

Boulder COUNTY

BAR ASSOCIATION

OCTOBER SIDE BAR PRESENTATION

October is Professionalism Month for Colorado lawyers. We are so pleased to be offering our Side Bar CLE presentation to align with this theme. Judge William Lucero, the Presiding Disciplinary Judge, will be presenting **Attorney Discipline Cases Before the Presiding Disciplinary Judge: An Independent Disciplinary Tribunal Ensuring Public Protection and Guaranteeing Due Process**. Judge Lucero's presentation will provide an introduction to the Office of the Presiding Disciplinary Judge (PDJ), an overview of the disciplinary hearing system, and a discussion of other types of proceedings that come before the PDJ. There will also be an opportunity for a brief Q&A session with Judge Lucero. **This presentation offers 1 Ethics credit.**

BCBA Blood
Drive
Page 2

William R. Lucero received his J.D. in 1972 from the University of Denver. He served in the Denver District Attorney's Office from 1972 to 1990 and the United States Attorney's Office from 1990 to 2001, where he supervised the Complex Prosecution Unit and the Appellate Unit. He then returned to the Denver District Attorney's Office and served as Chief Trial Deputy until 2004, when the Colorado Supreme Court appointed him Presiding Disciplinary Judge. He is a past member of numerous committees handling professional responsibility matters, including the Colorado Supreme Court Grievance Committee, the Attorney Regulation Committee, and the Federal Committee on Conduct. He received the Colorado Hispanic Bar Association's award for Outstanding Hispanic Lawyer of the Year in 1995 and its Lifetime Achievement Award in 2020.

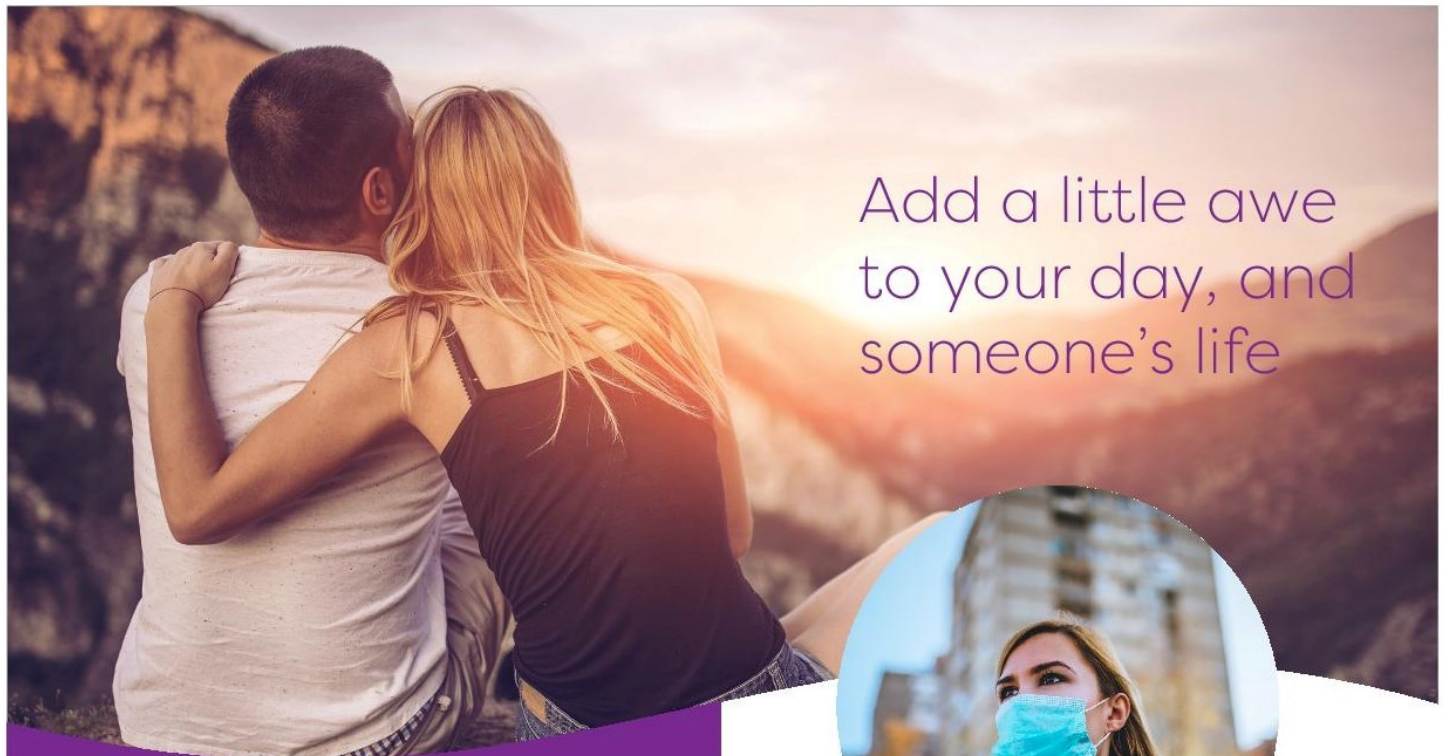
Our monthly Side Bar CLE presentations will be presented virtually via Zoom meeting rooms through the end of the 2020. Attendees will receive the log-in information the day prior to the presentation. Please click [here](#) to register.

