

## In Memoriam

### John E. Moye

August 15, 1944–May 27, 2022



The Colorado legal community mourns the loss of pioneering attorney, philanthropist, and civil leader John E. Moye, who passed away on May 27, 2022, due to complications from Parkinson's disease. John was deeply devoted to the firm he built and led since 1976, and to his family, friends, partners, and clients.

Born in Deadwood, South Dakota, to Margaret and Jeff Moye on August 15, 1944, John was a precocious and mischievous only child. He inherited his sense of humor from his father, who penned his own obituary. It simply read, "Jeff Moye left Deadwood yesterday and is not expected to return."

John was a dedicated pianist and student who attended the University of Notre Dame, where he met his college sweetheart and later wife, Patti Theisen. He was also known as DJ Johnny Mopp on the ubiquitous Topsy Rock and Roll program at WNDU.

He attended Cornell Law School, where he graduated with distinction followed by a four-year station at Lowry Air Force Base in Denver. In 1976, he founded a law firm that has evolved over several decades, now known as Moye White. While known for his impeccable dress in custom-tailored suits, John became even more recognized for his genuine approachability, deep compassion, and commitment to a creative, intellectual, and ethical culture within the firm.

John's professional expertise included contracts, corporate, commercial, banking, and partnership law. He chose contracts to spite one of one of his Cornell professors who told him that he "would never understand contracts." He especially loved the intricacies

of the language of contracts and wrote "The Contracts Rap," which articulates more than 60 contract law concepts through memorable rhyming couplets and serves as a mnemonic for thousands of graduate students through his legendary bar exam lectures.

John authored several books, including legal texts on corporations, partnerships, business organizations, federal jurisdiction, and the Uniform Commercial Code. He was a professor and associate dean of academic affairs at the University of Denver Law School, where he was awarded an honorary Doctorate of Law for his commitment to legal education.

John's other commitments extended to dozens of nonprofit and for-profit organizations. In addition to serving as president of the Colorado Bar Association, he served as chair of the Colorado Historical Foundation, the Board of Law Examiners, the Stapleton Development Corporation, the Denver Urban Renewal Authority, and Downtown Denver, Inc. He also served as director of the Denver Botanic Gardens and Colorado Public Radio, Inc.

In 2006, along with Supreme Court Justice Rebecca Kourlis and Chancellor Emeritus Dan Richie, he cofounded the Institute for the Advancement of the American Legal System (IAALS), an independent research center at the University of Denver. He traveled internationally to study models in countries like New Zealand and was inspired by intelligent and compassionately streamlined legal systems that better served all parties. In 2016, John Moye Hall was dedicated to him at the University of Denver, where IAALS continues to operate.

Throughout his career, John won countless awards for outstanding leadership, law practice, and civic contributions, only some of which include the Award of Merit, the Colorado Bar Association's highest honor (2005), and the Dana Crawford Award for Excellence in Historic

Preservation (2017). He was a member of The Order of the Coif, Phi Kappa Phi.

In his free time, John loved playing the piano, cycling, gambling in Las Vegas with his best friend Steven Levine, and spending quality time with family in Italy, his grandparents' birthplace.

He is survived by his daughters Kelly (Mark) Moye, Mary (Tom) Moye Monroe, and Megan (Chris) Zacher; his stepdaughter Rachael Portnoy; his grandchildren Madeleine Heroux, Tucker Heroux, Chelsea Monroe, Zoey Monroe, and Zander Zacher; and his trusty dog Joe Biden, who was named long before the presidency.

### Remembering Professor John Moye



I first met Professor John E. Moye in the fall quarter of 1975 at the University of Denver College of Law. My fellow 2Ls and I were taking our first truly practical law school class, "The Law of Business Associations," taught by an energetic new instructor named John Moye. We were thrilled to learn that Professor Moye had actually authored the textbook. (We would not be reading the text of some long-deceased Harvard professor!) Professor Moye greeted us from the lectern and welcomed us with a broad smile.

Professor Moye drove a Porsche 911 Targa in which he had installed the latest technology wonder—a cell phone. Humorous and competitive, Professor Moye offered the student with the top final exam score a full hour in the driver's seat of the Porsche, with full use of the phone (no international calls please). He had an encyclopedic knowledge of pop culture and music, and he often spelled out legal principles in rhyme or using television jingles for well-known products. A partnership was "a voluntary association of two or more persons engaged in a business for profit" (sung to the tune of McDonald's "two all-beef patties, special sauce, lettuce, cheese . . .").

