

# **BOULDER COUNTY BAR ASSOCIATION NEWSLETTER MAY 2016**



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## **SPEED DATING WITH THE 20TH JD JUDGES**

**Thursday, June 2 • 5:30 PM**

**Bohemian Biergarten • 2017 13th Street  
\$40 ethics CLE, food and drinks  
\$20 food and drinks, no CLE. Seating is limited**

**SIGN UP ON LINE  
[boulder-bar.org/calendar](http://boulder-bar.org/calendar) June 2**

# CALENDAR OF EVENTS FOR MAY

**Tuesday, May 3**  
**SOLO/SMALL FIRM**  
Networking lunch and roundtable  
Noon @ Dietze & Davis,  
2060 Broadway, #400

**Wednesday, May 4**  
**CIVIL LITIGATION**  
Access to Justice: New Law Regarding  
Contingent Fee Agreements  
Presenter: Jeff Rose  
Noon @ Justice Center  
Training Room East  
\$25 CLE, \$15 New/Young Lawyer, brown  
bag lunch

**Thursday, May 5**  
**IN HOUSE COUNSEL**  
Nuts & Bolts of In-House Intellectual  
Property Programs  
Presenter: Curtis J. Ollila  
Noon @ Holland and Hart  
\$25 CLE, \$15 New/Young Lawyer, brown  
bag lunch

**Tuesday, May 10**  
**EMPLOYMENT**  
Networking Lunch and Roundtable  
Noon @ Zolo Grill

**Thursday, May 12**  
**INTELLECTUAL PROPERTY**  
Crossing the T's and Dotting the I's in  
IPR Proceedings  
Presenter: A USPTO  
Administrative Law Judge  
Noon @ Lathrop Gage  
\$25 CLE, \$15 New/Young Lawyer,  
brown bag lunch

**Friday, May 13**  
**AVAILABILITY OF LEGAL SERVICES**  
Monthly Roundtable  
Noon @ Boulder County Legal Services  
**Tuesday, May 17**  
**ELDER**  
Mineral Estates  
Presenters: Rocky Miller and Adam Cohen  
Noon @ Dickens Tavern, Longmont  
\$25 CLE, \$15 New/Young Lawyer, \$13 Lunch

**Wednesday, May 18**  
**FAMILY**  
A Review or Legislation Affecting the Bar  
and the Practice of Law During the  
2016 Session  
Presenter: Jeremy Schupbach  
Justice Center Jury Assembly Room  
\$25 CLE, \$15 New/Young Lawyer, brown bag  
lunch

**Wednesday, May 18**  
**PARALEGAL**  
20th JD Division Staff Presentation  
Presenter: Division Staff  
Justice Center Training Room East  
\$12 Lunch

**Thursday, May 19**  
**NATURAL RESOURCES/ENVIRONMENTAL**  
Changes of Water Rights Quantifying Con-  
sumptive Use: Panel Discussion of Recent  
Caselaw and Statutory Developments  
Presenter: Ema Schultz, Kate Ryan and  
Aaron Ladd  
Noon @ Bryan Cave  
\$25 CLE, \$15 New/Young Lawyer,  
brown bag lunch

**Thursday, May 19**  
**BANKRUPTCY**  
Monthly Roundtable  
Noon @ Agave

**Tuesday, May 24**  
**ALTERNATIVE DISPUTE RESOLUTION**  
TBD  
Presenters: Judge Cross, Richard Myers,  
and Judge Haglund  
Noon @ Justice Center Training Room East  
\$25 CLE, \$15 New/Young Lawyer,  
brown bag lunch

**Wednesday, May 25**  
**TAX, ESTATE PLANNING AND PROBATE**  
Same Sex Marriage after the  
SCOTUS Ruling  
Presenter: Erica Johnson  
Noon @ Bryan Cave  
\$25 CLE, \$15 New/Young Lawyer, brown  
bag lunch

**MARK YOU CALENDARS FOR THE BCBA  
ANNUAL MEETING AND RECEPTION**

**WEDNESDAY, JUNE 8 AT 5 PM  
CHAUTAUQUA DINING HALL • \$55**

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AND CONFIRMATION OF NEW BCBA  
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**A View From the Bench  
Wednesday, May 4, 2016  
Boulder District Court  
Judges & Magistrates  
CLE Credit: 2 General**

