December 2024

Boulder COUNTY BAR ASSOCIATION

BCBA HOLIDAY PARTY

The BCBA wishes you a happy holiday season, and we hope you will join us for the BCBA Holiday Party on Thursday, December 5 at 5:00 pm! Spouses and significant others are also welcome and encouraged, or just bring yourselves. Special thanks to our event sponsors **Berg Hill Greenleaf Ruscitti LLP** and **Stahly Mehrtens Miner LLC**.

We would love to see all of you to celebrate the season. We will have appetizers, drinks and great conversation. This will also be the final drop-off date for our holiday gift donation drive so you can plan to bring your donations and stay for the party! **Please click here to register**.

Holiday Gift Drive Wrap Up Page 6

Special thanks to our event sponsors

BHGR BERG HILL GREENLEAF RUSCITTI LLP

STAHLY | MEHRTENS | MINER LLC
Experienced Leaders in Family Law

IN THIS ISSUE

CALENDAR OF EVENTS 2
PRESIDENTS PAGE 4-5
2024 PRECIOUS CHILD GIFT DRIVE 6
ON MODERN EDISCOVERY 7-9
BCBA CLE WEBINARS 11
NOVEMBER IN PHOTOS 12-14
WELCOME NEW MEMBERS 14
CLASSIFIED ADS 15
PROFESSIONALISM & PRO BONO 16



CALENDAR OF EVENTS

Wednesday, December 4
Natural Resources Section CLE Webinar
Provisions on Opening the Tap to EPA's Water Assistance Programs
Presented by Frannie Monasterio
1 General Credit
12:00 - 1:00 PM @ BCBA Zoom Meeting Room
Free for BCBA Members
Please click here to register
Please click here to sponsor

Thursday, December 5
BCBA Holiday Party
Special thanks to our event sponsors *Berg Hill Greenleaf Ruscitti LLP* and *Stahly Mehrtens Miner LLC*
5:00 - 7:00 PM @ BCBA Office (3269 28th St.)
Free for BCBA Members
Please click here to RSVP

Tuesday, December 10
Civil Litigation and Real Estate Sections Membership Lunch
12:00 - 1:00 PM @ BCBA Zoom Meeting Room
Free for BCBA Section Members
Please click here to RSVP
Please click here to sponsor

Wednesday, December 11
Bagels with the Bar: Longmont
8:30 - 10:00 AM @ Lyons Gaddis (515 Kimbark St. Suite 200)
Free for BCBA Members
Please click here to RSVP

Thursday, December 12
Wellness Meditation Session
Presented by Diane M. Connolly, J.D., LL.M. & Mediator
8:00 - 9:00 AM @ BCBA Office (3269 28th St.)
Free for BCBA Members
Please click here to RSVP

Wednesday, December 18
Criminal Law Section CLE Webinar
Stress Management in the Legal Profession
Presented by Maggie Kapitan
1 Ethics Credit
12:00 - 1:00 PM @ BCBA Zoom Meeting Room
Free for BCBA Members
Please click here to register
Please click here to sponsor



from the BCBA

MEDIATION

Domestic Landlord/Tenant Personal Injury Business Employment

Morgan O'Brien, MBA
mobrien@fobrienlaw.com
(303) 725-9549

Fern O'Brien, JD
fobrien@fobrienlaw.com
(303) 579-3559

O'BRIEN LAW | LLC


TRUSTED ADVISORS
POWERFUL ADVOCATES
STRATEGIC PARTNERS
BHGR
BERG HILL
GREENLEAF RUSCITTI LLP
ATTORNEYS AT LAW | BOULDER, COLORADO | WWW.BHGRLAW.COM | 303.402.1600

PRESIDENT'S PAGE

CAROLYN STEFFL

Which state produces more than half of the global supply of cranberries?

If you said Wisconsin, you said it all.



