

# LOUISIANA BAR JOURNAL

August / September 2019

Volume 67, Number 2

## DATA BREACH

### ONE YEAR LATER:

## Louisiana's Database Security Breach Notification Law 2.0

#### Also Inside:

- Piercing the Corporate Veil with the Single Business Enterprise Doctrine
- Medicaid Secondary Payer Laws Revisited: Supreme Court Decisions, Congressional Action, Budget Act





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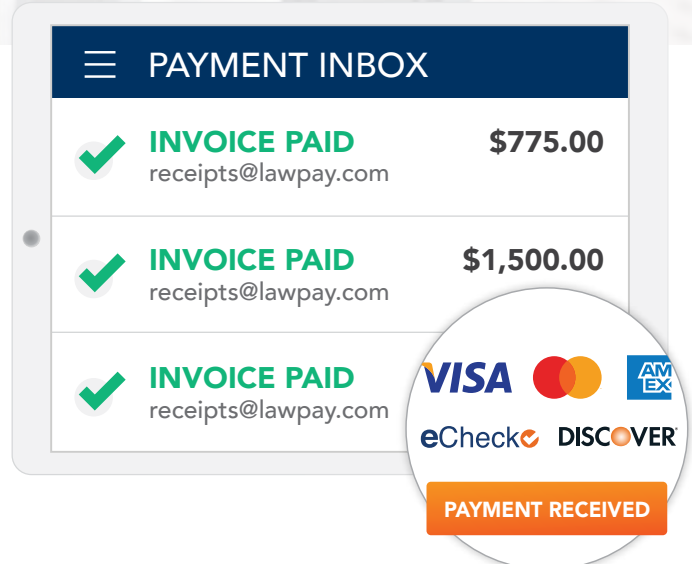
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Right: Robert A. Kutcher, right, managing partner in the Metairie law firm Richard Kutcher Tygier & Luminais, L.L.P., was installed as the 79th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Photo by Matthew Hinton Photography.



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By Patrick A. Talley, Jr.

# Professionalism... “Lessons Learned”

It has been frequently observed that professionalism is nebulous and difficult to define. Certainly there are plenty of definitions and we often are not exactly sure how to put it into words, but we definitely know it when we see it, or perhaps better stated, we know the *lack* of it when we see it. Unfortunately, we can all cite personal examples of the latter and maybe we've been guilty ourselves of a lapse in professionalism from time to time. But the important thing is the lesson learned. Professionalism is, after all, a constant and iterative process to “get better” and learn from our mistakes.

Recently, I was in court for rule hearings. The judge, obviously frustrated with frivolous motions and wasted time, chastised all of us for not talking to each other enough. He cited several examples in the morning's rule docket of lawyers who worked out their differences minutes before their rule was to be heard, after having filed motions making disparaging comments about each other and asking for sanctions. His point was well-taken. If only the lawyers had talked to each other before filing motions. Lesson learned. In the Code of Professionalism (COP), we agree not to use the threat of sanctions as a litigation tactic, and we also agree to refrain from personal attacks or disparaging comments about opposing counsel. So, before filing that motion, pick up the phone, call each other more often and have a civil conversation. Many of our disagreements are simply the result of misunderstandings and having a conversation with someone can work wonders.

On another rule day, following conclusion of oral argument on a contentious motion, another judge complimented the lawyers and thanked them for their professionalism in oral arguments, but also

noted that the same lawyers were “sharp-tongued” toward each other in depositions and other contexts outside the courtroom. She said if you can act in a professional manner in front of a judge, you should be able to do so all of the time. Lesson learned. Let's always talk to each other with the same respect and civility as we do when we're in front of a judge in court. The COP says, “I will conduct myself with dignity, civility, courtesy” and “I will not engage in personal attacks on other counsel.”

Another situation is when an attorney is late to a deposition or court conference. I was involved in a deposition several years ago when one of the attorneys was late. Rather than calling him, we started the deposition. We all agreed, “He certainly could have called us if he wanted us to wait, so let's go.” The attorney came in a little later, after having accompanied his wife to a doctor's visit. Obviously, his attention was somewhere else and rightly so. Lesson learned. Since then, I have never agreed to begin a deposition without accounting for all counsel not present. The COP says, “I will be cooperative in scheduling” and “I will grant reasonable extensions.” Let's cooperate with each other whenever we can and make that a reality.

Some of us think it's a sign of weakness to agree to extensions of deadlines. In reality, the strength in your case is more at the forefront when you have the strength of character not to take advantage of someone who simply needs a little more time to get something done. I observed a rule hearing in which the judge noted that an opposition memorandum had not been timely filed and he was not going to allow the attorney to participate in oral argument. Moving counsel rose from his chair, asked to be recognized and requested that his opponent be allowed to have oral argument.

The judge agreed. Now that's professionalism by both the attorney and the judge. They understood the concept in the COP, “I will allow counsel fair opportunity to respond.” Lesson learned. If you can do someone a favor, do it. A favor may come back your way when you need it.

One morning, while traveling from New Orleans to Baton Rouge for a court status conference, despite allowing two hours, more than enough time, I was caught behind an accident over the Bonnet Carre Spillway and was running late. I called the court, but the judge said he would not make the other lawyers wait and was going to start the status conference without me. I didn't know any of the other lawyers and they could have easily taken advantage of me not being there. Instead, they spoke up and said they didn't mind waiting. As a result, the judge waited for me to arrive before beginning the conference. The attorneys and the judge could have acted differently. I was late and they didn't have to wait, but they chose to act in a professional and courteous manner. We all had a cup of coffee after I arrived, making the status conference pleasant and enjoyable rather than contentious. Lesson learned. Life is too short. Rather than trying to jam someone, let's give the other guy a break and acquiesce in reasonable requests for extensions of time, as we agree to do in the COP.

In closing, let's not worry too much about defining professionalism but rather focus on conducting ourselves in accordance with the COP. After many years of practice, I've learned a few lessons. Call your adversary and have a conversation. Treat him or her with kindness and respect. Do a favor when you can. That's what professionalism is all about. It makes the practice of law much more enjoyable and pleasant.

# Code of Professionalism

***The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.***

- **My word** is my bond.
- **I will** conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- **I will not** knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- **I will** be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- **I will** allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- **I will not** abuse or misuse the law, its procedures or the participants in the judicial process.
- **I will** cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.
- **I will not** engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- **I will** support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- **I will** work to protect and improve the image of the legal profession in the eyes of the public.
- **I will** endeavor to improve our system of justice.
- **I will** use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- **I will** seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- **I will** be supportive of new members in the profession.
- **I will** stay informed about changes in the law, communication, and technology which affect the practice of law.

*Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee, and was revised in June 2018.*



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By Robert A. Kutcher

# Do Something for Others

I was sitting at home on a rainy Father's Day afternoon thinking about what to write for this message when my wife, Renee, came back from the grocery store with an extra package. She had found an old, small, skinny toothless dog apparently abandoned on the street. This isn't the first time this has happened. Stray dogs seem to find my wife and my daughters. Being the person she is, she brought the dog home, dried her off and set about trying to find her owner. I was all for that since strays who don't have a home end up at our house for an extended stay. That's when it struck me. This profession and this Bar Association are not just about making a living but doing something for others . . . for people less fortunate than ourselves.

Yes, we all have problems and issues in our lives, that, after all, is life. You have good days and bad days. But no matter how bad that bad day may be, there are so many people who are far less fortunate.

Our state has a poverty rate of almost 20% and almost 900,000 of our fellow citizens live under the poverty line. That includes 300,000 children. Worse yet, it is estimated that every year almost 180,000 Louisianians will have at least one civil legal issue, and they need our help.

The good news is that both the federal government and our Legislature recognize the need.

I applaud the Governor and the Louisiana Legislature. This year, for the first time in almost a decade, our political leaders appropriated \$500,000 for civil legal aid. That's a big deal.

On the federal front, although nothing is certain, there is reason for optimism that Congress, acting on a bipartisan basis, will appropriate something in the range

of \$550 million, a material increase from last year but well below the adjusted-for-inflation amount of the Reagan era. With these funds, we can provide legal assistance to tens of thousands of seniors, opioid victims, veterans and juveniles and provide assistance for disaster declarations. This not only helps our citizens, but a social return on investment analysis conducted by the Louisiana Bar Foundation found that every dollar spent on civil legal aid delivers \$9.13 in financial benefits. It helps all of us.

Our two legal aid associations, Southeast Louisiana Legal Services and Acadiana Legal Service Corp., serve almost 49,000 individuals. They do a lot with very little. While the funding is very much appreciated, that does not cover all the unmet needs.

That's where all of us should come in. Volunteer to help a pro bono board in your community. The need is there. Give something back. You'll feel better for it.

Another way to help is through the Louisiana State Bar Association's (LSBA) "Find Legal Help" resource webpage. The Bar directs individuals to resources such as our Modest Means Online Legal Directory. Created by the Access to Justice Commission, the online directory lists attorneys for Louisiana citizens who don't qualify for free legal services but who still can't afford an attorney on the open market. This directory is designed to help Louisiana consumers obtain legal services at affordable rates. It connects people with attorneys who charge reduced rates based on client income, charge a flat fee, or charge less because they represent the client for just part of the case. This program is designed to help not only those of limited income but also provides income

to lawyers. If you are interested, go to our website to learn more, [www.lsba.org](http://www.lsba.org).

Our Lawyers in Libraries Program is an easy way to give back. The 2019 LSBA statewide week of service, held in conjunction with National Celebrate Pro Bono Week, is set for Oct. 21-26. Volunteer through the LSBA to visit a local library for a few hours and help people where they live. In the most advanced and richest country in the world and with the world at our fingertips, so many people lack access to a computer. Their only access is the public library, so let's meet them there. This affirms our commitment to providing access to the legal system for all individuals, regardless of financial circumstance, and better connects the public with counsel. At the same time, it enables a more efficient and just legal system.

Giving back also hits closer to home. Our statewide mentoring program, Transition into Practice, allows young lawyers to benefit from the experience of their more seasoned counterparts. We have also implemented our Spot Mentoring Program which allows lawyers who have been practicing two to seven years to obtain on-the-spot advice as needed. Again, please visit our website for more details.

You can also check out our Legal Innovators for Tomorrow (LIFT) Program which provides new lawyers with the resources and support necessary to develop solo and small firm practices that employ innovative solutions to addressing unmet legal needs of low- and moderate-income clients.

We annually conduct our Suit Up for the Future Program. This program, cosponsored with Just the Beginning, the Louisiana Bar Foundation and the four

state law schools, is available to incoming high school juniors, seniors and recent graduates who are interested in the legal profession. Students participate in a three-week legal institute, during which they attend an abridged law school session, field trips to law schools and courts, and an internship consisting of shadowing at area law offices and courts. This program gives young people a taste of what law

practice is like.

The point is simple. There are so many ways to get involved. Give something back to the communities in which we live and serve. It's good for you and the community. Volunteer for a board position on a not-for-profit. If you're a young lawyer, get active in our Young Lawyers Division (YLD). Volunteer for the YLD's Wills for Heroes Program or judge a

mock trial competition. If your "young lawyer" years are well behind you, get active in our Senior Lawyers Division. Do something for your community and you will benefit as well.

By the way, the good news on the lost dog front is that dog and master were happily reunited, and we don't have another dog living with us. Just like giving back, that's a win-win.

# 2020 Expert Witness, Consultant and Legal Services Directory

The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2019/January 2020 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

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# DATA BREACH

## One Year Later:

### Louisiana's Database Security Breach Notification Law 2.0

By Micah J. Fincher and Jessica C. Engler

Like the other 49 States, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands, Louisiana has a data breach notification law.<sup>1</sup> First enacted in 2005, the Louisiana Legislature passed significant amendments to the law, which became effective on Aug. 1, 2018.<sup>2</sup> The amendments strengthened data protections for Louisiana residents by, among other things, adding affirmative obligations on businesses to safeguard personal information and setting a 60-day deadline for giving notice to individuals for most breaches. Left unchanged were deadlines to report breaches to the Consumer Protection Section of the Louisiana Attorney General's Office with regulations authorizing fines for tardy notices of up to \$5,000 per day.<sup>3</sup> Further, while Louisiana's law had already created a

private right of action for those harmed by untimely breach notifications,<sup>4</sup> the 2018 amendments deemed any violation of the law to be an unfair trade practice.<sup>5</sup> Yet despite expanded affirmative duties and enforcement rights, many businesses (including law firms) remain unaware of these changes. The one-year anniversary of the amendments merits a review first of the Louisiana's breach notification law as amended and then a discussion of enforcement of the amended law in the public and private sector.

#### "Personal Information"

The Louisiana breach notification law's definition of "personal information" is limited to certain information for individual Louisiana residents that is not encrypted or redacted.<sup>6</sup> Computerized data qualifies as "personal information" if it in-

cludes the Louisiana resident's last name and first name (or first initial) in combination with one or more of the following:

- ▶ Social security number;
- ▶ Driver's license number or state identification card number;
- ▶ Account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account;
- ▶ Passport number; or
- ▶ Biometric data, including fingerprints and other unique biological characteristics used to authenticate an individual's identity to access a system or account.<sup>7</sup>

The last two categories – passport numbers and biometric data – were added by the 2018 amendments. These additions are consistent with recent changes made to other states' data breach notification laws.

## Protecting Personal Information

Among the most significant additions to the law, the 2018 amendments introduced affirmative obligations to protect personal information.<sup>8</sup> These obligations apply to all persons and legal entities that either conduct business in Louisiana or own or license computerized data that includes Louisiana residents' personal information.<sup>9</sup> They must "implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure."<sup>10</sup> When disposing of records containing personal information, they must destroy the records "by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means."<sup>11</sup> Both of these requirements are one of several "best practices" of data management that are now enshrined in Louisiana law. They apply regardless of whether the person or entity has suffered a breach.

No regulations or official guidance are currently available for interpreting these new obligations, including what constitutes "reasonable security procedures and practices."<sup>12</sup> The Louisiana Attorney General's Office has generally commented that the interpretation may be informed by the Federal Trade Commission's guidance and jurisprudence from state courts, but each complaint made to its office would be handled on a case-by-case basis.

### The Trigger: What is a "Breach?"

A "breach of the security of the system" occurs when the "security, confidentiality, or integrity of computerized data" is compromised resulting in, or has "a reasonable likelihood to result in," the "unauthorized acquisition of and access to personal information."<sup>13</sup> In other words, for an event to constitute a "breach," it must be reasonably likely that a Louisiana resident's personal information was both acquired and accessed without authorization. The

definition excludes good faith acquisition of personal information by a person's employee or agent "for the purposes of" the employer or principal, but only if the personal information is not used for, or subject to, unauthorized disclosure.<sup>14</sup>

### No Harm Exception

The law includes a safe harbor when a breach results in "no reasonable likelihood of harm," such as when an event technically qualifies as a breach but it is contained in a manner that makes the likelihood of identity theft or other harm unlikely. Notice of a breach is not required if the person determines after a reasonable investigation that "there is no reasonable likelihood of harm" to Louisiana residents.<sup>15</sup> If a person relies on the safe harbor, then he/she must retain a copy of the determination, in writing and with supporting documentation, for five years from the date of discovery of the breach.<sup>16</sup> Upon request, they must provide a copy to the Louisiana Attorney General.<sup>17</sup>

### Who Gives Notice?

Following discovery of a breach, the law requires any person that "owns or licenses computerized data that includes personal information" to notify Louisiana residents "whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person."<sup>18</sup> If a person who does not own the data suffers a breach, then the person must give notice of the breach to the owner or licensee of the data,<sup>19</sup> who in turn must notify the affected Louisiana residents.<sup>20</sup> This statutory scheme ensures that affected individuals have a single point of contact, *i.e.*, the data owner or licensee, regarding the breach.

### Timing of Notice to Residents

Louisiana residents have the right to receive notice of security breaches of computerized data that include their personal information.<sup>21</sup> The amendments added a 60-day deadline for most breaches: notice must be made "in the most expedient time

possible and without unreasonable delay but not later than 60 days from the discovery of the breach."<sup>22</sup> The law permits delays in giving notice at the request of law enforcement or "to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system."<sup>23</sup> But if a person relies on either of those grounds to delay notice, the Louisiana Attorney General must be notified of the reasons for such delay within the 60-day period from discovery of the breach.<sup>24</sup> If additional time to provide notification is required, the Attorney General "shall allow a reasonable extension of time."<sup>25</sup> The law does not specify the contents of the notice to residents.

### Form of Notice to Residents

When a person's system is breached, the law provides four ways to notify affected Louisiana residents. First, if the person maintains an information security policy for the treatment of personal information and that policy includes notification procedures, then he/she may provide notice in accordance with its policy and procedures.<sup>26</sup> The procedure, of course, must otherwise comply with the timing requirements of the law,<sup>27</sup> but the law does not require that the procedure specify the medium through which the notice is given (*e.g.*, the procedure may permit notice via email, telephone, etc.). Second, notice may be made by written notification.<sup>28</sup> Third, the law authorizes electronic notification in accordance with the Electronic Signatures Act (the ESA).<sup>29</sup> Because the ESA requires affirmative, informed consent in advance of the electronic notice,<sup>30</sup> such notice is often not a viable option. Fourth, the law permits "substitute notification" in circumstances where other means of notification would be burdensome or impossible, namely, sufficient contact information is not available, the cost of providing other means of notice would exceed \$100,000, or the number of persons to be notified exceeds 100,000.<sup>31</sup> Substitute notice requires the person to give notice in three ways: by email, if available; by a conspicuous posting on the person's Internet site, if an Internet site is maintained; and by major statewide media.<sup>32</sup>



## Notice to Attorney General

Regulations promulgated by the Office of the Attorney General also require notice to the Attorney General's Consumer Protection Section.<sup>33</sup> Under the regulations, if notice to "Louisiana citizens"<sup>34</sup> is required under the law, then "within 10 days of distribution" of such notice, the Attorney General must also receive written notice.<sup>35</sup> Failure to provide timely notice to the Attorney General may result in a fine of up to \$5,000 per day.<sup>36</sup> The written notice to the Attorney General must include the names of all Louisiana citizens affected by the breach and detail the breach of the security of the system,<sup>37</sup> including the date of the breach, the date of discovery of the breach and the date of notice to Louisiana residents.

## Private Enforcement

A person who suffered damages as a result of violations of Louisiana's breach notification law may bring a civil action against the violator. The law permits civil actions "to recover actual damages resulting from the failure to disclose in a timely manner" that there was "a breach of the security system resulting in the disclosure of a person's personal information."<sup>38</sup> Louisiana's Unfair Trade Practices and Consumer Protection Law<sup>39</sup> also permits plaintiffs to recover "actual damages" for any "unfair or deceptive method, act, or practice declared unlawful by" the law.<sup>40</sup> In a change that expands the grounds for actions by the Attorney General and private plaintiffs for violations of Louisiana's breach notification law, the 2018 amendments provide that a violation of the law "shall constitute an unfair act or practice pursuant to" Louisiana's Unfair Trade Practices and Consumer Protection Law.<sup>41</sup>

## Exemption for Financial Institutions

The law includes a limited safe harbor for financial institutions. In 2005, federal regulators published "Interagency



Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice."<sup>42</sup> A financial institution that is subject to and in compliance with such federal inter-agency guidance, as amended, "shall be deemed to be in compliance with" the law.<sup>43</sup>

## Enforcement Update

The 2018 amendments clarified the Louisiana Attorney General's authority to hold businesses accountable when they violate Louisiana's breach notification law. Yet, as of the submission date of this article, the Attorney General has not used the new law to take action against any Louisiana entities. The Attorney General's Office has, however, joined with other state attorneys general to bring cases involving multi-state breaches.<sup>44</sup>

There has also been limited activity in civil litigation. This may be because, even in cases involving clear violations of breach notification laws, claimants have historically had difficulty in proving the existence of actual damages specifically caused by such breaches. In past cases, Louisiana courts (like many other state and federal courts) have required data breach claimants to allege a non-speculative, actual injury to establish legal standing.<sup>45</sup> Many courts, including Louisiana, have held that theft of personal information alone, leading to merely an increased *risk* of identity theft

and subsequent emotional distress, does not constitute actual damages.<sup>46</sup> And because an individual claimant's information may have been compromised in multiple breach events, it may be difficult to prove that any single breach is causally linked to any specific instance of identity theft. As a result, even if a claimant is successful in proving that the entity was noncompliant with the law's data management obligations, the claim may still ultimately fail if the non-compliance did not cause the breach. Finally, the amended law includes no indication from the Legislature that the obligations may be applied retroactively; thus, it is unlikely that breaches or noncompliance that occurred prior to the effective date can establish a cause of action under the amended statute.

Despite the limited enforcement activity to date, we anticipate greater scrutiny of Louisiana businesses' statutory obligations to secure personal information, before and after breaches occur. To the extent that a business has not reviewed its data security practices since the 2018 amendments became effective, undertaking that exercise has become a necessary cost of doing business in Louisiana.

## FOOTNOTES

1. See La. R.S. § 51:3071, *et seq.*
2. La. Act No. 382 (2018).
3. La. Admin. Code title 16, pt. III, § 701.
4. La. R.S. § 51:3075.
5. *Id.* § 51:3074(J).

6. *Id.* § 51:3073(4)(a). The definition of “personal information” excludes “publicly available information that is lawfully made available to the general public from federal, state, or local government records.” *Id.* § 51:3073(4)(b).

7. *Id.* § 51:3073(4)(a).

8. See La. R.S. § 51:3074(A),(B) (2019).

9. *Id.* § 51:3074(A). Also, as noted above, the definition of “personal information” under section 3073(4)(a) is limited to Louisiana residents.

10. *Id.* § 51:3074(A).

11. *Id.* § 51:3074(B).

12. Other states that require persons to affirmatively protect personal information have created detailed guidance for compliance. For example, Massachusetts requires a comprehensive information security program, risk assessments, security policies for employees, overseeing outside service providers, securing user authentication protocols for computer access, encryption of personal information traveling across public networks, reasonable monitoring systems, etc. See generally 201 Mass. Code Regs. 17.00 (2019).

13. *Id.* § 51:3703(2).

14. *Id.*

15. La. R.S. § 51:3004(I) (2019).

16. *Id.*

17. *Id.*

18. *Id.* § 51:3074(C).

19. *Id.* § 51:3074(D).

20. *Id.* § 51:3074(C).

21. *Id.* § 51:3074(C).

22. *Id.* § 51:3074(E).

23. *Id.* § 51:3074(E),(F).

24. *Id.* § 51:3074(E).

25. *Id.*

26. *Id.* § 51:3074(H).

27. La. R.S. § 51:3074(H) (2019); see also *Id.* § 51:3074(E).

28. *Id.* § 51:3074(G)(1).

29. *Id.* § 51:3074(G)(2); see also 15 U.S.C. § 7001 (2019).

30. See *id.* § 7001(c)(1).

31. La. R.S. § 51:3074(G)(3) (2019).

32. *Id.* § 51:3074(G)(3)(a)-(c).

33. La. Admin. Code title 16, pt. III, § 701 (2019).

34. While the law requires notice to Louisiana “residents,” see La. R.S. § 51:3074(C) (2019), the regulations require notice to the Attorney General “[w]hen notice to Louisiana citizens is required pursuant to R.S. 51:3074.” La. Admin. Code title 16, pt. III, § 701(A) (2019). (A) (*emphasis added*).

35. *Id.* § 701(B).

36. *Id.*

37. *Id.* § 701(A).

38. La. R.S. § 51:3075 (2019).

39. *Id.* § 51:1401, *et seq.*

40. *Id.* § 51:1409.

41. *Id.* §§ 51:3074(J), 51:1405(A).

42. See 70 Fed. Reg. 15736 (Mar. 29, 2005).

43. La. R.S. § 51:3076 (2019).

44. See e.g., Allison Grande, “States Secure \$900K Deal in First Coordinated HIPAA Suit,” Law360 (May 29, 2019, 9:16 PM EDT), [www.law360.com/articles/1163999/states-secure-900k-deal-in-first-coordinated-hipaa-suit](http://www.law360.com/articles/1163999/states-secure-900k-deal-in-first-coordinated-hipaa-suit); Press Release, Louisiana Department of Justice, Settlement with Uber over Data Breach Announced by Attorney General Jeff Landry (Sept. 27, 2018) (available at [www.ag.state.la.us/Article/9602/5](http://www.ag.state.la.us/Article/9602/5)).

45. See, e.g., Bradix v. Advance Stores Co., Inc.,

17-0166 (La. App. 4 Cir. 8/16/17), 226 So.3d 523, 528 (affirming exception of no right of action because, among other things, plaintiff failed to allege that someone successfully stole his identity).

46. See *id.*; see also, Ponder v. Pfizer, Inc., 522 F. Supp. 2d 793 (M.D. La. 2007); Melancon v. La. Office of Student Fin. Assistance, 567 F. Supp. 2d 873 (E.D. La. 2008).

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# Piercing the Corporate Veil with the Single Business Enterprise Doctrine

By Casey C. DeReus

**A**t its purest, the Single Business Enterprise Doctrine is a jurisprudentially-created rule that allows a party to pierce the corporate veil, allowing one entity to be responsible for the liabilities of another when the business entity is the “alter ego, agent, tool[,] or instrumentality of the other entity.” *Green v. Champion Ins. Co.*, 577 So.2d 249, 257-58 (La. App. 1 Cir.), writ denied, 580 So.2d 668 (La. 1991).

The Louisiana Supreme Court has not yet directly defined the parameters of the Single Business Enterprise (SBE) Doctrine. *Brown v. ANA Ins. Grp.*, 07-2116 (La. 10/14/08), 994 So.2d 1265, 1272 n.13 (implicitly embracing the SBE Doctrine but deciding the case on other grounds because the entities in question stipulated that they were a SBE). This has led to interesting and sometimes divergent developments in Louisiana courts.

## Jurisprudential Foundation

The 4th Circuit has noted that whether the SBE Doctrine applies is a question of fact. *Boes Iron Works, Inc. v. Gee Cee Group, Inc.*, 16-0207 (La. App. 4 Cir. 11/16/16), 206 So.3d 938, 948-49; see also, *Grayson v. R.B. Ammon & Assocs., Inc.*, 99-2597, pp. 20-21 (La. App. 1 Cir. 11/3/00), 778 So.2d 1, 15 (citing *Brown v. Automotive Cas. Ins. Co.*, 93-2169, p. 8 (La. App. 1 Cir. 10/7/94), 644 So.2d 723,

728); *Lee v. Clinical Research Center of Fla., L.C.*, 04-0428 (La. App. 4 Cir. 11/17/04), 889 So.2d 317, 323 (“Whether or not a group of entities comprises a single business enterprise is a factual inquiry.”).

