

Boulder COUNTY

BAR ASSOCIATION

REFORMATION TO CORRECT MISTAKES UNDER §15-11-806, C.R.S.

JONATHAN LEINHEARDT

Since 2010, §15-11-806, C.R.S. has allowed for reformation of governing instruments to conform to the transferor's intention, if it is proved that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law.

According to the official comments, the Colorado statute was based on Section 415 of the Uniform Trust Code, which was derived from Section 12.1 of the Restatement (Third) of Property: Wills and Other Donative Transfers (2003). Section 12.1 of the Restatement states:

"A donative document, though unambiguous, may be reformed to conform the text to the donor's intention if it is established by clear and convincing evidence (1) that a mistake of fact or law, whether in expression or inducement, affected specific terms of the document; and (2) what the donor's intention was. In determining whether these elements have been established by clear and convincing evidence, direct evidence of intention contradicting the plain meaning of the text as well as other evidence of intention may be considered."

The purpose of reformation is to do equity: "Equity rests the rationale for reformation on two related grounds: giving effect to the donor's intention and preventing unjust enrichment. The claim of an unintended taker is an unjust claim. **Using the equitable remedy of reformation to correct a mistake is necessary to prevent unjustly enriching the mistaken beneficiary at the expense of the intended beneficiary.**" *Id.*, Comment b. (Emphasis added).

Welcome
New
Members
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REFORMATION CONTINUED

The historical background of Section 12.1 of the Restatement reveals that reformation of donative documents other than wills is well established. “Equity has long recognized that deeds of gift, inter vivos trusts, life-insurance contracts, and other donative documents can be reformed if it is established by clear and convincing evidence: (1) that a mistake of fact or law, whether in expression or inducement, affected specific terms of the document; and (2) what the donor’s intention was. Reformation of these documents is granted, on an adequate showing of proof, even after the death of the donor.” *Id.*, Comment c.

Under Section 12.1, the Court may employ two types of equitable relief: both reformation and the imposition of a constructive trust:

“The grounds stated in this section, if established by clear and convincing evidence, **support an order of reformation and, if necessary, other equitable relief such as the imposition of a constructive trust.** An order of reformation alters the text of a donative document so that it expresses the intention it was intended to express. Thus, unless otherwise stated, a judicial order of reformation relates back and operates to alter the text as of the date of execution rather than as of the date of the order or any other post-execution date.

“If property was previously distributed under the mistaken terms of the document, the court may impose a constructive trust or take other remedial steps in addition to issuing an order of reformation. **A constructive trust is an equitable remedy that can be used to require property in the hands of an unintended recipient to be transferred to the intended beneficiary.** Thus, the court imposes the constructive trust in favor of the intended beneficiary. Unless otherwise stated, the constructive trust imposed under this section presupposes that the order of reformation relates back and operates to alter the text as of the date of the donor’s execution of the document.” (Emphasis added).

In *West Greeley Nat. Bank v. Wygant*, 650 P.2d 1339 (Colo. App. 1982), the decedent had made an oral request to a bank cashier to change the payable on death designation, but the statute in effect (§15-15-104, C.R.S.) required that a modification of a POD account be in writing. There, the Court of Appeals upheld the oral modification because to require otherwise “would exalt

form over substance.” *Id.* at 1340.

In a very recent case, the Colorado Supreme Court upheld the trial court’s imposition of constructive trust over money in a multi-party account which otherwise would have passed outright to the surviving daughter of the decedent under §15-15-212, C.R.S. The Court held that the trial court sits in equity and permitted the imposition of a constructive trust upon the inappropriate transfer (the creation of the multi-party account). *Sandstead-Corona v. Sandstead*, 415 P.2d 310, 320-321 (Colo. 2018).

