

# LOUISIANA BAR JOURNAL

August / September 2017

Volume 65, Number 2



## #YOURLSBA

- Read all about it
- Award Winners
- Pro Bono Hero
- Annual Meeting Wrapup



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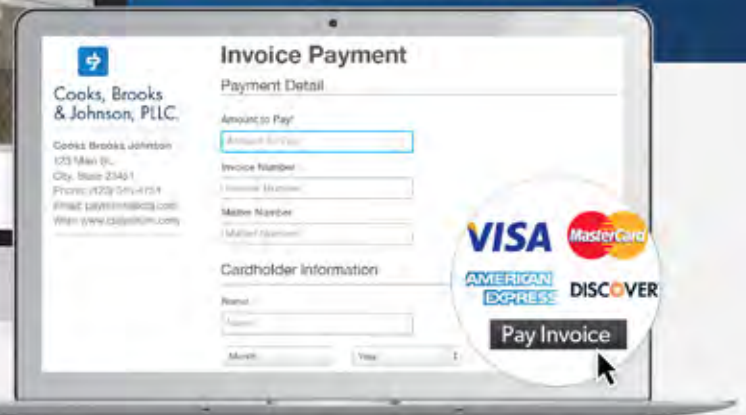
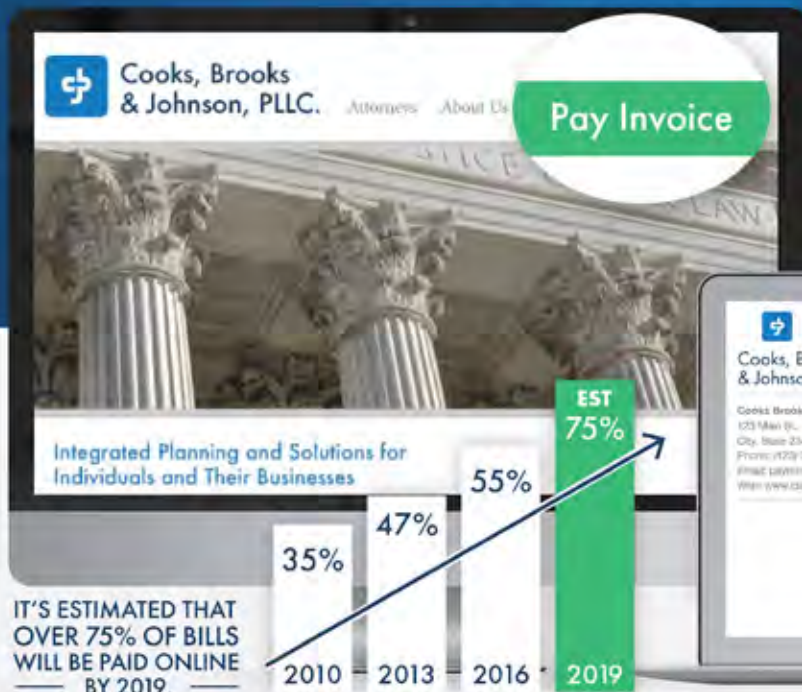
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**On the Cover:** Top row, LSBA President's Award winners, from left, R. Christian Johnsen, Keenan Kelly and Angela White-Bazile with 2016-17 LSBA President Darrel J. Papillion. Below, Kimball Award recipient Judge (Ret.) Kathleen Stewart Richey. See pages 80-91 for more on the Annual Meeting. Photos by Matthew Hinton Photography.

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**LSBA Members:** Are you an artist or photographer? If you have created art that you would like to be featured on a future *Louisiana Bar Journal* cover, email [barbara.baldwin@lsba.org](mailto:barbara.baldwin@lsba.org).

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By John E. McAuliffe, Jr.

# Judges and Lawyers Together — Again

In this issue, we highlight the recent Louisiana State Bar Association (LSBA) Annual Meeting and joint LSBA/Louisiana Judicial College Summer School. One important aspect of this annual gathering is to honor those attorneys and organizations who have devoted so much of their work to those in need and to the profession. If you happen to have contact with one of our honorees, please give them your personal thanks.

My wife, Jean, and I have been attending the Annual Meeting and Summer School for a number of years. Back then, our two children were in tow. This time, our two granddaughters were with us. Things do change.

We lawyers also have witnessed significant changes in the events. “Back in the day,” the judges and lawyers were bivouacked in separate locations. There were some joint CLE sessions and a few meetings for all. But, for the most part, we were divorced, *i.e.*, separate and apart.

I always thought it odd that the very judges who would preside over litigation and interpret our laws were not sitting in the same CLE classes. Might they have had something to add to any discussion? Would their shared experiences as judges have brought some different “take” on a case or statute?

Several years ago, this “separation of church and state” ended. We now hold all CLE sessions and meetings in the same convention facilities. Most of the sessions are attended by both judges and lawyers.



The Mississippi Bar 2016-17 President W. Briggs Hopson III speaks with Darrel J. Papillion, 2016-17 LSBA president, and Louisiana Supreme Court Justice John L. Weimer during the Opening Reception of the LSBA/LJC Joint Summer School and LSBA Annual Meeting. One of the many benefits of a combined Annual Meeting and Joint Summer School is the opportunity for judges, lawyers and even justices to network and discuss ideas. Photo by Matthew Hinton Photography.

During any given CLE session and even during the breaks, you may find yourself discussing issues with judges and lawyers from around the state. It is not uncommon for a presenter to look into the audience and ask a judge how he or she would handle a particular problem.

I attended one CLE which involved some of the proposed amendments to our criminal laws which were then being considered by the Legislature. The meeting room was at capacity, and it seemed that at least one half of the attendees were judges. The exchanges among the lawyers, judges and presenters were robust and to the point, both as to the amendments themselves and the possibility of future implementation.

Any lawyer practicing in the field of criminal law absorbed a wealth of information that could only augment that attorney’s practice.

So, if you have not attended the Annual Meeting and Summer School for a number of years, you may want to reconsider. Participation of lawyers and judges in CLE programs is what our profession needs and wants. The continuing exchange of ideas between the judiciary and lawyers enhances our legal system by promoting cooperation, collegiality and consideration of opposing views.



By Dona Kay Renegar

# Let's Give Them Something to Talk About: #yourLSBA

For many years, we, as an Association, have battled the perception society has about lawyers and our practices. A number of years ago, television shows like “The Public Defender” and “Perry Mason” gave society the first visual representation of the practice of law, albeit in a criminal setting. With the increase in television shows about the practice of law, the opening of our courtrooms to the media and the advancement of social media, our everyday practices have had little effect on society’s perception of what we do. Members of our community, depending upon how old they are, see us as characters from “LA Law,” “Law & Order,” “Ally McBeal,” “Boston Legal,” or even “The People’s Court” and “Judge Judy.” We, as a profession, know and understand that these shows are not indicative of how we practice, the professionals that we are, or the difference we make in a civil society. Yet we struggle against the media’s representation of lawyers and the practice of law and the skewed image those representations create in the eyes of our citizens.

I suggest that the numerous shows on television, the advancement of social media, and the competitive nature of the practice of law in Louisiana will continue to control society’s perception of lawyers. A year ago, 2016-17 LSBA President Darrel Papillion asked us to consider what members of our society

expected when they called a lawyer’s office. He encouraged us to remember that our communities need lawyers as we are an essential component of a civilized society and will continue to serve that purpose regardless of the changes in technology or availability of legal forms from the Internet. Darrel is right and, while I welcome the inquiry into society’s perception of lawyers, I suggest that there is little control we have as an association to change that perception by looking *outside* of our membership. We do, however, have the ability to promote our members, their dedication to the practice of law, the necessary role they play in our justice system, and the time and resources they devote to their communities.

The practice of law is the last self-regulated profession in our state. While we have citizen members who serve on our disciplinary committees, our citizens have decided that, solely due to our decision to become lawyers, we are entrusted with disciplining our own members. Doctors are not allowed to regulate their own practices. Nurses are not allowed to regulate their own practices. Social workers are not allowed to regulate their own practices. But, we, as lawyers, are allowed to set the high standards to obtain a law license, maintain that license and represent our fellow citizens in our courts of law. That level of trust also brings a great responsibility. We must celebrate our members who excel in the

practice and in their ethical standards, and we must lift up those members who are struggling to meet those standards. That is the duty society has entrusted us with in allowing us to manage our own members, and it is an honor.

In this day of the 24-hour news cycle and the need to be the first to break a story, as opposed to getting the most accurate story, our most troubled members often get attention. I intend to spend my year celebrating our members who get up every day and diligently represent their clients with the highest of ethical and professional standards and with no expectation of recognition or gratitude. I would like to share their accomplishments with you via the LSBA’s social media platforms this year by using a new hashtag, #yourLSBA. I will recognize our members who are mentors to young lawyers and officers of the court in the truest sense of that term, and those who use their legal skills to benefit their communities. Over my years of practice, I have seen many of these attorneys and I have chosen a few to recognize now.

**Danny Landry** acted as a curator in a divorce case on behalf of an absentee defendant. After being unable to locate the defendant and taking the necessary steps attempting to do so, he filed an answer and the matter was set for trial. The attorney for the plaintiff sent a young associate to handle the trial of the matter and she struggled to properly introduce





2017-18 LSBA President Dona Kay Renegar during the Installation Luncheon at the LSBA Annual Meeting in Destin, Florida. Photo by Matthew Hinton Photography.

the necessary exhibits and ask the correct questions to establish her case. The judge became anxious and somewhat frustrated, and the young attorney became even more nervous as the hearing progressed. Danny moved for a recess, invited the young attorney into the hallway, and explained what needed to be done to establish a case. The professional courtesy and mentoring Danny Landry shared with that young lawyer represents the very best of #yourLSBA.

**Ric Mere's** oldest son attended school with a young man whose home life became unstable and whose basic physical needs were not being met. Out of concern for this young man, the Mere family discussed inviting him into their home and family. After much discussion and by unanimous agreement, Ric, his wife Kathy, and their sons, David and Andre, sought temporary custody of the young man and brought him to live with them as a member of their family. This young man flourished under their care and control. They had struggles along the way and the road was not always easy, but they persevered and created a trusting, loving relationship with their new family. Ric and Kathy now have legal custody of this young man and speak with such pride of their three sons and the wonderful family they have crafted out of love. Ric Mere and his family are shining examples of the generosity and devotion at-

torneys share with their communities and are a source of pride for #yourLSBA.

**Maria Losavio** was asked by her local court to represent children in certain juvenile law cases (Children in Need of Care or CINC) to ensure that their interests were protected. After being trained as a CINC attorney and serving in that capacity, she became a qualified foster parent so she could foster a family of children who needed to be placed in a safe environment while their mother got the help she needed. Maria agreed and fostered a family of four siblings, providing them with a safe, loving home and keeping them together as a family unit. The court now appoints Maria, by agreement of the parties, as an advocate for children with special needs or unique issues in private divorce or custody matters to make sure the children get the support from the school system and counseling they may need to successfully navigate the emotional litigation. Maria Losavio's dedication to the justice system and selfless commitment of time to help those who have no representation and need it desperately are examples to which we all should strive in #yourLSBA.

Over the next year, I ask each of you to share with me similar actions of lawyers in your local jurisdictions so that I can recognize them this year as I travel around our state. They are our silent

champions who, with every day of practice, represent our profession with grace and dignity. I hope that each story shared will chip away at the negative perception some may have of our profession and begin to build a new admiration for the practice of law and the integral part lawyers play in both our justice system and our communities.

I am so proud and honored to represent this association and its 22,000+ members, and I look forward to meeting as many of you as I can in the next year. I will continue our partnership with the Louisiana Supreme Court and am so appreciative of the support our association receives from our highest court. Not all state bar associations are so fortunate to have that relationship with their Supreme Courts. I look forward to sharing with the state of Louisiana the fine work of our members both inside and outside the courtrooms of our state.

You are champions of justice every day you walk into your offices, with every client you meet, every piece of advice you share and every argument you make. I am honored to count myself amongst your numbers and look forward to championing your efforts every day of my tenure as your president.

*Dona Renegar*



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The 2017-18 Louisiana State Bar Association Board of Governors. Seated from left, Shannon S. Dartez, President-Elect Barry H. Grodsky, Secretary John E. McAuliffe, Jr., Immediate Past President Darrel J. Papillion, President Dona Kay Renegar, Treasurer H. Minor Pipes III, Valerie T. Schexnayder and Monique Y. Metoyer. Standing from left, L. Kent Breard, Jr., Sandra K. Cosby, Daniel A. Cavell, John M. Church, Darryl J. Foster, Edward J. Walters, Jr., Jermaine Guillory, Young Lawyers Division Chair Bradley J. Tate, Charles D. Elliott and C.A. (Hap) Martin III. Not in photo, D. Skylar Rosenbloom, Stephen I. Dwyer, J. Lee Hoffoss, Jr., Marjorie L. Frazier, Ronald J. Scalise, Jr., Julie Baxter Payer and Jeffrey A. Riggs. Photo by Matthew Hinton Photography.

## LSBA Installs 2017-18 Officers and Board of Governors at Annual Meeting

The Louisiana State Bar Association's (LSBA) 2017-18 officers and members of the Board of Governors were installed June 8, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Dona Kay Renegar** was installed as the 77th LSBA president by Louisiana Supreme Court Justice John L. Weimer. Renegar is a member in the Lafayette law firm Veazey, Felder & Renegar, L.L.C.

**Barry H. Grodsky**, a partner in the New Orleans law firm Taggart Morton, L.L.C., was installed as 2017-18 president-elect. He will assume the presidency in 2018-19.

**John E. McAuliffe, Jr.**, an attorney in the Metairie office of the law firm Frederick A. Miller & Associates, is beginning his first year of a two-year term as secretary. He also serves as editor of the *Louisiana Bar Journal*.

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

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

**Darrel J. Papillion**, a partner in the Baton Rouge law firm Walters, Papillion, Thomas, Cullens, L.L.C., will continue his service to the LSBA as 2017-18 immediate past president.

**Bradley J. Tate**, tax manager for the firm Carr, Riggs & Ingram, L.L.C., was installed as 2017-18 chair of the LSBA Young Lawyers Division.

Members of the 2017-18 Board of Governors also were installed by Justice Weimer.

### First District

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

► **Darryl J. Foster**, a partner in the New Orleans office of the law firm Bradley Murchison Kelly & Shea, L.L.C.

### Second District

► **Stephen I. Dwyer**, a partner in the Metairie law firm Dwyer, Cambre & Suffern, A.P.L.C.

### Third District

► **Shannon Seiler Dartez**, an attorney with the Glenn Armentor Law Corporation in Lafayette.

### Fourth District

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

### Fifth District

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

► **Valerie T. Schexnayder**, a solo practitioner attorney and mediator in Baton Rouge.

Continued next page



June 4-9, 2017 ★ Destin, Florida



Louisiana Supreme Court Associate Justice John L. Weimer swore in the 2017-18 Louisiana State Bar Association officers and Board of Governors during the Installation Luncheon. Photo by Matthew Hinton Photography.

## Installation

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### Sixth District

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

### Seventh District

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

### Eighth District

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

### At-Large Members

► **Daniel A. Cavell**, a partner in the Thibodaux law firm Morvant & Cavell, A.P.L.C.

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

► **Monique Y. Metoyer**, an assistant district attorney and chief of Section 3 for the Caddo Parish District Attorney's Office in Shreveport.



2017-18 LSBA President Dona Kay Renengar was sworn in by Louisiana Supreme Court Associate Justice John L. Weimer during the Installation Luncheon. Photo by Matthew Hinton Photography.

### LSU Paul M. Hebert Law Center

► **John M. Church**, Baton Rouge, Professor of Law at LSU Paul M. Hebert Law Center.

### Tulane University Law School

► **Ronald J. Scalise, Jr.**, New Orleans, the A.D. Freeman Professor of Civil Law at Tulane University Law School.

### Louisiana State Law Institute

► **L. Kent Breard, Jr.**, an attorney in the Monroe law firm Snellings, Breard, Sartor, Inabnett & Trascher, L.L.P.

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► Chair **Julie Baxter Payer**, executive counsel for the Louisiana Department of Veterans Affairs in Baton Rouge.

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

► Member **Jeffrey A. Riggs**, a partner in the Lafayette office of the law firm Lewis Brisbois Bisgaard & Smith, L.L.P.



R. Christian Johnsen, left, was presented with a President's Award by 2016-17 LSBA President Darrel J. Papillion during the General Assembly. Photo by Matthew Hinton Photography.



Keenan Kelly, left, was presented with a President's Award by 2016-17 LSBA President Darrel J. Papillion during the General Assembly. Photo by Matthew Hinton Photography.



Angela White-Bazile, left, was presented with a President's Award by 2016-17 LSBA President Darrel J. Papillion during the General Assembly. Photo by Matthew Hinton Photography.

## LSBA Members Receive President's Awards

Three Louisiana State Bar Association (LSBA) members received 2017 President's Awards during the Annual Meeting in Destin, Fla., in June. Recipients were chosen by 2016-17 LSBA President Darrel J. Papillion and were recognized for services to the Association.

**R. Christian Johnsen**, senior partner in the Washington, D.C., office of the law firm Jones Walker LLP, was recognized for his exemplary efforts in annually assisting the LSBA with its ABA Day visits on Capitol Hill, an opportunity for Bar leadership to meet with legislators on various legal issues. He has developed strong relationships with key committees on Capitol Hill, including the Senate Commerce Committee, the House and Senate Armed Services Committees, the House Transportation and Infrastructure Committee, the Senate Finance Committee and the House Ways and Means Committee. He is a member of the Executive Committee and the board of

directors of the Coast Guard Foundation, serves as vice chair of the board of directors of the American Maritime Congress and is a member of the Advisory Board of the McIntire School of Commerce at the University of Virginia.

**Keenan K. Kelly**, a partner in the Natchitoches law firm Kelly & Townsend, L.L.C., was recognized for his exemplary accomplishments as a member and chair of the LSBA's Legislation Committee. A graduate of Northwestern State University in 1990 and Loyola University College of Law in 1993, he has been a member of the LSBA's House of Delegates since 2004. He has served on the Legislation Committee since 2008, chairing the committee since 2014. He is a member of the Natchitoches Parish Bar Association (vice president since 1996), the Natchitoches Inn of Court, the American Bar Association, the American Association of Justice, the Louisiana Bar Foundation, the Louisiana Association of Justice, the State Bar of Texas and the Texas Trial Lawyers'

Association.

**Angela White-Bazile**, executive counsel of the Louisiana Supreme Court under Chief Justice Bernette Joshua Johnson, was recognized for her exemplary efforts in advancing the partnership between the Louisiana Supreme Court and the LSBA. She received her JD degree in 1996 from Southern University Law Center and earned a doctorate of philosophy in psychology and biblical counseling. A practicing attorney for more than 20 years, she has worked as a research attorney, a judicial law clerk, an associate attorney (Dr. Kevin U. Stephens and Associates and Thornhill Law Firm), an associate professor of law (Baton Rouge College of Paralegals) and in-house counsel for Prudential Life Insurance. She is a member of the LSBA's Bar Governance Committee and the Diversity Committee. She also is a member of the American Bar Association, the National Bar Association and the Louis A. Martinet Legal Society, Inc.



June 4-9, 2017 ★ Destin, Florida



Judge (Ret.) Kathleen Stewart Richey, left, was presented with the Kimball Award by 2016-17 LSBA President Darrel J. Papillion during the General Assembly. *Photo by Matthew Hinton Photography.*

## Richey Honored with Kimball Award

Judge (Ret.) Kathleen Stewart Richey of Baton Rouge received the 2017 Catherine D. Kimball Award for the Advancement of the Administration of Justice.

She became the president/CEO of LouisianaChildren.org in May 2015. She began her career as an attorney representing children in child dependency and delinquency matters. During this time, she served on the Children’s Code Project Committee which drafted the Louisiana law regarding children’s issues.

In 1991, she became the first juvenile judge in East Baton Rouge Parish, serving until 2015. During her 24 years on the bench, she was instrumental in establishing Capital Area CASA and was named Louisiana CASA Judge of the Year in 1997. She is a member of the Louisiana Council of Juvenile and Family Court Judges (president in 2001) and chaired the Department of Children and Family Services’ Liaison Committee from 2001-08. She has served on the Legislative Task Force on Legal Representation in Child in Need of Care (CINC) Matters which created the Child Advocacy Program in Louisiana.

She is the recipient of the Louisiana State Bar Association’s Children’s Law Award and the Baton Rouge Children’s Coalition “For the Love of Children” Award.



Francophone Section Chair Warren Perrin addressed the General Assembly and accepted the Hernandez Memorial Award on behalf of Professor Alain A. Levasseur at the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*

## LSU Law Professor Receives Hernandez Award

Louisiana State University Paul M. Hebert Law Center Professor Alain A. Levasseur of Baton Rouge received the 2017 John A. “T-Jean” Hernandez III Memorial Award, presented for achievements in Francophone leadership.

He obtained an MCL degree in 1966 from Tulane University where he returned to teach in 1968. He joined the LSU Law Center faculty in 1977. He is a member of the International Academy of Comparative Law, the American Association for the Comparative Study of Law, the Société de Législation Comparée, the Association Henri Capitant and the International Association of Legal Methodology.

He also is a member of several boards, including the Fondation pour le Droit Continental, the Revue Internationale de Droit Comparé, E-Competition, the Revue Trimestrielle de Droit Civil, El Foro de Derecho Mercantil, the American Journal of Comparative Law and the LSU Center for French and Francophone Studies.



## Magistrate Judge, Students Honored with Diversity Awards

The Chief Justice Bernette Joshua Johnson Trailblazer Award and the Guardian of Diversity Award were presented during the Louisiana State Bar Association's Annual Meeting in June.

**Magistrate Judge Karen Wells Roby** with the U.S. District Court for the Eastern District of Louisiana in New Orleans received the 2017 Chief Justice Bernette Joshua Johnson Trailblazer Award.

Judge Roby, who took her oath of office in 1999, was the first African-American woman to serve as president of the Federal Magistrate Judges Association (FMJA). She received the FMJA's 2016 Founder's Award for her work resulting in increased salaries of U.S. magistrate judges. While in private practice, she was the first African-American female in Louisiana to represent General Motors Corporation in defense of its automotive products. As a partner with the law firm Vial Hamilton Koch & Knox, L.L.P., she assisted in the hiring process and worked toward diversifying the practice.

A strong believer in pipeline initiatives, Judge Roby has worked to improve clerkship opportunities in the federal judiciary. As the coordinating judicial officer of the Louisiana State Bar Association's Suit Up for the Future Program, she annually inspires high school students to consider the legal profession. She has traveled to Kenya as part of the Lawyers Without Borders program and brought U.S. case management best practices to magistrates in the country. She served as co-chair of the American Bar Association Litigation Section's Diversity and Inclusion Committee and was a member of the Federal Bar Association's Ethics Committee and the Eastern District's Bench Bar Communications Committee



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, and 2016-17 LSBA President Darrel J. Papillion, right, presented Magistrate Judge Karen Wells Roby, center, with the Trailblazer Award. Photo by Matthew Hinton Photography.

and Technology Committee.

The **Louisiana State University Hispanic Law Students Association (HLSA)** in Baton Rouge received the 2017 Guardian of Diversity Award. Chartered in 2015, the organization's goals are awareness and integration. Awareness involves educating HLSA members about the federal, state and local Hispanic legal realm. Integration involves assimilating law students into the Hispanic legal community, especially those Spanish speakers who can utilize their bilingual abilities. Among its events, HLSA hosts the roundtable discussion "Que Pasa, PMH?" where students can practice and learn Spanish phrases while discussing current Latin American political events. HLSA President Tatiana Torres said the pressing need for Spanish speakers in the legal community became evident in the lack of translation services during disaster relief efforts for Hurricane Katrina and



Monica Vela-Vick, left, accepted the Guardian of Diversity Award on behalf of the LSU Hispanic Law Students Association from 2016-17 LSBA President Darrel J. Papillion. Photo by Matthew Hinton Photography.

the Baton Rouge floods. Undocumented workers functioned as day laborers in the clean-up and rebuilding efforts but many were not paid for their labor. Spanish-speaking lawyers and law students (regardless of ethnicity) are needed to assist in these cases.



June 4-9, 2017 ★ Destin, Florida



Alainna R. Mire presented member representatives of the Leadership LSBA Class with the Victory Award at the LSBA Annual Meeting during the General Assembly. Inset photo at right, Micah J. Fincher, Shayna B. Morvant, Mire and Kimberly R. Silas. Photo by Matthew Hinton Photography.

## Leadership LSBA Class Recognized for *Journal* Contributions

The Leadership LSBA 2015-2016 Class received the 2017 Stephen T. Victory Memorial Award, recognizing outstanding contributions to the *Louisiana Bar Journal*.

For its class project, the Leadership Class coordinated a special issue of the *Louisiana Bar Journal* to commemorate the LSBA's 75th Anniversary. The Class members wrote articles, compiled historic information and photographs, and conducted interviews with prominent Bar members on the past and the future of the profession.