In *Green*, a seminal case on this doctrine in Louisiana, the court noted the rationale behind the SBE Doctrine is to prevent affiliated corporations from hiding behind business fragmentation. *Id.* at 256. In other words, “[i]f a corporation is wholly under the control of another, the fact that it is a separate entity does not relieve the latter from liability.” *Id.* at 257. The *Green* court applied this doctrine in the context of corporations. *Green*, 577 So.2d 249.

*Green* enumerates an illustrative list of factors that are used to determine whether two corporations are a single business enterprise for the purpose of the SBE Doctrine. *Green*, 577 So.2d at 257-58. No one factor is dispositive of the issue. *Id.* “When determining whether a corporation is an alter ego, agent, tool or instrumentality of another corporation, the court is required to look to the substance of the corporate structure rather than its form. The following factors have been used to support an argument that a group of entities constitute a ‘single business enterprise’”:

1. corporations with identity or substantial identity of ownership, that is, ownership of sufficient stock

to give actual working control;

2. common directors or officers;
3. unified administrative control of corporations whose business functions are similar or supplementary;
4. directors and officers of one corporation act independently in the interest of that corporation;
5. corporation financing another corporation;
6. inadequate capitalization (“thin incorporation”);
7. corporation causing the incorporation of another affiliated corporation;
8. corporation paying the salaries and other expenses or losses of another corporation;
9. receiving no business other than that given to it by its affiliated corporations;
10. corporation using the property of another corporation as its own;
11. noncompliance with corporate formalities;
12. common employees;
13. services rendered by the employees of one corporation on behalf of another corporation;
14. common offices;
15. centralized accounting;
16. undocumented transfers of

funds between corporations;

17. unclear allocation of profits and losses between corporations; and

18. excessive fragmentation of a single enterprise into separate corporations.

*Id.* at 257–58.

## Recent Developments and Unanswered Questions

A series of cases explores the contours and applicability of the doctrine, considering whether it is limited to corporations or if it also applies to other entities or even individuals. Generally, courts are embracing the doctrine’s applicability for other entities but disallowing its use to hold individuals liable.

► ***Brown v. ANA Ins. Grp.***, 07-2116 (La. 10/14/08), 994 So.2d 1265, 1271-72 (summarizing the doctrine as “a theory for imposing liability where two or more business entities [*i.e.*, not just corporations] act as one” but not reaching the question of whether the three entities involved were a SBE since the parties had stipulated that the three entities constituted a SBE).

► ***Nussli US, L.L.C. v. Nola Motorsports Host Committee, Inc.***, 2016 WL 4063823, at \*17-18 (E.D. La. 2016), *reconsideration denied*, 2016 WL 6520139 (E.D. La. Nov. 3, 2016) (relying on *Brown* and holding that the SBE Doctrine only applies to business entities and that it may not be applied to hold an individual liable).

► ***Che v. First Assembly of God, Ruston, LA***, 50,360 (La. App. 2 Cir. 1/13/16), 185 So.3d 125, 135-36 (affirming the trial court’s judgment and determining that the entities were not a SBE, reasoning that there were no genuine disputes of material fact on this issue when the plaintiff failed to present any competing summary judgment evidence, while the two entities presented deposition testimony and evidence in the form of Constitution and By-laws and when they lacked shared officers and directors, did not insure the property of the local churches, etc.).

► ***Boes Iron Works, Inc. v. Gee Cee Group, Inc.***, 16-0207 (La. App. 4 Cir. 11/16/16), 206 So.3d 938, 948-49 (4th

Circuit summarizing, applying and implicitly adopting the *Green* factors used by the 1st Circuit, and ultimately finding two corporations constituted a Single Business Enterprise and concluding that equity dictated the application of the Single Business Enterprise Doctrine).

► ***Hunter v. Wind Run Apartments, L.L.C. et al.***, 15-05551, pp. 3-5 (CDC La. 9/21/17) (reasoning that *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888, “greatly supports the assertion that veil piercing and similar doctrines do not apply to limited liability companies,” concluding that the applicability of the SBE Doctrine on limited liability companies should be narrowly construed to conform with La. R.S. 12:1320(D), but ultimately denying summary judgment on other grounds).

► ***GBB Properties Two, L.L.C. v. Stirling Properties, Inc.***, 17-352 (La. App. 3 Cir. 10/25/17), 230 So.3d 225, 227-28, 230-32, *writ denied*, 17-1931 (La. 1/29/18), 233 So.3d 606 (rejecting the defendants’ reliance on *Ogea* for the position that the SBE theory had been abolished via legislation, and instead holding that the petition sufficiently pleaded facts stating a cause of action under the SBE theory when it articulated common ownership and control, identified common location and operation from one corporate office, and described the nature of the entity relationship in more than 20 pages; the court ultimately reversed the trial court’s judgment granting an exception of no cause of action on the SBE Doctrine).

## Conclusion

Although the general development of the SBE Doctrine suggests that it can be used in the limited liability context, the Supreme Court has not yet explicitly approved this rule. *Green* suggests that the doctrine only applies to corporations, yet *Brown* suggests that the doctrine can apply to any business entity where two or more business entities act as one. Since *Green* predates *Brown*, one could argue that, to the extent they conflict, the more recent guidance in *Brown* controls. However, cases like *Hunter* show that this is far from a settled issue.

These cases show that there is a spectrum to the likelihood of success for SBE

Doctrine arguments. Practitioners who are considering arguing the SBE Doctrine when the entities at issue involve corporations should be poised for success, especially if they have facts like those set forth in *Che* and plead them accordingly. Practitioners seeking to apply the doctrine to other business entities like limited liability companies have a good faith argument to do so, but because of divergent case law should consider jurisprudence in their circuit and be prepared to address the arguments articulated in the *Hunter* judgment. Finally, practitioners who want to apply the doctrine to hold *individuals* liable will likely fail based on the current jurisprudence.

If arguing for the applicability of the doctrine to non-corporate entities or individuals, practitioners could consider arguing the SBE as a backup plan and leading with a stronger argument based on more settled law. For example, when entities are intertwined, they often respond to discovery together. If a party directs one set of discovery to two entities and those entities respond together, both entities will be bound by the responses. In *Hunter*, the court denied summary judgment on the issue of which entity had care, custody and control of the property involved in that case, since both entities admitted having care, custody and control in response to a Request for Admission. *Hunter*, 2015-05551, at p. 5. Subsequent affidavit testimony stated the contrary. *Id.* This created a genuine issue of material fact and resulted in denial of the motion for summary judgment. Thus, the plaintiff survived summary judgment even though he lost on the issue of the application of the SBE Doctrine. At least until the law becomes more settled, less controversial arguments like these are a more likely way to prevent entities from hiding behind excessive business fragmentation than relying on the SBE Doctrine alone.

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# Medicaid Secondary Payer Laws Revisited:

## Supreme Court Decisions, Congressional Action, Budget Act

By Nicholas W. D'Aquila and Megan Heller

In 2016, Louisiana expanded Medicaid eligibility criteria under the terms of the Affordable Care Act. Since then, more than 450,000 new beneficiaries have enrolled in the program, bringing the current enrollment to approximately 1.2 million as of November 2018. With a quarter of the state's population enrolled in Medicaid, Medicaid secondary payer issues are becoming more frequent in personal injury settlements. In June/July 2014, the *Louisiana Bar Journal* addressed the topic, providing an overview of the pertinent laws. Since 2014, just like the ever-changing landscape of our healthcare

system, the legal framework for compliant and optimal resolution of Medicaid liens has been in a constant state of change. In February 2018, Congress enacted legislation that cemented the legal framework that all parties (plaintiff's counsel and the defendant) must adhere to when resolving a personal injury claim with a Medicaid beneficiary.

This article provides an overview of the state and federal laws that establish Medicaid secondary payer requirements, reviews the two key Supreme Court decisions that shaped the practical framework for resolving Medicaid liens, the Congressional actions since 2014

that impacted the framework set forth by the Supreme Court, and a summary analysis of Louisiana's Medicaid lien resolution laws under the framework cemented by the Budget Act of 2018.

### Medicaid Secondary Payer Laws

When a person with health insurance is injured in an accident and seeks medical treatment, his or her health insurer typically pays for the associated medical bills. If the accident was the fault of another person and the insured sues that person, secondary payer laws

may come into play. In this case, the plaintiff's health insurer (whether government, private, ERISA, etc.) usually has a right to be reimbursed for its past expenditures on the tort-related injury. This right of reimbursement functions as a lien and attaches to any settlement, judgment or other award the plaintiff may later receive as a result of the underlying third-party liability action.

State Medicaid programs are required by federal law to implement laws that allow Medicaid agencies to receive reimbursement from any settlement or payment made by a third party for covered healthcare services.<sup>1</sup> These statutes, however, must comply with the federal anti-lien statute, which prevents a Medicaid program from asserting a lien on a beneficiary's personal property (such as lost wages), including any portion of a settlement not related to compensation for past medical expenses.<sup>2</sup> It has been difficult for parties settling a personal injury claim with a Medicaid beneficiary to identify and comply with their rights and responsibilities at the intersection of the federal anti-lien statute and state Medicaid secondary payer laws. In 2006, and then again in 2013, the absence of statutory and regulatory guidance led to the Supreme Court issuing landmark decisions centered on the issue.

## The *Ahlborn* and *Wos* Decisions

### *Ahlborn*<sup>3</sup>

*Ahlborn* was a young woman who suffered severe injury from a car accident. Arkansas Medicaid paid \$215,645.30 for her medical care. She subsequently settled a personal injury lawsuit related to the accident for \$550,000, with no allocation of the settlement funds among the various damages types. The state sought full reimbursement of the amount paid for her care. *Ahlborn* argued that the state was only entitled to recover \$35,581.17, the amount of the settlement the parties had later stipulated was for past medical expenses.

The Supreme Court agreed with *Ahlborn* and found that the text of the applicable federal statutes allowed a

state to recover only the portion of a liability settlement attributable to past medical expenses as the federal anti-lien provision protects all other portions of the funds. The Court did not address how to determine the portion of the settlement attributable to past medical expenses, as the parties in the case had stipulated to that amount.

The *Ahlborn* decision limited the ability of state Medicaid agencies to recover their expenses from personal injury settlements and left states considering whether and how to amend their statutes and devise a method for determining the portion of a settlement allocated to past medical expenses.

### *Wos*<sup>4</sup>

With the questions left unanswered by *Ahlborn*, the *Wos* case was a natural successor. In *Wos*, the minor plaintiff suffered from numerous birth defects and eventually settled a case against the delivering doctor and hospital for \$2.8 million. North Carolina Medicaid had paid \$1.9 million for her care. North Carolina law provided that when the value of the agency's lien exceeded one third of a beneficiary's total settlement recovery, there was an irrebuttable presumption that one third of the settlement was for past medical expenses. This presumption applied even if there was an allocation of less than one third of the settlement dollars to past medical expenses.

The Supreme Court found that this irrebuttable presumption violated the federal anti-lien statute. The arbitrary assignment of one third of the settlement to past medical expenses did not comply, as it allowed the state to assert a lien on settlement proceeds that were not intended for payment of past medical expenses.

## Congressional Action After the *Ahlborn* and *Wos* Decisions

### BBA of 2013<sup>5</sup>

Following the *Ahlborn* and *Wos* decisions, certain stakeholders put pressure on the federal government to correct

what they saw as an intrusion into state rights to recover payment for past medicals. In 2013, the Bipartisan Budget Act was passed by Congress and signed into law by President Obama. The relevant section of the BBA modified the federal statutes to invalidate the holdings in the *Ahlborn* and *Wos* decisions. Section 202(b) of the BBA strengthened Medicaid's exception to the anti-lien statute and allowed recovery from the entire portion of a beneficiary's settlement, without considering what portion of the settlement was allocated to past medical expenses. The BBA provisions were scheduled to go into effect in October 2014.

### PAM<sup>6</sup> and MACRA<sup>7</sup>

On April 1, 2014, President Obama signed the Protecting Access to Medicare Act of 2014, which delayed the implementation date of the BBA provisions until Oct. 2, 2016. The following year, the President signed the Medicare Access and CHIP Reauthorization Act of 2015, which further delayed the implementation of the provisions until Oct. 1, 2017. The provisions finally went into effect on that date.

### BBA of 2018<sup>8</sup>

On Feb. 9, 2018, Congress passed and President Trump signed into law the Bipartisan Budget Act of 2018. This act repealed the Medicaid lien expansions that took effect the prior October, and once again returned the law as it was after *Ahlborn* and *Wos* were decided. States are again limited to recovery only from the portion of a personal injury settlement that is attributable to past medical expenses.

## Current State of the Law

Despite a tumultuous few years, *Ahlborn* and *Wos* are once again the law of the land. When settling personal injury cases, it is important to allocate the damages in order to protect portions of a client's settlement not intended for past medical expenses. A third-party neutral familiar with such allocation methodology can be helpful in ensuring an apportionment



of damages that is fair to all parties.

As for the state of the law in Louisiana, La R.S. 46:446(F) provides in pertinent part:

The Department of Health and Hospitals shall have a privilege for the medical assistance payments made by the department on behalf of an injured or ill Medicaid recipient on the amount payable to the injured recipient, his heirs, or legal representatives *out of the total amount of any recovery or sum had, collected, or to be collected, whether by judgment or by settlement or compromise*, from another person on account of such injuries, and on the amount payable by any insurance company under any contract providing for indemnity or compensation to the injured person. (Emphasis added.)

The Louisiana statute appears to be in direct conflict with the current state of federal law, as it was in 2014 following the *Ahlborn* and *Wos* decisions (and the last time this topic was addressed by this publication). The Louisiana Legislature may need to modify the statute and could face a challenge in court if it is not addressed. Practitioners should be well versed in the status of the relevant state law in order to protect a client's settle-

ment from making an overpayment to Medicaid.

## Conclusion

The *Ahlborn* and *Wos* decisions are again good law, with no known legislative challenges on the horizon. Louisiana's statute appears to be directly in conflict with the holdings of these decisions and may be ripe for challenge.<sup>9</sup>

When settling a personal injury case with a Medicaid-entitled plaintiff, parties should consider a damages allocation based on the underlying facts of the case and a historical settlement valuation of like claims. Where feasible, the proposed allocation should be developed or reviewed by a third-party neutral and then presented to the trial court for approval. Further, all litigating parties (plaintiff counsel, defendant/payers and defense counsel) should consult each state's full statutory framework to identify the obligations of each party involved in the action as all parties have a stake in compliant resolution of the case.

## FOOTNOTES

1. 42 USC § 1396(a)(25)(H).
2. 42 USC § 1396p(a)(1)(a).
3. Arkansas Dep't of Health & Human Services v. *Ahlborn*, 547 U.S. 268 (2006).
4. *Wos v. E.M.A.*, 133 S.Ct. 1391 (2013).
5. Bipartisan Budget Act of 2013, Pub. L. No.

113-67, 127 Stat. 1165 (2013).

6. Protecting Access of Medicare Act of 2014, Pub. L. No. 113-93, 128 Stat. 1040 (2014).

7. Medicare Access and CHIP Reauthorization Act of 2015, Pub. L. No. 114-10, 129 Stat. 87 (2015).

8. Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (2018).

9. One such case is *Weaver v. Malinda*, 07-CA-708 (La. App 5 Cir. 2008), where the Court upheld the lower court's decision awarding DHS only the portion of the settlement allotted for medical expenses.

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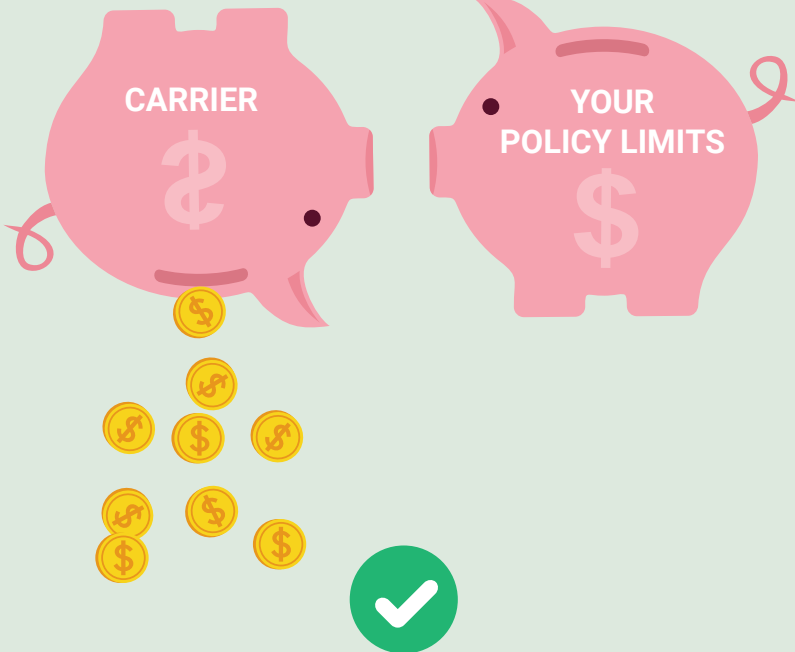
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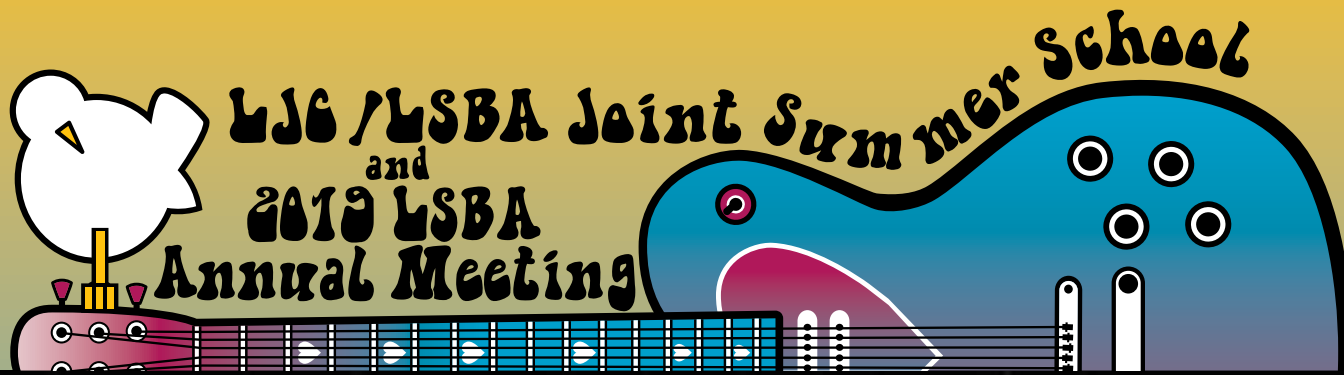
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# LJC /LSBA Joint Summer School and 2019 LSBA Annual Meeting



Robert A. Kutcher, right, managing partner in the Metairie law firm Richard Kutcher Tygier & Luminais, L.L.P., was installed as the 79th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. *Photo by Matthew Hinton Photography.*





The Louisiana State Bar Association's 2019-20 officers and members of the Board of Governors. Seated from left, Monique Y. Metoyer, at-large; Patrick A. Talley, Jr., secretary; Barry H. Grodsky, immediate past president; Robert A. Kutcher, president; Alaina R. Mire, president-elect; Shayna L. Sonnier, treasurer; Kelly M. Rabalais, District 5; and Tina L. Suggs, at-large. Standing from left, Jeffrey A. Riggs, Liaison Committee; Shayna B. Morvant, Liaison Committee chair; Ann S. Siddall, Liaison Committee; Shannon Seiler Dartez, District 3; Paul L. Hurd, District 7; Valerie T. Schexnayder, District 5; Scott L. Sternberg, Young Lawyers Division chair; Zeldia W. Tucker, Louisiana State Law Institute; Edward L. Tarpley, Jr., District 6; Darryl J. Foster, District 1; Todd S. Clemons, District 4; Donald W. North, Southern University Law Center; Monica Hof Wallace, Loyola University College of Law; Lynn Luker, at-large; Stephen I. Dwyer, District 2; and Lawrence J. Centola III, District 1. Not in photo, Patrick J. Harrington, District 8. Photo by Matthew Hinton Photography.

## LSBA Installs 2019-20 Officers and Board of Governors

The Louisiana State Bar Association's (LSBA) 2019-20 officers and members of the Board of Governors were installed June 6, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Robert A. Kutcher** was installed as the 79th LSBA president by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Kutcher is managing partner in the Metairie law firm Richard Kutcher Tygier & Luminais, L.L.P.

**Alaina R. Mire**, chief resilience officer and an assistant attorney for the City of Alexandria, was installed as 2019-20 president-elect. She will assume the presidency in 2020-21.

**Patrick A. Talley, Jr.**, a partner in the New Orleans office of law firm Phelps Dunbar, L.L.P., is beginning his first year of a two-year term as secretary. He also serves as editor of the *Louisiana Bar Journal*.

**Shayna L. Sonnier**, a partner in the

Lake Charles law firm Hunter, Hunter & Sonnier, L.L.C., is beginning her second year of a two-year term as treasurer.

**Barry H. Grodsky**, a partner in the New Orleans law firm Taggart Morton, L.L.C., will continue his service to the LSBA as 2019-20 immediate past president.

**Scott L. Sternberg**, a partner in the law firm Sternberg, Naccari & White, L.L.C., in New Orleans and Baton Rouge, was installed as 2019-20 chair of the LSBA Young Lawyers Division.

Members of the 2019-20 Board of Governors also were installed by Chief Justice Johnson.

### First District

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

► **Lawrence J. Centola III**, a principal member in the New Orleans law firm

Martzell, Bickford & Centola.

### Second District

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

### Third District

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

### Fourth District

► **Todd S. Clemons**, founder of Todd Clemons & Associates in Lake Charles.

### Fifth District

► **Valerie T. Schexnayder**, special counsel with law firm Mickey S. deLaup, A.P.L.C., in Baton Rouge.

► **Kelly M. Rabalais**, chief administrative officer for St. Tammany Parish Government in Mandeville.

Continued next page





Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, administered the oath of office to members of the 2019-20 Board of Governors. Photo by Matthew Hinton Photography.

## Installation

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### Sixth District

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

### Seventh District

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

### Eighth District

► **Patrick J. Harrington**, an attorney practicing in the Shreveport-Bossier area.

### At-Large Members

► **Monique Y. Metoyer**, an assistant district attorney and homicide screening chief

for the Caddo Parish District Attorney's Office in Shreveport.

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

► **Tina L. Suggs**, in-house counsel for State Farm Insurance Co. in Metairie.

### Loyola University College of Law

► **Monica Hof Wallace**, the Dean Marcel Garsaud, Jr. Distinguished Professor of Law and executive director of the Advocacy Center at Loyola University College of Law in New Orleans.

### Southern University Law Center

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

### Louisiana State Law Institute

► **Zelda W. Tucker**, a sole practitioner and deputy city attorney for the City of Shreveport.

### House of Delegates Liaison Committee

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

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

► Member **Ann S. Siddall**, a sole practitioner and city prosecutor in Vidalia and first assistant district attorney for the 7th Judicial District.

# Five Members Receive President's Awards

Five Louisiana State Bar Association (LSBA) members received 2019 President's Awards at the Annual Meeting in June. Recipients were chosen by 2018-19 LSBA President Barry H. Grodsky and were recognized for services to the association. Recognized were **Judge Randall L. Bethancourt**, Houma; **Judge Fredericka Homberg Wicker**, Gretna; attorney **Val P. Exnicios**, New Orleans; attorney **Richard**

**K. Leefe**, Metairie; and attorney **John E. McAuliffe, Jr.**, Metairie.

**Judge Bethancourt**, a judge for the 32nd Judicial District Court (Terrebonne Parish) since 2003, was recognized for his contributions to the LSBA's Continuing Legal Education Committee and to the Louisiana Center for Law and Civic Education. He received a BS degree in 1975 from Louisiana State University

and his JD degree in 1979 from Loyola University College of Law. Before his election to the bench, he practiced law for 22 years. He also worked as an assistant district attorney from 1997-99 and was the founding director of the Terrebonne Children's Advocacy Center. He is serving as president of the Louisiana Center for Law and Civic Education (LCLCE) and as

Continued next page



Judge Randall L. Bethancourt of Houma, right, received the 2019 President's Award from 2018-19 LSBA President Barry H. Grodsky. All photos by Matthew Hinton Photography.



Judge Fredericka Homberg Wicker of Gretna, left, received the 2019 President's Award from 2018-19 LSBA President Barry H. Grodsky.



Val P. Exnicios of New Orleans, left, received the 2019 President's Award from 2018-19 LSBA President Barry H. Grodsky.

## President's Awards

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a member of the Louisiana District Judges Association's Executive Committee. He received the 2016 Judge Benjamin Jones Judges in the Classroom Award presented by the LCLCE.

**Judge Wicker**, a judge for the Louisiana 5th Circuit Court of Appeal since 2006, was recognized for her contributions as co-chair of the Summer School Committee. She is a 1977 graduate of Tulane University Law School. During her 20 years of practicing law, she served as an assistant district attorney in both Orleans and Jefferson parishes and as an assistant United States attorney for the U.S. District Court, Eastern District of Louisiana, ending her career there as chief of narcotics. She also was in the private practice of law for 10 years. In 1996, she was elected to the Louisiana 24th Judicial District Court, serving there until her election to the 5th Circuit bench. She was a member of the adjunct faculty at Tulane Law School. She is a former president of the Louisiana District Judges Association and the Louisiana Judicial College.

