

# LOUISIANA BAR JOURNAL

August / September 2013

Vol. 61, No. 2

**The Cause and Effect of Recent  
Changes to the Louisiana Bar  
Examination**

**2013 Changes to Code of Civil  
Procedure: Recent Amendments  
Create Evidentiary Traps  
for the Unwary**

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Cover illustration of Lady Justice, gavel and law recording book.



Richard K. Leefe, the 73rd president of the Louisiana State Bar Association, was sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the LSBA's Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

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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.

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By Barry H. Grodsky

## Tooting Our Own Horns on the Good Works of the Bench and Bar

I am taking the liberty of wearing two of my Louisiana State Bar Association (LSBA) hats for this message — as editor of the *Louisiana Bar Journal* and as chair of the Committee on the Profession. My friend Monique Edwards is very active in professionalism programs. She also serves on this committee and is a frequent volunteer for the law school professionalism programs. We have discussed professionalism topics which affect all attorneys.

Recently, she sent me an article about an attorney who may be facing an ethics problem because of possible solicitation of cases involving a mass tort. The article painted a picture of a less-than-ethical attorney purportedly engaging in conduct which lawyers and non-lawyers alike know is improper. That made the news. That causes those who already have a poor opinion of our profession to say, “See, another typical lawyer.” That tarnishes our profession. That perception hurts all lawyers. But it is — apparently — newsworthy.

A lawyer gets disbarred and it makes the news. A judge is removed from the bench and it makes the news. A law firm representing a class of individuals who are financially damaged because of a disaster is perceived as “fee hungry” and that makes the news. But this is — apparently — newsworthy.

But what else happened the day such stories hit the newsstands? Where is the story of the lawyer who wins an award for pro bono service or the judge who takes time from the bench to help families after a natural disaster? What about the law firms which raise money for charity or the group of young lawyers who draft wills for free throughout the state for first responders? You will never hear of that because apparently it is not newsworthy. What about the judges in Louisiana who have received awards for activities away from the bench or the State Bar winning several ABA awards over the past few

years? Nope, not newsworthy.

For our profession, I am a firm believer in tooting our own horn. You and I know that for every one bad deed committed by an attorney — which makes the news — there are a hundred great deeds lawyers and judges perform that no one ever hears about. We need to better promote our profession. It is imperative that whenever and wherever possible we all take steps to improve the perception the public has of lawyers, judges and our overall profession. Frankly, I see this as our duty. The LSBA publications are a great place to start.

Submit an article about a great accomplishment. Write a letter to the editor about a judge or lawyer who accomplishes a great deed. If your partner, associate or colleague reaches a milestone, wins an important case, breaks down a barrier or does something for the community, tell us so we can tell everyone. Achievements come in all shapes and sizes and should be acknowledged. The LSBA publications are designed to accomplish these efforts. Also, there is nothing wrong in trying to get local media to report something good we do and not just to report the bad — but “newsworthy” — stories.

This is a great opportunity to let the public know the good we do and I do want to hear from you.

*Barry Grodsky*



By Richard K.  
Leefe

## Committee on the Profession, Mentoring

**M**y term as Louisiana State Bar Association (LSBA) President has begun and I hope you will help me move the practice of law forward. I ask that you get involved yourself and make a difference. I understand that time and/or desire is often lacking, but I do ask that each of you who wants to have the LSBA address a particular issue to let me know.

I can address it, refer it to the appropriate committee, or do whatever may be appropriate. There is no doubt that there are ideas out there which we have

**What is your idea on how to build professionalism in the practice and improve the respect for lawyers from the public? Tell us. We are listening.**

not considered, but should. I know that the various committee and section chairs are all willing to consider the thoughts of LSBA members and can deal with issues you may want to raise or have the LSBA review. If you would like, we can even arrange for you to attend a committee or section meeting to present your issue. My email address is [president@lsba.org](mailto:president@lsba.org).

One of our more active committees is the Committee on the Profession. How many times have you heard the conversation about how professionalism has suffered in the practice of law? Older lawyers take great joy in describing the camaraderie and friendliness with which the practice was handled in "the old days." Because some members believe that professionalism has been on a long decline, and public opinion of us has diminished, the LSBA has, and continues to undertake, efforts to deal with this phenomenon.

Under the guidance of the LSBA's

Committee on the Profession, the Louisiana Bar has initiated a number of programs, including targeting new law students from day one of law school. This has included sincere effort to instill in the newest students an understanding of what professionalism is and the need to maintain it within the profession with the desire to better the reputation of the profession with the public and even among ourselves. The Committee on the Profession organizes orientation programs with law students on the first day of law school to emphasize the importance of professionalism and follows up later in their law school careers. The committee reaches out to the Bar for volunteers to participate in these law school orientations and it has been wonderful to see the Bar respond in great numbers. These volunteers have for years now given their time without compensation and I believe you would find almost unanimous agreement among those attorneys and judges who have participated in this program that it has been a very gratifying experience for them and the students.

What is your idea on how to build professionalism in the practice and improve the respect for lawyers from the public? Tell us. We are listening.

Another area in which the LSBA is active is in promoting a mentoring program. This program was approved on May 15, 2013, by the Louisiana Supreme Court as the Transition Into Practice (TIP) Voluntary Mentoring Program. The program will be initiated on Jan. 1, 2015, for a test period of two years, with the first test areas being in

Shreveport, Baton Rouge and the Greater New Orleans area (Orleans, Jefferson and St. Tammany parishes). Thereafter, the program will be reviewed for possible expansion statewide.

The mentors in Louisiana will be nominated by the LSBA and, as an honor, approved by the Louisiana Supreme Court. Mentors also will receive CLE credits. This program partners a newly admitted attorney with an approved mentor for a year, during which time the mentor will ensure that the new attorney attends a deposition, trial, motion day, appeal oral argument, closing, etc., and obtain a feel for the practice of law.

The LSBA will match mentors and new attorneys one-on-one for true support and learning, helping the new attorneys to transition into practice. The LSBA hopes to have senior attorneys volunteer as mentors and will be looking to the experienced attorneys to help in this program. We ask that those attorneys interested in participating as mentors to let the LSBA know of the interest.

The mentoring program is an exciting step toward helping new attorneys make the transition into practice in a way that can make the process easier for them and for all of us. We hope you will help in this process.

Each of us has, on more occasions than we can count, stood and said the Pledge of Allegiance to the United States, mouthing the words "... with liberty and justice for all." Do any of us as attorneys claim or believe that we have fulfilled that ideal?

Last year, while serving as president of the LSBA, John H. Musser IV declared a "Month of Service" to emphasize the obligation of attorneys to do their part in assuring that justice is available to everyone.

This year, to coincide with the National Celebrate Pro Bono Week (Oct. 20-26) and to continue President Musser's efforts, the LSBA has moved the "Month of Service" to October 2013 and is asking courts and attorneys to set up and volunteer to work in Ask-a-Lawyer desks at the various district courts, in the nature of the help desks the LSBA supports in New Orleans, Baton Rouge, Lake Charles and Shreveport. We hope to increase the awareness of how effective these help

desks have been with local attorneys and judges while helping the public.

The LSBA stands ready to help with forms and material for use in these projects. The LSBA is reaching out to the local bars, members of the Board of Governors and judges to help organize this effort and to take a step forward in providing justice for all. Please provide whatever help you can with this worthwhile project.

For more information on the LSBA's "Month of Service" and for help desk

resources, go to: [www.lsba.org/atj/LAMonthofService](http://www.lsba.org/atj/LAMonthofService). For updates on Pro Bono Week activities, go to: [www.lsba.org/celebrateprobono](http://www.lsba.org/celebrateprobono), or email LSBA Access to Justice Administrative Assistant Katie Mozier at [katie.mozier@lsba.org](mailto:katie.mozier@lsba.org) or contact SRL Counsel Michael W. Schachtman at [michael.schachtman@lsba.org](mailto:michael.schachtman@lsba.org).



## Pro Bono Heroes: Providing Justice for All

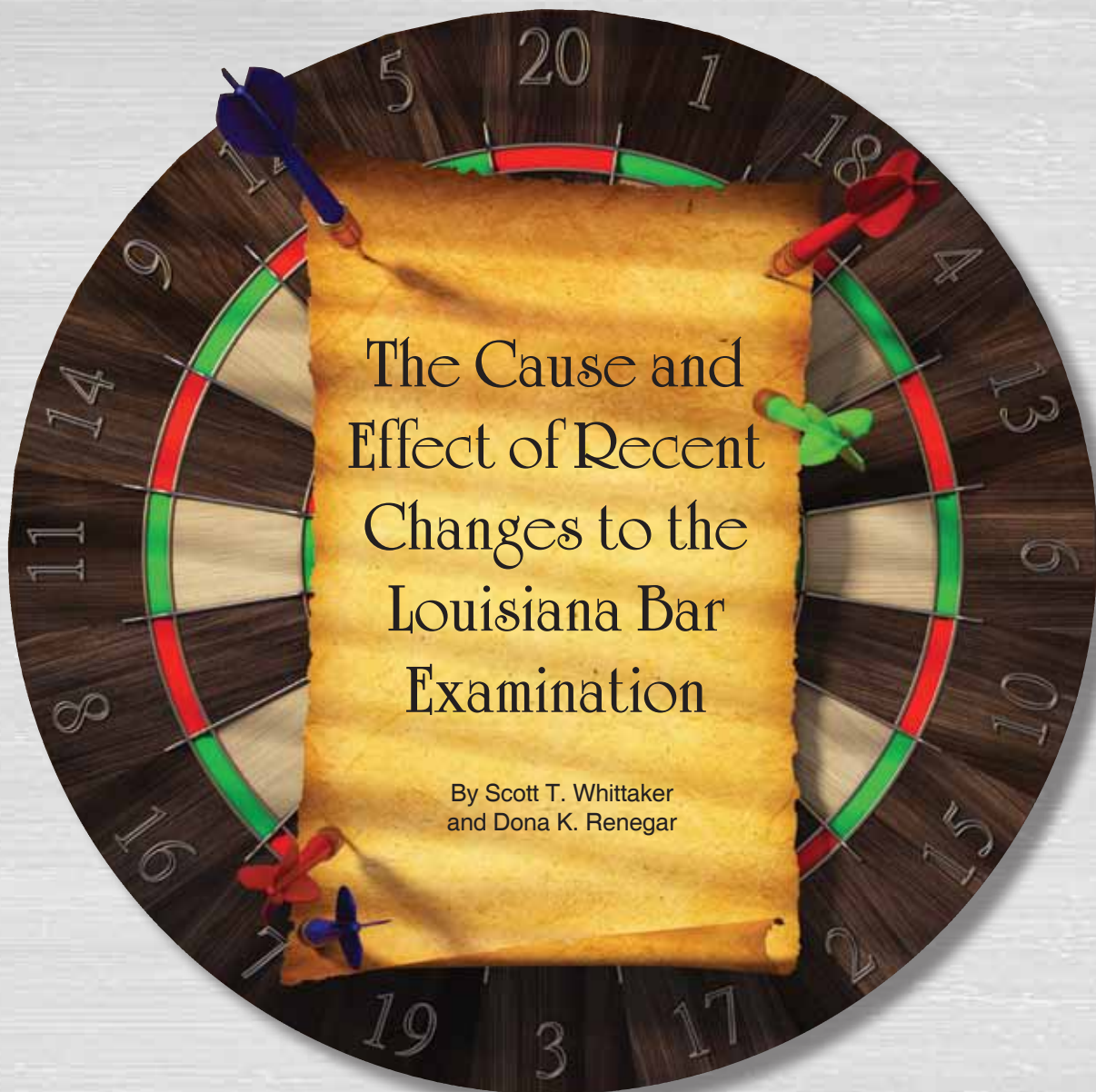
“As a bankruptcy practitioner, I encounter underprivileged people on a daily basis. A surprising number of potential clients that I meet do not realize that they have been taken advantage of in some way by their various lenders or creditors. These potential clients think everyone is paying 45% interest on a loan. These potential clients do not realize that a creditor is not permitted to knock on their front door and threaten to throw them into jail if they don't pay. It is very rewarding to be an attorney who can defend a pro bono client and get the various bullies to abide by the law. I can also say that my pro bono clients are extremely grateful, send thank you notes, and think higher of our profession when they realize that not all attorneys are fee driven. “Do well, but also remember to do good.”

— Robin R. De Leo  
The De Leo Law Firm, LLC  
and volunteer with Southeast Louisiana Legal Services  
North Shore Pro Bono Project  
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# The Cause and Effect of Recent Changes to the Louisiana Bar Examination

By Scott T. Whittaker  
and Dona K. Renegar

A milestone in the annals of Louisiana legal practice was passed in July 2012 when a new method of grading the Louisiana Bar Examination (Bar exam) was instituted. No longer do applicants to the Louisiana Bar have to worry about passing seven of the nine subjects tested on the Bar exam, while not failing more than one of the five “Code” subjects. No longer can an applicant “conditionally fail” the Louisiana Bar exam by passing at least five of the nine subjects and three of the five Code subjects, but failing to achieve a passing score on seven of the nine subjects. As of July 2012, Louisiana Bar applicants simply have to achieve a

score of at least 650 out of the possible 900 total points that can be earned in the nine subjects tested.

As far as anyone can remember, this is the first change that has been made to the grading standards of the Louisiana Bar Examination since the Bar exam was instituted. This article explains the reasons for the change, the long process that resulted in the change, and the results of the two Bar exams that have been administered since the change was implemented. It also describes future changes (which are even more significant) to the Bar exam that have been proposed by the Louisiana Supreme Court Committee on Bar Admissions (COBA).

## 2001: The Process Begins

The nine subjects of the Louisiana Bar exam (Code I, II and III; Louisiana Civil Procedure; Torts; Federal Jurisdiction and Procedure; Constitutional Law; Criminal Law and Evidence; and Business Entities and Negotiable Instruments) are written and graded by examiners, who are appointed by the Louisiana Supreme Court and are members of COBA. Each examiner has the help of assistant examiners in the grading of the exam answers. Prior to 2001, the examiners acted independently of one another, which resulted in significant differences among the subject matter exams in terms of the number of questions and

format (long essays vs. short answer).

In 2001, the Louisiana Supreme Court restructured COBA by creating a subcommittee called the "Testing Committee" to study and recommend improvements to all aspects of the Bar exam. The Testing Committee was initially composed of Scott T. Whittaker (director), David E. Walle and Rebecca L. Hudsmith. All three were members of COBA who had completed 10-year terms as examiners. Over the ensuing years, the composition of the Testing Committee changed. At various times leading up to the COBA proposals of February 2010, the members of the Testing Committee included Professor Michelle L. Ghetti of Southern University Law Center, Professor David W. Gruning of Loyola University Law School, and former examiners Billy J. Domingue and Hon. S. Maurice Hicks, Jr.

As stated in the Louisiana Supreme Court's 2001 Annual Report, the general areas to be studied by the Testing Committee were:

► **The substance of the Louisiana Bar Examination.** This includes, without limitation, whether any new topics should be added; whether any existing topics should be deleted; whether to alter the current system of testing professional responsibility (*e.g.*, by ceasing to use the multi-state ethics exam, by testing professional responsibility on other portions of the exam, and/or by reinstating a professional responsibility essay exam); and whether a performance exam such as the multi-state performance test should be adopted.

► **The structure of the Louisiana Bar Examination.** This includes, without limitation, whether to keep the current nine-exam format or combine the exams into two or more exams (*e.g.*, simply "Code" and "Non-Code"); whether to continue the practice of labeling examinations; and whether to reduce the number of days on which the exam is held from three to two.

► **The procedural aspects of the Louisiana Bar Examination.** This includes, without limitation, whether to alter the current system of volunteer Examiners and Assistant Examiners; whether to alter the current grading procedure; whether to

limit the number of times an applicant may take the exam; and whether to continue to allow applicants to "condition" the exam.

The Testing Committee began gathering information and input. By the end of 2001, the committee had reviewed information regarding the scope of the bar exams administered by all of the other states, as well as the critiques of the Louisiana Bar exams for the past five years, which had been submitted by the Bar Admissions Advisory Committee (comprised of representatives of all Louisiana law schools). The Testing Committee also began drafting and planning a detailed survey to gather input from members of the Louisiana Bar, the judiciary and the law schools.

## 2002-2004: Studying and Gathering Input

The members of the Testing Committee also felt that, to properly carry out their charge, they needed to learn about testing theory. Therefore, in 2002, they contacted the National Conference of Bar Examiners (NCBE), the organization that prepares and administers the Multi-State Bar Exam and whose staff includes some of the most highly respected professionals in the area of high-stakes testing. The NCBE staff helped educate Testing Committee members about important testing concepts, such as validity, reliability and consistency across time (which are beyond the scope of this article but which played a key role in the proposals for change that were eventually put forth).

In 2003, the Bar exam survey was conducted online to solicit input from members of the Louisiana Bar, the judiciary and the law schools. Significant efforts were made to publicize the survey, including sending letters to every member of the Bar, judiciary and law school faculties encouraging them to take part.

In early 2004, after approximately two and one-half years of study and gathering input, the Testing Committee issued the following written questions to the Louisiana Supreme Court in order to suggest potential Bar exam changes:

► Should success on the Bar exam be determined by means of one numerical score that would be arrived at by combining the scores of the individual exams?

► Should all applicants be required to take the entire Bar exam, thereby eliminating the "conditional failure" that is currently allowed?

► Should the Bar exam be restructured so as to shift the orientation toward legal practice and away from the current system of testing traditional categories of substantive law and procedure?

► Should the Multi-State Performance Test (MPT) be added as an additional requirement of the Bar exam?

► Should the Louisiana Code of Professional Responsibility be included in the essay portion of the Bar exam; and, if so, should this be in addition to or in lieu of the current practice of testing professional responsibility by means of the Multistate Professional Responsibility Exam (MPRE)?

► Should the current policy of giving greater weight to the "Code" sections of the Bar exam be continued?

Then-Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. sent those questions to the dean and/or chancellor of each Louisiana law school and convened a May 2004 meeting among the Louisiana Supreme Court justices, the Testing Committee and the law schools. Later in 2004, follow-up meetings took place between the Testing Committee members and the faculties and administration of Louisiana State University Paul M. Hebert Law Center and Southern University Law Center.

## 2005: Hurricane Katrina Sidetracks Process

Prior to the Louisiana Supreme Court taking action on these possible areas of change, Hurricane Katrina struck during the July 2005 Louisiana Bar exam grading process. At the time Hurricane Katrina made landfall, approximately 5,000 separate exam answers were in the hands of approximately 450 assistant examiners, most of whom were displaced by the storm. At that time, no copies of

exam answers were kept. Therefore, the original exam answers had to be recovered from offices and homes throughout the hurricane-ravaged area. The examiners, assistant examiners, staff and other members of COBA exerted herculean efforts to locate and properly grade all exams. To properly chronicle those efforts would fill a book. In the end, the grades of only 13 applicants were affected through their exam answers being lost in the storm. COBA administered the first-ever make-up Bar exam to those 13 applicants, all of whom, happily, passed the exam and were sworn in only one month later than the other applicants who passed the July 2005 Louisiana Bar exam.

Needless to say, the proposals of the Testing Committee to improve the Bar exam were put on hold following Hurricane Katrina, while more pressing matters were addressed. Those matters included procuring and installing a system of digitizing exam answers, with secure off-site backup, so as to eliminate the possibility of losing exam answers in the future.

### **2006-2010: Process Continues and Proposed Changes Announced**

From February 2006 through July 2009, COBA provided examination data to the NCBE after each administration of the Bar exam. The NCBE analyzed the data and worked with COBA to develop testing improvements. By December 2008, COBA was ready to move toward adopting a “compensatory” grading system, under which success on the Bar exam would be determined by one score achieved by combining the scores of the individual exams. This compensatory grading system was to be the first step in a two-part proposal to overhaul the Bar exam.

COBA sought input from the Louisiana Supreme Court, the law schools, the Louisiana State Bar Association (LSBA) and other interested groups. Based on feedback received, COBA worked with the NCBE to develop a presentation addressing the questions and concerns raised during the information-gathering

process. To assist in the preparation of the proposed final recommendations for changes, COBA retained testing expert Stephen P. Klein, Ph.D., and testing consultant Karen Barbieri.

In September 2009, COBA officers met with then-Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball and then-LSBA President Kim M. Boyle to discuss the proposed plan. COBA, Klein and Barbieri created PowerPoint presentations outlining the proposals for change and calling for comments. In January 2010, those PowerPoint presentations were circulated to the Louisiana Supreme Court, the LSBA, the Louisiana law schools and others. In February 2010, the presentations were posted on the COBA website.

To summarize, the proposals consisted of a “short-term plan” and a “long-term plan.” The short-term plan was to change the method of scoring the Bar exam from its historical, “conjunctive approach” of having to pass seven of nine subjects and four of five “code” subjects, to a single grade of 630 for all nine exam subjects (a passing score of 70 multiplied by the nine exam subjects). The long-term plan was a complete revamping of the Louisiana Bar exam to be administered on Tuesday, Wednesday and Thursday (as opposed to the historical Monday, Wednesday and Friday format), as follows:

- ▶ Tuesday morning: three-hour Multistate Performance Test prepared by the NCBE;
- ▶ Tuesday afternoon: three hours of essay questions prepared by COBA;
- ▶ Wednesday morning: three hours of multiple-choice questions prepared by COBA;
- ▶ Wednesday afternoon: three hours of multiple-choice questions prepared by the NCBE;
- ▶ Thursday morning: three hours of essay questions prepared by COBA; and
- ▶ Thursday afternoon: three hours of essay questions prepared by COBA.

The long-term plan also included a proposed restructuring of COBA and a proposal to use paid consultants in connection with the Bar exam, especially

in the development of multiple-choice questions. The essay questions on the restructured exam would cover the subject matter currently covered by the Bar exam tests in the following subject areas: Code I; Code II; Code III; Louisiana Code of Civil Procedure; Torts; and Business Entities and Negotiable Instruments. Professional responsibility, currently tested only through the MPRE, also would be added as an essay exam topic. The requirement of a current passing score on the MPRE would be retained under the restructured procedures. The essay exam testing, however, would be “blind,” in that the applicants would not be told which subjects are being tested on a particular day.

### **LSBA Response**

In March 2010, then-LSBA President Boyle appointed a six-person committee to review the proposed changes to the Louisiana Bar exam.<sup>1</sup> The LSBA committee was tasked with reviewing the suggested short- and long-term changes proposed by COBA and providing a report by May 1, 2010. The PowerPoint presentations prepared by COBA were placed on the LSBA website and the LSBA solicited members’ comments on the proposed changes. Boyle requested that the Louisiana Supreme Court delay action on the COBA proposals until the LSBA could obtain reaction from its members and respond.

The first meeting of the LSBA committee was on April 5, 2010. The committee members reviewed the proposals and questions raised by LSBA members and deans and faculty of Louisiana’s law schools. Four meetings were held in conjunction with local bar associations throughout the state in order to obtain responses from as many LSBA members as possible to the proposed changes to the Bar exam.<sup>2</sup>

The LSBA committee met with COBA and NCBE representatives on May 15, 2010, to discuss responses from LSBA members and concerns expressed by the deans and faculty of Louisiana’s law schools. Information was exchanged on May 15, and a subsequent meeting was held on Oct. 20, 2010, with COBA, its

consultants, NCBE representatives, and the deans and some faculty of Louisiana's law schools.

The LSBA committee issued its final report on Nov. 29, 2010. The report concluded that the proposals by COBA would improve the validity, reliability and fairness of the Bar exam; however, it suggested the following changes to the COBA proposals:

- ▶ raising the passing score from 630 to 650, which the COBA expert thought would result in a first-time passing rate that was consistent with historical passing rates for first-time exam takers who sat for all nine Bar exam sections;

- ▶ weighting the Code subjects twice that of the non-Code subjects, to ensure proficiency in Code subjects;

- ▶ making additional efforts to publicize and obtain additional input from the practicing Bar prior to the adoption of the short-term proposal; and

- ▶ conducting a separate process to publicize and obtain input from the practicing Bar, after the implementation of the short-term plan and prior to the implementation of the long-term plan.

The report was presented to the LSBA's Board of Governors by committee members on Dec. 4, 2010. Jack M. Weiss, chancellor of Louisiana State University Paul M. Hebert Law Center, also made a presentation to the LSBA's Board of Governors at that meeting, generally recommending rejection of the short-term plan for compensatory scoring. Based on the recommendations of the committee and Chancellor Weiss, the Board of Governors passed a resolution strongly recommending the Supreme Court defer any decision until after the suggested changes were reviewed by an independent expert.

The resolution noted that there were significant issues which had not been fully discussed and analyzed by the LSBA's Board of Governors and House of Delegates, so the Board resolved to recommend that the Louisiana Supreme Court publish the proposed rule changes by COBA to allow sufficient time for the LSBA to appoint a special committee,

comprised of LSBA members and representatives from each of the state's four law schools. This committee would undertake a systematic and comprehensive analysis of all proposed changes to the Louisiana Bar exam, with the input and advice of an independent expert. The committee was asked to complete its analysis no later than June 1, 2011, with reports being submitted to the LSBA's House of Delegates and Board of Governors and the Louisiana Supreme Court. The resolution passed unanimously.

In December 2010, then-LSBA President Michael A. Patterson appointed a Reconstituted Committee to Review Proposed Changes to the Bar Exam. The committee was comprised of 12 members, some of whom served on the original committee and some new members.<sup>3</sup> The reconstituted committee held an initial meeting on Jan. 26, 2011, and agreed that the November report prepared by the original Committee to Review the Proposed Changes to the Bar Exam would be supplemented by the reconstituted committee's report. The reconstituted committee appointed an ad hoc subcommittee, led by Professor Melissa Thornton Lonegrass, to conduct a search for an independent testing consultant to assist the reconstituted committee in its determination. At the Feb. 22, 2011, committee meeting, Dr. Thomas M. Haladyna, Professor Emeritus at Arizona State University, was recommended. The reconstituted committee retained Dr. Haladyna in March, under a cost-sharing arrangement among the LSBA and the law schools at LSU, Loyola and Tulane. During March 2011, the reconstituted committee held conference calls with Dr. Haladyna to define the scope of the work he would perform for the committee. He was provided with COBA's proposed changes to the Bar exam, concerns regarding same from LSBA members and representatives from Louisiana's law schools, and the data from the eight administrations of the Bar exam during 2007 through 2010.

Once the reconstituted committee concluded consultations with Dr. Haladyna, several telephone conferences were conducted to reach a consensus among committee members regarding conclusions

and recommendations to be submitted to the LSBA's Board of Governors and House of Delegates and to the Louisiana Supreme Court. The reconstituted committee allowed members who had different viewpoints from the majority to submit separate concurring or dissenting reports. The final committee meeting was held on May 31, 2011.

Dr. Haladyna prepared three papers for the reconstituted committee, including the Validity for a Licensing Test, Analysis and Evaluation of the Current Louisiana Bar Exam and Opinions about COBA's Plan for Short-Term Revision of the Current Examination, and Long-Term Plan for Revision of the Louisiana Bar Examination, Observations and Recommendations. The reconstituted committee's primary focus was to review Dr. Haladyna's papers, discuss his conclusions, and arrive at a consensus regarding the conclusions and recommendations to be made to the LSBA. The reconstituted committee met via conference call numerous times throughout the month of May 2011.<sup>4</sup>

Like the original LSBA committee, the reconstituted committee concluded that the COBA proposals would improve the validity, reliability and fairness of the Louisiana Bar exam, but recommended some changes. In regard to the short-term plan, the reconstituted committee recommended that:

- ▶ a "cut-score study" be performed to determine the passing score, and if such a study was not performed, a 650 passing score should be used instead of the 630 proposal;

- ▶ COBA re-grade exams in a "zone of uncertainty" both above and below the passing score, rather than regarding only failing exams as proposed by COBA; and

- ▶ COBA immediately discontinue reuse of essay exam questions.

The reconstituted committee report also noted that its members were divided over the issue of weighting the Code courses twice as much as the non-Code courses, although a majority of the reconstituted committee members favored "double-weighting" of Code subjects.

The reconstituted committee rec-

ommended that the long-term plan be adopted, with an altered method of “equating” essay answers, but only after additional study and verification of some of the underlying assumptions, the conduct of additional publicity and information campaigns, and after the determination, made more than one year after implementation of the short-term plan, of whether the goals of the short-term plan were achieved, whether there were any unintended consequences, and whether the results of the short-term plan indicated any changes should be made to the long-term plan.

The final report of the reconstituted committee, including its conclusions and recommendations, was submitted to the LSBA on June 10, 2011.

