

# LOUISIANA BAR JOURNAL

August / September 2016

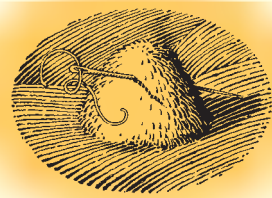
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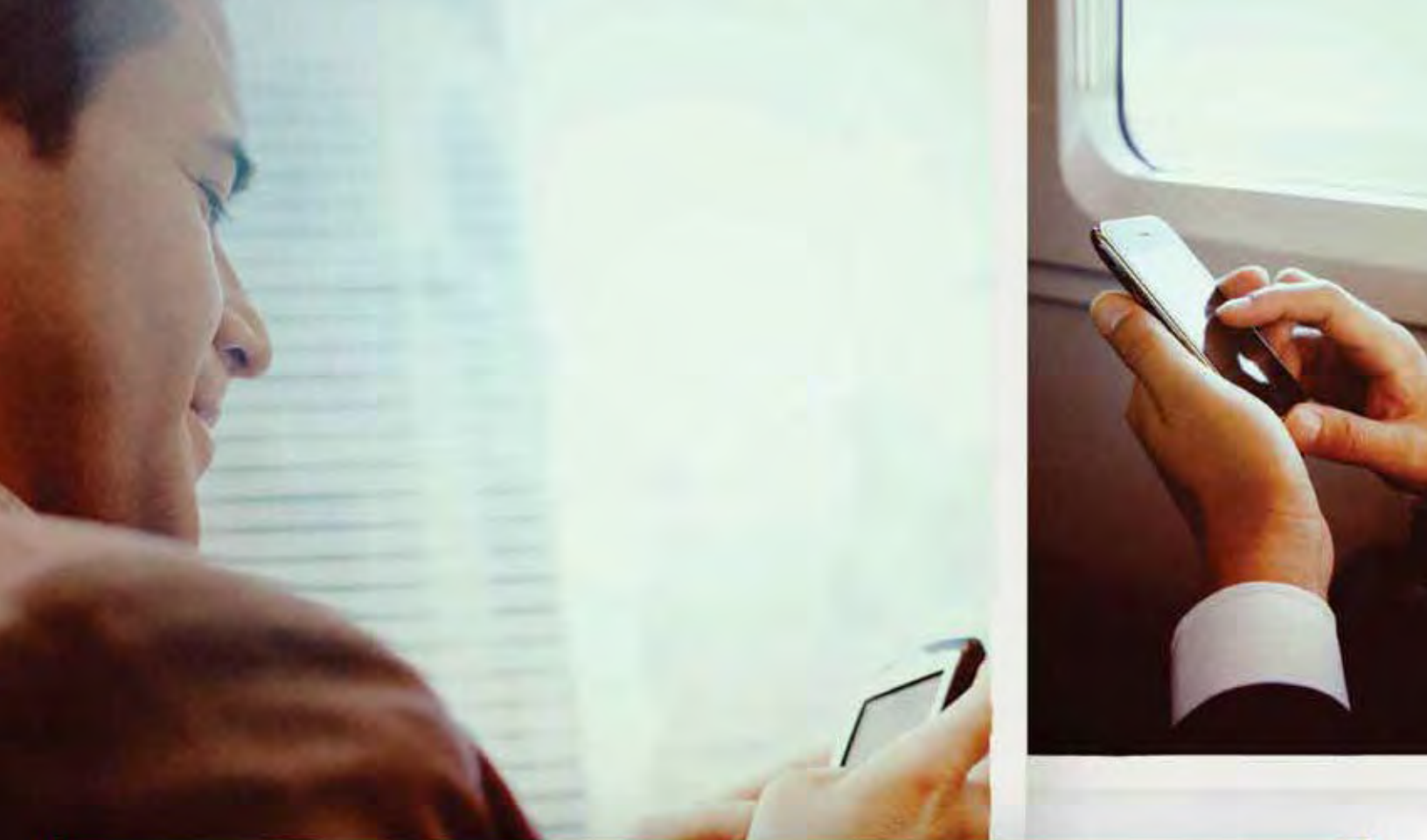
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Darrel J. Papillion, left, was installed as the 76th Louisiana State Bar Association president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Annual Meeting. Read more about the Annual Meeting on pages 122-135.

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By Alainna R. Mire

# #ONELLOUISIANA

Living in Louisiana, there are certain things you expect, such as good seasoned food, Cajun French, humidity and possibly hurricanes. The summers always bring a lot of rain and humidity, but it is bearable. Yet, in the blink of an eye, everything changed while most people slept.

The rain started on Aug. 12, 2016. I didn't realize how bad it was until a friend told me she couldn't make it to Lake Charles from Baton Rouge due to the Interstate conditions. I was like "huh?" Then I noticed the rain on the radar. The rain just kept coming and coming. I received notice that the roads in Scott were closed. My parents are in Scott! I'm from Scott! I was nervous, but my parents said everything was fine except for Layla (our family dog) who is terrified of heavy rains and storms. Next came the flooding and devastation. It happened so fast. It happened indiscriminately. It happened across the socio-economic spectrum. It happened to Lafayette Parish, Livingston Parish, East Baton Rouge Parish, Tangipahoa Parish and many others. It happened to us all.

Yet, to some, it felt like no one cared outside of their affected community. There was no immediate national coverage. There was no sense of urgency to assist from outsiders. There was just "us."

Although I now live in Alexandria, I was born and raised in Scott. The elementary school I attended there is the only school in the parish that received major damage. The young students will be sent to two different

**#OneLouisiana Resources**

**LSBA Disaster Recovery website:**  
[www.lsba.org/dr](http://www.lsba.org/dr)

**Volunteer to help those affected:**  
[www.lsba.org/goto/volunteer](http://www.lsba.org/goto/volunteer)

**SOLACE information:**  
[www.lsba.org/goto/solace](http://www.lsba.org/goto/solace)

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schools until they can return to Westside Elementary. I never thought something like that would happen at "my school." Although a school being damaged is major, the impact that I feel by the loss of family homes in Maurice is much worse. The pictures of my great-grandmother's and grandmother's homes looked like they were sitting in the middle of a river. Looking at those same homes where I have such fond memories with my cousins now only show busted windows, missing bricks and total loss. There is no "repair" of my grandmother's home. There is no fixing it. How could so much loss be from an unnamed storm? How could so much loss be from a rain event? This was no flood. This was no natural occurrence. This was hurtful.

I've heard a few people say that there

would have been more media coverage if this rain event impacted New Orleans or some other major city. Hearing those sentiments made me think of the differences between north and south Louisiana and the divide that is often mentioned. Lack of sufficient national news coverage on what is being called "the worst natural disaster since Superstorm Sandy" may have had less to do with location, but more to do with other events circulating through the news cycles, i.e., the Olympics and the presidential election to name a couple. We may never know the real reason for the news trickle. But I do know, and have seen, that all Louisianians band together in times of crisis. We take care of our own all over the state. We shift gears, change schedules and set priorities to get the job done in whatever way necessary.

This banding together also covers our Louisiana legal profession. Shortly after this crisis unfolded, I started receiving a number of SOLACE emails. Talk about perfect timing. Our legal community has really come together to assist others during this time of need. You never know when you too will need the help of someone in the SOLACE community.

I now call the unnamed storm "The Equalizer." For me, The Equalizer and SOLACE brought into focus that, no matter what, WE are ONE LOUISIANA! I hope each of you remembers that as well.



By Darrel J. Papillion

# L'EAU HAUTE DE VINGT-SEPT

**M**y paternal grandparents were both born in 1906. Although they lived a combined 159 years, they lived all those years in rural Acadiana, where they were born. French was their native language, and, between the two of them, they knew only enough English to defend themselves in the simplest of transactions in that language. Over their relatively long and colorful lives, they saw America and the world change in many ways. They lived through two world wars, the Great Depression, the Civil Rights Movement, and the administrations of U.S. Presidents from Roosevelt (that would be Teddy Roosevelt) to George H.W. Bush. And, even though they also lived through one of the greatest ages of innovation in the history of the world—a period that would include the development of automobiles, radio and television, the jet age, and conveniences like refrigeration and air conditioning—they rarely spoke of these things. They did, however, speak rather regularly of one event in Louisiana's history, especially when the French radio broadcast from KVPI in Ville Platte warned of heavy rain. That event was something my grandparents called *l'eau haute de vingt-sept*—the high waters of '27—or the most destructive river flood in the history of the United States.

While my family's small farm on the Acadian Prairie in St. Landry Parish was spared serious flooding, my grandparents were keenly aware of the suffering en-

**Resources**

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**Volunteer to help those affected:**  
[www.lsba.org/goto/volunteer](http://www.lsba.org/goto/volunteer)

**SOLACE information**  
(see also page 103):  
[www.lsba.org/goto/solace](http://www.lsba.org/goto/solace)

**LSBA Disaster Response Message Board - post offers of help or requests for assistance (for LSBA members only):**  
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ured by many. Roughly 630,000 people in Louisiana, Arkansas and Mississippi were affected by flooding. More than 80 percent of St. Landry Parish flooded. Nearby Opelousas had a population of only 6,000 people in 1927, but, within a few days of when the Atchafalaya River levee failed a few miles north of St. Landry Parish in Avoyelles Parish in May 1927, nearly 15,000 registered refugees, and many unregistered ones, from other parts of Louisiana would seek shelter in Opelousas' Red Cross refugee camps. Another nearly 2,000 would seek refuge in camps in nearby Eunice. My grandparents often spoke of the human misery that ensued as thousands, often with all their possessions including livestock in tow, journeyed to higher ground because much of Louisiana

was under water.

Nearly a century later, in August 2016, I would recall my grandparents' frequent references to *l'eau haute de vingt-sept* as a slow-moving storm would pound Louisiana with rainfall for several days and would drop nearly seven trillion gallons of water—enough to fill more than 10 million Olympic-sized swimming pools or fill Lake Pontchartrain four times—on our state. More than 140,000 homes and thousands of businesses would be affected. Like in 1927, thousands of Louisianians, including many in the legal profession, would seek refuge in shelters or with family and friends. As in 1927, and like the aftermath of Hurricanes Katrina and Rita, thousands of Louisianians would need help from their state and federal governments and, of course, their communities. Louisiana, of course, survived the Great Flood of 1927 and has survived numerous tragedies and disasters since then. And, it will survive and rebuild from the damage caused by the floods of 2016.

The Louisiana State Bar Association (LSBA) acted quickly in the aftermath of this year's historic flooding to help our members and our system of justice. The LSBA activated its disaster plan and quickly rolled out the disaster page of its website, [www.lsba.org/dr](http://www.lsba.org/dr). The LSBA's leaders worked with Gov. John Bel Edwards' office to help with emergency Executive Orders regarding legal deadlines.

Similarly, the LSBA worked with the



chief judges of Louisiana’s federal courts to secure similar orders in federal court to prevent lawyers and citizens who were busy rescuing their families and neighbors from the devastation of the floods from being prejudiced by legal deadlines. Before the flood waters receded, LSBA leadership was in close contact with Chief Justice Bernette Joshua Johnson and the staff of the Louisiana Supreme Court to ensure that Louisiana’s lawyers had timely information regarding court closures and other issues that might affect their clients and practices.

The LSBA worked quickly to begin raising funds to help lawyers and legal professionals affected by flooding, and the LSBA’s SOLACE Program provided scores of flood victims with aid, services and relief in the aftermath of the flooding. The LSBA also began working to develop a seminar to help lawyers affected by flooding to rebuild their practices. As I write this article, the LSBA is working on numerous flood-related projects.

I am proud of the LSBA’s response to the flooding of 2016. The flooding has had a devastating effect on lawyers in several

communities in our state, most notably Livingston Parish, and much remains to be done. The LSBA will devote considerable time and energy over the next weeks and months to help our members affected by the flooding of 2016. While these flood relief efforts will be challenging, like so many times in the past, Louisiana’s lawyers, judges and legal community will rise to the challenge.



# 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, to contact a coordinator or for more information, visit [www.lsba.org/goto/solace](http://www.lsba.org/goto/solace).

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| <b>Jefferson Parish Area</b>          | Pat M. Franz<br>patfranz@bellsouth.net            | (504)455-1986                       | <p>SOLACE is accepting assistance requests for non-monetary needs from those affected by the severe weather. Requests can be for gift cards, furniture, office space, temporary housing, food, etc. Requests for assistance will be circulated to the 20,000-plus SOLACE members. If you or someone you know needs assistance, forward your request to SOLACE at <a href="mailto:solaceinfo@lasolace.org">solaceinfo@lasolace.org</a> or post your request to the LSBA Diaster Response Message Board. Please include an email address that protects the sender’s identity.</p> |   |  |
| <b>Lafayette Area</b>                 | Josette Abshire<br>director@lafayettebar.org      | (337)237-4700                       |   |   |  |
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# ONE LOUISIANA

# LSBA RESPONDS TO LOUISIANA FLOODING DISASTER

*Service to the Public. Service to the Profession.*

**Legal Assistance Efforts Underway for Citizens and Legal Professionals**

## Message from the LSBA President

The Louisiana State Bar Association (LSBA) is working hard to help its members in the aftermath of the devastating flooding that has affected a large portion of our state. The LSBA is dedicated to serving the needs of our members, the courts and the public throughout this disaster and its aftermath. The LSBA's disaster response website, <https://www.lsba.org/dr>, will serve as a single source for information on court closings, announcements and emergency contact information.

Additionally, we have made the LSBA Disaster Planning Handbook, which contains practical information on emergency response, the recovery process, and how to prepare your law practice for emergencies in the future, available as an online resource.

It is critical that we pull together as a legal community during this crisis. The LSBA will continue to do its best to help you during this time of misfortune and recovery.

—Darrel J. Papillion  
2016-2017 LSBA President

## Governor Amends Executive Order on Emergency Suspension of Legal Deadlines

Louisiana Gov. John Bel Edwards has amended his previous Executive Order (JBE 2016-53) for the emergency suspension of deadlines in legal, administrative and regulatory proceedings.

“In this time of disastrous disruption of Louisiana citizens’ lives, services and the infrastructure of the justice system, this emergency suspension of deadlines in

state legal, administrative and regulatory proceedings is certainly a welcome relief for members of the

Louisiana Bar, their clients and all those with pending matters,” said Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.

Review the amended Executive Order (JBE 2016-57): [files.lsba.org/documents/News/LSBANews/AmendedExOrder-JBE201657.pdf](https://files.lsba.org/documents/News/LSBANews/AmendedExOrder-JBE201657.pdf).

## Louisiana Supreme Court Monitoring Court Closures Due to Flooding

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson said, due to the flood conditions affecting several Louisiana parishes, numerous state and federal courts have temporarily closed until conditions improve. Citizens and the legal community should refer to the Louisiana Supreme Court website home page at [www.lasc.org](http://www.lasc.org) for the most current list of all court closures.



## Donations Being Accepted Online for Flood Disaster Relief

The Baton Rouge Bar Foundation has established a Disaster Relief Fund to assist legal professionals who have been impacted by the flooding. For more information, to apply for a grant or make a donation, go to: [www.brba.org/Web/Foundation/Bar\\_Foundation.aspx](http://www.brba.org/Web/Foundation/Bar_Foundation.aspx).

## SOLACE Support for Those Affected by Flooding

SOLACE is accepting assistance requests for non-monetary needs from those affected by the severe weather. Requests can be for gift cards, furniture, office space, temporary housing, food, etc. Requests for assistance will be circulated to the 20,000+ SOLACE members. If you or someone you know needs assistance, email the request to SOLACE: [solaceinfo@lasolace.org](mailto:solaceinfo@lasolace.org). Include an email address that protects the sender's identity. For more information on the SOLACE Program, go to: [www.lsba.org/Members/Solace.aspx](http://www.lsba.org/Members/Solace.aspx).

## Call for Volunteers: Flooding Victims Need Legal Assistance

Attorney volunteers are being sought to provide legal advice and counseling to individuals impacted statewide by the recent flooding. Volunteers are needed to answer questions from individuals seeking assistance at Disaster Recovery Centers, to assist the Louisiana Civil Justice Center in answering calls through the Statewide Disaster Hotline and to work with local pro bono organizations. To volunteer online, click on the "Volunteer" button at: [www.lsba.org/dr](http://www.lsba.org/dr). Or contact Rachael Mills at (504)619-0104 or email [rachael.mills@lsba.org](mailto:rachael.mills@lsba.org).

## Free Legal Assistance Available for Louisiana Flood Victims

A toll-free legal aid hotline is available for victims of the storms and flooding in Louisiana. The service, which allows callers to request the assistance of a lawyer, is a partnership between the Louisiana State Bar Association, the Louisiana Civil Justice Center, the American Bar Association Young Lawyers Division and the Federal Emergency Management Agency.

Low-income survivors facing legal issues may call 1-800-310-7029, the assistance hotline activated by Louisiana Civil Justice Center. Callers should identify that they are

seeking storm-related legal assistance and should identify the parish in which they are located. Survivors who qualify for assistance will be matched with Louisiana lawyers who have volunteered to provide free legal help.

Examples of legal assistance available include:

- ▶ assistance with securing FEMA and other benefits available to disaster survivors;
- ▶ assistance with life, medical and property insurance claims;
- ▶ help with home repair contracts and contractors;

- ▶ replacement of wills and other important legal documents destroyed in the disaster;

- ▶ assistance in consumer protection matters, remedies and procedures;

- ▶ counseling on mortgage-foreclosure problems; and

- ▶ counseling on landlord/tenant problems.

The hotline is available 24/7 and callers can leave a message any time. Individuals who qualify for assistance will be matched with Louisiana lawyers who have volunteered to provide free, limited legal help. Survivors should be aware that there are some limitations on disaster legal services. For example, assistance is not available for cases that will produce a fee (*i.e.*, those cases where fees are paid as part of the settlement by the court). Such cases are referred to a lawyer referral service.

## FEMA and SBA Assistance Offered

Residents who sustained property damage as a result of the severe storms and flooding are urged to register with FEMA, as they may be eligible for federal and state disaster assistance. Attorneys can register online at [DisasterAssistance.gov](http://DisasterAssistance.gov) or via smartphone or Web-enabled device at [m.fema.gov](http://m.fema.gov). Applicants may also call 800-621-3362 or 800-462-7585 (TTY) from 6 a.m. to 10 p.m. seven days a week. Flood survivors are also encouraged to call the FEMA hotline to report their damage. Other flooding resources may be found on [www.lsba.org/dr](http://www.lsba.org/dr).

Low-interest disaster loans from the U.S. Small Business Administration (SBA) are available for eligible applicants. SBA helps businesses of all sizes (including landlords), private nonprofit organizations, homeowners, and renters fund repairs or rebuilding efforts and cover the cost of replacing lost or damaged personal property. Disaster

loans cover losses not fully compensated by insurance or other recoveries.

For more information, individuals may contact SBA's Disaster Assistance Customer Service Center by calling 800-659-2955, emailing [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov), or visiting SBA's website at [disasterloan.sba.gov/la](http://disasterloan.sba.gov/la). Deaf and hard-of-hearing individuals may call 800-877-8339.

For more information on Louisiana's recovery, visit the disaster Web page at [www.fema.gov/disaster/4277](http://www.fema.gov/disaster/4277), Twitter at [www.twitter.com/femaregion6](http://www.twitter.com/femaregion6), and the Louisiana Division of Emergency Management website, [emergency.louisiana.gov/](http://emergency.louisiana.gov/).

## Beware of Fraud

Both FEMA and the Louisiana Attorney General's Office are warning Louisiana residents of the risk of fraud and common scams in the wake of the severe weather. Common post-disaster fraud practices include phony housing inspectors, fraudulent building contractors, bogus pleas for disaster donations, and fake offers of state or federal aid. Louisianans are urged to ask questions, and to require identification when someone claims to represent a government agency.

Survivors should also keep in mind that state and federal workers never ask for or accept money, and always carry identification badges with a photograph. There is no fee required to apply for or to receive disaster assistance from FEMA, the U.S. Small Business Administration (SBA), or the state. Additionally, no state or federal government disaster assistance agency will call to ask for your financial account information. Unless you place a call to the agency yourself, you should not provide personal information over the phone as it can lead to identity theft.

Those who suspect fraud can call the FEMA Disaster Fraud Hotline at 866-720-5721 (toll free). Complaints may also be made to the Louisiana Attorney General's Office Consumer Protection Hotline at 800-351-4889.

## Free Replacement Bar Licenses and LSU Diplomas

- ▶ The Louisiana Supreme Court Clerk of Court's office will issue free replacement Bar licenses for all those damaged in the flooding. Call (504)310-2300.

- ▶ The Louisiana State University Registrar's Office will reprint, free of charge, any LSU diploma lost in the flooding. Email [sarahmartin@lsu.edu](mailto:sarahmartin@lsu.edu).

*I'm Sure Glad We're Done... or Are We?*

# HOW TO WIN (OR LOSE) YOUR CASE AFTER YOU HAVE WON (OR LOST):

## Additur, Remittitur, JNOV and New Trial

By C. Frank Holthaus and Edward J. Walters, Jr.

**Y**ou lost your case or the jury verdict was way out of line. You know you should have won. The judge knows it, too. The jury just didn't "get it." They certainly didn't get it right. You need to fix it. But what do you do? What do you file? What are your client's rights?

Luckily for you, in Louisiana, you have a few options.

### Remittitur and Additur

The statutory tools available to the Louisiana practitioner seeking to correct an erroneous or deficient verdict are not always clearly written. One of the articles that *is* clearly written, however, is Louisiana Code of Civil Procedure art. 1814, providing for remittiturs and additurs, which states, in pertinent part:

If the . . . verdict is so excessive or inadequate that a new trial should be granted for that reason only, [the court] . . . may indicate to the party or his attorney within what time he may enter a remittitur or additur [which may] be entered *only with the consent* of the plaintiff or the defendant as the case may be, *as an alternative to a new trial* . . . (emphasis added.)

Where the court indicates an intent to order a new trial or, as an alternative, to grant a remittitur or additur, the opponent has the option of agreeing to the additur or of obtaining a new trial.

### Remittiturs and Additurs: Standard for Granting and Scope of Relief

To determine whether an additur is proper, the court must determine whether the jury abused its discretion.<sup>1</sup> The court is allowed to grant a motion for additur only if it believes that the jury award was so inadequate as to justify a new trial on that issue alone.<sup>2</sup> The decision whether to grant an additur is proper only if granting a new trial solely on the issue of damages would also be proper.<sup>3</sup> In other words, if the jury's award is within its range of discretion, an additur is improper. A judgment granting an additur is proper when the jury awards an amount that is lower than the lowest reasonable amount. The purpose of art. 1814 is to serve judicial efficiency by allowing the parties to avoid a possibly unnecessary new trial.<sup>4</sup>

The scope of the remedy provided under art. 1814 is balanced. The mover's remedy is to recover only such an amount as is the least/most a reasonable jury could have awarded. If the opponent disagrees with this, he is entitled to a new trial instead. It is as simple as that.

### Judgment Notwithstanding the Verdict (JNOV)

Not nearly so clearly written is La. C.C.P. art. 1811, which, in pertinent part, reads:

A. (1) Not later than seven days . . . a party may move for a judgment notwithstanding the verdict.

(2) A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative.

B. The court may allow the judgment to stand or may reopen the judgment and either order a new trial or render a judgment notwithstanding the verdict . . .

C. (1) If the motion for a judgment notwithstanding the verdict is granted, the court shall also rule on the motion for a new trial, if any . . . and shall specify the grounds for granting or denying the motion for a new trial.

(2) If the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court orders otherwise.

(3) If the motion for a new trial has been conditionally denied and the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

D. The party whose verdict has been set aside on a motion for a judgment notwithstanding the verdict may move for a new trial . . .

E. If the motion for a judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to

a new trial in the event the appellate court concludes that the trial court erred in denying the motion for a judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this Article precludes the court from determining that the appellee is entitled to a new trial or from directing the trial court to determine whether a new trial shall be granted.

## JNOV: Standard for Granting Relief

Noting that art. 1811 does not on its face provide a standard for application, the Supreme Court jurisprudentially established one:<sup>5</sup>

The grounds upon which the district court may grant a JNOV are not specified in Article 1811; however, this court has set forth the standard to be used in determining when a JNOV is proper as follows: A JNOV is warranted when the facts and inferences point so strongly and overwhelmingly in favor of one party that the trial court believes that reasonable persons could not arrive at a contrary verdict. The motion should be granted only when the evidence points so strongly in favor of the moving party that reasonable persons could not reach different conclusions, not merely when there is a preponderance of evidence for the mover. In making this determination, the trial court should not evaluate the credibility of the witnesses, and all reasonable inferences or factual questions should be resolved in favor of the non-moving party.<sup>6</sup>

Acting on a case-by-case basis, the jurisprudence has formulated the standards to be applied:

► Generally, the same standard applies to a JNOV as to a directed verdict.<sup>7</sup>

► The evidence and all reasonable inferences from the evidence should be considered in the light most favorable to the party opposing the motion.<sup>8</sup>

► The motion should be granted only if the facts and inferences are so strong that the court believes that reasonable people could not rule in favor of the opponent.<sup>9</sup>

► The motion should be denied if the

record contains “evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions.”<sup>10</sup>

► A JNOV may not be granted where there is conflicting evidence.<sup>11</sup>

► A preponderance of the evidence in favor of the moving party is insufficient grounds for granting a motion for a JNOV.<sup>12</sup>

► Both the trial judge and the appeals court are prohibited from making credibility determinations when considering a motion for a JNOV.<sup>13</sup>

► The trial court is also prohibited from substituting its judgment for the judgment of the jury.<sup>14</sup>

► A trial judge may not consider statements made by a juror in deciding a motion for JNOV.<sup>15</sup>

► The granting of a motion for JNOV is not an appropriate remedy merely because the trial judge finds that a preponderance of the evidence is in favor of the mover.<sup>16</sup>

► A trial court’s authority to grant a JNOV is limited “to those cases where the jury’s verdict is absolutely unsupported by any competent evidence.”<sup>17</sup>

A motion for a JNOV requires a stringent test because it deprives the parties of their right to have all disputed issues resolved by a jury.<sup>18</sup>

The hurdle imposed by a motion for JNOV is higher than that required to reverse a case on the grounds of manifest or clear error on appeal. If reasonable people, in the exercise of impartial judgment, might have reached a different conclusion, then it was error for the trial judge to grant the motion. The trial judge is not entitled to interfere with the verdict simply because he believes another result would be correct.<sup>19</sup>

Neither the trial court nor this court can substitute its evaluation of the evidence for that of the jury unless the jury’s conclusions totally offend reasonable inferences from the evidence.<sup>20</sup> Questions of fact should be resolved in favor of the non-moving party.<sup>21</sup> A judge is allowed to enter a JNOV only where the jury’s verdict is absolutely unsupported by any competent evidence.<sup>22</sup>

## Motion for New Trial

Far and away the most commonly used

post-verdict motion is the motion for a new trial. As discussed above, it arises implicitly with the remittitur/additur motion and is routinely paired with the previously discussed JNOV.

The Code of Civil Procedure provides, in pertinent part:

### Art. 1971. Granting of new trial

A new trial may be granted . . . to all or any of the parties and on all or part of the issues, or for reargument only . . . .

### Art. 1972. Peremptory ground

A new trial shall be granted . . . in the following cases:

(1) When the verdict or judgment appears clearly contrary to the law and the evidence.

(2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.

### Art. 1973. Discretionary grounds

A new trial may be granted in any case if there is good ground therefor, except as otherwise provided by law.

By its terms, art. 1972 (peremptory grounds) uses the mandatory language “shall,” requiring a new trial “when the verdict or judgment appears clearly contrary to the law and the evidence,” and art. 1973 (discretionary grounds) provides permissive language “may” whenever “a good ground” exists.<sup>23</sup>

## New Trial: The Standard for a Granting or Denying

The motion for a new trial is applied by a less stringent test than a motion for a JNOV because its remedy is so less severe — a new trial. The parties maintain their right to have all disputed issues resolved by a jury.<sup>24</sup> In considering a motion for a new trial, unlike the JNOV, the trial court is free to evaluate the evidence without favoring either party, drawing its own conclusions and inferences and *evaluating the credibility of the witnesses* to determine if the jury has erred in giving too much credence to an unreliable witness.<sup>25</sup> A court may use its discretion and order a new trial whenever it is “convinced by its examination of the



facts that the judgment would result in a miscarriage of justice.<sup>26</sup> Although the trial court has much discretion in determining if a new trial is warranted, an appellate court can set aside the ruling of the trial judge in a case of manifest abuse of that discretion.<sup>27</sup>

The discretionary grounds described by art. 1973 contemplate circumstances other than those enumerated in art. 1972 and a court must articulate a reason why it is invoking art. 1973 when granting a new trial.<sup>28</sup>

In *Martin v. Heritage Manor House*,<sup>29</sup> the Supreme Court opined that:

The fact that a determination on a motion for new trial involves judicial discretion, however, does not imply that the Trial Court can freely interfere with any verdict with which it disagrees. The discretionary power to grant a new trial must be exercised with considerable caution . . . the jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence.

When considering a motion for new trial under either La. C.C.P. arts. 1972 or 1973, the trial court may evaluate the evidence without favoring either party. It may draw its own inferences and conclusions and evaluate witness credibility to determine whether the jury erred in giving too much credence to an unreliable witness.<sup>30</sup>

### Cases: The "Easy" Ones

A trier of fact abuses its discretion in failing to award general damages when it finds that a plaintiff has suffered injuries causally related to the accident that required medical attention.<sup>31</sup>

In *Green v. K-Mart Corp.*,<sup>32</sup> the Supreme Court upheld the 3rd Circuit, finding that:

Here, the court of appeal correctly determined that the jury abused its discretion in failing to award general damages while awarding a substantial amount for past and future medical expenses. In this case, the jury determined that plaintiff suffered injuries causally related to the accident which required medical attention, and is still

suffering an injury that will, in fact, require medical attention in the future. Failing to make a general damage award in such circumstances was an abuse of discretion.

In *Ezzell v. Miranne*,<sup>33</sup> the plaintiff was awarded future damages, yet no award was given for future pain and suffering. On appeal, the 5th Circuit held that the jury abused its discretion in not making a general damages award for future pain and suffering after awarding future lost wages.

### The "Hard" Ones: Reducing Damages

In *Forbes v. Cockerham*,<sup>34</sup> the 1st Circuit (also discussing the standard for a JNOV and new trial) was asked to reduce a plaintiff's damages. Appellant argued that an extensive list of prior case results showed the award in *Forbes* was excessive. The court rejected that approach, finding it well-settled law that only *after* a finding that the jury had abused its discretion could resort be made to prior cases, and then only for the purpose of establishing the highest reasonable award. The *Forbes* court found the jury had not abused its discretion, so the court refused to look at prior judgments.

### Increasing Damages

In *Guillory v. Lee*,<sup>35</sup> the Louisiana Supreme Court was presented with plaintiff's request to increase damages. The jury had awarded only \$10,000, allowing nothing for loss of enjoyment of life. The trial court granted a new trial. Defendant appealed. Turning to the specific evidence of the case, the Court found evidence the jury may have relied on to conclude plaintiff had not suffered a loss of enjoyment of life. Expressly noting that the award was clearly on the lower end, the Court found the jury had not abused its discretion and reversed the trial court's granting of a new trial.

In *Rachal v. Brouillette*,<sup>36</sup> the 3rd Circuit refused to decrease an award of compensatory damages which was "three and one-third times higher" than the largest award for the death of a parent, and, at the same time, increased the award of exemplary

damages finding it "unreasonably low:"

Plaintiff argues that the award of exemplary damages, \$100,000, was unreasonably low. We agree and increase the award to \$500,000. The purpose of exemplary damages is to punish the defendant and deter future similar behavior. These damages are regarded as a fine or penalty for the protection of the public interest. . . . The following factors are considered in determining whether the award is too high or low: (1) the nature and extent of the harm to the plaintiff; (2) the wealth or financial situation of the defendant; (3) the character of the conduct involved; (4) the extent to which such conduct offends a sense of justice and propriety; and (5) the amount necessary to deter similar conduct in the future. *Id.* The amount of exemplary damages is the result of a fact-intensive inquiry into the case. These awards should only be disturbed if the damages are such that "all mankind at first blush would find [them] outrageous." (Citations omitted.)