**Exnicios**, senior trial counsel and managing counsel in the New Orleans law firm of Liska, Exnicios & Nungesser, was recognized for his contributions as chair of the LSBA's Section Council. A recipient of the U. S. 5th Circuit Court of Appeals American Inns of Court Professionalism Award, he chairs the LSBA's Mass Torts, Class Action & Complex Litigation Section and is a member of the Bar Governance, Rules of Professional Conduct, Ethics Advisory and Legislation committees. He is a member of the LSBA's House of Delegates and the Louisiana Association

of Justice's Board of Governors. A 1989 graduate of Loyola University College of Law, he was an adjunct professor of law skills at Loyola. He is pro bono counsel to the Ozanam Inn and was active with U.S. District Court Judge Jay C. Zainey in founding the Homeless Experience Legal Protection (H.E.L.P.) Program.

**Leefe**, a founding and senior partner in the Metairie law firm of Leefe Gibbs Sullivan & Dupre, L.L.C., was recognized for his contributions as chair of the LSBA's Transitioning Lawyers Committee. A Vietnam veteran, he served as a combat engineer and commanded an engineer company in the Mekong Delta during the war. After returning from the Army, he received his JD degree in 1974 from Loyola University College of Law. He later earned an LLM degree in International Commercial Law from Robert Gordon University in Aberdeen, Scotland. He served as LSBA president in 2013-14 and as LSBA secretary and editor of the *Louisiana Bar Journal* in 2012-13. He served on the American Bar Association's House of Delegates. He is the author of the *Louisiana Code of Evidence Practice Guide* (First, Second and Third Editions).

**McAuliffe**, an attorney in the Metairie office of Frederick A. Miller & Associates, was recognized for his contributions as a LSBA leader and as chair of several LSBA committees. He received a BS degree in accounting in 1975 from the University of New Orleans and his JD degree in 1978 from Loyola University College of Law. He served as LSBA secretary and editor of the *Louisiana Bar Journal* from 2017-19 and on the Board of Governors from 2014-



Richard K. Leefe of Metairie, left, received the 2019 President's Award from 2018-19 LSBA President Barry H. Grodsky.



John E. McAuliffe, Jr. of Metairie, left, received the 2019 President's Award from 2018-19 LSBA President Barry H. Grodsky.

17. He chairs the LSBA's Unauthorized Practice of Law Committee and the LSBA's Audit Committee and is the Executive Committee's representative on the Access to Justice Commission (2017-19). He was a mentor in 2015 and 2016 for the Transition Into Practice Program. He is a member of the Louisiana Association of Defense Counsel, the New Orleans Association of Defense Counsel and the New Orleans Bar Association.



## Judge Zainey Recognized as First Inductee into LSBA Hall of Fame

Judge Jay C. Zainey of New Orleans, appointed to the U.S. District Court, Eastern District of Louisiana, in 2002, was recognized as the first inductee into the newly created Louisiana State Bar Association (LSBA) Hall of Fame for his contributions to the organized Bar and legal profession in Louisiana and specifically for his exemplary service to the SOLACE Program.

Judge Zainey is a co-founder of SOLACE, the LSBA program providing assistance to the legal community during times of tragedy, disaster and life-changing events. In 2004, he organized the Homeless Experience Legal Protection (H.E.L.P.) Program, providing free legal services to area homeless centers. He assisted in developing a Homeless Court in New Orleans and is assisting in developing

Veterans Courts in Jefferson, St. Tammany, Terrebonne and Lafourche parishes and in federal court. During his term as LSBA president, he created the Community Action Committee and the Legal Services for Persons with Disabilities Committee. He assisted Tulane Law School in developing its Disability Law Society. He served on the American Bar Association's (ABA) Hurricane Katrina Task Force. In 2011, he was appointed by U.S. Supreme Court Chief Justice John Roberts to the Judiciary Commission's Codes of Conduct Committee. In 2004, he and his wife, Joy, founded the God's Special Children Program, offering services to people with special needs. They also co-founded St. Andrew's Village, a faith-based, long-term living community for adults with disabilities.



Judge Jay C. Zainey of New Orleans, left, was recognized as the first inductee into the newly created LSBA Hall of Fame. Presenting the award was 2018-19 LSBA President Barry H. Grodsky. Photo by Matthew Hinton Photography.



## Corcoran, Sternberg Receive Victory Award

Lawrence Sean Corcoran of Lake Charles and Scott L. Sternberg of New Orleans received the 2019 Stephen T. Victory Memorial Award, recognizing outstanding contributions to the *Louisiana Bar Journal*. Corcoran was recognized for his article, "A Member's Powerful Story of Addiction, Surrender, Recovery and Hope," published in the February/March 2019 issue. Sternberg was recognized for the accompanying interview published with Corcoran's article.

Corcoran is a divorce and child custody attorney and a licensed family law mediator in Lake Charles. He is owner of Corcoran Law Firm, L.L.C. Since 2015, he has served as an assistant district attorney in Calcasieu Parish. He earned his JD degree from Louisiana State University Paul M. Hebert Law Center. He is treasurer of the Southwest Louisiana Bar Association's Young

Lawyers Division and serves on the board of the Calcasieu Parish Communications District. He is a former board member of the Literacy Council of Southwest Louisiana and of Rebuilding Together Calcasieu.



Lawrence Sean Corcoran

Sternberg is a partner at Sternberg, Naccari & White, L.L.C., with offices in New Orleans and Baton Rouge, where he focuses on business, general litigation and media matters. His media focus has involved litigation for newspapers and legal and legislative work for the Louisiana Press Association. He received a BA degree in journalism from Louisiana State University and his JD degree from LSU Paul M. Hebert



John E. McAuliffe, Jr., left, 2017-19 LSBA secretary, presented the Victory Award to Scott L. Sternberg. Lawrence Sean Corcoran also received the award (not in attendance). Photo by Matthew Hinton Photography.

Law Center. He is the 2019-20 chair of the LSBA's Young Lawyers Division and chaired the first Louisiana Young Lawyers Conference in 2019.

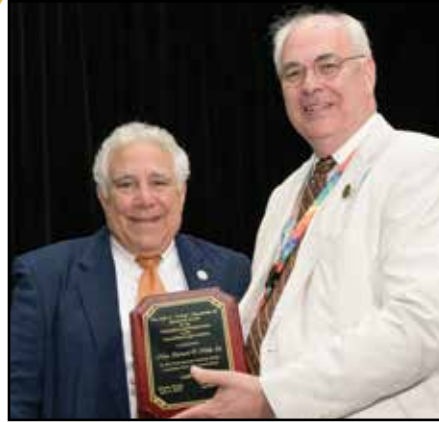


Jasmine N. Brown, left, received the 2019 Leah Hipple McKay Memorial Award for Outstanding Volunteerism. Presenting the award was 2018-19 LSBA President Barry H. Grodsky. Photo by Matthew Hinton Photography.

## Brown Receives McKay Memorial Award

Jasmine N. Brown of New Orleans received the 2019 Leah Hipple McKay Memorial Award for Outstanding Volunteerism.

An associate in the Metairie office of Blue Williams, L.L.P., Brown earned her bachelor's degree, *cum laude*, in business administration in 2009 from Loyola University and her JD degree in 2016 from Louisiana State University Paul M. Hebert Law Center. She is a member of Blue Williams' Diversity and Community Action Committee. She is involved in several community efforts that target homelessness, women's empowerment and mass incarceration. She is the founder of a mentorship program, Beautifully You, which mentors young women who have experienced homelessness, sexual trauma, gun violence and teen pregnancy. She co-led a feed-the-homeless initiative, Project 300, and has volunteered with other organizations serving the homeless, including Grace at the Greenlight, the New Orleans Mission and the Baton Rouge Dream Center. She is a facilitator of a street law class at the Orleans Parish Juvenile Detention Center and is the monthly guest speaker at the Rivarde Juvenile Detention Center.



Judge (Ret.) Richard T. Haik, Sr., left, received the 2019 John A. "T-Jean" Hernandez III Memorial Award. Presenting the award was 2018-19 LSBA President Barry H. Grodsky. Photo by Matthew Hinton Photography.

## Judge Haik Receives Hernandez Award

Judge (Ret.) Richard T. Haik, Sr. of Opelousas received the 2019 John A. "T-Jean" Hernandez III Memorial Award, presented for achievements in Francophone leadership.

Judge Haik joined the Opelousas office of the law firm Morrow, Morrow, Ryan, Bassett & Haik as of counsel in 2016, after serving more than 31 years on the state and federal bench. He was a judge for Louisiana's 16th Judicial District Court from 1984-91. From 1991-2016, he was a judge for the U.S. District Court, Western District of Louisiana (chief judge from 2002-09). He earned his BS degree in business in 1972 from the University of Louisiana at Lafayette and his JD degree in 1975 from Loyola University College of Law. He served in the Louisiana National Guard from 1971-76, then joined the U.S. Army Reserves, retiring in 1979. He is a member of the Lafayette Bar Association, the Louisiana Association of Justice, the American Association for Justice and the St. Landry Parish Bar Association. He is the 2016 recipient of the Loyola University Alumni Glass Award.



Kim M. Boyle, left, received the 2019 Louisiana Bar Foundation's (LBF) Curtis R. Boisfontaine Trial Advocacy Award. Presenting the award was LBF 2019-20 President Amanda W. Barnett. Photo by Matthew Hinton Photography.

## Boyle Receives LBF's Boisfontaine Award

Kim M. Boyle of New Orleans received the 2019 Louisiana Bar Foundation's (LBF) Curtis R. Boisfontaine Trial Advocacy Award. The award was presented at the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

Boyle received the award for her longstanding devotion to and excellence in trial practice and for upholding the standards of ethics and consideration for the court, litigants and all counsel.

She received a plaque and a stipend will be donated in her name to CASA New Orleans, the Innocence Project New Orleans and Southeast Louisiana Legal Services.

A partner in the New Orleans office of Phelps Dunbar, L.L.P., Boyle was the first female African-American president of the LSBA (2009-10) and the first African-American president of the New Orleans Bar Association (2002-03). She received her undergraduate degree in 1984 from Princeton University and her JD degree in 1987 from the University of Virginia School of Law. She received the LBF's 2017 Distinguished Attorney Award. She currently chairs the board of directors of the Amistad Research Center and serves on the board of directors of the Lawyers Committee for Civil Rights Under the Law.





Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, administered the oath of office to Scott L. Sternberg, 2019-20 Young Lawyers Division chair. Photo by Matthew Hinton Photography.

## LSBA YLD 2019-20 Officers and Council Installed

The Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) 2019-20 officers and council members were installed June 6, in conjunction with the LSBA's Annual Meeting in Destin, Fla.

**Scott L. Sternberg**, a partner in the law firm Sternberg, Naccari & White, L.L.C. (offices in New Orleans and Baton Rouge), was installed as 2019-20 YLD chair by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.

Also sworn in as officers were Chair-Elect **Carrie LeBlanc Jones**, Baton Rouge, chief legal officer and general counsel for the Louisiana State Board of Nursing (she will assume the chair's position in 2020-21); Secretary **Graham H. Ryan**, a partner in the New Orleans office of law firm Jones Walker LLP; and Immediate Past Chair **Dylan T. Thriffiley**, assistant vice president of compliance for Ochsner Health System in New Orleans.

Justice Johnson also installed members of the 2019-20 YLD Council.

**District 1:** Randy J. (RJ) Marse, Jr., an associate in the New Orleans office of law firm Liskow & Lewis, A.P.L.C.; and Kristen D. Amond, an associate in the New Orleans office of law firm Fishman Haygood, L.L.P.

**District 2:** Shayna B. Morvant, managing partner of the law firm Beevers &

Beevers, L.L.P., in Gretna; and Betty A. Maury, judicial law clerk for Judge Lee V. Faulkner, Jr., 24th Judicial District Court, Gretna.

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

**District 4:** Elizabeth F. Shea, an associate in the law firm Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P., in Lake Charles.

**District 5:** Loren D. Shanklin, a partner in the law firm Smith Shanklin Sosa, L.L.C., in Baton Rouge; and Rachal Cox Cassagne, an associate in the Baton Rouge office of law firm McGlinchey Stafford, P.L.L.C.

**District 6:** Joshua J. Dara, Jr., an associate in the law firm Gold, Weems, Bruser,

Sues & Rundell, A.P.L.C., in Alexandria.

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

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

**At-Large Representative:** Senae D. Hall, an assistant district attorney for Caddo Parish in Shreveport.

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

**Young Lawyer Member/American Bar Association House of Delegates:** Valerie E. Fontenot, an associate in the law firm Frilot, L.L.C., in New Orleans.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, administered the oath of office to members of the 2019-20 Young Lawyers Division. Photo by Matthew Hinton Photography.

# YLD Members Receive Bat P. Sullivan, Jr. Chair's Awards

Danielle L. Borel of Baton Rouge and Graham H. Ryan of New Orleans received the 2019 Louisiana State Bar Association (LSBA) Young Lawyers Division Bat P. Sullivan, Jr. Chair's Award.

Borel, an associate in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., received a BS degree, *magna cum laude*, in 2011 from Louisiana State University and her JD degree, *magna cum laude*, in 2014 from LSU Paul M. Hebert Law Center. She is the American Bar Association's (ABA) Young Lawyers Division representative on the LSBA's Young Lawyers Division Council. She is a member of the ABA's Health Law Section and was recognized as an Emerging Young Lawyer in Healthcare by the ABA Health Law Section in 2019. In her community, she is a member of the board of directors and chairs the advisory board for Lighthouse Louisiana and volunteers for PulseBR (American Heart Association).

Ryan, a partner in the New Orleans office of Jones Walker LLP, graduated *summa cum laude* in finance from Louisiana State University, received his law degree from LSU Paul M. Hebert Law Center and is an alumnus of the Harvard Negotiation Institute dispute resolution program. He is serving as the 2019-20 secretary of the LSBA's Young Lawyers Division Council and is a member of the LSBA's Legislation Committee and Access to Justice Committee. He was honored as a "Top 40 Young Lawyer" nationally by the American Bar Association (ABA) and co-chaired the ABA YLD Litigation Committee. In his community, he is a commissioner for the Lakeview Crime Prevention District (New Orleans) and is a former chair of HandsOn New Orleans, a nonprofit volunteer center founded after Hurricane Katrina. He also is an attorney volunteer to the homeless and veterans at the Father Harry Tompson Rebuild Center in New Orleans.



Danielle L. Borel, left, and Graham H. Ryan, right, were presented the Bat P. Sullivan, Jr. Chair's Award by 2018-19 Young Lawyers Division Chair Dylan T. Thriffiley. Photo by Matthew Hinton Photography.



2018-19 Young Lawyers Division Chair Dylan T. Thriffiley presents 2018-19 LSBA President Barry H. Grodsky with a token of appreciation on behalf of the Young Lawyers Division. Photo by Matthew Hinton Photography.





# 2019 LSBA Annual Meeting

All photos by Matthew Hinton Photography.



Lots of activities for the young and young at heart. Skylar Rosenbloom slides down an inflatable with his daughter Claire at the indoor Beach Bash - moved inside due to weather.



Being Presidential. Former, current and soon-to-be Louisiana State Bar Association presidents, from left, Richard K. Leefe, Barry H. Grodsky, Dona Kay Renegar, S. Guy deLaup, Alaina R. Mire and Robert A. Kutcher.



Judge Randall L. Bethancourt was sworn in as president of the Louisiana Center for Law and Civic Education by Louisiana Supreme Court Justice John L. Weimer. With him is his wife Adrienne.



Outgoing LSBA President Barry H. Grodsky leads a round of applause for incoming President Robert A. Kutcher during his address.



Attending the Opening Reception in the Exhibit Hall during Annual Meeting were Amanda Hunt, Hon. Robin D. Pittman, Kim M. Boyle, Hon. Tracey Flemings-Davillier, Hon. Karelia Stewart and Valerie E. Fontenot.



Brad Tate, Dona Renegar, Shayna L. Sonnier and Alaina Mire at the Installation Luncheon during Annual Meeting.





Barry H. Grodsky and H. Minor Pipes greeted attendees.



Incoming LSBA President Robert A. Kutcher, on stage with his family members during his induction, received a special gift from his children, a Hawaiian shirt - which he is known for wearing - imprinted with his face and legal icons.



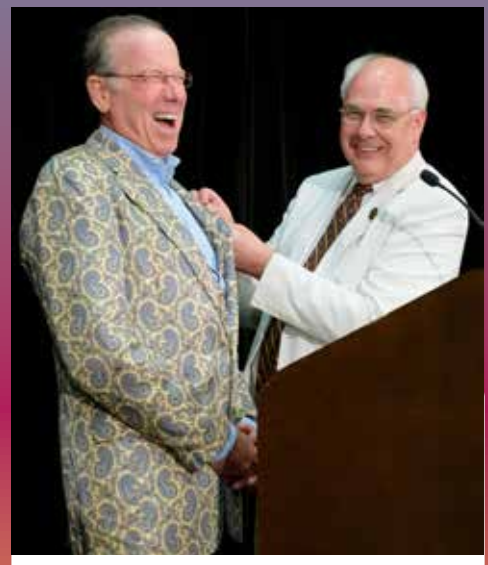
Attending the Supreme Court reception during Annual Meeting were Dean Patricia W. Bennett, Justice Scott Crichton and Hon. David Ritchie.



Robert A. Kutcher and family all wearing copies of the special Hawaiian shirt, pictured at the indoor Beach Bash are, from left, Jessie Kutcher, Molly Rosenbloom, Renee Kutcher, Robert A. Kutcher, Claire Rosenbloom, Brittany Rosenbloom, Emma Rosenbloom and Skylar Rosenbloom.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson addressed the Annual Meeting attendees during the General Assembly.



Incoming LSBA President Robert A. Kutcher received his presidential pin from outgoing President Barry H. Grodsky.





Several legal professionals and law students were recognized for their pro bono achievements during the Louisiana State Bar Association's (LSBA) 34th Annual Pro Bono Publico & Children's Law Awards Ceremony on May 21. Award recipients are joined by LSBA officers and access to justice representatives and several Louisiana Supreme Court justices. *Photo by Matthew Hinton Photography.*

## LSBA Honors Exceptional Louisiana Pro Bono Work

The Louisiana Supreme Court hosted the Louisiana State Bar Association's (LSBA) 34th Annual Pro Bono Publico & Children's Law Awards Ceremony on May 21. LSBA 2018-19 President Barry H. Grodsky and members of the Louisiana Supreme Court presented the awards to the 2019 recipients. LSBA 2019-20 President Robert A. Kutcher announced the award winners.

Justice John L. Weimer and Louisiana Bar Foundation President Amanda W. Barnett gave opening remarks. Also helping to distribute awards were Justice Marcus R. Clark, Justice Jefferson D. Hughes III and Justice Scott J. Crichton.

The Pro Bono Awards celebrate the best in the legal profession by acknowledging those attorneys and other public interest professionals who have gone beyond their

professional duties to ensure justice and access to the legal system for those without the ability to hire an attorney.

The award recipients are listed below.

### David A. Hamilton Lifetime Achievement Award

Recipient **Leonard K. Knapp, Jr.** of Lake Charles has had an exemplary career of more than 47 years, committed to bringing access to justice to the under-resourced as well as a dedication to making his community better. He received the Southwest Louisiana Law Center Pro Bono Award in 1996 and the Louisiana State Bar Association's Pro Bono Publico Award in 1997. He is a past member of the board of directors of Acadiana Legal Services Corp. He and his wife, Ann, launched the Calcasieu Chapter of Habitat for Humanity. He served as

the executive director of Habitat from 2012-18. He also has mentored students in the Community Foundation Workforce Training Scholarship Program.

### Career Public Interest Award

Recipient **Michael A. Mitchell** of Baton Rouge has worked in public interest law for 37 years. As an assistant public defender in East Baton Rouge Parish, he accepted appointments in some of the toughest cases in the Baton Rouge area, including high-profile capital cases. He became chief public defender in 1994, served as the president of the Louisiana Association of Criminal Defense Lawyers in 2010, and is currently president of the Public Defenders Association of Louisiana. As a volunteer with the Baton Rouge Bar Pro Bono Project Ask-a-Lawyer program, he

Continued next page

counsels those in need and accepts cases referred by Legal Aid. He also participates in monthly expungement clinics.

### Children's Law Award

Recipient **Jack P. Harrison** of Baton Rouge Jack Harrison has gone above and beyond in his representation of young people as a full-time public defender in the East Baton Rouge Juvenile Court. He is teaching the next generation of children's law attorneys through his recruitment and mentorship at the East Baton Rouge Public Defender's office and through his work with the LSU Juvenile Defense Clinic. Recently, he worked with the Louisiana Center for Children's Rights to develop a program that placed a social worker at the East Baton Rouge Juvenile Court.

### Law Student Pro Bono Award

Victoria T. Heyer.....LSU Paul M. Hebert Law Center  
Samantha Johnson.....Southern University Law Center  
Patrick M. Jackson.....Loyola University College of Law  
Andrew Taylor.....Tulane University Law School

### LSBA Friend of Pro Bono Award

H. Bruce Shreves.....New Orleans Entergy Services  
Legal Department.....New Orleans

### Pro Bono Publico Award

Courtney Hollier Guillory.....Lafayette  
Molly C. McDiarmid.....Baton Rouge

Patrice W. Oppenheim.....Mandeville  
Christopher B. Ortte.....Lafayette  
Gregory J. Reda.....Baton Rouge  
Phillip M. Smith.....Lafayette  
Michelle Demarest Sunseri.....Covington  
Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P.....Lafayette  
Stone Pigman Walther Wittmann, L.L.C.....New Orleans

### LA.FreeLegalAnswers Award

Cornelia S. Ullmann.....Metairie

### 2019 Century Club Awards

Mary Beth Akin.....Gretna  
Dana Dallas Atchison.....New Orleans  
Kyle Matthew Brennan.....New Orleans  
W. Scott Brown.....New Orleans  
Pamela W. Carter.....River Ridge  
Catharine Ohlsson Gracia....New Orleans  
Marquest J. Meeks.....New Orleans  
Mark C. Surprenant.....New Orleans  
Kathryn Ann Washington.....New Orleans

To view photographs from the event, visit the Facebook page: <https://www.facebook.com/louisiana.bar>.

**Top Photo:** Robert A. Kutcher, 2019-20 LSBA president, addresses the crowd at the Pro Bono Ceremony.

**Middle:** Associate Justice John L. Weimer congratulates several of the Pro Bono award recipients.

**Below:** Leonard K. Knapp, Jr., the David A. Hamilton Lifetime Achievement Award recipient, left, congratulates Michael A. Mitchell, the Career Public Interest Award recipient, at a reception following the Pro Bono Awards ceremony.



## LSBA Implements Spot Mentoring Program for Young Lawyers

The Louisiana State Bar Association (LSBA) has implemented a new Spot Mentoring Program to give young lawyers in practice from two to seven years the ability to securely post questions via email.

The LSBA's Committee on the Profession continues to offer comprehensive mentoring through the TIP (Transition into Practice) Program to attorneys in their first year of practice. The TIP program ends at the completion of the mentoring requirements within one-two years of the new attorney entering practice. As a supplement to the TIP program, the spot mentoring program allows eligible LSBA



attorneys to initiate contact with a volunteer spot mentor for advice, guidance or information by securely posting questions via email. All spot mentors will receive the inquiry.

Examples of spot mentoring topics are career development (firm culture, time management, work/life management, receiving feedback, seeking opportunities

internally and externally); legal practice skills (writing, oral communication, negotiation, technical skills); professionalism (ethics, civility, integrity, elimination of bias, system equity); practice development (networking, thought leadership, client entertainment, external involvement); client service/management (business solutions, responsiveness, articulating client value, counseling clients); and family/work integration (parental leave, working parents, eldercare, family resources).

Lawyers in practice from two to seven years are encouraged to visit the LSBA website for more information, [www.lsba.org/mentoring/spotmentoring.aspx](http://www.lsba.org/mentoring/spotmentoring.aspx).



# LSBA Leaders Advocate for Continued Legal Service Corp. Funding at ABA Day in D.C.

Several Louisiana State Bar Association (LSBA) leaders traveled to Capitol Hill April 9-11 to meet with members of Congress and staff members for ABA Day, the American Bar Association's (ABA) annual lobbying efforts in Washington, D.C.

The LSBA's delegation included 2018-19 LSBA President Barry H. Grodsky, incoming ABA President Judy Perry Martinez, 2019-20 LSBA President Robert A. Kutcher, 2005-06 LSBA President Frank X. Neuner, Jr. and LSBA Access to Justice Director Monte T. Mollere.

The event is an opportunity for LSBA leaders and colleagues from around the nation to speak to elected representatives on issues of critical importance to the Bar, clients, the legal profession and the administration of justice. This year, the delegation focused on securing appropriate funding for the Legal Services Corp. (LSC), which provides legal services to those most in need across the nation. In Louisiana, LSC funding makes up approximately 53 percent of the total funding for Louisiana's two largest civil legal aid programs — Acadiana Legal Service Corp. and Southeast Louisiana Legal Services. As the President's budget again called for the elimination of LSC funding entirely, the LSBA leaders' efforts to drive home its importance were more critical than ever.

With the assistance of staff from the Washington, D.C. office of Jones Walker LLP, particularly Jones Walker lobbyist R.



The Louisiana State Bar Association delegation spoke with Logan De La Barre-Hays, far right, legislative assistant to Rep. Garret Graves. From left, Monte T. Mollere, Robert A. Kutcher, James Adams (Jones Walker director of government relations), Barry H. Grodsky and De La Barre-Hays.

Christian Johnsen, the Louisiana delegation met with Sen. Bill Cassidy and Reps. Steve Scalise and Garret Graves, and staff members of Sen. John Kennedy and Reps. Clay Higgins, Mike Johnson, Ralph Abraham and Cedric Richmond.

The LSBA leaders emphasized how funding civil legal aid is a smart investment. An updated Social Return on Investment analysis completed in 2018 by the Louisiana Bar Foundation shows that for every \$1 invested in Louisiana's civil legal aid services, the programs deliver \$9.13 in immediate and long-term, consequential financial benefits.

“The return on investment study demonstrates that investing in civil legal aid is not only an economic engine for Louisiana, but a powerful way to help people solve critical problems and prevent events that are harmful and expensive for citizens,” said 2019-20 LSBA President Robert A. Kutcher.

Indeed, through offering basic civil legal services at no cost, Louisiana's network of providers helps stabilize the lives of thousands of individuals annually — approximately 22,727 in 2018. Their clients often include the most vulnerable members of the community, such as veterans, domestic violence victims, individuals undergoing foreclosure or other housing issues, those coping with the after-effects of natural disasters, and families involved in child custody disputes.

