

The Marin Lawyer

An Official Publication of the Marin County Bar Association

November 2006

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GENERAL MEMBERSHIP MEETING ANNUAL JUDGES LUNCHEON: HEAR THE LATEST FROM THE BENCH

The annual Judges Luncheon will be held on Wednesday, November 29th from 12:00 to 1:30 p.m. at the Embassy Suites Hotel. Presiding Judge Lynn Duryee will discuss the state of the court and upcoming changes of assignments for 2007. Following these remarks, Judge Duryee will answer questions. See page 2 for the reservation form.

This event also serves as the November General Membership Meeting and will include the election of Officers and Directors for the Marin County Bar Association for 2007 .

The Nominating Committee's slate of 2007 Officer nominees is: Ed Berberian (President-Elect), Marlene Getchell (Treasurer), Beth Jordan (Secretary), Myron Greenberg (Five year Past-President).

The nominees for Director are: Frederick Bradley, Elizabeth Brekhus, Tim Chambers, Houman Chitsaz and Jordan Lavinsky - 3 year terms; and Louis Franecke - 2 year term.

Calendar of Events

November 29th
Annual Judges' Luncheon
Embassy Suites, 12 - 1:30 pm

November 2nd
Insurance Law Seminar, 4 - 6 pm

November 14th
Probate & Trusts Mentor Group
12 - 1:30 pm

November 15th
Probate & Estate Planning
Section Meeting, 12 - 1:30 pm

ADR Section Meeting
12-1:30 pm

November 16th
Real Property Section
12 - 1:30 pm

November 20th
Employment Law Section
12 - 1 pm

Look for details each month in
The Marin Lawyer

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Lisa Goldfien was guest editor of this issue of *The Marin Lawyer*. Philip R. Diamond is Series Editor for 2006.

BOUNDARY DISPUTES: LIMITATIONS ON THE USE OF PRESCRIPTIVE EASEMENTS

By: *Todd W. Smith**

When English author Gilbert K. Chesterson wrote "The Bible tells us to love our neighbors, and also to love our enemies, because generally they are the same people," he could well have had a common boundary dispute in mind. It seems nothing can turn neighbors into enemies quicker than the discovery of, for example, a fence or corner of a deck placed on the "wrong" side of a property line. For practitioners in this area of law, the client's refrain is inevitably the same, depending upon whose improvement lies on whose property: the paper title holder wonders at the audacity of his or her neighbors seeking to use for free land that does not belong to them; the encroacher wonders at the gall of his or her neighbor who suddenly seeks to change or terminate a long-standing use of land.

(Continued on page 16.)



PRESIDENT'S MESSAGE

A VOLUNTEER CHALLENGE, PART II

By Dan Harris

I made a challenge to each of you in my October President's Message to try to increase your volunteer activity. I wrote that, in the month of October, I would volunteer for approximately 1-2 hours at each of the agencies that comprise the Marin Justice Center. The month is almost over and I wanted to share my experiences with you.

First, all of the Justice Center agencies were very supportive of my challenge and tried very hard to accommodate my schedule. Understandably, the nature of the work done at a number of the agencies did not lend itself readily to short-term volunteers, so I was unable to volunteer at all of the agencies. (I strongly encourage these agencies to take a closer look at their programs to see if they could utilize short-term volunteers in the future.) I am on "stand-by" at Fair Housing of Marin and Canal Alliance to assist in discrete legal research or other projects as they arise.

On October 12, as part of Binational Health Week, I worked a Justice Center table at the San Geronimo Valley Cultural Center providing legal resource information to individuals seeking information about medical and health services. Our table was not very active while I was there, so I did not get to do very much, but I was able nonetheless to get to know some Legal Aid staff.

On October 17, I had a brown-bag lunch with the staff of the Self-Help Legal Center. I shared my knowledge of and experience with the enforcement and collection of

judgments, a subject frequently raised by SHLC customers. The staff was friendly and eager to learn, and I was blown away by their knowledge of the subtleties of this area of law and the sophistication of the questions they posed. This was a truly rewarding experience, and it was a good refresher for me, too. (Thanks to the hard work of MCBA-er Mark Rice, MCBA members will conduct these meetings regularly on a variety of legal subjects, and little to no preparation is required. Please contact Mark if you would like to help out.)

On October 26, I will be attending a community forum held by the Marin Community Foundation to discuss its new initiating grants program. The effect of this program is to shift funds from ongoing programs, like the Justice Center, to new programs. The financial effect of this policy shift could be devastating for Justice Center agencies, and I will voice MCBA's support for continued funding of the Justice Center.

On November 1, I will be volunteering at Legal Aid's advice clinic, where volunteers give advice to individuals on a variety of legal issues, such as personal injury, public benefits, contract matters, etc. I have volunteered for this clinic before and it is highly rewarding. Often, what the individuals I have met with need the most is someone with a good head on his/her shoulders to offer some practical advice and guide them in the right direction. It is a very humbling experience and helps provide some perspective (which is easy to lose here in Marin).

In all, this past month has given me the opportunity to make a small difference in the lives of a number of Marin-ites, and to work with a number of wonderful, committed people trying mightily to improve our community. In the process, I have been enriched personally and professionally. It was time well spent, it feels great, and I look forward to volunteering again in the future. You should do it too.

RESERVATION FORM General Membership Meeting Speaker: Judge Lynn Duryee

Please make _____ reservations for me at the Embassy Suites Hotel in San Rafael, on Wednesday, November 29, 2006: 12-1:30p.m.

Please choose one: ___ Grilled Salmon ___ Champagne Chicken ___ Grilled Vegetable Plate

Name or Firm Name: _____ Phone: _____

Enclosed check for _____ (\$35 MCBA Members; \$45 non-members)

Visa Mastercard _____ Exp _____

Please, we must have RSVP's by Nov. 22, 2006

Make checks payable to MCBA and mail to: 30 North San Pedro Road, Ste. 140, San Rafael 94903.
Reservations are non-refundable unless the individual provides at least 24 hours cancellation notice to MCBA.



