



## BOULDER COUNTY BAR NEWSLETTER

# FEBRUARY 2012

### ON AGREEMENTS AND PROFESSIONALISM

By JULIE CAPUTO

It's just one month into the new year, possibly our last year on this planet if you follow the Mayan calendar. This got me thinking, what can we do better as attorneys in case this is really the end? So for now, I was thinking of focusing on just two (of many) things that would be helpful for attorneys to work on in 2012.

One area or focus is working on creating tighter agreements and doing a more thorough job of explaining what the terms mean in these agreements we prepare. It is important to carefully walk our clients through the possible ramifications and risks. This may seem obvious but I have been surprised and frustrated by some agreements I have reviewed and by some of the terms clients are willing to agree on to settle their cases. I recently served as a mediator in a post-decree dispute that centered on interpretation of a term in a separation agreement. This term was labeled "Child Support" but the provision stated that the payment was not modifiable; together with a restriction in the same paragraph, this took the payment out

of the statutory definition of child support definition of child support. Although some parties do not want child support or want to restrict it in ways that contravene the modification provision § 14-10-122, their attorneys must remind them of the law and how that may affect their agreement in the future.

Our clients are free to reach any agreements they want to, despite our advice (although occasionally the magistrate or judge who reviews an agreement will not approve it); and often a problem will never arise. But that is not something we should count on. The extremes of emotions in a divorce often prevent parties from rationally evaluating the problems that may arise. Most likely these are the clients who will return post-decree with a dispute over a portion of a parenting plan or separation agreement, saying, "I don't remember you telling me this would happen...". We reproduce notes and the client files and explain that we advised them against this provision.

*(continued on page 10)*

#### FOOD WINE JAZZ ART

Thursday, February 9  
5:30 PM

Rembrandt Yards

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Amanda and John Sessa - SWBC Mortgage  
The Savela Law Firm PC

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## CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing [lynn@boulder-bar.org](mailto:lynn@boulder-bar.org), or pay online with a credit card at [www.boulder-bar.org/calendar](http://www.boulder-bar.org/calendar).

Wednesday, February 8

Solo/Small Firm Happy Hour  
5 PM at The Rib House 13th and Walnut

Thursday, February 9

Intellectual Property  
Trademarks and the Madrid Protocol  
Presenter: Sabrina Stavish and Sarah Miller of Sheridan Ross  
Noon at Hutchinson Black and Cook  
1 CLE \$20, \$10 for new/young lawyers  
Lunch \$10

Friday, February 10

Availability of Legal Services Cancelled

Monday, February 13

Colorado Law In House Counsel Series:  
The Changing Dynamics of  
Technology and Outsourcing  
2:00 PM – 4:45 PM at Wittmyer Courtroom  
of the CU Law School 3 CLE credits  
Call CU Law School to register

Tuesday, February 14

Employment Law & Employment Ethics  
Presenter: Margaret Funk, Assistant  
Attorney Regulation Counsel  
Noon at Caplan and Earnest Lunch \$10  
1 Ethics CLE \$20, \$10 new/young lawyers

Wednesday, February 15

New/Young Lawyers Trial Skills  
Learn From a Man with 31 Years of Mistakes  
Session 3: Closing Arguments, Advanced  
Direct and Cross Examination Techniques  
Presenter: Pat Furman, Noon-1:30 Jury  
Assembly Room-brown bag lunch  
2 free CLE's to those judging Mock Trials

Wednesday, February 15

Family Law  
Family Case Law Update  
Presenter: Tim Mehrtens  
Noon brownbag in Courtroom B  
1 CLE \$20, \$10 for new/young lawyers

Thursday, February 16

Forum for Organizations Providing Legal  
Resources for Boulder County residence.  
An opportunity for organizations to  
present information on what they provide.  
Noon – 1:30 in the Jury Assembly Room  
Boulder County Justice Center  
BYO lunch. Presented by the BCBA  
Availability of Legal Service Section and  
the Access to Justice Committee. All bar  
members are invited to attend. No CLE