Meeting with the congressional representatives and their staff members allowed the LSBA delegation to forge personal connections and share the human impact that LSC programs have on their constituents. The LSBA leaders applaud Sen. Cassidy and Reps. Richmond and Abraham, who joined other congressmen in signing letters of support urging robust funding for LSC in the Fiscal Year 2020 Appropriations bill.



The Louisiana State Bar Association delegation met with Rep. Garret Graves (R-LA-06). From left, Monte T. Mollere, Robert A. Kutcher, Graves, Barry H. Grodsky and Frank X. Neuner, Jr.

# Nominating Committee to Meet Aug. 23 to Nominate President-Elect, Treasurer

The Nominating Committee of the Louisiana State Bar Association (LSBA) will meet on Friday, Aug. 23, in New Orleans to nominate a president-elect for the 2020-21 term and a treasurer for the 2020-22 term. The president-elect will automatically assume the presidency in 2021-22.

According to the president-elect rotation, the nominee 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 nominee 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).

Any member interested in seeking the position of president-elect or treasurer should contact members of the Nominating Committee. Go online to: [www.lsba.org/GoTo/NominatingCommittee](http://www.lsba.org/GoTo/NominatingCommittee).

## Election Schedule

For the 2019-20 election cycle, balloting will be conducted electronically only, as approved by the LSBA Board of Governors. No paper ballots will be provided.

The Nominating Committee report will be submitted to the Board of Governors on Saturday, Aug. 24.

On Monday, Sept. 23, notice of the action of the Nominating Committee and self-qualification forms for positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House

of Delegates will be provided to the membership.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 21. First election ballots will be available to members on Monday, Nov. 18. Deadline for electronically casting votes is Monday, Dec. 16.

## Other Positions Open

Other positions to be filled in the 2019-20 elections are:

**Board of Governors** (three-year terms beginning at the adjournment of the 2020 LSBA Annual Meeting and ending at the adjournment of the 2023 LSBA Annual Meeting) — one member each from the First, Second, Third and Fifth Board Districts.

**LSBA House of Delegates** (two-year terms beginning at the commencement of the 2020 LSBA Annual Meeting and ending at the commencement of the 2022 LSBA Annual Meeting) — one delegate from each of the First through Nineteenth Judicial Districts, plus one additional delegate for every additional district judge in each district.

**Nominating Committee** (15 members, one-year terms beginning at the adjournment of the 2020 LSBA Annual Meeting and ending at the adjournment of the 2021 LSBA Annual Meeting) — District 1A, Orleans Parish, four members; District 1B, parishes of Plaquemines, St. Bernard and St. Tammany, one member; District 2A, East Baton Rouge Parish, two members; District 2B, Jefferson Parish, two members; District 2C, parishes of Ascension, Assumption, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana, one member; District 3A, Lafayette Parish,

one member; District 3B, parishes of Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Martin, St. Mary and Vermilion, one member; District 3C, parishes of Allen, Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry and Vernon, one member; District 3D, parishes of Bossier and Caddo, one member; and District 3E, parishes of Bienville, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll and Winn, one member.

**Young Lawyers Division. Secretary** (2019-20 term), nominee **shall** be a resident of or actively practicing law in any parish in Louisiana, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Third, Fifth and Seventh districts (two-year terms).

**American Bar Association House of Delegates** (*must be members of the American Bar Association*) — two delegates from the membership at large and one delegate from that portion of the membership not having reached his/her 35th birthday by Aug. 4, 2020 (that delegate being the “young lawyer delegate”). All LSBA members may vote for both sets of candidates. The delegates will serve two-year terms, beginning with the adjournment of the 2020 ABA Annual Meeting and expiring at the adjournment of the 2022 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

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



# LBLS Accepting Certification Applications in Bankruptcy Law

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2019.

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

area for which certification is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBLS Bankruptcy Law Standards (business and consumer) for a detailed description of the requirements: [www.lsba.org/specialization](http://www.lsba.org/specialization).

In addition, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered. For bankruptcy law, CLE is regulated by the American Board of Certification (ABC), the testing agency.

With regard to applications for business

bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the ABC, attorneys should apply for approval of the LBLS simultaneously with the testing agency to avoid delay of board certification by the LBLS. Information concerning the ABC will be provided with the application form(s) and can be viewed online at: [www.abworld.org](http://www.abworld.org).

Anyone interested in applying for certification should contact LBLS Specialization Director Mary Ann Wegmann, email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org), or call (504)619-0128. For more information, go to the LBLS website link listed above.



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

**Webcast Attendance:**

- ▶ Half Day (Morning: 8:30-11:45 a.m.), includes Law Practice Management ..... \$160
- ▶ Half Day (Afternoon: 1:00-4:15 p.m.), includes Ethics ..... \$160

*\*Fee includes electronic course materials.*

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

## LASC Approves Revisions to Rule XIX

The Louisiana Supreme Court approved substantive revisions to Supreme Court Rule XIX and its appendices, pertaining to Lawyer Disciplinary Enforcement. The revisions became effective on May 15, said Chief Justice Bernette Joshua Johnson.

The Court adopted the rule revisions following a lengthy study and an audit by the American Bar Association. The Court solicited, received and reviewed comments from the Louisiana State Bar Association's Rules of Professional Conduct Committee, the Court's Attorney Disciplinary Board and practitioners before making its final determination.

The amendments to Rule XIX and its appendices seek to streamline the disciplinary process; clarify certain processes regarding existing practices; implement a new permanent retirement status; implement a procedure for inventorying lawyer files; and include changes for stylistic and consistency purposes.

The revised Rule XIX and its appendices may be reviewed online at: [www.lasc.org](http://www.lasc.org).

# FORENSIC AND VALUATION SERVICES



Shown seated: Holly Sharp, CPA, CFE, CFF    Shown standing from left: Thomas Horne, CPA/CFF, CFE; Gilbert Herrera; Michele Avery, CPA/ABV, MBA, CVA, MAFF; Ginger Liu, CPA/ABV, MBA, MS

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# PRACTICE Management

By Ashley M. Flick

RECEIVED A DISCIPLINARY COMPLAINT: NOW WHAT?

An attorney will likely receive at least one disciplinary complaint during the course of practice. Around 3,000 complaints are filed a year and most complaints are filed by past clients. According to the Louisiana Attorney Disciplinary Board, the most common misconduct alleged in complaints in 2018 were neglect; lack of communication; misrepresentation/dishonesty; fee disputes/excessive fees; and scope of representation.

While not all complaints lead to formal charges, you should take every complaint seriously and work with the Disciplinary Board to complete its investigation. Here are a few things you should and shouldn't do when you receive a complaint.

► Do review the complaint completely. Don't panic, get angry or retaliate against the complainant. Remember, most complaints are dismissed or result in no disciplinary charges being filed.

► Do cooperate with the Office of Disciplinary Counsel throughout its investigation of any matter within the time required. Typically, a substantive response to its inquiry is due within 15 days or the allegations will be deemed

admitted. If the complaint filed against you is false or frivolous, provide the Disciplinary Board with the information requested to prove the complaint has no merit. Failing to do so can result in a violation of Rule 8.1 of the Rules of Professional Conduct and sanctions such as suspension or disbarment.

► Do respond to the Disciplinary Board's request for information truthfully. Don't cover up misconduct or attempt to deceive the Office of Disciplinary Counsel. The Disciplinary Board must investigate each complaint it receives. Being dishonest will only result in a violation of Rule 8.4(c) of the Rules of Professional Conduct and possibly more sanctions.

► Do seek assistance from an attorney with the skills and experience in responding to disciplinary complaints. Hiring an attorney with experience defending disciplinary complaints could mean the difference between having your case dismissed and formal charges being brought. Also, check your malpractice policy to see if assistance is offered or reimbursement for attorney fees and other reasonable costs and expenses are covered under the policy. This could be a

great help if you have to hire an attorney to assist you. The Louisiana State Bar Association-endorsed carrier, CNA, has excellent coverage of disciplinary complaints.

► Do be remorseful and acknowledge mistakes when appropriate. Your attitude can become a factor in deciding whether to file formal charges and can be taken into consideration as an aggravating or mitigating factor when deciding sanctions.

Your actions and attitude after notice of a complaint are vital factors in the outcome of a disciplinary complaint.

*Ashley M. Flick is professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C. in Covington. She received her BA degree in political science in 2005 from Southeastern Louisiana University and her JD degree in 2010 from Loyola University College of Law. As loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. Email her at [aflick@gilsbar.com](mailto:aflick@gilsbar.com).*



## Ethics Advisory Service

[www.lsba.org/goto/ethicsadvisory](http://www.lsba.org/goto/ethicsadvisory)

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# LAWYERS Assistance

By J.E. (Buddy) Stockwell

IT'S NOT MY PROBLEM, OR IS IT?

In the past five years, the Judges and Lawyers Assistance Program, Inc. (JLAP) has witnessed a national mental health and well-being movement in the legal profession. Across the nation, courts, bar associations and bar counsel have come together to both acknowledge and address the severe mental health and wellness concerns that are so prevalent in the legal profession. Fortunately, the stigma associated with reaching out for help with mental health issues is waning, but there are still major barriers that must be overcome if we are to really heal our profession.

One barrier is presented when people fail to acknowledge that mental health issues such as addiction and depression are actual diseases. They may say “those people chose to drink too much alcohol and it’s their fault they became alcoholics, so why should it be my problem? They did this to themselves!” The truth is no one chooses to drink too much and become an alcoholic, and willpower is ineffective in fighting the disease if you are unfortunate enough to have contacted it.

The common thread that runs through these types of viewpoints is an underlying tone of “it’s not my problem.” Of course, people are certainly entitled to their viewpoints and JLAP fully respects it. But to those who may feel that the mental health of the profession is not their problem (simply because they are personally okay), we at JLAP encourage them to seriously reconsider that line of thinking.

The fact is that, in the practice of law, we often cannot choose who we will or won’t interact with, be it co-counsel, opposing counsel or the judge presiding over the matter. When there are impaired professionals in our ranks, and when we personally encounter them in a legal case, it can be severely problematic and stressful, tremendously costly to all involved, and can even block the path to the public’s

access to fairness and justice.

An impaired or disruptive lawyer or judge is everyone’s problem.

I practiced in large firm, small firm and solo settings. During those years, I encountered opposing counsel — and, yes, with all due respect, once in a great while, a judge — who were extremely problematic to deal with. They all earned reputations for being “difficult” on one end of the spectrum or the other. Either they were extremely aggressive and disruptive or so passive that moving a case forward seemed impossible, and all while the rest of us simply did our best to weather their troublesome behavior. There are also direct monetary costs visited upon our clients in the form of increased initial client retainers once the opposing lawyer has been identified as routinely disruptive and difficult.

It’s an extremely touchy subject but, from a purely clinical viewpoint, it is more likely than not that some of these unusually disruptive professionals are impaired on some level by a mental health, addiction or personality disorder issue that drives their abhorrent behavior.

Law, like any other business, suffers significant harm from undiagnosed and untreated mental health issues such as depression or alcoholism. According to the American Journal of Preventive Medicine, excessive drinking negatively impacts our bottom lines by as much as \$223.5 billion annually.<sup>1</sup>

As to drug addiction, the National Institute on Drug Abuse cites that drug use disorders (both illicit and prescription) are very costly to our nation “exacting more than \$740 billion annually in costs related to crime, lost work productivity and health care.”<sup>2</sup>

Per the American Psychiatric Association Center for Workplace Mental Health, “Depression costs employers an estimated \$44 billion each year in lost productivity. About half of employees with depression

are untreated. Yet with proper treatment, people with depression can get better. The key is to help employees access effective care.”<sup>3</sup>

While all of the above information demonstrates why we are all affected by the problems, JLAP encourages a shift in everyone’s viewpoint toward solutions and compassion for their brothers and sisters in the profession who, through no fault of their own, developed mental health issues under the pressures of practicing law. The ripple effect of recovery is powerful, and we all benefit from it.

For the legal profession in Louisiana, JLAP is the key to effective care. JLAP is the highly specialized program that offers professional clinical assistance specifically tailored to the needs of impaired lawyers and judges. Be it depression, addiction, an anxiety disorder or another mental health issue, JLAP’s nationally recognized top-tier program can help that disruptive lawyer get better and that benefits all of us.

If you, or someone you know, are struggling emotionally and in need of clinical support, reach out confidentially to JLAP at (985)778-0571, email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com) or visit the website at [www.louisianajlap.com](http://www.louisianajlap.com).

## FOOTNOTES

1. [www.sciencedirect.com/science/article/pii/S0749379711005381](http://www.sciencedirect.com/science/article/pii/S0749379711005381).

2. [www.drugabuse.gov/related-topics/trends-statistics](http://www.drugabuse.gov/related-topics/trends-statistics).

3. <http://workplacementalhealth.org/Mental-Health-Topics/Depression>.

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





### Conclave on Diversity: Thanks to Our Sponsors and Co-hosts

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### SAVE THE DATES!

#### LSBA CLE Series on Disabilities-Related Issues: Social Security on Oct. 25

The LSBA's Committee on Diversity in the Legal Profession is hosting the "LSBA CLE Series on Disabilities-Related Issues: Social Security" on Friday, Oct. 25, noon to 1:30 p.m., at the Louisiana Bar Center, 601 St. Charles Ave., New Orleans. The CLE is approved for 1.5 credit hours. CLE speakers are Monica Ferraro and Suzette Tagesen Murphy, both with Workers' Compensation, LLC, Metairie. Register: [www.lsba.org/goto/CLEDisabilitySeries2019](http://www.lsba.org/goto/CLEDisabilitySeries2019).

#### Natchitoches Lights CLE Seminar

The LSBA's Committee on Diversity in the Legal Profession is hosting the "Natchitoches Lights" CLE seminar on Friday, Dec. 13, at the Chateau Saint Denis Hotel, Natchitoches. More details to come.

#### 13th Annual Conclave on Diversity in the Legal Profession

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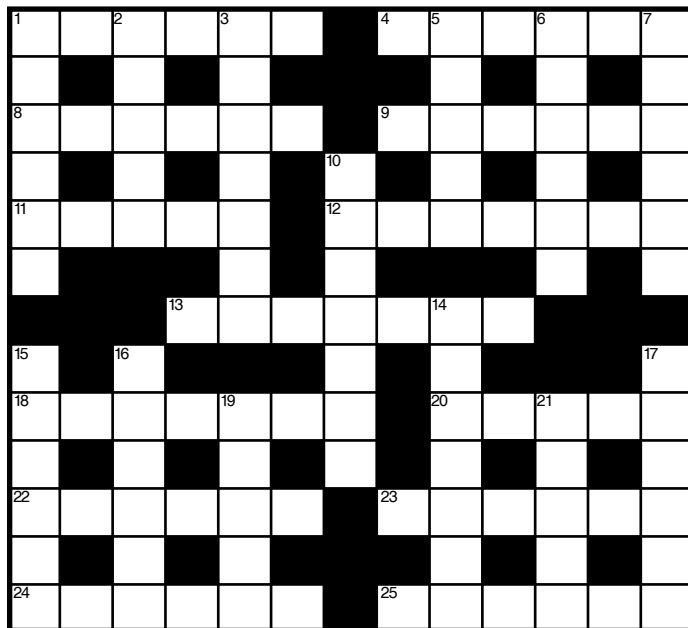




# Crossword PUZZLE

By Hal Odom, Jr.

## “SUPREME” CRIMINAL LAW



### ACROSS

- 1 \_\_\_ v. *Wainwright* (1963): Right to counsel in all state felony cases (6)
- 4 *North Carolina v. \_\_\_* (1970): Authority for the “best interest” plea (6)
- 8 \_\_\_ *curiae*, source of many Supreme Court briefs (6)
- 9 Philippine capital (6)
- 11 Performed, as in a play (5)
- 12 Conjunctivitis (7)
- 13 \_\_\_ v. *Arizona* (1966): Reading of rights upon custodial arrest (7)
- 18 Crisis phone service (7)
- 20 Obsolete office position, with a pad (5)
- 22 \_\_\_ v. *Alabama* (2012): No life without parole for juvenile homicide offenders (6)
- 23 Commandeer (6)
- 24 Tying up, as shoes (6)
- 25 *Maryland v. \_\_\_* (1997): Cop’s authority to make everybody get out of the car in traffic stop (6)

### DOWN

- 1 \_\_\_ v. *Florida* (2010): No life without parole for juvenile nonhomicide offenders (6)
- 2 Float aimlessly; general trend (5)
- 3 Secret organization in *The Da Vinci Code* (4, 3)
- 5 Acquire knowledge (5)
- 6 \_\_\_ v. *United States* (1984): “Open fields” exception to exclusionary rule (6)
- 7 \_\_\_ v. *United States* (1959): Tip from paid informant may create probable cause (6)
- 10 Morphine, heroin, etc. (7)
- 14 West African pullover (7)
- 15 \_\_\_ v. *California* (1969): Officer’s authority to search suspect’s wingspan and lunge space (6)
- 16 Font used for case cites (6)
- 17 \_\_\_ v. *Alabama* (1969): Reading of rights before guilty plea (6)
- 19 Explanatory phrase, usually futile (1, 4)
- 21 Finals, most notably (5)

Answers on page 140.

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

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

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Jefferson Parish Area	Pat M. Franz patfranz@bellsouth.net	(504)455-1986	Shreveport Area	Dana M. Southern dsouthern@shreveportbar.com	(318)222-3643
Lafayette Area	Josette Gossen director@lafayettebar.org	(337)237-4700			
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Should Louisiana's #METOO Law reignite discussion about the need for express anti-harassment and anti-discrimination language in Louisiana's Model Rule 8.4?

The number of gender discrimination and sexual harassment lawsuits is rising in this country and the legal profession is not immune from this trend. The 2019 high-profile lawsuit filed by six women against Jones Day, one of the world's largest and wealthiest law firms, is a strong reminder that not only should lawyers champion the rights of others, we must exhibit the highest level of respect and fairness toward each other.<sup>1</sup>

The statistics are alarming. The Equal Employment Opportunity Commission (EEOC) saw a 13.6% increase in harassment reporting between 2017 and 2018.<sup>2</sup> Additionally, twice the numbers of harassment lawsuits regarding sexual misconduct were filed in 2018 versus 2017.<sup>3</sup> EEOC Commissioner Charlotte A. Burrows told lawyers at a recent American Bar Association (ABA) conference that solutions to harassment are "industry specific" and she compelled industry leaders to help change the tide.<sup>4</sup>

A perfect example of an industry-specific solution to harassment is Louisiana Act 270 of 2018. In 2018, the Louisiana Legislature took a huge step in the right direction to fight sexual harassment in state agencies. On Jan. 1, 2019, Louisiana Act 270 of 2018, also known as Louisiana's #METOO law, took effect. It is the state's first government-wide policy against sexual harassment and it requires agencies to enact policies that include a process for handling complaints, a ban against retaliation when someone files a complaint and mandatory annual prevention training.<sup>5</sup>

With hope, this #METOO law will inspire private employers and professional organizations to enact similar policies across the state. Louisiana's #METOO Law also begs an important question: If the Legis-



lature has recognized the need for express policy language prohibiting sexual harassment and gender discrimination, should the Louisiana Supreme Court and the Louisiana State Bar Association (LSBA) reignite discussion about the need to adopt ABA Model Rule 8.4(g)?

The ABA adopted the Model Rules on Aug. 2, 1983. The original language of Model Rule 8.4 provided:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.<sup>6</sup>

The Louisiana Supreme Court adopted

the ABA Model Rule 8.4 on Jan. 20, 2004, and it became effective on March 1, 2004. Louisiana's Rule 8.4 is identical to the ABA Rule 8.4 except for three important differences.<sup>7</sup> In comparison, Louisiana Rule 8.4 on misconduct provides:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.<sup>8</sup>

On Aug. 8, 2016, the ABA amended Model Rule of Professional Conduct 8.4. While sections (a) through (f) of Rule 8.4 remained the same, the ABA added section (g), which added broad anti-discrimination and anti-harassment language “in conduct related to the practice of law.”

ABA Model Rule 8.4(g) currently provides: *It is professional misconduct for a lawyer to: (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.* This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.<sup>9</sup>

Judy Perry Martinez, incoming ABA president and fellow Louisiana attorney, believes that the legal profession must

support our nation’s position against harassment and discrimination. “ABA Model Rule 8.4(g) furthers the ABA’s goals to promote ethical conduct and professionalism while eliminating bias and enhancing diversity in the profession and justice system,” Martinez said. “The black letter of the rule specifically authorizes legitimate advice and advocacy. Our nation has decided that harassment and discrimination are illegal; our profession must stand tall in demonstrating to the public that we believe in and lead on those values and laws. The ABA model rules, which support professional standards, serve as guides for state regulatory bodies that govern the legal profession; model rules carry no licensing authority per se. That said, the ABA has been and will continue to be a champion of diversity and inclusion by urging guidance such as ABA Model Rule 8.4(g),” she added.

Additionally, Comment 3 to ABA Model Rule 8.4 further explains which

conduct constitutes discrimination: “[3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of anti-discrimination and anti-harassment statutes and case law may guide application of paragraph (g).”<sup>10</sup>

Importantly, ABA Model Rule 8.4(g) makes three key changes:

► adds a knowledge component by prohibiting conduct that a lawyer “knows or reasonably should know” is harassment or discrimination. “Know,” “reasonably” and “reasonably should know” are defined

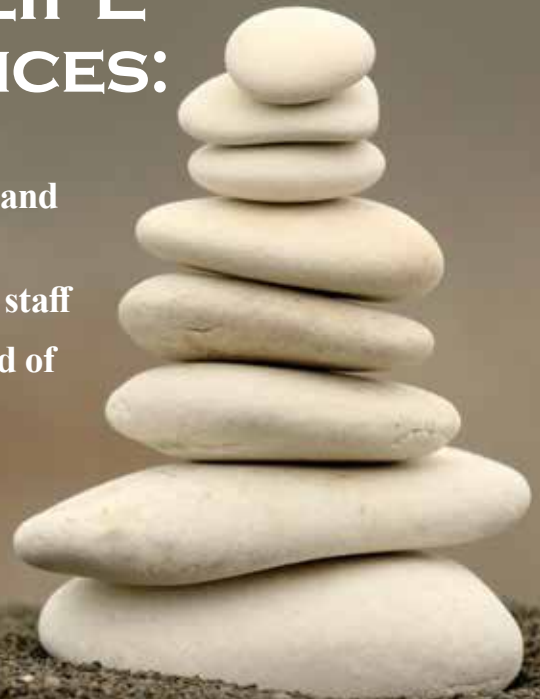
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in Model Rule 1.0 (f), (h), (j), respectively.

► expands the list of protected classes to include ethnicity, gender identity and marital status.

► applies broadly to lawyers’ “conduct related to the practice of law” rather than the original Rule’s focus on conduct related to the “administration of justice.”<sup>11</sup>

All Louisiana lawyers should be cognizant of all the amendments to Model Rule 8.4, even if section (g) is not expressly a part of the Louisiana Model Rules. Admittedly, this amendment is not without controversy. Professor Dane S. Ciolino noted that the breadth of these broad changes should be a concern for all lawyers.<sup>12</sup> From the inception of the 2016 amendment, states have been split on whether to adopt the rule.<sup>13</sup> Twenty states have used some or all of the ideas expressed in the Model Rule comments to create similar anti-discrimination or harassment policies.<sup>14</sup> Four states have adopted Rule 8.4 in its entirety.<sup>15</sup>

However, Louisiana is among seven states that have declined to adopt amended Model Rule 8.4 for various reasons, including constitutional issues.<sup>16</sup> The Louisiana Attorney General noted that the phrase “conduct related to the practice of law” is unconstitutionally broad as it prohibits and chills a substantial amount of constitutionally protected speech and conduct.<sup>17</sup> On Nov. 27, 2017, the Louisiana State Bar Association’s (LSBA) Rules of Professional Conduct Committee reported it would make “no recommendation” regarding the adoption of a rule prohibiting discrimination and harassment in conduct related to the practice of law.<sup>18</sup>

Whether the LSBA Rules of Professional Conduct Committee or the Louisiana Supreme Court will take further action on Rule 8.4 in light of the Legislature’s #METOO law is uncertain. We definitely have options. Even Professor Ciolino recognized that “Louisiana either should do nothing at all (like what the committee did), or adopt a simpler anti-discrimination standard that is directly tethered to anti-discrimination laws applicable to Louisiana lawyers. Such anti-discrimination laws would include those enacted by the federal government, the State of Louisiana, and local governments.”<sup>19</sup>

The Louisiana Bar can’t afford to do nothing in a post #METOO world. Women

outnumbered men in law schools for the first time in 2016 and statistics show that 56,490 women (51.27 percent) versus 53,645 men (48.69 percent) enrolled in law school in 2017.<sup>20</sup> The number of females entering the legal profession will continue to grow and we owe it to them to make sure there are specific rules in place supporting a zero tolerance of gender discrimination and sexual harassment in the Louisiana Bar.

Joshua H. Camson, chair of the ABA Standing Committee on Professionalism, suggests that the addition of Model Rule 8.4(g) is only just the beginning of the fight: “Rule 8.4(g) was an important step in the fight against harassment and discrimination in the legal industry, but far from the end of the road. We still live in a world where harassment and discrimination are too common. These problems prevent many talented lawyers from rising to the top and rob the industry of some of its most talented minds. It is the responsibility of every lawyer to do what they can to end harassment and discrimination in their offices, bar associations and organizations.”

The Louisiana Legislature has set an important standard in the battle against sexual harassment and discrimination in this state. The Bar should be motivated to create similar rules and policies to help eradicate sexual harassment and gender discrimination in the Louisiana Bar. If we acknowledge that gender discrimination and sexual harassment have no place in the legal profession, this belief should be clearly reflected not only in our everyday actions but also in the highest professional rules that govern all lawyers in this state.

## FOOTNOTES

1. Tiffany Hsu, “Jones Day Law Firm Is Sued for Pregnancy and Gender Discrimination by 6 Women,” *New York Times*, [www.nytimes.com/2019/04/03/business/jones-day-pregnancy-discrimination.html](http://www.nytimes.com/2019/04/03/business/jones-day-pregnancy-discrimination.html).