### Changes Adopted

On Oct. 19, 2011, the Louisiana Supreme Court issued orders implementing the short-term changes to the Louisiana Bar exam, the highlights of which included compensatory scoring taking effect in July 2012, a passing score requirement of 650, and the code subjects being weighted two to one (2:1), extending applicants a final opportunity in February 2012 to take advantage of their current conditional failure status, eliminating spotting, and placing a five-time limit on unsuccessful attempts to pass the Bar exam. The Louisiana Supreme Court intends to take time to study the long-term proposed changes to the Bar exam.

### Results of Changes

Bar applicants who conditionally failed the Bar exam were allowed to take single sections one last time in February 2012. Thereafter, any failing applicant was required to retake all nine sections and comply with the changes implemented by the Louisiana Supreme Court. The first examination implementing the changes was administered in July 2012, and the second was administered in February 2013. COBA shared the data from those examinations for use in this article.

#### In July 2012, the pass rate for the Louisiana Bar exam was:

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	179	135	44	75.42%
Loyola	193	116	77	60.10%
Southern	139	65	74	46.76%
Tulane	107	81	26	75.70%
Out-of-State	137	66	71	48.17%
<b>TOTAL</b>	<b>755</b>	<b>463</b>	<b>292</b>	<b>61.32%</b>

#### In July 2011, the pass rate for the Louisiana Bar exam was:

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	164	142	22	86.59%
Loyola	171	120	51	70.17%
Southern	127	79	48	62.2%
Tulane	98	80	18	81.63%
Out-of-State	190	122	68	64.21%
<b>TOTAL</b>	<b>750</b>	<b>543</b>	<b>207</b>	<b>72.4%</b>

#### In February 2013, the pass rate for the Louisiana Bar exam was:

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	34	18	16	52.94%
Loyola	87	27	60	31.03%
Southern	67	22	45	32.84%
Tulane	24	9	15	37.5%
Out-of-State	98	50	48	51.02%
<b>TOTAL</b>	<b>310</b>	<b>126</b>	<b>184</b>	<b>40.65%</b>

#### This compares to the results from the Feb. 2012 administration:

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	30	22	8	73.3%
Loyola	68	37	31	54.4%
Southern	64	27	37	42.2%
Tulane	26	16	10	61.5%
Out-of-State	131	69	62	52.7%
<b>TOTAL</b>	<b>319</b>	<b>171</b>	<b>148</b>	<b>53.6%</b>

These comparisons show a decline in the overall passage rate from 72.4% to 61.32% between July 2011 and July 2012, and from 53.6% to 40.65% between February 2012 and February 2013.



The comparisons between the results achieved by first-time Bar exam takers, however, tell a different story. Those comparisons are as follows:

**July 2012 first-time takers:**

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	170	132	38	77.65%
Loyola	170	108	62	63.53%
Southern	108	60	48	55.56%
Tulane	99	78	21	78.79%
Out-of-State	98	54	44	55.1%
<b>TOTAL</b>	<b>645</b>	<b>432</b>	<b>213</b>	<b>66.98%</b>

**This compares to the following results who sat for all nine Bar exam subjects in July 2011:**

School/Group	Applicants	Passed	Failed (including Conditioned)	Pass Rate
LSU	150	132	18	88%
Loyola	132	94	38	71.21%
Southern	89	59	30	66.29%
Tulane	87	68	19	78.16%
Out-of-State	132	88	44	66.66%
<b>TOTAL</b>	<b>590</b>	<b>441</b>	<b>149</b>	<b>74.75%</b>

**In February 2013, the pass rate for first-time takers was:**

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	3	3	0	100%
Loyola	22	6	16	27.27%
Southern	17	6	11	35.29%
Tulane	11	5	6	45.45%
Out-of-State	66	38	28	57.58%
<b>TOTAL</b>	<b>119</b>	<b>58</b>	<b>61</b>	<b>48.74%</b>

**This compares to the following results of those who sat for all nine Bar exam subjects in February 2012:**

School/Group	Applicants	Passed	Failed	Pass Rate
LSU	7	5	2	71.43%
Loyola	20	4	16	20%
Southern	24	9	15	37.5%
Tulane	9	6	3	66.67%
Out-of-State	70	34	36	48.57%
<b>TOTAL</b>	<b>130</b>	<b>58</b>	<b>72</b>	<b>44.62%</b>

These comparisons show a decline in the overall first-time taker passage rate of only about 6 percentage points (74.75% to 66.98%) between July 2011 and July 2012, as opposed to the approximately 11-percentage-point drop indicated by the results of the total applicant pool (72.4% to 61.32%). Also, the February exam pass rate for first-time takers actually went up under the new grading scheme — from 44.62% in February 2012, to 48.74% in February 2013. This is as opposed to the approximately 13-percentage-point drop indicated by the results of the total applicant pool (53.6% to 40.65%).

COBA also shared the results of reliability studies performed by COBA's expert psychometrician, Stephen P. Klein, Ph.D., on the July 2012 and February 2013 examination data. In those studies, Dr. Klein concluded that the score reliability for the July 2012 examination was 0.92, and the score reliability for the February 2013 examination was 0.90. The target score reliability for high-stakes tests such as the Louisiana Bar exam is 0.90.

**Conclusion**

Although improving the reliability of the Louisiana Bar exam was one of COBA's goals in suggesting changes to the testing process, these results beg the question: *Have the changes made the Louisiana Bar Examination too difficult to pass?* We believe further study and analysis is necessary before any conclusion can be reached regarding this question. It may be that passage rates will return to historical levels after a few more administrations of the Bar exam. Or, it may be that a drop in passage rates is appropriate because the historical passage rates included as "passing" those applicants who had previously "conditionally failed" and who, therefore, were only taking a selected subset of the entire exam. One thing that is certain, however, is that the Louisiana Bar Examination will provide a good topic for discussion between the practicing Bar, the law schools and the Louisiana Supreme Court for years to come.

## FOOTNOTES

1. Members of the committee included John M. Frazier, Hon. Piper D. Griffin, Cordell H. Haymon, Alejandro R. Perkins, Dona K. Renegar and Chair Scott T. Whittaker.

2. The Lafayette meeting was held on May 11, 2010. The Baton Rouge meeting was held on May 26, 2010. The Shreveport meeting was held on June 17, 2010. The New Orleans meeting was held on June 29, 2010.

3. The Reconstituted Committee to Review Proposed Changes to the Bar Examination consisted of Kim M. Boyle, Hon. Piper D. Griffin, Cordell H. Haymon, Robert A. Kutcher, Winfield E. Little, Jr., Melissa Thornton Lonegrass, John A. Lovett, Alaina R. Mire, Darrel J. Papillion, Alejandro R. Perkins, Dona K. Renegar and Chair Scott T. Whittaker.

4. The Reconstituted Committee held conference calls on May 4, May 6, May 13, May 18, May 25 and May 31, 2011.

*Scott T. Whittaker, a member of Stone Pigman Walther Wittmann, L.L.C., and chair of the firm's Business Section, received the Louisiana State Bar Association's (LSBA) President's Award in 2011 for his service as chair of the two LSBA special committees seated to study the proposed changes to the Louisiana Bar Exam. He received his undergraduate degree, cum laude, in 1982 from Tulane University and his JD degree, magna cum laude, in 1984 from Tulane Law School. He is a former chair of the Louisiana Supreme Court's Committee on Bar Admissions; he served on this committee for more than 17 years (including more than 10 years as examiner for Business Entities and Negotiable Instruments). (546 Carondelet St., New Orleans, LA 70130)*



*Dona K. Renegar, a member in the Lafayette office of Huval, Veazey, Felder & Renegar, L.L.C., currently represents the Third District on the Louisiana State Bar Association's (LSBA) Board of Governors. She received two BA degrees in 1988 in English and French, both from the University of Louisiana-Lafayette, and her JD degree in 1992 from Tulane Law School. She served on the two LSBA special committees seated to study the proposed changes to the Louisiana Bar Exam. She has served in the LSBA's House of Delegates and as chair of the LSBA's Young Lawyers Division. (2 Flag Place, Lafayette, LA 70508)*



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# 2013 Changes to Code of Civil Procedure: Recent Amendments Create Evidentiary Traps for the Unwary

By William R. Forrester, Jr.



**T**he practicing lawyer should be aware that, during the 2013 legislative session, significant changes were made to the requirements in the Code of Civil Procedure for placing in the court record testimonial evidence and documentation offered to obtain a default judgment, summary judgment and an amended judgment. Failure to follow the new procedures could present problems for the unwary.

## Default Judgments

Prior to its 2013 amendment, Code of Civil Procedure (C.C.P.) Article 1702 provided that a judgment of default (*i.e.*, preliminary default) had to be confirmed “by proof of the demand sufficient to establish a *prima facie* case.” The article did not require that all of the evidence presented to the judge to establish a *prima facie* case be placed in the court record. Only those documents that were (1) the “principal basis” for claims had to be placed in the record, such as contracts,<sup>1</sup> and insurance policies;<sup>2</sup> and (2) documents used for defaults in actions for certain conventional obligations pursuant to Article 1702(B).<sup>3</sup> Other evidence, such as the testimony of corroborating witnesses, could have probative significance with the

trial court even though not recorded as long as the judgment reflected that the plaintiff had exhibited to the trial judge at the confirmation “due proof in support of his demand.”

This practice could create an anomaly when a default judgment was appealed. The appellate court could consider overturning a default judgment if the evidence *in the record* was insufficient to establish a *prima facie* case, but in the absence of supporting evidence in the record, the judgment could be sustained by a presumption that a *prima facie* case had been sufficiently proven if the judgment recited that conclusion.<sup>4</sup>

The presumption was clearly prejudicial to the rights of a defaulted defendant to use an appeal to challenge the sufficiency of proof of a *prima facie* case. It was at cross-purposes with Louisiana Constitution Article 1, § 19, which gives all parties a right to an appeal based on a court record, and recent jurisprudence from the Louisiana Supreme Court that courts, including appellate courts, must be “vigilant to assure that default judgments are properly proven.”<sup>5</sup>

Accordingly, through Act 78, prepared by the Louisiana State Law Institute and sponsored by Representatives John Bel Edwards and Neil Abramson, Article 1702(A) was amended in 2013 to require that the

evidence used to prove a *prima facie* case has to be placed in the record if it is going to be considered by the appellate court in reviewing the sufficiency of the evidence. Prior jurisprudence holding that a simple recitation in a default judgment that the trial court was exhibited due proof of a *prima facie* case is no longer a substitute for introduction of the evidence in the record if there is an appeal.

To maximize protection from an appellate challenge, plaintiff’s counsel confirming a preliminary default is advised to prove a *prima facie* case with admissible evidence as though presenting a direct case in a contradictory proceeding with all supporting evidence in the record.<sup>6</sup>

## Amended Judgments

Prior to 2013, C.C.P. Article 1951 authorized a trial court at any time to amend a final judgment *without notice* to change its phraseology but not its substance or to correct technical errors of calculation. Under this procedure, the only required memorialization of notice to the parties of the amended judgment was the Clerk’s notice of the signing of the judgment placed in the record pursuant to Article 1913.

The two problems with this article were that (1) the difference between changing purely technical errors in a judgment but not its substance was not always clear, leading parties that never received notice of the proposed change to successfully appeal;<sup>7</sup> and (2) the provision in the article authorizing an *ex parte* amended judgment conflicted with District Court Rule 9.5, which provides that “all judgments” prepared by counsel after rendition must be circulated to all other counsel and be presented to the court with a certificate of no opposition in the record.

In order to coordinate the need for an expeditious procedure for amending final judgments to correct purely technical errors with an opportunity to permit all parties to express objections after receiving notice, Article 1951 has been amended. Though the option of amending judgments with no previous notice has been eliminated, Article 1951 now provides that amendments to a final judgment can be made either by (1) a noticed motion; (2) consent of all parties; or (3) a certificate placed in the court record that five days’ notice has been given to all parties with no objection.

Thus, in order for an amended judgment to withstand a challenge that a substantive change was made without notice, it is recommended that both the record and judgment reflect that there has been compliance with Article 1951.

## Motions for Summary Judgment

The procedure for the correct and timely introduction of documentary evidence into the court record in connection with a motion for summary judgment has been inconsistent and confusing. Prior to 2012, Article 966(B) provided that motions for summary judgment could be considered based on specified documentation (pleadings, depositions, answers to interrogatories, admissions and affidavits) placed “on file” by the parties. This provision was interpreted by one appellate court to mean that the documents enumerated in the article did not have to be introduced into evidence at a hearing if they were already “on file.” The court further held that other documents not listed in Article 966(B) could be considered if introduced into evidence at a hearing.<sup>8</sup> Another appellate court held that, as an alternative to filing, any documents could

be considered by the trial court if offered and accepted into evidence at the hearing on the motion even if previously not “on file.” Yet another appellate court took the opposite position, reversing a summary judgment because opposition documents that were not filed before the hearing were accepted into evidence by the trial judge when offered at the hearing. The court reasoned that the opposing party was not given a “meaningful opportunity” to defend itself from such an untimely production of evidence.<sup>10</sup>

The procedure became even more complicated when a 2012 amendment to Article 966(B) deleted the reference to placing summary judgment documents “on file” and added a requirement in Article 966(E)(2) that documentation had to be “admitted.” This change led some practitioners and judges to conclude that each item of documentation either supporting or in opposition to a motion for summary judgment had to be “admitted” by a ruling on the court record at a hearing as would be the case at a regular trial, even if filed on time before the hearing.<sup>11</sup>

This interpretation was considered by some practitioners to create an unnecessary risk that at hearings, particularly on busy rule dockets, the formality of memorialization of admissibility of each document on the court record could be overlooked, encouraging appellate courts to reverse summary judgments for lack of evidence properly admitted into the record.

In 2013, a provision was added to Article 966(F) in Act 391 to simplify the procedure. Read in conjunction with the filing deadlines in Article 966(B), motion for summary judgment documentation is now “admitted” for consideration by the court when it is “cited and attached” to the motion or opposition and filed on time. Once “admitted,” the judge can consider it in determining its effect on the issues raised by the motion, if any, or it can be excluded from the record altogether if there is a sustained objection. The amended article further added in 966(F)(3) a provision that objections to documentation can be raised either with a motion to strike or in a memorandum. When timely made, such written objections function like oral objections to evidence offered at trial, adjusted to fit pretrial procedures.

In short, though the district courts may continue to have some discretion in relaxing the procedure for submission of documentary evidence, participants in summary

judgment motions would be well advised to cite and attach all documentary evidence to their motions and oppositions and file them in strict compliance with District Court Rule 9.9. To be sure the record is clear, some practitioners now identify in the final judgment all admitted documents by exhibit number that were cited and attached to their motion.

## FOOTNOTES

1. *Ascension Builders, Inc. v. Jumonville*, 263 So.2d 875 (La. 1972).

2. *Nelson v. Merrick*, 06-2381 (La. App. 1 Cir. 9/19/07), 970 So.2d 1019.

3. *Sessions & Fishman v. Liquid Air Corp.*, 616 So.2d 1254 (La. 1993).

4. *See*, *Smith v. Clement*, 01-0087 (La. App. 3 Cir. 10/3/01), 797 So.2d 151, 155, *writ denied*, 01-2878 & 01-2982 (La. 1/25/02), 807 So.2d 249 & 843: “If no record is made of the confirmation proceeding, the judgment is presumed to be supported by sufficient evidence. When there is a record of the confirmation proceeding, the presumption does not attach.”

5. *Arias v. Stolthaven New Orleans, L.L.C.*, 9 So.3d 815, 820 (La. 2009).

6. *See* footnote 5.

7. *See* the 37 pages of annotations to Article 1951.

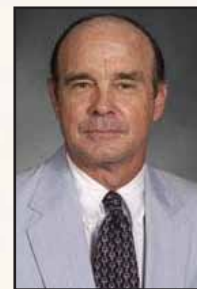
8. *Sheffie v. Wal-Mart La., L.L.C.*, 11-1038 (La. App. 5 Cir. 5/31/12), 92 So.3d 625.

9. *Mapp Constr., L.L.C. v. Southgate Penthouses, L.L.C.*, 09-0850 (La. App. 1 Cir. 10/23/09), 29 So.3d 548, 563, *writ denied*, 09-2743 (La. 2/26/10), 28 So.3d 275; *see* *McCall and Grundmeyer*, “Appeals: Making the Record,” *New Orleans Bar Association, Briefly Speaking*, Spring 2013, at 10-11.

10. *Ultra Pure Water Techs., Inc. v. Standex Int’l Corp.*, 11-1531 (La. App. 3 Cir. 5/16/12), 89 So.3d 1282, 1288, *writ denied*, 12-1705 (La. 11/2/12), 99 So.3d 672.

11. In *Marengo v. Harding*, 13-0047 (La. App. 5 Cir. 5/16/13), \_\_\_ So.3d \_\_\_, 2013 WL 2122053, the 5th Circuit interpreted the 2012 amendment to 966(B) to mean that “only evidence formally admitted into evidence during the summary judgment hearing can be considered by the trial court;” *see also*, *Cook v. Asbestos Corp.*, 13-0009 (La. App. 5 Cir. 5/23/13), \_\_\_ So.3d \_\_\_, 2013 WL 2249232.

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# LOUISIANA SUPREME COURT JUSTICES:

## PROFILES OF THREE RECONSTRUCTION-ERA JUSTICES

By Evelyn L. Wilson

**N**ineteen justices served on the Louisiana Supreme Court during the period 1865-1880.

They are properly divided into three distinct periods of service. The justices selected to serve in 1865 were supporters of the Union. They faced the task of bringing order to chaos.

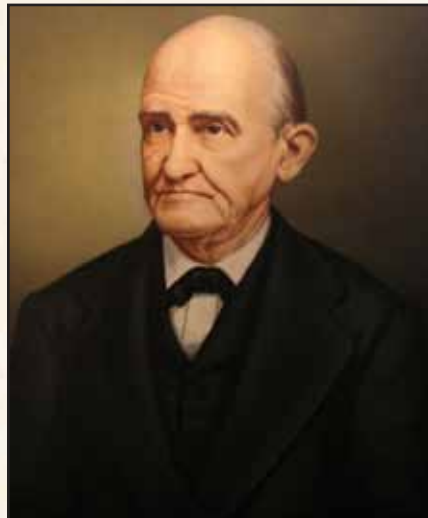
Louisiana's 1868 Constitution ended their terms. The 1868 court included two justices from the earlier court and three new appointees. Republican governors appointed Republicans and Union supporters to the court. Operating in the face of open hostility from practitioners who had fought for or supported the Confederacy, this court was careful to examine the applicable law and to explain its reasoning thoroughly.

In 1877, the era of Reconstruction ended when Democrats gained control of the state. The set of justices appointed in 1877 qualified by their commitment to the Confederacy or by their opposition to the federal influence in the state. Though considered political conservatives, they were judicial activists.

The Civil War and Reconstruction years were not easy times for any of these men. Sentiment ran high and violence was common. Criticism was as harsh as it was unwarranted. The work of the court is a testament to the integrity of these justices, to their commitment to service, and to their devotion to the law. In each period, one man stands out as characteristic of that court.

### 1865-1868

**James Govan Taliaferro**, born Sept. 28, 1798, in Virginia, moved to Catahoula Parish in 1815 where his father established



**Louisiana Supreme Court Associate Justice James Govan Taliaferro.** *Published with permission from the Louisiana Supreme Court Archives.*

a small sawmill. His biographer described him as "a poor boy, with only his energy and honesty for patrimony."<sup>1</sup> He attended Transylvania University in Lexington, Kentucky, where he met the statesman, Henry Clay. He was admitted to the Kentucky Bar in 1820 and returned to Harrisonburg, La., where he established a law practice and entered politics.<sup>2</sup>

Taliaferro served as parish judge for many years and served in Louisiana's 1852 and 1868 Constitutional Conventions. He was a staunch supporter of the Union. As early as 1856, he published a scathing denunciation of secession in his newspaper, the *Harrisonburg Independent*.

He raised sheep and cattle and was an authority on the geological characteristics of Catahoula Parish. He was a scholar of classical studies, science and history, and owned a large collection of books and

Indian relics.<sup>3</sup>

At the 1861 Secession Convention, Taliaferro was one of 17 delegates who opposed the ordinance of secession, and one of nine who refused to sign it. He delivered a Protest to the convention objecting to secession. During the war, he was carried to a military prison but stayed only a short while.

After the war, as a Conservative Republican, Taliaferro actively sought Louisiana's readmission to the Union.<sup>4</sup> He served as president of the 1868 Constitutional Convention that produced a Constitution acceptable to Congress<sup>5</sup> and voted in favor of free public schools open to all children without distinction of race, color or previous condition.

In the state elections that followed, Taliaferro was a candidate for governor. He received support from Radical Republicans, Democrats and conservative newspapers but was easily defeated by Henry Clay Warmoth, who received the majority of the votes from the new black voters.<sup>6</sup> Taliaferro had been a slaveholder and an opponent of equality for blacks. Warmoth of Illinois had not. Newly elected Governor Warmoth reappointed Taliaferro to the Louisiana Supreme Court, where he served until shortly before his death.

Once on the Supreme Court, Taliaferro changed his position on slavery, declaring it a violation of the natural right of freedom.<sup>7</sup> His participation alongside blacks and his vote in favor of universal education suggest that he accepted political equality, if not social equality. His turnaround was acknowledged when Governor P.B.S. Pinchback chose him to administer his oath of office.

Justice Taliaferro served on the Supreme Court with Zenon Labauve from West Baton Rouge Parish; John Ilsley from New Orleans; William Hyman from Alexandria; and Rufus King Howell from West Feliciana Parish. He died at age 78 on Oct. 13, 1876.

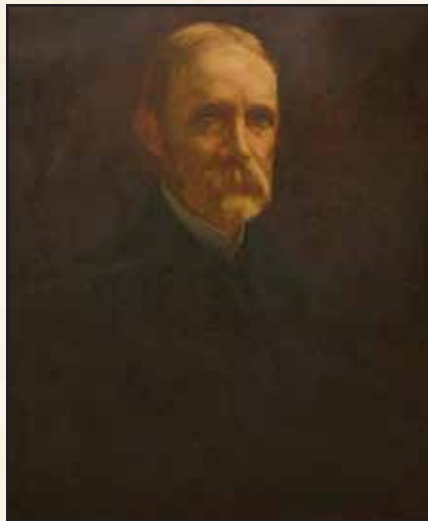
## 1868-1877

**William Wirt Howe**, born in New York, came to New Orleans during the war. Valedictorian at Hamilton College in New York, Howe studied law in St. Louis and settled in New York City, where he practiced law.<sup>8</sup> He enlisted in the war, was taken prisoner, paroled and returned to service. He served as adjutant-general on the staff of Major General Ulysses S. Grant.<sup>9</sup> In 1863, he qualified by the Board of Examiners for Major in the 1st Regt. Cavalry Corps d’Afrique, Headquarters Department of the Gulf.<sup>10</sup>

Howe was one of more than 5,000 Union soldiers who settled in Louisiana after the war.<sup>11</sup> He established a law practice,<sup>12</sup> and Governor Warmoth appointed him to the Louisiana Supreme Court in 1868.<sup>13</sup> Howe served with Rufus King Howell of West Feliciana Parish, James Govan Taliaferro, John T. Ludeling of Ouachita Parish as Chief Justice and W.G. Wyly of Carroll.

Howe resigned from the Supreme Court shortly after the November 1872 contested election to become more involved in the civic and social activities of the city. The court, with its Republican and anti-secession members, was ostracized by the practicing bar, many of whom had fought for the Confederacy.

In private practice, Howe became legal counsel for the Texas and Pacific Railway Company, the New Orleans Board of Trade and the Louisiana Sugar Refining Company. He took an active part in civic and philanthropic work in the city and was involved in various capacities with the University of Louisiana, the New Orleans Art Association, the New Orleans Chamber of Commerce, the New Orleans Board of Trade, New Orleans Charity Hospital, the Louisiana Historical Society, the New Orleans Board of Civil Service, the Board of Trustees of the Eye, Ear, Nose



**Louisiana Supreme Court Associate Justice William Wirt Howe.** *Published with permission from the Louisiana Supreme Court Archives.*

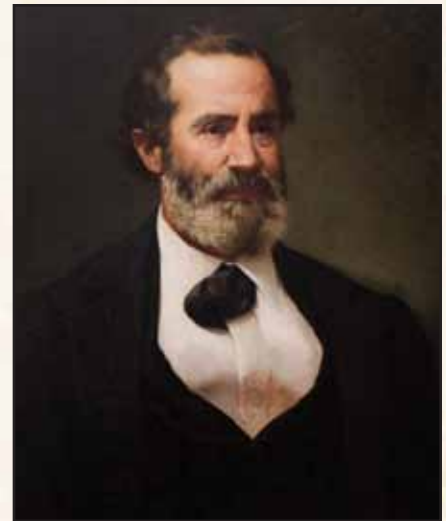
and Throat Hospital, and the Society for the Prevention of Cruelty to Animals. He was an Episcopalian vestryman and senior warden of Christ Church Cathedral.<sup>14</sup>

Howe, an active member of the bar, was president of the American Bar Association in 1897. He focused on the professional ethics of lawyers and lectured at law schools and before state and local bar associations. In 1899, Hamilton College conferred upon him an honorary Doctor of Laws degree.<sup>15</sup> From 1903-1909, he sat on the Board of Trustees of the Carnegie Institution of Washington.

In 1900, President William McKinley appointed Howe as the United States District Attorney for the Eastern District of Louisiana, where he served until 1907, when his declining health compelled him to resign.<sup>16</sup>

A prolific author, Howe wrote scholarly articles on Roman law, Spanish law and the law within the Territory of the Louisiana Purchase. He wrote historical pieces on ancient and medieval law schools and wrote a history of New Orleans. His works appeared in the nation’s leading law journals.<sup>17</sup>

Judge Howe gave an address to the Louisiana State Bar Association on Jan. 8, 1909, and was to have spoken to the Executive Committee of the American Bar Association. He was unable to do so



**Louisiana Supreme Court Associate Justice Jean Maximilien Alcibiades Derneville DeBlanc.** *Published with permission from the Louisiana Supreme Court Archives.*

and, after that date, remained at home until his death.<sup>18</sup>

## 1877-1880

**Jean Maximilien Alcibiades Derneville DeBlanc** was born Sept. 16, 1821, in St. Martinville, La. He read law and was admitted to the Louisiana Bar in 1845. He practiced in St. Martinville. DeBlanc served in the state Legislature and the 1861 Secession Convention, where he advocated for secession.<sup>19</sup> A large landowner and slaveholder, DeBlanc was nearly 40 years old when he enrolled to serve the Confederacy at Camp Moore in Tangipahoa Parish. He helped to organize the Attakapas Guards, Company C, Eighth Regiment, Louisiana Infantry, and served as captain. Francis R.T. Nicholls, who would later appoint DeBlanc to sit on the Louisiana Supreme Court, served in the Eighth Regiment with him.<sup>20</sup>

DeBlanc’s regiment was assigned to the Department of Northern Virginia, and DeBlanc was promoted to the rank of lieutenant colonel at Fredericksburg on April 6, 1863. He was permanently disabled in his right arm at the Battle of Gettysburg and promoted to the rank of colonel.

DeBlanc was one of three military officers sent by Major General Harry

Hays to Baton Rouge on May 23, 1865, to negotiate the surrender of the Confederate troops still operating in Louisiana. DeBlanc's military records include the remark that DeBlanc was a perfect gentleman and an excellent officer. It stated that all respected, obeyed and loved him.<sup>21</sup>

After the war, DeBlanc returned to St. Martinville and served as a parish judge. On May 22, 1867, DeBlanc and Daniel Dennett of Franklin, managing editor of the *Planter's Banner*, organized a White Man's or Caucasian Club in Franklin. The White Man's Club sought to offset the growing political power of blacks. Similar groups were organized across the South and combined to become the Knights of the White Camellia, an anti-Republican secret fraternity similar to the Ku Klux Klan. The *Planter's Banner* was the clandestine voice of the Knights.<sup>22</sup>

In May 1873, DeBlanc led an insurrection in St. Martin Parish to protest Governor William Pitt Kellogg's government. DeBlanc encouraged his supporters to refuse to pay their state taxes and organized an army of 600 local men to prevent the Republican government from taking office.<sup>23</sup>

A dispatch sent to the *New Orleans Republican* newspaper read: "The fiery orator of the Attakapas, Colonel Alcibiades DeBlanc, is traveling through the country stirring his followers up to deeds of desperate valor . . ." <sup>24</sup>

Governor Kellogg sent Metropolitan Police from New Orleans to confront the Knights of the White Camellia. In the exchange, two of the Metropolitan Police were killed. DeBlanc surrendered to Federal Marshal DeKlyn and was held prisoner on board the ship *Lucretia*. When the ship arrived at Morgan's Landing in New Orleans, 6,000 people met it and gave DeBlanc a hero's welcome. DeBlanc was acquitted and released.<sup>25</sup>

DeBlanc served on the Supreme Court from 1877 until 1880 with Robert Hardin Marr of Orleans Parish, Thomas Courtland Manning of Rapides Parish, William Brainerd Spencer of Concordia Parish and William B. Giles Egan of Caddo Parish. He died in St. Martinville in 1883.

