



## BOULDER COUNTY BAR NEWSLETTER

# APRIL 2013

## ETHICS AND THE DIGITAL AGE

By

TIMOTHY JOHNSON

In the not too distant past, there was a time without smart phones, social media websites, and instant blogging. The advance of the digital age; however, has created unexpected challenges for attorneys and their ethical obligations.

Imagine this scenario: An attorney files a motion to continue a hearing stating that her father had just died. The court grants the motion and the hearing was continued. Little did the attorney know, but the judge finds the attorney's social media page and followed her updates during the time the attorney was supposed to be attending her father's funeral. To the judge's surprise, the attorney posts a string of updates detailing her week of drinking, going out with friends and partying.<sup>1</sup>

Or this scenario: During a drug trial that was only scheduled to last a day, a prosecutor decided to chronicle what was going on in court through social media. He began to describe

the trial by re-writing the lyrics to Gilligan's Island. In the lyrics, the prosecutor complains about the length of trial, the fact the judge seemed "lost", and described the defendant and the defense attorney as "the gang banger" and "weasel face" respectively.<sup>2</sup>

In each of these scenarios, an attorney's use of technology and social media crossed the ethical boundaries attorneys are expected to follow. Unfortunately, the quickly changing digital landscape has created ethical dilemmas that probably weren't anticipated when the Colorado Rules of Professional Conduct were adopted originally in 1992. While many of the rules have been amended recently, none provide unambiguous guidance when dealing with social media and technology. However, many of the current rules provide direction for attorneys.

Comment 6 of Rule 1.1 states, "to maintain the requisite knowledge and

skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."<sup>3</sup> Competent practice of law requires not only knowledge about the use of digital devices but the ethical implications of one's actions with that technology.

Further, an attorney is ethically responsible not only for his or her own conduct, but also that of subordinate attorneys and nonlawyer assistants.<sup>4</sup> With this in mind, innovative investigation techniques can run contrary with ethical requirements. For example, if an attorney is attempting to find out information about an opposing litigant, it may be tempting to try and access that litigant's profile on social media. Some social media sites provide privacy settings for users. These privacy settings often allow only friends, family or other

*(continued on page 4)*

## CALENDAR OF EVENTS

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

Wednesday, April 3

Boulder Interdisciplinary Committee  
When to Hold 'Em, When to Fold 'Em,  
When to Throw Them Under the Bus:

Issues in PC/DM Work

Presenter: Christie Coates

A Spice of Life Event Center

11:30 to 12:00 Networking, Noon to 1:15

Lunch and speaker

RSVP the Friday prior to the meeting.

720-232-4573

[www.Boulderidc.org](http://www.Boulderidc.org) to pay

with Paypal, or bring a check.

1 CLE and lunch \$20 for members,

\$25 for non-members

Thursday, April 4

New/Young Lawyers & CU Law School

Happy Hour

5-7 PM @ the Med

Friday, April 5

Civil Litigation/Personal Injury

Preparing Motor Vehicle Accident

Claims for Settlement

Presenter: Gerald Sloat

Noon at at Faegre Baker Daniels

(1470 Walnut)

1 CLE \$20, \$10 New/Young Lawyers

\$11 Lunch

Wednesday, April 10

Criminal/Civil Litigation

The Restitution Effect

Presenters: Zak Malkinson, Jason Savela

What civil liability that can attach to pleas

in criminal and traffic cases involving resti-

tution. This course bridges the gap

between the criminal and civil arenas with

helpful advice on how to deal

with these complex issues.

Noon @ East Training Room (Justice Center)

1 CLE \$20/\$10 new/young lawyer

Wednesday, April 10

Solo/Small Firm Happy Hour

5 pm @ Conor O'Neill's

Friday, April 12

Availability of Legal Services

Roundtable

Noon @ BCLS

Tuesday, April 16

Employment & Business

Marijuana Rights and the Workplace: a

point/counterpoint presentation from

plaintiff and defense perspectives

Presenters: Kimberlie Ryan and Holli

Hartman, members of the Tax Funding/civil

Law Work Group for Governor's Task Force

on Amendment 64

Noon @ Hutchinson Black and Cook

1 CLE \$20, \$10 new/young lawyers

\$11 Lunch

Thursday, April 18

Bankruptcy

Roundtable Luncheon

Noon @ Agave Bistro

Tuesday, April 23

Elder/Taxation, Estate Planning & Probate

Videotaped Wills

Presenters: Keith Lapuyade,

Herb Tucker, Allison Zinn

Noon at Caplan & Earnest

1 CLE \$20, \$10 New/Young Lawyers

\$11 Lunch

Friday, April 26

Immigration Roundtable

8:30 am @ Broadway Suites

(3rd floor conference room)