This Thanksgiving, I traveled home to Madison, where I studied, became an adult and met the love of my life, for a big family gathering. It's a year of transitions. Two of the children – my daughter and niece, are freshman in college, having adventures, living independently, and learning who they are. At the same time, my mom is forgetting who she is . . . and who we are. And, it's terrifying, sad and frustrating.

So, let's take a moment to be thankful for our big, beautiful, hardworking brains.

Just as surgeons rely on their hands, as attorneys, our brains are our money-makers. We have developed the skills to identify problems, take them apart, and put them back together. For litigators, that means crafting a story, leading the judge or jury to understand that the law and justice obviously support your client's position. For transactional attorneys (like me), it's about getting to a win-win, helping individuals with disparate



interests but a common goal to agree on the big and small details, while thinking about the what ifs and planning for the future.

It's easy to take our brains for granted, to accept that learning new things and analyzing situations come naturally. But, it can all change so quickly. This happened to me in 2017, when, as the girl scout troop leader, I fell off of a horse and suffered a serious concussion. I woke in a field alone, not knowing where I was or how I got there. At first, all I could do was rest. Over time, I started working part-time, ½ hour at a time, then an hour at a time, etc., slowly building back up. We don't consider thinking as a high energy activity, but it is. I experienced such fatigue that I needed to rest after working just short periods of time. I was so, so blessed to make a nearly full recovery. But, it certainly gave me an appreciation of every day.

As Coloradoans with an active lifestyle, I know so many people who have experienced head injuries from bike or skiing accidents. Other friends have reduced cognition from long COVID or from playing professional, high-impact sports. So, I know that a portion of our members are struggling with this right now.It's worth it to me to take risks

