

# LOUISIANA BAR JOURNAL

August / September 2018

Volume 66, Number 2



## Also Inside:

- Our Children Are "Our Greatest Natural Resource and Most Valuable Asset"
- Legal Representation in Child Protection Cases
- The Color of Justice for Children
- Am I a Mandatory Reporter?
- Expungement Reform Helps Those with Juvenile Records Wipe the Slate Clean



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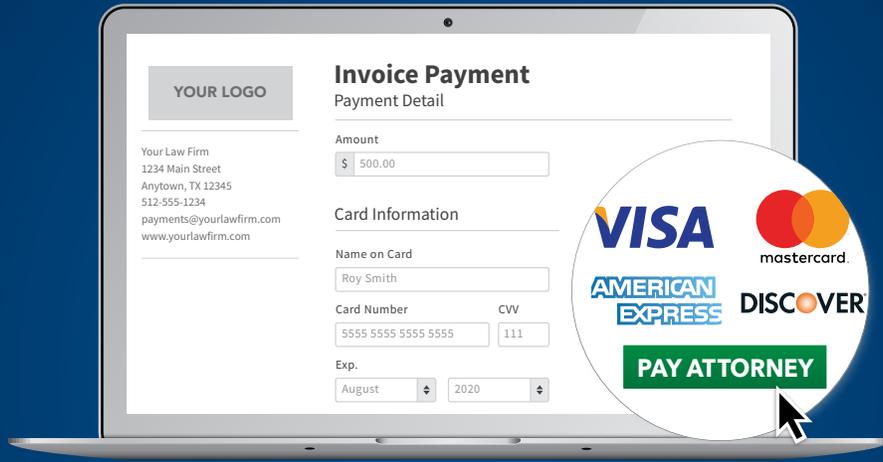
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## Departments

Editor's Message.....	85
President's Message.....	86
Association Actions.....	121
Practice Management.....	124
Lawyers Assistance.....	125
Focus on Diversity.....	126
Puzzle.....	127
Focus on Professionalism ....	128
Discipline Reports.....	130
Client Assistance Fund.....	134
Recent Developments.....	135
Young Lawyers.....	150
La. Center for Law and Civic Education.....	152
Judicial Notes.....	154
People.....	156
News.....	160
Classified.....	165
The Last Word.....	168

## Also Inside

Alcohol/Drug Abuse Hotline..	127
Expert Directory.....	120
SOLACE.....	142
Advertisers' Index.....	147
Minimum Qualifications for Special Assistant AG.....	167



**On the Cover:** This special Children's Law Journal is a mosaic of different topics, programs and issues in Louisiana, which is represented by the traditional "Pelican in Her Piety," a mother pelican feeding her chicks her own blood.

## Features

<b>Overview: Children's Law Our Children Are "Our Greatest Natural Resource and Most Valuable Asset"</b> <i>By Chief Justice Bernette Joshua Johnson, Louisiana Supreme Court.....</i>	88
<b>LSBA Children's Law Committee: History, Mission and Initiatives</b> <i>By Kären A. Hallstrom.....</i>	90
<b>Legal Representation in Child Protection Cases</b> <i>By Margot E. Hammond.....</i>	92
<b>Am I a Mandatory Reporter?</b> <i>By Cherrilynn Washington Thomas ....</i>	95
<b>Legal Representation of Children: Opportunities for Attorneys</b> <i>By Guy R. Lain.....</i>	96
<b>The Color of Justice for Children</b> <i>By Judge Ernestine S. Gray.....</i>	98
<b>► The Pelican Center for Children &amp; Families</b> <i>By Mark Harris, Executive Director.....</i>	99
<b>Expungement Reform Helps Those with Juvenile Records Wipe the Slate Clean</b> <i>By Hector A. Linares III .....</i>	100
<b>Children Exposed to Domestic Violence: Silent Victims</b> <i>By Judge (Ret.) Kathleen Stewart Richey.....</i>	104
<b>Adoptions: Lawyers Helping to Create Forever Families and Sometimes Forever Problems</b> <i>By Jennifer Guillot Womble.....</i>	106
<b>Children and Education: Access Articles Online.....</b>	107
<b>Recap: 2018 Annual Meeting and Joint Summer School</b> New Leaders Installed; Awards Presented.....	108



88



92



100



108

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By John E. McAuliffe, Jr.

# Children and the Law

As I sat down to write this message, the airwaves were abuzz with stories of immigrant children at our border. Our local newspaper was running a series of articles on the children of Central City. These news items only confirm that our society continues to have a deep concern about the welfare of children, whether that child was born here or comes to us from some other land. And so, the *Louisiana Bar Journal* is pleased to present this issue dedicated to our children.

The *Journal* was approached by members of the Louisiana State Bar Association's (LSBA) Children's Law Committee with a suggestion that we dedicate an entire issue to those legal issues involving our children. To be honest,

we had no hesitation in agreeing to that proposal. There could be no better way to help our children than to allow those attorneys most familiar with these issues to educate our membership and the public about the problems and solutions involving our young citizens.

The Children's Law Committee is composed of private practitioners, public practitioners, legal aid attorneys and judges who are all dedicated to the legal system as it relates to children. These attorneys bring their knowledge, compassion and practical experience to all legal matters involving our children. Their individual practices are diverse — adoption, custody, juveniles in the criminal system, immigration and the like. The committee is a valuable asset to Louisiana when new

legislation and amendments are proposed. These attorneys are in the trenches every day. Their views have been honed from the practical and daily experiences of helping the youth of the state.

The *Journal* would like to thank Kären A. Hallstrom, chair of the Children's Law Committee, and Michael W. Schachtman, LSBA staff liaison to the committee, for their efforts in coordinating this issue. Over the past several months, both of them worked with committee members who provided insight and articles on a range of children's law-related topics for the issue. Their work made this *Journal* possible.

## Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

6. Letters also may be clarified or edited for grammar, punctuation and style by staff. In addition, the EB may edit letters based on space considerations and the number and nature of letters received on any single topic. Editors may limit the number of letters published on a single topic, choosing letters that provide

differing perspectives. Authors, editorial staff or other LSBA representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

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

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

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



By Barry H. Grodsky

# Address to the Members

## Remarks from the Installation on June 9, 2018:

It is with the greatest sense of humility that I begin my term as the 78th president of the Louisiana State Bar Association (LSBA). I am both humbled and honored. This is a journey which started 36 years ago — being sworn in and taking an oath as poignant and important then as it is now. On this path through a legal career, two things have become very clear.

First, it is very hard to be a lawyer. Getting in and staying in law school is a challenge as well as the looming Bar Exam now made even more difficult with the onerous character and fitness component. Combine that with student debt and the difficult job market and we have seen the stress of law school carry over for many into the practice of law.

We all deal with the problems of finding and keeping clients, making our partners happy, billing hours but still trying to achieve a good work-life balance. With economic concerns, lawyers are working longer than ever before. Factor into all of that our obligation of maintaining appropriate ethical standards and aspiring to be as professional as we can. Indeed, it is hard to be a lawyer.

But, despite it all, the second thing I've learned is I am proud to be a lawyer. I am proud to have the capability to right a wrong, to give advice to the worried client, to offer guidance in times of need. I am proud to stand up for someone unsure of his rights and how to express them. I am proud to be able to explain difficult concepts, and even have some fun doing it. I remember a great conversation with a know-it-all Philadelphia lawyer who

was so confused when I told him that we cannot do a deed in lieu of foreclosure in Louisiana and then I explained to him what a *dation en paiement* is.

I am proud to use my legal skills and training in different ways such as to serve on the board of a non-profit corporation or a civic group. I have taught business law classes and have given many CLEs. I often get calls from friends and colleagues to ask a question about an area of law in which I practice but with which they are unfamiliar and they just need some advice and guidance. I am proud to know that, with such relationships, I can call upon them when needed.

I am very proud of my service to the Bar, from being on committees, chairing one, giving CLEs, becoming secretary and now president. And the best part is that every lawyer reading this, in his/her own way, is deep-down also proud to be a lawyer.

So, "how does all of this fit into the Bar Association and what can the Bar do for members to ease the burden of practicing law and provide a forum and tools to make members even better and prouder?" I know firsthand what the Bar does and, truly, it is formidable if we just tap into it. But we cannot simply rely on the Bar as it is. As Bob Dylan said, "The times they are a-changing." Keeping in line with my favorite musicians, I channeled my inner Jimmy Buffett and know there must be "Changes in Latitudes, Changes in Attitudes," hence the theme of the Annual Meeting.

How does this work? We have all developed certain ideals and beliefs as lawyers — our attitudes. But we have to ask, "Is this the best we can do?" My background in the Bar has been in professional-

ism and that is where our attitudes can get better. One of my goals has already been achieved. Through the Committee on the Profession, our Code of Professionalism has been updated, revised and brought into the 21st century. It had remained the same for 25 years and the updated Code has been approved by the Supreme Court order. Hopefully, it will change our attitudes.

We must be mindful of those not yet admitted into the practice. We have already created programs for our law schools with more on the way. We need to address topics such as debt service to help those about to become lawyers. Our award-winning character and fitness program not only helps students through the Bar admission process but also helps them recognize that sometimes a helping hand is needed. In that regard, we have strengthened, and will continue to support, our Judges and Lawyers Assistance Program (JLAP), not just for lawyers and judges but for students, paraprofessionals and their families. JLAP is an integral component of what we do as professionals.

Our attitude also must support those just embarking on their legal careers and ensure that their path can be made easier. The Transition Into Practice (TIP) mentoring program is now statewide and we are looking to create programs to assist two-year to seven-year practitioners. We all must be aware of the needs of younger lawyers and have better attitudes towards helping them.

Our attitudes must be better about helping those who cannot help themselves — the poor, the disenfranchised, those who cannot afford legal representation and see the door as closed for help. Access to jus-

tice is at a critical stage and we must have a positive attitude to recognize and assist. Funding is critical. We are one of only three states to give no money for access to justice causes, but our efforts must never stop. We must support the legal services corporations and those who unselfishly engage in pro bono work and be creative in helping those who simply cannot help themselves. We will develop and work on programs such as the Modest Means Directory, call centers, Wills for Heroes, Lawyers in Libraries and help desks. As lawyers, we have a duty to assist, and more can and must be done, perhaps with a bit of a change in attitude.

We are seen often as “just a mandatory Bar;” our members have to belong. Our attitude has to change on that as well. Many would be amazed at all the services the Bar offers. We will get this message out statewide through our outreach efforts.

But, what about the “changes in latitudes?” The Bar cannot stay where it is; we must grow, identify and address the needs of an ever-changing membership and keep up with the times. The goals of our previous Long-Term Strategic Plan have been met, so we will embark on this project again. Soon, a committee will begin work on a new Long-Term Strategic Plan, focusing on what the Bar hopes to achieve over the next two years, two to four years, and beyond four years. It will serve as a road map for where the Bar is heading. President-Elect Bob Kutcher will be instrumental in this endeavor.

To move forward, we have to address specific members of our Bar. No group is expanding as quickly as senior lawyers and they have unique needs and issues to consider. The creation of a Senior Lawyers Division was a significant first step. That division will be tasked to consider the special needs of its members and determine what the Bar can do to assist. No doubt senior lawyers and young lawyers can learn from each other and such programming could be mutually beneficial. Senior lawyers are ideal mentors for the TIP program. I am appreciative of the work of all of the division’s leaders.

We have to expand our efforts for inclusion and diversity and be sure that this message is delivered statewide. We have to address timely issues like wellness, social media and cyber security.



**2018-19 LSBA President Barry H. Grodsky addresses the crowd at the 2018 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.**

We must recognize and address challenges to mandatory bar associations. This is a real and legitimate concern and our course forward must focus on what a mandatory bar can and cannot do. In this regard, having specific regulatory functions now back under the Bar’s umbrella, such as legal specialization and mandatory continuing legal education, is very important.

Standing still is simply not an option.

There is one other thing of which I am absolutely certain. This year is NOT about me. This year is about fulfilling the Bar’s mission to the fullest — serving the public and serving the profession.

This year is about doing everything the Bar can to help those citizens who cannot obtain full access to our courts.

This year is about recognizing and strengthening even more our wonderful relationship with our Supreme Court and its Justices.

This year is about doing all we can for those involved in the law, whether it be to assist law students aiming to become lawyers, to help young attorneys get on their way, to help senior lawyers with specialized needs, to assist those with personal problems through JLAP, to offer quality education services, great programs and an opportunity to be involved with the Bar.

This year is about reaching out to all lawyers in all parts of the state, large firms, small firms and everything in between, to

let them know the Bar is here for them.

This year is about developing leaders for our future.

This year is about touting our accomplishments and letting others know what our members have done, both in and out of the practice of law.

This year is about creating a path forward for the Bar and its members.

This year is about working with and continuing our strong relationships with other affiliated entities such as the Louisiana Bar Foundation and local/specialty bars.

No one could possibly get to this point without significant support and assistance. I am certainly no exception. LSBA Executive Director Loretta Larsen, the other LSBA directors and the staff are the unsung heroes whose tireless efforts keep the organization running.

We are also blessed to have many very involved past presidents, a collegial group still committed to promoting the Bar and its mission. To steal a line from Darrel Papillion’s remarks when he became president, I too feel that I am standing on the shoulders of giants. I have sought advice from many in this group and no doubt will continue to do so.

Our strength too comes from Bar leadership. We are fortunate to have a dedicated and hard-working Board which will soon be called upon to undertake specific tasks to ensure our goals are met. I am also proud of the work of all of our committees and sections.

I have learned much about Bar governance through the work of the Executive Committee. This, of course, leads to the wonderful year of our dedicated President Dona Kay Renegar.

I also must acknowledge the support I receive from my wife Cheri (who has been instrumental in my Bar involvement), my beautiful daughter Caroline (who will keep me young and on my toes), my family, friends and law firm colleagues. I thank them all for joining me on this great journey.

This is a great and noble profession and I am honored for this opportunity. When it’s done, as Jimmy Buffett would say, “I’m heading for a cheeseburger in paradise.”



## Overview: Children's Law

# Our Children Are “Our Greatest Natural Resource and Most Valuable Asset”

By Chief Justice Bernette Joshua Johnson  
Louisiana Supreme Court

Many say that oil and gas are Louisiana's most important natural resources. I believe that our greatest natural resource and most valuable asset are truly our children, and we have an obligation to help them thrive, maximize their potential and fulfill their dreams. Our legal system provides opportunities to serve and support children, and to strengthen and stabilize families, through informed decision-making by our family and juvenile judges and qualified representation of all parties, and through statewide programs such as Court Appointed Special Advocates (CASA), Families in Need of Services (FINS), the Court Improvement Program (CIP) and drug courts. By supporting our children from the beginning, they will grow into productive and contributing citizens, with the corresponding societal benefits, such as reductions in our poverty rate and incarceration rate.

Recent advances in scientific research involving child and adolescent brain development, attachment and trauma are challenging how the judicial system understands and responds to children and adolescents. The research informs us that children's brains develop over time and continue to mature until their early to middle twenties. During this period, the developing brain is both vulnerable to adverse experiences and yet capable of remarkable change.

The implications of adolescent brain

development to the legal system have been acknowledged by the U.S. Supreme Court in several recent decisions regarding the culpability of juvenile offenders and their greater capacity for reform than adult offenders. *See, Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). Louisiana courts continue to interpret these Supreme Court opinions as our state Legislature has enacted procedures consistent with them. The intersection of brain science and children's law is not limited to criminal cases.

Court dockets in Louisiana routinely include cases that determine the future of children — abused or neglected children; truant or runaway children; children who have experienced or witnessed domestic violence; youth who are arrested and incarcerated; victims of trafficking or bullying or discrimination; children suspended or expelled from school; those who have been abandoned and those who are being adopted; children who are homeless or are unaccompanied immigrants. Regardless of the individual circumstances that bring children into the justice system, they share one commonality — their brains are still developing.

In this issue of the *Louisiana Bar Journal*, the Louisiana State Bar Association's Children's Law Committee presents a series of articles on children and the law. Each article demonstrates

the important role that lawyers and judges have in ensuring positive outcomes for Louisiana's children. Our collective commitment to the “best interest of the child” standard compels us to consider how to bring the practice of law, and the judicial system as a whole, into alignment with established research on child development.

When given the opportunity, our children will lead us into a better Louisiana in which we can truly be proud. Although Louisiana has finally moved from having the highest incarceration rate in the nation, the state routinely ranks 49th in child well-being. We owe it to our citizens to continue to resist complacency and strive for excellence.

*Chief Justice Bernette Joshua Johnson is the Louisiana Supreme Court's 25th Chief Justice, its second female Chief Justice and its first African-American Chief Justice. She was sworn in on Feb. 1, 2013. Always an advocate for social justice and civil rights, she worked as a community organizer with the National Association for the Advancement of Colored People (NAACP) Legal Defense & Educational Fund, and at the U.S. Department of Justice's Civil Rights Division. Following law school, she became the managing attorney of the New Orleans Legal Assistance Corporation, where she provided legal services to clients in socio-economically deprived neighborhoods.*







# LSBA Children's Law Committee: History, Mission and Initiatives

By Kären A. Hallstrom

In 2009, at the request of the state Legislative Task Force on Legal Representation in Child Protection Cases, the Louisiana State Bar Association (LSBA) created the Children's Law Committee as a forum for all attorneys practicing law related to children's issues, including judges, children's attorneys, parents' attorneys, public defenders and attorneys representing the state.

The committee engages in initiatives designed to benefit children, their parents and the professionals who serve them. In accordance with the Task Force recommendations, this committee supports dialogue among attorneys and judges on children's issues, promotes awareness to the general Bar membership of legal issues involving children, and honors Louisiana attorneys and organizations providing outstanding services in the field of children's law. Originally established as an ad hoc committee, the Children's Law Committee was re-designated as a standing committee of the LSBA in 2017.

## Initiatives

The Children's Law Committee has actively engaged in several initiatives, including:

- ▶ Creation of videos in English and Spanish that explain the role of court personnel to children in the foster care system and the procedure of Child in Need of Care (CINC) proceedings.

- ▶ Revision of the LSBA "Coming of Age" manual and establishment of a mobile website to provide legal information to children reaching the age of 18.

- ▶ Outreach to law schools to promote careers in children's law.

- ▶ Provision of attorney training opportunities and informational sessions for the public on a variety of child-related subjects, including special education and adoption law.

- ▶ Recognition of legal professionals who work in children's law through the annual LSBA Children's Law Award.

## NACC Child Welfare Law Certification

Children's law is not considered a specialization by the Louisiana Board of Legal Specialization. However, the National Association of Counsel for Children (NACC) provides a Child Welfare Law Certification, accredited by the American Bar Association and endorsed by the National Council of Juvenile and Family Court Judges and the Conference of Chief Justices/Conference of State Court Administrators. NACC Child Welfare Law Certification is available to attorneys who serve in the role of child's attorney, parent's attorney and agency/department/government attorney in child protection proceedings.

Child Welfare Law Certification requires a rigorous application process, including 36 hours of specialized education and a comprehensive examination. To date, 28 attorneys in Louisiana have become NACC Child Welfare Law Specialists, and many others are in the process.

## Children's Law Committee Website

Visit [www.lsba.org/childrenslaw](http://www.lsba.org/childrenslaw) to learn more about the LSBA Children's Law Committee and find helpful resources

for both attorneys and young people. Review information:

- ▶ "Becoming an Adult" guide for Louisiana youth.

- ▶ Orientation videos for children entering foster care and/or child protection cases.

- ▶ Training opportunities.

- ▶ Substantive articles.

## LSBA Children's Law Award

The LSBA Children's Law Award is presented annually to an attorney and/or Louisiana-based organization providing outstanding services in children's law.

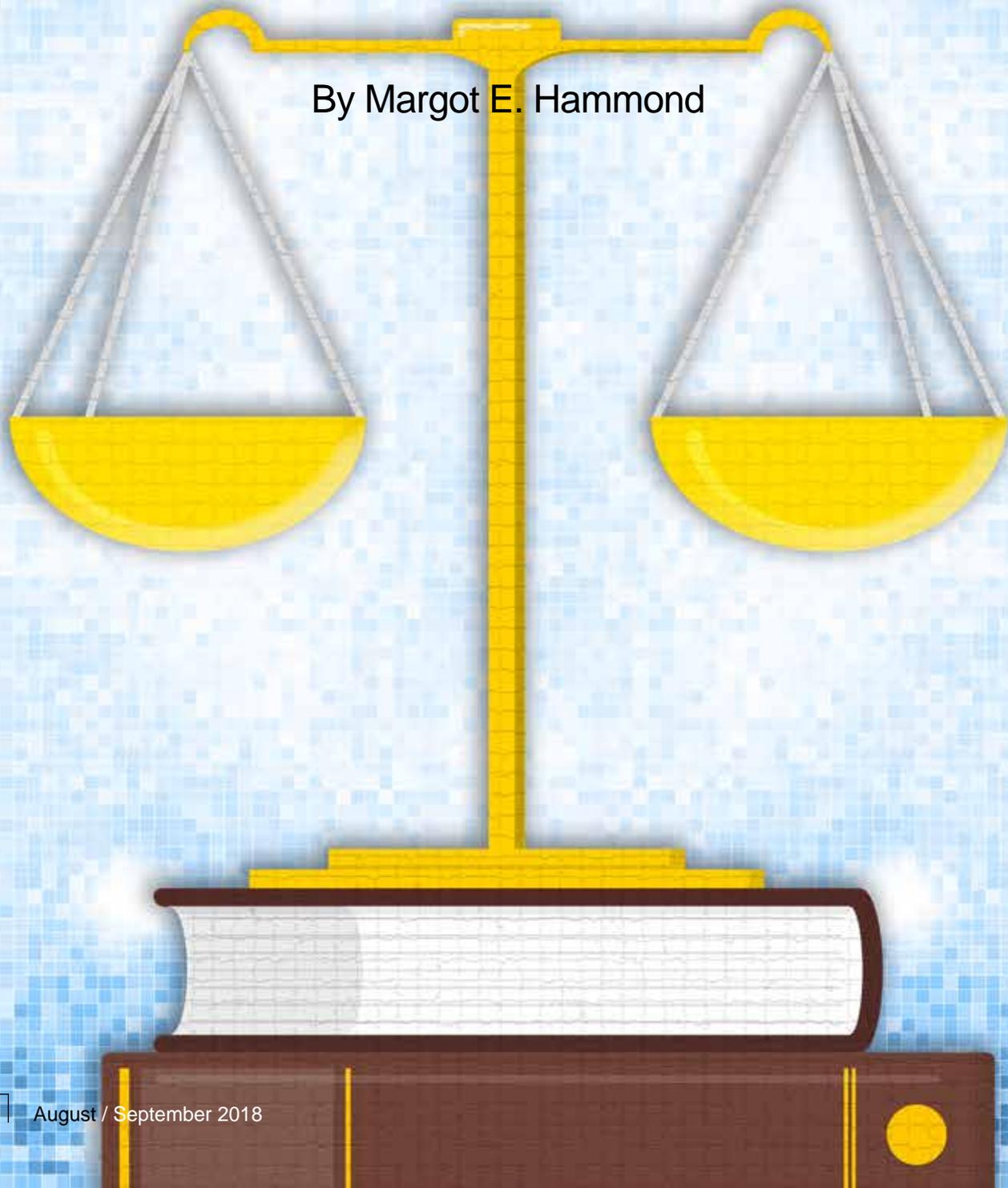
The 2018 recipients are the Louisiana Parole Project, a nonprofit organization responding to the needs of individuals who were sentenced to life without parole for crimes committed when they were children, and Cherrilynne Washington Thomas, an assistant district attorney for Orleans Parish Juvenile Court. *For photos and profiles, go to page 121.*

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# Legal Representation in Child Protection Cases

By Margot E. Hammond



Federal and state law both have historically recognized the authority and responsibility of states to protect children from abuse and neglect. In Louisiana, child protection is managed through the child welfare system, which involves both the executive and judicial branches of government.<sup>1</sup> The serious and intrusive nature of child protection proceedings necessarily implicates fundamental constitutional rights, including the child's liberty interest in safety, health and well-being, and the parents' rights to custody and control of their children. To balance the power of the state and to minimize unwarranted or prolonged intrusion into the family, due process requires that the state provide attorneys for both children and indigent parents in child protection proceedings.

Over the past several decades, Congress has passed significant pieces of legislation that support the state's duty and power to protect children, including the Child Abuse Prevention and Treatment Act (CAPTA), which provides guidance for child protection and requires qualified representation of children be provided by states as a condition of states' continued receipt of federal child welfare funding. Amendments to CAPTA further required that attorneys representing children receive training appropriate to their role.

The rights of children and indigent parents to representation in child protection cases are guaranteed in Louisiana Children's Code art. 607 and art. 608, as it was in the previous Code of Juvenile Procedure, and in La. R.S. 13:1579 prior to enactment of the Code of Juvenile Procedure. Until recently, however, there was no uniform statewide system in place to ensure equal access to quality legal representation.

In connection with the larger statewide Juvenile Justice Reform movement, HCR 44 of 2003 created a multi-disciplinary Task Force on Legal Representation in Child Protection Cases to "study systemic issues and concerns related to the provision of legal representation of abused and neglected children and their indigent parents in child protection cases and to

make recommendations on how these services may be more effectively and efficiently provided and funded."<sup>2</sup>

After years of study and incremental improvements, the multi-disciplinary Task Force recommended that the state transition to a uniform statewide system of representation providing greater specialization, more stability, efficiency and equity in expenditures, and improved quality control and administrative oversight. It was projected that ultimately the transformed system would yield long-term cost savings to the state and would contribute to improved outcomes for children. In 2014, the Task Force concluded its work and a state level Child Protection Representation Commission was established to provide continuing oversight of the system.<sup>3</sup>

### Indigent Parent Representation

The Task Force on Legal Representation worked closely with the Task Force on Indigent Defense as it systematically addressed statewide inequities in funding and oversight challenges in the indigent defense system. Act 95 of the 2007 Regular Session created the Indigent Parents' Representation Program with the Indigent Defense Assistance Board (now the Louisiana Public Defender Board).<sup>4</sup> Representation of indigent parents in child protection cases has been implemented statewide through the Indigent Parents' Representation Program, with legal services provided through local public defender offices in each jurisdiction across the state. Funding has been a continued challenge for this program, and many local offices have struggled to provide conflict-free representation to all indigent parents.

Most child protection cases have at least two indigent parents who need representation provided by the local public defender office. Many cases have in excess of two parents, as multi-child households may have multiple fathers or there may be multiple potential fathers of an individual child due to byzantine parentage laws. Each parent has a due process

right to representation, and, if the parent is indigent, that representation must be provided by the local public defender office. In cases with many parents needing representation, it can be a challenge to identify enough conflict-free attorneys to assign and to provide compensation for attorneys from already strained budgets.

Estimates from the Louisiana Public Defender Board show that public defender offices spend approximately \$4 million representing parents in the state. For this, public defenders receive an annual appropriation from the Legislature of just under \$1 million dedicated to parent representation. Although federal funding heavily subsidizes state funding for the state child welfare system, no federal funding is available for parent representation (although, without parent representation, court cases cannot proceed, which would jeopardize all federal funding of the child welfare system). The bulk of funding for parent representation must be made up from other sources of revenue, primarily court costs from traffic tickets. Insufficient state funding for indigent parent representation has created an untenable situation for local public defender offices which are also responsible for providing counsel in burgeoning indigent criminal and juvenile delinquency defense caseloads.<sup>5</sup>

### How Lawyers Can Help Indigent Parent Representation

- ▶ Advocate for sufficient state funding levels to support indigent parent representation.
- ▶ Volunteer to accept pro bono conflict cases under supervision of local public defender offices.
- ▶ Provide pro bono services as a curator for absentee parents through local public defender offices.

### Child Representation

In Louisiana, representation of children in child protection cases is overseen by the Louisiana Supreme Court, which designates appropriate programs for qualified legal representation in accordance with a plan for service delivery approved by the Court.<sup>6</sup> The Mental Health

Advocacy Service's Child Advocacy Program and the Louisiana Bar Foundation as grantor for the Louisiana Legal Services Corporations are currently designated to provide children's representation.<sup>7</sup>

All attorneys representing children in child protection cases must be qualified in accordance with Part II of Rule XXXIII of the Administrative Rules of the Supreme Court. A minimum of six hours of specialized continuing legal education relevant to child welfare law is required each year, and documentation is provided annually to the Louisiana Supreme Court which publishes a list of qualified attorneys.

In 14 parishes, representation of children in child protection cases is provided by the Mental Health Advocacy Service's Child Advocacy Program (MHAS/Child Advocacy Program). MHAS is an executive branch agency authorized by La. R.S. 28:64 and governed by a board of trustees responsible for review and evaluation of the Child Advocacy Program. State funding for the Child Advocacy Program is included annually in the state executive budget.

In 50 parishes and an additional city court, representation of children in child protection cases is provided by Louisiana's two Legal Services Corporations (Acadiana Legal Service Corporation and Southeast Louisiana Legal Services). State funding is included as a line item in the Judicial Appropriations Bill each year and administered by the Louisiana Bar Foundation.

The level of state funding for children's representation in child protection cases has not kept pace with increasing caseloads. Insufficient funding challenges the ability of attorneys to provide quality representation in compliance with the Child Attorney Standards promulgated by the Louisiana Supreme Court.<sup>8</sup>

Each child in a child protection proceeding is entitled to independent representation of his/her wishes. Conflicts frequently arise in cases where multiple children have different positions or where the program previously represented a parent of the child client now requiring

representation.

