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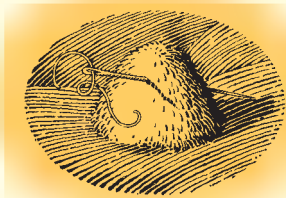
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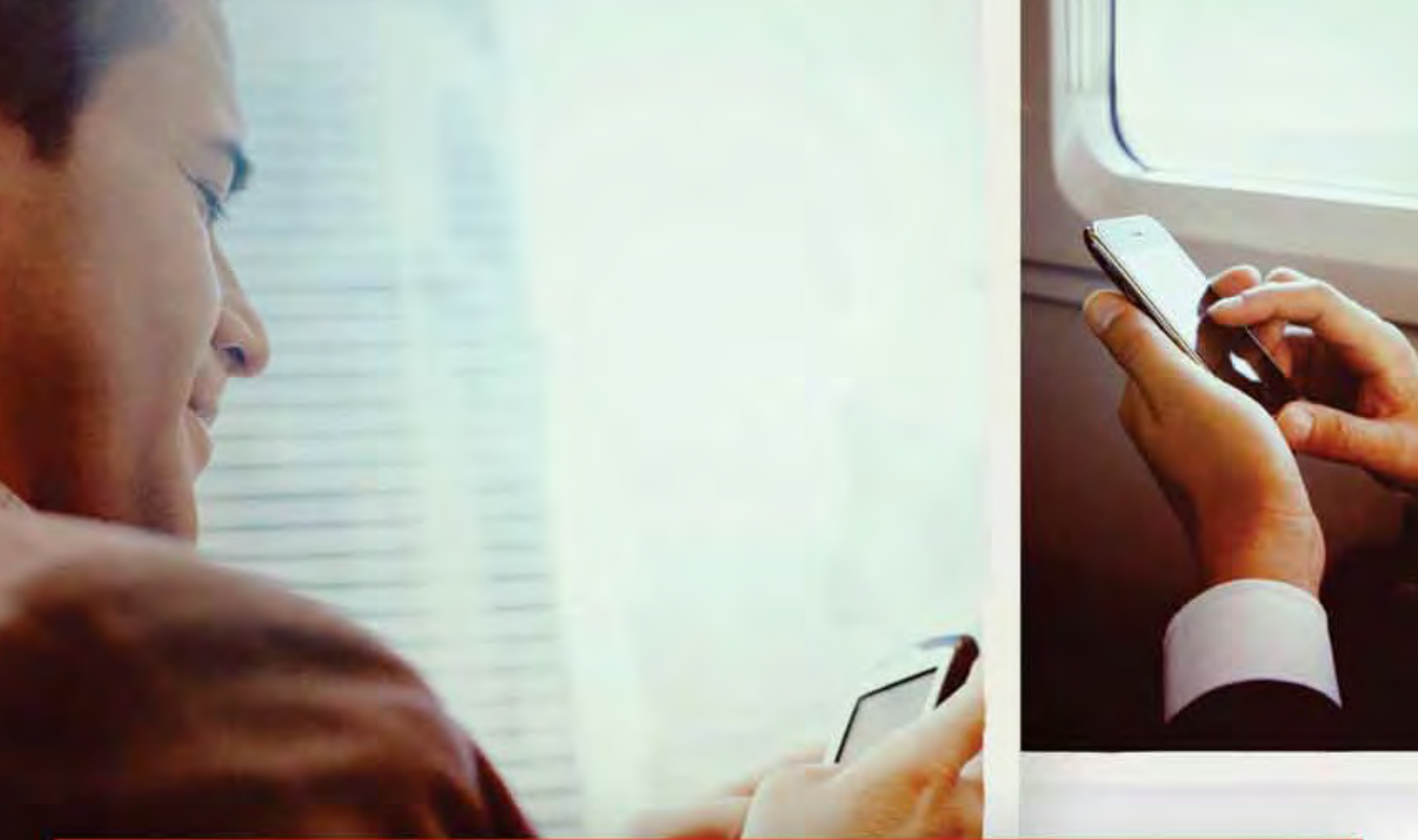
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“Night of the Comet,” an acrylic on canvas board, by artist Anthony M. DiLeo. For more of DiLeo’s artwork, see page 120.

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*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.

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By Barry H. Grodsky

HELP!!!

Good. Now I have your attention and you need to read this article. I wear more than one hat for the Louisiana State Bar Association (LSBA) and I am taking the liberty of using this column to explain my angst relating to another role I play.

As the chair of the Committee on the Profession, about three years ago, we set out to create a mentor program for new admittees. It took considerable time to put it in place. After it was approved by the committee, the LSBA's Board of Governors and the LSBA's House of Delegates (all unanimously), the

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Louisiana Supreme Court entered an order in May 2013 that the program will go into effect in January 2015. I have written about it, talked about it, lectured on it, been videotaped and been all over the state to promote it.

It is a great program and absolutely needed for our new admittees, especially those just starting out as solo practitioners. Although the program is commencing on a pilot basis in Shreveport, Baton Rouge and Greater New Orleans, we are seeking mentors statewide and we need them now.

And that is the source of my agitation. When we have a chance to shine, do the right thing, express professionalism on the highest level, give back to younger attorneys and make a difference, **THIS IS NOT BEING DONE!**

I should be inundated with mentor applications; we have far too few. I wish I could make the words on this page scream and reach out to tell you:

“THIS NEEDS TO BE DONE NOW.”

Our new admittees will benefit greatly from this program and, therefore, so will our profession. This is not time for apathy and there is no excuse to not at least consider it. It is easy to become a mentor, CLE credit is given, the time commitment is not great, and you will make a difference.

We have a golden opportunity to better the profession; I daresay this is our duty. I am not going to stop my efforts to get this program up and running by January.

Please, please, please take just a moment and click onto the Bar's website at www.lsba.org/mentoring/ and complete an application (or see page 116 of this issue.)

Take a moment. Be a mentor. Better the profession. The time is now. Thanks.

Barry Grodsky



By Joseph L. (Larry) Shea, Jr.

Louisiana Lawyers Serve the Public and the Public Should Know It

There are literally thousands of Louisiana lawyers engaged in service to the public and the profession. These are services for which the lawyers receive little or no monetary compensation. While I am writing this message, there are lawyers throughout the state volunteering their time and effort to represent the legal interests of less fortunate Louisiana citizens who could not afford an attorney and have no other source of representation.

There are still other lawyers who are participating in the work of committees, councils, foundations and boards to enhance the development of our communities, to improve access to justice, to self-regulate the ethical conduct of attorneys, to provide assistance to those who suffer from debilitating conditions that adversely affect the lives and practices of attorneys and their families, to provide care for children who have been abused or mistreated, and to enhance the educational opportunities provided through our schools, to name just a few. According to Albert Schweitzer, "The only ones among you who will be really happy are those who have sought and found how to serve." As a profession, we should be proud that so many of our fellow attorneys "get it!"

The Louisiana State Bar Association (LSBA), along with the Louisiana Bar Foundation, our courts and many local and specialty bars, provides members of our profession with numerous opportunities to join together in the organized pursuit of worthy projects designed to serve the public and the profession. The opportunities provided by the LSBA alone are countless—ranging from professionalism programs in the law schools to the Young Lawyers Division's Wills for Heroes Program and the Community Action Committee's Secret Santa Project, from committees on Access to Justice and Diversity and Outreach to a Committee on the Profession, from the Lawyers Assistance Program, Inc. (LAP) to the Louisiana Center for Law and Civic

Education. There are hundreds of lawyers who take advantage of these opportunities.

It is unfortunate that the general public does not know how much the legal profession does for the citizens of Louisiana. For the most part, the substantial efforts of the thousands of Louisiana lawyers who do the tens of thousands of hours of good work go unsung except within the profession itself. I have attended legal gatherings throughout the state where we have acknowledged lawyers for their outstanding contributions to the betterment of the public, their communities and the profession, but little has been reported outside of those meetings. For example, back in May of this year, I had the personal privilege of participating in a ceremony at the Louisiana Supreme Court in a courtroom full of attorneys who were being honored for their many hours of pro bono service. It was a great event for the participants and their families but it received little or no fanfare by the media or the public. That is a shame!

A recent survey by the Pew Research Center continues to show lawyers at the bottom of professions in terms of public appreciation for their contributions to society. However, the more the public knows about the good works of our profession, the more likely it is that the public's perception of lawyers will improve. While there may be a view of some in the media that good news does not make for good headlines, there are those of us who believe that such a viewpoint can

be overcome with perseverance. Wayne Gretzky once said, "Statistically, you miss 100% of the shots you don't take." So, let's take a shot or two.

Our first shot is the establishment of LSBA Regional Panels and Citizen Lawyer Awards. Each panel will be headed by your Board of Governors' representative and will consist of lawyers within each region. One of the primary objectives of these panels is to identify the exceptional Citizen Lawyers throughout the state whose contributions to their communities deserve special recognition. The LSBA will make every effort to see that the accomplishments of those lawyers are rewarded and publicized, not just within the profession but within the communities

that have benefitted from their efforts.

Our second shot is a Louisiana Day of Service on Thursday, Oct. 23. The LSBA, in conjunction with local bars, pro bono organizations and civil legal aid organizations, will seek to mobilize lawyers across the state to support and advance the Legal Education and Assistance Program (LEAP) that has been developed in cooperation with the Louisiana Library Association. The program itself is designed to deliver legal resources and information via public libraries. An important aspect of the LEAP project is the "lawyers in libraries" component pursuant to which the libraries will provide a venue for lawyers to address the public on specific legal issues about which patrons have inquired. On

our Day of Service, the LSBA's objective is to have at least one lawyer in a library serving the public in every parish of our great state.

Join with your fellow attorneys on the Day of Service and choose to serve. Give it a shot. Based on Dr. Schweitzer's opinion, you will "be really happy" you did.

To volunteer for Day of Service events, contact LSBA Access to Justice Administrative Assistant Nicole Louque at (800)421-5722, ext. 106, or (504)619-0106; or email nicole.louque@lsba.org. Or go to: www.LouisianaLawyersinLibraries.org.

Joseph L. Shue, Jr.

LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. To this end, 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. As the premier organization serving Louisiana's legal profession, the LSBA is working to advance its members' goals and interests through unparalleled programming and a comprehensive benefits package. Listed below are a few benefits of membership:

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www.louisianalap.com • (866)354-9334

LAP provides confidential assistance to members of the Bar and their families who experience problems with alcohol, drugs, gambling and other addictions, as well as mental health issues. Call 1(866)354-9334 for assistance.

LSBA Professional Programs Department Services

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cgrodsky@lsba.org

This program helps consumers by providing compensation to clients who have been defrauded by their lawyers. For more information, contact Associate Executive Director Cheri Cotogno Grodsky at cgrodsky@lsba.org or (504)619-0107.



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www.lsba.org/fastcase

In 2005, the LSBA launched Fastcase, a free web-based legal research product that provides unlimited access to all state and federal court cases. To access the program, go to www.lsba.org and click on the Fastcase icon. For more information, contact Practice Management Counsel Shawn L. Holahan at shawn.holahan@lsba.org or (504)619-0153.

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This program provides screening of proposed lawyer advertising to confirm compliance with the Supreme Court's advertising rules. For information/inquiries, contact LSBA Ethics Counsel Richard P. Lemmler, Jr. at rlemmler@lsba.org or (504)619-0144.

Practice Assistance and Improvement • bking@lsba.org

As mandated by the Louisiana Supreme Court, the Bar's Practice Assistance and Improvement Program offers alternatives to discipline via its Attorney-Client Assistance Program and the Diversion Program. The Office of Disciplinary Counsel diverts eligible matters enabling these members to avoid disciplinary proceedings. For more information, contact Professional Programs Counsel for Practice Assistance William N. King at bking@lsba.org or (504)619-0109.

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“SPEAKING THE TRUTH” **about Attorney *Voir Dire***

By Lewis O. Unglesby

The intersection of juror questioning and jury trials developed over many centuries. The first jury trials took place as early as 500 B.C. in Greece. At that time, the jury, selected by the government, could be composed of between 200 and 1,500 people. In the 1100s, King Henry II forced civil litigants to appear before laymen he selected based on their own personal knowledge of the facts and issues surrounding the litigant's complaint and the rules of the community. In most cases, these laymen had a preconceived knowledge of the actual facts and knew the parties to the suit. By the end of the 15th century, that process was abandoned and the focus was shifted to the requirement of impartiality. It was in that time frame that the first idea of challenges to jurors' qualifications became law.¹

At the beginning of the American Revolution, the English enacted a jury selection system in the colonies which allowed the sheriff to choose the jurors with no questioning involved. Because the sheriff was the hand of the King in the colonies, rebellion ensued over the process. It is during that time that Jefferson penned his famous line:

I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.

The right to juries was incorporated into the United States Constitution through the Sixth and Seventh Amendments. In the early days, the judge conducted all of the *voir dire*. The treason trial of Aaron Burr was the first test of the importance of the jury in the new America. Chief Justice Marshall held that an impartial jury was required by the common law and secured by the American Constitution in all criminal matters.

Voir dire (translated: speak the truth) developed because society became disconnected from the old English village traditions due to changes caused by the expansion of the population. As people migrated to the West and South, a litigant had to secure some direct information about the jurors and could not be expected to rely on general community knowledge.

In 1911, New Jersey passed the first statute allowing *voir dire*. Other states followed suit and, at that time, attorney-conducted *voir dire* was the rule in federal courts.

Development of the jury trial concept in Louisiana was slow to reach fruition. The most radical change in the civil procedure of Louisiana was the Practice Act of 1805, which established the right to trial by jury and a requirement that the testimony of available witnesses be taken in open court rather than by depositions as was the civil law tradition in France and Spain.

After Louisiana's admission to the Union, the Louisiana Supreme Court held, under the Constitution of 1812, that there could be no retrial of a factual issue before a new jury. That edict was followed shortly by a decision holding that the appellate court could review the transcript of the evidence presented in the trial and determine the correctness of the jury's findings. The principle of appellate review of the facts was adopted and repeatedly affirmed by the court and confirmed in subsequent constitutions of the state. Since the appellate courts were free to substitute their findings on factual issues, and frequently did so, the civil jury trial case became a rarity. When the Code of Civil Procedure was enacted in 1960, provisions for jury trials allowed examination by attorneys. That rule continued throughout the revisions in 1983 to the present form in 1990. The restrictive federal rule was rejected, and the grant of *voir dire* was given to the litigants.

A more modern respect for the decision of the fact-finder developed. Trial jurors were to be given the benefit of their fact finding in the absence of manifest error. Jury trials became more common. The populist tradition and prevailing legal scholarship found that the federal practice of court-conducted *voir dire* was not effective for the Louisiana citizenry, and the law favored *voir dire* administered by attorneys.

Federal vs. State *Voir Dire* Rules

The immediate differences in *voir dire* between federal and state law, and between

criminal and civil cases, appear in the rules.

Article I, Section 17 of the Louisiana Constitution provides:

The accused shall have a right to full *voir dire* examination of prospective jurors and to challenge jurors peremptorily.

Article 786 of the Louisiana Code of Criminal Procedure reads:

The court, the state, and the defendant shall have a right to examine prospective jurors. The scope of the examination shall be within the discretion of the court

Article 1763 of the Louisiana Code of Civil Procedure states:

A. The court shall examine prospective jurors as to their qualifications and may conduct such further exam as it deems appropriate.

B. The parties or their attorneys shall individually conduct such exam of prospective jurors as each party deems necessary, but the court may control the scope of that examination to be conducted by the parties or their attorneys.

Rule 24 of the Federal Rules of Criminal Procedure states:

(1) *In general.* The court may examine prospective jurors or may permit the attorneys for the parties to do so.

(2) *Court examination.* If the court examines the jurors, it must permit the attorneys for the parties to:

(A) Ask further questions that the court considers proper; or

(B) Submit further questions that the court may ask if it considers them proper.

Rule 47 of the Federal Rules of Civil Procedure provides:

(a) Examining Jurors. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the

court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

Thus, in Louisiana state courts, the *voir dire* by attorneys is a matter of right. The presumption is in favor of lawyer questioning and recognizes the necessity of the lawyer's involvement:

While the method for selecting petit juries is within the court's discretion, the procedure cannot be such as to deny the accused his constitutional right to full *voir dire* examination of prospective jurors.

State v. St. Amant, 413 So.2d 1312 (La. 1981).

Importance of Attorney-Conducted *Voir Dire*

The purpose of the *voir dire* examination is to develop the prospective juror's state of mind. This enables the trial judge to determine actual bias and allows counsel to exercise his intuitive judgment concerning the prospective juror's possible bias or prejudice. The trial judge is granted broad discretion in regulating and supervising *voir dire* and ruling on challenges and rarely will rulings governing the selection of a civil jury be reversed.

In 1924, the Federal Court Conference of Senior Judges decided that the judge alone should do the questioning. In 1928, this became Rule 47(a) of the Federal Rules of Civil Procedure and Rule 24 of the Federal Rules of Criminal Procedure. Although the rules stated that the court *may* permit the attorneys to examine jurors, by 1960, almost all federal court judges performed the *voir dire*. In 1960, the Federal Judicial Conference found that "the judge alone should conduct *voir dire*, as this resulted in a 'great savings of time.'"

The practical results between a lawyer-conducted *voir dire* versus a judge-controlled selection process are a source of ongoing controversy.



Arguments consistently given for advocating judge-conducted *voir dire* are:

- 1) Efficiency of selection.
- 2) Attorney-conducted *voir dire* allows the lawyer to disqualify the most impartial jurors.
- 3) There is no constitutional right to *voir dire* (except under certain state laws, including the Louisiana Constitution, Article I, Section 17).
- 4) Jurors are more likely to be honest when questioned by an authoritative figure such as the judge.

The American Bar Association (ABA) determined in 2005 that attorneys should be given a liberal opportunity to question jurors individually on prior knowledge and preconceptions about a case. The ABA found through empirical research that jurors would be more candid responding to an attorney who they see as more of a "co-equal" rather than the authoritarian figure represented by the judge. The overriding reason, and the only reason consistently given by the federal judiciary, is time savings, which was first suggested in 1928 by Judge Learned Hand of the United States 2nd Circuit Court of Appeals.

Let's explore the statistics. In 1938, 20 percent of federal civil cases went to trial. In 1962, the percentage fell to 12 percent. By 2000, the number dropped to 1 percent. Correspondingly, 15 percent of federal criminal cases went to trial in 1962; by 2002, that number plunged to 5 percent.

At the same time, various studies reflected that, in the last 30 years, the number of cases dismissed by federal courts on summary judgment has risen by 300 percent. The ultimate average number of trials by federal courts has decreased by 67 percent since 1962. The number of cases filed, or removed, to federal courts is less than 10 percent of those in 1962, and the absolute number of federal civil jury trials in the United States decreased from 12,000 in 1985 to 3,271 in 2009.

No matter how one interprets these statistics, it appears federal courts have more time to allow *voir dire* by lawyers than they did when Rule 47 was created. In 1984, the Federal 2nd Circuit Judicial Council found that the greatest number of successful cause challenges occurred when attorneys were allowed effective *voir dire*. The 2nd Circuit study further concluded that attorney interaction with the juror resulted in the greatest amount

of information necessary for the trial court to properly rule on challenges for cause.

The findings included the following:

1) Jurors respond better to the equality of status between lawyer and juror rather than judge.

2) The judge has already instructed the entire panel that it is required and expected to be open-minded, fair, impartial, and follow the law. Human nature does not permit a belief that the normal juror seated amongst his peers will voluntarily stand up and identify himself as outside that norm.

Numerous human behavioral studies in jury research have found that:

1) Jurors are more likely to tell their true attitudes about the justice system when questioned by an attorney.

2) The way a juror responds to a question may be more reflective of an innate prejudice than the actual words he speaks.

3) Judge *voir dire*, based on the instruction to be impartial and fair, negates the opportunity for the juror to express his own innate opinions and/or prejudices.²

In evaluating judge versus attorney *voir dire*, the different goals and roles must be recognized. The judge must balance the need to maintain the court's position as the ascendant authority in the courtroom and the desire for efficiency in jury selection.

Attorney-conducted *voir dire* provides more information about a juror's thought processes. Quite naturally, the court will rarely understand the particular nuances of a case that require follow-up questions to certain answers. General questions by the court, collectively or individually, are often closed-ended questions, which produce silence or general affirmation. Lawyers, on the other hand, asking open-ended questions, can elicit individual responses leading to interaction among the jurors, as well as follow-up questions that identify the capacity of the juror to be fair.

Modern behavioral studies recognize that there is built-in juror bias from the media, the Internet, politics and other methods of communication, and that the lawyers who know their case are in the best position to recognize the problems.³

A judge performs no task that is more important than presiding over a case tried before a jury. The lawyers know their cases, the issues that cause them concern, and the areas relevant to the ultimate decision-making process. Fairly posed, open-ended questions designed to achieve that goal do not burden the system.

Trial practitioners recognize the essential inconsistency between a desire for a fair and impartial jury and a restriction on the opportunity to discern the psychological and mental impressions the individual jurors bring from their life experiences as they sit in judgment.

The Louisiana courts give meaning to the language of the United States Supreme Court:

Voir dire examination preserves to protect that right by exposing possible biases, both known and unknown, on the part of potential jurors. Demonstrated bias in the response to questions on *voir dire* may result in the jurors being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors, if this process is to serve its purpose, is obvious.

McDonough Power Equipment v. Greenwood, 464 U.S. 548, 104 S.Ct. 845 (1983).

Conclusion

The importance of a fair and full jury trial cannot be overstated:

If citizens lose interest and ability to do justice in court, a general loss of democratic government will follow. If the trial dies, it would not be by the tyrant's ax, but by a long and scarcely

noted process of decay. Indifference, in the long run, is deadlier than any coup, and democratic institutions are easily lost through neglect, followed by decline and abandonment.⁴

A jury trial is the most important part of the legal system. Only in open court are the citizens the ultimate authority. The courthouse is the community's church. Everyone is equal. It is the place an average guy gets his say, where everyone takes an oath, where nobody's power can overcome the facts. All of this rests on the foundation that a group of citizens will fairly apply the law and facts. With such essential truths at stake in every case, allowing the litigants enough time to select the decision makers is only fair.

FOOTNOTES

1. Michael L. Neff, "Legal History and Social Science Demand Appropriate *Voir Dire*," Georgia Bar Journal, August 2011.

2. "Is Attorney-Conducted *Voir Dire* an Effective Procedure for the Selection of Impartial Juries?," Reid Hastie, 40 Am. U.L. Rev. 703, 703-04 (1991).

3. *Distorting the Law: Politics, Media and the Litigation Crisis*, William Haltom and Michael McCann, University of Chicago Press (2004).

4. *In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles, and Future in American Democracy*, Judge William L. Dwyer, Thomas Dunne Books, 2002.

Lewis O. Unglesby, founder of Unglesby Law Firm, L.L.C., in Baton Rouge, is nationally-known for his work with jury trials, with emphasis on criminal defense and personal injury. He is recognized by The Best Lawyers in America in five major practice areas. Martindale-Hubbell and the American



Board of Trial Advocates recognize him as a "premier trial attorney." His prosecution of cases in the field of product liability led to the complete abolition of three-wheelers, the installation of safety devices on fork lifts, and the recognition of diseases directly related to chemical exposure. He has been profiled on the television shows "Good Morning America" and "20/20," as well as in the New York Times, the Times Picayune, the Business Report, the Shreveport Journal and Tiger Rag. (lisa@unglesbylaw.com; 246 Napoleon St., Baton Rouge, LA 70802-5937)

Contrasting Professional Conduct Rule 4.2 with the First Amendment Right to Petition

By Scott L. Sternberg



Attorneys often deal with the government as the adverse party in representation. This presents an interesting quandary as the government — created by the people — can sometimes (often?) be adverse to a certain citizen's interest in law or in fact. Citizens have the right to petition their government, secured by the First Amendment to the United States Constitution.¹ The Louisiana Constitution of 1974 also expressly protects this right.²

Lawyers' representation of clients makes the right of citizens to petition the government much more complicated, particularly when an attorney is engaged but no litigation is pending. The right of a lawyer to represent a client before the government seems almost elementary. Attorneys often appear before governmental entities and meet with public officials, not necessarily as "registered lobbyists"³ but rather as advocates or dealmakers. However, what complicates these matters is the fact that often the public official or governmental entity is represented by an attorney as well.

Imagine that a client has asked his attorney to discuss pending legislation with a local parish council member in order to influence a policy outcome. The parish council is also represented by legal counsel since a designated parish attorney attends every meeting and every hearing to give legal advice as issues arise during the meetings. The parish attorney may not react well when he learns that his "client," the parish councilman, had engaged in unmonitored contact with another attorney, especially if litigation is a possibility. It is unlikely that the parish attorney would have much of an argument if the client simply had approached the council member and engaged him in a policy discussion, but this contact involves more direct, one-on-one advocacy separate and apart from the normal course of council meeting business.

The "No-Contact" Rule

Rule 4.2 of the Louisiana Rules of Professional Conduct, "Communication

with a Person Represented by Counsel," states, in pertinent part:

In representing a client, a lawyer shall not communicate about the subject of the representation with: (a) a person the lawyer *knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.⁴

Without a doubt, Rule 4.2 only applies to "the subject of the representation" and only communication about issues germane to the representation would offend.⁵ Every law student who has taken an ethics and professionalism class knows that the attorney is forbidden from talking to another attorney's client *ex parte*. Further, the rule doesn't just apply to litigation; rather, it "covers any person who is represented by an attorney in the matter."⁶

But the rule is easy to forget when there's no litigation pending. Even if no "tangible harm" results from the authorized communications with the adverse party, "Rule 4.2 is prophylactic in nature and is designed to preserve the sanctity of the attorney-client relationship."⁷

So, if a client requests an attorney's assistance, and the attorney knows the public official or body is represented by legal counsel, does the attorney need to first ask permission before approaching the official or other members of the body?

A First Amendment Right?

Nevertheless, Rule 4.2 is subject to limitations. The comments to the ABA Model Rule, which is identical to the Louisiana rule, reveal that the rule is, of course, limited to topics germane to the representation. They state, in relevant part:

"[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitu-

tional or other legal right to communicate with the government . . . The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule."⁸

But, as is often stated, the comments are not the law. So can an attorney communicate with a governmental official without running afoul of the Louisiana Rules of Professional Conduct?

The First Amendment to the United States Constitution secures the right of the people to "petition the Government for a redress of grievances." Ostensibly, the First Amendment right of a citizen to tell the government what he thinks about its practices or negotiate for political relief should trump the Rules of Professional Conduct. But is this the case? Not necessarily.

After all, the First Amendment does not prevent the state from regulating and even prohibiting commercial speech, such as solicitation, which merely "proposes a commercial transaction."⁹ Nevertheless, the U.S. Supreme Court held in *In re Primus* that the First and 14th Amendments can usurp the right of the state to regulate direct solicitation of clients, particularly when the alleged solicitation involved the exercise of "constitutionally protected expression and association" rights.¹⁰ In that case, Ms. Primus had sent a letter to a woman who she believed had been unconstitutionally sterilized in order to continue receiving Medicaid benefits. The Supreme Court held that, although "[t]he State is free to fashion reasonable restrictions with respect to the time, place, and manner of solicitation by members of its Bar," the actions of the attorney were merely associational and not solicitation which could be prohibited by the state bar association.¹¹

However, Rule 4.2 is not directed toward solicitation and it does not deal with associational rights either. In the problem at hand, the client hires counsel to help her achieve some policy goal before a governmental body. If the citizen did

this herself, there would be no question as to the applicability of the right to petition protected by the U.S. and Louisiana Constitutions. But, if she chooses to exercise her First Amendment right through the person of her attorney, the answer becomes a bit more complicated.

Louisiana Rulings

Not surprisingly, there is a dearth of Louisiana cases involving contact with a represented party — especially given that, as noted above, it's a pretty well known "no-no."

Louisiana's rulings often deal with details such as contact with a former employee of an adverse party (not covered by 4.2)¹² or a disciplinary proceeding for an attorney who ignores several warnings from opposing counsel not to contact his client (covered by 4.2).¹³

In re Pardue is the only case to tangentially approach the topic at hand but even its facts are distinguishable.¹⁴ In *Pardue*, the Louisiana Supreme Court suspended an attorney for three years, with all but a year and a day deferred, for multiple violations of the Rules of Professional Conduct. The attorney had pled guilty to filing a false tax return and charged by the Office of Disciplinary Counsel under Rule 8.4. *Pardue* also was charged by the Office of Disciplinary Counsel with violating Rule 4.2 because he "improperly communicated with a party represented by counsel" — in this case, a claims adjuster in the Louisiana State Office of Risk Management.¹⁵ That dispute was in litigation, and *Pardue* "thought [the adjuster] was an attorney," although his name did not appear on any pleadings.¹⁶ *Pardue* also contacted a state representative and asked him to contact the adjuster "in an effort to facilitate settlement."¹⁷

The Supreme Court focused on the false tax return, calling it a "serious crime," and noted that the Rule 4.2 "misconduct is relatively minor, and, standing alone, would probably justify no more than a reprimand."¹⁸ Indeed, Justice Lemmon, in dissent, noted that:

As to the second charge of improperly communicating with a party

represented by counsel, disciplinary counsel conceded at oral argument that "we would not be here" on this charge alone. Accordingly, I do not address the very troublesome question of whether an adjuster for a governmental agency is a "client" within the contemplation of Rule 4.2.¹⁹

Perhaps the most compelling distinction between *Pardue* and the instant question is that litigation was filed and the attorney representing the state was bypassed in furtherance of the client's settlement demand.

For the First Amendment advocate, *Pardue* is troubling. But it is clearly limited in scope. It involved direct contact with an adjuster working on the filed lawsuit between a plaintiff and the state as a defendant. As Justice Lemmon noted, there was a real question as to whether *Pardue*'s conversation with the adjuster and the state representative should be a Rule 4.2 violation. There is not any language in the opinion to determine whether the Supreme Court thought the contact with the adjuster or the state representative was dispositive of a violation. Admittedly, the adjuster is employed by the state and possesses the power to redress the client's grievances. Furthermore, what if the state representative represented *Pardue*'s plaintiff's district? Wouldn't the client be able to discuss his pending case against the state with his state representative as part of his right to petition the government to redress his grievances?