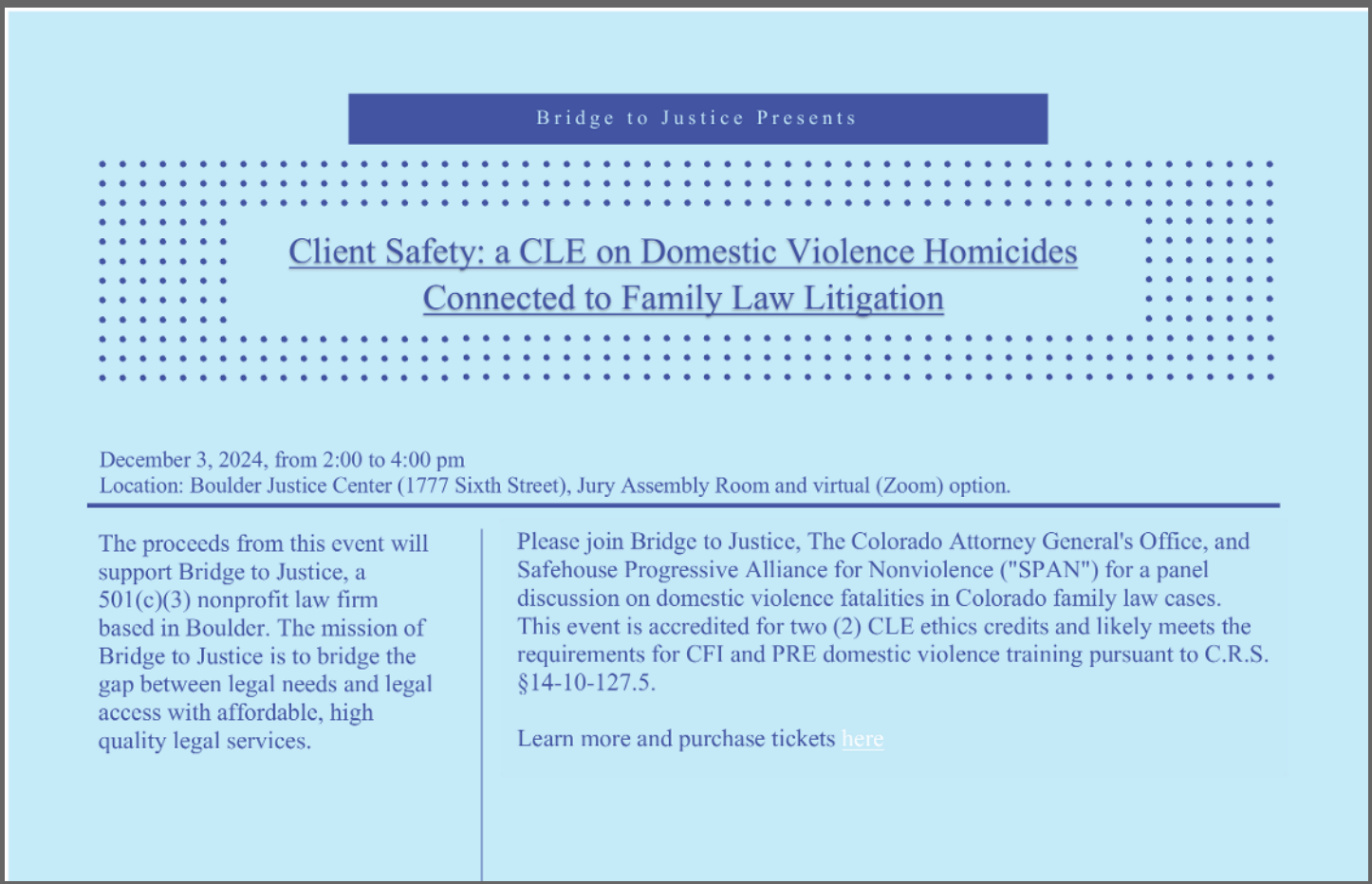
PRESIDENT'S PAGE CONTINUED

and enjoy the outdoors, even horseback riding, but I'm a big champion of helmets - my freshman daughter is probably the only one in her dorm with a bike helmet under her bed in case she rents e-bikes in central park.

And … dementia. Many of us are navigating this with our parents or grandparents, while balancing a demanding career and raising children. Some of us are facing dementia ourselves. My mom is only 75, and she has lost so much. Over thanksgiving, she was happy, surrounded by family, music and hugs, but later couldn't remember who had been there. The littlest things seem baffling and new, but she was still a card shark – deep brain grooves for bridge and other card trick games. It's terrifying to me that I could experience dementia at such a young age, too.

As a bar association, we recognize that our members face daily challenges, and sometimes we all feel alone in our struggles, but you are not alone. **On December 12th, we will be hosting a meditation session at the BCBA offices (8-9 AM)**. There is some evidence that meditation and social connection help improve cognitive abilities and reduce stress. So, I encourage you to schedule something for yourself on your calendar and join us! Please click here to register for this free meditation session.

To conclude, on this day, I am thankful for my family, thankful for researchers studying neurology and aging, thankful for my mental acumen, thankful for the brilliance of my co-workers and friends, thankful for caregivers, thankful for patience, and thankful for this day. And, I'm thankful for all of our bar members. Thanks for reading.



THE BCBA 2024 PRECIOUS GIFT DRIVE

80 children's wish lists are being fulfilled by BCBA members during this year's Precious Gift donation drive. Thanks to the generosity of this year's participants, we will be able to deliver two vehicles full of toys, bikes, clothes, and assorted gifts to A Precious Child's warehouse in Broomfield. Our great thanks to this year's participants:



Cecil Kennedy
K.C. Cunilio
Carolyn Steffl
Jennifer Arnett
Mary Claire Mulligan
TJ Willard
Jonathan Rivinu
Nathan Klotz
Sarah Keane
Jodi Martin

Sara Ross
Mike Rafik
Carla Sledge
Connie Eyster
Bryan Quiram
Megan Kondrachuk
Hon. Patrick Butler
Judge Zachary Malkinson

Brittany Frisbie
Mari Bush
Lucy Walker
Care Enichen
Helen Towlerton
Laura Moore
Larry Myers
Anna Bond
Leila Behnampour
Steve Clymer