Friday, April 26

Civil/Personal Injury

Negotiation Techniques

for Insurance Claims

Presenter: Gerry Sloat

Noon at Faegre Baker Daniels (1470 Walnut)

1 CLE \$20, \$10 New/Young Lawyers

\$11 Lunch

Monday, April 29

Pro Bono Lunch (ethics)

Presenters: Justice Hobbs, Judge Bailin

11:45 am @ Marriott (2660 Canyon Blvd.)

\$29 per person

RSVP to Erika 303.449.2197

Wednesday, May 1

Boulder Interdisciplinary Committee

A View From the Bench:

Panel of Judges from 20th JD

A Spice of Life Event Center/

Flatirons Golf Course

11:30 to 12:00 Networking, Noon

to 1:15 Lunch and speaker

RSVP the Friday prior to the

meeting. 720-232-4573

[www.Boulderidc.org](http://www.Boulderidc.org) to pay

with Paypal, or bring a check.

1 CLE and lunch \$20 for members,

\$25 for non-members

Friday, May 3

Civi Litigation/all lawyers

Litigation in Lawless Lands

and \$19 Million Verdict

Presenter: Beth Klein

1 CLE \$20, \$10 New/Young Lawyers

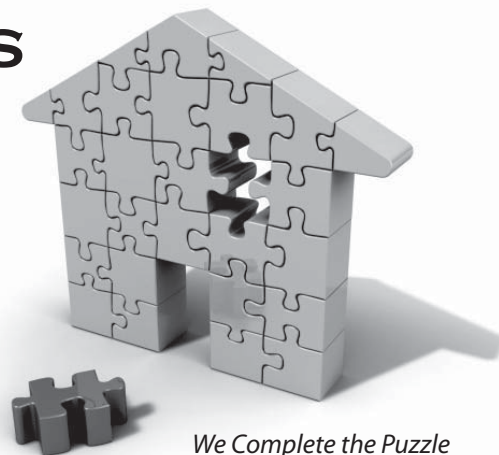
Location to be determined

## COMPLEX ESTATES

DAVID A. PERLICK

COORDINATED PLANNING  
WILLS • TRUSTS • PROBATE  
BUSINESS INTERESTS  
REAL ESTATE HOLDINGS

WE WELCOME REFERRALS AND CO-COUNSEL OPPORTUNITIES



We Complete the Puzzle

PERLICK LEGAL COUNSEL PC

303.449.6543 | [DAVID@PERLICKLEGALCOUNSEL.COM](mailto:DAVID@PERLICKLEGALCOUNSEL.COM)

---

# BOULDER COUNTY BAR FOUNDATION

The Boulder County Bar Foundation had the annual meeting and dinner on March 3rd at the Flagstaff House in Boulder. This year's meeting format was changed to a cocktail reception which gave the 60+ attendees an opportunity for much more socialization and conversation. It was a grand success and everyone commented on how much they enjoyed the relaxed evening to meet and greet all their friends, new and old. The only business matter that took place was the approval of the new Trustees, Judge David Archuleta, Ruth Becker and Bob Lanham. The retiring Trustees were honored for their years of service to the Foundation. They are: Melody Fuller, Star Waring and Bill Meyer. The remaining current Trustees are Anton Dworak, Seth Benezra, Karl Kumli, Sonny Flowers, Rich Irvin and Joan Norman.

The Boulder County Bar Foundation currently has a membership of 280 lawyers. Each year Boulder County Bar lawyers are asked to become Fellows of the Foundation.

Prospective members are recommended by the current Fellows. New Fellows make a ten-year commitment to pay \$1500 or \$150 per year. Upon completion of ten-year commitment, they become Honorary Life members. Many continue to pay and become Sustaining Life Members.

The main focus of the Foundation is to fund law-related organizations and programs in Boulder County. The grants are disseminated annually in August with a total amount of about \$11,000 each year. The corpus of the Foundation is presently \$230,000. Our goal is to have continued growth in our membership that will enable us to fund more programs and make a larger difference in our community.