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BCBA BLOOD DRIVE



Add a little awe
to your day, and
someone's life

Boulder County Bar Association Blood Drive

FRIDAY, OCT. 9
11 AM - 3 PM
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BOULDER, CO 80301
MEETING ROOM, 2ND FLOOR

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CALENDAR OF EVENTS

Thursday, October 8

SIDE BAR CLE

**Attorney Discipline Cases Before the Presiding
Disciplinary Judge**

Presented by Judge William Lucero

4:00 - 5:00 PM CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

[Please click here to register](#)

October date TBD

NATURAL RESOURCES CLE

**Status Update on Climate Change Lawsuit Filed By
City of Boulder, Boulder County and San Miguel
County Against ExxonMobil and Suncor**

Presented by Marco Simons

CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

[Registration coming soon!](#)

October date TBD

BUSINESS LAW CLE

Presented by Karen Hammer

CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

[Registration coming soon!](#)

Thursday, October 22

CWBA & BCBA VIRTUAL WINE TASTING

Presented by Frasca Wine Director Carlin Karr

5:00-6:00 PM @ CWBA Zoom Meeting Room

[Link and details coming soon!](#)

Thursday, November 12

SIDE BAR CLE

Speed Dating with the Judges

Presented by the Judges of the 20th JD

4:00 - 5:00 PM CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

[Please click here to register](#)

Mark your calendars for a fun holiday social event!

Tuesday, November 24

BCBA VIRTUAL SOCIAL EVENT

**Happy Hour and Cocktail Class with Bryan Dayton
from OAK and Corrida**

4:00-5:00 PM @ BCBA Zoom Meeting Room

Price TBD - Stay tuned!

[Registration coming soon!](#)



**David
Driscoll**

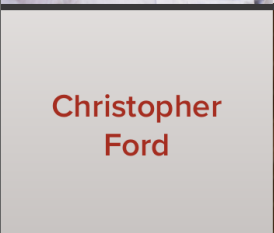


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PRESIDENT'S PAGE

JEFF ROSE

During his eulogy for George Floyd, The Rev. Al Sharpton called out local bar associations for targeting civil rights lawyers like Ben Crump, who advocate for civil rights and equal protection under the law. Initially, I thought “we absolutely do not do that here.” Is that right?

Do we as a bar association target civil rights lawyers? Absolutely not. But do we do enough to shed light on issues of equal protection, systematic racism, and inequality under the law? No.

