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Also Inside

Features

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By Alainna R. Mire

Learning from the Past to Prepare for the Future

On March 12, the Louisiana State Bar Association (LSBA) officially entered its 75th year of operation. The LSBA was incorporated on March 12, 1941, and conducted its first Annual Meeting on April 18-19, 1941, in Lake Charles. That's not to say, however, that this was the very first organized group of attorneys in Louisiana. An organization known as the "Louisiana Bar Association" and other smaller groups before that group predated the LSBA by a few years. E. Phelps Gay, one of the LSBA's former presidents, wrote a very informative and enlightening article published in the April/May 2013 *Louisiana Bar Journal* that talks about this pre-history (a pre-history that involves Louisiana Gov. Huey P. Long). I recommend re-reading that article at this particular milestone. Read online at: *www.lsba.org/goto/0413lbjv60n6.*

Learning from the Past…

The character Rafiki said it best in Disney's 1994 *The Lion King*: "The past can hurt. But the way I see it, you can either run from it or learn from it."

As we get ready to celebrate this 75-year milestone with a special *Journal* issue in June/July (being coordinated, in part, by the current members of the Leadership LSBA Class, quite fittingly as they are the next generation to guide the LSBA into its next 75 years), it is appropriate to reflect on the Bar year coming to an end and gather what we have learned from it.

> "The past can hurt. But the way I see it, you can either run from it or learn from it."
>
> – Rafiki
>
> *Disney's The Lion King, 1994*

Over the past year, *Journal*-speaking, we have offered our readers substantive articles on a variety of legal topics including frivolous civil appeals, CLE credit for pro bono representation, "stigma" property damages, data breach litigation, ADR issues, contractual indemnity claims, debt buyers' abuse and drones (in this issue). We have also offered one-on-one interviews with Supreme Court justices and covered several innovative LSBA projects (the Blue Jeans video-conferencing network and "Lawyers in Libraries"). Read all past issues of the *Journal* online at: *https://www.lsba.org/NewsAndPublications/BarJournal.aspx.*

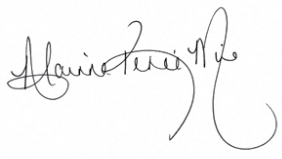
For next year, members of the *Journal* Editorial Board are gathering more interesting articles, as well as working on more themed issues. So, stay tuned!

Preparing for the Future…

To properly prepare for the future, we must first remember where we have been and who has come before us to guide our steps.

Personally, I am honored to have followed in the footsteps of many others who have paved my way into the legal profession and into Bar leadership — Edwina Breckwoldt Chasez, the first female lawyer admitted to the Bar on July 3, 1925; Wayne J. Lee, the first African-American LSBA president; Marta-Ann Schnabel, the first female LSBA president; and Kim M. Boyle, the first African-American female LSBA president. And, there are many more Bar members, on a personal level, who have helped guide me in my first years as an attorney.

In closing, as a past chair of the LSBA Young Lawyers Division and a current young lawyer, I am honored to continue my service for another year as secretary of this great association.



By Mark A. Cunningham

The Harm and Challenges of Limited Licensing

For the past 75 years, the Louisiana State Bar Association (LSBA) has committed itself to serving the public and the profession. This mission is critical to ensuring the proper administration of justice and public confidence in the system itself. Without lawyers, the rule of law fails, and fails immediately. Autocrats know this and target judges and lawyers when solidifying their hold on power. Earlier this year, Turkey arrested six human rights lawyers in the middle of the night. Media reports suggest that China still routinely engages in the mass detention of lawyers.

While it is important to fight against government threats and intimidation designed to deter lawyers from doing their job, another war against the legal profession is currently being waged on two unexpected battlefields – Silicon Valley and Washington State. In Silicon Valley, high-tech businesses see an opportunity to profit by "disrupting" the legal market. They point to the unmet legal needs of the middle class and poor and to state court systems that are largely overwhelmed, inefficient and ineffective. These entrepreneurs believe that technology offers the means for displacing the current system for the delivery of legal services with something new and more efficient and are wagering billions in venture capital to turn their vision into reality.

Meanwhile, the Washington Supreme Court has implemented a controversial rule through which it licenses non-lawyers called limited license legal technicians (Triple LTs) to practice law. Triple LTs are permitted to operate businesses without the supervision of a lawyer, conduct factual investigations, provide legal advice and opinions to clients, prepare legal documents for filing in court, and advise clients on how to present their case to the court. Triple LTs are not required to graduate from law school. They are not required to graduate from a four-year college. With the right curriculum, an associate degree from a two-year community college will do. Law schools faced with declining enrollments see opportunity and love the idea.

Bar associations have reacted to these challenges in different ways. The North Carolina State Bar challenged Legal Zoom and found itself embroiled in an antitrust suit. The Florida Bar is looking for ways to partner with companies like Avvo. For its part, the Washington State Bar Association twice opposed the rule change authorizing Triple LTs only to be overruled by the Washington Supreme Court. Washington State Supreme Court Chief Justice Barbara A. Madsen identified four drivers for the Court's decision: 1) the growing gap in access to justice; 2) increasing numbers of pro se litigants; 3) the rising cost of law school; and 4) the proliferation of unauthorized legal service providers.[1]

Surprisingly to some and shockingly to others, the American Bar Association is on a path toward endorsing programs authorizing the practice of law by Triple LTs and other non-traditional legal service providers. Over the past two years, the ABA Commission on the Future of Legal Services has been examining how legal services are delivered in the United States and recommending innovations to improve the delivery of, and the public's access to, those services. The Commission has held summits, town hall meetings, issued working papers and solicited public comment. On the whole, the effort has been impressive in bringing together scholars, thought leaders, lawyers and judges from across the country. But the outcome of the Commission has never been in doubt. Chief Justice Madsen is a member of the Commission and chairs a key project team. The balance of the Commission consists almost exclusively of law professors, lawyers from large law firms in big cities, and legal service attorneys. Solo and small-firm practitioners are largely unrepresented on the Commission and their voices ignored.

Thus far, the Commission has issued several working papers.[2] Those papers generally take the position that, rather than representing a significant threat to the public and rule of law, opening up the practice of law to non-lawyers will benefit consumers and reduce pro se litigation. The working papers correctly recognize that non-lawyers are currently practicing law but, rather than propose a mechanism for combatting this illegal and, in many states, criminal conduct, the Commission assumes that non-lawyer legal service providers are an inevitability and that it would be better for the public to take steps to regulate them rather than ignore them.

The New Jersey State Bar Association has come out vocally against the work of the Commission. In one letter to the ABA Commission, New Jersey Bar State Association President Miles S. Winder III

wrote that instead of seeking "creative ways to expand upon the many innovative approaches that already exist in the legal community to increase access to legal services while promoting the core values of the profession, the Commission appears driven to sanction the practice of law by non-lawyers regardless of all other concerns."[3] The ABA Solo, Small Firm and General Practice Division has also voiced its concern stating that the "ABA should be at the forefront at protecting the American Public and its membership and should be advocating and educating the public as to why one should retain a lawyer and not advocating or endorsing non-lawyers offering legal services which will directly compete with the solo and small firm lawyer."[4]

In my personal view, non-lawyers lack the education, expertise and judgment to provide competent legal services and are certain to take advantage of consumers if permitted to practice law outside the regulatory controls. Moreover, the justifications for permitting non-lawyers to practice law are ill-conceived. Triple LTs and other licensed non-lawyer practitioners are unlikely to fill the access to justice gap in a meaningful way because they have the same profit incentive as any other commercial enterprise and will be subject to many of the same cost constraints as attorneys. Additionally, most states have an abundance of lawyers willing to provide affordable and timely legal services to underserved members of the public.

Identifying innovative business models that will generate cost-saving efficiencies for attorneys and incentivize them to market low-cost legal services would be a far more effective strategy for expanding the availability of affordable legal services to the public than permitting consumers to receive services from less qualified and less effective non-lawyers. For example, the Louisiana Civil Justice Center, in partnership with the LSBA, is now accepting applications for the third class of its Legal Innovators For Tomorrow (LIFT) Incubator and Accelerator Program. The program provides a two-year fellowship for lawyers just entering the practice of law to explore ways for developing innovative business models for solo and small-firm general practices. The program supports fellows by providing business and practice management training, access to an expansive network of commercial, public interest and in-house attorneys, and substantive law training in high-demand areas of legal practice.

"In short, the economic justifications for opening up the practice of law to non-lawyers do not hold water and the impact of such a strategy is potentially as detrimental to the public and rule of law as other less well-intentioned attacks on the legal profession."

There also is no reason to conclude that the widespread practice of law by non-lawyers is inevitable or acceptable. Most states have unauthorized practice of law statutes. Lobbying for enhanced penalties and expanded enforcement of these laws would serve the public interest and represents an effective response to the impact of technology and globalization. The LSBA undertook this strategy in the current legislative session in which it worked with legislators, the Louisiana Attorney General and the Louisiana District Attorneys Association to sponsor a bill that expands the current unauthorized practice of law statute in Louisiana to create a civil right of action for consumers and other stakeholders against non-lawyers engaged in the practice of law.

Most significantly, authorizing non-lawyers to practice law could result in the public being denied access to lawyers entirely as lawyers migrate away from practice areas where the unauthorized practice of law has been sanctioned by the State. This outcome already may be happening in Washington where law students are reportedly being told "to stay clear" of family law and immigration law because young attorneys, opening their own firms and carrying high debt loads and overhead, will not be able to compete effectively with Triple LTs.[5]

In short, the economic justifications for opening up the practice of law to non-lawyers do not hold water and the impact of such a strategy is potentially as detrimental to the public and rule of law as other less well-intentioned attacks on the legal profession. The LSBA's House of Delegates should take a stand before the movement reaches our borders. One option – adopt a resolution stating while the LSBA embraces competition and believes that the benefits of competition and innovation can lower fees, mitigate costs and promote access to justice, the public suffers serious injury when non-lawyers engage in the unauthorized practice of law and, as such, the LSBA will oppose any state legislation, rules or regulations that would have the purpose or effect of authorizing non-lawyers to practice law or reduce the penalties or sanctions applicable to such unlawful conduct. Let's discuss this more at the Annual Meeting.

FOOTNOTES

1. *See* Hon, Barbara Madsen, *The Promise and Challenges of Limited Licensing*, 65 S.C.L.R. 533, 534-35 (2014).

2. The working papers, roster and other information about the ABA Commission on the Future of Legal Services are available at: *www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html.*

3. Letter from Miles S. Windner III to the ABA Commission on the Future of Legal Services, dated April 28, 2016, available at: *www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/Comments1.html.*

4. Comment from ABA Solo, Small Firm and General Practice Division to the ABA Commission on the Future of Legal Services, dated Dec 30, 2015, available at: *www.americanbar.org/content/dam/aba/images/office_president/lspcomments_solo_small_firm_and_general_practice_division.pdf.*

5. *Id.*

DRONES ON THE BAYOU

An Overview of the Current State of Unmanned Aircraft System Law

By Brendan P. Doherty
and Bradley J. Schwab

Imagine a world where police robots hover above your neighborhood patrolling for criminal activity, and where automated flying couriers are available at a moment's notice to deliver anything from your morning coffee to your weekly dry cleaning. While seemingly far-fetched, each of these concepts may soon become reality through the use of unmanned aircraft system (UAS) technology.

Historically, unmanned aircraft have been known by many names, including drone, unmanned aerial vehicle, remotely piloted vehicle, and radio control aircraft.[1] Today, the term UAS is used to emphasize the fact that a number of different system components are required to support airborne operations without a pilot aboard the aircraft.[2] A UAS consists of three primary components: (1) an unmanned aircraft, (2) a ground-based or onboard control station, and (3) a communications link between them.[3] The aircraft component can have a fixed-wing or rotary-wing design and can range from mere inches to hundreds of feet in length. Despite their many different shapes and sizes, all UAS have one thing in common — their numbers and uses are growing dramatically in the United States.

Although previously used almost exclusively for military or governmental purposes, UAS technology has been making waves in the private sector in recent years. In addition to widespread success in the consumer electronics market, UAS have also drawn the attention of corporate America due to the enormous cost-saving potential and seemingly limitless list of commercial applications. For example, General Electric is exploring the use of UAS to inspect utility power lines;[4] Google is researching the use of UAS to provide Internet access to underserved populations;[5] and Amazon has proposed the use of UAS for everyday package delivery.[6] Other potential uses for UAS technology are in the pipeline and petroleum industries, where low cost of operation and reduction of risk to human life are seen as advantageous for obvious reasons.[7] Further demonstrating the popularity of this technology and the common assumption of significant future integration, several universities are offering degree programs geared toward the development of the UAS field, and large

insurers have begun offering UAS liability insurance products.

One of the most highly anticipated applications for UAS technology is precision agriculture, where aircraft can be outfitted with equipment to assess crop yields, apply herbicide, pesticide and fertilizers, assist with irrigation monitoring, and even track wandering cattle.[8] On May 1, 2015, the Federal Aviation Administration (FAA) issued approval of the Yamaha RMAX, a drone capable of carrying tanks of fertilizers and pesticides.[9]

The Association of Unmanned Vehicle Systems International estimates that, by 2025, the UAS industry will employ 100,000 and will have an economic impact of more than $80 billion, including more than $150 million in Louisiana.[10] In addition to these enormous potential economic benefits, the rise in market availability of unmanned aircraft has brought with it significant safety,[11] privacy,[12] liability[13] and constitutional[14] concerns, forcing state and federal regulators to scramble in an effort to keep pace with the growing technology.

Federal UAS Regulations

The FAA is an arm of the U.S. Department of Transportation, with the primary mission of ensuring the safety of United States airspace.[15] Consistent with this mission, the FAA and its predecessor agencies have regulated the design, manufacture, maintenance and operation of aircraft flying through domestic airspace since the 1920s.[16] However, the aviation regulations historically enforced by the FAA were created specifically with manned flight in mind and fail to account for the practical realities of UAS operations. In an early response to UAS technologies, the FAA in 2007 published a notice in the Federal Register prohibiting private operators from using such aircraft in domestic airspace without specific authority to do so.[17] Since then, the requirements for a private UAS operator to obtain such authority have been largely dependent on whether the aircraft would be used for recreational or commercial purposes.[18]

Recreational use of UAS is governed by the operating standards set forth in FAA Advisory Circular 91-57A pertaining to model aircraft.[19] In AC 91-57A, the FAA provided UAS operators with blanket authority to fly in domestic airspace provided they adhere to a number of specific operational limitations.[20] Today, those model aircraft rules require that (1) the UAS be flown strictly for hobby or recreational use; (2) the UAS weigh no more than 55 pounds; (3) that the UAS be flown within the operator's visual line-of-sight; (4) that the UAS be flown less than 400 feet off the ground and be operated in a manner that does not interfere with and gives way to any manned aircraft in flight; and (5) that the UAS not be flown within five miles of

an airport without prior authorization of the air traffic control tower.[21] Notably, these rules limit the applicability of AC 91-57A to flights conducted for hobby or recreational purposes. The Advisory Circular provides no authorization or guidance relative to the operation of UAS for commercial or profit-related reasons.

Commercial UAS operations are subject to the same domestic flight authorization requirements as operators of standard piloted aircraft. However, that regulatory framework is incompatible with commercial UAS usage. Thus, in 2012, Congress addressed this issue by passing the FAA Modernization and Reform Act of 2012 (FMRA), which instructed the FAA to develop a comprehensive plan to integrate UAS into the national airspace.[22] Earlier this year, the FAA took the first step towards accomplishing that goal when it issued a Notice of Proposed Rulemaking setting forth a potential regulatory framework for the commercial operation of small UAS (those under 55 pounds).[23] Under the FAA's proposed rules, small UAS will not require airworthiness certification and operators will not need a pilots' license; however, operations will be restricted to daylight hours, under 87 knots (approximately 100 mph), less than 500 feet above ground level, and within the operator's visual line-of-sight.[24] The FAA has received more than 4,000 comments on the proposed rules and has yet to set a firm date for the issuance of final regulations.

Until the rules for the commercial operation of small UAS are finalized, the FAA is granting operators limited authority to make commercial unmanned flights on a case-by-case basis pursuant to Section 333 of the FMRA.[25] To obtain such authority, the entity seeking to fly a UAS for commercial reasons must file a petition with the FAA and demonstrate that its intended operations will provide a level of safety equivalent to that required of standard piloted aircraft.[26] The FAA has granted nearly 3,000 Section 333 petitions as of this writing.[27]

State-Level UAS Legislation

In addition to the FAA's efforts to regulate the private use of UAS, a number of

state legislatures have enacted their own laws pertaining to unmanned flight. In 2014 and 2015, 45 states considered 168 bills and resolutions addressing UAS-related issues.[28] The Louisiana Legislature has followed suit and has enacted a number of UAS-related laws over the past few years.

For example, in 2014, Louisiana enacted R.S. 14:337 which makes criminal the "intentional use of an unmanned aircraft system to conduct surveillance of, gather evidence or collect information about, or photographically or electronically record a targeted facility without the prior written consent of the owner of the targeted facility."[29] The term "targeted facility" is defined as including petroleum and alumina refineries, chemical and rubber manufacturing facilities, and nuclear power electric generation facilities.[30] R.S. 14:337 does not pertain to the use of UAS on property owned by the operator or on property subject to a "valid lease, servitude, right-of-way, right of use, permit, license, or other right" in favor of the operator.[31] The statute is also inapplicable to use of a UAS "for motion picture, television, or similar production where the filming is authorized by the property owner."[32]

The Louisiana Legislature has been particularly interested in the potential uses of UAS technology in the commercial agriculture sector. During the 2014 legislative session, the state Senate passed Concurrent Resolution 124 establishing the Unmanned Aerial Vehicle Study Group (the Study Group) to study the potential applications of UAS for agricultural purposes and to recommend any action or legislation deemed to be necessary or appropriate.[33] The Study Group is headed by state Sen. Francis Thompson (D-Delhi) and contains a total of 17 members including state legislators, public university officials, and representatives from the agriculture, aviation, public safety and emergency response industries. Although it was formed less than two years ago, the Study Group has already succeeded in proposing legislation to promote and regulate the agricultural usage of UAS technology in Louisiana.

During the 2015 legislative session, the Study Group chair proposed Senate Bill 183 to establish state-level regulations for the use of UAS in commercial agricultural operations. After passing in the Senate and House, that legislation was signed into law on June 23, 2015, and was enacted as Chapter 1A ("Unmanned Aerial Systems") under Title 3 ("Agriculture and Forestry") of the Revised Statutes.[34] These new laws authorize the Louisiana Commissioner of Agriculture to adopt rules, provide for license and registration requirements, address violations, provide for penalties, and issue stop orders related to the use of UAS for agricultural purposes. The regulations ultimately promulgated under this author-

ity will supplement the FAA's final small UAS rules expected to be issued in 2016.

Conclusion

At this time, it is impossible to accurately predict the future role of UAS technology in day-to-day life. Without a doubt, the potential benefits of this technology are vast and varied. However, the realization of those benefits will be dictated to a great extent by the FAA's response to Congress' mandate that it integrate this promising technology into the national airspace. Further confounding the future potential of UAS technology is the ongoing development of state legislation. Currently, there exists significant criticism of the lack of a unified vision and uniformity in the various states' laws on the issue and, at the rate that legislation is being proposed across the country, this inconsistency is likely to only increase. Moving ahead, constitutional issues and privacy issues will likely move to the forefront of the debate. Issues relating to interstate commerce, law enforcement searches and seizures, and the First Amendment are being debated throughout the country. Safety issues also are being analyzed and hotly debated.

What also remains to be seen is how the UAS industry will affect the legal profession. In all likelihood, the industry will spawn transactional work as well as civil and criminal litigation. There are currently firms and attorneys focusing on Section 333 exemption applications, and a Google search shows multiple attorneys already billing themselves as "drone injury lawyers."

Notwithstanding the current uncertainty, one thing is clear — the future of UAS is now, and it will be incumbent on lawmakers, regulatory agencies and the legal profession to ensure the viability and appropriate regulation of this burgeoning industry.

FOOTNOTES

1. Fed. Aviation Admin., "Integration of Civil Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap" (Nov. 7, 2013), 7, *www.faa.gov/uas/media/uas_roadmap_2013.pdf* [hereinafter, NAS Roadmap].

2. *Id.*

3. *See id.* at 8.

4. Jonathan Vanian, "Guardians of the Grid," Fortune (Nov. 1, 2015), *http://fortune.com/2015/10/23/ge-drones-power-grid/*.

5. Daniel B. Kline, "Google Wants to Use Drones Too, but Not in the Same Way as Amazon," The Motley Fool (Oct. 24, 2015), *www.fool.com/investing/general/2015/10/24/google-wants-to-use-drones-too-but-not-in-the-same.aspx.*

6. Jeremy Bowman, "Amazon.com's Drones Are Ready for Primetime," The Motley Fool (Dec. 7, 2015), *www.fool.com/investing/general/2015/12/07/amazoncoms-drones-are-ready-for-primetime.aspx.*

7. Dyan Gibbens, "Drones in Oil and Gas," Oil & Gas Financial Journal (Dec. 16, 2014),

http://www.ogfj.com/articles/print/volume-11/issue-12/features/drones-in-oil-and-gas.html.

8. Christopher Doering, "Growing Use of Drones Poised to Transform Agriculture," USA TODAY (March 23, 2014), *www.usatoday.com/story/money/business/2014/03/23/drones-agriculture-growth/6665561/.*

9. In the matter of the petition of Yamaha Motor Corp., USA, FAA Reg. Docket No. 2014-0397, *www.faa.gov/uas/legislative_programs/section_333/333_authorizations/media/Yamaha_11448.pdf.*

10. *The Economic Impact of Unmanned Aircraft Systems Integration in the United States*, (March 2013), *www.auvsi.org/auvsiresources/economicreport*.

11. Richard C. Balough, *Under Current Law, There's No Place for Commercial Drones*, CBA Rec., April-May 2015, at 34, 35 (discussing a recent response to a Freedom of Information Act request to the FAA wherein the FAA disclosed that, over a five-month period, pilots and air traffic controllers reported 25 instances where drones came within a few seconds or feet of crashing into much larger aircraft, with many of the near misses occurring near large airports).

12. *See* Timothy T. Takahashi, "Drones and Privacy," 14 Colum. Sci. & Tech. L. Rev. 72 (2013).

13. *See* Benjamin D. Mathews, "Potential Tort Liability for Personal Use of Drone Aircraft," 46 St. Mary's L.J. 573 (2015).

14. *See* Marc J. Blitz, et. al., "Regulating Drones Under the First and Fourth Amendments," 57 Wm. & Mary L. Rev. 49 (2015).

15. *See* Fed. Aviation Admin., "Mission," *www.faa.gov/about/mission/* (last visited Dec. 15, 2015) ("Our continuing mission is to provide the safest, most efficient aerospace system in the world.").

16. *See* Timothy T. Takahashi, "Drones in the National Airspace," 77 J. Air L. & Com. 489, 498 (2012).

17. *See* Fed. Aviation Admin., *Unmanned Aircraft Operations in the National Airspace System*, Docket No. FAA-2006-25714; Notice No. 07-01, 72 Fed. Reg. 29 at 6689 (Feb. 13, 2007), *https://www.faa.gov/uas/media/frnotice_uas.pdf* [hereinafter, FAA 2007 Notice].

18. *See id.*

19. *See* Fed. Aviation Admin., Advisory Circular, AC 91-57A, Model Aircraft Operating Standards (Sept. 2, 2015), *www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91-57A.pdf* (originally enacted in 1981 with slightly different requirements).

20. *See id.*

21. *See id.* at 2-3; see also, FAA Modernization and Reform Act of 2012 § 336(a)-(c), Pub. L. No, 112-95, 126 Stat. 11, 77-78 (2012) [hereinafter, FMRA]; Fed. Aviation Admin., *Model Aircraft Operations, https://www.faa.gov/uas/model_aircraft/* (last visited Dec. 15, 2015). Effective Dec. 21, 2015, recreational UAS operators must also register their aircraft with the FAA's Unmanned Aircraft System Registry before flying their unmanned aircraft outdoors. *See generally* 14 C.F.R. §§ 48.1-48.125; *see also* Fed. Aviation Admin., *Unmanned Aircraft Systems (UAS) Registration, https://www.faa.gov/uas/registration/* (last visited Feb. 2, 2016).

22. *See* FMRA § 332.

23. *See* Operation and Certification of Small Unmanned Aircraft Systems, 80 Fed. Reg. at 9544.

24. See *id.* at 9576.

25. *See* FMRA § 333.

26. *Id.*

27. *See* Fed. Aviation Admin., *Section 333, https://www.faa.gov/uas/legislative_programs/section_333/* (last visited Dec. 15, 2015).

28. National Conference of State Legislatures, Current Unmanned Aircraft State Law Landscape (10/9/15), *www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx.*

29. La. R.S. 14:337(A).

30. *Id.* at (B)(3).

31. *Id.* at (C)(1).

32. *Id.* at (F).

33. *See* Louisiana Senate Concurrent Resolution No. 124 (2014).

34. *See* La. R.S. 3:41-:47.

