



The Marin Lawyer

An Official Publication of the Marin County Bar Association



WED, MAR 25, 2015 | 12-1:30 PM

Annual Pro Bono Appreciation Luncheon

Co-sponsored by MCBA and Legal Aid of Marin

A special awards luncheon honoring our community's outstanding pro bono providers of the past year. Speakers include attorneys Christina Sherman and Charles Ostertag. LAM Director Paul Cohen and The Hon. Faye D'Opal will introduce and present this year's Wiley W. Manuel Awards.

McInnis Club Restaurant

Buffet Lunch

\$45 MCBA members / \$50 nonmembers

[Details & Registration](#)

MARIN LAW PRACTICE MANAGEMENT

Hourly Rates for Marin Attorneys

Gary Ragghianti conducted the first ever Marin County attorney hourly rate survey during a 3-week period in January and February 2015, and received over 100 responses to the question, "What do you charge?" The survey results demonstrated that Marin County attorneys charge considerably less per hour than our colleagues in San Francisco. There is a wide range of attorney rates, and the amount charged is not necessarily tied to the years of practice. Also noteworthy, family law attorneys charge more than other practitioners, with an average hourly rate of over \$420 for attorneys with 7 or more years of experience. Other survey results, perhaps less surprising, showed that defense attorneys charge less than plaintiff's attorneys. **A PDF link to complete survey results is available in our March e-news.**

This column was written by Elizabeth Brekhus, a civil litigation attorney in Marin County.

In This Issue

President's Message	2
Recollections	2
New Housing Impacts	4
Tour of San Quentin	4
April Members Lunch	5
Civic Center Parking Passes	5
Being Neighborly	5
Director Spotlight	7
2015 Committee & Section Chairs	8
New Members	10
Calendar Details	12
Marketplace	14

Calendar of Events

Wed, March 4: 12-1:30 pm

Real Estate Section Meeting

Tues, March 10: 12-1:30 pm

Labor & Employment Section Meeting

Tues, March 17: 12-1:30 pm

Family Law Section Meeting

Wed, March 18: 12-1:30 pm

Probate & Estate Planning Section Meeting

Wed, March 18: 12-1:30 pm

ADR Section Meeting

Thu, March 19: 12-1:30 pm

Construction Law Section Meeting

Tue, March 24: 12-1:30 pm

Diversity Section Meeting

Wed, March 25: 12-1:30 pm

MCBA Member Meeting
2015 Pro Bono Appreciation Luncheon

Thu, April 2: 5:30 – 7:30 pm

Superior Court of Marin County
Induction Ceremony & Reception for Judge Geoffrey Howard

See page 12 for details.



APRIL MEMBERS LUNCH The State of the Court

Speaker: Kim Turner, Marin County Superior Court Executive Officer

Wed April 22, 2015 | 12-1:30 PM
San Rafael Joe's
\$40 Members | \$45 Nonmembers
[Details & Registration](#)

If you have a practice in civil litigation, family law, probate and estate, or criminal law, this informative program offers cogent information on how our Marin Court operates and in understanding and navigating through the court changes. Have you wondered the following?

- How do research attorneys work in the various divisions?
- What is the procedure and who is selected to decide the criminal processing of cases?
- What is the funding for this year and next, including the Court's strategic and operational plans to address budget shortfalls?
- How can the community of MCBA attorneys assist the court to function more efficiently?

You'll hear answers to these as well as updates on the technology and business process changes that have been implemented to streamline the clerk's offices, jury services, and courtroom. We will discuss the outlook for the future of our Court and State judicial branch. Attendees will have ample opportunity for questions.

2015 CIVIC CENTER PARKING PASSES

One of membership's perks: limited free parking passes at Civic Center when you have a brief errand. Parking is limited to 30 minute time zones in these time periods:

- 8:30 to 10:00 am & 1:00 to 3:00 pm

Please contact the MCBA office by email if you would like a parking pass. As required by Civic Center, please provide:

- Your name
- Phone number, CA license plate number
- Make, model and year of your vehicle

For parking passes: kgaines@marinbar.org

*Passes issued before 2015 are no longer valid.
Parking restrictions are strictly enforced.*



Scott D. Rogers



Theodore K. Klaassen

Being Neighborly May Give Rise to an Irrevocable License

By Scott D. Rogers and Theodore K. Klaassen © 2015

Since its formation in the mid-1850s, the California court system has regularly been called upon to adjudicate the rights of neighboring property owners. Whether the neighbors' disputes related to water, minerals, access or the myriad other issues that arise between adjoining property owners, California courts have long sought to find common sense, neighborly and equitable solutions. In a very recent case, *Richardson v. Franc*, ___ Cal. App. 4th ___ (Cal. App. 1st Dist. Jan. 27, 2015), the courts were

again called upon to intervene in a dispute between neighbors, this time over the use of an easement. Though the easement at issue in *Richardson* was for "access and public utility purposes," the trial court granted, and the appeals court upheld, an irrevocable license over the easement area for landscaping, irrigation and lighting.