This year the grants were given to the following organizations: Boulder County Legal Services; Boulder High School Mock Trial program; Collaborative Community /FOCUS Program; Immigrant Legal Center of Boulder County; Voices for Children and the YWCA Family

and Divorce program. In past years, the Foundation has funded the St. Vrain Family Center, CU Law School Loan Assistance Program, Center for Juvenile Justice and other high school mock trial teams. The Foundation also supports the Senior Law Day, which will be on August 10th this year. It also supports the Tree Planting Project in Four Mile Canyon.

Please consider joining the Boulder County Bar Foundation. Your contribution is valuable to supporting legal education and legal services to the Boulder community and improving the image of lawyers and the practice of law.

Thank you to all those who are members and continue to support the Foundation and its philanthropic efforts.

Please call Christine at the bar office 303.440.4758 for recommendations for future grantees and membership.

**Over Fifteen Years of Experience with**

- **Mediation**
- **Arbitration**
- **Settlement Conference Services**

**Also accepting referrals for personal injury civil and criminal litigation.**

Past President of Colorado Trial Lawyers and Boulder County Bar Association; Colorado Super Lawyer 2007-2012.

**Jim Christoph, JD**  
**303.381.2560 christophlaw@comcast.net**



---

## ETHICS AND THE DIGITAL AGE *(continued from page 1)*

authorized persons to see a user's profile. In the example, can the attorney have his or her investigator contact the litigant over social media pretending to be a former classmate to gain access to the litigant's page? While this may seem like an innovative way to obtain potentially critical information, it may violate several rules of ethics.

Analyzing the example in the framework of the Rules of Professional Conduct, the attorney has clearly requested the investigator he or she hired to try, through deception, to obtain information about the other litigant. The first consideration in this example is whether the litigant is represented by counsel. Rule 4.2 generally prohibits communication with a represented party about information related to the representation.<sup>5</sup> While asking to "friend" the litigant may be ambiguous, the intent is to gain information favorable in the litigation. Further, if the person is unrepresented, Rule 4.3 requires an attorney to "not state or imply that the lawyer is disinterested."<sup>6</sup> The actions by the investigator pretending to be a classmate of the unrepresented person are clearly contrary to this ethical directive. Finally, the actions by the investigator are directly attributed to the attorney under Rule 5.3.<sup>7</sup>

It is also critical in the age of emails to maintain not only appropriate candor to the court, but to refrain from engaging in *ex parte* communications.<sup>8</sup> It is not uncommon for communication to occur between a court's division clerk and the attorneys involved in a case. Whether this communication is for the purpose of scheduling a hearing or relaying a party's position on an issue, the use of email has become a common mode to communicate. This communication can often

involve a judge directly. At times, the communication can be less formal than what is seen on the record during a docket or through the filing of motions. However, it is imperative that any electronic communication with the court comply with the ethical requirements of Rule 3.5. This would require including the opposing counsel on all emails or electronic communication with the court.<sup>9</sup>

Finally, the use of social media has complicated what is permissible "trial publicity" under Rule 3.6. The conduct of the prosecutor who rewrote the lyrics to the Gilligan's Island theme song seriously jeopardized the integrity of the trial. These lyrics could have been seen by jurors listening to the evidence and were most definitely seen by members of the community, including the defense attorney. Under the rule, attorneys may not make extrajudicial statements that the attorney knows or reasonably should know will be disseminated by means of public communication.<sup>10</sup> Anything posted to the internet has the potential to be widely distributed by a single keystroke. In the example, what started out as an inside joke among co-workers quickly spread. One's private thoughts that used to be expressed in personal communications are now splashed on the internet or in a blog. The concept of "trial publicity" has changed from providing formal information to a news media to potentially anything posted on the internet or social networking site.

The preamble to the Colorado Rules of Professional Conduct reminds us that "a lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of

justice."<sup>11</sup> In the digital age, an attorney's conduct on social networking sites and on the Internet is not necessarily private or restricted to an intimate group of friends or colleagues. Adherence to the Rules of Professional Conduct takes on a more important dimension in this context where the words and actions of an attorney can be memorialized and available for all on the internet.

