

INAUGURAL SIDE BAR

On Thursday, September 12 we held our inaugural Side Bar with a presentation on the Colorado Legislative Update. We were so happy to see such a great turnout and enthusiasm for this new program. As a bar association, we are continually seeking new ways to keep our members engaged while offering quality programming. Adding a social hour after the presentation helps create a sense of community among colleagues, and we are looking forward to watching the new connections this will foster.

Our second program will be held on Thursday, October 10. Michelle Rafik will present Top Productivity and Time Management Tips for Attorneys. The CLE will be from 4-5 pm, followed by happy hour at our offices. We look forward to seeing all of you there! Click here to register.

Annual Judges Dinner Page 10

Mark your calendars for the upcoming Side Bar season:

- November 14 Client Centered Pricing: Profitable Alternatives to the Billable Hour with Lauren Lester, JD, CBA Modern Law Practice Initiative. Click here to register.
- December 12 Mentoring a Professional Identity with Ryann Peyton, Director of the Colorado Attorney Mentoring Program. *This program will include ethics.* Click here to register.
- January 9 CBA Presidential Visit with Kathleen Hearn Croshal and CLE presentation by Justice Richard Gabriel. Click here to register.
- February 13 On Being A Lawyer with Sonny Flowers, past BCBA President who brings over 40 years of experience to speak on his reflections on the practice of law. Click here to register.

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SIDE BAR CONTINUED

- March 12 Effective Communication and Conflict Management to Build Relationships that Thrive with Sharla Macy, CEO of Pursuits Coaching, and Beth Brown Ornstein, JD, Mediator. Click here to register.
- April 9 Speed Dating with the 20th JD Judges with Judges Archuleta, Brodsky, Butler, LaBuda, Martin, Mulvahill, Salomone, Sierra, and Magistrate Collins. Click here to register.
- May 14 The Office of the Presiding Disciplinary Judge: An Independent Tribunal Ensuring Public Protection and Guaranteeing Due Process with Presiding Judge William Lucero. Click here to register.

Click here to register for the October Side Bar



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CALENDAR OF EVENTS

Tuesday, October 1 TAX & ESTATE PLANNING USING WEALTH TRANSFER TRUSTS Presented by Randi Grassgreen & Scott Robinson 3:30 - 5:00 PM @ BCBA Offices (3269 28th Street) \$35 CLE and social, \$20 New Lawyer, \$10 No CLE Please click here to register

Thursday, October 3 ALL SECTIONS LONGMONT CLE - OBSERVATIONS OF AN INTERNATIONAL ELECTION OBSERVER **Presented by Richard Lyons**

Dickens Tavern (300 Main Street, Longmont) \$16 Lunch only

Please click here to register

Thursday, October 3 **CWBA BOULDER LEGAL NETWORKING EVENT** Co-hosted by BCBA & CWBA

5:00 - 7:00 PM @ BCBA Offices (3269 28th Street) \$10 to attend

Please click here to register

Thursday, October 10 **ALL SECTIONS** SIDE BAR: TOP PRODUCTIVITY & TIME MANAGEMENT **TIPS FOR ATTORNEYS Presented by Michelle Rafik** 4:00 - 6:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE and social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Tuesday, October 15 FREE LEGAL CLINIC IN LAFAYETTE

5:30 PM @ Lafayette Senior Center (103 S. Iowa Avenue)

Please click here to volunteer

Wednesday, October 23 **FAMILY LAW FAMILY CASE LAW UPDATE**

Presented by Ron Litvak & Luke Abraham

Noon - 1:00 pm BCBA Offices (3269 28th Street) \$35 CLE & Lunch, \$20 New Lawyer, \$10 lunch only

Please click here to register

Friday, October 25 **ALL SECTIONS COLORADO'S REAL ID ACT AND LEGISLATIVE UPDATE** Co-hosted by BCBA & J-SUP **Presented by Casey Sherman** 4:00 - 5:00 PM @ BCBA Offices (3269 28th Street) \$35 CLE & Lunch, \$20 New Lawyer, \$10 Lunch only

Please click here to register

Monday, October 28 **CIVIL LITIGATION KEY TIPS FOR PRACTICING CIVIL LITIGATION IN BOULDER DISTRICT COURT** Presented by Judge LaBuda & Magistrate Collins 4:00 - 6:00 PM @ BCBA Offices (3269 28th Street) \$45 2 CLE, \$25 New Lawyer, \$10 No CLE

