

# MAINSTREAM

A Disability and Elder Rights Advocacy News Magazine



DISABILITY LAW  
COLORADO™

Colorado's Protection & Advocacy System

Disability Law Colorado protects and promotes the rights of individuals with disabilities and older people in Colorado.

Fall 2019

## SUBMINIMUM WAGE CONVERSATION

# Colorado Poised for Change

Colorado is on the brink of an important and precedent-setting change. Currently, federal law allows employers to pay workers with disabilities less than minimum wage – sometimes significantly less – based on the premise that they are less productive than workers without disabilities. This is thanks to Section 14(c) of the Fair Labor Standards Act of 1938. But Colorado is poised to change this law and the premise upon which it was built.



Over the last several months, Disability Law Colorado, together with its partners the Arc of Colorado and Alliance, has been working with individuals, family members, providers and employers to look at whether it is time for Colorado to put an end to the practice of paying people with disabilities sub-minimum wage often in a segregated setting, away from non-disabled coworkers and the public. The answer has been a resounding yes! Yes, it is time to pay people with disabilities a living wage. Yes, it is time to expect more of individuals with disabilities and demand more of employers. Yes, it is time to end segregation and ensure that people with disabilities are fully integrated into community life.



This is not an easy task. You cannot simply eliminate a long-standing system upon which many people – including individuals with disabilities – have come to rely. Business plans must be put in place. Individuals must be assessed for interest and abilities. Connections to employers in the community must be built. This will not happen overnight. But the important thing is that we, and the community that we serve, are dedicated to making it happen.

**“It’s time that Colorado recognize the practice of paying individuals with disabilities below minimum wage is unjust and must end.”**

Alison L. Butler, Esq.  
Director of Legal Services at Disability Law Colorado

We anticipate introducing a bill in the 2020 state legislature to end the practice of paying sub-minimum wage to individuals with disabilities in Colorado. This will signal that Colorado is making a change in the way we treat our workers with disabilities. Employers, providers and the disability community are leading the way to guarantee that individuals with disabilities can live the life they want, at a job they choose, in the community. Please support our efforts and find out more by visiting our website, reviewing our report, *Quest for Equal Pay*, and following the progress of upcoming legislation.

## Inside this Issue:

### Colfax Marathon | Page 4

We had a wonderfully successful Colfax Marathon this year as we rocked our “Groovy 60’s” theme and shared stories of our work.



### Western Slope Win | Page 5

An exciting win for parents on the Western Slope in a due process hearing following an education complaint filed with Colorado Department of Education.



### Supported Decisions | Page 6

Supported Decision Making feature story outlines the importance of support to clients wanting to choose for themselves what’s best for their care.



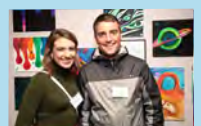
### Jail Wait Update | Page 10

Behavioral Health Task Force and systems change for competency restoration services highlight new efforts in Colorado.



### Fall Open House | Page 12

Save the Date and join us for our Annual Open House on Thursday, November 21 at our Denver Office; featuring great food, live entertainment and storytelling.



# THE MEANING OF OLMSTEAD

Dear Friends,

You will notice that there is a lot of emphasis in this edition of *Mainstream* on the U.S. Supreme Court decision in *Olmstead v L.C.* This year marked the twentieth anniversary of the decision drawing from the Americans with Disabilities Act that people with disabilities have a right to live in the community and states must eliminate the unnecessary segregation of persons with disabilities.



The plaintiffs in this case were Lois Curtis and Elaine Wilson who had mental health and intellectual disabilities. They cycled in and out of Georgia's mental health hospitals, but every time they were released to go back home, they would struggle again because they did not have the community supports they needed to be successful. Sue Jamieson, an attorney at the Atlanta Legal Aid Society, filed a lawsuit on their behalf for treatment to be provided in the community. The name *Olmstead* comes from the name of the Defendant in the case, Tommy Olmstead, who was the Commissioner of the Georgia Department of Human Resources.

The case is widely known as one of the most important civil rights cases for people with disabilities. The case is so important because the U.S. Department of Justice Civil Rights Division made it a priority for enforcement in states after 2009, and it applied to all state and Medicaid funded institutions, including nursing facilities. Subsequent court decisions established that *Olmstead* applied to people living in the community who were at risk of institutionalization.

Throughout Disability Law Colorado's history, which started in 1976, our organization has been focused on children and adults with disabilities receiving services in the least restrictive setting. One of our early lawsuits focused on obtaining appropriate educational services in the least restrictive environment for children living at the Wheat Ridge State Home and Training School. This meant that children living there would go to public school.

We have helped individuals move from nursing homes and institutions into the community and worked to make sure they had the supports they need to be successful. Today, in this context, we are emphasizing important life transitions of our clients—from preschool to school, from school to work, from sheltered work to competitive, integrated employment in the least restrictive setting. We are also exploring Supported Decision Making, a less restrictive alternative to guardianship. All of these efforts involve person-centered planning. The quest for these fundamental services will continue to be the foundation of our work.