Other States' Rules and Rulings

Although Louisiana has not explicitly ruled that Rule 4.2 does not apply to the exercise of the constitutional right to petition, at least one court (in Maryland) has explicitly recognized that Model Rule 4.2 does not apply in the context of communications with government officials, albeit with some caveats.²⁰

In *Camden v. Maryland*, the U.S. District Court for the Southern District of Maryland held that a law firm had violat-

ed Rule 4.2 when it spoke with a former employee of a state university (a public body). This former claims investigator revealed confidential, attorney-client privileged information to the attorneys after they previously had been warned not to contact the employee while employed by the university. The attorneys did not inform the university that the employee had contacted the plaintiff's lawyers after being terminated from his job as an investigator. The unique circumstances convinced the judge that the actions disqualified the law firm since the fired investigator was like a former employee with confidential information of any private entity.²¹ However, the *Camden* court also explicitly stated that:

Insofar as a party's right to speak with government officials about a controversy is concerned, Rule 4.2 has been uniformly interpreted to be inapplicable. See 2 Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 4.2:109 (2d ed. Supps. 1991 & 1994); Charles W. Wolfram, *Modern Legal Ethics* § 11.6.2 (1986). It is questionable whether the authorities had the case of a public educational institution in mind when they crafted this governmental agency exception, particularly where the institution finds itself in the more corporation-like stance of employer rather than its role of enforcer of governmental mandates.²²

Camden stands for the proposition that, even though a court may say that Rule 4.2 is "uniformly . . . inapplicable," adverse consequences can still occur when the government finds itself acting more like a private corporation and less like a policy-implementing public arm. As compared to the instant situation, *Camden* seems to agree that when the government assumes the position of "enforcer of governmental mandates," Rule 4.2 does not apply to communication with that government.

Further, in New York, where the "Freedom of Information Law [inherently authorizes] such direct contact without

the prior consent of the government's lawyer," the no-contact rule has been held inapplicable.²³ But, New York has also held that, absent a statute to the contrary, contact with a government official who has power to settle a controversy violates the no-contact rule, much like the Louisiana decision in *In re Pardue*.²⁴

Several states have codified their stance on the matter, including California whose Rules of Professional Conduct contain a specific exception for "communications with a public officer, board, committee or body." Utah also allows contact so long as the attorney advises the government's lawyer of his representation beforehand.²⁵ The District of Columbia applies an exemption to First Amendment "redress of grievances" situations.²⁶ The D.C. Rules of Professional Conduct, Rule 4.2(d), state that: "[t]his rule does not prohibit communication by a lawyer with government officials who have the authority to redress the grievances of the lawyer's client, whether or not those grievances or the lawyer's communications relate to matters that are the subject of the representation, provided that in the event of such communications the disclosures specified in (b) are made to the government official to whom the communication is made."²⁷

Finally, the ABA itself has spoken on the issue, stating²⁸ that when a lawyer is representing a private party and is adverse to the government, he or she can communicate directly with a public official with the authority "to take or recommend action in the matter of communication," but only if the communication meets a two-part test. First, the communication must be for the purpose of addressing a policy issue. Second, the public official's lawyer must be given reasonable advance notice of the intent to communicate. Unless the communication satisfies the test, Rule 4.2 applies "in full force."²⁹

Solving the Ethical Dilemma

Attorneys Geoffrey C. Hazard, Jr. and Dana Remus Irwin, in their comment, "*Toward A Revised 4.2 No-Contact Rule*," argue that the current Rule 4.2 is not practical and that it should be

clarified to allow communications if the public official consents to the communication or if the communication is written and copied to government counsel. The idea behind Hazard's and Irwin's solution is simple: government officials are smart enough to know when they need a lawyer and when they do not.

However, Hazard's and Irwin's academic musings are just suggestions, leaving the practitioner with an ethical dilemma when a client asks the question at hand. The ABA's ruling is also a reasonable accommodation — it requires a genuine policy issue and that the government's lawyer be given notice. But without a clearer Rule 4.2, the answer is opaque. Can an attorney contact a public official, such as a board member of, say, a local charter school, in an attempt to settle a client's unfilled grievances with that board?

After laborious First Amendment jurisprudence, we know that "Congress shall make no law abridging . . ." doesn't actually mean "no law abridging."³⁰ If it did, there would be no question at all: petitioning the government for the redress of grievances — whether slight or monumental — would be left untouched by government action. Ultimately, although an attorney may think he or she stands on the higher constitutional ground, the best practice is to notify the government lawyer of the communication to ensure both counselors share the same opinion.

FOOTNOTES

1. U.S. Const. Amd. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (emphasis added)).

2. La. Const. Art. 1 § 9 ("No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.")

3. Lobbyists are required to register within five days of employment as a lobbyist with the Louisiana Board of Governmental Ethics. See La. R.S. 24:53. A "lobbyist" is defined by one whose principal duty (or that more than 20 percent of their compensated time) is to "act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement." La. R.S. 51(5)(a)(i).

4. La. State Bar Art. 16 RPC Rule 4.2.

5. *Id.*

6. 21 La. Civ. L. Treatise, Louisiana Lawyering § 9.3.

7. *In re Bilbe*, 02-1740 (La. 2/7/03), 841 So.2d 729, 739; (citing *State v. Gilliam*, 98-1320 (La. App. 4 Cir. 12/15/99), 748 So.2d 622, writ denied, 00-0493 (La. 9/29/00), 769 So.2d 1215.

8. Model Rule 4.2 cmt.

9. See, e.g., *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council*, 428 U.S. 748 (1976).

10. *In re Primus*, 436 U.S. 412, 421 (U.S. 1978).

11. *Id.* at 438.

12. *Jenkins v. Wal-Mart Stores, Inc.*, 956 F. Supp. 695 (W.D. La. 1997).

13. *In re Bilbe*, 02-1740 (La. 2/7/03), 841 So.2d 729.

14. 98-3017 (La. 3/26/99), 731 So.2d 224, *reinstatement granted*, 03-0294 (La. 4/4/03), 845 So.2d 353.

15. *Id.* at 225.

16. *Id.* at 226.

17. *Id.* at 225.

18. *Id.* at 227, n.7.

19. *Id.* at 228, n. 1.

20. *Camden v. Maryland*, 910 F. Supp. 1115, 1118 (D. Md. 1996).

21. *Id.* at 1123.

22. *Id.* at n. 8.

23. *Fusco v. City of Albany*, 509 N.Y.S.2d 763, 766 (Sup. Ct. 1986).

24. *Frey v. Department of Health & Human Serv.*, 106 F.R.D. 32, 35 (E.D.N.Y. 1985).

25. *Utah St. B. Opin.* 115 (1993).

26. D.C. Rules of Professional Conduct, Rule 4.2(d).

27. See generally *Restatement (Third) of Law Governing Law* § 101 (2000).

28. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 97-408 (1997).

29. See Geoffrey C. Hazard, Jr. and Dana Remus Irwin, "Toward A Revised 4.2 No-Contact Rule," 60 *Hastings L.J.* 797 (2009).

30. "The First Amendment's language leaves no room for inference that abridgements of speech and press can be made just because they are slight. That Amendment provides, in simple words, that 'Congress shall make no law . . . abridging the freedom of speech, or of the press.' I read 'no law . . . abridging' to mean no law abridging." *Smith v. California*, 361 U.S. 147, 157 (1959) (Black, J., concurring.).

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Book Review

The Cottoncrest Curse

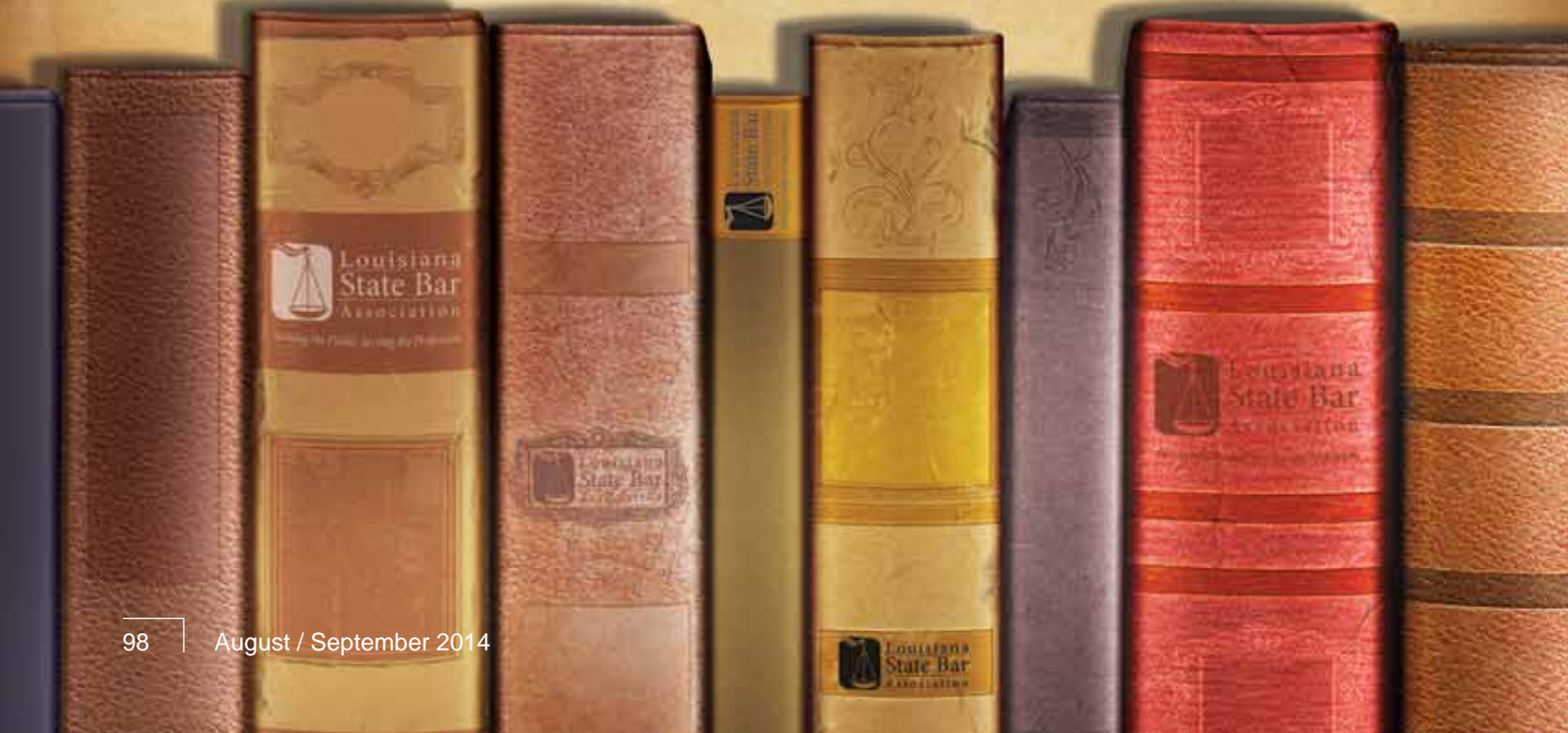
A Novel by Michael H. Rubin

Offering a Wild Ride Through Louisiana History

Reviewed by E. Phelps Gay

Anyone who has had the pleasure of attending one of Mike Rubin's CLE presentations knows he is not just an accomplished lawyer and scholar; he is a brilliant entertainer. Not for him the dry 60-minute lecture packed with citations to case law and statutes. No, he has a performer's need to spice things up with witty original songs and gyrating PowerPoint graphics. We come to learn, yes, but also to laugh. A long time ago, a Roman poet named Horace said the goal of poetry is not just to teach but also to delight. Mike Rubin got that Memo.

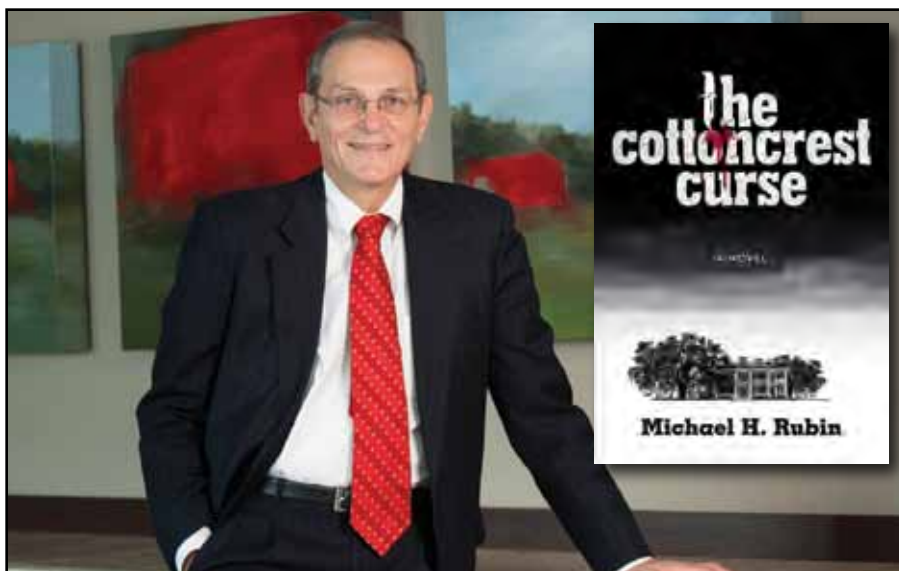
Now, at an age when many are slowing down, Mike is shifting into another, higher gear. Not content with having written numerous books and articles on topics ranging from collateral mortgages to conflicts of interest, nor with having composed countless songs, not to mention maintaining a busy law practice while teaching Security Devices at LSU Law Center, Mike has decided to write a novel. The result is a fascinating thriller steeped in our state's rich and sometimes lurid history, a book all Louisiana lawyers should enjoy.



Published by the award-winning Louisiana State University Press in September 2014, *The Cottoncrest Curse* centers around a grisly murder-suicide (or so it appears) which takes place at the Cottoncrest Plantation in Petit Rouge Parish on the west bank of the Mississippi River in 1893. “Whodunit” is the question, of course, and the answer unfolds in short, suspenseful chapters, during which we learn much about the victims, suspects and investigators. Colorful characters abound, from a patrician plantation owner named Colonel-Judge Augustine Chastaine to a bumbling sheriff’s deputy named Bucky; from a grizzled Civil War physician named Francois Cailleteau to a savvy and resourceful servant named Jenny; and from a fearless Cajun named Trosclair Thibodeaux to a multi-lingual immigrant from Czarist Russia named Jake Gold, who must hide his Jewish background during these racist and anti-Semitic times. I won’t spoil the plot, but trust me: this is a fun read, a page-turner likely to keep you up at night.

It is also a historically well-informed book. There are several references to the Battle of Port Hudson in 1863, where Colonel-Judge Chastaine sustained injury, Dr. Cailleteau amputated more than a few Confederate limbs, and the Corps d’Afrique fought valiantly for the Union side. Louis Martinet, practicing law in New Orleans, makes a cameo appearance and deals rather amusingly with the aforementioned sheriff’s deputy. The plight of sharecroppers who are paid poorly and can’t get credit at the plantation store is movingly portrayed. Most importantly, the “passenger car” case of Homer Adolph Plessy v. J.H. Ferguson, which was meant to fulfill the promise of the 14th Amendment but (as we know) wound up setting back the cause of racial justice for generations, plays a key role. Indeed, the book’s climactic scene takes place on one of that train’s Jim Crow cars as it makes its way from New Orleans around Lake Pontchartrain toward Hammond.

For lawyers there are occasional references to the Louisiana Civil Code, including changes to the 1870 Code allowing workers to seize and sell a plantation and use the proceeds to pay their wages. Mike points out that such changes were enacted during the Reconstruction-era administrations of P.B.S. Pinchback and C.C. Antoine



Michael H. Rubin, former Louisiana State Bar Association president and author of the novel *The Cottoncrest Curse*. The official release date of *The Cottoncrest Curse* is Sept. 10, 2014. For more information on purchases, go to Amazon’s website at www.amazon.com.

over the objections of white planters. Clearly, the author knows his way around Louisiana legal history. Seamlessly, he weaves this knowledge into the fabric of the story.

I should add that this is a “bloody” tale, not for the faint of heart. There are sharp knives, slit throats and blood dripping down staircases. People get shot, punched and mistreated; rats and maggots crawl over and into dead bodies. No punches are pulled in portraying the racism and anti-Semitism of the times. The Klan-like White Knights of the Camellia “ride” around the parish one terrifying night. Jake Gold’s status as a Jew, when revealed, provokes all kinds of vile, ignorant comments. Mixed into this gumbo, however, is a good dose of comic relief, largely from the aforementioned sheriff’s deputy who wants to be regarded as important but never succeeds. Given its exotic nature, I kept thinking the book would make an outstanding movie — directed, perhaps, by Quentin Tarantino.

One delightful feature of the book is the regular insertion of French and Yiddish sayings. Two examples: One character says: “*La pauvreté n’est pas un deshonneur; mais c’est une fichue misère.*” He explains: “It just means that poverty is not a sin, but it is a mighty inconvenience.” And from the Yiddish: “*Az me est chazzer, zol rinnen fun bord.*” Translated: “If you’re going to do something wrong, enjoy it.”

As befits any good murder mystery, *The Cottoncrest Curse* is skillfully and intricately plotted. Its short, punchy chap-

ters, picking up various strands of the plot, sometimes shifting to a different time and place, give you just enough information to wonder what happens next. Eventually, all strands are tied up and secrets are revealed.

Through it all, the writing is sharp, vivid and compelling. It is one thing to be a good lawyer and legal brief writer; one would expect as much from a person with Mike’s education and abilities. It is quite another to display a novelist’s ear for language and eye for physical description, to enliven the prose with arresting images, apt similes and metaphors. Here I should add (much too belatedly) that Mike’s talented wife Ayan, to whom the novel is dedicated, not only “edited and re-edited” the book, she also helped to write it, as Mike acknowledges at the outset. Between them, they have produced exactly what a novel is supposed to be: a good story, well told.

E. Phelps Gay has practiced law for 34 years at the firm of Christovich & Kearney, L.L.P. He also is affiliated with the mediation/arbitration firm, Patterson Resolution Group. He obtained his undergraduate degree from Princeton University in 1975 and his JD degree from Tulane Law School in 1979. He is a member of the Louisiana State and Texas Bar Associations. He served as president of the Louisiana State Bar Association during the 2000-2001 term. (epgay@christovich.com; Ste. 2300, 601 Poydras St., New Orleans, LA 70130)





2014-15 Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr. addresses the audience during the Installation Dinner at the 2014 Annual Meeting in Destin, Fla. *Photo by Matthew Hinton Photography.*



The 2014-15 Louisiana State Bar Association Board of Governors at the 2014 Annual Meeting in Destin, Fla. Back row, from left: Patrick A. Talley, Jr., Mickey S. deLaup, John M. Church, S. Jacob Braud, C. Kevin Hayes, Blake R. David, John E. McAuliffe, Jr., Marguerite L. (Peggy) Adams, Thomas M. Hayes III, Julie Hayes Ferris, J. Lee Hoffoss, Jr. and Michael E. Holoway. Front row, from left: Treasurer Robert A. Kutcher, David W. Leefe, Alainna R. Mire, Karelia R. Stewart, President-Elect Mark A. Cunningham, President Joseph L. (Larry) Shea, Jr., Immediate Past President Richard K. Leefe, Shayna L. Sonnier, Secretary Barry H. Grodsky and John M. Frazier.

LSBA Installs 2014-15 Officers and Board of Governors at Annual Meeting

The Louisiana State Bar Association's (LSBA) 2014-15 officers and members of the Board of Governors were installed June 5, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

Joseph L. (Larry) Shea, Jr. was installed as the 74th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Shea is a member in the Shreveport office of Bradley Murchison Kelly & Shea, L.L.C.

Mark A. Cunningham, a partner in the New Orleans office of Jones Walker, L.L.P., was installed as 2014-15 president-elect. He will assume the presidency in 2015-16.

Barry H. Grodsky, a partner in the New Orleans firm of Taggart Morton, L.L.C., is serving his second year of a two-year term as secretary. He also serves as editor of the *Louisiana Bar Journal*.

Robert A. Kutcher, a partner in the Metairie firm of Chopin, Wagar, Richard & Kutcher, L.L.P., was installed as 2014-16 treasurer (a two-year term).

Richard K. Leefe, a senior partner in the Metairie firm of Leefe Gibbs Sullivan

& Dupré, L.L.C., will continue his service to the LSBA as 2014-15 immediate past president.

J. Lee Hoffoss, Jr., a partner in the Lake Charles firm of Hoffoss Devall, L.L.C., was installed as 2014-15 chair of the LSBA Young Lawyers Division.

Members of the 2014-15 Board of Governors also were installed by Chief Justice Johnson.

First District

► **David W. Leefe**, a shareholder in the New Orleans office of Liskow & Lewis, P.L.C.

► **Patrick A. Talley, Jr.**, a partner in the New Orleans office of Phelps Dunbar, L.L.P.

Second District

► **John E. (Eddie) McAuliffe, Jr.**, an attorney in the Metairie office of Frederick A. Miller & Associates.

Third District

► **Blake R. David**, founding partner of the Lafayette firm of Broussard & David, L.L.C.

Fourth District

► **Shayna L. Sonnier**, a partner in the Lake Charles firm of Hunter, Hunter & Sonnier, L.L.C.

Fifth District

► **Michael E. Holoway**, a partner in the Covington office of Milling Benson Woodward, L.L.P.

► **C. Kevin Hayes**, a capital partner in the Baton Rouge office of Adams and Reese, L.L.P.

Sixth District

► **Robert G. Levy**, a partner in the Alexandria firm of LaCroix, Levy & Barnett, L.L.C., and an assistant district attorney for the 9th Judicial District.

Seventh District

► **Thomas M. Hayes III**, a partner in the Monroe firm of Hayes, Harkey, Smith & Cascio, L.L.P.

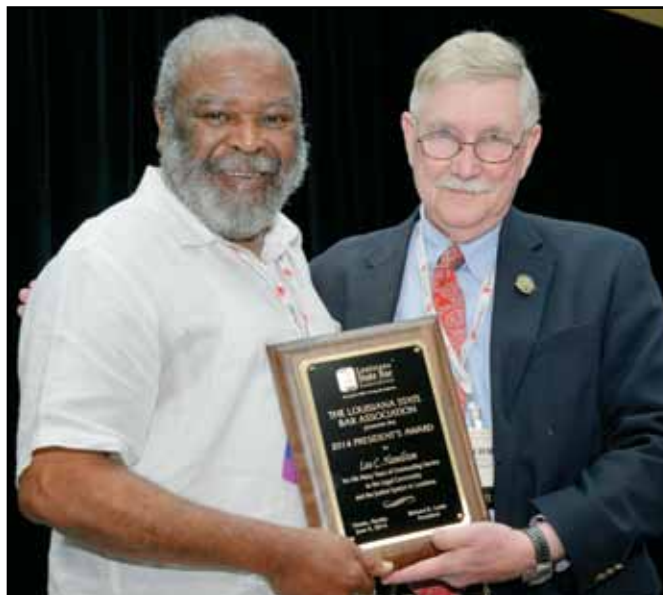
Eighth District

► **Karelia R. Stewart**, Shreveport, a prosecutor in the Caddo Parish District At-

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Timothy F. Averill, left, is presented with the President's Award by 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.



Leo C. Hamilton, left, is presented with the President's Award by 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Three LSBA Members Receive President's Awards

Three Louisiana State Bar Association (LSBA) members (one recognized posthumously) received 2014 President's Awards during the Annual Meeting in June. All recipients were chosen by 2013-14 LSBA President Richard K. Leefe and were recognized for various services to the Association.

Timothy F. Averill of Mandeville was recognized for his years of service to the Louisiana Supreme Court and the state's justice system. From 2011 through February 2014, he served as the Supreme Court's judicial administrator and chief executive officer of the Judiciary Commission of Louisiana. He was involved in several initiatives of importance to the LSBA, including the adoption of the Rules for Lawyer Disciplinary Enforcement and significant changes to the Code of Judicial Conduct, the Rules of Professional Conduct and the Bar Admission Rules. He received a BA degree in 1979 from James Madison University, a master of public administration degree in 1980 from the University of Alabama and a JD degree in 1985 from

Loyola University College of Law.

Leo C. Hamilton of Baton Rouge was recognized for his years of service to Louisiana's legal community and justice system. He is a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P. He represents the City of Alexandria and Pointe Coupee Parish and is general counsel for the Louisiana Community and Technical College System. He received his BA degree and his JD degree from Louisiana State University and its Paul M. Hebert Law Center. Hamilton was the 2013-14 president of the Louisiana Bar Foundation. He is chair of the LSBA's Bill of Rights Section and a member of the LSBA's House of Delegates. He is a past president of the Baton Rouge Bar Association. He serves as a council member of the Louisiana State Law Institute and is a member of the Louisiana Indigent Defender Assistance Board.

Mark A. Moreau of New Orleans was recognized (posthumously) for his years of service as a public interest advocate. From 1988-2003, he was executive director of

the New Orleans Legal Assistance Corp. When that program merged with Southeast Louisiana Legal Services (SLLS) in 2003, he became co-executive director, serving until 2013. He received a bachelor's degree from Brown University and his law degree from Buffalo University. In 1982, he earned his master in law degree in taxation. His Hurricane Katrina-related housing work earned him and the SLLS staff an award in 2009 from the U.S. Department of Housing and Urban Development. He recently co-authored the "2013 Louisiana Legal Services and Pro Bono Desk Manual." He served on the boards of the New Orleans Pro Bono Project, the Louisiana Civil Justice Center, the Family Justice Center and the Multi-Service Center for the Homeless. He was a member of the Louisiana Supreme Court Task Force for Self-Represented Litigants and the LSBA's Access to Justice Committee.

To read the recipients' full profiles, go to: www.lsba.org/goto/2014LSBA Awards.



2013-14 President Richard K. Leefe, left, presents Barry H. Grodsky with the Distinguished Service to the Profession Award during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Grodsky Receives Distinguished Service to the Profession Award

New Orleans attorney Barry H. Grodsky received the Louisiana State Bar Association's (LSBA) Distinguished Service to the Profession Award for his years of service as chair of the LSBA's Committee on the Profession. The award was presented during the Annual Meeting in June.

Grodsky is a partner in the New Orleans firm of Taggart Morton, L.L.C. He received a BBA degree, with honors, in 1979 from the University of Texas-Austin and his JD degree in 1982 from Tulane Law School.

He is the 2013-15 LSBA secretary and editor of the *Louisiana Bar Journal*. He represented the First Board District on the LSBA's Board of Governors and chairs the LSBA's Committee on the Profession. He has coordinated several law school professionalism programs for the Bar. In 2009, he accepted the American Bar Association's Smythe Gambrell Professionalism Award on behalf of the Committee on the Profession. He is a member of the Bar Governance Committee and serves on the LSBA Fee Arbitration Panel. He received the LSBA's President's Award in 2008 and 2010.



Hon. Fredericka Homberg Wicker, left, accepted the 2014 Kimball Award on behalf of Hon. Jules D. Edwards III with 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Judge Edwards Receives 2014 Kimball Award

Hon. Jules D. Edwards III of Lafayette is the recipient of the 2014 Catherine D. Kimball Award for Advancement of the Administration of Justice. The award was presented during the Louisiana State Bar Association's Annual Meeting in June.

Judge Edwards presides over Division B of the 15th Judicial District Court in Lafayette. He received his BA and JD degrees from Loyola University, a master of public administration degree from Louisiana State University in Baton Rouge, and a master of strategic studies degree from the U.S. Army War College.

He has served as chief judge and is a pioneer in the Drug Treatment Court movement. He is vice chair of the Judiciary Commission of Louisiana, works with the Louisiana Sentencing Commission, is first vice president of the Louisiana District Judges Association, and has served as an indigent defender attorney, assistant district attorney, and counsel to the Senate's Select Committee on Crime and Drugs. He is a partner in the law firm of Edwards and Edwards.



Jaimmé A. Collins, a partner at Adams and Reese, accepted the 2014 Human Rights Award on behalf of Adams and Reese. She is pictured with 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.



Lynn Luker is presented with the 2014 Human Rights Award by 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Attorney, Law Firm Receive 2014 Human Rights Awards

New Orleans attorney **Lynn Luker** and the New Orleans office of **Adams and Reese, L.L.P.**, received 2014 Human Rights Awards, presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

Lynn Luker, owner of Lynn Luker & Associates, L.L.C., in New Orleans, is committed to working toward inclusion within the legal profession. After graduation from Tulane Law School, she systematically built trial teams that included women attorneys and has mentored those inside and outside her firm. A trained LSBA diversity speaker, she conducts diversity and inclusion training across Louisiana. She is chair of the National Association of Minority and Women Owned Law Firms. In the 1980s, she co-founded the "Mommy Malpractice Avoidance Club," a diverse group of women who supported each other's efforts to balance the demands of being a good mother and being a good lawyer.

In 2015, Luker will celebrate 30 years of teaching at Tulane Law School as co-director of Trial Ad and the Civil Pre-Trial Litigation Boot Camp. She has been instrumental in fundraising for Tulane's Black Law Students Association's Moot Court team. She has been trained on "undoing racism" by The People's Institute for Survival and Beyond. She also has been trained by the Industrial Areas Foundation, a faith-based organization working for racial reconciliation.

The **Adams and Reese, L.L.P.**, Diversity Committee is comprised of the Diversity Committee chair, the recruiting partner, the

partner for associates, an Executive Committee appointee, three Practice Group leaders, the chief marketing officer and additional representatives throughout the firm. The Minority Attorney Committee develops and promotes diversity through events targeted to minority attorneys, clients and the community. The committee has coordinated minority receptions in conjunction with the New Orleans Jazz and Heritage Festival, the Bayou Classic and the Essence Music Festival, as well as sponsorships including the Urban League, Diversity Summits, Black Business Networks, Minority Bar Association events, National Minority AIDS Council efforts, and endowed professorships and scholarships at historically black universities.





