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Check out the separate supplement mailed with this issue:
► 2014 Expert Witness, Consultant and Legal Services Directory
Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2014 will be four (4.0%) percent per annum.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on Oct. 13, 2013. Thus, the effective judicial interest rate for the calendar year 2014 shall be four (4.0%) percent per annum.

La. R.S. 13:4202(B)(2) provides that the publication of the commissioner’s determination in the Louisiana Register “shall not be considered rulemaking within the intendment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.” Therefore, (1) a fiscal impact statement, (2) a family impact statement, and (3) a notice of intent are not required to be filed with the Louisiana Register.

— John P. Ducrest, CPA
Commissioner of Financial Institutions
Date: October 16, 2013

Judicial Interest Rate Calculator Online!

Need to calculate judicial interest? Check out the Judicial Interest Rate Calculator (courtesy of Alexandria attorney Charles D. Elliott) on the Louisiana State Bar Association’s website.

Go to: www.lsba.org/Members/JudicialInterestRate.aspx.
Or visit the “For Members” page and find it under the “Member Tools and Services” box on the www.LSBA.org website.
Discounted rates.

*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounts.

The following car agencies have agreed to discount rates for LSBA members.

- Avis – (800)331-1212 • Discount No. A536100
- Budget Rent-a-Car – (800)527-0700 • Discount No. Z855300
- Hertz – (800)654-2210 • Discount No. 277795

The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

- Avis – (800)331-1212 • Discount No. A536100
- Budget Rent-a-Car – (800)527-0700 • Discount No. Z855300
- Hertz – (800)654-2210 • Discount No. 277795

Other Vendors

- ABA Members Retirement – (800)826-8901
- CoreVault – (866)945-2722
- Geico – (800)368-2734

National Hotel Chains*

- Holiday Inn, (800)HOLIDAY

*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.

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The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

- Avis – (800)331-1212 • Discount No. A536100
- Budget Rent-a-Car – (800)527-0700 • Discount No. Z855300
- Hertz – (800)654-2210 • Discount No. 277795

Other Vendors

- ABA Members Retirement – (800)826-8901
- CoreVault – (866)945-2722
- Geico – (800)368-2734

National Hotel Chains*

- Holiday Inn, (800)HOLIDAY

*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.
When I became Louisiana State Bar Association (LSBA) secretary, I knew fairly well the components of my job. One part was to be the editor of the *Louisiana Bar Journal*, something I happily anticipated. Spending two years on the Editorial Board provided me with insight, guidance and ideas as to what goals I wanted to achieve as editor and to define the parameters of the job.

One of the goals I want to achieve is hearing from you. There is a lot of good and bad in our profession; we need to address both and there is no better place to do this than in the *Journal*. In previous columns, I have asked for everyone to let me know of your achievements and those of others in our profession, both in legal and non-legal settings. I want to publish those stories, toot our horn and brag about such accomplishments.

Certainly I realized, by making such a request, the bad would come in with the good. That’s fine. If there is a need, concern, issue or complaint, let’s air it out, have constructive and meaningful discussions, and perhaps something positive can ultimately result from the effort. At least a problem can be addressed and this is often done in letters to the editor.

Recently, I received two calls, one on a “good” issue and one on a “bad” issue. The “good” issue was a call from an attorney who told me about the great participation of those in the legal profession for service performed at Covenant House. While this was not a story about lawyers’ legal achievements, it was about lawyers giving back to the community in a truly meaningful and special way. (An upcoming article will tell the whole story in the *Journal’s* “Focus on Professionalism” section.) It is a story of what we do as professionals — selflessly giving to those who are so grateful and appreciative. Sure, it sounds like the typical “feel good” story, but I am happy to let everyone know just how wonderful and meaningful it was.

Then came the “bad” issue. I received a call from an attorney who I could only describe as agitated. He left me a detailed message but without a request to return his call. He was incensed because I made the error of allowing in the *Journal* a sentence in which an adjective was used when there should have been an adverb. First and foremost, that is part of my job. I then took the time to actually research the sentence’s usage and it turns out that, as written, it was an acceptable, albeit not preferred, usage. Perhaps it was a clever bit of poetic license or a play on words, but, nonetheless, it was not the grammatically preferred method. I do wonder how many of the nearly 22,000 lawyers admitted into practice here caught this error; to them, I especially apologize.

The content of the message (I did not return the call) was rather intense, questioning what my grammar school English teacher would have thought about it and ended with the admonition of “DO YOUR JOB.”

Which brings me back to where this all started . . . Exactly what is my job? As editor, I have the responsibility to present to our members a *Journal* that is informative, relevant, enlightening and current. I want to report on trends in the law, highlight what our members are accomplishing, trumpet personal achievements, present themed issues on interesting topics, advise about LSBA activities and keep our members up-to-date. My job is (fortunately) to have a great LSBA staff with whom I work and know they will handle the “heavy lifting.” My job is to encourage and rely upon the volunteer Editorial Board which serves without compensation and consistently does an excellent job. My job is to have our members tell me what they want the full Bar to know. It is also my job to be responsible for the *Journal’s* content, so if something goes wrong — such as a grammatical error — it being on my watch, it is my job to take responsibility.

Please do not take this as my being thin-skinned (no such luck after 31 years of practice). Also, don’t hesitate to tell me if something goes wrong. I do think it is my job to do the best work I can. If the worst thing that happens to me in my tenure as secretary is this poor word usage, then I think the *Journal* staff, Editorial Board and I (notice I did not say “me”) are indeed doing a pretty good job.

By Barry H. Grodsky

Just What Is My Job?
Words of Advice and Encouragement for Our Newest Attorneys

On Oct. 24, 2013, 407 new attorneys were sworn in to practice in Louisiana, thereby becoming new members of the Louisiana State Bar Association (LSBA). That day started a new chapter in their lives as licensed attorneys. The LSBA welcomes each of them to the practice and congratulates them on their accomplishment. They worked hard for it and deserve credit for their perseverance.