Maile Kobayashi
Brett Landis
Jocelyn Kanoff
Savanna Thompson
Kathy Grothe
Robyn Kube
Lisa Shoemaker
Megan Henderson
Liz Parker

Tanya Shimer
Laura Ruth
Brad Hall
Krista Garcia
Scott Brenner
Andrew Dunkin
Mary Lynn Macsalka
Emily Horowitz
Kyle Mares
Meghan Hungate

JAMS
Denver
Welcomes
Our New
Panelist



HON. PATRICK BUTLER (RET.)
MEDIATOR ARBITRATOR SPECIAL MASTER

JAMS

NEED A NEUTRAL YOU CAN TRUST?
jamsdenver.com 303.534.1254

ON NAVIGATING MODERN EDISCOVERY

KELLY TWIGGER & MARTHA MACPHERSON



Kelly Twigger's *Navigating Modern eDiscovery Challenges: Hyperlinked Files, Mobile Devices, and Sanctions – Oh My!* CLE Home Study Program for the BCBA is available to view by clicking here.

The rapid evolution of technology has brought transformative changes to how we manage ediscovery. With the rise of collaboration tools, the ubiquity of mobile devices, and the ever-growing demands for electronic evidence, litigators are facing new, complex challenges. During my recent webinar for the Boulder County Bar Association, we tackled some of the most critical issues on the ediscovery horizon in 2024, including hyperlinked files, the complexities of preserving mobile data, and the evolution of sanctions under Rule 37. Here's a recap of what we covered, along with practical takeaways to help you navigate these tricky waters.

Hyperlinked Files: The New "Modern Attachments"

Hyperlinked files have fundamentally changed the game in ediscovery. Gone are the days of simple email attachments; now, we're dealing with links to documents stored in the cloud via tools like Microsoft Teams or Google Drive. These "modern attachments" pose unique challenges for collection and preservation—and the courts are still catching up.

Key Issues and Tips

- **What Do We Call Them?** Hyperlinked files are not the same as traditional attachments, and courts have rejected the term "hyperlinks" to describe them. In my view, the most accurate term is "hyperlinked files," as it highlights their evidentiary nature when linked to a communication.
- **Proportionality Questions**: When collecting hyperlinked files, the burden and cost often clash with the value of the evidence. Courts are increasingly considering proportionality under Rule 26(b)(1), so it's critical to assess whether the effort to retrieve these files aligns with their importance to your case.
- **Policies and Tools**: If your client uses Microsoft 365, for example, implementing a cloud attachment policy is non-negotiable. This allows for the preservation of every version of a hyperlinked file. Without it, you'll only collect the most recent version—which might not be the one relevant to your case.

MODERN EDISCOVERY CONTINUED

Takeaway: Get ahead of these issues by including hyperlinked files in your ESI protocol. Understanding the technology your client uses and negotiating terms up front can save time, money, and headaches later.

Mobile Devices and Sanctions: The New Battleground

Mobile devices have become essential communication tools for businesses and individuals alike, which means text messages are now a goldmine for evidence. Yet too often, these messages are lost, deleted, or overlooked entirely, leaving parties vulnerable to sanctions under Rule 37(e).

Key Case Law Lessons

1. **Miramontes v. Peraton**: In this case, the court found that an employer may have control over employees' personal devices if the employer knows they are used for business purposes. Failure to preserve text messages led to sanctions in the form of denying Peraton's motion for summary judgment—a game-changer in employment litigation.
2. **Skanska USA v. Bagelheads**: Repeated oversights in collecting mobile devices led the court to find intent to deprive, issuing adverse inference instructions. This case shows that negligence can rise to the level of bad faith when it becomes a pattern.
3. **Hunter's Capital v. City of Seattle**: The court found intent to deprive after multiple city officials—including the mayor—lost critical text messages. However, the sanction was limited to an adverse inference instruction, demonstrating the courts' reluctance to impose harsher penalties even in the face of clear preservation failures.

