

LOUISIANA BAR JOURNAL

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RESURRECTION OF A REAL RIGHT: Annuities with a Charge

Also Inside:

- Interstate Discovery Simplified
- Are Medicare Set-Asides Legally Mandated in Personal Injury Settlements?
- Book Review: *Acadie*



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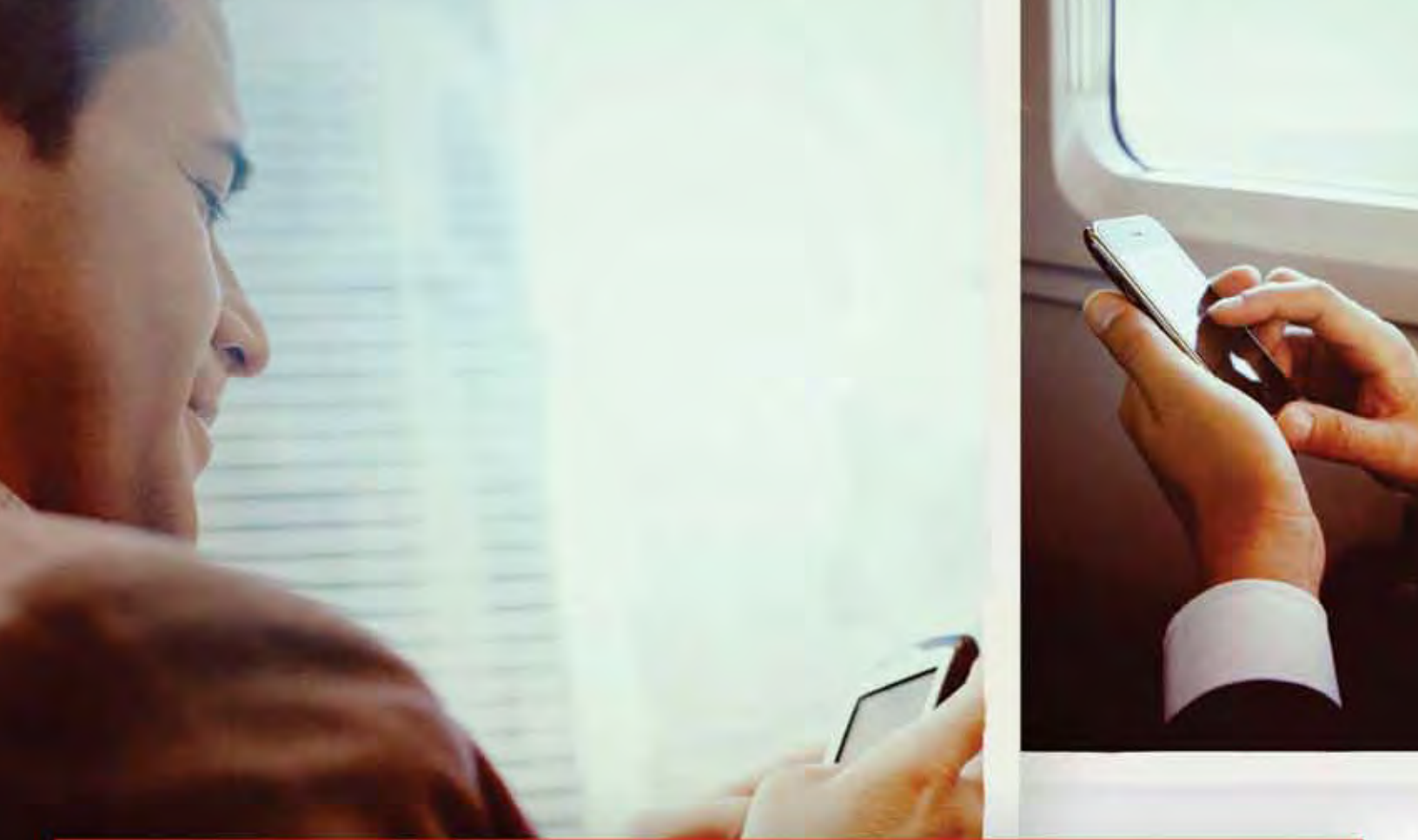
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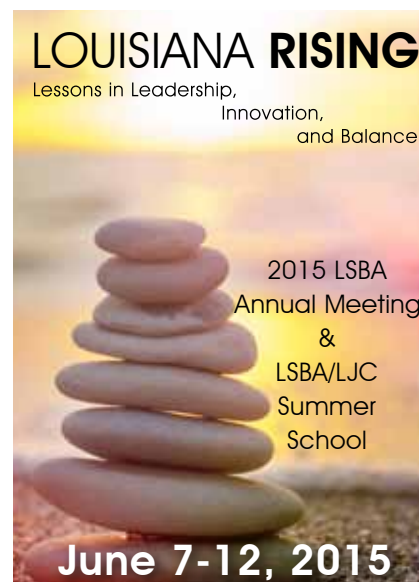
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By Barry H. Grodsky

Goodbye, Farewell and Amen

Okay. Those of you who are television nostalgia buffs will recognize this title. It's from the last episode of M*A*S*H. But I think it works very well here for a couple of reasons.

First, when something works well, there is no real need to change it. (In an earlier message, I quoted the great philosopher Bum Phillips who eloquently said, "If it ain't broke, don't fix it.") This title worked well for the M*A*S*H finale, so why change it? When things work well, why change them? As Louisiana State Bar Association (LSBA) secretary, I was very fortunate to inherit a great *Bar Journal* (the Bar's other publications are top-notch as well). I really didn't need to change much of anything. In working with the Editorial Board and the tireless Bar staff, a few revisions were made here and there but my biggest challenge was not to let the ship sink. Our members should be very proud of the *Bar Journal*. I have had a chance to see journals and magazines from other states and I am convinced that ours is one of the very best. Being published six times a year is often enough to let our readers know of recent developments, trends in the law and current information about judges and lawyers, as well as legal news relevant at the time. However, it also gives us time to develop feature articles which are analytical, informative and helpful. By

increasing the number of themed issues, we were able to focus on a broad area of law in one *Journal*. We have often moved away from purely legal topics and focused, for example just recently, on issues of wellness, health and quality of life. We featured lawyers in non-lawyer roles such as Tony DiLeo's artwork and Randy Roussel's photography. I believe our *Bar Journal* has honored its commitment to keep our members up-to-date and did so with well-written, articulate and well-thought-out articles. The ship didn't sink.

Secondly, this is my last Editor's Message as I turn the reins over to Alainna Mire, the incoming secretary. I have truly enjoyed this experience. I remember having dinner with Richard Leefe at the Louisiana Bar Foundation gala as he was coming into office as secretary. He graciously accepted my request to become a member of the Editorial Board, a true prerequisite to becoming secretary. That was an eye-opening experience! I learned from Richard and then-Secretary Ed Walters (as well as all the members of the Editorial Board) of what is expected and what needs to be done. I also have learned that not only does the secretary have to make decisions but also those decisions sometimes have to be made quickly. (Thank goodness for the Bar staff, in particular, Darlene, who must be tired of reminding me of my deadlines.)

I am fortunate that the criticisms have been very few (one about grammar and word usage — and I still think I was right — one about a *Journal* cover and one about some photos from the LSBA Annual Meeting). Three complaints for nearly a dozen *Journals* sent to 20,000+ members. Not too bad. What has been most rewarding has been my interaction with so many people dealing with the *Bar Journal*. I have interviewed two Bar Presidents,

Richard Leefe and Larry Shea; a Chief Justice of the Supreme Court, Catherine D. (Kitty) Kimball; and "our friend" Jim McClelland. I have spoken to dozens of contributors and potential contributors. I am truly overwhelmed by how many people want to contribute. This leads to tough decisions by the Editorial Board, but that's all part of the process. I have received, on behalf of the *Bar Journal*, many calls and messages of thanks which I have shared with the Editorial Board and the Bar staff. This included a call from Judge Peter Beer thanking us and author Bob Kutcher for the article about the lawsuit in which he was the named lead plaintiff in suing the United States. I have received so many calls and notes about the article on Jim McClelland (with special thanks to LSBA Executive Director Loretta Larsen for her input). I even received a few notes about prior Editor's Messages... very gratifying.

As secretary, I have made calls for more participation in Bar activities, such as being on a committee or serving as a mentor. I truly believe that the success of all Bar programs is dependent on volunteerism. Over the past 10 years or so, I have served on more than half a dozen committees and am currently the chair of one. While being a "Bar junkie" is a bit more than simply volunteering, this has all been enjoyable. I wouldn't change a thing. I am proud that the *Bar Journal* kept our members up-to-date and hopefully inspired some to become more active. It is hard work but truly rewarding.

So as my tenure winds down, I'll now exhale and then let Alainna take over. She will do a great job. So, at this point, I'll say "Goodbye, Farewell and Amen."



By Joseph L. (Larry) Shea, Jr.

A Few Last Words as President

"We must find time to stop and thank the people who make a difference in our lives."

—John F. Kennedy

In the last few weeks, I have thought more and more about being in the home-stretch of my presidency. With that in mind, it was my initial intention to write about what the Louisiana State Bar Association (LSBA) has accomplished over this year. I was going to start off by writing about the LSBA's increased efforts at outreach to our members throughout the state. As one of those rare presidents from north Louisiana, outreach was a major objective and I believe we have made great strides in furthering that objective. With our new Outreach Committee and Regional Panels, we are pursuing innovative ways to involve more of our members in what the LSBA does.

I was going to impress upon you the LSBA's recognition of the increasing diversity of our lawyer population in Louisiana, and the LSBA's commitment to removing barriers that restrict persons of diverse backgrounds from participating in the profession and seeking to achieve greater inclusion. I was going to commend our staff



Joseph L. (Larry) Shea, Jr. with Chief Justice Bernette Joshua Johnson at the 2014 Annual Meeting Louisiana Supreme Court Reception in Destin, Fla. Photo by Matthew Hinton Photography.

on the excellent Conclave on Diversity in the Legal Profession in March. I was going to emphasize the advancements we have made in the area of access to justice with our support of pro bono programs, our work with legal services, and our innovations in court self-help resource centers and other self-represented litigant assistance. I was going to discuss the Legal Education and Assistance Program (LEAP), our new program working with libraries across the state, and the continued expansion of our self-represented litigant efforts with district courts. I was going to note that we just received reports indicating that literally thousands of people have been assisted through these self-help undertakings.

I was going to remind you that the LSBA has increased its support for the Lawyers Assistance Program (LAP) by expanding the resources it has available to help our

membership in times of trouble. I was going to make sure that you were aware that the LSBA has served its members well over the last year through the continuance and improvement of such important services as Fastcase and free CLE programs, the Ethics Advisory Service and the Client Assistance Fund, our Lawyer Fee Dispute Resolution Program and our Diversion Program, just to name a few.

I then began reflecting upon what it has meant to serve as LSBA president and what I will remember most about that year. As Ralph Waldo Emerson wrote, "I awoke this morning with devout thanksgiving for my friends, the old and the new." I immediately knew that my few last words as president would have to be words of thanks. I want to begin by thanking *you* for allowing me the privilege of serving as president. It has been a humbling experience. Sure, it has been a

lot of hard work, but it has accorded me the opportunity to visit legal communities across the state and elsewhere and to meet, work with, and sometimes just observe and admire an untold number of attorneys who devote considerable time and effort to the betterment of our profession. Most of them are unsung heroes. They do good things just to have done good things and do not look for credit.

I also want to express my gratitude to the many judges with whom I have had the distinct pleasure of working — judges who tirelessly spend hours upon hours in service of the public and the profession. Few know how hard each and every one of the Justices of our Supreme Court work behind the scenes to advance important initiatives. If you think that all the justices do is review writs, read records and write opinions, you are wrong. In that regard, I must extend a special thanks to Chief Justice Bernette Joshua Johnson for the work that she does, how devoted she is to the profession, and the assistance she has provided in furtherance of the objectives of the LSBA.

I also would be remiss in not mentioning two judges who I have admired for their hard work and devotion. The first is Judge C. Wendell Manning from Monroe. I have had the chance to work with Judge Manning, who is currently the president of the Louisiana Bar Foundation, not only on Foundation matters but also in connection with other activities and committees. He is truly committed to the citizens of our state and providing them with access to justice. The second judge I must recognize is Judge Jay C. Zainey of New Orleans. He is devoted to the wellness of our profession. Judge Zainey's work with SOLACE is an inspiration for all of us. And, with all that he does, he was still willing to help with the restructuring of LAP when I called upon him.

Further, I want to thank the many volunteers who I have worked with at the LSBA. There are numerous lawyers statewide who serve in our House of Delegates, on our Board of Governors, and as chairs or members of the Bar's committees who are working hard every day for you. In particular, I want to thank the Immediate Past President Richard Leefe for his guidance, for filling in whenever we have needed him, and for his friendship. He provided me with



Presidents Joseph L. (Larry) Shea, Jr., John H. Musser IV, Richard K. Leefe, James (Jimmy) J. Davidson III and Michael A. Patterson at the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*

a great example of how it should be done. I also want to thank the many past presidents of the Bar who have helped me along the way (from this old guy's perspective, there is much to be said for the advice of old guys), especially John Musser, Jimmy Davidson and Guy deLaup who, along with Richard and their better halves (Barat, Stephanie, Kay and Mickey), have made Jane and I feel welcome. I want to thank our President-Elect Mark Cunningham for his leadership in the improvements that have been made with LAP and his assistance and input on many other important activities of the Bar. I am confident that he is well prepared to assume leadership of the LSBA and I ask that all of you help him in any way you are able.

I want to add another couple of special thanks to Barry Grodsky and LSBA Past President Marta-Ann Schnabel. If I did not already know it before I became president, it did not take long for me to confirm that Barry and Marta are always there if you need them. Barry's contributions in furtherance of the Supreme Court-ordered mentoring program, as Secretary of the Bar, as Editor of the *Louisiana Bar Journal* and on other projects too numerous to mention cannot be understated. The same can be said for Marta. Her leadership and hard work are incredibly important to LSBA efforts to advance access to justice, and she has willingly assisted me with the improvements made in LAP and on other important issues during the last year.

A much deserved thanks goes to the staff of the LSBA. These "guys" work really hard. The Bar is under the expert leadership of our Executive Director Loretta Larsen who has been employed in that capacity for more than 20 years and who is recognized by her peers as being one of the best. It would have been nearly impossible to effectively

serve as president of the Bar without input, advice, direction and counsel from Loretta. Moreover, she has assembled a formidable team to assist her. From the Associate Executive Director Cheri Grodsky to the Directors Monte Mollere (Access to Justice), Denise Tingstrom (Administration), Kelly Ponder (Communications), Tony LaVerde (Information Technology) and Tricia Pierre (Outreach and Diversity) to the support personnel in each department, I have found every one of them to be knowledgeable and always ready to help.

Finally, and last but not least, I want to thank my family, friends and partners. Being LSBA president brings with it a substantial commitment of time. It is not something I could have done (or even considered doing) without the support and encouragement of my wife of 41 years, Jane, and my daughters, Shawn and Shannon. They have seen considerably less of me over the last few years (something which Jane has not complained of as much as I thought she would) and had to do more in my absence. I also must thank my partners at Bradley Murchison Kelly & Shea. They have worked harder so that I could serve, and I truly appreciate it.

So there are the words of thanks. As you can see, what I will remember the most from my experience of being president of the Louisiana State Bar Association are the people — the people who made it possible for me to serve, the people who inspired me to serve, and the people who helped me to serve — "my friends, the old and the new." It has been a rewarding journey, indeed. Thank you.

Joseph L. Shea, Jr.

Interstate Discovery Simplified: Louisiana Passes the Uniform Interstate Depositions and Discovery Act

By Christopher D. Cazenave and Graham H. Ryan



Litigants often seek discovery across state lines. In federal court, Federal Rule of Civil Procedure 45 authorizes an attorney to simply sign a subpoena to be served in the district where the witness or evidence is located. In state court, however, each state has a particular procedure for issuing and enforcing subpoenas directed to a nonparty, out-of-state witness. The trial and error associated with navigating these state-court procedures are often vexing and, in some cases, prohibitively expensive.

On Aug. 1, 2014, Louisiana became the 33rd state to adopt the Uniform Interstate Depositions and Discovery Act (UIDDA). UIDDA significantly simplifies the process for an out-of-state litigant to obtain discovery from a state that has enacted UIDDA. Understanding Louisiana's UIDDA statute, La. R.S. 13:3825, which is substantially similar to other states' UIDDA laws, will lessen the complexity and cost for Louisiana litigants seeking out-of-state discovery in any of the 32 other states that have enacted the statute. This article offers an introduction to Louisiana's UIDDA statute, guidelines for applying UIDDA to obtain out-of-state discovery, and, in summary, a suggested plan for out-of-state discovery.

Understanding Louisiana's UIDDA Statute

The Uniform Law Commission formulated UIDDA in 2007,¹ following two previous attempts to achieve procedural uniformity for interstate discovery: the Uniform Foreign Depositions Act (UFDA) in 1920, and the Uniform Interstate and International Procedure Act in 1962.² The purpose of UIDDA is to "set forth a procedure that can be easily and efficiently followed, that has a minimum of judicial oversight and intervention, that is cost-effective for the litigants, and is fair for the deponents."³ The statute is modeled after current Federal Rule of Procedure 45, which has been well accepted by litigators seeking out-of-state evidence in federal cases.⁴

Louisiana is the latest of 33 states to adopt a form of UIDDA.⁵ In February 2014, William R. Forrester, Jr., a council member of the Louisiana State Law Institute, presented UIDDA to the Louisiana Legislature.⁶ UIDDA became House Bill 619, sponsored by Rep. Neil C. Abramson.⁷ The House of Representatives and Senate passed the bill with ease, and Gov. Jindal signed the bill into law on June 29, 2014.⁸ UIDDA is now codified as La. R.S. 13:3825, effective Aug. 1, 2014.⁹ Compared to the model act, Louisiana's version of UIDDA contains only minor changes to conform to Louisiana procedure.

The comments to La. R.S. 13:3825 provide a detailed practice guide for how the statute functions. Under UIDDA, an out-of-state attorney no longer needs to prepare letters rogatory, file an ancillary action, or navigate any other convoluted procedure before obtaining a subpoena for Louisiana discovery.¹⁰ Instead, the attorney of record in the out-of-state proceeding first obtains a subpoena in the trial state in accordance with that state's procedure.¹¹ Next, the attorney obtains a copy of the form subpoena from the clerk of court of the parish where the witness resides or the documents are located.¹² The attorney from the trial state then prepares the Louisiana form to include the same terms as the trial-state subpoena.¹³ The statute requires that, when the sub-

poena is served, it contains the names, addresses and telephone numbers of all counsel of record in the trial state and of any party not represented by counsel.¹⁴ The attorney then submits the executed trial-state subpoena and unexecuted discovery-state subpoena (*i.e.*, Louisiana subpoena) to the clerk of court.¹⁵ After applicable filing and service fees are paid by the requesting party, the clerk will then take steps necessary under any local rules to issue the subpoena and arrange for service in accordance with La. C.C.P. art. 1355.¹⁶ Once issued, the subpoena is subject to the same substantive law as any other Louisiana subpoena.¹⁷

The benefits to UIDDA are clear. The statute requires only ministerial action by the clerk, which is sufficient to subject the deponent or third party in possession of documents to jurisdiction in Louisiana.¹⁸ The trial-state attorney is required to present less documentation to the Louisiana clerk to have the subpoena issued as compared to other available methods.¹⁹ This cures the ambiguity surrounding UFDA and letters rogatory as to the documentation sufficient for the issuance of a Louisiana subpoena.²⁰ Perhaps most importantly, the trial-state attorney's submission of documents to the clerk does not constitute an appearance, and, thus, the out-of-state party does not need to obtain local counsel for issuance of the subpoena.²¹ Also significant, UIDDA, unlike UFDA, applies not only to depositions but also to document requests, inspections and other methods for discovery set forth in La. C.C.P. art. 1421.²²

Note, however, that UIDDA's passage in Louisiana does not spell the end of UFDA (La. R.S. 13:3821) or letters rogatory (La. R.S. 3824(B)), both of which are still operative and available to practitioners to compel evidence in Louisiana for an out-of-state action. But, comparatively, UIDDA is certainly the simpler alternative.

Applying UIDDA to Obtain Foreign-State Discovery

Louisiana's adoption of UIDDA does not affect the process for obtaining out-of-state discovery in a Louisiana state-

court action. Rather, it simplifies an out-of-state litigant's pursuit of discovery from a nonparty in Louisiana. Thus, the first step in obtaining foreign discovery for a case pending in Louisiana is simply to determine whether the discovery state has enacted UIDDA. The Uniform Law Commission's website contains an "Enactment Status Map" that displays the 33 states that have enacted UIDDA or a variation thereof, as well as the states in which enactment is pending.²³

If the foreign state has adopted UIDDA, a Louisiana lawyer seeking out-of-state discovery can utilize the foreign state's version of UIDDA to seek out-of-state discovery. The Louisiana Legislature amended La. R.S. 12:3823 in 2014 to inform Louisiana litigants of the potential availability of UIDDA in foreign states. La. R.S. 12:3823 now contains a reference to Article 1435 of the Louisiana Code of Civil Procedure, which permits a Louisiana lawyer (after notice to all parties in the Louisiana proceeding) to compel appearance and testimony in the foreign state by using the foreign state's "compulsory process,"²⁴ *i.e.*, UIDDA. Employing UIDDA for out-of-state discovery is preferable for the same reasons that out-of-state litigants are likely to invoke it in Louisiana: UIDDA eliminates any need for judicial intervention or local counsel and, as a result, is more efficient and less costly. Thus, if the foreign state has adopted UIDDA, a Louisiana litigant should take advantage of that procedure as authorized by La. R.S. 13:3823(A)(4) and La. C.C.P. art. 1435.

If the foreign state has not adopted UIDDA,²⁵ the process for issuing a subpoena usually falls into one of three groups, any of which may ultimately require the Louisiana lawyer to retain local counsel to navigate that foreign state's procedure. First, under UFDA, which many states have adopted, a witness may be compelled to provide testimony for an action pending in a foreign state "in the same manner and by the same process and proceedings as may be employed for the purpose of taking testimony in proceedings pending in the [witness's] state."²⁶ In the second category, some states require a letter rogatory or commission from the forum state before issu-



ing a subpoena to an out-of-state witness. Third, some states, such as Maine, still expressly require the trial-state attorney to hire local counsel and file a miscellaneous action,²⁷ which is likely to be the most expensive and inefficient option.

Developing a Discovery Plan in Louisiana

Consider the following suggestions when developing a discovery plan for a case in Louisiana state court in which out-of-state nonparty discovery is required.

1. Identify the foreign state(s) where nonparty discovery is sought — *i.e.*, the "discovery state(s)" per the terminology used by the Uniform Law Commission.²⁸ The state where an action is pending — Louisiana — is referred to as the "trial state."

2. Visit the Uniform Law Commission's website to determine whether the discovery state has adopted UIDDA.²⁹ If

the discovery state has adopted UIDDA, locate the act as codified in the discovery state and review that statute along with any comments that were adopted. The comments to the model act — adopted by Louisiana and other states — are essentially a step-by-step guide to issuing a subpoena under UIDDA.

3. Obtain a valid subpoena issued from the trial state by completing the form required by the judicial district in which the action is pending and submitting the completed subpoena form to the clerk or judge for issuance. In Louisiana, La. C.C.P. art. 1351 requires that the "clerk or judge of the court wherein the action is pending . . . shall issue subpoenas . . . under the seal of the court."³⁰ Unlike some other jurisdictions, Louisiana attorneys cannot issue a subpoena to a Louisiana witness as an officer of the court. Notably, while UIDDA significantly lessens trial-state counsel's responsibility to closely follow the rules of the discovery state, the statute does not reduce any requirements that trial-state

counsel ensure that a subpoena is validly issued under the rules of the trial state.

4. Determine which form, if any, must accompany a subpoena to be issued in the county of the discovery state where the witness resides. The form may be found on the website for the particular discovery-state court.³¹ The discovery state's form should then be completed with the same information included in the trial-state subpoena.

5. Deliver the executed trial-state subpoena and the unexecuted discovery-state subpoena to the appropriate clerk's office in the discovery state. The clerk of court will then issue the identical subpoena from the discovery state once applicable fees are paid, and will have the subpoena served in accordance with the discovery state's law and any applicable local rules.

If the discovery state has not adopted UIDDA, a discovery plan becomes more complicated. But the process in the non-UIDDA discovery state for issuing a subpoena likely permits one or more of the three methods identified above — *i.e.*, UFDA, letters rogatory/commission, or initiating a miscellaneous action. Understanding at the outset which other processes may be available in the discovery state will at least allow an estimate for obtaining the foreign discovery and whether the cost is worth the anticipated benefit.

The next time interstate discovery is required in a state-court proceeding, be sure to consult UIDDA and, if applicable, take advantage of its efficient and cost-effective procedure for obtaining discovery across state lines.

The authors would like to credit Rep. Neil C. Abramson and William R. Forrester, Jr. for their insights and contributions. They also would like to acknowledge fellow Jones Walker, L.L.P., attorney Tyler J. Rensch for his assistance.

FOOTNOTES

1. Uniform Interstate Depositions and Discovery Act (2007), available at: www.uniformlaws.org/shared/docs/interstate%20depositions%20and%20discovery/uidda_final_07.pdf (last visited Jan. 17, 2015).

2. American Bar Association, Pretrial Practice & Discovery, Winter 2012, Vol. 20, No. 2 at 13, available at: www.americanbar.org/content/dam/aba/unclassified/litigation-pretrial-winter2012-mo.authcheckdam.pdf (last visited Jan. 17, 2015).

3. See *supra* note 1 at 1.

4. See *supra* note 1 at 8.

5. Legislative Fact Sheet, Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act (last visited Jan. 17, 2015).

6. Louisiana State Legislature, House Bill 619, available at: www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=HB619&sbi=y (last visited Jan. 30, 2015). UIDDA was first brought to the Louisiana State Law Institute's attention by Michael H. Rubin, an attorney in the Baton Rouge office of McGlinchey Stafford, P.L.L.C. Arkansas and Illinois are also considering passing UIDDA. See, www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act.

7. See *supra* note 6.

8. See *supra* note 6.

9. See La. R.S. 13:3825 (2015).

10. See La. R.S. 13:3825 cmt. (c).

11. See La. R.S. 13:3825 cmt. (c).

12. See La. R.S. 13:3825 cmt. (c).

13. See La. R.S. 13:3825 cmt. (c).

14. See La. R.S. 13:3825 cmt. (c).

15. See La. R.S. 13:3825 cmt. (c). The comments also recommend that the attorney include a cover letter expressly stating that the subpoena is being issued pursuant to La. R.S. 13:3825. *Id.*

16. See La. R.S. 13:3825 cmt. (c).

17. See La. R.S. 13:3825 cmt. (c).

18. See La. R.S. 13:3825 cmt. (c).

19. See La. R.S. 13:3825 cmt. (c).

20. La. R.S. 13:3824 (pre-2014 amendment), for example, provided that "[a] court of this state may order" a Louisiana witness to give testimony or provide documents "upon the application of any interested person or in response to a letter rogatory." That language left a litigant in the dark as to which documents must be contained in such an "application." Further, that language required a court order, which leaves a lawyer questioning whether to initiate an ancillary proceeding in the appropriate parish or to seek an order through the clerk of court. The 2014 amendment to La. R.S. 13:3824 removes the language requiring an order from a "court." This statutory ambiguity and inconsistency from parish to parish translates to wasted time and cost.

21. See La. R.S. 13:3825(C)(1). Enforcement proceedings, if necessary, must comply with all applicable Louisiana law and may well require

participation by Louisiana counsel.

22. Compare La. R.S. 13:3825(B)(5) with La. R.S. 13:3821 and La. R.S. 13:3824.

23. Enactment Status Map, Uniform Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act (last visited Jan. 17, 2015).

24. La. R.S. 13:3823(A)(2)(d); La. C.C.P. art. 1435.

25. Many states have not adopted UIDDA. See *infra* note 23.

26. See, *e.g.*, La. R.S. 13:3821.

27. Maine R. Civ. P. 30(h).

28. Prefatory Notes, Uniform Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/shared/docs/interstate%20depositions%20and%20discovery/uidda_final_07.pdf (last visited Jan. 15, 2015).

29. See *infra* note 23.

30. La. C.C.P. art. 1351 (2014).

31. For example, the form for Orleans Parish can be found on the court's website at: www.orleanscdc.com/forms/Subpoena.pdf.

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RESURRECTION OF A REAL RIGHT:

Annuities with a Charge

By Tyler G. Storms



Thanks to the Louisiana State Law Institute,¹ we now have a workable and modern real right which is available to you as a practitioner. Before analyzing this new right, we should, however, first look back to what it replaced.

Louisiana Civil Code Articles 2778-2800 were, possibly, the section of the Civil Code most direly in need of revision. Prior to the revision² of Book III, Title X, very few lawyers even contemplated, and rarely if ever used, the contract known as “Rent of Lands.” The entire body of jurisprudence regarding “Rent of Lands” is scarce, and there were no reported cases involving “Rent of Lands” in the past 50 years.³

The concept of “Rent of Lands” made sense in a primarily agrarian society in that a party would convey a tract of land but reserve an annual rent to be paid in money or fruits. The charge for the annual payment of money or fruits was perpetual and remained with the land even after a sale.⁴ What distinguished the “Rent of Lands” contract from a lease was the nature of its perpetual charge on the land in question.⁵

The charge on the “Rent of Lands” contract was removed via “redemption.”⁶

The revision at issue concerns the replacement of something antiquated and unused with a modern law that is the first of its kind in the entire civil law world.⁷ The annuity contract secured by the annuity charge provides a tool for the acquisition of income *inter vivos* through periodic payments. The very statutory scheme of the annuity contract itself provides for these types of rights. Parties have contractual freedom to obligate themselves to pay whatever sums they choose. One might imagine a situation where a party obligates himself to pay small amounts of money in an annuity contract based on a relatively healthy and young person’s life; however, an older person who exchanges a highly valuable house might be able to negotiate a rather large periodic payment for the remainder of his life.

The annuity contract considered with the annuity charge can, furthermore, provide an alternative to the reverse mortgage. Louisiana is particularly well positioned to benefit from this type of arrangement because our homestead exemption has made home ownership status relatively easier for people to obtain. The annuity contract, moreover, is much simpler and more elegant than a reverse mortgage. The annuity contract can actually be combined with a retention of the usufruct over the thing exchanged. This would allow the previous homeowner to avoid the risk associated with the possible loss of a home in a reverse mortgage situation.

Many reverse mortgages, furthermore, require that the owner actually live in the house.⁸ The annuity contract does not.