### Other Cases

The trial court properly granted a motion for a new trial after the jury found landowners liable to their neighbor for damages to his bell pepper crop caused by the defendant's negligently spraying herbicide. The testimony of the landowner, field inspector and meteorology expert indicated spraying occurred on a day when the wind would not have carried fumes to the neighbor's field. Spraying was done in a manner to avoid affecting neighboring fields. Other neighboring fields were not affected by spraying, and experts testified that they could not tell whether damage to bell peppers was the result of spraying herbicide. Thus, the court concluded that the evidence did not support a verdict against the defendant and that the jury had abused its discretion.<sup>37</sup>

Where a plaintiff slipped and fell on a banana on the defendant's premises but still found for the defendant, the court of appeal affirmed the finding that the trial court cannot freely interfere with a verdict

merely because it disagrees.<sup>38</sup>

In a case in which the jury found the defendant 100 percent at fault but awarded only \$3,000 in damages — the award reflected only the plaintiff's lost wages and medical expenses, accounting for none of the plaintiff's pain and suffering — the court held that the jury could not find injury and 100 percent fault on the defendant, and then award nothing for pain and suffering. The jury's omission of a general damage award was clearly contrary to the law and the evidence so a new trial was properly granted.<sup>39</sup>

In *Morgan v. Belanger*,<sup>40</sup> the 1st Circuit refused to reverse the jury's apparent finding of lack of causation despite a treating physician's opinion that the accident did cause plaintiff's injury. The jury was free to discredit the plaintiff's testimony and that of his treating physician in light of totality of the evidence.<sup>41</sup> In accord, the 3rd Circuit has held that: "The jury was free to reject Mr. Simon's treating physician's diagnosis of thoracic outlet syndrome and also to reject the assertion that this condition would be a problem for the plaintiff in the future"<sup>42</sup> and:

The jury or trial judge may accept or reject the opinion expressed by any medical expert, depending upon how he is impressed with the qualifications and testimony of that expert.<sup>43</sup>

The treating physician's testimony is not irrebuttable, as the trier of fact is required to weigh the testimony of all of the medical witnesses.<sup>44</sup>

## Conclusion

Losing at trial is, no doubt, unfortunate, but Louisiana law invests three tiers of courts with the power, under appropriate circumstances, to rectify wrongful verdicts. In short, it ain't over until it's over.

## FOOTNOTES

1. *Ryals v. Louisiana Power & Light Co.*, 94-0050 (La. App. 5 Cir. 4/26/94), 636 So.2d 1064.

2. *Fleischmann v. Hanover*, 470 So.2d 216 (La. App. 4 Cir. 1985).

3. *Temple v. State ex rel. DOTD*, 02-1977 (La. App. 1 Cir. 6/27/03), 858 So.2d 569.

4. *Accardo v. Cenac*, 97-2320 (La. App. 1 Cir.

11/6/98), 722 So.2d 302; Art. 1814 Comment (b).

5. *Smith v. State DOTD*, 04-1317 c/w 04-1594 (La. 3/11/05), 899 So.2d 516.

6. *Trunk v. Medical Center of Louisiana at New Orleans*, 04-018 (La. 10/19/04), 885 So.2d 534, 537 (citing *Joseph v. Broussard Rice Mill, Inc.*, 00-0628, (La. 10/30/00), 772 So.2d 94). See also, *Smith v. State DOTD*, 524 So.2d 25.

7. *State, Dept. of Transp. and Development v. Wahlder*, 554 So.2d 233 (La. App. 3 Cir. 1989), *determination sustained*, 558 So.2d 561 (La. 1990).

8. *Robinson v. Fontenot*, 02-C-0704 (La. 2/7/03), 837 So.2d 1280.

9. *Thrash v. Maerhofer*, 99-375 (La. App. 3 Cir. 11/18/00), 745 So.2d 1238.

10. *Robinson v. Fontenot*, 02-C-0704 (La. 2/7/03), 837 So.2d 1280.

11. *Acosta v. Pendleton Memorial Methodist Hosp.*, 545 So.2d 1053 (La. App. 4 Cir. 1989); *Alumbaugh v. Montgomery Ward & Co., Inc.*, 492 So.2d 545 (La. App. 3 Cir. 1986).

12. *Boudreaux v. Schwegmann Giant Supermarkets*, 585 So.2d 583 (La. App. 4 Cir. 1991); *Doming v. K-Mart Corp.*, 540 So.2d 400 (La. App. 1 Cir. 1989).

13. *Robinson v. Fontenot*, 02-C-0704 (La. 2/7/03), 837 So.2d 1280; *Thrash v. Maerhofer*, 99-375 (La. App. 3 Cir. 11/18/00), 745 So.2d 1238.

14. *May v. Jones*, 675 So.2d 275 (La. App. 2 Cir. 1996); *Acosta v. Pendleton Memorial Methodist Hosp.*, 545 So.2d 1053 (La. App. 4 Cir. 1989); *Doming v. K-Mart Corp.*, 540 So.2d 400 (La. App. 1 Cir. 1989).

15. *Hoyt v. Wood/Chuck Chipper Corp.*, 625 So.2d 504 (La. App. 1 Cir. 1993).

16. *Thrash v. Maerhofer*, 99-375 (La. App. 3 Cir. 11/18/00), 745 So.2d 1238.

17. *Davis v. Lazarus*, 04-C-0582 (La. App. 4 Cir. 4/12/06), 927 So.2d 456.

18. *Martin v. Heritage Manor South Nursing Home*, 00-1023 (La. 4/3/01), 784 So.2d 627; *Templet v. State ex rel. Dep't of Transp. & Dev.*, 00-2162 (La. App. 1 Cir. 11/9/01), 818 So.2d 54.

19. *Davis v. Wal-Mart Stores, Inc.*, 00-0445 (La. 11/28/00), 774 So.2d 84, 95; *Yohn v. Brandon*, 01-1896 (La. App. 1 Cir. 9/27/02), 835 So.2d 580, 585, *writ denied*, 02-2592 (La. 12/13/02), 831 So.2d 989.

20. *Templet*, 818 So.2d at 58.

21. *Anderson*, 583 So.2d at 832.

22. *Boudreaux v. Schwegmann Giant Supermarkets*, 585 So.2d 583 (La. App. 4 Cir. 1991).

23. La. C.C.P. art. 1973.

24. *Broussard v. Stack*, 95-2508 (La. App. 1 Cir. 9/27/96), 680 So.2d 771.

25. *Hunter v. State ex rel. LSU Medical School*, 05-0311 (La. App. 1 Cir. 3/29/06), 934 So.2d 760, *writ denied*, 06-0937 (La. 11/3/06), 940 So.2d 653.

26. *Lamb v. Lamb*, 430 So.2d 51 (La. 1983).

27. *Hardy v. Kidder*, 292 So.2d 575 (La. 1973); *Hitkinan v. Wm. Wrigley, Jr. Co.*, 33,896 (La. App. 2 Cir. 10/4/00), 768 So.2d 812.

28. *Burris v. Wal-Mart Stores, Inc.*, 94-0921 (La. App. 1 Cir. 3/3/95), 652 So.2d 558, *writ denied*, 95-0858 (La. 5/12/95), 654 So.2d 352; *Johnson v. Missouri Pacific R.R. Co.*, 00-0980 (La. App. 3 Cir. 7/25/01), 792 So.2d 892, 897-898, *writ denied* (La. 12/7/01), 803 So.2d 33.

29. *Martin v. Heritage Manor South*, 00-1023 (La. 4/3/01), 784 So.2d 627.

30. *Smith v. American Indem. Ins. Co.*, 598 So.2d

486 (La. App. 2 Cir. 1992), *writ denied*, 600 So.2d 685 (La. 1992).

31. *Stewart v. Haley*, 11-0584 (La. App. 1 Cir. 11/9/11), 2011 WL 5415175.

32. *Green v. K-Mart Corp.*, 03-2495 (La. 2004), 874 So.2d 838.

33. *Ezzell v. Miranne*, 11-228 (La. App. 5 Cir. 12/28/11), 84 So.3d 641.

34. *Forbes v. Cockerham*, 05-CA-1838, (La. App. 1 Cir. 3/7/08), 985 So.2d 86.

35. *Guillory v. Lee*, 09-C-0075 (La. 2009), 16 So.3d 1104.

36. *Rachal v. Brouillette*, 12-794 (La. App. 3 Cir. 3/13/13), 111 So.3d 1137.

37. *Freeman v. Rew*, 557 So.2d 748 (La. App. 2 Cir. 1990), *writ denied*, 563 So.2d 1154 (La. 1990).

38. *Freeman v. Rew*, 557 So.2d 748 (La. App. 2 Cir. 1990), *writ denied*, 563 So.2d 1154 (La. 1990).

39. *Guillory v. National Union Fire Ins. Co.*, 95-1132 (La. App. 3 Cir. 1/31/96), 670 So.2d 326.

40. *Morgan v. Belanger*, 633 So.2d 173 (La. App. 1 Cir. 1993), *writ denied*, 634 So.2d 832 (La. 1994).

41. *Williams v. Diehl*, 625 So.2d 251 (La. App. 5 Cir. 1993).

42. *Simon v. Lacoste*, 05-550 (La. App. 3 Cir. 12/30/05), 918 So.2d 1102.

43. *White v. Cumis Ins. Soc.*, 415 So.2d 574 (La. App. 3 Cir. 1982).

44. *Freeman v. Rew*, 557 So.2d 748 (La. App. 2 Cir. 1990), *writ denied*, 563 So.2d 1154 (La. 1990).

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## Point: Lawyer Advertising

# Enough is Enough

By M.H. (Mike) Gertler

There has been an onslaught recently of television lawyer advertisements. Many of these advertisements include testimonials, ostensibly by former clients, who boast that they “got” substantial amounts of money as a result of cases handled by the advertising lawyers. These individuals are, as a rule, young and healthy looking with no apparent injury. There generally is no information, or at best, very limited information, regarding the types of injuries sustained, and no indication as to what portion of the gross recovery they “got.” To the average consumer, the most reasonable inference is that these clients simply won the lawsuit lottery by going to these lawyers.

### Complaint at Issue

I filed a complaint with the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board (LADB) regarding these types of commercials. The complaint alleged that, without information about the nature of the injuries, the focus on young, healthy-looking people was misleading and deceptive to the public. Additionally, given that the amounts mentioned are generally well-rounded large numbers, there is a serious question as to whether the clients’ statements that they received the claimed amount of money could also be deceptive because these figures appear to represent gross recoveries, not net recovery amounts after the fee and costs have been deducted.

The Office of Disciplinary Counsel responded to the complaint, stating that “[w]e have not found evidence of any violation of the Rules of Professional Conduct and thus no basis to open a disciplinary investigation. Please see the recent and relevant ruling of *Rubenstein v. Fla. Bar*, (S.D. Fla. 2014), enclosed.”<sup>1</sup>

After further communications, the Office of Disciplinary Counsel filed an additional explanatory letter adding the following comment:

Your complaint concerns “past results” in attorney advertisements, covered by Rule of Professional Conduct 7.2(c) (1)(D). In discussing the rule, the 5th Circuit in *Public Citizen, Inc. v. La. Attorney Disciplinary Bd.*, 632 F.3d 212, 221-222 (5 Cir. 2011), using as example the very type of language you claim is misleading, stated:

Continued next page

## COUNTERPOINT: Lawyer Advertising

# Enough with Enough

By Morris Bart III

Some lawyers are shouting the rallying cry, “Make lawyers great again,”<sup>1</sup> and seeking a return to the good old days in the first half of the 20th century when there was no legal advertising and the Bar was great for a small, non-diverse and powerful monopoly. It was a time when lawyers believed that clients served them, rather than vice versa. Unfortunately for lawyers, but fortunately for the general public, those times are gone, never to return.

Today’s reality is that it is now a buyer’s market for legal services. This reversal of fortunes for lawyers and boon for clients was foreseen and advanced by the United States Supreme Court in *Bates v. State Bar of Arizona*.<sup>2</sup> Specifically, the Court noted: “It is entirely possible that advertising will serve to reduce, not advance, the cost of legal services to the consumer.”<sup>3</sup>

Some lawyers wish to reverse the change in fortunes and hope to flip the legal services market to a seller’s market, restricting its availability to the public and, thus, raising the cost of legal services. The *Bates* Court anticipated this scenario, too. The Court noted that restricting attorney advertising “serves to increase the difficulty of discovering the lowest cost seller of acceptable ability. As a result, to this extent attorneys are isolated from competition, and the incentive to price competitively is reduced.”<sup>4</sup> Any practicing lawyer can confirm that we are no longer isolated from competition, and there is fierce competition for business which only benefits the clients.

As noted in *Bates*, lawyer advertising advances the public interest:

The listener’s interest is substantial: the consumer’s concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue. Moreover, significant societal interests are served by such speech. Advertising, though entirely commercial, may often carry information of import to significant issues of the day.<sup>5</sup>

The Court found that the idea to restrict attorney advertising is “paternalistic” and “that people will perceive their own best interests if only they are well enough informed, and that the best

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# Enough is Enough

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A statement that a lawyer has tried 50 cases to a verdict, obtained a \$1 million settlement, or procured a settlement for 90% of his clients, for example, are objective, verifiable facts regarding the attorney's past professional work . . . It is well established that the inclusion of verifiable facts in attorney advertisements is protected by the First Amendment. *Zauderer*, 471 U.S. at 647-49, 105 S.Ct. 2265 (permitting the use of an accurate illustration in an attorney advertisement); *In re R.M.J.*, 455 U.S. at 205-06, 102 S.Ct. 929 (permitting disclosure, in capital letters, of admission to practice before the United States Supreme Court in advertisement). "[A] State [cannot] . . . prevent an attorney from making accurate statements of fact regarding the nature of his practice merely because it is possible that some readers will infer that he has some expertise in that area." *Zauderer*, 471 U.S. at 640 n. 9, 105 S.Ct. 2265. Even if, as LADB argues, the prohibited speech has the potential for fostering unrealistic expectations in consumers, the First Amendment does not tolerate speech restrictions that are based only on a "fear that people would make bad decisions if given truthful information." *W. States Med. Ctr.*, 535 U.S. at 359, 122 S.Ct. 1497.

The Office of Disciplinary Counsel's interpretation of the 5th Circuit's ruling in *Public Citizen, Inc. v. La. Attorney Disciplinary Bd.*<sup>2</sup> and the Florida District Court ruling in *Rubenstein v. Fla. Bar*<sup>3</sup> strips away the last vestiges of the regulatory role of the Louisiana State Bar Association (LSBA) and the Rules of Professional Conduct when it comes to lawyer advertising — but, enough is enough.

## History

The rule at issue in *Public Citizen* pertained to the advertising of past results. The rule, then in effect, contained a blanket prohibition against communications "containing a reference or testimonial to past successes or results obtained."<sup>4</sup> In considering the issue of whether the rule was narrowly drawn to materially advance the asserted interests, the court explained as follows:

"Given the state of this record — the failure of the Board to point to any harm that is potentially real, not purely hypothetical — we are satisfied that the Board's action is unjustified." *Ibanez v. Fl. Bd. of Accountancy*, 512 U.S. 136, 146, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994). The evidence is insufficient to show that unverifiable claims in the targeted speech are so likely to be misleading that a complete prohibition is appropriate. LADB has not met its burden under the second prong of *Central Hudson* to show that prohibiting all references or testimonials to past results in advertisements will materially advance the State's asserted interests in preventing consumer deception or setting standards for ethical conduct by Louisiana lawyers.<sup>5</sup>

The court in *Public Citizen* rejected the blanket prohibition of past results, but significantly went on to explain that a regulation that restricts only *potentially* misleading commercial speech will

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# Enough with Enough

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means to that end is to open the channels of communication rather than to close them."<sup>6</sup>

Further, lawyer advertising is a rational response to a buyer's market. It is necessary for lawyers to be able to inform the public of the services which they offer and why potential users of their services should select them rather than another firm. The ability to provide factual information to potential consumers is both beneficial to the public as well as to the advertising law firm. The public is entitled to be given *truthful* information in selecting lawyers to hire. The lawyer is able to explain to the community his level of experience and where his interests lie. In short, the public's ability to receive this information is a constitutional right. Our own Supreme Court tried to restrict the ability of lawyers to disclose past results — on the Bar's recommendation — and was found to have overreached the protections afforded by the Constitution. In *Public Citizen*, the U.S. 5th Circuit Court of Appeals stated:

Even if, as LADB (Louisiana Attorney Disciplinary Board) argues, the prohibited speech has the potential for fostering unrealistic expectations in consumers, the First Amendment does not tolerate speech restrictions that are based only on a "fear that people would make bad decisions if given truthful information." "It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us." *Bates*, 433 U.S. at 374-75, 97 S.Ct. 2691 (rejecting arguments that "the public is not sophisticated enough to realize the limitations of advertising, and that the public is better kept in ignorance than trusted with correct but incomplete information"). To the extent that Rule 7.2(c) (1)(D) prevents attorneys from presenting "truthful, non-deceptive information proposing a lawful commercial transaction," it violates the First Amendment.<sup>7</sup>

The fact that a lawyer advertises does not in any way imply that he/she is not competent and professional. It is now well established that it is ethically proper for a lawyer to advertise, and every major prestigious law firm — even those founded a century ago — now engage in marketing and have marketing departments which publicize their firm's experience and results to potential clients. Actually, the lineage of lawyer advertising can be traced to Abe Lincoln who advertised his ability for legal services in 1857<sup>8</sup> on the front page of his local newspaper. Lincoln continued to advertise his services as a lawyer until he stopped practicing law in order to serve as President.

While it is generally constitutionally impermissible to regulate the artistic and stylistic aspects of an ad, the market will self-regulate those choices by not responding to and, therefore, eliminating ineffective and obnoxious advertisements and advertisers. This is reflected in the Bar's own statistics. The Louisiana State Bar Association Consolidated State of Activities for Fiscal Years 2014 and 2015 indicates that the

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pass constitutional muster if “the regulation advances a substantial government interest” and, importantly, is not more extensive than is necessary to serve that interest.<sup>6</sup> The court made clear that, although prohibition of *all* references to past results without evidence of actual deception fails the constitutional test under the First Amendment, “a disclaimer may be an acceptable way to alleviate the consumer deception that could result from this type of advertising.”<sup>7</sup>

The district court in *Rubenstein* essentially made the same point when it stated that the guidelines there at issue amounted to a blanket restriction on the use of past results in attorney advertising, which the Florida Bar did not demonstrate was necessary to achieve the interest advanced. And, most importantly, the Bar did not attempt lesser restrictions (*e.g.*, a disclaimer or other required language) that may have been sufficient to prevent deception.

Clearly, the lawyer advertisements at issue in my complaint before the LADB were potentially misleading in the context of the portrayal of the young, healthy-looking people and their “I got” language. And, just as clearly, requiring a disclaimer regarding the type of injuries suffered and explaining the “got” money language would avoid actual deception.

Ironically, in October/November 2008 before the decision in *Public Citizen*, the *Louisiana Bar Journal* published a “Handbook on Lawyer Advertising and Solicitation,” which contained a “Quick Reference Checklist.”<sup>8</sup> While Rule 7.2(c)(1)(d) was still in effect, the handbook made clear that not only were statements made directly by a lawyer subject to regulation but also testimonials to past results and “visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals or persons, things or events that are false, misleading or deceptive.”<sup>9</sup>

## Lawyer Advertising that Provides No Information at All

In *Bates v. State Bar of Arizona*,<sup>10</sup> the United States Supreme Court case that changed everything from the standpoint of advertising, the Court did not contemplate an “anything goes” approach to lawyer advertising. The Court held that commercial speech by lawyers is entitled to a limited but meaningful level of protection under the First Amendment. The *Bates* Court concluded that “[a] rule allowing restrained advertising would be in accord with the bar’s obligation . . . .”<sup>11</sup>

The *Bates* Court emphasized that the advertisement therein at issue was the most basic one possible — listing various services, the prices charged, and an address and telephone number.<sup>12</sup> In describing the commercial speech at issue, the Court stated that it informed the public of the availability, nature and prices of services.<sup>13</sup>

It would be difficult to argue that the type of information advertised in *Bates* was not useful to the public in deciding whether to seek the services of those attorneys. However, advertising through using healthy, young clients who claim that they received money in connection with their claim provides no useful information to the public, at all. There is simply no way for an injured person to compare his/her potential claim to the spokesperson’s claims in these advertisements, particularly without a description of the

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Bar collected about 15 percent less filing fees for approval of new advertisements in 2015 compared to fees collected in 2014.<sup>9</sup> This could lead to the conclusion that fewer ads are being offered.

Perhaps the author of the article, “Enough Is Enough,” should consider the adage, “People who live in glass houses should not throw stones.” His firm’s website boasts that its lawyers “achieved the \$591 million verdict in the tobacco litigation,” without disclosing what the firm’s actual role was in the litigation or how much each client netted out of the litigation!

So, the Bar should look forward to the 21st century by encouraging the dissemination of truthful, factual information to potential legal consumers so that consumers can make informed decisions on lawyer hiring. This approach is not only beneficial to the consumers, but also to the law firms which are competently, professionally and efficiently providing services which are needed by the consumers. A return to the good old days is not only constitutionally prohibited but also not in the best interests of the consumer, and any such ideas should be rejected.

## FOOTNOTES

1. With apologies to Donald Trump for potentially infringing on his trademark slogan.
2. 433 U.S. 350, 359, 97 S.Ct. L.Ed.2d 810 (1977).
3. *Id.* at 377.
4. *Id.*
5. *Id.* at 364.
6. *Id.* at 365.
7. *Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212, 222 (5 Cir. 2011) (some internal citations omitted).
8. April 30, 1857, Volume IX, Number 264, *Daily Illinois State Journal*.
9. The Bar collected advertisement filing fees of \$172,025 in 2014 and \$148,775 in 2015.

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injuries. The public could readily be misled into believing that any injury will justify recovering similar large amounts, which is simply not true.

My colleague (in his counterpoint article) points out that my own website lists at least one significant result, specifically, a verdict rendered in connection with the well-publicized tobacco litigation. In this author's view, a brief mention of the tobacco litigation on a passive website is markedly different from the types of advertisements that led me to file the above-referenced complaint. First, the website listing contains a full citation to the Southern Reporter, which in turn contains a decision discussing the facts of the case and the verdict in full. Secondly, and most importantly, it is unlikely that the typical consumer would be inclined to draw a comparison between their injuries and the injuries and damages at issue in the tobacco litigation, any more so than hearing news that the latest tech company has just settled a multi-billion-dollar patent infringement suit. In contrast, the advertisements that led me to file a complaint generally seem to target individuals who have been injured in auto accidents, as opposed to complex multi-year class action suits or commercial disputes. Whether my website's discussion of the tobacco litigation is truly useful or not is up for debate, but it is most certainly not misleading, potentially or otherwise.

Sadly, the Supreme Court in *Bates* predicted that there was no reason to believe that allowing lawyers to advertise would result in a tidal wave of disingenuous claims, and that recognition of First Amendment protection did not mean that states were powerless to regulate lawyer advertising at all. But that is, precisely, the current state of affairs in Louisiana.

## FOOTNOTES

1. Letter from Office of the Disciplinary Counsel to Meyer H. Gertler (June 15, 2015) (on file with author).
2. 632 F.3d 212 (5 Cir. 2011).
3. 72 F.Supp.3d 1298 (S.D. Fla. 2014).
4. La. Code of Prof'l Conduct R. Rule 7.2 (c)(1)(D).
5. Public Citizen, 632 F.3d at 223.
6. *Id.* at 219 (citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv.*, 447 U.S. 551, 566, 100 S.Ct. 2343, 65 L. Ed. 2d 341 (1980)).
7. *Id.* at 223.
8. *Handbook on Lawyer Advertising and Solicitation*, First Edition, October/November 2008, Supplement to the *Louisiana Bar Journal*.
9. *Id.*
10. 433 U.S. 350, 359, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977).
11. *Id.* at 377.
12. *Id.* at 354.
13. *Id.* at 370-72.

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## LAWYER ADVERTISING RULES: "No Risk/No Doubt Filing Policy" in Force

**U**nder Rule 7.7 (effective Oct. 1, 2009), lawyers are obligated to file ALL non-exempt advertisements or unsolicited written communications with the Louisiana State Bar Association (LSBA) prior to or concurrent with first use or dissemination of the advertisement or communication. A list of advertisements and communications exempt from the filing requirement can be found in new Rule 7.8. It should be noted that "exempt" does not necessarily mean "compliant" with the Rules — "exempt" means merely that the Rules leave the evaluation of compliance with the Rules to the individual lawyer. In short, ALL advertisements and unsolicited written communications — exempt and non-exempt — must be compliant with the Rules, or the lawyer risks potential professional discipline.

The Rules policies prohibit evaluation of an actual or proposed specific advertisement or communication unless and until properly filed under the established procedure; as such, LSBA Ethics Counsel is unable to offer any form of informal or "off-the-record" pre screening of specific advertisements and communications. However, the LSBA is offering a "No Risk/No Doubt Filing Policy." Any lawyer who is uncertain or unclear about whether an advertisement or communication is exempt from the filing requirement is strongly encouraged to file the item properly with LSBA Ethics Counsel, who will, in turn, offer to terminate the filing, with full refund of the filing fee submitted, if the advertisement or communication is, in fact, exempt from filing. There is no risk of needlessly paying a filing fee for an exempt advertisement and no doubt left regarding whether something is required to be filed under the new Rules.

For more information on the policy, filing procedures and filing forms, go to: <https://www.lsba.org/Members/LawyerAdvertising.aspx>.

All inquiries regarding the lawyer advertising rules (whether for lawyer advertising within LSBA publications or for lawyer advertising in outside media outlets) should be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., by phone (504)619-0144, by fax (504)598-6753, by email [RLemmler@lsba.org](mailto:RLemmler@lsba.org), or by mail to Louisiana State Bar Association, Rules of Professional Conduct Committee, c/o LSBA Ethics Counsel, 601 St. Charles Ave., New Orleans, LA 70130-3404.



# Constructing a *Padilla* Opinion:

## The Nuts and Bolts of an Immigration Consequences Opinion for Non-Citizen Criminal Defendants

By Glenda McGraw Regnart





**O**n March 31, 2010, the U.S. Supreme Court rendered *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed. 284 (2010), an undisputed watershed decision affecting criminal defense attorneys and immigration practitioners alike. As aptly stated by the Court:

The landscape of federal immigration law has changed dramatically over the last 90 years. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The “drastic measure” of deportation or removal is now virtually inevitable for a vast number of non-citizens convicted of crimes.<sup>1</sup>

The *Padilla* Court extended the Sixth Amendment’s guarantee to effective assistance of counsel to non-citizen defendants, or immigrants, when entering a plea of guilty to any offense. In many instances, it is more reasonable for a non-citizen, who faces nearly automatic deportation, to decline a plea and go to trial — risking a longer prison term — than to plead guilty to an offense rendering deportation virtually certain.<sup>2</sup>

The Court specifically held that defense counsel were responsible for advising non-citizen clients of the risk of deportation arising from a guilty plea. Further, the Court provided that a defense attorney’s failure to advise or misadvise could constitute ineffective assistance of counsel as outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). The Court explained that, “by bringing deportation consequences into th[e] process,” the parties may not only preserve the finality of pleas, but also may negotiate better agreements on behalf of the State and the non-citizen defendant.<sup>3</sup> Recognizing the significance of its holding, the Court cautioned:

[I]mmigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges,

in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain . . . When the law is not succinct and straightforward, a criminal defense attorney need do no more than advise a non-citizen client that pending criminal charges may carry a risk of adverse immigration consequences. *But when the deportation consequence is truly clear, . . . the duty to give correct advice is equally clear.*<sup>4</sup>

In the six years since the issuance of *Padilla*, criminal defense attorneys have grappled with the standard by which their counsel is measured. Criminal law, a legal specialty of its own, is now intersected with immigration law in a manner not previously conceived. Although the Court appeared to offer some level of comfort by limiting criminal defense attorneys to providing clear correct advice “when the deportation consequence is truly clear,” the reality of immigration law is that the deportation consequence is rarely “truly clear.” The volume of journal articles and scholarly works generated after *Padilla* is staggering and nuanced beyond the scope of this writing. In the years post-*Padilla*, prosecutors, defense counsel and judges were tasked with developing an understanding of immigration law and the consequences to ensure each defendant entered a knowing and intelligent plea able to withstand collateral attack.

Unfortunately for criminal attorneys, judges and prosecutors, casually venturing into immigration law is much like casually venturing into the federal tax code. Widely considered the most complex area of law, the immigration field is not the sort of landscape considered a safe harbor for dabbling. This article is designed to aid the criminal defense bar in partnering with immigration counsel to not only successfully satisfy the requirements prescribed in *Padilla*, but also to assist in navigating a path to avoid an adverse immigration consequence altogether.

Although the intersection of criminal and immigration law has long been artfully termed “crimmigration,” the term generally referred to the convergence of

the two methodologies. However, it did not wholly reference the skill set of providing counsel on the immigration consequences of criminal behavior. In recent years, savvy immigration practitioners found themselves uniquely poised to aid criminal attorneys in their efforts to fulfill the Court’s mandate in *Padilla*. In doing so, a cottage industry was born. Today, the terms “*Padilla* opinion” and “*Padilla* advisals” are common parlance. The remainder of this article will focus on the nuts and bolts of a *Padilla* opinion, *i.e.*, what a criminal defense attorney should have available when advising a client of the potential immigration consequences of a guilty plea.

## Enlist a Skilled Practitioner

As with many areas of the law, immigration law is often policy-driven, seemingly boundless and fluid. Its breadth encompasses family-based benefits, employer-based benefits, non-immigrant visas, removal defense, consular processing, asylum, refugees, pre- and post-order detention, etc. As recognized by the Massachusetts Supreme Judicial Court in *Commonwealth v. Lavrinenko*, “the ordinary, fallible criminal defense attorney may not be an expert on immigration law, but we expect such an attorney who learns of a complex immigration issue either to research the applicable immigration law or to seek guidance from an attorney knowledgeable in immigration law.”<sup>5</sup> Indeed, courts addressing claims of ineffective assistance of counsel based on *Padilla* arguments are routinely chastising practitioners for deficiencies easily remedied by consultation.<sup>6</sup> To this end, the importance of securing a competent immigration attorney who specializes in removal defense or criminal consequences cannot be overstated.

Most state bar associations have immigration sections. Regardless, immigration attorneys are a well-organized group such that finding an advocate skilled in criminal consequences should not be onerous.<sup>7</sup> When hiring immigration counsel to draft an expert opinion or provide advice, a criminal defense attorney should anticipate assisting with as much information gathering as possible. Defense counsel will typically have immediate access to the non-citizen defendant and his or her family members,

all of whom are best suited to provide answers to standard intake questions and facilitate obtaining the factual and procedural background. A specialized immigration questionnaire is a highly advisable tool for use by defense counsel for issue spotting and fact gathering.<sup>8</sup>

## Defendant Must Be a Non-Citizen to Trigger *Padilla*

Ostensibly, it may seem obvious whether an individual is or is not a U.S. citizen, yet the law of citizenship can be quite convoluted. Because *Padilla* advisals are not triggered when a U.S. citizen defendant enters a guilty plea, it is incumbent that an individual defendant's immigration status be conclusively determined by counsel. If a defendant states that he/she has lived in the United States for 12 years, that fact alone does not render him/her a citizen, nor does marriage to a U.S. citizen alone render a person a citizen. If a defendant claims to have been born abroad but believes himself/herself to be a U.S. citizen, conclusive proof should be sought to confirm. In numerous cases, an individual presumed to be an alien was in fact a U.S. citizen by either derivation or acquisition of citizenship through a parent(s) or grandparent. Conversely, an individual presumed to be a U.S. citizen can be rudely awakened to find himself/herself being deported to a country of which he/she has no memory.

Derivation of citizenship refers to citizenship that is acquired by operation of law without the need to apply for citizenship. Acquisition of citizenship refers to citizenship acquired at birth, by an individual born abroad, but whose parents or grandparents transmitted citizenship to the child pursuant to certain retention requirements.<sup>9</sup> The law of citizenship has evolved over time and, depending on an individual's date of birth, parents' marital status and their physical presence in the United States, the individual may have a viable claim to U.S. citizenship.

In 2000, Congress passed the Child Citizenship Act (CCA) which amended the Immigration and Nationality Act by providing that certain foreign-born children — including adopted children — currently residing in the United States as lawful permanent residents, could acquire citizenship

automatically.<sup>10</sup> To be eligible, the child must meet the definition of "child" for naturalization purposes under immigration law and also must satisfy the following criteria:

- ▶ the child has at least one U.S. citizen parent (by birth or naturalization);
- ▶ the child is under 18 years of age;
- ▶ the child is currently residing permanently in the United States in the legal and physical custody of the U.S. citizen parent; and
- ▶ the child is a lawful permanent resident.

Thus, for non-citizen defendants born after Feb. 27, 1983, who hold a "green card" or Lawful Permanent Resident status, a close examination of their parents' and grandparents' immigration status is advisable to determine if the defendant may have become a U.S. citizen by operation of law. A *Padilla* opinion lacking discussion of a defendant's immigration status, including an analysis of potential derivation or acquisition of U.S. citizenship, is arguably patently defective.<sup>11</sup>

## Immigration History

"Just as the ordinary physician must take a history from the patient before rendering a diagnosis, so too must the ordinary criminal defense attorney make a reasonable inquiry of his or her client regarding the client's history. . . ."<sup>12</sup> An expert immigration opinion necessarily includes a review of the non-citizen's immigration history. This should include birth date and location, all U.S. entry and/or admission information, any immigration benefits that have been conferred upon the individual and the dates of such, and all prior encounters with immigration officials. These encounters include any arrests, "returns" or removals (deportation) by U.S. Border Patrol, Customs and Border Protection, or Immigration and Customs Enforcement (ICE or legacy INS). The term "return" is often an informal reference to a Voluntary Return (VR) or a Voluntary Departure (VD). VR and VD are not equivalent under the law; if an individual indicates a prior return, he/she should be thoroughly interviewed to determine the scope of the events that occurred and how it may impact any future opportunities for discretionary relief.