---

1. [http://www.abajournal.com/news/article/facebooking\\_judge\\_catches\\_lawyers\\_in\\_lies\\_crossing\\_ethical\\_lines\\_abachicago/](http://www.abajournal.com/news/article/facebooking_judge_catches_lawyers_in_lies_crossing_ethical_lines_abachicago/)

2. <http://www.tcpalm.com/news/2010/apr/21/deputy-under-investigation-in-st-lucie-trial/?partner=popular>

3. Colo. RPC 1 [Comment 6]

4. See generally Colo. PRC 5.1 through 5.3

5. Colo. RPC 4.2

6. Colo. RPC 4.3

7. Rule 5.3 requires a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure the person's conduct is compatible with the ethical requirements of the lawyer. Colo. RPC 5.3

8. Colo. RPC 3.5

9. Colo. RPC 3.5 (b) ("A lawyer shall not communicate *ex parte* with [a judge, juror, prospective juror or other official] during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonable believe that the subject matter of the communication is within the scope of the judge's authority under a Rule of Judicial Conduct.")

10. Colo. RPC 3.6

11. Colo. RPC Preamble [1]

## PRESIDENT'S PAGE

BY KEITH COLLINS



Maintaining his innocence, Gideon represented himself at trial and was convicted by a jury of his peers. Gideon promptly filed an appeal with the Florida Supreme Court who upheld the conviction. Gideon was sentenced to a five-year prison term.

Undeterred, using prison stationary and a pencil, Gideon drafted his own appeal to the U.S. Supreme Court. Gideon argued that the right to counsel should extend to anyone accused of a crime, not just those who can afford it. The high court granted cer-

tiorari and heard the case. In a unanimous ruling, the Supreme Court stated, "...reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire an attorney, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

The Supreme Court reversed Gideon's conviction, finding he was unconsti-

*(continued on page 7)*

*"If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court; and if the Supreme Court had not taken the trouble to look at the merits in the that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone functioning undisturbed.*

*But Gideon did write that letter; the court did look into his case; he was re-tried with the help of competent defense counsel; found not guilty and released from prison after two years of punishment for a crime he did not commit. And the whole course of legal history has been changed."*

*-Attorney General  
Robert F. Kennedy  
November 11, 1963*

Those of us who practice in the criminal arena recently celebrated the 50th anniversary of a landmark Supreme Court case, *Gideon v. Wainright*. In 1961, Clarence Gideon was accused of burglarizing a poolroom in Florida. Gideon, then 51 years of age and destitute, asked the judge to appoint him counsel, as he could not afford one. At the time, Florida provided counsel to only those accused of capital offenses, and thus, his request was denied.



### LONG LIVE RELIABILITY.

You need a partner you can rely on — one who understands your commitment to your clients. At The Private Bank at Colorado State Bank and Trust, we share your respect for dependable partnerships and enduring client relationships. Let our Boulder office show you how our comprehensive wealth management services can strengthen both.



**COLORADO STATE  
BANK AND TRUST**  
THE PRIVATE BANK

Private Banking | Fiduciary Services | Investment Management  
Wealth Advisory Services | Specialty Asset Management

Mimi Goodman: 720.562.5525 | Lisa O'Brien: 720.562.5527  
1505 Pearl St., Suite 105 | Boulder, CO 80302 | [www.csbt.com](http://www.csbt.com)

---

## PRO BONO PAGE

### Pro Bono Referrals

Twelve cases were referred during February. Thank you to the following attorneys:

Susan Bryant  
Keith Edwards,  
Clark Edwards  
Leanne Hamilton  
Meghan Hungate

Thank you to the following mediators who accepted a pro bono referral in February.

Lauren Ivison  
Jim Lionberger  
Alice Robbins  
Brandy Rothman

### Pro Se Program Volunteers

Mary Louise Edwards  
John Hoelle  
Lauren Ivison  
Tucker Katz  
Michael Morphew  
Leonard Tanis

### BCAP Volunteers

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

Paul Bierbaum  
Laurel Herndon (The Immigrant Legal Center)

### Pro Bono Corner

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

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

April 1	Todd Stahly	303.797.2900
April 8	Anton Dworak	303.776.9900
April 15	Steve Meyrich	303.440.8238
April 22	Helen Stone	303.442.0802
April 29	Curt Rautenstrauss	303.666.8576



**Rush!**  
Service of Process • Court Filings • Copy Jobs  
Order Online @ [www.dbcouriers.com](http://www.dbcouriers.com) or call 303.444.9833  
Full Front Range Coverage Since 1987

---

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

tutionally denied the right to be represented by counsel. Gideon was retried with the assistance of a lawyer and was acquitted by a jury in less than an hour. He was then released from prison for a crime he did not commit.

In its ruling, the Supreme Court declared the states responsible for insuring their citizens access to legal representation. The same year, Colorado enacted the Colorado Public Defender Act, helping guarantee that all of its citizens receive legal counsel regardless of their economic status. Here in Colorado, the constitutional right to assistance of counsel has remained strong over the past fifty years.