Thursday, February 16

Bankruptcy Roundtable Lunch  
Noon at Agave Bistro 2845 28th Street

Tuesday, February 21

Paralegals and all lawyers  
Quasi-mod0, the Hunchback of  
Administrative Law: how practice before  
administrative agencies relates to a more  
“conventional” legal practice  
Presenter: Karl Kumli  
Noon at Bryan Case (HRO)  
1801 13th Street, Suite 300 Lunch \$10  
1 CLE \$20, \$10 new/young lawyers

Tuesday, February 21

Business Law  
Private Offerings: What Companies Need  
to Know About Raising Money  
Presenters: Brendan Chatham and  
Maureen Eldredge, HBC  
Noon at Hutchinson Black and Cook  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10

Wednesday, February 22

Taxation, Estate Planning and Probate  
Are Communications with a Fiduciary  
Protected by the Attorney-Client Privilege?  
Presenter: Kelly Cooper of Holland & Hart  
Noon at Hutchinson Black and Cook  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10

Wednesday, February 22

Real Estate  
Top 10 Issues Lawyers Should Know About  
the Boulder County Land Use Code  
Presenters: Ben Doyle, Assistant County  
Attorney and Kim Sanchez, Planning  
Division Manager  
Noon at The Boulder Cork, Lunch \$15  
1 CLE \$20, \$10 for new/young lawyers

Friday, February 24 (changed from Feb. 3)

Civil Litigation  
Construction Defects: More Than You  
Might Want to Know, But Still Should  
Presenters: John Tweedy & Ken Robinson  
Noon at Caplan and Earnest Lunch \$10  
1 CLE \$20, \$10 for new/young lawyers

Tuesday, February 28

Alternative Dispute Resolution  
Advanced Reframing of Issues in Mediation  
Presenter: Kon Damas, Mediator,  
Noon brownbag in Courtroom N  
1 CLE \$20, \$10 for new/young lawyers

Tuesday, February 28

Immigration Law  
Immigration and Entrepreneurship  
Presenter: Brad Hendrick  
Noon at Caplan and Earnest Lunch \$10  
1 CLE \$20, \$10 new/young lawyers

Wednesday, February 29

Criminal Law  
Using Treatment and Educational  
Programming to Advocate for Clients  
Presenters: Peg Rider, Director of the  
Footsteps Program, Debra Stein of CJS, and  
Sgt. Tim Oliveira,  
Noon brownbag in Courtroom N  
1 CLE \$20, \$10 new/young lawyers

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# INTEREST-BASED BARGAINING METHODOLOGY

By: ADELE L. REESTER, ESQ.

In the early 1990s, unions and their employers began to explore alternative methods to the traditional methodology for negotiating their master contracts. Emerging as a different and potentially better way to negotiate contracts and mutual interests in the workplace, interest-based bargaining (or IBB for short) is also known by many other names such as win-win, collaborative problem solving, and mutual gains. While interest-based bargaining has evolved over this time, it continues to be founded upon the strong pillars of framing negotiations as joint problem-solving to resolve each party's underlying issues, needs, and concerns.

Over the past few years, several factors in Colorado's struggling economy have affected budgets of both public and private sector employees. The public sector in particular has seen reduced education funding for school districts as the State legislature introduced a negative factor to the School Finance Act in order to reduce money provided to schools through the formula, as well as reduced tax collection based upon the decline in property valuation assessments that affects funding for special districts. In tight times such as these, the IBB process can help employers and employees alike in reaching agreements on wages, working conditions, and other aspects of master agreements with limited and reduced budgets while maintaining relationships and morale in the workplace.

This article reviews the terminology used in the IBB process and provides a general overview of the application of this terminology through the six steps of the collaborative process.

While both traditional bargaining and IBB methodologies both start with each party's issues and ultimately end with an agreement, the look and feel of each process for the participants involved is what sets apart the two methodologies. Traditional negotiations use arguments to support one party's position on an issue, applying power and compromise to reach an agreement. The resulting agreement often feels like one side won and the other side lost on some or all of the issues involved. On the other hand, the IBB process uses options to solve for both parties' interests of the issue, using closure tools to reach a win-win

agreement. The resulting agreement often reflects the feel that neither side won or lost, but rather that the working relationship has strengthened and the parties better understand each other's concerns and objectives.