Children involved in child protection cases often have legal needs beyond the scope of child welfare representation. This may include tort claims, educational rights, immigration problems, constitutional and civil rights violations, Social Security benefit claims and inheritance rights. Children's attorneys often do not have the time or knowledge to address these specialized legal matters.

Louisiana Bar Foundation Executive Director Donna Cuneo said, "The average adult encounters difficulty in accessing and navigating the legal system. To expect a child in need of care to do so without his/her own attorney is unconscionable. As a society, we talk about children being a priority. With the parent and child representation system, we have made children a priority in this state. Adequate funding for both systems is an essential component for success."

"The power to break up a family is one of the most awesome powers of the state. When done wrong, it harms children, parents, extended families and communities. Quality representation for parents helps ensure that the state does not interfere without very good reason, keeps parents engaged in the process after removal, and promotes safe reunification of children with their parents," said Richard M. Pittman, deputy public defender and director of Juvenile Defender Services for the Louisiana Public Defender Board.

### How Lawyers Can Help with Children's Representation

- ▶ Advocate for sufficient state funding to support legal representation of children.
- ▶ Become qualified and volunteer with the local child representation program to represent a child as a conflict attorney.
- ▶ Offer the local child representation program legal services in specialized areas of law.
- ▶ Volunteer to assist the local child representation program with needed research and writing, including writs and appeals.

## FOOTNOTES

1. The Louisiana Department of Children and Family Services has primary responsibility for child protection and foster care services. Since the enactment of P.L. 96-272, the Adoption Assistance and Child Welfare Act in 1980, courts exercising juvenile jurisdiction have substantial oversight responsibility in Child in Need of Care cases.

2. The history of the Task Force is chronicled in the Final Recommendations of the Task Force on Legal Representation in Child Protection Cases submitted March 10, 2014, to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A.

3. Louisiana Children's Code art. 581 provides for the membership and duties of the commission.

4. La. Ch. C. art. 571-575 provide for representation of indigent parents by public defenders in accordance with La. R.S. 15:185.1-185.9.

5. In 2016, some public defender offices began refusing indigent parent representation in some child protection cases due to an acute funding crisis. The result was that several termination of parental rights trials were delayed, resulting in delayed permanency for children and jeopardizing federal funding tied to timeliness measures.

6. See La. Ch. C. art. 558 and 560.

7. Although the original vision of the Task Force was to create a single uniform statewide system of representation for children in child protection cases, the current arrangement of utilizing both the MHAS/Child Advocacy Program and the LBF/Legal Services Corporations was necessitated by a demand for expeditious statewide implementation. The Task Force determined that both programs are currently providing qualified child representation in their respective jurisdictions, and that disruption to the service provision arrangement is not warranted. However, statewide uniformity has been achieved through Louisiana Supreme Court oversight of both child representation programs.

8. Administrative Rules of the Louisiana Supreme Court, Rule XXXIII, Part III, Subpart II.

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# Am I a Mandatory Reporter?

By Cherrilynne Washington Thomas

State and federal law require that individuals who regularly come into contact with children are to report suspected cases of abuse or neglect. Funding to the states for the investigation and prevention of child maltreatment (abuse) is provided by the Child Abuse Prevention and Treatment Act (CAPTA), as amended by the CAPTA Reauthorization Act of 2010, 42 U.S.C. 5101, *et seq.* To receive CAPTA funding, the adoption of state mandatory reporting laws is required.

In Louisiana, “mandatory reporter” is defined in Children’s Code art. 603(17) to include the following — health practitioners, mental health/social service practitioners, members of the clergy, teaching or child care providers, police officer/law enforcement officials, commercial film/photographic print processors, juvenile court mediators, parenting coordinators, CASA (Court Appointed Special Advocate) volunteers, organizational or youth activity providers, and school coaches. As such, mandatory reporters are required by law to make a report when there is a “cause to believe that a child’s physical or mental health or welfare is endangered as a result of abuse or neglect . . . .” Louisiana Children’s Code art. 609.

Louisiana law does not categorically identify legal professionals as mandatory reporters but attorneys serve in many other roles in the community. Some attorneys are also health practitioners,

mental health/social service practitioners, members of the clergy, teachers or child care providers, police officers or law enforcement officials, mediators, CASA volunteers, youth activity providers and coaches. All of the above listed classes of individuals are mandatory reporters of child abuse.

What about the attorney-client privilege? Although an attorney holds an attorney-client privilege with his legal client, the privilege does not necessarily extend to the attorney in the other roles as listed above. Louisiana Code of Evidence art. 506 specifically provides the situations in which an attorney-client privilege is present. The Children’s Code does not provide any statutes to indicate an override to that provision.

When the attorney-coach or the attorney-teacher observes a child who is a victim of child abuse or neglect, that attorney-coach or attorney-teacher is now a mandatory reporter. Additionally, any person having cause to believe that a child’s physical or mental health or welfare is endangered as a result of abuse or neglect is a permitted reporter. Louisiana Children’s Code art. 609(8). This specifically includes a judge. Thus, an attorney may be a mandatory reporter or a permitted reporter.

Now that you have been identified as a mandatory or permitted reporter and you are witness to an incident of suspected abuse or neglect, what do you do? As a mandatory reporter of child

abuse, a report should be made to the Department of Children and Family Services (DCFS) by calling 1-855-4LA-KIDS (1-855-452-5437) and the local or state law enforcement agency. The report can be made anonymously and will hopefully prevent another child from being subjected to the cruel world of child abuse and neglect. A violation of the duty of a mandatory reporter to report subjects that person to criminal prosecution as authorized by La. R.S. 14:403(A)(1), a misdemeanor offense.

Training is provided on a regular basis to provide the guidelines of mandated reporting and other areas of child abuse and neglect. The training is provided through the Pelican Center for Children & Families, [www.pelicancenter.org](http://www.pelicancenter.org). For more information, visit the website of the Children’s Law Committee, [www.lsba.org/ChildrensLaw/](http://www.lsba.org/ChildrensLaw/).

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# Legal Representation of Children: Opportunities for Attorneys

By Guy R. Lain

**A**lthough children do not have the full legal capacity of adults, they are entitled to a panoply of special rights and protections under the law. As the body of law regarding children has developed since the early 1900s, so the practice of children's law has evolved "from a cottage-age industry to a sophisticated legal specialty."<sup>1</sup> In Louisiana, the opportunities to represent children are varied and increasing. Attorneys are representing children in many types of proceedings — juvenile court matters; custody and visitation; federal and state immigration; education; mental health; SSI and Medicaid benefits; and, most recently, human/sex trafficking victim's rights cases. Representing a child can be enormously rewarding, but attorneys representing children encounter unique challenges.

Children's law is complex, often involving topic-specific federal and state

law, policy and regulation. Enacted in 1992, the Louisiana Children's Code is applicable to legal proceedings subject to juvenile jurisdiction of courts. Juvenile proceedings include, most notably, delinquency proceedings; family in need of services proceedings; child welfare proceedings; termination of parental rights proceedings; adoptions, including facilitating interstate adoptions under the Interstate Compact on the Placement of Children; mental health commitment proceedings involving minors; the implementation of interstate child support orders under the Uniform Reciprocal Enforcement of Support Act; voluntary transfers of custody; and when extraordinary life-sustaining procedures can be withdrawn from a terminally ill child. In addition, a juvenile judge can approve juvenile marriages and can enter protective orders in situations involving family violence.<sup>2</sup> Many provisions of the Children's Code are

distinct from civil and criminal law, including legal representation, identification and rights of parties, confidentiality of proceedings and records, discovery, mandatory time constraints for hearings, required judicial findings and special appellate procedures. The Children's Code has incorporated many of the applicable federal requirements within its provisions; however, additional federal laws and regulations also may be applicable.<sup>3</sup>

In addition to statutory law, the Louisiana Rules of Court also include special rules for juvenile court matters. Part J of the Rules of the Supreme Court include "Special Rules for Cases Involving the Protection of Children," including provisions for specialized divisions of court, timeliness of hearings and decision-making, confidentiality, child attorney qualification and standards, and special appeal and writ procedures for child protection, adoption and custody cases. Rule 5 of the

Uniform Court of Appeal Rules include “Procedures for Writs and Appeals in Certain Cases Involving Minors,” including expedited handling of cases and confidentiality. In addition, the District Court Rules include separate rules for family law proceedings (Title IV) and rules for juvenile proceedings (Title V).

The Louisiana Rules of Professional Conduct do not distinguish representation of children from representation of adult clients, and guidance addressing the unique challenges of representing a child is scant. Competent representation of children demands more than the “legal knowledge and skill” required by Rule 1.1. Effective legal representation necessarily includes an understanding of child development and the effects of trauma.<sup>4</sup> Providing client-directed representation for a very young child client is particularly challenging. Rule 1.14 provides that a lawyer must, as far as reasonably possible, maintain a normal lawyer-client relationship with a client having diminished capacity as a result of “minority.” Under some circumstances, “the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.” In “appropriate cases,” the lawyer may seek court appointment of a tutor or curator to “protect the interest” of the child client. However, in Louisiana, it is not the function of a child’s attorney to represent the “best interests” of the child, unless specifically appointed by a court for that purpose.<sup>5</sup>

Application of other provisions of the Rules also may be problematic. Pursuant to Rule 1.8(f), attorneys may not accept compensation from someone other than the client except as specifically provided. Frequently, attorneys represent children by court appointment, through an agency designated to represent children, or as retained by an adult on behalf of the child. Under these circumstances, the lawyer must maintain both independence and confidentiality in representation. Attorney-client communication, as contemplated in Rule 1.4, is particularly challenging with a child client, especially with a child who is nonverbal or has very limited verbal skills. Frequent meetings

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with the child may be needed to build trust and to learn how the child communicates verbally and non-verbally.

The children most in need of legal representation are frequently involved in multiple systems. It is not uncommon for a child in foster care also to be involved in the juvenile justice system or the immigration system, be facing suspension or expulsion from school, or be a sex trafficking victim. Today, to fully meet the legal representation needs of a child client, often more than one attorney is required, each providing specific experience.

The practice of law for children has become increasingly specialized and Louisiana has made great strides to meet the basic legal representation rights of children. However, there is much to be done:

► Attorneys statewide should understand and appreciate the nature and importance of children’s law practice and support efforts to improve access to quality representation of children.

► Training on representation of children and on children’s law issues should

be widely available to ensure quality legal representation of children.

► Agencies and organizations that provide legal services to children should be adequately funded for attorney salaries, administration and oversight, support services, court and expert witness fees, and other costs.

Louisiana’s children — Louisiana’s future — deserve the full commitment of all members of the Bar to ensure that the increasing needs of children for legal representation are met.

## FOOTNOTES

1. “From Cause to Profession: The Development of Children’s Law and Practice,” Marvin Ventrell, *The Colorado Lawyer*, January 2003.

2. Louisiana Children’s Code, Louisiana Children’s Code Project, pgs xvi-xvii.

3. For example, federal requirements of the Indian Child Welfare Act enacted in 1978 have only been recently referenced in the Children’s Code. See Act 296 of 2018.

4. See, “The Basics of Brain Development,” Joan Stiles and Terry L. Jemigan, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2989000/>;

“The Impact of Trauma on Child Development,” Frank W. Putnam, *Juvenile and Family Court Journal*, Winter 2006. See also, “How Trauma in Childhood Affects the Brain: New Research Points to Neurobiological Sex Differences in Youth with PTSD,” Sarah-Nicole Bostan, M.A., <https://www.psychologytoday.com/us/blog/greater-the-sum-its-parts/201703/how-trauma-in-childhood-affects-the-brain>, posted March 20, 2017; “The Adverse Childhood Experiences Study: Child Abuse and Public Health,” Why Prevention Matters Series, Dr. Robert Anda, Prevent Child Abuse America, [www.preventchildabuse.org](http://www.preventchildabuse.org).

5. In child protection cases, the best interests of the child may be represented by a Court Appointed Special Advocate while the child’s attorney represents the wishes of the child.

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# The Color of Justice for Children

By Judge Ernestine S. Gray

**F**or decades, there has been much discussion, acknowledgment and concern about racial disproportionality and disparity in the systems that focus on children, especially child welfare and juvenile justice. Disproportionality refers to the underrepresentation or overrepresentation of a racial or ethnic group compared to its percentage in the total population. Disparity is the unequal outcomes of one racial or ethnic group as compared to outcomes for other racial or ethnic groups.

Abundant national data indicate that minority children are disproportionately represented in the child welfare system. In other words, there are more minority children in the child welfare system than would be expected given their numbers in the general population. This is particularly true for African-American children. Data from 2014 cited by the Child Welfare Information Gateway (<https://www.childwelfare.gov>) indicates that African-American children make up 24.3 percent of those in foster care nationwide, although comprising only 13.8 percent of

the total population.

Nationally, youth of color are disproportionately represented at every decision point in the child welfare system. Their families are disproportionately referred to the system by institutions such as hospitals, schools and law enforcement. This is true, even though research shows that rates of child abuse and neglect are not higher in families of color. Nevertheless, these families are disproportionately petitioned and brought into the court system and face greater likelihood of removal of their children than white families.

Fiscal year 2014 child welfare data submitted by Louisiana and analyzed by Casey Family Programs showed that African-American children accounted for 42 percent of children in foster care, while African-American children were represented at a rate of 38 percent of all children in the general population. While a statewide average snapshot of disproportionality rates may not be as alarming as the national data, Louisiana data submitted as recently as 2016 and analyzed by the Center for Policy Research in Denver,

Colo., and the national Capacity Building Center for Courts showed that pockets of much higher disproportionality rates exist in a number of Louisiana parishes.

Many factors have been identified as leading to the disproportionality in representation and disparities in treatment. These include poverty, a lack of community resources, as well as institutional biases from the police, the child welfare agency and the courts. For example, research has found that poor families are more likely to come to the attention of the child welfare agency. There is also a lack of resources for foster families and kin caregivers of black children. These unavailable resources can include cultural competency training and adequate financial assistance. System (legal, child welfare agency and others) culture also can be a root cause affecting disproportionality. Whether all or some of these factors are at play, the result has been that many African-American children are staying in care for longer periods of time without achieving permanency or making permanent connections.

According to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), minority youth also are overrepresented in the juvenile justice system. A core requirement of OJJDP funding for states is to address the disproportionate number of minority youth who come in contact with the juvenile justice system at each contact point (<https://www.ojjdp.gov/dmc>). Similar to the child welfare system, the causes of disproportionate minority contact are complex and include racial bias within the system, differences in the types and levels of offending behavior, legislation and policies with disproportionate impact, and the presence of other risk factors, including family economic status, family structure and neighborhood.

Racial and ethnic disproportionality also exists in the educational system. Overrepresentation in school discipline is well documented. Minority students have been shown to be up to four times more likely to be suspended than white students and that suspensions are associated with negative student outcomes in academic achievement, disciplinary action and future juvenile justice involvement. In addition, research suggests that a child's race and ethnicity significantly influence the probability of misidentification as needing special education (<https://www.nea.org>). Root causes of disproportionality within the educational system are complex, including historical advantages for white children, institutionalized racism and socioeconomic conditions.

**What do we know?** Many blame disproportionality and disparity on "the system." But, what is a system but a collection of individual choices? Study after study suggest that all humans are subject to implicit bias, whether against persons of color, poor people, people with disabilities, people with less education — the list goes on and on. These biases — whatever they are — can shape our decisions and how we interact with the children and the families we serve.

**What can we do?** If motivated to do so, it appears that we have the capacity to control our biases. Acknowledging that completely eradicating bias will be difficult, if not impossible, knowing how it develops, owning it personally and knowing that it is changeable are essential in a move toward social justice. Awareness precedes change. Tapping into the right strategies with an open mind, meaningful progress can be made on an individual level with every decision we are called on to make. As individual decisions change, "systems" can begin to change. Let us be the catalyst for this change.

**Some strategies** that have been implemented to reduce bias in jurisdictions across the country include:

- ▶ training of existing staff to raise awareness;
- ▶ instituting checks and balances for individual bias as decisions are made;
- ▶ meaningfully engaging relatives, with particular emphasis on the extended family;
- ▶ contracting with providers of color;

▶ increasing and supporting staff cultural and linguistic diversity;

▶ developing a system-wide effort to ask how families self-identify racially, ethnically and/or culturally, and ensure that information is a part of the case record; and

▶ increasing funds available for prevention and in-home services that reflect an understanding of a family's cultural and historical background.

Anyone interested in examining the issues of racial disproportionality and disparate treatment in the Louisiana child welfare system should consider joining the Disproportionate Minority and Disparate Treatment Committee of the Pelican Center for Children & Families. For more information, visit [www.pelicancenter.org](http://www.pelicancenter.org).

(Assistance for the article was provided by Mark Harris, executive director of the Pelican Center for Children & Families.)

*Orleans Parish Juvenile Court Judge Ernestine S. Gray has served on the court for 33 years. She received her JD degree in 1976 from Louisiana State University Paul M. Hebert Law Center. Since the beginning of her legal career, she has been involved in the juvenile justice arena, handling hundreds of family law cases with the Baton Rouge Legal Aid Society and serving as president of the National Council of Juvenile and Family Court Judges. She is the current president of the Pelican Center for Children & Families. (esgray@nola.gov; 1100B Milton St., New Orleans, LA 70122)*



## The Pelican Center for Children & Families

The Pelican Center for Children & Families is a Louisiana not-for-profit corporation that brings together leadership from entities serving the state's most vulnerable children and families. In 2015, the Louisiana Supreme Court transferred the administration of Court Improvement Program (CIP) functions and responsibility for implementation of the CIP strategic plan to the Pelican Center. The overarching goal of the CIP and the Pelican Center is to support judges and attorneys, along with other legal, child welfare agency and community partners, to ensure sound and timely decision-making, competent legal representation, and advocacy for abused



and neglected children and their families. A key mechanism of the Pelican Center for supporting excellence in child welfare practice is the Children's Law Advocacy Resources Online (CLARO) website. The CLARO website is a clearinghouse for child welfare subject matter and training resources and opportunities, both live and online. To explore CLARO, go to: [www.clarola.org](http://www.clarola.org). For more information about the Pelican Center, go to: [www.pelicancenter.org](http://www.pelicancenter.org).

—Mark Harris  
Executive Director,  
The Pelican Center for Children & Families

# Expungement Reform Helps Those with Juvenile Records



By Hector A. Linares III

**G**iven the rehabilitative purpose of juvenile court, many assume delinquency records are confidential in a manner that prevents them from following children into adulthood and serving as obstacles to leading a productive life. The truth is, however, records of juvenile arrests or adjudications can come to light in a number of ways, creating collateral consequences that hamper the ability to move on with one's life. Even once a case is long over, a juvenile record can still negatively affect the ability to access higher education, job opportunities with both private and public employers, government benefits like housing assistance, and other opportunities like admission to the Bar.<sup>1</sup> Recognizing that these collateral consequences are counterproductive to the goal of rehabilitation, there has been a national movement towards helping youth wipe their slates clean by expanding and simplifying the expungement of delinquency records and generally strengthening the confidentiality protections related to juvenile proceedings.<sup>2</sup>

Louisiana recently joined this movement when a series of changes to the juvenile expungement and confidentiality articles contained in the Children's Code went into effect in August 2017. The new law, known as Act 362, both expanded the list of eligible offenses and created a uniform process for expungement that will allow the state's youth to expunge and seal their juvenile records sooner, more cheaply, and, in many cases, without the assistance of an attorney. The reforms also strengthened the confidentiality of juvenile records as a whole by creating a strict process with new limitations for sharing various kinds of juvenile records that are not expunged. Juvenile, criminal and civil legal aid attorneys alike should become familiar with these new rules and procedures to better help and advise clients whose juvenile records are creating unnecessary barriers to opportunities that will enhance their lives.

## **New Expungement Rules and Procedures**

Under the new expungement proce-

dures, the juvenile court can expunge and seal records at any time if they are related to matters that did not result in an adjudication or to matters that did result in an adjudication if it is for certain prostitution-related offenses where children by their very nature are also victims.<sup>3</sup> Records involving misdemeanor and most felony adjudications can now be expunged as soon as the juvenile court has ceased to exercise jurisdiction in those matters.<sup>4</sup> Also, records involving adjudications for murder, manslaughter, sex offenses requiring registration, kidnapping and armed robbery can now be expunged five years after the person satisfies the most recent judgment against him or her.<sup>5</sup> For all adjudications, the requirement remains that the person seeking expungement may not have any criminal court felony convictions, criminal court misdemeanor convictions for firearm offenses against a person, or a pending indictment or bill of information.<sup>6</sup> These provisions greatly expand the availability of expungement under the prior law, which imposed two-year waiting periods for misdemeanors, five-year waiting periods for most felonies, and prohibited expungement altogether for other felony offenses.

Expanding eligible offenses and shortening timelines for expungement is of little use, however, if the process is too complicated or expensive for most people to avail themselves of it. In order to make the procedure more accessible, the new law implemented several changes. First, juveniles must now be notified in writing of the procedures for expunging and sealing their juvenile records at disposition.<sup>7</sup> Second, the Children's Code now provides a fill-in-the-blank form that must now serve as the exclusive motion for the expungement and sealing of records and reports in all juvenile court jurisdictions.<sup>8</sup> The mover can now also serve all necessary parties by the much cheaper methods of U.S. mail or electronic means in addition to the personal service or certified mail that was required previously.<sup>9</sup> Furthermore, for all offenses except those serious offenses subject to the five-year waiting period, a contradictory hearing is not required unless one of the agencies objects to the expunge-

ment by filing an affidavit of response requesting a hearing.<sup>10</sup> The affidavit of response is also included as a form in the Children's Code and requires the objecting party to indicate on which of five possible grounds the agency is basing its objection.<sup>11</sup> The reforms also added an article that prohibits courts from assessing costs or fees for juvenile expungements and allows courts to waive fees or costs assessed by record-bearing agencies if the court finds the applicant is indigent.<sup>12</sup> Each of these changes removes a practical obstacle that previously made it more difficult for individuals to clear their juvenile records.

The most dramatic change brought about by Act 362, however, may be the new requirement that courts include in all judgments of disposition "an order of expungement to be made executory at the end of the disposition unless, at the end of the disposition, a person or agency files an objection" through an affidavit of response.<sup>13</sup> In effect, this provision makes expungement automatic and the need to file a motion for expungement superfluous for most juvenile adjudications since the end of the case triggers the execution of the expungement order without need for any further action by the juvenile. Nevertheless, individuals would still need to file a motion to expunge and seal when the records in question relate to arrests that did not result in an adjudication since there would be no order of disposition in such cases. Likewise, matters involving dispositions orders issued prior to the new law going into effect would also continue to require a motion. Yet even in cases where the judgment of disposition should make expungement and sealing automatic, juvenile defenders and other stakeholders within the juvenile system must be vigilant to ensure all jurisdictions are implementing the new process correctly.

Once the court has entered an order of expungement, the agencies or officials subject to the order must expunge and seal all records and reports within 30 days of the order.<sup>14</sup> The agencies are no longer required to destroy the record physically, but the records and reports expunged and the underlying conduct is afterwards considered non-existent and

cannot be made available to any person or be released under any circumstances.<sup>15</sup> Once records are expunged and sealed, the law does not prohibit schools, government agencies or potential employers from asking about expunged juvenile arrests and adjudications. However, the new law does specify that no one whose juvenile records have been expunged “shall be required to disclose to any person that he was arrested or adjudicated or that the records and reports of arrest or adjudication have been expunged and sealed.”<sup>16</sup> The law also protects children with expunged records and their parents from perjury charges related to a failure to acknowledge or provide information about the expunged record.<sup>17</sup> As a result, anyone who takes advantage of the new streamlined process for expungement and sealing of juvenile delinquency records can have confidence that their past involvement with the juvenile justice system will no longer be a legal impediment for their future.

### Confidentiality Protections in General

The new legislation also strengthens the confidentiality of juvenile records generally by establishing strict rules for how and when courts and agencies can share juvenile records with outside parties. First, a new provision explicitly provides “juvenile criminal conduct shall not be made part of any state or local criminal background check.”<sup>18</sup> Further, the new law creates a rigid process that applies to the sharing of all confidential juvenile records, including records related to Child in Need of Care (CINC) and Families in Need of Services (FINS) proceedings.<sup>19</sup> Courts maintain the ability to authorize the release of juvenile records when they are relevant to specific investigations or proceedings, but must follow a more rigid process in order to do so.

First, the party seeking the information must file a petition listing the intended use of the information and the names of all persons who will be able to access the information.<sup>20</sup> The petitioner must serve both the juvenile and his or her attorney with notice of this petition, and the court

must grant the juvenile an opportunity to be heard at a contradictory hearing before the petition can be granted. Furthermore, the new procedure specifies that, in determining whether to grant the petition for release of information, the juvenile court should consider “the privacy of the juvenile, risk of harm to the juvenile, whether a compelling reason exists for releasing the information, and whether the release is necessary for the protection of a legitimate interest.”<sup>21</sup> If the court grants the authorization to release the confidential information, every person to whom the information is disclosed must execute a non-disclosure agreement certifying the person is familiar with the rules surrounding disclosure and agrees not to disclose any information to unauthorized persons.<sup>22</sup> Importantly, courts have the ability to enforce these heightened protections because violation of these procedures and other confidentiality provisions are punishable as constructive contempt of court.<sup>23</sup> As a result of these enhanced confidentiality provisions, it is now significantly more difficult for third parties to obtain access to juvenile records, including delinquency records that have not been expunged.

### Conclusion

The reforms to juvenile expungement procedures and confidentiality provisions described in this article are the result of a collaborative effort among stakeholders from across the juvenile justice system, originating with proposed legislation developed by the Louisiana State Law Institute’s Children’s Code Committee. Many of the provisions making the expungement process more accessible — notification requirements, immediate eligibility and automatic expungement upon case closure for most adjudicated offenses, a five-year waiting period for serious offenses, and the elimination of costs associated with expungement — coincide with or were adapted from provisions contained in the American Bar Association’s Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records.<sup>24</sup> This new legal framework better protects confidentiality and removes

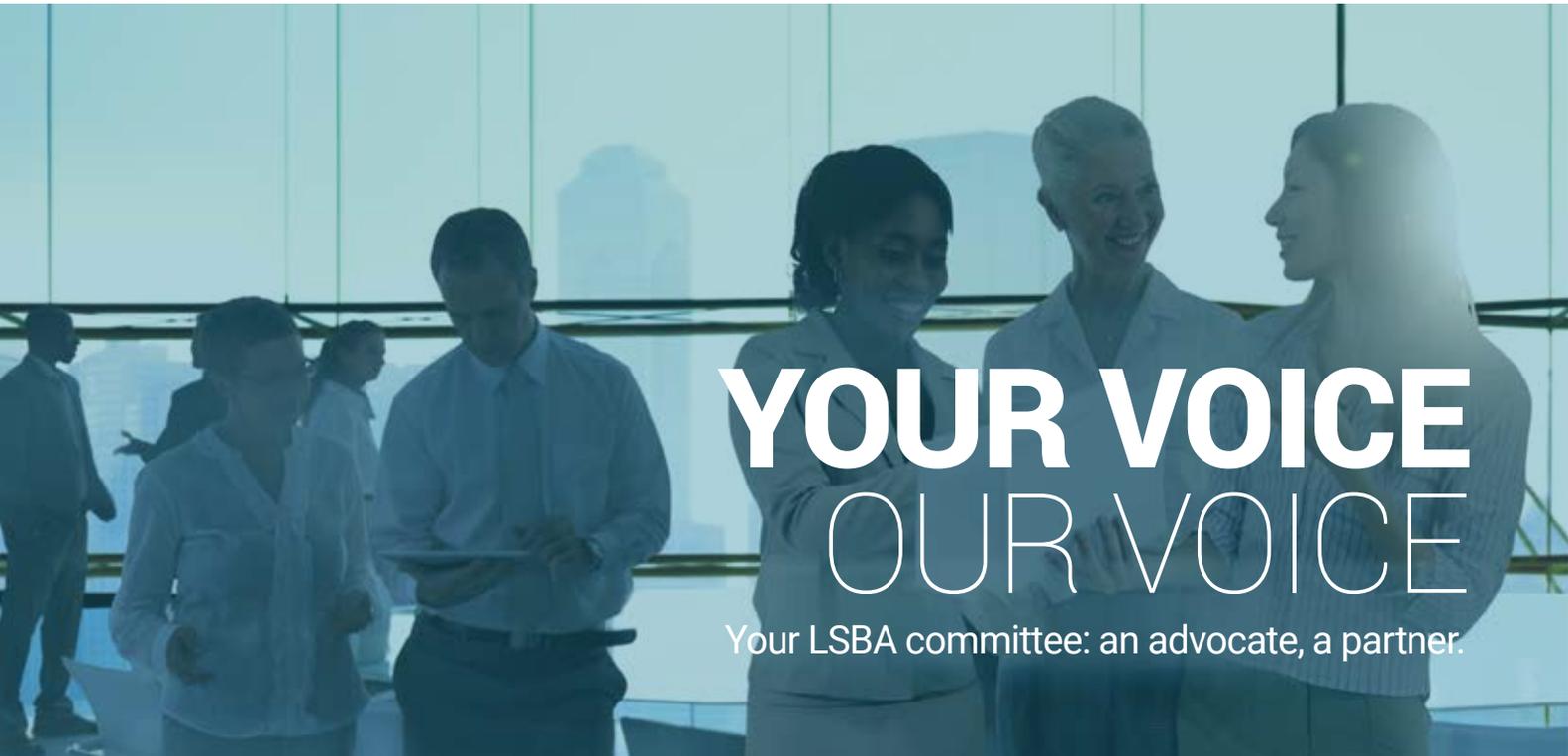
barriers to juvenile expungement by making it easier, cheaper and quicker. As a result, youth and adults seeking to move forward with their lives will not have to face as many obstacles to success because of their prior involvement with the juvenile justice system.