Class members were Shayna Lynn

Beevers Morvant, Gretna; Simone B. Boustead, New Orleans; L. Sean Corcoran, Lake Charles; Mark R. Deethardt, New Orleans; Jacqueline M. Epstein, New Orleans; Jamie Polozola Gomez, Hammond; Cassandra R. Hewlings, New Orleans; Tara R. Jones, Shreveport; Tracy O. Joseph, New Orleans; P.J. Kee, Sr., New Orleans; Richard D. Lamb III, Shreveport; Lisha C. Landry, Baton Rouge; Amani C. Perkins, Alexandria; Kimberly R. Silas, New Orleans; David M. Stein, New Orleans; Micah J. Fincher (co-chair), New Orleans; and Lynette Roberson (co-chair), Baton Rouge.



Desmond LeBlanc, left, was presented with the LCLCE Civics In Action award by Lawrence J. Centola III, right, during the General Assembly at the LSBA Annual Meeting. Photo by Matthew Hinton Photography.

## New Orleans Student Receives LCLCE Civics in Action Award

Desmond LeBlanc, a senior at Warren Easton Charter High School in New Orleans, received the 2017 Louisiana Center for Law and Civic Education's Civics in Action Award. The award recognizes an outstanding middle or high school student who has demonstrated outstanding civic virtue and involvement in the community.

LeBlanc participates in the Grow Dat Program, a sustainable youth farming initiative, and the Louisiana State Bar Association's Suit Up for the Future High School Summer Internship Program. He also is a research assistant in Tulane University's Psychology Department. He is a school ambassador, a Student Council member, a member of the National Honor Society and a trumpet player in the marching band.





LBF President Valerie Briggs Bargas presented Emmett C. Sole with the Boisfontaine Award during the General Assembly at the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*

## Lake Charles Attorney Recognized with Boisfontaine Award

**E**mmett C. Sole of Lake Charles received the 2017 Louisiana Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award.

Currently "of counsel" with the Lake Charles law firm Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P., Sole completed his undergraduate studies at Louisiana State University and received his JD degree from LSU Paul M. Hebert Law Center in 1968. He has an active litigation, mediation and arbitration practice. He served as a special assistant attorney general for the State of Louisiana in boundary litigation and Outer Continental Shelf Lands Act litigation. In 1999, he played a major role for a large industrial client in securing a no liability jury verdict in a high-profile environmental civil action in Calcasieu Parish.

He is chair emeritus and a past president (2001-03) of the Louisiana State Law Institute and has been a member of the Council for more than 30 years. He is a Charter Fellow of the Louisiana Bar Foundation and a Life Fellow of the American Bar Foundation (Louisiana State chair, 2003-10). He served on the Louisiana State Bar Association's Board of Governors, in the House of Delegates, on the Nominating Committee and is the immediate past chair of the Alternative Dispute Resolution Section and vice chair of the Fidelity, Surety and Construction Law Section. He is a member of the Southwest Louisiana Bar Association, the American Bar Association and the International Association of Defense Counsel.



2016-17 LSBA President Darrel J. Papillion, right, presented the Leadership LSBA Class with certificates of appreciation for their work over the last year. *Photo by Matthew Hinton Photography.*



2016-17 LSBA President Darrel J. Papillion, left, and Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, right, during the General Assembly. *Photo by Matthew Hinton Photography.*



2016-17 LSBA President Darrel J. Papillion during the General Assembly at the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*



June 4-9, 2017 ★ Destin, Florida



The Young Lawyers Division Council was sworn in by Judge Karelia R. Stewart at the LSBA Annual Meeting during the YLD Awards & Installation Reception. Photo by Matthew Hinton Photography.

## Young Lawyers Division's 2017-18 Officers and Council Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2017-18 officers and council members were installed June 7, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Bradley J. Tate**, tax manager for Carr, Riggs & Ingram, L.L.C., in Metairie, was installed as 2017-18 YLD chair by Judge Karelia R. Stewart, 1st Judicial District Court, Shreveport.

Also sworn in as officers were Chair-Elect **Dylan T. Thriffiley**, director of compliance for Ochsner Health System in New Orleans (she will assume the chair's position in 2018-19); Secretary **Scott L. Sternberg**, a partner in the New Orleans law firm Sternberg, Naccari & White, L.L.C.; and Immediate Past Chair **Scotty E. Chabert, Jr.**, an assistant district attorney for the 18th Judicial District and a partner in the Baton Rouge law firm Saunders & Chabert.

Judge Stewart also installed members of the 2017-18 YLD Council.

**District 1:** Cristin F. Bordelon, an associate in the New Orleans office of the law firm Leake & Andersson, L.L.P.; and James E. Courtenay, an attorney with The King Firm, L.L.C., in New Orleans.

**District 2:** Shayna B. Morvant, managing partner of the Gretna law firm Beevers & Beevers, L.L.P.; and Jeffrey D. Hufft, with the law firm Jeffrey D. Hufft, Attorney at Law, L.L.C., in New Orleans.

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

**District 4:** Adam P. Johnson, a partner in The Johnson Firm in Lake Charles.

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

**District 6:** Nicholas R. Rockforte, a partner in the Plaquemine law firm Pendley, Baudin & Coffin, L.L.P.

**District 7:** Ethan A. Hunt, a solo practitioner in Monroe.

**District 8:** Joshua K. Williams, an assistant district attorney for Caddo Parish in Shreveport.

**At-Large Representative:** Travis J. Broussard, a partner in the Lafayette law firm Durio, McGoffin, Stagg & Ackermann.

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

**Young Lawyer Member/American Bar Association House of Delegates:** Kristen L. Burge, an associate in the Metairie office of the law firm Sessions, Fishman, Nathan & Israel, L.L.C.



2017-18 LSBA YLD Chair Bradley J. Tate, left, presented Betty Ann Maury with the Outstanding Young Lawyer Award during the YLD Reception. Photo by Matthew Hinton Photography.



2017-18 LSBA YLD Chair Bradley J. Tate, right, presented Lauren L. Gardner with the Bat P. Sullivan, Jr. Chair's Award during the YLD Reception. Photo by Matthew Hinton Photography.



2017-18 LSBA YLD Chair Bradley J. Tate, right, presented Adam P. Johnson with the Bat P. Sullivan, Jr. Chair's Award during the YLD Reception. Photo by Matthew Hinton Photography.

## LSBA Members, Bar Association Honored with 2017 YLD Awards

Five Louisiana State Bar Association (LSBA) members and the Baton Rouge Bar Association's Young Lawyers Section received 2017 LSBA Young Lawyers Division awards.

### ► Outstanding Young Lawyer Award

**Betty Ann Maury** is law clerk to 24th Judicial District Court Judge Lee V. Faulkner, Jr. in Gretna. She received her BA degree from Concordia University in Wisconsin and her JD degree from Loyola University College of Law. She serves in the LSBA's House of Delegates, is a member of the LSBA's Access to Justice Committee and is the Region 4 High School Mock Trial Competition coordinator. She is chair of the Jefferson Bar Association Young Lawyers Division, a member of the CASA Jefferson Planning Committee and a board member of the Louisiana Center for Law and Civic Education. She was the 2016 recipient of the Gillis Long Poverty Law Center

Public Service Award. She also was named the 2013 Outstanding Loyola Family Law Clinic Student by the New Orleans Association of Women Attorneys.

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

**Lauren L. Gardner** is an associate in the Onebane Law Firm in Lafayette. She received her BA degree in 2003 from Louisiana State University and her JD/BCL degree in 2006 from LSU Paul M. Hebert Law Center. She is admitted to practice law in Louisiana and Texas. She is currently serving as the District 3 representative on the LSBA's Young Lawyers Division Council. She is a member of the Lafayette Association of Professional Landmen and the Acadiana Society of Human Resource Management and serves on the board of directors for the Lafayette Education Foundation.

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

**Adam P. Johnson** is a partner in The Johnson Firm in Lake Charles. He re-

ceived a bachelor's degree in business management in 2006 from Louisiana State University and his JD degree in 2009 from Southern University Law Center. He was admitted to practice law in Louisiana in 2009. He is currently serving as the District 4 representative on the LSBA's Young Lawyers Division (YLD) Council and co-chairs the YLD's Wills for Heroes Committee. He was a member of the Leadership LSBA 2013-14 Class and co-chaired the Leadership LSBA 2014-15 Class. He serves on the Executive Council for the Southwest Louisiana Bar Association and is a member of the American Association of Premier DUI Attorneys. He was recognized as a "Top 40 Under 40" professional and as a "Top Criminal Defense Lawyer" by *Acadiana Magazine* (2014 and 2017). In his community, he is a member of the V.I.S.A. Coalition of Lake Charles.

Continued next page



June 4-9, 2017 ★ Destin, Florida



2017-18 LSBA YLD Chair Bradley J. Tate, left, presented Monica M. Vela-Vick with the Wynne Professionalism Award during the YLD Reception. Photo by Matthew Hinton Photography.

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

**Monica M. Vela-Vick** is an associate in the Baton Rouge office of the law firm Hammonds, Sills, Adkins & Guice, L.L.P. She received her undergraduate degree from Rice University and her JD degree from the University of Michigan Law School, where she served on the *Michigan Journal of Gender and Law* Editorial Board and as chair of the Latino Law Students Association. She is a member of the LSBA's Diversity Committee and Diversity Conclave Subcommittee and was a member of the Leadership LSBA 2013-14 Class. She served on the LSU Law Center's Diversity Task Force and is a member of the Wex Malone American Inn of Court and the Hispanic Lawyers Association of Louisiana. She chairs the Baton Rouge Bar Foundation's Teen Court of Greater Baton Rouge Program and the Regional High School Mock Trial Competition. In 2015, she received the Baton Rouge Bar Association's President's Award.

► **Pro Bono Award**

**Janeane Gorcyca Abbott** is an attorney with the Joubert Law Firm in Baton



2016-17 LSBA YLD Chair Scotty E. Chabert, Jr., right, presented Janeane Gorcyca Abbott with the Pro Bono Award. Photo by LSBA Staff.

Rouge and currently leads the Family Law Department. She first joined the firm as a law clerk in 2014. She received a BA degree in history, with minors in political science and German, from Centenary College of Louisiana in Shreveport and her JD degree in 2014 from Southern University Law Center. She is a member of the Baton Rouge Bar Association and its Family Law Section. Since 2011, she has been a volunteer with the Sexual Trauma and Awareness Center in Baton Rouge, where she assists victims through hospital and phone advocacy. Since 2015, she has been an active volunteer at the legal Self-Help Desk at East Baton Rouge Family Court. She regularly accepts pro bono cases for representation through the Baton Rouge Bar Association's Pro Bono Project.

► **Service to the Public Award**

In fall 2016, the Baton Rouge Bar Association's (BRBA) Young Lawyers Section and the Federal Bar Association conducted a joint collection drive of personal hygiene items for homeless veterans in recognition of Veterans Day. After the hygiene products were received, the

BRBA's Teen Court volunteers put together 75 packages that were delivered to the Veterans Administration for the veterans in transitional housing.

► **Service to the Bar Award**

The Baton Rouge Bar Association's (BRBA) Young Lawyers Section coordinates a Sidebar Luncheon each quarter in a court of different jurisdiction. The luncheons are an opportunity for young lawyers to interact with judges and their staffs in an informal setting while learning more about the practice of law in that judge's courtroom. In July 2016, with the assistance of Louisiana 1st Circuit Court of Appeal Judge Guy P. Holdridge, 10 appellate judges participated in a Panel Sidebar Luncheon, with 50 young lawyers attending. Discussion topics included "do's and don'ts" at the 1st Circuit, mistakes made by attorneys, requests accepted from the judges and court procedures.



2017-18 LSBA YLD Chair Bradley J. Tate and 2016-17 LSBA YLD Chair Scotty E. Chabert, Jr. during the YLD Reception at the LSBA Annual Meeting in Destin, Florida. Photo by Matthew Hinton Photography.

*Joint Summer School & Annual Meeting Wrapup*



2017-18 LSBA President Dona Kay Renegar and 2016-17 LSBA President Darrel J. Papillion during the Installation Luncheon at the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*



Louisiana Supreme Court Associate Justice John L. Weimer and his wife Penny, left, chat with Peggy Cotogno during the LCLCE Reception. *Photo by Matthew Hinton Photography.*



Hon. John B. Breaux (Ret.) during a CLE seminar held during the Joint Summer School. *Photo by Matthew Hinton Photography.*



2016-17 LSBA President Darrel J. Papillion addressed the House of Delegates during the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*



Golf tournament held during the LSBA Annual Meeting. *Photo by Matthew Hinton Photography.*




Feeling (LSBA) presidential: Barry H. Grodsky, 2017-18 president-elect; Darrel J. Papillion, 2016-17 president; Dona Kay Renegar, 2017-18 president; Michael W. McKay, 2004-05 president; Joseph L. (Larry) Shea, Jr., 2014-15 president; and Richard K. Leefe, 2013-14 president. *Photo by Matthew Hinton Photography.*



**Develop** Nuggets,  
**Unpack** Weasel Words  
**& 8 More**  
**Deposition Suggestions to**  
**Minimize** Frustration 

By Adam Babich



Depositions are a useful, exciting, but frustrating part of a litigation practice. They are frustrating because when you read a deposition transcript you almost always find that the deposition could have been better — if only! There are no panaceas. Below, here are 10 suggestions intended to minimize deposition frustration.

## 1. Develop Nuggets.

By “nugget,” I mean a short Q&A that you can use to impeach a witness at trial or to drop into a summary judgment motion. A nugget does not need context. An example:

Q: You were not present when Jane Smith took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016, were you?

A: No.

You cannot build a solid nugget from a question like, “Were you present when she took those samples?” Who is she? What are “those samples?” During impeachment, you will need to leaf up through the deposition to find out and provide context. That is a painful thing to do when you impeach a witness; instead, you want to slap the witness hard and fast with a self-contained nugget that needs no further explanation.<sup>1</sup> Similarly, when you quote from a deposition in your summary judgment brief, you would rather not quote passages to catch the judge up on the context. You want a sharp question and answer that adds forward momentum to a hard-hitting, efficient brief.

Learning to ask questions that elicit nuggets is a habit. It involves questioning like a lawyer, not like a conversationalist. This means you must disengage from behavior you have engaged in for your whole life, which is a challenge. In addition, you want to keep the deposition feeling like a conversation from the witness’s perspective.

Although everyone at the deposition table already knows the context, the lawyer needs the discipline to put enough context *in the question* to create a nugget. When gathering nuggets, it sometimes helps to

write down in your notes a description of context that you can drop into every pertinent question, *e.g.*, “the June 13, 2016, sampling of groundwater at well number 14 on the South Scavenger Landfill.” That makes it easy to ask, as many times as it takes, “You’ve told me about cleaning the sample bottles, preparing the chain of custody documents, and drawing a sample, did you do anything else as part of the June 13, 2016, sampling of groundwater at well number 14 on the South Scavenger Landfill?” When you finally get the “no,” that Q&A will be a nugget. If the witness tries to add something else at trial, you can slap him or her with a nice, sharp impeachment.

When crossing an expert witness, it is nice to have a series of nuggets (for impeachment) about the limits of the experts’ expertise. For example:

You do not have a PhD, do you?

You are not a medical doctor, are you?

You are not an expert in toxicology, are you?

You are not an expert in chemistry, are you?

Tactically, you may not always try to develop nuggets. During one part of a deposition, you might focus on just getting the witness to talk freely and on learning as much as possible. But then go back to your notes and turn all the good things you have learned into nuggets.

## 2. Close the Door with Definitive Lists.

You “close the door” by drawing boundaries around what the witness knows. You draw these boundaries by asking the witness to agree to definitive lists of relevant information. For example:

Q: What kinds of things might cause inaccurate results of laboratory analyses of groundwater samples?

A: Cross-contamination, contaminated laboratory chemicals, an open window at the lab.

Q: You’ve told me that inaccurate

results of laboratory analyses of groundwater samples can result from cross-contamination, contaminated laboratory chemicals, and open windows at the lab. Is that everything that might cause inaccurate results of laboratory analyses of groundwater samples?

A: Human error.

Q: OK, you’ve told me that inaccurate results of laboratory analyses of groundwater samples can result from cross-contamination, contaminated laboratory chemicals, open windows at the lab, or human error. Is there anything else that might cause inaccurate results of laboratory analyses of groundwater samples?

A: Excessive hold times.

Q: Ah. You’ve told me that inaccurate results of laboratory analyses of groundwater samples can result from cross-contamination, contaminated laboratory chemicals, open windows at the lab, human error, or excessive hold times. Is there anything else that might cause inaccurate results of laboratory analyses of groundwater samples?

A: Well everything else on that list was really a type of human error.

Q: Got it. You’ve told me that inaccurate results of laboratory analyses of groundwater samples can result from the following types of human error: cross-contamination, contaminated laboratory chemicals, open windows at the lab, and excessive hold times. Is there anything else that might cause inaccurate results of laboratory analyses of groundwater samples?

A: No. (Or, “Nothing else comes to mind at the moment” — from a well-prepared witness who has been instructed to keep as many doors open as possible).

That door is now closed, or at least as closed as it gets. If the witness comes up with new sources of laboratory error at trial, you are in good shape to impeach. For impeachment purposes, you should generally craft your door-closing questions to elicit nuggets.

### 3. Close the Door by Unpacking Weasel Words.

Closing the door also involves spotting and unpacking the witness's weasel words. There are a limited number of these words or phrases in common use (*e.g.*, probably, not specifically), so they are not hard to spot once you get in the habit of listening for them. For example:

Q: Was it raining when Jane Smith took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016?

A: Probably. (The door is not closed.)

Q: You said "probably." Where would you look to determine whether it was raining when Jane Smith took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016?

A: My report.

Q: Please look at it now and let me know when you're ready to tell me whether it was raining?

A: It was raining. (We have an answer, but no nugget.)

Q: So it was raining when Jane Smith took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016?

A: Correct.

Another typical type of exchange:

Q: What did Jane Smith tell you about the conditions under which she took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016?

A: I don't remember specifically. (The door is not closed.)

Q: You said you don't remember specifically, what do you remember generally about what Jane Smith told you about the conditions under which she took the groundwater sample from well number 14 at the South Scavenger Landfill on June 13, 2016?

A: I don't remember generally either. (Now the door is closed).

### 4. Learn What the Witness Knows.

Go back to suggestion 2 (close the door with definitive lists). When you keep lists and confirm with the witness that those lists are complete, the next step is to explore each item on the lists. For example, "Please tell me what an excessive hold time is?" "Could an excessive hold time have affected the groundwater sample from well number 14 at the South Scavenger Landfill taken on June 13, 2016?" "What things do you do to avoid excessive hold times?" (This will be another list).

Often you will be working through several lists, and creating more lists as you go. Keep track. Before closing the deposition, go through your notes and make sure you have made a conscious decision about whether to exhaust the witness's knowledge behind each item on each list.

In general, people (including witnesses) love to talk about themselves and what they do, and they love to explain things. Defending lawyers want their witnesses to fight this tendency and to calmly dictate short, responsive and carefully thought-out statements to the court reporter. In contrast, deposing lawyers want the witness to live in the moment and to speak freely, without deliberation, as if the witness were having a simple conversation or argument.

Usually, being a "nice guy" who is genuinely interested in what the witness has to say is the most effective way to reinforce a witness's natural tendency to talk. There are other tactics, however. Sometimes, once the "nice guy" side of a lawyer's personality has gotten everything it can, it is time for a more aggressive approach, to make the witness feel uncomfortable or defensive. You might try to rattle a witness by harping on an inconsistency or mistake, by jumping around among topics, or by leaning forward and picking up the pace. If the lawyer succeeds in rattling the witness, then that can be a great time to jump to a key topic. Another great time for discussing key topics is after a witness has become tired. Rattled or tired witnesses make mistakes.

Remember the five "W"s — who, what,

when, where and why. "Why" is especially useful with experts. Most witnesses love to explain why, and the explanation can open fruitful areas for further inquiry. When preparing questions and taking notes, it is often helpful to think chronologically — to construct a timeline and fill in the gaps.

I recommend against prefacing questions with topic sentences, such as "now let's talk about background" or "I want to ask about your report." Many lawyers do this, but it seems more of a nervous habit than a tactical choice. Because you build nuggets to stand on their own, you should not need topic sentences for the transcript to make sense. There is a downside to letting the witness know where you are going with your next series of questions, and thus allowing the witness to prepare mentally. Topic sentences may also allow the lawyer on the other side to provide specific preparation for the witness during a break. Perhaps some lawyers think these topic statements are useful in getting the witness talking, but I have my doubts. How often in a conversation do you preface questions with a topic sentence, such as "now let's talk about where you went last night?" Go straight to your questions.

### 5. Take Notes.

I suggest working on paper. You will need to leaf through your notes while putting questions together and building nuggets, which is difficult on a computer. Also, you want the witness to feel as if he or she is having a conversation with you, which is difficult while typing or scrolling on a computer. When acting as second chair at a deposition, or when defending a deposition, computers are fine for note-taking.

### 6. Object When Appropriate.

When defending depositions, lawyers rarely say much. Not every technically improper question is worth an objection. But you should always be making a conscious decision about whether to speak. You must stay in the moment to make sure that you are paying attention during the one-in-20 (or one-in-200) question when an objection is needed to protect your client.



## 7. Handle Objections Efficiently.

The usual response to an objection is “noted” or, to the witness, “You can answer.” Do not let objections slow you down (unless you agree that the objection is well-taken, in which case you might want to re-phrase). Circumstances are few (*e.g.*, privilege) under which the defending lawyer may instruct his or her client not to answer without risk of sanction. Arguing with opposing counsel on the deposition record is often a waste of time.

## 8. Make (and Protect) the Record.

Often a witness will answer a question before you have finished asking it, so two people are talking at once. It may sound perfectly natural and understandable in the deposition room, but who knows what the transcript will look like? An important habit is for lawyers to listen for problems in the transcript and provide friendly reminders like, “Mr. Witness, the court reporter may not be able to take down everything if we both talk at the same time. Please allow me to finish my question before you answer.” Next, repeat your question and

get a good answer on the record. This same habit of listening for how the record is going to read also helps in developing nuggets. In general, careful listening (to both the witness’s words and your own) is a crucial deposition skill.

## 9. Be Tactical.

Especially with federal time limits on depositions, lawyers must be tactical in deciding what to explore. You should know why you are asking questions. In addition, you generally would rather not do your opponents’ work for them. It can be a mistake to explore (and thus develop) a bad fact that the other side might have missed. This is a judgment call, however. The other side of the balance is your desire to know what the witness may say at trial.

## 10. Develop Good Habits.

Good deposition skills become good habits. Develop good habits by noticing your own mistakes and those of your colleagues and opponents — both during the depositions and on the transcripts. In other words, do not relax just because someone else is taking the deposition; use the opportunity. The more depositions you observe,

while being alert to mistakes, the better prepared you will be to avoid mistakes. You make some anyway. Depositions can be long and stressful (albeit fun for the deposing lawyer). It is easy to become tired and somewhat sloppy (this happens to witnesses and defending lawyers, too, which works in your favor as the deposing lawyer). Remember to live in the moment, listening carefully to the witness and to yourself, and focusing on the task before you. If you make a mistake, fix it and/or move on. There will be time to beat yourself up about it after the deposition.

## FOOTNOTE

1. I like to keep things simple during trial. It is hard enough to do an effective cross-examination without leafing through a lot of paper during impeachment.

*Adam Babich is a professor at Tulane Law School. From 2000-17, he directed the Tulane Environmental Law Clinic, which provides free representation to clients on environmental issues. (ababich@tulane.edu; 6329 Freret St., New Orleans, LA 70118)*



## LSBA Rules of Professional Conduct Committee Sets 60-Day Public Comment Period on ABA Model Rule 8.4(g)

**O**n Aug. 8, 2016, the American Bar Association’s (ABA) House of Delegates adopted a new ABA Model Rule 8.4(g), making it “. . . professional misconduct for a lawyer to: (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law . . . .”

Since then, a subcommittee of the Louisiana State Bar Association’s (LSBA) Rules of Professional Conduct Committee (the Rule 8.4(g) Subcommittee) has been charged with studying current ABA Model

Rule 8.4(g), along with the current rules and relevant case law of all other U.S. jurisdictions. The Subcommittee has recently made a report and recommendation to the LSBA Rules of Professional Conduct Committee, summarized in an “executive summary.”

The LSBA Rules of Professional Conduct Committee has not yet taken any position on the Subcommittee’s recommendation but has chosen to seek written comments from the public and LSBA membership at-large for a period of 60 days. The comment period began on July 19 and will be open through Sept. 16, 2017.

Anyone wishing to comment on the Rule 8.4(g) Subcommittee’s recommendation should email written comments to:

“SUBJECT: Rule 8.4(g) Subcommittee Recommendation” c/o R Lemmler@lsba.org. (Comments also may be mailed to: “Attn: Rule 8.4(g) Subcommittee Recommendation,” c/o Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130.)