Brendan P. Doherty is a member of the law firm of Gieger, Laborde & Laperouse, L.L.C. He practices law in Louisiana and Texas in the areas of aviation, energy/oil and gas, products liability and general liability litigation. He earned his JD degree from Loyola University Law School. He is a member of the Louisiana Bar Journal's *Editorial Board. (bdoherty@glllaw.com; Ste. 750, 5151 San Felipe, Houston, TX 77056)*

Bradley J. Schwab is an associate of the law firm of Gieger, Laborde & Laperouse, L.L.C. He practices law primarily in Louisiana in the areas of aviation, products liability and general liability litigation. He earned his JD degree, magna cum laude, *from Tulane University Law School. (bschwab@glllaw.com; Ste. 4800, 701 Poydras St., New Orleans, LA 70139)*

LOUISIANA BUSINESS CORPORATION ACT

IS A GAME CHANGER

A Discussion of Remedies and the Valuation Standard

By Steven G. (Buzz) Durio,
A. Anderson Hartiens
and
Travis J. Broussard

The transformational new Louisiana Business Corporation Act (LBCA) creates new remedies for minority shareholders and a new business valuation standard for Louisiana.[1] By mandating the use of "fair value," the LBCA legislatively completes the jurisprudentially initiated elimination of minority and marketability discounts announced by the Louisiana Supreme Court five years before in *Cannon v. Bertrand*.[2]

The New Act

The new LBCA, effective Jan. 1, 2015, became La. R.S. 12: 1-101, et seq.,[3] through the efforts of the Louisiana Law Institute (Glenn Morris, reporter) and was based on the Model Business Corporation Act of 1999.[4] The LBCA's significant changes to prior law include a new section governing shareholder derivative actions,[5] an extensive elaboration of appraisal rights,[6] and a completely new remedy: the shareholder's right to withdraw.[7]

The New Remedies

Appraisal Rights

The new Act refers to what were once "dissenting shareholder's rights" as "appraisal rights,"[8] triggered by substantially the same transactions under the LBCA that previously triggered dissenting shareholder's rights under the old Louisiana Business Corporation Law (LBCL), without the exception which previously disallowed them in cases where there was 80 percent approval of the triggering transaction.[9] Additionally, appraisal rights now specifically include the right "to obtain payment of the fair value of that shareholder's shares."[10] As discussed below, this change of valuation standard is, in itself, a dramatic remedy for minority shareholders.

Withdrawal for Oppression

Minority shareholders notoriously received little protection under the old LBCL regime.[11] Without the availability of a "buy-out" remedy, minority shareholders could seek only involuntary dissolution based on statutory grounds that were narrowly construed.[12] Because courts perceived this remedy so "drastic" as to be "reluctantly applied," few actions for involuntary dissolution were successful.[13]

With the adoption of the LBCA, Louisiana became the 40th state to provide a statutory remedy for minority shareholder oppression.[14] Under the new regime, minority shareholders whose rights are unjustifiably violated can now "escape from their 'trapped' status by compelling the corporation to purchase their shares."[15] The predicate for this new remedy is "oppression," which is defined by § 1-1435(B):

> A corporation engages in oppression of a shareholder if the corporation's distribution, compensation, governance, and other practices, considered as a whole over an appropriate period of time, are plainly incompatible with a genuine effort on the part of the corporation to deal fairly and in good faith with the shareholder. Conduct that is consistent with the good faith performance of an agreement among all shareholders is presumed not to be oppressive.[16]

The LBCA's definition of oppression incorporates two predominant tests from other states: the "reasonable expectations" test and the "departure from the standards of fair dealing" test.[17] Accordingly, the LBCA anticipates that Louisiana courts will turn to common law jurisprudence when interpreting the term under Louisiana law.[18]

Louisiana joins the majority of states by incorporating the "reasonable expectations" test in its oppression analysis.[19] Historically, this test has required a lower threshold of proof, thus granting relief more liberally to minority shareholders.[20] *In re Kemp & Beatley*, an influential New York decision concerning this test, explained that a complaining shareholder must prove the "majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture."[21] Majority conduct will not be deemed oppressive merely because the minority shareholder's "subjective hopes and desires in joining the venture are not fulfilled."[22] Mere disappointment should not "necessarily be equated with oppression."[23]

Louisiana courts must also evaluate whether the majority shareholders' conduct represents a "departure from the standards of fair dealing."[24] In other words, a successful petitioner must not only demonstrate his reasonable expectations, but also prove that "the majority's behavior, taken as a whole over an appropriate period of time, is plainly incompatible with a genuine effort on the part of the majority to be fair to the shareholders."[25]

Generally, courts that measure oppression based on principles of "fair dealing" agree that oppressive conduct involves "burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of the company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely."[26] This inquiry involves a fact-intensive evaluation of the circumstances. A single act is usually insufficient to establish oppression unless extremely serious.[27] Likewise, "mere vague apprehensions of possible future mischief" or investments that turn out to be a bad bargain are also inadequate.[28]

The New Standard of "Fair Value"

The LBCA repealed the reference to "cash value" in connection with dissenting shareholder rights under the old LBCL and replaced it in the new chapter on appraisal rights. Under the new LBCA, fair value is defined in connection with appraisal rights by La. R. S. 12:1-1301(4):

> (4) "Fair value" means the value of the corporation's shares determined immediately before the effectuation of the corporate action to which the shareholder objects, using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, and *without discounting for lack of marketability or minority status* except, if appropriate, for amendments to the articles pursuant to R.S. 12:1-1302(A)(5) (emphasis added).[29]

This same definition is incorporated in the new withdrawal remedy by La. R.S. 12:1-1435(C) with one important

exception:

> The term "fair value" has the same meaning in this Section and in R.S. 12:1-1436 as it does in R.S. 12:1-1301(4) concerning appraisal rights, *except that the value of a withdrawing shareholder's shares under this Section and R.S. 12:1-1436 is to be determined as of the effective date of the notice of withdrawal* under Subsection D of this Section (emphasis added).[30]

Prior to the LBCA, the terms "cash" value and "value" had been subsumed by the term "fair market value."[31] It was generally acknowledged that "fair market value . . . is not the pro rata share . . . of the fair market value . . . of the entire business . . . [and] can be impacted by such factors as . . . minority discounts."[32] Thus, the reference to "fair market value" was generally understood to require such discounts for minority status or lack of control and lack of a market or marketability.[33]

However, the Louisiana Supreme Court in *Cannon v. Bertrand* [34] largely signaled the death knell for the application of minority or marketability discounts.[35] Since then, LBCL has been completely repealed.[36] The new LBCA eliminates the use of minority discounts by referencing "fair value" instead of "fair market value."[37] Thus, in terms of valuation standards, the new LBCA is both the logical extension and the inevitable conclusion of the analysis the Supreme Court accepted in *Cannon v. Bertrand*.[38]

"Fair value" is a statutory standard of valuation prescribed by state law.[39] There is no mathematical formula available to calculate fair value precisely. Instead, courts are largely left to make this value determination within the confines of the statute.[40] Ultimately, the strength of the withdrawal remedy hinges on the interpretation courts attribute to fair value, hence the range of varied results among the states.[41] Generally, courts have developed two conflicting interpretations of fair value. One interpretation equates fair value with "fair market value" and involves the application of discounts that would apply under a fair market value analysis.[42] Under this test, courts ascertain what price a reasonable and objective observer would pay without reference to the subjective thoughts of the petitioning shareholders.[43] The second approach involves ascertaining the "enterprise value" of the corporation and compensating the minority shareholder with his pro rata portion of the corporation's overall value.[44] Under the LBCA, "fair value" in the context of oppression is defined by reference to § 1-1301(4) concerning appraisal rights.[45] The reference to "businesses" coupled with the explicit rejection of minority and marketability discounts found in § 1301(4) strongly suggests that Louisiana courts should employ an interpretation akin to enterprise value.[46]

In this process, derivative actions, as well as other litigation pending at the time the withdrawal action is brought, have received mixed treatment. For example, a Delaware court in *Lebman v. National Union Elec. Corp.* declined to attribute any special value to the corporation's "long-pending but so far unproductive antitrust suit against Japanese manufacturers," despite acknowledging that the "mere pendency" of such an action would have some effect on the market value of the shares.[47] On the other hand, New York jurisprudence generally allows pending litigation that affects the corporation to be considered in determining the fair value of stock of a minority shareholder.[48] Moreover, a California court held that the valuation of a corporation was incomplete because the appraisers did not "assign a value to the derivative claims being asserted by the minority shareholder moving for dissolution."[49]

While the LBCA is largely silent on handling such pending litigation, foreign jurisprudence indicates that these determinations will continue to occur on a case-by-case basis; Louisiana will likely follow this trend. A prudent practitioner may be wise to assert all available derivative actions before petitioning for withdrawal on the grounds of oppression.[50] This way, as Professor Moll notes, he or she preserves the right to have these suits valued as assets of the corporation:

> Nevertheless, the court in the oppression proceeding will still need to resolve the issues raised in the derivative action because they affect the court's determination of fair value. . . . Even though the derivative action has been stayed, . . . a court will still need to decide whether misappropriation has occurred (and, if so, in what amounts) to fully compensate the minority for the fair value of his shares. Thus, while the stay may eliminate the need to resolve the same issues in two different proceedings, a resolution of those issues is necessary as part of a court's fair value determination.[51]

Because of the highly technical knowledge involved in the various methods of computing "fair value," lawyers should defer to a qualified expert, such as a CVA or ABV,[52] in choosing the method of valuation that both comports with the contours of the LBCA and is most favorable for their clients.

Conclusion

The LBCA is a game changer. It not only provides new opportunities for plaintiffs and defendants, but it changes the method and measure for legal and valuation professionals alike.

FOOTNOTES

1. The authors gratefully acknowledge and express special thanks for the generous assistance of Kristen Hunter, a third-year Louisiana State University Paul M. Hebert Law Center student, whose diligent research and editorial suggestions provided an invaluable contribution to this article.

2. 08-1073 (La. 1/21/09), 2 So.3d 393. *See* Steven G. Durio, "Discounts in Business Valuations after *Cannon v. Bertrand*," 57 La. B.J. 24 (2009) (hereinafter, "Durio, *Discounts*"). Durio served as counsel and A. Anderson Hartiens, a certified public accountant and valuation analyst in the Lafayette firm, Hartiens & Faulk, was the testifying valuation expert for Mr. Cannon in *Cannon v. Bertrand*.

3. Act 328 also repealed the first chapter of the Louisiana Business Corporation Law, consisting of R.S. 12:1 through 12:178. *See* 2014 Revision Comments to La. R.S. 12:1-101 (Supp. 2015).

4. *Id*.

5. *See* Section 1-740, *et seq.* The Act also included a provision that exempts shareholder derivative proceedings as defined in the LBCA from the application of Chapter 5 regarding "Class and Derivative Actions" in the Code of Civil Procedure. *See* La. C. C. P. art. 611(B).

6. *See* Section 1-1301, *et seq.*

7. *See* Section 1-1401, *et seq.*

8. Glenn G. Morris, "Model Business Corpora-

tion Act As Adopted in Louisiana," 75 La. L. Rev. 983, 1047 (2015).

9. La. R.S. 12:131(A) (Supp. 2015).

10. La. R.S. 12:1-1302(A) (Supp. 2015).

11. 7 La. Civ. L. Treatise, Business Organizations § 22.08.

12. 8 La. Civ. L. Treatise, Business Organizations § 40.11.

13. *Id.*; *see, e.g.,* Gruenberg v. Goldmine Plantation, Inc., 360 So.2d 884, 885 (La. App. 4 Cir. 1978).

14. Douglas K. Moll, "Shareholder Oppression and the New Louisiana Business Corporation Act," 60 Loy. L. Rev. 461, 462 (2014) (hereinafter, "Moll, *Shareholder Oppression*").

15. *Id.* at 463.

16. Section 1435 goes on to state:

> The following factors are relevant in assessing the fairness and good faith of the corporation's practices:
> (1) The conduct of the shareholder alleging oppression.
> (2) The treatment that a reasonable shareholder would consider fair under the circumstances, considering the reasonable expectations of all shareholders in the corporation.

17. La. R.S. 12:1-1435 cmts. a, d (Supp. 2015); *see also* Joshua A. DeCuir, "New Remedy for Oppressed Shareholders of Closely-Held Corporations," 62 La.B.J. 314, 315 (2015). While some jurisdictions employ a fiduciary duty theory to establish oppression, the Louisiana Law Institute did not choose to incorporate this standard into Louisiana's definition of oppression. *See* 12:1-1435 cmt. d.

18. *Id.*

19. F. Hodge O'Neal and Robert B. Thompson, *Oppression of Minority Shareholders & LLC Members* § 7:11, at 7-105 to 7-108 (rev. 2d ed. 2012).

20. 2 Close Corp and LLCs: Law and Practice § 9:33 (Rev. 3d ed.).

21. Matter of Kemp & Beatley, Inc., 64 N.Y. 2d 63, 73, 473 N.E. 2d 1173, 1179 (1984).

22. *Id.*

23. *Id.*

24. Moll, *Shareholder Oppression,* 471.

25. La. R.S. 12:1-1435 cmt. d(1) (Supp. 2015).

26. Fix v. Fix Material Co., 538 S.W.2d 351, 358 (Mo. App. 1976). Although a combination of a long-term management contract to controlling shareholders, heavy losses coupled with sale of corporate assets, and salary increases to those in charge came narrowly close, it did not rise to a level of oppressive or illegal conduct, but continuation of such conduct might well produce a different result in a subsequent action.

27. Struckhoff v. Echo Ridge Farm, Inc., 833 S.W.2d 463, 467 (Mo. App. 1992).

28. Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P. 2d 387, 397 (1973). The court went on to note: "It appears, however, that plaintiffs have since been permitted to examine the records and that the meetings in question occurred in 1969 and 1970. There was also no evidence that there is any reason to believe that proper notice will not be given to them of future meetings." *Id.*

29. This provision stems *verbatim* from the Revised Model Business Corp. Act of 1999 as reflected in the 2002 edition. *See,* Pratt, Shannon P., *The Lawyer's Business Valuation Handbook,* pp. 293-94 (hereinafter, "Pratt, *Valuation Handbook*").

30. Section 1-1435 provides that the corporation may accept the notice of withdrawal or dispute the allegation of oppression in an ordinary proceeding. Section 1-1436 applies after a notice of withdrawal and acceptance or a determination of oppression, and provides for a judicial determination of "fair value" by summary proceeding if the parties fail to determine it by negotiation within 60 days.

31. Shopf v. Marina del Ray Partnership, 549 So.2d 833 (La. 1989), as discussed in and distinguished by Cannon v. Bertrand, supra. *See also,* Durio, *Discounts.*

32. Pratt, *Valuation Handbook,* p. 4. "The largest single issue in most shareholder and partner valuation disputes is whether discounts and/or premiums are applicable, and if so, what is the magnitude of such discounts and/or premiums? The most common issues involve minority discount or control premiums and discounts for lack of marketability." *Id.* at 298.

33. *See* Shopf, 549 So.2d 833 at 849, as quoted in Cannon, 2 So.3d 393 at 395-96: "The most significant adjustment must be made in recognition of the fact that [Shopf's] share is a minority interest in a closely held business. The determination of the value of a fractional share in a business entity involves more than fixing the value of the business and multiplying by the fraction being evaluated, especially when the share is a minority interest. A minority interest may be uniquely valuable to the owner, but may have considerably less value to an independent third party, because the interest is relatively illiquid and difficult to market. . . . There is no testimony in this record discussing the applicability of a minority interest discount to plaintiff's share, but some reduction is clearly warranted. Under the circumstances of this case we apply a discount of one-third . . . as the fair market value."

34. 08-1073 (La. 1/21/09), 2 So.3d 393.

35. *See* Durio, *Discounts*. Cannon noted: "Nationally, the trend in law is away from applying such discounts. *See, e.g.,* 7 La. Civ. L. Treatise, Business Organizations § 4.11 (2008)." Cannon, fn. 4.

36. 2014 La. Acts No. 328, Section 5, eff. Jan. 1, 2015. *See also* note 2, supra.

37. *See* La. R.S. 12:1-1301(4), 1302, 1435, *passim.*

38. "Minority discounts and other discounts, such as for lack of marketability, may have a place in our law; however, such discounts must be used sparingly and only when the facts support their use. . . . Furthermore, discounting the market value . . . would be inequitable. The withdrawing partner should not be penalized for doing something the law allows him to do, and the remaining partners should not thereby realize a windfall profit at his expense." Cannon, 2 So.3d 393 at 396. *See also* Maison Orleans Partnership in Commendam v. Stewart, 14-341 (La. App. 5 Cir. 12/16/14), 167 So.3d 1, 6-7 ("We are unable to distinguish [*Cannon*] from the facts before us, and therefore conclude that it was error to apply either discount."), *writ denied*, 15-0096 (La. 4/2/15), 163 So.3d 798.

39. Pratt, *Valuation Handbook,* pg. 5.

40. *Id*., 294.

41. 12B Fletcher Cyc. Corp. § 5906.120.

42. Moll, *Shareholder Oppression,* 498.

43. *Id.*

44. *Id*. at 499.

45. La. R.S. 12:1-1301(4) (Supp. 2015); *see also* La. R.S. 12:1-1435(C) (Supp. 2015).

46. La. R.S. 12:1-1301(4).

47. Lebman v. National Union Elec. Corp., 414 A.2d 824, 826 (Del. Ch. 1980).

48. In re Dissolution of Penepent Corp., 96 N.Y.2d 186, 726 N.Y.S.2d 345, 750 N.E.2d 47 (2001).

49. Cotton v. Expo Power Systems, Inc., 170 Cal. App. 4th 1371 (Cal. App. 2 Dist. 2009).

50. *See* Maison Orleans Partnership in Commendam v. Stewart, *supra*, decided under LBCL: "We also note that as to the derivative claims involving MOII, when Mr. Stewart opted to trigger the applicability of La. R.S. 12:131, he gave up all rights to assert any claims, including derivative ones, as to that corporation."

51. Moll, *Shareholder Oppression,* 505-06.

52. A "CVA" is a certified valuation analyst. An "ABV" is an accredited business valuator.

Steven G. (Buzz) Durio is a founding partner of the Lafayette firm of Durio, McGoffin, Stagg & Ackermann. He received BA and JD degrees in 1977 from Louisiana State University and LSU Paul M. Hebert Law Center (managing editor, Louisiana Law Review, *1976-77) and was admitted to practice that year. He practices in the areas of commercial transactions and litigation, as well as banking and financial institutions. (durio@dmsfirm.com; 220 Heymann Blvd., Lafayette, LA 70503)*

A. Anderson Hartiens, CPA, CVA, is the founding partner of the Lafayette CPA firm of Hartiens & Faulk, L.L.P. He received a BS degree in accounting from the University of Louisiana-Lafayette and is a member of the AICPA, LCPA and NACVA. He practices in the areas of tax, litigation support services and management advisory services. (ahartiens@hartiens.com; Ste. 101, 124 Heymann Blvd., Lafayette, LA 70503)

Travis J. Broussard is an associate in the Lafayette firm of Durio, McGoffin, Stagg & Ackermann. A 2010 honors graduate of Southern University Law Center, he practices in the area of commercial litigation with a focus on complex business torts, breach of contract matters and "business divorces." (travis@dmsfirm.com; 220 Heymann Blvd., Lafayette, LA 70503)

17 LSBA Members Recognized for Volunteer Work with Citizen Lawyer Awards

Seventeen Louisiana State Bar Association (LSBA) members received Citizen Lawyer Awards in 2015-16.

The Citizen Lawyer Awards, previously known as the Crystal Gavel Awards, recognize individual attorneys and judges who have made significant volunteer contributions in their communities. Award recipients have performed volunteer work out of a sense of duty, responsibility and professionalism.

The LSBA wishes to acknowledge these 17 unsung heroes and heroines from across the state. The list of community projects undertaken by these LSBA members is extensive. Here are a few highlights for each of the award recipients. (For 2015-16, no nominations were received from District 2.)

District 1

Hon. Joyce C. Lobrano, New Orleans

Hon. Joyce C. Lobrano, a judge on the 4th Circuit Court of Appeal, is a founder of the Plaquemines Community C.A.R.E. (Counseling, Assessment/Advocacy, Resources, Education) Center Foundation, Inc., a nationally recognized non-profit center providing quality-of-life-enhancing services (legal, behavioral and mental health). Her care center model is also being used in St. Charles Parish. Judge Lobrano also is a founding member of Eden House, a non-profit organization offering housing, food, medical and dental services, therapy, education and job training for women who have survived lives of prostitution, violence and addiction, often victims of human trafficking. She co-authored a White Paper for the Louisiana Senate on the issue of the human trafficking of minors in Louisiana, and she participated on the Legislature's Human Trafficking Minors Working Group. She also has implemented Project L.E.A.D. (Legal Enrichment And Decision-making) for fifth graders and Project L.A.W. (Legal-thinking, Awareness and Wellness of spirit, mind and body) for ninth graders.

Kim S. Sport, New Orleans

Attorney Kim S. Sport founded Jefferson Dollars for Scholars, which has awarded more than $15 million in summer camp and college scholarships to 4,500 students in the Jefferson Parish Public School System. A three-time cancer survivor, Sport, in 2010, launched "Breastoration," a philanthropic partnership to assist and educate women contemplating surgical options following a diagnosis of breast cancer. She collaborated with the Louisiana State Board of Medical Examiners to draft the 2012 breast cancer treatment alternatives brochure, mandated by state law to be given by physicians to every women diagnosed with breast cancer. During the 2014 legislative session, Sport drafted five domestic violence bills, among them, to help women immediately divorce their abusers, to provide punitive damages for physical and mental injuries caused by a family member and to increase criminal sanctions for domestic abuse and violations of protective orders. All bills passed unanimously and were signed into law in May 2014.

District 3

Hon. Douglas J. Saloom, Lafayette

Hon. Douglas J. Saloom, a judge for Lafayette City Court, has volunteered countless hours to the Lafayette Bar Association, civic and professional organizations and schools. He presented free CLEs for Acadiana area attorneys on the Legislature's changes to expungement laws and prepared materials on the topic to the Lafayette Parish Public Law Library. He helped create a pro se expungement clinic program. Clinics are held at the Lafayette Bar Association using videoconferencing equipment donated by the LSBA. Judge Saloom is an advocate for public safety and use of automobile safety belts, particularly the "I Click It! Cross My Heart" Program, which reached 8,000 children in Lafayette. He also was involved in creating a traffic program to help prevent fatigued and impaired driving. A frequent guest speaker at schools, he has addressed more than 20,000 students since1995 on topics of judicial impartiality and the impact of drunken driving.

District 4

Homer E. Barousse, Jr., Crowley

Attorney Homer (Ed) Barousse, Jr. has made contributions in the legal and extralegal arenas. An attorney for 50 years, he has participated in the administration of ethical complaints against attorneys on behalf of the Louisiana Attorney Disciplinary Board. He also has represented attorneys with complaints that have been filed against them. Whenever there is a community event, Barousse is present. More likely than not and without any fanfare, he financially contributed to the event.

Derrick D. Kee, Lake Charles

Attorney Derrick D. Kee is president of the V.I.S.A. (Vision, Integrity, Structure and Accountability) Coalition, a community organization working to build bridges of success for future generations through education, expungements and civic engagement. V.I.S.A. has organized a "Parade to the Polls" event to encourage voter turnout in local elections. More than 300 people attended the event, with the tagline, "It doesn't matter who you vote for, just come vote with us!" V.I.S.A. also sought and was awarded grant funding to provide free expungements for 15 people whose records were preventing them from achieving gainful employment.

Hon. David A. Ritchie, Lake Charles

Hon. David A. Ritchie, a judge for the 14th Judicial District Court, was recognized for his continued dedication to the Southwest Louisiana Bar Association's Young Lawyers Section (YLS). He served as a presiding judge for the Louisiana State Bar Association's mock trial tournament in Lake Charles. He also has worked closely with the Southwest Louisiana Bar Foundation to provide greater access to the justice system for members of the local community.

District 5A

Preston J. Castille, Jr., Baton Rouge

Attorney Preston J. Castille, Jr., as president of the Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc., assisted in the establishment of the Louis A. Martinet Foundation and the foundation's pro bono and mentoring programs. As president of the Baton Rouge Bar Association and Foundation in 2011, he assisted in the creation of the Bar's Junior Partners Academy, an award-winning mentoring program for elementary and middle school students. He chaired the Capital Area Legal Services Corp. board of directors and assisted in the organization's transition to Southeast Legal Services Corp. In 2012, as president of the Southern University Laboratory School, he helped the school avoid closure because of funding deficits and worked to secure state capital outlay funding for building improvements. In 2013, he joined the New Schools for Baton Rouge board of directors, a group focusing on improving the quality of K-12 education in the Baton Rouge area.

District 5B

Lila Tritico Hogan, Hammond

Attorney Lila Tritico Hogan has been an inspiration to Hammond area attorneys for her work in domestic violence and family law. She is a former president of the Mayor's Commission on the Needs of Women and drafted its Sexual Abuse Manual. She also serves with the Southeast Spouse Abuse Program as an organizer, trainer and drafter of protective order forms. She is a member of the the Southeastern Louisiana University Family Counseling Advisory Committee and the LSU Family Law Seminar Planning Committee. Since 2011, she has been involved with both the national organization and the state chapter of the Association of Family and Conciliation Courts.

Hon. William J. Knight, Covington

In 2012, Hon. William J. Knight founded the 22nd Judicial District Court's Reentry Court Program and worked to pass legislation that granted authority for a pilot program of a Risk-Needs Assessment procedure. The Reentry Court gives nonviolent felony offenders the tools needed to become productive members of the community. Through the program, participants learn a vocational skill and obtain a GED, if necessary. For participants who have returned to probation, Judge Knight holds weekly staffing sessions with treatment providers, case managers, and representatives from the District Attorney's and Public Defender's offices. He also organizes trips to Angola for community members and prospective employers interested in the program. Judge Knight has been actively involved with CASA, the Youth Services Bureau, the Franklinton Area Economic Development Foundation, the Chamber of Commerce, Upward Community Services, Habitat for Humanity, Special Olympics, the National Cancer Society, the Susan G. Komen Foundation and the Washington Parish Junior Livestock Program.

Alan A. Zaunbrecher, Covington

Attorney Alan A. Zaunbrecher serves on the President's Council of the Mary Bird Perkins Cancer Center. The President's Council hosts a single major fundraiser each year to help make the Center's services available to anyone, regardless of the ability to pay. In 2012, he was co-chair of the Bench, Bar and Badge Project, in which members of the legal community built a Habitat for Humanity house. He participates in the Real Men of St. Tammany Annual Gala, which raises funds to support women and children who are the victims of domestic violence. He also volunteers with the Southeast Louisiana Legal Services North Shore Pro Bono Project.