Practical Tips

- **Early Preservation is Key**: Don't rely on custodians to understand their preservation obligations. Take proactive steps to collect data early, especially from mobile devices.
- **Audit Device Settings**: On iPhones, for example, default text message retention is set to "forever." If this setting is changed, the timestamp is logged. Use forensic analysis to uncover when changes were made and why—it could make the difference between proving negligence or intent.
- **Leverage Technology**: Tools like Microsoft Purview and forensic email collectors can streamline the collection of data from mobile devices and cloud platforms.

Takeaway: Timing and thoroughness are everything. Courts are increasingly scrutinizing patterns of inaction, and even unintentional losses can result in sanctions that derail your case.

Moving Forward: Practical Advice for Litigators

The most effective way to manage these ediscovery challenges is to take a proactive, informed approach. Here are my key recommendations:

1. **Identify Data Sources Early**: Talk with your client early and often about how they create, store, and communicate

MODERN EDISCOVERY CONTINUED

information. Don't wait until discovery deadlines loom.

2. **Create a Detailed ESI Protocol**: Address hyperlinked files, collaboration tools, and mobile device data explicitly in your agreements. Include language that allows for modifications if proportionality becomes an issue.
3. **Invest in Education**: ediscovery is a constantly moving target. Take advantage of resources like the annual eDiscovery Case Law Report, attend events like the University of Florida eDiscovery Conference, and stay informed through podcasts like Case of the Week.

Final Thoughts

As litigators, our jobs are evolving. Beyond mastering litigation strategy and case-specific subject matter, we now must also understand the intricacies of ediscovery. It's no small feat to keep up with the pace of technological and legal change, but the cost of falling behind is far greater.

If you're feeling overwhelmed, start small. Identify the biggest risks in your cases—whether that's hyperlinked files, mobile device data, or something else—and take steps to address them head-on. And remember, you're not alone. Tools like eDiscovery Assistant exist to make your work easier, and I'm always happy to help guide you through these challenges.

Litigation is complex, but with the right approach, you can turn the complexity of ediscovery into a strategic advantage. Let's embrace these changes and stay ahead of the curve—together.

Kelly Twigger is a practicing attorney, software developer, consultant, writer and speaker on issues in electronic discovery, the development and implementation of legal technology, and how to effectively use data in planning for and during litigation. She is one of the co-authors of Electronic Discovery and Records and Information Management, and host of Case of the Week at eDiscovery Assistant.



LEGAL CLINIC VOLUNTEERS NEEDED

Did you know the BCBA sponsors a Free Virtual Legal Clinic for Boulder County? This started during the pandemic and was so successful we have continued it to help further our commitment to access to justice. To date, we have helped over 1700 community members!

We have a small group of incredibly dedicated volunteers who give 15-20 minutes of their time approximately once every few weeks. We would like to get that number to once a month, but we need more volunteers! **Can you help with 20 minutes once a month in service to your community?**

Here's how the clinic works. Our goal is to speak with each person seeking help within 3 business days:

- Clients fill out an intake form at the BCBA website
- We contact an attorney in the appropriate practice area and ask if they are available for a 15-20 minute consultation
- If yes, we pass on the client contact information to the attorney - alternately, we can share your number with the client if you prefer to have them contact you
- You have the brief conversation and send us a quick email that you've helped the person so we can mark them as completed

You are under absolutely no obligation to take on the client. Here is the disclaimer the community receives when they sign up for the clinic:

By participating in the Boulder County Bar Association Free Virtual Legal Clinic, we cannot provide a lawyer to represent you. We can only provide brief legal advice, legal information, and guidance about where you can find further help, if needed. Any attorney-client relationship, to the extent one is established, is limited to the legal advice or information you receive at this clinic.

Please let us know that you are available to help once per month (or more!) along with your practice areas. We could not provide this service without all of our amazing volunteer attorneys!