BIDC meetings will be held at the  
Millennium Harvest House  
1345 28th Street, Boulder, CO 80302  
[www.millenniumhotels.com/Boulder](http://www.millenniumhotels.com/Boulder)  
11:30am - 1:15pm  
Networking: 11:30am to Noon  
Lunch and Speaker: Noon - 1:15pm

**LUNCH:**  
\$25.00 IDC MEMBERS;  
\$30.00 NON-MEMBERS

You may pay at the door  
(cash or check), or online

# THE GOLD KING MINE SPILL

BY COURTNEY McVEAN

On the morning of August 5, 2015, contractors working on one of the more than 400 abandoned or inactive mine sites in and around the Upper Animas River basin, triggered a leak at the Gold King Mine, resulting in an uncontrolled rapid release of 3,043,067 gallons of toxic wastewater. The wastewater, a lethal mixture of water combined with heavy metals<sup>1</sup> and eroded rock and gravel, flowed directly into Cement Creek, a tributary of the Animas River, temporarily turning the water a deep yellow color.<sup>2</sup> The yellow plume continued downstream along the Animas River in Colorado, and continued into the San Juan River and the Colorado River until it reached Lake Powell in Utah around August 14, 2015.<sup>3</sup> Many of the pollutants have now fallen out of the water column and settled into the sediments, potentially posing long-term human health and environmental risks in several states. In the wake of the spill, the crucial need to address the numerous environmental issues triggered by abandoned hardrock mines, like Gold King Mine, has moved into the forefront. The following article provides an overview of the Gold King Mine and the blowout, discusses recent legislative developments, and argues for fundamental reform of existing and outdated mining laws that fail to address these important issues.

## Brief history of the Gold King Mine and the 2015 Blowout

Hardrock mining,<sup>4</sup> although an integral part of the U.S. economy since the mid-1800s, has a significant impact on the environment, particularly in the west. Numerous hardrock mine sites have been abandoned or inactive for a long time and therefore cannot easily be regulated under public mining laws or pollution control laws directed at facilities that are in operation. According to Bureau of Land Management (BLM) and Forest Service estimates, approximately 5,105 abandoned hardrock mines exist in Colorado and many of them are located within a two-mile radius of the Animas River.<sup>5</sup> Several of these mines continuously produce flows of between 30 to 300 gallons per minute (gpm) of acid mine drainage that directly or indirectly enter Cement Creek and eventually reach the Animas River.<sup>8</sup>

The Gold King Mine is an abandoned mine located in the Upper Animas Watershed approximately 9 miles north of the town of Silverton, Colorado, just above the North Fork of Cement Creek, at an elevation of approximately 11,439 feet. Gold King Mine operated from 1887 to 1922 and is only one of many hardrock mines within the Upper Animas watershed. During the more than 120 years of hardrock mining in the

area, spanning from approximately 1871 to 1991, an estimated 8.6 million tons of mill tailings were discharged into the waterways.<sup>7</sup>

As a result, the EPA and the Colorado Department of Public Health and Environment (CDPHE) conducted a Superfund<sup>8</sup> site assessment of the area in the 1990s to determine whether it should be included on the EPA's National Priorities List (NPL). This would have given the EPA authority to clean up the area and identify potentially responsible parties to pay for it. However, despite poor water quality and severe impacts to aquatic life in the Upper Animas and its tributaries, EPA agreed to postpone adding the site to the Superfund NPL, provided progress was being made to improve the water quality of the Animas River. Until 2005, water quality seemed to be improving. Unfortunately, fish population surveys conducted by Colorado Parks and Wildlife demonstrated that since 2005, there have been precipitous declines in fish populations as far as 20 miles downstream, including a finding of no fish in the Animas River below Cement Creek for approximately 2 miles. In 2008, EPA's Superfund Site Assessment Program began evaluating whether the Upper Cement Creek area alone would qualify for inclusion on the NPL. Although the area

