



## BOULDER COUNTY BAR NEWSLETTER

# MARCH 2011

### BCBA SMALL CLAIMS MEDIATION PROJECT (SCMP)

SCMP (pronounced "Scamp") is a pilot project started in February 2011 by the ADR Section of the Boulder County Bar Association under the direction of the 20th Judicial District. SCMP provides volunteer mediators to resolve small claims cases prior to trial. The service is provided for free for litigants in the Boulder County Small Claims Court. Success will be based on both the number of cases settled prior to hearing and an objective evaluation form to be completed by the litigants and the volunteers following each mediation session.

#### Goals

1. To ease the caseload for judicial officers.
2. To provide litigants the opportunity to have facilitated communication with each other and to negotiate their own settlement with all parties leaving feeling that their concerns were adequately addressed and judicial intervention is not needed.
3. To save related governmental resources, such as additional dis-

patches to a residence by deputies to resolve neighbor disputes, prosecution of small cases by the DA, clerk and judicial time dealing with cases, etc.

4. To provide an opportunity for experienced and new mediators to hone their skills in a variety of conflict areas and receive feedback from the litigants on their performance.

5. To develop objective, easy to code evaluations for all participants and mediators to determine the success of the program.

#### Mediator Requirements

SCMP mediators must have at minimum 24 hours of mediation training and 6 hours of actual mediation practice before being allowed to mediate alone. Mediators with less than 6 hours of actual mediation practice can acquire additional hours by shadowing and assisting other more experienced mediators who volunteer in the program. Mediators must also provide their resume and commit to be available a minimum of two

hours per month for a twelve month period.

#### Orientation and Training

Mediators must attend a 1.5 hour training in the substantive areas of law that are typically seen in Small Claims Court prior to their first mediation. The first training will occur March 10, from noon – 1:30 pm at the Boulder Justice Center in Courtroom D. Free CLE credits will be given for attorney-mediators.

*To volunteer for the program, please contact Susan K. Bryant, Co-Chair of the ADR Section, by email at [susan@susankbryant.com](mailto:susan@susankbryant.com).*

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# CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing [lynn@boulder-bar.org](mailto:lynn@boulder-bar.org), or pay online with a credit card at [www.boulder-bar.org/calendar](http://www.boulder-bar.org/calendar). You will be charged for your lunch if you make a reservation and do not cancel prior to the CLE meeting. BCBA CLE's cost for members is \$20 per credit hour, \$10 for New/Young lawyers practicing three years or less. \$25 for non-members.

Tuesday, March 1

Alternative Dispute Resolution  
Dialogue with the Judge on ADR as they  
relate to Civil Matters

Noon-1:30 at the Justice Center Jury  
Assembly Room  
Lunch \$10 2 general and .6 ethics CLE's \$40,  
\$20 for new/young lawyers

Tuesday, March 8

Criminal with Employment  
Representing Criminal Defendants under  
Strickland as interpreted by Padilla  
Presenter: Lisa Battan, Immigration  
Attorney

Noon brownbag at  
Boulder County Justice Center D  
1 CLE \$20, \$10 new/young lawyers

Wednesday, March 9

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

Thursday, March 10

Intellectual Property Law  
Annual PCT Update  
Presenter: Carl Oppedahl  
Noon at Hutchinson Black and Cook  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10

Thursday, March 10

Alternative Dispute Resolution  
Small Claims Volunteer  
Mediation Pilot Project  
Training Session 1 - 2 CLE  
Noon brownbag in Courtroom D  
Free CLE's available to volunteer mediators  
Call the Bar Office to sign up 303-440-4758

Friday, March 11

Availability of Legal Services  
Monthly brownbag meeting at Boulder  
County Legal Services  
315 W. South Boulder Road, #205,  
Louisville

