



BOULDER COUNTY BAR NEWSLETTER

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HELPFUL HINTS FOR WORKING UNDER THE UCCJEA

By Todd A. Stahly

Like most things in my life, the practice of law seems to involve encountering the weird and unusual. Two years ago, after graduating from law school and starting my own practice, I encountered my first UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act) case. This was a divorce action filed in both New Mexico and Colorado. Because the parties had a child the jurisdiction to enter orders about that child were governed by the UCCJEA. It became necessary for me to obtain admission to the New Mexico bar, pro hac vice, and to travel to the very small town of Las Vegas, New Mexico (who knew there was another Las Vegas?) to litigate the matter. The next year I had three cases under the UCCJEA. Most of my colleagues, who have practiced family law for a number of years, have never encountered so many UCCJEA cases. Not necessarily by design, I became proficient in UCCJEA cases. It is important that practitioners, par-

ticularly those who do not specialize in the area of domestic relations, recognize when they have a case under the UCCJEA. Scenarios like this are typical: Mother and child move to Colorado from New Mexico (or any other jurisdiction) to escape domestic abuse. They reside in Colorado only four months before the father begins custody proceeding in New Mexico. The mother files an action in Colorado, but does not meet the six-month residency requirement for the child under the UCCJEA, C.R.S. §14-13-201. Whenever you have a case involving children and the parties are living in different states, be aware that your case may be subject to the UCCJEA.

One way to place the jurisdictional issue before the Colorado court is to file a motion to accept jurisdiction in Colorado under C.R.S. §14-13-207. This motion should request that the judges in each jurisdiction communicate with one another under C.R.S.

§14-13-206. Simultaneously, a motion citing the foreign states's counterpart of C.R.S. §14-13-207 should be filed in that state requesting that the court there decline jurisdiction over the child.

When there is already a permanent custody order in another state, the procedure outlined here may not apply. If the other state was the home state of the child (generally the child resided there for the p[past 6 ;months) at the time of the original proceeding, if it still is the child's home state and if one of the parties or the child still resides in that state, that state continues to have jurisdiction under the federal Parental Kidnapping Prevention Act, 28. U.S.. §1738A. Unless that state court declines jurisdiction, the Colorado court may not take jurisdiction. The Colorado UCCJEA contains a similar provision, in § 14-13-203.)

In litigating issues under the UCCJEA, one of the primary difficulties is the lack of case law. For example, C.R.S. §14-13-207 appears easy to understand when it sets forth factors that the court is required to consider in deciding whether to decline/accept jurisdiction based on inconvenient

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MEMBERSHIP BENEFITS

Advertising Members receive discounted advertising rates for Classified Ads and Announcements in the monthly newsletter. Non-member rates are an additional \$10. Rates are as follows: \$20 up to 30 words; \$30 up to 40 words; \$40 up to 70 words; \$50 up to 100 words. All deadlines are the 10th of the month or the next business day if on a weekend. Fax, mail or email your ad to the BCBA office. Payments are due with your ad. Commercial ad space in the newsletter is also available at a discounted rate for members.

Convenient and low-cost CLE programs are offered monthly throughout the year by the 15 sections of the bar. The cost of one general or ethics credit is only \$15. The bar offers discounted CLE programs for \$10 to New/Young Lawyer members. Each December the bar sponsors the annual Ethics Update CLE 1/2 day program. The Trial Skills series is planned yearly with NITA to help practitioners.

Special Events are planned throughout the year. The Annual Judges Dinner, the Legal Aid Foundation Wine Tasting, public symposiums, monthly New/Young Lawyer Happy Hours and Longmong Lawyers Lunch are planned to provide networking opportunities for friends and colleagues in a social atmosphere.

E-Newsletter is sent out each week with the current weekly CLE programs, news from the court and important bar news.

Legal Directory

All members receive a free annual "Legal Membership Directory" which lists all Boulder County Bar members. Each year members have the opportunity to list themselves under speciality headings in the directory as a supplement to their free alphabetical listings. Additional copies of the Directory are sold for \$10.

Mentor / Mentee Program

The goal of the Mentoring Project is to provide support for new admittees to the practice of law and to acquaint them at an early stage with the highest level of professionalism and familiarize themselves with the Boulder legal community. Mentees must have been in practice for less than three years. Mentees are required to have passed the Colorado Bar and maintain an appropriate level of malpractice insurance. Anyone who wishes to be assigned to a mentor should contact the Bar office and request a Mentee Application. Anyone wishing to be a mentor should contact the Bar office.