### FOOTNOTES

1. Christopher Gowen, Lisa Thureau and Meghan Wood, *The ABA’s Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 3 Duke Forum for L. & Soc. Change 187 (2011).
2. *Id.*
3. La. Ch. C. art. 918(A) (2018).
4. *Id.* at 918(B).
5. *Id.* at 918(D).
6. *Id.* at 918(C)-(D).
7. La. Ch. C. art. 901(G) (2018).
8. *Id.* at 925.
9. *Id.* at 919(D).
10. *Id.* at 919(E).
11. *Id.* at 926.
12. *Id.* at 924.
13. *Id.* at 903(B)(7).
14. *Id.* at 921(B).
15. *Id.* at 920(B), 922.
16. *Id.* at 922(A).
17. *Id.* at 922(B).
18. *Id.* at 412(M).
19. The new statutory language unequivocally classifies FINS proceedings as civil in nature and prohibits custody, detention and any other action ordered as a part of a FINS proceeding from being considered a delinquency or criminal matter. La. Ch. C. art. 792.
20. *Id.* at 412(E)(2).
21. *Id.* at art. 412(E)(3).
22. *Id.* at 412(K).
23. *Id.* at 412(I).
24. See ABA Model Act Governing the Confidentiality and Expungement of Delinquency Records (2015).

*Hector A. Linares III is an associate clinical professor and the coordinator of skills and experiential learning at Loyola University College of Law. He received his JD degree from New York University School of Law and worked as a special education attorney and juvenile defender prior to entering academia. He serves on the Louisiana State Bar Association’s Children’s Law Committee, the Louisiana State Law Institute’s Children’s Code Committee and the Southern Juvenile Defender Center Advisory Committee. (halinare@loyno.edu; 7214 St. Charles Ave., Box 902, New Orleans, LA 70118)*





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# Children Exposed to Domestic Violence: Silent Victims

By Judge (Ret.) Kathleen Stewart Richey

**A**s every family law attorney recognizes, children are impacted by the events in the lives of their parents and caretakers. This reality is underscored in matters involving child custody, visitation, termination of parental rights and child support. What receives little or no attention is the impact of domestic abuse or intimate partner violence on the children of the household.

Domestic violence is recognized as a pervasive and devastating social problem, with Louisiana leading the nation in female homicides related to domestic violence. The National Coalition Against Domestic Violence reports that, in 2010, Louisiana ranked fourth in the country for femicide and that 81 percent of all female homicides are committed by a partner or ex-partner. On one day, Sept. 16, 2015, domestic violence programs in Louisiana served 714 victims. (National Network to End Domestic Violence, *2015 Domestic Violence Counts: A 24-Hour Census of Domestic Violence Shelters and Services*.) In Louisiana, one in four women will experience domestic violence in their

lifetimes; more than 5,000 women a year living in Louisiana will experience domestic violence. (Tjaden and Thoenne, *National Institute of Justice and the Centers for Disease Control and Prevention Survey*, 2000.) Many of these women have children impacted by these traumatic events.

While the devastating effects of domestic violence on women are well documented, far less is known about the impact on children who witness a parent or caregiver being subjected to violence. It is documented that, on the census day, Sept. 16, 2015, of the individuals seeking refuge, 269 children (and 180 adults) were placed in shelters or transitional housing provided by domestic violence programs in Louisiana. It is estimated that, nationally, one in 15 children are exposed to intimate partner violence each year.

Children exposed to domestic violence or intimate partner violence have been called “the silent victims.” A growing body of research shows that children who witness violence at home are at risk for a wide range of physical, mental, emotional and behavioral problems.

(*Children Exposed to Marital Violence: Theory, Research, and Applied Issues*, Holden, Geffner & Jouriles, 1998). A review of the literature reveals that children who witness domestic violence are at risk for maladaptive reactions in one or more areas of functioning — emotional, social, behavioral, cognitive and even physical that persist into adulthood. (*Journal of Interpersonal Violence*, 11(2), Kolbo & Engleman, 1996). Truancy, ungovernable behaviors, immaturity and delinquency are behavioral concerns linked to exposure to domestic violence. Physical symptoms include failure to thrive, sleeplessness, regressive behaviors, eating disorders, poor motor skills and other psychosomatic symptoms. Cognitive symptoms linked to exposure to domestic violence include poor academic performance and language delays. (*Partner Violence: A Comprehensive Review of 20 Years of Research*, Wolak & Finkelhor, 1998.)

Additionally, children who reside in homes marked by domestic violence are exposed to various forms of aggression which may include repeated physical assaults, mental humiliation and

degradation, threats and assaults with weapons, threats of suicide and homicide, and destruction of property. (L.A. McClosky, A.J. Figueredo and M.P. Koss (1995), *The Effects of Systemic Family Violence on Children's Mental Health*, Child Development, 66, 1239-1261.) Investigation of the negative effects of a child's exposure to domestic violence reveals a link between witnessing violence in the home and a wide array of adjustment problems. Child witnesses of domestic violence experience chaotic, distressing events over which they have little control. Expressions of hostility between intimate partners are often followed by what appear to be loving exchanges, which may inhibit a child's ability to trust, develop a sense of safety and security or personal control. (A. Tyndall-Lind, *International Journal of Play Therapy*, 8,9-25, 1999.) Lastly, a review of the Adverse Childhood Experiences (ACE) Study indicates that witnessing domestic violence as a child may have long-lasting effects well into adulthood, promoting engagement in risky health behaviors that seriously impact adult physical and mental health. (The Adverse Childhood Experiences (ACE) Study, Vincent J. Felitti, MD, Robert F. Anda, MD, et al., *American Journal of Preventative Medicine*, 1998.)

Lenore Walker, author of *The Battered Woman*, describes the world of children who grow up in violent homes:

*Children who live in battering relationships experience the most insidious form of child abuse. Whether or not they are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers. They learn to become a part of a dishonest conspiracy of silence. They learn to lie to prevent inappropriate behavior, and they learn to suspend fulfillment of their needs rather than risk another confrontation. They expend a lot of energy avoiding problems.*

*Children who live in battering relationships experience the most insidious form of child abuse. Whether or not they are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers. They learn to become a part of a dishonest conspiracy of silence. They learn to lie to prevent inappropriate behavior, and they learn to suspend fulfillment of their needs rather than risk another confrontation. They expend a lot of energy avoiding problems.*

- Lenore Walker  
*The Battered Woman*

Not surprisingly, there is a common link between domestic violence and child abuse. Among victims of child abuse, 40 percent report domestic violence in the home. (World Health Organization, *World Report on Violence and Health*, 2002). One study in North America found that children who were exposed to violence in the home were 15 times more likely to be physically and/or sexually assaulted than the national average. (J.S. Volpe, *Effects of Domestic Violence on Children and Adolescents: An Overview*, The American Academy of Experts in Traumatic Stress, 1996.)

Equally troubling is that children who grow up with violence in the home learn early and powerful lessons about the use of violence in interpersonal relationships to dominate others and might even be encouraged in doing so. (A.C. Baldry, "Bullying in Schools and Exposure to DV," *Child Abuse and Neglect*, vol. 27, no. 7, 2003, pp. 713-732.) The single best predictor of children becoming either perpetrators or victims of domestic violence later in life is whether or not they grow up in a home where there is domestic vio-

lence. Studies from several countries support the findings that rates of abuse are higher among women whose husbands were abused as children or who saw their mothers being abused. (David Indermaur, *Young Australians and Domestic Violence*, Trends and Issues in Crime and Criminal Justice, No. 195, Canberra, 2001.)

As part of the U.S. Attorney General's Defending Childhood Initiative in 2010, a National Task Force on Children Exposed to Violence was commissioned to study the impact of violence on children. The Task Force was composed of a diverse group of leaders in the legal, academic, medical, psychiatric and psychological, and child welfare professions. In 2012, the Task Force issued findings and recommendations "to ensure that our nation's past inadequate response to children's exposure to violence does not negatively affect children's lives any further. . . The long-term negative outcomes of exposure to violence can be prevented, and children exposed to violence can be helped to recover." With recent advances in neuroscience and understanding child development, effective methods of interrupting and responding to the consequences of children's exposure to violence do exist. It is time, as a state, to commit to the protection of Louisiana's children. The legal profession can and should play a significant role in addressing this pressing problem.

Judge (Ret.) Kathleen Stewart Richey became the president/CEO of LouisianaChildren.org in 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. During her 24 years on the bench, she was instrumental in establishing Capital Area CASA. She has served on several legislative task forces, most notably the Legislative Task Force on Legal Representation in CINC Matters which created the Child Advocacy Program in Louisiana. (krichey@louisianacasa.org; 1120 Government St., Bldg. I, Baton Rouge, LA 70802)



# Adoptions:

## Lawyers Helping to Create Forever Families and Sometimes Forever Problems

By Jennifer Guillot Womble

It is well settled in Louisiana that “adoption is a creature of statute and all of the statutory requirements must be strictly carried out . . .” *In re Byrd*, 75 So.2d 331,332 (La. 1954). But adoption is not only a legal transaction, but a family transformation. No matter the age of the child or the circumstances surrounding the situation, the legal actions taken will forever dramatically change the life of a child as well as both the family of origin and the adoptive family. Louisiana’s adoption laws create a new family and, except in limited circumstances, permanently terminate the legal rights and responsibilities with the family into which the child was born.<sup>1</sup>

For an attorney, the prospect of assisting in the creation of a new family through adoption may be enticing. The practice of adoption law can be fulfilling but is fraught with potential pitfalls that complicate adoptions, delay adoptions or, in the worst case scenarios, cause adoptions to fail. Because the factual circumstances of each adoptive situation is unique, no two adoptions are exactly the same and opportunities for complications are variable and abundant. The more common problems involve opposition by a biological father, a biological mother deciding to parent her baby after adoption planning has progressed, placements that involve more than one state, and incorrect or missing adoption documentation. No matter the problem encountered and the reason for the adoption going astray, any complication

can be totally devastating to a child and both families (biological and adoptive). Complications could cause delays in hearings and finalization of adoptions, removal of the child from a loving family unit despite living in the home for a significant period of time, termination of relationships with the child, extensive emotional court proceedings, and/or payment of exorbitant costs. Rule 1.1 of the Louisiana Rules of Professional Conduct requires all lawyers to provide competent representation. In an adoption proceeding, where the stakes are so high and the obstacles so potentially devastating, attorney competency is critical.

There are three different types of domestic adoptions created by Louisiana statutory law — intrafamily, agency and private adoptions.<sup>2</sup> Intrafamily adoptions involve a stepparent or close biological relative of the child who is adopting the child.<sup>3</sup> These adoptions tend to be the simplest legal process and the most common. An agency adoption is one in which the child has been placed with adoptive parents by a licensed child placing agency.<sup>4</sup> Agency adoptions include adoption of foster children through the Department of Children and Family Services and adoption of unrelated children surrendered to a licensed adoption agency. A private adoption is one in which the biological parents and the adoptive parents are not legally or biologically related to each other.<sup>5</sup> Private adoptions are usually arranged by the parties themselves, through com-

mon friends or relatives, or matched through an attorney.

Additionally, Louisiana law provides procedures for intercountry adoptions through recognition of foreign adoption and adoption of a foreign orphan.<sup>6</sup> Through recognition of foreign adoption proceedings, a Louisiana court can recognize an adoption granted in a foreign country, render a Louisiana adoption decree and issue a Louisiana birth certificate. In an adoption of a foreign orphan, the Louisiana court must find that the child has qualified as a foreign orphan and is lawfully in the United States to proceed with a Louisiana adoption proceeding. Intercountry adoptions are very complicated and are subject to federal and state law. All intercountry adoptions require federal immigration and naturalization documentation. Since the Intercountry Adoption Universal Accreditation Act of 2012 went into effect, all intercountry adoptions are required to meet the standards of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.<sup>7</sup> Only Hague-accredited agencies and attorneys are permitted to place foreign children for adoption in the United States.

With the opportunity for complications so high and the consequences of a failed adoption so devastating, diligence at every point in the process is essential. Adoption attorneys can minimize problems by recognizing potential issues, counseling clients diligently, and proactively handling “hot spots” such as

interstate placements, federal tax credits, custodial situations, required documentation, termination of all parental rights, intercountry placements, allowable birth parent living expenses, insurance coverage and Indian Child Welfare Act application. Additionally, attorneys should be mindful of issues touching on adoption law including gestational carrier contracts which are statutorily allowed and handled under the jurisdiction of Juvenile Courts (although not included in the Children's Code). To further complicate matters, adoption laws are amended frequently, and adoption practitioners must be vigilant to changes in the law.

There are attorneys and agencies across Louisiana who regularly handle adoption matters. While adoption law is not considered a legal specialization by the Louisiana Board of Legal Specialization, the American Academy of Adoption Attorneys is a national association comprised of attorneys who have distinguished themselves in the

adoption field and have been invited into the academy based on their adoption work. Presently, there are approximately 10 Louisiana attorneys who have membership in the Academy.

Adoption practice is not for the faint of heart. It is categorically not a form practice. It is rewarding yet challenging even for seasoned adoption attorneys. Lawyers are well advised to proceed with caution in adoption matters — the future of a child and his/her family is at stake.

### Adoption Practice Pointers

- ▶ Learn all applicable law and policy, including, but not limited to, the provisions of the Children's Code.
- ▶ Enlist the assistance of a seasoned Louisiana adoption attorney.
- ▶ Attend specialized adoption training (see the Louisiana State Bar Association's Children's Law Committee webpage for scheduled events, [www.lsba.org/childrenslaw](http://www.lsba.org/childrenslaw)).

### FOOTNOTES

1. In all adoptions, the legal right of the child to inherit from birth parents is retained. Children's Code (Ch. C.) arts. 1218 and 1240. In a stepparent adoption, the relationship with the parent married to the stepparent is unaffected. Art. 1256.
2. La. Ch. C. art. 1170.
3. La. Ch. C. art. 1243 *et seq.*
4. La. Ch. C. art. 1198 *et seq.*
5. La. Ch. C. art. 1221 *et seq.*
6. La. Ch. C. art. 1281.1 *et seq.*
7. Public Law 112-276; 42 USC 14925.

*Jennifer Guillot Womble received both her BS and JD degrees from Tulane University. She has more than 20 years of experience in the juvenile law arena, practicing in various courts throughout Louisiana focusing on adoptions, Child in Need of Care, termination and delinquencies proceedings. (jenwomble@cox.net; 4828 Evangeline St., Metairie, LA 70001)*



## Children and Education: Access Articles Online

Neither the U.S. Constitution nor the Louisiana Constitution explicitly guarantees children a fundamental constitutional right to education. In a series of Supreme Court cases, beginning with *Brown v. Board of Education*, public education has been recognized as a legal entitlement that "is perhaps the most important function of state and local governments."<sup>1</sup> State statutes provide for compulsory school attendance and a system of public education. However, the exercise of state authority over educational matters has been limited by both federal law and by federal and state court decisions.

Education law involves a panoply of issues.

- ▶ Equal access to education for all children, including children with disabilities, at-risk children, homeless children and immigrant children.
- ▶ School safety concerns include

bullying, school fights and having weapons and drugs on school grounds.

- ▶ Control over student behavior through corporal punishment, use of restraints, suspension and expulsion.
- ▶ Privacy rights of students and educational records.
- ▶ Discrimination on the basis of race, ethnicity, religion or sexual orientation.
- ▶ Freedom of expression, including student appearance, publications, assembly and speech.

Posted on the Louisiana State Bar Association's Children's Law Committee website are several articles that provide additional information on many of these issues.

In her article on the "Educational Rights of At-Risk Children," Dr. Barbara Ferguson reviews federal and state laws that address the education of poor children.

Rebecca E. May-Ricks and Kellie Johnson Futrell provide guidance on the

"Federal Educational Rights of Children with Disabilities."

Pamela Toney Crawford's article on "Enrollment and Access to Education" references the statutory provisions by which non-parents without a custody order can enroll students in school.

Mark Simeon explains requirements relative to "Homelessness and Access to Education."

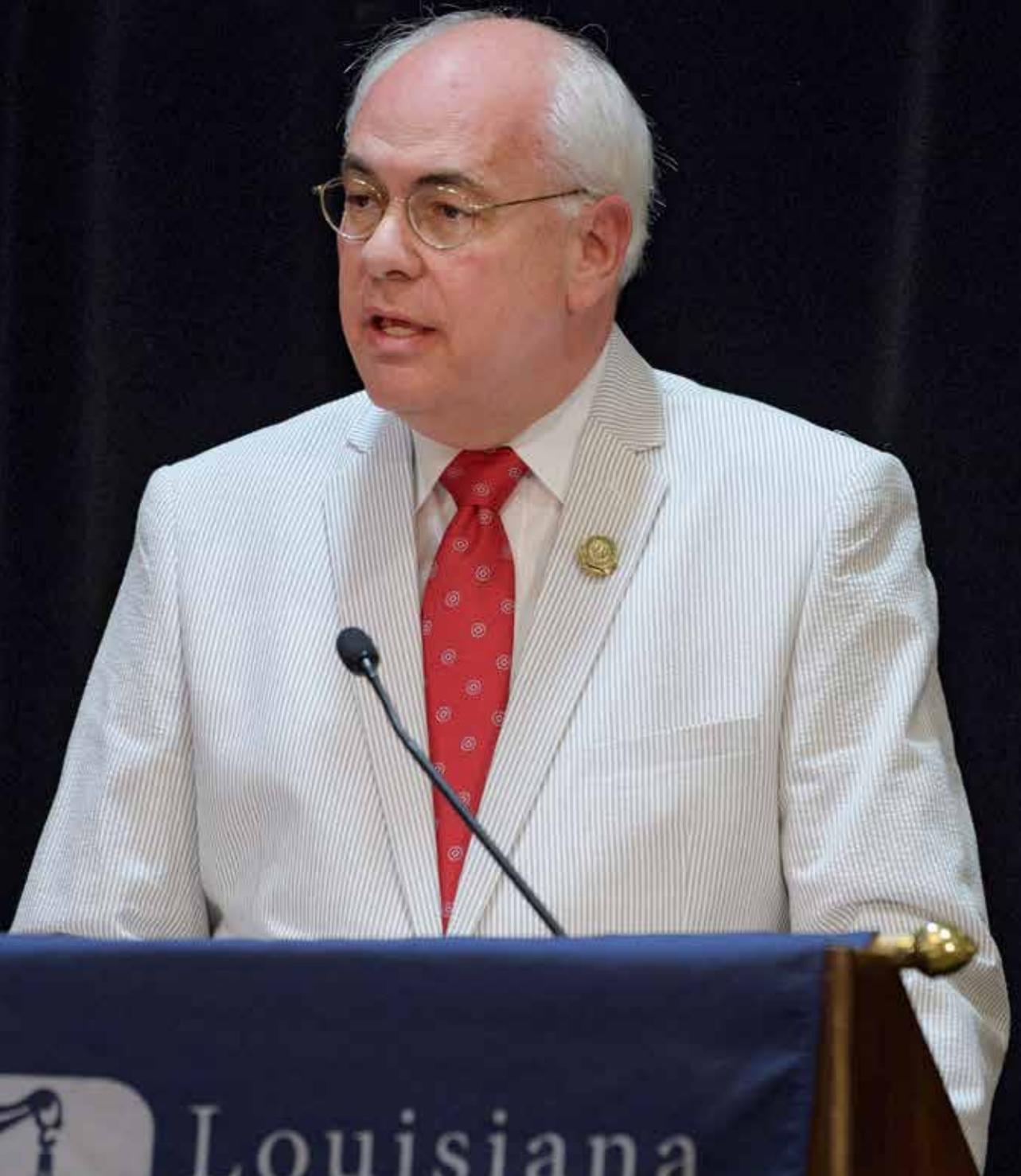
An article on "Locker Searches and Right to Privacy" by Pamela Toney Crawford highlights Louisiana law.

Information about "Corporal Punishment in Louisiana" is provided by Rebecca E. May-Ricks.

Access all articles at: [www.lsba.org/ChildrensLaw/](http://www.lsba.org/ChildrensLaw/).

### FOOTNOTE

1. 347 US 483 (1954).



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2018-19 LSBA President Barry H. Grodsky addresses the crowd during the Installation Luncheon. Photo by Matthew Hinton Photography.



The 2018-19 Louisiana State Bar Association Board of Governors. Seated from left, Valerie T. Schexnayder, Monique Y. Metoyer, Treasurer Shayna L. Sonnier, Immediate Past President Dona Kay Renegar, President Barry H. Grodsky, President-Elect Robert A. Kutcher, Secretary John E. McAuliffe, Jr. and Shayna B. Morvant. Standing from left, L. Kent Breard, Jr., John M. Church, Edward J. Walters, Jr., Sandra K. Cosby, Stephen I. Dwyer, Darryl J. Foster, Young Lawyers Division Chair Dylan T. Thriffiley, Edward L. Tarpley, Jr., D. Skylar Rosenbloom, Lynn Luker, Jermaine Guillory and Paul L. Hurd. Not in photo, Shannon S. Dartez, J. Lee Hoffoss, Jr., Patrick J. Harrington, Ronald J. Scalise, Jr. and Jeffrey A. Riggs. Photo by Matthew Hinton Photography.

## LSBA Installs 2018-19 Officers, Board of Governors

The Louisiana State Bar Association's (LSBA) 2018-19 officers and members of the Board of Governors were installed June 7, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Barry H. Grodsky** was installed as the 78th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Grodsky is a partner in the New Orleans law firm Taggart Morton, L.L.C.

**Robert A. Kutcher**, managing partner in the Metairie law firm Wagar Richard Kutcher Tygier & Luminais, L.L.P., was installed as 2018-19 president-elect. He will assume the presidency in 2019-20.

**John E. McAuliffe, Jr.**, an attorney in the Metairie office of Frederick A. Miller

& Associates, is beginning his second year of a two-year term as secretary. He also serves as editor of the *Louisiana Bar Journal*.

**Shayna L. Sonnier**, a partner in the Lake Charles law firm Hunter, Hunter & Sonnier, L.L.C., is beginning her first year of a two-year term as treasurer.

**Dona Kay Renegar**, a member in the Lafayette law firm Veazey, Felder & Renegar, L.L.C., will continue her service to the LSBA as 2018-19 immediate past president.

**Dylan T. Thriffiley**, assistant vice president of compliance and regulatory affairs for Ochsner Health System in New Orleans, was installed as 2018-19 chair of the LSBA Young Lawyers Division.

Members of the 2018-19 Board of Governors also were installed by Chief Justice Johnson.

### 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**, managing partner in the Metairie law firm Dwyer, Cambre & Suffern, A.P.L.C.

Continued next page



**JUNE 3-8, 2018**

*Sandestin Golf and Beach Resort  
Destin, Florida*

## Installation

continued from page 109

### 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 LSBA Distinguished Access to Justice Pro Bono Fellow and a mediator in Baton Rouge.

### Sixth District

► **Edward L. Tarpley, Jr.**, owner of the law firm Edward L. Tarpley, Jr., A.P.L.C., in Alexandria.

### Seventh District

► **Paul L. Hurd**, sole shareholder in Paul Loy Hurd, A.P.L.C., and in Home Title Guaranty Co., both in Monroe.



2018-19 LSBA President Barry H. Grodsky was sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Installation Luncheon. Photo by Matthew Hinton Photography.

### Eighth District

► **Patrick J. Harrington**, an associate in the Law Offices of J. Dhu Thompson, A.P.L.C., in Shreveport.

### At-Large Members

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

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

► **Lynn Luker**, of counsel in the New Orleans law firm Stanley, Reuter, Ross, Thornton & Alford, L.L.C.

### Louisiana State University 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.

### House of Delegates Liaison Committee

► Chair **Sandra K. Cosby**, an associate in the Metairie office of 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.

► Member **Shayna B. Morvant**, managing partner of the law firm Beevers & Beevers, L.L.P., in Gretna.



2017-18 LSBA President Dona Kay Renegar presents 2018-19 LSBA President Barry H. Grodsky with the President's lapel pin during the Installation Luncheon. Photo by Matthew Hinton Photography.

## Three LSBA Members Receive President's Awards

Three Louisiana State Bar Association (LSBA) members received 2018 President's Awards during the Annual Meeting in Destin, Fla. Recipients were chosen by 2017-18 LSBA President Dona Kay Renegar and were recognized for services to the association. Recognized were attorneys **Raymond P. Ladouceur**, Abita Springs; **David W. Leefe**, New Orleans; and **Lynn Luker**, New Orleans.

**Raymond P. Ladouceur**, a member in the Ladouceur Law Firm, L.L.C., in Abita Springs, was recognized for his exemplary contributions as a speaker at several LSBA Trust Accounting Schools and Solo, Small Firm



Raymond P. Ladouceur

and Tech Conferences. He received his JD degree from Loyola University College of Law and was admitted to practice in Louisiana in 1989. He is a board-certified estate planning and administration specialist through the Louisiana Board of Legal Specialization and is a Louisiana licensed certified public accountant. He is a member of the St. Tammany and American Bar Associations, the Society of Louisiana CPAs (president, 2003-04) and the Association of Attorney-CPAs (president, Louisiana Chapter, 1995-97). He is the author of *Estate and Gift Taxation (A Louisiana Perspective)* and *Tax and Other Aspects of Marriage and Divorce (A Louisiana Perspective)*, both published by Continuing Education Publishers, New Orleans; and a contributing author of *Guide to Litigation Services*, Practitioners Publishing Company, Fort Worth, Texas.

**David W. Leefe**, a shareholder in the



David W. Leefe, left, was presented with a President's Award by 2017-18 LSBA President Dona Kay Renegar during the General Assembly. Photo by Matthew Hinton Photography.

New Orleans office of the law firm Liskow & Lewis, A.P.L.C., was recognized for his exemplary accomplishments and contributions as chair of the LSBA's Client Assistance Fund Committee. A former member of Liskow's board of directors, he has practiced with the firm for 35 years and currently serves as chair of the 20-member Maritime, Oilfield and Insurance Practice Group. He received his undergraduate degree from Louisiana State University and his JD degree from Loyola University College of Law. He has served in the LSBA's House of Delegates for more than 20 years and on the Board of Governors from 2014-17. He is the longtime chair of the Client Assistance Fund Committee, a group of attorney volunteers whose mission is to reimburse individuals victimized by fraudulent or dishonest conduct by lawyers licensed to practice in Louisiana.

**Lynn Luker**, of counsel in the New Orleans law firm Stanley, Reuter, Ross, Thornton & Alford, L.L.C., and a mediator



Lynn Luker, left, was presented with a President's Award by 2017-18 LSBA President Dona Kay Renegar during the General Assembly. Photo by Matthew Hinton Photography.

and arbitrator with Perry Dampf Dispute Solutions, was recognized for her exemplary accomplishments and contributions as a LSBA Section leader and a member of the LSBA's CLE, Diversity and Legislation Committees. She received a BA degree in psychology in 1978 from the University of New Orleans, her JD degree in 1981 from Tulane University Law School (Order of Barristers), an LLM (with distinction) in admiralty law in 1985 from Tulane Law School and an LLM in energy and environmental law in 1992 from Tulane Law School. She was admitted to practice in Louisiana in 1981 and in Massachusetts in 2007. She is an at-large member on the LSBA's Board of Governors. She chairs the LSBA's Civil Law and Litigation Section and is a member of the LSBA's Committee on the Profession and the CLE Committee. She is an adjunct professor at Tulane Law School and co-director of the Trial Advocacy and Civil Pre-Trial Boot Camp.



JUNE 3-8, 2018

Sandestin Golf and Beach Resort  
Destin, Florida



Judge Guy P. Holdridge, left, was presented with the Kimball Award by 2017-18 LSBA President Dona Kay Renegar during the General Assembly. Photo by Matthew Hinton Photography.

## Judge Holdridge Receives Kimball Award

Louisiana 1st Circuit Court of Appeal **Judge Guy P. Holdridge** of Gonzales received the 2018 Catherine D. Kimball Award for the Advancement of the Administration of Justice, presented during the Louisiana State Bar Association's Annual Meeting in Destin, Fla.

Judge Holdridge began his judicial service on the 23rd Judicial District Court bench in 1991, holding the position of chief judge in 1991, 1995, 2000, 2005, 2006 and 2014. He earned a BA degree in 1974 from Louisiana State University and his JD degree in 1978 from LSU Paul M. Hebert Law Center (Order of the Coif, *Louisiana Law Review*). He is a member of the LSU Law Center Hall of Fame. He serves on the adjunct faculty of LSU Law Center, teaching Louisiana Civil Procedure I and II.

He is currently serving as assistant director of the Louisiana State Law Institute Council. He is a member of the Law Institute's Children's Code, Child Custody, Expropriation, Prescription, Bail Bonds, Summary Judgment, Civil Procedure and Adult Guardianship committees. He is currently serving as acting reporter for the Criminal Law and Procedure Committee which is revising the Post-Conviction Relief articles. He is a member of the Louisiana Supreme Court's Strategic Planning Committee and Jury Instructions Committee.