District 6

Hon. Dee D. Drell, Alexandria

Hon. Dee D. Drell, a judge for U.S. District Court, Western District of Louisiana, received the Leah Hipple McKay Memorial Award for Outstanding Volunteerism. He has devoted many pro bono hours to help individuals suffering from Acquired Immune Deficiency Syndrome. He also counseled the Central Louisiana AIDS Support Services and AIDSLaw of Louisiana, Inc. He served on the boards of the Family Mediation Council of Louisiana and the Rapides Parish Indigent Defender Board. He also was a member of a state task force on racial and ethnic fairness in the courts and is an active member of Kiwanis International.

Paul J. Tellarico, Alexandria

Attorney Paul J. Tellarico, recognized for his outstanding pro bono work, volunteers for nearly every event hosted by the Central Louisiana Pro Bono Project. He also regularly accepts cases from the Project. He is a volunteer for the Child in Need of Care (CINC) Program, and he volunteers with the Self-Help Desk at the Rapides Parish Courthouse. He participates in free legal clinics coordinated by the Central Louisiana

Pro Bono Project, helping clients prepare their wills, advance directives and gives general civil legal advice. He has received the Project's MVP Award for having the most pro bono hours in that year.

District 7

Derrick D. Carson, Ferriday

Attorney Derrick D. Carson has used his legal skills to serve as a peacemaker and go-between in his community on issues of civil rights. In 2005, he was awarded the Freedom Fund Award by the local chapter of the NAACP. The award recognizes those who have dedicated their time and energy in education, government, business and community service to the ideals, vision and mission of the NAACP. In 2007, he received the Trustees of Freedom Gideon Award from the Louisiana Association of Criminal Defense Lawyers, presented to attorneys in recognition of outstanding contributions to the right to counsel, including legislative work, work "in the trenches" and a concern for clients and criminal justice.

Hon. Terry A. Doughty, Rayville

Hon. Terry A. Doughty, a judge for the 5th Judicial District Court, administers and presides over the Drug Court Program in the 5th JDC and was instrumental in establishing the newly formed Juvenile Drug Court Program. He is active with the Celebrate Recovery Program for individuals suffering from various addictions, both in his home parish of Richland and in West Carroll Parish (another parish in his judicial jurisdiction).

District 8

W. Michael Adams, Shreveport

Attorney W. Michael Adams is active with the Volunteers of America of North Louisiana, serving as board chair and Endowment Committee chair (implementing the endowment itself) and working with the VOA's Lighthouse, an after-school tutoring program for at-risk students. He chairs the First United Methodist Church's Administrative Board and is a member of the board of trustees. He also has actively participated in the Red River Revel Arts Festival for several years, serving as president of the governing board and as the on-call volunteer for the information booth.

Melissa Scott Flores, Shreveport

Attorney Melissa Scott Flores is the Project Research and Development chair of the Junior League of Shreveport-Bossier. She created the Girls'/Women's Education Institute, which fosters monthly interaction between League members and at-risk girls and women on topics of finances, career preparation, healthy living and self-esteem. She serves on the Caddo Parish Children and Youth Planning Board, implementing a comprehensive plan for services and programs for children and youth. She also is involved with the Volunteers of America Program and is a "Cherish the Children" member. She was instrumental in partnering her law firm and the VOA for "Give for Good Day," a 24-hour online giving challenge to raise unrestricted dollars for the nonprofits in north Louisiana.

Hon. Carl E. Stewart, Shreveport

Hon. Carl E. Stewart, chief judge of the U.S. 5th Circuit Court of Appeals, is a board member of the Norwela Council Boy Scouts of America, serving as Council president and as local council representative for the National Council of Boy Scouts of America. At the national level, he is chair of the Whitney M. Young, Jr. National Service Award Selection Committee for Boy Scouts of America and is a member of the Boy Scouts of America National Scoutreach Committee. He is a former president of the Community Foundation of Shreveport-Bossier. A charter member of the Harry V. Booth/Judge Henry A. Politz American Inn of Court in Shreveport, he served as vice president of the American Inns of Court Foundation. He has volunteered with the Shreveport Bar Association's "People's Law School" and the LSU Law Center Post-Graduate Summer School for Lawyers.

The 2016-17 Citizen Lawyer Award nomination deadline is June 30. Learn more about the award and nomination procedures online (click "Service Awards") at: https://www.lsba.org/Members/Awards.aspx.

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* The National Academy of Distinguished Neutrals is an invitation-only professional association of over 900 litigator-rated mediators & arbitrators throughout the US and a proud partner of the AAJ and DRI. For more info, please visit www.NADN.org/about

BACK TO BASICS

Louisiana State Bar Association 1941 75th 2016 ANNIVERSARY

2016 LSBA 75TH ANNUAL MEETING & LSBA/LJC JOINT SUMMER SCHOOL

Celebrate the Louisiana State Bar Association's 75th Annual Meeting in style! Don't miss your chance to earn CLE credits at the renowned LSBA/LJC Joint Summer School! A full week of activities is planned, allowing participants to enjoy six days of substantive law programming, exciting social events and fascinating speakers, all for one great price!

This year's mega event will proudly feature:

- Dynamic, Interactive Panels
- Multiple Substantive Law Tracks
- Nationally Renowned Keynote Speakers
- New Business Development/Practice Management Track
- Lively Evening Receptions and Law School Gatherings
- Fun Supervised Kids' Activities During Evening Social Events
- Networking Opportunities With Leading Judges and Lawyers

ANNUAL MEETING **HIGHLIGHTS***

SUNDAY, JUNE 5

CLE Programming

Opening Reception in Exhibit Hall

MONDAY, JUNE 6

CLE Programming

2015/2016 LSBA Board of Governors Meeting
(open to 2015/2016 Board members)

2016/2017 Louisiana Judicial College Board of Governors Meeting
(open to 2016/2017 Board members)

Senior Lawyers Division Meeting

TUESDAY, JUNE 7

CLE Programming

Section Council Meeting
(open to Section officers)

Golf Tournament

Tennis Tournament

Law School Alumni Parties

WEDNESDAY, JUNE 8

CLE Programming

2015/2016 Young Lawyers Division Council Meeting
(open to 2015/2016 Council members)

First-Time Attendees Networking Reception
Hosts: Leadership LSBA 2015-2016 Class

2016/2017 Young Lawyers Division Council Meeting
(open to 2016/2017 Council members)

Summer Soirée
Featuring the presentation of YLD awards and installation of 2016/2017 YLD Officers and Council. This family-friendly event includes live music, food and libations (ticketed event)
Presiding: Erin O. Braud, 2015/2016 Chair

JUNE 5-10, 2016

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

THURSDAY, JUNE 9

CLE Programming

General Assembly and House of Delegates Meeting
Featuring reports and presentation of awards

Louisiana Supreme Court Reception

Installation Luncheon

Louisiana Center for Law and Civic Education Reception
The Beach House Pool Deck

Beach Bash
Family event featuring food, libations and entertainment (ticketed event)

FRIDAY, JUNE 10

CLE Programming

2016/2017 LSBA Board of Governors Meeting
(open to 2016/2017 Board members)

BACK TO BASICS

2016 LSBA 75TH ANNUAL MEETING & LSBA/LJC JOINT SUMMER SCHOOL

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

For complete schedule, including speakers, please visit *www.lsba.org/AnnualMeeting.*

CRIMINAL LAW & PROCEDURE
FOR LAWYERS & JUDGES

- **Recent Developments in Criminal Law and Procedure**
- **Admissibility of Forensic Interviews *v.* The Confrontation Clause**
- **It's Normal to be Normal: Children and Forensic Examinations**
- **United States Supreme Court Constitutional Cases**
- **The Value of Re - entry Courts and Their Best Practices**
- **Louisiana Public Defender Board: Statutorily Required Weighted Caseload Study: Transparency, Objectivity, Methodology, and Preliminary Results**
- **The Search for Behavioral Health Services – A Daunting Task**
- **The Face of Mental Health**
- **Building Blocks for an Effective Behavioral Health Court**
- **Predicting the Future and Responding to the Changing Needs of Clients - Panel Discussion**

BACK TO BASICS:
NUTS & BOLTS ON MANY AREAS OF LAW

- **Simple Bankruptcy**
- **Business Torts and Commercial Claims 101**
- **Louisiana Civil Procedure**
- **Wills, Trusts, and Successions**
- **Oil and Gas Law**
- **Ethics: "What Would Momma Say?- The Sequel"**
- **Employment Law Update**
- **Family Law**
- **Everybody's Doing It: Gambling and Sweepstakes Law for the Non-Gaming Lawyer**
- **Short- and Long-Term Responses to Mental Health Issues for the General Practitioner**
- **How to Get Your Client Out of Jail**
- **Federal Evidence Updates**
- **DWI Law for the Initiated**

BUSINESS AND COMMERCIAL SESSIONS
FOR JUDGES & LAWYERS

- **Zoning and Land Use Update**
- **Ethics 2016**
- **ERISA: What's Hot**
- **Recent Developments in Expropriation**
- **Lawyers Ethics in the Danger Zone - ETHICS**
- **Leasing 2016: Drafting Them and Enforcing Them**

HEALTHY FAMILIES MATTER:
ENHANCING UNDERSTANDING AND RESPONSE TO DOMESTIC VIOLENCE WITHIN THE LOUISIANA JUDICIAL SYSTEM

- **LPOR Update: Foundation for Enhancing Judicial Understanding and the Appropriate Response to Domestic Violence**
- **Serving Vulnerable Children & Families through Trauma Informed Courts: A Workshop**
- **Enhancing Judicial Understanding and Response to Domestic Violence in Louisiana Courts – Part 1, 2 & 3**

JOIN IN ON BONUS WELLNESS ACTIVITIES!

MORNING **FUN RUN**
Join your peers for some exercise, fun, and networking!

2ND ANNUAL **DALEY/CHENEY RUN/WALK**

CARDIO **SCULPT**
Use your own body weight as resistance in a workout with an upbeat vibe! Get your beach body on!

VINYASA YOGA & **MEDITATION**
All levels welcome!

MINDFULNESS **& MEDITATION** *(Space is limited)*
Wellness activity sponsored by Judges and Lawyers' Assistance Program

June 5–10, 2016 • Destin, Florida

BACK TO BASICS

2016 LSBA 75TH ANNUAL MEETING & LSBA/LJC JOINT SUMMER SCHOOL

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

For complete schedule, including speakers, please visit *www.lsba.org/AnnualMeeting.*

JUDGES & LAWYERS SESSIONS
SPONSORED BY LSBA SECTIONS

- **Attacks on the Judiciary** *Produced by Class Action, Mass Tort and Complex Litigation Section of the LSBA*
- **The Impact of *Obergefell v. Hodges*: What Does the Future Hold?** *Produced by LSBA Diversity Committee LGBT Sub-Committee*
- **Your Business and Foreign Employees: Hot Topics** *Produced by LSBA Immigration Law Section*
- **Client and Witness Candor in Trial Practice** - *Produced by LSBA Civil Law and Litigation Section*
- **The Influence of French Law and History in Louisiana: Then and Now** *Produced by LSBA Francophone Section*
- **Jury Selection Form and Substance: Is Post-Racial America Alive and Well in the Courtroom?** *Produced by LSBA Member Outreach & Diversity Department*
- **The Role of International Law in Louisiana Courts** *Produced by LSBA International Law Section*
- **The Combined Excel Detailed Descriptive List (DDL) (Managing the property division for the Court and counsel)** *Produced by Family Law Section*
- **Use of Technology in Discovery and Trial: No Longer Optional** - Includes a discussion on the ethics rule passed in several states regarding competency. *Produced by LSBA Young Lawyers Division*
- **Consumer Law** *Produced by Consumer Law Section*
- **Hot Topics in State and Local Tax (Post Legislation) – Part 1 & 2** *Produced by Taxation Section*
- **Understanding the Louisiana Special Immigrant Juvenile: Updates and Overview** *Produced by the Immigration Law Section*

GENERAL SESSIONS
FOR JUDGES & LAWYERS

- **Leadership in the Law**
- **What Are Juries Really Thinking**
- **How to Appropriately Represent High-Profile Clients in the Best Interest of the Client**
- **Extraordinary Measures: Actions in Quo Warranto, Declaratory Judgment, Mandamus and Prohibition, Summary Trials and Habeas Corpus**
- **Child Abduction Cases under The Hague Convention**
- **The Art of Cross Examination – Part 1**
- **Turning Your One-Man Office Into a Firm Through the Use of Technology or Incorporating Technology into Your Law Practice**
- **The Art of Cross Examination: Drilling Down on Hour One**
- **How to Take a Deposition**
- **Who Pays Much Attention to Interdictions**
- **Evidence: Emerging Issues in the New Age - Social Media and More**
- **How to Position a Case for Settlement**
- **Preparing for Trial, Herding Cats, and Other Mind-Bending Challenges**
- **What is the Best Juridical Entity?**
- **Ghosts in the Machines: Future Crimes and Data Security Challenges for Every Connected Company in the Digital Age**
- **Federal Substance and Procedure**
- **(Professor) Amy (Gajda) on Torts**
- **Updates in Employment Law**
- **Pay or Stay Sentencing: Why It's Illegal and Why We Need a Better Idea**
- **"Am I Losing My Mind, or Is It Something Else?" . . .** An overview of the types of mental health impairments legal professionals suffer and how JLAP can help!
- **Important Maritime and Tort Law Developments (…With Practical Observations From the Bench)** *An Insurance, Tort, Workers' Compensation and Admiralty Section Law CLE*
- **Finding Innocent Prisoners in Louisiana's Prisons and Preventing Wrongful Convictions in Louisiana's Courts** a summary of how Louisiana compares to other states in convicting and freeing the innocent. Discussion includes historical and current causes of wrongful convictions and the current post-conviction mechanism for finding & freeing the innocent.
- **Professionalism Panel Q&A: Modern Politics as Our Wake-Up Call?** Is the national political rancor a precursor of where things are headed for bench & bar? What to do? *Produced by the Bench & Bar Section*
- **Legislative Updates**
- **The Great Debate — Incarceration in Louisiana: "Who Should Be In and For How Long, or Are You Really Releasing All of Those Thugs from Jail?"**

June 5–10, 2016 • Destin, Florida

Register **Online at**
www.lsba.org/AnnualMeeting

JUDGES ONLY **SESSIONS**

- **Judicial Discipline in Louisiana: Transparency, Efficiency, and Fairness**
- **Advocating for the Judiciary I & II -**
- **Juvenile Shackling Reform: Why States are Rethinking Indiscriminate Restraints**
- **Advocating for the Judiciary I & II**
- **Media Relations: Proactive, Reactive and How We Can Help You**
- **Women in Leadership – Gender and Justice: Applying a Gender Lens to Judging Case Studies of Women on the Bench**
- **Imposing a Sentence Reflective of Your Intentions**
- **Women in Leadership – Gender and Justice: Applying a Gender Lens to Judging Critical Perspectives on Gender and Judging (Women Judges Only)**
- ***Montgomery v. Louisiana*, Past, Present and Into the Future**
- **Women in Leadership – Gender and Justice: Applying a Gender Lens to Judging Moving Toward Collective Action: How Can We Work Together to Eliminate Gender Bias?**
- **What Judges Can Do To Help the Profession - The Judge's Role in the TIP (New Lawyer Mentoring) Program**
- **Inns of Court - Judicial Participation**
- **The Judicial Mentorship Program**
- **New Judge Training**
- **The Emotional Lives of Judges I & II**
- **Eviction and Garnishment**
- **The Emotional Lives of Judges III**
- **Down and Dirty Overview, Death is Different**
- **Appellate Best Practices: Musing on Steps in Judicial Writing**
- **Jury Selection Issues Unique to Capital Cases**
- **Rural Courts Roundtable: Problems Particular to Rural Courts**
- **Penalty Phase: Reverse Repellant**
- **Appellate Best Practices ─ The Curious Appellate Judge: Ethical Limits on Independent Research**

Registration **Options**

Registration Options	May 27	On-Site
Lawyers	$850	$895
Lawyers 4-Day	$775	$825
Judges	$725	$775
Judges 4-Day	$650	$675
Legal Services/Gov't/ Academia/YLD member**	$725	$775
Legal Services/Gov't/ Academia/YLD member** 4-Day	$650	$675

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 receptions, dinners, installations and other events planned as part of the Annual Meeting & Joint Summer School. Check back on the website at *www.lsba.org/AnnualMeeting* for an up-to-date agenda.

* 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: Kristin Durand, Program Coordinator / Meeting & Events, Louisiana State Bar Association, kristin.durand@lsba.org or call (504)619-0116 or call tollfree (800)421-LSBA, ext. 116.

***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 who are members of the LSBA Young Lawyers Division. Members of the YLD are considered: Every member of the Louisiana State Bar Association who has not reached the age of thirty-nine (39) years or who has been admitted to the practice of law for less than five (5) years, whichever is later, is by virtue thereof a member of the Young Lawyers Division. (Article I, Section 1, Bylaws of the Louisiana State Bar Association, Young Lawyers Division).*

Cancellations, Refunds & Course Materials

Cancellation of registration must be received in writing by the LSBA no later than Friday, May 20, 2016. Cancellations will receive a full refund, less a $30 administrative charge. Absolutely no refunds will be made after Friday, May 20, 2016. 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 e-mailed to aburas@lsba.org. **Any questions, please contact Annette Buras, CLE Coordinator, (504)619-0102.**

Important Note: A link to the seminar materials will be emailed to members prior to the Combined LSBA Annual Meeting and LSBA/LJC Joint Summer School to the registered LSBA email of record; check your LSBA account to make sure the email address is correct. The LSBA suggests members print the materials in advance. If you choose to review the materials from your electronic device, charge the battery, as electrical outlets may be limited at the event. Internet access will not be available in the meeting rooms. **PLEASE NOTE: Printed materials will not be available.**

YOUR ADVOCATE.
YOUR PARTNER.
YOUR LSBA COMMITTEE.

The Legal Malpractice Insurance Committee of the Louisiana State Bar Association holds the endorsed insurance carrier to a high standard of accountability for the benefit of all its members.

Your LSBA Committee serves you by ensuring:

- A policy offering essential coverages.
- An opportunity for coverage for the majority of Louisiana attorneys.
- A continuous oversight of premium rates to provide a stable program.

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CNA

LSBA 50-, 60-, 70-Year Members Recognized at Midyear Meeting

More than 180 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 in New Orleans. During the reception, the honorees received certificates presented by LSBA President Mark A. Cunningham. The honorees also posed for photos with Cunningham, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and Associate Justice John L. Weimer. The following Bar members were recognized.

Among the 50-year Louisiana State Bar Association members attending the reception were, front row from left, Hon. Oswald A. Decuir, Dr. Jack C. Castrogiovanni (60-year member), Richard S. Derbes, Charles R. Whitehead, Jr., James M. Field, Sr., Hon. John W. Greene, Samuel P. Love, Jr., Kenneth W. Campbell, Dominick J. Scandurro, Jr., John P. Everett, Jr. and D. Scott Brown. Standing from left, Lee R. Miller, Jr., Maurice C. Hebert, Jr., Henry A. Bernard, Jr., C. Jerome D'Aquila, Charles Emile Bruneau, Jr., Raymond G. Sexton, John I. Hulse IV, Kenneth F. Sills, William J. Luscy III, Stephen A. Stefanski, Hon. Herman C. Clause, Joseph N. Marcal III, Robert P. Charbonnet, Joseph R. McMahon, Jr., Andrew M. Weir, Joseph J. Weigand, Jr., Wallace H. Paletou, Charles W. Dittmer, Jr., Albert J. Derbes III and Philip deV. Claverie, Sr. *Photo by Matthew Hinton Photography.*

50-Year Honorees

These LSBA members were admitted to the Bar in 1966.

Herschel L. Abbott, Jr. ..... New Orleans
Michael C. Abrahm ..... Baton Rouge
Alfred Abramson ..... New Orleans
William R. Alford, Jr. ..... Covington
Patrick J. Araguel, Jr. ..... Columbus, GA
Claude J. Aucoin, Jr. ..... New Orleans
Col. James R. Barrow ..... Walla Walla, WA
Catherine L. Barter ..... The Woodlands, TX
Henry A. Bernard, Jr. ..... Lafayette
Gordon P. Bienvenu ..... Metairie
Mary Coon Biggs ..... Monroe
Donald E. Bradford ..... Baton Rouge
D. Scott Brown ..... Mansfield
Hon. Henry N. Brown, Jr. ..... Shreveport
Charles Emile Bruneau, Jr. ..... New Orleans
Kenneth W. Campbell ..... Leesburg, FL
Donald T. Carmouche ..... Baton Rouge
Harold B. Carter, Jr. ..... Little Rock, AR
Gerald J. Casler ..... Madisonville
Maurice S. Cazaubon, Jr. ..... Lafayette
Robert P. Charbonnet ..... New Orleans
L. Frank Chopin ..... West Palm Beach, FL
Joseph F. Ciolino ..... Madison, MS
Hon. Herman C. Clause ..... Carencro
Philip deV. Claverie, Sr. ..... New Orleans
Samuel H. Collins ..... Tucson, AZ
Carl E. Cooper ..... Monroe
Robert M. Cordell ..... Lafayette
Margaret A.O. Correro ..... New Orleans
Jere L. Crago ..... Metairie
Wilbert Oscar Crain, Jr. ..... Shreveport
C. Jerome D'Aquila ..... New Roads
Peter T. Dazzio ..... Baton Rouge
Gerald L. DeBlois ..... Metairie
Hon. Oswald A. Decuir ..... New Iberia
Albert J. Derbes III ..... New Orleans
Richard S. Derbes ..... Baton Rouge
Charles W. Dittmer, Jr. ..... Metairie
Richard J. Dodson ..... Baton Rouge
James C. Downs ..... Alexandria
Donald W. Doyle, Jr. ..... New Orleans
Paul H. Due ..... Baton Rouge
Bobbie J. Duplantis ..... Lafayette
Hon. Stanwood R. Duval, Jr. ..... New Orleans

Among the 60-year Louisiana State Bar Association members attending the reception were, front row from left, Alvin W. LaCoste, Dr. Jack C. Castrogiovanni, Hon. Thomas P. McGee, Joan A. Danner and Thomas A. Casey, Sr. *Photo by Matthew Hinton Photography.*

William T. Elliott ..... New Orleans
James O. Ervin..... Baton Rouge
John P. Everett, Jr..... Lake Charles
Doris Falkenheiner ..... Baton Rouge
James M. Field..... Baton Rouge
Hugh Craig Forshner..... Ridgeland, MS
Iva Macdonald Futrell ..... Arlington, VA
John W. Futrell..... Arlington, VA
Pierre F. Gaudin..... Gretna
William J.F. Gearheard..... Mandeville
C. James Gelpi..... Holden
Joseph J. Gendusa, Jr..... Slidell
Harvey G. Gleason ..... Metairie
Mat Marion Gray III..... New Orleans
Hon. John W. Greene..... Covington
Anthony J. Guarisco, Jr. ..... Baton Rouge
Louis B. Guidry..... Lake Charles
Paul J. Hardy..... Baton Rouge
Ronald L. Harris ..... Sun Lakes, AZ
Hon. John R. Harrison..... Monroe
Maurice C. Hebert, Jr. ..... River Ridge
Russ M. Herman..... New Orleans
Ana V. Hernandez..... Coral Gables, FL
Arthur L. Herold..... Washington, DC
James F. Holmes..... Metairie
Robert O. Homes, Jr. ..... Gulfport, MS
John I. Hulse IV..... Metairie
David F. Hutchins..... Lafayette
John W. Hutchison..... Lafayette
Robert M. Johnston ..... New Orleans
Francis J. Judycki ..... Morgan City
Donald G. Kelly..... Natchitoches
Robert J. Kinler ..... Slidell
Jerry Kircus..... Shreveport
Hon. Robert J. Klees..... Meraux
Jerold E. Knoll..... Marksville
Howard W. L'Enfant, Jr. ..... Denham Springs
David Andrew Lang ..... Jackson, MS
Edward Larvadain, Jr..... Alexandria
William J. Larzelere, Jr..... Metairie
Christopher E. Lawler ..... Metairie
Henry R. Lazarus..... New Orleans
William R. Leary ..... Houma
Hon. Edward M. Leonard, Jr..... Franklin
Samuel P. Love, Jr. ..... Shreveport
William J. Luscy III..... Metairie
Joseph N. Marcal III..... New Orleans
Julian Clark Martin..... Houston, TX
Richard P. Massony ..... New Orleans
Robert K. McCalla ..... New Orleans
L.V. McGinty..... Paducah, KY
Daniel A. McGovern IV..... Slidell
Joseph R. McMahon, Jr. ..... New Orleans
Lee R. Miller, Jr. ..... Baton Rouge
Farris Mitchell ..... Richardson, TX
Alton T. Moran ..... Baton Rouge
Dimitry M. Morvant, Jr. ..... New Orleans
William Hugh Mouton ..... Lafayette
Ronald L. Naquin ..... Metairie
Judith A. Nichols ..... Missouri City, TX
Lancelot P. Olinde ..... Houston, TX
Wallace H. Paletou ..... Metairie
Vernon V. Palmer..... New Orleans
Antonio E. Papale, Jr. ..... Metairie
William S. Penick..... New Orleans
Eugene R. Preaus..... New Orleans
Rogers M. Prestridge..... Shreveport
C. Emmett Pugh ..... Suffield, CT
Charles H. Ritchey ..... Metairie
Alvis J. Roche..... Lake Charles
Robert L. Roshto ..... Baton Rouge
Gordon E. Rountree..... Shreveport
Richard L. Savoy..... Lake Charles
Dominick Scandurro, Jr..... Belle Chasse
John R. Schupp..... Daphne, AL
Raymond G. Sexton ..... Baton Rouge
Kenneth F. Sills..... Baton Rouge
Michael Silvers..... New Orleans
Jerry Hugh Smith..... Lexington, KY
Gary R. Steckler ..... St. Landry
Stephen A. Stefanski..... Crowley
Richard G. Steiner ..... Gretna
Clement Story III..... Lafayette
Walter G. Strong, Jr. ..... Sulphur
Frank W. Summers II ..... Abbeville
John A. Sutherlin, Jr..... Covington
Phyllis M. Taylor..... New Orleans
James E. Toups, Jr..... Baton Rouge
William D. Treeby ..... New Orleans
Peter J. Vernaci ..... Mandeville
David C. Vosbein..... Gulf Breeze, FL
Robert L. Watkins..... New Orleans
Joseph J. Weigand, Jr..... Houma
Andrew M. Weir..... Metairie
Charles R. Whitehead, Jr. ..... Natchitoches
Louis A. Wilson, Jr. ..... New Orleans
John Duncan Wogan..... New Orleans
William G. Yates..... Houma
Katherine Schwab Yeargain ..... Ponchatoula
Leonard A. Young..... New Orleans

60-Year Honorees

These LSBA members were admitted to the Bar in 1956.