Mailing Lists / Labels

BCBA membership lists are sold primarily for legal educational purposes that will benefit the BCBA membership. They will not be sold for political, fundraising, or business generation purposes. Section lists are available free to members and section labels for \$50. Section lists can be emailed in an excel format.

Web Page

Check out the website at <http://www.boulderbar.org>. The website has a Members Only section with Court opinions and many other resources to assist you in your practice. The monthly newsletter is always on line as is the Calendar of Events for the coming three months.

Building Your Client Base

You can be listed in the Find A Lawyer section under two speciality headings for \$40. Our office refers public calls from people looking for lawyers to the Find A Lawyer page. Call the Bar office for details about signing up for Find a Lawyer listings.

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JANUARY 2006 *(Details for programs on page 6)*

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1 HAPPY NEW YEAR!!	2	3	4	5	6 Section Co-chairs meeting ALS/BCLS	7
8	9	10 EMPLOYMENT	11	12	13	14
15	16	17	18 FAMILY REAL ESTATE	19 YOUNG LAWYERS HAPPY HOUR	20 BANKRUPTCY	21
22	23	24	25 TAXATION & ESTATE PLANNING	26	27	28
29	30	31				

UNIVERSITY OF COLORADO SCHOOL OF LAW CLINICAL PROGRAMS

By Norm Aaronson

Over the years, the University of Colorado School of Law clinical programs have offered many opportunities for students to gain hands-on experience in working with clients needing legal assistance in the community. A new clinical education program, the Juvenile Law Clinic has been established and another, the Federal Civil Litigation Practice Clinic, has been approved and is waiting for a faculty member to conduct it. These two clinics complement nearly a dozen other successful clinical programs.

The **Juvenile Law** Clinic is a year-long course taught by Clinical Professor Colene Robinson. Students represent children as guardians ad litem (GALs) in Broomfield County District Court and represent the Adams County School District in truancy cases in the Adams County District Court (both part of the 17th Judicial District). Ethics arise in the course of representation and are addressed in the classroom. The classroom portion during the second semester focuses on trial advocacy skills.

In the one-semester **Federal Civil Litigation Practice** Clinic, students will represent clients in administrative proceedings before the federal Immigration Court, U.S. District Court and 10th Circuit Court of Appeals and in federal district court cases involving immigration habeas corpus, prisoners' civil rights cases challenging conditions of confinement and employment discrimination cases. In the classroom, students will learn the three core substantive areas of law covered in the clinic, as well as procedural and practice rules, including the Federal Rules

of Civil Procedure, evidence and local rules. The course will include mock pre-trial and trial simulations to hone trial advocacy skills.

The established clinical programs are in diverse areas:

The **Immigration Law** Clinic emphasizes practice skills and includes litigation before federal immigration judges, the Board of Immigration Appeals and federal circuit courts of appeal. Students represent asylum-seekers, research legal and factual issues, present the case to an immigration judge and, when appropriate, appeal decisions to the Board of Immigration Appeals and/or the Tenth Circuit Court of Appeals. However, this semester-long clinic is not currently offered.

In the **Entrepreneurial Law** Clinic, conducted with the firm of Hogan and Hartson, students advise indigent clients in founding and/or developing businesses and non-profit organizations. Tasks include incorporation, registering LLCs and drafting employment and intellectual property agreements. The clinic exposes students to legal issues often faced by young entities, such as entity formation, financing, employment agreements and exit strategies. In addition, students are assigned readings on topics salient to entrepreneurial law and required to draft a paper and make a class presentation on a business problem addressed for a clinic client and complete a short paper on a due diligence exercise.

The American Indian Law Clinic involves practice of federal and tribal Indian law. Students represent individuals and tribes in cases involving the Indian Child Welfare Act, enforcement of federal and tribal rights and code development. The program focuses on select current Indian law topics and development of lawyering skills. This one semester clinic is currently taught by Jill Tompkins, a full time Clinical Professor. Many of the cases, including the Indian Child Welfare cases, are client-centered. Other cases address broader issues facing Indians. Clinic students are also involved in education and training and do substantial writing. Ethics issues are addressed in the classroom and arise in the course of representation. The mix of opportunities represent a good segment of the work students actually perform after graduation.