## Conclusion

The Reconstruction Courts left little impact on the state's laws. They were interim courts. Although many of the justices who served on these courts were extremely well-trained and talented, they were victims of their times. Their work was largely negated by the events of the day. Their enforcement of the equal protection articles of Louisiana's 1868 Constitution and subsequent legislation<sup>26</sup> was aborted by United States Supreme Court decisions that refused to require states to abandon discrimination based on skin color<sup>27</sup> and by revisions to Louisiana's Constitution made in 1879.<sup>28</sup> Their decisions on proper criminal procedure<sup>29</sup> did not cause permanent reform in the administration of justice in the state.<sup>30</sup>

These courts effected no radical change in the law but followed it closely to provide some stability during a time of political, social and economic upheaval. Perhaps the greatest contribution of these courts was that they operated with some level of success amidst the turmoil of post-Civil War Louisiana and that they carried forward the rule of law.

## FOOTNOTES

1. *In Memoriam* (Taliaferro), 28 La. Ann. vii.
2. 2 Dict. of La. Biog. 778.
3. Wynona Mills, *James Govan Taliaferro (1798-1876): Louisiana Unionist and Scalawag* 9 (Jan. 1968) (Unpublished Master's Thesis available at LSU Library).
4. Conservative Republicans had opposed secession, but objected to the political equality of the newly freed slaves. Radical Republicans supported equality.
5. Louisiana's 1864 Constitution was rejected by Congress because it did not grant black males the right to vote.
6. Henry Plauche Dart, *History of the Supreme Ct. of Louisiana*, Centenary of Louisiana Supreme Court 6, 28 (1913).
7. *Wainwright v. Bridges*, 19 La. Ann. 234, 236-237 (1867).
8. *In Memoriam* (Howe), 127 La. Ann. xxv (1909).
9. William Wirt Howe, Military Service Records, M589 Roll 42, National Archives.
10. Evelyn Wilson, *Laws, Customs and Rights* 51. The Department of the Gulf advertised for applicants to appear before the Board of Examiners at Department Headquarters to be examined for commissions in U.S. colored regiments. *Daily Picayune*, Mar. 31, 1865, at 4, col. 4.
11. John Hope Franklin, *Reconstruction After the Civil War* 92.

12. *Daily Picayune*, Mar. 18, 1909, at 4, col. 1.
13. 17 Minute Book 127 (Nov. 2, 1868).
14. IX *Dict. of Am. Biog.* 300 (1932).
15. *In Memoriam* (Howe), 127 La. Ann. xxv (1909).
16. IX *Dict. of Am. Biog.* 300.
17. Dargo, *Am. Natl. Biog.* 345.
18. *Daily Picayune*, Mar. 18, 1909, at 4, col. 1.
19. Editorial, *Obituaries, Daily Picayune*, Nov. 10, 1883, at 2, col. 2.
20. Francis R.T. Nicholls was governor of Louisiana from 1877-1880 and again from 1888-1892.
21. DeBlanc, Military Service Records, M320 Roll 190, National Archives.
22. Official Website for the Knights of the White Camellia, Ku Klux Klan, Realm of Virginia (on file with author).
23. Gilbert King, *The Execution of Willie Francis* 43-44. Franklin, *supra* n. 11 at 47-38, 139-142.
24. Stuart Landry, *The Battle of Liberty Place* 57.
25. I *Dict. of La. Biog.* (Alcibiades DeBlanc) 222.
26. La. Const. of 1868, arts. 2. ("All persons, without regard to race, color, or previous condition thereof, . . . shall enjoy the same civil, political, and public rights and privileges, and be subject to the same pains and penalties."); *Joseph v. Bidwell*, 28 La. Ann. 382 (1876) (Peter Joseph, denied a seat at the Academy of Music, was awarded damages); *Sauvinet v. Walker*, 27 La. Ann. 14 (1875), *aff'd*, 92 U.S. 90 (1875) (C.S. Sauvinet, denied a drink at a coffeehouse, was awarded damages); *Decuir v. Benson*, 27 La. Ann. 1 (1875), *rev'd*, 95 U.S. 485 (1877) (Mrs. Decuir, denied access to the Ladies' Cabin on a steamboat, was awarded damages).

27. *See, e.g., Hall v. Decuir*, 95 U.S. 485 (1877), which reversed the decision in *Decuir v. Benson*, 27 La. Ann. 1, and *Plessy v. Ferguson*, 163 U.S. 537 (1896), which endorsed separation by skin color.

28. Louisiana's 1879 Constitution does not contain language, included in its 1868 Constitution, intended to protect the civil and political rights of blacks, particularly art. 1, "All men are created free and equal . . .", art. 2, "All persons, without regard to race, color, or previous condition . . . are citizens of this State," and art. 13, "All persons shall enjoy equal rights and privileges . . ." La. Const. of 1868, arts. 1, 2 and 13.

29. *See, e.g., La. v. Nunn*, 29 La. Ann. 589 (1877).

30. *See, e.g., La. v. Jones*, 700 So.2d 1034 (1997) (Counsel did not file a written opposition to the habitual offender bill of information, nor did counsel object to the defects in the state's proof. The court determined that there was a reasonable probability the outcome of the proceeding would have been different had counsel made the proper objections.)

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Procrastination, file stagnation & neglect, inability to meet professional or personal obligations or deadlines

Inability to open mail or answer phones, "emotional paralysis"

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Persistent apathy or "empty" feeling

Drug or alcohol abuse

Changes in energy, eating or sleep habits

Loss of interest or pleasure, dropping hobbies

Trouble concentrating or remembering things

Guilt, feelings of hopelessness, helplessness, worthlessness, or low self-esteem

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2013-14 Louisiana State Bar Association President Richard K. Leefe addresses the crowd during the Installation Dinner at the 2013 Annual Meeting in Destin, Fla. *Photo by Matthew Hinton Photography.*

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School



The 2013-14 Louisiana State Bar Association Board of Governors at the 2013 Annual Meeting in Destin, Fla. Back row: David W. Leefe, Secretary Barry H. Grodsky, H. Minor Pipes III, Marguerite L. Adams, Robert A. Kutcher, Michael E. Holoway, Daniel A. Cavell, Mickey S. deLaup, Treasurer Steven G. Durio, John M. Church and Thomas M. Hayes III. Front row: Dona K. Renegar, Shayna L. Sonnier, Karelia R. Stewart, President-Elect Joseph L. Shea Jr., President Richard K. Leefe, Immediate Past President John H. Musser IV, Julie H. Ferris and Stephen I. Dwyer. Photo by Matthew Hinton Photography.

## LSBA Installs 2013-14 Officers and Board of Governors at Annual Meeting

The Louisiana State Bar Association's (LSBA) 2013-14 officers and members of the Board of Governors were installed June 6, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Richard K. Leefe** was installed as the 73rd LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Leefe is a senior partner in the Metairie law firm of Leefe Gibbs Sullivan & Dupré, L.L.C.

**Joseph L. (Larry) Shea, Jr.**, a member in the Shreveport office of Bradley Murchison Kelly & Shea, L.L.C., was installed as 2013-14 president-elect. He will assume the presidency in 2014-15.

**Barry H. Grodsky**, a partner in the New Orleans firm of Taggart Morton, L.L.C., was installed as 2013-15 secretary. He also will serve as editor of the *Louisiana Bar Journal*, the LSBA's bimonthly magazine.

**Steven G. (Buzz) Durio**, a partner in

the Lafayette firm of Durio, McGoffin, Stagg & Ackermann, will continue his service as LSBA treasurer for one more year.

**John H. Musser IV**, a sole practitioner with offices in New Orleans and Covington, will continue his service to the LSBA as the 2013-14 immediate past president. He is of counsel to the Covington Law Office of Leon A. Aucoin and the Law Office of Toledano & Herrin, L.L.C., and also is on the panel of neutrals for the mediation/arbitration firm ADR inc. in New Orleans.

**Kyle A. Ferachi**, a partner in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., was installed as 2013-14 chair of the LSBA Young Lawyers Division.

Members of the 2013-14 Board of Governors also were installed by Chief Justice Johnson.

### First District

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

Sarver, L.L.C.

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

### Second District

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

### Third District

► **Dona Kay Renegar**, Lafayette, a member in the Lafayette office of Huval, Veazey, Felder & Renegar, L.L.C.

### Fourth District

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

### Fifth District

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

Continued next page

# Strengthening Our Profession

## Combined LSBA Annual Meeting and LSBA/LJC Summer School



2013-14 LSBA President Richard K. Leefe is sworn in by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson during the Installation Dinner at the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*

### Sixth District

► **Robert G. Levy**, Alexandria, a partner in the Alexandria firm of LaCroix, Levy & Barnett, L.L.C.

### Seventh District

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

### Eighth District

► **Karelia R. Stewart**, Shreveport, a prosecutor in the Caddo Parish District Attorney's Office.

### At-Large Members

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

► **Julie H. Ferris**, Baton Rouge, interim state public defender for the Louisiana Public Defender Board.

► **Mickey S. deLaup**, Metairie, a partner in the New Orleans area office of Neuner Pate Law Firm.

### Louisiana State University Paul M. Hebert Law Center

► **John M. Church**, Baton Rouge, a professor of law at Louisiana State

University Paul M. Hebert Law Center.

### Tulane University Law School

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

### Louisiana State Law Institute

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

### House of Delegates Liaison Committee

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

► Member **Robert A. Kutcher**, Metairie, a partner in the Metairie firm of Chopin, Wagar, Richard & Kutcher, L.L.P.

► Member **Tricia R. Pierre**, Lafayette, a staff attorney in the Juvenile Division of the 15th Judicial District Public Defender Office.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson swears in the incoming LSBA Board of Governors and officers during the Installation Dinner at the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*



# Dixon Receives Catherine D. Kimball Award



James T. (Jay) Dixon, Jr. addresses the Installation Dinner at the 2013 Annual Meeting with John H. Musser IV, 2012-13 LSBA President. Photo by Matthew Hinton Photography.

**L**ake Charles attorney James T. (Jay) Dixon, Jr. received the 2013 Catherine D. Kimball Award for Advancement of the Administration of Justice. The award, named for former Louisiana Supreme Court Chief Justice Catherine D. Kimball, was presented during the Louisiana State Bar Association's Annual Meeting in June. The award recognizes an individual who has done exemplary work in advancing the administration of justice in Louisiana.

Dixon was born at the U.S. Military Academy in West Point, NY, into an Army family. He moved throughout his childhood and graduated from high school in Madrid, Spain. After graduating from Bucknell University, he enrolled at Loyola University Law School in New Orleans to pursue a law degree.

Dixon's legal experience has been diverse. He served as a law clerk for Louisiana Supreme Court Justice Pike Hall. He had a private practice in New Orleans, while serving as contract counsel for the Jefferson Parish Public Defender's Office. He was a full-time line defender for the St. John the Baptist Parish Public Defender's Office. His next adventure was to serve as

Attorney General for the Republic of Palau, a small island nation in the Pacific Ocean. Upon his return to the United States, he was the judicial administrator for the 12th Circuit Court for Virginia. After Hurricanes

Katrina and Rita, he and his wife returned to Louisiana. He worked as a contract defender for the Lafayette Parish Public Defender's Office. He next accepted the position of chief public defender for Calcasieu and Cameron parishes (14th Judicial District), where he has served since 2011.

Dixon is credited with greatly improving the working relationships between Public Defender's Office (PDO) staff and 14th JDC judges and the district attorney's office. He has addressed his legislative delegation and strongly advocated for increased PDO funding. He instituted a PDO think-tank for attorneys to strategize for trial. He began in-house training with attorneys teaching others courses in their skill strengths. He instituted an office policy that another attorney would always second-chair the trial. As such, the PDO's office has not lost a jury trial in a year and a half. The 14th JDC Public Defender's Office is now recognized as "the premier criminal defense firm in this district."

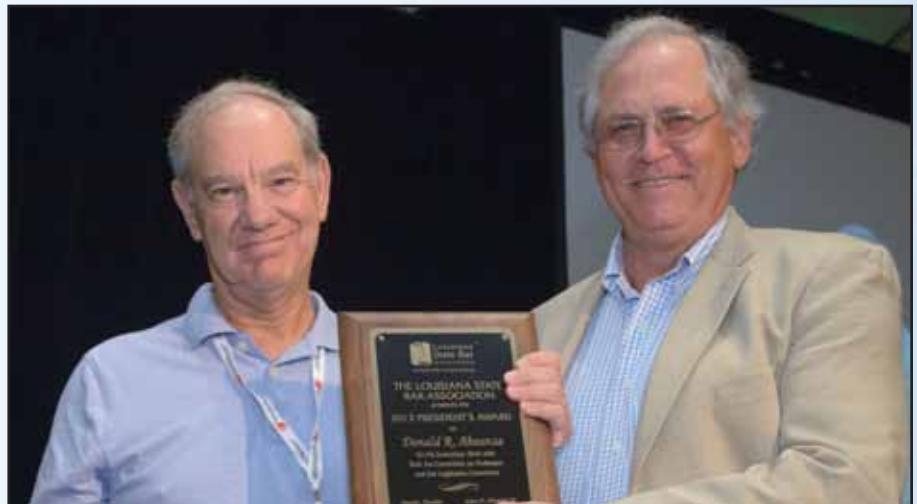


James T. (Jay) Dixon, Jr. receives the Catherine D. Kimball Award from John H. Musser IV, 2012-13 LSBA President, during the Installation Dinner at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

### Six LSBA Members Receive President's Awards

Six Louisiana State Bar Association (LSBA) members received 2013 President's Awards during the Annual Meeting in Destin, Fla. All recipients were chosen by 2012-13 LSBA President John H. Musser IV of New Orleans and were recognized for various services to the Association. Recognized were **Donald R. Abaunza**, New Orleans; **Robert A. Kutcher**, Metairie; **Winfield E. Little, Jr.**, Lake Charles; **Clyde Darrow Merritt** (posthumously), New Orleans; **Judge Harry F. Randow**, Alexandria; and **Judge Lisa Woodruff-White**, Baton Rouge.

**Abaunza** was recognized for his overall contributions to the LSBA and for his work with the LSBA's Committee on the Profession and the Legislation Committee. An attorney for 44 years, he served as president and managing partner of Liskow & Lewis, P.L.C., in New Orleans from 1996-2003. He has been the leader of the firm's offshore and maritime practice group for most of his career. He received his undergraduate degree from Vanderbilt University and his JD degree in 1969 from Tulane Law School. He has been active in the LSBA's House of Delegates for many years and has served several terms on the LSBA's Legislation Committee. He is the LSBA representative to the Legislature's Louisiana



Donald R. Abaunza receives the President's Award from John H. Musser IV, 2012-13 LSBA President, during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

Judicial Compensation Commission. He is currently an elected member of the LSBA's Nominating Committee and is the past chair of the LSBA's Committee on Federal Uniform Rules. He received the LSBA President's Award in 1988. He is a longtime member and active participant in the Maritime Law Association and the Southeastern Admiralty Law Institute. He serves on the board of trustees of the Center for American and International Studies.

**Kutcher** was recognized for his many

contributions as chair of the LSBA's Audit Committee and as a member of the Continuing Legal Education Program Committee and the Legislation Committee. A partner in the law firm of Chopin, Wagar, Richard & Kutcher, L.L.P., in Metairie, his practice is divided between business litigation and real estate work. He writes and speaks extensively on business entities, litigation issues, federal jurisdiction and ethics. He received his undergraduate degree in 1972 from Cornell University and his JD degree, *cum laude*, in 1975 from Loyola University Law School. He is a past chair of the Louisiana Attorney Disciplinary Board, the New Orleans Chapter of the Federal Bar Association and the Louisiana Advisory Committee, U.S. Civil Rights Commission. He is a member of the LSBA's House of Delegates and has served several terms as House liaison to the Board of Governors. He also is active in several LSBA committees and is a Fellow of the Louisiana Bar Foundation.

**Little** was recognized for his overall contributions to the LSBA and for his work to assist lawyers battling depression. He received a BS degree in physics from Louisiana Tech University. After serving in the U.S. Air Force as a captain, he attended Louisiana State University Paul M. Hebert Law Center, graduating with his JD degree



Robert A. Kutcher receives the President's Award from John H. Musser IV, 2012-13 LSBA President, during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

# Strengthening Our Profession

## Combined LSBA Annual Meeting and LSBA/LJC Summer School



Judge Lisa Woodruff-White and Judge Harry F. Randow receive their President's Awards from John H. Musser IV, 2012-13 LSBA President, during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

in 1974. He has practiced in Lake Charles since being admitted to the practice of law in 1974. He has been admitted to practice in all Louisiana courts, the Western District of Louisiana, the Middle District of Louisiana, the Eastern District of Louisiana, the 5th Circuit and the U.S. Tax Court. He has served as an assistant bar examiner since 1980 and in the LSBA's House of Delegates for a number of terms representing the 14th Judicial District. He has recently completed his second term on the LSBA's Board of Governors, representing the 4th District. In 2000, he served as president of the Southwest Louisiana Bar Association. He received his formal alternative dispute resolution training at the Straus Institute for Dispute Resolution, Pepperdine University School of Law.

**Merritt** was recognized, posthumously, for his lifetime of work providing criminal defense services to indigent defendants. Mr. Merritt died on Dec. 11, 2012, at the age of 82. He served the New Orleans legal community for 49 years, as a longtime Orleans Parish public defender and before that as a prosecutor under ex-New Orleans District Attorney Jim Garrison. He served in the United States Army and was a Korean War veteran.

**Judge Randow** was recognized for his efforts to assist self-represented litigants in Louisiana. He is serving his 16th year as judge with the 9th Judicial District Court,

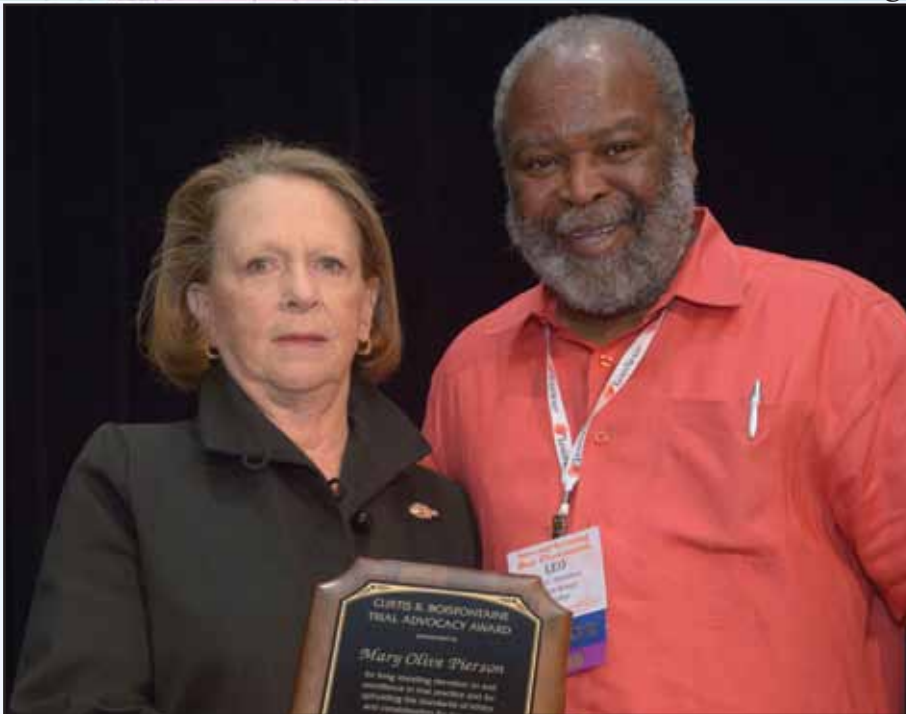
currently serving as chief judge. During his service on the bench, he has presided over civil, criminal and juvenile dockets. He has served as the presiding judge for the Adult Drug Court Program for the past eighty years. He received a BA degree in 1965 from Louisiana State University and his JD degree in 1971 from Loyola University Law School in New Orleans. He is president of the Louisiana District Judges Association and chairs the Louisiana Supreme Court's Task Force on Pro Se Litigants. He is a member of the Louisiana Judicial College's

Board of Governors and the Red River Delta Law Enforcement Planning Council's board of directors. He chaired the Louisiana District Judges Association/DOC Liaison Committee from 2008-12. He previously served as a member of the LSBA's Ethics 2000 Committee. He is a 2013 inductee into the Louisiana Judicial Hall of Fame and is a graduate of the Louisiana Judicial Leadership Institute.

**Judge Woodruff-White** was recognized for her efforts to assist self-represented litigants in Louisiana as chair of the District Judges Association's Self-Represented Litigants Committee. She presides over the East Baton Rouge Parish Family Court, Division B. She worked for 10 years as a staff attorney, senior attorney and attorney supervisor for Support Enforcement Services. She was deputy secretary of the Louisiana Department of Social Services. She also served as statewide director of the Louisiana Child Support Program from 2001-04. She chaired the Child Support Committee of the Louisiana State Law Institute. She authored a 1999 review of Louisiana Child Support Guidelines for the Louisiana Legislature that led to significant positive changes in Louisiana's child-support laws. She also chaired the Louisiana Child Support Guidelines Review Committee in 1999 and 2004. She is an active board member of Habitat for Humanity of Louisiana and the Child and Youth Protection Advisory group.



Winfield E. Little, Jr. receives the President's Award from John H. Musser IV, 2012-13 LSBA President, during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.



Mary Olive Pierson receives the 2013 Curtis R. Boisfontaine Trial Advocacy Award from Leo C. Hamilton, 2013-14 Louisiana Bar Foundation President, during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*

## Pierson Receives 2013 Boisfontaine Award

**B**aton Rouge attorney Mary Olive Pierson is the recipient of the Louisiana Bar Foundation's (LBF) 2013 Curtis R. Boisfontaine Trial Advocacy Award. The award was presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla. Pierson received a plaque and \$1,000 will be donated in her name to the Lawyers Assistance Program.

Pierson is a sole practitioner whose practice focuses on lender liability, multi-party litigation, commercial contract disputes and white-collar crime. Prior to opening her own firm, she practiced with Brown, McKernan, Monsour & Screen and its successor firms. She earned her BS and JD degrees from Louisiana State University. She is a member of the American Bar Association and the Baton Rouge Bar Association.

Pierson is a past representative of the

Louisiana Statewide Indigent Defender Board and a past council member of the East Baton Rouge Parish Council. She has supported several community and charitable organizations, including the Baton Rouge Crisis Intervention Center, the Baton Rouge General Foundation, the Juvenile Diabetes Research Foundation, the Louisiana Bar Foundation, the Mary Bird Perkins Cancer Center and the Pennington Biomedical Research Foundation.

The award was established through an endowment to the LBF in memory of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the Louisiana Association of Defense Counsel. Generous donations from Sessions, Fishman, Nathan & Israel L.L.P., the Boisfontaine family and friends established the fund.

## Hernandez Receives First Francophone Award

**A**ttorney John A. Hernandez, Jr., a partner in the Lafayette law firm of Hernandez and Hernandez, A.P.L.C., is the first recipient of the John Ashby Hernandez III Memorial Award for Francophone Leadership. The award bears the name of his son, John A. Hernandez III, known by many as "T-Jean," who died on Sept. 3, 2012, at the age of 44.

Both father and son were strong supporters of the French language, culture and civil law and often traveled abroad to French-speaking countries to support the mission. Both father and son were charter members of the LSBA's Francophone Section, with T-Jean serving as chair at the time of his death. His father is currently serving as a member of the Executive Committee in honorarium.

Both father and son co-chaired the Judge Allen M. Babineaux International Civil Law Symposium, which established international relationships for Louisiana with Francophone countries such as Canada, France, Haiti and Belgium.



John W. Dean presented a session on lawyer ethics during the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*





## Ogwyn Receives 2013 Stephen T. Victory Memorial Award

**B**aton Rouge attorney David H. Ogwyn received the 2013 Stephen T. Victory Memorial Award, which recognizes outstanding contributions to the *Louisiana Bar Journal*, the LSBA's bimonthly magazine. He was recognized for his article, "Digital Asset Planning and Protection: Inventory, Provide Access and Leave Instructions," October/November 2012, Volume 60, Number 3.

Ogwyn, attorney and owner of Ogwyn Law Firm, L.L.C., in Baton Rouge, received his BS degree in 1997 from Louisiana State University and his JD degree in 2001 from LSU Paul M. Hebert Law Center. His practice primarily focuses in the areas of business representation and litigation, oil and gas, and estate planning.

He is an active member of the Baton Rouge Bar Association, serving on the Volunteer Committee. He is a member of the American Bar Association and its Solo/Small Firm Group, as well as the Federalist Society for Law and Public Policy.

In his community, he is chair of the board of directors for the West Baton Rouge Chamber of Commerce. He volunteers in the local public schools' reading programs and serves on the board of directors for the West Baton Rouge Foundation for Academic Excellence.

The award's namesake, Stephen T. Victory, was a partner in the firm of Liskow & Lewis, P.L.C., in New Orleans. He served as LSBA secretary-treasurer and editor of the *Louisiana Bar Journal* from 1983-85. He died on Dec. 6, 1985.



John H. Musser IV, 2012-13 LSBA President, presents Catherine E. Lasky with the 2013 Leah Hipple McKay Memorial Award during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

## Lasky Receives 2013 Leah McKay Award

**A**ttorney Catherine E. Lasky of New Orleans received the 2013 Leah Hipple McKay Memorial Award for Outstanding Volunteerism. The award is in memory of Leah Hipple McKay, LSBA member and wife of former LSBA President Michael W. McKay of Baton Rouge. The award recognizes Louisiana attorneys and judges who have made significant long-term contributions in volunteerism. The award was presented during the Annual Meeting in Destin, Fla.

Lasky, an attorney with the firm Jones, Swanson, Huddell & Garrison, L.L.C., has been practicing law since 2003 in the fields of complex commercial and bankruptcy litigation. She received her undergraduate degree, *magna cum laude*, in 1998 from Cornell University and her JD degree, *cum laude*, in 2003 from Georgetown University Law Center.

She chairs the board of directors of the New Orleans Pro Bono Project. From 2007-11, she was a 100-plus-hour

volunteer with the New Orleans Pro Bono Project. She received the LSBA's 2006 Pro Bono Publico Award for her pro bono service to Louisiana's indigent.

She has routinely for 10 years served lunch at Ozanam Inn, a New Orleans homeless shelter, and has regularly volunteered to provide notarial services at homeless outreach centers in New Orleans. She took on a three-year volunteer commitment (2003-06) through the Boys Hope Girls Hope program. She built chicken coops for community gardens as part of her work with Hands On New Orleans in the recovery effort after Hurricane Katrina. Following the hurricane, she spent nearly two years providing weekly legal intake interviews and services for the Common Ground organization. She also was instrumental in starting the "Food from the Bar" program in New Orleans, designed to help lawyers support local food banks in their efforts to feed children during the summer months.

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School

## Attorney, Martinet Society Receive Human Rights Awards

**N**ew Orleans attorney J. Dalton Courson and the Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. were 2013 recipients of the Louisiana State Bar Association's Human Rights Award. The awards were presented during the Annual Meeting in Destin, Fla.

**J. Dalton Courson**, a member of the firm Stone Pigman Walther Wittmann, L.L.C., in New Orleans, received his undergraduate degree from Harvard University and his JD degree from the University of Virginia School of Law. Since 2011, he has served as co-chair for the LGBT Litigator Committee of the American Bar Association Section of Litigation, which supports lesbian, gay, bisexual and transgender lawyers and offers a forum for issues LGBT attorneys face in their practices. In 2012, the National LGBT Bar Association named Courson as one of the "Best LGBT Lawyers Under 40." From 2006-11, he served on the board of directors for AIDS Law of Louisiana, Inc., co-chairing



John H. Musser IV, 2012-13 LSBA President, presents J. Dalton Courson with the LSBA Human Rights Award during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

in 2010-11.