The annuity contract and annuity charge can possibly provide shelter in a bankruptcy filing.⁹ A person filing a petition in bankruptcy may attempt to rely on an exemption contained in state law.¹⁰ Annuity contracts may be claimed as exempted property.¹¹

The annuity contract and annuity charge can, furthermore, provide protection in a medical estate recovery program when dealing with Louisiana long-term Medicaid eligibility.¹² For someone in need of long-term nursing home care, the annuity contract with its annuity charge could help a potential Medicaid beneficiary from

having to spend down countable assets.¹³

Regardless, immovable property that is subject to the annuity charge should be deemed to have been alienated from the beneficiary’s estate. Additionally, there are no cumbersome federal regulations. For example, there is no restriction that the immovable exchanged in an annuity contract be a dwelling. The immovable could be pasture land or a commercial building. The beauty of this revision is that it provides a workable body of suppletive law for annuities in general, and it more importantly allows for an annuity charge over an immovable that functions as a real right.¹⁴

Real Rights

A “real right” is distinguishable from a “personal right.” A “personal” right is the legal power that an obligee has to demand from an obligor in terms of giving, doing or not doing a thing.¹⁵ “Real” rights have to do with ownership — rights that may be declared against the entire world.¹⁶ While it is beyond the scope of this article to provide an analysis that perfectly distinguishes “real” versus “personal” rights, “real” rights confer absolute authority over a thing, such as the right of ownership.

Annuities

Before discussing the annuity charge, which is the true teeth of the revision, it is important to look at the suppletive law regarding the annuity contract itself. “An annuity contract is an agreement by which a party delivers a thing to another who binds himself to make periodic payment to a designated recipient.”¹⁷

The type of “thing” that may be delivered is virtually anything. The only limitation on what could be exchanged would be a restriction against things that are not privately owned — that is, “common things,” such as air or the high seas.¹⁸ The annuity can be for the life of a natural person or for a specified period of time.¹⁹ If no time is stated, an annuity in favor of a natural person is presumed to be for the life of that natural person, but an annuity in favor of a juridical person must be for a specified period of time.²⁰ An annuity in favor of a



juridical person will be ineffective without a specified period of time.²¹

Annuities may be in favor of several natural persons in divided shares or in indivision.²² If the annuity is established in indivision and is based on the lifetimes of natural persons, the amount of the annuity does not change because it inures to the benefit of the survivors.²³

The Annuity Charge

It is important to remember that an annuity may be set up simply by the delivery of “a thing.”²⁴ When the “thing” which has been transferred is an immovable, that immovable property may be transferred subject to an “annuity charge” for the periodic payment due under the annuity contract.²⁵ This annuity charge must be established expressly and in writing.²⁶ The annuity charge is without effect as to third persons unless it is recorded in the conveyance records of the parish in which the immovable is located.²⁷ An annuity charge may not exceed 30 years, unless the charge is for the life of a natural person.²⁸

If the recipient does not receive payment of the amounts due under the annuity contract subject to the annuity charge, he or she may obtain a judgment for the amounts due, and execute that judgment in accordance with law.²⁹ This adjudication extinguishes not only the annuity charge for all amounts for which judgment was rendered, but also extinguishes “all charges and encumbrances on the immovable

inferior to the annuity charge,”³⁰ however, this adjudication does not extinguish the annuity charge for amounts thereafter becoming due under the annuity contract.³¹ This means, in effect, that a buyer of the immovable burdened with an annuity charge will be responsible to continue making future annuity payments after, for example, a sheriff’s sale. If the recipient is the one who buys the immovable subject to the annuity charge, though, the annuity charge is of no further effect because of the principle of confusion.³²

The annuity charge also can serve as an estate planning tool, as an onerous donation. For example, an owner may donate an immovable to a loved one. If the immovable is worth \$1 million, the owner could retain an annuity charge worth \$400,000, reducing the donation to \$600,000. If properly performed and accounted for, the annuity charge could be used to offset what could be subject to the unified gift tax credit.

Conclusion

The revision of the law of annuities, combined with the creation of the annuity charge, can serve the needs of those planning for retirement. Ideally, the annuity charge would, for example, allow an elderly person to sell his home to his child and relocate to a more suitable venue with the benefit of secure income. This contract also provides shrewd investors with a simple way to acquire property without having

to put money down. The possibilities are limitless for the creative practitioner, and this new law stands as a tremendous improvement over the antiquated “Rent of Lands.”

FOOTNOTES

1. Particular recognition goes to A.N. Yiannopoulos, reporter and chair of the Rents and Annuities Committee, which was also the last committee to include the late Saül Litvinoff. In the interest of full disclosure, the author of this article serves on the same committee.

2. La. Acts 2012, No. 258, eff. Jan. 1, 2013, authorized the revision of Book III, Title X, of the Louisiana Civil Code of 1870, “Of Rents and Annuities,” consisting of Articles 2778 to 2800.

3. Bradley Schwab, “The Birth of a Real Right: An Overview and Analysis of the Recent Revision of Book III, Title X of the Civil Code,” 73 La. L. Rev. 821 (2013) (hereinafter, “Schwab”).

4. La. Civ.C. arts. 2780 and 2786 were articles of the Louisiana Civil Code of 1870.

5. *Id.*

6. La. Civ.C. art. 2799 (1870).

7. Schwab at 847.

8. *Id.* at 846.

9. *Id.* at 844-845.

10. 11 U.S.C. § 522(b)(2); *see also*, Schwab at 845.

11. La. R.S. 22:912 B(1); *see also*, Schwab at 845.

12. *Id.* at 846-847.

13. *Id.*

14. A.N. Yiannopoulos, 2 La. Civ. L. Treatise, Property, § 203 (4 ed. 2001).

15. *Id.*

16. *Id.*

17. La. Civ.C. art. 2778.

18. Schwab, fn. 9.

19. La. Civ.C. art. 2781.

20. La. Civ.C. art. 2782.

21. *Id.*

22. La. Civ.C. art. 2785.

23. *Id.*

24. La. Civ.C. art. 2778.

25. La. Civ.C. art. 2787.

26. *Id.*

27. La. Civ.C. art. 2788.

28. La. Civ.C. art. 2790.

29. La. Civ.C. art. 2791.

30. *Id.*

31. *Id.*

32. *See*, comment (c) to La. Civ.C. art. 2791.

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Procrastination,
file stagnation &
neglect, inability to
meet professional or
personal obligations
or deadlines

Inability to open mail
or answer phones,
“emotional paralysis”

Feelings of bafflement,
confusion, loneliness,
isolation, desolation
and being overwhelmed

Persistent
apathy or
“empty” feeling

Drug or
alcohol
abuse

Changes
in energy,
eating or
sleep habits

Loss of interest
or pleasure,
dropping
hobbies

Trouble
concentrating
or remembering
things

Guilt, feelings of
hopelessness,
helplessness,
worthlessness, or
low self-esteem

A Johns Hopkins study found that
lawyers suffer from depression
at a rate 3.6 times higher than the
general employed population.

We Can Help.

The signs of depression aren't easy to read. No one is completely immune.
If you or a colleague experiences signs of depression, please call.

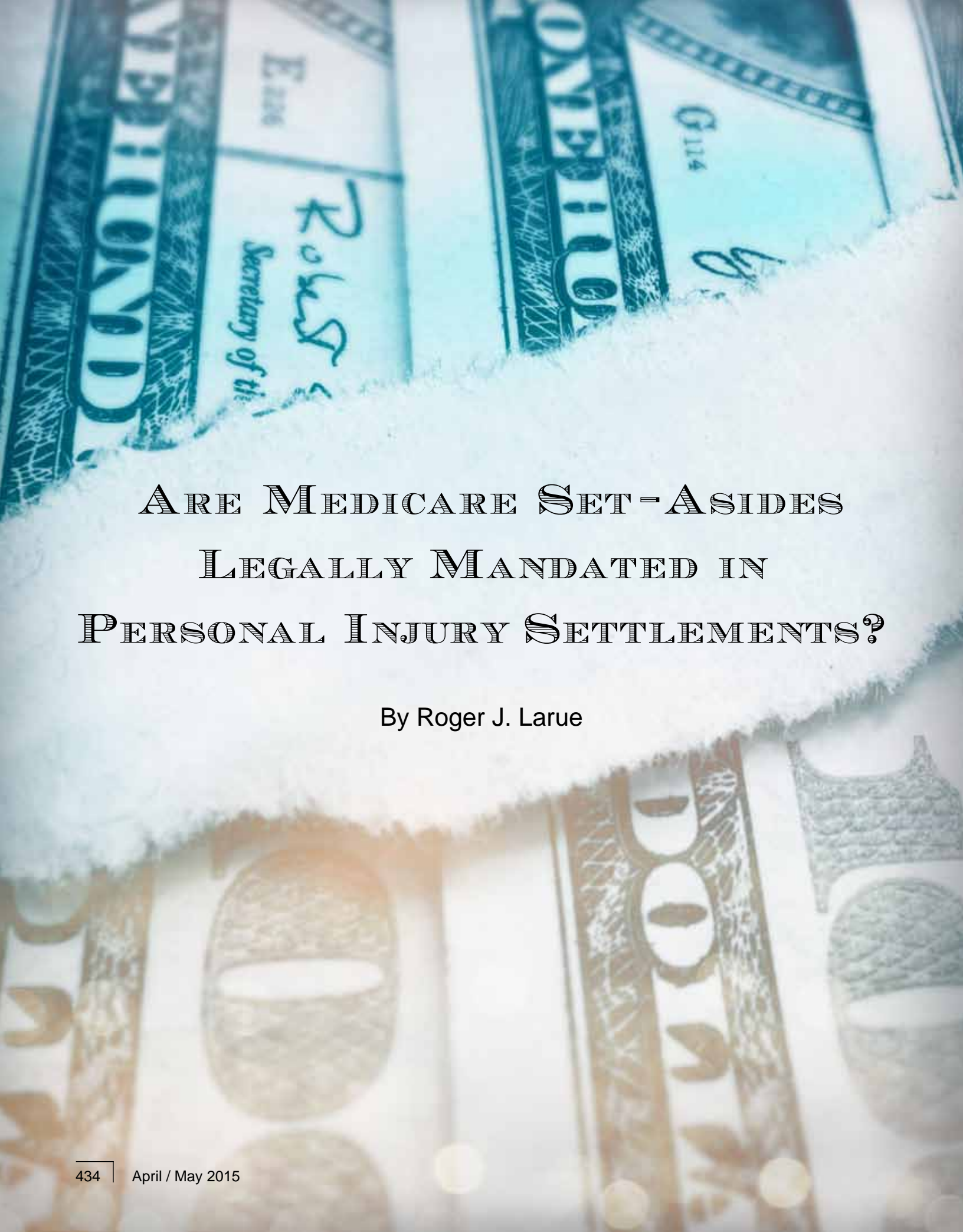


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The background of the page features a close-up, slightly blurred image of several US dollar bills that have been torn horizontally. The top portion of the bills is blue, showing the word "ONE" and the number "100". The bottom portion is green, showing the word "DOLLAR" and the number "100". The tear is jagged and runs across the middle of the page, creating a white, fibrous gap. The text of the article is centered over this background.

ARE MEDICARE SET-ASIDES LEGALLY MANDATED IN PERSONAL INJURY SETTLEMENTS?

By Roger J. Larue

Are Medicare set-asides (MSAs) legally mandated when settling third-party liability claims?

In my opinion — No, MSAs are not legally mandated in third-party liability cases. While properly evaluated MSAs are the method preferred by the Centers for Medicare and Medicaid Services (CMS),¹ and the safest for protection of the parties and counsel, there is no authority that they are mandated. To the contrary, the overwhelming evidence is that MSAs are not mandated.

Observation and Reasons

The Medicare Act “is one of ‘the most completely impenetrable texts within human experience.’”²

The issue of MSAs arises out of the Medicare Secondary Payer (MSP) Act, 42 U.S.C. § 1395y(b)(2)(A) & (B).

Section A, the “General Rule,” prohibits Medicare from paying for medical expenses related to third-party liability claims as long as a “primary plan” exists.³ A “primary plan,” as defined by the MSP Act, can be any one of a number of resources: personal and/or group health coverage, workers’ compensation, or a monetary personal injury settlement wherein the claimant releases the defendant(s) from payment of future medical expenses.⁴

The only exception to this general prohibition on payment of medical expenses is found in Section B of § 1395y(b) (2), “Conditional Payments.” Under that section, Medicare is authorized to make payments for accident-related medical expenses under certain circumstances.⁵ These payments are considered “conditional” because they must be repaid upon receipt of settlement funds by the claimant. The procedures for repayment and the penalties for failing to repay the “conditional payments” are very specific, and the rights of CMS to collect conditional payments are spelled out in detail in the MSP Act and its implementing regulations.⁶

A glaring distinction exists between Sections A and B. Although the General Rule states that Medicare is prohibited from paying for medical expenses related to third-party liability claims, the General

Rule of the MSP Act contains no statutory time limits, procedures or regulations setting forth the duration of that prohibition. In other words, unlike the “Conditional Payment” section, the “General Rule” continues past the closure of the claim: without any time limits on protecting Medicare’s interests, the parties are obligated to protect Medicare’s interests as long as a primary plan exists. The MSP Act is somewhat confusing because no person, fund or entity is required to reimburse Medicare until payment is made. Therefore, if the defendant wins via summary judgment, directed verdict, etc., it has no responsibility to repay Medicare because it didn’t ever become a “Primary Plan.” Courts have taken notice of this. Indeed, one court has noted:

[§] 1395[y] is not a model of clarity[,] [y]et it does clearly provide that, where there is some entity, other than Medicare, obligated to pay for an item or service, that entity shall pay first and Medicare shall pay the excess.⁷

The same reasoning applies to post-settlement protection of Medicare. However, neither the MSP Act nor the Code of Federal Regulations nor CMS have articulated how that obligation should be satisfied.

In 2001, CMS published the “Patel Memorandum” which contained the first mention of MSAs as a means of protecting Medicare’s post-settlement interests.⁸ Since the publication of the Patel Memorandum, CMS has issued many other memoranda and guidelines on this issue.⁹

Over the same period that CMS was publishing and expanding its MSA guidelines, there were growing concerns about whether set-asides of any sort were mandated, particularly in liability cases. Additionally, the tide was changing as to whether MSAs were legally mandatory in liability cases in view of the fact that the language of the MSP Act says nothing about MSAs. Likewise, the federal regulations are silent as to post-settlement protection of Medicare.¹⁰

The first note I personally received indicating that MSAs are not legally mandated is found in a November 2006 email

from Sally Stalcup, CMS’s MSP regional coordinator for Region 6, headquartered in Dallas.¹¹ The email stated, in pertinent part:

Section 1862(b)(2)(A)(ii) of the Social Security Act [42 U.S.C. § 1395y(b)(2)(A)(ii)] precludes Medicare payment for services to the extent that payment has been made or can reasonably be expected to be made promptly under liability insurance.

This also governs Workers’ Compensation. 42 CFR 411.50 defines liability insurance. Anytime a settlement, judgment or award provides funds for future medical services, it can reasonably be expected that those funds are available to pay for future services related to what was claimed and/or released in the settlement, judgment or award. Thus, Medicare should not be billed for future services until those funds are exhausted by payments to providers for services that would otherwise be covered by Medicare

There is no regulation that requires the establishment of a set-aside fund. The law does require that those funds be available to pay for future otherwise Medicare covered services related to what was claimed and/or released in the settlement agreement. There is no formal CMS review process in the liability arena as there is for Workers’ Compensation. (Emphasis added.)

A second basis for my opinion is a handout by Stalcup at a Medicare conference in May 2011.¹² In that handout, she stated:

The law does not require a “set-aside” in any situation. The law requires that Medicare Trust Funds be protected from payment for future services whether it is a Workers’ Compensation or liability case.

In a CMS memorandum published on May 11, 2011,¹³ CMS reiterated that it had issued guidelines on Workers’ Compensation Medicare Set-Aside Agreements (WCMSAs) which can be found

on a “dedicated workers’ compensation” website. This memorandum effectively excluded all liability cases from CMS’s MSA guidelines.

Also during this period, the 11th Circuit decided *Bradley v. Sebelius*.¹⁴ With respect to the methodology of handling matters falling outside the MSP Act and the Code of Federal Regulations, *Bradley* stands out for the following statement:

At present, there is no vehicle or mechanism in the MSP statute or its regulations that specifically prescribes how a lump sum settlement will be prorated between multiple parties. Until better methods are prescribed and followed, the one pursued here [*i.e.*, a probate court’s equitable allocation of wrongful-death settlement proceeds between a beneficiary’s children for non-medical losses and Medicare for medical expenses paid] is reasonable and, indeed, the only one available.¹⁵

Stated otherwise, in situations where the MSP statute or its regulations are silent as to how a Medicare issue should be resolved, parties should exercise reason, due diligence and common sense in regard to Medicare’s interests. Indeed, this is how courts have interpreted *Bradley*.

For instance, in *Benoit v. Neustrom*,¹⁶ the district court clearly noted that MSAs are not mandatory. Citing the May 25, 2011, CMS memorandum and *Bradley v. Sebelius*, *supra*, the court stated in its findings of fact:

Medicare does not currently require or approve Medicare set-asides when personal injury lawsuits are settled. Medicare does not currently have a policy or procedure in effect for reviewing or providing an opinion regarding the adequacy of the future medical aspect of a liability settlement or recovery of future medical expenses incurred in liability cases.¹⁷

Additional proof that CMS has not issued any guidance on liability MSAs is found in CMS’ Advanced Notice of Proposed Rulemaking (ANPR) published in the Federal Register in June 2012.¹⁸

The purpose of that notice, as stated by CMS, was:

[To] solicit[] comment on standardized options that we are considering making available to beneficiaries and their representatives to clarify how they can meet their obligations to protect Medicare’s interest with respect to Medicare Secondary Payer (MSP) claims involving automobile and liability insurance (including self-insurance), no-fault insurance, and workers’ compensation when future medical care is claimed or the settlement, judgment, award, or other payment releases (or has the effect of releasing) claims for future medical care.

The ANPR then provided several options as to how to protect Medicare’s interests following conclusion of a liability case. Of the seven options that CMS sought comment on, only one mentioned set-asides (option 4). To date, however, no proposed regulation has been published.

Summary

For all these reasons, it is my opinion that Medicare set-asides are not legally required when settling third-party liability claims. However, using the rule of reason, the parties must protect Medicare’s interests. The methods for protecting Medicare’s post-settlement interests are case-specific and are not addressed herein.

FOOTNOTES

1. CMS is a federal agency within the Department of Health and Human Services (DHHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, among other programs.

2. *Parra v. PacifiCare of Arizona*, 715 F.3d 1146 (9 Cir. 4/19/13); *Cooper University Hospital v. Sebelius*, 636 F.3d 44, 45 (3 Cir. 2010).

3. The MSP Act is somewhat vague in the definition of a “Primary Plan” because, in reality, the defendant only becomes a “Primary Plan” when the claim is concluded via a compromise or judgment, *i.e.*, the claimant receives a sum of money for his/her injuries. Before that point in time, the proper term should be that the defendant is a potential Primary Plan. If the defendant succeeds in winning the case by whatever means, the defendant never becomes a Primary Plan.

4. § 1395y(b)(2)(A)(ii).

5. Medicare normally makes “conditional payments” if the claimant has no source of medical funding that should reasonably pay within 120 days of the injury. 42 U.S.C. § 1395y(b)(2)(B)(i); 42 C.F.R. § 411.21.

6. § 1395y(b)(2)(B)(i)-(iv); 42 C.F.R. § 411.21.

7. *Bradley v. Sebelius*, 621 F.3d 1330, 1339 n.21 (11 Cir. 2010) (citing § 1395y(b)(2)(A), (b)(2)(B)(ii)).

8. www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Memorandums/Downloads/July-23-2001-Memorandum.pdf.

9. www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Memorandums/Memorandums.html.

10. See generally, 42 C.F.R. §§ 411.01 through 411.54.

11. Upon request, the entire email can be forwarded to you. Because Stalcup is a public servant, the emails are not confidential and can be reviewed by interested persons.

12. www.pmsionline.com/pdf/May-25-2011-CMS-Handout-Stalcup.pdf.

13. www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Memorandums/Downloads/May-11-2011-Memorandum.pdf.

14. 621 F.3d 1330.

15. *Id.* at 1339 n. 21.

16. No. 10-cv-1110, 2013 WL 1702120 (W.D. La. April 17, 2013).

17. *Id.* at *5.

18. Medicare Program: Medicare Secondary Payer and “Future Medicals,” Federal Register/Vol. 77, No. 116, June 15, 2012, pgs. 35917-35920; www.gpo.gov/fdsys/pkg/FR-2012-06-15/pdf/2012-14678.pdf.

Roger J. Larue is the co-owner of Mediation Arbitration Professional Systems, Inc. (maps®) and president/lead lien compliance officer of maps® Lien Resolution Services, L.L.C. (LRS). He divides his time between mediating and consulting on various lien issues. He is a lien resolution consultant to members of the plaintiff and defense bars, corporate entities and insurance carriers. He is a member of the National Association of Medicare Set-Aside Professionals. He has presented numerous seminars on lien and reimbursement issues involving traditional Medicare, Medicare Part C Plans, Medicaid, ERISA and more. He graduated in 1970 from Loyola University and received his JD degree in 1972 from Loyola and his MBA in 1998 from Tulane University. (rlarue@maps-adr.com; Ste. 400, 3850 N. Causeway Blvd., Metairie, LA 70002)



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Book Review

Acadie, Then and Now: A People's History

under the direction of Warren Perrin, Mary Broussard Perrin and Phil Comeau

(published by Andrepont Publishing, L.L.C., Opelousas, La. 2014)

Reviewed by W. Thomas Angers

A*cadie, Then and Now: A People's History* is a monumental event in publishing. Never has anyone sought to assemble all things Acadian in one place and one volume, until now.

This incomparable anthology of 470 pages, available in both French and English editions, is a compilation of 65 scholarly essays written by 50 authors, all compiled by Warren A. and Mary Broussard Perrin and Phil Comeau.

Warren A. Perrin, a Lafayette lawyer and current chair of the Louisiana State Bar Association's Francophone Section, has long been active in the movement to preserve and promote Louisiana's French and Acadian culture. He served as a long-time president of the Council for the Development of French in Louisiana and is a skills professor at Loyola University College of Law. The author of six books dealing with Louisiana culture and history, Perrin is also well-known for filing a petition for an apology for the Acadian deportation, resulting in the famous Queen's Proclamation signed on Dec. 9, 2003, wherein the British Crown formally acknowledged tragic consequences of the deportation, including deaths of the Acadian people and their trials and suffering from the expulsion from present-day Nova Scotia, then known as Acadie.

His wife, Mary Broussard Perrin, is a mixed media artist and author. Phil Comeau,

a film director, writer and editor, was born in Nova Scotia and presently lives in Montreal, Canada.

The three compilers assembled the works of authors from the United States, France and Canada, from all regions settled by Acadians. They include professors, folklorists, historians, broadcasters, lawyers, jurists, professors of law, scientific advisers, musicians, producers, poets, playwrights, film directors and producers, Acadian museum directors, business persons, journalists, editors, communication educators, genealogists, policy analysts, Acadian and cultural activists, directors of Acadian associations, translators, and specialists from other disciplines. The compilers could never have assembled a more informed body of expertise on the subject.

The word "Cajun" refers to persons of Louisiana Acadian descent. The word "Acadian" was shortened to "Cadien" and then to "Cajun." But, Acadians have lived and settled worldwide.

The goals of the book, according to Mr. Perrin, include identifying Acadian communities existing today throughout the world, identifying places where the Acadian exiles moved after the British expelled them from the Canadian Maritime Provinces in 1755, and identifying all things Acadian, commencing with the settlement of Acadia in 1605 by French immigrants and continuing up to the present date.

As Mr. Perrin said, "I wanted to know why we have an Acadian flag and other remnants of Acadie, even though it ceased to exist three centuries ago." Mary Broussard Perrin explained, "There is very little written about Louisiana — or any place. We had to piece it together like a quilt."

Mr. Perrin discovered an Acadian community near Montreal known as Lanaudiere that began about 1765 when his ancestor, Joseph Broussard, arrived in Louisiana. "I thought I understood what Acadie meant, but I had no idea this region existed. It caused me to think, how many other places exist and what does Acadie mean today?" So, the seeds of this publishing journey were sown. The book addresses where the Acadian people have gone, where they remain and their cultural and demographic history.

Acadians today reside in the states of Louisiana, Texas, Maine, Massachusetts and Michigan; in the Canadian provinces of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Quebec; in the Caribbean; in South America and the Falkland Islands; and in the French regions of Nantes, Poitou, Belle-Ile-en-Mer, Saint Pierre and Miquelon. The book reveals that the Acadian experience is truly a three-continent phenomenon, but ultimately is worldwide in scope.

Like the Huguenot experience, also originating in repression, expulsion and deportation, the Acadian experience has



been characterized by cohesion and remarkable continued identity. To this day, certain specific French names can be identified as Acadian or Huguenot after several centuries.

The book also touches on historical and legal issues of ethnic cleansing, genocide and systematic violation of human rights, which show that the Acadians are another element in the matrix of world citizens fleeing denial of personal and political freedom and seeking escape from repressive governmental conduct.

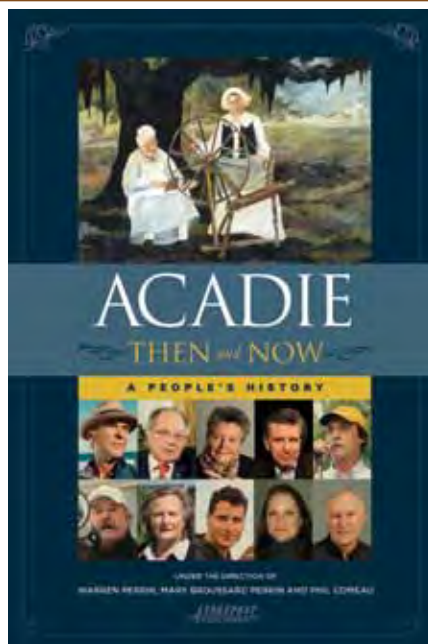
The book is divided into five sections titled "World Acadie," "Cultures of Acadie," "Remarkable Acadie," "Dignity of a People" and "Acadian Regional Histories."

The "World Acadie" section includes essays on the Acadian demographic history, contemporary effects of the Acadian Diaspora, and the French language and the Acadians in North America. The "Cultures of Acadie" section covers the topics of Acadian and Cajun cultural tourism, Cajun music, Acadian cinema in Canada, Cajuns in film, Cajun cuisine, and the Métis of Mi'kmaq Indians and their connections with Acadians. The "Remarkable Acadie" section includes essays on "The Landscape of Grand Pre" and "Evangeline: The Icon Who Just Won't Die." In the "Dignity of a People" section, articles discuss John Winslow, the British officer who masterminded the deportation, "The Protection of Minority Rights in Canada" and "Acadian Refugees or Prisoners in Acadie: 1755-1765." The "Acadian Regional Histories" section contains essays on Acadians living in more than 15 places in the world.

Through this extraordinary assortment of articles and images, the authors carefully weave a volume which fully explores the physical, cultural, multi-ethnic, culinary, legal and political history of the Acadian people, and provides much imagery confirming their journey.

In addition to many fascinating and well-written essays, the book also appeals to the visual-minded with superior maps, illustrations and photographs.

The map indexing is divided into "then" maps and "now" maps. In the "now" maps section, locations of Acadians in Atlantic Canada, Louisiana, Texas, Quebec, Maine and France are identified. One two-page map (pages 16-17) titled "Acadian Migrations 1758 to 1816" shows the migrations, sub-migrations and cross-migrations throughout



the Western Hemisphere and Europe, even including certain verified historical migrations of Acadians returning from France to the Western world.

Illustrating the "Visual Arts of the Cajuns of South Louisiana" essay by Mary Broussard Perrin are images of George Rodrigue's "The Aioli Dinner" and a photograph of Rodrigue in his studio with a canvas depicting the iconic Blue Dog; photography by Debbie Fleming Caffery, a Louisiana artist with works published by *The Smithsonian*; and works by artists Elemore Morgan, Jr., Troy Dugas, Mary Beyt, Lou Blackwell, Megan Barra and Camille Comeaux.

Illustrating the essay "The Acadian Aboiteau: A Cultural and Economic Keystone" by Dr. Whitney P. Broussard III are images depicting marsh reclamation started in Port Royal, Acadia's first permanent settlement, marsh reclamation at the village of Grand Pre and a portrait of an Acadian community repairing an aboiteau, a dike-and-sluice structure that made agriculture possible in the marshland environment.

It is noteworthy from an economic history point of view that the Acadians dealt with marsh reclamation and farming in a marsh environment, both in Acadie and in south Louisiana.

The essay titled "The Cajuns in Louisiana" by Warren Perrin includes photographs of iconic Louisiana Cajuns, among them, Dr. Thomas Arceneaux, former Louisiana State Comptroller Roy Theriot, Sr. and Judge Allen Babineaux, with the official Acadian flag in 1974. Dr. Arceneaux is credited with

designing the Acadian flag and Judge Allen Babineaux was a lifetime leader of the Louisiana Acadians and the French Renaissance movement who studied and made known the history of the Acadian people.

The first use of the Acadian flag in a business and in print was by this author's father, the late Robert J. (Bob) Angers, Jr., who founded *Acadiana Profile Magazine* in 1968, using the image of the Acadian flag on the cover. Artist Al Esteve reduced the image to print with the first rendering of it on paper.

In the book's epilogue, Mr. Perrin relates extensive details of his personal journey in exploring the physical and cultural Acadian world, which underscores his motive in producing the book. He emerges as a freedom fighter personality, fighting for the rights, liberties, dignity and vindication of his beloved Acadian people so the world will know the pain, struggles, progress and continued viability of the Acadians.

In the end, *Acadie, Then and Now* is a journal of the lives of Warren and Mary Perrin over many decades, as they attempt to discover and redeem the Acadian people. The Perrins seek the ultimate redemption, vindication, dignity and promotion of the Acadian people, and, in a superb way, they have succeeded magnificently with this volume.

The book is available for purchase online via Amazon, www.amazon.com, or online at the Acadian Museum (Erath, La.) boutique, www.acadianmuseum.com/boutique.html.

W. Thomas Angers, a Lafayette attorney, practices in the areas of personal injury, environmental damages and BP claims. He serves on the board of the Louisiana Center for Law and Civic Education. He is a member of the Louisiana State Bar Association's Francophone Section. He is a former member of the Lafayette Bar Association's board of directors. He is an author and president of Beau Bayou Publishing Co., a book publisher. He is co-author of *My Wars: Nazis, Mobsters, Gambling and Corruption*, Colonel Francis C. Grevemberg Remembers, the biography of former Louisiana Superintendent of State Police, Francis C. Grevemberg, who fought mob-controlled illegal gambling, public corruption and vice, and who signed an affidavit before Angers confirming specific details of a cover-up, public corruption and obstruction of justice relating to the killing of Huey Long. (thomas.angers@lusfiber.net; 131 South Audubon Blvd., Lafayette, LA 70503)



LSBA Recognizes 50- and 60-Year Members at Midyear Meeting

Louisiana State Bar Association (LSBA) members who have reached half a century and beyond in their professional careers were honored during the LSBA's Midyear Meeting in January. At the Jan. 16

reception, the honorees were recognized for their years of service with certificates and they posed for photographs with LSBA President-Elect Mark A. Cunningham and Louisiana Supreme Court Associate Justice Jefferson D. Hughes III.



LSBA President-Elect Mark A. Cunningham addresses the attendees at the reception. Photo by Matthew Hinton Photography.

60-Year Honorees

These LSBA members were admitted to the Bar in 1955.