Please click here to sign up

THANKS TO OUR CLINIC VOLUNTEERS

Ainagul Holland	4 calls last month	Monique DuPont	1 calls last month
Dipak Patel	3 calls last month	Jessica Catlin	1 call last month
Julia Morgenthau	2 calls last month	Amanda Peek	1 call last month
Karen Burns	2 calls last month	Alison Gordon	1 call last month
Mike Rafik	2 calls last month	Bruce Weiner	1 call last month
TJ Willard	2 calls last month	Jennifer Arnett	1 call last month
Kurt Hofgard	2 calls last month	Kevin Miller	1 call last month
Patricia Riley	1 calls last month	Georgiana Scott	1 call last month
Scott Brenner	1 calls last month	Lane Rideout	1 call last month

BCBA HOME STUDY WEBINARS

A benefit of BCBA CLE offerings moving to webinars is that we are able to record the programs and make them available to view after the live presentation. We also submit the majority of our recordings for home study CLE credit, which allows our members to view them as needed to fulfill the credits needed for their reporting periods. Please see a list of our current home study offerings below, and if there is a program you're interested that you don't see here, the full list of our video recordings is available for BCBA Members only on our Webinars page. If there is a program that is not currently accredited for home study that you're interested, please contact Kyle and we can work to get a recording re-accredited.

Ethics Courses

Creating Effective and Ethical Environments for Colleagues and Clients with Intellectual Disabilities
Presented by April McMurrey, Zoey Tanner, and Judge Chris Larson
Video recording here
Course ID# 850525

Moving from Ignorance to Terror: Engagement Letters for Estate Planners
Presented by Connie Eyster
Video recording here
Course ID# 853868

Getting Your Firm's Affairs in Order: Part 2
Presented by Jodi Martin
Video recording here
Course ID# 838332

EDI Courses

Introduction to Racial Equity: A Lawyer's Responsibility
Presented by Judge Dea Lindsey
Video recording here
Course ID# 847136

A Primer on Disability Advocacy
Presented by Franklin Erickson
Video recording here
Course ID# 853822

A Focus on RMIAN
Presented by Mekela Goehring
Video recording here
Course ID# 853866

The Importance of Pro Bono Service
Presented by Gregor MacGregor
Video recording here
Course ID# 853867

Lessons for Mediators from the EDI Roundtable
Presented by Melora Bentz and Wesley Parks
Video recording here
Course ID# 853869

Advocacy Requires Allyship: Conscious Representation of LGBTQ+ Clients
Presented by Kevin Miller
Video recording here
Course ID# 836005

General Credit Courses

Drafting and Using Arbitration Clauses: Tips from a Litigator & Arbitrator
Presented by Paul Schwartz
Video recording here
Course ID# 847138

An eDiscovery Update for 2024
Presented by Kelly Twigger
Video recording here
Course ID# 853823

Fall 2024 Tax & Estate Legislative Update
Presented by Scott Challinor
Video recording here
Course ID# 853824

Tips on Having a Successful Mediation
Presented by Hon. Patrick Butler
Video recording here
Course ID# 853870

Law of the Colorado River
Presented by Gregor MacGregor
Video recording here
Course ID# 812690

Business Valuation: A Guide to Understanding How It Works
Presented by Tamara Rigberg
Video recording here
Course ID# 853871

BCBA NOVEMBER PHOTOS



Judge Salomone gives keynote remarks at the BCBA Annual Judges Dinner

Special thanks to our 2024 event sponsors The W Law, Berg Hill Greenleaf Ruscitti, Peek Goldstone, LLC, Lyons Gaddis, and Caplan & Earnest.

JOIN US FOR A FREE

WELLNESS MEDITATION SESSION

THURSDAY, DECEMBER 12 | 8:00 - 9:00 AM @ BCBA OFFICE (3269 28TH STREET)

Do you feel like you're running through your life in an endless "to do" list that doesn't satisfy you? Do you want some time to tune into yourself with a group of like-minded people? If so, then this class may be for you. Join us to find out more! Diane M. Connolly, J.D., LL.M.& Mediator will lead all participants on a guided meditation. Space is limited so please sign up today!