Each one of us, when receiving our license to practice in Colorado, swore or affirmed to do the following: support the constitution of the United States and the Constitution of the State of Colorado; maintain the respect due to courts and judicial officers; employ such means consistent with truth and honor; treat all persons whom I encounter through practice with fairness, courtesy, respect, and honesty; use our knowledge of the law for the betterment of society and improvement of the legal system; never reject the case of the defenseless or oppressed, and adhere to the Colorado Rules of Professional Conduct.

I unceremoniously took this oath at the OARC reception desk while on a lunch break from my job clerking in Denver. With all the naivete of someone about to receive their first law license, my oath-taking experience felt like reciting the pledge of allegiance in elementary school. Until hearing Al Sharpton comments about local bar associations, I probably thought about the lawyer’s oath no more than twice ever. Instead, I spent my first decade-plus of being a lawyer focused on developing my skillset and building a practice, largely indifferent to the lofty ideals I undertook when I swore to uphold the Constitution.

This indifference is a far cry from the abhorrent practice of targeting and shunning civil rights attorneys. But, this indifference – as I suspect we all experience in some form throughout our careers –



has an effect on a different scale.

Our local bar has about 1,750 members. I can’t help but to think that 1,750 lawyers – all of whom swore to uphold the United States Constitution – can make a difference on issues of equal protection under the 14th Amendment, an independent judiciary under Article III, and many others.

As a local bar association, we’re trying to shine a light the issues currently facing our profession. Our programming is changing, and we’re trying to re-emphasize our professional commitment to the oath we’ve all taken. CU Professor Aya Gruber gave an excellent Side-Bar presentation about inequality in the criminal justice system. Member Jack Peters gave a CLE on qualified immunity in civil cases brought against law enforcement officers. Our family law section gave a very well-attended CLE on teen suicide. Plans are in the works to start 2021 with a Side-Bar about improvements in criminal justice in 2020-2021.

As for me, the Colorado Oath of Admission is now taped to my desk, next to my keyboard. I hope it’s a (very) small step in incorporating these ideals throughout my workday. I don’t pretend that this is enough or that it’s making a difference. I’m sure I can do better, just as I’m sure that we can do better as an organization. If you like what we’ve been doing at the Bar, if you hate what we’ve been doing, or if you have suggestions on how we can do better, please drop me a line at jrose@lyonsgaddis.com.

THE BOULDER COUNTY BAR FOUNDATION IS SEEKING A NEW PRESIDENT FOR 2021 TERM

The Boulder County Bar Foundation is actively seeking a president to help determine next steps as we move this organization into the future. Interested applicants will ideally have previous board experience and the energy and enthusiasm to take on an ambitious project to increase membership for an organization that helps so many legally related causes in Boulder County.

The term for president will begin in January 2021 and continue to December 2021. The President oversees the Board of Trustees who are responsible for setting and implementing the goals of the BCBF as set forth in the articles and bylaws.

The Boulder County Bar Foundation was founded in 1983 as a non-profit 501(c)(3) organization. Our mission is to advance justice and understanding of the law in Boulder County by providing grants to those Boulder County nonprofits which increase education and awareness of the law and the judicial system, provide access to legal services for the poor, homeless, and immigrant populations, and to assist those turning to the legal system for help. For over 25 years, the Foundation has helped organizations educate the public about the law and provide legal services for the underserved. Grants are made possible through the generosity of our Foundation Fellows, as well as other charitable contributions to the Foundation's endowment from individuals and law firms.

This year, the Foundation awarded grants to Boulder IDC, Bridge to Justice, Children First of the Rockies, Immigrant Legal Center of Boulder County, J-SUP: Boulder Law Center for the Unhoused, Safe Shelter of St. Vrain, Safehouse Progressive Alliance for Nonviolence, and the YMCA.

Applications should be returned no later than Monday, November 30. If you would like further information, please email or call 303-440-4758.