Any appearances before an immigration

judge (IJ) should be fully fleshed out. If the individual was previously granted an immigration benefit by an IJ, that information should be included, along with an explanation of its impact, if any, on the conferral of future immigration benefits. Because certain immigration benefits may only be granted one time per individual, it is important to know if that person has already received his/her opportunity to remain in the United States.<sup>13</sup> If a "one time" benefit has previously been accorded, even the seemingly smallest of crimes may render an individual subject to mandatory deportation.

In instances where a non-citizen defendant has an extensive immigration history, a Freedom of Information Act (FOIA) request to the Department of Homeland Security seeking the individual's "alien registration file" is the best practice to ensure all relevant information has been analyzed.

## Complete Criminal History

The heart of any *Padilla* opinion is the discussion of the potential immigration consequences of the current or pending charges against the non-citizen defendant. However, those consequences will be addressed in a vacuum if the alien's full criminal history is not analyzed. For example, if a Lawful Permanent Resident (LPR or green-card holder) who has been a resident of the United States for more than 20 years is presently facing a sole criminal charge of forgery (presumably a crime involving moral turpitude) with a 30-day sentence, the immigration consequence for the conviction may be minimal, *i.e.*, a delay to his ability to naturalize. If that same LPR has a conviction from five years prior for mail fraud with a sentence of 10 months imprisonment, the immigration consequence becomes significant because that individual is now subject to deportation and mandatory detention for the pendency of his immigration case.<sup>14</sup>

For those non-citizens with a lengthy criminal history, each conviction should be addressed to determine its immigration impact on the defendant. It may well be that the non-citizen has heretofore been convicted of an aggravated felony offense and faces certain deportation, rendering any additional criminal conviction superfluous. But, that fact should be communicated in clear terms to afford the defendant an



opportunity to make a meaningful choice in the present case whether to enter plea negotiations or risk trial.

As part of any criminal history discussion, it is advantageous to incorporate a brief explanation of the term “conviction,” as that term is not only statutorily defined under the Immigration and Nationality Act (INA) but also the subject of extensive case law interpretation.<sup>15</sup> The discussion also should mention the significance of any direct appeal of a criminal conviction *vis-à-vis* a collateral attack. Because a conviction for immigration purposes rarely comports with the term “conviction” under a state or federal construct, it is a topic worthy of elaboration in a *Padilla* opinion, as it can significantly impact defense litigation strategy.

### Current or Pending Charges

The potential immigration consequences of a non-citizen’s guilty plea to current or pending criminal charges are the core of the Court’s directive to criminal defense attorneys in *Padilla*. Defense counsel should be prepared to provide complete charging documents to immigration counsel for review and analysis. Those pending charges will be juxtaposed to the non-citizen’s immigration status, history and any prior criminal history to determine whether the defendant will be subject to certain deportation if he/she enters a plea of guilty to the offense as charged or to any negotiated offer by the prosecution, or decides to risk a trial. The required legal analysis, which exceeds the scope of this article, has evolved into a complex process of categorical, modified categorical and realistic probability tests which leave most practitioners adrift in an ocean of case law.<sup>16</sup> Complexities aside, immigration counsel should provide a thorough analysis of the statute of conviction (if the statute is divisible, the appropriate subsection), the conduct charged, and a determination of whether a guilty plea to the offense could result in either a charge of removability or inadmissibility. Ideally, immigration counsel will provide an analysis of both.

Returning to the example of the LPR with a prior forgery conviction currently facing a charge of mail fraud, as an LPR, he would be subject to removal from the United States. If, however, he travels abroad



for vacation, upon his return to the United States, an immigration officer must inspect him and determine if he is “admissible.” The INA contains two distinct statutory schemes — one for those who are removable, and one for those who are inadmissible. The same individual may not be deemed removable from the United States but yet be deemed inadmissible should he/she depart and attempt to reenter. This is an especially important distinction for non-citizens since many foreign nationals regularly travel abroad to visit relatives in their home countries but, upon their return, potentially face an inadmissibility determination at the port of entry.

In addition to providing an analysis of the immigration consequence to a pending charge, immigration counsel will ideally assist defense counsel in negotiating a plea to an offense that avoids a deportation consequence altogether. Barring the best scenario result, at a minimum, the negotiated plea should render the non-citizen eligible for discretionary relief from removal.

### Removal Process

For most attorneys, a brief overview of the removal process can prove beneficial by advising the non-citizen client of what may lie ahead. Under current law, aliens placed into removal proceedings are not entitled to appointed counsel, thus any legal representation must be obtained by the individual or by his/her family members. Given the nature of immigration law and the consequences it can bear, the importance of competent immigration counsel cannot be overstated and an immigration consequences opinion

should include a brief explanation of the removal process and how that process differs from criminal proceedings.

Removal (formerly called deportation or exclusion) proceedings under § 240 of the INA are initiated by the U.S. Department of Homeland Security, with service of a Notice to Appear (NTA) in immigration court.<sup>17</sup> Although certain non-citizens may be ordered removed from the United States via other provisions of the INA, whatever method the Department of Homeland Security employs to attempt to deport an individual, the basis for deportation must be one which renders the person either removable or inadmissible.

Whether a particular individual will be served with a NTA or another type of immigration charging document depends on a number of factors. ICE, like any other government agency, has limited resources. Some of the factors unique to ICE include detention space constraints (approximately 34,000 detention beds nationwide) and well-publicized criteria for prioritizing and targeting certain types of individuals for removal from the United States. Under the current administration, ICE has tried to prioritize removals by focusing on individuals who pose a threat to national security, egregious criminal offenders, and recent border entrants.<sup>18</sup> A non-citizen defendant may first encounter ICE officers while serving a criminal sentence in state or federal custody or while reporting on probation. If ICE determines the individual is subject to removal from the United States, either through in-person interview or by remote document review, the agency will generally place a “detainer” on the individual. The detainer requests the custodian to notify



ICE when the alien has completed his/her criminal sentence and can be transferred into ICE custody for commencement of removal proceedings or to execute removal, if an outstanding order of removal already exists.<sup>19</sup>

## Relief from Removal

Discretionary relief from removal is generally available for certain non-citizens who have not been convicted of an aggravated felony and otherwise meet the statutory criteria to apply for relief. In other words, an individual may be deportable, yet remain eligible for relief from deportation, sometimes referred to as a “waiver” or “cancellation.”<sup>20</sup> Such relief is often requested before an IJ. Mere eligibility for the relief is not a guarantee that it will be granted. Again, the assistance of a competent attorney to determine eligibility for and the likelihood of receiving discretionary relief from removal is singularly important.

## Naturalization

Part of any discussion of immigration consequences to criminal activity should be a succinct analysis of the consequence to a non-citizen’s efforts to become a naturalized citizen. Serving a criminal sentence or being on probation for a criminal offense is a bar to obtaining U.S. citizenship.<sup>21</sup> Also, an applicant for U.S. citizenship must show “good moral character,” which generally means that an applicant cannot have any serious criminal convictions, such as violent crimes, within the five years prior to the date on the application for naturalization.<sup>22</sup> More importantly, a conviction for an aggravated felony serves as a permanent bar to obtaining U.S. citizenship.<sup>23</sup> For those defendants who possess a green card, it is significant that they understand the fate of their future ability to become naturalized U.S. citizens.

## Miscellaneous Caveats

As with most expert opinion letters, a *Padilla* letter typically contains a small host of caveats. Such caveats may include that: the opinion letter is based on immigration law as it exists today; the U.S. Government’s interpretation and enforcement of immigration laws can change over time rendering

the opinion inaccurate; and immigration laws have changed dramatically over time and could change again in the future and be applied retroactively. Such disclaimers should serve to make defense counsel aware that the shelf life of an immigration opinion may be short-lived, even if the client’s criminality is not.

## Conclusion and Recommendation

A conclusion section is axiomatic to any formal writing but, in the context of an immigration consequences opinion, the inclusion of specific recommendations to aid plea negotiations can prove highly valuable. For most criminal defense attorneys, simply being advised their client is facing certain deportation if he/she accepts the offer from the prosecution is helpful and may satisfy the threshold requirements of *Padilla*. But, being advised of possible non-deportable offenses, with which to barter, can make the difference between removal and remaining in the United States. The hallmark of a skilled criminal and immigration team is one with knowledge of lesser included offenses, sentencing strategies, and the impact of collateral orders — all of which may allow a defendant to avoid an immigration consequence altogether.

## FOOTNOTES

1. *Padilla*, 130 S.Ct. at 1479 (internal citation omitted).
2. *Padilla*, 130 S.Ct. at 1484 (“[P]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence,” quoting *INS v. St. Cyr*, 533 U.S. 289, 322 (2001) (alteration omitted)).
3. *Padilla*, 130 S.Ct. at 1486.
4. *Padilla*, 130 S.Ct. at 1484 (emphasis added) (internal citations omitted).
5. *Commonwealth v. Lavrinenko*, 473 Mass. 42, FN. 15 (Mass. Sup. Ct. 2015) (citing ABA Criminal Justice Standards for the Defense Function, Standard 4-5.5 (4th ed. 2015)).
6. *State v. Sandoval*, 171 Wash.2d 163, 172 (2011) (counsel required to correctly advise or seek consultation to correctly advise of deportation consequence.); *Lavrinenko*, 473 Mass. 42 (remand after finding of deficient performance); *U.S. v. Rodriguez-Vega*, No. 13-56415, (9 Cir. Aug. 14, 2015) (attorney’s, not the court’s, duty to warn of consequences and warning after plea is deficient).
7. For additional resources, see [www.aialawyer.com](http://www.aialawyer.com); [www.ilrc.org](http://www.ilrc.org); and [www.americanimmigration-council.org](http://www.americanimmigration-council.org).

8. For additional resources on intake questionnaires, see <https://cliniclegal.org>.

9. See 8 U.S.C. § 301, *et seq.*

10. Child Citizenship Act of 2000 (effective date Feb. 27, 2001); codified at 8 U.S.C. § 320(a)(1)-(3).

11. See *Lavrinenko*, 473 Mass. at 53 (failure of criminal defense attorney to make reasonable inquiry of client regarding immigration status is sufficient to satisfy the deficient performance prong of ineffective assistance analysis) (citing *Commonwealth v. Clarke*, 460 Mass. 30, 45 (2011)).

12. *Lavrinenko*, 473 Mass. at 51.

13. See generally 8 U.S.C. § 240A(c)(6) and 8 U.S.C. § 240B(c).

14. See 8 U.S.C. §§ 236(c)(1)(B) and 237(a)(2) (A)(ii).

15. See 8 U.S.C. § 101(a)(48)(A)-(B); *Matter of Cuellar-Gomez*, 25 I&N Dec. 850 (BIA 2012) (formal judgment of guilt by a municipal court is a conviction for immigration purposes); *Matter of Calvillo-Garcia*, 26 I&N Dec. 697 (BIA 2015) (term of confinement in a substance abuse treatment facility as a condition of probation constitutes a “term of confinement” under section 101(a)(48)(B) of the Immigration and Nationality Act).

16. For detailed discussions, see *Taylor v. United States*, 495 U.S. 575, 110 S.Ct. 2143 (1990); *Moncrieffe v. Holder*, 133 S.Ct. 1678, 185 L.Ed.2d 727 (2013); *Descamps v. United States*, 133 S.Ct. 2276 (2013).

17. See 8 U.S.C. §§ 239(a) and 240(a).

18. See generally, Memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, to Acting Director Thomas S. Winkowski, U.S. Immigration and Customs Enforcement, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants” (Nov. 20, 2014) (copy on file with the U.S. Department of Homeland Security).

19. See Immigration Enforcement, [www.ice.gov/pep](http://www.ice.gov/pep) (2016) for a broader discussion.

20. See e.g., 8 U.S.C. §§ 212(h); 240A(a); and 240A(b).

21. 8 C.F.R. § 316.10(c)(1)(2015).

22. 8 C.F.R. § 316.10(b)(2)(2015).

23. 8 C.F.R. § 316.10(b)(ii)(2015).

*Glenda McGraw Regnart, currently the executive director of Central Louisiana Interfaith Immigration Center in Alexandria, spent 15 years working in the federal government, mostly with the Department of Homeland Security, U.S. Immigration and Customs Enforcement. She was stationed at the Oakdale, La., Federal*



*Detention Complex and prosecuted removal cases involving criminal aliens, national security and high-profile immigration removals. She holds a BS degree in economics from Louisiana College, an MBA degree from the University of Louisiana-Monroe and a JD degree from Mississippi College School of Law. She is a member of the Mississippi and Alaska Bar Associations and the American Immigration Lawyers Association. (gmrborn@gmail.com; 4400 Coliseum Blvd., Alexandria, LA 71303)*

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# Perspectives on the Practice of Law: Recollections of Legal Practice in New Orleans

By Louis Y. Fishman

*Editor's Note: The author's full article was published in the July 2016 issue of Seasoning, the quarterly e-newsletter produced by the Louisiana State Bar Association's Senior Lawyers Division. This article is an excerpt. Access the full article at: [www.lsba.org/SLD/](http://www.lsba.org/SLD/).*

One of my five children, none of whom has gone into law, asked me if the practice of law has changed much since I started in 1966. I responded, "Not that much," realizing a detailed response would bore the inquiring child. But the question got me thinking. Most of the recollections in this article are from as many as 50 years ago, and some may even be older. They are not supported by research and are totally anecdotal. One of my litigation partners told me they "would not survive cross-examination." Litigation partners 50 years ago would have been more diplomatic.

## Law Firms

The largest firm in New Orleans had maybe 25 lawyers and, like the other "top" firms, was housed in a building that none of those firms would find suitable today. Most of these buildings are now hotels. The Hibernia Bank Building was the tallest building in town. The firm it housed is still with us, now in its second new building. Firm names were the same as the senior practicing lawyers, often changing when the lawyer roster changed. Names tend to be institutional today. The names of all of the firm's lawyers, listed by seniority, were painted in black, highlighted in gold leaf, on the front door of most firms by a Mr. Daly. That practice ceased, possibly when Mr. Daly retired. I joined the firm started by my grandfather and continued by my father. It offered me a monthly salary of \$600. Two of the larger firms offered me \$850, but I really did not consider those offers because I always expected, and was expected, to practice with my father. Ironically, I ended up in an entirely different area of law, and we rarely worked together after my first year or so. The firm had no anti-nepotism

rule, although one partner who was my contemporary suggested a decade or two later, kidding, I think, that the firm adopt such a rule retroactively. Most larger firms today do have anti-nepotism rules. Today's associates start at almost 20 times my starting salary.

The letterheads of most firms, like the doors, also contained a list of the lawyers, in the order of seniority. Unlike the names on the doors, which at some point were discontinued, the letterhead names grew and grew and grew, until they occupied about one-third of the letterhead of the larger firms. I'm not aware of any large firms that follow that practice today. The big firm letterheads also contained a "telex" address for international communications. My firm didn't have a telex address, probably the result of not having an admiralty practice. When Federal Express started a fax program, it assigned participating firms a "zipmail" or maybe it was a "zapmail" address. I was pleased we had that on our letterhead, though "telex" seemed more sophisticated to me.

My former firm, which was about 12 lawyers when I started, had phones that had five white buttons and one red button. The five white buttons each represented a separate trunk line and lit up when that trunk line was in use. The red button was the hold button. Our receptionist would announce a call over an intercom by saying, for example, "Mr. Fishman, line 2." Her monotone voice prompted me to press the second white button from the left, which would be flashing because the receptionist had placed the caller on hold. Sometimes all five buttons were lit, meaning they were all in use. At those times, an outgoing call could not be made, and an incoming caller would get a busy signal.

My former firm grew, as most did, and moved to a new building in 1971, as most did sooner or later. We had outgrown the

five trunk lines, and there were no available phones with more than five white buttons. We, therefore, installed a switchboard like the one used in the old Rowan & Martin Laugh-In TV show by the operator who famously said, "Is this the party to whom I am speaking?" It was the kind of switchboard used by the "big firms" at the time. You've seen them. There were cables representing the trunk lines, and they were plugged into receptacles representing the various phone extensions in the office.

Filing was done by a filing clerk when I started. Our filing clerk doubled as a Xerox paper "ruffler." If she did not "ruffle" through the plain white paper that fed the Xerox copier, the copier would inevitably jam, or so she said. We bought into this process when we loaded paper after hours. Sometimes the paper would jam anyway. We concluded we had not ruffled sufficiently.

There were no paralegals when I started, but secretaries frequently performed work that today would be done by paralegals. My former firm modernized in the 1970s by hiring a paralegal and a librarian. The paralegal quit after a partner asked her "to file a suit at the laundry."

## Technology

Back then, my firm had a copy machine. It took in a document (almost always a 14-inch document) and, a few minutes later, spit out a wet copy on some sort of photographic paper that curled up into the size of a baker's rolling pin. These paper rolling pins sat on tables until they were dry. They were then straightened by rolling in the opposite direction. The process was very slow. Copies of documents being typed were invariably made with carbon paper, frequently seven copies at a time. The typewriters were manual, meaning that



the letter struck the page with about the same force that the typist's finger struck the key, with no assist from the typewriter. A carbon ribbon on the typewriter imprinted the first, original page. A sheet of carbon paper imprinted the copy immediately under it. One carbon sheet for each copy desired. When a mistake was made, a metal device, which had the same curvature as the carriage or roller of the typewriter, was inserted behind each page being corrected so that the erasure would not disfigure the next copy. Few, if any, stand-alone typewriters still exist in the modern law office, and copies are made by printers or electrostatic copying machines that crank them out at incredible speeds. You may still see at the bottom of a letter, or even an email, the letters "cc" followed by one or more names, indicating that "carbon copies" were sent to those names. It's an anachronism, but still used today.

When Xerox first invented the electrostatic copier, and IBM the electric and then Selectric typewriter and MT/ST and MC/ST word processors, the new technology replaced the manual typewriters and carbon copies. MT/ST was short for Magnetic Tape/Selectric Typewriter, and MC/ST for Magnetic Card/Selectric Typewriter. The tape and the card were the memory devices. The Selectric typewriter had a magic ball a bit larger than a golf ball. It imprinted the letters or symbols on the page by striking a carbon ribbon. It also had a white ribbon that corrected an error by typing white over the incorrect letter or symbol. The ball replaced the old key-operated levers that each carried two letters or symbols. The levers slowed the typist because if she (yes, it was invariably she back then) typed too fast, they would get stuck with other levers at the top of their arc. No secretary and not even a MT/ST or MC/ST could possibly type too fast for the Selectric ball. Now, of course, we have laser printers that produce a typed page in one or two seconds. The fastest Selectric ball probably took at least two minutes just to run out a page already recorded on tape or card. The mag card was faster and unbreakable and therefore a significant improvement over the tape. Soon after the electrostatic copier appeared, so did "xc," meaning "Xerox copy," but I haven't seen that in years. Collators came several years later but at first were not particularly reliable, requiring that each copy be checked for completeness.

Of course, there were no cell phones when I started practicing law. But one day in the 1970s, I was walking with a client back to my office from lunch when his briefcase began to ring. He opened it and took a call, right then and there. I was impressed how advanced he was. The briefcase must have weighed 15 pounds. The client was from Texas, of course.

The advances in technology skyrocketed and the way business was conducted began to change dramatically in response. The first fax machine I ever saw — I think in the 1970s — could produce a page in six minutes on a coated sheet of paper. Ten pages in an hour! A 60-page M&A agreement in six hours, a huge step up from the competing delivery services, which took at least a day and often two or three. So, all of a sudden, someone could put an agreement in front of you in a matter of hours and expect a response that same day. Fax machines got faster and faster. Federal Express saw faxes as competition and placed a network of fax machines the size of a desk in many firms. These machines were faster and the quality better. But regular fax machines improved to the point where Federal Express abandoned its fax business. Today, fax machines are yesterday's technology, although they are thought to be much more secure than emails of scanned documents.

## New Orleans

The city was less air-conditioned than it is now. I remember running to federal court one summer, late for a pre-trial conference a senior litigator asked me to attend. The other lawyers and the judge were in the judge's conference room waiting for my tardy arrival. I sat down and dripped sweat on the papers I had placed in front of me, the sweat due not only from running in the summer heat, but my humiliation at being reprimanded by a federal judge. One of my colleagues knew "cold cuts" through air-conditioned buildings to avoid the heat of the street. I sure wish he had led me to court that day.

The New Orleans office buildings were pretty old, even then. Built before air conditioning, they had operating windows and a center core for ventilation. Paperweights adorned many desks, perhaps mostly as relics but to some extent for the inevitable days when the air conditioning was not function-

ing, windows were open, and a breeze could send papers flying. In the late 1960s, 225 Baronne Street was built. Its anchor tenant was the largest firm in town, which was the first to move to a "modern" building. The rest followed, one after another, except the few that bought or leased a building of their own. The windows in most of these modern buildings do not open. Some windows in my building are marked with a sticker to indicate they can be shattered, presumably for an emergency exit. Not a happy thought.

Two of the favored lunch spots for a sit-down lunch were the Roosevelt Coffee Shop and a small café operated by Arnaud's. Lunch was \$1 to \$1.50. The Arnaud's café served a three-course meal — Shrimp Arnaud, choice of one of four entrees like Coquille St. Jacques or Trout Amandine, and bread pudding or custard for dessert. Then there were the great sandwich shops like Ditcharo's (the Ditch), the Commercial and Mother's. I think a Ferdie was 45 cents. That's 45 cents, not 15 dollars. My father remembered a 10-cent Ferdie in his youth. My father and I went to Arnaud's once a week. I accompanied him and another name partner once a week to the Roosevelt, and I ate poboyos with colleagues on the other days. Who would have dreamed that a national sandwich chain would replace almost all of our downtown poboy shops?

## Conclusion

When I started, there was no Internet, no smart phones, no cell phones, no email, no computers, no networks, no word-processing, no Westlaw or Lexis (not even a Lexus), no efficient copiers, no scanners, and no useful dictation equipment. Has the practice of law changed? I'd say, "It sure has!" What do you say?

*Louis Y. Fishman is a founder and a senior partner of Fishman Haygood, L.L.P., with offices in Baton Rouge and New Orleans. He holds BBA and LLB degrees from Tulane University and an LLM from Yale Law School, where he was a Sterling Fellow. He teaches a corporate governance mini-course at Tulane Law School. He is grateful to his colleagues, Alysson Mills, Jae Donnelly, Blair Schilling and Molly Wells, and to Roger Stetter, all of whom provided edits, comments and suggestions. (lfishman@fishmanhaygood.com; 201 St. Charles Ave., 46th Flr., New Orleans, LA 70170-1000)*





# BACK TO BASICS

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



Darrel J. Papillion addressed the membership after being sworn in as the 76th Louisiana State Bar Association president. Photo by Matthew Hinton Photography.

## LSBA Installs 2016-17 Officers and Board of Governors at Annual Meeting



The 2016-17 Louisiana State Bar Association Board of Governors. Seated from left, Patrick A. Talley, Jr., First Board District; Donald W. North, Southern University Law Center; Monica Hof Wallace, Loyola University College of Law; Treasurer H. Minor Pipes III; President Darrel J. Papillion; President-Elect Dona Key Renegar; Secretary Alainna R. Mire; Jermaine Guillory, at-large; Kevin C. Curry, Louisiana State Law Institute; and D. Skylar Rosenbloom, First Board District. Standing from left, Immediate Past President Mark A. Cunningham; Sandra K. Cosby, House of Delegates Liaison Committee; Rachael D. Johnson, at-large; Edward J. Walters, Jr., Fifth Board District; Young Lawyers Division Chair Scotty E. Chabert, Jr.; C. Kevin Hayes, Fifth Board District; Blake R. David, Third Board District; C.A. (Hap) Martin III, Seventh Board District; John E. (Eddie) McAuliffe, Jr., Second Board District; Charles D. Elliott, Sixth Board District; and John M. Frazier, at large. Not in photo, J. Lee Hoffoss, Jr., Fourth Board District; Marjorie L. (Meg) Frazier, Eighth Board District; Julie Baxter Payer, House of Delegates Liaison Committee chair; and S. Jacob Braud, House of Delegates Liaison Committee. *Photo by Matthew Hinton Photography.*

The Louisiana State Bar Association's (LSBA) 2016-17 officers and members of the Board of Governors were installed June 9, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Darrel J. Papillion** was installed as the 76th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Papillion is a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C.

**Dona Kay Renegar**, a member in the

Lafayette office of Huval, Veazey, Felder & Renegar, L.L.C., was installed as 2016-17 president-elect. She will assume the presidency in 2017-18.

**Alainna R. Mire**, the chief resilience officer and an assistant attorney for the Alexandria City Attorney's Office, is beginning her second year of a two-year term as secretary. She also serves as editor of the *Louisiana Bar Journal*, the LSBA's bimonthly magazine.

**H. Minor Pipes III**, a founding member of the New Orleans firm of Barrasso Usdin

Kupperman Freeman & Sarver, L.L.C., is beginning his two-year term as treasurer.

**Mark A. Cunningham**, a senior partner in the New Orleans office of Jones Walker LLP, will continue his service to the LSBA as 2016-17 immediate past president.

**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, was installed as 2016-17 chair of the LSBA Young Lawyers Division.

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Louisiana State Bar Association officers and members of the 2016-17 Board of Governors were sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Annual Meeting. Photo by Matthew Hinton Photography.

### BOG continued from page 123

Members of the 2016-17 Board of Governors also were installed by Chief Justice Johnson.

#### First District

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

► **D. Skylar Rosenbloom**, an associate in the New Orleans office of Fishman Haygood, 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

► **J. Lee Hoffoss, Jr.**, a partner in the Lake Charles firm of Hoffoss Devall, L.L.C.

#### Fifth District

► **C. Kevin Hayes**, owner of Hayes Strategic Solutions, L.L.C., in Baton Rouge.

► **Edward J. Walters, Jr.**, a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C.

#### Sixth District

► **Charles D. Elliott**, a solo practitioner at Charles Elliott & Associates, L.L.C., in Alexandria.

#### Seventh District

► **C.A. (Hap) Martin III**, a member in the Monroe firm of Shotwell, Brown & Sperry, A.P.L.C.

#### Eighth District

► **Marjorie L. (Meg) Frazier**, a shareholder in the Shreveport firm of Wiener, Weiss & Madison, A.P.C.

Continued next page



**BOG** continued from page 124

### At-Large Members

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

► **Rachael D. Johnson**, senior staff attorney with the Law Offices of Julie E. Vaicius (employees of The Hartford) in Metairie.

► **Jermaine Guillory**, section chief for the 19th Judicial District Attorney's Office in Baton Rouge.

### Loyola University College of Law

► **Monica Hof Wallace**, New Orleans, the Dean Marcel Garsaud, Jr. Distinguished Professor of Law at Loyola University College of Law.

### Southern University Law Center

► **Donald W. North**, Baton Rouge, a law professor at Southern University Law Center.

### Louisiana State Law Institute

► **Kevin C. Curry**, a partner in the Baton Rouge firm of Kean Miller, L.L.P.

### House of Delegates Liaison Committee

► Chair **Julie Baxter Payer**, deputy chief of staff for communications/legal/special projects for Louisiana Gov. John Bel Edwards.

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

► Member **Sandra K. Cosby**, an associate with Frederick A. Miller & Associates in Metairie.



Above: Darrel J. Papillion, left, was installed as the 76th Louisiana State Bar Association president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Annual Meeting.

Below: Outgoing LSBA President Mark A. Cunningham, right, passed the gavel to incoming President Darrel J. Papillion. Photos by Matthew Hinton Photography.





## 8 President's Awards Presented



New Orleans Bar Association Executive Director Helena Henderson, left, accepted the President's Award on behalf of the association. At right, 2015-16 LSBA President Mark A. Cunningham.



President's Award recipient John J. Finan, Jr., left, and 2015-16 LSBA President Mark A. Cunningham.



President's Award recipient Kendall P. Green, left, and 2015-16 LSBA President Mark A. Cunningham.  
*Photos by Matthew Hinton Photography.*

**E**ight Louisiana State Bar Association (LSBA) President's Awards were presented during the Annual Meeting in June. All recipients were chosen by 2015-16 LSBA President Mark A. Cunningham and were recognized for various services to the Association.

The **New Orleans Bar Association** (NOBA) was recognized for its years of collaboration with the LSBA and its initiatives to promote diversity, indigent defense and construction of an Orleans Parish Courthouse. A community of 3,000 lawyers and judges, NOBA is led by a 22-member board of directors and longtime Executive Director Helena Henderson. NOBA has an enduring commitment to diversity and inclusion and its partnership with Southeast Louisiana Legal Services supports the first-of-its-kind, bar-sponsored Public Interest Law Fellowship. NOBA has served the cause of justice by speaking for indigent defense, promoting pro bono civil representation, encouraging adequate funding for the justice system and the building of a new courthouse for Orleans Parish Civil District Court.

**John J. Finan, Jr.**, president and chief executive officer of the Franciscan Mis-

sionaries of Our Lady Health System, Inc. in Baton Rouge, was recognized for helping attorneys and their families through his support of the SOLACE (Support of Lawyers-Legal Personnel — All Concern Encouraged) Program. With more than 40 years of experience in healthcare leadership and operations, Finan currently serves as board vice chair of Mercy Health System in St. Louis, is board chair for the Louisiana Association of Business and Industry and board chair of Loyola University New Orleans. He is a member of the boards of the Public Affairs Research Council and Blueprint Louisiana. He received his BS degree from Louisiana State University at New Orleans and his MBA degree from Loyola University of the South.

**Kendall P. Green** of New Orleans was recognized for his heroic and selfless efforts during his career with the Orleans Public Defenders (OPD). For the past 32 years, he served as a public defender, first with the Orleans Indigent Defender Program, then its successor organization, Orleans Public Defenders. In the years following Hurricane Katrina, and the deep inequities the disaster exposed in the Orleans Parish criminal justice system, Green was instrumental in transforming OPD from its

traditional court-centered orientation to its current client-centered model. As the longtime chief of trials at OPD, he oversaw the entire Trial Division and helped to develop the Investigative Division and the Client Services Division. In 2009, he was recognized by the Louisiana Public Defenders Association with its Lifetime Achievement Award.

**Abid Hussain**, a solo law practitioner in New Orleans, was recognized for his efforts in launching the online LSBA Tech Center and as chair of the LSBA Solo and Small Firms Section. With entrepreneur clients in Dallas, Texas, Hussain has practiced corporate law for 10 years in Texas and Louisiana. He provides legal and corporate counsel, including intellectual property and asset protection, to entrepreneurs, business owners, investors and musicians. He has provided law technology and practice management CLEs for the LSBA, the New Orleans Bar Association and the Jefferson Bar Association. For eight years after receiving his law degree from the University of Oregon, he held marketing and web development positions at technology and software companies.

**Hon. Calvin Johnson**, retired chief judge of Orleans Parish Criminal District Court, was recognized for his countless



President's Award recipient Abid Hussain, left, and 2015-16 LSBA President Mark A. Cunningham.

accomplishments as a leader in the administration of criminal justice. He established the first Mental Health Treatment Court in Louisiana in 2002 and was Drug Court judge from 1994-2002. Following his retirement from the bench in 2008, he served as executive director of the Metropolitan Human Service District (MHSD), an agency overseeing the delivery of publicly funded, community-based behavioral health services. Since his retirement from MHSD in 2014, he has handled consulting work for Magellan Health Louisiana, Futures Education and the Council on Alcohol and Drug Abuse. He works with the federal monitors in U.S. District Court, Eastern District of Louisiana, for the care of defendants with mental health issues in parish prison. He is on the faculty of Loyola University College of Law. He received his JD degree in 1978 from Loyola University College of Law.



President's Award recipient Hon. Calvin Johnson, left, and 2015-16 LSBA President Mark A. Cunningham.



President's Award recipient Hillar C. Moore III, left, and 2015-16 LSBA President Mark A. Cunningham.

**Hillar C. Moore III**, district attorney for the 19th Judicial District in East Baton Rouge Parish, was recognized for his efforts in advancing the relationship between the LSBA and the Louisiana District Attorneys Association (LDAA). Currently serving as LDAA president, Moore has been in the criminal justice field for more than 40 years. He formed BRAVE, the Baton Rouge Area Violence Elimination program, a group violence reduction strategy; a Crime Strategies Unit modeled after the Manhattan DA's office; and a hospital intervention program to prevent future violence to victims. He received his undergraduate degree from Louisiana State University, majoring in criminal justice. He completed course work for a master's degree in criminal justice and later graduated from Southern University Law Center.