*Mary Anne Harvey*  
**Mary Anne Harvey**  
Executive Director

## JOIN OUR SOCIAL MEDIA REVOLUTION

Get an Inside Look at Disability Law Colorado

Get an inside look at Disability Law Colorado through our social media posts as we use pictures and articles to help tell the story of our work. Help us grow our social media presence by encouraging your friends, family and co-workers to “like” and “follow” us today!



[Facebook.com/disabilitylawco](https://www.facebook.com/disabilitylawco)  
[Twitter.com/disabilitylawco](https://twitter.com/disabilitylawco)  
[LinkedIn.com/disabilitylawco](https://www.linkedin.com/company/disabilitylawco)  
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# GOV. POLIS SIGNS PROCLAMATION

## Commitment to Disability Community Living Day

Earlier this summer, on the anniversary of the landmark *Olmstead* United States Supreme Court decision, Governor Jared Polis signed a proclamation embracing Colorado's commitment to disability community living. *Olmstead* affirms that people with disabilities should not be segregated in institutions, but instead, given the freedom to choose to live in the community. This premise and benchmark is at the heart of Disability Law Colorado's work as the Centennial State's Protection & Advocacy System. Join your voice with ours as we stand firm and committed to fight for the rights the Americans with Disabilities Act and *Olmstead* guarantee.



*WHEREAS, on June 22, 1999, the United States Supreme Court ruled in *Olmstead v. L.C.*, 527 U.S. 581 (1999), that people with disabilities should not be segregated in institutions, but instead, given the freedom to choose to live in the community; and*

*WHEREAS, Community Living is the idea that all people, regardless of age or disability, should be able to live independently and participate fully in their communities, and that every person should have the right to have choices and make decisions about how they live their lives; and*

*WHEREAS, the *Olmstead* decision has led to independence for millions of people with disabilities; and*

*WHEREAS, over the last 20 years, courageous and committed individuals have worked diligently to ensure the rights of people with disabilities are protected; and*

*WHEREAS, in order to be inclusive of all people, state agencies, advocates, and community organizations must continue to work together; and*

*WHEREAS, Colorado is committed to providing older Coloradans and individuals with disabilities the opportunity to live, work, learn, play, and travel as independently as possible and in the least restrictive settings possible; and*

*WHEREAS, it is a top priority of the State of Colorado to provide equal rights and equal access to Coloradans with mental, psychiatric, sensory, intellectual, developmental, and physical disabilities; and*

*WHEREAS, Colorado's commitment to the *Olmstead* decision will not waver, and will continue to grow, expand, and improve throughout the years to come in services, programs, and state department policies.*

*Therefore, I, Jared Polis, Governor of the State of Colorado, do hereby proclaim, June 22, 2019, as*

**COMMITMENT TO DISABILITY COMMUNITY LIVING DAY**  
*in the State of Colorado.*

*GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-second day of June, 2019*

*Jared Polis*  
Jared Polis  
Governor



## SHAPING POLICY

As we continue our commitment to protect and promote disability rights, elder rights and quality long-term services in Colorado, you'll find Disability Law Colorado:

**In the conversation:** Informing and shaping the debate on disability rights, elder rights and long-term care; providing perspective to the media, partner groups, opponents, and thought leaders.

**At the ballot:** Our advocacy efforts put important policies on the ballot, giving Coloradans the power to advocate for disability and elder rights with their votes.

**At the legislature:** Elected leaders rely on Disability Law Colorado's expertise and unique insights on disability rights, elder rights and long-term care, often looking to us to better understand their constituents' needs. We advance legislation and assist coalition partners with their goals.

**In the community:** Disability Law Colorado connects with local leaders and residents from communities across Colorado through outreach events and educational meetings, and also builds strong coalitions to elevate issues.

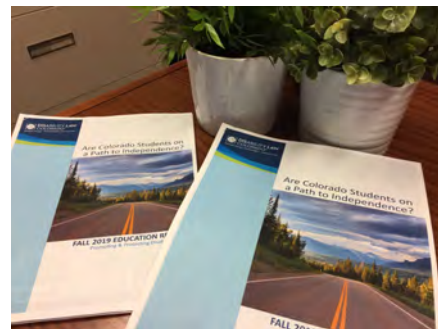


# FALL 2019 EDUCATION REPORT

## Are Colorado Students on a Path to Independence?

In the spring of 2018, Disability Law Colorado started a project using our access authority to monitor public schools. Several attorneys and advocates from our offices in Denver and Grand Junction set out to visit 17 schools in all four corners of our state. During our monitoring visits, DLC teams interviewed school staff, including administrators, and made direct observations of students. The teams gathered information on issues that might impact the students throughout an entire school district. Based on our observations and conversations, DLC discovered several common areas of concern with schools:

- An overall lack of awareness regarding available transition resources, particularly the specific resources available through the Division of Vocational Rehabilitation (DVR);
- School district staff in some of the areas visited expressed frustration that they felt working on meaningful transition plans was difficult because even when they knew of DVR, the DVR counselors were often unavailable to provide services and attend Individualized Education Program (IEP) meetings for students of transition age;
- A general lack of awareness regarding assistive technology, specifically how low-tech devices could qualify as assistive technology so that they could be funded through Medicaid, private insurance, or DVR and allow students an easier transition out of school; and
- In general, segregation remains a concern, even when the student is no longer in the classroom. Specifically, it is important to ensure that sheltered workshops, enclaves, and work centers, are no longer considered options for students leaving high school; but instead, competitive integrated employment settings are considered and implemented as part of a student's transition plan.



As a result of this project, Disability Law Colorado issued a report entitled *Are Colorado Students on a Path to Independence?* This report describes the trends that were noted and provides resources for schools and parents to use when developing transition plans and encouraging our students to become independent adults.

**Find the full report at: [www.disabilitylawco.org/EducationReport2019](http://www.disabilitylawco.org/EducationReport2019)**

## COLFAX MARATHON 2019

### Getting Our Disability Law Colorado “Groove On” For 9 Years!

This year marked the 9th year Disability Law Colorado participated in the Colfax Marathon. We were honored to be one of only eight Legacy Charity Partners due to our longstanding participation. Our theme this year was “Groovy 60’s” which was highlighted by bright tie-dye shirts and a solid 60’s vibe. Another highlight was the donation of \$1,000 coming from Sherman & Howard as a result of their 2nd Place finish in the Corporate Relay - Legal Division. Thanks to all who helped make this year’s Colfax Marathon a ton of fun!



## VOLUNTEER APPRECIATION

Disability Law Colorado is supported by a wonderful crew of volunteers. We are grateful for the gifts of time and talent our volunteers share with us. Together, we work to promote change, protect rights and improve lives. Our volunteer opportunities include board members, committee members, PAIMI advisory council members, pro bono lawyers, legal interns, Mighty Rights Press interns, language translators, and outreach event helpers.

For more information about Disability Law Colorado’s volunteer opportunities, please call 303.722.0300 or visit our website:

**[DisabilityLawCO.org/volunteer](http://DisabilityLawCO.org/volunteer)**

# A PRECEDENT-SETTING WIN

## Western Slope Parents File Education Complaint

Disability Law Colorado's Grand Junction staff scored a rare win for parents. The case involved a student who had significant learning disabilities, but high aspirations of attending college as the stepping stone to a career in professional baseball. To follow his dream, he needed to take two years of a foreign language. Unfortunately, the school district offered few choices for foreign languages, was not willing to expand on them, and was not willing to consider reasonable input from the parent while determining what services to provide for the student.



The student's mother filed a complaint with the Colorado Department of Education and won. However, the school district immediately hired an attorney and filed a due process complaint with the Office of Administrative Courts and refused to implement the remedies required by the

complaints' officer. The boy's mother felt ill-equipped to go up against a school district attorney, so Disability Law Colorado agreed to step in and represent the parent. After two days of hearings, the administrative law judge ruled in favor of the parent and student, ordering the school district to provide and pay for accommodations allowing the student to take a preferred foreign language course. Despite school districts winning 87% of all such hearings, our Grand Junction staff secured this win for the family.

In explaining why Disability Law Colorado took the case, Managing Attorney David Monroe said: "We believe that every school district's role is to provide every child who has a disability with the right to try. The student needed a foreign language to attend the college of his choice. Without the accommodation, his college options would be limited and his career opportunities constrained. They were limiting his choices from the outset."



While thrilled with the opportunities opening up for their son in Colorado, the family made the decision to move to California where he could attend a larger high school and improve his chances of being scouted for a college baseball team. "Even though the school district ultimately did not have to provide the foreign language course, we hope this case demonstrates that students with disabilities can and do succeed, and should always be given an opportunity to try," said David Monroe. "They just weren't allowing him to dream big – as they would with any other kid."

# EQUAL PAY FOR EQUAL WORK

## Subminimum Wage Report



In the fall of 2018, Disability Law Colorado released a sub-minimum wage report, *The Quest for Equal Pay for Equal Work*, and began to build a coalition to address the best way to phase out and then eliminate sheltered workshops and sub-minimum wages. The report contains metrics and stories to support our efforts. View the report at:

[DisabilityLawCO.org/Sub-Minimum-Wage](http://DisabilityLawCO.org/Sub-Minimum-Wage)



# SUBMINIMUM WAGE

## Grand Junction Symposium

Disability Law Colorado hosted a community conversation about ending subminimum wage practices for people with disabilities in Colorado on September 11 on the campus of Colorado Mesa University. The event featured a screening of "Bottom Dollars" - a Rooted in Rights documentary about alternatives to subminimum wage practices.