Be advised that any comments submitted will be considered public and, as such, may be published on the LSBA’s website and/or may become a matter of public record.

To review the Subcommittee’s Final Report, the Subcommittee’s Executive Summary and the ABA Model Rule 8.4, go online to: [www.lsba.org](http://www.lsba.org), then follow the links.

# Book Review

## **It's All to Their Credit: A Review of *Secured Credit, Louisiana and American Perspectives***

Reviewed by Michael H. Rubin

**P**assing the Code III section of the Louisiana Bar Exam is a hurdle all Louisiana lawyers have to face and overcome. Working through the complex issues involved in security rights requires knowledge of numerous parts of the Civil Code and its ancillaries.

Although it sounds like a class on how to unlock a door, “Security Devices” is the name that the majority of Louisiana law schools give this course, and it is one that most students take in their third year for it requires a

thorough grounding in areas such as obligations, business entities, movable and immovable property, sales and prescription. Until 2017, no major publisher had a casebook in the area, but now Wolters Kluwer has released one co-written by L. David Cromwell, a Shreveport attorney who serves as the reporter for the Louisiana State Law Institute’s Security Devices Committee, and professors Dian Tooley-Knoblett, John Randall Trahan and Christopher K. Odinet, who teach the Security Devices courses at the law schools of, respectively, Loyola

University, Louisiana State University and Southern University.

This array of legal talent has produced an outstanding volume that not only includes all the key cases but also contains detailed explanatory materials as well as notes and questions for students to ponder.

The book begins with a clearly written overview of secured lending, the right of pursuit of real security, how bankruptcy affects Louisiana security interests, principal and accessory rights, personal and real rights, and consensu-



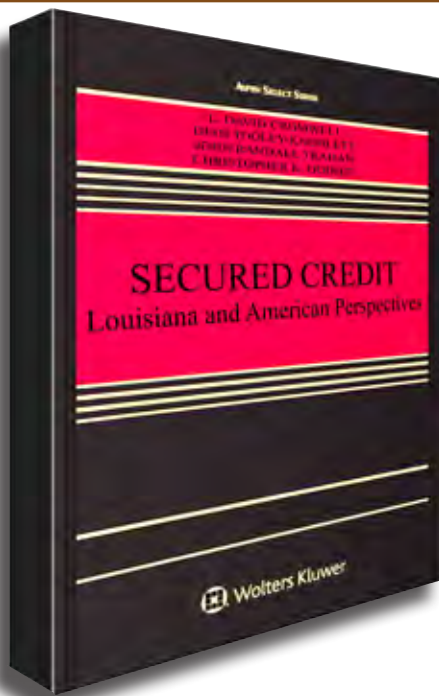
al, non-consensual, possessory and non-possessory security interests.

Following the introduction, the casebook is divided into six main areas covering suretyship, the pledge articles of the Civil Code that became effective in 2015 as well as aspects of the U.C.C. Article 9, mortgages, privileges, ranking of privileges, and the Private Works Act.

Each section of the book leads students through the difficult and sometimes unresolved issues that have resulted from both the text of the Civil Code and the jurisprudence. The scholarship of the authors is beyond reproach, for they both provide background information allowing readers to understand the historical underpinnings of the Civil Code concepts and have materials that require students to carefully contemplate how the courts are approaching each of the issues covered.

For example, in a discussion of mortgages, the book contains a paragraph about Roman law, the law of France before the 1789 Revolution, and the law of 11 Brumaire Year VII promulgated during the Revolution. But the casebook is not a historical treatise, and from there it plunges the students directly into the intricacies of making a conventional mortgage effective between the parties and as to third parties.

In its discussion of the interaction between U.C.C. Article 9 and the Civil Code's pledge provisions, the volume clarifies for students what assets may be subject to a pledge and which may be perfected only through a U.C.C. 9 security interest. Moreover, this section of the book provides numerous examples



for students to work through, including contrasting when a “negative pledge” is permitted and when a contractual clause impermissibly restricts rights in such a way as to be unenforceable.

There are more than 2,500 privileges scattered across the Civil Code and the Revised Statutes. Because the Bar Exam's Code III covers only the Code and its ancillaries, the casebook's section on privileges focuses on those in the Civil Code and R.S. 9. Many of the Code's privileges are derived from French law, and the authors provide extensive quotations from Planiol and others that help students better understand the area.

How privileges rank against each

other and other security interests is dealt with in its own chapter. Privileges on movables are treated separately from privileges on immovables, as is appropriate, and consideration is given to the confusing and still unresolved “vicious circles” that exist, where privilege X can outrank privilege Y, which outranks privilege Z, but privilege Z can outrank privilege X. This section of the book also delves into how privileges rank against other security interests, such as how privileges on movables rank against U.C.C. 9 security interests, and how privileges on immovables rank against mortgages.

The final chapter of the book deals with the intricacies of the Private Works Act and poses insightful questions requiring students to ponder the public policy reasons underlying the PWA's rules and limitations.

All in all, Cromwell, Tooley-Knoblett, Trahan and Odinet have written a first-rate casebook and generations of students will benefit from their work.

*Michael H. Rubin is one of the leaders of the McGlinchey Stafford, P.L.L.C., law firm. For four decades, he taught the course in security devices at both Louisiana State University Paul M. Hebert Law Center and Southern University Law Center. His many law review articles have been cited as authoritative by state and federal courts in Louisiana and nationwide. His latest legal treatise is Louisiana Law of Security Devices, A Précis, now in its second edition. (mrubin@mcglinchey.com; 301 Main St., 14th Flr., Baton Rouge, LA 70801)*



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## 2017-2018 LSBA CLE Calendar

### **Employment Law**

Aug. 18, 2017 • New Orleans

### **Expert Witness**

Aug. 25, 2017 • New Orleans

### **Ethics & Professionalism**

Sept. 6, 2017 • Lafayette

### **DWI & Disciplinary Actions**

Sept. 8, 2017 • New Orleans

### **24th Annual Admiralty Symposium**

Sept. 15, 2017 • New Orleans

### **Ethics & Professionalism**

Sept. 22, 2017 • New Orleans

### **Social Security/Elder Law**

Sept. 29, 2017 • New Orleans

### **Tax & Estate Planning**

Oct. 6, 2017 • New Orleans

### **11th Annual Dispute Resolution Seminar**

Oct. 13, 2017 • Baton Rouge

### **Hanging Out Your Own Shingle**

Oct. 16, 2017 • New Orleans

### **57th Bi-Annual Bridging the Gap**

October 17 & 18, 2017 • New Orleans

### **Federal Legislative Updates**

Oct. 20, 2017 • New Orleans

### **Voodoo Fest CLE**

October 27, 2017 • New Orleans

### **Workers' Comp CLE**

Nov. 2, 2017 • Baton Rouge

### **Ethics & Professionalism**

Nov. 3, 2017 • Bossier City

### **17th Annual Class Action/ Complex Litigation Symposium**

Nov. 10, 2017 • New Orleans

### **Environmental Law Summit**

Nov. 14, 2017 • New Orleans

### **Appellate Practice**

Nov. 16 • New Orleans

### **New York, New York CLE**

Nov. 18-21, 2017

InterContinental NY Times Square

New York City, NY

### **Ethics & Professionalism:**

#### **Watch Your P's & Q's**

Dec. 1, 2017 • New Orleans

### **29th Summer School Revisited**

Dec. 7 & 8, 2017 • New Orleans

### **Depositions CLE**

Dec. 8, 2017 • New Orleans

### **Trial Practice CLE**

Dec. 12, 2017 • New Orleans

### **Quality of Life CLE**

Dec. 12, 2017 • New Orleans

### **CLE Wrap Up**

Dec. 15, 2017 • New Orleans

### **Historic Charleston CLE**

Feb. 26-28, 2018 • Renaissance  
Charleston Historic District Hotel  
Charleston, SC

### **Cyber Security**

March 23, 2018 • New Orleans

### **Healthcare & Medicare**

April 6, 2018 • New Orleans

### **French Quarter Fest CLE: 9th Annual White Collar Crime Symp.**

April 13, 2018 (Tentative Date)  
New Orleans

### **Immigration Law**

April 20, 2018 • New Orleans

### **Jazz Fest CLE**

April 27, 2018 (Tentative Date)  
New Orleans



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# Member Benefits: A Q&A on Hotel Discounts

By Micah J. Fincher

**T**he *Louisiana Bar Journal* Editorial Board, in collaboration with the new Louisiana State Bar Association's (LSBA) Outreach Committee, will submit a series of articles highlighting benefits available to LSBA members. This first article features Chase D. Tettleton in a Q&A about hotel discounts.

**Q:** Chase, tell us about yourself and where you live and practice.

**A:** I live in Baton Rouge and I'm a partner in Babcock Partners, L.L.C., where my practice is focused on litigating personal injury and commercial disputes.

**Q:** When did you first begin using hotel discounts available to LSBA members?

**A:** I seem to have known about [hotel discounts] since I was first admitted to the bar in 2009 and I've used them ever since.

**Q:** Where have you used the discount? How do you tell the hotel that you qualify for the discount?

**A:** I've used the hotel dis-

counts for business and pleasure. The hotel I've used the most is the Hotel Monteleone in New Orleans. It's pretty slick. They remember who you are, they give you a drink coupon and free wifi. I make reservations at: [www.lsba.org/GoTo/HotelMonteleone](http://www.lsba.org/GoTo/HotelMonteleone).

I've also used the Hilton Garden Inn for depositions in Shreveport. When we have clients staying in town for a hearing or trial here in Baton Rouge, we put them up in the Hilton Capital Center, not far from the courthouse. The LSBA provides corporate discount codes and links to discount reservation sites at: [www.lsba.org/Members/TravelServices.aspx](http://www.lsba.org/Members/TravelServices.aspx). Discounts are also available with national chains with locations outside Louisiana, so it's always worth a check. The site is easy to navigate. It's saved to my favorites!

**Q:** Has a hotel ever turned you down?

**A:** I've never been denied a discount. For what it's worth, I've also never had to show my bar card. It's very easy. In my experience, if a room is available, I've received the discount.

**Q:** About how much is the discount? Can you estimate how much money you've saved using this benefit?

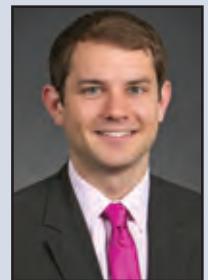
**A:** Without exaggerating, I've saved thousands of dollars from

Monteleone alone. The discounted rate saves you at least \$100 per night, and I've seen savings of up to \$200 per night.

**Q:** Anything else you'd like to share?

**A:** When it comes to Louisiana hotels, it's nice to know that I'm getting the best deal, so I don't have to waste time shopping around. I'm always surprised that more people don't know about the hotel discounts. You owe it to yourself to at least check this first to see if you can save money.

*Micah J. Fincher is the chair of the Louisiana State Bar Association's Outreach Committee. He is a graduate of Louisiana State University Paul M. Hebert Law Center and currently practices in intellectual property law at Jones Walker LLP in New Orleans.*



*Have you used a member benefit through the LSBA? Tell us about it! Contact the Outreach Committee at [outreach@lsba.org](mailto:outreach@lsba.org) with questions, comments and ideas for future "Member Benefits" articles. Remember . . . you can always learn more about discounts on the LSBA's website at [www.lsba.org/Members/DiscountBusinessServices.aspx](http://www.lsba.org/Members/DiscountBusinessServices.aspx).*



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# Focus on Local Practice:

## New Certification Required in 2nd Circuit

By Hal Odom, Jr.

**T**he 2nd Circuit Court of Appeal has adopted a new rule for briefs filed in that court. Effective May 31, 2017, the new rule states:

### **Local Rule 15. BRIEFS – Certification for attachments**

All appeal briefs shall contain the following certification:

I hereby verify that all attachments to this brief have previously been duly filed and/or accepted into evidence in the lower court, to the best of my knowledge, information and belief. I understand that failure to comply with this local rule may result in the refusal to consider said attachments. *WILLFUL FAILURE TO COMPLY WITH THIS LOCAL RULE MAY SUBJECT ME TO PUNISHMENT FOR CONTEMPT OF COURT.*

The court has concurrently amended Local Rule 2-5, “Rejection of briefs not in compliance with URCA,” to provide that the 2nd Circuit clerk of court may reject a brief for noncompliance with Local Rule 15. Further, if a brief is rejected and the party subsequently corrects the insufficiency and resubmits the brief for filing within *seven days* from the date of rejection or by the current brief due date, whichever is greater, the brief will be considered timely for purposes of oral argument only. Previously, the resubmission time was only five days.

“This certification is required, even if there are no attachments to the brief,” said 2nd Circuit Clerk of Court Lillian Evans Richie. While she would not call it a serious problem, there have been “situ-

ations in which attachments to briefs are not in evidence in the record. This has been done in the past by attorneys and pro se litigants alike.”

Rule 15 is intended to effectuate the principle that appellate courts are “courts of record and may not review evidence that is not in the appellate record, or receive new evidence.” *Denoux v. Vessel Mgmt. Servs. Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84. Legislative authority is drawn from La. C.C.P. art. 2164, authorizing the appellate court to render any judgment “which is just, legal, and proper *upon the record on appeal*” (emphasis added).

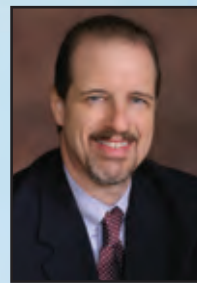
The 2nd Circuit has recently noted that documents attached to memoranda do not constitute evidence and cannot be considered as such on appeal. *Zeno v. Great Southern Coaches of Ark.*, 51,370 (La. App. 2 Cir. 5/17/17), \_\_\_ So.3d \_\_\_; *Gilley v. Gilley Enters. Inc.*, 51,328 (La. App. 2 Cir. 5/2/17), \_\_\_ So.3d \_\_\_; *Swaggart v. Doe*, 50,739 (La. App. 2 Cir. 4/5/17), \_\_\_ So.3d \_\_\_.

There is no equivalent rule in either the Uniform Rules of Courts of Appeal or in the local rules of any other court of appeal.

Richie said that, as of May 31, 2017, the clerk’s office began screening all briefs for the certificate and would reject any that leave it out. She added, however, “We will *not* examine attachments for compliance — hence the certification. The new rule puts the burden on the filer and provides possible consequences.”

Practitioners who anticipate coming to the 2nd Circuit should add this certificate to their checklist and save Local Rule 15’s text to their standard language file. The complete local rules can be accessed at [www.la2nd.org/local\\_rules](http://www.la2nd.org/local_rules).

*Hal Odom, Jr. is a graduate of Louisiana State University and LSU Paul M. Hebert Law Center. He is a research attorney for the Louisiana 2nd Circuit Court of Appeal in Shreveport and a member of the Louisiana Bar Journal’s Editorial Board. (rhodom@la2nd.org; 430 Fannin St., Shreveport, LA 71101)*



# 2018 Expert Witness, Consultant and Legal Services Directory

The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2017/January 2018 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

- ▶ Reach 21,000+ practicing attorneys
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- ▶ Display ads must be provided camera-ready in PDF format.
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- ▶ For CV ads, submit original or digital headshot photos separately from the text, in .jpg or .tif format (high-resolution digital photos of at least 300 dpi work best).
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Communications Assistant Krystal Bellanger Rodriguez  
Louisiana State Bar Association  
601 St. Charles Ave.  
New Orleans, LA 70130-3404  
e-mail: [kbellanger@lsba.org](mailto:kbellanger@lsba.org)

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

	Early Bird Deadline Sept. 8, 2017	Final Deadline Oct. 18, 2017
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Full-page, black & white . . . . .	\$725 . . . . .	\$850
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**FOR MORE INFORMATION, VISIT [www.lsba.org/expertwitness](http://www.lsba.org/expertwitness)**

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## LSBA, Supreme Court Recognize Legal Professionals for Pro Bono Achievements

The Louisiana State Bar Association (LSBA), in conjunction with the Louisiana Supreme Court, recognized the pro bono accomplishments of public interest legal professionals and law students during the Pro Bono Publico and Children's Law Awards Ceremony on May 23 at the Louisiana Supreme Court Building in New Orleans.

Award recipients include:

### 2017 David A. Hamilton Lifetime Achievement Award

Judy Perry Martinez, of counsel with the firm of Simon, Peragine, Smith & Redfean, L.L.P. in New Orleans, received the Lifetime Achievement Award which recognizes an attorney who demonstrates a commitment to the provision of legal services to the poor, has made significant contributions to enhance the pro bono movement in Louisiana and has shown significant leadership and service on behalf of the poor and disenfranchised.

Martinez currently serves on the board of the Innocence Project New Orleans and has served on the boards of the Louisiana Endowment for the Humanities and Planned Parenthood of New Orleans. Early in her career, she worked with other leaders of the Louisiana Bar to help establish the New Orleans Pro Bono Project and served as its first chair. In the wake of the August 2016 floods in Baton Rouge, in her capacity as a special advisor to the American Bar Association Center for Innovation, she helped to bring the necessary talent



Judy Perry Martinez, center, received the 2017 David A. Hamilton Lifetime Achievement Award. Presenting the award were Louisiana Supreme Court Justice Marcus R. Clark, left, and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. Photo by Matthew Hinton Photography.

together to create a smartphone app that assists flood victims.

### 2017 Career Public Interest Award

Franchesca L. Hamilton-Acker, senior attorney for the Acadiana Legal Service Corp. (ALSC) in Lafayette, and Zakiya LaGrange, paralegal for The Pro Bono Project in New Orleans, both received the Career Public Interest Award which recognizes attorneys and non-attorneys who have devoted at least 10 years to public interest legal work and who have provided significant service on behalf of the poor and disenfranchised.

Hamilton-Acker has practiced public interest law for more than 18 years. In 2010, she led the creation and development of the CINC Unit at ALSC which focuses on representing children in Child in Need of Care cases. She promotes an

assertive and holistic approach to the representation of children to ensure that every child has a voice. She manages the children's representation in 47 courts throughout Louisiana, which includes a partnership with two pro bono programs and many contract attorneys.

LaGrange has assisted staff and attorney volunteers to help more than 300 clients to complete successions and property transfers so they can qualify for grants from the Road Home Program. Once a month, she organizes a divorce workshop where attorney volunteers sign petitions for up to 75 clients a day. She has trained and mentored paralegals as well as law student from various colleges.

### 2017 LSBA President's Access to Justice Award

Sarah J. Campbell of Baton Rouge re-



Zakiya LaGrange and Franchesca L. Hamilton-Acker, second and third from left, both received the 2017 Career Public Interest Award. Presenting the awards were Louisiana Supreme Court Justice Marcus R. Clark, left, and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. Photo by Matthew Hinton Photography.

ceived the Access to Justice Award which recognizes a lifelong commitment and dedication to ensuring access to justice for Louisiana citizens.

Campbell has worked in various capacities for the state's public interest organizations for the majority of her legal career, dedicating 38 years to service to Southeast Louisiana Legal Services, Legal Services of North Louisiana and Kisatchie Legal Services in Natchitoches. She is involved in the delivery of legal services in educational issues and health issues, to victims of domestic violence, and to improve medical outcomes for clients. She has always been concerned with providing legal services accessibility to

residents with limited access to transportation.

**2017 Children's Law Award**

Teneé P. Felix of New Orleans received the Children's Law Award which recognizes attorneys or Louisiana-based organizations providing outstanding services in children's law.

Felix has represented children in juvenile court for almost a decade and previously served as a juvenile public defender in Orleans Parish. She leads a Louisiana Center for Children's Rights team of social workers, youth advocates and investigators who ensure successful legal and life outcomes for clients.



Sarah J. Campbell, center, received the 2017 LSBA President's Access to Justice Award. Presenting the award were Louisiana Supreme Court Justice Marcus R. Clark, right, and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. Photo by Matthew Hinton Photography.

**2017 Pro Bono Publico Award**

- Curry & Friend, P.L.C. .... New Orleans
- NeunerPate..... Lafayette
- William G. Cherbonnier, Jr. .... Gretna
- Taylor Stein Eley ..... Covington
- Philip A. Franco..... New Orleans
- Thomas E. Gibbs ..... Baton Rouge
- Holly Gottschalk..... New Orleans
- Edward E. (Ted) Roberts III..... Alexandria
- T. MacDougall (Mac) Womack ..... Baton Rouge

**2017 Law Student Pro Bono Award**

- Kristen J. Richardson ..... LSU Paul M. Hebert Law Center
- Kyle Anderson..... Loyola University College of Law
- Yvonne E. Henshaw ..... Southern University Law Center
- Kayla Patterson..... Tulane University Law School

**2017 Friend of Pro Bono Award**

- 24th Judicial District Court ..... Gretna
- Family Justice Center of Acadiana..... Lafayette
- St. Charles Parish Bar Association..... Luling
- John C. Nickelson.....Shreveport

The Access to Justice Committee also recognized pro bono volunteers who contributed 100 or more hours of pro bono legal services during the 2016 calendar year. Receiving the 2017 Century Club Award are:

- Booker T. Carmichael..... Baton Rouge
- Christopher P. Coty..... New Orleans
- Jonah A. Freedman ..... New Orleans
- Rena L. Hester ..... Baton Rouge
- Cynthia N. Reed ..... Baton Rouge
- Nisha Sandhu..... New Orleans
- Rachel I. Silvers..... New Orleans
- Charlene L. Smith..... Metairie
- Hugh R. Straub ..... New Orleans
- Tyler D. Trew..... New Orleans

To view photographs from the event, visit the Facebook page: [www.facebook.com/louisiana.bar](http://www.facebook.com/louisiana.bar).

## Elections: Several Leadership Positions Open in 2017-18 Election Cycle

Several Louisiana State Bar Association (LSBA) and American Bar Association leadership positions are open in the 2017-18 election cycle.

For the 2017-18 election cycle, balloting will be conducted electronically only, as approved by the LSBA Board of Governors. No paper ballots will be provided.

On Monday, Sept. 18, notice of the action of the Nominating Committee and 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.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 16. First election ballots will be available to members on Monday, Nov. 13. Deadline for electronically casting votes is Monday, Dec. 11.

Positions to be filled in the 2017-18 elections are:

**Board of Governors** (three-year terms beginning at the adjournment of the 2018 LSBA Annual Meeting and ending at the adjournment of the 2021 LSBA Annual Meeting) — one member each from the Sixth, Seventh and Eighth districts.

**LSBA House of Delegates** (two-year terms beginning at the commencement of the 2018 LSBA Annual Meeting and ending at the commencement of the 2020 LSBA Annual Meeting) — one delegate from each of the First through Nineteenth 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 2018 LSBA Annual Meeting and ending at the adjournment of the 2019 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** (2018-19 term), nominee **shall** be a resident of or actively practicing law in any parish in Louisiana, based on preferred mailing address. **Secretary** (2018-19 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Third, Fifth and Seventh districts (two-year terms).

**American Bar Association House of Delegates** (*must be members of the American Bar Association*) — two delegates from the membership at large and one delegate from that portion of the membership not having reached their 35th birthday by Aug. 7, 2018 (young lawyer delegate). All LSBA members may vote for both sets of candidates. The delegates will serve two-year terms, beginning with the adjournment of the 2018 ABA Annual Meeting and expiring at the adjournment of the 2020 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

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

## LBLS Sets Submission Date for Bankruptcy Law Certification Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for business bankruptcy law and consumer bankruptcy law certification through Sept. 30, 2017.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association (LSBA) member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum percentage of the attorney's practice must be devoted to the area of certification sought and a written examination must be passed to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought.

Applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered. CLE is regulated by the American Board of Certification, which is also the testing agency.

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the LBLS certification simultaneously with the testing agency in order to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBLS Specialization Director Mary Ann Wegmann, email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org). For more information, go to the LBLS website: <https://www.lasc-mcle.org/specialization/>.

By Ashley M. Flick

## MANAGING CLIENT EXPECTATIONS

**M**anaging client expectations is the key to keeping your clients happy and avoiding conflicts. Happy clients are your best marketing agents and are likely to boost your reputation and send more work your way by referrals or repeat business. How your clients feel about you is important. A good reputation is crucial to building your client base.

Clients will set their own expectations and, if you deliver anything less, they will be unhappy or dissatisfied. Dissatisfied clients are far more likely to taint your reputation or file a disciplinary complaint or malpractice claim. It is important to work with clients to develop realistic expectations you can control and meet, allowing your clients to walk away from your relationship satisfied.

Below are tips to easily manage client expectations and boost client relationships.

► **Be honest with every client, every time.** Every transaction with your clients should start with an open and honest conversation. You want to earn client trust from the beginning of the relationship by listening to their concerns and responding in such a way that they feel their concerns were heard and understood. Continue strengthening that trust by being consistent, meeting deadlines when you set them, and avoid neglecting your client.

► **Establish expectations.** Ask your clients directly about the expectations they have regarding the handling of their case, such as the mode and frequency of communication, the expected results or outcome of their case, and any budget constraints or issues they face. Once you know what your client expects, you can come to a mutual agreement regarding what will be deemed reasonable expectations for both parties.

