



BOULDER COUNTY BAR NEWSLETTER

JULY/AUGUST 2013

CIVIL DIS-UNION: IS DOMICILE REQUIRED FOR CIVIL UNION DISSOLUTION?

By LILA SOL

On May 1, 2013 the Colorado Civil Union Act ("CUA")¹ took effect². The CUA amends and adds to several other titles, including but not limited to, Title 14, "Domestic Matters." Currently, twenty states offer some sort of protection and state legitimization of same sex relationships³; this groundbreaking and controversial legislation made Colorado the sixth state to create a "civil union"⁴ option.

While there are a host of issues regarding civil unions⁵, one of the most pressing issues for domestic relations law practitioners will be the dissolution of civil unions. Overall, the CUA simply refers parties seeking to dissolve a civil union to the Uniform Dissolution of Marriage Act ("UDMA").⁶ The application of the dissolution statutes will be straightforward in some respects; however, jurisdiction will still need to be addressed by the courts or the legislature because the jurisdictional section of the CUA seems to contradict itself,

and also appears to conflict with the UDMA. Furthermore, depending on the courts' ultimate interpretation of the CUA, there may be an additional layer of complexity added when applying the Uniform Child-custody Jurisdiction and Enforcement Act ("UCCJEA") in dissolving civil unions that have children.

Currently, the UDMA, as it applies to the dissolution of marriage⁷, requires at least one of the parties to have been domiciled in Colorado for ninety-one days prior to the commencement of the dissolution proceeding. The CUA, on the other hand, states that to dissolve a union made under the CUA in Colorado, neither party must be domiciled in Colorado at all. Although the CUA states that the UDMA applies to the dissolution of civil unions, including domiciliary requirements, it fails to resolve this jurisdictional conflict. Even more confusing, the UCCJEA requires that a state be a child's

"home state" before the court acquires jurisdiction over the child, which usually means the child must live in the state for 182 days.⁸ It is unclear how Colorado's new law affects dissolution of a civil union involving children covered by the UCCJEA.

CONTRADICTION WITHIN THE CUA: Section 14-15-115, C.R.S., of the CUA reads in relevant part:

(1) Any person who enters into a civil union in Colorado consents to the jurisdiction...of Colorado... even if one or both parties cease to reside in the state.

(2) The district court has jurisdiction over all proceedings relating to the dissolution of a civil union... regardless of the jurisdiction where the civil union was entered into. The court shall follow... article 10 of this title, including the same domicile requirements for a dissolution...for such proceedings. [emphasis added]

(continued on page 4)

CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing sarah@boulder-bar.org, or pay online with a credit card at www.boulder-bar.org/calendar.

Friday, August 9
Noon Brown Bag Lunch
Jury Assembly Room, Boulder Justice Ctr.
Magistrate Gunning, Judge Mallard and
Judge Macdonald
The new procedure on
"No Written Discovery Motions"
ONE FREE CLE

Tuesday, August 20
4 PM BCBA Section Co-Chair Meeting
at Caplan and Earnest
All Bar Happy Hour
5:30 PM at Bacaro

ANNUAL MEETING AND RECEPTION

Photo Right: Ross Buchanan and Mrs. James Buchanan accept the Award of Merit in honor of James Buchanan presented by E. Greg Martin.



Photo below: Retiring BCBA Board of Directors, (left) Ellen Cadette, Keith Olivia, Dave Cheval and President Keith Collins. Incoming President Judson Hite asked for membership approval of new Board members. They are Renee Ezer, Maureen Eldridge and Jennifer Lorenz.



Joel Hayes presents the 2013 Outstanding Young Lawyer of the Year Award to Brandy Rothman

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A LASTING JOB

BY PETER DIETZE

By six o'clock of every morning during spring and summer, Ms. Elizabeth Avery is at her job making sure that water runs in the Silver Lake Ditch. She is the ditch rider for the Silver Lake Ditch in Boulder. Her job ends sometime in November, when the head gate of the ditch in Boulder Canyon is closed and starts again in early April. On average, she spends three hours per day on the job.

Since the 1880's, when the ditch was built by Boulder's early settlers, the job of the ditch rider has changed little. Her tools – a three pronged pitch fork and a shovel – were the tools the first ditch rider employed. Today, as

did her predecessors in the 1880's, Ms. Avery starts her day by checking the head gate of the ditch located about one mile west in Boulder Canyon on the north side of the highway.

