

Session

11:10 a.m. - 12:10 p.m.

(Ethics)

Salon 2

*Opening Plenary: Practicing in the
Social Media Age*

Panelists:

Danielle “*Dani*” L. Borel

Breazeale, Sachse & Wilson, LLP
Baton Rouge

Franz N. Borghardt

The Borghardt Law Firm
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Hayden A. Moore

Walters, Papillion, Thomas, Cullens, LLC
Baton Rouge

Danielle L. Borel
ABA YLD Representative

Danielle L. Borel is an associate in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P. She received a BS degree, *magna cum laude*, in 2011 from Louisiana State University and her JD degree, *magna cum laude*, in 2014 from LSU Paul M. Hebert Law Center (member, *Louisiana Law Review*, 2012-14; Order of the Coif). She was admitted to practice in Louisiana in 2014. Borel is a member of the American Bar Association's (ABA) Young Lawyers Division and the ABA Health Law Section. She was recognized as the ABA Young Lawyers Division Star of the Quarter in spring 2017 and fall 2017. She also is a member of the Louisiana Hospital Association and has participated in the Baton Rouge Bar Association's Holiday Star Program. In her community, she is an advisory board member for Lighthouse Louisiana Baton Rouge and a volunteer for PulseBR (American Heart Association). She and her husband, Nathan Judice, have been married for seven years.



Franz N. Borghardt

Franz N. Borghardt practices criminal defense and civil rights law in Louisiana federal, state and municipal courts. He is the owner of the Borghardt Law Firm. He is a graduate of the National Criminal Defense College and the Trial Lawyers College. He is a member of the NACDL and LACDL. He is a CJA Panel Member for the Federal Middle District of Louisiana. He has previously been employed as a felony assistant in the East Baton Rouge Office of Public Defender and the East Baton Rouge District Attorney's Office. He additionally consults on jury selection. He has presented CLE's in the areas of jury selection, domestic violence, criminal law topics, and a seminar for law enforcement officers and law enforcement forensic scientists. He has written published articles on criminal law topics, cell phone search and seizure, jury selection, and social media. Franz cohosts the Legally Unfiltered podcast on iTunes and SoundCloud and provides regular legal commentary on Talk 107.3 radio. Franz has also provided legal commentary on WAFB and WBRZ news channels.

Franz has served as an adjunct professor at the Paul M. Hebert LSU Law School and has co-taught a Criminal Litigation Practice course. He was selected as a Super Lawyers Rising Star and is AV rated through Martindale Hubbell. He formerly served as a member of the Louisiana Public Defender Board and presently is on the East Baton Rouge Alcohol Beverage Control Board. He has previously served on the Louisiana Legislature Law Enforcement Body Camera committee and previously chaired the taskforce. He is immediate Past-President of the Louisiana Association of Criminal Defense Lawyers. He was selected to the 2017 Class of the Baton Rouge Business Report's Forty Under 40 and is a 2018 Honoree of Club Blue's Great Futures Gala. He has been selected multiple times to Super Lawyers Rising Stars and is Martindale Hubbell AV rated. He is a graduate of the Paul M. Hebert LSU Law School. He received his undergraduate degrees from Louisiana State University and graduated from Catholic High School. He is married to his best friend, Shannon Fay Borghardt, and has a son named Fisher.

Hayden A. Moore

Hayden A. Moore is an associate at Walters, Papillion, Thomas, Cullens, LLC. Born and raised in Baton Rouge, she is a proud graduate of St. Joseph's Academy where she lettered in volleyball. She attended Louisiana State University and obtained two degrees in Political Science and Sociology with a concentration on Criminology. While at LSU she served as the President of Phi Alpha Delta Law Fraternity International. She attended law school at Southern University Law Center where she graduated cum laude in 2013. While at Southern she served as Vice Justice of Phi Alpha Delta and was a student attorney in the Civil Administrative division of their Law Clinic. Throughout law school she volunteered as a reading friend at Highland Elementary School, where she continues to volunteer today. She was admitted to the practice of law in October 2013. Hayden is excited about becoming involved in the Louisiana legal community. She is currently a member of the Louisiana State Bar Association, Baton Rouge Bar Association, Wex Malone American Inn of Court and is admitted to practice in the Middle and Eastern Districts of Louisiana. Ms. Moore will be working on the firm's civil litigation matters and looks forward to expanding her legal career in the areas of personal injury and wrongful death, including automobile and trucking accidents, products liability, industrial accidents, and medical malpractice.