Nevertheless, there are only three reported cases citing §15-11-806, C.R.S. The first, *In re the Estate of Johnson*, 304 P.3d 614 (Colo.App. 2012), held that the ex-wife of the decedent lacked standing to reform a life insurance policy to recognize her as primary beneficiary because she was removed as beneficiary by operation of law upon divorce. *Id.* The next case, *Baker v. Wood, Ris & Hames, Prof’l Corp.*, 364 P.3d 872 (Colo. 2016), the Supreme Court upheld dismissal of a malpractice action brought by a testator’s children against the estate planning attorneys because the children lacked standing. However, the court noted that *Johnson, supra*, implicitly recognized that a disappointed beneficiary has standing to bring a reformation claim under §15-11-806. The third case, *In re Estate of Ramstetter*, 411 P.3d 1043 (Colo.App. 2016), holds that the reformation statute is not retroactive, and therefore, the will of a decedent who died prior to its enactment may not be reformed under the statute.

The reformation statute was amended recently as part of Colorado’s adoption of the Uniform Trust Code (2018 Colo. Legis. Serv. Ch. 169 (S.B. 18-180) (WEST), to exclude trusts from 15-11-806, but the General Assembly also added section 15-5-415, which allows for reformation of trusts to conform to the settlor’s intention.

Colorado has continued expanding reformation to maximize a donor’s intention, but it still requires standing to do so. Thus, a donor’s intent may be realized to avoid unjust enrichment caused by a mistake, even if the donative document is unambiguous.

Jonathan Leinhardt is a co-chair of the BCBA Elder Law Section. He can be reached at leinhardt@slblaw.com.

CALENDAR OF EVENTS

Wednesday, September 5

CIVIL LITIGATION & BUSINESS CLE

2018 Legislative Update

Presented by Jeremy Schupbach

12:00 PM @ Boulder County Justice Center

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

[Register Here](#)

Tuesday, September 11

EMPLOYMENT LAW CLE

Recent Developments in Employment Law: Retaliation

Presented by Chris Leh

12:00 PM @ BCBA Conference Room

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

[Register Here](#)

Wednesday, September 12

IN-HOUSE COUNSEL CLE

Pitfalls in IP License Agreements

Presented by Aaron Brodsky

4:00 PM @ Trimble's SketchUp

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

[Register Here](#)

Thursday, September 13

FREE BOULDER LEGAL CLINIC

5:30 PM @ Sacred Heart of Jesus Church

Free to attend

Please volunteer here

Wednesday, September 19

LOUISVILLE HAPPY HOUR

5:00 PM @ Waterloo

Wednesday, September 19

NEW / YOUNG LAWYER LUNCH

12:00 PM @ BCBA Conference Room

Wednesday, September 19

FAMILY LAW CLE

Protective Capacity: Basics of Child Welfare

12:00 PM @ Dickens Tavern, Longmont

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

[Register Here](#)

Thursday, September 20

BANKRUPTCY

Monthly lunch and roundtable

12:00 PM @ Kathmandu Restaurant

Friday, September 21

AVAILABILITY OF LEGAL SERVICES

Monthly lunch and roundtable

12:00 PM @ Boulder County Legal Services

Wednesday, September 26

ELDER LAW & TAX, ESTATE PLANNING AND PROBATE

Best Practices in the Courtroom

Presented by Judge Macdonald and Judge Salomone

12:00 PM @ Boulder County Justice Center

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

[Register Here](#)

Wednesday, September 26

WOMEN'S BAR HAPPY HOUR

5:00 PM @ License No 1

Thursday, September 27

NATURAL RESOURCES / ENVIRONMENTAL CLE

Current Issues in Oil and Gas Development

Presented by

12:00 PM @ BCBA Conference Room

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

[Register Here](#)

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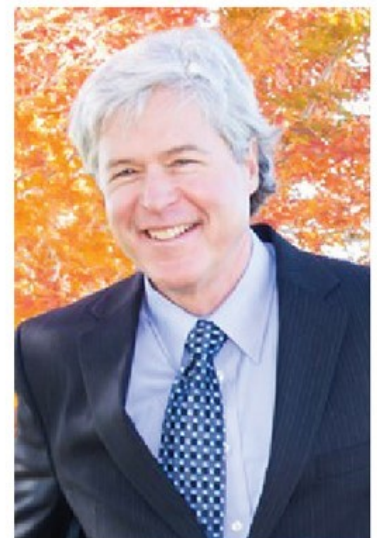
HutchinsonBlackandCook^{LLC}