They now become part of an important element of our society and the judicial branch of government as protectors of the rule of law. They have proven that they have a body of knowledge that is special to those who hold that license. It is now their obligation, as it is for all of us, to use that knowledge not only to earn a living but also to help those less fortunate in this world who do not know the law and to be their protection and access to justice. It is up to every attorney to ensure that clients are provided justice. We all say a Pledge of Allegiance to the United States as a country that provides “justice for all.” Unfortunately, even though this is an ideal that hopefully we all believe in and strive toward, we know that we are far from accomplishing total “justice for all.” It is now their obligation, as it has been for all attorneys, to help us live up to that ideal and make this a system that does provide equal justice for all, regardless of a person’s social status, assets, station in life, race, religion, connections or any other special factor. These new attorneys will play a large part in making this happen; this system does not work if it is not for everyone and with equal application to all.

I hope the new attorneys take a lesson from some of our older leaders. On the night of Nov. 14, 2013, three Louisiana federal judges, six Orleans Parish district judges, one 4th Circuit Court of Appeal judge and several Louisiana attorneys and business leaders spent the night sleeping on the street, on the concrete, in support of the homeless children helped by the wonderful work of Covenant House in New Orleans. Led by Patricia A. Krebs, chair of Covenant House and a former president of the Louisiana Bar Foundation, this group of individuals gave up their time and comfort to show the children that people care and that they are, in fact, important to us and the community. The love and care they receive at Covenant House is certainly worth this show of unity. Barry H. Grodsky, LSBA secretary and Louisiana Bar Journal editor, recently pointed out in the Journal that we as attorneys fail to trumpet much of the good work attorneys provide in the community, often anonymously. We need to tell the public. This effort was a good example of how judges, attorneys and business leaders in our community are willing to show that they care.

We hope that our new attorneys remember that their interest in any matter they handle is secondary to that of their clients. Every attorney must always remember that the client comes first and the client makes the decision on the situation; attorneys can advise but should not dictate. Attorneys must use their knowledge of the law to educate clients so the clients can make their own informed decisions. It is not the attorney’s position to make that decision.

The LSBA is here to help those new attorneys with many services. The LSBA provides the Bridging the Gap program to help in the transition into practice. Fastcase,
an online legal research tool, is offered as a free service to LSBA members. The LSBA provides meeting rooms for use by attorneys, offers many CLE options, negotiates discounts for various services and material, and on and on. There are committees and sections addressing numerous areas of the law, community service activities provided through the Young Lawyers Division, and many opportunities to contribute and make a difference. I encourage new attorneys (and not-so-new attorneys) to take advantage of these and many other services offered by the LSBA.

The LSBA has started the process for a mentoring program in the state. Slated to begin in January 2015, the initial voluntary mentoring program will be operative in the New Orleans, Baton Rouge and Shreveport areas and will offer each new attorney the opportunity to have a mentor during his/her first year of practice. Every attorney is required to be a member of the LSBA and I hope they all take advantage of all the LSBA has to offer.

The pass rate results of the July 2013 bar examination were surprising and not what we had hoped for, and I have been further disheartened by hearing people cite incorrect actual percentages by law school. The results as published on the website of the Louisiana Supreme Court are relative to all who took the test — 763 took the exam. Since the system was revised effective in July 2012, there is no longer a possible result of “conditioned.” A taker either passes or fails the exam. Each of the nine tests forming the examination is provided a number grade between 0 and 100. The sum of the nine test grades must reach 650 to pass the exam. Those who have failed previous tests who decide to retake the exam are required to take the entire exam again. The results for first-time takers may be a better indicator of the application of the test. I have been advised that these pass rates were: LSU, 72 percent; Loyola, 64 percent; Southern, 41 percent; Tulane, 69 percent; other, 47 percent — for an overall pass rate of 60 percent. This is better than when you include those retaking the test.

Those who passed should be proud of their achievement. Those who took the exam and did not pass should keep working toward their goal. Those who will take the exam in the future need to take it seriously. The attorneys involved in the testing process will continue efforts to improve the process to make this a fair test and be proud to assure the public that it is a true test of competence to practice. We owe that to the public. For those who prefer to claim the pass rate of the bar exam is the result of a conspiracy to keep the number of Louisiana attorneys down, I can assure you this is not the case from my experience. In one area, the LSBA has begun investigating the possibility of the LSBA providing an affordable and hopefully Louisiana-oriented bar review course. We hope the LSBA can be a part of helping students better prepare for the bar exam in the future.

The LSBA was the leader in the United States in initiating a program of addressing new law students on professionalism. As the LSBA pointed out to these new Louisiana attorneys on their first day of law school several years ago, their reputation follows each of them. They should be sure it is one of honesty and integrity. Abusing the system will not serve them in the long run. Professionalism is something to be strived for. Professionalism is like a smile; it is contagious. We should each be the first to show leadership and be a professional. Practicing law can be a fulfilling and wonderful career. I hope the new attorneys enjoy it, make a good living, are proud to be an attorney, and do some good for the world.

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Pro Bono Heroes: Providing Justice for All

Volunteering my time to projects that are designed to help make it easier for low income individuals to access our judicial system is incredibly gratifying. I have enjoyed using my skills and experience in a way that has benefitted others as well as provided me with the opportunity to learn something new. In this profession, one person really can make a difference and to do so feels wonderful.

— Ashley Payne Gonzalez
Ochsner Health System, and volunteer with Louisiana Appleseed
New Orleans, LA
Implementation of LSBA’s Mentoring Program Underway:
Another Milestone on the Road to Professionalism for New Admittees

By Barry H. Grodsky
he Louisiana State Bar Association’s (LSBA) new admittee mentoring program, Transition Into Practice (TIP), has been approved by the Louisiana Supreme Court and steps are underway for its implementation. The creation of the TIP program was a collaborative effort of the Supreme Court and the LSBA through its Committee on the Profession (COTP). This innovative program will begin in January 2015 for those who are admitted into practice in 2014.