Donald J. Baker ..... Metairie
Adelaide W. Benjamin..... New Orleans
Daniel V. Blackstock ..... Oroville, CA
J. Joseph Blotner..... Gretna
Patrick Walsh Browne, Jr. ..... New Orleans
Patrick T. Caffery..... New Iberia
Thomas A. Casey, Sr..... Metairie
Jack C. Castrogiovanni..... Metairie
Edward A. Champagne, Jr. ..... New Orleans
John Catlett Christian ..... Madisonville
Joan A. Danner ..... Metairie
James E. Diaz ..... Lafayette
David M. Ellison, Jr..... Baton Rouge
Hoffman Franklin Fuller ..... New Orleans
Gayle K. Hamilton ..... Shreveport
Robert H. Hodges..... Baton Rouge
William C. Hollier..... Lafayette
J. Bennett Johnston, Jr. ..... McLean, VA
Donald Lucius King ..... New Orleans
Alvin W. LaCoste ..... New Orleans
Robert Liles, Jr..... Metairie
Huey K. McFatter..... Sulphur
Hon. Thomas P. McGee ..... Santa Rosa Beach, FLA
George Hefley Meadors ..... Homer
A. Charles Occhipinti..... Metairie
Hugh B. O'Connor ..... Baton Rouge
John David Ponder ..... Amite
Edward J. Seymour, Jr. ..... Monroe
Hon. Anne Lennan Simon ..... New Iberia
Hon. James T. Trimble, Jr. ..... Alexandria
Justice Jack Crozier Watson..... Lake Charles
W. Leonard Werner..... Baton Rouge
John S. White, Jr. ..... Baton Rouge
Herbert F. Young..... Bay St. Louis, MS

70-Year Honorees

These LSBA members were admitted to the Bar in 1946.

Hon. Nestor Currault, Jr. ..... Gretna
Carol Byrns Fleddermann .....Pensacola, FL
Betty G. Ratcliff ..... Baton Rouge
A. Lester Sarpy..... Metairie
Guyton H. Watkins..... New Iberia

Electronic Payment of 2016-17 LSBA Dues and LADB Assessment Accessible in Mid-May

Louisiana State Bar Association (LSBA) members have the option to pay their LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessment by ACH electronic check, credit card, or download and mail their Attorney Registration Statement and checks for the payment of fees. Members can also file their Trust Account Disclosure and Overdraft Notification Authorization following the online payment process. Members are 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.

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.

Members will be advised to report current year trust account information and provided with the option to file the Trust Account Disclosure & Overdraft Notification Authorization online at *www.LADB.org/trustaccount*. Filing deadline is July 1, 2016.

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 online access information to create a LSBA.org member account and to obtain instructions regarding the online filing and payment process. This is the only mailing members will receive. Attorney Registration Statements will NOT be mailed. ***Filing and payment deadline is July 1, 2016.***

Once members have electronically filed their Attorney Registration Statements (including any necessary changes and/or updates) and made the required payments, they 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%, 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.

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June 26-29, 2016
Post-Legislative Conference
Carmel Valley Ranch
Carmel, California
An informative program, including discussions on actions taken during the 2016 legislative sessions.

August 19, 2016
High Stakes on the High Seas
Windsor Court Hotel, New Orleans
Maritime CLE conference.

December 15-16, 2016
Last Chance
Hyatt Regency New Orleans
Dual-track CLE program featuring national and top Louisiana speakers. Includes ethics and professionalism.

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LAJ members enjoy discounted registration fees for most LAJ conferences.
Visit www.lafj.org or call 225-383-5554 for details, registration and to learn about other upcoming events.

Louisiana Association for JUSTICE

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Westgate High Teacher Receives President's Award of Excellence

Jennifer L. Mestayer-Kidd, a teacher at Westgate High School in New Iberia, is the 2016 recipient of the President's Award of Excellence for Outstanding Law-Related Education. The award, presented jointly by the Louisiana Center for Law and Civic Education (LCLCE) and the Louisiana State Bar Association (LSBA), recognizes outstanding Louisiana elementary, middle or high school teachers who impart knowledge and understanding of law and civic education and demonstrate the use of interactive learning techniques.

LCLCE Board member Judge C. Wendell Manning and LSBA President Mark A. Cunningham presented Mestayer-Kidd with a plaque of appreciation and funds to purchase law-related education materials for her classroom. The presentation was conducted at a reception during the LSBA's Midyear Meeting in New Orleans.

Mestayer-Kidd has taught school for 15 years. She is the Social Studies Department chair at Westgate. She also sponsors the Diversity Club, chairs the Staff Appreciation Committee, heads the Homecoming Committee and serves on the Positive Behavioral Intervention and Support Committee.

Jennifer L. Mestayer-Kidd, center, the Social Studies Department chair at Westgate High School in New Iberia, is the 2016 recipient of the President's Award of Excellence for Outstanding Law-Related Education. Presenting the award were Louisiana Center for Law and Civic Education Board member Judge C. Wendell Manning, left, and Louisiana State Bar Association President Mark A. Cunningham. *Photo by Matthew Hinton Photography.*

"This quote by Tommy Jeff (as my students call Thomas Jefferson) sums up why I chose to leave my career as an English teacher (10 years, five as department chair) and start my career as a civics teacher — 'All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression,'" Mestayer-Kidd said.

Letters to the Editor Policy

1. At the discretion of the Editorial Board (EB), letters to the editor are published in the *Louisiana Bar Journal*.

2. If there is any question about whether a particular letter to the editor should be published, the decision of the editor shall be final. If a letter questioning or criticizing Louisiana State Bar Association (LSBA) policies, rules or functions is received, the editor is encouraged to send a copy of that letter to the appropriate entity for reply within the production schedule of the *Louisiana Bar Journal*. If the editor deems it appropriate, replies may be printed with the original letter, or in a subsequent issue of the *Louisiana Bar Journal*.

3. Letters should be no longer than 200 words.

4. Letters should be typewritten, signed and, if applicable, include LSBA member number, address and phone number. Letters from non-members of the LSBA also will be considered for publication. Unsigned letters are not published.

5. Not more than three letters from any individual will be published within one year.

6. Letters also may be clarified or edited for grammar, punctuation and style by staff. In addition, the EB may edit letters based on space considerations and the number and nature of letters received on any single topic. Editors may limit the number of letters published on a single topic, choosing letters that provide differing perspectives. Authors, editorial staff or other LSBA representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

7. Letters may pertain to recent articles, columns or other letters. Letters responding to a previously published letter should address the issues and not be a personal attack on the author.

8. No letter shall be published that contains defamatory or obscene material, violates the Rules of Professional Conduct or otherwise may subject the LSBA to civil or criminal liability.

9. No letter shall be published that contains a solicitation or advertisement for a commercial or business purpose.

Attorneys Apply for Recertification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for recertification as legal specialists for the period of Jan. 1, 2017, to Dec. 31, 2021. Any person wanting to comment on the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, or email barbara.shafranski@lsba.org, no later than June 30, 2016.

It is also requested that any knowledge of sanctions or other professional action against an applicant be reported during this comment period.

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By Elizabeth LeBlanc Voss

COMPETENCE IN THE INFORMATION AGE

The Luddites were early 19th century workers, primarily in the cotton and wool mills of England, who fought against industrialization. They actively sought to destroy machinery they feared would replace them with low-wage laborers. Today, "luddite" describes someone who resists progress. In the legal field, the term most often describes lawyers who eschew computer use or intentionally avoid adapting to new technologies in favor of tried-and-true practices of the past. But the term also applies to lawyers who do not adequately understand the technology they use.

There was a time when failing to adapt to new technologies would merely put lawyers at a disadvantage — simply because it took them longer to do their work. The old-school lawyer still preferred to read from bound Reporters, write notes on a legal pad, then thumb through pages Shepardizing that research. These tried-and-true research methodologies learned as a law student or law clerk worked, so why mess with a good thing?

The answer is, oftentimes, change actually does make things better. There was a time when telephones were not mobile, multi-functional devices; shopping was done in person in a department store; and typewriters, Dictaphones and copy machines were not only the most important office technology, for many firms, they were the ONLY pieces of office technology. Today we engage in complex work in an even more complex world. New technology crops up regularly. Work procedures and communications change. There are good reasons to move on to newer and better technology methods and lawyers need to understand the capabilities and limitations of this technology.

Some lawyers, fearful of or disinterested in technology, claim they cannot master it, relying on their children and grandchildren to program phones and remote controls and set up computers. But, anyone who can learn the nuances of handling a medical malpractice claim, how to prosecute a patent infringement or how to negotiate a merger or acquisition has the capacity to learn the basics about technology. It may require learning new terminology, but it is certainly within the grasp of any lawyer's abilities. Lawyers don't have to understand coding or computer engineering, but they do need to know what it means, for example, to store information in the cloud and the risks they and their clients face when cloud storage is used. Also, they need to understand how to comply with e-discovery and any court rule requirements related to electronic court filings.

Avoiding technology is no longer merely a disadvantage in a law practice; it could be an ethics violation, or worse, malpractice. In 2012, the ABA added a "technological competence" component to the Model Rule 1.1[1] comments. Specifically, Comment 8 to the Model Rule, "Maintaining Competence," provides:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

To date, roughly one third of the states[2] have adopted Comment 8 in their versions of ABA Model Rule 1.1. Louisiana is not yet one of them, but it is expected that most states, including Louisiana, will follow suit. Even if Louisiana never adopts this provision, from a risk perspective, it is recommended that lawyers proactively recognize a duty of basic competence, including using readily available technology to avoid errors, and that they understand the technology they and their clients use or could use.

Rule 1.1 of the Louisiana Rules of Professional Conduct sets out a lawyer's duty to be competent. The duty of competency encompasses more than just possessing adequate knowledge of the law. At a minimum,

a lawyer must have the requisite knowledge and skills to perform the legal services he/she agrees to perform. But, more than that, lawyers must exercise at least the degree of care, skill and diligence exercised by prudent practicing lawyers in the same locality. *Ramp v. St. Paul Fire & Marine Ins. Co.*, 269 So.2d 239, 244 (La. 1972); *Jenkins v. St. Paul Fire & Marine Ins. Co.*, 422 So.2d 1109 (La. 1982); *Leonard v. Reeves*, 82 So.3d 1250, 1257 (La. App. 1 Cir. 2012) (noting that the "legal standard of care may vary depending upon the particular circumstances of the [attorney-client] relationship"); *Sherwin-Williams Co. v. First La. Constr., Inc*, 915 So.2d 841, 845 (La. App. 1 Cir. 2005); *Burris v. Vinet*, 664 So.2d 1225, 1229 (La. App. 1 Cir. 1995); *Leonard v. Stephens*, 588 So.2d 1300, 1304 (La. App. 2 Cir. 1991); *Nelson v. Waldrup*, 565 So.2d 1078, 1079 (La. App. 4 Cir. 1990); *Reed v. Verwoerdt*, 490 So.2d 421, 427 (La. App. 5 Cir. 1986).

As new technologies develop and are incorporated into the practice of law, they become the new standard — the new baseline for competency. Lawyers should have a basic understanding of the technologies they use, and they should understand the privacy law that applies in the event there is a breach of that technology. An example of technology that will require much greater attention is social media. Many lawyers might avoid social media as a personal choice, and they may not have social media pages for their firms. But that doesn't mean they can remain ignorant about the various forms of social media and how they might impact a client. A Facebook post or an Instagram photo might violate a no-contact order. This probably is no surprise to younger lawyers who are more familiar with social media. But, it might not be intuitive to someone who is unfamiliar with the many social networking sites now being used by people of all ages. Recently, a New York judge issued a court order barring a woman from contacting another person by "electronic or any other means." Shortly thereafter, the woman subject to the protective order tagged the protected party in a Facebook post. The court ruled that this action violated the court order.

If you are an admitted "luddite," what does all this mean to you? Must you use specific technology? Not necessarily, as long as your failure to do so does not negatively impact your competence. But, what if you fail to use a readily available computer conflicts or calendaring system that would have caught an error? We all still must meet the standard of care of lawyers in our locality. For most law firms, this means there is a need to have a basic understanding of the capabilities and limitations of a particular type of technology before assessing the benefits and risks of using that technology in a law practice. If a breach of your systems were to occur, no prudent lawyer would want to be in a position of admitting that he/she was unaware of inherent security risks or that they were ignorant about the purpose the technology serves. Even in Louisiana, a state that has not adopted the ABA Model Rule, lawyers are urged to be proactive. Educate yourself and protect your practice.

FOOTNOTES

1. The ABA Model Rule does not create an actual duty toward technological competence. But, there have been ethics opinions and sanction rulings in jurisdictions across the country where lawyers are found at fault (or held responsible) over circumstances resulting from their lack of understanding of technology. It appears we are moving toward an actual and substantive duty.

2. Arizona (effective 1/1/15); Arkansas (effective 6/26/14); Connecticut (effective 1/1/14); Delaware (effective 3/1/13); Idaho (effective 7/1/14); Illinois (effective 1/1/16); Kansas (effective 3/1/14); Massachusetts (effective 7/1/15); Minnesota (adopted the ABA Model Rule, but not the comments, 2/24/15); New Hampshire (effective 1/1/16); New Mexico (effective 12/31/13); New York (adopted 3/28/15); North Carolina (approved 7/25/14, varies slightly from ABA Model Rule); Ohio (effective 4/1/15); Pennsylvania (approved 10/22/13, effective 30 days later); Virginia (effective 3/1/16); West Virginia (effective 1/1/15); Wyoming (effective 10/6/14).

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.

By J.E. (Buddy) Stockwell | DOPING WITH ADDERALL

Many are familiar with the term "doping" after U.S. cyclist Lance Armstrong was stripped of all his titles in 2012 because he used performance-enhancing drugs to win races. In the aftermath, he lamented he had no choice because, according to him, competitors were doping too and he had to "level the playing field."

Unfortunately, some college students have adopted the same type of "doping to win" mentality. The pressure to win is even more extreme in law and medical schools. The drug of choice — Adderall, a prescription amphetamine and Schedule II drug (drugs with the highest potential for addiction and abuse).

Like cocaine, Adderall is a stimulant that, when used by a typical person, increases dopamine, causes euphoria and facilitates staying awake for hours. Interestingly, however, Adderall has a much different effect on people with ADHD; it slows their minds down and reduces hyperactivity.

For people without ADHD who are taking Adderall non-medically as a study aid, there are significant risks. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), 89.5 percent of college students who use Adderall non-medically also report binge drinking. Half are heavy alcohol users. They are three times more likely to use marijuana, five times more likely to use pain medications without a prescription, and eight times more likely to use tranquilizers without a prescription. Also, 28.9 percent of illicit Adderall users have tried cocaine compared to only 3.6 percent of college students in the general population who do not use Adderall non-medically.[1]

In the worst cases, Adderall use results in death. In 2010, 21-year-old Vanderbilt University student Kyle Craig lost his life.[2] Suffering from increasing deterioration of his mental health due to Adderall abuse, he stepped in front of a passenger train and ended his life.

Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334
www.louisianajlap.com
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In 2011, 24-year-old Richard Fee lost his life. Psychotic from Adderall abuse in attempts to make the grades to enter medical school, he hung himself in his closet. The *New York Times'* article, "Drowned in a Stream of Prescriptions,"[3] is a horrifying look at the dangers of student doping with Adderall and how easy it is to get the drug. According to the article, Fee was "an intelligent and articulate young man lying to doctor after doctor, [with] physicians issuing hasty diagnoses, and psychiatrists continuing to prescribe medication — even increasing dosages — despite evidence of [Richard's] growing addiction and psychiatric breakdown."

It appears to be shockingly easy to hoodwink some doctors into prescribing Adderall. Search "How do I get an Adderall prescription" online and a plethora of links prepare you to meet with a doctor, feign ADHD and walk out with a pile of Adderall.

Don't feel comfortable with fraud at the doctor's office? No problem. Ask around campus to see if someone has "study buddy" or "A-bombs" and illegally buy Adderall. There is a lucrative black market supplying Adderall to students who believe they can't compete academically without it.

Unfortunately, the Adderall abuse epidemic is not limited to students. The Judges and Lawyers Assistance Program (JLAP) assists lawyers who are abusing or addicted to Adderall, and the abuse often began in law school. Some come to JLAP psychotic and suicidal.

If all of the above information is not terrifying enough, some experts now claim Adderall is not a "smart drug" at all and that people only *think* they are doing better on tests when they actually are not.[4]

What is the path back from the Adderall-doping trap? At JLAP, the first step is to facilitate a reliable JLAP-approved ADHD assessment to determine whether the person has ADHD. If there is no ADHD present, the person is referred to a JLAP-approved facility to extricate him/her from the grip of Adderall abuse, safely ending its use and restoring the person's mental health to allow competition at his/her natural best.

If you or someone you know needs help for Adderall abuse, make a confidential call to JLAP at (985)778-0571 or visit *www.louisianajlap.com* for more information.

FOOTNOTES

1. Substance Abuse and Mental Health Services Administration (SAMHSA), *http://media.samhsa.gov/samhsaNewsletter/Volume_17_Number_3/Adderall.aspx*.

2. ABC News Online, *http://abcnews.go.com/Health/MindMoodNews/adderall-psychosis-suicide-college-students-abuse-study-drug/story?id=12066619*.

3. *New York Times*, "Drowned in a Stream of Prescriptions," *www.nytimes.com/2013/02/03/us/concerns-about-adhd-practices-and-amphetamine-addiction.html?_r=0*.

4. *The Daily Beast*, "Busting the Adderall Myth," *www.thedailybeast.com/articles/2010/12/21/adderall-concentration-benefits-in-doubt-new-study.html*.

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

Thanks to 9th Annual Conclave on Diversity in the Legal Profession Sponsors and Co-Hosts

The March 4, 2016, Conclave on Diversity in the Legal Profession was a success because of the generous support from sponsors and co-hosts. The Louisiana State Bar Association's Diversity Committee and the Conclave Subcommittee want to acknowledge this support.

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The Louisiana State Bar Association (LSBA) honored Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, center, with the establishment of an annual award in her name. On hand for the March 4 announcement at the LSBA's ninth annual Conclave on Diversity in the Legal Profession in Baton Rouge were, at left, attorney Roderick A. (Rick) Palmore, with Dentons US LLP and the conclave's keynote speaker; and LSBA President Mark A. Cunningham. The "Chief Justice Bernette Joshua Johnson Trailblazer Award" will be presented annually at the LSBA's Annual Meeting to a recipient who demonstrates a unique blend of experience, skills and accomplishments which translate into successful diversity and inclusion efforts.

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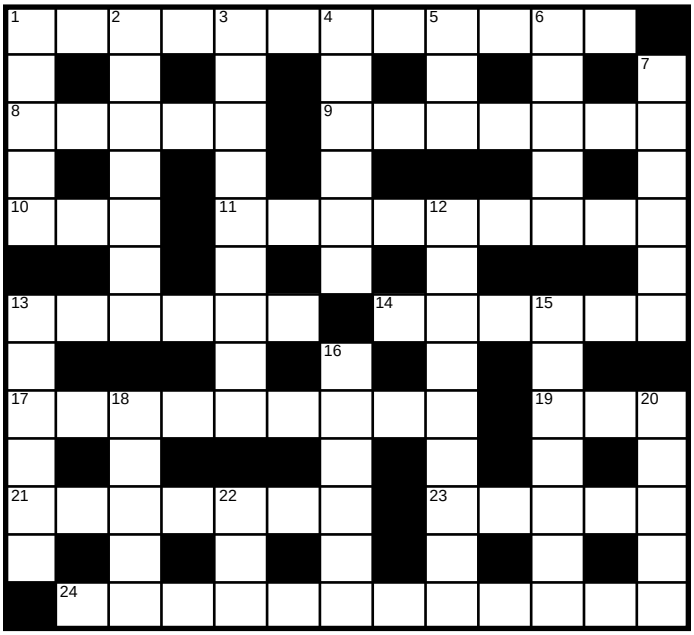
Crossword PUZZLE

By Hal Odom, Jr. | SO YOU WANT A SUMMARY JUDGMENT?



ACROSS

1 First part of what mover must negate for summary judgment, under Art. 966C(1) (7, 5)
8 Advantage (3, 2)
9 Join as a third-party defendant (7)
10 Adversary (3)
11 One kind of document that is evidence on motion for summary judgment (9)
13 Like a tune you can't forget (6)
14 "Drums Along the ___," Fonda-Colbert frontier drama (6)
17 Another kind of document admissible on motion for summary judgment (9)
19 Belly (3)
21 Kind of restaurant with table service (3-4)
23 Airline seating option (5)
24 Second part of what mover must negate for summary judgment, Art. 966 C(1) *and* Rule 56(a) (8, 4)

DOWN

1 Musical symbol indicating notes above Middle C (1, 4)
2 Failure to act, when there is a duty to act (7)
3 Attacked a witness's credibility (9)
4 Something you can't figure out (6)
5 Small or dainty taste (3)
6 Wombs (5)
7 Where Lech Walesa founded Solidarity (6)
12 Deficit (9)
13 Provision of constitution or contract (6)
15 Where the Masters Tournament is held (7)
16 Forward, to Luigi (6)
18 Islamic decree or legal ruling (5)
20 Unauthorized taking, with intent to deprive permanently (5)
22 Be indebted to (3)

Answers on page 455.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334
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	John A. Gutierrez	(225)715-5438 (225)744-3555
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New Orleans	Deborah Faust	(504)304-1500
	Donald Massey	(504)585-0290
	Dian Tooley	(504)861-5682 (504)831-1838
Shreveport	Michelle AndrePont	(318)347-8532
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	Steve Thomas	(318)872-6250

The Judges and Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

By Lauren E. Godshall and Meghan E. Smith

THE LAW STUDENT DEBT CRISIS MATTERS

This year, Louisiana State Bar Association (LSBA) President Mark A. Cunningham charged the Committee on the Profession with a special task—focusing on the issue of law student debt. Student loan debt (both undergraduate and graduate debt) tripled from $364 billion in 2004 to $966 billion in 2012.[1] Both authors of this article graduated with more than $100,000 of student loan debt from law school alone.

Rising tuition costs account for much of this huge debt load. However, tuition costs alone do not account for the entire growth in debt; the student loan ombudsman for the Consumer Financial Protection Bureau also blamed the housing crisis and recession, in part: "[B]ecause American families lost so much in home equity and so much in wealth that what they would typically have contributed to their depended child's education really shrunk. And so it shifted a lot of costs from one generation to another, leading to a huge jump in debt."[2]

Regardless of the source of the problem, the issue now facing new lawyers is the combined burdens of huge student loan debts and an overburdened legal market. Law schools graduate around 40,000 students each year, although those numbers are now decreasing;[3] the Bureau of Labor Statistics, however, projects an average of 15,770 new law jobs per year between 2014 and 2024.[4] This is a problem we will be hearing about for years to come.

But, for lawyers whose loans are a distant memory, or who attended law school before tuition began to skyrocket, the problem may not resonate. This makes sense: Why should lawyers without debt care about the bad financial decisions made by new entrants to the profession? Frankly, however, it is not just the problem of the newer lawyers trying to make their staggering monthly payments; it is

a problem for the entire profession.

"Law school debt is a significant concern to the future of our profession. In recent years, many of the best and brightest college students are looking at what their debt load will look like after law school and job prospects and choosing to pursue other careers. These same concerns also create a significant barrier to increasing diversity within our profession," President Cunningham said.

Impact on the Profession

President Cunningham also noted, "Law school debt also negatively impacts the public. Recent law school graduates who might otherwise pursue careers in public service or social justice often have no choice but to work in the commercial sector. Even years after graduating from law school, solo and small firm practitioners must take law school debt into account when calculating their overhead which translates into higher fees for clients."

This is an extremely important concern, one recently echoed in the *New York Times* by a law school dean at CUNY: "For many students, high debt drives legal employment preferences and decisions — in exactly the wrong direction. Being deeply in debt at graduation drives young lawyers *away* from crucial but less highly compensated public interest practice, which leaves low-income and moderate-income communities chronically underrepresented."[5]

Impact on Law Firms

Law firms may appear to benefit from the situation, able to select only the best candidates from the sea of graduates who far outnumber the available positions. But law firms should consider that their younger hires are facing levels of debt that older lawyers never experienced and are operating under a correspondingly greater amount of stress. It may be no surprise that a new study conducted jointly by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation found that younger lawyers are the segment of the profession most at risk of substance abuse and mental health problems. One of the authors of this study pointed out, "Our profession faces truly significant challenges related to attorney well-being."[6]

Aside from the quality-of-life considerations that may affect law firms as this younger, debt-burdened generation comes up through the ranks, law firms should not view the current situation as a "buyer's market" because long-term implications are not that simple. Yes, there may be more law school graduates than new legal jobs are created each year, but several studies have shown that the law school debt picture may have farther-reaching consequences on the talent pool in the future. With the economic downturn in 2008 and the increased scrutiny on law schools' positions as university "cash cows," there was a sudden shift between

the drop in law school applications and the enrollment numbers necessary to support the oversaturated law school market, particularly in the lower-ranked schools and for-profit institutions.[7] This resulted in a pool of law school students who scored, on average, lower on the LSATs than previous classes of applicants.[8] This trend in the applicant pool could lead to broader implications for the profession, as declining bar passage rates correspond to the continued drop in average LSAT scores, and headlines like "Are Lawyers Getting Dumber?" appear on the cover of *Bloomberg Businessweek*.[9] With the long-term bar passage rates down, mid-sized and boutique law firms could find a dearth of quality young associates for hire.