MELBA BEALS TELLS BAR MEMBERS ABOUT THE “LITTLE ROCK NINE”

By Lisa Goldfien

She just wanted to experience what was inside of Central High School. That, Melba Patillo Beals told a rapt audience of Marin lawyers, judges, officials and students, was her motivation for volunteering to be among the first group of black students to enroll at all-white Central High School in Little Rock, Arkansas in 1957.

Speaking at the Marin County Bar Association’s September 27, 2006 General Membership Meeting at the Seafood Peddler, Beals described her experiences as one of the “Little Rock Nine,” the nine teenagers who made history by integrating Central High School almost fifty years ago. Beals’ dream of sharing in the wealth of opportunities offered at the school, which, both physically and in resources, dwarfed the local black high school, quickly turned into a terrifying nightmare when the arriving teens were confronted and chased by angry mobs and death threats.

The fierce, ugly opposition, supported by the Governor of Arkansas, continued until President Eisenhower ordered in the Army’s 101st Airborne Division to escort the students to school and control the mobs. But despite the protection provided by the soldiers, in the year ahead, Beals and the other eight students were subjected to continuing harassment and physical danger. Beals was assaulted with acid in her face on one occasion, and was injured another time when her chair was covered with peanut butter mixed with broken glass.

Beals noted that her terrifying experience affected the families of the students as well. Her own family was devastated. After her first year at Central High School, a \$10,000 “reward” was offered for anyone who hurt or injured one of the black teens. Faced with this threat, Beals and her family decided she should leave Little Rock and relocate to the Bay Area and a new life with a white family. In the Bay Area, she was still in the minority at her schools, but at least she did not encounter the same hostilities.

But while Beals’ life was irrevocably altered by the events of 1957, and while she is frank to say that she would not wish the experience on her own children, she cherishes the life she has created as a result. She eventually earned a Master’s Degree in journalism from Columbia University,

worked in television and radio news, and wrote for numerous print publications. She has also written best-selling books, including her account of the events at Central High, *Warriors Don’t Cry: A Searing Memoir of the Battle to Integrate Little Rock Central High School*. Currently, Beals is Chair of Dominican University’s Communications Department.

In 1998, Congress awarded Beals and the rest of the Little Rock Nine the Congressional Gold Medal, the nation’s highest civilian honor. Other honors have been bestowed on the nine, including a life-sized statue of the Little Rock Nine on the grounds of the Arkansas Capitol and a commemorative postage stamp.

From the questions she received after her talk, it was clear that the audience was moved and inspired by Beals’ courage and sacrifices. In response to questions, Beals credited her faith, her sense of humor, and the support of many, many people with seeing her through her ordeal. She had special praise for the attorneys working for so long to enable her and her fellow students to enter Central High, and fighting the battles that followed in the war for equality. Calling lawyers the “guardians” of equal rights, Beals emphasized the importance of the legal profession in continuing to fight to protect fundamental human freedoms.

HANSON BRIDGETT “LOANS A LAWYER” TO LEGAL AID

By Lisa Goldfien

One of the first challenges Paul Cohen faced in his new job as Executive Director of Legal Aid of Marin was to fill a temporary shortage in his staff without creating a new burden on the agency's budget. Staff attorney Jenie Chang, who handles juvenile dependency cases for Legal Aid, was scheduled to go on maternity leave in October, creating a temporary need for an attorney to cover her cases. So Cohen sent out a call for help, contacting the pro bono coordinators at several firms to see whether they might be interested in loaning an attorney to Legal Aid. To Cohen's delight, the firm of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP answered the call, agreeing to provide one of the firm's associates to Legal Aid full time for two months while Ms. Chang is on leave.

Cohen's proposal was particularly appealing to Andrew Giacomini, who serves not only as the Managing Partner at Hanson Bridgett, but also as President of the Board of Legal Aid of Marin. According to Giacomini, Hanson Bridgett, with offices in San Francisco, Larkspur and Sacramento, is strongly committed to providing pro bono services. "We give back to the communities we serve in," says Giacomini, who notes that the firm has established a major pro bono partner in each of the communities in which the firm has offices. Legal Aid of Marin is Hanson Bridgett's Marin partner, and has benefited from the firm's pro bono efforts for many years.

Hanson Bridgett actively encourages its attorneys to engage in pro bono work, allowing each associate to bill up to 150 hours per year of pro bono work. But Giacomini says that Hanson Bridgett has been interested for some time in finding a "loan-a-lawyer" type program in a pro bono setting, having participated productively in similar programs with private clients. After learning of Legal Aid's need, Giacomini contacted the chair of Hanson Bridgett's Pro Bono Committee, associate attorney Julie Veit, who also recognized an opportunity to try a new type of pro bono program that could benefit both the Marin community and the firm. Veit took the lead in gathering information to present the proposal to the firm's Administrative Committee, and when the Committee approved the proposal, Veit was chosen to fill in for Chang at Legal Aid.

Veit, who has worked at Hanson Bridgett since 2000, except for a stint clerking for the Honorable Edward C. Reed, Jr. in the United States District Court in Reno, Nevada, is excited to have this opportunity, which she considers a unique chance both to give back to the community, and to experience more direct client contact and advance her own legal skills. Taking over Ms. Chang's duties, Veit will provide direct representation of clients in juvenile dependency proceedings, including hearings, trials, settle-

ment conferences, and mediations. Legal Aid handles such cases under a contract with the State Administrative Office of the Courts' Center for Families, Children & the Courts, and primarily serves as attorney for one of the parents in a proceeding. Veit underwent several hours of online and onsite training before starting her new position at the beginning of October. She expects to be working full time in-house at Legal Aid until at least early December, putting in approximately 240 to 280 hours.

