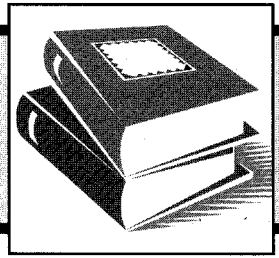


REVIEW OF LEGAL RESOURCES



This department is published to apprise attorneys of legal resources that may be of interest to them. Readers wishing to make review suggestions, provide review copies, or write reviews should contact the Editorial Office of The Colorado Lawyer, 1900 Grant St., Suite 900, Denver, CO 80203; (303) 860-1118. Review of Legal Resources is prepared by the journal's Book Review Committee, chaired by Allen Sparkman, (303) 449-6543, in Boulder. For information on the materials reviewed or to obtain a copy, please contact the publisher directly.

THE COLORADO STATE CONSTITUTION: A REFERENCE GUIDE

By Dale A. Oesterle and Richard B. Collins (Westport, CT: Greenwood Press, 2002) [Greenwood Press, 88 Post Road West, Westport, CT 06881; (800) 225-5800; www.greenwood.com]; 489 pp.; \$139.95.

Reviewed by Gregory J. Hobbs, Jr.
A Justice of the Colorado Supreme Court.

Courts, attorneys, the press, and the public will appreciate this unique guide to Colorado's Constitution. University of Colorado School of Law professors Dale Oesterle and Richard Collins start with a very useful historical account of Colorado's founding and its six attempts at drafting a constitution.

Colorado's successful 1875-1876 Constitutional Convention focused on the Illinois, Pennsylvania, and Missouri constitutions as models. The Convention also produced unique provisions, such as Article XV, Section 15, banning businesses from requiring their employees to waive employer liability for negligence; Article XVI on mining and irrigation; and Article XVIII, Section 6, on preservation of state forests. The delegates added provisions to curb legislator misbehavior and railroad monopolies, limit bills to a single subject, prohibit substantive provisions in appropriation bills, and give the Governor line item veto power.¹

Published sources about the derivation of the Colorado Constitution are few. Colorado Supreme Court decisions most often cite the Convention Proceedings.² Oesterle and Collins also draw on the Hensel thesis,³ prominent Colorado histories,⁴ decisions of the Colorado Supreme Court, and publications of the Colorado General Assembly's Legislative Council.⁵ The book concludes with a bibliographical essay.

Colorado citizens have amended the Colorado Constitution 142 times, two-thirds by referral from the Colorado General Assembly and one-third by initiative. Oesterle and Collins consulted primary sources in commenting on these amendments. *The Colorado State Constitution: A Reference Guide* ("Guide") contains a useful list of twenty-one of the most important amendments, including the 1902 and 1912 Home Rule amendments, 1910 Initiative and Referendum amendment, 1966 Ju-

dicial Selection amendment, 1974 Reapportionment Commission amendment, 1992 Taxpayer's Bill of Rights amendment, and 2000 Public School Funding amendment. The authors do especially fine work in dealing with these important amendments.

The *Guide* proceeds to examine the Colorado Constitution provision-by-provision, as amended through the year 2000 election. An historical and legal commentary follows each provision, accompanied by footnote citations at the end of every Article. Particularly valuable is the attention the authors pay to Article II (Bill of Rights), Article X (Revenue), Article XI (Public Indebtedness), and Article XVI (Mining and Irrigation).

The Article II discussion compares Colorado's bill of rights to the federal constitution's counterpart provisions and points out where the Colorado Supreme Court has afforded greater protection under the state provision. Notable examples are Section 4, religious freedom, and Section 10, freedom of speech and press. In most other respects, the Colorado Supreme Court has construed the state provisions in a manner consistent with federal precedent.⁶

The Article X commentary unpacks the provisions relating to uniform taxation, equalization, and exemptions; then focuses on Section 20's tax, spending, and revenue limitations. The authors predict that it will "take another decade or two of judicial precedent to work out all the kinks in TABOR." Pointing to the 95 percent pass rate of close to 1,000 local government referenda allowing spending of increased revenues, the commentary observes that "Colorado voters wanted the tax limits in TABOR but not necessarily the spending and revenue limits."⁷