# BOTTOM DOLLARS



In 2016, nearly 250,000 people were legally paid less than the minimum wage, on average, less than \$2 an hour. "Bottom Dollars" exposes the practice through personal stories of hardship, success and expert interviews. Following the screening attendees had a conversation about abolishing the practice.

Thank you to our partner organizations who supported our Subminimum Wage Symposium:



# SUPPORTED DECISION MAKING

## The Right for Individuals with Disabilities to Make Choices

To understand the importance of Supported Decision Making (SDM) it helps to think about our own life experiences: Do you like to be told what to do all day every day? If you have ever worked for a micromanager, did you enjoy it? The answers to these questions are probably no, because humans simply do not thrive in an environment where important and meaningful life choices are controlled. In fact, the loss of choice and control is part of the punitive model of incarceration. On the other hand, most of us willingly rely on advice and assistance from family, friends and others to make complex decisions, such as buying a car or seeking medical care. We seek the counsel of individuals that we know and trust to help us make informed decisions.

### JENNY'S VICTORY



“Jenny Hatch’s victory is more than affording one young woman the right to live in the community and make her own choices. It is a case to remind all of us that one among us being weaker by virtue of age or disability is not an invitation for someone else to step in and claim ownership.”

**The Columbus Dispatch**

“For anyone who has been told you can’t do something, you can’t make your own decisions, I give you Jenny Hatch – the rock that starts the avalanche.”

**The Washington Post**  
(quoting Jonathan Martinis)



In supported decision making individuals with intellectual disabilities or elders with diminished capacity make decisions with the assistance of trusted supporters. There are many models for SDM, but they all have three constants: (1) The individual is empowered to make his or her own decisions; (2) the individual decides who will provide support; and (3) the individual gets to make the final decision, even if the supporters disagree.

The SDM process typically begins when an individual decides that she would like to make her own decisions on issues such as housing, healthcare, finances, and employment. The individual selects supporters, who can be friends, family members, professionals or other trusted advisors. Supporters are always selected by the individual and can never be appointed. The supporters commit to working with the individual to provide guidance in understanding the different options available and the risks and benefits of each. An SDM facilitator may explain the process and help the parties work together, but the facilitator can never make or recommend decisions. A Supported Decision Agreement may be used to clarify the SDM relationship, including who the supporters are and with what issues they will assist.

Supported Decision Making is a straightforward concept and to many of us it seems to be a common-sense approach to decision making. So why is a formal process needed? SDM is important because it integrates, as fundamental principles, independence and empowerment, which can be overlooked in the surrogate decision-making arrangements that our legal system often relies on, such as guardianship. In recent years SDM has been growing as an alternative to guardianship, arguably our society's most extreme intervention into the life of an adult.

In Colorado, we have two types of guardianship: Limited and Unlimited. A limited guardianship occurs when a guardian is appointed by the court only for a specific purpose based on the current needs of the individual. For example, a person may need assistance making decisions about medical procedures, but does not need assistance regarding housing or choosing a caregiver. In that case the court could order a limited guardianship that only gives the guardian authority to make decisions regarding medical procedures. An unlimited guardian may make all decisions regarding the “support, care, education, health and welfare,” of the person under guardianship. While the law requires unlimited guardians to consider the wishes and preferences of the individual, in practice they have expansive authority to make all decisions for another person, with only minimal oversight from an overburdened court system.

### WHAT IS SUPPORTED DECISION MAKING?

In supported decision making individuals with intellectual disabilities or elders with diminished capacity make decisions with the assistance of trusted supporters. There are many models for SDM, but they all have three constants:

- (1) The individual is empowered to make his or her own decisions;
- (2) The individual decides who will provide support; and
- (3) The individual gets to make the final decision, even if the supporters disagree.

# KEEPING THE FOCUS ON CHOICE AND INDEPENDENCE

## Creating Systems That Are Focused on the Individual Needing Care

In *Olmstead v. L.C. ex rel. Zimring*, the U.S. Supreme Court held that the unjustifiable confinement of individuals with disabilities in a more restrictive setting than necessary violated the integration mandate of the Americans with Disabilities Act (ADA). While there is no case law on this issue, advocates argue that the use of guardianship without exhausting other methods of assisting someone in making decisions is a violation of the integration mandate of the ADA.

Guardianship, by definition, takes away choice and independence. In contrast, SDM integrates the ability to fully participate in and make decisions, as any other adult would. Supported Decision Making does this by integrating three ideas that are essential to independence. First, SDM is always person-centered and person-driven. This means that the SDM process is focused on the individual's values, needs and wants to design a process and goals specific to that individual. The individual then drives the process. Second, SDM recognizes that issues of capacity and choice are complex. An individual may need assistance to make some decisions, and may have no interest in making others, but that does not mean that they do not have the ability or the right to make decisions in other areas of their life. Finally, SDM is important because it recognizes the fundamental importance of choice as a human right that is essential to well-being.