When utilizing the IBB process, parties refrain from using power tactics and strategies, while they share information useful in the decision-making process. Additionally, the parties remain open to potential options and alternatives that meet both of their interests while they also

*(continued on page 6)*

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## PRO BONO COMMITMENT AND RECOGNITION PROGRAM, COLORADO SUPREME COURT

By JUSTICE GREGORY HOBBS

Each year, the Supreme Court recognizes law firms and in-house counsel groups that commit to an annual goal of 50 hours of pro bono legal services per attorney, averaged across the firm each year for its Colorado licensed attorneys and pro-rated for part time attorneys, primarily for the indigent and/or non-profit organizations that serve the indigent. It awards certificates signed by the justices to those firms and in-house counsel groups that achieved this goal in the prior calendar

year and lists your firm or group on the judicial web page. If your firm or in-house counsel group met the goal in calendar year 2011 or, if not, your firm or group would like to make the annual commitment starting in calendar year 2012, please notify Justice Gregory Hobbs by February 15, 2012 at [katharine.lum@judicial.state.co.us](mailto:katharine.lum@judicial.state.co.us)

Dear Pro Bono Colleagues,  
If your firm or in-house counsel group is currently on our Colorado

Supreme Court pro bono recognition list. Would you please let my law clerk/judicial assistant, Katy Lum, know by reply e-mail message whether or not your firm achieved the goal in calendar year 2011. As a reminder, below is a description of the commitment and recognition program. Every hour of pro bono is valuable so, if your firm or group did not achieve the goal in calendar year 2011, we would like to continue to recognize your firm's commitment by keeping your firm or group on the list as you work towards achievement in future calendar years.

**Please respond by February 15, 2012** We need your yes or no response regarding 2011 achievement of the goal by February 15, 2012, so we can prepare the certificates of pro bono achievement signed by the seven justices for those firms and groups who achieve the goal.

### Location of the 2012 Supreme Court's recognition event

Please hold the date of Friday afternoon April 13, 2012 for the Court's pro bono recognition program. We will offer a hard-hat tour of the new Ralph Carr Justice Center at 3:30 and hold the recognition program at the new History Museum at 4:30! Members of the Colorado Supreme Court will also be attending local judicial district and bar association pro bono recognition programs. We can bring your firm or group's achievement certificate to one of those events if you let us know which event you will attend, the metro event or your local event.



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## PRESIDENT'S PAGE

By ELLEN CADETTE



February 2012

"Well the time and day has changed, where the women wear the pants without changing the last name."

-Rihanna

This year our calendar calls for a leap year, to account for the timing of earth's orbit around the sun. February 29th, or Leap Day, is the day when it was traditionally permissible in some European cultures for a woman to take charge and propose marriage to a man. Some claim this tradition commenced in 5th Century Ireland, when Saint Bridget complained to Saint Patrick that women should not have to wait for the men to get around to marriage proposals, and he supposedly allowed it on that day. Others claim the tradition began in Scotland in 1288, when Queen Margaret mandated that women could propose to men on Leap Day, and the fine for declining such a proposal ranged from payment of money to payment by silk dress or gloves.

On Leap Day, some legends have it that a woman had to wear a red petticoat if she intended to pop the question, to give the man fair warning so he might have time to run the other way! In American tradition, the equivalent "Sadie Hawkins Day" is actually sometime in November, when a woman can take charge by asking a man to dance or by proposing.

I thought I would dig up a few tidbits of history (and memory) related to the notion of women taking charge in the law and in our bar association in particular. Take Sandra Day O'Connor, the first female United States Supreme Court Justice, who was appointed by Ronald Reagan in 1981: Justice O'Connor faced a difficult job market after graduating from Stanford Law School in 1952. No private law firm in California would hire her, and only one offered her a position as a legal secretary, so she went to work in the public sector instead (working for free to start ) as a deputy district attorney in California . As Justice O'Connor has been quoted as saying: "Young women today often have very little appreciation for the real battles that took place to get women where they are today in this country. I don't know how much history young women today know about those battles."