The Article XI analysis sorts out the Colorado Constitution's stringent limitations against state-incurred debt and pledging public credit to private interests. The prohibition of government aid to corporations in general and railroads in particular was one of the Constitutional Convention's "successes." The authors point to several breaches against the Constitutional Convention's apparent purpose by highlighting Colorado Supreme Court decisions identifying and upholding legislative "valid public purpose" and public authority finance exceptions.⁸

The Article XVI overview addresses the constitutional provisions establishing prior appropriation as the law of surface water and tributary groundwater in Colorado, as limited by interstate compact and equitable apportionment delivery obligations to downstream states. This part of the commentary also notes the critique of environmental interests that Colorado water law "induces overuse in the present rather than conservation for the future by rewarding the first to take water and requiring its constant use."⁹

Alongside the annual publication of the Colorado Revised Statutes, this very readable work provides a handy starting point for research into the Colorado Constitution's derivation and meaning. The authors illuminate Colorado's political, legislative, and judicial history, often pungently. In the authors' view, Colorado's labor wars produced especially zany actions by Governors and the Colorado Supreme Court.

The *Guide* demonstrates time and again how Colorado's penchant for citizen government continues to mark its principal governing document, requiring implementing legislation by the General Assembly, interpretation by the judiciary, and adjustment by the people. I consider this book a valuable asset for those who may have a Colorado constitutional question and those who would understand their state's legal heritage.

NOTES

1. See *The Colorado State Constitution: A Reference Guide* ("Guide") at 1-25 for an overview of Colorado's constitutional history.

2. *Proceedings of the Constitutional Convention Held In Denver, December 20, 1875 to Frame a Constitution for the State of Colorado Together with the Enabling Act and the Address to the People Issued by the Convention*, published by authority of Timothy O'Connor, Secretary of State (Denver, CO: Smith-Brooks Press, 1907).

3. See Hensel, "A History of the Colorado Constitution in the Nineteenth Century," thesis submitted to the Faculty of the Graduate School of the University of Colorado, Department of History (1957) (available on microfilm from the UMI Dissertation Services, Ann Arbor, Michigan).

4. E.g., Abbott, Leonard, and McComb, *Colorado: A History of the Centennial State*, 3rd ed. (Niwot, CO: Univ. of Colo. Press, 1994); Hafen, *Colorado and Its People: A Narrative and Topical History of the Centennial State* (New York, NY: Lewis Historical Pub. Co., 1948); Noel, Mahoney, and Stevens, *Historical Atlas of Colorado* (Norman, OK: Univ. of Okla. Press, 1994); Stone, ed., *History of Colorado* (Chicago, IL: S.J. Clarke, 1918); and Ubbelohde, Benson, and Smith, *A Colorado History*, 7th ed. (Boulder, CO: Pruett Pub. Co., 1951).

5. These materials include Research Publications of the Legislative Council of the Colorado General Assembly, a continuing, numbered series that began in 1953. The Research Publications also contain the Analysis of Ballot Proposals published for general elections.

6. See *Guide*, *supra*, note 1 at 31-91.

7. *Id.* at 250-63.

8. *Id.* at 264-79.

9. *Id.* at 336-46.

AN ESTATE PLANNER'S GUIDE TO QUALIFIED RETIREMENT PLAN BENEFITS, THIRD EDITION, WITH ADDENDUM

By Louis A. Mezzullo (Chicago, IL: ABA Section of Real Property, Probate and Trust, 2002) [ABA Publications Orders, P.O. Box 10892, Chicago, IL 60610-0892; (800) 285-2221; fax: (312) 988-5568; e-mail: service@abanet.org]; 184 pp., plus addendum; \$99.95 (\$89.95 for Section members).

Reviewed by Nancy R. Crow

A shareholder and director of Pendleton, Friedberg, Wilson & Hennessey, P.C., Denver, Colorado, where her practice emphasizes tax planning, estate planning, employee benefits, and probate.

Virginia practitioner and professor Lou Mezzullo is a prolific writer, offering estate planners straightforward guidance through the maze of tax law. Mezzullo and the American Bar Association no doubt had just put the finishing touches on the third edition of his popular and practical guide to understanding the ins and outs of the rules governing distributions from retirement plans and IRAs when the Internal Revenue Service ("IRS") issued final regulations concerning required minimum distributions. These regulations were of such importance that the

book is shipped with a sixteen-page addendum. Because addenda and their main texts can easily part ways, it would have been helpful for the publisher to add a notation to Chapter Two of the main volume urging the reader to refer to the addendum and skip the extensive discussion of the history of the various generations of proposed required minimum distribution regulations. Perhaps purchasers can do so.