Wednesday, October 30 **REAL ESTATE** BCBA/CBA CO-HOSTED CLE: CCIOA UPDATE **Presented by Suzanne Leff**

4:30 - 5:30 PM @ BCBA Offices (3269 28th Street) \$35 CLE & Social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Please click here to register

OCTOBER SIDE BAR - TOP PRODUCTIVITY

Join us on Thursday, October 10 for our next Side Bar program. Michelle Rafik will present on productivity and time management tips for lawyers struggling with the demands of a busy practice and billable hour requirements. Topics will include completing tasks more efficiently and effectively to gain hours in the day. Also, mastering the art of creating boundaries in life and work to devote more time to projects and goals that truly matter. Time management is especially important for lawyers to gain a handle on stress that impacts mental health and quality of life. We will then have a networking and social hour with appetizers, wine and beer included. Please click here to register.

NEUROSCIENCE AND PROFESSIONALISM

KAREN A. HAMMER, ESQ., LL.M.

Most lawyers agree that we are experiencing a crisis in professionalism. To help address these issues, Colorado traditionally celebrates October as Professionalism Month. Throughout the year, the Colorado Supreme Court supports a Twitter campaign -#ProfessionalismMatters.

This article celebrates Professionalism Month by examining what neuroscience can teach us about managing professionalism issues. Justice Monica Márquez' Colorado Task Force on Lawyer Well-Being takes an innovative approach - understanding that "well-being matters [because] it can impact [p]rofessional interactions."

Do We Agree on What Conduct Is Unprofessional?

After presenting continuing legal education; participating in discussions at the local, state, and federal levels about the importance of professionalism; and serving the bar through ethics and professionalism bar leadership roles, I believe that professionalism is in the eye of the beholder more frequently than we care to admit. Although optometrists can provide relatively objective eye exams alerting a person as to the accuracy of her vision, no such vehicle exists for objectively evaluating whether our colleagues are exhibiting conduct that is within the lines of the Colorado Rules of Professional Conduct but outside the proper bounds of

professionalism.

In 2015, the joint Colorado Bar Association and Denver Bar Association Professionalism Coordinating Council adopted a definition that provides a starting place to discuss professionalism:

Professionalism is conduct reflecting the values embodied in the Colorado Attorney Oath of Admission, the Colorado Principles of Professionalism, and the Colorado Rules of Professional Conduct. These values require attorneys always to act competently, civilly, and with integrity and to commit themselves to the public good and to furthering the interests of justice.

This definition provides one perspective of two bar associations. The Boulder County Bar Association has adopted Principles of Professionalism, published on our website: click here to view. By participating in the first Local Bar Summit last year, I came to the conclusion that different parts of the state and different practice areas hold a variety of perspectives on many topics, perhaps even professionalism.

The focus on diversity and inclusion raises another point that is rarely discussed: honoring diversity requires not only that we include those who look different from each other, but also understanding that people with "different" backgrounds may also act and communicate differently than "we" do, while staying

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Daniel Wartell



Deirdre Ostrowski



Zachary Warzel

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

NEUROSCIENCE CONTINUED

well within the bounds of professional and ethical conduct.

We need to consider the possibility that another person's conduct is not disrespectful or suspect merely by being different from what we expected or from that to which we think we're entitled.

No One Is Immune from Less-Than-Becoming Conduct

Lawyers are human – yes, it's true. And so, like other humans, we tend to think that "the other guy" is the one with the problem. In numerous professionalism events, I've heard the comment that programs on professionalism would be helpful if only the "other people" with the problem had the sense to attend these events.

The good and bad news is every single one of us is capable of a broad range of conduct that fluctuates, depending on a variety of ever-changing circumstances. This means that each one of us is capable of engaging in conduct that someone else might perceive as unprofessional.

Developments in neuroscience have provided greater clarity on some factors that make it more likely that people will engage in conduct that is "not their best."

Lawyers Are Sometimes Professional Arguers

At times lawyers view themselves as accomplished narrators of other people's issues. But frequently clients want lawyers to be the front-line in waging battles in which clients want to demonstrate *their* own toughness and "being right." Even transactional lawyers are frequently expected to be persuasive enough to win others over to the perspective of our clients.