Ralph Brewer.....Baton Rouge
Hon. Marcus A. Broussard, Jr. ... Abbeville
Joseph E. Brown, Jr.....New Orleans
Prof. William E. Crawford.....Baton Rouge
Clarence D. Ellington.....Atlanta, GA
Samuel R. Exnicios.....Harahan
Norman C. FrancisNew Orleans
Shirley C. Friend, Jr.....Metairie
Hon. Marvin F. GahaganNatchitoches
John D. GasquetBaton Rouge
Charles M. GremillionBunkie

Neilson S. Jacobs.....Shreveport
Henry C. Keene, Jr.New Orleans
John R. Kluchin.....New Orleans
Lewis R. Krieg.....Baton Rouge
Walter R. Krousel, Jr.Baton Rouge
H. Lee Leonard.....Lafayette
Roy M. Lilly, Jr.....Gibsland
William E. Logan, Jr.Lafayette
Ronald C. Martin.....Natchitoches
Miriam M. MillerArlington, VA
Cas Boone Moss.....Winnfield
John L. OlivierSunset
Robert E. PalmerPonchatoula
Jean W. Pucheu.....Ville Platte
Albert RegenbogenMetairie

Basilio Santiago-Romero.....New Orleans
Harold L. Savoie.....Lafayette
Hon. H. Dan Sawyer.....Shreveport
Robert S. Schultis.....Metairie
Jack Sisk.....New Orleans
Guy W. SmithNew Orleans
James P. Thompson, Jr.New Orleans
Frank J. VarelaNew Orleans
Kazuo Watanabe.....Bellevue, WA
Geraldine Bullock Weaver.....Baton Rouge
Lawrence D. WiedemannMetairie
H.L. Dufour Woolfley.....Cassville, WI
Maurie D. YagerNew Orleans



Among the 60-year Louisiana State Bar Association members attending the reception were, from left, Charles M. Gremillion; Frank J. Varela; Shirley C. Friend, Jr.; Hon. Marvin F. Gahagan; Walter R. Krousel, Jr.; Geraldine B. Weaver; H.L. Dufour Woolfley; and Robert E. Palmer. Photo by Matthew Hinton Photography.



Among the 50-year Louisiana State Bar Association members attending the reception were, front row from left, Patrick E. Jones; Giles J. Duplechin; John Myrle Coman, Jr.; George A. Hamilton; W. Brian Babin; Louis V. delaVergne; Leonard J. Sullivan; Philip L. Kitchen; Darryl W. Bubrig, Sr.; and Joseph A. Taranto. Second row, seated, from left, James S. Holliday, Jr.; Burgess E. McCranie, Jr.; Richard D. Chappuis, Jr.; Charles M. Gremillion; Hon. H. Ward Fontenot; Stanford O. Bardwell, Jr.; Hon. Plauche F. Villere, Jr.; William D. Norman, Jr.; Hon. J. Wendel Fusilier; Byron R. Kantrow, Jr.; and Ann L. Kerr. Standing, back row, from left, Louis M. Kiefer, Jr.; Hon. Richard J. Ganuchau; John C. Combe, Jr.; John Michael Cumberland; Louis Y. Fishman; Thomas O. Lind; Rene A. Curry, Jr.; Charles B. Johnson; Robert E. Redmann; Hon. Nancy Amato Konrad; Stephen L. Huber; Jeff Bratton; and Sidney L. Shushan. *Photo by Matthew Hinton Photography.*

50-Year Honorees

These LSBA members were admitted to the Bar in 1965.

Joseph Accardo, Jr. LaPlace
 Douglas J. Authement Houma
 W. Brian Babin Baton Rouge
 Hon. Sidney M. Bach Asheville, NC
 John R. Ballard Shreveport
 Daniel F. Balsinger Spring, TX
 Stanford O. Bardwell, Jr. Baton Rouge
 Donald L. Beckner Baton Rouge
 Wayne J. Bienvenu Covington
 James A. Bolen, Jr. Alexandria
 William E. Borah New Orleans
 Jeff Bratton Covington
 Darryl W. Bubrig, Sr. Belle Chasse
 I. Jackson Burson, Jr. Eunice
 Mildred Byrd Birmingham, AL
 Charles P. Carriere III New Orleans
 Hon. James D. Carriere Covington
 Richard D. Chappuis, Jr. Lafayette
 Paul B. Clemenceau Houston, TX
 John Myrle Coman, Jr. Metairie
 John C. Combe, Jr. New Orleans
 Richard B. Crowell Alexandria
 John Michael Cumberland Metairie
 Rene A. Curry, Jr. New Orleans
 Thomas W. Davenport, Jr. Calhoun
 Harold G. Daves Baton Rouge
 Kenneth C. DeJean Baton Rouge
 Louis V. delaVergne Covington

Daniel A. DeVun Metairie
 Giles J. Duplechin Gretna
 Lawrence A. Emboulas Metairie
 Hon. Robert B. Evans, Jr. Metairie
 Steven K. Faulkner, Jr. Harahan
 Louis Y. Fishman New Orleans
 Hon. H. Ward Fontenot Lake Charles
 Charles C. Foti, Jr. New Orleans
 Robert L. Freeman Plaquemine
 David L. French Baton Rouge
 Hon. J. Wendel Fusilier Ville Platte
 Hon. Richard J. Ganuchau Metairie
 Thomas A. Grant III Monroe
 Gordon L. Hackman New Orleans
 Stanley A. Halpin, Jr. Lafayette
 George A. Hamilton Shreveport
 G. Patrick Hand, Jr. Gretna
 W. Paul Hawley II Lafayette
 James S. Holliday, Jr. Baton Rouge
 Stephen L. Huber River Ridge
 Lois Jett Conroe, TX
 Charles B. Johnson New Orleans
 Patrick E. Jones Metairie
 John Powell Jordan Destin, FL
 Patrick A. Juneau, Jr. Lafayette
 Warren B. Jung II Metairie
 Byron R. Kantrow, Jr. Baton Rouge
 William Q. Kendall III New Orleans
 Richard R. Kennedy Lafayette
 Ann L. Kerr Clearwater, FL
 Louis M. Kiefer, Jr. New Orleans
 George A. Kimball, Jr. Oconomowoc, WI

John M. King Willis, TX
 Philip L. Kitchen New Orleans
 Gordon K. Konrad River Ridge
 Hon. Nancy Amato Konrad Metairie
 Henry M. Lambert New Orleans
 Jacob D. Landry Austin, TX
 F. Henri Lapeyre, Jr. New Orleans
 J. Thomas Lewis New Orleans
 Thomas O. Lind New Orleans
 Wendell G. Lindsay, Jr. Baton Rouge
 Floyd J. Logan Gulfport, MS
 Hon. Morris A. Lottinger, Jr. Houma
 J. David Malone III Harahan
 Roberto J. Matos San Juan, PR
 H. Sloan McCloskey Morgan City
 Burgess E. McCranie, Jr. New Orleans
 Ralph C. McCullough II Charleston, SC
 Tom L. McKenzie Corpus Christi, TX
 Roland V. McKneely, Jr. Bossier City
 Gillis T. Melancon, Jr. Mandeville
 Louis Bernard Merhige Metairie
 R. King Milling New Orleans
 David L. Morgan, Jr. Mandeville
 L. Linton Morgan Covington
 August W. Mysing, Jr. Covington
 Craig R. Nelson Metairie
 Autley B. Newton II Abbeville
 William D. Norman, Jr. New Orleans
 Ellis Jay Paillet Metairie
 Richard X. Patin New Orleans
 Hon. Charles B. Peatross Shreveport

Continued next page

Daniel A. Post Mandeville
 Robert E. Redmann Metairie
 Edward J. Rice, Jr. New Orleans
 Hon. J. Pargen Robertson Atlanta, GA
 Malcolm B. Robinson, Jr. Metairie
 Robert Henry Sarpy, Jr. New Orleans
 Michael D. Shepard Englewood, CO
 Sidney L. Shushan New Orleans
 William C. Siegel River Ridge
 Ralph E. Smith Metairie
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 Charles A. Tammetta New Orleans
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 Michael F. Thompson Lafayette
 Dr. Katherine
 Connell Thouez Hallandale, FL
 John J. Tiedemann III Lafayette
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 Hon. Plauche
 F. Villere, Jr. Sacramento, CA
 Justice Elizabeth Ann
 Weaver Traverse City, MI
 J. Hugh Willey, Jr. Houston, TX
 L. Hallman Woods, Jr. New Iberia
 Michael D. Zelden Baton Rouge



Alicia Ferguson, second from left, head of the Social Studies Department at Central Private School in Central, La., is the 2015 recipient of the President's Award of Excellence for Outstanding Law-Related Education, jointly presented by the Louisiana Center for Law and Civic Education (LCLCE) and the Louisiana State Bar Association (LSBA). Ferguson, a teacher for 17 years, was recognized during the LSBA's Midyear Meeting in January. The award recognizes an outstanding Louisiana elementary, middle or high school teacher who imparts knowledge and understanding of the law and civic education and who demonstrates the use of interactive learning techniques. The recipient receives a plaque and funds to purchase law-related education materials for the classroom. From left, Louisiana Supreme Court Associate Justice Jefferson D. Hughes III, Ferguson, LSBA President-Elect Mark A. Cunningham and LCLCE President Barbara Turner Windhorst. Photo by Matthew Hinton Photography.

LBSLS Accepting Requests for Bankruptcy Law Certification

The Louisiana Board of Legal Specialization (LBSLS) is accepting application requests for January 2016 certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2015.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought, passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in

the specialty field.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered. For bankruptcy law, the CLE is regulated by the American Board of Certification, the testing agency.

Although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBSLS. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBSLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128. For more information, go to the LBSLS website at: www.lascmcle.org/specialization.



LSBA Announces Electronic Billing for FY 2015-16 Dues, Assessment Collections

The Louisiana State Bar Association (LSBA) will once again utilize electronic billing for the collection of LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessments. The collection method will continue to allow payment of fees either by an ACH electronic check or credit card, and will also include a component whereby members will be able to download their Attorney Registration Statements and mail checks for the payment of fees. Members are still encouraged to pay and file electronically, as this access will be available 24/7, including times when the Bar Center is closed or if mail service is disrupted due to inclement weather. Further, electronic payment gives members more control over their information in the database and allows for more timely updates to their member records.

"There were some growing pains with last year's transition to electronic billing and we have modified our procedures which we hope will make the entire process more user friendly," said LSBA President Joseph L. (Larry) Shea, Jr. "We encourage members to pay and file electronically if at all possible, but are incorporating options which will allow payment by check for those who are more comfortable with that approach."

Filing electronically should be a quick and simple process, utilizing the online member accounts that participants have relied on for years to register for CLE

seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: www.lsba.org/Members/memberaccts.aspx. This webpage also allows members to edit their existing accounts and to reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to www.LADB.org to complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule will be the same as in prior years. In lieu of mailing a statement to each member, in mid-May, the LSBA will mail to each member a 4x6 postcard, which will provide instructions to go online to www.LSBA.org to complete the registration process and also to go online to www.LADB.org to complete the Trust Account Form. **This is the only mailing members will receive prior to the July 1, 2015, due date; attorney registration statements will NOT be mailed.**

Once they have electronically filed their Attorney Registration Statements (including any necessary changes and/or updates) and made the required payments, members will receive email confirmations. The filing and payment deadline will remain July 1. The LSBA will continue to mail delinquency and ineligibility notices

to those who fail to meet the deadlines.

Members who elect to pay by electronic check will continue to pay the following fees:

- ▶ LSBA dues (practicing more than three years): \$200;
- ▶ LSBA dues (practicing three years or less): \$80;
- ▶ LADB assessment (practicing more than three years): \$235; and
- ▶ LADB assessment (practicing three years or less): \$170.

Those who are planning to pay by electronic check should contact their financial institutions to confirm that their accounts allow payment by this method.

As was the case last year, processing fees of 3 percent plus a .20 transaction fee will be passed along to those choosing to pay by credit card. Total amounts including credit card processing fees are as follows:

- ▶ LSBA dues (practicing more than three years): \$206.20;
- ▶ LSBA dues (practicing three years or less): \$82.60;
- ▶ LADB assessment (practicing more than three years): \$242.25; and
- ▶ LADB assessment (practicing three years or less): \$175.30.

Bar staff members will be available to answer questions and provide assistance to members. All questions and concerns should be directed to:

- ▶ Email — processing@LSBA.org
- ▶ Telephone — (504)566-1600 or (800)421-LSBA; ask for Payment Processing.

LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. The LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community.



In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive.

For more information,
visit www.lsba.org

LOUISIANA RISING

Lessons in Leadership, Innovation,
and Balance

LSBA Annual Meeting & LJC/LSBA Summer School

Preliminary Annual Meeting Highlights*

June 7-12, 2015
Destin, Fla.

SUNDAY, JUNE 7

- 3 p.m. – 6:30 p.m. **CLE Programming**
- 6:30 p.m. – 7:30 p.m. **Opening Reception in Exhibit Hall**
(open to all registrants)

MONDAY, JUNE 8

- 8 a.m. – 12:30 p.m. **CLE Programming**
- 11 a.m. – 1 p.m. **2014/2015 Young Lawyers Division Council Meeting**
(open to 2014/2015 Council members)
Presiding: John L. “Lee” Hoffoss, Jr., 2014/2015 Chair
- 1 p.m. – 3 p.m. **2014/2015 LSBA Board of Governors Meeting**
(open to 2014/2015 Board members)
Presiding: Joseph L. “Larry” Shea, Jr., 2014/2015 President
- 2 p.m. – 3 p.m. **Senior Lawyers Division Meeting**
(open to all registrants)
Presiding: Edward J. Walters, Jr., Chair
- 6 p.m. – 7:30 p.m. **Young Lawyers Division Awards Reception**
Presiding: John L. “Lee” Hoffoss, Jr., 2014/2015 Chair

TUESDAY, JUNE 9

- 8 a.m. – 12:30 p.m. **CLE Programming**
- 9:30 a.m. – 11:30 a.m. **2015/2016 Young Lawyers Division Council Meeting**
(open to 2015/2016 Council members)
Presiding: Erin O. Braud, 2015/2016 Chair
- 11:30 a.m. – 12:30 p.m. **Section Council Meeting**
(open to Section officers)
Presiding: Val P. Exnicios, Chair
- 12:30 p.m. – 1:30 p.m. **Class Action, Mass Tort & Complex Litigation Section Meeting**
(open to section members)
Presiding: Val P. Exnicios, Chair
- 1 p.m. **Golf Tournament**
- 1 p.m. **Tennis Tournament**
- 1:30 p.m. **Conference of Court of Appeal Judges Meeting**
(open to conference members)
Presiding: Hon. James E. Stewart, Sr., Luncheon Chair
- 6 p.m. – 10 p.m. **Law School Alumni Parties**

WEDNESDAY, JUNE 10

- 8 a.m. – 12:30 p.m. **CLE Programming**
- 10 a.m. – 11 a.m. **Corporate and Business Law Section Meeting**
(open to section members)
Presiding: Maureen Brennan Gershanik, Chair
- 12:30 p.m. – 1:30 p.m. **Unauthorized Practice of Law Committee Meeting**
(open to committee members)
Presiding: John E. McAuliffe, Jr., Chair
- 4 p.m. – 5:30 p.m. **Friends of Bill W. Meeting**
- 5:30 p.m. – 6:30 p.m. **Louisiana Center for Law and Civic Education Reception**
(open to all registrants)
- 6:30 p.m. – 8:30 p.m. **Beach Bash - Sponsored by Gilsbar**
Family event featuring food, libations and entertainment

THURSDAY, JUNE 11

- 7:45 a.m. – 12:30 p.m. **CLE Programming- Second Level**
- 9 a.m. **General Assembly and House of Delegates Meeting**
Featuring reports and presentation of awards
(open to all registrants)
Presiding: Joseph L. “Larry” Shea, Jr., 2014/2015 President
- 10 a.m. – 11:30 a.m. **Legal Malpractice Insurance Committee Meeting**
(open to committee members)
Presiding: Kevin C. O’ Bryon, Chair
- 11 a.m. – noon **Labor and Employment Law Section Meeting**
(open to section members)
Presiding: Ross M. Molina, Chair
- 11:30 a.m. – noon **Louisiana Supreme Court Reception**
(open to all registrants)
- Noon – 1:30 p.m. **Installation Luncheon**
- 1 p.m. – 2 p.m. **Civil Law and Litigation Section Meeting**
(open to section members)
Presiding: Lynn Luker, Chair
- 6 p.m. – 7 p.m. **First-Time Attendees Networking Reception**
Hosts: Leadership LSBA 2014/2015 Class
- 7 p.m. – 9 p.m. **Family Poolside Party - Sponsored by LexisNexis**

FRIDAY, JUNE 12

- 8:30 a.m. – noon **CLE Breakfast and Programming**
- 9 a.m. – 10:15 a.m. **Insurance, Tort, Workers’ Compensation & Admiralty Law CLE**
- 11 a.m. – 12:30 p.m. **2015/2016 LSBA Board of Governors Meeting**
(open to 2015/2016 Board Members)
Presiding: Mark A. Cunningham, 2015/16 President



*Preliminary schedule subject to change. Please check website at www.lsba.org/AnnualMeeting for up-to-date schedule of events or to register.

LOUISIANA RISING

PRELIMINARY SUMMER SCHOOL SCHEDULE*

LSBA/LJC Summer School Highlights and Schedule as of 4/7/15
For the most up-to-date complete schedule, visit www.lsba.org/annualmeeting

Multiple Tracks of Programming

Multiple tracks of substantive law programming have been designed to suit many different areas of the law.

CRIMINAL LAW & PROCEDURE FOR LAWYERS & JUDGES

- **Addressing Vulnerable Populations — Children, People with Disabilities or Trauma and Confronting Race and Poverty**
Bryan Stevenson • *Founder, Equal Justice Initiative and author, "Just Mercy"*
Facilitator: Emily Maw, *Director, New Orleans Innocence Project*
Active Voices: Hon. Scott J. Crichton • *Louisiana Supreme Court • New Orleans*
Hon. Brady D. O'Callaghan • *1st Judicial District Court • Shreveport*
Donna R. Andrieu • *Orleans Parish District Attorney's Office • New Orleans*
Kerry P. Cuccia • *SE Louisiana Capital Defense Project • New Orleans*
- **Atkins, Miller and Beyond**
Facilitator: Emily Maw • *Director, New Orleans Innocence Project • New Orleans*
Active Voices: Hon. Scott J. Crichton • *Louisiana Supreme Court • New Orleans*
Hon. Brady D. O'Callaghan • *1st Judicial District Court • Shreveport*
Donna R. Andrieu • *Orleans Parish District Attorney's Office • New Orleans*
Kerry P. Cuccia • *SE Louisiana Capital Defense Project • New Orleans*
- **United States Supreme Court: Constitutional Criminal Cases 2015**
Hon. Brady G. O'Callaghan • *1st Judicial District Court • Shreveport*
- **Louisiana Public Defender Funding: The Good, The Bad, and the Ugly**
Cloyce C. Clark III • *Caddo Parish District Attorney's Office • Shreveport*
Dwight M. Doskey • *Capital Defense Project of Southeast LA • Covington*
John W. Lindner II • *22nd Judicial District Public Defender • Covington*
- **Medical and Mental Health Issues in the Pre Adjudicated Jail Population**
Hon. Karen K. Herman • *Orleans Parish Criminal Court • New Orleans*
Rob J. Reardon • *Lafayette Parish Sheriff's Office • Lafayette*
John Thompson, M.D. • *Tulane University Medical School • New Orleans*

THE INTERFACE OF MENTAL HEALTH AND CRIMINAL JUSTICE

This interactive training is designed for those involved in criminal cases. This program was created by judges and psychiatrists working in partnership with the American Psychiatric Foundation and the Counsel of State Governments Justice Center.

- **Factors Contributing to Over-Representation & What You Can Do**
Hon. Stephen Gross
- **Louisiana Mental Health and substance Abuse Services**
Hon. Karen K. Herman • *Orleans Parish Criminal Court • New Orleans*
Rob J. Reardon • *Lafayette Parish Sheriff's Office • Lafayette*
John Thompson, M.D. • *Tulane University Medical School • New Orleans*
- **Video Case Studies: Improving Interactions in the Courtroom State RICO Cases: How to Handle Them**
Hon. Camille G. Buras • *Orleans Parish Criminal District Court • New Orleans*
Alexander Calenda III • *Orleans Parish District Attorney Office • New Orleans*
Maurice E. Landrieu, Jr. • *Assistant US Attorney • New Orleans*
M. Richard Schroeder • *Jones Walker • New Orleans*

THE BUSINESS OF THE LEGAL PROFESSION

- **Ethics and the Professional Hiring Process - ETHICS**
Yolanda Bouchand • *HR Consultant, LA Supreme Court • New Orleans*
Veronica Cheneau • *Deputy Judicial Administration, HR, LA Supreme Court • New Orleans*
- **Collegiality vs. Efficiency — Are We a Family, a Business, or ALL of the Above?**
Facilitator: Lottie L. Bash • *Gold, Weems, Bruser, Sues & Rundell • Alexandria*
Panelists: Hon. Dee D. Drell • *US District Court, Western Dist. of La. • Alexandria*
Richard J. Arsenault • *Neblett Beard & Arsenault • Alexandria*
Joseph H. Perez-Montes • *Gold, Weems, Bruser, Sues & Rundell • Alexandria*
- **Professionalism and Office Management — PROFESSIONALISM**
Lottie L. Bash • *Gold, Weems, Bruser, Sues & Rundell • Alexandria*
- **Entrepreneurialism and Rainmaking in a Rapidly Evolving Legal World**
David H. Freeman • *David Freeman Consulting Group • Laguna Beach, Calif.*

CRIMINAL LAW AND PROCEDURE

- **Gwen's Law**
Hon. Scott C. Gardner • *22nd Judicial District Court • Covington*
Brian J. Capitelli • *Capitelli and Wicker • New Orleans*
Gary V. Evans • *Attorney at Law • Mansfield*
Hon. Jonathan P. Friedman • *Magistrate Commissioner, Silbert, Garon, Pitre & Friedman • New Orleans*
John W. Lindner II • *22nd Judicial District Public Defender • Covington*
- **Purposeful Sentencing: How to Make Probation a Success**
Hon. Patricia E. Koch • *9th Judicial District Court • Alexandria*
Tammy Bordelon • *LA Dept. of Public Safety & Corrections, Div. of Probation & Parole • Alexandria*
Nicole A. Mitchell • *LA Dept. of Public Safety & Corrections, Div. of Probation & Parole • Alexandria*

PUBLIC HEALTH, THE ENVIRONMENT AND THE LAW

- **Balancing Public Health and Human Rights**
This session will provide an overview of international human rights law and in particular the right to health.
Dabney P. Evans, Ph.D., MPH • *Rollins School of Public Health, Emory University • Atlanta, Ga.*
- **The ABCs of Public Health: ACA to Zoonosis**
Ever wonder what you'd do if a health care worker in your area returned from an Ebola affected country? Or what if a parent sought a vaccine exemption for measles? How public health may impact your decision making.
Dabney P. Evans, Ph.D., MPH • *Rollins School of Public Health, Emory University • Atlanta, Ga.*
- **Nurse Geneva: A Tale of Public Health in Rural Louisiana and Beyond**
What does the life of a public health nurse in rural Louisiana have to do with global public health? As the recent Ebola and Measles crises showed, your public health issues may not be so different than those faced by others in our increasingly globalized world.
Dabney P. Evans, Ph.D., MPH • *Rollins School of Public Health, Emory University • Atlanta, Ga.*
- **Fracking: Erupting Areas in the Law**
Moderator: Hon. Charles B. Adams • *42nd Judicial District Court • Mansfield*
Panelists: Katherine S. Baker • *Bradley Murchison Kelly & Shea • Shreveport*
Carl T. Conrad • *Blue Williams • Mandeville*
Gary L. Kinsland • *School of Geosciences, University of La. at Lafayette*

LESSONS IN COMMERCIAL, BUSINESS AND TAX TOPICS

These sessions were produced in partnership with the LSBA Corporate and Business Law Section, Taxation Section, and Loyola Law School.

- **Ethics in Organizational Representation — ETHICS**
James A. Brown • *Liskow & Lewis • New Orleans*
- **Zoning and Land Use: Recent Developments**
Randy P. Roussel • *Phelps Dunbar • Baton Rouge*
- **Tax Year in Review**
(This session was produced in partnership with the LSBA Taxation Section)
B. Trevor Wilson • *Jones Walker • Baton Rouge*
- **Financial and Tax Ramifications of Divorce**
Mitchell J. Hoffman • *Lowe, Stein, Hoffman, Allweiss & Hauver • New Orleans*
Mark S. Stein • *Lowe, Stein, Hoffman, Allweiss & Hauver • New Orleans*
- **ERISA: What's Popping**
Randy C. Snyder • *Liskow & Lewis • New Orleans*
- **Expropriation: An Update**
Randall A. Smith • *Smith & Fawer • New Orleans*
- **The New Remedy for Shareholder Oppression under the Louisiana Business Corporation Act**
This session was produced in partnership with the LSBA Corporate and Business Law Section
Professor Lloyd Drury III • *Loyola University, College of Law • New Orleans*
- **Current Insurance Types and Forms — It's a Moving Target**
Marie A. Moore • *Sher Garner Cahill Richter Klein & Hilbert • New Orleans*

A PRIMER IN SPECIFIC SPECIALTIES FOR NON SPECIALISTS

- **Louisiana Estate Planning & Successions "For Dummies" (or What Every Non-Specialist Should Know)**
Carole Cukell Neff • *Sessions, Fishman, Nathan & Israel • New Orleans*
- **Worker's Comp for Appellate Judges and Non Comp Lawyers**
Hon. Patrick F. Robinson • *Workers Compensation • Shreveport*
- **Grammar for Judges and Lawyers**
Hon. Florence Rae Swent (Ret.) • *Alexandria*
- **Bankruptcy for Non Bankruptcy Lawyer**
Jan M. Hayden • *Baker, Donelson, Bearman, Caldwell & Berkowitz • New Orleans*



LOUISIANA RISING

PRELIMINARY SUMMER SCHOOL SCHEDULE* HIGHLIGHTS

LSBA/LJC Summer School Highlights and Schedule as of 4/7/15
For the most up-to-date complete schedule, visit www.lsba.org/annualmeeting

Schedule Highlights

- ▶ **How We Rise: The Neuroscience of Leadership, Innovation and Balance in the Law**
Kimberly Papillon, Esq., Judicial Professor • *THEBETTERMIND.COM*
- ▶ **Understanding Our Biases to Effectuate Positive Behaviors Resulting in Becoming More Innovative and Better Leaders**
Paulette Brown • *ABA President Elect; Locke Lord, LLP • Morristown, NJ*
- ▶ **Lessons in Leadership in a VUCA (Volatile, Uncertain and Complex) World**
George W. Casey, Jr., US Army (Ret.) • *President and CEO, Minot Group LLC • Arlington, VA*
- ▶ **"Mindfulness in Law"** - An overview of mindfulness, the science of mindfulness, and its application to the practice of law. This discussion will establish a foundation for the mindfulness workshops offered over the course of Summer School.
Professor Scott Rogers • *University of Miami, School of Law • Coral Gables, FL*
- ▶ **Arbitration: The Pitfalls, Problems and Shortcomings: When Can/Should a Court Step In**
James M. Garner • *Sher Garner Cahill Richter Klein & Hilbert • New Orleans*
Thomas J. Madigan • *Sher Garner Cahill Richter Klein & Hilbert • New Orleans*
- ▶ **Fairness in an Era of Mass Incarceration**
Bryan Stevenson • *Founder, Equal Justice Initiative and author, "Just Mercy"*
Introduction: Emily Maw • *Director, New Orleans Innocence Project • New Orleans*
- ▶ **Domestic Relations Law — Recent Legislative and Jurisprudential Updates**
Hon. David A. Blanchet • *15th Judicial District Court • Lafayette*
Hon. Charles G. Fitzgerald • *15th Judicial District Court • Lafayette*
- ▶ **Introduction to Mindfulness: Enhancing Focus and Stress Reduction** - An exploration of mindfulness insights and experiential practices centering on the cultivation of greater focus and wellbeing. (This session is limited to 20 people)
Hon. Chris McAiley • *U.S. District Court, Southern District of Florida • Miami, FL*
Professor Scott Rogers • *University of Miami, School of Law • Coral Gables, FL*
- ▶ **Changes in the Delivery of Legal Services: The Impact on Lawyers & the Judiciary**
Judy Perry Martinez • *Chair, ABA Commission on the Future of Legal Services • New Orleans*
- ▶ **Mindfulness Techniques for Dealing with Difficult Clients and Colleagues** — Mindfulness practices can be of benefit in relating more effectively to challenging situations and people. This session explores mindfulness insights and exercises that can be helpful. Attendance in the "Introduction to Mindfulness" session is not necessary to benefit from this session.
Hon. Chris McAiley • *U.S. District Court, Southern District of Florida • Miami, FL*
Professor Scott Rogers • *University of Miami, School of Law • Coral Gables, FL*
- ▶ **Distinguish Yourself from the Crowd: Creating and Implementing Innovative Business Strategies (eight 30 minute time slots)** – Take advantage of the opportunity to meet one-on-one with Mr. Freeman in the afternoon following his program "Entrepreneurialism and Rainmaking in a Rapidly Evolving Legal World." Mr. Freeman will be available to speak with attendees about their business development ideas and strategies. *SPACE IS LIMITED!!*
- ▶ **Louisiana Civil Procedure: Recent Updates**
Hon. Guy P. Holdridge • *1st Circuit Court of Appeal • Gonzales*
- ▶ **Negotiating: Does Gender, Race, or Age Affect the Process**
Hon. Carolyn Gill-Jefferson (Ret.) • *Attorney at Law • New Orleans*
Lynn Luker • *Law Office of Lynn Luker • New Orleans*
- ▶ **Medical Malpractice: Particular and Thorny Issues**
Moderator: Hon. Nakisha Ervin-Knott • *Orleans Parish Civil District Court • New Orleans*
Panelists: Nairda T. Colón (Lesa) • *Frilot • New Orleans*
Kara Hadican Samuels • *Kara Hadican Samuels and Associates • New Orleans*
- ▶ **Lying in Wait with a Deadly Motion: Winning (or losing) Your Case before Trial – Current Strategies for Handling Motions for Summary Judgment, Motions in Limine and Other Dispositive Motions**
Edward J. Walters, Jr. • *Walters, Papillion, Thomas, Cullens • Baton Rouge*
- ▶ **Ethics in the Clouds: Ethics Issues in the Realm of eDiscovery**
Kent A. Lambert • *Baker, Donelson, Bearman, Caldwell & Berkowitz • New Orleans*
William M. Ross • *Stanley, Reuter, Ross, Thornton & Alford • New Orleans*
- ▶ **Default Judgments — Potholes and Pitfalls**
Hon. Hans J. Liljeberg • *5th Circuit Court of Appeal • Gretna*
Hon. Lee V. Faulkner, Jr. • *24th Judicial District Court • Gretna*
- ▶ **Louisiana Criminal Law and Criminal Procedure: Recent Updates**
Brian J. Capitelli • *Capitelli & Wicker • New Orleans*
Hon. Jonathan P. Friedman • *Magistrate Commissioner, Silbert, Garon, Pitre & Friedman • New Orleans*
- ▶ **LUTPA — Louisiana Unfair Trade Practices Act: How to Try Your Case**
Robert A. Kutcher • *Chopin, Wagar, Richard & Kutcher • Metairie*
Kyle D. Schonekas • *Schonekas, Evans, McGoe & McEachin • New Orleans*
- ▶ **Mindfulness, Procedural Fairness, and Effective Decision Making - Litigants and their lawyers care deeply about procedural fairness, that is, how they are treated by courts. In this session we will focus on open-minded attention to people and events.**
Hon. Chris McAiley • *U.S. District Court, Southern District of Florida • Miami, FL*
Professor Scott Rogers • *University of Miami, School of Law • Coral Gables, FL*
- ▶ **Summary Judgments: Yesterday, Today and Tomorrow**
Hon. Guy P. Holdridge • *1st Circuit Court of Appeal • Gonzales*
Hon. Madeleine M. Landrieu • *4th Circuit Court of Appeal • New Orleans*
- ▶ **Leadership: Strategies for Success in the Ever Changing Competitive Legal Market**
Arturo Menefee • *Auburn University • Auburn, Ala.*
- ▶ **Legacy Litigation and Downhole Claims for Lost Royalties**
Robert B. McNeal • *Liskow & Lewis • New Orleans*
J. Michael Veron • *Veron, Bice, Palermo & Wilson • Lake Charles*
- ▶ **How Do I Get My Money and What's OK — The Money Side of the Practice of Law**
Thomas M. Flanagan • *Flanagan Partners • New Orleans*
- ▶ **Ethical Issues in Multi-Client Representation**
Moderator: Val P. Exnicios • *Liska, Exnicios & Nungesser • New Orleans*
Panelists: Mark P. Glago • *Glago Law Firm • New Orleans*
Stephen J. Herman • *Herman, Herman & Katz • New Orleans*
Charles B. Plattsmier • *LA Attorney Disciplinary Board • Baton Rouge*
Richard C. Stanley • *Stanley, Reuter, Ross, Thornton & Alford • New Orleans*
Phillip A. Wittmann • *Stone Pigman Walther Wittmann • New Orleans*
- ▶ **Federal Substance and Procedure — The Cases of Note This year**
Hon. Mark L. Hornsby • *US Magistrate • Shreveport*
Darrel J. Papillion • *Walters, Papillion, Thomas, Cullens • Baton Rouge*
- ▶ **Attacks on the Judiciary**
Moderator: Val P. Exnicios • *Liska, Exnicios & Nungesser • New Orleans*
Panelists: Mark P. Glago • *Glago Law Firm • New Orleans*
Stephen J. Herman • *Herman, Herman & Katz • New Orleans*
Charles B. Plattsmier • *LA Attorney Disciplinary Board • Baton Rouge*
Richard C. Stanley • *Stanley, Reuter, Ross, Thornton & Alford • New Orleans*
Phillip A. Wittmann • *Stone Pigman Walther Wittmann • New Orleans*
- ▶ **The Implications of Immigration Status for Custody and Other Domestic Relations Issues**
(These sessions were produced in partnership with the LSBA Immigration Law Section)
David A. Ware • *Ware Gasparian • Metairie*
- ▶ **Tom on Torts**
Professor Thomas Galligan, Jr. • *Colby-Sawyer College • New London, New Hampshire*
- ▶ **Use of Exhibits and Demonstrative Aids in the Age of Technology: Blending the Old and the New**
Shayna L. Beevers • *Beevers & Beevers • Gretna*
J. Lee Hoffoss, Jr. • *Hoffoss Devall • Lake Charles*
- ▶ **The Federal Practice Blues — The Hot Seat! Federal practitioners question federal judges regarding the pitfalls and difficulties of federal practice**
Moderators: Robert A. Kutcher • *Chopin, Wagar, Richard & Kutcher • Metairie*
H. Minor Pipes III • *Barrasso, Usdin, Kupperman, Freeman & Sarver • New Orleans*
Panelists: Hon. Dee D. Drell • *US Dist. Court, Western District of LA • Alexandria*
Hon. Jane M. Triche-Milazzo • *US Dist. Court, Eastern District of LA • New Orleans*