Giacomini also believes that placing one of Hanson Bridgett's associates in-house at Legal Aid is a "win-win" situation for the agency and the firm. In addition to advancing Hanson Bridgett's public service policies, Giacomini knows that Veit will be in court frequently, assuming a great deal of responsibility and dealing with very difficult problems. He feels that the experience is not about learning a specific substantive area of law, but rather is a tremendous growth experience that will make Veit a better lawyer.

Giacomini says that if this project is successful, he thinks the firm will try to find another similar program in the future. Executive Director Cohen couldn't be more pleased. He says Hanson Bridgett's generous donation of attorney time means a great deal to Legal Aid, and he also hopes the firm's example will cause other firms to consider participating in such programs, and to revitalize the commitment of individual members of the Bar to participate in the agency's pro bono panel to provide needed services to the Marin community.

COURT WEBSITE AND COPIER UPDATE

By Sara Allman

Thanks to the efforts of Court Executive Officer Kim Turner, and the court's Information Technology department, two improvements have been made to the court's website which should facilitate your ability to retrieve information. First, you may now limit your case search to the civil calendar only, without having to wade through the calendar of all other matters. Second, you may access the court's tentative rulings through the website. From the side navigation bar, you may select civil or probate tentative rulings and then follow the instructions to access them. It is important to note that the tentative rulings are posted by reference to the day of the week on which the tentative ruling issues, not to the date of the hearing or department.

As was reported to you previously, it is anticipated that, in the next several years, a project will be commenced to allow the court's website to be independent from the County's website and to have its own server, including a system with imaging capabilities which would allow for the scanning and downloading of filed documents. In the meantime, we will continue to work, step by step, on improvements to the existing system, such as expanding the accessible information for each judge and his or her department and providing online access to the register of actions in most cases.

A public copier has been installed and is now available on the Court Floor, between courtrooms J and K. The addition of a copier will obviously be of great benefit to attorneys at, or in, court. The copier accepts dollar bills as well as coins, and it dispenses copy cards. Please note that it does not, however, accept debit cards.

We will continue to keep you posted on website improvements as they occur.

PAY TRIBUTE TO THE PAST PRESIDENTS AND 2007 BOARD OF MARIN COUNTY BAR ASSOCIATION

MARIN COUNTY BAR ASSOCIATION'S PAST PRESIDENTS' PARTY AND 2007 BOARD INSTALLATION

For the first time ever, MCBA is combining its Past Presidents' recognition with its annual Board Installation event for one big FUNdraiser, with all net proceeds going to the Marin Justice Center, a conglomerate of indispensable organizations which make legal assistance available to the public. You can honor a past president or member of the Board by writing a congratulatory ad in the Tribute Journal which will be distributed at the event (see form enclosed).

Thank you in advance for turning yourself in for "Disorderly Conduct"

SAVE THE DATE: Saturday evening, January 6, 2007, at the Mill Valley Community Center

HELP FOR HOMELESS CHILDREN

Please help homeless children. Support DrawBridge, an arts program for homeless children, by purchasing beautiful cards and gifts featuring art work by children in the DrawBridge program.

Visit www.drawbridge.org for more information.

BUSINESS DEVELOPMENT OPPORTUNITIES

Most of you joined MCBA primarily because you were looking for a way to build your law practice and network with other lawyers. Here are two strategies to do just that. These are especially good for MEDIATORS (for whom all other MCBA litigators are potential clients or referral sources) and NEW MEMBERS (who should be trying to get acquainted with as many other members/potential referral sources as possible).

First, sign up for one of the MCBA committees. It's a great way to network with other lawyers, take the first step on leadership track, and raise your community profile, with a relatively small time commitment. See the application on the next page. DEADLINE: 11/15/06.

Second, take our short member survey where you can vote on, among other things, a number of business development and networking opportunities we're considering offering.

ALL ANSWERS AND THE IDENTITY OF ALL RESPONDENTS WILL BE KEPT STRICTLY CONFIDENTIAL. We will use this information to evaluate every aspect of MCBA and how we can be there for you in every way that's meaningful to you.

Your input is even more critical now. This December, the MCBA Board will be creating its first long-term strategic plan. Your answers to the survey will be given heavy consideration in that plan.

As the saying goes, you're either part of the solution or part of the problem. While MCBA is a healthy, vital, successful organization, it can always be better. The "problem" we currently face is how to make our strategic plan and our membership as valuable as possible to you, our members. So, please be part of the solution. Invest about 10 minutes now in completing this online survey. (If you don't have computer access, call Robynn Gaspar at 499-1314 and she will fax you a hard copy of the survey you can complete and fax back to her.) We e-mailed it you a couple of weeks ago. If you cannot find that e-mail, just type <http://www.surveymonkey.com/s.asp?u=153682721189> into your browser address bar and it will take you to the survey. We must have your answers by no later than November 10, 2006.

Thank you for your time.

Jeffrey Lerman
President Elect, Marin County Bar Association

SECTION NEWS

November 14th

Probate & Trusts Mentor Group
802 B ST., San Rafael

An informal forum to further discuss issues addressed at the monthly estate planning section meetings or any other issues. Bring your lunch and interesting estate planning/trust administration/probate issues to discuss, and snacks will be provided. Parking is available in the City of San Rafael parking lot on B Street south of 4th Street. Brown Bag Lunch 12 - 1:30

November 15th

The Probate & Estate Planning Section Meeting will be at Whistlestop, 930 Tamalpais Ave, San Rafael 12 - 1:30
And

The Alternative Dispute Resolution Section Meeting will be at the Seafood Peddler, 100 Yacht Club Drive, San Rafael. 12 - 1:30 pm.