Monday, March 14

All Lawyers  
Civic Engagement With Your Eyes Open:  
Liability and Ethical Issues for Lawyers  
and Others Serving as Nonprofit Directors  
Presenter: Stephanie M. Tuthill of Tuthill  
and Hughes LLP, and Merry H. Balson of  
Berenbaum & Weinshienk PC,  
Noon-1:30 at Boulder County Justice Center  
Jury Assembly Room  
2 CLE's 2 General and .4 ethics  
\$40, \$20 for new/young lawyers  
Lunch \$10

Tuesday, March 15

Employment Law  
Aggregate Discrimination  
Presenter: Hugh Pixler  
Noon at Caplan and Earnest  
1 CLE \$20, \$10 for new/young lawyers  
Lunch \$10

Tuesday, March 15

Paralegals and All Lawyers  
New Tools, Tips and Technologies to  
Improve Your Next Deposition  
Presenter: Judy Stevens,  
Stevens-Koenig Reporting  
Noon at Hutchinson Black and Cook I CLE  
\$20, \$10 for New Young Lawyers  
Lunch \$10

Wednesday, March 16

Family Law  
Family Law Ethics Update  
Presenter: Deborah Cantrell, CU Law  
Noon brownbag at the Boulder County  
Justice Center Courtroom B  
1 Ethics CLE \$20, \$10 new/young lawyers

Wednesday, March 16

Raising the Bar Mentor/Mentee  
Client Relations: Practicing Law Can Be  
Dangerous - Let's Minimize the Risk  
Presenter: James S. Bailey of Senn,  
Visciano, Canges, Rosenstein, PC Denver  
Noon at Hutchinson Black and Cook,  
Free CLE, 2 general and .6 ethics,  
and lunch to Mentees  
Open to all bar members  
CLE \$40 and lunch \$10

Thursday, March 17

Bankruptcy Lunch Roundtable Discussion  
Noon at Agave Cantina,  
28th and Valmont

Tuesday, April 5

Dialogue with the Judges on ADR  
as it relates to family matters  
Presenters: 20th JD Judges and Magistrates  
Boulder Justice Center  
Jury Assembly Room  
Lunch \$10  
\$40 general and ethics  
CLE credits applied for

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**Thank you from the Legal Aid Foundation!**

**Great food, wine, art, jazz, and conversation -- once again the Boulder Bar hit the ball out of the park with its annual fund raising event for Legal Aid. Held on February 10th at the St. Julien, not only was it a wonderful evening, but a total of \$9,200 was raised! On behalf of all those whose lives are improved because they receive necessary civil legal assistance at a critical juncture, thank you to all who contributed to the success of the event, including all who attended!**

**A special thank you to the volunteers who served on this year's organizing Committee -Ellen Cadette, Mia DellaCava, Keith Olivia, Craig Small and Star Waring.**

**A special thank you to the Sponsors for their commitment to access to justice and for their generosity - Laszlo Law, the Millstone Evans Group of Raymond James, the Anonymous Donor (you know who you are!), Beverly C. Nelson LLC - Mediator, Great Western Bank, DellaCava Family LLC, Hurth Sisk & Blakemore, Marsh Fischmann & Breyfogle, Stevens Littman Biddison Tharp & Weinberg, Berg Hill Greenleaf & Ruscitti, Caplan and Earnest, Carrigan Law, Dietze & Davis, First Western Trust Bank, Garlin Driscoll Howard, Hutchinson Black & Cook, Jung & Associates, Lyons Gaddis Kahn & Hall, Moses Wittemyer Harrison & Woodruff, Mulligan & Mulligan, Packard and Dierking, Perlick Legal Counsel, Roberts & Olivia, Amanda and John Sessa at SWBC Mortgage, Uncorked Catering, Stack McKinney Law Group, and Wells Fargo Bank.**

**And last but certainly not least, a special thank you to Christine Hylbert and Lynne Barnett for pulling it all together year after year!**



Diana Poole, Legal Aid Foundation Director, congratulates Christine Hylbert, Boulder County Bar Executive Director for ten years of sponsoring a successful event and this year's event raised \$9200 for legal aid.



