

BOULDER COUNTY BAR ASSOCIATION NEWSLETTER SEPTEMBER 2015



TABLE OF CONTENTS

CALENDAR OF EVENTS	2
NEW DIVISION 13 SCHEDULE	3
MEDICAID: MEDICAL INSURANCE FOR THE POOR	5
PRESIDENT'S PAGE	7
PRO BONO PAGE	8
LAWYERS ANNOUNCEMENTS	9
CLASSIFIED ADS	12

CALENDAR OF EVENTS FOR SEPTEMBER

Thursday, September 3
IN HOUSE COUNSEL
IPR from the In-House Perspective –
A Roundtable Discussion
Presenter: Tracy Gann
Noon @ Holland & Hart
No CLE, Free to attend.
Brown bag lunch.

Thursday, September 10
INTELLECTUAL PROPERTY
Protecting Commercial Impression:
Combining TM, Design Patent
and Copyright Law
Presenter: George Lewis
Noon @ Broadway Suites
\$25 CLE, \$15 New/Young Lawyers.
Brown bag lunch.

Friday, September 11
AVAILABILITY OF LEGAL SERVICES
Monthly Roundtable
Noon @ Boulder County Legal Services.
Brown bag lunch.

Tuesday, September 15
ELDER LAW
Sex, Drugs and Rock & Roll: Atypical
Beneficiary Requests
Presenter: Peter Wall
and Megan Brand
Noon @ Caplan and Earnest
\$25 CLE, \$15 New/Young Lawyers.
Brown bag lunch.

Wednesday, September 16
FAMILY LAW
Relocation Cases in Family Law
Presenter: Judges LaBuda, Mulvahill,
and Langer, Kevin Udis, Tucker Katz,
and Josh Anderson
Noon @ Justice Center
\$25 CLE, \$15 New/Young Lawyers.
Brown bag lunch.

Tuesday, September 15
PARALEGALS
Water Law 101
Presenter: Star Waring
Noon @ Bryan Cave
Free to attend. \$12 lunch.

Wednesday, September 16
LOUISVILLE LAWYERS HAPPY HOUR
5 pm @ La Revolucion
(701 Main St, Louisville)
First drink and appetizers
are on the bar!

Thursday, September 17
REAL ESTATE
Neither a Lender Nor Borrower
Be – Statutory Restrictions
on Private Lending
Presenter: Michael Smeen
Noon @ Dickens Tavern, Longmont
\$25 CLE, \$15 New/Young Lawyers.
\$13 lunch.

Thursday, September 17
BANKRUPTCY
Monthly Roundtable
Noon @ Agave

Tuesday, September 22
ALTERNATIVE DISPUTE RESOLUTION
Self Determination in the ADR Context:
Ethical Issues and Implications
Presenter: Robin Rossenfeld
Noon @ Justice Center
Training Room West
\$25 CLE, \$15 New/Young Lawyers.
Brown bag lunch.

Wednesday, September 23
TAXATION, ESTATE PLANNING
AND PROBATE
Happy Hour and Networking
5 PM location TBD

Tuesday, September 29
BUSINESS
Successor Liability: Should My Client
Purchase the Seller's Entity
or Its Assets?
Presenter: Fern O'Brien
and Judith Vorndran
Noon – 1:30 @ Packard Dierking
\$35 1.5 CLE, \$20 1.5 CLE New/Young
Lawyers. Brown bag lunch.

Boulder County Women Lawyers
Networking event and Happy Hour
Wednesday, September 30
License 1 at 5:30 PM

**MARK YOUR CALENDARS FOR THE
BCBA ANNUAL JUDGES DINNER
WEDNESDAY, NOVEMBER 4, 2015
5:30 PM AT
TOUCHDOWN CLUB AT FOLSOM FIELD**

**\$60 per person
(Free Parking will be provided)**

RSVP at www.boulder-bar.org/calendar at November 4

New Division 13 Schedule
(Effective 9/2015)