*(continued on the next page)*



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## THE GOLD KING MINE SPILL *(continued from page 3)*

qualified, following public input, the EPA postponed the listing once again.<sup>9</sup>

The Gold King Mine blowout occurred during an attempt to open and stabilize an old adit<sup>10</sup> on Level 7 of the mine. Prior to the effort to reopen the mine, the EPA, in consultation with the Colorado Division of Reclamation, Mining and Safety (DRMS), concluded that the adit was partially full of water based on excavations made in 2014 and 2015.<sup>11</sup> They incorrectly concluded that the water level inside the mine was at a similar elevation, a few feet below the adit roof. As a result of this error, a plan<sup>12</sup> was developed to open the mine in a manner that was meant to guard against blowout, but instead led directly to the failure.<sup>13</sup>

### Legislation Introduced in the Wake of the Gold King Mine Spill

In the months since the Gold King Mine spill, several bills were introduced in the U.S Congress, or in some cases reintroduced, addressing the spill and other issues associated with leaking abandoned mines. The following is an overview of some of the most noteworthy proposals.

First, the Good Samaritan Cleanup of Orphan Mines Act<sup>14</sup> would allow third-party groups to apply for permits to clean up abandoned mines, specifically sites used for the production of minerals other than coal. This legislation is narrowly tailored to exempt Good Samaritan cleanup efforts from liability for certain provisions under the Clean Water Act and CERCLA. However, the bill holds parties liable

under all laws if they fail to comply with the terms of their permit.

A second bill, the Hardrock Mining and Reclamation Act,<sup>15</sup> would be a much needed overhaul of the General Mining Law of 1872. This proposal would repeal the provision of the Mining Law that privatizes public lands for the mining industry for \$2.50 to \$5.00 per acre. Additionally, companies running new mines would pay royalties to the government at a rate of 2 to 5 percent of the gross income of production on federal lands. The royalties, and an abandoned mine reclamation fee of 0.6 percent to 2 percent on both new and existing mines, would be deposited into an Abandoned Hardrock Mine Reclamation Fund.

A third bill, the Abandoned Mine Reclamation Safety Act,<sup>16</sup> directs the Secretary of the Interior and others to promulgate regulations "for the safe and environmentally responsible reopening of abandoned mines for the sole purpose of facilitating cleanup or remediation of conditions at such mines." This legislation would incorporate recommendations from the BLM's technical report about the incident, including: incorporating potential failure modes into project planning; the need to review mine maps, production records, and local history before opening an abandoned mine adit; evaluating the downstream consequences before any attempt at remediation; and directly measuring water conditions within the mine prior to opening a blocked mine.<sup>17</sup>

A fourth bill, the Gold King Mine Spill Recovery Act,<sup>18</sup> would amend CERCLA and require the EPA and other relevant agencies to iden-

tify the most dangerous abandoned or inactive mines and establish a priority plan for remediation. In addition, the legislation would require federal entities to conduct certain activities prior to remediation, including developing a contingency plan and notification and coordination in the event of another accident. The legislation also requires the EPA to work with affected States and Indian tribes to develop, fund, and implement long-term monitoring of the impacted rivers to ensure environmental standards remain. Finally, the act would ensure compensation for losses incurred as a result of the spill, specifically damages for settlement under the Federal Tort Claims Act.

### Conclusion

Since 1977, the Surface Mining Control and Reclamation Act (SMCRA) has required the coal industry to pay a fee for abandoned mine reclamation.<sup>19</sup> Yet, the hardrock mining industry pays no fee. In states where the coal mine problems have been dealt with, the funds can be used on mines other than coal. For instance, Colorado receives about \$2 million per year from the fund, and most of the money is applied to non-coal mine sites. Nevertheless, the hardrock mining industry needs similar legislation to fund the cleanup of the thousands of abandoned and inactive hardrock mines across Colorado and the West. Modernizing the antiquated mining laws of the past would

*(continued on the next page)*



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# THE GOLD KING MINE SPILL *(continued from page 4)*

both facilitate cleanup and remediation and provide the funds to do so. Consequently, disasters like the Gold King Mine spill might be prevented and the cleanup of waterways polluted by acid mine drainage could begin.