Brian D. Lenard, left, is presented with the 2014 McKay Award by 2013-14 President Richard K. Leefe during the Pro Bono Awards Ceremony on May 20 at the Louisiana Supreme Court. *Photo by Matthew Hinton Photography.*

Lenard Receives 2014 McKay Award

Attorney Brian D. Lenard of Hammond received the 2014 Leah Hipple McKay Memorial Award for Outstanding Volunteerism. The award was presented during the Access to Justice Department's Pro Bono Publico and Children's Law Awards ceremony in May.

Lenard served as executive director of Southeast Louisiana Legal Services for 36 years, retiring in May 2014.

In 1982, he joined the board of the Southeast Spouse Abuse Program, a non-profit domestic violence prevention and intervention program serving four parishes. He worked with the program for nearly three decades, also serving as the president and treasurer.

Also in 1982, he joined the Tangipahoa Social Services Council, serving in various leadership capacities for nearly 25 years, including as board chair and secretary. He also chaired the agency's United Way Committee and Resource Directory Committee.

Lenard was appointed to the board of the National Center for Survivor Agencies and Justice (CSAJ) in 2009. He currently serves as board president. CSAJ provides technical assistance to the national network of more than 200 legal agencies receiving funding from the Office of Violence Against Women and the U.S. Department of Justice.



From left, Hon. C. Wendell Manning, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, C. Jefferson Manning III and Mark A. Cunningham. C. Jefferson Manning III was presented with the 2014 Civics in Action Award at the 2014 Annual Meeting. *Photo by Matthew Hinton Photography.*

High School Senior Receives 2014 Civics in Action Award

C. Jefferson Manning III of Monroe received the 2014 Civics in Action Award, presented by the Louisiana Center for Law and Civic Education. The award was presented during the Louisiana State Bar Association's Annual Meeting in June.

Manning is a 2014-15 senior at St. Frederick Catholic High School in Monroe. His school activities include the National Honor Society, class president for ninth, 10th and 11th grades, Interact Club, state officer of the Future Business Leaders of America and varsity basketball and golf teams. He has won several awards for public speaking.

He was a state finalist for the Richard D. Clanton Scholarship, served on the Congressional Youth Leadership Council in Washington, D.C., was the Louisiana delegate for the National Young Leaders Southern Regional Conference, and is a member of the Louisiana All-District Academic Basketball Team.

Manning is a council member for the Louisiana Legislative Youth Advisory. He is the creator and chair of "Louisiana's Largest King Cake Fundraisers," which raised funds for a homeless shelter and food pantry. He also chairs the Senior Citizen Pneumonia Awareness Campaign Community Service Project.



From left, 2014-15 LSBA President Joseph L. (Larry) Shea, Jr., Louisiana Supreme Court Justice Greg G. Guidry, C. Jefferson Manning III and his father Hon. C. Wendell Manning at the Louisiana Center for Law and Civic Education reception. *Photo by Matthew Hinton Photography.*



Dona K. Renegar, Secretary Barry H. Grodsky and Scott T. Whittaker during the General Assembly at the 2014 Annual Meeting. Renegar and Whittaker were awarded with the 2014 Stephen T. Victory Memorial Award recognizing their work on their collaborative article "The Cause and Effect of Recent Changes to the Louisiana Bar Examination." Photo by Matthew Hinton Photography.

Two Attorneys Receive 2014 Victory Memorial Award

Attorney **Scott T. Whittaker** of New Orleans and attorney **Dona K. Renegar** of Lafayette received the 2014 Stephen T. Victory Memorial Award, recognizing outstanding contributions to the *Louisiana Bar Journal*. The award was presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

They were recognized for their article, "The Cause and Effect of Recent Changes to the Louisiana Bar Examination," published in the August/September 2013 issue.

Whittaker, a member of Stone Pigman Walther Wittmann, L.L.C., in New Orleans, received the LSBA's President's Award in 2011 for his service as chair of the two LSBA special committees seated to study the proposed changes to the Louisiana Bar Exam. He received his undergraduate degree, *cum*

laude, in 1982 from Tulane University and his JD degree, *magna cum laude*, in 1984 from Tulane Law School. He is a former chair of the Louisiana Supreme Court's Committee on Bar Admissions.

Renegar, a member in the Lafayette office of Huval, Veazey, Felder & Renegar, L.L.C., served as the Third District representative on the LSBA's Board of Governors. She also served in the LSBA's House of Delegates and as chair of the LSBA's Young Lawyers Division. She received two BA degrees in 1988 in English and French, both from the University of Louisiana-Lafayette, and her JD degree in 1992 from Tulane Law School. She served on the two LSBA special committees seated to study the proposed changes to the Louisiana Bar Exam.

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torney's Office and section chief of the Drug Division in the District Attorney's Office.

At-Large Members

► **Julie Hayes Ferris**, an attorney in Baton Rouge.

► **Mickey S. deLaup**, owner of Mickey S. deLaup, A.P.L.C., in Metairie.

► **John M. Frazier**, a shareholder in the Shreveport law firm of Wiener, Weiss & Madison, A.P.C.

Louisiana State University Paul M. Hebert Law Center

► **John M. Church**, Baton Rouge, professor of law at Louisiana State University Paul M. Hebert Law Center.

Tulane University Law School

► **Ronald J. Scalise, Jr.**, New Orleans, vice dean for academic affairs and the A.D. Freeman Professor of Civil Law at Tulane Law School.

Louisiana State Law Institute

► **Marguerite L. (Peggy) Adams**, a shareholder in the New Orleans office of Liskow & Lewis, P.L.C.

House of Delegates Liaison Committee

► Chair **Alainna R. Mire**, an assistant attorney for the Alexandria City Attorney's Office.

► Member **S. Jacob Braud**, a partner in the Belle Chasse firm of Ballay, Braud & Colon, P.L.C.

► Member **Sandra K. Cosby**, an attorney in the Metairie firm of Frederick A. Miller & Associates.



2013-14 LSBA President Richard K. Leefe pins the president's pin onto 2014-15 LSBA President Joseph L. (Larry) Shea, Jr., at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.



2014-15 LSBA President Joseph L. (Larry) Shea, Jr., Louisiana Supreme Court Justice Jeffrey P. Victory and former Supreme Court Chief Justice Pascal F. Calogero, Jr. during the Supreme Court Reception at the 2014 Annual Meeting. All photos by Matthew Hinton Photography.



Louisiana Supreme Court Justice John L. Weimer and Darrel J. Papillion during the Supreme Court Reception at the 2014 Annual Meeting.



2014-15 LSBA President Joseph L. (Larry) Shea, Jr. and Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Supreme Court Reception at the 2014 Annual Meeting.



Warren A. Perrin accepted the 2014 John Ashby Hernandez III Memorial Award for Francophone Leadership on behalf of Professor Olivier Moreteau with 2013-14 President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.



From left, LBF President Hon. C. Wendell Manning, Charles F. Gay, Jr., and 2013-14 LSBA President Richard K. Leefe during the General Assembly at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Gay Receives 2014 Boisfontaine Award

Attorney Charles F. Gay, Jr. of New Orleans received the Curtis R. Boisfontaine Trial Advocacy Award, presented by the Louisiana Bar Foundation. The award was presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June. He received a plaque and \$1,000 was donated to The Pro Bono Project in his name.

Gay is a partner in the New Orleans office of Adams and Reese, L.L.P., currently serving as a member of the firm's Pharmaceuticals and Products Liability Team of the

Litigation Practice Group. He also works with the Healthcare Litigation Group.

He is a member of the American College of Trial Lawyers, the International Society of Barristers and the Louisiana Bar Foundation. He is a former chair of the International Association of Defense Counsel's Pharmaceutical-Medical Device Committee. Gay has served as chair of the LSBA's Legal Malpractice Insurance Committee and has co-chaired the LSBA's Medical-Legal Interprofessional Committee.

Law Professor Receives Award for Francophone Leadership

Professor Olivier Moréteau of Baton Rouge received the 2014 John Ashby Hernandez III Memorial Award for Francophone Leadership. The award was presented during the Louisiana State Bar Association's Annual Meeting in June.

Professor Moréteau joined the Louisiana State University faculty in 2005, when he was named the first holder of the Russell B. Long Eminent Scholars Academic Chair. He is the director of the Center of Civil Law Studies, the editor-in-chief of the *Journal of Civil Law Studies* and the associate vice chancellor for international programs.

Hereceived his Ph.D., *summa cum laude*, at the Université Jean Moulin in 1990. He has authored and edited books in French and English, and written articles in various languages on the civil law, common law, comparative law, law and languages, tort law, the law of obligations and legal education. He is a member of the International Academy of Comparative Law, the European Group on Tort Law, the European Centre of Tort and Insurance Law, the Société de Législation comparée, the American Law Institute, the Louisiana Bar Equivalency Panel and the Louisiana Bar Foundation.



2014-15 LSBA YLD officers and council are sworn in by Judge David A. Ritchie at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

YLD's 2014-15 Officers, Council Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2014-15 officers and council members were installed June 2, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

J. Lee Hoffoss, Jr. of Lake Charles was installed as 2014-15 Division chair by Judge David A. Ritchie, 14th Judicial District Court, Division E. Hoffoss is a partner in the Lake Charles firm of Hoffoss Devall, L.L.C.

Also sworn in as officers were Chair-Elect **Erin O. Braud**, staff counsel for Liberty Mutual Insurance Co. (Law Offices of Robert E. Birtel) in Metairie (she will assume the chair's position in 2015-16); Secretary **Scotty E. Chabert, Jr.**, an assistant district attorney for the 18th Judicial District and a partner in the Baton Rouge law firm of Saunders & Chabert; and Immediate Past Chair **Kyle A. Ferachi**, a partner in the Baton Rouge office of McGlinchey Stafford, P.L.L.C.

Judge Ritchie also installed members of the 2014-15 YLD Council.

District 1: Dylan T. Thriffiley, an associate in the New Orleans office of Kean Miller, L.L.P.; and James E. (Jimmy) Courtenay, a partner in the New



2013-14 LSBA YLD Chair Kyle A. Ferachi and 2014-15 LSBA YLD Chair J. Lee Hoffoss, Jr. at the YLD reception at the 2014 Annual Meeting. Photo by Matthew Hinton Photography.

Orleans office of Deutsch, Kerrigan & Stiles, L.L.P.

District 2: Jason M. Baer, a partner in the Metairie office of Hailey, McNamara, Hall, Larman & Papale, L.L.P.; and Jennifer Z. Rosenbach, Gretna, an assistant district attorney with the Jefferson Parish District Attorney's Office.

District 3: Kassie L. Hargis, a law clerk for Judge John R. Walker, 32nd Judicial District Court, Houma (Terrebonne Parish).

District 4: Lynsay M. Fontenot, an associate in the Lake Charles firm of Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P.

District 5: Bradley J. Tate, tax manager for the firm of Postlethwaite & Netterville in Baton Rouge; and Kristi W. Richard, an associate in the Baton Rouge office of McGlinchey Stafford, P.L.L.C.

District 6: Christie C. Wood, an associate in the firm of Faircloth Melton, L.L.C., in Alexandria.

District 7: Ashley L. Smith, Monroe, a law clerk for Judge Sharon I. Marchman and Judge James H. Boddie, Jr. with the 4th Judicial District Court, Ouachita and Morehouse parishes.

District 8: Jerry Edwards, Jr., a director in the Shreveport firm of Blanchard, Walker, O'Quin & Roberts.

At-Large Representative: Kellen J. Mathews, an associate in the Baton Rouge office of Adams and Reese, L.L.P.

American Bar Association Young Lawyers Division Representative: Cristin G. Fitzgerald, a member/partner in the New Orleans firm of Fitzgerald & Brown, L.L.C.

Young Lawyer Member/American Bar Association House of Delegates: Ryan M. McCabe, an associate in Steeg Law Firm, L.L.C., in New Orleans.



Victor J. Suane, Jr., left, is presented with the Outstanding Young Lawyer Award by 2013-14 LSBA YLD Chair Kyle A. Ferachi during the YLD Chair's Reception at the 2014 Annual Meeting. All photos by Matthew Hinton Photography.



Lynsay M. Fontenot, left, is presented with the Bat P. Sullivan, Jr. Chair's Award by 2013-14 LSBA YLD Chair Kyle A. Ferachi during the YLD Chair's Reception at the 2014 Annual Meeting.



2013-14 LSBA YLD Chair Kyle A. Ferachi, left, presents Seth T. Mansfield with the YLD Pro Bono Award during the YLD Chair's Reception at the 2014 Annual Meeting.

Attorneys, Bar Associations Receive 2014 LSBA YLD Awards

Five Louisiana State Bar Association (LSBA) members and two local Bar Associations received 2014 LSBA Young Lawyers Division (YLD) awards. The awards were presented by 2013-14 YLD Chair Kyle A. Ferachi of Baton Rouge and other YLD Council members during a June 2 ceremony, held in conjunction with the LSBA's Annual Meeting in Destin, Fla.



2013-14 LSBA YLD Chair Kyle A. Ferachi, right, presents the Baton Rouge Young Lawyers Section with the Service to the Public Award With him are Scotty E. Chabert, Jr. and Ann K. Gregorie.

► Outstanding Young Lawyer Award

Victor J. Suane, Jr., a partner in the Baton Rouge office of Kean Miller, L.L.P., received the Outstanding Young Lawyer Award. He received his BA degree in business administration in 1998 from Rhodes College and his JD degree, *cum laude*, in 2007 from Southern University Law Center (a member of the *Southern University Law Review*).

Active in the Baton Rouge Bar Association (BRBA), he served as a member of the Young Lawyers Section Council and chaired the Belly Up with the Bar Committee. He received the BRBA's 2013 President's Award. He is a past president of the Louisiana School for the Deaf Foundation and a board member of Cancer Services of Greater Baton Rouge. From 2007-09, he was the Kean Miller Team co-captain of the Alzheimer's Services of the Capital Area "Walk to Remember." He currently volunteers with the Kean Miller Dictionary Project and the BRBA Easter Egg Hunt at Buchanan Elementary School.

► Bat P. Sullivan, Jr. Chair's Award

Two Chair's Awards were presented.

Lynsay M. Fontenot, an associate in the Lake Charles firm of Stockwell, Sievert, Viccello, Clements & Shaddock, L.L.P.,

received a BS degree in risk management and insurance in 2002 from Florida State University and her JD degree in 2006 from Louisiana State University Paul M. Hebert Law Center. She was a member of the 2011-12 Leadership LSBA Class and co-chaired the 2012-13 Leadership LSBA Class. She is a representative on the LSBA YLD Council. She is a member of the Junior League of Lake Charles and "Fusion Five," a young

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2013-14 LSBA YLD Chair Kyle A. Ferachi, right, presents the Lafayette Young Lawyers Association with the Service to the Bar Award. With him is Lafayette Bar President Tricia R. Pierre.



2013-14 LSBA YLD Chair Kyle A. Ferachi, left, presents Lawrence Centola III with a plaque for his service as YLD Immediate Past Chair during the YLD Chair's Reception at the 2014 Annual Meeting.



2013-14 LSBA YLD Chair Kyle A. Ferachi presents Erin O. Braud, left, with a plaque for her service as YLD Secretary during the YLD Chair's Reception at the 2014 Annual Meeting.



2013-14 LSBA YLD Chair Kyle A. Ferachi, left, presents J. Lee Hoffoss, Jr. with a plaque for his service as YLD Chair-Elect during the YLD Chair's Reception at the 2014 Annual Meeting.

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professionals' organization sponsored by the Chamber of Southwest Louisiana.

Sara B. Rodrigue, an associate in the Lafayette firm of NeunerPate, received her bachelor of arts and sciences degree in 2005 from Nicholls State University and her JD degree in 2009 from Louisiana State University Paul M. Hebert Law Center. She served as a representative on the LSBA's YLD Council and co-chaired the LSBA YLD's High School Mock Trial Competition. She is a member of the Lafayette Bar Association and the Acadiana Inn of Court. She received the 2011 Lafayette Volunteer Lawyers Outstanding Attorney Award. She participates in the Big Brothers Big Sisters of Acadiana.

► Hon. Michaelle Pitard Wynne Professionalism Award

Mackenzie S. Ledet, an associate in the Baton Rouge office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., received the Hon. Michaelle Pitard Wynne Professionalism Award.



Louisiana Attorney General Buddy Caldwell, left, talks with former LSBA President Frank X. Neuner, Jr. at the YLD Chair's Reception during the 2014 Annual Meeting.

sionalism Award. She practices in general commercial and business litigation, health care litigation, insurance defense, gaming and other regulatory matters. She is a lobbyist registered with the Louisiana Board of Ethics (Executive Branch and Legislative Branch).

Ledet has experience in state and federal politics as a head page to former Presidents of the Louisiana State Senate, Sen. John Hainkel, Jr. of New Orleans and Sen. Donald Hines of Bunkie, and as a staff assistant to U.S. Congressman Charles W. Boustany Jr., M.D., in Washington, D.C. She worked as a criminal prosecutor in the Louisiana Department of Justice, Office of the Attorney General, and obtained the first conviction under Louisiana's movie bootlegging law. She is a member of the Federal Bar Association, the American Bar Association and the Baton Rouge Bar Association's Young Lawyers Section Council.

► Pro Bono Award

Seth T. Mansfield, an associate in the Lafayette firm of NeunerPate, received the Pro Bono Award. He joined the law firm in 2012 after graduating from Louisiana State University Paul M. Hebert Law Center. He received a BS degree in criminal justice from the University of Louisiana at Lafayette, and a MS degree in criminal justice from the University of Cincinnati. Prior to attending law school, he worked as a deputy in the Patrol Division of the Lafayette Parish Sheriff's Office.

He is a member of the Lafayette Bar Association, the Lafayette Young Lawyers Association and the John M. Duhe, Jr. American Inn of Court. He participates in the Homeless Experience Legal Protection (HELP) Program and was presented with

the Outstanding Attorney Award from the Lafayette Volunteer Lawyers in 2013.

► Service to the Public Award

The **Baton Rouge Bar Association Young Lawyers Section's** Holiday Star Project works with 12 Baton Rouge social services agencies to provide children in need a brighter Christmas. The children assisted by the project include those with serious illnesses to those who are visually impaired, and from underprivileged children in early Head Start programs to those born HIV-positive or exposed to AIDS. The Holiday Star Project is in its 22nd year.

► Service to the Bar Award

The **Lafayette Young Lawyers Association (LYLA)** hosted its first Young Lawyers' CLE Program in November 2013. About 30 young lawyers earned 3 hours of CLE credit while engaging in discussions about courtroom "dos and don'ts," the importance of maintaining professionalism in practice, and creating strong working relationships. Because of the first program's success, the LYLA hosted a second CLE in spring 2014.



2013-14 YLD Chair Kyle A. Ferachi, left, and 2013-14 LSBA President Richard K. Leefe during the YLD Chair's Reception during the 2014 Annual Meeting.

2015 Expert Witness, Consultant and Legal Services Directory

The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2014/January 2015 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA website.

- ▶ Reach 22,000+ practicing attorneys
- ▶ Listings indexed **THREE** ways: alphabetical, geographical and by category
- ▶ View last year's publication at www.lsba.org/goto/expertwitness

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- ▶ Display ads must be provided camera-ready in PDF format, black and white only.
- ▶ For text/CV ads, supply text in an editable word-processing format.
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- ▶ Email or mail ads on a disk to the addresses provided below.
- ▶ **DON'T FORGET TO PROVIDE YOUR 5 INDEXING CATEGORIES.**

Contact Info, Deadlines & Pricing

To reserve space in the directory, mail and/or e-mail your display ad or text listing/photo and check (payable to the Louisiana State Bar Association) to:

Communications Assistant Krystal Bellanger Rodriguez
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404
email: kbellanger@lsba.org

If you prefer to charge your listing (Visa, Mastercard or Discover only), please contact Krystal at (504)619-0131 or (800)421-5722, ext. 131.

	Early Bird Deadline Sept. 12, 2014	Final Deadline Oct. 17, 2014
½-page	\$400	\$475
Full-page	\$725	\$850

Note to Lawyer/Law Firm Advertisers: Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements — unless specifically exempt under Rule 7.8 — are required to be filed for a compliance review by the Louisiana State Bar Association's Ethics Counsel prior to first publication. This process could take up to 30 days, so advertisers should consider that time window in relation to the publication's ad placement deadline. For more information on compliance with the Rules, contact LSBA Ethics Counsel and/or go online: www.lsba.org/LawyerAdvertising. Communications Department staff cannot discuss Rules compliance issues.



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Left Upper: 2013-14 LSBA President Richard K. Leefe with keynote speaker Ruby Bridges and Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.

Left: Louisiana Supreme Court Chief Justice Bernette Joshua Johnson addresses the General Assembly and House of Delegates during the 2014 Annual Meeting.



Left: A photo of many of the Shreveport lawyers in attendance at the Installation Dinner during the 2014 Annual Meeting.



Left: 2013-14 LSBA President Richard K. Leefe dances with his wife, Barat, in the background while 2014-15 LSBA President Joseph L. (Larry) Shea, Jr. dances with his wife, Jane, in the foreground during the 2014 Annual Meeting.

Left bottom: The Beach Bash was well attended by families and friends during the 2014 Annual Meeting.

Right upper: 2013-14 LSBA President Richard K. Leefe receives a plaque from 2014-15 LSBA President Joseph L. (Larry) Shea, Jr. during the Installation Dinner at the 2014 Annual Meeting.

Right bottom: All four deans of Louisiana law schools on a panel during the LJC/LSBA Summer School - including Dean Maria Pabón López of Loyola University College of Law, New Orleans; Dean David D. Meyer of Tulane University Law School, New Orleans; Chancellor Freddie Pitcher, Jr. of Southern University Law Center, Baton Rouge; and Dean Jack M. Weiss of LSU Law Center, Baton Rouge.

All photos by Matthew Hinton Photography.



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Elections: Qualifying Begins Sept. 22 for Leadership Positions

Several Louisiana State Bar Association (LSBA) leadership positions are open during the 2014-15 election cycle. Self-qualification forms for positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House of Delegates will be provided to the membership on Sept. 22.

For the 2014-15 election cycle, balloting will be conducted electronically only, as approved by the LSBA Board of Governors in June 2011. No paper ballots will be provided.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 20. First election ballots will be available to members on Monday, Nov. 17. Deadline for electronically casting votes is Monday, Dec. 15.

Positions to be filled include:

Board of Governors (three-year terms beginning at the adjournment of the 2015 LSBA Annual Meeting and ending at the adjournment of the 2018 LSBA Annual Meeting): one member each from the Sixth, Seventh and Eighth Board districts.

LSBA House of Delegates (two-year terms beginning at the commencement of the 2015 LSBA Annual Meeting and ending at the commencement of the 2017 LSBA Annual Meeting): one delegate from

each of the 20th through 42nd Judicial Districts, plus one additional delegate for every additional district judge in each district.

Nominating Committee (15 members, one-year terms beginning at the adjournment of the 2015 LSBA Annual Meeting and ending at the adjournment of the 2016 LSBA Annual Meeting): District 1A, Orleans Parish, four members; District 1B, parishes of Plaquemines, St. Bernard and St. Tammany, one member; District 2A, East Baton Rouge Parish, two members; District 2B, Jefferson Parish, two members; District 2C, parishes of Ascension, Assumption, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana, one member; District 3A, Lafayette Parish, one member; District 3B, parishes of Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Martin, St. Mary and Vermilion, one member; District 3C, parishes of Allen, Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry and Vernon, one member; District 3D, parishes of Bossier and Caddo, one member; and District 3E, parishes of Bienville, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin,

Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll and Winn, one member.

Young Lawyers Division: Chair-elect (2015-16 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. **Secretary** (2015-16 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

American Bar Association House of Delegates (*must be a member of the American Bar Association*): one delegate from the membership at large. The delegate will serve a two-year term, beginning with the adjournment of the 2015 ABA Annual Meeting and expiring at the adjournment of the 2017 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

For more information on the election procedures and the schedule, go to: www.lsba.org/goto/elections.

LSBA President Shea Encourages Participation in “Day of Service”

Louisiana State Bar Association (LSBA) President Joseph L. (Larry) Shea, Jr. is encouraging Louisiana lawyers to recognize Thursday, Oct. 23, as a “Day of Service” to the public by volunteering for the LSBA’s “Lawyers in Libraries” initiative. The initiative advances both the Legal Education and Assistance Program (LEAP) and

Louisiana’s participation in the National Pro Bono Celebration Week (Oct. 19-25). “Lawyers in Libraries,” an important component of LEAP, was designed in partnership with the Louisiana Library Association to deliver legal information and resources through public libraries. “The goal for our Day of Service will be to have an attorney

in a library in each parish to address the public on various legal issues through public education or advice sessions,” Shea said. For more information on the event or to volunteer, contact LSBA Access to Justice Director Monte T. Mollere at (800)421-5722, ext. 146, or (504)619-0146; or email mmollere@lsba.org.

La. Board of Legal Specialization Mails Recertification Applications

The Louisiana Board of Legal Specialization (LBLS) has mailed recertification applications to specialists whose certification expires Dec. 31, 2014. The completed application, along with a \$100 check payable to the "Louisiana Board of Legal Specialization," should be mailed

to the LBLS, c/o Barbara Shafranski, Executive Director, 601 St. Charles Ave., New Orleans, LA 70130. The application and check should be mailed no later than Oct. 15 to avoid revocation of certification. For more information, contact Shafranski at (504)619-0128 or email barbara.shafranski@lsba.org.

LBLS Revises Specialty Standards

The Louisiana Board of Legal Specialization has revised Specialty Standards for bankruptcy law, estate planning

and administration, family law and tax law, effective June 5, 2014. To download a copy of the revisions, go to: www.lascmcle.org/specialization.

Notice: CLE Compliance for Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as set forth in the individual Specialty Standards for each field of legal specialization, board-certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2014. The requirement for each area of specialty is as follows:

- ▶ Estate Planning and Administration Law — 18 hours of estate planning law.
- ▶ Family Law — 18 hours of family law.
- ▶ Tax Law — 20 hours of tax law.

▶ Bankruptcy Law — CLE is regulated by the American Board of Certification

CLE credits will be computed on a calendar-year basis and all attendance information must be delivered to Mandatory Continuing Legal Education (MCLE). The deadline for filing annual CLE is Jan. 31, 2015. Failure to timely report specialization CLE hours will result in a penalty assessment.

If you have any questions, contact Barbara Shafranski, LBLS Executive Director, at (504)619-0128 or email barbara.shafranski@lsba.org.

LBLS Accepting Applications for Bankruptcy Law Certification Through September

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for 2015 certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2014. Regarding applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board

of Certification, attorneys should apply for approval of the LBLS simultaneously with the testing agency in order to avoid delay of board certification by the LBLS. For more information, contact LBLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128.

LSBA Launches Free App

The Louisiana State Bar Association has launched a free app which offers quick access to several popular sections of the main website, including the members' directory, CLE events, publications information and the calendar. The app is available for iPad, iPhone and Android users. Members using these platforms should search "Louisiana State Bar Association" in their devices' App Stores for the free download.

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.

Pilot Mentoring Program Begins Jan. 1: Registration Open for Mentors

The Louisiana Supreme Court has approved a pilot mentoring program for newly admitted Louisiana lawyers. The program, sponsored by CNA/Gilsbar, begins Jan. 1, 2015. The Louisiana State Bar Association (LSBA) is now seeking mentors from all practice areas and all

parts of the state to guide this next generation of lawyers. Mentors must be in good standing, have no disciplinary history and must have at least 10 years of experience. Mentors can receive up to 6 hours of free CLE credit by volunteering. For more information, to register as a mentor and

to view video messages from Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and LSBA Committee on the Profession Chair Barry H. Grodsky, go to: www.lsba.org/mentoring/.



Mentor Registration Transition Into Practice (TIP) Voluntary Mentoring Program

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Bar Roll Number _____

Law Firm (if applicable) _____

Mailing Address _____

City/State/Zip _____

Office Phone _____

Cell Phone _____

Fax _____

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Judicial District _____

Areas of Practice _____

Complete the form and return to:

Connie P. Sabio / Professional Programs
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404

Fax (504)598-6753



Several legal professionals received 2014 Pro Bono Publico and Children's Law Awards during a May 20 ceremony at the Louisiana Supreme Court. Justices and members of the Louisiana State Bar Association leadership attended. *Photo by Matthew Hinton Photography.*

Legal Professionals, Law Students Recognized for Exceptional Pro Bono Work

The Louisiana State Bar Association (LSBA), in conjunction with the Louisiana Supreme Court, hosted the 29th annual Pro Bono Awards Ceremony on May 20. LSBA 2013-14 President Richard K. Leefe presented the 2014 Pro Bono Publico and Children's Law Awards. The ceremony was held in the Louisiana Supreme Court building in New Orleans.

The Pro Bono Awards Ceremony honors attorneys and other public interest legal professionals from around the state who provided exceptional pro bono services to Louisiana's indigent, a group who may not otherwise have received adequate legal representation or access to the legal system.

This year's award recipients included:

► **2014 Leah Hipple McKay Memorial Award for Outstanding Volunteerism:** Brian D. Lenard, Hammond.

► **2014 David A. Hamilton Lifetime Achievement Award:** Mark C. Surprenant, New Orleans.

► **2014 Career Public Interest Award:** Gregory L. Landry, Lafayette.

► **2014 Children's Law Award:** Family and Youth Counseling Agency, Lake Charles;

and T. Darlene Bewley, New Orleans.

► **2014 Pro Bono Publico Award:** Office of the Attorney General, Alexandria Litigation, Alexandria; Phillip J. Antis, Jr., New Orleans; Robert T. Binney, Slidell; R. Alan Breithaupt, Monroe; Booker T. Carmichael, Baton Rouge; Michele M. Echols, Covington; Entergy Corp., New Orleans Office Legal Department, New Orleans; Michael D. Ferachi, Baton Rouge; Valerie G. Garrett, Lafayette; Catharine O. Gracia, New Orleans; Kenneth W. Jones, Lafayette; Judith R. Kennedy, Lafayette; Robert C. Owsley, Natchitoches; Sherrye K. Palmer, St. Amant; Sandra L. Sutak, New Orleans; Zebulon M. Winstead, Alexandria; and Amy M. Winters, New Orleans.