	Monday	Tuesday	Wednesday	Thursday	Friday
8:00					
8:30		AITC			
9:00	Probation Violations		Probation Violations	Probation Violations	Juvenile Det/Delq
9:30					
10:00					
10:30				MH/PV Hrgs	Mental Health
11:00			Juvenile Detention		
11:30					
12:00					
12:30					
1:00					
1:30	Juvenile Det/Del	Truancy			PV Hearings/ Other
2:00		No summers	AITC	AITC	
2:30			(L'mont)	(Alt Bldr/ L'mont)	
3:00					
3:30	Mental Health/PV Hrgs				
4:00					
4:30					

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MEDICAID: MEDICAL INSURANCE FOR THE POOR

By JOEL HAYES

The good news is that Medicaid eligibility in Colorado is broader than ever, and that many folks who don't qualify can get subsidized health care through the Connect for Colorado Marketplace. The bad news is that those who fail to enroll face a tax penalty and an ever harder time finding willing providers.

In general Medicaid is limited to US Citizens and Legal Permanent Residents here five years or longer. The Children and Adults listed immediately below do not have resource caps, but cannot also receive Medicare. Figures for most groups appear in the chart below, based on family size. Many numbers change annually.

CHILDREN

Most children qualify if their household income is below 148% of the federal poverty level (FPL). Infants born to a Medicaid recipient qualify for one year regardless of income and resources. Children's Health Plan Plus (CHP+) provides a limited health care benefit for children up to 250%FPL. No resource cap.

ADULTS

Generally, adults qualify for Medicaid if they live in a household at or below 138%FPL. Pregnant women qualify up to 195%FPL. There is no resource cap.

AGE OR DISABILITY RELATED ELIGIBILITY

Old Age Pension (OAP) recipients who are 65 plus or disabled, and Supplemental Security Income, (SSI) recipients qualify for Medicaid in Colorado. Those who lost SSI

or OAP due to a Cost of Living Allowance (COLA), earned income, or for receipt of Adult Children, Widow's or Widower's Social Security benefits may generally retain the Medicaid associated with SSI or OAP. Resource cap of \$2000 for one, \$3000 for two, not including exceptions such as a home, car, and burial funds.

NURSING HOME, ASSISTED LIVING AND HOME AND COMMUNITY BASED SERVICES

Income is generally limited to 3x the SSI rate (so \$2199 for 2015) but can go higher for nursing home residents (up to the average private pay rate, or even higher with a Trust Account aka a Miller Trust.) Resources have the same \$2000/\$3000 cap as SSI, but married couples can take advantage of Spousal Protections of up to \$2,980.50 per month income and resources of \$119,220 plus limited exempt property like a home, car,

These benefits are limited to adults and children who meet a medical/functional test called the ULTC 100.2, also known as the nursing home level of care. Assisted Living and HCBS are considered alternatives to nursing home care, so long as the cost is less to the state and can be safely provided. Transfer penalties, Spousal Protection rules and high costs of care make this area particularly complex.

HELP WITH MEDICARE COSTS

Medicaid will pay the Part B Medicare premium (currently \$104.50) for the following three groups, each of which limits resources to \$7,280 for one, \$10,930 for two. A \$20

income disregard is added to income caps.

Qualified Medicare Beneficiary (QMB) pays the Part B premium, but also pays co-pays and deductibles. Income is limited to 100%FPL.

Special Low Income Medicare Beneficiary (SLMB) pays the Part B premium. Income up to 120%FPL

Qualified Individual (QI1) pays the Part B premium. Income is up to 130%FPL. Qualified Disabled Working Individuals pays the Part A premium for those who lose Medicare for earned income. It allows resources up to \$4000 for one, \$6000 for two and income up to \$1965 for one or \$2622 for two.

Limited Income Subsidy (LIS) pays the Medicare Part D drug premium. It allows resources up to \$13,300 for one and \$26,580 for two, and income up to \$1,436 for one or \$1939 for two.

Joel Hayes is the Managing Attorney for Boulder County Legal Services.