Today, the Colorado Public Defender system is arguably one of the best in the country. They represent the accused in every judicial district across the state. They also represent both adults and juveniles, throughout all phases of the criminal system. Its reputation brings law school graduates from all over the country seeking an opportunity to work in a system that provides exceptional training and experience.

However, the rest of the country is not as fortunate. Many states' public

defender systems are severely underfunded and crippled by the lack of support services. While other states have failed to create a system at all. There are still eighteen states, including New York and California, who do not have a statewide public defender system. Instead, each county is responsible for setting up its own system resulting in significant disparity in the appointment of counsel from one county to the next. The practice in some of these counties is to simply call up lawyers at firms and ask them to take a case even if they have never handled a criminal case before.

States, like Colorado, who have a public defender system, have historically been underfunded and plagued with constant budget cuts. Many public defenders suffer from outrageous and unrealistic case-loads, handling more than 300 cases at time. Recently, a chief public defender in northeast Pennsylvania, informed the courts that his office could not accept any more cases due to being grossly understaffed and underfunded. After a hearing on the matter, the judge agreed with the public defender, but forbade his office from refusing new cases.

As former Vice President Walter Mondale said, "Arguing for money to defend criminals is not the easiest way to win a close election." Despite the Supreme Courts honorable intentions in Gideon, it created an unfunded mandate for each of the 50 states. Fifty-years later this problem is slowly eroding the fundamental principals of the Gideon decision.

Practicing criminal law gives one a clear understanding of the necessity for competent representation to all, despite the ability to afford counsel. A disproportionate number of people accused of criminal conduct are minorities or the poor. A recent study showed that nearly 80% of people charged with crimes say they cannot afford counsel. Many of these people may have little to no education, mental health or substance abuse issues, and simply can not effectively advocate for themselves. Without counsel, they essentially have no voice in the criminal system. Our public defenders here in Colorado are the champions for the vast majority of the individuals who find themselves accused of criminal conduct.

It would be unfair of me not disclose that I am proudly married to one of

*(continued on pag 10)*

**Accord  
ADR  
Group**

Mediation • Arbitration • Facilitation

**Steve Clymer, Esq.**  
Principal Mediator

**ADR in our *new* offices or yours  
in the Denver Metro area.**

3223 Arapahoe Ave., Suite 300, Boulder, CO 80303  
303-530-2137 | [www.accordADRgroup.com](http://www.accordADRgroup.com)

## CONTRACT TIP OF THE MONTH: COVENANTS NOT TO COMPETE IN PHYSICIAN CONTRACTS ARE VOID IN COLORADO – OR ARE THEY?

BY JONATHAN BRAUN

In general, covenants not to compete are prohibited in employment contracts in Colorado as “unlawful restraints of trade”, and the statute expressly extends that prohibition to contracts between physicians. C.R.S. §8-2-113. The wrinkle comes from exception language in the statute, that allows parties to physician contracts to include contractual provisions that require a departing physician to pay damages to his or her former employer upon termination:

“Any covenant not to compete provision of an employment, partnership, or corporate agreement between physicians which restricts the right of a physician to practice medicine...upon termination of such agreement, shall be void; **except that all other provisions of such an agreement enforceable at law, including provisions which require the payment of damages in an amount that is reasonably related to the injury suffered by reason**

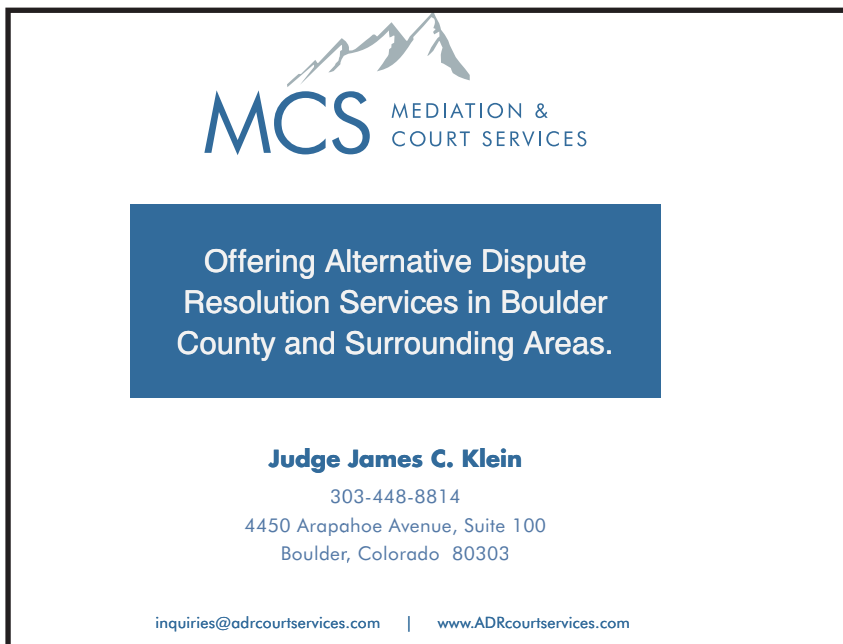
**of termination of the agreement, shall be enforceable. Provisions which require the payment of damages upon termination of the agreement may include, but are not limited to, damages related to competition.”** C.R.S. §8-2-113(3).

