

Boulder COUNTY

BAR ASSOCIATION

FEE WAIVERS: HOW TO HELP LOW INCOME LITIGANTS ACCESS THE COURTS

BRETT LANDIS

Annual
Judges
Dinner
Page 5

Filing fees and other court fees are something attorneys routinely bill for, but for a low-income litigant they can be a devastating barrier to access to the court system. Fortunately, our courts provide a system to seek a waiver of filing fees and other fees. Unfortunately, many people can be confused by the process. In this article we hope to demystify the process for filing for fee waivers and provide guidance about how to address errors.

Not every litigant is eligible for fee waivers. Fee waivers or deferrals are reserved for low-income and low-asset litigants. However, more litigants may be eligible than attorneys realize. Often, a stay-at-home parent in a dissolution of marriage case or a tenant in an eviction case may have little access to funds, especially if they have hired an attorney to represent them.

Fee waivers are authorized under C.R.S. 13-16-103. However, the details are governed by the Chief Justice Directive 98-01, which lays out the entire process and procedure for applying for a filing fee.

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FEE WAIVERS CONTINUED

Generally speaking, litigants may be eligible for fee waivers two ways. They may be below 125% of the Federal Poverty Level and have liquid assets below \$1500. They may also be below 150% of the Federal Poverty Level, have assets below \$1500, and have monthly expenses which are equal to or exceed their monthly income. (Chief Justice Directive 98-01). The Federal Poverty Level is based on household size, so 125% varies depending on the number of people in the household. (For example, a single person making \$1256 per month is at 125% of the Federal Poverty Level, but a family of 4 making \$2563 is at 125% of the Federal Poverty Level).

Filing a fee waiver is a relatively simple process. The difficult part comes with providing the appropriate documentation to the court clerks. As always, it helps to be prepared.

Cases that are taken pro bono through Boulder County Legal Services (or through Colorado Legal Services in other counties) have a stream-lined process. Because BCLS and CLS are able to screen clients for eligibility, “a further application for indigency for the purpose of waiving the filing fee. . . is not necessary”. (Chief Justice Directive 98-01). The office simply provides a Certificate of Indigency (JDF 203) on behalf of the client, signed by the managing attorney. The pro bono volunteer attorney then takes that Certificate of Indigency and files it through the electronic filing system.

For all other cases, you begin with a Motion to Waive Fees (JDF205, available on the court’s website here. [\[1\]](#) The Motion form actually consists of both the motion and supporting affidavit.

The affidavit calls for information regarding all adults who are part of the same economic household, those who live together and share expenses. A roommate would not qualify as a household member, but a partner or spouse would. Parents and adult siblings may be household members depending on how rent, utilities, food and other expenses are split. The more things are shared, the more likely they are to be considered household members. Minor children ought to be listed as household members as the size of the household affects what is considered to be low-income.

To properly fill out the form, the applicant must be able to list income from all sources, all assets, and all regular essential expenses.[\[2\]](#) Some expenses are hard to

quantify when they fluctuate, so estimates are permitted. It is also important to note if an applicant receives foodstamps (SNAPS), welfare (TANF), old age pension (OAP) , or another form of cash assistance from the state. This must be included on the form.

The next critical step is to gather the supporting documentation. An applicant will need to provide three months’ worth of bank statements and paystubs. If an applicant is not working, they should plan to provide three months’ worth of other income documentation, for example, a social security award statement and the bank accounts showing those deposits.

Once the Motion and Affidavit is completed and the documentation put together, the applicant files these with the court clerks. The court will then issue a Finding and Order Concerning Payment of Fees (JDF 206). The court may waive the entire fee, allow for installment payments of the fees, or deny the application.

The courts have broad discretion in reviewing fee waiver applications. While these orders are appealable, the standard is quite high. Absent an abuse of discretion, the appellate court will not overturn the lower court’s findings. *Medina v. District Court*, 493 P.2d 367 (1972).

Accessing our justice system is both a right and an American ideal. The courts in Colorado have established the fee waiver system to properly allow low-income litigants have their “day in court”. We hope this article helps our colleagues to better understand this system.

For more information, please call the court clerks.

Brett E. Landis is the current managing attorney of Boulder County Legal Services and former co-chair of the Availability of Legal Services committee for the Boulder County Bar Association. She is currently a member of the board of directors for the Boulder County Bar Association. Many thanks to Bruce Wiener and Erin Eastvedt on the Availability of Legal Services committee for their assistance editing this article.