**Christopher K. Ralston**, a commercial litigation partner in the New Orleans office of Phelps Dunbar, L.L.P., was recognized for his efforts in the areas of access to justice and diversity in the legal profession. In his firm, he serves on the ethics, pro bono, recruiting and diversity committees and as co-leader of the Small & Emerging Business Team. He is a member of the Louisiana Access to Justice Commission, the LSBA's House of Delegates and the LSBA's Client Assistance Fund Committee. He is president-elect of the New Orleans Bar Association and vice president and a board member of the Pro Bono Project in New Orleans and Southeast Louisiana Legal Services. He is a



President's Award recipient Christopher K. Ralston, left, and 2015-16 LSBA President Mark A. Cunningham.

Fellow of the Louisiana Bar Foundation and serves on its board of directors.

**Mark C. Surprenant**, a partner in the New Orleans office of Adams and Reese, L.L.P., was recognized for his efforts in the implementation of the Access to Justice Intern Program and the Reentry Program and as chair of the Judges and Lawyers Assistance Program, Inc. (JLAP). Currently the chair of JLAP, Surprenant also is a member of the Louisiana Access to Justice Commission. Since the beginning of his legal career, he has been dedicated to community service. In 1988, he created HUGS, his law firm's corporate philanthropy program. In 2000, he established CA&RE, his firm's official pro bono program. He also is the co-founder of SOLACE, Inc. (Support of Lawyers-Legal Personnel — All Concern Encouraged).



President's Award recipient Mark C. Surprenant, left, and 2015-16 LSBA President Mark A. Cunningham.



## LSBA Members Recognized for Services to the Bar and Profession

Several Louisiana State Bar Association (LSBA) members were recognized for services to the Bar and the legal profession at the Annual Meeting in June.

### ► Stephen T. Victory Memorial Award

**Michael S. Finkelstein**, an associate attorney with Didriksen, Saucier, Woods & Pichon, P.L.C., in New Orleans, received the 2016 Victory Award, recognizing outstanding contributions to the *Louisiana Bar Journal*. His article, “Overview of Data Breach Litigation in Louisiana: A Look Into Its Uncertain Future,” was published in the August-September 2015 issue. An alumnus of Louisiana State University and the LSU Paul M. Hebert Law Center, he is licensed to practice law in Louisiana and Texas. He focuses his practice on commercial litigation, toxic torts, product liability, insurance defense, subrogation, and data and cybersecurity law. He is developing his firm’s data breach litigation practice, among the first of its kind in Louisiana.

### ► John Ashby Hernandez III Memorial Award for Francophone Leadership

**Warren A. Perrin**, chair of the LSBA’s Francophone Section, is an attorney with the firm Perrin, Landry & deLaunay in Lafayette and a skills professor at Loyola University College of Law. He served as president of CODOFIL and as a member of the board of directors of the *Congrès Mondial Acadien – Louisiane 1999*. He also served as president of the Lt. Governor’s Task Force of *FrancoFête ’99* and founded the Acadian Museum of Erath, La. In 1999, he was awarded the French National Order of Merit Award. He is the author of seven



**John Ashby Hernandez III Memorial Award for Francophone Leadership** recipient Warren A. Perrin, left, and presenter Louis R. Koerner, Jr. Photo by Matthew Hinton Photography.

books: *Acadian Redemption, Une Saga Acadienne, Vermilion Parish, Iberia Parish, St. Landry Parish, Acadie Then and Now: A People’s History and L’Acadie hier et aujourd’hui – L’histoire dunpeuple*. In 2015, he received the Daughters of the American Revolution Americanism National Medal of Honor. He earned his JD degree from Louisiana State University Paul M. Hebert Law Center.

### ► Curtis R. Boisfontaine Trial Advocacy Award

**Christine Lipsey**, a member in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., received the 2016 Boisfontaine Award, presented by the Louisiana Bar Foundation. She has more than 30 years of experience in litigation representing small and large businesses, insurance companies, state agencies, lenders, and corporate and limited liability company constituents. She



**Curtis R. Boisfontaine Trial Advocacy Award** recipient Christine Lipsey, left, and Louisiana Bar Foundation President E. Jane Sherman. Photo by Matthew Hinton Photography.

serves on the LSBA’s Rules of Professional Conduct Committee and completed a second term on the Louisiana Supreme Court’s Mandatory Continuing Legal Education Committee. She serves on the Commercial and Business Litigation Committee, the Business Torts Committee, and the Professional Liability Litigation Committee of the American Bar Association. A member of the Bar Association of the 5th Federal Circuit and the Wex S. Malone American Inn of Court, she also is Louisiana Bar Foundation Fellow. A 1982 graduate of Louisiana State University Paul M. Hebert Law Center, she currently teaches “The Legal Profession” as an adjunct faculty member and serves on the Alumni Board of Trustees.

## 4 LSBA Members Recognized with Kimball Awards

**F**our Louisiana State Bar Association (LSBA) members received the Catherine D. Kimball Award for Advancement of the Administration of Justice at the Annual Meeting in June.

**Justice (Ret.) Harry T. Lemmon** of New Orleans served as an associate justice on the Louisiana Supreme Court from 1980-2001. Prior to his election to the Supreme Court, he served on the 4th Circuit Court of Appeal for 10 years. He received his JD degree, *cum laude*, from Loyola University Law School, where he was a member of the *Law Review*. He received an honorary Doctor of Laws degree from Loyola and is an honorary member of the Order of the Coif and the Hall of Fame of Louisiana State University Paul M. Hebert Law Center. He served on the adjunct faculty of Loyola Law School and taught courses at LSU Law Center and Tulane University Law School. He chaired the Louisiana Judicial College for 25 years and chaired the Education Committee of the Appellate Judges Education Institute and the American Bar Association's Appellate Judge Seminar Series.

**Hon. Ronald J. Sholes**, a former Orleans Parish Civil District Court judge, is a partner and the arbitration and alternative dispute resolution team leader in the New Orleans office of Adams and Reese, L.L.P. He also served as a New Orleans Traffic Court judge. He earned his JD degree in 1984 from Loyola University College of Law and his MPH degree in 1980 from Tulane University School of Public Health. He is a former president of the Louisiana District Judges Association and the Louisiana 4th and 5th Circuit Judges Associations. He served as president of the Louisiana Association of Defense Counsel and the St. Thomas More Inn of Court. He was an instructor for the National Institute of



Catherine D. Kimball Award for Advancement of the Administration of Justice recipient Hon. Ronald J. Sholes, far left; J. Roslyn Lemmon and James (Jake) Lemmon accepting the award on behalf of recipient Justice (Ret.) Harry T. Lemmon; and 2015-16 LSBA President Mark A. Cunningham. Photo by Matthew Hinton Photography.

Trial Advocacy and taught trial advocacy at Emory University, Loyola University and Louisiana State University.

**Jeffrey E. Richardson** is a partner in the New Orleans office of Adams and Reese, L.L.P., where his practice focuses on class action and complex litigation, products liability litigation and appellate litigation. He graduated with highest honors from Emory University and with high honors from Georgetown University Law Center. He has been a volunteer with Louisiana Appleseed for many years. He also publishes iPhone J.D. (iPhoneJD.com), the oldest and largest website for attorneys who use iPhones and iPads. The website has frequently been named the best legal technology website, and the *ABA Journal* recently named iPhone J.D. to its Blawg Hall of Fame.

**Martin A. Stern** is the appellate team leader and claims counsel in the New Or-

leans office of Adams and Reese, L.L.P. He has substantial experience in legal ethics, representing judges before the Louisiana Judiciary Commission and lawyers before the Louisiana Attorney Disciplinary Board. His appellate practice included representing a defendant sentenced to death, which resulted in a grant of certiorari by the U.S. Supreme Court. *Kennedy v. Louisiana* announced the landmark holding that the death penalty is unconstitutional for most non-homicide crimes. Stern is a former director of both the national and Louisiana Appleseed and spearheaded the reestablishment of Louisiana Appleseed after Hurricane Katrina. Another Appleseed project culminated in the Louisiana Supreme Court's adoption of a rule allowing lawyers to earn CLE credit for pro bono representation of indigent clients. He also proposed a project accepted by the U.S. 5th Circuit Court of Appeals to provide pro bono representation to indigent appellants in selected federal immigration appeals.



## YLD's 2016-17 Officers, Council Installed



The 2016-17 Louisiana State Bar Association Young Lawyer Division officers and Council were sworn in by Judge Guy P. Holdridge, 23rd Judicial District Court. Photos by Matthew Hinton Photography.

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2016-17 officers and council members were installed June 8, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Scotty E. Chabert, Jr.** of Baton Rouge was installed as 2016-17 YLD chair by Judge Guy P. Holdridge, 23rd Judicial

District Court, Gonzales. Chabert is an assistant district attorney for the 18th Judicial District and a partner in the Baton Rouge firm of Saunders & Chabert.

Also sworn in as officers were Chair-Elect **Bradley J. Tate**, tax manager for Carr, Riggs & Ingram, L.L.C., in Metairie (he will assume the chair's position in 2017-18); Secretary **Dylan T. Thriffiley**, a compliance director for Ochsner Health System in New Orleans; and Immediate Past Chair **Erin O. Braud**, staff counsel for GuideOne Insurance Co. in New Orleans.

Judge Holdridge also installed members of the 2016-17 YLD Council.

**District 1:** Scott L. Sternberg, an attorney in the New Orleans office of Baldwin Haspel Burke & Mayer, L.L.C.; and Cristin F. Bordelon, an associate in the New Orleans office of Leake & Andersson, L.L.P.

**District 2:** Jeffrey D. Hufft, an associate with Colvin Law Firm, A.P.L.C., in Gretna;

and Shayna B. Morvant, managing partner of the Gretna firm of Beevers & Beevers, L.L.P.

**District 3:** Lauren L. Gardner, an associate in the Onebane Law Firm in Lafayette.

**District 4:** Adam P. Johnson, an attorney in the Lake Charles firm of Johnson & Vercher, L.L.C.



Incoming YLD Chair Scotty E. Chabert, Jr., left, and outgoing Chair Erin O. Braud.



Erin O. Braud, left, 2015-16 YLD chair, with 2015-16 LSBA President Mark A. Cunningham.



**District 5:** Carrie L. Jones, a partner in the Baton Rouge firm of Shows, Cali & Walsh, L.L.P.; and Kristi W. Richard, a senior associate in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., and an adjunct instructor of business law and sports law at Louisiana State University.

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

**District 7:** Ethan A. Hunt, an associate in the firm of Dean Morris, L.L.C., in Monroe.

**District 8:** Allison C. Foster, an associate in the Shreveport firm of Cook, Yancey, King & Galloway, A.P.L.C.

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

**American Bar Association Young Lawyers Division Representative:** Graham H. Ryan, a business litigation associate in the New Orleans office of Jones Walker LLP.

**Young Lawyer Member/American Bar Association House of Delegates:** Kristen L. Burge, an associate in the firm of Beahm & Green in New Orleans.



2016-17 Young Lawyer Division Chair Scotty E. Chabert, Jr., left, was sworn in by Judge Guy P. Holdridge, 23rd Judicial District Court. Photos by Matthew Hinton Photography.



Alainna R. Mire, left, 2015-17 LSBA secretary, and Bradley J. Tate, 2016-17 YLD chair-elect.



Photos, from left, children enjoying the YLD reception; Scotty E. Chabert, Jr. and daughter; and Past LSBA President Richard K. Leefe and his wife Barat.





## LSBA Members, Bar Associations Honored with 2016 YLD Awards

Six Louisiana State Bar Association (LSBA) members and two local bar associations received 2016 LSBA Young Lawyers Division (YLD) awards, presented by 2015-16 YLD Chair Erin O. Braud and other YLD Council members during a June 8 ceremony, held in conjunction with the LSBA's Annual Meeting.

### ► Outstanding Young Lawyer Award

**Alysson L. Mills**, a partner in the New Orleans office of Fishman Haygood, L.L.P. (Litigation Section), practices in the areas of securities, media and general commercial litigation. She earned a BA degree in French and a BA degree in international studies, *magna cum laude*, from the University of Mississippi and her master of philosophy degree from Trinity College Dublin. She earned her JD degree, *summa cum laude*, from the University of Mississippi (editor-in-chief of the *Mississippi Law Journal*). She was admitted to practice in Louisiana in 2010. She co-teaches a course on the First Amendment and media law at Tulane University. She chairs the board of the Lycée



Outstanding Young Lawyer Award recipient Alysson L. Mills, right, with 2015-16 YLD Chair Erin O. Braud. Photos by Matthew Hinton Photography.

Français de la Nouvelle-Orléans and serves on the governing boards of the American Red Cross for Southeast Louisiana and the Younger Lawyers Division of the New Orleans Chapter of the Federal Bar Association. She also serves with the Choice Foundation, the governing board of three public charter schools in New Orleans.

### ► Bat P. Sullivan, Jr. Chair's Award

**Graham H. Ryan**, a business litigation associate in the New Orleans office of Jones Walker LLP, received a BS degree, *summa cum laude*, in finance in 2007 from Louisiana State University and his JD/DCL degree in 2011 from LSU Paul M. Hebert Law Center (*Louisiana Law Review*). He was admitted to practice in Louisiana in 2011. He serves on the Louisiana State Bar Association (LSBA) Access to Justice Committee's Disaster Leadership Team and co-chairs the LSBA's Annual Meeting and Summer School Planning Committee. He was a member of the 2014-15 Leadership LSBA Class. As the Louisiana representative on the American Bar Association's Young Lawyers Division Council, he is responsible for implementing disaster legal services in Louisiana following



Bat P. Sullivan, Jr. Chair's Award recipient Graham H. Ryan, right, with 2015-16 YLD Chair Erin O. Braud.

a presidentially declared disaster. He also chairs HandsOn New Orleans, a nonprofit volunteer center, and provides pro bono legal services to the homeless and veterans at the Father Harry Tompson Rebuild Center in New Orleans.

### ► Chair's Special Award: YLD Appreciation of Service

**Kas L. Hargis**, a law clerk for Judge John R. Walker of the 32nd Judicial District Court in Houma, received her BA degree in English literature in 2000 from Louisiana State University and her JD degree in 2006 from Loyola University College of Law. She was admitted to practice in Louisiana in 2007. A member of the 2014-15 Leadership LSBA Class, she is a member of the Louisiana State Bar Association's (LSBA) Access to Justice Committee and the Unauthorized Practice of Law Committee. She served as the District 3 representative on the LSBA Young Lawyers Division Council and co-chaired the 2015-16 High School Mock Trial Committee. In her community, she is involved with the Houma-Terrebonne Girls on the Run Program.



Chair's Special Award recipient Carrie L. Jones, right, with 2015-16 YLD Chair Erin O. Braud.



Hon. Michaelle Pitard Wynne Professionalism Award recipient Judge Karelia R. Stewart, right, with 2015-16 YLD Chair Erin O. Braud.

► **Chair’s Special Award: YLD Appreciation of Service**

**Carrie L. Jones**, a partner in the Baton Rouge firm of Shows, Cali & Walsh, L.L.P., received a BA degree in mass communication in 2004 from Louisiana State University, an MBA degree in 2005 from Southeastern Louisiana University and her JD/BCL degree in 2008 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008. Currently a District 5 representative on the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) Council, she co-chaired the 2015-16 High School Mock Trial Committee. She was a member of the 2013-14 Leadership LSBA Class and is a member of the LSBA’s Continuing Legal Education Committee. She is vice chair of the Louisiana Attorney Disciplinary Board and a member of the Baton Rouge Bar Association and the Bar Association of the 5th Federal Circuit. She serves on the Louisiana Bar Foundation’s Capital Area Community Partnership Panel.

► **Hon. Michaelle Pitard Wynne Professionalism Award**

**Judge Karelia R. Stewart** serves on the 1st Judicial District Court in Shreveport. Prior to her election, she was a prosecutor in the Caddo Parish District Attorney’s Office and section chief of

the Drug Division. She received her undergraduate degree, *cum laude*, in 2001 from Dillard University and her JD degree in 2004 from Loyola University College of Law. She was admitted to practice in Louisiana in 2006. While serving as a prosecutor, she partnered with Caddo Parish Schools for a presentation called “Don’t Let This Be You,” conversations with high school students about how to avoid the criminal justice system. She also participated in the job-shadowing program for middle and high school students in the Teen Court Program. For the Louisiana State Bar Association (LSBA), she served on the Board of Governors, in the House of Delegates, on several committees and as the District 8 representative on the LSBA Young Lawyers Division Council. In 2015, she was recognized as one of the “Nation’s Best 40 Under 40” advocates by the National Bar Association and received the organization’s Excellence in Leadership Award.

► **Pro Bono Award**

**Dwazendra J. Smith**, an associate in the Opelousas firm of Doran & Cawthorne, P.L.L.C., received a BA degree in political science in 2006 from Louisiana State University-Shreveport and her JD degree in 2009 from Southern University Law Center. During law school, she served as Student Bar Association president (2008-09), 2L Class president (2007-08), a member of the Moot Court Board, a pupil of the American Inns of Court and the symposium editor for Southern University Law Center’s second law journal, the *Journal of Race, Gender, and Poverty*. She is a member of the Lafayette Bar Association and the American Bar Association. She provides pro bono services through the Lafayette Volunteer Lawyers (LVL) program and the Lafayette Bar Association’s Protective Order Panel. She is a member of the LVL panel and current president of the Lafayette Young Lawyers Association. She has provided pro bono



Pro Bono Award recipient Dwazendra J. Smith, right, with 2015-16 YLD Chair Erin O. Braud.

services for nearly seven years.

► **Service to the Public Award**

The **Lafayette Young Lawyers Association’s** annual Holiday Giving Program provides services and support to the Acadiana community, donating gifts to needy families and partnering with different charity organizations to provide much needed funding. Letters are written to the Lafayette Bar Association members asking for contributions used to purchase gifts and/or to purchase supplies for the chosen charity. During the 2015 holiday season, the program focused all of its support to Hearts of Hope, an organization that provides free therapy and coping services to children and adult survivors of sexual abuse and assault.

► **Service to the Bar Award**

The **Baton Rouge Bar Association’s** Young Lawyers Section offered an educational trip in November 2015 to the Louisiana State Penitentiary (Angola Prison) in St. Francisville. The event gave insight into life after incarceration to young prosecutors, public defenders and criminal defense lawyers. The tour consisted of a visit to the museum, the historic Red Hat, a cellblock or dormitory at Camp F, lunch at Camp F and the lethal injection table. The event included a one-hour CLE class presented by a criminal defense attorney and an Angola trustee.



# BACK TO BASICS

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



Top photos: Beach Bash; Louisiana Supreme Court Justice Marcus R. Clark, left, swears in Louisiana Center for Law and Civic Education President Lawrence J. Centola III.

Photos above: Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and newly installed LSBA President Darrel J. Papillion; Beach Bash fireworks.

Bottom left photo: From left, LSBA President-Elect Dona K. Renegar, LSBA President Darrel J. Papillion, LSBA Immediate Past President Mark A. Cunningham, LSBA Past President Kim M. Boyle, Hon. Sandra C. Jenkins, Hon. Pammela S. Lattier and Hon. Tracey Flemings-Davillier.

Photo below: "Kids of the LSBA" led the House of Delegates in the Pledge of Allegiance.





# BACK TO BASICS

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



Top photos: Outgoing LSBA President Mark A. Cunningham addresses the House of Delegates, left, and chats with LSBA President-Elect Dona K. Renegar.

Photos above: LSBA President Darrel J. Papillion with Annual Meeting attendees; and LSBA Secretary Alaina R. Mire during her speech at the House of Delegates.

Bottom right photo, Judge D. Kent Savoie takes a shot during the golf tournament.

Bottom left photo, LSBA President Darrel J. Papillion, third from left, and his law partners, from left, David Abboud Thomas, Edward J. Walters, Jr. and J.E. Cullens, Jr.





## LSBA Recognizes Legal Professionals, Law Students for Pro Bono Service

Several Louisiana legal professionals and law students were recognized for exceptional pro bono service over the past year at the 31th annual Louisiana State Bar Association (LSBA) Pro Bono Awards Ceremony on May 24. The Louisiana Supreme Court hosted the ceremony at its courthouse in New Orleans.

LSBA 2015-16 President Mark A. Cunningham and members of the Louisiana Supreme Court presented the awards to the 2016 Pro Bono Publico and Children's Law Award recipients. LSBA 2016-17 President Darrel J. Papillion announced the award winners.

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 who may not otherwise have received adequate representation or access to the legal system.

The awards and the 2016 recipients include:

### ► David A. Hamilton Lifetime Achievement Award

Glenn P. Marcel of Baton Rouge received the David A. Hamilton Lifetime Achievement Award, which recognizes a Louisiana attorney who has demonstrated a commitment to the provision of legal services to the poor, made significant contributions to enhance the pro bono movement in Louisiana and shown significant leadership and service on behalf of the poor and disenfranchised.

Marcel retired in 2015 after a legal career spanning 40 years. He was a member of the LSBA's Access to Justice Committee, the Baton Rouge Bar Association's



Linton W. Carney of New Orleans, right, received the LSBA President's Access to Justice Award. Presenting the award was 2015-16 Louisiana State Bar Association President Mark A. Cunningham. Photo by Matthew Hinton Photography.

(BRBA) Pro Bono Committee and the BRBA Pro Bono Panel. He regularly volunteered for the BRBA's Ask-A-Lawyer and Thirst for Justice programs and the LSBA's Wills for Heroes program assisting first responders.

### ► Career Public Interest Award

James F. Welch II of New Orleans received the Career Public Interest Award, which recognizes Louisiana attorneys or non-attorneys who have devoted 10 or more years of service to public interest legal work, providing significant service on behalf of the poor and disenfranchised.

Since 1985, Welch has been a civil legal aid attorney in the New Orleans area, serving low-income individuals through Southeast Louisiana Legal Services. Over his career, he has assisted 19,000 people, helping clients obtain or preserve assets, income or benefits valued at more than \$15 million. In 2012, he began work as the legal arm of the Delgado Community Col-

lege Single Stop USA project. The project received the first LSBA Access to Justice Innovation in Civil Legal Service Delivery Award in 2015.

### ► LSBA President's Access to Justice Award

Linton W. Carney of New Orleans received the LSBA President's Access to Justice Award, recognizing a person for a lifelong commitment and dedication to ensuring access to justice for Louisiana citizens.

Since 1999, Carney has served in leadership roles in the original LSBA Access to Justice Committee, the subsequent Access to Justice Policy Committee and most recently the Access to Justice Commission.

### ► Children's Law Award

Zebulon M. Winstead of Alexandria received the Children's Law Award, presented by the LSBA Children's Law Committee to recognize Louisiana attorneys or Louisiana-based organizations for outstanding services in children's law.

Winstead, managing member of the Alexandria law firm of Crowell & Owens, has volunteered to represent children in Child in Need of Care (CINC) cases for several years. He also chairs the Louisiana Bar Foundation's Central Partnership Panel, is a member of the LSBA's House of Delegates and is a Hearing Committee member for the Louisiana Attorney Disciplinary Board.

### ► Friend of Pro Bono Award

Three Friend of Pro Bono Awards were presented to the New Orleans Bar Association's Young Lawyers Section, Lake Charles attorney John F. DeRosier and Ba-



Glenn P. Marcel of Baton Rouge, center, received the David A. Hamilton Lifetime Achievement Award. Presenting the award were Louisiana Supreme Court Justice John L. Weimer, left, and 2015-16 Louisiana State Bar Association President Mark A. Cunningham. Photo by Matthew Hinton Photography.



James F. Welch II of New Orleans, center, received the Career Public Interest Award. Presenting the award were Louisiana Supreme Court Justice John L. Weimer, left, and 2015-16 Louisiana State Bar Association President Mark A. Cunningham. Photo by Matthew Hinton Photography.

ton Rouge attorney Emily P. Ziober. The award recognizes attorneys, non-attorneys, law firms or organizations making major contributions to the enhancement and promotion of pro bono legal services to the poor.

The New Orleans Bar Association's Young Lawyers Section sponsors several annual fundraising events to benefit Southeast Louisiana Legal Services and the Pro Bono Project in New Orleans.

DeRosier, serving his third term as district attorney of Calcasieu Parish, is a decorated Vietnam veteran who supports veterans' causes and other charitable activities. He founded a 501c(3) foundation to help the needy in Calcasieu Parish. In 2016, he led the Fresh Start Initiative, a collaborative project aiding job seekers in need of expungements.

Ziober, a solo practitioner who served as administrative general counsel for the Louisiana 1st Circuit Court of Appeal and as assistant director of the Center of Civil Law Studies at Louisiana State University Paul M. Hebert Law Center, was the 2012-15 Baton Rouge Bar Association Pro Bono Committee chair.

#### ► Law Student Awards

Four Louisiana law students received the Law Student Pro Bono Award, recognizing dedication to providing legal services to the poor. The award recipients are Lauren Bradberry, Louisiana State University Paul M. Hebert Law Center; Rebecca Holmes, Loyola University College of Law; Britni Duplantis, Southern University Law Center; and Stacey Michel, Tulane University Law School.

#### ► Pro Bono Publico Award

The Pro Bono Publico Award recognizes attorneys and law firms for providing pro bono legal services to Louisiana residents that meet or exceed the aspirational goal of 50 hours of pro bono services per year, as established in Rule 6.1 of Louisiana Rules of Professional Conduct.

The 2016 award recipients are:  
Gold, Weems, Bruser, Sues & Rundell,  
Alexandria

Nadège A. Assalé, New Orleans  
Dana D. Atchison, New Orleans  
Jeffrey M. Cole, Lake Charles  
Lisa C. Cronin, Shreveport  
Jonah A. Freedman, New Orleans  
Meredith S. Grabill, New Orleans  
Valerie V. Guidry, Lafayette  
Thomas R. Hightower III, Lafayette  
Jane A. Jackson, New Orleans  
Jonathan T. Jarrett, Lafayette  
Winfield E. Little, Jr., Lake Charles  
Thomas L. Lorenzi, Lake Charles  
Maria A. Losavio, Alexandria  
Seth T. Mansfield, Lafayette  
Eric R. Miller, Baton Rouge  
Ross F. Roubion, Lafayette  
Dyan L. Schnaars, Lafayette  
Paul J. Tellarico, Alexandria  
Rolando R. Urbina, Baton Rouge  
Christian N. Weiler, New Orleans  
James J. Zito, Baton Rouge  
Gary M. Zwain, Metairie

#### ► Pro Bono Century Awards

The Pro Bono Century Award recognizes attorneys who have shown consummate pro bono leadership by completing 100 hours of service from January 2014 through December 2015.

The 2016 recipients include:  
Nadège A. Assalé, New Orleans  
Robert L. Blankenship, Baton Rouge  
Robert C. Clotworthy, New Orleans  
Jeffrey K. Coreil, Lafayette  
Sherry Dolan Ormond, New Orleans  
Paula J. Ferreira, Kenner  
Jonah A. Freedman, New Orleans  
Valerie G. Garrett, Lafayette  
Keren E. Gesund, Metairie  
Meredith S. Grabill, New Orleans  
Catharine O. Gracia, New Orleans  
Valerie V. Guidry, Lafayette  
Thomas R. Hightower III, Lafayette  
Jane A. Jackson, New Orleans  
Jonathan T. Jarrett, Lafayette  
Victor M. Jones, New Orleans  
Mandie E. Landry, New Orleans  
Stephanie S. Lintern, New Orleans  
Winfield E. Little, Jr., Lake Charles  
Seth T. Mansfield, Lafayette  
Douglas P. Matthews, New Orleans  
Mark W. Mercante, Mandeville  
Henry V. Meyer, Metairie  
James D. Rhorer, Metairie  
Sophie D. Rosado, Kenner  
Ross F. Roubion, Lafayette  
Dyan L. Schnaars, Lafayette  
John F. Shreves, New Orleans  
Dwazendra J. Smith, Lafayette  
Mark C. Surprenant, New Orleans  
Dorothy L. Tarver, New Orleans  
Danielle L. Trostorff, New Orleans

To access event photographs, go to the LSBA's Facebook page: [www.facebook.com/louisianabar](http://www.facebook.com/louisianabar).



# Elections: Qualifying Begins Sept. 19 for Leadership Positions

Several Louisiana State Bar Association (LSBA) leadership positions are open during the 2016-17 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. 19.

For the 2016-17 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. 17. First election ballots will be available to members on Monday, Nov. 14. Deadline for electronically casting votes is Monday, Dec. 12.

Positions to be filled include:

**Board of Governors** (three-year terms beginning at the adjournment of the 2017 LSBA Annual Meeting and ending at the adjournment of the 2020 LSBA Annual Meeting) — one member each from the First, Second, Third and Fifth districts.

**LSBA House of Delegates** (two-year terms beginning at the commencement of the 2017 LSBA Annual Meeting and ending at the commencement of the 2019 LSBA An-

nual Meeting) — one delegate from each of the Twentieth through Forty-Second 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 2017 LSBA Annual Meeting and ending at the adjournment of the 2018 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** (2017-18 term), nominee **shall** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. **Secretary** (2017-18 term), nominee **shall** be a resident of or actively practicing law in any parish in Louisiana, 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 members of the American Bar Association*) — one delegate from the membership at large. All LSBA members may vote for the candidate. The delegate will serve a two-year term, beginning with the adjournment of the 2017 ABA Annual Meeting and expiring at the adjournment of the 2019 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

## Attorneys Apply for Certification as Legal Specialist

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Barbara M. Shafranski, Executive Director, no later than Oct. 15, 2016.

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

### Appellate Practice

Travis Louis Bourgeois ..... New Orleans  
Douglas L. Grundmeyer ..... New Orleans  
Kenneth P. Haines ..... Shreveport  
Louis C. LaCour ..... New Orleans  
Roy A. Raspanti ..... Metairie

Martin Alan Stern ..... New Orleans  
Raymond Peter Ward ..... New Orleans

### Estate Planning & Administration Law

Aaron D. Beyt ..... Lafayette  
Gerald J. Bourgeois ..... Morgan City  
Michelle M. Davis ..... Mandeville  
John C. Overby ..... New Orleans

### Family Law

Jodi C. Andrews ..... DeRidder  
Shandy L. Arguelles ..... Slidell  
Leslie A. Burns ..... Denham Springs  
Kevin M. Edler ..... Covington  
Tracy Ellen Gold ..... Covington  
Ivy L. Graham ..... Denham Springs  
Elizabeth Stevenson Meneray ..... New Orleans  
Suellen Richardson ..... Covington

### Tax Law

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

## Legal Specialization Update

The Louisiana Board of Legal Specialization (LBLS) received notice that, on June 2, the Louisiana Supreme Court amended Rule 7.2(c)(5) of the Louisiana Rules of Professional Conduct.

The amended rule, in part, involves use of the terms “specialist,” “specialty,” “specializes in,” “certified” and “board certified.” Review the full court order at: [www.lsba.org](http://www.lsba.org).

For specialists whose certification expires at the end of this year, the LBLS recognizes that this new rule may impact decisions to maintain specialization certification. All eligible specialists have been sent an Application for Recertification form for the period of Jan. 1, 2017, to Dec. 31, 2021. While the LBLS encourages specialists to continue the recertification process, the LBLS board has determined that a specialist who withdraws his/her recertification application prior to the end of the year will receive a full refund of the \$100 application fee.

For more information, email LBLS Executive Director Barbara Shafranski at [barbara.shafranski@lsba.org](mailto:barbara.shafranski@lsba.org).



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Bernie McLaughlin  
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Mimi Methvin  
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Elizabeth Middleton  
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**Y**ou made the decision to retire from the practice of law. How should you prepare to close your practice? Throughout your practice, you wore two hats — one of business person and one of attorney. The decision to close your practice not only closes the doors to your business, but also the relationship with many clients.

Where do you start? Closing a law practice requires time, preparation and planning. First, you want to create an exit plan, a checklist of tasks to complete with associated target dates for completing those tasks. Utilizing an exit plan ensures nothing is overlooked and assists in a smooth, lawsuit-free transition into retirement. Completing the tasks necessary to properly close your practice will take time, normally six months to a year.

What should your exit plan contain? Because every practice is different, you need to tailor your exit plan to your needs. You want to be comprehensive and include a list of all items to close your business, such as canceling leases, canceling advertisements, discontinuing telephone and Internet service, etc., and a list of items to close your client files, such as notifying clients of your plans, concluding active cases, transferring client files to new attorney, etc.

While exit plans can be comprehensive, below are a few important points to consider when wrapping up the attorney/client side of your practice.

► **Cease taking new cases.** Once you make the decision to end your practice, don't start new matters. Starting new matters with the knowledge you are soon leaving can anger the new client.

► **Reconcile client accounts, secure unpaid balances and send final bills.** Do this sooner rather than later. It will be much harder to collect outstanding balances once you no longer maintain an office.



► **Notify your clients in writing.** An attorney is required to exercise reasonable diligence in providing advance notification to clients regarding the decision to close his/her practice. Give your clients adequate time to hire new counsel, advise your clients on any deadlines associated with their cases, and provide a time and place for them to pick up a copy of their files.