Impact on Lawyers as Taxpayers

Even young lawyers who are making minimum payments on an income-based repayment plan (available for some federal loans) may not fully understand the long-term implications for their tax bill. Under the plan, after 20 or 25 years (this depends on the date the student took the loan) of making minimum payments as determined by the debtor's income, the remaining debt is canceled. However, with ballooning interests rates and rising principals, some debtors could end up canceling hundreds of thousands of dollars in unpaid principal and interest — resulting in a hefty bill from the IRS which will treat that canceled debt as income in the final year of repayment.[10]

Putting aside the consequences for lawyers as individual taxpayers, the student debt crisis is concerning in the aggregate sense for all lawyers as taxpayers. The majority of student loans are backed by the U.S. government through banks like Sallie Mae or, since 2010, by the Department of Education. Translation: The creditor in this scenario is the U.S. taxpayer who, if students default on these loans, will be subject to carry the burden of these loans.[11]

Higher loan amounts, longer repayment periods, rising default rates and high tax bills for canceled debt can all contribute to an even more worrisome existential crisis facing the next generation of lawyers and taxpayers alike — the disappearance of adequate retirement planning and an increased burden on public subsidies and payments later in life. In fact, studies show this impact on retirement accounts is not limited to new graduates; as parents and grandparents co-signed student loan debt for their children, many are carrying that debt into their present retirement.[12] Increased loan payments in lawyers' first years in the profession also mean that they may not be adequately funding or focusing on their retirement years.[13] One study found that the average student loan debt of $35,000 can cost the borrower up to $700,000 in lost retirement savings.

What Should We Do?

The Committee on the Profession's Subcommittee on Law School Debt Issues is exploring this pressing issue, including advising students while still in law school. Ideas are welcome and needed, so join the discussion.

President Cunningham frames the call to action as a duty that all members of the Bar owe, not just new graduates: "For the past 20 or so years, many universities have used law schools as profit centers and paid little attention to the long-term impact their strategies have had on the public or the profession. The LSBA owes a duty to the public and its members to fill this void by offering law students and recent graduates services on how to manage law school debt in a fiscally responsible manner."

Those who want to serve on the Law School Debt Subcommittee or want to become more involved on the issue should contact the Committee on the Profession via LSBA Associate Executive Director Cheri C. Grodsky, email cgrodsky@lsba.org.

FOOTNOTES

1. M. Brown, et al., "Measuring Student Debt and Its Performance," Federal Reserve Bank of NY Report, April 2014, *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr668.pdf.*

2. *www.americanbar.org/news/abanews/aba-news-archives/2015/02/education_debt_crisi.html.*

3. ABA Section of Legal Education reports 2013 law school enrollment data, *www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba_section_of_legal.html*; "2015 State of Legal Education," Law School Transparency, *www.lawschooltransparency.com/reform/projects/investigations/2015/analysis/.*

4. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections, *www.bls.gov/emp/ep_table_102.htm.*

5. Michelle J. Anderson, Opinion, Nov. 2, 2015, *www.nytimes.com/2015/11/02/opinion/the-debt-burden-of-law-school-graduates.html.*

6. James Podgers, "Younger lawyers are most at risk for substance abuse and mental health problems, a new study reports," Feb. 7, 2016, *www.abajournal.com/mobile/article/younger_lawyers_are_most_at_risk_for_substance_abuse_and_mental_health_prob.*

7. Editorial Board of the *New York Times*, "The Law School Debt Crisis," Oct. 24, 2015, *www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html.*

8. Jerry Organ, "Changes in Composition of the LSAT Profiles of Matriculants and Law Schools Between 2010 and 2015," Jan 18, 2016, *http://lawprofessors.typepad.com/legalwhiteboard/.*

9. Natalie Kitroeff, "Are Lawyers Getting Dumber?" Aug. 20, 2015, *www.bloomberg.com/news/features/2015-08-20/are-lawyers-getting-dumber-.*

10. See generally, Jonathan A. LaPlante, "Congress's Tax Bomb: Income-Based Repayment and Disarming a Problem Facing Student Loan Borrowers," 100 Cornell L. Rev. 703 (2015).

11. Chris Denhart, "How the $1.2 Trillion College Debt Crisis is Crippling Students, Parents and the Economy," Aug 7, 2013, *www.forbes.com/sites/specialfeatures/2013/08/07/how-the-college-debt-is-crippling-students-parents-and-the-economy/#749a9a361a41.*

12. Sharon Epperson, "Student Loan Debt Is a Big — and Growing — Problem for Retirees," June 18, 2015, *www.nbcnews.com/news/education/student-loan-debt-big-growing-problem-retirees-n377881.*

13. Anthony Mason, "Study: Student loans getting in the way of retirement," Nov. 11, 2015, *www.cbsnews.com/news/study-student-loans-getting-in-the-way-of-retirement/.*

Lauren E. Godshall and Meghan E. Smith are members of the Louisiana State Bar Association Committee on the Profession's Law School Debt Issues Subcommittee. They both practice environmental and energy law at Curry & Friend, P.L.C., in New Orleans. (laurengodshall@curryandfriend.com; meghansmith@curryandfriend.com; Ste. 1200, 228 St. Charles Ave., New Orleans, LA 70130)

DISCIPLINE Reports

REPORTING DATES 2/1/16 & 2/4/16

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Feb. 4, 2016.

Decisions

Alton Bates II, Baton Rouge, (2015-B-2101) **Suspended for one year and one day, fully deferred, to be followed by two years of supervised probation**, ordered by the court on Jan. 15, 2016, as consent discipline. JUDGMENT FINAL and EFFECTIVE on Jan. 15, 2016. *Gist:* Neglect of a legal matter; failure to communicate with a client; mishandling of his client trust account; and notarizing an affidavit outside the presence of the signatory.

Jade R. Blasingame, Lafayette, (2016-B-0108) **Interim suspension from the practice of law** ordered by the court on Jan. 21, 2016.

Robert A. Booth, Jr., Shreveport, (2015-OB-2008) has, on application for rehearing, been **conditionally reinstated to the practice of law, subject to a two-year period of supervised probation**, by order of the Louisiana Supreme Court on March 24, 2016. JUDGMENT FINAL and EFFECTIVE on March 24, 2016. *Gist:* During the period of probation, Mr. Booth may not operate a solo law practice; have no access to client funds; and have no signature authority on financial accounts maintained by employer.

Glay H. Collier II, Shreveport, (2015-B-2139) **Interim suspension** ordered by the court on Dec. 4, 2015.

Glay H. Collier II, Shreveport, (2015-B-2181) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on Jan. 15, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 15, 2016. *Gist:* Failure to practice with competence; failure to exercise reasonable diligence; failure to communicate; charging an excessive/improper fee and/or costs; commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

J. Michael Cutshaw, Baton Rouge, (2015-B-2310) **Suspended for 30 months, retroactive to his Feb. 20, 2013, interim suspension,** ordered by the court as consent discipline on Jan. 25, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 25, 2016. *Gist:* Commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

Gregory P. Hardy, St. Martinville, (2015-OB-2098) **Reinstated to the practice of law** ordered by the court on Dec. 7, 2015. JUDGMENT FINAL and EFFECTIVE on Dec. 7, 2015.

Richard Z. Johnson, Jr., Mansfield, (2015-B-2058) **Interim suspension** ordered by the court on Dec. 4, 2015.

Charles Joiner, West Monroe, (2015-B-0959) **Suspended for 30 days, subject to one-year supervised probation and to attend Trust Accounting School and undergo quarterly trust account audits**, ordered by the court on Dec. 8, 2015. JUDGMENT FINAL and EFFECTIVE on Dec. 22, 2015. *Gist:* Negligent supervision of non-lawyer employee and negligent conversion of client funds.

Warren A. Perrin, Lafayette, (2015-B-2036) **Public reprimand** ordered by the court as consent discipline on Jan. 8, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 8, 2016. *Gist:* Engaging in conduct prejudicial to the administration of justice; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Barry Singh Ranshi, New Orleans, (2015-OB-2145) **Reinstated to the practice of law** ordered by the court on Jan. 15, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 15, 2016.

Sangbahn Youloamour Scere, Shreveport, (2015-B-2094**) Suspended for one year and one day, fully deferred, along with two-year supervised probation**, ordered by the court as consent discipline on Jan. 8, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 8, 2016. *Gist:* Failed

Continued next page

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. 1, 2016.

Respondent	Disposition	Date Filed	Docket No.
William Harrell Arata	[Reciprocal] Suspension.	1/4/16	15-5966
Steven Courtney Gill	[Reciprocal] Suspension.	1/4/16	15-6041
Henry H. Lemoine, Jr.	[Reciprocal] Disability inactive status.	1/4/16	15-5755

to maintain adequate records, resulting in the commingling and conversion of client funds.

Stanley S. Spring II, Baton Rouge, (2015-OB-2313) **Transferred to disability/inactive status** ordered by the court on Jan. 8, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 8, 2016.

Kenneth Todd Wallace, New Orleans, (2015-B-2305) **Interim suspension from the practice of law** ordered by the court on Jan. 8, 2016.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report of misconduct involving:

No. of Violations

A lawyer shall promptly deliver to the client any funds that the client is entitled to receive. 1

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation to the disclosure is permitted by paragraph (b) of the Rules of Professional Conduct. 1

Engaging in conduct prejudicial to the administration of justice as prohibited by Rule 8.4 (d).....1

Failed to act with diligence and promptness in representing a client.....1

Failing to provide an accounting and failing to tender the client as required by Rule 1.16 1

Failing to resolve a fee dispute as required in Rule 1.5 (f)(5) of the Louisiana Rules of Professional Conduct.....1

Regarding safekeeping of client property1

Violating the Rules of Professional Conduct as set forth in Rule 8.4 (a).....1

TOTAL INDIVIDUALS ADMONISHED 5

It's Time to Book a Listing in 'Who's Who in ADR 2016'

One price gets you in the print directory and on the Web!

View the 2015 directory at

www.lsba.org/goto/adrdirectory

The print version of the directory for arbitrators and mediators will be mailed with the October/November 2016 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). The Web version of the directory remains active for one full year!

The special Arbitrators and Mediators Directory will feature brief articles and photographs of arbitrators and mediators (**INDIVIDUALS ONLY**).

The articles should be **150 words MAXIMUM**. Provide your address, phone, fax, email address and website information at the end of the listing (not part of the word count).

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 29 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
dlabranche@lsba.org
(504)619-0112 or (800)421-5722, ext. 112.

Potential Limits to Attorney-Client Confidentiality in Mediation

On Dec. 10, 2015, the Oregon Supreme Court decided a case of first impression regarding mediation confidentiality. In *Alfieri v. Solomon*, the court was faced with interpreting Oregon's mediation statutes to determine whether a client could introduce evidence of attorney conduct during mediation in an attorney malpractice action against that attorney. *Alfieri v. Solomon*, 358 Ore. 383 (2015). The trial court held that some of the plaintiff's allegations relied on confidential information revealed during mediation and were, therefore, stricken from the complaint. This resulted in the dismissal of the action. Essentially, the Oregon Supreme Court evaluated current jurisprudence, created a new rule and applied it to the case at bar. The new rule is an interpretation and definition of the terms "mediation" and "mediation communication," as well as limiting "mediation communications" to exclude attorney-client communications.

Alfieri arose from an employment discrimination and retaliation case that was settled after mediation when Solomon, the attorney in the mediated case, urged his client, Alfieri, to accept a settlement offer that had been presented by the mediator during mediation. The plaintiff's complaint of legal malpractice relied on facts that included terms of the confidential settlement agreement and communications made during the mediation process, including the mediator's proposal, his attorney's conduct during mediation,

and the attorney-client communications between the plaintiff and his attorney regarding the mediation. The attorney/defendant moved that all allegations based on those facts be stricken as confidential under Oregon mediation statutes. The trial court struck the allegations by applying a broad interpretation of the definition of mediation communications as provided by the Oregon statute, which states that all mediation communications are confidential. The complaint was dismissed.

The court of appeals reversed in part and distinguished between attorney-client communications made during mediation and those made after mediation. The court held that only those attorney-client communications made during mediation were mediation communications and subject to confidentiality. *Alfieri v. Solomon*, 263 Or. App. 492 (2014).

The Oregon Supreme Court fully reversed the trial court's decision, holding that mediation communication is a communication that occurs either during an actual mediation in which a mediator is present and directly involved, or else outside such proceedings but relating to the substance of the dispute and its resolution process, and with the added limitation that the communication must be one made between certain identified persons — the mediator, the parties, their agent or anyone else present — and not one made to a person other than those identified in the statute. Nor can a communication between a client and his attorney made before or after the actual mediation proceedings be a mediation communication.

This definition is much more limited than the plain language of the Oregon mediation statute. Oregon Revised Statutes § 36.110(7)(a) defines mediation communications as "[a]ll communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings."

This recent ruling poses an interesting question for Louisiana's mediation and confidentiality expectations. The Louisiana Mediation Act, La. R.S. 9:4101, *et seq.*, does not define mediation communications. La. R.S. 9:4112 provides for a default rule for waivable confidentiality in limited circumstances. The language of La. R.S. 9:4112(A) clearly states that "all oral and written communications and records made during a mediation, whether or not conducted under this Chapter . . . may not be used as evidence in any judicial or administrative proceeding." While the vast majority of mediations in Louisiana occur outside the purview of the Louisiana Mediation Act, the confidentiality provision still applies. The statute further allows for these communications to be used for three exceptions: (1) reports made to the court about whether the parties appeared and reached a settlement, (2) noncompliance with a court order for mediation, and (3) to prevent fraud or manifest injustice. In issues where confidentiality violates compliance with other legal requirements for disclosure, a judge may review the records and determine whether disclosure is necessary. Lastly, if the mediator and all parties agree in writing, confidentiality may be waived.

In a 2004 case similar to the *Alfieri* case in the Eastern District of Louisiana, Judge Wilkinson determined that "the Mediation Act does not impose an absolute bar against discovery of documents otherwise protected by its provision." *Cleveland Constr. Inc. v. Whitehouse Hotel Ltd. P'ship*, No. Civ.A. 01-2666 (E.D. La. Feb. 25, 2004), 2004 WL 385052. The statute provides that, if it conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine whether, under the circumstances, the information is subject to disclosure. La. R.S. 9:4112(D).

Due to the confidentiality exceptions in Louisiana's statute and the lack of an express provision in the Louisiana Mediation Act addressing communications that occur as a result of a mediation conference before or after the actual mediation conference is conducted, a Louisiana client in a similar circumstance might be able to have confidentiality waived in order to sue his attorney for malpractice. The attorney would likely not waive his right to confidentiality in writing, but the client could possibly have a judge review the mediation and determine whether information would be subject to disclosure, as was the case in *Cleveland Construction*.

—**Leona Scoular**,
Michelle Kornblith
and **Genevieve Leslie**
Law Students, Student Mediators,
LSU Paul M. Hebert Law Center
Civil Mediation Clinic
Under the Supervision of
Paul W. Breaux
LSU Adjunct Clinical Professor
Immediate Past Chair,
LSBA Alternative
Dispute Resolution Section
16643 S. Fulwar Skipwith Rd.
Baton Rouge, LA 70810

Claims Against Self-Insurance Fund

In re Louisiana Oilfield Contractors Ass'n Ins. Fund, No. 14-51518 (Bankr. W.D. La. Jan. 27, 2016), 2016 WL 361738.

The debtor, Louisiana Oilfield Contractors Insurance Fund, is a workers' compensation group self-insurance fund. Three employees filed motions for relief from the automatic stay to pursue claims not only against their own employers but the other non-employer members of the fund. In turn, the debtor filed a motion requesting that the bankruptcy court make a determination that the employees' claims were property of the debtor's estate and that the employees did not have independent claims against the members who did not employ them.

First, the bankruptcy court analyzed whether the employees had claims against the members who did not employ them. The employees argued that an employer-employee relationship existed against those members based solely on their membership in the fund, also relying on La. R.S. 23:1196F, which provides that members of a group self-insurance fund are "liable *in solido* for liabilities of the fund." The employees argued that the *in solido* liability created an independent cause of action against those members. The bankruptcy court held 23:1196F did not support an independent cause of action or expand workers' compensation liability against non-employers. The court reasoned that 23:1196F imposes *in solido* liability with respect to "liabilities of the fund," not with respect to individual workers' compensation claims. La. R.S. 23:1191, *et seq*., govern the relationship between the fund and the members and empower the fund to assess its members amounts necessary to cover any deficits. These provisions and the indemnity agreement entered into between the fund and the members also give the fund the exclusive authority to enforce the assessment powers. The court held that no provision in 23:1191, *et seq*., conferred any authority on individual claimants to exercise the fund's statutory and contractual assessment powers, and 23:1196F did not provide for a broad expansion of employer liability as alleged by the employees.

The court then found that the fund's statutory and contractual right to recover assessments and satisfy its statutory mandate to pool its members' liability for workers' compensation claims are "'legal or equitable interests of the debtor in property as of the commencement of the case' and thus are property of the debtor's bankruptcy estate." Accordingly, the court held the debtor had exclusive standing to control and assert those claims, and the employees had neither independent claims nor standing to assert the assessment claims that belonged to the debtor.

The court denied the employees' motions for relief from stay against the members who were not their employers. The court did, however, grant the employees' motion for relief from stay as to the employees' employers, finding those workers' compensation claims arose of the Louisiana Workers' Compensation Law and were not affected by 23:1191, *et seq*. The court

found the claims were against non-debtors and would not undermine the administration of the debtor's estate because the fund still retained its assessment claims against the remaining members.

Counsel Compensation

In re Boomerang Tube, Inc., (Bankr. D.Del. Jan. 29, 2016), 2016 WL 385933.

Before the court were two applications to employ counsel for the official committee of unsecured creditors. The applications sought, among other things, approval under section 328(a) of a contractual provision entitling counsel compensation from the debtors' estates for fees, costs or expenses arising from successfully defending their fees. The United States Trustee objected to this fee-defense provision, arguing that the provision is barred by *Baker Botts L.L.P. v. ASARCO, L.L.C.*, 135 S.Ct. 2158, 2169 (2015), and that such fees are outside the scope of a committee's professional's employment and are unreasonable.

In 2015, the Supreme Court in *ASARCO* denied debtor's counsel's request to approve fees incurred defending its fee application under section 330(a), which allows a court to award "reasonable compensation for actual, necessary expenses." The Supreme Court held 11 U.S.C. § 330(a) did not contain an express statutory exception to the American Rule, which provides that "[e]ach litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Id.* at 2164.

The committee argued that *ASARCO* was not binding precedent because it applied only to 11 U.S.C. § 330(a), and the committee's professionals were seeking approval of the fee-defense provision under 11 U.S.C. § 328(a). The bankruptcy court disagreed, holding section 328 did not contain specific and express language authorizing attorneys' fees for successful prosecution of a defense to a fee objection; thus, section 328 did not provide an exception to the American Rule.

The committee also argued that the Supreme Court recognized a contractual exception to the American Rule. While the bankruptcy court agreed that *ASARCO* acknowledged a contractual exception to the American Rule, it held the contract had to be consistent with the other provisions of the Bankruptcy Code. The bankruptcy court held the retention agreements were not contractual exceptions to the American Rule because the contracts were not between two parties providing that each would be responsible for the other party's fees if it is lost; rather, it was a contract between two parties where a third party, the debtors' estates, would pay the defense costs even if the debtor did not object. The court also held the contract could not bind the estates, which were not parties to the contract. Finally, the court noted that bankruptcy courts had the authority to approve or modify retention agreements if certain provisions are impermissible.

The Delaware bankruptcy court also agreed with the Trustee's argument that the fee-defense provision is unreasonable because such services do not involve services for the committee but instead involve services performed by the committee's counsel for counsel's own interests. The court rejected the committee's argument that the fee-defense provisions were similar to indemnification provisions, which courts have approved under section 328(a), noting those decisions occurred pre-*ASARCO*, which rejected the argument that a court could consider market factors in determining whether defense fees could be approved. Lastly, the court held out-of-pocket expenses defending fee applications also could not be approved.

—**Cherie Dessauer Nobles**
Member, LSBA Bankruptcy Law Section
and
Tristan E. Manthey
Chair, LSBA Bankruptcy Law Section
Heller, Draper, Patrick, Horn & Dabney, L.L.C.
Ste. 2500, 650 Poydras St.
New Orleans, LA 70130

Corporate and Business Law

Liability of LLC Members and Managers

Nunez v. Pinnacle Homes, L.L.C., 15-0087 (La. 10/14/15), 180 So.3d 285.

The plaintiff engaged a limited liability company, of which the defendant was the sole member and manager, to build a home. The construction contract required the work to comply with all applicable laws and codes. The defendant, who was a state licensed construction contractor, failed to properly supervise or to calculate the proper elevation of the property, and the home was built below the base flood elevation required by the building permit. The trial court found the company liable for breach of contract and found the defendant personally liable for professional negligence. The court of appeal affirmed; the Louisiana Supreme Court reversed.

The Supreme Court briefly reviewed the statutory provisions addressing the liability of members and managers of an LLC to third parties, La. R.S. 12:1320, concluding that the "narrowly defined circumstances" in which an LLC member may be held personally liable are enumerated in La. R.S. 12:1320(D), which provides, in pertinent part, that "[n]othing in this Chapter shall be construed as being in derogation of any rights which any person may by law have against a member

[or] manager . . . because of any breach of professional duty or other negligent or wrongful act by such person . . . ."

As to whether the defendant had breached a professional duty, the court held that the defendant, although a licensed contractor, was not a "professional" within the meaning of La. R.S. 12:1320(D). The court's reasoning suggests that the term may comprise only persons engaged in one of the professions for which a professional corporation may be formed under Title 12 or, perhaps, also persons who owe a separate, non-contractual duty to their customers as do members of the foregoing professions.

As to whether the defendant had committed a negligent or wrongful act for which he could be held liable, the court found in defendant's favor on all four factors identified in *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888. First, regarding whether the defendant's conduct could be fairly characterized as a traditionally recognized tort, there was no showing the defendant owed a separate duty to the plaintiff regarding the home elevation outside of the obligations of the contract, and a mere showing of poor workmanship arising out of a contract of the LLC was insufficient. Second, there was no showing that defendant's conduct constituted a crime for which a natural person could be held culpable. Third, the conduct at issue was required by or in furtherance of the contract. Finally, regarding whether the conduct at issue was done outside the member's capacity as a member, the court concluded that the defendant's failures were "within the context of his membership in the L.L.C. and were not undertaken in a personal capacity." Chief Justice Johnson dissented, concluding that it was ultimately the responsibility of the defendant, "the licensed contractor on the job," to ensure the house was built in compliance with the mandated base flood elevation.

Authority of LLC Members

First Nat. Bank v. Kellick's Catch Pen & Western Wear, L.L.C., 50,196 (La. App. 2 Cir. 11/18/15), 182 So.3d 227.

The plaintiff bank made a loan to the defendant limited liability company, which loan was secured by a mortgage on immovable property of the LLC. The note and the mortgage were both signed by a member of the LLC. The bank also received a resolution stating that the signing member was authorized to sign the note and to mortgage the property to the bank. The resolution was signed by the signing member and a second member who collectively held 48 percent of the membership interest and also bore the purported signature of a third member who held 26 percent. The bank also received a copy of the LLC's articles of organization, which provided that "any person dealing with [the LLC] may rely upon a certificate of [any of its members (who were identified by name)] to . . . establish the authority of any person to act on behalf of" the LLC, including to incur debt outside the ordinary course and to mortgage immovable property. The LLC made no payments on the note, and the bank sued the LLC. The LLC claimed it never received any benefits of the loan, that the third signature was forged, and that the signing member did not have authority to sign the note and mortgage for the LLC.

The trial court granted summary judg-

ment for the bank without a written opinion. The court of appeal affirmed, concluding that the signing member had "actual authority" to act on behalf of the LLC in incurring the indebtedness as well as mortgaging the LLC's property. The court considered the claim of forgery to be "immaterial," as the bank "reasonably relied" on the articles of organization provided by the LLC. The court added that there was no objective evidence that the signature was a forgery or that the bank had any information that it was a forgery. Finally, the court opined that the doctrine of apparent authority was "inapplicable," as "[t]he articles indicate that any member could delegate authority, and the [LLC] properly delegated authority" to the signing member.

—Michael D. Landry
Reporter, LSBA Corporate and
Business Law Section
Stone Pigman Walther
Wittmann, L.L.C.
546 Carondelet St.
New Orleans, LA 70130

La. Supreme Court Looks at Manifest Error Standard

The Supreme Court's own opening line tells the tale: "This mineral case presents a classic battle of experts . . . ." *Hayes Fund for First United Methodist Church of Welsh, L.L.C. v. Kerr-McGee Rocky Mountain, L.L.C.*, 14-2592 (La. 12/8/15), 2015 WL 8225654 at *1. Plaintiffs are mineral royalty owners who sued the mineral lessees and working interest owners for unrecovered hydrocarbons after two wells ceased production. The district court conducted a lengthy trial and found that the defendants' experts were more credible that the plaintiffs' expert, ruling for the defendants. The appellate court conducted a "manifest error" review and reversed.

In all civil cases, the appropriate standard for appellate review of factual determinations is the manifest error/clearly wrong standard. Two steps are required: "There must be no reasonable factual basis for the trial court's conclusion, and the finding must be clearly wrong." *Id.* at *4. This is a difficult standard to overcome, and the Supreme Court noted how rarely the standard is met. Here, the appellate court had focused on the evidence in favor of the plaintiffs' version of events — which the Supreme Court faulted. Instead, the court ruled, the appellate court should have simply looked to see whether there was *any* reasonable basis for the trial court to have reached the conclusion it did: "The function of the Court of Appeal is to correct errors, not make choices it prefers over the District Court when there are two or more permissible views of the evidence." *Id.* at *37.