The **Natural Resource Litigation** Clinic offers hands-on experience to a small number of students (fewer than 10). The clinic's docket of active cases focuses on public land law and the environmental statutes protecting those lands and their resources. Students participate in projects that test the full range of lawyering skills, including traditional litigation, administrative advocacy, legislative drafting and complex negotiations. This semester-long clinic is taught by Adjunct Professors Tom Lustig and Michael Saul of the National Wildlife Federation. Students work on complicated and cutting-edge environmental cases, spending most of their time researching and writing about

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HELPFUL HINTS FOR WORKING UNDER THE UCCJEA *(continued from page 1)*

forum. Unfortunately, there is very little case law that interprets this statute. In the annotations, there are half a dozen cases or so, most of which address attorney's fees but are not very helpful in actually litigating a case under the factors included in the statute.

Fortunately, the courts seem to be persuaded on issues related to the UCCJEA by the comments to the Uniform Laws Annotated. The comments contain such information as the reasons why the court should look beyond the six-(6) month "home state" period under C.R.S. 14-13-201(a). The comment states: "Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home." Uniform Laws Annotated, vol. 9, p. 308, citing Ratner, *Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 818 (1964). To find the proper comment or authority in the Uniform Laws Annotated, a certain amount of detective work is required. The UCCJEA is descended directly from its predecessor, the UCCJA, and reviewing the commentary to the UCCJA may provide important information.

In particular, while the current statute sets forth factors, this commentary is helpful in guiding the court on how to use the criteria should be utilized in making a decision. For example, under C.R.S. §14-13-207, the first factor is "whether domestic violence or domestic abuse has occurred and is likely to continue in the future and which state could best protect the parties and the child." C.R.S. §14-13-207(2)(a). The Uniform Laws Annotated is informative when it provides the following related to this factor, "For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse." Uniform Laws Annotated, vol. 9, p. 683. Despite the absence of case law, this information can be a powerful litigation aid.

The Uniform Laws Annotated also provides citations to cases in other states that have adopted the UCCJEA. It is important to verify that the referenced state has, in fact, not modified the language in its adoption of UCCJEA before you rely on

any given case. However, these cases may provide guidance on how other states treat similar problems, which may assist the Colorado trier of fact in making her/his determination. It can be useful to see how the other state, i.e., New Mexico, may consider the issue from its perspective.

In conclusion, it is extremely important to recognize when a case is subject to the UCCJEA. If your case involves parents in two states, there is the possibility that you have a UCCJEA case. Remember that you can only practice in a state where you are admitted. Absent special permission (*admittance pro hac vice*), you cannot file pleadings, appear, or otherwise participate as an attorney in the court of another state. This is unauthorized practice of law *CO Rule of Professional Conduct 5.5*. Once you proceed with the case, utilize all possible resources, including the annotations and conferring with attorneys who have experience with these cases. Unfortunately, one of the biggest difficulties faced by parties in UCCJEA cases is that most do not have the financial resources to litigate in two different jurisdictions. It is easy to become distracted from the ultimate issue of concern, which is to determine which jurisdiction will provide the greatest benefit to the child, rather than what state is more convenient or "better" for the parents involved. In most cases, applying common sense to the situation will provide a resolution that can avoid the fight over which Court should hear the case.

Todd A. Stahly is an Associate with the firm of Johnson and Johnson, P.C., in Louisville, Colorado. Todd is also the co-chair of the BCBA Family Law Section.

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CU SCHOOL OF LAW CLINICAL PROGRAMS *(continued from page 3)*

the factual and legal issues. Students help represent public interest clients before administrative agencies, state and federal courts and Congress and state legislatures. Cases typically require analysis and presentation of detailed scientific and environmental data and submission of complex legal briefs and occasionally require expert testimony and witness preparation. It is a writing-intensive experience, where students learn from the clinic's staff and from the attorneys and experts representing the opposition. There is little client contact, and ethical issues rarely arise.

The **Wrongful Conviction** Clinic, headed by Prof. Pat Furman, takes cases from the Colorado Innocence Project. These cases involve remedies for Colorado inmates who claim they are innocent despite their conviction at trial and loss on direct appeal. It is offered every other year and taught by Prof. Pat Furman. Students review trial transcripts; research the state of the law at the time of trial; determine whether more investigation should be conducted or new investigative techniques, such as DNA, might

help; evaluate claims of ineffective assistance of counsel, prosecutorial misconduct and the like, and determine whether there are any procedural bars to the claim. If the evaluation results in a recommendation that the Colorado Innocence Project proceed with the case, the student is assigned to work with the volunteer attorney handling it.