[\[1\]](#) This form is to be used in civil and domestic relations cases. However, if an applicant is applying for state-pay for a Child and Family Investigator, the appropriate form is JDF 208 , which is available here: <https://www.courts.state.co.us/userfiles/file/JDF%20208.pdf>

[\[2\]](#) Determining whether or not an expense is “essential” or “nonessential” is a bit of a judgment call. The instructions from the court list “cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc” as nonessential expenses.

CALENDAR OF EVENTS

Wednesday, October 3

CIVIL LITIGATION

Basics of Civil Protection Orders

Presented by Judge Butler & Judge Mulvahill

12:00 PM @ Boulder County Justice Center

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Wednesday, October 3

PARALEGAL

Habits of a Successful Paralegal

Presented by Kyna Glover

12:00 PM @ BCBA Conference Room

\$12 Lunch

[Register Here](#)

Thursday, October 4

BUSINESS

Public-Private Partnerships: A Legal Introduction to P3s

Presented by Karen A. Hammer

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Tuesday, October 9

EMPLOYMENT

Ethical Issues in High Profile Cases

Presented by Paul Maxon

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Wednesday, October 10

CRIMINAL

Criminal Law Primer

Presented by Judge Patrick Butler

12:00 PM @ Boulder County Justice Center

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Thursday, October 11

LONGMONT HAPPY HOUR

5:00 PM @ The Roost (526 Main St, Longmont)

Free to attend

[Please RSVP to Kyle](#)

Thursday, October 11

INTELLECTUAL PROPERTY

Protecting Your Clients' Interests Before Trademark Rights Become Contentious

Presented by Jessie Pellant

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Tuesday, October 16

ELDER LAW

Guardianship Pilot Program / Legislative Update

Presented by Brooke Brestel

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Wednesday, October 17

FAMILY

Domestic Violence: Expanded Statute of Limitation for Civil Liability

Presented by Lila Sol, Lydia Waligorski, Pamela Mass

12:00 PM @ Boulder County Justice Center

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Thursday, October 18

REAL ESTATE

Presentation TBD

Presented by TBD

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Wednesday, October 17

NEW / YOUNG LAWYER LUNCH

12:00 PM @ BCBA Conference Room

Thursday, October 18

BANKRUPTCY

Monthly lunch and roundtable

12:00 PM @ Kathmandu Restaurant

Friday, October 19

AVAILABILITY OF LEGAL SERVICES

Monthly lunch and roundtable

12:00 PM @ Boulder County Legal Services

Tuesday, October 24

TAX, ESTATE PLANNING, & PROBATE

Leaving Retirement Assets to Trusts

Presented by Jennifer Spitz

12:00 PM @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register Here](#)

Thursday, October 25

NATURAL RESOURCES / ENVIRONMENTAL CLE

Role of the State Engineer in Water Rights Administration

Presented by Kevin Rein

12:00 PM @ Dickens Tavern, Longmont

\$25 CLE, \$15 New/Young Lawyer, \$16 Lunch

[Register Here](#)

PRESIDENT'S PAGE

BRAD HALL

Each year the President of the Boulder County Bar Association can elect to focus on a particular area of interest affecting lawyers, be it access to justice, a particular demographic of the bar, professionalism or another area. Last year our esteemed President, Renee Ezer, focused on attorney wellness. It is a topic I found many of our past presidents have touched on as I read through numerous president's pages on the BCBA website. It is a topic that is always relevant and needs attention. I am sure many of you have found that the practice of law never becomes less stressful or less anxiety-inducing until maybe retirement becomes a realistic possibility.

I had planned to address this issue later in the year, but just before beginning last month's page I had a dream that convinced me that I better write this column before it fades completely away. The root of the dream is clear. My wife and I are in the planning stages of a bathroom remodeling project. Given my lack of taste in the selection of vanities and free-standing tubs, let's just say she is taking the lead. As an aside, I was once advised by a friend that if things are just going too well in your marriage, just hang wallpaper together to put an end to that. I always have that in mind when Mary asks if I like whatever she has selected to brighten up the home décor. In any event, in my dream I was making one of the inevitable trips back to Lowe's (I know because the service staff had on the blue and red vest) to return some part for a different size. When the employee at the service desk turned around I was stunned to see a law school classmate. When I asked him why he was working at Lowe's rather than practicing law he responded, "The pay is better, and there's a lot less stress." Needless to say, that one stuck with me in the morning.