For those of us who had gone to law school to receive a practical education—to develop

forward-looking, career-relevant skills—Moye's course fed directly into our expectations and needs. John never hesitated to offer his classes to the evening division. He was as accessible to the older students with families and day jobs as he was to those of us who came to law school directly out of a four-year college.

After taking his Business Associations course, I immediately signed up for Moye's next class on offer. It was a study of the Uniform Commercial Code, recently adopted in Colorado. It was the trifecta: Sales, Negotiable Instruments, and Secured Transactions.

If John did anything as an instructor, it was to set an example. Clearly, he loved what he was doing. His ebullient spirit, engaging wit, and kindness demonstrated that success in law could be fun—and that, in the business and enterprise fields, a young lawyer could find gratification by helping people.

Dean Robert Yegge's office was on the ground level at the Southeast corner of the law building at 200 W. 14th Ave. I had been hauled into Yegge's office a few times because I had some low-level committee position with student government. Dean Yegge asked me to help with the student newsletter he wanted to start. My first assignment was to profile Professor John Moye.

During the newsletter interviews, John and I became friends. I was fascinated by his personal story. He had grown up in Deadwood, South Dakota. He was the South Dakota state piano champion and went to nationals, where he played Rachmaninov. Here was a man who could recite TV jingles and make informed academic reference to Russian composers. John described being a DJ and his experiences as the owner of a seasonal tax preparation service while an undergraduate at Notre Dame. He left South Bend for Cornell Law School. There, he said, he worked six days a week around the clock, taking only Saturdays and Sunday mornings off for his young family. The long hours paid off: he made Order of the Coif and Law Review.<sup>1</sup>

John graduated from Cornell in 1968. He passed the New York bar and was admitted that year. John explained that he had received financial assistance from the US Air Force. Although he had planned to work on Wall Street, the Air

Force sent him to Colorado in the early 1970s to serve out his obligation. He was admitted to the Colorado bar, appropriately, on tax day, April 15, 1971. While working for the USAF, John was writing his book on the law of corporations for West Publishing Company. John explained that West didn't want its books to be written by "some captain in the Air Force." West wanted John to have an "academic affiliation." John was serving at the Air Force Academy campus. Denver Law was the closest law school. John called Dean Yegge. Yegge knew a good thing when he saw it. John Moye was immediately hired and given an office in the law school.

The simplest way to summarize what students at the law school thought of John was: "If you wanted to learn something, take the class from Moye."

The same held true for bar review. We were startled, and elated, to see that Moye was on the program for Corporations, Contracts, and UCC. We couldn't understand how Moye found the energy, time, and space to do bar review and carry a full load at the law school and find time for his successful young law firm. Bar review classes were conducted in the gymnasium of the Jewish Community Center. We were all pleased to see the new Porsche in the parking lot. Thanks to Moye, and taking to heart his example of hard work and long hours, I passed the February 1977 bar exam.

Soon after I started my own firm, I purchased a 1984 Datsun 280ZX. The hatchback X-model left enough room under the floor in the left rear wheel well to install a new Motorola cell phone transceiver; the handset was wired to the console next to the brake handle. My first cell phone call was to John.

Many lawyers would turn to John for professional advice and legal services. When Linda and I founded our own firm, John and his associate, Sheri Visani, wrote the articles, bylaws, compliance documents, and employment contracts for the firm. Later, his firm prepared an estate plan for us to protect our children in the event that Linda and I were "wiped out."

One time, John represented us in a potential a law firm merger. The sticking point was how to manage the debt of the incoming law firm. John called my cell phone while we were on our

commute to suggest the new firm could solve the problem were it to issue a debenture. He knew we had him on speaker, and he couldn't resist the opportunity. In comedy he morphed to a denture paste commercial. He acted out both the announcer and singer. His words came at us with a slight, loose-tooth whistle. Thus, he made sure that we understood the purpose and intent of the debt instrument and gave us a laugh along the way.

John never missed a law school reunion. He narrated the annual Law Stars event because he had the best microphone voice in the community. His favorite lunch spots were the University Club and The Palm. John knew every staff member and server by name, and he was sure to give them a hello, a handshake, and a smile.

We heard earlier this spring that John was ill. He wasn't one to sit still or slow down. It was no surprise to learn he had passed on quietly. Our hearts go out to his family, his friends, his colleagues at the Sturm, and his firm.

Across Colorado's legal community, every day, some lawyer remembers and implements a lesson taught by John Moye—from the well of the classroom, a text, a CLE, the bar review, or by example. And those lessons and the lawyer's actions will improve someone's life, help a person's business, or boost a young law student's prospect of success. That's the legacy of our friend and mentor John E. Moye.