Marsha Yeager was the first female deputy district attorney in Boulder, and also the first female judge in Boulder County. Chief Judge Roxanne Bailin was the first female Boulder County District Court judge, appointed to the bench in 1987 after serving for several years as a County Court judge. Now five of nine Boulder County District Court judges are women. Jean Dubofsky became the first woman Justice to be appointed to the Colorado Supreme Court, in 1979. What amazes me is that all of these "firsts" occurred during my own lifetime.

I sat down with Helen Stone, our first BCBA female president (1980-1981), and talked on the phone with Sara-Jane Cohen, to find out more about their experiences as two of only a few practicing female attorneys "back in the day." Even though the first woman graduated the University of Colorado Law School in 1908, when

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## INTEREST-BASED BARGAINING *(continued from page 3)*

solve their issues. Utilizing these tenets allows the parties to efficiently and fairly reach a desired and durable result while keeping their relationship intact. Keeping the relationship healthy and positive is especially important where the parties are in a long term relationship and have a close working environment like school district, fire districts, and city governments.

When implementing the IBB process, the parties should become familiar with the terms used throughout the process.

These include:

**Issue:** A problem or subject area to be addressed.

**Position:** A solution to a problem or concern which is crafted to meet one party's interest.

**Interest:** An underlying motivation, concern, or need that must be considered in reaching a mutually satisfactory solution. Interests are what cause one to take a given position and often express why the issue is an issue in the first place.

**Options:** Potential, often partial, solutions to satisfy one or more interests.

**Standard:** Broad or generally agreed-upon qualities of an acceptable solution.

The IBB process then proceeds through the following six steps:

**STEP 1: Define the Issue.** The first step in collaborative problem solving is to understand clearly what the issue or problem really is. By defining the Issue, the parties are able to ensure a common understanding of the problem and to put the problem in a format for interest-based problem solving. The Issue can be defined by a party independently or by both parties together.

Learning to frame the Issue is an art in and of itself so that the right question is asked and can be answered through the IBB process. Be sure to understand that when the Issue is framed too narrowly, only part of the problem will be solved; however, when the Issue is framed too broadly then the problem becomes unsolvable and the work of the negotiating teams never accomplished. Done properly, the Issue is framed as an open-ended question that is objective and free of both accusations and emotionally laden terms, instead focusing on causes rather than symptoms. It is commonly phrased as "What can we do to . . ." or "What might we do to . . ."

**STEP 2: Tell the Story.** The Story is "the what" behind the Issue. It pro-

vides historical information from each party's perspective on the Issue and allows the parties to discuss the relevant facts and outside forces at play that help to shape the particular problem.

**STEP 3: Determine the Interests.** The Interests are "the why" or the motivation to solve the Issue. The negotiation team members ask themselves why this is Issue a problem. As they identify each Interest, both common and mutual interests, the teams discuss the Interests and chart them for all to see and relate back to the Issue. As all of the Interests behind the Issue are identified, the team members should take care to distinguish Interest (the needs or concerns underlying the Issue) from positions (one party's solution to the issue).

**STEP 4: Develop Options.** Options are potential solutions or partial solutions to the Issue. They should be developed in an environment in which they are not viewed as commitments by one party or the other when offered, but rather simply as potential solutions to the Issue. During this step, negotiations team members should strive for quantity in developing the Options, referring back to the Story and Interests in order to create and develop a large number of Options for consideration later in the IBB process. A facilitator or the team members should try to engage all participants in the Options development process, explore a full range of standard as well as creative ideas, and attempt to develop a solution to the Issue which satisfies as many or the most important common Interests.

There are several methods by which Options can be developed by nego-

*(continued on page 12)*

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## LAWYERS ANNOUNCEMENTS

The following people either  
volunteered at the pro se clinic  
and/or assisted Probate Registrar  
John Lauce with  
reviewing conservator reports  
Thank you!