November 16th

The Real Property Section Meeting will be at the Seafood Peddler, 100 Yacht Club Drive, San Rafael. 12 - 1:30 pm.

November 20th

Employment Law Section Meeting - "New Developments in State Labor Code Enforcement - What To Expect from the Labor Commissioner's Office in 2007" Speaker: Robert Jones, Acting Head of the State Labor Commissioner's Office and lead counsel to the Commission. Mr. Jones will also provide a view into the enforcement activities of the Labor Commissioner's Division of Labor Standards Enforcement. One Hour MCLE credit for attendees. Location: Miller Law Group, 60 E. Sir Francis Drake, # 302, Larkspur, from 12 - 1 p.m.

MCLE COMPLIANCE DEADLINE COMING UP

GROUP 1 (A - G)

Period 2/1/03 - 1/31/07

Deadline: 2/1/07

MCLE "Regular Requirement"

Total hours required every three years: 25 hours

- Maximum "self-study" hours: 12.5 hours
- Members must fulfill at least one-half of their MCLE requirement with activities approved for "participatory" MCLE credit. (For additional information contact The State Bar of California at 538-2130, or visit the website at <http://www.calbar.ca.gov>.)
- Special Requirements within the total hours required (may be taken as participatory or self-study)
- Legal Ethics: 4 hours (required)
- Detection/Prevention of Substance Abuse: 1 hour (required)
- Elimination of Bias in the Legal Profession: 1 hour (required)

SIGN UP NOW TO SERVE ON AN MCBA STANDING COMMITTEE

To: Members of the Marin County Bar Association
From: President-elect Jeff Lerman
Re: The year 2007 Standing Committees

Each year the Marin County Bar Association seeks members to serve on its Standing Committees. In order to maintain continuity on our committees, the president is allowed to make one appointment for a three-year term to each Committee, and to name the chairperson of each Committee for a one-year term.

With this in mind, we ask you to volunteer to assist in the operation of the Marin County Bar Association. Listed below are the Standing Committees of the Association. Please mark three committees in your order of preference. If you have no preference but are willing to volunteer your services, please state so.

It is my hope to make appointments to the Committee in late November. Therefore, please return this form to MCBA, 30 North San Pedro Rd., Ste. 140, San Rafael, CA 94903, or for your convenience you may FAX it to MCBA at (415) 499-1614 no later than November 15, 2006.

If you have any comments or suggestions regarding Bar activities, please do not hesitate to contact me personally or use the comment lines below to express your thoughts. I thank all our members for their continued support and service.

- | | |
|---|---|
| <input type="checkbox"/> Membership | <input type="checkbox"/> Administration of Justice |
| <input type="checkbox"/> Program/Entertainment | <input type="checkbox"/> Insurance |
| <input type="checkbox"/> Lawyer Referral Service | <input type="checkbox"/> Continuing Legal Education |
| <input type="checkbox"/> Legislation | <input type="checkbox"/> Public Information |
| <input type="checkbox"/> Library | <input type="checkbox"/> Client Relations |
| <input type="checkbox"/> Bylaws | <input type="checkbox"/> Law Day/Public Education |
| <input type="checkbox"/> Marin Justice Center | <input type="checkbox"/> Judicial Liaison
(must be a Past President of MCBA) |
| <input type="checkbox"/> Ethics/Unauthorized Practice | |

Name: _____

Comments: _____

TRIBUTE JOURNAL OPPORTUNITIES

Show a Past President or 2007 Director That You Care.

The Tribute Journal will be distributed at the event.

“Disorderly Conduct” Event ♦ January 6, 2007

Tribute to Past Presidents and 2007 Board of Directors Installation

(Invitation to Follow)

Congratulatory Ads:

- \$750** **Inside Front Cover**
- \$500** **Inside Back Cover**
- \$200** **Full-page 5”W x 8 ½”H**
- \$125** **Half-page 5”W x 4”H**
- \$75** **Quarter-page 2”W x 4”H**
- I wish to donate _____ tickets to “Disorderly Conduct” (\$100/person)**

In order to be included in the Tribute Journal, please return this form with your payment and your tribute message no later than **November 21, 2006**. Please type or print your message on the back of this form or include on a separate piece of paper. You can also email messages and photos to RGaspar@30nsp.org

For a complimentary (no charge) full-page Tribute Journal ad in memory of a deceased MCBA member, please add his/her name and submit your message

Member’s Name: _____

Your Name: _____

- My check for \$ _____ to “Legal Aid of Marin” (Fiscal Agent for MJC) is enclosed.
- I authorize a charge of \$ _____ on my Visa Mastercard
- I am unable to attend, but would like to make a contribution of: \$ _____

Card Number	Exp. Date	Signature
Name/Contact	Company/Organization	
Address	Apt/Suite#	
City	State	Zip
Phone (Home)	(Office)	(Cell)
Email	Fax	

Thank you for turning yourself in for “Disorderly Conduct”

Marin County Bar Association

(Tax ID # for Legal Aid of Marin: 941419330)

30 North San Pedro Road, Suite 140, San Rafael, California 94903

Questions? Contact Robynn Gaspar (415) 499-1314 Phone (415) 499-1614 Fax

QUESTION FOR LITIGATORS:

My name is Susan Nevelow Mart. I'm a law librarian at UC Hastings College of Law. I am writing an article about authentication of e-government documents in the courts. For the article, I am looking for anecdotes, at the trial court level, where an attorney has offered into evidence some documentary evidence of the law - a case, statute, regulation, agency publication, etc. - from an online source, and had the court (or opposing counsel) refuse to accept the document unless an "authentic" or "official" version was proffered. If you have any examples of this occurring, I would really appreciate hearing about it.

I would also like to send this question to some of the litigation list-servs. If you subscribe to list-servs for the California Bar Association litigation section, the ABA litigation section, or the ATLA, and you would be willing to post my question on the list-servs, please contact me at marts@pericles.uchastings.edu.