► **Agree on a course of action with your client.** Discussing and agreeing on a

course of action sets expectations for case handling and results. Once your client has made his/her expectations clear, discuss the potential pitfalls of the client's desired course of action, discuss the risks in taking or failing to take an alternate course of action, and suggest alternatives that would better meet the client's needs or more effectively accomplish your client's goals. Be realistic and don't promise results you can't deliver.

► **Regularly communicate with your client.** If you see you will miss a commitment or deadline, let them know before it is due. Lack of communication is the root of most problems with clients. To avoid communication issues, set expectations about how and when you will communicate updates and abide by those set expectations. A good rule is to respond to client inquiries within 24-48 hours or provide an alternative contact person if you will be unable to return a call or email within that time frame. Consistent communication as well as proactive communication with your client will help build trust, which will lead to a stronger relationship. If you neglect them, they will feel you don't care about their matter.

► **Set boundaries.** While it is important to regularly communicate with your clients, you don't need to communicate every single detail. Advise clients at the outset that you will consult them on important decisions and you will handle day-to-day minutiae. This will keep clients from derailing the agreed-upon course of action.

► **Communicate timeline and costs.** Discuss your fees and cost of handling the matter, how and when you will bill, the projected time frame to bring the case to a conclusion, and your client's budget. Consider providing a brief outline that documents the steps and projected time frame for each step in the process. Also, continuously revise the outline and liti-

gation budget at important milestones in the case, such as after the pleading stage, during discovery, after major motions and prior to trial, to realistically communicate timeline and budget expectations.

► **Set agendas for meetings or phone calls.** When setting meetings or phone conferences, communicate the purpose of the call or meeting to alert your clients to what they should expect to discuss. This can ease stress and allow you to keep the meeting on track.

► **Deliver what you promise.** Keep expectations low. Don't sell your client by over promising results. Unfortunately, when you first interview clients, they are only telling you one side of the story. Clients typically leave out details unfavorable to them. Wait until you fully research your client's issue before you make a determination of expected results.

► **Provide excellent customer service.** Remember that your client is a paying customer. Show you value them. If you were in their shoes, would you like to be sent to voice mail with no response for days or have your email go unanswered for weeks? Would you be happy if you hired someone to help you with an important issue and didn't hear from them for months? Make it a point in your practice to treat your clients as you would like to be treated.

*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

WHAT YOU DON'T KNOW COULD SAVE YOU!

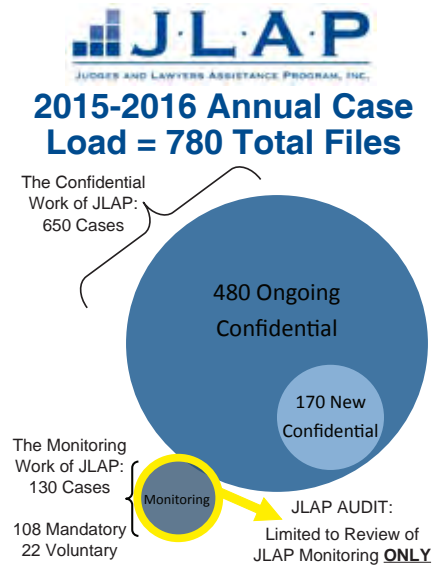
In the June/July 2017 *Louisiana Bar Journal*, Judges and Lawyers Assistance Program, Inc.'s (JLAP) Board President Mark C. Surprenant published an article highlighting the positive results of JLAP's 2015 Independent Performance Audit. The Audit specifically examined JLAP's protocols and clinical standards in its formal monitoring cases referred to JLAP by outside entities, including the Office of the Disciplinary Counsel (ODC) and the Louisiana Supreme Court's Committee on Bar Admissions (COBA).

As certified by the Audit Report, JLAP's formal monitoring services utilize appropriate clinical standards to reliably increase the individual's probability of recovery without recidivism while also helping to protect the public from the harm that impaired professionals can cause. The Audit was a valuable step in confirming JLAP's standards in cases involving formal monitoring due to referrals from the ODC and COBA and wherein there is need to prove one's fitness to practice by clear and convincing evidence.

But the Audit only tells a part of JLAP's story and reflects only a portion of JLAP's services to the profession. Even though JLAP's formal monitoring services draw a lot of attention in some quarters, those services are actually the very smallest segment of JLAP's case load in terms of actual client numbers.

By far, JLAP's predominant caseload today is comprised of absolutely confidential matters that do not involve the ODC, COBA or formal monitoring in order to prove fitness to practice. Instead, most of JLAP's cases include people who have reached out discretely for help proactively and *before* there was any incident or allegation of misconduct or harm to the public or the profession.

In its fiscal year 2015-16, JLAP serviced 780 open files, with 650 of them absolutely confidential cases having nothing whatsoever to do with the ODC, COBA or licensure issues. As such, JLAP has reached



new milestones wherein it rendered totally confidential assistance at a rate that is *five times* the number of referrals from the ODC or COBA. (See chart.)

The substantial expansion in JLAP's confidential services and caseload has evolved over the last five years due to a combination of JLAP's active promotion of its services and expansion of its professional clinical staff and expertise to provide comprehensive mental health services.

Whether the issue is depression, anxiety, alcoholism, addiction, burnout or any other form(s) or combinations of mental health distress, JLAP offers its discrete professional assistance to lawyers, judges and law students. JLAP also offers its assistance to any family member of someone licensed to practice in Louisiana. We are very grateful for the progress made and for the strong support JLAP received from different segments of the profession, without which none of these advances would have been possible.

There is still more work to be done. JLAP's ongoing challenge, above all others, is a need to increase the entire profession's understanding and recognition that JLAP offers much more in life-saving services than just formal monitoring in cases referred by the ODC and COBA. JLAP encourag-

es a grassroots effort by individuals in the profession to spread the word that JLAP's primary services are rendered in total confidence and acknowledge that JLAP is currently helping hundreds of people behind the scenes — all totally out of the profession's view.

The truth is that no matter how effective JLAP's confidential services are, JLAP can't help a person in need unless that person knows that JLAP is a safe place to call and reaches out. To that end, you can personally help increase the wellness of the profession and your peers. Whenever a mental health concern appears, spread the word: 1) JLAP's primary mission is providing *totally confidential help*; 2) hundreds of people reach out to JLAP each year and receive professional clinical help in absolute privacy; and 3) reaching out early for help is in everyone's best interest.

When a lawyer or judge reaches out early and discretely to JLAP and receives help and support before private health issues become public disciplinary issues, every single human being and entity wins — the person, their family, their law firm or district, the greater profession and, ultimately, the public that our profession serves.

It does not matter who you are or why you call JLAP. All calls are absolutely confidential and privileged pursuant to La. R.S. 37:221 and LASC Rule XIX Sec. 16 (J). As such, don't wait for problems to get worse. If you or someone you know is experiencing mental health or substance use issues and may need help, make the confidential call to JLAP at (985)778-0571; email JLAP@louisianajlap.com; or visit us on the web at [www.louisianajlap.com](http://www.louisianajlap.com).

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



## 12 Students Complete 2017 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 12 student interns completing the program. The three-week program (June 12-30) 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 memorandums to support their oral arguments presented on the last day of the program to a panel of judges in a courtroom.

The LSBA Suit Up Program, a partnership with Just the Beginning and the Louisiana Bar Foundation, 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:

► LSBA Pipeline to Diversity and Outreach Subcommittee Co-Chairs Scherri N. Guidry, 15th Judicial District Public Defenders Office, and Monique M. Edwards, the Edwards Group.

► LSBA President Dona Kay Renegar and President-Elect Barry H. Grodsky.



The 12 student interns participating in the 2017 Suit Up Program. Seated from left, Aityana U. Cousin, Alanna B. Austin, Isabel S. Sauviac, Khaja K. Bradley, Sionne J. Murray, Grace J.R. Morse and Carrington J. Carey. Standing from left, Tori D. Dozier, Ishmael J. Blackstone, Hayward J. Expose, Domenic G. Mesa and Meghan E. Quaglino.

► Instructors — Professors Isabel Medina and Emily A. Bishop, Loyola University New Orleans College of Law; Professor Russell L. Jones, Southern University Law Center; and Professors Jeffrey C. Brooks, Christopher J. Tyson and Robert E. Lancaster, Louisiana State University Paul M. Hebert Law Center.

► Shadowing employers — Entergy Services; Hon. Ivan L.R. Lemelle, U.S. District Court, Eastern District of Louisiana; Orleans Parish District Attorney's Office; Liskow & Lewis, P.L.C.; Irwin Fritchie Urquhart & Moore,

LLC; Stone Pigman Walther Wittmann, L.L.C.; Kelly Hart & Hallman, LLP; Courington Kiefer & Sommers, L.L.C.; and Christovich & Kearney, LLP.

► Volunteers — U.S. District Court, Eastern District of Louisiana, and Hon. Karen Wells Roby and law clerk Christian S. Chaney; Louisiana Supreme Court; Louisiana 4th Circuit Court of Appeal and Hon. Joy Cossich Lobrano and Hon. Paula A. Brown; Orleans Parish Criminal District Court and Hon. Tracey E. Flemings-Davillier (Section B) and Hon. Camille G. Buras (Section H); LSBA Access to Justice Department; Orleans Parish District Attorney's Office; Orleans Public Defenders Office; Hon. Max N. Tobias, Jr. (retired); Adria N. Kimbrough, Dillard University; Martin Smith, University of New Orleans; Tulane University Law School; Loyola University New Orleans College of Law; Suit Up alumna Synise Pierre; and Suit Up interns Ashley Berry and Karina Shareen.

► Attorneys — Bryanna C. Frazier, Kimberly R. Silas, Dominik J. Cvitanovic, Victoria J. Cvitanovic, Alexandra V. Navarre-Davis, Micah C. Zeno and Caroline F. Bordelon.



On the final day, the Suit Up students presented oral arguments before judges. From left, winners for the Prosecution, Domenic G. Mesa (written memo) and Isabel S. Sauviac (oral argument); Hon. Paula A. Brown, Louisiana 4th Circuit Court of Appeal; Hon. Joseph B. Landry, Orleans Parish Municipal Court; Hon. Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; and winners for the Defense, Meghan E. Quaglino (written memo) and Ishmael J. Blackstone (oral argument).



Louisiana State Bar Association President-Elect Barry H. Grodsky, left, and U.S. Magistrate Judge Karen Wells Roby welcomed the students on Day One.



Louisiana State Bar Association President Dona Kay Renegar, third from left, with students Grace J.R. Morse, Isabel S. Sauviac and Hayward J. Expose.



Professor Jeffrey C. Brooks, Louisiana State University Paul M. Hebert Law Center, discussed “How to Make an Oral Argument.”



Professor Christopher J. Tyson, Louisiana State University Paul M. Hebert Law Center, center, discussed Local Government Law.



Loyola University College of Law Professor Isabel Medina, second from right, presented Constitutional Law.



Southern University Law Center Professor Russell L. Jones, right, engaged the students in a discussion about Criminal Law.



District Attorney Hon. Leon J. Cannizzaro, Jr., sixth from left, helped the students understand the work of the Orleans Parish District Attorney’s Office.



A mock oral argument was delivered by Dominik and Victoria Cvitanovic before a three-judge panel. From left, Hon. Joy Cossich Lobrano, Louisiana 4th Circuit Court of Appeal; Dominic Cvitanovic, Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C.; Victoria Cvitanovic; Hon. Max N. Tobias, Jr. (retired); and Hon. Paula A. Brown, Louisiana 4th Circuit Court of Appeal.



Martin Smith, University of New Orleans, left, and Adria N. Kimbrough, Dillard University, presented the “College Admission Preparation Workshop.”

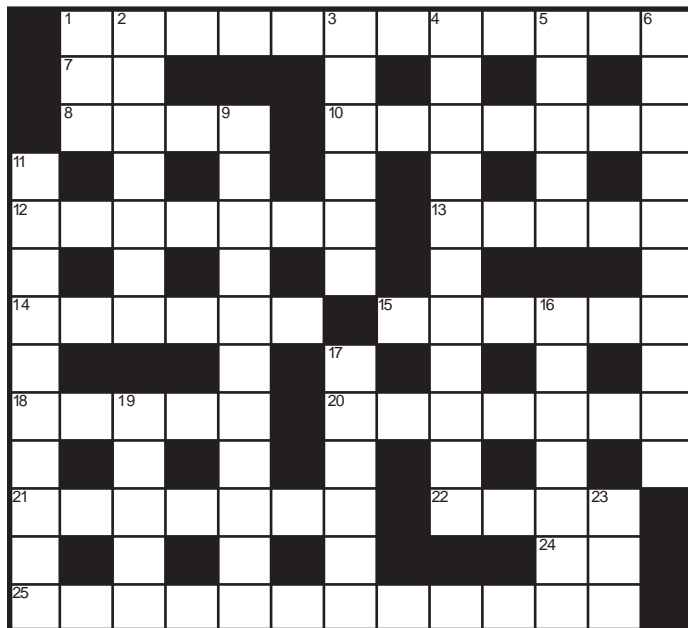


Chief Public Defender Derwyn D. Bunton, center, spent time with the students discussing the work of the Orleans Public Defenders Office.

# Crossword PUZZLE

By Hal Odom, Jr.

## "I TAKE EXCEPTION"



### ACROSS

- 1 Exception that may be liberative or acquisitive (12)
- 7 A fairly wide shoe size (2)
- 8 Sound of a tiger (4)
- 10 Crime specifically named in the U.S. Constitution (7)
- 12 Alibis (7)
- 13 "You \_\_\_ Beautiful," Joe Cocker ballad (3, 2)
- 14 More than you want to hear (6)
- 15 Submit, as a term paper, or surrender, as a criminal suspect (4, 2)
- 18 Kind of dish in chemistry class (5)
- 20 Kind of sweet French roll (7)
- 21 Emerald Isle (7)
- 22 Belonging to you (4)
- 24 Opposite of NE (2)
- 25 He wrote "The Executioner's Song" (6, 6)

### DOWN

- 1 \_\_\_ curiam, a prolific jurist (3)
- 2 Happen again and again (7)
- 3 Make-up exam (6)
- 4 Exception that asks if a claim is in existence yet (11)
- 5 Point of disagreement (5)
- 6 Exception that used to be indispensable (10)
- 9 Exception of "we already did this" (3, 8)
- 11 Exception of total extinction through passage of time (10)
- 16 Exception of \_\_\_ of action (2, 5)
- 17 *Ibid.*, in full (6)
- 19 Belonging to them (5)
- 23 40th president monogram (1, 1, 1)

Answers on page 151.

## Alcohol and Drug Abuse Hotline

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

1405 W. Causeway Approach, Mandeville, LA 70471-3045 • email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com)

Alexandria	Steven Cook .....(318)448-0082	Lake Charles	Thomas M. Bergstedt.....(337)558-5032
Baton Rouge	Steven Adams.....(225)921-6690 (225)926-4333	Monroe	Robert A. Lee ....(318)387-3872, (318)388-4472
	David E. Cooley.....(225)753-3407	New Orleans	Deborah Faust .....(504)304-1500
	John A. Gutierrez .....(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
Lafayette	Alfred "Smitty" Landry .....(337)364-5408 (337)364-7626		Dian Tooley .....(504)861-5682 (504)831-1838
	Thomas E. Guilbeau .....(337)232-7240	Shreveport	Michelle AndrePont .....(318)347-8532
	James Lambert .....(337)233-8695 (337)235-1825		Nancy Carol Snow.....(318)272-7547
			William Kendig, Jr. ....(318)222-2772 (318)572-8260 (cell)
			Steve Thomas.....(318)872-6250

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



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### Baton Rouge



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David Butler, Jr.



Carey Guglielmo



Trippe Hawthorne



William Helm



M. "Kip" Holden



Steven Justice



Richard Hymel



Jim Lochridge Jr.



Doug Moreau  
Judge, Ret.



Darrel Papillion



Jonathon Perry



Michael Ponder  
Judge, Ret.



Keith Richardson



Keely Scott



Aub Ward



Katherine Loos



Emmett Sole

### New Orleans & Northshore



Robert Burns Sr.  
Judge, Ret.



David Clement



James Cobb Jr.



René DeRojas



Michael Helm



Richard Kingrea



A. J. Krouse



Donald Armand Jr.



Brian Homza

### North Louisiana



Peggy Landry



Andrew Lemmon



Lynn Luker



Daniel Lund III



Christopher Moody



Michael Pulaski



David Shea



Hodge O'Neal III



Chet Traylor  
Justice, Ret.

## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 5, 2017.

### Decisions

**Johnny S. Anzalone**, Shreveport, (2017-B-0387) **Suspended from the practice of law for one year and one day, retroactive to his May 16, 2014, interim suspension in *In Re: Anzalone*, 14-0812 (La. 5/16/14), 139 So.3d 991**, by order of the Louisiana Supreme Court on May 12, 2017. JUDGMENT FINAL and EFFECTIVE on May 26, 2017. *Gist*: Commission of a criminal act, especially one that reflects adverse-

ly on the lawyer's fitness; and violating or attempting to violate the Rules of Professional Conduct.

**Michael A. Betts**, Denham Springs, (15-DB-054) **Public reprimand** ruling by the Louisiana Attorney Disciplinary Board on April 19, 2017. JUDGMENT FINAL and EFFECTIVE on May 3, 2017. *Gist*: Respondent negligently violated a duty owed to his client which caused minor harm to his client in the form of a delay of the resolution of the matter for which he was hired.

**John Arthur Brittain**, Natchitoches, (2017-B-0493) **Consented to be transferred to interim suspension status** by order of the Louisiana Supreme Court on March 29, 2017. JUDGMENT FINAL and EFFECTIVE on March 29, 2017.

**Gregory Timothy Discon**, Mandeville, (2017-B-0638) **Consented to being transferred to interim suspension status** by order of the Louisiana Supreme Court on April 27, 2017. JUDGMENT FINAL and EFFECTIVE on April 27, 2017.



Advice and Counsel Concerning Legal & Judicial Ethics  
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## DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

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

Respondent	Disposition	Date Filed	Docket No.
Romualdo Gonzalez	(Reciprocal) Public reprimand.	4/26/17	17-1902
Michael L. Thiel	(Reciprocal) Interim suspension.	4/11/17	17-1493

### Discipline continued from page 112

**Hugh B. Exnicios, Jr.**, Folsom, (2017-B-0519) **Six-month suspension, deferred in its entirety, subject to a one-year period of probation**, by order of the Louisiana Supreme Court on May 1, 2017. JUDGMENT FINAL and EFFECTIVE on May 1, 2017. *Gist:* Respondent mishandled his client trust account and threatened to bring a disciplinary complaint against an attorney in an effort to gain an advantage in a civil case.

**James L. Fahrenholtz**, New Orleans, (2017-B-0261) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on April 7, 2017. JUDGMENT FINAL and EFFECTIVE on April 21, 2017. *Gist:* Conduct involving dishonesty, fraud, deceit and misrepresentation; commission of a criminal act; failure to cooperate with ODC; and violating or attempting to violate the Rules of Professional Conduct.

**George William Jarman**, Baton Rouge, (2017-OB-0693) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana

Supreme Court on May 26, 2017. JUDGMENT FINAL and EFFECTIVE on May 26, 2017. *Gist:* Commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

**James Paul Johnson**, New Orleans, (2017-B-0709) **Interimly suspended** by order of the Louisiana Supreme Court on May 24, 2017. JUDGMENT FINAL and EFFECTIVE on May 24, 2017. *Gist:* Suspended from the practice of law on an interim basis for his commission of a crime, pursuant to Louisiana Supreme Court Rule XIX, § 19, pending further orders of the Court.

**Mark A. Johnson**, Hahnville, (2017-B-0262) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on April 24, 2017. JUDGMENT FINAL and EFFECTIVE on May 8, 2017. *Gist:* Commission of a criminal act; failure to comply with MCLE requirements; failure to comply with all requirements of the Supreme Court's rules regarding annual

registration; engaging in the unauthorized practice of law; failure to cooperate with ODC; and violating or attempting to violate the Rules of Professional Conduct.

**James E. Moorman III**, Covington, (2017-B-0431) **Suspended from the practice of law for a period of three years, retroactive to the date of his interim suspension on Oct. 21, 2013**, by order of the Louisiana Supreme Court on April 24, 2017. JUDGMENT FINAL and EFFECTIVE on April 24, 2017. *Gist:* Suspended for neglecting legal matters; failure to promptly return unearned fees; converting client funds; failure to properly supervise a non-lawyer assistant; failure to act with reasonable diligence; failure to safeguard property of clients or third persons; failure to fulfill obligations upon termination of representation; and engaging in conduct prejudicial to the administration of justice.

**Lance Hac Nguyen**, Texas, (2017-B-0214) **Respondent guilty of conduct that would warrant a one-year suspension from the practice of law if respondent were a member of our Bar**. Recognizing that he is not a member of the Bar, we order that respondent be enjoined for a period of one year from date of this order from seeking full admission to the Louisiana Bar or seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking pro hac vice admission or as in-house counsel, by order of the Louisiana Supreme Court on April 13, 2017. JUDGMENT FINAL and EFFECTIVE on April 27, 2017. *Gist:* Respondent knowingly violated duties owed to the legal system and the

**CHRISTOVICH & KEARNEY, LLP**  
ATTORNEYS AT LAW

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**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**

legal profession, causing actual and potential harm.

**Ashton R. O'Dwyer**, New Orleans, (2016-B-1848) **Permanently disbarred from the practice of law** by order of the Louisiana Supreme Court on March 15, 2017. JUDGMENT FINAL and EFFECTIVE on March 29, 2017. *Gist*: A lawyer shall not bring or defend a proceeding unless there is a basis in law and fact for doing so that is not frivolous; engaging in conduct intended to disrupt a tribunal; in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person; violating or attempting to violate the Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct that is prejudicial to the administration of justice; threatening to present criminal or disciplinary charges solely to obtain an advantage in a civil matter; knowingly disobeying an obligation under the rules of a tribunal; a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth

or falsity concerning qualifications or the integrity of a judge; engaging in the unauthorized practice of law.

**Dwight D. Poirrier**, Baton Rouge, (2017-B-0370) **By consent has been suspended from the practice of law for a period of one year and one day, suspension is fully deferred, and respondent subject to unsupervised probation for a period of two years**, by order of the Louisiana Supreme Court on May 12, 2017. JUDGMENT FINAL and EFFECTIVE on May 12, 2017. *Gist*: Commission of criminal acts.

**Harold D. Register, Jr.**, Lafayette, (2017-B-0691) **Consented to being transferred to interim suspension status** by order of the Louisiana Supreme Court on April 27, 2017. JUDGMENT FINAL and EFFECTIVE on April 27, 2017.

**Anna C. Simmons**, Baton Rouge, (2017-B-0621) **Suspended, on consent, for a period of six months, fully deferred, subject to a two-year period of supervised probation**, by order of the Louisiana Supreme Court on May 19, 2017. JUDGMENT FINAL and EFFECTIVE on May 19, 2017. *Gist*: Commingling personal funds in her client trust account.

**Richard C. Teissier**, New Orleans, (2017-OB-0014) **Reinstated to active status from interim disability inactive status** by order of the Louisiana Supreme Court on May 26, 2017. His status is subject to the order of interim suspension entered in *In re: Teissier*, 15-1435 (La. 7/28/15), 170 So.3d 960.

**Channing J. Warner**, Gretna, (2017-B-0359) **Probation revoked and his previously deferred suspension of one year and one day has been made immediately executory** by order of the Louisiana Supreme Court on April 7, 2017. JUDGMENT FINAL and EFFECTIVE on April 7, 2017.

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

No. of Violations

Violation of Rule 8.1(c)— Failure to cooperate with disciplinary authorities ..... 1

**TOTAL INDIVIDUALS ADMONISHED..... 1**

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

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

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
Alexandria Area	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700	Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Natchitoches Area	Peyton Cunningham, Jr. peytonc1@suddenlink.net	(318)352-6314 Cell (318)332-7294
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
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### “IGSA” is Procurement Contract Subject to GAO’s Protest Jurisdiction

*Red River Waste Solutions, Inc.*, B-414367 (March 21, 2017). Accessed at: <https://www.gao.gov/products/B-414367>.

On Jan. 31, 2017, the Army executed an Intergovernmental Support Agreement

(IGSA) with the Vernon Parish Police Jury for refuse collection services at Fort Polk, La. An IGSA is a relatively recently enacted special-procurement authority that allows the federal government to enter into an agreement with a state or local government to provide, receive or share certain support services on a sole-source basis. *See*, 10 U.S.C. § 2679(a)(1). The only requirements to use this authority are: (1) the Secretary of the agency concerned must determine if the IGSA will serve the best interest of the agency by enhancing mission effectiveness or creating efficiencies or economies of scale; (2) the IGSA cannot exceed five years; (3) the party to the IGSA that is providing the service must already provide such service for its own use; and (4) if the party to the IGSA that is provid-

ing the service decides to subcontract for the provision of the service, such subcontract be awarded on a competitive basis. *See*, 10 U.S.C. § 2679(a)(1)-(4). This IGSA authority is generally exempt from the full-and-open-competition requirements under the Federal Acquisition Regulation (FAR) and the Competition in Contracting Act (CICA), 31 U.S.C. § 3551, *et seq.*

Red River Waste Solutions, L.P. (Red River) was the incumbent contractor providing refuse collection services for Fort Polk. This instant refuse collection requirement was the subject of a protest by Red River at the Government Accountability Office (GAO) in 2016. *See*, *Red River Waste Solutions, L.P.*, B-411760.2, Jan. 20, 2016, 2016 CPD ¶ 45; discussed in 64 La. B.J. 62-63. In that protest, the GAO con-

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cluded that the agency had failed to establish that the terms of the solicitation were consistent with customary commercial practice under FAR Part 12, Acquisition of Commercial Items. Since that decision, Red River continued to perform the requirement pending the anticipated expiration of its contract with the Army on March 31, 2017.