Background

The TIP program is part of the LSBA’s continued commitment to establish professionalism programs with the goal of reaching lawyers and those seeking to become lawyers as early in their legal careers as possible. Through the COTP’s efforts, professionalism programs have been established in all four of the state’s law schools and all programs have been well accepted by the law schools and the students. This includes the LSBA’s two-part character and fitness program to assist students with their admission process into the Bar. That program earned the LSBA the American Bar Association’s (ABA) Smythe Gambrell Professionalism Award, the first ABA award received by the LSBA.

With the law school programs firmly in place, the COTP turned its attention to continuing its professionalism efforts to those who are newly admitted to the Bar. Specific concerns for new admittees were apparent and the COTP sought to address them with the TIP program.

Initially, many newly admitted attorneys are not able to find employment. Many either individually or collectively are hanging out their own shingles. This is being done without the benefit of gaining any experience of the reality of practice in a law firm. There are also newly admitted attorneys in firms of all sizes which have no mentoring programs at all or other firms which have only a loosely structured mentoring program. Merely because a new admittee is in a firm, there is no assurance that he or she is receiving sufficient mentoring when first starting out in practice.

The COTP also took into consideration that law schools do not always provide sufficient practical application of the law in everyday practice.

Further, the COTP understands that there are several aspects of the practice of law which many practitioners take for granted but which can be of major concern to a newly admitted attorney. It is easy to understand how a new attorney who has never been with a firm but decides to try it on his or her own may struggle with opening a trust account, preparing an engagement letter, hiring a secretary or paralegal or figuring out what happens on rule day. It is apparent that assisting these new attorneys is not only important to them but imperative to the overall practice of law. As such, the COTP believed it to be essential that this mentoring program be implemented in Louisiana.

Creating this program was only possible with the continued support of LSBA leadership and the Supreme Court. Every LSBA president for the past several years has embraced the mentoring concept and the Supreme Court has been behind these efforts. Unlike the LSBA’s law school character and fitness program, which was created solely by the LSBA, the COTP looked to other states for guidance in creating the TIP program. The COTP’s Mentoring Subcommittee gathered information from professionalism centers and bar associations in Ohio, Illinois, Texas, South Carolina and Georgia. Important contacts were made and information also was obtained through the ABA’s professionalism symposiums. While it was primarily Ohio’s program which offered the most guidance, the LSBA’s TIP program is based on critical elements from other states, plus unique features developed through the efforts of the Mentoring Subcommittee.

After approximately two years of work, the subcommittee submitted its recommendations to the COTP, which made certain revisions. Ultimately, the mentoring program was approved unanimously by the LSBA Board of Governors and the House of Delegates. Before implementation, the program was submitted to, and reviewed by, the Supreme Court. Further revisions were made but the result was the creation of the TIP program for new admittees, by order of the Supreme Court in May 2013.

Implementation

The TIP program will first be made available to those who are admitted into practice in 2014. The Supreme Court order allows for the program to take place over a two-year period on a voluntary basis in three areas: Shreveport, Baton Rouge and greater New Orleans. The LSBA is hopeful that, with the success of the program, it can expand in two ways — first, being offered to new admittees throughout the state and, second, becoming mandatory. While not all states have implemented mentoring programs on a mandatory basis, the COTP believes this program will achieve its goals and become most effective if it does become mandatory. Only the Supreme Court can make the TIP program mandatory. The mentoring program is designed to last one year (January through December, regardless of when the new attorney is admitted into practice).

Over the next several months, numerous steps will be taken to implement the program.

First, mentors are currently being sought and many attorneys have already signed up to be mentors. But efforts are being made statewide to create as large a group as possible of prospective mentors, in anticipation of the program eventually being expanded into other parts of the state. Becoming a mentor is very simple. Sign up online at: http://files.lsba.org/documents/SL/MentoringProgramFillInRegistration.pdf.

Next, a mentor training manual is being developed. This manual, to be provided to both the mentor and mentee, will ensure that the mentor has all the requisite information he or she needs to review and discuss specific concepts with the mentee.
As explained below, this will take place in four meetings throughout the one-year mentoring program. In that regard, the mentor will receive six hours of CLE credit. The mentor will attend a training session in advance of the commencement of the program with the mentee.

Further, the LSBA is creating a system to enable the mentee to report the periodic completion of various tasks. The reporting by the mentee will be on an honor system. At the end of the year, the LSBA will generate a report to be submitted to the Supreme Court which will ensure compliance and ultimate completion of the mentoring program. This system also will assist in the matching of the mentors and the mentees.

Qualifications for Mentors

There will be specific qualifications for mentors. The Supreme Court will appoint qualifying mentors recommended by the LSBA based on submitted mentor applications. To qualify for appointment, the mentor must have been admitted into the practice of law for a period of at least 10 years; must have no record of suspension or disbarment from practice; must have a professional liability insurance policy with minimum limits of $100,000 per occurrence and $300,000 in the aggregate; must be of good moral character; must be willing to voluntarily participate in the program; and must commit throughout its term to the obligations and duties of being a mentor. The professional liability insurance policy requirement is not applicable to mentors who are employed as in-house attorneys or employed by a governmental unit or “not for profit” entity. Judges may serve as mentors.

Temporary Deferral for Some New Admittees

Additionally, certain new admittees may defer participation in the program. The following new lawyers may be eligible for a temporary deferral from the TIP requirements:

- New lawyers serving as judicial clerks;
- New lawyers on active membership status whose principal office is outside Louisiana (but attendance at the LSBA’s “Bridging the Gap” seminar may still be required, as well as participation in the other state’s mentoring program if applicable);
- In-house counsel and government attorneys; and
- New lawyers who are not engaged in the practice of law.

New lawyers admitted to practice in Louisiana but who have practiced in another jurisdiction for five years or more are exempt from the TIP program but may participate if they wish.