Retirement accounts constitute a large portion of many middle-class clients' net worth. No estate plan can be considered complete without taking their distribution on death into consideration. The interplay of the income and estate tax consequences of distribution alternatives and the minimum distribution requirements must be considered in planning for maximum tax benefits and tax deferral. Mezzullo sets out to provide a clear, yet thorough guide to the income, estate, and gift tax implications of distributions from qualified retirement plans and Investment Retirement Accounts ("IRAs"), as well as the planning considerations involved. The intended audience is attorneys who plan estates, but are not tax or employee benefit law experts. However, even lawyers with that expertise will find this volume to be a useful resource.

Mezzullo begins with a clear and concise introduction to the characteristics of qualified plans and IRAs. With that groundwork in place, he next outlines the application of penalties (and how to avoid them) for distributions that are too early (pre-age 59½) or too late (the minimum distributions that must start by the April 1 following the account owner or plan participant reaching age 70½). The addendum brings this discussion up to date through the issuance of the final minimum required distribution rules in the spring of 2002, although it is already somewhat dated by the IRS's issuance of Revenue Ruling 2002-62 in October 2002. That ruling allows taxpayers who have locked themselves into a specific distribution method to avoid the 10 percent penalty for pre-age 59½ distributions to switch to another method to avoid depleting their retirement funds early due to market declines. The constant stream of regulatory changes illustrates the primary peril of using a book of this nature; the practitioner must update any book's research and commentary with a review of recent developments.

Subsequent chapters provide accurate and eminently readable explanations of the income tax, estate and gift tax treatment of retirement plan distributions, spousal rights (applicable to qualified plans, but not IRAs), and planning suggestions for clients before and at retirement and for beneficiaries of deceased retirement account owners. Mezzullo details how spousal rollovers and conduit IRAs work and what to consider when deciding whether to qualify retirement plan assets for the marital deduction, a charitable gift, or to fund the estate tax exemption. Appendices provide case study illustrations; sample beneficiary designation language; useful charts (although the life expectancy charts have been superseded by the addendum); and cross-references to applicable cases, statutes, and IRS pronouncements.

An Estate Planner's Guide to Qualified Retirement Plan Benefits fulfills its promise and would be a valuable addition to the library of any lawyer engaged in estate planning or retirement planning. This book guides attorneys in advising clients how to achieve their estate planning goals while avoiding the pitfalls associated with retirement assets that may be subject to both estate and income taxes. A more generous use of subheadings and bullet points would help steer a user's eyes more quickly to the answers to specific questions, the prevalence of acronyms

(defined in an appendix) might be annoying to a newcomer to the area, and even more sample document language would be appreciated. However, these are minor imperfections in this straightforward and practical survey of an increasingly significant and complex subject.

THROUGH THE CLIENT'S EYES: NEW APPROACHES TO GET CLIENTS TO HIRE YOU AGAIN AND AGAIN (SECOND EDITION)

By Henry W. Ewalt (Chicago, IL, American Bar Association Law Practice Management Section, 2002) [ABA, 750 N. Lake Shore Drive, Chicago, IL 60611; order from ABA Book Publishing, (800) 285-2221 or www.ababooks.com; product number 511-0480]; 275 pp.; \$69.95 for ABA Law Practice Management Section members; \$79.95 for non-members.

Reviewed by Ari B. Gould

A solo practitioner in Denver, Colorado, and former chair of the Colorado Bar Association Solo/Small Practice Section.

In this day and age of practicing law, with the competitive nature of the legal marketplace, any resource that can assist a practicing attorney in obtaining and keeping clients is a welcomed resource. *Through the Client's Eyes: New Approaches to Get Clients to Hire You Again and Again* by Henry W. Ewalt is such a resource. Ewalt puts forth a number of strategies and ideas, from building healthy and positive attorney-client relations to marketing and attorney referral techniques.