The **Louis A. Martinet Legal Society,**



John H. Musser IV, 2012-13 LSBA President, presents Christopher B. Hebert, Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society President, with the LSBA Human Rights Award during the General Assembly and House of Delegates Meeting at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

**Inc.** Greater Baton Rouge Chapter fulfills the organization's mission through its Pro Bono Project and the Marshall-Brennan Constitutional Literacy Project operated with Southern University Law Center. The Chapter awards scholarships to high school, college and law students, and assists East Baton Rouge Parish pre-school children through its "Reading from the Start" program. In January 2013, the Chapter partnered with the East Baton Rouge Parish Public Defender's Office to present "Expungement Day." The Chapter supported Baton Rouge minority attorneys in their efforts to have an additional minority judgeship added to the Louisiana 1st Circuit Court of Appeal. The Chapter worked with the Louisiana Legislative Black Caucus to educate minorities in low-income areas on Louisiana voter redistricting issues.

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School



Maggie Trahan Simar, 16th Judicial District Family Court hearing officer, swears in the incoming LSBA Young Lawyers Division Council members and officers during the Young Lawyers Division Award Reception at the 2013 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

## YLD's 2013-14 Officers, Council Members Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2013-14 officers and Council members were installed June 3, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Kyle A. Ferachi** of Baton Rouge was installed as 2013-14 Division chair by Maggie Trahan Simar, hearing officer for the 16th Judicial District Family Court. Joining Ferachi as officers are Chair-Elect **J. Lee Hoffoss, Jr.** of Lake Charles, who will assume the chair's position in 2014-15; Secretary **Erin O. Braud** of Metairie; and Immediate Past Chair **Lawrence J. Centola III** of New Orleans.

**Ferachi** is a partner in the Baton Rouge office of McGlinchey Stafford, P.L.L.C. He received a BA degree in 1998 from Louisiana Tech University and his JD degree in 2001 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2001.

**Hoffoss** is a partner in the Lake Charles firm of Hoffoss Devall, L.L.C. He received a BA degree and a MA degree in 2000 and 2001, respectively, from Louisiana Tech University and his JD degree in 2004 from Southern University Law Center. He was admitted to practice in Louisiana in 2004 and in Texas in 2010.

**Braud** is an attorney with the Law Offices of Robert E. Birtel, staff counsel

for Liberty Mutual Insurance Co., in Metairie. She received a BA degree in mass communications in 2002 from Louisiana State University and her JD degree in 2005 from Loyola University College of Law. She was admitted to practice in Louisiana in 2005.

**Centola** practices law at the New Orleans firm of Martzell & Bickford. He received a BA degree in 1998 from Louisiana State University and his JD degree in 2001 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2001.

Simar also installed members of the 2013-14 YLD Council.

**District 1:** Dylan Tuggle Thriffiley, New Orleans; and James E. (Jimmy) Courtenay, New Orleans.

**District 2:** Jason M. Baer, Metairie; and

Jennifer Z. Rosenbach, Gretna.

**District 3:** Sara B. Rodrigue, Lafayette.

**District 4:** Lynsay M. Fontenot, Lake Charles.

**District 5:** Scotty E. Chabert, Jr., Baton Rouge; and Bradley J. Tate, Baton Rouge.

**District 6:** Christie Clark Wood, Alexandria.

**District 7:** Jennifer H. Johnson, Monroe.

**District 8:** Jerry Edwards, Jr., Shreveport.

**At-Large Representative:** Kellen J. Mathews, Baton Rouge.

**American Bar Association Young Lawyers Division Representative:** Cristin G. Fitzgerald, New Orleans.

**Young Lawyer Member/American Bar Association House of Delegates:** Sarah E. Stogner, New Orleans.



Maggie Trahan Simar, 16th Judicial District Family Court hearing officer, swears in Kyle A. Ferachi, 2013-14 Young Lawyers Division Chair, at the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School

## Attorneys, Bar Associations Receive 2013 LSBA YLD Awards

**F**our Louisiana State Bar Association (LSBA) members and two local Bar Associations received 2013 LSBA Young Lawyers Division (YLD) awards. The awards were presented by 2012-13 YLD Chair Lawrence J. Centola III of New Orleans and other YLD Council members during a June 3 ceremony, held in conjunction with the LSBA's Annual Meeting in Destin, Fla.

### ► Outstanding Young Lawyer Award

**Jamie Hurst Watts** of Baton Rouge has practiced with Long Law Firm, L.L.P. since 2002 in the areas of public utility regulation, commercial transactions and litigation, and wills and estates. She is a senior partner and one of three members of Long Law Firm's Management Committee. She has been a member of the Baton Rouge Bar Association (BRBA) Young Lawyers Section's Council since 2009. She served as 2010 secretary/treasurer, 2011 chair-elect, 2012 chair and is currently serving as past chair. She also has served as a member of the BRBA Finance Committee and as an ex-officio member of the BRBA board of directors. In 2012, she served as a Wills for Heroes volunteer.



Kyle A. Ferachi, 2013-14 Young Lawyers Division Chair, presents Jamie Hurst Watts with the 2013 Outstanding Young Lawyer Award at the Young Lawyer Division Awards Reception during the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*



Larry J. Centola III, 2012-13 Young Lawyer Division Chair, addresses the Young Lawyer Division Awards Reception at the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*

She received a 2012 BRBA President's Award for her service to the 2011 and 2012 Opening of Court, New Member and Memorial Ceremony. She has served as an officer of the LSBA's Public Utility Section. She assumed the position of section chair in June 2013, where her primary duties involve conducting the section's annual meeting and planning the annual Public Utility Section CLE and Social.

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

**Sarah E. Stogner** of New Orleans is



Larry J. Centola III, 2012-13 Young Lawyers Division Chair, presents Sarah E. Stogner with the 2013 Bat P. Sullivan, Jr. Chair's Award at the Young Lawyer Division Awards Reception during the 2013 Annual Meeting. *Photo by Matthew Hinton Photography.*

an associate in the New Orleans office of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C. She received a BS degree in international trade and finance in 2005 from Louisiana State University and her JD/BCL degree in 2008 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008. She is a member of the LSBA's Legislation Committee and was a member of the 2010-11 Leadership LSBA Class. She is a member of the American Bar Association's House of Delegates, a Young Lawyers Division board member for the New Orleans Chapter of the Federal Bar Association, a member and Young Lawyers Division Committee member of the Defense Research Institute, and a board member of the Louisiana Association of Defense Counsel.

### ► Pro Bono Award

**Ryan R. Brown** of Baton Rouge is an associate attorney with Roedel, Parsons, Koch, Blache, Balhoff & McCollister, A.L.C. His practice is focused on business transactions, civil litigation, corporate law, public information law, newspaper law and successions. He was admitted to the Louisiana Bar in 2007 and the U.S. Bankruptcy Court in 2009, and practices in the U.S. District Court

# Strengthening Our Profession

## Combined LSBA Annual Meeting and LSBA/LJC Summer School



Larry J. Centola III and Kyle A. Ferachi at the Young Lawyer Division Awards Reception during the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

and the U.S. Court of Appeals. He received a BS degree in information technology from Louisiana State University and his JD degree from LSU Paul M. Hebert Law Center. He is the president and co-founder of Just Cause La, Inc., a nonprofit organization that serves various causes in the Baton Rouge area. He is an active member of the Louisiana Sports Law Association and the Baton Rouge Bar Association (BRBA) Young Lawyers Section. He will serve as 2013 chair of the BRBA Young Lawyer Section Holiday Star Committee and as vice chair of the Law Day Committee. Additionally, he is a member of the BRBA Pro Bono Panel and the Junior Partners Academy Committee and participates in several Youth Education programs.



Kyle A. Ferachi addresses the Young Lawyer Division Awards Reception during the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

### ► Hon. Michaele Pitard Wynne Professionalism Award

**Ryan M. McCabe** of New Orleans is an associate at Montgomery Barnett, L.L.P. His practice focuses on commercial litigation, legal malpractice defense, business/corporate law and construction. He completed his undergraduate work at the University at Albany and earned his law degree from Tulane Law School, where he was editor-in-chief of the *Tulane Maritime Law Journal*. He is a member of the New Orleans Bar Association, the 2012-13 Leadership LSBA Class and the LSBA House of Delegates. He is a member of the Federal Bar Association's National Committee on Attorney Ethics and Professionalism. He serves on multiple LSBA committees and subcommittees, including the Practice Assistance and Improvement Committee, the Rules of Professional Conduct Committee, the Ethics Advisory Service Subcommittee, the Practice Aid Guide Subcommittee and the Publications Subcommittee.

### ► Service to the Public Award

The **Baton Rouge Bar Association Young Lawyers Section's** "Belly Up with the Bar" fundraiser is an annual Brew Fest and cook-off competition featuring live music and fun activities. All proceeds benefit the Baton Rouge Bar Foundation's award-winning Youth Education programs,



Sarah E. Stogner presents Ryan M. McCabe with the 2013 Hon. Michaele Pitard Wynne Professionalism Award at the Young Lawyer Division Awards Reception during the 2013 Annual Meeting. Photo by Matthew Hinton Photography.

including Teen Court, the High School Mock Trial Competition, Law Day, Lawyers in the Classroom and the Junior Partners Academy. The 14th annual Belly Up with the Bar was Sept. 28, 2012, at the Live Oak Arabian Stables and attracted a record number of attendees. The 2012 Belly Up with the Bar Committee chair was Brandon DeCuir and vice chair was Jennifer Racca.

### ► Service to the Bar Award

The **Lafayette Young Lawyers Association** organizes and hosts "Shoot for Justice," an annual sport clay shoot event to raise money for the Lafayette Volunteer Lawyers (LVL) program. Each year, LVL places about 200 cases from underprivileged citizens with private attorneys. Most of LVL's funding comes from grants and charitable contributions from events. Shoot for Justice, begun in 2007 by attorneys interested in raising money for underprivileged citizens needing access to legal services, combines the area's rich enthusiasm for hunting and outdoors with the community's commitment to charity and public service. Each year, more than 75 members of the community participate in the shooting competition. Prizes are awarded and local businesses and law firms join the cause by sponsoring teams and shooters. To date, the program has raised more than \$35,000 for the community, with all proceeds going directly to LVL.



Scotty E. Chabert, Jr. presents the Service to the Public Award to the Baton Rouge Bar Association Young Lawyers Section. Jamie Watts Hurst accepted the award on behalf of the Section. Photo by Matthew Hinton Photography.

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School



**Top:** Michael A. Patterson addresses the Senior Lawyers Division meeting during the 2013 Annual Meeting.

**Center left:** John H. Musser IV and Richard K. Leefe during the Installation Dinner at the 2013 Annual Meeting.

**Center right:** Louisiana Supreme Court Chief Justice Bernette Joshua Johnson addresses the General Assembly and House of Delegates during the 2013 Annual Meeting.

**Bottom:** New this year at the 2013 Annual Meeting was the Beach Bash, a party on the beach for LSBA members and their families.

*All photos by Matthew Hinton Photography.*

# Strengthening Our Profession

Combined LSBA Annual Meeting and LSBA/LJC Summer School



**Top:** Joseph (Larry) Shea Jr., John H. Musser IV, Richard K. Leefe, James J. Davidson III and Michael A. Patterson.

**Center:** The 2012-13 Leadership LSBA Class, with LSBA Staff Liason, Kelly McNeil Legier, Esq. and Danielle Boveland at the First-Time Attendees Reception during the 2013 Annual Meeting.

**Bottom left:** Hon. Carl E. Stewart, Chief Judge of the U.S. 5th Circuit Court of Appeals, addressed the General Assembly and House of Delegates during the 2013 Annual Meeting.

**Bottom right:** Richard K. Leefe and Barat Leefe during the Summer Kickoff event at the 2013 Annual Meeting.

*All photos by Matthew Hinton Photography.*



# 2013-14 LSBA Elections: Self-Qualifying Deadline is Oct. 28

Several leadership positions are open in the 2013-14 Louisiana State Bar Association (LSBA) election cycle.

Self-qualification forms for positions on the Board of Governors, Nominating Committee, LSBA House of Delegates, Young Lawyers Division and American Bar Association House of Delegates will be provided to the membership on Monday, Sept. 30. Deadline for return of nominations by petition and qualification forms is Monday, Oct. 28. First election ballots will be available to members on Monday, Nov. 25. Deadline for electronically casting votes is Monday, Dec. 16.

For the 2013-14 election cycle, balloting will be conducted electronically only, as approved by the LSBA Board of Governors. No paper ballots will be provided.

The LSBA Nominating Committee met Aug. 23 to nominate a president-elect for the 2014-15 term and a treasurer for the 2014-16 term. The president-elect will automatically assume the presidency in 2015-16.

According to the president-elect rotation, the candidate must have his/her preferred mailing address in Nominating Committee District 1 (parishes of Orleans, Plaquemines, St. Bernard and St. Tammany).

According to the treasurer rotation, the candidate must have his/her preferred mailing address in Nominating Committee District 2 (parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Jefferson, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana).

Other positions open for the 2013-14

elections are:

**Board of Governors** (three-year terms beginning at the adjournment of the 2014 LSBA Annual Meeting and ending at the adjournment of the 2017 LSBA Annual Meeting): one member each from the First, Second, Third and Fifth Board districts.

**Nominating Committee** (15 members, one-year terms beginning at the adjournment of the 2014 LSBA Annual Meeting and ending at the adjournment of the 2015 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.

**LSBA House of Delegates** (two-year

terms beginning at the commencement of the 2014 LSBA Annual Meeting and ending at the commencement of the 2016 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.

**Young Lawyers Division: Chair-elect** (2014-15 term), nominee **shall** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. **Secretary** (2014-15 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Third, Fifth and Seventh districts (two-year terms).

**ABA House of Delegates** (*must be a member 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. 12, 2014, that delegate being the "Young Lawyer Delegate," all 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 2014 ABA Annual Meeting and expiring at the adjournment of the 2016 ABA Annual Meeting.

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



# Legal Professionals, Law Students Recognized for Pro Bono Work

The Louisiana State Bar Association (LSBA), in conjunction with the Louisiana Supreme Court, hosted the 28th annual Pro Bono Awards Ceremony on May 21. LSBA Access to Justice Committee Co-Chairs Marta-Ann Schnabel and Luz M. Molina presented the awards to the 2013 Pro Bono Publico Award recipients. Children's Law Committee Co-Chairs Cherrilynne W. Thomas and Judge Sandra Jenkins presented the Children's Law Award. The ceremony was held in the Louisiana Supreme Court Building in New Orleans.

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

This year's award recipients include:

► **2013 David A. Hamilton Lifetime Achievement Award:** Gary K. McKenzie, Baton Rouge.

► **2013 Career Public Interest Award:** Salyria L. Gumms, Houma.

► **2013 Children's Law Award:** Hon. Kathleen Stewart Richey, Baton Rouge.

► **2013 Pro Bono Publico Award:** Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Jenny A. Abshier, New Orleans; Harold L. Domingue, Jr., Lafayette; Ronald A. Fonseca, New Orleans; Holly Gottschalk, New Orleans; Joanna B. Hynes, Baton Rouge; and Thomas H. Peyton, New Orleans.

► **2013 Friend of Pro Bono Award:** Self-Help Resource Center of Baton Rouge at East Baton Rouge Family Court; and Norman Rubenstein, New Orleans.

► **2013 Law Student Pro Bono Award:** Denise Farrior, Louisiana State University Paul M. Hebert Law Center; Anna Lellelid, Loyola University College of Law; Oni Groves, Southern University Law Center; and Kate Shulman, Tulane University Law School.

► **2013 Century Club Award**



Louisiana Supreme Court Justices, from left, Jefferson D. Hughes, John L. Weimer, Jeannette Theriot Knoll, Marcus R. Clark and Greg G. Guidry, with 2012-13 Louisiana State Bar Association President John H. Musser IV, far right, with the 2013 David A. Hamilton Lifetime Achievement Award Winner Gary K. McKenzie, center, of Baton Rouge. *Photo by Matthew Hinton Photography.*

(recognizing attorneys who have completed 100 hours of pro bono service in 2012): Samantha R. Ackers, Baton Rouge; Paula B. Bertuccini, Lafayette; William G. Cherbonnier, Jr., New Orleans; Andrew H. Chrestman, New Orleans; Linda Law Clark, Baton Rouge; Jeffrey K. Coreil, Lafayette; J. Dalton Courson, New Orleans; Harold L. Domingue, Jr., Lafayette; Elizabeth A. Dugal, Lafayette; Holly Gottschalk, New Orleans; Joanna B. Hynes, Baton Rouge; Judith R. Kennedy, Lafayette; Gregory A. Koury, Lafayette; Gary K. McKenzie, Baton Rouge; Thomas H. Peyton, New Orleans; Michelle C. Purchner, New Orleans; Barbara A. Siefken, New Orleans; Dwazendra J. Smith, Lafayette; Grady M. Spears, Lafayette; and K. Wade Trahan, Lafayette.

To review profiles of award recipients and photographs of the award ceremony, go to: [www.lsba.org/atj](http://www.lsba.org/atj).



Salyria L. Gumms of Houma, the recipient of the 2013 Career Public Interest Award, with Louisiana Supreme Court Justices, from left, Marcus R. Clark, Jefferson D. Hughes and John L. Weimer and 2012-13 Louisiana State Bar Association President John H. Musser IV. *Photo by Matthew Hinton Photography.*



Marian Mayer Berkett, left, partner emeritus with Deutsch, Kerrigan & Stiles, L.L.P., in New Orleans, was presented with the Louisiana State Bar Association's Lifetime Achievement Award during the Superwomen CLE in May. Presenting the award was 2013-14 LSBA President Richard K. Leefe. Berkett, who celebrated her 100th birthday in March, joined Deutsch & Kerrigan in August 1937 as an associate and later became a partner. In March, she was one of 12 inductees into Tulane Law School's first Hall of Fame. Over the course of her career, she has practiced in several areas of the law. She has written articles for the *Tulane Law Review* and published *Workmen's Compensation Law in Louisiana* (LSU Press, 1937). She has served as a lecturer for many CLE programs on construction law, fidelity and surety law, successions and ethics. *Photo by LSBA Staff.*

## Applications Accepted for Bankruptcy Law Certification through September

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for 2014 certification in business bankruptcy law and consumer bankruptcy law through September 2013.

In accordance with the Plan of Legal Specialization, any Louisiana State Bar Association member who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. The five-year practice requirement must be met for the period ending Dec. 31, 2013. A further requirement is that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought.

Regarding applications for business

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

For an application or more information, contact Barbara Shafranski, LBLS executive director, at (504)619-0128 or (800)421-5722, ext. 128. Or go to the Louisiana Board of Legal Specialization's website at [www.lascmcle.org/specialization](http://www.lascmcle.org/specialization).

## LSBA Month of Service to be celebrated in October



LSBA President Richard K. Leefe has designated October as Louisiana's "Month of Legal Service" for LSBA members. The month of service coincides with, and will culminate in, the National Celebrate Pro Bono Week, Oct. 20-26. The goal of the "Month of Legal Service" is for attorneys to help make a difference in their communities by providing assistance to benefit those most in need. Local bars and legal organizations are encouraged to give their time and experience by providing legal advice or help to unrepresented individuals at local courts.

How you can help your community? Visit [www.lsba.org/goto/service](http://www.lsba.org/goto/service) for more information.

## LBLS Amends Rules and Regulations on Dues and CLE Hardship

The Louisiana Board of Legal Specialization (LBLS) has amended its rules and regulations to include an additional penalty assessment for late payment of dues (Paragraph 6, items g and h) and a provision for a specialization CLE hardship exemption (Paragraphs 7.8 and 7.10). A copy of the amended LBLS Rules and Regulations may be downloaded from the website: [www.lascmcle.org/specialization](http://www.lascmcle.org/specialization).

# Solo SPEAKING

By Shawn L. Holahan and Abid Hussain

ENCRYPTION: THE BASICS

From Abid Hussain★  
Subject Sensitive Client Data  
To Shawn Holahan★

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Shawn-

We need to file suit against John Doe ASAP!

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Abid Hussain  
[Hussain Law LLC](#)

From Abid Hussain★  
Subject Sensitive Client Data  
To Shawn Holahan★

---

-----begin pgp message-----  
Charset: iso-8859-1  
Comment: gpgtools - <http://gpgtools.org>  
Comment: Using Gnupg with Thunderbird - <http://www.enigmail.net/>

hqema6kcmypjst/iaqf/YpcvPzvmucoej3D6xccq9bko97hj4DovZtz/dcfr3zwe  
yEkzz/BpTsKlksgs18hJxaqoM2/xw80vhpY81pltsvdvhn2T/wyjnI7cqz7z2sa  
edeBv1xjn6t3tvx9j8gfwjsgbH0muk0ufi3cyEgW4mkbusmuVcohmof5mqz0lc/  
0wrI4ehxdw==  
=rVwC  
-----end pgp message-----

Recent headlines should give pause to any attorney relying on email or a mobile device as a courier for confidential or sensitive client information. Just how secure is it? Is it possible to make email and electronic file storage more secure? Encryption may be the answer.

This two-part Q&A series explores simple, yet effective, data and email encryption (or cryptography) and how lawyers can easily incorporate encryption into their practices. Part 1 will focus on the basics, while keeping “technospeak” to a minimum. Part 2 will delve further to provide practitioners easy, practical steps to implement encryption into their practices.

## What is Encryption?

You might have childhood memories of sending secret messages that only your best pal could read because of a special spy decoder ring. Without the decoder ring, an unauthorized person (like the evil bully down the block) would not be able to read your secret, even if the message had been intercepted. Modern-day cryptography is conceptually the same, though a bit more sophisticated. Now, a sender of an email can encrypt the message into unreadable digital code that can be read only by a recipient who has the correct digital key.

## Why is Encryption Important?

Increasingly, lawyers are depending on the cloud or the Internet for the transmittal of sensitive information. We are routinely using emails, online backup systems and the Internet to send sensitive client data and critical information. Unencrypted email, as it travels to its intended recipient, leaves readable copies across many servers around the world. Emails in transit are also easy prey to the prying eyes of hackers. Not readily known to many is the fact that emails on cloud-based services such as Gmail or Yahoo are stored on a system accessible by the company storing the email or even the government.

Complicating the picture is that federal law governing electronic communications has not kept pace with technological changes. Enacted 26 years ago, the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §§ 2510-2522, has drawn numerous critics, resulting in interesting bedfellow pairings in an attempt to sophisticate the law.<sup>1</sup> A particularly pernicious issue is that currently, under 18 U.S.C. § 2703, the government may subpoena any emails stored on cloud systems like Google that are older than 180 days without a warrant.

Undoubtedly, the ECPA debate will

continue. In the meantime, lawyers using the cloud should become aware of the vulnerabilities of electronic communications and how to protect files in the cloud from prying eyes. The good news is that encryption can significantly improve your chances of keeping your clients' information secure.

## How Does Encryption Work? What Does It Look Like?

Whether sending an email or sending to the cloud a file for storage, the basic concept of encryption is the same. By encrypting the message in the email or the file, the actual content is garbled into unreadable digital code. For example, an unencrypted email might look like the one above, left side.

That same email, once encrypted, would look like the one on the right side.

In the example, for Shawn to read the email from Abid, Shawn would need to type in a decryption key (akin to a password) provided by Abid to unscramble the content of the email into readable English. Should an unauthorized person without a decryption key intercept the encrypted email before it reaches Shawn, or access it while stored in the cloud, the contents of the email would remain unreadable.

Now suppose that instead of an email, a lawyer places for storage certain files



in a cloud-based server like Dropbox. If encrypted before their placement in Dropbox, the documents would resemble the jumbled digital code in the example above and would remain secure from anyone who did not possess a decryption key. The same principle would apply to files stored on desktop computers, laptops, mobile devices and thumb drives.

### Is Encryption Easy to Do?

Depends on what you encrypt. Encrypting everything will reduce both computer performance as well as efficiency. Decide what is worth encrypting and formulate a strategy.

Encrypting your entire hard drive might be overkill, depending on your type of practice. Same is true when storing files in cloud services. A more prudent approach might be to encrypt certain critical client files.

An example is TrueCrypt which is free and allows the user to encrypt only certain files. Another service, SpiderOak, allows data or file encryption before the file is transmitted to SpiderOak's servers, such that the data on SpiderOak's servers is in unreadable digital gobbledygook, with only the sender having the decryption key to read them. Neither SpiderOak employees nor other prying eyes can read the contents of those files without the encryption key.

The process for encrypting email depends on how email is accessed, read or sent. With web-based email like Gmail, third-party online services such as Mailvelope provide easy to use tutorial videos

on email encryption. Note that encrypted emails that are stored on Gmail will not be searchable using Google's search tools.

If downloading email or accessing email through an application like Thunderbird or Apple Mail, then tools, known as open-source PGP (stands for Pretty Good Privacy), can encrypt and decrypt your emails. To use these tools, you and your email recipient would exchange decryption keys. Then with both using the encryption key, messages could be exchanged. The messages would look like digital gibberish to anyone who might intercept them, but would be readable text to only the two of you.<sup>2</sup>

### What Happens if I Lose the Encryption Key?

Encrypted items would not be able to be read. An encryption key differs from a password in that they are not able to be regenerated or reset if lost. Once a decryption key is lost, the encrypted content that the key unlocks is also lost, an important factor to consider when deciding what to encrypt. Lawyers using encryption should develop and employ a process for safeguarding encryption keys.

*Part 2 of this series will discuss the nuts-and-bolts of encryption with easy-to-follow instructions on how to use popular encryption tools like TrueCrypt, PGP and Mailvelope and other encryption methods within Microsoft Word and WordPerfect processing programs.*

## FOOTNOTES

1. Foreexample, Grover Norquist, a Republican anti-tax enthusiast whose Taxpayer Protection Pledge was signed by 95 percent of all Republican members of Congress prior to the November 2012 election, and Laura Murphy, who is in her second tenure as the director of the American Civil Liberties Union's legislative office in Washington D.C., sounded the alarm with a joint statement on The Hill's Congress Blog, excerpted as follows:

Today, if the police want to come into your house and take your personal letters, they need a warrant. If they want to read those same letters saved on Google or Yahoo, they don't. The Fourth Amendment has eroded online.

Summarizing the issue further is Jim Dempsey, vice president for public policy at the Center for Democracy & Technology (a Washington, D.C. think-tank with the motto "Keeping the Internet Open, Innovative and Free"), who stated, "The problem with the law is so big that this is not about right versus left. What we want is a policy that protects users and their privacy. We need a privacy framework against warrantless wiretapping." For more information about recent attempts at amending the ECPA, read "Unlikely Allies Join in a Push to Require Warrant for Access to Digital Communications," *ABA Journal* (posted April 1, 2013) by Jason Krause, [www.abajournal.com/magazine/article/unlikely\\_allies\\_join\\_in\\_a\\_push\\_to\\_require\\_warrants\\_for\\_access\\_to\\_digital/](http://www.abajournal.com/magazine/article/unlikely_allies_join_in_a_push_to_require_warrants_for_access_to_digital/).

2. For a more thorough review of email systems, IMAP (Internet Message Access Protocol) and POP (Post Office Protocol), read "You've Got Mail — And Lots of It!" by Stephen Stine, [www.americanbar.org/groups/departments\\_offices/legal\\_technology\\_resources/resources/articles/youraba0708.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/articles/youraba0708.html), first appearing in YourABA e-newsletter, a monthly publication of the ABA.

*Louisiana State Bar Association's Practice Management Counsel Shawn L. Holahan is a member of the Publications Board of the American Bar Association's Law Practice Management Section and secretary of the ABA's Practice Management Group of North America. She can be contacted via email at [shawn.holahan@lsba.org](mailto:shawn.holahan@lsba.org).*



*Abid M. Hussain is a solo practitioner in New Orleans. He has practiced corporate law in Texas and Louisiana. He provides legal and corporate counsel, including intellectual property and asset protection, to entrepreneurs, small business owners, real estate investors and musicians. He is a technology consultant to other attorneys. After receiving his law degree from the University of Oregon, he held marketing and web development positions at technology and software companies, including small startups and giants such as Texas Instruments, before practicing as an attorney. (Ste. 102, 643 Magazine St., New Orleans, LA 70130)*



# LAWYERS Assistance

By J.E. (Buddy) Stockwell

## LAP STAFF INTRODUCTIONS

Thanks to a generous increase in funding from the Louisiana State Bar Association (LSBA), the Lawyers Assistance Program, Inc. (LAP) has increased its manpower and services to better meet the ever-increasing demand for its *confidential* services to lawyers, judges and their families. We want everyone to feel at ease when confidentially contacting LAP for assistance. A good place to start is by introducing our staff.

### Buddy Stockwell Executive Director

Buddy Stockwell grew up in the small town of New Roads located on False River in Pointe Coupee Parish. He earned a BS degree in management in 1989 from Louisiana State University and his JD degree in 1993 from LSU Paul M. Hebert Law Center.