Required Activities for Mentees

There will be two categories of required activities for the mentees. Initially, the mentee must participate in 10 specific activities. Unless required, the mentor does not have to attend these with the mentee. These activities are:

1. Attend civil hearing or trial in state district court.
2. Attend criminal hearing or trial in state district court.
3. Attend civil hearing or trial in federal district court.
4. Attend criminal hearing or trial in federal district court.
5. Appellate court oral argument (including online Supreme Court oral argument).
6/7. Attend two hearings or trials in specialized courts, such as bankruptcy court, state or federal administrative law court, family/domestic/juvenile court or small claims court.
8. Deposition (with mentor).
9. Jail (to understand procedure for jailhouse visits).
10. Attend meeting or function of LSBA, local bar association, specialized bar association or Inn of Court (recommended for mentor to attend).

Mentor/Mentee Quarterly Meetings

The mentor and mentee are required to meet four times during the year-long program. At least five of the activities must be discussed each quarter but it is
FIRST QUARTER
► Meet at mentor’s office to be introduced to other firm members.
► Discuss “unwritten” customary rules of civility and etiquette among lawyers and judges.
► Discussion of Louisiana Code of Professionalism.
► Review RPC Rules 6.2 and 6.3.
► Acquaint mentees with legal aid, local pro bono agencies and lawyers engaging in civic and charitable work.
► Discussion of work/life balance and factors effecting ability to successfully practice.

SECOND QUARTER
► Discuss mentee’s long-term career objectives and identify ways to meet these goals.
► Discuss substance abuse and mental health issues, including warning signs, colleagues with problems and resources. Include specific information about the Lawyers Assistance Program (LAP).
► Discuss different career paths and identify resources for exploring options. Discuss differences in working in various sized firms and government positions.
► Discuss managing law school debt.
► Discuss job search strategies.
► Discuss common malpractice traps and how to avoid common pitfalls.
► Discuss handling of conflict issues and review of applicable ethical rules.
► Discuss purpose, necessity and benefits of professional liability insurance.
► Discuss operation and function of Office of Disciplinary Counsel and duty to cooperate in disciplinary process.
► Discuss handling ethics issues at law firm, with associate or partner and with other colleagues.

THIRD QUARTER
► Discuss client and business development and retention and ethical issues.
► Discuss client’s role in decision-making process.
► Discuss how to evaluate a potential case and whether to accept a case.
► Discuss dealing with “difficult” client.
► Discuss importance of constant communication with client, providing updates and status reports.
► Discuss fee arrangements and contracts.
► Discuss proper legal counseling techniques and duty of advising clients.
► Discuss appropriate ways (including ethics, professionalism, custom, etiquette) in dealing with others on behalf of client.
► Discuss preparation for taking and defending depositions.
► Discuss methods and issues in negotiations.
► Discuss effective legal writing.
► Discuss alternative dispute resolution.

FOURTH QUARTER
► Discuss client confidentiality and privileges.
► Discuss how to screen for and recognize conflicts.
► Discuss roles of secretaries and paralegals.
► Discuss how to prevent unauthorized practice of law.
► Discuss office politics, including what is and what is not appropriate networking, socializing and personal behaviors.
► Discuss steps in leaving a law firm.
► Discuss good time management skills and techniques.
► Discuss law office management matters, such as time records; records of client expenses; billing systems; retainer/advance deposits/payment schedules; escrow and trust accounts, IOLTA and handling client funds; filing system and procedure; document retention; calendar reminder and docket systems; information technology systems, including court-accessible systems such as PACER; and library and research systems.

Other Activities

Other than the cost of the “Bridging the Gap” seminar, there is no cost to the mentees for the TIP program. Also, new admittees can participate in mentoring programs offered by their law firms if available but the firm’s program must be in compliance with the requirements of the TIP program.

There will also be a voluntary program offered twice a year. This will combine a social/networking aspect for the new admittees with speakers to discuss specific topics geared towards supporting the overall mentoring program such as marketing, use of social media in the practice of law and general transitioning into practice.

A welcoming reception by the LSBA and the Supreme Court for the mentors will begin the annual program which will conclude with a reception to honor the mentees who have completed it. While the program lasts for one year, based on information from other states, the mentors and mentees have often continued to maintain this relationship. Also, many mentors have repeated the program. The LSBA and the Supreme Court are encouraged by the very strong feedback and high levels of support from those who have participated in the program in other states.

Conclusion

This is a very important program and will not only be of great value to the new admittees but also will strengthen our profession. It also shows the LSBA’s continued commitment to professionalism.
Recusal is an ancient civil law concept fundamental to democracy and due process.1 Prior to the 19th century, judges were allowed to preside in situations that today would almost universally be considered improper.2 Disqualification of judges for bias was rare, and except for those cases that contravened Sir Edward Coke’s core principle that “no man should be a judge in his own case,”3 only a direct financial stake in a case usually disqualified a judge. This view persisted into the 20th century.

The “duty to sit doctrine” — what one writer termed the “pernicious” version of the concept4 — emphasizes a judge’s obligation to hear and decide cases unless there are compelling grounds for disqualification.5 That doctrine pushes judges to resolve close disqualification issues against recusal, when the presumption should run in exactly the opposite direction.6

The duty to sit doctrine is often traced to William Blackstone and the pre-1800 English attitude that “the law will not suppose the possibility of bias or favour in a judge.”7 The prevailing opinion was that “challenges to judicial impartiality would undermine public respect for the legal system.”8 The first reported American case to use the term “duty to sit” appeared in 1824.9

One of the most famous 20th century endorsements of the duty to sit occurred in Laird v. Tatum, a case involving a claim that the Army was unlawfully surveilling citizens.10 In Laird, the plaintiff attempted to recuse Justice William Rehnquist, who before his appointment to the Supreme Court had testified as an expert witness for the Justice Department at Senate hearings on the constitutionality of the federal government’s surveillance of citizens.11 In refusing to recuse himself, Rehnquist stated, among other reasons, that “[t]hose federal courts of appeals which have considered the matter have unanimously concluded that a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified.”12

In 1973, the American Bar Association (ABA) adopted Canon 3(C) (now Rule 2.11) and the Model Code of Judicial Conduct to eliminate the duty to sit as a factor to be weighed in deciding a recusal motion. Instead, a judge should disqualify himself if this impartiality might reasonably be questioned, or if required by law. The Judicial Code and the case law interpreting it have effectively obliterated the idea of weighing a judge’s duty to sit in most jurisdictions, since the “appearance of impropriety” standard is so high that recusal is favored in close cases.13 In most states today, any legal presumption against disqualification created by the duty to sit doctrine is considered detrimental to the judicial system because it reverses what should be the logical presumption in favor of disqualification,14 so that in close cases “the balance tips in favor of recusal.”15 Yet, the duty to sit has persisted for 40 years in Louisiana, despite the ABA’s changes to the Model Judicial Code and the adoption by other states of similar language.16

Statutory Foundations of Louisiana Recusal Law

“All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality or unreasonable delay, for injury to him in his person, property, reputation, or other rights.” La. Const. art. 1. § 22 (1974).