David P Dougherty  
Connie T. Eyster  
Arlene French  
Andy L. Gitkind  
Walter W. Kingsbery  
Charlie Martien  
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We are very pleased to announce

Brad Hendrick, a Boulder local,  
has been named a member of the firm.

Brad joined Caplan & Earnest in 2009.  
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law since 2002.

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## PRESIDENT'S PAGE *(continued from page 5)*

Helen hung her own general-practice shingle in Boulder in 1973, she recalls that at that time, there were only a handful of other female lawyers listed in the phone book. Sara-Jane Cohen, who moved to Boulder to practice law in 1969, concurs.

One of the most striking things about that time, Helen recalls, was that there was just no established way for men and women to have professional relationships. For example, just inviting a male attorney to lunch to discuss a case was a "Sadie Hawkins" maneuver, and more than a few invitations were declined. Our BCBA happy hour functions of today are quite a bit different than the social functions of the bar years ago, particularly in the sense that the bar events back in the 70's were more geared toward a bunch of guys getting together, and not exactly designed for professional comraderie among the sexes: the annual dinner, Helen recalls (and Bart Balis has confirmed!) was a cigar-smoking, poker-playing good time. Early on when Helen joined the Bar, she called to sign up for the dinner, and was told something to the effect of, "Oh, wives and/or girls don't come!" Helen and a few other ladies decided to attend anyway. Sara-Jane Cohen remembers that when they went to sit at the poker table, some men moved to other tables. At one of the BCBA annual

dinners at the country club, a particular male attorney gave a speech rife with sexist jokes, only to end up being thrown in the pool fully clothed by the handful of women who were there. I can't help but think that in some ways, those annual dinners sounded a bit more fun! But I also can't help but thinking, Gee, that wasn't that long ago.

Fortunately, by the time I graduated from law school, I did not have to deal with all of the little things that today would seem strange, such as the "pantsuit dilemma." Helen Stone did. It was a problem particular to women lawyers back in the 70's: wondering whether or not wearing a pantsuit to court would draw ire that might negatively impact a client. Or the ever-present "Miss/Mrs." query: "Helen Stone appearing on behalf of Client X," was followed rapidly by the overriding crucial question of the day, "Is that MISS or MISSUS??" Or the invisibility factor that a female attorney might encounter at that time: she was occasionally simply ignored by other folks in the hall or the courtroom. Sara-Jane Cohen recalls working on the fourth floor of the Woolworth Building, which is now Broadway Suites and home of the BCBA. Helen Stone's office was on the second floor. There were only three bathrooms, one on each floor, and the second and fourth floor bathrooms were designated as men's

while the third floor was women's. The landlord finally consented to make the bathrooms unisex, after some agitating by the women, who outnumbered the men working there due to all of the secretaries, a female dentist, Helen and Sara-Jane.

There were so few women attorneys that Sara-Jane Cohen recalls telephoning opposing counsel only for him to assume she was somebody's secretary. And Helen Stone recalls that after a lengthy meeting with a client, her client asked when he would be meeting with the attorney. Sara-Jane relayed a story of Helen going to a restaurant in Boulder where the waitress, upon hearing she was an attorney, said, "Oh, you must be Sara-Jane Cohen!" As E. Greg Martin noted in his article "The 1960's: The Winds of Change are Blowin,'" during the 1960's, the bar association continued to be male-dominated, with only two female members of the bar from 1911 to 1959: Mary Louise Duvall, who became a member in 1952, and Ruth Lehman, who became a member in 1956. BCBA Newsletter November 2007, p.1. In that same issue, Sonny Flowers also noted that in 1907, when the BCBA was formed, Miss Frances Davy was a member, as the secretary.