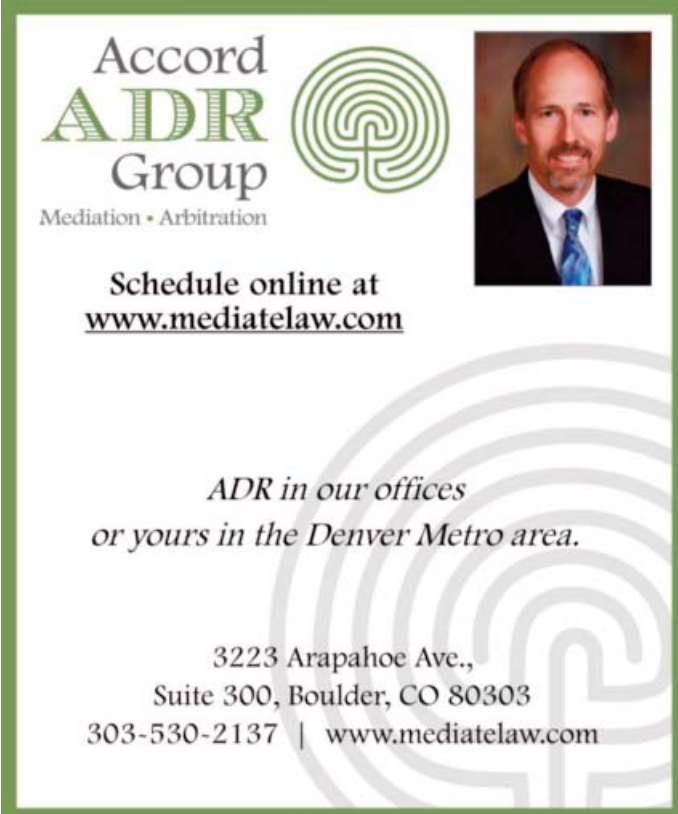
## FOOTNOTES

1. The wastewater contained several heavy metals, including lead, arsenic, mercury, zinc, and cadmium. These metals are listed as hazardous substances under 40 CFR § 302.4.
2. Acid mine drainage is usually a rusty red color due to the presence of iron. When a spill occurs in a waterway, and the acid mine drainage is mixed with fresh water, it changes the way iron and other metals interact with the water and solids in the water. The iron from the acid mine drainage settles into the water, turning it yellow. Old-time miners referred to this as “yellow boy.” See *Understanding the Gold King Mine Spill*, available at [http://superfund.pharmacy.arizona.edu/sites/default/files/u43/gold\\_king\\_mine\\_spill.pdf](http://superfund.pharmacy.arizona.edu/sites/default/files/u43/gold_king_mine_spill.pdf).
3. See *Technical Evaluation of the Gold King Mine Incident*, available at <http://www.usbr.gov/docs/goldkingminereport.pdf>.
4. Hardrock mines contain primarily ores and metals, such as gold, silver, copper, lead, zinc, and nickel.
5. See *Abandoned Mine Lands Portal*, available at <http://www.abandonedmines.gov/>.
6. See *EPA Action Memorandum*, available at [https://www.epa.gov/sites/production/files/2016-01/documents/action\\_memo\\_gkm\\_release.pdf](https://www.epa.gov/sites/production/files/2016-01/documents/action_memo_gkm_release.pdf).
7. See *Understanding the Gold King Mine Spill*, *supra*.
8. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, provides the primary tools available to EPA project managers to develop strategies for assessment, investigation, and cleanup of environmental risks from abandoned mine sites. The National Priorities List (NPL) was established by CERCLA to provide a guide to determine which sites warrant further action. 42 U.S.C. § 9601.
9. See *Gold King Mine—Watershed Fact Sheet*, available at <https://www.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf>.
10. An adit is a horizontal or gently in-


clined excavation made into the side of a hill or mountain to provide underground access.

