

LOUISIANA BAR JOURNAL

August / September 2015

Volume 63, Number 2



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- Suing a Mandatary
- Data Breach Litigation
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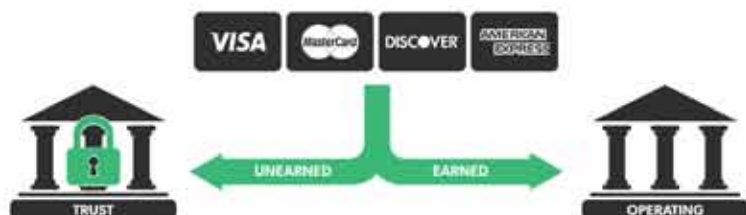
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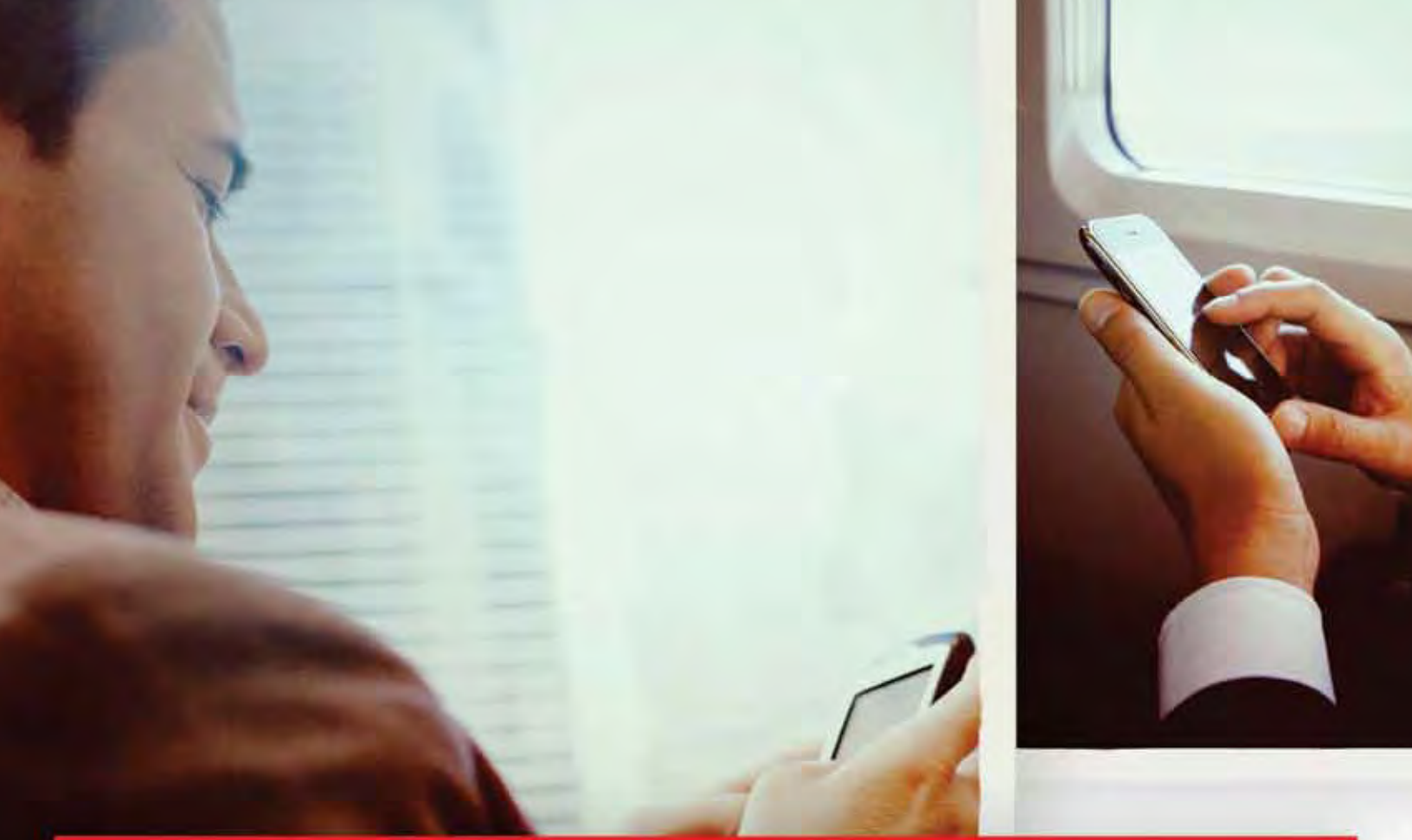
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Louisiana Supreme Court Associate Justice John L. Weimer painting "Laurel Valley Home on a Misty Morn, Thibodaux, LA." Painting by Justice John L. Weimer; photo by Weimer Family.

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The Louisiana Bar Journal (ISSN 0459-8881) is published bimonthly by the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Periodicals postage paid at New Orleans, Louisiana and additional offices. Annual subscription rate: members, \$5, included in dues; nonmembers, \$45 (domestic), \$55 (foreign). Canada Agreement No. PM 41450540. Return undeliverable Canadian addresses to: P.O. Box 2600, Mississauga, ON, L4T 0A8.

Postmaster: Send change of address to: Louisiana Bar Journal, 601 St. Charles Avenue, New Orleans, Louisiana 70130.

Subscriber Service: For the fastest service or questions, call Darlene M. LaBranche at (504)619-0112 or (800)421-5722, ext. 112.

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By Alainna R. Mire

Be More Like Bella and Try Again

Success is often achieved by those who don't know that failure is inevitable.

—Coco Chanel

As young children, we are daring and fearless. There is never an obstacle in our way. There is no cabinet too high to climb and no bed that shouldn't be jumped on. One year my Mom thought she had my Christmas presents high enough so that I could not reach them. She had already wrapped them and everything. Needless to say, that was not the case. I not only opened every present but had a personal pitcher of Kool-Aid sitting next to me to drink as well. Seriously, playing with new toys will make you thirsty. (Still makes me laugh.)

Almost every day, I watch my Maltese, Bella, chase the birds where I live. In her little mind, she always has a chance of catching a goose, a duck or even an egret. Where I see failure on her part every day, she sees another opportunity to try again later. She has not given up after almost five years of trying.

I'm trying to be more like Bella by no longer thinking about failure. I'm trying to no longer think about what happens if I don't catch the bird. While in law school, I never thought about failure. I actually told a classmate that I was too scared to quit. Yet, as I get older, I think of the possibility of failing often. I've tried to blame it on complacency but I know deep down it is the fear of failure that holds me back.

During these uncertain economic

times, we have to remain united as a Bar and be there for each other. Some attorneys have obstacles in their way of finding permanent employment while others have had their salaries cut. Now is the time to not only advocate for our clients, but also to advocate for ourselves. Their situation is not permanent because they will achieve success.

If you have a story about someone who has overcome obstacles to achieve success, please share it with us to help inspire others.

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*By Mark A.
Cunningham*

Address to the Members

Remarks from the Installation on June 11, 2015:

I am profoundly honored by the opportunity to serve as the 75th President of the Louisiana State Bar Association (LSBA) and humbled that so many of my partners, friends, mentors and family members are here to share this event with me. I believe that no one can achieve success in life without help from others, and I owe any measure of success that I have achieved to the people in this room.

Let me begin by thanking the Louisiana Judicial College for its collaboration with the LSBA in hosting our Annual Meeting/Summer School Program. I particularly would like to acknowledge Judge Wicker, Judge Koch, Bob Kutcher, Minor Pipes and other members of the Summer School Committee for their hard work and dedication in producing what have been top-flight programs.

I also would like to acknowledge Chief Justice Bernette Joshua Johnson. She is the leader and inspiration for our legal community in Louisiana, and I am thankful that she has joined us. We also have been joined this week by Justices Knoll, Weimer, Clark, Hughes and Crichton and many members of the Louisiana Supreme Court staff. Their partnership and support are critical to our ability as an association to achieve our mission of service to the public and service to the profession.

Let me also thank all of the other state and federal judges and dignitaries who are present today including Chief Disciplinary Counsel Chuck Plattsmier. I would ask all of us to specifically

acknowledge United States District Judge Jay Zainey of the Eastern District of Louisiana. He is a former President of the Louisiana State Bar Association and an example to all of us in what is possible when someone dedicates his life to helping others no matter what their station in life.

I am also pleased to see the Executive Director of the Lawyers Assistance Program, Buddy Stockwell, who has dedicated his professional life to helping judges and lawyers suffering from addiction, depression and other mental illness. We are so thankful for his critical work.

So many leaders from the Louisiana Bar Foundation, Louisiana Appleseed, the Pro Bono Project and other members of the public interest legal services community are here today. Their work and ability to keep access to justice alive and well in Louisiana is awe-inspiring to all of us.

A critical link to our success as an association is our partnership with the voluntary and specialty bars of Louisiana, and I would like to thank the Baton Rouge Bar Association, the New Orleans Bar Association, the Jefferson Bar Association and the Shreveport Bar Association, as well as the Louisiana Association for Justice and the Louisiana Defense Lawyers Association, for their leadership and support of the LSBA.

I want to thank my wife and family for supporting me in my choice to undertake this role. I am also fortunate to work with decent, smart people who embrace diversity in thought and background. My firm, Jones Walker, very much believes it has an obligation to serve

the profession and the communities in which we do business and has shown me nothing but encouragement in my pro bono work and service to the LSBA. President Shea likes to remind me that I am the third attorney from Jones Walker to serve as President of the LSBA and that I follow in the footsteps of a true statesman, my partner, Harry Hardin.

I would like to spend the next few minutes speaking with you about an ideal that I believe is embodied in all of you who are here today. Some call it the transformative power of the law. I call it the transformative power of the profession. It is reflected in our ability as lawyers to alter the course of not just an individual but of entire communities by providing a voice of the voiceless.

It is an ideal that you can find in attorneys in every part of Louisiana and in every practice area. Some of these attorneys may be focused on civil rights. Others may be working on economic development or fighting crime. Some defend the rights of children. Others defend the rights of the homeless. They work in legal aid organizations and non-profits, but are just as likely to work as public servants, solo or small firm practitioners, or as corporate attorneys at a large firm. Some will spend their entire careers in the courtroom while others will never step foot in one. However, they all share a common commitment to the rule of law and the ethical rules that govern our profession.

Yet many lawyers in Louisiana are struggling in their professional and personal lives. Many young lawyers are saddled with substantial law school

debt. The incomes of established lawyers are declining. At the same time, the cost of doing business is rising. Lawyers are three times more likely than other professionals to suffer from depression. Our profession has some of the highest percentages of suicide, substance abuse and burnout. The average lawyer in Louisiana makes between \$50,000 to \$60,000 per year. That is not a living wage, not when many lawyers carry twice that amount in law school loans.

We can cast about blaming others for these challenges, but the truth is that we have often been our own worst enemy. Our profession has been slow to innovate. We have been slow to embrace technology. Most troubling, however, is that we spend much of our time trying to marginalize each other.

For years, defense lawyers turned a blind eye as special interest groups bashed trial lawyers as part of their political campaign in support of tort reform, the Class Action Fairness Act, and the eradication of punitive damages and other remedies designed to deter serious misconduct and protect the public. These same attorneys now wonder why trial lawyers file so few cases in Louisiana.

We are seeing a similar dynamic between the district attorneys and public defenders in our state. Every year, many district attorneys go to Baton Rouge to lobby against additional funding for indigent defense. They claim that the indigent defense system is already overfunded and engaged in widespread waste and mismanagement. While the current system is far from perfect, common sense and the tone of the debate tells us that these district attorneys are primarily concerned with keeping what we all know to be a broken system crippled in a misguided belief that they are acting in the interest of the public. The public, however, is best served when all sides are equally funded and equally matched — not when District Defenders are forced to restrict their services due to lack of funding, and certainly not when the State of Louisiana has the highest rates of incarceration not only in the United States but in the entire world.

We also see lawyers increasingly attacking the integrity of judges as a

“Your commitment to the public good is the reason why our profession is unique in its ability to transform the communities in which we live....”

**—Mark A. Cunningham
2015-2016 LSBA President**

litigation strategy or excusing their own errors when they cut a bad deal, fail to prove an essential element of their claim, or simply find themselves in a forum they don't like.

All this in-fighting has serious consequences for the profession. If our profession cannot provide solutions to access to justice or provide an effective criminal justice system, nonlawyers will fill the gap. High-tech businesses are already rolling out products to take the place of lawyers and judges. Washington State, New York and California are already experimenting with permitting nonlawyers to serve as courtroom advocates. The American Bar Association is poised to issue a report in the next year in which it is likely to conclude that the profession should accept the inevitability of nonlawyers practicing law.

If we don't want our profession to be marginalized, we must begin by not marginalizing each other. We must put aside our differences on matters affecting the profession when we step outside the courtroom. That means taking sides — not for or against prosecutors or public defenders or any other particular group but for the profession. It means each of us must step forward when we see our colleagues marginalizing other members of our profession, even when it would be financially or politically expedient to do nothing. The LSBA will continue to correct the record and stand up for judges and other parts of

our profession that are unfairly attacked for political expediency, but we need all members of the profession to join in this effort. In order to succeed, we all must share equally in both the fault and the solution whether we are trial lawyers, defense lawyers, district attorneys or public defenders.

Despite the challenges we face, all of us should be excited about the future of our profession. Over the next year, the LSBA will be focused on promoting innovation and entrepreneurialism in our profession and with rolling out new services to provide lawyers, particularly solo and small firm practitioners, with the tools to succeed in business and life. Our focus will be on leveraging technology as a way of reducing attorney costs and improving productivity. We will also leverage our economic power as an association with more than 22,000 members to improve member access to capital, insurance coverage, and other services critical to effective practice management. Our most significant investment over the next year will be in the area of attorney wellness so we can expand the programs and options available to lawyers suffering from substance abuse, depression and other mental health diseases.

We also have a strong base of young leaders in Erin Braud, the Chair of the Young Lawyers Division, and Darrel Papillion, who will succeed me as President. We have an amazing Executive Director and an equally amazing staff. And we are fortunate to be able to build our future on a strong foundation established by President Larry Shea and 73 other presidents who preceded me.

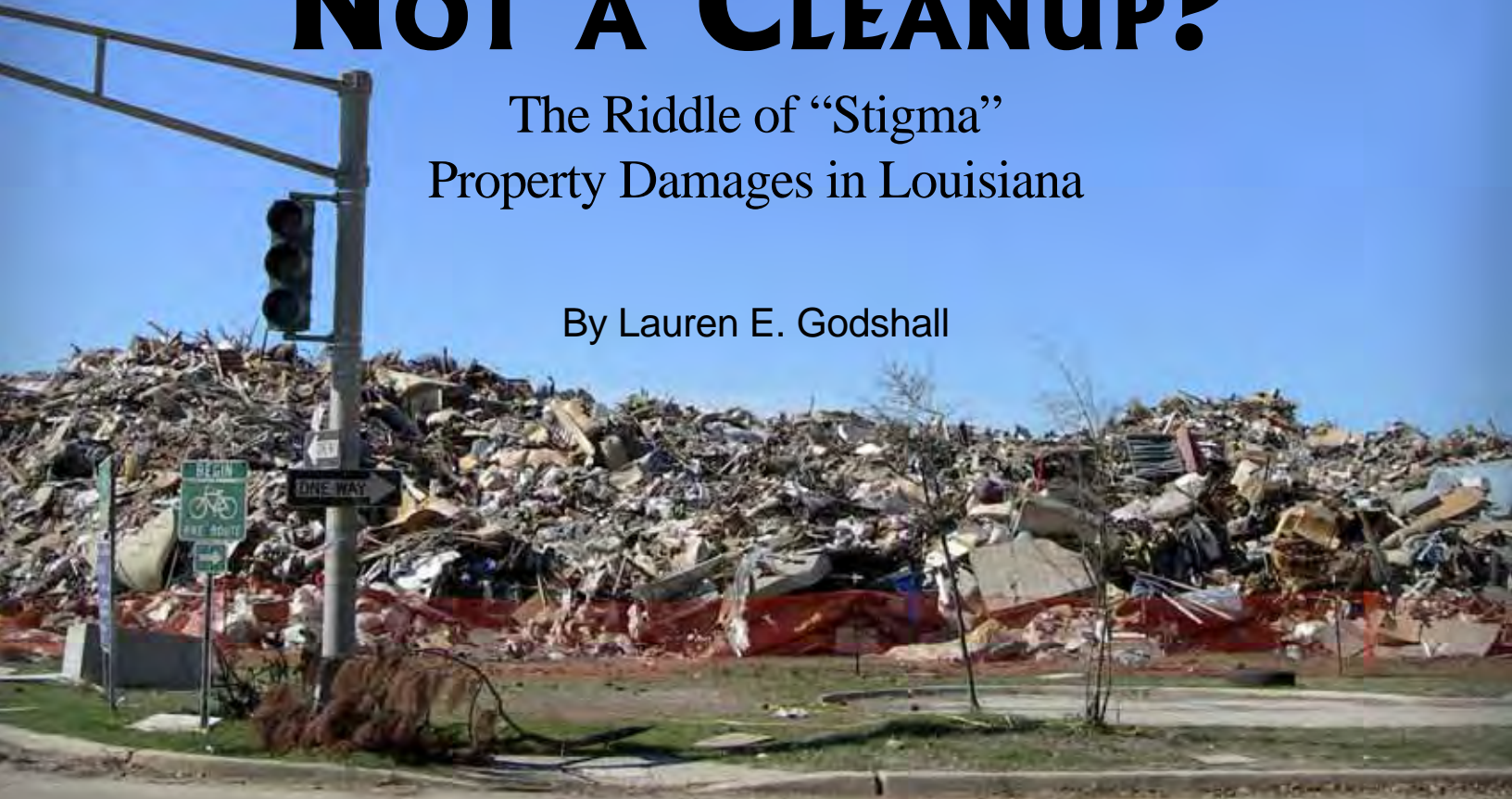
But our greatest reason for optimism is you. You are each volunteers. You are all doers. Your commitment to the public good is the reason why our profession is unique in its ability to transform the communities in which we live and our beloved State. I could not be prouder of my membership in the LSBA, and thank you all for this opportunity to serve the public and profession over the next year.

Mark A. Cunningham

WHEN IS A CLEANUP NOT A CLEANUP?

The Riddle of “Stigma” Property Damages in Louisiana

By Lauren E. Godshall



Toxic waste is spilled in a residential neighborhood, sending chemicals into local soils and streams. A response team is mobilized, and a remediation plan is carefully developed. Remediation occurs and the governing environmental agency gives the area its stamp of approval. No traces of contamination remain, and there is no reason to suspect this will ever happen again.

Local homeowners cannot sell their homes. Property prices plummet. No one is interested in moving to a neighborhood recently swarming with backhoes, monitors and mysterious testing equipment.

The danger is gone and the mess is cleaned up. But the perception of risk, rightly or wrongly, remains. The local homeowners are angry their property values have decreased; the toxic waste company is frustrated that it has taken every remediation action it could. An economic loss of some kind has occurred — but is it real? Is it permanent? Is it measurable? And when the market is irrational, who should bear the cost of that irrationality?

Those are the questions frequently faced by courts where plaintiffs claim the right to recover “stigma damages,” *i.e.*, property value losses that are un-

related to remaining contamination but are nonetheless felt. As the 5th Circuit noted in *Bradley v. Armstrong Rubber Co.*, 130 F.3d 168, 175 (5 Cir. 1997), “Whether market stigma is a recoverable element of damages has been the subject of considerable debate.” Courts have been cautious and not necessarily consistent in handling these issues. Courts have “struggle[ed] with the desire to make the plaintiff whole while awarding only those damages that are proven with reasonable certainty.” Jennifer L. Young, “Stigma Damages: Defining the Appropriate Balance Between Full Compensation and Reasonable Certainty,” 52 S.C. L. Rev. 409, 410 (Summer 2001).

Compounding the problem is the extreme difficulty faced in determining a proper amount to award. The “stigma” that is reducing the value of the property

may decrease over time, or vanish — and the amount of that reduction in value is itself up for debate, as property valuation can be more of a subjective art than an objective science.

The entire New Orleans region, for example, could arguably suffer from the stigma associated with the disaster of Hurricane Katrina and the subsequent massive flooding. However, New Orleans real estate is widely reported to be on a major upswing, and property values have largely risen; “eight years after Hurricane Katrina flooded 80 percent of the city and displaced 400,000 residents, New Orleans has become one of the fastest-growing U.S. commercial real estate markets.” Nadja Brandt, “A New Orleans Real Estate Boom Eight Years After Katrina,” Sept. 5, 2013; www.businessweek.com/articles/2013-09-05/a-new-orleans-real-estate-boom-eight-years-after-katrina.

As reported by the Times Picayune in August 2013, as the eighth anniversary of Katrina neared, “In New Orleans, prices rose 6 percent to \$150 per square foot. Among the thousand homes sold through June, the average price was \$327,498. Before Hurricane Katrina in 2005, the average house sold for \$228,620 or \$114 per square foot, which means prices are up by a third in the city since the storm.” Katherine Sayre, “New Orleans metro home prices climbed in first half of year,” Aug. 8, 2013; www.nola.com/business/index.ssf/2013/08/new_orleans_metro_home_prices_1.html.

Despite this regional upswing, there are still lawsuits percolating through the system alleging that property values were indeed affected negatively by the public perception of the flooding that followed the hurricane. This article sets out some of the litigation, in both the federal and state systems, to demonstrate how local courts have dealt with the enigmatic question of stigma.

Federal Court: Show Me the Physical Injury

Many jurisdictions require that plaintiffs asserting a “stigma damages” claim must experience some physical injury to their property before they may recover

stigma damages. The U.S. 5th Circuit is no exception. In *Berry v. Armstrong Rubber Co.*, 989 F.2d 822, 826 (5 Cir. 1993), the court was faced with a group of plaintiffs claiming stigma damage to their property based on the illegal dumping practices of a tire manufacturer. The plaintiffs in *Berry* did not live on the illegal dumping sites but did live nearby. They presented expert witness testimony that, in the local real estate market, “the plaintiffs’ properties were perceived to be contaminated by toxic wastes and... a negative market stigma significantly reduced the market values of plaintiffs’ properties.” *Id.* The 5th Circuit, applying Mississippi law, refused to grant any damages without evidence the property itself had been contaminated. “Plaintiffs have cited no case, and the court has found none, holding that Mississippi common law allows recovery for a decrease in property value caused by a public perception without accompanying physical harm to the property.” *Id.* at 829.

This rule was re-emphasized a few years later in *Bradley*, 130 F.3d at 176. Again, the court required that the “stigma” claim be made only where property was actually damaged. “The requirements of permanent and physical injury to property ensure that this remedy does not open the floodgates of litigation by every property owner who believes that a neighbor’s use will injure his property.” *Id.*

More recently, in the U.S. District Court, Eastern District of Louisiana, Judge Carl J. Barbier addressed a true “pure” stigma claim as a part of the Deepwater Horizon oil spill litigation. *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, 902 F.Supp.2d 808 (E.D. La. Oct. 1, 2012). In October 2012, he released an opinion addressing the “Pure Stigma Claims” that had been brought in the oil-spill-related litigation, which he defined as “claims by or on behalf of owners, lessors, and lessees of real property that they have suffered damages resulting from the taint of their property caused by the oil spill, although no oil or other contaminant physically touched the property.” These are claims by, for example, high-rise condominium owners in Orange Beach whose property value was allegedly affected by the oil spill

although the condo itself was not touched by any oil. The “Pure Stigma Claims” plaintiffs argued that stigma damages are recoverable under the Oil Pollution Act (OPA), pursuant to general maritime law and Louisiana law.

Judge Barbier held that OPA preempted the application of Louisiana law, thus avoiding a discussion of whether Louisiana law would allow a “pure” stigma damages claim like this. *Id.* at 815. However, even under OPA, no stigma damages could be awarded because of the plaintiffs’ inability to prove they actually suffered a loss. “[T]he ‘Pure Stigma Claims’ concern property that was not sold; they are claims for unrealized diminution or real property value. Such claims concern neither a ‘loss of profits’ nor ‘impairment of earning capacity.’ Before real property is sold, there can be no ‘profits’ to be lost. . . . Furthermore, until property is sold and a loss realized, damages are speculative — *it is possible that the value of real property eventually may meet or exceed its pre-spill amount.*” *Id.* at 816 (emphasis added).

The New Orleans post-Katrina real estate recovery supports the judge’s decision as this price upswing does show that theoretical stigma damages can vanish before any actual monetary loss is suffered. In any event, the federal cases demonstrate an insistence that while stigma damages must be awarded, they are only done so narrowly in those cases where all prerequisites are precisely met.

State Courts: Sometimes You’ll Get Stigma Damages, Sometimes You Won’t

Louisiana state courts have been less consistent and more flexible in granting awards for decreased values from environmental stigma. The Louisiana Supreme Court, in 2003, affirmed an award for “pure” stigma damages in *Bonnette v. Conoco, Inc.*, 01-2767 (La. 1/28/03), 837 So.2d 1219, 1239. In this case, plaintiffs claimed diminished property values due to the stigma of asbestos contamination, *even though the contamination had already been remediated*. Plaintiffs put on the expert testimony of a Mr. Pauley

in support of their stigma claims, who “opined that plaintiffs’ property values would be lower even after the property had been remediated due to the ‘stigma effect’ the presence of asbestos would have on the properties. He explained... most prudent buyers would be more likely to buy a house that has never been contaminated with a hazardous substance than one that has been contaminated and remediated. He stated that the word ‘asbestos’ is frightening to people because most people are aware that it is a carcinogen, and even if it is cleaned up, people are still concerned.” *Id.*

The trial court determined Mr. Pauley’s testimony was more credible than the testimony of the defendants’ expert on the same topic and awarded plaintiffs stigma damages by estimating that their property values had been diminished by 10 percent. This award was upheld by the Supreme Court without much discussion as to the appropriateness of a general stigma award of this nature, based on its deference to the trial court’s assessment about the relative credibility of the expert witnesses.

Ten percent was again the magic number in *Johnson v. Orleans Parish School Board*, 06-1223 (La. App. 4 Cir. 1/30/08), 975 So.2d 698 705. In *Johnson*, the City of New Orleans had previously leased 100 acres of land as a landfill and garbage dump, then had the land later developed for public housing without ever testing or remediating the property. The EPA eventually tested the soil in the area and found serious contamination. Remediation of the top two feet of soil was ordered and completed, and the residents were given a certification of completion confirming their property had been partially remediated. The EPA also gave the residents a list of permanent restrictions on the use of their property. In that case, the trial court gave the property owners who lived on the landfill site itself their fair market property value. In addition, property owners in the adjacent area “were awarded 10 percent of their property value for stigma damages.” *Id.* Once again, the appellate court only noted its deference to the trial court regarding its decision about awarding damages and did not provide any analysis beyond the statement, “There is

objective evidence in the record to make such a finding reasonable.” *Id.* at 711.

Contrarily, stigma damages were not awarded in the case *Mitchell v. East Baton Rouge Parish*, 2010 WL 2889572, 09-1076 (La. App. 1 Cir. 7/16/10), ___ So.3d ___. In that case, the City of Baton Rouge was sued by residents living near the North Wastewater Treatment Facility, which was built in 1960 and expanded several times, including in 1997-98. “Monetary [stigma] damages were awarded to nineteen plaintiffs for stigma damage to their residences.” *Id.* at *1. The appellate court, however, reversed the trial court’s award of the stigma damages, noting that plaintiffs could only be claiming damages from the 1997-98 expansion; claims from decreased property values from prior to that time would have already prescribed. However, the plaintiffs’ expert on the stigma’s effect on property values “did not consider the effect of the 1997 expansion on the property, but the total effect of the sewerage treatment plant, which has existed since 1960.” *Id.* at *4. Moreover, “the costs of many of the plaintiffs’ homes reflected a decreased value due to the plant at the time of the purchase.” *Id.* In other words, the plaintiffs who purchased their property after the wastewater plant was already built had in effect already been granted their stigma damages by buying their property at a reduced price. A second award of money would have, in effect, been a double windfall. Notably, the court did not suggest that stigma damages arising simply from the proximity of the plant could not be awarded in any case. Instead, it focused on the fact that the plaintiffs had failed to prove they suffered additional “stigma” to their already-stigmatized property in the relevant time window of 1997-98.

In a case involving Jefferson Parish property that flooded during Hurricane Katrina, but which was also unlikely to flood again, the appellate court allowed the admission of expert testimony on the value of the stigma claim. *Chicago Property Interests, L.L.C. v. Broussard*, 2012 WL 4761505, 11-0788 (La. App. 4 Cir. 5/23/12), ___ So.3d ___. The expert in question previously reported on the “potential for loss in market value of the subject properties due to stigma dam-

ages.” *Id.* at *7. This was a preliminary ruling on writs only, not an appeal on the merits of the case, but the 4th Circuit did indicate that stigma damages could be calculated as a part of any damages award. “[T]he district court did not abuse its discretion in accepting the expert reports and formulating a mathematical calculation of the damages that can be used in the future of this litigation if the court sees fit.” *Id.* at *9.

An Uncertain Future

Overall, Louisiana courts are more willing than federal courts to allow the recovery of diminished property values arising from environmental stigma. These claims can be brought by property owners who do not claim any permanent physical injury to their property.

In general, stigma claims present unusual challenges for courts. The public’s unreasonable fear that property could be contaminated is not the basis for a suit. But, under a stigma claim, unreasonable public fear, resulting in a decreased property value, may indeed be compensable, particularly in Louisiana state courts. No permanent injury to the property needs to be shown for an environmental property stigma claim to be successful. It is a risk that Louisiana chemical and energy companies must understand they are taking by operating in this state.

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A NEW RIGHT OF ACTION:

Any Person Can Sue a Mandatary on Behalf of a Principal

By Evelyn L. Wilson

Act 356 of the 2014 Louisiana Legislature created a new right of action designed to protect the estates of persons who have appointed mandataries to handle their affairs when those mandataries abuse their powers. To assist principals unable to supervise their mandataries, this new law allows any interested person to draw a court's attention to the abuse.

In July 2006, the Uniform Law Commission recommended for enactment a Uniform Power of Attorney Act. An AARP Public Policy Institute Research Report, titled "A Comparison of Current State Laws with the New Uniform Power of Attorney Act," disclosed that much of Louisiana's law on mandate already offered many of the protections recommended by the new uniform law. A glaring omission in state law is section 116 of the uniform law which allowed a list of nine categories of persons to "petition a court to construe a power of attorney or review an agent's conduct, and grant appropriate relief."¹

By House Resolution 113 of 2009, Rep. Tim Burns asked the Louisiana State Law Institute (the Law Institute) to “study and make recommendations relative to the implementation of safeguards for elderly persons executing powers of attorney and to report its findings to the legislature.” In response to this resolution, the Law Institute formed the Power of Attorney for the Elderly Committee with representatives from various interest groups in the areas of estate planning and elder abuse. After reviewing the uniform act, the AARP report and Louisiana’s laws on mandate, the committee proposed a new right of action to allow persons other than the principal to petition a court on the principal’s behalf.