Michael J. Moran, left, was presented with the Victory Award by 2017-19 LSBA Secretary John E. (Eddie) McAuliffe, Jr. during the General Assembly. Photo by Matthew Hinton Photography.

## Moran Receives Victory Memorial Award

**Michael J. Moran** of Metairie received the 2018 Stephen T. Victory Memorial Award, recognizing outstanding contributions to the *Louisiana Bar Journal*. The award was presented during the Louisiana State Bar Association's Annual Meeting in Destin, Fla.

Moran was recognized for his article, "Louisiana Collateral Source Rule," published in the *Louisiana Bar Journal*, December 2017/January 2018, Volume 65, Number 4.

He is a director, the vice president and a mediator for Mediation Arbitration Professional Systems, Inc. (maps.) Over his 45-year legal career, he has focused his practice in the areas of litigation-personal injury, commercial, banking, real estate, bankruptcy and general civil cases.

He received a BS degree in 1969 from the University of Louisiana-Monroe and his JD degree in 1972 from Loyola University Law School.

He received training in basic and advanced mediation techniques from U.S. Arbitration and Mediation, Appropriate Dispute Resolution, Attorney-Mediators Institute, the International Academy of Mediators and Pepperdine University School of Law's Straus Institute for Dispute Resolution. He is an adjunct professor in negotiation and mediation at Tulane University Law School. He is a charter fellow of the International Academy of Mediators and the American College of Civil Trial Mediators.

## Joint Summer School & Annual Meeting Wrapup



Pamela W. Carter, left, was presented with the Chief Justice Bernette Joshua Johnson Trailblazer Award by 2017-18 LSBA President Dona Kay Renegar during the General Assembly. Photo by Matthew Hinton Photography.



Kim M. Boyle, left, former LSBA president, accepted the Guardian of Diversity Award on behalf of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc., which was presented by 2017-18 LSBA President Dona Kay Renegar during the General Assembly. Photo by Matthew Hinton Photography.

# Carter, Martinet Society Chapter Receive Diversity-Related Awards

**P**amela W. Carter of New Orleans received the 2018 Chief Justice Bernette Joshua Johnson Trailblazer Award during the Louisiana State Bar Association's (LSBA) Annual Meeting in Destin, Fla.

A partner in the Carter Law Group, L.L.C., in New Orleans, Carter has represented clients in federal and state courts in Louisiana and Texas for more than 25 years. She has litigated and mediated complex disputes, including insurance claims for corporate clients and race/gender discrimination cases.

She was an extern for Judge Freddie Pitcher, Louisiana 1st Circuit Court of Appeal, in 1994 and a judicial law clerk in Orleans Parish Civil District Court from 1995-96. She is a member

of the Leadership Council for the DRI Diversity Committee (former chair) and of the Claims Litigation Diversity Committee. She has championed inclusion by supporting scholarships for minority high school students and by assisting in law firm recruitment of diverse lawyers. She is a contributor/co-author of more than 50 articles on the topic of diversity and inclusion.

The **Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc.** received the 2018 Guardian of Diversity Award, also presented during the LSBA's Annual Meeting. The organization (GNO Martinet) was recognized for its annual "Pathways and Pipelines to Success" Program.

In 2016, the GNO Martinet hosted its inaugural "Pathways" program to ad-

dress racial disparities in the legal profession. The professional development program assisted minority students from the state's four law schools with networking and career-building skills. In 2018, the GNO Martinet hosted its third program at Tulane University Law School. More than 70 students, representing all four Louisiana law schools, participated. More than 200 students have participated since the program's inception.

The GNO Martinet wants to expand this program in the future and is seeking opportunities to partner with other diversity bar associations, including the Louisiana Asian Pacific American Bar Association and the Hispanic Lawyers Association of Louisiana.



JUNE 3-8, 2018

Sandestin Golf and Beach Resort  
Destin, Florida



Chief Justice Bernette Joshua Johnson, Patrick S. Ottinger and W. Michael Street during the General Assembly. Photo by Matthew Hinton Photography.

## Ottinger Receives LBF's Boisfontaine Trial Advocacy Award

Patrick S. Ottinger of Lafayette received the 2018 Louisiana Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award during the Louisiana State Bar Association's (LSBA) Annual Meeting in Destin, Fla.

A partner in the Lafayette law firm Ottinger Hebert, L.L.C., Ottinger has been in private practice since 1973, concentrating in oil and gas (onshore and offshore), renewable energy projects, and corporate, banking and commercial matters.

He received a BS degree in 1971 from the University of Southwestern Louisiana and his JD degree in 1973 from Louisiana State University Paul M. Hebert Law Center. He also is admitted to practice in Texas.

An experienced arbitrator and mediator in oil and gas matters, he is affiliated with The Patterson Resolution Group

and is listed on the AAA Energy Panel and on the Energy Arbitrators List of the Institute for Energy Law. He completed formal mediation training through the Straus Institute for Dispute Resolution, Pepperdine University School of Law.

He is a Fellow of the Louisiana Bar Foundation and served on its board of directors from 2003-07. He served as president of the LSBA in 1998-99. He is a member of several Louisiana State Law Institute committees, chairs the Advisory Council of the Institute on Mineral Law, is an adjunct professor at LSU Paul M. Hebert Law Center and was recognized as a 2014 Distinguished Achievement Honoree by the Law Center. He has authored and/or contributed to several books and articles, including *A Course Book on Louisiana Mineral Rights* in 2011, *Louisiana Mineral Law Treatise* in 2012 and *Louisiana Mineral Leases: A Treatise* in 2016.

## Domengeaux Receives Hernandez III Memorial Award

James H. Domengeaux of Lafayette received the 2018 John A. "T-Jean" Hernandez III Memorial Award for achievements in Francophone leadership. The award was presented during the Louisiana State Bar Association's Annual Meeting in Destin, Fla.



James H. Domengeaux

A partner in the Lafayette law firm Domengeaux Wright Roy & Edwards, L.L.C., Domengeaux currently serves as treasurer for the LSBA's Francophone Section and is a former board member of the Council for the Development of French in Louisiana. He is a former board member of the Lafayette Bar Association and served on the Board of Governors for the Louisiana Association for Justice. He authored an article, "Native Born Acadians and the Equality Ideal," published in the *Louisiana Law Review* (1986).

He is a 1981 graduate of the University of Louisiana at Lafayette, where he co-founded the UL Law Club, and earned his law degree in 1986 from Louisiana State University Paul M. Hebert Law Center. He is admitted to practice in Louisiana and Texas.

# Joint Summer School & Annual Meeting Wrapup



Loren D. Shanklin, left, was presented with the YLD Outstanding Young Lawyer Award by 2017-18 YLD Chair Bradley J. Tate during the General Assembly. Photo by Matthew Hinton Photography.



Kristi Wagley Richard, left, was presented with the Bat P. Sullivan, Jr. Chair's Award by 2017-18 YLD Chair Bradley J. Tate during the General Assembly. Photo by Matthew Hinton Photography.



Jonathan T. Jarrett, left, was presented with the YLD Pro Bono Award by 2017-18 YLD Chair Bradley J. Tate during the General Assembly. Photo by Matthew Hinton Photography.

## 2018 YLD Awards Presented

Four Louisiana State Bar Association (LSBA) members and the Baton Rouge Bar Association's Young Lawyers Section received 2018 LSBA Young Lawyers Division (YLD) awards, presented by 2017-18 YLD Chair Bradley J. Tate during a June 7 ceremony at the LSBA's Annual Meeting.

### Outstanding Young Lawyer Award: Loren D. Shanklin, Baton Rouge

**Loren D. Shanklin** is a partner in the Baton Rouge law firm Smith Shanklin Sosa, L.L.C. She received a BS degree in secondary education (concentration in history) in 2005 from Louisiana State University and her JD/GDCL degree in 2010 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2010. She currently is serving as one of the District 5 representatives on the LSBA's YLD Council. She served as the 2017 chair of the Baton Rouge Bar Association's Young Lawyers Section and helped create new events during her term — Brews with Barristers, the 19th JDC Civil Law Day CLE and the Southern University Law Center panel discussion. She is a member of the Louisiana Association for Justice. In law school, she received the LSU Law Center's 2006 Exceptional Volunteer Award and was recognized in 2010 for volunteering more

than 100 hours of pro bono services. She is a volunteer and Legal Compliance Committee member for the K.I.D.S. (Karing is Doing Something) Program.

### Bat P. Sullivan, Jr. Chair's Award: Kristi Wagley Richard, Baton Rouge

**Kristi Wagley Richard** is 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. She received a BS degree in management, *summa cum laude*, in 2004 from LSU, a master's degree in business administration in 2009 from LSU, and her JD/BCL degree, *magna cum laude*, in 2009 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2009. She currently is serving as one of the District 5 representatives on the LSBA's YLD Council. She was a member of the Leadership LSBA 2012-13 Class and served as co-chair of the Wills for Heroes Program in 2014-16. She served as chair of the Young Lawyers Professional Development Seminar in 2017 and as chair of the Awards Committee this year. She was a member of the 2015 class of the Baton Rouge Area Leadership Program. She received the Dermot S. McGlinchey Commitment to Pro Bono Award in 2016.

### Hon. Michaele Pitard Wynne Professionalism Award: Stuart R. Breaux, Lafayette

**Stuart R. Breaux**, an associate in the Lafayette law firm Becker & Hebert, L.L.C., and the assistant city-parish attorney for the Lafayette Consolidated Government, focuses his practice on local, municipal and governmental law, planning, zoning and land use law, commercial real estate and business transactions. He received a BA degree in political science in 2008 from the University of Louisiana-Lafayette and his JD degree in 2011 from Tulane University Law School (certificate in civil law, Order of Barristers, Moot Court Board). He is the editor of the Lafayette Bar Association's (LBA) publication, *The Promulgator*. He is 2017-18 treasurer of the LBA's Young Lawyers Section. He has been involved with the Lafayette Volunteer Lawyers since 2012. He is a barrister in the American Inn of Court of Acadiana. He is current co-chair of the Leadership Institute of Acadiana's Intro Lafayette Program and was a 2016 graduate of the Institute's Leadership Lafayette Class XXIX.

### Pro Bono Award: Jonathan T. Jarrett, Lafayette

**Jonathan T. Jarrett** founded The Jarrett Firm in 2014 in Lafayette. He practices in the areas of family law, estate



**JUNE 3-8, 2018**  
*Sandestin Golf and Beach Resort  
 Destin, Florida*



The Baton Rouge Bar Association received the Service to the Public and Service to the Bar Awards presented by the 2017-18 YLD Chair Bradley J. Tate. Landon T. Hester, left, accepted the awards. Photo by Matthew Hinton Photography.



2017-18 YLD Chair Bradley J. Tate addresses the General Assembly. Photo by Matthew Hinton Photography.

planning and successions, criminal defense, personal injury and real estate. He received his JD degree in 2012 from Louisiana State University Paul M. Hebert Law Center. He participated in the Louisiana Center for Law and Civic Education's Judges and Lawyers in the Classroom Program and judged the LSBA's Regional High School Mock Trial Competition. He created a mock trial program at Carencro High School and continues to serve as team coach. He is vice president of the Lafayette Bar Association's (LBA) Family Law Section, the recipient of the Lafayette Bar Foundation's Outstanding Attorney Award in 2015, 2016 and 2017, and a volunteer for the LBA's Counsel on Call Program. His pro bono service consists largely of litigating protective orders for abused women. In 2017, he spent more than 100 hours on protective order cases, receiving many of the cases through the Lafayette Volunteer Lawyers Program.

**Service to the Public Award:  
 Baton Rouge Bar Association's  
 Young Lawyers Section  
 Trunk or Treat Project**

The Baton Rouge Bar Association's

(BRBA) Young Lawyers Section (YLS) partnered with the BRBA's Volunteer Committee and the Children's Hospital Outpatient Center in Baton Rouge for the inaugural Halloween Trunk or Treat event for patients and their families in October 2017. As this event was an unbudgeted project for the BRBA YLS, the YLS and the other groups gathered donations of candy and prizes and secured the use of personal vehicles. On the day of the event, the parking lot of the Children's Hospital Outpatient Center featured 15 Halloween-themed vehicles loaded with candy, prizes and games. More than 100 community members and patients participated, going car to car for treats. The event also featured a hayride, face painting and a cake walk. The project was successful because of its ability to bring together diverse groups to serve the community. The event allowed the young lawyers to interact and mentor children in a fun way outside the typical classroom setting.

**Service to the Bar Award:  
 Baton Rouge Bar Association's  
 Young Lawyers Section  
 19th JDC Civil Law Day CLE**

The Baton Rouge Bar Association's Young Lawyers Section hosted its first 19th JDC Civil Law Day CLE at the 19th Judicial District courthouse in September 2017. At the event, 35 young lawyers from Baton Rouge and surrounding areas gathered for a half-day of learning and networking with colleagues and 19th JDC judges and received 2 hours of CLE credit. The program began with "CLE with Law Clerks: The Day-to-Day Operations in the 19th JDC." Judge Janice Clark led a tour of the courthouse and explained the history and inner workings. Judge R. Michael Caldwell, Judge Todd W. Hernandez and Chief Judge William A. Morvant presented a panel discussion, "Rule Day Do's and Don'ts." The program was successful as it provided an opportunity for young lawyers to interact with judges and their staff members in an informal setting and to learn about the practice of law in the judges' individual courtrooms.

# Joint Summer School & Annual Meeting Wrapup



The Young Lawyers Division Council was sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Installation Luncheon. Photo by Matthew Hinton Photography.

## YLD 2018-19 Officers, Council Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2018-19 officers and council members were installed June 7, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Dylan T. Thriffiley**, assistant vice president of compliance and regulatory affairs for Ochsner Health System in New Orleans, was installed as 2018-19 YLD chair by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.

Also sworn in as officers were Chair-Elect **Scott L. Sternberg**, a partner in the New Orleans law firm Sternberg, Naccari & White, L.L.C. (he will assume the chair's position in 2019-20); Secretary **Carrie L. Jones**, a partner in the Baton Rouge law firm Shows, Cali & Walsh, L.L.P.; and Immediate Past Chair **Bradley J. Tate**, tax manager for Carr, Riggs & Ingram, L.L.C., in Metairie.

Justice Johnson also installed members of the 2018-19 YLD Council.

**District 1:** James E. Courtenay, an attorney with The King Firm, L.L.C., in New Orleans; and Randy J. (RJ) Marse, Jr., an associate in the New Orleans office of the law firm Liskow & Lewis, A.P.L.C.

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

in Gretna.

**District 3:** Megan E. Réaux, an associate in the law firm Hill & Beyer, A.P.L.C., in Lafayette.

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

**District 5:** Loren D. Shanklin, a partner in the law firm Smith Shanklin Sosa, L.L.C., in Baton Rouge; and Kristi W. Richard, a member in the Baton Rouge office of the law firm McGlinchey Stafford, P.L.L.C.

**District 6:** Jessica Perez Reynolds, an associate in the Plaquemine office of the law firm Pendley, Baudin & Coffin, L.L.P.

**District 7:** Russell A. Woodard, Jr., a solo practitioner in the Law Offices of

Russell A. Woodard, Jr., L.L.C., in Ruston.

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

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

**American Bar Association Young Lawyers Division Representative:** Danielle L. Borel, an associate in the Baton Rouge office of the law firm Breazeale, Sachse & Wilson, L.L.P.

**Young Lawyer Member/American Bar Association House of Delegates:** Graham H. Ryan, an associate in the New Orleans office of the law firm Jones Walker LLP.



Young Lawyers Division officers Scott L. Sternberg, Bradley J. Tate and Dylan T. Thriffiley sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Installation Luncheon. Photo by Matthew Hinton Photography.



**JUNE 3-8, 2018**

*Sandestin Golf and Beach Resort  
Destin, Florida*



**LSBA Annual Meeting**

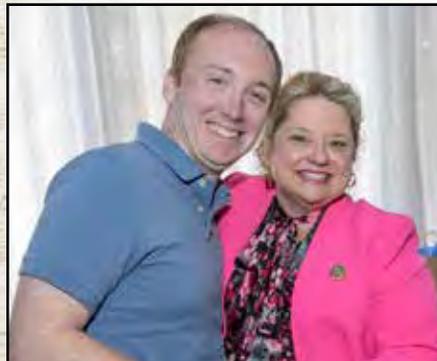
*All photos by  
Matthew Hinton  
Photography.*



Judge Roland L. Belsome, LCLCE president, addresses the General Assembly.



S. Guy deLaup, Richard K. Leefe and Dona Kay Renegar, all former LSBA presidents, attend the Annual Meeting Opening Reception.



Bradley J. Tate and Dona Kay Renegar during the Board of Governors luncheon.



YLD Chair Dylan T. Thriffley and Hon. Guy Holdridge immediately before the YLD meeting.



Robert A. Kutcher attends the LCLCE Reception and Installation before the Beach Bash.



Patrick S. Ottinger, Judy Perry Martinez and Julia Heintz during the LASC Reception and LSBA Installation.



Chief Justice Bernette Joshua Johnson addresses the General Assembly during Annual Meeting.

# Joint Summer School & Annual Meeting Wrapup



Barry H. Grodsky shares a light moment with his daughter, Caroline Grodsky, during the Installation luncheon.



Associate Justice John L. Weimer III and Hon. William J. Knight chat during the Louisiana Supreme Court reception.



Dona Kay Renegar addresses the General Assembly during the Annual Meeting.



Bradley J. Tate and Dylan T. Thriffiley during the General Assembly.



Julia Heintz, Barry H. Grodsky and Judy Perry Martinez, all law school friends, during the Back to the Bay Reception.



From left, Richard K. Leefe, Barry H. Grodsky, Dona Kay Renegar, Robert A. Kutcher, Joseph L. (Larry) Shea, Jr. and Darrel J. Papillion at the LCLCE Reception immediately preceding the Beach Bash event during Annual Meeting.



Dylan T. Thriffiley addresses the General Assembly during Annual Meeting.

# 2019 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 2018/January 2019 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

- ▶ Reach 22,000+ practicing attorneys
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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 attorneys, public interest professionals and law students during the Pro Bono Publico and Children's Law Awards Ceremony on May 22 at the Louisiana Supreme Court Building in New Orleans. (*Access full profiles and more photos of award recipients online at: [www.lsba.org/ProBono/ProBonoAwards.aspx](http://www.lsba.org/ProBono/ProBonoAwards.aspx).)*

### 2018 David A. Hamilton Lifetime Achievement Award

Catharine Ohlsson Gracia, assistant general counsel in the Legal Department of Entergy Services, Inc., received the Lifetime Achievement Award, recognizing an attorney who demonstrates a commitment to the provision of legal services to the poor and has made significant contributions to enhance the pro bono movement in Louisiana. Gracia serves on the Legal Department's committee managing employee involvement in pro bono legal service. She serves as a liaison to local pro bono organizations, assists employees in identifying volunteer opportunities, coordinates training and facilitates service projects. She is a frequent volunteer with the Orleans Parish Civil District Court's Self-Help Resource Center.

### 2018 Career Public Interest Award

R. Paul Tuttle, director of the Low-Income Taxpayer Clinic at Southeast Louisiana Legal Services (SLLS), received the Career Public Interest Award, recognizing attorneys and non-attorneys devoting at least 10 years to public interest legal work. Tuttle is a 1996 *cum*



Catharine Ohlsson Gracia, third from left, received the 2018 David A. Hamilton Lifetime Achievement Award. From left, Louisiana Supreme Court Justice James T. Genovese, Justice Scott J. Crichton, Gracia, Justice Marcus R. Clark, Justice John L. Weimer and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. *Photo by Matthew Hinton Photography.*

*laude* graduate of Tulane University Law School and began working with SLLS the same year. After Hurricanes Katrina and Rita in 2005, he helped to recruit, train and supervise pro bono attorneys in a project assisting low-income homeowners to clear title to their properties and become eligible for federal rebuilding funds.

### 2018 Children's Law Award

The Louisiana Parole Project and Cherrilynne W. Thomas received the Children's Law Award recognizing attorneys or Louisiana-based organizations providing outstanding services in children's law.

**The Louisiana Parole Project (LPP)** is a nonprofit organization responding to the needs of individuals sentenced to life without parole for crimes committed



Cherrilynne W. Thomas, center, was one of two recipients of the 2018 Children's Law Award. From left, Louisiana Supreme Court Justice John L. Weimer, Thomas and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. *Photo by Matthew Hinton Photography.*

when they were children. These “juvenile lifers” were made eligible for parole consideration following the *Montgomery v. Louisiana* decision and Act 277 of the 2017 Louisiana Legislature. LPP provides legal representation before the Committee on Parole and step-down services including intensive re-entry training, transitional housing, employment, medical coverage, driver’s education/licensing, and family reunification. LPP provides continued re-entry coaching. LPP staff members are all formerly incarcerated individuals.

**Cherrilynne W. Thomas**, an assistant district attorney for Orleans Parish Juvenile Court, has handled criminal and Child in Need of Care cases for the past 10 years. She was a staff attorney for the State of Louisiana, Department of Social Services, Bureau of General Counsel for more than six years representing foster care workers. In 2016, she received her certification from the National Counsel for Children as a child welfare specialist. As co-chair of the LSBA’s Children’s Law Committee from 2010-16, she participated in the development and production of two videos informing children and the community about the Child in Need of Care process.

**2018 LA.FreeLegalAnswers Award**

Peter S. Thriffley, the principal of Peter S. Thriffley, A.P.L.C., received the first LA.FreeLegalAnswers Award for pro bono work provided through the website. Louisiana is one of 38 participating jurisdictions in the ABA initiative to expand pro bono access nationwide. The site allows attorneys to anonymously answer the civil legal questions submitted by site users while being covered by malpractice insurance provided by the ABA. Thriffley practices in creditor representation and collections. He began giving pro bono advice on the website after downsizing his practice.

**2018 Pro Bono Publico Award**

- King & Jurgens, L.L.C. — New Orleans
- Nancy S. Bousfield — Slidell
- W. Scott Brown — New Orleans
- Hallie P. Coreil — Lafayette
- Morgan A. Druhan — Lafayette



**R. Paul Tuttle, third from left, received the 2018 Career Public Interest Award. From left, Louisiana Supreme Court Justice James T. Genovese, Justice Scott J. Crichton, Tuttle, Justice Marcus R. Clark, Justice John L. Weimer and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. Photo by Matthew Hinton Photography.**



**The Louisiana Parole Project was one of two recipients of the 2018 Children’s Law Award. From left, Keith Nordyke, Kerry Myers, Andrew Hundley, Louisiana Supreme Court Justice John L. Weimer and 2017-18 Louisiana State Bar Association President Dona Kay Renegar. Photo by Matthew Hinton Photography.**



**Peter S. Thriffley, second from left, received the first LA.FreeLegalAnswers Award. From left, Cheryl Zalenski, director of the ABA’s Center for Pro Bono; Thriffley; Louisiana Supreme Court Justice Scott J. Crichton; 2017-18 Louisiana State Bar Association President Dona Kay Renegar; and Rachael M. Mills, LSBA Access to Justice Department projects counsel. Photo by Matthew Hinton Photography.**

- Charles D. Elliot — Alexandria
- Marquest J. Meeks — New Orleans
- Eric R. Miller — Baton Rouge
- Jackey W. South — Lake Charles
- James A. Watson — Lake Charles
- David L. White — Zachary
- Sean E. Williams — Covington

**2018 Law Student Pro Bono Award**

- Ahmed Soussi — LSU
- Mary Kate Richardson — Loyola
- Fatima Mann — Southern
- Kirby Kenny — Tulane

**2018 Friend of Pro Bono Award**

- Jason A. Matt — Lafayette

**2018 Century Club Award**

The Access to Justice Committee recognized pro bono volunteers who contributed 100 or more hours of pro bono legal services during the 2017 calendar year — Kyle M. Brennan, New Orleans; Tinashe E. Chimwaza, Alexandria; James Craig Diamond, Covington; and Adreja L. Boutte Swafford, New Orleans.

# Elections: Several Leadership Positions Open in 2018-19 Election Cycle

Several Louisiana State Bar Association (LSBA) and American Bar Association leadership positions are open in the 2018-19 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. 24, 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. 22. First election ballots will be available to members on Monday, Nov. 19. Deadline for electronically casting votes is Monday, Dec. 17.

Positions to be filled in the 2018-19 elections are:

**Board of Governors** (three-year terms beginning at the adjournment of the 2019 LSBA Annual Meeting and ending at the adjournment of the 2022 LSBA Annual Meeting) — one member each from the First, Fourth and Fifth Board Districts.

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

ending at the commencement of the 2021 LSBA Annual Meeting) — one delegate from each of the Twentieth through Forty-Second Judicial Districts, plus one additional delegate for every additional district judge in each district.

**Nominating Committee** (15 members, one-year terms beginning at the adjournment of the 2019 LSBA Annual Meeting and ending at the adjournment of the 2020 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** (2019-20 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. **Secretary** (2019-20 term), nominee **shall** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

**American Bar Association House of Delegates** (*must be members of the American Bar Association*) — one delegate from the membership at large. The delegate will serve a two-year term, beginning with the adjournment of the 2019 ABA Annual Meeting and expiring at the adjournment of the 2021 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).

## Attorney Applies for Certification as Legal Specialist

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorney has applied for certification as a legal specialist. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Mary Ann Wegmann, Specialization Director, no later than Aug. 31, 2018.

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

### Consumer Bankruptcy

Rachel Thyre Anderson.....Covington

## Bankruptcy Law Certification Applications Accepted Through Sept. 30

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for business bankruptcy law and consumer bankruptcy law certification through Sept. 30, 2018.

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 admin-

istered. 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).

To receive an application, email Specialization Director Mary Ann Wegmann, Louisiana Board of Legal Specialization, at [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org).

For more information about specialization, go to the LBLS website at: [www.lsba.org/specialization](http://www.lsba.org/specialization).

# PRACTICE Management

By Ashley M. Flick

## ARBITRATION CLAUSES IN ENGAGEMENT LETTERS

Are arbitration clauses in engagement letters enforceable? Yes, but only if certain requirements are met. The Louisiana Supreme Court held in *Hodges v. Reasonover*, 12-0043 (La. 7/2/12), 103 So.3d 1069, that “arbitration clauses in attorney-client agreements may be enforceable, provided the contract does not limit the attorney’s substantive liability, is fair and reasonable to the client, and does not impose any undue procedural barrier to a client seeking relief.” The court also noted, “The attorneys’ fiduciary obligation to the client encompasses ethical duties of loyalty and candor, which in turn require attorneys to fully disclose the scope and the terms of the arbitration clause. An attorney must clearly explain the precise types of disputes the arbitration clause is meant to cover and must set forth, in plain language, those legal rights the parties will give up by agreeing to arbitration.” *Id.*

The court reasoned that since clients may not understand the arbitration process and the full implications of an arbitration

clause, the attorney must, at a minimum, disclose the following legal effects of binding arbitration, assuming they are applicable:

- ▶ Waiver of the right to a jury trial;
- ▶ Waiver of the right to an appeal;
- ▶ Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- ▶ Arbitration may involve substantial upfront costs compared to litigation;
- ▶ Explicit disclosure of the nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
- ▶ The arbitration clause does not impinge upon the client’s right to make a disciplinary complaint to the appropriate authorities;
- ▶ The client has the opportunity to speak with independent counsel before signing the contract. *Id.*

Keep in mind, if you wish to utilize the Louisiana State Bar Association’s (LSBA) Lawyer Fee Dispute Resolution Program as an avenue to resolve a fee dispute, you must make sure that your dispute is subject

to the program requirements and guidelines before the case will be heard. Since the LSBA’s Lawyer Fee Dispute program only hears cases involving fee disputes, you also may want to contain a clause for resolving all other disputes with another arbitration company in your engagement letter as well.

Access information about the LSBA’s Lawyer Fee Dispute Resolution Program online: [www.lsba.org/Public/FeeDisputeResolution.aspx](http://www.lsba.org/Public/FeeDisputeResolution.aspx).

*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).*

## SOCIAL MEDIA: LAW, POLICY & TIPS



Friday, August 31, 2018

Sheraton New Orleans Hotel • 500 Canal St., New Orleans, LA

AGENDA TOPICS: 8:30 A.M. – 4:15 P.M.

**Admissibility, Authentication and Discoverability of Social Media**

Wait... Ethics in Social Media?!? Yes.

**#You’re Fired: Social Media, Workplaces and the Law**

**Reputation Management:  
Social Media – Tips, Tricks and Pitfalls**

**Boilerplate for Web Browsing: Importance of Website  
Privacy Policies & Terms of Use**

**How to Stay Secure on Social Media:  
Privacy Settings on Facebook, LinkedIn,  
Twitter and Other Platforms**

- CLE Credit: 6 max hours, including ethics
- Written Cancellation Deadline: Aug. 24
- e-Course Materials
- No Internet Access
- See [LSBA.org](http://LSBA.org) Website for Full Details

Advance Registration . . . \$320

After Aug. 24 &  
On-Site Registration . . . \$345

\*Fee includes e-course materials, seminar attendance & coffee/refreshment breaks.

For more information or to register online, visit [www.lsba.org/cle](http://www.lsba.org/cle)

The Judges and Lawyers Assistance Program, Inc. (JLAP) promotes wellness and mindfulness tools that are effective in helping lawyers manage the day-to-day stress and pressure of practicing law. Of course, the inherent tension of any given law practice varies. For example, it's likely that domestic litigation and criminal defense attorneys encounter a higher ratio of extremely distraught clients.