► **2014 Friend of Pro Bono Award:** P. Michael Breeden III, New Orleans; Gary M. Carter, Jr., New Orleans; Ian M. Ellis, New Orleans; Julie M. Lafargue, Shreveport; Wendy Hickok Robinson, New Orleans; Hugh R. Straub, New Orleans; and K. Wade Trahan, Lafayette.

► **2014 Law Student Pro Bono Award:** Savannah Steele, Louisiana State University Paul M. Hebert Law Center; Brittany Jaleesa McKeel, Southern University Law Center;

and Khalid Samarrae and Tyler Whittenberg, Tulane University Law School.

► **2014 Century Award:** Phillip J. Antis, Jr., New Orleans; John O. Brady, Baton Rouge; Scott Brown, New Orleans; Booker T. Carmichael, Baton Rouge; William G. Cherbonnier, New Orleans; Jeffrey K. Coreil, Lafayette; Anderson O. Dotson III, Baton Rouge; Elizabeth A. Dugal, Lafayette; Bradford H. Felder, Lafayette; Valerie G. Garrett, Lafayette; Catharine O. Gracia, New Orleans; Mitchell P. Hasenkampf, New Orleans; Kenneth W. Jones, Jr., Lafayette; Judith R. Kennedy, Lafayette; Greg A. Koury, Lafayette; Cliff A. Lacour, Lafayette; Seth T. Mansfield, Lafayette; Gary K. McKenzie, Baton Rouge; Patrick O'Hara, Baton Rouge; Annette N. Peltier, Baton Rouge; Christopher K. Ralston, New Orleans; James C. Rather, Jr., New Orleans; Dona K. Renegar, Lafayette; Wendy Hickok Robinson, New Orleans; Marcus J. Roots, Baton Rouge; Dwazendra J. Smith, Lafayette; Grady M. Spears, Lafayette; Gregory T. Stevens, Baton Rouge; Mark C. Surprenant, New Orleans; Sandra L. Sutak, New Orleans; K. Wade Trahan, Lafayette; and Amy M. Winters, New Orleans.

SOLO Speaking

By Michael J. Sepanik

WRITING FOR LITIGATORS

Litigators are busy by nature. As trials approach, time disappears. Motions are an essential aspect of any case, not mere speed bumps on the road to trial. A well-written dispositive motion can eliminate the need for trial altogether, and a convincing motion in limine can make or break a trial when addressing key evidence or testimony.

Computers make the physical task of drafting motions much easier. Unfortunately, when time is short, “cut-and-paste” sometimes replaces well-thought-out structure and cohesive argument, making the final product ineffective. Learning to write requires years of diligent study and application. Litigators should analyze effective legal writing by peers and opponents whenever possible and take note of the recurring threads. The following 15 points may be of use to litigators.

1. A motion’s introduction is as crucial to a motion as an opening statement is to a jury trial. Think of the introduction as opening with the words: “What this motion is about. . .” The first sentence is your opportunity to grab the reader’s attention.

2. Structure is critical to keeping the reader’s attention. Keep paragraphs concise, avoiding “PMDs” (Paragraphs of Mass De-

struction). One point per paragraph makes the reader’s job easier.

3. Use headings and subheadings often and wisely. Direct, brief and clear headings make your motion easier to follow. Think of headings as signposts alerting readers as to where they are headed.

4. Revise, revise, revise. Great writing rarely happens without many rounds of analysis and revision.

5. Delete unnecessary words. Qualifying words often water down your point and reduce clarity. Always question whether an adverb or adjective is necessary.

6. Credibility is earned by acknowledging the other side’s best arguments. Just as credibility before a judge and jury is vital during a trial, credibility before a judge considering a motion is crucial. Footnotes are an effective way of minimizing and distinguishing the other side’s supporting case law.

7. Overuse of italics, underlining and boldface weakens your argument and distracts the reader. Effective and precise use of language will speak for itself.

8. Discard “throw-away” arguments. A motion composed of two or three strong arguments speaks volumes. In contrast, two strong arguments Scotch-taped to four flimsy arguments makes the reader

question whether you value his/her time. If an argument has little or no chance of success, leave it out.

9. Long sentences are confusing. Avoid long or disjointed sentences whenever possible.

10. Use simple and straightforward language. Plain English is easy to read. Why begin a brief with the words “COMES NOW” if there aren’t any trumpets or horns announcing your presence to royalty?

11. Spelling errors, grammatical mistakes and incorrect citations will reduce, and eventually destroy, your credibility with the reader. Trivial errors in a motion convey the sense that your motion is not important. If the relief in your motion is unimportant to you, why should the judge care?

12. Avoid the terms “clearly,” “obviously,” “absurd” or cynical and combative language about opposing counsel.

13. Eliminate clutter.

14. Use the dictionary and thesaurus frequently.

15. Know when to stop writing.

One final point: Attention to detail and thorough analysis will help earn a judge’s trust. Use that trust to benefit your client, especially when proposing a novel or common-sense approach to issues that have not been addressed by the appellate courts of your jurisdiction.

Michael J. Sepanik is a trial and appellate litigator with the firm Lee, Futrell & Perles, L.L.P., in New Orleans. He has represented professionals in malpractice cases, product manufacturers and construction entities in the context of toxic tort, construction defect and accident claims. He was admitted to the Louisiana Bar in 2013. (msepanik@leeftutrell.com; Ste. 4120, 201 St. Charles Ave., New Orleans, LA 70170)



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Insurance Law and Regulations

By Johanna G. Averill

ENGAGEMENT LETTERS

Continuing the focus on the critical importance of an engagement letter, this is an example of a law firm that properly clarified and documented the limited scope of its representation. The law firm was hired a few months before a civil litigation trial only to assist lead counsel. The law firm was not involved in any aspect of the pre-trial preparation, as lead counsel was completely responsible for pre-trial matters. Later, the client sued the law firm for negligence in the preparation of certain pre-trial documents. The court dismissed the action against the law firm and found it was not accountable for the content of the pre-trial documents due to a signed written agreement titled "Engagement for Limited Services," which stated:

"The specific limited legal services to be provided by us follows:

1. Serve as secondary assistant counsel in connection with the trial, to assist your present lead attorneys; and

2. You specifically acknowledge that we will not be preparing any jury instructions, jury charges, jury interrogatories, or the Pre-Trial Order; all of which shall be done by other attorneys whom you separately engaged previously and for whose work we shall have no responsibility whatsoever of any kind.

3. By signing this letter, you specifically agree, acknowledge and stipulate that you shall hold harmless this law firm and all of its attorneys and staff, from any and all claims arising from or connected with the preparation or presentation of your case at trial or appeal to your current attorneys."

The use of properly crafted engagement letters not only make the limited scope of services clear but also limit the scope of your exposure to a claim of malpractice and avoid a swearing contest.

Johanna G. Averill is professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C., in Covington. She received her BS degree in marketing in 1982 from Louisiana State University and her JD degree in 1985 from Loyola University Law School. In her capacity as loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. She can be emailed at javerill@gilsbar.com.



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QUALITY of Life

By Anthony M. DiLeo

ON ARTISTIC ENDEAVOR

Having more confidence than skill, I started with a 99-cent watercolor paint set in about 1979. When the *Louisiana Bar Journal* editor asked for a painting for the magazine's cover, as well as a few words about the artistic process, I thought about why I had started painting — and I thought mostly of my mentors. Many in the legal field also were engaged in other activities: writing, art, music, family, so many things outside of their practice of law. (Judge Alvin Rubin, for example, wrote haiku while waiting for the jury to come back.)

My goal here is simply to encourage others to consider an artistic endeavor as a pastime — just to have the experience of doing it.

So often we don't try something new without a goal of it achieving some expectation, or of it pleasing someone else. The process of painting is about the experience of doing something in a way that is immediate and experimental. The only standard is that, as you do it, you get as aware of the process as you can and simply be reactive, so that you are only trying to be spontaneous. This applies to whatever design, shape, color, style and material you are using. There is no way to make a "mistake." Each attempt is its own adventure; each attempt is its own thing all by itself. If you can do that, you'll discover that you can, in fact, "do it." The endeavor gets spoiled only if you need to meet a specific goal, if you need someone to say to you "I really like that," or if you're doing anything other than getting your most immediate focus on the process while you are working on it. Sometimes it is called "*alla prima*."¹

I recommend to anyone reading this to make an attempt — remembering to try to follow this method and path — and I believe you'll discover an experience of personal self-expression that will be pleas-



The Trees (30" x 36").

ing. (After all, this isn't our day job.) The next time you may try something entirely different, with different material, in a different way, and that is good, too.² It really is about the experience and the moment, and not about anything else.³ It feels great to use the other side of our brain!

If it becomes about gaining admiration from another person or selling something, you are likely to lose out on the experience.

Trying to think in a commercial way or in an analytical way can spoil the process and make it more like a work assignment or a task (and we already have lots of those). It can defeat the exhilaration and the purity of detachment and the exuberation of a very personal connection. The irony of this is that the more you detach from fulfilling an expectation, the more you can connect with it and you get, surprisingly,

a bond with the experience. After all, it's only about the experience.

This same process applies to any creative or athletic endeavor, to writing or music or gardening or running or sailing.

For those of you still reading, I hope it encourages you to make an attempt, any attempt in any artistic field. I recommend you not do this with anyone else around because *unconsciously* we start wondering what they might think and feel about it, and that is taking yourself out of the equation. And *you* need to be primary in that equation.

You've worked really hard, so give yourself a bonus, give yourself permission. That's the hardest part.

Leave reason behind for just a brief moment and it will be waiting for you when you are ready. There are no rules here.

It's not a discipline; it's an undiscipline.

If you get that down, everything is great.

Do it.

FOOTNOTES

1. Wet-on-wet, or *alla prima* (Italian, meaning *at first attempt*), is a painting technique, used mostly in oil painting, in which layers of wet paint are applied to previous layers of wet paint. This technique requires a fast way of working because the work has to be finished before the first layers have dried. It also may be referred to as "direct painting."

2. Whatever you have by way of materials is okay — pens, pencils, crayons, watercolor, paper, canvas, acrylic, oils, etc. A lot of my



Morning Landscape (53" x 72").



Artist Anthony M. DiLeo.

paint I buy from the back of the store at Sherwin Williams for \$1 per quart. They call these their "mistakes" and there are *great* colors in there!

3. Sometimes, if I don't like the way a painting comes out, I cut it into pieces, then rearrange the pieces to a surprising result. Or I paint over it with the underlying colors giving depth to the new result.

Anthony M. DiLeo, a solo practitioner based in New Orleans, also is an arbitrator and mediator, handling more than 400 cases in 20 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). His largest painting, Vespertine, is 96" x 120" and is located in the lobby of Ochsner Hospital. His artwork can be viewed online at: www.dileoart.com. (tony@tonydileo.com; Ste. 2350, 909 Poydras St., New Orleans, LA 70112)

LAWYERS Assistance

By J.E. (Buddy) Stockwell

INTERVENTION SAVES LIVES

It's often been said that "alcoholics and addicts simply will not accept help until they hit bottom on their own and finally decide themselves to get help." That common belief is incorrect, dangerous and potentially deadly. In truth, a professional intervention can be very effective in raising an alcoholic's "bottom" and helping the person into life-saving treatment before serious consequences accumulate.

The art and science of intervention began to evolve in the 1960s with the legendary efforts of Dr. Vernon E. Johnson, an Episcopal priest. He devoted much of his life to helping alcoholics into early recovery. Dr. Johnson's famous book, *I'll Quit Tomorrow: A Practical Guide to Alcoholism Treatment* (Harper & Row, 1973, with seven subsequent editions), declares that it is pointless and dangerous to sit by and wait to help alcoholics until they have hit bottom on their own.

The "Johnson Model" for intervention deems that each and every crisis that an alcoholic or addict encounters along the way represents an opportunity to break through the alcoholic's denial and convince him/her to accept help. A DWI arrest, loss of a job or any other glaring consequence of ongoing substance abuse may provide the catalyst for conducting a successful intervention.

Intervention techniques continue to improve and experts Jeff and Debra Jay, both former clinicians at the Hazelden Foundation, have been recognized as national leaders in the field of intervention. The Jays' work has been noted by CNN, PBS, *Forbes*, *The Washington Post*, *Parade* magazine and *USA Today*. They have appeared frequently on the "The Jane Pauley Show" and "The Oprah Winfrey Show." In 2000, Hazelden published the Jays' definitive book, *Love First: A Family's Guide to Intervention*, and a second edition was released in 2008. Since then, the Jays have authored and co-authored additional books, all of which are authoritative texts on the subjects of

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as a matter of law.

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

intervention and addiction treatment.

One of the most identifiable advances in the Jays' intervention design is their commitment to carefully structured and comprehensive support to the family before, during and after the intervention. Research over the years has revealed that quick "hit-and-run" interventions may very well get an alcoholic into a treatment facility, but those efforts alone do not provide the family with what it needs to heal and support the alcoholic's or addict's long-term recovery after treatment.

Recovery from addiction is indeed a family mission, and it is a marathon, not a sprint. There will be rough patches in every person's recovery and there also will be challenges for the family members, too. Families must be on guard not to default to their old *status quo* of coping behaviors that often unwittingly supported the disease of addiction and hurt rather than helped. To be successful in supporting the alcoholic or addict in recovery, a family must "stick to its guns" and render support as a well-trained team. A professional intervention provides that training.

An intervention offers needed relief to the family irrespective of whether the alcoholic or addict agrees to treatment or is successful in recovery. The Jays describe addiction as "a destructive force that runs through families like a freight train." By confronting the alcoholic or addict, the family can end its enabling and return to core family values that have been compromised by alcoholism and addiction. If an addict or alcoholic refuses help during the interven-

tion, the participating family members will have perfected their individual "bottom lines" and can be steadfast in articulating the changes they will make in their behavior toward the alcoholic or addict — no more money to support an addictive lifestyle and no more help in cleaning up alcohol- and drug-related disasters. Instead, the family's efforts will be openly focused on treatment and recovery.

The message to the alcoholic or addict is crystal clear: We love you and our family will do anything in the world to support your treatment and recovery but the family will never again do anything whatsoever that will support, even obliquely, the disease of addiction. This liberates families from further enabling the alcoholic or addict and allows the family to restore its integrity and heal as a unit notwithstanding the alcoholic's or addict's eventual prognosis.

In June 2014, the Lawyers Assistance Program's (LAP) executive director and clinical director both completed an intensive, week-long intervention certification course conducted personally by Jeff and Debra Jay at the Betty Ford Center. This nationally acclaimed course is offered by the Jays only once a year and is limited to 20 select professionals in the field. If you have any questions or think that someone you know could benefit from an intervention, LAP is now exceptionally qualified to help. Call LAP at (985)778-0571 or email LAP@louisianalap.com. As a matter of law, all calls are confidential and you do not even have to give your name.

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



New Signatories to LSBA Statement of Diversity Principles Listed

Several more attorneys, law firms and businesses have added their signatures to the Louisiana State Bar Association's (LSBA) Statement of Diversity Principles.

The LSBA's Committee on Diversity asks all Louisiana law firms, law departments and courts to execute the voluntary Statement of Diversity Principles. By executing the Statement, the leaders of a legal organization or court agree to use their best efforts to increase the diversity in their hiring, retention and promotion of attorneys and the elevation of attorneys to leadership positions within their organizations. They also agree to promote and participate in appropriate diversity awareness training programs as well as programs to measure their progress in the pursuit of the stated diversity principles.

To access the Statement online, go to: www.lsba.org/Diversity/DiversityPrinciples.aspx.

Signed forms may be returned to Director of Member Outreach and Diversity Tricia R. Pierre by email at tricia.pierre@lsba.org, by fax (504)566-0930, or by mail: 601 St. Charles Avenue, New Orleans, LA 70130-3404.

Among the recent signatories are:

Attorneys

D. August-Gilmore
Marcus V. Brown
Katharine Byrd
Desiree C. Calvin
Laura L. Catlett
Joy C. Daussin
Wanda Anderson Davis
Ariyal Fabre
Amanda C. Foster
George M. Gates IV
Jennifer Gaubert
Kristina M. Kent
Don Paul Landry, P.L.C.

Venus R. Masakowski
Melissa Mendoza
Charles K. Middleton
Rokeya J. Morris
Gayle Speed Ringo
Tina Suggs
Cherrilynne W. Thomas
Katherine W. Trotter
Sherry Watters
Jacquelyn Watts

Law Firms/Business

Christovich & Kearney, L.L.P.
Davenport & Kim, A.P.L.C.
Law Office of Edward Larvadain III
Law Office of Williard J. Brown, Sr.
LaCour Law Firm, L.L.C.
Lower 9th Ward
Homeownership Association
NASA Stennis Space Center

LSBA Diversity Subcommittee Preference Form 2014-15: Get Involved!

Indicate below your committee preference(s). If you are interested in more than one committee, list in 1-2-3 preference order.

<input type="checkbox"/> Diversity Awards	<input type="checkbox"/> Diversity Conclave	<input type="checkbox"/> Diversity Integration
<input type="checkbox"/> Diversity Communications	<input type="checkbox"/> LGBT Diversity	<input type="checkbox"/> Pipeline to Diversity (outreach to law students, students, law firms and judiciary)

For a description of subcommittees, go to: www.lsba.org/Diversity/DiversitySubCommittees.aspx For more information on subcommittee duties, email Tricia R. Pierre, Director of Member Outreach and Diversity, tricia.pierre@lsba.org.

LSBA Bar Roll Number _____ Name _____
Address _____
City/State/Zip _____
Telephone _____ Fax _____
Email address _____

Response Deadline: Aug. 30, 2014

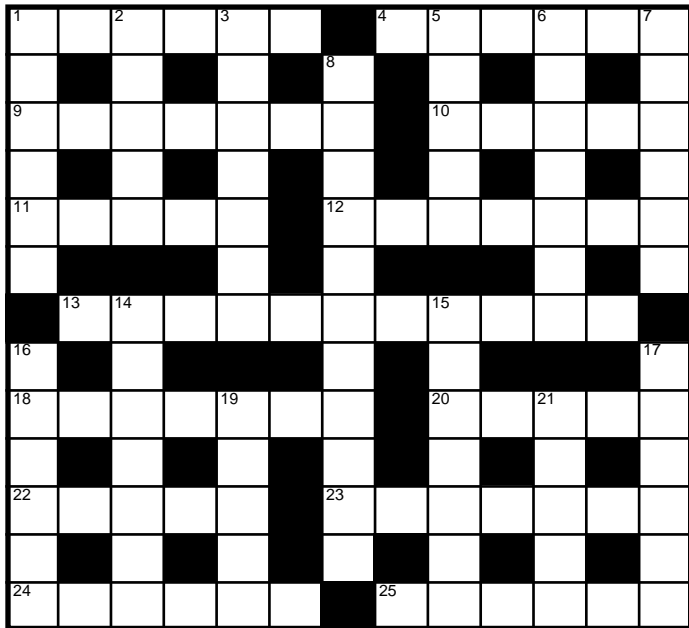
Mail, email or fax your completed form to:

Tricia R. Pierre, Director of Member Outreach and Diversity Department, Louisiana State Bar Association
601 St. Charles Ave., New Orleans, LA 70130-3404 • email: tricia.pierre@lsba.org • fax: (504)566-0930

Crossword PUZZLE

By Hal Odom, Jr.

SEE THE U.C.C.



ACROSS

- 1 Person ordered in a draft to make a payment (6)
- 4 Person in possession of an instrument (6)
- 9 Give one's consent (5, 2)
- 10 Singular of "data" (5)
- 11 Old term for an ant (5)
- 12 Judicial interpretation of Commerce Clause, prohibiting state action that impedes interstate commerce (7)
- 13 Like many IOUs, and all olographic wills (11)
- 18 Article: Civil Code:: ____: Revised Statutes (7)
- 20 Person who signs or is identified in a note as a person undertaking to pay (5)
- 22 Excessive, as influence or delay (5)
- 23 Field of flying saucers (7)
- 24 Instruments referred to in clues to 1 Down and 1 Across (6)
- 25 Halted, as in bankruptcy (6)

DOWN

- 1 Person who signs or is identified in a draft as a person ordering payment (6)
- 2 Abraham's name until he was 99 years old (5)
- 3 Voted into office (7)
- 5 Having more seniority (5)
- 6 Futile pursuit; vicious circle (3, 4)
- 7 Makes payment (6)
- 8 ____ course, party against whom personal defenses may not usually be asserted (6, 2, 3)
- 14 Seat of Bienville Parish (7)
- 15 Short suspension of play (4-3)
- 16 Delivered an instrument, for the purpose of giving rights thereon (6)
- 17 Took an inside look (1-5)
- 19 *I.e.*, in full (2, 3)
- 21 Nutty (5)

Answers on page 162.

Alcohol and Drug Abuse Hotline

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

1405 W. Causeway Approach, Mandeville, LA 70471-3045 • email lap@louisianalap.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 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 Jonathan D. Stokes

THE YOUNG AND THE RESTLESS

I have attended several professionalism CLEs recently in which the conversation inevitably turned to the need to address unprofessional behavior on the part of new lawyers. At one such presentation, one of my more experienced colleagues suddenly leaned over and whispered, "It's not the young lawyers I'm worried about." During the break, he further explained that he believed some seasoned attorneys use aggressive, unprofessional tactics to intimidate and provoke young lawyers.

I appreciated his perspective because I had sometimes been the target of such behavior myself. During my first couple of years of practice, when faced with unprofessional behavior on the part of opposing counsel, my default reaction was to respond angrily, often saying things I would later wish I had not said. I was left with a sense of dissatisfaction, but without a clear answer on where I had gone wrong.

I imagine my dilemma is not unique. What should a new lawyer do when faced with unprofessional behavior? Is there a way to be civil while preventing someone from taking advantage?

In terms of a lawyer's behavior towards others, the Code of Professionalism provides:

I will conduct myself with dignity, civility, courtesy and a sense of fair play. . . .

I . . . will be cooperative . . . in the handling of the entire course of any legal matter. . . .

I will not engage in personal attacks on other counsel or the court.

Note that the Code speaks of civility, courtesy, fairness, cooperation, and a focus on professional, as opposed to personal, confrontations. Nowhere does it state that an attorney must be a nice person. Nowhere does it state that a lawyer must always give

opposing attorneys what they want. On the other hand, the Code's requirements are unrelenting and without exception. The Code of Professionalism demands civility—even when faced with incivility.

Keeping these guidelines in mind, it becomes clear that, for experienced and inexperienced lawyers alike, angry tirades and other displays of temper are as unprofessional as the behavior from which they were prompted. Moreover, these displays rarely, if ever, produce a satisfactory resolution to the dispute. Fighting fire with fire just makes more fire.

Instead of reacting in a way that may later lead to regret, new lawyers might consider the following strategies.

Everyone Stay Calm. More often than not, a simple refusal to respond in kind, while keeping your tone calm, even, but firm, causes opposing counsel to rethink their strategy. In fact, some attorneys appear to intentionally try to provoke younger attorneys into rash, unprofessional behavior. When such behavior never materializes, the provoking attorney may change tactics.

Find an Apology. As professionals who find success from being correct, it is very difficult for most attorneys to admit they are wrong. Nevertheless, I have discovered that, inevitably, no matter how righteous my cause, I can always find something I could have handled better. It is amazing how quickly an argument can deescalate when one party begins with an apology for a misstep or a misunderstanding. Apologizing does not mean conceding defeat for the overall dispute. The trick is to apologize for what you can and then move on to the meat of what you want to dispute. Such an approach shows good faith and willingness to compromise.

Be Wise, Always Revise. Never send the first draft of an angry email or letter. Likewise, feel free to take a break from a phone conversation and ask to call back when tempers have cooled.

Nobody Moves, Nobody Gets Hurt. On a related note, refrain from making snap judgments during a heated discussion. Very few situations require immediate reactions. Taking more time on the front end for measured, considered responses can save time later. It is almost always OK to say, "I'm going to have to take some time to think about that."

(Here's a Quarter) Call Someone Who Cares. Find an experienced colleague to discuss run-ins with problematic attorneys. Chances are, he or she has been there before and can provide valuable perspective, validation and, if need be, course correction.

Just like every other aspect of our profession, civility in the face of incivility takes practice. For most of us, appropriately responding to incendiary, unprofessional behavior does not come naturally, and it takes a great deal of patience and discipline to consistently find success. In the meantime, we'll keep practicing our apologies.

Jonathan D. Stokes practices school law, corporate law and commercial litigation as an associate attorney at Gold, Weems, Bruser, Sues & Rundell. He is licensed to practice law in Louisiana and Kansas, and he is a member of the Louisiana State Bar Association's Committee on the Profession. (jstokes@goldweems.com; 2001 MacArthur Dr., P.O. Box 6118, Alexandria, LA 71307-6118)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 4, 2014.

Decisions

Sean Daniel Alfortish, Kenner, (2013-B-2424) **Permanent disbarment** ordered by the court on May 7, 2014. JUDGMENT FINAL and EFFECTIVE on May 21, 2014. *Gist:* Criminal conviction for conspiracy to commit mail, wire, identity document and health care fraud.

Johnny S. Anzalone, Alexandria, (2014-B-0812) **Interim suspension** ordered by the court on May 16, 2014.

Elizabeth Ashley Brunet-Robert, Ville Platte, (2013-B-2929) **Suspended for three years retroactive to Dec. 19, 2009, the date of her interim suspension**, ordered by the court on May 7, 2014. JUDGMENT FINAL and EFFECTIVE on May 21, 2014. *Gist:* Engaging in criminal conduct, including

possession of a controlled and dangerous substance.

Sonceree Smith Clark, Baton Rouge, (2014-B-0518) **Public reprimand** ordered by the court as consent discipline on April 4, 2014. JUDGMENT FINAL and EFFECTIVE on April 4, 2014. *Gist:* Neglect of a legal matter; failure to communicate; and failure to promptly refund an unearned fee.

Seth Cortigene, Baytown, TX, (2013-B-2022) **Disbarment** ordered by the court on Feb. 14, 2014. Rehearing denied on May 2, 2014. JUDGMENT FINAL and EFFECTIVE on May 2, 2014. *Gist:* Engaging in and assisting in the unauthorized practice of law.

Craig Allen Davis, Lafayette, (2014-B-0749) **Suspended for six months, fully deferred, subject to one-year unsupervised probation**, ordered by

the court as consent discipline on May 16, 2014. JUDGMENT FINAL and EFFECTIVE on May 16, 2014. *Gist:* Failure to timely remit funds to a third party; failure to provide full disclosure to a court about disbursement of funds; and engaging in conduct prejudicial to the administration of justice.

Michael A. Fenasci, New Orleans, (2014-OB-0826) **Reinstated to the practice of law** ordered by the court on May 23, 2014. JUDGMENT FINAL and EFFECTIVE on May 23, 2014.

Robert T. Garrity, Harahan, (2014-B-0468) **Suspended for six months, fully deferred, subject to one-year supervised probation with conditions**, ordered by the court as consent discipline on April 4, 2014. JUDGMENT FINAL and EFFECTIVE on April 4, 2014. *Gist:*

Continued next page



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Judiciary Commission (1994-2008)
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Former Prosecutor,
Office of Disciplinary Counsel (1998-2006)
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julie@sswethicslaw.com

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 June 4, 2014.

Respondent	Disposition	Date Filed	Docket No.
Hugh Dumas Aldige	(Reciprocal) Suspension.	5/13/14	14-466
Murphy F. Bell, Jr.	(Reciprocal) Suspension.	5/13/14	14-521
Robert T. Garrity, Jr.	(Reciprocal) Suspension.	5/16/14	14-857
Gregory Joseph Lewis, Jr.	(Reciprocal) Suspension.	5/13/14	14-465

Discipline continued from page 126

Commingle earned fees with client funds in his trust account; and failed to provide a reasonable periodic accounting to a client.

Scott M. Hawkins, Lafayette, (2014-OB-0195) **Reinstated to the practice of law** ordered by the court on March 14, 2014. JUDGMENT FINAL and EFFECTIVE on March 14, 2014.

James L. Hilburn, Baton Rouge, (2014-B-0763) **Public reprimand** ordered by the court as consent discipline on May 16, 2014. JUDGMENT FINAL and EFFECTIVE on May 16, 2014. *Gist*: Filed a petition for damages for

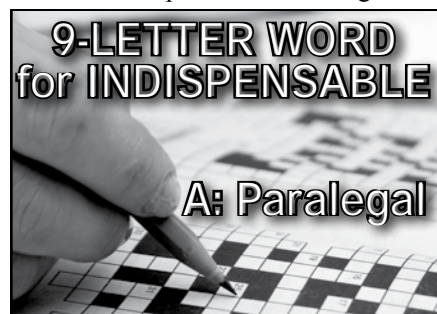
defamation against a defendant based on the defendant's filing of a disciplinary complaint with ODC.

Kenneth S. Hill, Baton Rouge, (2014-OB-0890) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on May 21, 2014. JUDGMENT FINAL and EFFECTIVE on May 21, 2014. *Gist*: Commission of a criminal act (multiple DWI).

Jean-Marie Lacobee, Shreveport, (2014-OB-0373) **Reinstatement to the practice of law denied** ordered by the

court on April 4, 2014. JUDGMENT FINAL and EFFECTIVE on April 18, 2014. Ms. Lacobee may not reapply for reinstatement until she has paid restitution to her clients and the costs of prior disciplinary proceedings, or made a good faith effort to do so, but in no event until two years have passed from the date of the Supreme Court order denying her reinstatement.

J. Renee Martin, Baton Rouge, (2014-B-0895) **Public reprimand** ordered by the court as consent discipline on May



**9-LETTER WORD
for INDISPENSABLE**

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damon@callihanlaw.com

CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

E. PHELPS GAY KEVIN R. TULLY
ELIZABETH S. CORDES

(504)561-5700

601 POYDRAS STREET, SUITE 2300
NEW ORLEANS, LA 70130

Discipline continued from page 127

23, 2014. JUDGMENT FINAL and EFFECTIVE on May 23, 2014. *Gist:* Failed to return a client file.