The Supreme Court then went through its own manifest error analysis, citing extensively from the testimony of the "battling" experts in the various fields of petroleum engineering in order "to demonstrate a proper manifest error review." *Id.* The Court expressly stated its intent that this opinion be used as guidance in future appeals based on battles of the experts: "We set forth this manifest error analysis at length in this opinion to give guidance to the appellate courts in analyzing evidence under the manifest error doctrine when there are two or more permissible views of the evidence." *Id.*

5th Circuit Addresses Oil Pollution Act Issues

The Oil Pollution Act (OPA) establishes specific procedures that claimants must follow in order to recover following an oil spill. Specifically, the statute first requires presentment of claims to the responsible party; then, if that party denies all liability *or* 90 days from the time of presentment has passed, the injured party can bring a lawsuit under OPA.

In *Nguyen v. American Commercial Lines, L.L.C.*, 805 F.3d 134 (5 Cir. 2015), the 5th Circuit was faced with questions about this "presentment" issue. The parties disputed whether the injured plaintiffs — fishermen unable to fish after an oil spill — had properly "presented" their claims to the responsible party by providing sufficient documentation of their loss. The court was also asked to consider whether OPA claims had to be presented at least 90 days *before* the three-year period of limitations established by OPA to bring a lawsuit.

The 5th Circuit first determined that the paperwork submitted by the plaintiffs was sufficient to satisfy the OPA. Although the defendant had requested additional information, the initial information provided did satisfy the purpose of the OPA. *Id.* at 141.

However, those claimants who did not present their claims for payment at least 90 days before the three-year statute of limitations ran were barred from recovering. The plaintiffs had argued that because they were running up against the statute of limitations, they should have been allowed to file suit without having to wait the full 90 days between presentment and filing suit. The court disagreed, finding that claimants had no convincing reason for their delay in presenting their claims to the responsible party. Moreover, the statutory language

was plain and unambiguous, and "clearly requires that the claimants comply with both the 90-day waiting period and the three-year period of limitations. Therefore, claimants may not ignore the 90-day waiting period simply because the period of limitations is about to expire." *Id*. at 144.

The result provides useful additional guidance on presentment issues under the OPA. Responsible parties cannot avoid payment by demanding additional information be provided beyond what is purely necessary to quickly resolve the claim. Injured parties cannot wait any longer than 90 days before the statute of limitations to first present their claims. Early presentment should be advised.

"Additional Remediation" Damages

The Western District of Louisiana briefly held, before reconsidering, that in a legacy lawsuit for damage to property from oil and gas activity, plaintiffs' "excess" damages must be paid into the court registry rather than going to the plaintiffs. Judge Robert James initially ruled on Feb. 1 in *Moore v. Denbury Onshore, L.L.C.*, 13-914 (W.D. La. Feb. 1, 2016), 2016 WL 393549, that in an Act 312 suit, "a plaintiff cannot directly recover additional remediation damages in the absence of an express contractual provision."

The plaintiffs had sought additional remediation damages based on Denbury's "unreasonable or excessive" operations. *Id.* at *7. While other courts have awarded additional damages, above and beyond what is determined by the state to be required, under the standard of "unreasonable and excessive operations," Judge James in his Feb. 1 opinion read Act 312, section M(1)(b), as requiring that any additional amounts be paid to the court registry, not the plaintiffs, unless there is "an express contractual provision providing for remediation to original condition or to some other specific remediation standard." La. R.S. 30:20(M)(1)(b). Because the plaintiffs' leases had no "restore to original condition" language, direct payment of additional remediation damages was not available to them.

However, the court shortly thereafter granted a motion for reconsideration and ruled in March that, based on the legislative history behind the 2014 amendments to Act 312, his original reading of Act 312 was incorrect, in part: "The Court amends its Ruling . . . should the jury find [defendant] Denbury acted unreasonably or excessively, the Moores could pocket the resultant damages." Forcing those "extra" funds to be paid into a court registry was not the intent of the law. However, the court, nonetheless, reaffirmed its dismissal of the Moores' claim for a cleanup to original condition, noting that remediation to original condition was only available if required by a contract, and no such contract existed here.

—Lauren E. Godshall
Member, LSBA Environmental Law Section
Curry & Friend, P.L.C.
Ste. 1200, 228 St. Charles Ave.
New Orleans, LA 70130

Custody

Hodges v. Hodges, 14-1575 (La. App. 1 Cir. 3/6/15), 166 So.3d 348, *aff'd in part, rev'd in part*, 15-0585 (La. 11/23/15), 181 So.3d 700.

The trial court granted joint legal custody, ordered equal physical custody, and designated the parties as co-domiciliary parents. The 1st Circuit affirmed the designation of the parents as co-domiciliaries, but found that no joint custody implementation order had been rendered. The Supreme Court granted a writ of certiorari and held that the law does not allow for "co-domiciliary parents." There is either a single domiciliary parent or no designation. Further, the trial court must issue a joint custody implementation order, which must address the time periods during which the parents have physical custody and the legal authority and responsibility of the parents regarding decision making. It remanded the matter to the trial court to conclude the above two issues.

Williams v. Griffith, 14-0690 (La. App. 5 Cir. 4/15/15), 170 So.3d 265.

Ms. Griffith could not argue on appeal that the trial court was biased since she did not raise an allegation of bias in the trial court or file a motion to recuse prior to the court's rendering judgment. The trial court did not err in not considering the article 134 factors, even though it did not issue reasons for judgment, because it adopted the custody evaluator's report, in whole, and the evaluator had addressed the factors. (The court did not explain how the report could have been accepted without the custody evaluator testifying and being subject to cross-examination, or how the custody evaluator's report could stand as an evaluation of the article 134 factors, rather than the court's evaluation based on testimony at the trial itself.) Moreover, although Ms. Griffith alleged that the court did not allow her the opportunity to cross-examine the custody evaluator before it adopted the evaluation, the court found that since she had participated in the evaluation and her position was expressed in the report, the court had the discretion to accept or reject the evaluator's recommendation, and chose to accept it. (The court further failed to address the fact that the report is hearsay without the evaluator actually testifying.)

Tracie F. v. Francisco D., 15-0224 (La. App. 5 Cir. 9/21/15), 174 So.3d 781, *writ granted*, 15-1812 (La. 11/16/15), ____ So.3d ____, 2015 WL 9492243.

In this motion to modify custody where a prior stipulated judgment provided that the father and maternal grandmother would have joint custody with the grandmother designated as the domiciliary parent, the 5th Circuit engaged in a thorough review of Louisiana law, Louisiana Supreme Court jurisprudence, and the law and jurisprudence of other states in order to determine the burden of proof and standard to modify custody when the parent sought to modify that judgment. The 5th Circuit determined that, initially, the burden of proof is on the parent, the moving party, to show that "he has been rehabilitated of the parental unfitness or abandonment by reason of which he relinquished some part of his child's custody to a nonparent, thereby eliminating the 'substantial harm' threat to the child which existed when the stipulated judgment was signed;" and, secondly, if he proves that he has been rehabilitated, then he "must prove that the adequate and stable environment in which the child has lived with the nonparent as a result of the stipulated judgment has materially changed." Upon proving that "dual test," the parent then must prove that it is in the child's best interest to change custody to the parent. The court's rationale included that "parents who voluntarily relinquish all or part of their custody to a nonparent are judicially admitting that they are not currently fit, *i.e.*, capable of sole custody of their child . . ." and are also "judicially admitting that the nonparent is able to provide the child with a wholesome and stable environment which is in the child's best interest."

Community Property

de Klerk v. de Klerk, 14-0104 (La. App. 4 Cir. 7/29/15), 174 So.3d 205.

The parties were separate in property. However, the matrimonial domicile was purchased in both names, although paid for entirely by Mr. de Klerk. The court found that they were co-owners of the property and that Mr. de Klerk was not entitled to any reimbursement for having purchased the property solely with his funds. He also was not entitled to reimbursement for improvements made to the property, since they were expenses of the marriage, the obligation for which he had assumed. Moreover, he did not present evidence that the expenses incurred were to improve the property or that the value of the home was increased thereby. He was, however, entitled to reimbursement for expenses incurred on the property after his obligation of support terminated. Ms. de Klerk was entitled to reimbursement for payments she made on a personal credit line and credit card. She was entitled to reimbursement for one-half of the sales proceeds from the sale of the co-owned home that were used to pay a home equity line of credit, which the court determined Mr. de Klerk was responsible for as an expense of the marriage, although both parties signed to obtain the home equity line of credit. The dissent argued that, since both parties signed for the home equity line of credit, they were solidary obligors, and Ms. de Klerk should have been equally responsible for that debt.

Arterburn v. Arterburn, 15-0022 (La. App. 3 Cir. 10/7/15), 176 So.3d 1163.

The trial court's methodology in this community property partition — to determine the assets and liabilities, and the net equalizing payment; then to determine the reimbursements and the net reimbursement due; and then to offset the net equalization payment and the net reimbursement due — was the proper methodology. Its allocating all of the liabilities to Mr. Arterburn and none to Ms. Arterburn was appropriate, since she had no income in order to pay any liabilities. La. Civ.C. art. 2367's limitation on liability for reimbursement

claims applies only to expenditures made during the marriage. Reimbursements for termite inspection, mortgage payments, tax payments and insurance premiums on the community residence were reimbursable, in various percentages, based on the time the expenses were incurred, the spouse in possession of the home, and the child support provisions in place. Funds donated by Mr. Arterburn's parents were not reimbursable as his separate property, as there was no evidence that the funds were not donated for the benefit of both spouses.

—David M. Prados
Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, L.L.P.
Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735

A Victory for Class Actions

Campbell-Ewald Co. v. Gomez, 136 S.Ct. 663 (2016).

The U.S. Navy contracted with Campbell to conduct a multi-media recruiting campaign, which included sending text messages to 18- to 24-year-olds who had "opted in" to receive them. Gomez, who was 40 years old and had not opted in, received one of the messages. He filed a class action under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A)(iii), which prohibits "using any automatic dialing system" to send text messages to cell phones, absent prior express consent, seeking treble statutory damages for a willful violation. Before the deadline for class certification, Campbell filed an FRCP 68 offer of judgment, proposing to settle Gomez's claim for $1,503 per message, the amount prayed for, denying liability, thereby satisfying his personal treble-damages claim. Gomez did not accept the offer, which lapsed after 14 days, as specified in the rule. Campbell moved to dismiss pursuant to FRCP 12(b)(1) for lack of subject-matter jurisdiction, *i.e.*, no Article III case or controversy remained, and the district court denied the motion. The Supreme Court granted certiorari to resolve differences among the circuits over whether an unaccepted offer can moot a plaintiff's claim, thereby depriving federal courts of Article III jurisdiction.

Justice Ginsburg, writing for the majority, framed the issue thusly: Is an unaccepted offer to satisfy the named plaintiff's individual claim sufficient to render a case moot when the complainant seeks relief on behalf of the plaintiff and a class of persons similarly situated? The majority

adopted Justice Kagan's dissent in *Genesis Healthcare Corp. v. Symczyk*, 133 S.Ct. 1523, 1533 (2013), that:

> an unaccepted offer of judgment cannot moot a case . . . . When a plaintiff rejects such an offer—however good the terms—her interest in the lawsuit remains just what it was before. And so does the court's ability to grant her relief. An unaccepted settlement offer—like any unaccepted contract offer—is a legal nullity, with no operative effect. As every first-year law student knows, the recipient's rejection of an offer "leaves the matter as if no offer had ever been made."

The Court stated: "We hold today, in accord with Rule 68 of the FRCP, that an unaccepted settlement offer has no force. Like other unaccepted contract offers, it creates no lasting right or obligation. With the offer off the table, and the defendant's continuing denial of liability, adversity between the parties persists." *Campbell-Ewald Co.*, 136 S.Ct. at 666.

The Court also addressed Campbell's claim that, as a federal government contractor, it is entitled to "'derivative sovereign immunity,' *i.e.*, the blanket immunity enjoyed by the sovereign." *Id.* Such immunity, unlike the sovereign's, is not absolute. "When a contractor violates both federal law and the Government's explicit instructions, as here alleged, no 'derivative immunity' shields the contractor from suit by persons adversely affected by the violation." *Id.* at 672. Justices Kennedy, Breyer, Sotomayor and Kagan joined in the opinion. Justice Thomas filed an opinion concurring in the judgment. Chief Justice Roberts filed a dissenting opinion, joined by Justices Scalia and Alito, who also filed an opinion.

Fault Allocation in Horse/Vehicle Incident

Prejean v. State Farm Mut. Auto. Ins. Co., 15-0499 (La. App. 3 Cir. 1/6/16), ____ So.3d ____, 2016 WL 63242.

Cyril Prejean and Jessyca Steward were riding Prejean's horse, Mississippi, on a highway in Calcasieu Parish at approximately 6:30 p.m. in February, when they were rear-ended by a GMC Yukon driven by Russell Horton. Prejean and Steward were injured, and Mississippi had to be put down. Prejean and Steward sued for damages, and Horton reconvened for damages. The trial court found Horton 100 percent at fault, awarding $17,969.50 to Prejean and $6,962.00 to Steward. Horton and State Farm appealed, assigning as error:

> 1. The finding that Prejean had no legal obligation to comply with the law requiring a vehicle on a highway after sunset to display illumination;
> 2. The finding that Prejean was free from fault in riding a dark horse at night on a highway while wearing dark clothes, with a passenger wearing camouflage;
> 3. The finding that Horton was at fault "in failing to see the rider of a dark horse, wearing dark clothes, at night in time to avoid a collision."

Summarizing Horton's argument on appeal: Prejean should have outfitted Mississippi with lights as required by statute for a vehicle in accordance with La. R.S. 32:53, 32:101 and 32:124, and he should have been cast with 100 percent fault.

The court of appeal cited La. R.S. 32:22, which states in full:

> Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and be subject to all of the duties applicable to the driver of a vehicle by this Chapter, except those provisions which by their very nature can have no application.

It then held: "Although we agree that it was not the wisest decision to ride a dark horse in the road at dusk, there simply is no legal requirement that a ridden horse be illuminated. Attempting to apply the suggested statutes to a horse results in absurd consequences in contravention of La. R.S. 32 . . . ."

The court relied on *Merideth v. Kidd*, 147 So.539 (La. App. 2 Cir. 1933), the only case addressing the issue. "[I]f there is no statute to the contrary, a person riding a horse without an attached vehicle is not required to have lights . . . in order to avoid being negligent." There is still no contrary law and, thus, the court found *Merideth* still applies.

The court found, however, that Prejean's negligence could still be taken into account in fault allocation. It stated, "The state of travel on Louisiana highways is vastly different today than . . . in 1933 . . . and persons riding horses in lanes . . . traversed by motor vehicles must bear some liability in causing accidents . . . ." As the court considered the fault allocation manifestly erroneous, it reapportioned fault 50 percent each to Prejean and Horton.

—**John Zachary Blanchard, Jr.**
Past Chair, LSBA Insurance, Tort, Workers' Compensation and Admiralty Law Section
90 Westerfield St.
Bossier City, LA 71111

Wetlands Mitigation Bank; Conservation Servitude

Spanish Lake Restoration, L.L.C. v. Petrodome St. Gabriel II, L.L.C., ____ So.3d ____, 15-0451 (La. App. 4 Cir. 1/13/16), 2016 WL 157137.

This case relates to property located in Sections 12 and 13 of Iberville Parish. In 1999, Lago Espanol Wetlands Mitigation Bank recorded a conservation servitude on Section 12 that contained certain land-use restrictions that run with the land. In 2006, Rio Bravo Energy Partners acquired a mineral lease on Section 12 from Lago. Rio Bravo later assigned its lease to AUS-TEX Exploration, Inc. AUS-TEX acquired a wetlands permit to board a pre-existing unimproved road on Section 12. AUS-TEX boarded the road and drilled a well on Section 13, which never produced. Thereafter, AUS-TEX plugged and abandoned the well, removed the board road and assigned its lease and the wetlands permit back to Rio Bravo.

In 2009, Spanish Lake Restoration, L.L.C., acquired the surface rights on Section 12, and Lago reserved the mineral rights. In 2011, Rio Bravo assigned its rights under the permit and the lease to Petrodome St. Gabriel II, L.L.C. Petrodome reboarded the road on Section 12 and drilled a well on Section 13. Petrodome later reinforced the road with limestone and installed an above-ground, natural-gas-gathering line from its Section 13 well across the surface of Section 12.

In 2013, Spanish Lake filed a trespass action against Petrodome claiming it violated certain covenants in the conservation servitude when it rebuilt the road and put a gathering line across Section 12. Spanish Lake claimed that Petrodome's actions (1) caused damage to Section 12 and (2) interfered with Spanish Lake's ability to operate its wetland mitigation bank. Petrodome filed a motion for summary judgment, arguing that its operations were authorized by the mineral lease, the wetlands permit and the conservation servitude. Spanish Lake filed a cross-motion.

The trial court ruled in favor of Petrodome. Spanish Lake appealed to the Louisiana 4th Circuit Court of Appeal. The appellate court remanded the matter to the trial court because there were too many issues of material of fact, for instance, (1) whether the installation of the gathering line and limestone roads were consistent with the terms of the conservation servitude and the objectives of the mitigation bank; (2) whether Petrodome exceeded the limited surface impact contemplated by the conservation servitude; and (3) whether Petrodome provided proper compensation for the loss of wetland values as required by the conservation servitude and other agreements. Based on the record before it, the court could not resolve these issues so it reversed the ruling of the trial court in favor of Petrodome and sent the case back for further proceedings.

Duration of Mineral Lease

Regions Bank v. Questar Exploration & Prod. Corp., 50, 211 (La. App. 2 Cir. 1/13/16), ____ So.3d ____, 2016 WL 154852.

This case involves the question of whether a mineral lease was perpetual in nature and whether it, therefore, terminated automatically after 99 years pursuant to La. Civ.C. art. 2679. Three mineral leases are at issue — the Stiles leases — that cover land located in Caddo Parish. The primary term of these leases was 10 years. The leases date to 1907 and were originally taken by Standard Oil Co. (now, ExxonMobil).

In 2007, plaintiffs filed a lawsuit seeking

damages for failure to reasonably develop the leases below 6,000 feet. Plaintiffs sought cancellation and a release of a portion of the leases. Plaintiffs later amended their petition to include a claim for termination of the leases, pursuant to art. 2679, claiming that the secondary term of the habendum clause created a perpetual lease in violation of that article.

Exxon and plaintiffs filed cross-motions for summary judgment. The trial court granted Exxon's motion and denied plaintiffs'. Plaintiffs later attempted to appeal the matter to the Louisiana 2nd Circuit Court of Appeal but were initially denied the right to appeal because the matter had not been properly certified by the trial court. After the trial court certified the matter, the appellate court accepted the appeal.

At issue is the two-tiered nature of the habendum clause in a mineral lease — on the one hand, the primary term of the lease (here, 10 years), and, on the other hand, the secondary term language that says a lease is valid "as much longer thereafter as gas or oil is found or produced in paying quantities." The court found that the mineral leases in this case were not perpetual because (1) the leases had a primary term of 10 years, and (2) the secondary term language of the habendum clause was widely accepted in the oil and gas industry and did not violate Louisiana Mineral Code art. 115. Further, the court found that because La. Civ.C. art. 2679 and Mineral Code art. 115 were in conflict with each other here, the Mineral Code ultimately controlled because Louisiana law states that "[i]n the event of a conflict between the provisions of the [M]ineral Code and those of the Civil Code or other laws, the provisions of the [Mineral] Code shall prevail."

NOTE: In full disclosure, author Keith B. Hall submitted an expert witness affidavit in support of ExxonMobil in this case.

—Keith B. Hall
Member, LSBA Mineral Law Section
Louisiana State University
Paul M. Hebert Law Center
1 E. Campus Dr.
Baton Rouge, LA 70803
and
Colleen C. Jarrott
Member, LSBA Mineral Law Section
Slattery, Marino & Roberts, A.P.L.C.
Ste. 1800, 1100 Poydras St.
New Orleans, LA 70163

Summary Judgment: 2016 Edition of Civil Procedure Article 966

Louisiana Code of Civil Procedure article 966 was amended and reenacted during the 2015 legislative session. The Act (442) became effective on Jan. 1, 2016. What's different?

Some Known Knowns

A. Article 966 makes no change to the *substantive* law of the earlier edition of the summary judgment (MSJ) article.

B. The *procedure* remains "favored" and is to be construed to accomplish "the just, speedy, and inexpensive resolution of every action, except those disallowed by Article 969."

C. Parts of the 2014 edition were reorganized for ease of reference, clarification and flow of information.

D. Article 966A(4) creates an *exclusive* list of documents that may be filed in support or opposition to MSJ: 1) Pleadings; 2) Memoranda; 3) Affidavits; 4) Depositions; 5) Answers to Interrogatories; 6) Certified medical records; 7) Witness stipulations; and 8) Admissions.

Authentication is key, *e.g.*, a photograph is inadmissible unless properly authenticated by an affidavit or deposition to which it is attached; memoranda, though not pleadings, filed in support or in opposition to MSJ are proper documents that can be used to advance arguments; a medical-review-panel opinion cannot be filed unless it is properly authenticated and attached to an affidavit or deposition; answers to interrogatories that are not made under oath may not be filed.

E. An MSJ should be heard and granted only after there is "an opportunity for adequate discovery," but article 966B(1), (2), (3) and (4) create hard and fast deadlines for filings and hearings unless extended by the court *and* agreed to by all parties.

F. Article 966D(2) requires that all objections to documents be included in timely filed opposition or reply memoranda, thus removing the motion to strike, *i.e.*, at the hearing, as a means of objecting to a document.

Article 966D(2) requires the court to specifically state on the record or in writing which evidence it held inadmissible or declined to consider.

G. Article 966G adopts the rule from prior article 966(G)(1) and eliminates (G)(2), to-wit: A party or non-party dismissed on summary judgment based on a finding that the party or non-party was not at fault or did not cause the injury or harm, in whole or in part, cannot be considered in any subsequent fault allocation, no evidence can be admitted at trial to establish the fault of that party or non-party, nor is any party or person allowed to refer directly or indirectly to any such fault. 966G(2), which required that a judgment rendered pursuant to 966G(1) had to recite/repeat that it was rendered pursuant to the part G(1), was eliminated.

H. An appellate court shall not reverse a trial court's denial of a motion for summary judgment and grant a summary judgment dismissing a case or dismissing a party without assigning the case for briefing and permitting the parties an opportunity to request oral argument.

I. Article 966 became effective on Jan. 1, 2016, but does not apply to any MSJ filed before that date.

Some Known Unknowns

A. 966A(3) provides for "an opportunity for adequate discovery" before summary judgment can be granted: How much/how long is "adequate?"

In *McCastle-Getwood v. Professional Cleaning Control*, 14-0993 (La. App. 1 Cir. 1/29/15), 170 So.3d 218, suit was filed in March 2012. The defendant filed an MSJ in September 2013. The court of appeal ultimately decided that one-and-a-half years between suit and MSJ filings provided "adequate" time. In *Jordan v. Thatcher Street, L.L.C.*, 49-0820 (La. App. 2 Cir. 6/10/15), 167 So.3d 1114, suit was filed in September 2013, the plaintiff (who died during pendency of the litigation) was deposed in April 2014, and the defendant filed an MSJ

in November 2014. The trial and appellate courts found no reason to delay the MSJ hearing to allow the plaintiffs additional time to conduct discovery.

B. Louisiana Code of Civil Procedure article 1425F allows for pretrial/*Daubert* hearings to determine whether a witness qualifies as an expert or whether the methodologies applied by the witness are reliable as dictated by Louisiana Code of Evidence articles 702 and 705. However, article 1425 pertains to expert witnesses "who may be used at *trial*."

1. *May* trial courts allow *Daubert* hearings on experts whose affidavits are submitted in MSJ pleadings?

2. *Must* trial courts permit *Daubert* hearings on experts whose affidavits are submitted on MSJs?

3. Article 1425 has deadlines for filings and hearings that differ from those of article 966. Article 1425 allows "live testimony at the contradictory hearings," whereas article 966 prohibits live testimony.

C. If a party fails to timely object to a document not allowed by 966A(4):

1. *Must* the court consider that document?

2. *May* the court consider that document?

3. What is the standard for the trial court in deciding the "weight" to be given that document, if the court considers it?

Unknown Unknowns

A. With no apology to Mr. Rumsfeld: Unknown.

—Robert J. David
Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.
Ste. 2800, 1100 Poydras St.
New Orleans, LA 70163-2800

Repairs to MRIs Are Taxable Repairs to Tangible Personal Property

Hitachi Med. Systs. Am., Inc. v. Bridges, 15-0658 (La. App. 1 Cir. 12/9/15), 2015 WL 8479021.

The 1st Circuit Court of Appeal affirmed the Louisiana Board of Tax Appeals' Sept. 14, 2011, decision upholding the assessment of sales taxes by the Louisiana Department of Revenue against Hitachi

on proceeds from repair services Hitachi Medical Systems America performed on magnetic resonance imaging (MRI) systems.

The Department conducted an audit and as a result issued a notice of proposed tax due for the sales taxes that Hitachi failed to collect from its customers on repairs it made to MRIs. Louisiana levies a sales tax on the sales of services, which includes the furnishing of repairs to tangible personal property. Therefore, the classification of property as either movable or immovable determines whether services and repairs of such property are taxable; thus, whether the services or repairs Hitachi performs on MRI systems are subject to sales tax depends on whether the systems are movable or immovable property. The issue before the court was whether the systems Hitachi had serviced or repaired were component parts of the medical facility in which they were installed.

The Department argued the systems are not component parts of the facilities. Hitachi argued: (1) they were immovable; (2) because the Department accepted a payment as a part of a proposed settlement, it should be estopped from contesting the remainder; and (3) Hitachi should not be responsible for the taxes because it relied on Department policy statements, such as Revenue Ruling 02-003, Private Letter Ruling 03-005 and various articles in the Department's publications, in which the Department indicated that repairs and services to MRI systems were not taxable. Hitachi protested the proposed assessment by filing a petition with the Louisiana Board of Tax Appeals.