In early 2017, Red River learned that the Army had entered into an IGSA with the police jury for the refuse collection services at Fort Polk. On Feb. 14, 2017, Red River filed a protest with the GAO. In its protest, Red River alleged that the IGSA between the Army and the police jury violated the IGSA-enabling statute — 10 U.S.C. § 2679. Specifically, Red River alleged that: (1) the IGSA violated § (a)(3) of the statute because the police jury did not already provide the services being procured; and (2) the IGSA violated § (a)(4) of the statute because the police jury did not conduct a competition under which Red River could compete for the required services.

On March 6, 2017, the Army moved to dismiss, asserting that: (a) the GAO did not have jurisdiction to review the IGSA under CICA and the GAO's bid-protest regulations; and alternatively, (b) the protest was untimely, (c) Red River was not an interested party and (d) the protest alleged matters of contract administration that are not for consideration by the GAO.

While the GAO agreed with the Army that Red River's protest was untimely and

partially a matter of contract administration — and dismissed the protest — the GAO did not agree with the Army's primary argument that the GAO did not have jurisdiction over an IGSA under CICA and its bid-protest regulations. This argument is addressed herein. The GAO did not address the Army's interested-party argument.

## GAO and Jurisdiction Under CICA

In its primary argument, the Army asserted that the protest should be dismissed because under CICA and the GAO's bid-protest regulations, the GAO did not have jurisdiction to review an IGSA awarded under 10 U.S.C. § 2679. In that regard, the Army argued that an IGSA was not a procurement contract subject to the provisions of CICA, and that an IGSA was similar to an "other transaction" agreement to which the GAO's bid-protest authority does not extend. The GAO did not find this argument persuasive.

In rendering its decision, the GAO noted that "under CICA and our Bid Protest Regulations, [the GAO] review[s] protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of contracts for the procurement of goods and services, and solicitations that lead to such awards." See, 31 U.S.C. §§ 3551(1), 3552; 4 C.F.R. § 21.1(a). The GAO went on to explain that, in instances where an agency has

statutory or "other transaction authority" and that agency enters into an agreement under that authority, such agreements are not "procurement contracts" and are generally not reviewed by GAO under its bid-protest function. See, *Rocketplane Kistler*, B-310741 (1/28/08), 2008 CPD ¶ 22 at 3; *Exploration Partners, L.L.C.*, B-298804 (12/19/06), 2006 CPD ¶ 201 at 3.

In contrasting 10 U.S.C. § 2679 to "other transaction" authority, the GAO noted that the statute did not contain any reference to "other transactions." In GAO's view, "if Congress had intended for IGSA's to be something other than procurement contracts, it would have so stated." Further, and more importantly, "there would have been no need to exempt the award of IGSA's, on a sole-source basis, from other provisions of law governing contract awards since, in that context, such an exemption would be redundant and superfluous." Lastly, the GAO noted that the statute anticipates that "the federal government will obtain installation support services under this authority." Therefore, the GAO found an IGSA awarded pursuant to 10 U.S.C. § 2679 to be a procurement under CICA and within its bid-protest jurisdiction.

—Bruce L. Mayeaux  
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## U.S. Supreme Court: Not a Violation of FDCPA

*Midland Funding, L.L.C. v. Johnson*,  
137 S.Ct. 1407 (2017).

Aleida Johnson filed for Chapter 13 bankruptcy relief. Midland filed a proof of claim based on unpaid credit card debt. The last charge on the credit card account was more than 10 years prior to the petition date. Under Alabama state law, creditors have six years to enforce the debt; therefore, Midland's claim expired on its face. Accordingly, Johnson objected to the claim, which was disallowed.

Johnson then sued Midland, arguing that filing the obviously time-barred proof of claim was "false," "deceptive," "misleading," "unconscionable" and "unfair," under the Fair Debt Collection Practices Act (FDCPA). The district court dismissed the suit, and the 11th Circuit reversed and remanded. The U.S. Supreme Court granted certiorari.

Johnson argued that a "proof of claim" contemplates an enforceable claim. The Court rejected this argument, noting that a claim is defined as a "right to payment." State law applies to determine whether a person has this right. Under Alabama law, like many states, a creditor maintains a right to payment of a debt even after the claim prescribes. In other words, the remedy expires, but not the right. Additionally, the Bankruptcy Code does not include the word "enforceable" in its definition of a "claim."

While in ordinary civil actions, it is "unfair" to knowingly assert a time-barred claim, the Court found the circumstances of a Chapter 13 proceeding to be distinguishable, particularly because debtors initiate the proceedings themselves, and a knowledgeable trustee is available to evaluate each claim. The Court added that a debtor may benefit from a creditor filing an untimely claim because the debt will be discharged and will no longer appear on the debtor's credit report.

Finally, the Court reviewed the legislative history of the Federal Rules of Bankruptcy Procedure, wherein the advisory committee explicitly rejected a proposal that would have required creditors to certify that there were no valid statute-of-limitations defenses. The Court thus held that filing a claim that has prescribed on its face is not a violation of the

FDCPA. Justices Sotomayor, Ginsburg and Kagan vehemently dissented.

## 5th Circuit Affirms Bankruptcy Court's Decision

*Selenberg v. Bates (In re Selenberg)*,  
856 F.3d 393 (5 Cir. 2017).

Dianne Bates retained attorney Robert Faucheux to bring her personal injury suit, but Faucheux let the prescriptive period lapse. Bates then hired Carl Selenberg to bring a malpractice claim against Faucheux, but Selenberg also let prescription run. Selenberg informed Bates that he had no malpractice insurance and no money to pay her. After confirming Bates had not hired a new attorney, Selenberg offered her a promissory note in the amount of \$275,000 plus attorney's fees. He explained that she would recover nothing if she sought the malpractice claim within the one-year limit, but would have five years to enforce the note against him.

Selenberg never made payments on the note, and Bates sued him in state court nearly two years later. Selenberg subsequently filed for Chapter 7 bankruptcy, staying Bates' lawsuit. Bates sought to have the debt declared nondischargeable under Sections 523(a)(2)(A)-(B) of the

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Bankruptcy Code. Section 523(a)(2)(A) provides, among other things, that debt for money or an extension of credit will not be discharged if obtained by actual fraud. The bankruptcy court held that the debt was nondischargeable because Selenberg effectively settled the malpractice claim with Bates, but failed to advise her to seek independent counsel as required under the Rules of Professional Conduct, which amounted to actual fraud.

On appeal, Selenberg first argued that he had not received an extension of credit from Bates. The 5th Circuit rejected this argument. An extension of credit is defined as an “indulgence by a creditor giving his debtor further time to pay an existing debt.” The goal is to protect creditors who are deceived into delaying collection efforts. Here, the court found Selenberg executed the note with the intention of receiving additional time to pay; therefore, Selenberg received an extension of credit.

Second, the court rejected Selenberg’s argument that he had not engaged in actual fraud. Actual fraud may be proven by

showing that the debtor knowingly made false representations with the intent to deceive the creditor, the creditor relied on the misrepresentations and the creditor sustained losses as a result.

The court found that although Selenberg was honest about his financial situation, his misrepresentation was made by his silence when he failed to inform Bates that she should seek outside counsel before effectively settling the malpractice claim against him. Likewise, Selenberg argued that he never had any intent to deceive because he was honest and included a 25 percent attorney’s fee in the note. The court quickly dismissed this argument, reasoning that Selenberg agreed to meet with Bates only after he knew she hadn’t hired another attorney, and then convinced her to believe she would be repaid in the future, although he knew he would likely never be able to pay the full amount of the note, much less attorney’s fees.

Finally, Selenberg argued that Bates did not suffer any losses. The court dis-

agreed, holding that Bates had lost the chance to sue him for malpractice because he convinced her it would be futile. Additionally, although the note was valued higher than the malpractice claim, Selenberg never had the funds to pay any amount of the note, and then sought to have the debt discharged, permanently eliminating any remedy Bates had against him. Therefore, the court agreed that Selenberg had engaged in actual fraud in receiving the extension of credit; it affirmed the bankruptcy court’s decision.

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## Reinstatement of Corporations Dissolved Before 2015

*In re Krebs Lasalle, Lemieux Consultants, Inc.*, No. 16-0586 (La. App. 5 Cir. 3/15/17), 215 So.3d 939.

A corporation was dissolved by affidavit in December 2012, and its representatives sought to reinstate it in May 2016. The 2012 version of the section of the Louisiana Business Corporation Law on dissolution by affidavit provided that the secretary of state shall reinstate a corporation dissolved pursuant to that section “only upon receipt of a court order directing him to so reinstate the corporation.” That statute did not specify a time limit. *See*, La. R.S. 12:142.1(B) (2012). Under the current version of the Louisiana Business Corporation Act, which became effective Jan. 1, 2015, a terminated corporation may be reinstated only if the corporation, among other things, “requests reinstatement in accordance with this Section no later than three years after the effective date of its

articles or certificate of termination.” La. R.S. 12:1-1444(A)(2).

The Louisiana 5th Circuit decided that “the law at the time of dissolution governs a request for corporate reinstatement,” and that the newly enacted provisions did not apply to limit the corporation’s capacity to seek reinstatement, for several reasons. *In re Krebs*, 215 So.3d at 940.

First, the court noted that La. R.S. 12:1-1701 provides that the new Business Corporation Act “applies to all domestic corporations in existence on its effective date that were incorporated under the laws of this state . . . .” Because the corporation in question was not in existence at the time of the new law’s effective date, the court found that the Legislature did not intend for La. R.S. 12:1-1444 to apply to it.

Second, the court noted that sections (1) and (2) of La. R.S. 12:1703(A) provide that, generally, the repeal of the old Business Corporation Law does not affect “(1) [t]he operation of the statute or any action taken under it, before its repeal” or “(2) [a]ny ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute, before its repeal.” In the court’s view, “[t]he operation of former La. R.S. 12:142.1 involved the option to seek reinstatement at any time” and “the privilege of requesting reinstatement at any

time accrued to [the corporation] prior to the repeal of La. R.S. 12:142.1,” and, therefore, the repeal of the former law did not affect the corporation’s “capacity to seek reinstatement to the extent permitted by” the former law, under which it was dissolved. *Id.* at 942-43.

Third, the court noted that, under La. Civ.C. art. 6 and La. R.S. 1:2, substantive laws are presumed to apply prospectively only. In the court’s view, “the new time limitation on a corporation’s capacity to petition for reinstatement constitutes a substantive enactment which changed the fundamental rights of a corporation seeking dissolution and reinstatement” and, thus, the reinstatement provisions of La. R.S. 12:1-1444 apply only prospectively to corporations dissolved under the new law. *Id.* at 943.

Having determined that La. R.S. 12:1-1444 and its bar on seeking reinstatement three years after dissolution did not apply to the corporation, the 5th Circuit remanded the case to the trial court to determine whether the corporation met the standards for granting reinstatement under the former law.

—**Michael D. Landry**

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## Custody

**Tuft v. Tuft**, 51,293 (La. App. 2 Cir. 1/18/17), 214 So.3d 916.

Although Ms. Tuft argued that Dr. Tuft needed counseling to assist him with anger management, disciplinary techniques and parenting skills, the court of appeal affirmed the trial court's finding that he was to have unsupervised visitation of the children every other week from Thursday afternoon to Tuesday morning and alternating weeks during the summer. Although Ms. Tuft was named the domiciliary parent, the trial court did not err in instituting a plan of implementation that provided that Dr. Tuft, a pediatric dentist, would be responsible for making decisions regarding the children's dental care. Further, the trial court's order that if they failed to agree on extracurricular activities either could unilaterally choose for the children to participate in an extracurricular activity at that parent's own cost did not impermissibly infringe on her status as domiciliary parent. Further, the court's allowing each party to take the children to the church of his or her choice did not impermissibly infringe on her status as domiciliary parent.

The trial court's award of \$10,000 per month in child support was affirmed. Although Ms. Tuft argued that the court impermissibly considered a rare capital gain in her income, the court of appeal affirmed, finding that capital gains could be included in determining a parent's income for child support.

Ms. Tuft contested several exclusions from the child support calculation, but the appellate court affirmed. Mortgage for the home from the child-support calculation was correctly excluded because Ms. Tuft was granted exclusive use of the home. Church gifts were excluded as Ms. Tuft's personal tithes. Holiday gifts and vacations were excluded as personal expenses of the parties. Child care was also excluded because Ms. Tuft was not working or

seeking employment.

The trial court did not err in ordering her to pay one-half of the non-covered health expenses, extracurricular expenses and other expenses for the benefit of the children, particularly given that she was receiving \$10,000 per month in child support and was financially capable of splitting these expenses — even though his income exceeded hers in the proportion of 76 percent to 24 percent. The trial court did not err in denying interim spousal support because she had sufficient income to maintain her standard of living, even though she was paying the mortgage, a portion of the children's expenses and other expenses for herself, given her income, and the \$10,000-per-month child support she was receiving. The trial court erred in not naming a parenting coordinator, particularly given the parties' difficulties in communicating with each other, so the court of appeal remanded for the appointment of a parenting coordinator.

## Community Property

**Bulloch v. Bulloch**, 51,146 (La. App. 2 Cir. 1/18/17), 214 So.3d 930, *writ denied*, 17-0348 (La. 4/13/17), 2017 WL 1534864.

At a hearing on a separate issue, Ms. Bulloch complained that Dr. Bulloch had been coming to the home when she was not there, and the trial court, on its own motion, ordered, on an interim basis, that Ms. Bulloch have exclusive use of the home. She later argued that he was not entitled to rent for her use of the home as rent was not addressed at the time of that award of use and occupancy. However, the court of appeal found that the award was interim and was not made after a contradictory hearing concerning use and occupancy, which was set for a future hearing. The parties were aware of this at the time the interim award was made. Thus, it found that the trial court did not intend to make a final decision on the use and occupancy at the time the interim award was made, and, therefore, Dr. Bulloch's right to seek rent was reserved to him. Thus, the trial court did not err in later awarding him rent.

Dr. Bulloch was a shareholder in the

Orthopaedic Clinic. He was also a member of the Advanced Surgery Center (ASC), to which he and other physicians referred patients for surgery. He received distributions from ASC based on his membership interest, not on the number of surgeries he performed, although he was required to perform a certain number of surgeries at ASC or risk being disassociated as a member. Because the ASC operating agreement did not provide for a valuation methodology in the event of divorce or partition of community, although it did in other events, the valuation methodology in the operating agreement did not apply to establish a value for his interest in ASC.

The court found that the valuation of Dr. Bulloch's expert was appropriate, although Ms. Bulloch argued that it was contrary to appropriate valuation methodologies because it failed to consider the entity's growth rate in fixing the capitalization rate and improperly deducted personal goodwill attributable to Dr. Bulloch. Although both experts used an income approach to establish the value, Dr. Bulloch's expert did not include a growth rate in determining the capitalization rate on the theory that Ms. Bulloch would not be entitled to participate in post-judgment growth of ASC. The court of appeal accepted that rationale.

Ms. Bulloch argued that because Dr. Bulloch was neither an employee, officer or board member of ASC, no goodwill could be attributable to him personally. Further, Dr. Bulloch's expert attributed 30 percent of the goodwill to the enterprise and 70 percent to Dr. Bulloch, leading to a deduction of \$511,000 from the value of his interest in the entity. He argued that his membership in ASC was an extension of his medical practice and, therefore, included personal goodwill as a result of his bringing patients to the entity. The court of appeal stated that it did not find this rationale "patently unsound" and, thus, deferred to the trial court.

Regarding the Orthopaedic Clinic, the court affirmed the trial court's finding that, because the shareholder agreement provided a formula for the calculation of the value in the event of divorce,

Ms. Bulloch was bound to that value whether or not she signed the shareholder agreement, as Dr. Bulloch had the right to manage the entity and to sign agreements, as the stock was registered in his name alone. Her expert had valued his interest at \$1.9 million, in contrast to the \$19,500 provided in the shareholder agreement.

Regarding post-termination distributions from ASC, Dr. Bulloch argued that they were his separate property as a result of his efforts post-termination, while Ms. Bulloch argued that they were fruits of the parties' ownership interest in the entity and should, therefore, be classified as community property. The court found that, because the distributions were based on his ownership interest rather than the number of surgeries he performed, they were fruits of his interest, not payments for his labors. Moreover, he was paid for the surgeries by Orthopaedic Clinic, not ASC. Moreover, Dr. Bulloch would have been entitled to receive distributions whether

he performed surgeries or not, as long as he was not disassociated from the entity for failure to perform surgeries. The court also noted that his bringing patients to ASC was factored in as part of its goodwill analysis, which was deducted from the valuation of the entity.

The court reversed the trial court's valuation of the former matrimonial domicile, acknowledging that the court could average multiple appraisals, but finding that one of those appraisals — a "drive-by" appraisal — was improper to include in the averaging since there were two full appraisals, which included interior home inspections and were within \$5,000 of each other.

—David M. Prados

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## No Proof of Duplicative Payments Required by Owner to be Entitled to Indemnification

*Wholesale Elec. Supply Co. v. Honeywell Int'l, Inc.*, 16-1180 (La. App. 1 Cir. 5/11/2017), \_\_\_ So.3d \_\_\_, 2017 WL 1968729.

Vector Electric Controls, Inc., as contractor, was issued three work orders (the projects) in accordance with a Master Service Agreement with Honeywell International, Inc., as owner, to perform construction work at Honeywell's facility in Baton Rouge. In conjunction with the projects, Wholesale Electric Supply

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Co. supplied electrical supplies and materials to Vector. After Vector failed to make timely payment, Wholesale filed three liens in accordance with the Louisiana Private Works Act, La. R.S. 9:4801, which represented the amounts due and owing from Vector to Wholesale. Thereafter, Wholesale filed suit against Honeywell under the Private Works Act seeking to enforce the liens.

Subsequent to the institution of the suit by Wholesale, Honeywell filed a third-party demand against Vector seeking indemnification under the Private Works Act and the Master Service Agreement between Vector and Honeywell. In response, Vector filed a reconventional demand against Honeywell asserting that Honeywell was negligent in its management of the projects, which caused Vector to be delayed and to experience labor inefficiencies.

Thereafter, Wholesale filed a motion for summary judgment against Honeywell seeking the principal sum due of \$1,251,397.56. Prior to a hearing on the matter, Honeywell and Wholesale entered into a consent judgment for the full principal amount due as well as judicial interest on the principal demand. Subsequently, Honeywell paid Wholesale in full, and a satisfaction of judgment was filed acknowledging Honeywell's full and complete satisfaction of the judgment.

Several months later, Honeywell filed a motion for summary judgment against Vector arguing that there was no genuine issue of material fact as to the issue

that Vector owed Honeywell indemnification under the Private Works Act and the Master Service Agreement. After a hearing on the matter, the trial court entered judgment in favor of Honeywell, holding that Honeywell was in fact entitled to statutory and contractual indemnification from Vector for the amounts Honeywell paid to Wholesale to have the liens cancelled. Thus, the trial court awarded the full principal amount paid by Honeywell to Wholesale as well as judicial interest.

On appeal, Vector contended that the trial court erred in finding that Honeywell was entitled to indemnification because (1) Honeywell did not provide "evidence to demonstrate the amount [Honeywell] sought to be indemnified was ever invoiced by or paid to Vector," (2) Honeywell's own fault and/or breach of contract caused Vector's inability to pay, and (3) evidence showed that Honeywell owed Vector amounts that were well above the judgment paid by Honeywell to Wholesale. *Id.* at \*5.

Vector's first argument, relating to the indemnification issue, was that Honeywell failed to meet its burden of proof because it had "not presented any evidence proving [Honeywell] paid 'twice' for the material and supplies provided by Wholesale and used by Vector on the projects." Vector did not dispute the payment made by Honeywell to Wholesale; rather, it argued that Vector's non-payment was directly a result of Honeywell's failure to pay it for "additional labor, materials,

equipment rentals, and overhead on the projects." The court of appeal, in agreeing with the trial court, explained that, under La. R.S. 9:4802(F), Honeywell was entitled to indemnification from Vector. The court did not reach the issue of contractual indemnification under the Master Service Agreement. *Id.* at 4.

The court recognized that La. R.S. 9:4802(F) "requires a subcontractor to indemnify the owner, the contractor, and/or any subcontractor from or through whom rights are derived 'for amounts paid by them for claims under this part . . .'" *Id.* at n.5. It further reasoned that, despite the evidence of Honeywell's mismanagement of the projects introduced by Vector, that evidence had no bearing on the issue of indemnification under the Private Works Act. Furthermore, the court explained that it found no legal support for Vector's assertion that Honeywell was required to show that it paid "twice" and/or show that it had no liability to Vector before invoking its right to indemnification under the Private Works Act.

The court next reviewed Vector's argument that compensation should have been applied to defeat the motion for summary judgment; it held that compensation did not apply. Citing *Independent Living Center, Inc. v. State*, 93-0776 (La. App. 1 Cir. 6/24/94), 638 So.2d 1202, 1205, the court explained that compensation was not applicable because "a disputed debt is not liquidated and cannot be admitted as susceptible of compensation, unless the one who asserts compensation has in hand the proof of the existence of the disputed debt and is thus in a position to prove it promptly." *Id.* at 5. Given that the amount Vector claimed was due was disputed and pending, the court held that Vector was not entitled to rely on compensation. As a result, the court of appeal affirmed summary judgment in its entirety.

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## Maritime Tort: Allision and Discretionary Immunity

*Populis v. State*, 16-0655 (La. App. 5 Cir. 5/31/17), \_\_\_ So.3d \_\_\_, 2017 WL 2350144.

The ferryboat M/V NEW ROADS, owned by the Louisiana Department of Transportation and Development (DOTD) and operated by Captain Ledet, was departing from the west bank landing in Edgard carrying passengers and vehicles across the Mississippi River to a landing in Reserve when it allided with a barge moored to a

fleet adjacent to the Edgard landing. Several passengers, including Mr. Populis, were injured. Suits filed by the injured passengers alleged fault/negligence for, *inter alia*, failure to keep a proper lookout, failure to exercise reasonable diligence, failure to maintain reasonable and proper control of the M/V NEW ROADS, unseaworthiness due to the incompetence of the vessel's crew, and failure to have competent crew keeping lookout and properly stationed and attentive to their duties. The actions were consolidated on plaintiffs' motion. A plaintiffs' motion for summary judgment alleging 100 percent liability of the defendants was denied.

Defendants moved for summary judgment seeking dismissal of all claims, arguing that Captain Ledet's actions on the day of the allision were discretionary, and they were immune from liability pursuant to La. R.S. 9:2798.1. Defendants' motion was denied. The trial court found that Captain Ledet's negligence caused the allision and awarded damages of \$18,000 to \$24,000

per passenger/plaintiff. On appeal, defendants argued, *inter alia*, error in denying their motion for summary judgment on the issue of whether Captain Ledet and DOTD were protected from liability through discretionary immunity under La. R.S. 9:2798.1.

La. R.S. 9:2798.1 states, in pertinent part:

B. Liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.

C. The provisions of Subsection B of this Section are not applicable:

- (1) To acts or omissions which are not reasonably related to the legitimate governmental objective for which the policymaking or discretionary power exists; or
- (2) To acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.

The Louisiana Supreme Court has held that the application of discretionary immunity is a question of fact to be determined at trial. The court must consider whether the conduct in question occurred at the "operational level." The immunity statute does not protect governmental entities against legal fault or negligent conduct at the "operational level," but confers immunity only for policy decisions, that is, decisions based on social, economic or political concerns. Once a discretionary decision is made, the government entity is not protected from liability for conduct in carrying out the discretionary decision.

Generally, a state court applies maritime or admiralty law to a case involving injury of a passenger on a vessel. Under general maritime law, the plaintiff must demonstrate that there was a duty owed by the defendant, breach of that duty, injury sustained by the plaintiff and a causal connection between defendant's conduct and plaintiff's injury. It has been held that, when a moving vessel allides with a stationary object, the former is presumed at fault. Here, testimony was that,

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although it was dark and the barges may or may not have been lighted, nothing was unusual about the weather or the river's level and currents. Captain Ledet was aware of the barges, which had been moored next to the landing for 20 years, and the ferryboat had adequate crew to post lookouts, which was apparently not done. He considered use of the ferryboat's searchlight unnecessary and elected to continue the cross-river trek following the allision. The appellate court found that the trial court did not err in denying defendants' motion; the judgment of the trial court as to negligence without discretionary immunity was affirmed.