Michael K. Powell, Lake Charles, (2014-OB-0829) **Reinstated to the practice of law** ordered by the court on May 23, 2014. JUDGMENT FINAL and EFFECTIVE on May 23, 2014.

Kimberly Marie Richardson, New Orleans, (2014-B-0621) **Probation revoked** on April 25, 2014. JUDGMENT FINAL and EFFECTIVE on April 25, 2014. *Gist:* Failed to comply with the terms of her probation and her Lawyers Assistance Program contract.

Newton B. Schwartz, Houston, TX, (2013-B-2172) **Guilty of conduct** which would warrant a three-year suspension from the practice of law if he was a member of the Louisiana bar, and ordered him enjoined for a period of three years from seeking full admission to the Louisiana bar or seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court pursuant to Supreme Court Rule XVII

Sect. 13 or seeking limited admission as an in-house counsel pursuant to Supreme Court Rule XVII Sect. 14. Ordered by the court on Feb. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 28, 2014. *Gist:* Engaging in and assisting in the unauthorized practice of law.

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

No. of Violations

Settling a potential claim for legal malpractice liability without advising the client in writing of the desirability of seeking independent legal counsel.....1

TOTAL INDIVIDUALS

ADMONISHED.....1

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



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email: kaydonn@bellsouth.net

FUND PAYMENTS

CLIENT ASSISTANCE FUND PAYMENTS - NOV. 2013, FEB. & MAY 2014

Attorney	Amount Paid	Gist
Paul W. Bairnsfather	\$1,000.00	#1412 – Unearned fee in a custody matter
Bruce A. Craft	\$3,000.00	#1537 – Unearned fee in a criminal matter
Bruce A. Craft	\$5,580.21	#1455 – Conversion in a workers' comp. matter
Bruce A. Craft	\$2,300.00	#1495 – Unearned fee in a domestic matter
Bruce A. Craft	\$2,250.00	#1508 – Unearned fee in a domestic matter
Bruce A. Craft	\$845.00	#1504 – Unearned fee in a domestic matter
Bruce A. Craft	\$500.00	#1506 – Unearned fee in a domestic matter
Bruce A. Craft	\$3,500.00	#1497 – Unearned fee in a real estate matter
Bruce A. Craft	\$11,015.58	#1494 – Unearned fee in a divorce matter
Bruce A. Craft	\$5,000.00	#1514 – Unearned fee in a custody matter
Bruce A. Craft	\$7,500.00	#1467 – Unearned fee in a domestic matter
Bruce A. Craft	\$3,500.00	#1516 – Unearned fee in a domestic matter
Bruce A. Craft	\$4,500.00	#1498 – Unearned fee in a domestic matter
Bruce A. Craft	\$7,500.00	#1541 – Unearned fee in a domestic matter
Bruce A. Craft	\$2,585.00	#1538 – Unearned fee in a community property matter
Claire R. Deslatte	\$550.00	#1458 – Unearned fee in an adoption
Jo Anne Fleming	\$11,000.00	#1482 – Unearned fee in a domestic matter
Douglas K. Hall	\$2,000.00	#1460 – Unearned fee in a custody matter
Keisha Jones Joseph	\$1,100.00	#1503 – Unearned fee in a criminal matter
James E. Moorman III	\$3,500.00	#1518 – Unearned fee in a domestic matter
James E. Moorman III	\$3,350.00	#1539 – Unearned fee in a domestic matter
Nicholas S. Morphis	\$7,500.00	#512 – Conversion in a personal injury matter
Madison F. Mulkey	\$500.00	#1526 – Unearned fee in an estate planning matter
Heather M. Murphy	\$3,700.00	#1502 – Unearned fee in a succession
Charles T. Phillips II	\$675.00	#1451 – Unearned fee in a domestic matter
Kenota L. Pulliam	\$3,500.00	#1169 – Unearned fee in a criminal matter
Robert B. Purser	\$25,000.00	#1463 – Conversion
Robert B. Purser	\$1,500.00	#1472 – Unearned fee in a domestic matter
Robert B. Purser	\$2,500.00	#1512 – Unearned fee in a DUI matter
Robert B. Purser	\$2,500.00	#1525 – Unearned fee in a succession
Robert B. Purser	\$5,000.00	#1507 – Conversion in a community property matter
Iona A. Renfro	\$1,950.00	#1442 – Unearned fee in a custody matter
C. Hearn Taylor	\$2,500.00	#1519 – Unearned fee in a post-conviction relief matter
Rebecca L. Vishnefski	\$4,920.00	#1486 – Unearned fee in an immigration matter



Read the Cases Upon Which You Rely

The Innocence Project New Orleans submitted a public records request to the New Orleans Police Department through its records custodian, Superintendent Ronal W. Serpas. The request sought records relative to the 1991 conviction of Mr. Brown, which was a final judgment as of 1993. Serpas, through counsel, notified

the requestor 65 days later that the records would not be produced because they were statutorily exempt. Suit was filed and the trial judge ordered that (1) the records be produced, (2) the defendant pay attorneys' fees and costs, and (3) the custodian pay penalties of \$5,000 (\$100 per day) as provided by law. The custodian appealed.

In *Innocence Project New Orleans v. New Orleans Police Dept.*, 13-0921 (La. App. 4 Cir. 11/6/13), the appeals court held that the trial court judgment be affirmed in all respects.

The court noted that the custodian's argument that he was in "good faith" was not supported by the jurisprudence he cited. In fact, he relied on a case which supported the opposite contention. The court went on to reject the custodian's argument that police

reports are exempt from disclosure, again noting that the custodian relied on jurisprudence which did not support that contention; *i.e.*, such records are subject to disclosure if the conviction of the person named in them is final. Finally, the court noted that the custodian is *personally* liable for payment of the civil penalty (in this case pegged at \$5,000), which amount was affirmed.

The court went on to deny the Innocence Project's claim for damages for frivolous appeal because it did not answer the appeal as required by La. C.C.P. art. 2133.

—**Brian M. Bégué**

Chair, LSBA Administrative Law Section
2127 Dauphine St.
New Orleans, LA 70116



Lane Ewing
Former Asst. U.S. Attorney

Stan Lemelle
Former Criminal Chief,
U.S. Attorney

Don Cazayoux
Former U.S. Attorney

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Mediation is Making a Difference in Detroit

Municipal bankruptcy proceedings can be contentious, lasting several years and involving intense courtroom battles. However, the use of mediation in Detroit's municipal bankruptcy has put the city on a faster road to recovery. Confidential mediation sessions convened by Chief U.S. District Judge Gerald Rosen have produced positive results. Judge Rosen was appointed by U.S. Bankruptcy Judge Steven Rhodes to lead mediations between Detroit and its creditors. Breakthroughs in Detroit's bankruptcy process include an agreement to set aside \$800 million of private and state money to rescue the city's pension fund. Mediation agreements also have helped to significantly reduce the city's debt and long-term liabilities and assisted in restructuring the city's government. Legal experts credit much of the progress in Detroit's bankruptcy proceedings to the use of quick rulings and aggressive mediation. Some legal experts project, based on the timetable set by Judge Rhodes, that Detroit could resolve its bankruptcy approximately one year after it filed for protection from creditors, which would be a significant accomplishment. In comparison, it took Orange County, California, one year and six months to emerge from its 1996 declaration, which at the time was the largest municipal bankruptcy in U.S. history.

Municipal bankruptcies rarely involve mediation. However, the estimated \$18 billion to \$20 billion of debt at issue in Detroit's bankruptcy called for a unique solution. Detroit's bankruptcy is now the highest valued municipal bankruptcy in U.S. history. Detroit's problems were not created by a single debt issue, but rather by extensive infrastructure issues, insolvent pension plans and many other difficulties. Patton Hahn, an attorney who worked on the municipal bankruptcy of Jefferson County, Alabama, believes that the use of mediation has given the bankruptcy court in Detroit the resources

it needs to move Detroit's bankruptcy case along. Tresa Baldas, Matt Helms and Alisa Priddle, "How mediation has put Detroit bankruptcy on the road to resolution" (Feb. 2, 2014), www.freep.com/article/20140202/NEWS01/302020063/Orr-Snyder-Rosen-Detroit-bankruptcy.

While Detroit's use of mediation is expediting the bankruptcy process overall, the process is considerably more confidential than the average municipal bankruptcy. All mediation proceedings are confidential and only the terms of the settlement are presented to the bankruptcy court for approval. Michael Bathon, "Detroit Judge Rosen Named Mediator in City's Bankruptcy" (Aug. 13, 2013), *Bloomberg Business Week*, retrieved Aug. 13, 2013.

Patton Hahn noted that the mediation process could rub some taxpayers the wrong way because "Detroit is a public entity. Its true stakeholders are its citizens, and there's a clash between the goals of mediation — which is to simply get to a result — and the public interest, which is to know the content of [negotiations]." Tresa Baldas, Matt Helms and Alisa Priddle. Additionally, the high legal fees for attorneys representing parties in the bankruptcy process could cause citizens to ask exactly what they are paying for, which could intensify the demand for disclosure in the mediation process.

Detroit's emergency manager, Kevyn Orr, allocated \$62.5 million to pay the fees and expenses of Detroit's consultants and lawyers. Law firms and consultants could earn up to \$36 million in legal fees for just the last quarter of 2013. Matt Helms, "Detroit bankruptcy costs hit \$36M in 2013, expected to soar in 2014" (May 7, 2014), www.freep.com/article/20140507/

[NEWS01/305070141/detroit-bankruptcy-expenses-cost](http://www.freep.com/article/20140507/NEWS01/305070141/detroit-bankruptcy-expenses-cost).

The Jones Day Law Firm submitted more than \$16.6 million in fees and nearly \$734,000 in other expenses as of December 2013. *Id.* The Dentons Law Firm, hired to represent the official committee for Detroit's retirees, billed \$4.4 million in fees and \$185,550 in expenses. *Id.* The city's restructuring consultant, Conway MacKenzie, billed \$5.3 million in fees and almost \$17,000 in expenses. *Id.* These costs are high even though many of the law firms and consultants have agreed to discount their hourly rates. For example, court-appointed fee examiner Robert Fishman has agreed to reduce his typical hourly rate of \$675 to \$600 an hour. *Id.* Overall, experts expect final legal costs to exceed \$100 million.

While the price tag may be high, the use of mediation may be restraining even higher costs. Many people questioned Detroit's ability to modify any of its pension obligations in a bankruptcy process. There were 109 filed objections to Detroit's eligibility for Chapter 9 bankruptcy protection. "Order Regarding Eligibility Objections Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)," U.S. Bankruptcy Court for the Eastern District of Michigan, Aug. 26, 2013, retrieved Sept. 4, 2013. The use of mediation brought Detroit past those concerns and also brought about substantive progress. For example, on May 2, 2014, the board of directors of the Detroit Retired City Employees Association (DRCEA) supported a 4.5 percent cut in pension benefits for retired city workers as well as a reduction of their Cost of Living Allowance (COLA). DRCEA's loss of COLA can be restored depending upon the performance

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of the General Retirement System under the Plan of Adjustment that must be presented to the bankruptcy court. *Associated Press*, "Detroit Retired City Employees Association supports bankruptcy plan," www.myfoxdetroit.com/story/25415548/detroit-retired-city-employees-association-supports-bankruptcy-plan#ixzz333EzYnbb. This type of successful mediation result may encourage remaining parties to re-double their efforts to reach agreements on other issues that can be incorporated into a fair, balanced and fully agreed-upon Plan of Adjustment to be presented to the bankruptcy court for confirmation.

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Proper Procedural Treatment of "Stern Claims"

Executive Benefits Ins. Agency v. Arkison, 12-1200, 2014 WL 2560461 (U.S. June 9, 2014).

Nicolas Paleveda and his wife owned and operated Bellingham Insurance Agency, Inc. (BIA). In 2006, BIA became insolvent and Paleveda used BIA funds to incorporate Executive Benefits Insurance Agency, Inc. (EBIA) and "initiated a scheme to transfer assets from BIA to EBIA." Later in 2006, BIA filed for Chapter 7 bankruptcy and Pete Arkison was appointed as the trustee. The trustee subsequently filed a complaint in the Bankruptcy Court for the Western District of Washington alleging fraudulent conveyance

of BIA assets to EBIA. The trustee filed a motion for summary judgment against EBIA and the bankruptcy court granted the motion for the trustee on all claims, including the fraudulent conveyance claims. On appeal, the district court conducted *de novo* review and affirmed.

During the pendency of EBIA's appeal to the 9th Circuit, the U.S. Supreme Court decided *Stern v. Marshall*, 131 S.Ct. 2594 (2011), which held that "Article III of the Constitution did not permit a bankruptcy court to enter final judgment on a counterclaim for tortious interference, even though final adjudication of that claim by the bankruptcy court was authorized by [28 U.S.C. § 157(b)]." In light of *Stern*, EBIA moved to dismiss its appeal for lack of jurisdiction arguing that the bankruptcy court did not have the authority to finally decide the trustee's fraudulent conveyance claims. The 9th Circuit rejected EBIA's motion and affirmed the district court, finding that because EBIA had impliedly consented to the bankruptcy court's jurisdiction, the bankruptcy court's adjudication of the fraudulent conveyance claims was permissible. The U.S. Supreme Court granted certiorari.

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The Supreme Court began its analysis by noting an unanswered question left in the wake of *Stern*. Specifically, while *Stern* held that “Article III prohibits Congress from vesting a bankruptcy court with the authority to finally adjudicate certain claims,” *Stern* did not address how courts should proceed when faced with such “*Stern* claims,” where a claim is designated for final adjudication in the bankruptcy court as a statutory matter, but the court is simultaneously prohibited from proceeding in that way as a constitutional matter. The Supreme Court reviewed the history of modern bankruptcy legislation, recognizing that federal district courts have original jurisdiction in bankruptcy cases and may refer to “core” and “non-core” proceedings to bankruptcy judges. In those core proceedings, the bankruptcy judges may hear and determine the claims and enter orders and judgments. As to those non-core proceedings which are “otherwise related to” the bankruptcy case, the bankruptcy judges may enter findings of fact and conclusions of law for the district court’s *de novo* review, unless the parties consent to the bankruptcy judge’s entry of a final judgment. However, in light of *Stern*, bankruptcy courts were prohibited from entering final judgments regarding certain “core” claims of tortious interference.

Addressing how bankruptcy courts are to proceed when faced with *Stern* claims, the Supreme Court reviewed the severability provision of 28 U.S.C. § 157 which allows those provisions deemed invalid under Article III to be severed without affecting the remainder of the statute. Therefore, where a claim otherwise satisfies section 157(c) governing non-core provisions, a bankruptcy court is to “treat the *Stern* claim as non-core.”

Assuming that the fraudulent conveyance claims at issue are *Stern* claims, the Supreme Court determined them to be non-core, “related to” claims as they assert “that property that should have been a part of the bankruptcy estate and therefore available for distribution to creditors pursuant to Title 11 was improperly removed.” Finding that the fraudulent conveyance *Stern* claims fit comfortably within those claims governed by section 157(c), the Supreme Court held that the same procedure should apply, *i.e.*, the bankruptcy court should

enter findings of fact and conclusions of law to the district court for *de novo* review. As the district court in the present case had already conducted such *de novo* review, any procedural or consensual errors were cured as the parties were afforded to proper judicial review regardless of any improper final judgments entered by the bankruptcy court.

Importantly, the Supreme Court provided clarity as to this issue, but refused to decide “whether Article III permits a bankruptcy court, with the consent of the parties, to enter final judgment on a *Stern* claim.” *Id.* at *4 n. 4. The Supreme Court expressly “reserve[d] that question for another day.”

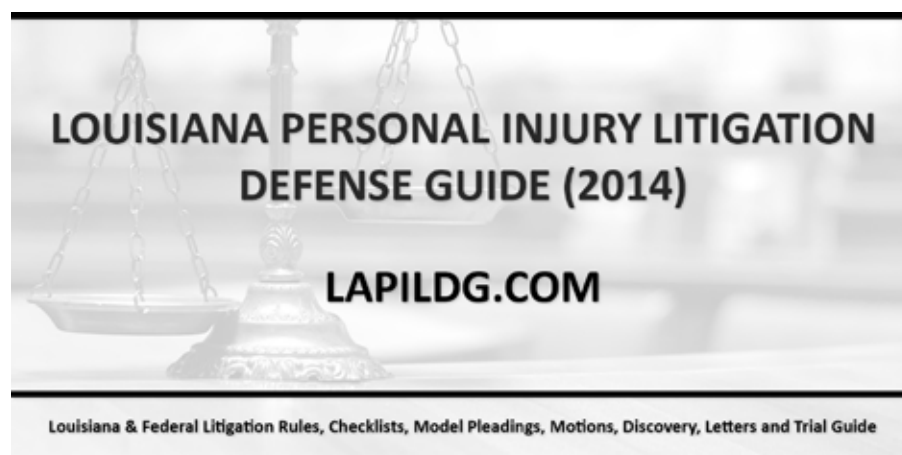
Inherited IRAs Not Exempt in Bankruptcy Proceedings

Clark v. Rameker, 13-299, 2014 WL 2608860 (U.S. June 12, 2014).

Heidi Heffron-Clark and her husband, Brandon C. Clark (collectively, the debtors), filed for Chapter 7 bankruptcy. Prior to the bankruptcy, Mrs. Heffron-Clark inherited her mother’s individual retirement account (IRA) and the account transformed into an “inherited IRA account.” Once the bankruptcy was filed, the debtors sought to have the inherited IRA excluded from their bankruptcy estate using the “retirement funds” exemption of 11 U.S.C. § 522(b)(3) (C). The trustee and the unsecured creditors of the estate challenged the exemption on the grounds that an inherited IRA is not “retirement funds” within the meaning of the Bankruptcy Code.

The Bankruptcy Court for the Western District of Wisconsin denied the exemption, reasoning that because an inherited IRA does not make distributions to a person’s retirement, it is not a retirement fund within the meaning of section 522(b)(3)(C). The district court reversed, finding that the retirement funds exemption covers any account containing funds “originally accumulated for retirement purposes.” The 7th Circuit reversed the judgment of the district court, finding that “inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings.”

The U.S. Supreme Court granted certiorari to resolve the 7th Circuit ruling with a conflicting case from the 5th Circuit, *In re Chilton*, 674 F.3d 486 (2012), 571 U.S. ____ (2013). The Supreme Court began its analysis by establishing that “retirement funds” are properly understood to mean “sums of money set aside for the day an individual stops working” and that any inquiry into whether funds are “retirement funds” must be an objective review of the legal characteristics of the account. The Supreme Court reviewed the three legal characteristics of an inherited IRA as compared to a traditional IRA. First, the holder of an inherited IRA is not permitted to make any contributions to the account, whereas the purpose of a traditional IRA is to create a tax incentive for regular contributions to a person’s retirement account. Second, while a traditional IRA is designed for distribution upon retirement, an inherited IRA from a non-spouse is required to be distributed within five years of the original owner’s death or through an annual distribution. This causes the inher-



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ited IRA to diminish over time regardless of proximity to the holder's retirement age. Lastly, the holder of an inherited IRA is permitted to withdraw the entire balance of the account for any purpose at any time. A traditional IRA prohibits such withdrawals without penalty, encouraging traditional IRA holders to leave the funds untouched until retirement.

The Supreme Court next reviewed the purpose of the Bankruptcy Code exemptions, namely to effectuate a balance between the interest of the creditors and the debtors. When debtors are permitted to exempt their traditional IRAs, it is to ensure the debtors' needs will be met during their retirement. On the other hand, an inherited IRA could be received as a windfall to the debtors, giving them the entire balance of the account for any frivolous use, to the detriment of the creditors.

Lastly, the Supreme Court reviewed the debtors' argument that because the funds were originally placed into an account bearing the legal characteristics of a retirement fund, the current status of the account is immaterial. The Supreme Court found

that because section 522(b)(3)(C) imposes two conditions for exemption, namely that the funds must be "retirement funds" and they must be held in a covered account, the debtors' interpretation would render the first condition superfluous as the funds of an inherited IRA could be used for any purpose. Reasoning that the statute should not be construed so as to render any portion superfluous, the Supreme Court affirmed the decision of the 7th Circuit, finding that because inherited IRAs do not bear the defining legal characteristics of retirement funds, they are not entitled to exemption pursuant to section 522(b)(3)(C).

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Supreme Court Holds Survival Actions Are Prescriptive Not Peremptive

Patricia Watkins v. Exxon Mobil Corp.,
13-1545 (La. 5/7/14).

Plaintiff brought a survival action pursuant to La. Civ.C. art. 2315.1 as a result of the death of her father in 1986. In the petition, filed on June 17, 2011, plaintiff claimed that on June 22, 2010, she was first made aware of the defendants' use of "naturally occurring radioactive material" (NORM), which she believed led to her father's death.

Because the suit was filed 25 years after decedent's death, defendants as-

the
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serted the claim should be perempted and, therefore, dismissed. La. Civ.C. art. 2315.1(A) sets out the action “shall survive for a period of one year from the death of the deceased” However, La. Civ.C. art. 2315.1(C) states, “[T]he right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this article.”

The court discussed the established principles for legislative interpretation, ultimately holding the Legislature is well acquainted with the distinction between prescriptive and preemptive and, by choosing to define the time limitation as prescriptive, gave a clear and unambiguous intent for interpretation and application.

Legislative Changes

The 2014 regular legislative session concluded on June 2. During the session, more than two dozen bills were filed to address the way civil lawsuits are handled in Louisiana.

Jury Threshold

A hot topic this session was the reduction of the jury threshold. There were propositions to allow for a trial by jury in a tort case regardless of the amount of the claim, or, in the alternative, to allow for a reduction in the threshold for a jury trial. These bills failed early on in the session. The jury threshold for tort claims in Louisiana remains \$50,000.

Summary Judgment

During the 2012 legislative session, La. C.C.P. art. 966 was amended, changing the procedure for summary judgments. This year, the Legislature once again tinkered with the procedure and further amended the article.

The newest amendments provide that the court *may* permit documentary evidence to be filed in the record. While the amendment continues to state this evidence can be in any electronically stored format, more importantly, it appears as though this provision would apply to evidence not cited in and attached to the original motion or opposition.

The second amendment to this article is specific to the objection of the submitted evidence. The article previously allowed for the opponent to object via a written motion to strike, wherein the reasons for objection were stated; the current amendment retains this procedure but clarifies the policy for service thereof. The article now provides that these objections must be served pursuant to La. C.C.P. art. 1313.

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Governor Signs New Corporation Law

On May 30, 2014, Gov. Jindal signed the Business Corporation Act (BCA) (Act No. 328), the first comprehensive revision of Louisiana's business corporation law since the current statute was originally adopted in 1968. Drafted by the reporter of the Louisiana State Law Institute's Corporations Committee, the BCA was submitted to the Legislature on the Law Institute's recommendation. The BCA will take effect on Jan. 1, 2015, and will be codified at La. R.S. 12:1-101 *et seq.*

The BCA is based on the Model Business Corporation Act, written and continuously revised by the Committee



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on Corporate Laws of the American Bar Association's Business Law Section. Approximately 30 states have adopted all or substantially all of the Model Act, and many other states have adopted selected provisions. The Model Act and the BCA are substantially longer than the current Louisiana Business Corporation Law, but it is hoped that the additional detail contained in the BCA will address questions that have arisen under current law. The law contains comments explaining the areas where it departs from the Model Act to preserve existing law or for other reasons.

A complete analysis of the new law is beyond the scope of this article, but some of the noteworthy changes in the BCA from existing law are highlighted.

► The BCA's default shareholder vote for the approval of extraordinary corporate transactions such as business combinations or amendments to the articles of incorporation is a majority of the corporation's outstanding voting power, unless the articles specify a greater vote. Current law requires a vote of two-thirds of the voting power present for most

such events.

► The law will, by default, exculpate the corporation's directors and officers from liability to the corporation and its shareholders for money damages for any act or failure to act as a director or officer, except for breaches of the duty of loyalty, the intentional infliction of harm on the corporation or shareholders, the payment of unlawful dividends or an intentional violation of criminal law. A corporation wishing to reject this limitation of liability must affirmatively "opt out" through a statement in the articles of incorporation.

► The law eliminates the concept of legal capital, the requirement of stated capital and capital surplus, and the concept of treasury shares. However, the law retains a "dual insolvency" standard, now requiring that dividends cannot be paid if the corporation would not be able to pay its debts as they become due or if its total assets would be less than its total liabilities plus any amount needed to satisfy the liquidation preference of preferred stockholders.

► The BCA permits the issuance

of shares in exchange for promissory consideration.






► The BCA generally makes it easier for shareholders to exercise dissenters' rights. Where dissenters' rights apply, the BCA entitles dissenters to the arms' length fair value of their shares, without discounts for minority status or lack of marketability. In limited circumstances, appraisal rights are a shareholder's exclusive remedy and foreclose the shareholder's ability to bring a fiduciary duty suit challenging a transaction.

► The BCA contains a withdrawal remedy not available under current law for an oppressed shareholder if the corporation's practices over a period of time are "plainly incompatible" with a genuine effort by the corporation to deal fairly and in good faith with the shareholder. If the remedy applies, the corporation must pay the shareholder fair value for his shares or may instead elect to seek a judicial dissolution of the corporation. The law provides that this is the exclusive remedy for a claim of oppression.

► Current Louisiana law provides a

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mechanism for the approval of transactions between the corporation and its directors or officers, so-called “self-dealing” transactions. However, current law does not validate self-dealing transactions if the required approvals are obtained, but rather merely provides they are not automatically voidable. By contrast, the BCA affirmatively validates such transactions if the required procedures are followed.

► The BCA permits written unanimous governance agreements among shareholders, which can contain provisions that deviate from the governance provisions of the BCA, including the total elimination of the board of directors or the limitation of its powers.

► The BCA eliminates the limitation under current law on the term of a voting trust.

► The law rejects the demand futility doctrine for derivative suits under current law and implements the Model Act’s universal demand rule. A board composed of a majority of disinterested directors (or a committee of such directors) can obtain a dismissal of the suit if the directors determine in good faith after reasonable inquiry that it is not in the best interests of the corporation.

► Section 1-120 of the BCA contains a set of unified filing rules specifying the signing, notarization and filing procedures to be followed for any document to be filed under the BCA with the Secretary of State. Documents filed electronically need not be notarized.

► The BCA reduces the “grace period” for failure to file an annual report from three years to 90 days. If the report is not filed timely after notice from the Secretary of State, the corporation’s existence terminates, but the law permits the corporation’s existence to be reinstated during a period of three years after the termination.

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Circuit Strikes Down EPA’s Attempt to Restrict Applicability of Judicial Decision

In *National Environmental Development Association’s Clean Air Project v. EPA*, 13-1035, 2014 U.S. App. LEXIS 10047 (D.C. Cir. May 30, 2014) (*NEDACAP*), the U.S. Court of Appeals for the District of Columbia Circuit vacated an Environmental Protection Agency (EPA) directive instructing EPA regions to disregard the 6th Circuit’s source aggregation decision outside the 6th Circuit. The court held that the directive violated EPA’s regulations, which require EPA to maintain national uniformity when implementing the Clean Air Act.

EPA regulations provide that multiple pollutant-emitting activities may be aggregated and considered a single source under the Clean Air Act Title V and New Source Review permitting programs if the activities are, *inter alia*, “adjacent.” While EPA’s interpretation of “adjacent” has fluctuated over time, EPA has recently interpreted “adjacent” to include consideration of the functional interrelatedness of emission units, in addition to the physical distance between

them. The 6th Circuit rejected this recent interpretation in *Summit Petroleum Corp. v. EPA*, 690 F.3d 733, 735 (6 Cir. 2012), holding that “EPA’s determination that the physical requirement of adjacency can be established through mere functional relatedness is . . . contrary to the plain meaning of the term ‘adjacent.’” The court vacated EPA’s determination that a natural gas sweetening plant and sour gas production wells, which were dispersed over 43 square miles, constituted a single source. In response, EPA issued the *Summit* Directive stating that, although the agency may no longer consider interrelatedness in determining adjacency in the 6th Circuit, “[o]utside the 6th Circuit . . . EPA does not intend to change its . . . practice of considering interrelatedness.”

Industry challenged the *Summit* Directive, and the D.C. Circuit held that the directive violated EPA’s “regional consistency” regulations in 40 C.F.R. Part 56, which “strongly articulate EPA’s firm commitment to national uniformity in the application of its [air] permitting rules,” with no exemption for variance created by a judicial decision. *NEDACAP*, 2014 U.S. App. LEXIS 10047 at *23-24. EPA argued that the Clean Air Act contemplates divergence between circuit courts and thus permits the agency to apply varied standards in different circuits. The court never reached this statutory issue because it concluded that EPA’s regulations precluded the *Summit* Directive by requiring uniformity. Similarly, the court reasoned that the “intercircuit nonacquiescence” doctrine (providing that an agency may maintain its independent assessment of the statutes and regulations



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it administers after one circuit disagrees with the agency's position, in the hope that other circuits, the Supreme Court or Congress will later uphold the agency's position) does not allow EPA to ignore its own regulations.

In the wake of *NEDACAP*, EPA could amend its regional consistency regulations to account for regional variances created by a judicial decision or modify its source aggregation regulations to include consideration of functional interrelatedness. In the meantime, the decision will likely curtail EPA's use of the functional interrelatedness test to determine adjacency and its reliance on intercircuit nonacquiescence in the air permitting context.

Amendments from 2014 Regular Session of the Louisiana Legislature

Act 544

Act 544 provides that the sole cause of

action that state and local governmental entities have related to certain coastal activities is under the Louisiana State and Local Coastal Resources Management Act (SLCRMA). Specifically, the act states that:

[e]xcept as provided in [the SLCRMA], no state or local governmental entity shall have, nor may pursue, any right or cause of action arising from any activity subject to permitting under [the SLCRMA], 33 U.S.C. 1344 [Clean Water Act wetlands permitting] or 33 U.S.C. 408 [Rivers and Harbors Act permitting] in the coastal area as defined by [the SLCRMA], or arising from or related to any use as defined by [the SLCRMA], regardless of the date such use or activity occurred.