Attorneys at Law

📞 303.442.6514

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PRESIDENT'S PAGE

BRAD HALL

When I first joined the Boulder County Bar Association back in 1991, I did not think much about why I joined or what was to be accomplished by my membership. Like my association with the Kansas City Bar Association right out of law school, it was really a no-brainer to join. It went without saying that the bar association was a good organization with which to be associated and that it did a good job of serving both its members and the public at large.

My new firm paid the dues, I met some great people and lawyers, and the annual parties were always fun. Very little was asked of me and very little was required. Looking back, it seems like the ideal relationship. I certainly did not appreciate, at the time, that a well-run organization, like the BCBA, had its hiccups and suffered trials and tribulations on a regular basis. I certainly did not appreciate the hard work the Board and staff had to do to actually make it the organization that it is today.

As all who have had the pleasure of being a member of the BCBA Board can attest, reality belies appearance. Over the course of the Bar year, a great deal of thought, planning, and hard work goes into making this organization a success. The Board, our Executive Director and Assistant, and many volunteers are working year-round to continue to fulfill the mission of the BCBA.

The planning for the upcoming year starts at our Bar Board retreat in June. Board members and staff hunker down in a conference room for a day and discuss in depth both our short-term and long-term goals for the upcoming year. The time together allows our Board members to get acquainted on a more personal level. The trust built during the



weekend allows us to move forward on those goals with a common sense of purpose. (I should also mention that I won the putt-putt golf tournament the night before the Bar Board retreat.)

As always, our goals are defined by the mission to serve the members of the organization and to educate the public about law-related topics. As a member based organization, the BCBA continually works on how to engage additional members in the process of fulfilling the mission.

One area in which a lot of bar associations struggle is engaging younger members to become involved in bar activities and eventually become leaders of the bar. The reasons are numerous, but in the end, it is all guess work unless those members and potential members engage on their terms and not ours. To that end, the BCBA is in the early stages of establishing a Young Lawyers Division within the BCBA.

In the past, the BCBA has used the model of a young lawyers section with section chairs who plan activities and CLEs of interest to those individuals. The new YLD model would operate

PRESIDENT'S PAGE CONTINUED

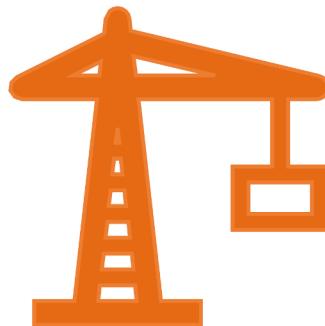
differently; its members would elect their own board and establish, as a quasi-independent entity, their own governing documents and goals with the support of the BCBA.

Establishing a YLD will certainly take more than one year to be successful, but it will be important to the overall continued success of the BCBA. We are fortunate to have the initial efforts of starting the YLD spearheaded by Banafsheh Lari of the Ciancio, Ciancio, Brown law firm. If you would like to be involved in getting this new venture started, you may contact her at banafshehlari@colo-law.com or 303-872-8918.

The other area of focus in the coming year will be to increase our connection with the Colorado Bar Association. Ron Jung, our current Secretary/Treasurer, and I had the pleasure of attending a Bar Leader's Summit in June which

was sponsored by the CBA. The information and resources available through the CBA are outstanding, and we want to take advantage of that to better assist our members. In addition, we want to provide our members more opportunities to participate in CBA sections by presenting at seminars sponsored by the CBA, as well as moving into leadership positions at the state level. Renee Ezer, Ron and I had the opportunity to sit down with outgoing CBA President, Dick Gast, as well as current CBA President, Jon Vought, this past spring. Both were encouraged by the BCBA's interest in being more involved with the CBA and are ready to help make that endeavor a success.