While it's important to take care of yourself and manage stress, it's equally important to be deliberate in deciding who you will represent in the first place. An ounce of prevention by totally avoiding toxic clients may prevent a landslide of misery in the future.

A two-part article by Mike O'Horo on the subject is worth a glance to remember it's perfectly fine and necessary to end a client relationship when it is chronically impacting the firm's mental health.<sup>1</sup>

In part 1, O'Horo identifies common attitudes among toxic clients, including demanding inordinate amounts of your time; wanting everything for nothing; slow to pay fees; unwilling to follow your advice; ignores your requests for information; or are disrespectful to you (or your staff).

In part 2, he sets out how to fire a client — prepare the file and follow all the procedural rules; notify the client and cite the objective reasons; hear the client out if they want to discuss it; provide several references for new representation; keep it short and wrap it up; be calm no matter what the client's reaction is; and complete all the details necessary to comply with all rules that are applicable to terminating representation.

Sounds unpalatable but manageable, right? The truth is that, in some cases, you're stuck. There is no guarantee the

court will let you withdraw from a case for any number of reasons. At that point, you're saddled with a toxic client for the duration of the case and that's a category of misery that wears on the mental health of the lawyer and his/her staff.

Against that backdrop, it is clearly important to identify toxic clients up-front and avoid them whenever possible. An excellent and comprehensive article on "Toxic Client Syndrome," written by California lawyers Jerome Fishkin and Lindsay Slatter, discusses all aspects of toxic clients, including a valuable section on how to better identify them in the pre-retainer stage.<sup>2</sup>

According to the authors, these client traits during the consultation spell trouble — overbearing or dictatorial; certain the case is a "slam dunk;" grumble about your hourly rate and retainer; or their case is solely about principles, not money.

Prior to my tenure at JLAP, I learned many toxic client lessons the hard way in my solo domestic litigation practice. Over time, I developed these self-disciplined consultation guidelines to greatly reduce the toxic client load — demand a full retainer up-front (and stick to your guns); define and align all expectations on both sides of the relationship up-front including worst-case-scenario legal outcomes; set expectations on billing, returning phone calls and mutual cooperation; and make it clear that many other clients are being represented and no single client can monopolize the firm's attention or receive instant responses 24/7. I also learned that a thorough, *free* initial consultation was the best way to go because, if after the consultation I felt the potential client was not a good fit, the person was not out any money if I decided I was not the best lawyer for the particular case.

No matter your style or practice area,

the bottom line is always trust your gut. If payroll and rent are looming, it's hard to resist a potential fee. But, if after a long consultation your gut is screaming "NO!" and your bank account is demanding "yes," you might deeply regret not following your gut. Toxic clients ultimately make you wish that you had paid *them* a full retainer fee to find another lawyer.

At JLAP, we often see lawyers who are burned out or worse; they may have become toxic lawyers in response to an ongoing, unhealthy level of exposure to toxic clients. If you don't remember to always include your own mental health and welfare in the lawyer-client equation, it can be hazardous to your health.

If you are under pressure and being impacted by too many toxic clients, call JLAP for effective tools and advice on self-care, setting boundaries, and steps to take to reduce the stress and anxiety of your practice. Your call is absolutely confidential and privileged. Call (985)778-0571, email [jlap@louisiana-jlap.com](mailto:jlap@louisiana-jlap.com), or visit the website at [www.louisianajlap.com](http://www.louisianajlap.com).

## FOOTNOTES

1. See these online articles: <https://www.attorneyatwork.com/purge-toxic-clients-practice-part-1/> and <https://www.attorneyatwork.com/purge-toxic-clients-practice-part-2/>.

2. <http://cclawyer.cccba.org/2011/04/toxic-client-syndrome/>.

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).



## “Natchitoches Lights” CLE Features Discussions, Scholarship Award

The Louisiana State Bar Association (LSBA) Diversity Committee’s Specialty Bars Subcommittee presented the “Natchitoches Lights” CLE in December 2017 in Natchitoches. The event featured discussions on discipline, trust accounting, LGBT law, jury selection and biomechanics. Also, the Dreams Scholarship was presented.



“Defending Disciplinary Action” was presented at the Natchitoches CLE by, from left, Richard P. Lemmler, Jr., ethics counsel, Louisiana State Bar Association, who also presented “Lawyer Trust Accounting Basics;” Damon S. Manning, Schiff, Scheckman & White, L.L.P., Hammond; Susan R. Kalmbach, deputy disciplinary counsel, Louisiana Attorney Disciplinary Board, Baton Rouge; and William N. (Billy) King, professional programs practice assistance counsel, Louisiana State Bar Association.



Alexis Smith, second from left, received the Dreams Scholarship Award during the Natchitoches CLE. From left, Lachaka Smith, Alexis Smith, Steven Harris, Jr., Tawana Harris, Rev. Steven Harris, Sr. and Cloyd Benjamin Jr., with the Law Offices of Cloyd Benjamin Jr., L.L.C.



“Equal Protection in Jury Selection: Batson, Miller-El and Beyond” was presented at the Natchitoches CLE by Associate Justice Scott J. Crichton, Louisiana Supreme Court, District 2.



“Biomechanics and Injury Mechanisms” was presented at the Natchitoches CLE by David J. Barczyk, D.C., Barczyk Biomechanics Institute, Lafayette.



“LGBT Law: 2017 Year in Review” was presented at the Natchitoches CLE by, from left, Brandon H. Robb, Delaney, Robb & Rubin, L.L.C., Metairie; and J. Dalton Courson, Stone Pigman Walther Wittmann, L.L.C., New Orleans.

### Diversity Committee’s Specialty Bars Subcommittee

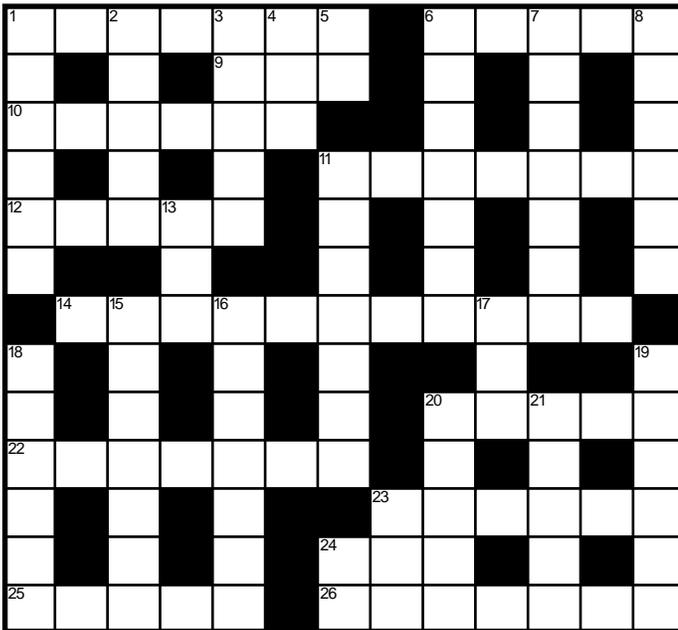


The Louisiana State Bar Association (LSBA) Diversity Committee’s Specialty Bars Subcommittee met in January with 2017-18 LSBA President Dona Kay Renegar to discuss upcoming events and how the LSBA can continue to support Specialty Bar initiatives. Attending, from left, Chancellor John K. Pierre, Southern University Law Center; April D. Davenport, attorney and vice president of external communications, Louis A. Martinet Legal Society, Inc., Greater New Orleans Chapter; Demarcus K. Gordon, Kelly Hart & Pitre, chair, LSBA Minority Involvement Section; Ezra Pettis, Jr., Delphin Law Offices, president-elect, Louis A. Martinet Legal Society, Inc., Lake Charles Chapter; Christine A. Corcos, Richard C. Cadwallader Associate Professor of Law, chair, Diversity and Professionalism Faculty Committee, LSU Paul M. Hebert Law Center; and 2017-18 LSBA President Dona Kay Renegar.

# Crossword PUZZLE

By Hal Odom, Jr.

## HAIL TO THE CHIEF (JUSTICE)



Answers on page 166.

### ACROSS

- 1 Joe B. \_\_\_\_, chief for five months in 1970 (7)
- 6 \_\_\_\_ Fournet, chief from 1949-'70 (4, 1)
- 9 Prevailed (3)
- 10 François-Xavier \_\_\_\_, chief from 1815-'36 (6)
- 11 Joe W. \_\_\_\_, chief from 1973-'78 (7)
- 12 \_\_\_\_ nick of time (2, 3)
- 14 What "post-prandial" means (5, 6)
- 20 Chocolate-flavored coffee (5)
- 22 Frank \_\_\_\_, chief from 1979-'80 (7)
- 23 Kind of dancing associated with striptease (6)
- 24 151, to Cicero (3)
- 25 John A. \_\_\_\_, chief from 1980-'90 (5)
- 26 Catherine D. \_\_\_\_, chief from 2009-'13 (7)

### DOWN

- 1 Walter B. \_\_\_\_, chief for 3 months in 1972-'73 (6)
- 2 Attribute of a successful legal argument (5)
- 3 Strong string (5)
- 4 A billion years (3)
- 5 One who may assist and MD in the ER (1, 1)
- 6 Bernette J. \_\_\_\_, chief since 2013 (7)
- 7 Phrase to introduce things that are right at hand (4, 3)
- 8 Kind of burner in chemistry lab (6)
- 11 \_\_\_\_-on-the-Teche, antebellum home in New Iberia (7)
- 13 Bowler or boater (3)
- 15 Totally bewildered (7)
- 16 Level in a hierarchy (7)
- 17 "New" prefix (3)
- 18 Rendered, as a judicial opinion (6)
- 19 \_\_\_\_ F. Calogero, Jr. chief from 1990-2008 (6)
- 20 Saying or adage (5)
- 21 Terra \_\_\_\_, a kind of fired clay (5)
- 23 Giant Manning (3)
- 24 Noted stand-up comedian Louis \_\_\_\_ (1, 1)

## Alcohol and Drug Abuse Hotline

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

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

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

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

# FOCUS ON Professionalism

By Katherine L. Hurst

ROLE OF THE JUDICIARY

There is a lot of focus on attorney professionalism. We are encouraged, rightly so, to adhere to our Code of Professionalism. But what is the role of the judiciary in encouraging or discouraging professionalism in the attorneys who practice before the courts?

The District Court Rules, specifically Rule 6.3 of the Code of Professionalism in the Courts, outlines a Code of Professionalism for both judges and attorneys and the preamble specifically addresses the interplay between the two.

### **Rule 6.3, Code of Professionalism in the Courts**

Attorneys and judges should conform to the Code of Professionalism adopted as Section 11 of Part G, General Administrative Rules, Supreme Court of Louisiana:

#### **The Code of Professionalism in the Courts Preamble**

The following standards are designed to encourage us, the judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of professionalism and civility, both of which are hallmarks of a learned profession dedicated to public service.

Provisions specifically addressing how judges are to treat attorneys are as follows:

#### **Judges' Duties to the Court**

We will be courteous, respectful, and civil to lawyers, parties, and witnesses.

We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral com-

*The way in which judges manage their dockets, interact with counsel and preside over their courtrooms sets a standard of professionalism for the attorneys who appear before them.*

**(Supreme Court of Ohio  
Commission on Professionalism)**

munications with lawyers, parties, or witnesses.

We will be considerate of time schedules of lawyers, parties, and witnesses in scheduling all hearings, meetings and conferences.

While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

We will not impugn the integrity or professionalism of any lawyer on the basis of clients whom or the causes which a lawyer represents.

We will do our best to ensure that

court personnel act civilly toward lawyers, parties, and witnesses.

We will bring to lawyers' attention uncivil conduct which we observe.

It is incumbent upon our judges and our attorneys to adhere to the Code of Professionalism in Courts. The excuse of a "bad day" on either side is not acceptable. All parts of the equation must act in a professional and respectful manner. Our profession demands it and the public deserves such demeanor by our judges and lawyers.

As attorneys, we don't have the luxury of having a bad day. Behaving badly in court would never be tolerated. As professionals, we are expected to leave any personal issues on the courthouse steps. No less should be expected of the judiciary.

What is the role of judges when attorneys are acting unprofessionally, filing frivolous pleadings and generally disregarding basic court rules? When there are no consequences for such behavior, it encourages further unprofessional behavior and the erosion of respect for our profession by the general public and between members of the bar. As we continue to encourage professionalism, I submit there needs to be more focus on the interplay between the judiciary and the bar and our mutual obligations of professionalism to one another.

*Katherine L. Hurst is a solo practitioner in Lafayette whose primary practice areas are attorney disciplinary defense and complex domestic litigation. She is a member of the Louisiana State Bar Association's (LSBA) Committee on the Profession and the LSBA's Practice Assistance and Improvement Committee. She served on the Subcommittee to Revise the Code of Professionalism that was recently adopted by the LSBA House of Delegates and approved by the Louisiana Supreme Court. She received her JD degree in 1991 from Louisiana State University Paul M. Hebert Law Center. (klh@katherinehurst.com; Ste. 555, 600 Jefferson St., Lafayette, LA 70501)*

## Results that speak for themselves.

Every favorable result is a testament to the dedication, experience, and rigor of the white-collar defense team. No matter how high profile the case or the how sensitive the issue, our clients are confident that their reputation is protected—and that their story will be told.

## Recent Wins at a Glance



### Financial Fraud

August 2017

#### **Result: Not Guilty on All Counts**

- ▶ **Case:** A Louisiana business owner accused of criminal *insider trading*



### Public Corruption

October 2017

#### **Result: All Charges Dismissed**

- ▶ **Case:** Member of the Texas House of Representatives accused of *public corruption*

EACH CASE IS UNIQUE  
INDIVIDUAL RESULTS MAY VARY



### Environmental & Industrial Catastrophes

November 2017

#### **Result: All Charges Dismissed**

- ▶ **Case:** Leading national residential housing company accused of *water pollution*

## The Deepest White-Collar Bench in Texas

**DANE BALL**  
PARTNER  
✉ [dball@skv.com](mailto:dball@skv.com)

**DAVID ISAAK**  
PARTNER  
✉ [disaak@skv.com](mailto:disaak@skv.com)

**SHAUN CLARKE**  
PRACTICE CHAIR  
PARTNER  
✉ [sclarke@skv.com](mailto:sclarke@skv.com)

**KARIMA MALONEY**  
PARTNER  
✉ [kmaloney@skv.com](mailto:kmaloney@skv.com)

**ANTHONY PHILLIPS**  
PARTNER  
✉ [aphillips@skv.com](mailto:aphillips@skv.com)

## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 4, 2018.

### Decisions

**David G. Arceneaux**, Thibodaux, (2018-OB-0696) **Reinstated to active status** by order of the Louisiana Supreme Court on May 18, 2018. JUDGMENT FINAL and EFFECTIVE on May 18, 2018.

**Erich Webb Bailey**, Tennessee, (2017-B-2065) **Transferred to disability/inactive status as imposed by the Supreme Court of Tennessee and made reciprocal in the State of**

**Louisiana** by order of the Louisiana Supreme Court on Feb. 9, 2018. JUDGMENT FINAL and EFFECTIVE on Feb. 9, 2018.

**Lionel Lon Burns**, New Orleans, (2017-B-2153) **Suspended from the practice of law for a period of one year and ordered to attend ethics school** by order of the Louisiana Supreme Court on May 1, 2018. JUDGMENT FINAL and EFFECTIVE on May 16, 2018. *Gist:* Assisted and facilitated another in the unauthorized practice of law;

and violated the Rules of Professional Conduct.

**Debra L. Cassibry**, Metairie, (2017-B-2045) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on May 1, 2018. JUDGMENT FINAL and EFFECTIVE on May 15, 2018. *Gist:* Commission of criminal acts; and engaging in conduct prejudicial to the administration of justice.

Continued next page

## STANLEY, REUTER, ROSS, THORNTON & ALFORD LLC

### Legal & Judicial Ethics



**William M. Ross**  
*wmr@stanleyreuter.com*

William "Billy" M. Ross has over 15 years of experience defending lawyers and judges in disciplinary matters, advising lawyers on their ethical duties, and providing representation in legal fee disputes and breakups of law firms. He is committed to advancing the legal profession through his work for clients, involvement with the LSBA, and participation in presentations on ethics and professional responsibility.

909 Poydras Street, Suite 2500 • New Orleans, Louisiana 70112  
(504) 523-1580 • [www.stanleyreuter.com](http://www.stanleyreuter.com)

**Discipline** continued from page 130

**Kevin M. Dantzler**, Alexandria, (2018-B-0621) **Interimly suspended** by order of the Louisiana Supreme Court on April 27, 2018.

**Patrick H. DeJean**, Marrero, (2018-B-0684) **Interimly suspended** by order of the Louisiana Supreme Court on May 11, 2018. JUDGMENT FINAL and EFFECTIVE on May 11, 2018.

**Hilliard C. Fazande III**, New Orleans, (2018-B-0683) **Interimly suspended** by order of the Louisiana Supreme Court on May 11, 2018.

**Louise A. Klaila**, New Orleans, (2018-B-0093) **Suspended for one year and one day** by order of the Louisiana Supreme Court on March 23, 2018. JUDGMENT FINAL and EFFECTIVE on April 7, 2018. *Gist*: Failing to communicate; failing to return unearned fees; failing to cooperate; and acts of commingling and conversion of client funds.

**Howard L. Marcello**, Thibodaux, (2018-OB-0475) **Transferred to dis-**

**ability/inactive status** by order of the Louisiana Supreme Court on April 6, 2018. JUDGMENT FINAL and EFFECTIVE on April 6, 2018.

**Anthony T. Marshall**, Gonzales, (2018-OB-0656) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on May 11, 2018.

**David J. Motter**, Metairie, (2016-OB-2263) **Reinstated to active status** by order of the Louisiana Supreme Court on April 21, 2018. JUDGMENT FINAL and EFFECTIVE on April 27, 2018.

**Roy Joseph Richard, Jr.**, Sunset, (2018-B-0803) **Interimly suspended** by order of the Louisiana Supreme Court on May 25, 2018. JUDGMENT FINAL and EFFECTIVE on May 25, 2018.

**Michael J. Riley, Sr.**, New Orleans, (2018-OB-0237) **Readmitted to the practice of law, subject to a two-year period of unsupervised probation governed by the conditions** set forth

in the order by the Louisiana Supreme Court on May 25, 2018. JUDGMENT FINAL and EFFECTIVE on May 25, 2018. *Gist*: Riley has proven by clear and convincing evidence that he satisfies the criteria for readmission to the practice of law in Louisiana.

**Ronald J. Sholes**, New Orleans, (2018-B-0361) **Public reprimand** by order of the Louisiana Supreme Court on April 2, 2018. JUDGMENT FINAL and EFFECTIVE on April 2, 2018. *Gist*: Failure to make reasonable efforts to ensure that non-lawyer personnel conduct is compatible with the professional obligations of the lawyer.

**Stuart H. Smith**, New Orleans, (2018-B-0506) **Suspended for a period of three months, suspension deferred in its entirety, subject to a one-year period of unsupervised probation governed by the conditions** set forth in the order of the Louisiana Supreme Court on May 11, 2018. JUDGMENT FINAL and EFFECTIVE on May 11, 2018.

Continued next page



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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, 2018.

Respondent	Disposition	Date Filed	Docket No.
Elaine Appleberry	[Reciprocal] Suspension.	4/13/18	18-1753
James Casey Fos	[Reciprocal] Suspension.	5/4/18	18-2898
Louella Givens	[Reciprocal] Interim suspension.	4/13/18	17-13722
James A. Gray II	[Reciprocal] Suspension.	4/13/18	18-1944
James Elwood Moore, Jr.	[Reciprocal] Interim suspension.	4/13/18	18-1752
Gregory J. Noto	[Reciprocal] Suspension (fully deferred).	5/4/18	18-2896
Joseph G. Pastorek II	[Reciprocal] Disbarment.	5/4/18	18-2899
Eric O. Person	[Reciprocal] Suspension (fully deferred).	5/4/18	18-2897

**Discipline** continued from page 131

**Gregory Swafford**, New Orleans, (2017-B-2154) **Suspended for six months, with three months fully deferred; following the active portion of suspension, respondent shall be placed on probation for a period of one year**

by order of the Louisiana Supreme Court on March 23, 2018. JUDGMENT FINAL and EFFECTIVE on April 7, 2018. *Gist*: Respondent failed to complete the succession work for a client; failed to respond to his clients several requests for information; and failed to timely inform his client he would not complete the representation.

**Jose W. Vega**, Houston, TX, (2018-B-0262) **Permanent disbarment** ordered by the Louisiana Supreme Court on May 11, 2018. JUDGMENT FINAL and EFFECTIVE on May 25, 2018. *Gist*: Lack of diligence; failure to communicate with a client; failure to cooperate with the ODC in its investigation; engaging in conduct prejudicial to the administration of justice; and violating the Rules of Professional Conduct.

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

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

Violation of Rule 8.4(d) — Engage in conduct that is prejudicial to the administration of justice.

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### CLIENT ASSISTANCE FUND PAYMENTS - FEBRUARY & MAY 2018

Attorney	Amount Paid	Gist
Daniel G. Abel	\$4,000.00	#1872 — Unearned fee for an adoption while ineligible to practice law
Anthony T. Marshall	\$1,000.00	#1832 — Unearned fee in a bankruptcy matter
Anthony T. Marshall	\$2,400.00	#1835 — Unearned fee in a criminal matter
Anthony T. Marshall	\$810.00	#1838 — Unearned fee in a bankruptcy matter
Harold D. Register, Jr.	\$10,000.00	#1868 — Unearned fee in a criminal matter
Harold D. Register, Jr.	\$6,000.00	#1600 — Conversion in a personal injury matter
Michael B. Rennix	\$328.00	#1814 — Unearned fee in a bankruptcy matter
Michael B. Rennix	\$914.73	#1829 — Unearned fee in a bankruptcy matter
Murray N. Salinas	\$4,000.00	#1874 — Unearned fee in a criminal matter
Christopher L. Sices	\$2,500.00	#1833 — Unearned fee in a domestic matter
Christopher L. Sices	\$3,500.00	#1798 — Unearned fee in a succession matter
Christopher L. Sices	\$2,754.37	#1826 — Conversion of client funds
Richard C. Teissier	\$6,000.00	#1849 — Unearned fee in an immigration matter

## Q&A

### LOUISIANA CLIENT ASSISTANCE FUND

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

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

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

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

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

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

#### How do I file a claim?

Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary

Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.

#### Who decides whether I qualify for reimbursement?

The Client Assistance Fund Committee decides whether you qualify for reimbursement from the Fund, and, if so, whether part or all of your application will be paid. The committee is not obligated to pay any claim. Disbursements from the Fund are at the sole discretion of the committee. The committee is made up of volunteer lawyers who investigate all claims.



### “Non-Statutory Insider” of a Debtor

*U.S. Bank Nat’l Ass’n v. Vill. at Lakeridge, L.L.C.*, 138 S.Ct. 960 (2018).

The Supreme Court considered the standard of review to apply when analyzing whether a party is a “non-statutory insider” of a debtor. The debtor, Lakeridge, wholly owned by MBP Equity

Partners, was attempting to reorganize under Chapter 11 of the Bankruptcy Code. Lakeridge owed substantial debts to MBP and U.S. Bank. Lakeridge proposed a plan that classified MBP and U.S. Bank into separate classes and impaired their claims. U.S. Bank objected, and Lakeridge sought to use a “cramdown” plan, which requires, among other things, a non-insider impaired class to support the proposed plan. MBP was an insider; therefore, that class could not provide the required consent to a cramdown plan.

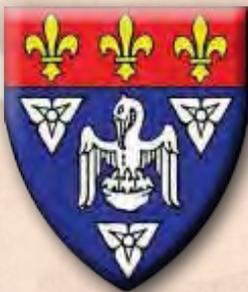
Subsequently, Kathleen Bartlett, an MBP board member and Lakeridge officer, sold the claim of MBP to her boyfriend, Robert Rabkin. As the new holder of the MBP claim, Rabkin consented to

Lakeridge’s proposed plan.

U.S. Bank challenged the transaction, arguing that, as Bartlett’s boyfriend, Rabkin was also an insider of the debtor, and that the transaction was not done at arm’s length. The bankruptcy court rejected this argument, finding that Rabkin purchased the claim after adequate due diligence, and noting that, although dating, he and Bartlett lived and managed their finances separately.

The 9th Circuit agreed that Rabkin was not an insider and that the purchase was the result of an arm’s length negotiation. The 9th Circuit held that the bankruptcy court’s decision was entitled to the more deferential “clear-error” standard of review, rather than de novo, and, finding no

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error, it affirmed.

On appeal, the Supreme Court affirmed, noting that legal inquiries are subject to de novo review, but factual inquiries, such as those regarding the nature of Bartlett and Rabkin's relationship, are subject to review only for clear error. The Court found, however, that the question before it was a "mixed question" of law and fact, *i.e.*, whether the factual findings regarding Bartlett and Rabkin's relationship satisfies the legal inquiry of whether Rabkin was a non-statutory insider. Here, the Court found the inquiry almost wholly depended on the factual details surrounding the relationship, with little to no legal inquiry involved in analyzing whether the relationship prohibited an arm's length transaction. Thus, the bankruptcy court was entitled to deference of the clear-error standard of review.

## Supreme Court Resolves Circuit Split

*Lamar, Archer & Cofrin, L.L.P. v. Appling*, 138 S.Ct. 1752 (2018).

Section 523(a)(2) of the Bankruptcy Code excepts from discharge debts incurred as the result of the debtor's false, written "statements . . . respecting the debtor's financial condition." The Supreme Court resolved a circuit split regarding whether a debtor's written state-

ments as to a "single asset" may constitute such a statement respecting his financial condition under the Bankruptcy Code.

The 5th and 10th Circuits held that "statements respecting financial condition" are those that present a picture of the debtor's overall financial health. Therefore, a written statement regarding a single asset would not fall under the purview of Section 523(a)(2). The 11th and 4th Circuits, however, held that a written statement regarding a single asset may constitute a statement respecting the debtor's financial condition. Therefore, a debt arising from such a statement that proves to be false may be nondischargeable.

The debtor in *Lamar* retained the firm of Lamar, Archer & Cofrin, L.L.P., for assistance with various legal matters. The debtor failed to pay his legal fees but assured the firm he would be receiving a large tax refund that would cover his bills. Relying on this statement, the firm continued its representation. The debtor eventually received his refund but used it to pay his own business expenses rather than paying the firm. Meanwhile, the debtor continued to tell the firm he was still waiting to receive his refund in the mail. The firm later sued and won judgment against the debtor, who subsequently filed Chapter 7 bankruptcy. The firm sought to have the debt declared nondischargeable under Section 523(a)(2).

The bankruptcy court held that the debt

was nondischargeable, reasoning that the debtor knowingly made two false representations to the firm regarding his financial condition. The 11th Circuit reversed, holding that, while statements regarding a single asset, such as the debtor's tax refund, may constitute statements respecting the debtor's financial condition, such statements must be in writing in order to be nondischargeable. The debtor's statements here were not in writing.

The Supreme Court affirmed, rejecting the 5th and 10th Circuits, and held that statements regarding a single asset may constitute statements respecting the debtor's financial condition under Section 523(a)(2). The Court reasoned that statements regarding a single asset impact the picture of the debtor's overall financial condition. The Court advised concerned creditors that to easily protect themselves from dishonest debtors, they can insist that such statements be made in writing.

—Cherie D. Nobles  
and  
Tiffany D. Snead

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## Amendments to Data Breach Notification Laws

**Database Security Breach Notification Law**, La. R.S. 51:3073 and 51:3074 (May 20, 2018).

On May 20, Louisiana Gov. John Bel Edwards signed into law a bill amending La. R.S. 51:3073 and La. R.S. 51:3074, the Database Security Breach Notification Law (2018 La. Sess. Law Serv. Act 382 (S.B. 361)). The law became effective on Aug. 1, 2018. It is a reaction to the numerous media reports surrounding data breaches in companies around the United States and similar measures that other states have taken. All 50 states have database breach notification laws. States are now scrutinizing these laws and amending them to ensure that they are up-to-date with currently accepted practices concerning data collection and that they hold companies that collect personal data to a higher standard in preventing these breaches.

The first notable change in the law is the expansion of the definition of personal information under database security breach notification law. Previously, personal information was limited to the first and last name of an individual in combination with his or her Social Security number, driver's license number or account number, and credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account. There is an exception if the data elements making up the personal information are encrypted or redacted. The bill clarifies that the personal information must be of Louisiana residents and expands the data elements to include state identification card numbers, passport numbers or biometric data containing biological characteristics of individuals used to authenticate their identity.

The bill also expands on the timeline in which companies that experience a breach must notify the public. Previously this

timeline was "the most expedient time possible and without unreasonable delay" following the discovery of the breach. This language has been consistent across many state breach notification laws. The bill adds to this language by adding a concrete deadline of 60 days. It also requires companies to inform the Louisiana Attorney General in writing of their reasons to delay notification under this hard deadline due to law enforcement requests, or additional time needed due to the complexity of the breach investigation and the reasonable restoration of the breached database. The notice to the attorney general must be given before the original 60-day deadline. Upon receipt, the attorney general shall allow for a reasonable extension of time to provide notification.