2. Jaclyn Diaz, “Rise in Sexual Harassment Claims Has EEOC Looking for Answers,” *Bloomberg Law*, <https://news.bloomberglaw.com/daily-labor-report/rise-in-sexual-harassment-claims-has-eEOC-looking-for-answers>.

3. *Id.*

4. *Id.*

5. Ted Jackson, “For new sexual harassment law, Louisiana agencies update policy,” [nola.com, www.nola.com/news/2019/01/for-new-sexual-harassment-law-louisiana-agencies-update-policy.html](http://www.nola.com/news/2019/01/for-new-sexual-harassment-law-louisiana-agencies-update-policy.html).

6. Model Rules of Prof’l Conduct, R. 8.4.

7. 1) Louisiana Rule 8.4 generally interprets “misconduct” as any criminal act of an attorney; 2) Louisiana Model Rule 8.4(g) is not a part of the ABA Model Rule 8.4; and 3) ABA Model Rule section (g) was not adopted by Louisiana.

8. Louisiana Rules of Professional Conduct, 8.4 Misconduct.

9. Model Rules of Prof’l Conduct, R. 8.4.

10. Kristine A. Kubes, Cara D. Davis, Mary E. Schwind, *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination and Harassment in the Practice of Law*, [www.americanbar.org/groups/construction\\_industry/publications/under\\_construction/2019/spring2019/model\\_rule\\_8\\_4/](http://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring2019/model_rule_8_4/).

11. *Id.*

12. Dane S. Ciolino, “ABA Adopts Broad Anti-Harassment Rule. Will Louisiana Follow?” *Louisiana Legal Ethics*, <https://lalegaethics.org/aba-adopts-anti-harassment-rule/>.

13. David L. Hudson, Jr., “States split on new ABA Model Rule limiting harassing or discriminatory conduct,” *ABA Journal*, [www.abajournal.com/magazine/article/ethics\\_model\\_rule\\_harassing\\_conduct](http://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct).

14. Kristine A. Kubes, Cara D. Davis, Mary E. Schwind, *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination and Harassment in the Practice of Law*.

15. *Id.*

16. *Id.* See also, Dane S. Ciolino, “Idaho Becomes Seventh State to Reject ABA’s Model Anti-Discrimination Rule,” *Louisiana Legal Ethics*, <https://lalegaethics.org/idaho-becomes-seventh-state-to-reject-abas-model-anti-discrimination-rule/>.

17. La. Att’y Gen. Op. 17-0144 (2017). See also, Richard C. Stanley, Letter to LSBA Outreach and Diversity Director (Nov. 27, 2017); LSBA Rules of Professional Conduct, Rule 8.4 Subcommittee Report Executive Summary at p. 2 (March 24, 2017); and LSBA Rules of Professional Conduct Committee, Rule 8.4 Subcommittee Report (March 24, 2017) (full report).

18. *Id.*

19. Dane S. Ciolino, “Idaho Becomes Seventh State to Reject ABA’s Model Anti-Discrimination Rule,” *Louisiana Legal Ethics*.

20. Staci Zaretsky, “There Are Now More Women in Law School Than Ever Before,” *Above the Law*, <https://abovethelaw.com/2018/03/there-are-now-more-women-in-law-school-than-ever-before>.

*Chautis Jenkins-Floyd has been an attorney in the New Orleans office of Porteous, Hainkel & Johnson, L.L.P., since 2001. She received a BA degree in 1995 from Loyola University and her JD degree in 1998 from Southern University Law Center. She is a former co-chair of the Louisiana State Bar Association’s (LSBA) Diversity Committee and a former chair of the Women in the Profession Committee of the New Orleans Bar Association. She received a 2010 LSBA President’s Award for chairing the Conclave on Diversity. She also is licensed in Georgia, where she currently resides. (cjenkins@phjlaw.com; 704 Carondelet St., New Orleans, LA 70130-3774)*



## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 4, 2019.

### Decisions

**Evelyn Adams**, Grove Hill, AL, (2019-B-0624) **Transferred from disability inactive status to active status** by order of the Court on May 1, 2019. JUDGMENT FINAL and EFFECTIVE on May 1, 2019.

**Evelyn Adams**, Grove Hill, AL, (2019-B-0625) **Interim suspension** by order of the Court on May 1, 2019. JUDGMENT FINAL and EFFECTIVE on May 1, 2019.

**Warren H. Anthony, Jr.**, Greensboro, NC, (2019-B-0186) **Suspended for one year from the practice of law, as reciprocal**

**discipline, for discipline imposed by the District of Columbia on Dec. 13, 2018**, by order of the Court on April 29, 2019. JUDGMENT FINAL and EFFECTIVE on May 13, 2019. *Gist:* Respondent failed to communicate with client; failed to protect client interests upon termination; failed to cooperate in a disciplinary investigation; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaged in conduct prejudicial to the administration of justice.

**Attlah D. Burrell**, Baton Rouge, (2019-OB-0243) **Reinstated to the practice of**

**law, subject to a two-year period of supervised probation**, by order of the Court on April 8, 2019. JUDGMENT FINAL and EFFECTIVE on April 8 2019. Ms. Burrell has proven by clear and convincing evidence that she satisfies the criteria for reinstatement to the practice of law in the state of Louisiana.

**Dante Jerome Butler**, New Orleans, (2018-B-1812) **Suspended for a period of 18 months, with all but one year deferred, subject to a one-year period of unsupervised probation**, by order of the Court on May 8, 2019. JUDGMENT FINAL and EFFECTIVE on May 22, 2019. *Gist:* Respondent knowingly shared fees with non-lawyers and knowingly facilitated the unauthorized practice of law.

**Richard Joseph Deaguero**, Dallas, TX, (2019-B-0187) **Reciprocal discipline imposed based upon Texas disciplinary orders: three-year suspension deferred for offer to pay for client referrals; 18-month suspension deferred for failure to refund an unearned fee; two-year suspended with all but three months deferred for commingling and failure to withdraw upon termination. All suspensions subject to a period of probation with conditions imposed by Texas**

Continued next page

## CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

### DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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**Discipline** continued from page 125

disciplinary orders. JUDGMENT FINAL and EFFECTIVE on May 6, 2019.

**Kimberly E. DeBrock**, Covington, (2019-B-0370) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to probation**, by order of the Court on May 20, 2019. JUDGMENT FINAL and EFFECTIVE on May 20, 2019. *Gist:* Criminal conduct (possession of controlled dangerous substance; misdemeanor theft; and misdemeanor illegal possession of stolen things).

**Iain A. Dover**, New Orleans, (2019-B-0401) **Publicly reprimanded on consent** by order of the Court on May 6, 2019. JUDGMENT FINAL and EFFECTIVE on May 6, 2019. *Gist:* Respondent engaged in an inappropriate verbal exchange with opposing counsel in open court.

**Connie M. Easterly (Eversberg)**, Baton Rouge, (2019-B-0467) **By consent, suspended from the practice of law for one year and one day, retroactive to her Jan. 8, 2019, interim suspension**, by order of the Court on March 18, 2019. JUDG-

MENT FINAL and EFFECTIVE on March 18, 2019. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and violating or attempting to violate the Rules of Professional Conduct.

**Julie A. Fusilier**, Baton Rouge, (2019-OB-0375) **Reinstated to the practice of law, with conditions**, by order of the Court on April 29, 2019. JUDGMENT FINAL and EFFECTIVE on April 29, 2019.

**Stephen J. Holliday**, Baton Rouge, (2019-OB-0459) **Reinstated to the practice of law, with conditions**, by order of the Court on May 20, 2019. ORDER FINAL and EFFECTIVE on May 20, 2019.

**Michael K. LeBlanc**, Metairie, (2019-B-0165) **Permanently disbarred from the practice of law** by order of the Court on April 8, 2019. JUDGMENT FINAL and EFFECTIVE on April 22, 2019. *Gist:* Conduct involving dishonesty, fraud, deceit and misrepresentation; commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

**Zachary Ryan Moffett**, Shreveport,

(2019-B-0627) **Interimly suspended** by order of the Court on May 6, 2019. JUDGMENT FINAL and EFFECTIVE on May 6, 2019.

**John Marron Monsour**, Baton Rouge, (2019-B-0469) **Suspended for one year and one day, with six months deferred, subject to a two-year unsupervised probation period, with conditions**, by order of the Court on May 6, 2019. JUDGMENT FINAL and EFFECTIVE on May 6, 2019. *Gist:* Respondent practiced law while ineligible and violated the Rules of Professional Conduct.

**Richard C. Oustalet, Jr.**, Jennings, (2019-B-0486) **Consented to a two-year period of suspension** by order of the Court on May 20, 2019. JUDGMENT FINAL and EFFECTIVE on May 20, 2019. *Gist:* Respondent neglected his client's legal matters; failed to communicate with his clients; relocated and accepted a position as an attorney with the state without giving notice to his clients; continued representing clients while employed with the state; and failed to return unearned fees and client files upon request.

**Daniel James Stanford**, Lafayette,



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**Discipline** continued from page 126 (2019-B-0626) **Consented to disbarment, retroactive to Sept. 17, 2014, the date of his interim suspension**, by order of the Court on May 28, 2019. JUDGMENT FINAL and EFFECTIVE on May 28, 2019. *Gist:* Respondent was convicted of conspiracy to introduce and cause to be introduced misbranded drugs into interstate commerce, money-laundering conspiracy, and money laundering.

**Sangbahn Y. Scere**, Shreveport, (2019-B-0082) **By consent, suspended from the practice of law for a period of two years** by order of the Court on April 15, 2019. JUDGMENT FINAL and EFFECTIVE on April 15, 2019. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**John J. Steger IV**, Kenner, (2018-B-1979) **Suspended from the practice of law for 18 months, with all but six months deferred, subject to a five-year period of probation**, by order of the Court on May 8,

2019. JUDGMENT FINAL and EFFECTIVE on May 22, 2019. *Gist:* Multiple DWI offenses, other alcohol-related incidents, including simple battery.

**Cherie Elizabeth Teamer**, New Orleans, (2019-B-0353) **Suspended for one year, fully deferred, followed by one-year supervised probation**, by order of the Court on April 29, 2019. JUDGMENT FINAL and EFFECTIVE on April 29, 2019. *Gist:* Respondent notarized signatures to a quitclaim deed, which signatures were made outside of her witness, and then filed the deed, which contained false information, into a succession proceeding.

**Alan B. Tusa**, Covington, (2019-B-0512) **Publicly reprimanded** by order of the Court on May 20, 2019. JUDGMENT FINAL and EFFECTIVE on May 20, 2019. *Gist:* Respondent neglected a legal matter; failed to communicate with a client; and failed to timely remit funds to the client and two third-party medical providers.

**Rebecca Lynn Vishnefski**, Shreveport, (2019-B-0137) **Suspended for a year and a day by consent, fully deferred, subject to a two-year period of unsupervised proba-**

**tion**, by order of the Court on April 22, 2019. JUDGMENT FINAL and EFFECTIVE on April 22, 2019. *Gist:* Failed to act with diligence and promptness in representing a client; and commission of a criminal act.

**Christine Y. Voelkel**, Mandeville, (2019-B-0480) **Suspended for one year and one day** by order of the Court on May 20, 2019. JUDGMENT FINAL and EFFECTIVE on June 3, 2019. *Gist:* Respondent mismanaged her client trust account; practiced law while ineligible; and failed to cooperate with the investigation into attorney misconduct.

**Robert Wiegand II**, Denver, CO, (2019-B-0170) **Suspended for one year and one day from the practice of law, fully deferred, subject to a two-year period of probation imposed by the Supreme Court of Colorado and made reciprocal in the state of Louisiana**, by order of the Court on April 8, 2019. JUDGMENT FINAL and EFFECTIVE on April 22, 2019. *Gist:* Unlawfully obstructing another party's access to evidence; and conduct prejudicial to the administration of justice.

**No admonitions for this report.**

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## Legal & Judicial Ethics



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

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

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## DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of June 3, 2019.

Respondent	Disposition	Date Filed	Docket No.
David W. Ardoin	[Reciprocal] Suspension, fully deferred.	4/5/19	19-362
Gerald Joseph Asay	[Reciprocal] Suspension.	4/5/19	19-1343
William Christopher Beary	Interim suspension.	5/9/19	19-2172
Michael A. Betts	[Reciprocal] Suspension, fully deferred.	4/5/19	19-1341
Alicia Johnson Butler	[Reciprocal] Suspension, partially deferred.	5/9/19	19-1834
Felix DeJean IV	[Reciprocal] Suspension.	5/9/19	19-1833
Aubrey E. Denton	[Reciprocal] Suspension, fully deferred.	5/9/19	19-1607
Jennifer E. Gaubert	[Reciprocal] Suspension.	5/9/19	19-2290
David Cartan Loker Gibbons, Jr.	[Reciprocal] Suspension, partially deferred.	4/5/19	19-361
Ella Cortland Goodyear	[Reciprocal] Suspension.	4/11/19	19-1438
William Magee	[Reciprocal] Suspension.	5/9/19	19-1832
Scott W. McQuaig	Interim suspension.	5/9/19	19-2361
Sean P. Mount	[Reciprocal] Suspension, fully deferred.	4/5/19	19-364
Brian P. Quirk	[Reciprocal] Disbarment.	4/5/19	19-1340
Michael Sean Reid	[Reciprocal] Disbarment.	4/5/19	19-178
Shannon Jay Thomas	[Reciprocal] Interim suspension.	4/5/19	19-363

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# MEDIATION AND ARBITRATION *of* COMPLEX DISPUTES



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Thomas Hayes, III



Mike McKay



Patrick Otfinger



Mike Patterson



Marta-Ann Schnabel

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◀ **Larry Roedel** received his mediation training at the Strauss Institute, Pepperdine University. He served as a mediator and arbitrator on several cases with FINRA (formerly the National Association of Securities Dealers-NASD). He also served in an advisory role to three former governors of Louisiana: Buddy Roemer, Kathleen Blanco and Bobby Jindal. He has practiced law since 1977 with a focus on the blend of general litigation and public/private partnerships for the construction of large public projects in Louisiana. Larry Roedel is member of the Patterson Resolution Group and an attorney with Roedel Parsons Koch Blache Balhoff & McCollister in Baton Rouge. He served as the firm's managing shareholder from inception through 2017.







### LASC Answers Certified Question: Louisiana Attachment Statute

*Stemcor USA Inc. v. CIA Siderurgica Do Para Cosipar*, 18-1728 (La. 5/8/19), \_\_\_ So.3d \_\_\_, 2019 WL 2041826.

In a world where arbitration clauses are becoming more and more commonplace,

the Louisiana Supreme Court answered a Certified Question from the U.S. 5th Circuit Court of Appeals interpreting the term “action for a money judgment” as it related to a suit to compel arbitration.

The background of this case involves two companies who entered into unrelated contracts with America Metals Trading, L.L.P. (AMT). Daewoo International Corp. contracted with AMT to purchase pig iron; the contract between these two parties contained an arbitration clause. Daewoo alleged it paid more than \$14 million to AMT for the pig iron, but AMT failed to deliver the goods. Thyssen Krupp Mannex GMBH (TKM) also entered into a contract with AMT to obtain pig iron, which it contends AMT never delivered.

Daewoo, having not received the pig iron contracted for, sued AMT in the U.S. District Court for the Eastern District of Louisiana. This suit was to compel arbitration, in accordance with the contract of the parties, *and* for a writ of attachment to obtain pig iron aboard the M/V Clipper Kasashio, pursuant to La. C.C.P. art. 3542. The writ of attachment was granted and served by the U.S. Marshals.

A few days after the U.S. Marshals served the writ of attachment on behalf of Daewoo, TKM filed suit in the 24th Judicial District Court (*Thyssen Krupp Mannex GMBH v. CIA Siderurgica Do Para Cosipar*, Docket 722-480). TKM alleged it paid more than \$36 million to AMT for pig iron, AMT failed to deliver

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the pig iron, and the pig iron that was placed aboard the M/V Clipper Kasashio was already under attachment of TKM pursuant to a settlement agreement entered into in Brazil. TKM further sought a writ of attachment pursuant to La. C.C.P. art. 3542 for the pig iron aboard the M/V Clipper Kasashio — the same pig iron attached by Daewoo in the federal suit.

TKM, learning of Daewoo’s attachment on the cargo, intervened in Daewoo’s federal suit and obtained a federal writ of attachment on the cargo as well. TKM also moved to vacate Daewoo’s attachment, alleging that by filing a suit to compel arbitration, pursuant to the contract between Daewoo and AMT, Daewoo had no right under art. 3542 as there was no “action for a money judgment” as required by the statute.

Initially, the federal court agreed with TKM and vacated Daewoo’s writ of attachment, in essence, providing TKM the entirety of the claim to the attached goods. TKM appealed, and the U.S. 5th Circuit vacated the district court’s ruling with a split decision. On rehearing, in yet another split opinion, the 5th Circuit withdrew the prior opinion and affirmed the district court’s ruling. The parties filed separate rehearing petitions, and the 5th Circuit then certified the following question to the Louisiana Supreme Court: “Is a suit seeking to compel arbitration an ‘action for money judgment’ under Louisiana’s non-

resident attachment statute, La. Code Civ. Pro. art. 3542?”

The Louisiana Supreme Court accepted the certified question and ultimately answered in the affirmative, finding that the language “in any action for a money judgment” was not clear and unambiguous. Therefore, the majority examined the purpose of the statute, the context of the language and the law as a whole to determine the statute was broad enough to include a suit to compel arbitration when the ultimate goal of the arbitration was to obtain a money judgment.

Justice Guidry dissented, with Justice Genovese dissenting for the reasons assigned by Justice Guidry. Justice Guidry believed the language of the law was clear and unambiguous, and the application did not lead to absurd consequences, such that the secondary interpretation of the majority was improper. Accordingly, the dissenters would have answered the question in the negative and found that an action to compel arbitration was not an action for a money judgment and, therefore, art. 3542 would not apply.

—**Shayna Beevers Morvant**  
Secretary, LSBA Civil Law  
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## WOTUS on the Move: Southern District of Texas Remands Obama- Era Rule to EPA

*Texas v. U.S. EPA*, No. 3:15-CV-00162, \_\_\_ F.Supp.3d \_\_\_ (S.D. Tex. 2019), 2019 WL 2272464.

On May 28, 2019, Judge George C. Hanks, Jr. of the Southern District of Texas remanded to the Environmental Protection Agency (EPA) the 2015 Final Rule defining “Waters of the United States” (WOTUS) under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (Clean Water Act). Texas, Louisiana and Mississippi challenged the legality of the Final Rule. The states asserted that the Final Rule was an encroachment on the rights of the states to regulate lands within their borders and thereby in violation of the 10th Amendment. The states also asserted that the Final Rule was in excess of the EPA’s and the U.S. Army Corps of Engineers’ statutory authority un-



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der the Clean Water Act as interpreted by the U.S. Supreme Court. Lastly, the states asserted “that the Final Rule violates the notice-and-comment requirements of the [Administrative Procedure Act, APA] because (1) the Final Rule’s definition of ‘adjacent’ was not a logical outgrowth of the Proposed Rule’s definition, and (2) the Agencies denied interested parties an opportunity to comment on the Final Connectivity Report, which serves as the technical basis for the Final Rule.” *Id.* at \*3. Granting in part the states’ motion for summary judgment, Judge Hanks found “that the Final Rule violated the APA’s notice-and-comment requirements.” *Id.* at \*5.

In 2014, the EPA and the U.S. Army Corps of Engineers jointly proposed a new definition of the phrase WOTUS (Proposed Rule). The technical basis for the Proposed Rule was a Preliminary Connectivity Report drafted by the EPA that reviewed “more than a thousand publications from peer-reviewed sci-

entific literature and discussed the connected nature of the nation’s waters.” *Id.* at \*2. After the notice-and-comment period for the Proposed Rule closed, the EPA issued a Final Connectivity Report. The Final Rule was issued nearly six months after the Final Connectivity Report. As the court recognized, “[t]his meant that the Proposed Rule was never open for public comment after the Final Connectivity Report was finalized.” *Id.* at \*2. In other words, the public never had an opportunity to comment on any changes in the Final Rule that were based on changes in the Final Connectivity Report.

The court found that “the Final Rule departed from the Proposed Rule in at least one key respect. Namely, the Final Rule defined ‘adjacent waters’ under the [Clean Water] Act using distance-based criteria, rather than the ecologic and hydrologic criteria used in the Proposed Rule.” *Id.* at \*3. Drawing on the Supreme Court’s decision in *Long Island Care at*

*Home, LTD. v. Coke*, 551 U.S. 158, 174 (2007), in addition to various appellate court decisions, the court concluded that the change to the definition of “adjacent waters” was so significant that it was not a “logical outgrowth of the Proposed Rule and that it was promulgated in violation of the APA.” *Id.* at \*4.

Moreover, because the public was not given the opportunity to comment on the Final Connectivity Report, the court found that “[t]he Final Rule also violated the APA by preventing interested parties from commenting on the studies that served as the technical basis for the rule.” *Id.* at \*5. While conceding that the public is not expected to have an opportunity to comment on all information influencing an agency’s decisions, the court found that interested parties were prejudiced by not having the opportunity to “provide meaningful comments regarding the Final Rule’s continuum-based approach to connectivity and . . . ‘mount a credible challenge’ to the Final Rule.” *Id.* at \*6 (citing *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237-38 (D.C. Cir. 2008)).

Noting that “the Agencies have already begun reviewing whether changes should be made to the Final Rule,” the court remanded the Final Rule to the EPA and the U.S. Army Corps of Engineers for proceedings consistent with its order. *Id.* at \*6. Indeed, the agencies promulgated a draft revised definition of WOTUS and accepted comments thereon through April 15, 2019. The Southern District of Texas maintained the injunction it issued on Sept. 12, 2018, pending the proceedings on remand. The court denied all the remaining pending motions as moot. At the time of this writing, the delay for seeking reconsideration had not yet lapsed.

—**Harry J. Vorhoff**  
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 Chief, Environmental Section,  
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## Use and Occupancy/ Rent

*Averill v. Averill*, 18-0299 (La. App. 1 Cir. 9/21/18), \_\_\_ So.3d \_\_\_, 2018 WL 4520246.

After Ms. Averill found that Mr. Averill was having an affair, she moved out of the community home and later filed a petition for divorce, wherein she requested rent for his exclusive use of the home. He subsequently filed an answer and reconventional demand and sought use and occupancy of the home, or alternatively rent. The parties entered into a consent judgment granting Mr. Averill use and occupancy of the home and deferring Ms. Averill's reimbursement claim for rent until the partition. Following the partition and an award of rent to her, Mr. Averill appealed, arguing that the trial court erred in awarding her rent since she had not requested use of the home and been denied.

The appellate court held that La. R.S. 9:374(C) has been amended since *McCarroll v. McCarroll*, allowing retroactive awards of rent when that issue has been deferred to the partition trial. Further, the court found that the present version of La. R.S. 9:374(C) does not require that a party demand use and be denied in order to preserve a rental reimbursement claim. Further, Mr. Averill was aware of her claim and that it was deferred. Finally, he had changed the locks and moved his girlfriend into the home, and the court found that under such circumstances she did not need to request use and occupancy in order to preserve her rental claim, as he had denied her use of the home by such actions.

## Premarital Contracts

*Brady v. Pirner*, 18-0556 (La. App. 4 Cir. 12/5/18), 261 So.3d 867.

Although the parties' premarital con-

tract was invalid as a matrimonial agreement because it was in an improper form, it was nevertheless a valid and enforceable contract, in proper form for a contract, regarding certain matters contained within the agreement. Because there was a severability clause, the invalid provisions were ignored, and the remainder of the agreement remained enforceable as the agreement was not dependent on the invalid portion, which provided for a separate property regime. The court stated, "[T]he couple had distinct causes and multiple principal objects for consenting to the Agreement other than the establishment of a separate property regime."

## Community Property

*Villarrubia v. Villarrubia*, 18-0430 (La. App. 5 Cir. 12/27/18), 263 So.3d 949.

This matter involved the classification of funds on BP files received after the termination of the community regime, on matters upon which Mr. Villarrubia, an attorney, had worked both before and after the termination. Ms. Villarrubia claimed that the funds were community

property or, alternatively, that they represented uncompensated or undercompensated labor that increased the value of her husband's PLC, which was his separate property. Mr. Villarrubia argued that he had been fully compensated for his work during the regime, and that the funds belonged to his PLC until they were distributed to him. Further, he argued that if any of the funds were to be awarded to her, they must be reduced for income taxes and the overhead he paid to produce the fees.

The court of appeal affirmed the trial court's award of fees to her, based on a percentage of time he worked before and after the termination of the community to obtain the funds. The court found that as he was the sole member and owner of the PLC, only he would be entitled to a distribution of the fees from the entity. Thus, the fees partially represented compensation and were community property where attributable to work he performed before the termination of the community. Regarding his claims for overhead and taxes, the court found that he failed to present evidence at the trial except for his uncorroborated testimony.

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## Custody

*Melton v. Johnson*, 18-0403 (La. App. 1 Cir. 12/12/18), 2018 WL 6571044 (unpublished).

The court of appeal stated: “The heightened standard stated in *Bergeron* is applicable to both changes in legal and physical custody.” *Id.* at \*5. Notably, the appellate court distinguished between “visitation” and “physical custody,” stating that the proper term when parties have joint custody is “physical custody,” not “visitation.” *Id.* at \*6, note 14.

*Bernard v. Bernard*, 18-1149 (La. App. 1 Cir. 2/12/19), 2019 WL 546530.

The appellate court reversed the trial court and granted the father and grandmother joint custody, with the grandmother designated as the domiciliary parent. The court remanded to the trial court “to establish a joint custody visitation schedule.” *Id.* at \*1. (Note that the same appellate panel in *Melton* in an opinion written by Judge Whipple took careful time in footnote 14 to distinguish between “physical custody” and “visitation” when parties’ shared joint custody.)

*J.P. v. A.D.*, 18-0555 (La. App. 3 Cir. 2/20/19), 265 So.3d 860.