Act 544 sets forth certain limited exceptions to the prohibition on non-SLCRMA-based claims, including

contractual claims and the pursuit of certain administrative remedies. Act 544 is a response to the 2013 lawsuit brought by the Southeast Louisiana Flood Protection Authority-East against numerous energy companies related to coastal oil and gas activities. The Act 544 amendments apply "to all claims existing or actions pending on the Act's effective date"

Act 400

Act 400 amends Louisiana's oilfield cleanup law, La. R.S. 30:29 (commonly known as "Act 312"). Under Act 312, a defendant may request a preliminary hearing to determine whether good cause exists for maintaining the defendant as a party. Act 400 provides that if a defendant is dismissed under this preliminary procedure, the defendant may recover reasonable attorneys' fees and costs from the party who asserted the claim. Act 400 reiterates that a defendant can make an admission of liability that is limited to responsibility for implementing the most feasible plan for remediation of the property but adds that, if a party makes such a limited admission, there shall be a rebuttable presumption that the plan ultimately approved by the Department of Natural Resources is the most feasible plan. Further, the court shall instruct the jury regarding this presumption if the party so requests. Act 400 also lists the specific types of damages that may be awarded in Act 312 cases. Finally, Act 400 provides that it "shall not apply to any case in which the court, on or before May 15, 2014, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued."

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Custody

Bagwell v. Bagwell, 48,913 (La. App. 2 Cir. 1/15/14), 132 So.3d 426.

The parties' stipulation that *Bergeron* would not apply to a modification of custody was enforced as not being against public policy (although it appears that the previous judgment was by consent, so *Bergeron* would not have applied anyway, although some testimony seems to have been taken before the prior agreement was reached).

Barber v. Green, 49,049 (La. App. 2 Cir. 2/19/14), 134 So.3d 1223.

The trial court changed the parties' alternating weekly physical custody schedule to less time for the father because of his rotating work schedule as a fireman, which it found caused too much "shifting" in the schedule. The court of appeal reversed and restored the original schedule, finding that the father provided more continuity and stability and that the old schedule had less "shifting" than the one imposed by the trial court. The court of appeal also stated that his mother, who helped him with the children while he was working, was more than a mere "third party" and that there was value in the children having time with their grandmother.

Custody/Relocation

Randazzo v. Prosperie, 13-0704 (La. App. 1 Cir. 9/13/13), 135 So.3d 22.

In determining both custody and relocation as initial judgments, the court had to apply both the La. Civ.C. art. 134 and La. R.S. 9:355.14 factors. The trial court's award of alternating weeks between the father in Louisiana and the mother in Texas of this not-yet-school-aged child was not an abuse of discretion and fostered the relationship between the child and his extended families in both states. Because the trial court did not name a domiciliary parent, or explain why

one was not needed, the court of appeal named the mother as domiciliary parent. It vacated the award of the child tax dependency deductions to the father as premature because no child support order had yet been entered. Although attorneys' fees were not recoverable under La. R.S. 9:355.6 for her relocation without providing notice, her failure to provide notice did increase the costs of the litigation, so the trial court's award of \$500 attorneys' fees to him was affirmed under La. R.S. 9:355.19.

Procedure/Evidence

Parents of Minor Child v. Charlet, 13-0316 (La. App. 1 Cir. 10/12/13), 135 So.3d 724.

Because communication shared with a priest during confession is a confidential communication made to a clergyman, the priest is not a mandatory reporter even when the confession is by a minor regarding her being sexually abused by another member of the church. There is no private or civil cause of action against such a clergyman since there is no mandatory duty to report. There is no cause of action for negligent giving of advice given during the confession.

Parents of Minor Child v. Charlet, 13-2879 (La. 4/4/14), 135 So.3d 1177.

The Supreme Court granted writs, reversed the court of appeal and reinstated the trial court's judgment, holding that the child could waive the privilege regarding her confession to the priest, and that the priest had no independent right to claim a privilege because he could only raise the privilege "on behalf of the person" who made the confession. Further, whether the priest had a mandatory duty to report the child's claims of abuse was a question to be determined by the fact finder at trial, including whether the communications between the child and priest were actually confessions, and whether the priest had knowledge outside of the confessional that would lead to a duty to report the child's claims.

Adoption

In Re B.L.M., 13-0448 (La. App. 1 Cir. 11/1/13), 136 So.3d 5.

This intrafamily adoption was affirmed

because, despite the existence of a consent judgment granting the mother sole custody, terminating the biological father's custodial rights, and enjoining him from contacting the mother and children, he failed to show "just cause" for not attempting to contact the children, and because the adoption was in their best interest.

M.P.W. v. L.P.W., 13-0366 (La. App. 1 Cir. 11/1/13), 136 So.3d 37.

M.P.W.'s petition to annul a stipulated judgment in which he agreed to terminate his custodial rights and awarded sole custody to the mother was appropriately dismissed on summary judgment because the stipulation was proper as to form, having been dictated into the record in open court, under oath. The mother's waiving of her rights to child support was not *contra bones mores*, nor was his agreeing to sign a voluntary act of surrender. Because the waiver of child support was tied to the act of surrender so as to allow the children to be adopted by the mother's new husband, the biological father's obligations of support and custody would have been terminated anyway and assumed by the

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adopting parent. The transcript of the stipulation showed no ill practices, duress or deprivation of legal rights. His change of heart or bad bargain made did not provide grounds for relief.

Final Spousal Support

Fontana v. Fontana, 13-0916 (La. App. 4 Cir. 2/12/14), 136 So.3d 173.

Although Ms. Fontana had some income and inherited assets, she was still entitled to final spousal support as a rehabilitative award for three years to obtain a degree. However, the court of appeal reduced the award by deleting support for entertaining, charities, salon, health club, pet, other and miscellaneous cash. Her attorneys' fees were allowed to remain as an expense category. Because the father's income was greater than the highest guideline amount, the court could use its discretion to set the child support award based on the expense sheet provided by Ms. Fontana's CPA expert. The court found it would be

inconsistent to impute her income for child support purposes since it found that she was entitled to rehabilitative support. The trial court did not err in ordering Mr. Fontana to pay 100 percent of the children's tuition because he had been paying it under a temporary agreement and she had little income, especially compared to his. Mr. Fontana's contempt for late payment of child support was reversed because the parties had deviated by custom from the terms of the judgment, and his untimely payment was not in willful disobedience; further, amounts due for certain expenses were uncertain and were due on an uncertain date.

—David M. Prados

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Medical Expenses Incurred

Ashley Hoffman, et al. v. Travelers Indemnity Company of America, 13-1575 (La. 5/7/14), ____ So.3d ____.

Ms. Hoffman, injured in an auto accident, was treated at Baton Rouge General Medical Center (BRMC) under an agreement by which she assumed responsibility for payment of all charges. BRMC's charges totaled \$713.67. Under terms of a contract with AETNA, her parents' insurer, the hospital billed her at a discounted rate of \$485.29, which she paid. Travelers received an itemized bill from BRMC that did not reflect the discount and issued payment to Ms. Hoffman in the full amount. After learning of the contractual discount, Travelers sought reimbursement from Ms. Hoffman for the difference. Her suit alleged Travelers' non-compliance with its policy for failing to pay the full amount of the bill. Travelers moved for summary judgment, arguing it had complied with the policy because it paid Ms. Hoffman for "expenses incurred," *i.e.*, \$485.29. The trial court denied the motion and the 1st Circuit Court of Appeal denied Travelers' writ for supervisory review. The Supreme Court granted Travelers' writ and remanded to the court of appeal for briefing, argument and full opinion.

On remand, the court of appeal considered the issue:

[W]hether "expenses incurred," as stated in the medical payment provision of plaintiff's automobile liability policy, means the full amount of the medical expenses charged by a treating hospital in connection with plaintiff's automobile accident, or the reduced amount of medical expenses accepted by the hospital due to a contractual agreement with plaintiff's health insurer.

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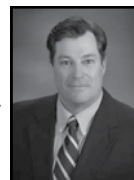


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The court concluded that “‘expenses incurred’ constitutes the full amount of medical expenses charged by the treating hospital and that the trial court properly denied [Travelers’] motion for summary judgment.” The opinion repeatedly referred to the discount as a “windfall” to which Travelers was not entitled. Judge Higginbotham, concurring, further stated, “[T]he meaning of the term [‘expenses incurred’] is subject to interpretation of the parties’ intent, and is, therefore, inappropriate for summary judgment.” The court cited two 3rd Circuit cases, *Thomas v. Universal Life Ins. Co.*, 201 So.2d 529 (1967), and *Niles v. American Bankers Ins. Co.*, 229 So.2d 435 (1969).

The Supreme Court found these rulings inapposite to the case at bar, citing instead, with approval, *Drearr v. Connecticut General Life Ins. Co.*, 119 So.2d 149 (La. App. 4 Cir. 1960), and *Brackens v. Allstate Ins. Co.*, 339 So.2d 486 (La. App. 2 Cir. 1976). In both cases, plaintiffs received treatment without charge, to which they were entitled, at Veterans Administration hospitals. The appeals courts concluded that the plaintiffs “incurred” no expenses and, therefore, were not entitled to payments under their insurance contracts.

Because we find Travelers paid the expenses incurred by Ms. Hoffman in accordance with the terms of its policy, we find that Travelers has fully performed under the insurance contract and is entitled to summary judgment.

—**John Zachary Blanchard, Jr.**
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Survival Action Subject to Prescriptive Rather Than Peremptive Period

A decision by the Louisiana Supreme Court could have far-reaching repercussions in allowing individuals to bring claims for survival action when the victim died years

earlier. In *Watkins v. Exxon Mobil Corp.*, 13-1545 (La. 5/7/14), ____ So.3d ____, the court clarified that survival actions under Louisiana law are subject to prescriptive rather than peremptive periods, opening the door for plaintiffs to file suit within one year of *knowing* of their cause of action, rather than one year from the date of death of the victim.

The plaintiff, Patricia Watkins, filed suit on June 17, 2011, setting forth claims under wrongful death and survival action relating to the death of her father, who had died on Dec. 27, 1986. The plaintiff alleged that her father had been exposed to naturally occurring radioactive material (NORM) by the defendants and claimed that, under the principle of *contra non valentem*, she did not have notice of her causes of action until June 22, 2010, making her filing of June 17, 2011, within one year of having knowledge of her claim.

The defendants filed exceptions of prescription, preemption and no cause of action, which were sustained by the district court, finding the one-year time period governing survival actions to be peremptive under La. Civ.C. art. 2315.1(A) and, therefore, not capable of renunciation, interruption or suspension, even under the doctrine of *contra non valentem*. Thus, the court dismissed the plaintiff’s suit as untimely since it had been filed more than a year after the death of her father. On appeal, however, the 4th Circuit reversed

the district court, finding that the 1986 amendment to article 2315.1 made the period prescriptive rather than peremptive, allowing for *contra non valentem* to suspend the running of the prescriptive period. *Watkins v. Exxon Mobil Corp.*, 12-0477 (La. App. 4 Cir. 5/29/13), 117 So.3d 548.

The Louisiana Supreme Court, per Justice Guidry, looked to the plain language of article 2315.1, legislative intent and policy considerations in affirming the 4th Circuit’s ruling that the one-year time limitation is a period of prescription rather than preemption, and remanded the case to the district court for further proceedings. *Watkins v. Exxon Mobil Corp.*, 13-1545, p. 12 (La. 5/7/14), ____ So.3d _____. By allowing survival action claims to be brought more than a year after the death of the victim, the court expanded the rights of victims’ families to file survival action claims if prescription has been interrupted or suspended. As the period is prescriptive rather than peremptive, survivors may bring their claims even years after the victim’s death, which could lead to a flurry of survival actions from claimants who, for years, were unaware they could even bring such a claim.

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Ukraine and Russia

Political events in Ukraine beginning in November with pro-European protests in Kiev and culminating in March with the annexation of Crimea by Russia exposed a plethora of international legal issues, including some matters of first impression. The broader international legal issues include, *inter alia*:

► Whether the Russian minority in Crimea and Eastern Ukraine validly executed their *jus cogens* right of self-determination to become part of Russia or an autonomous region of Ukraine;

► Whether Russian interference and intervention in Crimea and Eastern Ukraine violates the Ukrainian right of territorial integrity codified in the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe, which requires Russia to “refrain . . . from the threat or use of force” against Ukraine and requires that Russia “respect the territorial integrity of” Ukraine;

► Whether Russian interference and intervention in Crimea and Eastern Ukraine violates the 1994 Budapest Memorandum whereby Ukraine transferred its nuclear arsenal to Russia in exchange for Russia’s reaffirmation of its “obligation to refrain from the threat or use of force against the territorial integrity

or political independence of Ukraine;” and

► Whether Russian interference and intervention in Crimea violates three Black Sea Fleet agreements dividing up Soviet military warships stationed in Crimea and granting Russia leasehold interests in Crimean naval facilities through 2042. The Black Sea Fleet agreements require Russian military forces to “respect the sovereignty of Ukraine, honor its legislation and preclude interference in the internal affairs of Ukraine.”

A full discussion of the broad legal questions is beyond the scope of this article. Ukraine lodged formal complaints at both the United Nations and the International Criminal Court, where most of the complex public and private international legal issues will be addressed. Russia launched a complaint at the World Trade Organization regarding the U.S. sanctions regime, discussed *infra*.

Economic Sanctions

In addition to major legal questions of public and private international law, the political events generated a myriad of economic sanctions that directly and immediately impact international business transactions and investments. U.S. law on sanctions, export controls and financial due diligence are difficult to comply with under ordinary circumstances. The broad sanctions issued by the United States, Canada, the European Union (EU) and Australia increase the pressure on counsel with client interests in the region.

The following is a brief overview and summary of major sanctions.

► On March 6, 2014, President Obama entered Executive Order No. 13660 (Blocking Property of Certain Persons Contributing to the Situation in Ukraine) authorizing the first set of economic sanctions against Russia under the International Emergency Economic Powers Act. The Executive Order did not name particular individuals or institutions, but set forth the general intention of the United States to target persons or individuals engaged in illicit financial activity or political activity destabilizing Ukraine.

► On March 6, 2014, the U.S. Department of the Treasury issued an advisory regarding financial institutions’

ongoing obligations to monitor and report suspicious transactions relating to foreign senior political figures, including former Ukrainian President Victor Yanukovich (U.S. Department of the Treasury Financial Crimes Enforcement Network, Advisory, Updated Guidance to Financial Institutions on Recent Events Related to the Departure of Victor Yanukovich and Other Ukrainian Officials).

► The EU initiated sanctions against Russia at an extraordinary meeting of the European Commission on March 6, 2014. The EU suspended bilateral talks with Russia on visa and trade matters and preparations for the G8 Summit in Sochi, Russia. The G8 summit was held in Brussels on June 6, 2014, without Russian participation for the first time in 17 years.

► The United States and the EU acted again on May 17, 2014, following the annexation referendum in Crimea. The United States imposed sanctions blocking the assets and prohibiting transactions with four Ukrainian individuals and seven high-level Russian officials (Office of Foreign Assets Control, Changes to List of Specially Designated Nationals and Blocked Persons List since January 1, 2014 at 7-8). The EU imposed an asset freeze and travel ban on 21 persons (Council Regulation No. 269/2014, March 17, 2014). The EU list was expanded to add an additional 12 individuals on March 21, 2014 (Council Regulation No. 284/2014).

► The broadest sanction regime was imposed by the United States on March 20, 2014. The United States expanded the list of sanctioned individuals by 20 and also specifically targeted Russian financial institution Bank Rossiya. Nine sectors of the Russian economy also were targeted, including financial services, energy, metals and mining, engineering, and defense and related material (Office of Foreign Assets Control, Ukraine-Related Designations: Specially Designated Nationals List Update).

► Russia responded in March by issuing its own retaliatory sanctions banning travel and freezing the assets of, *inter alia*, Senators John McCain, Harry

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Reid and Mary Landrieu.

► The United States, the EU, Canada and Australia have continued to add further designations to the sanction list since March. Currently 100 individuals and 21 entities are subject to sanction in one or more of the countries listed above.

Effect on International Business

What does the sanction regime mean for U.S. or other international business?

First, any designated individuals or entities are subject to a visa ban and asset freeze, including all assets located in the United States or in the possession of a U.S. citizen. Guidance provided by the Office of Foreign Asset Controls governs the scope of assets that may be blocked, which can include future contingent interests (Ukraine-Related Sanctions Regulations, 31 C.F.R. Part 589, May 8, 2014). U.S. individuals and entities are prohibited from engaging in transactions with designated individuals or entities, including any entities that are owned or controlled by the designated entities. This could include

joint venture partners and others where the designated company or individual has a 50 percent or greater interest. Violations of these sanctions can result in civil penalties up to \$250,000 or twice the value of the transaction, whichever is greater. Criminal penalties of 20 years' imprisonment are available for intentional or willful violations of the sanctions.

Every attorney representing companies doing business overseas must conduct significant due diligence to confirm they are not conducting business either with a specifically designated individual or entity, or an entity that is controlled by a designated individual or entity.

Second, the sanctions imposed an indefinite hold on export licenses for certain U.S. goods, services or technologies to Russia. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced the suspension of export control licenses to Russia in its area of jurisdiction ("Commerce Department Announces Expansion of Export Restrictions on

Russia," April 28, 2014, available at: www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/107-about-bis/newsroom/press-releases/press-release-2014/665-commerce-dept-announces-expansion-of-export-restrictions-on-russia).

BIS primarily governs "dual use" items that have both a commercial and military application. For now, the BIS ban appears to apply prospectively only, with no impact on existing licenses. However, BIS always has the authority to modify or revoke prior licenses. Any business exporting goods to Russia or the region that are subject to export licenses should double check the license status and reconfirm with its consignees that goods sent to neighboring countries are not being re-exported to Russia.

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5th Circuit Limits Whistleblower Protections, But Leaves Open Extraterritorial Application

Villanueva v. U.S. Dep't of Labor, 743 F.3d 103 (5 Cir. 2014).

The U.S. 5th Circuit Court of Appeals held that the whistleblower protections of the Sarbanes-Oxley Act (SOX) do not apply to individuals who make complaints regarding violations of *foreign* law as opposed to *U.S.* law. Although the *Villanueva* decision narrowed the scope of SOX's whistleblower protections, the three-judge panel specifically declined to address the question of whether SOX has extraterritorial application. Thus, it remains an open question in the 5th Circuit as to whether SOX's whistleblower provision applies to complaints *originating* in foreign countries but involving alleged violations of U.S. law.

Given the procedural posture of the case, *Villanueva* also highlights the importance of the standard of review employed by a reviewing court. Because the *Villanueva* court was analyzing the order of an administrative court, it applied a deferential standard of review when conducting its examination. *Villanueva*, therefore, provides an excellent illustration of the difficulties associated with challenging an administrative decision at the appellate level.

Procedural History

The plaintiff, William Villanueva, was a Colombian national formerly employed with a Colombian subsidiary of Core Labs. (Core Labs is a Netherlands company whose stock is publicly traded in the United States and, therefore, is an entity covered by SOX's whistleblower

provision.) According to Villanueva, he raised concerns that his employer, acting at the direction of Core Labs executives in Houston, engaged in improper transactions designed to underreport revenue for the purpose of reducing its tax burden in violation of Colombian law. After making these complaints, Villanueva was passed over for a pay raise and eventually terminated from his position.

Villanueva subsequently filed a charge with the Occupational Safety and Health Administration (OSHA), the agency charged with investigating alleged violations of SOX. Villanueva's administrative charge alleged that the withholding of his pay raise and the termination of his employment were in retaliation for his previous complaints and, therefore, violated SOX's whistleblower provision. However, OSHA found that it did not have jurisdiction over Villanueva's charge because the complained-of acts (*i.e.*, the denial of the pay raise and subsequent termination) took place outside of the United States in Colombia.

After receiving the adverse determination from OSHA, Villanueva sought further review of that decision before an administrative law judge (ALJ). The ALJ agreed with OSHA's determination to dismiss Villanueva's charge, reasoning that Villanueva's complaints would require extraterritorial application of SOX and that such application was impermissible because the statute does not apply extraterritorially. The ALJ likewise held that he lacked jurisdiction over Villanueva's whistleblower complaint.

Villanueva then appealed the ALJ's decision to the Department of Labor's (DOL) Administrative Review Board, which, in a 3-2 *en banc* decision, held that it had jurisdiction over the complaint but nonetheless affirmed the ALJ's dismissal of the case. In particular, the board held that SOX's whistleblower provision did not apply extraterritorially and the facts underlying Villanueva's complaint, *i.e.*, a non-U.S. citizen residing in Colombia alleging violations of foreign laws, would require extraterritorial application. For these reasons, the board concluded that Villanueva's complaints did not constitute protected activity under SOX.

5th Circuit's Decision

After having his SOX whistleblower complaint dismissed at three different administrative levels of review, Villanueva appealed his claim to the 5th Circuit. In a unanimous decision, the *Villanueva* court affirmed the decision to dismiss Villanueva's charge but on narrower grounds than the Administrative Review Board. While agreeing that Villanueva's claim failed because SOX's protections are limited to the reporting of violations of certain *United States* laws, the 5th Circuit explicitly declined to address the question of whether SOX applies extraterritorially, despite an amicus brief from the DOL urging the court to do so. Had the 5th Circuit accepted the government's invitation, it would have been the first federal appellate court to address whether SOX's whistleblower provisions apply to complaints made outside the United States.

Perhaps recognizing that the 5th Circuit would limit the application of SOX to complaints regarding U.S. laws, Villanueva argued in the alternative that his complaint implicated U.S. law because his charge included an allegation that tax fraud "was being perpetrated in Colombia at the express direction of Core Lab[s]'s executives in Houston *using mail, email and telephones to accomplish the fraud.*" The 5th Circuit, however, found this single reference insufficient to demonstrate that Villanueva had a reasonable belief that U.S. mail and wire fraud statutes had been violated. Although the 5th Circuit agreed that an employee need not cite a specific code section to come within the scope of SOX's whistleblower protections, it held that the thrust of Villanueva's complaint was the alleged underreporting of taxes in violation of *Colombian* law rather than *U.S.* law and, therefore, was insufficient to constitute protected activity under the statute.

One notable, but perhaps overlooked, aspect of the 5th Circuit's decision is the impact of the standards of review it applied to the Administrative Review Board's determination that Villanueva's OSHA charge fails to raise violations of U.S. law. Because the board's order dismissing Villanueva's claim was governed by the Administrative Procedure Act, the 5th

Circuit reviewed that decision under abuse of discretion and substantial evidence standards. Given these deferential standards, the 5th Circuit affirmed the board's finding that Villanueva's charge did not allege violations of U.S. law "because a reasonable person could have reached the same conclusion as the [board]." Had the board reached a different conclusion regarding the scope of Villanueva's allegations and found them to implicate U.S. law, the 5th Circuit may well have reached the same determination given the limited scope of judicial review.

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Mineral Code Article 149

Mineral Code Article 149 provides that, when land is acquired by certain types of "acquiring authorities" (primarily government agencies or other entities with expropriation authority, and nonprofit land conservancy groups), and the person from whom the land is acquired reserves a mineral right that is subject to prescription of nonuse, prescription will remain interrupted as long as the acquiring authority or any successor-in-interest that is an acquiring authority owns the land. Acts 2014, No. 473, adds a new provision to Mineral Code Article 149. It states that, if "an acquiring authority or other person" acquires land by contract, exchange or

donation "as part of an economic development project pursuant to a cooperative endeavor agreement between the acquiring authority and the state through the Department of Economic Development . . . , the prescription of nonuse shall be for a period of twenty years from the date of acquisition whether the title to the land remains in the acquiring authority or is subsequently transferred."

Legacy Litigation

La. R.S. 30:29(B)(6) allows a defendant in a legacy litigation case to request a preliminary hearing early in the litigation to determine whether there is good cause for maintaining the defendant in the litigation. The provision provides for a dismissal without prejudice if no evidence is introduced at the hearing to show that the moving party caused or is otherwise legally responsible for the contamination alleged. If such a defendant is dismissed without prejudice, the defendant can be rejoined in the litigation later if new evidence is discovered. If the

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defendant is not rejoined prior to the end of the lawsuit, the defendant is entitled to a dismissal with prejudice. Acts 2014, No. 400, amends this provision to provide that, if such a defendant is never rejoined, the defendant is entitled to reasonable attorneys' fees and costs.

Act 400 also adds a new section which states that, if a defendant makes a limited admission of liability as allowed by R.S. 30:29, there will be a rebuttable presumption that the plan approved by the Department of Natural Resources, after consultation with the Department of Environmental Quality, is the most feasible plan for remediation.

In addition, Act 400 amends R.S. 30:29 to state that money damages "may be awarded only" for: (1) the costs of funding the feasible plan; (2) the cost of additional remediation *only* if required by an express contractual provision providing for remediation to original condition or to some other specific remediation standard;" (3) costs of evaluating or correcting damages "caused by unreasonable or excessive operations;" and (4) "nonremediation" damages.

Cooperative Endeavor Agreements for Purchase of Surface Water

La. R.S. 30:961 authorizes the Department of Natural Resources to enter cooperative endeavor agreements that grant persons the right to withdraw running surface waters in the state of Louisiana in return for payment of fair market value. The statute previously prohibited the Department from entering any new cooperative endeavor agreements after Dec. 31, 2014, though existing agreements could be extended to a date no later than Dec. 31, 2020. Acts 2014, No. 285, changes the deadline for the Department to enter new cooperative endeavor agreements to Dec. 31, 2016.

Coastal Erosion Litigation

Acts 2014, No. 544, amends La. R.S. 49:214.36 to add a section stating that "no state or local governmental entity shall have, nor may pursue, any right or cause of action arising from any activity" in the coastal area that is "subject to permitting under" one of three statutes—La. R.S. 49:214.21 (part of the

State and Local Coastal Resources Management Act of 1978); 33 U.S.C. 1344 (part of the Clean Water Act); or 33 U.S.C. 408 (part of the Rivers and Harbors Appropriation Act of 1899)—or that arises from "use" or activity in the coastal zone, "regardless of the date such use or activity occurred." The legislation states that nothing in the new section precludes any government entity from enforcing contract claims or from pursuing any administrative remedies. Act 544 states that it applies to pending actions, as well as claims asserted after the effective date of the legislation. An objective of the supporters of Act 544 is to stop litigation in which the Southeast Louisiana Flood Protection Authority-East has sued nearly 100 oil and gas companies, blaming the companies for coastal erosion and seeking billions of dollars in compensation.

City's Annexation of Parish Road

Chesapeake Operating, Inc. v. City of Shreveport, 48,608 (La. App. 2 Cir. 2014), 132 So.3d 537.

The City of Shreveport and Caddo Parish disputed which of them was entitled to the royalties attributable to the area occupied by certain roads located within units where Chesapeake operated productive wells. The beds of the roads had been owned by Caddo Parish, but the City of Shreveport had annexed an area that included the roads. The City asserted that the annexation had the effect of transferring ownership of the roads to the City and that the City, therefore, had the right to the royalties attributable to the roadbeds. The Louisiana 2nd Circuit agreed, holding that the annexation had the effect of transferring ownership of the roads to the City. Therefore, the City was entitled to the disputed royalties.

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— Michele M. Echols
Echols & Associates, L.L.C.
and volunteer with North Shore Pro Bono Project
Covington, LA



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Panel Composition

In Re Vankregten, 48,622 (La. App. 2 Cir. 2/5/14), 134 So.3d 641.

Mr. Vankregten's survivors filed a request for a medical review panel, naming as respondents a hospital and two of its nurse-employees. They then nominated a nurse as a panelist. The hospital objected because the nominee was not a physician. The petitioners refused to nominate a physician, contending that the claimed negligence was by two nurses and that the Louisiana Medical Malpractice Act (LMMA) allows healthcare providers of the same class and specialty to serve on panels.

The attorney chair notified the parties he did not have authority to decide the question, following which the hospital moved to compel petitioners to withdraw the nomination of the nurse and to substitute a physician in her place.

Does La. R.S. 40:1299.47 allow a registered nurse to serve on a panel involving only a hospital and two of its nurse-employees? All parties stipulated, and the court accepted, that there were no reported Louisiana cases addressing this issue.

Eligibility for medical review panel service is set forth in La. R.S. 40:1299.47(C) (3)(j). The controlling sentence reads: "If there is only one party defendant which is a hospital, community blood center, tissue bank, or ambulance service, all panelists except the attorney shall be physicians."

Schumpert (the hospital) argued there is only one party defendant, despite the nurses also having been named as parties, because those nurses were the hospital's employees, and they would not be separately liable for any acts of negligence; only Schumpert would be.

All negligence allegations in the panel request were against the nursing staff, with no allegation of independent negligence by the hospital. The appellate court concluded, in affirming the trial court's decision, that

absent a claim against Schumpert for its individual negligence, there is "effectively only one defendant in this case," and, thus, all panelists must be physicians, under the clear and unambiguous language of Section 1299.47(C)(3)(j).

Physician's Liability After Settlement with PCF

Frugé v. Foret, 13-1071 (La. App. 3 Cir. 3/5/14), 134 So.3d 152.

Following a split panel decision, and prior to trial, the plaintiff accepted \$600,000 from the PCF in full settlement of all claims against it, while reserving rights against Dr. Foret. Following Mr. Frugé's trial against Dr. Foret, the court found Dr. Foret negligent and awarded Frugé \$700,000 in general damages and approximately \$66,000 in future medical expenses. The trial court reduced the award to \$500,000, under La. R.S. 40:1299.42(B) (1), and found Dr. Foret's liability was limited to \$100,000 plus interest. The judgment said nothing about the settlement with

the PCF and gave Dr. Foret no offsetting credit for the settlement.

Dr. Foret contended on appeal that the trial court should first have reduced the award to the statutory cap of \$500,000 and then again reduced that amount by the \$600,000 paid by the PCF, which would mean he owed nothing. He asserted that the PCF settlement was "an advanced payment" under the LMMA, and, therefore, a payment for which he must be given credit because:

A plaintiff is not entitled to recover damages from the [fund] before an admission of liability has been made by the defendant [healthcare] provider, then recover again after a judgment has been rendered against the defendant [healthcare] provider.