A mandate, or power of attorney, is a contract between a principal and the principal’s mandatory.² In general, this device serves as an extraordinarily efficient tool for managing property as it allows principals to plan for their absence or possible incapacity by making arrangements for someone other than themselves to properly manage their affairs. Louisiana’s mandates are always “durable” in that they continue in effect even after the principal loses the capacity to act for himself.³

Louisiana’s law of mandate provides a host of protections for principals. A principal who does not expressly authorize a mandatory to alienate, acquire, encumber or lease immovable property,⁴ make or revoke an *inter vivos* donation, accept or renounce a succession, contract a loan, acknowledge or remit a debt, or become a surety, draw or endorse promissory notes and negotiable instruments, or enter into a compromise or refer a matter to arbitration⁵ will not be bound by the mandatory’s act. Unfortunately, a typical power of attorney form is drafted in broad strokes and waives these protections. Most mandates expressly authorize mandatories to perform all of these acts.

Under Louisiana’s laws, absent an agreement to the contrary, either the mandatory or the principal can terminate a mandate at any time. Although a mandatory is accountable to the principal and is bound to provide information and an accounting upon the request of the principal,⁶ a principal may become men-



tally or physically unable to demand or interpret an accounting. A principal who is unaware of the actions of a mandatory, or a principal who is deceived by or who fears a mandatory, may not act to protect his estate.

Thousands of reports of abuse, neglect and exploitation are received by the state Office of Elderly Protective Services (EPS) each year. Often the perpetrator is a trusted mandatory. The Louisiana Medicaid Fraud Control Unit (MFCU) of the Louisiana Attorney General’s Office investigates and prosecutes the crime of “Exploitation of the infirmed,” defined as “[t]he use of an infirmed person’s or aged person’s, or disabled adult’s power of attorney or guardianship for one’s own profit or advantage by means of fraudulent conduct, practices, or representations.”⁷ Sadly, in many cases, by the time these investigations are complete, the principal’s property cannot be recovered.

Louisiana’s law of mandate neither contemplates nor provides for the oversight of a mandatory when the principal can no longer direct the mandatory. This new legislation allows a third party to bring suit on behalf of the principal to

call the mandatory to task. Importantly, it allows any interested person to ask a court to enjoin a mandatory from disposing of the principal’s assets pending a review by the court; that is, it allows injunctive relief without a finding of irreparable harm to, as it is said, stop the bleeding.

The petition filed in this action must name both the principal and the mandatory as defendants, and may name any other person the plaintiff believes has improperly received property that belonged to the principal. Naming these other persons as defendants allows a court to order the return of the principal’s property.

The pleading must be verified and must state with particularity the reasons the plaintiff believes court action is needed, thus creating a heightened pleading standard designed to discourage frivolous lawsuits. Members of the committee expressed concern that the children of a principal would use this action to obtain financial information the principal chooses to keep secret. A principal’s children have no right to access their parent’s financial data and a mandatory has no duty to account to anyone other than the principal, absent some evidence of abuse.

Significantly, the new statute applies only when the principal is a natural person. It does not impact other uses of a mandate or power of attorney.

To ensure that the principal has actual notice of the suit and of the allegations of wrongdoing on the part of the mandatory, the principal must be personally served. This provision resulted from concerns that the mandatory would want to hide his or her behavior from the principal and might make an appearance on behalf of the principal without the principal's knowledge or consent. Notifying the principal personally of the accusations against the mandatory may be enough by itself to spur the principal to address the concerns raised in the pleading. Conversely, a principal who knows of the litigation may choose to file a motion to dismiss it, taking sides with the mandatory rather than with the plaintiff.

When a principal files a motion to dismiss the action, the principal must appear in person or appear electronically to allow the court to assess the principal's supervision of the mandatory. During the court's hearing on the motion, the court must determine whether the principal is aware of the acts of the mandatory, whether the principal is subject to fraud, duress or undue influence, and whether the principal is able to comprehend generally the nature and consequences of the acts of the mandatory before granting the principal's motion to dismiss. These standards were derived from existing Civil Code articles 1477 through 1479 concerning the capacity of a person of the age of majority to make a donation.

When a principal is aware of the acts of the mandatory, is not subject to fraud, duress or undue influence, and is able to comprehend the mandatory's acts, the court is required to grant the principal's motion to dismiss. Otherwise, the court is expected to address the allegations in the petition using existing law applicable to the principal-mandatory relationship. The court can grant any relief to which the principal is entitled. This legislation does not create new standards of behavior for a mandatory; it creates new opportunities for enforcing the standards that already exist.

To assist a court in reaching its decision, this legislation expressly authorizes a court to appoint an investigator and to collect information from financial institutions and health care providers without meeting the strict notice and hearing requirements established to protect the privacy of those records. A court may enjoin a mandatory from exercising all or some of the powers granted by the mandate and may appoint an interim mandatory pending its decision.

The legislation allows a court to assess reasonable costs and attorney fees — another provision intended to discourage frivolous suits. In doing so, this new right of action seeks to protect a principal from serious abuse while protecting a mandatory, who may be working without compensation, from having to respond to the minor complaints of disgruntled siblings who may demand an accounting just to see what the mandatory is doing. The new law seeks to honor the principal's right to the privacy of his affairs while at the same time provide more vulnerable principals with some opportunity for relief.

Two additional procedural rules should be highlighted. Venue is set with a preference for the parish of domicile. The second venue choice, residence, is to be used when the principal has no domicile in the state. The third choices, in the absence of a domicile or a residence, are physical presence or where immovable property is located.⁸

To address concerns about issue preclusion and prescription should the principal die or become interdicted while litigation under this act is pending, the rules of substitution allow the action to continue even after the mandate ends. Successors may be substituted for the plaintiff after a principal's death and a curator may be substituted after interdiction.⁹

In addition to adding this new section to the law of mandate, this legislation amended Civil Code article 3029 on termination by the mandatory. Under current law, a mandate will terminate when the mandatory gives notice to the principal that the mandatory resigns or renounces his authority. Warned that the threat of this litigation might cause mandataries to abandon their principals, the committee chose to require that the mandatory give notice to someone else when the manda-

tary "has reasonable grounds to believe that the principal lacks capacity."¹⁰

Lastly, one matter that the committee considered important is not addressed by this legislation. Some courts have imposed a jurisprudential duty of loyalty in a principal-mandate relationship.¹¹ The committee wanted to codify this duty. Although the Council of the Law Institute agreed with the committee's suggestion, the Council chose to refer this substantive addition to the general laws of mandate in the Civil Code to the Law Institute's standing Committee on Mandate.

Act 356 will by no means solve all of the problems associated with mandataries executing mandates from persons no longer able to supervise them. It does not make a dishonest person honest. It simply makes available a tool that can be used to protect the property of persons who need this protection without intruding into the privacy of persons who do not.

FOOTNOTES

1. Uniform Power of Attorney Act §116 (2006).
2. La. Civ.C. art. 2989 (1998).
3. La. Civ.C. art. 3026 (1998).
4. La. Civ.C. art. 2996 (1998).
5. La. Civ.C. art. 2997 (2001).
6. La. Civ.C. art. 3003 (1998).
7. La. R.S. 14:93.4 (1999).
8. La. Civ.C. art. 3851 D. (2014).
9. La. Civ.C. art. 3853 (2014).
10. La. Civ.C. art. 3029 (2014).
11. *Assunto v. Coleman*, 158 La. 537, 540 (1925), ("an agent owes the utmost fidelity to his principal . . .").

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A hand holding a gavel over a circuit board. The hand is positioned on the left, holding the handle of a gavel. The gavel's head is positioned over a circuit board. The circuit board is orange and has various components and traces. The background is dark and out of focus.

Overview of Data Breach Litigation in Louisiana: A Look Into Its Uncertain Future

By Michael S. Finkelstein

Not often do entirely new practice areas emerge that span multiple fields of law. Such a phenomenon is occurring across America now as a new area of law sweeps the headlines of the nation's largest news providers and immediately captures the public's attention: Data Breach.

Nuts and Bolts (and Bytes)

“Data breach” has been defined as an incident whereby an individual, application or service accesses, views or retrieves data, illegally or without authorization.¹ Data breaches are forms of a security breach specifically designed to steal data and publish that information in an unsecured location or utilize that information in an unauthorized manner. Affected information can include:

- ▶ personal identifiable information (PII, including information such as an individual's name, date of birth, Social Security number, credit/debit card numbers, account login credentials and driver's license numbers), responsible for 57.2 percent of data breach claims;²
- ▶ personal health information (PHI), responsible for 27.2 percent of data breach claims;
- ▶ trade secrets, responsible for 1.4 percent of data breach claims); or
- ▶ other information.³

After suffering a data breach, businesses or entities are required to notify affected individuals pursuant to the Louisiana Database Security Breach Notification Law, La. R.S. 51:3071 *et. seq.*



Data Breach Notification Requirements

Recognizing the need to protect their citizens, 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have enacted legislation requiring that individuals be notified in the event of a security breach involving personal information.^{4,5} Louisiana Revised Statutes Title 51, “Trade and Commerce,” Chapter 51, “Database Security Breach Notification Law,” lists the requisite responsibilities for businesses and the duty to notify consumers of a security breach.

The law provides that any person, business or agency that owns or licenses computerized data that includes an individual's personal information shall notify affected individuals of the breach when it is reasonably believed or discovered that the data was acquired by an unauthorized person.⁶ The law defines “personal information” as the individual's name when combined with at least one of the following — Social Security number, driver's license number, account number, credit or debit card number, and any combination, access code or

password that would allow access to the individual's financial account.⁷

Notification of the breach must be made in writing or electronically.⁸ Additionally, notification “shall be made in the most expedient time possible and without unreasonable delay,” subject only to the permissible delay of the business working with a law enforcement agency as a part of a criminal investigation.⁹ An exception to the notice requirement is permitted so that no notice is required “if after a reasonable investigation, the person or business determines that there is no reasonable likelihood of harm to customers.”¹⁰

The Louisiana law also provides that a civil action may be brought to recover *actual damages* resulting from the failure to timely notify an affected person that there has been a data breach resulting in the disclosure of his/her personal information.¹¹ While the statute attempts to create a civil remedy for failure to notify in the event of a data breach, the law falls short of providing true teeth for that action.¹² The development of data breach case law in Louisiana and across the country has not been friendly to plaintiffs.

Filing Suit for Data Breach

Having been notified that their information has been compromised, affected individuals can bring actions for data breach. While data breach law is in its infancy in Louisiana, claims have been made under the headings of negligence, emotional distress, loss of privacy, invasion of privacy, identity theft, fear of identity theft, harassment, nuisance, fear and anxiety, among others.¹³ These claims are analyzed under theories of negligence by the courts, employing Louisiana's duty/risk analysis.¹⁴

In *Ponder*, the case of first impression in Louisiana, the court noted that courts across the country have dismissed complaints alleging damages in the form of charges for identity theft monitoring and credit protection based on a finding that those plaintiffs do not meet the threshold of actual damages or a cognizable loss. This holding is grounded in the idea that no injury is incurred when a plaintiff is in "anticipation of a future injury that has not materialized."¹⁵ In *Clapper v. Amnesty Int'l*, the U.S. Supreme Court cemented the notion that plaintiffs incurring costs to protect confidential information, even those undertaking burdensome and costly measures, do not necessarily satisfy the Constitution's Article III Case or Controversy Requirement.¹⁶

Assuming, however, that the complaint can satisfy the standing requirement, the courts have denied plaintiffs' recovery under numerous theories. In the cases thus far brought before the courts in Louisiana, even when the plaintiffs' information had been compromised by exposure to a third party, their information had not yet been utilized to, for example, incur fraudulent charges. Unable to prove concrete damages, the courts have ruled that the plaintiffs have not sustained actual injuries, finding instead that their injuries were "purely speculative" and denying the plaintiffs' relief.¹⁷ Courts have rejected claims of misrepresentation and fraud based on not being pled with particularity¹⁸ or the plaintiff not causally relying on the defendant's misrepresentation.¹⁹ As to plaintiffs' emotional distress claims, the courts have ruled that defendants will not be held liable

for merely negligent conduct without an accompanying physical injury.²⁰ However, in *Melancon*, the court did recognize the possibility for a case to proceed where the plaintiffs' heightened risk for identity theft or charges for medical monitoring are recognized as cognizable injuries.²¹

Data Breaches as Class Actions

The high barriers to establishing a meritorious action in court beg the question of how and whether data breach claims brought by individuals or as class action lawsuits will develop this area of the law. With massive amounts of information being stolen from corporate databases, data breach litigation is ripe for claims to be brought as class actions. Perhaps also the class action is the best vehicle to pursue these claims, as private attorneys have the additional incentive of developing cybersecurity law under the "Private Attorney General" theory.²² Classes must satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure: numerosity, commonality, typicality, and that the class representatives fairly and adequately protect the interests of the class.²³ Due to the nature of the information typically stolen in data breaches, the class action requirements will likely be satisfied in the event of a breach. Given the recent retraction of the courts in certifying class actions,²⁴ however, it seems that this avenue will also present its own challenges.

The Future of Data Breach Actions in Louisiana

Though the existing case law has not been favorable for plaintiffs seeking to bring an action for data breach, it is instructive on what prospective claims may look like.²⁵ In *Melancon*, the court sets forth several avenues for recovery, opening the possibility for a claim to proceed if an actual injury is incurred. Sustaining actual damages, such as fraudulent credit transactions, thus becomes a requirement for a plaintiff to maintain an action against the person or business that suffered the breach. Furthermore, "[i]n order to have suffered an actual injury, [a plaintiff] must

have had an unreimbursed charge on [his] credit card."²⁶ When plaintiffs bring their contemplated action, they can include damages for future credit monitoring and identity theft monitoring, which will naturally follow from having actually suffered the fraud. But, with the possibility of PHI or trade secret information being stolen as a part of a data breach, the opportunity is open for the litigation to develop outside of the PII spectrum. Muddying the water for the courts is the fact that damages for disclosure of PHI would be far more speculative, as quantifiable damages cannot be easily determined.

While Louisiana courts have not yet arrived at a negligence analysis of a data breach claim, it can be expected to proceed similar to a recent analysis by the 11th Circuit applying Florida law.²⁷ As for the merits of a cognizable negligence claim under Louisiana law, the legal battle will likely proceed with plaintiffs asserting that the breach was preventable, and defendants countering that they acted reasonably to prevent the harm.

Not All Businesses Are Created Equal

As a part of the debate regarding which standard will apply, the duties of diligence and competence carried by a large business will inevitably be far more onerous than those imposed on small businesses. As the law evolves in this area, the standard of "reasonableness" by which actions are measured will become more burdensome on large businesses due to their access to complex technology, or the idea that they can and should be using complex technology to safeguard their information. Smaller businesses, however, lacking access to the same complex technology, will be held to a far more lenient standard.

A Heightened Risk: Attorneys and Susceptibility to Data Breach

Attorneys are prime targets for cyber attacks given that they often possess their clients' confidential and personal information. While all attorneys should be aware of the risks inherent in maintaining con-

fidential client information, attorneys in certain practice areas should be especially aware of the omnipresent threat posed by a data breach. Attorneys maintaining their clients' medical records or those attorneys possessing proprietary client information, such as pending patents, trade secrets or other similarly-sensitive information, should take extra steps to ensure that they have the proper technology and systems in place specifically designed to protect and safeguard their clients' information.

Under the Louisiana Rules of Professional Conduct, attorneys have a duty to provide competent representation to their clients, which includes safeguarding and protecting their confidential client information.²⁸ Competence in this area likely includes a duty on the attorney to understand, on some level, the technology being utilized in the representation. Attorneys should be aware of the capabilities and limitations of the services and devices they use and should exhibit caution when making decisions and implementing policies on where and how to store and access confidential information. With so great a risk of exposure stemming from a data breach lawsuit, how are attorneys and other businesses to respond when faced with an ever-present threat of liability? Just as they usually do: by purchasing insurance.

The Evolving World of Cybersecurity Insurance

In addition to their regular business liability insurance and malpractice policies, attorneys possessing sensitive information and businesses of all kinds should make sure they are covered under a Data Breach/Cybersecurity Liability Insurance Policy. Over the past few years, insurance companies have started to specifically exclude electronic data loss from their traditional insurance policies, forcing businesses to purchase additional insurance specific to data security. These cybersecurity policies cover the costs of the data loss and can include hiring investigators, credit monitoring for affected individuals, and enlisting public relations professionals to help contain the damage done to the affected company's

reputation.²⁹ With potential post-data-breach costs reaching millions of dollars per organization, paying a premium for a cybersecurity liability policy can be a crucial purchase to protect a business's bottom line.³⁰

With the security of a data liability insurance policy in place, businesses can rest assured that their exposure is limited, while any data breach claims against them are handled efficiently under their insurance coverage. Similarly, these insurance policies incentivize plaintiff attorneys to pursue data breach claims, allowing for the further development of data security law in Louisiana.

FOOTNOTES

1. Data breach, www.techopedia.com/definition/13601/data-breach (last visited July 22, 2015).

2. Aggregating the numbers from the *NetDiligence Study* for credit/debit card, financial and PII categories.

3. Mark Greisiger, *NetDiligence 2013 Cyber Liability & Data Breach Insurance Claims: A Study of Actual Claim Payouts* (2013), www.netdiligence.com/files/CyberClaimsStudy-2013.pdf.

4. Security Breach Notification Laws, www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx (last visited July 22, 2015).

5. Bills to establish a federal data breach notification standard have been proposed, though none have as yet passed through Congress. To date, there is no federal data breach notification standard.

6. La. R.S. 51:3074.

7. La. R.S. 51:3073.

8. *Id.*

9. *Id.*

10. La. R.S. 51:3074(G).

11. La. R.S. 51:3075.

12. Breaches may be subject to different standards depending on the nature of the compromised material. Breaches involving PHI-protected medical records implicate standards under HIPAA (Health Insurance Portability and Accountability Act of 1996; Pub. L. 104-191(F)(C)(1171)(4)) and HITECH (Health Information Technology for Economic and Clinical Health Act; 45 CFR 160.103), whereas breaches affecting the federal government are actionable under the Privacy Act of 1974 (5 U.S.C. § 552a).

13. Melancon et. al v. Louisiana Office of Student Financial Assistance, et al., Civil Action Nos. 07-7712, *c/w* 07-9158 567 F.Supp.2d 873 (E.D. La. 6/5/08); *see also*, Ponder v. Pfizer, Inc., 522 F.Supp.2d 793 (2007).

14. Melancon, *id.*; *citing* Mathieu v. Imperial Toy Corp., No. 94-C-0952 (La. 11/30/94) 646 So.2d 318, 321-22; *see also*, La. Civ.C. art. 2315, 2316.

15. Ponder, 522 F.Supp.2d at 797; *quoting* Forbes v. Wells Fargo Bank, N.A., 420 F.Supp.2d 1018 (D. Minn. 2006); *see also, e.g.* Pisciotta v. Old Nat'l Bancorp, 499 F.3d 629 (7 Cir. 2007);

Hendricks v. DSW Shoe Warehouse, Inc., 444 F.Supp.2d 775 (W.D. Mich. 2006); Kahle v. Litton Loan Servicing, L.P., 486 F.Supp.2d 705 (S.D. Ohio 2007).

16. Clapper v. Amnesty Int'l, 568 U.S. ____, 133 S.Ct. 1138 (2013).

17. *See, e.g.* Ponder, 522 F.Supp.2d at 797-98, *citing* Kahle v. Litton Loan Servicing L.P., 486 F.Supp.2d 705 (S.D. Ohio 2007).

18. Fed. R. Civ. P. 9(b) requires that fraud be alleged with particularity.

19. In re LinkedIn user Privacy Litigation, No. 5:12-CV-03088 EJD (N.D. Cal. 3/6/13).

20. Melancon, 567 F.Supp.2d at 874-75; *citing* Nesom v. Tri Hawk Int'l, 985 F.2d 208, 211 (5 Cir. 1993); Moresi v. State, Dept. of Wildlife & Fisheries, 567 So.2d 1081, 1095-96 (La. 1990); Rivera v. United Gas Pipeline Co., 697 So.2d 327, 328 (La. App. 5 Cir. 1997).

21. Melancon, 567 F.Supp.2d at 876; *citing* Arcilla v. Adidas Promotional Retail Operations, Inc., 488 F.Supp.2d 965, 972 (C.D. Cal. 2007); Bourgeois v. A.P. Green Indus., Inc., No. 97-C-3188 (La. 9/4/98), 716 So.2d 355.

22. Associated Industries of New York State v. Ickes, 134 F.2d 694, 704 (2 Cir. 1943) (Judge Jerome Frank, the first to recognize the "private attorney general" theory).

23. Fed. R. Civ. P. 23.

24. *See, e.g.*, Wal-Mart Stores, Inc. v. Dukes, et al., 564 U.S. ____, 131 S.Ct. 2541 (2011).

25. *See* Belle Chase Auto Care, Inc. v. Advanced Auto Parts, Inc., 2009 WL 799760 (E.D. La. 2009); Pinero v. Jackson Hewitt Tax Service, Inc., 594 F.Supp.2d 710, 2009 WL 43098 (E.D. La. 2009).

26. In re Barnes & Noble Pin Pad Litigation, No. 12-cv-8617 (N.D. Illinois 9/3/13).

27. Resnick v. AvMed, Inc., 693 F.3d 1317 (11 Cir. 2012).

28. Louisiana Attorney Rules of Professional Conduct, R. 1.1, 1.3, 1.6.

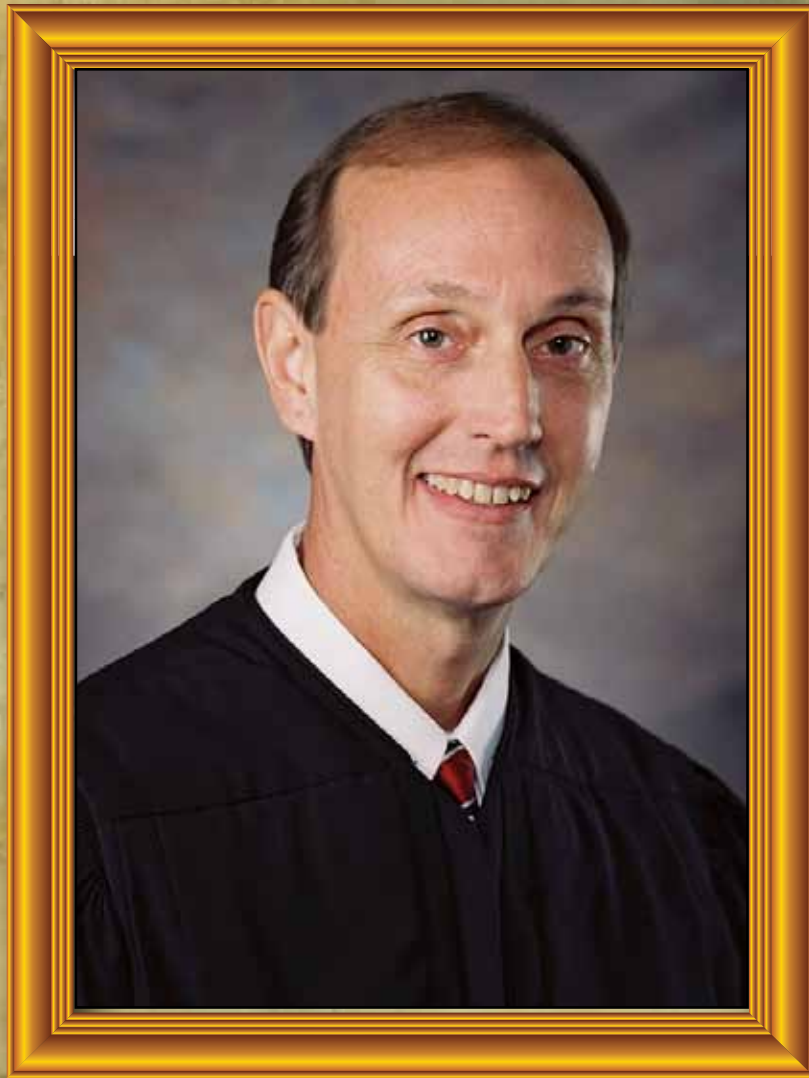
29. Dierdre Fernandes, "More firms buying insurance for data breaches," *The Boston Globe* (Feb. 17, 2014), www.bostonglobe.com/business/2014/02/17/more-companies-buying-insurance-against-hackers-and-privacy-breaches/9qYrVhskcoPEs5b4ch3PP/story.html.

30. *NetDiligence 2013 Cyber Liability Study*.

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Portraits & Perspectives: Louisiana Supreme Court Associate Justices



**One on One with Louisiana Supreme Court
Associate Justice John L. Weimer**

Interviewed by Anthony M. DiLeo

Asking Louisiana Supreme Court Associate Justice John L. Weimer to talk about his achievements for this interview proved challenging. All who know him well know he is reluctant to discuss his accomplishments about his career as a judge, lawyer and teacher.

Justice Weimer has served as a judge in the state courts of Louisiana for the past 20 years, as a trial judge, an appellate judge and now a Supreme Court Justice. He represents the Louisiana Supreme Court's 6th District, which includes the 12 parishes of St. Martin, Iberia, St. Mary, Assumption, St. James, St. John the Baptist, St. Charles, Terrebonne, Lafourche, Jefferson, St. Bernard and Plaquemines. Serving on the Supreme Court for 14 years, he was elected to a full term in 2002 and re-elected without opposition in 2012. His current term expires in 2022.

Prior to his election to the Supreme Court, Justice Weimer served as judge *pro tempore* of the 17th Judicial District Court, Division D. He was elected judge for the 17th Judicial District Court, Division A, in 1995 and re-elected in 1996 without opposition. In 1998, he was elected judge of the 1st Circuit Court of Appeal, District 1, Division B, and served until his election to the Supreme Court in 2001.

Justice Weimer has received numerous awards and honors including Victims & Citizens Against Crime Outstanding Judicial Award; Crimefighter's Outstanding Jurist Award; the 2015 Outstanding Lafourche Parish Public School Graduate; the 2002 Nicholls State University Outstanding Alumni Award and the 50th Anniversary Golden Graduate Award; Who's Who Among American Teachers; and the Nicholls State University Presidential Award for Teaching Excellence.



Louisiana Supreme Court Associate Justice John L. Weimer with his family, from left, his youngest daughter Emily, his wife Penny, his oldest daughter Jacqueline and his middle daughter Katherine. Photo courtesy of Weimer Family.

He was recognized for the significant assistance he provided in establishing the Lafourche Parish Drug Treatment Court. He is active in his community as well, including as a member of the Rotary Club, the Thibodaux Volunteer Fire Department and Christ the Redeemer Catholic Church Pastoral Counsel. He works with the Lafourche Parish Student Government Day Program and other school programs encouraging children to avoid meeting judges in their professional settings.

Born in Thibodaux in 1954, Justice Weimer is the oldest of five children. He graduated from Thibodaux High School in 1972 and financed his education by working in the oil fields. He received his BS degree in 1976 from Nicholls State University and his JD degree in 1980 from Louisiana State University Paul M. Hebert Law Center.

Justice Weimer is married to Penny Hymel Weimer and has three daughters. He is an avid Harley Davidson rider and art enthusiast. And while reluctant to formally call himself an artist, Justice Weimer has created award-winning images of south Louisiana with exquisite detail and accuracy, images of beauty in execution and composition, many of which he has donated to charitable auctions.

Rather than merely listing achievements, we talked about stories of how his professional life unfolded. These stories tell more than anything we could say about the character and integrity of this Justice.

Journal: Justice Weimer, tell us about yourself.

Weimer: I grew up in Thibodaux in Lafourche Parish. My parents were both 29 years old when they married. It was the first marriage for both of them, and they had five kids in six years. I was the oldest. My mother died when I was 9 years old and my youngest brother was 3. My father had the unbelievably difficult task of raising five kids on his own. He owned a service station, and I went to work for him when I was in the seventh grade and worked there through high school. I attended a Catholic school through the seventh grade, then attended and graduated from public school. I muddled through high school and can speak candidly about that because my children are now all out of high school. I didn't want them emulating my ineptitude in high school [laughing]. I earned a degree in business from Nicholls, went to LSU Law School and then went back to Thibodaux to practice law.

Journal: How did you begin your practice of law?

Weimer: Initially, I went to work with Billy Tauzin. I had worked with Billy as a legislative assistant. I would work part of the summer in the Legislature, first with Sen. Harvey Peltier and then later with Billy. I would then spend the balance of the summer working offshore, on the boats and rigs, in order to earn enough money to finance my education. Billy always said, "When you get out of law school, I want you to come and work with me." And, that's exactly what happened. He hired me before I finished law school. He was elected to Congress the day I graduated. Billy had a general, small-town practice, but soon realized that, because of the demands of his position in Congress and certain ethical rules, it wouldn't be appropriate to continue practicing law. I then went to work for Randy Parro and Jerald Block. When Randy was elected to the district bench, in the early 1980s, I remained with Jerald. We had a general civil practice. I did a lot of real estate work; we represented a savings and loan; we also represented a hometown community bank.

Journal: What made you decide to seek the position on the court?

Weimer: I had begun teaching law classes part-time at Nicholls. Prior to that, let me mention, I taught a law class through the American Institute of Banking (AIB) and that led to me teaching at Nicholls. There is a direct linear progression between me teaching that AIB class and us being here today. I won't bore you with all the details, but [laughing], that AIB position led to me teaching at Nicholls part-time, which eventually led to me teaching at Nicholls full-time, which played a role in me being appointed to the bench when then-District Judge Randy Parro was elected to the Court of Appeal. I was grading papers when he called and asked me if I would consider allowing him to submit my name to the Supreme Court to take his place on the district bench. I declined. I was very content teaching full-time and practicing law part-time and had no interest or aspirations whatsoever in serving as a judge.

Randy, however, persisted and convinced me to serve if appointed. Justice Lemmon appointed me. My career has



Louisiana Supreme Court Associate Justice John L. Weimer speaks during the 2015 LSBA Pro Bono Publico Awards ceremony. Photo by Matthew Hinton Photography.

moved through fate and circumstances that I still have a hard time comprehending. For example, my father-in-law and Justice Lemmon worked at a plant together before Justice Lemmon went to law school. My wife attended school with some of Justice Lemmon's children so they knew one another. I knew Justice Lemmon in passing, but based on Randy's recommendation and the fact that I was primarily a teacher and not a full-time attorney, which could have created some conflicts, Justice Lemmon recommended me to his colleagues on the Supreme Court and they approved my appointment. I ended up serving as a district judge *pro tempore* for 7.5 months.

While I was serving as a judge, I still had classes to teach at Nicholls. I taught two of the classes and two of the judges I was serving with volunteered to teach two

other classes. So the judges were teaching and the teacher was judging [laughing].