A common theme is that many attorneys overlook the importance of client relations in their practices and concentrate too heavily on substantive law. From the perspective of building and maintaining a client base, it is just as important that the attorney have a solid relationship with the client as it is to be well versed in the law on the client's particular case. Legal scholars may object to this statement, but the bottom line is that without clients there is no law practice. Client satisfaction, therefore, is paramount. This is the crux of the book, which is based on Ewalt's many years in practice, both as corporate counsel and as a solo practitioner.

While some of the precepts of *Through the Client's Eyes* may smack of common sense, the book provides insightful hints on the keys to getting and keeping clients; for example: building trust; practicing effective communication; exhibiting a genuine interest in the client on a personal, as well as a business, level; and giving the client a sense of certainty (or at least reducing uncertainty) about the possible outcome of the case.

Client perception is critical. The book is full of ideas about how to get clients to perceive their attorneys in a positive light. These ideas are applicable to all practicing attorneys and firms—those in solo or small firms and big firms, as well as corporate counsel. However, the book is geared primarily to the solo attorney or small firm, especially to the attorney just starting his or her own practice. The longest chapter is devoted to the solo practice or firms with three or fewer attorneys. This makes sense, because small firms generally do not have the financial wherewithal to formalize a plan to enhance client relations.

Through the Client's Eyes is organized well and is easy to follow. Moreover, the subject matter is straightforward and uncomplicated. It aptly covers the areas that attorneys might expect in dealing with getting and keeping clients. For example,

the book not only addresses technology, but also the types of technology that might enhance client relations versus those that might impede client relations, such as e-mail.

Moreover, the book focuses on the importance of client satisfaction and how to obtain it, topics that few law school curricula have covered. All practicing attorneys, especially those seeking to start their own practices, may be assisted by the finer points of human relations. Attorneys who learn how to relate to their clients most effectively will generate greater client satisfaction and, in turn, an increased client base. Enhanced client satisfaction also should serve to improve the public image of lawyers. For that alone, the book is "worth the price of admission."

ALI-ABA'S PRACTICE CHECKLIST MANUAL ON TRIAL ADVOCACY: CHECKLISTS AND ADVICE FROM THE PRACTICAL LITIGATOR

By ALI-ABA Continuing Legal Education (Phila., PA: ALI-ABA Continuing Legal Education, 2001) [ALI-ABA, 4025 Chestnut St., Phila., PA 19104-3099; (800) 253-6397, ext. 7000; fax: (215) 243-1664; online at www.ali-aba.org/aliaba/F149.htm]; 304 pp., with free CD-ROM; \$95, plus \$4 for shipping and handling.

Reviewed by N. Reid Neureiter

A Member with the firm of Jacobs Chase Frick Kleinkopf & Kelley LLC, Denver, Colorado, with an emphasis in complex commercial litigation.

ALI-ABA has produced its second *Practice Checklist Manual on Trial Advocacy: Checklists and Advice from The Practical Litigator* ("Manual"). The second volume reproduces updated versions of articles originally published in ALI-ABA's *The Practical Litigator* magazine. The chapters are written by litigators (and some judges) with years of accumulated trial experience. According to the foreword, this new book is intended to form a "current practical guide to effective trial advocacy."

Chapters are organized in six general categories: (1) pretrial preparation (e-mail discovery, mediation, expert witness preparation, the importance of privilege logs); (2) depositions (witness preparation, deposing experts, use of a video deposition); (3) *voir dire* (use of juror questionnaires, mistakes in *voir dire*); (4) trial practice (courtroom presentation and performance, evidence authentication, technology in the courtroom); (5) examining and cross-examining witnesses (dealing with opposing experts, cross-examination in different types of cases); and (6) closing arguments and appeals (guide to effective closing argument, pointers for better brief writing). Although the *Manual* is somewhat scattershot in terms of the category areas, there is a strong focus on discovery strategy, particularly expert discovery in light of the *Daubert* and *Kumho Tire* decisions and the associated revisions to the Federal Rules of Civil Procedure ("F.R.C.P.").

The "checklist" element of the publication entails beginning each of the thirty-four distinct chapters with a short checklist of directions or commandments, preceded by a little box, presumably for the practitioner to "check off" before launching into that particular litigation arena. Thus, the chapter entitled "Ten Steps to Preparing for a Mediation" includes in its checklist such items as "Identify the disputed issues," and "Plan your