LSBA CLE NOTES

I. NCSC Center for Judicial Ethics Updated Report on Social Media and Judicial Ethics

Source:

<https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/SocialMediaandJudicialEthics%20Update.ashx>

Judicial discipline decisions

- A. The Arizona Commission on Judicial Conduct publicly reprimanded a judge for mocking a litigant in posts on his Facebook page; the Commission also ordered the judge to delete the post and to review an advisory opinion. *Urie, Order* (Arizona Commission on Judicial Conduct June 12, 2018).
- B. Based on a stipulation, the California Commission on Judicial Performance publicly censured a former commissioner and barred him from receiving an assignment, appointment, or reference 3 of work from any California state court for (1) posts and re-posts on his public Facebook page that reflected, among other things, anti-Muslim sentiment, anti-immigration sentiment, antiNative American sentiment, anti-gay marriage and transgender sentiment, anti-liberal and antiDemocrat sentiment, anti-black sentiment, opposition to then-presidential candidate Hillary Clinton, accusations against President Barack Obama, a lack of respect for the federal justice system, and contempt for the poor and (2) representing to his presiding judge and the Commission that he had taken the posts down when that was not true, although he believed the posts were no longer publicly viewable. *In the Matter Concerning Gianquinto, Decision and order* (California Commission on Judicial Performance August 22, 2018).
- C. As recommended by the Judicial Qualifications Commission, the Florida Supreme Court removed a judge from office for statements in e-mail advertisements and on Facebook that implied that her opponent was unfit for judicial office because he was a criminal defense attorney, for example, stating, “Attorney Gregg Lerman has made a lot of money trying to free Palm Beach County’s worst criminals. Now he’s running for judge!” *Inquiry Concerning Santino* (Florida Supreme Court October 19, 2018).
- D. Based on an agreement, the Kentucky Judicial Conduct Commission publicly reprimanded a judge for sharing a news story on her Facebook account with the comment, “This murder suspect was RELEASED FROM JAIL just hours after killing a man and confessing to police.” *In re the Matter of McLaughlin, Agreed order public reprimand* (Kentucky Judicial Conduct Commission June 12, 2018).
- E. The Nevada Commission on Judicial Discipline publicly reprimanded a former judge for her campaign’s posting of a photoshopped picture of herself and an actor on her campaign Facebook page, misleading the public into believing that Dwayne “the Rock”

Johnson had endorsed her re-election, and for subsequently commenting on the post. In the Matter of Almase, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline October 22, 2018).

- F. Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly admonished a non-lawyer judge for entering a property without the owner's permission, taking photographs of the property, posting the photos on Facebook with disparaging comments about the owner, and failing to promptly remove the post despite assuring the Commission that he would do so. In the Matter of Fisher, Determination (New York State Commission on Judicial Conduct June 26, 2018). The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting campaign advertisements for other candidates on his Facebook page and sitting in the campaign tent of 3 candidates during the election. Public Reprimand of Lopez (Texas State Commission on Judicial Conduct June 6, 2018).
- G. The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting on his Facebook page a meme endorsing the extermination of Muslims and statements “railing” 4 against liberals. Public Reprimand of Burkeen (Texas State Commission on Judicial Conduct February 21, 2018).
- H. The Texas State Commission on Judicial Conduct publicly admonished a judge for organizing a school supply drive using court staff and advertising it in Facebook posts, soliciting donations to an individual in a Facebook post, and advertising his donation of a rifle to a charitable organization’s raffle in a Facebook post. Public Admonition of Metts (Texas State Commission on Judicial Conduct October 3, 2018).
- I. Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct has publicly admonished a judge for a post on his Facebook page encouraging people to attend a charity pancake feed. In re Svaren, Stipulation, agreement, and order (Washington State Commission on Judicial Conduct December 7, 2018).
- J. Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct has publicly admonished Supreme Court Justice Mary Yu for 2 posts soliciting support for nonprofit organizations. In re Yu, Stipulation, agreement, and order (Washington State Commission on Judicial Conduct December 7, 2018).
- K. The West Virginia Judicial Investigation Commission publicly admonished a judge for posting on his Facebook page a photo showing him conducting an initial appearance. Public Admonishment of Hall (West Virginia Judicial Investigation Commission October 31, 2017).