The court of appeal reversed the trial court, which had named both parties as joint custodial domiciliary parents, citing

the ruling in *Hodges v. Hodges*, 15-0585 (La. 11/23/15), 181 So.3d 700, that there can be only one domiciliary parent. The trial court also failed to adequately allocate the legal authority and responsibility between the parents in its joint custody implementation order, as also required by *Hodges*. The court determined that it had a sufficient record before it to render a de novo review and ruling and designated the mother as the domiciliary parent, with authority to make all major decisions stating in a footnote:

Louisiana Revised Statutes 9:336 also provides that “[j]oint custody obligates the parents to exchange information concerning the health, education, and welfare of the child and to confer with one another in exercising decisionmaking authority.” Major decisions “normally include decisions concerning major surgery or medical treatment, elective surgery, and schools attended, but not the daytoday decisions involved in rearing a child, e.g., bedtimes, curfews, household chores, and the like.” Nonmajor decisions are not subject to judicial review.

*Id.* at 865, note 6 (citations omitted).

## Evidence

*State v. Ducote*, 18-0060 (La. App. 3 Cir. 11/14/18), 260 So.3d 627, writ denied, 18-2026 (La. 4/22/19), 268 So.3d 298.

Mr. Ducote’s jailhouse telephone calls to his wife were not protected by the spousal privilege of confidentiality under La. Code of Evidence art. 504(A). The court found that as inmates and their spouses are advised that phone calls may be recorded or monitored, they can have no expectation of privacy regarding such calls.

—David M. Prados

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## Long-Term Disability

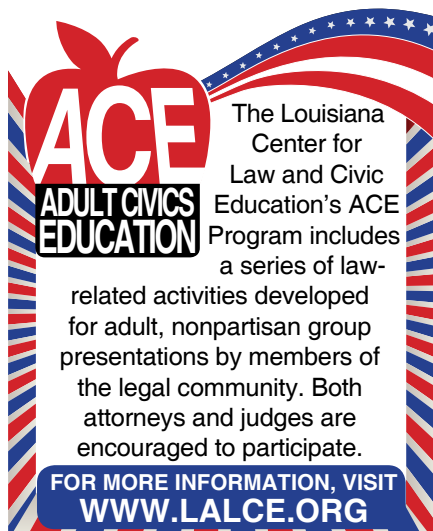
*Foster v. Principal Life Ins. Co.*, \_\_\_ F.3d \_\_\_ (5 Cir. 2019), 2019 WL 1474315.

Amanda Foster was employed as a healthcare attorney at a New Orleans law firm in 2005. She described her duties as “review and draft leases and agreements; research and advise clients regarding government laws and regulations; represent clients in administrative appeals; [and] draft compliance plans.” In March 2013, she reduced her work hours to part-time, allegedly due to intractable headaches, and took complete disability leave in July 2013.

Her law firm has a group benefits plan or policy, issued by Principal, providing employees with long-term disability (LTD) benefits. Plaintiff’s claims under the policy are governed by the Employee Retirement Income Security Act of 1974 (ERISA). The policy confers on Principal the discretion to construe the policy provisions and determine eligibility, making Principal both the insurer and the plan administrator.

Regarding LTD, the policy states that a member is “disabled” if she “cannot perform one or more of the substantial and material duties of his or her Own Occupation.” “Substantial and material duties” are “essential tasks generally required by employers from those engaged in a particular occupation that cannot be modified or omitted.” The policy defines Own Occupation for attorneys as “[t]he specialty in the practice of law the Member is routinely performing for the Policyholder when his or her Disability begins.” Her claim for LTD under the policy, supported by her neurologist’s report, was provisionally approved, with the caveat that additional information would be required.

Principal requested surveillance on the plaintiff, which showed her performing routine tasks like shopping and picking up children. An updated review of the plaintiff’s medical records by two of Principal’s



physicians found that her “chronic headaches and intractable migraines” would not allow her “consistent full time employment for sedentary work” and that she was experiencing daily migraines that resulted in her “functional impairment,” limiting her to part-time work.

Principal hired two additional physicians to review the plaintiff’s file. The psychologist found “no indication of functionally impairing symptoms” and noted “generally mild psychological symptoms consistently across time.” She concluded that “[n]o limitations are supported” that would result in the plaintiff’s “total inability to perform any type of occupation.”

The neurologist concluded that the plaintiff’s “objective neurological exam is consistently normal,” as well as her MRI and EEG, whereas her headaches were “subjectively affecting her functionality.” Her records showed “no objective/clinical evidence which demonstrates that [plaintiff] is functionally impaired,” further noting that “she is seen on video surveillance to be functional . . . [plaintiff] has capabilities to perform work activities on a full-

time basis, in a sedentary capacity.”

Principal terminated the plaintiff’s LTD benefits, stating that her “subjective complaints did not correlate with objective findings” and concluding that “there is no objective medical or psychological evidence supporting an ongoing claim of Disability as it is defined in the policy.” ERISA requires an employee aggrieved by her plan’s decision to file “mandatory” and “voluntary” appeals with the plan’s administrator before seeking review in federal district court.

The plaintiff filed her mandatory appeal, attaching letters from her treating physician, an independent medical examination, an affidavit from her employer’s founding partner attesting to her struggles with headaches and inability to work as an attorney, and additional medical records detailing her continued struggle with migraines.

Principal denied the plaintiff’s appeal, relying on the opinions of two doctors. Dr. Harrop, a psychiatrist, concluded that the plaintiff was “not disabled for psychiatric reasons,” that “the psychiatric restrictions suggested by the attending clinicians . . .

are not supported by clinical findings or diagnostic evidence or the clinical records,” that her “[m]emory, cognition, and concentration are not demonstrated by mental status examinations to be impaired . . . [and that] [t]he medical documentation does not support that there are restrictions and limitations which would render [plaintiff] unable to perform the occupation she regularly performs.”

Dr. Miller, a psychiatrist/neurologist, diagnosed the plaintiff with “opioid dependence,” “opioid induced mood disorder” and “opioid induced hypalgesia and somatoform disorder. Hydrocodone causes pain, particularly headache pain and her pain will be significantly reduced and the frequency . . . severity . . . [and] nature of her headaches all will improve once she no long [sic] is prescribed an uses hydrocodone.” He concluded that “[plaintiff] is otherwise capable of full-time sedentary work” and “she should discontinue under medical supervision hydrocodone and Ativan [lorazepam] as these medications increase pain and anxiety and depression.”

The plaintiff filed a second, voluntary



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Monday, October 7, 2019  
St. Louis Cathedral*

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*Procession 9:15 a.m.*

*Mass 9:30 a.m.*

*Followed by a Reception at Bourbon Orleans Hotel*

*Louisiana State Supreme Court Building*

*Memorial Service 11:45 a.m.*



appeal, submitting additional reports. Principal scheduled an independent neuropsychological examination. The psychologist concluded that the plaintiff “would have no limitations on more complex legal tasks if these did not involve much oversight and responsibility.” Principal upheld its previous determination that the plaintiff was not disabled within the meaning of the LTD provisions of the policy and denied the second appeal.

The plaintiff filed suit in federal district court, and the parties filed cross-motions for judgment on the administrative record. The court found that Principal did not abuse its discretion when denying the plaintiff’s claim and denied a motion for reconsideration.

On appeal, the 5th Circuit noted its earlier stated standard of review:

Where a benefits plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan, . . . the reviewing court applies an abuse of discretion standard to the plan administrator’s decision to deny benefits.

Noting the light burden that Principal bears:

Principal must support its decision only with “substantial evidence” and, if the decision “is not arbitrary and capricious, it must prevail.”

Furthermore, although Principal has a “structural” conflict of interest in that it both evaluates and pays claims, . . . we accord this factor little weight in view of the extensive investigation Principal undertook. We therefore conclude that Principal’s benefits denial was supported by substantial evidence.

—**John Zachary Blanchard, Jr.**  
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## Court of International Trade

*Am. Inst. for Int’l Steel, Inc. v. United States*, 376 F.Supp.3d 1335 (Ct. Int’l Trade 2019).

A three-judge panel of the U.S. Court of International Trade ruled on a key constitutional challenge to Section 232 of the Trade Act of 1962. The case stems from President Trump’s declaration that imported steel and aluminum threaten to impair U.S. national security and the subsequent imposition of 10% (aluminum) and 25% (steel) remedial tariffs. The American Institute for International Steel challenged Section 232 as an impermissible congressional delegation of economic authority to the President containing an “essentially unlimited definition of national security” and a “limitless grant of discretionary remedial powers.” *Id.* at 1343.

Section 232 authorizes the Secretary of the Department of Commerce to initiate an investigation into whether certain imports are having or will have a detrimental impact on U.S. national security. The Secretary issues a written report to the President with a conclusion regarding any real or potential threat to national security and a recommended course of action, if any, to address the threat. Once the President receives the report, if he concurs with a finding that a national security threat exists, the President has discretion to adjust the imports to minimize or erase the national security risk. The President has unfettered discretion to either concur or not with the Secretary’s findings and to impose remedial measures.

The opinion carefully reviews prior jurisprudence on legislative delegations, which are permissible if they satisfy the “intelligible principle” standard, where Congress “shall lay down by legislative act an intelligible principle to which the person or body authorized . . . is directed to conform . . .” *Id.* at 1339, quoting *J.W. Hampton, Jr.*

& *Co. v. United States*, 48 S.Ct. 348, 352 (1928). Despite acknowledging that Section 232 “bestow[s] flexibility on the President and seem[s] to invite the President to regulate commerce by way of means reserved for Congress,” the panel dismissed the challenge because of prior Supreme Court precedent. *Id.* at 1344. The Supreme Court previously upheld Section 232 in 1976, finding that the law easily satisfied the intelligible principle standard. *Id.* at 1340, citing *Fed. Energy Admin. v. Algonquin SNG Inc.*, 96 S.Ct. 2295, 2302 (1976).

Despite the binding precedent of *Algonquin*, the panel’s decision was split 2-1. Judge Katzmman issued a separate *dubitante* opinion. An opinion entered *dubitante* expresses doubt or unhappiness with some aspect of the decision without lodging a formal dissent. *Dubitante* opinions are also issued where a judge is constrained by precedent but suggests an alternative view of the matter. *Id.* at 1345 n.1. Judge Katzmman addressed *Algonquin* at the outset, stating, “While acknowledging the binding force of that decision, with the benefit of the fullness of time and the clarifying understanding borne of recent actions, I have grave doubts.” *Id.* at 1346-47. Considering the broad delegation contained in Section 232 and the potentially limitless scope of national security, Judge Katzmman concluded that the statute almost certainly violates the U.S. Constitution’s separation of powers:

What we have come to learn is that section 232, however, provides virtually unbridled discretion to the President with respect to the power over trade that is reserved by the Constitution to Congress. Nor does the statute require congressional approval of any presidential actions that fall within its scope. In short, it is difficult to escape the conclusion that the statute has permitted the transfer of power to the President in violation of the separation of powers.

...  
In the end, I conclude that, as my colleagues hold, we are bound by *Algonquin*, and thus I am constrained to join the judgment entered today . . . . I respectfully suggest, however, that the fullness of time

can inform understanding that may not have been available more than forty years ago. We deal now with real recent actions, not hypothetical ones. Certainly, those actions might provide an empirical basis to revisit assumptions. If the delegation permitted by section 232, as now revealed, does not constitute excessive delegation in violation of the Constitution, what would?

*Id.* at 1352 (footnote omitted).

The American Institute of International Steel has appealed this matter directly to the Supreme Court, bypassing the Court of Appeals for the Federal Circuit. The Supreme Court has yet to consider the request for a *writ of certiorari*. See Docket No. 18-1317. The matter was distributed for conference on June 20, 2019.

## World Trade Organization

***China-Domestic Support for Agricultural Producers***, WT/DS511/R (Feb. 28, 2019).

The United States secured an important victory against China at the WTO when a dispute-settlement panel ruled that China was illegally subsidizing its farmers in excess of its WTO commitments. At issue was a Chinese farm-subsidy program ensuring an “applied administered price” for farm products. The United States contended that the program violates Chinese Aggregated Measure of Support commitments and provides an unfair advantage to Chinese domestic producers over foreign competitors. The panel ruled that the “applied administered price” contained in China’s 2012, 2013, 2014 and 2015 farm-subsidy program violated China’s trade commitments and is inconsistent with Articles 3.2 and 6.3 of the Agreement on Agriculture.

The United States has launched similar challenges to additional Chinese agriculture programs, including import quotas on rice, corn and wheat. Those disputes remain pending.

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## Charge-Filing Requirement Not Jurisdictional: Much Ado About Nothing?

You have probably seen myriad articles addressing the Supreme Court’s recent unanimous ruling in *Fort Bend County, Texas, v. Davis*, 139 S.Ct. 1843 (2019), a Title VII case. Many of their eye-catching titles imply this ruling is a bigger deal than it should be. The holding is simple: Title VII’s charge-filing requirement is not jurisdictional. While the ruling implicitly creates currently unanswered questions, this ruling should not significantly change the way Title VII cases are handled and serves as a good reminder for defense counsel to assess

and assert available defenses early, or risk waiving them.

Title VII prohibits employment discrimination on the basis of race, color, religion, sex or national origin, and retaliation against persons who assert rights under Title VII. The statute directs workers to file charges of discrimination describing their legal claims with the Equal Employment Opportunity Commission (EEOC) or state equivalent, which notifies the employer and investigates, as a precondition to filing suit. If the EEOC chooses not to sue the employer, the complainant receives a “right-to-sue” notice, giving permission to bring a civil action.

Here, the plaintiff filed a charge against her employer alleging sexual harassment and retaliation for reporting harassment. While the charge was pending, the employer fired her when she failed to show up for work on a Sunday and went to a church event instead. She attempted to supplement her charge by handwriting “religion” in the margin of an intake questionnaire but did not amend her formal charge. After receiving her right-to-sue letter, she sued, alleging religious discrimination and retaliation.



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After years of litigation, only the religious discrimination claim remained, and the employer argued the district court lacked jurisdiction because the charge did not state a religious discrimination claim and the intake questionnaire was not a valid charge. The district court granted the motion to dismiss; the 5th Circuit reversed, holding the charge-filing requirement is not jurisdictional, but instead a prerequisite to suit, which the employer here forfeited by waiting too long to raise the failure-to-exhaust objection.

The Supreme Court affirmed. The basis for this ruling is simple: Federal courts exercise jurisdiction over Title VII actions pursuant to the grant of general federal question jurisdiction and Title VII's own jurisdictional provision, and separate provisions of Title VII contain the charge-filing requirement. The word "jurisdictional" is generally reserved to describe the types of cases a court may hear (subject matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction). On the other hand, the charge-filing requirement is a claim-processing rule, albeit a mandatory one, that requires parties to take certain procedural steps prior to litigation. While this type of rule may be mandatory in that a court must enforce it if timely raised, it is ordinarily forfeited if not timely asserted.

Of course, employers have good reason to raise objections promptly that may eliminate the headache of litigation. And, as the Supreme Court points out, "[a] Title VII complainant would be foolhardy consciously to take the risk that the employer would

forgo a potentially dispositive defense." *Id.* at 1851-52. However, this ruling does create a potential loophole where a plaintiff does not file a charge of discrimination before filing suit, and the employer fails to timely assert the failure-to-exhaust defense.

This ruling also generates some unanswered questions. A charge has to be filed within 180 days (or 300 days if the state has a fair employment agency of its own) of the alleged unlawful employment practice to be timely. If no charge is filed, how far back can the alleged wrongdoing have occurred to be actionable in a lawsuit? Does the same temporal restriction (180 or 300 days) apply from the date of suit? Similarly, if the EEOC determines there is no reasonable cause to believe the charge is true, the EEOC will dismiss the complaint and notify the complainant of his or her right to sue in court. The complainant may then commence a lawsuit against the employer within 90 days following such notice. If no charge is filed, and thus no notice right-to-sue letter is issued, what is the statute of limitations for a claim under Title VII? As long as charges continue to be filed and failure-to-exhaust defenses are timely raised, these questions are moot, but, in the rare case where this defense is forfeited, these may be additional issues to be litigated.

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## Mutual Interest Provision

*Glassell Non-Operated Interests, Ltd. v. EnerQuest Oil & Gas, L.L.C.*, No. 18-20125 (5 Cir. June 12, 2019), \_\_\_ F.3d \_\_\_, 2019 WL 2442745.

This case involves the interpretation of an area-of-mutual-interest (AMI) provision in a development agreement in which a group of oil companies agreed to cooperatively develop oil prospects in the Dubose Field in Texas. The AMI was defined in Section 2.1 of the development agreement. EnerQuest acquired an interest in the specified area (the DKE/Pati-Dubose interest) after the agreement took effect, but refused to offer a *pro rata* share to the other parties.

The development agreement, however, did not require that a party share with another party any interest *already owned prior to the effective date of the development agreement*. The AMI provision stated that the AMI shall cover all lands within the DuBose Field that are *acquired after Aug. 1, 2010* (the effective date). The AMI provision defined any interests acquired after Aug. 1, 2010, as "Acquired Interests." All "Acquired Interests" were subject to the sharing obligation; any interests acquired prior to Aug. 1, 2010, were not. Section 2.3 of the Development Agreement further stated that "[a]ll interests, leases or agreements owned by a Party prior to the Effective Date . . . shall not be considered part of or subject to the AMI." *Id.* at \*3.

EnerQuest interpreted its DKE/Pati-Dubose interest as an interest that was acquired *prior to Aug. 1, 2010*, and, thus, not subject to the sharing obligation of the AMI. Because DKE and Pati-Dubose were both parties to the development agreement, they owned interests in the Dubose Field prior to *Aug. 1, 2010*. Therefore, the DKE/Pati-Dubose interest was not subject to the AMI. The U.S. 5th Circuit Court of Appeals agreed with EnerQuest's interpretation and found that



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it was bound by the plain text of the AMI in the development agreement. The court stated, "If Appellees sought to prohibit the type of activity in which EnerQuest engaged, they could have easily done so through the contract." *Id.* at \*3.

## Louisiana Mineral Code

*AWT Be Good, L.L.C. v. Chesapeake Louisiana, L.P.*, No. 16-1412 (W.D. La. June 4, 2019), \_\_\_ F.Supp.3d \_\_\_, 2019 WL 2385199.

In deciding a motion for reconsideration of a summary judgment ruling filed by PXP Louisiana, the U.S. District Court for the Western District of Louisiana (C.J. Hicks) confirmed its prior decision regarding the liability of an assignee/sublessee to a mineral lessor under the Louisiana Mineral Code. The court found that given the general rule under the Mineral Code that an assignee/sublessee is directly liable to a mineral lessor for the lessee's obligations, and because PXP did not meet its burden of proof on summary judgment in showing that it did not consent to the lease amendment, the mineral lessor in this case (AWT) can seek to hold PXP liable for the same claims it brings against Chesapeake (original lessee). Thus, the court found that (1) AWT can proceed with discovery on its claims, and (2) PXP and/or Chesapeake's liability to AWT would be determined at trial.

## New Well Control Rule

On May 2, the Bureau of Safety and Environmental Enforcement (BSEE) issued the 2019 Well Control Rule, a long-awaited, revised (and final) well-control and blowout-preventer rule governing Outer Continental Shelf (OCS) activities. This rule represents a groundbreaking development for the offshore industry in the aftermath of the Deepwater Horizon incident in 2010. It is the first time that BSEE has provided more learned guidance for oil and gas companies regarding well-control and blowout-preventer systems since the well-control rules issued in April 2016 (2016 WCR).

The new rule revises current regulations impacting offshore oil and gas

drilling, completions, workovers and decommissioning activities. Specifically, the new final rule addresses six areas of offshore operations: (1) well design, (2) well control, (3) casing, (4) cementing, (5) real-time monitoring (RTM), and (6) subsea containment. Recognizing that blowout-preventer technology and well-control systems continue to evolve and improve, BSEE decided that it was time to review and revamp its well-control rules so that they not only incorporate the lessons learned from Deepwater Horizon, but also take into account OCS stakeholders' concerns about the implementation and application of the 2016 WCR.

The 2019 Well Control Rule affects Part 250, Subparts A, B, D, E, F, G and Q of Title 30, Code of Federal Regulations. In creating the new rule, BSEE received and reviewed more than 265 sets of comments from individual companies, industry organizations and others, totaling 118,000 submissions. The new rule revises/adds to 71 provisions of the 2016 WCR. The new rule also embraces the recommendations set forth in a number of investigative reports following Deepwater Horizon and maintains the core safety and environmental protective provisions of the 2016 WCR, with a more tailored approach focused on reducing regulatory burdens on the industry. The new rule does not alter the following: (i) the Drilling Safety Rule of 2010, (ii) SEMS I (2010) or (iii) SEMS II (2013). The 2019 Well Control Rule will go into effect 60 days after publication in the Federal Register on May 15, 2019 (84 Fed. Reg. 21,908).

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## Prescription


*Guffey v. Lexington House, L.L.C.*, 18-1568 (La. 5/8/19), \_\_\_ So.3d \_\_\_, 2019 WL 2041788, *reh'g denied*, 2019 WL 2750928 (La. 6/26/19), \_\_\_ So.3d \_\_\_.

Frederick, Mrs. Guffey's granddaughter, timely filed a medical-review panel request. More than a year after Mrs. Guffey's death, Frederick supplemented the request to add decedent's children as claimants. Lexington filed an exception of no right of action, asserting that the granddaughter was not a proper claimant to request a medical-review panel because she had no right to file a survival or wrongful death



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action. The trial court, referencing *Truxillo v. Thomas*, 16-0168 (La. App. 4 Cir. 8/31/16), 200 So.3d 972, denied the exception based on the definition of “claimant” in La. R.S. 40:1231.1(A) (4) of the MMA which, it reasoned, did not limit claimants to only those who ultimately would be allowed to assert a claim when panel proceedings are concluded. Lexington’s writ application was denied.

Decedent’s children filed a lawsuit within 90 days of the panel opinion that found Lexington had breached the standard of care. The trial court denied Lexington’s second exception of prescription.

Lexington argued on appeal that the children’s lawsuit was filed more than one year from the date of the incident and from the date of the death and that their reliance solely on a claim filed by the granddaughter could not suspend or interrupt prescription. The 3rd Circuit relied on the reasoning in *Truxillo* and the MMA and ruled that the granddaughter was a “claimant,” although she would not be eligible as a plaintiff in subsequent legal proceedings.

The Supreme Court acknowledged that the lower courts had ruled that the granddaughter was decedent’s representative filing on decedent’s behalf, from whom she held power of attorney; the granddaughter was named as executrix in decedent’s will; and she had amended her panel complaint to reflect her representative capacity. The Court agreed the MMA does define “claimant” as a patient or “representative,” a seemingly broader

definition than that which appears in the Civil Code, but the Court ultimately found that the lower courts “ignored the full wording of La. R.S. 40:1231.1(A) (4),” which defined a claimant as “a patient or representative or any person, including decedent’s estate, *seeking or who has sought recovery of damages or future medical care and related benefits under this Part.*” The Court emphasized this language to “make it clear that the ‘claimant’ requesting the medical review panel must be seeking damages sustained as a result of injuries to or the death of the patient,” in order to make a panel request valid.

The Court wrote that allowing a claimant to proceed through panel and into a lawsuit before a defendant could challenge the right of action “would virtually read out of the Act the provision providing for the defendant health care provider to end the medical review panel proceedings before they have been completed by peremptorily excepting to the claimant’s right of action to seek such damages.”

Lexington’s exception of prescription was granted, and the case dismissed.

## Two Caps

*Smith v. Touro Infirmary*, 18-1028 (La. App. 4 Cir. 5/8/19), \_\_\_ So.3d \_\_\_, 2019 WL 2030983.

The plaintiff sued private health-care providers under the MMA and state health-care providers under the MLSSA. The PCF and private health-care defendants settled all claims prior to trial. The State defendants filed a motion for summary judgment, contending that the plaintiff had already received the \$500,000 maximum damage recovery. The trial court agreed and dismissed all the State defendants.

The plaintiff urged on appeal that the cap on recovery against various co-defendants was not intended to divest non-settling defendants of liability or plaintiffs of the right to a trial.

The appellate court did a comprehensive analysis of prior jurisprudence, advising that it had previously examined the then *res nova* issue of whether mal-

practice plaintiffs could recover two caps when their damages were caused both by the negligence of MMA-qualified health-care providers and MLSSA-qualified health-care providers, ultimately deciding that a plaintiff could not, but noting that the Supreme Court has recognized that multiple caps can exist in certain situations, e.g., two negligent acts causing “separate and independent damages.” But in *Smith*, the most important issue was whether a malpractice plaintiff is precluded from proceeding to trial “against remaining MLSSA defendants when the MMA defendants settled in excess of the cap” before trial.

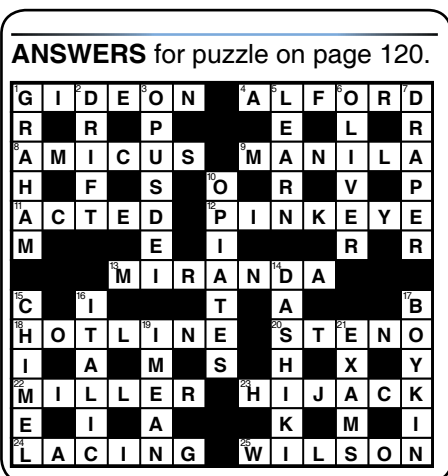
While finding no jurisprudence on this “specific procedural posture,” the court noted that the Supreme Court had stressed in earlier cases the importance of the term “amount recoverable” in the MMA as opposed to “damage sustained.” Recognizing the similarity in language used in both the MMA and MLSSA, the appellate court interpreted the Supreme Court’s distinction to reason that “the MLSSA does not provide that no fault shall be allocated or verdict reached in excess of” \$500,000.

This historical review led the *Smith* court to determine that the plaintiff was entitled to proceed with a trial against the non-settling defendants because to find otherwise “would further amplify the reductions placed on the plaintiff by the cap. Moreover, permitting defendants to evade trial via summary judgment in this instance would also circumvent the entire comparative fault scheme.”

The appellate court reversed the trial court’s dismissal of the State defendants and remanded the cases for trial, declining to discuss whether the State defendants would receive a credit after trial because it was “prohibited from issuing advisory opinions ‘from which no practical results can follow.’”

—Robert J. David

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## Lack of Jurisdiction to Review Enterprise Zone Contract

*Zelia, L.L.C. v. Robinson*, BTA Docket No. 10430D (4/10/19).