I invite all of you who are interested in being involved in either of the above to contact Laura Ruth or any Board member. You may also want to start working on your putt-putt game.



BCBA YOUNG LAWYERS DIVISION UNDER CONSTRUCTION!

STAY TUNED FOR UPDATES!

WANT TO GET INVOLVED?

CONTACT BANAFSHEH LARI:

banafshehlari@colo-law.com

WELCOME NEW BCBA MEMBERS

Douglas R Arbuthnot
Jennifer Arnett-Roehrich
Blair Bayless
William D Bode
Megan S Bradford
Diedre W Braverman
Amy K Burma
Veronique Cantrell-Avloes
Victoria Caraballo
Stephen J Carbonneau
Jeff G Carson
Gregory S Carter
Brianna Champ
Daniel Condren
Jessica Corey
Riley M Cutner
Zachary DeFelice
Denise DeForest
Donald P Delaney
Sean Di Cioli
Austin G Dieter
Robert T Donald
Danika Douglas
Daniel Droege
Barry I Dunn
Alec R Egizi
Lauren Elliott
Emily M Ellison
Rodion K Emelyan
Conner Eversole
Emily Foster
Jacqueline Z Fox
Alannah K Frantz
Schyeler Gilman

Jeff S Greenblatt Carson
Kathleen F Guilfoyle
Conor R Hagerty
Kendra D Hartmann
Robert S Held
Laura L Heller
Michelle L Hickerson
Erin Hogan
Jesse Jenner
Brent P Johnson
Jeremiah Jones
Joseph B Jonikas
Carol A Kennedy
Karyn Kesselring
Heather A Kurland
Barry C Lancaster
Banafsheh Lari
Kathryn F Larsen
Erica Lieber
Elizabeth F Lindquist
Douglas W Link
Jeffrey P List
Michelle Long
Zachary K Louth
Trevor Lowenthal
Suzanne J Marsh
Marshall D Mckellar
Malea A McKeown
Kathleen L McLaughlin
Arie R Mielkus
Lilya Mitelman
Shelby Morbach
Kristen Morris
Nicole A Murad

Samuel C Newman
Jolly-Johanna L Northrop
Shannon O'Keefe
Shelly E Oren
Kevin Parish
Travis Parker
Ronald G Pestine
John F Peters
Jarred L Pinkston
Francisca Pretorius
Alyssa P Rhodes
John H Ridge
Jennifer L Roskamp
Larry Rothenberg
Anne Ruggles
Lauren Sakin
Jamie R Scubelek
Richard A Selinger
Brooke Shafranek
Erik G Smith
Christopher J Stock
Nicholas H Sung
Caleena Svatek
Jordan Travis
Daniel M Twetten
Christine Vanston
Neal Vickery
Jessica L Wagner
Daniel J Williams
Anjuli Woods
Maria V Woods
Maria V Woods
Corian Zacher
Luka Znidarcic

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Attorneys at Law

Since 1891

HBC is pleased to welcome to the Firm:

Ken Robinson, Meghan Hungate and Lucy Walker

Formerly of Robinson Hungate, PC

As of September 1, 2018, Ken, Meghan and Lucy bring to HBC their decades of wisdom and experience in the areas of construction, real estate and commercial litigation.

BOULDER COUNTY BAR FOUNDATION

THE 2019 GRANT CYCLE IS ENDING SOON

The Boulder County Bar Foundation grant cycle is beginning and will be accepting applications. The Foundation funds legally related organizations and programs in Boulder County. The grant application is on the BCBA website and can be accessed here. All applications are due September 15. If you have any questions, please email laura@boulder-bar.org.

2018 GRANTS

Boulder County Legal Services
Boulder High School Mock Trial
Bridge to Justice
Children First of the Rockies
Fairview High School
Immigrant Legal Center of Boulder County
J-SUP: Law Center for the Un-housed
League of Women Voters of Boulder County
Niwot High School Mock Trial Team
Safe Shelter of St. Vrain Valley
YWCA

TOTAL \$21,600

BCBA SOFTBALL TEAM

Scared Hitless had a great season. Not as many wins as we would have liked, but a great deal of laughs and camaraderie mixed with just a few injuries. The BCBA is interested in more opportunities to engage with our members and would love to hear your ideas for activities. We are considering more sports leagues if there is interest along with other activities you might enjoy.