I will not speculate on the reason this nugget manifested itself so vividly at this stage of my career, but I think it is safe to say that the practice of law, while stimulating, can be damn stressful. We all have our own issues that keep us up at night--too much work, not enough work, billable hours, unfavorable rulings, unreasonable clients, unreasonable opposing counsel--to name just a few. If too many of these are heaped on us at once, the effects can be disastrous for the attorney and the clients.

One of the most comprehensive studies conducted on the effects of stress on attorneys found that attorneys



suffer ill effects at almost twice the rate of the general population. Not surprisingly, the high level of stress leads to a higher rate of alcohol and drug abuse than suffered by the general population. The rates of stress, anxiety, and substance abuse were even higher among young lawyers.

I have no good answers for these problems. What I can say is that ignoring them or simply keeping them to yourself and hoping they go away is not a good approach. I speak from experience. Several years ago, what seemed like an avalanche of issues in my private life left me almost paralyzed in my professional life. Looking back on it over a decade later can still make me shudder. Fortunately, I had others I could turn to and what I learned from that experience was that I was not alone. The second thing I learned was that if you find yourself in a similar situation, tell someone. In spite of all of our faults, attorneys can be very understanding and helpful.

The Colorado Supreme Court has established the Colorado Lawyer Assistance Program which provides assistance from everything from practice management to substance abuse and addiction problems. All communications are held in the strictest confidence. I encourage all of you to visit the COLAP website at coloradolap.org. It can be reached at (303) 986-3345.

Finally, I want to pass on a piece of wisdom imparted to me by my late partner, Dan Bernard. He told me early in my career that when the phone is not ringing to go golfing because it will start ringing the moment you leave.

Now back to that remodeling project.



REGISTER NOW FOR THE ANNUAL JUDGES DINNER

Please join us for the 2018 Judges' Dinner at the St. Julien Hotel on Thursday, November 1 at 5:30 pm. This is a great opportunity to meet with your colleagues and socialize with the judges of the 20th Judicial District. This event is expected to sell out, so buy your tickets early! \$85 admission includes dinner and wine with the meal. Other drinks available for purchase at the venue.

We look forward to seeing all of you there!

Register and pay online here

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Melissa Sullivan



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Zachary Warzel

PERSONAL INJURY. WORKERS' COMPENSATION. BUSINESS LITIGATION. INSURANCE DISPUTES.

LIABILITY PROTECTION FOR OPERATORS IN THE RECREATIONAL INDUSTRY REMAIN ALIVE AND WELL IN COLORADO

DOUG STEVENS AND LUCY WALKER

As members of the Boulder Bar Association, we are lucky to live and practice law in a place renowned for its outdoor (and even indoor) recreational opportunities. We have world-class skiing, rafting, rock climbing, horseback riding, mountain biking, and fly fishing within a short day's drive. We also have an abundance of fitness gyms, indoor rock climbing facilities, and other opportunities right here in Boulder County. Consistent with Colorado's strong commitment to the outdoors and recreational businesses, our state has pro-business laws that protect operators against liability when their customers sustain damages, even in instances stemming from the business's or their employees' alleged negligence.

Colorado has several statutes that protect outdoor recreation companies from liability for accidents arising from the activity's inherent risk. This includes the Ski Safety Act (C.R.S. §§ 33-44-101 to -114), the Equine Activities Act (C.R.S. § 13-21-119), and the Agritourism Act (C.R.S. § 13-21-121). As an example, the Equine Activities Act, which dates back nearly 30 years, states that an equine activity sponsor—such as a dude ranch—is not liable for accidents resulting from dangers or conditions that are an integral part of equine activities. These specifically include accidents arising from the animal behaving in ways that may injure its rider, hazardous surface and subsurface conditions, and collisions with other animals or objects. While the statute also explicitly includes certain acts that do not constitute inherent risks, those exceptions are limited.

As further protection for recreational businesses, these statutory requirements neither hinder nor restrict their ability to utilize appropriately drafted exculpatory language alongside articulated inherent risk language. See, e.g., *Chadwick v. Colt Ross Outfitters, Inc.*, 100 P.3d

465, 468 (Colo. 2004). Further, under C.R.S. § 13-22-107, not only may adults waive their own prospective negligence claims against a recreational provider, but they may do so on their minor child's behalf as well. If properly drafted, these agreements typically protect businesses from liability for accidents arising from the businesses', or their employees', simple negligence. Colorado law does not permit a recreational provider to be protected for accidents resulting from gross negligence or willful or wanton conduct. *Chadwick*, 100 P.3d at 467.