LOUISIANA RISING

PRELIMINARY SUMMER SCHOOL SCHEDULE* HIGHLIGHTS

LSBA/LJC Summer School Highlights and Schedule as of 4/7/15
For the most up-to-date complete schedule, visit www.lsba.org/annualmeeting

Schedule Highlights

- **More and Advanced Federal Civil Procedure and Substance**
Hon. Mark L. Hornsby • *US Magistrate • Shreveport*
Darrel J. Papillion • *Walters, Papillion, Thomas, Cullens • Baton Rouge*
- **Important Maritime and Tort Law Developments (...With Practical Observations From the Bench) An Insurance, Tort, Workers' Compensation and Admiralty CLE**
Richard J. Arsenault, Chair • *Neblett, Beard & Arsenault • Alexandria*
Hon James J. Brady • *USDC, Middle District of LA • Baton Rouge*
Hon Richard T. Haik • *USDC, Western District of LA • Lafayette*
Hon. Jay C. Zainey • *USDC, Eastern District of LA • New Orleans*
Professor Thomas C. Galligan, Jr. • *Colby-Sawyer College • New Hampshire*
Jay Christopher Zainery, Jr. • *Williams Law Group • New Orleans*
Peggy Giglio • *USDC, Western District of LA • Lafayette*
- **Ethics for Lawyers: Lawyers Assistance Program**
J.E. "Buddy" Stockwell III • *Lawyers Assistance Program • Mandeville*
- **Consumer Protection Hot Topics** (in collaboration with the ABA Antitrust Section)
Richard Lawson • *Florida Office of the Attorney General • Tallahassee, FL*
Lydia Parnes • *Wilson Sonsini Goodrich & Rosati • Washington, DC*
- **The Influence of French Law and History in Louisiana – Then and Now**
Warren A. Perrin • *Perrin, Landry & deLaunay • Lafayette*
- **Hot State and Local Tax Issues**
Antonio C. Ferachi • *LA Department of Revenue • Baton Rouge*
- **Avoiding Bad Faith Claims**
Nancy J. Marshall • *Deutsch, Kerrigan & Stiles • New Orleans*
- **The Great Debate: Gay Marriage**
- **Meet the Gubernatorial Candidates**

JUDGES ONLY SESSIONS

A HOLISTIC LOOK AT BALANCED RETIREMENT

- **Achieving Balance in Retirement: Judicial Retirement and Attendant Issues**
Randy Certoma • *Judicial Admin. Office; Louisiana Supreme Court • New Orleans*
- **Group Benefits: The Interesting Nuances for Judges**
Dean Moberley • *Office of Group Benefits, Agency Services Director • Baton Rouge*
- **Keeping Those Synapses Firing: Ad Hoc Judging Post Retirement**
Hon. Marion F. Edwards (Ret.) • *Attorney at Law • Gretna*
- **Living the Good Life after Retirement - PROFESSIONALISM**
Dr. David Schjott • *Northwest Florida State College • Niceville, FL*
Hon. Marion F. Edwards (Ret.) • *Attorney at Law • Gretna*
Hon. Robert M. Murphy • *5th Circuit Court of Appeal • Gretna*

BACK TO BASICS: IT'S ALL ABOUT NEW JUDGES

- **Getting It Right for Families: Family Law Discourse**
Hon. David A. Blanchet • *15th Judicial District Court • Lafayette*
Hon. Pamela J. Baker • *East Baton Rouge Family Court • Baton Rouge*
Hon. Lylenn A. Cutrer • *14th Judicial District Court • Lake Charles*
Hon. Mary L. Doggett • *9th Judicial District Court • Alexandria*
Hon. M. Lauren Lemmon • *29th Judicial District Court • Hahnville*
- **Pre-Trial and Trial Practice: Criminal Law Confab**
Hon. Marilyn C. Castle • *15th Judicial District Court • Lafayette*
Hon. Lori A. Landry • *16th Judicial District Court • St. Martinville*
Hon. Michael A. Pitman • *1st Judicial District Court • Shreveport*
- **Exceptions, Motions, and Trials: Civil Law Dialogue**
Moderator: Hon. Guy P. Holdridge • *1st Circuit Court of Appeal • Gonzales*
Panelists: Hon. Tiffany G. Chase • *Orleans Parish Civil District Court • New Orleans*
Hon. Stephen C. Grefer • *24th Judicial District Court • Gretna*
Hon. Robin M. Giarrusso • *Orleans Parish Civil District Court • New Orleans*
- **Lawyers to Judges: Being the Best Judge You Can Be from the Lawyers' Perspective — PROFESSIONALISM**
Robert A. Kutcher • *Chopin, Wagar, Richard & Kutcher • Metairie*
H. Minor Pipes III • *Barrasso, Usdin, Kupperman, Freeman & Sarver • New Orleans*

WOMEN IN LEADERSHIP: WORK/LIFE BALANCE

- **Understanding the Need for Balance — PROFESSIONALISM**
Hon. M. Lauren Lemmon • *29th Judicial District Court • Hahnville*
Susie Drell LCSW • *Licensed Clinical Social Worker • Alexandria*
- **Developing Strategies for Balance (Judges Only Session)**
Hon. Sharon I. Marchman • *4th Judicial District Court • Monroe*
Susie Drell LCSW • *Licensed Clinical Social Worker • Alexandria*
- **Renewing the Passion for Work-Life (Judges Only Session)**
Hon. Robin M. Giarrusso • *Orleans Parish Civil District Court • New Orleans*
Susie Drell LCSW • *Licensed Clinical Social Worker • Alexandria*

TOPICS FOR JUDGES WHO PRESIDE OVER CASES IN WHICH CHILDREN ARE INVOLVED

- **Adverse Childhood Experiences (ACE's) Study (Judges Only Session)**
Hon. Patricia E. Koch • *9th Judicial District Court • Alexandria*
Hon. Madeleine M. Landrieu • *4th Circuit Court of Appeal • New Orleans*
Revonda A. Kirby • *louisianachildren.org • Baton Rouge*

OTHER JUDGES ONLY TOPICS

- **Office and Court Management: Ethical Implications and Practical Considerations - ETHICS**
Hon. Ulysses Gene Thibodeaux • *3rd Circuit Court of Appeal • Lake Charles*
- **Steamy Discipline: The Ethics of Sexual Relations with Clients - ETHICS**
Hon. Dee D. Drell • *US District Court, Western District of LA • Alexandria*
- **HR — Your Court: Are We a Family or Are We a Business?**
Inquisitor: Cheryl Q. Landrieu • *5th Circuit Court of Appeal • Gretna*
Debaters: Hon. Susan M. Chehardy • *5th Circuit Court of Appeal • Gretna*
Hon. Marion F. Edwards (Ret.) • *Gretna*
Hon. Harry F. Randow • *9th Judicial District Court • Alexandria*
- **City Judges Best Practices: OMV and Other Traffic Reporting Issues**
- **The Protective Order Registry — Updates (Judges Only Session)**
Ramona Harris • *Louisiana Protective Order Registry • New Orleans*
- **City Judges Best Practices: Selected Problems in the City Court Civil Docket**
Moderator: Hon. John B. Slattery, Jr. • *Springhill City Court • Springhill*
Panelists: Hon. James M. Cunningham • *Rayne City Court • Rayne*
Hon. Danny W. Tatum • *Ruston City Court • Ruston*
- **HR — The Big No-No's for Judges (Judges Only Session) - ETHICS**
Yolanda Bouchand • *HR Consultant, LA Supreme Court • New Orleans*
Veronica Cheneau • *Deputy Judicial Administration, HR, LA Supreme Court • New Orleans*
- **Legal Education in Louisiana: The Expanding Role of Externships and the Ethical Issues Related to Field Placements - ETHICS**
Christine Cerniglia Brown • *Coord. Skills & Experiential Learning, Loyola College of Law • New Orleans*
Jeff Brooks • *Preis & Roy; Director Advocacy & Prof. Practice, LSU Law Center • Baton Rouge*
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Registration Form

Or register online today at www.lsba.org/AnnualMeeting

☐ Judge Bar Roll Number _____ First Name for Badge _____

☐ Ms. ☐ Mr. Name _____

Firm Name _____

Address _____

City/State/Zip _____

Office Phone _____ Fax _____

☐ I am a local bar association president. ☐ I am a local bar association officer. ☐ I am a first-time attendee.

☐ Please register my spouse/guest for social events at no additional charge. (Spouse/guest must be registered to receive tickets.)

Spouse/Guest Name _____

First Name for Badge _____

Registration Options	by April 24	by May 29	On-Site	Subtotal
Lawyers	\$795	\$850	\$895	_____
Judges	\$875	\$725	\$775	_____
Legal Services/Gov't/Academia/New Lawyer	\$875	\$725	\$775	_____

Special Pricing applies to judges, lawyers employed full-time by local, state, or federal government, and lawyers employed full-time by legal aid agencies or indigent defense agencies or those lawyers admitted to practice on or after June 1, 2011.

Important Note: A link to the seminar materials will be emailed to you prior to the event; we suggest you print the materials in advance and bring them with you. The link will be sent to the email address of record you provided to the LSBA. If you choose to review the materials from your laptop, we strongly suggest you charge your laptop battery, as electrical outlets may be limited. Internet access will not be available in the meeting room. **PLEASE NOTE: Printed materials will not be available.*

Golf Tournament

Subtotal

Golf Tournament Registration form should be returned with your Annual Meeting Registration. Include the entry fee with your total payment. Use the form to register yourself for the tournament, or to request players for foursome. If no other players are requested, LSBA staff will assign foursomes based on handicap.

- ☐ Player #1 Name: _____ Handicap _____ \$150 _____
Email (for foursome confirmation): _____
- ☐ Player #2 Name: _____ Handicap _____ \$150 _____
Email (for foursome confirmation): _____
- ☐ Player #3 Name: _____ Handicap _____ \$150 _____
Email (for foursome confirmation): _____
- ☐ Player #4 Name: _____ Handicap _____ \$150 _____
Email (for foursome confirmation): _____

Tennis Singles Tournament

Subtotal

Tennis Tournament Registration form should be returned with your Annual Meeting Registration. Include the entry fee with your total payment. Use the form to register yourself for the singles tennis tournament, or to register you and your guest for the singles tennis tournament. The USTA rating is only for the tennis pro to assign matches, leave blank if non-applicable. In registering to play in this tennis activity, I do hereby release the Louisiana Judicial College and the Louisiana State Bar Association of any injuries that are incurred as a result of participating in the event in any way. Non-alcoholic drinks, beer and light refreshments will be served.

- ☐ Name: _____ USTA rating* _____ \$40 _____
Email (for confirmation): _____
Cell Phone : _____
- ☐ Name: _____ USTA rating* _____ \$40 _____
Email (for confirmation): _____
Cell Phone: _____

☐ Pay by Check: Make checks payable to the Louisiana State Bar Association. Amount Enclosed \$ _____

☐ Pay by Credit Card: The LSBA accepts MC, Visa & Discover. Please visit www.lsba.org/AnnualMeeting to pay by credit card.

☐ Please check here or contact the LSBA if you have a disability which may require special accommodations at this conference. The LSBA is committed to ensuring full accessibility for all registrants.

Please return this form with your remittance to:
Seminar Registration – Louisiana State Bar Association
601 St. Charles Ave. • New Orleans, LA 70130-3404
(504)619-0137 • (800)421-5722 • fax (504)598-6753



Registration Options

	By April 24	By May 29	On-Site
Lawyers	\$795	\$850	\$895
Judges.....	\$675	\$725	\$775
Gov't/Legal Services/ Academia ¹ /New Lawyer ²	\$675	\$725	\$775

Registration is for LSBA member and spouse/guest when indicated on Registration Form.

- ▶ includes seminar registration, programs, business meetings and admission to Lawyers' Expo;
- ▶ electronic version of the seminar materials for attendees to download;
- ▶ daily continental breakfast/coffee/refreshment breaks;
- ▶ up to two adult tickets to the Opening Reception on Sunday, June 7, 2015;
- ▶ up to two adult tickets to the YLD Reception* on Monday, June 8, 2015;
- ▶ up to two adult tickets to the LCLCE Reception and Beach Bash* on Wednesday, June 10, 2015;
- ▶ up to two adult tickets to the Supreme Court Reception & Installation Dinner* on Thursday, June 11, 2015;
- ▶ up to two adult tickets to the Family Poolside Party Dinner Dance* on Thursday, June 11, 2015.

* Spouse/guest name must be indicated on the Registration Form to receive tickets included in registration. Additional tickets for children and guests are available for purchase for the social functions.

*To purchase additional tickets for events, please contact: Kaya Koban, Program Coordinator / Meeting & Events, Louisiana State Bar Association, kaya.koban@lsba.org or call (504)619-0116 or call tollfree (800)421-LSBA, ext. 116.

¹Special Pricing applies to judges, law professors, lawyers employed full-time by local, state, or federal government, and lawyers employed full-time by legal aid agencies or indigent defense agencies.

²Special Pricing applies to those lawyers admitted to practice on or after June 1, 2011.

Cancellations, Refunds & Course Materials

Cancellation of registration must be received in writing by the LSBA no later than Friday, May 22, 2015. Cancellations will receive a full refund, less a \$30 administrative charge. Absolutely no refunds will be made after Friday, May 22, 2015. Requests should be mailed to the Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; faxed to (504) 598-6753; or emailed to aburas@lsba.org.

Important Note: A link to the seminar materials will be emailed to you prior to the Combined LSBA Annual Meeting and LSBA/LJC Joint Summer School; we suggest you print the materials in advance and bring them with you. The link will be sent to the email address of record you provided to the LSBA. If you choose to review the materials from your laptop, we strongly suggest you charge your laptop battery, as electrical outlets may be limited. Internet access will not be available in the meeting rooms.

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By Elizabeth LeBlanc Voss

STATE RULES ON “FEDERAL-ONLY” PRACTICES

Gilsbar, L.L.C., has received several telephone calls from immigration attorneys, licensed in other jurisdictions, who have opened offices for practice in Louisiana. The calls have been from experienced, competent attorneys who are doing the responsible thing and seeking malpractice coverage. They all claim to not need a Louisiana license to practice here because they have a “multijurisdictional, federal-only” practice and are admitted to practice by the federal courts.

Ordinarily, attorney calls seeking professional liability coverage do not necessitate the involvement of loss prevention counsel. Luckily, however, Gilsbar underwriters concerned about the impact of placing policies for these attorneys requested input from loss prevention counsel regarding the propriety of placing coverage for non-admitted attorneys who were already practicing in the state.

There is a common misperception among many attorneys with a “federal-only” practice that they do not require licensure in a state to practice law. There is some truth to the idea that a federal license is sufficient. But, in Louisiana and many other states, the state bar associations prohibit a non-admitted lawyer from establishing an office or other regular presence in the state for the practice of law. Even when the nature of the law practice is strictly federal, state law will apply to anyone choosing to open a law office in the state of Louisiana.

The confusion surrounding this is understandable because federal laws allow attorneys approved by one federal district court to practice in the federal courts in any state. These attorneys are, therefore, entitled to practice immigration law in any state. There are innumerable articles touting the merits of a multijurisdictional practice. However, these attorneys must consider the various state laws that also apply to them when they open a practice.

“There is a common misperception among many attorneys with a “federal-only” practice that they do not require licensure in a state to practice law...In Louisiana and many other states, the state bar associations prohibit a non-admitted lawyer from establishing an office or other regular presence in the state for the practice of law.”

In Louisiana, La. R.S. 37:212 and 37:213 make it a felony to hold oneself out as a Louisiana lawyer and to advertise as a Louisiana lawyer when one is not actually admitted to the bar in Louisiana. These laws, as well as Louisiana Rule of Professional Conduct 5.5, do not allow attorneys to practice any non-federal law in this state without proper licensing.

Because Louisiana does not provide reciprocity for out-of-state attorneys, there are only two traditional ways that out-of-state attorneys can practice in Louisiana. Out-of-state attorneys must either pass the Louisiana Bar exam or arrange for temporary permission to appear in Louisiana courts through *pro hac vice* admission. See La. Sup. Ct. R. XVII § 11; La. Sup. Ct. R. XVII § 13.

While these attorneys perhaps intend not to practice in any other state matters, the question becomes how do these “federal immigration” lawyers get their clients? Are they advertising or holding themselves out as Louisiana attorneys? How do these immigration clients find out about them? What happens if an immigration client asks the non-admitted attorney for help with a non-federal matter, such as a divorce or property purchase?

According to Louisiana State Bar Association (LSBA) Ethics Counsel Richard P. Lemmler, Jr., it is the natural expectation of an immigration client to

believe that an immigration lawyer with a practice in Louisiana can handle any legal matter here. If these attorneys open up a practice and clearly, repeatedly and openly communicate a disclaimer, both orally and in writing — “I ONLY PRACTICE IMMIGRATION LAW AND I AM NOT LICENSED TO PRACTICE LAW IN LOUISIANA” — on all forms of communication, then a lawyer, who is properly licensed in another jurisdiction, though not admitted in Louisiana, may provide legal services in Louisiana that are services the lawyer is authorized to provide by federal law, in keeping with Rule 5.5(d) (2) of the Louisiana Rules of Professional Conduct. But, according to Lemmler, Ethics Counsel, rarely – if ever – see anyone who knows the importance of, and chooses to make, this required disclaimer.

Before opening an office to practice law, regardless of the area of practice, attorneys should always consult the state rules that apply to the opening of that office. For any non-admitted federal lawyers who have opened a practice in Louisiana, it is highly recommended that they either begin using the appropriate disclaimer or make immediate plans to get licensed in the state.

Elizabeth LeBlanc Voss serves as loss prevention supervisor and loss prevention counsel for the Louisiana State Bar Association under the employment of Gilsbar, L.L.C., in Covington. Before joining Gilsbar, she was in-house counsel and regulatory compliance officer for a Louisiana community bank, worked as a civil litigator in New Orleans, served with the Harris County District Attorney's Office in Houston, Texas, and was a tax examiner for the U.S. Department of Treasury in Atlanta, Ga. She received her BA degree in political science from Louisiana State University and her JD degree from South Texas College of Law (Texas A&M University). She presents ethics and professionalism CLE programs on behalf of the LSBA. She can be emailed at bvoss@gilsbar.com.



LAWYERS Assistance

By J.E. (Buddy) Stockwell

HAPPY LAWYERING

An article titled “Advice for a Young Lawyer” recently caught my eye. Written by Judge Lawrence Primeaux of Meridian, MS,¹ the article offers 10 pieces of sage advice. Here is a sampling:

1. Your own story.

Most of what happens in your life is a product of the choices you make. You get to write your own story. You get to define the main character, and you decide the plot, the supporting cast and the style of the story. From time to time, read back over your story. Do some parts need to be rewritten or the plot revised to move in a more satisfying direction?

2. More than a paycheck.

Choose to do work that will add value to your clients and yourself — work that makes your clients’ lives better and makes you a better person. When all you work for is a paycheck, the only thing in your work that you have to look forward to is payday.

3. Balance.

You may have to work 70 hours a week when you first start practicing, simply because, as you will find, law school merely introduced you to the law and taught you how to think like a lawyer. And that takes an investment of time. But as you grow into lawyerhood and become more efficient, you need to pare down the hours you work to make room in your life for some living. Balance out your law time with family, church, friends, exercise and quiet time.

4. Avoid hatred and resentment.

It’s easy for lawyers to become cynical and distrustful, to question others’ motives, and to harbor hatred and resentments. The more we let the darkness into our lives, the more the light is driven out. Try to focus on the positive. Take note of the negatives, the hurts, the slights and outrageous conduct of others, and learn from them. And then let them go.

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Your call is absolutely confidential
as a matter of law.

Toll-free (866)354-9334
Email: lap@louisianalap.com

5. Keep fears in perspective.

Mark Twain said, “I am an old man and have known a great many troubles, but most of them have never happened.” The fact is that most of our worries and fears never come to be. The sooner you take that to heart and live by it, the sooner you will be free of the shackles.

6. Difficulties are opportunities.

Losing a case, disappointing a client, making a mistake, angering a judge — all are part and parcel of practicing law. Get over them, set them aright, and move on to the next thing. The difficulties and struggles of the practice of law are the forces that sculpt you into the kind of lawyer that you will grow to be. How you react to those forces will determine whether you become a polished work of art or a pile of dust.

7. Seek enduring happiness.

Material goods can make us happy. The happiness that material goods bring us, however, is like cotton candy. Soon after the pleasurable flavor and sugar high dissipate, we are left with nothing of substance. Seek happiness that will endure. Seek richness in mind and spirit.

8. Grow where planted.

Ambition is a professional hazard of lawyers. You will see that some lawyers are never satisfied with the small stage they are on and the role they have to play. They are always anxious and fretful that they are missing out on the bigger show. When you decide to grow where you are planted, you will find yourself content to make your little world a better, more fulfilling place. You will have made a difference. You will

find happiness in that.

9. Avoid sharp objects.

People who juggle sharp knives usually get cut. People who associate with negative, demanding, hurtful, self-centered, boastful, spiteful, selfish, unfaithful, vengeful, dishonest, envious, greedy, abusive, conniving, bitter, crafty, controlling, self-entitled, passive-aggressive, manipulative, lazy, bigoted, crazy, cynical, gossipy, angry, narrow-minded or shallow individuals are like people who juggle sharp knives. Eschew those kinds of people like you would dangerous objects because their friendship or involvement in your life is, indeed, fraught with danger.

10. Appearances.

You will find that there are lawyers who will look down on you because you don’t wear the right suits or shoes, or don’t drive the right car, or don’t belong to the right firm, or don’t handle the right kind of cases. Those poor people see only what is on the surface, when the real value is what is in your mind and soul. Pay them no mind.

If you are not a happy lawyer and need confidential help for alcoholism, addiction or depression, call LAP at (985)778-0571, email LAP@louisianalap.com, or visit the website at: www.Louisianalap.com.

FOOTNOTE

1. Judge Lawrence Primeaux is a Chancery Court judge in Meridian, MS. The full article is available online at: <https://chancery12.wordpress.com/?s=advice+for+a+young+lawyer>.

J.E. (Buddy) Stockwell is the executive director of the Lawyers Assistance Program, Inc. (LAP) and can be reached at (866)354-9334 or via email at LAP@louisianalap.com.



Thanks to Conclave Sponsors and Co-Hosts

The March 6 Louisiana State Bar Association's (LSBA) eighth annual Conclave on Diversity in the Legal Profession, with the theme, "Celebrating 50 Years of Civil Rights: Moving the Pendulum Forward," was co-hosted by the Louisiana Supreme Court and local and specialty bar associations from across Louisiana. The organizers would like to recognize the sponsors and co-hosts.

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Freedom Rider Henry (Hank) James Thomas, right, was a speaker and special guest during the March 6 Louisiana State Bar Association's (LSBA) eighth annual Conclave on Diversity in the Legal Profession, with the theme "Celebrating 50 Years of Civil Rights: Moving the Pendulum Forward." Thomas is best known as an American civil rights activist and one of the original 13 Freedom Riders, men and women who bravely boarded the first Greyhound bus that traveled South in 1961 to protest the segregation of buses and trains. He was eventually jailed in Mississippi's notorious Parchman State Prison Farm for his activities. Also speaking at the Conclave was LSBA President Joseph L. (Larry) Shea, Jr., left. Shea said the Conclave brought together "a truly diverse group of registrants who were provided with information and insight into the numerous issues we face in Louisiana with an increasingly diverse population of lawyers." More information and photos of the Conclave will be published in the June/July 2015 *Louisiana Bar Journal*. Photo by Matthew Hinton Photography.

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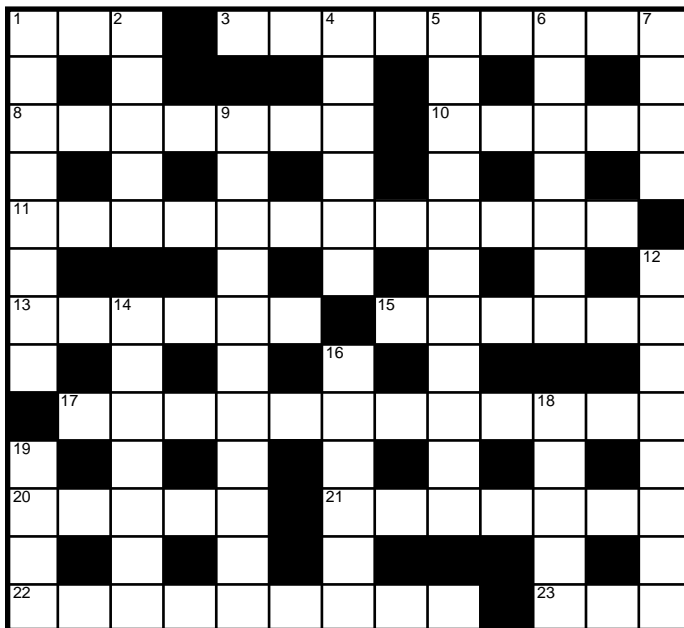
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Counsel; Louisiana District Attorneys
Association; Louisiana District Judges
Association; Louisiana Employment
Lawyers Association; New Orleans Bar
Association; Southwest Louisiana Bar
Association; and Vietnamese American
Bar Association of Louisiana.

Crossword PUZZLE

*In Honor of Judge William Norris III
By Hal Odom, Jr.*

"WHERE WE USED TO EAT"



ACROSS

- 1 Part of Apollo 11 that actually touched the moon (3)
- 3 Former cafeteria chain, based in Alabama, absorbed by Piccadilly (8'1)
- 8 Finds (7)
- 10 Lone Ranger's sidekick (5)
- 11 Kind of alimony, back in the day (8, 4)
- 13 Cruel thing to do to the paws of a cat (6)
- 15 Anatomical ring (6)
- 17 Noisy story from the Book of Genesis (5, 2, 5)
- 20 Cafeteria chain based in Texas, no longer in Louisiana (4'1)
- 21 "I Shot the ____," Bob Marley ballad (7)
- 22 Where to take freshly cut sugarcane (5, 4)
- 23 Major R. R. line crisscrossing Louisiana (3)

DOWN

- 1 Might be floating on a pond's surface (4, 4)
- 2 Bayou that runs behind Poverty Point (5)
- 4 Buttons in bowling alleys (6)
- 5 Kind of Acts passed by Parliament after the Boston Tea Party (11)
- 6 How a person suffering a heart attack should be (2, 5)
- 7 Word inside a red octagon (4)
- 9 What you tell a person who's about to lose (3, 4, 2, 2)
- 12 Upper portions of stable or barn (8)
- 14 Stereotypical burglar tool (7)
- 16 Dwarf Chinese tree (6)
- 18 Regal or LeSabre (5)
- 19 Delta 88 or Cutlass (4)

Answers on page 494.

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	John A. Gutierrez(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
			Dian Tooley(504)861-5682 (504)831-1838
Lafayette	Alfred "Smitty" Landry(337)364-5408 (337)364-7626	Shreveport	Michelle AndrePont(318)347-8532
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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Feb. 4, 2015.