All in all, I am thankful for all of the

*(continued on page 11)*



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## PRO BONO PAGE

### Pro Bono Referrals

Five cases were referred during December. Thank you to the following attorneys:

**Christina Ebner**  
**Ronald Jung**  
**Paul Karlzen**  
**Laura Moore**

### Pro Se Program Volunteers

**Sheila Carrigan**  
**Lauren Ivison**  
**Helen Stone**  
**Leonard Tanis**  
**Chris Tomchuck**  
**Karen Trojanowski**

### BCAP Volunteers

Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project in December:

**Paul Bierbaum**

### Pro Bono Corner

**Interested in a Pro Bono case?**  
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Thank you to all of our generous lawyers who are on the Reduced Fee Panel list. If you are willing to take a client who has financial restrictions and needs legal representation, please call the bar office 303.440.4758 so we can put you on the list. We appreciate your willingness to help these people. We receive many referrals from BCLS, DA's office and Family Court Facilitator.

### Boulder County Bar Association Professionalism Committee On-Call Schedule

Feb. 6	Christie Coates	303.443.8524
Feb 13	Anton Dworak	303.776.9900
Feb. 20	Steve Meyrich	303.440.8238
Feb. 27	Helen Stone	303.442.0802



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## ON AGREEMENTS AND PROFESSIONALISM *(continued from page 1)*

But in the end we are still faced with an unhappy client, despite their original insistence on the provision we warned against, asking us what now. **Despite our best efforts**, sometimes we are unable to convince our clients that a provision in an agreement may result in future problems, but we just did not try hard enough.

We are used to reviewing agreements and sometimes forget that a non-lawyer may not understand terms the same way we do. Let's all take a few extra minutes to explain problematic terms and what the client is really giving up now or in the future--then read the agreement again and consider whether a person in our client's shoes would want to agree to this term or would want the attorney to advise them not to sign.

This problem is not limited to family law disputes: I have met with many attorneys and clients who have complained about terms in an agreement in real estate, personal injury, contract and even probate matters.

Another area of focus is professionalism, specifically communicating professionally with one another. We are connected to the internet on our phones, iPads (although I cannot

bring myself to purchase one) and computers. We text and email opposing counsel and our clients, and our quick responses sometimes can avert expensive court emergencies or even de-escalate a situation that is easily resolved with a quick answer. Nonetheless, we must not forget the phone call as a useful tool in our legal practice. I can recall when I was first out of law school and there were no cell phones (gasp!) or mobile internet. If there was a problem I actually had to call opposing counsel and talk with them. Sometimes talking produced great results, and sometimes it did not, but the person-to-person interaction made us realize that opposing counsel was a human being and that he or she was representing another human being.


That call underscored that we were attorneys, we were not our clients and we were advocating their interests and were not personally attacking the other attorney. That was professional courtesy. This year, I encourage all of us to pick up the phone more, before shooting off an email that might start with "Your client." Call someone up, be courteous and make a new friend of a lawyer.

All of us have difficult problems and sometimes outrageous situations, but we should all remember that we are in this profession as lawyers. This was underscored by Judge Berkenkotter at a family law CLE; she stated that her requirement for counsel to confer under Rule 121 required us to "pick up the phone." I hope that in this new year, perhaps our last year on this earth, we are a bit more courteous to one another and make an effort to engage in more personalized communications.

*Julie Caputo is a solo family law practitioner and co-chair of the BCBA Family Law Section.*

### Footnote

1. The Separation Agreement paragraph has been changed a bit to ensure that confidentiality of the clients and the attorneys who drafted the agreement, and to ensure that in no way is my review of this provision meant to question the integrity or respect of the counsel who may have drafted this agreement or the clients who agreed to these provisions.



**Supporter of the Boulder County  
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Home Loan Consultant  
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**John Sessa**  
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<http://www.dora.state.co.us/real-estate/index.htm>



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## PRESIDENT'S PAGE *(continued from page 5)*

women who blazed the trail for me. Aside from not even a handful of occasions, I can't say I have ever felt that being a female attorney is at all an issue. It took courage and a sense of humor to be one of the few female practicing lawyers here, recalls Helen Stone. Male or female, those are good qualities to have in our line of work!