Thank you in advance - I know there are interesting stories out there!

Susan Nevelow Mart, Reference Librarian
University of California - Hastings College of the Law
marts@uchastings.edu 415.565.4759.

CALL FOR NOMINATIONS FOR THE 2007 MARGARET BRENT WOMEN LAWYERS OF ACHIEVEMENT AWARDS

Do you know an outstanding woman lawyer who has achieved professional excellence in her field and has paved the way to success for other women lawyers? The ABA Commission on Women in the Profession is seeking nominations for the 17th Annual Margaret Brent Women Lawyers of Achievement Awards. These awards will be presented at a luncheon on Sunday, August 5, 2007 during the ABA Annual Meeting in San Francisco, California.

The deadline to submit the nomination form and supporting materials is the close of business on Monday, November 27, 2006.

If you have submitted a nomination previously and want to nominate that person for 2007, simply send (1) a letter stating that you want to renominate that woman and (2) updated supporting material. We have on file whatever you submitted in the past.

For more information, please click on the links below:

Nomination criteria and application requirements

Online nomination form

View the list of distinguished award recipients

View the 2006 luncheon tribute program book (PDF)

View the videos of the introductions of the honorees and the keynote speaker's presentation (need Real Player or similar software to view)

If you have further questions, please contact Julia Gillespie at 312-988-5668 or via email at gillespj@staff.abanet.org.

Thank you - The ABA Commission on Women in the Profession

Your e-mail address will only be used within the ABA and its entities.

We do not sell or rent e-mail addresses to anyone outside the ABA.

To change your e-mail address or remove your name from any future general distribution e-mails you can call us at 800-285-2221 or write to: American Bar Association Service Center 321 N Clark Street, Floor 16 Chicago, IL 60610.

If you are an ABA member, log in to the ABA web site at <http://www.abanet.org/abanet/common/MyABA/home.cfm> to edit your member profile. Otherwise, complete the form located at <https://www.abanet.org/members/join/coa2.html>. To review our privacy statement, go to http://www.abanet.org/privacy_statement.html.

Reprinted from the Journal of the American Bar Association

MARIN COUNTY JURY VERDICTS

Complete Title of Plaintiff(s): Jane Doe by and through her Guardian Ad Litem, Bonnie Miller

Complete Title of Defendant(s): Estate of Steven Greenberg, Susan Zaret, Individually

Case Number: CV02621 **Insurance Carrier(s):** State Farm Fire and Casualty

Plaintiff Attorney(s), Phone No.: Joseph P. Carcione; (650) 367-6811

Defendant Attorney(s), Phone No.: Herbert M. Rowland, Jr., Patrick M. Macias - Raggianti Freitas, LLP for Defendant Estate of Greenberg; (415) 453-9433. Peter J. Van Zandt and Kelly J. Lack - Bledsoe Cathcart, et al. for Defendant Susan Zaret; (415) 981-5411.

Plaintiff Expert(s), Field, Address: James R. Cole, Ph.D., Neuropsychologist, Walnut Creek, California; George L. Kirkham, Ph.D., Criminologist, Lake Worth, Florida; Gilbert W. Kliman, M.D., Psychiatry, San Francisco, California; Patrick F. Mason, Ph.D., Economist, San Francisco, California; Lynn E. Ponton, M.D., Psychiatrist, San Francisco, California; Patricia C. Sullivan, Ed.D., Vocational Rehabilitation, San Francisco, California.

Defendant Expert(s), Field, Address: Estate of Greenberg: Richard Perrillo, Ph.D., Psychologist, Beverly Hills, California.

Susan Zaret: Leslie Packer, Ph.D., Psychologist, Menlo Park, California.

Judge: John A. Sutro, Jr.

Date & Time of Incident: Molestation of a minor over a period of years

Type of Action: Childhood Sexual Abuse

Location of Accident/Incident: Marin County

Plaintiff(s) Age: 17 **Occupation:** n/a

Residence: San Mateo County

Facts of Case:

Jane Doe sued the Estate of Steven Greenberg and his close friend Susan Zaret. Jane Doe and her mother Bogumila first met Steven in 1997 when they moved into a Daly City apartment complex that Steven owned and was the onsite manager. Jane Doe was 8 years old. Bogumila

worked for Steven at this apartment complex in exchange for free rent.

Throughout the course of Bogumila's employment with Steven, they became friends. Steven also developed a relationship with Jane Doe, who was exceptionally bright and did not have the socio-economic background to capitalize on her intellectual capacity.

In 1999, Steven moved from the Daly City complex to a townhouse in San Rafael. From that point until the summer of 2001, Jane Doe, with the permission of Bogumila would visit Steven in San Rafael. She would sometimes stay for the entire weekend.

On some visits to Steven's townhouse, Jane Doe would see Susan Zaret. Susan was one of Steven's closest friends for over 20 years. She and her husband, Jerry, had two daughters and they all treated Steven like a part of their family. When Jane Doe was visiting, Susan would sometimes walk the dog with her and Steven, or go out to eat with them. On the few occasions when Steven asked her, Susan went shopping and to a movie with him and Jane Doe.

In June of 2001, Jane Doe stopped making trips to visit Steven in San Rafael. The reason she stopped is that her mother and Steven had a falling out. Ultimately, Steven terminated Bogumila's employment and she and Jane Doe moved out of the Daly City complex. Thereafter, in September 2001, Jane Doe refused to go to school. When

(Continued on page. 13.)