Decisions

Jarrett P. Ambeau, Baton Rouge, (2014-B-2386) **Suspended for one year, fully deferred, subject to two years' unsupervised probation**, ordered by the court as consent discipline on Dec. 8, 2014. JUDGMENT FINAL and EFFECTIVE on Dec. 8, 2014. *Gist*: Failed to fulfill his obligations of safekeeping client property; and failed to take reasonably practicable steps to surrender property to his former client within a reasonable time frame.

Madro Bandaries, New Orleans, (2014-B-1435) **Public reprimand** ordered by the court on Dec. 9, 2014. JUDGMENT FINAL and EFFECTIVE on Dec. 23, 2014. *Gist*: Violated Rules 3.1 and 4.4(a) of the Rules of Professional Conduct; and engaged in conduct prejudicial to the administration of justice, in violation of Rules 8.4(a) and (d).

Robert N. Clarke, Metairie, (2014-B-2005) **Six-month suspension, fully deferred, subject to one-year supervised probation**, ordered by the court as consent discipline on Nov. 26, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 26, 2014. *Gist*: Mishandled his client trust account by issuing checks from the account pay-

able to "cash" and allowing the account to become overdrawn.

David Jack Dowell, Gretna, (2014-B-2038) **Permanent disbarment** ordered by the court on Nov. 21, 2014. JUDGMENT FINAL and EFFECTIVE

Continued next page

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Office of Disciplinary Counsel (1998-2006)
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DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Feb. 5, 2015.

Respondent	Disposition	Date Filed	Docket No.
Daniel G. Abel	(Reciprocal) Interim suspension.	2/4/15	13-6542
William Harrell Arata	(Reciprocal) Deferred suspension.	1/13/15	14-2733
Christopher Luke Edwards	(Reciprocal) Disability inactive status.	1/13/15	14-2675
Cory Scott Morton	(Reciprocal) Disbarment.	1/13/15	14-1863
Elizabeth Spurgeon	(Reciprocal) Disability inactive status.	12/8/14	14-2274
Daniel James Stanford	(Reciprocal) Interim suspension.	12/8/14	14-2275

Discipline continued from page 454 on Dec. 5, 2014. *Gist:* Conduct involving dishonesty, fraud, deceit and misrepresentation; violating or attempting to vio-

late the Rules of Professional Conduct; and failure to cooperate with the Office of Disciplinary Counsel.

Gregory S. Duhy, Chalmette, (2014-B-2052) **Suspended for one year and**

one day, with all but three months deferred, followed by one year of unsupervised probation, ordered by the court on Nov. 21, 2014. **JUDGMENT FINAL and EFFECTIVE** on Dec. 5, 2014. *Gist:* Failure to respond to a lawful demand for

Continued next page

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- Practice concentrated in legal and judicial ethics for over 15 years.
- Author, "Coverage for a Rainy Day: Many Malpractice Policies Will Help Pay the Costs of Defending Disciplinary Complaints," ABA Journal, August 2003, p. 29.



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information from a disciplinary authority; and failure to cooperate with the Office of Disciplinary Counsel.

Randy J. Fuerst, Lake Charles, (2014-B-0647) **Suspension of six months, with all but three months deferred**, ordered by the court on Dec. 9, 2014. JUDGMENT FINAL and EFFECTIVE on Dec. 23, 2014. *Gist*: Conflict of interest by maintaining a consensual, intimate relationship with a current domestic relations client in 2004.

Samuel O. Henry IV, West Monroe, (2014-B-2485) **Public reprimand** ordered by the court as consent discipline on Jan. 23, 2015. JUDGMENT FINAL and EFFECTIVE on Jan. 23, 2015. *Gist*: Advertised as board-certified bankruptcy specialist after certification had lapsed and been revoked.

Vivica D. Smith Pierre, Boston, MA, (2014-B-2427) **Three-year suspension** ordered by the court as consent discipline on Jan. 23, 2015. JUDGMENT FINAL and EFFECTIVE on Jan. 23, 2015. *Gist*:

Commingled and converted client funds; failed to promptly provide an accounting to her client; and made dubious entries on the belated accounting to justify the retention of the client's funds.

Steven L. Rushing, Longview, Texas, (2014-B-2053) **Permanent disbarment** ordered by the court on Nov. 21, 2014. JUDGMENT FINAL and EFFECTIVE on Dec. 5, 2014. *Gist*: Conduct involving dishonesty, fraud, deceit or misrepresentation and the commission of a criminal act.

James Spruel, Jr., Lake Charles, (2014-B-2117) **One-year suspension, with six months fully deferred, followed by one year of unsupervised probation**, ordered by the court as consent discipline on Dec. 15, 2014. JUDGMENT FINAL and EFFECTIVE on Dec. 15, 2014. *Gist*: Neglect of a client matter resulting in dismissal for lack of prosecution; failure to respond to client's inquiries about the status of her case following its dismissal; and failure to return the client's file as requested.

Kevin Michael Steel, Gretna, (2014-B-2367) **Suspended for three months, fully deferred**, ordered by the court as consent discipline on Jan. 16, 2015. JUDGMENT FINAL and EFFECTIVE on Jan. 16, 2015. *Gist*: Neglect of a legal matter; and failure to communicate with a client.

Nicholas J. Trenticosta, New Orleans, (2014-B-2557) **Public reprimand** ordered by the court as consent discipline on Jan. 23, 2015. JUDGMENT FINAL and EFFECTIVE on Jan. 23, 2015. *Gist*: Failed to provide competent representation to a client in a succession matter; and engaged in conduct prejudicial to the administration of justice.

Jermaine D. Williams, Lafayette, (2014-OB-2561) **Permanent resignation from the practice of law** ordered by the court on Jan. 23, 2015. JUDGMENT FINAL and EFFECTIVE on Jan. 23, 2015. *Gist*: Commingling and conversion of client and third-party funds.

No admonitions reported for this issue.

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Importance of Confidentiality for Vitality of Mediation

In recent years, mediation has grown in popularity as a form of alternative dispute resolution. The mediation process has many benefits, one of which is confidentiality. The expectation of confidentiality

promotes the use of mediation by providing parties with certainty that they will be able to earnestly discuss settlement without the risk of valuable information being disclosed to anyone not privy to the mediation. See Michael P. Carbone, "Confidentiality Revisited," *mediate.com* (June 2014), www.mediate.com/articles/CarboneMbl20140613.cfm.

Several recent cases across the United States have indicated that confidentiality rules are effectively ensuring that mediation will remain the preferred form of alternative dispute resolution, but some cases suggest otherwise.

A ruling by a Florida federal district court suggests that violations of mediation confidentiality rules lack a remedy.

In *Procaps S.A. v. Patheon, Inc.*, 12-24356 (S.D. Dist. Fla. 10/22/14), the plaintiff, Procaps, filed a motion to compel return to mediation, which the defendant, Patheon, opposed. In its opposition, Patheon alluded to several aspects of the parties' previous confidential mediation by stating:

- ▶ there was a "monumental gap" at mediation;
- ▶ Procaps refused to "close the gap" during or after mediation;
- ▶ Procaps made "over the top" settlement offers;
- ▶ Patheon made a counteroffer to Procaps's settlement offer;
- ▶ Procaps refused to disclose a "rule of reason theory" to Patheon; and
- ▶ Procaps's counsel made no good-

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faith effort to settle.

Based on these statements, Procaps filed a motion to strike defendant's opposition, alleging that Patheon breached Florida's mediation confidentiality rules. *See* S.D. Fla. L.R. 16.2(g)(2). Procaps argued that the court should strike Patheon's opposition or, alternatively, that Procaps should also be able to disclose confidential information from the mediation.

The court first held that the statements referring to the monumental gap, Procaps's refusal to close the gap, and Procaps's lack of good faith were "relatively harmless" because they were responsive to the motion to compel return to mediation and "sufficiently generic to not constitute a violation of the confidentiality rule." It noted that a party should, "at least to some limited degree," be able to mention that the previous mediation did not succeed due to considerable differences.

Next, Patheon revealed in its opposition that Procaps's settlement demand was based on an expert's opinion that the venture would have generated billions of dollars in revenues and that Procaps "has no rule of reason theory, as evidenced by its refusal to disclose one to Patheon." The court found that these statements "did, in fact, go a tad too far" and that the statements were in violation of Florida's mediation confidentiality rules; however, the court opined that allowing the disclosures in this case would not be significant enough to chill mediation. The court further stated that the severity of Procaps's suggested remedies—to strike Patheon's opposition or to allow Procaps to also disclose confidential information—were disproportionate to Patheon's technical violations. Ultimately, the court denied Procaps's motion to strike defendant's opposition.

On the other hand, in *American Environmental Group, Ltd. v. H.M. Miller Construction Co.*, 2014-Ohio-4681 (Ohio Ct. App. Oct. 23, 2014), a recent case from Ohio, the court demonstrated that confidentiality rules are successful in protecting mediation materials from disclosure. The city of Fremont, Ohio, and H.M. Miller Construction Co. (Miller) participated in a series of mediations to settle claims based on a construction project. Another party to the litigation, American Environmental Group (AEG), was invited to attend the

mediation but declined to do so. At the final mediation, Fremont and Miller settled their dispute. AEG subsequently filed suit against Miller and issued subpoenas duces tecum to Fremont seeking documents from the Fremont-Miller mediation. Miller filed a motion to quash subpoenas, or, in the alternative, a motion for a protective order against AEG, alleging that the documents were confidential mediation communications, which are privileged under Ohio's Uniform Mediation Act. *See* Ohio Rev. Code §§ 2710.01-2710.10.

The trial court denied Miller's motion to quash and the motion for protective order, stating that the issue was "not yet justiciable" and that the documents must be disclosed. The disclosure was strictly limited to AEG's counsel, and, once the documents were received, the defendants could then "file another motion for a protective order to prevent plaintiff from using privileged mediation communications in discovery or at trial and to 'claw back' any such communications." On appeal, the Ohio Court of Appeals reversed the trial court's ruling, stating that "the trial court abused its discretion in ordering the release of all the requested documents, including those that fall within the ambit of a mediation communication."

The court first found that there was evidence in the record that the documents were protected under Ohio's Uniform Mediation Act. AEG took the position that it was entitled to view the documents for three reasons:

- it was a party to the mediation through Miller;
- it was invited to attend the media-

tion; and

- its claims were compromised at the mediation.

Ruling that none of these arguments qualified as a valid exception to Ohio's Uniform Mediation Act, the court held that requiring disclosure was improper. Furthermore, the trial court's solution to limit disclosure to only AEG's counsel and to have the defendants "claw back" the confidential documents violated Ohio's Uniform Mediation Act.

The court specifically noted the importance of mediation's confidentiality, stating that it is "critical to the success of mediation." The court opined that disregarding confidentiality rules "threatens the vitality of mediation" and held that, when there are confidential mediation communications, a trial court should not order their release.

These cases illustrate that while the degree of disclosure may impact a court's enforcement of the confidential nature of mediation conferences, overall, confidentiality rules are an effective way to promote the continued vitality of mediation.

—**Alexander J. Baynham** and
Kristin Farquharson

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Federal Income Taxes Exempted from Discharge

United States v. Stanley, No. 13-60704, 2014 WL 6997518 (5 Cir. Dec. 12, 2014), ____ Fed Appx. ____.

Dr. Markus B. Stanley failed to pay his tax liabilities to the United States from 1998 through 2010. In 2009, Stanley filed for Chapter 7 bankruptcy relief and, in 2011, was granted a discharge from his debts, including the tax liabilities. The government did not appeal the discharge. In 2011, the government brought a civil action against Stanley to reduce his tax liabilities to judgment. The government sought summary judgment from the district court to determine whether Stanley's tax liabilities for 1998 to

2010 were excepted from his bankruptcy discharge under 11 U.S.C. § 523. The district court found the following taxes were excepted from discharge and reduced them to judgment: (1) the 2009 and 2010 taxes because they accrued after the bankruptcy filing; and (2) the 2005-2008 taxes because they were assessed in the three years immediately before the bankruptcy filing. *See*, 11 U.S.C. §§ 507(a)(8)(A)(i) and 523(a)(1)(A).

With respect to the 1998 to 2004 tax liabilities, in order for those tax liabilities to be excepted from discharge, the government had to demonstrate that "the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax" pursuant to 11 U.S.C. § 523(a)(1)(C). At the trial, the government had the burden of proving the "willful attempt" standard, *i.e.*, the debtor's conduct was an attempt to "evade or defeat [a] tax" and that he had a "willful" mental state in doing so. Stanley did not contest the conduct requirement but argued that he suffered from bipolar disorder, which rendered him incapable of forming the requisite willful mental state. The district court ruled in favor of the government and denied the discharge of

the 1998 to 2004 tax liabilities.

On appeal, the 5th Circuit discussed the three-pronged test used to determine willfulness in the tax-evasion context. This test considers whether the debtor (1) had a duty to pay taxes under the law; (2) knew he had that duty; and (3) voluntarily and intentionally violated that duty. *See, United States v. Coney*, 689 F.3d 365, 374-76 (5 Cir. 2012). Under this standard, the debtor does not have to specifically intend to defraud the IRS. The third prong will be considered satisfied by either an affirmative act or culpable omission. Reasoning that simple "non-payment" or an "ability to pay" are not alone sufficient evidence of intent, the 5th Circuit looked to the totality of circumstances surrounding Stanley's actions.

Between 1998 and 2004, Stanley entered into many complicated real-estate transactions, purchased a number of luxury items (including a motorcycle, a number of cars and expensive jewelry for his wife), established a wholly owned corporation and generally made timely payments on his other debts. Stanley also entered into an installment agreement with the IRS to pay his back taxes, but breached the agreement

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shortly thereafter. The 5th Circuit found these actions clearly indicated Stanley's willfulness in evading his taxes. In response, Stanley asserted that because of his mental health, he was unable to control his actions. The 5th Circuit held, however, that a debtor's ability to successfully carry out duties in a demanding profession, such as the practice of medicine, is evidence of a corresponding ability to form a willfulness mindset to evade tax obligations. Therefore, because Stanley demonstrated an ability to continue his medical practice, tended to other financial obligations and participated in complex financial transactions during the period in question, the 5th Circuit found Stanley willfully attempted to evade his federal income taxes and exempted the 1998 to 2004 taxes from discharge.

—Cherie D. Nobles and
Alida C. Wientjes

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Louisiana Business Corporation Act Modifies Merger Process

The Louisiana Business Corporation Act (effective on Jan. 1, 2015) contains slight, but significant, modifications to the merger process of one or more corporations or entities. La. R.S. 12:1-1101 through 1108. The process remains consistent with prior Louisiana law, but this update describes several changes that practitioners should keep in mind.

Adoption of Plan of Merger

The board of directors of each party to a merger must adopt a plan of merger that contains: (1) the name of each business corporation or "eligible entity" that will merge, and the name of the surviving entity; (2) the terms and conditions of the merger; (3) the manner and basis of converting shares of each merging corporation and/or entity into shares or other securities; eligible interests; obligations; rights to acquire shares or other securities or eligible interests; or into cash, other property or any combination of the foregoing; (4) the articles of incorporation or "organic documents" of any domestic or foreign entity to be created by the merger, or any amendments to the survivor's articles of incorporation or organic documents; and (5) any other provisions required by the law of the state where any party is organized or by which it is governed, or by the articles of incorporation or organic document of such party. La. R.S. 12:1-1102.

The plan may allow for its amendment after approval, but prior to filing articles of merger. However, if the shareholders of a corporation that is a party to the merger are permitted or required to vote on the plan, the plan may not be amended to change:

► the amount or kind of shares or other securities; eligible interests; obligations; rights to acquire shares or other securities or eligible interests; or cash or other property to be received under the plan by the shareholders or owners of eligible interests in any party to the merger;

► the articles of incorporation or organic documents of any unincorporated entity that will survive or be created by the merger; or

► any of the other terms or conditions of the plan if the change would adversely affect the shareholders in any material respect.

The plan must then be submitted to shareholders for approval, together with a recommendation of approval from the directors. If the board of directors determines it should not recommend approval because of a conflict of interest or some other special circumstance, the board must provide a statement explaining such conflict or circumstance.

If, pursuant to La. R.S. 12:1-1104(8), the corporation will survive the merger; its articles will not be changed by the merger; each shareholder of the corporation whose

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shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical preferences, limitations, and relative rights immediately after the effective date of the merger; and the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a shareholder vote, the approval of the shareholders of such corporation is not required. If the merger is between a corporation or entity that owns at least 90 percent of the voting power of each class or series of outstanding shares of another corporation or entity that has voting power, the approval of either the board of directors or shareholders of the subsidiary is not required unless the articles of any corporations provide otherwise. La. R.S. 12:1-1105.

Written notice of a meeting to approve the plan of merger must be sent to each shareholder, whether or not the shareholder is entitled to vote for the merger.

Approval of the merger requires a majority of the votes entitled to be cast in favor of the plan of merger, and if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group by at least a majority of the votes entitled to be cast by that voting group is required, unless a greater vote is required by the organic documents of any entity or the board of directors. This threshold requirement is a change from previous Louisiana law, which required approval of two-thirds of the voting power present.

Filing of Articles of Merger

Articles of merger must be filed with the Secretary of State after approval of the plan identifying the parties to the merger; any amendments to existing articles of incorporation, or new articles of incorporation of any entity formed by the merger; if shareholder approval was required, that the plan of merger was approved under law and the articles of incorporation, or a statement that

shareholder approval was not required; and a statement that participation in the merger by a foreign corporation or entity was authorized pursuant to the organic law of the foreign corporation or entity.

Within 30 days of the articles of merger taking effect, a duplicate original or certified copy of the articles must be filed in the conveyance records of any parish in the state where a party to the merger owns immovable property. The requirement to file in the parish where any party to the merger has its registered office has been eliminated.

—Joshua A. DeCuir

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the Chair of the Louisiana Supreme Court's Judicial Oversight Committee and served as the first woman president of the Louisiana State Bar Association.



Thomas M. Hayes, III has also joined the Patterson Resolution Group. His practice has focused on product liability, redhibition, insurance coverage, industrial accidents, medical malpractice, lawyer's professional liability and professional responsibility, construction, architect and engineering liability, successions, real estate disputes,

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5th Circuit Denies Qualified Immunity for Prison Officials Accused of Due Process Violations

Wilkerson v. Goodwin, 774 F.3d 845 (5 Cir. 2014).

The U.S. 5th Circuit Court of Appeals recently upheld the decision of Senior Judge James J. Brady of the Middle District of Louisiana denying qualified immunity for prison officials at the Louisiana State Penitentiary at Angola and the David Wade Correctional Facility. Plaintiff-appellee Albert Woodfox is the last of the “Angola 3” who is still incarcerated. Woodfox, along with Robert King and Herman Wallace, were charged with the 1972 murder of an Angola prison guard.

The trio have been repeatedly tried and convicted only to be exonerated on appeal due to numerous revelations including the loss of potentially exculpatory DNA evidence, special favors (including a pardon recommendation) which were given to the State’s serial rapist star witness in exchange for testimony, and various other forms of prosecutorial misconduct. Advocates for their release and reparation include Amnesty International, the United Nations High Commissioner for Human Rights, and even the widow of the slain prison guard who has attended rallies demanding their release and stated, “If I were on that jury, I don’t think I would have convicted them.”

Woodfox filed suit against prison officials alleging a procedural-due-process claim arising out of his 39 years of continuous incarceration in solitary confinement.

Prison officials sought summary judgment on the basis of qualified immunity, stating that the placement of prisoners into separate security classifications did not implicate a due-process right. The court first dismissed the semantic distinctions made by the State regarding “extended lockdown” at Wade Correctional, “closed-cell restric-

tion” at Angola, and other forms of solitary confinement, noting that prisoners in each system endure 23 hours of solitary confinement each day in addition to restrictions on access to legal resources, visitation, personal property and religious services.

The State likewise failed to prove that Woodfox’s due-process rights were protected by “sham” reviews held before a board of prison officials every 90 days, whose written decisions in “rote repetition” state “the Plaintiffs’ placement in CCR was and remains indefinite,” which creates a situation with “no hope of release other than by death or release from prison.” *Id.* at 856 (emphasis added). (The due-process claims of co-plaintiff Herman Wallace were originally part of these proceedings, but have since been settled with the family after Wallace died. He spent more than 40 years in solitary confinement in the same facilities.)

The original plaintiffs brought near identical arguments in 2000 regarding their extended solitary confinement at Angola. The State likewise brought a claim of qualified immunity, which was denied, and sought summary judgment, which was denied. *Wilkerson v. Stalder*, 329 F.3d 431, 436 (5 Cir. 2003). In March 2005, the protracted litigation came to an end with the issuance of an order declaring that “the extraordinary duration of the solitary confinement gave rise to a protected liberty interest.” 745 F.3d at 850 (internal citations omitted).

After the 5th Circuit’s decision, the plaintiffs were moved intermittently to a maximum-security dormitory between stints in solitary confinement until November 2010 when Woodfox was transferred to Wade Correctional and “immediately placed in a newly-created CCR unit, where he has remained ever since.” Woodfox was given leave to amend his petition to include officials at the new prison, who immediately sought summary judgment asserting qualified immunity because “they made an initial independent decision that Woodfox should be housed in CCR.” This argument was undercut by evidence showing that “there was no CCR tier at Wade prior to Woodfox’s transfer, and that, at the time of transfer, no official had ever had any intention to house Woodfox anywhere other than at CCR.” *Wilkerson v. Stalder*, No. 00-304-JJB, 2013 WL 6665452, at *7 (M.D. La. 12/17/13).

The court applied the *Sandin* test set forth

by the U.S. Supreme Court, which established that a prisoner’s liberty interest (for purposes of a due-process review) “will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 115 S.Ct. 2293, 2300 (1995).

The court then noted that, generally speaking, prisoners have neither property nor liberty interests that are protectable in a prison-classification procedure, and that courts have repeatedly given the widest possible deference to prison officials in order to maintain the necessary level of security and internal order. However, constitutional requirements do not fall by the wayside, and a review of recent U.S. Supreme Court jurisprudence holds that, when a prisoner demonstrates such an “atypical and significant hardship,” he will be able to maintain a due-process challenge to his custodial classification.

The court compared several cases from around the country and found that there was no reason to dwell on whether Woodfox’s confinement was “atypical and significant,” given that his 39 years in solitary is almost five times as long as what other courts have found sufficient to establish a liberty interest. Arguments from the State included assertions that Woodfox’s conditions were not extreme because he was able to take correspondence courses and his placement in the new CCR at Wade Correctional was a different term of confinement that began in November 2010 and should be analyzed without regard to the fact that he has been in near-continuous solitary confinement since 1972.

Rebuffing these arguments, the 5th Circuit held that “no reasonable prison official could conclude that continuing four decades of indefinite solitary confinement would not implicate a liberty interest protected by due process,” and, therefore, affirmed the denial of summary judgment based on qualified immunity of state officials. *Wilkerson v. Goodwin*, 774 F.3d at 858.

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Federal Judge Rejects Asbestos Plaintiffs' "Every Exposure" Causation Expert

In *Comardelle v. Pennsylvania General Ins. Co.*, No. 13-6555 (E.D. La. Jan. 5, 2015), 2015 WL 64279, ____ F.Supp.3d ____, plaintiff was allegedly exposed to a variety of asbestos products that were asserted to be the cause of his cancer and mesothelioma. Plaintiff's proposed expert witness planned to use an "every exposure" theory, arguing that every asbestos fiber inhaled by an individual that reached the target organ contributed to causing mesothelioma.

Judge Africk granted a defense motion to exclude this expert testimony, noting that although there may be no known safe level of asbestos exposure, this does not support the proposed expert's leap to the conclusion that every single asbestos exposure must have been a substantial contributing cause of the plaintiff's mesothelioma: "The Court is not persuaded that such a one-size-fits-all approach is reliable expert testimony." The judge pointed out the "impermissible gap in [the expert's] reasoning" from the more general causation principle that exposure to asbestos increases the risk of mesothelioma, to the specific causation opinion that, in this case, the plaintiff's exposure to a specific

product was a cause of his mesothelioma. The judge accordingly barred the plaintiff's proposed expert witness from giving any testimony based on the every-exposure theory. The case settled and was dismissed shortly thereafter.

District Court Lacks Jurisdiction to Review Air Permit Issued Without Public-Comment Period

The Louisiana Department of Environmental Quality (LDEQ) approved an air permit on behalf of RAM Terminals for a proposed coal terminal to be located in Ironton, La. A coalition of environmental groups filed a petition for judicial review, arguing that the LDEQ breached its duty by failing to perform an environmental assessment prior to issuing the permit. The LDEQ filed a motion to dismiss, arguing that a petition for review must be filed with the court within 30 days of notice of the action. The district court agreed with the agency, and the 1st Circuit affirmed. *Christian Ministers Missionary Baptist Ass'n v. La. Dep't of Envtl. Quality*, 14-0421 (La. App. 1 Cir. 12/10/14), 2014 WL 7003903.

The court focused on the question of its own jurisdiction. District courts have subject matter jurisdiction over administrative decisions only as provided by the Legislature or Constitution. La. R.S. 30:2050.21 provides that "[a] petition for review must be filed in the district court within thirty days after notice of the action or ruling being appealed

has been given."

Although no public-comment period was held for this permit, the LDEQ contended that the plaintiffs could have requested notice of permit application in Plaquemines Parish, perused the LDEQ's website to see the application under review or submitted their concerns with the RAM Terminals facility at any point during the permit-application-review process. Because plaintiffs took none of those steps, they did not get direct notice from the LDEQ about the final issuance of the permit.

The court did not speculate on whether it was realistic for community members to constantly review the LDEQ's website to look for local permit applications in the absence of public notice. Instead the court simply noted that "[t]he statutes and law do not envision an unlimited amount of time in which to appeal the grant of a permit." Thus, because the petition for judicial review was not filed within 30 days of the LDEQ's notice to others of the issuance of the permit, the district court had no jurisdiction over the petition.

No Insurance Coverage After Well Blowout Under Property Damage and Pollution Exclusions

An oil-and-gas exploration company, Pioneer Exploration, L.L.C., was sued and fined following a blowout of a well in Cameron Parish. The blowout contaminated more than 12 acres of land, including neighboring property. Pioneer requested coverage from its insurer, Steadfast, for costs associated with the cleanup, suits and fines under a commercial general-liability policy and an umbrella policy. Steadfast denied coverage, and Pioneer sued but lost in district court. Pioneer then appealed, pursuing claims under its umbrella policy. The 5th Circuit, in *Pioneer Exploration, L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503 (5 Cir. 2014), upheld the decision to dismiss the suit.

The court looked at the "Blended Pollution" exclusion and the "Property Damage" exclusion. Specifically, the Blended Pollution exclusion excludes or limits coverage of damages arising from actual, alleged or threatened pollution — specifically, the

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policy did not cover the costs of cleanup, removal or containment of pollution on any location “owned, rented or occupied by any insured.”

Pioneer argued that the owned, rented or occupied language was inapplicable here because it did not own, rent or occupy the surface property; rather, it had only a mineral lease. The 5th Circuit disagreed, noting that Pioneer had “broad rights to the land” under the standard mineral-lease provisions that give the lessee the right to enter and use the surface of the property for exploration and drilling purposes. Pioneer argued that it actually used only a small limestone pad on the property, but the court noted that Pioneer had the right to use all of the property, regardless of how large a section it had actually used.

Pioneer also argued that its containment costs were not to enhance or repair the owned, rented or occupied property but rather to prevent the spread of contamination onto neighboring property. The court disagreed on language in the Property Damage exclusion that specifically excluded coverage for the repair of property for any

reason, “including prevention of injury to a person or damage to another’s property.”

Based on the “owned, rented or occupied” language in the Blended Pollution exclusion and the “another’s property” language in the Property Damage exclusion, the 5th Circuit concluded that the costs of containment were excluded. Thus, the damage resulting from the blowout and subsequent contamination — and subsequent regulatory fines and lawsuits — were not covered by the umbrella policy.

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Custody

Steele v. Ashworth, 14-0527 (La. App. 3 Cir. 11/12/14), 151 So.3d 177.

The father filed a petition for change of custody, alleging that the child had lived with him for the last year, although the prior considered decree had designated the mother as the domiciliary parent. The child’s letter to the court stating that he was “hit” by the mother appeared to have been considered by the court, although the court appeared not to give it much weight. His allegation that he did not have to meet *Bergeron* because the parties had already changed custody by agreeing that the child would reside with him was rejected, as that was a temporary arrangement for the child to attend school for one year. Moreover, the court of appeal

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stated: “We will not allow the domiciliary parent’s decision to allow the child to have more liberal access to his non-domiciliary parent to serve as the basis for a change of custody.” The court of appeal also stated: “However, a slightly lower reading grade, a minor injury to his eye, mildly inappropriate comments, and physical restraint of the child during a physical altercation between the parents, which caused no injury to the child, are not such harmful circumstances as to justify a modification of the custody decree.” Finally, Mr. Steele’s own testimony indicated that he was not attempting to change custody, as much as he simply desired a greater part in his child’s life.

Sole Custody

Barlow v. Barlow, 14-0361 (La. App. 3 Cir. 10/1/14), 149 So.3d 856.

Even though Mr. Barlow did not receive written notice from the clerk of court 10 days in advance of the trial date, because he had actual notice of the trial date, having discussed it with his attorney more than 10 days before the date, his motion for new trial, after he failed to appear at trial, was

properly denied. The trial court did not err in modifying the parties’ joint custody regime to sole custody in favor of the mother because she met *Bergeron*, showing that the father’s instability was detrimentally affecting the child. Although she did not expressly plead for sole custody, because she sought “any and all just and equitable relief” and because La. C.C.P. art. 862 allows the court to award “any relief warranted by the facts,” the trial court could award sole custody as it was merited under the facts.

McCartney v. McCartney, 14-0396 (La. App. 3 Cir. 10/1/14), 149 So.3d 894.

The trial court did not err in changing the parties’ joint-custody regime to sole custody in favor of the mother after the father was sentenced to 10 years in prison because visitation was impractical, particularly as he had little relationship with the children prior to his incarceration, and because it was impractical for her to attempt to confer with him regarding decision making. The trial court also did not err in continuing his child-support obligation, but in allowing the child-support arrears to accrue.

Procedure

Mahfouz v. Davenport, 14-0358 (La. App. 3 Cir. 10/1/14), 149 So.3d 845.

Following custody and child-support proceedings, Mr. Mahfouz sued the child’s mother, her attorney, her attorney’s law firm and her attorney’s insurance company seeking damages for malicious prosecution, abuse of process, wrongful collection/seizure regarding a judgment for attorney’s fees, defamation, false/light invasion of privacy, intentional infliction of emotional distress and violation of the Rules of Professional Conduct. The trial court did not err in striking Mr. Mahfouz’s “global statement of facts,” because, on defendant’s exception of no cause of action, the court could consider only the facts in the petition. Defendant’s exceptions of no cause of action regarding claims related to Mr. Davenport’s representation of his client were maintained because his claims did not establish sufficient facts showing malice or an intent to harm Mr. Mahfouz. However, his claims against Mr. Davenport separate from his representation of his client were sufficient to state a cause of action for defamation, although the



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comments were not defamatory per se. Mr. Mahfouz failed to state a cause of action for invasion of privacy and intentional infliction of emotional distress. The trial court did not err in ordering Mr. Mahfouz to pay costs, since the court can assess the costs in any equitable manner.

