

# **PROCLAMATION**

## **First Judicial District Bar Association**

### **OCTOBER 2020**



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## PRESIDENT'S COLUMN

Samantha Lillehoff  
1st JD Bar Association President

“We make up horrors to help us cope with the real ones.”  
—Stephen King

Those who share an affinity for the macabre may celebrate the Halloween season in various ways, watching horror movies, donning gruesome disguises, or eating far too much processed sugar, all to feel a chilling yet entertaining and cathartic sense of horror. The Halloween season allows us to come face to face with our fears and the reality of our mortality in an ideally controlled environment. But what do people do when their contrived nightmares meant for mere entertainment become real? As it turns out, some of them sue.

In *Western World Ins. Co. v. Markel American Ins. Co.*, 677 F.3d 1266 (10th Cir. 2012), a man was working outside of a haunted house in peak season, checking admission tickets at night by flashlight. After his flashlight died, he entered the haunted house to find a replacement, guided only by the light of his cellphone. The cellphone light disturbed one of the actors, who told the man to turn off his light. The man complied and continued making his way in almost complete darkness. The flashlights were stored in a location that in hindsight was unfortunate, to say the least: a freight elevator. The man reached the elevator, pulled down the grate, and stepped inside, only to realize too late that the elevator was on the floor above him as he fell down the 20-foot elevator shaft. The man eventually recovered and received a settlement. If I were in that situation, I don't know whether I would walk away more afraid of the dark or heights (or both).

A local case, *LaFondFX, Inc. v. Kopelman*, No. 16-cv-00726-RBJ, 2017 WL 4621733 (D. Colo. Sept. 20, 2017), involved breach of contract claims arising from the construction of two haunted houses. One of the central factual disputes was whether the contractor properly applied fire retardant, evoking one's fear of fire and possibly claustrophobia. Luckily for the contractor and the haunted houses' corporeal inhabitants, the court found in favor of the contractor on this matter.

Journeying outside of the 10th Circuit, *Allen v. Ghoulis Gallery*, Civil No. 06cv371 NLS, 2007 WL 4207923 (S.D. Cal. Nov. 20, 2007), details a bitter rivalry between competing artists who create changing portraits—that is, portraits that look like regular people and items from one angle but transform into horrible and terrifying images from another. One can glean from the record that the parties feared that their respective competitor's actions would cost them their livelihood. However, per witness testimony relied upon by the court, the parties lost potential customers as a result of their own increasingly hostile and unprofessional words and actions. This may be a cautionary tale to take care not to become the thing you fear lest you lose everything, but according to a brief internet search, it seems that both parties are still in business.

Continued on page 3

A sadly common instance of a slip-and-fall occurring at a haunted house occurred in *Davis v. Dungeons of Delhi*, 135 N.E.3d 469 (Ohio Ct. App. 2019). Here, a woman fell after she was chased by an actor dressed like a ghoul out of a haunted house. One goes to a haunted house presumable expecting to be scared to some degree, but *how* scared is *too* scared, going beyond any risk assumed by the haunt's patron? This factual issue precluded summary judgment in this case, resulting in the case being remanded for further proceedings.

This last case honestly gave me the heebie-jeebies. In *Milbert v. Wells Twp. Haunted House, Inc.*, 70 N.E.3d 1143 (Ohio Ct. App. 2016), a haunted house contained a ride sure to thrill those who get a kick out of being buried alive and those who fear heights. Patrons would climb to the haunted house's second floor, and two or three would lie side by side in a large coffin that would then be bolted shut. The coffin then drops quickly to the first floor and springs into an upright position, and an operator would then open the coffin lid and release the happily terrified patrons. If that doesn't sound like a scary time to you, then imagine lying in that coffin in the dark and beginning the drop to the first floor, only to fly out of the coffin mid-drop because the lid was not firmly bolted shut. This tragically happened to the plaintiff here, whose allegations that the ride was negligently designed and/or constructed were strong enough to survive summary judgment.

Many of us will participate in Halloween activities this season, seeking some kind of catharsis by means of seeking out pretend, fearsome things. Keep in mind, though, situations like those noted above, where Kruegeresque horrors we think we've made up for fun escape our control and cause nightmares to have real consequences.

## **COURAGE GARDEN DAMAGED BY FIRE**

On Wednesday, October 7 an arson fire damaged the Courage Garden located behind the Jefferson County Courthouse. The gazebo was destroyed along with trees and groundcover. The Courage Garden is a sacred place of respite for hundreds of victims of violent crime in Jefferson county. Claudia Miller, a former member of the 1st JD Bar Association is honored in the garden. Thankfully, Claudia's plaque was not damaged.

If you would like to donate to this worthy cause you will find a link below that gives a history of the garden and provides an option to contribute to the rebuilding.

<https://www.victimoutreach.org/index.php>

The 1st JD Bar  
Association and  
the Golf Committee  
are pleased to announce  
the contribution from the Golf  
Tournament for COURT SUPPORT  
is \$4,975.

Thank you to the players,  
sponsors and volunteers for  
a successful event.

**SEE YOU NEXT YEAR**

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Pesch Law Office PC [Dispute Resolution Division](#) announces virtual mediation services via Zoom. Please contact our lead mediator, Amber Hill Anderson, MA at [amber@peschlawoffice.com](mailto:amber@peschlawoffice.com) for more information.

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FIRST JD BAR ASSOCIATION

Virtual CLE Luncheon  
Tuesday November 10, 2020  
First JD Members \$10  
Non First JD Members \$15

**DENNIS B. POLK**  
**Holley, Albertson & Polk, P.C.**

**Taking Effective Depositions**

Virtual CLE  
Presented via Ring Central

You Must Register to Attend

<https://1stjd.org/events/#!event/2020/11/10/dennis-b-polk-taking-effective-depositions>

OR

[admin@1stjd.org](mailto:admin@1stjd.org)

Information regarding attendance procedures  
will be provided after registration

CLE Credit Requested

## COMMITTEE UPDATE

The following 1st JD Bar Association committees are open to additional volunteers. If you are interested, respond to [admin@1stJD.org](mailto:admin@1stJD.org).

BANQUET	Plans and coordinates the annual Judges and Awards Banquet
CLE	Plans and coordinates continuing legal education programs
COMMUNITY RELATIONS	Develops and coordinates various events designed to promote the goals of the Bar Association.
GOLF	Responsible for the annual Golf Tournament
PROFESSIONALISM	Plans and organizes professionalism programs for the membership

## SEEKING WRITERS FOR THE PROCLAMATION

Are you a budding poet?  
Do you have a short story about your travels?  
Have an interesting legal topic to address?  
Nearly finished writing the next Great American Novel?

Send your musings to [admin@1stjd.org](mailto:admin@1stjd.org).

"One day I will find the right words, and they will be simple."

--Jack Kerouac, The Dharma Bums





**YOU PROVIDE THE TRAINING AND WE'LL PROVIDE THE PAY!**

In this changing economy, businesses need employees who pursue lifelong learning and skills development. To meet that need, we've created a collaborative, structured internship program that's free to businesses.

“  
Getting a professional, adult intern through this program was an invaluable tool for our organization”

- Nola Krajewski, Golden Chamber of Commerce



Jefferson County Business and Workforce provides quality training, tools, and resources to assist businesses with talent development, and individuals with their educational and career goals.

**For more information about internships:**

Diana Herring-Stark  
Business Outreach Specialist  
303.271.4620  
TTY/TDD 800.659.3656  
[dhstark@jeffco.us](mailto:dhstark@jeffco.us)

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