J. E. (Buddy)  
Stockwell

He was an enlisted man in the U.S. Navy, serving on a Guided Missile Destroyer. He also is a U.S. Coast Guard licensed captain. Post-law school, Buddy opened a solo practice in Baton Rouge after a few years at other firms. He focused heavily on domestic litigation. In 2004, Buddy sold his Baton Rouge law office, home and vehicles, and he and his wife, Melissa, moved aboard a large catamaran and sailed the seas for six years.

His tenure as LAP's executive director began Jan. 1, 2010. In 2012, he was awarded the LSBA President's Award for his exemplary service. Buddy has earned 425 hours of course credits in the study of addiction, psychology and sociology and more than 9,000 hours of participation in the core functions of substance abuse counseling. He has personally been in recovery from alcoholism for more than 30 years. Always on call, he works non-stop with bar applicants, lawyers, judges and their family members

who need assistance due to impairment issues stemming from alcoholism, addiction and depression problems.

### Leah Rosa Clinical Director

Leah Rosa is a native New Orleanian with an unflagging passion for helping others. She received her BS degree in social counseling in 1998 from Our Lady of Holy Cross College and her master's of health science degree



Leah Rosa

in rehabilitation counseling in 2000 from Louisiana State University. Leah is a board-certified professional counselor, a certified rehabilitation counselor, a nationally certified counselor and a licensed professional counselor, both in Louisiana and Texas.

She began her career at the National Alliance for the Mentally Ill in New Orleans, providing services to clients with severe mental illness. She also has provided clinical case management and counseling to clients and their families. She has worked in educational settings, as well as serving individuals with learning, educational and mental health disabilities. She also maintained a private practice prior to accepting the LAP appointment. Her experience in treating substance use disorders includes serving as an addictions counselor in both adolescent and adult treatment settings. She has served as the program director for an intensive outpatient program for substance-dependent clients.

Leah was hired by LAP in April 2013. She will provide a wide range of expert clinical oversight to LAP's operations and help maintain and update relationships with mental health experts and treatment facilities to ensure LAP utilizes the most effective clinical resources available at any given time.

### Lori Michelli Administrative Assistant

Lori Michelli was raised in Luling, La., graduated from Cabriani High School in New Orleans and attended Holy Cross College. In 1999, she began working as a legal secretary for Watson & Tramonte, a Houston-based commercial litigation defense firm. Her talent was quickly recognized and she was repositioned to the firm Collins & Watson to help the firm prepare for a federal trial in Dallas, Texas. Lori travelled with the litigation team and, during the trial, proved to be a particularly adroit legal secretary. She ultimately returned to New Orleans and, two months into a new position with Adams, Hoefler, Holwadel & Eldrige, Hurricane Katrina hit. The New Orleans office was not accessible so a small skeleton crew, including Lori, kept the firm going from a Lafayette rental house. Eventually, she became the executive administrative assistant for the Vice President of Drilling & Completions for Nexen Petroleum U.S.A. She organized large-scale corporate and team-building events, collaborated with both offsite and onsite team members and supervisors, and was involved in the BP oil spill cleanup.



Lori Michelli

Hired by LAP in Nov. 1, 2012, Lori brings excellent "big firm" professionalism and crisis management experience to LAP. She is a seasoned team player who performs well under pressure and is eager to meet any challenge. LAP is poised for continued growth and is ready to help. If you or someone you know is experiencing trouble, don't wait. Place a confidential call to LAP at (866)354-9334 or send an email to [lap@louisianalap.com](mailto:lap@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](mailto:LAP@louisianalap.com).

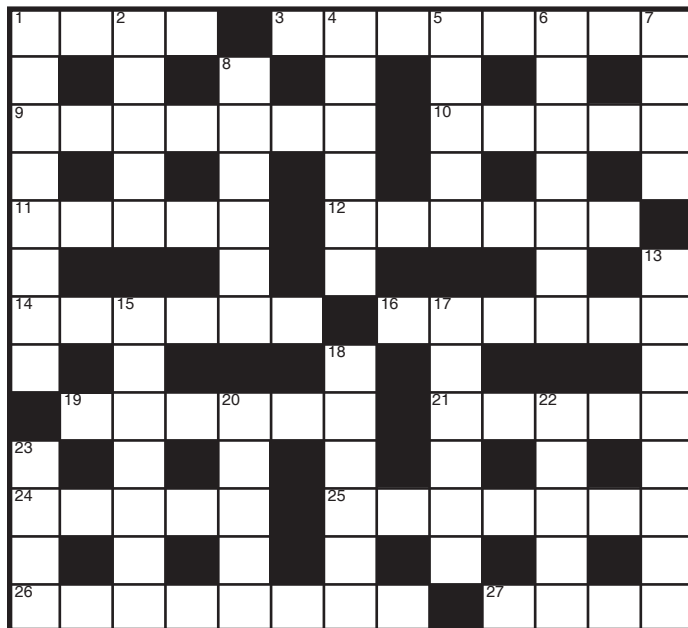
Louisiana Bar Journal Vol. 61, No. 2

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# Crossword PUZZLE

By Hal Odom, Jr.

FIRST MONDAY IN OCTOBER



## ACROSS

- 1 \_\_\_ Roberts, Bush II appointee (4)
- 3 \_\_\_ Thomas, Bush I appointee (8)
- 9 \_\_\_ Breyer, Clinton appointee (7)
- 10 \_\_\_ Kagan, Obama appointee (5)
- 11 Rome is its capital (5)
- 12 \_\_\_ Alito, Bush II appointee (6)
- 14 Tooth coating (6)
- 16 Robinson \_\_\_, noted castaway (6)
- 19 Words of commiseration (2'1, 3)
- 21 Ruth \_\_\_ Ginsburg, Clinton appointee (5)
- 24 "\_\_\_ the Barbarian," 1982 Arnold Schwarzenegger movie (5)
- 25 \_\_\_ Kennedy, Reagan appointee (7)
- 26 Temporary (and often ineffectual) remedies (4-4)
- 27 Remain undecided, as a verdict (4)

## DOWN

- 1 What nine of the people in the puzzle are (8)
- 2 Laughing animal (5)
- 4 Most isolated (colloquial) (6)
- 5 Old term for a runny nose (5)
- 6 People with (usually psychological) deprivations (7)
- 7 Common bibliographic abbr. (4)
- 8 "\_\_\_ Coming To Take Me Away," 1966 novelty song (4'2)
- 13 Covered, as expenses (8)
- 15 \_\_\_ Scalia, Reagan appointee (7)
- 17 Adspeak for a postpurchase refund (6)
- 18 Needed for entry into most secure offices (1, 1, 4)
- 20 \_\_\_ Sotomayor, Obama appointee (5)
- 22 Kind of bee or unmanned plane (5)
- 23 One crossing a picket line (4)

Answers on page 166.

## Alcohol and Drug Abuse Hotline

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

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

Alexandria	Steven Cook.....(318)448-0082	Lake Charles	Thomas M. Bergstedt.....(337)558-5032
Baton Rouge	Steven Adams.....(225)753-1365 (225)924-1510	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
Houma	Bill Leary.....(985)868-4826		Dian Tooley.....(504)861-5682 (504)831-1838
Lafayette	Alfred "Smitty" Landry.....(337)364-5408, (337)364-7626	Shreveport	Michelle AndrePont.....(318)347-8532
	Thomas E. Guilbeau.....(337)232-7240		Nancy Carol Snow.....(318)272-7547
	James Lambert.....(337)233-8695 (337)235-1825		William Kendig, Jr. ....(318)222-2772 (318)572-8260 (cell)
			Steve Thomas.....(318)872-6250

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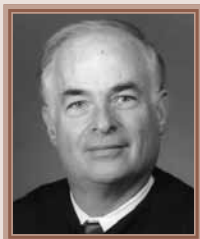
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# From the COURT

By Maggie Trahan Simar

VIEWS FROM A FAMILY COURT HEARING OFFICER

While having dinner with some girlfriends recently, one of my gal pals asked, “What is the funniest case you have ever heard?” I began making a mental list of all the funny and not-so-funny things I have heard in Family Court. I don’t think for a second that my experiences are unique; however, my experiences in a rural parish are certainly worlds apart from another hearing officer in the “big city.” Nevertheless, we all share similar experiences.

Although the list below is not exhaustive, it does offer some tips and advice from my nearly 10 years of serving as a hearing officer for the 16th Judicial District. These tips may (or may not) help you when preparing your client for a Hearing Officer

conference. Take these tips for what they are worth and feel free to add/delete for your preparation.

► It is not OK to push, point to or yell at the hearing officer (yes, all happened last month). S/he especially doesn’t like being cursed at or told she is any sort of farm animal. Try to keep assaults and batteries to a minimum in Family Court. Although not elected, we are court-appointed officials and deserve a semblance of client control and professionalism. Ask your clients to give us that respect.

► Although most hearing officers love their jobs and generally enjoy visiting with people outside of court, I personally do not like being cornered at the ice cream shop and told what a lousy person I am (language edited) and pushed into the wall in front of my children to the point that the police have to be called. I am not fond of batteries, particularly in front of children.

► It is not OK to admit to the hearing officer, or any other officer of the court, that you are slurring your speech because you “smoked meth on the way to the hearing” because you were “nervous” (direct quote). It is generally not wise to admit illegal drug use.

► It is not OK to admit that you “hustled \$300” (in \$1 and \$5 bills) to pay your child support in order not to go to jail. Even if you do have to “hustle” the money, please don’t tell the court that you sold illegal drugs to get it.

► It is not OK to tell your lawyer, in open court, that he is a “low-down, dirty bastard” for agreeing to continue a Protective Order, when the other attorney requested same due to a car accident he was in the night before which resulted in an extended ICU stay. Encourage your clients to give the court, the other party and the other attorneys the respect they are due.

► It is not OK to admit in the Hearing Officer conference that you did, indeed, get arrested two years ago for the attempted murder of your 2-month-old, without first letting your attorney know that fact. This information generally puts a damper on your request for sole custody.

► It is not OK to hide any sort of drug, assault, battery, murder, rape or other violent conviction from the court. I have been privy to many outright denials of these convictions. It is not difficult to find this information — and I generally do find it — so let the court know prior to having to ask for the information from external sources.

► One that continues to rear its ugly head is to file your pleading, alleging the most vitriolic hate speech imaginable against the parenting ability of the other party, and then deciding at the Hearing Officer conference that you want to dismiss your case because the other party is an accomplished lover — then going into great detail of the past evenings’ dalliance. A sexual play-by-play is not necessary to prove your case. We do NOT want to hear it.

Yes, I do love my job and can sleep well at night knowing I am helping the families in the jurisdiction. I also am very blessed to have eight wonderful judges who support my efforts toward a speedy resolution with mediation tactics. Help us help you by arriving knowledgeable, prepared and ready to discuss methods by which families can reach amicable resolutions to the most important litigation they likely will ever experience.

Maggie Trahan Simar is a hearing officer for the 16th Judicial District Family Court in St. Martin Parish. (415 S. Main St., St. Martinville, LA 70582)



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# FOCUS on Professionalism

By Bobby J. Delise

BERN, DAVIDSON AND SPIKE

Interpersonal relationships may be more important in the legal profession than in any other profession or trade. As members of the Bench and Bar, we have the honor and privilege of interacting with all types of people. Sometimes, we may be blessed with making friends for a lifetime — friends who change us in meaningful and lasting ways.

Over the past year, three such friends of mine have passed away — all members of our Bench or Bar. I've been allowed the privilege of celebrating their lives.

John D. Bernhardt, Debbie Davidson Kingrea and Joseph Giarrusso, Jr. were known as “Bern, Davidson and Spike” to all who knew and loved them.

As freshmen at Loyola Law School in fall 1976, John Bernhardt and I became fast friends, in part because of our common experiences at, and our common love for, our *alma mater*, LSU, and, more significantly, because of our mutual appreciation to Loyola for affording us an opportunity to join the legal profession.

Bern's experiences at Loyola became stories of legend. His guidance and insight into social interaction inspired the student body, faculty and even the administration to organize the school's only Mardi Gras krewes, the Honorary Society of Simple Bastards. This accomplishment rose to greater importance during our senior year in 1979 when the New Orleans Police Department's strike caused New Orleans to cancel Mardi Gras. Undaunted, Bern rallied his krewes to march on the Friday before Mardi Gras, distinguishing the “HSSB” as the only formal krewes to hold its parade in the city that year — a feat that would probably have caused great concern in today's climate had it become necessary for the law students of Loyola's Class of 1979 to pass a character-and-fitness review in anticipation of taking the Bar exam.

Bern became a member of the Louisiana State Bar Association in October 1979. Taking his knowledge and love of the law to the



Members of “Bern’s Brigade” on race day, from left, Louisiana State Bar Association member Carolyn I. Dietzen, Christina Delise, John D. “Bern” Bernhardt and Bobby J. Delise.

oil patch, he opened an energy company, building it into a successful enterprise. He became politically involved in the State Democratic Party. He served on the Louisiana Mineral Board, the Acadiana Center of the Arts and the Louisiana Public Facilities Authority. Throughout his life, he was selfless with his time and treasure. Whenever a friend, someone negotiating an oil deal or a stranger needed an uplifting story or reassurance, Bern was always there.

Also in Loyola's Class of 1979 was a wonderful young woman from St. Louis — Debbie Davidson. At that time, Davidson, as a female law student, was viewed by some as a “curiosity.” She was a woman in a “man's world,” and she was a Jewish woman attending law school at a Jesuit institution. Undeterred, she flourished in her studies and, after three years at Loyola, she became “one of us.”

After graduation, she worked in her father's St. Louis law firm. She returned to Louisiana and married another classmate, Rick Kingrea. After working as marketing director at Adams and Reese, Davidson and



Debbie Davidson Kingrea

Rick moved to Fairhope, Ala. They raised their children, entered mediation practices and became model citizens serving community organizations. In Fairhope, Davidson pursued her passion and love of art and her mission of literacy improvement. She served as president of the Eastern Shore Literacy Council and Eastern Shore Arts Center. When someone needed help, Davidson offered her hand, heart and soul.

My friend, Joseph (Spike) Giarrusso, Jr., was in public service his whole life. The son of legendary Chief of Police and City Council leader Joe Giarrusso, Spike served as criminal magistrate for Orleans Parish Criminal Court before entering private practice. He transitioned to MAPS and became one of the most respected mediators in Louisiana.

In 1985, Spike graduated with a master of pastoral studies degree and earned a Loyola Pastoral Life Center-specialized certificate in Christian spirituality. He brought his many years of experience from the Bench and Bar to teach those in the legal and spiritual communities.

I was honored to meet Spike as we served Loyola Law School and through our involvement on the Louisiana State Bar Association's Committee on the Profession.

Anyone who knew Spike's energy and

passion for his family, faith and profession can attest that he had more “best friends” than anyone. Within moments of meeting Spike, he became your dear friend. He always put those around him at ease, a rare talent much needed in our profession.



Joseph (Spike) Giarrusso, Jr.

In spring 2011, Bern learned that the cancer he thought was defeated five years earlier returned. He fought back. He requested all the common treatment protocols, but, as the fight became more challenging, he demanded newer, less conventional options. He fought his fight without complaint or self-pity. He pursued every avenue to prolong life between countless rounds of golf. Loving his profession, golf and LSU almost as much as his lovely daughter, Katie, Bern was undeterred by his illness and therapy. He guided and inspired Katie to enroll in law school.

So inspirational was Bern’s spirit and dedication to beat cancer, his friends decided to run the New Orleans Rock ‘n Roll marathon in his honor. The “logic” was that if Bern could fight to beat cancer, it was only fitting that we would fight to get ourselves healthy to show him that his commitment to life was meaningful to the quality of our lives.

Seizing on the notion to celebrate life as a testament to Bern, Davidson agreed to run the half-marathon and to chair the party committee established both to honor Bern and to revive those who finished the 26.2-mile event. She contacted Bern’s friends, organized the festivities and began training for the run. Just weeks before the marathon, though, she learned that a troublesome leg pain wasn’t a mere inconvenience but rather symptoms of lymphoma. She began treatment but inspired all of us by showing up race day to give the marathoners and Bern support, joy and love.

For months, Bern and Davidson fought with every ounce of strength remaining in their hearts and souls. During their treatments, they never complained. They reminded everyone to cherish life and to keep their loved ones close by blogging, texting and emailing touching thoughts about the gift of life and their love of friends, family and faith.

As many sadly remember, on Sept. 12, 2012, Spike died at his own hands. His death was a tragedy. At his services, the church was filled with countless members of the Bench, Bar and political community, all saddened that his humor, compassion and spirit were gone from our world. No one could understand why Spike’s death occurred. Suicide within our profession, though, is an issue that must be discussed. Many at his funeral recalled names of other attorneys who took their own lives over the past few years.

Suicide and a lessening in the quality of life among members of our profession are topics finally being discussed by the legal community, most recently through *Journal* articles by Lawyers Assistance Program Executive Director J.E. (Buddy) Stockwell.

Spike’s son, attorney Joseph I. Giarrusso III, passionately spoke of his father’s passing in the eulogy. While he said no one would ever know the true reason for his father’s actions, he emphasized that we should be more mindful of those around us in their day-to-day lives: “If my dad’s death can teach us anything, it is the need for heightened sensitivity to mental health issues.”

Joseph’s words highlight the lesson that our society overlooks and ignores the pain and troubles of those suffering from depression and other psychiatric challenges. His words compel us to strive to make the commitment to help those suffering in silence. Even in Spike’s death, he continues to teach us in a meaningful way.

On Nov. 3, 2012, Deborah Davidson Kingrea, born May 2, 1952, passed away.

On Feb. 8, 2013, John D. Bernhardt, born Jan. 24, 1953, passed away.

Three wonderful members of our Bar gone all at the young age of 60.

Readers may wonder why this memorial is being published in the “Focus on Professionalism” section. I served as chair and co-chair of the Committee on the Profession when it carried its original name of the “Professionalism and *Quality of Life* Committee.” One of the missions of the committee was to emphasize and recognize how the systemic stresses and challenges of our profession affect the quality of our lives. Much has been written recently about how the tensions, pressures and strains of our profession have worn us down, particularly stressors such as commercial influences,

Rambo-style litigation tactics and incivility. Thankfully, our Bar Association is taking a close look at the quality of our lives.

The legacies of Bern, Davidson and Spike are to enjoy life to the fullest. They all shared their energies with their profession, friends and families. They traveled at every opportunity. They worked tirelessly for those less fortunate. They were kind, compassionate, caring, honest and selfless. They exemplified what it is to be “professional” and they should be viewed as role models to all members of the Bench and Bar.

So... the next time you are asked for an informal extension of time to respond to discovery or for a legitimate continuance on a trial or hearing, think about being professional.

The next time you are asked to work *pro bono* for a battered spouse or a neglected child, think about being professional.

The next time you are asked to promptly return your clients’ calls, to provide a paid day-off from the grind for your staff or associates, think about being professional.

The next time you are asked to miss a firm’s or partners’ non-emergency meeting to attend your child’s soccer game or ballet recital or asked by your loved ones “to put that file down and give us some attention,” think about being professional.

If you’re confused about what to do, simply call the author of this article and I’ll tell you what Bern, Davidson or Spike would do. They’d like that.

*Bobby J. Delise is a founding partner of Delise & Hall in New Orleans. He also is admitted to the Colorado and Texas bars. He is a past chair of the Louisiana State Bar Association’s Committee on the Profession and a member of the Rules of Professional Conduct Committee. He received the LSBA President’s Award in 2006. (7924 Maple St., New Orleans, LA 70118)*



Bobby J. Delise completing the marathon.



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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 4, 2013.

### Decisions

**William B. Baggett, Jr.**, Lake Charles, (2013-B-0821) **Suspended for one year and one day, fully deferred, and placed on probation for five years** ordered by the court as consent discipline on May 3, 2013. JUDGMENT FINAL and EFFECTIVE on May 3, 2013. *Gist:* Arrested and charged with driving under the influence of alcohol on three separate occasions.

**Kenneth J. Beck**, New Orleans, (2013-B-0265) **Suspended for one year, with all but three months deferred**, ordered by the court on March 28, 2013. JUDGMENT FINAL and EFFECTIVE on April 11, 2013. *Gist:* Prohibited *ex parte* communication with the court; failure to act with reasonable diligence and promptness in the representation of a client; failure to communicate; knowingly disobeying an obligation under the rules of a tribunal; and violating or attempting to violate the Rules of Professional Conduct.

**Charles G. Blaize**, Houma, (2013-OB-0745) **Transfer to disability/inactive status** ordered by the court on April 17, 2013. JUDGMENT FINAL and EFFECTIVE on April 17, 2013.

**Chris L. Bowman**, Jonesboro, (2012-B-2410) **Suspended for six months, with all but 30 days deferred, subject to the completion of a two-year period of unsupervised probation**, ordered by the court on March 19, 2013. JUDGMENT FINAL and EFFECTIVE on April 2, 2013. *Gist:* Commission of a criminal act (domestic abuse battery) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

**Eunice Charles**, Gretna, (2013-B-0352) **Suspended for three years and ordered to return files to clients and refund unearned fees** ordered by the court on April 19, 2013. JUDGMENT FINAL and EFFECTIVE on May 3, 2013. *Gist:* Neglected her clients' legal matters; failed to communicate with her clients; failed to return unearned fees; failed to return a client's file; and forged

her client's signature on an affidavit filed with the court.

**Melanie Smith Daley**, Lake Charles, (2013-B-0846) **Suspended for two years, retroactive to her interim suspension of Sept. 28, 2011**, ordered by the court as consent discipline on May 17, 2013. JUDGMENT FINAL and EFFECTIVE on May 17, 2013. *Gist:* Neglect of legal matters; failure to communicate with

Continued next page

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clients; failure to refund unearned fees; and failure to return client files.

**Frank J. Ferrara, Jr.**, Walker, (2013-B-0722) **Suspended for one year and one day** ordered by the court as consent discipline on April 26, 2013. JUDGMENT FINAL and EFFECTIVE on April 26, 2013. *Gist:* Engage in conduct prejudicial to the administration of justice; offer an inducement to a witness that is prohibited by law; and violate or attempt to violate the Rules of Professional Conduct.

**Frank Fradella**, Gretna, (2013-B-0461) **Suspended for two years** ordered by the court on April 26, 2013. JUDGMENT FINAL and EFFECTIVE on May 10, 2013. *Gist:* Failed to deposit fee and expense advancements into his client trust; and failed to return the unearned and unused portions to his client, even after a dispute arose.

**Derek Damond Jones**, Baton Rouge, (2013-B-0541) **Suspension of one year**

**and one day, with all but 60 days deferred, followed by a two-year period of probation**, ordered by the court as consent discipline on April 5, 2013. JUDGMENT FINAL and EFFECTIVE on April 5, 2013. *Gist:* Practiced law while ineligible to do so.

**Steven Boyd Longo**, New Orleans, (2013-B-0482) **Suspended for 18 months, retroactive to Oct. 14, 2011, the date of his interim suspension**, ordered by the court as consent discipline on April 1, 2013. JUDGMENT FINAL and EFFECTIVE on April 1, 2013. *Gist:* Convicted of driving under the influence of alcohol and a domestic violence charge; and commingled client funds with personal funds in his client trust account.

**Christopher D. Matchett**, New Orleans, (2013-OB-0638) **Reinstated to the practice of law with conditions** ordered by the court on April 19, 2013. JUDGMENT FINAL and EFFECTIVE on April 19, 2013.

**Mark A. Moeller**, Metairie, (2012-B-2460) **Suspended for one year and one day, with all but 90 days deferred, subject to two years' unsupervised probation following the active portion of his suspension**, ordered by the court on March 19, 2013. JUDGMENT FINAL and EFFECTIVE on April 2, 2013. *Gist:* Failure to comply with the minimum requirements for continuing legal education; failure to pay Bar dues and disciplinary assessment; engaging in the practice of law while ineligible; and violating the Rules of Professional Conduct.

**Robert B. Purser**, Opelousas, (2013-B-0875) **Interim suspension** ordered by the court on April 24, 2013.

**Gregory Rubin**, New Orleans, (2013-B-0845) **Public reprimand** ordered by the court as consent discipline on May 17, 2013. JUDGMENT FINAL and EFFECTIVE on May 17, 2013. *Gist:* Negligently practiced law while ineligible to do so.

**E. Lynn Singleton**, Greensburg, (2013-OB-0876) **Interim disability**

Continued next page

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**Discipline** continued from page 131

**inactive status** ordered by the court on May 1, 2013. JUDGMENT FINAL and EFFECTIVE on May 1, 2013.

**Lisa Jeanenne Thomas**, Baton Rouge, (2013-B-0311) **Suspended, with conditions, for two years which shall run concurrently to the suspension imposed in In re: Thomas, 11-2012 (La. 11/18/11), 74 So.3d 695**, ordered by the court on April 12, 2013. JUDGMENT FINAL and EFFECTIVE on April 26, 2013. *Gist:* Multiple incidences of unauthorized practice of law resulting from continuing to practice while ineligible; failure to have client trust account; failure to deposit advanced costs in trust account; failure to account; failure to refund unearned fees and costs; and failure to communicate and keep client reasonably informed.

**Jerome M. Volk, Jr.**, Kenner, (2013-B-0309) **Suspended by consent for three months, deferred**, ordered by the court on April 1, 2013. JUDGMENT FINAL

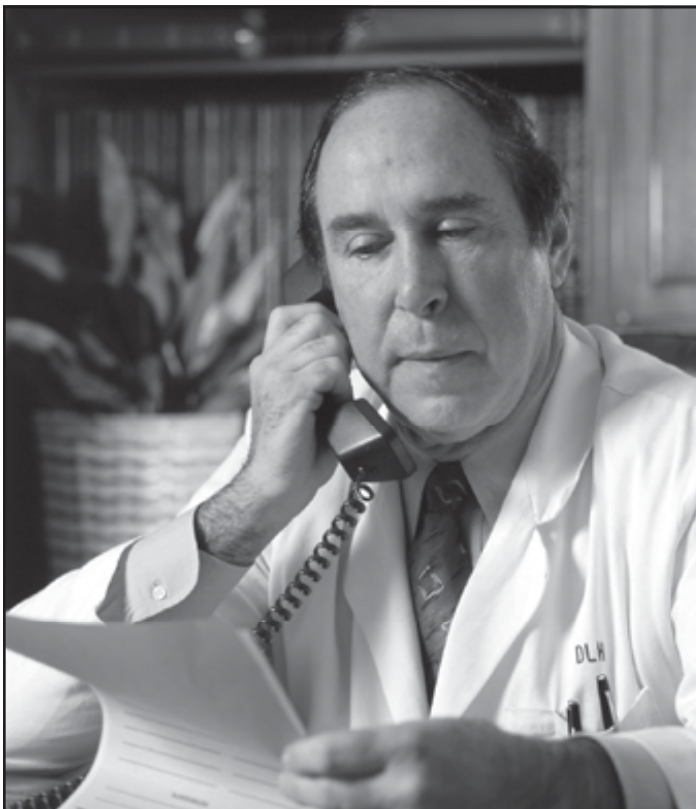
and EFFECTIVE on April 1, 2013. *Gist:* A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

**Quenton I. White**, Nashville, TN, (2013-B-0439) **Public reprimand** ordered by the court as reciprocal discipline on April 19, 2013, for discipline imposed by Tennessee. JUDGMENT FINAL and EFFECTIVE on May 3, 2013. *Gist:* Practicing law while ineligible to do so.

**Thomas G. Wilkinson**, Gretna, (2013-B-0822) **Suspended for three years, retroactive to his interim suspension of Oct. 24, 2012**, ordered by the court as consent discipline on May 3, 2013. JUDGMENT FINAL and EFFECTIVE on May 3, 2013. *Gist:* Prohibited division of fees between lawyers not within the same firm; the commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

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### Orleans Parish CDC Establishes New Family Mediation Program

The Orleans Parish Civil District Court has created a new family mediation program for child custody and visitation disputes. Under the program, contested

child custody and visitation disputes will be ordered to qualified family mediators listed on the court-referred roster of mediators. All contested child custody and visitation cases are eligible for mediation, except for certain cases that are not appropriate for mediation such as those where there are allegations of domestic violence. A reduced fee schedule for mediators is being used by the court to assist litigants who cannot afford the full mediation fees. The court also is establishing lists of professionals to assist with the processing of family cases, including family mediators, custody evaluators, attorneys to prepare post-mediation consent judgments and parenting coordinators. For more informa-

tion about the program, contact Mark A. Myers at (504)564-7014 or myers24ma@aol.com; or Stacey Williams Marcel at (504)581-9322 or aiswm@aol.com.