I was very concerned about not having been in an everyday law practice for a number of years at that point in time and how I would transition to being a judge. I found that the experience of teaching was excellent preparation for becoming a judge. After all, judges make decisions and teachers are called upon daily to make decisions regarding their students' performances. Teachers have to have command of the classroom, as judges have to have command of the courtroom. Both positions involve scholarship and a desire to be of service. Having taught law classes, which covered every topic from abandoned property to zoning and included tort law and criminal law, proved immensely helpful.

I completed my service on the district

bench and thought that would be the end of my career as a judge. After 7.5 months, I went back to the university to teach full-time and practice law part-time. I also became involved in mediation. A dean and the then-president at Nicholls were both interested in moving me through the academic ranks with the idea that I would become involved in some administrative positions. I became the director of the Free Enterprise Week program at Nicholls, which involved high school students learning about the free enterprise system. Then, unfortunately, one of my former colleagues from the district bench died of cancer after a brief illness. I was literally giving blood for his benefit at the church I attend when someone came in and announced that he had passed away. I was told one of the last times he laughed was when I went to visit him and told him we were organizing a blood drive through the bar association and asked him if he minded having some lawyer blood [laughing].

I was then faced with a tough decision: whether to continue my career as a teacher or to run for district judge to fill an unexpired term. I anguished over that decision because I was very happy serving as a teacher and an attorney and doing some mediation work on the side. But, obviously, I decided to run and I was fortunate enough to be elected.

Journal: And that was in 1995?

Weimer: Yes. A couple years later, again most unfortunately, someone I really looked up to and who was a dear friend, and who had been in the automobile business with my father, Court of Appeal Judge J. Louis Watkins, died.

Again, I really anguished over what to do. I offered to defer to all the district judges — throughout the district, it was an eight-parish district — and they all deferred to me. They were content serving as district judges. One consideration was that, geographically, the district lined up incredibly well for me. Ascension Parish, in the middle of the district, is where my wife had a large number of family members. The district was anchored by Lafourche and Terrebonne, in the south, and one of my brothers was the chief civil deputy in the Sheriff's Office in West Baton Rouge Parish, the northern end of the district. I



A painting by Justice Weimer, "Laurel Valley Home on a Misty Morn, Thibodaux, LA." Photo courtesy of Weimer Family.

ran and was fortunate enough to be elected. Interestingly, Justice Lemmon came to the swearing-in ceremony and [laughing] my wife jokingly said, "Guard your health carefully because every time someone dies, he runs." Thankfully, Justice Lemmon didn't pass away. However, he did retire. Again, fate and circumstances provided me with an opportunity to seek that office and I was again fortunate enough to be elected.

Journal: And, did you have to run for the one year?

Weimer: Yes, Justice Lemmon retired early to provide an opportunity for more people to run. There were a number of appellate court judges who would have had to make a choice of whether to continue service on the Courts of Appeal or run for the Supreme Court. And, of course, if they were not successful, they would lose their position on the Court of Appeal.

So there is this incredible symmetry that Justice Lemmon commenced my career with the appointment, and I said during the campaign, I didn't run to take his place, no one could take his place, but someone had to run to fill the position.

Journal: So at the end of the one year?

Weimer: I had to run for reelection. I was fortunate enough to not have anyone sign up to run at the same time. I try to avoid saying opponents. I try not to consider the people who run for office at the

same time as I do as opponents. I have been in elections with extremely worthy candidates; we just happen to be seeking the same position at the same time.

Journal: That's a lovely sentiment and I think that is part of your mediation skill I am hearing right there.

Weimer: [laughing] No, it's sincere. They are all wonderful people and excellent judges. I have been incredibly blessed in seeking office. For example, going back to teaching, when I campaigned, almost every business, including banks, had a former student of mine working there. Every fair or festival or function I attend, I meet a former student. I taught roughly 3,000 students over my career. Also, I attended Nicholls in the early 1970s through 1976. Nicholls is in the very middle of the Supreme Court district, the area served by Nicholls covers most of the parishes in the Supreme Court district and many of the parishes in the Court of Appeal district. In each of the races that I was involved in, three campaigns and six primaries, the people I met through Nicholls both as a student and as a teacher were essentially the foundation of the campaign. When I took the oath of office at Nicholls to serve on our state's highest court, there were five of us (Jimmy Dagate, Danny Cavell, John Perry and Billy Stark) on the stage who had all started at Nicholls in 1972, finished in 1976, and went on to law school.



Justice Weimer and his Harley at No Problem Dragstrip in 2002. Photo courtesy of Weimer Family.

Journal: Judge Parro told me that he actually drove you to become a candidate.

Weimer: I like his version of the story. Do you want to hear the true version? [laughing]

Journal: Yes, he told me he told you, “You’re going to run for this office. Come with me.”

Weimer: Well, a judicial colleague was going to run and I wasn’t going to run. Unfortunately, right before qualifying, the colleague couldn’t run because of health reasons. I was at the office on Friday afternoon literally working on some opinions when I received phone calls simultaneously from Judge Parro and from my wife, who both said you ought to consider running for the position on the Supreme Court. We had a long chat and I said, “Look, let’s talk on the way there.” So we started driving to Baton Rouge from Thibodaux. There was an accident on the highway that delayed us. When we arrived at the state capital, it was right around 5:30. The children were with us and two of them had fallen asleep in the vehicle. Judge Parro threw one child over each shoulder and ran to a side entrance. My wife and I ran up the steps to the front entrance, but the doors were locked. We heard Judge Parro calling that he found an open door.

Journal: Last day?

Weimer: Yes, last day of qualifying. We went up the elevators and walked into the Secretary of State’s office where you have to qualify and the door was locked and the curtain drawn. I said, “Oh, well, it wasn’t meant to be. Let’s go have a nice meal.” My wife started knocking on the door and someone opened it, and through the door, my wife says, “It’s not 5:30. You’re not supposed to close until 5:30.” The person at the door said, “Well, my watch says it’s 5:30, but it depends on what time it says in the computer.” The computer was rebooted and indicated it was three minutes before qualifying closed. My wife handed them the qualifying fee, and I became a candidate. If Randy Parro hadn’t gotten us around the accident or found an open door, if we had arrived a couple minutes later, certainly my career would have been different. If a colleague hadn’t developed health issues, I wouldn’t have been a candidate. And that’s why I say fate and circumstances intervened way beyond my ability to comprehend.

Journal: On the judicial side, are there any particular opinions that are notable?

Weimer: I hesitate to single out any one opinion because I try very hard to give each and every case that comes before us my full

attention. I’m often asked if I have had an important case, and my response is that each case is immensely important to the litigants and their attorneys and, beyond that, to our system of justice and the Justices. So all cases are interesting and challenging.

I am immensely blessed with an incredibly talented and competent staff. I tell them often there’s room on this staff for one dummy and I’ve got that position sewn up [laughing]. A few years ago I did something I haven’t done in 10 years — I hired another law clerk and bought a car. The law clerk that I had on the district bench followed me to the Court of Appeal and the Supreme Court. I hired another clerk when I was elected to the Court of Appeal and that clerk also followed me to the Supreme Court. I hired another clerk when I was elected to the Supreme Court and she is still with me. All those individuals, including my secretary, remained with me until two of my clerks decided to retire. So it had been 10 years since I hired a clerk and 10 years since I bought a car.

Journal: What are your hobbies right now?

Weimer: I dabble at painting. I would not flatter myself by saying I’m an artist, I assure you. I paint. I would be remiss if I didn’t say I attempt to play basketball with a group of guys; we’ve been playing for about 30 years now. I’m not a very good basketball player, but I run up and down the court with the best of them [laughing]. As I turn different decades, I always think I’ll not continue playing. But I’m past 60 and I’m still playing. I’m grateful I can do that. And I still have one bad habit left over from my misdirected youth. I still ride motorcycles.

Journal: What kind?

Weimer: I have a Harley Davidson, as do all of my brothers. We have the occasion to get together and ride, but far too infrequently.

You know, the job is so demanding and takes up so much time. Much of my free time is spent with my family. My youngest daughter is in college and is a collegiate athlete who hopes to coach, my eldest daughter is teaching after finishing graduate school, and my middle daughter just finished undergraduate school and is working in the medical field while planning to pursue future education in medicine. They are all doing

magnificently well, and thank God they are all pretty and smart like their momma. I am immensely blessed with a wonderful wife and three magnificent daughters who, collectively and individually, have taught me more than I've taught them. Any success that I have had is from them being who they are. They made me a much better person than I ever dreamed that I would be.

Journal: You've succeeded at many things.

Weimer: I have been blessed and fortunate. I've said this often, my law degree provided me with opportunities. In a six-year period, I went from being a full-time teacher, part-time attorney and mediator to being a district judge, an appellate court judge and a Supreme Court Justice. Because I switched positions, one of my colleagues who introduced me at a function said I was a "real Renaissance man," and from the back of the room someone said, "I don't know about a Renaissance man, it sounds like the boy can't hold a job to me" [laughing], which I had to concede. But I have hung on to this job at the Supreme Court for almost 14 years now.

Journal: And look at where you began. You had a mother who died when you were 9; you had a father raising all of these children; you were working at a service station. . . .

Weimer: Working in a service station was an educational experience. If you observe carefully, you learn from each life-experience. My father was an honest mechanic. Remarkably, when I ran for judge, I was amazed how so many people said, "I'm voting for you. Your daddy gave me a square deal when he worked on my car." I have my father's name. I'm named for my grandfather, too. He worked at a grocery store, which was the first supermarket in Thibodaux. He was the produce man and, the way the store was configured, he greeted everyone who walked into the store. And, again, by sharing the same name, people in another generation would say, "I remember your grandfather from the grocery store. He was always a gentleman." From my name sakes, I learned the virtue of honesty; the value of hard work; and how vitally important it is to treat everyone, regardless of their station in life, with dignity and respect. By working at the service station, I also learned



A painting by Justice Weimer, "South Lafourche Marsh, Fourchon, LA." Photo courtesy of Weimer Family.

how gratifying it can be to be of service and to help people.

My father worked on Randy Parro's car. I helped with something, maybe changed the oil in his car. Whenever he did business with my father, Randy would come in and talk to my father. He was always dressed real nice and he was a nice looking guy; I knew he was an attorney. I would listen to the conversations, but I never had enough gumption to participate. I would just listen, and he and my father would speak. Judge Parro tells this story: "I went to pick up my car at Weimer's service station and there was this long-haired, filthy, greasy, dirty kid who asked me what did you have to do to become an attorney? And I looked at this kid and thought to myself, 'This kid is going to need a lawyer someday. He's never going to be one.'" He concludes the story with, "Lo and behold, we ended up practicing law together and I recommended him to be on the bench, and now he is my colleague on the Court of Appeal." Then when I got elected to the Supreme Court, he said, "Now he's my boss." [laughing]

Journal: On the law side, is there anything in particular you would want to mention?

Weimer: Just recently I had the occasion to hand out awards with some of my colleagues to those attorneys involved in providing pro bono legal services. That was followed a few days later with a Louisiana Bar Foundation meeting and then, in short order, by the Bar's Annual Meeting. Those

three events really resonated with me about all of the wonderful work that so many lawyers are doing, both for individual members of society and for our system of justice. There are so many lawyers doing so many good things, and that is not adequately publicized or recognized in society at large. I am immensely grateful for all of the volunteer efforts by judges and members of the Bar toiling somewhat anonymously doing volunteer work that benefits society. Most people don't have any idea how many lawyers are involved in serving society so well.

Journal: I see you truly enjoy your work.

Weimer: One of the wonderful things about this job is that I get to meet some immensely talented and gifted and brilliant people, including lawyers, judges and professors, with whom I have developed wonderful friendships.

Anthony M. DiLeo, who practices in New Orleans, is also an arbitrator and mediator, handling more than 400 cases arising in 22 states for local, national and international parties. After Tulane Law School (Law Review, Order of the Coif), he received an LL.M. from Harvard Law School in 1971. He served



as law clerk to Judge Alvin B. Rubin (U.S. District Court) and Judge John Minor Wisdom (U.S. 5th Circuit Court of Appeals). He is a member of the Louisiana Bar Journal's Editorial Board. (tony@tonydileo.com; Ste. 2350, 909 Poydras St., New Orleans, LA 70112)

LOUISIANA RISING

Lessons in Leadership, Innovation,
and Balance



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson administers the oath of office to 2015-16 Louisiana State Bar Association President Mark A. Cunningham during the Installation Luncheon at the 2015 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

LSBA Installs 2015-16 Officers and Board of Governors at Annual Meeting

The Louisiana State Bar Association's (LSBA) 2015-16 officers and members of the Board of Governors were installed June 11, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

Mark A. Cunningham was installed as the 75th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Cunningham is a senior partner in the New Orleans office of Jones Walker LLP.

Darrel J. Papillion, a partner in the Baton Rouge firm of Walters, Papillion,

Thomas, Cullens, L.L.C., was installed as 2015-16 president-elect. He will assume the presidency in 2016-17.

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

Robert A. Kutcher, the managing partner in the Metairie firm of Chopin Wagar Richard & Kutcher, L.L.P., is serving his second year of a two-year term as treasurer.

Joseph L. (Larry) Shea, Jr., a member

in the Shreveport office of Bradley Murchison Kelly & Shea, L.L.C., will continue his service to the LSBA as 2015-16 immediate past president.

Erin O. Braud, staff counsel for Liberty Mutual Insurance Co. (Law Offices of Robert E. Birtel in Metairie), was installed as 2015-16 chair of the LSBA Young Lawyers Division.

Members of the 2015-16 Board of Governors also were installed by Chief Justice Johnson.

Continued next page

LOUISIANA RISING

Lessons in Leadership, Innovation,
and Balance



The 2015-16 Louisiana State Bar Association Board of Governors at the 2015 Annual Meeting in Destin, Fla. Seated from left, Shayna L. Sonnier, Donald W. North, Treasurer Robert A. Kutcher, President-Elect Darrel J. Papillion, President Mark A. Cunningham, Secretary Alainna R. Mire, Young Lawyers Division Chair Erin O. Braud and S. Jacob Braud. Standing from left, C. Kevin Hayes, Patrick A. Talley, Jr., John M. Frazier, Rachael D. Johnson, Marjorie L. Frazier, Kevin C. Curry, Immediate Past President Joseph L. (Larry) Shea, Jr., C.A. (Hap) Martin III, Julie J. Baxter, David W. Leefe, John E. McAuliffe, Jr., Charles D. Elliott, Mickey S. deLaup and Michael E. Holoway. Not in photo, Blake R. David, Monica Hof Wallace and Marcus A. Augustine. Photo by Matthew Hinton Photography.

First District

- ▶ **David W. Leefe**, a shareholder in the New Orleans office of Liskow & Lewis, P.L.C.
- ▶ **Patrick A. Talley, Jr.**, a partner in the New Orleans office of Phelps Dunbar, L.L.P.

Second District

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

Third District

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

Fourth District

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

Fifth District

- ▶ **Michael E. Holoway**, a partner in the Mandeville office of Milling Benson Woodward, L.L.P.
- ▶ **C. Kevin Hayes**, a capital partner in the Baton Rouge office of Adams and Reese, L.L.P.

Sixth District

- ▶ **Charles D. Elliott**, a partner in the Alexandria firm of Vilar & Elliott, L.L.C.

Seventh District

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

Eighth District

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

At-Large Members

- ▶ **Mickey S. deLaup**, owner of the firm Mickey S. deLaup, A.P.L.C., in Metairie.
- ▶ **John M. Frazier**, a shareholder in the Shreveport firm of Wiener, Weiss & Madison, A.P.C.
- ▶ **Rachael D. Johnson**, senior staff attorney with the Law Offices of Julie E. Vaicius (employees of The Hartford) in Metairie.

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

Loyola University College of Law

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

Southern University Law Center

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

Louisiana State Law Institute

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

House of Delegates Liaison Committee

- ▶ **Chair S. Jacob Braud**, a partner in the Belle Chasse firm of Ballay, Braud & Colon, P.L.C.
- ▶ **Member Marcus A. Augustine**, senior counsel for Cleco Corporation in Pineville.
- ▶ **Member Julie J. Baxter**, an attorney for the Louisiana Senate.



Joseph L. (Larry) Shea, Jr., LSBA 2014-15 president, left, symbolically hands over the gavel to Mark A. Cunningham, 2015-16 LSBA president, during the Installation Luncheon at the 2015 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

LOUISIANA RISING

Lessons in Leadership, Innovation,
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Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, awards the Catherine D. Kimball Award for Advancement of the Administration of Justice. Accepting the posthumous award for Hon. James R. McClelland was his wife, Sandra. Photo by Matthew Hinton Photography.



Scott L. Sternberg, left, receives the Stephen T. Victory Memorial Award from Barry T. Grodsky, 2013-15 LSBA secretary. Photo by Matthew Hinton Photography.



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, presents the Human Rights Award to Elia Diaz-Yaeger. Photo by Matthew Hinton Photography.

LSBA Members Recognized for Services to the Bar and Profession

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

► Catherine D. Kimball Award for Advancement of the Administration of Justice

Hon. James R. McClelland of Franklin was honored (posthumously) with the 2015 Kimball Award. He was recognized for his exemplary service to the legal profession and the public throughout his distinguished career: as a district judge, as an attorney, as an assistant district attorney and as a public defender. He started his career in 1975 with Aycock, Horne & Coleman in Franklin, becoming a partner in 1978. He was the founder of the local Public Defender Board and served as a public defender from 1975-81. He was an assistant district attorney in the 16th Judicial District Court from 1981-2008. He began serving as judge for the 16th JDC on Jan. 1, 2009. He also presided over the St. Mary Parish Adult Drug Treatment Court, the DWI Court and the Juvenile Drug Treatment Court. He retired from the 16th JDC bench on March 1, 2015. He died on March 15, 2015, at the age of 68, after a three-year battle with ALS.

► Stephen T. Victory Memorial Award

Scott L. Sternberg, an associate in the New Orleans law firm of Baldwin Haspel Burke & Mayer, L.L.C., received the 2015 Victory Award, recognizing outstanding contributions to the *Louisiana Bar Journal*. His article, “Contrasting Professional Conduct Rule 4.2 with the First Amendment Right to Petition,” was published in the August-September 2014 issue. He received a bachelor’s degree in journalism in 2006 from Louisiana State University and his JD degree and diploma in civil law in 2010 from LSU Paul M. Hebert Law Center. He is the newly-seated District 1 representative on the LSBA’s Young Lawyers Division Council.

► Human Rights Award

Elia Diaz-Yaeger, a shareholder in the New Orleans office of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard, received the 2015 Human Rights Award. She works to encourage and empower diversity in the legal profession through her participation and leadership roles in several organizations, including the Hispanic Lawyers Association of Louisiana (HLAL), the LSBA, the Hispanic National Bar Association (HNBA) and the Defense Research Institute (DRI). As president of the HLAL,

she played an integral role in its MetLife Networking and Mentorship Program, which pairs HNBA lawyer members and affiliate bar organizations with Hispanic law students nationwide. She has been a member of the LSBA’s Diversity Conclave Subcommittee since 2011 and is a certified LSBA diversity facilitator.

► Trailblazer Award

J. Dalton Courson, a member of the law firm Stone Pigman Walther Wittmann, L.L.C., in New Orleans, received the 2015 Trailblazer Award. He has dedicated significant time to promoting diversity in the legal profession. From 2010-14, he served as co-chair for the LGBT Litigator Committee of the American Bar Association’s



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA President, presents the Trailblazer Award to J. Dalton Courson. Photo by Matthew Hinton Photography.

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Hon. Dee D. Drell, left, is awarded the Leah Hipple McKay Memorial Award for Outstanding Volunteerism by Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president. Photo by Matthew Hinton Photography.



Warren Perrin, left, Francophone Section chair, presents the John Ashby Hernandez III Memorial Award for Francophone Leadership to Edwin R. Fleischmann, Jr. Photo by Matthew Hinton Photography.



H. Minor Pipes III, left, Louisiana Bar Foundation president, presents the Curtis R. Boisfontaine Trial Advocacy Award to Eugene J. Sues. Photo by Matthew Hinton Photography.

(ABA) Section of Litigation. In 2014, he served as counsel for the Forum for Equality Louisiana and four married same-sex couples who brought a challenge to Louisiana's refusal to give legal effect to their valid out-of-state marriages. Since 2014, he has co-chaired the ABA Section of Litigation's Civil Rights Litigation Committee. He received his undergraduate degree from Harvard University and his JD degree from the University of Virginia School of Law.

► **Leah Hipple McKay Memorial Award for Outstanding Volunteerism**

Hon. Dee D. Drell of Alexandria, chief judge for the U.S. District Court for the Western District of Louisiana, received the 2015 McKay Award. He earned both his undergraduate degree and his law degree from Tulane University. He has devoted time on a pro bono basis to helping individuals suffering from Acquired Immune Deficiency Syndrome (AIDS). He served as volunteer counsel for AIDS Law of Louisiana and Central Louisiana AIDS Support Services. He is also a past faculty member and presenter for the Delta Region AIDS Education and Training Center. In 1997, he received the Pro Bono Publico Award for his work with AIDS Law of Louisiana.

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

Edwin R. Fleischmann, Jr., a solo practitioner in Metairie, received the 2015 Hernandez Award. He received a BA degree in foreign language education in 1964 from

the University of New Orleans and his JD degree in 1973 from Loyola University College of Law. He has been one of the most active members of the LSBA's Francophone Section. Over the past three years, he has promoted French and the civilian traditions in Canada, France and all parts of Louisiana. He teaches a pro bono French course in New Orleans and has been the president of Les Amis du CODOFIL West Bank, Inc. for more than four years.

► **Curtis R. Boisfontaine Trial Advocacy Award**

Eugene J. Sues, a shareholder in the Alexandria law firm of Gold, Weems, Bruser, Sues & Rundell, received the 2015 Boisfontaine Award, presented by the

Louisiana Bar Foundation. A civil litigation defense attorney, he has practiced with the firm since 1974 and has more than 40 years of trial experience in the areas of medical malpractice defense, products liability, general tort and governmental liability. He leads the firm's medical malpractice defense section. A Fellow of the Louisiana Bar Foundation, he was elected as a Fellow in the American College of Trial Lawyers in 2009. He is a master of the bench for the Crossroads American Inn of Court of Alexandria-Pineville, was named an associate in the American Board of Trial Advocates and was elected to the International Association of Defense Counsel.



Past, present and future presidents: Darrel J. Papillion, James J. Davidson III, Joseph L. (Larry) Shea, Jr., Mark A. Cunningham and Richard K. Leefe attend the LCLCE reception at the Beach Bash during the 2015 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

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Joseph L. (Larry) Shea, Jr., left, 2014-15 LSBA president, presents Craig L. Caesar with a President's Award at the General Assembly in Destin, Fla. Photo by Matthew Hinton Photography.



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, presents Luis A. Leitzar with a President's Award during the 2015 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, presents Hon. C. Wendell Manning with a President's Award during the General Assembly in Destin, Fla. Photo by Matthew Hinton Photography.

5 LSBA Members Receive President's Awards

Five Louisiana State Bar Association (LSBA) members received 2015 President's Awards during the Annual Meeting in June. All recipients were chosen by 2014-15 LSBA President Joseph L. (Larry) Shea, Jr. and were recognized for various services to the Association.

Craig L. Caesar, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was recognized for his exemplary assistance to the Lawyers Assistance Program, Inc. (LAP). He has served as chair of the LSBA's Committee on Alcohol and Drug Abuse and as Executive Committee chair of LAP. He continues to work with LAP in carrying out its mission of assisting impaired lawyers. An attorney for 37 years, he graduated from Northwestern University (BA, 1974; MA, 1976; JD, 1978).

Luis A. Leitzelar, a partner in the Baton Rouge office of Jones Walker LLP, was recognized for his exemplary assistance to the LSBA's Diversity Committee. He has served on the Diversity Committee for several years, currently as co-chair both of the full committee and of the Conclave on Diversity in the Legal Profession Subcommittee. He previously served as chair and in other leadership positions for the LSBA's Minority Involvement Section. He received his bachelor's degree in 1987 from Louisiana State University and his JD degree in 1991 from Tulane University Law School.

Hon. C. Wendell Manning of Monroe, a

judge on the 4th Judicial District Court, Division F, was recognized for his leadership as president of the Louisiana Bar Foundation, as a member of the Louisiana Supreme Court Attorney Intern Program (LaSCAIP) Board and for his assistance in establishing the 4th Judicial District Court's Online Self-Help Center website for Ouachita and Morehouse parishes. He received a BA degree and an MBA degree in finance from Louisiana Tech University and his JD degree in 1988 from Louisiana State University Paul M. Hebert Law Center.

Marta-Ann Schnabel, managing director of the New Orleans law firm of O'Bryon & Schnabel, P.L.C., was recognized for her exemplary assistance to the LSBA, particularly for the Lawyers Assistance Program, Inc. and access to justice issues. She served as the LSBA's first woman president in 2006-07. She also served as the LSBA's secretary and *Louisiana Bar Journal* editor. She chairs

the LSBA's Access to Justice Committee and the Access to Justice Policy Committee and heads the board of the non-profit Louisiana Civil Justice Center. She is a *cum laude* graduate of Loyola University College of Law.

Jack K. Whitehead, Jr., founder and shareholder of the Whitehead Law Firm in Baton Rouge, was recognized for his exemplary assistance to the Louisiana Client Assistance Foundation. He received a BS degree in accounting in 1977 from the University of Southwestern Louisiana and his JD degree in 1986 from Louisiana State University Paul M. Hebert Law Center. He also is a certified public accountant. He served as the LSBA's treasurer and on the Executive Committee from 2008-10. He is currently serving in the House of Delegates for the 19th Judicial District and was a member of the House of Delegates Liaison Committee to the Board of Governors in 2007-08.



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, presents Marta-Ann Schnabel with a President's Award at the General Assembly in Destin, Fla. Photo by Matthew Hinton Photography.



Joseph L. (Larry) Shea, Jr., 2014-15 LSBA president, presents Jack K. Whitehead with a President's Award at the General Assembly in Destin, Fla. Photo by Matthew Hinton Photography.

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Louisiana Supreme Court Chief Justice Bernette Joshua Johnson addresses the General Assembly and House of Delegates.



Darrel J. Papillion, his wife Shirley Papillion and Louisiana Supreme Court Justice Marcus R. Clark.



Joseph L. (Larry) Shea, Jr. and Mark A. Cunningham in the exhibit hall.

A glimpse at the 2015 Annual Meeting in Destin, Fla. Don't miss the 2016 Annual Meeting & Joint Summer School – June 5-10, 2016. All photos by Matthew Hinton Photography.



Alainna R. Mire, Mark A. Cunningham and Shayna L. Sonnier at the Installation Luncheon.



Attendees, including Val Exnicios, far left, and John Olivier, far right, networking during a dinner at the Annual Meeting in Destin.



Former LSBA president Harry Hardin III.



Mark A. Cunningham during the Installation Luncheon.



Buddy Stockwell and Louisiana Supreme Court Associate Justice Scott J. Crichton.



Darrel J. Papillion and James J. Davidson III during the LCLCE reception.



Louisiana Supreme Court Associate Justice John L. Weimer during the Supreme Court reception.

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2015-16 LSBA YLD officers and council are sworn in by Judge Karelia R. Stewart at the 2015 Annual Meeting. All photos by Matthew Hinton Photography.

YLD's 2015-16 Officers, Council Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2015-16 officers and council members were installed June 8, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

Erin O. Braud of Metairie was installed as 2015-16 Division chair by Judge Karelia R. Stewart, 1st Judicial District Court, Shreveport. Braud is staff counsel for Liberty Mutual Insurance Co. (Law Offices of Robert E. Birtel) in Metairie.

Also sworn in as officers were Chair-Elect **Scotty E. Chabert, Jr.**, an assistant district attorney for the 18th Judicial District and a partner in the Baton Rouge firm of Saunders & Chabert (he will assume the chair's position in 2016-17); Secretary **Bradley J. Tate**, tax manager for the Lafayette firm of Prejean Romero McGee; and Immediate Past Chair **J. Lee Hoffoss, Jr.**, a partner in the Lake Charles firm of

Hoffoss Devall, L.L.C.

Judge Stewart also installed members of the 2015-16 YLD Council.

District 1: Dylan T. Thriffiley, an associate in the New Orleans office of Kean Miller, L.L.P.; and Scott L. Sternberg, an associate in the New Orleans office of Baldwin Haspel Burke & Mayer, L.L.C.

District 2: Jason M. Baer, a partner in the New Orleans firm of Pandit Law; and Jeffrey D. Hufft, an assistant attorney general (Criminal Division) with the Louisiana Department of Justice.

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

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

District 5: Kristi W. Richard, a senior associate in the Baton Rouge office of McGlinchey Stafford, P.L.L.C.; and Carrie

LeBlanc Jones, an associate in the Baton Rouge firm of Shows, Cali & Walsh, L.L.P.

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

District 7: Ashley L. Smith, an attorney in Monroe.

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

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

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

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



Kyle A. Ferachi, left, is thanked for his work as immediate past chair of the YLD by J. Lee Hoffoss, Jr. Photo by Matthew Hinton Photography.



Scotty A. Chabert, left, is recognized by J. Lee Hoffoss, Jr. for his work as secretary of the YLD. Photo by Matthew Hinton Photography.



Erin O. Braud, left, recognizes J. Lee Hoffoss, Jr. for his work as chair of the YLD. Photo by Matthew Hinton Photography.

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Cliff A. LaCour, left, is recognized as Outstanding Young Lawyer by J. Lee Hoffoss, Jr., 2014-15 YLD chair. Photo by Matthew Hinton Photography.



J. Lee Hoffoss, Jr., left, 2014-15 YLD chair, bestows the Hon. Michaele Pitard Wynne Professionalism Award to Laranda Moffett Walker. Photo by Matthew Hinton Photography.



Bradley J. Tate, left, is honored with the Bat P. Sullivan, Jr. Chair's Award by J. Lee Hoffoss, Jr., 2014-15 YLD chair. Photo by Matthew Hinton Photography.

Attorneys, Bar Association Honored with 2015 YLD Awards

Four Louisiana State Bar Association (LSBA) members and the Baton Rouge Bar Association received 2015 LSBA Young Lawyers Division (YLD) awards. The awards were presented by 2014-15 YLD Chair J. Lee Hoffoss, Jr. of Lake Charles and other YLD Council members during a June 8 ceremony, held in conjunction with the LSBA's Annual Meeting.

► Outstanding Young Lawyer Award

Cliff A. LaCour is a partner at Neuner-Pate in Lafayette. He earned his BS degree from Louisiana State University and his JD degree from Tulane University Law School. He is committed to providing service to his community through his activism in legal organizations such as the Lafayette Volunteer Lawyers Protective Order Panel, where he provides free legal service to victims of domestic abuse. He is the immediate past president of the Lafayette Young Lawyers Association. He has volunteered his services for the Homeless Experience Legal Protection (H.E.L.P.) Program and for the Wills for Heroes Program. He is a volunteer faculty member for Tulane Law School's Civil Litigation Intercession.

