



LOUISIANA BAR JOURNAL

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PRACTICE TIPS

- **MILITARY CLIENTS AND SCRA**
- **WRITTEN CONTRACTS**
- **NEW FASTCASE 7**

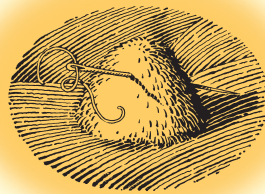
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- Interview with Justice Crichton
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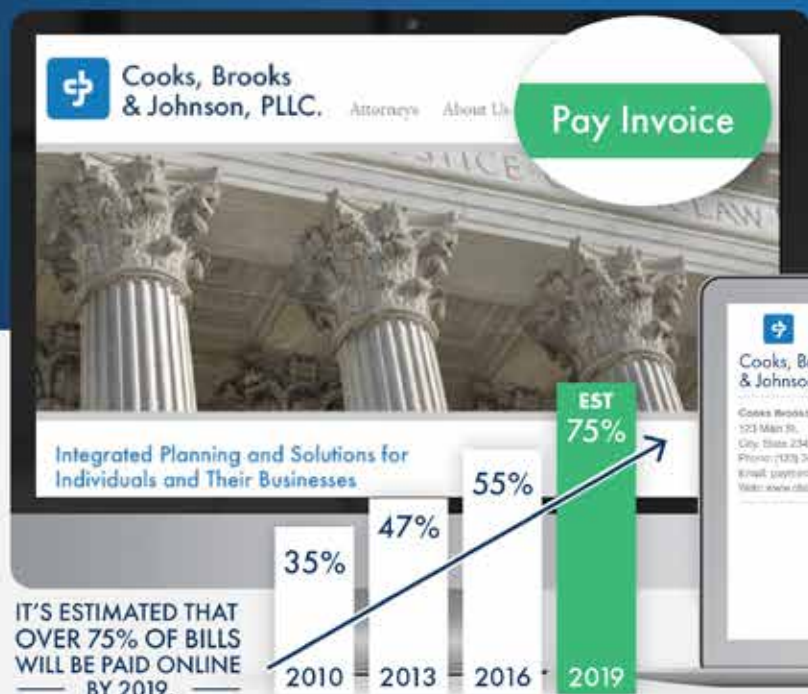
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By Alainna R. Mire

It's Been a Wonderful and Enlightening Two Years!

As this is my final Editor's Message — before I relinquish the duties to incoming Louisiana State Bar Association (LSBA) Secretary Eddie McAuliffe in June — I'd like to reflect on where we began and where we are now.

In my first Editor's Message, I commented: "With the assistance of the wonderful, talented staff of the LSBA and the hardworking members of the *Journal* Editorial Board, I believe the *Journal* will continue to be a publication of which we all can be proud."

I, for one, can say I am very proud to have been involved with this publication. I have reviewed journals and magazines from other states and I am convinced that ours is one of the best. In each issue, we have endeavored to publish timely, substantive, informative and just plain enjoyable material, including recent developments, trends in the law and current information about judges and lawyers.

Over the past two years, we have published a variety of independent articles and themed issues, but my favorite issue — hands down — was the June/July 2016 *Louisiana Bar Journal*, coordinated by the 2015-16 Leadership LSBA Class, to pay tribute to the LSBA's

75th anniversary. The Class members worked hard gathering material, conducting interviews and doing research. The content included interviews with a Supreme Court justice, a state appellate court judge, a New Orleans district judge and a past LSBA president from the 1970s. There also were articles on historic courthouses in Louisiana and a technological look ahead to the next 25 years.

I have truly enjoyed my interaction with members of the *Journal* Editorial Board, a group of very hardworking attorney volunteers who were always there, and always came through, whenever needed. I was able to see firsthand the many efforts needed to produce a single magazine (a total of 12 under my tenure) and the care taken to get things just right. Yes, some LSBA members have taken issue with a few items in the magazine, but it was all in the vein of constructive criticism and will be filed for future edification.

Issues of the *Journal* would never be possible without the articles submitted by LSBA members. I would like to thank all of the LSBA members who became our published authors over the past two years and who volunteered their experience and wisdom to educate the full membership in a variety of sub-

stantive areas of the law.

As one of my final requests as editor, I am wholeheartedly encouraging all LSBA members to get involved with the magazine and to submit articles and/or article proposals for consideration by the incoming editor and Editorial Board. If selected for publication, your articles will both educate our members and earn CLE writing credit. That's a win-win for everyone.

Don't want to write an article? Then send us an email and let us know what topic ("hot" or not) you'd like to see published. The Editorial Board will be happy to discuss it, assign it and see it through to publication.

I have truly enjoyed this experience as LSBA secretary and as *Journal* editor. As my term ends and I move on to the next chapter in my career, I'll send my best wishes and good luck to Eddie. He will, no doubt, have some very good ideas to keep the *Journal's* quality, focus and purpose continuing on for the next two years.

A stylized, handwritten signature in dark ink, appearing to read 'Alainna R. Mire'.

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By Darrel J.
Papillion

Put Down Your Phone and Pay Attention!

Nearly 25 years ago, on a lovely June afternoon, I was walking along Poydras Street in the heart of New Orleans' Central Business District when I heard a young associate at the big firm, where I had started work earlier that day, say something incredible. It was my first day as a law clerk or "summer associate," as we were called, at one of the state's largest law firms. I was an LSU Law School student who had grown up in Eunice and was still wondering why on Earth this, or any, law firm would pay me the astronomical sum law firms paid summer associates in those "good old days." I was desperately working to not say the wrong thing, use the wrong fork, or otherwise reveal I might have no business representing multinational corporations in complex cases. I knew I had what it took to eventually get a job at this or another firm, but when I met the other law clerks, some of whom were students at some of the nation's top law schools, I knew I needed to do all I could to make LSU and Eunice proud!

My fellow clerks and I, all wearing the new suits we had acquired to supplement the one good "interview suit" we had worn all through the preceding school year's interview season, had just enjoyed the first of many outstanding

networking lunches at a fine French Quarter restaurant and were walking back to the firm's offices.

The *real* associate, just a few years older than I was, said, "Darrel, when we get back to the office, I am going to print an email I got from a client this morning and have you start researching the legal implications of something our client wants to do." I thought, "You're going to print a . . . what?" I was about as familiar with computers as most American law students, and I guess I had *heard* of email, but I had surely never seen one, and I had no idea how email worked. But, not wanting to expose myself as a complete rube, I confidently said, "Sure, I'd be happy to *review that email* and get right to work."

That was my introduction to a medium of communication that would absolutely dominate my life — and the lives of thousands of other lawyers — for, at least, the next quarter century.

I have joked that, depending on the day, I am either the "youngest old guy" or the "oldest young guy" in my work as a lawyer or as Louisiana State Bar Association President. Granted, some days it seems like the "young" is becoming more aspirational than actual.

I am old enough to remember when lawyers did not use computers, but I am

also young enough to be in the very first group of lawyers to have always used computers and other electronic devices in the practice of law. My initial introduction came in law school and on that long-ago day I just described, but when I graduated from law school a couple of years later and started my first real job as a law clerk at the Louisiana Supreme Court, the Court installed computers on all our desks the week before my class of clerks started, replacing the "computer room" that previous clerks had shared. When I went to work as a lawyer at a large law firm after my clerkship, a shiny new Apple computer was waiting on my desk. I have never practiced law without a computer.

Today, I use a laptop that is always with me. While there is nothing nautical about it, I "dock" it into a "docking station" as soon as I come into the office each morning, and I undock it and bring it home with me every evening. At home, I can VPN (use a virtual private network) and see all my files as if I were sitting behind my desk. I have "24-hour tech support" if something goes wrong. As if this were not enough, I also have an iPad and two cell phones — an Apple and an Android. I can be reached anywhere, anytime, by practically anyone, and I almost certainly have at my



disposal more computing power than the Johnson Space Center had when it launched the Mercury and Apollo astronauts into space!

As LSBA members, we can all log onto Fastcase (a free LSBA perk), PACER and Court Connect, and we can all email, text, research, Dropbox, VPN and electronically download and send files and data until our eyes go bleary.

As 21st century lawyers, we have a virtual arsenal of technology at our disposal. And, I haven't even begun to talk about how we can harness artificial intelligence, offshore legal resources, apps that help prepare our cases and allow us to manage our practices and clients "over multiple platforms," blah, blah, blah. The possibilities are endless! So, when is enough technology enough? At what point are we simply spending too much time staring or squinting at a screen? Are we at that point now, or are we prepared to continue to embrace each new technology as we have for the past 25, or more, years until we are literally one with our machines?

Some argue we have reached the point where our over-reliance on technology may be doing more harm than

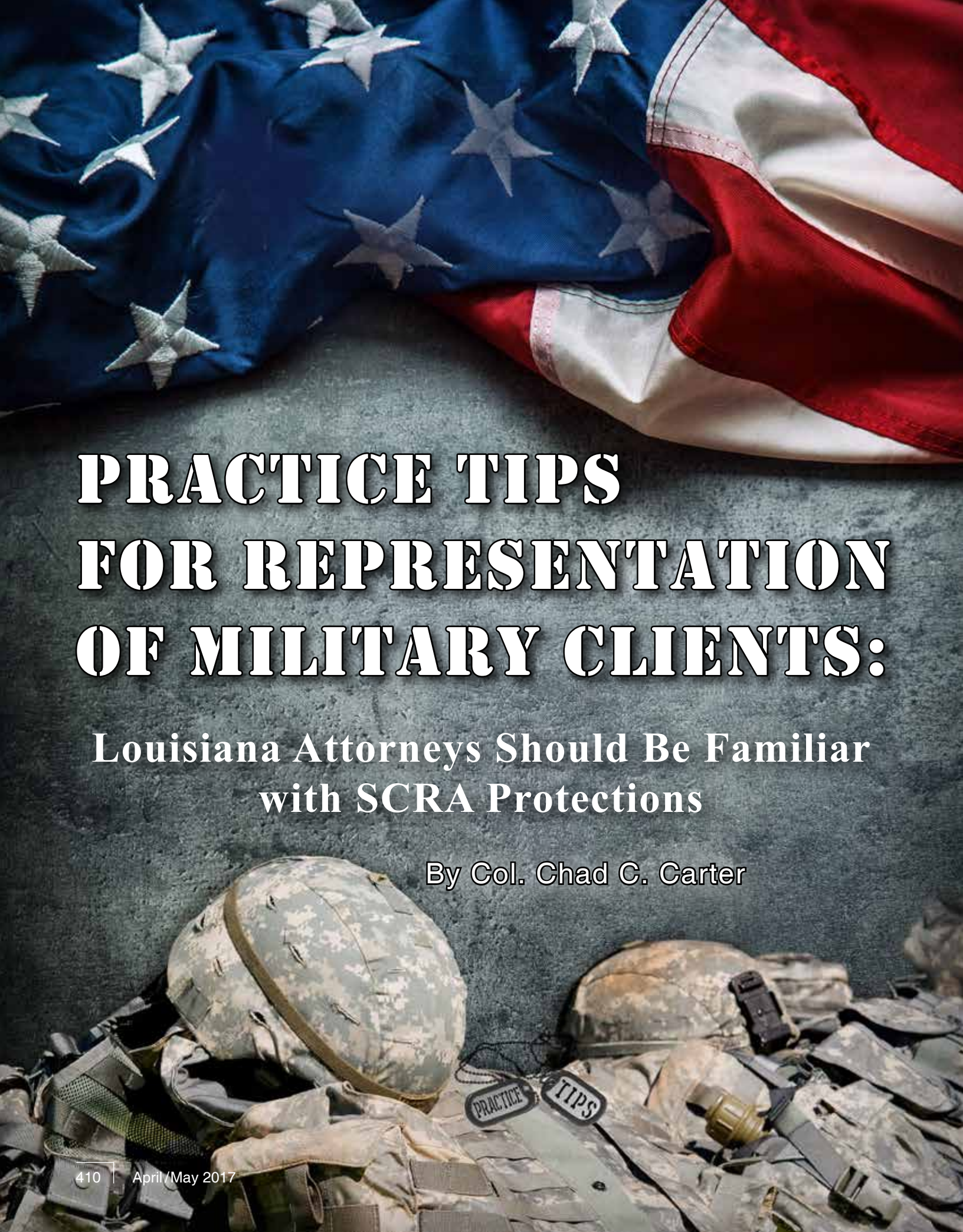
good to what is, at least for the time being, the most important tool we have as lawyers — our brains. Studies are beginning to suggest that repeated use of electronic devices — incessant email checking on smartphones, use of social media, and similar acts that put highly educated legal professionals in a trance during deposition breaks (or, worse, in a deposition) and throughout the day — are affecting lawyers' ability to concentrate. A very compelling (and ironic) case can be made that our ability to "think" — something IBM's longtime slogan compelled — is the most important thing we do as lawyers, but our incessant emailing, texting and typing away on devices large and small may be harming our brains and probably our thumbs, too.

Neuroscientists are beginning to discover that people who spend a great deal of time using computer and video screens suffer higher levels of gray matter atrophy, compromised white matter integrity, reduced cortical thickness, impaired cognitive functioning, and cravings and impaired dopamine functioning related to their screen use. In other words, the devices so many lawyers are

"addicted" to may be impairing brain structure and function. For those of you who still have deep powers of concentration and who can never turn off your "lawyer brain," there is certainly not enough evidence to "incite inquiry" as to whether a whole generation of lawyers will suffer from a new occupational disease. I have not now alerted you all to the beginning of the prescriptive period of this new "lawyer brain disorder," but maybe now would be a good time to examine our relationships with our devices. Or, as my children have said, "Dad, maybe you should disconnect, so we can connect." Good advice, I'd say.

It would stand to reason that if our greatest asset as lawyers is our ability to think critically and deeply and to bring high levels of focus and concentration to complex legal issues, then we might want to consider weaning ourselves from our devices and screens. Less screen time will likely make us better lawyers, and it will almost certainly make us better spouses, parents, dinner companions — and drivers!

A. L. Brin

The background of the page features a close-up of an American flag in the upper half, with its stars and stripes clearly visible. The lower half of the page shows military equipment, including two camouflage helmets and tactical vests. A small tag with the words "PRACTICE TIPS" is visible on one of the vests.

PRACTICE TIPS FOR REPRESENTATION OF MILITARY CLIENTS:

**Louisiana Attorneys Should Be Familiar
with SCRA Protections**

By Col. Chad C. Carter

Military life is significantly different from civilian life. Servicemembers do not get to choose the locations where they work. They are deployed far away from their families and friends for months at a time. They are always on duty and do not receive overtime pay. They can face jail time for not going to work or for criticizing their bosses. Their job descriptions include laying down their life in defense of their country if necessary. Due to these peculiarities, legal protections developed over time in an attempt to balance the obligations of servicemembers with the realities of military life.

Servicemembers Civil Relief Act

Louisiana has a long history of civil legal protections for the military dating back to the War of 1812.¹ Since that time, both federal and state governments issued legislation which seeks to “protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”² The most significant law relating to servicemember protections is the Servicemembers Civil Relief Act (SCRA).³ Louisiana attorneys who represent military clients and their families should have a working knowledge of its principal protections.

Basic SCRA protections were adopted in the World War II era and the law has been amended numerous times over the years. In 2003, it underwent a significant overhaul and its name was changed from the Soldiers’ and Sailors’ Civil Relief Act to its current moniker.⁴ In 2015, the SCRA was moved from an appendix of the United States Code to a location within the Code itself.⁵

The SCRA applies to all active duty U.S. military, members of the reserves while on active duty, and national guardsmen when activated under a federal call to active duty.⁶ It also offers protections for the dependents of military members. The SCRA does not apply to civilian employees of the military or contractors. Additionally, it does not apply to criminal proceedings.

The SCRA is assigned two explicit purposes. One is to “provide for, strengthen and expedite the National Defense” by providing legal protections to U.S. servicemembers, thus enabling them to “devote their entire energy to the defense needs of the Nation.”⁷ The SCRA also serves to “provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.”⁸ Nonetheless, the SCRA is not a sword wielded by servicemembers to nullify otherwise valid obligations.⁹ It does not forbid legal actions against servicemembers nor does it provide defenses against them.¹⁰ The intent is simply to level the playing field so as to minimize the adverse impact of one’s military service on one’s legal obligations.¹¹ Because of this, in many instances, the SCRA will not provide relief to a servicemember unless it can be demonstrated that the member’s military service has materially affected his or her ability to meet a certain legal obligation.¹² Examples of material affect would include a servicemember’s inability to appear in court due to participation in a military exercise, deployment or training.¹³

Default Judgments and Automatic Stays

An important procedural safeguard is the protection afforded against default judgments while on active military service.¹⁴ In a civil case in which a military defendant does not make an appearance, a plaintiff is required to file an affidavit with information indicating whether the defendant is in military service.¹⁵ Any default judgment obtained without the required affidavit is voidable.¹⁶ Additionally, a court may not enter a default judgment unless an attorney is first appointed to represent the interests of an absent military defendant.¹⁷ Further, if a default judgment is entered while a defendant is on active military service,¹⁸ the servicemember can have the judgment reopened upon a showing that military service materially affected

the servicemember’s ability to defend the action.¹⁹

The SCRA also provides that an individual on active military service²⁰ with notice of a civil or administrative proceeding is entitled to an automatic 90-day stay of that action.²¹ For a court to provide this automatic stay, the request must contain evidence as to how military service has materially affected the servicemember’s ability to appear in the action²² and should also include a letter from his or her commander that indicates military leave is not authorized for the servicemember’s participation in the action.²³ Following the initial 90-day stay, an additional stay may be requested upon a showing of continued material affect of military service on the servicemember’s ability to appear in the action.²⁴ Any additional stays are discretionary.²⁵

Prior to requesting a SCRA stay, it is important for attorneys who represent military clients to ask several relevant questions.²⁶ Was the servicemember served properly? Does the court have subject matter jurisdiction? Does the court have jurisdiction under the Uniform Child Custody Jurisdiction Act?²⁷ Does the court have personal jurisdiction over the servicemember? Does the court have jurisdiction to award or modify spousal or child support under the Uniform Interstate Family Support Act?²⁸ These questions should be addressed first because a lack of jurisdiction or proper service of process could preclude the need to resort to SCRA remedies.

Statutes of Limitations/ Prescriptive Periods

The SCRA also grants relief to servicemembers regarding statutes of limitations/prescriptive periods, which are tolled/suspended to exclude the period of military service.²⁹ The tolling period applies regardless of whether the action is brought by or against a servicemember.³⁰ The tolling provision does not apply to tax proceedings.³¹ Other procedural protections afforded by the SCRA are provisions which authorize a court

to stay execution of judgments against servicemembers³² and provisions which provide protection of persons who are secondarily liable on servicemember obligations.³³

Of the substantive protections afforded by the SCRA, one key provision is that a landlord may not evict a military tenant or military dependents without first obtaining a court order.³⁴ If an eviction order is sought, the servicemember may request a stay of execution of up to 90 days.³⁵ If a landlord fails to comply with the court order requirement, the landlord can be held criminally liable.³⁶ In one particularly egregious case, this provision was successfully used against a landlord who, without a court order, evicted a pregnant military dependent mother of two while the husband servicemember was absent due to military duty.³⁷ In that case, the landlord was sentenced to six months in prison, one year of supervised release, a \$1,000 fine and restitution of more than \$15,000.00.³⁸

Liens, Leases and Contracts

A similar SCRA provision applies in the area of storage liens. A lienholder of personal property or effects of a servicemember must obtain a court order prior to foreclosure or enforcement.³⁹ A court may issue a stay of the foreclosure or enforcement proceeding on its own motion,⁴⁰ but a stay *must* be issued if a servicemember demonstrates that military service has materially affected his or her ability to comply with the obligation.⁴¹ Additionally, a storage lienholder can be held criminally liable for failing to obtain the required court order prior to enforcement of the lien.⁴² This court order requirement also exists for repossession actions on installment contracts and foreclosure actions on mortgages entered into by a servicemember *prior* to entry onto active military service.⁴³

Under the SCRA, servicemembers have a right to terminate residential and professional leases when certain conditions are present. A servicemember may terminate such a lease upon initial entry onto active military service.⁴⁴

A servicemember may also terminate a lease upon the receipt of permanent change of station orders (*i.e.*, orders for assignment to another military post or base) or upon receipt of orders to deploy for a period of more than 90 days.⁴⁵ A lease termination pursuant to the SCRA serves to terminate the lease obligation as to the servicemember as well as any military dependents on the lease.⁴⁶ It is not necessary that a “military clause” be present in the lease in order for this protection to be exercised.⁴⁷ Additionally, the SCRA permits servicemembers to terminate motor vehicle leases and cellular telephone service contracts under conditions similar to those permitting the termination of immovable property leases.⁴⁸

SCRA’s Enforcement Options

In 2010, Congress amended the SCRA to clarify its enforcement options.⁴⁹ This amendment authorizes the U.S. Attorney General to bring actions in federal court against those who engage in a pattern of violating the SCRA or those whose violation of the SCRA raises an issue of significant public importance.⁵⁰ Aside from Department of Justice enforcement, the SCRA now provides for an explicit private right of action as well.⁵¹ An individual aggrieved by a SCRA violation can bring a civil action to recover costs and attorney’s fees.⁵² Due to this, servicemembers may now “retain experienced counsel who might otherwise be unable or unwilling to take on such representation due to the substantial costs of long and drawn out litigation battles.”⁵³

Louisiana’s Protections

Louisiana adopted its own set of protections which supplement the SCRA, known as Servicemembers Civil Relief and Consumer Rights.⁵⁴ The Louisiana protections expand upon the SCRA’s provisions in the areas of interest rates, landlord/tenant leases, and termination of motor vehicle leases and cellular phone contracts.⁵⁵ Added protections ex-

ist in the areas of natural gas and electric power consumer agreements.⁵⁶ Further, Louisiana law provides for compensatory visitation rights for servicemembers who are unable to visit their minor children due to military obligations.⁵⁷

Conclusion

The protections afforded military members under the SCRA and Louisiana law effectively strike a balance between the need to meet servicemember obligations and the need to keep soldiers, sailors, marines and airmen focused on the mission. These pieces of legislation offer no more and no less than what is appropriate given the frequently uncertain circumstances of military service. Louisiana attorneys need to be familiar with these provisions to ensure that their military clients are effectively represented.

FOOTNOTES

1. H.R. Rep. No. 108-81, at 32 (2003) (“The earliest recognition of the need to provide civil protections for servicemembers in the United States dates back to the ‘stay laws’ promulgated by Louisiana during the War of 1812. Louisiana suspended all proceedings in civil cases for four months as the British were advancing on New Orleans.”).

2. *Boone v. Lightner*, 319 U.S. 561, 569 (1943).

3. 50 U.S.C. §§ 3901-4043.

4. *See*, Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003).

5. *See*, Servicemembers Civil Relief Act Centralized Verification Service, <https://www.servicememberscivilreliefact.com/blog/change-u-s-code-section-numbers/> (last visited Jan. 4, 2017). The website provides a table which cross-references each provision of the former SCRA classifications to the new classifications. “On December 1, 2015, the Appendix to Title 50 of the U.S. Code was eliminated. . . . This renumbering did not change any of the wording of the Servicemembers Civil Relief Act — it only changed how the Act is cited.” (emphasis omitted) *Id.*

6. *See*, 50 U.S.C. § 3911 and 50 U.S.C. § 3912 for an explanation as to what constitutes “military service” for the purpose of SCRA protections. Where this article refers to “active military service,” the intent is to cover the periods of applicable service addressed in 50 U.S.C. § 3911 and 50 U.S.C. § 3912.

7. 50 U.S.C. § 3902.

8. *Id.*

9. *See generally*, State ex. rel. Swanson v. Heaton, 22 N.E. 2d 815, 816 (Iowa 1946); *see also*, Capt. Thomas A. Gabriele, “Protecting Their

Life at Home: The Servicemembers Civil Relief Act.” 42 AZ Attorney 38, 45 (Oct. 2005) (“The SCRA does not provide military members a mechanism to shirk their responsibilities, but rather a necessary tool to protect them from civil actions and obligations that they are unable to address or fulfill due to military necessity.”).

10. *See generally*, Register v. Bourquin, 14 So.2d 673, 674 (La. 1943).

11. *See generally*, Tolmas v. Streifer, 21 So.2d 387, 388 (La. App. Orleans 1945).

12. *See*, Boone v. Lightner, 319 U.S. 561, 569 (1943) (“This mere fact of being in military service is not enough; military service must be the reason for the defendant not meeting his obligations.”).

13. Material affect is particularly applicable to servicemembers stationed outside the continental United States.

14. 50 U.S.C. § 3931.

15. 50 U.S.C. § 3931(b).

16. *See*, Merrill v. Beard, 2007 U.S. Dist. LEXIS 9210, at 9 (N.D. Ohio 2007).

17. 50 U.S.C. § 3931(b).

18. Or within 60 days of release from active military service. 50 U.S.C. § 3931(g).

19. The servicemember has 90 days following release from active military service to file an application to reopen the default judgment. *Id.*

20. Or within 90 days following release of active military service. 50 U.S.C. § 3932(a).

21. 50 U.S.C. § 3932(b).

22. 50 U.S.C. § 3932(b)(2)(A). The servicemember also must provide to the court a date upon which he or she will be available to appear in the action. *Id.*

23. 50 U.S.C. § 3932(b)(2)(B). The commander also must indicate that military duty prevents the servicemember’s appearance in the action. *Id.*

24. 50 U.S.C. § 3932(d).

25. *See generally*, Lebo v. Lebo, 886 So.2d 491, 493 (La. App. 1 Cir. 2004); George P. v. Super. Ct., 127 Cal. App. 4th 216, 219 (Cal. 2005).

26. *See generally*, Jurado v. Brashear, 782 So.2d 575 (La. 2001). “In every civil case in Louisiana, the court must have not only subject matter jurisdiction, but also either (1) personal jurisdiction under La. Code Civ. Proc. art. 6, (2) property jurisdiction under La. Code Civ. Proc.

art. 8 or 9, or (3) status jurisdiction under La. Code Civ. Proc. art. 10.” (Emphasis in original.) *Id.* at 577.

27. *See*, La. R.S. 13:1801-1842.

28. *See*, Jurado, 782 So.2d at 577. In order for a court to increase a permanent obligation to pay child support, the court must first have personal jurisdiction under La. C.C.P. art. 6 and La. Ch.C. arts. 1301.1-1308.2. *Id.*

29. 50 U.S.C. § 3936(a).

30. *Id.*

31. 50 U.S.C. § 3936(c).

32. 50 U.S.C. § 3934. There must be a demonstration that military service materially affected the servicemember’s ability to comply with the judgment or order. 50 U.S.C. § 3934(a). A servicemember may only be availed of this protection during the period of active military service or within 90 days of its termination. 50 U.S.C. § 3934(b).