In *Jones v. Dressel*, 623 P.2d 370 (Colo. 1981), the Colorado Supreme Court established a four-pronged test for determining whether an exculpatory agreement is valid: (1) the existence of a duty to the public; (2) the nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the intention of the parties was expressed in clear and unambiguous language.

While there have been many challenges over the years to the enforceability of liability waivers, Colorado courts typically find that waivers in the recreational setting meet the first three factors. See, e.g., *Hamill v. Cheley Colorado Camps, Inc.*, 262 P.3d 945, 949-51 (Colo. App.), cert. denied (2011). (1) There is long-standing Colorado precedent that a business providing recreational services does not implicate a public duty. (2) Courts have consistently held that recreational services are neither essential nor a matter of practical necessity. (3) Courts routinely find that the type of unfair disparity in bargaining power sometimes present in other contracts is not implicated in recreational activities. This third factor is due in large part to their voluntary nature and the number of businesses offering similar services.

LIABILITY PROTECTION CONTINUED

The fourth prong is the one that courts have most frequently grappled with, although even with this factor, they have rarely chosen not to enforce the agreement. One such instance was less than two years ago, in *Stone v. Life Time Fitness, Inc.*, 411 P.3d 225 (Colo. App. 2016), *cert. denied* (2017). There, the Colorado Court of Appeals declined to enforce what it termed “exculpatory clauses” contained in a “Member Usage Agreement” signed by a fitness club member. (The clauses the court referred to included exculpatory language seeking to release the fitness club from liability, as well as both an acknowledgment and acceptance by the signer of “inherent risks” and later an assumption of “all risk of injury...”). The member filed a lawsuit against the gym after she was injured in the club’s locker room when she tripped on a hair dryer cord. The court of appeals reversed the trial court’s summary judgment order enforcing the exculpatory language and dismissing the plaintiff’s Premises Liability Act claim against the gym.

The opinion turned on the fourth *Jones* factor and the court’s belief that there were various deficiencies in the Agreement and, as a result, the parties’ intentions were not clearly expressed. While the Agreement discussed the risk of injuries on fitness equipment such as bikes and treadmills, the court determined it did not specifically cover injuries sustained on other areas of the premises, including the locker room where the plaintiff was injured. (The court noted that the plaintiff did not dispute that the Agreement would have barred her from asserting claims if she was injured while using fitness equipment or playing racquetball.)

The court was also concerned that, in its view, the

Agreement did not include clear, unambiguous language easily understood by a layperson, and it contained an abundance of “legalese,” confusing to a layperson. It was also critical of the Agreement’s “extremely dense fine print” for which many people would require a magnifying glass.

To this point, *Stone* has not had a significant impact. The few courts that have cited *Stone* have chosen to enforce the exculpatory agreement and have essentially dismissed the facts in *Stone* as an outlier due to the extremely fine print, misplaced language in the document, and other elements of the Agreement that were not present in subsequent cases. At least one court has again noted that Colorado law does not require that exculpatory agreements refer to the specific activity in which the plaintiff was injured. See *Patterson v. Powdermonarch, L.L.C.*, 2017 WL 4158487, at *8 (D. Colo. July 5, 2017). Generally, it appears that these courts—which were all federal trial courts—have tried to downplay *Stone*’s impact and instead continued to apply the *Jones* factors as Colorado courts have done for nearly 40 years.

Overall, these laws demonstrate the favorable climate in which recreational businesses operate in Colorado. They also show the significant challenges that participants (and their attorneys) face if they hope to recover damages for injuries sustained during these activities, unless they were caused by the willful and wanton conduct or gross negligence of the operator or its employee.

Doug Stevens, Esq. of Caplan and Earnest, LLC, and Lucy Walker, Esq. of Hutchinson Black and Cook, LLC are the Co-Chairs of the Boulder County Bar Civil Litigation



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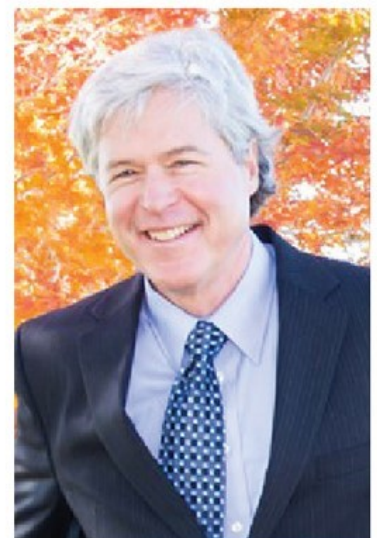
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PROFESSIONALISM ON CALL