► Bat P. Sullivan, Jr. Chair's Award

Bradley J. Tate, with the Metairie firm of Carr, Riggs & Ingram, L.L.C., received a BS degree in accounting in 2005 from Southeastern Louisiana University, his JD degree

in 2008 from Louisiana State University Paul M. Hebert Law Center and an LLM (Master of Laws) in taxation in 2012 from the University of Alabama. He is the newly installed YLD secretary. He has a strong dedication to the YLD's service projects. He volunteered for the rigorous workload required of the Wills for Heroes Committee co-chair and served with distinction in that role for the past two years. While continuing the Wills for Heroes Project in the state's larger cities, he was able to further diversify this project into smaller towns.

► Hon. Michaele Pitard Wynne Professionalism Award

Laranda Moffett Walker practices commercial litigation in the Houston office of Susman Godfrey, L.L.P. Prior to joining Susman in 2014, she worked in the Baton Rouge office of Phelps Dunbar, L.L.P. She received her undergraduate degree in communications from Mississippi State University and her JD degree in 2007 from Louisiana State University Paul M. Hebert Law Center. Before attending law school, she worked as a news anchor and reporter for television stations in Columbus, MS, and Baton Rouge. She was member of the Leadership LSBA 2010-11 Class and is a former chair of the Baton Rouge Bar Association's Young Lawyers Section.

► Pro Bono Award

Rolando R. Urbina is an assistant public defender in Section 5 of the 19th Judicial

District Court and the member-manager of the Law Offices of Rolando R. Urbina & Associates, L.L.C., in Baton Rouge. He received his undergraduate degree in history and law and humanities in 2005 from Xavier University of Louisiana and his JD degree in 2011 from Southern University Law Center. He currently serves as the president of the Louis A. Martinet Legal Society, Inc. Greater Baton Rouge Chapter and as a board member of Southeast Louisiana Legal Services. He is an investigator for the Louisiana Commission on Human Rights.

► Service to the Public Award

The **Baton Rouge Bar Association's** Self-Help Resource Center (SHRC), launched in 2012, received 1,645 requests for assistance in 2014. The SHRC, located at the East Baton Rouge Parish Family Court, is a joint venture of the Baton Rouge Bar Foundation, the East Baton Rouge Parish Family Court, Southeast Louisiana Legal Services, Southern University Law Center, Louisiana State University Paul M. Hebert Law Center and the Louis A. Martinet Legal Society, Inc.

► Service to the Bar Award

The **Baton Rouge Bar Association's** Young Lawyers Section offered a new project in January 2015 — the Health and Wellness Fair. This half-day program addressed stress, anxiety and depression-related issues among young lawyers and law students and provided them with techniques for coping with this demanding profession in a healthy fashion.

Legal Professionals, Law Students Recognized for Pro Bono Work

The Louisiana Supreme Court hosted the Louisiana State Bar Association's (LSBA) 30th Annual Pro Bono Awards Ceremony on May 19. LSBA 2014-15 President Joseph L. (Larry) Shea, Jr. and justices of the Supreme Court presented the awards to the 2015 Pro Bono Publico and Children's Law Award recipients, recognizing attorneys, law students and public interest legal professionals for providing exceptional pro bono services to Louisiana's indigent residents.

Also in attendance were LSBA 2014-15 President-Elect (now President) Mark A. Cunningham, Justice Marcus R. Clark, Justice Jefferson D. Hughes III, Justice John L. Weimer and Justice Scott J. Crichton.

The 2015 award recipients are:

► **Career Public Interest Award:** Joseph R. Oelkers III, Lafayette.

► **David A. Hamilton Lifetime Achievement Award:** Jay M. Jalenak, Jr., Baton Rouge.

► **Children's Law Awards:** Baton Rouge Bar Foundation's Teen Court; and Kathleen C. Gasparian, New Orleans.

► **Pro Bono Publico Awards:** Joseph R. Ballard, Baton Rouge; Valerie B. Bargas, Baton Rouge; Roy K. Burns, Jr., Covington; La'Gretta R. Fortune, Baton Rouge; Valerie G. Garrett, Lafayette; J. Spencer Hays, Bossier; Benjamin W. Kadden, New Orleans; Gregory A. Koury, Lafayette; Michael W. Magner, New Orleans; Charles W. Montz, Jr., Lafayette; Wendy Hickok Robinson, New Orleans; Sophia D. Rosado, Kenner; Michelle M. Rutherford, New Orleans; Dwazendra J. Smith, Lafayette; Stone Pigman Walther



Several legal professionals received 2015 Pro Bono Publico during the May 19 ceremony at the Louisiana Supreme Court. Justices and members of the Louisiana State Bar Association leadership attended. Photo by Matthew Hinton Photography.

Wittmann, L.L.C., New Orleans; and K. Wade Trahan, Lafayette.

► **Law Student Pro Bono Awards:** Gabrielle Alessi-Friedlander-Bowersox, Louisiana State University Paul M. Hebert Law Center; Sophia Mire, Loyola University College of Law; Christopher Kubacki, Southern University Law Center; and Brittany Wolf, Tulane University Law School.

► **Friend of Pro Bono Awards:** Kay E. Donnelly & Associates, New Orleans; and Dwayne M. Murray, Baton Rouge.

► **Century Club Awards:** Amy M. Bernadas, New Orleans; Mandi A. Borne, Lafayette; Philip H. Boudreaux, Jr., Lafayette; Marianna Broussard, Lafayette; William G. Cherbonnier, New Orleans; Jeffrey K. Coreil, Lafayette; L'Reece

David, Lafayette; Elizabeth H. Emmett, New Orleans; Matthew R. Emmons, Mandeville; Bradford H. Felder, Lafayette; Valerie G. Garrett, Lafayette; Irain J. Gonzalez, Metairie; Catharine O. Gracia, New Orleans; Valerie V. Guidry, Lafayette; Jane A. Jackson, New Orleans; Amythist L. Kearney, Slidell; Gregory A. Koury, Lafayette; Cliff A. Lacour, Lafayette; Craig D. Little, Lafayette; Seth T. Mansfield, Lafayette; Jason A. Matt, Lafayette; Alysson L. Mills, New Orleans; Charles W. Montz, Jr., Lafayette; Jason T. Reed, Lafayette; Wendy Hickok Robinson, New Orleans; Dwazendra J. Smith, Lafayette; Hugh R. Straub, New Orleans; Mark C. Surprenant, New Orleans; K. Wade Trahan, Lafayette; and Danielle E. Treadaway, Metairie.

Elections: Qualifying Begins Sept. 21 for Leadership Positions

Several Louisiana State Bar Association (LSBA) leadership positions are open during the 2015-16 election cycle. Self-qualification forms for positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House of Delegates will be provided to the membership on Sept. 21.

For the 2015-16 election cycle, balloting will be conducted electronically only, as approved by the LSBA Board of Governors in June 2011. No paper ballots will be provided.

Deadline for return of nominations by petition and self-qualification forms is Monday, Oct. 19. First election ballots will be available to members on Monday, Nov. 16. Deadline for electronically casting votes is Monday, Dec. 14.

Positions to be filled include:

Board of Governors (three-year terms beginning at the adjournment of the 2016 LSBA Annual Meeting and ending at the adjournment of the 2019 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 2016 LSBA Annual Meeting and ending at the commencement of the 2018 LSBA Annual Meeting) — one delegate from each of the 1st through 19th 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 2016 LSBA Annual Meeting and ending at the adjournment of the 2017 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 (2016-17 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** (2016-17 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, Third, Fifth and Seventh districts (two-year terms).

American Bar Association House of Delegates (*must be members of the American Bar Association*) — two delegates from the membership at large and one delegate from that portion of the membership not having reached their 35th birthday by Aug. 9, 2016, that delegate being the “Young Lawyer Delegate,” as required by the rules of the American Bar Association. All LSBA members may vote for both sets of candidates. The delegates will serve two-year terms, beginning with the adjournment of the 2016 ABA Annual Meeting and expiring at the adjournment of the 2018 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS) and the Louisiana State Bar Association (LSBA) Plan of Legal Specialization, the following LSBA members have satisfactorily met the established criteria and are qualified as board-certified specialists in the following areas for a five-year period which began Jan. 1, 2015, and will end on Dec. 31, 2019.

Estate Planning and Administration

Orr Adams, Jr. Metairie
M. Elizabeth Bowman Gretna
Laura E. Fine New Orleans
Steven Grenier Shreveport
Carla H. Sibille Baton Rouge

Tax Law

Steven Grenier Shreveport

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

For more information on specialization, email LBLS Executive Director Barbara M. Shafranski, barbara.shafranski@lsba.org.

SEND YOUR NEWS!

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

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

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

Two New LBLS Certification Designations Approved

The Louisiana Board of Legal Specialization (LBLS) petitioned and received approval from the Louisiana State Bar Association's (LSBA) House of Delegates and the Louisiana Supreme Court to revise the LSBA Plan of Legal Specialization and the LBLS Rules and Regulations to provide for two new certification designations, specifically, "inactive" and "senior."

The "inactive" certification designation was created to accommodate specialists who have to leave or suspend the practice of law on a temporary basis but wish to maintain their specialization certification.

The "senior" designation was established to accommodate specialists who no longer practice law on a full-time basis but wish to maintain their specialization certification.

The criteria for these designations can be reviewed in Rule 13 and Rule 14, respectively, in the LBLS Rules and Regulations. A copy of the Plan of Legal Specialization, LBLS Rules and Regulations, individual

LBLS Standards and the appropriate application form(s) may be downloaded from the LBLS website at: www.lascmcle.org/specialization/index.asp.

Qualifying specialists who have relinquished their certification within the past year and would like to have their certification reinstated under the senior certification designation may also apply.

In addition, in an effort to make more CLE credits available to specialists, the LBLS has also made some revisions in approving programs for specialization CLE credit. In some instances, portions of programs that may not have qualified for specialization CLE credit in the past may now qualify for credit. All specialization CLE requests must be submitted to LBLS in care of the Executive Director and will be evaluated by the specialization CLE committee on a case-by-case basis.

For more information, contact LBLS Executive Director Barbara M. Shafranski at (504)619-0128 or email barbara.shafranski@lsba.org.

BAR 101
ONLINE VIDEO SERIES

Louisiana State Bar Association
Serving the Public. Serving the Profession.

To see Bar 101 videos, visit www.lsba.org/Members/bar101.aspx

The **Bar 101 Video Series** offers a quick look inside different aspects of the LSBA. Learn about new and noteworthy LSBA projects, free professional services offered by the Bar, and how the Association can aid in everyday practice management. Everyone can learn something new from this series, from the newest LSBA members to the most seasoned attorneys.

Ethics Advisory Service



www.lsba.org/ethicsadvisory

For assistance with dilemmas and decisions involving legal ethics, take full advantage of the LSBA's Ethics Advisory Service, offering - at no charge - confidential, informal, non-binding advice and opinions regarding a member's own prospective conduct.

Eric K. Barefield, Ethics Counsel

LSBA Ethics Advisory Service, 601 St. Charles Ave., New Orleans, LA 70130-3404
(504)566-1600, ext. 122 • (504)619-0122 • toll-free: (800)421-5722, ext. 122 • Fax: (504)598-6753
E-mail: ebarefield@lsba.org

By Johanna G. Averill

TRANSITIONING LAWYERS

On the Lawyers' Professional Liability insurance application, this question appears: "If you are a solo practitioner, do you have a procedure in place regarding provisions of services if you are incapacitated or otherwise unavailable?" While the question is directed to one-person firms, it should be considered by all attorneys. Accidents, personal family situations, an untimely death or even a hurricane evacuation are all real possibilities.

It is important that all attorneys have a plan in place to ensure that their clients' matters will not be neglected by an unplanned absence. An attorney's responsibility to protect his/her clients' interests and safeguard their confidential information survives the incapacity. The Rules of Professional Conduct require attorneys to provide competent and diligent representation and to keep clients reason-

ably informed, and this requirement does not end with an attorney's disability, injury or death. A recent case held the deceased attorney's estate may be liable for malpractice for a case which prescribed shortly after he died.¹

Who will take over for an attorney depends on the plan created. For attorneys who work in a firm, the replacement will likely be one of the remaining firm members. But, solo practitioners must designate their replacements. Before a plan is drafted, guidance may be sought from a trusted colleague who has already devised a plan, members of the Louisiana State Bar Association Professional Programs staff or the American Bar Association (ABA).

Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement, Section 27, titled "Appointment of Counsel to Protect Clients' Interests" states:

If a respondent has been transferred to disability inactive status, or has disappeared or died . . . and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interest of the respondent and his or her clients.

Continued next page

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

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

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
Alexandria Area	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700	Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Natchitoches Area	Peyton Cunningham, Jr. peytonc1@suddenlink.net	(318)352-6314 Cell (318)332-7294
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
Denham Springs Area	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508	Opelousas/Ville Platte/ Sunset Area	John L. Olivier johnolivier@centurytel.net	(337)662-5242 (337)942-9836 (337)232-0874
Houma/Thibodaux Area	Danna Schwab dschwab@theschwablawfirm.com	(985)868-1342	River Parishes Area	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 (225)265-9828 Cell (225)270-7705
Jefferson Parish Area	Pat M. Franz patfranz@bellsouth.net	(504)455-1986	Shreveport Area	M'Lissa Peters mpeters@shreveportbar.com	(318)222-3643
Lafayette Area	Josette Abshire director@lafayettebar.org	(337)237-4700			
Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900			

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

Attorneys who do not want a judge or the disciplinary board appointing a back-up lawyer for them must make provisions ahead of time.

ABA Committee on Ethics and Professional Responsibility Formal Opinion 92-369 titled "Disposition of Deceased Sole Practitioners' Client Files and Property" states:

To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of those client interests in the event of the lawyer's death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer's death.

In addition to the designation of a back-up attorney, these plans should contain:

- ▶ a current status memo on all active client matters, including where to find all calendared deadlines, files, billing records, pleadings submitted, engagement letters and fee agreements (attorneys have to be ready at all times with easy-to-find client notes because no one can schedule his/her disability or demise);

- ▶ a memo on all former client matters, including file retention date for each closed file and where all closed client files are kept;

- ▶ a memo to the back-up attorney including bank name, address, account signers and account numbers of all law office bank accounts; the location of all

law office bank account records (trust and operating); and directions on accessing voice mail, email and other access code numbers;

- ▶ a current law office procedure manual containing policies for calendaring, conflicts screening and conflicts waivers, billing, client ledgers, maintaining client original documents, record retention policy, engaging and disengaging from representation, and opening and closing files;

- ▶ a complete picture of current insurance coverages including lawyers' professional liability and business office;

- ▶ a memo to the back-up attorney providing a detailed description of staff and close family members that he/she may be dealing with; and

- ▶ the written agreement between the attorney and back-up attorney outlining the responsibilities the back-up attorney will be assuming.

After the plan has been created and the back-up attorney selected, the next step is to ensure someone notifies the attorney's clients. Rule 1.4 provides that attorneys "shall keep clients reasonably informed about the status of the matter and give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." One way to comply with this obligation is to include the following or a similar statement in engagement letters:

In the event that I become incapacitated or otherwise unavailable to handle your representation to completion, be advised that I have made arrangements with [back-up

lawyer] of [name of firm] law offices to complete the matter. If you have objections to [back-up lawyer's] participation, or if [back-up lawyer] is unable to handle the matter at this time, [back-up lawyer] will arrange for other counsel to handle the matter. [Back-up lawyer] will not receive any information about your representation until and unless (1) I become unable to proceed, (2) you consent to [back-up lawyer's] representation, and (3) [back-up lawyer] is able to handle the matter at such time.²

In closing, solo practitioners who do not have procedures in place regarding provision of services if they are incapacitated risk not receiving an initial or renewal quote from the carrier.

FOOTNOTES

1. Cabrera v. Collazo, 979 N.Y.S.2d 326 (Sup. Ct. A.D. 2014).

2. www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/jf00proctor.html.

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



LSBA Member Services

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



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

For more information,
visit www.lsba.org

LAWYERS Assistance

By J.E. (Buddy) Stockwell

TAKING TIME TO PLAY

Do you remember what it was like to be a kid and have no professional deadlines or serious responsibilities to worry about? As children, we enjoyed the luxury of wasting lots of precious time on pure fun. But now as adults with pressures and responsibilities, we simply don't have that luxury anymore, right?

It may be time to rethink that viewpoint. Mental health experts now say that carving out time for play is just as important for us as adults as it was for us as children. Play provides benefits to adults including improved brain function, reduced stress and improved social skills. In the long run, those who often take time from work to play outperform the martyred workaholics who don't take all of their vacation time and instead remain perpetually under the gun and on the job with few real breaks in the stress.

It is important for mental health, wellbeing and relationships with others to take time out to play. The type of healthy, therapeutic play that rejuvenates and improves mental health for adults is no different than the type of play we engaged in together as children.

Healthy adult play is defined by www.HelpGuide.org as "a time to forget about work and commitments, and to be social in an unstructured, creative way. The focus of play is on the actual experience, not on accomplishing any goal. There doesn't need to be any point to the activity beyond simply having fun and enjoying yourself."

It is a very tall, almost impossible, order for lawyers to try and find an "off switch" for their intensely goal-oriented brains. The thought of routinely doing things that do not have a point can seem absurd and irresponsible. The conditioning of law school, the bar exam and years of law practice thereafter can render unrelenting, goal-oriented habits of continuously moving toward achieving difficult goals.

Lawyers Assistance Program, Inc. (LAP)

Your call is absolutely confidential
as a matter of law.

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

Even if we do learn to take a break now and then, we may need to rethink how to spend that downtime.

According to HelpGuide.org, "When we do carve out leisure time, we're more likely to zone out in front of the TV or the computer than engage in fun, rejuvenating play like we did as children. Play could be simply goofing off with friends, sharing jokes with a co-worker, throwing a Frisbee on the beach, dressing up at Halloween with your kids, building a snowman in the yard, playing fetch with a dog or a game of charades at a party, or going for a bike ride with your spouse with no destination in mind."

George Bernard Shaw's famous quote is: "We don't stop playing because we grow old; we grow old because we stop playing."

The National Institute for Play at www.nifplay.org and Scott Eberle's "Play Blog" at www.museumofplay.org/blog/replay are good resources to learn more about how fun and play are important components for maintaining personal mental health and better weathering the high-pressure environment of practicing law.

Access Stuart Brown's "TED Talk" about play, "Play is More Than Just Fun," at: www.ted.com/talks/stuart_brown_says_play_is_more_than_fun_it_s_vital?language=en. Brown says the benefits of play are not limited to personal improvement but also have amazing effects in building trust and solving relation-

ship issues. The "Play Signal," he says, can override a differential in power and turn what may have been a confrontation into an interaction that builds trust, cooperation and bonding in a positive way.

From a lawyer's perspective, one of Brown's most striking observations is that the opposite of "play" is not "work," as we might intuitively expect it to be. Instead, the opposite of play is *depression*. Is there a possibility that a lack of play time is one of the causes of the high rates of depression in the legal profession? Does an intense work ethic with no significant time for lighthearted play on a routine basis hurt us as a profession more than it helps us?

As Plato said, "You can discover more about a person in an hour of play than in a year of conversation." Play is a very effective tool for teambuilding and boosting productivity and innovation in the workplace. According to HelpGuide.org, dot-com companies that offer yoga, exercise and games like ping pong at work are on to something.

Bottom line: Playtime is needed to avoid burnout and depression. Working harder and longer is not the answer. Instead, incorporate play into your schedule and benefit from it so as to be more effective in the long run.

If you need help with depression now, contact the Lawyers Assistance Program (LAP) confidentially at 1(866)354-9334, (985)778-0571 or email LAP@louisianalap.com. Or visit the website at www.louisianalap.com.

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



FOCUS ON Diversity

THROUGH THE LENS: 2015 DIVERSITY CONCLAVE

8TH ANNUAL CONCLAVE ON DIVERSITY IN THE LEGAL PROFESSION



MOVING THE PENDULUM FORWARD

Celebrating 50 Years of Civil Rights



All photos on pages 130-131 by Matthew Hinton Photography.



The Civil Rights session, “Just How Far Has the Pendulum Moved? Striving for Justice,” opened with a slideshow of haunting imagery of the civil rights and voting rights movement. Panelists offered perspectives on how the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 have changed the moral landscape of the country. From left, Professor Kareem U. Crayton, University of North Carolina School of Law; Judge Bernice B. Donald, the first African-American woman nominated to the 6th Circuit Court of Appeals; Henry (Hank) James Thomas, one of the original 13 Freedom Riders; moderator Judge Roland L. Belsome, Jr., 4th Circuit Court of Appeal; and Alexander P. Tureaud, Jr., the first African-American to enroll and attend Louisiana State University as an undergraduate.



Some of the co-hosts of the 8th Annual Conclave on Diversity in the Legal Profession were recognized at the event.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, delivered powerful remarks at the Awards Luncheon, then introduced keynote speaker, Kim M. Keenan, center, CEO and president of Multicultural Media, Telecom and Internet Council. Keenan spoke about minorities and the historical impact of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Right, 6th Circuit Court of Appeals Judge Bernice B. Donald.



Special thanks go out to all who helped by giving of their time, resources or talents to make the Conclave on Diversity a success.

Mark your calendars for March 4, 2016 for the 9th Annual Conclave on Diversity in the Legal Profession at the Hilton Baton Rouge Capitol Center in Baton Rouge, La.





Panelists for the standing-room-only Immigration session, “Navigating the Troubled Waters of Immigration,” addressed the challenges of immigration at the national and state level; problems related to Unaccompanied Alien Children; the detention of foreign nationals and how to effectively represent them; and the intersection of immigration and litigation. Panelists, from left, were Graham Bateman, Kathleen Gasparian, Ivan Torres Hidalgo Gato, Professor Hiroko Kusuda and Emily Trostle.



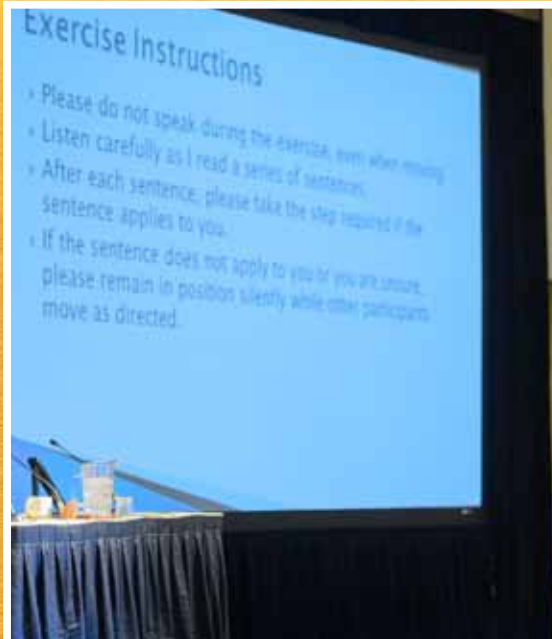
The LGBT session was “The Changing Landscape and Effects of Marriage Equality.” The panelists — attorneys engaged in protecting the rights of the LGBT community — addressed the evolving law on state and federal recognition of same-sex marriages and implications, intra-family adoption in Louisiana and other states, and the Defense of Marriage Act. Panelists included, from left, Scott Jerome Spivey, Julie Wilensky, Melanie Lockett and Nicholas Hite.



Joseph L. “Larry” Shea, Jr. honors Louisiana Supreme Court Chief Justice Bernette Joshua Johnson for her support and service to this and prior Diversity Conclaves on the Legal Profession.



The Criminal Law session, “Moving the Pendulum to Justice, Fairness & Accountability,” highlighted the complexities in the criminal justice system due to ongoing negative views of minorities and prejudgments that lead to bias, as well as the systematic deficiencies due to bias. Panelists, from left, were Kevin Boshea, Sen. Edwin R. Murray, Angela A. Allen-Bell, Judge Kern A. Reese (moderator), Cathy Harris and Sheriff Newell Normand.

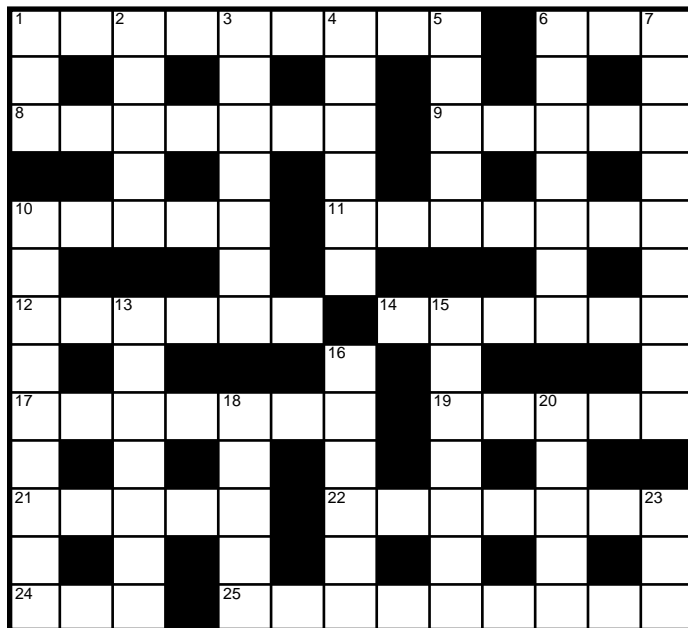


Hon. Wendell G. Griffin presents at the 8th Annual Conclave on Diversity in the Legal Profession. Part of his presentation was a “Privilege Walk” event where participants started on the same line and then took steps forward or back if a particular sentence applied. At the end of this powerful event, participants were scattered around the room based on implicit privileges that they may not have realized.

Crossword PUZZLE

By Hal Odom, Jr.

MLB FROM LA



ACROSS

- 1 Yankees pitcher (1975-1988) from Lafayette (3, 6) (9)
- 6 Fed. agcy. with motto "Qui pro domina justitia sequitur" (1, 1, 1)
- 8 One way to end an at-bat (4-3)
- 9 Albert ____, Indians left fielder (1989-1996) from Shreveport (5)
- 10 __ and the Pussycats (5)
- 11 Deprived of food (7)
- 12 It's a crime to do this to an officer (6)
- 14 The earliest stage of life, or of anything (6)
- 17 Tide in Alabama (7)
- 19 __ Finley, Angels pitcher (1986-1999) from Monroe (5)
- 21 Opposite of omega (5)
- 22 May birthstone (7)
- 24 Nonstarter, failure (3)
- 25 Brewers pitcher (2001-2010) who played at St. Amant H.S. (3, 6)

DOWN

- 1 Nickname for official in sports other than baseball (3)
- 2 Words for persons, places or things (5)
- 3 Major tournaments in golf, tennis and bowling (1, 1, 5)
- 4 Greatly dislike (6)
- 5 " __ dabba doo!" (5)
- 6 Principal obligation of the seller (7)
- 7 Milwaukee Braves first baseman (1953-1963) from Coushatta (3, 6)
- 10 Astros right-handed pitcher (1971-1980) from Vienna/Ruston (1, 1, 7)
- 13 Stumbled; eluded capture (7)
- 15 Lady who sleepwalks in Shakespeare (7)
- 16 Sight __ is a bad way to buy things (6)
- 18 Rusty __, Expos/Mets right fielder/first baseman (1969-1985) from New Orleans (5)
- 20 Along with equity, this may be used to interpret contracts (5)
- 23 Lac __ allemands (3)

Answers on page 175.

Alcohol and Drug Abuse Hotline

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

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

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

The 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 William N. King

MENTORING: 6 MONTHS AND COUNTING

The Louisiana State Bar Association's (LSBA) new admittee mentoring program, Transition Into Practice (TIP), was approved by the Louisiana Supreme Court and formally implemented in January 2015. Since then, this entirely voluntary program has been a tremendous success, with numerous mentors paired with new admittees in the Shreveport, Baton Rouge and greater New Orleans areas. The TIP program, a collaborative effort of the Supreme Court and the LSBA through its Committee on the Profession, is part of the LSBA's continued commitment to establish professionalism programs with the goal of reaching lawyers and those seeking to become lawyers as early in their legal careers as possible.

Status of TIP Program

Before implementation, the Committee on the Profession conducted a recruiting campaign to seek qualified mentors to guide young attorneys through the first year of their admission. Mentors must be in good standing and in the practice for at least 10 years. As of June 9, there are 255 mentors in place statewide. Of those 255 mentors, 118 of them have been paired with lawyers admitted in 2014. The breakdown is: Shreveport, 14; Baton Rouge, 31; Orleans, 53; Jefferson, 16; and St. Tammany, 4.

In addition to imparting wisdom, character and experience from the older attorneys to the new admittees, another of the program's goals is to foster friendships and collegiality. With that goal in mind, three mentor/mentee receptions were conducted in New Orleans, Shreveport and Baton Rouge in May and June. The New Orleans and Shreveport receptions were simulcast at the Louisiana and Shreveport Bar Association offices. Louisiana Supreme Court Justice Scott J. Crichton and 2014-15 LSBA President Joseph L. (Larry) Shea, Jr. offered appreciation to program participants.

"The TIP program is off to a very good



Among those attending the Transition Into Practice Program mentor/mentee reception in New Orleans were, from left, Patrick B. Reagin, Catherine M. Sens, Meghan E. Merrell, Louisiana Supreme Court Justice Scott J. Crichton and Christopher J. Sellers, Jr. Photo by LSBA Staff.

start. Through professionalism presentations throughout the state, Bar articles and word of mouth, there was significant interest from prospective mentors. It is gratifying that we actually have double the number of mentors as we have mentees. The number of mentees also exceeded our expected goals," said Barry H. Grodsky, chair of the LSBA's Committee on the Profession.

Michael E. Holoway, a paired mentor and a member of the Committee on the Profession, said, "The response to and participation in the pilot program this first year is certainly a testament to the commitment of the LSBA to provide relevant and practical support to our members from the very first day they begin their journey into the practice of law and their membership in the LSBA."

Mentees routinely indicate how much they are receiving from the program. Amy E. Duncan, a 2014 admittee, commented on her first six months in the program: "The time I have spent with my mentor thus far has been invaluable. We have discussed everything from law practice management and career development to effective client representation. She has an open communication policy that allows me to ask anything and

everything. As a new attorney, the mentorship program has been truly significant to my professional and personal development."

"The early success of the program serves as a good foundation for its continued growth throughout the state. The pilot program will end in one year in Shreveport, Baton Rouge and the Greater New Orleans area. The goal then is to have it extended statewide. Mentors from these other areas have already signed up in anticipation of this," Grodsky said.

To become a mentor, go online to: <http://files.lsba.org/documents/SL/MentoringProgramFillInRegistration.pdf>.

All 2015 new admittees wanting to register can obtain more information online at: www.lsba.org/mentoring/.

William N. King is the Louisiana State Bar Association's Professional Programs Practice Assistance counsel. He works with the Practice Assistance and Improvement Program and other professional programs of the association. He can be reached at (504)619-0109, (800)421-5722, ext. 109, or email bking@lsba.org.



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 4, 2015.

DECISIONS

David H. Alfortish, Gretna, (2015-B-0416) **Suspended for one year, with all but three months deferred, followed by one-year supervised probation**, ordered by the court as consent discipline on April 2, 2015. JUDGMENT FINAL and EFFECTIVE on April 2, 2015. *Gist:* Improperly notarized an act of sale of real estate, causing actual harm.