33. 50 U.S.C. § 3913. If a SCRA stay is granted in favor of a servicemember, a court has authority to also grant a stay on behalf of any other person who may be primarily or secondarily liable on the obligation, such as a surety, guarantor or endorser. 50 U.S.C. § 3913(a).

34. 50 U.S.C. § 3951(a). This provision only applies to premises with a monthly rent that does not exceed the statutory limit that is tied to the annual inflation rate. *Id.*

35. 50 U.S.C. § 3951(b).

36. 50 U.S.C. § 3951(c).

37. *See*, U.S. v. McLeod, 2008 U.S. Dist. LEXIS 1500 (W.D. Mich. Jan. 9, 2008).

38. *Id.*

39. 50 U.S.C. § 3958(a). This provision is applicable to liens for storage, cleaning or repair of personal property. *Id.*

40. 50 U.S.C. § 3958(b).

41. *Id.*

42. 50 U.S.C. § 3958(c).

43. 50 U.S.C. § 3952, 50 U.S.C. § 3953. These two SCRA provisions do not apply to installment contracts or mortgages entered into after entry onto active military service.

44. 50 U.S.C. § 3955(a).

45. 50 U.S.C. § 3955(b); *see also*, La. R.S. 9:3261 for additional Louisiana-specific rights of servicemembers to terminate leases.

46. 50 U.S.C. § 3955(a)(2).

47. *See generally*, American Bar Association, *Legal Guide for Military Families*, 162 (1st ed. 2013) (“Rather than continue to burden servicemembers with the responsibility to negotiate into their lease a ‘military orders clause,’ Congress has effectively included such a clause into servicemembers’ leases by way of amendments to [the SCRA].”).

48. *See*, 50 U.S.C. § 3955(b)(2); 50 U.S.C. § 3956. Note that the SCRA protections addressed in this article are not an exhaustive list. The SCRA also provides servicemembers with other important benefits, including: a 6 percent cap on interest rates; protections as to professional liability, health and life insurance; voting rights guarantees; and more. *See generally*, 50 U.S.C. §§ 3901-4043.

49. *See*, Veterans’ Benefit Act of 2010, H.R. 3219, 111th Cong. (2nd Sess. 2010).

50. 50 U.S.C. § 4041.

51. 50 U.S.C. § 4042.

52. *Id.*

53. Grant A. Walsh, Kelly C. Ganzberger and Christianne L. Edlund, “When Duty Calls: The Impact of Military Service on Litigation,” 73 Tex. B. J. 840, 842 (November 2010).

54. La. R.S. 29:311-319.

55. *Id.*

56. *Id.*

57. La. R.S. 9:348.

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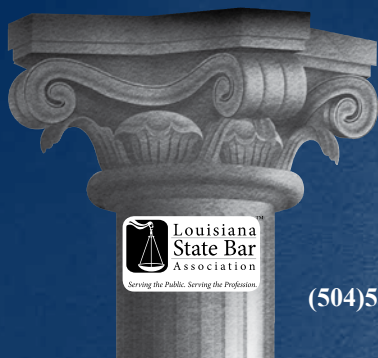
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The background of the entire page is a close-up photograph. The top half shows the stars and stripes of the American flag, with the blue field containing white stars and the red and white stripes. The bottom half shows a black and silver ballpoint pen lying diagonally across a document. The document has the word "CONTRACT" printed in large, blue, serif capital letters. Below the word, there is some smaller, faint text that is partially obscured by the pen and the overall blur of the image.

PRACTICE TIPS: A WRITTEN CONTRACT IS #EVERYTHING!

By Adrejia L.A. Boutté Swafford

Law school is the place where we first meet some of our future opposing counsel and co-counsel in the profession. Some of us find life-long mates with whom we could not remember life pre-them. Because of this bond, we decide there is no one better with whom to practice law. So, we become business partners — IN LAW! But, because the friendship is so strong (we have a meeting of the minds) and the trust is so deep (consent is there, too), we choose not to write the specific terms of our work agreement. After all, as we learned in law school, oral contracts are just as good as written contracts, unless stated otherwise by law.

Deciding to Go for It

“A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished.” La. Civ.C. art. 1906

While it is true that *oral* contracts are enforceable, by creating obligations between parties, “[a] party who demands performance of an obligation [per the contract] must prove the existence of the obligation.”¹ “Prov[ing] the existence of the obligation” in an *oral* contract between lawyers is a bit more difficult than simply producing a *written* contract which speaks for itself. For some reason, not nearly enough contracting lawyers, or joint venturer(s), consider the burden of proof required to evidence the obligation(s) allegedly agreed upon (if things go south) before they enter a work agreement.

Why do so many lawyers leave anything up for discussion or confusion? In my years in this profession, I have often read case opinions about lawyers suing former co-counsels for monies allegedly earned pursuant to an *oral* work agreement or heard complaints about former co-counsels who failed to honor the *oral* work agreement. The sad truth is that these are the perils and pitfalls of contract employment — which occur far too often.

The decision to enter into a work agreement with another lawyer requires

an *honest* analysis of personal and professional goals and boundaries. During such healthy analysis, one first, and most important, task is to clearly designate how clients will be secured/retained and how the monies earned, while working for said client, will be shared with co-counsel. The best advice is to put it all DOWN IN WRITING. Think of it as a pre-nuptial agreement to your business marriage — IN LAW.

In *Duer & Taylor v. Blanchard, et al.*, the Louisiana Supreme Court said, “[W]here a retained attorney employs or procures the employment of another attorney to assist him in handling a case involving a contingency fee, the agreement regarding the division of the fee is a joint venture, which gives the parties to the contract the right to participate in the fund resulting from the payment of the fee by the client.”² The “joint venture”³ can be between two (or more) sole practitioners or between a sole practitioner and a firm or between multiple firms (of several lawyers). The combinations of work agreements among contracting lawyers not of the same firm are truly endless.

If the contracting relationship is a joint venture for a certain client, the written contract can be made a part of the overall client contract, with a provision referring to expressed terms and conditions of the shared fees,⁴ costs, expenses and divided representation among the lawyers. However, if the contracting relationship is a long-term matter, it is best to have the work agreement provision in the client(s) contract *and* a separate working agreement between the lawyers. But, make sure the work agreement provision in the client contract does not conflict with the separate working agreement between lawyers. Regardless of whether lawyers are joining forces for a short-term or a long-term joint venture, keep the details *current* and in writing so the terms are “clear and unambiguous.”⁵

I recently worked on a case where a lawyer left a firm and subsequently tried contracting certain existing clients to his new firm. When, and whether, departing lawyers may take existing clientele with them as they depart a firm is a good discussion for another time.⁶ But, in this case, whose client is it? The departing

lawyer asserted he had an agreement with former co-counsel that he would be responsible for procuring and directly communicating with clients, while the former co-counsel was responsible for the non-client relations work. This caused a huge issue when he departed the firm as some clients only knew him and desired to retain only him and his new law firm.

The moral of this story is to make sure all terms of working agreements are in writing. Do not simply use a “boilerplate” contract without including any and all special conditions of the work arrangement with co-counsel. Remember, written contracts are only valuable if the intent is made clear.

“When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent.” La. Civ.C. art. 2046

Once all the brainstorming is complete and you and your future co-counsel have had enough “working lunches” to hash out the details of your purported work agreement, keep in mind the Louisiana Rules of Professional Conduct as you set about to draft these terms. Then, consider getting some malpractice insurance if this relationship is purported to be one of longevity.

Getting Started

Of course, all the Louisiana Rules of Professional Conduct are important but pay attention to the following rules when forming a work agreement with another lawyer.

Fee Sharing

The client must give written consent to the association and participation of lawyers not of the same firm. Rule 1.5(e) states:

A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised

in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

The *Jumonville v. Cardenas* court further clarified that, “[e]ven though Rule 1.5 was amended in 2004 to require the client to agree in writing to an attorney fee-sharing agreement between attorneys not of the same firm, the Rules of Professional Conduct do not regulate or prohibit the enforcement of an agreement between attorneys.”⁷

Restrictions on the Right to Practice?

Rule 5.6 generally prohibits lawyers from entering non-competition, or non-solicitation, agreements with other lawyers. While these employment-related agreements are legal in Louisiana under general contract law,⁸ this does not apply to lawyers. Rule 5.6 states:

A lawyer shall not participate in offering or making:

(a) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

When It All Goes South and You Are Missing Your Money

Hopefully, you have taken my advice and have a written contract, coupled with good billing records of your time spent on each case at issue. If, however, you ignored my advice and engaged in an *oral* working agreement anyway, be prepared

to fight it out in court. It will be your word versus your former co-counsel’s word (with, if you were good, the aid of a billing paper trail).

According to the Louisiana Supreme Court in *Duer & Taylor, supra*, lawyers sue other lawyers for damages resulting from a breach of contract regarding fee sharing, not for attorney’s fees.⁹ Absent a written agreement to the contrary, when fee sharing between lawyers (based on joint representation of a client) is at issue, the court generally finds a joint venture and divides fees equally between the lawyers.¹⁰ If the court fails to find a joint venture agreement existed, recovery of fees will likely be awarded under the theory of *quantum meruit* by which fees are assessed based on services performed. In a case where the lawyer was either discharged or did not work the case from its inception to its conclusion, the court will usually apply the *quantum meruit* theory.¹¹

“If the price or value [of an oral contract] is in excess of five hundred dollars, the contract must be proved by at least one witness and other corroborating circumstances.” La. Civ.C. art. 1846

Something to keep in mind is Louisiana Civil Code Article 1846. Under 1846, it is not necessary to provide independent evidence of every detail of an oral contract.¹² However, an oral contract of more than \$500 must be proven by “at least one witness and other corroborating circumstances.” The witness can be the plaintiff himself, but the corroborating circumstances must come from a source other than the plaintiff.¹³

In the End

No matter how much trust and comradery existed at the beginning of the journey into contract lawyering, the bridge back to that warm, fuzzy place of happiness and friendship is usually difficult. While nothing is impossible and business is business, disputes and confusion over money have ruined many relationships. If you care about your friendship and value any po-

tential business relationship-IN LAW, do the right thing, put it in writing and keep it current. Good luck!

FOOTNOTES

1. La. Civ.C. art. 1831.

2. *Duer & Taylor v. Blanchard, Walker, O’Quin & Roberts*, 354 So.2d 192, 194-95 (La. 1978).

3. “The joint venture theory has been utilized to apportion the attorney fee equally between the attorneys where the attorneys failed to execute a contract between themselves as to how a fee should be divided between them.” *W. Carl Reynolds, P.C. v. McKeithen*, 14-0171 (La. App. 1 Cir. 5/6/15), 2015 WL 21657862014, at *2; *rev’d in part*, 15-1122 (La. 10/9/15), 176 So.3d 399 (*citing*, *McCann v. Todd*, 203 La. 631, 14 So.2d 469, 471 (La.1943) (a case where the court held that lawyers who jointly represent a client are entitled, when an agreement stating otherwise exists, to an equal share in the compensation. It is irrelevant which lawyer provided the most labor or skill.)).

4. *See*, Louisiana Rules of Professional Conduct Rule 1.5.

5. *Murray v. Harang*, 12-0384 (La. App. 4 Cir. 11/28/2012), 104 So.3d 694 at 698.

6. *See*, Louisiana Rules of Professional Conduct, Rules 1.10(b) and 7.4. *Also*, Frank Maraist, N. Gregory Smith, Judge Thomas F. Daley, Thomas C. Galligan, Jr. and Catherine Maraist, 21 Louisiana Civil Law Treatise, *Louisiana Lawyering* § 8.13 (updated June 2016).

7. *Jumonville v. Cardenas*, 2013 WL 6506205, at *5, 13-0037 (La. App. 1 Cir. 12/10/13).

8. La. R.S. 23:921 A (1) sets forth the requirements for a valid “non-solicitation” clause under general contract law. *See also*, *Maestri v. Destrehan Veterinary Hospital, Inc.*, 554 So.2d 805, at 810, 89-473 (La. App. 5 Cir. 12/13/89).

9. *Duer & Taylor*, 354 So.2d at 194-95.

10. 2015 WL 21657862014, at *5. *See also*, *Rice, Steinberg & Stutin, P.A. v. Cummings, Cummings & Dudenhefer*, 97-1651 (La. App. 4 Cir. 3/18/98); and *Dukes v. Matheny*, 02-0652 (La. App. 1 Cir. 2/23/04), 878 So.2d 517, at 520-521.

11. *Id.*, at *14-15.

12. 2013 WL 6506205, at *3.

13. *Id.*

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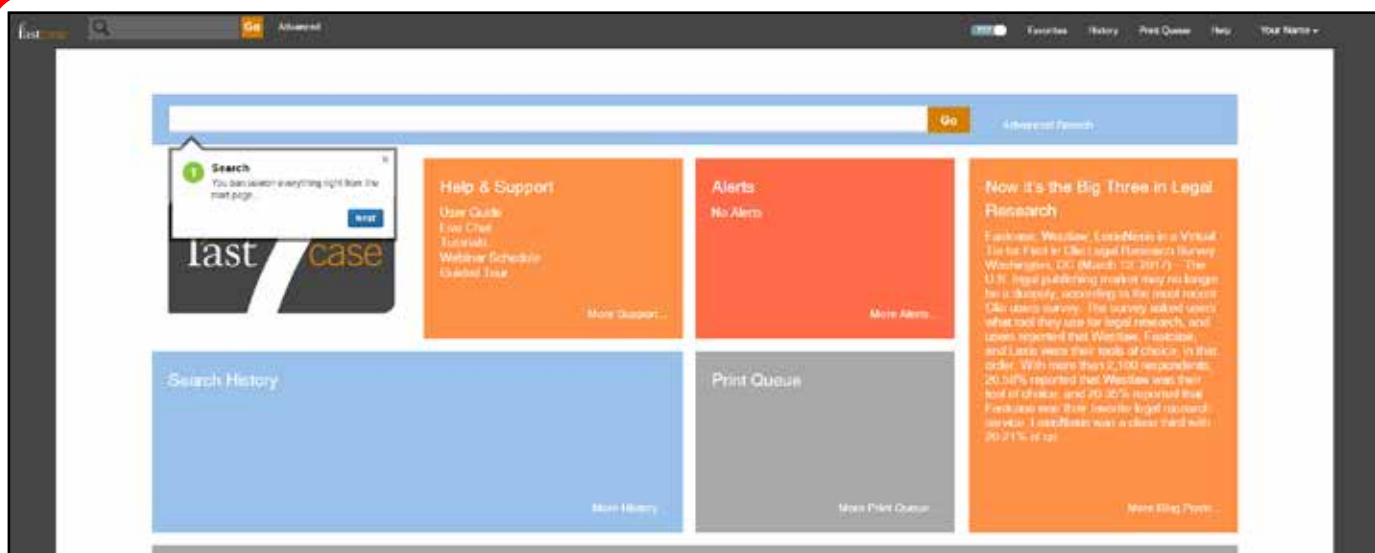


A close-up, slightly angled view of the American flag, showing the blue field with white stars and the red and white stripes. The flag is draped over a dark, textured surface.

PRACTICE TIPS: USE FASTCASE 7

New Version Offers LSBA Members
Easier Navigation and More Legal
Research Options





Fastcase's new home screen.

Louisiana State Bar Association (LSBA) members now have access to Fastcase 7, the all-new version that offers a more fluid and easy-to-navigate online legal research library. Fastcase is offered free to all LSBA members in good standing.

The new version has all of the familiar features and tools, plus an enhanced Forecite, Tag Cloud, Authority Check and Bad Law Bot, more advanced search options, new results screen options, larger fonts and selections to make documents easier to read on computer screens, and new dual-column printing options.

Members have the option to use Fastcase 7 or the classic service via a slider at the top right corner of the Fastcase webpage.

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Here's an overview of the new Fastcase 7 features.

► **New Home Screen.** Fastcase 7 greets users with a guided visual tour that automatically loads the first time the program is accessed. Several resources,

tools and updates are prominently displayed, including help resources, live chat with a Fastcase reference attorney, new results on alerts set for particular searches, and quick access to a more detailed version of the search history.

► **More Advanced Search.** Users can search across different types of materials at the same time, including cases, state constitutions and attorney general opinions. Choose to search everything or filter results down to a select category. Or, choose to search across all materials associated with a particular state jurisdiction simultaneously.

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► **Tag Cloud.** This first-of-its-kind feature allows users to ascertain which terms are being used to discuss a legal issue. Users can click any term to see only results that use that term.

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Forecite Results, Journals and other resources. There are no pages of cases to click through on Fastcase 7. When users scroll to the bottom of the initial results, more results will load automatically.

► **Document Page.** Fastcase 7 makes reading cases on a screen easier by using large fonts. Users can make the reading experience even cleaner by activating full-screen mode using the diagonal arrows on the top right of the opinion text. The results list is now displayed alongside the opinion text in larger format.

► **New Authority Check.** Users can view Authority Check alongside the opinion. All citing cases, the case-level Interactive Timeline and Bad Law Bot can be viewed without opening a new tab or window. Statistical information about which jurisdictions are citing the case is now clearer so users can spot trends in the law on the fly. Users can view the Authority Check report right next to the case, or expand it for the full dashboard view.

► **New Dual-Column Printing.** Users can download up to 500 documents at a time in a zip file, with each document in a separate file. Each file has an intelligent name, so users can identify them in a snap.

LSBA members are encouraged to access Fastcase 7 and review the new features. To access Fastcase, LSBA members should log into their LSBA Member Account and select the "Go directly to Fastcase" option.

Portraits & Perspectives: Louisiana Supreme Court Associate Justices



**One on One with Louisiana Supreme Court
Associate Justice Scott J. Crichton**

Interviewed by Anthony M. DiLeo

In 1990, with the help of his wife Susie, Judge Scott J. Crichton ran a door-to-door campaign for a seat on the 1st Judicial District Court. Susie supervised the campaign for the first two weeks while he was working more than 12-hour days prosecuting a serial killer. He was subsequently re-elected three times, unopposed. While serving on the Caddo Parish bench, Judge Crichton presided over more than 25,000 civil and criminal cases. For the 10 years prior, he served as an assistant district attorney.

Because of Louisiana's mandatory judicial retirement age, he is currently serving his first, and only, term on the Louisiana Supreme Court, elected from the 2nd District, which includes the 11 parishes of Caddo, Bossier, Webster, DeSoto, Natchitoches, Red River, Sabine, Vernon, Allen, Beauregard and Evangeline. His term expires in 2024.

Justice Crichton has dedicated his professional life to public service and commits himself to community service projects off the bench as well, especially those focusing on crime prevention programs with students, parents, teachers and inmates, including "Don't Let This Be You." He taught business law at LSU-Shreveport and also taught at the Shreveport Police Academy and a number of other law enforcement training facilities.

His parents believed in the importance of education and hard work — with which, anything is possible — and sent him to The Webb School in Tennessee, a school that emphasized an honor code. After graduation, he received his undergraduate degree and JD degree from Louisiana State University in 1976 and 1980, respectively. Throughout this interview, he returned to the principles learned from school and family.

Justice Crichton has been married to his wife Susie for more than 30 years and they have two sons, also members of the Louisiana Bar. At a youthful 62, he is affable and energetic. This in-person interview — casual and conversational — was conducted at his Supreme Court office.

Journal: I'm so impressed by the history of your judicial experience. By the time you finish your term at the Supreme Court, you'll have been a judge for half of



Justice Scott J. Crichton with his wife Susie. Photo provided by Crichton Family.

your life. That's pretty amazing.

Crichton: Yes, but by then, I'll be 70 and thereby disqualified by law from running again. I will serve only one term. But I like that. It distances me from any political clamor that may be going on out there. The challenge for a judge is to not be swayed and influenced because the job is to honor the law as written, and that's what I do.

Journal: You were elected to the Supreme Court without opposition. Did you have any opposition in earlier elections?

Crichton: When I ran in 1990, there were three other candidates. That was a very hotly contested event. But then for my second, third and fourth terms, there was no opposition. I fully expected opposition for the Supreme Court in 2014. We had just gone through the election in the East Baton Rouge district where there were eight competitors. So, I was ready. The election was set for 2014. I started campaigning in 2012 and was, quite frankly, surprised at the enthusiastic response. I had a small campaign committee of hardworking people, maybe seven, and we talked every day and developed and executed a plan.

There were 11 parishes to cover, and I knew less than five people in some of

those parishes. I had a lot of work to do and needed every bit of that two years to meet people and for them to get to know, and hopefully feel comfortable with, me. It took a lot of driving. I gassed up my pickup truck, fired up my GPS, and pulled out an old-fashioned map for the smaller towns. I started with the sheriffs, district attorneys, elected officials, public defenders, law enforcement officers, and went from there. And I did all of that while continuing to serve as a judge on the civil bench in Caddo Parish. I didn't want to take any chance of not handling my docket properly because that's got to be the first order of business. But I spent weekends and late afternoons, off-court hours, going to these places. I initially thought it would be difficult and scary, but I actually enjoyed it.

Journal: That's probably why it was so successful.

Crichton: People liked the fact that I showed up in my pickup truck, with my boots on and usually with a jacket and maybe a tie, but without an entourage. People liked the fact that I appeared to be my own man, which I am. I told my entourage — my committee of seven — that I needed to go to some of these places by myself. One of my campaign members wanted to rent a bus and all go together.



The Crichton family, circa 1964. Mary and Thomas Crichton III and their sons, Thomas Crichton IV, standing, and Scott J. Crichton. Photo provided by Crichton Family.



The Crichton Hardware sign remains on the building at 509 Main St., Minden, La. In addition to a multitude of hardware items, Thomas Crichton III and his Dad (Thomas, Jr.) sold Dutch Boy Paints. Photo provided by Crichton Family.

But that's not me. I needed to do this on my own.

I was gratified to get so much support geographically across the state, too, this being a state office. In terms of the law, I represent the State of Louisiana, the Constitution of the United States and the Constitution of the State of Louisiana, not any constituency other than the law. So, I was very lucky to receive diverse support and no opposition. Looking back, I wonder if I could ever do it again.

Journal: It sure is the right way to approach it. You're a Supreme Court Justice for everybody in the state, not just the people in 11 parishes.

Crichton: Exactly. That's the whole thing about law. If you're going to be a judge and not an advocate, you've got to be impartial and you've got to apply the law to the evidence and be true to your oath. Once a judge crosses the line, he or she dishonors the office. It's about the law and evidence and little else.

Journal: Some lawyers may know a judge very well, personally, then appear before that judge and lose. I've asked them, "How do you feel about that?" They say, "I'll take it every day because I would rather have a person that I trust to do an honest and honorable analysis and I'll win when I should win and lose when I should lose."

Crichton: That's the way it's got to be.

If they expect anything less, then they're really not your friends. You cannot be a judge in even a medium-sized district like the 1st Judicial District in Caddo Parish without encountering people that you know and friends who are lawyers, and you've got to keep the personal aspect out of it. It's important to keep it at that level, and if you don't want to do that, then go do something else.

Journal: I saw Judge Alvin Rubin call some lawyers into his office one day. He said, "Gentlemen, I've got to be straight up with you. I've known the plaintiff's attorney for 35 years. We play tennis together twice a month and I'd say there would be a reasonable basis for someone to say I should recuse myself. If either of you ask me to, I will recuse myself without any fanfare of any kind." The counsel who was not his friend said, "Your Honor, I am perfectly comfortable that you will put all that aside in your ruling." Of course, his friend couldn't say no, which would have been a smart move because he lost. It was a pleasure to be in that kind of atmosphere, so I am a student of that kind of thinking.

Crichton: I am, too. Judge Rubin was disclosing the relationship. Disclosure is a very important concept that has been talked about a lot in recent CLE seminars, more than it was my first couple of decades as a lawyer. Alvin Rubin was such an excellent, ethical jurist, a great example of professionalism. Al Tate also was an

excellent justice. We've had so many who are almost of iconic status. It's inspiring.

Journal: Can we talk about the things that have influenced you?

Crichton: Well, I was born — this will be History of the World Part 1 — in Shreveport in 1954. My parents lived in nearby Minden, so I grew up in a small town of about 15,000 people. It's in Webster Parish, about 30 miles from Shreveport.

I had the benefit of tremendous parents. My mother was a very smart lady, full of grace and dignity. She was a master bridge player, which requires deep analytical ability, and a voracious reader. She loved a mystery novel and would usually figure out the end of the story before she got there. I always thought she would have been an excellent lawyer because her mind was so analytical. But she grew up in the day when women didn't go to law school.

My dad was a country boy who grew up in Minden and ran a store with his father. The name of it was Crichton Hardware Company and they sold everything-hardware. My dad really pushed me to go to law school, but, along the way, he sent me to an all-boys' school, The Webb School in the mountains of middle Tennessee. That was 1968 and I remember our non-negotiable discussion about my departure. It was basically, "You're leaving to go to Webb School." I was 14 and, of course,

that scared me to death. Around Labor Day weekend in 1968, we packed up the car, he and my mother in the front, me in the back, and we drove 600 miles to the mountains of middle Tennessee. My parents checked me into the dorm, helped me unpack, then said “See you at Christmas” and drove off. I didn’t know anybody.

But two things I want to mention about my high school years. The school has a strict honor code; its motto is “Noli Res Subdole Facere,” a Latin phrase that means “Do nothing on the sly.” That is an important concept to live by. If you think about the words, it incorporates ethics and a lot of things. If you do nothing on the sly, you have nothing to worry about. You abide by law and ethics. You’re not going to do anything illegal or unethical. That’s a great standard for life.

During my junior year in 1971, most of my class attended a three-week course at the North Carolina Outward Bound School. The motto there was, and I think this comes from “Ulysses” by Alfred Lord Tennyson, “To Serve, To Strive and Not To Yield.” Outward Bound was touted as a survival camp. Whether it was or not, or whether it was more equivalent to a mini boot camp, what I experienced were weeks of pretty rigorous exercise, obstacle courses and demanding challenges. I was never an outdoorsman really, but we did a whole lot of camping and mountain climbing. At the end of the three weeks, I had lost about 12 pounds. I wasn’t a big guy, not then and obviously not now, and losing 12 pounds as a high school kid was significant. Yet, at the same time, successfully completing the course was quite exhilarating and gratifying.

Looking back at my high school years from 1968-72 and what I learned during that time, it set the tone for who I am. Truly, if you maintain integrity and don’t do things on the sly, you’re never going to betray your wedding vows, you’re never going to take money that you shouldn’t, you’re never going to do things that are inappropriate because, to do those things, you’d have to do them on the sly. Combined with the ethic taught at Outward Bound, if you serve, strive and not yield on what’s important in life, that’s the standard. Those four years formed the basis for the person I’d later become.



Justice Scott J. Crichton was sworn in as a Supreme Court justice in December 2014 by Chief Justice Bernette Joshua Johnson. Photo by David Rigamer.

