

## What's Legal and What's Right

The application of the adverse possession legal doctrine in a neighborhood property dispute in Boulder has resulted in a judicial ruling that many people, locally, regionally and nationally, perceive as tremendously unjust. The defendants in the case, Don and Susie Kirlin, lost a sizeable portion of their land when Boulder County District Court Judge James Klein ruled in favor of the plaintiffs, Richard McLean and Edith Stevens, on their claim for adverse possession. The factual and legal history of the claim and the doctrine of adverse possession have been explored and debated at length and in detail and we do not attempt to address either.

However, there is an issue that makes this case somewhat unique and has added to the widespread expressions of public outrage. That issue is the fact that Richard McLean is a former Boulder County District Court judge and Edith Stevens is a former attorney active in local politics. There have been many allegations that because of their former professions, McLean and Stevens were treated differently and more favorably than others who appear before Judge Klein, including the Kirlins. Public and private commentators alike have made explicit accusations that Judge Klein ruled in favor of McLean and Stevens based on improper influence resulting from their shared professions and positions.

Cronyism by a judge would be wrong and would be taken very seriously. The fact that Judge Klein and former Judge McLean have held the same position, and that Ms. Stevens has been an attorney active in local politics is not, and should not be, enough to impugn the character of a judge sworn to be faithful to the law.

Judge Klein is in the difficult position of being prohibited by the Code of Judicial Conduct from commenting on this case. We, however, are not so restricted. Judge Klein did not have a relationship, either professional or personal, with McLean or Stevens prior to this litigation. Furthermore, we are unaware of any evidence that there has been any improper influence or inappropriate action by Judge Klein in this case.

Without comment as to the ethical, moral or legal propriety of the institution and ultimate resolution of this adverse possession suit, we feel compelled to raise our collective voice in support of Judge Klein. In our experience, Judge Klein has proven himself to be a thoughtful, compassionate and well-reasoned jurist. Whether or not his decision in this case was correct is not for us to say. If the decision is appealed as anticipated, the Colorado Court of Appeals (or possibly the Colorado Supreme Court) will be the arbiter of its correctness. The charges of judicial activism and improper influence that have been levied against Judge Klein as a result of this case are wrong and should not be allowed to stand unanswered now or in the future. Based on his performance to date, we believe Judge Klein has served well and is an asset to our courts.

The question of whether McLean and Stevens acted fairly toward the Kirlins in their actions is not a question for the courts to determine. The courts determine what is legal, not what is right.

The law is not perfect. But in recognition of that imperfection, it can be changed. We encourage those who have been enraged, enlightened or just intrigued by this application of the long-standing doctrine of adverse possession in this case to be well-informed and to contact their state representatives if they are interested in changing the law.

We also encourage everyone to resist jumping to conclusions about the reasons for Judge Klein's ruling. Whether his decision in the McLean-Stevens/Kirlin case is right or wrong, we do not believe it was made based on anything other than his unbiased interpretation of the facts and law before him.

Submitted on behalf of the Officers and Board of Directors of the Boulder County Bar Association. Judge D. D. Mallard, who sits on the Board as an Ex-Officio Director was not made aware of, nor participated in, any facet of the preparation of this opinion.