Keri Glenn Armstrong, Monroe, (2015-B-0283) **Disbarment** ordered by the court on April 10, 2015. JUDGMENT FINAL and EFFECTIVE on April 24, 2015. *Gist:* Failure to act with reasonable diligence and promptness in representing clients; failure to communicate with clients; failure to timely remit funds to a client or third person; failure to refund unearned fee; failure to cooperate with the ODC in its investigation; violating the Rules of Professional Conduct; commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or

fitness as a lawyer; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Michael H. Bercier, Lake Charles, (2014-B-2352) **Suspended for two years** ordered by the court on March 27, 2015. JUDGMENT FINAL and EFFECTIVE on April 10, 2015. *Gist:* Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Gary A. Book, Shreveport, (2015-OB-0749) **Transfer to disability inactive status** ordered by the court on April 29, 2015. JUDGMENT FINAL and EFFECTIVE on April 29, 2015.

Carl J. Ciaccio, Metairie, (2015-B-0716) **Suspended for six months, fully deferred, with one year of probation**, ordered by the court as consent discipline on May 22, 2015. JUDGMENT FINAL and EFFECTIVE on May 22, 2015. *Gist:* Recklessly called a judge's integrity into question.

Charles E. Cotton, Baton Rouge, (2015-OB-0802) **Transfer to disability inactive status** ordered by the court on April 29, 2015. JUDGMENT FINAL and EFFECTIVE on April 29, 2015.

Brian A. Eddington, Baton Rouge, (2015-B-0629) **Public reprimand** ordered by the court as consent discipline on May 1, 2015. JUDGMENT FINAL and EFFECTIVE on May 1, 2015. *Gist:* Filed five separate suits in the same court on the same date, which suits were identical in substance except for naming a different plaintiff, and then, after obtaining a favorable judge, dismissed four of the suits and attempted to consolidate the claims of the newly dismissed plaintiffs into the lone remaining action.

James A. Gray II, New Orleans, (2014-B-2085) **Suspended for two years and ordered to participate in the Louisiana State Bar Association's Fee Dispute Resolution Program** ordered by the court on March 17,



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2015. JUDGMENT FINAL and EFFECTIVE on March 31, 2015. *Gist:* Neglect of client matters; failed to communicate with clients; failed to return clients' files; failed to refund unearned fees; and failed to cooperate with the ODC in its investigations.

William J. Jefferson, New Orleans, (2015-B-0508) **Permanent disbarment** ordered by the court on May 1, 2015. JUDGMENT FINAL and EFFECTIVE on May 15, 2015. *Gist:* Engaging in bribery and corruption, using his position in public office for personal gain; and knowingly and intentionally violating duties owed to the public, the legal system and the profession.

Lynn Plaisance Johnson, Springfield, MO, (2015-B-0203) **Public reprimand imposed by the Supreme Court of Missouri made reciprocal in the State of Louisiana** ordered by the court on April 10, 2015. JUDGMENT FINAL and EFFECTIVE on April 24, 2015. *Gist:* Failure to respond to a lawful demand for information from the Missouri Office of Disciplinary Counsel.

Diedre Pierce Kelly, New Orleans, (2015-B-0414) **Suspended for one year and one day** ordered by the court as consent discipline on April 2, 2015. JUDGMENT FINAL and EFFECTIVE on April 2, 2015. *Gist:* Signing her employer's name as notary to several documents in her application for admission to the Louisiana State Bar Association, without her employer's knowledge or consent.

Itzhak E. Kornfeld, Philadelphia, PA, (2015-OB-0586) **Reciprocally reinstated to the practice of law** ordered by the court on April 24, 2015. JUDGMENT FINAL and EFFECTIVE on April 24, 2015.

Wayne M. Leblanc, Metairie, (2015-B-0413) **Public reprimand** ordered by the court as consent discipline on April 2, 2015. JUDGMENT FINAL and EFFECTIVE on April 2, 2015. *Gist:* Filing frivolous pleadings and appeals.

Andrew Nebl Lee, New Orleans, (2015-B-0490) **Suspended for one year and one day, with all but 90 days deferred, followed by one-year supervised probation**, ordered by the court as consent discipline on April 10, 2015. JUDGMENT FINAL and EFFECTIVE on April 10, 2015. *Gist:* Practiced law while ineligible to do so; and failed to place an advance fee into his client trust account until earned.

Kevin D. McCleary, Baton Rouge, (2015-B-0993) **Interim suspension** or-

dered by the court on May 28, 2015. JUDGMENT FINAL and EFFECTIVE on May 28, 2015.

Patrick M. McMath, Covington, (2015-B-0639) **Conditional admission revoked** ordered by the court on April 22, 2015. JUDGMENT FINAL and EFFECTIVE on April 22, 2015. *Gist:* Conditional admission to the practice of law revoked.

John Roumain Peters III, New Orleans, (2015-B-0775) **Suspended for three months, fully deferred**, ordered by the court as consent discipline on May 22, 2015.

JUDGMENT FINAL and EFFECTIVE on May 22, 2015. *Gist:* Knowingly making a false statement of material fact or law to a third person; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

Tiffany Ann Peters, Houston, TX, (2015-B-0464) **Disbarment** ordered by the court as consent discipline on April 2, 2015.

Continued next page

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- Author, "Coverage for a Rainy Day: Many Malpractice Policies Will Help Pay the Costs of Defending Disciplinary Complaints," ABA Journal, August 2003, p. 29.



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Elizabeth A. Alston

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 10, 2015.

Respondent	Disposition	Date Filed	Docket No.
Leonard Levenson	Suspension	4/24/15	11-966

Discipline continued from page 135

JUDGMENT FINAL and EFFECTIVE on April 2, 2015. *Gist:* Conversion of funds from law firm.

June A. Placer, Kentwood, (2015-B-0463) **Interim suspension** ordered by the court on March 25, 2015. JUDGMENT FINAL and EFFECTIVE on March 25, 2015.

Ronald A. Rossitto, Lake Charles, (2015-OB-0750) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on May 15, 2015. JUDGMENT FINAL and EFFECTIVE on May 15, 2015. *Gist:* Commission of a criminal act.

Michael S. Sepsich, Mandeville, (2015-B-0709) **Disbarred retroactive to his interim suspension in *In Re: Sepsich*, 2010-1601 (La. 7/9/10), 38 So.3d 893**, ordered by the court as consent discipline on May 22, 2015. JUDGMENT FINAL and EFFECTIVE on May 22, 2015. *Gist:* Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Ali Z. Shields, Jr., New Roads, (2014-B-2473) **Suspended for one year and one day** ordered by the court on Feb. 27, 2015. JUDGMENT FINAL and EFFECTIVE on March 13, 2015. *Gist:* Instructed a client to file false pleadings; failed to return a client file; failed to provide an accounting; failed

to return an unearned fee; and failed to cooperate with the ODC in an investigation.

Phyllis A. Southall, Gonzales, (2014-B-2441) **Suspended for three years, retroactive to her interim suspension date of Jan. 15, 2014**, ordered by the court on March 17, 2015. JUDGMENT FINAL and EFFECTIVE on March 31, 2015. *Gist:* Neglect of legal matters; failure to communicate with a client; engaging in a conflict of interest with a former client; mishandling her client trust account; resulting in commingling and conversion; and failure to cooperate with the ODC in an investigation.

Timothy Liam Spratt, New Orleans, (2014-OB-1874) **Conditional admission revoked** ordered by the court on March 25, 2015. JUDGMENT FINAL and EFFECTIVE on March 25, 2015. *Gist:* Conditional admission to practice law revoked.

William Clifton Stoutz, New Orleans, (2015-B-0936) **Interim suspension** ordered by the court on May 20, 2015. JUDGMENT FINAL and EFFECTIVE on May 20, 2015.

Jesse P. Terrell, Jr., Pineville, (2015-B-0499) **Suspended for one year and one day, fully deferred, with five years' probation**, ordered by the court as consent discipline on May 1, 2015. JUDGMENT FINAL and EFFECTIVE on May 1, 2015. *Gist:* Failed to properly supervise a non-lawyer employee, allowing the employee to commingle and

convert client funds.

Dalonsia Shunette Thomas-Jordan, Westlake, (2015-B-0273) **Suspended for one year and a day, fully deferred, followed by two years' supervised probation**, ordered by the court as consent discipline on March 27, 2015. JUDGMENT FINAL and EFFECTIVE on March 27, 2015. *Gist:* Failed to communicate with a client; failed to promptly submit a court-ordered judgment; and failed to cooperate with the Office of Disciplinary Counsel in its investigation.

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

	No. of Violations
Competence	1
Conduct involving fraud, dishonesty, deceit or misrepresentation	3
Confidentiality of information	1
Diligence	1
Expediting litigation	1
Failure to act with reasonable diligence and promptness	1
Failure to communicate	2
Failure to cooperate with the Office of Disciplinary Counsel	1
Failure to fully disclose, in writing, the method by which the fee is to be determined ...	1
Failure to keep the client reasonably informed	1
Lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent	1
Violating or assisting another in violating the Rules of Professional Conduct	5
TOTAL INDIVIDUALS ADMONISHED.....	7

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Damon S. Manning

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CLIENT ASSISTANCE FUND PAYMENTS - SEPTEMBER 2014, NOVEMBER 2014, MARCH 2015 & MAY 2015

Attorney	Amount Paid	Gist
David P. Adams	\$12,500.00	#1385 – Conversion in a personal injury matter
Joseph W. Bailey	\$25,000.00	#1426 – Conversion of funds in trust
Carla Brown-Manning	\$835.00	#1575 – Unearned fee in an expungement
Rejohnna Brown-Mitchell	\$1,200.00	#1430 – Unearned fee in an insurance coverage dispute
Bruce A. Craft	\$4,500.00	#1560 – Unearned fee in a community property matter
Guy J. D’Antonio	\$2,500.00	#1542 – Unearned fee in a criminal matter
Guy J. D’Antonio	\$2,500.00	#1545 – Unearned fee in a criminal matter
Ermence Debose-Parent	\$1,543.75	#1432 – Unearned fee in a child support matter
Anthony Hollis	\$1,250.00	#1556 – Unearned fee in a succession
Anthony Hollis	\$950.00	#1561 – Unearned fee in a domestic matter
David J. Motter	\$5,000.00	#1563 – Unearned fee
David J. Motter	\$6,000.00	#1576 – Unearned fee in a criminal matter
Heather M. Murphy	\$850.00	#1581 – Unearned fee in a civil matter
Heather M. Murphy	\$1,550.00	#1583 – Unearned fee in a child support matter
Charles T. Phillips II	\$1,050.00	#1610 – Unearned fee in a property matter
Robert B. Purser	\$3,500.00	#1577 – Unearned fees in a real estate matter
E. Lynn Singleton	\$2,250.00	#1522 – Unearned fee in a property dispute

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.



Mail Box Rule Applies to Administrative Appeals of Contracting Officer's Final Decisions

Tessada & Associates, Inc., ASBCA No. 59446 (April 21, 2015).

In 2009, the National Aeronautics and Space Administration (NASA) awarded a Federal Acquisition Regulation (FAR)-type contract to Tessada & Associates, Inc. On July 31, 2013, Tessada submitted a certified claim to the NASA contracting officer responsible for the subject contract's administration. A "claim" is a form of contract dispute in which contractors seek relief from actions and events that occur after contract award in a FAR-type contract. *See generally*, FAR Subpart 33.2. On April 25, 2014, the contracting officer emailed Tessada the contracting officer's final decision denying the claim.

In response, Tessada sent a notice of appeal of the final decision to the Armed Services Board of Contract Appeals (ASBCA) by Federal Express on July 22, 2014, which ASBCA received on July 25, 2014 (91 days after Tessada received the final decision). By U.S. mail, he also sent a copy of the notice to the contracting officer on July 24, 2014 (90 days after Tessada received the final decision), which the contracting officer received on Aug. 26, 2014. The copy sent to the contracting officer bore a July 24, 2014, postmark.

The ASBCA reviews administrative appeals of final decisions under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. ASBCA is one of four boards of contract appeals that are available to potential appellants dissatisfied with contracting officers' final decisions as an alternative to pursuing litigation at the Court of Federal Claims for contract disputes that occur after contract award. The others are the Civilian Board of Contract Appeals, the Postal Service Board of Contract Appeals and the Tennessee Valley Board of Contract Appeals. The board one appeals to depends on the government agency involved. ASBCA has jurisdiction to decide appeals regarding contracts made by the Department of Defense or an agency that has designated ASBCA to decide the

appeal, like NASA in this case. ASBCA is the largest board and issues the majority of decisions. ASBCA consists of 20 to 30 administrative judges who handle between 500-900 appeals a year.

To be considered timely, an appeal of a final decision to a board of contract appeals must be made within 90 days from when the potential appellant receives the final notice. *See generally*, 41 U.S.C. § 7104(a). In this case, ASBCA *sua sponte* raised the issue of timeliness, and, as such, jurisdiction to hear the matter. The government declined to take a position on whether Tessada's notice of appeal was timely. It is important to note that ASBCA is considered to "liberally construe" timeliness. *See generally, AIW-Alton, Inc.*, ASBCA No. 46917, 94-3 BCA 27,279.

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ASBCA has held that, when a notice of appeal is mailed via the U.S. Postal Service, “the date of filing an appeal is the date of transfer to [the] U.S. Postal Service.” *Thompson Aerospace, Inc.*, ASBCA Nos. 51548, 51904, 99-1 BCA 30,232 at 149,569. However, a notice carried by commercial courier is deemed filed on the date the notice is delivered to ASBCA. *See, Bay Gulf Trading Co.*, ASBCA No. 54122, 03-2 BCA 32,297 at 159,805 (citing, *Tyger Constr. Co.*, ASBCA Nos. 36100, 36101, 88-3 BCA 21,149 at 106,781).

Citing to its own opinion in *Thompson Aerospace*, ASBCA noted that “filing the notice with the contracting officer is tantamount to filing an appeal with this Board.” 99-1 BCA 30,232 at 149,569 (quoting, *McNamara-Lunz Vans & Warehouses, Inc.*, ASBCA No. 38057, 89-2 BCA 21,636 at 108,856). In *Thompson Aerospace*, ASBCA also recognized, as was in the case at hand with Tessada, that this rule applies even when a contractor attempts timely service directly on the ASBCA. In Tessada’s case, the ASBCA found “no good reason why the USPS ‘mail box’ filing rule should not

equally apply to notices of appeal mailed to the [contracting officer].” Subsequently, ASBCA applied the rule to Tessada’s notice that was sent by U.S. mail to the contracting officer and postmarked July 24, 2014, 90 days after Tessada received the final decision. The reasoning by ASBCA resulted in the board finding Tessada’s notice of appeal to be timely under the Contract Disputes Act, where it otherwise would not have, and therefore, ASBCA had jurisdiction over the appeal.

While ASBCA is bound by the Act’s “90-day timeliness rule,” this decision is one in a line of decisions that suggests the Board will try to find ways to get the notices to fit within the statutory scheme. Counsel advising appellants who may have waited to obtain counsel or take action on a final decision, possibly “well after” the appellant received it, should be familiar with this decision as a possible appeal saver.

—Bruce L. Mayeaux
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JAG Legal Center and School
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The Race to Finalize the Cycle of Armstrong’s Arbitration

Lance Armstrong, a U.S. cyclist who was stripped of seven consecutive Tour de France titles in 2012 following a doping scandal, faces a \$10 million sanction issued by a Texas arbitration panel in favor of SCA Promotions, a risk-management company specializing in event and sports promotions that Team Armstrong selected to protect the financial interests of team owners and sponsors, www.scapromotions.com. This was the same Texas arbitration panel that awarded Armstrong \$7.5

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million nine years earlier through an Agreed Final Arbitration Award based on a settlement agreement between Armstrong and SCA. The settlement agreement was negotiated in response to Armstrong's 2006 claim against SCA for its failure to pay him \$5 million in satisfaction of his rights under a "Contingent Prize Contract" between the parties. Some nine years later, after Armstrong publicly acknowledged his use of performance-enhancing drugs, SCA moved the panel to reconvene arbitration and requested sanctions and forfeiture against Armstrong. The panel then returned a \$10 million sanction against Armstrong in favor of SCA.

Texas and U.S. jurisprudence offer little guidance as to when an arbitration panel may exercise jurisdiction or authority to entertain or award sanctions. However, the majority of the arbitration panel in the present case concluded that, although arbitration tribunals have jurisdiction over only those parties and issues affirmatively delegated to them, the parties, through the settlement agreement and in the anticipation of potential future disputes, provided for continuing jurisdiction over this matter to this specific arbitration panel. *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, 130 S.Ct. 1758 (2010). Armstrong's use of the panel on two prior occasions to affirmatively seek relief, including seeking sanctions against SCA, further evidenced his acceptance of the panel's jurisdiction.

Although the majority could not point to a specific Texas law on point, it cited Armstrong's "bad faith" and the "implied covenant to cooperate," including the "the obligations of parties to be truthful, to not commit perjury and to not intentionally submit fraudulent evidence in arbitrations," as authority to issue a sanction against Armstrong. The majority found that the "employment of perjured testimony and fraudulence [sic] prevented the Tribunal from performing those obligations which were owed to all of the parties participating in the arbitration." Based on jurisdiction delegated in the original settlement agreement and Armstrong's failure to admit to doping prior to the original settlement, the panel awarded SCA \$7.5 million originally paid to Armstrong, along with \$2 million in attorney fees and another \$500,000 in "additional cost insusceptible of precise calculation."

The dissenting arbitrator, Ted Lyon, labeled the sanctions as a product of the "do right rule" — "it doesn't matter what the law is, let's just do what is right." SCA's motion to reconsider was, in his opinion, foreclosed based on the language of the settlement agreement that it was the intent of the parties for the agreement to be "[f]ully and forever binding on The Parties . . ." and that both parties expressly waived any right to "challenge, appeal or attempt to set aside the Arbitrator Award." Moreover, SCA had much motivation for the settlement to constitute a final agreement on the

matter — the company was accused of engaging in selling insurance in Texas without a license, which, if true, would expose SCA to possible liability for treble damages and attorney fees. The confidentiality agreement in the settlement kept the finding that SCA had engaged in license-less insurance sales from being disclosed to the Texas Department of Insurance.

SCA is currently seeking a declaration by a Texas court that the arbitration panel's reconsidered award is a final judgment. It is difficult to predict the outcome of this battle as such an award is unprecedented and unsupported by legal provisions or jurisprudence. There is, however, a federal case on point that indicates the district court's "review of an arbitration award is extraordinarily narrow." *Antwine v. Prudential Bache Sec., Inc.*, 899 F.2d 410, 413 (5 Cir. 1990). Armstrong's legal counsel urges that the initial voluntary settlement constituted a "final and binding settlement" and preempts any ruling to the contrary — an opinion only Lyon, the dissenter in the arbitration, found convincing. The results of the Texas court's decision are bound to be contentious and cause waves in the arbitration world. Ultimately, either a former athletic champion is permitted to collect on his wrongfully procured winnings or a license-less prize insurer is permitted to forge the way for a slippery slope of arbitration awards to be "re-litigated eight years [after the fact] or to infinity" (Lyon's dissent, the reconsidered arbitration decision).

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—**Lauren J. Bradberry,**
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LSU Adjunct Clinical Professor
Immediate Past Chair, LSBA
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Orders Denying Plan Confirmation Are Not Final, Appealable Orders

Bullard v. Blue Hills Bank, 135 S.Ct. 1686 (2015).

A Chapter 13 debtor proposed a plan of repayment, and the debtor's secured lender objected to the plan. The bankruptcy court denied confirmation of the plan, and the debtor appealed. The 1st Circuit Bankruptcy Appellate Panel ruled that the order denying confirmation was not a final, appealable order; however, it heard the appeal as an interlocutory appeal. After the appellate panel affirmed the bankruptcy court's order,

the debtor appealed to the 1st Circuit Court of Appeals, which dismissed the appeal due to a lack of jurisdiction. The 1st Circuit held the order denying plan confirmation was not a final order; thus, it did not have jurisdiction to hear the appeal.

The issue before the Supreme Court was whether an order denying confirmation of a plan is a final, appealable order. In a unanimous decision, the Supreme Court held that such an order is not a final, appealable order as long as the debtor is able to propose another plan.

In bankruptcy cases, orders are immediately appealable "if they finally dispose of discrete disputes within the larger case." *Id.* at 1692. That concept is incorporated into Section 158(a) of Title 28, which provides that bankruptcy appeals as of right may be taken from "final judgments, orders, and decrees . . . in cases and *proceedings*." 28 U.S.C. § 158(a) (emphasis added).

In *Bullard*, the Supreme Court found that the relevant "proceeding" is the entire process of attempting to confirm a plan that would allow the bankruptcy to proceed forward, rather than a separate "proceeding"

for each proposed plan as argued by the debtor. The Supreme Court reasoned that "only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties." *Bullard*, 135 S.Ct. at 1692. However, when a plan is denied and the debtor is able to amend that plan, the automatic stay remains in place, the parties' rights and obligations are not fixed, and the debtor is still able to obtain a discharge; therefore, nothing is final for purposes of an appeal.

The Supreme Court also reasoned that orders denying confirmation are not final because: (1) the text of 28 U.S.C. § 157(b)(2)(L) lists as a "core proceeding" in a bankruptcy "confirmations of plans" but does not list denials of plans; (2) immediate appeals of denied plans would result in delay and inefficiencies that would defeat the purpose of final orders; and (3) if a debtor is not able to obtain an immediate appeal, he would be encouraged to work with his creditors to achieve a confirmable plan. The Supreme Court acknowledged that debtors will still have the ability to appeal orders denying plan confirmation through interlocutory appeals.



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Notice Required Before Imposing Criminal-Contempt Sanctions and Entering Injunctions

Wheeler v. Collier, 596 F. App'x. 323 (5 Cir. 2015).

McBride & Collier and its partners (collectively, the appellants) advertised and performed "No Money Down" bankruptcies and paid the court costs up front. McBride & Collier represented the debtor, Dorothy May Wheeler, in her Chapter 7 case. Wheeler filed an adversary proceeding alleging Collier debited her bank account in violation of 11 U.S.C. §§ 362 and 524, and that the appellants acted as "debt relief agencies" and, thus, violated 11 U.S.C. §§ 526(c) and 528(a) by failing to provide her with a clear fee agreement.

The district court entered a minute entry that counsel should be prepared to present evidence and argue at a hearing whether the appellants (1) violated 11 U.S.C. § 528 and (2) should be held in contempt under 11 U.S.C. § 105 for violating the discharge injunction under 11 U.S.C. § 524(a)(2). The district court entered judgment in favor of the debtor, finding the appellants (1) violated 11 U.S.C. §§ 526 and 528, and (2) were in contempt under Section 105 for violating the discharge injunction. In addition to disgorgement of their fees, punitive damages and attorneys' fees, the district court imposed \$10,000 as sanctions for contempt payable to the clerk of court and ordered the appellants to cease and desist all "No Money

Down" bankruptcies and remove and cancel any advertisements of "No Money Down" bankruptcies. The appellants appealed the \$10,000 sanctions and injunctions.

On appeal, the 5th Circuit vacated the imposition of the \$10,000 in sanctions and the injunctions entered against the appellants. With respect to the sanctions, the court held that the \$10,000 constituted criminal-contempt sanctions and that the minute entry failed to provide sufficient notice that the hearing constituted a criminal-contempt proceeding. The 5th Circuit found that the minute entry referenced only contempt pursuant to 11 U.S.C. § 105 for violating the discharge injunction, and that 11 U.S.C. § 105 provides grounds for only civil contempt. Therefore, the 5th Circuit held that the minute entry did not provide sufficient notice for a criminal-contempt proceeding. Similarly, the 5th Circuit held the minute entry did not even suggest that the district court was considering enjoining the appellants for their "No Money Down" bankruptcy practices, and, therefore, the district court failed to provide sufficient notice to the appellants to properly enter an injunction against them. Accordingly, the 5th Circuit vacated the order with respect to the sanctions and injunction and remanded.

—**Tristan E. Manthey**

Chair, LSBA Bankruptcy Law Section
and

Cherie Dessauer Nobles

Member, LSBA Bankruptcy Law Section
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& Dabney, L.L.C.
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Law Progressing with Technology

Act Number 84 of the 2015 Louisiana Regular Legislative Session works to bring the law up to speed with the world's technological advancements. The Act amends La. C.C.P. art. 2639 by adding subpart (9), which recognizes electronic signatures on promissory notes, if obtained in accordance with the Louisiana Uniform Electronic Transactions Act.

The Act further amends subpart (F) of La. C.C.P. art. 2637 by including electronically signed documents among those that need not be authentic.

Going further, the Act amended the definition of "record" under La. R.S. 13:3733.1, with respect to financial institutions, to include information that is electronically stored and retrievable in perceivable form. The Act also now defines "electronic record" and "electronic signature."

Changes Abound in Motion for Summary Judgment Again

Motions for summary judgment have been getting a lot of attention in recent years from the Louisiana Legislature. As of the date of this article's deadline, while not yet signed by the Governor, House Bill 696 would amend La. C.C.P. art. 966 to change summary judgment proceedings again. The changes are extensive, and even include timelines for the hearing and filing of the opposition and documents. Further, objections to documentation submitted as a part of a motion for summary judgment must be raised in the timely filed opposition or reply memorandum, which would mean they cannot be raised for the first time at a hearing.

Of significance is that, on review, ap-

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pellate courts cannot reverse a trial court's denial of a motion for summary judgment and grant a judgment dismissing the case or a party without first assigning the case for briefing and providing the parties an opportunity to request oral argument.

This bill is slated to take effect on Jan. 1, 2016, but will not be retroactive to cases wherein the motion for summary judgment is pending adjudication or appeal prior to the effective date. With that in mind, it may take a while to see how this shakes out in both trial and appellate practice.

Balance Billing: Personal Right, But Appropriate for Class Action Resolution

Prentiss Baker v. PHC-Minden, L.P.,
14-2243 (La. 5/5/15), ___ So.3d ___,

2015 WL 2091993.

In the *Louisiana Bar Journal*, Vol. 62, No. 4 (December 2014/January 2015), the authors noted that the Louisiana Supreme Court found a private right of action existed in the Balance Billing Act. *Anderson v. Ochsner Health Syst.*, 13-2970 (7/1/14), ___ So.3d ___, 2014 WL 2937101. The Louisiana Supreme Court granted a supervisory writ to resolve whether actions under the Balance Billing Act could be certified as a class under La. C.C.P. art. 591(A).

Prior to this ruling, the 2nd Circuit and 3rd Circuit were directly at odds. The 3rd Circuit had affirmed certification of similar cases, but, in *Prentiss Baker*, the 2nd Circuit found that a class action was not the best vehicle for resolving these actions and reversed the trial court's ruling of class certification. Ultimately, the Louisiana Supreme Court found that the class action "is superior to any other available method for a fair and efficient adjudication of the common controversy

over the disputed billing and lien practices," and, in so holding, reversed the 2nd Circuit Court of Appeal's decision.

As a note, the court also stated "class action certification is *purely procedural*. What is of primary concern in the certification proceeding is simply whether the plaintiffs have met the statutory requirements to become a class action, *not* the merits of the underlying litigation."

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New Policy Statement Defining RAGAGEP

Apparently, the Occupational Safety and Health Administration (OSHA) could not wait to complete rulemaking and, on June 5, 2015, issued an interpretation letter staking out its position concerning the current meaning of a very important concept: recommended and generally acceptable good engineering practices (RAGAGEP). The letter is online at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=29414.

Previously, both OSHA and the EPA published Requests for Information for potential rulemaking on this very issue.

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See, 78 Fed. Reg. 73756 (Dec. 9, 2013) and 79 Fed. Reg. 44604 (July 31, 2014). Historically, the EPA has promulgated Risk Management Program (RMP) rules consistent with OSHA's Process Safety Management (PSM) rules.

References to RAGAGEP within the PSM and RMP rules are few, and the term RAGAGEP is undefined. Further, both of these rules are performance standards. Given these two factors, the application of requirements referencing RAGAGEP has been understandingly variable and at times inconsistent with OSHA's and the EPA's expectations. Ultimately, the question is whether the various degrees of implementation of RAGAGEP are compliant with the rule. In a decision by an administrative law judge (ALJ) of the Occupational Safety and Health Review Commission, the judge concluded that OSHA had overreached with its strict interpretation of RAGAGEP. See, *Sec. of Labor v. BP Prods. N. Am.*, No. 10-0637, Aug. 12, 2013, 2013 WL 9850777. Whether the June 2015 interpretations are supportable under the current rule will be a hot topic; at a minimum, these interpretations provide a possible glimpse as to OSHA's plans for future rulemaking. Following is a discussion of three of the more important interpretations.

RAGAGEP References Are Narrow

OSHA's June 2015 interpretation opens by acknowledging that RAGAGEP applies to only three references within the rule: equipment (a defined and narrow term), inspection procedures, and inspection frequency. Arguably, this acknowledgment means that RAGAGEP does not necessarily apply to other PSM elements, such as facility siting. Additionally, according to the guidance, "[e]mployers do not need to consider or comply with a RAGAGEP provision that is not applicable to their specific worksite conditions, situations, or applications." Such suggests that RAGAGEPs published for petroleum refineries (e.g., API-520) or chemical plants should not necessarily be applied to such worksites as, for example, compressor stations.

Internal Procedures Must Be Equivalent to Published Codes and Standards

When issuing the PSM rule, OSHA agreed that "the phrase recognized and generally acceptable good engineering practices would include both appropriate internal standards and applicable codes and standards." See, 57 Fed. Reg. 6356, 6391 (Feb. 24, 1992). In the 2013 Request for Information, OSHA stated that it intended for appropriate internal standards to be used only when codes and standards were unavailable or when the internal code was more stringent. See, 78 Fed. Reg. at 73761. This position was rejected by the ALJ in the *BP* case. See, *Sec. of Labor v. BP*, *supra*, at pp. 19-21.

In an apparent response to that decision, OSHA now says that for an internal procedure to be "appropriate," it must "meet or exceed the protective requirements of published RAGAGEP where such RAGAGEP exist." Notwithstanding that this requirement is not mentioned in the original rule or preamble, the statement itself creates more questions than it does answers. For example, the ALJ ruled that pressure-drop requirements in *BP-Husky's* procedures did not have to follow existing published RAGAGEPs. Is OSHA's new requirement meant to be consistent with this decision or to supersede it? Also, elsewhere in the interpretation letter, OSHA explains that an employer may choose between published RAGAGEPs that "contain similar but not identical requirements." Pursuant to such, OSHA provided two example RAGAGEPs and declared both as "protective." However, if an internal standard must meet or exceed published standards or codes, must you also choose the published standard that meets or exceeds all other published codes? If an internal procedure is protective, must its protective requirements exceed a published code or standard?