Frugé countered that his settlement with the PCF had no legal effect on Foret's liability for his \$100,000 (plus interest) exposure.

In its reasons for judgment, the trial court relied on two provisions of the LMMA. La. R.S. 40:1299.42(C) provides

Community Action Committee & 'WEEN DREAM Partnering for Halloween Costume Donations

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee is assisting the 'WEEN DREAM program in the collection of new and/or slightly used Halloween costumes for children in need.

Law firms, attorneys and legal professionals wishing to donate should drop off costumes at the Louisiana Bar Center, 601 St. Charles Ave., New Orleans, on Monday and Tuesday, Nov. 3-4, during business hours (8:30 a.m.-4:30 p.m.).

Costumes may simply be placed in bags. There is no labeling or sorting process required. 'WEEN DREAM volunteers will handle the sorting process and match the costumes to children for Halloween 2015. (Costumes that were donated after Halloween 2013 are being distributed to children for 2014.)

For more information, contact Krystal Bellanger Rodriguez at (504)619-0131 or email kbellanger@lsba.org.



that an advanced payment by a healthcare provider to anyone for injuries or damages suffered by the plaintiff may not be construed as admission of liability. Section 1299.42(D)(2) provides that advanced payments inure to the exclusive benefit of the defendant or his insurer who makes the payments. The PCF is neither a defendant healthcare provider nor an insurer. The court reasoned that the PCF settled prior to trial to “protect its own interests.” Section 42(D)(2) is unambiguous: Advanced payments inure to the exclusive benefit of the defendant or his insurer. Dr. Foret paid nothing; therefore, he can receive no credit to apply to the judgment against him.

In affirming the trial court’s ruling, the appellate court found “clear” the LMMA’s language that advanced payments inure only to the “defendant or insurer making the payment.”

Failure to Pass Board Certification Exams

Sanders v. Ballard, 48,714 (La. App. 2 Cir. 2/14/14), 134 So.3d 1205, writ denied, 14-0565 (La. 4/25/14).

A jury found that Dr. Ballard breached the standard of care owed to Mr. Sanders but that the breach caused no injury to Sanders that would not have otherwise occurred.

Sanders posed several arguments on appeal, one of which involved the denial of his motion in limine to prevent the defendant from cross-examining Sander’s expert about his failing his board certification exams on his first attempt.

Sanders presented evidence that his orthopedic expert (Dr. Leitman) passed the exams on his second attempt, possessed many impressive qualifications and skills, had outstanding academic training, with military service after medical school, had performed several hundred surgeries of the kind Sanders underwent, and had worked under the head team physician for the Philadelphia Eagles and Philadelphia Flyers, as well as for several high school and minor league baseball teams.

Dr. Ballard countered that the failure of Dr. Leitman’s certification exam was relevant and highly probative of his qualifications and knowledge. Dr. Ballard also argued that Sanders’ attorney raised board certification in tendering Dr. Leitman as an expert witness and that “board certification was relevant to an expert’s knowledge of accepted standards of practice and the expert’s training and experience.”

The appellate court noted that while Dr. Leitman was accepted as an expert, the jury weighed the testimony of all of the experts and decided the case based on the weight of the evidence. Given the “great discretion” of trial judges in determining relevancy and admissibility, the court’s determination concerning “relevancy and admissibility should not be overturned absent a clear abuse of discretion.”

—Robert J. David

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



Taxpayer Refund Requests Do Not Interrupt Prescription in Favor of Collector

Cajun Industries, L.L.C. v. Vermilion Parish School Board, 14-22 (La. App. 3 Cir. 5/14/14), ___ So.3d ___, 2014 WL 2107047.

The 3rd Circuit Court of Appeal reversed in part a trial court’s decision to grant a motion to strike and an exception of prescription filed by Cajun Industries, L.L.C. (Cajun). The motion and exception were in response to the Vermilion Parish School Board’s (the collector) reconventional demand for offset of additional taxes due against Cajun’s suit for refund of sales and use taxes. The 3rd Circuit held that the collector had the right to offset tax liabilities against any refund found to be due to Cajun, but held that Cajun’s filing of a refund request did not interrupt prescription for taxes that were not assessed by the collector within the constitutionally prescribed period.

Cajun paid sales and use taxes on certain purchases it made from 2007-10. Cajun later asserted that the purchases were exempt from tax. In December 2010,

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Cajun filed a claim for refund of the taxes. In May 2011, Cajun filed a claim for an additional refund for sales and use taxes paid in 2010-11. The collector granted a partial refund and formally denied the remainder. Cajun filed a petition for refund in the 15th Judicial District Court in May 2013. The collector filed an answer and reconventional demand against Cajun for statutory offset, stating that it expected to find delinquent taxes, interest and penalties owed by Cajun for the disputed periods, 2007-11. Cajun filed a motion to strike and an exception of prescription, which the trial court granted. The collector appealed.

In reversing the matter, the 3rd Circuit addressed two questions: (1) whether the collector has the right to offset taxes against any tax refund amount found due to a taxpayer; and (2) whether the filing of a refund request by a taxpayer interrupts prescription in favor of taxes that have not been assessed within the constitutionally prescribed period set forth by La. Const. art. 7, § 16?

In rejecting Cajun's reliance on the Louisiana Civil Code concept of compensation, the 3rd Circuit relied on La. R.S. 47:337.78 and La. R.S. 47:337.81(C). Relying on the aforesaid statutory provisions, the 3rd Circuit found that the collector had the right to credit any overpayment against liability owed by a taxpayer and assert any demand for tax due for the period involved in the claim for refund.

In addition, the 3rd Circuit found that none of the instances in which prescription can be interrupted and suspended under La. R.S. 47:337.67 were applicable. The collector asserted that Cajun's first claim for refund filed on Dec. 10, 2010, prevented the running of prescription and opened up the entire disputed period for the collector's claims for taxes. The 3rd Circuit held that there was no statute or jurisprudence stating that a refund request by the taxpayer interrupts prescription in favor of the collector. Considering the foregoing, the 3rd Circuit ultimately held that the collector's reconventional demand to assess additional taxes for the 2007, 2008 and 2009 years were facially prescribed but such demand for the 2010

and 2011 years were not.

—**Antonio Charles Ferachi**
Member, LSBA Taxation Section
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821-4064

Department Erred in Issuing Assessment to Member of Out-of-State LLC

In *Thomas v. Bridges*, 13-1855 (La. 5/7/14), ____ So. 3d ____, the Louisiana Supreme Court held that the Department of Revenue erred in assessing a member of an out-of-state limited liability company for sales tax on the company's purchase of a recreational vehicle. The individual was a Louisiana resident who formed a Montana LLC admittedly to avoid Louisiana sales tax on the purchase of a recreational vehicle since Montana does not impose sales tax on the purchase of vehicles by its residents, including resident LLCs. After the LLC purchased the RV and did not pay sales tax to Louisiana, the Department of Revenue pursued the individual rather than the LLC and issued an assessment to the individual for taxes owed on the vehicle.

The court found that the Department clearly erred in assessing the individual rather than the LLC, essentially ignoring the separate existence of the LLC before establishing any valid basis for doing so. After assessment and over the course of the proceedings, the Department's attorneys offered various theories for why the assessment against the individual was appropriate, but the court was dismissive of these undeveloped theories in support of the assessment and stated that the record did not contain any factual or legal basis for assessing the individual directly. With respect to one such theory, the court held that the Department's "after-the-fact appraisal the veil should be pierced" did not overcome the problems created by the Department's approach of simply ignoring the existence of the validly formed Montana LLC, which acquired

and held title to the property. The Department's approach was in derogation of Louisiana's statutory protection for LLCs, Louisiana's obligation under the U.S. Constitution to provide full faith and credit to the laws of Montana, and the assessed individual's constitutional right to due process. The court suggested that pursuing an assessment against the LLC first and then looking to Montana law in order to find personal liability on the part of the individual member of the LLC should have been the Department's approach.

Further, although personal liability could have been imposed under Louisiana law if the individual member of the LLC had committed fraud, there was no evidence offered that he had committed fraud. Regarding the situation at hand, the court stated "taking actions to avoid sales tax does not constitute fraud" and "[a] finding that the formation of an LLC solely for tax avoidance and not for any 'legitimate' purpose constitutes fraud would have destabilizing implications for Louisiana law." Additionally, the court declined to examine the Department's arguments regarding the doctrines of substance over form and economic substance since the Department raised those issues for the first time in its appeal. Although the court was sympathetic to the Department's policy arguments, it found that the issues in this case involved policy considerations that should be addressed by the Louisiana Legislature rather than the court system. Finally, the court rejected the Department's assertion that the lower courts failed to dismiss the suit on account of the plaintiff neglecting to follow the procedure for posting bond and determined that the statements made by the Board of Tax Appeals to the plaintiff effectively waived strict adherence to the bond provision in La. R.S. § 47:1434.

—**Jaye A. Calhoun**
and

Christie B. Rao
Members, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
601 Poydras, 12th Flr.
New Orleans, LA 70130

CHAIR'S MESSAGE

Professionalism: Lessons Learned Early Last a Lifetime

By J. Lee Hoffoss, Jr.

The need to reclaim “civility” in the practice of law has become a rallying cry in the profession.¹ Lack of civility has been blamed on everything from an increase in the cost of litigation to the cause of the public’s



J. Lee Hoffoss, Jr.

lost faith in the legal profession. To help curb the lack of civility in the legal profession, our Supreme Court established the annual requirement of continuing legal education credits in “professionalism.”

But what is “professionalism”? Merriam-Webster defines it as “the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.” For the most part, as it is used in the legal community contexts, it deals primarily with polite behavior and civility among fellow lawyers.

Some have noted a potential for natural tension between a lawyer’s duty to represent a client zealously and the emerging duty to act in a professional and civil manner in representation. But zealous representation does not mean that one must become a zealot. Nor does civility or courtesy reflect weakness on the part of the lawyer. For instance, The Mississippi Bar underscores this point in its “A Lawyer’s Creed” by stating that effective

advocacy does not mean that any tactic is acceptable or that effective advocacy requires antagonistic or obnoxious behavior. Even if clients have ill feelings between them, that does not justify ill feelings between the lawyers.

Over the past decade, new methods of communication in the legal profession have lent themselves to a notable decrease in civility among lawyers. Instant communication by email and text messaging has made lawyers more reactionary and defensive rather than thoughtful and considerate. Oftentimes, because of our instinctive defense nature as lawyers, we tend to take brevity of emails and text messaging out of context because we are not communicating through voice, but typed words. As a result, we may respond without forethought . . . something that might come back to haunt us for years to come.

You should learn these lessons early on without having to experience them firsthand. We typically run “ninety to nothing” and are juggling dozens of cases each day. We don’t always take the time to prepare a proper response to an email or text message, but instead toss something back equally as offensive. We lob bombs to one another and think this is just the nature of the profession. Make a promise to yourself . . . don’t pick up this dirty habit. It will haunt you for years.

As a young lawyer, you should never fall prey to this method of communication. As

my former boss, Mike Palmintier, would say: “Type it out, read it and think — what would I think if I got a letter or email like this?” I have always tried to adhere to this rule because when you take time to think about what you have written, more often than not, you will rewrite it every time.

Another suggestion is to simply pick up the phone and talk to the opposing side. Verbal communication is much more valuable in resolving conflicts because you can talk it out and not simply do the back-and-forth over email.

In closing, I recall nearly every day a piece of advice from a senior lawyer when I first began practicing: Your reputation is everything and how you treat other lawyers will follow you throughout your career. If you don’t take the time to engage in civil communication, you will be labeled in the community as the lawyer who cannot be trusted and will have a tarnished reputation for a long time. Don’t learn these lessons the hard way. Keep an open line of verbal communication with your fellow lawyers. It makes all the difference.

FOOTNOTE

1. Information in this article is attributed to the “Report of the ACREL Working Group on Ethics and Professionalism,” Sept. 27, 2004; and Donald E. Campbell, “Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility,” *Gonzaga Law Review*, Vol 47:1, Nov. 2, 2011.



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YOUNG LAWYERS SPOTLIGHT

Seth T. Mansfield Lafayette

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Lafayette attorney Seth T. Mansfield.

Mansfield is an associate attorney at the firm of Neuner-



Seth T. Mansfield

Pate. He received a BS degree in criminal justice in 2006 from the University of Louisiana-Lafayette and a MS degree in criminal justice in 2009 from the University of Cincinnati. Prior to entering law school, he worked as a deputy in the Patrol Division of the Lafayette Parish Sheriff's Office. He received his JD degree and graduate diploma in comparative law in 2012 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2012.

He is a member of the Lafayette Bar Association, the John M. Duhe, Jr. Inn of Court and Lafayette Volunteer Lawyers. As a member of Lafayette Volun-

teer Lawyers, he has handled multiple divorce and child custody cases, assisted in providing the homeless with legal assistance through the Homeless Experience Legal Protection (HELP) Program, and advocated for victims of domestic violence through the Protective Order Panel.

He has received several awards for his work, including the 2013 Lafayette Volunteer Lawyers Outstanding Attorney Award, the 2013 LSBA Pro Bono Century Award and the 2014 LSBA Young Lawyers Division Pro Bono Award.

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

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

Area	Coordinator	Phone Number	Alternate Phone	Email Address
Alexandria Area	Richard J. Arsenault	(318)487-9874	Cell (318)452-5700	rarsenault@nbalaawfirm.com
Baton Rouge Area	Ann K. Gregorie	(225)214-5563		ann@brba.org
Covington/ Mandeville Area	Suzanne E. Bayle	(504)524-3781		sebayle@bellsouth.net
Denham Springs Area	Mary E. Heck Barrios	(225)664-9508		mary@barrioslaw.com
Houma/Thibodaux Area	Danna Schwab	(985)868-1342		dschwab@theschwablawfirm.com
Jefferson Parish Area	Pat M. Franz	(504)455-1986		patfranz@bellsouth.net
Lafayette Area	Josette Abshire	(337)237-4700		director@lafayettebar.org
Lake Charles Area	Melissa St. Mary	(337)497-0022		melissa@semienlaw.com
Monroe Area	John C. Roa	(318)387-2422		roa@hhsclaw.com
Natchitoches Area	Peyton Cunningham, Jr.	(318)352-6314	Cell (318)332-7294	peytonc1@suddenlink.net
New Orleans Area	Helena N. Henderson	(504)525-7453		hhenderson@neworleansbar.org
Opelousas/Ville Platte/ Sunset Area	John L. Olivier	(337)662-5242	(337)942-9836 (337)232-0874	johnolivier@centurytel.net
River Parishes Area	Judge Jude G. Gravois	(225)265-3923	(225)265-9828 Cell (225)270-7705	judegravois@bellsouth.net
Shreveport Area	M'Lissa Peters	(318)222-3643		mpeters@shreveportbar.com

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

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Stephen D. Enright, Jr. was elected as judge of Division N, 24th Judicial District Court, Jefferson Parish. He received his BS degree in 1990 and his JD degree in 1993 from Louisiana State University and its Paul M. Hebert Law Center.



Stephen D. Enright, Jr.

He worked as a New Orleans prosecutor for three years before becoming a partner in deLaup & Enright, L.L.C., law firm in Metairie. He also served as magistrate in Grand Isle. He and his wife Doni are the parents of four children.

Albert A. Thibodeaux was appointed as a magistrate commissioner for Orleans Parish Criminal District Court. He received his BA degree in 1991 from Xavier University and his JD degree in 1996 from Tulane Law School.



Albert A. Thibodeaux

He worked for the City of New Orleans as an assistant city attorney from 1997-2001 and as chief deputy city attorney from 2002-10, where he managed the city's general litigation team. He served as of counsel to Davillier Law Group, L.L.C., and as general counsel to Landmark Consulting, L.L.C. He is an adjunct professor of business law at Xavier University. He and his wife Keely

are the parents of two children.

Appointments

► Retired Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office ending on April 30, 2018.

► L. David Cromwell and Robert P. Thibodeaux were appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began July 1 and will end on June 30, 2019.

► David R. Frohn was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions, for a term of office which began on June 1 and will end on May 31, 2019.



*The Catholic Bishops of the State of Louisiana
and the
St. Thomas More Catholic Lawyers Association
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All Members of the Bench and Bar
to the
Sixty-Second Annual Red Mass
in honor of the Holy Spirit, to mark the opening of the
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and to invoke a Divine Blessing upon our Courts
and Legal Proceedings
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Assembly for Processing into the Cathedral 9:15 a.m.
Reception to follow at the Louisiana Supreme Court*

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Jennifer A. Bagalman and Frank P. Tranchina, Jr. announce the formation of Bagalman & Tranchina, L.L.P., with offices located at Ste. 310, 220 Sansome St., San Francisco, CA 94104.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Erin E. Pelleteri and Tyler L. Weidlich have been elected as shareholders in the New Orleans office.

Attorney **J. Wesley (Wes) Bearden** announces the opening of Bearden Investigative Agency Inc.'s New Orleans office, located at 829 Baronne St., New Orleans, LA 70113; phone (504) 581-9322; www.picompany.com. He also has an office in Dallas, Texas.

Blanchard, Walker, O'Quin & Roberts, A.P.L.C., in Shreveport and Bossier

City announces that **Jerry Edwards** and **Melissa S. Flores** have been named shareholders/directors in the firm. Also, **Brian C. Flanagan** and **Rebecca S. Luster** have joined the firm as associates.

Attorney Kristian A. Gerrets joined Bourgeois Bennett CPAs & Consultants in Metairie as director of business incentives and transaction tax.

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., announces that **Justin M. Chopin** has joined the firm's New Orleans office as an associate.

Coats, Rose, Yale, Ryman & Lee announces that Daniel Lund III has joined the firm's New Orleans office as a director. Also, attorney Shailendra U. Kulkarni has joined the New Orleans office.

Larry Curtis, A.P.L.C., in Lafayette announces that **Emily C. Borgen** has joined the firm as an associate.

Gieger, Laborde & Laperouse, L.L.C., announces that **Caitlin J. Hill**, **Jonathan S. Ord** and **Bradley J. Schwab** have joined the firm's New Orleans office as associates.

Jacobs, Sarrat, Lovelace & Harris, A.P.L.C., in New Orleans announces that **Peter O. Cola** has joined the firm as of counsel.

Jones, Swanson, Huddell & Garrison, L.L.C., announces that Bernard E. Boudreaux, Jr. will lead the firm's new Baton Rouge office, located at Ste. 1920, One American Place, 301 Main St., Baton Rouge, LA 70801.

McCranie Sistrunk Anzelmo Hardy McDaniel & Welch, L.L.C., announces that **Shannon Howard-Eldridge** has joined the firm's Covington office as an advisory member and **Amanda L. Sullivan** has joined the firm's New Orleans office as an associate.



Richard J. Arsenault



J. Wesley (Wes) Bearden



Jack C. Benjamin, Jr.



Emily C. Borgen



Stephen W. Brooks, Jr.



Justin M. Chopin



David C. Clement



Peter O. Cola



Robert J. David



Isidro René DeRojas



Anthony M. DiLeo



Stevan C. Dittman

Perrier & Lacoste, L.L.C., in New Orleans announces that **Jack C. Benjamin, Jr.** has joined the firm as special counsel.

Perry Dampf Dispute Solutions in Baton Rouge announces that **Darrel J. Papillion, Steven C. Judice, David C. Clement, G. Trippe Hawthorne** and **Isidro René DeRojas** have joined its mediation panel. These attorneys will continue to practice law with their current law firms.

Preis, P.L.C., announces that Karnina D. Dargin has joined the firm's Lafayette office.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., announces that **Stephen W. Brooks, Jr.** has joined the firm's Covington office as special partner and **Richard J. Voelker** has joined the Covington office as an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, will chair the 21st annual Louisiana State Bar Association Admiralty Law Symposium on Friday, Sept. 19, in New Orleans. Recently, he discussed the \$9 billion Actos MDL verdict at the American Association for Justice (AAJ) seminar in Chicago and as a faculty member at the

June HarrisMartin conference in New Orleans. He served as a panelist for the Actos Litigation Group and the DePuy Metal Hip Implant Litigation Group at the 2014 AAJ Annual Convention in July.

Shelton Dennis Blunt, a partner in the Baton Rouge office of Phelps Dunbar, L.L.P., was selected for the 2014 Fellows Program of the Leadership Council on Legal Diversity.

Anthony M. DiLeo, with Anthony M. DiLeo, A.P.C., in New Orleans, was elected as a Fellow of the College of Commercial Arbitrators.

Monica A. Frois, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was named to the board of managers of the Hermann-Grima and Gallier Historic Houses in New Orleans.

Orleans Parish Criminal District Court Judge Arthur L. Hunter, Jr. was appointed by the U.S. State Department to participate in a conference in Macedonia focusing on sentencing guidelines in the criminal justice system. Judge Hunter discussed Louisiana's sentencing guidelines and the Louisiana Sentencing Commission at the May conference titled "U.S. Sentencing Reform Experience and Lessons Learned for Macedonia."

Judge Donald R. Johnson, currently serving as a criminal court judge for the 19th Judicial District Court (East Baton Rouge Parish), received his doctor of philosophy (Ph.D.) degree in 2014 from the University of Southern Mississippi in Hattiesburg.

Patricia A. Krebs, a member in the firm of King, Krebs & Jurgens, P.L.L.C., in New Orleans, was chosen as a recipient of the 2014 Texas A&M University Commerce Distinguished Alumni Award.

William H. Langenstein III, a partner in the New Orleans office of Chaffe McCall, L.L.P., was named to the board of directors for Greater New Orleans, Inc., a regional economic development alliance.

Linda A. Liljedahl, an attorney-mediator in Baton Rouge and in practice for 35 years, was interviewed for the "Close-Up TV/Radio News" program about being a mediator and dispute resolution practitioner and trainer. She has offices throughout Louisiana and offers MCLE seminars.

Albert C. Rees, Jr. was promoted to colonel in the U.S. Air Force Reserve and received a 2014 Judge Advocate Association "Outstanding Career Judge Advocate Award." When not handling Reserve duties, he is a senior counsel with the U.S. Department of Justice in Washington, D.C.

Continued next page



Michael J. Ecuyer



Jerry Edwards



Nakisha Ervin-Knott



Brian C. Flanagan



Melissa S. Flores



G. Trippe
Hawthorne



Caitlin J. Hill



Shannon Howard-
Eldridge



Steven C. Judice



M. Palmer Lambert



Frank E. Lamothe III



Rebecca S. Luster

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., received the Loyola University College of Law's Glass Honoree Award for his years of volunteer service. Among his accomplishments, he is a co-founder of the SOLACE program (Support of Lawyers/Legal Personnel — All Concern Encouraged).

Jennifer I. Tintenfass, an associate in Steeg Law Firm, L.L.C., in New Orleans, was named the alumni board member of Emerging Philanthropists of New Orleans.

Robert S. Toale, founder of the Law Office of Robert S. Toale in Gretna, was elected 2014 president of the Louisiana Association of Criminal Defense Lawyers. He also was elected to the 2014-17 board of directors of the National Association of Criminal Defense Lawyers.



Gerald E. Meunier



Jonathan S. Ord



Darrel J. Papillion



Bradley J. Schwab



Richard J. Voelker



Irving J. Warshauer

PUBLICATIONS

The Best Lawyers in America 2014

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P. (Metairie): David R. Sherman.

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

Liskow & Lewis, A.P.L.C. (New Orleans): Gene W. Lafitte and Thomas B. Lemann.

Chambers USA 2014

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Edward H. Arnold III, Phyllis G. Cancienne, Roy C. Cheatwood, Nancy Scott Degan, Donna D. Fraiche, Steven F. Griffith, Jr., Jan M. Hayden, Kenneth M. Klemm, Amelia Williams Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Mark W. Mercante, William N. Norton, David C. Rieveschl, James H. Roussel, Danny G. Shaw and Paul S. West.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, George C. Freeman III, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin.

Bradley Murchison Kelly & Shea, L.L.C. (Baton Rouge, Shreveport): Jerald N. Jones, Joseph L. (Larry) Shea, Jr. and David R. Taggart.



Robert M. Steeg



Amanda L. Sullivan



Raymond T. Waid



Amanda L. Westergard

Liskow & Lewis, A.P.L.C. (Lafayette, New Orleans): Donald R. Abaunza, Marguerite L. Adams, Robert S. Angelico, Wm. Blake Bennett, James A. Brown, James C. Exnicios, Joseph I. Giarrusso III, Don K. Haycraft, Joseph P. Hebert, Robert E. Holden, Jonathan A. Hunter, R. Keith Jarrett, Greg L. Johnson, Philip K. Jones, Jr., James E. Lapeze, Thomas J. McGoe II, Robert B. McNeal, Richard W. Revels, Jr., Leon J. Reymond, Jr., Leon J. Reymond III, Lawrence P. Simon, Jr., Randy C. Snyder and John D. Wogan.

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

Taylor, Porter, Brooks & Phillips, L.L.P. (Baton Rouge): Anne J. Crochet, Vicki M. Crochet, Paul O. Dicharry, Brett P. Furr, Harry J. Philips, Jr., Patrick D. Seiter and Fredrick R. Tulley.

Louisiana Super Lawyers 2014

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P. (Metairie): David R. Sherman, Steven E. Hayes and Julian R. Murray, Jr.

Coats Rose Yale Ryman & Lee (New Orleans): Elizabeth Haecker Ryan.

Flanagan Partners, L.L.P. (New Orleans): Sean P. Brady, Harold J. Flanagan and Thomas M. Flanagan.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): **Robert J. David, Stevan C.**

Continued on page 158



Jennifer I. Tintenfass



Robert S. Toale



Elizabeth S. Wheeler



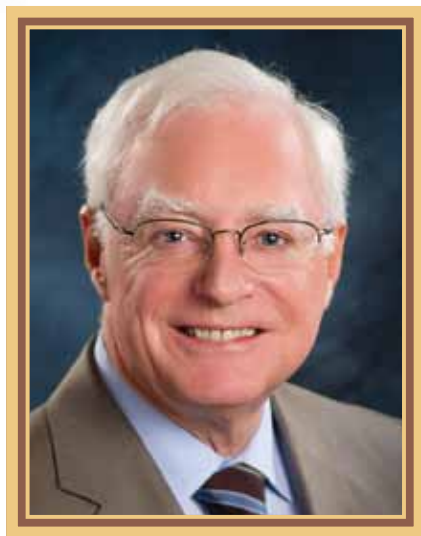
Christie C. Wood

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LSU Law, 1968

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Sabbaghian Brown
LSU Law, 2000



Craig W. Murray
LSU Law, 1976



Patrick S. Ottinger
LSU Law, 1973

LSU Paul M. Hebert Law Center's Distinguished Alumnus Award is given annually to an alumnus/a for rare distinction in professional achievement and loyalty to the LSU Law Center. The Distinguished Achievement awards recognize graduates for professional achievement and career distinction, service to and support of LSU Law, and service to the community.

AWARDS LUNCHEON

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LOD COOK CONFERENCE CENTER

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Ticket information: Jennifer Roche, 225/578-5722 or jennifer.roche@law.lsu.edu

Dittman, Michael J. Ecuyer, M. Palmer Lambert, Gerald E. Meunier and Irving J. Warshauer. (Meunier also was listed in 2014 *Benchmark Plaintiff*.)

Law Offices of Fred Herman (New Orleans): Fred L. Herman.

Jones, Swanson, Huddell & Garrison, L.L.C. (Baton Rouge, New Orleans): Bernard E. Boudreaux, Jr., Gladstone N. Jones III, Catherine E. Lasky and Kerry A. Murphy.

New Orleans CityBusiness

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): **Nakisha Ervin-Knott**, Leadership in Law Class 2014.

Lamothe Law Firm, L.L.C. (New Orleans): **Frank E. Lamothe III**, Leadership in Law Class 2014.

IN MEMORIAM

Philip Evart Henderson, widely recognized as a pre-eminent authority in maritime law, died on May 31 at the age of 80. During his career, he argued numerous important cases before state and federal courts, at the trial and appellate levels, including winning a landmark admiralty case before the U.S. Supreme Court, *Ro-*



Philip Evart Henderson

drigie v. Aetna Cas. & Sur. Co., 395 U.S. 352 (1969). He received his BA degree in economics and philosophy, *cum laude*, in 1956 from Georgetown University, Washington, D.C., and his LLB degree in 1959 from Louisiana State University Law School (associate editor, *Louisiana Law Review*). He was admitted to practice in Louisiana in 1959 and later to the Bar of the U.S. Supreme Court. He also was commissioned as a second lieutenant in the U.S. Army Tank Corps and eventually retired as a captain in the U.S. Army Reserves. He entered the private practice of law with Phelps, Dunbar, Marks, Claverie & Sims in New Orleans, then became a partner in the Houma firm of O'Neal and Waitz. In 1971, he co-founded the firm of Henderson, Hanemann & Morris, working there until his retirement in 2002. He was a member of the Terrebonne Parish Bar Association (president in 1968), the American Bar Association, the Louisiana Trial Lawyers Association and the Association of Trial Lawyers of America. He received the 2006 Elton Darsey Lifetime Achievement Award presented by the Terrebonne Parish Bar Association in recognition of his 47 years practicing law with the highest level of professionalism. He is survived by seven children, his brother, nine grandchildren and other relatives.

Roland C. (Buddy) Kizer, Jr., a former partner in the Baton Rouge firm of Kizer, Hood & Morgan, L.L.P., died on March 20 at his home in Boerne, Texas. He was

76. Born in Baton Rouge, he was a graduate of University Laboratory School and Louisiana State University Law School (1963; *Louisiana Law Review* in 1962-63). He was admitted to practice in Louisiana in 1963. "Buddy" was a successful attorney in Baton Rouge for many years where he practiced with his father and other partners. He was a member of the Baton Rouge Bar Association and the American Bar Association. He is survived by his wife of 51 years, Barbara Olsen Kizer, three children and five grandchildren. Colleagues say he lived for his family, especially his grandchildren who knew him as "Grumps."

CLARIFICATION

The placement of four People photos in the April/May 2014 *Louisiana Bar Journal* (page 462) may have caused some confusion. The photos were at the bottom of the column headed "In Memoriam," but the attorneys were being recognized for new positions in their respective firms. We apologize for any confusion and are republishing the four photos and their listings.