11. See *Technical Evaluation*, *supra*.
12. The plan consisted of excavating the fill to expose the rock crown over the adit but leave the fill below the adit roof in place. Then a steel pipe (“stinger”) would be inserted through the fill and into the mine pool, a pump would be attached, and the water in the mine would be pumped down. See *Technical Evaluation*, *supra*.
13. *Id.*
14. Discussion draft of bill available at <http://www.gardner.senate.gov/imo/media/doc/Good%20Samaritan%20Cleanup%20of%20Orphan%20Mines%20Act%20of%202016.pdf>.
15. Text of proposed bill available at <https://www.congress.gov/bill/114th-congress/senate-bill/2254/text>.
16. Text of proposed bill available at <https://www.congress.gov/bill/114th-congress/house-bill/4323/text>.
17. See *Technical Evaluation*, *supra*.
18. Text of proposed bill available at <https://www.congress.gov/bill/114th-congress/senate-bill/2063/text>.
19. See 30 U.S.C. 25 Subchapter IV §1231 et seq.

*Courtney McVean graduated in 2014 from DU Law. Currently, she is a judicial law clerk for Judge Todd Taylor in the 19th Judicial District. She is hoping to practice Natural Resources/Environmental Law in Boulder.*



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## LAWYER ANNOUNCEMENTS



Louisa Young receives the John Marshall Award for Outstanding Pro Bono Service from Boulder County Bar Association President Craig Small.

Congratulations and thank you to the following Boulder Lawyers who have donated pro bono hours at Boulder County Legal Services.

### 50 – 75 Pro Bono Hours

- Joyce Bergmann
- Howard Bernstein
- Lee Dunham
- Christina Ebner
- Mary Louise Edwards
- Ronald Jung
- Tucker Katz
- Brett Landis
- Sarah McEahern
- Todd Stahly
- Louisa Young

### 75 – 100 Pro Bono Hours


- Michele Clark
- Melody Fuller
- Judson Hite
- Chris Jeffers
- James Lionberger
- Michael Morpew
- Mary Street

### 100 – 200 Pro Bono Hours

- Evan Branigan
- Shirin Chahal
- Toni Gray
- Michael Miner
- Gabriella Stockmayer
- Craig Small
- Bruce Wiener

### 200-300 Pro Bono Hours

- Erin Eastvedt
- Jeffrey Skovron



**Flanders, Elsborg, Herber & Dunn, LLC**  
Is pleased to announce:

**William Ellison**  
has joined the firm as an associate attorney.

William Ellison's practice will focus on  
Litigation, Real Estate, and Collections.

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Accepting Supreme Court Pro Bono recognition awards from Justice William Hood (center), left to right: M.L. Edwards, Judson Hite, and Bruce Wiener and Ericka Fowler of Bridge to Justice.



Accepting awards for their firms' 100% Participation in Pro Bono from Justice William Hood (center), left to right: Brett Landis of Warren Carlson & Moore; Brook Brestel of Vincent Romeo and Rodriguez; Maureen Eldredge of Hutchinson Black and Cook; and Thomas Kranz of Jung & Kranz.

## PRESIDENTS PAGE

By CRAIG SMALL



Salutations fellow Boulder County Bar Association Members!

This month's President's Page is solely devoted to a subject that is an ever-present factor in my life and I would like to take this moment to share this subject with you....[insert drum roll, please] .....  
.....FATIGUE!

Ah...fatigue. That fickle mistress of the deep dark night that slowly chips away at your cognitive faculties at all hours of the blessed day until she forces you to make poor decisions. Sometimes those decisions are putting inappropriate creams on your toothbrush obliging you to do a comedic, and sometimes not so comedic, spit-take. Other times she causes you to call your son by your dog's name, the dog by the cat's name and to forget your wife's name altogether. Any form she takes is bound to negatively affect your life in one of a thousand different ways, but the way I wish to focus here is how she can affect your professional life.

In the legal profession, fatigue can take one of two forms: traditional fatigue and compassionate fatigue. Traditional fatigue is often caused by our habits and routines that incrementally take its toll on our lives through alcohol or drug use, lack of exercise, lack of sleep, poor eating habits, medications, etc. Compassionate fatigue is caused by those that work with victims of trauma and the inevitable ways they take on the trauma of their clients/patients into their own psyche. As lawyers we are certainly sus-

ceptible to either form of fatigue, but compassionate fatigue is the not so obvious source of much of the problem. The good news is that both forms of fatigue can be addressed through similar rehabilitative measures and compassionate fatigue has some additional remedial solutions. Some treatment measures are very intuitive; eat well, exercise, drink lots of water, get some sleep, monitor your medications and limit your use of alcohol and drugs (except at Food, Wine, Jazz, Art.)