Louisiana’s first recusal statute, enacted in 1858, provided that a judge could be recused in criminal cases only if the judge was related by blood or marriage to the defendant. That prohibition was expanded in 1871 to familial relations to the fourth degree and prior employment as an attorney in the matter. In 1880, the recusal rules were made applicable to civil cases and grounds for recusal were added: the judge’s interest in the cause of the litigation and the judge having rendered a judgment in the same cause in another court. In 1882, the law was amended to allow recusal where the judge had previously been employed or consulted as an advocate in the cause. The current recusal rules in civil cases are codified in Louisiana Code of Civil Procedure articles 151 through 160.16 A district court judge may recuse himself, even if no motion for recusal has been filed, or may file a written application with the Louisiana Supreme Court, which may recuse the judge if there are sufficient grounds for recusal.17 Otherwise, the party seeking recusal must file a written motion setting forth the grounds for recusal.18 If the motion sets forth a “valid” ground, the trial judge may either recuse himself or refer the motion to another judge for hearing. If a motion is filed to recuse an appellate judge, he may either recuse himself, or have the matter heard by the other members of the panel or, alternatively, by all of the members of the court.19

Rise of the Louisiana Code of Judicial Conduct Canons

The Louisiana Code of Judicial Conduct was adopted by the Louisiana Supreme Court on March 5, 1975, and became effective on Jan. 1, 1976.20 “The Code is binding on all judges, and judges are bound exclusively by [its] provisions.”21 Canon 2 requires judges to avoid both impropriety and the appearance of impropriety.22 Canon 2(B) provides, in relevant part, that “[a] judge shall not allow family, social, political, or other relationships to influence” him. Canon 3(C) provides that “[a] judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or by applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.”23

If the Judicial Canons can be the basis for disciplining judges, then the Canons should also be the basis for removal of judges from cases where such violations exist. In In re Cooks, the Supreme Court held in a 1997 disciplinary proceeding
that a judge should have recused herself due to the appearance of potential bias and prejudice under La. C.C.P. art. 151, and that her failure to do so violated the Judicial Canons.24 The judge was close friends with one of the litigants and her attorney, the attorney was representing the judge in her divorce, and the litigant had also tutored the judge’s children, helped decorate the judge’s office and was reimbursed for school supplies and groceries.25 The court held that article 151 applied, and the Judicial Code and Louisiana Constitution required recusal when “the circumstantial evidence of bias or prejudice is so overwhelming that no reasonable judge would hear the case.” Id. at 903. Because the standard for determining whether it appears that a judge is “biased or prejudiced” is an objective one, it does not require direct evidence of actual bias or prejudice.26 The Cooks ruling is consistent with the court’s earlier pronouncements that recusal is “not only for the protection of the litigants but generally to see that justice is done by an impartial court . . . [and] for the sake of appearances to the general public. . . .”27

Yet, also in 1997, the Supreme Court gave a nod to what one writer referred to as the “benign version” of the duty to sit,28 stating, “[i]n each possible recusal situation, there is a countervailing consideration which militates in favor of a judge’s not recusing himself, or being recused; that is, that the judge has an obligation, part of his sworn duty as a judge, to hear and decide cases properly brought before him. He is not at liberty, nor does he have the right, to take himself out of a case and burden another judge with his responsibility without good and legal cause.”29

In 2004, the Supreme Court recused a district judge in Folse v. Transocean Offshore USA, Inc. based solely upon a Judicial Canon violation.30 Defendants had moved to recuse a pro tem judge because of his firm’s relationship with plaintiff’s counsel.31 The district court denied the recusal motion and the 4th Circuit Court of Appeal denied supervisory writs. However, the Supreme Court reversed and recused the judge, due to the appearance of impropriety under Canon 3(C). Notably, that ground for recusal is not specifically listed in La. C.C.P. art. 151.32

In 2006, the Supreme Court held in Disaster Restoration Dry Cleaning, L.L.C. v. Pellerin Laundry Machinery Sales Company, Inc. that the Code of Judicial Conduct binds all judges and instructs them as to their expected ethical conduct.33 In 2009, the court reiterated that “the primary purpose of the Code of Judicial Conduct is to protect the public rather than to discipline judges.”34

In 2012, the Supreme Court reversed the denial of a motion to recuse a 5th Circuit judge in Tolmas v. Parish of Jefferson on the basis of La. C.C.P. art. 151(A)(4) and transferred the case to the 2nd Circuit, in order to avoid even the appearance of impropriety.35

La. Circuit Courts Persist in Applying the Duty to Sit in Non-Disciplinary Cases

Louisiana courts of appeal and district courts are not applying the Code of Judicial Conduct with any consistency to recusal motions, despite the Supreme Court’s rulings in Cooks, Disaster Restoration and Tolmas. Rather, some courts continue to support both a duty to sit and a presumption of impartiality.36

In 2000, the 4th Circuit Court of Appeal distinguished Cooks and found in Guidry v. First National Bank of Commerce that because La. C.C.P. art. 151 does not include “appearance of impropriety” as a grounds for recusal, “[a]bsent an amendment or a contrary interpretation by the Supreme Court, a mere appearance of impropriety, not statutorily listed in La. C.C.P. art. 151, cannot be a basis for recusal.”37