The Board held that (1) MRI systems were the same as the nuclear cameras; (2) the systems were not component parts of the hospital under La. Civ.C. art. 466 (as amended by 2005 La. Acts No. 301) as the systems were not permanently attached to the building; were not plumbing, heating, electrical or other installations; were not permanently attached so as to cause substantial damage to either the systems or building if removed; and there was no evidence that the prevailing notions in society would consider the systems to be component parts of the hospitals in which they were located; and (3) Revenue Ruling 02-003 was superseded by the case law and amendments to article 466. Hitachi appealed to the 1st Circuit Court of Appeal.

The court affirmed the Board's ruling that the systems were not immovable property. The court also rejected Hitachi's argument that it relied to its detriment on Revenue Ruling 02-003 and Private Letter Ruling 03-005 along with the Department's publications. Relying on the subsequent decision by the Louisiana Supreme Court in *Willis-Knighton* in which the court held that MRI systems were not component parts of the hospital in which they were installed, as well as the amendment to article 466 (as amended by 2005 La. Acts. No. 301), the court held that neither Revenue Ruling 02-003 nor Private Letter Ruling 03-005 could be considered unequivocal advice from the Department because both had been superseded as a matter of law. The court held the Revenue Rulings could not be relied on as unequivocal advice because they specifically stated they were based on the specific facts at issue. The court held that Private Letter Rulings are binding only on the Department and the requesting taxpayer pursuant to Louisiana Administrative Code 61:III.101(C)(2)(a) and are not unequivocal advice for purposes of proving detrimental reliance. Accordingly, the court held that the Board did not err in finding that Hitachi was liable for the taxes on the services and repairs it made to the MRI systems.

—**Antonio Charles Ferachi**
Member, LSBA Taxation Section
Director, Litigation Division
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

2nd Circuit Allows Inventory Tax Credit on Equipment Leased Prior to Sale

In *Bridges v. Bullock*, 50,297 (La. App. 2 Cir. 2/19/16), ____ So.2d ____, 2016 WL 683817, Louisiana's 2nd Circuit ruled on the partners' ability to receive inventory-tax credits on equipment that their partnership leased prior to sale. The taxpayers in this case were members of a Louisiana limited liability company that engaged in the business of selling and leasing new and used construction equipment. Because the company was taxed as a partnership for federal and state income tax purposes, the taxpayers claimed their proportionate share of inventory-tax credits for ad valorem taxes that the company paid on the construction equipment. The Department of Revenue disallowed the portion of the inventory-tax credit that the taxpayers claimed for taxes paid on property reported as leased equipment, and the taxpayers filed petitions for refunds.

La. R.S. 47:6006(A) allows retailers to claim a credit against any Louisiana income tax for ad valorem taxes paid to political subdivisions on inventory held by retailers. La. R.S. 47:6006(C) defines "retailer" as a person engaged in the sale of products to the ultimate consumer; under Louisiana Administrative Code 61:V.1701, "inventory" is defined as the aggregate of items of tangible personal property that are held for sale in the ordinary course of business or are utilized in marketing activities and includes goods awaiting sale. On appeal, the court reviewed the taxpayers' testimony and evidence and agreed with both the Board of Tax Appeals and the district court by finding that all of the items for which a tax credit was requested were goods awaiting sale, thereby constituting the inventory of the company, and that the company was a retailer engaged in the sale of products to the ultimate consumer.

Note that this decision comes five months after a similar decision from the 1st Circuit allowing inventory tax credits on property rented prior to sale. *See, Louisiana Machinery Co., L.L.C. v. Bridges*, 15-0010 (La. App. 1 Cir. 9/18/15), 2015 WL 5515156. However, effective Jan. 1, 2016, La. R.S. 7:6006 provides a definition for "inventory" that attempts to exclude leased property.

—**Jaye A. Calhoun** and
Christie B. Rao
Members, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
601 Poydras St., 12th Flr.
New Orleans, LA 70130

Tacit v. Statutory Dedication and Preservation of the Entirety of a Servitude

Himel v. Bourque, 14-1811 (La. App. 1 Cir. 12/11/15), ____ So.3d ____, 2015 WL 8900029.

In 1992, the owners of unimproved property in Ascension Parish agreed to establish a 40-foot-wide servitude of passage extending north from Louisiana Highway 74 to the southern boundary of Bourque's property. The owners of the properties on the east and west sides of the servitude shared the costs of constructing a gravel road along the length of the servitude. In 2000, Ascension Parish paved the servitude — now called Hanson Road — at the owners' request. The paved portion of the road, however, did not extend the entire length of the servitude; instead, it stopped short of its boundary at Bourque's property.

In 2013, Bourque applied to the parish for access to Hanson Road from the southern portion of his property, explaining that the bridge over Bayou Narcisse, which had previously connected the southern portion of his property to the remainder of his acreage, had deteriorated beyond repair. Himel and Gautreau (plaintiffs), who owned the northern-most properties bordering the servitude along Hanson Road (both of which were adjacent to the southern boundary of Bourque's property), sought to enjoin Bourque and the parish from extending the road to provide access to his property.

Plaintiffs claimed that the unpaved portion of the servitude had not been dedicated for public use and, even if it had been, its unpaved status and non-use constituted abandonment of the servitude such that Bourque was no longer entitled to use it for access. The trial court found in favor of Bourque, holding that the entire length of the servitude had been statutorily dedicated to the public and that Bourque and all future owners of his property would have free and uninterrupted access to Hanson Road.

While the appellate court agreed that the servitude of passage extended over the entire length of the servitude as originally described (including the unpaved portion), it overturned the trial court's determination that Hanson Road had been dedicated statutorily. Although Himel's property was acquired in 2009 via an act of sale that included a map confirming the respective lengths of the 1992 servitude and Hanson Road, the court found that the inclusion of the 2009 map did not effect a statutory

dedication of the property pursuant to La. R.S. 33:5051. First, it reasoned that the seller of Himel's property was not developing a *subdivision* for which the 2009 map was required to accompany, pursuant to the statute. Instead, the map was prepared for the "limited purpose of the sale." Additionally, the map did not include the signatures of the remaining owners of the Hanson Road properties, who were also parties to the original servitude agreement. Finally, the dedication statement on the 2009 map specifically provided that it applied "only to streets or rights of way 'not previously dedicated.'" Because the servitude *had* been previously dedicated pursuant to the 1992 agreement, and for the other reasons mentioned above, the court found that the 2009 map did not result in a statutory dedication of either the servitude or Hanson Road.

Nonetheless, the court upheld Bourque's right of access to Hanson Road by concluding that Hanson Road and the servitude parcel had been *tacitly dedicated* to public use pursuant to La. R.S. 48:491. To effect a tacit dedication of a road for public use, the court observed that 1) there must be sufficient maintenance of the road, and 2) the landowners must have had knowledge of or acquiesced in such maintenance. The parish's 2000 paving of Hanson Road, as well as its maintenance along the previously existing gravel strip, satisfied the first requirement. As to the second, the court found that the owners' request to the parish to pave the road more than confirmed their "knowledge and acquiescence." Thus, it held that the entirety of Hanson Road had been tacitly dedicated to public use.

As to the remaining unpaved portion of the servitude, the court found that the parish's routine use of the unpaved strip for drainage maintenance constituted sufficient evidence of tacit dedication. Furthermore, it noted that even if the unpaved portion had not been used by the parish, the "use of the *paved* portion of Hanson Road [was] sufficient to preserve the entire 1992 servitude" because a "partial use of a servitude constitutes use of the whole." Judge McClendon dissented in part, instead emphasizing that the parish's mere use of the unpaved strip for access was not sufficient evidence of the maintenance, upkeep or work required for tacit dedication. As the unpaved portion was, therefore, not dedicated, she asserted, the use of the paved portion of the servitude did not preserve the entirety of the servitude: "Use of part of a servitude . . . can only preserve that which has been dedicated."

Regardless, the majority's opinion in *Himel* suggests that the concept of tacit dedication of public roads can be more broadly applied to pieces of property that may be unpaved and merely used for incidental access. It also supports a more rigid interpretation of the requirements of statutory dedication and confirms that use of a portion of a servitude can preserve its entirety — even where the used and unused portions may be of a different quality and character.

—Travis A. Beaton
Member, LSBA Trusts, Estate, Probate and Immovable Property Law Section
Sher Garner Cahill Richter
Klein & Hilbert, L.L.C.
Ste. 2800, 909 Poydras St.
New Orleans, LA 70112

CHAIR'S MESSAGE

Farewell, So Long, See You Soon...

By Erin O. Braud

Erin O. Braud

Friends:

As this Young Lawyers Division (YLD) year comes to a close, and my year as chair of the YLD has come to its final days, I struggle to convey what an honor it has been to serve alongside the young lawyers of Louisiana. I am grateful for and inspired by your time, efforts, commitment, work and enthusiasm that have made this year a great success.

I look back on my initial involvement, starting sometime in 2008, and realize the YLD has been instrumental in allowing me to both find opportunities and take risks that may have otherwise scared me. I have made connections with attorneys through the bar association whom I would not have otherwise met. The bar community has encouraged me to plow forward when I've been low and has given me a pat on the back when I've succeeded.

Many individuals deserve recognition for everything that has happened with the YLD this year. Thank you. I am humbled by their support and grateful for their encouragement during this year.

The YLD is in good hands, and I am excited to watch our programs grow as we do even bigger and better things under the leadership of our 2016-17 all-star cast of officers: Scotty Chabert (chair), Bradley Tate (chair-elect) and Dylan Thriffiley (secretary).

No words can adequately recognize you, the bar members, who have volunteered valuable time and talents to make a difference in the lives of our fellow Louisianians, so I leave you with a partial snapshot of what has been accomplished in our state by young lawyers through the YLD:

► Approximately 72 first responders received free wills and powers-of-attorney prepared by young lawyers (Wills for Heroes).

► Young lawyers fielded legal questions at no charge in conjunction with the Louisiana State Bar Association's (LSBA) Lawyers in Libraries Program.

► More than 50 young lawyers volunteered throughout the state for high school mock trial regional and state competitions.

► Young lawyers aided in moderating the annual Bridging the Gap seminar held each October prior to the bar admissions ceremony.

► This year, the YLD Diversity Committee partnered with specialty bar affiliates and the LSBA Diversity Committee to offer programming designed to promote diversity and inclusion within both the LSBA and local bar affiliates.

► A record number of young lawyers attended "Louisiana64," connecting young lawyers across Louisiana's 64 parishes. The goal was to strengthen communication, resources and coordination among the legal community of Louisiana's parishes, while increasing access to LSBA and local affiliate initiatives that serve the public and the profession.

► Law school students were introduced to trial procedure and tactics (Law School Mock Trial).

► Many young lawyers were placed on nonprofit boards or committees throughout the state. The committee solicits young lawyer participants and participants from the Louisiana nonprofit community meeting certain criteria, conducts "Meet and Greet" sessions to assist in matching young lawyers and nonprofits, and places young lawyers in available nonprofit board or committee positions (Barristers for Boards).

► More than 100 young lawyers participated in the YLD Professional Development Seminar.

► Young lawyers visited elementary, middle and high school students through the "Lawyers in the Classroom" and Law Day activities that assist in educating the public regarding the law and their rights and responsibilities as citizens. The committee also promotes "Choose Law," a program adopted by the American Bar Association to promote diversity in the profession of law. This committee also includes substance abuse prevention efforts through the "Better Judgment Program" (Law-Related Education).

► The YLD entered the digital age with its own Facebook and Twitter page stocked full of information, updates, events and networking opportunities.

I thank you all for remaining active in the YLD and ask that you encourage others around you to get involved as well. I know many of you remain active while you continue to be associates, partners, solo practitioners, state and government employees, husbands, wives, fathers, mothers, mentors and rock stars. In closing with the infamous words of a well-known marketing campaign but emphasized for a different and deeper meaning, "Stay thirsty, my friends."

I hope you all have a great summer. Thank you again and I hope to see you soon.

YOUNG LAWYERS SPOTLIGHT

Ashley Foret Dees
Lake Charles


Ashley Foret Dees

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Lake Charles attorney Ashley Foret Dees.

Dees splits her time between her main office in Lake Charles and her second office in the Houston Heights neighborhood. She devotes all of her time to an immigration law practice.

She earned a BA degree as a double major in English and Spanish from Vanderbilt University. As an undergraduate, she studied abroad in Italy, the United Kingdom and Spain. After graduation, she lived in Madrid, Spain, for one year to pursue her understanding of Spanish language and culture. Upon her return, she attended Louisiana State University Paul M. Hebert Law Center. After law school graduation, she clerked for the 38th Judicial District Court in Cameron Parish. She then began her career as an immigration attorney in southwest Louisiana.

Dees presents programs several times a year on different immigration law topics. She speaks at local conferences in Louisiana and Texas as well as national immigration law conferences for the Federal Bar Association and the American Immigration Lawyers Association. She focuses a large portion of her practice on representation of companies and employees in the H-2A and H-2B visa program. She works with Louisiana employers across the state in hiring temporary, seasonal foreign workers in Louisiana's vital crawfish, crab, seafood and construction industries. Further, she handles immigration cases involving defense of removal, marriage cases, asylum, and special immigrant juveniles, among others.

Over the past eight years, she has served in various Louisiana State Bar Association (LSBA) leadership positions, including membership in and co-chair of the Leadership LSBA Class. In 2014, she founded and chaired the LSBA's Immigration Law Section and continues to both chair the section and the annual Immigration Law Seminar in New Orleans. She also is a member of the LSBA's Continuing Legal Education Committee and is organizing a military outreach program for foreign spouses of military members. She dedicates time to the Texas State Bar, serving as vice president of the Immigration Law Section's Asylum and Refugee Issues Committee and chairing the Grant Committee.

Dees has devoted much of her time in service positions with the American Immigration Lawyers Association (AILA). She has served on the AILA National Pro Bono Committee and the AILA MidSouth Chapter as the pro bono chair. She traveled with groups of AILA attorneys to volunteer with women and children held in detention facilities in Artesia, NM, and Dilley and Karnes, Texas. She met with detained women and children refugees helping them understand the asylum process and advocating for their release.

She is married to John Dees.

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

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

JUDICIAL Notes

By David Rigamer, Louisiana Supreme Court | NEW JUDGES... APPOINTMENTS

New Judges

Charlotte H. Foster

Charlotte H. Foster was elected judge, Division B, 21st Judicial District Court. She earned her BS degree in 1984 from Louisiana State University and her JD degree in 1989 from Loyola University College of Law. She began her legal career in 1990 as an assistant district attorney in Dallas, Texas. She returned to Louisiana in 1993 and began a solo practice in Denham Springs. She served as felony chief prosecutor for the Livingston Parish District Attorney's Office from 1995 until her election to the bench. She has been named "Prosecutor of the Year" by Victims and Citizens Against Crime. She formerly served as a board member for the Louisiana District Attorneys Association and the Livingston Youth and Family Counseling Organization. Judge Foster is married to Larry Foster and they are the parents of five children.

Scott Westerchil

Scott Westerchil was elected judge, Division C, 30th Judicial District Court. He earned his BA degree in 1986 from McNeese State University and his JD degree in 1989 from Southern University Law Center, where he was on the Moot Court Board. He served as law clerk for the six judges of the 14th Judicial District Court in 1989 and 1990. From 1990 until his election to the bench, he practiced law in Leesville and served as an assistant district attorney. Judge Westerchil is married to Kathleen Stephens Westerchil and they are the parents of two children.

Byron C. Williams

Byron C. Williams was elected judge, Section G, Orleans Parish Criminal District Court. He earned his BS degree in 1978 from the University of Montana and his JD degree in 1987 from Tulane University Law School. He began his legal career as a law clerk for Federal Magistrate Judge Louis Moore, Jr. from 1988-94. He served as an assistant U.S. attorney from 1994-2003 and was an executive assistant district attorney for Orleans Parish from 2003-08. In 2008, he served as judge *pro tempore* in Section E of Orleans Parish Criminal District Court. He served as special counsel for the Judiciary Commission of Louisiana from 2008-09. From 2010-15, he was executive counsel to the president for the Southern University System. He is a member of the Greater New Orleans Louis A. Martinet Legal Society, Inc. Judge Williams is married to Geraldine B. Williams and they are the parents of four children.

Appointments

► Retired Judge Frank Foil and Franchesca L. Hamilton-Acker were reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for terms of office ending on Dec. 31, 2018.

► Edwin G. Preis, Jr. was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office ending on Feb. 1, 2020.

Retirements

► 21st Judicial District Court Judge Bruce C. Bennett retired effective Dec. 31, 2015. He earned his BS and JD degrees in 1973 and 1975, respectively, from Louisiana State University. At LSU Law School, he received the Dean Henry George McMahon Scholarship. He served as captain in the U.S. Air Force Judge Advocate General Corps from 1975-79. He was elected judge in 1988 and served in that capacity for the past 27 years.

► Orleans Parish Criminal District Court Judge Frank A. Marullo retired effective Dec. 31, 2015. He earned his BS degree in 1962 from the University of Southern Mississippi and his JD degree in 1966 from Loyola University Law School. Prior to becoming judge, he practiced law with the firms Marullo & Letellier and Marullo & Mora. In 1971, he was elected to the Louisiana House of Representatives. In 1974, he was appointed to the Criminal District Court bench by then-Gov. Edwin Edwards. He retained that seat through several elections, serving more than 40 years.

2016-2017 Dues and Assessment Payments – Postcard Mailing in May!

Watch your mail in May for a postcard from the LSBA regarding payment of 2016-2017 LSBA Dues, LADB Assessment, Filing of Attorney Registration and Trust Account Information - Due by July 1, 2016. This is the only notice you will receive. Registration Statements will not be mailed.

See page 412 for more information.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Matthew A. Woolf, a shareholder in the New Orleans office, has been named chair of the firm's New Litigator Group.

Beirne, Maynard & Parsons, L.L.P., announces that Thomas Louis Colletta, Jr., has been named a partner in the firm's New Orleans office.

Breazeale, Sachse & Wilson, L.L.P., announces that **Christopher A. Mason** has been named a partner in the Baton Rouge office.

Carter Law Group, L.L.C., in New Orleans announces that attorneys Francine M. Giugno and Trishawn Payne-Palmer Jones have joined the firm's litigation group.

Deutsch Kerrigan, L.L.P., announces that **Terrence L. Brennan** has been named managing partner in the New Orleans office.

Friedlander Misler, P.L.L.C., in Washington, D.C., announces that Rebecca R. Urland has been elected as a partner.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., announces that **Kathy A. Rito** has joined the firm's New Orleans office as an associate.

Leake & Andersson, L.L.P., announces that **Jason R. Bonnet** has been named a member in the firm's New Orleans office.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that **Ashley L. Belleau** has joined the firm's New Orleans headquarters as a shareholder.

Rodd A. Naquin was appointed clerk of court of the Louisiana 1st Circuit Court of Appeal.
Perrier & Lacoste, L.L.C., announces that **Jack C. Benjamin, Jr.** has become a member in the New Orleans office.

Provosty, Sadler, deLaunay, Fiorenza & Sobel, L.L.C., in Alexandria announces that Stephen F. Butterfield has joined the firm as an associate.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., in New Orleans announces that **Maura Z. Pelleteri** and **Amy S. Malish** have joined the firm as special partners and **Christopher J. Weema** has joined the firm as an associate.

Schiff, Scheckman & White, L.L.P., announces that **Damon S. Manning** has joined the firm's Hammond office as an associate.

Staines & Eppling in Metairie announces that David C. Bernard has joined the firm as an associate.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C., in New Orleans announces that **Brendan A. Curtin** and **Benjamin P. Kahn** have joined the firm as associates. Also, **Lynn M. Luker** has joined the firm as of counsel.


Ashley L. Belleau


Jack C. Benjamin, Jr.


Jason R. Bonnet


Terrence L. Brennan


Brendan A. Curtin


Robert J. David


Stevan C. Dittman


Michael J. Ecuyer


Benjamin P. Kahn


Henry L. Klein


M. Palmer Lambert


Matthew D. Lane, Jr.

Stone Pigman Walther Wittmann, L.L.C., announces that Brooke C. Tigchelaar has been elected a member in the firm's New Orleans office.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that Michael S. Walsh has been elected to partner. Also, Scott M. Mansfield, Lauren K. Rivera and Kelley R. Dick, Jr. have joined the firm as associates.

Ziegler & Lane, L.L.C., in Lafayette announces it has changed its name to **Matthew D. Lane, Jr.**, L.L.C., and its website address to *www.MatthewLaneLaw.com*.

NEWSMAKERS

Brent B. Barriere, a partner in the New Orleans office of Fishman Haygood, L.L.P., has become a Fellow of the American College of Trial Lawyers.

Henry L. Klein, a New Orleans attorney, was sworn in on Feb. 22 as an active member of the bar of the U.S. District Court for the District of Columbia. He also is a member of the bar of the U.S. Court of Appeals for the District of Columbia Circuit and a member of the Federal Bar Association Chapter for the District of Columbia.

Steven J. Lane, managing partner of Herman, Herman & Katz, L.L.C., in New Orleans, was named to the board of directors of Louisiana Appleseed.

Louisiana Attorney General Jeffrey M. Landry announced his division directors — Elizabeth Baker Murrill, civil; Brandon J. Fremin, criminal; Christopher B. Hebert, gaming; Renee Free, public protection; and Sonia Mallett, risk litigation.

Louisiana Gov. John Bel Edwards named Juana Marine-Lombard as commissioner of the Office of Alcohol and Tobacco Control. Also, Matthew F. Block is executive counsel, Erin Monroe Wesley is special counsel, and Julie Baxter Payer is deputy chief of staff for communications, legal and special projects.

The New Leaders Council's Louisiana Chapter announced its 2016 Fellows, including New Orleans attorneys Evan J. Bergeron, Michelle D. Craig, Victor M. Jones and William C. Snowden.

Dwight D. Poirrier, an attorney in Gonzales, was elected chair of the board of directors for the Ascension Economic Development Corp.

E. Fredrick Preis, Jr., senior partner in the New Orleans office of Breazeale, Sachse & Wilson, L.L.P., was elected chair-elect of the Jefferson Chamber of Commerce and chair-elect of the American Red Cross Southeastern Louisiana Division. He also was named chair of the National Legal Committee for Leading Age Long Term Care Association and was named by the Louisiana Board of Legal Specialization to the eight-member commission on Labor Law Legal Specialization.

Robert J. Roux was appointed executive counsel for the Louisiana Workforce Commission.

PUBLICATIONS

***Best Lawyers in America* 2016**

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans, Jackson, Miss.): **Robert J. David**, **Stevan C. Dittman, Gerald E. Meunier**, **Walter C. Morrison IV** and **Irving J. Warshauer**.

Leake & Andersson, L.L.P. (Lafayette, New Orleans): W. Paul Andersson, George D. Fagan, Donald E. McKay, Jr., Stanton E. Shuler, Jr. and Patrick M. Wartelle.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **Lynn M. Luker**, **Thomas P. Owen, Jr.**, **Bryan C. Reuter**, **William M. Ross**, **Richard C. Stanley** and **Jennifer L. Thornton**.

***Chambers USA* 2016**

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **Richard C. Stanley**.

Continued next page


Lynn M. Luker


Amy S. Malish


Damon S. Manning


Christopher A. Mason


Gerald E. Meunier


Walter C. Morrison IV


Thomas P. Owen, Jr.


Maura Z. Pelleteri


E. Fredrick Preis, Jr.


Bryan C. Reuter


Kathy A. Rito


William M. Ross

***Louisiana Super Lawyers* 2016**

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): Mark R. Beebe, Robin B. Cheatham, Scott R. Cheatham, David C. Coons, Kathleen F. Drew, John M. Duck, Brooke Duncan III, Philip A. Franco, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., Christopher J. Kane, Louis C. LaCour, Jr., Edwin C. Laizer, Leslie A. Lanusse, Kellen J. Mathews, 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, David M. Stein, 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, 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, Paul C. Thibodeaux, Danielle L. Trostorff, Tyler L. Weidlich, Paul S. West, Matthew A. Woolf and Adam B. Zuckerman.

Richard C. Stanley

Jennifer L. Thornton

Irving J. Warshauer

Christopher J. Weema

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): David L. Carrigee, 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): Michael A. Balascio, Judy Y. Barrasso, Jamie L. Berger, George C. Freeman III, Craig R. Isenberg, John W. Joyce, Stephen H. Kupperman, David N. Luder, Stephen L. Miles, H. Minor Pipes III, Thomas A. Roberts, Richard E. Sarver, Erica A. Therio and Steven W. Usdin.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): Robert L. Atkinson, Thomas M. Benjamin, Robert T. Bowsher, David R. Cassidy, Joseph J. Cefalu III, Carroll Devillier, Jr., Murphy J. Foster III, Alan H. Goodman, Paul M. Hebert, Jr., Scott N. Hensgens, Joseph R. Hugg, David R. Kelly, Eric B. Landry, Eve B. Masinter, Christopher A. Mason, Van R. Mayhall, Jr., Wesley M. Plaisance, Jennifer D. Sims, Thomas R. Temple, Jr., Traci S. Thompson and Douglas K. Williams.

Coats Rose, P.C. (New Orleans): Jason A. Camelford, Walter W. Christy, Brian D. Grubb, Clyde H. Jacob III, Tamara J. Lindsay, Daniel Lund III and Elizabeth Haecker Ryan.

Cook, Yancey, King & Galloway, A.P.L.C. (Shreveport): Samuel W. Caverlee, Sidney E. Cook, Jr., Albert M. Hand, Jr., David J. Hemken, Bernard S. Johnson, John T. Kalmbach, William C. Kalmbach III, Robert Kennedy, Jr., Kenneth Mascagni, Matthew R. May, Herschel E. Richard, Jr. and D. Logan Schroeder.