Apply here

**Invest in justice.
Invest in the future.
Invest in the community.**



**BOULDER COUNTY BAR
FOUNDATION**

The Boulder County Bar Foundation is a 501(c)(3) that invests donations from its Fellows in an endowment fund, the proceeds of which are awarded to legally-related 501(c)(3) organizations in Boulder County. Grants have regularly been awarded to help fund legal services for low income, immigrant and displaced members of the community; high school mock trial teams and court-ordered co-parenting classes as well as court access for victims of domestic violence. The Foundation always has grant applications for more than it can give. Become a Fellow and help grow the endowment - it's good for justice, it's good for the future, it's good for the community and it's good for you.

**Invest in yourself.
Become a Foundation Fellow today.**

PROFESSIONALISM—MORE THAN ASPIRATIONAL

KAREN HAMMER

Welcome to Professionalism Month 2020. As the Chair of the Colorado Bar Association's Ethics Hotline, I know that lawyers' understanding of ethics issues varies greatly. No single factor seems to be the determining one – confusion crosses lines of generation, gender, area of specialization, and size of law practice.

Perhaps the single biggest fallacy held by one hearty slice of lawyers is that the ethics rules are aspirational. Ethics rules have the force of law for purposes of regulatory discipline – while all laws are not equally enforced, violations remain just that (violations).

But this article is about professionalism. If lawyers are confused about the effect of ethics rules, even the best among us doubt that violations of professionalism standards are legally cognizable for discipline. As a practical matter, unprofessional conduct remains largely a matter for lawyers to resolve among themselves without judicial or disciplinary intervention:

[T]he principles have no coercive enforcement mechanism except those that have existed in our profession since the days of the quill pen and powdered wig: the fundamental commitment of attorneys to conduct themselves and their practices professionally and with integrity.

Click here to view the webpage for the Professionalism Coordinating Council.



And the specific Principles of Professionalism ("Principles") referred to above do not have the force of law. These Principles were voluntarily adopted by the CBA.

Background

This article originated as a more general article for Professionalism Month. Per my custom, I research even those things I about which I have abundant confidence. Shortly before my settling in to write this article, I had an inspiring conversation with Denver District Court Judge Andrew McCallin, the Chair of the Colorado Supreme Court's Continuing Legal and Judicial Education Committee. Judge McCallin recently invited me to join a subcommittee examining

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PROFESSIONALISM CONTINUED

whether diversity, equity, and inclusivity (“DE+I”) should be an essential component of CLE requirements.

In my work on this subcommittee and on the Professionalism Coordinating Council, I at times quote Presiding Disciplinary Judge William R. Lucero for his belief that unprofessional conduct can lead to ethics violations. In speaking with Judge McCallin, I took the bold position that I believed further analysis would show that some aspects of professionalism (as well as DE+I) are reasonably grounded in ethics – not just as a voluntary gloss that ennobles us.

Even I was shocked by my unexpected conclusions in this article. To be clear, this article reflects my own, evolving views and does *not* reflect the views of others referred to herein as a catalyst for this analysis.

This article provides a few fundamentals that merely introduce the subject.

First, a Note of Caution

This article is simply the beginning of an analysis. As noted above, this analysis springs from my conversations with Judge McCallin and others who are exploring whether the appropriate development of lawyers is complete without ongoing CLE in the areas of professionalism and of diversity, equity, and inclusivity. The Denver Bar Association President Kevin McReynolds is spearheading one effort for Colorado to adopt California’s mandatory elimination-of-bias CLE.

In these discussions, I have noted that virtually every classification of lawyer admitted to practice in Colorado must take the mandatory Practicing with Professionalism course. We understand that Colorado views this initial common ground as an essential foundation for practicing law *in Colorado*.

I believe that Colorado lawyers can understand the need for a periodic refresher in the evolving legal topic of professionalism, just as we are required to keep fresh in other areas of the law. Each lawyer is required to be competent in the Rules of Professional Conduct, a unifying area impacting *all* lawyers, regardless of our areas of practice (whether specialized or general).