"Should" Means "Shall" (or the Equivalent)

The final issue raised by the June 2015 interpretation letter is a game changer; it indicates that the term "should" as used in industry standards really essentially

means “shall” by putting the burden of proof on an employer to justify an alternative. The interpretation letter requires that the employer determine and document if an employer chooses to use an alternative approach to an action designated within a published industry standard as a recommendation using the word “should.” In the interpretation letter, OSHA cites API-520 and concludes that it is protective and acceptable to OSHA. According to API-520 (Eighth Edition, 2008), “as used in a standard, ‘should’ denotes a recommendation or that which is advised *but not required* in order to conform to the specification.” (Emphasis added.) If “the phrase recognized and generally acceptable good engineering practices would include . . . applicable codes and standards,” would not conformance with a code or standard be compliance with RAGAGEP?

Finally, when developing the rule, OSHA said that codes and standards and

appropriate internal standards could be considered RAGAGEP. Some industry publications available to be considered a RAGAGEP are not called codes or standards but are instead considered “Recommended Practices.” Should an employer be compelled to address every recommendation within a Recommended Practice?

In conclusion, as the wait is on for OSHA to issue new proposed rules, OSHA has offered new interpretations to the meaning of the old rules. Unfortunately, these interpretations create many more questions. Perhaps rulemaking would be a good approach to resolve these issues.

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Property

Succession of Gassiott, 14-1019 (La. App. 3 Cir. 2/4/15), 159 So.3d 521, *writ denied*, 15-0493 (La. 5/15/15), ___ So.3d ___, 2015 WL 3477434.

Although the parties were separate in property, upon Mr. Gassiott’s receiving proceeds from a medical-malpractice lawsuit, he deposited one-half of those proceeds into a checking account in his name alone, and the other half in a joint savings account in his and his wife’s name. She then withdrew those funds, \$77,769, four days before his death. His children sought to have her return the money. The trial court found, and the court of appeal affirmed, that the creation of the savings

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account was a donation *inter vivos* to her; and, further, her withdrawal of the funds from the account also accomplished a manual donation *inter vivos*. His opening the savings account in her name and her acceptance of that donation by signing the documents to create the account established the donation *inter vivos*. His confirmation to his preacher, months before his death, that he put money in the bank for her and intended her to have it, as well as his telling her shortly before his death that he wanted her to withdraw the money, evidenced his continuing intent to donate the funds to her.

Thompson v. Thompson, 14-0963 (La.App. 3 Cir. 3/4/15), 159 So.3d 1121.

Ms. Thompson's petition to annul the parties' community-property-partition judgment on the basis of Mr. Thompson's alleged "fraud, non-disclosure, and ill practices" was prescribed because she had sufficient information to put her on notice that something might be wrong more than one year prior to her filing her petition. Her claim of coercion was also dismissed. The trial court's award of \$25,744 in attorney's

fees to Mr. Thompson as the prevailing party under La. C.C.P. art. 2004 was affirmed. The court of appeal awarded him an additional \$2,800 for attorney's fees he incurred on her appeal.

Procedure

David v. David, 14-0999 (La. App. 3 Cir. 2/4/15), 157 So.3d 1164, *writ denied*, 15-0494 (La. 5/15/15), ____ So.3d ____, 2015 WL 3477436.

Mr. David's motion to recuse the trial judge filed the day before trial was properly denied because he failed to allege any proper grounds for recusation. However, the trial court award of sanctions against Mr. David and his attorney for filing a frivolous pleading was reversed because they were entitled to notice and a hearing prior to sanctions being imposed upon them.

Paternity

Miller v. Thibaux, 14-1107 (La. 1/28/15), 159 So.3d 426.

In this wrongful death case, Miller alleged only that the decedent was his son and that he was the deceased's biological father. The trial court overruled the defendant's exception of no right of action and issued a judgment of paternity. The court of appeal reversed, finding that Miller failed to present sufficient allegations to state a cause of action for filiation. The Supreme Court reversed the court of appeal and reinstated the trial court's judgment, finding that, under its prior opinion in *Udomenh v. Joseph*, 11-2839 (La. 10/26/12), 103 So.3d 343, the putative father's failure to specifically request a finding of filiation, or to specifically allege that the action was an avowal action, did not preclude the court from issuing a judgment of paternity when allegations of biological paternity are made, as "there was no other purpose an allegation of paternity could have served." *Miller*, 159 So.3d at 432. Moreover, the "bare allegations" were nevertheless sufficient to put defendants on notice that the putative father was claiming paternity

of the child and, effectively thereby, initiating an action to establish filiation.

Three justices dissented, arguing that conclusory allegations of paternity are insufficient to establish a cause of action without additional supporting facts. The dissent argued that an action for avowal must be instituted, not simply that defendants be put on notice "by way of filing the wrongful death and survival action — the very action that [the legislature] sought to prevent a putative father who has not proven filiation from bringing in the first place." *Id.* at 437.

Custody

State ex rel. P.T., 14-1160 (La. App. 3 Cir. 3/4/15), 159 So.3d 1184, *writ denied*, 15-0693 (La. 5/1/15), 2015 WL 2371704.

The court of appeal affirmed the trial court's denial of the maternal grandparents' petition for adoption, agreeing that joint custody between the maternal grandparents and the paternal grandmother was more in the child's best interest because adoption carried permanency, whereas custody allowed for flexibility and adaptability to adjust to the child's ongoing needs. Joint custody between the maternal grandparents and paternal grandmother was appropriate, as the child had a close and loving relationship with both, both were fit to care for her and capable of raising her, and it was important to continue the child's contact with both. However, the court of appeal reversed the trial court's designation of all three as co-domiciliaries, finding that the failure to name domiciliary custodians could lead to additional litigation if the maternal and paternal grandparents had disagreements. Because the child had been living primarily with the maternal grandparents, the court found that they should be named as the domiciliary grandparents.

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Predatory Billing by Healthcare Providers: Class Certification

Baker v. PHC-Minden, L.P., 14-2243 (La. 5/5/15), ___ So.3d ___, 2015 WL 2091993.

PHC-Minden (Minden) had a regular practice of billing insured patients involved in automobile accidents where a third-party health-insurance company was liable for the crash. After admission, Minden sought information concerning all parties' automobile insurance. The information was used to send a lien pursuant to La. R.S. 9:4752 to the liability insurer and the patient's attorney seeking to collect from the patient's

damage settlement the full and undiscounted rate. Only later would Minden file with the patient's health insurer. Even if receiving payment, it maintained its claim to collect the full amount from the settlement, using medical liens. Plaintiffs claimed that Minden was liable to them and those similarly situated for damages and recompense. Plaintiffs alleged hundreds of other patients have been subjected to this collection policy, in violation of the Health Care Consumer Billing and Disclosure Protection Act, La. R.S. 22:1871 *et seq.* (Balance Billing Act). They filed a motion to certify the class, and Minden opposed. Finding class action a superior method of proceeding in the matter, the trial court granted certification. On appeal, the 2nd Circuit reversed, a result inconsistent with holdings in the 3rd Circuit, and the Louisiana Supreme Court granted a writ to resolve the conflict.

The court defined class action as "a non-traditional litigation procedure that permits a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common interest to persons so numerous as to make it imprac-

ticable to bring them all before the court." *Baker* at *6. Errors made in deciding class action issues "should be in favor of and not against the maintenance of the class action, because a class certification order is *always* subject to modification or decertification, if later developments during the course of the trial so require." *Id.* at *7. A trial court has wide discretion in deciding whether to certify a class, and the standard on review is manifest error/abuse of discretion.

In Louisiana, the requirements for class certification are set forth in La. C.C.P. art. 591, which provides five threshold prerequisites: (1) numerosity — joinder of all members is impracticable; (2) commonality — questions of law or fact common to the class; (3) typicality — claims or defenses of representative parties typical to those of the class; (4) adequacy of representation — will fairly and adequately protect the interests of the class; and (5) objective definability of class — the class may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for the purposes of any judgment rendered.

Art. 591(B)(3) adds an additional require-

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ment — “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” The court found that superiority was the “single, paramount issue,” and that if the court resolved the superiority issue in plaintiff’s favor, the remaining issues all related to the calculation of damages. The court stated many of the claims may be small or nominal in nature, rendering individual action financially impractical, if not impossible. Thus, it found the class action the superior method for adjudication as the common question “regarding the legality, under the Balance Billing Act, of a health care provider’s collection of filing medical liens to recover its full rate for services from an insured’s settlement or judgment with a third party tortfeasor.” *Id.* at *14. The judgment of the 2nd Circuit Court of Appeal was reversed, and the judgment of the trial court was reinstated. The case was remanded to the district court.

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U.S. Supreme Court

Zivotofsky v. Kerry, 135 S.Ct. 2076 (2015).

The U.S. Supreme Court issued a splintered 6-3 decision on June 8, 2015, addressing the separation of powers between the Executive and Legislative branches in connection with the “delicate subject” of Jerusalem. Noting that “[q]uestions touching upon the history of the ancient city and its present legal and international status are among the most difficult and complex in international affairs,” the Court examined whether the President has the exclusive constitutional power to grant formal recognition to a foreign sovereign. *Zivotofsky*, 135 S.Ct. at 2081. If such power resides exclusively with the President, the Court had to address whether a Congressional statute could force the Executive to issue a statement contradicting its exercise of the recognition power.

The specific question before the Court was whether a Congressional mandate allowing a U.S. citizen born in Jerusalem to have his or her passport’s place of birth listed as Israel violates the President’s foreign affairs power to recognize foreign sovereigns. *Id.* Petitioner Menachem Zivotofsky was born in 2002 to U.S. citizens living in Jerusalem. *Id.* When his mother applied for his passport at the U.S. Embassy in Tel Aviv, she requested the place of birth as “Jerusalem, Israel.” The U.S. Embassy refused the request on the ground that U.S. policy prohibits the use of Israel in connection with Jerusalem; accordingly, the Embassy would only list Jerusalem as the place of birth on his passport. *Id.* at 2083.

Petitioner’s parents brought suit against the U.S. Secretary of State on his behalf in the U.S. District Court for the District of Columbia, seeking to enforce a Congressional statute, discussed *infra*, requiring for “purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born

in the city of Jerusalem, the Secretary [of State] shall, upon the request of the citizen or the citizen’s legal guardian, record the place of birth as Israel.” *Id.* at 2117. The District Court dismissed the lawsuit, reasoning that it presented a nonjusticiable political question and petitioner lacked standing to bring such a claim. The Court of Appeals for the District of Columbia reversed on the standing issue, but later affirmed the District Court’s political question ruling. *Id.* at 2083. The U.S. Supreme Court vacated the political question part of the judgment, and after remand, the Court of Appeals found the statute an unconstitutional violation of the President’s exclusive foreign affairs power to recognize a foreign sovereign. The Supreme Court again granted certiorari, this time to determine the separation of powers question at issue. *Id.*

Justice Kennedy authored the opinion of the Court, providing a textbook analysis of the separation of powers formula set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 72 S.Ct. 863 (1952) (concurring opinion). The case presents a direct conflict between a Presidential action and the express will of Congress. Accordingly, Presidential power is at its lowest ebb, and in order to prevail, the Presidential power at issue must be both exclusive and conclusive on the issue. *Zivotofsky* at 2083-84.

U.S. Executive policy regarding the recognition of Jerusalem has been consistent over time. President Truman first formally recognized Israel by written statement in 1948. However, neither President Truman nor any other U.S. President since has issued a formal statement or declaration recognizing Israeli sovereignty over Jerusalem. The United States has consistently refused to issue a unilateral declaration regarding Jerusalem’s sovereign status, insisting that any recognition must result from agreement between Israel and Palestine. *Id.* at 2081.

U.S. policy on Jerusalem stretches to the consular act of issuing passports. The U.S. State Department’s Foreign Affairs Manual recognizes that passports are construed as reflections of official U.S. policy, and, as such, the place of birth on a passport shall only be listed as the “country [having] present sovereignty

over the actual area of birth.” No sovereign may be listed in conflict with Executive Branch policy. *Id.* The Foreign Affairs Manual specifies that the United States recognizes no sovereign over Jerusalem and the place of birth for citizens born in Jerusalem should be Jerusalem. *Id.* at 2082.

Congress sought to override the Foreign Affairs Manual in the 2002 Foreign Relations Authorization Act. *Id.* Section 214(d) of the Act, titled “Record of Place of Birth as Israel for Passport Purposes,” requires the Secretary upon request of a citizen or legal guardian to record Israel as the place of birth of U.S. citizens born in Jerusalem. President George W. Bush signed the Act into law and issued a statement indicating that U.S. policy regarding Jerusalem had not changed and any construction of the Act as mandatory rather than permissive would impermissibly interfere with the President’s foreign affairs recognition power. *Id.*

The Court conducted an exhaustive analysis of the Constitution and prior historical precedent on the issue of foreign sovereign recognition. The Court had no

difficulty concluding that the “text and structure of the Constitution grant the President the power to recognize foreign nations and governments.” *Id.* at 2086. The more difficult question is whether the recognition power is exclusive. The Court ruled as follows on the exclusivity of the recognition power:

The various ways in which the President may unilaterally effect recognition — and the lack of any similar power vested in Congress — suggest that it is [exclusive]. So, too, do functional considerations. Put simply, the Nation must have a single policy regarding which governments are legitimate in the eyes of the United States and which are not. Foreign countries need to know, before entering into diplomatic relations or commerce with the United States, whether their ambassadors will be received; whether their officials will be immune from suit in federal court; and whether they may initiate lawsuits here to vindicate

their rights. These assurances cannot be equivocal.

Id.

The President’s exclusive power over recognition extends beyond formal recognition to the power of his agents to maintain such recognition determinations in formal U.S. statements. *Id.* at 2094-95. Invoking precepts of general international law, the Court found that recognition could be effected by any “written or oral declaration of the recognizing state.” *Id.* at 2095. The Court concluded that section 214(d) impermissibly contradicts the President’s act of recognition with respect to Jerusalem and, therefore, is an unconstitutional exercise of power specifically reserved and limited to the Executive Branch. *Id.* at 2096.

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Supreme Court Rules for Pregnant Workers in UPS Case

Young v. United Parcel Serv., Inc., 135 S.Ct. 1338 (2015).

On March 25, 2015, the U.S. Supreme Court ruled that employers cannot impose a “significant burden” on pregnant workers and that a pregnant worker can show that her employer’s practices are unjustified if the employer makes accommodations for a large percentage of non-pregnant workers, while denying the same kinds of accommodations to pregnant workers.

When UPS driver Peggy Young became

pregnant, her doctor advised her not to lift heavy packages. She requested a light-duty assignment, but UPS denied her request, despite the fact that UPS made such accommodations available to three groups of employees: those who were injured on the job, workers who were covered by the Americans with Disabilities Act (ADA) and workers who lost their commercial driver’s license. UPS refused to reassign Young or let co-workers help her, and so she was forced to take an unpaid leave. During this time, she lost her medical coverage. Young sued UPS and claimed she had been the victim of discrimination under the Pregnancy Discrimination Act (PDA).

The PDA has two relevant clauses. While the first prohibits discrimination, the second — the one at issue in *Young* — has broader language that pregnant women must be “treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work...” Young argued that UPS’s policy was discriminatory because it permitted light-duty accommodations to some workers

who had similar types of work restrictions, but did not allow the same accommodation for her. Under the second clause of the PDA, she argued, UPS must grant her the same accommodations available to other workers with similar restrictions, and refusing to do so was discrimination. UPS argued that no policy could violate the PDA if it was pregnancy-neutral — that is, if it did not single out pregnancy as the only condition that did not merit some particular accommodation.

In a 6-3 decision, the majority opinion, written by Justice Stephen G. Breyer, rejected the interpretations offered by both parties. With respect to Young’s interpretation, Breyer wrote that pregnant women were not entitled to “most favored nation” status, under which they could demand an accommodation that was offered to any other worker. With respect to UPS’s interpretation, the majority reasoned that if an employer accommodates some temporary disabilities, it has to accommodate pregnancy. The employer need not accommodate any temporary disabilities, but, if it does, it cannot treat pregnancy worse than it treats other temporary disabilities.

The majority, instead, applied a new approach to the second clause of the PDA, which makes use of the framework established in *McDonnell Douglas Corp. v. Green*, 93 S.Ct. 1817 (1973). Under that test, a plaintiff must first make out a prima facie case, demonstrating that she was treated differently from someone similarly situated but outside the protected class. The district court in Young’s case had held that she failed to make out a prima facie case because none of the proposed comparators were “similarly situated.” UPS’s justification for its accommodation policy was circular — she was not similarly situated to anyone covered by the policy because she was not covered by the policy.

Justice Breyer’s opinion rejects this application of *McDonnell-Douglas*. A plaintiff can establish a prima facie case of pregnancy discrimination simply by showing that “she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others ‘similar in their ability or inability to work.’”

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

Law firms, attorneys and legal professionals wishing to donate should drop off costumes at the Louisiana Bar Center, 601 St. Charles Ave., New Orleans, on Monday through Friday, Nov. 2-6, during business hours (8:30 a.m.-4:30 p.m.).

Costumes may simply be placed in bags. There is no labeling or sorting process required. ‘WEEN DREAM volunteers will handle the sorting process and match the costumes to children for Halloween 2016. (Costumes that were donated after Halloween 2014 are being distributed to children for 2015.)

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

claims, the company would then have an opportunity to show if there was any “legitimate, nondiscriminatory, nonpretextual justification for these differences in treatment.” After the employer articulates a legitimate reason for its treatment of the plaintiff, the plaintiff has the opportunity to reach a jury by “providing sufficient evidence that the employer’s policies impose a significant burden on pregnant workers, and that the employer’s ‘legitimate, nondiscriminatory’ reasons are not sufficiently strong to justify the burden, but rather — when considered along with the burden imposed — give rise to an inference of intentional discrimination.” For example, a company cannot just claim that it would be too expensive or inconvenient for them to accommodate a pregnant woman.

In his concurring opinion, Justice Samuel A. Alito, Jr. makes it clear that the PDA has a “further requirement of equal treatment irrespective of intent.” To determine whether the conduct was discriminatory, Justice Alito argued that the treatment of pregnant employees should be compared to the treatment of non-pregnant employees in similar jobs with similar abilities and inabilities to work.

In his dissenting opinion, Justice Antonin G. Scalia argues that the Act only prohibited an employer from distinguishing between employees of similar abilities and inabilities because of pregnancy, while differing treatment for other reasons is permissible. He argued that the court overstepped its role.

UPS has since changed its policy to explicitly include accommodations for pregnant workers, but the rules laid out by the case will impact working women around the country, as they guide lower courts in future litigation. Young’s case now goes to trial to establish the facts regarding UPS’s accommodations of others and their refusal to accommodate her.

—Kevin Mason-Smith

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Lieu Warrants; Mineral Reservation

Midstates Petroleum, L.L.C. v. State Mineral & Energy Bd., ___ So.3d ___ (La. App. 3 Cir. 4/15/15), 2015 WL 1650549.

This case involves a concursus proceeding between Louisiana’s State Mineral and Energy Board and titleholders of land located in Beauregard Parish. The legal question — Who owns the minerals underlying the tract of land?

In 1858, the State sold land with minerals to John Laidlaw. The land, however, had been sold previously by the federal government. Pursuant to Act 104 of 1888, the State issued a lieu warrant to Laidlaw in 1919. A lieu warrant is a promise (or obligation) by the State to transfer land “of the same class” as that originally sold to the holder of the warrant. The warrant is issued “in lieu” of returning the money obtained by the State for the piece of property erroneously sold. Laidlaw’s heirs later assigned the warrant to Alvin Albritton. Albritton was issued a patent to satisfy the warrant in 1944.

In 2011, the Albritton heirs granted a mineral lease on the property to Midstates Petroleum. The State later claimed that the minerals belonged to it because a 1921 amendment to the Louisiana Constitution prohibited the sale of minerals on any property sold by the State. The State ultimately entered into an operating agreement with Midstates, and Midstates drilled a well on the land. A concursus proceeding to clarify ownership was initiated by Midstates and the Albrittons in 2012.

On cross-motions for summary judgment, the State argued that the minerals were owned by it because of the 1921 amendment. The Albrittons, however, argued that the obligations per the lieu warrant were not abrogated by the amendment.

The trial court ruled in favor of the Albrittons, finding that the amendment did not affect the obligations created by the lieu

warrant. On appeal, the 3rd Circuit affirmed, holding that this case was analogous to a prior case in which the Louisiana Supreme Court found that a subsequent constitutional amendment did not affect existing obligations established by the lieu warrant.

Tax Adjudication; Mineral Lease

Sapphire Land Co. v. Chesapeake La., L.P., 49,712, ___ So.3d ___ (La. App. 2 Cir. 5/20/15), 2015 WL 2405709.

In April 1986, two acres of land located in Caddo Parish (Haynesville Shale) were sold to Ebey. Ebey neglected to pay his 1986 property taxes. The property was subsequently sold to Smith at a tax sale. A tax deed was executed and recorded in the conveyance records of Caddo Parish. Notice was sent to Ebey advising him of the tax sale and the three-year redemption period if he paid the back taxes due. It was disputed whether the notice was sent to the proper address for Ebey. In 1987, Smith did not pay the taxes on the property. The property was offered for bid at a tax sale, but no bids were received. The property was thus adjudicated to Caddo Parish. All tax sales were advertised in the *Shreveport Journal*.

In 2009, Caddo Parish granted a mineral lease to Classic Petroleum. Classic later assigned the lease to Chesapeake. The Commissioner of Conservation then created a unit and named Chesapeake as unit operator. Chesapeake drilled and completed a well inside the unit. Classic’s assignment of the lease to Chesapeake was recorded.

Sapphire Land Co. purchased the interests of the Ebey and Smith heirs by quitclaim deeds in 2010. By this time, Caddo Parish’s interest had been recorded in the public record for 22 years. Chesapeake’s mineral lease was also recorded in the public record. Sapphire later paid the 1987 taxes owed on the property, and, in October 2010, a certificate of redemption was issued. Sapphire sent letters to Chesapeake claiming that it was the “unleased owner” and demanded that Chesapeake (1) release part of its lease, and (2) send its accounting records to Sapphire. Chesapeake refused to do so. Sapphire sued.

Sapphire argued to the trial court that the mineral lease was void *ab initio* because the tax adjudication was improper. The trial court, after a trial on the merits, held that

Sapphire did not meet its burden of proof and dismissed its claims with prejudice. Sapphire appealed.

The Louisiana 2nd Circuit Court of Appeal affirmed the holding of the trial court, finding that:

- (1) the period for redemption ended in 1991; Sapphire did not redeem the property until 2010;
- (2) the notices previously sent to Ebey and Smith were proper because the tax collector took all reasonable steps to apprise them of the tax delinquencies and upcoming tax sales;
- (3) Caddo Parish was not required by law to institute a lawsuit in order to take possession of the property; thus the failure to do so did not affect its ability to take possession, and further the failure to file a lawsuit did not affect the validity of the mineral lease; and
- (4) any interest Sapphire might own in the property was subject to Chesapeake's lease because it was recorded in 2010 and the quitclaim deeds acquired by Sapphire specifically said that the property was subject to "all restrictions . . . of public record."

—**Keith B. Hall**

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Fax Filing Requests for Review

In re: Med. Review Panel Claim of Tillman, 15-0178 (5 Cir. 4/22/15).

Rose Tillman died on May 22, 2012. The plaintiffs faxed a medical-review-panel request to the Division of Administration on May 22, 2013, at 7:43 p.m. The Division of Administration's website shows that facsimile filings are permissible and that faxes received after 5 p.m. will be stamped as filed the next business day.

The Tillman request was date-stamped by the Division of Administration on May 23 at 9:09 a.m. The PCF advised the plaintiffs that it had received the panel request dated May 22 and that the "file date of the request was also May 22." Then, on Nov. 10, 2014, the PCF advised all parties that, pursuant to La. R.S. 40:1299.47(A)(2)(b), it was changing the file date to the next business day (May 23), whereupon the defendants filed an exception of prescription, which the district court denied. In a supervisory writ to the court of appeal, the defendants argued that the plaintiffs' case was prescribed because it was filed one day beyond the applicable one-year prescriptive period.

The appellate court found clear and unambiguous the pertinent portions of La. R.S. 40:1299.47(A)(2)(b): A request for review is timely filed on the date of mailing the request if it is sent to the Division of Administration by certified or registered mail. The plaintiffs had used neither certified nor registered mail; thus, the court ruled that the Division of Administration correctly changed the filing date to May 23 because the request was filed after 5 p.m., which was the beginning of the "next business day." The defendants' writ was granted, and the plaintiffs' case was dismissed with prejudice.

Informed Consent

Snider v. La. Med. Mut. Ins. Co., 14-1964 (La. 5/15/15), ____ So.3d ____, 2015 WL

2082480.

This case was reported in the February/March 2014 issue of the *Louisiana Bar Journal* (Vol. 61, No. 5) after the Louisiana Supreme Court reversed and remanded to a court of appeal that court's reversal and remand of a jury verdict for the defendants. The Supreme Court ruled that the appellate court erred when it used a *de novo* standard of review instead of a manifest-error standard, thereby substituting its own opinion in place of the fact-finder's. The court instructed the appellate court to consider and to rule on all of the plaintiff's assignments of error.

On remand, the appellate court again reversed the trial court's judgment, reasoning that the jury was manifestly erroneous in failing to find a defendant's actions breached the acceptable standard of care.

The Supreme Court's second review of the case convinced it that the jury's finding in favor of the defendant was not manifestly erroneous, and it again reversed the court of appeal, again remanded it to the appellate court, and again instructed it "to consider the remaining assignments of error in the appeal."

Physician's Testimony on Nursing Standards of Care

McGregor v. Hospice Care of La. in Baton Rouge, L.L.C., 14-2591 (La. 4/24/15), ____ So.3d ____, 2015 WL 2260926.

The decedent was a terminal metastatic cancer patient enrolled in hospice care. Hospice nurses treated him at home and would thereafter report their findings to his treating oncologists, who would then make determinations about prescribing pain medication.

The patient's son and a Hospice nurse had a disagreement, leading the son to refuse the nurse's request to assess his father. She thereafter called the son and advised that Hospice was discharging the patient from its care, whereupon the son called one of the treating physicians who was aware of the confrontation. The doctor said she concurred in Hospice's decision. That same day, the patient was transferred by ambulance to a hospital, where hours later he died.

A medical-review panel exonerated the treating physicians, who were then joined in an earlier filed lawsuit against Hospice,

A blue rectangular box with white text. At the top left is a logo consisting of three blue squares of increasing size. To the right of the logo, the letters "L.A.P." are written in a large, bold, blue font. Below "L.A.P." is the text "LAWYERS ASSISTANCE PROGRAM, INC." in a smaller, blue, sans-serif font. Below this, the text "YOUR CALL IS ABSOLUTELY CONFIDENTIAL AS A MATTER OF LAW." is written in a bold, blue, sans-serif font. At the bottom, "Call toll-free (866)354-9334" is written in a large, bold, black font, and "Email: lap@louisianalap.com" is written in a smaller, black font below it.

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All defendants filed motions for summary judgment, claiming that the plaintiffs had no expert testimony to establish a breach of a standard of care. The trial court agreed and dismissed the case. The plaintiffs appealed, arguing that the deposition testimony of their physician expert (Dr. Samuels, whose specialty was reported in neither the Supreme Court nor appellate court opinions) had provided testimony sufficient to overcome a motion for summary judgment. The defendants countered that the plaintiffs' expert testified by deposition that he was unfamiliar with the standard of care applicable to hospice nurses concerning the issues in question and, therefore, the plaintiffs could not satisfy their burden of proof.

Dr. Samuels had testified that he was not familiar with the standard of care for hospice nurses and had no opinion about another issue concerning "partially filling" prescriptions. Dr. Samuels also testified, however, that Hospice did breach the standard of care by discharging the patient without proper notification "by way of certified letter" to the patient, specifying therein the time period the patient would be given to obtain alternative care and that, during the interim, a health-care provider is obligated to continue to provide care. He also testified that the standard of care for discharging a patient is not limited to any particular specialty. Hospice was unable to show that its standard of care for discharging a patient differed from Dr. Samuel's standard. The court of appeal reversed the summary judgment, and the case was remanded to the trial court.

The Supreme Court then accepted the defendant's writ application and issued a per curiam opinion in which it held that the trial court erred in excluding the testimony of the plaintiffs' expert because "hospice nursing" and "partial refill prescriptions" are medical areas "subsumed within the expertise of plaintiff's expert" and "the fields are not separately recognized areas of expertise." The case was remanded to the court of appeal.

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La. R.S. 47:305.1(A) Sales Tax Exemption Only Applies to Original Construction

Coastal Drilling Co. v. Dufrene, 14-0960 (La. App. 1 Cir. 6/5/15), ___ So.3d ___, 2015 WL 3537527.

The 1st Circuit Court of Appeal affirmed summary judgment that found unconstitutional the Louisiana Department of Revenue's (Department) regulation interpreting the sales-tax exemption under La. R.S. 47:305.1(A). The court found in favor of the local taxing authority, holding Coastal Drilling Co., L.L.C., liable for the use tax assessed on parts and materials used to restore an inland-marine-drilling barge that was damaged by fire.

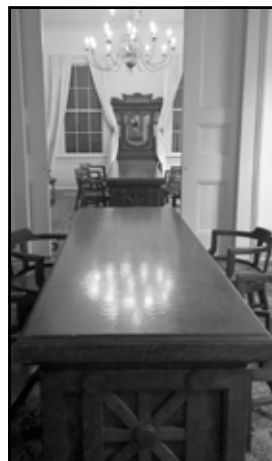
After being damaged by fire in 2005, Rig 21 was restored. When an audit revealed that Coastal had not paid local sales tax on the parts, materials, equipment and machinery purchased in connection with the work performed to restore the barge, St. Mary Parish's Director of Sales and Use Tax and Ex-Officio Sales and Use Tax Collector issued a use-tax assessment for the items used in restoring Rig 21. Coastal timely paid the assessment under protest and filed

suit to recover.

The Collector asserted that the tax exemption provided by La. R.S. 47:305.1(A) applied only to "articles of tangible personal property that are installed on ships, vessels, barges, commercial fishing vessels, drilling ships and drilling barges during original construction," and as the parts installed on Rig 21 were not installed during "original construction," Coastal was not entitled to a refund of the taxes paid under protest. The Collector further alleged that the provisions of the Department's regulation, LAC 61:1.4403 (Regulation 4403), by which Coastal claimed authority for extension of the exemption, did not apply because Rig 21 was not "destroyed" by fire, but instead "damaged." The Collector also reconvened to challenge the constitutionality of Regulation 4403.

In prior proceedings, the district court held that the repairs to Rig 21 did not qualify as a reconstruction under Regulation 4403, and, therefore, Coastal was not entitled to the tax exemption. The district court did not reach the constitutionality of Regulation 4403. In the prior appeal, the court vacated the district court's judgment and remanded the matter for a determination of the constitutionality of Regulation 4403. On remand, the district court declared Regulation 4403 to be unconstitutional as exceeding the scope of the exemption provided in La. R.S. 47:305.1(A). Coastal appealed again.