Many tools of persuasion exist along the spectrum from clearly proper to unlawful or illegal. Some of those tools along this spectrum are tactics that some lawyers have come to believe are perfectly normal but that are objectively similar to intimidation, misdirection, and even bullying.

Neuroscience teaches us that behaviors on one edge of the persuasion spectrum can trigger neurological states in which we become more like cave-dwellers than professionals with advanced degrees and a sense of honor.

Mainstream neuroscientists believe that once we're using the primal parts of our brains – the ones developed prehistorically and from which fight/flight/freeze responses arise – it's very hard to change the channel. While stuck in the primal brain



FRESH START

Take care of your outstanding warrant in Boulder County without arrest.

Individuals appearing for the event will not be arrested on their active warrants regardless of eligibility.

HOW IT WORKS

1.Check your eligibility at www.bouldercounty.org/district-attorney/ or call the hotline at 303-413-7574.

2.Come to the Boulder County Courts- Longmont Annex on Saturday, November 2, 2019 between 9 am – 3:00 p.m.

No appointment needed.

3. Speak with a Deputy District Attorney and try to resolve your case.

4.Speak with a volunteer, free defense attorney or immigration attorney about your case if you choose.

5.If you are unable to resolve your case, then you will receive a new court date.

Boulder County Courts - Longmont Annex

1035 Kimbark St

Longmont, CO 80501

Saturday, November 2, 2019 9:00 a.m. - 3:00 p.m. drop in anytime!

Individuals appearing for the event will not be arrested on their active warrants regardless of eligibility.

NEUROSCIENCE CONTINUED

stem, we cannot easily access the higher-thinking parts of our brains that we tend to identify as our most enlightened selves.

Many of us know that, even when we ourselves are working at a peak state of detachment and intellectual rigor, events can result in a knee-jerk reaction, which is very like the response of our primitive brain stems. The changes happen more quickly than we can monitor at times. And our own conduct, even when technically proper, can at times trigger others to jerk their knees, moving them into *their* most primitive selves.

While arguing, lawyers are in a zone that is particularly likely to slip us into the primitive. For some lawyers at some times, unprofessional conduct has become a highly developed and conscious strategy. But in many circumstances, unprofessional conduct occurs during these unconscious primitive states in which we *think* that there's only one serving of freshly grilled meat and we're a hungry bear who just came out of hibernation.

Litigators in particular represent either plaintiffs (making them definitionally aggressors) or defendants (making defensive conduct in the worst sense easy to slip into).

I suggest that the most important advancements in professionalism will occur when we no longer view "others" as being the sole source of the professionalism problem, but understand that even good people can engage in bad conduct at times. How bad the conduct is and how frequently such conduct occurs may vary from person to person, but each human is fully capable of the full spectrum of conduct and misconduct.

So, Now What?

Focusing on how we can get "those other people" to be more professional is perhaps a fool's errand. What we can do is focus on our own conduct to see how we can foster professionalism and notice when we've contributed to professionalism problems while arguably coloring within the lines of ethical conduct.

I leave you with a real-life experience. Many years ago, I took a continuing legal education course that utilized scripts to hone litigation skills. During the course, I noticed that opposing counsel ("they") were making assumptions about "my side's" story-line ("us") that led "them" to be unprofessional to "us." I also made

assumptions that maybe this conduct reflected something about "them" and their behavior outside of this course. But I wasn't sure, so at the end of the course I asked to see the scripts "they" had been using and compared them to the scripts that "we" had been using. Each script was easily interpreted to assume bad motives and bad conduct. What "we" perceived as unprofessional conduct by "them" could have been what "they" perceived as justifiable indignation against "us." And vice versa.

One Bottom Line

We might consider the possibility that, when we feel a knee-jerk, we'd be well-served to step back and consider whether our own assumptions are about to contribute to misunderstandings or miscommunications. Perhaps we can humbly realize that we are each one-more-night-of-not-enough-sleep, one-more-sick-kid, or one-more-glass-of-wine away from making decisions that can be perceived as unprofessional conduct by those not walking in our shoes.

Once we label "the other guy" as acting unprofessionally, we forget we have a reset button to escape from the primitive brain and safely land back in the zone of intelligent detachment.

Even if "the other guy" is objectively acting unprofessionally, let's make sure that our righteous indignation doesn't lead us to respond in kind.