POPULAR MEDICAID INCOME CAPS FOR COLORADO (2015)

Family Size	Qualified Medicare Beneficiaries 100% Poverty Level	Adults (Ages 18+) 138% Poverty Level	Children (Ages -18) 142% Poverty Level	Pregnant Women 195% Poverty Level
1	981	1,354	1,393	1,913
2	1,328	1,832	1,886	2,587
3	1,674	2,310	2,378	3,265
4	2,020	2,789	2,870	3,941
5	2,367	3,267	3,362	4,617

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Mr. Cohen served as an Air Force JAG, a Special Asst. U.S. Attorney, a prosecutor, a Boulder Municipal Judge, on the Executive Board of the Colorado Municipal League, and on the Editorial Board of The Colorado Lawyer. He wrote six articles published in the American Jurisprudence Proof of Facts series. He taught an advanced legal writing class at the University of Arkansas School of Law. His two mysteries, published by Time Warner, won high praise, and one was a Book Sense® top ten mystery pick. His non-legal articles have appeared in magazines such as Inside Kung Fu, Camping & RV, and Modern Dad. He is a member of the Institute of General Semantics.

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PRESIDENTS PAGE

By CRAIG SMALL



Hello! I hope everyone is enjoying their last bit of summer vacation, getting their children settled into the new school year, squeaking out every last dog park visit that the weather will allow and preparing for another beautiful Colorado fall. For this month's newsletter I want to reflect on something I read, or rather re-read, this summer.

As part of my summer reading I dredged up an old philosophy book from my days at Syracuse University and refreshed my recollection on how dry philosophical writings can be as well as the absolute gems of knowledge they contain amidst archaic language. Knowledge that is every bit applicable today as when they were inscribed on stone, lamb's skin or other medium thousands of years ago. I wanted to re-acquaint myself with the concept of 'virtue', but there are so many variations on what 'virtue' means.

Looking back on life I have learned that women are wiser and smarter than men and that women have mostly only wanted Platonic relationships with me; therefore, ipso facto quid pro quo Plato's teachings on 'virtue' must be the definitive true source on defining the truth on 'virtue'.

I was reading various passages from Plato's different works and focused on Plato's four cardinal virtues: temperance, prudence, courage and justice. I had read this before, committed it to memory for a test, took the test and moved on with my life and never really thought back on it... until this summer. Now that I am an attorney, husband, father and footrest/perch

for my cat and dog, I read these with an entirely new perspective and outlook on how they would apply to my practice.

Temperance. Plato defines temperance as "moderation in action, thought, or feeling; restraint." I am sure I am not the only one, but as part of my practice I may be called upon to work with difficult opposing parties, opposing counsel, and the occasional judge (not you, 20th Judicial District). I cannot tell you how many times I have drafted the email I really wanted to send only to put it in my Drafts folder and wait 24 hours before rewriting the email how a professional would respond; not an angry lunatic. I even go so far as to make sure I do not put anyone's email address in the To: field lest I accidentally send a thermonuclear meltdown email.

This is an example of restraint. As professionals we must always hold ourselves to a higher standard of conduct than non-attorneys. Temperance has failed when you get into that shouting match in the hallways of the courthouse with opposing counsel. Yes I have seen that, not done that. This is especially true when that shouting match involves an attorney and opposing party. One time...at court...my client said something to opposing counsel that set opposing counsel off and they both started yelling

at me, "Your client better stop talking to me, blah, blah, blah..." and "You need to tell her [opposing counsel] to step away blah, blah, blah..." My response was to quietly tell opposing counsel that she is the professional and she needs to control herself, take the higher road and walk away. Didn't work, but that attorney can learn a lesson from Plato.

Prudence. Prudence is the ability to govern and discipline oneself by the use of reason. As attorneys, you would think we would apply reason and logic to every decision we make, but life is not that clean and simple. Our professional lives are filled with decision trees based on statutes, judicial decisions, policies and that good old fashioned wild card, human nature. Often it is our client's human nature that interferes with our ability to effectively and efficiently guide their cases. Sometime it is our human nature that tempts us to take shortcuts in a case because we know just how much work the prudent path would take. When my practice is running a million miles a minute there are times I have to stop myself at a decision point and ask myself, "What would a prudent person do here?"

Invariably, the instinctual answer is the correct one. Do the right thing. Inform the client of their choices and the

(continued on the next page)



Past

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Jim Christoph, JD

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PRESIDENTS PAGE *(continued from page 6)*

pros/cons of each choice. Respect the client's decision when they do make a choice and effectuate the client's choice while managing their expectations on anticipated results.