Following the Webb School and Outward Bound experiences, I went to LSU which was also a non-negotiable issue for my father. Keep in mind that I had been in an all-boys’ high school, then all of a sudden thrust into LSU with 25,000 students. I joined a fraternity, attended classes, at least some of them, but was enamored with the fact that this school was coed. All that was new to me, and sometimes my attention was diverted more towards social than scholastic!

Four years later, I graduated with a liberal arts degree and a whole lot of good memories.

I didn’t really have a plan to go to law school. I finished up with decent grades and a degree which didn’t exactly qualify me to work in any particular field, so I took off for a year to work for my dad and think about my life. It was 1977. My dad had mandated in 1968, “You’re going to Webb.” In the same stern tone, he said, “You’re going to LSU Law School.” It wasn’t my idea; it was his. And what a gift it was!

We worked out a deal. He said, “I’ll pay for tuition and buy you a car.” My father was a stout and dominant personality. In compliance with the 5th Commandment, I listened. But by this point, I had learned to negotiate — a little — and said, “Okay, I’ll take the LSAT and will go for one year, but if I don’t like it, I’m going to give the car back and do something else, and I want you to agree with that.” He reluctantly agreed.

A year later, I reported not being completely enamored with law school. Back then, LSU regularly flunked out a third of the class. You know, “look to your left, look to your right.” My attitude was I don’t know what you’re talking about. You invited me here by accepting me, and now are you telling me you’re going to kick me out? Well, that was not an option. But both the words and the threatening tone scared me and I worked extremely hard.

At the end of that first year, I reported to my dad, “Maybe I don’t love this as much as I should.” His attitude was you completed your first year (with actually 40 percent of the freshman class being kicked out), so go ahead, finish the next two years, and if you don’t want to practice law, don’t do it. Somewhat reluctantly, I agreed. Turns out, that was another gift. During law school, he would call after every final exam.

Journal: Your father calling you after every exam, that’s a powerful story.

Crichton: Well, he didn’t miss an exam. He would learn my exam schedule and mark it on his calendar. He’d say I’m going to call you after each one, and he did that all the way through the bar exam. A cattle rancher, a country boy who loved to fish and hunt, and a hardware store manager, my dad was extremely dedicated to his family, his two sons and placed high value on education. He was genuinely interested in each exam and each grade in each course. And when I was an assistant

district attorney, he would call to find out my verdicts, “How’d you do today?” I’m so blessed with great parents and owe so much to them.

Journal: I have to tell you, I’m moved by this story.

Crichton: Well again, it was the greatest gift. He had a vision for me, one that in the 1970s I didn’t have. My dad’s younger brother had attended law school, and he didn’t have that chance because of the war and circumstances where he had to come back and work in the family business. So my dad wanted opportunities for his sons that he didn’t have. Not because he wasn’t smart enough, but his family needed the older son to come back and run the family business, so that’s what he did. He thought the law would provide a good foundation for his sons to do most anything in the area of either business or law. Just get the benefit of a good education, he said, and you will have good choices, you can be

a productive member of society, you can support your family and you’ll make me proud. That was the driving force and he did the same for my brother Tom, who graduated from LSU Law School in 1972. I did not fully embrace law school as my older brother had. Certainly, I had no idea of what to do after law school. That was not in my brain. I never even had a notion about being a judge, much less a Supreme Court justice. No idea, none, zero!

During the spring semester of my senior year of law school, the administrator from Caddo Parish District Court came down to interview students. Because I didn’t really care about being in private practice, I signed up. And, lo and behold, I was one of several invited to Shreveport to meet the judges. I thought I’d meet each one individually, shake hands, and that would be about it. But what I walked into at 8:30 on the morning of the interview were eight judges of Caddo Parish sitting en banc in a small room with one extra chair — for

me. I was absolutely terrified, definitely not ready for that. These were older, distinguished and austere-looking judges. I didn’t know any of them and didn’t know what to say, but somehow I received an offer to serve as a law clerk. That became important as to what I would do later.

Journal: You were one law clerk for eight judges!

Crichton: Eight senior jurists, all men with eight healthy egos. After I got used to them, I actually liked and enjoyed their company. However, they scared me to death for the longest time, starting with that en banc interrogation, which they called a job interview.

Journal: This was around 1980-1981?

Crichton: I began in August of 1980. During the spring of 1981, I became friends with some assistant district attorneys who were in the building and that turned out to be a godsend in that they

Reflections on Justice Antonin Scalia

By Scott J. Crichton

As the Senate confirmation process for the replacement of U.S. Supreme Court Justice Antonin Scalia (who died unexpectedly in 2016) was nearing a final vote, it allowed me to reflect on my brief, but compelling, experience with Justice Scalia.

It was 2012. I was a district judge for Caddo Parish, president of the Louisiana District Judges Association (which serves the nearly 250 trial judges in Louisiana) and moderator of a two-day seminar on legislative updates and recent developments in New Orleans.

During the early morning of the first day, I was advised that, by some happenstance, Justice Scalia was a guest at our seminar hotel. Through the hotel administrator (perhaps presumptively and certainly boldly), I sent Justice Scalia a hand-written note extending an invitation to the reception scheduled later that day, or, alternatively, to speak to

our group at any point during the two-day seminar, or perhaps both. To my astonishment, within a few minutes, I received a response that, while he could not make the reception, Justice Scalia would speak to us at 10 the following morning.

Trying to contain my exuberance, and as much as I wanted to immediately proclaim success in securing a U.S. Justice as a speaker for a Louisiana seminar, upon further reflection I realized that if the press were informed, there could be cameras and an entourage, which might result in no Justice. As challenging as it was, I kept it a secret. My thoughts turned to the rare and probably once-in-a-lifetime opportunity to introduce a U.S. Supreme Court Justice. I feverishly began reviewing Justice Scalia’s biography and scribbling notes for what I had hoped would be a most stellar introduction. Unfortunately, upon further reflection, I was harkened back to

the “pecking order,” the “food chain,” subservient protocol, and perhaps the vested discretion — abuse of which the appellate courts so thoughtfully remind district court judges is intolerable — that often dictates the actions of a lower court judge. The professional, lofty and right decision was that this opportunity should go first to then-Chief Justice Kitty Kimball, then to the associate justices of our Court in order of seniority. Forcing humility upon myself, I somewhat reluctantly sent word to the Louisiana Supreme Court, only to learn that all of the justices had a conflict . . . except for one, Justice Greg Guidry. While not so compelled as to share with him my biography notes, I nevertheless expressed measured delight in his opportunity.

Throughout that day, I did my absolute best to tantalize the crowd with the fact that we would have a very special guest at 10 a.m. on the second day, “well

shepherded me into the DA's office. I didn't know much about being a prosecutor, not sure it would be my cup of tea. Turns out, it was absolutely my cup of tea. Working with law enforcement, managing the docket for a courtroom, having jury and bench trials — I loved that job.

For 10 years as an assistant DA, I especially enjoyed bringing justice and closure to the family members of victims. It became a passion. In a murder case, an armed robbery, or a rape case, it's the prosecutor representing the State of Louisiana, but really sort of representing the victim, too, and I found myself speaking for and advocating justice for the victim and the victim's family. The role appealed to my sense of service and a jury trial appealed to my competitive nature.

Then, in the mid-1980s, the DA allowed a few of us to go part-time. By that point, I was married with a child with another on the way. This also was a blessing because it allowed me to go into private

civil practice while at the same time satisfying that service ideal that had become part of my DNA.

Journal: Then in 1990 you ran for District Court judge?

Crichton: All of the judges' terms were set to expire at the end of 1990. But either in 1989 or early 1990, U.S. District Judge Parker had issued a restraining order for the whole state of Louisiana with regard to the sub-districts issue in the pending federal litigation. The idea of running for a future judgeship had been mentioned to me, but I was busy with other things. I had some comfort knowing there was a restraining order, so I wasn't thinking about it that September when commencing a first-degree murder trial with a sequestered jury that was scheduled to go five weeks. It involved a serial killer, and I was lead prosecutor. All of a sudden, in the middle of trial, Judge Parker lifted the injunction on all judicial elections and the

Secretary of State set qualifying almost immediately. I was not sure about being a judge and distracted by the capital case, yet, at the same time, I didn't want to let this opportunity go by. I talked to my wife Susie and signed up. Unable to launch a campaign on such short notice, and with the first two weeks of the campaign being the last two weeks of my capital case, I relied on my wife to get the committee formed and the campaign underway.

Journal: That's remarkable!

Crichton: It was exhausting, to tell the truth. And Susie organized it. Thank God, she has a lot of friends — more than I do — and she got it off the ground. Susie and I barely saw each other during this time as I would get home from the courthouse late at night and leave early the next morning. When it was over, I went straight from receiving the jury's death penalty verdict to campaigning. Yes — remarkable, but challenging and exhausting!

worth the price of admission," I said, but whose name I could not divulge. Wild speculation of the judge-attendees led to rumors that our "special guest" would be Les Miles (remember, it was 2012!), Drew Brees, Brad Pitt, Angelina Jolie or Denzel Washington.

A few minutes before 10 the next day, the U.S. marshals arrived, then the Louisiana justice and, finally, our guest of honor. I briefly introduced our state justice who, as expected, provided an excellent introduction of Justice Scalia (even without the benefit of my notes).

Justice Scalia spoke of his judicial philosophy — the U.S. Constitution is not designed to facilitate social change but, rather, is meant to protect citizens' basic fundamental rights and responsibilities. He also touched on the limited role of federal government in the affairs of the states, underscoring the importance of local government. He further recognized the significance of the district court judges, emphasizing that for witnesses, jurors and most citizens with cases and controversies, trial judges are the only ministers of justice they may

ever know. Praising our work, Justice Scalia proclaimed that the trial judges are "where the rubber meets the road."

Five years have passed since that day in New Orleans. Even though Justice Scalia is deceased, through his authored opinions, his concurrences and even his dissents, his voice will continue to be heard and his philosophy will live on forever. For me and the many Louisiana judges, irrespective of whether all agree with all of his views, this proved to be an unforgettable opportunity to spend time with this icon, one who so graciously shared his precious time with us. While I fully support the entertaining diversion of hearing from an accomplished NFL quarterback or a movie star, that day we were blessed with a superstar jurist — one who significantly contributed to the Rule of Law in this country.

Scott J. Crichton served as a Caddo Parish district judge from 1991-2014 and began his 10-year term as associate justice on the Louisiana Supreme Court on Jan. 1, 2015.



United States Supreme Court Justice Antonin Scalia spoke at the United States District Court, Eastern District of Louisiana, in New Orleans during the LSBA Rule of Law Conference. Photo by Ross Foote.

Journal: And how old were you then?

Crichton: I was 36. And the problem, Tony, is that I looked much younger. I'm 62 now. To look young is a combined blessing and curse. If you're a lawyer and you look like I looked in the 1980s, the jury would look at me like "Are you old enough to even be driving, much less prosecuting a case?"

Journal: I can see that.

Crichton: In Caddo Parish, and I suspect most places, the face-to-face contact in a campaign is important, so as soon as I finished the trial, my wife and I would walk door to door. The question asked over and over was, "But how old are you?" And the response was repeated, "I'm 36, but let me tell you what I am all about — married, two kids, prosecutor, having just finished a big case, civil practitioner and adjunct college instructor." Once people would get past my youthful appearance and learn my age, it was fairly smooth sailing.

And the age issue came up in my Supreme Court campaign. By the way, how old are you? That would be the inquiry. You look a little young for that job. And I'd have to say the same things but thankfully with a more robust résumé — 60 years old, 24 years on the district court, plus all the rest. Usually they were okay with me after hearing that.

Journal: I think it's the perfect age to start on the Supreme Court. In a way, it's the best years of your career, given all of the experience you've had.

Crichton: Really, there's not anything that I've encountered in the field of law that I don't like, which makes for a blessed professional life. I loved being an advocate back in my former life whether for the State of Louisiana or private clients. But I've also immensely loved being a judge and maintaining the impartiality required for each case. Looking back, I've needed every single thing that I've done to get to this point. From the teachings of Webb School, the challenges of Outward Bound and another survival achievement — LSU Law School — to my work as a lawyer, part-time teacher, civil practitioner,



Justice Scott J. Crichton presented an ethics program for the joint Louisiana Judicial College/Louisiana Association for Justice 2017 Evidence and Procedure Seminar on March 10. Photo by David Rigamer.

assistant DA, and district court judge, I bring all of those experiences to the Louisiana Supreme Court.

Journal: That's quite a story. I love the fact of these relationships you have.

Crichton: Relationships are important. And I do want to mention my family. Susie and I have been married for more than 30 years. I'm incredibly blessed by her.

Journal: Well, her running that campaign for two weeks, she's in the hall of glory forever for pulling that off.

Crichton: Susie is definitely in my hall of glory. She is a private person. You're not going to see her volunteering to give a speech or giving an interview, for that matter. But Susie is dedicated to her husband and sons. Because of her dedication to me, coupled with her competitive edge, she worked extremely hard to get me elected to the district court in 1990 and the Supreme Court in 2014. Her plan was to win the elections whether she actually wanted me to have the job or not! I definitely married up.

Journal: And you have two sons.

Crichton: Yes, both are lawyers, both LSU Law graduates. My older son practices law with a small business defense firm in Shreveport. My younger son previously served as an Orleans as-

sistant DA and now serves in the Caddo DA's office — a prosecutor like his father was. I'm proud of them and blessed with a great family.

I'm going to leave you with this: The Crichton family motto is "God Send Grace." I've never appreciated and valued our motto quite as much as right now. God has filled my life with Grace which comes with the awesome responsibility of serving on our State's highest court. I couldn't be more thankful.

For a full transcript of Justice Crichton's induction ceremony held on Dec. 15, 2014, see *Southern Reporter*, Vol. 165 So.3d 157 to 165 So.3d 1131 (p. XIX). For his full biography, go to: www.lasc.org/justices/crichton.asp.

Anthony M. DiLeo, who practices in New Orleans, is also an arbitrator and mediator, handling more than 400 cases arising in 22 states for local, national and international parties. After Tulane Law School (Law Review, Order of the Coif), he received an LL.M. from Harvard Law School in 1971. He served as law clerk to Judge Alvin B. Rubin (U.S. District Court) and Judge John Minor Wisdom (U.S. 5th Circuit Court of Appeals). He is a member of the Louisiana Bar Journal's Editorial Board. (tony@tonydileo.com; Ste. 2350, 909 Poydras St., New Orleans, LA 70112)



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

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

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

Persistent
apathy or
“empty” feeling

Drug or
alcohol
abuse

Changes
in energy,
eating or
sleep habits

Loss of
interest or
pleasure,
dropping hobbies

Trouble
concentrating
or remembering
things

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

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In The Limelight: Annual Meeting Events*

Sunday, June 4

CLE Programming

Opening Reception in Exhibit Hall

Monday, June 5

CLE Programming

2017/18 Louisiana Judicial College
Board of Governors Meeting
(open to 2017/2018 Board members)

Senior Lawyers Division Meeting

Tuesday, June 6

CLE Programming

Section Council Meeting
(open to Section officers)

Golf Tournament

Tennis Tournament

Law School Alumni Parties

Wednesday, June 7

CLE Programming

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

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

2017/2018 Young Lawyers Division
Council Meeting
(open to 2017/2018 Council members)

First-Time Attendees Networking Reception
Hosts: Leadership LSBA 2016-2017 Class

Summer Soirée

Featuring the presentation of YLD awards and
installation of 2017/2018 YLD Officers and
Council. This family-friendly event includes
live music, food and libations (ticketed event).

*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 8

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

Beach Bash

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Friday, June 9

CLE Programming & Breakfast

2017/2018 LSBA Board of Governors Meeting
(open to 2017/2018 Board members)

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Natalie R. Laborde • LA Dept. of Public Safety & Corrections • Baton Rouge

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Annie – It's a Hard Knock Life: Understanding Trauma & Its Impacts in Your Court

Kim & Kristyn S. Carver, Ph.D., • Foster & Adoptive Parents, Co-Founders of

Louisiana Institute for Children in Families Crossroads NOLA & Texas Christian University's Institute of Child Development

2001: A Space Odyssey - Cyber Security/Cyber Attacks

as They Relate to The Court, Your Firm and Justice

David London • The Chertoff Group • Washington, DC

Judges Only Keynote Sessions

And Justice for All – Judicial Indiscretion

Hon. Scott J. Crichton • Louisiana Supreme Court • Shreveport

The Justice League – Access to Justice

Introduction by Chief Justice Bernette Joshua Johnson • Louisiana Supreme Court • New Orleans

Moderator: Marta-Ann Schnabel • O'Bryon & Schnabel • New Orleans

Panelists: Christy Kane • Louisiana Appleseed • New Orleans

Alainna R. Mire • Alexandria City Attorney's Office • Alexandria

Michael Schachtman • Louisiana State Bar Association • New Orleans

Laura Tuggle • Southeast Louisiana Legal Services • New Orleans

Irreconcilable Differences – Thinking about Gender and Judging

Professor Sally J. Kenney • Tulane University Newcomb College Institute • New Orleans

A Civil (Criminal) Action – Case Flow and Docket Management:

Needless Delay – The Enemy of Justice

Hon. Patricia K. Costello • Chiesa, Shahingian & Giatomasi • West Orange, NJ

Gordon M. Griller • National Center for State Courts • Williamsburg, VA

June 4-9, 2017 ★ Destin, Florida

For complete schedule, including speakers, or to register, please visit
www.lsba.org/AnnualMeeting.



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

Featuring Learning Tracks

Miracle on 34th Street – Louisiana Sentencing Reform:
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The Pelican Brief – The Great Debate –
State Court is Broken! Now How Do We Fix It?

Big Think – Sessions for Judges & Lawyers

The Paper Chase – Back to Basics: Sessions for Judges & Lawyers

L.A. Law the Movie – A Return to Justice –
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The Informant – Sessions for Judges & Lawyers
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**Armistad – Federal Jurisprudence, Procedure
and Evidence** for Judges and Lawyers

Life in a Day – Healthy Mind, Body, Spirit, Psyche
for Lawyers and Judges

Judges Only Sessions

And Justice For All – A Series of Judge Only Sessions
Addressing Ethics and Access to Justice

A Civil (Criminal) Action – Case Flow and Docket Management:
Needless Delay – The Enemy of Justice

Every Woman's (Person's) Problem –
Access to Justice and Gender-Related Discussions

Broken Trust – Best Practices for
Judges on Varied Topics

**Annie – Louisiana Transformative Initiatives In Cases Involving
Abuse and Neglect of Children:** Quality Parenting Initiative and
Trauma Informed

Broken Trust – Best Practices and Roundtable for Judges

In Supporting Roles... Other Sessions of Note

- ★ *Alias Jesse James* - Insurance Law: Recent Developments
- ★ *Trail of Tears: Cherokee Legacy* - Expropriation: What's Shaking
- ★ *The Verdict* - State Civil Procedure: Recent Developments
- ★ *Open Range* - Restrictions Needed For Millennial Housing and Impact on Property Values
- ★ *Crazy on the Outside* – Louisiana Statutes which Implicate Sentencing
- ★ *Kings Row* - Advanced Torts: Medical Malpractice
- ★ *The Merchant of Venice* - Drafting Contracts That Courts Will Understand
- ★ *The Insider* - Expert Testimony
- ★ *Nine to Five* - Employment Law: The Future of the Workplace
- ★ *Disorganized Crime* – Criminal Bail Bond Forfeiture: Nuts & Bolts
- ★ *Kramer versus Kramer* - Family Law Updates
- ★ *Smosh: The Movie* - Social Media: Basics, Tips, and Admissibility
- ★ *The Hunger Games* - Cybersecurity: What Does the Future Hold?
- ★ *Black Mass* - Asset Forfeiture: Nuts & Bolts
- ★ *Home Alone* - Juvenile Law: Recent Developments

- ★ *North Country* - Revision of the LA LLC Act
- ★ *The Insider* - Representing the Fractured & Imploding Business
- ★ *Carlito's Way* – Criminal Fines, Fees and Court Costs
- ★ *Stranger in My Land* - Property Law, Land Use, Local Government Regulation
- ★ *Happy Gilmore* – State & Local Tax: Legislative Developments and the Fiscal Cliff
- ★ *The Bucket List* – Top Trending Topics in Retirement Plans
- ★ *A Time to Kill* - LA Criminal Law and Criminal Procedure: Recent Developments
- ★ *Mi Familia* - The Intersection Immigration & Tort Law
- ★ *Limitless* - Everybody's Doing It: Gambling & Sweepstakes Law for the Non-Gaming Lawyer
- ★ *Michael Clayton* - Implementing Proportionality and Other Significant Changes to the Federal Rules of Civil Procedure
- ★ *War of the Roses* - Family Law Best Practices
- ★ *The Net* - Consumers: Identify Theft, Free Credit and the Chip
- ★ *Felon* – Criminal Pre-Trial Services: Risk Assessment, Bonding Procedure

- ★ *The Rainmaker* - Federal Pre-Trial and Dispositive Pre-Trial Motions
- ★ *A Sentence Apart* - Smart Sentencing: Risk Assessment at Sentencing
- ★ *The Fortune Cookie* - Federal Jurisdiction & Procedure Updates
- ★ *Moving Violations* - City Court Best Practices (JUDGES ONLY SESSION)
- ★ *Twelve Angry Men* - Jury Selection Form & Substance: Is Post-Racial America Alive and Well in the Courtroom?
- ★ *The Bee Movie* - Tom on Torts
- ★ *Schindler's List* – Lawyers Without Rights: The Prosecution of Jewish Lawyers and Judges in Nazi Germany
- ★ *Flight* – The Professional Duty of Self Care
- ★ *Suspect* - Ethics for Judges (JUDGES ONLY)
- ★ *Loving* - Appellate Best Practices (JUDGES ONLY SESSION)
- ★ *It's A Wonderful Life* – Rural Courts Roundtable (JUDGES ONLY SESSION)
- ★ *My Cousin Vinny* - Case Flow Management: Making It Work (JUDGES ONLY)
- ★ *A Civil (Criminal) Action* – Case Flow Management: A Judicial Conclave (JUDGES ONLY SESSION)

Registration Form

☐ Judge Bar Roll Number _____ First Name for Badge _____

☐ Ms. ☐ Mr. Name _____

Firm Name _____

Address _____

City/State/Zip _____

Office Phone _____ Fax _____

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

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

Spouse/Guest Name _____

First Name for Badge _____

In response to popular demand, a 4-day registration category is again offered this year! This economical option allows you to attend only four days of the conference (your choice of days!) for a steep discount to the on-site fee.

Registration Options	May 1	May 26	On-Site	Subtotal
Lawyers	\$795	\$850	\$895	_____
Lawyers 4-Day	\$725	\$775	\$825	_____
Judges	\$675	\$725	\$775	_____
Judges 4-Day	\$625	\$650	\$675	_____
Legal Services/Gov't/ Academia/YLD member**	\$675	\$725	\$775	_____
Legal Services/Gov't/ Academia/YLD member** 4-Day	\$625	\$650	\$675	_____

**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).

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

Any questions? Contact

Annette Buras, CLE Coordinator
Louisiana State Bar Association
aburas@lsba.org or call (504)619-0102
or call tollfree (800)421-LSBA, ext. 102

To purchase additional tickets for events, contact

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

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

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

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

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



June 4-9, 2017
Sandestin Golf and Beach Resort
Destin, Florida

Registration Options

Registration Options	May 1	May 26	On-Site
Lawyers	\$795	\$850	\$895
Lawyers 4-Day	\$725	\$775	\$825
Judges	\$675	\$725	\$775
Judges 4-Day	\$625	\$650	\$675
Legal Services/Gov't/ Academia/YLD member**	\$675	\$725	\$775
Legal Services/Gov't/ Academia/YLD member** 4-Day	\$625	\$650	\$675

In response to popular demand, a 4-day registration category is again offered this year! This economical option allows you to attend only four days of the conference (your choice of days!) for a steep discount to the on-site fee.

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, 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.

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Cancellations, Refunds & Course Materials

Cancellation of registration must be received in writing by the LSBA no later than Friday, May 19, 2017. Cancellations will receive a full refund, less a \$30 administrative charge. Absolutely no refunds will be made after Friday, May 19, 2017. Requests should be mailed to the Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; faxed to (504) 598-6753; or emailed to aburas@lsba.org. Any questions, 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.

LSBA 50-, 60-, 70-Year Members Recognized at 2017 Midyear Meeting

Nearly 200 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 Baton Rouge. During the reception, the honorees received medals presented by LSBA President Darrel J. Papillion. The honorees also posed for photos with

Papillion and Louisiana Supreme Court Justice Jefferson D. Hughes III.

The following Bar members were recognized.



Among the 50-year honorees attending the ceremony were, seated from left, John W. Robinson, Hon. Jack W. Caskey, Raleigh Newman, Jerry A. Oubre, Charles S. McCowan, Jr., Emile C. Rolfs III, A.J. Gray III, Louis R. Koerner, Jr., Rhett M. Powers and John H. Wells. Standing from left, Richard M. Olsen, Clayton J. Borne III, Hon. Kenneth E. Pickering, F. Joseph Drolla, Jr., Alex W. Rankin, Frank A. Fertitta, Hon. Randolph H. Parro, Foye L. Lowe, Jr., Marion B. Farmer, Hon. Robert L. Lobrano, Robert A. Vosbein and Lawrence F. Babst, Jr. Photo by Matthew Hinton Photography.

50-Year Honorees Admitted in 1967

C. Calvin Adams, Jr. Tallulah
Lawrence F. Babst, Jr. Folsom
James J. Bailey III Baton Rouge
Robert J. Bailey III Mandeville
Marshall Ballard III Dallas, Tx
John J. Barcelo III Ithaca, NY
Barry J. Baroni Metairie
Stephen A. Berniard, Jr. Lake Charles
John A. Bolles New Orleans
Clayton J. Borne III Metairie
Joseph R. Boyd Prairieville
John B. Breaux, Sr. Washington, D.C.
Mack E. Breaux New Orleans
James A. Burnett Shreveport
Robert L. Cables Lafayette

Hon. James L. Cannella Kenner
Robert H. Carpenter, Jr. Baton Rouge
Hon. Jack W. Caskey Lake Charles
Michael D. Charbonnet Metairie
Merritt B. Chastain, Jr. Shreveport
Ethel H. Cohen Metairie
Robert L. Cole Lafayette
Robert A. Connell Jackson
James S. Conner, Jr. Mandeville
David S. Cressy Mandeville
Ronald E. Dauterive Lafayette
Jimmy Lee Dauzat Sunset
Hugh H. Doran, Jr. New Orleans
F. Joseph Drolla, Jr. Metairie
Robert P. Edel River Ridge
Hon. Marion F. Edwards Gretna
Hon. Jude T. Fanguy Houma
Marion B. Farmer Covington

F. Leo Faust, Jr. Berwyn, PA
J. Michael Fernandez, Jr. Lafayette
Frank A. Fertitta Baton Rouge
Whitfield W. Fitzpatrick Oslo, Norway
Warren C. Fortson Atlanta, GA
Hon. Edward J. Gaidry Houma
Walter T. Gamard II Mandeville
Russell A. Gaudin Baton Rouge
Jarrell E. Godfrey, Jr. St. Joseph
Warren A. Goldstein New Orleans
A.J. Gray III Lake Charles
Peter P. Guarisco Baltimore, MD
Jules E. Guglielmo, Jr. Lake Charles
Kirby J. Guidry Baton Rouge
Manuel G. Gutierrez, Jr. Mandeville
Richard A. Hammel Metairie
Harold J. Hanson Covington
John M. Harrison Shreveport



Among the 60-year honorees attending the ceremony were, from left, Caryl H. Vesey, Dudley D. Flanders, Garland R. Rolling, Sylvan J. Steinberg and Hon. Robert W. Kostelka. Photo by Matthew Hinton Photography.