Deutsch Kerrigan, L.L.P. (New Orleans): Denia S. Aiyegbusi, Francis J. Barry, Jr., Keith J. Bergeron, Terrence L. Brennan, Bertrand M. Cass, Jr., Jimmy A. Castex, Jr., James E. Courtenay, John Jerry Glas, Paul D. Hale, Scott J. Hedlund, Robert E. Kerrigan, Jr., Frederic Theodore Le Clercq, Charles E. Leche, Raymond C. Lewis, Nancy J. Marshall, Joseph L. McReynolds, Ellis B. Murov, Howard L. Murphy, Cassie E. Preston, Charles F. Seemann, Jr., A. Wendel Stout III, Kelly E. Theard and William E. Wright, Jr.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): **Robert J. David**, **Stevan C. Dittman**, **Michael J. Ecuyer**, **M. Palmer Lambert**, **Gerald E. Meunier** and **Irving J. Warshauer**.

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

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans): Ashley L. Belleau, Joseph P. Briggett, Celeste D. Elliott, Joseph P. Guichet, Ralph S. Hubbard III, Benjamin W. Kadden, Rose McCabe LeBreton, Stewart F. Peck, Seth A. Schmeeckle, Shaundra M. Schudmak, David B. Sharpe, Miles C. Thomas and S. Rodger Wheaton.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **Lynn M. Luker**, **Thomas P. Owen, Jr.**, **William M. Ross** and **Richard C. Stanley**.

Stone Pigman Walther Wittmann, L.L.C. (Baton Rouge, New Orleans): Hirschel T. Abbott, Jr., Matthew S. Almon, Barry W. Ashe, Carmelite M. Bertaut, William R. Bishop, Maggie A. Broussard, Stephen G. Bullock, Joseph L. Caverly, John W. Colbert, James T. Dunne, Jr., Abigayle C. Farris, Michael R. Fontham, James C. Gulotta, Jr., 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. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Bryant S. York.

Taylor, Porter, Brooks & Phillips, L.L.P. (Baton Rouge): Cynthia M. Amedee, Vicki M. Crochet, Richard B. Easterling, Tom S. Easterly, Ryan K. French, Brett P. Furr, Mary C. Hester, W. Shelby McKenzie, Harry J. Philips, Jr. and Michael S. Walsh.

UPDATE

Chief Justice Johnson, Simoneaux Inducted into LSU Alumni Hall of Distinction

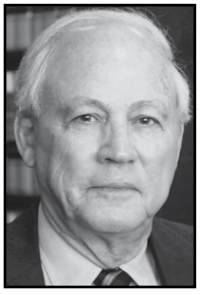
Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and Baton Rouge attorney Frank P. Simoneaux were inducted March 4 into the Louisiana State University (LSU) Alumni Association's Hall of Distinction.

The Hall of Distinction recognizes LSU graduates who have distinguished themselves and the university through their careers, personal and civic accomplishments, and volunteer activities.

After receiving her undergraduate degree from Spelman College, Chief Justice Johnson was one of the first African-American women to attend LSU Paul M. Hebert Law Center, where she received her JD degree in 1969. Her judicial career began in 1984 when she was the first women elected to serve on the Orleans Parish Civil District Court. She was then elected to serve on the Louisiana Supreme Court in 1994 and re-elected without opposition in 2000 and 2010. As senior justice on the Supreme Court, she was sworn in as chief justice on Feb. 1, 2013. She is the Court's 25th chief justice, its second female chief justice and its first African-American chief justice.

Simoneaux earned his JD degree in 1961 from LSU Law School. He served with several prominent law firms and remains active as a sole practitioner. He also has been inducted into the LSU Law Center Hall of Fame. He was thrice elected to the Louisiana House of Representatives (1972, 1976-1982) and unanimously elected House Speaker *pro tem* in 1980. He was the Louisiana Secretary of Natural Resources from 1982-84. In 2008, he was elected by the House to

Chief Justice Bernette Joshua Johnson



Frank P. Simoneaux

the Louisiana Board of Ethics and elected chair by its members. He served on the boards of the Baton Rouge and Louisiana State bar associations, the Council of the Louisiana State Law Institute and the Louisiana Mineral Law Institute. He also served on the Judicial Campaign Oversight Committee and as president of the Louisiana Organization for Judicial Excellence.

Three Appointed to Judiciary Commission

New Orleans attorney Philip B. Sherman, New Orleans attorney Fred L. Herman and Suzanne H. Stinson have been appointed members of the Judiciary Commission of Louisiana by the Louisiana Supreme Court.

Sherman is a partner in the New Orleans office of Chaffe McCall, L.L.P., in the Business and Real Estate Section and also practices in general business and securities law.

Herman established the Fred Herman Law Firm in New Orleans in 1988 and practices in litigation, business transactions and alternative dispute resolution.

Stinson retired as court administrator of the 26th Judicial District Court of Bossier and Webster Parishes in 2014.

Judge Castle Elected LDJA President

Judge Marilyn C. Castle

Judge Marilyn C. Castle, 15th Judicial District Court, was installed as 2016 president of the Louisiana District Judges Association (LDJA).

Also installed for a one-year term were First Vice President Judge John J. Molaison, Jr., 24th Judicial District Court; Second Vice President Judge C. Wendell Manning, 4th Judicial District Court; Secretary Judge Lisa M. Woodruff-White, East Baton Rouge Family Court; and Treasurer Judge Allison H. Penzato, 22nd Judicial District Court.

All Louisiana district court judges with general jurisdiction and judges of juvenile and family courts are eligible for LDJA membership.

Attending the Lafayette Bar/Acadia Bar Red Mass and Opening of Court were, front row from left, Louisiana State Bar Association President-Elect-Designee Dona K. Renegar, Louisiana Supreme Court Associate Justice Jeannette T. Knoll, Lafayette Bar President Danielle D. Cromwell and Lafayette Bar President-Elect Melissa L. (Missy) Theriot. Back row from left, Lafayette Bar Foundation President Thomas R. (Trey) Hightower, Jr. and Lafayette Bar Secretary-Treasurer Donovan J. (Donnie) O'Pry II.

Lafayette Bar, Acadia Bar Conduct Red Mass and Court Opening

The Lafayette Bar Association celebrated its annual Red Mass on Jan. 8 at St. John's Cathedral. The Mass was followed by a luncheon reception at the cathedral.

The Acadia Parish Bar Association hosted the Court Opening at the Acadia Parish Courthouse in Crowley. Judges from the surrounding area attended to recognize the newly admitted attorneys and to memorialize deceased members of the Bar.

Dona K. Renegar, the Louisiana State Bar Association's president-elect-designate, delivered a welcome and highlighted the importance of Bar service. Louisiana Supreme Court Associate Justice Jeannette T. Knoll also addressed the new attorneys.

A reception at the Grand Opera House of the South followed.

Thibodaux attorney L. Thad Toups, left, was sworn in as president of the Louisiana Association of Drug Court Professionals, a statewide organization partnering with the Louisiana Supreme Court's Drug Court Office to provide training to Drug Court professionals and to promote the use of best practices in drug courts. Supreme Court Associate Justice John L. Weimer, right, administered the oath. Also attending the ceremony was Supreme Court Chief Justice Bernette Joshua Johnson. Toups has served as a Lafourche Parish assistant district attorney for more than 32 years and headed the drug education and prevention programs of the DA's Office.

Attorney James McClendon Williams, a past president of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc., reigned as 2016 king of the Mystick Krewe of Louisianians in Washington, D.C., in January. Anna Haspel Aronson of Baton Rouge was the 2016 queen.

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Attending the Lafayette Bar/Acadia Bar Red Mass and Opening of Court were, from left, Acadia Parish Bar officers, Secretary-Treasurer Scott J. Privat, President William J. Casanova and Vice President John Michael Stefanski.

The 21st Judicial District Bar Association and the Florida Parishes Inn of Court hosted their fourth annual December CLE New Orleans Study Break on Dec. 11-12, 2015. Lynn Luker, a diversity seminar facilitator, discussed "Professionalism and the Age Gap." The 1st Circuit Court of Appeal judges presented a roundtable discussion, from left, Judge Ernest G. Drake, Jr., Judge William J. Crain, Judge Page McClendon and Judge Wayne Ray Chutz.

New Louisiana State Bar Association admittees were introduced during the Baton Rouge Bar Association's annual Opening of Court, Memorial and New Member Ceremony Jan. 27. Also, senior members of the Bar were recognized and deceased members were memorialized. Attending, from left, Rolando R. Urbina, president of the Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc.; new admittee Adrian Carter Ross; and Quintillis K. Lawrence, commissioner of the 19th JDC.

The Baton Rouge Bar Association's (BRBA) annual Opening of Court, Memorial and New Member Ceremony was Jan. 27. Robert H. Hodges, second from left, has practiced law for 65 years and was one of several lawyers honored. Also attending were, from left, Linda Law Clark, Amy C. Lambert and Robert J. Burns, Jr., all 2016 officers of the BRBA board of directors.

The Jefferson Bar Association celebrated its annual court opening and installed its 2016 officers on Jan. 22. Attorney Mickey S. deLaup, third from left, was installed as president. On hand for the event were, from left, Louisiana State Bar Association (LSBA) President Mark A. Cunningham; former LSBA President S. Guy deLaup; and former LSBA President Richard K. Leefe.

The New Orleans Chapter of the Association for Women Attorneys installed its 2016 officers at the Annual Dinner Meeting in January. Ashley M. Liuzza, far left, was installed as president. Other officers are Hillary Barnett Lambert, vice-president; Sharonda R. Williams, treasurer; Kelly E. Barbier, corresponding secretary; and Megan S. Peterson, far right, recording secretary. The chapter also presented the AWA Michaelle Pitard Wynne Professionalism Award to Katharine M. (Katie) Schwartzmann, third from left, co-director of the Roderick and Solange MacArthur Justice Center. Also attending was Prof. Jane L. Johnson, director of experiential learning at Tulane Law School.

President's Message

Interview of 2016-17 President E. Jane Sherman

Interviewed by 2016-17 Secretary Amanda Wood Barnett

Barnett: Tell us about yourself and your family.

Sherman: Although a native of Monroe, I earned my undergraduate and JD degrees at LSU and moved to Baton Rouge. I am happily married going on 28 years to Dr. Stephen L. Sherman, a practicing orthodontist of Sherman & Balhoff, Orthodontics, in Baton Rouge. Of our four children, three aspire to be dentists like their father, but I am proud to say one has an interest in law, like his mother. Obviously, we are not very creative with careers in our family, but we are happy knowing our children are each pursuing great career paths. Our four children were each born on holidays, so celebrations are big at our home! Our oldest Stephen, age 26, is a May 2016 graduate of the LSU School of Dentistry, who is beginning his orthodontic residency at University of Oklahoma Health Science Center. Kramer, age 25, anticipates graduation from the LSU School of Dentistry next year and also seeks an orthodontic specialty. Bennett is a junior finance major at LSU in Baton Rouge, with an interest in law. Finally, a girl (the first in the Sherman family in over 100 years!), Elizabeth is a sophomore biology major at LSU aspiring to be a pediatric dentist. My family and faith are always first in my life.

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

Sherman: Life is a circle and I am a prime example. It's like the lyrics of folk-rock composer and philanthropist Harry Chapin's "All My Life's a Circle." He writes, "All my life's a circle . . . It seems like I've been here before. I can't remember when. But I got this funny feelin' that I'll be back once again." In 1988, I served on the first Grants Committee of the LBF, and thus began my passion for the LBF and its services. As chair of the Young Lawyers Section, I became an LBF charter member in 1987 and served on the first Grants & Criteria Committee for the IOLTA grants program in 1988. Throughout my law practice, I remained involved in civil legal aid services, such as coordinating "The Law & You" newspaper and TV projects, serving on the board of the former Capital Area Legal Services, and serving with the Baton Rouge Bar Association Pro Bono and Legal Aid Committees. It is a dream to believe that, after 25 years, I would return to the LBF board and become its president. It is truly an honor and humbling privilege.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, far left, administered the oath of office to the incoming Louisiana Bar Foundation officers. From left, Secretary Amanda W. Barnett, Treasurer W. Michael Street, Vice President Valerie Briggs Bargas and President E. Jane Sherman. *Photo by Matthew Hinton Photography.*

Similar circles have occurred in my legal career. I practiced law for 10 years with Mangham, Hardy, Rolfs & Abadie in Lafayette and Baton Rouge, and then for 10 years with Phelps Dunbar, L.L.P., in Baton Rouge doing regulatory, real estate and corporate litigation. In 2001, I looked up and, with four children within five years of age beginning their teen years, it was time to put a temporary halt on my full-time law practice. I maintained my passion for service work as well as my law license in private practice representing various corporate entities, both commercial and non-profit. My youngest child graduated high school last year, and I am excited to say that, after a 15-year hiatus, I renewed my relationship with Phelps Dunbar as a senior counsel in its Baton Rouge office effective April 1, 2016. Life is a circle.

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

Sherman: The LBF plays the greatest role in Louisiana in ensuring access to civil justice. It is sadly a little known fact to our profession about the tremendous services provided by the LBF. The LBF was established to advance justice and law-related education. The LBF is currently the largest state funder of civil legal aid to indigents. With federal funding cuts over the last several years of more than 40 percent, the LBF's funding is more crucial now than ever to maintain access to civil justice for the impoverished. Imagine having your children or home taken away or being the victim of domestic violence, and you can't afford a lawyer. Unlike criminal proceedings, there is no constitutional guarantee to civil representation. The LBF provides funding for civil legal services in all 64 parishes of Louisiana to indigents who fall below the federal poverty guideline. Civil legal aid is the life-saving oar to people facing life-changing problems. Investing

Continued next page

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson with President E. Jane Sherman and her husband Dr. Stephen L. Sherman. *Photo by Matthew Hinton Photography.*

in civil legal aid not only offers indigents a way out of poverty, but also provides positive economic and community impact by keeping families together, reducing domestic violence and incarceration, reducing evictions, and saving tax dollars.

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

Sherman: The Campaign's importance is twofold. First, it is to raise awareness within our profession of the presence and work of the LBF. More importantly and related, it is to raise funds for the continuation of civil legal aid in our state. In 2015-2016, the LBF awarded $5.3 million in social justice initiatives to those who would otherwise go unrepresented. While admirable, these funds were sufficient to serve only approximately 25,000 of the estimated 161,000 Louisiana households in poverty. The challenge of the Campaign will be to raise funds to sustain and expand funding to our civil legal service programs.

Barnett: Why is this Campaign so important?

Sherman: The time for action is now. A study by the Jesuit Social Research Institute of Loyola, reported on March 17, 2016, announced, "Louisiana is dead last in U.S. social justice." The Loyola researchers stated, "Low-income families, immigrants and workers of color are worse off in Louisiana than anywhere else in the nation." The average low-income household in Louisiana was $11,156 in 2014, as compared to $15,281 nationally, and as compared to the estimated $45,840 needed for a two-person family to afford basic necessities. But, as the study reports, "it is well within the power and the duty of citizens in Louisiana to change the current reality for the common good." The LBF is taking steps to make this change.

Barnett: How can Louisiana lawyers help the LBF?

Sherman: The answer is so easy! Become a Fellow of the LBF. Of the 22,407 licensed attorneys in Louisiana, only 1,786 are currently LBF Fellows. Each of us is asked to contribute to various charitable organizations annually, and these needs are compelling. I urge you also to consider supporting the charitable works of your legal profession by the LBF as one of your priorities this upcoming year. As a non-profit 501(c)(3) entity, the LBF is the visible public service organization of Louisiana attorneys. Become a part. Become a Fellow. Email LBF Development Director Laura Sewell at laura@raisingthebar.org, or visit the website, *www.raisingthebar.org*. Annual Fellows fees are as affordable as $200 annually and $100 for young lawyers. Help our LBF to continue to provide access to justice to all in the civil legal arena. You also may go online and donate to the Campaign at *www.raisingthebar.org/campaign*. U.S. Chief Justice Warren Burger said, "Concepts of justice must have hands and feet to carry out justice in every case in the shortest possible time and the lowest possible cost. This is the challenge to every lawyer and judge in America." I urge you to join the LBF's efforts to be the hands and feet of providing access to civil justice for all.

Barnett: What are your goals and vision as LBF president?

Sherman: My goal is to continue the works of the great leaders of the LBF before me. I seek not only to find funding sources for the many civil legal aid providers throughout our state, but also to streamline those services to ensure that the funds are used efficiently to provide services to the most clients possible. Louisiana Supreme Court Chief Justice Bernette Joshua Johnson recently implemented the Access to Justice Commission. Our task of increasing funds and ensuring the best economic use of our grant money will be better achieved through the coordinated works of the LBF with our new Access to Justice Commission, the Louisiana State Bar Association and all interested civil legal aid providers working together to expand and enhance the civil legal aid services available in Louisiana.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

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Alaina E. Brandhurst ..... New Orleans
Hon. Barron C. Burmaster ..... Harvey
Hon. Aisha S. Clark ..... Monroe
Hon. Lilynn A. Cutrer ..... Lake Charles
Gordon L. James ..... Monroe
Hon. Madeline Jasmine ..... Edgard
Hon. Theodore M. (Trey) Haik III ..... New Iberia
Hon. F. Stanton Hardee ..... Kaplan
Hon. Pammela S. Lattier ..... Shreveport
John L. Luffey, Jr. ..... Monroe
Hon. Timothy S. Marcel ..... Hahnville
Hon. Sharon Ingram Marchman ..... Monroe
Deidre Deculus Robert ..... Baton Rouge
Hon. C. Sherburne Sentell III ..... Minden
Hon. James B. Supple ..... Franklin
Hon. Lala B. Sylvester ..... Natchitoches
Hon. Kirk A. Williams ..... Baker
Ta-Tanisha T. Youngblood ..... Baton Rouge

LBF Honors Award Recipients at Gala

The Louisiana Bar Foundation (LBF) celebrated its 30th Anniversary Gala on April 8 and honored the 2015 Distinguished Jurist Sarah S. Vance, Distinguished Attorney Judy Y. Barrasso, Distinguished Attorney Herschel E. Richard, Jr., Distinguished Professor Alain A. Levasseur, and Calogero Justice Award recipient The Family Justice Center of Ouachita Parish.

LBF 2016-17 President E. Jane Sherman, third from left, with award winners, from left, Valerie Bowman, Family Justice Center executive director; Alain A. Levasseur; Sherman; Judge Sarah S. Vance; Herschel E. Richard; and Judy Y. Barrasso. *Photo by Matthew Hinton Photography.*

Distinguished Jurist Sarah S. Vance

Judge Sarah S. Vance completed her seven-year term as chief judge of the U.S. District Court for the Eastern District of Louisiana in September 2015. She joined the court in 1994. A graduate of Tulane University Law School, she first joined the New Orleans firm of Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.C., becoming a partner.

Judge Vance is a leader in the federal judiciary, serving on the Judicial Conference of the United States and appointed by U.S. Supreme Court Chief Justice John Roberts to serve on the Conference's Executive Committee. He appointed her to the Judicial Panel on Multidistrict Litigation in 2013 and as chair of the panel in 2014, the first woman to hold that position. Also by appointment of the Chief Justice, she served on the board of directors of the Federal Judicial Center from 2003-07, chairing the Center's Committee on Judicial Education and involved in judicial education programs and mentoring newly minted federal judges. She also was appointed by the Chief Justice to serve on the Bankruptcy Administration Committee of the Judicial Conference of the United States.

Distinguished Attorney Judy Y. Barrasso

Judy Y. Barrasso, a founding member of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans, practices in commercial litigation, including complex commercial litigation matters and class actions involving insurance coverage and bad faith, director and officer liability, securities fraud and commercial contracts. She is a member of the American College of Trial Lawyers, a Fellow and second vice president of the International Society of Barristers, and the current president of the New Orleans Bar Association.

Barrasso has taught as an adjunct professor at Tulane Law School and the Louisiana Association of Defense Counsel Trial Academy. She served as a board member and chair of the Louisiana Attorney Disciplinary Board. She also serves on the Attorney Disciplinary Committee of the U.S. District Court for the Eastern District. She served on the board of the New Orleans Pro Bono Project. She was named a Young Leadership Council Role Model in 2004, one of the *CityBusiness* Women of the Year in 2014 and 2001, and a YWCA Role Model in 2000.

Distinguished Attorney Herschel E. Richard, Jr.

Herschel E. Richard, Jr., a member of Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport, practices principally in business litigation, eminent domain, toxic tort, products liability, and legal and medical malpractice. He was the 2000 recipient of the LBF's Curtis R. Boisfontaine Trial Advocacy Award and served as LBF president from 2010-11.

A graduate of Louisiana State University Law School (a member of the *Louisiana Law Review*), Richard was admitted to practice in 1970. He is a Fellow of the American College of Trial Lawyers, the International Society of Barristers and the Louisiana Bar Foundation. He is a member and past president of the Louisiana Association of Defense Counsel and a master bencher in the Harry V. Booth and Judge Henry A. Politz American Inn of Court. He also is a member of the International Association of Defense Counsel, the Federation of Insurance and Corporate Counsel, the Maritime Law Association of the United States and the Louisiana State Law Institute Council.

Distinguished Professor Alain A. Levasseur

Professor Emeritus Alain A. Levasseur was the Louisiana State University Paul M. Hebert Law Center's Hermann Moyse, Sr. Professor of Law, director of the European Studies Program, and associate director for International Studies, Center for Commercial and Business Law. He retired in June 2015 from LSU Law Center. He holds a DESS from the Faculté de Droit de Paris and an MCL from Tulane University Law School.

In 2014, Levasseur was selected as Scholar in Residence by the LBF. He is the author of more than 20 books in English and French, 30 articles in English and 50 articles in French. His latest book, *Deciphering a Civil Code* (2015), was written with the support of the LBF. He has also spearheaded many translations, particularly the *Dictionary of the Civil Code* and the *French Civil Code* for the official site of the French government (Légifrance).

2015 Calogero Justice Award The Family Justice Center of Ouachita Parish

The Family Justice Center of Ouachita Parish (FJC) opened in 2005. A Family Justice Center is an innovative method of co-locating a multi-disciplinary team of professionals to provide coordinated services to victims of domestic violence, dating violence, sexual assault and stalking. The FJC is one of only 15 in the nation. The FJC groups agencies that serve victims under one roof, making it easier for those who need services to get them while batterers are held accountable for their actions.

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NOTICE

Notice is hereby given that J. Michael Cutshaw 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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Notice is hereby given that Frank J. Ferrara, Jr. 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.

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

Notice is hereby given that Diedre Pierce Kelly intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing the petition and application for reinstatement may 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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8 L	E	G	U	P		9 I	M	P	L	E	A	D	
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10 F	O	E		11 A	D	M	I	12 S	S	I	O	N	
		C		C		A		H				S	
13 C	A	T	C	H	Y		14 M	O	H	15 A	W	K	
L				E		16 A		R		U			
17 A	F	18 F	I	D	A	V	I	T		19 G	U	20 T	
U		A				A		F		U		H	
21 S	I	T	D	22 O	W	N		23 A	I	S	L	E	
E		W		W		T		L		T		F	
	24 M	A	T	E	R	I	A	L	F	A	C	T	

The Last WORD

By Leslie J. Schiff

A FEW IDEAS ON PROMOTION

I finally figured it out. Sitting in my office on Thursday afternoon, Jan. 28, 2016, and entering my 57th year in the practice of law, I finally figured it out.

I received a call from some gentleman congratulating me on my appointment as a Super Lawyer. I thanked him for the compliment. He then offered to send me a "free packet" of materials suggesting ways in which I might promote myself.

I thanked him profusely for his generosity and suggested to him that I was not interested in promoting myself. He thanked me and the call was terminated.

This sent me to thinking: That's our problem! We are so hell-bent on promoting ourselves and in search of the almighty dollar that we have forgotten the true spirit of our profession. I did not take down the solicitor's phone number. I wish I had. I would explain to him my views on how lawyers should promote themselves. These ideas are not novel with me and are probably not in his "free packet" of promotional suggestions.

Here are a few ideas on promotion . . . .

Work hard.
Study your cases.
Investigate the facts diligently.
Keep your client informed.
Work diligently on your cases.
Maintain a strong one-on-one relationship with your client.
Gain and maintain your client's confidence.
Remember to honor the lawyer/client relationship.
Keep your client's interest foremost in your mind while handling the case.
Be kind and courteous to your partners and staff.

Respect the judiciary and your opposition.

Be honest and forthright in handling your affairs, both professional and personal.

I wonder how many of these thoughts are in the free promotional packet.

Leslie J. Schiff, president of the Louisiana State Bar Association (LSBA) in 1989-90 and a 1960 graduate of Louisiana State University Law School, is currently with the firm Schiff, Scheckman & White, L.L.P. He concentrates his practice on matters related to attorney discipline before the Louisiana Attorney Disciplinary Board and representation of judges before the Judiciary Commission of Louisiana. He is a member of the LSBA's Rules of Professional Conduct Committee, the Lawyers in Transition Committee and the Senior Lawyers Division and is a frequent speaker on legal ethics and professionalism. (leslie@sswethicslaw.com; 117 W. Landry St., Opelousas, LA 70570)

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 include "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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FOR
EVERYTHING

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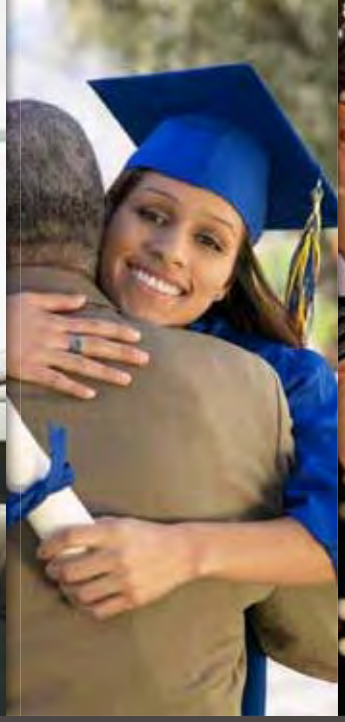

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