In a 2001 case, Southern Casing of Louisiana, Inc. v. Houma Avionics, Inc., the defendant sought recusal of the trial court judge because the judge had practiced law with the owner of the plaintiff company; had formerly represented the owners of the plaintiff company in federal and state court; had accepted a plant as a gift; and had had dealings with the company owner over 32 years.38 The motion to recuse was denied because actual bias was not proven.39 The 1st Circuit rejected the “appearance of impropriety” standard as a mandatory recusal ground, citing the duty to sit and the allegedly exclusive grounds of article 151.40

Opponents of recusal often rely on the Supreme Court’s 2002 decision in Chauvin v. Sisters of Mercy Health Systems41 to deny writs on the 4th Circuit’s ruling that for the proposition that article 151 is the exclusive statutory grounds for recusing a judge, the movant must show actual bias to successfully recuse a judge.42 This reliance is misplaced because in Chauvin, the parties seeking recusal apparently failed to allege that the trial court’s actions violated the Code of Judicial Conduct. Because the Chauvin court was never presented with the issue, it did not consider whether the judge’s conduct would have warranted recusal under the Judicial Code.

In 2008’s Radcliffe 10, L.L.C. v. Zip Tube Systems of Louisiana, Inc., the 5th Circuit affirmed the denial of defendants’ motion to recuse the trial court judge where plaintiffs’ sole damages expert had been the judge’s campaign treasurer and was the judge’s accountant.43 The appellate court held that Code of Judicial Conduct Canon 3(C) “does not provide an independent basis of recusal of a judge” and quoted the “duty to sit” doctrine from Lemoine, without acknowledging either Cooks or Disaster Restoration.44

In 2011, the same court affirmed sanctions against an attorney for filing two motions to recuse trial court judges, cautioning “courts and litigants of the obvious dangers to our system of justice—the use of a motion to recuse as a litigation tool in response to unfavorable rulings.”45

In Florida Parishes Juvenile Justice Commission v. Hannist, the 1st Circuit reversed the denial of a recusal motion in 2011. The defendant had filed a motion to recuse all of the judges of the 21st Judicial District Court (JDC) pursuant to Art. 151(A)(4).46 This civil matter arose from a criminal case where the criminal defendant, who served as secretary of the Florida Parishes Juvenile Justice Commission (Commission), was accused of creating false invoices for a fictitious court reporting service and then converting the funds to her personal use. The commission has an ongoing working relationship with the judges of the 21st JDC in conjunction with district administration. Two members, who allegedly signed many of the checks used
to perpetuate the alleged fraud, had been appointed to the commission by judges of the 21st JDC. An ad hoc judge denied the motion to recuse, finding no evidence of actual bias. The 1st Circuit reversed the denial, citing Tolmas, and found that the fact that commission members had been appointed by the 21st JDC judges created the potential for bias, since the outcome of the case could affect how the judges’ credibility will be viewed.

Federal System, States Adopt Higher Standards for Judicial Impartiality than Louisiana

The United States Supreme Court has often held that “[t]rial before an unbiased judge is essential to due process.” In Caperton v. A.T. Massey Coal Co., the court recently ordered the recusal of a West Virginia Supreme Court justice who refused to voluntarily recuse himself from a case after the defendant corporation spent $5 million on advertising in support of the justice’s election. Without questioning the lower court’s finding of no actual bias, impartiality or impropriety, the court found that the risk of perceived bias was so great that due process required recusal.

Under federal statutes and jurisprudence, a judge should be recused when “a reasonable and objective person, knowing all the facts, would harbor doubts concerning the judge’s impartiality.” The Supreme Court recognized that due process “may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between [the] parties.” The federal 5th Circuit has opined that “[i]f the question of whether [to recuse] is a close one, the balance tips in favor of recusal.”

Despite congressional elimination of the duty to sit in the 1974 amendments to 28 U.S.C. § 455, many federal courts continue to rely on it, at least in dicta. A number of federal cases still refer to Justice Rehnquist’s opinion on the duty to sit in Laird v. Tatum as good law on questions of judicial disqualification (although many courts cite that case simply for the less controversial position that a judge’s philosophy is not ground for recusal) and fail to acknowledge that the 1974 amendment to 28 U.S.C. § 455 was intended to legislatively overrule Justice Rehnquist’s Laird opinion.

According to Flamm’s disqualification treatise, the duty to sit is now a minority rule. Other states are inconsistent in their application of the duty to sit doctrine, despite adoption of the 1972 ABA Judicial Code Canon 3(C) or its successor 1990 Code Canon 3(E).

Conclusion

Louisiana should modify its Codes of Civil and Criminal Procedure as well as its Code of Judicial Conduct to clearly state that, when presented with recusal, the subject judge should not weigh his duty to sit against the merits of the motion to recuse, and that close questions are to be decided in favor of recusal. The citizenry’s right to a judiciary above suspicion should outweigh any consideration that there is any dereliction of duty when a judge is recused.

The clear adoption of the “appearance of impropriety” recusal standard, already contained in Canon 2 to the Louisiana Code of Judicial Conduct, would be consistent with the majority rule and the ABA Model Code of Judicial Conduct.

The authors would like to acknowledge the assistance of Veronica J. Lam in the preparation of this article.

Footnotes

1. “Pursuant to the Roman Code of Justinian, a party who believed that a judge was under suspicion was permitted to recuse that judge, so long as he did so prior to the time the issue was joined.” Richard E. Flamm, “History of and Problems with the Fed. Judicial Disqualification Framework,” 58 Drake L. Rev. 751, 753 (Spring 2010), citing Code Just. 3.1.14 (Justinian 1530 S.P. Scott. Trans.). “This expansive power on the part of early litigants to effect a judge’s recusal formed the basis for the broad disqualification statutes that generally prevail in civil law countries today.” Id., p. 753 n. 13.