Faircloth Melton, L.L.C., formerly The Faircloth Law Group, L.L.C., announces that **Christie C. Wood** and **Amanda L. Westergard** have joined the firm as associates in the Alexandria office.

Liskow & Lewis, A.P.L.C., announces that **Elizabeth S. Wheeler** has joined the New Orleans office as of counsel and **Raymond T. Waid** has joined the New Orleans office as an associate.

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E-mail: ebarefield@lsba.org



UPDATE

Francophone Section Conducts Civil Law Symposium

The Louisiana State Bar Association's (LSBA) Francophone Section presented its 2014 Judge Allen M. Babineaux International Civil Law Symposium in April at the U.S. Federal Courthouse (Judge Richard T. Haik, Sr.'s courtroom) in Lafayette. The CLE/symposium was titled "Louisiana Law: A Jambalaya of French, Spanish and Common Law."

Among those attending the event were members of the Francophone Section's Executive Committee—Chair Warren A. Perrin and James H. Domengeaux, Judge James F. McKay III, John A. Hernandez, Jr. and Louis R. Koerner, Jr.

Special guests included Philippe J. Gustin, international trade manager, Le Centre International; Mark A. Babineaux, representative of the Lafayette Parish School Board; and Ray and Brenda Trahan, representatives of the World Acadian Congress (Congres mondial Acadien 2014).

Symposium presenters included Judge Richard T. Haik, Sr., "Professionalism in Federal Court;" Professor Michel Doucet, University of Moncton Law School, "La common law en français Robert Monckton's worst nightmare;" Professor Olivier Moréteau, Louisiana State University Paul M. Hebert Law Center, "The Louisiana Civil Code Translation Project and Its International Impact;" Professor Claire LeBas, Loyola University College of Law, "Teaching French to Louisiana Lawyers;" and attorney Leslie J. Schiff, "Ethics Overview."

During the event, attorney James



University of Moncton Law School Professor Michel Doucet was one of the Babineaux International Civil Law Symposium presenters.

Thompson and Loyola College of Law student George Riedel announced that the Loyola Law students formed a Francophone Club.

The Francophone Section's next international CLE program was conducted on Aug. 16, in conjunction with the World Acadian Congress at the University of Moncton, Edmundston Campus, Edmundston, New Brunswick.

Chancellor Pitcher Inducted into 2014 NBA Hall of Fame

Southern University Law Center (SULC) Chancellor Freddie Pitcher, Jr. was inducted into the National Bar Association's (NBA) Hall of Fame on July 29 during the 2014 NBA Annual Convention.



Chancellor Freddie Pitcher, Jr.

NBA President Patricia Rosier cited Pitcher's "personal rich history of meeting the legal, social and personal needs of hundreds during his 40-plus years of professional service."

The NBA Hall of Fame honors lawyers licensed to practice for 40-plus years who have made significant contributions to the cause of justice. Other inductees include the late Justice Thurgood Marshall, first African-American member of the U.S. Supreme Court; the late Benjamin L. Hooks, longtime leader of the NAACP; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; and the late Vanue B. Lacour, a member of the original SULC faculty and former dean.

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The Louisiana Hearing Officers' Association (LaHOA) conducted its 2014 Annual Meeting in Lafayette in March. Members attending were, seated from left, Tamithia P. Shaw, Jefferson Parish Juvenile Court; Monique F. Rauls, 9th JDC; Vanessa D. Randall, 15th JDC; K. Jacob Ruppert, 11th JDC and LaHOA president; Felicia H. Higgins, Jefferson Parish Juvenile Court; and Josie G. Frank, 27th JDC. Standing from left, Patrice W. Oppenheim, 22nd JDC; Dennis R. Bundick, 15th JDC; Stephanie L. Cochran, 14th JDC; Lesa Henderson (1st, 2nd, 3rd and 10th JDC; Dean J. Manning, 14th JDC; Vicki L. Green, 4th JDC; Paul S. Fiasconaro, 24th JDC; Michelle Perkins, Caddo Parish Juvenile Court; Leonora C. Estes, 21st JDC; K. Tess Stromberg, 23rd JDC; Carolyn F. Ott, 21st JDC; Rebecca Kennedy, 22nd JDC; and William H. Dunkelman, 32nd JDC. During the meeting, K. Jacob Ruppert was re-elected as president for a fifth consecutive term.

OPD Honors 2014 Clyde Merritt Award Recipients

The Orleans Public Defenders (OPD) honored investigators Emily Beasley and Nicole Heisser as the 2014 recipients of the Clyde Merritt Award. Established in 2012 to honor Merritt, a stalwart advocate for public defense, the award recognizes commitment and dedication to public defense in New Orleans.

Beasley joined the OPD staff after graduation from Tulane University. Her commitment to justice continues as she fights for indigent clients in federal court.

Heisser has worked for indigent

defendants for 20 years, first at the Louisiana Capital Assistance Center and then for OPD. As OPD's supervising investigator, she leads a team of 12 investigators.

Chief Defender Derwyn D. Bunton presented the awards during the launch party for the newly created Ben Sullivan Investigator Fellowship. Launching later this year, the fellowship established in Sullivan's memory will focus on applicants committed to representing the most disenfranchised.



Orleans Public Defenders investigator Nicole Heisser, right, is a 2014 recipient of the Clyde Merritt Award. Chief Defender Derwyn D. Bunton presented the award.



Orleans Public Defenders investigator Emily Beasley, right, is a 2014 recipient of the Clyde Merritt Award. Chief Defender Derwyn D. Bunton presented the award.

Chancellor Pitcher Awarded Honorary Degree in Turkey

Southern University Law Center (SULC) Chancellor Freddie Pitcher, Jr. was awarded an honorary Doctor of Law degree from Siirt University in Siirt, Turkey, in May.

The Senate of Siirt University conferred the degree for Pitcher's contribution in increasing internationalization of higher education between Southern University and Siirt. He was awarded the honorary degree while attending the International Leadership Conference at Siirt.

SULC has implemented other academic endeavors with universities in Turkey. A student and faculty exchange program was initiated between SULC and Turkey's Kırıkkale University. Pitcher has addressed faculty, staff and students at Kırıkkale, Abant İzzet Baysal University and Marmara University. Topics included developing a framework for a democratic Constitution, social justice in a democratic Constitution, the differences between legal education in the United States and Turkey, and the American jury trial system.

Judge Guidry New President of Louisiana Judicial College Board of Governors

Louisiana 1st Circuit Court of Appeal Judge John Michael Guidry is the new president of the Louisiana Judicial College Board of Governors.

Judge Guidry received his undergraduate degree in 1983 from Louisiana State University and his law degree in 1987 from Southern University Law Center. He had a private law practice from 1987-97. He also served as an assistant parish attorney from 1988-91, as a state representative for District 67 from 1992-93 and as a state senator for District 14 from 1993-97. He was elected to the 1st Circuit in 1997. He is a member of the American Bar Association, the National Bar Association, the American Judges Association and the Judicial Council of the Louisiana Supreme Court.



Judge John Michael Guidry

LOCAL / SPECIALTY BARS



Attending the DeSoto Parish Bar Association's (DPBA) annual Law Day program on May 2 were, from left, attorney Katherine E. Evans, DPBA secretary/treasurer; attorney John S. Evans; attorney Dave Knadler, DPBA vice president; attorney Ron Christopher Stamps; attorney Adrienne D. White, DPBA president; District Attorney Richard Z. Johnson, Jr.; attorney Murphy J. White; and attorney Michael E. Daniel.

DeSoto Parish Bar Celebrates Law Day

Judge Scott J. Crichton, serving on the bench of the 1st Judicial District Court in Caddo Parish, was the guest speaker for the DeSoto Parish Bar Association's annual Law Day program. The program on May 2 was conducted in the large courtroom at the DeSoto Parish Courthouse in Mansfield.

In addition to members of the legal community, the Law Day program attendees included public officials, members of the community (including students from DeSoto Parish high schools) and the media. A reception followed in the petit jury room at the courthouse.



Attending the DeSoto Parish Bar Association's annual Law Day program on May 2 were, from left, Judge Charles B. Adams, 42nd Judicial District, DeSoto Parish; attorney Adrienne D. White, DeSoto Parish Bar Association president; and guest speaker Judge Scott J. Crichton, 1st Judicial District, Caddo Parish.



In commemoration of the 40th anniversary of the Louisiana State Constitution and the Constitutional Convention that preceded its adoption, the Law Library of Louisiana sponsored a free CLE in April, titled "The Louisiana Constitutional Convention of 1973: A Panel Discussion or Look What They've Done to Our Song, Ma!" Louisiana 4th Circuit Court of Appeal Judge Max N. Tobias, Jr., fourth from left, a former delegate to the 1973 convention, led a panel of former delegates, including, from left, Tom Velazquez, Alvin D. Singletary, Mary K. Zervigon and Philip O. Bergeron. The panel discussed why the convention was called, important revisions and changes made, and how consensus by the delegates was reached.

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Stephanie A. Finley, United States attorney for the Western District of Louisiana, presented her Shreveport Bar Association (SBA) membership application to SBA President Lawrence W. Pettiette, Jr. during the Law Day luncheon. Finley delivered the keynote address. From left, U.S. District Court Judge S. Maurice Hicks, Jr.; Mayor Lorenzo Walker; Judges Frances J. and Michael A. Pitman; Finley; Pettiette; Marcus E. Edwards and Erik S. Vigen, Law Day Committee chairs; and Ronald J. Miciotto, Speaker Program chair.

U.S. Attorney Finley Gives Keynote at Shreveport Bar's Law Day Luncheon

Stephanie A. Finley, United States attorney for the Western District of Louisiana, delivered the keynote address at the Shreveport Bar Association's Law Day luncheon on April 30 at the Petroleum Club of Shreveport.

In honor of the 50th anniversaries of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, Finley focused on the national theme for Law Day 2014, "American Democracy and the Rule of Law: Why Every Vote Matters," as she outlined the history of both Acts and discussed the legal challenges which existed in the country and Louisiana.

The Shreveport Bar Association hosts the annual Law Day luncheon as part of a week of activities. The association also sponsors a student event, with juniors and seniors from local high schools participating in a day of interactive exposure to the legal profession, and a community event. This year's community event was a voter registration drive, in accord with the Law Day theme.

The Shreveport Bar also presents the Liberty Bell Award to a citizen demonstrating a commitment to the community who has advanced the rule of law. This year's Liberty Bell Award recipients were the Gingerbread House and the Cara Center. Both organizations provide fact finding, diagnosis and

continuing care to victims of child abuse. The award recognizes community service, particularly among non-lawyers, which strengthens the effectiveness of the American system of freedom under law.

The Shreveport Bar also welcomed this year's mock trial competition winners (high school students from Loyola College Prep and Caddo Magnet High School) to the luncheon, as well as local mayors and state and federal judges.



During the Shreveport Red Mass Society's 2014 event, Bishop Michael G. Duca, third from left, delivered his homily on separation of church and state. From left, Lawrence W. Pettiette, Jr., Shreveport Bar Association president; Stephanie A. Finley, United States attorney for the Western District of Louisiana; and John C. Nickelson, Red Mass chair.



The Louisiana Bar Foundation (LBF) and the Pelican Center for Children and Families formed a partnership to support the training of attorneys representing children and indigent parents. From left, Judge C. Wendell Manning, LBF president; Mark Harris, Pelican Center executive director; Karen A. Hallstrom, Louisiana Supreme Court deputy judicial administrator for children and families; Donna Cuneo, LBF executive director; David P. Kelly, child welfare program specialist for court improvement, Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services; and Howard Davidson, ABA Center on Children and the Law director.

ANSWERS for puzzle on page 124.

D	R	A	W	E	E	B	E	A	R	E
R	B	L	H	L	A	E				
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E	M	M	E	T	D	O	R	M	A	N
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E	I	S	E	U	K	E				
D	R	A	F	T	S	S	T	A	Y	E

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces two new Fellows:

Prof. William R. Corbett . Baton Rouge
 Jerry Edwards..... Shreveport
 Prof. Robert Force..... New Orleans
 Ann M. Johnston..... New Orleans
 Teresa D. King Gray
 John C. Nickelson Shreveport
 Carolyn J. Smilie..... Pineville
 Hon. Carl E. Stewart Shreveport
 Carter B. Wright..... Covington

President's Message

Partnership with Pelican Center and Updates on Other Projects

By President Hon. C. Wendell Manning

I am pleased to announce that, as of July 1, 2014, the Louisiana Bar Foundation (LBF) and the Pelican Center for Children and Families (Pelican Center) have formed a unique partnership to support the training of attorneys representing children and indigent parents. This partnership presents an opportunity to create a statewide training and education curriculum that will benefit Louisiana's most vulnerable children and families. The training being developed will include a focus on best practices for those involved in Child in Need of Care (CINC) and Families in Need of Services (FINS) cases. Training will be made available to all those involved, including legal aid attorneys, district attorneys, child welfare agency attorneys, judges and other key stakeholders in the Louisiana child welfare system.

The LBF's support of this partnership will augment ongoing training for attorneys who provide representation to abused and neglected children and whose work directly affects the safety, permanency and well-being of children in the foster care system. The LBF will provide in-kind support to the Pelican Center through office space and other business amenities.

"The Pelican Center will provide comprehensive training and education opportunities for child welfare practitioners across systems — legal, executive and community. A first for the state, this represents a tremendous asset for the state of Louisiana. The mission and vision of the Pelican Center will be accomplished through the design and delivery of a state-of-the-art curriculum that incorporates the latest scholarship and research, evidence-based and best practices, and brings child welfare practitioners information in a consistent and accessible manner through a variety of learning modalities," said Judge Ernestine S. Gray, chief judge of Orleans Parish Juvenile Court and Pelican Center president.

"The Pelican Center shows promise

to become a national model for how states can best respond to the legal needs and judicial involvement of abused and neglected children and their families. It demonstrates a long-term commitment to having the courts meaningfully collaborate with key child welfare system stakeholders, while assuring that federal, state, private and other funding can be pooled to help assure maximum positive impact for the state's underserved children and families," said Howard Davidson, director of the ABA Center on Children and the Law.



Hon. C. Wendell Manning

Louisiana Campaign to Preserve Civil Legal Aid

The Louisiana Campaign to Preserve Civil Legal Aid is moving "full steam ahead." In my last report to you, I addressed this unified statewide campaign and the various stages of implementation. Focus is now upon the next level of the campaign bringing awareness to the local and specialty bar associations throughout the state. Our efforts are to enlist the support of all local and specialty bars, with many having already adopted resolutions in support of the campaign. The campaign will address awareness among the state's judiciary at the annual Fall Judges' Conference in October. See the Louisiana Bar Foundation's website for more information on how you can help with this very important work in supporting the critical needs of civil legal aid in Louisiana.

Training for Legal Aid Grantees

In support of our efforts to provide leadership and organizational support to our grantees, the LBF offered board training for Louisiana's three legal service corpora-

tions (Acadiana Legal Services Corp., Legal Services of North Louisiana, Inc. and Southeast Louisiana Legal Services) and the state's seven pro bono projects. The board trainings, held in July, provided tools, resources and guidelines to help ensure that board members and executive directors are equipped to meet their fiduciary obligations while ensuring proper delivery of civil legal services to the state's indigent. The LBF leadership will follow up in December with onsite audits to ensure that clients are receiving the maximum amount of services with the funding the LBF provides. Special thanks go to Skip Phillips, chair of the LBF Grants Subcommittee for civil legal aid, John Davies and Edmund Giering, both with the Baton Rouge Area Foundation, and Jane Sherman, LBF treasurer, for their hard work in conducting the trainings.

Updates on Other Projects

The LBF announces the appointment of Professor Alain A. Levasseur (LSU Paul M. Hebert Law Center Hermann Moyse, Sr. Professor of Law and Henry Plauché Dart Professor of Law) as the 2014-16 Scholar-in-Residence. His work will focus on an in-depth analysis of the Louisiana Civil Code with emphasis upon the reasoning and methodologies employed by the various Louisiana courts. Also, the Oral History Project has produced 60 oral histories of retiring judges, bar leaders and other legal personalities that can be viewed on our website.

Special thanks to Professor Paul R. Baier (LSU Paul M. Hebert Law Center George M. Armstrong, Jr. Professor of Law and Judge Henry A. Politz Professor of Law and the first LBF Scholar-in-Residence) who has graciously agreed to donate the proceeds from the sale of his new book, *Speeches*, to the LBF. Email Prof. Baier directly at paul.baier@law.lsu.edu for more information on how to obtain a copy of his book.

LBF grants \$5.2 million to nonprofit organizations for 2014-15

The Louisiana Bar Foundation (LBF) has awarded \$5.2 million in grants to nonprofit organizations for the 2014-15 year. The grants help agencies and organizations address the legal needs of indigent citizens, provide a basic understanding of the law and assist with improvements to the justice system.

ANNUAL SUSTAINING GRANTS

Building Capital Development \$125,000

Grants up to \$25,000, on a matching basis, assist in the acquisition of an office building or property.

Acadiana Legal Services Corp.	\$25,000
Eden House	\$25,000
Innocence Project New Orleans	\$25,000
Shreveport Bar Foundation	\$25,000
Southeast Louisiana Legal Services	\$25,000

Children's Legal Services\$100,000

Grants provide legal assistance to children in areas of law which affect their safety, well-being and future development.

Advocacy Center	\$13,000
Children's Advocacy Center of Louisiana	\$3,500
First Grace Community Alliance	\$15,000
Juvenile Justice Project of Louisiana	\$25,000
Juvenile Regional Services	\$35,000
Louisiana CASA Association	\$3,500
T.E.A.M.S.	\$5,000

Law-Related Education\$100,000

Grants assist law-related educational programs for children and the public.

Baton Rouge Bar Foundation	\$8,292
Baton Rouge Children's Advocacy Center	\$6,125
Juvenile Justice Project of Louisiana	\$7,791
Juvenile Regional Services	\$5,500
Louisiana Center for Law & Civic Education	\$48,000
Louisiana District Judges Association	\$5,000
LSBA Diversity Committee	\$5,000
LSBA Young Lawyers Division	\$8,000

Youth Service Bureau of St. Tammany	\$6,292
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Legal Assistance to the Poor. \$1,863,359

Grants provide free direct legal services to indigent clients.

► Domestic Violence Programs \$307,859

Beauregard Community Concerns, Inc.	\$21,389
Catholic Charities/Project S.A.V.E.	\$30,389
Chez Hope	\$21,389
D.A.R.T. of Lincoln	\$20,389
Faith House, Inc.	\$19,391
Metropolitan Center for Women and Children	\$36,389
Oasis	\$18,391
Project Celebration	\$19,739
Safe Harbor, Inc.	\$15,000
Safety Net for Abused Persons	\$22,389
Southeast Spouse Abuse Program	\$12,391
St. Bernard Battered Women's Program	\$15,391
The Haven, Inc.	\$18,391
The Wellspring Alliance for Families, Inc.	\$20,000
United Way of Central Louisiana	\$16,831
► Legal Service Corporations	\$1,080,000
Acadiana Legal Services Corp.	\$283,608

Legal Services of North Louisiana	\$261,360
Southeast Louisiana Legal Services	\$535,032

► Other Legal Service Providers \$260,000

Advocacy Center	\$53,000
Arts Council of New Orleans	\$10,000
Catholic Charities of New Orleans	\$40,000
Catholic Charities of Baton Rouge	\$40,000
Eden House	\$12,000
Innocence Project New Orleans	\$100,000

NO/AIDS Task Force/AIDS Law of Louisiana	\$5,000
--	---------

► Pro Bono Projects\$215,500

Baton Rouge Bar Foundation	\$45,000
Central Louisiana Pro Bono Project	\$9,500

Lafayette Parish Bar Foundation	\$37,000
Shreveport Bar Foundation	\$25,500
Southwest Louisiana Bar Foundation	\$19,000
The Pro Bono Project	\$79,500

Loan Repayment

Assistance Program.....\$33,327

The program provides forgivable loans of up to \$5,000 per year to attorneys working at an organization supported by the LBF. Applicants' identities are anonymous.

SPECIAL INITIATIVES

► Mortgage Servicing Settlement

Provide advice, counseling and direct attorney representation to affected consumers including but not limited to the homeless, FHA borrowers, veterans and the unemployed in matters including financial counseling; wrongful foreclosure; foreclosure relief; loan modification; principal reduction; refinancing; foreclosure prevention and mediation; and bankruptcy. Approximately \$722,000 (pending approval).

► Child in Need of Care

Provides free legal representation to Louisiana children in foster care. Approximately \$1.9 million (pending approval).

► LSBA Access to Justice\$75,000

► Louisiana Appleseed\$50,000

SCHOLARSHIPS, FELLOWSHIPS, AWARDS AND OTHER PROJECTS

ATJ Fund Grant	\$50,000
Kids' Chance Scholarships	\$45,000
Law Student Pro Bono Awards	\$2,100
Legal Education Projects	\$4,000
ProBono/LawHelps Website	\$12,650

DISCRETIONARY FUNDING

Jock Scott Community Partnership Panel Grants.....\$90,000

Nine Community Partnership Panels act as regional chapters of the Foundation. These panels identify needs in their communities and fund efforts to address those needs. Grants are awarded throughout the year.

Minimum Qualifications, Conditions for Appointment as Special Assistant Attorney General

The minimum qualifications and conditions for appointment as a Special Assistant Attorney General are listed below.

1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
 2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
 3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
 4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees unless specifically waived in writing by the Attorney General and the Office of Risk Management.
 5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
 6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.
 7. The attorney must be a subscriber to an electronic billing program designated by the Office of Risk Management.
 8. The attorney should have a Martindale-Hubbell rating of "bv" or better.
 9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
 10. The requirements set forth in 8 and 9 may be waived by the Attorney General, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the State Risk Administrator-Claims and the Assistant Director for Litigation Management of the Office of Risk Management and the Director of the Litigation Program of the Louisiana Department of Justice.
- In the event that the attorney's performance is acceptable during the three-year probationary period, he shall be removed from probationary status. In the event the attorney's performance is unsatisfactory, he may be removed from the probationary list or, at the discretion of the State Risk Administrator-Claims, the Assistant Director for Litigation Management of the Office of Risk Management and the Director of the Litigation Program of the Louisiana Department of Justice, the probationary period may be extended.

Additional Requirements for the Defense of Medical Malpractice Claims

11. The attorney should have three years' experience in the defense of medical malpractice claims.
12. The attorney should have participated as counsel of record in at least two medical malpractice trials.
13. Professional malpractice limits shall be at least \$1 million per claim with an aggregate of \$1 million.
14. Requirements 11 and 12 may be waived by the Attorney General, in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 10 above.

Conditions

1. Any attorney appointed by the Attorney General serves at the pleasure of the Attorney General and may be removed by the Attorney General at any time without cause.
2. The Office of Risk Management may withdraw its concurrence of any attorney only for cause.
3. All contracts must comply with the Ethical Standards for Public Servants, Title 42, Section 15, Part II of the Louisiana Revised Statutes, including, but not limited to, La. R.S. 42:1113.

CLASSIFIED NOTICES

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

RATES

CLASSIFIED ADS

Contact Krystal L. Bellanger at (504)619-0131 or (800)421-LSBA, ext. 131.

Non-members of LSBA

\$85 per insertion of 50 words or less
\$1 per each additional word
\$20 for Classy-Box number

Members of the LSBA

\$60 per insertion for 50 words or less
\$1 per each additional word
No additional charge for Classy-Box number

Screens: \$25

Headings: \$15 initial headings/large type

BOXED ADS

Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE

For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2014. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES

To respond to a box number, please address your envelope to:

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c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

Growing AV-rated New Orleans defense firm seeks an attorney with three-five years' experience in insurance defense. Excellent writing/communication skills required. Great opportunity for advancement or lateral placement. All inquiries treated with strictest confidence. Qualified individuals should submit résumé, transcript and writing samples: HR, 701 Poydras St., #4700, New Orleans, LA 70139-7708, or email info@jjbylaw.com.

AV-rated small personal injury firm seeking an experienced personal injury attorney with at least two years of experience on the plaintiff's side with a strong understanding of medical issues and an ability to evaluate claims, take depositions, etc. A verifiable and stable work history, good academic credentials and litigation experience are important. Excellent opportunity for a hardworking, motivated self-starter. Email confidential résumé to: rc@lewis-caplan.com.

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for two positions. 1) Litigation attorney: Qualified candidates must have at least five years of litigation experience; medical malpractice defense experience and an AV rating preferred; and excellent organizational, case

management and deposition skills required. 2) First-chair attorney/environmental law: Minimum of eight-plus years' defense experience in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; and environmental and/or toxic tort experience preferred. The firm offers competitive salary and benefits and an excellent work environment. If you are interested in either position, visit the firm's website at: www.curryandfriend.com/careers.html.

Shuart & Associates Legal Search & Staffing. In today's market, many law firms are growing by lateral acquisition of partners/practice groups. Some partners are choosing to relocate to firms where their unique strengths are valued and compensation competitive. This requires broad knowledge of the existing marketplace and insight into the culture of local law firms. Shuart & Associates has a proven track record in providing this service. All inquiries confidential. (504)836-7595. www.shuart.com.

POSITIONS SOUGHT

Seeking entry-level associate position at New Orleans firm. JD, University of Chicago. BA, Tulane University. One year of experience. Licensed in Louisiana and Florida. Contact thomas.bell27@gmail.com.

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

Appellate briefs, motions, legal research. Attorneys: the appellate process is your last chance to modify or defend your judgment. LeeAnnArcher, former Louisiana Supreme Court clerk and Tulane Law honors graduate, offers your best chance, with superior appellate briefs, outstanding legal research, pinpoint record review and 20-plus years of appellate experience. Confidential; statewide service; fast response. Call (337)474-4712 (Lake Charles); email lee@leeaarcher.com; visit www.leeaarcher.com.

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Office space available for lease in Mandeville. Great location at 5150 Hwy. 22. Approximately two miles to/from North Causeway Blvd. 1,000-3,400 square feet spaces available. Ample parking. If interested, email ashley@kostmayer.com or call (504)616-5895.

FOR RENT METAIRIE

Metairie law office space available. Perfect for the solo practitioner. Private office 18-feet-by-16-feet, with restroom. Secretarial space, conference room, kitchen, parking, Internet and Jeffnet, network, copier, fax, printer scanner available. Furniture available. \$850/month. One-year lease. Contact Michelle Redmann, (504)834-6430, msredmann@redmannlawnola.com.

FOR RENT NEW ORLEANS

Offices available at 829 Baronne St. in prestigious downtown building, tastefully renovated. Excellent referral system among 35 lawyers. Includes secretarial space, receptionist, telephones, voice

mail, Internet, conference rooms, kitchen, office equipment and parking. Walking distance of CDC, USDC and many fine restaurants. Call Cliff Cardone or Kim Washington at (504)522-3333.

Offices and/or cubicle space available at 601 Poydras St. High-end amenities with great views. Includes secretarial space, Internet, two shared conference rooms, kitchen and parking. Excellent location, beautiful space. Call Jude at (504)669-6827. Can view space at: www.togoffices.com.

NOTICE

Notice is hereby given that Thomas R. Pittenger has filed a petition and application for readmission to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for readmission may file notice of the concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

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The Last **WORD**

By John A. Broadwell

"THANK YOU" LETTER TO THE BAR

On March 28, 2014, I heard the words no one wishes to hear — "It's incurable." While much of the ensuing discussion of that visit is now lost on me, the following weeks have added clarity to what we now jokingly refer to as "the situation" as there is no other apt description. This leads me to write this . . . a "thank you" letter of sorts to the members of the Louisiana Bar.

I am a Loyola '83 graduate, and, in that same year, I married my way to Shreveport. After some time in the local DA's office and the 2nd Circuit Court of Appeal, in 1987, I accepted an invitation to join the U.S. Attorney's Office, where I have since represented the interests of the United States and its agencies in civil litigation. My practice has been exclusive to the federal courts in Shreveport, Monroe, Alexandria, Lafayette and Lake Charles.

In 1992, I was treated with radiation for Hodgkin's disease. Now the very treatment which enabled me to watch my two children grow up into successful young adults has produced a rare combination of lung carcinomas which have spread throughout my bones. Ever hopeful for a miracle achieved through chemotherapy, we are aware that, statistically, time is now measured in a few months, not years.

Although I am only 57 years of age, most would say that I have been "robbed" of time. Yet, paradoxically, I have discovered that I have been given the gift of time as I reflect upon my life. One of my many discoveries is an appreciation for the contributions of so many opposing counsel to the richness of my life. So I write to tell you that it has been my sincerest pleasure and honor to have worked with so many wonderful and talented attorneys over the



John A. Broadwell

years. It is often said that we should value our relationships with our co-workers because we spend as much time with them as we do our own family members. But I will go further to state that the same can be said for our relationships with opposing counsel.

Over the last 30 years, attorneys have challenged, sharpened, taught, sometimes "schooling," laughed with and befriended me. Numerous friendships have developed over the years with opposing attorneys who understand that the litigation experience is far greater than the sum of its parts. Attorneys who fail to appreciate this deprive themselves, in part, of the richness of the work we do. I have always said that the best part of my occupation is the people with whom I work, and that includes the many attorneys I have worked with over the years. These days they offer me not only extensions of time, but phone calls and emails to inquire of my condition and to offer their sincerest sympathies and prayers. Class acts, these folks.

At a minimum, litigation teaches us

how not to comport ourselves. But if we permit it to do so, litigation can move us to be better lawyers and individuals. After three decades of practice, I can identify only five lawyers out of hundreds whom I'd just as soon never see again. That is a remarkable statistic which speaks well for our Bar. But even those difficult experiences were learning opportunities for me, and perhaps they can be so for you as well. We should not be defined as a profession by those of whom we read in the "Discipline Reports;" rather, we are defined by those who exercise grace and professionalism in the representation of their clients.

So I extend my sincerest thanks to every lawyer on the other side of the caption with whom I have dealt. You unwittingly helped to shape me and enabled me to grow not just as a lawyer, but as an individual. And to the envy of many, I can say that you enabled me to enjoy my profession.

Peace and grace to you all,
John

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

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