In the **Appellate Advocacy** Clinic up to 8 students work on briefs for appeals of felony convictions to the Colorado Court of Appeals or Colorado Supreme Court. The cases are handled by the Appellate Division of the Public Defender or Attorney General's Office, and the course is taught by an adjunct professor alternating between prosecution and defense lawyers. It consists mostly of writing, with instruction in oral advocacy. Although the clinic centers on cases of actual clients, there is little contact, and ethical issues are rarely encountered.

The core clinical programs are in civil and criminal practice. The **Civil Practice** Clinic emphasizes procedural and practical remedies and defenses and courtroom skills. Students are assigned cases involv-

ing poor persons. The year-long clinic taught by Clinical Professor Norm Aaronson focuses on domestic relations, social security disability law and some immigration (asylum) cases. Students appear in state district court and before federal administrative law judges. Each student represents about 5 clients at a time. The course concludes with a mock trial.

In the **Criminal Practice** Clinics students defend indigent persons charged with misdemeanors and traffic and petty offenses in Boulder County Court and municipal courts in the county to develop a working knowledge of courtroom skills, advocacy and evidence presentation. The first semester-long clinic, taught by Clinical Professor Ann England, concludes with a mock trial. In the year-long clinic, taught by Clinical Professor Pat Furman, each student represents 15-25 clients over the course of a year. Many students have substantive hearings on constitutional and evidentiary issues, and students regularly conduct both jury and court trials. There is less writing than in many of the other clinics. The classroom instruction on both substantive law and advocacy skills is deeper than in the one-semester course, and the students handle a larger number of cases.

Norm Aaronson is a professor at the University of Colorado School of Law and acting Director of Clinical Programs in Boulder.

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CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by emailing lynne@boulder-bar.org. 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 \$15 per credit hour or members and \$20 for non-members unless otherwise noted. CLE credit is \$10 per hour for members of the Young/New Lawyer Section who have practiced 3 years or less. Materials are \$5 without CLE credit.

Friday, January 6
SECTION CO-CHAIRS MEETING
7:30 AM at
Hutchinson Black and Cook

Friday, January 6
AVAILABILITY OF LEGAL SERVICES
What Every Lawyer Should Know
About Medicaid
Presenter: Joel Hayes
Noon brown bag at Justice Center
Courtroom I 1 CLE \$15

Tuesday, January 10
EMPLOYMENT LAW
Creating Enforceable
Settlement Agreements
Presenter: Mark Wiletsky
Noon at Caplan & Earnest
1800 Broadway, Suite 200
Lunch \$10 (turkey, veggie, beef or
salad), 1 CLE \$15

Wednesday, January 18
FAMILY LAW
Caselaw Update
Presenter: Ron Litvak
Noon brown bag lunch at Boulder
County Justice Center Jury
Assembly Room 1 CLE \$15

Thursday, January 19
YOUNG LAWYERS HAPPY HOUR
5:30 at The Hungry Toad
2543 Broadway (North St. and
Broadway)

Friday, January 20
BANKRUPTCY LAW
Noon lunch at Dolan's
2319 Arapahoe, Boulder

Tuesday, January 25
TAXATION, ESTATE PLANNING
AND PROBATE
Ethical Considerations in
Trust Administration
Presenter: Gail Cohen, Esq.,
Executive Vice President and
General Trust Counsel for Fiduciary
Trust International
Noon at Hutchinson Black
and Cook, 921 Walnut
Lunch (\$10) turkey, veggie, beef
or salad
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COLORADO ASSOCIATION OF LEGAL SUPPORT STAFF

will hold its Second Board Meeting and
Education Conference on
February 3-4, 2006 at the Courtyard by Marriott,
1410 Dry Creek Drive, Longmont, Colorado.

Friday: 12-1 PM Registration
1-2 PM Parliamentary Style of Organizations
Presented by Audrey Breke.
3-4:30 PM Handling Employee Issues in
Today's Work Place. presented by Melinda Strickland.

Saturday: 9:45 - 12 CLASS Second Board

For additional information contact Pat at 303.776.9900

LAWYER ANNOUNCEMENTS

FRECHETTE LAW OFFICE Has opened a General Practice of Law:

- Civil Plaintiffs
- Criminal Defense
- Workers' Compensation
- Civil Rights/Discrimination (Defense & Prosecution)
- Employment Law
- Estate Planning
- Social Security
- Real Estate
- Contracts

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is pleased to announce that

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LAWYER ANNOUNCEMENTS

WE'RE MOVING!

Thomas L. Stover and Jennifer M. Spitz
are pleased to announce that
Stover & Associates LLC will be moving to its
permanent office space on January 16, 2006.