The ability to exercise choice is so fundamental that in the 2008 United National Convention on the Rights of Persons with Disabilities states: "Persons with disabilities enjoy legal capacity on an equal basis to others in all aspects of life..." and signatory nations must "take appropriate measure to provide access by a person with disabilities to the support they require in exercising the legal capacity."



Supported Decision Making offers a promising alternative to allow individuals to retain control of their life choices and to retain the dignity that comes from being an independent adult. Fortunately, support for SDM is growing nationally and in

Colorado. In fact, next year Colorado is likely to be making changes to the probate code, and Disability Law Colorado will be advocating strenuously for a requirement that SDM be considered prior to the appointment of a guardian.

If you believe SDM would be appropriate in your situation, begin discussing the use of SDM with potential supporters now and make your desire for SDM clear; if you plan to hire an attorney, ask that attorney if they support SDM. If you are a guardian, or if a guardian has been appointed for you, consider the use of SDM in that relationship. Additional resources are available at the National Supported Decision Making Resource Center:

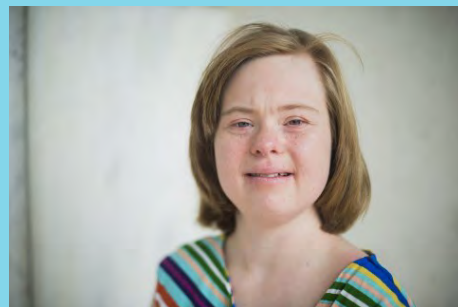
[www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)

## JENNY HATCH: A STORY OF IMPACT

To understand the importance of SDM to protecting rights we can look to the experience of Jenny Hatch, one of the best known examples of SDM:

[www.jennyhatchjusticeproject.org](http://www.jennyhatchjusticeproject.org).

Jenny, a high school graduate, lived in her own home, worked at the same job for five years, and was active in her community.



Jenny has Down syndrome and following a car accident she was placed under a guardianship, where the guardian was given nearly all of Jenny's decision making authority. As a result, Jenny was forced to quit her job, move into a group home, and prevented from seeing her many friends. Jenny decided to fight the guardianship and she contacted an attorney. The attorney argued that Jenny does need assistance in making complicated decisions, but so does everyone else. To further this argument the attorney found that in the past few years Jenny had signed Power of Attorney documents and participated in her own Medicaid planning process, documents that one needs to understand to sign.

When the attorney asked why Jenny was allowed to sign these documents if she is so incapacitated that she needs a guardian, he was told that she could sign them because the documents were carefully explained to her and they made sure that she understood them before she signed. The attorney then argued that Jenny was already effectively using SDM and it was inappropriate to put a guardianship in place.

After a year of litigation, the judge agreed and held that Jenny would have a guardian in place for one year; the guardians would be two supportive friends that Jenny requested and the guardians' job would be to assist Jenny in using SDM. Since then, the guardianship has terminated and Jenny has been using SDM successfully for several years.

# GUÍA SHORT RUN HAS ARRIVED

## Guía de la Ley de Educación Especial



Mighty Rights Press, the publications division of Disability Law Colorado, is excited to announce that a short run of *Guía de la Ley de Educación Especial* was received on September 1, 2019. The book is the Spanish version of *The Everyday Guide to Special Education Law*, an easy to read parent handbook about special education. Since November 15, 2018, the book had been sold out. Numerous requests for the book drove the decision to print the short run.

Plans are underway to produce a second edition of *Guía de la Ley de Educación Especial* in 2020. Discover more about *Guía* and other Mighty Rights Press products by visiting our website:



[www.mightyrightspress.org](http://www.mightyrightspress.org)

## WELCOME NEW DLC STAFF MEMBERS

### Recent Staff Hires Bring Robust Skill Set



**Adriene Callahan, Accounting Manager** | Adriene is a native of Denver and has extensive accounting, finance and entrepreneurial experience. She began her accounting career at CH2M. Most recently Adriene was the Director of Taxation for a private equity firm that managed over 850 million in real estate investments and served as CFO and as Board Treasurer for Art Reach and Humanity in Unity.



**Georgia Kasow, Administrative Assistant/Intake Specialist** | Georgia joined Disability Law Colorado in June of 2019. She is originally from Vermont but has been in Colorado since June of 2018. Georgia has a bachelor's degree from Brandeis University in Health Science, Society and Policy. Most recently, she worked as a Transition Coordinator transitioning people with disabilities from nursing homes into the community.