Arthur M. Hayes, Jr. Port Washington, NY
 Cornelius R. Heusel Harahan
 Quincy T. Hinton, Jr. Kingwood, TX
 Edward A. Hyndman, Jr. Mobile, AL
 Carrick R. Inabnett Monroe
 Joe M. Inabnett New Orleans
 John B. Jarboe Tulsa, OK
 George H. Jones Metairie
 William C. Kaufman III Baton Rouge
 Louis R. Koerner, Jr. Houma
 William J. Krummel, Jr. Kenner
 Karen Clasen Kucik Rockville, MD
 Louis J. Lambert, Jr. Prairieville
 Cullen P. Landry New Orleans
 Laurence E. Larmann Metairie
 Dennis E. Lastrapes Metairie
 David B. Lawrence, Jr. Houston, TX
 William H. Ledbetter, Jr. Bossier City
 Arthur A. Lemann III New Orleans
 Gerald J. Leydecker Metairie
 Hon. Robert L. Lobrano Belle Chasse
 John G. Loftin Monroe
 Foye L. Lowe, Jr. Baton Rouge
 W. Glen Mangham Shreveport
 Edward Fontaine Martin New Orleans
 Charles S. McCowan, Jr. Baton Rouge
 Terry H. Miller Baton Rouge
 W. Henson Moore Washington, DC
 Daniel L. Morrow Baton Rouge
 James J. Morse New Orleans
 John W. Munsterman Alexandria
 Raleigh Newman Lake Charles
 James R. Nieset Lake Charles
 Henry F. O'Connor, Jr. New Orleans
 Richard M. Olsen Pass Christian, MS
 Jerry A. Oubre New Iberia
 William B. Owens Alexandria
 Hon. Randolph H. Parro Thibodaux
 David A. Payse Metairie
 Patrick W. Pendley Plaquemine
 Donald G. Perez New Orleans
 Robert L. Perez River Ridge
 David G. Perlis New Orleans
 Benjamin M. Peters Monroe
 Robert E. Peyton New Orleans
 Hon. Kenneth E. Pickering New Orleans
 Clint L. Pierson, Jr. Covington

A.C. Powell III Hammond
 Rhett M. Powers New Orleans
 Alfred L. Price Brandon, MS
 R. Perry Pringle Shreveport
 Alex W. Rankin Bastrop
 Patrick M. Reily Miramar Beach, FL
 Robert P. Roberts New Orleans
 John W. Robinson Metairie
 Dwight N. Rockwood, Jr. New Braunfels, TX
 Emile C. Rolfs III Baton Rouge
 Roger D. Rowland Baton Rouge
 Scotty G. Rozas Lake Charles
 Ronald S. Ruiz New Orleans
 Hon. Gerald H. Schiff Lafayette
 C. Sherburne Sentell, Jr. Minden
 Edward P. Seybold, Jr. Folsom
 William W. Shaw, Jr. Frisco, TX
 Hon. Robert H. Shemwell Shreveport
 Frank H. Simonton, Jr. Kingwood, TX
 James D. Sparks, Jr. Monroe
 Michael X. St. Martin Houma
 Howard C. Stanley Covington
 Charles M. Steen Houston, TX
 Edwin A. Stoutz, Jr. New Orleans
 Camille Jones Strachan New Orleans
 John M. Sturgeon, Jr. Ferriday
 Joseph S. Sturgeon Bellevue, WA
 James R. Sutterfield New Orleans
 Bobby D. Sutton, Sr. Shreveport
 Ronald Tanet New Orleans
 Wilbert J. Tauzin II Washington, D.C.
 William T. Tete New Orleans
 Gerald P. Theriot Breaux Bridge
 James H. Theriot New Orleans
 Frank P. Trosclair, Jr. Opelousas
 Maurice L. Tynes Lake Charles
 J. William Vaudry, Jr. New Orleans
 Robert A. Vosbein New Orleans
 Emile A. Wagner III New Orleans
 Richard W. Wagner New Orleans
 Hon. Gerard Bernard Wattigny New Iberia
 Thomas H. Watts Baton Rouge
 John H. Wells Picayune, MS
 J. Rush Wimberly III Arcadia
 Ronald S. Wood Metairie
 Patrick H. Wright, Jr. West Monroe
 Lanny R. Zatzkis New Orleans

60-Year Honorees Admitted in 1957

Milton H. Anders Shreveport
 Jane F. Asher Paris, IL
 John A. Bernard Lafayette
 Joseph Bernstein Dallas, TX
 Edward J. Broussard Harahan
 Donald E. Chavanne Lake Charles
 John Earl Coleman, Jr. Franklin
 Paul B. Deal New Orleans
 Thomas J. DuBos Baton Rouge
 Hon. John M. Duhe, Jr. Dallas, TX
 Hon. Martin L.C. Feldman New Orleans
 Jack B. Files Monroe
 Dudley D. Flanders Fishersville, VA
 Nicholas J. Gagliano Metairie
 Andy B. Gallagher Shreveport
 Thomas D. Hardeman Lafayette
 Robert B. Hargrove Lafayette
 Charles Marion Hughes, Sr. Covington
 Jerry G. Jones Lake Charles
 S. David Kass New Orleans
 Joseph H. Kavanaugh Washington
 Hon. Robert W. Kostelka Monroe
 Lewis P. Lauve Alexandria
 Joseph Lipsey, Jr. Alexandria
 B. Lloyd Magruder Mt. Pleasant, SC
 James H. Martin New Orleans
 Melvin W. Mathes Metairie
 Sam J. Mattina Houston, TX
 Willis L. Meadows, Jr. Shreveport
 C.A. Miller, Jr. Austin, TX
 Luther W. Moore Minden
 George T. Oubre Metairie
 Gene S. Palmisano New Orleans
 James F. Pierson, Jr. Baton Rouge
 Robert L. Redfearn New Orleans
 Billy R. Robinson Bossier City
 Garland R. Rolling Metairie
 Dennis L. Rousseau Folsom
 Harry R. Sachse Washington, DC
 Dan E. Stapp Metairie
 Sylvan J. Steinberg New Orleans
 Benjamin C. Toledano Columbus, MS
 Caryl H. Vesey New Orleans
 Charles D. Viccellio Lake Charles
 Fred P. Westenberger Metairie
 Fernand F. Willoz III New Orleans
 Bob F. Wright Lafayette

70-Year Honorees Admitted in 1947

Paul J. Keleher Metairie
 Norman V. Kinsey, Jr. Shreveport
 C. Ebb Munden III Plano, TX
 Vincent A. Paciera Mandeville
 Herman B. Schoenberger Buras
 H. Paul Simon Covington

“Meet-and-Greet” at Midyear: New Associate Justice Genovese Offers Practical Tips on Writ Applications

By John W. Redmann and David B. Belk

Nearly two weeks after being sworn in as the newest associate justice of the Louisiana Supreme Court, James T. Genovese made one of his first public appearances on Jan. 19 at a “Meet and Greet” event coordinated by the Louisiana State Bar Association’s (LSBA) Bench and Bar Section on the first day of the LSBA’s Midyear Meeting in Baton Rouge.

Among those at the well-attended event were Bench and Bar Section Chair John W. Redmann and Vice Chair Christopher K. Ralston, LSBA President Darrel J. Papillion, LSBA President-Elect Dona Kay Renegar, LSBA Treasurer H. Minor Pipes III and Judge Raymond S. Steib, Jr., 24th Judicial District.

During the event, Justice Genovese shared his vision for the future of the state’s highest court and offered practical advice for attorneys about writ applications.

Regarding the challenges in his new position, Justice Genovese said, “I’ve been on a learning curve for the past 60 days,” adding, with a hint of irony as he spoke to a room full of lawyers and judges, “for the first time in my life, I’m quiet.” The import of his new job is not lost on him. “It’s amazing what one person can do, (how one person) can make a difference.” He described what undoubtedly will soon be a familiar feeling. “Last Tuesday was the first time the vote came down 3-3. ‘Alright, Genovese, what’s your vote?’ All of a sudden I get this chill. Wait a minute — right now, 10 days in — what I say is going to be what that decision is going to be!”

Justice Genovese has big plans regarding the understanding and transparency of the Supreme Court and hopes to



New Louisiana Supreme Court Associate Justice James T. Genovese, second from left, made one of his first public appearances on Jan. 19 at a “Meet and Greet” event coordinated by the Louisiana State Bar Association’s (LSBA) Bench and Bar Section. From left, Bench and Bar Section Chair John W. Redmann, Genovese, LSBA President Darrel J. Papillion and Bench and Bar Section Vice Chair Christopher K. Ralston.

give greater insight to the Bar as to the inner workings. “It’s important for you to know what goes on in the Supreme Court. We’ve got to get out and let people know what’s involved with taking a writ to the Supreme Court — what to expect in the Court, how it functions, what happens to your case when you file that writ, where does it go, what’s the first thing that happens, what are my chances of getting a writ granted? I would like to take the opportunity in due course just to have a presentation regarding the Supreme Court — what it is, what it does, what works, and what doesn’t work.”

He also offered some practical advice. “People need to understand what works and what doesn’t work and how important it is — your application for

writ of certiorari. Don’t sit back and think, ‘Well, let’s wait and see when the Justices look at the record and they’ll see what I’m talking about.’ We don’t get the record until maybe a week before the case is orally argued — key distinction between that and an appellate court. You live and die on your writ application. So if you want to put all your marbles in one basket, don’t wait for the end of the parade to get the doubloons.”

In response to a question regarding what practitioners should keep in mind when filing a writ application with the Supreme Court, Justice Genovese advised, “People need to know that the Supreme Court is a writ court. It is not what we call an errors court. I take issue with the broad statement that the Supreme Court is a policy court. In

FOOTNOTE

1. Review the full Louisiana Supreme Court Rule 10 online at: www.lasc.org/rules/supreme/RuleX.asp. The five specific areas where the Supreme Court can exercise its discretion include: 1) Conflicting Decisions; 2) Significant Unresolved Issues of Law; 3) Overruling or Modification of Controlling Precedents; 4) Erroneous Interpretation or Application of Constitution or Laws; and 5) Gross Departure from Proper Judicial Proceedings.

John W. Redmann, a 1989 graduate of Loyola University Law School, is the owner of the Law Office of John W. Redmann, L.L.C., and the current chair of the Louisiana State Bar Association's Bench and Bar Section. Since starting his own practice in 1994, his primary focus has been advocating on behalf of tort victims and homeowner and flood insurance claimants. (john@redmannlaw.com; 1101 Westbank Expressway, Gretna, LA 70053)

David B. Belk is a 2015 graduate of Louisiana State University Paul M. Hebert Law Center, where he was a member of the Moot Court Executive Board and the Gibson Moot Court Competition Travel Team. After law school, he clerked for Judge Fredericka H. Wicker in the Louisiana 5th Circuit Court of Appeal until joining the Law Office of John W. Redmann, L.L.C., as an associate in 2016. (dbelk@redmannlaw.com; 1101 Westbank Expressway, Gretna, LA 70053)

my view, the Supreme Court decides a case based on the law (not policy) but its decision becomes the policy of the court. Rule 10 [of the Rules of the Supreme Court of Louisiana]¹ gives you five specific areas where the Supreme Court would exercise its discretion. Those five issues are the issues which you must pound on. Knowing that it's a writ court, you have to approach it like that. People make a major mistake going at it from an error standpoint. You want to go with your errors to the appellate court, but leave that at the door in the Supreme Court. We cannot correct every error. It's going to have to have something to catch our attention. It's going to have to fall under the umbrella of Rule 10."

In closing, Justice Genovese offered an inside look into the collective mind of the Supreme Court. "Things that we look at — the judge makes a difference, the [district] court makes a difference, the circuit court makes a difference. And it goes back to credibility. If you do good work, it's not that you get the

benefit of the doubt, but it casts you in a much better, believable light. We're all human beings and you cannot separate the human element involved. On the district level, you know the attorneys who do good work and they're going to get in and get out quickly. On the appellate level, you know the judges who are very conscientious. It's not that they get a free pass, but they come to the forefront."

Justice Genovese, a Loyola University Law School graduate, spent more than 20 years in practice before being elected to the district court bench in Opelousas in 1995. From 2005 until his recent election, he was a judge on the 3rd Circuit Court of Appeal. His 3rd District seat on the Supreme Court was formerly held by retiring Justice Jeannette Theriot Knoll.

The leadership of the LSBA's Bench and Bar Section plans to continue offering unique opportunities for interaction between members of the Bar and judiciary and invites all LSBA members to take part in future events.



2017 LSBA Midyear Meeting LCLCE Award Recipients



Kirby Gordon, Jr., second from left, a teacher at Galvez Middle School in Prairieville, received the 2017 President's Award of Excellence for Outstanding Civics Teacher during the Louisiana State Bar Association's (LSBA) Midyear Meeting in Baton Rouge. The award is jointly presented by the LSBA and the Louisiana Center for Law and Civic Education (LCLCE). From left, Louisiana Supreme Court Justice Jefferson D. Hughes III, Gordon, LCLCE President Lawrence J. Centola III and LSBA President Darrel J. Papillon. Photo by Matthew Hinton Photography.



Frederick D'Wayne Bell II, right, a 2015-16 senior at the Math, Science and Arts Academy-East in Iberville Parish, received the 2016 Louisiana Center for Law and Civic Education's Civics in Action Award during the Louisiana State Bar Association's Midyear Meeting in January, presented by Louisiana Supreme Court Justice Jefferson D. Hughes III. Photo by Matthew Hinton Photography.

Electronic Payment of 2017-18 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 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 on-line member accounts that participants have relied on for years to register for CLE seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: www.lsba.org/Members/memberaccts.aspx. This webpage also allows members to edit their existing accounts and to reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to www.LADB.org to

complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule will be the same as in prior years. In lieu of mailing a statement to each member, in mid-May, the LSBA will mail to each member a 4x6 postcard, which will provide instructions to go online to www.LSBA.org to complete the registration process, and also go online to www.LADB.org to complete the Trust Account Form. ***This is the only mailing members will receive prior to the July 1, 2017, due date; attorney registration statements will NOT be mailed.***

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.

LSBA Member Services

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



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

**For more information,
visit www.lsba.org**

Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS) and the Plan of Legal Specialization, the following individuals have satisfactorily met the established criteria and are qualified as LBLS board-certified specialists in the following areas for a five-year period which began Jan. 1, 2017, and will end on Dec. 31, 2021.

Newly Appointed Specialists

Appellate Practice

Travis Louis Bourgeois New Orleans
Douglas L. Grundmeyer New Orleans
Kenneth P. Haines Shreveport
Louis C. LaCour, Jr. New Orleans
Martin A. Stern New Orleans
Raymond P. Ward New Orleans

Estate Planning and Administration Law

John C. Overby New Orleans

Tax Law

Alex H. Glaser New Orleans
Ryan Q. Moon Baton Rouge
R. Fritz Niswanger Monroe

Recertified Specialists

Estate Planning and Administration Law

Marguerite L. Adams New Orleans
Walter Antin, Jr. Hammond
Alton E. Bayard III Baton Rouge
John C. Blackman IV Baton Rouge
Thomas G. Blazier Lake Charles
Sidney M. Blitzler, Jr. Baton Rouge
Jean C. Breau, Jr. Lafayette
Dorrell J. Brister Alexandria
Susan J. Burkenstock New Orleans
David I. Burkett Monroe
Douglas C. Caldwell West Monroe
Jaye Andras Calhoun New Orleans
Richard M. Campbell Monroe
L. Milton Cancienne, Jr. Houma
Donald A. Capretz Lafayette
Katherine Conklin New Orleans
Gary L. Conlay Natchitoches
Michael L. Eckstein New Orleans
David F. Edwards New Orleans

Mark William Fry Baton Rouge
David S. Gunn Baton Rouge
Steven E. Hayes Metairie
Allen P. Jones Shreveport
William C. Kalmbach III Shreveport
Jeffrey Wood Koonce Baton Rouge
Raymond P. Ladouceur Abita Springs
Brian T. Leftwich New Orleans
Lawrence M. Lehmann New Orleans
Peter J. Losavio, Jr. Baton Rouge
John L. Luffey, Jr. Monroe
David J. Lukinovich Metairie
Ray C. Mayo, Jr. Shreveport
Linda S. Melancon Prairieville
Donald M. Meltzer Baton Rouge
Joel A. Mendler New Orleans
Joseph Winzerling Mengis Baton Rouge
Carey J. Messina Baton Rouge
J. Tracy Mitchell Baton Rouge
Max Nathan, Jr. New Orleans
Carole Cukell Neff New Orleans
Laura Walker Plunkett New Orleans
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Betty Ann Raglin Lake Charles
Jerome John Reso, Jr. New Orleans
Patrick K. Reso Hammond
F. Kelleher Riess New Orleans
Leon H. Rittenberg, Jr. New Orleans
Armand L. Roos Shreveport
John A. Rouchell New Orleans
David R. Sherman Metairie
John F. Shreves New Orleans
David L. Sigler Lake Charles
Paul D. Spillers Monroe
David Bruce Spizer New Orleans
William P. Stubbs, Jr. Lafayette
Richard G. Verlander, Jr. New Orleans
Chris A. Verret Lafayette
Jess J. Waguespack Napoleonville
William Brooks Watson Monroe
John J. Weiler New Orleans
Kenneth A. Weiss New Orleans
Jack G. Wheeler Lake Charles
Lester J. Zaunbrecher Lafayette

Tax Law

Jaye Andras Calhoun New Orleans
Lance Joseph Kinchen Baton Rouge
David Gregory Koch Baton Rouge
Shanda Jeneé McClain Baton Rouge
Carl Joseph Servat III Metairie
Cloyd F. Van Hook New Orleans
Christian Neumann Weiler New Orleans

Family Law

Andrea Ducote Aymond Marksville
Jeffrey W. Bennett River Ridge

Elizabeth Ann Dugal Lafayette
Desiree Duhon Dyess Natchitoches
William J. Faustermann, Jr. Slidell
Jamie Elizabeth Fontenot Port Allen
Marcus Todd Foote Baton Rouge
Deborah Parker Gibbs Baton Rouge
David Cleveland Hesser Alexandria
Barbara Volk Madere Gretna
Lisa C. Matthews Covington
Vanessa Denise Randall Lafayette
Carol T. Richards Covington
Susan D. Scott Shreveport
Suzette Marie Smith New Orleans

Business Bankruptcy Law

H. Kent Aguiard Eunice
Gary K. McKenzie Baton Rouge
Kevin R. Molloy Shreveport
David S. Rubin Baton Rouge
Stephen D. Wheelis Alexandria

Consumer Bankruptcy Law

Hilary Beth Bonial Dallas, TX
Gary K. McKenzie Baton Rouge
Keith M. Welch Shreveport
Thomas R. Willson Alexandria

The LBLS was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become a certified specialist, an attorney must be an active member in good standing with the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate substantial experience in the specialty area and pass a written examination. Presently, the areas of law for which the LBLS is offering certification are appellate practice, business bankruptcy law, consumer bankruptcy law, estate planning and administration, family law and tax law.

The LBLS is currently accepting applications for 2017 in bankruptcy law. To receive an application, email LBLS Executive Director Barbara Shafranski at barbara@legalspecialization.org.

For more information about specialization, go to the LBLS website at: www.lascmcle.org/specialization.

A recent white paper published by CNA reports that the computer systems of nearly 80 of the top 100 law firms have been breached at least once in the last five years. (CNA, “Cybersecurity and Small Law Firms,” p. 2.) Even though that statistic highlights the vulnerability of large firms, all firms are susceptible to breaches. Inadequately protected systems invite risk to any client, employee or firm information stored on computer systems. Risk to your clients means risk to you and your bottom line.

The goal is to avoid both discipline and malpractice while providing the most practical protection for your clients and their data. In addition to various federal privacy laws that may apply to the data that firms store, lawyers have ethical obligations of competence under Rule 1.1 and confidentiality under Rule 1.6 of the Louisiana Rules of Professional Conduct. Maintaining inadequate data security poses problems under both ethics rules.

Attorneys can avoid discipline by using reasonable care to protect client information and data. While it is not always easy to determine what constitutes reasonable care in protecting data, factors to be considered are:

- ▶ the nature of the information;
- ▶ the likelihood of inadvertent disclosure absent enhanced safeguards;
- ▶ the financial and practical costs of using additional safeguards; and
- ▶ whether the use of those safeguards render computers or software too difficult to use, thereby adversely impacting the lawyer’s ability to represent clients.

Most law firms already use an array of data security tools — from spam filters and firewalls to anti-spyware and virus scanners. While those tools are essential, CNA advises that they may not result in comprehensive protection. Malpractice



carriers urge firms to incorporate the following practices.

1. Utilize encryption and passwords to protect the firm network, files and devices. Encryption and passwords are simple tools that will protect client information, even when stored on devices that are lost or stolen. Lost and stolen laptops and phones are among the leading causes of law firm breaches.

2. Use due diligence in selecting cloud storage providers. Verify that your vendor has adequate security to protect data, and find out the physical location of the server that will house your information. If the server is located outside of the United States, determine if it is subject to search and seizure.

3. If outside devices, including smart phones, are used to access or transmit client information, adopt a written policy governing the use of outside devices and client data. Insist on encryption and password protection for those devices and discourage use of free Wi-Fi networks for any client matters.

4. Require vendors who store, transmit or analyze data to sign confidentiality agreements and contractually require them to store and secure data with adequate safeguards.

Safeguarding your system does not have to be a daunting task. There are many resources and tools available to assist firms against the threat of breaches. For more information, email lossprevention@gilsbar.com.

Elizabeth LeBlanc Voss is loss prevention supervisor and loss prevention counsel for the Louisiana State Bar Association under the employment of Gilsbar, Inc. in Covington. Prior to joining Gilsbar, she was in-house counsel and regulatory compliance officer for a Louisiana community bank, worked as a civil litigator in New Orleans and served with the Harris County District Attorney's Office in Houston, Texas. She received her BA degree in political science from Louisiana State University and her JD degree from South Texas College of Law-Houston. She presents ethics and professionalism CLE programs on behalf of the LSBA. Email her at bvoss@gilsbar.com.



LAWYERS Assistance

By J.E. (Buddy) Stockwell

JLAP'S ANNUAL REPORT 2015-16

The Judges and Lawyers Assistance Program, Inc. (JLAP) has published its Annual Report for fiscal year 2015-2016 and we encourage all members of the Bar to visit JLAP's website at www.louisianajlap.com and review the entire report.

JLAP is a 501(c)(3) non-profit corporation that serves the public, the Bar and the profession by assisting, on a confidential basis, judges, lawyers, law students and bar applicants whose professional impairment may stem from substance use disorders or other mental health issues such as depression. In addition, JLAP helps protect the public from the harm that impaired lawyers and judges can cause.

JLAP is first and foremost an *absolutely confidential* method of providing life-saving help. By state statute and Louisiana Supreme Court Rule, any information received by JLAP is absolutely privileged and confidential.¹

The most exciting JLAP achievement in the last year is that the majority of JLAP cases in 2015-16 involved persons reaching out discretely to JLAP voluntarily and confidentially. In many cases, they obtained completely private help from JLAP before there was any harm to their career, the profession or the public. This increase in voluntary contact reflects JLAP's recent campaign to raise awareness about JLAP's totally confidential help.

As to program improvements, the new JLAP is now a truly comprehensive professionals' program that offers help with all types of mental health issues, not just alcohol and drug problems.

JLAP has completed a complex and challenging transformation process over the last three years. Beginning in 2011, JLAP (then LAP) began seeking a significant increase in funding. Compared to fully-funded leading programs in other states with similar numbers of Bar members, our Louisiana program had fallen far behind. Fortunately, the Louisiana State

Bar Association (LSBA) leadership came forward and made a strong commitment to financially support JLAP.

With funding in place, JLAP has been able to move forward and greatly improve its program. Unprecedented challenges were navigated, such as: 1) restructuring JLAP's governance; 2) amending La. R.S. 37:221 to include judges' programming and to expand JLAP's clinical scope to include all mental health issues; 3) recruiting and developing a full-time professional clinical staff; 4) initiating professional intervention services; 5) offering a new JLAP Diversion Track for judges involved in disciplinary matters; 6) creating a comprehensive JLAP website; 7) producing a new JLAP exhibit and meditation training classes at the LSBA's Annual Meeting/Summer School; and 8) instituting new law school outreach services including JLAP-sponsored mental health presentations and "JLAP Office Hours" wherein a JLAP licensed professional counselor periodically offers free, confidential mental health services onsite to law students.

JLAP has expanded its CLE presentation topics to include mental health issues such as depression, anxiety and compassion fatigue. JLAP also has new protocols for assisting with mental health issues, including the facilitation of appropriate clinical responses and maintaining an in-house library of professionals'-level publications to distribute as needed.

As for JLAP's formal monitoring services involving referrals from discipline, bar admissions, employers and others, JLAP has carefully examined its protocols and clinical standards and implemented necessary adjustments to ensure that it is successfully meeting its responsibility to facilitate highly-effective treatment for licensed professionals while also fulfilling its duty to help protect the public from the damage that impaired professionals can cause.² The result is that JLAP's monitored participants now enjoy a no-relapse

efficacy rate of 90 percent or better.

All of these JLAP improvements could not have come soon enough. A 2016 national study on attorney mental health has confirmed stunning statistics on the prevalence of substance use disorders and mental health issues in the legal profession.³

JLAP's staff is especially grateful to the unpaid volunteers who serve on JLAP's Board of Directors and Operations Committee. These very special people were willing to take on very difficult challenges. The result is that our improved JLAP is a top-tier program, saving more lives and careers than ever before.

But JLAP still needs *your* help in reaching out to the profession! Help spread the word: JLAP offers services on a *totally confidential basis*. If you or someone you know needs help with a substance use or mental health issue, reach out to JLAP confidentially before a clinical issue erupts into a disciplinary issue as well. Call JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the web, www.louisianajlap.com. Your call is confidential and you do not even have to give your name.