### 22nd Judicial District Court Sends Family Court Cases to Mediation

Hearing officers and social workers have been hired by the judges of the 22nd Judicial District Court to process preliminary family court matters in Washington and St. Tammany parishes. The hearing officers, who are licensed attorneys with experience in family court matters, hear



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family court matters including divorce, child custody and support. Licensed social workers provide mediation and parental coordination services. After the hearings and conferences, hearing officers and social workers make recommendations to the Family Court judges. Matters may be resolved without the necessity of an appearance before a judge or may proceed to hearing or trial before a Family Court judge. [www.22ndjdc.org/Family/Juvenile-Court.aspx](http://www.22ndjdc.org/Family/Juvenile-Court.aspx) (visited June 9, 2013).

The court also has developed a list of private mediators interested in mediating cases ordered by the hearing officers. For more information about the program, contact Mark A. Myers at (504)564-7014 or [myers24ma@aol.com](mailto:myers24ma@aol.com).

### Arbitration Agreement in Sales Contract Properly Incorporated by Reference into Promissory Note

*Aeneas Williams Imports, L.L.C. v. Carter*, 47,989, (La. App. 2 Cir. 12/13/12), \_\_\_ So.3d \_\_\_, 2012 WL 6621328.

The action was a suit for default on payment of two promissory notes. The promissory notes did not contain any language regarding mediation or arbitration. However, a previously executed sales agreement between the parties, and the basis for execution of the promissory notes, provided that any disputes arising from the sales agreement would be resolved by mediation, and, thereafter, if mediation was unsuccessful, binding arbitration. The maker of the notes filed an exception of lack of subject matter jurisdiction, arguing that the incorporated arbitration clause rendered the court without jurisdiction. The exception was

overruled by the district court. The court of appeal granted the writ and held that the arbitration clause found in the sales contract should be incorporated into the promissory notes by reference. As a result, the district court lacked jurisdiction, and the matter should have been referred to arbitration.

### Subcontractor's Consent to Arbitrate Vitiating Error

*French's Welding & Maint. Serv., L.L.C. v. Harris Builders, L.L.C.*, 12-0200 (La. App. 4 Cir. 12/12/12), 106 So.3d 716.

A subcontractor on a public-works contract brought an action against the contractor seeking damages for delayed payments for work on a project for renovation of a state wildlife-management area. The district court granted a permanent injunction prohibiting arbitration under the subcontract because the arbitration agreement signed by the subcontractor was "null, void, and unenforceable" as the contractor never signed the contract containing the arbitration agreement and the subcontractor's consent to arbitrate was vitiated by error when the contractor falsely represented that, under the state's public-works contract, the arbitration clause could not be deleted. Finding that not all arbitration provisions are valid under state law, the court of appeal affirmed the judgment of the district court and stated that one of the conditions of a valid contract is the consent of both parties and that consent can be vitiated by error. Because the subcontractor signed the contract in error and without valid

consent, the court of appeal found that "the alleged secreting of the State's contract" under the circumstances of the case could result in irreparable harm. Consequently, the trial court did not commit manifest error in its factual findings that led to the issuance of a permanent injunction.

### Failure to File Medical Malpractice Claim Within One Year Results in Dismissal

*Howard v. Mamou Health Resources*, 12-0820 (La. App. 3 Cir. 3/6/13), \_\_\_ So.3d \_\_\_, 2013 WL 811676, writ denied, 13-0614 (La. 4/19/13), 112 So.3d 227.

Plaintiff filed a claim against several defendants alleging that an employee of a health-care center attacked and beat her on her face, head and entire body, causing injuries. After plaintiff settled her claim with all initial defendants, she filed a supplemental petition naming the Patient Compensation Fund (PCF) as a defendant. The district court sustained the PCF's exceptions of prescription and no cause of action because plaintiff did not file her claim under the Medical Malpractice Act within one year from the date of the alleged malpractice as required by La. R.S. 40:1299.47. The court of appeal affirmed.

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## Supreme Court Defines “Defalcation” in Section 523 Discharges

*Bullock v. BankChampaign*, 133 S.Ct. 1754 (2013).

Randy Curtis Bullock was appointed as trustee over a trust created by his father for the benefit of the five Bullock children. The trust contained a single life insurance policy on the father’s life and permitted Bullock to borrow funds from the life insurer against the policy’s value. Bullock, at his father’s request, borrowed funds from the trust to repay the father’s business debt, to buy a mill and to buy real property. Bullock’s siblings sued him in state court alleging breach of fiduciary duty as trustee.

The state court determined that while

Bullock had no malicious motive in borrowing from the trust, he nonetheless engaged in self-dealing. The state court imposed constructive trusts over Bullock’s interest in the mill and the original trust to secure his judgment debt and appointed BankChampaign as trustee of all of the trusts. After Bullock unsuccessfully attempted to liquidate his assets to pay the judgment debt, he filed for bankruptcy and sought to have the judgment debt discharged. BankChampaign opposed the discharge and the bankruptcy court ruled that the judgment debt fell under the exception in 11 U.S.C. § 523(a)(4)—“a debt for fraud or defalcation while acting in a fiduciary capacity . . . .” The district court and 11th Circuit Court of Appeals affirmed.

As lower courts, scholars and judges have long disagreed over whether the term “defalcation” has a scienter requirement, the United States Supreme Court granted certiorari to settle the dispute. The Supreme Court turned to its prior interpretation of “fraud” under what is now Section 523. In *Neal v. Clark*, 95 U.S. 704 (1878), Judge Harlan stated that “fraud,” as referred to in Section 523, involved a moral turpitude

or intentional wrong. In considering this interpretation, the Supreme Court similarly determined that the term “defalcation” under Section 523 requires an intentional wrong or reckless conduct “of the kind that the criminal law often treats as the equivalent” such as in the Model Penal Code. *Id.* at 1759. The court stated:

Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary “consciously disregards” (or is willfully blind to) “a substantial and unjustifiable risk” that his conduct will turn out to violate a fiduciary duty. . . . That risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the circumstances known to him, its disregard involves a *gross deviation* from the standard of conduct that a law-abiding person would observe in the actor’s situation.

*Id.* at 1759-60. The Supreme Court arrived at this definition of defalcation by

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following *Neal*'s notion that the statutory context strongly favors such an interpretation. In *Neal*, the Supreme Court looked to the definition of embezzlement, a word describing conduct similar to fraud, and found that embezzlement requires a showing of wrongful intent. Therefore, the court concluded that fraud must require such intent as well. The Supreme Court reasoned that as words similar to defalcation, such as larceny and fraud, require a showing of intent, so to should the definition of defalcation itself.

The court rationalized that its interpretation of defalcation was proper as it does not make the word identical, and therefore superfluous, to its statutory neighbors of embezzlement, larceny and fraud. Moreover, the court found its interpretation consistent with the principle that "exceptions to discharge should be confined to those plainly expressed." *Id.* at 1760. Also, policy considerations support this interpretation as the presence of fault warrants the preservation of debt, favoring a broader exception to those whom the scienter requirement will benefit most — a nonprofessional trustee. As the imposition of this interpretation has yet to raise difficulties in those courts where utilized, and in an effort to create uniform interpretations of federal law, the court vacated the judgment of the 11th Circuit and remanded the case to permit the court to apply the defalcation standard imposing a scienter requirement.

## Bankruptcy Court Credit Bidding, Debt Cancellation

*In re Spillman Development Group, Ltd.*, 710 F.3d 299 (5 Cir. 2013).

The debtor, Spillman Development Group, Ltd., owed Fire Eagle, L.L.C., \$9.3 million in secured loans that were guaranteed by Spillman's principals (the guarantors) and secured by a certificate of deposit. At a Section 363 auction of Spillman's assets, Fire Eagle successfully credit bid \$9.3 million under Section 363(k). Fire Eagle's bid was accepted, and the bankruptcy court held the credit bid paid the loan debt in full. Therefore, Fire Eagle held no deficiency claim against Spillman's estate. The guarantors filed an adversary action in the bankruptcy court seeking a declaratory judgment that the guarantors were released from their obligations, and the certificate of deposit should be released. The bankruptcy court granted summary judgment in favor of the guarantors, and the district court affirmed.

On appeal, the 5th Circuit affirmed the decisions of the lower courts finding that Fire Eagle's credit bid had the effect of retiring the loan debt and that Fire Eagle could not collect against the guarantors. Fire Eagle asserted that the credit bid did not eliminate the right to recover against the guarantors as credit bidding a proof of claim in a bankruptcy auction affects only the claim in bankruptcy and not any underlying debt.

The 5th Circuit reasoned that if Fire Eagle had been outbid at the auction, or declined

to credit bid, the cash proceeds from the sale would have been applied against the loan debt. If the loan debt were paid in full with these cash proceeds, it would be absurd to allow Fire Eagle to separately proceed against the guarantors because Fire Eagle would then be recovering in excess of the face value of the loan debt as the guaranties terminated upon full payment of the loan debt. Since Section 363(k) provides that credit bidders "may offset [their] claim against the purchase price of any property that is the subject of the Section 363(b) sale," it explicitly contemplates mixed bids of cash and claims and implicitly presupposes equivalency between cash and the value of the credit bid. The 5th Circuit agreed with the lower courts and found that Fire Eagle's credit bid of \$9.3 million constituted a payment-in-full of the loan debt, just as if Spillman's assets had been sold for cash.

The 5th Circuit also declined to hold that an assessment of the fair-market value of the assets Fire Eagle had purchased was called for or would have been proper because while the Bankruptcy Code provides for such valuations in other contexts, its failure to do so in Section 363(b) is fatal to Fire Eagle's case.

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## U.S. 5th Circuit Affirms Dismissal of Climate Change Lawsuit

The United States 5th Circuit Court of Appeals, in *Comer v. Murphy Oil*, \_\_\_ F.3d \_\_\_ (5 Cir. 2013), 2013 WL 1975849, affirmed the dismissal of an action brought by Mississippi Gulf Coast property owners against multiple defendants, including energy, fossil fuel and chemical companies. The plaintiffs alleged that defendants’ greenhouse-gas emissions increased global warming, led to development of conditions that formed hurricanes, resulted in higher insurance premiums and caused sea level to rise. The 5th Circuit affirmed the district court’s dismissal on the grounds that the plaintiffs’ claims were barred by the doctrine of res judicata. The procedural history of the case is significant in understanding this ruling.

The plaintiffs first filed suit in 2005 in the Southern District of Mississippi. *Comer v. Murphy Oil USA, Inc.*, No. 05-436 (S.D. Miss. Aug. 30, 2007); *rev’d*, 585 F.3d 855 (5 Cir. 2009), *vacated on grant of reh’g en banc*, 598 F.3d 208 (5 Cir. 2010), *appeal dismissed*, No. 07-60756, 2010 WL 2136658 (5 Cir. May 28, 2010), *mandamus denied*, No. 10-294 (U.S. Jan. 10, 2011) (*Comer I*). The district court dismissed the case on the ground that the case was nonjusticiable due to a lack of standing. The 5th Circuit reversed, ruling that the plaintiffs had standing to assert the public and private nuisance, trespass and negligence claims. The 5th Circuit relied on the Supreme Court’s decision in *Massachusetts v. EPA*, 127 S.Ct. 1438 (2007), and found that it is accepted law that greenhouse-gas emissions contribute to global warming, which in turn worsens weather conditions such as hurricanes. Thus, the plaintiffs’ injuries were “fairly traceable” to the defendants’ emissions

of greenhouse gases. The 5th Circuit also found that the state law claims did not present nonjusticiable political questions.

The defendants filed a motion for rehearing en banc. The 5th Circuit granted the motion and vacated the panel opinion. Before the en banc court reheard the case, an additional recusal left the court with no quorum. The court dismissed the appeal. The plaintiffs unsuccessfully sought mandamus from the Supreme Court, leaving in place the *Comer I* dismissal.

The plaintiffs then refiled their lawsuit. *Comer v. Murphy Oil USA, Inc.*, 839 F.Supp.2d 849 (S.D. Miss. 2012) (*Comer II*). *Comer II* focused on state law causes of action ostensibly in an attempt to avoid the question of whether federal common law applies in the global warming context. The plaintiffs also added strict liability and conspiracy claims and sought a declaratory judgment that federal law does not preempt state law claims.

In *Comer II*, the district court held that the litigation was barred by the doctrines of res judicata and collateral estoppel and

found that the new issues raised by the plaintiffs did not change that result. “Out of an abundance of caution,” the district court reviewed the claims and provided supporting reasons that the case failed. The district court relied heavily on *AEP v. Connecticut*, 131 S.Ct. 2527 (2011), regarding standing, political question and preemption. In *AEP*, the Supreme Court ruled that corporations cannot be sued for their greenhouse-gas emissions under the federal common law of nuisance, largely because the Clean Air Act (CAA) delegates the regulation and management of those emissions entirely to the EPA; this delegation supercedes any rights under federal common law.

Reiterating the decision in *Comer I* that the plaintiffs failed to satisfy Article III standing requirements, the district court relied on language in *AEP* that the Supreme Court “had not yet determined whether private citizens . . . could file lawsuits seeking to abate out-of-state pollution” and held that plaintiffs, as private citizens, did not have standing.

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The court embraced *AEP*'s political question discussion that if the "plaintiffs [are] dissatisfied with the outcome of the EPA's rulemaking, they should seek review from the Court of Appeals" on direct review of agency action and not judicial intervention in the first instance.

The district court also relied on the federal displacement reasoning found in *AEP* and concluded that the plaintiffs' "entire lawsuit [was] displaced by the Clean Air Act," in the same manner as the CAA displaces federal nuisance claims. The district court provided additional reasons, including the application of the Mississippi statute of limitations, to support its position that *Comer II* was not substantively or procedurally viable.

The 5th Circuit did not address any of the substantive reasoning posited by the district court. Instead, the 5th Circuit upheld the dismissal of *Comer II* strictly on the basis of res judicata. The 5th Circuit expressly rejected appellants' argument for an equitable exception to the application of res judicata on the basis that they did not receive meaningful appellate review in *Comer I*. The court found that such an exception is contrary to "the well-known rule that a federal court may not abrogate principles of res judicata out of equitable concerns." The 5th Circuit held that:

[i]n sum, the district court correctly held that true res judicata bars Appellants' claims because the district court's judgment in *Comer I* was final and on the merits. Because true res judicata compels good repose and bars Appellants' claims, we do not need to address whether collateral estoppel applies.

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## Community Property

**Daigle v. Merrill Lynch**, 12-1016 (La. App. 3 Cir. 2/6/13), 107 So.3d 901.

Because the parties' partition of community property judgment in the 16th Judicial District Court did not provide for legal interest on each yearly payment Mr. Daigle was to make to Ms. Daigle, the 15th Judicial District Court in her attempt to enforce the judgment could not modify it to award her interest on each payment from the date it was due.

**Simmons v. Simmons**, 47,416, (La. App. 2 Cir. 10/31/12), 109 So.3d 10, *amended on rehearing*, (1/17/13).

The trial court erred in awarding rent at the partition trial because it was not awarded or reserved when use and occupancy was granted. The trial court's awarding Ms. Simmons 5/12ths of the parties' one-quarter interest in a piece of immovable property was equitable, given the difficulty of partitioning the immovable property they owned and their debts, and also considering the cash, securities and mineral interests that she received.

## Custody

**McEachern v. Langley**, 47,872 (La. App. 2 Cir. 1/16/13), 109 So.3d 938.

Although Mr. Langley did not file responsive pleadings to the petition for change of custody of Ms. McEachern, the maternal grandmother who had visitation, the pleadings were expanded at trial, and the trial court did not err in reducing her visitation with the child and requiring that visitation be supervised.

## Child Support

**Goutreaux v. Goutreaux**, 47,769 (La. App. 2 Cir. 1/16/13), 109 So.3d 935.

The child support judgment from one parish could be made executory in another parish where the payee had moved, even though the payor remained in the original parish.

**Hagen v. Hagen**, 11-1130 (La. App. 1 Cir. 8/15/12), 110 So.3d 172.

La. R.S. 9:315.13(B)(1)'s directive that when the parties' combined income is above the highest guideline income figure, the child support award is "in no event" to be lower than the highest child support amount on the schedule is only the beginning step of the calculation. The various adjustments are then added or deducted to this base amount. La. R.S. 9:315.8(E)(1)'s allowance for a deviation based on the time the payor has the children can then be applied if applicable.

**Rhymes v. Rhymes**, 12-1184 (La. App. 3 Cir. 3/13/13), 110 So.3d 286.

The mother's decision to continue home schooling the two children was not a factor to be considered to determine the amount of final spousal support due to her because her voluntary unemployment was

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not to be attributed to the father to increase the amount of final spousal support. The court stated: "Moreover, periodic support is based on the basic needs of the recipient party in order [to] sustain life and assist the spouse in returning to the workforce, not the desire to maintain the former lifestyle the party was accustomed to during the marriage." The dissent argued that the parties' history and the effect of custody on her earning capacity allowed for the home schooling to be considered.

**Sharp v. Moore**, 47,888 (La. App. 2 Cir. 2/27/13), 110 So.3d 1232.

The parties agreed (1) to change the domiciliary parent from the mother to the father, and (2) that the father would waive his demand for child support from the mother. His request for child support one year later was not restricted by this waiver because it did not fix her income at zero, it did not fix an award of support at all, and he did not have to state a change of circumstances, as his request was for an initial setting.

## Paternity

**State v. A.Z.**, 12-560 (La. App. 5 Cir. 2/21/13), 110 So.3d 1150.

On the state's rule for contempt for non-payment of child support, the trial court found A.Z. not to be the child's father, revoked his in-hospital acknowledgment on the child's birth certificate, voided the previous child-support judgment and ordered monies paid as child support to be returned to A.Z. The court of appeal reversed, finding that his acknowledgment was a legal finding of paternity and the obligation accruing under the judgment could not be voided without proper pleadings being filed to revoke the acknowledgment.

## Final Spousal Support

**Hindelang v. Hindelang**, 12-1031 (La. App. 3 Cir. 4/17/13), 110 So.3d 1289.

Following the end of the one-year period for which Ms. Hindelang was awarded final spousal support, she filed

another rule seeking final support based on a change of circumstances in her medical condition that supported a continuing need for additional support. The trial court granted Mr. Hindelang's exception of *res judicata*, and Ms. Hindelang appealed. The court of appeal reversed, finding that as there had been no extinguishment of his obligation to pay support, she was entitled to attempt to show a material change of circumstances to allow for support. The dissent argued that her medical condition had already been litigated in the first support ruling, and there were no new issues.

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Handling projects in the remotest parts of Louisiana has its own built-in difficulties. In *Greater Lafourche Port Commission v. James Construction Group, L.L.C.*, 104 So.3d 84, 11-1548 (La. App. 1 Cir. 9/21/12), a general contractor involved in construction of a steel sheet piling bulkhead and mooring bits at Port Fourchon — the southernmost port in the state of Louisiana, located at the tip of Lafourche Parish — experienced a series of delays and ultimately was assessed by the owner with significant liquidated damages (\$266,000). At the end of the project, the owner convoked a concursus

proceeding, depositing in the registry of the court the balance of the contract funds that the owner believed was the maximum possibly due the general contractor. For its part, the general contractor filed claims against the owner for additional amounts and also sought similar relief against the project engineer, which had been hired by the owner. The contractor settled with the owner and proceeded thereafter against the engineer.

The contractor — seeking repayment of the liquidated damages it was assessed as well as other losses — alleged that during the course of the project the engineer misrepresented to the contractor certain facts concerning the construction project, including information regarding time for completion and the owner’s intent to refrain from assessing liquidated damages under the circumstances of the job (including the engineer making representations that a certain liquidated damage clause had been completely eliminated from the

contract). The contractor also contended that the engineer had otherwise caused delays, disruptions and interference on the job, increasing the cost of the work to the contractor.

At the trial court, the engineer successfully prosecuted a motion for summary judgment against the contractor on the basis that the contractor — lacking privity of contract with the engineer — had no cause of action against the engineer. The engineer had also asserted that the settlement between the general contractor and the owner effectively released any claims against the engineer, as the engineer was the owner’s “disclosed agent.” The judgment of the trial court did not get deeply into the matter of the negligence alleged against the engineer, but, in granting summary judgment, simply ruled (apparently on a “no evidence” standard) that the general contractor could not meet its burden of proof at trial. The contractor appealed.

The court of appeal took a deeper look into the aspect of the contractor’s claims against the designer sounding in negligence. Citing the scant Louisiana jurisprudence on the topic wherein design professionals lacking privity with the contractor had nonetheless been held liable to a contractor, the court of appeal reversed the trial court on the dismissal of the negligence claims. The court noted that the engineer admitted in deposition testimony various matters that suggested that the engineer — by failure to investigate or other shortcomings in the plans and specifications — had indeed cost the general contractor significant sums on the project. For example, the contractor had to re-coat at its own expense certain pilings and other components that were admittedly blasted and coated by the contractor in the first instance exactly in conformance with the engineer’s plans and specifications. As factual issues also remained regarding the alleged negligent misrepresentation concerning liquidated damages, the appellate court restored the contractor’s negligence claims.

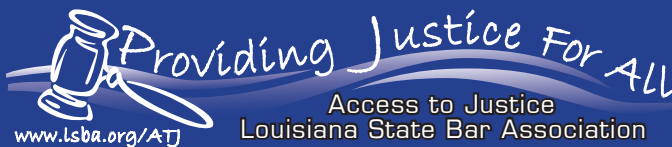
—Daniel Lund III

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Kean Miller, LLC  
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Baton Rouge, LA





## Exclusionary Clauses: Determination of Subjective Facts

*Estes v. St. Tammany Parish Sch. Bd.*,  
12-1750 (La. App. 1 Cir. 6/7/13), \_\_\_\_  
So.3d \_\_\_\_, 2013 WL 2476545.

Estes and Boyne are substitute teachers who were hotly contesting each other for a long-term teaching position at Fontainebleau High School in Mandeville, La., having previously exchanged heated words as to their respective qualifications. Following a school volleyball game attended by both men, Estes was conversing with a group when Boyne approached him. As Boyne approached, Estes removed his watch and glasses, handed them to a

friend, and turned to confront Boyne, who punched him in the face, the only blow thrown during the altercation.

Estes sued, adding Boyne's homeowner's insurer, Encompass Insurance Company of America, claiming injuries to his jaw, neck and shoulder when Boyne attacked him without just cause. Boyne claimed that after Estes removed his glasses, he felt threatened because Estes had assumed a fighting posture and simply reacted by attempting to defend himself by throwing the first punch. Encompass answered, denying coverage and seeking summary judgment based on its policy's exclusionary clause for intentional acts, which states, in pertinent part:

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persons or property.

Estes and Boyne both opposed Encompass's motion for summary judgment. Boyne filed an affidavit attesting that he felt threatened by Estes and that he acted spontaneously and instinctively in self-defense, with no intent to injure Estes. The court took the matter under advisement before granting judgment dismissing Encompass from the suit. Estes and Boyne appealed separately, each arguing that the trial court erred in granting summary judgment, because genuine issues of material fact remain as to whether Boyne's actions were intentional or spontaneous and instinctive and whether Boyne acted in self-defense.

The 1st Circuit noted that the general rule is "[s]ummary judgment is rarely appropriate for disposition of a case requiring judicial determination of subjective facts such as intent, motive, malice, good faith, or knowledge." The court found summary judgment was inappropriate, stating:

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Encompass's intentional act exclusion clearly does not apply to injuries "resulting from the use of reasonable force . . . to persons[.]" Thus, the question of whether Boyne used reasonable force for his protection is obviously determinative of the outcome of this litigation.

The court concluded that the case was not ripe for summary judgment, stating:

We are unable to find that Encompass's policy unambiguously excludes coverage for this incident as a matter of law, because the subjective intent of Mr. Boyne is a critical factual issue — a genuine issue of material fact — that is still to be determined.

Judge McClendon dissented. Her entire dissent read: "It is clear that Mr. Boyne was the aggressor and could have walked away from the confrontation at any time prior to throwing the punch. Therefore, I find that the intentional act exclusion in the policy applies."

### Admiralty: Burden of Proof in Allision

*Mike Hooks Dredging Co. v. Marquette Transp. Gulf-Inland, L.L.C.*, 716 F.3d 886 (5 Cir. 2013).

The dredge, *Mike Hooks*, was moored for repairs in a narrow (400-800 feet) channel of the Gulf Intracoastal Waterway in violation of Inland Navigation Rule (INR) 9 when it was struck by a passing

vessel, the *Pat McDaniel*, with barges in tow. The INRs established "rules of the road" for proper navigation based on long-standing principles, were intended to prevent collisions in inland waterways and "apply to all vessels upon the inland waterways of the United States." 33 C.F.R. § 83.01(a) (INR 1). INR 9 states, "Every vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel." The INRs do not define "narrow channel," but the 5th Circuit has held that the term generally includes bodies of water that are less than 1,000 feet in width.

The district court found that there were not exigent circumstances that precluded movement of the *Mike Hooks* to a more suitable repair site; thus, it was in violation of INR 9 at the time of the allision. This finding triggered application of the rule of *The Pennsylvania*, established by the U.S. Supreme Court in a seminal admiralty case, creating a burden-shifting presumption for causation when a vessel, "at the time of a collision is in actual violation of a statutory rule intended to prevent collisions." *The Pennsylvania*, 86 U.S. 125 (1873). *Hooks* did not successfully rebut the presumption, and the district court thus found it 70 percent liable. The 5th Circuit affirmed.

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### U.S. Court of Appeals for the District of Columbia Circuit

*Center for International Environmental Law v. Office of the United States Trade Representative*, No. 12-5136, 2013 U.S. App. LEXIS 11477 (D.C. Cir. June 7, 2013).

The Court of Appeals for the District of Columbia (D.C.) Circuit recently resolved an action brought by the Center of International Environmental Law (CIEL) under the Freedom of Information Act (FOIA). CIEL sought documents from the Office of the United States Trade Representative (USTR) memorializing negotiations from the now-dormant Free Trade Agreement of the Americas (FTAA). CIEL specifically sought the release of documents concerning sessions of the Negotiating Group on Investment for the FTAA. As is common in free-trade-agreement negotiations, FTAA parties maintained an understanding that all documents produced or received during negotiations were confidential and not subject to public release absent agreement of all parties. Several of the negotiating documents at issue were derestricted by the FTAA parties, but the dispute involved one document (the so-called "white paper") that USTR refused to produce on the grounds

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that it is a classified national security document protected from disclosure under FOIA exemption 1. Exemption 1 protects from disclosure information that is properly classified in the interest of national defense or foreign policy. *See* 5 U.S.C. § 552(b)(1).

The white paper document contained USTR's commentary and interpretation of the phrase "in like circumstances," which is a key element of two fundamental non-discrimination principles in all free-trade agreements: Most Favored Nation status and National Treatment. The USTR submitted that disclosure of its interpretation of that phrase would "limit the United States' flexibility to 'assert a broader or narrower view of the meaning and applicability of the phrase in interpreting existing agreements and in negotiating future agreements.'" *CIEL*, 11477 at \*7.

The district court concluded the risk of adverse interpretation or harm to negotiating positions was insufficiently substantiated by the USTR. *CIEL*, 11477 at \*10. The D.C. Circuit reversed, adopting a broad and deferential view of the USTR's position.

The government has determined that it would "damage [the] ability of the United States to conclude future trade agreements on favorable terms." That determination has the force of history behind it. It echoes what George Washington wrote more than two centuries ago. Courts are "in an extremely poor position to second-guess" the Trade Representative's predictive judgment in these matters, . . . but that is just what the district court did in rejecting the agency's justification for withholding the white paper.

*CIEL*, 11477 at \*13-14.

### Office of the U.S. Trade Representative

*2013 Special 301 Report* (May 2013).

The USTR issued its annual review of the state of worldwide intellectual property rights (IPR) protection and enforcement. The review examined IPR protection and enforcement in 95 countries, with 41

countries being placed on various levels of "watch" for problems with IPR protection and enforcement. Only one country was placed on the Priority Foreign Country (PFC) watch list: Ukraine. This is the first time in seven years that a country was named a PFC. Citing severe deterioration of enforcement in the areas of government use of pirated software and piracy over the Internet, as well as denial of fair market access through copyright collecting societies, the USTR named Ukraine a PFC and will consider initiating further investigations and consultations with Ukraine. This is not Ukraine's first stop on the PFC list. Ukraine was listed in 2001 and lost its preferential market access to the United States under the General System of Preferences (GSP) for failure to correct the alleged deficiencies. Ukraine subsequently regained GSP eligibility in 2005 after addressing the IPR issues.