Zelia, L.L.C. appealed a notice of assessment issued by Louisiana Department of Revenue Secretary Kimberly Lewis Robinson to recoup a refundable Investment Tax Credit (ITC) that the taxpayer, Zelia, received in connection with Louisiana Economic Development Enterprise Zone Contract No. 20111066-EZ (EZ contract). Robinson issued the assessment after receiving a copy of a letter from the Louisiana Department of Economic Development (LED), notifying Zelia of the EZ contract's cancellation. The cancellation was based on LED's determination that Zelia was in violation of its new-job-creation obligations under the EZ contract. Zelia appealed the assessment by filing a petition for redetermination of assessment with the Louisiana Board of Tax Appeals.

In its petition, as originally filed, Zelia named the following defendants: Robinson, the LED and the Louisiana Board of Commerce and Industry (LBCI) (collectively respondents). The petition also contained a prayer for relief asking the board to order the LED and LBCI to reinstate the EZ contract. Respondents filed exceptions of no right of action, no cause of action and lack of subject matter jurisdiction. Respondents essentially argued that the board lacked jurisdiction over the contractual dispute between Zelia and the LED and LBCI. The board denied the exception of lack of subject matter jurisdiction.

Respondents sought supervisory writs to the 1st Circuit Court of Appeal. The 1st Circuit granted LED and LBCI's writ application and reversed the judgment of the board. The 1st Circuit held that the board

lacked the subject matter jurisdiction to determine the merits of the underlying contract dispute, "particularly considering the tax assessment issued by the Louisiana Department of Revenue is a secondary issue contingent upon resolution of the contract dispute." *Zelia, L.L.C. v. Robinson*, 18-0011 (La. App. 1 Cir. 5/14/18), 2018 WL 2202314. The 1st Circuit denied Robinson's writ application. As a result, Robinson was the only remaining defendant in the action.

Robinson and Zelia then filed cross motions for summary judgment. Robinson's motion argued that, absent jurisdiction over the underlying contractual dispute, the sole remaining issue as to the correctness of the assessment was whether Robinson received notice from the LED that the EZ contract had been cancelled. Robinson asserted that, upon receipt of such notice, the Department of Revenue was statutorily required to recoup the ITC under La. R.S. 51:1787(1). If that argument was accepted, the only matter left for review would be the correctness of the computation of the liability on the assessment. If no error was found, Robinson argued the board must render summary judgment in her favor. Zelia disagreed and argued that the board still had jurisdiction over the contract dispute as it relates to Robinson.

In reliance on the 1st Circuit's ruling, the board held its jurisdiction extended only to reviewing the propriety of Robinson's actions in issuing the assessment. The board rejected Zelia's argument that Robinson had to make her own determination as to whether the LED properly cancelled the EZ contract. The board held Robinson had

a mandatory duty to issue the assessment pursuant to La. R.S. 51:1787(I).

The board found the assessment was proper under the law and factually correct with respect to the computation of liability. The board granted Robinson's motion for summary judgment and denied Zelia's cross motion for summary judgment.

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## 3rd Circuit Affirms BTA Ruling

*Avanti Exploration, L.L.C. v. Robinson*, 18-0750 (La. App. 3 Cir. 4/17/19), 268 So.3d 1093.

In this case, Louisiana's 3rd Circuit Court of Appeal affirmed the Louisiana Board of Tax Appeals' ruling that Avanti, the taxpayer, did not owe additional severance taxes for prior periods and vacating the Louisiana Department of Revenue's challenged assessment.

Avanti produced crude oil from mineral leases and was subject to the severance tax levied under La. R.S. 47:633(7), which bases the tax on the value of the oil at the time and place of severance. The tax is calculated on the producer's gross receipts from sales in an arm's length contract, or by the posted field price, whichever is higher; but if a producer incurs transportation costs in getting its product to market,



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it can subtract certain costs and calculate tax on the reduced amount. The court found that there was an arm's length contract, but that no posted field price existed; thus, the case turned on whether taxes were paid on the proper amount of gross receipts.

The pricing formula used in the taxpayer's purchase contracts began with published market-center prices and made adjustments to determine a sales price, including for amounts the purchaser incurred to transport oil derived from the lease. The Department argued that the receipts were improperly reduced by the transportation deduction in La. R.S. 47:633(7)(a), as the producer had borne no transportation costs. The court found, however, that the price adjustment did not relate to the *producer's* transportation costs, but the *purchaser's*, which, as "an element of the negotiated price of the oil in an arm's length transaction . . . appears as just another fluctuating overhead expense in the cost of doing business." *Id.* at 1098. The court described the Department's argument, that it could properly add back the costs for transportation, as "attenuated" before ultimately ruling that taxes were paid on the appropriate amount of gross receipts. *Id.* at 1100.

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## Is Canal Servitude Abandoned When Replaced with Underground Pipeline?

In *Clement v. Menard*, 18-0497 (La. App. 3 Cir. 5/1/19), \_\_\_ So.3d \_\_\_, 2019 WL 1930115, the 3rd Circuit addressed whether a canal servitude was abandoned when it was filled and replaced with an underground pipeline.

The Menards' ancestor in title, Marcel Guidry, in an agreement in 1952, "granted to Willie Clement, his heirs, and his assigns, a twenty-four-foot predial servitude/right-of-way for an irrigation canal across his property." The agreement was properly recorded. In 1997, the Clements installed an irrigation pipeline in the same location as the open irrigation canal and filled the canal. The Menards purchased the property in 1998. The sale transferred all rights, subject to any easements or rights-of-way, but did not specifically disclose the underground pipeline. When the irrigation pipeline needed repairs, the Menards prevented those repairs, result-

ing in the Clements' lawsuit. The trial court granted the Clements' temporary restraining order for 10 days on June 22, 2017. The Menards opposed the injunction, alleging that the irrigation canal was abandoned in 1997 when it was replaced with an underground irrigation system. The Menards also asserted there was no mention of the pipeline in the act of sale, and a 1997 survey attached to the cash sale did not indicate the presence of the pipeline on the Menard property. The trial court ruled in favor of the Clements.

When a servitude is established by title, the use and extent of the servitude is regulated by the title that created it. Since the 1952 agreement provided for an "irrigation canal," the issue on appeal was whether that included an underground irrigation pipeline. The Menards argued the 1952 agreement established a right-of-way for an apparent servitude only and that the nature of the servitude had been changed to a non-apparent servitude. The Clements argued that the underground pipeline was permissible because it served the same purpose, irrigation. The Louisiana Civil Law Treatise states the "owner of the dominant estate may not unilaterally change the nature of a servitude, its location, or its purpose."

The trial court concluded that the term "irrigation canal" encompassed a subsurface pipe for agricultural irrigation. Although the underground pipeline changed from an open canal to a subsurface pipe, the irrigation canal was consistently used for irrigation for many years. However, the appellate court reversed the trial court's ruling, finding in favor of the Menards, holding (1) the 1952 agreement described only an apparent servitude because the agreement required that Willie Clement maintain the canal levees; (2) the Clements unilaterally changed the nature of the servitude; and (3) when the Clements filled in the canal, they ceased using the apparent servitude.

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New Orleans, LA 70112

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# Another reason we are the *LEADER IN RESOLUTION:*

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*My mediation  
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maps Lien Resolution Services, LLC  
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Medicare/Medicaid lien issues  
during my mediation!*

*-Satisfied Attorney*

”

## CHAIR'S MESSAGE

# Hone Your Marketer's Whetstone with Activities and Colleagues

By Scott L. Sternberg

For some Young Lawyers Division chairs, writing the message for the *Journal* is the part of this great job that they like the least. Not me! Writing is something I have always enjoyed. From Facebook posts to writs, I just enjoy the process.

But my topic this issue — marketing — is something I had to grow to love as my practice developed. I took to it early because, at its core, marketing is another thing I enjoy — getting to know people.

I know marketing can be simultaneously a young lawyer's dream and nightmare. I remember as a young(er) associate I would wonder if one day I would get on an elevator with the right person, or sit down at the right table, and the next thing I knew I'd have that big "whale" of a client that would make me a partner.

Kind of like winning the lottery, right? Looking back, that seems silly. I don't think that's really how it works (most of the time, anyway). People learn how to market in many ways. For example, Shreveport lawyer Tom Arceneaux sends out a daily email about marketing designed to educate and encourage marketers.

A mentor told me early on that marketing is one-third luck, one-third the marketer's personality and one-third effort.

Luck is just that, luck. Sometimes you just have to be in the right place at the right time. But you put yourself there with effort. You already know how im-

portant effort is — you've made it through law school, passed the bar and are probably doing all kinds of amazing things with your spare time, from billing thousands of hours, raising kids, renovating a house or devoting yourself to those in need with pro bono work.

But how about that one-third of the elusive "marketers' personality?" Not everyone has the natural marketers' gene. It has to be sharpened, like a knife to a whetstone. Where is the marketers' whetstone?

I, myself, found my whetstone in listening — and talking — to lawyers I have met along the way.

As a lawyer at the beginning stages of your career, you have somewhat of a license to try new things. The Louisiana State Bar Association (LSBA) and other bar associations can provide those opportunities. During these events, you can get double the value — enjoy the programming and work on your marketing.

For example, coming in October, there is the 2019 American Bar Association Young Lawyers Fall Conference in New Orleans. There, a number of like-minded people will gather and talk about the issues affecting their lives. We're planning a Wills for Heroes service project that weekend if you're interested in volun-



Scott L. Sternberg

teering! In January, we will have our second annual Louisiana Young Lawyers' Conference. Plenty of marketing practice to be had there! Throughout the year, the LSBA sponsors numerous professional development and CLE events which allow you to work your marketer's whetstone with your colleagues.

Join a committee of your local bar or the LSBA and get actively involved. Put your phone down during those CLE breaks and shake some hands. Write for the *Journal* or reach out to someone who wrote an article you enjoyed. You can learn how to market yourself and your practice by talking about it with friends, new and old.

Who knows? For some lawyers, other lawyers are their clients! Referrals can be as important to a practice as a billboard or a great write-up in the local paper. As my friend Tom in Shreveport might say: Good Hunting.

## YOUNG LAWYERS SPOTLIGHT

### William C. Snowden New Orleans

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting New Orleans attorney William C. Snowden.

Snowden is the director of the New Orleans office of Vera Institute of Justice. In this role, he continues and strengthens Vera's existing partnerships with criminal justice



William C. Snowden

Continued next page



## Spotlight continued from page 144

actors and community leaders while identifying new collaborative relationships with government entities and community organizations. The collaborations focus on improving criminal justice systems in the South.

He received a BS degree from the University of Minnesota and his JD degree from Seton Hall University School

of Law.

Prior to joining Vera, Snowden was a public defender for five years representing New Orleanians in all stages of a case — from arraignment to trial.

He also advocated for reforming the procedures, systems and policies for jury duty in an effort to promote diversity and representativeness in the jury box. He launched The Juror Project, an initiative aimed at increasing the

diversity of jury panels while changing and challenging people's perspectives of jury duty. He was heavily involved in bringing unanimous juries to Louisiana's criminal legal system.

Snowden leads workshops around the country, discussing how implicit bias, racial anxiety and stereotype threats influence actors and outcomes in the criminal justice system.

# LSBA Young Lawyers Division Award Nominations

## Deadline: September 15, 2019

Nominations are open for the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) awards. To be eligible for consideration, individual nominees must be current members of the YLD (attorneys who have not yet reached the age of 39 or who have been admitted to the practice of law for fewer than five years) in good standing. The YLD Council selects award winners from recommendations made by a committee of young lawyers appointed from throughout the state.

► **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made exceptional contributions to the legal profession and his/her community. In determining the award recipient, the YLD considers several factors, including the nominee's service to the public and community, the nominee's service to the legal profession, the nominee's service to the LSBA YLD, awards and achievements received during the nominee's legal career, challenges the nominee may have overcome, and specific examples of the nominee's outstanding characteristics. Present or former members of the YLD Council are ineligible.

► **Outstanding Local Affiliate.** This award is given to a local affiliate organization that has impacted the lives of young lawyers in an outstanding way. In determining the award recipient, the YLD considers several factors, including the organization's service to the public, service to the legal profession, success of initiatives that serve the public and the profession, challenges overcome, creative use of resources,

involvement of young lawyers in programming and services, and inclusiveness.

► **Program of the Year.** This award is given to an organization (bar association, firm or other entity) that has implemented an outstanding program or service that serves the public or the profession and enhances the lives of young lawyers or was primarily planned by young lawyer(s). In determining the award recipient, the YLD considers several factors, including young lawyer involvement, impact on the public and/or profession, innovation, inclusiveness and success.

► **Hon. Michaele Pitard Wynne Professionalism Award.** This award is given to a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public. In determining the award recipient, the YLD considers several factors, including the nominee's commitment to promoting respect for the legal system and profession by exhibiting the highest standards of competence, integrity, civility and ethics as well as a dedication to enhancing professionalism among lawyers.

► **YLD Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community or the state at large. In determining the award recipient, the YLD considers several factors, including the total number of pro bono hours per year, the impact of the nominee's pro bono work and ongoing contributions that have resulted in the increased access to legal

services for Louisiana citizens.

1. Submit a type-written nomination entry, not to exceed 1,000 words, that describes why the nominee should be considered for the award and that specifically addresses the award criteria and includes, where applicable, nominator's and nominee's: (a) name, (b) address, (c) telephone number and (d) email address.

2. Nominations for individual awards must include a current photo and résumé of the nominee. Additional attachments for all nominations are encouraged, including newspaper clippings, letters of support and other materials pertinent to the nomination. Submissions should not exceed 10 pages total.

3. Nomination packets must be submitted by email or regular mail to:

**LSBA Young Lawyers Division Awards**  
**Attn: Krystal Bellanger Rodriguez**  
**601 St. Charles Ave.**  
**New Orleans, LA 70130**  
**email: kbellanger@lsba.org**

4. Any nomination packet that is incomplete or not received by **September 15, 2019**, will not be considered. Submit detailed and thorough entries as nominees are evaluated based on the information provided in the nomination packets.

5. Finalists will be announced in late November. All finalists and winners will be recognized at the LSBA Midyear Meeting and the Louisiana Young Lawyers' Conference luncheon in Baton Rouge on January 17, 2020.

For questions, email Krystal Bellanger Rodriguez at kbellanger@lsba.org.



LAW SIGNATURE SCHOOL... WTP... ACE



Attending the Law Signature School dedication ceremony at Haynes Academy for Advanced Studies included, from left, Jefferson Parish School Board member Chad Nugent, Louisiana Center for Law and Civic Education board member Val P. Exnicios, Haynes Principal Karla Russo, Jefferson Parish School Board member Tiffany Kuhn and Jefferson Parish Public School System Superintendent Dr. Cade Brumley.

## Haynes Academy Receives Law Signature School Designation

Haynes Academy for Advanced Studies in Metairie has been designated as a Law Signature School by the Louisiana Center for Law and Civic Education (LCLCE). The announcement was made by LCLCE board member Val P. Exnicios at the school. Exnicios also presented a proclamation by the Louisiana Supreme Court recognizing Haynes Academy for its accomplishments as a Law Signature School.

A Law Signature School has met the LCLCE board-approved criteria and has a comprehensive program concentrating on aspects of the law and legal processes. It is typically created by school district administrations to offer students the unique enrichment that a concentration of law-related education courses and experiences can provide.



While in Washington, D.C., Louisiana's "We the People" team from Haynes Academy for Advanced Studies in Metairie visited U.S. Sen. Bill Cassidy.

## Louisiana "We the People" Team Competes in National Competition

The "We the People" team from Haynes Academy for Advanced Studies in Metairie traveled to Washington, D.C. to compete in the National "We the People" competition. The students were among 1,200 high school students from throughout the nation participating in the 2019 National Finals.

Students participated in two days of rigorous, simulated congressional hearings, testifying as constitutional experts before panels of judges acting as congressional committees. Each hearing began with a four-minute opening statement by students and was followed by a six-minute period of follow-up questioning during which judges probed students' depth of knowledge, understanding and their ability to apply constitutional principles.

While in Washington, Haynes' teacher Chris Totaro gave his students the opportunity to explore the nation's capital, learn about government beyond the classroom walls and meet U.S. Sen. Bill Cassidy.

## ACE (Adult Civics Education)



Judge C. Wendell Manning, at the podium, a board member for the Louisiana Center for Law and Civic Education (LCLCE), presented an interactive adult civics lesson to members of the Monroe Rotary Club in remembrance of Law Day. Through the "Can You Pass the Test?" presentation, Manning provided statistics on how poorly some citizens perform on history and government questions. He then presented the audience with a civics quiz based on the naturalization test immigration officers administer to people desiring to become U.S. citizens. At the end of the program, pocket Constitutions were distributed. The presentation was made in conjunction with the LCLCE's ACE (Adult Civics Education) program. From left, Monroe Rotary Club members Mike Echols, Mike Epler and Michael Fox.

By Trina S. Vincent, Louisiana Supreme Court

## NEW JUDGE... APPOINTMENTS

### New Judge

#### Judge Jefferson

**R. Thompson** was elected judge of the Louisiana 2nd Circuit Court of Appeal, 2nd District, Election Section 2. He previously served as judge of the 26th Judicial District Court, Division B (Bossier and Webster parishes), from 2015 until his election to the 2nd Circuit. He earned his BA degree in 1988 from Northeast Louisiana University and his JD degree in 1995 from Tulane University Law School. He practiced law as an associate at Weems, Schimpf, Hayter, Gilsoul &



Judge Jefferson R. Thompson

Carmouche, A.P.L.C., from 1995-97 and was in private practice from 1997-2015. He was a member of the Louisiana House of Representatives, District 8, from 2012-15. He served as a member of the Louisiana Supreme Court Committee on Judicial Ethics. He is a former president and member of the Greater Bossier Economic Development Foundation and a member of the Bossier Chamber of Commerce and Bossier Parish Community College Foundation. He is married to Toni Thompson and they are the parents of two children.

### Appointments

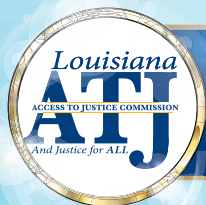
► L. David Cromwell was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a

term of office which began July 1 and will end on June 30, 2020.

► Celeste R. Coco-Ewing was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a term of office which began June 1 and will end on May 31, 2024.

► David R. Frohn was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a term of office which began July 1 and will end on June 30, 2024.

► Stacy G. Butler and Sandra Diggs-Miller were appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began May 15 and will end on May 14, 2024.



## #yourLSBA: A Pro Bono Hero Providing Justice for ALL

“ Several years ago, a fellow attorney encouraged me to begin doing pro bono work representing children in Child in Need of Care (“CINC”) cases through the Southwest Louisiana Bar Foundation. With an undergraduate degree in Sociology/Social Work, CINC cases seemed a natural fit.

While it is disheartening to see first-hand the issues that many children face today, it is very satisfying to play even a small part in ensuring that these children get the best start possible given their particular circumstances, some of which are very difficult.

I encourage all attorneys, regardless of educational or legal background, to make time for pro bono work in a field that interests them. Doing so brings a sense of self-satisfaction unlike that achieved in our day-to-day work. ”

### Jackey South, Partner

Lundy, Lundy, Soileau & South • Lake Charles, LA  
And she volunteers with the Southwest LA Bar Foundation





# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

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

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Jennifer L. Anderson has joined the firm's Baton Rouge office as a shareholder. Also, Laura E. Carlisle, Noah B. Kressler and

Christine M. White have joined the firm's New Orleans office as shareholders.

Blanchard, Walker, O'Quin & Roberts, A.P.L.C., announces that **William C. Bradford, Jr.** and **C. Taunton Melville** have joined the firm's Shreveport office as of counsel.

Blue Williams, L.L.P., announces that **April L. Watson** has joined the firm's Metairie office as of counsel.

Breaux & Stelly Law Firm, L.L.C., announces it has relocated from Ste. 100 to Ste. 102 in its current location, 413 Travis St., Lafayette, LA 70503.

Breazeale, Sachse & Wilson, L.L.P., announces that **V. Thomas Clark, Jr.** has joined the firm's Baton Rouge office as a partner.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., an-

nounces that attorneys **Nicholas R. Varisco** and **Jacob D. Young** have joined the firm's Metairie office.

Ottinger Hebert, L.L.C., in Lafayette announces that attorneys **Rodger (Rory) G. Green, Jr.** and **Ryan P. McAlister** have joined the firm.

The Rhodes Law Firm, L.L.C., announces that Dr. Evian Mugarbi, S.J.S., and Thea R. Scott have joined the firm's New Orleans and Baton Rouge offices, respectively, as associates.

Riess LeMieux in New Orleans announces that **Margaret N. Davis** has joined the firm as an associate.

Sternberg, Naccari & White, L.L.C., announces that **Carl J. Little** and **M. Suzanne Montero** have joined the firm's New Orleans office as partners.



John T. Andrishok



Richard J. Arsenault



Thomas M. Benjamin



William C. Bradford, Jr.



Christine M. Calogero



David R. Cassidy



V. Thomas Clark, Jr.



Clay J. Countryman



Blake R. David



Margaret N. Davis



Murphy J. Foster III



Gregory D. Frost



Alan H. Goodman



Rodger G. Green, Jr.

## NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired a Complex Litigation Conference in Washington, D.C., and a Mass Tort Symposium in New Orleans. He also discussed “Bet the Company Mass Torts: Navigating Game-Changing Dynamics from Electronic Discovery Through Exit Strategies” at a Louisiana State Bar Association seminar in Quebec, Canada.

**Christine M. (Chrissy) Calogero**, an associate in the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., was selected to be a participant in the New Orleans Business Alliance’s 2019 Economic Development Ambassador Program.

**Blake R. David**, senior partner in the Lafayette firm of Broussard & David, was named to the Executive Committee of the Louisiana Board of Regents, where he chairs the Finance Committee.

**Randall A. Smith**, founding member and managing partner of Smith & Fawer, L.L.C., in New Orleans, was appointed by the Owners’ Counsel of America for the second year in a row to serve as Board chair in 2019-20.



Eve B. Masinter



Van R. Mayhall, Jr.



Ryan P. McAlister



C. Taunton Melville



M. Suzanne  
Montero



E. Fredrick Preis, Jr.



Claude F.  
Reynaud, Jr.



Matthew A. Sherman



Randall A. Smith



Nicholas R. Varisco



April L. Watson



Jacob D. Young

## PUBLICATIONS

### Chambers USA 2019

**Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.** (Baton Rouge, Mandeville, New Orleans): Jennifer L. Anderson, Edward H. Arnold III, Phyllis G. Cancienne, Roy C. Cheatwood, Nancy Scott Degan, Matthew R. Emmons, Sean L. Finan, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Jan M. Hayden, Errol J. King, Jr., Kenneth M. Klemm, Amelia W. Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Mark W. Mercante, Kathryn G. Perez, Robert L. Wollfarth, Jr. and Adam B. Zuckerman.

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

**Breazeale, Sachse & Wilson, L.L.P.** (Baton Rouge, New Orleans): **John T. Andrishok, Thomas M. Benjamin, David R. Cassidy, Clay J. Countryman, Murphy J. Foster III, Gregory D. Frost,**



Emily Black Grey



David R. Kelly



Carl J. Little



M. Suzanne  
Montero



E. Fredrick Preis, Jr.



April L. Watson



Jacob D. Young



Shelton, Susan G. Talley, Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

**Louisiana Super Lawyers 2019**

**Broussard & David** (Lafayette): **Blake R. David**, Top 50 Lawyers in Louisiana.

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): Hirschel T. Abbott, Jr., Maggie A. Broussard, Stephen G. Bullock, John W. Colbert, Noel J. Darce, Michael R. Fontham, Samantha P. Griffin, James C. Gulotta, Jr., Kathryn M. Knight, John M. Landis, Wayne J. Lee, Justin P. Lemaire, Paul J. Masinter, W. Brett Mason, C. Lawrence Orlansky, Laura Walker Plunkett, David C. Rieveschl, Michael R. Schneider, Susan G. Talley, Peter M. Thomson, William D. Treeby, Michael Q. Walshe, Jr., Daniel J. Walter, Scott T. Whittaker, Rachel W. Wisdom and Phillip A. Wittmann.

**New Orleans CityBusiness**

**Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P.** (Metairie): **Matthew A. Sherman**, Leadership in Law Hall of Fame 2019.

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): James C. Gulotta, Jr., Kathryn M. Knight and Dana M. Shelton, 2019 Leadership in Law Class.

**IN MEMORIAM**

**Jean C. Breaux, Jr.** of Lafayette died April 30 at his home. He was 68. He graduated from Cathedral-Carmel High School in 1969. He received a degree in accounting in 1973 from the University of Southwestern Louisiana.



Jean C. Breaux, Jr.

He earned his JD degree in 1976 from Louisiana State University Paul M. Hebert Law Center and his LLM in taxation in 1977 from Georgetown University. While in law school, he studied for and passed his CPA exam in 1975. He returned to Lafayette in 1977 to practice law, forming Jean C. Breaux, Jr. & Associates, A.P.L.C. He practiced in estate planning, probate

and taxation for the past 42 years, helping clients with preparation of wills, probate and estate planning needs. He earned an AV rating with Martindale- Hubbell. He was a member of the Louisiana State Bar Association, the Lafayette Bar Association and the Greater Lafayette Chamber of Commerce. He is survived by his wife of 38 years, Sissy Breaux, two sons, two sisters, a brother, two grandchildren and other relatives.

**John Edward Morton** died on April 30 in Georgetown, Texas. He was a resident of Angel Fire, NM. He was 62. He received his undergraduate degree in 1979 from Louisiana State University and his JD degree in 1982 from



John Edward Morton

LSU Paul M. Hebert Law Center. He practiced law in Alexandria, La., from 1982-2015, focusing in products liability and personal injury law. He was a member of the Louisiana Trial Lawyers Association, the Louisiana State Bar Association and the American Bar Association. He was a decorated high school swimmer, achieving national rankings and a scholarship to LSU. While at LSU, he became an All SEC swimmer after winning the SEC 400 Individual Medley event and advanced to the NCAA Championships. He was an active member of the Knights of

Columbus at Our Lady of Prompt Succor Catholic Church in Alexandria, serving as grand knight. He also was a member of the Knights of Columbus at Holy Angels Catholic Church in Angel Fire, NM. He is survived by his wife, Kathleen Harwood Morton, three daughters, two grandchildren and two sisters.