On a completely different note, I hope you all will try to make it to "Food Wine Jazz Art" this year. It's on **Thursday February 9th at 5:30 P.M.** at the Rembrandt Yard, just east of the Hotel Boulderado. We will have live music by the jazz band Bilbao, along with wines provided by the Wine Merchant, and appetizers. We will also have several artists on hand selling their creations and donating 50% of their proceeds to the cause, which is the Legal Aid Foundation of Colorado. You can purchase tickets for \$40 at the door or on our website. This event is open to the public, so don't hesitate to bring your spouses, neighbors and friends. I promise nobody will get thrown in the pool!

### FOOTNOTES

1. <http://www.time.com/time/magazine/article/0,9171,1079476-2,00.html>
2. Oyez Project webpage - U.S. Supreme Court, Chicago-Kent College of Law, [http://www.oyez.org/justices/sandra\\_daly\\_oconnor](http://www.oyez.org/justices/sandra_daly_oconnor)
3. <http://www.colorado.edu/law/about/history.htm>



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## INTEREST-BASED BARGAINING *(continued from page 6)*

tiations team members. The negotiations teams should select the process(es) that work for the group and for the particular Issue, as different process may be better suited for different Issues. Such Option-generating methodologies may include looking at best practices in the area (either in the employer's business, e.g. what are other fire district or school districts doing; or by practice area, e.g. what are others doing about annual leave and sick leave); using an expert panel; asking questions of a focus group; and simply brainstorming.

Brainstorming is the most common technique used in the IBB process for developing Options. If employing brainstorming to develop Options, negotiations team members should remember:

- Don't critique ideas as they are offered; instead, allow the ideas to flow freely and save evaluating the Options until a later step. When the flow of ideas is not interrupted, participants are not discouraged from contributing to the process and more Options may be generated;
- Use freewheeling imagination and don't prevent ideas from emerging by rigidly adhering to logical or practical thinking. Remind negotiations team members to not feel bound by budget, time, staff, or other resource constraints. (Remember, there is no commitment at this stage.)
- Build on others' ideas by piggy-backing or expanding.
- Aim for quantity and not quality at this stage. The more ideas you can bring out, the better. And don't worry about duplicates, as categorizing and winnowing the list will happen during the next step.
- Record each idea on a flipchart paper or computer template exactly as it is presented. Try to keep it brief,

but faithful to the wording of the presenter.

**STEP 5: Craft a solution.** Integrate the promising Option(s) into a Solution and test the Solution against the Interests and other standards used by the group (e.g. is it affordable, can it be ratified by the association, etc.). When crafting a solution, evaluate the Options and be creative in integrating them into a Solution. Once a Solution passes the group's standards (each group may have different standards and may also apply different standards to different unique Issues that they are facing), then test for consensus with the group. If there is consensus, draft the written Solution off-line or use a sub-committee to create a straw design or draft language to bring back to the full group. Review again, testing against the Interests and other standards, and then test the Solution again for consensus. Repeat the review process of the Solution until the group has reached a workable solution that is supported by a consensus.

**STEP 6: Closure.** Use your closure tools, standards, and consensus to reach an agreement. Closure tools may include winnowing the list (eliminate duplicates, categorize the options, prioritize), weighted polling, option ranking, creating straw designs, or simply proposing closure. Remember that consensus is a decision in which all members of a group agree on the result. The decision may not be everyone's first choice, but everyone has been heard and everyone supports and can live with the decision.

Once parties have determined to utilize the IBB process in their negotiations, it is beneficial for the teams to participate in joint training of the

process. The training has a dual function: allowing for some team building time between the two negotiations teams, as well as ensuring that everyone is familiar with the process, terms, and methodology. Training can be a short half-day, working through scenarios in order to practice using the IBB steps on neutral topics or can be of a longer duration to allow for more detailed and in-depth training on the steps and inner-working of IBB. Having been trained on the process, the teams can then integrate the tenets of IBB into their negotiations ground rules in order to commit to the process and so that there is a touchstone to return to if the teams stray from the steps. Then all it takes is to identify and exchange your issues and apply the IBB methodology to reach your win-win resolutions.