Whether or not a court will enforce such a provision and actually require a departing physician to pay the agreed upon damages involves a two-stage process. First, the court must decide whether the covenant is “enforceable at law”, which means that it must be “reasonable” in both duration and geographic scope. *National Graphics Co. v. Dilley*, 681 P.2d 546 (Colo.App. 1984). In cases involving physicians, Colorado courts have found covenants not to compete to be reasonable when they prohibited competition for 5 years, in the city of Trinidad<sup>1</sup>; for 5 years, within 50 miles of the city of Lamar<sup>2</sup>; for 5 years within the County of Boulder<sup>3</sup>; and for 2 years, within 25 miles of the city of Greeley<sup>4</sup>.

Second, any damages sought for the breach of a covenant not to compete must be proven to be reasonable in light of the injury suffered by the former employer as a result of the departed physician’s competition. In *Wojtowicz*, the court examined the damages to be assessed against a physician who breached his non-competition agreement and agreed with the parties that the harm suffered by the former employer included future lost profits, but then required the submittal of evidence at trial in order to determine whether the agreed upon formula in the contract resulted in appropriate damages. In that case, the parties’ contract included a “liquidated damages” clause in their employment contract in which the physician was required to pay his former employer 50 percent of any fees he earned “within a 25-mile radius of Greeley during the two-year period” following termination of his employment. The court upheld the scope of that prohibition but, after a trial with expert testimony and an appellate review, the Colorado Court of Appeals held that the agreed-upon damages were not “reasonably related to the injury suffered” by the employer and that, as a result, the damages provision in the non-competition covenant was not enforceable.

The lesson to be gleaned from that court decision is that a non-competition clause in a physician’s contract can be enforced in Colorado to the extent that it provides for the payment of damages upon termination of employment; however, even a seemingly clearly drafted damages provision that accurately reflects the

(continued on page 10)



**MCS** MEDIATION & COURT SERVICES

Offering Alternative Dispute Resolution Services in Boulder County and Surrounding Areas.

**Judge James C. Klein**  
303-448-8814  
4450 Arapahoe Avenue, Suite 100  
Boulder, Colorado 80303

[inquiries@adrcourtservices.com](mailto:inquiries@adrcourtservices.com) | [www.ADRcourtservices.com](http://www.ADRcourtservices.com)



## LAWYER ANNOUNCEMENTS

BRIDGE TO JUSTICE  
A Colorado Nonprofit  
595 Canyon Blvd. Ste. D.  
303.443.1038

Attorneys Bruce Wiener and Michelle Haynes, formerly of the Boulder Law Shop, are pleased to announce the formation of a new Colorado nonprofit organization, Bridge to Justice.

Effective April 1, 2013, this organization will provide reduced-rate legal advice and representation to clients of modest means who fall within our income guidelines and who do not qualify for legal aid.

Bridge to Justice will help clients in the areas of domestic relations (divorce and post-decree cases), landlord-tenant, debt collection, Chapter 7 bankruptcy, wills, and county court construction defect matters.

Please contact Bruce Wiener at 303.443.1038 for more information.