The court rejected Coastal's attempt to broadly define the word "build" to encompass the concepts of reconstruction and restoration as this would violate the principles that a tax exemption is an exceptional privilege that must be expressly and



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- ▶ I will not abuse or misuse the law, its procedures or the participants in the judicial process.
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- ▶ I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- ▶ I will not use the threat of sanctions as a litigation tactic.
- ▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
- ▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.

clearly conferred in plain terms, and that tax exemptions are strictly construed against the taxpayer. Relying on prior decisions by the Louisiana Supreme Court, as well as its own prior decisions, the court held the La. R.S. 47:305.1(A) tax exemption applies only to materials, equipment and machinery that become component parts during the original construction of a ship, vessel or barge and does not apply to the replacement of the original component parts of vessels.

Accordingly, the court found that the district court did not err in finding Regulation 4403 unconstitutional, as the regulation exceeded the scope of the exemption authorized in La. R.S. 47:305.1(A), which applies only to component parts of vessels added during the original construction of the vessel.

—**Antonio Charles Ferachi**
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U.S. Supreme Court Tackles Two State Tax Issues

The U.S. Supreme Court confronted two tax issues in the most recent term.

In *Direct Marketing Ass'n. v. Brohl*, 135 S.Ct. 1124 (2015), the Court held that a trade association of retailers who sell to Colorado residents online may bring suit in federal court, as the action was not barred by the Tax Injunction Act (TIA), 28 U.S.C. § 1341. Colorado has a complementary sales-and-use-tax regime, requiring resident consumers who purchase tangible personal property from a retailer who does not collect sales or use tax at the point of sale, such as those operating online, to file a return and remit the taxes to the state. Colorado enacted legislation requiring non-collecting retailers whose gross sales in Colorado exceed \$100,000 to notify its Colorado customers of their use tax obligations and to report tax-related information to its customers and Colorado. Direct Marketing Association brought suit in federal court alleging that the notice and reporting requirements were unconstitutional under both state and federal law, and

sought an injunction. Although the district court enjoined state officials from enforcing the notice and reporting requirements, the 10th Circuit held that the district court lacked jurisdiction over the suit because of the TIA, which prohibits federal courts from enjoining, suspending or restraining the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy is available in state courts. The Supreme Court reversed, finding that the relief sought would not enjoin, suspend or restrain the assessment, levy or collection of Colorado's sales-and-use taxes because the notice-and-reporting requirements do not fall under the definitions of assessment, levy or collection.

In *Comptroller of the Treasury of Md. v. Wynne*, 135 S.Ct. 1787 (2015), the Court held in a 5-4 decision that Maryland's personal-income-tax scheme, which allowed residents to receive a tax credit against their state income tax for taxes paid to other states, but disallowed a credit against their county income tax, violated the dormant Commerce Clause. Maryland bifurcates its state income tax into state and county income-tax regimes, yet both are assessed and collected by the state. In *Wynne*, the taxpayers had income from an S Corporation that earned income in multiple states and claimed a credit for taxes paid to other states on their 2006 income-tax return. Maryland's Comptroller allowed the credit against their state income tax but disallowed the credit against their county income tax. The Supreme Court determined that this system causes taxpayers' income to be taxed twice, incentivizing taxpayers to choose to engage in intrastate rather than interstate economic activity in violation of the dormant Commerce Clause. The Court noted that this scheme operates as a tariff and may be cured by granting a credit for income taxes paid to other states. The principal dissent by Justice Scalia highlighted the inconsistency of the majority's decision with prior dormant Commerce Clause decisions because the Maryland tax does not discriminate on its face against interstate commerce.

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Robert Burns Sr.
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North Louisiana



Peggy Landry



Andrew Lemmon



Lynn Luker



Daniel Lund III



Christopher Moody



Michael Pulaski



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Hodge O'Neal III



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CHAIR'S MESSAGE

Life Outside the Law?

By Erin O. Braud

Outside the law — what do you love to do outside of being a lawyer? No, depositions, CLEs, networking, speeches and article writing are not hobbies. Those activities tend more toward improving your career rather than improving yourself. It seems that as we settle into our careers, attorneys lose sight of doing activities just for fun, relaxation and self-improvement.



Erin O. Braud

The good thing is there is a simple solution: get a hobby or three.

It's easy to blame the nature of the profession here, as well as an economy that makes new attorneys feel as if they've got to accept any billable-hour job that will help them pay off ever-mounting student loans. We can always put "me time" to better use, and even find time to squeeze in a personal hobby or two. Any hobby you enjoy is always worth the time.

This is where the "me time" comes in. Even if you only have 30 minutes left over at the end of the day, instead of switching on that episode of "Real Housewives" or "Fixer Upper," muster up the energy to do something somewhat meaningful and productive. Start a hobby, go for a jog, take a class to learn something new, plan a trip,

write a book — *do something* that may help you feel like you have something else going on in your life other than your work.

The benefits of having at least one hobby are huge, especially to attorneys whose stress levels, happiness and health are often cited as some of the worst of any profession.

Most importantly, hobbies allow you to mentally switch off for a bit. We are constantly bombarded with information, and we are infamous for taking our work home with us, even if it's only mentally. Getting home and doing that Pinterest project while you decompress can be amazingly therapeutic. The same goes with exercise, stamp collecting and wine clubs, or being a stand-up comic, a writing whiz, a culinary aspirant or a casual rock star.

Attorneys often need help to "unplug" and hobbies can be an immense help.

I believe I've set forth a convincing case for adding a hobby to your life, even if you are very busy. I hope you find one that you can integrate into your life and enjoy.



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YOUNG LAWYERS SPOTLIGHT

Jeffrey K. Coreil Lafayette

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Lafayette attorney Jeffrey K. Coreil.



Jeffrey K. Coreil

Coreil, an associate at the NeunerPate law firm in Lafayette, devotes a majority of his practice to civil defense litigation, with a primary focus on admiralty, maritime, toxic torts and environmental litigation and workers' compensation defense.

He received a BS degree in business administration from Louisiana State University and his JD degree and graduate diploma of civil law from LSU Paul M. Hebert Law Center, where he served as president of the student bar association and his class. Since 2011, he has participated in the LSBA's Law School Professionalism Orientations at LSU Law Center, stressing the importance of professionalism and ethics to incoming law students.

A member of the 2013-14 Leadership LSBA Class, Coreil currently serves on the Lafayette Bar Association board of directors, the Lafayette Bar Foundation board of directors and the Lafayette Young Lawyers Association board of directors. He chairs the Lafayette Bar Foundation's Lafayette Volunteer Lawyers (LVL) Program which administers pro bono legal services in the Acadiana area. He is a member of the Louisiana Association of Defense Counsel Young Lawyers Committee and the board of the Acadiana Chapter of the Coastal Conservation Association.

In the past six years, Coreil has contributed more than 450 hours of legal work to the impoverished and victimized citizens of Lafayette Parish. As chair of the LVL Program, he spearheaded the Counsel on Call Program, which offers 15-minute conferences with attorney volunteers for basic legal advice. Since the program's inception in 2013, hundreds of Lafayette residents have received assistance from more than 50 lawyers. As a member of the LVL Protective Order Panel, Coreil also assists victims of domestic violence with their petitions for Title 46 protective orders. He also accepts pro bono civil cases and coordinates the efforts of attorney volunteers to assist homeless individuals through the Project H.E.L.P. Program (Homeless Experience Legal Protection).

In 2012, Coreil spearheaded the creation of the CLE Committee of the Lafayette Young Lawyers Association to provide quality, low-cost CLE opportunities in professionalism and ethics to the region's young lawyers. In 2014, the LSBA's Young Lawyers Division recognized his efforts by awarding its Service to the Bar Award to the CLE program.

In 2014, Coreil received the American Inn of Court Sandra Day O'Connor Award for Professional Service, which recognizes an American Inn of Court member in practice for 10 or fewer years for excellence in public interest or pro bono activities. The award was presented at the U.S. Supreme Court during the annual American Inns of Court Celebration of Excellence ceremony hosted by Associate Justice Ruth Bader Ginsburg.

He also has received the 2013 LSBA's Crystal Gavel Award, the 2012 LSBA's Pro Bono Publico Award, the 2012 LSBA Young Lawyers Division's Pro Bono Award, the LSBA's Pro Bono Century Award from 2011-14, and multiple awards from the Lafayette Bar Association.

A native of Ville Platte, Coreil is married to Hallie P. Coreil, a 2011 LSU Paul M. Hebert Law Center graduate and an associate at the law firm of Briney Foret Corry, L.L.P., in Lafayette. They are the parents of a son.

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115 Law Day Presentations Conducted Statewide

Through the “Lawyers/Judges in the Classroom” program — a joint venture of the Louisiana State Bar Association, the Louisiana District Judges Association and the Louisiana Center for Law and Civic Education (LCLCE) — 115 Law Day presentations were conducted at schools throughout the state, reaching more than 5,500 students. Thanks to dedicated teachers, attorneys and judges, these programs occurred in all six Louisiana congressional districts and at all grade levels. During the 2014-15 fiscal school year, more than 8,000 students have benefited from these and other law-related programs.

Several judges participated in the Law Day programs this year, including Judge Candice B. Anderson, Judge Mary H. Becnel, Judge Randall L. Bethancourt, Judge Eirleen E. Brown, Judge Aisha S. Clark, Judge John E. Conery, Judge June Berry Darensburg, Judge Clayton A.L. Davis, Judge Daniel J. Ellender, Judge Jude G. Gravois, Judge Theodore M. Haik III, Judge Keva Landrum-Johnson, Judge C. Wendell Manning, Judge Sharon I. Marchman, Judge Daniel Milton Moore III, Judge Robin D. Pittman, Judge Richard J. Putnam III, Judge J. Wilson Rambo, Judge W. Mitch Redd, Judge D. Kent Savoie, Judge Cameron B. Simmons, Judge Sheva M. Sims, Judge Raymond S. Steib, Jr., Judge Daniel E. Stretcher, Judge Max N. Tobias, Jr., Judge Melise B. Trahan, Judge Ralph E. Tureau, Judge Jason M. Verdigets, Judge Zorraine M. Waguespack, Judge H. Stephens Winters, Judge Regina H. Woods and Judge Robert L. Wyatt.

Participating attorneys included Angela A. Allen-Bell, Zata W. Ard, Dara L. Baird, Charles C. Bourque, Jr., Charles H. Braud, Jr., Michelle D. Brooks, Danielle N. Brown, Roy K. Burns, Jr., Michael J. Busada, Trina



Judge Clayton A.L. Davis visited students at T.S. Cooley Magnet School in Lake Charles in honor of Law Day 2015.

T. Chu, Danielle C. Claiborne, Robert J. Collins, Stephen T. Collins, Mekisha S. Creal, Melissa T. Daigle, John F. Dillon, Henri P. Dufresne, Mary L. Dumestre, Angela M. Elly, Tara Elwell, Steven J. Farber, Shytishia M. Flugence, J. Keith Gates, Lauren E. Godshall, Erika L. Green, A. Spencer Gulden, Galen M. Hair, Jack P.

Harrison, Lance E. Harwell, Thomas M. Hayes III, Maurice C. Hebert, Jr., Evan P. Howell III, Jennifer H. Johnson, Teresa D. King, Arlene D. Knighten, Gregory L. Landry, Jasmyne A. McConnell, Jackie M. McCreary, Scott W. McQuaig, Mark A. Myers, James H. Peltier and Brad P. Scott.



As a volunteer for the Lawyers/Judges in the Classroom program and in honor of Law Day 2015, attorney **Scott W. McQuaig** visited John Curtis Christian School in River Ridge.

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for **JUSTICE**

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By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS... MEMORIAM

New Judges

Desirée Duhon Dyess

Desirée Duhon Dyess was elected judge, Division A, 10th Judicial District Court. She earned her BA degree, *cum laude*, in 1997 from Northwestern State University and her JD degree in 2000



Desirée Duhon Dyess

from Louisiana State University Paul M. Hebert Law Center. She trained as a family law mediator at Loyola University and became a board-certified family law specialist (Louisiana Board of Legal Specialization) in 2007. She spent the past 14 years in the private practice of law at the Dyess Law Firm. She is a charter member and past president of the St. Denis American Inn of Court and served as president and vice president of Court Appointed Special Advocates of Natchitoches. She was recognized as Attorney of the Year Natchitoches Pro Bono and has received Louisiana State Bar Association Crystal Gavel and Pro Bono Awards. Judge Dyess is married to William Daniel Dyess.

Michele Meaux Breaux

Michele Meaux Breaux was elected judge of Division E, 15th Judicial District Court. She earned her BA degree in 1986 from the University of Southwestern Louisiana and her JD degree in 1990 from Southern University Law Center. She was a law clerk in the 15th JDC from 1990-92. From 1992-95, she served as an indigent defender in Lafayette Parish. From 1995



Michele Meaux Breaux

until her election to the bench, she served as a magistrate for the Town of Scott, a coordinator for Families in Need of Services and an assistant district attorney assigned to juvenile matters while maintaining a private practice. Judge Breaux is married to Brian J. Breaux and they are the parents of two children.

Gregory P. Aucoin

Gregory P. Aucoin was elected judge, Division F, 16th Judicial District Court. He earned his BS degree in 1972 from Nicholls State University and his JD degree in 1975 from Loyola University Law School. His 37 years as a practicing attorney include 20 years as an assistant district attorney, 10 years as a public defender and 10 years as the lawyer for the Morgan City City Council. He also served the Louisiana National Guard as a judge advocate. Judge Aucoin is the father of two children.



Gregory P. Aucoin

Katherine Tess Stromberg

Katherine Tess Stromberg was elected judge, Division C, 23rd Judicial District Court. She earned her BA degree in 1995 from Louisiana State University and her JD degree in 2001 from Samford University Cumberland School of Law. From 2002-12, she was a partner in the firm Percy, Stromberg, Bush & Lanoux in Gonzales. She served as the 23rd JDC administrator and hearing officer from 2012-14. Judge Stromberg is married to Lee Stromberg and they are the parents of three children.



Katherine Tess Stromberg

Kim Cooper Jones

Kim Cooper Jones was elected judge, Division C, 34th Judicial District Court. She earned her BA degree in 1990 from the University of New Orleans and her JD degree in 1993 from Loyola



Kim Cooper Jones

University Law School. She began her legal career with an internship at the Orleans Parish District Attorney's Office under Harry F. Connick, Sr. before entering private practice with the firm of Tonry & Ginart in Chalmette. Prior to her election to the bench, she was in private practice for more than 20 years, most recently as a partner in the firm of Ginart & Jones. Judge Jones is married to Alvin A. Jones and they are the parents of three children.

James B. Supple

James B. Supple was elected judge of Franklin City Court. He earned his BS degree and his JD degree in 1968 and 1972, respectively, both from Louisiana State University. During his more than 40-year legal career, he has served as first chief defender of the 16th Judicial District and has been in private practice, where he handled public utility regulation matters before the board of ethics and matters involving open meetings laws. Judge Supple has been married for 43 years to Jan Wray Supple and they are the parents of three children. They have six grandchildren.



James B. Supple

Continued next page

C. Sherburne Sentell III was elected judge of Minden City Court. He earned his BA degree in 1989 from Davidson College in North Carolina and his JD degree in 1995 from Louisiana State University



C. Sherburne Sentell III

Paul M. Hebert Law Center, where he was on the Chancellor's List and ranked fifth in his class. While at LSU, he also was a member of the Order of the Coif, the *Louisiana Law Review* and Moot Court. From 1995-96, he was judicial clerk for Judge Donald E. Walter of the U.S. District Court, Western District of Louisiana, in Shreveport. He has served as an assistant district attorney for the 26th Judicial District Court since 2000 and maintained a private practice, The Sentell Law Firm, L.L.C., in Minden, where he has been a partner since 1997. He is a colonel in the U.S. Army Reserve and holds a master's degree from the Army War College. He was awarded a Bronze Star Medal for combat operations in Iraq as an airborne ranger. Judge Sentell is the father of two children.

Brian H. Barber, Sr. was elected judge of Division B, Shreveport City Court. He earned his BS degree in 1989 from Louisiana State University and his JD degree in 1992 from the University



Brian H. Barber, Sr.

of Mississippi. He began his legal career as a judicial law clerk in Caddo Parish. He was an assistant city attorney and later chief city prosecutor for the City of Shreveport. He then served as an assistant district attorney in Caddo Parish, DeSoto Parish and Sabine Parish before his election to the bench. He served on the Shreveport Juvenile Justice Board of Directors and as judge of Caddo Parish Teen Court. In 2000, he was named Outstanding Young Lawyer by the Louisiana State Bar Association. Judge Barber

is married to Becca Carruth Barber and they are the parents of three children.

Appointments

► Pamela W. Carter was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office ending on Dec. 31, 2017.

► Bonita Preuette-Armour and Marta-Ann Schnabel were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for terms of office ending April 21, 2019.

► The appointments of Jan M. Hayden, Robert G. Pugh, Jr. and Mike C. Sanders to the Mandatory Continuing Legal Education Committee were amended, by order of the Louisiana Supreme Court, to end on Dec. 31, 2016.

Deaths

► Retired Crowley City Court Judge T. Barrett Harrington, 79, died April 10. After graduating from Louisiana State University in 1957, he was commissioned a second lieutenant in the U.S. Infantry, where he served as a paratrooper. He returned to Louisiana and received his JD degree in 1962 from Tulane University Law School. He served as an assistant district attorney for the 15th Judicial District Court. In 1983, he was elected to Crowley City Court where he served until his retirement from the bench in 2008. He continued to practice law until 2010 and served *ad hoc* in the 14th, 15th and 31st JDCs. He served three terms on the Board of Governors of the Louisiana Trial Lawyers Association and was a founding director of the Indigent Defender Board for the 15th JDC.

► Retired Orleans Parish Civil District Court Judge Yada Tranace Magee, 60, died May 24. She earned her BA degree in 1976 from the University of New Orleans and her JD degree in 1979 from Loyola University Law School. She was the first African-American female to serve as a New Orleans assistant city attorney in the Litigation Division. She was in the private practice of law from 1982 until

her election to the Civil District Court bench in 1986, serving as chief judge for two years before retiring in 2008. She served as recording secretary of the National Bar Association's Louisiana Judicial Council from 1997-2007 and as chair from 2009-11.

► Retired 1st Judicial District Court Judge Charles Rex Scott II, 67, died April 22. He earned his undergraduate degree in 1968 from Northwestern State University and his law degree in 1971 from Louisiana State University Law School. He had a long career in public service, beginning as assistant city attorney for Shreveport. He was elected judge of Shreveport City Court in 1980 and served there until 1983 when he was elected to the 1st JDC, serving as chief judge. In 2008, he retired from the bench and went on to become Caddo Parish district attorney, a position he held until his death. An active member of the judiciary, he served terms as president of the 2nd Circuit Judges' Association, the Louisiana District Judges' Association, the Louisiana District Attorneys' Association and the Harry V. Booth-Judge Henry A. Politz Chapter of the American Inn of Court. He was a member of the Drug and Violent Crime Policy Board, the Louisiana Judicial Council and the Governor's Task Force on Child Support.



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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Patrick L. McCune has joined the firm's Baton Rouge office as an associate.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Mark W. Mercante, a shareholder in the Mandeville office, has been named chair of the firm's Construction Group.

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Thomas J. Cortazzo** has been re-elected to a third term on the firm's Executive Committee.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Stephen R. Klaffky** has joined the firm as of counsel.

Bienvenu, Bonnacaze, Foco, Viator & Holinga, A.P.L.L.C., in Baton Rouge announces that **Erin Percy Tadie** has joined the firm as an associate.

Borne & Wilkes, L.L.C., in Lafayette has changed its firm name to Borne, Wilkes, Rabalais & Smith, L.L.C., to reflect the names of the firm members: John F. Wilkes III, **Joy C. Rabalais** and **Tonya R. Smith**. The name of founding member, the late Keith M. Borne, will remain in the firm's name in his honor.

Breazeale, Sachse & Wilson, L.L.P., announces that **C. Stokes McConnell, Jr.** has joined the firm as a partner in the Baton Rouge office.

Broussard & David, L.L.C., in Lafayette announces that **Jerome H. Moroux** has been named a partner in the firm.

Chehardy Sherman Law Firm in Metairie announces that **James M. Williams** has joined the firm as a partner and the firm's name has been changed to Chehardy, Sherman, Williams, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P. The firm also announces that Inemesit U. O'Boyle has joined the firm as a partner, **Jane C. Scheuermann** has joined the firm as a member and **Barry W. Sartin, Jr.** has joined the firm as an associate.

Coats Rose Yale Ryman & Lee announces that Brian D. Grubb has joined the firm as of counsel in the New Orleans office.

Commerce Title and Abstract Co. announces that Parker L. Marschall has joined the Prairieville office as an associate.

Frilot, L.L.C., in New Orleans announces that **David S. Daly** and **Elliot M. Lonker** have joined the firm as partners.

The Glenn Armentor Law Corp. announces that **Britney L. Hebert** and **W. Corey Grimley** have joined the firm as associates in the Lafayette office.

The Joubert Law Firm, A.P.L.C., in Baton Rouge announces that Janeane M. Gorcycya has joined the firm and will lead the Family Law Department.

King, Krebs & Jurgens, P.L.L.C., announces that Reed M. Coleman has joined the firm as an associate in the New Orleans office.

Continued next page



Richard J. Arsenault



Michael E. Botnick



Jeffrey M. Cole



Thomas J. Cortazzo



David S. Daly



Blake R. David



Gerard J. Dragna



Antonio Charles
Ferachi



W. Corey Grimley



Britney L. Hebert



Scott R. Huete



Richard E. King

Liskow & Lewis, A.P.L.C., announces that Michael S. Williams has joined the firm as a shareholder in the New Orleans office.

The Louisiana Department of Revenue in Baton Rouge announces that **Antonio (Tony) Charles Ferachi** has been named director of the Litigation Division.

Gerald A. Melchiode, Kevin A. Marks and **Richard E. King** announce the formation of their new firm, Melchiode Marks King, L.L.C., located in the Entergy Building, Ste. 2550, 639 Loyola Ave., New Orleans, LA 70113; phone (504)336-2880; website www.mmkfirm.com. Also joining the firm are **Jennifer L. Simmons** as of counsel and **James J. Reeves II, Scott R. Huete** and **Olivia Y. Truong** as associates.

Montgomery Barnett, L.L.P., in New Orleans announces that **Caroline D. Lafourcade**, a board-certified tax law specialist (Louisiana Board of Legal Specialization), has joined the firm as a partner.

Mouledoux, Bland, Legrand & Brackett, L.L.C., in New Orleans announces that **C. Michael Parks** and **Gerard J. Dragna** have been named members in the firm and **Eric Winder Sella** has joined the firm as an associate.

Perry Dampf Dispute Solutions in Baton Rouge announces that Lake Charles attorney **Jeffrey M. Cole** and New Orleans attorney

Lynn Luker have joined its mediation and arbitration panel. Baton Rouge attorney **Elizabeth (Liz) Baker Murrill** has joined its mediation and special master panel.

Preis, P.L.C., announces that Christopher W. Smith has joined the firm's New Orleans office.

Stephenson, Chávarri & Lambert, L.L.C., in New Orleans announces the association of Sean R. Dawson and Eric D. Smith, Jr. with the firm.

Stone Pigman Walther Wittmann, L.L.C., announces that Barbra Barnett has joined the firm as an associate in the New Orleans office.

Sullivan Stoler Knight, L.C., announces that **Louis J. Lupin** and **Christopher J. Sellers, Jr.** have joined the firm as members in the New Orleans office.

J. Ralph White, Sharon L. Andrews and Stella C.C. Shackelford announce the formation of White, Andrews & Shackelford, L.L.C. (formerly White Law Firm), with offices in New Orleans and Oxford, Miss. B. Alan Baker, Jr. is an associate in the firm. Offices are located at Ste. 2319, 650 Poydras St., New Orleans, LA 70115, phone (504)799-2585; and Ste. 201, 2086 Old Taylor Road, Oxford, MS 38655, phone (662)281-3940. Website: www.whiteandrews.com.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, discussed class actions as a speaker at the 2015 Annual AJEFO (Association des juristes d'expression française de l'Ontario) Conference in June.

Michael E. Botnick, a member in the New Orleans office of Gordon Arata McCollam Duplantis & Eagan, L.L.C., obtained his civil mediator certification.

Premila (Prem) Burns, then first assistant district attorney for the 19th Judicial District, received FBI Director James Comey's Excellence Award for Distinguished Service to the law enforcement community during a ceremony last year in Washington, D.C.

Matthew M. Coman, special counsel in the New Orleans firm of Sher Garner Cahill Richter Klein & Hilbert, L.L.C., was honored at the Department of Justice's annual Director Awards ceremony in June for his work in the prosecution and conviction of former New Orleans Mayor Ray Nagin.

Blake R. David, founding partner of Broussard & David, L.L.C., in Lafayette, was selected for the 2015 list of the Nation's Top One Percent of attorneys by the National Association of Distinguished Counsel.

Continued next page



Stephen R. Klaffky



Caroline D. Lafourcade



Elliot M. Lonker



Lynn Luker



Louis J. Lupin



Kevin A. Marks



C. Stokes McConnell, Jr.



Gerald A. Melchiode



Jerome H. Moroux



Julian R. Murray, Jr.



Elizabeth Baker Murrill



C. Michael Parks

Christopher B. Hebert, a Louisiana assistant attorney general in Baton Rouge, was honored as the Southern University Law Center's 2015 Alumni of the Year in ceremonies in July.

Mary Terrell Joseph, a member in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., received *Lawyer Monthly's* 2015 Women in Law Award for her work in collections law.

Frank E. Lamothe III, founder of Lamothe Law Firm, L.L.C., in Covington and New Orleans, was selected for the 2015 list of the Nation's Top One Percent of attorneys by the National Association of Distinguished Counsel.

Julian R. Murray, Jr., a partner in the Metairie firm of Chehardy, Sherman, Williams, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., was inducted into the National Association of Distinguished Counsel.

P.J. Stakelum III, a partner in the Metairie firm of Chehardy, Sherman, Williams, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., was selected as a Fellow of the Litigation Counsel of America.

Steven W. Usdin, a member in the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., was named to the

New Orleans Young Leadership Council's 2015 Role Model Class.

PUBLICATIONS

Chambers USA 2015

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

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, Thomas M. Benjamin, David R. Cassidy, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Richard D. Leibowitz, Steven B. Loeb, Eve B. Masinter, E. Fredrick Preis, Jr., Claude F. Reynaud, Jr., Melissa M. Shirley and Jerry L. Stovall, Jr.

Jackson Lewis, P.C. (New Orleans): Charles F. Seemann III and René E. Thorne.

Jones Walker LLP (Baton Rouge, New Orleans, Houston, TX): H. Mark Adams, Jennifer L. Anderson, William M. Backstrom, Jr., Edward Hart Bergin, John J. Broders, Boyd A. Bryan, Robert R. Casey, Michael A. Cherenkoff, Fred L. Chevalier, R. Keith Colvin, J. Kelly Duncan, Elizabeth J. Futrell, Covert J. Geary, Jeffry W. Gray, Pauline F. Hardin, Harry S. Harden III, Curtis R. Hearn, David M. Hunter, F. Rivers Lelong, Jr., Sidney F. Lewis V, Matthew A. Mantle, Marjorie A. McKeithen, Kenneth

J. Najder, J. Marshall Page III, Rudolph R. Ramelli, Carl D. Rosenblum, Dionne M. Rousseau, Amy Garrity Scafidel, Richard J. Tyler, Susan M. Tyler, R. Patrick Vance and Richard P. Wolfe.

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

Stone Pigman Walther Wittmann, L.L.C. (New Orleans): Barry W. Ashe, Joseph L. Caverly, Noel J. Darce, Daria B. Diaz, Michael R. Fontham, John M. Landis, Wayne J. Lee, C. Lawrence Orlansky, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

Louisiana Super Lawyers 2015

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): Robert J. David, Stevan C. Dittman, Michael J. Ecuyer, M. Palmer Lambert, Gerald E. Meunier and Irving J. Warshauer.

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



Joy C. Rabalais



James J. Reeves II



Barry W. Sartin, Jr.



Jane C. Scheuermann



Eric Winder Sella



Christopher J. Sellers, Jr.



Jennifer L. Simmons



Tonya R. Smith



P.J. Stakelum III



Erin Percy Tadie



Olivia Y. Truong



James M. Williams

Minimum Qualifications, Conditions for Appointment as Special Assistant Attorney General

The minimum qualifications and conditions for appointment as a Special Assistant Attorney General are listed below.

1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees unless specifically waived in writing by the Attorney General and the Office of Risk Management.
5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.
7. The attorney must be a subscriber to an electronic billing program designated by the Office of Risk Management.
8. The attorney should have a Martindale-Hubbell rating of “bv” or better.
9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
10. The requirements set forth in 8 and 9 may be waived by the Attorney General, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney’s performance will be evaluated annually by the State Risk Administrator-Claims and the Assistant Director for Litigation Management of the Office of Risk Management and the Director of the Litigation Program of the Louisiana Department of Justice.

In the event that the attorney’s performance is acceptable during the three-year probationary period, he shall be removed from probationary status. In the event the attorney’s performance is unsatisfactory, he may be removed from the probationary list or, at the discretion of the State Risk Administrator-Claims, the Assistant Director for Litigation Management of the Office of Risk Management and the Director of the Litigation Program of the Louisiana Department of Justice, the probationary period may be extended.

Additional Requirements for the Defense of Medical Malpractice Claims

11. The attorney should have three years’ experience in the defense of medical malpractice claims.
12. The attorney should have participated as counsel of record in at least two medical malpractice trials.
13. Professional malpractice limits shall be at least \$1 million per claim with an aggregate of \$1 million.
14. Requirements 11 and 12 may be waived by the Attorney General, in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 10 above.

Conditions

1. Any attorney appointed by the Attorney General serves at the pleasure of the Attorney General and may be removed by the Attorney General at any time without cause.
2. Office of Risk Management may withdraw its concurrence of any attorney only for cause.
3. All contracts must comply with the Ethical Standards for Public Servants, Title 42, Chapter 15, Part II of the Louisiana Revised Statutes, including, but not limited to, La. R.S. 42:1113.

UPDATE



U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, right, attended a private reception at Buckingham Palace, hosted by Queen Elizabeth II and Prince Philip, during the February 2015 Global Law Summit in London, England.

Chief Judge Stewart Greets the Queen

U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart of Shreveport, in his capacity as chief judge and president of the American Inns of Court Foundation, attended the February 2015 Global Law Summit in London, England. The Summit gathered 2,100 delegates from 110 countries to celebrate the 800th anniversary of the Magna Carta.

To mark the celebration, Her Majesty Queen Elizabeth II and Prince Philip, Duke of Edinburgh, hosted a private reception for the delegates at Buckingham Palace.

The three-day Summit included

more than 40 sessions of plenary panels, keynote addresses and workshops dealing with driving economic growth through the rule of law; law at the heart of 21st Century business; Magna Carta principles and modern world solutions; and law as a foundation for a modern prosperous society.