Compassionate fatigue also benefits from the treatments above, but there are some additional treatment measures that will go a long way towards combating this issue. First, develop awareness of compassionate fatigue

and how to recognize its effect on you. Second, create lifestyle habits that support a healthy lifestyle; eat well, drink water, exercise, get some rest, all the same advice listed above. Third, create boundaries between your professional life and personal life. Taking on client trauma at any time of the day or night will inevitably fracture your personal relationships and exacerbate the problem. Ultimately, if you are not in a healthy state of mind you will not be able to help your client, your friends and family or yourself.

Finally, and I separate this treatment point to highlight its importance, use those professional and community

*please turn to the next page*

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## PRESIDENTS PAGE

resources available to you. The Boulder County Bar Association is here to help. The Colorado Bar Association is here to help. Most importantly, your fellow legal community is here to help. I say this often because it is true; we have such a great community of lawyers that genuinely strive to promote our profession and are willing to lend a hand to those in need whether it be taking over a caseload or helping manage a practice while an attorney in need gets through a tough time.

The only hurdle in this fatigue resolution process is the attorney in need asking for help and no attorney wants to accidentally offend the dignity of another by erroneously offering their assistance when it is not warranted or wanted.

So please, if you are an attorney in need, talk to your fellow colleagues

and ask for assistance and you will be pleasantly surprised at the amount of positive feedback and support you will receive.

For more information on compassionate fatigue, recognizing its symptoms and treatment please read a great article on this subject on the American Bar Associations website at this url.

[http://www.americanbar.org/groups/laywer\\_assistance/resources/compassion\\_fatigue.html](http://www.americanbar.org/groups/laywer_assistance/resources/compassion_fatigue.html)

**Juli J. Ellen**  
**Private Investigator**  
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## PRO BONO PAGE

### Pro Bono Referrals

Fourteen cases were referred during the month of March Thank you to the following attorneys:

**Amos Barclay  
Patricia Bellac  
Susan Boothby  
Susan Bryant  
Clark Edwards  
Graham Fuller  
Gary Merenstein  
Dipak Patel  
Sharon Svendsen  
Bruce Wiener**

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

**James Christoph**

### Pro Se Program Volunteers

**M.L. Edwards  
Toni Gray  
Chris Jeffers  
Brett Landis  
Michael Morphew  
Joan Norman  
Craig Small  
Michelle Stoll**

### BCAP Volunteers

There were no requests for pro bono referrals for the Boulder County AIDS Project in March.

### Pro Bono Corner

**Interested in a Pro Bono case?**

**Please call  
Erika at 303-449-2197.  
CLE credits available for  
pro bono service.**

### PROFESSIONALISM ON-CALL LIST

May 2	Peggy Goodbody	303.440.5736
May 9	Anton Dworak	303.776.9900
May 16	Steve Meyrich	303.440.8238
May 23	Mike Rafik	303.444.9292
May 30	Curt Rautenstrauss	303.666.8576

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.

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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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**Office space for rent: Large office (approximately 225 sq. ft.) in shared suite in Park Place Building, 3100 Arapahoe Avenue.** One other attorney in quiet transactional law practice. Fourth floor – ample free parking, great flatirons view, conference room and high capacity copier/scanner available. Administrator/reception area also available. Rent is negotiable depending on space and services needed. Contact Brian at 303-449-5643.

**Office space available at Canyon Professional Building across from Justice Center.** Full services include receptionist, law library, conference room, fax, phones, kitchenette, utilities, parking and other amenities. Call Jack Alexson for more information. 303.444.1700.

**Law Office is Southeast Boulder** has an extra office that is available immediately, easily accessible to Highway 36. This office is 110 sq/ ft and includes receptionist, small conference room , as well as ample parking. Rent is \$700 a month. For additional information, please call 303.449.9960

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