Kim Fischer, Melanie Lewis, Judy Snyder, Sally Berg and George Berg.



Left to right: Kim Gent, Ann Mygatt, Lee Strickler, Bev Nelson, Paul Bierbaum and Sidney McKay.



Martha Kiger and Petra Zunt, Millstone Evans Group and Rick Angel (center).

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## FEDERAL FUNDS FOR COLORADO'S LEGAL AID PROGRAM AT RISK

Last Saturday, the United States House of Representatives passed a budget bill for the remainder of the 2011 federal fiscal year, which includes a \$70 million cut to the Legal Services Corporation. By way of annual grants, the Legal Services Corporation provides approximately 40% of the annual operating budget for Colorado Legal Services, our statewide legal aid program. The House bill, if it were to become law, would translate into a loss of \$765,000 for Colorado Legal Services over the remainder of the calendar year, which would make it difficult to maintain current staffing levels. The House bill now goes to the Senate, where action is required by March 4th if the government is not to shut down. Any cut in federal funds would

come right on the heels of significant additional reductions in COLTAF funding for Colorado Legal Services, because of continued very low interest rates, and a proposed reduction in state funding for legal services for victims of domestic violence. Even before the recession, which increased the need for legal services among the poor as well as the number of people eligible for services, Colorado Legal Services was forced to turn away as many people as it served due to a lack of resources. Federal funding plays a pivotal role in making good on the fundamental American commitment of equal access to justice, which should not be sacrificed in the name of deficit reduction. If you are concerned, how can you help? Contact Colorado's Senators

today and urge them to oppose any cuts in FY 2011 funding to the Legal Services Corporation.

**For Senator Michael Bennet, send e-mails to Layth Elhassani, his Legislative Director, and Brian Appel, his Budget LA, at [layth\\_elhassani@bennet.senate.gov](mailto:layth_elhassani@bennet.senate.gov) and [brian\\_appel@bennet.senate.gov](mailto:brian_appel@bennet.senate.gov), or call 202-224-5852.**

**For Senator Mark Udall, send e-mails to Joe Britton, his Legislative Director, and Adam Jones, his Budget LA, at [joe\\_britton@markudall.senate.gov](mailto:joe_britton@markudall.senate.gov) and [adam\\_jones@markudall.senate.gov](mailto:adam_jones@markudall.senate.gov), or call 202-224-5941.**



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OR MONEY."**

BRIAN LEE, ASSOCIATE  
NUTTER McLENNEN & FISH LLP, BOSTON

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## PRESIDENT'S PAGE

# WHAT WE GOT HERE IS FAILURE TO COMMUNICATE

BY RICH IRVIN



This observation was made by the Captain (Warden) at a work camp to Lucas "Luke" Jackson. Luke had been sentenced to two years for cutting off the heads of parking meters in a small Southern town. After cutting off the heads, he sat down drank a beer and waited for the police. You know he had to work at it to get a "2 year" sentence at hard labor for criminal mischief. He of course ends up with nickname "Cool Hand Luke."

For this month's movie, I chose "Cool Hand Luke." There are no scenes in a courthouse or lawyers arguing and pontificating about justice and rehabilitation. Instead, we see the end product, confinement, the protection of society or rehabilitation (pick one!). Most of the prisoners in the work camp fit into one of the two categories but Luke doesn't. As the Warden observes "Some men you just can't reach."

The Captain (Warden) knows what he will be dealing with from Luke's army record. Luke had several medals and reached the rank of Sergeant, but he came out "Buck Private." Luke explained it like he

explained life "I guess you could say I wasn't thinking Captain. I was just passing time." Luke becomes a hero to the other prisoners and a constant irritant to the orderly system of the work camp. He is an alienated loser with potential never fulfilled, always fighting the system and coming out on the bottom. He is the poster child of the great 60's song (download this) "I Fought the Law and the Law Won" (If you call my office, I will sing it for you).