PLEASE CLICK HERE TO RSVP

BCBA NOVEMBER PHOTOS



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner

BCBA NOVEMBER PHOTOS



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner



BCBA Annual Judges Dinner

Welcome New Members

Conor Bateman	Julie Kreutzer	Merlin Arduini
Michael Hagihara	Rachel Hammond	Clayton James
Andrea Bonato-Gach	Elizabeth Schwab	Michele Manceaux
Alyssa Frost	Gabrielle Cooper	Virginia Frank
Paul Stevenson	Reilly Rastello	Fern O'Brien

CLASSIFIED ADS

Senior Trust and Estate Attorney Position. Berg Hill Greenleaf Ruscitti LLP, a prominent law firm in Colorado, is seeking a senior-level Trust and Estate Attorney to join our team. This position is ideal for an experienced attorney with a partial book of business looking to advance their career in a dynamic and challenging environment. This is a full-time exempt level position. Please click here for full job responsibilities and requirements.

Attorney Positions Available. Clark Hill is seeking high-performing, motivated attorneys to help us grow our Denver and Boulder offices. We would also be interested in a group of lawyers or boutique practice looking to join a larger firm. The ideal candidate(s) will have a minimum of five years of private practice experience, preferably in one or more of these practice areas: corporate transactional (M&A, lending), construction, real estate, labor & employment, litigation, and estate planning / probate litigation. A portable book of business is required, in addition to the desire and ability to collaborate with other attorneys across the firm to serve clients nationally and globally. Please submit a resume and cover letter to Margaret Myers, Legal Recruitment Coordinator, at *mmyers@clarkhill.com*.

Private Office Available. Spacious Longmont private office with mountain view in professional office suite. Multi-use, Class A building in southwest Longmont's industrial, retail, and restaurant district. Shared reception area, conference room, and kitchenette. Great access to Denver, Boulder, Louisville, Lafayette, and southwest Weld County. Private parking available in basement garage. One or two offices available. Please contact *karen@merteslaw.com*.

Part-time Legal Secretary Position. Part-time in-office legal secretary with great typing skills approx. 24 hours/wk, M-Th 10-4, flexible. Projects involve transcribing audio dictation or integrating dictation into existing forms. Must be detail oriented, proofread documents, and navigate forms in WordPerfect and Word. Two-attorney office in Lafayette specializing in estate planning, probate, real estate, and business transactions. Cheery work environment, good parking, easy access to Boulder and Denver-metro area. Contact *gail@oshlaw.com*.

PROFESSIONALISM ON CALL

December 2	Mike Rafik	303.444.9292
December 9	Gwyn Whalen	303.443.8010
December 16	Lee Strickler	303.443.6690
December 23	Connie Eyster	303.442.6514
December 30	Connie Eyster	303.442.6514

The Professionalism Committee assists lawyers, clients, and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is contrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

BOULDER COUNTY FREE LEGAL CLINIC

The Boulder County Free Legal Clinics have been replaced with our Virtual Legal Clinic until further notice. We are always seeking new volunteers to assist the public: please email Kyle if you are interested in participating.

PRO BONO REFERRALS

More than 2 cases were referred in the month of November. Thank you to the following attorneys:

Jennifer Terry
Jodie Gilbert

PRO SE VOLUNTEERS

There were multiple Pro Se Clinics held in the month of November thanks to the help of the following attorneys:

Shana Beggan

Ricki Palmisano

WILLS CLINICS

There were multiple Wills Clinics held in the month of November thanks to the help of the following attorneys:

Jodie Gilbert

PRO BONO CORNER

Interested in a Pro Bono case? Please call Alisiana Medina at 970-499-1003. CLE credits available for pro bono service.

c

Boulder COUNTY
BAR ASSOCIATION

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

COMMERCIAL ADVERTISING INFORMATION IS AVAILABLE BY CONTACTING
laura@boulder-bar.org

OR THE BAR'S WEBSITE

www.boulder-bar.org