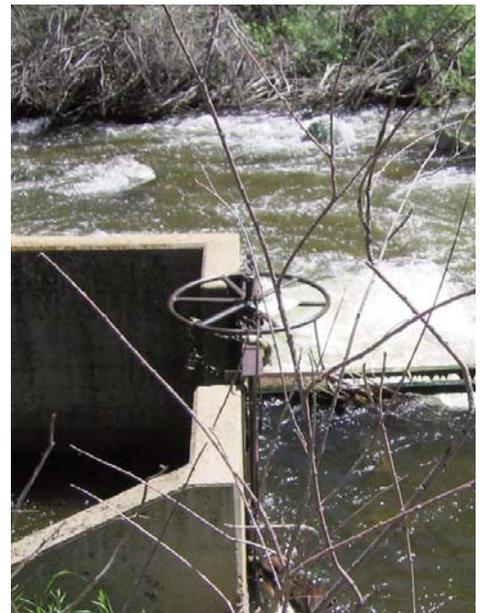
She makes sure that water flows into the ditch unobstructed by tree branches and other objects, removes obstacles such as dams built by children and trouble spots, which might affect the gravity flow of water through the head gate in Boulder Canyon.

In the canyon, long sections of the ditch channel are confined in a steel pipe. The pipe cleaves to the north side of the canyon wall and is visible

from the highway. In some areas the pipe is cut in half, so to say, allowing water to flow in the open. From the head gate of the ditch, Ms. Avery walks along the Boulder Creek path, following the ditch, checking and opening or closing head gates of the twelve laterals (small ditches branching off the main ditch) that bring water to properties away from the ditch. About 300 acres of land remain "under the ditch", meaning that water may be used by the owners of ditch water rights to irrigate their land. Most tracks are one acre in size and some as small as a quarter of an acre. Long's Gardens is the largest parcel consisting of approximately 22 acres. The active ditch is about six miles long. The Silver Lake Ditch is by no means the only ditch traversing Boulder. Some twenty other ditches exist to this day, bringing irrigation water to the properties whose owners have water rights.

Leaving Boulder Canyon, the ditch winds its way north, past Red Rocks Park, through Mapleton Hill, north toward Linden Avenue, and further on the west side of Wonderland Lake. Ditch water augments the water level

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CIVIL DIS-UNION *(continued from page 1)*

Section 14-15-115(1), C.R.S. appears to give the district courts of Colorado jurisdiction over the dissolution of any civil union entered into under the CUA, regardless of domicile. For example, a couple could enter into a civil union in Colorado, and then move to Texas. If they later wish to dissolve the civil union while both parties still reside in Texas, they may file for dissolution in Colorado. This provision addresses a known problem: if a same sex couple enters into a legal union in one state, then moves to another state that does not recognize same-sex unions, and by extension, dissolutions, then the couple may find themselves in a true “til death do us part” situation. For example, Texas will not dissolve a same-sex marriage or union at all, because Texas does not recognize same-sex marriages or unions as valid.⁹ Therefore, because all states have some domicile requirements to obtain a divorce¹⁰, the parties are prevented from accessing the courts to dissolve their union unless they move and create a domicile in a recognizing state. CUA’s provision would allow the before-mentioned Texas couple to dissolve the civil union in Colorado without having to move to Colorado.

The next section in the CUA, §14-15-115(2), C.R.S., gives the Colorado district courts jurisdiction over civil unions *entered into in any state*. This includes all alternative legal unions because §14-15-116, C.R.S., states that any relationship that does not comply with Colorado’s definition of marriage¹¹, but was legally entered into in another jurisdiction, is treated as a civil union in Colorado. For example, if two women *marry* in New York, and then move to Colorado, their marriage will automatically be treated as a civil union under Colorado law. However, this section seems to state that *there is a domicile requirement for dissolution for a civil union that does not originate in Colorado*.¹²

The CUA may be deliberately attempting to require domicile for civil unions *created outside* of Colorado, but not for civil unions created in Colorado. However, it fails to articulate this clearly.

CONTRADICTION BETWEEN THE CUA AND UDMA:

One way the legislative intent regarding jurisdictional requirements remains unclear is the CUA’s reference to the UDMA. The CUA

adds §14-10-106.5, C.R.S., to the UDMA which states, in relevant part: (1) *Any person who enters into a civil union in Colorado...consents to the jurisdiction of the courts of Colorado ... even if one or both parties cease to reside in this state. In a matter seeking a dissolution...of a civil union, the court shall follow the procedures that are set forth in this article for dissolution...*”

(2) *The court shall follow the laws of Colorado in a matter filed in Colorado that is seeking a dissolution, legal separation or invalidity of a civil union that was entered into in another jurisdiction.* [emphasis added].