(Jury Verdicts, continued from page. 12.)

a police officer came to their residence in November 2001 to investigate Jane Doe's absence from school, Jane Doe told her that she had been sexually molested by Steven. The police initiated an investigation and on January 4, 2002, the police searched Steven's house pursuant to a search warrant. After hearing about the search from the police and being asked to surrender to them, Steven went to the Petaluma airport, took a plane without permission from his flight school, took off, crashed into a mountain and died. Upon hearing the news of his death, Jane Doe's mother was hospitalized with an emotional breakdown. Jane Doe became a dependent of the juvenile court and moved in and out of group homes for nearly two years. In December 2003, she was reunited with her mother.

Jane Doe filed this lawsuit against Steven's Estate for childhood sexual molestation. She does not, however, allege that Susan directly molested her. She does allege, however, that as a result of the sexual molestation she has suffered severe and continuing emotional distress for which Steven's Estate and Susan are liable. Susan's liability is based on an "enabler theory" that she had knowledge of the molestation and took steps which worsened Jane Doe's predicament by hosting a birthday party and socializing with Jane Doe and Steven on many occasions.

Plaintiff(s) Contention(s) as to Liability: Steven Greenberg molested Jane Doe; Susan Zaret knew about it and "enabled" it to continue.

Defendant(s) Contention(s) as to Liability: Steven Greenberg did not molest Jane Doe, she did not suffer from PTSD and if the molestation was happening, Susan Zaret had no actual knowledge of it.

Length of Jury Trial: 9 Weeks Jury Deliberated: 5 ½ days
Plaintiff Attorney asked the Jury to Award: \$27 million
Defendant Attorney asked the Jury to Award: \$0.

Injuries/Damages:

Plaintiff Doctor/Expert Stated:

Jane Doe suffered from PTSD. Damages to help her matriculate to college and receive psychiatric care for 5 years at minimum, \$479,000.00.

Defendant Doctor/Expert Stated:

Estate of Greenberg: Richard Perrillo, PhD. Testified that Jane Doe was not suffering from PTSD, no damages.

Susan Zaret: Leslie Packer, PhD. testified that Susan Zaret did not know of the molestation and did not in any way contribute to plaintiff's molestation.

Specials/Damages: \$479,000.00

Settlement Talks:

Demand: \$1.5 million

Offer: \$1.2 million with an indication of \$1.3 million

Result: \$8.4 Million against Defendant Estate of Greenberg, Defense verdict as to Susan Zaret.

Poll Result: 10-2 on liability of Susan Zaret; 11-1 on Liability of the Estate of Greenberg

Verdict Date: 8-7-06

NEW JUDICIAL ASSIGNMENTS ANNOUNCED BY THE MARIN COUNTY SUPERIOR COURT

At their October meeting, the Judges of the Marin County Superior Court approved the following judicial assignments for a two-year period, effective January 1, 2007:

Civil/Juvenile/Probate Division:

- Hon. James R. Ritchie, Supervising Judge
- Hon. Lynn Duryee, Presiding Judge, Juvenile Court
- Hon. John A. Sutro, Jr.
- Hon. Terrence R. Boren, Criminal Division:
- Hon. Michael B. Dufficy, Supervising Judge
- Hon. John Stephen Graham
- Hon. Kelly V. Simmons
- Hon. Faye D' Opal

Vacancy - Hon. Vernon F. Smith will serve on assignment until a judge is appointed by the Governor

Family Law Division:

- Hon. Verna A. Adams, Supervising Judge

MARIN COUNTY JURY VERDICTS

Complete Title of Plaintiff(s): Jennifer Newsom

Complete Title of Defendant(s): Frank Annicelli, Dolphin Details and John Shuey

Case Number: CV 033252 **Insurance Carrier(s):**
None for John Shuey; Nationwide for Annicelli

Plaintiff Attorney(s), Phone No.: Jeffrey A. Berger, Esq.;
(415) 399-9994

Defendant Attorney(s), Phone No.: H. Renton Rolph,
Jr., Esq.; (415) 837-3820 (for Defendant Frank Annicelli)

Defendant Attorney(s), Phone No.: Peter B. Brekhus,
Esq.; (415) 461-1001 (for Dolphin Details & John Shuey)

Plaintiff Expert(s), Field, Address: Stephen J. Wedlock,
Marine Surveyor

Defendant Expert(s), Field, Address: None reported

Judge: Hon. John Sutro

Date & Time of Incident: November 7, 2002

Type of Action: Property Damage to Boat

Location of Accident/Incident: Annicelli Fish Dock,
Sausalito, CA

Plaintiff(s): Age: 40+ Occupation: Unemployed
Residence: San Francisco and Marin County

Facts of Case:

After being expelled from two previous yacht harbors, plaintiff, Jennifer Newsom, brought her aged, wooden vessel, the Yukon Lady, to the Annicelli Fish Dock, located at 3941 Libertyship Way, Sausalito, CA, to dock it temporarily while its engines were being repaired. An agreement was made that plaintiff could dock the boat, but the dock would not be responsible for electricity, and there would be no live-aboard status conferred. Plaintiff's boat sustained damage to the front deck during a freak storm which occurred on November 7, 2002 when high winds blew off the top of a fish shed onto her boat. Thereafter, plaintiff threatened to sue the dock owner if the boat was not repaired. Pursuant to negotiations and authorization from plaintiff's father, Brennan J. Newsom, the boat was removed to the nearby Dolphin Details' repair dock for repairs. John Shuey, boatwright and owner of Dolphin Details, agreed to fix the moderate damage done to the

boat as a result of the damage it sustained as a result of the windstorm.

Plaintiff(s) Contention(s) as to Liability: Plaintiff claimed that the boat sank once or twice while in the possession, control, or under the responsibility of defendant Frank Annicelli and defendant John Shuey so as to completely ruin its engines, rendering the boat worthless.

Defendant(s) Contention(s) as to Liability: Defendants contended that plaintiff's boat was a sinking disaster when it arrived at the Annicelli Fish Dock and that it sank at least one time prior to the storm and prior to the time defendants had any responsibility for, or possession of, the vessel. Defendants contended they had no liability, nor were they responsible for causing the damage to the engines in plaintiff's boat. Accordingly, defendants contended they did not damage plaintiff's boat and were therefore not responsible to replace the vessel.