**Miriah Lawson, Administrative Assistant/Intake Specialist** | Miriah has been part of the Western Slope her entire life. She has over ten years of experience in customer service and previously worked as an intake specialist for a law firm. Miriah also has previous experience in administration and book keeping, and a strong passion to help individuals with disabilities.

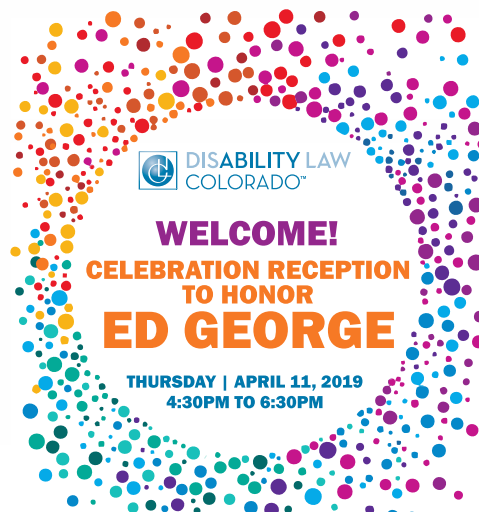


**Elina Rodriguez, Administrative Assistant** | Elina recently graduated from the University of North Carolina at Chapel Hill. She earned a certificate in Human Rights from Duke University as part of the Robertson Scholars Leadership Program. Elina joins the staff as an administrative assistant with a special focus in development and publications. She has experience at public defenders' offices in Louisiana and New York where she worked in community organizing and reentry services.



## CELEBRATING ED 30 Years of History & Helping

On April 11, 2019 we honored and celebrated Ed George - an extraordinary volunteer who, for the past 30 years, has offered his time and talent at Disability Law Colorado, Mental Health Colorado, and the Colorado Developmental Disabilities Council. Ed's passion for history and helping, along with his quick wit and humor, has touched countless lives. At the Ed George Celebration Reception, Ed received the Randy Chapman Lifetime Achievement Award - an award that recognizes extraordinary service and impact in the disability community. Ed is the first volunteer to receive this prestigious award. Ed is currently on the Board of Directors at Disability Law Colorado and a member of the Protection & Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council. Thank you Ed for your contributions to the community and for your profound impact on mental health in Colorado.





# MEET BOARD MEMBER JACK HANLEY

Passionate About Disability Rights & Called to Serve



John C. Hanley (Jack) is on Disability Law Colorado's Board of Directors and currently serves as its vice-president. Jack is the executive director of Reilly Pozner LLP, responsible for all administrative and business operations of the firm. He is a former associate dean of the University of Denver College of Law. In 1985, Jack became the principal administrator of one of Colorado's largest law firms, Holme Roberts & Owen, LLP (now Bryan Cave). He first learned about Disability Law Colorado in 1990, when his good friend and colleague at HRO, Dan Hoffman, asked him to speak at a DLC event on the ground-breaking new law, the Americans with Disabilities Act.

"Mary Anne must have been impressed," Jack says, "because she invited me to lunch where she laid out the possibilities for all that Disability Law Colorado could achieve. I was drawn to the mission because I have a daughter who had serious learning disabilities and when Mary Anne asked me to join the board that was the spark that encouraged me to accept. I must not have irritated too many people, because a few years later, my colleagues on the board asked me to serve as chair."

According to Executive Director Mary Anne Harvey, "Jack is the world's best legal administrator and we were so lucky to have him. With term limits, he had to leave, but I was thrilled when two years ago, he agreed to come back, and once again, he's managed not to irritate his colleagues, as he is a candidate for board chair at the September annual meeting! He has a wonderful sense of humor that helps us all as we deal with some of the very serious issues facing people with disabilities." Some of those serious issues, such as ensuring that people with mental illness in Colorado's jails receive prompt evaluation and treatment, have found incredible pro bono support from Reilly Pozner. Over eight years, the "Jail Wait" team benefitted from the expertise of lawyers from several firms, and Jack is particularly proud that along the way his firm contributed four top-notch lawyers. "At Reilly Pozner, we specialize in big stakes litigation, and there's nothing more big stakes than the wellbeing of vulnerable people up against the entire state of Colorado," Jack insists. "Both as a partner on litigation, and as a board member, I'm so proud to work with Disability Law Colorado in ensuring that vulnerable people in jails get the treatment they need."



Jack also encourages his company to support people with disabilities having fun. He explains that he and his wife were friends and admirers of Ski Instructor Hal O'Leary, who pioneered the ski program for people with disabilities at Winter Park: "Individuals and businesses were asked to sponsor ski teams that had at least one person with a disability. One year, I encouraged Reilly Pozner to sponsor a team and we came in third, the next year we were second, and the third we won! Hal O'Leary was inducted into the Ski and Snowboard Hall of Fame and his disability ski project became the National Sports Center for the Disabled."