Any of us who practice criminal law has known somebody like Luke. Somebody with great potential who just can't make it, can't handle success and find refuge in the failing. Clients who can find the land mines on the path to success, and who are most dangerous to themselves. As Luke points out "I never planned anything in my life."

I have and still have clients who seem eager to sabotage their success. Clients who, if they had conditions of probation where they were required to drink, use drugs and

commit minor crimes, would become model citizens just to violate the rules. As the hero "Marlon Brando" of another (The Wild Ones) movie was asked, "What are you rebelling against? "What'd you got?"

These are the people who don't fit into the system. They are not amenable to rehabilitation but don't pose a danger to society to the point that they should be locked up and throw away the key. The great trial lawyer Clarence Darrow said that the greatest tool to assist rehabilitation of the offender is that they get older. They also get tired of being in jail.

How is the system supposed to react to someone like Luke? Our justice system is becoming more attentive to trying to help change the person and thus change the behavior. The system does not just punish a person for using drugs, but tries to change the behavior that results in that criminal

*(continued on page 6)*

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

activity. If we have learned anything, it's that a person sent to jail will eventually get out. If the internal forces that caused the criminal activity are still there, the person will just have learned how to commit new crimes to satisfy their urges.

Boulder County and other surrounding counties now have drug courts and DITC courts that give people the chance to break the cycle that keeps landing them in jail. They use the Skinnerian Theory of reward and punishment (carrot and stick) to modify behavior. Over time people can learn to lead productive lives for themselves and their community.

Bruce Springsteen opined that when he was driving across Arizona he saw a sign on reservation, "America is the Land of Peace, Love and Justice but no Mercy" (It of course was on Thunder Road). To avoid being the land of no mercy, the system should always try rehabilitation because one success outweighs a number of failures. Jack Rae, head of probation a number of years ago, told me that if a probation department had a 100% success rate they were failing the community. They need to work on hard cases otherwise some poor souls will just be discarded who might have succeeded with assistance.

The other end of the continuum from "Cool Hand Luke" is the "Shawshank Redemption." This is where incarcerated becomes "institutionalized." The inmate becomes habituated to a way of life on the inside and can't face living on the outside. All of us who are familiar with the system have seen it. I had a client who blatantly committed a

crime within hours of his release because he wanted to be where he was secure, prison. I argued to Judge Richtel that if he really wanted to punish my client he should give him probation instead of prison. You can guess what happened.

In many ways Luke was institutionalized. He was a big man in the work camp. He could eat 50 eggs in an hour or energize the work crew in an act of rebellion by doing their road work in record time and making it fun. In Shawshank Redemption, "Red" (Morgan Freeman) was a fixer in prison, he knew the system and could fix anything. He was the big man but outside, he was a nobody.

One of the dangers is that the jail is becoming a mental health center. This is not just in Boulder but around the country. I was astonished to learn that Fort Logan Mental Health Hospital is closing down. Jails and institutions will be used to house people with no place else to go. How penny-wise and pound foolish.

Fortunately Boulder County, as well as other counties, is trying new ways to deal with the "Cool Hand Luke's" so they don't end up like "Red." With programs like DITC treatment courts, the DUI treatment court, the Pace Program, the judicial system is trying out new options. This has been ongoing process. Tocqueville visited the United States on behalf of the French Government to study the new sentencing options of penitentiaries. (He also wrote a treatise on Democracy in America) He visited Sing Sing Prison in New York and marveled at its new modern humane method of dealing with

prisoners. In the new penitentiary, prisoners would have time to become penitent and reflect on the wrongs that they had committed. That would assist them in changing their lives.

We are still evolving. The problem with crime and punishment has been with us since the first generation after Adam and Eve. (It's interesting to note that the first story in the Bible after the Garden of Eden is a crime story.)