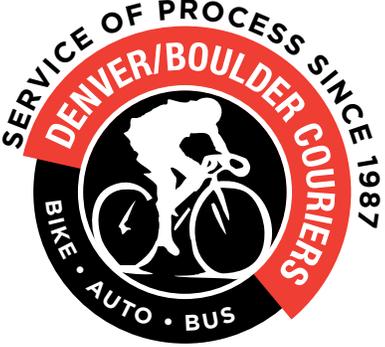
Again, this section contradictorily implies that domicile requirements do not apply to dissolve a civil union created in Colorado, but then immediately goes on to state that the dissolution of the civil union is subject to the UDMA, which would require domicile for a marriage, as stated in §14-10-106. Although it is not explicitly stated, it could be interpreted by viewing §14-10-106.5, C.R.S. as an alternative to §14-10-106, C.R.S. in conferring jurisdiction.

Although it seems that jurisdiction requirements are intentionally different for Colorado civil unions, this will not be entirely clear until higher courts begin interpreting the new law.

CUA AND UCCJEA CONFLICT FOR UNIONS WITH CHILDREN:

The UCCJEA adds another layer of complexity.¹³ If the couple who enter a civil union also have children in which parental responsibilities need to be allocated, they must comply with jurisdiction under UCCJEA, which requires Colorado to be the “home state” of the child. If the CUA is interpreted to not require domicile in Colorado for civil unions created

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PRESIDENT'S PAGE

BY JUDSON HITE



You're surprised? I'm still a bit incredulous, and this, my spot in the slot, has been slated for two years. Bar President. Through the 106th year of the Boulder County Bar Association. This. Is. An. Honor. Thank you. Although I am circumspect of holding it. I believe John Prine sang: 16 million Elvis Presley fans -- can't be all wrong. I suppose 1600 Longmont-loving lawyers can't either. I look forward to proving that up.

So besides working self-deprecation and trying to mask introversion with gregari-

ty, these other tenants of my character that might shed some light on whom you've elected: All my formal schooling was at Michigan and I continue idolize most manner of sport hailing from Ann Arbor and Detroit. I grew up in Kalamazoo, but suck at tennis, don't even like tennis, ruptured an achilles playing tennis. I've been practicing law for 25 years, the first 10 in Chicago as an environmental attorney, the last 15 as a ripening Repuccitrained real estate lawyer and self/bar taught transactional-construction-civil litigation practitioner. In between I built houses; built, as in with a hammer. Mostly I've practiced solo, which is how I hooked up with the bar association, where I realized no one practices totally alone. Other of my hook-ups are legion, but those days, gladly, have past me by.

I have been associated with the Boulder County Bar for nearly 10 years. I became attached out of wonder in how so venerated an institution continues to remain relevant. I likewise wonder how to keep myself relevant. I think it's the same answer: give people what they need. Begging the question: what does our bar membership need? Please don't be sur-

prised if you are asked that question directly in the next year. Please also don't be shy in your response.

Interestingly, 75% of our 1600-plus rank and file practice in small firms having. It has been my mistaken sense that our members in larger firms are not participating widely in bar activities simply because I don't see as many of them as I do of our small firm contingent. That perception discounts that we are three times larger in our smallness, the bigger group is simply outnumbered. That paradigm has begun to shift my focus of relevancy.

Keeping the bar meaningful to lawyers in big firms is laudatory, but not necessarily a mandate. The opportunities a local bar traditionally delivers effectively – training, mentoring, community outreach – are often well addressed in-house in the big house. Our primary constituency has needs that differ from practicing in a sizeable firm. You can therefore expect to see an emphasis in the bar's re-tooling of our small firm practice offerings.

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The Boulder County Bar Foundation's grant cycle begins in August with grant applications due September 16. Please encourage those legally-related organizations in Boulder County in need of funding for special programs or events to complete a application found on the bar's website www.boulder-bar.org

Call Christine with questions
303.440.4758

CIVIL DIS-UNION *(continued from page 3)*

in Colorado, the UCCJEA necessarily re-establishes the domiciliary requirement to civil unions that have children. This potentially negates the legislative intent of preserving jurisdiction to dissolve Colorado civil unions for non-Colorado residents. Therefore, if a couple enters into a civil union in Colorado and relocate to Texas, if they have children, they may remain in a legally undissolvable union.