Jack is enjoying his second stint as a board member. This time around his daughter is grown up and the mother of his four-year-old twin grandchildren. "I'm proud to say that she is a marvelous special education teacher in Chicago, something that brings me great joy," he says. "A lot has improved with the ADA, but Disability Law Colorado still has so much to do. I'm a great admirer of Alison's work as director of legal services. She's a go-getter, and when that means filing suit to protect the rights of people with disabilities, she doesn't hesitate. This organization is charged with being our state's watchdog. We have to make sure that the voices of people with disabilities are heard wherever they are, and when they're not, we have to be that voice!"

## DISABILITY LAW COLORADO STAFF

**Mary Anne Harvey** | Executive Director

**Alison L. Butler, Esq.** | Director of Legal Services

**Mark Ivandick, Esq.** | Denver Office Managing Attorney

**David Monroe, Esq.** | Grand Junction Office Managing Attorney

**Kaytie Angeli** | Administrative Assistant/Intake Specialist

**Meghan Baker, Esq.** | Facilities Attorney

**Jeremy Bell** | Ombudsman Program Manager

**Julie Z. Busby** | Office Manager

**Adriene Callahan** | Accounting Manager

**Bill DeSonier** | Representative Payee Investigator

**Vinni Ferrara** | Ombudsman Program Manager

**Anna French** | Grant Coordinator, Rights Advocate

**Angela Garberding** | Senior Intake Specialist

**Emily Harvey, Esq.** | Intake Team Leader, Attorney

**Georgia Kasow** | Administrative Assistant/Intake Specialist

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**Miriah Lawson** | Grand Junction Administrative Assistant

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## PRESIDENTS' CIRCLE



By becoming a member of the Presidents' Circle, you are helping to fuel the fire of disability rights advocacy. Our ability to protect and promote the rights of individuals with disabilities and elders in Colorado is only possible with your support.

As a member of the President's Circle, you'll receive regular updates from Disability Law Colorado along with a variety of special benefits.

Thank you for your support and advocacy.

**DisabilityLawCO.org/  
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# COLORADO PACE OMBUDSMAN PROGRAM

## Program of All-Inclusive Care for the Elderly

The Colorado PACE (Program of All-Inclusive Care for the Elderly) Ombudsman Program advocates for older adults and people who live with multiple health issues. PACE participants are eligible for Medicare or Medicaid (or dually eligible), are 55 years or older and require a nursing home level of care. However, the strength of the program is that in addition to serving nursing home residents, it helps people to remain in their own home or in an assisted living residence, if that is their wish.



Leah McMahon (left) discussing the PACE program with Julie Reiskin, Executive Director of the Colorado Cross-Disability Coalition.

PACE ombudsmen help participants to navigate the service delivery system within PACE: they provide assistance with medical appointments, care transitions, and other services; and they advocate for participants in cases where care is delayed or denied.

The program works with 11 day centers along the front range and the western slope, with two local PACE ombudsmen in the Denver metro area, and the State PACE Ombudsman providing advocacy throughout Colorado. The ombudsmen provide training to PACE staff, participants, and family members on the issues most important to the people enrolled in the PACE program. In regularly

solicited feedback, participants have told the ombudsmen that those issues are respect and dignity, choice within the PACE delivery system, communication about their care, coordination of services, their right to request services, as well as their right to appeal or make complaints.

One example of successful individual advocacy demonstrates how ombudsmen promote empowerment and choice for vulnerable adults. A woman enrolled in PACE contacted the ombudsman because she was being returned to her home following surgery and did not feel well enough to cope with the transition from a skilled nursing home. She told the ombudsman that she didn't know what to expect, what the process was, or what support she would receive until she felt well enough to manage independently. The ombudsman explained that she had a right to choose how her care was directed and could appeal the arrangements, but first the ombudsman arranged a care plan meeting between the skilled nursing home and the PACE provider teams. Once the woman could meet with her care team, express her concerns, and voice her preferences, she was more confident about the transition.

The strength of the PACE program – its “comprehensive medical and social services” provided by an “interdisciplinary team through coordinated care” – can also be a challenge when there is a breakdown of communication within the system. The people who live with complex care needs and who benefit from PACE services can find it difficult to negotiate the system of care without assistance, and the appeals process is daunting. Last year, ombudsmen advocated on 284 cases like the one described above and they made 179 visits to PACE centers to meet with participants and explain their rights and options.



PACE ombudsmen make a huge difference in the health and wellbeing of our state's vulnerable adults. As Colorado's Program of All-Inclusive Care for the Elderly continues to expand throughout the state, so does the need for additional local PACE ombudsmen to help the participants successfully navigate their care and promote their rights. Disability Law Colorado is currently working on 2020 legislation for increased funding for the program. We need your help. If you or a friend or family member is involved with PACE and has a story to tell, please let us know by emailing State PACE Ombudsman Leah McMahon at [lmcmahon@disabilitylawco.org](mailto:lmcmahon@disabilitylawco.org). Or better yet, contact your state legislators and tell them how important the PACE Ombudsmen Program is to you! With your support Disability Law Colorado will advocate for further expansion and development of the program so that we can reach every PACE participant who needs our help.