► **Finalize as many active files as possible.** Once you have a date your practice will close, wrap up as many files as you can before that date. Keep files organized and current, including up-to-date client contact information.

► **Keep clients informed about all pending matters.** If necessary, secure extensions, continuances and reschedule any hearing dates. With client consent, file all relevant Motions to Withdraw or Motions to Substitute Counsel and allow time to secure court approval.

► **Return files to current and former clients.** Remember to keep a copy of the client's file for your own records. Rule 1.15 of the Louisiana Rules of Professional Conduct requires attorneys to keep and maintain complete records of all client trust account funds and other client property for a period of five years after termination of the representation. Also, don't forget to return client documents kept in your safe deposit box.

► **Close law firm banking accounts.** Close trust accounts after an audit of your books is complete. Remember to return any unearned fees and address any unclaimed account funds.

► **Notify the Louisiana State Bar Association.** Update your status and contact information with the LSBA.

► **Notify your malpractice carrier.** Inquire about obtaining tail insurance coverage (an extended reporting period), which will cover you for any malpractice claims that arise after you have stopped practicing law for malpractice that occurred while you were practicing. Remember, all legal malpractice policies are claims made and do not operate like an occurrence policy. The premium may even be free if you are retiring so make sure your agent knows this and it is in writing.

The most important part of closing a practice is making sure your clients' interests are protected. Once your clients' interests are protected and your business is closed, kick back and enjoy your retirement!

For more information and resources on closing a practice, visit [www.lsba.org/Members/PracticeManagementClosing-Practice.aspx](http://www.lsba.org/Members/PracticeManagementClosing-Practice.aspx) or email [aflick@gilsbar.com](mailto:aflick@gilsbar.com).

*Ashley M. Flick 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 BA degree in political science in 2005 from Southeastern Louisiana University and her JD degree in 2010 from Loyola University College of Law.*

*As loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. Email her at [aflick@gilsbar.com](mailto:aflick@gilsbar.com).*



# LAWYERS Assistance

By J.E. (Buddy) Stockwell

ANXIETY AND PERFECTIONISM

For many lawyers and judges, anxiety is a constant companion as they are driven by fierce competitiveness and perfectionism. Depending on the individual, anxiety levels may rise dramatically during law school and then continue into the practice of law. Over time, if anxiety continues to build, the person may develop mental health disorders such as generalized anxiety disorder, panic disorder or social anxiety disorder.<sup>1</sup> Biological factors, family background and particularly stressful life experiences play a role in the development of anxiety disorders.

Law is a noble profession and extremely rewarding on many levels but it is equally demanding and often visits high levels of stress and anxiety upon its practitioners, all due to the fact that it exists within an adversarial system that routinely pits practitioners against each other.

The challenge of law school, and practicing law thereafter, renders seasoned lawyers and judges who can, and do, withstand high pressure, but it is concurrently important to acknowledge that literally all of us are made of flesh and blood. That means, in the fullness of time, any of us may develop anxiety problems if exposed to unrelenting stress.

While stress levels vary from practice to practice, there is one common denominator that affects virtually all lawyers and judges — the expectation of perfection.

Our perfectionism began as a self-imposed mandate during law school competition. Thereafter, the legal profession doggedly demands precise attention to detail. Mistakes can be costly to our clients, our professional reputation and our malpractice insurers.

In general, there is nothing wrong with high standards in any endeavor; a healthy level of stress and anxiety is motivational and helps us to succeed. But, when anxiety becomes merciless and overwhelming, it

## Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

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decreases productivity and significantly reduces one's quality of life. In the most extreme cases, anxiety can render a person unable to function and not fit to practice.

If we can't eliminate anxiety in the practice of law, what tools are available to reduce it to more manageable levels?

Some people seek relief through alcohol or drug use, but being dependent on substances places them at risk for developing issues with both anxiety and substance dependency. There are healthier strategies.

Expectations of perfection will always be a part of practicing law. But what we can do to consciously minimize pessimism in our thinking and reduce "ANT" thinking (automatic negative thoughts)?<sup>2</sup>

Is it your nature to view things optimistically and always hope for the best, or do you tend to predict that the worst will likely happen and then worry all the time about what terrible outcome may materialize in cases you are handling?

We are learning it is unhealthy to focus all thought on either the past or the future, while being generally *unfocused* to the present moment. It is also unhealthy to think too much and ruminate all the time. Lawyers' brains often run in a continuous loop of reviewing past evidence and planning future strategies to resolve their clients' cases. There is very little time spent "in the now."

To ensure mental health, however, our brains need sufficient downtime to actually think of *nothing*. This is an extremely challenging concept for lawyers who live in a fast-paced world of intense analytical

reasoning and thinking. But, some lawyers are successfully learning how to meditate and experiencing its benefits.

On JLAP's new website, [www.louisianajlap.com](http://www.louisianajlap.com), there are links to resources about anxiety and how to manage it. The mission is to always be proactive and take care of our personal mental health *before* pathologies have any chance to fully develop.

A new book, cited on JLAP's website under "Anxiety Resources," may help — *The Anxious Lawyer, An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation*.<sup>3</sup> It is a useful tool in helping lawyers and judges utilize new and better strategies to reduce anxiety in their day-to-day professional lives. JLAP encourages everyone suffering from stress and anxiety to keep an open mind and give meditation a genuine try.

Today's comprehensive JLAP provides assistance with all mental health issues. JLAP has licensed professional clinical staff on hand. If you are suffering from anxiety and need immediate help, or help with any other mental health issue such as depression, make a totally confidential call to JLAP at (985)778-0571 or email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com). You do not have to give your name.

## FOOTNOTES

1. [www.nimh.nih.gov/health/topics/anxiety-disorders/index.shtml](http://www.nimh.nih.gov/health/topics/anxiety-disorders/index.shtml).
2. <http://anxietynetwork.com/content/perfectionism-and-pressure>.
3. [www.theanxiouslawyer.com/](http://www.theanxiouslawyer.com/).

J.E. (Buddy) Stockwell is the executive director of the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) and can be reached at (866)354-9334 or email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com).





## 19 Student Interns Complete 2016 "Suit Up" Program

The Louisiana State Bar Association's (LSBA) Suit Up for the Future High School Summer Legal Institute and Internship Program had another successful year with 19 student interns completing the program. The three-week program (June 13-July 1) included abridged law school sessions; shadowing opportunities at law firms, courts and agencies; and field trips to courts and law schools.

During the final week, the students prepared written memorandum to support their oral argument that was presented on the last day of the program to a panel of judges in a courtroom.

The Suit Up Program, a partnership with the LSBA, the Just the Beginning Foundation, the Louisiana Bar Foundation and Louisiana law schools, is an award-winning Diversity Pipeline Program and a 2013 American Bar Association Partnership Program recipient.

The Suit Up Program is successful because of the dedicated volunteers, including:

- ▶ the LSBA Pipeline to Diversity and Outreach Subcommittee Co-Chairs



The 19 student interns participating in the 2016 Suit Up Program were, seated from left, Jerrica D. Fleming, Deja S. Hansell, Gabriella N. Ayala, Caroline M. Bland, Fatima A. Rahman, Gabriela T. Guzman, Olymar Ocegueda and Bailey M. Chauvin. Standing from left, Asia J. Hentkowski, Kenedi A. Reed, Ashley A. Berry, Dillon A. Peters, Gary C. Peters, Tamunobelega A. Derefaka, Daryl A. Naquin, Erron M. Thomas, Emma Chiao, Shaela S. Phillips and Zora D. Robinson.

Scherri Neewana Guidry and Kandace Runita Hamilton.

- ▶ Professor Mary G. Algero, Loyola University College of Law; Professors Michelle A. Jackson and Russell L. Jones, Southern University Law Center; and Professors Jeffrey C. Brooks and Christopher J. Tyson, Louisiana State University Paul

M. Hebert Law Center.

- ▶ Shadowing employers — Irwin Fritchie Urquhart & Moore, L.L.C.; Liskow & Lewis, P.L.C.; Orleans Public Defenders Office and Chief Defender Derwyn D. Bunton; Orleans Parish Civil District Court and Judge Piper D. Griffin; 24th Judicial District Court and Judge June Berry Darensburg and Judge Raymond S. Steib, Jr.; Orleans Parish First City Court and Section B Judge Angelique A. Reed; Courington Kiefer & Sommers, L.L.C.; and U.S. District Court, Eastern District of Louisiana, and Judge Ivan L.R. Lemelle.

- ▶ Volunteers — Louisiana Supreme Court; the Louisiana 4th Circuit Court of Appeal; Orleans Parish Criminal District Court and Section B Judge Tracey Flemings-Davillier and Section A Chief Judge Laurie A. White; Dillard University; LSBA Access to Justice Department; and externs of Judge Karen Wells Roby and Suit Up Alumni.

- ▶ Attorneys Jackie M. McCreary, Jason M. Freas, Amanda Casey Desselles, Matthew S. Smith, Janet C. Kearney, Micah C. Zeno and Caroline F. Bordelon.



On the final day, the Suit Up Program interns prepared and presented oral arguments before judges. From left, students Zora D. Robinson and Caroline M. Bland; U.S. Magistrate Judge Karen Wells Roby, Eastern District of Louisiana; Chief Judge Kern A. Reese, Orleans Parish Civil District Court; student Tamunobelega A. Derefaka; Judge Paula A. Brown, Orleans Parish Civil District Court; student Daryl A. Naquin; U.S. District Court Judge Michael B. North, Eastern District of Louisiana; and student Asia J. Hentkowski.



Suit Up students participated in a field trip to Tulane University Law School. With them is Professor Ronald J. Scalise, Jr., far left.



Suit Up students participated in a field trip to Loyola University College of Law. With them are Kimberly Jones, far left, and Laura V. Apsley, far right.



Southern University Law Center Professor Michelle A. Jackson presented a class on education law for the Suit Up students.



Louisiana State University Paul M. Hebert Law Center Professor Jeffrey C. Brooks presented a class on oral argument for the Suit Up students.



Loyola University College of Law Professor Mary G. Algero, far right, presented a class on legal writing for the Suit Up students.



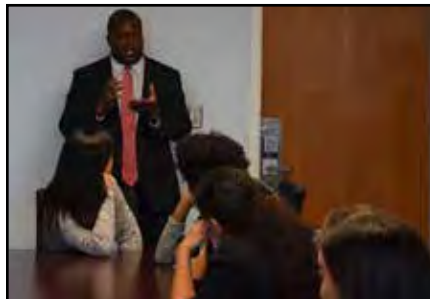
Southern University Law Center Professor Russell L. Jones, second from right, presented a class on criminal law for the Suit Up students.



Louisiana State University Paul M. Hebert Law Center Professor Christopher J. Tyson, center, presented a class on local government law for the Suit Up students.



Orleans Parish District Attorney Leon A. Cannizzaro, Jr. addressed Suit Up students during a field trip.



Orleans Public Defenders' Chief Defender Derwyn D. Bunton addressed Suit Up students during a field trip.



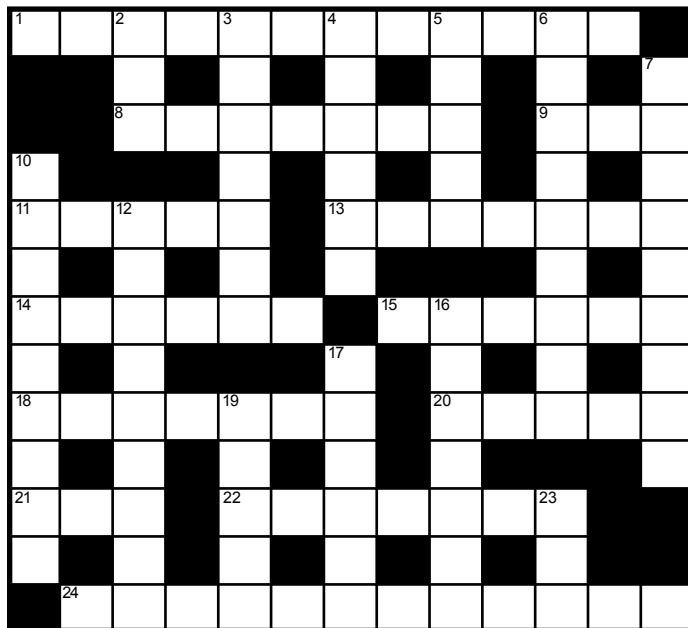
Judge Ivan L.R. Lemelle, far right, with the U.S. District Court, Eastern District of Louisiana, presented a shadowing opportunity for students. From left, student Kenedi A. Reed; Judge Lemelle's law clerks C.J. Murray and Kathryn J. (Kaki) Johnson; and students Gabriella N. Ayala and Caroline M. Bland.



# Crossword PUZZLE

By Hal Odom, Jr.

## OF PERSONS



### ACROSS

- 1 Proceeding for person unable to make reasoned decisions regarding the care of person or property (12)
- 8 Deny, as parental status (7)
- 9 Academic URL (3)
- 11 Parabolic (5)
- 13 Louis Armstrong (7)
- 14 Expunged (6)
- 15 Popular website devoted to urban legends (6)
- 18 Incipient (7)
- 20 Spokes (5)
- 21 The only even prime number (3)
- 22 Establish parental status (7)
- 24 Proceeding to confer adult rights on minor (12)

### DOWN

- 2 Kennedy or Cruz (3)
- 3 Portion of estate subject to universal legacy (7)
- 4 One way for curator to manage property subject to 1 Across (6)
- 5 Namely (2-3)
- 6 Excessively publicized or promoted (9)
- 7 Proceeding to manage the property of an orphan (9)
- 10 Parental status subject to a very strong presumption (9)
- 12 Academic setting (9)
- 16 Kurt Cobain band (7)
- 17 List-ending phrase (2, 4)
- 19 Finally, to Philippe (5)
- 23 Giant Manning (3)

Answers on page 178.

## Alcohol and Drug Abuse Hotline

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| Baton Rouge | Steven Adams.....(225)921-6690            | Monroe       | Robert A. Lee ....(318)387-3872, (318)388-4472 |
|             | (225)926-4333                             | New Orleans  | Deborah Faust .....(504)304-1500               |
|             | David E. Cooley.....(225)753-3407         |              | Donald Massey.....(504)585-0290                |
|             | John A. Gutierrez .....(225)715-5438      |              | Dian Tooley .....(504)861-5682                 |
|             | (225)744-3555                             |              | (504)831-1838                                  |
| Lafayette   | Alfred "Smitty" Landry .....(337)364-5408 | Shreveport   | Michelle AndrePont .....(318)347-8532          |
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|             | Thomas E. Guilbeau .....(337)232-7240     |              | William Kendig, Jr. ....(318)222-2772          |
|             | James Lambert .....(337)233-8695          |              | (318)572-8260 (cell)                           |
|             | (337)235-1825                             |              | Steve Thomas.....(318)872-6250                 |

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

## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 8, 2016.

### Decisions

**Gregory Thomas Akers**, Baton Rouge, (2016-B-0510) **Suspended from the practice of law by consent for one year and one day, fully deferred, subject to probation**, by order of the Louisiana Supreme Court on April 15, 2016. ORDER FINAL and EFFECTIVE on April 15, 2016. *Gist:* Commission of a criminal act (DWI), particularly one that reflects adversely on the lawyer's honesty, trustworthiness or fitness in other respects; conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**Jarvis Martez Antwine**, Baton Rouge, (2016-B-0493) **Consented to a public reprimand** by order of the Louisiana Supreme Court on April 15, 2016. JUDGMENT FINAL and EFFECTIVE April 15, 2016. *Gist:* Respondent failed to communicate with a client, failed to reduce a contingent fee agreement to writing and failed to comply with the requirements for a division of fees between lawyers who are not at the same firm.

**Darryl J. Becnel**, Reserve, (2016-OB-0483) **Transfer to disability inactive status** ordered by the court on May 13, 2016. JUDGMENT FINAL and EFFECTIVE on May 13, 2016.

**Michael T. Bell**, Baton Rouge, (2016-B-0544) **Publicly reprimanded on consent**, pursuant to Louisiana Supreme Court Rule XIX, Section 20, for engaging in conduct constituting a conflict of interest. The order was effective and final on April 22, 2016.

**Sondra Allen-Borne**, New Orleans, (2016-B-0357) **Suspended through**

**consent discipline for one year and one day, with all but 60 days deferred, followed by a year of unsupervised probation**, by order of the Louisiana Supreme Court on March 24, 2016. JUDGMENT FINAL and EFFECTIVE on March 24, 2016. *Gist:* Respondent failed to ensure fees were paid relative to the request for a medical review panel.

**Charles M. Bradshaw**, Shreveport, (2016-B-0356) **Publicly reprimanded through consent discipline** by order of the Louisiana Supreme Court on March 24, 2016. JUDGMENT FINAL and EFFECTIVE on March 24, 2016. *Gist:* Respondent neglected a legal matter and failed to communicate with a client.

**Kerry Dion Brown**, LaPlace, (2016-B-0396) **Permanently disbarred** by order of the Louisiana Supreme Court on May 2, 2016. ORDER FINAL and EFFECTIVE on May 16, 2016. *Gist:* Commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; safekeeping property of clients or third persons; failure to timely remit funds; sharing legal fees

with a non-lawyer; failing to cooperate with the ODC in its investigation; failure to communicate with a client; failing to act with reasonable diligence and promptness in representing a client; and failing to return an unearned fee.

**Jalila E. Bullock**, New Orleans, (2016-B-0075) **Suspended from the practice of law for one year and one day, with six months deferred**, by order of the Louisiana Supreme Court on March 24, 2016. ORDER FINAL and EFFECTIVE on April 7, 2016. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**Keith Michael Couture**, Madisonville, (2016-B-0460) **Public reprimand on consent** by order of the Louisiana Supreme Court on April 22, 2016. JUDGMENT FINAL and EFFECTIVE on April 22, 2016. *Gist:* Failure to communicate;

Continued next page

## CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

E. PHELPS GAY      KEVIN R. TULLY

ELIZABETH S. CORDES

H. CARTER MARSHALL

(504)561-5700

601 POYDRAS STREET, SUITE 2300

NEW ORLEANS, LA 70130



**Discipline** continued from page 145

failure to properly terminate the representation of the client; and neglecting client's legal matter.

**Walter C. Dumas**, Baton Rouge, (2016-OB-0412) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on April 4, 2016. ORDER FINAL and EFFECTIVE on April 4, 2016. He may not practice law in Louisiana.

**John J. Finckbeiner, Jr.**, Chalmette, (2016-B-0654) **Suspended on consent from the practice of law for a period of one year and one day, fully deferred, to be followed by a period of supervised probation**, by order of the Louisiana Supreme Court on May 20, 2016. ORDER FINAL and EFFECTIVE on May 20, 2016. *Gist:* Commission of a criminal act.

**Carl N. Finley**, Metairie, (2016-B-0815) **Suspended on consent** by order of the Louisiana Supreme Court on June 3, 2016. ORDER FINAL and EFFECTIVE on June 3, 2016. *Gist:* Failed to maintain a client trust account; engaged in improper fee sharing with non-lawyers; and facilitated the

unauthorized practice of law in Louisiana by a California attorney and the attorney's non-lawyer staff.

**E. Eric Guirard**, Baton Rouge, (2016-OB-0397) **Readmitted to the practice of law, subject to a two-year period of supervised probation**, by order of the Louisiana Supreme Court on April 22, 2016. JUDGMENT FINAL and EFFECTIVE on April 22, 2016. Mr. Guirard has proved by clear and convincing evidence that he satisfies the criteria for readmission to the practice of law in Louisiana.

**Richard Z. Johnson, Jr.**, Mansfield, (2016-B-0661) **Suspended by consent from the practice of law for a period of three years, retroactive to Dec. 4, 2015, the date of his interim suspension**, by order of the Louisiana Supreme Court on May 27, 2016. ORDER FINAL and EFFECTIVE on May 27, 2016. *Gist:* Making and subscribing a false income tax return.

**Chase McNeil McCalip**, Baton Rouge, (2016-B-0545) **Consented to a public reprimand** by order of the Louisiana Supreme Court on May 20, 2016. JUDGMENT FINAL and EFFECTIVE on May 20, 2016.

*Gist:* Respondent notarized a document outside the presence of the signatory and witnesses.

**Christine M. Mire (Matherne)**, New Iberia, (2015-B-1453) **Suspended from the practice of law for a period of one year and one day, with all but six months deferred, to be followed by a two-year period of unsupervised probation**, by order of the Louisiana Supreme Court on Feb. 19, 2016. JUDGMENT FINAL and EFFECTIVE on May 2, 2016. *Gist:* Conduct which involved a finding that her tactics were improper and caused a delay in the receipt of funds by a former client's bankruptcy estate, as well as a finding that she prepared a pleading that contained statements regarding members of the judiciary that were made with either knowledge of their falsity or reckless disregard for the truth.

**Harry J. Morel, Jr.**, Luling, (2016-OB-0757) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on May 13, 2016. ORDER FINAL and EFFECTIVE on May 13, 2016. *Gist:*

Continued next page



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damon@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 1, 2016.

| Respondent               | Disposition                      | Date Filed | Docket No. |
|--------------------------|----------------------------------|------------|------------|
| Michael P. Arata         | Interim suspension.              | 5/2/16     | 16-790     |
| Walter C. Dumas          | [Reciprocal] Suspension.         | 4/15/16    | 16-1303    |
| Ronald Sidney Haley, Jr. | [Reciprocal] Suspension.         | 4/15/16    | 16-1726    |
| Yolanda Julie King       | [Reciprocal] Interim suspension. | 5/13/16    | 16-2371    |
| Ashton DeVan Pardue      | [Reciprocal] Suspension.         | 5/12/16    | 16-2315    |
| Kenya J. Rounds          | [Reciprocal] Suspension.         | 5/26/16    | 16-2978    |
| Willie M. Zanders        | [Reciprocal] Suspension.         | 5/12/16    | 16-2767    |

### Discipline continued from page 146

Commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

**Jalonda Morris**, New Orleans, (2016-B-0796) **Suspended from the practice of law for a period of one year and one day, with six months deferred, through consent discipline**, by order of the Louisiana Supreme Court on May 27, 2016. JUDGMENT FINAL and EFFECTIVE on May 27, 2016. *Gist*: Suspension by consent discipline; respondent neglected a legal matter and converted funds to her own use.

**Alfred O. Pavy**, Opelousas, (2016-OB-441) **Permanently resigned** by order of the Louisiana Supreme Court on April 8, 2016. JUDGMENT FINAL and EFFECTIVE on April 8, 2016. *Gist*: Permanent resignation in lieu of discipline.

**Roy Joseph Richard, Jr.**, Opelousas, (2016-B-0076) **Suspended for one year and one day, with all but 60 days deferred, followed by a one-year period of unsupervised probation**, by order of the Louisiana Supreme Court on April 4, 2016. JUDGMENT FINAL and EFFECTIVE on April 18, 2016. *Gist*: Respondent allowed his client trust account to become overdrawn on one occasion and failed to cooperate with the Office of Disciplinary Counsel in its investigation.

**Kenya J. Rounds**, New Orleans, (2016-B-0389) **Suspended on consent from the practice of law for a period of six months, fully deferred, to be followed by a two-year period of supervised probation**, by

order of the Louisiana Supreme Court on April 4, 2016. ORDER FINAL and EFFECTIVE on April 4, 2016. *Gist*: Conduct involving his commingling of client and personal funds in his trust account.

**Heather R. Slay**, Houston, TX, (2016-B-0437) **Public reprimand by consent** by order of the Louisiana Supreme Court on April 8, 2016. JUDGMENT FINAL and EFFECTIVE on April 8, 2016. *Gist*: Conduct prejudicial to the administration of justice; and the unauthorized practice of law.

**Louis Jerome Stanley**, Baton Rouge, (14-DB-042) **Public reprimand** by order of the Louisiana Attorney Disciplinary Board on March 1, 2016. JUDGMENT FINAL and EFFECTIVE on March 15, 2016. *Gist*: Failed to communicate; failed to promptly deliver client funds; and violated or attempted to violate the Rules of Professional Conduct.

**Randy J. Ungar**, Metairie, (2016-OB-0394) **Reinstated to the practice of law** by order of the Louisiana Supreme Court on May 20, 2016. JUDGMENT FINAL and EFFECTIVE on May 20, 2016.

**Cynthia Marchese Wallace**, New Orleans, (2016-B-0600) **Permanently resigned in lieu of discipline** by order of the Louisiana Supreme Court on April 22, 2016. JUDGMENT FINAL and EFFECTIVE on April 22, 2016.

**Quenton I. White**, Nashville, TN, (2016-B-0392) **Suspension ordered by the court as reciprocal discipline for discipline imposed by Tennessee on May 13, 2016**. JUDGMENT FINAL and EFFECTIVE on May 27, 2016. *Gist*: Reciprocal discipline imposed for misconduct occurring in Tennessee.


**Willie Zanders**, New Orleans, (2016-B-0289) **Suspended through consent discipline for one year and one day, with all but 60 days deferred, followed by a year of unsupervised probation**, by order of the Louisiana Supreme Court on March 24, 2016. JUDGMENT FINAL and EFFECTIVE on March 24, 2016. *Gist*: Respondent failed to ensure fees were paid relative to the request for a medical review panel.

**No admonitions for this reporting period.**

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### CLIENT ASSISTANCE FUND PAYMENTS - NOVEMBER 2015 & FEBRUARY 2016

| Attorney               | Amount Paid | Gist  |
|------------------------|-------------|---|
| Twilia A. Andrews      | \$2,500.00  | #1529 — Unearned fee in a custody matter                    |
| Twilia A. Andrews      | \$2,500.00  | #1666 — Unearned fee in a family law matter                 |
| Twilia A. Andrews      | \$2,545.00  | #1676 — Unearned fee in a domestic matter                   |
| Twilia A. Andrews      | \$3,500.00  | #1585 — Unearned fee in a domestic matter                   |
| Malcolm Brasseaux      | \$25,000.00 | #1627 — Conversion in a succession matter                   |
| Malcolm Brasseaux      | \$12,500.00 | #1620 — Conversion in a succession matter                   |
| Malcolm Brasseaux      | \$19,000.00 | #1623 — Conversion in a succession matter                   |
| Malcolm Brasseaux      | \$12,500.00 | #1668 — Conversion in a succession matter                   |
| John D. Conry          | \$3,463.00  | #1410 — Conversion of costs in a civil rights matter        |
| Douglas Kent Hall      | \$1,500.00  | #1671 — Unearned fee in a custody matter                    |
| Keisha Jones-Joseph    | \$1,000.00  | #1544 — Unearned fee in an insurance matter                 |
| Keisha Jones-Joseph    | \$2,500.00  | #1552 — Unearned fee in an employment discrimination matter |
| Clarence T. Nalls, Jr. | \$14,252.00 | #1359 — Conversion in a personal injury matter              |
| Kevin R. Rees          | \$25,000.00 | #1622 — Conversion of client funds in a property matter     |
| Richard C. Teissier    | \$300.00    | #1656 — Unearned fee in a criminal matter                   |
| Randal A. Toaston      | \$1,000.00  | #1655 — Unearned fee in a post-conviction matter            |

## Q&A

### LOUISIANA CLIENT ASSISTANCE FUND

#### What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to \$25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

#### How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

#### Who can, or cannot, qualify for the Fund?

Almost anyone who has lost money due to a lawyer's dishonesty can apply for reimbursement. You do not have to be a United States citizen. However, if you are the spouse or other close relative of the lawyer in question, or the lawyer's business partner, employer or employee, or in a business controlled by the lawyer, the Fund will not pay you reimbursement. Also, the Fund will not reimburse for losses suffered by government entities or agencies.

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Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property,

you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.



### Subcontract Termination Settlement Authority Under the Federal Acquisition Regulation

*Appeal of Shavers-Whittle Construction, L.L.C.*, ASBCA No. 60025 (Feb. 9, 2016), available at [www.asbca.mil/Decisions/2016/60025%20Shavers-Whittle%20Construction,%20LLC%202.9.16.pdf](http://www.asbca.mil/Decisions/2016/60025%20Shavers-Whittle%20Construction,%20LLC%202.9.16.pdf).

On July 29, 2008, the U.S. Army Corps of Engineers (Government) awarded a small business 8(a) multiple-award task-order contract to DQSI Corporation. On Sept. 30, 2010, the Government awarded Task Order 9 to DQSI, L.L.C., and Task Order 10 to DQSI Corporation. The con-

tracts were for hurricane storm-damage-risk-protection systems in New Orleans.

In October 2010, DQSI, L.L.C., subcontracted with Shavers-Whittle Construction, L.L.C. (appellant), for task orders nine and ten. Three years later, on Oct. 24, 2013, appellant wrote the contracting officer, informing her that DQSI, L.L.C., owed about \$500,000 to appellant resulting from the aforementioned subcontract. The letter made no demands of the Government, nor was it properly certified as required under the Contract Disputes Act (CDA). Therefore, the letter did not meet the elements of a claim under the CDA.

Almost two years later, on March 26, 2015, appellant's counsel wrote to the contracting officer asserting that DQSI, L.L.C., and appellant were in litigation and that DQSI, L.L.C., was not a small business 8(a) contractor and thus had committed fraud when it asserted itself as such to the Government. Further, appellant asserted that because of this, the Government had the authority to terminate the prime contract under Federal Acquisition Regulation (FAR) 49.108-8 and settle with

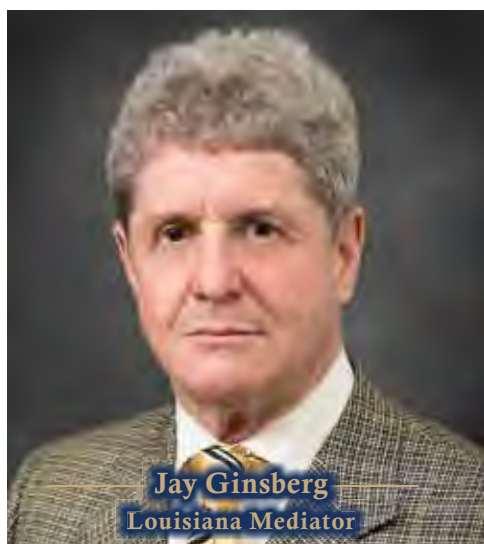
the subcontractors, including appellant. This letter also did not meet the elements of a claim under the CDA.

In general, FAR 49.108-8 provides that when undergoing termination for convenience procedures, the Government may require the prime contractor to assign rights, titles and interests under any subcontract terminated because of the termination of the prime contract. However, the assignment is at the discretion of the contracting officer and must be in the interest of the Government.

In April 2015, the contracting officer notified appellant that the contract had been physically completed and to terminate the contract at that time was not in the best interest of the Government. The contracting officer directed appellant to continue in private litigation.

On June 1, 2015, appellant appealed to the Armed Services Board of Contract Appeals (ASBCA), requesting the voiding of the prime contract and payment of all monies due appellant. The Government moved for dismissal for lack of jurisdiction.

The ASBCA reviews administrative



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appeals of a contracting officer's final decisions under the CDA, 41 U.S.C. §§ 7101-7109. The ASBCA is one of a handful of boards of contract appeals that are available to potential appellants dissatisfied with a contracting officer's final decisions as an alternative to pursuing litigation at the Court of Federal Claims for contract disputes that occur after contract award. A potential appellant's choice of board of contract appeals depends on the government agency involved. The ASBCA has jurisdiction to decide appeals regarding contracts made by the Department of Defense or an agency that has designated the ASBCA to decide the appeal. Of the boards of contract appeals, by far the ASBCA is the largest board and issues the vast majority of decisions. The ASBCA consists of 20 to 30 administrative judges who dispose of anywhere between 500 to 900 appeals a year.

After an evidentiary hearing, the ASBCA granted the Government's motion to dismiss for lack of jurisdiction. In support, the ASBCA pointed to the general

rule that, under the CDA, an appeal of a contracting officer's final decision must be filed by a prime contractor for the ASBCA to have jurisdiction over the appeal. *See, SKE Tech. Servs. GmbH*, ASBCA No. 59711, 15-1 BCA ¶ 35,941 at 175,662. In this case, appellant admitted that it did not have a contract with the Government, but argued that FAR 49.108-8(b) created an implied-in-law contract between the Government and the subcontractor. The ASBCA did not find appellant's argument persuasive, noting that the ASBCA does not have jurisdiction to entertain any implied-in-law claims an appellant may assert. *See, ASFA Constr. Indus. & Trade, Inc.*, ASBCA No. 57269, 15-1 BCA ¶ 36,034 at 176,005.