A NOTE ON VENUE DIFFERENCES:

The CUA, in its attempt to always allow Colorado civil unions to be dissolved in Colorado even when parties move away, provides an alternative venue option to facilitate this. Venue is available for a Colorado civil union in the county in which the civil union certificate was issued, regardless of where the parties live.¹⁴ There is no corresponding venue option for dissolution of marriage.¹⁵

CONCLUSION:

It appears based on a comparison of other states' same sex union legislation, the lack of the domicile requirement was intended to be a deliberate solution to the "lock-out" of divorce for same-sex couples who move out of state.¹⁶ Unless the legislature

clarifies these issues, the practical application of the dissolution of civil unions will require careful interpretation by the courts in Colorado¹⁷, to intelligently resolve conflicts between the CUA, the UDMA, and the UCCJEA.

Lila Sol is a law clerk for the 20th Judicial District, currently working on the domestic relations docket.

1. S.B. 13-011, 69th General Assem., 1st Reg. Sess. (Colo. 2013), available at http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/35CE5FDC5F040FF487257A8C0050715D?open&file=011_enr.pdf. Codified at §§14-15-101, C.R.S., *et seq.*
2. Insurance related issues will not take effect until January 1, 2014.
3. See www.freedomtomarry.org.
4. In reality, these are "alternate" unions, rather than same-sex unions, because both same and opposite sex parties can enter into a civil union: "'Civil Union' means a relationship established by two eligible persons pursuant to this article that entitles them to receive the benefits and protections and be subject to the responsibilities of spouses." §14-15-103(1), C.R.S. Eligible parties include: two adult parties, regardless of gender, where neither party is part of a civil union or marriage with another person. §14-15-104, C.R.S.
5. For example, on June 26, 2013, the U.S. Supreme Court rule that the Defense of Marriage Act (DOMA) was unconstitutional, which could significantly change the application and relevance of civil union laws. See www.supremecourt.gov - 2012 slip opinions, *United States v. Windsor*.
6. -§14-10-101, C.R.S., *et seq.*, §14-15-115(2), C.R.S.

7. Colo. Const. art. II, §31: "Only a union of one man and one woman shall be valid or recognized as a marriage in this state."

8. §§14-13-102(7)(a) and 14-13-201, C.R.S.

9. *In re J.B. & H.B.*, 326 S.W.3d 654, 666 (Tex. App. 2010). "[a] Texas court has no more power to issue a divorce decree for a same-sex marriage than it does to administer the estate of a living person."

10. See Judith M. Stinson, *The Right to (Same-Sex) Divorce*, 62 Case W. Res. L. Rev. 447, 460 (2011).

11. *Supra* at note 7: added by initiative on November 7, 2006, effective upon proclamation by the governor on December 31, 2006.

12. §14-15-115(2), C.R.S.

13. §§14-13-101, C.R.S., *et seq.*

14. §14-15-115(3), C.R.S.: "A proceeding relating to the dissolution of a civil union...maybe held in the county where the petitioner or respondent resides or where the parties' civil union certificate was issued..."

15. Venue is not directly addressed in the UDMA. §14-10-105(1), C.R.S.; Rule 98(c), C.R.C.P.

16. See Elisabeth Oppenheimer, *No Exit: The Problem of Same-Sex Divorce*, 90 N.C. L. Rev. 73 (2011).

17. Colorado's civil union statute closely mirrors Illinois's civil union statute, which went into effect nearly two years prior to Colorado. Illinois may provide Colorado valuable and persuasive authority regarding this matter. See Richard A. Wilson, *A Guide to the New Illinois Civil Union Law*, 99 Ill. B.J. 232, 236 (2011): "The new act expressly provides in section 45 that "[a]ny person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to the civil union even if one or both parties cease to reside in this State." This provision will allow parties access to Illinois courts for the purposes of dissolving their civil union should they live in a jurisdiction where they could not otherwise do so."

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A LASTING JOB *(continued from page 3)*

in Wonderland Lake. The ditch channel terminates at Mesa Reservoir located in open space near Boulder's "Rez." But the channel north of Lee Hill Road has dried up as water delivery ends at the intersection of Broadway and Lee Hill Road. In many places, the ditch today is underground. In the sections where the ditch is an open channel, vegetation blocks the view and yards obscure the ditch.