FOOTNOTES

1. La. R.S. 37:221 and La. Supreme Court Rule XIX(16)(j).

2. See the JLAP Annual Report online to learn more about the clinical guidelines and criteria that support JLAP's professionals' programming from definitive authorities such as the American Society of Addiction Medicine and the Federation of Physicians' Health Programs.

3. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys* (2016), Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW (available at www.louisianajlap.com).

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 email jlap@louisianajlap.com.



2017 Conclave Sponsors and Co-Hosts Acknowledged

The Louisiana State Bar Association's (LSBA) Diversity Committee and Conclave Subcommittee would like to thank the generous sponsors and co-hosts who supported the Conclave on Diversity in the Legal Profession.

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Black History Month CLE

In celebration of Black History Month, the Louisiana State Bar Association Young Lawyers Division's Diversity Minority Involvement Committee and the Committee on Diversity in the Legal Profession hosted a Black History Month CLE on Feb. 16 at the Baton Rouge office of Adams and Reese, L.L.P.



From left, Betty L. Dunkum, Esq., Victory Trial Consulting, L.L.C., West Palm Beach, FL; William C. Snowden, supervising staff attorney, Orleans Public Defenders and the Juror Project, New Orleans; and Chief Judge Brian A. Jackson, U.S. District Court, Middle District of Louisiana, Baton Rouge.

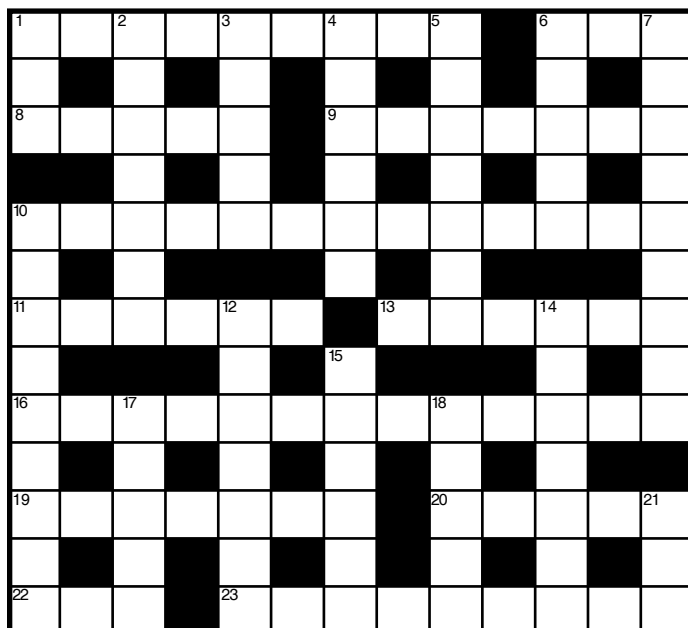


Black History Month CLE panel members included, from left, Kellen J. Mathews, Adams and Reese, L.L.P., Baton Rouge; and Ron C. Gathe, Jr., William Madison Jorden and Jermaine Guillory, all assistant district attorneys for the East Baton Rouge Parish District Attorney's Office.

Crossword PUZZLE

By Hal Odom, Jr.

NOT FOR THE TAKING



ACROSS

- 1 Use of threats to get anything of value (9)
- 6 Crow's call (3)
- 8 Any kind of taking without consent and with intent to deprive permanently (5)
- 9 Theoretically (2, 5)
- 10 Device from which telecommunications data may be stolen (9, 4)
- 11 One of the continents (6)
- 13 Having landed, nautically speaking (6)
- 16 Check-out devices often the targets of armed robberies (4, 9)
- 19 Signs, as of reliability or title (7)
- 20 Noted riveter (5)
- 22 Juniper-flavored spirit (3)
- 23 Taking from a financial institution by false pretenses (4, 5)

DOWN

- 1 No. after the ph. no. on a bus. card (3.)
- 2 One of many on Broadway (7)
- 3 Popular ingredient in cheese dip (5)
- 4 Perfectly representative of a style (6)
- 5 Male collateral relatives (7)
- 6 Kinds of pants also known as pedal-pushers (5)
- 7 Kind of check that's illegal to issue intentionally (9)
- 10 Form of taking that applies not just to purses (9)
- 12 Popular component of rustic-looking pipe (7)
- 14 Wide expanse of ocean (4, 3)
- 15 "I'll take that with ___ of salt!" (1, 5)
- 17 Prior to a 2011 partition, it was the largest country in 11 Across (5)
- 18 Decorative part of a font (5)
- 21 Termination (3)

Answers on page 479.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334

1405 W. Causeway Approach, Mandeville, LA 70471-3045 • email jlapp@louisianajlap.com

Alexandria	Steven Cook.....(318)448-0082	Lake Charles	Thomas M. Bergstedt.....(337)558-5032
Baton Rouge	Steven Adams.....(225)921-6690 (225)926-4333	Monroe	Robert A. Lee(318)387-3872, (318)388-4472
	David E. Cooley.....(225)753-3407	New Orleans	Deborah Faust.....(504)304-1500
	John A. Gutierrez.....(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
			Dian Tooley.....(504)861-5682 (504)831-1838
Lafayette	Alfred "Smitty" Landry.....(337)364-5408 (337)364-7626	Shreveport	Michelle AndrePont.....(318)347-8532
	Thomas E. Guilbeau.....(337)232-7240		Nancy Carol Snow.....(318)272-7547
	James Lambert.....(337)233-8695 (337)235-1825		William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
			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.

FOCUS ON Professionalism

By Michael E. Holoway

PROFESSIONALISM AND WINNING

The practice of law takes our minds on journeys that few could have anticipated prior to entry into the profession. In the courtroom, especially when we are speaking to juries, we talk about trials being a search for the truth. Some believe that this search for the truth can be subject to different definitions or interpretations. There are those who say that most people's conception of truth is really based upon their own personal conceptions and acceptance of certain facts. Of course, especially in these times, it appears that the definition of facts which should correlate with the idea of truth can now be subjectively shaded. Underlying all of this in terms of lawyering is our innate competitiveness and desire to win. Our clients certainly expect us to win when we take on their legal matters.

So, are lawsuits comparable to sports contests where the end result, *i.e.*, winning or losing, is the only thing that matters? Some argue that there are many analogies between the two, but I believe comparing a lawsuit to a game completely ignores the institution of law itself as an entity. Our legal system in Louisiana, being derived from the French and Spanish Civil Law and the English Common Law, is unique in that it has evolved from three systems of law into one.

As lawyers in Louisiana, we, therefore, have the benefit of a hybrid system of justice that hopefully has incorporated the best of the previous systems of law into one. As lawyers, we should be proud of Louisiana's system of law and proud of the fact that we constantly, whether we are in the office, in the courthouse or otherwise engaged, are the face of Louisiana's legal system, as well as that of the United States of America.



As one who has been involved in litigation, I know that it is very easy to focus on our duties to our clients, our own egos (we want to win) and forget that we are part of something that is much larger than ourselves, something which has existed prior to our arrival and, hopefully, something which will continue to exist longer after we have made our individual contributions to it.

The thought that as officers of the court, we lawyers, each one of us, are part of an institution that is the bulwark of our civilization should always have equal (and at times, perhaps, overarching) residence in our minds.

It seems like it's easy to become jaded and to succumb to our natural human tendency to blame others for our shortcomings when we don't achieve the outcomes which we desire. As lawyers, it is much easier to blame the law, the system, the judges, our opponents, etc., when we don't achieve the results desired by our clients and ourselves, especially if we view that as "losing."

Even though I have practiced law for more than 33 years, I do not pretend to know any more than any of my fellow attorneys. We are all members of a very select, privileged group and duty-bound defenders of the law and the institution of the law. How we comport ourselves in public and private either brings credit

or discredit to the institution which we serve.

It is my hope and desire that we attorneys (and I include myself as well) become and remain mindful of the fact that attorneys as a group are all facing the same challenges, bound by the same fears, and buoyed by the same hopes and intentions of all our fellow attorneys. Additionally, it is my hope and desire that we all remain mindful of the larger institution of which we are a part and to remember that the joy of victory and winning should not supersede nor supplant the search for the truth. It seems that in these times our legal institutions and our judges, in particular, are oftentimes attacked for fulfilling their duties and obligations. Recently, a Supreme Court nominee indicated that it was "disheartening" to hear such things. I believe it is incumbent on all of us as members of the legal profession and as lawyers to step forward and defend our legal system whenever and however we can. If we believe that there are areas which need to be rectified or fixed, we should likewise take action to do so. We may not all agree nor speak with one voice; however, we should all speak.

Michael E. Holoway received his JD degree in 1983 from Tulane Law School. He is a partner in the Northshore New Orleans office of Milling Benson Woodward, L.L.P. He is vice chair of the Louisiana State Bar Association's (LSBA) Committee on the Profession, a 2013-16

member of the LSBA's Board of Governors, a past chair of the Joint Subcommittee on Mentoring and a member of the LSBA's Practice Assistance and Improvement Committee. He is a Fellow of the Louisiana Bar Foundation and has served on its board of directors. (mholoway@millinglaw.com; 68031 Capital Trace Row, Mandeville, LA 70471)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Feb. 3, 2017.

Decisions

Joslyn Renee Alex, Breaux Bridge, (2016-B-1020) **Suspended for one year and one day, with all but 30 days deferred, and placed on supervised probation for two years**, ordered by the Louisiana Supreme Court on Nov. 15, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2016. *Gist*: Violated duties owed to her client, causing the potential for serious harm.

Susan L. Bowers, Mandeville, (2016-OB-2262) **Transferred to dis-**

ability/inactive status ordered by the Louisiana Supreme Court on Jan. 9, 2017. JUDGMENT FINAL and EFFECTIVE on Jan. 9, 2017.

Mitchel M. Evans II, DeRidder, (2016-B-1115 c/w 2016-B-1213) **Suspended for three years, with two years deferred, subject to a two-year supervised probation and conditions**, ordered by the Louisiana Supreme Court on Dec. 6, 2016; rehearing denied. JUDGMENT FINAL and EFFECTIVE on Jan. 25, 2017. *Gist*: Neglect of clients' legal matters; failure to commu-

nicate with clients; failure to provide competent representation; failure to refund unearned fees; failure to provide accountings to clients; failure to reduce contingency fee agreements to writing; failure to properly supervise non-lawyer assistants; failure to keep client's information confidential; failure to cooperate in ODC investigations; and violating the Rules of Professional Conduct.

Continued on page 446



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DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Feb. 1, 2017.

Respondent	Disposition	Date Filed	Docket No.
Roger Wayne Kitchens	(Reciprocal) Interim suspension.	1/6/17	16-16079
Randal Paul McCann	(Reciprocal) Suspension.	1/6/17	16-16080
Jerry L. Settle	(Reciprocal) Suspension	1/6/17	16-16081

Discipline continued from page 445

Arthur Gilmore, Jr., Monroe, (2016-B-0967) **Disbarred, retroactive to June 9, 2013, with credit for the time he served on interim suspension during the period of June 19, 2011, to Sept. 21, 2011, and during the period of May 2, 2012, to April 3, 2013,** ordered by the Louisiana Supreme Court on Oct. 19, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 2, 2016. *Gist:* Convicted of a crime; commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct prejudicial to the administration of justice; and stating or implying an ability to influence improperly a judge, judicial officer, government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

N. Dawn Harper, Monroe, (2016-B-1635) **Suspended from the practice of law for a period of three years or-**

dered by the Louisiana Supreme Court on Nov. 15, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2016. Gist: Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; failure to refund unearned fees; failure of safekeeping property of clients or third persons/conversion; failure to meet obligations upon the termination of representation; failure to return file upon the termination of representation; engaged in the unauthorized practice of law while ineligible; and failure to cooperate with disciplinary authorities.

Joseph Christopher Miciotto, Shreveport, (2016-B-1757) **Suspended for one year and one day, deferred in its entirety, and placed on probation for a period of two years, subject to the following conditions: (1) respondent shall maintain ongoing treatment for his gambling addiction for two years; and (2) he shall work under the supervision of attorney J. Allen Cooper, Jr. for one year,** ordered by the Louisiana Supreme Court on Nov. 18, 2016. JUDGMENT

FINAL and EFFECTIVE on Dec. 2, 2016. *Gist:* Failure of safekeeping property of clients/conversion.

Michael S. Reid, Lafayette, (2016-B-1641) **Interim suspension from the practice of law for threat of harm** by order of the Louisiana Supreme Court on Dec. 9, 2016. JUDGMENT FINAL and EFFECTIVE on Dec. 9, 2016.

David Segal, New York, (2016-B-2004) **One-year suspension from the practice of law imposed by the Supreme Court of New York made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Jan. 13, 2017. JUDGMENT FINAL and EFFECTIVE on Jan. 13, 2017. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to keep a client reasonably informed about the status of a matter; and engaging in conduct prejudicial to the administration of justice.

Richard C. Teissier, New Orleans, (2017-OB-0014) **Transferred to interim disability inactive status** by order of the Louisiana Supreme Court on Jan. 20, 2017, pending a hearing to determine the validity of his claim of inability to assist in his defense due to mental or physical incapacity, pursuant to Louisiana Supreme Court Rule XIX § 22(C). JUDGMENT FINAL and EFFECTIVE on Jan. 20, 2017.

Jose W. Vega, Houston, Texas, (2016-B-0816) **Disbarment as reciprocal discipline for discipline imposed by Texas** ordered by the Louisiana Supreme Court on Sept. 6, 2016. JUDGMENT FINAL and EFFECTIVE on Jan. 13, 2017. *Gist:* Lack of diligence; failure to keep clients reasonably informed; failure to return unearned fees and client files upon termination; failure to supervise non-lawyer staff; and

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failure to cooperate in ODC investigations.

Trisha Ann Ward, New Orleans, (2016-B-2003) **Interim suspension by consent from the practice of law** by order of the Louisiana Supreme Court on Dec. 1, 2016. JUDGMENT FINAL and EFFECTIVE on Dec. 1, 2016. She may not practice law in Louisiana until further orders of the court.

Gregory F. Williams, Sr., Lafayette, (2016-B-1253) **Permanently disbarred from the practice of law** by order of the Louisiana Supreme Court on Dec. 6, 2016. JUDGMENT FINAL and EFFECTIVE

on Dec. 20, 2016. *Gist*: Conduct prejudicial to the administration of justice; conduct involving dishonesty, fraud, deceit and misrepresentation; commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

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

No. of Violations

Violation of Rule 1.15 — Conversion/

commingling; failure to keep records; unauthorized signatory on trust account.... 1

Violation of Rule 5.5(e)(1)(i) — Lawyer shall not employ a disbarred attorney, contract with as a consultant or otherwise join in any capacity..... 1

Violation of Rule 8.4(c) — Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation 1

TOTAL INDIVIDUALS

ADMONISHED.....3



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Don't Hide the Ball

Duhon v. Activelaf, L.L.C., 16-0818 (La. 10/19/16), ____ So.3d ____, 2016 WL 6123820.

The case provides valuable lessons about drafting and executing agreements to arbitrate.

On April 19, 2015, James Duhon went to Sky Zone, a trampoline park in Lafayette. When he arrived, Sky Zone staff directed him to a computer screen for check-in. At check-in, Duhon completed a Participation Agreement. Duhon used an electronic signature to agree to the terms of the agreement, which he read on the computer screen.

The electronic agreement required Duhon to "check" three paragraph box-

es relating to the park's liability. The last and longest one covered several topics, including arbitration. The paragraph was more than 300 words long. Halfway down it purported that the patron waived trial and agreed to submit any dispute to arbitration. The end of the paragraph purported that the patron agreed to pay Sky Zone liquidated damages of \$5,000 if he filed a lawsuit, although the agreement did not bind Sky Zone to arbitration.

Duhon sued Sky Zone in the 19th Judicial District Court, alleging that he had suffered injuries on his visit to Sky Zone due to Sky Zone's negligence. Sky Zone's exceptions to the suit included an exception of prematurity because Duhon had not initiated arbitration. Duhon countered that he did not knowingly consent to arbitration and that the agreement to arbitrate was adhesionary and unenforceable.

The district court overruled the exception of prematurity because the agreement to arbitrate lacked mutual-

ity. Sky Zone sought and was granted supervisory review, and the Louisiana 1st Circuit Court of Appeal, in an unpublished opinion, reversed the district court, finding that the agreement to arbitrate met the requirements for enforceability as announced in *Aguillard v. Auction Management Corp.*, 04-2804 (La. 6/29/05), 908 So.2d 1. The Louisiana Supreme Court granted Duhon's application for writs.

Reversing the court of appeal, the Supreme Court held that the nature of the agreement and the placement of the arbitration provision within a long paragraph, along with a lack of mutuality of the arbitration obligation, prevented Duhon from giving effective consent to the arbitration provision ("the two-sentence provision mandating arbitration is camouflaged within the confines of an eleven-sentence paragraph, nine of which do not discuss arbitration.") In examining the enforceability of the agreement to arbitrate, the Supreme Court acknowledged that *Aguillard* pro-

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vided the “template” for that determination.

Aguillard involved an arbitration provision in a contract to participate in a real estate auction. At the auction, Aguillard received his bidder number, a printed document entitled “Auction Terms and Conditions” and other documents. He physically signed a document that contained the arbitration provision at issue. The document was in nine-point type, and the entire agreement was in the same size type and same font. Importantly, the single arbitration sentence was its own paragraph, set apart by double-spacing both before and after the single-sentence paragraph. The wording of the provision made it clear that both parties were bound to arbitrate disputes.

The determination whether an agreement is an adhesion contract is an issue of consent. Did the party reading or reviewing the agreement, usually in printed form with small type, actually see and agree to the provisions? *Aguillard* recognized the strong state and federal

policies in favor of arbitration and held that, under the facts presented in that case, the arbitration provision was not so inconspicuous as to be easily overlooked, and both parties were bound by the arbitration provision. Thus, Aguillard was bound to arbitrate.

In the majority opinion in *Duhon*, Chief Justice Bernette Joshua Johnson identified four factors that led to the result in *Aguillard*: (1) the arbitration language was a stand-alone, single-sentence paragraph, (2) the language was not concealed, (3) both parties were obligated to arbitrate, and (4) the parties did not have significantly different bargaining positions. Applying those factors to the contract before it in *Duhon*, the Supreme Court found that the language’s placement and the lack of mutuality caused the agreement to arbitrate to be adhesionary and unenforceable.

The Supreme Court found it significant that the other two check-boxes in Sky Zone’s electronic contract were shorter provisions that dealt with only

a single subject each, while the third check-box paragraph was longer and dealt with multiple topics in addition to arbitration. In essence, the paragraph “camouflaged” the arbitration provision.

An important part of the opinion is significant with respect to electronic contracts containing arbitration provisions. The Court made it clear that the fact that the contract was read and affirmed electronically “is of no legal consequence” because of La. R.S. 9:2607, which legally recognizes electronic signatures.

The Supreme Court’s decision does not appear to represent a seismic change away from the enforceability of arbitration clauses, but several practice observations spring from *Duhon*. First, the use of “check-boxes” or other electronic contract-execution techniques does not by itself invalidate an agreement to arbitrate. Second, the best practice would be to use a stand-alone arbitration paragraph with a single sentence if possible, and to include a separate acknowledg-

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ment by the parties of the agreement to arbitrate. Finally, the obligation to arbitrate should apply to both parties.

—**M. Thomas Arceneaux**
Member, LSBA Alternative
Dispute Resolution Section
Blanchard, Walker, O'Quin
& Roberts, A.P.L.C.
Ste. 700, 333 Texas St.
Shreveport, LA 71101



Support Orders

Galaz v. Galaz (In re Galaz), No. 15-51151 (5 Cir. 12/12/16), 2016 WL 7209705.

Prior to filing for bankruptcy under Chapter 13 of the Bankruptcy Code, the debtor was ordered in her divorce decree to maintain health insurance and pay in-

surance premiums and medical expenses for her children.

In December 2007, the debtor filed bankruptcy and soon thereafter stopped paying the insurance premiums and medical expenses. In 2009, the state court entered an order awarding the debtor's ex-husband child-support arrearages and attorney's fees (First Support Order). The ex-husband then requested the bankruptcy court direct the debtor to pay the amounts due under the First Support Order from the debtor's estate.

At that time, the debtor had a pending adversary proceeding against her husband, and she argued that the bankruptcy court should offset the amounts due under the First Support Order against any judgment entered in the adversary. The bankruptcy court agreed with the debtor and denied the motion to direct payment.

In November 2011, the state court entered a second order demanding the debtor pay half of her daughter's medical premiums and expenses (Second Support Order, and collectively with the First Support Order, the Support Orders). Prior to entry of the Second Support Order, the debtor was discharged and her bankruptcy case was closed. The ex-husband moved for the state court to enforce the Support Orders against the debtor, and the debtor filed a Motion to Enforce Stay or Prior Order in the bankruptcy court. The bankruptcy court entered an order enjoining the ex-husband from collecting because the debtor had a right to offset the amounts against her judgment.

The ex-husband appealed, arguing that the bankruptcy court lacked subject matter jurisdiction to prohibit him from enforcing the Support Orders because the debtor's estate had been closed for almost three years when he filed the action to enforce the Support Orders. Alternatively, he argued that the obligations from the Support Orders were ineligible for setoff against the debtor's judgment because, under Texas law, child-support obligations may not be set off because the obligation lacks mutuality. Because this argument was not made below, it was waived. The debtor countered that the district court had "arising under, arising in, or related to" jurisdiction.

The 5th Circuit held that the bank-

ruptcy court had jurisdiction to enjoin the ex-husband from enforcing the First Support Order because bankruptcy courts always have jurisdiction to enforce their own prior orders. The 5th Circuit held that permitting the ex-husband to enforce the order in state court, rather than be offset, would "create an end run around the bankruptcy court's previous ruling" and, therefore, the injunction was necessary to enforce the court's previous order.

The 5th Circuit did find, however, that the bankruptcy court lacked subject matter jurisdiction to enjoin the ex-husband from enforcing the Second Support Order. Unlike the First Support Order, the 5th Circuit held there was no "arising in" jurisdiction because the bankruptcy court was not enforcing one of its prior orders. The 5th Circuit found that almost all of the obligations under the Second Support Order arose after the bankruptcy case was closed and, therefore, did not pertain to the implementation or execution of the debtor's plan. The 5th Circuit thus held that the bankruptcy court lacked jurisdiction to enjoin the ex-husband from enforcing the obligations of the Second Support Order.

Deadline for Filing a Notice of Appeal

Netsch v. Sherman (In re Prism Graphics, Inc.), No. 16-10432 (5 Cir. 12/22/16), 2016 WL 7422270.

The trustee obtained a judgment against Bryan Netsch and Intense Printing, Inc. (appellants). Under Federal Rule of Bankruptcy Procedure 8002(a), appellants have 14 days after entry of judgment to file a notice of appeal. Here, however, appellants failed to file their notice timely. Instead, 12 days after the 14-day deadline passed, appellants filed a motion to extend time to file an appeal and their notice of appeal.

Appellants argued that the bankruptcy court should extend the deadline to file an appeal because the error constituted "excusable neglect" under Federal Rule of Bankruptcy Procedure 8002 as counsel for appellants mistakenly be-

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lieved the 28-day appeal deadline allowed under the Federal Rules of Civil Procedure applied. The bankruptcy court denied the motion, and the district court affirmed.

On appeal, the 5th Circuit explained that, in analyzing whether to extend a deadline due to an error caused by “excusable neglect,” courts consider the following factors set forth in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 113 S.Ct. 1489, 1498 (1993): “(1) ‘whether the movant acted in good faith’; (2) ‘the danger of prejudice’ to the nonmovant; (3) ‘the length of the delay and its potential impact on judicial proceedings’; and (4) ‘the reason for the delay, including whether it was within the reasonable control of the movant.’”

In its reasons, the bankruptcy court first found that counsel acted in good faith and was candid about his reason for failing to meet the deadline. Second, the trustee expected an appeal to follow and, therefore, was not prejudiced by the late filing. Third, while the 12-day

delay was long, it was consistent with counsel’s mistaken belief that he had 28 days to file the appeal. However, the bankruptcy court held that the reason for the missed deadline was inexcusable. The bankruptcy court found that “confusing bankruptcy procedure with civil procedure does not constitute excusable neglect.” The 5th Circuit agreed, noting the *Pioneer* court’s holding that ignorance of the rules or mistakes made in construing the rules will not typically constitute excusable neglect. Finding the bankruptcy court properly applied the *Pioneer* test, the 5th Circuit affirmed the bankruptcy court’s denial of the motion to extend time.

—**Cherie Dessauer Nobles**
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and
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No Action Against Corporate Employee for Tortious Interference

Gulf Eng’g Co. v. Kuhn, 16-0425 (La. App. 5 Cir. 12/21/16), ____ So.3d ____, 2016 WL 7384134.

In sustaining an exception of no cause of action, the Louisiana 5th Circuit Court of Appeal declined to expand the action for tortious interference with contract to apply to an employee who was not a corporate officer.

Gulf Engineering Co., L.L.C., had a contract with the Dow Chemical Co. to test equipment at Dow facilities in Louisiana. Dow assigned its employee, Allison Kuhn, to coordinate the assign-

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ments of third-party contractors, including Gulf. Kuhn was not a corporate officer of Dow. Gulf claimed that Kuhn interfered with Gulf's ability to perform its contractual duties and encouraged other contractors to solicit Gulf's employees, contrary to Dow policy, along with other actions that resulted in Gulf being unable to perform under its contract. Gulf also alleged that Kuhn told Gulf employees that Gulf's contract had terminated and that the employees should seek employment with the new contractor. Apparently, Kuhn's alleged actions took place prior to the termination of Gulf's contract with Dow.

Kuhn's supervisor and Dow's point of contact for Gulf's work was Troy Barbier. Barbier subsequently gave Gulf a 90-day notice of termination. Kuhn then allegedly ordered Gulf's supervisory personnel to vacate the Dow premises and stated that she did not consider either Dow or herself to be bound by the 90-day notice.

Gulf filed suit against Kuhn in the 29th Judicial District Court, alleging inten-

tional interference with contract. The trial court sustained an exception of no cause of action, finding that a suit for intentional interference with contract can be maintained only against a corporate officer or someone who functions in a similar manner, and the cause of action for tortious interference with contract does not exist against a corporation's employee who is not a corporate officer.

Gulf then amended its petition, alleging that Kuhn was "charged with the same duties, authority, and responsibilities as a corporate officer of Dow, which rendered her position completely indistinguishable from that of a corporate officer of Dow, which she effectively served as at all times pertinent hereto." Gulf cited *9 to 5 Fashions, Inc. v. Spurney*, 538 So.2d 228 (La.1989), in its amended petition. The trial court sustained a second exception of no cause of action.