The second-tier Priority Watch List countries include, *inter alia*, Argentina, Chile, China, India, Russia, Thailand and Venezuela. The USTR cited "grave" concerns over China's misappropriation of

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trade secrets, as well as the growing theft of private business data primarily by military and government-owned enterprises. Thirty countries were included on the third-tier Watch List, with Brazil, Italy, Mexico and Turkey retaining their status and Canada being added to the Watch List. The USTR cited the continuing flow of pirated and counterfeit goods from Canada into the United States as grounds for its inclusion.

## United Nations

*United Nations Conference on Trade & Development* (UNCTAD), Recent Developments in Investor-State Dispute Settlement (May 2013).

The UNCTAD released a report on April 10, 2013, chronicling the number and nature of formal investor-state dispute settlement proceedings in 2012. Fifty-eight new cases were instituted in 2012, by far the largest number of treaty-based dispute settlement cases filed in a single year. Developing or transition economies were respondents in 68 percent of the new cases. Thirty-nine of the 58 cases were lodged with the International Center for Settlement of Investment Disputes (ICSID), seven under the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules and five under the Stockholm Chamber of Commerce.

Venezuela responded to the largest number of cases — nine — while Pakistan faced four new claims. The investors have challenged a broad array of government measures, including license revocations, irregularities in public tenders, withdrawal of prior subsidies and direct expropriations. The year 2012 also saw the largest award in ICSID history. As previously reported in this column, an ICSID tribunal awarded \$1.77 billion to Occidental Petroleum against Ecuador for expropriation of assets in 2006.

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## 5th Circuit: Lactation is Pregnancy-Related Medical Condition Protected by Title VII

*EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425 (5 Cir. 2013).

The 5th Circuit Court of Appeals recently held that discharging a female employee because she is lactating or expressing breast milk violates the Pregnancy Discrimination Act (PDA) provisions of Title VII. By reaching this determination, the 5th Circuit becomes the first federal appellate court to explicitly hold that discrimination on the basis of lactation or breastfeeding gives rise to an actionable claim of sex discrimination under Title VII.

### Background

Donnicia Venters worked for Houston Funding as an account representative from March 2006 until her employment was terminated in February 2009. In December 2008, Venters requested and received a leave of absence to have her baby. While on leave, Venters stayed in constant contact with her supervisor. In one conversation, Venters advised that she was breastfeeding and asked if she would be permitted to use a breast pump at work after she returned. According to Venters's supervisor, he raised the issue with Houston Funding's limited partner, Harry Cagle, and Cagle responded with a "strong NO."

Shortly thereafter, Venters called Cagle to tell him that her physician had released her to return to work. Venters again mentioned that she was lactating and asked Cagle whether she could use a back room to pump breast milk once she returned. According to Venters, after a "long pause," Cagle told her that her position had been filled.

Venters subsequently filed a charge of gender discrimination with the EEOC. After investigating Venters's allegations and finding them to have merit, the EEOC

commenced a Title VII action against Houston Funding on behalf of Venter. The EEOC's complaint alleged that Houston Funding had discriminated against Venter based on her sex, including her pregnancy, childbirth or related medical conditions, when it terminated her employment.

### District Court's Decision

After discovery, Houston Funding moved for summary judgment on the ground that discharging a female employee for lactating did not amount to gender discrimination prohibited by Title VII, and the district court agreed. In granting Houston Funding's summary judgment motion, the district court held that Venters's allegations did not give rise to a viable Title VII claim because "[f]iring someone because of lactation or breast-pumping is not sex discrimination." The district court further held that lactation is not a related medical condition of pregnancy because any pregnancy-related conditions ceased after Venter gave birth.

### 5th Circuit's Decision

The 5th Circuit reversed the district

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court's summary judgment order and expressly held that lactation is a medical condition related to pregnancy because it "is the physiological process of secreting milk from mammary glands and is directly caused by hormonal changes associated with pregnancy and childbirth." In further support of its holding, the 5th Circuit relied on *Harper v. Thiokol Chemical Corp.*, 619 F.2d 489 (5 Cir. 1980), which suggested that menstruation was a condition related to pregnancy and childbirth for purposes of the PDA. According to the 5th Circuit:

Menstruation is a normal aspect of female physiology, which is interrupted during pregnancy, but resumes shortly after the pregnancy concludes. Similarly, lactation is a normal aspect of female physiology that is initiated by pregnancy and concludes sometime thereafter. . . . And as both menstruation and lactation are aspects of female physiology that are affected by pregnancy, each seems readily to fit into a reasonable definition of "pregnancy, childbirth, or related medical conditions."

Notwithstanding its determination that lactating and breastfeeding are pregnancy-related medical conditions protected by the PDA, the 5th Circuit limited the reach of its holding by specifically noting that the PDA does not require employers to provide accommodations for women affected by pregnancy or related conditions: "Nothing in this opinion should be interpreted as precluding an employer's defense that it fired an employee because that employee demanded accommodations." In a concurring opinion, Judge Edith Jones further underscored this point by emphasizing that "the PDA does not mandate special accommodations to women because of pregnancy or related conditions," such as special facilities or work breaks.

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## Mineral Servitude; Ambiguity in Deed

*Franklin v. Camterra Resources Partners, Inc.*, (La. App. 2 Cir. 5/22/13), \_\_\_ So.3d \_\_\_, 2013 WL 2217324.

In 2000, Franklin owned separate property in DeSoto Parish. As part of his divorce, Franklin transferred the property to a family-named educational trust, reserving his mineral rights. In 2001, the Arbuckles offered to purchase the property and ultimately obtained it. Franklin's mineral servitude was not discussed.

In 2008, Haynesville Shale was an attractive play. The Arbuckles granted a mineral lease to Camterra Resource Partners, who later assigned it to Petrohawk. A few months later, Franklin transferred his "reserved" mineral rights to his current wife. She later sought a declaratory judgment as to who owned the mineral rights. Franklin intervened. Defendants filed motions for summary judgment that the Arbuckle deed conveyed both the mineral and surface rights to the Arbuckles. The trial court agreed.

On appeal, the Louisiana 2nd Circuit Court of Appeal affirmed the trial court's ruling and found that the deed was not ambiguous. In the first part of the deed, Franklin and his ex-wife appeared together as trustees and transferred what the trust owned subject to any mineral reservation. In the second part, however, Franklin appeared alone and quitclaimed "all interest" in the property. The court further found that because Franklin had experience transferring mineral interests and he had his attorney review the transfer at issue, error could not absolve them from overlooking the "all interest" language.

## Oilfield Contamination; Battle of the Experts

*Andrepoint v. Chevron USA, Inc.*, 12-1100 (La. App. 3 Cir. 4/3/13), 113 So.3d 421.

Several plaintiffs filed an oilfield con-

tamination (legacy) lawsuit against a number of oil companies claiming that defendants' ongoing operations polluted their property. One defendant, Radke Oil & Gas, an independent oil and gas company, filed a motion for summary judgment on the basis that the wells it operated were not near the property and that it did not use earthen pits for storage. Radke attached plaintiffs' discovery responses and an affidavit from Lee Day, a senior geologist with TEA, Inc., to its motion.

Day determined that Radke never operated any of the wells set forth in plaintiffs' petitions and that Radke could not have caused any contamination because Radke did not use open pits and, given the natural drainage of the property, contamination could not have flowed from Radke's wells onto plaintiffs' property. In opposition, plaintiffs filed an affidavit from Greg Miller with ICON. Miller noted that defendants (including Radke) used open earthen pits to store oilfield waste and that flowlines used to transport oil across plaintiffs' property "appeared" to have originated from Radke wells. A supplemental affidavit from Day showed that the use of open pits along the Gulf Coast was discontinued in the 1920s, and that, by the 1940s, steel storage tanks were used to store oil.

The trial court ruled in favor of Radke. Plaintiffs appealed. The Louisiana 3rd Circuit Court of Appeal affirmed the trial court's ruling and found that plaintiffs could not prove that Radke was liable for any contamination, based on Miller's assertion that the flowlines "appeared" to originate from Radke's wells.

## "Calculate-and-Pay" Clause and the Deep Water Royalty Relief Act

*Total E&P USA, Inc. v. Kerr-McGee Oil & Gas*, 711 F.3d 478 (5 Cir. 2013); *vacated & superseded by Total E&P USA, Inc. v. Kerr-McGee Oil & Gas Corp.*, \_\_\_ F.3d \_\_\_ (5 Cir. 2013), 2013 WL 3104943.

In 1995, the United States adopted the Deep Water Royalty Relief Act (DWRRA) to encourage drilling in deep waters on the outer continental shelf. DWRRA authorized the Department of Interior to suspend collection of certain royalties for deep water production under federal offshore leases

between 1996 and 2000. The suspension would apply until a certain threshold amount of production was obtained.

In 1998, the federal government issued an offshore lease to Mariner Energy and Westport Oil and Gas. Westport assigned overriding royalty interests (ORRIs) to several persons. The assignments contained a “calculate-and-pay” clause that stated: “The overriding royalty interest assigned herein shall be calculated and paid in the same manner and subject to the same terms and conditions as the landowner’s royalty under the Lease.” Westport and Mariner later assigned their interests to Chevron, Total E&P and Statoil.

In 2009, the new owners established production. Because their well qualified for a royalty suspension, the owners did not pay royalties to the federal government, but Chevron began making payments to the ORRI owners and continued to do so. In contrast, Total and Statoil took the position that, for purposes of the calculate-and-pay clause, the royalty suspension was a “term and condition” of their obligation to make royalty payments to the “landowner.” Accordingly, their obligation to make ORRI payments was also suspended. The ORRI owners disagreed and litigation ensued.

The district court granted summary judgment for Statoil and Total, but the 5th Circuit reversed, concluding that the calculate-and-pay clause was ambiguous. The 5th Circuit stated that the clause could be interpreted as incorporating the federal regulations that define how royalties are calculated, without interpreting the clause as also incorporating the DWRRAsuspension of royalty payment obligations. Because of the ambiguity, the 5th Circuit remanded for further proceedings.

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## PCF Notice Requirements

*Howard v. Mamou Health Resources*, 12-0820 (La. App. 3 Cir. 3/6/13), \_\_\_ So.3d \_\_\_, writ denied, 13-0614 (La. 4/19/13), 112 So.3d 227.

Howard filed a lawsuit in district court alleging defendants’ negligence but mentioning nothing concerning medical malpractice. She later amended her petition to add new parties and again made no mention of a medical malpractice claim.

More than one year after the date of filing the original lawsuit, Howard settled her claims with the defendants and filed

a “Petition for Approval of Settlement of Medical Malpractice,” which the district court granted. The PCF appeared and claimed it had no prior knowledge of the filing of the petition to settle because it was not served until after the district court had signed the order approving the settlement.

The plaintiff then filed a supplemental petition naming the PCF as a defendant, in response to which the PCF filed exceptions of prescription and no cause of action, claiming that the action was prescribed because the plaintiff did not file a claim with the PCF within one year from the date of the alleged malpractice (La. R.S. 40:1299.47) and that the cause of action was lost when the plaintiff did not serve it with a copy of the petition to approve the settlement 10 days prior to its filing as required by La. R.S. 40:1299.44(C). The trial court granted the PCF’s exceptions, and the plaintiff appealed.

The plaintiff asserted that the exception of prescription was granted in error because

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of the trial court's misplaced reliance on *LeBreton v. Rabito*, 97-2221, (La. 7/8/98), 714 So.2d 1226, and its progeny. Plaintiff argued that *LeBreton* was not applicable to her case because it did not "initially" involve a claim for medical malpractice and she "agreed to convert her damages to a medical malpractice claim by way of arbitration reserving her rights against the [PCF]." The PCF countered, and the court agreed, that no mechanism within the MMA allows a plaintiff to make such a conversion. The only mechanism within the MMA for pursuing a medical malpractice claim is set forth in La. R.S. 40:1299.47(B)(1)(a)(i), which requires the timely filing of the claim with the Division of Administration, which plaintiff failed to do.

The court wrote in a footnote that while affirmance of the ruling that the case was prescribed rendered moot the exception of no cause of action, it "elect[ed] to discuss" the issue because the trial court had ruled on it, and it "wish[ed] to explain why Plaintiff is unable to breathe life into a 'dead' claim by relying on a second faulty interpretation

of the Medical Malpractice Act and its mandatory requirements."

The court cited La. R.S. 40:1299.44(C), which establishes the rules that must be followed if the insurer of a health-care provider (or a self-insured health-care provider) has agreed to settle its liability and the claimant seeks excess damages from the PCF, *i.e.*, a petition for approval of settlement must be served on the PCF, the settling health-care provider and/or his insurer at least 10 days before it is filed. Citing *Horil v. Scheinhorn*, 95-0967 (La. 11/27/95), 663 So.2d 697, the court found the failure strictly to comply with that provision warranted a dismissal of the claim against the PCF. The plaintiff's failure to serve the PCF with a copy of the petition at least 10 days before filing warranted the trial court's granting the PCF's exception of no cause of action.

### Waiver of Panel

*Alexander v. Acadian Ambulance Servs., Inc.*, 12-1236 (La. 3 Cir. 5/22/13), \_\_\_\_ So.3d \_\_\_\_.

The plaintiff was injured in the process of being unloaded from defendant's ambulance. He filed a lawsuit but did not request a medical-review panel. The defendant answered the lawsuit.

More than three years after the time of the incident, Acadian filed an exception of prescription, claiming that the suit was prescribed because the claimed acts of negligence were medical malpractice and that the lawsuit had been filed without first being submitted to a medical-review panel.

The trial court overruled the exception. Acadian appealed, alleging that the claims fell under the ambit of the MMA, the claims were not first presented to a medical-review panel and more than three years had elapsed since the incident occurred.

The plaintiff agreed the tort sounded in medical malpractice and Acadian was a qualified provider but argued that Acadian waived its right to a medical-review panel by answering the lawsuit before filing an exception of prematurity, citing La. R.S. 40:1299.47(B)(1)(c) (a panel may be waived if all parties agree) and *Barraza v.*

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*Scheppegrell*, 525 So.2d 1187 (La. App. 5 Cir. 1988) (failing to file an exception of prematurity before answering a malpractice lawsuit waives the right to a panel).

Acadian argued that its prescription claim was different from a prematurity claim, citing as authority *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So.2d 1226, and its offspring. The court of appeal noted the *LeBreton*-type cases involved health-care providers who filed exceptions of prescription and/or prematurity before answering the lawsuit. The court referenced Louisiana Code of Civil Procedure articles 926 (pre-maturity exceptions are dilatory) and 928 (dilatory exceptions “shall be pleaded prior to or in the answer”).

The appellate court then examined *Barrie v. V.P. Exterminators, Inc.*, 625 So.2d 1007 (La. 1993), and noted that the Louisiana Supreme Court had addressed the issue in a different context. *Barrie* involved the failure of a plaintiff to comply with a contractual provision for filing a claim, and the court ruled that the prematurity exception filed after the lawsuit had been answered was waived, and “[o]nce waived, the prematurity argument could not be resurrected by camouflaging it as a substantive issue.” *Id.* The court commented that “camouflaging” an exception of prematurity as an exception of prescription was “exactly” what Acadian was attempting to do.

Another of Acadian’s arguments relied on *Farve v. Jarrott*, 04-1424 (La. App. 4 Cir. 10/13/04), 886 So. 2d 594, *writ denied*, 05-0007 (La. 3/11/05), 896 So.2d 74. The court remained unconvinced, observing that the *Farve* court had not analyzed the differences between its facts and those in *LeBreton* and had not considered the Supreme Court’s discussion of prematurity in *Spradlin v. Acadia-St. Landry Medical Foundation*, 98-1977 p.4 (La. 2/29/00), 758 So.2d 116, 119, which contrasted exceptions of prematurity, which seek only to delay medical malpractice suits, against exceptions of prescription, which seek to defeat them.

—Robert J. David

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## Tobacco Tax: Invoice Price and Its Constitutionality

*McLane Southern, Inc. v. Bridges*, 10-1259 (La. App. 1 Cir. 3/21/13), 110 So.3d 1262.

The 1st Circuit Court of Appeal affirmed a trial court’s decision upholding the Louisiana Department of Revenue’s interpretation of “invoice price” upon which the excise tax on tobacco products is based and found that such interpretation did not discriminate against interstate commerce to violate the Commerce Clause.

The first issue for review was the proper interpretation of “invoice price” as the benchmark that sets the tax base for the tobacco tax on smokeless tobacco products. La. R.S. 47:841(E) provides that the amount of tax levied on smokeless tobacco is “twenty percent of the invoice price as defined in this Chapter.” Pursuant to La. R.S. 47:842(12), invoice price is defined, in part, as “the manufacturer’s net invoiced price as invoiced to the Louisiana tobacco dealer, by the manufacturer, jobber, or other persons engaged in selling tobacco products.”

McLane purchased its smokeless tobacco products from a supplier, U.S. Smokeless Tobacco Brands, Inc. (UST-Sales), which is an affiliate of U.S. Smokeless Tobacco Manufacturing Company (UST-Manufacturing). UST-Manufacturing sells to UST-Sales the smokeless tobacco products that UST-Sales then sells to McLane. All of these sales occur outside of Louisiana. McLane sells the products to its customers in Louisiana.

McLane argued that the smokeless tobacco tax applies to the manufacturer’s net invoiced price, which in its distribution chain is the price at which UST-Sales purchased the smokeless tobacco from UST-Manufacturing. McLane asserted that UST-Sales is not a manufacturer and, thus, the price at which it sells the products to McLane cannot be the manufacturer’s net

invoiced price. McLane also argued that any ambiguity in La. R.S. 47:842(12) must be construed in its favor.

The Department of Revenue (Revenue) asserted, and the trial court agreed, that the “invoice price” as defined in La. R.S. 47:842(12) is the price McLane paid to UST-Sales, not the price UST-Manufacturing charged UST-Sales. Revenue argued that the Legislature clearly intended that the price that sets the base can be a sale from either (1) a manufacturer, (2) a jobber or (3) other persons engaged in selling tobacco products. Importantly, before UST-Sales sold the product in question to McLane, it purchased the product from UST-Manufacturing. UST-Sales then resold the product to McLane at a higher price. This, Revenue argued, brought UST-Sales clearly within the classification of a “jobber, or other [person] engaged in selling tobacco products” as is contemplated in La. R.S. 47:842(12).

The 1st Circuit held that the base for the tax on smokeless tobacco products is the price McLane paid to UST-Sales, not the price UST-Sales paid to UST-Manufacturing. The court found that the language in La. R.S. 47:842(12) is clear and unambiguous that the price as invoiced to the Louisiana tobacco dealer by the manufacturer, jobber or other persons engaged in selling tobacco products sets the tax base.

The second issue for review was McLane’s argument that under the trial court’s interpretation of La. R.S. 47:842(12), the “shifting tax base” rewards the location of economic activity in Louisiana and penalizes the location of the activity in other states,” thus discriminating “against interstate commerce in violation of the Commerce Clause.” The 1st Circuit looked to *McLane Western, Inc. v. Department of Revenue*, 126 P.3d 211 (Colo. App. 2005), *writ denied*, 2006 WL 349738 (Colo. 2006), *cert. denied*, 127 S.Ct. 42 (2006), where the Colorado Court of Appeals found that the tobacco tax statutes, as they applied to the transactions between McLane Western and UST-Sales, were constitutional under the Commerce Clause as “[a]ll taxable distributors of [other tobacco products] are taxed at the same rate and on a tax base determined in the same fashion.” In addition, the 1st Circuit looked to *McLane Minnesota, Inc.*

v. *Commissioner of Revenue*, 773 N.W.2d 289 (Minn. 2009), where the court held “[a]ll tobacco products are taxed at the same rate and all are taxed at the time of the first wholesale transaction in Minnesota, regardless of the origin of the products” and “McLane’s increased tax obligation is not the result of a tax that discriminates against out-of-state products or favors in-state products, but rather the result of [UST-Sales’] business decisions to sell its tobacco products at a higher price than [UST Manufacturing] sold them.”

The 1st Circuit held that Louisiana’s excise tax on tobacco products is assessed against the first dealer who causes tobacco products to be in Louisiana for sale or dis-

tribution, and the tax is assessed at the same rate. This is true regardless of where the products originate, *i.e.*, whether the person manufactures the products for sale in the state, brings the products into the state or causes the products to be brought into the state. The 1st Circuit also held that:

[m]uch like the scenario in *McLane Minnesota, Inc.*, McLane’s increased tax obligation is “not the result of a tax that discriminates against out-of-state products or favors in-state products,” but rather due to the change in pricing by McLane’s supplier, UST-Sales. *McLane Minnesota, Inc.*, 773 N.W.2d at 300.

“It is [UST-Sales’] business model, and not the statutory structure, that causes McLane’s higher tax obligation. The Commerce Clause does not protect particular structure[s] or methods of operation in a retail market.” *McLane Southern*, 110 So.3d 1269.

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

# 20<sup>TH</sup> ANNUAL ADMIRALTY SYMPOSIUM

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## Succession Rights: The Change in Law of Forced Heirship Considered

*In re Succ. of Dean*, 12-0832 (La. App. 4 Cir. 4/3/13), \_\_\_ So.3d \_\_\_.

Decedent's will, executed in 1983, left his "beloved children" the "forced portion" of his estate. However, due to the change in the law of forced heirship, the children, who were all of age of majority, were not forced heirs at the time of their father's death. Thus, the issue before the court was the interpretation of Mr. Dean's will, specifically whether the decedent's three children were entitled to 50 percent of the estate, *i.e.*, the forced portion, even though they were no longer "forced heirs" under the law at the time of their father's death. Reversing the trial

court's ruling that the children were entitled to nothing, the Louisiana 4th Circuit Court of Appeal held that the children were entitled to their 50 percent of the estate because they were forced heirs when the will was made. The decision came from a five-judge court, with Judge Belsome dissenting and Judge Bonin dissenting in part.

The trial court ruled that Mr. Dean's children were entitled to nothing because succession rights are governed by the law in effect on the date of decedent's death. The court noted that by using language such as "forced portion" and "disposable portion" rather than a numerical value, the decedent employed language that had a specific legal meaning and that such language should be interpreted according to the law in effect at the time of his death. The court further reasoned that because the testator used the language "forced portion," there was no intent to leave his children anything more than required by the law. As a result, the trial court found that the children were entitled to nothing because they were no longer forced heirs at the time of their father's death. The children appealed.

The 4th Circuit reversed the trial court's interpretation of the decedent's intent. The court concluded that La. Civ.C. art. 1611(B) expressly authorized it to consider the law in effect at the time decedent made his will in order to ascertain his intent toward his children. Noting that the cardinal principle of the interpretation of acts of a last will is to ascertain and honor the intent of the testator and ascribe meaning to the disposition so that it can have effect, the court found that there was no evidence or other indication that Mr. Dean intended to leave nothing to his children if the law had not required him to leave them their forced portion. Accordingly, the court reversed the lower court's ruling and held that the children were entitled to what would have been their forced portion at the time the decedent made the will.

—Christina Peck Samuels

Member, LSBA Trusts, Estate, Probate  
and Immovable Property Law Section  
Sher Garner Cahill Richter Klein  
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and Legal Proceedings  
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### CHAIR'S MESSAGE

## Young Lawyers Learning the Profession

By Kyle A. Ferachi

August and September mark many events: the end of summer; vacations are over; school is back in session; football is here; and, importantly for our Bar, anxious law school graduates await their bar exam results. For me, waiting on bar exam results is something I think about each year at this time.



Kyle A. Ferachi

In the summer of 2001, I, along with my classmates and others similar to me all over the country, spent 10-14 hours a day, every day, studying for the bar exam. Once the exam was over (and I missed an entire summer of my life), all I could do was wait. Of course, I had my then-bosses Steve Judice and John Wolff to help. Steve provided me with a hand-tied rosary and John constantly stuck his head

in my office with sage words of wisdom: "Tick-tock tick-tock."

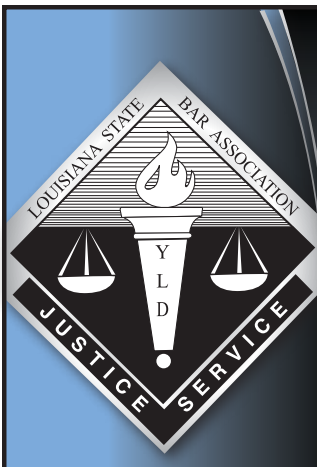
What I did not appreciate at the time were the professionalism lessons Steve and John taught. They were able to provide a bit of levity to a very stressful time. After practicing with lawyers from all over the state, I have gained a greater appreciation for what professionalism is and how through our actions we can teach those new to the practice what it means to really be professional.

To facilitate this teaching, along with the basics of practice, the Louisiana Supreme Court has established a Transition Into Practice Voluntary Mentoring Program. I encourage you to sign up to formally mentor in your area. To begin, the voluntary program will be offered in Shreveport, Baton Rouge and the Greater New Orleans area. More information can be found at: [www.lsba.org/InsideLSBA/SeniorLawyersDivision.asp](http://www.lsba.org/InsideLSBA/SeniorLawyersDivision.asp).

Outside of formal mentoring, there

are many opportunities for experienced lawyers, both young and old, to expose new lawyers to the profession and how to be professional. Perhaps you could assist a newly admitted lawyer who may be struggling with answering a question posed by the judge on the proper way to respond. Or, attend or help organize a new admittee function with your local bar affiliate. The Louisiana State Bar Association offers many opportunities to meet and mingle with the newest members of our Bar. Take these opportunities to show what it means to be professional.

With summer winding down and football gearing up, take some time to stop and guide a new lawyer. He or she will gladly listen to your war stories, will take your advice to heart next time they are in a courtroom or deposition, and, if you ask nicely enough, they may show you how to Instagram, Snapchat or even use that iPad in front of a jury.



## YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division news online

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

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

## YOUNG LAWYERS SPOTLIGHT

### Karelia R. Stewart Shreveport

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Shreveport attorney Karelia R. Stewart.



Karelia R. Stewart

Stewart, a prosecutor in the Caddo Parish District Attorney's Office, handles felony drug cases, inclusive of judge and jury trials. She is the section chief of the Drug Division in the District Attorney's Office. She received her undergraduate degree, *cum laude*, in 2001 from Dillard University and her JD degree in 2004 from Loyola University College of Law. She was admitted to practice in Louisiana in 2006.

She is currently the youngest elected member of the LSBA Board of Governors, representing the Eighth District. Previously, she served as an at-large member on the LSBA Board of Governors, as the District 8 representative on the LSBA's Young Lawyers Division Council, and as a member of the LSBA's House of Delegates, representing the 1st Judicial District (Caddo Parish). She also is a member of the LSBA's Committee on the Profession, the Access to Justice Committee and the Criminal Justice Committee and has served on the Committee to Review Proposed Changes to the Louisiana Bar Exam.

Stewart is a past president of the Shreveport Bar Association's (SBA) Young Lawyers Section, and a member of the SBA's Women Section, the Black Lawyers Association of Shreveport-Bossier, the Harry V. Booth and Judge Henry A. Politz American Inn of Court and the Louisiana State Law Institute. She was recently selected by her peers as a "Top Lawyer" in Shreveport and featured in the April 2013 issue of *SB Magazine*.

During her term as SBA Young Lawyers Section president, she created YL S.W.A.P. (Young Lawyer Socials With A Purpose). These socials were conducted each month and young lawyers donated school supplies, raised money to sponsor a field trip for the Adopt-a-Class Project, provided toiletry items for area shelters, and donated food to the area food bank.

Stewart is a board member of Sci-Port: Louisiana's Science Center. She volunteers for community service projects of Delta Sigma Theta Sorority, Inc., the Junior League of Shreveport-Bossier and LANO's Community Class and works with the Teen Club Group, an after-school program of Volunteers of America offering students career guidance. She donates countless volunteer hours doing pro bono work for her church and for elderly members in the community. She was selected by the Greater Shreveport Chamber of Commerce as a member of the 2008 class of "40 Under 40" outstanding young professionals.

She is married to Frederick Green.

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LaPorte.com

By Robert Gunn, Louisiana Supreme Court

## NEW JUDGES... RETIREMENT

### New Judges

#### Sandra Cabrina Jenkins

was elected as judge of Division H, 4th Circuit Court of Appeal, effective Jan. 1, 2013. She earned her BA degree in 1984 from Louisiana State University, a master's degree in public administration in 1987 from Southern University and her JD degree in 1989 from Southern University Law Center. Judge Jenkins is a former assistant district attorney for Orleans Parish and a former staff attorney, Central Staff, for the Louisiana 4th Circuit Court of Appeal. Prior to her election to the bench, she was in the general practice of law and was of counsel with the Scheuermann & Jones, L.L.C., law firm. In 2010, she joined the faculty of Xavier University as an assistant professor in the Political Science Department, teaching pre-law courses. She continues to serve as co-chair of the Louisiana State Bar Association's Children's Law Committee. She has presented programs at national and local seminars on the issue of representation of juvenile offenders in the federal system.