*Adele Reester is a Shareholder, Lyons Gaddis Kahn & Hall, P.C. in Longmont. Adele's law practice is primarily devoted to the representation of institutional clients, including special districts and school districts. She has participated in negotiations of collective bargaining agreements with teacher unions, and counseled and defended clients regarding special education matters, student discipline, labor and employment matters.*

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## 2011-2012 DIRECTORY CHANGES

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if you have changes for the directory please send them to us at the bar office so we can update our files and everyone will know where to find you.

Thank you so much for having your photos taken and making this a special edition of the 2012 BCBA Directory.

If you think we should stop printing a hard copy of this directory and put it on our website, please email [christine@boulder-bar.org](mailto:christine@boulder-bar.org)



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# BOULDER COUNTY LEGAL SERVICES ANNUAL STATS

## BCLS Client Service Statistics for 2011

Total client interviews are very close to last year, which remains our record year. These are clients who passed through our initial telephone screen and were given face to face or telephone interviews.

Five Year totals are:

2007- 784; 2008 - 659; 2009 - 830  
2010 - 888; 2011 - 874

Cases involving actual representation are up again. (This number excludes advice cases and pro se clinic cases which are both down slightly.) Five year totals for clients who received legal representation are:

2007 - 314; 2008 - 324; 2009 - 316;  
2010 - 346; 2011 - 377

For 2011 housing case numbers are up, and family law cases are down slightly. Housing cases totaled 179, or 21% of all intakes – up 3% from 2010. These include public housing terminations, evictions and conditions cases. Clients with family law issues, including protection orders, totaled 340, or 39% of all intakes – down 4% from 2010.

Pro bono hours, which are only reported when a case has been closed (which can take a year or more) are down for 2011 - largely because only two CU Law clinics accepted cases in 2010. (All three are now taking cases, so numbers will go back up in 2012.) Pro bono numbers tend to fluctuate yearly because some cases can take years to resolve, but are trending up generally. Five year totals are:

2007 - 4,230 hrs.; 2008 - 3,117hrs.;  
2009 - 4,954 hrs. 2010 - 5,206 hrs.  
2011 - 4,190 hrs.

Even with this temporary reduction, the total estimated value of pro bono hours supplied by attorneys in Boulder County for 2011 is \$1,147,500.00


Finally, BCLS continued to enjoy the support of the community despite tough economic times. We received a total of \$166,000 in funding from 9 grants in 2011. Five year fundraising totals are printed below:

2007 - \$143,000 2008 - \$159,000  
2009 - \$153,000 2010 - \$164,000  
2011 - \$166,000

With pending cuts to our federal and state funding, volunteer support and local fundraising is even more important for our continued existence. Thanks to all the staff, volunteers, lawyers, contributors and others who made 2011 such a successful year for BCLS. We hope that we can continue to count on your support for 2012. *Report was submitted by Joel Hayes, Managing Attorney for BCLS.*

THANK YOU TO ALL OUR GREAT COMMUNITY AND LAW FIRM SPONSORS FOR YOUR CONTINUED SUPPORT FOR THIS IMPORTANT AND FUN EVENT.  
**SEE YOU THURSDAY!**

BOULDER COUNTY BAR ASSOCIATION'S 11TH ANNUAL



Food Wine Jazz Art

A FUNDRAISER FOR LEGAL SERVICES FOR THOSE IN NEED

Tickets \$40 at the door  
or online at [FoodWineJazzArt.org](http://FoodWineJazzArt.org)

5:30pm Thursday, February 9th, 2012  
Rembrandt Yard - 1301 Spruce St. - Boulder  
[foodwinejazzart.org](http://foodwinejazzart.org)

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**Approximately 12' x 14' office available in two office legal suite, South Boulder Road in Louisville.** Office currently furnished with new desk and chairs, just remodeled and repainted. Comes with full sized conference room, kitchen, shared leased printer/copier/fax/scanner, filing room, WiFi, and shared paralegal. Free parking. \$1,200/month plus shared office overhead. 303-665-9845.

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