In the late afternoon, the head gates serving laterals closer to the mouth of Boulder Canyon, are closed in order to allow sufficient water to reach the laterals farther north. At times, Ms. Avery puts on her waders to walk through the ditch for more efficient progress in the built up residential areas. A ditch rider had better be nimble-footed to meet the demands of the terrain.

Before water starts flowing in spring, the ditch rider works with property owners served by the ditch in cleaning the channels. Throughout fall and winter, leaves and small natural debris blows into the channel. During the irrigating season (May through early September), depending on water being available in Boulder Creek), ditch riders spend a lot of time removing young willows and other vegetation growing in the ditch. Debris that has accumulated at trash gates located in the ditch channel is also removed.

What job practiced today can trace its origin back to the way it was practiced in the 1880's? It is difficult to come up with examples. In a sense, the ditch rider's job maintains a direct connection with Boulder's history and its beginnings. Ms. Avery loves her job, the ditch and what it brings to North Boulder – green lawns and abundant, mature trees and rich vegetation.

Being the ditch rider for the Silver Lake ditch is a way of life for her. She grew up in North Boulder and returned to Boulder about four years ago. She has been the ditch rider for three years. Jim Snow, President of the Silver Lake Ditch Company for many years, is in the photo below with Ms. Avery.

For more information and history about Boulder's ditches, the author suggests going to the website for the Boulder Ditch Project.

http://bcn.boulder.co.us/basin/ditchproject/?The_Ditch_Project



Ditch riders, Elizabeth Avery and Jim Snow, President of the Silver Lake Ditch Company.

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

At the same time, the relevancy expectations of larger firms and our governmental members must be addressed and met. Malpractice and health insurance coverage might not be prescient concerns of these individuals; however, networking, quality CLEs, and an open dialogue with the bench should be. The leaders of our larger local legal institutions should expect to be queried on how the bar might become more relevant to their charges. As a recent participant myself to a larger firm practice, I look forward to these conversations while I gain my own experience and perspective.

Additionally, the Boulder County Bar Association has a long, storied, and rich tradition of supporting legal services for the underserved public. That tradition must be maintained, albeit possibly expanded to include broader community interests. Facilitating the pairing of volunteer and reduced fee counsel with needy philanthropic, charitable, and other public interest organizations should be a function we consider to appeal to our members in addition to traditional legal aid.

Through my experiences in solo practice and now with a larger firm, I hope to bring a perspective of relevance and a feeling of inclusion to all members of the bar over the next

year. I want you to want to attend and participate in bar functions, not dread them. We should each be a part of the organization, not operating at its periphery, or worse not participating at all. I welcome and encourage any and all suggestions to get us closer to that goal. Thank you for the opportunity and honor of serving you. I am looking forward to the next year.



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PRO BONO PAGE

Pro Bono Referrals

Six cases were referred during the month of June. Thank you to the following attorneys:

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Pro Se Program Volunteers

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July 29	Tripp DeMuth	303.447.7775
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August 12	Anton Dworak	303.776.9900
August 19	Steve Meyrich	303.440.8238
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All responses will be kept confidential.

ROBIN AMADEI, J.D. IS NOW OFFERING PERSONAL AND PROFESSIONAL COACHING FOR LAWYERS!

Although I have been providing Executive and Personal Coaching in addition to Conflict Coaching for years, I am in the process of going through a formalized (and rigorous) coach certification program with Coaches Training Institute (CTI).

During this time, I am offering a special introductory price for the first 10 new executive or personal coaching clients, \$100 per 45 minute phone meeting for up to 6 meetings. If you have always wanted to experience the power of professional coaching now is your chance! Please contact Robin Amadei at 303-604-1960 or ramadei@aol.com for more information.



**BOULDER COUNTY
2013 SENIOR LAW DAY
AUGUST 10, 2013**

PLAZA CONFERENCE CENTER IN LONGMONT

FREE TO SENIORS, FAMILIES, AND CAREGIVERS

Reservations: WWW.SENIORLAWDAY.ORG

Topics to be presented:

**Rights and Responsibility of Caregivers, Tax Consideration for Seniors
End-of-Life Paperwork • Protecting Yourself Estate Planning Beyond Basics
Nutrition and Aging • Medicaid and Medicare**



BOULDER COUNTY BAR ASSOCIATION

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