As noted above, I am consistently exposed to the large deviation in Colorado lawyers’ competence to evaluate the application of the Colorado Rules of Professional Conduct to their *own* conduct. Part of this reasonably stems from the basic neuroscience that generally makes our brains less nimble at evaluating issues that are relevant to our *own* conduct, where detachment is much harder than when we evaluate the problems of our clients.

So I have developed a strong inclination to protect (rather than dilute) the mandatory ethics requirements of seven CLE hours every three years. Through the process of newly joining and serving on the DE+I Subcommittee, my thoughts have evolved.

I thank the Boulder County Bar Association’s enthusiastic embrace of Professionalism Month that provided me the opportunity to sharpen my evolving thoughts on the connection between professionalism and ethics. I look forward to sharing more detailed supplements to this initial overview of the topic.

I am firmly committed to the principle that lawyers should not (and cannot not properly) be disciplined for failing to comply with vague cultural norms about acceptable conduct.

My dissent as a member of the three-person disciplinary Hearing Board in *People v. Betterton-Fike* emphasized the dangers of relying on cultural consensus not yet incorporated into the law:

The danger of using the power of government to discipline those who violate customs that fall short of being legal constraints is well-understood. *Gentile* specifically cautioned that “The prohibition against vague regulations . . . is based in part on the need to eliminate the impermissible risk of discriminatory enforcement.” *Gentile* at 1051. Taking the majority’s analysis to its logical conclusion, a community would arguably be justified in imposing governmental punishment on a black person who drank from a water fountain that the community understood was prohibited to him by cultural norms - he should have known not to drink from that fountain.

People v. Betterton-Fike, 18PDJ043 (Mar. 22, 2019), *slip op.* at 29 (*dissent referred to and relied on in part, In re Betterton-Fike*, 459 P.3d 522, 526 (Colo. 2020)).

And evolving controlling legal authority arguably puts lawyers on notice that certain specific conduct is prohibited, judicially-sanctionable, or grounds for imposing discipline. In addition, the principle of imposing discipline for violations of standards largely considered under the umbrella of professionalism is already embedded in rules promulgated by the Colorado Supreme Court, as briefly introduced in this article.

The Court may change these rules (or otherwise interpret them differently in controlling legal authority), but this article focuses on the language of the rules as they are stated today.

Introduction to Legal Grounds for Disciplining Specific Unprofessional Conduct

A. Oath of Admissions

Each licensed Colorado lawyer was required to take the Oath of Admissions. Most of us did so on the day we were sworn in as officers of the court. That Oath binds us not only to follow the ethics rules, but also to act with “truth and honor [and] treat all persons whom [we] encounter through [our] practice of law with fairness, courtesy, respect and honesty.” *C.R.C.P. 211.3*.

The Colorado Supreme Court has acknowledged the relevance of the Oath to discipline. *See, e.g., In re Pautler*, 47 P.3d 1175, 1176 (Colo. 2002). The Oath can also be viewed as a contract between the People of Colorado and the lawyer voluntarily seeking

PROFESSIONALISM CONTINUED

licensure from the Colorado Supreme Court. As with all contracts, the precise terms used have legal significance. *Id. n. 1* (noting that the Court has amended the wording of the Oath over time, the reasonable inference of which is that the amended wording made the obligation of lawyers under the new version somewhat different than obligations under the prior version).

The Oath by its terms clearly indicates that the Colorado Rules of Professional Conduct are only one source of standards lawyers affirm they will uphold. *C.R.C.P. 211.3*.

B. The Court's Rules

In my mind's eye, the Colorado Rules of Professional Conduct exist as a separate body. But in truth, they are part of the larger Rules of Civil Procedure and are housed in the appendix to Chapters 18 through 20.