Karen Hammer has handled over two billion dollars of complex financial transactions involving businesses, government agencies, and quasi-governmental entities; does related types of litigation; and is a mediator. She is Secretary of the CBA Ethics Committee, chairs the CBA lawyer ethics hotline subcommittee, and is the former Secretary of the CBA/DBA Professionalism Coordinating Council. Hammer is a Hearing Panel member for the Office of Presiding Disciplinary Judge hearing attorney discipline cases. She chairs the Business Section of the BCBA and was Chair of the D.C. Bar's Real Estate, Housing, and Land Use Section and an appointee to the White House and Congressional Commission on Character Building in Education.

PRESIDENT'S PAGE

JENNIFER LORENZ

I recently had a client ask me if they could travel with their dog. If you've flown lately you've probably noticed an increase of people traveling with their pets. In years past, most airlines permitted small animals, under approximately 20 lbs., to travel in a pet carrier that fit beneath the seat. However, the rules have changed.

Most airlines permit services animals and emotional support animals to fly with their owner. But there is a clear difference between a service animal and an emotional support animal.

Pursuant to 28 C.F.R. § 35.104:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or



companionship do not constitute work or tasks for the purposes of this definition.

Service animal are not considered "pets" but are treated like any other accommodation under the Americans with Disabilities Act, such as a wheelchair or prosthetic limb. However, pursuant to 28 C.F.R. § 35.136, a public entity may ask an individual with a disability to remove a service animal from the premises if: (1) The animal is out of control and the animal's handler does not take effective action to control it; or (2) The animal is not housebroken.

Service animals are limited to specifically trained dogs and miniature horses. Its true! According to 28 C.F.R. § 35.136, a public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. But a public entity may consider (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;(ii) Whether the handler has sufficient control of the miniature horse; (iii) Whether the miniature horse is housebroken; and (iv) Whether

PRESIDENT'S PAGE CONTINUED

the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

If a miniature horse trots into a public entity, including an airport, the public entity cannot ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal.

- 1. A public entity may ask if the animal is required because of a disability.
- 2. The public entity may ask what work or task the animal has been trained to perform.

According to the Transportation.gov website, under the Air Carrier Access Act (ACAA) a service animal is any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support. Documentation may be required of passengers needing to travel with an emotional support or psychiatric service animal.

The laws and regulations regarding emotional support animals are far more lenient than those related to service animals. Pursuant to 14 C.F.R. §382.117 (e): If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (i.e., no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating the following:

(1) The passenger has a mental or emotional disability recognized in the Diagnostic and

Statistical Manual of Mental Disorders—Fourth Edition (DSM IV);

- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
- (3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
- (4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.

Airlines are never required to accept snakes, reptiles, ferrets, rodents, sugar gliders, and spiders. Pursuant to 14 C.F.R. §382.117(f): You are never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin. With respect to all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), as a carrier you must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight's destination). If no such factors preclude the animal from traveling in the cabin, you must permit it to do so. However, as a foreign carrier, you are not required to carry service animals other than dogs.

Sleep easy knowing that you will not have to sit next to someone's emotional support snake on your next flight!

PROFESSIONALISM ON CALL

 October 7
 Lee Strickler
 303.443.6690

 October 14
 Mike Rafik
 303.444.9292

 October 21
 Gwyn Whalen
 303.443.8010

 October 28
 Steve Clymer
 303.530.2137

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 2019 Free Legal Clinics at the BCBA Office (3269 28th Street, 2nd Floor), the Lafayette Senior Center (103 lowa Avenue), 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 15

Longmont: November 19

Boulder: December 19

THANKS TO OUR VOLUNTEERS

The first Boulder Free Legal Clinic at the BCBA Office was held on September 19. Thank you to the attorneys who were able to serve as volunteers:

Shana Beggan Laurel Herndon
Patricia Bellac John Koechel
Karen Burns Heather Kurland
Emily Ellison Nancy Miller
Michael Foote Mike Pellow
Joel Hayes Michael Smeenk

PRO BONO REFERRALS

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

Susan Bryant Christina Ebner Clark Edwards Wallace Grant Heather Kurland

PRO SE VOLUNTEERS

Josh Anderson
Kathleen Franco
Chris Jeffers
Tucker Katz
Zachary LaFramboise
Michael Morphew
Joan Norman

PRO BONO CORNER

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





REGISTER NOW FOR THE ANNUAL JUDGES DINNER

Please join us for the 2019 Judges' Dinner at the St. Julien Hotel on Tuesday, November 5 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! \$90 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! Please click here to register.