Lyons Gaddis Kahn & Hall  
A Professional Corporation  Attorneys and Counselors

ANNOUNCES THAT

### BLAIR M. DICKHONER

has joined the firm's Government Practice Group as an Associate Attorney. Mr. Dickhoner's practice will emphasize Special District and Education Law



[bdickhoner@lgkhlaw.com](mailto:bdickhoner@lgkhlaw.com)  
515 Kimbark Street • Second Floor  
Longmont, Colorado 80502-0978  
303-776-9900 • Facsimile 303-776-9100  
[www.lgkhlaw.com](http://www.lgkhlaw.com)

### REDUCED FEE PANEL LAWYERS

The bar receives many public calls from those who are unable to afford an attorney and do not meet the income guidelines for legal services. We have the Reduced Fee Panel list of our wonderful Boulder County lawyers who are willing to take a case for a lower fee if they have time.

We are so very grateful to those of you who help already but we NEED MORE ATTORNEYS on our list. We especially need attorneys for domestic, civil/personal injury, social security and criminal calls.

Please call Sarah at 303.440.4758 or email [sarah@boulder-bar.org](mailto:sarah@boulder-bar.org) to put your name on the list. This is a great opportunity for newer lawyers to get experience and we have lawyers who will mentor you if you need help with a case.

Thank you very much for all you do for the bar and the community.

**STAHLY**  
Stahly LLC | Informed Divorce

Stahly LLC is pleased to announce that Todd A. Stahly has been named a **Colorado Superlawyer Rising Star**. Thank you to all who participated in the nomination process.

---

1562 Spruce Street, #103  
Boulder, Colorado 80302  
(Please note our new Boulder address.)

•  
425 South Cherry Street, #620  
Denver, Colorado 80246

•  
303.797.2900

•  
[www.stahlyllc.com](http://www.stahlyllc.com)

agreement of the parties at the time that they entered into the contract can be the subject of costly litigation, and may be determined to be unenforceable based upon a judge's discretionary evaluation of the facts.

The tip? If you don't like paying lawyers to litigate on your behalf, don't agree to include a non-competition in your employment contract, no matter how clearly you think that it states your agreement.

UPDATE: The March/April 2013 edition of the Colorado Medicine reported that the board of the Colorado Medical Society has formed a special committee to study and refine the issue of legislation to make non-compete (liquidated damages) clauses unenforceable in instances when a physician is terminated from an employment contract using the "without-cause" reason for the termination.

1. *Freudenthal v. Espey*, 102 P. 280 (Colo. 1909)
2. *Mabray v. Williams*, 291 P.2d 677 (Colo. 1955)
3. *Boulder Medical Center v. Moore*, 651 P.2d 464 (Colo.App. 1982)
4. *Wojtowicz v. Greeley Anesthesia Services, P.C.*, 961 P.2d 520 (Colo.App. 1997)

*Jonathan Braun practices law with Fern O'Brien in O'Brien Braun PC, representing physicians, financial institutions, small businesses and individuals in planning, litigation and other civil matters.*

our outstanding public defenders, and that my two business partners are former public defenders. I am obviously an individual who believes that their work is a truly noble and honorable service to our society. It is often a thankless job with incredibly difficult clients. However, they do more than just protect those who cannot protect themselves. Their ceaseless battles help protect the integrity of the entire justice system. They are an integral part the checks and balances that insures fairness and justice for all.

I would like to end with a quote from Tracie Olson, public defender of Yolo County, California.

"Every public defender has been asked at least once, in some fashion or another, "How do you sleep at night doing what you do?" This question is typically asked by the person who can't fathom actually needing a public defender for himself, a family member, or a friend. However, when something goes wrong in one of their lives, we are the first ones they call—and it's only then that they truly understand.

Happy 50th Anniversary Mr. Gideon, and thank you for not giving up."

**QDRO SPECIALISTS  
JOHN F. McNALLY LLC  
Attorneys At Law**

- We Assist Family Law Attorneys In Advising, Structuring and Drafting QDROs
- Over 35 Years of Experience With ERISA and Deferred Compensation Plans
- Extensive Experience With Both Public and Private Sector Plans and QDRO
- Over 35 Years Operating Legal Practice Specializing in Taxation, Business, Estate Planning and Probate Law, In Addition To Retirement Plans and QDROs

**Please Feel Free To Inquire About Fee Estimates And General Information Regarding QDROs and Retirement Plans**

**JOHN F. McNALLY JD, LLM In Taxation • 303.494.1098  
jmcnallyllc@yahoo.com**

---

## CLASSIFIED ADS

Established Boulder law firm has office available immediately for month-to-month lease to attorney or professional person. Furnished office with beautiful views of foothills, \$1,200.00/monthly includes; receptionist services, parking, multi-line phone system with voicemail, elevators, routine cleaning services. Please contact Cindy for more details, (303) 440-7500.