On appeal, Gulf argued that Kuhn was a *de facto* corporate officer, relying on *Comm'ns & Info. Res. v. Expressions*

Acquisitions Corp., 95-1070 (La. App. 5 Cir. 5/15/96), 675 So.2d 1164 (liability against a board member); *Chaffin v. Chambers*, 577 So.2d 1125 (La. App. 1 Cir. 1991, *rev'd*, 54 So.2d 665 (La. 1991)) (action between attorneys in joint partnership for tortious interference with a contract between an attorney and his client; reversal found no cause); and *WKG-TV Video Elec. Coll., Inc. v. Reynolds*, 618 So.2d 1023 (La. App. 1 Cir. 1993) (suit against a director/shareholder of a corporation). The 5th Circuit noted that in these cases the alleged tortious interference would also constitute a breach of fiduciary duty. Further, Gulf had not alleged what duties Dow's corporate officers had or how Kuhn's duties were the same.

In affirming the judgment of the trial court in sustaining the exception, the 5th Circuit stated that in *Spurney* the Louisiana Supreme Court has "recognized a limited cause of action for tortious interference with contractual relations, that applies 'to a corporate officer interfering with his employer's contractual relations with third persons.' *Miller v. Desoto Reg'l Health Sys.*, 13-639 (La. App. 3 Cir. 12/11/13), 128 So.3d 649, 658." The 5th Circuit then restated the elements of the action for intentional interference with contracts found at 235 of *Spurney*.

The court of appeal concluded:

We find no error [in] the trial court ruling that Gulf's mere assertions that Ms. Kuhn had duties similar to those of Dow's corporate officers was not sufficient to state a cause of action for intentional interference with contracts as set forth in *Spurney, supra*. In addition, we decline to extend the cause of action set forth in *Spurney* to employees, even those in a supervisory capacity, who intentionally interfere with contracts between their employer and a third party.

—Michael H. Piper

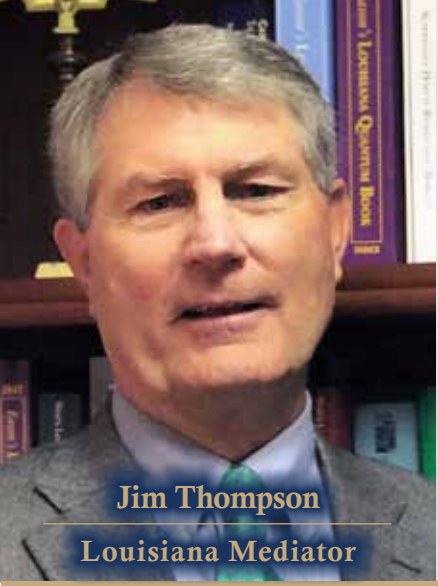
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Community Property

Baumbouree v. Baumbouree, 15-1053 (La. App. 3 Cir. 7/13/16), 202 So.3d 1077, writ denied, 16-1557 (La. 11/18/16), 2016 WL 7030773.

Dr. Baumbouree executed a stock-subscription agreement and shareholder agreement regarding the stock he owned in Hamilton Medical Group, stating that the stock was to be valued at \$1,000 in the case of certain listed events. The court found that the agreement also applied to the parties' divorce and community-property partition, and that, for purposes of the partition, the stock was to be valued at \$1,000, even though Ms. Baumbouree did not sign the agreements. The court found that his exclusive right to manage the asset registered in his name allowed him to sign the agreements, which then bound Ms. Baumbouree. The court did state that she had a remedy under La. Civ.C. art. 2354 if she could prove that he acted fraudulently or in bad faith in entering into the agreements. The dissent persuasively argued that the circumstances

listed in the agreement did not include divorce, that the stock had much greater value as a result of the "multitude of benefits" that the ownership interest in the entity provided to Dr. Baumbouree and that the asset should have been valued in accordance with La. R.S. 9:2801.

Trahan v. Trahan, 16-0108 (La. App. 1 Cir. 9/16/16), 203 So.3d 447.

The trial court had legal authority to find Ms. Trahan in contempt for her failure to pay an equalizing payment set forth in a community-property-partition judgment. She argued that the appropriate remedy was to seek execution under a writ of *feri facias*. The court found that the property-partition judgment requiring an equalizing payment was a judgment for the payment of money and she was able to pay the sum when the judgment was rendered. Thus, the judgment finding her in contempt for failing to pay it was affirmed.

Custody

Mason v. Mason, 16-0287 (La. App. 3 Cir. 10/5/16), 203 So.3d 519.

The trial court did not err by not allowing testimony, and not allowing a proffer of testimony, by one child regarding incidents in his relationship with the father, which the mother wanted to argue were similar to the remaining minor

child's relationship to the father, particularly because all of the incidents with the first child predated the three custody hearings. An audio recording the mother made of the minor child was inadmissible hearsay evidence as the child testified. The mother was not allowed to seek testimony at trial on matters not alleged in her rule to modify custody.

The trial court did not err in dismissing the mother's rule for contempt and to modify custody after the father orally moved for "directed verdict" or no cause of action at the end of trial. An exception of no cause of action may be raised during the trial by the trial court on its own motion. Moreover, although the court was actually granting an involuntary dismissal, the judge's "slip of the tongue" was not reversible error.

The case of **Mulkey v. Mulkey**, 12-2709 (La. 5/7/13), 118 So.3d 357, restates but does not relax the *Bergeron* burden of proof, particularly as regards the preference of a child. The trial court did not err in modifying the physical custody schedule on its own motion, despite no pleading requesting such a change. The dissent argued that the schedule could not be modified without a pleading seeking to do so, as it provided Ms. Mason with no appropriate notice or opportunity to present evidence on the issue.



Ronald E. Corkern, Jr.



Brian E. Crawford



Steven D. Crews



Judge Eric R.
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Evidence

Mayeux v. Charlet, 16-1463 (La. 10/28/16), 203 So.3d 1030.

Following the Supreme Court's remand of this matter to the trial court, the court ruled that Louisiana Children's Code article 609 regarding mandatory reporters of child abuse was unconstitutional. The Supreme Court granted writs to determine "whether a priest is a 'mandatory reporter,' as defined in La. Child. Code art. 603, when administering the Sacrament of Penance ('confession'), such that the provisions of La. Child. Code art. 609 would require him to report information learned during a sacramental confession." The court first found that the matter was premature because the trial court had not determined whether "the communications between the child and the priest were confessions *per se*." Priests would not be mandatory reporters if the information was not obtained during the confidential confessional communication. However, it addressed the issue, finding that "any communication made to a priest privately in the sacrament of confession for the purpose of confession, repentance, and absolution is a confidential communi-

cation under La. Code Evid. 511, and the priest is *exempt* from mandatory reporter status in such circumstances by operation of La. Child. Code art. 603, because 'under the . . . tenets of the [Roman Catholic] church,' he has an inviolable 'duty to keep such communications confidential.'" (Emphasis in original.) Finally, the court concluded:

Because the provisions of La. Child. Code art. 609 speak only to "mandatory reporters," a priest when administering the sacrament of confession has no duty to report any confidential communications made during the confession that, by the tenets of the Roman Catholic Church, he is authorized to hear and is also duty bound to keep confidential.

Child Support

Toups v. Kauffman, 16-0248 (La. App. 4 Cir. 11/23/16), 204 So.3d 1044.

Following a change of circumstances, the parties' previous agreement that Ms. Kauffman would be solely responsible for the children's private school costs was modified such that each party would be responsible for 50 percent of those costs. The court of appeal stated: "Thus, regardless of whether a consent judgment contains a non-modification clause, either party is entitled to seek modification of child support, upon showing a material change in circumstances."

Dazet v. Price, 16-0362 (La. App. 5 Cir. 12/7/16), 204 So.3d 1152.

The court did not err in determining Mr. Dazet's income for child support purposes by examining his personal and business accounts, including his failure to produce documents. Proceeds from the sale of immovable property that he was receiving on an installment basis were included in his income for child support purposes. Mr. Dazet could not use his failure to produce documents to claim that the trial court erred in determining the child support because it lacked sufficient documentation to do so. The trial court did not err in not addressing wheth-

er Ms. Price was expense sharing with her new husband because there had been no claims regarding that in the lower court.

Successions

Succession of Cannatella, 16-0332 (La. App. 5 Cir. 12/7/16), 205 So.3d 1007.

Mr. Cannatella died after the parties were divorced, but before their community property had been partitioned. Although a succession was opened, because undecided claims concerning the community property remained, both proceedings were going forward simultaneously. When Ms. Watermeier filed pleadings in the succession matter seeking reimbursement for certain payments concerning former community property that she alleged the succession was partly responsible for, the trial court granted the succession's exceptions of *lis pendens* and stayed the succession proceedings until the partition proceedings were complete. The court of appeal reversed and lifted the stay, finding that claims for reimbursement incurred prior to the termination date of the community should be heard in the divorce proceedings; and claims arising after termination of the community and after the succession was opened should be heard in the succession proceeding. Further, the court of appeal directed that the judge in the succession matter should "use his discretion" regarding setting Ms. Watermeier's claims for reimbursements from the succession incurred post-termination in order to allow the judge in the divorce matter time to complete the community property partition. Essentially, the court directed that the community property partition should be completed and her claims for pre-termination reimbursements adjudicated, and then the succession proceeding could resume and determine her reimbursement claims for post-termination expenses.

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10-Year Prescriptive Period Applies to Claims for Violation of the Prompt Pay Statute

Boes Iron Works, Inc. v. Gee Cee Grp., Inc., 16-0207 (La. App. 4 Cir. 11/16/16), 206 So.3d 938.

Plaintiff, Boes Iron Works, Inc., entered into a subcontract with Gee Cee Group, Inc. to perform certain structural steel and iron work in connection with a project to repair and renovate Entergy's Gas Department Warehouse located in New Orleans (the project). In December 2001, Boes completed its work on the project and submitted two invoices to Gee Cee Group, which were not paid. Entergy paid Gee Cee Group for the work performed by Boes sometime in 2003. In April 2010, a representative of Boes met with Gibson Chigbu, the president of Gee Cee Group, to discuss payment. Following the meeting, Chigbu sent an email to Boes stating that he would pay \$5,000 and that subsequent payments would be made in installments. Thereafter, in June 2010, Boes received a \$5,000 check from the Gee Cee Company of LA, Inc., and, on Sept. 3, 2010, Gee Cee of LA issued a second check for \$11,500. On both of the checks, it was noted that the payments were being made to Boes for its Job No. 1079, which was the number that Boes assigned to the Entergy project. Boes contacted Chigbu regarding the balance of \$16,820. Thereafter, Boes sent an invoice to Gee Cee of LA showing a balance of \$82,739.80. This amount included not only the balance due of \$16,820, but also interest calculated at the rate set forth on the invoices. On Dec. 27, 2012, Boes' attorney sent a formal written demand to Gee Cee Group setting forth the same amount due of \$82,739.80.

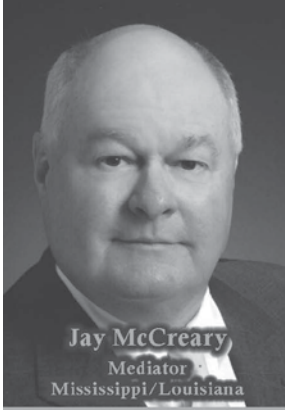
On Feb. 19, 2013, Boes filed suit

against Gee Cee Group, Gee Cee of LA and Chigbu, the president of both Gee Cee Group and Gee Cee of LA, for breach of contract, violation of the prompt-pay statute and violation of misapplication-of-funds statutes. The trial court ruled in Boes' favor. In its written reasons for judgment, the court found that the April 2010 meeting and subsequent May 11, 2010, email from Chigbu served as a new promise by Gee Cee of LA to pay the debt of Gee Cee Group. The court found that Gee Cee LA was an alter ego or a mere continuation of Gee Cee Group and thus responsible for its debts. As to the terms of the new April 2010 agreement, the court found that defendants continued to owe Boes for the unpaid balance of \$16,820 and that "it is clear that Boes is entitled to collect interest on the remaining unpaid balance." Finally, as to penalties, attorneys' fees and costs, the court found that Boes was entitled to penalties under the prompt-pay statute, La. R.S. 9:2784, but not under the misapplication-of-funds statute, La. R.S. 9:4814. The court thus rendered judgment in Boes' favor for the principal sum of \$16,820 plus penalties and judicial interest from the date of judicial demand.

On appeal, defendants contend that the trial court legally erred in applying the continuation doctrine to find that Gee Cee of LA was responsible for Gee Cee Group's debt, given that a threshold requirement for applying the doctrine was not met. Defendants cited to the 4th Circuit's holding in *Pichon v. Asbestos Defendants*, 10-0570, p. 6 (La. App. 4 Cir. 11/17/10), 52 So.3d 240, 244, that "[a] threshold requirement to

trigger a determination of whether successor liability is applicable under the 'continuation' exception is that one corporation must have purchased all or substantially all of the assets of another." Defendants noted that it was undisputed no asset transfer occurred between Gee Cee Group and Gee Cee of LA. The 4th Circuit agreed with the defendants that the trial court's reliance on the continuation doctrine was misplaced as the threshold requirement of an asset transfer was lacking. However, the 4th Circuit found that the single-business-enterprise doctrine (SBE) — another veil-piercing doctrine — applied and dictated the same legal result. The 4th Circuit explained that the SBE doctrine is invoked "to break down corporate walls between affiliated corporations." The SBE applies when a corporation is found to be the "alter ego, agent, tool or instrumentality of another corporation." In applying the SBE doctrine, the 4th Circuit relied on *Green v. Champion Ins. Co.*, 577 So.2d 249, 257 (La. App. 1 Cir. 1991), in which the 1st Circuit Court of Appeal adopted the SBE doctrine and enumerated a non-exclusive, 18-factor test to determine whether a group of affiliated entities constitutes a SBE. Considering the *Green* factors, the 4th Circuit found that Gee Cee Group and Gee Cee of LA were an SBE. Accordingly, the 4th Circuit found no error in the trial court's finding that Gee Cee of LA was liable for Gee Cee Group's debts.

In challenging the trial court's award of penalties under the prompt-pay statute, defendants conceded a violation of the prompt-pay statute; however, they



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contended that Boes' prompt-pay claim was prescribed. Defendants argued that *Specialty Construction, L.L.C. v. Jim Meyers Const. Co.*, 10-1378 (La. App. 1 Cir. 2/11/11), applied a one-year prescriptive period to a prompt-pay claim and held that prescription would run no later than two years from the date on which payment was received. The 4th Circuit found that the defendants' reliance on *Specialty Construction* was misplaced as the focus in *Specialty Construction* was the calculation of the deadline for filing suit to enforce a claim and privilege granted by the Private Works Act. As the prompt-pay statute contains no prescriptive period, the 4th Circuit held that a prompt-pay claim is subject to a 10-year prescriptive period. Pursuant to La. R.S. 9:2784 (C), the 4th Circuit found that the 10-year prescriptive period commenced to run 14 days after the date on which Gee Cee Group received payment from Entergy for the work. At trial, Boes established that Entergy paid Gee Cee Group "sometime in 2003." Given that Boes' petition was filed on Feb. 19, 2013, the 4th Circuit held that the trial court did not err in awarding Boes penalties under the prompt-pay statute as it could not be said that Boes' petition was prescribed under the applicable 10-year prescriptive period.

Finally, on appeal, Boes contended that the trial court erred in rejecting its claim for penalties under the misapplication-of-funds statute. Boes contends that because Chigbu admitted that Gee Cee Group deposited Entergy's payments for Boes' work into its operating account and that it paid other business-related expenses instead of paying Boes, the trial court erred in failing to award penalties for misapplication of funds. The 4th Circuit found no error in the trial court's denial of penalties as there was no direct evidence of a knowing misapplication of funds.

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Royalties; Conditional Allowable

Gladney v. Anglo-Dutch Energy, L.L.C., 16-0468, ____ So.3d ____ (La. App. 3 Cir. 12/21/16), 2016 WL 7402427.

This case involves a dispute regarding the proper payment of royalties. Plaintiffs leased property to Anglo-Dutch Energy, L.L.C. and Anglo-Dutch (Everest), L.L.C. The mineral lease stated that plaintiffs were entitled to 1/5 royalty on production. Lessees drilled a gas well on plaintiffs' land and started producing from a reservoir that extended beneath their property and neighboring lands. A few months later, Anglo-Dutch decided to apply for a geographic unit. Prior to approving the unit, the Commissioner issued a conditional allowable, which allows an operator to extract a certain volume of production from the reservoir prior to the establishment of a unit. It is a way of ensuring that the owners of the various tracts are able to receive their equitable share of the production prior to the existence of a unit.

The conditional allowable in this case stated, "[a]ll monies generated from the date of first production, the disbursement of which is contingent upon the outcome of the current proceedings before the Office of Conservation for the Frio Zone will be disbursed based upon results of those proceedings." Lessees' application for the conditional allowable was granted on May 17, 2012. Lessees' application for the geographic unit was submitted on July 3, 2012. The unit was established on Oct. 30, 2012.

In March 2013, plaintiffs claimed that they were not paid the proper amount of royalties from May 2012 through October 2012. Plaintiffs argued they should have been paid their royalties on a lease basis since first production under the conditional allowable (since May 17, 2012).

Anglo-Dutch argued royalties were to be paid to plaintiffs on a unit-basis for the entire time. The parties did not disagree that from Oct. 30, 2012, forward that the plaintiffs' royalties were to be paid on a unit basis. The only dispute was whether the royalties from May 17, 2012, through Oct. 30, 2012, should be paid on a unit or lease basis. The district court ruled in favor of the Anglo-Dutch lessees. Plaintiffs appealed.

The Louisiana 3rd Circuit Court of Appeal reversed the district court. It found that the language of the mineral lease (not the Commissioner's order) governed the payment of royalties. The lease provided that plaintiffs were to get lease-based royalties on all production from the well. The lease governed the parties' relationship prior to the unitization order. The creation of the conditional allowable did not abrogate the terms of the mineral lease. The 3rd Circuit also relied on an affidavit submitted by the chief hearing officer over unitization hearings, who confirmed that the Commissioner's conditional allowable could not alter the terms set forth in the mineral lease between the parties.

The 3rd Circuit also rejected Anglo-Dutch's argument that the lawsuit was a collateral attack on the orders of the Commissioner of Conservation because plaintiffs were not questioning the unit order, nor were they questioning the Commissioner's ability to issue the order. Rather, what was at issue here was the appropriate basis for paying royalties (either on a lease basis or unit basis) and determining the appropriate date as to when such unit-based royalties were to begin. The 3rd Circuit found it compelling that the Commissioner's order provided that the effective date of the unit was Oct. 30, and that Oct. 30 was to be the date on which lessees would have to begin to provide for the sharing of production on a unit basis, not the date of first production. Thus, from the period beginning May 17, 2012, through Oct. 30, 2012, the royalties were to be paid on a lease-basis as described in the mineral lease, not a unit basis.

Proposed Regulations Relating to Natural- Resource-Damage- Restoration Banking in Louisiana

New regulations have been proposed to establish procedures for the certification and operation of natural-resource-damage-restoration banks in Louisiana. These proposed regulations can be found in La. Register, Jan. 20, 2017, at pp. 128-136. The natural-resource-damage-restoration banking program is designed to allow, encourage and incentivize private investors to undertake environmental-restoration projects and generate restoration credits that responsible parties can purchase to fully or partially resolve natural-resource-damage liabilities from oil spills under the Oil Pollution Act (OPA) or the Oil Spill Prevention and Response Act (OSPR). The focus of the proposed regulations is the restoration of Louisiana's coastal area. Whether a private party may use this type of restoration banking in response to injuries resulting from a particular oil spill is left to the authority of the natural-resource-damage-assessment trustees. The trustees would retain final authority to purpose and select the purchase of credits from certified natural-resource-damage-restoration banks. The trustees are designated from certain state agencies, such as the Louisiana Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Natural Resources and the Louisiana Department of Wildlife and Fisheries.

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Prescription

Correro v. Ferrer, 16-0861 (La. 10/28/16), ____ So.3d ____, 2016 WL 6311881.

"Wrong site" surgery was performed on a patient who then timely filed with the Division of Administration a request for a panel review of the actions of a surgeon, a hospital and the hospital's employees. After the panel meeting was scheduled, the surgeon admitted his "liability and breach of the standard of care" and waived his participation in the panel proceedings.

The attorney chair scheduled the panel meeting concerning the remaining parties. The patient requested that the panel meeting be postponed because she had recently learned that others who had participated in the surgery were not employees of the hospital, and she wished to amend her request for review to include them as parties. The attorney chair refused, stating that the proceeding had been pending for "almost a year," adding that he viewed the request as an action by the patient to "start over by adding new defendants," which would significantly delay matters. The chair also wrote that the patient could file "a new complaint in a new proceeding" but that the panel meeting set for the following day would go forward as scheduled. On the following day, the patient amended her complaint and added additional defendants, specifically referencing her initial complaint, and stating that the amendment was made within three years of the incident and that she first learned from the hospital's panel brief that potentially culpable parties were not employees of the hospital. The chair went forward with the panel meeting, nevertheless, and an opinion was rendered finding that both the surgeon and hospital had breached the applicable standard of care.

A month later, the PCF informed the patient that it had converted her amended complaint against the newly named non-hospital-employed defendants into a separate request for a panel, stating that it had not known that an opinion had been rendered on the initial panel request when the recently submitted amendment was filed; thus, the PCF decided that "the amendment will be processed as a new request for a medical review panel."

The newly named defendants then filed an exception of prescription, which the trial court granted. The court of appeal reversed, finding that "the timely filed claim with the initial panel . . . served to suspend prescription" against the unknown/unnamed joint tortfeasors to the same extent suspension occurred as to those named in the initial request for review. The plaintiff then filed a lawsuit against the defendants named in the initial panel request, to which the surgeon (who had acknowledged his liability and waived panel proceedings) and hospital responded by filing separate exceptions of prescription, each arguing that the plaintiff's claim against them had prescribed 90 days after the panel opinion was issued. The plaintiff countered that the remaining claims against the newly added parties suspended prescription against all joint and solidary obligors, including the hospital and the surgeon. The trial court granted the exception of prescription, dismissed the surgeon and hospital, and the court of appeal affirmed.

The Supreme Court accepted the patient's writ application. It began its *per curiam* opinion by affirming its "long held" principle that prescriptive statutes are strictly construed in favor of maintaining the cause of action and that absent clear and contrary legislative intent "prescriptive statutes which can be given more than one reasonable interpretation should be construed against the party claiming prescription." *Maltby v. Gauthier*, 506 So.2d 1190, 1193 n. 5 (La. 1987). Thus, if there are two possible constructions, the one that favors maintaining an action, as opposed to barring, should be adopted. *Carter v. Haygood*, 04-0646, p. 10 (La. 1/19/05), 892 So.2d 1261, 1268.

The Court noted that it had "repeated-

ly cautioned” that parties cannot make prescription more onerous, noting it had recently “reaffirmed” in *In re Tillman*, 15-1114, p. 16 (La. 3/15/16), 187 So.3d 445, 455, that administrative agencies cannot adopt rules that shorten the prescriptive period.

The MMA specifically controls prescription and its suspension. La. R.S. 40:1299.47(A)(2)(a) specifically provides that the filing of a panel request suspends prescription until 90 days following notification of the panel opinion as to the all joint and solidary obligors and all joint tortfeasors, including but not limited to health-care providers, to the same extent that prescription is suspended against the parties subject to the request for review.

When the plaintiff timely amended her complaint to add new respondents, the panel was still pending, and prescription of her claims against all joint and solidary obligors, named or not, was suspended. The Court noted that “it logically” followed that had the patient’s timely filed amended complaint been treated *only* as an amendment, the suspension that began with the initial

panel request would have continued. The Court observed that the issue in this case arose because the Division of Administration (the PCF?) made “an administrative decision” to convert the patient’s timely filed amendment into a new panel request. The Court said:

Consequently, if we interpret the provisions of La. Rev. Stat. § 40:1299.47(A)(2)(a) in accordance with the holdings of the lower courts, *i.e.*, finding notification of the [Panel] opinion served to end suspension of prescription against Dr. Ferrer and Glenwood, the DOA’s administrative decision would effectively have shorten[ed] the suspensive period, and in turn the prescriptive period, contrary to our holding in *Tillman*. Thus, our rules of strict construction require us to find the timely filed amendment, adding Caldwell and Greer, likely suspended, or rather maintained the suspension of, prescription against all joint and solidary, including Dr. Ferrer and Glenwood.

The question, as first framed by the Supreme Court, was whether a timely amendment to a medical-review panel can be converted into a new complaint by the Division of Administration (or PCF), thus ending suspension of the original complaint and causing a patient’s claims against the first-named health-care providers to prescribe while the second complaint was still pending against alleged joint and solidary obligors. It answered no, it cannot.

The grant of defendants’ exception of prescription was reversed, and the matter was remanded for further proceedings consistent with the Court’s opinion.

Negligent Credentialing: Medical Malpractice or General Tort?

Billeau v. Opelousas Gen. Hosp. Auth., 16-0846 (La. 10/19/16).

This case was first reported in LBJ Vol. 64, No. 1, June/July 2016. It involves a lawsuit against the hospital for the negligent credentialing of a physician in emergency medicine that al-

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lowed her to treat a stroke patient in an emergency room. The plaintiffs moved for partial summary judgment, asking the trial court to acknowledge that negligent credentialing was a tort that fell outside the MMA's coverage; the court did so and certified its judgment as final. The court of appeal, as had the trial court, analyzed the six factors of *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So.2d 303, the seminal case on the question of what is covered by the MMA, and affirmed the trial court's opinion. The Supreme Court, noting that Billeaudeau's singular *res novus* issue was whether a negligent credentialing claim falls within the protections of the MMA, granted the defendants' writ.

The plaintiffs argued that the defendant physician should not have been working in the emergency department and that credentialing her to do so was simply a matter of "corporate malfeasance" in the hiring process. They also contended that the hospital's duty arose under La. R.S. 40:2114, the "Organization of medical and dental staff" statute. The defendants' argument was that the entire case was about whether the patient should have been given a certain kind of medication at a certain time, which was purely a medical decision.

The Court observed that the definition of "malpractice" in the MMA, La. R.S. 40:1299.41(A)(8), "clearly covers negligent 'training and supervision of health care providers,' it does not directly address negligence in the credentialing or hiring of said providers." It then took cognizance of the *Coleman* factors and examined each to decide whether credentialing is an act of medical negligence or an act of administrative negligence.

The Court found the first three factors mitigated in favor of finding credentialing to be more of a general tort than a medical tort. Factor 1 (whether the *wrong* was treatment-related) was more of a general tort because the decision to hire a physician is administrative. Factor 2 (whether medical evidence is required to determine the appropriate standard of care) sounded more in general negligence because "expert *medical* evidence" would not be necessary, even though some other sort of expert testi-

mony might be. Factor 3 (whether the tort involved assessment of the patient's condition) mitigated against a finding of malpractice, as there could have been no medical evaluation of the patient at the time the "administrative decision to credential" the physician was made.