Some people must be separated from society because of the danger to society they pose. Others need to be punished to deter others and because punishment fits the crime. The third group needs the rehabilitation that the system hopefully can provide. We as lawyers need to advocate for our clients and for improvement to our whole system. We know the journey will never be finished but we have to try. Otherwise we will be the land of "Peace, Law, Justice but no Mercy."

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## LAWYER ANNOUNCEMENTS

Thank you to all the volunteers who helping with the year's Boulder County High School Mock Trials. This year we hosted eight teams from around the county. We are sending two high school teams, Boulder High School and Peak to Peak, to the state competition, which will take place on March 11 and 12th.

We had a great response for volunteers this year thanks to Prof. Pat Furman's Trial Skills Series for our Young Lawyer Section. Young lawyers who took the trial series received free CLE for attending if they volunteered to "judge" at the mock trial competition. Thank you to our Young Lawyer Section, especially co-chair Dave Pacheco, for his help to coordinate. We also thank those Boulder County Bar volunteer lawyers who give many hours coaching these high school students and preparing them for the competition.

We are very fortunate to have such accomplished teams in our district.

Barry Aaron  
Mary Lynn Benham  
Sally Berg  
Whitney Blair  
Craig Blake  
Jon Booker  
Cynthia Bowkley  
Mark Changaris  
Dave Cheval  
Keith Collins  
Amelia Dickerson  
Alex Goiran  
Mimi Goodman  
Leanne Hamilton  
Mag. Lisa Hamilton Fieldman  
David Hughes  
Rich Irvin  
Steve Janssen  
Preston Johnson  
Heather Kendall  
Lindsey Killion  
Rebecca Klymkowsky

Liz Lane  
Per Larsen  
Mike Laszlo  
Ty Layman  
Mar kLoy  
Alex Loyd  
Jef Mangus  
Jordan May  
Kathleen Morgan  
Eric Moutz  
Judge Tom Mulvahill  
Fern O'Brien  
Jonathan Rivinus  
Geroge Robertie  
Ann Schroeder  
Victoria Shupe  
Craig Small  
Mimi Tatum  
Nathan Watkins  
Bruce Weiner  
Pat Wilkes  
Sara Young



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## LAWYER ANNOUNCEMENTS

MARK YOUR CALENDARS  
FOR

Longmont Lawyer Lunch  
Wednesday April 20  
at Terroir in Longmont

Bench Bar Retreat  
Friday, May 13  
CU Law School 1 - 5 PM

Annual Medical Legal Legislative Dinner  
Tuesday, May 24  
5:30 PM at the Boulder County Club  
This is coordinated annually with the  
Boulder Medical Society

BCBA Annual Meeting and Dinner  
Thursday, June 2  
Folsom CenterPlate at 5:30 PM

COAFCC, MDIC, BIDC  
Spring Parenting Conference  
Friday, March 4, 2011  
Sheraton Denver West,  
360 Union Blvd., Lakewood

Featuring:

Mary O'Connell, J.D.,  
Are Family Courts Solving the Wrong Problem?  
A Critical Examination of Judicially  
Mandated Problem-Solving Techniques  
&

Zeynep Biringen, Ph.D.,  
Emotional Availability: The Bridge from  
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## PRO BONO PAGE

### Pro Bono Referrals

Sixteen cases were referred during January. Thank you to the following attorneys:

Steven Barnett  
William Benjamin  
Paul Bierbaum  
Susan Bryant  
Robert Cooper  
Christina Ebner  
Judson Hite  
Ruth Irvin  
Joshua Long  
Jennifer McGinn  
Tanya Shimer  
Jeff Skovron

### Pro Se Program Volunteers

Sheila Carrigan  
M.L. Edwards  
Lauren Ivison  
Chris Jeffers  
Tucker Katz  
Jennifer McGinn  
Leonard Tanis

### Mediators

The following mediators accepted a pro bono case in January:  
James Christoph  
Lauren Ivison  
Jim Lionberger  
Dana Matthews