Sandra Cabrina Jenkins

#### Katherine Clark Dorroh

was elected as judge of Division F, 1st Judicial District Court, effective April 1, 2013. She earned her BAS degree, *magna cum laude*, in 1981 from Salve Regina University and her JD degree in 1984 from South Texas College of Law, where she graduated in the top 10 percent of her class and was a member of the Order of the Lytae and Phi Delta Phi. Judge Dorroh was with the firm of Wiener, Weiss & Madison, A.P.C., 1984-2002, and had her own law firm from 2003 until her election to the bench. She has been active in the Shreveport Bar Associa-



Katherine Clark Dorroh

tion, serving on the Executive Committee, as Program chair and Professionalism chair, and on the board of the Association's Pro Bono Project from 1987-90 (chair in 1991 and 1992). She has been a member of the Louisiana State Bar Association's (LSBA) and the American Bar Association's Legal Services Committees and the LSBA's Continuing Legal Education Committee. She is a 2006 Louisiana Bar Foundation Fellow and a 2008 recipient of the Shreveport Pro Bono Project's Volunteer Award. She is married to William E. Dorroh and they are the parents of four children.

#### Yolanda J. King

was elected as judge of Section E, Orleans Parish Juvenile Court, effective May 13, 2013. She earned her BS degree in 1979 from Dillard University and her JD degree in 1991 from Southern University Law Center. Prior to her election to the bench, she served as an administrative law judge, 2011-12; research attorney for Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, 2005-08; assistant district attorney in the Orleans Parish District Attorney's Office, 2004-05 and 1993-97; senior research attorney for the 4th Circuit Court of Appeal, 2000-04; and judicial law clerk at Orleans Parish Civil District Court, 1997-98. She is a member of the A.P. Tureaud American Inn of Court and the American Bar Association, the National Bar Association, the New Orleans Bar Association and the Association for Women Attorneys.



Yolanda J. King

#### Vincent J. Borne

was elected, unopposed, to Division C, 16th Judicial District Court, effective March 1, 2013. He earned his BA degree in 1994 from Louisiana State University and his JD degree in 1997 from Loyola University



Vincent J. Borne

College of Law, where he was a member of the *Loyola Law Review* and was comment/casenote editor. Prior to his election to the bench, he was an assistant district attorney with the 16th JDC for the past 16 years. He is married to Robin Borne and they are the parents of three children.

### Judges

► 1st Judicial District Court Judge Frances Jones Pitman was elected to Section 2B, 3rd District, 2nd Circuit Court of Appeal, effective Jan. 1, 2013.

► 2nd Parish Court of Jefferson Judge Stephen C. Grefer was elected to Division J, 24th Judicial District Court, effective March 4, 2013.

► 21st Judicial District Court Judge Ernest G. (Ernie) Drake, Jr. was elected to Division C, 3rd District, 1st Circuit Court of Appeal, effective March 18, 2013.

### Retirement

34th Judicial District Court Judge Manuel A. (Manny) Fernandez retired effective June 1, 2013. He took his first oath as judge of Division B on the 34th JDC on June 1, 2001. From 1976-88, he served in the Louisiana Legislature as a State Representative for District 104. From 1988-89, he served as assistant chief of staff in the Louisiana Governor's Office.

### Death

Retired 1st Circuit Court of Appeal Judge Daniel W. LeBlanc, 82, died May 12, 2013. Judge LeBlanc was a 1951 graduate of Spring Hill College and earned his JD degree in 1956 from Loyola University Law School. He served in the U.S. Army from 1951-53 and is a former special agent of the Federal Bureau of Investigation. He was in the practice of law for 12 years before his election to Baton Rouge City Court, where he served from 1969-72. In 1972, he took his oath as judge on the 19th Judicial District Court and served on that bench until 1986, when he was elected to the 1st Circuit Court of Appeal. He retired from the 1st Circuit Court of Appeal in 2000.

# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Victor M. Jones has joined the firm's New Orleans office as an associate.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces new shareholders in the New Orleans office: Brian M. Ballay, Craig L. Caesar and David C. Rieveschl. Tom D. Snyder, Jr. has joined the firm as of counsel in the

Mandeville office. Also, Kent A. Lambert, a shareholder in the New Orleans office, is chair of the Business Litigation Group.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **David A. Becker** and **Michelle M. Rutherford** have joined the firm as associates.

Courington, Kiefer & Sommers, L.L.C., in New Orleans announces that **James M. Matherne** and **Dawn Danna Marullo** have been named members of the firm.

Also, **Daniel R. Estrada**, **Jeffrey M. Burg** and **Jonathan P. Hilbun** have joined the firm.

The Derbes Law Firm, L.L.C., in Metairie announces that **Sarah L. Costello** has joined the firm as an associate.

Duplass, Zwain, Bourgeois, Pfister & Weinstock, A.P.L.C., in Metairie announces the promotion of Philip G. Watson to partner.

**Mary G. Erlingson** and **Judson G. Banks** announce they have opened their firm Erlingson Banks, P.L.L.C., located at Ste. 2110, 301 Main St., Baton Rouge, LA 70801, phone (225)218-4446. **Tara L. Johnston** has joined the firm as a partner, **Mary E. Colvin** has joined the firm as an associate, and **Catherine S. (Cathy) St. Pierre** has joined the firm as special counsel.



Judson G. Banks



David A. Becker



John W. Bihm



Clay V. Bland, Jr.



Jeffrey M. Burg



Jennifer B. Cheramie



Mary E. Colvin



Sarah L. Costello



Kaye N. Courington



Yvette A. D'Aunoy



Jeremy S. Epstein



Mary G. Erlingson



Daniel R. Estrada



Kevin P. Fontenot



Brian A. Gilbert



Jonathan P. Hilbun

Continued next page

Flanagan Partners, L.L.P., in New Orleans announces that **Clay V. Bland, Jr.** has joined the firm.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C. announces that Paul B. Simon has joined the firm as an associate in the Lafayette office.

Jackson Lewis, L.L.P., announces that Charles F. Seemann III has joined the New Orleans office as a partner.

The Javier Law Firm, L.L.C., in New Orleans announces that **Brian A. Gilbert** and **Jennifer B. Ceramic** have joined the firm as associates.

Kingsmill Riess, L.L.C., announces that **John W. Bihm** has joined the firm as an associate in the New Orleans office.

Liskow & Lewis, P.L.C., announces the election of two new shareholders in the New Orleans office: Brianne S. Rome and Katherine Seegers Roth. Also, Mandie E. Landry has joined the New Orleans office as an associate.

Middleberg Riddle & Gianna in New Orleans announces that **Yvette A. D'Aunoy** has joined the firm as of counsel in the New Orleans office.

Scofield, Gerard, Pohorelsky, Gallagher & Landry, L.L.C., in Lake Charles announces that **Kevin P. Fontenot** and **Peter J. Pohorelsky** have become members of the firm.

Southeast Louisiana Legal Services Corp. announces that Laura Tuggle Issokson has joined the New Orleans office as a managing attorney.

Staines & Eppling in Metairie announces that Jeff D. Peuler has become an associate in the firm.

## NEWSMAKERS

**Kaye N. Courington** of Courington, Kiefer & Sommers, L.L.C., in New Orleans was named vice president of the Claims and Litigation Management Alliance, Southeastern Louisiana Chapter.

Nancy Scott Degan, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., will serve as chair of the American Bar Association's Section of Litigation, beginning in August 2014.

**Jeremy S. Epstein**, an attorney in the New Orleans office of Herman, Herman & Katz,

L.L.C., was appointed to his second term as associate judge of the American Bar Association Young Lawyers Division's Awards and Subgrants Team.

Brandon M. Hudson, an attorney in the Southeast Louisiana Legal Services Corp.'s Baton Rouge office, was named vice director of the American Bar Association's Disaster Legal Services Program.

**Stanley J. Jacobs**, a partner in the New Orleans firm of Jacobs, Manuel, Kain & Aamodt, was appointed by Gov. Bobby Jindal to the Louisiana State University Board of Supervisors for a six-year term. He previously served on the board from 1997-2003 and 2006-12.

**Zachary H. Kupperman**, an associate in Steeg Law Firm, L.L.C., in New Orleans, was selected as a Fellow of the World Economic Forum's Global Shapers Community.

**Kelly McNeil Legier**, the Louisiana State Bar Association's director of member outreach and diversity, is one of the recipients of the 2013 Louisiana Multicultural Leadership Award, presented by the Louisiana Diversity Council.



Stanley J. Jacobs



Tara L. Johnston



Zachary H. Kupperman



Kelly McNeil Legier



Dawn Danna Marullo



Omar K. Mason



James M. Matherne



Peter J. Pohorelsky



Michelle M. Rutherford



Robert M. Steeg



Catherine S. St. Pierre



Jennifer I. Tintenfass

**Omar K. Mason**, an attorney in the New Orleans office of Montgomery Barnett, L.L.P., was selected as one of 20 participants representing the National Bar Association at the inaugural Collaborative Bar Leadership Academy in June.

Stephanie A. Short, an Equal Justice Works Fellow attorney in the Southeast Louisiana Legal Services Corp.'s New Orleans office, was named the 2013-14 vice chair of the American Bar Association Young Lawyers Division's Access to Legal Services Committee.

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., received the William Reece Smith, Jr. Special Services Pro Bono Award, presented by the National Association of Pro Bono Professionals in May. Surprenant, who also serves as the liaison partner of the firm's Pro Bono Committee, was nominated for the award by The Pro Bono Project in New Orleans.

**Jennifer I. Tintenfass**, an associate in Steeg Law Firm, L.L.C., in New Orleans, was selected as a member of the Emerging Philanthropists of New Orleans 2013 Class.

## PUBLICATIONS

### *The Best Lawyers in America 2013*

**Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C.** (Lafayette, New Orleans): Gerald H. Schiff and Marion W. Weinstock.

**Juneau David, A.P.L.C.** (Lafayette): Robert J. David, Jr.

### *Chambers USA 2013*

**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.

**Jackson Lewis, L.L.P.** (New Orleans): Susan F. Desmond, Charles F. Seemann III and René E. Thorne.

**Ogletree, Deakins, Nash, Smoak &**

**Stewart, P.C.** (New Orleans): Mark N. Mallery and Christopher E. Moore.

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

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

### *New Orleans CityBusiness*

**Courington, Kiefer & Sommers, L.L.C.** (New Orleans): **Kaye N. Courington**, Leadership in Law Class 2013.

**Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C.** (New Orleans): C. Peck Hayne, Jr., Leadership in Law Class 2013.

**Montgomery Barnett, L.L.P.** (New Orleans): Terrel J. Broussard, Leadership in Law Class 2013.

## LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. To this end, the LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community. In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive. As the premier organization serving Louisiana's legal profession, the LSBA is working to advance its members' goals and interests through unparalleled programming and a comprehensive benefits package. Listed below are a few benefits of membership:

### Bar Center Services

**Louisiana Bar Center**  
[www.lsba.org/GoTo/BarCenter](http://www.lsba.org/GoTo/BarCenter)  
[mike.montamat@lsba.org](mailto:mike.montamat@lsba.org)

Louisiana lawyers are invited to reserve any of the three Bar Center conference rooms for depositions or other meetings. The building is equipped with wireless Internet access as well as desktop computers available at no charge to members. Contact Operations Coordinator Mike Montamat at (504)619-0140 with any questions.

### Lawyers' Assistance Program (LAP)

**Lawyers' Assistance Program**  
[www.louisianalap.com](http://www.louisianalap.com) • (866)354-9334  
LAP provides confidential assistance to members of the Bar and their families who experience problems with alcohol, drugs, gambling and other addictions, as well as mental health issues. Call 1(866)354-9334 for assistance.

### LSBA Professional Programs Department Services

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

### Fastcase

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



For more information,  
visit [www.lsba.org](http://www.lsba.org)

# 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 ORM.
8. The attorney should have a Martindale-Hubbell rating of "bv" or better.
9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
10. The requirements set forth in 8 and 9 may be waived by the Attorney General, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the State Risk Administrator-Claims and the Assistant Director for Litigation Management of the Office of Risk Management and the Director of the Litigation Program of the Louisiana Department of Justice.

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

## Additional Requirements for the Defense of Medical Malpractice Claims

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

## Conditions

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



## UPDATE

### Heinen Receives Hearing Officer of the Year Award

Jacquelyne (Jackie) J. Heinen, a judicial hearing officer for the 36th Judicial District Court in Beauregard Parish, received the Louisiana Support Enforcement Association's 2013 Hearing Officer of the Year Award. The award was presented by Lisa Andry, Child Support Enforcement Executive Program Director for the Louisiana Department of Children and Family Services (DCFS), during the annual meeting of the Louisiana Hearing Officers' Association (LaHOA) in March.

Heinen hears DCFS child support enforcement cases, protective order cases and other family law matters. She graduated from Louisiana State University Paul M. Hebert Law Center in 1980. She also has worked as an assistant district attorney for the 31st JDC (Jefferson Davis Parish), with the



Jacquelyne J. Heinen

Louisiana Bureau of General Counsel, and as the judicial hearing officer for the 14th JDC (Calcacieu Parish). She is a charter member of the LaHOA.



Samuel B. Stephens, right, judicial hearing officer for Jefferson Parish Juvenile Court, received the 2013 Louisiana Hearing Officers' Association (LaHOA) Career Achievement Award at the group's annual meeting in March. The award is in appreciation of his nearly 38 years in public service and his nearly 17 years of service to the LaHOA. Presenting the award is LaHOA President K. Jacob Ruppert.



Warren A. Perrin, left, chair of the Louisiana State Bar Association (LSBA) Francophone Section, represented the LSBA in Spain at the Madrid Bar Association annual reunion and the opening ceremonies of the Spanish Supreme Court in April. Perrin donated a book detailing the establishment of the Spanish settlement along Bayou Teche in 1779 to the Madrid Bar Association's library. Accepting the donation was Teresa Cabezas Soriano.



E. Phelps Gay, center, a partner in the firm of Christovich & Kearney, L.L.P., in New Orleans and a board member of the Louisiana Supreme Court Historical Society and the A.P. Tureaud Inn of Court, presented a CLE program, "Lincoln's Emancipation Proclamation: How the Commander in Chief Created a New Birth of Freedom," on May 2 at the Louisiana Supreme Court in conjunction with Law Day 2013. The program was sponsored by the Law Library of Louisiana, the Louisiana Supreme Court Historical Society and the A.P. Tureaud Inn of Court. Among the 75 people attending the event were Judge Ethel S. Julien, left, Orleans Civil District Court judge and president of the A.P. Tureaud Inn of Court; and Historical Society board member Judge Marc T. Amy, right, 3rd Circuit Court of Appeal. Dean María Pabón López, with Loyola University College of Law, is co-chair of the Society's Program Committee.

## LOCAL / SPECIALTY BARS

### ABOTA Louisiana Chapter Elects Officers

Edward E. Rundell of the law firm of Gold, Weems, Bruser, Sues & Rundell in Alexandria was elected president of the Louisiana Chapter of the American Board of Trial Advocates (ABOTA).

Other officers are J. Patrick Hennessy of J. Patrick Hennessy Law Firm in Shreveport, president-elect; M.H. (Mike) Gertler of Gertler Law Firm in New Orleans, secretary; and J. Michael Veron of Veron, Bice, Palermo & Wilson in Lake Charles, treasurer; and S. Gene Fendler of Liskow & Lewis, P.L.C., in New Orleans, immediate past president. Sharon Stickling of Baton Rouge is executive director.

Harry T. Widmann of the Law Offices of Harry T. Widmann in New Orleans is the Otis Lecture Series Chair.

### 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](mailto:dlabranche@lsba.org).

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



Mary T. Joseph, second from left, a member with McGlinchey Stafford, P.L.L.C., and Amanda S. Stout, far right, an associate with McGlinchey, are the recipients of this year's Dermot S. McGlinchey Commitment to Pro Bono Award. They donated their award money to the Baton Rouge Bar Foundation's Pro Bono Project. Accepting the donation are Baton Rouge Bar Association (BRBA) Executive Director Ann K. Gregorie and BRBA President Michael S. Walsh.

### Award Recipients Assist Baton Rouge Bar's Pro Bono Efforts

Two attorneys with the law firm of McGlinchey Stafford, P.L.L.C., donated \$2,500 in April to the Baton Rouge Bar Foundation's Pro Bono Project. The firm's Pro Bono Committee created the "Dermot S. McGlinchey Commitment to Pro Bono Award" in honor of the firm's late founder, Dermot S. McGlinchey.

This year's award recipients — Amanda S. Stout, an associate in Baton Rouge, and Mary T. Joseph, a member

in Baton Rouge — donated the money to the Baton Rouge Bar Foundation's Pro Bono Project to support its programs and services, including Ask-A-Lawyer, Thirst for Justice and Wills for Heroes.

The annual award, which provides for a donation in the recipients' names to the charity of their choice, is presented to the associate with the most pro bono hours and to the attorney with the most overall pro bono hours.



The Louisiana Hearing Officers' Association (LaHOA), an association of all of Louisiana's 42 judicial hearing officers from 44 parishes, conducted its 2013 annual meeting and dinner in March. Members attending were, seated from left, Samuel B. Stephens, Jefferson Parish Juvenile Court; K. Tess Stromberg, 23rd JDC; Monique F. Rauls, 9th JDC; Maggie T. Simar, 16th JDC; Felicia H. Higgins, Jefferson Parish Juvenile Court; and Carol Kay Accardo, 24th JDC. Standing from left, K. Jacob Ruppert, LaHOA president and 11th JDC; Jill M. DeCourt, 16th JDC; Dean J. Manning, 14th JDC; Lesa Henderson, 1st, 2nd, 3rd and 10th JDCs; A. Michelle Perkins, Caddo Parish Juvenile Court; Paul S. Fiasconaro, 24th JDC; Dennis R. Bundick, 15th JDC; Rebecca Kennedy, 22nd JDC; Rebecca M. Kirk, 15th JDC; and William H. Duncelman, 32nd JDC.



For the Louisiana State Bar Association's Month of Service in May, the New Orleans Bar Association (NOBA) Young Lawyers Section increased its monthly food service project at Ozanam Inn from twice a month to four times. Volunteering at a recent event were, from left, Christopher K. Ralston, Kimberly Silas, Carla D. Gendusa and Christopher D. Wilson.

## DeSoto Parish Bar Celebrates Law Day

The DeSoto Parish Bar Association hosted the annual Law Day program on May 3 in the DeSoto Parish Courthouse in Mansfield. The program guest speaker was Hon. Mark L. Hornsby, United States magistrate judge, United States District Court, Western District of Louisiana, Shreveport Division.

In addition to the legal community, program attendees included public officials, community representatives, DeSoto Parish high school students and the media. A reception followed the program.



The DeSoto Parish Bar Association hosted the annual Law Day program on May 3 in Mansfield. Among the attendees were, front row from left, Pastor Fred Mustiful, Cedar Hill Baptist Church, Mansfield; Kervin Campbell, Mansfield Middle School; U.S. Magistrate Judge Mark L. Hornsby; 42nd Judicial District Judge Charles B. Adams, DeSoto Parish; attorney Adrienne D. White, DeSoto Parish Bar Association president; and attorney Katherine E. Evans, DeSoto Parish Bar Association secretary/treasurer. Back row from left, Pastor Thumper Miller, First Baptist Church, Mansfield; attorney Dave Knadler, DeSoto Parish Bar Association vice president; Matthew LaFollette, Mansfield High School; and attorney Murphy J. White.

## Lincoln Parish Bar Association Helps with Local Schools

Members of the Lincoln Parish Bar Association volunteered their time in May to conduct a “Junior Judges” program at Ruston Elementary School. The Junior Judges program provides a video and teaching curriculum consisting of seven real-life scenarios for fourth graders to judge what options they have in tough situations and encourage them to make smart choices. The topics include cheating, destroying property, bullying, teasing, stealing, drugs and alcohol, and gangs and weapons.

“I want to thank all of the attorneys who participated in this program, as well as each of the members of the Lincoln Parish Bar Association for the many



Several members of the Lincoln Parish Bar Association volunteered their time in May to conduct a “Junior Judges” program at Ruston Elementary School. From left, Cary T. Brown, Laurie James, Shelley A. Goff, Addison (Add) Goff and Jeffrey L. Robinson. Also participating was Monique B. Clement.

ways in which they volunteer their time in order to improve this great community

that we share,” said Lincoln Parish Bar Association President Cary T. Brown.

## 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/LawyerAdvertising>.

Inquiries, questions and requests for assistance may be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., [RLemmler@LSBA.org](mailto:RLemmler@LSBA.org), (800)421-5722, ext. 144, or direct dial (504)619-0144.

## President's Message

# What is the Louisiana Bar Foundation?

By Leo C. Hamilton

**A**s the Louisiana Bar Foundation (LBF) president, I believe it is important that every Louisiana attorney knows exactly who the LBF is and what the LBF does. It amazes me that so many of my colleagues are unaware of this wonderful organization that works tirelessly to secure funding for free civil legal services to Louisiana's disadvantaged. The LBF is the visible public service organization of Louisiana attorneys. It reflects the social conscience and public responsibility of our profession, and our commitment to effective action.

Every member of the Bar is encouraged to join in the joint effort of the Louisiana State Bar Association (LSBA) and the LBF to ensure that adequate funding is available so that the promise of equal access to justice is a reality. Become a Foundation Fellow! In doing so, your actions will be in line with the Rules of Professional Conduct regarding pro bono work and the Bar's Access to Justice Pro Bono Policy.

The LBF, a non-profit 501(c)(3) entity organized under the laws of the state of Louisiana, is the largest funder of free civil legal services in the state and is working every day to include all Louisiana citizens

in the justice system. We support non-profit organizations throughout the state that provide free, civil legal representation to the indigent, law-related education to the public, and administration of justice projects.

Since 1989, we have distributed \$54.4 million to hundreds of Louisiana non-profit organizations to meet these goals.

We serve as the fiscal administrator for the state of Louisiana Child in Need of Care Program which provides free legal representation to children in foster care. We also serve as fiscal administrator for the Louisiana Supreme Court Interest on Lawyers' Trust Accounts Program. Most recently, we became an administrator of funding on behalf of the Office of the Louisiana Attorney General for the federal mortgage servicing settlement.

I am proud to be a Fellow of an organization that each year, through grants, assists women, children, the elderly, people with disabilities, the newly unemployed, those facing loss of their homes, disaster victims and many others



Leo C. Hamilton

by providing services that go to the very heart of the health, safety and security of many of our citizens and their families. Recent interest rate declines, coupled with the significant federal budget cuts and our state's discontinuance of direct appropriation of civil legal aid, make it critical, now more than ever, that every attorney support the Louisiana Bar Foundation.

To find out how to become a Fellow, contact us at (504)561-1046, (504)566-1926 (fax) or visit [www.raisingthebar.org](http://www.raisingthebar.org). You also can follow us on Facebook, LinkedIn and YouTube.

### Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

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Justin M. Chopin .....	New Orleans	Keenan K. Kelly .....	Natchitoches
Susan E. Dinneen .....	New Orleans	Katy Britton Kennedy .....	New Orleans
Michael D. Ferachi .....	Baton Rouge	Hon. Elizabeth C. Lanier .....	Houma
Julie Kilborn Ferris .....	Baton Rouge	Hon. Walter I.	
Cristin G. Fitzgerald .....	New Orleans	Lanier, Jr. (Ret.) .....	Thibodaux
Lauren E. Godshall .....	New Orleans	Kelsey L. Meeks .....	New Orleans
Ethan A. Hunt .....	Monroe	Andrew Reed .....	Morgan City
		Sarah E. Stogner .....	New Orleans

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Email your news items and photos to:  
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LaBranche at  
[dlabranche@lsba.org](mailto:dlabranche@lsba.org).

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

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No additional charge for Classy-Box number

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For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2013. Check and ad copy should be sent to:

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liability litigation experience. Excellent hourly compensation. Morris Bart, L.L.C., Ste. 2000, 909 Poydras St., New Orleans, LA 70112. Email résumé to: [AStanford@MorrisBart.com](mailto:AStanford@MorrisBart.com).

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**Phelps Dunbar, L.L.P.**, a regional law firm, is seeking an associate for its Litigation Practice Group in the Baton Rouge office. The preferred candidate will have two-plus years' experience in insurance coverage and general litigation matters. The position offers a competitive salary and benefits. Interested candidates should send a cover letter, résumé and transcript to Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130, or email [rachel.woolridge@phelps.com](mailto:rachel.woolridge@phelps.com).

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## NOTICE

**Notice is given that** Robert A. Booth, Jr. intends on petitioning for reinstatement to the practice of law. Any person(s) concurring with or opposing this petition must file notice within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Jeff D. Easley** intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition

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

**Notice is hereby given** that Michael A. Fenasci intends to make application for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Notice is hereby given** that Calvin Benjamin Lester, Jr. 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.

## YOUR AD COULD BE HERE!

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*Included in Registration: Seminar attendance, coffee breaks, lunch, and electronic program materials.*

### CANCELLATIONS AND REFUNDS

Cancellation of registration must be received in writing by the LSBA no later than October 17, 2013. Cancellations will receive a full refund, less a \$30 administrative charge. Absolutely no refunds will be made after **October 17, 2013**.

**Register online today at [www.lsba.org/CLE](http://www.lsba.org/CLE)**

To advertise in this directory, contact Krystal Bellanger-Rodriguez at (504)619-0131 or email [kbellanger@lsba.org](mailto:kbellanger@lsba.org)



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## YOUR AD HERE!

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### ANSWERS for puzzle on page 124.

J	O	H	N	C	L	A	R	E	N	C	E
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# The Last WORD

By E. Phelps Gay

“JEST” NUTS

**R**ecently, while waiting in an airport, worrying about my upcoming examination of an important witness, my client came up to me and asked:

*Q. What did the Dalai Lama say to the Lucky Dog salesman?  
A. Make me one with everything.*

Tension suddenly drained from my body. Laughter and relaxation reigned, and the rest of the day was OK. The examination went well.

Having passed the age of 60, I may be wallowing in a state of woozy confusion, occasionally interrupted (or so I like to believe) by lucid intervals. Or, as my friend Mike Patterson more succinctly remarked when I reached the dreaded milestone: “Welcome to the old fart decade.”

No doubt the number of cells in my brain has taken a bit of a nosedive, but, on the other hand, I like to think the remaining cells are more seasoned and do better work. Still, as Samuel Johnson said of second marriages, this may represent the triumph of hope over experience. Not too long ago, I filed a Motion to Transfer a case from one parish to another, contending that while venue was certainly proper in the parish where the suit had been filed, almost all the witnesses and parties were based in another parish, which would be more convenient for all concerned. The problem was this supposedly “more convenient” parish adjoined the parish where the suit was pending. The judge kindly shook his head and said no. As I slunk out of the courtroom, I had to ask myself: What happened to my “seasoned” brain cells that day?

Yet the balm of humor almost never fails to soothe, even (perhaps especially) when you happen to be its object. A few weeks ago, I came across a neat little volume called *Louisiana Law: Legends and Laughs* compiled in 2002 by Prof. Frank L. Maraist (a legend himself) and the late, great Judge Henry A. Politz. On page 202, I read this submission from my old colleague Geoff Snodgrass:

*Three lawyers went to a local Orleans pub after work and spent considerable time there. One of them had brought his briefcase. When he excused himself briefly to answer the call of nature, the other two lawyers quickly filled his*



*briefcase with bar peanuts. As luck would have it, he took the briefcase home and the next morning went to an 8 a.m. settlement hearing on a workers' compensation claim. As he opened his briefcase, peanuts spilled onto the floor of the judge's chambers, prompting the judge to comment that he'd heard of settling cases for peanuts before, but that this was ridiculous.*

Geoff identified the “peanut lawyer” as yours truly. Prof. Maraist and Judge Politz duly noted: “Phelps was unavailable for comment.”

In the words of Inspector Jacques Clouseau: Good one.

*E. Phelps Gay has practiced law for 31 years at the firm of Christovich & Kearney, L.L.P., in New Orleans. He also is affiliated with the mediation firm, Patterson Resolution Group.*



E. Phelps Gay

*The Louisiana Bar Journal is looking for authors and ideas for future “The Last Word” articles. If you have experienced, seen or heard something humorous in your day-to-day legal practice, or you have an idea you'd like to pitch, contact LSBA Publications Coordinator Darlene M. LaBranche, c/o Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; or email [dlabranche@lsba.org](mailto:dlabranche@lsba.org).*

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