Adoption

In Re JDH, 14-0621 (La. App. 3 Cir. 11/5/14), 150 So.3d 651.

The father consented to an intrafamily adoption by the mother and the mother's new husband, including a provision that he would have visitation with the minor child three full 24-hour days per month, but that his visitation was conditioned on his making payments toward child-support arrearages he owed the mother. He subsequently filed a rule to enforce the agreement because the mother and stepfather were not allowing him visitation. The trial court found, and the court of appeal affirmed, that the provision tying his visitation to his payment of the arrearages was against public policy "in this case." Further, the trial court did not err in revising the visitation provision to provide, specifically, that his visitation would be the second weekend of each month from Friday at 5 p.m. to Sunday at 5 p.m. The mother's failure to act in good faith and the resulting unfairness to the father supported the court's finding that the agreement was against public policy.

Community Property/ Prenuptial Contract

Deshotels v. Deshotels, 13-1406 (La. App. 3 Cir. 11/5/14), 150 So.3d 541.

Although the parties' prenuptial matrimonial agreement for a separate-property regime was executed neither as authentic act nor as an act under private signature duly acknowledged, the trial court found that because Ms. Deshotels admitted in court that she had signed the document and that she had knowledge of its purpose, her acknowledgment created a "natural obligation" of the parties to be separate in property, and that the agreement was enforceable. The court of appeal reversed, finding that she had not acknowledged the contract prior to the parties' marriage and that her admission in

court could not "retroactively resurrect the defective marriage agreement." Moreover, there was no testimony that she believed she had a moral obligation, nor was there any testimony that she had performed or promised to perform any obligation pursuant to the agreement. Because she had never expressed an intent to bind herself to perform the agreement, neither a moral nor a natural obligation existed.

Divorce

Hightower v. Schwartz, 14-0431 (La. App. 4 Cir. 10/15/14), 151 So.3d 903.

During Ms. Hightower's testimony on the rule to show cause under article 102, Mr. Schwartz's attorney attempted to cross-examine her regarding reconciliation. Ms. Hightower's counsel objected that Mr. Schwartz had not filed any pleading raising an affirmative defense of reconciliation, to which Mr. Schwartz's attorney argued that, as a summary proceeding, no answer or affirmative defense was required. After the

court sustained the objection, Mr. Schwartz's attorney failed to proffer the testimony. The court of appeal affirmed the judgment of divorce because the failure to proffer the testimony did not preserve the matter for the court's review. The court of appeal discussed that regardless of whether the defense of reconciliation is raised as an affirmative defense, by testimony, by a peremptory exception, by a motion to dismiss or by some other procedural vehicle, the party asserting the defense bears the burden of proof. Additionally, regardless of the method of raising the defense, once Ms. Hightower testified that they lived separate and apart "without reconciliation," she became subject to cross-examination on that issue and, further, the trial court is required to find that the parties did not reconcile.

—David M. Prados

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Bayou Health

On Feb. 1, 2015, the new contract period began for Louisiana's Bayou Health Plans, which are the health plans chosen by the Louisiana Department of Health and Hospitals to coordinate health-care services and payment for most Medicaid recipients, including adults with disabilities who do not receive Medicare, children under age 19, their parents and pregnant women.

The most significant change in the new contract period is the elimination of the shared-savings payment model option that existed under the prior contract. Under the shared-savings model, the health plan received a monthly fee for each enrolled member to provide care-management services, with the opportunity to share in any savings to the State that resulted from the

improved coordination of care. The State (not the plan) ultimately processed and paid provider claims. In the new contract period, all Bayou Health Plans participate under the prepaid-payment model, in which the plan is paid a monthly flat fee for managing the care of Medicaid recipients and will process claims and pay providers directly for services.

The five Bayou Health Plans chosen for the new contract period are Aetna Better Health of Louisiana; Amerigroup Louisiana, Inc.; AmeriHealth Caritas Louisiana, Inc.; Louisiana Healthcare Connections; and UnitedHealthcare Community Plan. Aetna Better Health is a new entrant; the other plans participated in the prior Bayou Health contract. All of the health plans will operate statewide.

Medicaid recipients not covered through Bayou Health include nursing home residents, Medicare dual eligibles and recipients enrolled for some specialty-service Medicaid programs. Individuals not enrolled in Bayou Health will continue receiving care through the legacy fee-for-service system. Additionally, dental care and specialized behavioral-health services remain separately

managed. Doctors and other medical providers can sign contracts with as many plans as they wish and may remain Medicaid fee-for-service providers to treat any patients who are not included in Bayou Health.

RAC Program Improvements

On Dec. 30, 2014, the Centers for Medicare and Medicaid Services (CMS) published an updated list of Recovery Audit Program improvements intended to reduce provider burden and increase transparency in the program. Under the Recovery Audit Program, recovery audit contractors (RACs) audit Medicare claims submitted by hospitals, physicians and other health-care providers. RACs are paid a commission on each claim they deny.

Notably, CMS will limit the look-back period for patient status reviews to six months after the date of service if the hospital has submitted its claim within three months of the date of service. CMS believes this addresses concerns regarding its policy that limits a hospital's ability to resubmit certain



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denied Medicare Part A claims under Part B to one year after the date of service.

Additionally, RACs will have a limit on the number of document requests they can make to a provider, depending on provider type and practice setting. To address concerns about providers unfamiliar with the program becoming overwhelmed by document requests, CMS is now instructing RACs to let these providers transition into the program by not requesting the maximum number of documents immediately, but by reaching document limits through incremental requests.

Other changes include a reduction in the time period RACs have to complete complex reviews from 60 days to 30. To address concerns regarding accuracy of automated reviews, RACs will be required to maintain an accuracy rate of 95 percent. Failure to maintain this rate will result in a progressive reduction in document limits for RACs. In response to concerns that RACs focus too much of their efforts on inpatient claims, CMS will require RACs to broaden their review to topics that include all claims/provider types.

The improvements will be effective with each new RAC contract awarded after Dec. 30, 2014, beginning first with a new contract awarded to identify improper Medicare payments nationwide made to suppliers of durable medical equipment, prosthetics and orthotics and to home health and hospice providers.

IRS Requirements for Charitable Hospital Organizations

On Dec. 29, 2014, the Treasury Department and the IRS released final regulations under Internal Revenue Code Section 501(r), added by the Patient Protection and Affordable Care Act in 2010, which impose additional requirements on charitable hospital organizations. Section 501(r)(1) provides that a hospital organization will not be treated as a Section 501(c)(3) tax-exempt organization unless the organization meets the requirements of Sections 501(r)(3) through 501(r)(6), which require a hospital organization (1) to conduct a community-health-needs assessment at least once every

three years and to adopt an implementation strategy to meet the needs identified through the assessment; (2) to establish a written financial-assistance policy and a written policy relating to emergency medical care; (3) to not use gross charges and to limit amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the organization's financial-assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care; and (4) to make reasonable efforts to determine whether an individual is eligible for the financial-assistance policy before engaging in extraordinary collection actions. The hospital organization must meet each requirement separately with respect to each hospital facility it operates.

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Negligence, Unseaworthiness and *McCorpen* Rule

Meche v. Doucet, 777 F.3d 237 (5 Cir. 2015).

Willie Meche was employed by Key Marine Services, L.L.C., under supervision of Alex Doucet, as captain of the crew boat MISS CATHERINE, owned by Key and serving a drilling rig off the coast of Louisiana. While the vessel was tied to the rig, which was under tow to a new location, Meche allegedly injured his back lifting a hatch cover to check the oil on the vessel. Meche claimed that stormy conditions caused a five-foot wave to hit the vessel and throw him over a railing.

Meche filed suit against Key and Doucet (toolpusher on the rig under tow at the

time), asserting claims under the Jones Act and general maritime law, including a claim for maintenance and cure against both defendants. The defendants denied that the incident ever happened and argued that Meche forfeited his right to maintenance and cure by lying about his preexisting spinal injuries on his employment application and medical questionnaire. The district court found Meche's testimony regarding being washed over the railing by a wave incredible, as it conflicted with his contemporaneous account of straining his back lifting a hatch cover and expert testimony that the seas were calm at the time. The court did find that Meche aggravated his preexisting spinal injury by lifting the hatch cover and thus was entitled to recover maintenance and cure from Key and Doucet, and that they had acted in bad faith in wrongfully refusing such relief, thus entitling Meche to punitive damages, attorney fees, interest and costs from both defendants. Meche appealed, and Key and Doucet cross-appealed.

On appeal, Meche argued that the vessel was unseaworthy in several respects, including that it was poorly lit and that lifting the hatch was a two-man operation that he was ordered to perform alone. These arguments were rejected outright as being false or irrelevant. He further contended that the vessel was unseaworthy because it was leaking oil, requiring him to perform the task leading to his injury. The district court properly rejected this but-for argument as not bearing directly on the injury.

The standards for maintenance and cure were established in the seminal case of *McCorpen v. Central Gulf Steamship Corp.*, 396 F.2d 547 (5 Cir. 1968), and its progeny.

Maintenance and cure is a contractual form of compensation afforded by the general maritime law to seamen who fall ill or are injured while in the service of a vessel. . . . Maintenance is a daily stipend for living expenses, (whereas) cure is the payment of medical expenses.

The vessel owner's obligation to provide this compensation does not depend on any determination of fault, but rather is treated as an implied term of any contract for maritime employment. A seaman may recover main-

tenance and cure even for injuries or illnesses pre-existing the seaman's employment unless that seaman knowingly or fraudulently concealed his condition from the vessel owner at the time he was employed.

Meche, 777 F.3d at 244 (footnotes omitted).

The 5th Circuit summarily vacated the maintenance and cure, punitive damages, attorney fees, interest and costs award against Doucet, as the duty extends only to the seaman's employer, which Doucet clearly was not. Key raised a *McCorpen* defense, claiming that Meche had intentionally failed to disclose his preexisting condition to a prior employer, Moncla Marine, from whom Key purchased its marine division and thereby "acquired all of its assets and all of its liabilities," including Meche's employment contract.

The district court found that Meche sustained three prior work-related low back and neck injuries between 1984 and 1994, before he applied to work for Moncla. Meche received disability payments and sued his former employers for damages, settling two lawsuits for a total of \$170,000. The 5th Circuit held that Meche was aware of his prior spinal injuries at the time he applied to work for Moncla and concealed information about those injuries from Moncla, and by extension, from Key.

The 5th Circuit found Meche's argument that he had made oral disclosure of

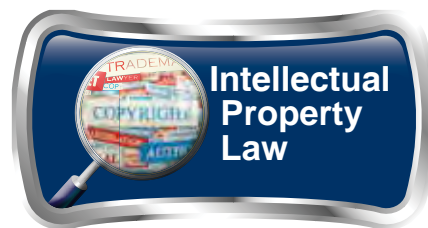
the preexisting injuries and lacked requisite literacy skills to comprehend and respond to the written employment questionnaire disingenuous. The "intervening asset sale" of Meche's employment contract made all of Moncla's defenses against such claims available to Key. The court limited its decision, however, with the following language:

The rule we announce today only applies when a company purchases the division and keeps the predecessor's seaman in its employ. It would not, for example, punish a seaman who leaves his or her employer for an entirely unrelated company.

Therefore, an intervening asset sale does not automatically relieve a seaman from the consequences of his or her prior intentional concealment of material medical information.

The district court's judgment rejecting Meche's Jones Act negligence and unseaworthiness claims against Key and Doucet was affirmed. The awards against Doucet and Key were vacated, and judgment was rendered in their favor.

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Recent Legislative Changes to U.S. Patent Law

The Leahy-Smith America Invents Act (AIA) and more recent legislation have changed U.S. patent law both in practice and procedure. Perhaps the best known and most significant change is the conversion from a first-inventor patent system to a first-inventor-to-file patent system, which results in the U.S. system aligning with the global patent standard. AIA Sec. 3; 35 U.S.C. §§ 100, 102, 103 (effective March 16, 2013). Generally the filing date of a patent application is considered to be the invention date for prior art. This change results in yet another reason to file a patent application as soon as possible. Failure to do so may result in the loss of all patent rights, and possibly the granting of a U.S. patent to a later inventor (which could then prevent the earlier inventor from practicing the invention).

All patent practitioners should be aware of a number of other significant changes.

A version of the Act can be found at: www.uspto.gov/aia_implementation/bills-112hr1249enr.pdf.

A summary of the effective dates of different provisions of the Act can be found at: www.uspto.gov/sites/default/files/aia_implementation/aia-effective-dates.pdf.

AIA Highlights

Below are highlights of some of the other important changes resulting from the AIA:

► There is a prioritized-examination option for a fee with no difficult requirements (unlike prior provisions), which allows an inventor to get a final disposition of the patent application within about 12 months. AIA Sec. 11; 37

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C.F.R. § 1.102(e).

► A new class of entity — micro entity — is established. Under the prior scheme, government fees were assessed between large entities and small entities. Large entities are for-profit companies with more than 500 employees, whereas small entities are nonprofits or companies having fewer than 500 employees. Small entities pay most fees at one-half the rate paid by large entities. Now, micro entities will pay most government fees at one-half the rate paid by small entities. Many independent inventors will qualify for this micro-entity status, as will nonprofit universities. AIA Sec. 10; 35 U.S.C. § 123.

► The inventor's oath or declaration can be included in an assignment or replaced with a substitute statement by someone else, such as an assignee. The oath or declaration may now be submitted any time prior to paying the issue fee. AIA Sec. 4; 35 U.S.C. §§ 115, 118 (effective Sept. 16, 2012).

► A patent claim can no longer be found to be invalid or unenforceable in litigation due to a failure to disclose the best mode contemplated by an inventor for carrying out the invention. AIA Sec. 15; 35 U.S.C. §§ 112, 282.

► Derivation proceedings are established and limited to allegations that one alleged inventor derived the invention from another alleged inventor. AIA Sec. 3; 35 U.S.C. §§ 134, 135, 146, 291 (effective March 16, 2013).

► Supplemental examination post-issuance proceedings are established, which allow one to cure apparent inequitable conduct that might otherwise render a patent unenforceable. AIA Sec. 12; 35 U.S.C. § 257 (effective Sept. 16, 2012).

► A party's failure to obtain the advice of counsel with respect to any alleged patent infringement may not be used in court to prove that the accused infringer willfully infringed the patent or that the infringer intended to induce infringement of the patent. AIA Sec. 17; 35 U.S.C. § 298.

► Tax strategies are deemed within the prior art — applicable to any pending patent applications or future patent applications, but not prior-issued patents. AIA Sec. 14 (Uncodified Law, present in the USPTO copy of 35 U.S.C. following

§ 376).

► There are significant changes to the patent-marking statute. Among these, virtual marking (*i.e.*, marking a reference to a web page on a product) is now possible. AIA Sec. 16; 35 U.S.C. §§ 287, 292.

Other Changes

In addition to the AIA, other changes to U.S. patent legislation are worth noting.

First, in general, the 12-month period to file a U.S. patent application claiming priority of another patent application may be extended by up to an additional two months if the delay in filing the application in this country within the 12-month period was unintentional. 35 U.S.C. § 119.

Second, a new provision allows for the delayed payment of a maintenance fee at any time if the delay is unintentional (there is no longer a two-year deadline to file after patent expiration). 35 U.S.C. § 41. The previous "unavoidable" delay standard has been eliminated in favor of a single standard of "unintentional" delay. Abandoned patent applications also may be revived solely on the basis of the "unintentional" standard. 35 U.S.C. § 27.

Finally, a nonprovisional application (other than a design application) may now be filed without claims and still be granted a filing date (a claim has never been required for a provisional application to be entitled to a filing date). 35 U.S.C. § 111. A nonprovisional application also may be filed "by reference" to a previously filed patent application in place of filing the specification and drawings. 37 CFR § 1.57(a). However, the patent application will not be placed on a Patent Examiner's docket until the patent application includes a specification including at least one claim.

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Office of the U.S. Trade Representative

On Feb. 13, 2015, the Office of the U.S. Trade Representative (USTR) announced that it was pursuing dispute-settlement consultations with the Government of China at the World Trade Organization (WTO) regarding a purported massive export-contingent subsidies program providing support to several industries, including textiles, agriculture, medical products, light industry, special chemical engineering, new materials, and hardware and building materials. A total of 179 industrial clusters are at issue, with some sectors receiving at least \$635,000 worth of annual benefits. Exports from sectors receiving export subsidies are significant, including the textiles sector, which accounts for 14 percent of China's textile exports, and the seafood industry, accounting for 20 percent of China's seafood exports.

Consultations are the first step in the WTO dispute-settlement process. If the United States and China are unable to reach a satisfactory resolution, the United States may request the establishment of a dispute-settlement panel to resolve the dispute. This announcement comes as the President seeks approval of his broader international trade agenda, including Trade Promotion Authority and the Trans-Pacific Partnership Agreement.

U.S. Senate

Leveling the Playing Field Act, S. 2994 (113th Congress, 2d Session).

Sen. Sherrod Brown (D-OH) introduced the Leveling the Playing Field Act to implement certain changes and clarifications to existing U.S. trade remedy Antidumping and Countervailing Duty laws. Many of the changes seek to promote administrative efficiency at the Department of Commerce, the U.S.

agency charged with administering the U.S. trade remedy laws. The bill also delineates additional factors the International Trade Commission should consider when assessing injury to the U.S. domestic industry. In short, the bill makes the following changes/clarifications to U.S. Antidumping and Countervailing Duty law:

- maintains Commerce's discretion to use adverse facts available when a mandatory foreign respondent fails to cooperate with an investigation;

- increases the number of factors and the length of time the International Trade Commission should use to evaluate the injury or threat of injury to U.S. producers;

- closes the "new shipper" loophole used by many foreign companies to evade or circumvent antidumping or countervailing duties;

- increases the penalties for failure to provide, or for falsifying, a country of origin certificate for merchandise covered under an antidumping or countervailing duty order;

- clarifies that Commerce has the statutory authority to determine whether to include voluntary respondents in an investigation; and

- clarifies Commerce's statutory authority to assess whether a country's non-market economy status should be maintained.

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SOX Affords Noneconomic Compensatory Damages

The anti-retaliation provision of the Sarbanes-Oxley Act (SOX), 18 U.S.C. § 1514A(a), provides that certain public companies may not "discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee

in the terms and conditions of employment because of" having engaged in certain protected whistleblowing activity. When an employee prevails in an anti-retaliation action, SOX provides that the employee "shall be entitled to all relief necessary to make [him] whole," including reinstatement, back pay (with interest) and "compensation for any special damages sustained as a result of the discrimination . . ." 18 U.S.C. § 1514A(c).

In *Halliburton, Inc. v. Administrative Review Board, United States Department of Labor*, 771 F.3d 254 (5 Cir. 2014), the 5th Circuit considered for the first time whether noneconomic compensatory damages, such as damages for emotional distress and reputational harm, are available under SOX. There, an employee of Halliburton lodged a complaint with management, in accordance with company procedures, about what he perceived as questionable accounting practices. He also filed a confidential complaint with the SEC. When the SEC provided notification of its investigation into the company's accounting practices, the company's general counsel surmised that claimant/employee was the source of the complaint to the SEC, as general counsel had also seen the internal complaint. General counsel then sent an email to claimant's boss and others in his work group, identifying claimant as the whistleblower. Claimant also received the email and was "horrified" that he had been identified as the source of the SEC complaint. *Id.* at 257. His work relationships and performance immediately began to decline, and he ultimately was granted paid administrative leave.

After claimant successfully pursued his claim through the administrative process and was awarded compensatory damages for emotional distress and reputational harm, Halliburton sought the 5th Circuit's review. Halliburton challenged both the conclusion that claimant suffered an "adverse action" and that his protected activity was a "contributing factor" in the adverse action (two of the four elements of a SOX anti-retaliation claim), as well as the damages award. *Id.* at 259.

While the 5th Circuit's discussion of the "adverse action" and "contributing factors" elements is instructive, the

decision is most notable in its discussion of the damages available under SOX. Citing 18 U.S.C. § 1514A(c), the court noted that the forms of relief specifically listed in the statute — reinstatement, back pay and certain "special damages" — are not exhaustive, as indicated by the phrase "[r]elief for any action . . . shall include." 18 U.S.C. § 1514A(c) (2) (emphasis provided). As the court explained, "We read the entitlement to 'all relief necessary to make the employee whole' in § 1514A(c)(1) to have a broader scope than the three enumerated forms of relief in § 1514A(c)(2)." *Id.* at 264. In other words, the court found that reading these two provisions together indicates that "shall include" must also mean "but is not limited to."

The 5th Circuit supported its conclusion with *Lockheed Martin Corp. v. Administrative Review Board*, 717 F.3d 1121 (10 Cir. 2013), noting that the 10th Circuit is the only other circuit court that has confronted the issue of whether SOX affords noneconomic compensatory damages. The court also examined near-identical language in the anti-retaliation provision of the False Claims Act and decisions of the 7th and 8th Circuits concluding that the False Claims Act provides noneconomic compensatory damages. In addition, the 5th Circuit found persuasive the Secretary of Labor's argument:

that because the text of SOX's anti-retaliation provision proscribes certain employer conduct, namely "threat[s]" and "harass[ment]," see 18 U.S.C. § 1514A(a), that in the usual case will cause only noneconomic harm such as emotional distress, rather than economic harm, it would be anomalous to construe the statute to fail to afford a corresponding remedy for such.

See *Halliburton*, 771 F.3d at 266. For these reasons, and others discussed in the opinion, the 5th Circuit concluded that the anti-retaliation provision of SOX "affords noneconomic compensatory damages, including emotional distress and reputational harm." *Id.*

Fatally Defective Pleadings Cannot Be Corrected by Proof Taken at a Default Judgment Hearing

In *Wooten v. McDonald Transit Associates, Inc.*, 775 F.3d 689 (5 Cir. 2015), the 5th Circuit confronted the question it left open in *Nishimatsu Construction, Ltd. v. Houston National Bank*, 515 F.2d 1200, 1206 n.5 (5 Cir. 1976): whether “otherwise fatal defects in the pleadings might be corrected by proof taken by the court at a hearing”?

In *Wooten*, plaintiff asserted claims under the Age Discrimination in Employment Act, but his “complaint contained very few factual allegations,” *id.* at 691, and the facts he did allege were “inextricably bound up with legal conclusions.” *Id.* at 696. When defendant failed to appear and answer, the district court entered default judgment, and at a hearing on damages plaintiff testified in detail regarding the elements of his claim that were absent from the pleadings.

On defendant’s appeal, the majority vacated the default judgment, noting that the complaint, standing alone, failed to meet the Rule 12(b)(6) “plausibility” standard and concluding that it was not “well-pleaded” for default judgment purposes. *Id.* Although the plaintiff’s live testimony provided sufficient factual detail to support each element of the ADEA claim, the court concluded “that a fatally deficient complaint cannot be cured by testimony at a prove-up hearing.” *Id.* at 703.

The dissent expressed concerns that the majority’s decision “will eviscerate the role of default judgments in the efficient administration of civil litigation,” *id.* at 704, and that the “practical consequence” will require district courts to rule *sua sponte* on the sufficiency of complaints. *Id.* at 705.

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Termination of Lease; Commencement of Lawsuit; Mineral Servitude Owner

Crooks v. Louisiana Pac. Corp., 14-0724 (La. App. 3 Cir. 12/10/14), 155 So.3d 686.

This case involved a lawsuit by a landowner against a mineral servitude owner, seeking to recover money for alleged surface damage even though the lease had not yet terminated. The property encompasses 200 acres in LaSalle Parish. Over time, the property was bought and sold by various companies, but the original owner, Louisiana Pacific, reserved a mineral servitude. The mineral servitude was transferred among a number of entities. In 2012, the Crooks, the then-owners, filed a lawsuit for environmental contamination. The Crooks sued all of the entities that at one time owned all or a portion of the mineral servitude.

In defense of this lawsuit, one defendant raised the dilatory exception of prematurity, arguing that because the mineral lease had not yet expired, any end-of-lease restoration obligations were not yet due. The Crooks stated there was no law preventing them from suing for environmental contamination before the lease ended. The trial court granted the exception, and the lawsuit was dismissed.

The Crooks appealed to the Louisiana 3rd Circuit Court of Appeal. The 3rd Circuit reversed and remanded the case, finding that nowhere in the Mineral Code or Civil Code is there a requirement that a landowner wait until a mineral lease has expired before he can file a lawsuit for restoration damages. Also, there are no prohibitions against filing a lawsuit against a mineral-servitude owner before the lease expires. Thus, the 3rd Circuit found that the timing of the lawsuit did not bar it.

Dismissal of Levee Board Lawsuit

Bd. of Comm’rs of the S.E. La. Flood Protection Authority-E. v. Tenn. Gas Pipeline Co., ____ F. Supp. 3d ____, 2015 WL 631348, Civ. No. 13-cv-05410 (E.D. La. Feb. 13, 2015).

On Feb. 13, 2015, Judge Nannette Jolivet Brown dismissed the “Levee Board Lawsuit” in its entirety because plaintiff failed to state a claim upon which relief could be granted.

This case was filed by the Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East (plaintiff) on July 24, 2013, in state court in New Orleans. Defendants removed the case to federal court on June 27, 2014. On Sept. 5, 2014, defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure Rule 12(b)(6), arguing that plaintiff failed to state a claim based upon the allegations in its petition. Oral argument was heard on Nov. 12, 2014, and supplemental briefs were filed.

Through this lawsuit, plaintiff sought to hold practically the entire oil and gas industry accountable for alleged damages to the “Buffer Zone.” The lawsuit was originally filed against 96 oil and gas companies; 88 companies remained at the time of the dismissal. Plaintiff asserted that defendants allegedly caused damage to Louisiana’s wetlands by conducting certain dredging and maintenance activities in the Buffer Zone. Defendants, however, maintained that those activities were lawfully conducted pursuant to various permits issued by the State of Louisiana and the federal government.

In dismissing the suit, Judge Brown found that no federal or state law provided any recourse by which plaintiff could successfully bring its lawsuit. Judge Brown rejected plaintiff’s arguments, ruling that the levees were too far from, or too indirectly affected by, the alleged damage. Judge Brown also said the plaintiff had no right to sue under any of the permits issued by the State of Louisiana or the U.S. Army Corps of Engineers because those permits sanctioned the operations conducted by defendants.

Moreover, Judge Brown did not find that any of the federal laws that plaintiff

contended defendants had violated were intended to create a legal duty in favor of plaintiff. Simply put, the court stated “oil and gas companies do not have a duty under Louisiana law to protect members of the public ‘from the results of coastal erosion allegedly caused by [pipeline] operators that were physically and proximately remote from plaintiffs or their property.’”

Regarding the natural servitude of drainage, the court found that plaintiff did not state a claim because a servitude of drainage cannot exist between non-adjacent estates with respect to coastal storm surge. The court refused to extend articles 655-656 of the Louisiana Civil Code to fit the circumstances presented by plaintiff here. The court felt the expansion of such laws was better left to the Louisiana Legislature.

Regarding the nuisance claims, Judge Brown held that they also failed because plaintiff did not allege that it was a neighbor to any property of any defendants. Plaintiff did not allege any physical proximity of the servient and dominant estates. Thus, its

claim under article 667 of the Civil Code could not survive.

As to plaintiff’s third-party-beneficiary claims viz. the dredging permits authorized by the Corps of Engineers, the court held that (1) a permit is not a contract under federal common law and (2) even if permits were contracts, plaintiff could not establish that it was an intended beneficiary, which is required by federal common law.

No doubt this ruling will be appealed by plaintiff to the U.S. 5th Circuit Court of Appeals in the near future.

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Can PDR Evidence Alone Establish a Prima Facie Case?

McCorkle v. Gravois, 13-2009 (La. App. 1 Cir. 6/6/14), 152 So.3d 944, *writ denied*, 14-2179 (La. 12/8/14).

Plaintiff alleged the defendant physician did not adequately inform a patient of drug-related information that was included in the PDR and (presumptively) accompanies the drug when it is prescribed. The patient killed himself shortly after taking the medication (Lunesta) for three consecutive days.

The defendant supported his motion for summary judgment (MSJ) with a





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unanimous panel opinion in his favor and with the testimony of the plaintiffs' own expert that he had not breached the applicable standard of care. The plaintiffs' only opposing evidence was Lunesta's PDR and package-insert information. The ultimate question was whether the product information alone constituted evidence sufficient to defeat an MSJ.

The *McCorkle* court reviewed jurisprudence from other jurisdictions concerning the evidentiary value of the PDR, whose product information is "substantially similar, if not identical" to the information the Food and Drug Administration requires in all drug-package inserts. The court noted that the question of whether the "PDR, either alone or where contradicted by expert testimony, may be used to establish the applicable standard of care and breach thereof is more complex and more problematic" than when it is offered in conjunction with expert testimony to prove standard of care and breach.

The *McCorkle* court referenced *Terrebonne v. Floyd* and observed that the

evidence in that case proved that physician's use of a medication was "in direct contradiction" to PDR instructions. 99-0766, (La. App. 1 Cir. 5/23/00), 767 So.2d 758. *Terrebonne* had "considered and cited with favor" a factually similar Minnesota Supreme Court opinion that reversed a directed verdict for a physician defendant because the PDR contained a "warning section" about the particular risk of harm at issue, which it held is "prima facie evidence of negligence if there is competent medical testimony that his patient's injury or death resulted from the doctor's failure to adhere to the recommendations." *Mulder v. Parke Davis & Co.*, 181 N.W. 2d 882, 887 (Minn. 1970) (*per curiam* on rehearing). *Terrebonne* noted that it (the *Terrebonne* court) may have been presented with the first instance in Louisiana where a plaintiff sought to rely solely on the PDR's specific warning to establish the standard of care. 767 So.2d at 763.

McCorkle then cited *Pfiffner v. Correa*'s holding that expert testimony is not

necessary to establish standard of care and breach when the medical and factual issues can so obviously be perceived by a jury as negligence. *Pfiffner v. Correa*, 94-0924 (La. 10/17/94), 643 So.2d 1228, 1234. *McCorkle* concluded that *Pfiffner* and *Terrebonne*, together with other cases referenced throughout the opinion, soundly point in favor of admitting PDR information as evidence sufficient to establish a *prima facie* showing of breach. However, the court then quoted *Terrebonne*: "whether plaintiffs may use the evidence they intend to offer as *prima facie* proof of [the physician's] negligence is itself a matter seriously unresolved; and the granting of summary judgment under the circumstances was inappropriate." *McCorkle*, 152 So.3d at 954, quoting *Terrebonne*, 767 So.2d at 763.

McCorkle also quoted *Christiana v. Sudderth*, which in part relied on *Fournet* and *Terrebonne*: "A health-care provider's deviation from a manufacturer's warning may be negligence for which expert testimony is not required to establish the applicable standard of care, because such evidence may be sufficient to make a *prima facie* showing of negligence." *McCorkle*, 152 So.3d at 954, quoting *Christiana v. Sudderth*, 02-1080, (La. App. 5 Cir. 2/25/03), 841 So.2d at 911, 916.