The Court found Factor 4 (whether the incident involved a physician/patient relationship *or* was within the scope of activities a hospital is licensed to perform) mitigated in favor of finding the case did fall within MMA coverage because credentialing is within the scope of activities a hospital is licensed to perform pursuant to La. R.S. 40:2114(E).

"Whether the injury would have occurred if the patient had not sought treatment" (Factor 5) "was also difficult to apply in this case." The plaintiffs contended that the patient needed treatment from a medical professional, irrespective of whether it was the defendant or anyone else, but it nevertheless decided that it weighed against finding that the claim sounded in medical malpractice. The defendant hospital argued that there would have been no injury but for the physician's alleged malpractice, a point the plaintiffs conceded, but they countered that the *Coleman* factors must be examined *in toto*. In examining these arguments, the Supreme Court took "particular guidance" from its holding in *LaCoste v. Pendleton Methodist Hospital, L.L.C.*, 07-0008 at pp. 15-16, 966 So.2d 528-29, in which it explained that "any wrong that a patient suffers in a hospital or doctor's office would not occur if the patient had not first entered

the facility." In this case, as in *LaCoste*, the "wrongs" alleged by the plaintiffs were not treatment/failure-to-treat related. The Court explained that "this factor likewise does not weigh greatly in favor of finding the negligent credentialing alleged in the petition was medical malpractice under the LMMA." *Coleman* Factor 6 (whether the alleged tort was intentional) was not at issue.

The Court prefaced its conclusion with its oft-repeated caution that "[a]n expansive reading of the definition of medical malpractice contained in the MMA runs counter to our previous holdings that coverage of the Medical Malpractice Act should be strictly construed." It rejected defendants' contentions that the plaintiffs' claims of administrative negligence were inseparable from the medical malpractice claim they already settled, finding that "the application of the *Coleman* factors demonstrate[s] the alleged negligent credentialing was *administrative*, not medical in nature." Thus, it fell outside the ambit of the MMA, the plaintiffs were entitled to summary judgment on that issue, and the judgment of the court of appeal was affirmed.

Billeaudeau was a 4-3 opinion, with one concurring and three dissenting opinions.

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Jurisdiction of the Louisiana Board of Tax Appeals

Dep't of Rev. v. Jazz Casino Co., 16-0180 (La. 2/7/17), 2017 WL 496266.

Jazz Casino Co., L.L.C., operates a land-based casino in New Orleans. In connection with its operations, Jazz rented rooms. The Louisiana Department of Revenue collected certain taxes on these hotel/motel room rentals (hotel occupancy taxes) on behalf of the State of Louisiana and on behalf of the Louisiana Tourism Promotion District (LTPD), the Louisiana Stadium & Exposition District (LSED) and the New Orleans Exhibition Hall Authority (NOEHA). Asserting entitlement to an exemption, Jazz sought a refund of hotel occupancy taxes it paid during the relevant periods, requesting a refund of state, LTPD, LSED and NOEHA hotel occupancy taxes. The Department denied the refund claims. Jazz appealed to the Louisiana Board of Tax Appeals (BTA).

After protracted litigation, Jazz and the Department ultimately stipulated that Jazz had overpaid \$1,983,315.27, exclusive of interest, in hotel occupancy taxes. Of this amount, 2 percent was attributable to state general sales taxes and 98 percent was attributable to LTPD, LSED and NOEHA taxes. Based on the stipulations of the par-

ties, the BTA rendered a judgment ordering the Department to refund the entire \$1,983,315.27 to Jazz, with applicable statutory interest. This judgment was not appealed and became final.

Subsequently, the Department filed with the BTA a motion to annul the BTA's judgment, contending that the BTA did not have the subject matter jurisdiction to order a refund of taxes the Department had collected and remitted to LTPD, LSED and NOEHA. The BTA denied the motion to annul.

On appeal, the Department contended that the BTA lacked subject matter jurisdiction to order it to refund hotel occupancy taxes levied by NOEHA and LSED because the BTA's jurisdiction set forth in La. R.S. 47:1401 and 1407 did not extend to NOEHA and LSED taxes. Specifically, the Department asserted that La. R.S. 47:1401 extended the BTA's jurisdiction only to taxes "administered" by the Department. It further asserted that La. R.S. 47:1502 limited the taxes administered and collected by the Department to those set forth in the provisions of Subtitle II of Title 47, La. R.S. 47.21-47:1690, and that neither NOEHA nor LSED taxes are found in Title 47. The Department contended that because it does not "administer" the NOEHA or LSED taxes, but rather collected those taxes as an agent of those political bodies, with no authority to issue refunds, the BTA did not have subject matter jurisdiction to order it to issue a refund of such taxes.

The Louisiana Supreme Court disagreed. The Court reasoned, because the Legislature, through its constitutionally recognized authority and duty to provide a "complete and adequate remedy" for the

recovery of an illegal tax paid by a taxpayer, vested the BTA with jurisdiction to hear and decide disputes or controversies between taxpayers and the Department in the enforcement of any tax "administered" by the Department, the question before the Court was whether the Department "administers" the NOEHA and LSED hotel occupancy taxes, thereby bringing disputes between the Department and the taxpayer as to these taxes within the jurisdiction of the BTA.

The Court found that nothing in the language of La. R.S. 47:1502 limited the Department's authority to administer only the taxes referred to therein. Looking to the ordinances and provisions of the NOEHA and LSED, the Court found the Department was authorized to collect such taxes on behalf of the respective entities. The Court held that while the word "administer" is not defined in La. R.S. 47:1401, it was clear through various legislative provisions, ordinances and resolutions that the Department was authorized to and had been "administering" the NOEHA and LSED taxes. The Court held the BTA had subject matter jurisdiction to hear and decide the dispute between Jazz and the Department as to the Department's denial of Jazz's request for a refund of these taxes and upheld the denial of the Department's motion to annul judgment.

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



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Substance-Over-Form Doctrine

Summa Holdings, Inc. v. Comm'r, No. ____ F.3d ____ (6 Cir. 2017), 2017 WL 631663.

The substance-over-form doctrine allows the Internal Revenue Service to reclassify a tax-motivated arrangement consistent with its substance, rather than its form. However, the doctrine has its limitations. In *Summa Holdings, Inc. v. Commissioner*, the 6th Circuit reversed the U.S. Tax Court and declined to apply the doctrine to a series of transactions among Summa, a family-owned company; a domestic international-sales corporation (DISC); and two Roth IRAs that generated significant tax benefits.

The DISC was 100 percent owned by a holding company that, in turn, was owned by the IRAs. Summa paid commissions to the DISC, which then distributed dividends to the holding company. The holding company paid tax on the dividends and distributed the balance to the IRAs. Consequently, the arrangement allowed the family to transfer to the IRAs more than \$5 million, an amount far in excess of the Roth IRA contribution limits.

The court upheld the taxpayer's strategy of using the DISC and IRAs for the intended purpose: tax avoidance. The substance-over-form doctrine should be limited to situations in which "the taxpayer's formal characterization of a transaction fails to capture economic reality and would distort the meaning of the Code in the process." The court refused to apply the doctrine

simply because the arrangement lacked a purpose other than federal income tax effects and generated tax benefits.

The year at issue in *Summa* was before the enactment of Internal Revenue Code section 7701(o), which clarified and codified the economic-substance doctrine. If the economic-substance doctrine were relevant, the result could be different because the lack of a valid business purpose could be enough for the IRS to successfully deny the tax benefits of a transaction.

—Jaye A. Calhoun

Member, LSBA Taxation Section
and

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CHAIR'S MESSAGE

Did We Cover Every Map Dot?

By Scotty E. Chabert, Jr.

Unlike my previous messages, it did not take me long to decide what to say or how to end my final message.



Scotty E.
Chabert, Jr.

In my first message in June 2016, the Young Lawyers Division (YLD) Council made a pact and set out a goal: "Together we embark on a mission to get young lawyers from every 'map dot' around the state engaged in helping those in our community who 'have too little'." Has it really been a year since our first message? It couldn't be, right? Has the Council that I humbly led done enough? Have WE conquered what we set out to conquer? As I compiled my notes, it became apparent... WE HAVE.

Since August 2016, the YLD and young lawyers from across the state have assisted more than 3,700 victims through the Flood Disaster Relief Hotline. This hotline has been reactivated for the tornado and storm victims in the Greater New Orleans area and the YLD will continue to assist in these efforts.

In a joint effort with the Louisiana Center for Law and Civic Education, the YLD has expanded its law-related education program from the classrooms to the homes and now provides parents and adults with law-related education.

The YLD has worked diligently with the United Way to move our joint efforts to all parts of the state that had not been included in the past, mainly north Louisiana.

In January 2017, the YLD hosted its annual Professional Development Seminar which was attended by 130 young lawyers from throughout the state.

The seminar was followed by the YLD's newest program, the Louisiana 64 Symposium. The symposium was attended by representatives from 10 parishes who shared ideas and plans, then took those ideas back to their local bars and communities.

In conjunction with other great groups, the YLD co-hosted a Black History Month CLE with more than 40 attendees to discuss the criminal justice system and jury bias which expands across the state.

On March 11, 2017, the High School Mock Trial Competition was held at the 4th Judicial District Courthouse in Monroe. The competition included eight teams and more than 90 students, coaches and teacher volunteers from across the state. The winning team will represent the state in Hartford, Conn.

On March 25, 2017, the YLD hosted its annual Law School Mock Trial Competition with teams from Louisiana State University Paul M. Hebert Law Center, Southern University Law Center, Tulane University Law School and Mississippi College.

The YLD's Wills for Heroes Program has served an unbelievable amount of heroes from across the state, including from Baton Rouge, Bogalusa, Raceland and surrounding areas. More than 150 wills were written for our local heroes as of press time.

I truly believe this year's YLD Council has gone above and beyond what has been asked of them and have reached every map dot across the state. Truthfully, and without hesitation, I can say this was the best Council I have ever served on and could not have done it without the constant efforts of each member and their families. So, I will sincerely end my last message with this: "From the bottom of my heart, thank you Erin Braud, Brad Tate, Dylan Thriffley, Cristin Bordelon, Scott Sternberg, Shayna Morvant, Jeff Hufft, Lauren Gardner, Adam Johnson, Carrie Jones, Kristi Richard, Christie Wood, Ethan Hunt, Allison Foster, Kellen Mathews, Graham Ryan, Kristen Burge, and, of course, Kelly Ponder."

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YOUNG LAWYERS SPOTLIGHT

Scott B. McLemore Vidalia

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Vidalia attorney (now Judge) Scott B. McLemore.

McLemore began his term as judge for the City of Vidalia in January 2017 and will serve through December 2022.

Born and raised in Vidalia, he received a BS degree in accounting in 2005 from Louisiana State University and his JD and BCL degrees in 2008 from LSU Paul M. Hebert Law Center. In law school, he served as the Student Bar Association treasurer. Following law school graduation, he moved to Atlanta, Ga., and was admitted to the Georgia Bar

in 2008. In 2009, he was admitted to the Louisiana Bar. He and his wife moved to his hometown and he began law practice with his father at the McLemore Law Firm. In 2015, McLemore acquired the firm.

McLemore has served his community in several capacities. His municipal clients have included the City of Vidalia as city attorney, Riverland Medical Center, Concordia Parish Sheriff's Office, Concordia Waterworks and Concordia Sewer District No. 1. He also has served as a director of Concordia Bank & Trust Co. since 2013. Additional areas of his law practice include family/domestic; successions; real estate; title examina-



Scott B. McLemore

tions and closings; corporate law; and civil litigation for plaintiff and defense.

His professional affiliations have included: 7th Judicial District Bar Association, current member and president; Louisiana City Attorney's Association, former member; Louisiana State University Alumni Association of the Miss-Lou; Jefferson Street United Methodist Church, current trustee, past administrative board member and Sunday School teacher; Concordia Chamber of Commerce, current member; Rotary Club, current member; Natchez Chamber of Commerce, current member, past board member and past chair of Young Professionals; and Panola Woods Country Club, former board member.

McLemore is married to Laura McLemore and is the father of two daughters.

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By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Justice and Judges

James T. Genovese was elected associate justice of the Louisiana Supreme Court. He earned his bachelor's degree in 1971 from Northwestern State University, where he was a four-year letterman in tennis and named in "Who's Who Among Universities and Colleges" and "Outstanding College Athletes of America." He earned his JD degree in 1974 from Loyola University Law School, with honors in property law. His judicial career began as a judge *ad hoc* of the Opelousas City Court from 1975-89. He was elected judge in the 27th Judicial District (St. Landry Parish) in 1995 and served in that position until 2004 when he was elected to the 3rd Circuit Court of Appeal. He served on the appellate court from 2005-16. Justice Genovese is married to Martha Anne Janes and is the father of four daughters and one step-daughter and the grandfather of three.



James T. Genovese

Jeffrey S. Cox was elected judge of the 2nd Circuit Court of Appeal. He earned his BS degree in finance from Louisiana Tech University; his MBA degree from Louisiana State University in Shreveport; his JD degree, *magna cum laude*, from Southern University Law Center; and his LLM degree in taxation from Southern Methodist University in Dallas, Texas. He previously served as judge in the 26th Judicial District (Bossier



Jeffrey S. Cox

and Webster parishes). He was a partner with the law firm of Mills, Turansky & Cox, P.C., where he focused in the areas of estate planning, wills, successions and elder care. He also served as an assistant district attorney for Bossier and Webster parishes. Judge Cox is a former member of the Harry V. Booth/Judge Henry A. Politz American Inn of Court and is a member of the American, Louisiana, Shreveport, Bossier and Webster bar associations. He is married to Susan Cox and they are the parents of two children.

E. Jeffrey Perilloux was elected judge, 40th Judicial District Court, Division B. He earned his BA degree in 1989 from Southeastern Louisiana University and his JD degree in 1993 from Loyola University College of Law. He practiced law in St. John the Baptist Parish for more than 20 years, serving as assistant district attorney for 12 of those years. He also served as legal counsel for the parish government. Judge Perilloux is the father of two children.



E. Jeffrey Perilloux

Amy Burford McCartney was elected judge, 42nd Judicial District Court, Division A. She earned her BS degree in 2000 from Centenary College and her JD degree in 2003 from Baylor Law School. Licensed to practice in both Louisiana and Texas, she maintained a civil practice prior to her election to the bench. Judge McCartney is married to Blake McCartney and they are



Amy Burford McCartney

the parents of one child.

Scott B. McLemore was elected judge, Vidalia City Court. He earned a BS degree in 2005 from Louisiana State University and his JD/BCL degrees, *cum laude*, in 2008 from LSU Paul M. Hebert Law Center. He opened a private practice in Vidalia, where he served as Vidalia city attorney. He is president of the 7th Judicial District Bar Association. Judge McLemore is married to Laura Eanes McLemore and they are the parents of two children.



Scott B. McLemore

Appointments

► 4th Judicial District Court Judge Sharon Ingram Marchman was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for a term of office which began Jan. 1 and will end on Dec. 31, 2019.

► Orleans Parish Civil District Court Judge Nakisha Ervin-Knott and 24th Judicial District Court Judge Lee V. Faulkner, Jr. were appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for terms of office which began Jan. 1 and will end on Dec. 31, 2019.

► 5th Circuit Court of Appeal Judge Jude G. Gravois was appointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for a term of office which began on Jan. 1 and will end on Dec. 31, 2018.

► Danna E. Schwab was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began on Jan. 1 and will end on Dec. 31, 2019.

Deaths

► Retired 5th Circuit Court of Appeal Judge Clarence Elburn McManus, 82, died Sept. 22, 2016. He earned his bachelor's and JD degrees in 1958 and 1961, respectively, from Tulane University. He began his career in a private civil practice while serving as assistant district attorney in Jefferson Parish. He was elected unopposed to the 24th Judicial District Court in 1982 and became chief judge in 1990. In 2000, he was elected to the Louisiana 5th Circuit Court of Appeal, serving until his retirement in 2012.

► Retired 28th Judicial District Court Judge John Phillip (J.P.) Mauffray, Jr., 73, died Dec. 2, 2016. In 1960, he was appointed colonel as an aide de camp of Gov. Jimmie Davis. He earned his BS degree in 1965 from Tulane University and his JD degree in 1973 from Louisiana State University Law School, where he was on the Moot Court Board. In 1994, he was elected as judge for the 28th JDC, serving in that capacity until his retirement in 2008.

► Retired 2nd Judicial District Court Judge Robert Young Butler, 80, died Dec. 7, 2016. He earned his bachelor's degree in 1958 from Louisiana Tech University and his JD degree in 1964 from Louisiana State University Law School. He began his law practice in Shreveport before moving to Arcadia. He served for several years as assistant district attorney for Bienville, Claiborne and Jackson parishes. In 1979, he was elected as judge and served in that capacity until his retirement in 2000.



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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Kellen J. Mathews has been promoted to partner in the Baton Rouge office and Diana Cole Surprenant has been promoted to partner in the New Orleans office. Caroline H. Catchings has joined the firm as special counsel and Grant J. Guillot has joined the firm as an associate, both in the Baton Rouge office. Also, New Orleans partner Francis V. Liantonio, Jr. and Washington, D.C. partner B. Jeffrey Brooks have been elected to serve on the firm's Executive Committee.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that New Orleans office shareholder Steven F. Griffith, Jr. was elected to the firm's board of directors.

Bradley Murchison Kelly & Shea, L.L.C., announces that **Michael R. Brassett II**

has been elected to equity partnership in the Baton Rouge office, and **Richard S. Crisler** has been elected to a three-year term as co-managing partner in the New Orleans office.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., announces that it has opened a new office at Ste. 200, 111 N. Oak St., Hammond. Partner **Patrick K. Reso** will lead the office, joined by attorneys **Jennifer A. Lee**, **Elsbet C. Smith** and **Frank J. DiVittorio**.

Coats Rose, P.C., announces that Amanda W. Goldman has been elected of counsel and Brian D. Grubb has been elected director, both in the New Orleans office.

Courington, Kiefer & Sommers, L.L.C., announces that **Brittney B. Ankersen** has joined the firm's New Orleans office as an associate.

Durio, McGoffin, Stagg & Ackermann in Lafayette announces that Travis J.

Broussard has been elected as a director and shareholder of the firm.

Irwin, Fritchie, Urquhart & Moore, L.L.C., announces that **Matthew J. Averill** and **Alex T. Robertson** have joined the firm's New Orleans office as associates.

Johnson Gray McNamara, L.L.C., announces that **Nichole M. Gray** has been named a partner in the firm's New Orleans office.

Kanner & Whiteley, L.L.C., in New Orleans announces that **Layne C. Hilton** and **Marshall L. Perkins** have joined the firm as associates.

Keegan, DeNicola, Kiesel, Bagwell, Juban & Lowe, L.L.C., in Baton Rouge announces that **Amber N. Robichaux** has been named a partner in the firm.

Leake & Andersson, L.L.P., announces that **Ryan M. Casteix** and **Vallie S. Dugas** have been named partners in the New Orleans office.



Brittney B. Ankersen



Richard J. Arsenault



Ian L. Atkinson



Ralph J. Aucoin, Jr.



Matthew J. Averill



Philip H.
Boudreaux



Michael R.
Brassett II



Ryan M. Casteix



Alan M. Cohen



Richard S. Crisler



Frank J. DiVittorio



Brendan P. Doherty

Lewis Brisbois Bisgaard & Smith, L.L.P., announces that James W. Hailey III and Shannon C. Burr have joined the New Orleans office as partners.

Perrier & Lacoste, L.L.C., announces that **Ralph J. Aucoin, Jr.**, **Nathan M. Gaudet** and **Curt L. Rome** have become members in the New Orleans office.

Quintairos, Prieto, Wood & Boyer, P.A., announces that **Garrett P. LaBorde** has joined the firm as a partner in the Pensacola, Fla., office.

Roedel, Parsons, Koch, Blache, Balhoff & McCollister announces that **Suchitra J. Satpathi** has joined the firm's New Orleans office.

Schonekas, Evans, McGoey & McEachin, L.L.C., in New Orleans announces that **Ian L. Atkinson** and **Eleanor T. (Ellie) Schilling** are now members of the firm. Also, **Mandie E. Landry**, **Jennifer G. Mann**, **Teva F. Sempel** and **Jacob K. Weixler** have joined the firm as associates.

Shields Mott, L.L.P., in New Orleans announces that **Jeffrey K. Prattini** has been elected as a partner in the firm and **Alana L. Riksheim** has joined the firm as an associate.

Stahl, Bernal, Davies, Sewell & Chavarria, L.L.P., announces that **Alan M. Cohen** has been named a partner in the Austin, Texas, office.

Scott L. Sternberg, **Keith J. Naccari** and **Clayton J. White** announce the formation of their new firm, Sternberg, Naccari & White, L.L.C., with offices in New Orleans and Covington. Also, **Joseph R. Marriott** has joined the firm as an attorney.

Stone Pigman Walther Wittmann, L.L.C., announces that Abigayle C. Farris and William R. Bishop were elected members in the New Orleans office and W. Brett Mason was elected as a member in the Baton Rouge office.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that Erin Sayes Kenny has been elected to partner.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was appointed to the Louisiana Supreme Court Rules of Professional Conduct Class Action Committee. Also, he presented programs at the Masters of Mass Tort Inaugural Seminar in Cancun, Mexico, on the topics of "The Role in, Politics of and Risk/Reward of PSCs" and "The Pinnacle Bellwether Trial Experience."

Philip H. Boudreaux, founding partner of Andrus, Boudreaux, Landry & Coussan, A.P.L.C., with offices in Lafayette and Metairie, received the Louisiana Land Title Association's Lifetime Achievement Award in December 2016.

Jaimmé A. Collins, a partner in the New Orleans office of Adams and Reese, L.L.P., was accepted into the Product Liability Advisory Council as a sustaining member.

Brendan P. Doherty, a member in the Houston, Texas, office of Gieger, Laborde & Laperouse, L.L.C., was elected to membership in the Fellows of the Texas Bar Foundation.

Johnny L. Domiano, Jr., a partner in the New Orleans office of Adams and Reese, L.L.P., was admitted to membership in the Jefferson Business Council.

Sam N. Gregorio, founder of the firm Gregorio, Chafin, Johnson & Poolson, L.L.C., with offices in Shreveport and Metairie, was re-elected as president (for 2017) of the Board of Commissioners of the Caddo-Bossier Parishes Port Commission.

Continued next page



Vallie S. Dugas



Nathan M. Gaudet



Nichole M. Gray



Sam N. Gregorio



Layne C. Hilton



Garrett P. LaBorde



Mandie E. Landry



Mitchell R. Landry



Jennifer A. Lee



Jennifer G. Mann



Joseph R. Marriott



Ryan M. McCabe

Mitchell R. Landry, a partner in the Lafayette office of Andrus, Boudreaux, Landry & Coussan, A.P.L.C., was sworn in as the 2017 president of the Louisiana Association of Independent Land Title Agents in November 2016.

John F. McDermott, a partner in the Baton Rouge firm of Taylor, Porter, Brooks & Phillips, L.L.P., was appointed to chair the Internal Revenue Service Advisory Council's Small Business/Self-Employed and Wage and Investment Subgroup.

Randy Opotowsky, a partner at Steeg Law Firm, L.L.C., in New Orleans, is a board member and board secretary at Regional Loan Corporation, a non-profit, certified small business development company.

Alejandro R. (Al) Perkins, a partner in the Baton Rouge office of Hammonds, Sills, Adkins & Guice, L.L.P., was sworn in as chair of the board of the University of Louisiana System on Jan. 6.

E. Fredrick Preis, Jr., senior partner in the New Orleans office of Breazeale, Sachse & Wilson, L.L.P., was installed as chair of the Jefferson Chamber of Commerce and selected as a member of the Jefferson Business Council. He also is serving on the Executive Committee of the Louisiana Association of Business and Industry.

Judge Scott U. Schlegel with the 24th Judicial District Court was selected to join the third annual class of the Presidential Leadership Scholars Program, a leadership development initiative that draws on the resources of the presidential centers of George W. Bush, William J. Clinton, George H.W. Bush and Lyndon B. Johnson.

William D. Shea, partner in charge of the Baton Rouge office of Adams and Reese, L.L.P., was appointed to the board of directors of Louisiana Appleseed.

Robert P. Thibeaux, a member in the New Orleans office of Carver Darden Koretzky Tessier Finn Blossman & Areaux, L.L.C., was appointed to the Louisiana State Law Institute's Executive Committee. He also is a reporter and a member of the Institute's Council.

PUBLICATIONS

Louisiana Super Lawyers 2017

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): Mark R. Beebe, Charles A. Cerise, Jr., Robin B. Cheatham, Scott R. Cheatham, S. Jason Comer, 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.,

Marshall A. Hevron, Christopher J. Kane, Louis C. LaCour, Jr., Edwin C. Laizer, Leslie A. Lanusse, Kellen J. Mathews, Jay M. Mattappally, Patrick L. McCune, Don S. McKinney, Glen M. Pilié, Jeffrey E. Richardson, Elizabeth A. Roussel, E. Paige Sensenbrenner, Mark J. Spansel, David M. Stein, Martin A. Stern, Mark C. Surprenant, Raymond P. Ward and Victoria P. White.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans, Nashville, TN): Edward H. Arnold III, Alton E. Bayard III, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Matthew S. Chester, Robert C. Clotworthy, Christopher O. Davis, Nancy Scott Degan, Daniel J. Dysart, 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, Colleen C. Jarrott, Matthew C. Juneau, Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, Kent A. Lambert, M. Levy Leatherman, Jon F. Leyens, Jr., Alexander M. McIntyre, Jr., Patricia B. McMurray, Mark W. Mercante, Christopher G. Morris, William N. Norton, Erin E. Pelleteri, Kathlyn G. Perez, David C. Rieveschl, James H. Roussel, Danny



Keith J. Naccari



Randy Opotowsky



Alejandro R. Perkins



Marshall L. Perkins



Jeffrey K. Prattini



Patrick K. Reso



Alana L. Riksheim



Alex T. Robertson



Amber N. Robichaux



Curt L. Rome



Suchitra J. Satpathi



Eleanor T. Schilling

G. Shaw, Paul C. Thibodeaux, Danielle L. Trostorff, Tyler L. Weidlich, Paul S. West, Matthew A. Woolf and Adam B. Zuckerman.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Michael A. Balascio, Judy Y. Barrasso, Jamie L. Berger, Celeste R. Coco-Ewing, George C. Freeman III, Catherine Fornias Giarrusso, Craig R. Isenberg, John W. Joyce, Stephen H. Kupperman, David N. Luder, Stephen L. Miles, H. Minor Pipes III, Andrea Mahady Price, 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, Rachael A. Jeanfreau, David R. Kelly, Eve B. Masinter, Christopher A. Mason, Van R. Mayhall, Jr., Wesley M. Plaisance, Jennifer D. Sims and Thomas R. Temple, Jr.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P. (Hammond, Metairie): Preston L. Hayes, Steven E. Hayes, Conrad Meyer IV, Julian R. Murray, Jr., Inemesit U. O'Boyle, Patrick K. Reso David R. Sherman, P.J. Stakelum III and James M. Williams.