An exception under the current law provides that notification is not required when, after a reasonable investigation, the breach poses no likelihood of harm to the Louisiana residents. This exception now requires companies to retain this determination in writing with supporting documentation for five years. Upon request, companies must send this documentation to the attorney general.

Perhaps the biggest and most notable change to the law is the explicit requirement for companies that collect and use personal information in their computer databases to implement and maintain "reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure." Companies also must take reasonable steps to destroy personal information that is no longer to be retained. Previously, these requirements were implicit under Louisiana's unfair trade practices law (La. R.S. 51:1405). In the past, many states have used their version of unfair trade practices law to litigate against companies that have been breached and lost control of personal information. Currently, the Federal Trade Commission (FTC) enforces reasonable and adequate cybersecurity practices under its authority in Section 5 of the FTC Act to bring actions over unfair or deceptive acts or practices. States are now making this requirement explicit, and Louisiana goes so far as to make it express that violations under this law constitute an unfair act or practice.

An area of concern is that the require-

ment of "reasonable security procedures and practices" is vague. Some state laws are more prescriptive in this area. Although limited in scope to banks, insurance companies and other financial-services institutions, New York law requires a number of practices for effective cybersecurity programs. These practices include a written cybersecurity policy, an incident-response plan, employee cybersecurity training, encryption, multi-factor authentication, etc. (23 NYCRR § 500.00 *et seq.*). The FTC also has substantive materials on its website regarding this topic. States could look to the FTC's positions in this area to inform their interpretation of the law. Further changes and refinements down the road are likely as Louisiana's new law and others like it are tested around the country.

—**Geoffrey C. Elkins**  
Elkins, P.L.C.

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## A Tale of Two Bayous: Bayou Bridge and Bayou Canard

*Joseph v. Secretary, La. Dep't of Nat. Res.*, No. 38,163, 23rd Jud'l Dist. Ct., St. James Parish.

In a case centered around the state Coastal Use Permit (permit) granted by the Louisiana Department of Natural Resources (LDNR) for the Bayou Bridge Pipeline, the 23rd JDC recently found that that LDNR was arbitrary and capricious in granting the permit for the pipeline project. This case was initiated by a petition for judicial review under La. R.S. 49:214.35, which argued that LDNR failed to apply its own Coastal Use Guidelines in granting the permit and that LDNR violated its

duty as the public trustee when it failed to consider the impacts that pipeline project would have on the people of St. James.

In reviewing an application for a permit, LDNR must apply its Coastal Use Guidelines found at 43 La. Admin. Code Pt. I. 701-719. Not all guidelines are necessarily implicated by every permit application, but the agency is responsible for determining which guidelines are applicable. Two particular guidelines, § 711(A) and § 719(K) — (K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations) — were flagged by the plaintiffs as improperly ignored by LDNR. It is undisputed that LDNR did not apply those two guidelines, but the question raised by the plaintiffs was whether the facts of the permit application necessitated consideration under those guidelines.

In its permit decision, LDNR reasoned that § 711(A), which relates to surface alterations, did not apply because the more specific § 719(K), which covers oil, gas and mineral activity, applied. However, when reviewing the permit application

under § 719(K), LDNR then determined that it too had no applicability. According to the court, the determination that § 719 did not apply upheld the justification for not applying § 711. The court determined instead that both guidelines should have been applied and that the permit application should be reviewed for its impacts as a surface alteration to the coastal zone (§ 711) and as an activity that is directly involved in the exploration, production and refining of oil, gas and materials (§ 719). In light of LDNR's decision not to apply these two guidelines, the court determined, pursuant to La. R.S. 49:964(G)(5) of the Louisiana Administrative Procedures Act, that LDNR was arbitrary and capricious and remanded the case to the agency for further consideration. The court also ordered LDNR to "require Bayou Bridge Pipeline, LLC, to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster . . . prior to the issues of [a new] permit."

LDNR appealed the district court's ruling on May 22, 2018, to the Louisiana 5th Circuit Court of Appeal.

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*Bayou Canard, Inc. v. State, through Coastal Protection & Restoration Auth.*, 17-1067 (La. App. 1 Cir. 5/14/18), \_\_\_ So.3d \_\_\_\_.

In *Bayou Canard*, the Louisiana 1st Circuit overturned a decision by the 19th Judicial District Court, which had ruled in favor of an oyster company's challenge to the Coastal Protection and Restoration Authority's (CPRA) interpretation of the Oyster Lease Acquisition and Compensation Program (OLACP), La. R.S. 56:432.1, which allows CPRA to acquire state-issued oyster leases in the footprint of coastal projects prior to undertaking the construction.

Unlike previous cases testing the limits of the state's shield from suits by oyster leaseholders who challenge coastal restoration activities, (*see, Avenal v. State*, 03-3521 (La. 10/19/04), 886 So. 2d 1085), this suit did not stem from physical harm to the leased property. Rather, Bayou Canard was challenging CPRA's methodology in determining the value of the lease acreage acquired through the program. Bayou Canard challenged CPRA's application of the so-called "harvest efficiency ratio," which resulted in a significant reduction in the value of the acquisitions. Bayou Canard argued (successfully at the 19th JDC) that CPRA's uniform application of the ratio amounted to a formal "rule" and CPRA was required to follow proper rulemaking procedures under the Louisiana Administrative Procedure Act (LAPA), La. R.S. 49:951, *et seq.*, which it did not. Bayou Canard successfully sought summary judgment to declare the state's informal rulemaking invalid.

On appeal, the 1st Circuit declined to overturn the district court's decision that CPRA adopted a rule without proper LAPA promulgation. However, the court quickly moved to the state's third assignment of error, which asserted that under the terms of the oyster lease agreements, Bayou Canard never had a right to bring the suit in the first place. On this point, the court handed CPRA a sweeping victory. In short, the court ruled that the language of the oyster leases in question (which are materially similar to all state-issued oyster leases), which contain two indemnity clauses related to coastal restoration, bars "all claims against CPRA by an oyster lessee resulting

from a coastal restoration project, which includes the claims brought by Bayou Canard herein."

The 1st Circuit found that "[t]his lawsuit results from a coastal restoration project." And "[t]he language of the lease eliminates any right *whatsoever* of Bayou Canard to make any claims against CPRA as a result of the Shell Island West Restoration Project." The court relied on *Avenal v. State*, which related to physical damage caused by the Caernarvon Freshwater Diversion, thereby significantly extending the interpretation of the immunities and limitations of liability contained in state-issued oyster leases in favor of coastal restoration and protection.

Bayou Canard sought writs to the Louisiana Supreme Court on June 13, 2018.

—**S. Beaux Jones**  
Treasurer, LSBA Environmental  
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## Divorce

*McCalmont v. McCalmont*, 17-0644 (La. App. 3 Cir. 12/28/17), 236 So.3d 640.

Ms. McCalmont initially filed a petition for an article 102 divorce. Mr. McCalmont did not file any responsive pleadings. She then filed an amending and supplemental petition for divorce, seeking a divorce on the grounds of adultery, but not pleading any alternative grounds for divorce in that second petition. Mr. McCalmont moved to terminate the community regime retroactive to the date of the filing of the initial petition on the basis of the parties living separate and apart the required time. The court made the termination effective as of the date of the second petition. The court of appeal affirmed, finding that after the amendment of

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La. Civ.C. art. 2375(C) in 2010, the retroactivity was not to the date of the filing of the “original” petition and, in this case, related back to the only pending petition, her second petition on the grounds of adultery. The court found that the amendment had the effect of canceling the original petition and starting the matter anew on a different ground for the divorce. His argument that the amended petition related back to the original petition was rejected, since the second petition did not arise out of the conduct, transaction or occurrence set forth in the initial petition, but set forth a different ground for the divorce.

## Community Property

*Knobles v. Knobles*, 17-0233 (La. App. 5 Cir. 12/27/17), 236 So.3d 726.

During the parties’ divorce proceedings, Mr. Knobles retired from his job with Chevron. A consent judgment of partition was later entered, in which his retirement plan was partitioned pursuant to a Qualified Domestic Relations Order. Years

later, he was rehired by Chevron and began to participate in a retirement plan for highly compensated employees. The court found that Ms. Knobles was entitled to a portion of those benefits. His arguments that his entitlement under the second plan did not come into effect until after the termination of the community, and that his ability to participate was based on his post-termination efforts, were rejected, as the benefits were based, in part, on his prior credited service during the community. The court stated: “Although [Mr. Knobles] did not qualify for the Restoration Plan until his compensation from Chevron exceeded the applicable annual compensation limit, well after the community ceased to exist, the benefits [he] will receive under the Restoration Plan are calculated in part on his credited service years accumulated during the existence of the community with [Ms. Knobles].” Consequently, Ms. Knobles was entitled to share in the portion of the plan deriving from these community service years.

*Webb v. Webb*, 16-0567 (La. App. 5 Cir. 1/24/18), 238 So.3d 566, writ granted, 18-0320 (La. 4/27/18), \_\_\_ So.3d \_\_\_, 2018 WL 2049919.

Mr. Webb, an attorney, admitted to forging his wife’s name to obtain a \$250,000 bank loan, secured by the parties’ home. The trial court found that the debt was his separate obligation, finding that admissions he made in disciplinary proceedings were a judicial confession that the obligation was his separate obligation.

The court of appeal found that because the statements were not made in the present proceeding, they were not judicial confessions, and, nevertheless, they could not change the classification of the debt, which was community, as it was incurred during the community and the funds were used for a community purpose.

The court noted that the inquiry when reviewing obligations arising from intentional wrongs is not on the wrongful activity but on whether it benefitted the community. Here, because the funds were used to pay other community obligations, the debt

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was a community obligation. As a result, the trial court's denial of his reimbursement claim for making post-termination payments on the obligation was reversed, and he was granted that reimbursement claim. The trial court did not err in denying his rental reimbursement claim for Ms. Webb's use of the former matrimonial domicile, and was within its discretion in finding that the parties' disparate financial circumstances and Ms. Webb's health issues and medical expenses related thereto supported the denial.

## Custody

*England v. England*, 17-0493 (La. App. 4 Cir. 3/2/18), 238 So.3d 1064, writ denied, 18-0515 (La. 5/11/18), 241 So.3d 1008.

The trial court did not err in changing custody to award Mr. England sole custody and in suspending Ms. England's visitation for 90 days and ordering her to seek mental health counseling. However, it did err in ordering her to see a therapist named by the court, rather than a therapist of her own choosing. The court found that she had a history of making unsupported claims that Mr. England was abusing the parties' children. The court found that there was "ample evidence" that she was "unwilling or unable to encourage a close and continuing relationship between the children and Mr. England," and that she was "fabricating abuse allegations and encouraging the children to verify them." The court of appeal found that although the trial court could order her to obtain therapy, it could not designate the therapist that she had to see. Judge Lobrano concurred in the award of sole custody and visitation but wrote a well-reasoned partial dissent on the issue of mental health counseling. He asserted that *Bergeron* did not apply under La. C.C.P. art. 3945, under which this proceeding was brought, and the article provided no authority for a judge to require a litigant to seek mental health counseling.

## Final Spousal Support

*Thomas v. Thomas*, 17-0760 (La. App. 4 Cir. 2/21/18), 238 So.3d 515.

The trial court did not err in finding that Ms. Thomas was a victim of domestic abuse. Further, Mr. Thomas' argument

that she abandoned the family home was rejected, as, impliedly, she had good cause for leaving. The court's ruling that she was free from fault was affirmed, as was its award of final spousal support to her. As she was a victim of domestic abuse, the award could exceed one-third of Mr. Thomas' net income pursuant to La. Civ.C. art. 112.

## Maternity

*Chaisson v. State, Dep't of Health & Hosps.*, 17-0642 (La. App. 4 Cir. 3/7/18), 239 So.3d 1074, writ denied, 18-0540 (La. 5/25/18), \_\_\_ So.3d \_\_\_, 2018 WL 2441223.

Unbeknownst to Ms. Chaisson, her same-sex spouse, to whom she was married at the time Ms. Chaisson gave birth to a child, submitted their marriage certificate to the Louisiana Department of Vital Records and had the child's birth certificate amended to reflect the spouse's name as a parent. Ms. Chaisson filed a writ of mandamus to have the Department restore the birth certificate to its original form, which was denied. Because the spouse was entitled to the presumption that she was the parent of the child, the Department of Vital Records acted in its capacity to amend the birth certificate, just as it would have for an opposite-sex couple.

—David M. Prados

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## Public Body Not Entitled to Withhold Final Payment

*Woodrow Wilson Constr. L.L.C. v. Orleans Parish Sch. Bd.*, 17-0936 (La. App. 4 Cir. 4/18/18), \_\_\_ So.3d \_\_\_.

Orleans Parish School Board (OPSB) awarded a public works contract to Woodrow Wilson Construction, L.L.C. (WWC) for construction of the elementary school at North Kenilworth Park. In accordance with the terms of the contract, the project was to be completed in 548 days. The contract provided for \$5,000 per day in liquidated damages for every day the project was late. The project began in February 2013, and the certificate of substantial completion was issued on Feb. 3, 2016. The project was late by 517 days. After receipt of the certificate of substantial completion, WWC issued a final payment application seeking retainage in accordance with the terms of the contract. OPSB refused to issue final payment, and as a result, WWC filed for a writ of mandamus in accordance with La. R.S. 38:2291 in an attempt to compel final payment.

After filing the writ of mandamus, OPSB filed an answer and reconventional demand against WWC. OPSB argued that it was entitled to withhold final payment under the contract due to its right to collect and assess

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liquidated damages, which OPSB claimed exceeded the final amount of retainage. The trial court denied WWC's writ of mandamus, finding that La. R.S. 38:2291 was not applicable because a question remained regarding whether final payment was due under the terms of the contract.

On appeal, the Louisiana 4th Circuit sought to determine "whether OPSB may withhold final payment due under La. R.S. 38:2291 on the basis that the project was completed behind schedule, despite the fact that liability for the delays has yet to be adjudicated." In reversing the ruling of the trial court and granting the writ of mandamus in favor of WWC, the court of appeal first looked to the statutory language of La. R.S. 38:2291.

In examining the language of the statute, the court of appeal reasoned that La. R.S. 38:2291 was applicable. In doing so, it looked to La. R.S. 38:2291(A), which provides that "all public entities shall promptly pay all obligations under public contracts when the obligations become due and payable under the contract." Thereafter, the court decided that it must determine when final payment is due under the contract.

The court of appeal then examined the contract, which provided that normal retainage was due:

upon the following having occurred: 1) Substantial Completion is achieved; 2) the Architect and the Owner approve and accept the Certificate of Substantial Completion, including an attached punchlist; 3) the Contractor submits an application for payment for retainage; 4) the Contractor submits the lien waivers to accompany the application for payment; (5) the 45-day lien period in La. R.S. 38:2242 has expired; and 6) the Contractor provides the Owner and the Architect with a clear lien and privilege certificate.

Thereafter, the court of appeal determined that WWC had satisfied all of the requisites of the contract in order to receive final payment and that final payment had in fact become due and payable at that time.

In response, OPSB argued that payment was still not due because it had cause to withhold payment "as security" for its delay claim. In response, the court of appeal explained that OPSB's position failed to comport "with the legislative intent, the reasoning prompting the statute's enactment, or the express language of La. R.S. 38:2291." The court of appeal went on to reason that, although the contract permit-

ted OPSB to withhold liquidated damages, withholding was permitted under the contract only when a payment became due. As a result, the court of appeal determined that OPSB could not withhold under the contract without also acknowledging that the final retainage payment was due. Therefore, because the final retainage payment was due, La. R.S. 38:2291 was implicated, and as a result, OPSB was statutorily required to tender the final retainage payment. Furthermore, OPSB was not permitted under La. R.S. 38:2291 to contractually waive the duty to pay.

The court of appeal also examined whether OPSB's defense of a separate claim for damages was a basis to withhold payment. In determining that the claim for damages was not a valid basis, the court of appeal examined the contract and determined that the "provisions of the contract demonstrate that OPSB's 'right' to liquidated damages is in fact not a right at all." It went on to explain that, under the contract, OPSB simply had a "claim" for damages, a claim that had not been "judicially determined." As a result, the court of appeal held that "a public entity's separate claims against a contractor are secondary to the contractor's right to prompt payment under La. R.S. 38:2291."

Therefore, the court of appeal reversed

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the ruling of the trial court and granted the writ of mandamus in favor of WWC on the basis that “the OPSB had a ministerial duty to issue final payment and had no discretion to withhold based on a separate claim against WWC.”

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## Tort

**Fornah v. Schlumberger Tech. Corp.**,  
No. 17-30910, \_\_\_ F.3d \_\_\_ (5 Cir.  
June 5, 2018), 2018 WL 2715147.

Chevron Corp. hired Schlumberger to assist, as an independent contractor, in a plugging and abandonment project on its fixed platform in the Bay Marchand Field on the Outer Continental Shelf in the Gulf of Mexico, about five miles off the coast of Louisiana. Chevron also hired Tetra Applied Technologies as an independent contractor to provide crew for plugging and abandoning services. Alliance Offshore, which owned and operated the M/V MISS LYNNE, a liftboat adjacent to the platform, and a crane to lift and move the equipment, was also hired as an independent contractor.

Fornah was employed by Tetra as a rigger, responsible for handling the hoses for the coiled tubing job. Once Alliance began operating its crane on the adjacent liftboat to raise Schlumberger’s coiled tubing injector head into position, Fornah’s job was to guide the tubing hoses during the lift. While he was guiding the tubing, acting alone, he jerked an attaché hose to untangle it from scaffolding and felt a pain in his back and shoulder. Two days later, he reported the injury, but not to Schlumberger.

Almost a year later, Fornah filed suit in federal district court against Tetra, Alliance, the M/V MISS LYNNE,

Chevron and Schlumberger, seeking to recover maintenance and cure under general maritime law. He also made claims of Jones Act negligence against Tetra; unseaworthiness of the vessel; and negligence claims under general maritime law against Alliance, Chevron and Schlumberger, alleging, *inter alia*, that Schlumberger was negligent in conducting unsafe coiled tubing operations and failing to provide a sufficient coiled tubing crew. Schlumberger moved for summary judgment on grounds that Schlumberger and Tetra were co-independent contractors of Chevron, that Schlumberger exercised no supervisory control over Tetra personnel, and that Schlumberger owed no duty to Fornah besides that of ordinary care and did not breach that duty. Before ruling on the motion, Fornah settled with all parties except Schlumberger. The district court granted Schlumberger’s motion for summary judgment, finding that Fornah’s claims were governed by Louisiana law. A duty-risk analysis concluded that, because Schlumberger and Tetra were co-independent contractors, Schlumberger did not have a duty to protect Tetra’s employee, Fornah. Thus, as Schlumberger owed no duty, it could not be in breach. The 5th Circuit Court of Appeals agreed.

Fornah further contended that the district court erred in applying Louisiana law to his claim and urged instead the application of general maritime law. Three requirements must be met for state law to apply as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1333(a)(1): 1) the dispute must arise on a situs covered by OCSLA; 2) federal law must not apply of

its own force; and 3) the state law must not be inconsistent with federal law.

Fornah was injured on a fixed platform in federal waters on the Outer Continental Shelf and thus the first requirement was met as the situs was covered by the OCSLA. There is no dispute that Louisiana negligence law is consistent with federal maritime negligence law, so the third requirement was met. The only dispute was whether federal maritime law applied of its own force.

For maritime law to apply of its own force, there must be both a maritime location and a connection to general maritime activity. Fornah contended, unpersuasively, that the negligence of the Alliance crane operator gave rise to federal admiralty jurisdiction and the application of general maritime law, noting the traditional maritime activity of transporting and unloading vessel cargo.

The Supreme Court and the 5th Circuit previously concluded that work performed on oil production platforms affixed to the Outer Continental Shelf is not maritime in nature because it is primarily related to oil-and-gas exploration and production. “Thus, we agree with the district court that maritime law does not apply of its own force . . . and, consequently, that Louisiana law applies to Fornah’s negligence claims.”

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## United States

*Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 138 S.Ct. 1865 (2018).

The U.S. Supreme Court reversed a 2nd Circuit ruling in an antitrust case involving vitamin C price fixing. That ruling vacated a \$147 million judgment against two Chinese companies. Central to the Supreme Court’s decision was the question of what deference federal courts should give to a foreign sovereign’s interpretation of its own domestic law under Federal Rule of Civil Procedure 44.1.

Domestic purchasers of vitamin C filed a class action lawsuit against several Chinese companies that manufacture and export the vitamin. The plaintiffs alleged that the Chinese companies conspired to fix the price and quantity of vitamin C exported to the United States, in violation of the Sherman Act. *Id.* at 1870. The initial lawsuit and others were consolidated into a Multidistrict Judicial Panel for pretrial proceedings. Two of the Chinese merchants moved to dismiss the litigation on the grounds that they were immune from Sherman Act liability because the Chinese government requires them to engage in price and quantity restraints. *Id.* The district court denied the Chinese

sellers’ motion to dismiss, despite acknowledging that the interpretations of Chinese law contained in the Chinese Ministry of Commerce *amicus brief* were “entitled to substantial deference.” *Id.* at 1871. The district court did not regard the Chinese submission as conclusive on the issue of Chinese law, noting the contrary evidence submitted by the U.S. purchasers. *Id.*

The Chinese sellers moved for summary judgment after discovery regarding the Chinese law issue. Expert testimony was given regarding the Chinese Ministry’s deference to interpret its own laws and regulations. *Id.* The U.S. purchasers countered with official Chinese statements at the World Trade Organization wherein China admitted that it “gave up export administration of . . . vitamin C.” *Id.* The district court denied summary judgment, finding that Chinese law did not require the sellers to fix the price or quantity of vitamin C. *Id.*

The 2nd Circuit reversed the district court. The central issue on appeal was the “amount of deference” the court owed to the Chinese Ministry’s characterization of Chinese law. *Id.* at 1872. The 2nd Circuit determined that a “highly deferential” standard applies when a foreign government directly participates in U.S. legal proceedings and provides an official statement regarding the construction of its own laws. *Id.* Applying the highly deferential standard to the facts, the 2nd Circuit concluded that the Ministry’s interpretation of Chinese law was reasonable, and therefore the Chinese sellers were immune from Sherman Act liability

because Chinese law required the price and quantity measures. *Id.*

The U.S. Supreme Court granted certiorari to resolve a circuit conflict over the appropriate deferential standard to apply under Federal Rule of Civil Procedure 44.1. Justice Ruth Bader Ginsburg delivered the opinion of a unanimous Court on the issue. Summarizing the complex issues involving interpretation of foreign law, the Court noted:

Given the world’s many and diverse legal systems, and the range of circumstances in which a foreign government’s views may be presented, no single formula or rule will fit all cases in which a foreign government describes its own law. Relevant considerations include the statement’s clarity, thoroughness, and support; its context and purpose; the transparency of the foreign legal system; the role and authority of the entity or official offering the statement; and the statement’s consistency with the foreign government’s past positions.

*Id.* at 1873-74.

Judging the Chinese statement in this light, the Court found that the court of appeals erred in determining that the Ministry’s submission was binding because it was facially reasonable. *Id.* at 1874. The Court admonished the court of appeals for failing to address other relevant evidence, including the official statements of the Chinese government at the World Trade Organization. *Id.* The Court concluded that, while a federal court interpreting or determining foreign law under Rule 44.1 should accord respectful consideration to the foreign government’s position, U.S. courts should not accord conclusive effect to the foreign government’s statements. *Id.* at 1870.

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## Mineral Leases

*Rainbow Gun Club, Inc. v. Denbury Res., Inc.*, 17-0997 (La. App. 3 Cir. 5/23/18), \_\_\_ So.3d \_\_\_, 2018 WL 2326189.

On May 23, 2018, the Louisiana 3rd Circuit Court of Appeal affirmed a district court ruling that imposed liability on SKH Energy Partnership, L.P., a former mineral lessee, for a one-fourth share of more than \$10 million in damages. In this case, more than 170 mineral lessors and royalty owners sued SKH, as well as Denbury Resources, Inc., Denbury Onshore, L.L.C., and Specter Exploration, Inc., for damages arising from Denbury's imprudent operations in the drilling of a well. SKH had assigned its interest in the mineral leases and, in 2003, Denbury, as operator, spud a well that produced dry gas until it was plugged and abandoned in 2008. Plaintiffs alleged that, during the drilling of the well, pipe became stuck in the original hole. As a result, plaintiffs claimed that "extraneous water invasion" ruined the gas reservoir. Plaintiffs asserted damages based on negligence and breach of obligations pursuant to various mineral leases.

Denbury and Specter settled prior to trial, and several other defendants were dismissed on summary judgment, leaving SKH as the only defendant to proceed to trial. After trial, the district court awarded more than \$2.5 million in damages against SKH, holding it responsible pursuant to the mineral leases even though it had assigned its interests. SKH appealed.

Section 31:129 of the Louisiana Revised Statutes does not relieve an assignor of its obligations under a mineral lease unless the lessor expressly discharges him in writing. The appellate court reasoned that because there was no evidence of any such discharge, the trial court properly held SKH solidarily liable for the breach of the obligation to act as a prudent

operator. The appellate court also found that SKH should be held liable for a one-fourth share of damages where the other defendants settled because the Louisiana Civil Code provides that the payment of a debt by one solidary obligor benefits the other obligors *only in the amount of the paying obligor's portion*. So, because only three of the four obligors in this case had settled, the 3rd Circuit held SKH to be responsible for a one-fourth share of the obligation.

## Oil and Gas Lease

*In re ATP Oil & Gas Corp.*, 888 F.3d 122 (5 Cir. 2018).

ATP Oil & Gas Corp. held an oil and gas lease granted by the federal government on the Outer Continental Shelf. Several service companies performed work for ATP. Pursuant to the Louisiana Oil Well Lien Act (LOWLA), which applied as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), the service companies obtained a privilege on ATP's operating interest. Later, ATP sold "term overriding royalty interests" to OHA Investment Corp. In 2012, ATP filed a petition for bankruptcy. OHA and the service companies then disputed whether the service companies could enforce their privileges against OHA's overriding royalties. The U.S. 5th Circuit Court of Appeals quoted the bankruptcy judge's interpretation of the "safe harbor" provision found at La. R.S. 9:4869(A)(1)(a), which stated that the LOWLA privilege does not apply to "hydrocarbons that are . . . transferred in a bona fide onerous transaction by the lessee or other person . . . if the transferee pays for them before he is notified of the privilege by the claimant." *Id.* at 125. The parties did not dispute that the overriding royalty interests were transferred to OHA in an onerous transaction. Further, the service companies did not notify OHA of the privileges before it purchased the overriding royalties. Thus, the only question was whether the purchase of an overriding royalty is a purchase of hydrocarbons. The 5th Circuit concluded that it is. Thus, the service companies' privileges did not attach to OHA's overriding royalties.



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## Servitudes

*Vintage Assets, Inc. v. Tenn. Gas Pipeline Co.*, \_\_\_ F.Supp.3d \_\_\_ (E.D. La. May 5, 2018), 2018 WL 2078606.

Plaintiffs are the owners of land in Plaquemines Parish. The defendants were companies that had been granted servitudes to construct and operate pipelines and dredge canals. Some of the servitude agreements placed limits on the width of the canals authorized by those agreements. The plaintiffs filed suit, alleging that the defendants' failure to maintain the canals had caused the loss of land to erosion.

In pretrial rulings, the court dismissed the plaintiffs' claims for trespass and negligence, leaving the claims for breach of contract. The court determined that the defendants had breached their obligations and that some (though not all) of the land loss that had occurred would have been avoided if the defendants had performed their obligations. The defendants asserted that their liability should be limited to paying the fair market value for the lost land, while the plaintiffs asserted that they were entitled to complete restoration.

The court found that, for certain portions of the land loss, the cost of restoration would be greatly disproportionate to the benefits of restoration. For that land loss, the court declined to require restoration. Instead, the court concluded that the defendants would be required to pay the fair market value of that land. The court also concluded that the plaintiffs were entitled to an injunction requiring the defendants to restore 9.6 acres whose restoration was practical.

An appeal to the U.S. 5th Circuit Court of Appeals was filed June 4, 2018.

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## Prescription

*In re Med. Review Panel of Benoit*, No. 17-0802 (La. App. 4 Cir. 4/11/18), \_\_\_ So.3d \_\_\_, 2018 WL 1750521.

Ms. Benoit filed a panel request against four healthcare providers, alleging that she sustained a malpractice-caused injury in 2013 when her broken foot was too tightly bound. The panel process proceeded in the usual fashion, including an extension of the life of the panel until Feb. 25, 2017.

On Feb. 9, 2017, Ms. Benoit amended her panel complaint by adding two additional respondents to the pending panel request, claiming that these newly-added defendants were jointly and solidarily liable for the injuries to her foot.

The new defendants filed an exception of prescription, showing that the amended complaint was on its face prescribed because the three-year prescriptive period set forth in La. R.S. 9:5628(A) had expired. Ms. Benoit countered that the three-year period was prescriptive, not preemptive, and that her amendment was timely, pursuant to La. R.S. 40:1231.8(A) (2)(a), because the new defendants were jointly and severally liable with the original defendants.

The trial court sustained the exception of prescription, commenting: "I think the law is clear. You've got to file [a request for a MRP] at the absolute latest, in three years."

On appeal, Ms. Benoit proposed the same arguments as she had to the trial judge: Panel proceedings were ongoing, and until completed, prescription is suspended against all joint and solidary obligors.