Further, the ASBCA noted that it does not possess jurisdiction to order injunctive relief, such as the appellant's request to void or terminate the subject contract. *See, CDM Constructors, Inc.*, ASBCA No. 59524, 15-1 BCA ¶ 36,097 at 176,240. Additionally, the ASBCA clarified that it does have jurisdiction over requests for the payment of money; however, appel-

lant first had to submit a proper claim to the contracting officer for a sum certain. *See, Al Bahar Co.*, ASBCA No. 58416, 14-1 BCA ¶ 35,691 at 174,689. Appellant conceded that the March 26, 2015, letter to the contracting officer did not request a sum certain, but asserted that the Oct. 24, 2013, letter did and, therefore, the ASBCA had jurisdiction. Again, the ASBCA did not find that argument persuasive, noting that even if the ASBCA treated the 2013 letter as part of a claim, appellant still failed to properly certify the claim as required under the CDA. *See, GSC Constr., Inc.*, ASBCA No. 59401, 15-1 BCA ¶ 35,887 at 175,445. Consequently, the ASBCA determined that the Subcontractor Termination Settlement Authority in FAR 49.108-8 does not in and of itself afford jurisdiction under the CDA.

—**Bruce L. Mayeaux**  
Member, LSBA Administrative  
Law Section  
Major, Judge Advocate  
U.S. Army

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## Supreme Court's Interpretation of "Actual Fraud"

*Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581 (2016).

Chrysalis purchased nearly \$164,000 in products from Husky International. Subsequently, Daniel Ritz, Chrysalis' director and partial owner, drained Chrysalis' assets and transferred large amounts of money to other companies he owned. Husky filed a lawsuit against Ritz to recover Chrysalis' debt, claiming the transfers constituted "actual fraud" under Texas law. Ritz then filed for Chapter 7 bankruptcy. Husky filed an adversary proceeding arguing the debt should not be discharged because the transfers constituted actual fraud pursuant

to section 523(a)(2)(A) of the Bankruptcy Code, which excepts from discharge debts that were obtained by "false pretenses, a false representation, or actual fraud . . ."

The bankruptcy court and the 5th Circuit found Ritz to be personally liable, but held that because he never made a misrepresentation to Husky, the debt was not obtained through "actual fraud" under section 523(a)(2)(A); therefore, the debt could be discharged.

The Supreme Court reversed, stating that by requiring actual misrepresentation by the debtor, the courts below failed to differentiate between "actual fraud" and "false pretenses or false representations." Congress' addition of "actual fraud" to the Bankruptcy Code in its 1978 amendment was not intended to have the same meaning as pre-existing terms in the Bankruptcy Code. Further, the common law interpretation of the terms "actual" and "fraud" support the holding that any conduct that counts as "fraud," *i.e.*, done with wrongful intent, constitutes "actual fraud." Behavior of the type that Ritz undertook, transferring assets to prevent debt

collection, has consistently been described as fraud by courts and legislatures. The Supreme Court pointed out that a debtor in a fraudulent conveyance context has little opportunity to make a misrepresentation to the creditor, except where the creditor asks about the assets' whereabouts. The Supreme Court held the "concealment and hindrance" aspects of the debtor's conduct appropriately fell within the definition of "actual fraud," under section 523(a)(2)(A).

## Authority of Puerto Rico to File Chapter 9

*Puerto Rico v. Franklin Calif. Tax-Free Trust*, 136 S.Ct. 1938 (2016).

Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the Act), which contains sections, namely Chapter 3, which mirror Chapters 9 and 11 of the Bankruptcy Code, enabling Puerto Rico's public utility corporations to restructure their debt. A group of investment funds and utility bondholders sought to enjoin the Act, arguing that 11

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U.S.C. § 903(1) explicitly pre-empts it. The district court enjoined enforcement of the Act, and the 1st Circuit affirmed. The Supreme Court affirmed the 1st Circuit, reasoning that the Code's definition of a "State" excludes Puerto Rico for purposes of defining who can be a debtor, but does not exclude Puerto Rico from the scope of the pre-emption provision.

In reaching its ruling, the Supreme Court pointed to the clear language of the Code as the best indication of Congress' intent. The Code contains a "gateway" provision in section 109(c) requiring a Chapter 9 debtor to be an insolvent municipality that is "specifically authorized" by a State "to be a debtor." The pre-emption provision of section 903(1) bars states from enacting municipality bankruptcy laws, but section 101(52) defines "States" to include Puerto Rico, "except for purposes of defining who may be a debtor under Chapter 9." Holding that Congress clearly intended this language to apply only to the "who may be a debtor" section of Chapter 9, the Supreme Court rejected Puerto Rico's argument that the definition removed Puerto Rico from the scope of Chapter 9 entirely. The result of this interpretation is that Puerto Rico is barred from authorizing a municipality to proceed as a debtor, thereby preventing Puerto Rico's municipalities from seeking Chapter 9 relief. Because Puerto Rico is still subject to the rest of Chapter 9, including the pre-emption provision, it is not permitted to enact bankruptcy laws for its municipalities, and the Act violates this prohibition.

Justice Sotomayor dissented, joined by Justice Ginsberg. Justice Sotomayor would hold that Puerto Rico is excluded from the scope of Chapter 9 entirely. She reasoned that the Chapter 9 pre-emption provision necessarily presupposes that Chapter 9 would apply only to states that can authorize their municipalities to proceed as debtors. In order to seek relief under Chapter 9, the debtor must be a municipality that has been specifically authorized by the State to seek restructuring. Because Puerto Rico's municipalities are unable to pass through the Chapter 9 "gateway" laid out in this provision, she does not believe that any of the provisions of Chapter 9 apply, including the provision prohibiting the states from making municipality bankruptcy laws.

Justice Sotomayor admonished the majority for abandoning the Court's "repeated exhortations to read statutes in context of the overall statutory scheme." She stated that, when read in context, Congress' amendment precluding Puerto Rico (and the District of Columbia) from seeking Chapter 9 relief removes them from the benefits of Chapter 9, as well as its burdens (the pre-emption clause). By preventing Puerto Rico's municipalities from attaining Chapter 9 relief, but also prohibiting Puerto Rico from enacting municipality-level bankruptcy laws, Justice Sotomayor argues that the Supreme Court has left Puerto Rico and its 3.5 million citizens powerless and without any legal recourse to seek relief until Congress steps in to help the crisis. She ended her dissent quoting a congressional letter to the Senate Committee on the Judiciary addressing Puerto Rico's Fiscal Crisis stating, "Statutes should not easily be read as removing the power of the government to protect its citizens."

—**Tristan E. Manthey**  
Chair, LSBA Bankruptcy  
Law Section  
and

**Cherie Dessauer Nobles**  
Member, LSBA Bankruptcy  
Law Section  
Heller, Draper, Patrick, Horn  
& Dabney, L.L.C.  
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New Orleans, LA 70130



## Shareholders' No Price Buy-Sell Agreement

*In re P.K. Smith Motors, Inc.*, 50,357 (La. App. 2 Cir. 3/9/16), 188 So.3d 324, writ denied, 16-0852 (La. 6/17/06), \_\_\_\_ So.3d \_\_\_\_, 2016 WL 3581693.

In 1984, all of the shareholders of a corporation signed a shareholders' agreement with various restrictions on the transfer of shares, including a provision that, on the death of a shareholder, within 60 days after qualification of the succession representative, the corporation was required to buy, and the deceased's estate was required to sell, all shares owned by the shareholder at death, to the extent the corporation lawfully could do so. To the extent it could not, the remaining shareholders had the option to buy the shares pro rata shortly thereafter. The purchase price per share was left blank in the agreement.

After 1997, two shareholders each held half of the shares. In 2009, one died. In 2013, his estate filed suit against the corporation and the other shareholder, seeking to discontinue the business and dispose of its assets under the former La. R.S. 12:143(C) (a special provision applicable only to a corporation with two 50 percent shareholders, essentially

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providing that unless the shareholders agree on a plan of discontinuance and disposition, the court “may” proceed with involuntary dissolution). The defendants opposed, seeking specific performance of the shareholders’ agreement and asserting other claims. The defendants proposed as the plan that the court hold a hearing to determine a fair price, after which the defendants would either pay that price to buy the estate’s shares or else agree to a liquidation, and the trial court so ordered. The estate objected to the plan and moved for summary judgment seeking to proceed with dissolution. The estate filed another motion for summary judgment against specific performance of the shareholders’ agreement on the grounds that it was unenforceable for lack of a price. The trial court denied both motions, held the hearing, found that the shareholders’ agreement required determination of a “reasonable price,” determined the “fair value” of the corporation to be \$1 million and set the price for the estate’s shares at \$500,000.

The appellate court held that “[t]hough the estate argues that the agreement is a contract to sell that is unenforceable because it lacks a price, we find that the agreement is properly viewed as a transfer restriction.” The court noted that “[t]ransfer restrictions applicable to the *mortis causa* sale of stock are valid” and that La. R.S. 12:143(C) used the word “may.” Based on the law and some of the testimony of the parties, the appellate court held that the trial court appropriately found in favor of denying relief under La. R.S. 12:143(C) and in enforcing the shareholders’ agreement, explaining that this result appeared to be the “best resolution” of the dispute, in accordance with the intent of the shareholders’ agreement, and “equitable.” The appellate court also found no error in the determination of the price, noting that both sides had testified they would agree to a fair price. One testified that the shareholders’ agreement did not contain a price because of volatility in the industry at the time and that the shareholders intended a “fair market

value or fair price” would be determined when needed, which testimony was uncontroverted.

In passing, the appellate court noted that the new Louisiana Business Corporation Act now provides that, in a dissolution proceeding brought by a shareholder, either the corporation or a shareholder may elect to purchase the shares of the petitioning shareholder at a fair value.

## Shareholders’ Noncompete Agreement

*Patridge v. Starks*, 50,351 (La. App. 2 Cir. 2/24/16), 189 So.3d 1112.

In 2004, the investors in a Louisiana corporation all signed a noncompete agreement stating that if any of them were terminated as shareholders, they would not compete against the corporation in a five-parish area within 24 months after termination. One of them, Edwards, ceased to be a shareholder on July 31, 2013,



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when his shares were acquired at auction by two of the others. His son formed a new company that commenced business in March 2014 in direct competition with the corporation, and Edwards helped by pledging funds to secure a loan to the new company and by referring some of the corporation's customers to the new company. An earlier case had concluded that Edwards breached the noncompete agreement; in this case, the trial court held a separate trial to determine the damages and awarded \$600,000.

Edwards appealed, claiming among other things that the trial court erred by considering activities outside of the non-compete area and by awarding damages for lost profits after the expiration of the noncompete period. The appellate court affirmed, however, noting that the profits that the corporation lost from customers would have accrued to the corporation in Louisiana and that Edwards' actions to compete against the corporation were "primarily concentrated" in the non-compete area. The court upheld the trial court's award of lost sales through the end of 2016 (a year and a half beyond the end of the noncompete period) because the defendant's early entry into the market in violation of the noncompete agreement caused the corporation damages that could have been mitigated had the defendant abided by the agreement, and because customers prematurely lost were unlikely to return.

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## Community Property

*Fleece v. Fleece*, 50,262 (La. App. 2 Cir. 1/4/16), 185 So.3d 90.

After being discharged from the military, Mr. Fleece withdrew his retirement contributions. Subsequently, after the termination date of the community, he bought back those years of service at the same value as his contributions, thus allowing him sufficient service years to be eligible for military retirement benefits. The repayment was to be paid in installments by deductions from the retirement benefits. The trial court held, and the court of appeal affirmed, that those years were community years for the calculation of the community's interest in the benefit, and that Ms. Fleece was entitled to 24.5 percent of the retirement benefits. The court of appeal reversed the trial court's order that Ms. Fleece had to reimburse Mr. Fleece for one-half of the funds being used to repurchase the service years, since that purchase was being made from the ongoing monthly retirement benefits, a portion of which were community. Because the years being repurchased were attributable to his employment during the community, they remained a community asset. Interestingly, the court held that Mr. Fleece might have a future claim if he could show that his separate funds were being used to pay the community portion of the repurchase.

*Succession of Seal*, 15-0855 (La. App. 1 Cir. 12/23/15), 185 So.3d 791.

Ms. Seal was entitled to the marital portion of Mr. Seal's estate under La. Civ.C. art. 2432. Her living in the home after his death was not an offset to her entitlement of the marital portion, as it was not an asset existing at the time of his death. Moreover, she had no obligation to reimburse Mr. Seal's heir for her use of the home. She was also entitled to the marital portion in ownership, rather than in a cash value.

*Estate of Goss v. Estate of Goss*, 15-0960 (La. App. 3 Cir. 3/9/16), 187 So.3d 570, writ denied, 16-0660 (La. 5/27/16), \_\_\_ So.3d \_\_\_, 2016 WL 3258363.

Mr. and Ms. Goss had confected a declaration of paraphernality during their marriage. The action by Mr. Goss's estate against Mrs. Goss's estate to have a piece of immovable property classified as community, rather than separate property, was prescribed after their deaths because even if Mr. Goss could have controverted the declaration during his lifetime, such a claim would have prescribed prior to his death and could not be resurrected by his heirs once it had prescribed.

## Custody

*Tracie F. v. Francisco D.*, 15-1812 (La. 3/15/16), 188 So.3d 231.

The Louisiana Supreme Court accepted this writ application to determine the standard when a biological parent seeks to modify a consent judgment where the biological parent shares joint custody with a non-parent who has been designated the domiciliary parent. The court held that La.

Civ.C. articles 131 and 134 apply, not article 133, which applies only on an initial determination. On a change of circumstances to modify a prior custody arrangement, the party seeking the modification, even the biological parent, must show a change of circumstances since the prior award, and that a modification is in the child's best interest. The court found that the biological parent did not have to show that he had been "rehabilitated" since the last order, or that the significant or material change occurred in the situation of the domiciliary parent. Here, Francisco was able to show a change in circumstances in that he had begun to participate more extensively in the child's life. However, he failed to show that a modification would be in the child's best interest, as the child had primarily lived with the maternal grandmother in a continuing stable environment.

*Coleman v. Manley*, 15-0778 (La. App. 5 Cir. 3/16/16), 188 So.3d 395.

A judgment awarding custody under the Post-Separation Family Violence Relief Act is not a considered custody decree subject to the *Bergeron* standard to demonstrate

a change of circumstances if evidence of parental fitness is not taken at that hearing, and only evidence of the alleged violence is taken. Testimony by Ms. Coleman in which she introduced certificates evidencing her completion of anger-management programs was sufficient to fulfill her burden of proof under La. R.S. 9:364 to show that she had completed the required treatment program. Although the trial court did not expressly review the La. Civ.C. art. 134 custody factors because they had been addressed sufficiently in the custody evaluator's report, on which the trial court relied, and, in large measure, incorporated into its judgment, the court of appeal found that the trial court had sufficiently considered those factors in changing domiciliary custody from Mr. Manley to Ms. Coleman.

Although the parties lived more than 75 miles apart, the relocation statute did not apply, as this was a custody, not a relocation proceeding; and, further, Ms. Coleman was not seeking to establish a new residence, nor was Mr. Manley, but both parties were continuing to live in their existing residences. The court found that the relocation statutes apply only when a custodial parent seeks



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to establish a new residence more than 75 miles from the current residence.

*McGovern v. McGovern*, 15-0737 (La. App. 5 Cir. 3/30/16), 189 So.3d 503.

The court of appeal affirmed the trial court's award of visitation with the minor child to the grandmother, after the child's mother died following the parties' divorce. The court found that La. Civ.C. art. 136 was applicable, that the grandmother was allowed to seek visitation under that article, and that she had demonstrated that visitation with her grandson was both reasonable and in the child's best interest. The court awarded her the second weekend of each month from Friday through Sunday; Mother's Day, Christmas Eve, Thanksgiving Eve and Easter Eve from noon to 6 p.m.; two consecutive weeks of vacation time during the summer; weekly telephone contact; and allowed her to participate in the child's school activities and extracurricular events. Although the father argued that the visitation was excessive and infringed on his primary parental rights, the court of appeal found that the schedule was reasonable, particularly given the grandmother's historical relation-

ship and visitation with the child.

## Parental Rights

*State ex rel. K.C.C.*, 15-1429 (La. 1/27/16), 188 So.3d 144.

After surveying the codal history and jurisprudence, the Louisiana Supreme Court ruled that "private counsel in a particular case may be specially appointed, by approval of the court, to pursue the termination of parental rights due to abandonment under La. Ch. Code art. 1015(4)." Here, the parties seeking to adopt the child had obtained an order from the trial court designating their attorney as special counsel to seek to terminate the biological parents' rights regarding the child. The court's granting that authority "cured" private counsel's lack of authority to seek termination.

—David M. Prados

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## Jurisdiction Over Foreign Entities

*Patterson v. Aker Solutions, Inc.*, \_\_\_\_ F.3d \_\_\_\_ (5 Cir. 2016), 2016 WL 3254605.

Patterson, a U.S. citizen, was working aboard the M/V SIMON STEVIN, a Luxembourg-flagged vessel installing subsea production equipment in a gas and condensate field off the coast of Russia, when he was struck by a cable and injured. He filed a personal injury suit against four foreign corporations, owners or operators in the endeavor. Aker Subsea AS (Aker) moved to dismiss for lack of personal jurisdiction. The district court found neither specific nor personal jurisdiction existed over Aker under FRCP

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Rule 12(b)(2) and granted the motion, the subject of this appeal.

Patterson argued that Aker had sufficient contacts with the United States to establish jurisdiction under FRCP 4(k) (2) in that, over a three-year period, it entered into 11 secondment agreements whereby it would assign its employees to an American affiliate in Houston, Aker Solutions, while they remained Aker Subsea employees. Was this sufficient contact?

The court stated that due process in federal cases governed by Rule 4(k)(2) is measured with reference to the 5th, rather than the 14th, Amendment. To assert general personal jurisdiction under Rule 4(2) (k), Aker's "contacts with the United States must be so continuous and systematic as to render it essentially at home in the United States." Both Aker Subsea's place of incorporation and its principal place of business are in Norway. Aker's only business contacts with the United States were the 11 secondment agreements.

The court then looked for what the Supreme Court has described as the "exceptional case," *i.e.*, it compared this case to the only other in which that court found a sufficient basis for the exercise of general jurisdiction over a non-resident defendant — *Perkins v. Benguet Consol. Mining Co.*, 72 S.Ct. 413 (1952). There, a Philippine corporation was found to be subject to general personal jurisdiction in Ohio based on extensive contacts within the state. During World War II, Benguet moved certain operations to Ohio, including maintaining an office, keeping company files there, corresponding from Ohio about business and employees, paying salaries to the company's president and two secretaries, maintaining company bank accounts, using an Ohio bank as a transfer agent for stock of the company, holding several director's meetings, managing company policies concerning rehabilitation of company property in the Philippines and sending funds to pay for projects in the Philippines.

The court found that Aker's contacts fell "well short of effectively operating its business within the United States." Its limited contacts with the United States, *i.e.*, the 11 secondment agreements, were insufficient to satisfy due process concerns.

## Damage Award: *Housley* Presumption

*Bush v. Mid-South Baking Co., L.L.C.*, 15-0540 (La. App. 5 Cir. 5/26/16), \_\_\_\_ So.3d \_\_\_\_, 2016 WL 3031634.

Bush was a guest passenger in a car that struck a gate extended from defendant's delivery truck in a McDonald's parking lot, sustaining injuries. The trial court found the car's driver negligent in failing to see the gate, and the defendant liable for not strictly following company guidelines in marking the hazard, assessing 25 percent liability to the defendants, and 75 percent to the car's driver. The appellate court found no manifest error in the trial court's apportionment of fault.

In his remaining assignment of error, Bush contended that the trial court erred in failing to apply the *Housley* presumption, in finding that his neck injury was not related to the accident and in failing to award all related medical expenses. In *Housley v. Cerise*, 579 So.2d 973, 980 (La. 1991),

the court stated that a claimant's disability is presumed to have resulted from an accident, if before the accident he or she was in good health, "but commencing with the accident the symptoms of the disabling condition appear and manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition."

The court found that Bush failed to show he was healthy before the accident. To the contrary, Bush admitted that he was receiving workers' compensation at the time of the automobile accident, which indicated he had some kind of injury that made him unable to work. Thus, the *Housley* presumption was inapplicable.

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## 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 Tuesday through Friday, Nov. 1-4, 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 2017. (Costumes that were donated after Halloween 2015 are being distributed to children for 2016.)

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







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## **Supreme Court Rules Against Tyson Foods in Class Action Case**

*Tyson Foods v. Bouaphakeo*, 136 S.Ct. 1036 (2016).

On March 22, 2016, the U.S. Supreme Court upheld class certification — and a \$2.9 million jury verdict — in a donning and doffing case brought under Iowa law and the federal Fair Labor Standards Act (FLSA). The Court addressed the question of when statistical sampling evidence may be used to establish class-wide liability. Departing from recent decisions, the Court specifically limited its ruling to the facts of this case, holding that representative, statistical evidence may be used to cer-

tify a class action if the same sampling could be used to establish liability in an individual action.

Tyson employee Bouaphakeo brought a class action and collective action on behalf of herself and other plant employees seeking compensation for time spent donning and doffing protective gear to perform their jobs. The employees contended that they were either not paid for their donning and doffing time or were paid for a small, fixed amount of time that was much less than the time actually required. Under both the FLSA and Iowa law, an individual employee bringing such an action needs to show that the time spent donning and doffing combined with the time spent working totaled more than 40 hours a week and that the employer did not pay for all of the work time. Before the district court, Tyson did not argue whether the compensability of time spent donning and doffing was a question common to the class. It argued, rather, that because employees spent different amounts of time donning and doffing gear, some of which was less than the time for which they were paid, and some of which would not

bring their time to 40 hours in a week even if added to their paid work hours, the case could not fairly be tried on a class basis.

Because Tyson did not maintain records of the time employees spent donning and doffing, the employees hired an expert to estimate the average time workers in various departments spent donning and doffing their gear. Then, using the time records Tyson had for each employee, another expert calculated whether each class member should have been paid overtime in any given week and, if so, how much. Remarkably, Tyson neither objected to the employees' experts' methodology nor offered any rebuttal expert. Instead, it contended that the variance in time spent donning and doffing made the claims too speculative for class-wide recovery.

In a 6-2 decision, the majority opinion, written by Justice Kennedy, stated the plaintiffs were entitled to rely on statistics to prove their case. Justice Kennedy affirmed the judgment based on the premise that any individual could have used the expert's study to raise a reasonable inference of the amount of time he

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or she spent donning and doffing. Justice Kennedy wrote: “A representative or statistical sample, like all evidence, is a means to establish or defend against liability. Its permissibility turns not on the form a proceeding takes — be it a class or individual action — but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action.” *Id.* at 1046.

Justice Kennedy further explained that this ability for individuals to rely on statistical evidence in their individual cases distinguished this case from *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541 (2011), where the Court held that the purported sample could not properly be used by any individual outside the sample to determine individual liability. Justice Kennedy contrasted *Wal-Mart*, where the employees’ experiences bore little relationship to one another, with *Tyson*, where the employees worked in the same facility, performed similar work and were paid under the same policy to clarify that a representative sample is not always an impermissible means to establish class-wide liability.

The workers should not suffer because *Tyson* failed to keep accurate records, Justice Kennedy added, citing as precedent *Anderson v. Mt. Clemens Pottery Co.*, 66 S.Ct. 1187 (1946), a decision allowing statistical sampling in the absence of accurate time records.

In dissent, Justice Thomas, joined by Justice Alito, said the decision gives employers an “untenable choice” — either they must track any time employees spend doing uncompensated work to deflect “an innovative lawsuit,” or face the threat of a class action based on statistical sampling later.

*Tyson* also argued that awarding damages based on averages would result in payments to employees who had not been injured, but the Court said that this issue could not be addressed until the district court approved a plan to allocate the awarded damages among class members. In his concurring opinion, Chief Justice Roberts addressed this issue in detail, concluding that allocating the money could prove impossible and that the plaintiff’s proposal for allocating the award would not weed out uninjured plaintiffs. “[I]f there is

no way to ensure that the jury’s damages award goes only to injured class members, that award cannot stand,” he wrote.

*Tyson* gives employees another tool for bringing class action lawsuits against employers. The fact that the Supreme Court declined to categorically exclude such evidence in the class action context may indicate a growing willingness on the part of the courts to admit such evidence, provided it bears certain indicia of reliability.

—Kevin R. Mason

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## 2016 Regular Session

**Act No. 277** provides for a monthly fee to dispose of waste that is generated by exploration and production activities. The law, signed by the Governor on May 27, 2016, requires a \$0.02 per barrel fee to be paid to the Office of Conservation for exploration and production waste delivered to certain facilities: (1) any Office of Conservation-permitted, off-site commercial facilities; (2) any transfer stations permitted by Conservation for waste transfer to an out-of-state treatment or disposal facility; or (3) any other legally permitted Louisiana off-site waste-storage, treatment or disposal facility approved by Conservation for the receipt of exploration and production waste. “Waste” does not include brine, produced water or salvageable hydrocarbons.

**House Bill No. 632** relates to financial security that must be posted by applicants (1) applying for a permit to drill, or (2) seeking to amend a permit to drill because of a change of operator. For a permit to drill, an applicant shall provide financial security 30 days after the date

of completion or 30 days from the date the operator is notified by Conservation that financial security is required. For an amendment, financial security must be paid in accordance with La. R.S. 30:4.3 or by establishing a site-specific trust account prior to the change of operator. The amount of financial security is set by the Commissioner of Conservation and may be based on an individual-well or multiple-well basis and may depend on the well’s location. For a well that is 3,000 feet or less, financial security shall be \$2.00 per foot. Financial security is not required for (1) orphaned wells, or (2) any well where an operator has an agreement with Conservation to plug a well that has been declared orphaned and the proposed well is similar in depth and location to the orphaned well. This bill was sent to the Governor for executive approval as of June 6, 2016.

## Operating Agreement; Arbitrability of Claims

*LeBlanc v. Texas Brine Co., L.L.C.*, \_\_\_\_ F.Supp.2d \_\_\_\_, (E.D. La. May 10, 2016), 2016 WL 2849506.

This case arises from the Bayou Corne sinkhole litigation and presents a number of issues relating to the “arbitrability of claims” pursuant to a 1975 operating agreement and its amendments (operating agreement). Two motions to stay are at issue — one filed by Occidental Chemical Corp. (Occidental) and one filed by OXY USA, Inc., an affiliate of Occidental.

Occidental’s motion sought to stay litigation brought by Texas Brine Co., L.L.C., in federal court pending an arbitration panel’s decision as to which of Texas Brine’s claims were arbitrable. The parties had been in arbitration since September 2013. Texas Brine opposed the motion and maintained that none of its tort claims against Occidental were arbitrable because none of its claims related to the operating agreement. Occidental, conversely, argued that all of Texas Brine’s claims were arbitrable pursuant to either the operating agreement or one of the many other contracts between the parties over the years.

As a preliminary matter, the court had



to decide whether the issue of arbitrability was to be determined by it or a panel of arbitrators. Texas Brine argued that it was the duty of the court to decide arbitrability. Occidental contended that 5th Circuit precedent required that a panel of arbitrators decide.

In its analysis, the court noted, first, that arbitrability is governed by Louisiana (contract) law. As such, there must be “clear and unmistakable” evidence that the parties agreed to arbitrate. Second, the court noted that it has plenary power to decide the question of arbitrability unless the agreement states “clearly and unmistakably” that an arbitrator must do so.

The operating agreement incorporated by reference the American Arbitration Association (AAA) rules. Those rules state in part that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction *including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.*” (Italics added.) Louisiana law provides that incorporating AAA rules is enough to show “clear and unmistakable” evidence of the parties’ intent to allow an arbitrator to decide arbitrability. Based on this, the court found that it was the arbitration panel’s role to decide arbitrability.

As to scope — whether Texas Brine’s tort claims were arbitrable — the court looked at whether the claims were “wholly groundless” (*i.e.*, do the claims relate to the operating agreement?). Here, the court found that Texas Brine’s claims were not “wholly groundless” because the language of the arbitration agreement was broadly worded and there is a strong federal policy in favor of arbitration.

Regarding OXY USA’s motion — whether a non-signatory (OXY) could compel a signatory (Texas Brine) to arbitrate — the court held that the doctrine of equitable estoppel requires that all claims between a signatory and non-signatory must be arbitrated where those claims are so intertwined with the contract (here, the operating agreement) that it would be unfair to deny the arbitration of those claims.

Based on these rulings, the court ultimately stayed the litigation as between Texas Brine and Occidental and Texas

Brine and OXY USA, *et al.*

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## Manifest Error

*Montz v. Williams*, 16-0145 (La. 4/8/16), 188 So.3d 1050.

A jury decided that the plaintiffs had failed to prove the applicable standard of care for obtaining informed consent; thus, no other jury interrogatory was answered. The court of appeal concluded that this finding was clearly wrong and was without a reasonable factual basis because expert testimony from both sides, together with the medical-panel opinion, presented the jury with adequate information to establish “that the standard of care . . . was to obtain informed consent.” *Montz v. Williams*, 15-0221 (La. App. 5 Cir. 12/23/15), 182 So.3d 1149.

The Supreme Court granted writs and summarily reversed. The Court recognized the need for expert testimony to aid the factfinder in determining the applicable standard of care, but also noted that expert witnesses often disagree on standard-of-care issues. The Court referenced the oft-quoted tenets of *Rosell v. ESCO*, 549 So.2d 840, 844-45 (La. 1989), “Where there are two permissible views of evidence, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong;” and *Bellard v. American Cent. Ins. Co.*, 07-1335, P.27, (La. 4/18/08), 980 So.2d 654, 672, when

that determination “is based on a decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous . . . .”

Both sides of this litigation agreed that the standard of care required Dr. Williams to obtain Mrs. Montz’s informed consent, which led the court of appeal to decide that the jury’s decision that the Montzes had not proved the applicable standard of care was clearly wrong. The Supreme Court acknowledged that all the experts agreed that informed consent was mandated, but it decided that the jury had arrived at its opinion based on the language required to obtain informed consent under the circumstances presented, which was a matter the court determined was “reasonably contested.” In choosing to accept one side’s expert testimony over the other’s, the jury could not have been manifestly erroneous.

Noticeably absent from the *Montz* opinion was reference to a case the court decided four months earlier: *Hayes Fund for First United Methodist Church of Welsh, L.L.C. v. Kerr-McGee Rocky Mountain, L.L.C.*, 14-2592 (La. 12/8/15), \_\_\_ So.3d \_\_\_, 2015 WL 8225654.

*Hayes* involved the “classic battle of experts,” which was resolved in the trial court in favor of the defendants based on factual findings and credibility determinations. The court of appeal reversed. The Louisiana Supreme Court accepted the case and determined that the single issue before it was to determine whether the trial court committed manifest error in ruling for the defendants. The court noted in its 68-page opinion that it had “meticulously analyzed this case employing the manifest error doctrine to further demonstrate, as guidance, the proper analysis the reviewing court should employ.”

After determining that the trial court made it clear that it found neither the plaintiffs’ evidence credible nor their exhibits supportive and had concluded, as a factual finding, that the plaintiffs failed to prove their case, the Supreme Court reversed the court of appeal, reinstated the trial court’s judgment, and announced:

The function of the Court of Appeal is to correct errors, not make choices it prefers over the District Court when there are two or more permissible

views of the evidence. . . . Rarely should a District Court's choice of expert(s) be found clearly wrong because it is so difficult to find a reasonable basis does not exist for the expert's opinion relied upon by the District Court. It is destructive to the manifest error analysis for a reviewing court to make its choice of the evidence rather than look for clear error in the reasonable basis found by the trier of fact. . . . We set forth this manifest error analysis at length in this opinion to give guidance to the appellate courts in analyzing evidence under the manifest error doctrine when there are two or more permissible views of the evidence.

## Fax Filing Requests for Review

*In Re Med. Rev. Panel Claim of Tillman*, 15-1114 (La. 3/15/16), 187 So.3d 445.

This case was first reported in 63 La. B.J. 152 (2015) when the court of appeal ruled that the Division of Administration's (DOA) administrative rule was the legal standard for fax filings of medical-review-panel requests, which is that fax filings are permissible but that those received after 5 p.m. will be considered to have been filed on the following day.

In *Tillman*, the request for a panel was faxed on the day prescription tolled (May 22), and it was received by the DOA that same day, but after 5 p.m.; thus, it was date-stamped by the DOA as having been received on May 23. The defendant filed an exception of prescription, which the trial court denied. The appellate court reversed. Its interpretation of La. R.S. 40:1299.47(A)(2)(b) was that a request for review is timely filed at any time of day on the date of mailing *only* when it is sent by certified or registered mail, which meant that *Tillman's* fax filing did not interrupt prescription.

The Supreme Court granted writs to review the appellate court's interpretation of La. R.S. 40:1231.8(A)(2)(b). The Court observed that, as to other methods of delivery of medical-review-panel requests (certified or registered mail), paragraph (A)(2)(b) (to-wit, a panel request "shall be deemed filed on the date of receipt of the request stamped and certified by the division of administration") is ambiguous as applied to fax-filed requests.