A huge thanks to our team: Evan Branigan, Beth Cook, Austin Dieter, Brooke Garrett, Graham Gerritson, Lance Goff, Patrick Haines, Ron Jung, Karl Kumli Jr., Kyle Mares, Laura Ruth, Andi Savage, Jeff Shepard, Justine Weeks, Bruce Wiener, Jason Wiener, and Julie Wolfe.



PROFESSIONALISM ON CALL

September 3	Mike Rafik	303.444.9292
September 10	Tony Dworak	303.776.9900
September 17	Steve Clymer	303.530.2137
September 24	Peggy Goodbody	303.440.5736

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 (2312 14th Street) 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.

Boulder: September 13, December 13

Longmont: November 27

Lafayette: October 16

PRO BONO CORNER

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

PRO BONO REFERRALS

8 cases were referred during the month of July. Thank you to the following attorneys:

Norm Aaronson
Donald Alspaugh
Susan Bryant
Chris Jeffers
Colene Robinson

Thank you to the following mediators who accepted referrals in July:

Kathleen Franco
Michael Morpew

PRO SE VOLUNTEERS

Josh Anderson
Kathleen Franco
Zachary LaFramboise
Michael Morpew
Alice Robbins
Lenny Tanis

BCAP VOLUNTEERS

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

LAWYER ANNOUNCEMENTS

HutchinsonBlackandCookLLC
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Congratulates

Kimberly M. Hult Medical Malpractice Law-Plaintiffs	Baine Kerr Medical Malpractice Law-Plaintiffs
Christopher W. Ford Personal Injury Litigation-Plaintiffs	Glen F. Gordon Personal Injury Litigation-Plaintiffs

David J. Driscoll
Commercial Litigation, Insurance Law and
Personal Injury Litigation-Plaintiffs

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William D. Meyer Commercial Litigation	Brad Peterson Construction Law

Connie Tromble Eyster
Trusts and Estates

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Over 20 Years Experience

Josh Yeager

Attorney
Location: Louisville, Colorado
Phone: 303-720-7260
Fax: 303-604-6052
Email: josh@elderlawcolorado.com

Josh is an associate attorney at Vincent, Romeo Rodriguez. Prior to joining the firm in 2018, Josh clerked for Judge Roland Belsome on Louisiana's 4th Circuit Court of Appeals, where he drafted appellate opinions in a variety of civil, criminal, and probate related matters.

After serving the term of his clerkship, Josh moved to Denver and parlayed his experience with the court into a position with a downtown civil litigation practice where he focused mostly on personal injury and premises liability representation.

Now with VRR, Josh is marrying his passion with experience and looks forward to representing clients in probate, will, and trust litigation; as well as advising them in estate planning and administration matters.

Areas of Practice

- Probate
- Wills
- Trust Litigation

Bar Admissions

- Colorado, 2017

Education

- Tulane Law School, New Orleans, Louisiana
- J.D. - 2015

-- Honors: Moot Court Board, Appellate Competition Chairperson

-- Honors: Ruby R. Vale Corporate Law Moot Court Team

-- Honors: Negotiation/Mediation Advocacy Program

Professional Associations and Memberships

- Colorado Bar Association, Member
- Denver Bar Association, Member
- Boulder County Bar Association, Member

University of South Carolina

- B.S. - 2010

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.

We offer a competitive salary which is commensurate with experience. Excellent benefits. Interested candidates should submit their resume, references, and writing samples to: sacarroll@bc-law.com

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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.

THE BCBA CONFERENCE ROOM

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Kyle@boulder-bar.org
at the bar offices to
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Boulder^{COUNTY} BAR ASSOCIATION

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