The defendants responded that La. R.S. 9:5628(A) imposes a "strict deadline" of three years to bring a medical malpractice claim and no statutory or case law allows suspension or interruption of prescription beyond three years from the date of the malpractice.

The appellate court first observed that *LeBreton v. Rabito*, 714 So.2d 1226, 1230 (La. 7/8/98), "conclusively established" that the MMA applies to the exclusion of general Louisiana Civil Code articles concerning sus-

pension and interruption of prescription in medical malpractice claims and that the timely filing of a panel request suspends, but does not interrupt, liberative prescription until 90 days following notification of the panel opinion.

The court then noted that the Louisiana Supreme Court was faced with an issue similar to that of Ms. Benoit's in *Borel v. Young*, 07-0419 (La. 7/8/98), 989 So.2d 42 (La. 11/27/07), where the plaintiffs filed a lawsuit within 90 days after the conclusion of the panel proceedings against a hospital but not against a physician who had been named in the panel proceeding. Then, over 90 days after notification of the panel opinion, the physician was added to the lawsuit, following which the Supreme Court sustained the physician's exception of prescription because more than 90 days (plus the remainder of the one-year prescriptive period that was unused) had elapsed. The *Benoit* court distinguished *Borel* because in *Benoit* the panel was pending when the new defendants were added. Prescription was suspended for a minimum of 90 days after the panel proceedings concluded, and thus the trial court erred in granting the exception of prescription.

## Continuing Treatment Exception

*McCauley v. Stubbs*, 17-0933 (La. App. 3 Cir. 4/25/18), \_\_\_ So.3d \_\_\_, 2018 WL 1940524.

Mr. McCauley's treatment with Dr. Stubbs, including two surgeries, began in 2010 and continued until January 2015. In August 2016, McCauley named Stubbs in a panel request. Stubbs filed an exception of prescription. McCauley argued in opposition that neither the one-year nor three-year malpractice prescriptive periods began to run until January 2015, when the doctor-patient relationship was terminated, that he had one year from the date he discovered the malpractice (April 29, 2016) within which to timely file, and that prescription was suspended for one year from that April 29, 2016, date of discovery.

The trial court sustained the exception of prescription, finding that the one-year "date of discovery" doctrine applied only when the claim is brought within three years of the alleged malpractice.

One question on appeal was whether the third category of the *contra non valentum* doctrine served, in this case, to suspend pre-

scription. The appellate court discussed its earlier interpretations of this third category, insofar as it applied to interrupt prescription only “where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action.”

Stubbs argued that Louisiana jurisprudence allows for the continuing treatment doctrine to suspend prescription “only when there is proof of fraud, concealment, misrepresentation or ill practice on the part of the defendant physician.” The appellate court relied on its earlier observations that, while the three-year period is prescriptive, it nevertheless affixes an overall three-year time limit on the discovery rule that “cannot be suspended or interrupted” unless the defendant does something to conceal the wrongful conduct, thus preventing the plaintiff from acting. The court noted that the Supreme Court “has often failed to declare” whether a plaintiff may invoke the third category of *contra non valentum* in a medical malpractice case, but “it has strongly implied that if the defendant’s conduct arises to the level of fraudulent concealment, misrepresentations, or ill practices, the three-year prescriptive period can be suspended.” Thus, the trial court did not err in granting the exception of prescription.

—**Robert J. David**

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



## Cleaning of Oil Field Drilling Tube Found to Be a Taxable Repair

*Duncan Oil, Inc. v. Calcasieu Parish Sch. Bd.*, 17-0488 (La. App. 3 Cir. 2/28/18), 239 So.3d 367.

Duncan Oil, Inc. specializes in oil and gas exploration and development. It owned three active wells in Calcasieu

Parish during the relevant time period. The Calcasieu Parish School Board (CPSB) assessed Duncan with sales and/or use tax, interest, penalties and audit costs covering the December 2010 through December 2013 tax period. Duncan filed a petition with the Louisiana Board of Tax Appeals for a redetermination of the assessment, arguing that CPSB had improperly classified non-taxable cleaning services as taxable repair services; improperly classified non-taxable charges as taxable gross proceeds in conjunction with a lease or rental; and improperly classified other non-taxable services and charges as taxable services. The Board denied in part and granted in part Duncan’s petition for redetermination. Duncan appealed.

On appeal, Duncan asserted the Board erred in finding non-taxable cleaning services as taxable repairs under La. R.S. 47:301(14)(g). Specifically, Duncan asserted that the Board erred in finding that its invoices concerning the removal of paraffin deposits from the tubing used to extract the hydrocarbons from their source to its wells were taxable repairs. Duncan asserted that the paraffin removal should be classified as a non-taxable cleaning service rather than a taxable repair. Duncan relied on *Intracoastal Pipe Service, Co. Inc. v. Assumption Parish Sales & Use Tax Dept.*, 558 So.2d 1296 (La. App. 1 Cir. 1990), where the court held that cleaning oil field pipe or tubing was not a taxable service.

CPSB argued that the present facts differed from *Intracoastal Pipe* in that the removal of the paraffin from the pipe was a taxable repair as hydrocarbons cannot flow through the pipe without the paraffin removal, and the Board and court both agreed. CPSB also made the distinction that the cleaning in *Intracoastal Pipe* was aesthetically helpful but was not functionally required. CPSB argued that, without the paraffin removal, the pipe would be unusable for the purpose for which it was intended. The court upheld the Board’s ruling that the paraffin removal was a repair as contemplated by La. R.S. 47:301(14)(g) and was, therefore, a taxable service.

Duncan also asserted the Board erred in finding non-taxable services in conjunction with rentals as taxable services under La. R.S. 47:302(B). CPSB countered that the entire amount of the invoices are gross

proceeds of the rentals and that the services in connection with the rentals cannot be separated from the rentals. The court dismissed Duncan’s argument, finding that the argument was general in nature and that no particular invoices were singled out for discussion. The court held it was not shown that the lessee had the option to decline the services at issue and that the services were severable from the lease.

—**Antonio Charles Ferachi**

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

## INDEX TO ADVERTISERS

Admiralty Symposium .....	82
D. Wesley Attaway .....	165
Barrios, Kingsdorf & Casteix, L.L.P. ....	155
Bourgeois Bennett .....	140
Broussard & David .....	OBC
Kathleen Christmas .....	166
Christovich & Kearney, L.L.P. ....	132
Clean Jacket App .....	159
Complex Litigation Symposium .....	133
Expert Communications .....	166
Robert G. Foley .....	165
Gilsbar, Inc. ....	103, IBC
LawPay .....	81
Legier & Company, apac .....	IFC
Louisiana Association for Justice .....	149
MAPS, Inc. ....	144
National Academy of Distinguished Neutrals .....	143
The Patterson Resolution Group .....	138
Perry Dampf Dispute Solutions .....	153
Provosty, Sadler & deLaunay, A.P.C. ....	141
RAL Forensics .....	145
Roy A. Raspanti .....	139
Schafer Group, Ltd. ....	137
Schiff, Scheckman & White, L.L.P. ....	131
Smyser Kaplan & Veselka, L.L.P. ....	129
Stanley, Reuter, Ross, Thornton & Alford, L.L.C. ....	130
St. Thomas More Catholic Lawyers Association .....	135
Taggart Morton, L.L.P. ....	166
Upstate Mediation Group .....	136
The Write Consultants .....	166

## Department Provides Operating Rules for Exceptions to Louisiana's Add-Back Statute

In April 2018, the Department promulgated LAC 61 § I.1115(B)(5), which provides "Operating Rules" governing the exceptions to Louisiana's corporate add-back statute, La. R.S. 47: 287.82. Generally, the add-back statute requires that otherwise deductible interest, intangible expenses and costs, and management fees paid to a related entity be "added back" to a corporation's gross income. Adding back the expense essentially denies the deduction for that expense to the taxpayer. The add-back statute is subject to four exceptions, as well as a fifth regulatory exception. Taxpayers and their advisors should be aware of these rules now because of requirements of contemporaneous documentation in order to qualify for exceptions in some instances.

The two "subject-to-tax" exceptions apply if the item of income corresponding to the expense was subject to tax in Louisiana, another state or certain foreign

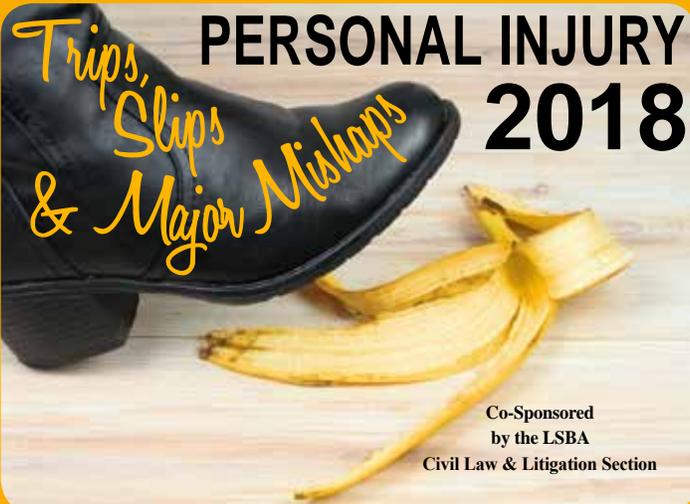
nations. The regulation states that these exceptions are allowed only to the extent the related member includes the corresponding item of income in post-allocation income or apportioned income reported to the taxing jurisdiction(s). If the income is offset or eliminated via combined reporting, it does not qualify. The "non-tax business purpose" exception applies if the transaction giving rise to the expense between the taxpayer and the related member did not have as a principal purpose the avoidance of Louisiana tax.

The regulation specifies that the Department may request "contemporaneous" documentation to support this exception. Documentation is contemporaneous if it is in existence and compiled before the filing date (including extensions) for the return containing the transaction(s). The "passed through" exception applies if the expense was "passed through" to an unrelated third party in an arms-length transaction via a corresponding expense. The regulation limits this exception for management fees when the related member pays fees to unrelated third parties in excess of the fees it receives from related members.

The regulation provides a fifth exception if the taxpayer establishes that, based on

the entirety of the particular facts and circumstances, the add-back would increase Louisiana income-tax liability to an amount that bears no reasonable relation to the taxpayer's Louisiana presence. The regulation states that if the interest or intangible-expense rate charged the taxpayer by the related member exceeds the rate charged the related member by third-party payees, the excess expense will not qualify for the "unreasonable" exception. If multiple arrangements exist between the taxpayer and the related member, or the related member and the third-party, a weighted-average rate formula is used to determine non-qualifying excess. The regulation also provides a "debt-over-asset test" solely for interest expense. If the taxpayer's debt-over-asset percentage exceeds the consolidated unrelated third-party debt over asset percentage of its federal consolidated group, the interest expense associated with the excess debt must be added back.

—**Michael Bardwell**  
Clerk, La. Board of Tax Appeals  
627 North Fourth St.  
Baton Rouge, LA 70802



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## CHAIR'S MESSAGE

### Attorney Volunteers Essential to Success of YLD Disaster Legal Services Program

By Dylan T. Thriffiley

This time of year always causes me to reflect on my time here in Louisiana. I moved from Tennessee to Baton Rouge right smack in the middle of August 2005. As if the August heat in south Louisiana wasn't enough to get me acclimated to my new home, a short two weeks later, Hurricane Katrina made landfall and life around here has never been the same.

Returning to law school in the days and weeks after Katrina opened my eyes to a sense of community and culture that I had never before witnessed. What I didn't know at the time is that the scope of services and resources available in times of disaster extend far beyond housing and MREs.

The American Bar Association Young Lawyers Division (ABA YLD) partners with FEMA to provide disaster victims free, quality, timely and efficient legal help through the ABA YLD Disaster



Dylan T. Thriffiley

Legal Services Program (DLS). When there is a presidentially declared disaster, FEMA and the ABA YLD work with the state and local bar associations and civil legal aid groups to provide free legal assistance

to low-income disaster survivors via a toll-free hotline. The legal assistance hotline is able to be immediately activated and runs for as long as is needed based on call volume and frequency. For the Louisiana State Bar Association (LSBA) Young Lawyers Division, this program is overseen by our ABA YLD representative, Danielle L. Borel, who serves as the liaison between the ABA and LSBA young lawyers. The hotline is administered through the Louisiana Civil Justice Center.

The DLS is not specific to hurricane response. When the Baton Rouge region experienced devastating flooding in 2016, the DLS hotline was activated and provided legal services to impacted residents for seven months (August 2016-February 2017).

While this program is organized by the ABA and LSBA young lawyers, attorney volunteers are essential to its success. Any Louisiana-licensed attorney can volunteer to work the hotline, answer disaster-related questions online through [LA.freelegalanswers.org](http://LA.freelegalanswers.org) or volunteer with local pro bono programs to handle cases. Disaster issues might include bankruptcy, contractor problems, landlord/tenant issues, wills and insurance. If you are interested in learning more about DLS or how to volunteer, email Dani Borel at [danielle.borel@bswllp.com](mailto:danielle.borel@bswllp.com) or Rachael M. Mills at [rachael.mills@lsba.org](mailto:rachael.mills@lsba.org).

As my law school classmates and I prepare for our 10-year reunion in October and reminisce about our unusual first semester in the fall of 2005, I hope we don't have a need to activate DLS during this hurricane season. But if we do, I am honored to be part of an organization that is capable and ready to respond.



## YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division news online

Go to: [www.lsba.org/YLD](http://www.lsba.org/YLD)

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.

## YOUNG LAWYERS SPOTLIGHT

### Paul H. Scott Baton Rouge

The Louisiana State Bar Association's (LSBA) Young Lawyers Division Council is spotlighting Baton Rouge attorney Paul H. (Woody) Scott.

Born in Honduras, Scott moved to New Orleans when he was 2 years old. He attended Louisiana State University and LSU Paul M. Hebert Law Center, graduating in 2008. Since his law school graduation, he has been practicing immigration and criminal defense. He formed his own firm, The Scott Law Firm, in 2010 which now has four attorneys and 16 support staff.

He enjoys not only the practice of law but also the business of law. He was drawn to immigration law because of his roots of being born in a foreign country and watching family members navigate the immigration system. A large part of his practice is dedicated to representing immigrants charged with crimes in the criminal court system who are trying to avoid negative consequences to their immigration status.

Scott is active with the American Immigration Lawyers Association and is treasurer of the LSBA's Immigration Law Section.

He currently lives in Baton Rouge with his wife, Jennifer, two children and two dogs. When he is not practicing law, he is usually training for the next triathlon, marathon or race, mainly because he believes that the practice of law is not punishing enough (LOL).

Follow him on Instagram or Twitter at Woody12345 or on Facebook at Paul "Woody" Scott.



Paul H. Scott

## Jesuit High School Wins 2018 State High School Mock Trial Competition

The mock trial team from Jesuit High School in New Orleans was the winner of the 2018 Richard N. Ware IV State High School Mock Trial Competition. The competition was March 10 at the 24th Judicial District Court in Gretna.

The members of the Jesuit team are Nathan Alvarez, Gabe Dupuy, Ethan Erhardt, Christian Lacoste, Nick Leonik and Manuel Molina. Molina also was recognized as Best Attorney, and Leonik was recognized as Best Witness. The Jesuit team went on to compete in the 2018 National High School Mock Trial Championship in Reno, Nev.

Second place honors went to the mock trial team from Haynes Academy for Advanced Studies (Metairie) — Adija

Bhattacharjee, Omer Israeli, Kiera Lesky, Carter Nugent, Luke Vedros and Jacob Zanca.

The State High School Mock Trial Competition is the culmination of four regional championships. The project is coordinated annually by the Louisiana State Bar Association's Young Lawyers Division. The competition is named in memory of the Hon. Richard N. Ware IV, who enthusiastically volunteered for nearly a decade as the presiding judge of the final round of the Louisiana High School Mock Trial Competition.

This year's state case, *State of Louisiana v. Hendrix Rhodes*, was written by the members of the University of Louisiana-Monroe Mock Trial Team.



The Southeast Louisiana Legal Services' Northshore Pro Bono Project's Wills for Heroes event was conducted May 4 at the St. Tammany Parish Sheriff's Office. A total of 39 first responders had wills, living wills and powers of attorney drafted, signed and notarized, thanks to several lawyer volunteers. Among the attorneys volunteering their services were Joseph B. Harvin, Dorian L. Tuminello, Frances M. Strayham, Kim Vanderbrook, Adam P. Johnson, James E. Moorman III, Janet L. MacDonell, Roy K. Burns, Andrea E. Potter, Patricia R. Bonneau, Elena M. Perez, Gary Higgins, Cynthia M. Bordonaro, Catharine O. Gracia and Kasi Brannan.



Scott L. Sternberg, right, received the Louisiana Press Association's (LPA) President's Award for his work with the association. Presenting the award was Garland Forman, LPA past president. Sternberg is currently serving as chair-elect of the Louisiana State Bar Association's Young Lawyers Division.

## SEND YOUR NEWS!

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

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

## 74 Law Day Programs Presented Statewide

The Louisiana Center for Law and Civic Education (LCLCE) this year organized 74 Law Day presentations throughout the state, reaching more than 3,900 students. Attorneys and judges volunteered their time to present in-class programs in all six Louisiana congressional districts and at all grade levels.

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

Several judges participated in the Law Day programs this year, including Judge David W. Arceneaux, Judge Aisha S. Clark, Judge John E. Conery, Judge June Berry Darensburg, Judge Katherine C. Dorroh, Judge Lee V. Faulkner, Jr., Judge Benjamin Jones, Judge Lawrence L. Lagarde, Jr., Judge Terri F. Love, Judge Lewis H. Pitman, Jr., Judge J. Wilson Rambo, Judge D. Kent Savoie, Judge Curtis Sigur and Judge Marie B. (M’elise) Trahan.

Several attorneys participated in the programs, including Rebecca K. Bayless, Teri L. Black, Alison C. Bondurant, Caroline F. Bordelon, Elizabeth Borne, Jeanette E. DeWitt-Kyle, Mary L. Dumestre, Lauren E. Godshall, A. Spencer Gulden, Michael A. Harowski, William (Ken) Hawkins,

Peter M. Mansfield, Judy P. Martinez, Matt D. McConnell, Jackie M. McCreary, Elizabeth B. McDermott, Ebonee R. Norris, Mark A. Myers, Gary M. Parker, DeVonna M. Ponthieu, James C. Rather, Jr., Celeste H. Shields, Roger A. Stetter and Micah C. Zeno.

Schools participating in the Law Day activities included Bastrop High School, Boyet Junior High School, C.E. Byrd High School, Cohen College Prep, Comeaux High School, Coteau Bayou Blue Elementary School, Huntington School of Excellence, Immaculate Conception Cathedral School, Jesus Good Shepherd School, Joseph J. Davies Elementary School, Lycee Francais de la Nouvelle Orleans, Martha Vinyard Elementary School, New Iberia Senior High School, Northside Christian School, Notre Dame, Nunez Community College, Quest School, St. James Parish 4-H Achievement Day, New Roads STEM Academy, Tchefuncte Middle School, Walker High School, William J. Fischer Elementary School, Woodlawn Leadership Academy and Young Audiences Charter School.

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



Attorney Jeanette E. DeWitt-Kyle presented a Law Day program at Immaculate Conception Cathedral School in Lake Charles.



Attorney Debra K. Henkels, center, discussed “Sorting Out the Courts” at a Slidell Lions Club meeting, part of the new Adult Civics Education (ACE) program. From left, Ginny Payne, Slidell Lions Club vice president; Henkels; and Slidell Lions Club Lion Tamer Johnny C. Crow.

## Slidell Lions Club Hosts Adult Civics Education Program

The Slidell Lions Club recently hosted an Adult Civics Education (ACE) presentation at its weekly meeting. ACE, a new program sponsored by the Louisiana District Judges Association, the Louisiana State Bar Association and the Louisiana Center for Law and Civic Education, includes multiple educational presentations designed for civic and community groups/forums. Attorney Debra K. Henkels presented a program on “Sorting Out the Courts,” followed by a question-and-answer session.

Community and civic groups interested in an ACE presentation are encouraged to contact the Louisiana Center for Law and Civic Education, (504)566-1600. More information about the program can be found online at: [www.lalce.org](http://www.lalce.org).

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By David Rigamer, Louisiana Supreme Court

JUDGES... APPOINTMENTS... RETIREMENTS

## New Judges

### Dale N. Atkins

was elected judge, 4th Circuit Court of Appeal. She earned her BA degree in 1980 from the University of Notre Dame and her JD degree in 1983 from Southern Methodist University. After law school, she served as an assistant district attorney for Orleans Parish. In 1989, she was elected clerk of court for Orleans Parish Civil District Court, becoming Louisiana's first African-American woman clerk of a district court. She served in that capacity until her election to the 4th Circuit. In 1995, she received the Louis A. Martinet Presidential Award. Judge Atkins is the parent of one child.



Dale N. Atkins

### Fred T. Crifasi

was elected judge, Division H, 19th Judicial District Court. He earned his BS and JD degrees in 1986 and 1992, respectively, from Louisiana State University (member of the Moot Court Board). He was in private practice for more than 25 years and was a law partner of retired 19th JDC Judge Anthony J. Marabella, Jr. He received the Pro Bono Publico Award from the Louisiana State Bar Association in 2004 and is a past president of the Baton Rouge Bar Association. Judge Crifasi is married to Lorraine D. Crifasi and they are the parents of three children.



Fred T. Crifasi

**Kina T. Kimble** was appointed commissioner, Division B, 19th Judicial District Court. She earned her BS and BA degrees, *magna cum laude*, in 2001 from Grambling

State University and her JD degree, *cum laude*, in 2005 from Southern University Law Center (member of the *Law Review* Board). She was staff attorney at the 19th JDC from 2008-10. She taught criminal and juvenile law as an adjunct professor at Southern University Law Center from 2010-15. She served as a public defender in East Baton Rouge Parish from 2013 until her election to the bench. She is the parent of one child.



Kina T. Kimble

**Ellen M. Hazeur** was elected judge, Division A, Orleans Parish Civil District Court. She earned her BA degree in 1986 from Xavier University and her JD degree in 1991 from Tulane University Law School. She served on the New Orleans City Council from 1994-2000 and as clerk of New Orleans's 1st City Court from 2000 until her election to the bench. Judge Hazeur is married to Ernest Colbert, Jr. and they are the parents of one child.



Ellen M. Hazeur

## Appointments

► Charles V. Cusimano III and Angelette A. Jackson were reappointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for terms of office ending on April 21, 2022.

► Retired Judge Eugene W. Bryson, Jr. and Sheri M. Morris were reappointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for terms of office ending on April 30, 2022.

## Retirements

► 9th Judicial District Court Judge Thomas M. Yeager retired effective April 30. He earned his BA degree from Louisiana State University and his JD degree from Southern University Law Center. He was elected to the 9th JDC in 1996 and founded the district's drug court program in 1997. Prior to his election to the bench, he served as a prosecutor in Rapides Parish.

► 19th Judicial District Court Judge Anthony J. Marabella, Jr. retired effective April 30. He earned his BS and JD degrees in 1970 and 1973, respectively, from Louisiana State University. Prior to his 2003 election to the 19th JDC bench, he served as an assistant parish attorney, an assistant district attorney and an assistant public defender in East Baton Rouge Parish. He also served as an *ad hoc* judge in Baton Rouge City Court and as a moot court instructor at LSU.

## Deaths

► Retired Orleans Parish Civil District Court Judge George C. Connolly, Jr., 89, died March 26. He earned his AB, LLB and BBA degrees in 1947, 1950 and 1952, respectively, from Loyola University. He was appointed commissioner of the Orleans Parish Civil District Court by the court's judges in 1961, named judge *ad hoc* in 1968, and appointed judge, Division J, by Louisiana Gov. John J. McKeithen in 1970. He served there until his retirement in 1996. He served in the Louisiana National Guard for 37 years and was awarded the U.S. Army Commendation Medal, the U.S. Army Meritorious Service Medal and the Selective Service Award while serving as director of selective service for Louisiana. He co-authored *The History of the Courts in the Parish of*

Orleans with Louisiana Supreme Court Chief Justice Walter H. Hamlin.

► Retired 25th Judicial District Court Judge Anthony D. Ragusa, Jr., 69, died March 27. He earned his bachelor's and JD degrees from Louisiana State University. Prior to his 1999 election to the 25th JDC bench, he practiced law for 26 years and served as an assistant district attorney for 14 years. He retired in 2008.

► Retired 23rd Judicial District Court Judge Glynn A. Long, 90, died April 19. He graduated valedictorian of his high school class in Donaldsonville. He was a veteran of the U.S. Air Force and served in the Pacific Theatre during WWII. He earned his BS degree from the University of Illinois and his JD degree from Louisiana State University Law School. Prior to his 1991 election to the 23rd JDC bench, he was city attorney for the City of Donaldsonville and senior member of the firm Long & Long. He retired from the bench in 1996 and returned to private practice.

► Retired 5th Circuit Court of Appeal Judge Walter J. Rothschild, 81, died April

26. He earned his BA degree in 1965 from Louisiana State University in New Orleans (LSUNO) and his JD degree in 1973 from Loyola University College of Law. Prior to his election to the bench, he served as an assistant district attorney in both Orleans and Jefferson parishes and as an assistant U.S. attorney for the Eastern District of Louisiana. He was elected to the 24th Judicial District Court in 1995 and to the 5th Circuit Court of Appeal in 2000. He served there until his retirement in 2012. In retirement, he continued to serve through *ad hoc* appointments, including an appointment to the Louisiana Supreme Court.

► Retired Jennings City Court Judge Bernard N. Marcantel, 94, died May 9. He graduated valedictorian of his high school class in Oberlin. He served in the U.S. Army during WWII. After his military service, he earned his BS degree in 1946 from the University of Louisiana at Lafayette and his JD degree in 1949 from the University of Chicago (*Law Review*). He received a second JD degree in 1950 from Tulane University Law School. He

served as district attorney for the 31st Judicial District from 1953-78 and as judge for the Jennings City Court and Ward II from 1985 until his retirement in 1993. In retirement, he served as judge *pro tempore* for several judicial districts and the 3rd Circuit Court of Appeal.

► Orleans Parish Civil District Court Judge Clare F. Jupiter, 65, died May 18. She earned her BA degree in 1974 from Yale University and her JD degree in 1978 from Duke University. She was the first female partner in Bryan, Jupiter, Lewis & Blanson (previously named Jefferson, Bryan, Gray & Jupiter). She was the first female and African-American to serve as outside general counsel to the Orleans Parish School Board. She also served on the Louisiana Attorney Disciplinary Board and on the Louisiana State Bar Association's Rules of Professional Conduct Committee and the Practice Assistance and Improvement Committee. She was elected to Orleans Parish Civil District Court in 2011 and was re-elected without opposition in 2014.



## Barrios, Kingsdorf & Casteix, LLP

WELCOMES

# JOSEPH I. GIARRUSSO III

TO THE BKC TEAM.

Joe Giarrusso joined BKC as of counsel in 2018. After a year-long appellate clerkship, he went into private practice extensively litigating cases in state and federal court for the next fifteen years. Joe will continue his general litigation practice at the firm, focusing his practice on litigation in all Louisiana state courts.

[JGIARRUSSO@BKC-LAW.COM](mailto:JGIARRUSSO@BKC-LAW.COM) | 504.524.3300

701 POYDRAS STREET, SUITE 3650, NEW ORLEANS, LOUISIANA, 70139



# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

**Michael B. Alker** and **James C. Rather, Jr.** announce the formation of the law firm Alker & Rather, L.L.C., located at Ste. B, 4030 Lonesome Road, Mandeville, LA 70448; (985)727-7501; website [www.alker-rather.com](http://www.alker-rather.com).

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Matthew S. Chester has been elected as a shareholder in the firm's New Orleans office. Also, Tessa P. Vorhaben has joined the firm's New Orleans office as of counsel.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Charles-Theodore Zerner** has joined the firm as an associate.

Breazeale, Sachse & Wilson, L.L.P., announces that **Cody J. Wagner** has

joined the firm's Baton Rouge office as an associate.

Chehardy Sherman Williams Murray Recile Stakelum & Hayes, L.L.P., announces that **Sarah J.L. Christakis** has joined the firm's Metairie office as a partner and **Meredith E. Chehardy** has joined the Metairie office as an associate.

Du  Guidry Piedrahita Andrews, L.C., in Baton Rouge announces that **C. Scott Courrege** has joined the firm as an associate.

Gallagher Benefit Services in Baton Rouge announces that **Michael R. Baker** has been named area assistant vice president, compliance counsel for the South Central Region and Heartland Region.

Jones Walker LLP announces that Jonathan A. Hunter has joined the firm's New Orleans office as a partner.

**Scott M. Mansfield, Collin R. Melancon, Brad W. Cranmer and Kelley R. Dick, Jr.** announce the formation of the law firm Mansfield, Melancon, Cranmer & Dick, L.L.C., with offices in Baton Rouge and New Orleans. Baton Rouge office: Ste. B, 2133 Silver Side Dr., Baton Rouge, LA 70808, (225)612-0800. New Orleans office: Ste. 107, 318 Harrison Ave., New Orleans, LA 70124, (504)500-1108. Website: [www.mansfieldmelancon.com](http://www.mansfieldmelancon.com).

Preis, P.L.C., announces that Robert W. Tschirn and Jason P. Wixom have joined the firm's New Orleans office.

Provosty & Gankendorff, L.L.C., in New Orleans announces that **Lena D. Giangrosso** has been named a partner in the firm.