—Jim Chalat, June 2022 

#### NOTE

1. Moye, "Fourteenth Amendment Congressional Power to Legislate Against Private Discriminations: The Guest Case," 52 *Cornell L. Rev.* 586 (1967); Wenk Jr. and Moye, "Debtor-Creditor Remedies: A New Proposal," 54 *Cornell L. Rev.* 249 (1969).

In Memoriam honors the life and work of recently deceased CBA members. Email submissions to Susie Klein at [sklein@colorado.org](mailto:sklein@colorado.org). High-resolution photos are appreciated.

# Colorado Supreme Court Colorado Judicial Ethics Advisory Board (CJEAB)

## C.J.E.A.B. Advisory Opinion 2022-03 (Finalized and effective May 18, 2022)

### Background

Colorado Mountain College (“CMC”) is a public community college with several campuses in western Colorado. The CMC Board of Trustees has seven at-large seats, which are elected by

the voters in the six counties that make up the CMC District. See C.R.S. § 23-71-123.1. The Board of Trustees is responsible for hiring and evaluating CMC’s president, approving the college budget, certifying the mill levy, working with the college president to develop a strategic plan, monitoring CMC’s progress, and acting in CMC’s best interests.

The requesting judge has been approached to run for election as a regional trustee.

### Issue Presented

Whether the requesting judge may run for election and, if successful, serve as a trustee of CMC without violating the Code of Judicial Conduct (“Code”).

### Summary

Colorado follows the “resign to run” rule, which requires judges to resign from judicial office upon becoming a candidate for nonjudicial elective office. While the requesting judge could serve as a trustee of CMC if he volunteered or was appointed to the position, Rule 4.4(A) prohibits the judge from running for election unless he resigns from judicial office.

### Applicable Provisions of the Code

Rule 3.7 governs the extent to which judges may participate in certain extrajudicial activities “sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.” Rule 3.7(A) (6) permits judges to

serve as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

- (a) will be engaged in proceedings that would ordinarily come before the judge; or
- (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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Canon 4 provides that a judge "shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." Rule 4.4(A) provides that "[u]pon becoming a candidate for nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office."

### Analysis

The question before the CJEAB is whether the requesting judge may run for election to a trustee position for CMC and, if successful, serve in that capacity. Although Rule 3.7(A)(6) permits serving as a CMC trustee, Rule 4.4(A) prohibits running for nonjudicial elective office while maintaining judicial office. Thus, while the judge could serve if he volunteered or was appointed as a trustee, he may not run for office.

The commentary to Rule 4.4 explains why judges may not run for nonjudicial elective office, even if the position is apolitical or nonpartisan:

In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

C.J.C. Rule 4.4, cmt. [1]. Comment [2] explains that "the 'resign to run' rule . . . ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaigning retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the 'resign to run' rule."

Colorado courts have not yet considered the resign to run rule, but other jurisdictions with similar provisions have concluded that judges

are prohibited from becoming candidates for election to nonjudicial office, including school boards. See, e.g., NV Standing Comm. on Jud. Ethics & Election Pract. Op. JE 98-001 (June 15, 1998) (non-partisan municipal judge may not run for and serve, if elected, as a non-partisan, unpaid regent of the University of Nevada); KS Jud. Eth. Adv. Op. JE 56 (June 15, 1995) (municipal court judge elected to the board of education prior to becoming a judge and before the code of judicial conduct was amended may finish serving her term of office on the board but must resign judgeship if she intends to become a candidate for elected school board office again); NY Jud. Adv. Comm. Joint Op. 89-157, 90-7 (Jan. 18, 1990) (in light of prohibition against judges campaigning for other elective offices, a part-time judge may not seek election to local board of education without resigning from judicial office); WA Ethics Adv. Comm. Op. 85-08 (Oct. 1, 1985) (improper for part-time municipal court judge to continue in judicial position while running as a candidate for the school board even though school district is outside of municipality where judge sits).

### Conclusion

Unless the requesting judge resigns from judicial office, the judge may not run for election to CMC's Board of Trustees under Rule 4.4(A). FINALIZED AND EFFECTIVE this 18th day of May, 2022.

### Note

1. Colorado Mountain College Board of Trustees, available at Board of Trustees-Colorado Mountain College ([coloradomtn.edu](http://coloradomtn.edu)).

CJEAB opinions are available on the Supreme Court's website. Material printed in Court Business appears as submitted by the Court and has not been edited by *Colorado Lawyer* staff.

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