WELCOME NEW BCBA MEMBERS

Linda E Davidson
Christine L Vanston
Oswaldo A Mendoza
Marianne H Luu-Chen
CJ Mathis
Benjamin Daniels
Mary E Barnett

Carin M Cutler
Gary Chapman
Michael J Thomson
Garth Gersten
William C Groh, III
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David H Savidge

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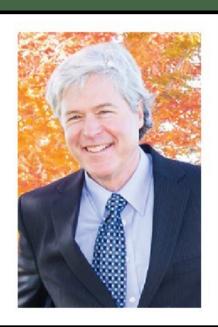
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PRO BONO COORDINATOR. CLS Boulder office has an opening for the Pro Bono Coordinator; position includes grant management, oversight of PAI program, and work with private attorneys. Interested candidates should send a resume and cover letter to Managing Attorney Brett Landis, blandis@colegalserv.org.

VIRTUAL PARALEGAL. Have a virtual office? You need a virtual paralegal. Civil. Criminal. Mobile Notary. References. Roz Lynn Dorf, M.A., Freelance Paralegal Services. (303) 494-6935.

DOWNTOWN BOULDER OFFICE FOR RENT – Free client parking. 9th and Walnut, conference room, available underground parking, phone and internet included. Email interest to steve@collinsrafik.com.

KNIGHT NICASTRO IS HIRING FULL TIME ATTORNEYS WITH EXPERIENCE IN CIVIL LITIGATION. Preferred candidate would have experience in trials, taking depositions and arguing motions. Some travel required. Competitive compensation, CLE budget, medical, dental, company matching 401(k). Email resume to mcminn@knightnicastro.com

FIDUCIARY SERVICES, CAROL JOHNSON, J.D. Client seeking a competent Trustee or Personal Representative to execute their estate less expensively than a law firm or bank? 303.474-4235. Carol-530@comcast.net

OFFICE SPACE FOR LEASE. Incredible Flatirons Views, located at 2575 Pearl Street, Suite 230, Boulder. Furnished office space with 2 executive offices, glassed-in conference room, kitchen/work room, and reception area. 850 Square Feet. Monthly rent: \$2,950. Call Todd at (303) 859-3840.

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practice law firm seeks litigation attorney for family law and civil litigation work. Two years or more experience is desirable. Must be comfortable in a courtroom, maintain a professional demeanor and attitude with our clients and staff, and be willing to go the extra mile to provide exceptional service to clients. We are seeking candidates with a strong work ethic and commitment to pro bono work and community. Some portable business would be a plus. Salary based on billable hours received. Please submit a cover letter and resume to lmoore@niwotlaw.com.

EXPERIENCED PUBLIC SECTOR ATTORNEY. The Longmont, Colorado office of Lyons Gaddis has an opening for an experienced public sector attorney to join the firm's government practice group, which represents school and special districts. The ideal candidate will have 2 to 8 years' experience in public sector work, with a desire to practice education law and local government work. Candidates will have a passion for providing exceptional client service, developing strong client and community connections, and either live in Northern Colorado or be willing to relocate. The position will include direct client interaction, as well as the potential for some evening meeting attendance. If you are interested in joining our team and your background aligns with our needs for this position, please reply with a letter of introduction, as well as a resume and a writing sample to careers@lvonsgaddis.com.

BCBA JOBS BOARD NOW ACTIVE

We have added a Jobs Board and classified page to the BCBA website; <u>please click here to view</u>. Do you have a job posting or classified you would like listed on the BCBA Jobs Board? The pricing for these listings is for 30 days: \$40 for current BCBA members, \$60 for non-members. Submitted listings will also run in the BCBA newsletter. <u>Please click here</u> to submit your listing.



THE BCBA NEWSLETTER IS A MONTHLY ELECTRONIC PUBLICATION BY THE BOULDER COUNTY BAR ASSOCIATION. ARTICLES BY GUEST LAWYERS MAY NOT BE REPRODUCED WITHOUT PERMISSION FROM THE BOULDER COUNTY BAR ASSOCIATION OR THE AUTHORS.

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