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

King, Krebs & Jurgens, P.L.L.C. (New Orleans): Robert J. Burvant, J. Grant Coleman, Reed M. Coleman, George B. Jurgens III, Henry A. King, Patricia A. Krebs, Timothy S. Madden,

Douglas P. Matthews and David A. Strauss.

Lamothe Law Firm, L.L.C. (New Orleans): Frank E. Lamothe III.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans): Ashley L. Belleau, Joseph P. Briggett, Christopher T. Caplinger, Daniel B. Centner, Stanley J. Cohn, Celeste D. Elliott, Meredith S. Grabill, Joseph P. Guichet, Brad E. Harrigan, Benjamin W. Kadden, Rose McCabe LeBreton, Stewart F. Peck, Seth A. Schmeekle, Shaundra M. Schudmak, David B. Sharpe, Miles C. Thomas, S. Rodger Wheaton and Kristopher T. Wilson.

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

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, Mary L. Dumestre, James T. Dunne, Jr., Abigayle C. Farris, Michael R. Fontham, Samantha P. Griffin, James C. Gulotta, Jr., Erin E. Kriksciun, John M. Landis, Wayne J. Lee, Justin P. Lemaire, Paul J. Masinter, W. Brett Mason, 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 and Phillip A. Wittmann.

Taylor, Porter, Brooks & Phillips, L.L.P. (Baton Rouge): Cynthia M. Amedee, Vicki M. Crochet, Tom S. Easterly, Ryan K. French, Brett P. Furr, Mary C. Hester, Jon Nathan Loupe, W. Shelby McKenzie, Harry J. Philips,

Jr., L. Adam Thames, Robin P. Toups, Fredrick R. Tulley, Vincent V. (Trey) Tumminello III and Michael S. Walsh.

New Orleans Magazine 2016

Steeg Law Firm, L.L.C. (New Orleans): **Robert M. Steeg**, Top Lawyers.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
Aug./Sept. 2017	June 4, 2017
Oct./Nov. 2017	Aug. 4, 2017
Dec. 2017/Jan. 2018	Oct. 4, 2017
Feb./March 2018	Dec. 4, 2017

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to: **Publications Coordinator Darlene M. LaBranche, Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404** or

email dlabranche@lsba.org.



Teva F. Sempel



Elsbet C. Smith



Robert M. Steeg



Charles L. Stern, Jr.



Scott L. Sternberg



Robert P. Thibeaux



Jacob K. Weixler



Clayton J. White

UPDATE

LSBA Francophone Section Discusses Scholarship

Nicolas Lambert, a law professor at the University of Moncton School of Law in New Brunswick, Canada, attended the Louisiana State Bar Association's (LSBA) Midyear Meeting on Jan. 21 in Baton Rouge. Lambert was in Louisiana as the guest of the LSBA Francophone Section and its Chair Warren A. Perrin helping to develop a new program for Louisiana students to study law in Canada — in French — with a scholarship. The Francophone Section will launch an effort to help to raise funds to underwrite some of the expenses of the law school scholarship.

During his six-day visit, Professor Lambert met with representatives of Louisiana State University Paul M. Hebert Law Center, Tulane University Law School, Loyola University College of Law and Southern University Law Center. He also was hosted by the Consul General of France Gregor Trumel and CODOFIL President Dr. William Arceneaux in New Orleans and LSU Law Professor Olivier



Nicolas Lambert, right, a law professor at the University of Moncton School of Law in New Brunswick, Canada, attended the Louisiana State Bar Association's (LSBA) Midyear Meeting on Jan. 21. From left, Warren A. Perrin, chair of the LSBA's Francophone Section, and LSBA President Darrel J. Papillion.

Moreteau in Baton Rouge. This innovative international educational and cultural program will help to solidify ties between the Cajuns of the United States and Acadians from Canada.



The 23rd Judicial District Bar Association hosted its annual multi-topic CLE in December 2016 in Gonzales. Attending were, top row, from left, Jeffery P. Diez; R. Ryland Percy III; Judge Jason M. Verdigets, 23rd JDC; Kim S. Landry; Judge Guy P. Holdridge, 1st Circuit Court of Appeal; Larry W. Buquoi; Jeffrey M. Heggelund; Martin S. (Marty) Triche; Vivian A. Jeansonne; and Christopher G. McNeil. Bottom row, from left, Judge K. Tess Stromberg, 23rd JDC; Amy Colby; Erin W. Lanoux, 23rd Judicial District Bar president; Shawn R. Bush; Joni M. Buquoi; and Patricia H. Douglas, 23rd JDC hearing officer.

Judge Pitman Named 2017 President of Louisiana Judicial College

First Judicial District Court Judge Michael A. Pitman was named the 2017 president of the Louisiana Judicial College (LJC) Board of Governors. He was originally appointed to the Board of Governors in 2009 and has served as treasurer, secretary and vice president for the College.



Judge Michael A. Pitman

Judge Pitman received a BBA degree in 1987 from Baylor University and his JD degree in 1991 from Louisiana State University Paul M. Hebert Law Center. He was elected to the bench in 2003 and re-elected, without opposition, twice. He previously served in the criminal and family law divisions of the First Judicial District Court and currently sits in the civil division. He is married to 2nd Circuit Court of Appeal Judge Frances J. Pitman.

SEND YOUR NEWS!

The *Louisiana Bar Journal* would like to publish news and photos of your activities and accomplishments.

Email your news items and photos to:
LSBA Publications Coordinator
Darlene LaBranche at
dlabranche@lsba.org.

Or mail press releases to:
Darlene LaBranche, 601 St. Charles Ave., New Orleans, LA 70130-3404



U.S. District Court Judge Jay C. Zainey, left, is the recipient of the Louisiana Chapter of the American Board of Trial Advocates' "Thomas Jefferson Justice by the People" Award. Presenting the award is ABOTA President Don S. McKinney.

ABOTA Presents Award to Judge Zainey

The Louisiana Chapter of the American Board of Trial Advocates (ABOTA) presented the "Thomas Jefferson Justice by the People" Award to U.S. District Court Judge Jay C. Zainey, Eastern District of Louisiana, on Jan. 28 at the annual dinner and meeting. The award recognizes individuals in Louisiana who, in the Chapter's opinion, most exemplifies respect for and devotion to the right to trial by jury.

Also at the meeting, the chapter installed officers — President Don S. McKinney, President-Elect T. Gregory Schafer; Secretary Helen H. Babin and Treasurer J. Rock Palermo III. Sharon Stickling continues to serve as executive director.



Baton Rouge Bar Association President Karli Glascock Johnson, center, was sworn in on Jan. 11 by Chief U.S. District Judge Brian A. Jackson, Middle District of Louisiana. From left, Judge Shelly D. Dick, Judge John W. deGravelles, Johnson, Chief Judge Jackson and Judge James J. Brady. Photo by Susan Kelley.

BRBA Installs 2017 Officers, Board

New leaders and officers of the Baton Rouge Bar Association (BRBA) were installed on Jan. 11 at the U.S. District Court, Middle District of Louisiana.

Karli Glascock Johnson, a partner with Kean Miller, L.L.P., was sworn in as the 88th BRBA president by Chief U.S. District Judge Brian A. Jackson.

Also serving as 2017 officers are Linda Law Clark, president-elect; Amy C. Lambert, treasurer; Shelton Dennis Blunt, secretary; and Jeanne C. Comeaux, past president.

The 2017 BRBA directors-at-large are Kelly E. Balfour, Melissa M. Cresson, Lauren Smith Hensgens, Christopher K. Jones, Melanie Newkome Jones and David Abboud Thomas.

The 2017 officers and council members of the BRBA's Young Lawyers Section are Loren Shanklin Fleshman, chair; Francisca M.M. Comeaux, chair-elect; Jordan L. Faircloth, secretary; and Kara B. Kantrow, past chair.

The Young Lawyers Section council members are Ashley N. Butler, Chelsea Gomez Caswell, Kellye Rosenzweig Grinton, Erin Sayes Kenny and Lauren M. Temento.

Christopher K. Odinet received the 2017 BRBA Young Lawyers Section Judge Joseph Keogh Award. Past President Jeanne C. Comeaux honored President's Awards recipients.



The Baton Rouge Bar Association (BRBA) hosted its annual Court Opening and New Admittees Recognition Ceremony at the 19th Judicial District Courthouse on Jan. 25. Attending were, from left, Commissioner Quintillis K. Lawrence, 19th Judicial District Court; Loren Shanklin Fleshman, BRBA Young Lawyers Section chair; Dona Kay Renegar, Louisiana State Bar Association president-elect; and Karli Glascock Johnson, BRBA president.



The New Orleans Chapter of the Federal Bar Association hosted a Federal Judges' Reception in November 2016. From left, Chapter President Kelly T. Scalise and President-Elect W. Raley Alford.



The New Orleans Chapter of the Federal Bar Association hosted the Malcolm Monroe Federal Practice Seminar CLE and Admission to the Federal Courts in Louisiana in December 2016. From left, Scott L. Sternberg, Melissa Tokar, Corey E. Dunbar and Christopher J. Weema.



The Lafayette Bar Association (LBA) hosted its annual Red Mass and Court Opening Ceremony on Jan. 13. The Red Mass was held at the Cathedral of St. John the Evangelist, followed by a luncheon sponsored by Broussard & David, L.L.C. The Court Opening Ceremony was at the Lafayette Parish Courthouse. Louisiana State Bar Association (LSBA) President Darrel J. Papillion joined the Lafayette Bar in welcoming the new admittees. Back row from left, Papillion and LBA President-Elect Donovan J. (Donnie) O'Pry II. Front row from left, Maggie T. Simar, LBA President Melissa L. (Missy) Theriot, retired Bishop Michael Jarrell, Bishop J. Douglas Deshotel, LBA Immediate Past President Danielle D. Cromwell and LSBA President-Elect Dona Kay Renegar.



Royce I. Duplessis, left, was sworn in as the 2016-17 president of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. in October 2016 during the annual Black Law Student Association mixer. Administering the oath of office was Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.



Former East Baton Rouge Mayor Melvin (Kip) Holden, left, received the Baton Rouge Bar Association's (BRBA) Presidents' Award on Jan. 11, presented by 2016 BRBA President Jeanne C. Comeaux.



Travis J. Broussard, second from left, is the 2016-17 president of the Lafayette Young Lawyers Association. From left, Judge Charles G. Fitzgerald; Broussard; Keith P. Saltzman, president-elect; Jaclyn Bridges Bacon, treasurer; and Stuart R. Breaux, secretary.

Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — *are required to be filed* with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation process, the required filing fee(s) and the pertinent Rules are available online at: <http://www.lsba.org/members/LawyerAdvertising.aspx>.

Inquiries, questions and requests for assistance may be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., RLemmler@LSBA.org, (800)421-5722, ext. 144, or direct dial (504)619-0144.

2017-18 Dues and Assessment Payments – Postcard Mailing in May!

Watch your mail in May for a postcard from the LSBA regarding payment of 2017-2018 LSBA Dues, LADB Assessment, Filing of Attorney Registration and Trust Account Information - **Due by July 1, 2017**. This is the only notice you will receive. Registration Statements will not be mailed.

INN OF COURT



Attending the joint meeting of the four north and central Louisiana Inns of Court were, from left, David H. Nelson, president of Judge Fred Fudickar, Jr. (Monroe); Lauren S. Laborde, president of Crossroads (Alexandria-Pineville); Louisiana Supreme Court Justice Scott J. Crichton; Barrett L. Beasley, president of St. Denis (Natchitoches); and Brian D. Landry, president of Harry V. Booth-Judge Henry A. Politz (Shreveport). Photo by W. Ross Foote.

Four Louisiana Inns Hold Joint Meeting

By Hal Odom, Jr.

Four Inns of Court from north and central Louisiana — the Harry V. Booth-Judge Henry A. Politz (Shreveport), Judge Fred Fudickar, Jr. (Monroe), Crossroads (Alexandria-Pineville) and St. Denis (Natchitoches) Inns — convened for a holiday celebration and joint meeting in Natchitoches in December 2016. About 133 members and guests attended the event.

Lauren S. Laborde, president of the Alexandria Inn, introduced special guests, Louisiana Supreme Court Justice Scott J. Crichton, speaker; U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, president of the American Inns of Court; and Pam Wittmann, AIC chapter relations director. Laborde also recognized the presidents of the other participating Inns

— Brian D. Landry (Shreveport), Barrett L. Beasley (Natchitoches) and David H. Nelson (Monroe) — for their work in coordinating this large meeting, the first of its kind in Louisiana.

Justice Crichton presented the program, “Ethics and Beyond,” covering recent amendments to Louisiana’s Rules of Professional Conduct and the Louisiana State Bar Association’s Lawyer’s Oath, as well as cases involving lawyer discipline and ethical issues.

After the program, U.S. District Court Judge S. Maurice Hicks, Jr. and Chief Judge Stewart commended Justice Crichton’s lifelong dedication to ethics and again thanked all Inn officers for making the historic joint meeting possible.



Twice each month, the New Orleans Bar Association organizes lunch service at the Ozanam Inn, a homeless shelter in New Orleans. Recent volunteers, from left, were Kerry A. Murphy, Edward W. Trapolin, Catherine E. (Katie) Lasky, Christopher D. Wilson, Kimberly R. Silas and Christopher K. Ralston.

President's Message

Q&A with 2017-18 LBF President Valerie Briggs Bargas

Interviewed by 2017-18 Secretary Christopher K. Ralston

Ralston: Tell us about yourself and your family.

Bargas: I am fortunate to practice with some of my favorite people in a firm we formed eight years ago. For the last 16 years, my practice has been focused primarily on casualty and insurance defense litigation. There is very little downtime when a trial is always looming around the corner, but I look for ways to give back and, of course, I spend as much time as I can with my family. My husband, Trey, and I have been married for 13 years and we have three children, Briggs, 11; Anna-Marie, 9; and Reed, 5. The kids are involved in many extracurricular activities. I am grateful that Trey has a flexible schedule and is able to do the afternoon chauffeuring. Somehow we make it all work!



Valerie Briggs
Bargas

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

Bargas: I learned about the LBF when I was on the Young Lawyers Council (now Division) of the Louisiana State Bar Association (LSBA). I had no hesitation in becoming a Fellow and I was eager to be more involved.

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

Bargas: In my practice, I am often defending individuals who can afford to litigate in the civil justice system. However, there are so many whose lives are negatively impacted because they do not have the means to hire a lawyer to assist them in handling simple civil matters. The LBF funds grantees who are giving Louisiana's most vulnerable citizens access to a system which they would otherwise be prevented from using. Some of the civil matters include representation of abused children,

domestic violence victims, and those who are victims of financial fraud. The impact on these individuals who receive these legal services is life changing. By vetting and regularly auditing grantees, the LBF ensures that quality and effective legal assistance is being provided.

Ralston: Can you tell us about the newly formed Access to Justice (ATJ) Commission and its role in the LBF's mission?

Bargas: Louisiana, through the LSBA and LBF initiatives, has had a strong and active presence in the access to justice community nationwide. However, it became clear that the individual states had been moving to a Commission model, which is thought to enable and give all stakeholders an active voice in ATJ efforts. The LBF and ATJ Commission work hand in hand to find more sustainable forms of income to support civil legal aid initiatives, current grantees, and to better fund Legal Services Corporations in Louisiana. In addition, the Commission works to keep abreast of any new civil legal aid issues and/or problems that may need a more consistent approach statewide. The goals include finding a consistent stream of income, prevent/limit duplication of efforts, and maximize the ideas and efforts of civil legal aid providers.

Ralston: Why is it so important to have consistent funding for civil legal aid?

Bargas: The LBF commenced its Civil Legal Aid Campaign two years ago in an effort to increase funding for grantees in the wake of low interest rates on IOLTA accounts, the base of the LBF's funding. The idea was that if grantees could be funded consistently year to year, then they would not have to spend time and effort looking for funding and being concerned that it may run out. The lack of consistent funding makes it very difficult for the civil legal aid grantees to hire and retain lawyers. We now have the Commission

to assist in the Campaign. Most recently, the LBF, at the request of the ATJ Commission, funded an Economic Impact Study to demonstrate the financial impact of providing civil legal aid in Louisiana communities. For every dollar invested in Louisiana's civil legal aid providers, Louisiana receives \$8.73 in immediate and long-term financial benefits. Serving the most vulnerable citizens in our state is the right thing to do, but the fact that it yields such a substantial return to our economy cannot be ignored.

Ralston: How can Louisiana lawyers help the LBF?

Bargas: Become a Fellow! I know that there are lawyers who work hard and find it difficult to fit in pro bono work. We have grantees doing amazing work across the state, but we have a very small number of lawyers who are Fellows of the LBF financially supporting the work being done. You can ensure that the civil legal aid providers being funded by the Bar Foundation are audited and reevaluated on a quarterly and yearly basis. Please make being a Fellow a priority this year!

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

Bargas: The LBF leadership is currently working with the ATJ Commission to obtain a constant, yearly stream of income from a source in Louisiana. This is a priority for the LBF and the Campaign. In addition, I would also like to work with some of our grantees in ensuring that the services they seek to and do provide best fit their model, funding and expectations. I have been fortunate to audit several of our grantees and, through this process, have learned some organizations provide more effective services at a better cost. Providing our grantees direction and support is important. It validates the LBF's mission and gives our supporters confidence in the work that is being done.

LBF Honors Award Recipients at Gala

The Louisiana Bar Foundation (LBF) celebrated its 31st Annual Gala on April 21 and honored the 2016 Distinguished Jurist Jeannette Theriot Knoll, Distinguished Attorney Donna D. Fraiche, Distinguished Attorney Thomas M. Hayes III, Distinguished Professor Howard W. L'Enfant, Jr., and Calogero Justice Award recipient Joseph R. Oelkers III.

Other highlights of the evening included live music from Shamarr Allen and the Underdaws and Gumbo Trio, a Kendra Scott mystery jewelry pull, endless martini bar, dinner, and live auction.

Award recipient profiles follow:

Distinguished Jurist Jeannette Theriot Knoll Louisiana Supreme Court

Justice Knoll served as a member of the Louisiana judiciary for 34 years. In 1983, she became the first woman to be elected to a reviewing court in state history when she won a seat on the 3rd Circuit Court of Appeal. In 1996, she was elected to the Louisiana Supreme Court. In her 20-year career on the Supreme Court, she read and voted on more than 58,000 writ applications and authored 185 full Supreme Court opinions. In 1969, she graduated from Loyola University College of Law. From 1969-72, she served as an indigent defender in Avoyelles Parish. From 1972-82, she served as the first assistant district attorney for the 12th Judicial District. In 1996, she earned a Master of Laws degree in the judicial process from the University of Virginia School of Law. In 2000, she was inducted into the Louisiana Political Hall of Fame. In 2007, she was inducted, with her whole family, into the Louisiana Justice Hall of



Justice Jeannette
Theriot Knoll

Fame. In 2017, she received the St. Ives Award from the Loyola College of Law.

Distinguished Attorney Donna D. Fraiche

Fraiche practices as a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., chairing its Nominating Committee and formerly chairing its Women's Initiative. She chaired the Louisiana Health Care Commission from 1998-2015 and served on the Louisiana Legislature's Task Force on the Working Uninsured. She was the first woman president of the American Health Lawyers Association and was chosen for its first class of Fellows. She is currently a board member of the Louisiana Health Care Quality Forum, the Center for Planning Excellence and Woman's Hospital and is the honorary consul-general of Japan for New Orleans. She was a charter member of the Louisiana Recovery Authority; chaired its Long-Term Community Planning effort, and served on its Health Care Committee and the Louisiana Health Care Redesign Collaborative. She is currently on the Board of the Baton Rouge Area Foundation.



Donna D. Fraiche

Distinguished Attorney Thomas M. Hayes III

Hayes, a partner in the Monroe firm of Hayes, Harkey, Smith and Cascio, L.L.P., has practiced law for 40 years. He obtained a BA degree with honors in 1974 from the University of the South in



Thomas M. Hayes III

Sewanee, Tenn., and his JD degree in 1977 from Louisiana State University Paul M. Hebert Law Center. He began practicing with his father, Tom, Jr., at Hayes, Harkey, Smith & Cascio, L.L.P., where he now practices with his son, Tommy. He is a senior council member of the Louisiana State Law Institute, serving on the Executive Committee and the Committee on Louisiana Civil Procedure. He served five years as bar examiner on Federal Jurisdiction and Procedure for the Louisiana Supreme Court's Committee on Bar Admissions. He has twice served on the Louisiana State Bar Association's Board of Governors and on the Nominating Committee. He was trained as a mediator at the Straus Institute for Dispute Resolution at Pepperdine School of Law and serves as a mediator with the Patterson Resolution Group.

Distinguished Professor Howard W. L'Enfant, Jr.

L'Enfant, the Henry Plauché Dart Professor of Law, retired from Louisiana State University Paul M. Hebert Law Center in 2011 following a 40-year career. He graduated in 1963 from the



Howard W.
L'Enfant, Jr.

University of Notre Dame and received his LLB degree in 1966 from LSU. Following graduation, he entered the private practice of law in New Orleans but soon found his calling in teaching. In 1969, he began his LSU teaching career, which influenced four generations of students and future lawyers. At LSU Law Center, he served as acting associate dean, vice chancellor and interim chancellor. He served as reporter for the Continuing Revision of the Code of Civil Procedure for the Louisiana State Law Institute. He taught evidence, civil procedure and federal courts throughout his teaching career.

Joseph R. Oelkers III Calogero Justice Award

Oelkers is a founder of Acadiana Legal Service Corp. (ALSC), the first Legal Services Corp.-funded law firm in the Acadiana area. He served as ALSC executive director from its inception in 1978 until his retirement in 2016. He graduated in 1972 from the University of Southwestern Louisiana and received his law degree in 1976 from Louisiana State University Paul M. Hebert Law Center. He was president of



Joseph R.
Oelkers III

the Louisiana Legal Consortium from 1983-94, established by Louisiana legal services programs to provide support for access to justice efforts in the state. He has been a member of the Louisiana State Bar Association's (LSBA) Access to Justice Committee since 1981, chairing the committee for more than 10 years. He has served in the LSBA's House of Delegates since 1993. He is a former president of the Lafayette Bar Association (LBA) and currently serves on the LBA board of directors. He received the LSBA President's Award in 1992 and 1998, the Legal Services Corporation Distinguished Service Award in 2008, and the LSBA Career Public Interest Award in 2015.

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ANSWERS for puzzle on page 443.

E	X	T	O	R	T	I	O	N	C	A	W
X	H	O	C	E	A	O					
T	H	E	F	T	O	N	P	A	P	E	R
	A	E	N	H	R	T					
S	A	T	E	L	L	I	T	E	D	I	S
N	E				C	W					L
A	F	R	I	C	A	A	S	H	O	R	E
T			O								S
C	A	S	H	R	E	G	I	S	T	E	R
H	U	N	R			E	N				
I	N	D	I	C	I	A	R	O	S	I	E
N	A	O									
G	I	N	B	A	N	K	F	R	A	U	D

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The Last **WORD**

By Darrel J. Papillion

MORGAN GOUDEAU: A MEMOIR

It is my privilege and honor to share a few thoughts about my dear friend Morgan J. Goudeau III — the long-time DA in St. Landry Parish and one of the brightest lights our legal profession has ever known.

I first met Morgan when I was a little boy. He was a friend of my Dad when my Dad served on the St. Landry Parish Police Jury. Morgan learned that I wanted to be a lawyer and gave me a job the day after I graduated from high school. Because I was a 17-year-old kid, I didn't understand then what he was doing for me. I just thought I had a job, but what I got was a front-row seat to his wonderful and colorful life.

Over the next 30 years, I spent many hours with Morgan. If I wasn't in class at LSU, I was working for him. Winter break, summer break, after school — we had an understanding.

Before he retired to Lafayette 20 years ago, Morgan was from Opelousas. His Dad was a civil engineer who largely laid out the City of Opelousas, and his mother was Alma Chachere, Tony Chachere's sister. He went to LSU and then to Georgetown Law School where he was elected to the *Georgetown Law Journal*. He worked his way through Georgetown as a U.S. Capitol police officer, courtesy of Sen. Russell Long.

One of his duties was to drive Gen. Douglas MacArthur around Washington. Morgan drove General "I shall return" MacArthur, and I drove Morgan. I drove him around Louisiana in 1986 when he ran for Congress. We visited everybody. We'd stop at the courthouse or some person's house. We'd visit Camille Gravel, the Abrusleys in Oakdale, Lindy Boggs, Judge Reggie, our congressional delegation. Everybody was a Democrat back then, and Morgan was a Democratic superstar.

Before I knew him, he rode in the Yambilee Parade with a young senator from Massachusetts running for President, Jack Kennedy. Morgan was President



Morgan Goudeau at the White House, seated far right, facing camera.
Photo provided by the Goudeau family.

Kennedy's campaign manager for southern Louisiana. After President Kennedy was elected, Morgan was invited to the White House on a couple of occasions. He had a colorful life.

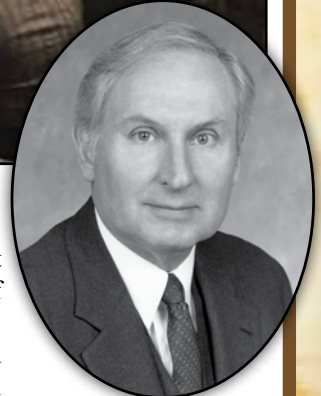
He was a special person. He was a devout Catholic, a devoted husband to Helen, his wife of 51 years who he loved and treasured, and a devoted father to his children. I loved his family, and he was a role model for me. He was a man for others. He served as an assistant district attorney and then as district attorney in Opelousas — all totaled for more than 40 years. He had great power. He had a brilliant education. He could get people to do things, but, at the end of the day, what made him a special person was how he used his powerful office that could send people to prison and ruin lives. He used sound judgment. He often used prosecutorial discretion in a way that gave second chances where they were warranted but he could just as swiftly bring down the full weight of our system of justice on those who needed it.

He treated people fairly. He fought for and protected people's civil rights. He took

pride in the fact that, outside of Orleans Parish, his office tried more criminal jury trials than any other DA's office in the state. He didn't hold prison over people's heads and force them to plea, nor did he plea out hard cases to avoid a trial. He let the juries decide and he used grand juries very wisely as well. He was a great DA.

He had a generous and frequent smile and he loved people. He gave of himself and I am an example of that. He didn't need to take me under his wing and take the interest in me that he did, but he did because that's who he was.

Those of you who knew him would understand. If you didn't, I wish you could have known him.



Morgan J. Goudeau III
1929-2016

Darrel J. Papillion, a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is the 2016-17 president of the Louisiana State Bar Association. (papillion@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)

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