The Court discussed Louisiana's Uniform

Electronic Transmission Act (UETA), La. R.S. 9:2601, *et seq.*, and decided that the fax filing of documents occurs when the electronic record "[e]nters an information processing system," which encompasses a fax machine. As to the defendant's argument that the DOA's rule, *i.e.*, its authority to postdate panel requests was controlling, the court noted that administrative rules "may not exceed the authorization delegated by the legislature." In this instance, the DOA's postdating policy circumvented paragraph 8(A)(2)(a), which directs that it is "the filing" of the panel request that suspends prescription. The lower court also ignored the UETA's rule that "receipt occurs when the document reaches the designated system." When the DOA decided that the document it received on May 22 would be deemed received on May 23, thus shortening the one-year prescriptive period, it was attempting to overrule La. R.S. 9:5628 and La. Civ.C. arts. 3454, 3456 and 3492, a result the Legislature could not have intended; ergo, the court ruled that the fax filing was timely.

—Robert J. David

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



## Duty of Taxpayers to Keep Suitable Records

*Yesterdays of Lake Charles, Inc. v. Calcasieu Parish Sales & Use Tax Dep't*, 15-1676 (La. 5/13/16), 190 So.3d 710.

*Yesterdays of Lake Charles, Inc.* and *Cowboy's Nightlife, Inc.* (clubs) were selected for a sales tax audit by the Calcasieu Parish School System Sales and Use Tax Department (collector). The clubs were cash-based businesses that sold alcohol and collected cover charges for admission. To account for cash sales, the bartenders would bring the drawer from their register along with the register's "z-tape" to their managers. The z-tape is a printed tape pro-

duced by the cash register that reflects the amount of all sales transactions recorded on a particular machine. The managers would count the cash and match the total against the z-tapes to balance the registers at the end of the night. The z-tapes were neither printed nor retained after their use. The clubs kept no record of the number of people who entered the bars or the cover charges collected and deposited. The clubs used undocumented amounts of cash revenue to pay undocumented expenses (payments to bands, off-duty sheriff's deputies and bouncers) before making bank deposits. The clubs admitted that the bank deposit slips were imprecise records of actual gross sales because an unreported portion of the money collected was not deposited in the bank.

As a result of the audit, the collector issued a Notice of Collector's Intent to Assess additional taxes due based on an examination of the clubs' sales tax returns and bank statements that indicated a discrepancy in the reporting of sales transactions. The collector notified the clubs that it was not able to reconcile the sales taxes due on the returns because of the lack of support such as z-tapes, shift-change reports, etc. The collector issued final notices of assessment to the clubs, which the clubs paid under protest. The trial court and court of appeal ruled in favor of the clubs. The Louisiana Supreme Court granted the collector's writ application.

The Court held the lower courts erred in effectively concluding the bank statements and deposits alone, reflecting at best net sales, were sufficient to meet the record-keeping requirements of La. R.S. 47:337.29(A)(1). The Court found that La. R.S. 47:337.29(A)(1) and its implementing regulation, La. Admin. Code, Title 61, Part 1 § 4359, are clear and unambiguous and do not lead to absurd consequences. The statutes clearly provide that, for the purpose of reporting and paying sales taxes, the dealer must "keep and preserve suitable records of the sales . . . and such other books of accounts as may be necessary to determine the amount of tax due hereunder . . ." The Court also held that the statutes do not require that the collector tell the dealer or taxpayer exactly what records he or she should keep and preserve, nor does the lack of explicit guidance transfer the burden of proving what constitutes suitable



records to the collector.

Based on the clubs' lack of records, the collector estimated the amount of taxes due and used a sampling methodology to do so. The clubs asserted the amount of taxes alleged to be due was erroneous because the clubs had not agreed in writing to the sampling methodology used by the collector and the method used was arbitrary. The Court held that La. R.S. 47:337.45(B) does not require that such agreement must be in writing to be binding on the parties, nor is there any requirement by the collector to prove the clubs' reports were false or fraudulent, or filed with intent to defraud or evade taxes. The Court held that the collector's assessment cannot be considered an arbitrary assessment if the taxpayer fails to comply with the records requirements of La. R.S. 47:337.29. Finding the collector's sampling procedure was done in accordance with generally recognized sampling techniques, the Court reversed the decisions below and upheld the collector's estimated assessment.

—**Antonio Charles Ferachi**  
Member, LSBA Taxation Section  
Director, Litigation Division  
Louisiana Department of Revenue  
617 North Third St.  
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## Tax Sale Null for Failure to Provide Proper Presale Notice

*Adair Asset Mgmt., L.L.C. v. Turney*, (La. App. 2 Cir. 5/4/16), \_\_\_ So.3d \_\_\_, 2016 WL 2342353.

In an action to quiet title on property sold at a tax sale, the 2nd Circuit reversed the trial court's order, finding the tax sale null and of no effect due to the City of Shreveport's failure to provide proper presale notice. Specifically, the 2nd Circuit held:

The possibility that a tax sale could be invalidated at any time as an absolute nullity under the old tax sale regime created a system of persistent uncertainty. It was undoubtedly the aim of the Louisiana Legislature to correct this confusion and create a regime that reconciles the requirements of due process under *Menmonite*, with a system that both provides a fair process for the redemption of tax sale properties and encourages the return to commerce of such properties subject to tax sale. La. R.S. 47:2121; La. R.S. 47:2286.

The plaintiff brought an action to quiet title on property for which it held a tax-sale certificate acquired during the 2010 City of Shreveport tax sale. The trial court ruled for the defendant, finding the tax sale null and of no effect due to the City's failure to provide proper presale notice. The plaintiff maintained that the trial court erred because the defendant had not proved that the tax sale was null under the three exclusive causes for relative nullity pursuant to La. R.S. 47:2286. The 2nd Circuit agreed and reversed the earlier judgment and entered a judgment to quiet and confirm the title held by the plaintiff.

The key notice relied on by the plaintiff in this appeal occurred nine months prior to the expiration of the three-year period for redemption for the 2010 tax sale. The plaintiff sent several notices of the right to redeem the property and the applicable deadlines to all interested parties, but received no response. The plaintiff then filed a petition to quiet title. The defendant an-

swered and subsequently filed a reconventional demand to annul the 2010 tax sale pursuant to *Menmonite Board of Missions v. Adams*, 103 S.Ct. 2706 (1983).

In this case, the 2nd Circuit held that the trial court's reliance on *Menmonite* did not amount to a finding that the relevant statutes are per se unconstitutional. The court found that the City complied with its statutory duties under the prior versions of section 2161 and subsection 2153(A). Furthermore, under the new act, the failure to give presale notice to any tax sale party does not render a sale an absolute nullity. La. R.S. 47:2121; La. R.S. 47:2286; La. Civ.C. art. 2030. The 2nd Circuit found that after the 2008 revision, *post-sale notice is now the important notice for due process in tax sales and redemption*. Under Section 2122(4) of the new act, it does not matter whether a tax debtor, mortgagee or other tax-notice party receives notice from the tax collector or the tax purchaser, and under Section 2122(12), it does not matter how the notice is sent (regular or certified mail). If the post-sale notice of the right to redeem is received by the tax-sale parties more than six months before the end of the redemption period, due process is satisfied. La. R.S. 47:2156.

The court also agreed with the plaintiff's argument that the new act abolished the practice of invalidating tax sales as absolute nullities based on deficient presale notice because failure by the taxing authorities to give notice is a relative nullity and, unlike an absolute nullity, a relative nullity is capable of being cured. La. Civ.C. art. 2031. The result is that only three exclusive causes now exist that render a tax sale a relative nullity — redemption nullity (La. R.S. 47:2122), payment nullity (La. R.S. 47:2122) or sale to a prohibited buyer (La. R.S. 47:2162). The 2nd Circuit rejected the argument that a redemption nullity occurred because the plaintiff timely mailed redemption notices to all parties, in the proper form. La. R.S. 47:2122(4),(10), 47:2156(B)(3), 47:2286.

—**Rachael A. Arteaga**  
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**CHAIR'S MESSAGE**

# The Rains Came and the LSBA Responded

By Scotty E. Chabert, Jr.

Humbled, humbled, humbled . . . On Aug. 13, 2016, I watched the rain stay on top of Baton Rouge for hours dumping water, then the water began to rise and stopped three feet from the back of my home. I was lucky!

On Aug. 29, 2005, I was a third-year law student and all I could do was watch on television as the Hurricane Katrina waters rose and devastated many homes, lives and law practices.



**Scotty E. Chabert, Jr.**

Looking back, I keep asking myself, "Could I have done more then?" Do not sit idle and be left asking that same question of yourself.

Together with the Louisiana Civil Justice Center, FEMA and the American Bar Association Young Lawyers Division, the Louisiana State Bar Association has set up free legal assistance for Louisiana flood victims via a toll-free legal aid hotline, 800-310-7029. This hotline for victims of the storms and flooding allows victims to call and request assistance of a lawyer for the following types of assistance:

- ▶ securing FEMA and other benefits available to disaster survivors;
- ▶ assistance with life, medical and property insurance claims;
- ▶ help with home repairs and

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contractors;

- ▶ replacement of wills and other legal documents destroyed in the floods;
- ▶ aid in consumer protection matters, remedies and procedures; and
- ▶ counseling on mortgage-foreclosure and landlord-tenant problems.

The hotline is available 24 hours a day, seven days a week, and callers can leave a message. Those individuals who qualify for assistance will be matched with Louisiana lawyers who have *volunteered* to provide free, limited legal help. This is where you come in!

If by the time you read this message you have not volunteered, then consider volunteering today. I am often reminded that practicing law is not a "right" but a "privilege." Use the privilege you have been given to help another. Of course, if you want to step out of your lawyer suit, feel free to head to Baton Rouge and surrounding parishes and get your hands dirty. There is no shortage of demolition, cleanup and rebuilding tasks to be done.

**YOUNG LAWYERS SPOTLIGHT**

**Scott M. Levy  
Baton Rouge**



**Scott M. Levy**

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Baton Rouge attorney Scott M. Levy.

In 2015, Levy joined Amedisys, Inc., a national home health and hospice provider, as its director of government affairs. He is responsible for leading the health care provider's legislative and regulatory strategies at the federal and state level. He also is directly involved with managing all state and federal trade association relationships where Amedisys is a member.

Prior to joining Amedisys, Levy spent four years with Adams and Reese, L.L.P., as a member of the firm's Special Business Services Practice Group. He litigated cases through trial, was involved in complex regulatory transactions and was a registered lobbyist. His expansive practice included representing a wide array of clients in procurement matters in Louisiana, including health care companies, insurance firms and other service providers. He also represented clients before the Louisiana Public Service Commission on telecommunications, water, wastewater and transportation matters.

Levy is a former law clerk for Judge Timothy E. Kelley in the 19th Judicial District Court in Baton Rouge. He also served as a law clerk in the Executive Counsel's Office, Office of the Governor, during Gov. Bobby Jindal's tenure.

Prior to law school, he worked in state

Continued next page

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government as an administrative aide with the Office of the Lieutenant Governor in Baton Rouge. He has experience at the federal level, employed in various positions with the U.S. Department of Education and as a member of the White House Advance Team in the Office of Presidential Advance. He was one of the working points of contact during visits of the U.S. President, including working with the host committee or host government, the U.S. Secret Service and the White House Military Office to ensure a smooth event for the President and guests. During his tenure, he was appointed as a member of "Team NOLA," responsible for traveling to New Orleans following Hurricane Katrina to participate in on-the-ground and air assessments to determine accessibility for a Presidential visit. He returned for

every trip taken by former President Bush or Vice President Cheney after the storm. He also traveled internationally, facilitating visits to Beijing, China; Panama City, Panama; and Riga, Latvia.

Levy earned his JD degree from Louisiana State University Paul M. Hebert Law Center, where he was a member of the Chancellor's Student Advisory Committee. He double-majored at Louisiana State University, earning a BA degree in political science and a BA degree in mass communication, both in 2004. As an undergraduate, he was president of the LSU Interfraternity Council; student member of the LSU Athletic Council; director of student activities for the LSU Student Government; and senator in the LSU Student Senate.

He served as chair of the Baton Rouge Bar Association's (BRBA) Young Lawyers

Section Council and was a member of the BRBA's board of directors (ex officio) and the Finance Committee. He was a member of the Louisiana State Bar Association's 2014-15 Leadership LSBA Class. In 2014, he was appointed to the board of directors for Cancer Services of Greater Baton Rouge. He is an alumnus of the Class of 2004 of Leadership LSU, a program for students seeking leadership roles in the communities where they will be living and working. He is a former LSU Law Center Student Representative with the 2009 "Belly Up With The Bar" Committee.

In 2014, Levy was named to the *Greater Baton Rouge Business Report's* annual "40 Under 40" list recognizing outstanding young professionals.

He and his wife, Candace, have three children, his "daily inspiration."

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# Zachary High School Mock Trial Team Wins State Competition

The mock trial team from Zachary High School in Zachary was named the winner of the 2016 Richard N. Ware IV State High School Mock Trial Competition, conducted March 12 in Baton Rouge. Students on the winning Zachary team included Anan Henderson, Elise Goff, Nash Joyner, John Carl Begley, Reagan Staggs, Shelby Waddell and Jake Robertson (alternate). Teacher sponsors were Chris Staggs and Adrienne Dykes. Attorney coach was Craig Kaster.

Runner-up in the state competition was the team from West Feliciana High School in St. Francisville. Students on the team included Catherine McKinney, Zoe Williamson, Landry Higgins, Adam Broussard, Ruby Robag, Fiona Tully, Miles Bailey Casteel (alternate) and Emma Beachamp (alternate). Teacher sponsors were Torrence Williams and Amy Geiger. Attorney coach was Luke Williamson.

Because of scheduling conflicts, the West Feliciana team represented Louisiana at the 2016 National High School Mock Trial Competition May 12-14 in Boise, Idaho.

The Louisiana "Best Attorney" Award was presented to Catherine McKinney from West Feliciana High School.

The Louisiana "Best Witness" Award was presented to Aleya Domingue from Northside High School in Lafayette.

The state competition is the culmination of eight regional championships. Also winning regional championships were teams from:

- ▶ Caddo Parish Magnet High School, Shreveport. Team members included Mary Cash, Ankur Khanna, Sunjay Letchman, Shaunteau Ranglin, Geoffrey Vickers, Shubhneet Warar, Akeylah Wellington (alternate) and Matthew Pinchback (alternate). Teacher sponsors were Karen Soileau and Ginger Marks. Attorney coach was Steve Soileau.

- ▶ Early College Academy, Lafayette.



The mock trial team from Zachary High School in Zachary was named the winner of the 2016 Richard N. Ware IV State High School Mock Trial Competition.

Team members included Madison Andrus, Lenika Billera, Michelle Sellers, Mayna Liamkeo, Landon Boudreaux and Garrigg Crowden. Teacher sponsors were Vickie Hebert and Amanda Guidry. Attorney coaches were L'Reece David Butcher and John Billera.

- ▶ Jesuit High School, New Orleans. Team members included Nathan Alvarez, Andre Navarre, Manuel Molina, John Schmidt, Gabe Dupuy, Donovan Reynolds and Nick Leonik (alternate). Teacher sponsor was Greg Ernst. Attorney coaches were Brett Wise and John Becknell.

- ▶ Louise S. McGehee School, New Orleans. Team members included Claiborne Beary, Miriam Ellis, Amelia Kraus, Maria Martello, Grace Perret, Suzy Thomas, Sofia Cabrera (alternate) and Molly Stockmeyer (alternate). Teacher sponsors were Debby Pigman and Carolyn Thompson Tapp. Attorney coaches were Chris Beary and Patrick O'Keefe.

- ▶ Northside High School, Lafayette. Team members included Reginald Boudreaux, Isiah Chavis, Tucker Guilbeaux, Aleya Domingue, Aryanne Darby, Markalyon Boyd, Kira Reney (alternate) and Jamie Joseph (alternate). Teacher sponsors were Liz Tullier and Delonde



The mock trial team from West Feliciana High School in St. Francisville was the runner-up of the 2016 Richard N. Ware IV State High School Mock Trial Competition.

Richardson. Attorney coaches were Patsy Randall and Mary Wallace.

- ▶ West Monroe High School, West Monroe. Team members included Alex Crigler, Scott Dorman, Grace Mobley, Brandon Treno, Cole Walker, Benji Jones and Dalia El-Giar (alternate). Teacher sponsor was Mitzi Murray. Attorney coach was Devin Jones.

The State High School Mock Trial Competition is coordinated annually by the Louisiana State Bar Association's Young Lawyers Division. This year's state case involved a vehicle-related wrongful death suit, *Charlie Winters v. Louisiana Department of Transportation and Development*.



## 88 Law Day Programs Presented Statewide

**T**he Louisiana Center for Law and Civic Education (LCLCE) this year organized 88 Law Day presentations throughout the state, reaching more than 5,600 students. Attorneys and judges volunteered their time to present in-class programs in all six Louisiana congressional districts and at all grade levels.

The LCLCE, working through the “Lawyers in the Classroom/Judges in the Classroom” programs, endeavors to celebrate Law Day in schools that may not otherwise have a Law Day event.

Several judges participated in the Law Day programs this year, including Judge E. Adrian Adams, Judge Dawn Amacker, Judge Roland L. Belsome, Jr., Judge Randall L. Bethancourt, Judge Marilyn C. Castle, Judge Aisha S. Clark, Judge Sylvia R. Cooks, Judge John D. Crigler, Judge June Berry Darensburg, Judge Katherine C. Dorroh, Judge Lee V. Faulkner, Jr., Judge Charles G. Fitzgerald, Judge W. Ross Foote, Judge Theodore M. Haik III, Judge Sandra C.



**Attorney Jessica G. Braun celebrated Law Day with students at the Baton Rouge Visual and Performing Arts Center School.**

Jenkins, Judge Keva M. Landrum-Johnson, Judge Craig O. Marcotte, Judge Lewis H. Pitman, Jr., Judge Robin D. Pittman, Judge D. Kent Savoie, Judge Curtis Sigur, Judge Sheva M. Sims, Judge Parris A. Taylor, Judge Charles G. Tutt and Judge Kimberly Anastasia Wiley.

Several attorneys participated in the programs, including David C. Bernard, Elizabeth Borne, Jessica G. Braun, Michelle D. Brooks, Jackie D. Broussard, Danielle N. Brown, William Drew Burnham, Brent N. Carriere, Trina T. Chu, Robert J. Collins,

Andrea A. Crawford, Mekisha S. Creal, Sam C. D’Aquila, Abby C. Devall, Jeanette E. Dewitt-Kyle, John F. Dillon, Sherron P. Douglas, Brian C. Flanagan, William J. Flanagan, Koshaneke N. Gilbert, A. Spencer Gulden, Felicia M. Hamilton, Jerry L. Harrell, Jr., Jack P. Harrison, Rodney B. Hastings, Thomas J. Hogan, Jr., Sarah M. Hood, Bernard Slattery Johnson, Jr., Kendra S. Joseph, Joseph P. Landreneau, Ross M. LeBlanc, Ted L. Luquette, Jackie M. McCreary, Marla E. Mitchell, John C. Nickelson, Patrice W. Oppenheim, DeVonna M. Ponthieu, William H. Priestley, Jr., Thomas A. Pressly IV, Robert Gahagan Pugh, Jr., Rebecca S. Luster Radford, Tiffany L. Ratliff, Elizabeth S. Sconzert, Sara P. Scurlock, Mark S. Stein, Paul A. Tabary III, Kimberly S. Thomas, Earlnisha D. Williams, J. Richard Williams and Timothy R. Wynn.

The “Lawyers in the Classroom/Judges in the Classroom” programs are a partnership of the Louisiana District Judges Association, the Louisiana State Bar Association and the LCLCE.

## James Madison Legacy Project Offers Professional Development

Louisiana’s first James Madison Legacy Project (JMLP) program was held from January through April at the Southeast Louisiana Community College in Lafayette. Twenty-five teachers attended four all-day professional development workshops on the nationally acclaimed civics curriculum, “We the People: The Citizen and the Constitution.” The workshops were made available at no cost to the teachers and provided them with free textbooks for their classrooms.

Constitutional scholars — Associate Justice (Ret.) Susan M. Leeson, Oregon Supreme Court; Thomas S. Vontz, Ph.D., professor and director, Center for Social Studies Education, Kansas State University; and Timothy D. Moore, deputy director, Center for the Study of the American Consti-



**In New Iberia, Westgate High School students testified before a congressional committee in one of a dozen simulated congressional hearings conducted by high school students in May.**

tution in Wisconsin—taught the workshops.

“The older I get the more convinced I am that teaching kids about foundational constitutional principles is about the most important thing we do as educators,” Dr. Vontz said of the program.

The JMLP is a three-year nationwide

initiative that aims to increase the number of highly effective teachers of high-need students, to increase the achievement of more than 200,000 students in attaining state standards in civics and government, and to serve the professional development needs of more than 500 schools nationwide. The project focuses on identifying cost-effective means of providing widely available professional development programs useful in enhancing the knowledge and skills required of teachers to promote high-need and other students’ attainment of state standards in civics and government.

The Louisiana Center for Law and Civic Education is an active participant in the James Madison Legacy Project.



By David Rigamer, Louisiana Supreme Court

## NEW JUDGES... APPOINTMENT

### New Judges

**Chuck R. West** was elected judge, Division B, 13th Judicial District Court. He earned his BS degree in 1983 from Louisiana Tech and his JD degree in 1987 from Southern University Law Center.



Chuck R. West

Judge West is married to Martha West and they are the parents of two children.

**Lewis H. Pitman, Jr.** was elected judge, Division D, 16th Judicial District Court. He earned two BS degrees in 1977 and 1978 from the University of Southwestern Louisiana.



Lewis H. Pitman, Jr.

He earned his JD degree in 1982 from Loyola University College of Law. From 1982-91, he was an associate attorney with Caffery, Oubre, Dugas & Campbell in New Iberia.

From 1991-96, he was a solo practitioner. From 1996-2003, he was a managing partner in the New Iberia office of Simmons, Pitman & Legros. From 2003 until his election to the bench, he was senior partner in Pitman Broussard of New Iberia. While in private practice, he served 18 years as a supervising attorney for the 16th JDC Public Defenders Office, handling misdemeanors, juvenile, children in need of care and drug court cases. Judge Pitman is married to Laurette Williams Pitman and they are the parents of one child and grandparents of two children.

## LSBA Member Services – Louisiana Hotels

The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

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alebouef@nolahotelgroup.com
- ▶ **Hampton Inn Hotels & Suites of New Orleans**  
cmohamed@highpointe.com  
(504) 529-5077
- ▶ **Hotel Monte Leone** • (504) 648-4717  
mlopez@hotelmonteone.com  
[www.lsba.org/GoTo/HotelMonteleone](http://www.lsba.org/GoTo/HotelMonteleone)
- ▶ **Hyatt French Quarter** • (504) 266-6362  
csoler@hriproperties.com
- ▶ **Hyatt Regency New Orleans**  
(888) 591-1234 • Corporate ID #: 95147
- ▶ **Intercontinental Hotel** • (504) 585-4309  
judith.smythe@icneworleans.com
- ▶ **Le Meridien Hotel** • (504) 207-5025  
Christopher.Couvillion@starwoodhotels.com
- ▶ **Le Pavillon Hotel** • (504) 620-4132

- ▶ **Loews New Orleans Hotel** • (504) 595-5314  
dpembo@loewshotels.com
- ▶ **Maison Dupuy Hotel** • (504) 648-6117  
jneyrey@maisondupuy.com
- ▶ **Omni Hotels of New Orleans**  
(504) 756-1141 • Jyates@omnihotels.com
- ▶ **The Ritz-Carlton** • (504) 670-2845  
Matthew.Mcdaniel@ritzcarlton.com
- ▶ **The Roosevelt New Orleans**  
(504)335-3008 • Corporate ID #: 2742353  
peter.honan@waldorfasteria.com
- ▶ **Sheraton New Orleans** • (800) 937-8461  
dana.smith@sheraton.com
- ▶ **St. James Hotel** • (504) 926-7720  
alebouef@nolahotelgroup.com
- ▶ **W French Quarter Hotel** • (504) 207-5025  
Christopher.Couvillion@starwoodhotels.com
- ▶ **Westin New Orleans Canal Place**  
(504) 553-5110  
robin.mccoey@westinneworleans.com
- ▶ **The Whitney Hotel** • (504) 212-8688  
Stephanie.Borrello@whitneyhotel.com
- ▶ **Windsor Court** • (504) 596-4364  
plambert@windsorcourthotel.com

### Baton Rouge

- ▶ **Crowne Plaza Baton Rouge**  
(225)930-0100  
dbond@executivecenterbr.com
- ▶ **Hilton Baton Rouge Capitol Center**  
(800)955-6962, (225)906-5754  
Corporate ID #0921780 • sdaire@hiltonbr.com  
[www.lsba.org/GoTo/HiltonBRCapitol](http://www.lsba.org/GoTo/HiltonBRCapitol)

### Lafayette

- ▶ **SpringHill Suites Lafayette South at River Ranch**  
[www.lsba.org/GoTo/SpringHill](http://www.lsba.org/GoTo/SpringHill)

### Lake Charles

- ▶ **Best Western Richmond Suites** • (337)433-5213

### Shreveport

- ▶ **Clarion Shreveport Hotel** • (318)797-9900
- ▶ **The Remington Suite Hotel** • (318)425-5000

### National Hotel Chains\*

- ▶ **Holiday Inn** • (800)HOL-IDAY • ID: 100381739
- ▶ **LaQuinta Inns & Suites** • (866)725-1661  
[www.LQ.com](http://www.LQ.com) • Corp. rate code: LABAR

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



For more information on  
LSBA Member discount business services,  
visit [www.lsba.org/goto/businessservices](http://www.lsba.org/goto/businessservices)

**Elizabeth A. Engolio** was elected judge, Division D, 18th Judicial District Court. She earned her BA degree in 2001 from the University of Louisiana-Lafayette and her JD degree in 2004 from Southern University Law Center. She served 10 years as an assistant district attorney in the 18th JDC while also maintaining a civil practice. Judge Engolio is the granddaughter of the late Judge Edward Engolio, Sr.



Elizabeth A. Engolio

**Tarvald Anthony Smith** was elected judge, Division C, Baton Rouge City Court. He earned his BS and JD degrees in 1991 and 1995, respectively, from Southern University (executive editor of the *Southern University Law Review* and a member of the Moot Court Board). He began his law practice as a prosecutor for the District Attorney's Office and later the Attorney General's Office. During that time, he also maintained a private civil practice. He served on the East Baton Rouge Parish School Board from 2004-14 (vice president from 2010-14). He also worked as a public defender for the City of Baker from 2012-15. He is a member of Alpha Phi Alpha Fraternity, the Louis A. Martinet Legal Society, Inc. and the NAACP. Judge Smith is married to Allison Kleinpeter-Smith and they are the parents of one child.



Tarvald Anthony Smith

**J. Scott Sartin** was elected judge, Winnsboro City Court. He earned his BA degree in 1994 from the University of Mississippi and his JD degree in 1997 from Vanderbilt University. He began the practice of law in Tennessee before re-



J. Scott Sartin

turning to Louisiana in 1998 and returning to Winnsboro in 2000. Judge Sartin is married to Holly Sartin and they are the parents of two children.

**Brigid E. Collins** was appointed magistrate commissioner for Orleans Parish Criminal District Court. She earned both her BA and JD degrees in 2000 and 2003, respectively, from Loyola University. She served as an assistant district attorney from 2003-06 and 2008-11. From 2006-08, she handled criminal appeals as an assistant attorney general in Daytona Beach, FL. In 2011, Collins transitioned into private practice as a partner in Frank G. DeSalvo, A.P.L.C., in New Orleans.



Brigid E. Collins

## Appointment

Harold S. Bartholomew, Jr. was appointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term of office which concludes on Dec. 31, 2018.

## Deaths

► Retired 12th Judicial District Court Judge Harold J. Brouillette, 83, died Feb. 23. A native of Marksville, he received his BA degree from the University of Southwestern Louisiana. He attended Louisiana State University Law School, where he served as chief judge of the Honor Court, as a member of the *Louisiana Law Review* staff and was selected by his peers as the outstanding law graduate of 1954. He practiced law in Marksville from 1958 until his election to the 12th JDC bench, where he served from 1985 until his retirement in 1996.

► Retired 5th Circuit Court of Appeal Judge Nestor L. Currault, Jr., 90, died March 26. A native of Westwego, he received a full scholarship to Tulane University. World War II interrupted his Tulane studies and he attended the U.S. Navy Hospital Corps School. After his military service, he returned to Tulane, receiving his BA and LLB degrees in

1945 and 1946 (member of the Moot Court Board, named to the Dean's Honor List and recipient of the Jurisprudence Prize for Constitutional Law). He was appointed city attorney for Westwego shortly after passing the bar. He was appointed as second assistant district attorney for Jefferson Parish in 1951, serving in that capacity until his appointment and subsequent election to the 24th Judicial District Court in 1971. In 1981, he was elected to the newly created 5th Circuit Court of Appeal where he remained until his retirement in 1987. During retirement, Judge Currault was appointed judge pro tempore in several courts, including the Louisiana Supreme Court.

► Retired Plaquemine City Court Judge Robert L. (Bobby) Freeman, 82, died May 14. He attended Louisiana State University and was inducted into the Athletic Hall of Fame for his boxing career as two-time NCAA runner-up in his weight class. After attending LSU, he served as special agent of the U.S. Army Counter Intelligence Corps. He received his JD degree in 1965 from Loyola University Law School. He was elected to the Louisiana House of Representatives to serve Iberville and West Baton Rouge parishes in 1968. He was House floor leader in the early 1970s and, in 1980, was elected lieutenant governor. In 1990, he was elected judge of Plaquemine City Court where he served six years.

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**(866)354-9334**

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Email: [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com)



# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that four attorneys have been elected as shareholders in the New Orleans office: Katie L. Dysart, Christopher M. Hannan, Benjamin West Janke and Robert L. Wollfarth, Jr. Attorney Layna Cook Rush has been elected as a shareholder in the Baton Rouge office. Also, Elizabeth A. Liner has joined the firm's Baton Rouge office as an associate.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Christine M. Calogero** and **Diana K. Cochrane** have joined the firm as associates, and **Celeste R. Coco-Ewing** has rejoined the firm as a member.

Bradley Murchison Kelly & Shea, L.L.C., announces that **Margaret G. Patton** and **Scott R. Patton** have joined the firm's Baton Rouge office as special counsel.

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., announces that **Jacqueline M. Brettner** has been named a partner in the New Orleans office. She also is a registered commercial and civil mediator.

Coats Rose, P.C., announces that Vinson J. Knight has joined the firm's New Orleans office as of counsel. Also, Aaron J. Hurd

has joined the firm's New Orleans office as an associate.

The Law Office of J. Christopher Ford, L.L.C., in Metairie announces that **Patrick B. Sanders** has joined the firm as of counsel.

Galloway, Johnson, Tompkins, Burr & Smith, A.P.L.C., announces that Kathleen K. Charvet has been hired as a director and Heather Waterman Angelico has been hired as special counsel, both in the New Orleans office.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Emmitt L. (Tripp) DuBose III has joined the firm as an associate in the New Orleans office.

Phelps Dunbar, L.L.P., announces that Gillian G. Egan has joined the firm's New Orleans office as an associate.

Preis, P.L.C., announces that attorneys Joseph B. (Josh) Marino III and Adelaida J. (Adi) Ferchmin have joined the firm's New Orleans office.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., in New Orleans announces that **Joseph L. Spilman III** has joined the firm as a special partner.

A. Gregory Riley was named executive director of the Louisiana House Legislative Services in Baton Rouge.

Stone Pigman Walther Wittmann, L.L.C., announces that Annie G. McBride has joined the firm's New Orleans office as an associate.

The Whaley Law Firm in Baton Rouge announces that Benjamin H. Dampf has joined the firm as an associate.

### NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired the "Bet-the-Company" Mass Tort Litigation Symposium in Chicago. He also was recognized by the American Society of Legal Advocates as one of the Top 100 Litigation Lawyers in Louisiana.

S. Dennis Blunt, a partner in the Baton Rouge office of Phelps Dunbar, L.L.P., was elected chair of the Baton Rouge Area Foundation board of directors.

Brad C. Cashio, an attorney in Kenner, was profiled as a *Times-Picayune* newspaper "Everyday Hero" for his pro bono and other community service. Read the profile: [www.nola.com/heroes/2016/06/kenner\\_lawyer\\_brad\\_cashio.html](http://www.nola.com/heroes/2016/06/kenner_lawyer_brad_cashio.html).

The patent attorneys with the firm of Garvey, Smith, Nehrbass & North, L.L.C., with offices in Metairie and Covington, contributed to the firm's ranking by Juristat as No. 1 in the United States in 2015 in allowance percentage of patent applications in Technology Center 3600.



Richard J. Arsenault



Kristin L. Beckman



Jacqueline M. Brettner



Christine M. Calogero



Diana K. Cochrane



Celeste R. Coco-Ewing

Jennifer M. Hoekstra, an attorney in the Alexandria office of Neblett, Beard & Arsenault, co-authored an article on pharmaceutical document review in the Winter 2016 issue of *Tort Source*, a publication of the Tort Trial & Insurance Practice Section of the American Bar Association.