As a panelist for “The View from the Bar and Bench on Choice of Law — and Why You Should Care,” Chief Judge Stewart offered insight on issues concerning international business disputes.

Supreme Court’s Drug Courts Receive Legislative Commendation

The Louisiana Legislature, in a joint resolution issued June 5, commended the Louisiana Supreme Court for administering drug courts in the state since 2001 and for collaborating with Louisiana Association of Drug Court Professionals (LADCP) to ensure accountability and promote best practices in Louisiana drug courts.

House Concurrent Resolution No. 216, authored by Rep. Chuck Kleckley and Sen. John Alario, noted, “The partnership between the LADCP and the Louisiana Supreme Court has made Louisiana’s drug courts some of the best and most progressive in the country and the information on national best practices shared at staff training opportunities has drawn interest from drug courts in other states.”

Supreme Court Chief Justice Bernette Joshua Johnson said, “National research has shown significant reductions in recidivism for participants in drug courts compared to those sentenced to conventional justice interventions. The success of Louisiana drug courts is proven in the 2014 numbers. More than 90 percent of the drug court clients had no new criminal convictions two years after graduation from Louisiana drug courts in 2012.”

Nearly 5,000 individuals participated in Louisiana drug courts in 2014 and more than 11,500 have graduated from Louisiana drug courts since their inception. As of Jan. 1, 2015, there were 50 drug court programs — 30 adult, 17 juvenile and three family preservation — operational in 42 parishes in Louisiana.

Law Library Director Receives Ochal Award

Law Library of Louisiana Director Georgia Chadwick was awarded the Bethany J. Ochal Award for Distinguished Service by the State, Court and County Special Interest Section of the American Association of Law Libraries. The award is presented to a member who has made a significant contribution to law librarianship.

Chadwick received her undergraduate degree in 1976 from Newcomb College

and her MA degree in librarianship in 1978 from the University of Denver. She has worked at the Law Library of Louisiana for the past 20 years, serving as director for the past seven years.



Georgia Chadwick

OPD Recognizes 2015 Clyde Merritt Award Recipients

The Orleans Public Defenders (OPD) honored Stephen I. Singer and William D. (Willy) Boggs as the 2015 recipients of the Clyde Merritt Award, which recognizes extraordinary dedication to public defense.

Singer currently serves as assistant clinical professor of law at Loyola University College of Law in New Orleans, supervising the criminal defense clinic. Boggs is a former deputy chief defender, training director and Capital Division chief for OPD.

Singer and Boggs were instrumental in establishing the current client-centered, community-oriented defense practice that now sets the bar for indigent defense in Louisiana. In the aftermath of Hurricane Katrina, Singer led the effort to rebuild, restructure and reform the public defenders' office, moving the office from a part-time contract structure to a full-time, fully-



Stephen I. Singer, left, was one of two recipients of the 2015 Clyde Merritt Award, presented by the Orleans Public Defenders (OPD) for dedication to public defense. Presenting the award is OPD Chief Defender Derwyn D. Bunton. Not available for photos was Merritt Award recipient William D. (Willy) Boggs.

staffed defender office. Boggs was one of the first attorneys in the new OPD and instrumental in the formation of OPD's training program for new attorneys.

OPD Client Services Division Honored

The Orleans Public Defenders (OPD) Client Services Division and supervising social workers Ginger Parsons were the recipients of the 2015 Excellence in Prevention Award by the Council on Alcohol and Drug Abuse (CADA) for Greater New Orleans. The award recognizes contributions to the field of substance abuse prevention in New Orleans and to those who have had a positive impact on the lives of young New Orleanians by reducing their risk for substance abuse.

Led by Parsons, OPD's Client Services Division is the only division of its kind in Louisiana and consists of 10 client advocates and three social workers. In 2014, Client Services assisted more than 13,000 clients and provided nearly 2,000 direct services.



Attending the Jefferson Bar Association's (JBA) CLE by the Sea April 9-10 were, from left, JBA President-Elect Mickey S. deLaup, JBA President E. Adrian Adams and member Jason A. Cavignac.



Southern University Law Center (SULC) unveiled several new judicial portraits during its 2015 Judicial Wall of Fame ceremony in April in Baton Rouge. Portraits were presented for, from left, Judge (Ret.) Charles L. Porter, 16th Judicial District Court; Judge Beau M. Higginbotham, 19th Judicial District Court; Judge (Ret.) Charles L. Elloie, Orleans Parish Criminal District Court; Judge Toni M. Higginbotham, Louisiana 1st Circuit Court of Appeal; Judge Sheva M. Sims, Shreveport City Court; Judge John W. McClarty, Tennessee Court of Appeals; Judge John Michael Guidry, Louisiana 1st Circuit Court of Appeal; and Judge Benedict J. Willard, Orleans Parish Criminal District Court.



Southern University Law Center (SULC) honored its 2015 Hall of Fame inductees at an April 11 Gala in Baton Rouge, during the Alumni & Friends Round-Up. SULC Chancellor Freddie Pitcher, Jr., far left, recognized John F. Belton, district attorney, Ruston; Mark Crawford, managing counsel, BP America, Inc., Houston, TX; Kathryn D. Nesbitt, University of Colorado vice president for employee and information services, Denver, CO; Russell L. Jones, SULC vice chancellor for academic affairs, Zachary; P. Craig Morrow, Jr., senior partner, Morrow, Morrow, Opelousas; and Johnnie L. Matthews, senior partner, Matthews & Matthews Law Firm, Baton Rouge. Not in photo, Antonio M. (Tony) Clayton, senior partner, Clayton, Fruge & Ward, Port Allen; and Judge John W. McClarty, Chattanooga, TN.



Attending the May 1 Law Day program, hosted by the DeSoto Parish Bar Association (DPBA), were, from left, attorney Michael E. Daniel; attorney Murphy J. White; DeSoto Parish District Attorney Gary V. Evans; 42nd Judicial District Court Judge Robert E. Burgess; attorney Katherine E. Evans, DPBA secretary/treasurer; guest speaker Christopher A. Cantrell; attorney Adrienne D. White, DPBA president; 42nd Judicial District Court Judge Charles B. Adams; attorney Amy Burford McCartney; attorney Dave Knadler, DPBA vice president; attorney Nicholas Eugene Gasper; attorney Andrew M. Cera; and attorney John Stephen Evans.



Cameron Murray, right, a 2015 graduate of Catholic High School in Baton Rouge, received the 2015 Teen Court of Greater Baton Rouge scholarship. Attorney Linda Law Clark, a member of the Baton Rouge Bar Association board of directors, presented the award in May. Teen Court, a program of the Baton Rouge Bar Foundation, is a voluntary diversion program in which teens sentence their peers for first-time misdemeanor offenses. Scholarships were established to encourage new and long-term volunteer participation.



Johnnie A. Jones, left, civil rights attorney famous for his work in the 1953 Baton Rouge Bus Boycott, accepted the Lifetime Achievement Award from the Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. during the chapter's Annual Scholarship Gala on April 17. With him is Baton Rouge Martinet President Rolando R. Urbina.

DeSoto Parish Bar Celebrates Law Day

The DeSoto Parish Bar Association hosted the annual Law Day program May 1 at the DeSoto Parish Courthouse in Mansfield. Guest speaker for the program was Christopher A. Cantrell, currently the supervisory senior resident agent of the Shreveport office of the Federal Bureau of Investigation, New Orleans Division,

which includes DeSoto Parish.

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



Southern University Law Center (SULC) honored its 2015 Distinguished Alumni at an April 9 reception in Baton Rouge, during the Alumni & Friends Round-Up. SULC Chancellor Freddie Pitcher, Jr., far left, recognized Distinguished Alumni, from left, William C. Bradford, Jr., city attorney, Shreveport; Krystal J. Brumfield, VP, COO, D.C. Chamber of Commerce; Christian N. Elloie, assistant general counsel, Deloitte LLP, New York, NY; Hon. Donald R. Cravins, Jr., deputy national political director, American Israel Public Affairs Committee, Washington, D.C.; and Louisiana Rep. Edward (Ted) James, Baton Rouge.



The Louisiana Hearing Officers' Association (LaHOA) held its annual meeting and dinner in March in Marksville. Among the members attending were, seated from left, LaHOA President K. Jacob Ruppert, Jackie J. Heinen, Felicia H. Higgins, Maggie T. Simar, Josie G. Frank, Patricia H. Douglas and Kay S. Rector. Standing from left, Dennis R. Bundick, Marty S. Sanders III, Stephanie L. Cochran, Dean J. Manning, Ashley E. Amato, Gregory J. Doucet, William H. Dunkelmann, Jill M. DeCourt, Sadye K. Bernheim and Lesa Henderson. Not in photo, Michelle Perkins and R. Preston Mansour, Jr.

Mentoring Reception: Pilot Program Begins in Shreveport

The Louisiana State Bar Association (LSBA) hosted a reception May 21 for the mentors and mentees participating in the pilot Transition Into Practice (TIP) mentoring program. The New Orleans reception and the Shreveport reception were joined through the LSBA's video-conferencing system.

The event at the Shreveport Bar Center was well attended. The Shreveport group heard remarks from LSBA 2014-15 President Joseph L. (Larry) Shea, Jr. of Shreveport; Louisiana Supreme Court Justice Scott J. Crichton of Shreveport; and Barry H. Grodsky, 2013-15 LSBA secretary and chair of the LSBA's Committee on the Profession.

Members of the Shreveport Bar Association and the Harry V. Booth-Judge Henry A. Politz American Inn of Court introduced the mentees and mentors. Remarks were given by program chair Magistrate Judge Mark L. Hornsby, Booth-Politz Inn of Court President



Receptions in New Orleans and Shreveport for the pilot Transition Into Practice mentoring program were joined through the Louisiana State Bar Association's video-conferencing system. At right, Harry V. Booth-Judge Henry A. Politz American Inn of Court President Lawrence W. Pettiette, Jr. in Shreveport.

Lawrence W. Pettiette, Jr., Shreveport Bar President Bennett L. Politz, and program directors Leland G. Horton and Sam N. Gregorio.



The Louis A. Martinet Legal Society, Inc. Greater Lafayette Chapter installed its 2015-17 officers on May 14. Judge Edward D. Rubin, 15th Judicial District Court, administered the oath of office. Standing from left, Franchesca Hamilton-Acker, president-elect; Patsy A. Randall, president; and Harold D. Register III, chaplain. Seated from left, Corrie Journet, secretary; and Karnina D. Dargin, financial secretary. Not in photo, Shytishia M. Flugence, treasurer; Edward Rubin, Jr., historian; and Robert Moore, parliamentarian.



Warren P. McKenna III, board member of Southeast Louisiana Legal Services, accepted the A.P. Tureaud Award from the Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. during the chapter's Annual Scholarship Gala on April 17. With him is Baton Rouge Martinet President Rolando R. Urbina.



Members of several chapters of the Louis A. Martinet Legal Society, Inc. attended the "Martinet Day on the Capitol" May 21 in Baton Rouge. The day's events included recognition on the House and Senate floors, meetings in the Senate Chambers and a Capitol tour. Members attending were, front row from left, law student Jasmine Brown, J. Ashley Mitchell-Carter, Ashley J. Greenhouse, Rachael D. Johnson, Gavin M. Richard, Cashaura M. Hill, Rolando R. Urbina, Chantell M. Boutte, law student Krystal Wilson, Tricia R. Pierre, Tracie L. Washington and Christopher B. Hebert. Back row from left, Deidre D. Robert, Cordelia D. Tullous, Ne'Shira D. Millender, Claire McDaniel-Ojeh, Hon. Quintillis Kenyatta Lawrence, Justin I. Woods, law student Laurie Ann Lucas, medical student Camille Wilson, Sanettria G. Pleasant, Rep. Marcus L. Hunter (District 17) and Rep. Edward C. (Ted) James II (District 101).

SEND YOUR NEWS!

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

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

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



\$5.8 Million

for Social Justice Initiatives in 2015-16

Annual/Sustaining Funding

Building Capital Development	\$109,260
Acadiana Legal Services Corporation	\$16,760
D.A.R.T. of Lincoln	\$17,500
Innocence Project New Orleans	\$25,000
Shreveport Bar Foundation	\$25,000
Southeast Louisiana Legal Services	\$25,000

Children's Legal Services	\$100,000
Advocacy Center	\$16,667
Louisiana Center for Children's Rights	\$61,111
T.E.A.M.S.	\$22,222

Law-Related Education	\$100,000
Baton Rouge Bar Foundation	\$11,180
Baton Rouge Children's Advocacy Center	\$6,706
Louisiana Center for Children's Rights	\$11,176
Louisiana Center for Law & Civic Education	\$44,983
Louisiana District Judges Association	\$5,000
LSBA - Diversity Committee	\$2,794
LSBA - Young Lawyers Division	\$5,867
Martinet Legal Foundation	\$5,588
Youth Service Bureau of St. Tammany	\$6,706

Legal Assistance to the Poor	\$2,083,750
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Domestic Violence Programs	\$326,250
Beauregard Community Concerns, Inc.	\$21,196
Catholic Charities/Project S.A.V.E.	\$34,497
Chez Hope	\$21,191
D.A.R.T. of Lincoln	\$20,205
Faith House, Inc.	\$19,713
Metropolitan Center for Women and Children	\$35,976
Oasis	\$18,234
Project Celebration	\$34,094
Safe Harbor, Inc.	\$16,667
Safety Net for Abused Persons	\$22,176
Southeast Spouse Abuse Program	\$12,321
St. Bernard Battered Women's Program	\$15,278
The Haven, Inc.	\$18,234
The Wellspring Alliance for Families, Inc.	\$21,684
United Way of Central Louisiana	\$14,784

Legal Service Corporations	\$1,272,000
Acadiana Legal Services Corporation	\$325,000
Legal Services of North Louisiana	\$305,000
Southeast Louisiana Legal Services	\$642,000

Other Legal Service Providers	\$270,000
Advocacy Center	\$53,333
Arts Council of New Orleans	\$11,111
Catholic Charities of Baton Rouge	\$33,333
Catholic Charities of New Orleans	\$33,333
Innocence Project New Orleans	\$100,000

Louisiana Center for Children's Rights	\$5,556
Lower 9 th Ward Home Ownership Association	\$11,111
NO/AIDS Task Force	\$5,556
Loyola College of Law Clinic – Workplace Justice Project	\$16,667

Pro Bono Project	\$215,500
Baton Rouge Bar Foundation	\$43,224
Central Louisiana Pro Bono Project	\$9,444
Lafayette Parish Bar Foundation	\$40,777
Shreveport Bar Foundation	\$24,278
Southwest Louisiana Bar Foundation	\$18,889
The Pro Bono Project	\$78,888

Loan Repayment Assistance Program	\$42,442
<i>Applicant identities are anonymous.</i>	

Special Initiatives

Mortgage Servicing Settlement	*\$1,223,000
<i>*Grants listed are for the 2014-15 funding cycle. 2015-16 grants are pending based upon renewal agreement with Office of Louisiana Attorney General.</i>	
Acadiana Legal Services Corporation	\$321,000
Legal Services of North Louisiana	\$268,000
Southeast Louisiana Legal Services	\$519,000
Louisiana Civil Justice Center	\$65,000
Louisiana Appleseed	\$50,000

Child in Need of Care	\$1,937,000
Acadiana Legal Services	\$767,000
Legal Services of North Louisiana	\$548,000
Southeast Louisiana Legal Services	\$622,000

Other Special Initiatives	\$125,000
LSBA Access to Justice	\$75,000
Louisiana Appleseed	\$50,000

Scholarships and other projects

ATJ Fund Grant	\$50,000
Kids' Chance Scholarships	\$52,500
Legal Education Projects	\$6,500
ProBono/LawHelps Website	\$12,650

Discretionary Funding

Jock Scott Community Partnership Panel Grants	\$90,000
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President's Message

Praising the Work of Inspiring and Hardworking Fellows and Grantees

By President H. Minor Pipes III

Over the past few months as Louisiana Bar Foundation (LBF) president, I have been on a whirlwind tour around the state, meeting many of our wonderful Fellows and grantees in person. I have had the pleasure of meeting some of the most inspiring, giving and hardworking individuals from across the state. Our Fellows 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. 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.

The most important work we can do as lawyers is to help the less fortunate in

their time of need. The Foundation's first president, the late Dermot S. McGlinchey, said it best, "The tradition of service by lawyers is as old as the law itself. We need not be reminded that the practice of law was considered a privilege long before it became a paid profession so that the concept of service is innately part of our tradition."

I applaud the commitment of those lawyers and firms who are meeting the Access to Justice Pro Bono Policy which captures the intent included in our Rules of Professional Conduct regarding pro bono work. Rule 6.1 states that a lawyer should render public interest legal service and may discharge the services at no fee or a reduced



H. Minor Pipes III

fee to persons of limited means or to public service or charitable groups or organizations.

As the visible public service organization of Louisiana attorneys, the LBF reflects the social conscience and public responsibility of our profession and our commitment to effective action. The Foundation is the largest funder of free civil legal services in Louisiana and is working every day to increase this access to include all Louisiana citizens in the justice system.

Every member of the Bar should be a Foundation Fellow. It costs as little as \$200 a year. Your membership represents your commitment and beliefs to the basic principle of access to fair and equal justice for everyone. We invite you to visit the LBF website at www.raisingthebar.org to see about joining today. Should you have any questions, contact membership coordinator Danielle Marshall at danielle@raisingthebar.org or (504)561-1046.

LBF Awards \$52,500 in 2015-16 Kids' Chance Scholarships

The Louisiana Bar Foundation (LBF) Kids' Chance Scholarship program awarded \$52,500 in scholarships to 17 students. Scholarships are awarded to dependent children of Louisiana workers killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law.

The 2015-16 scholarship recipients are Caleb Adams, Monroe; Kaitlyn Arceneaux, Lafayette; Brittany Bailey, Deridder; Allana Gross, Marrero; Jessica Harper, Eros; Heather Jones, New Orleans; Katelyn Kerner, Jefferson; Grant Klentzman, New Iberia; Anna LaGrange, Breaux Bridge; Tabitha Monceaux, Sulphur; Taylor Morris, Sulphur; Casey Shelton, Denham Springs; Alexander Stroh, Lake Charles;

Lauren Stroh, Lake Charles; Christina Thiels, Alexandria; Jacob Underwood, Leesville; and Alesha Widcamp, Lake Charles.

The LBF Kids' Chance Program was started in 2004 and is administered by the LBF and governed by a committee representing a cross-section of the state's legal and workers compensation communities. Since 2004, the LBF has awarded 235 scholarships totaling \$459,600.

For more information about Kids' Chance or to donate to the scholarship fund, contact Dennette Young at the LBF office, (504)561-1046, email dennette@raisingthebar.org; or go to: <http://raisingthebar.org/ProgramsAndProjects/KidsChanceProgram.asp>.



Hon. C. Wendell Manning, left, 2014-15 Louisiana Bar Foundation (LBF) president, presented the President's Award to Harry J. (Skip) Phillips, Jr., managing partner at Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge, at the LBF Annual Fellows Membership Meeting in May. The award recognizes outstanding support, volunteer service and dedication and advancement of the mission and goals of the LBF. A longtime Fellow, Phillips is a member of the Campaign Committee and has been a Grants Committee member since 2008. He was instrumental in planning and facilitating the grantee board trainings. Photo by Matthew Hinton Photography.

Pipes Leading LBF's 2015-16 Board

H. Minor Pipes III of New Orleans was installed as the 2015-16 president of the Louisiana Bar Foundation.

Other officers are Vice President E. Jane Sherman, Baton Rouge; Treasurer Valerie Briggs Bargas, Baton Rouge; and Secretary W. Michael Street, Monroe.

New board members are Charles C. Bourque, Houma; Hon. John Davidson, Alexandria; J. Lee Hoffoss, Jr., Lake Charles; Michael E. Holoway, Mandeville; Julie M. Lafarge, Shreveport; Michael J. Mestayer, New Orleans; and Harry J. Philips, Jr., Baton Rouge.

Other members of the 2015-16 board of directors are Mathile W. Abramson, Gonzales; Hon. Marc T. Amy, Abbeville; Paula A. Ates, Destrehan; Amanda W. Barnett, Alexandria; David F. Bienvenu, New Orleans; Alan G. Brackett, New Orleans; Elwood F. Cahill, Jr., New Orleans; Mark A. Cunningham, New Orleans; Hon. Eldon E. Fallon, New Orleans; Donna D. Fraiche, New Orleans; Marcel Garsaud, Jr., New Orleans; Cyrus J. Greco, Baton Rouge; Karleen J. Green,

Baton Rouge; Leo C. Hamilton, Baton Rouge; Harry S. Hardin III, New Orleans; Rebekah R. Huggins, Lafayette; Suzanne M. Jones, Covington; Patricia A. Krebs, New Orleans; Hon. C. Wendell Manning, Monroe; Robert C. McCorquodale, Lake Charles; Darrel J. Papillion, Baton

Rouge; Christopher K. Ralston, New Orleans; Drew Ranier, Lake Charles; Herschel E. Richard, Shreveport; Garland R. Rolling, Metairie; Joseph L. (Larry) Shea, Jr., Shreveport; John G. Swift, Lafayette; and Paul W. Wright, Wimberley, Texas.



Attorneys with Kean Miller, L.L.P., in Baton Rouge accepted the Dutch Morial Award from the Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. during the chapter's Annual Scholarship Gala on April 17. From left, Jay M. Jalenak, Jr., Kristi D. Obafunwa, Victor J. Suane, Jr., Baton Rouge Martinet President Rolando R. Urbina, Jason R. Brown and Edward H. Warner.



The Louisiana Bar Foundation (LBF) honored several legal professionals at the 29th Annual Fellows Gala in May in New Orleans. LBF 2015-16 President H. Minor Pipes III, far left, is with honorees, from left, Calogero Justice Award recipient Marta-Ann Schnabel; Shirley Smith, wife of posthumously recognized Distinguished Attorney Allen L. Smith, Jr.; Distinguished Professor Gail S. Stephenson; and Distinguished Jurist John W. Greene. Photo by Matthew Hinton Photography.



Hon. C. Wendell Manning, left, 2014-15 Louisiana Bar Foundation (LBF) president, presented the Horn Blower Award to the Baton Rouge Area Foundation (BRAf) at the LBF Annual Fellows Membership Meeting. Edmund J. Giering IV accepted the award on the BRAf's behalf. The award is given to a partner organization in recognition of outstanding support and leadership in advancing a shared LBF initiative, project or program. The BRAf was recognized for its leadership and training on governance matters for the LBF and its grantees. Photo by Matthew Hinton Photography.

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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. 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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Screens: \$25

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For the December issue of the Journal, all classified notices must be received with payment by October 16, 2015. Check and ad copy should be sent to:

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POSITIONS OFFERED

The Baton Rouge office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., seeks a staff attorney with five or more years of litigation experience. Experience in commercial lending, bankruptcy, foreclosures, commercial collections, construction, lien and public and private works would be particularly valuable. Academically distinguished applicants who have excellent writing and analytical skills and deposition, discovery and motion practice experience are sought to assume responsibility in an active and diverse federal and state court litigation practice. Louisiana law license required or candidate must be able to take the Louisiana Bar and obtain license promptly. The firm seeks a bright, hardworking and responsive candidate with good judgment and attention to detail. For consideration, email a cover letter (referencing job posting #563), résumé and law school transcript to Helen Beasley, Recruiting Assistant, at lateral@bakerdonelson.com.

Lafayette defense firm seeking attorneys with zero-five years' experience. Opportunities include part-time contract work and full-time associate position. Compensation includes productivity bonus. Position would be ideal for a young attorney seeking a mentor. Email résumé and writing sample (if available) to connie@rhhnet.com.

Robichaux, Mize, Wadsack & Richardson, L.L.C., a Louisiana firm based in Lake Charles, is seeking an associate attorney with six to eight years of experience in commercial litigation; extensive trial experience is required. Partnership track available and salary commensurate with experience. Benefits include group health, disability and life insurance and 401K. Résumés should be emailed to sdm@mwlegal.com.

Duplass Zwain Bourgeois Pfister & Weinstock, A.P.L.C., is seeking an attorney with zero-three years of experience, insurance defense and litigation experience preferred. Dual licenses in Louisiana and Mississippi preferred. Candidates must have relevant work experience as an attorney as well as excellent academic credentials (top 20 percent of class rank is required). Recent law school graduates with class rank in the top 20 percent will also be considered. The position offers competitive salary and benefits. Interested candidates should email résumé with cover letter, transcript, writing sample and references to careers@duplass.com.

Metairie law firm (AV-rated) seeks an experienced health care regulatory attorney with a current book of business but with the capacity to take additional work representing hospitals, medical practices and other health care providers. Reply in strict confidence to Office Administrator, P.O. Box 931, Metairie, LA 70004-0931.

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Boutique and dynamic defense firm seeking associate attorney with a minimum of four years' experience. Candidate should preferably have experience in maritime personal injury and property damage claims, marine insurance, and litigation experience. Will work closely with senior attorneys. Should have deposition, discovery and motion practice experience and must be licensed in both federal and state court. The successful candidate must have excellent academic credentials (top 25 percent of class) and outstanding writing ability. Applicants should supply a cover letter, résumé, class rank, references and a writing sample authored solely by the applicant. No hard copy submissions. Apply by email only to rvizzini@blandpartners.com.

Shuart & Associates Legal Search & Staffing. In today's market, many law firms are growing by lateral acquisition of partners/practice groups. Some partners are choosing to relocate to firms where their unique strengths are valued

and compensation competitive. This requires broad knowledge of the existing marketplace and insight into the culture of local law firms. Shuart & Associates has a proven track record in providing this service. All inquiries confidential. (504)836-7595. www.shuart.com.

Executive administrative assistant sought by Lafayette professional with community, legal and political work affiliations. Seeking self-starter with strong computer, communication and organizational skills and ability to multitask. Candidates must be flexible and provide high-level administrative support to deal with Executive's busy schedule. Benefits include group health insurance, cafeteria plan, 401(k) and paid vacation. Email résumé to jarnold@oatsmarino.com and cmouton@oatsmarino.com.

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for three positions. The firm offers competitive salary and benefits and an excellent work environment. 1) Environmental litigation attorney — Associate; candidate with excellent academic credentials (top 15 percent) to join environmental legal team, detail-oriented with excellent organization skills; one-three years' civil litigation experience preferred with emphasis on complex litigation; environmental law, oil and gas law and/or toxic tort experience a plus. 2) Environmental litigation attorney — Senior associate to join environmental legal team; minimum five years' civil litigation experience preferred with emphasis on complex litigation; A/V rating preferred; environmental law, oil and gas law and/or toxic tort experience preferred. 3) Environmental and toxic tort, first-chair attorney to join environmental and toxic tort legal team — Minimum eight years' defense experience preferred in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; environmental, oil and gas and/or toxic tort experience preferred. Those interested in these positions should visit the Curry & Friend, P.L.C., website at: www.curryandfriend.com/careers.

SERVICES

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

Appellate briefs, motions, legal research. Attorneys: the appellate process is your last chance to modify or defend your judgment. Lee Ann Archer, former Louisiana Supreme Court clerk and Tulane Law honors graduate, offers your best chance, with superior appellate briefs, outstanding legal research, pinpoint record review and 20-plus years of appellate experience. Confidential; statewide service; fast response. Call (337)474-4712 (Lake Charles); email lee@leeaarcher.com; visit www.leeaarcher.com.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; 16 years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@thearvillelawfirm.com, (318)222-1700 (Shreveport).

Appellate brief writing; research and analysis for complex/problem cases; brief writing, motion practice/court appearances. Alicia Reitzell, LSU Law graduate, 16-plus years' experience. Quick turnaround. Reasonable rates. References available. Statewide service. Call (318)325-9900 (Monroe). Email areitzell@att.net.

Louisiana attorney. LSU Law 1988. I am available to attend hearings, conduct depositions, act as local counsel and assist as needed. Only in state courts. Contact Ted Chapman at (985)748-6753 (Amite); email chapmanapl@bellsouth.net; www.tedchapmanapl.com.



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NOTICE

Notice is hereby given that William F. Henderson 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.

Notice is hereby given that Barry Ranshi is filing a petition and application for readmission to the practice of law. Individuals may file notices of concurrence or objection with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

Notice is hereby given that Elvin A. Sterling, Jr. is filing a petition and application for reinstatement to the practice of law. Individuals may file notices of concurrence or objection with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

Important Reminder: Lawyer Advertising Filing Requirement

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

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

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

ANSWERS for puzzle on page 132.

R	O	N	G	U	I	D	R	Y	D	O	J
E	O	S	E	A	E	O					
F	O	U	L	O	U	T	B	E	L	L	E
	N	P	E	B	I	A					
J	O	S	I	E	S	T	A	R	V	E	D
R		N	T				E				C
R	E	S	I	S	T	E	M	B	R	Y	O
I	L					U	A				C
C	R	I	M	S	O	N	C	H	U	C	K
H	P	T	S	B	S						
A	L	P	H	A	E	M	E	R	A	L	D
R	E	U	E	T	G	E					
D	U	D	B	E	N	S	H	E	E	T	S

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The Last WORD

By Edward J. Walters, Jr. IPSE DIXIT: THE FILE ON THE FLOOR

You know it's there.
You see it every day.
You either step over it or trip over it.
But there it sits.
On the floor.
Look! You can see it right now.
THE FILE ON THE FLOOR.

You took it out of the file cabinet because you knew you had to deal with it . . . but you didn't. Yet. But you will.
You can't put it back, because you have to deal with it . . . and, if you put it back, you will forget about it.
So there it sits.
On the floor.
In the way.
Festering.
Dying for attention.
It's not like fine wine — getting better with age.
But what do you DO with it?
First thing Monday morning, as miserable as it sounds — go pick it up off the floor and DEAL with it.
You'll feel much better.
Relieved.
And it's the right thing to do.

. . . or, just have your associate deal with it.
That's how it works in a law firm, isn't it?

My good friend (and frequent opponent before he retired) — Don Phelps — once told me, "I learned many years ago how the hierarchy in a law firm works. I learned it from a plumber. He told me, 'Water flows down . . . and it ain't always water.'"

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



The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed, but the scope has broadened to include "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.



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Left to Right: Richard C. Broussard, Blake R. David, Jerome H. Moroux



Broussard & David Welcomes New Partner Jerome Moroux

Jerome Moroux joined Broussard & David in 2010. After graduating from LSU Law School in 2009, Jerome clerked for the Honorable W. Eugene Davis of the United States Court of Appeals for the Fifth Circuit. Jerome handles serious personal injury and wrongful death cases and has been selected for membership in the National Trial Lawyers: Top 100 Trial Lawyers and the Million Dollar Advocates Forum. In 2014 and 2015, Jerome was recognized by Louisiana Super Lawyers as a Rising Star in the field of personal injury litigation.



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Jerome H. Moroux: Super Lawyers Rising Stars 2014-2015, Million Dollar Advocates Forum Top Trial Lawyers in America