**Jana Elaine Smith**



Jana Elaine Smith

died on Feb. 1 after a tragic accident in her home in Edwards, Colo. She was 57. Born in New Orleans and raised in Eunice, she graduated with a bachelor's degree in psychology from the University of Southwestern Louisiana. She earned her law degree in 1992 from Loyola University College of Law. She was an accomplished attorney practicing in family law in New Orleans until Hurricane Katrina and then in labor relations for CenturyLink in Denver, Colo. Her colleagues and friends said she worked hard her entire life, reaching every goal she ever set for herself, and was looking forward to retirement. She enjoyed spending time with her three children and her grandchildren, traveling around the world and relaxing with her partner Christian in their home in the Vail mountains. She had a passion for life and adventure that was unparalleled and never shied away from new experiences.

**People Deadlines & Notes**

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

Publication	Deadline
Dec. 2019/January 2020	Oct. 4, 2019
Feb./March 2020	Dec. 4, 2019
April/May 2020	Feb. 4, 2020

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



## UPDATE



New Orleans attorney Judy Perry Martinez, incoming president of the American Bar Association, third from left, addressed participants attending the Equal Justice Conference this past May. From left, Louisiana State Bar Association Access to Justice Department staff members Joanna S. Laidler and Rachael M. Mills; Martinez; and LSBA ATJ Director Monte T. Mollere.

## LSBA Members Participate in Equal Justice Conference

Judy Perry Martinez, of counsel with Simon, Peragine, Smith & Redfean, L.L.P., in New Orleans and the incoming president of the American Bar Association, addressed participants attending the Equal Justice Conference in Louisville, KY, this past May.

The American Bar Association/National Legal Aid Defender Association (ABA/NLADA) Equal Justice Conference is an annual gathering of legal services and pro bono advocates to discuss developments and innovations in providing legal services to low-income people. The emphasis of the conference is on strengthening partnerships

among the key players in the civil justice system.

Martinez gave a rousing speech on the importance of the work being done by the conference participants and how the ABA and NLADA are supporting these efforts.

In conjunction with the Equal Justice Conference, Southeast Louisiana Legal Services (SLLS) Executive Director Laura Tuggle shared the cutting-edge work of the SLLS and the LSBA Access to Justice Commission to address civil legal needs of the reentry population on a panel presentation during the national meeting of State Access to Justice Commission Chairs.

## LOCAL/SPECIALTY BARS

### NOBA Inn of Court Officers Elected

The New Orleans Bar Association's Inn of Court elected officers for 2019-20. Christopher K. Ralston is president; J. Dalton Courson, counselor; Judge Robin M. Giarrusso, vice president-

membership; Brigid E. Collins, secretary; Judge Veronica E. Henry, treasurer; and Jack C. Benjamin, Jr., past president.



Mary Claire Landry, center, founder and director of the New Orleans Family Justice Center Alliance, is the 2019 recipient of the Liberty Bell Award, presented by the New Orleans Bar Association (NOBA). Presenting the award was NOBA Young Lawyers Section Chair Kelly E. Brilleaux, left, and NOBA President Jason P. Waguespack.

## Landry Receives Liberty Bell Award

Mary Claire Landry, founder and director of the New Orleans Family Justice Center Alliance, is the 2019 recipient of the Liberty Bell Award, presented by the New Orleans Bar Association (NOBA) at the NOBA Young Lawyers Section's Law Day Program on May 10. The award recognizes an exceptional non-lawyer leader whose life is dedicated to serving the community in strengthening and promoting the American system of justice.

In 2014, Landry was honored on the 20th anniversary of the Violence against Women Act. In 2015, she was inducted into the Louisiana Justice Hall of Fame.

After the award presentation, fourth grade students from Bonella A. St. Ville Elementary School had a Q&A about this year's Law Day theme, "Free Speech, Free Press, Free Society."

The NOBA Young Lawyers Section hosted its annual Law Day program in the courtroom of U.S. District Court Judge Jay C. Zainey, Eastern District of Louisiana.

# GNO Martinet Society Presents 4th Annual Pathways and Pipelines

The Greater New Orleans Louis A. Martinet Legal Society, Inc. hosted its fourth annual Pathways and Pipelines to Success Program on Feb. 2 at Loyola University College of Law.

The program provides Louisiana law students with career-building tools and networking opportunities. During the day-long event, law students had the opportunity to learn from nearly 50 prominent judges and lawyers and gained essential skills to navigate within the legal profession.

The keynote speakers for the luncheon were Chief Judge Nannette Jolivet Brown, U.S. District Court, Eastern District of Louisiana; and Marcus V. Brown, executive vice president, Entergy Services Inc.



Participating in the Pathways and Pipelines to Success Program included, from left, Kimberly Silas, president-elect, Greater New Orleans Martinet Legal Society, Inc. (GNO Martinet); Cory J. Vidal, president, GNO Martinet; Kristen A. Lee, chair, Pathways and Pipelines to Success Program; Camille R. Bryant, treasurer, GNO Martinet; and Ashley J. Heilprin, immediate past president, GNO Martinet.



Presenting the “Paths to Practice in the Public Sector and Private Sector” panel discussion were, from left, Brittany Reed, LSU BLSA president; Kimlin S. Lee, City of New Orleans; Danielle E. Davis, Southern Poverty Law Center; Matthew S. Almon, Stone Pigman Walther Wittmann, L.L.C.; attorney Tiffany T. Smith; and Rachel Woolridge, Optimum Legal Consulting.



The Lafayette Bar Association and the Acadia Parish Bar Association hosted the annual 15th JDC Red Mass and Court Opening on Jan. 11. Attending were, from left, Matthew H. Long; Parker R. Mitchell; William J. Casanova, 2018-19 Acadia Parish Bar Association president; Dona Kay Renegar, 2017-18 Louisiana State Bar Association president; Scott J. Privat, 2018-19 Acadia Parish Bar Association secretary/treasurer; and Kenneth M. Habetz.



Attending the 15th JDC Red Mass and Court Opening were, from left, Christopher B. Ortte, Neuner Pate; attorney Philip G. Smith; Elizabeth B. Bloch, Neuner Pate; Taylor C. Granger, Neuner Pate; and Frank X. Neuner, Jr., Neuner Pate.



The Greater New Orleans Louis A. Martinet Legal Society, Inc. co-hosted “Civil Rights: What It Meant Then, What It Means Now, What It Means for Our Future” on Feb. 22. From left, Michael M. Simpson, first assistant U.S. attorney, Eastern District of LA; Claude J. Kelly, chief federal defender, Eastern District of LA; Brenda Barron-Harrell, deputy chief, U.S. Probation Office, Eastern District of LA; panelist Sybil Morial, educator and activist; panelist Hon. Maurice (Moon) Landrieu, 56th mayor of New Orleans; Chief Judge Nannette J. Brown, U.S. District Court, Eastern District of LA; panelist Dr. Norman C. Francis, a founder of the Louis A. Martinet Legal Society, Inc.; panelist Ernest L. Jones, Elie, Jones & Associates; Cory J. Vidal, president, GNO Martinet; Madeleine M. Landrieu, Loyola University College of Law; Judge Ivan L.R. Lemelle, U.S. District Court, Eastern District of LA.





Attending the Chief Judge Stewart reception were officers and board members of the Greater New Orleans Louis A. Martinet Legal Society, Inc., from left, Ebony S. Morris, vice president of membership; Cory J. Vidal, president; Kimberly Silas, president-elect; and Robert M. Knight, Political Action Committee co-chair.



Attending the Chief Judge Stewart reception included, from left, were Judge Paula A. Brown, 4th Circuit Court of Appeal; Judge Nakisha Ervin-Knott, Orleans Parish Civil District Court; Judge Ellen M. Hazeur, Orleans Parish Civil District Court; Justin I. Woods, 4th Circuit Court of Appeal; Magistrate Judge Dana M. Douglas, U.S. District Court, Eastern District of LA; Judge Yvette M. Alexander, Baton Rouge City Court; seated, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.



The Greater New Orleans Louis A. Martinet Legal Society, Inc. co-sponsored a reception on May 7 celebrating the term of U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, left. With him is Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.



Attending the Baton Rouge Bar Association Opening of Court ceremony were, from left, M. Luisa Hu, Pujol, Pryor & Irwin, LLC; V. Patrice Haley, Keogh, Cox & Wilson, Ltd; Quintillis K. Lawrence, 19th JDC Public Defender; Talya J. Bergeron, Southeast Louisiana Legal Services; Tiffany L. Green, 19th JDC; Jerri A. Lee, 19th JDC; J. Michael McDonald, Bateman Law Firm; William H. Caldwell, Baringer Law Firm, LLC; attorney Erin L. Pedrami; and Emmanuelle L. Rollo, Erlingson Banks, PLLC.



Louisiana State Bar Association (LSBA) Outreach Committee member and attorney Tyler G. Storms, third from left, presented the Member Outreach CLE seminar at the Feb. 7 Judge Fred Fudickar, Jr. American Inn of Court meeting in Monroe. The CLE series informs members about the LSBA and the services included with membership. From left, Judge Karen L. Hayes, U.S. District Court, Western District of Louisiana; Charlen T. Campbell, Nelson, Zentner, Sartor & Snellings, L.L.C.; Storms; and Judge H. Stephens Winters, 4th Judicial District Court.



The Louisiana State Bar Association (LSBA) Outreach Committee and the Greater Slidell Bar Association co-hosted the Member Outreach CLE seminar on Feb. 7 in Slidell. The CLE series informs members about the LSBA and the services included with membership. The seminar featured Darryl J. Foster, left, Bradley Murchinson Kelly & Shea, L.L.C., LSBA Board of Governors, First Board District; and D. Skylar Rosenbloom, right, Fishman Haygood, L.L.P., former LSBA Board of Governors, First Board District. With them is Judge Clayton J. Borne, Justice Court for St. Tammany Parish and president of the Greater Slidell Bar Association.



The Baton Rouge Bar Association (BRBA) hosted its annual Opening of Court, Memorial and New Member Ceremony on Jan. 30 at the 19th Judicial District Courthouse. BRBA 2018-19 President Amy C. Lambert, far left, and 2018-19 President-Elect S. Dennis Blunt, second from left, recognized 50-, 55-, 60- and 65-year members of the Bar. New members were introduced and deceased Bar members were recognized. From left, Lambert; Blunt; Talya J. Bergeron, Southeast Louisiana Legal Services; and 2018-19 Louisiana State Bar Association President Barry H. Grodsky.





The Louisiana State Bar Association's Medical/Legal Interprofessional Committee met on March 23 at the Louisiana Bar Center. Attending were, front row from left, Charles D. Elliott; Amy M. Winters; Lauren B. Bailey, Louisiana State Medical Society staff attorney; D. Abboud Thomas, attorney co-chair; Dr. Randy Roig, physician co-chair; Jason R. Cashio; Charles O. Taylor; and Christopher A. Minias. Back row from left, William Lee, medical student; Thomas Fincke, medical student; Dr. Michael Ellis; Richard S. Crisler; Dr. Paul Hubbell; Stacey W. Marcel; Lyn S. Savoie; and Hon. Louis J. Volz III.

## Barnett to Lead LBF's 2019-20 Board

Amanda W. Barnett of Alexandria was installed as the 2019-20 president of the Louisiana Bar Foundation (LBF) at the 33rd Annual Gala. Other officers are Vice President Christopher K. Ralston, New Orleans; Treasurer Harry J. (Skip) Philips, Baton Rouge; and Secretary Alan G. Brackett, New Orleans.

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

Ralston is a litigation partner and litigation group coordinator in the New Orleans office of Phelps Dunbar LLP. He received his undergraduate degree from the College of William and Mary and his law degree from Tulane University Law School.

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

Brackett is a member of Mouldoux, Bland, Legrand & Brackett in New Orleans. He obtained both his BA and JD degrees from Tulane University.

New board members are Paula Adams Ates, St. Rose; Patricia R. Bonneau, Mandeville; Charles C. (Chuck) Bourque, Jr., Houma; Hon. Guy E. Bradberry, Lake Charles; Edmund J. Giering IV, Baton Rouge; Julie M. Lafargue, New Orleans; Alaina R. Mire, Alexandria; and John C. Nickelson, Shreveport.

Other members of the 2019-20 board of directors include Hon. John C. Davidson, Alexandria; George D. (Dave) Ernest III, Lafayette; H. Dunbar Healy, Covington; Eugene G. (Bubba) Gouaux, Jr., Lockport; Karleen J. Green, Baton Rouge; Camille R. Jackson, Alexandria; Robert A. Kutcher, Metairie; Kerry A. Murphy, New Orleans; W. Michael Street, Monroe; David E. Verlander III, Monroe; Sharonda R. Williams, New Orleans; and Zebulon M. Winstead, Alexandria.

## Updates: LBF Kids' Chance Scholarship Program

The Louisiana Bar Foundation (LBF) Kids' Chance Scholarship program awarded \$55,500 in scholarships to 16 students for 2019-20. Scholarships are awarded to dependent children of Louisiana workers killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law.

The Baton Rouge Bar Association Workers' Comp Section hosted the ninth annual Kids' Chance fundraiser and raised more than \$6,000 for scholarships.

The LWCC Annual Kids' Chance Golf Tournament will be Monday, Sept. 23, at the Country Club of Louisiana.

National Kids' Chance Awareness Week is Nov. 18-22.

The LBF Kids' Chance Program was started in 2004 and is administered by the LBF and governed by a committee representing a cross section of the state's legal and workers' compensation communities. Since 2004, the LBF has awarded 306 scholarships totaling \$719,100.

For more information about Kids' Chance or to donate to the scholarship fund, contact Dee Jones at the LBF office, (504)561-1046, email [dee@raisingthebar.org](mailto:dee@raisingthebar.org). Or go to: <https://raisingthebar.org/programs-and-projects/kids-chance-scholarship-program>.



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## President's Message

# Discover the Many Ways LBF Fellows Get Involved

By 2019-20 President Amanda W. Barnett

**M**y first duty as Louisiana Bar Foundation (LBF) president was a tour around the state meeting many of our wonderful Fellows in person. I have had the pleasure of meeting some of the most inspiring, giving and hardworking individuals from across the state. Our Fellows demonstrate their commitment to legal representation for the poor and improving our system of justice on a regular basis. These dedicated volunteers truly exemplify the highest ideals of our profession.

As the LBF president, I am proud to be a member of an organization directly impacting the legal profession and the community at large. Each year, the LBF awards grants to non-profit organizations and public interest attorneys throughout the state to address the civil legal needs of indigent citizens, provide a basic understanding of the law and assist with improvements to the justice system. The organizations we sup-

port provide free civil legal aid to women, children, the elderly, people with disabilities, the newly unemployed, those facing loss of their homes, disaster victims and many others by providing services that go to the very heart of the health, safety and security of many of our citizens and their families.



Amanda W. Barnett

Members of the LBF are referred to as Fellows. Our membership consists of judges, lawyers and law professors whose professional, public and private careers demonstrate their dedication to the improvement of the administration of justice. LBF membership provides opportunities for networking, professional development, volunteer leadership and committee participation. Other benefits include invitations to special events and meetings; participation in annual nominations for the distinguished jurist, attorney and professor awards; and association with an organization directly impacting the legal profession and recognition of one's contribution to the profession.

There are many ways for Fellows to get involved.

► The Fellows Class Project is an opportunity for our newest members to get involved and be a part of the LBF mission through volunteer service. Each year, the class works on a project. This year, in partnership with Louisiana Appleseed, the LSC Liaison Project is working to educate communities about the importance of the legal services corporations.

► Join a committee or community partnership panel. Our committees include Communications, Development, Education, Grants and Kids' Chance, as well as the nine regional community partnership panels operating across the state.

► The LBF Education Committee, in partnership with the Community Partnership Panels, produces oral histories of retiring judges, Bar leaders and other legal personalities to preserve the history, culture and flavor of Louisiana Law. With CPP funding and support, we now have a collection of nearly 100 oral histories that can be viewed on the LBF website.

► The Annual Fellows Events are hosted by the Community Partnership Panels and are held every spring across the state to update Fellows on LBF activities, local projects and initiatives and to recognize local volunteers.

► The Annual Fellows Membership Meeting is an opportunity for Fellows to be updated on LBF activities and elect new board members.

► The Kids' Chance Scholarship Program awards educational scholarships to the dependents of workers killed or permanently disabled in a work-related accident.

► The Annual Fellows Gala is the LBF's largest fundraiser. Each year, lawyers, judges and professors gather to support the LBF's mission to preserve, honor and improve our system of justice. The gala is a black-tie event and includes dinner, an auction, entertainment and awards.

In an effort to grow LBF membership, we have removed criteria requiring sponsorship by an existing member of the Foundation. I encourage you to go to our website, [www.raisingthebar.org](http://www.raisingthebar.org), and join today!

Additionally, we invite new members of the Bar to become an LBF Young Lawyer Fellow with a complimentary membership for the first year of practice. After the first year, it costs as little as \$100 to be a Young Lawyer Fellow of the Foundation and donations are tax-deductible. For more information, contact Outreach and Events Manager Danielle Marshall at (504)561-1046 or email [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).

## LBF Announces New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Jessica Ann Ballard ..... New Orleans  
 Barry M. Barnett.....Alexandria  
 Emmanuel Billy.....Shreveport  
 Cameron D. Clark..... New Orleans  
 R. Brent Cueria..... New Orleans  
 Hayden S. Downs..... Bastrop  
 Carly M. Greenfield..... New Orleans  
 Johanna R. Hajiakbarifini..... Baton Rouge  
 Hon. Lowell Christopher Hazel... Alexandria  
 Mary Catherine Joiner..... Baton Rouge  
 Rebecca Ann McBride .....Alexandria  
 Hon. Joseph H.L. Perez Montes... Alexandria  
 Hon. Robert Lane Pittard ..... Benton  
 Yazan M. Rantisi ..... Baton Rouge  
 Erin E. Rosson..... Lafayette  
 Morgan S. Sanders..... Shreveport  
 Gemma Zuniga..... Shreveport

# \$7.8 Million for Social Justice Initiatives 2019-20

As of 6/19

<b>Annual/Sustaining Funding</b>	<b>\$4,528,885</b>	NO/AIDS Task Force dba CrescentCare	\$17,750
		Southwest Louisiana Law Center	\$25,000
<b>Building Capital Development</b>	<b>\$50,000</b>	The Advocacy Center	\$28,750
Innocence Project New Orleans	\$25,000	The Ella Project	\$12,000
Southeast Louisiana Legal Services	\$25,000		
<b>Children's Legal Services</b>	<b>\$150,000</b>	<b>Pro Bono Projects</b>	<b>\$400,000</b>
Catholic Charities - Diocese of Baton Rouge	\$10,000	Baton Rouge Bar Foundation	\$75,775
Catholic Charities Archdiocese of New Orleans	\$21,000	Lafayette Bar Foundation	\$76,900
First Grace Community Alliance	\$19,000	Shreveport Bar Foundation	\$54,775
Louisiana CASA Association	\$10,000	Southwest Louisiana Bar Foundation	\$31,000
Louisiana Center for Children's Rights	\$25,000	The Central Louisiana Pro Bono Project, Inc	\$37,775
Loyola University New Orleans College of Law	\$5,000	The Pro Bono Project	\$123,775
T.E.A.M.S.	\$40,000		
The Advocacy Center	\$20,000	<b>Child in Need of Care</b>	<b>\$2,240,000</b>
<b>Domestic Violence Programs</b>	<b>\$550,000</b>	Acadiana Legal Service Corporation	\$1,590,000
Beauregard Community Concerns	\$37,908	Southeast Louisiana Legal Services	\$650,000
Capital Area Family Violence Center	\$15,000		
Chez Hope, Inc.	\$76,400	<b>Special Program and Project Funding</b>	<b>625,150*</b>
D.A.R.T. of Lincoln	\$38,000	Access to Justice Commission	\$30,000
Faith House, Inc.	\$36,081	Access to Justice Fund Grants	\$40,000
Family Justice Center of Central Louisiana	\$33,085	ATJ Community Conference Training	\$5,000
Jeff Davis Communities Against Domestic Abuse	\$22,703	Tech Center/Louisiana Civil Legal Navigator	\$250,000
Metro Centers for Community Advocacy	\$38,520	LouisianaLawHelp.org and Probono.net	\$12,650
Oasis	\$21,379	Louisiana Applesed	\$150,000
Project Celebration, Inc.	\$38,520	Oral Histories	\$2,000
Project SAVE	\$40,000	Pelican Center for Children and Families	
Safe Harbor	\$16,426	Pro Hac Vice	\$123,500
Southeast Spouse Abuse Program	\$15,408	Statewide Case Management System	\$12,000
St. Bernard Battered Women's Program, Inc.	\$24,075		
The Haven, Inc	\$36,495	<b>Scholarships, Fellowships, and other funding projects</b>	<b>\$240,000*</b>
The Wellspring Alliance For Families	\$60,000	Kids' Chance Scholarships	\$55,500
<b>Law-Related Education</b>	<b>\$125,000</b>	Scholar-in-Residence	\$4,500
Baton Rouge Bar Foundation	\$25,000	Fellowships	\$180,000
Baton Rouge Children's Advocacy Center	\$18,000		
Catholic Charities - Diocese of Baton Rouge	\$12,000		
Louisiana Center for Law and Civic Education	\$35,000		
LSBA Young Lawyers Division	\$10,000		
Youth Service Bureau of St. Tammany	\$25,000		
<b>Legal Services Corporations</b>	<b>\$2,800,000</b>		
Acadiana Legal Service Corporation	\$1,423,344		
Southeast Louisiana Legal Services	\$1,376,656		
<b>Loan Repayment Assistance Program</b>	<b>\$53,885</b>		
<b>Other Legal Service Providers</b>	<b>\$400,000</b>		
Catholic Charities Diocese of Baton Rouge	\$35,750		
Catholic Charities Archdiocese of New Orleans	\$45,000		
Catholic Charities of North Louisiana	\$50,000		
Frontline Legal Services, Inc.	\$50,000		
Innocence Project New Orleans	\$70,000		
Justice and Accountability Center of Louisiana	\$50,000		
Louisiana Center for Children's Rights	\$15,750		

\* Pending Board approval in July 2019

**Discretionary Funding** **\$180,000**

The Louisiana Bar Foundation (LBF) is a non-profit 501 (c) (3) entity organized under the State of Louisiana. As the largest state funder of civil legal aid, the LBF supports non-profits throughout Louisiana that provide free, civil legal representation to the indigent, law-related education to the public and administration of justice projects. Since 1989, the LBF has distributed nearly \$86 million to hundreds of Louisiana non-profit organizations to meet these goals.

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

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

1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees unless specifically waived in writing by the Attorney General and the Office of Risk Management, or, if applicable, the institutions exempted from the state risk management program pursuant to La R.S. 17:3139.5(e)(i) (hereinafter exempted institutions).
5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.
7. The attorney must be a subscriber to an electronic billing program designated by the Office of Risk Management or, if applicable, the exempted institutions.
8. The attorney should have a Martindale-Hubbell rating of "distinguished" or better.
9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
10. The requirements set forth in 8 and 9 may be waived by the Attorney General, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the State Risk Administrator-Claims and the Assistant Director for Litigation Management of the Office of Risk Management or, if applicable, the Director for the Office of Risk Management of the exempted institutions, and the Director of the Litigation Program of the Louisiana Department of Justice.

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

## Additional Requirements for the Defense of Medical Malpractice Claims

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

## Conditions

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

# CLASSIFIED

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

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Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

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For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2019. Check and ad copy should be sent to:

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## NOTICE

**Notice is hereby given** that Gerald J. Asay is filing a petition for reinstatement to the practice of law in Louisiana. Any person(s) concurring with or opposing the petition and application for reinstatement must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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

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

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# IPSE DIXIT: Mockingbirds Don't Have Canaries

By Edward J. Walters, Jr.



**M**y wife, Norma, grew up in McDonoghville, right across the river from New Orleans. (McDonoghville was subsumed into Gretna — a fact that she is not happy about to this day. Just ask her.)

Anyway, her grandmother, Mary Strohmeier, also from McDonoghville, who never had a bad word to say about anyone, used a phrase that I have always loved and have stolen. Here's the scenario. Somebody does something really stupid, or says something really stupid, and you know that person's father or mother says, or does, the same really stupid kind of thing all the time. Instead of saying something bad about both the parent and the child, she would stand there, shake her head, smile and say, "Mockingbirds don't have canaries."

I use it all the time, mostly when I encounter some lawyer pulling the same sort of stunt his or her father or mother did. It's happening more and more often as I encounter more and more lawyer offspring.

The mother of our former *Journal* Editor Eddie McAuliffe used this one: "He didn't lick that up off the ground."

You know when someone says "bless her heart," that someone is actually saying "what a dummy," but kinder.

So I thought I'd ask some of our members if they had any great catchphrases or shibboleths (I knew I'd use that word someday) they like to use. Here's a few from other lawyers and some famous names.

"He is seldom right, but never in doubt."

"There's never enough time to do it right, but always enough time to do it over."

"The right to be heard does not automatically include the right to be taken seriously."

"Once a camel gets his nose in your tent, all of a sudden you've got the whole camel in your tent."

"If you shoot at the king, kill him."

"It's a bad workman who blames his tools." (Blaming associates, staff, computer, judge, clients and others when things go bad and it was your fault in the first place.)

"The world is round . . . and sometimes it's a fast trip."

"The harder I work the luckier I get."

"Good judgment comes from experience. Experience comes from bad judgment."

"Better to remain silent and be thought a fool than to speak and to remove all doubt" (Abraham Lincoln).

"Success is 10% inspiration and 90% perspiration" (Thomas Alva Edison).

"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and five minutes thinking about solutions" (Albert Einstein).

"As we know, there are known knowns: things we know we know. We also know there are known unknowns: things we know that we do not know. But there are also unknown unknowns: things we don't know we don't know" (Donald Rumsfeld).

"I can explain it to you but I can't understand it for you" (Frank Maraist).

"Always take the high road. It's far less crowded" (Warren Buffett).

And one I use all the time, which I stole from my partner Darrel Papillion who grew up in Eunice: "If he'll steal an egg, he'll steal a chicken." ♦



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

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