October 1	Gwyn Whalen	303.443.8010
October 8	Lee Strickler	303.443.6690
October 15	Mark Langston	303.440.9684
October 22	Meghan Pound	303.443.8010
October 29	Tom Rodriguez	303.604.6030

The Professionalism Committee assists lawyers, clients, and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is contrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

BOULDER COUNTY FREE LEGAL CLINIC

The dates have been set for the 2018 Free Legal Clinics at the Sacred Heart of Jesus Church (1318 Mapleton Avenue), the Sister Carmen Community Center (655 Aspen Ridge Dr.), and the Longmont Senior Center (910 Longs Peak Ave) from 5:30 - 7:30 pm. Volunteers are always needed. Please contact Laura at laura@boulder-bar.org if you can help in Boulder or Lafayette, or susan.spaulding@longmontcolorado.gov if you can help in Longmont.

Lafayette: October 16

Longmont: November 27

Boulder: December 13

PRO BONO REFERRALS

7 cases were referred during the month of August. Thank you to the following attorneys:

Norm Aaronson
Charles Martien
Rick Romeo
Chris Tomchuck
Ben Wilson

PRO SE VOLUNTEERS

Kathleen Franco
Ainagul Holland
Chris Jeffers
Tucker Katz
Zachary LaFramboise
Michael Morpew

BCAP VOLUNTEERS

There were no requests for a referral for the Boulder County AIDS Project in July.

PRO BONO CORNER

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.

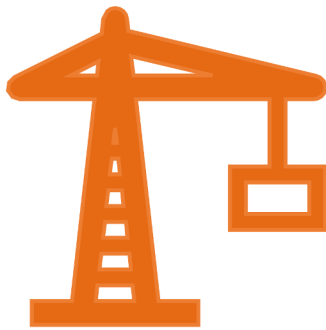
FREE LEGAL CLINIC VOLUNTEERS

Thank you to the following volunteers for our August Free Legal Clinic in Longmont:

Ben Thompson
Don Alspaugh
John Gaddis
Jeff Larson
Laurel Herndon
Sarah Pheral
Steven Janssen
Liz Parker
William Ellison
Emily Ellison
Susan Bryant
Karen Burns
Jennifer Terry

Thank you to the following volunteers for our September Free Legal Clinic in Boulder:

Kathleen Franco
William Ellison
Emily Ellison
Mary Street
Laurel Herndon
Samantha Sitterly
Mike Rafik
Steven Taffet
Nancy Miller
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William Benjamin
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LYONS GADDIS

ATTORNEYS & COUNSELORS

is pleased to announce

Jennifer M. Spitz



Will be joining the Firm on January 1, 2019
as a shareholder.

With the recent retirement of her current law partner, Tom Stover, Jennifer is bringing her expertise to Lyons Gaddis where she will strengthen our firm's Tax Law and Trusts & Estate Law teams. This will bring together two long-standing Longmont law firms with highly complementary practice strengths, enabling us to continue providing exceptional service to all of our clients.

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CLASSIFIED ADS

LITIGATION ASSOCIATE (3-5 YRS EXPERIENCE): Leading Employment and Civil Rights Firm, Benezra & Culver, PC is seeking an associate with three to five years of experience in Litigation. Employment and Civil rights experience preferred but not required. Depositions, trial, and arbitration experience is a plus.

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PART-TIME PARALEGAL POSITION: Bridge to Justice (B2J) is hiring a part-time paralegal to join our agency.

B2J is a nonprofit organization based in downtown Boulder providing reduced-rate civil legal services to low- and moderate-income individuals. This is a part-time position (20-25 hours per week) with an opportunity for growth. The ideal candidate would have paralegal training and/or experience, detail oriented, and possess strong communication and organizational skills. Please send a resume and list of professional references to Bruce Wiener, Executive Director, at bruce@boulderbridgetojustice.org. Posted 8/27/18.

FULL-TIME PARALEGAL. Energetic, established Boulder law firm seeks highly skilled, full-time paralegal with experience in family law, civil litigation, and criminal defense. Ideal candidate possesses 4+ years legal experience, excellent written and oral communication skills and ability to work as part of a team as well as independently. Must be highly organized and a self-starter. Ability to multi-task and a sense of humor are mandatory. Position involves extensive interaction with clients and attorneys as well as document preparation and organization, litigation support, E-filing, scheduling, and case management. Knowledge of Prolaw a plus. Long-term, committed professional required; salary commensurate with experience. Send resume, cover letter, salary requirements and list of professional references to waters@slblaw.com.

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