Length of Jury Trial: 6 days

Jury Deliberated: 3 hours

Plaintiff Attorney asked the Jury to Award: Approximately \$35,000

Defendant Attorney asked the Jury to Award: Nothing

Settlement Talks:

Demand: Plaintiff refused to take anything less than \$40,000.

Offer: Defendant Frank Annicelli made a CCP § 998 offer of \$36,900; defendant John Shuey made a CCP § 998 offer of \$1,000.

Result: Defense Verdict

Poll Result: Unanimous

Verdict Date: 5/08/06

NOTE: Information provided solely by counsel for defendant Shuey; no other counsel responded.

*** SAVE THE DATE ***

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November 1, 2006

Dear Member:

The MCBA has engaged the firm of RCL Portrait Design, which specializes in "Executive Portraits," to photograph all the members for our annual member directory.

RCL, the nation's leading executive portrait studio, has worked with more than 500 professional organizations and photographed over 100,000 professionals.

The photographs will be taken in the MCBA conference room at 30 N. San Pedro Road, in San Rafael and there is no cost for you to participate. A professional portrait photographer will photograph you in several poses. You will then be able to view your proofs immediately through an instant video system and choose your picture for the directory. Additional portraits will also be made available to those wishing to purchase them, however there is no obligation to do so.

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We hope everyone will take advantage of this free service to make the 2007 MCBA directory look great.

Thank you,
Robynn Gaspar
Executive Director

(Boundary Disputes, continued from page 1.)

Eschewing the (non-legal) adage that “possession is nine-tenths of the law,” California jurisprudence favors the paper title holder. Indeed, with a clear paper title to the property, the landowner need only file a complaint to quiet title and/or for declaratory relief to successfully reassert his or her right to the disputed property. In boundary dispute litigation, the burden falls clearly on the encroacher to prove his or her right to continue to use or occupy the disputed area of land. In meeting this burden, the most common causes of action available to the encroacher are adverse possession, agreed boundary, and prescriptive easement. However, because adverse possession and agreed boundary are difficult to prove (adverse possession because of the requirement that the adverse claimant have paid taxes (Cal. Code Civ. Proc. § 325); agreed boundary because the ability to objectively ascertain the true boundary trumps any inference that a long-standing fence resulted from confusion as to the true boundary (*Bryant v. Blevins* (1994) 9 Cal. 4th 47)), prescriptive easement often becomes the “default” form of relief for an encroacher seeking to maintain his or her historic use of the disputed area of land.

While the award of a prescriptive easement seeking to protect a common use of land such as a driveway or other means of access is common and accepted, a problem arises when an encroacher seeks to take by prescriptive easement that which is essentially a fee interest in land – e.g., a fenced yard or a concrete patio. Over the past decade in particular, California courts have consistently rejected such efforts, in particular in the context of common boundary disputes, in favor of protecting the interest of the paper title holder. See *Rabb et al. v. Casper et al.* (1975) 51 Cal. App. 3d 866; *Silacci et al. v. Abramson et al.* (1996) 45 Cal. App. 4th 558; *Mehdizadeh v. Mincer et al.* (1996) 46 Cal. App. 4th 1296; *Kapner v. Meadowlark Ranch Association* (2004) 116 Cal. App. 4th 1182; and *Harrison et al. v. Welch* (2004) 116 Cal. App. 4th 1084. These cases make clear that a claim of prescriptive easement is not a means by which an encroacher or adverse claimant may maintain a long-standing use of land the net effect of which is to deny the true owner of the property all of the benefits a fee interest in land accords.

The trend against granting what courts call “exclusive prescriptive easements” appears to find its roots in *Rabb*, and hit its stride in 1996 with the decisions in *Silacci* and *Mehdizadeh*, approximately one month apart. These cases share a similar and common fact pattern. Adjoining landowners discover that one of them has created improvements on the other’s land. See *Rabb*, supra, at 870, 876 (cabin on one portion of land, driveway, utility lines, yard and other landscaping on another portion); *Silacci*, supra, at 560 (fence enclosing portion of owner’s yard); *Mehdizadeh*, supra, at 1301-1302 (same). One of the landowners sues the other, and the encroacher seeks to quiet title to the legal owner’s land through a combination of the theories of adverse possession, agreed boundary and prescriptive easement. See *Rabb*, supra, at 870, 876; *Silacci*, supra, at 560; *Mehdizadeh*, supra,

at 1301-1302. In each of these three cases, the encroacher either did not seek to or simply was unable to prove the “payment of taxes” element of adverse possession. See *Rabb*, supra, at 877; *Silacci*, supra, at 564; *Mehdizadeh*, supra, at 1304. Nevertheless, the trial court in each case granted the encroacher a prescriptive easement which allowed the encroachments to remain. See *Rabb*, supra, at 876; *Silacci*, supra, at 560; *Mehdizadeh*, supra, at 1301-1302.

On appeal, *Rabb*, *Silacci*, and *Mehdizadeh* were each reversed. In each case, the court of appeal held that the scope of the prescriptive easement granted by the trial court ignored “the difference between two legal concepts relating to the rights in land of another: claim of title by adverse possession, and mere prescriptive use of another’s land.” *Silacci*, supra, at 562; see also *Rabb*, supra, at 877 (easement “for maintenance of lawns, fences, shrubs, fruit trees, and landscaping” was “designed to exclude plaintiffs [the owners of the land] from defendants’ [the encroachers] domestic establishment, employing the nomenclature of easement but designed to create the practical equivalent of an estate.”); *Mehdizadeh*, supra, at 1305 (easement granted by the trial court “would divest [defendants] of nearly all rights that owners customarily have in residential property.”). Unlike adverse possession or agreed boundary, a prescriptive easement should not create a change in title or ownership, and an easement that “becomes so comprehensive as to supply the equivalent of ownership, and conveys an unlimited use of real property,” violates this principle and must be reversed. *Mehdizadeh*, supra, at 1306, 1308.