2. For example, Chief Justice John Marshall arguably violated even the most narrow disqualification norm by serving as a justice in Marbury v. Madison, 5 U.S. 137, 2 L. Ed. 60 (1803), which arose out of Marshall’s own failure as Secretary of State to properly deliver William Marbury’s commission to serve as a justice of the peace.


5. “In close cases, judges should err on the side of recusal in order to enhance public confidence in the judiciary and to ensure that subtle, subconscious, or hard-to-prove bias, prejudice, or partiality does not influence decision-making. The pernicious version of the duty to sit concept pushes judges in exactly the wrong direction, suggesting that they should decline to preside only if the grounds for disqualification are undeniably clear.” Id.

6. Id.


8. See James, Hazard & Leubsdorf, n. 74, at 394, at § 7.3.

9. See Waterhouse v. Martin, 7 Tenn. 373, 385 (Tenn. 1824).


11. Id. at 837 (citations omitted).


14. In re Boston’s Children First, 244 F.3d 164, 167 (1 Cir. 2001) (quoting Nichols v. Alley, 71 F.3d 347, 352 (10 Cir. 1995)).


16. La. Code Civ. Proc. art. 151 provides the following grounds for recusal:

A. A judge of any court, trial or appellate, shall be recused when he:

(1) Is a witness in the cause;

(2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter’s employment in the cause, and the judge participated in representation in the cause;

(3) Is the spouse of a party, or an attorney employed in the cause or the judge’s parent, child, or immediate family member is a party or attorney employed in the cause;

(4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties’ attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

B. A judge of any court, trial or appellate, may be recused when he:

1069, p. 1 (La. 5/7/04), 872 So.2d 467, 468. See also, "The Problematic Persistence of the Duty to Sit," supra, 57 Buffalo L. Rev. at 882-87.

37. Guidry v. First Nat'l Bank of Commerce, 98-2383 (La. App. 4 Cir. 3/1/00), 755 So.2d 1033, 1037 (internal citations omitted).

38. Southern Casing of La., Inc. v. Houma Avionics, Inc., 00-1930, 00-1931 (La. App. 1 Cir. 9/28/01), 809 So.2d 1040.

39. The judge specifically noted that there was "a small legal community in Houma. Everybody comes in contact with everybody else in either an adversarial or a representative or a fiduciary capacity at some point in our career." Id. at 1049.

40. Id. at 1049-50.


42. Chauvin, supra, 818 So.2d at 835.


44. Id. at 115.


47. Id. at *2-3.

48. Id. at *3.

49. Id.


52. Id. at 886-87. See also, Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986) ("[J]ustice must satisfy the appearance of justice").

53. Patterson v. Mobil Oil Corp., 335 F.3d 476, 484 (5 Cir. 2003); see 28 U.S.C. §§ 144, 455; Caperton, supra, 556 U.S. at 866 ("The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process.").

54. Muchison, supra, note 50, 349 U.S. at 16.

55. See also, Liljeberg v. Health Sci. Acquisition Corp., 486 U.S. 847, 865 (1988) (affirming recusal of a judge who was a Tulane University trustee in a matter affecting the university's property even though he had no recollection or understanding of the benefit to the university at that time).


Roy J. Rodeney, Jr., founder and managing partner of the law firm of Rodeney & Etter, L.L.C., has an extensive history of defending against injustice and infringement of civil liberties. The diverse law firm handles civil disputes, including contracts, business torts, unfair trade practices, environmental justice, intellectual property, and civil and constitutional rights. Rodney has been recognized by national, state and local legal associations, receiving the New Orleans Martinet Legal Society's Trailblazer of the Year Award from the Coalition of Leadership and Development, the A.P. Turenau Award, the Louisiana State Bar Association's Pro Bono Award and the National Bar Association's (NBA) President's Award. He is past chair of the NBA's Civil Trial Advocacy Section. (620 N. Carrollton Ave., New Orleans, LA 70119)

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A Johns Hopkins study found that lawyers suffer from depression at a rate 3.6 times higher than the general employed population.

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

Persistent apathy or "empty" feeling

Trouble concentrating or remembering things

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

Drug or alcohol abuse

Loss of interest or pleasure, dropping hobbies

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

Feelings of bafflement, confusion, loneliness, isolation, desolation and being overwhelmed

Changes in energy, eating or sleep habits

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The Foreign Corrupt Practices Act:

Through the Lens of Azerbaijan and the Republic of Georgia

By Peter G. Strasser
It is virtually impossible to pick up a local newspaper anywhere in the world without seeing a headline about corruption. In the past year alone, more than one in four people (27 percent) reported having paid a bribe. Revelations of widespread bribery of foreign officials by U.S. companies prompted Congress, back in 1977, to enact the Foreign Corrupt Practices Act (FCPA). Through its various criminal and civil provisions, the Act was intended to halt corrupt practices, create a level playing field for honest businesses, and restore public confidence in the integrity of the marketplace.

In general, it is no easy matter for U.S. companies operating overseas to comply with both U.S. and foreign laws while conducting business in cultures that do not view the rule of law through the lens of Western ideals. Such environments pose metaphysical minefields for many U.S. businesses. Accordingly, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) recently published a 130-page guide that explains the FCPA, its relevance to international business and corporate compliance programs, and the DOJ/SEC’s joint enforcement approaches and priorities.

Nevertheless, the DOJ and the SEC have been exponentially increasing their FCPA enforcement actions over the years. The DOJ now has attachés in more than 30 embassies around the world assigned to work closely with foreign law enforcement and international organizations. Beyond collaborating on specific cases, the attachés review foreign anti-corruption legislation and programs and train foreign prosecutors in combating corrupt activities. These efforts are yielding noticeable results: FCPA cases are arising out of high-risk countries where law enforcement historically looked the other way.