### BCAP Volunteers

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

Steven Barnett

### Pro Bono Corner

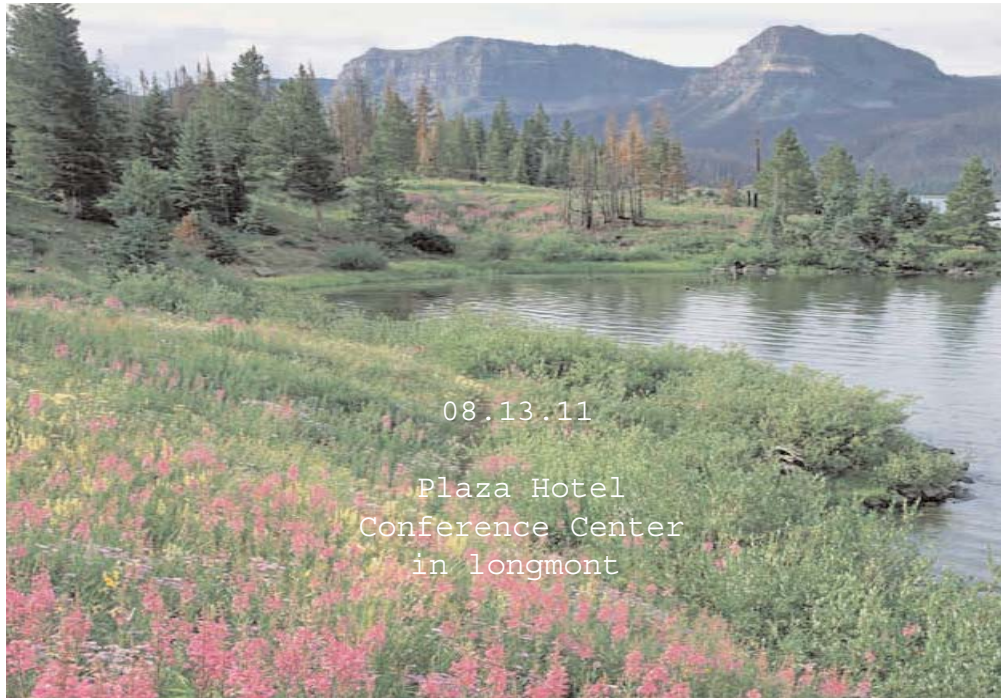
Interested in a Pro Bono case?  
Please call Erika at 303-449-2197. CLE credits available for pro bono service.

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

March 7 Steve Meyrich 303.440.8238  
March 14 Helen Stone 303.442.0802  
March 21 C. Rautenstrauss 303.666.8576  
March 28 Bruce Fest 303.494.5600

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BOULDER COUNTY SENIOR LAW DAY 2011



**Our first year of Senior Law Day in Boulder County was a great success. We had over 350 people attend which far out reached our expectations. Our 2011 event will be on Saturday, August 13 at the Plaza Hotel Conference Center in Longmont. There is an opportunity to join in supporting this excellent educational conference that will present older adults useful and important information and many resources for our growing elder populations. The presentations will cover not only legal aspect of aging but mental and physical health and housing issues important to individuals and their families.**

**The Boulder County program will have many accomplished and respected legal and medical professionals to present informative seminars for seniors, adult family members, caregivers and friends. The conference will be dedicated to providing legal, medical and other pertinent information specifically for our county's senior populations. There is no charge to attendees but a donation of \$15 is requested.**

**The Presenting Sponsors are: HospiceCare of Boulder and Broomfield Counties, Frasier Meadows Retirement Community and the Boulder County Bar Association and Foundation.**

**Sponsorships of this conference will be given the unique opportunity for visibility, networking and recognition in a professional environment.**

**Please call Christine Hylbert if you have any questions about sponsoring or attending the program.  
303.440.4758**

## CLASSIFIED ADS

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