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## United States

*Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S.Ct. 1312 (2017).

The U.S. Supreme Court issued a rul-

ing that tightens the reins of court jurisdiction over expropriation cases under the Foreign Sovereign Immunities Act (FSIA). The case involved claims by a U.S. oil company and its Venezuelan subsidiary that Venezuela illegally expropriated and nationalized their oil rigs in Venezuela. Venezuela sought dismissal of the lawsuit on FSIA sovereign immunity grounds. The oil companies opposed the motion, citing the FSIA's expropriation exception, which allows cases to proceed against sovereign entities where a sovereign expropriates property "in violation of international law." Venezuela replied that the taking was not "in violation of international law" because the expropriation exception does not apply to the taking of property of its own nationals. The parties agreed that the threshold question before the district court was whether the exception applies based on the stipulated facts, and assuming the plaintiffs' allegations as true. The district court ruled the exception inapplicable to the Venezuelan subsidiary because the subsidiary is a national of Venezuela. The court allowed the parent company's case to proceed because Venezuela's actions deprived the parent of its rights as the sole shareholder of the subsidiary.

Using a nonfrivolous pleading standard, the Court of Appeals for the District of Columbia Circuit found that both the parent's and subsidiary's claims satisfied the expropriation exception. On *writ of certiorari*, the U.S. Supreme Court accepted

the case to determine what is necessary to defeat sovereign immunity under the FSIA expropriation exception. Justice Breyer noted that the court of appeals did not decide whether the plaintiffs' allegations and the stipulated facts are sufficient to show a taking in violation of international law. Rather, the court of appeals merely found that the plaintiffs might have such a claim. The court of appeals established a very low threshold for application of the exception, requiring only that the plaintiffs assert a "nonfrivolous" claim of expropriation.

The Court squarely examined this threshold jurisdictional issue, asking the question: "What happens in a case where the party seeking to rely on the expropriation exception makes a nonfrivolous, but ultimately incorrect, claim that his property was taken in violation of international law?" *Id.* at 1316. The Court answered the question as follows:

In our view, a party's nonfrivolous, but ultimately incorrect, argument that property was taken in violation of international law is insufficient to confer jurisdiction. Rather, state and federal courts can maintain jurisdiction to hear the merits of the case only if they find that the property in which the party claims to hold rights was indeed "property taken in violation of international law." Put differently, the relevant factual allegations must make out a legally valid claim



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that a certain kind of right is at issue (*property* rights) and that the relevant property was taken in a certain way (in violation of international law). A good argument to that effect is not sufficient. But a court normally need not resolve, as a jurisdictional matter, disputes about whether a party actually held rights in that property; those questions remain for the merits phase of the litigation.

... But, consistent with foreign sovereign immunity's basic objective, namely, to free a foreign sovereign from *suit*, the court should normally resolve those factual disputes and reach a decision about immunity as near to the outset of the case as is reasonably possible.

*Id.* at 1316-17.

In sum, courts must now address the threshold question of sovereign immunity and its exceptions at the outset of the case on the substantive factual and legal merits of the issue.

## North American Free Trade Agreement

*United States Notice of Intent to Modernize the North American Free Trade Agreement* (May 18, 2017).

The Trump administration formally notified Congress on May 18 of its intent to enter trade negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). NAFTA was negotiated 25 years ago, at a time when the digital economy hardly existed. The Notice of Intent triggers various deadlines under Trade Promotion Authority legislation that will lead to formal negotiations with the NAFTA partners. It is unclear at this point precisely what the administration will seek from a new, modernized NAFTA. Nonetheless, any new agreement will have to pass through Congress by up or down vote without amendments.

—Edward T. Hayes

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## Split in U.S. Courts of Appeals: Whether Sexual Orientation Discrimination Is Cognizable Under Title VII

In recent months, two federal courts of appeals reached conflicting decisions regarding the application of Title VII to employment-discrimination claims based on sexual orientation. In those decisions, the courts disagreed on the interpretation of Title VII's command that employers may not discriminate "because of . . . sex." 42 U.S.C. § 2000e-2(a)(1). The different decisions rendered by these courts have set the stage for the Supreme Court to address and shape the developing law of sexual-orientation discrimination.

By way of background, in *Price*



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*Waterhouse v. Hopkins*, 109 S.Ct. 1775 (1989), the Supreme Court interpreted Title VII to include a prohibition on employment discrimination based on nonconformity with gender-based stereotypes. Later, in *Oncale v. Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998), the Court held that same-sex sexual harassment is cognizable. Relying on these precedents, plaintiffs seeking protection from sexual-orientation discrimination have argued that discrimination based on actual or perceived sexual orientation is also cognizable as discrimination “because of . . . sex.” Defendants, on the other hand, have argued that Congress never intended the definition of “sex” within Title VII to encompass sexual orientation. Defendants also point to Congress’ repeated refusal to pass legislation that would expressly expand Title VII to include sexual-orientation-based claims.

In March of this year, the 11th Circuit sided in favor of a defendant, holding 2-1 that a plaintiff failed to state a Title VII claim based on her status as a lesbian. See, *Evans v. Ga. Reg. Hosp.*, 850 F.3d 1248 (11 Cir. 2017). In that case, the panel majority held that it was bound by a precedent from the former 5th Circuit, *Blum v. Gulf Oil Corp.*,

597 F.2d 936, 938 (5 Cir. 1979). According to the majority, it could not stray from the prior precedent until that decision is overruled by “a clearly contrary opinion of the Supreme Court or of this Court sitting en banc.” 850 F.3d at 1256. In contrast, the dissent argued that *Blum* had already been abrogated by *Price Waterhouse*. According to the dissent, sexual-orientation discrimination is necessarily discrimination based on impermissible sex-based stereotypes. “[T]he employer discriminates against the employee because she does not conform to the employer’s prescriptive stereotype of what a person of that birth-assigned gender should be,” and thus the employer discriminates “because of . . . sex.” *Id.* at 1264. The plaintiff has already filed for a rehearing en banc.

Reaching a conclusion opposite to *Evans*, the en banc 7th Circuit in April held that sexual-orientation discrimination is actionable under Title VII. See, *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7 Cir. 2017). Overruling prior circuit precedent, the *Hively* majority cited several reasons why sexual-orientation discrimination should be considered a form of sex discrimination. First, the court found that

sex discrimination occurs when a woman married to another woman is treated differently from a man married to a woman. *Id.* at 345. Second, the court found that it is impossible to draw a line between claims based on gender nonconformity, which are actionable under a sex-stereotyping theory after *Price Waterhouse*, and those based on sexual orientation. *Id.* at 346. The court found that any discrimination that may occur “based on the fact that the complainant — woman or man — dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex.” *Id.* at 347. Third, the court analogized to *Loving v. Virginia*, 87 S.Ct. 1817 (1967), where the Court held discrimination because one associates with a person of a different race was a form of race discrimination. Hence, according to the *Hively* majority, discrimination that occurs because one associates with a person of the same sex similarly is sex discrimination. *Id.* at 342.

The dissenters in *Hively* argued that the majority’s interpretation over-strained the phrase “because of sex.” Under their view, “discrimination ‘because of sex’ is not reasonably understood to include dis-



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crimination based on sexual orientation, a different immutable characteristic.” *Id.* at 363 (Sykes, J., dissenting). The dissent also chastised the majority for its *Loving* analogy because in the dissent’s view, while miscegenation laws are inherently racist, discrimination based on sexual orientation is not inherently sexist. *Id.* at 368. The dissent also faulted the majority for drawing on *Price Waterhouse* because it was not a proper comparison, stating that “heterosexuality is not a *female* stereotype; it is not a *male* stereotype; it is not a *sex-specific* stereotype at all.” *Id.* at 370.

As noted, a petition for rehearing en banc has been filed in the *Evans* case, and it is widely expected that the decision in *Hively* will be appealed to the Supreme Court. The current circuit split between *Evans* and *Hively* may increase the likelihood that the Court will grant *certiorari* and issue a ruling to resolve the dispute on a nationwide basis. Attorneys who handle Title VII cases would be wise to watch for further developments in this area.

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## Res Judicata; Final Judgments; Oyster Lease

*White v. Cox Operating, L.L.C.*, 16-0901 (La. App. 4 Cir. 4/5/17), \_\_\_ So.3d \_\_\_, 2017 WL 1245003.

Defendant, Cox Operating, L.L.C., allegedly damaged oyster beds owned by Wade White while drilling oil and gas wells. White complained that Cox was driving pilings into the oyster beds and that Cox was not using agreed-upon avenues of ingress and egress to the drill sites. White contacted Cox about these issues, and Cox agreed to cover any damages to the oyster leases. Cox then entered into a settlement with White to compensate him for any damage to the oyster leases. White later filed a lawsuit against Cox for the damage caused by the pilings. In response, Cox filed excep-

tions based on *res judicata* and no right of action, and a reconventional demand for breach of contract (breach of the settlement agreement).

The trial court granted Cox’s exception of *res judicata* without hearing any testimony or accepting any evidence. White appealed. At the appellate level, Cox filed a motion to dismiss, arguing that the Louisiana 4th Circuit Court of Appeal did not have subject matter jurisdiction because the ruling of the trial court on the exception was not a final judgment pursuant to La. C.C.P. art. 1915. The appellate court disagreed and found that because all of White’s claims against Cox were dismissed with the granting of the exception of *res judicata*, pursuant to article 1915(A)(1), the judgment was final.

As to the ruling regarding *res judicata*, the 4th Circuit found that, because the parties did not introduce any evidence or testimony to the trial court during the hearing on the exception and because the issue was not decided by a preponderance of the evidence, the judgment must be vacated and remanded to the trial court for further proceedings and the creation of a record that can be reviewed by the appellate court.

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## Subsequent Purchaser Doctrine; Mineral Leases; Contamination

*Guilbeau v. Hess Corp.*, 854 F.3d 310 (5 Cir. 2017).

This case involves the subsequent-purchase doctrine as it applies to mineral leases. Hess Corp. and its predecessors-in-interest operated oil-and-gas leases on a piece of property for a number of years. In 1973, those operations ceased and the wells were plugged and abandoned. In 2007, Kenneth Guilbeau purchased the property on which the operations had been conducted. Guilbeau sought to sue third parties for environmental contamination from the oil-and-gas operations; however, Guilbeau's purchase agreement did not include any assignment of rights to sue for pre-purchase damages.

Guilbeau filed a lawsuit against Hess, arguing that his property was contaminated by Hess's operations. Hess sought summary judgment based on the subse-

quent-purchaser doctrine, arguing that, in the absence of an assignment of the right to sue, Guilbeau had no claim for pre-purchase damages. Guilbeau countered that the doctrine does not apply to claims based on mineral leases. The district court disagreed and granted Hess's motion for summary judgment. Guilbeau appealed.

The U.S. 5th Circuit Court of Appeals affirmed the trial court's ruling. The 5th Circuit engaged in an in-depth analysis of Louisiana case law in support of its decision, including *Eagle Pipe* (Louisiana Supreme Court), *Global Marketing Solutions, L.L.C.* (1st Circuit), *Walton* (2nd Circuit), *Boone* (3rd Circuit) and *Bundrick* (3rd Circuit). All of these cases hold that the subsequent-purchaser doctrine applies to cases involving expired mineral leases. Damage to property is a personal right, not a real right that transfers with the property at the time of sale. Thus, the sale documents must contain a specific assignment from the seller to the purchaser subrogating or assigning that personal right to the purchaser. Without it, the purchaser has no

recourse for environmental contamination against a third party. Pursuant to Louisiana law, the consensus is clear — the subsequent-purchase rule does apply to cases involving expired mineral leases.

## Well Cost Reporting

*TDX Energy, L.L.C. v. Chesapeake Operating*, 857 F.3d 253 (5 Cir. 2017).

The parties disputed whether non-operator lessees can invoke La. R.S. 30:103.2. The statute provides that, in certain circumstances, the operator of a compulsory unit forfeits its right to collect well costs from non-operators if the operator fails to timely provide information that is requested pursuant to La. R.S. 30:103.1. Relying on 30:103.2's language stating that the forfeiture can be invoked by owners of "unleased" interests, the district court held that a non-operator lessee cannot invoke the penalty. But the U.S. 5th Circuit reversed.

Relying on La. R.S. 30:103.1's language suggesting that the owner of any interest not leased by the operator can make a 30:103.1 information request, and the court's reasoning that 30:103.1 and 30:103.2 work together, the 5th Circuit held that non-operator lessees can invoke the forfeiture when the circumstances required for an operator's forfeiture of rights otherwise are satisfied. The 5th Circuit also decided certain questions relating to a prior version of the Risk Fee Statute, La. R.S. 30:10.

**Disclosure:** Author Keith B. Hall submitted an *amicus* brief arguing that non-operator lessees cannot invoke La. R.S. 30:103.2.

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## Prescription

*In re Med. Review Panel of Hurst*, 16-0934 (La. App. 4 Cir. 5/3/17), \_\_\_ So.3d \_\_\_, 2017 WL 1719051.

Hurst presented to University Medical Center's emergency room on May 21, 2013. He was diagnosed with an upper respiratory infection and cough, for which he was treated and discharged that same day "in good condition," with instructions to see his primary care physician for a recheck and routine health maintenance.

Hurst filed a malpractice claim two years later that alleged negligence in failing to test for and failing to diagnose his condition. His complaint referenced a "discovery date" of Jan. 1, 2015, when his chest pain became "unbearably worse."

The defendants' exception of prescription was granted. Hurst appealed.

The complaint was prescribed on its face; thus, Hurst bore the burden of proving that he did not have constructive knowledge of facts sufficient to "excite attention and put [him] on guard and call for inquiry." *Id.* at \*6, citing *Campo v. Correa*, 01-2707 (La. 6/21/02), 828 So.2d 502, 511-12.

Hurst testified during the hearing on the exception that he had not filed earlier because he "didn't have concrete knowledge of what was going on here in my chest," that lawyers he had spoken with suggested the possibility that his problems may have been caused by his having been exposed to certain chemicals, and at some point "around, say, like August of 2014," the possibility of a medical malpractice case was raised. He testified that he had to do more research but that he never got "concrete knowledge" about his situation. The appellate court found that Hurst failed to allege facts "with particularity . . . to show that [he] was unaware of the malpractice prior to the . . . alleged date of discovery," thus failing to satisfy his burden of proof. The judgment granting appellee's exception of prescription was affirmed.

*Breland v. Willis Knighton Med. Ctr.*, 51,150 (La. App. 2 Cir. 2/15/17), 212 So.3d 724.

Mr. Breland was taking Lactulose, a drug used to treat a medical condition that would cause his ammonia level to rise. Absence of the drug could lead to complications that included confusion, agitation and toxemia. He underwent hernia surgery at Willis Knighton North. One month later, he began to experience abdominal pain and returned to the same hospital on July 27, 2014. Mrs. Breland contended that she informed an emergency room nurse and an emergency room physician of Mr. Breland's need for Lactulose and, thereafter, over the next two days, she repeated this request seven times, but the medication was not administered until the morning of July 29, at which time a one-half dose was given. Complications, including confusion, followed by a refusal to take Lactulose, consistent with elevated ammonia level ensued, leading to his death on July 31.

Mrs. Breland consulted an attorney about two months after her husband's death; he later confirmed her suspicions concerning medical negligence. Suit was filed on July 20, 2015, and a medical-review panel was requested on Aug. 14, 2015. The defendants filed an exception of prescription, which the trial court granted. Mrs. Breland's attorney requested leave to amend "the petition," which was denied. The trial judge found that Mrs. Breland was well aware of problems involving the failure to give the medication, especially since she was a nurse, and that her petition was "very detailed," leading the court to conclude that there was no amendment she could make to her original petition that would overcome the defendants' exception of prescription.

Without distinguishing in the opinion the lawsuit from the panel request, the appellate court reversed the trial court's decision and remanded the case to allow Mrs. Breland to amend her petition "to include the discovery date of the alleged malpractice" pursuant to La. C.C.P. art. 934. The court noted that article "has been liberally applied by courts to allow for the amendment of petitions in the interest of sustaining justice and for various policy reasons."

The court knew, from her memorandum in opposition to the exception, that she claimed that the date of discovery was May 29, 2015; thus, the amendment might allow her to overcome the exception.

The defendants' main argument against allowing the amendment was that it would not remove the basis for the trial court's ruling, in that the only way Mrs. Breland could amend her petition would be to change her allegations. The court of appeal disagreed because Mrs. Breland never mentioned the discovery date in the original petition; thus, including it in an amendment "would raise some *possibility* that the claim had not prescribed." The court determined, in advance of the amendment, that the new information "might" affect the exception, and its allowance would allow Mrs. Breland an opportunity to proceed with her case and the defendants the opportunity to maintain their argument against proceeding.

—Robert J. David

Gainsburgh, Benjamin, David,  
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## Resolution to Suspend Exemptions Was Not Unconstitutional

*La. Chem. Ass'n v. State*, 16-0501 (La. App. 1 Cir. 4/7/17), \_\_\_ So.3d \_\_\_, 2017 WL 1293472.

The Louisiana Chemical Association and other taxpaying companies (plaintiffs) filed a petition for declaratory judgment against the Louisiana Department of Revenue, the Louisiana Legislature and the Louisiana Tourism Promotion District (defendants) regarding House Concurrent Resolution 8. That resolution, passed during the 2015 legislative session, suspended certain exemptions for

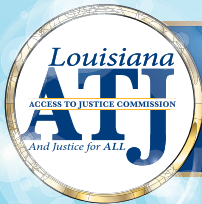
state sales-tax laws from July 1, 2015, until 60 days after the 2016 Regular Session of the Legislature. Plaintiffs asserted that HCR 8 was unconstitutional because it purported to suspend a law without the required two-thirds vote of each house of the Legislature; that it did not satisfy the requirements of the Louisiana Constitution; that it was in direct conflict with existing laws and, thus, could not be given effect; and, alternatively, that it was impermissibly vague and ambiguous, such that it violated due process.

The defendants jointly moved for summary judgment, asserting that there were no genuine issues of material fact that the plaintiffs' arguments were without merit and their case should be dismissed. Plaintiffs filed a cross motion for summary judgment. The district court denied the plaintiffs' motion, granted the defendants' motion and dismissed plaintiffs' case with prejudice. Plaintiffs appealed.

Plaintiffs asserted HCR 8 is incon-

sistent with, and superseded by, Acts 2004, No 4, § 3 (1st Ex. Sess.). The court held that HCR 8 is a later expression of legislative will that is controlling and dismissed this argument. They also asserted that the Legislature's failure to specifically state that it was suspending Acts 2004, No 4, § 3 (1st Ex. Sess.) renders HCR 8 null and void. The court found that the objective of HCR 8 is to suspend the enacted and effective exemptions for business utilities contained in Chapter 2 of Subtitle II of Title 47, not to suspend the temporary inoperability of these exemptions, which had ceased five years earlier.

In addition, plaintiffs asserted that HCR was unconstitutional under Article III, §§ 14, 15, 16, 18 and 20, and Article VII, § 2 of the Louisiana Constitution. The court held that the language of Article VII, § 2 does not provide that the suspension of an exemption of an existing tax shall require the enactment of a law by two-thirds of the elected members of each house of the Legislature.



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“ I strive to make time for pro bono work, with some days more successful than others. We're all so busy and never truly catch up, so it's easy to justify never volunteering. However, we have to remember that a large percentage of our population cannot afford an attorney on an hourly basis. Often, their issues can be resolved through consultation or limited commitment. So, when a program such as “Lawyers in Libraries” offers an efficient, controlled environment in which to assist those in need, there really is no excuse not to participate. ”

**Salvador I. Bivalacqua, Attorney at Law**  
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The court reasoned that a repeal of an existing tax would be a permanent change, whereas a suspension (which is time limited) of an exemption is not the same thing as a permanent repeal. The court also held that as HCR 8 is not a bill, the tax levy raises the revenues, and granting of the exemption does not change the underlying tax levy, suspending an exemption is not a revenue-raising measure that must originate in the house.

Finally, the court dismissed the plaintiffs' argument that HCR 8 is unconstitutionally vague and ambiguous because it makes no reference to La. R.S. 51:1286; it makes no cross-reference that makes the sales tax exemptions in La. R.S. 47:305 applicable to the taxes imposed by La. R.S. 47:331 and 51:1286(A); and it purports to suspend "any other exemptions" for "business utilities" without defining the term "business utilities." The court held HCR 8 "suspends all of the exemptions from the tax levied pursuant to R.S. 47:331 for sales of steam, water, electric power or energy, and natural gas," and such language is not vague or ambiguous.

—**Antonio Charles Ferachi**

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

## Advising Clients in Light of Looming TEFRA Repeal

Governing documents of all entities taxed as partnerships should be reviewed and modified in light of recent federal tax law developments (and related anticipated state law changes). Section 1101 of The Bipartisan Budget Act of 2015 (BBA) substantially changes how the Internal Revenue Service may conduct audits of flow-through entities taxed as partnerships. The BBA eliminates long-standing audit rules enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and replaces them with

new centralized partnership-audit rules, effective for returns filed for partnership tax years beginning after Dec. 31, 2017. To provide guidance to taxpayers on how the BBA regime will be implemented, the IRS re-released proposed regulations on June 13, 2017, and has invited comments in anticipation of a hearing on the proposed regulations currently scheduled for Sept. 18, 2017. The proposed regulations were initially released on Jan. 18, 2017, but were withdrawn on Jan. 20, 2017, in light of the Trump Administration's freeze on all new and proposed federal rule making.

The BBA, and the related IRS-proposed regulations, make significant changes to the way partnerships will be audited for tax years beginning after Jan. 1, 2018, including that: (1) the "tax matters partner/member" under the TEFRA audit rules is replaced with a "partnership representative," who will have the *sole authority* to act on behalf of the partnership; (2) unless certain partnerships makes an election to "push out" additional taxes owed as a result of an audit to the audited ("reviewed") year partners, such additional taxes will now be paid by the partnership; and (3) as a trap for the unwary, the new audit rules will apply to all partnerships except for those that are qualified to "elect out" and properly make such an election annually.

The significant changes brought about by the BBA and the proposed regulations warrant substantive amendments to the governing documents of entities taxed as partnerships. While a detailed and thorough review of the entity's organizational documents and operating agreement is necessary to determine the particular language of any such substantive changes, the documents should be amended to: (1) address the change from the "tax matters partner/member" to the "partnership representative" and the expanded role of such representative and to designate the partnership representative, as well as to impose any limits on the partnership representative's authority to act as may be required; (2) grant the partnership the ability to recover any taxes paid by the partnership that are attributable to any deficiency for taxes imposed upon a partner (particularly taxes resulting from the

"push out" election referenced above); and (3) grant the partnership the authority to "elect out" of the BBA regime and make other elections established by the BBA regime.

With respect to the state tax impact, there are many as yet unanswered questions. Even after the state provides guidance, many more are likely. Louisiana does not tax partnerships as taxpayers and will have to adapt applicable law to address those instances in which partnerships will become taxpayers under the BBA. Nevertheless, the Jan. 1, 2018, effective date of the BBA is approaching. Thus, the time for providing notice and counsel to your clients is quickly running out.

—**Jaye A. Calhoun**

Member, LSBA Taxation Section  
and  
**David P. Hamm, Jr.**  
Kean Miller, L.L.P.  
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CHAIR'S MESSAGE

# Building Your Sense of Community

By Bradley J. Tate

**A**s young lawyers, most of us are faced with the same struggles — clients, billable hours, student loan payments, daycare, carpool, grocery shopping — a never-ending list of work and personal responsibilities that seems to monopolize all of our time. All of this coupled with just starting out in a career can be stressful and unfulfilling. However, through all of the hectic activity, I encourage all of you to become more involved in your communities. It is through giving back that you will find a greater sense of pride in what we do as attorneys and you will make an impact outside of your daily routine.

The Young Lawyers Division (YLD)



Bradley J. Tate

has a focus on being a service organization. But, across the state as young lawyers, our reach goes beyond the activities of the YLD. As a young attorney and young professional, I have been encouraged by the willingness and dedication of many of my colleagues to become involved in our communities in many different ways. I know young lawyers who are involved in activities from serving on non-profit boards, coaching youth sports, volunteering in their churches, serving as pro


bono advocates, and holding leadership positions in community organizations. As we mark a year since the devastating floods in the greater Baton Rouge area and other parts of the state, recall that the attorneys were the ones who began opening their offices to help these communities start to get back on their feet.

It is important that lawyers are seen in our communities volunteering and giving back to the people who entrust them with some of the most impactful things in their lives. It is a great responsibility to represent an accused person through a criminal proceeding or to guide a grieving family through a succession. When we are seen in the community as people who care, it becomes easier for clients to entrust us with their important issues and to be the first person they call.