**Steven J. Lane**, managing partner of Herman, Herman & Katz, L.L.C., in New Orleans, was named the 2016 chair of the New Orleans Bar Association's Family Law Committee.

Edward J. (Ted) Laperouse II, a partner in the Baton Rouge firm of Taylor, Porter, Brooks & Phillips, L.L.P., is serving as president of the South Central Louisiana Chapter of the Construction Financial Management Association.

Southern University Law Center announces that four professors received endowed professorships — Angela Allen Bell was named the B.K. Agnihotri Endowed Professor; Shenequa L. Grey was named the Clyde C. Tidwell Endowed Professor; Gail S. Stephenson was named the Louisiana Outside Counsel A.A. Lenoir Endowed Professor; and Christopher K. Odinet was named the Horatio C. Thompson Endowed Professor.

David M. Stein, a partner in the New Orleans office of Adams and Reese, L.L.P., has earned certified e-discovery specialist certification through the Association of Certified E-Discovery Specialists.

Harold K. (Hal) Watson, a partner in the Houston, Texas, office of Chaffe McCall, L.L.P., was elected president of the Maritime Law Association of the United States.

Michelle Marney White, a partner in the Baton Rouge firm of Taylor, Porter, Brooks & Phillips, L.L.P., was elected 2016-17 chair of the Louisiana State Bar Association's Environmental Law Section.

Graham H. Williams, an associate in the New Orleans office of Adams and Reese, L.L.P., was appointed to serve on the Tulane University Law School's Dean's Advisory Board.

## PUBLICATIONS

### *Best Lawyers in America 2016*

**Wagar Richard Kutcher Tygier & Luminais, L.L.P.** (Metairie): **Robert A. Kutcher**.

### *Chambers USA 2016*

**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.

**Chaffe McCall, L.L.P.** (New Orleans, Houston, Texas): G. Wogan Bernard, E. Howell Crosby and Ivan M. Rodriguez.

**Liskow & Lewis, P.L.C.** (Lafayette, New Orleans): Donald R. Abaunza, Marguerite L. Adams, Robert S. Angelico, Wm. Blake Bennett, James A. Brown, Louis E. Buatt, James C. Exnicios, Joseph P. Hebert, Robert E. Holden, Jonathan A. Hunter, R. Keith Jarrett, Greg L. Johnson, Philip K. Jones, Jr., Thomas J. McGoey II, Robert B. McNeal, Dena L. Olivier, Richard W. Revels, Jr., Leon J. Reymond III, Lawrence P. Simon, Jr. and Randy C. Snyder.

**McGlinchey Stafford, P.L.L.C.** (Baton Rouge, New Orleans): Ricardo A. Aguilar, Rodolfo J. Aguilar, Jr., Samuel

A. Bacot, J. Patrick Beauchamp, Stephen P. Beiser, Magdalen Blessey Bickford, Laura Hobson Brown, Rudy J. Cerone, Katherine Conklin, Bennet S. Koren, Christine Lipsey, Colvin G. Norwood, Jr., Jean-Paul Perrault, Michael H. Rubin and Stephen P. Strohschein.

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): Barry W. Ashe, Joseph L. Caverly, Noel J. Darce, Daria B. Diaz, Michael R. Fontham, John M. Landis, Wayne J. Lee, C. Lawrence Orlansky, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

**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.

### *New Orleans CityBusiness*

**Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.** (New Orleans): **Kristin L. Beckman**, 2016 Leadership in Law Class.

**King, Krebs & Jurgens, P.L.L.C.** (New Orleans): Patricia A. Krebs, 2016 Leadership in Law Class.

**Liskow & Lewis, P.L.C.** (New Orleans): Kelly B. Becker, 2016 Leadership in Law Class.

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): Susan G. Talley and Michael Q. Walshe, Jr., 2016 Leadership in Law Class.

### *Florida Super Lawyers 2016*

**The Health Law Firm** (Alta Monte Springs, Fla.): George F. Indest III.

Continued next page



Robert A. Kutcher



Steven J. Lane



Margaret G. Patton



Scott R. Patton



Patrick B. Sanders



Joseph L. Spilman III



## IN MEMORIAM

**Robert Burns Fisher, Jr.**, a partner in the New Orleans office of Chaffe McCall, L.L.P., died April 25 after a long illness. He was 72. He received his BA and JD degrees from Tulane University and was founding editor-in-chief of the



**Robert Burns Fisher, Jr.**

*Tulane Maritime Law Journal*. Before attending law school, he served as an officer in the U.S. Navy (1966-70), where he was stationed aboard destroyer-type vessels. As a member of the U.S. Naval Reserve, he taught a course on collision regulations and became familiar with lower Mississippi River pilotage. He practiced with Chaffe McCall from 1974-2016 in domestic and international cases. An accomplished international maritime and admiralty lawyer, he assisted in complex international law cases involving damage to the marine environment. He handled cases involving collisions in the English Channel, the Indian Ocean, the Panama Canal, the Gulf of Mexico, the Mississippi River and other inland waters. He was a member of the West Feliciana Port Commission and the board of editors of *Shipping and Transport International* magazine. He created and edited a unique Collision Case Survey, first appearing in 13 *Tulane Maritime Law Journal* 355 (1989). Mr. Fisher is survived by his wife, Lisa; his son, Robert Burns Fisher III; two brothers; and other relatives.

**David Louis Kimball** of Moss Bluff died on May 3. He was 61. A native of New Orleans who was raised in Mandeville, he lived in Lake Charles for more than 30 years. He received a bachelor's degree



**David Louis Kimball**

in history from Southeastern Louisiana University and his JD degree from Louisiana State University Paul M. Hebert Law Center. After law school graduation, he began his 33-year career with the Calcasieu Parish District Attorney's Office, serving as an assistant district attorney in numerous divisions, including as Misdemeanor Section chief and a felony prosecutor. In 2012, he was promoted to chief felony prosecutor and later became administrative first assistant district attorney. Highly respected among his peers, he enjoyed teaching and mentoring young attorneys as well as teaching law enforcement officers at the Southwest Louisiana Law Enforcement Training Academy. He helped to establish the 14th Judicial District Mental Health Court, offering offenders with mental health issues the opportunity for rehabilitation. He is survived by his wife, Sandy Faulk Kimball; two daughters and two sons; five stepchildren and four stepgrandchildren; three brothers and a sister; and several other relatives.

**John Giffen Weinmann**, a New Orleans lawyer and businessman who represented the United States as ambassador to Finland from 1989-91 during the first Bush Administration, died June 9. He was 87. He worked as a lawyer



**John Giffen Weinmann**

for 30 years with Phelps Dunbar, L.L.P. He was a former secretary of the Louisiana State Bar Association and a member of its House of Delegates. The association's Young Lawyers Section gave him its first Outstanding Young Lawyer Award. He earned his undergraduate and law degrees from Tulane University (student body president, commander of the Navy ROTC battalion, co-manager of the football team, member of the *Tulane Law Review* and elected to Phi Beta Kappa, Order of the Coif and Omicron Delta Kappa). In recognition of his philanthropy, the Tulane Law School's building is named for him. A former chair of Tulane's Board of Administrators, he also was a former member of the Tulane Medical Center's Board of Governors. He was president and director of Waverly Oil Co., chair of the board and director of Eason Oil Co., director of the American Life Insurance Co. of New York, director of the Allied Investment Corp. and a member of the Metropolitan Area Committee and the Council for a Better Louisiana. He is survived by his wife, Virginia Eason Weinmann; four sons and a daughter; and 16 grandchildren.

## Ethics Advisory Service

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For assistance with dilemmas and decisions involving legal ethics, take full advantage of the LSBA's Ethics Advisory Service, offering - at no charge - confidential, informal, non-binding advice and opinions regarding a member's own prospective conduct.

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E-mail: [ebarefield@lsba.org](mailto:ebarefield@lsba.org)



## UPDATE

### Berkett Named *Tulane Law Review* 2016 Alumna of the Year

Attorney Marian Mayer Berkett, who joined the New Orleans firm of Deutsch Kerrigan, L.L.P., in 1937 as an associate, was named the 2016 Alumna of the Year by the *Tulane Law Review* in April. More than 200 former and current editors of the *Review* attended the century celebration.



Marian Mayer Berkett

Berkett, now age 103, is often credited for being the first woman hired at a

Louisiana law firm, but she appreciates co-founder Eberhard P. Deutsch as “a man of vision” for giving her the opportunity. Over the course of many years, she has had phenomenal success as a trial lawyer, bringing to successful conclusion approximately 97 percent of a multitude of cases in which she has often defended the unfavored client.

She wrote and published many works, including “Workmen’s Compensation Law in Louisiana” (Louisiana State University Press, 1937). She also is a Tulane Law School 2013 Hall of Fame inductee.

### Weems Recognized as Louisiana Legend by LPB

Charles S. Weems III, the 1996-97 president of the Louisiana State Bar Association (LSBA), was selected by Louisiana Public Broadcasting as one of its 2016 Louisiana Legends. His contributions to the law and the community were spotlighted in May at the Louisiana Legends Award Gala in Baton Rouge. The Louisiana Legends program honors Louisiana citizens who have distinguished themselves in a variety of disciplines and have brought honor to the state.



Charles S. Weems III

Weems, senior member and president of the Alexandria law firm of Gold, Weems, Bruser, Sues & Rundell, has served in various officer and board roles within the LSBA. During his term as president, he instituted the Citizens’ Summit for Justice Reform, which translated public input on civil trials into legislative action.

He graduated Order of the Coif from Louisiana State University Paul M. Hebert Law Center, serving as editor-in-chief of the *Louisiana Law Review*. He also is the chair emeritus of the Louisiana State Law Institute.

He has received several awards during his legal career, including the 2009 Distinguished Attorney Award and the 1999 Curtis R. Boisfontaine Trial Advocacy Award (both presented by the Louisiana Bar Foundation) and the 1998 LSBA Distinguished Service Award.

### Judge Roby Receives 2016 FMJA Founder’s Award

U.S. Magistrate Judge Karen Wells Roby, with the U.S. District Court, Eastern District of Louisiana, is one of the recipients of the 2016 Federal Magistrate Judges Association (FMJA) Founder’s Award, the highest award presented by the national organization of United States magistrate judges. This award is not presented each year but reserved for extraordinary activities and individuals who have displayed exceptional support, loyalty and dedication to the FMJA. The



Judge Karen Wells Roby

award was presented during the FMJA’s Annual Meeting in July.

Judge Roby, a magistrate judge with 17 years of service, led the organization in 2012 through the deliberations to bring salary restoration litigation which resulted in a salary increase for all 600 magistrate judges in the country. Judge Roby, along with Judge Sidney Schenkier and Judge Karen L. Strombom, successors in leadership who managed the litigation after Judge Roby’s term expired, also will be honored with the award. During her tenure, Judge Roby also led the organization through digital communication enhancements which allow for improved methods for magistrate judges to share information.



# 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. 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.

# 40th Judicial District Court Celebrates 2016 Law Day

The 40th Judicial District Court in St. John the Baptist Parish hosted its annual Law Day celebration on May 6 at the courthouse in Edgard. Middle school students from West St. John Elementary School and West St. John High School attended the presentation. The day's theme, "Voting Matters," showcased a unique voting rights program.

During this program, fifth grader Jaci Donald, sixth grader Amari Smith and seventh grader Ty' Reion Smith from West St. John Elementary campaigned for "President of Law Day." This fictitious public office represented the importance of elections in the community and served as a reminder that each vote matters. After hearing the candidates' speeches, the students elected Ty' Reion Smith as their president of Law Day. Smith's campaign slogan was "We Can Make a Change."

Students also heard from Newton Savoie who spoke about the history of voting rights in the United States. Savoie encouraged students to take an interest in elections now so as to be an informed voter in the future.



The 40th Judicial District Court in St. John the Baptist Parish hosted its annual Law Day celebration on May 6. Participating, from left, were 40th JDC Judge Madeline Jasmine; 40th JDC Judge J. Sterling Snowdy; Ty' Reion Smith, voted president of Law Day; 40th JDC Judge Mary Hotard Becnel; president candidate Jaci Donald; president candidate Amari Smith; and 5th Circuit Court of Appeal Judge Jude G. Gravois.

Judge Madeline Jasmine, Judge Mary Hotard Becnel and Judge J. Sterling Snowdy, all of the 40th Judicial District Court, and Judge Jude G. Gravois from the 5th Circuit Court of Appeal provided words of encouragement to the students, reiterating the importance of elections and

emphasizing that each citizen's vote is an opportunity to effectuate change.

Each May, the 40th Judicial District Court observes Law Day to commemorate the rule of law, the judiciary and its place in American society.



## *St. Thomas More Catholic Lawyers Association*

*Invites*

*All Members of the Bench and Bar  
Of All Faiths to Attend*

*The Red Mass  
Monday, October 3, 2016  
St. Louis Cathedral*

*Assembly 9:00 a.m.*

*Procession 9:15 a.m.*

*Mass 9:30 a.m.*

*Followed by a Reception in the Grand Hall*

*Louisiana State Supreme Court Building*

*Memorial Service 11:45 a.m.*





# NOBA Presents Liberty Bell Award Posthumously

New Orleans Bar Association (NOBA) President Judy Y. Barrasso presented the 2016 Liberty Bell Award, posthumously, to Dr. Rudy Lombard during the NOBA Young Lawyers Section's Law Day program on May 4 at the U.S. District Court, Eastern District of Louisiana, in Judge Jay C. Zainey's courtroom. Dr. Lombard's brother, Judge Edwin A. Lombard, accepted the award on his behalf.

Dr. Lombard was recognized for his civic responsibility in leading a generation of civil rights leaders. He was arrested for sitting at a whites-only lunch counter at McCrory's on Canal Street in New Orleans 50 years ago. He took his case all the way to the U.S. Supreme Court and won. Dr. Lombard's arrest led to the Supreme Court's landmark civil rights case of *Lombard v. Louisiana*.

The NOBA's Liberty Bell Award recognizes non-lawyers for outstanding contributions in stimulating a sense of civic responsibility.

Also during the Law Day event, middle school students from Audubon Charter held a mock trial presentation, "Miranda: More than Words." The theme was selected in honor of the 50th anniversary of *Miranda v. Arizona*, one of the nation's best-known U.S. Supreme Court cases.

## LOCAL / SPECIALTY BARS

### Gay Installed as 2016-17 President of Louisiana Association of Defense Counsel

New Orleans attorney E. Phelps Gay was installed as the 2016-17 president of the Louisiana Association of Defense Counsel, a statewide organization for lawyers devoting a substantial amount of their professional time to the defense of civil litigation.

Also serving for the 2016-17 term are President-Elect Ralph E. Kraft, Lafayette; Immediate Past President Bobby S. Gilliam, Shreveport; First Vice-President Mickey S. deLaup, Metairie; Second Vice-President L. Victor Gregoire, Jr., Baton Rouge; and Secretary-Treasurer Dean A. Sutherland, New Orleans.

The LADC staff is led by its Executive Director William R. Corbett, Associate Executive Director Dane S. Ciolino and Executive Administrator Kimberly Zibilich.



E. Phelps Gay



Ralph E. Kraft



Bobby S. Gilliam



Mickey S. deLaup

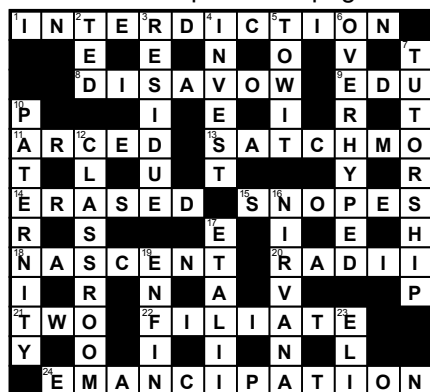


L. Victor  
Gregoire, Jr.



Dean A. Sutherland

### ANSWERS for puzzle on page 144.



The Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. hosted its annual Scholarship Gala on March 12 in Baton Rouge. Officers attending were, from left, Ashley J. Greenhouse, president; Lykisha R. Vaughan, first vice president; Carlton J. Miller, second vice president; Jerne C. Theriot, treasurer; Jennipher V. Williams, secretary; and Rolando R. Urbina, past president.



Several attorneys assisted the Northshore Pro Bono Project of Southeast Louisiana Legal Services with a Wills for Heroes event on May 14 at the Slidell Fire District No. 1 training facility. Volunteers drafted wills and other documents for 29 first responders. Front row from left, attorney Cynthia M. Bordonaro, pro bono coordinator for the Northshore Pro Bono Project; attorneys Gisele B. Rose, Jessica M. Wood, Michele M. Echols, Kristen Stanley-Wallace, Andrea Erwin Potter and Amythist L. Kearney; and paralegal Erin Scarborough. Back row from left, attorneys Gary Higgins, Kurt D. Duncan, Chris Williams, Nisha Sandhu, Patrice W. Oppenheim, Daniel A. Oppenheim, Joseph B. Harvin and Janet L. MacDonell; and paralegal Emmet Bowling.



The New Orleans Bar Association (NOBA) and the New Orleans Bar Foundation (NOBF) presented this year's Mark A. Moreau Public Interest Law Award to James F. (Jay) Welch II, center. The award recognizes lawyers who have dedicated their careers to serving the poor through public interest law. With him are NOBA President Judy Y. Barrasso, left, and NOBF President Darryl M. Phillips.



The Southwest Louisiana Bar Association hosted its annual Bench-Bar Conference on March 18 in Houston, TX. Among those attending were, from left, Lake Charles attorney Ezra Pettis, Jr. and Chief Judge Ulysses Gene Thibodeaux, 3rd Circuit Court of Appeal.



The Jefferson Bar Association hosted its 29th annual "CLE by the Sea" on March 30-April 2 in Biloxi, MS. Attending, from left, Judge Raymond S. (Ray) Steib, Jr., 24th Judicial District Court, Division A; Judge Michael P. Mentz, 24th Judicial District Court, Division F; Jefferson Bar Association President Mickey S. deLaup, Mickey S. deLaup, A.P.L.C.; and Judge Roy M. Cascio, 2nd Parish Court.

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The Vietnamese American Bar Association of Louisiana hosted a membership drive on May 14. Attorneys participating were, from left, Connie P. Trieu, Joseph D. Tran, Tony V. Tran, Michael M. Vo, Anh Joseph Cao (former U.S. Congressman), Tu (Thomas) Hoang, N. Kim Nguyen, Ann H. Luong and Tracy M. Tran; and law clerk Dan Linh Tran.



## President's Message

# The Dollars and Sense of Civil Legal Aid

By President E. Jane Sherman

**V**anessa thought she and her daughter had fled her abusive husband. Four years later, she was still being stalked by him. He located her and her daughter, forced entry, destroyed their home and refused to leave. Now homeless and without income, Vanessa turned to legal aid attorneys who put an end to this nightmare terror by obtaining a permanent injunction, divorce and sole custody of her child. Vanessa and her daughter gained a new life through civil legal aid.

The Louisiana Bar Foundation (LBF) funds domestic violence services such as those received by Vanessa and her daughter. Since 1989, the LBF has granted more than \$70.9 million throughout Louisiana to help address the legal needs of indigent citizens, providing services to women, children, the elderly, the working poor, people with disabilities, and those facing loss of their homes.

Protecting lives is the motivating force for providing civil legal aid. However, recent studies have shown that there is another significant benefit that civil legal aid brings to our communities and our state.

In a 2010 study by Louisiana State

University economics Professor James Richardson, titled "Legal Services Programs in Louisiana: Their Economic Impact on the State of Louisiana," it was estimated that for every dollar spent on legal services for the poor, there is a benefit of up to \$2.40, and that the legal services corporations assisted their clients in either acquiring or retaining more than \$58 million, which initiated a series of economic transactions totaling between \$70 million and \$107 million for the state. Since this study, other states have concluded greater economic benefits ranging from \$5 to more than \$11 for every dollar spent on civil legal aid.<sup>1</sup>

Louisiana remains one of only a few states in the country in which civil legal services receive no state appropriation of funds or mandated unified court filing fees contributed toward civil legal aid. Over the last six years, civil legal aid organizations in Louisiana have sustained a significant drop in state and federal funding while the poverty rate in Louisiana has increased significantly to among the highest in the nation at almost 20 percent. Indigent individuals in civil matters, often with life-altering consequences, have no constitutional right to counsel. One of the foundations of our legal system is to ensure that all persons have access to address their legal needs, regardless of their economic circumstances and their ability to pay. We must ask ourselves, is access to justice truly equal if only one party has legal representation due to financial means?

I am happy to report that the LBF, with the Access to Justice Commission of the Louisiana State Bar Association (LSBA), will conduct an economic impact study regarding the need for civil legal aid and the benefits to our state. This study will demonstrate that legal assistance not only



E. Jane Sherman

has an immediate benefit for the recipient of services, but also has a ripple effect, impacting the community at large, schools, businesses, government agencies and the state as a whole. To better understand these current economic benefits, our Legislature recently adopted a resolution pursuant to the direction of the 2016 Regular Session of the Louisiana Legislature contained in the House Resolution No. 2 urging the economic impact study be conducted and that the findings be reported to the Louisiana Legislature.

The Access to Justice Commission, with representatives from the Louisiana Supreme Court, the LSBA, the LBF and other stakeholders, believes that an updated impact study is vital to understanding the multi-fold financial benefits for the community and the state as well as the need for civil legal aid. Civil legal economics is not the primary factor for providing legal aid, but it is beneficial and should not be ignored.

American composer David Haas wrote, "We are called to act with justice. We are called to love tenderly. We are called to serve one another, to walk humbly with God." Civil legal aid gives us the opportunity to provide justice and serve those without means, while also providing a reinvestment in our state.

### FOOTNOTE

1. *Legal Analysis of the Economic Impacts and Social Benefits of Assistance Provided by Alaska Legal Services Corporation*, 2011, reports, "Every dollar invested in ALSOC generates \$5.00 in economic benefit to ALSOC's clients, their communities and the state." *The Economic Impact of Iowa Legal Aid*, 2011, reports, "Iowa's Legal Aid's financial impact on the Iowa economy in 2011 totaled \$28,729,291.29. This represents a return of \$6.71 for every dollar invested in Iowa Legal Aid by sources within Iowa." *Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts*, October 2014, reports, "For every dollar invested in civil legal aid, the return to the state and its residents is as much as \$2 to \$5 dollars." *Economic Impact of Civil Legal Aid Organizations in Tennessee*, March 2015, reports, "Economic impact per dollar of funding - \$11.21."

### Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

- Roya S. Boustany.....Lafayette
- Alexander N. Breckinridge.....New Orleans
- Hon. Jeffrey S. Cox.....Benton
- Hon. Michael O. Craig .....Benton
- Tiffany Delery Davis .....New Orleans
- George D. (Dave) Ernest III.....Lafayette
- Hon. E. Charles Jacobs.....Benton
- Hon. Jefferson B. Joyce.....Monroe
- Bernard N. Marcantel .....Jennings
- David F. Marcantel.....Jennings
- Hon. Michael Nerren .....Benton
- Larry M. Roedel.....Baton Rouge
- Keely Y. Scott.....Baton Rouge
- Hon. A. Parker Self, Jr. ....Benton
- Bradley J. Tate.....New Orleans



# Louisiana Bar Foundation

## grants more than \$5.9 Million

### for Social Justice Initiatives in 2016-17

*Based on Proposed 2016-2017 budget as of 6/30/2016*

#### **Annual/Sustaining Funding**

|  |                  |
|--|------------------|
| <b>Building Capital Development</b>        | <b>\$125,000</b> |
| Innocence Project New Orleans              | \$25,000         |
| Lafayette Parish Bar Foundation            | \$25,000         |
| Metropolitan Center for Women and Children | \$25,000         |
| Shreveport Bar Foundation                  | \$25,000         |
| Southeast Louisiana Legal Services         | \$25,000         |

|  |                  |
|--|------------------|
| <b>Children's Legal Services</b>       | <b>\$125,000</b> |
| Advocacy Center                        | \$20,000         |
| First Grace Community Alliance         | \$12,500         |
| Louisiana Center for Children's Rights | \$35,000         |
| Louisiana Civil Justice Center         | \$22,500         |
| T.E.A.M.S.                             | \$35,000         |

|  |                  |
|--|------------------|
| <b>Law-Related Education</b>               | <b>\$125,000</b> |
| Baton Rouge Bar Foundation                 | \$26,097         |
| Baton Rouge Children's Advocacy Center     | \$6,000          |
| Court Watch NOLA                           | \$5,000          |
| Louisiana Center for Children's Rights     | \$12,903         |
| Louisiana Center for Law & Civic Education | \$48,000         |
| LSBA - Diversity Committee                 | \$2,500          |
| LSBA - Young Lawyers Division              | \$5,500          |
| Youth Service Bureau of St. Tammany        | \$19,000         |

|   |                  |
|---|------------------|
| <b>Domestic Violence Programs</b>             | <b>\$458,246</b> |
| Beauregard Community Concerns, Inc.           | \$36,367         |
| Catholic Charities/Project S.A.V.E.           | \$46,821         |
| Chez Hope                                     | \$39,876         |
| D.A.R.T. of Lincoln                           | \$28,206         |
| Faith House, Inc.                             | \$26,312         |
| Jeff Davis Communities Against Domestic Abuse | \$20,000         |
| Metropolitan Center for Women and Children    | \$38,000         |
| Oasis   | \$22,200         |
| Project Celebration                           | \$40,000         |
| Safe Harbor, Inc.                             | \$16,000         |
| Safety Net for Abused Persons                 | \$30,000         |
| Southeast Spouse Abuse Program                | \$15,000         |
| St. Bernard Battered Women's Program          | \$25,000         |
| The Haven, Inc.                               | \$35,464         |
| The Wellspring Alliance for Families, Inc.    | \$24,000         |
| United Way of Central Louisiana               | \$15,000         |

|                                     |                    |
|-------------------------------------|--------------------|
| <b>Legal Service Corporations</b>   | <b>\$1,665,000</b> |
| Acadiana Legal Services Corporation | \$407,430          |
| Legal Services of North Louisiana   | \$428,570          |
| Southeast Louisiana Legal Services  | \$829,000          |

|                                      |                  |
|--------------------------------------|------------------|
| <b>Other Legal Service Providers</b> | <b>\$341,754</b> |
| Advocacy Center                      | \$25,000         |
| Arts Council of New Orleans          | \$11,000         |
| Catholic Charities of Baton Rouge    | \$22,754         |

|   |           |
|---|-----------|
| Catholic Charities of New Orleans                     | \$33,000  |
| Catholic Charities of North Louisiana                 | \$20,000  |
| Frontline Legal Services                              | \$40,000  |
| Innocence Project New Orleans                         | \$110,000 |
| Louisiana Center for Children's Rights                | \$5,000   |
| Lower 9 <sup>th</sup> Ward Home Ownership Association | \$10,000  |
| St. Frances Cabrini Immigration Law Center            | \$50,000  |
| The Southwest Louisiana Law Center                    | \$15,000  |

|                                    |                  |
|------------------------------------|------------------|
| <b>Pro Bono Projects</b>           | <b>\$300,000</b> |
| Baton Rouge Bar Foundation         | \$60,000         |
| Central Louisiana Pro Bono Project | \$11,500         |
| Lafayette Parish Bar Foundation    | \$70,500         |
| Shreveport Bar Foundation          | \$35,000         |
| Southwest Louisiana Bar Foundation | \$23,000         |
| The Pro Bono Project               | \$100,000        |

|  |                 |
|--|-----------------|
| <b>Loan Repayment Assistance Program</b>   | <b>\$49,812</b> |
| <i>Applicant identities are anonymous.</i> |                 |

|  |                  |
|--|------------------|
| <b>Self-Represented Litigants Programs</b>             | <b>\$100,000</b> |
| <i>New Funding Category to be awarded summer 2016.</i> |                  |

#### **Child in Need of Care**

|                                    |                    |
|------------------------------------|--------------------|
| <b>Child in Need of Care</b>       | <b>\$1,990,000</b> |
| Acadiana Legal Services            | \$780,800          |
| Legal Services of North Louisiana  | \$574,200          |
| Southeast Louisiana Legal Services | \$635,000          |

#### **Discretionary Funding**

|  |                  |
|--|------------------|
| <b>Jock Scott Community Partnership Panel Grants</b> | <b>\$135,000</b> |
| <i>To be decided during the year.</i>                |                  |

#### **Special Initiatives**

|                            |                  |
|----------------------------|------------------|
| <b>Special Initiatives</b> | <b>\$237,650</b> |
| ATJ Special Commission     | \$50,000         |
| LCJC                       | \$125,000        |
| Louisiana Appleseed        | \$50,000         |
| ProBono/LawHelps Websites  | \$12,650         |

#### **Scholarships, Fellowships, and other projects**

|                           |          |
|---------------------------|----------|
| ATJ Fund Grant            | \$50,000 |
| Grantee Board Training    | \$10,000 |
| Kids' Chance Scholarships | \$54,500 |
| Legal Education Projects  | \$5,000  |
| LBF Fellowships           | \$90,000 |

#### **Other Funding**

|                                       |                  |
|---------------------------------------|------------------|
| <b>Pro Hac Vice</b>                   | <b>\$104,500</b> |
| <i>To be decided during the year.</i> |                  |



## 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](http://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

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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

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\$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, 2016. Check and ad copy should be sent to:

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Classified Notices  
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New Orleans, LA 70130

### RESPONSES

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601 St. Charles Avenue  
New Orleans, LA 70130

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and I-10. Total monthly rent, \$500, plus pro rata utilities. Contact Bob Caluda, 3232 Edenborn Ave., Metairie, LA 70002; (504)586-0361.

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## NOTICE

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

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# The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: A PLAQUE ON YOUR HOUSE  
(With apologies to William Shakespeare, *Romeo and Juliet*,  
*Act 3, Scene 1*, and with an assist from Vince Fornias)

## You Have Been Nominated . . .

I'm sitting at my desk, reading emails, as usual, and one email comes across telling me that the sender is pleased to announce that I have been nominated as a potential winner of a global award in the Legal and Corporate Finance sector for 2016 — in England! How they received word about my prowess in the world of British law and corporate finance, I'll never know, but they did. There's no cost involved, so they say, BUT, should you choose to do so, you may pay dearly for a very fancy walnut or mahogany plaque to put on your wall for all the world to see.

Well, how pleased I am to be nominated — in England — for such an honour. (See how I spelled it?)

Back when I started practicing law some 40-plus years ago, there was only one “rating” service — Martindale-Hubbell — and, if you made the cut, all you got was an AV listing in its huge tome of a book. That's it.

Now there are many rating services. There's the U.S. News and World Report's Best Lawyers and Best Law Firms, the Bar Register of Preeminent Lawyers, the National Trial Lawyers' Top 100 Lawyers, the National Association of Distinguished Counsel, Avvo, the National League of Renowned Attorneys and Super Lawyers (some of whom are not so super). I'm sure there are others. All of these companies give the honoree the ability to tell the world by offering the sale of a plaque. Go in the waiting rooms of many lawyers nowadays — plaintiff and defense — and you will see many of these boastful plaques adorning the walls. You also may purchase a “badge” depicting the name of the service to install on your website to let people know about it should they arrive at your website.

All of these services brag about their stringent, unbiased, peer-reviewed, blue-ribbon-panel selection process. Some even list the Top 50 lawyers in your state, the Top



25 women lawyers and now even the Top 10 lawyers. I'm waiting for one of them to soon tell us who THE Top Number 1 Lawyer is . . . The Best of the Best.

## The Cover of the *Rolling Stone*

Some of these services send out a magazine. For the right price, you can get your picture on the cover of a magazine. Suitable for framing, of course. For a lesser price, you can advertise inside the magazine.

## Didn't Make the Cut?

Not to worry. Some of these sites allow other lawyers and clients to rate you, so you can get all of your clients (who still like you) and your lawyer friends to go on the site and post glowing recommendations about you, increasing your greatness quotient accordingly. So instead of the 6.6 rating you actually got, you can get by with a little help from your friends and boost your rating to 10.0 — a perfect 10!

## The Plaques

Congratulations to you if you get selected. Now you will be inundated by companies

trying to sell you a plaque to put on the wall in your waiting room so you can show the world that you are one of the best . . . for 2016.

Next year, should you still be one of the best, you will again be inundated with requests to purchase the new 2017 plaque, which you must do, lest folks think you were the best last year, but not so much this year. What happened? Where's her 2017 plaque? And so it goes. Yearly plaque sales abound in a new cottage industry selling ego pieces to lawyers with egos, which, of course, includes all of us.

What we really need is a service telling the public who the WORST lawyers are — that would be useful information for the public, but it wouldn't sell many plaques.

*Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal's Editorial Board. He is the chair of the LSBA Senior Lawyers Division and former editor of the Division's e-newsletter Seasoning. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)*



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

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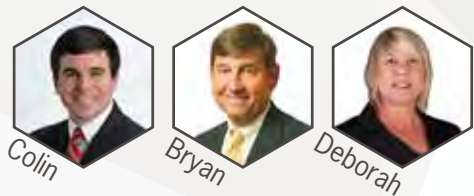
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