Stewart Robbins & Brown, L.L.C., announces that **Jamie D. Cangelosi** has joined the firm as a member and will practice in New Orleans.



Michael B. Alker



John T. Andrishok



Richard J. Arsenault



Michael R. Baker



Jeffrey M. Bassett



Taylor J. Bassett



Thomas M. Benjamin



Keith J. Bergeron



Jamie D. Cangelosi



David R. Cassidy



Meredith E. Chehardy



Sarah J.L. Christakis

## NEWSMAKERS

Rolando A. Anillo, corporate counsel at Florida Crystals Corp. in West Palm Beach, Fla., and José R. Cot, a partner in the New Orleans firm of Hurley & Cot, A.P.L.C., were appointed to the adjunct faculty of Tulane University Law School and taught a course on Cuban law and U.S.-Cuba relations.

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, will chair the 25th Annual Admiralty Symposium in New Orleans and the Complex Litigation Symposium in Napa, Calif., both in September 2018.

**Keith J. Bergeron**, a partner in the New Orleans office of Deutsch Kerrigan, L.L.P., was elected to serve on the American Bar Association's Forum on

Construction Law Governing Committee for a three-year term.

**Clay J. Countryman**, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was appointed secretary of the American Bar Association Health Law Section's Governing Council.

Jan M. Hayden, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was elected to the American College of Bankruptcy's 2018-19 board of directors.

Hammond attorney Nicholas J. Muscarello, Jr. was elected to represent District 86 in the Louisiana House of Representatives. He will serve on the House Judiciary Committee and the Administration of Criminal Justice Committee.

**Elizabeth Haecker Ryan**, a director in the New Orleans office of Coats Rose, P.C., was appointed vice chair of the American Bar Association's Commercial Transportation Litigation General Committee for the 2018-19 term.

**David R. Sherman**, a founding partner of the firm Chehardy Sherman Williams Murray Recile Stakelum & Hayes, L.L.P., based in Metairie, was certified as a member of the Lawyers of Distinction.

Scott T. Whittaker, a member in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., was elected chair of the SoLA Super Region Committee, a partnership of the Baton Rouge Area Chamber, Greater New Orleans, Inc. and the South Louisiana Economic Council.

Continued next page



Clay J. Countryman



C. Scott Courrege



Brad W. Cranmer



Kelley R. Dick, Jr.



Monique Gougisha  
Doucette



Murphy J.  
Foster III



Gregory D. Frost



Lena D. Giangrosso



Alan H. Goodman



Emily Black Grey



Richard T. Haik, Jr.



David R. Kelly



Frank E.  
Lamothe III



Richard D.  
Leibowitz



Mark N. Mallery



Scott M. Mansfield



Eve B. Masinter



Van R. Mayhall, Jr.

## PUBLICATIONS

### Chambers USA 2018

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

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

**Fisher & Phillips, L.L.P.** (New Orleans): Walter W. Christy, Sandra Mills Feingerts, Edward F. Harold, Keith M. Pyburn, Jr. and Timothy H. Scott.

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.** (New Orleans): **Monique Gougisha 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, Paul J. Masinter, C. Lawrence Orlansky, David C. Rieveschl, 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. **Taylor, Porter, Brooks & Phillips, L.L.P.** (Baton Rouge): Michael A. Crawford, Anne J. Crochet, Vicki M. Crochet, Harry J. (Skip) Phillips, Jr., Patrick D. Seiter and Fredrick R. Tulley.

### Louisiana Super Lawyers 2018

**Morrow, Morrow, Ryan, Bassett & Haik** (Opelousas, Lafayette, New Iberia): **Jeffrey M. Bassett, Taylor J. Bassett, Richard T. Haik, Jr., Patrick C. Morrow, Sr., P. Craig Morrow, Jr. and James P. Ryan.**

**Preis, P.L.C.** (Lafayette): Charmaine B. Borne, Robert M. Kallam, Brian J. Lindsey, Edwin G. Preis, Jr., Mandy A. Simon and Jonathan L. Woods.

### Benchmark Litigation 2018

**Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.** (New Orleans): Judy Y. Barrasso, Kristin L. Beckman, Stephen L. Miles and Kyle W. Siegel.

### Acadiana Profile Magazine 2018

**Morrow, Morrow, Ryan, Bassett & Haik** (Opelousas, Lafayette, New Iberia): **Jeffrey M. Bassett, Patrick C. Morrow, Sr., P. Craig Morrow, Jr. and James P. Ryan, Top Lawyers.**

**Preis, P.L.C.** (Lafayette): John F. Colowich, Robert M. Kallam, Catherine M. Landry, Brian J. Lindsey, Edwin G. Preis,

Jr., John L. Robert and Jonathan L. Woods, Top Lawyers.

### New Orleans CityBusiness

**Lamothe Law Firm, L.L.C.** (New Orleans): **Frank E. Lamothe III**, Leadership in Law Class 2018 and Leadership in Law Hall of Fame.

## People Deadlines & Notes

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

#### Publication Deadline

Dec. 2018/Jan. 2019	Oct. 4, 2018
Feb./March 2019	Dec. 4, 2018
April/May 2019	Feb. 4, 2019

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).**



Collin R. Melancon



Christopher E. Moore



Patrick C. Morrow, Sr.



P. Craig Morrow, Jr.



E. Fredrick Preis, Jr.



James C. Rather, Jr.



Claude F. Reynaud, Jr.



Elizabeth Haecker Ryan



James P. Ryan



David R. Sherman



Cody J. Waagner



Charles-Theodore Zerner

# Introducing...



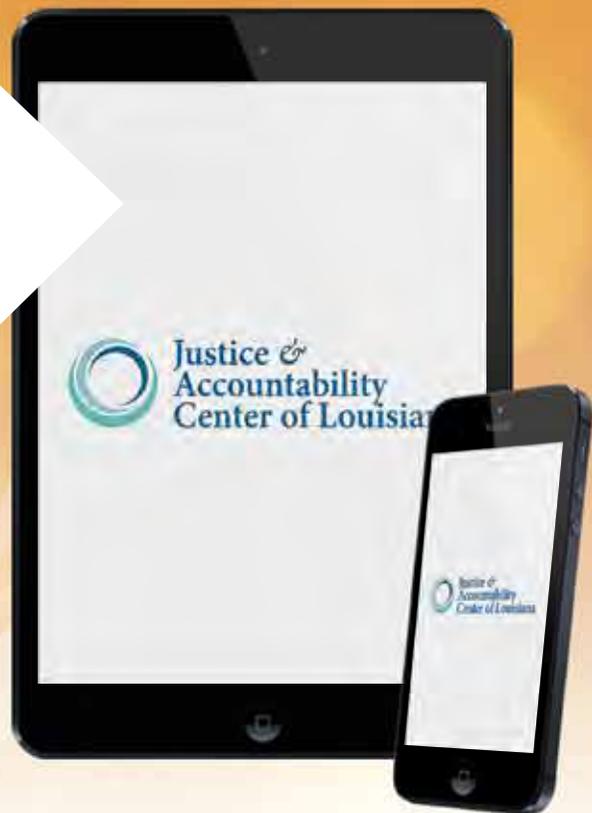
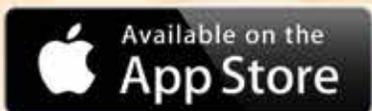
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UPDATE

## LASC Hosts Port-au-Prince Bar Association Delegates

**L**ouisiana Supreme Court Chief Justice Bernette Joshua Johnson hosted Port-au-Prince Bar Association Bâtonnier Stanley Gaston April 3 at the Louisiana Supreme Court building.

Louisiana State Bar Association (LSBA) 2017-18 President Dona Kay Renegar joined a delegation of expat Haitian New Orleans business and cultural leaders, Warren A. Perrin and representatives from the LSBA's Francophone Section and U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart to commemorate the partnership between the Congrès of International Conference of Bar Associations of Common Legal Traditions (CIB) and the LSBA.

Gaston initiated the collaboration to activate the LSBA's membership with the CIB, citing shared French history and the need to generate diversity within the CIB.

"The connection between Haiti and Louisiana cannot be overstated," Chief Justice Johnson said. "The Haitian Revolution influenced American history. Who, if anyone, can imagine America without the Louisiana Purchase? The trajectory of this country changed, and Louisiana's cultural identity was fortified. Here we are, a little over two hundred years later, Haiti's influence will reinvigorate the Francophone Section of the LSBA, while strengthening and diversifying the CIB," she added.

The delegation toured the Supreme Court building including a visit to the rare books collection. Gaston had particular interest in *Traité d'économie politique et de commerce des colonies, 1804 Code Civil Français, De la législation et de l'administration des colonies* and



The Haitian delegation toured the Louisiana Supreme Court building during the April visit, including a stop in the rare books collection. Seated from left, Emeline Dessé and Fenelle Guillame. Standing from left, Warren A. Perrin, co-chair of the Louisiana State Bar Association (LSBA) Francophone Section; Mary Perrin; Law Library Director Miriam Childs; Louis R. Koerner, Jr., co-chair of the LSBA Francophone Section; and Jean Guy Celestin.

*Mémoire historique et politique sur la Louisiane* texts.

"Our historic ties to Haiti, with emphasis on the Revolution and the migration from Haiti to Louisiana, are unique, and they are the basis for cultivating a strong relationship with Port-au-Prince. While we have an eye on moving forward, it is always good to know from whence we came. Most importantly, the partnership will help to preserve our Louisiana French-speaking heritage," Renegar said.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, hosted Port-au-Prince Bar Association Bâtonnier Stanley Gaston, center, at the Louisiana Supreme Court building in April. Also attending the event was Louisiana State Bar Association 2017-18 President Dona Kay Renegar.



## LOCAL/SPECIALTY BARS

### Flood Proof Project Exceeds \$6M in Economic Benefits for Disaster-Impacted Communities

More than 300 disaster-impacted homeowners in the Baton Rouge were assisted, to date, by the Flood Proof Project, unlocking more than \$6 million in flood recovery funding and other economic benefits.

Flood Proof, a collaborative project including nonprofits, law schools and funders, has aided families in the Baton Rouge area by educating them on “heir property,” navigating the legal process to obtain proof of ownership, and advocating to policy-makers for improved inheritance and succession procedures.

The project provided free legal services to eligible, flood-impacted homeowners living in East Baton Rouge, Ascension, Livingston, Iberville and Pointe Coupee parishes. Support was provided by the W.K. Kellogg Foundation, the Baton Rouge Area Foundation, Equal Justice Works, the Greater New Orleans Foundation and the Louisiana Bar Foundation. Project partners included Southeast Louisiana Legal Services, Louisiana Appleseed, Southern University Law Center, the Baton Rouge Bar Association, the Louisiana State University Paul M. Hebert Law Center and the American Bar Association Center for Innovation.



More than 100 judges, bar leaders, nonprofit partners, law students, pro bono volunteers and community stakeholders attended the May 17 ribbon-cutting and open house for Southeast Louisiana Legal Services' (SLLS) new offices, located at Ste. 600, 1340 Poydras St., New Orleans. The office's conference room was named for SLLS' former Executive Director Mark A. Moreau, who died in 2014. The Entergy Legal Department and attorney Fred L. Herman donated the conference table and chairs. Cutting the ribbon, from left, Roxanne S. Newman, SLLS deputy director; Laura Tuggle, SLLS executive director; Janine Moreau Mansour; and Chin-Chin Ho Moreau.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson hosted students from L.B. Landry-O.P. Walker College and Career Preparatory High School and McDonogh 35 Senior High School at the Louisiana Supreme Court building in observance of Law Day. “Separation of Powers: Framework for Freedom” was the theme for the 60th observance of Law Day. Nearly 70 students sat in on oral arguments before the Supreme Court on May 1. The students also toured the Louisiana Supreme Court Museum and Law Library of Louisiana.

## Shreveport Red Mass Society Hosts Annual Event

The Red Mass Society of Shreveport hosted the 26th annual Red Mass at Holy Trinity Catholic Church on May 4. The Rev. Matthew Tyler Long, a Louisiana licensed lawyer and ordained Catholic priest, delivered the homily imbued with his unique perspective of a trained lawyer and experienced priest. Rabbi Jana De Benedetti read the first reading in Hebrew and English. The second reading was delivered by U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart.

This year's honoree was Christian Service and Hope Connections which provides outreach programs to the needy citizens and families of the Shreveport/Bossier community. Arthur R. Carmody, Jr., celebrating his 90th birthday, was the event chair.



Attending the 26th annual Red Mass in Shreveport in May were, from left, Hon. Tony Clason; Lawrence W. Pettiette, Jr., event co-chair; Zelda W. Tucker, protocol chair; and Thomas H. Cook, new member of the Red Mass Society.

## President's Message

# LBF's Strategic Planning Goals for 2018

By 2018-19 President W. Michael (Mike) Street

**T**he responsibility for meeting the legal needs of Louisiana's poor falls on a network of nonprofit, civil legal aid organizations who serve our poorest citizens. The Louisiana Bar Foundation (LBF) is dedicated to funding civil legal aid through these organizations. I am proud to announce that the LBF board approved \$5.8 million for social justice initiatives for the 2018-19 fiscal year. A detailed list of our grants can be found on our website: [www.raisingthebar.org](http://www.raisingthebar.org).

I recently had the pleasure of meeting many of the representatives from these civil legal aid organizations as I spent my first month as LBF president traveling the state to our regional Annual Fellows events. Our grantees are organizations that provide free representation or other legal assistance to low-income and vulnerable people who cannot otherwise afford legal help. These organizations make a difference in the lives of countless Louisiana citizens who have limited means. These events, hosted by our local Community Partnership Panels, also allowed me the opportunity to meet many of our Fellows. Our Fellows are some of

the most inspiring, giving and hardworking individuals from across the state. They demonstrate their commitment to legal representation for the poor and improving our system of justice on a regular basis. These dedicated volunteers truly exemplify the highest ideals of our profession.



W. Michael Street

This year the LBF will continue our commitment to serving all Louisiana households in poverty and we are working hard to make this a reality. During the recent LBF Strategic Planning, the LBF leadership outlined a detailed plan to evaluate and maximize resources and outcomes for future years, find more sustainable forms of income to support civil legal aid initiatives and current grantees, and to better fund the legal services corporations.

Strategic Planning goals for 2018 include:

1. Create a membership drive plan that would collaborate with the Louisiana

State Bar Association for its endorsement and joint event attendance, and remove the nomination requirement to become a new Fellow;

2. Create a capital campaign for operations support;

3. Create a marketing and branding campaign;

4. With the ATJ Commission Funding Committee, obtain new legislative appropriation and transfer the Campaign to Preserve Civil Legal Aid to the Funding Committee;

5. Enhance the grantee outreach program to include online audits, onsite visits and operation policy review.

Investing in civil legal aid helps people solve critical problems and prevents events that are personally harmful and expensive for society. Funding for civil legal aid will have a ripple effect, impacting not only the families served, but the community at large. Schools, businesses, government agencies and the state as a whole benefit from resolving civil legal problems. For more LBF information, go to: [www.raisingthebar.org](http://www.raisingthebar.org).

## Renegar Receives LBF President's Award

Dona Kay Renegar, the 2017-18 president of the Louisiana State Bar Association (LSBA), received the Louisiana Bar Foundation's (LBF) President's Award from 2017-18 LBF President Valerie Briggs Bargas.

Renegar, a member in the firm of Veazey Felder & Renegar, L.L.C., in Lafayette, was recognized for her support, dedication and advancement of the LBF's

mission and goals. She has been a LBF fellow since 2000, served on the LBF board of directors and on several committees and chaired a grants subcommittee for many years. She is dedicated to advancing the LBF's goals of funding civil legal aid and promoting access to justice and accomplishes these goals through her work on the LSBA's Board of Governors and the Louisiana Access to Justice Commission.



Dona Kay Renegar, right, the 2017-18 president of the Louisiana State Bar Association, received the Louisiana Bar Foundation's (LBF) President's Award from 2017-18 LBF President Valerie Briggs Bargas.

## Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation announces new Fellows:

Brittany S. Arvie.....Shreveport  
 Christopher J. Brault..... Baton Rouge  
 John Clayton Caraway .....Bossier City  
 Antonio M. DaMaia ..... New Orleans  
 Kelly Engle..... River Ridge  
 Robert H. Ford.....Houston, TX  
 Alexandra T. Giavotella..... New Orleans  
 Courtney N. Harris .....Shreveport  
 G. Trippe Hawthorne..... Baton Rouge  
 Jasmine Antoinette Heatly..... Baton Rouge  
 Edwin F. Hunter III..... Lake Charles  
 Rebecca Huskey ..... New Orleans  
 Anne C. Lemelin ..... New Orleans  
 Michael Jones, Jr. .... Baton Rouge  
 Alana M. Perrin .....Gonzales  
 Taylor M. Robinson..... Lafayette  
 Jessica L. Salafia..... New Orleans  
 LaKendra D. Turner Sampson Baton Rouge  
 Rebecca F. Schiller ..... New Orleans  
 Jaimelle N. Thomas ..... Baton Rouge  
 Hon. K. Anastasia Wiley ..... Winnfield  
 Aaron R. Wilson .....Bossier City



During Black History Month in February, the Louisiana State Bar Association's Diversity Committee and Adams and Reese, L.L.P., co-hosted a CLE, "The Civil Rights Issue of Our Time: 50 Years after the Assassination of Dr. Martin Luther King, Jr.," which explored the state of the nation in the decades after the Supreme Court's landmark decision in *Brown v. Board of Education*. The CLE was moderated by Kellen J. Mathews, Adams and Reese, L.L.P., far left. The panel featured, from left, Chancellor John K. Pierre, Southern University Law Center; Dean Thomas C. Galligan, Jr., Louisiana State University Paul M. Hebert Law Center; and Dean David D. Meyer, Tulane University Law School.



The 2018-19 Louisiana Bar Foundation's officers were installed at the 32nd annual Fellows Gala in April. From left, Secretary Harry J. (Skip) Philips, Jr., Baton Rouge; Treasurer Christopher K. Ralston, New Orleans; Vice President Amanda W. Barnett, Alexandria; and President W. Michael Street, Monroe. Photo by Scott Threlkeld.

# Street to Lead LBF's 2018-19 Board

W. Michael Street of Monroe was installed as the 2018-19 president of the Louisiana Bar Foundation (LBF) on April 20. Other officers are Vice President Amanda W. Barnett, Alexandria; Treasurer Christopher K. Ralston, New Orleans; and Secretary Harry J. (Skip) Philips, Jr., Baton Rouge.

**Street** is a partner of Watson, McMillin & Street, L.L.P., in Monroe. He received BA degrees in philosophy and political science from Centenary College of Louisiana and his JD degree from Louisiana State University Paul M. Hebert Law Center.

**Barnett** is general counsel and corporate secretary for Red River Bank and Red River Bancshares, Inc., with corporate offices in Alexandria. She received a BA degree in English literature from Newcomb College of Tulane University and her JD degree from LSU Paul M. Hebert Law Center.

**Ralston** is a litigation partner and litigation group coordinator at Phelps Dunbar, L.L.P. He received his undergraduate degree from the College of William and Mary and

his law degree from Tulane University Law School.

**Philips** is the managing partner of Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge. He received his BS and JD degrees from Louisiana State University.

New board members are Jerry Edwards, Shreveport; Karleen J. Green, Baton Rouge; Eugene G. (Bubba) Gouaux, Jr., Lockport; Camille R. Jackson, Alexandria; David E. Verlander III, Monroe; and Zebulon M. Winstead, Alexandria.

Other members of the 2018-19 board of directors include are Valerie Briggs Bargas, Baton Rouge; Alan G. Brackett, New Orleans; Hon. John C. Davidson, Alexandria; George D. (Dave) Ernest III, Lafayette; Barry H. Grodsky, New Orleans; H. Dunbar Healy, Covington; Robert A. Kutcher, Metairie; Michael J. Mestayer, New Orleans; Kerry A. Murphy, New Orleans; Deidre Deculus Robert, Baton Rouge; Shayna L. Sonnier, Lake Charles; Tina Crawford White, New Orleans; and Sharonda R. Williams, New Orleans.



**Annual/Sustaining Funding \$3,716,456**

<b>Building Capital Development</b>	<b>\$100,000</b>
Innocence Project New Orleans	\$25,000
Metro Centers for Community Advocacy	\$25,000
Shreveport Bar Foundation	\$25,000
Southeast Louisiana Legal Services	\$25,000
<b>Children's Legal Services</b>	<b>\$125,000</b>
Catholic Charities - Diocese of Baton Rouge	\$8,000
Catholic Charities Archdiocese of New Orleans	\$21,000
First Grace Community Alliance	\$11,000
Louisiana CASA Association	\$7,000
Louisiana Center for Children's Rights	\$25,000
T.E.A.M.S.	\$36,000
The Advocacy Center	\$17,000
<b>Domestic Violence Programs</b>	<b>\$500,000</b>
Beauregard Community Concerns	\$37,097
Chez Hope, Inc.	\$76,400
D.A.R.T. of Lincoln	\$33,734
Faith House, Inc.	\$36,081
Family Justice Center of Central Louisiana	\$14,613
Jeff Davis Communities Against Domestic Abuse	\$22,703
Metro Centers for Community Advocacy	\$38,520
Oasis	\$21,379
Project Celebration, Inc.	\$38,520
Project SAVE	\$39,491
Safe Harbor	\$15,408
Southeast Advocates for Family Empowerment (SAFE)	\$15,408
St. Bernard Battered Women's Program, Inc.	\$24,075
The Haven, Inc	\$36,495
The Wellspring Alliance For Families	\$50,076
<b>Law-Related Education</b>	<b>\$100,000</b>
Baton Rouge Bar Foundation	\$25,000
Baton Rouge Children's Advocacy Center	\$13,000
Catholic Charities - Diocese of Baton Rouge	\$1,000
Court Watch NOLA	\$3,000
Cristo Rey Baton Rouge Franciscan High School	\$1,000
Louisiana Center for Children's Rights	\$5,500
Louisiana Center for Law and Civic Education	\$35,000
LSBA Diversity Committee	\$1,000
LSBA Young Lawyers Division	\$5,500
Youth Service Bureau of St. Tammany	\$10,000
<b>Legal Services Corporations</b>	<b>\$2,100,000</b>
Acadiana Legal Service Corporation	\$1,061,563
Southeast Louisiana Legal Services	\$1,038,437
<b>Loan Repayment Assistance Program</b>	<b>\$56,456</b>

<b>Other Legal Service Providers</b>	<b>\$350,000</b>
Catholic Charities Diocese of Baton Rouge	\$28,958
Catholic Charities Archdiocese of New Orleans	\$39,458
Catholic Charities of North Louisiana	\$40,000
Frontline Legal Services, Inc.	\$46,458
Innocence Project New Orleans	\$90,000
Louisiana Center for Children's Rights	\$11,458
NO/AIDS Task Force dba CrescentCare	\$13,333
Southwest Louisiana Law Center	\$18,335
St. Frances Cabrini Immigration Law Center	\$50,000
The Ella Project	\$12,000

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

<b>Self-Represented Litigants Programs</b>	<b>\$35,000</b>
Louisiana Civil Justice Center	\$11,000
Southeast Louisiana Legal Services	\$9,000
The Pro Bono Project	\$15,000

**Child in Need of Care \$2,240,000**

**Discretionary Funding \$135,000**

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

**Special Program and Project Funding \$445,150**

Access to Justice Commission	\$30,000
Access to Justice Fund Grants	\$40,000
ATJ Community Conference Training	\$5,000
Civil Legal Aid Network Portal	\$75,000
Lawhelps.org and Probono.net	\$12,650
Louisiana Applesed	\$95,000
Oral Histories	\$2,000
Pelican Center for Children and Families	
Pro Hac Vice	\$123,500
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**Scholarships, Fellowships, and other funding projects \$233,500**

Kids' Chance Scholarships	\$50,500
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As of 7/18

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Standard classified advertising in our regular typeface and format may now be placed in the *Louisiana Bar Journal* and on the LSBA Web site, [LSBA.org/classifieds](http://LSBA.org/classifieds). All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

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Contact **Krystal L. Bellanger** at (504)619-0131 or (800)421-LSBA, ext. 131.

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**Headings: \$15 initial headings/large type**

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For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2018. Check and ad copy should be sent to:  
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Classified Notices  
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New Orleans, LA 70130

### RESPONSES

To respond to a box number, please address your envelope to:

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601 St. Charles Avenue  
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## NOTICE

**William F. Henderson** 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.

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## ANSWERS for puzzle on page 127.

H	A	M	I	T	E	R		J	O	H	N	B
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**Notice is hereby given** that Charles R. Whitehead III intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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# 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 “distinguished” 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.

# The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: APOCRYPHA

**S**o it was May 1991. Judge Henry (Hank) Politz, appointed to the U.S. 5th Circuit Court of Appeals in 1979 (chief judge, 1992-99), agreed to speak at the Baton Rouge Bar Association's Bench Bar Conference in Perdido Key, Ala.

Packed house. During his presentation, Judge Politz told an entertaining story, as only he could tell one, about a time when, as a 5th Circuit judge, he wanted to have some federal trial court experience and asked the Chief Judge at the time to assign him to try cases in Texas federal district court in San Antonio.

Judge Politz enthralled the audience with this story about one such trial. (Read this story in your mind with a deep Cajun accent, like you were born in 1932 and raised in Napoleonville — which he was — an accent somewhere between Justin Wilson and John Folse, but better, more animated and much more exaggerated.)

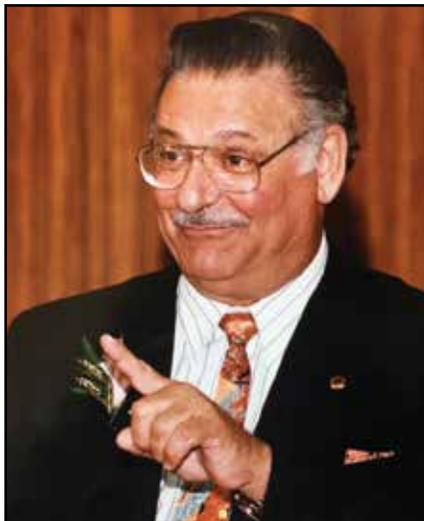
*I was frustrated by three days of endless objections and sidebars. I warned the lawyers to stop all the needless objections and bickering. On the fourth morning, one of the lawyers asked to approach for a sidebar. I said, "Buster, this better be good."*

*He said, "Your Honor, Juror Number 6 doesn't look like the Mrs. Rodriguez who was there yesterday."*

*I must have had a puzzled look on my face, like Whaaaat!?. Opposing counsel said, "I think he's right, your honor."*

*Whoa . . . How often does THIS come up? Like . . . never.*

*I looked at Juror Number 6 and thought, you know, they might be right. After all of the jurors were excused for a break, except for Juror Number 6, I asked her, "Ma'am, are you Mrs. Rodriguez?" She said, "Yes, sir, yes I am." I said, "Have you been here since the beginning of this case?" She said, "No, sir. I am Mrs. Rodriguez's sister-in-law, so I am, in fact, A Mrs. Rodriguez, just not THE Mrs. Rodriguez who was here yesterday."*



**The late Judge Henry (Hank) Politz, U.S. 5th Circuit Court of Appeals.** Photo courtesy of the Politz Family.

*Shocked, I said, "So where is THE Mrs. Rodriguez, and why isn't she here?"*

*"Well, you see, Judge, my sister-in-law asked me to 'catch the jury' today because she had a beauty parlor appointment to get ready for an award dinner tonight where her husband was to be honored. It's really, really important. She plans to be back later this afternoon to finish 'catching the jury.'"*

*Needless to say, everyone needed to take a break, so I got all the lawyers in chambers to see if they would agree to letting a five-person jury decide the case. Defense counsel was in the process of explaining why his client would not agree when a U.S. Marshal knocked on the door and escorted in the REAL Mrs. Rodriguez, displaying the, er . . . , aesthetic profit from her brief absence.*

*I was about to tear into her and deliver a thunderous tirade about direct contempt when Mrs. Rodriguez's eyes teared up and her lips quivered.*

*She explained, "Your Honor, it's really, really important for me to look good for my husband's special night. My sister-in-law has a great memory and she promised she was going to tell me EVERYTHING that went on. I didn't want to bother you with something so silly like my hair appoint-*

*ment. AND, Judge, it's really, really hard to get an appointment with this particular hairdresser. You just DON'T cancel with her. You just don't."*

Great story, right? You should have heard Judge Politz tell it in his unparalleled Cajun accent and huge friendly personality. I never forgot it.

I called his son, Nyle, a lawyer in Shreveport, and he said he knew about the story, and it's a good story to be stolen, which others have done. He said he heard the story recently from an unnamed Shreveport lawyer who said it happened to him in the 1990s in Shreveport. The missing juror was renamed Boudreaux and sported curlers in her hair when she returned to the courtroom.

I asked Nyle if he thought the Politz story was true. He said, "Ed, since you knew him personally, you might know that he never let the truth get in the way of a good story. Example, he wrote a law review article for a law school in a neighboring state and in the introduction to the article the author of that foreword credited him with jumping out of a burning airplane during his Air Force service in the early 1950s. When I challenged him about allowing them to print that blatant falsehood, his immediate response was, 'Oh, Nyle, nobody reads that law review.'"

But for me, cher, I think it happened to Judge Politz. I'm going with that. Anyway, I'm sure he tells the story much better than any of those impostors from Shreveport.

*Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal's Editorial Board and chair of the LSBA Senior Lawyers Division. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)*



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