# “JAIL WAIT” CONSENT DECREE UPDATE

## New Competency Restoration System Begins to Take Hold

In our last edition of Mainstream, we reported that our near decade-long lawsuit against the Colorado Department of Human Services (CDHS) had concluded with the filing of a Consent Decree in federal court. This meant that individuals in the criminal justice system for whom competency had been raised would no longer languish in jail, without timely and adequate access to appropriate mental health care. We are now in the monitoring phase of the lawsuit and have several positive outcomes to report.

First, CDHS has implemented a triage system to evaluate and treat the most acute individuals first, rather than relying on a first-come, first-served basis. This allows resources to be targeted where they are most needed.



Second, as expected, CDHS has not yet been able to come into compliance with the timeframes for providing restoration education to individuals who are incarcerated. This means that CDHS has had to pay hefty fines for each individual that waits longer than the agreed-to time before being admitted to the state hospital. These fines are held until a group made up of Disability Law Colorado staff, CDHS staff and experts appointed by the court determine how the fines should be spent. To date, the fines exceed three million dollars and the

group is looking at investing in supported housing and increasing the availability of peer-provided supports and services. Though we look forward to the day when CDHS can comply with the agreed-to time frames, in the meantime we are excited to be able to fund much needed resources in the community.

Finally, we were pleased that, in part due to our lawsuit, Governor Jared Polis developed a roadmap for healthcare, including an over-arching Behavioral Health Task Force, along with three sub-committees, one focusing on long-term competency in Colorado. Alison Butler, our Director of Legal Services, is co-chairing the competency sub-committee with Robert Worthwein, Director of the Office of Behavioral Health at CDHS. The sub-committee is tasked with overhauling the current competency system and making recommendations on what to put in its place. This is a huge lift, but there is a committee full of experts who, with input from consumers is primed to make it happen.

Disability Law Colorado has devoted many of its resources to this lawsuit and its on-going related work, we have absolutely no regrets. This is important work that has brought together many strange bedfellows, including members of the disability community, private law-firm partners, CDHS, the criminal defense community and many others. We are proud of the work and are ready to continue our efforts to protect the rights and well-being of individuals with mental health disabilities in the criminal justice system.



The “Jail Wait” Litigation Team won the Colorado Lawyers Committee’s 2019 “Team of the Year” award. This same team also won the award in 2017. Congratulations to Disability Law Colorado attorney’s Jennifer Purrington, Mark Ivandick and Alison Butler. Other team members include Sean Connelly - Connelly Law LLC; Caleb Durling - Fox Rothschild LL; Iris Eytan - Eytan Nielsen LLC; Ellie Lockwood - Snell & Wilmer; Kathleen Mullen; Timothy P. Scalo - Snell & Wilmer; and Byeongsok Seo - Snell & Wilmer.



**Together We’re Stronger**



What if giving from the heart helped change the lives of individuals with disabilities, older adults and their families in Colorado? Rest assured that your donation to Disability Law Colorado will impact lives throughout the Centennial state – up and down the Front Range, to rural communities on the Eastern Plains and across the Mountain Frontier and Western Slope.

Your gift will help fuel the fire of disability rights advocacy as we work to broker systems change, protect rights and improve lives. But we cannot accomplish this alone. Please partner with us and join your voice with ours by making a donation.

## WAYS to GIVE

Return the enclosed remittance envelope along with your tax-deductible donation.

Donate online at:  
[DisabilityLawCO.org/donate](https://DisabilityLawCO.org/donate)

Address Correction Requested

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## OPEN HOUSE SAVE THE DATE

You're Invited! Thursday, November 21 | 4:30 - 6:30PM

Mark your calendar and save the date for our Annual Open House on Thursday, November 21 at our Denver Office located at 455 Sherman Street. Our Open House will feature great food, drinks (wine, beer, soft drinks), storytelling stations and live entertainment. New this year will be an amazing chocolate fountain and interactive guest activities. RSVP beginning October 1 at [www.disabilitylawco.org/OpenHouse2019](http://www.disabilitylawco.org/OpenHouse2019).



## WELCOME NDRN

### National Gathering of CEO's

Denver is the location for this year's National Disability Rights Network (NDRN) gathering of CEO's from across the country. Disability Law Colorado is honored to host a reception at our offices in October.

Since 1977 Disability Law Colorado has served as the Centennial State's designated Protection & Advocacy System. Mary Anne Harvey has served as our Executive Director since 1980 and currently serves on the NDRN Board of Directors as secretary. Learn more about NDRN by visiting their website: [www.NDRN.org](http://www.NDRN.org)