For those of you looking for a place to begin involvement in your community, the YLD's programs, including Barristers for Boards, Wills for Heroes and the State High School Mock Trial Competition, are great places to start. I would be happy to help you get involved.

This spirit of service also comes into play via Louisiana State Bar Association President Dona Kay Renegar's hashtag — #yourLSBA — where attorneys around the state are being highlighted this Bar year for giving back to their respective communities. I'd also like to know more about the young lawyers who are making real differences in their communities and in the lives of others. Please reach out to me about these individuals so their stories can be shared.

In that regard, I'd like to ask each of you to interact with our social media pages. The YLD can be found on Twitter @LSBA\_YLD and on Facebook at [www.facebook.com/LSBAYLD](http://www.facebook.com/LSBAYLD). Also, follow the LSBA's new Instagram account: @thelouisianabar.



**YOUNG LAWYERS  
DIVISION NEWS**

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



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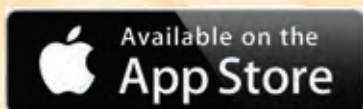
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## YOUNG LAWYERS SPOTLIGHT

### Rachel I. Silvers New Orleans

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting New Orleans attorney Rachel I. Silvers.

Silvers, a New Orleans native, is a founding member of Silvers Law Firm, L.L.C, a general civil law practice in Uptown New Orleans.



Rachel I. Silvers

Along with her law practice, she also is a licensed realtor and co-owner of Galiano Realty with her husband, Nick Galiano.

She received her BS degree in business administration in 2009 from the University of New Orleans. After college graduation, she attended Loyola University College of Law at night and worked at the Gray Insurance Co. during the day. At Loyola, she served as the school's Evening Division SBA representative, on the Moot Court staff, and spent a year in Loyola's Litigation and Technology Clinic. After receiving her JD degree in 2013, she worked as an attorney for the Gray Insurance Co. and later founded the Silvers Law Firm, L.L.C.

In 2016, Silvers was selected to participate in the Loyola University College of Law's Incubator Program, an immersive

two-year opportunity for graduates building a solo practice and committed to social justice. Her firm focuses on personal injury, litigation, real estate, business and family law.

She is committed to supporting her community through public service and pro bono work. She has been recognized by The Pro Bono Project for 100+ hours of pro bono service. In 2017, she was recognized by the Louisiana State Bar Association with its Pro Bono Century Club Award for her commitment to serving the less fortunate.

Silvers is currently serving as vice chair of the Jefferson Bar Association's Young Lawyers Division. She also is a member of the New Orleans Metropolitan Association of Realtors' Young Professionals Network.

## YOUNG LAWYERS DIVISION NEWS

# Caddo Parish Magnet High Wins 2017 State High School Mock Trial Competition

The mock trial team from Caddo Parish Magnet High School in Shreveport was the winner of the 2017 Richard N. Ware IV State High School Mock Trial Competition, conducted on March 11 at the 4th Judicial District Court in Monroe.

The mock trial team from Jesuit High School in New Orleans received second place. Manuel Molina from Jesuit High School was named "Best Attorney" and Dalia El-Giar from West Monroe High School was named "Best Witness."

The 2017 state case involved a free speech suit, *Logan and Hayden Harrison v. Riviere Rapide School District*.

The students from Caddo Parish Magnet High School went on to compete at the National High School Mock Trial Competition in May in Hartford, Conn.

The annual state competition is coordinated by the Louisiana State Bar Association's Young Lawyers Division.



The mock trial team from Caddo Parish Magnet High School in Shreveport was the winner of the 2017 Richard N. Ware IV State High School Mock Trial Competition. The students went on to compete in the national competition.



The mock trial team from Southern University Law Center won the 2017 Law School Mock Trial Competition, coordinated annually by the Louisiana State Bar Association's Young Lawyers Division. The competition was March 25 at the 19th Judicial District Court in Baton Rouge. The mock trial team from Louisiana State University Paul M. Hebert Law Center placed second in the competition. Elizabeth Wong of LSU was selected as "Best Oralist."



## Law Day Celebrated in Louisiana Schools

**T**he Louisiana Center for Law and Civic Education (LCLCE) partners with the Louisiana District Judges Association and the Louisiana State Bar Association to present Law Day activities to schools across the state. This year, 66 Law Day presentations were organized, reaching more than 3,400 students. Thanks to dedicated teachers, attorneys and judges, these programs occurred in all six Louisiana congressional districts and at all grade levels. During the 2016-17 fiscal school year, more than 6,000 students have benefited from these programs.

Several judges participated in the Law Day programs this year, including Judge Randall L. Bethancourt, Judge Marilyn C. Castle, Judge Aisha S. Clark, Judge Sylvia R. Cooks, Judge June Berry Darendburg, Judge Katherine C. Dorroh, Judge Charles G. Fitzgerald, Judge Clayton A.L. Davis, Judge Patricia E. Koch, Judge Sharon I. Marchman, Judge Michele R. Morel, Judge Kent D. Savoie, Judge Curtis Sigur, Judge Sheva M. Sims, Judge Ralph E. Tureau, Judge Charles G. Tutt and Judge



In recognition of Law Day, Judge Kent D. Savoie visited Brentwood Elementary School in Lake Charles.

Jason M. Verdigets.

Several attorneys participated in the programs, including Dan M. Boudreaux, Jeanette E. Dewitt-Kyle, Mary L. Dumestre, Shytishia (Sam) M. Flugence, A. Spencer Gulden, Felecia M. Hamilton, Patrick J. Harrington, Evan P. Howell III, Jonathan T. Jarrett, Holly Lamarche, Ross M. LeBlanc, Christine Lipsey, Betty A. Maury, Brittany J. McKeel, Marla E.

Mitchell, JoAnn Nixon, DeVonna M. Ponthieu, Allyson M. Prejean, Celeste H. Shields, Taylor C. Stone, J. Richard Williams, John S. Williams and Micah C. Zeno.

With the continued support of the Louisiana legal community, Louisiana will remain a leader in the promotion of law and civic education in the classroom.



In recognition of Law Day, attorney Evan P. Howell III visited John L. Ory Communications Magnet Elementary School in LaPlace.



In recognition of Law Day, Judge Clayton A.L. Davis visited Immaculate Conception Cathedral School in Lake Charles.

## New Judges

**Paula A. Brown** was elected judge, 4th Circuit Court of Appeal. She earned her BS degree in 1986 from Tulane University and her JD degree in 1992 from Southern University Law Center. She served



Paula A. Brown

as law clerk to Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. She served as staff attorney with the Orleans Public Defenders Program and as adjunct professor at Southern University New Orleans. She served as an executive board member of the A.P. Tureaud American Inn of Court and the Louis A. Martinet Legal Society, Inc. In 2005, she was a recipient of the New Orleans *CityBusiness* Leadership in Law Award. In 2010, Judge Brown was elected to Orleans Parish Civil District Court and served there seven years until her election to the 4th Circuit.

**Ree J. Casey-Jones** was elected judge, Caddo Parish Juvenile Court. She earned her BA and JD degrees from Southern University and its Law Center in 2000 and 2005, respectively. Prior to her election to the



Ree J. Casey-Jones

bench, she served as a public defender in Caddo and Bossier parishes and as a trial attorney in juvenile and district courts. She volunteered with the Northwest Louisiana Pro Bono Project and was named one of the Shreveport Chamber of Commerce's "40 Under 40" in 2010. Judge Casey-Jones is married to Darwin L. Jones and they are the parents of one child.

## Appointments

► Todd Samuels Clemons was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which ends on Jan. 31, 2022.

► Professor Herbert Larson was appointed, by order of the Louisiana Supreme Court, to the Equivalency Determination Panel for a term of office which ends on May 14, 2021.

► Keith M. Pyburn, Jr. was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which ends on March 31, 2022.

## Retirements and Resignation

► 2nd Circuit Court of Appeal Judge John L. Lolley retired effective May 2. He earned his BA degree in 1968 from Northeast Louisiana University and his JD degree in 1971 from Loyola University Law School. He served as prosecuting attorney for the City of Monroe from 1973 until his election as judge of Monroe City Court in 1979. He was elected to the 4th Judicial District Court in 1997 and to the 2nd Circuit Court of Appeal in 2003.

► 18th Judicial District Court Judge James J. Best retired effective May 15. He earned his bachelor's degree in 1978 from the University of Southwestern Louisiana and his law degree in 1986 from Southern University Law Center. He served on the 18th JDC for 24 years, running unopposed since his 1993 election.

► New Orleans Municipal and Traffic Court Judge Desiree M. Charbonnet resigned April 21. She earned her BA and JD degrees from Loyola University and its College of Law in 1990 and 1994, respectively. She was elected to Municipal Court in 2007 after serving as the city's recorder of mortgages.

## Deaths

► Retired Ville Platte City Court Judge Donald J. Launey, Jr., 71, died May 23. He earned his BA degree in 1966 from the University of Southwestern Louisiana and his JD degree in 1972 from Loyola University Law School. He was a former president of the Evangeline Parish Bar Association and, during law school, he worked for the New Orleans City Attorney's Office. He was elected judge of Ville Platte City Court in 1991 and served there until his retirement in 2013.

► Retired 4th Judicial District Court Judge John R. Joyce, 74, died May 5. He served four years active duty with the U.S. Marine Corps before earning his JD degree in 1970 from Louisiana State University Law School. He then practiced law in Monroe until his election to the 4th JDC in 1976. During his tenure at the 4th JDC, he served as president of the Louisiana District Judges' Association. He ran unopposed in his subsequent elections and retired in 1996 after 20 years of service. After his retirement, he practiced law in Monroe and served as *ad hoc* judge.

► Retired Abbeville City Court Judge Marcus A. Broussard, Jr., 88, died March 3. Shortly after high school, he joined the Louisiana National Guard as a private. He quickly rose through the ranks, receiving a commission as a second lieutenant Infantry Division in 1952 and promoted to reserve commissioned officer of a first lieutenant to the U.S. Army in 1956. He earned his bachelor's degree in 1951 from the University of Southwestern Louisiana and his law degree in 1955 from Loyola University Law School. In 1958, he was appointed by the Governor to the newly created Abbeville City Court. He served there until his retirement in 1984. In retirement, he sat *ad hoc* in more than one fourth of Louisiana's district courts.

# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Matthew R. Emmons has been elected as a shareholder in the Mandeville office.

Baldwin Haspel Burke & Mayer, L.L.C., announces that **Lawrence R. DeMarcay III** has joined the firm as a partner in the New Orleans office and **Jeannette S. Waring** has joined the New Orleans office as an associate.

Bienvenu, Bonnacaze, Foco, Viator & Holinga, A.P.L.L.C., in Baton Rouge announces that **F. Charles (Chip) Marion-neaux** has joined the firm as a partner and **Anthony J. Gambino, Jr.** and **Colin P. O'Rourke** have joined the firm as associates.

Boyer, Hebert, Abels & Angelle, L.L.C., announces that **F. Dominic Amato** has joined the firm as special counsel in the

Denham Springs office. **J. Brent Barry** has joined the firm as special counsel in the Breaux Bridge office. **Rhonda S. Smith** has joined the Denham Springs office as an associate.

Breazeale, Sachse & Wilson, L.L.P., announces that Jordan L. Faircloth and Druit G. Gremillion, Jr. have been named partners in the Baton Rouge office. Also, Rebecca S. Helveston and Alexandra Vozzella have joined the Baton Rouge office as associates.

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

R. Vaughn Cimini announces that, effective June 1, the name of his law firm has changed to Cimini & Noonan to reflect his partnership with trial attorney **Michael M. Noonan**. Also, **Ivana Dillas** has joined the Metairie firm as an associate.

Deutsch Kerrigan, L.L.P., announces that Peter E. Castaing has joined the firm's New Orleans office as a member.

Faircloth, Melton & Sobel, L.L.C., announces that Lottie L. Bash has joined the firm's Alexandria office as a partner and Laura B. (LB) Matthews has joined the Alexandria office as an associate.

Forman Watkins & Krutz, L.L.P., announces that Charles H. Abbott, Byron D. Kitchens and Amy L. Maccherone have joined the New Orleans office as partners.

Fowler Rodriguez announces that **Caroline Sanches** has joined the firm's New Orleans office as an associate.

Gaudry, Ranson, Higgins & Gremillion, L.L.C., announces that W. Glenn Burns has joined the firm as special counsel in the New Orleans office.

Continued next page



F. Dominic Amato



Richard J. Arsenault



Patrick J. Babin



Judy Y. Barrasso



J. Brent Barry



Betsy P. Britton



Samuel L. Burk



Daniel G. Collarini



Victor M. Dantin



Blake R. David



Francis X. deBlanc III



Lawrence R. DeMarcay III

Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Sarah E. Segrest-Jay** has joined the firm's New Orleans office as counsel. Also, **Betsy P. Britton, Victor M. Dantin** and **Jay M. Mattappally** have joined the New Orleans office as associates.

Johnson, Yacoubian & Paysse, A.P.L.C., in New Orleans announces that **Alejandro J. Rodriguez** and **Daniel G. Colarini** have joined the firm.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Kaja S. Elmer has joined the firm's New Orleans headquarters as an associate.

Mouledoux, Bland, Legrand & Brackett, L.L.C., in New Orleans announces that members **C. Michael Parks, Gerard J. Dragna, Robert N. Popich** and **Patrick J. Babin** have become equity members.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., announces that Lisa D. Hanchey has joined the firm as of counsel in the Lafayette office and Jennifer L. Englander has been elected to shareholder in the New Orleans office. Also, Christopher E. Moore has been named managing shareholder of the firm's Louisiana offices in New Orleans and Lafayette.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., announces that several attorneys have joined the firm's New Orleans office as special partners — **McGready L. Richeson, Ernest G. Foundas, Joseph H. Hart IV, Samuel L. Burk, Francis X. deBlanc III, Perrey S. Lee, Daniel E. Oser, Thomas A. Porteous** and **Milele N. St. Julien**. Also, **Kathleen E. (Katie) Jordan** has joined the New Orleans office as an associate.

Pusateri, Johnston, Guillot & Greenbaum, L.L.C., in New Orleans announces that Robert R. Johnston has joined the firm as a member and Jacques P. DeGruy has joined the firm as a partner.

B. Thomas Shea announces the formation of his new law firm, Tom Shea Family Law, L.L.C., located at Ste. 1720, 1 Lakeshore Dr., Lake Charles, LA 70629; (337)564-4148; website [www.tomsheafamilylaw.com](http://www.tomsheafamilylaw.com).

## NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, will speak at the inaugural Plaintiffs' Forum on Mass Tort Litigation in November and will chair the 24th annual Admiralty Symposium in September. Also, he was recognized by the National Trial Lawyers as having one of America's 25 Most Influential Law Firms.

**Judy Y. Barrasso**, a member in the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., was inducted as president of the International Society of Barristers.

Attorney James W. (Wes) Bearden, with J.W. Bearden & Associates, P.L.L.C., with offices in New Orleans and Dallas, TX, received the Hudgins-Sallee Award from the Texas Association of Licensed Investigators.

**Blake R. David**, a partner in the Lafayette firm of Broussard & David, was confirmed by the Louisiana Senate for a seat on the Board of Regents. Gov. John Bel Edwards made the appointment.

R. Marshall Grodner, a member in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., was elected treasurer of the American College of Commercial Finance Lawyers. He also has been inducted as president of the Association of Commercial Finance Attorneys, Inc.

George F. Indest III, president and managing partner of The Health Law Firm in Alta Monte Springs, Fla., received recertification in health law by the Florida Bar's Board of Legal Specialization and Education.

Continued next page



Ivana Dillas



Gerard J. Dragna



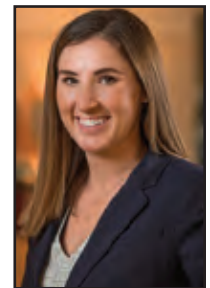
Ernest G. Foundas



Anthony J. Gambino, Jr.



Joseph H. Hart IV



Kathleen E. Jordan



Allan Kanner



Perrey S. Lee



F. Charles Marionneau



Jay M. Mattappally



Jerome H. Moroux



Michael M. Noonan

**Jerome H. Moroux**, a partner in the Lafayette firm of Broussard & David, will be published in the *Loyola University Maritime Law Journal*. His article, "McBride V. Estis Well Service: An Examination of the Past, Present and Future of Punitive Damages in Maritime Law," will be in the Winter 2017 issue.

**H. Minor Pipes III**, a member in the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., was elected as a Fellow of the International Society of Barristers.

## PUBLICATIONS

### *Chambers USA 2017*

**Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.** (Baton Rouge, New Orleans): Phyllis G. Cancienne, Donna D. Fraiche, Errol J.

King, Jr. and Paul S. West.

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

**Breazeale, Sachse & Wilson, L.L.P.** (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, Thomas M. Benjamin, David R. Cassidy, Clay J. Countryman, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Emily Black Grey, Richard D. Leibowitz, Steven B. Loeb, Eve B. Masinter, Van R. Mayhall, Jr., E. Frederick Preis, Jr. and Claude F. Reynaud, Jr.

**Chaffe McCall, L.L.P.** (New Orleans, Houston, TX): E. Howell Crosby, Julie D. Livaudais and Ivan M. Rodriguez.

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.** (New Orleans): Monique G. Doucette, Mark N. Mallery and Christopher E. Moore.

**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 Orleansky, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Michael Q. Walshe, Jr., Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

**Sullivan Stolier Schulze & Grubb, L.L.C.** (Lafayette, New Orleans): Jack M. Stolier, Stephen M. Sullivan, Michael R. Schulze, Matthew K. Brown and Isabel Bonilla-Mathe.

### *Lawdragon 2017*

**Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.** (New Orleans): Kerry J. Miller.

**Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.** (New Orleans): **Judy Y. Barrasso**, 500 Leading Lawyers in America.

**Kanner & Whiteley, L.L.C.** (New Orleans): **Allan Kanner** and **Conlee S. Whiteley**, 500 Leading Lawyers in America.

Continued next page



Colin P. O'Rourke



Daniel E. Oser



C. Michael Parks



H. Minor Pipes III



Robert N. Popich



Thomas A. Porteous



McGready L. Richeson



Alejandro J. Rodriguez



Caroline Sanches



Sarah E. Segrest-Jay



Peter J. Segrist



Rhonda S. Smith



Milele N. St. Julien



Jeannette S. Waring



Conlee S. Whiteley

**Louisiana Super Lawyers 2017**

**Flanagan Partners, L.L.P.** (New Orleans): Sean P. Brady, Andy J. Dupre, Harold J. Flanagan, Thomas M. Flanagan and Charles-Theodore Zerner. (Thomas M. Flanagan also was chosen as a *Benchmark Litigation* star in Louisiana for 2017.)

**New Orleans CityBusiness 2017**

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): Susan G. Talley and Lesli D. Harris, Leadership in Law Class.

**IN MEMORIAM**

**James Lee (Jim) Alcock**, 84, died Feb. 5. He was a native of New York and a resident and practicing attorney in Houma for the past 40 years. He served in the U.S. Navy before graduating from Loyola University with a degree in accounting. He received his JD degree in 1962 from Loyola Law School. After working as an attorney for NASA at the Michoud Facility, he began his work as a trial attorney in the Orleans



**James Lee (Jim) Alcock**

Parish District Attorney's Office, working as first assistant under Jim Garrison from 1963-71. In 1971, he was appointed by Gov. John McKeithan as a judge in Orleans Parish Criminal District Court. In 1973, he was named first assistant district attorney for the newly elected Terrebonne Parish District Attorney Norval Rhodes, serving in that position until 1985. He continued to practice law with distinction until he retired in 2008 at the age of 75. He is survived by his wife, Carolyn Rhodes Alcock, a son, two daughters, five grandchildren, one great-grandchild and other relatives.

**Edmond Wade Shows**, 67, died May 6. He was a founding partner of the Baton Rouge law firm Shows, Cali & Walsh, L.L.P. He served as 2005-07 secretary of the Louisiana State Bar Association (LSBA) and as editor of the *Louisiana Bar Journal*. He also served in the LSBA's House of Delegates and on the Board of Governors. He graduated from Louisiana State University Law School and was admitted to practice in 1975. He served as 2005 president of



**Edmond Wade Shows**

the Louisiana Center for Law and Civic Education. He was a probation monitor for the Louisiana Office of Disciplinary Counsel, an examiner for the Louisiana Bar Exam for Code II and a grader for the Louisiana Bar Exam. In his community, he served as parish attorney for East Baton Rouge from 2005-08. In 2001, he served as president of the Baton Rouge Bar Association. He was a former member of the Capital Area Legal Services board of directors. In 1992, he received the first Annie Smart Award presented by Capital Area Legal Services for assisting in the implementation of the program in the Baton Rouge City Court for collection of filing fees earmarked for the Baton Rouge Bar Association Pro Bono Project. In 1998, he received the Baton Rouge Bar Foundation Pro Bono Project's Friend of Pro Bono Award. He also received the LSBA's Pro Bono Publico Award in 1998. In 1999, he was recognized with an award from the Louis A. Martinet Foundation Pro Bono Program. He chaired the East Baton Rouge Parish Notary Commission from 1984-88 and 2003-04. He was a member of the Louisiana Association for Justice, the American Association for Justice and the American Bar Association's Section of Litigation. He is survived by Denise Waguespack Shows, a sister, a half-brother, nieces, nephews and other relatives.

**LSBA President Dona Kay Renegar created a new hashtag #yourLSBA**

to highlight the many LSBA members who work tirelessly on behalf of the public and the profession.

**“We have the ability to promote our members – their dedication to the practice of law, the necessary role that they play in our justice system, and the time and resources they devote to their communities.”**

Keep up with the hashtag on Facebook, Twitter and Instagram!

**#yourLSBA**

**People Deadlines & Notes**

**Deadlines for submitting People announcements (and photos):**

Publication	Deadline
Dec. 2017/Jan. 2018	Oct. 4, 2017
Feb./March 2018	Dec. 4, 2017
April/May 2018	Feb. 2, 2018

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



## UPDATE

# Southeast Louisiana Legal Services Establishes 50th Anniversary Advisory Committee

Southeast Louisiana Legal Services (SLLS) has established a 50th Anniversary Advisory Committee to assist its board in commemorating the milestone. This fall, “Justice is Golden” as the agency turns 50.

“SLLS is honored to join forces with so many other community leaders with a demonstrated commitment to equal justice to amplify our impact and help drive future innovation and partnership in the interest of justice,” said SLLS Board President Vivian Guillory.

The Committee, composed of judges, attorneys, business leaders, foundation heads and law school deans, held its first meeting on May 10 to begin its work.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, a former civil legal aid attorney early in her career, is the 50th Anniversary Advisory Committee honorary chair. Darrel J. Papillion, immediate past president of the Louisiana State Bar Association, and R. Patrick Vance, a former SLLS board president, are co-chairs.

“The help legal aid programs provide keeps faith with one of America’s core values — equal access to justice — and changes the lives of low-income people every day,” Chief Justice Johnson said. “For decades, SLLS has been at the forefront of increasing access to justice for vulnerable Louisiana citizens. I am thrilled to help lead this committee as it lays a strong foundation to fight for fairness for the next fifty years,” Vance said.

The committee will plan a year of activities, beginning with a kick-off event on Nov. 8 at the Louisiana Supreme Court. The panel discussion on the “Future of Civil Legal Aid” is from 4-5:30 p.m., fol-

lowed by a reception.

During the 50th Anniversary year from November 2017 through October 2018, an event will be held at each of Louisiana’s four law schools. The committee also will work to increase awareness of the importance of civil legal aid to improving lives and in strengthening communities. A recent Economic Impact Study released by the Louisiana Bar Foundation found that for every \$1 invested in civil legal aid, there is \$8.73 of social return on investment through immediate and long-term benefits and taxpayer savings.

Papillion stressed SLLS’s critical role in the justice system. “If all Americans do not have reliable access to our courts to resolve disputes and redress wrongs, the promises of our founding fathers are rendered meaningless, and we fail to live up to our national promise of equal justice under law,” he said.