Courage. Plato discusses and rejects many definitions of 'courage' but does offer a definition of courage as the ability to persevere through all emotions, like suffering, pleasure, and fear. I have been practicing law for seven years, but vividly remember the fear of those first few years. That fear has not waned in the last five years, but I am much better at courage now, then I was then. I am referring to the fear of failure. Law school teaches you how to think like a lawyer, not how to practice as one. When I hung my shingle and took my first dissolution of marriage case I had no idea what I was doing.

My practice has been trial by fire and I have felt fear every step of the way. Where is the next client going to come from? How do I draft this motion? What do I do in this situation? What do I tell my client when things don't go as planned? How the heck am I supposed to calculate estimated monthly federal income taxes with a built-in self-employment tax that won't get me in trouble with the wife come tax preparation time? Fear.

Seven years later these fears are all every bit as present as they were when I first opened my practice. The only difference is I have learned to build up my courage to work through the fear and focus on solving the problem. Don't worry about the next client. Do a great job with this client and the telephone will ring. Look for resources and guidance on how to draft specific motions. If resources are not available, just draft it and go with confidence. Client's always want their attorneys to be open and honest with them. Give them bad news and be sympathetic to their responses. Get an accountant. It just may save your marriage.

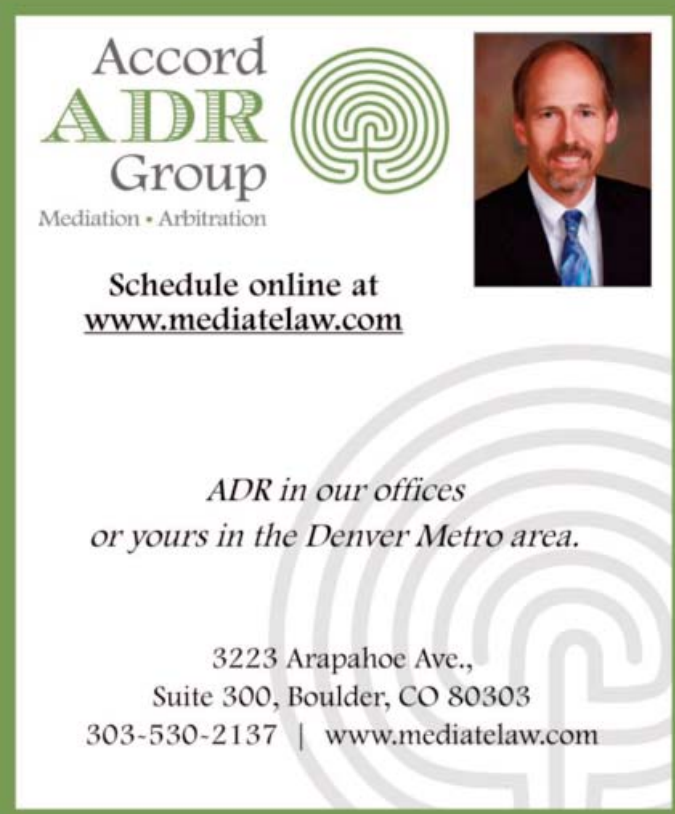
Justice. Plato defines justice as "to do one's own business and not to be a busybody." Not the most satisfying of defini-

tions and it is odd to think of a high-level thinker using the word 'busybody' but a deeper analysis of this definition leads to an understanding that we each have multiple roles. When we are attorneys we wear our attorney's hat and must act in the best interests of our clients regardless of our personal feelings.


There are times in court where we sympathize with the opposing party and their position, but that is not our client's position. I was recently in court representing my client against a contempt charge. Opposing party, pro se, did not have any legitimate legal argument and was destined to lose the case, but I understand why he was frustrated and why he filed contempt. In court, he completely imploded, fell apart and I felt terribly for him. I wanted to go to him and help him at least present his case knowing that he was not going to win the case in the end. I did not. That would not be in my client's best interests. That is not my role. I have my

role...represent my client. The judge has his/her role...weigh the evidence and adjudicate a result. Opposing party had his role and it is not up to me to be a busybody and take on his role as my own. In the end, justice was had by all.