**Mobile Notary and Contract Paralegal Services.** Civil Litigation. ADC/CJA. Real estate transaction. Roz Lynn Dorf, M.A. 303.494.6935

**Filing Cabinet, four drawer, four foot wide, HON Model 794 LP for sale.** Set up for hanging files. These are more than \$600 new, yours for \$300. Call Jeff 303 442 2599.

853ft<sup>2</sup> - Wonderful Multi-Suite Office, Downtown Boulder (Broadway/Pearl) Great office in Downtown Boulders Premier Executive Suites Building, Suite 222 at 1942 Broadway, Boulder. Broadway Suites. Large "bull pen" area, reception area and two private offices off of main area. Quiet floor in busy building. Arched windows and doors make this office beautiful and unique.

Rent rate as low as \$1,700.00 FSG per month! Please see [www.bsuites.com](http://www.bsuites.com) for floor-plans and detailed information. Call or email Candice today! 303.938.6831. [candice@bsuites.com](mailto:candice@bsuites.com)

**LEGAL RESEARCH - experienced local attorney seeks legal research, possible overflow contract work.** Resume and writing samples available upon request. Rates negotiable. Contact Erik S. Burns at (720) 560-9685 or [eriksburns@gmail.com](mailto:eriksburns@gmail.com).

**CLIENTS WITH STUDENT LOAN PROBLEMS? THEY ARE UNEMPLOYED, UNDEREMPLOYED,** overwhelmed, skipping loan payments, defaulting on the loans, on a first name basis with collection agencies, or being sued on their loans? Point them to [www.attorneytriggs.com](http://www.attorneytriggs.com) for helpful resources and solutions. Doug Triggs, 303-499-1336.

In the March issue we made several mistakes in the ad placed by Sloat and Nicholson for a personal injury attorney. We apologize for this and hope that this did not in any way reflect poorly on Sloat and Nicholson. We take full responsibility for these errors. Thank you for your understanding.

April 20, 2013

in honor of Earth Day

Boulder County lawyers will plant trees for the 3rd year in the hundreds of acres burned by the Fourmile Canyon Fire in Boulder County.

**PLEASE JOIN US!**

We would like to invite folks 16-years-old and over to help from either (1) 8AM to noon OR (2) 1PM to 4:30PM.

Transportation will be provided from the Boulder Justice Center.

If interested, please email Gabriella Stockmayer at [gstockmayer@dietzedavis.com](mailto:gstockmayer@dietzedavis.com)

with your name, telephone number, email address, organization if any, names and number of people in your party, and your preferred time.

From your gracious donations, we have already purchased 1000 trees. We would certainly like to plant more with more funds and more people to plant the trees we can exceed our goals.

Please make checks payable to Boulder County Bar Foundation and, in the memo line, Boulder Tree Planting. To make donations via credit card through the Boulder County Bar Association, please go to [www.boulder-bar.org/calendar.php](http://www.boulder-bar.org/calendar.php) click on April 20, 2013  
Donations are tax deductible.



## SITES FOR LAW FIRMS

MARKETING WEBSITES FOR ATTORNEYS



- Build a new, modern website full of content in minutes
- Attract new clients to your practice
- One company for all your web needs
- Professional support included
- **\$89/month**, for what costs thousands elsewhere

*"Our website constantly attracts valuable leads and we couldn't be happier."*

– **Michael Singer** ckslaw.com

*"I am not a technical person and the setup process was simple."*

– **Donna Wulkan** specialeducationlawyersdc.com

Visit [sitesforlawfirms.com](http://sitesforlawfirms.com) and start your **FREE** trial, or call **1-800-475-1726** to talk with a project manager.

**20% Discount for Boulder Bar Association Members!**

Just let us know you're a member to receive your special price



THE BOULDER COUNTY BAR ASSOCIATION NEWSLETTER IS PUBLISHED MONTHLY BY THE BOULDER COUNTY BAR ASSOCIATION. ARTICLES BY GUEST LAWYERS MAY NOT BE REPRODUCED WITHOUT PERMISSION FROM THE AUTHORS.

Phone: 303.440.4758  
1942 Broadway, Suite 205  
Boulder, CO 80302

E-mail: [christine@boulder-bar.org](mailto:christine@boulder-bar.org)  
[www.boulder-bar.org](http://www.boulder-bar.org)

Executive Director and  
Newsletter Editor ..... Christine Hylbert  
Executive Assistant ..... Sarah Flinn