The Preamble to these Chapters, as well as Chapters 18 and 20, contain language that assumes that the Rules of Professional Conduct are merely one source for discipline. See, e.g., *C.R.C.P. 251.5 Grounds for Discipline* (subsection (a) lists the Rules as one of four specific grounds for discipline). Rule 251.5 explicitly states that the Court may discipline an attorney on other grounds: "This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline."

The Times, They Are A'Changing

One body of my writing and teaching on ethics and other legal topics has a strong risk-management focus. This article identifies the potential risk that disciplinary focus could shift in the future to specific professionalism issues for which controlling authority already exists.

For example, Colorado Rules of Professional Conduct 3.3 contains specific duties of candor to the tribunal which are legitimately the subject of discipline. The Oath of Admissions states an independent duty of honesty and fairness that supplement the Rules of Professional Conduct. *C.R.C.P. 11* transforms every lawyer's signature on court filings into a certification of certain levels of inquiry. Some distortions of the truth create a series of reasonable inferences, some of which are true and some of which may be false – does a court's reliance on one false reasonable inference properly create a duty to remedy this false inference? Does failure to remedy this false inference (actually relied on by the court) trigger regulatory discipline? The legal grounds exist for that discipline when accompanied by certain facts.

Before the #MeToo movement, Harvey Weinstein apparently assumed that his sexually harassing those over whom he had power posed no practical risk to him. Suddenly, the winds shifted.

We can all learn from the Harvey Weinstein litigation. Companies have reexamined their internal policies to better manage risk from conduct by their executives. The laws were already on the books that regulated Harvey Weinstein's conduct, but these laws were not regularly and consistently enforced.

Without giving legal advice, I'd say a safe motto is "Don't be Harvey Weinstein."

Karen Hammer 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. She is a current co-chair of the BCBA Family Law Section.

WELCOME NEW BCBA MEMBERS

Jeff M Emberton
Sophia Pelecanos
Paige Robinson
Ann Defranco
Magnolia Landman

Kevin A Kuelbs
Crispin Brim
Aria N Corbitt
Jessica Eller
Mega Mars

PROFESSIONALISM ON CALL

October 5	Trip DeMuth	303.447.7775
October 12	Peggy Goodbody	303.440.5736
October 19	Anton Dworak	303.776.9900
October 26	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 Boulder County Free Legal Clinics have been replaced with our Virtual Legal Clinic until further notice.

THANKS TO OUR VOLUNTEERS

The BCBA Virtual Legal Clinic remains ongoing and has served over 100 people to date. Thank you to the attorneys who serve as volunteers:

Dan Droege	Amy Stengel	Beth Kelley
Jennifer Huston	Laura Herndon	Dipak Patel
Sherri Murgallis	Maki Iatridis	Lindsey Killion
Craig Small	K.C. Cunilio	Karen Burns
Scott Hamerslough	Fern O'Brien	Susan Spaulding
Starla Doyal	George Farmer	Chris Lane
Jeff Skovron	TJ Willard	Connie Eyester
Lila Sol	David Harrison	Beth Montague
Georgiana Scott	Ann England	Kurt Hofgard

PRO BONO REFERRALS

Four cases were referred in the month of August. Thank you to the following attorneys:

Deidre Braverman
Angelique Layton
Gary Merenstein
Mike Miner

PRO SE VOLUNTEERS

Thank you to Jennifer Huston, Zach Laframboise, Josh Anderson, Tucker Katz, and Kathleen Franco for assisting at the August Pro Se Clinic.

PRO BONO CORNER

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LAW BUILDING FOR SALE. 745 Walnut. First time on the market for over 40 years. Two blocks from Justice Center. One block from many amenities, including Spruce Confections, Lolita's, Nick & Willy's Pizza, St. Julien Hotel, etc. Please contact Tom, Julie or Jeanne at (303) 817-8650, (303) 494-7700 or (303) 859-3526.

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Boulder^{COUNTY} BAR ASSOCIATION

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