These four virtues have an infinite number of variations in our lives. I posit that every action in our lives is traceable back to one of these virtues. I challenge each of you to think about your practice and your life. Where do these virtues live in your actions? Have you been tempted to ignore a virtue and what was the result? Sometimes the result is... nothing. Does the virtuous path always have to have demonstrable results in order to encourage one to be virtuous? I don't know the answer, but I am deeply vested in the question.



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PRO BONO PAGE

Pro Bono Referrals

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

Norm Aaronson
Deborah Cantrell
Daniel Flynn
Brett Landis

Pro Se Program Volunteers

Josh Anderson
M.L. Edwards
Toni Gray
Brett Landis
Michael Morphey

Pro Bono Corner

**Interested in a
Pro Bono case?**

**Please call Erika
at 303-449-2197.
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Thank you to the following mediators who accepted cases in July:

John Hoelle
Beth Ornstein

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.

PROFESSIONALISM ON-CALL LIST

Sept. 7	Mark Langston	303.440.9684
Sept. 14	Peggy Goodbody	303.440.5736
Sept. 21	Anton Dworak	303.776.9900
Sept. 28	Steve Meyrich	303.440.8238

Attorney Volunteers are needed.

Boulder Free Legal Clinic
September 17
December 17

5:30 - 7:30 PM
Sacred Heart of Jesus
2312 14th Street.

The public comes with questions regarding family law, immigration, employment, collections, landlord tenant, probate, social security, bankruptcy and consumer law and just about anything.

Thank you to those who have already volunteered. We are in need a few more attorneys.
email: Christine@boulder-bar.org

LAWYERS ANNOUNCEMENTS

Elizabeth Friel joins firm



Elizabeth Friel has joined Caplan and Earnest's Colorado-leading education law practice as an associate. Her practice focuses on supporting school districts in a variety of matters, emphasizing special education counseling and litigation. She previously served as a staff attorney at the Colorado Association of School Boards.

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Boulder District Court Rotation Schedule			
District Court Division 1 and Division 12 will be assigned Domestic Relations cases.			
District Court Division 2, Division 3 and Division 5 will be assigned Civil cases.			
District Court Division 4 and Division 6 will be assigned Criminal cases.			
District Court Division 13 will be assigned Integrated Treatment Court (ITC) cases.			
District Court Division 14 will be assigned Juvenile, JITC, Probate and Civil cases.			
District Court Rotation Schedule - Each district court division will serve 2 years in a Domestic Relation			
2 years in a Criminal division, 3 years in a Civil division and 1 or 2 years in the Integrated Treatment			
Judges	9/3/2013	9/2/2014	9/8/2015
Langer	Division 2 - Civil	Division 1 - Domestic	Division 1 - Domestic
LaBuda	Division 1 - Domestic	Division 2- Civil	Division 2- Civil
Sierra	Division 3 - Civil	Division 3 - Civil	Division 3 - Civil
Berkenkott	Division 13 - ITC/PV	Division 13 - ITC/PV	Division 4 - Criminal
Butler	Division 4 - Criminal	Division 4 - Criminal	Division 5 - Civil
Bakke	Division 14 - Juvenile/Pr	Division 14 - Juvenile/Pr	Division 6 - Criminal
Macdonald	Division 6 - Criminal	Division 6 - Criminal	Division 12 - Domestic
Hartman	Division 5 - Civil	Division 5 - Civil	Division 13 - ITC/PV
Mulvahill	Division 12 - Domestic	Division 12 - Domestic	Division 14 - Juvenile/Probate/Civil*
* Includes juvenile, truancy, JITC, probate, Rule 120s, DMV appeals, D&N TC on Fridays			
Revised 8/12/15			

**October 9 – 11
Colorado AFCC State
Conference
“Brain and Bias”**

Join us at Beaver Run Resort in Breckenridge for an interdisciplinary weekend conference featuring national and state speakers on the latest research into brain functioning and how to use it in your work with separating parents. Come learn about this new information and what it means for crafting parenting plans and working with high conflict families.

See more information at
<http://www.coafcc.org/Events/index.php>

**REALITIES FOR
CHILDREN**

**CHARITY GOLF
TOURNAMENT**

Friday, September 11, 2015

**8 AM Shot Gun Start
Colorado National
Golf Club in Erie**

Register
www.rfcbc.org

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Frank N. Dubofsky
to our panel**



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