An exclusive prescriptive easement is ... a very unusual interest in land. The notion of an exclusive prescriptive easement, which as a practical matter completely prohibits the true owner from using his land, has no application to a simple backyard dispute like this one. An easement, after all, is merely the right to use the land of another for a specific purpose – most often, the right to cross the land of another. An easement acquired by prescription is one acquired by adverse use for a certain period. An easement is not, however, an ownership interest, and certainly does not amount to a fee simple estate. To permit [an encroacher] to acquire possession of [an owner’s] land, and to call the acquisition an exclusive prescriptive easement, perverts the classical distinction in real property law between ownership and use.

Silacci, supra, at 564 (emphasis added).

Subsequent to the decisions in *Rabb*, *Silacci*, and *Mehdizadeh*, courts have become more circumspect about granting prescriptive easements. Notably, in *Rabb*, *Silacci* and *Mehdizadeh*, the appellate courts reversed the trial courts’ grants of prescriptive easements to the encroachers. Since then, it is more common for trial courts to rely on *Rabb*, *Silacci* and *Mehdizadeh* to deny encroachers a prescriptive easement, and the courts of appeal have uniformly affirmed such decisions. See *Kapner v. Meadowlark Ranch Association*, supra; see also *Harrison et al. v. Welch*, supra. Indeed, from obvious encroachments such as structures (*Rabb*, supra,

(Continued on page 17.)

(Boundary Disputes, continued from page. 16.)

at 870) to less obvious encroachments such as landscaping and trees (Harrison, *supra*, at 1094), courts are clear that such encroachments “effectively prevent[] [a true owner] from determining how the area of the encroachment is to be used” (Id.) and therefore a prescriptive easement will not lie.

In the face of the general trend against the grant of “exclusive prescriptive easements,” two cases, one decided between Rabb and Silacci/Mehdizadeh and the other more recently, have deviated from this principle. See *Otay Water District v. Beckwith* (1991) 1 Cal. App. 4th 1041; and *Hirshfield et al. v. Schwartz et al.* (2001) 91 Cal. App. 4th 749. Each case is unique and readily distinguishable, however, and provides little relief from the above rule to claimants in run-of-the-mill boundary disputes.

In *Otay*, the court distinguished Rabb and granted the plaintiff water district an exclusive prescriptive easement to maintain a reservoir on the defendant’s land. Acknowledging that an exclusive easement is “an unusual interest in land,” the court nevertheless held that such easement was justified on the unique facts of the case. Id. at 1047-1048. Subsequent cases considering *Otay* have limited it to its “difficult and peculiar facts.” Silacci, *supra*, at 564; see also Mehdizadeh, *supra*, at 1307 (“[T]he rationale underling *Otay Water Dist.* has no application to a dispute between residential property owners which involves no socially important duty such as that imposed upon a utility.”). Thus, because of the limited nature of its holding, private claimants in ordinary boundary disputes cannot rely on *Otay* to support a claim for an exclusive prescriptive easement.

More recently, in *Hirshfield et al. v. Schwartz et al.* (2001) 91 Cal. App. 4th 749, the court applied an equitable principle it characterized as the “relative hardship doctrine” to a “garden-variety” residential boundary dispute and divested the true owners of land of certain portions of their property, albeit with compensation. The court distinguished Rabb, Silacci and Mehdizadeh because those cases made “no mention of a court’s power in equity to create a protective interest in favor of an encroacher.” Id. at 768. Rather, the court conducted “an equitable balancing to determine whether to grant an injunction prohibiting trespass, or whether to award damages instead,” in essence exercising “the right of eminent domain in favor of a private person.” Id. at 759-760. Like *Otay*, *Hirshfield* offers little help to a claimant in a common boundary dispute seeking to quiet title to a prescriptive easement. While the “relative hardship doctrine” should rightly be considered an additional arrow in the quiver of real property practitioners seeking a means by which to protect their client’s improvements, its application requires payment to the true property owner, whereas acquisition of title via adverse possession or agreed boundary or a right to use via a prescriptive easement does not.

With the value of property in California continuing to remain high, boundary disputes, even over seemingly small portions of land, will undoubtedly remain common. As the Mehdizadeh court observed, the resolution of boundary dis-

putes has real consequences for property owners: reducing the size of one’s parcel creates “problems with setbacks and building codes that could impede alterations to structures . . . and also potentially reduce[s] the value or salability of the[] property.” Mehdizadeh, *supra*, at 1308. The clear trend since Rabb is to reduce the ability of an adverse claimant to maintain even long-standing improvements when the existence of those improvements serves the purpose of denying the true owner of the property all of the benefits of ownership associated with a fee estate.

For adverse claimants and their attorneys, the practical effect of these cases is equally clear: no longer can they rely upon a claim for a prescriptive easement to help them achieve their goal of maintaining their long-held improvements on a neighbor’s land. In such instances, real property practitioners would do well to advise their clients on the limits of the relief available to them, and explore alternatives to litigation, such as a negotiated lot line adjustment, express easement, or license, that will allow adverse claimants to maintain their encroachments, if not permanently, then for a mutually agreed upon time frame. Such a solution may well be the best such adverse claimants can hope for, and may also be the only way to avoid having the words “neighbors” and “enemies” become synonymous.

**Todd W. Smith is an attorney with Ragghianti Freitas LLP in San Rafael. He specializes in land use and municipal law, and currently serves as the Deputy City Attorney for the City of Belvedere and the Deputy Town Attorney for the Town of San Anselmo.*

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