Joining Chief Justice Johnson, Papillion and Vance on the committee are Lila Arsan, SLLS client board member, Lafourche; Louisiana Bar Foundation President Valerie Briggs Bargas; attorney Mary H. Barrios; attorney David F. Bienvenu; attorney S. Dennis Blunt; Judge Bernadette G. D’Souza, Orleans Parish Civil District Court; Kurt D. Duncan, Capital One Bank; Thomas Galligan, Jr., dean of Louisiana State University Paul M. Hebert Law Center;

Charmel L. Gauden, Baptist Community Ministries; Rita Gue, Arlene & Joseph Mereaux Foundation; Vivian Guillory, SLLS Board chair; Ashley Aubrey Harrison, Whitney/Hancock Bank; attorney Jan M. Hayden; attorney Stephen J. Herman; Michael Hill, SLLS client

board member, Baton Rouge; attorney Jay M. Jalenak, Jr.; Regina Joseph, SLLS client board member, Jefferson Parish; Madeleine M. Landrieu, dean of Loyola University College of Law; Kerrie Long, SLLS client board member, Hammond; Brandt M. Lorio, FARA Insurance Service, Inc.; David D. Meyer, dean of Tulane University Law School; attorney Warren P. McKenna III; Joel Miller, SLLS client board member, Washington Parish; Monte T. Mollere, Louisiana State Bar Association Access to Justice director; Letita J. Parker-Davis, 24th Judicial District Court Public Defender Office; attorney Christopher K. Ralston; attorney John Y. Pearce; attorney Judy Perry Martinez; John K. Pierre, chancellor of Southern University Law Center; Darryl M. Phillips, Entergy Services, Inc.; William P. Quigley, director of Loyola Law Clinic and Gillis Long Poverty Law Center; Judge Kern A. Reese, Orleans Parish Civil District Court; Lauren D. Rogers, St. Charles Parish Bar Association; Judge Raymond S. Steib, Jr., 24th Judicial District Court; attorney Marta-Ann Schnabel; attorney Mark C. Surprenant; attorney Paul A. Tabary III; attorney Rolando R. Urbina; Jennifer Van Metre, 21st Judicial District Bar Association SLLS board representative; Claudette Warren, SLLS client board member, New Orleans; Michael Williamson, president/CEO United Way of Southeast Louisiana; attorney Rachel W. Wisdom;

Judge Lisa M. Woodruff-White, East Baton Rouge Parish Family Court; attorney Patrick H. Yancey; and Judge Jay C. Zainey, U.S. District Court, Eastern District of Louisiana.

## Judge Molaison Appointed to Judiciary Commission

Judge John J. Molaison, Jr., with the 24th Judicial District Court, was appointed as a judge member of the Judiciary Commission of Louisiana for a four-year term.



**Judge John J. Molaison, Jr.**

Judge Molaison received his undergraduate degree in 1983 from Loyola University and his law degree in 1986 from Loyola University College of Law. He has served as a judge of the 24th JDC since 2007. From 1986-2007, he held several positions in the Jefferson Parish District Attorney's Office, including executive assistant district attorney, supervisor of parish courts and felony trial assistant district attorney. During this time, he also was a partner in the law firms of John Molaison, Jr. & Associates (2005-07) and Molaison & LeBlanc (1988-2005). He currently serves as president of the Louisiana District Judges Association.



Louisiana State Bar Association Francophone Section Executive Committee member Warren A. Perrin, center, was one of the presenters for the first International Conference, "Legal and Environmental Law Implications of Toxic Waste Dumping in the South China Sea," on May 10 in Washington, D.C. The day-long symposium focused on the 2016 Formosa Company's illegal dumping of toxic wastes into the South China Sea which devastated the fishing industry off of the coast of Vietnam. Also speaking were Professor Luke Wilson, left, George Washington School of Law; and Roger Bilodeau, QC, Registrar of the Canadian Supreme Court.



Attending the opening reception for the "Lawyers Without Rights" exhibit were, from left, Rachel L. Emanuel, board member, Louisiana Supreme Court Historical Society; Mark A. Cunningham, partner, Jones Walker LLP; Hon. Marcus R. Clark, Louisiana Supreme Court; Michael H. Rubin, McGlinchey Stafford, P.L.L.C.; Ayan Rubin; Donna D. Fraiche, president, Louisiana Supreme Court Historical Society; and Benjamin W. Janke, treasurer, Louisiana Supreme Court Historical Society.

## LASC Hosts "Lawyers Without Rights" Jewish Exhibition

The Louisiana Supreme Court Museum opened the international exhibit, "Lawyers Without Rights: Jewish Lawyers in Germany under the Third Reich," with a presentation and reception at the Louisiana Supreme Court on April 27. The exhibit was open for viewing through May 31.

Speakers included Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; Donna D. Fraiche,

president of the Louisiana Supreme Court Historical Society; Mark A. Cunningham, partner, Jones Walker LLP; and Judy Perry Martinez, American Bar Association president designate.

The presentation, "Lawyers, Justice, Unpopular Causes, Unpopular Clients, and the Concept of Justice," was made by attorney Michael H. Rubin, McGlinchey Stafford, P.L.L.C.

## Cunningham, Magner Receive 2017 Clyde Merritt Awards

The Orleans Public Defenders (OPD) honored Jones Walker LLP partners Mark A. Cunningham and Michael W. Magner with the 2017 Clyde Merritt Award for their pro bono representation of former OPD investigator Taryn Blume. Established in 2012 to honor one of the stalwart advocates for public defense, Clyde Merritt, the award recognizes commitment and fight for the cause of public defense in New Orleans.

Chief Defender Derwyn D. Bunton presented the awards during the Ben Levick Sullivan Investigator Fellowship fundraiser. The fellowship, now in its third year, has proven to be a success and an integral part in fulfilling OPD's mission to provide client-centered representation. The fellowship was established in memory of Ben Sullivan and his passion and dedication for public defense.

## LOCAL/SPECIALTY BARS



Members of Louisiana specialty bars attended an evening of networking on June 5 at the Specialty Bars Reception, sponsored by the Greater New Orleans and Lake Charles Chapters of the Louis A. Martinet Legal Society, Inc. and the Louisiana State Bar Association's (LSBA) Diversity Committee. The event was held in conjunction with the LSBA's Annual Meeting in Destin, Fla. From left, Judge Lee V. Faulkner, Jr., 24th Judicial District Court; Cloyd Benjamin, Jr., Law Offices of Cloyd Benjamin, Jr., L.L.C.; Tricia R. Pierre, LSBA director of member outreach and diversity; Deidre D. Robert, Louisiana Department of Justice; Judge E. Adrian Adams, 24th Judicial District Court; Judge Rachael D. Johnson, Orleans Parish Civil District Court; Judge Karelia R. Stewart, 1st Judicial District Court; Sharonda R. Williams, Fishman Haygood, L.L.P.; and Christopher B. Hebert, Louisiana Attorney General's Office.



The New Orleans Bar Association and its Young Lawyers Section (YLS) sponsor and participate in legal clinics to offer free assistance to people, including those affected by the tornadoes in New Orleans East in March. A legal clinic on April 22 was organized by the YLS, hosted by AARP and assisted 89 people with various issues. Volunteers attending, from left, were Barbara L. Edin, Hayley Landry, Ebony S. Morris, Nathalia Brandsetter, Camille R. Bryant, Jennifer Gordon Lampton, Taylor C. Stone, Hardell H. Ward, Kimberly R. Silas and Christopher K. Ralston.



The Federal Bar Association New Orleans Chapter's Civil Rights Law Section hosted its first Civil Rights CLE, "Civil Rights Etoufee," on April 7. The Louisiana State Bar Association's Committee on Diversity in the Legal Profession co-hosted the seminar. From left, presenting "LGBT Religious Freedom vs. LGBT Equality: Legislative Attempts to Empower Anti-LGBT Discrimination" were Alysson Leigh Mills; J. Dalton Courson; Wylie Stecklow, FBA Civil Rights chair; and moderator David Thompson.

## LAW DAY

### Chief Justice Johnson Welcomes Students to Law Day

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson welcomed 102 students from two New Orleans area schools to the Louisiana Supreme Court to take part in the Court's Law Day 2017 activities.

On May 2, 75 students from Lafayette Charter Academy toured the court and sat in on oral argument in the Supreme Court courtroom. On May 3, 27 students from St. Katharine Drexel also were able to observe the Supreme Court in action and tour the court.

The students also had the opportunity to visit the Louisiana Supreme Court Museum and tour the Law Library of Louisiana, where they learned about the equal protection clause of the 14th Amendment.



The Baton Rouge Bar Foundation (BRBF) held its Law Day program on May 1, with the theme, "The 14th Amendment: Transforming American Democracy." A total of 600 middle and high school students attended the program which included a naturalization ceremony, opening of federal court, and interactive courtroom sessions. From left, Law Day speaker Dr. James Gilmore, Jr., assistant chief administrative officer with the Office of the Mayor-President, City of Baton Rouge; Hanna W. Thomas, chair of the 2017 BRBF Law Day Committee; and Jeffrey S. Wittenbrink, committee vice chair.



The U.S. District Court for the Middle District of Louisiana held a naturalization ceremony at the start of this year's Law Day event coordinated by the Baton Rouge Bar Foundation. At the podium is Clerk of Court Michael McConnell with the four attending federal court judges.

## President's Message

# Technology is the Key to Doing More with Less

By President Valerie Briggs Bargas

**T**echnology is a key tool in affording support and resources to the civil legal aid community. As the largest state funder of civil legal aid, the Louisiana Bar Foundation (LBF) has often taken the lead in assisting civil legal providers and grantees with technological resources and information so they can continue to be more accessible and efficient with their limited resources.

### Check Out Our Redesigned Website

The LBF's online presence is a primary component to increasing awareness and providing information and resources. If you have not already done so, I encourage you to check out the LBF's "new look." We have done a full redesign of the website, logo and tagline. The new logo and tagline were unveiled at our Annual Fellows Gala in April. The LBF's new website went live in June. The design was based on current, leading technologies incorporating the fundamentals of civil legal aid funding. The website has a clean, modern look and includes photos, stories and videos highlighting women, children, families, the disabled and the elderly showing the tremendous, life-changing impact of civil legal aid.

From a resource standpoint, the website includes microsites for our Kids' Chance Scholarship Program, the Fellows Gala and the Campaign to Preserve Civil

Legal Aid. The website also features a Fellow resources section where Fellows can stay up-to-date with their membership, make a donation, update contact information, RSVP for a meeting, nominate someone for



Valerie Briggs Bargas

Fellowship, or join a committee. We also have incorporated, through Donor Perfect software, online donations for real-time online transactions. Finally, just in time for grant applications, we have updated our online grants management system with a new user-friendly program that makes it easier to submit applications, populate and summarize data, and provide for the submission of electronic reports. We invite you to visit our new website at: [www.raisingthebar.org](http://www.raisingthebar.org).

### Connect with Us on Social Media

Recognizing that information is no longer solely contained in a website, we also have incorporated social media as a means to keeping our grantees, Fellows and the public up-to-date on the civil legal aid work being done across the state. Take a moment to like us on FaceBook, visit our Twitter page, and view our YouTube channel. You can link into each of these at the bottom of our website homepage.

### Upgrade of the Statewide Case Management System

In order to receive LBF funding, our grantees must meet rigorous reporting guidelines specifying the work they are doing and the clients being assisted. Many years ago, to facilitate statewide collaboration and consistent reporting, the LBF supported and assisted in implementing a Statewide Case Management System. Technology, however, has moved quickly

and we found that an upgrade was essential for our grantees. The LBF would prefer our grantees spend time doing great work, not trying to figure out antiquated reporting software. We expect to launch the upgraded system and software on April 1, 2018. In conjunction with the upgrade, the system will finally be moved to the cloud, under mandated secure technology. We are currently working with a consultant and the civil legal aid community, including LSCs and Pro Bono Projects across the state, to ensure that the upgraded system and software meets their current and expected future needs.

### The Future Network for Civil Legal Aid Providers

When resources are limited, time is of the essence. The LBF is in the initial research phase of creating a technological platform for civil legal aid providers to allow for live, immediate referrals, provider status on case acceptance, eligibility criteria, list of available services, and notification/tracking of each referral made into the provider network reflecting outcome. We plan to do a pilot project for one area of the state initially, then statewide and eventually expand to including social service providers, who are key players when the clients are domestic violence victims or abused and neglected children. Allowing for consistent, timely communication between civil legal aid providers ensures little to no overlap of and better access to legal services.

Funding for the civil legal aid needs of our state falls short every year. The LBF recognizes that providing grantees tools to do more with less is a necessity in today's world. We are excited about our innovative, technological initiatives and look forward to seeing the positive impact they will have on providing access to justice to our most vulnerable citizens.

## Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

- Karen J. King..... Lafayette
- K. Scott Kirkpatrick ..... Baton Rouge
- Gregory L. Landry..... Lafayette
- Mary E. Roper ..... Baton Rouge



## \$6.7 Million for Social Justice Initiatives 2017-18

### Annual/Sustaining Funding

**\$3,923,330**

<b>Building Capital Development</b>	<b>\$100,000</b>
Innocence Project New Orleans	\$25,000
Metro Centers for Women and Children	\$25,000
Shreveport Bar Foundation	\$25,000
Southeast Louisiana Legal Services	\$25,000

<b>Children's Legal Services</b>	<b>\$175,000</b>
Catholic Charities Archdiocese of New Orleans	\$37,500
First Grace Community Alliance	\$17,500
Louisiana Center for Children's Rights	\$42,500
LouisianaChildren.org	\$10,000
T.E.A.M.S.	\$45,000
The Advocacy Center	\$22,500

<b>Law-Related Education</b>	<b>\$150,000</b>
Baton Rouge Bar Foundation	\$35,000
Baton Rouge Children's Advocacy Center	\$13,000
Court Watch NOLA	\$6,000
Louisiana Center for Children's Rights	\$9,500
Louisiana Center for Law & Civic Education	\$48,000
LSBA - Diversity Committee	\$3,500
LSBA - Young Lawyers Division	\$10,000
Youth Service Bureau of St. Tammany	\$25,000

<b>Domestic Violence Programs</b>	<b>\$499,602</b>
Beauregard Community Concerns, Inc.	\$38,237
Catholic Charities Archdiocese of New Orleans/Project S.A.V.E.	\$41,008
Chez Hope, Inc.	\$68,400
D.A.R.T. of Lincoln	\$35,030
Faith House, Inc.	\$29,081
Faith House, Inc./Family Justice Center of Central La.	\$15,174
Jeff Davis Communities Against Domestic Abuse	\$23,575
Metro Centers for Community Advocacy	\$40,000
Oasis	\$22,200
Project Celebration, Inc.	\$40,000
Safe Harbor, Inc.	\$16,000
Southeast Spouse Abuse Program	\$16,000
St. Bernard Battered Women's Program	\$25,000
The Haven, Inc.	\$37,897
The Wellspring Alliance for Families, Inc.	\$52,000

<b>Legal Service Corporations</b>	<b>\$2,100,000</b>
Acadiana Legal Services Corporation	\$1,061,563
Southeast Louisiana Legal Services	\$1,038,437

<b>Other Legal Service Providers</b>	<b>\$400,000</b>
Catholic Charities Archdiocese of of New Orleans	\$33,000
Catholic Charities of the Diocese of Baton Rouge	\$22,500
Catholic Charities of North Louisiana	\$38,500
CrescentCare	\$10,000
Ella Project	\$11,000
Frontline Legal Services	\$40,000
Innocence Project New Orleans	\$120,000
Louisiana Center for Children's Rights	\$5,000
Lower 9 <sup>th</sup> Ward Home Ownership Association	\$10,000

Loyola University Workplace Justice Project	\$20,000
St. Frances Cabrini Immigration Law Center	\$50,000
The Advocacy Center	\$25,000
The Southwest Louisiana Law Center	\$15,000

<b>Pro Bono Projects</b>	<b>\$350,000</b>
Baton Rouge Bar Foundation	\$70,000
Central Louisiana Pro Bono Project, Inc.	\$29,500
Lafayette Parish Bar Foundation	\$68,900
Shreveport Bar Foundation	\$46,700
Southwest Louisiana Bar Foundation	\$24,900
The Pro Bono Project	\$110,000

<b>Self-Represented Litigants Programs</b>	<b>\$66,600</b>
Central Louisiana Pro Bono Project	\$5,000
Louisiana Civil Justice Center (East Carroll Parish)	\$10,000
Louisiana Civil Justice Center (Natchitoches Parish)	\$10,000
Louisiana Civil Justice Center (Tangipahoa Parish)	\$10,000
Louisiana Library Association	\$7,200
Southeast Louisiana Legal Services (Lafourche Parish)	\$8,000
Southeast Louisiana Legal Services (St. Tammany Parish)	\$8,400
Southeast Louisiana Legal Services (St. Charles Parish)	\$8,000

<b>Loan Repayment Assistance Program</b>	<b>\$82,128</b>
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### **Child in Need of Care** **\$1,990,000**

### **Discretionary Funding** **\$135,000**

**Jock Scott Community Partnership Panel Grants**  
*awarded throughout the year.*

### **Special Funding** *Pending July 2017 Board Approval*

Access to Justice Commission	\$35,000
Access to Justice Fund Grants	\$50,000
Board Training for Grantees	\$10,000
Disaster Relief	
Lawhelps.org and Probono.net	\$12,650
Louisiana Appleseed	\$125,000
Louisiana Civil Justice Center	\$150,000
Oral Histories	\$2,000
Pelican Center for Children and Families	
Pro Hac Vice	\$125,400

### **Scholarships, Fellowships, and other funding projects** *Pending July 2017 Board Approval*

Kids' Chance Scholarships	\$59,000
Scholar-in-Residence	\$3,000
Child Welfare Fellowships	\$120,000

# Bargas to Lead LBF's 2017-18 Board

Valerie Briggs Bargas of Baton Rouge was installed as the 2017-18 president of the Louisiana Bar Foundation at the 31st Annual Fellows Gala.

Also installed were Vice President W. Michael Street of Monroe; Treasurer Amanda W. Barnett of Alexandria; and Secretary Christopher K. Ralston of New Orleans.

New board members are Alan G. Brackett, New Orleans; George D. (Dave) Ernest III, Lafayette; Edmund J. Giering IV, Baton Rouge; Barry H. Grodsky, New Orleans; Alainna R. Mire, Alexandria; Kerry A. Murphy, New Orleans; Hon. Max N. Tobias, Jr., New Orleans; Tina Crawford White, New Orleans; and Sharonda R. Williams, New Orleans.

Other members of the 2017-18 board of directors are Charles C. (Chuck)



The 2017-18 Louisiana Bar Foundation officers were installed at the Annual Gala. From left, Treasurer Amanda W. Barnett, Secretary Christopher K. Ralston, President Valerie Briggs Bargas and Vice President W. Michael Street. Photo by Matthew Hinton Photography.

Bourque, Jr., Houma; Hon. John C. Davidson, Alexandria; H. Dunbar Healy, Covington; Julie M. Lafargue, Shreveport; Michael J. Mestayer, New Orleans; Harry J. (Skip) Philips, Jr., Baton Rouge; Dona

Kay Renegar, Lafayette; Deidre Deculus Robert, Baton Rouge; E. Jane Sherman, Baton Rouge; and Shayna L. Sonnier, Lake Charles.

## LBF Announces 2017-18 Committees

Louisiana Bar Foundation (LBF) President Valerie Briggs Bargas appointed the 2017-18 Louisiana Bar Foundation Community Partnership Panel (CPP) and committee chairs.

CPP chairs include Acadiana CPP, Shannon Seiler Dartez; Bayou Region CPP, Eugene G. Gouaux, Jr.; Capital Area CPP,

Linda Law Clark; Central CPP, Camille R. Jackson; Greater Orleans CPP, Paula A. Ates; Northeast CPP, Thomas (Tommy) Moore Hayes IV; Northshore CPP, Tom D. Synder, Jr.; Northwest CPP, Jerry Edwards; and Southwest CPP, Theresa Ann Barnatt and Jackey White South.

Committee chairs include Budget/

Investment, Amanda Wood Barnett; Communications, Christopher K. Ralston; Development, Christopher K. Ralston; Education, Professor Russell L. Jones; Governance, E. Jane Sherman; Grants, Amanda Wood Barnett; and Kids' Chance, Michelle M. Sorrells and Sherry A. Watters.



The Louisiana Bar Foundation (LBF) celebrated the 31st Annual Fellows Gala on April 21. The LBF honored the 2016 Distinguished Jurist Jeannette Theriot Knoll, Distinguished Attorney Donna D. Fraiche, Distinguished Attorney Thomas M. Hayes III, Distinguished Professor Howard W. L'Enfant, Jr. and Calogero Justice Award recipient Joseph R. Oelkers III. From left, Hayes, Oelkers, LBF 2017-18 President Valerie Briggs Bargas, Fraiche, Knoll and L'Enfant. Photo by Matthew Hinton Photography.

# Minimum Qualifications, Conditions for Appointment as Special Assistant Attorney General in Risk Litigation

The minimum qualifications and conditions for appointment as a Special Assistant Attorney General in risk litigation 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, or, if applicable, the institutions exempted from the state risk management program pursuant to La R.S. 17:3139.5(e)(i) (hereinafter exempted institutions).
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 or, if applicable, the exempted institutions.
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 or, if applicable, the Director for the Office of Risk Management of the exempted institutions, 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 or, if applicable, the Director for the Office of Risk Management of the exempted institutions, 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 or, if applicable, exempted institutions, 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.

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## SERVICES

**Texas attorney**, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300; email [manfred@msternberg.com](mailto:manfred@msternberg.com).

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**Louisiana and Florida** admitted attorney with offices in New Orleans and Pensacola available for general civil referrals in northwest Florida area. Contact A. Edward Cangelosi, 445 East Government St., Pensacola, FL 32502. Call (850)637-8650. Email [ecangelosi@cangelosilaw.com](mailto:ecangelosi@cangelosilaw.com).

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**NOTICE**

**Notice is hereby given** that James E. Moorman III is filing a petition and application for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for reinstatement must file notice of their concurrence or opposition

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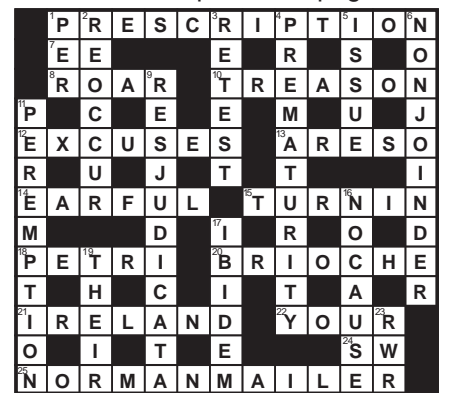
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with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

**Leonard E. Yokum, Jr.** intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**ANSWERS** for puzzle on page 110.



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# The Last **WORD**

IF YOU ARE A PROFESSIONAL, DON'T SAY...

**H**ere are 10 things you should NOT say if you are a professional . . . and why.

**1. Five minutes before you are supposed to be in court, you call the court and say, "I will be late for the hearing because I have court in another parish."**

- a. I will not abuse the participants in the judicial process.
- b. I will consult with other counsel whenever the scheduling procedures are required.
- c. I will cooperate with counsel and the court to reduce the cost of litigation.
- d. I will be punctual in honoring scheduled appearances.

**2. "I oppose any continuance being granted!!!"**

- a. I will not abuse or misuse the procedures in the judicial process.
- b. I will be cooperative in scheduling hearings and in the handling of the entire course of any legal matter.

**3. At a Christmas party, you say, "Judge, can I ask you only one thing about my case?"**

- a. I will not engage in any *ex parte* communication on any pending matter.
- b. Rule 3.5 of the Rules of Professional Conduct: "A lawyer shall not communicate *ex parte* with a judge during the proceedings unless authorized to do so."
- c. Code of Judicial Conduct canon 3 A (6), a judge shall not permit private or *ex parte* communications in any case, either civil or criminal.

**4. At a hearing on an exception, "Mr. Smith's (opposing attorney) argument is a lie, and he is a liar."**

- a. I will not engage in personal attacks on other counsel.

**5. "I want all of the plaintiff's witnesses to remain outside of court each day because I don't know when I will call them on cross in my case in chief."**

- a. I will not abuse or misuse the law, its procedures or the participants in the judicial process.
- b. I will cooperate in the scheduling of the testimony of witnesses.
- c. I will not utilize any course of conduct for the purpose of harassment of any other party.
- d. I will cooperate with counsel to reduce the cost of litigation.

**6. "I am 15 minutes away from Gonzales," when you are really in New Orleans.**

- a. My word is my bond. I will never intentionally mislead the court. I will not knowingly make statements of fact that are untrue.
- b. I will be punctual in honoring scheduled appearances.
- c. I will cooperate with the court to reduce the costs of litigation.

**7. At noon of a jury trial, "My expert witness cannot be here until tomorrow at 11 and I have no other witnesses."**

- a. I will conduct myself with a sense of fair play.
- b. I will consult with other counsel whenever the scheduling procedures

are required and will be cooperative in scheduling the testimony of witnesses and in the handling of the entire course of any legal matter.

- c. I will cooperate with counsel to reduce the costs of litigation.

**8. "I don't like to talk about the judge, but he was wrong in this case and I think he may have been bribed."**

- a. I will not engage in personal attacks on the court.
- b. Rules of Professional Conduct 8.3, "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to the truth or falsity concerning the integrity of a judge."

**9. At 12:15 p.m., "Judge, I forgot to tell you that we settled the case and will not need the 11:45 a.m. pre-trial conference."**

- a. I will never intentionally mislead the court.
- b. I will be punctual in my communication with the court and in honoring scheduled appearances.
- c. I will be considerate of the time constraints on the court.
- d. I will promptly notify the court of any likely problems with a hearing or trial date.

**10. Coming into court over one hour late, "Judge, I am sorry I was late. A train stopped me on the interstate."**

- a. My word is my bond.
- b. Rules of Professional Conduct 3.3, "A lawyer shall not knowingly make a false statement of fact to a tribunal."

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