In 1989, the Poksays built a home in Novato accessible by a 150 foot-long driveway on a 30 foot-wide easement granted by their neighbors, the Schaeferes. The express easement was for access and utility purposes only. Nonetheless, without objection by the Schaeferes, in addition to constructing a driveway and underground utilities, the Poksays improved the easement with extensive landscaping, irrigation and lighting, adding color and beauty to both properties. Over the years, the Poskays continued to improve and maintain the driveway area, expending substantial effort and cost to do so. In 2000, the Poskays sold their property to Richardson and Donetti (collectively, the "Richardsons") who continued to use, maintain and improve the driveway area in substantially the same manner as had the Poskays. In 2004, the Francs bought the Schaeferes' property. From 2004 through 2010, it appears that the neighbors lived in relative harmony, with the Francs voicing no displeasure over the Richardsons' continued use and enjoyment of the driveway area.

In late 2010, approximately six years after acquiring the Schaefer property and more than 20 years after the Poskays originally installed the easement improvements,

(Continued on page 6)

(Being Neighborly, continued from page 5)

the Francs severed the irrigation and electrical lines serving the driveway improvements without notice. Thereafter, the Francs demanded that the Richardsons remove all landscaping and other supporting improvements from the easement area within five days. So much for the harmonious neighborly relationship. The situation became more like the Hatfields and McCoys fought with legal briefs rather than bullets. The Richardsons responded by filing an action for declaratory and injunctive relief to establish their entitlement to an irrevocable license and/or an equitable easement to allow them to continue to use and maintain the easement improvements as had been done by them and the Poskays for the prior two decades. The trial court granted an injunction allowing the severed lines to be reconnected pending the outcome of the case.

After a bench trial and on-site visit, the court found that the Richardsons did not meet the requirements for an equitable easement because they knew or should have known that the recorded easement was limited to use for access and utility purposes. Notwithstanding that knowledge, the court determined that the Richardsons were entitled to an irrevocable license for themselves and their successors in interest to use and maintain the landscaping, irrigation and lighting within the easement area. The court noted that the absence of knowledge is not required for establishment of an irrevocable license. It opined that the key factors for an irrevocable license, as established by the Richardsons, are (i) permission (either express or implied by conduct) from the adjoining landowner of the other's use of the adjoining land, (ii) reasonable reliance on the continuation of the use of the adjoining land, and (iii) expenditure of substantial time and/or money on improvements with the adjoining landowner's knowledge. Although the Richardsons' use of the easement for landscaping had taken place during the entire six years of ownership by the Francs (and 20 years overall), the appeals court cited a case in which an irrevocable license was established by a property owner's failure to object to use for just one year. *Zellers v. State of California*, 134 Cal. App. 2d 270 (1955).

On appeal, the Francs contended, among other things, that the trial court's findings were contradictory and irreconcilable because the trial court found that the same facts that did not support granting the Richardsons an equitable easement were sufficient grounds upon which to grant the Richardsons an irrevocable license. The appellate court rejected the Francs' contentions and affirmed the trial court's ruling, finding that the trial court correctly recognized that the Richardsons' knowledge of the easement limitations was determinative as to an equitable easement but was wholly irrelevant with respect to an irrevocable license.

The key take away from this Hatfields and McCoys

redux is that neighborly arrangements or accommodations that are materially relied upon for extended periods will often be enforced long after the original neighbors have moved on. It is therefore critical when purchasing property to thoroughly investigate and understand all existing common use arrangements and accommodations with surrounding properties, as those neighborly arrangements are likely to continue well into the future. According to the court of appeal in *Richardson*, the license granted will continue "for so long a time as the nature of it calls for."

Scott Rogers is a partner in the Palo Alto office of Rutan & Tucker, LLP where he specializes in real estate finance, equity and lease transactions, title insurance and real estate litigation. He is the former Chair of the Real Property Section of the State Bar of California. Scott obtained both a J.D. and M.B.A. from UCLA.

Ted Klaassen is senior counsel in the Palo Alto office of Rutan & Tucker, LLP where he represents developer, investor, corporate, and institutional clients in a broad spectrum of real estate transactional and litigation matters. Ted earned his journalism degree from the University of Missouri and his law degree from the University of Southern California

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