The *McCorkle* court then took into account *DeRoche v. Tannenbaum*, which contrastingly granted summary judgment in favor of a defendant physician and specifically ruled that "a manufacturer's labeling and package insert standing alone is insufficient to establish a prevailing medical standard of care required by La. R.S. 9:2794." The court further held that a "physician's medical decision to deviate from a manufacturer's labeling also does not *ipso facto* establish a breach of the applicable standard of care." *McCorkle*, 152 So.3d at 955, quoting *DeRoche v. Tannenbaum*, 13-0979 (La. App. 4 Cir. 12/18/13), 131 So.3d 400, 411-12.

McCorkle then observed that *Robin v. Hebert* held that product information alone, without expert testimony, was not sufficient to establish a breach. *Robin*, however, involved cardiology-specific and complex medical issues; thus, *Robin* held that the PDR was not of weight

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Michael Hecht • Greater New Orleans, Inc. • New Orleans |
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| 10:35-10:45 a.m. | Break |
| 10:45-11:45 a.m.
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adequate to defeat summary judgment. 12-1417 (La. App. 3 Cir. 5/1/13), 2013 WL 1809821, ____ So.3d ____.

McCorkle's last case reference was to an admonition by the New Jersey Supreme Court in a judgment affirming a jury verdict in favor of a physician: "Allowing the admission of PDR warnings without accompanying expert testimony could transform drug manufacturers into judges of acceptable medical care. The effect would be to force doctors to follow the PDR's recommendations or run the risk of liability for malpractice." *Morlino v. Med. Ctr.*, 706 A.2d 721, 730 (1998).

The *McCorkle* court ultimately granted the defendant's motion for summary judgment, deciding that, because Lunesta's product information did not provide any specific warning or contraindication that clearly and explicitly directed the physician to take any action different from what was taken, the plaintiffs could not establish a *prima facie* case of negligence by relying solely on the product information.

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Waste Removal Services "Not" Part of the Taxable Gross Proceeds of Leases

Pot-O-Gold Rentals, L.L.C. v. City of Baton Rouge, 14-2154 (La. 1/16/15), 155 So.3d 511 (*per curiam*).

The Louisiana Supreme Court reinstated a trial court's decision granting Pot-O-Gold Rentals, L.L.C.'s motion for summary judgment. The Court held that waste-removal services were not taxable as gross proceeds derived from the lease or rental of portable toilets and

ordered the City of Baton Rouge to refund taxes that had been paid under protest. The Court reversed the Louisiana 1st Circuit Court of Appeal's holding that Pot-O-Gold's charges for cleaning and sanitation services were subject to the City's sales-and-use tax because they were provided in connection with, and incidental to, the lease or rental of tangible personal property.

Pot-O-Gold owns portable toilets and holding tanks that it leases to customers and offers cleaning and sanitation services for these rented toilets and tanks. Pot-O-Gold also offers cleaning and a sanitation service for portable toilets and tanks owned by others and does not require rental customers to purchase its sanitation or cleaning service. If a rental customer chooses to reject sanitation or cleaning services, the customer is charged a higher rental fee. A compliance audit revealed that, although Pot-O-Gold collected taxes on its rentals, it had not collected taxes for the cleaning or sanitization services it provided in connection with these rentals. The City issued an assessment for additional sales taxes, which Pot-O-Gold paid under protest and filed suit to recover.

The City's ordinance imposed a tax on the lease or rental of tangible personal property. Such taxes are levied on the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of the same is incidental or germane to the business.

In reaching its decision, the 1st Circuit held the "true object" of the transactions at issue was the furnishing of toilets and tanks and held that the cleaning and sanitation services were provided in connection with, and incidental to, the rental of such tangible personal property. However, the Louisiana Supreme Court disagreed, finding that it was just as reasonable that the true object of the portable-toilet transaction was the removal of human waste. The Court held that the true object of the transaction was at least debatable, requiring the Court to adopt the interpretation urged by Pot-O-Gold as the least onerous to the taxpayer. The Court also stated that an absurd result would be created if it found that providing cleaning services for portable toilets is not a taxable event

if the toilet is owned by someone else, but is a taxable service if the toilet is owned by the lessor.

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Video on Demand, Pay- Per-View Programming Not Subject to Sales Tax

In *Normand v. Cox Communications Louisiana, L.L.C.*, 14-563 (La. App. 5 Cir. 12/23/14), ____ So.3d ____, a case not yet released for publication, the Jefferson Parish tax collector sought to collect sales tax on Cox's Video on Demand (VOD) and Pay-Per-View (PPV) programming. The trial court rendered judgment in favor of the taxpayer, finding that Cox's VOD and PPV programming are nontaxable services rather than tangible personal property. On appeal, the tax collector argued that the VOD and PPV programming constitute computer software and are, therefore, tangible personal property, and also argued that, even if the VOD and PPV programming are not computer software, they are still considered tangible personal property subject to sales tax because the data comprising the VOD and PPV programming manifests itself in the customers' televisions as visual images and sound. The taxpayer argued that the VOD and PPV programming are considered nontaxable services and presented testimony to support its arguments that the VOD and PPV programming are neither computer software nor are they tangible personal property because they are data streams that no longer exist once they reach the customers' televisions. The court of appeal agreed with the taxpayer that the VOD and PPV programming are not computer software as defined by Louisiana sales tax law and found that the evidence supported the trial court's finding that the VOD and PPV programming are not tangible personal property.

On appeal, the tax collector also took

the position that Cox's VOD and PPV programming are subject to sales tax by virtue of being considered a lease or rental under La. R.S. 47:301(7), but the court held that, since Jefferson Parish only imposes sales taxes on the lease or rental of tangible personal property, the programming could not be subject to sales tax as a lease or rental because the transaction did not involve tangible personal property. Finally, the court considered whether VOD and PPV programming are subject to sales tax as "sales of services" pursuant to La. R.S. 47:301(14). While the court of appeal determined that VOD and PPV programming are considered sales of services, such services were exempt from sales tax pursuant to La. R.S. 47:305.16 and 47:301(29)(x)(vii). Under the first provision, stating that "state and local sales and use taxes shall not apply to necessary fees incurred in connection with the installation and service of cable television," VOD and PPV programming were part of the regular services offered by the provider and transmitted in the same manner. The latter provision also covered VOD and PPV programming in the definition of exempt cable service. Therefore, the court agreed with the trial court's finding that the programming is a nontaxable service and affirmed the trial court's judgment in favor of the taxpayer.

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When There's a Will, There's Not Always a Way: 4th Circuit Finds Testament Invalid

Succession of Duskin, 14-0236 (La. App. 4 Cir. 11/19/14), 153 So.3d 567.

The issue before the court was whether a document purporting to bequeath certain rights belonging to the president and vice president of a corporation was a valid testament.

In his last will and testament, Manuel Duskin bequeathed his 20 percent ownership interest in the Mahalia Jackson Residual Corp. (the corporation) to his daughters. Duskin passed away on March 19, 2004, and his will was probated shortly thereafter. A final judgment of possession was signed on Sept. 27, 2004, putting Duskin's daughters in possession of his estate and giving each daughter a 10 percent interest in the corporation.

After Duskin's death, Bishop Frank E. Lott filed suit, asserting that he owned the exclusive rights to the residue of Jackson's estate, including her publicity rights and intellectual property. In support of his claims, Lott relied on a two-page, handwritten document titled "Irrevocable and Last Will and Testament" (the 1994 document) that purportedly bequeathed to Lott the rights relative to the Mahalia Jackson name, proceeds and book. The "testators" to the 1994 document were Duskin and Edison Lazard, president and vice president, respectively, of the corporation, each owning 20 percent. The 1994 document was not dated, but was notarized, and also signed by Duskin, Lazard and one witness.

The 4th Circuit held that the 1994 document was not a valid testament because the two testators purportedly attempted to bequeath their property in one document. Relying on La. Civ.C.

art. 1571, the court explained that a valid testament can be executed by only one testator, regardless of whether it is olographic or notarial.

The court also determined that the 1994 document did not meet the formality requirements of either an olographic or a notarial testament. The court noted that an olographic testament must be entirely written, dated and signed in the handwriting of the testator. La. Civ.C. art. 1575. Although the 1994 document was handwritten and bore the testators' signatures, the only date present was from the notary stamp. The court noted that this precise issue had been addressed by the Louisiana Supreme Court in *Succession of Aycock*, 02-0701 (La. 5/24/02), 819 So.2d 290, which reversed a ruling that upheld an olographic testament written entirely in the hand of the testator, but the only date appearing on the document was filled in by the notary. Because the 1994 document did not contain a date written in the hand of the testator, the court found that it failed to satisfy the formality requirements of an olographic testament.

The 1994 document also did not comply with the formalities prescribed for a notarial testament. A notarial testament must be in writing and dated, and if the testator knows how to and is physically able to sign his name and read, the testator must declare or signify in the presence of a notary and two witnesses that the instrument is his last will and testament. La. Civ.C. art. 1577. Because the 1994 document was signed by only one witness and was not dated, the court found that it failed to comply with the formalities prescribed for a notarial testament.

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My 31,556,926 Seconds as Chair

By J. Lee Hoffoss, Jr.

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J. Lee Hoffoss, Jr.

Lawyers Division (YLD) are coming to a close. But, while I may be saying so long as chair, this is not goodbye.

First, I want to thank the Young Lawyers Division as a whole. Leading this great Division has been a great pleasure indeed. At times, it has been challenging. But, for the most part, the job has been fairly easy. Why? Because the members of the Division make it that way. The entire Division has always come to serve in so many ways. Rarely do we have a situation where we

do not have enough volunteers for various service projects. Your service to the Bar as a whole is truly commendable.

Second, my thanks to the YLD Council. Each and every member of the council has volunteered for the position he/she holds. These council members do not get paid. They voluntarily serve the Division and the Bar as a whole. They travel all over the state to meetings, service projects and other events — oftentimes away from their families and work. To the members of the council, my heartfelt thanks go out to each of you.

Third, I want to thank Louisiana State Bar Association (LSBA) Communications Director Kelly Ponder and the LSBA staff who assist the Young Lawyers Division. No one except those of us in leadership realize all the work Kelly and the LSBA staff do for the YLD. Communication, organization, scheduling and budgeting are just some of the remarkable tasks they do for us. Our

organization could not function as well as it does without Kelly and the staff. On behalf of the YLD Council and the entire YLD, my sincerest appreciation to Kelly and the LSBA staff.

Last, but surely not least, is my thanks to my wife, Corlissa, and our three children for putting up with my absence due to travel, meetings and conferences. I have been on the YLD Council and in leadership positions for five years, and not once has Corlissa expressed frustration about me having to attend a meeting, take a phone call, or take time away from the family to attend a YLD or LSBA function. She has always been supportive. To Corlissa, Sydney, Gray and Max, my love to you and appreciation for your patience.

As the baton passes to Erin Braud, Scotty Chabert, Bradley Tate and the new Council members for their 31,556,926 seconds, the greatest advice I can give is to trust your instincts. Stick to your guns. Do not abandon what you believe is right and you will continue to have success.

It has truly been a pleasure serving as your chair. I thank you for giving me this great opportunity and look forward to seeing each of you for the next 31,556,926.



YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division news online

Go to: www.lsba.org/YLD

The Young Lawyers Division Web site is a public service of the LSBA-YLD Council, providing YLD information to the public and communicating with YLD members.

YOUNG LAWYERS SPOTLIGHT

Adam P. Johnson Lake Charles

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Lake Charles attorney Adam P. Johnson.

Born and raised in Moss Bluff, La., Johnson graduated from Sam Houston High School in 2002. He received a BS degree in business management in 2006 from Louisiana State University. After undergraduate school, he pursued his law degree at Southern University Law Center. In the summer of 2007, he studied abroad at the Université Jean Moulin II in



Adam P. Johnson

Lyon, France. Once back in the states, he received his JD degree in 2009. After law school graduation, he began a clerkship in the 14th Judicial District Court, gaining valuable experience working with Hon. Ronald F. Ware and Hon. Robert L. Wyatt.

Johnson is currently an associate at the Lake Charles firm of Johnson & Vercher, L.L.C., focusing his practice primarily on criminal law and personal injury law. He chose to enter the legal field based on a strong desire to serve others. He has a passion for the courtroom and a will to represent the interests of those who are in need of restitution, recovery or exoneration.

He was a member of the Louisiana State Bar Association's (LSBA) 2013 Leadership LSBA Class and currently serves as co-chair for the 2014 leadership class. He will begin his term as the LSBA Young Lawyers Division Council's 4th District representative in June.

Johnson is a former president of the Southwest Louisiana (SWLA) Bar

Association's Young Lawyers Section and serves on the SWLA Law Center's board of directors. He also serves as chair of the annual Young Lawyers Section's golf tournament, which benefits the Holiday Helping Hands program — a program created by the SWLA Young Lawyers Section which provided Christmas gifts to more than 200 children in Calcasieu and Cameron parishes last year.

He is a member of the SWLA Association of Criminal Defense Lawyers, the SWLA Bar Association and the American Bar Association. He recently was selected as one of the top criminal defense lawyers by *Acadiana Magazine*.

In his community, he is a member of Trinity Baptist Church. He is involved in mission work and will return to Suriname to continue that work in December.

He is married to Ashley Leonards of Roberts Cove, La., and they are the parents of one child.

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The team from Haynes Academy for Advanced Studies in Metairie won the state “We the People” finals and will represent Louisiana in the national competition. With the team members are State Rep. Patricia H. Smith and team teacher Chris Totaro.

Metairie School Wins “We the People” State Finals

The team from Haynes Academy for Advanced Studies in Metairie won the state finals in the “We the People: The Citizen and the Constitution” competition in Baton Rouge. The team, led by teacher Chris Totaro, now will represent Louisiana in the national competition in Washington, D.C.

Also competing in the state finals were teams from Helen Cox High School, John Ehret High School and Glenbrook School. “We the People” (WTP) team teachers Matthew Edwards, Jonetta Jackson, Bradley Kiff and Totaro are to be commended for bringing their students to this level of academic achievement.

WTP is one of the programs that the Louisiana Center for Law and Civic Education (LCLCE) utilizes to promote civic competence and responsibility among Louisiana’s students. What makes

this program successful is the design of its instructional program, including its innovative culminating activity, the simulated congressional hearing, in which students “testify” before a panel of judges. At the state-level competition, students demonstrate their knowledge and understanding of constitutional principles and have opportunities to evaluate, take and defend positions on relevant historical and contemporary issues.

The panel of judges consisted of educators, attorneys and WTP team alumni, including attorney and WTP alumna Heather W. Angelico; Louisiana WTP alumni representative Tyler Barker; teacher Donald H. Broussard, Jr.; attorney and educator Belinda M. Cambre, JD, PhD; teacher Alicia N. Ferguson; teacher Camile Gautreaux; attorney Lauren E. Godshall; attorney Jack P. Harrison;

educator Supt. Darryl C. Kilbert (Ret.), Orleans Parish Public Schools; attorney Heather L. Landry; attorney Nahum D. Laventhal; WTP alumni Philip Lundy and Sabine Mohamed; teacher Carla Powell; WTP alumnus Charles P. Regnard; attorney and educator Alice M. Snee; attorney and educator Shirley A. Snyder; and retired teacher and former LCLCE board member Betty W. Wilkerson.

Also attending the state finals were guest speaker Louisiana State Rep. Patricia Haynes Smith, District 67; WTP District Coordinators Michelle Molina, Robert Rome and Jamie Staub; Carl Dermady, Jr., M.Ed., Jefferson Parish social studies consultant (Ret.); R. Ryan Martin, Lafayette Parish School System social studies academic specialist; and Sandra Newsome, Jefferson Parish Schools support specialist.

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... IN MEMORIAM

New Judges

Charles G. Tutt

was elected as judge of the 1st Judicial District Court, Division C, Section 2. He earned his undergraduate degree from Louisiana State University-Shreveport and his JD degree in 1975 from Louisiana State University Law School. He began his legal career with a one-year clerkship at the Louisiana 2nd Circuit Court of Appeal before joining Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport, where he practiced until 1995. He then began a solo practice which became Tutt, Stroud, Bordelon & McKay, L.L.C. In 2010, he became the director of legal affairs of the Caddo-Bossier Parishes Port Commission. He has served as chair of the Shreveport Bar Association's Pro Bono Project board and on the Executive Committee of the Shreveport Bar Association. He served on the Complex Litigation Committee of the Louisiana Supreme Court's Judicial Council and on the board of directors of the Louisiana Association of Business and Industry. Judge Tutt is married to Amo Johnson Tutt and they are the parents of two children.



Charles G. Tutt

Erin Leigh Waddell Garrett

was elected as judge of Division K, 1st Judicial District Court, Caddo Parish. She earned her BA degree in 2002 from Louisiana Tech University and her JD degree, *cum laude*, in 2006 from Southern University Law Center. From 2006-07, she served as law clerk for Louisiana Supreme Court Chief Justice



Erin Leigh Waddell
Garrett

Pascal F. Calogero, Jr. From 2008 until her election to the bench, she practiced law in Shreveport. She served in several leadership posts for the Shreveport Bar Association's Young Lawyers Section, including as 2012 president. Judge Garrett and her husband Greg are the parents of two children.

Lala B. Sylvester

was elected as judge of Division B, 10th Judicial District Court. She earned her BS degree in 1982 from Northwestern State University and her JD degree with honors in 1987 from Southern University Law Center. A 20-year partner in Brittain & Sylvester, L.L.P., in Natchitoches, she also served as an assistant district attorney for Natchitoches Parish from 2006-14. Judge Sylvester is married to Russell L. Sylvester and they are the parents of four children.



Lala B. Sylvester

Curtis Sigur

was elected as judge of Division G, 16th Judicial District Court. He received his BA degree, *cum laude*, in 1979 from the University of Southwestern Louisiana and his JD degree in 1984 from Southern University Law Center, where he was a member of the Moot Court Board and was executive editor of the *Law Review* from 1983-84. He was recognized for Best Appellate Brief and was listed in "Who's Who Among American Law Students" (1982-84). From 1990-91, he was a staff attorney for the Public Defenders' Office, before being appointed to the Public Defender Board and serving from 1993-95. From 1995 until his election to the bench, he worked for the St. Mary Parish District Attorney's Office, where he was senior Drug Court attorney



Curtis Sigur

and legal advisor for the St. Mary Parish School Board. Judge Sigur is married to Michele F. Sigur and they have three children and five grandchildren.

Christopher J. Boudreaux

was elected as judge, Division D, 17th Judicial District Court, Lafourche Parish. He received his BS degree in 1982 from Louisiana State University and his JD degree in 1986 from LSU Paul M. Hebert Law Center. Following law school, he served as law clerk for Judge Walter I. Lanier, Jr. and Judge J. Louis Watkins, Jr. at the 1st Circuit Court of Appeal before entering private practice. In 1998, he began serving as a Lafourche Parish assistant public defender, becoming chief indigent defender in 2007. He served in that capacity and in his private practice in Thibodaux until his election to the bench. Judge Boudreaux and his wife Jill are the parents of one child.



Christopher J.
Boudreaux

Kathryn E. (Betty) Jones

was elected as judge of Division A, 20th Judicial District Court. She received her bachelor and JD degrees in 1987 and 1993, respectively, from Louisiana State University and the LSU Paul M. Hebert Law Center. She was the administrative assistant for correspondence for Gov. Buddy Roemer from 1988-90. She served the 20th JDC as a law clerk from 1993-94. In 2002-10, she was the attorney for the town of Clinton. From 2003 until her election to the bench, she was an assistant district attorney for the 20th JDC. Judge Jones is married to Donald M. Cailier and they have one child.



Kathryn E. Jones

D. Jason Meche was elected as judge of Division D, 27th Judicial District Court. He earned his BA degree in 1996 from Northwestern State University and his JD degree in 1999 from Louisiana State University Paul M. Hebert Law Center. He has 15 years of private practice experience and served as law clerk to 27th JDC Judge Donald W. Hebert. He is a member of the St. Landry Bar Association where he served as president and secretary-treasurer. Judge Meche is married to Christina Shoemaker-Meche and they are the parents of one child.



D. Jason Meche

Nakisha Ervin-Knott was elected as judge of Section D, Orleans Parish Civil District Court. She earned her BA degree, *cum laude*, in 1995 from Xavier University and her JD degree in 1998 from Southern University Law Center. From 1999-2000, she served as law clerk for Judge Terri F. Love at Orleans Parish Civil District Court. From 2000 until her election to the bench, she was in the private practice of law, most recently as a member of Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., in New Orleans. She serves as an Executive Board member for the John C. Boutall American Inn of Court. In 2014, she was named a *New Orleans CityBusiness* Leader in Law. Judge Ervin-Knott is married to Steven Knott and they are the parents of two children.



Nakisha Ervin-Knott

M. Terrance Hoychick was elected as judge of Eunice City Court. He earned his BA degree in 1974 from the University of Southwestern Louisiana and his JD degree in 1978 from Louisiana State University Paul M. Hebert Law Center. He



M. Terrance Hoychick

began his law practice with Young & Burson in Eunice, becoming a partner in 1984. He was a partner in Young, Hoychick & Aguiard, L.L.P., from 1987-2005. From 2005-08, he was with Hoychick & Aguiard, L.L.P. From 2008 until his election to the bench, he worked as a sole practitioner. Judge Hoychick and his wife Angela are the parents of four children.

John J. Lee, Jr. was elected as judge of Division B, 1st Parish Court, Jefferson Parish. He earned his undergraduate degree in 1972 from the University of New Orleans and his JD degree in 1975 from Louisiana State University Law School. He entered private practice with the firm of Mollere, Flanagan & Arceneaux from 1980-99. He served as assistant district attorney in both the 24th Judicial District Court and 1st Parish Court. He has served as a member of the Louisiana State Bar Association's House of Delegates for more than 20 years and as president of the Jefferson Bar Association. Judge Lee has been married to Patricia Fitzgerald Lee for 35 years and they have five children and six grandchildren.



John J. Lee, Jr.

F. Stanton Hardee III was elected as judge of Kaplan City Court. Judge Hardee earned his BS degree in 1996 from the U.S. Military Academy, West Point, NY, and his JD degree in 2005 from Southern University Law Center. He served as a law clerk and then as assistant attorney general at the Louisiana Department of Justice from 2004-08. He then served as assistant district attorney for Caddo, St. Mary, St. Martin and Vermilion parishes. In 2013, he was named Prosecutor of the Year by the Louisiana Narcotics Association.



F. Stanton Hardee III

Aisha S. Clark was elected as judge of Division C, Monroe City Court. Judge Clark received a dual BA degree in political science and mass communications in 2000 and her JD degree in 2004 from Southern

University Law Center. She was featured in the "Who's Who Among American Law Students," 22nd edition. She was a law clerk in the 21st Judicial District Court from 2004-05 before entering private practice with Tucker & Associates, A.P.L.C., in Hammond. She served as an assistant district attorney in Orleans Parish from 2005-06. From May 2007 until her election to the bench, she served as an assistant city attorney for the city of Monroe and as an Environmental Court administrative law judge.



Aisha S. Clark

Deaths

► Retired 22nd Judicial District Court Judge Andy Clayton James, 82, died Dec. 27, 2014. A U.S. Army veteran, he served as a field artillery officer from 1955-57. After his military service, he received his law degree in 1960 from Louisiana State University Law School and entered the practice of law, eventually becoming a senior partner in the firm of James, Knight & Brumfield in Franklinton. He was elected to the bench in 1979 and served three terms before his retirement in 1996. After his retirement, Judge James sat *ad hoc* on the 1st Circuit Court of Appeal. He was instrumental in forming the CASA program in Washington Parish.

► Retired 5th Circuit Court of Appeal Judge Thomas F. Daley, 61, died Jan. 31. A New Jersey native and graduate of Rutgers College, he moved to New Orleans to attend Loyola University Law School. Shortly after graduation, he began his career of public service, working as an assistant district attorney for St. John the Baptist Parish from 1984-89. He was elected to the 40th Judicial District Court in 1991, where he twice served as chief judge. In 1996, he was elected to the 5th Circuit Court of Appeal, where he served until his election as St. John the Baptist Parish district attorney in 2008. Judge Daley was the 2007 recipient of the Louisiana Bar Foundation's Distinguished Jurist Award. He was a member of the Louisiana Judicial College and the Supreme Court Committee on Judicial Ethics.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Kerry J. Miller and Paul C. Thibodeaux have joined the firm's New Orleans office as shareholders, Anne E. Raymond has joined the New Orleans office as of counsel, and Daniel J. Dysart, James R. Parish and Elizabeth A. Rutledge have joined the New Orleans office as associates. Also, Phyllis G. Cancienne has been named managing shareholder of the firm's Baton Rouge office.

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Matthew P. Miller** has been promoted to partner in the firm and **Larry E. Mobley** has joined the firm as of counsel.

Blank Rome, L.L.P., announces that **Jeremy A. Herschaft** was elected to partnership in the firm. He practices in the firm's

Houston, Texas, office.

Chaffe McCall, L.L.P., announces that Anthony P. (Tony) Dunbar has joined the firm's New Orleans office as a partner.

Coats, Rose, Yale, Ryman & Lee, P.C., announces that **Daniel Lund III** has been elected as a director in the firm's New Orleans office. Also, **Shailendra U. (Shay) Kulkarni**, **Tamara J. Lindsay** and **Gillian B. (GiGi) Gibbs** have joined the firm's New Orleans office as associates.

Cowan & Lemmon, L.L.P., in New Orleans announces that **John K. Richards** has joined the firm as an associate.

Domengeaux Wright Roy & Edwards, L.L.C., in Lafayette has changed its name to Domengeaux Wright Roy Edwards & Colomb, L.L.C. **Brian C. Colomb** has been named a partner.

Erlingsen Banks, P.L.L.C., in Baton Rouge announces that **Lee J. Ledet** has joined the firm as an associate.

Faircloth, Melton & Keiser, L.L.C., in Alexandria announces that **Franklin A. (Drew) Hoffmann** and **Brook Landry Thibodeaux** have joined the firm as associates.

Frilot, L.L.C., in New Orleans announces that **Elizabeth H. Emmett** has joined the firm as of counsel, and **Kelsey A. Eagan** and **Blakeley R. Simpson** have joined the firm as associates.

Gieger, Laborde & Laperouse, L.L.C., announces that **Tara E. Clement** and **Emily E. Eagan** have been elected members in the firm's New Orleans office. Also, **David M. Schroeter** has joined the New Orleans office as an associate.

Jackson & McPherson, L.L.C., in New Orleans announces that Mark B. Badanowski has joined the firm as an associate.

Mayhall Fondren Blaize announces that **Andrea K. Tettleton** and **Margaret G. Patton** have been named to the partnership in the Baton Rouge office.



Richard J. Arsenault



Tara E. Clement



Brian C. Colomb



Kaye N. Courington



Alexander J. Douglas



Emily E. Eagan



Kelsey A. Eagan



Elizabeth H. Emmett



Samuel J. Ford



Gillian B. Gibbs



Stephen D. Hébert



Rebecca Fenton Henderson

McGlinchey Stafford, P.L.L.C., announces that Christopher S. Nichols has joined the firm's Baton Rouge office as an associate.

Sessions, Fishman, Nathan & Israel, L.L.C., announces that **Alexander J. Douglas** and **Samuel J. Ford** have joined the firm's Metairie office as associates.

Sher Garner Cahill Richter Klein & Hilbert, L.L.C., in New Orleans announces that Matthew M. Coman has joined the firm as special counsel.

Tom D. Snyder, Jr. and **Rebecca Fenton Henderson** announce the formation of their new firm, Snyder & Henderson, L.L.C., located at Ste. C, 222 Vermont Ave., Covington, LA 70433; phone (985)892-1180.

Staines & Eppling in Metairie announces that Sara P. Scurlock and Jason R. Kenney have become shareholders and James A. Crouch, Jr. has joined the firm as an associate.

Steeg Law Firm, L.L.C., in New Orleans announces that **Elise M. Henry** has joined the firm as an associate.

Stone Pigman Walther Wittmann, L.L.C., announces that Matthew S. Almon has been elected as a member in the firm's New Orleans office.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that **John M. Parker, Jr.** and **L. Adam Thames** have become partners in the firm.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was selected by the National Trial Lawyers as the 2014 Trial Lawyer of the Year finalist.

Christopher D. Granger, an associate in the Lafayette firm of Becker & Hebert, has been appointed as the town attorney for the Town of Sunset and as the attorney for the St. Landry Parish Water Works District II Water Board.

Betty A. Raglin, an attorney with Sigler & Raglin, A.P.L.L.C., in Lake Charles, was elected to membership in the American College of Trust and Estate Counsel at the 2014 annual meeting.

Jennifer I. Tintenfass, an associate at Steeg Law Firm, L.L.C., in New Orleans, was selected for inclusion in *Real Estate Forum's* "Tomorrow's Leaders: Southwest" for 2015.

IN MEMORIAM

B. Frank Davis, 66, officer of the firm of Bernard, Cassisa, Elliott & Davis, A.P.L.C. (offices in Metairie and Covington) died on Jan. 1. He received his BA degree, with distinction, in 1971 from the University



B. Frank Davis

of Virginia and his JD degree in 1974 from Tulane University Law School. He was admitted to practice in Louisiana in 1974 and in Colorado in 1993. He was a clerk for the Louisiana Supreme Court in 1975 and 1978. He was a member of the Louisiana Association of Defense Counsel, the Claims & Litigation Management Alliance (CLM), the Greater Covington Bar Association and the St. Tammany Bar Association (president in 1993). He also served as judge ad hoc in 1st City Court (1992) and was on the Hearing Committee of the Louisiana Attorney Disciplinary Board from 2004-09. Mr. Davis is survived by his wife, Kathryn McLeod Davis, two children, three grandchildren and his sister.

Continued next page



Elise M. Henry



Jeremy A. Herschaft



Franklin A. Hoffmann



Shailendra U. Kulkarni



Lee J. Ledet



Tamara J. Lindsay



Daniel Lund III



Ryan M. McCabe



Matthew P. Miller



Larry E. Mobley



Edward L. Moreno



John M. Parker, Jr.

PUBLICATIONS

The Best Lawyers in America 2015

Neblett, Beard & Arsenault (Alexandria): **Richard J. Arsenault**.

Louisiana Super Lawyers 2015

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): Mark R. Beebe, Robin B. Cheatham, Scott R. Cheatham, O. Ray Cornelius, Kathleen F. Drew, John M. Duck, Brooke Duncan III, Philip A. Franco, A. Kirk Gasperez, William B. Gaudet, Charles F. Gay, Jr., Christopher J. Kane, Louis C. LaCour, Jr., Edwin C. Laizer, Leslie A. Lanusse, Scott M. Levy, Donald C. Massey, Don S. McKinney, Patricia B. McMurray, Robert B. Nolan, Glen M. Pilié, Jeffrey E. Richardson, Elizabeth A. Roussel, E. Paige Sensenbrenner, Ronald J. Sholes, Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Janis van Meerveld and Raymond P. Ward.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Edward H. Arnold III, Alton E. Bayard III, Gregory E. Bodin, Quin H. Breland IV, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Stephen F. Chiccarelli, Robert C. Clotworthy, Christopher O. Davis, Nancy Scott Degan, Katie L. Dysart, Matthew R. Emmons, Sean L. Finan, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Christopher M. Hannan, Jan M.