Stover & Associates LLC
Roosevelt Place
636 Coffman Street, Suite 301
Longmont, CO 80501

Our other contact information remains the same:

Phone: 303-682-0433
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Ms. Horner's practice will continue to emphasize Technology Organizations, Patents Law, Estate Planning, Probate, Willful Law, Real Estate, and Selective Litigation.

Mr. Cohen's practice will emphasize Agricultural Law, Patents Litigation, Creditors Rights, Real Estate Litigation, Municipal Law, Tax and Special Districts, FMSI Law, and Selective Litigation.

PARENTING SEMINAR PROVIDERS

The 20th Judicial District in Boulder County is
accepting applications for providers for its mandatory
parenting seminars for divorcing parents.

In order for a seminar to be approved, a licensed clinical social worker, psychologist or marriage and family therapist must participate in the course instruction as required by the 20th Judicial District Administrative Order 05-106 (available on the Web at

<http://www.courts.state.co.us/district/20th/20adminorder.htm>

Content of the seminar must include the effects of divorce on children, appropriate parenting after separation, and instruction on appropriate decision-making relationships between divorcing parents. The seminars must be at least 3 hours in length, may not cost more than \$50.00 per person and must offer a sliding scale for payment of fees.

Please contact Amy Waddle, District Administrator,
303.441.3882 or amy.waddle@judicial.state.co.us
for an application



Please join us for the **Stevens, Littman, Biddison,
Tharp & Weinberg, LLC Silver Gala**

January 26, 2006, 4 - 8 pm

Celebrate 25 years of irreverence, diversity, eclecticism, chaos, whim, tales, bumps, bruises,
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Roger Stevens and Andrew Littman 1980 - 2005

Roger Stevens, Andrew Littman, Mark Biddison 1988 - 2005

Roger Stevens, Andrew Littman, Mark Biddison, Dennis Tharp 1989 - 2005

Roger Stevens, Andrew Littman, Mark Biddison, Dennis Tharp, Craig Weinberg 1990 - 2005

PRO BONO PAGE

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

David Hughes
Mark McMullen
Robert Pierce
Jack Robinson
Cynthia Kennedy
Bart Dunn
Bill Benjamin
Kim Gent
Jennifer Bales

PRO SE PROGRAM VOLUNTEERS

Susan Spaulding
Karen Trojanowski
Chris Jeffers
Georgiana Scott
Bev Nelson

BOULDER COUNTY AIDS PROJECT

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

Paul Bierbaum
Chris Ebner
Brandon Fields
Laurel Herndon
Rich Irvin

PRO BONO CORNER

Remember to utilize Rule 260.8. for Direct Representation and Mentoring in Pro Bono Civil Legal Matters. The rule states, " A lawyer may be awarded a maximum of nine (9) units of general credit during each three-year compliance period for providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients in a civil legal matter, or mentoring another lawyer or a law student providing such representation."

Call Sue @ 303-449-2197 for more information about CLE for your pro bono case.

Boulder County Bar Association Professionalism Committee On-Call Schedule

Jan. 2	Chrisie Coates	303.443.8524
Jan. 9	Steve Meyrich	303.440.8238
Jan. 16	Bruce Fest	303.494.5600
Jan. 23	Curt Rautenstrauss	303.666.8576
Jan. 30	Helen Stone	303.442.0802

BOULDER IDC PRESENTS

An all-day conference with Richard A. Warshak, Ph.D.

Author of *Divorce Poison*

- Working with Pathologically Alienated Children: Social Science, Ethical, and Trial Considerations
- Children's Contributions to Custody Decisions
- Pathological Alienation: Understanding, Controversies, Interventions and Advising parents.

LUNCHEON SPEAKER

Hon. Frank N. Dubofsky

"What it Takes to be a Great Domestic Relations Lawyer"

FRIDAY, FEBRUARY 10, 2006 • 8:45 AM TO 4:30 PM
ARVADA CENTER FOR THE PERFORMING ARTS & HUMANITIES
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Applying for 7 General CLE credits and 4 Ethics CLE credits

Cancellations prior to 1/27/06 will be refunded less a \$25.00 service fee. Cancellations after 1/30/06 cannot be refunded. Substitutions can be made at any time.

CONFERENCE FEES (continental breakfast & buffet lunch included)	Pre-registration	On-Site Registration
State/Metro/Boulder IDC Members:	\$125	\$135
Non-IDC Member:	\$150	\$160
Students:	\$ 75	\$ 85

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