Disqualification Caselaw:

The Florida Supreme Court held that a Facebook “friendship” with an attorney appearing before a judge, standing alone, did not constitute a legally sufficient basis for disqualification, disagreeing with Florida Advisory Opinion 2009-20 (<http://tinyurl.com/ylrw9zm>), which advised that a judge may not be Facebook “friends” with lawyers who may appear before the judge. *Law Offices of Herssein and Herssein v. United Services Automobile Association* (Florida Supreme Court November 15, 2018) (<https://tinyurl.com/ybmvp8ec>).

II. Ethics in the Social Media Age, Brumfield, Erik K., LSBA Ethics Counsel 2013.

Source: <http://files.lsba.org/documents/LOMAP/EthicsInTheSocialMediaAge.pdf>

“Numerous Louisiana Rules of Professional Conduct to be considered includes Rules 1.1, 1.2(c), 1.3, 1.6(a), 1.7, 1.8(b), 1.18, 3.3, 3.5, 3.7, 4.1(a), 4.2(a), 4.3, 5.3, 5.5(a), 7.2(c)(1) and (13), 7.4, 7.5, 7.6, 7.8 and 8.4(c),(e) and (f).”

III. PROSECUTORS ON SOCIAL MEDIA: IN RE: SALVADOR R. PERRICONE

Source: <http://www.lasc.org/opinions/2018/18-1233.B.OPN.pdf>

Posting on Nola.com anonymously about cases...

“Respondent’s conscious decision to vent his anger by posting caustic, extrajudicial comments about pending cases strikes at the heart of the neutral dispassionate control which is the foundation of our system. Our decision today must send a strong message to respondent and to all the members of the bar that a lawyer’s ethical obligations are not diminished by the mask of anonymity provided by the Internet. In summary, considering respondent’s position of public trust as a prosecutor, his knowing and intentional decision to post these comments despite his acknowledgment that it was improper to do so, and the serious harm respondent’s conduct has caused both to individual litigants and to the legal profession as a whole, we must conclude he has failed to comply with the high ethical standards we require of lawyers who are granted the privilege to practice law in this state. The only appropriate sanction under these facts is disbarment.”

IV. JUDICIAL CAMPAIGNS: CODE OF JUDICIAL CONDUCT

Source: <http://www.lasc.org/rules/supreme/cjc.asp>

https://www.lasc.org/judicial_campaign_oversight/Ethical_Guidelines_For_Judicial_Campaigning.pdf

**Relevant: Canon 5, 6, and 7 (Question: Judge Social Media versus Campaign Social Media)
See Code Opinion 271 and 271:**

HIGHLIGHTS: Always remember a judicial candidate may, during or in preparation for her candidacy, solicit publicly stated support (Canon 7C(2)(a)).

- A judicial candidate's campaign committee may maintain social media/website through which funds are solicited
- Be sure no first person statement of the candidate appears on these pages with a fund solicitation
- A judicial candidate may provide a link on her personal website/social media account to that of her campaign committee
 - Not to a fund solicitation page!
- Very specific language for the link is provided in Opinion 272