Hayden, William H. Howard III, Benjamin West Janke, Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, Kent A. Lambert, M. Levy Leatherman, Jon F. Leyens, Jr., Alexander M. McIntyre, Jr., Jennifer B. McNamara, Mark W. Mercante, Christopher G. Morris, William N. Norton, Erin E. Pelleteri, Kathlyn G. Perez, David C. Rieveschl, James H. Roussel, Danny G. Shaw, Danielle L. Trostorff, Tyler L. Weidlich, Paul S. West, Matthew A. Woolf and Adam B. Zuckerman.

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): David L. Carrige, Brodie G. Glenn, Joel A. Mendler, Matthew P. Miller, Jerome J. Reso, Jr., Leon H. Rittenberg, Jr., Leon H. Rittenberg III, John A. Rouchell, Stephen P. Schott, William B. Schwartz, Scott L. Sternberg, Andrew T. Sullivan, Matthew A. Treuting and Paul N. Vance.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, Kristin L. Beckman, Jamie L. Berger, Celeste R. Coco-Ewing, George C. Freeman III, Craig R. Isenberg, John W. Joyce, Stephen H. Kupperman, Stephen L. Miles, H. Minor Pipes III, Andrea Mahady Price, Michelle M. Rutherford, Richard E. Sarver, Jamaal W. Stafford and Steven W. Usdin.

Chaffe McCall, L.L.P. (New Orleans): Walter F. Becker, Jr., G. Wogan Bernard, H. Michael Bush, Katharine R. Colletta, E.

Howell Crosby, Alan R. Davis, Adelaida J. Ferchmin, Robert B. Fisher, Thomas D. Forbes, Edward N. George III, William F. Grace, Jr., Douglas L. Grundmeyer, J. Dwight LeBlanc, Jr., Julie D. Livaudais, Joseph B. Marino III, Corinne A. Morrison, Sarah Voorhies Myers, John F. Olinde, Robert S. Rooth, G. Phillip Shuler III, Brent A. Talbot and Derek A. Walker.

Courington, Kiefer & Sommers, L.L.C. (New Orleans): **Kaye N. Courington**.

Stephen D. Hébert, L.L.C. (New Orleans): **Stephen D. Hébert**.

King, Krebs & Jurgens, P.L.L.C. (New Orleans): J. Grant Coleman, Henry A. King, Patricia A. Krebs and Douglas P. Matthews.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans): Joseph P. Briggitt, Joseph P. Guichet, Brad E. Hargigan, Ralph S. Hubbard III, Benjamin W. Kadden, Rose McCabe LeBreton, Stewart F. Peck, Seth A. Schmeekle, David B. Sharpe, Miles C. Thomas and Scott R. Wheaton, Jr.

McGlinchey Stafford, P.L.L.C. (Baton Rouge, New Orleans): Rudy J. Aguilar, Jr., Stephen P. Beiser, Jaye A. Calhoun, Lauren E. Campisi, Rudy J. Cerone, Katherine Conklin, Gabriel A. Crowson, Richard A. Curry, Larry Feldman, Jr., Michael D. Ferachi, R. Marshall Grodner, Mary Terrell Joseph, Bennet S. Koren, Christine Lipsey, Kathleen A.



Margaret G. Patton



John W. Redmann



John K. Richards



David M. Schroeter



Blakeley R. Simpson



Tom D. Snyder, Jr.



Robert M. Steeg



Charles L. Stern, Jr.



Andrea K. Tettleton



L. Adam Thames



Brook Landry
Thibodeaux



Jennifer I.
Tintenfass

Manning, Deirdre C. McGlinchey, Colvin G. Norwood, Jr., Anthony J. Rollo, Jr., Michael H. Rubin, Stephen P. Strohschein, Dan E. West, Kenneth A. Weiss and Gerard E. Wimberly, Jr.

Montgomery Barnett, L.L.P. (New Orleans): Ashley L. Belleau, Philip S. Brooks, Jr., A. Gordon Grant, Jr., Harvey C. Koch, Jr., Patrick E. O'Keefe, John Y. Pearce, Joseph P. Tynan and Stephen L. Williamson.

Law Office of John W. Redmann, L.L.C. (Gretna): **John W. Redmann** and **Edward L. Moreno**.

Steeg Law Firm, L.L.C. (New Orleans): **Robert M. Steeg**, **Charles L. Stern, Jr.** and **Ryan M. McCabe**.

Stone Pigman Walther Wittmann, L.L.C. (Baton Rouge, New Orleans): Hirschel T. Abbott, Jr., Matthew S. Almon, Barry W. Ashe, Carmelite M. Bertaut, Stephen G. Bullock, Joseph L. Caverly, John W. Colbert, James T. Dunne, Jr., Abigayle C. Farris, Michael R. Fontham, James C. Gulotta, Jr., Lesli D. Harris, John M. Landis, Wayne J. Lee, Justin P. Lemaire, Paul J. Masinter, W. Brett Mason, Heather Begneaud McGowan, Michael W. McKay, C. Lawrence Orlansky, Laura Walker Plunkett, Michael R. Schneider, Susan G. Talley, Peter M. Thomson, Brooke C. Tigchelaar, William D. Treeby, Daniel J. Walter, Nicholas J. Wehlen, Scott T. Whit-

taker, Rachel W. Wisdom and Phillip A. Wittmann.

New Orleans CityBusiness

Courington, Kiefer & Sommers, L.L.C. (New Orleans): **Kaye N. Courington**, 2015 Leadership in Law.

Steeg Law Firm, L.L.C. (New Orleans): **Ryan M. McCabe**, 2015 Leadership in Law.

New Orleans Magazine Top Lawyers 2014

Stone Pigman Walther Wittmann, L.L.C. (New Orleans): Hirschel T. Abbott, Jr., Barry W. Ashe, Carmelite M. Bertaut, Stephen G. Bullock, Joseph L. Caverly, John W. Colbert, Daria B. Diaz, Mary L. Dumestre, James T. Dunne, Jr., John P. Farnsworth, Michael R. Fontham, Samantha P. Griffin, James C. Gulotta, Jr., Lesli D. Harris, Kathryn M. Knight, John M. Landis, Michael D. Landry, Wayne J. Lee, Justin P. Lemaire, Paul J. Masinter, C. Lawrence Orlansky, Laura Walker Plunkett, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Peter M. Thomson, Brooke C. Tigchelaar, William D. Treeby, Michael Q. Walshe, Jr., Nicholas J. Wehlen, Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

People Deadlines and Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
Aug./Sept. 2015	June 4, 2015
Oct./Nov. 2015	Aug. 4, 2015
Dec. 2015/Jan. 2016	Oct. 2, 2015

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator
Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130-3404

or email
dlabranche@lsba.org

SOLACE: Support of Lawyers/Legal Personnel — All Concern Encouraged

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee supports the SOLACE program. Through the program, the state's legal community is able to reach out in small, but meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience a death or catastrophic illness, sickness or injury, or other catastrophic event. For assistance, contact a coordinator.

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
Alexandria Area	Richard J. Arsenault rarsenault@nbawfirm.com	(318)487-9874 Cell (318)452-5700	Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Natchitoches Area	Peyton Cunningham, Jr. peytonc1@suddenlink.net	(318)352-6314 Cell (318)332-7294
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
Denham Springs Area	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508	Opelousas/Ville Platte/ Sunset Area	John L. Olivier johnolivier@centurytel.net	(337)662-5242 (337)942-9836 (337)232-0874
Houma/Thibodaux Area	Danna Schwab dschwab@theschwablawfirm.com	(985)868-1342	River Parishes Area	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 (225)265-9828 Cell (225)270-7705
Jefferson Parish Area	Pat M. Franz patfranz@bellsouth.net	(504)455-1986	Shreveport Area	M'Lissa Peters mpeters@shreveportbar.com	(318)222-3643
Lafayette Area	Josette Abshire director@lafayettebar.org	(337)237-4700			
Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900			

For more information, go to: www.lsba.org/goto/solace.

UPDATE

Francis Receives 2015 St. Ives Award

Norman C. Francis, president of Xavier University and the first African-American student to graduate from Loyola University College of Law, received the 2015 St. Ives Award, the highest honor awarded by the Loyola University College of Law Alumni Association.



Norman C. Francis

A 1952 graduate of Xavier University, Francis returned to his alma mater in 1957 — after attending Loyola's College of Law and serving two years

in the U.S. Army — to begin his administrative career as dean of men. As Xavier's dean of men in the late 1950s, Francis played a key role in the decision to provide housing in a Xavier dormitory to "Freedom Riders" who had been attacked on an anti-segregation bus ride through the South.

Since Francis' appointment as the university's first lay president in 1968, Xavier has tripled its enrollment, broadened its curriculum, expanded its campus and received national attention for its award-winning academic initiatives. Francis announced he will retire in June 2015.

Pro Bono Project Announces Officers, Board Members

Carole Cukell Neff, an attorney in the New Orleans office of Sessions, Fishman, Nathan & Israel, L.L.C., will serve as 2015 chair of The Pro Bono Project in New Orleans.

Joining her as officers will be Norman Rubenstein, Zeughauser Group, first vice chair; Christopher K. Ralston, Phelps Dunbar, L.L.P., second vice chair; Caroline McSherry (Sherry) Dolan, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., treasurer; Wendy Hickok Robinson, Entergy, secretary; and Jan M. Hayden, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., immediate past chair.

Serving on the board are Mindy Brickman, Dominique R. Bright-Wheeler, Joseph E. Ching, P. Kevin Colomb, Sr., Michael B. DePetrillo, Dana M. Douglas, Michelle Egan, Patrick C. Fraizer, Ira J. Gonzalez, Chauntis T. Jenkins, Robert A. Kutcher, Steven J. Lane, Roxanne S. Newman and Michael T. Tusa Jr.

Ex-officio board members are Christopher M. Short, Lindsey M. Ladouceur, J. Van Robichaux, Jr., Leopold Z. Sher and Project Executive Director Rachel Piercy.



Lafayette Bar Association (LBA) officers and Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr., center, participated in the New Admittee reception and Opening of Court ceremony on Jan. 9. From left, Kyle L. Gideon, LBA president; Melissa L. Theriot, LBA secretary/treasurer; Shea; Danielle D. Cromwell, LBA president-elect; and Miles A. Matt, Lafayette Bar Foundation.



The Louisiana State Bar Association's (LSBA) Francophone Section donated \$500 to the French program at Loyola University College of Law during the LSBA's Midyear Meeting in January. Section Chair Warren A. Perrin, left, presented the check to College of Law Dean Maria Pábon Lopez.

Baton Rouge Bar Association's 2015 Officers, Board Installed

The Baton Rouge Bar Association's (BRBA) 2015 officers and directors and the Young Lawyers Section's officers and council members were installed during a Jan. 13 ceremony at the U.S. District Court for the Middle District of Louisiana.

Robert J. Burns, Jr. was sworn in as the 86th BRBA president by his father, Judge Robert J. Burns, Sr. Burns is a partner in the law firm of Perry, Atkinson, Balhoff, Mengis, Burns & Ellis, L.L.C., and a managing partner of Perry Dampf Dispute Solutions.

Joining Burns as 2015 officers are Jeanne C. Comeaux, president-elect; Karli G. Johnson, treasurer; Linda Law Clark, secretary; and Darrel J. Papillion, immediate past president.

The 2015 BRBA directors-at-large are Shelton Dennis Blunt, Melissa M. Cresson, Christopher K. Jones, Melanie Newkome Jones, Amy C. Lambert and David Abboud Thomas.

The 2015 Young Lawyers Section officers and council members are Scott M. Levy, chair; Kara B. Kantrow, chair-elect; Loren D. Shanklin, secretary; Laranda Moffett Walker, immediate past chair; and council members Francisca M. Comeaux, Jordan L. Faircloth, Chelsea M. Gomez, Mackenzie Smith Ledet and Erin B. Sayes.



Baton Rouge Bar Association Young Lawyers Section Chair Scott M. Levy, left, presented Andrea Knouse Tettleton, an associate with Mayhall & Blaize, L.L.C., with the Judge Joseph Keogh Memorial Award during the Jan. 13 bar leaders' installation ceremony.



Robert J. Burns, Jr., left, was sworn in as the 2015 president of the Baton Rouge Bar Association by his father, Judge Robert J. Burns, Sr., during the Jan. 13 installation ceremony.



Baton Rouge Bar Association (BRBA) Young Lawyers Section Chair Scott M. Levy lit the ceremonial candle at the Jan. 28 Opening of Court, Memorial and New Member Ceremony. Photo by Susan Kelley.



Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr., left, and Baton Rouge Bar Association President Robert J. Burns, Jr. participated in the Jan. 28 Opening of Court, Memorial and New Member Ceremony. Photo by Susan Kelley.

Louisiana Association of Criminal Defense Lawyers Installs 2015-16 Board

The Louisiana Association of Criminal Defense Lawyers (LACDL) installed its 2015-16 officers and board of directors during its quarterly board meeting and annual membership meeting in December 2014.

Officers serving one-year terms are President T. Brett Brunson, 10th Judicial District defender, Natchitoches; Vice President Harold A. Murry, solo practitioner, Alexandria; Secretary Kyla M. Romanach, staff attorney, Baton Rouge Capital Conflict Office; and Treasurer David M. Williams, trial attorney, Alexandria.

Directors and members-at-large installed to serve a second three-year term are Second District Director Autumn A. Town, New Orleans; Sixth District Director Fred T. Crifasi, Baton Rouge; Member-at-Large Andre R. Belanger, Baton Rouge; Member-at-Large Derrick D. Carson, Vidalia; and Member-at-Large M. Richard Schroeder, New Orleans.

Member-at-Large Kathryn A. Widhalm of Natchitoches was elected to her first three-year term.

LACDL Recognizes Legal Professionals with 2014 Awards

The Louisiana Association of Criminal Defense Lawyers (LACDL) presented several legal professionals with 2014 awards during the 29th annual Justice Albert Tate, Jr. Awards Banquet in December 2014.

The **Justice Albert Tate, Jr. Award** was presented to James H. Looney of Covington, executive director of the Louisiana Appellate Project. This is the LACDL's most prestigious award for outstanding contributions to the Louisiana system of criminal justice and dedication to the constitutional principles for which Justice Tate stood.

The **Chief Justice Pascal F. Calogero, Jr. Lifetime Achievement Award** was presented to Louisiana 5th Circuit Court of Appeal Judge Fredericka Homberg Wicker of New Orleans for her work on behalf of criminal justice.

The **President's Award** was presented to Richard T. Simmons, Jr., managing partner of Hailey, McNamara, Hall, Larmann & Papale, L.L.P., in Metairie, for service to the association.

The **Trustee of Freedom Gideon Award** was presented to Judge Robert J. Burns of New Orleans for his contributions to the right to counsel and his concern for clients and criminal justice.

The **Public Defender Gideon Award** was presented to James T. (Jay) Dixon, Jr. of Baton Rouge for his service as Louisiana state public defender.

The **Criminal Justice Act Panel Attorney Award** was presented to William P. (Billy) Gibbens, with the firm of Schonekas, Evans, McGoey & McEachin, L.L.C., in New Orleans and panel representative for the U.S. District Court, Eastern District of



James H. Looney of Covington, left, executive director of the Louisiana Appellate Project, received the Louisiana Association of Criminal Defense Lawyers' Justice Albert Tate, Jr. Award during the 29th annual Justice Albert Tate, Jr. Awards Banquet in December 2014. Presenting the award is G. Paul Marx of Lafayette.

Louisiana.

The **Sam Dalton Capital Defense Advocacy Award** was presented to mitigation specialist Scharlette Holdman of New Orleans.

The **Professor Lucy McGough Juvenile Justice Award** was presented to Bryan Stevenson, founder and executive director of the Equal Justice Initiative in Montgomery, Ala.

The **10:1 Blackstone Award** was presented to eight attorneys — Jason L. Chatagnier, Baton Rouge; Mary L. Harried, Shreveport; Jodi Edmonds LeJeune, Baton Rouge; Joshua O. Monroe, Lake Charles; Julian R. Murray, Jr., Metairie; Richard T. Simmons, Jr., Metairie; Rickey K. Swift, Shreveport; and Kelly P. Tate, Mamou. The award recognizes lawyers who implement Blackstone's ratio in the courtroom, reminding judges, jurors and prosecutors that it is "better that 10 guilty persons escape than that one innocent suffer."



Todd S. Clemons, right, was sworn in as president of the Southwest Louisiana Bar Association by retired Judge Jack C. Watson. The swearing in ceremony was conducted during the bar's New Admittee reception. Also attending the event was Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr.

CODE OF PROFESSIONALISM

- ▶ My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.
- ▶ I will clearly identify for other counsel changes I have made in documents submitted to me.
- ▶ I will conduct myself with dignity, civility, courtesy and a sense of fair play.
- ▶ I will not abuse or misuse the law, its procedures or the participants in the judicial process.
- ▶ I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.
- ▶ I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- ▶ I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- ▶ I will not use the threat of sanctions as a litigation tactic.
- ▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
- ▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.

President's Message

Interview of 2015-16 President H. Minor Pipes III

Interviewed by 2015-16 Secretary W. Michael Street

Street: Tell us about yourself and your family.

Pipes: I was born and raised in Houma, La., where my father and grandfather were attorneys. I was one of seven children. After high school, I attended college at Penn State University. After graduation, I spent a couple of years in Washington, D.C., before I made my way back to Louisiana State University Paul M. Hebert Law Center. I am happily married to the former Jill McKay of Baton Rouge and we have three sons, Henry, 12, Charlie, 10, and George, 8. I practice law in New Orleans as a founding member of the firm Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.

Street: How did you get involved with the Louisiana Bar Foundation (LBF)?

Pipes: As a young lawyer, I was nominated to become a Fellow and began attending the Fellows' Breakfast at the Louisiana State Bar Association's (LSBA) Annual Meeting/Summer School. Through work with the LSBA, I got to know a number of the leaders in that organization, many of whom had close ties to the LBF. I was very impressed with the amount of public service and give-back that was included at the LBF and the more I got involved, the more I enjoyed what our hard work could accomplish.

Street: What role does the LBF play in promoting access to the justice system?

Pipes: I think it is an irreplaceable cog in that entire system. As we all know, there has been a constant attack on funding for civil legal justice at the national and state level for the last several years. If it were not for the work of the LBF, I believe the large majority of those needing these services would simply go unassisted, and our grantees working in the civil legal

justice system would be unable to continue working in this area.

Street: Tell us about the LBF's new initiative, Louisiana Campaign to Preserve Civil Legal Aid.

Pipes: I think the Campaign is a very important concerted effort to continue the educational campaign about the need to support civil legal aid and to develop and implement procedures to properly raise funds to support that system.

Street: Why is the Campaign so important?

Pipes: Although many people support the goals and missions of the Campaign, without this educational component, many of our supporters may not be aware of the dire financial straits these organizations are under. And without a consolidated effort to raise funds to support these causes, the chance of raising sufficient funds to make a difference is very limited. I believe that by making a concerted, across-the-board effort that provides a consistent message and with documented goals and documented priorities, there is a much better chance for success. This is what the Campaign provides.

Street: Are you satisfied with the response of Louisiana attorneys to the call to perform pro bono work?

Pipes: Satisfied is a hard word. I am always impressed with the number of people who will give up both time and money for such important causes, especially when that includes performing pro bono work for people they've never



H. Minor Pipes III

met and solely for the greater good. With that in mind, I believe there is so much more we all can do. I think it is part of our professional obligation to give back to our community and to our profession as a whole. In doing so, I think each lawyer has an obligation to support and perform some form of pro bono work.

Street: How can Louisiana lawyers help the LBF?

Pipes: I think the first and easiest way is to become a Fellow. Support the organization through both financial and time contributions. By dedicating time and effort to help support civil legal aid and its structure throughout this state, we can all make a difference.

Street: What are your goals and vision as president of the LBF?

Pipes: I would love to see us expand the membership of the LBF and continue to obtain the ongoing support of the many members of the Bar and the judiciary who currently support the Bar Foundation. I also hope to continue to put our Campaign into place and address the long-term needs it is attempting to address. We are all very fortunate to be able to practice law and to be able to earn a living through our profession and, through the LBF, we have the ability to pay back for these many great gifts.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces two new Fellows:

John C. Giglio, Jr. Lafayette

P. Craig Morrow, Jr. Opelousas

Hon. H. Stephens Winters Monroe

LBF Honors Award Recipients at Annual Dinner

The Louisiana Bar Foundation (LBF) recognized the 2014 Distinguished Jurist, Distinguished Attorney, Distinguished Professor and Calogero Justice Award recipient during its 29th Annual Fellows Gala May 1, held in conjunction with the fifth Annual Assembly in New Orleans.

Recognized were Distinguished Jurist John W. Greene, Distinguished Attorney Allen L. Smith, Jr. (posthumously), Distinguished Professor Gail S. Stephenson and Calogero Justice Award recipient Marta-Ann Schnabel.

Distinguished Jurist John W. Greene

Judge John W. Greene (Ret.) received a BA degree in finance from Louisiana State University and his JD degree from LSU Paul M. Hebert



John W. Greene

Law Center. He worked as a law clerk for the 1st Circuit Court of Appeal for two years and then operated a private law practice before being elected judge, Division D, 22nd Judicial District Court (St. Tammany and Washington parishes). He was re-elected three times, serving from 1976-97. He was appointed judge ad hoc on the 1st and 5th Circuit Courts of Appeal and served as ad hoc judge by appointments from the Louisiana Supreme Court. He mediated cases for 10 years and is still working as an arbitrator. He is serving on the Judicial Campaign Oversight Committee by appointment from the Louisiana Supreme Court. He also serves as independent counsel for the Louisiana State Board of Medical Examiners. In 1981, Greene founded the Youth Service Bureau, an organization that helps troubled and at-risk youth in St. Tammany and Washington parishes.

Distinguished Attorney Allen L. Smith, Jr. (posthumously)

Allen L. Smith, Jr. graduated from Louisiana State University's School of Engineering and received his JD degree from LSU Paul M. Hebert Law Center. He joined the firm of Plauché & Plauché in 1964 and became a partner in 1967. Upon his retirement from partnership, he became general counsel for the Calcasieu Parish Police Jury. He served as president of the Southwest Louisiana Bar Association and as president of the Louisiana Association of Defense Counsel. He was the recipient of the Louisiana State Bar Association's President's Award, the LBF's Curtis R. Boisfontaine Trial Advocacy Award and the Judge Albert Tate American Inns of Court Professionalism Award. He was inducted into the LSU Law Center Hall of Fame in 1987.



Allen L. Smith, Jr.

Distinguished Professor Gail S. Stephenson

Professor Gail S. Stephenson is director of legal analysis and writing at Southern University Law Center (SULC) and has been a full-time faculty member at SULC since 2004. She teaches legal analysis and writing and is the adviser for the *Southern University Law Review*. Her scholarship is primarily in the areas of culturally relevant teaching and Louisiana civil procedure. She was president of the Baton Rouge Bar Association in 2012 and president of the Baton Rouge Association of Women Attorneys in 1995. She has served as a consultant for the Louisiana Notary Public Examination since 2008. She earned her BA degree from North-



Gail S. Stephenson

western State University of Louisiana and her JD degree from Louisiana State University Paul M. Hebert Law Center, where she was a member of the *Louisiana Law Review* and Order of the Coif. Before joining the SULC faculty, she worked as an administrative general counsel for the Louisiana 1st Circuit Court of Appeal, as a law clerk for 1st Circuit Judge Melvin A. Shortess and U.S. District Judge Frank J. Polozola, and practiced insurance and corporate defense law.

Calogero Justice Award, Marta-Ann Schnabel

Marta-Ann Schnabel is a shareholder in the New Orleans law firm of O'Bryon & Schnabel, P.L.C. She is a *cum laude* graduate of Loyola University College of Law, where she was a member of the *Law Review*. She served as Louisiana State Bar Association (LSBA) secretary and editor of the *Louisiana Bar Journal* from 2001-03 and was the first woman to serve as president of the LSBA. She currently chairs the LSBA's Access to Justice Committee and the Access to Justice Policy Committee. She received the LSBA's President's Award three times. She is a past president of the New Orleans Bar Association. She has served in the American Bar Association's House of Delegates and as a member of the ABA Standing Committee on Bar Activities and Services. She is a Fellow of the Louisiana Bar Foundation and a past recipient of the LBF's Hornblower Award. She is currently the president of the Louisiana Association of Defense Counsel and the chair of the Louisiana Supreme Court's Judicial Campaign Oversight Committee. She is a past recipient of the Gillis Long Poverty Center Public Service Award and the David A. Hamilton Lifetime Achievement Award for her work as an advocate for access to justice. She also heads the board of the non-profit Louisiana Civil Justice Center.



Marta-Ann Schnabel

CLASSIFIED NOTICES

Standard classified advertising in our regular typeface and format may now be placed in the *Louisiana Bar Journal* and on the LSBA Web site, LSBA.org/classifieds. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

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POSITIONS OFFERED

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The Dill Law Firm, A.P.L.C., seeks a full-time attorney with interest in insurance defense litigation. Strong writing and communication skills required. All inquiries will be treated with the strictness of confidence. Submit résumés to: P.O. Box 3324, Lafayette LA 70502, or email resumes@dillfirm.com.

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for two positions. The firm offers competitive salary and benefits and an excellent work environment. 1) Environmental litigation attorney — Minimum five-plus years' civil litigation experience with emphasis on complex litigation; A/V rating preferred; environmental, oil and gas and/or toxic tort experience preferred. 2) First-chair attorney/environmental law — Minimum eight-plus years' defense experience in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; environmental, oil and gas and/or toxic tort experience preferred. Those interested in these positions should visit the Curry & Friend, P.L.C., website at: www.curryandfriend.com/careers.

The Shreveport/Caddo Metropolitan Planning Commission seeks proposals from attorneys or law firms to serve as its general counsel. Solicitation packages will be available on May 1, 2015, from Diane Tullos, diane.tullos@shreveportla.gov, or Judy Negrete, judy.negrete@shreveportla.gov, at Ste. 440, 505 Travis St., Shreveport, LA 71101; (318)673-6480. Responses are due by 5 p.m. CDT on June 1, 2015.

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Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; 16 years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)222-1700 (Shreveport).

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ANSWERS for puzzle on page 453.

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NOTICE

Notice is hereby given that Gregory Paul Hardy intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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IT'S TIME TO BOOK A LISTING IN 'WHO'S WHO IN ADR 2015'

The print version of the directory for arbitrators and mediators will be mailed with the October/November 2015 Louisiana Bar Journal.

For the one low price of \$125, your listing is first published in the print directory, then the directory is uploaded to the LSBA website in interactive PDF format (email addresses and website URLs are activated and instantly accessible).

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Submit either original photos or digital photos. Digital photos should be submitted separately from the article, in either .tif, .jpg or .eps format (the order of preference). DO NOT submit digital photographs embedded in word processing programs; send the photograph as a separate file. High-resolution digital photos work best (at least 300 DPI/dots per inch).

DEADLINE IS JULY 31 FOR ALL LISTINGS AND PHOTOS! DIRECTORY/WEB COMBO PRICE IS \$125.

Articles and photographs must be for individuals only. No group articles or group photographs will be used. But, as an **ADDED BONUS**, firms which have three or more arbitrators/mediators purchasing individual listings will receive a free **firm** listing in the section. (Firms are responsible for submitting the additional information, 150 words maximum.)

If you would like to repeat a prior listing and photo, you may send us a photocopy of that listing along with your check; please provide the year the listing appeared. (Digital photos appearing in ADR directories are archived back to 2000.)

IT'S EASY TO RESERVE SPACE IN THE DIRECTORY!

- Email your listing and photo to Publications Coordinator Darlene M. LaBranche (email: dlabranche@lsba.org). Then mail your check for \$125 (payable to *Louisiana State Bar Association*) to: **Publications Coordinator Darlene M. LaBranche, 601 St. Charles Ave., New Orleans, La. 70130-3404.**

- Or, mail your listing, photo, disk and check to the above address.

For more information, contact

Darlene M. LaBranche

(504)619-0112 or (800)421-5722, ext. 112.

The Last **WORD**

By Joseph I. Giarrusso III

ME AND MY PDA

Like many younger lawyers, my longest professional relationship has not been with a single law firm or client. It's been with a PDA. No, I'm not talking about a public display of affection but instead my cherished personal digital assistant. My first BlackBerry opened up a whole new world — access to email while out of the office. Was I sitting at my desk, at a deposition, or some dive? No one ever had to know.¹

It wasn't long before I was hooked on my mobile device. Mrs. Humorist tried to place restrictions on the device's use but my brain had an insatiable desire to know — who was looking for me and did they need me to respond in seconds flat? And, let's be honest. The BlackBerry (and now iPhone) held great utility outside of responding to work emails or reviewing documents in an airport. It could be used for the most important functions of: (1) checking LSU scores at a wedding; (2) sending texts in a meeting to see if I could get someone to laugh out loud (Bad form? Yes. Puerile and funny? Also, yes); (3) surveying Facebook and Twitter to see what my colleagues were up to.²

Over time, our relationship became more strained, more bittersweet. There were many moments of stillness and serenity interrupted by the screen showing yet another email. On the other hand, the "crackberry" brought me great joy. I learned Daughter 1 would be a girl while at the Cameron Parish Courthouse.

The iPhone also helped with something I never thought imaginable. Have you ever had the schadenfreude thought, "I'd love to see the look on his/her face when they see this?" [That's a rhetorical question. Of course, you have.] Near the tail end of our expert's deposition, we received



the electronic Pacer notification that our client's summary judgment had been granted. We *literally* got to see the look on the other lawyer's face when hearing that news. Those Pacer notifications are tax dollars well spent.

Notwithstanding my wife's admonition, my use of the iPhone became lax. Much like Icarus, I continued tempting the Fates by flying too close to the proverbial sun — the iPhone frequently crossed the threshold from office to home to restroom. And, then it happened . . .

I wasn't paying close enough attention a few months ago when I dropped the device into the urinal.³ This gave completely new meaning to getting closer to my law partners. As I sat there stunned at my carelessness, the initial reaction was to leave it there and just walk away. But I couldn't leave my old buddy behind. Thankfully, I was alone when retrieving the iPhone. I fished her out and even "tried" to dry her out.⁴ Alas, it wasn't meant to be and I was given a new phone. A little distance from your PDA is a good thing.

Sent from iPhone (No Longer Used in Bathrooms)

FOOTNOTES

1. Dear Apple: I really, really need you to fix the response function on my phone so no one can ever tell whether I'm responding from my desktop or phone. No charge for the free advice. Not even a 0.1 on the timesheet.

2. Again, transactional lawyers, you're killing me here with your lack of posting.

3. Let's be honest. I am not the only one. According to the websites of CNET and CBS News, nearly 75 percent of Americans admit to using their phones in the bathroom and nearly 20 percent admit to dropping their phone in the toilet. And, those are just the ones who *admit* to it.

4. At least that is what I told my IT department. Luckily for me, they don't read the *Bar Journal*.

Joseph I. Giarrusso III is a shareholder in the New Orleans office of Liskow & Lewis, P.L.C. He received his JD degree in 2001 from Louisiana State University Paul M. Hebert Law Center (Louisiana Law Review and Order of the Coif). He is admitted to practice in Louisiana and Texas. (jigiarrusso@liskow.com; Ste. 5000, 701 Poydras St., New Orleans, LA 70139)



The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed. But the scope has broadened to "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

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