Three recent cases involving transactions in Azerbaijan and the Republic of Georgia illustrate the resolutions that have become typical in these types of criminal corruption cases: deferred prosecution, trial or guilty plea. However, Azerbaijan and Georgia are two particularly complex countries located in one of the world’s most complicated regions—the Caucasus, which also includes Armenia and the North Caucasus of the Russian Federation. This geographical region is ripe with local, separatist, nationalist and global interests, cross-cutting diverse religions, ethnicities and cultures. Strategic transportation routes traverse one another; ethno-territorial conflicts persist unresolved; and even some national borders are still hotly contested. Each state struggles to overcome a daunting set of internal and external challenges, ranging from the need for economic and political reform to combating the constant threat of violent and destructive conflicts. Recent political and legal developments, however, offer cause for cautious optimism for foreign investors and corporate counsel seeking to facilitate U.S. business in this unique part of the world.

**Corrupt Practices: Three Case Studies**

**Tidewater Marine**

In November 2010, Tidewater Marine International, Inc., a Cayman Islands subsidiary of Tidewater, Inc., paid a combined $15 million to the DOJ and the SEC to settle FCPA allegations. Tidewater, Inc., headquartered in New Orleans, is a global operator of offshore service and supply vessels for energy exploration. Over the course of time, Tidewater Marine employees had paid $160,000 in bribes to tax inspectors in Azerbaijan to secure favorable tax assessments and also paid $1.6 million in bribes to Nigerian customs officials relating to the importation of vessels into Nigerian waters. Upon learning of the DOJ/SEC investigation, Tidewater conducted an internal investigation and voluntarily reported its findings to federal prosecutors. As a result, Tidewater Marine received a deferred prosecution agreement from DOJ whereby it implemented an enhanced FCPA compliance policy and revised its code of conduct for its worldwide employees. It also paid a penalty of $7.35 million and made an additional settlement with the SEC by paying a disgorgement of $8 million.

**Frederic Bourke**

Frederic Bourke, co-founder of the luxury-handbag maker Dooney & Bourke, entered federal prison in May 2013 to begin serving a one-year sentence. He had unsuccessfully fought his FCPA charges at his jury trial and appeal. Bourke’s problems stemmed from an investment venture in Azerbaijan to purchase the state-owned oil company, SOCAR. He was convicted despite his defense that he was unaware that his business partner, Victor “the Pirate of Prague” Kozeny, was bribing top-level officials, including the president of Azerbaijan. The 2nd Circuit affirmed the conviction in *United States v. Kozeny*, 667 F.3d 122 (2 Cir. 2011), holding that a defendant can indeed be found criminally liable under the FCPA if he is found to be “consciously avoiding” knowing that an intermediary is paying bribes to a foreign official. The court relied, *inter alia*, on testimony at trial demonstrating that Bourke “was aware of how pervasive corruption was in Azerbaijan.”

**Daniel Alvirez**

In March 2011, Daniel Alvirez, president of Arkansas military equipment company ALS Technologies, pleaded guilty to participating in a scheme to pay bribes to the Georgian Defense Ministry in exchange for obtaining an $11-million contract selling ammunition and MREs to the Georgian military. However, a year later, this FCPA charge was dismissed “without prejudice.” Alvirez, in a separate scheme, also had been part of the “SHOT Show” case (the FBI arrested the defendants at the Las Vegas Shooting, Hunting and Outdoor Trade Show). That investigation was the first of its kind to pursue FCPA violations using traditional undercover tactics such as informants, wiretaps and hidden cameras.
But after two consecutive mistrials, the DOJ dismissed with prejudice all FCPA charges against all 22 defendants. With respect to Alvarez’s Georgian scheme, federal prosecutors explicitly stated they were continuing to investigate and would “determine whether to bring criminal charges relating to that conduct.”

**International Business Rankings and Assessments**

In its handbook, “Business Principles for Countering Bribery,” Berlin-based Transparency International (TI) states, “Bribery may be so much a part of a business culture in some places, that dealing with it can seem an overwhelming challenge and no one business can fight it alone.” According to TI’s latest annual assessments of corrupt countries, Armenia and Azerbaijan rank 94th and 127th, respectively, out of 177 countries surveyed, although Georgia posted a better ranking of 55th. The TI ranking for Azerbaijan effectively confirms that it is difficult to do business in Azerbaijan, especially when it involves Azerbaijan’s oil resources, without paying bribes and kickbacks. Yet even those figures obscure the realities of corruption in the region.

**An Overview of Corruption in Azerbaijan**

Today, Azerbaijan is a politically closed society with a dynastic presidency. The considerable revenues it has earned from its vast hydrocarbon reserves have, unfortunately, failed to produce greater openness or democracy. Instead, those same riches have made the country’s rulers progressively more independent and self-confident. It is widely recognized that corruption is deeply institutionalized throughout Azerbaijani society and poses a major obstacle to both social and economic development in the country. In terms of specific areas of corruption, the State Customs Committee and the Ministry of Taxes are the institutions of greatest concern to both local and foreign companies operating in Azerbaijan.

Nonetheless, Azerbaijan has implemented efforts to clean up corruption at the mid-levels of government. Recent years have seen rising salaries for civil servants and special training offered to raise awareness within the bureaucracy about corruption. An Azerbaijani government service center (ASAN) was recently established in Baku to cut bureaucracy, strengthen transparency, and improve the ease of doing business. ASAN’s mission is to open up and simplify all areas of government, including the issuance of forms, registration, workplace compliance and tax issues. Already the number of procedures involved in starting a business in Azerbaijan has been reduced from 30 to seven, and the overall cost has been halved.

As seen in the *Kozeny* case, true corruption in Azerbaijan is at the elite level and based mostly on extracting rents from the energy sector (the country’s primary national asset). It is well documented that, through hidden ownership structures, the first family has profited personally from massive construction projects throughout Baku. In its 2012 country progress report, the Organisation for Economic Co-operation and Development (OECD) noted that, although Azerbaijan has made progress in fighting corruption, efforts toward judicial independence and meritocracy have largely taken a back seat. Police investigators almost never open criminal cases against top government officials and, when they do, judges often decline to rule against them. No high-level government official has ever been prosecuted. Further, no judge has ever been prosecuted for any corruption-related charge, despite the fact that the judiciary is regarded as one of the country’s most corrupt institutions.

Even so, the OECD report praised the efforts of the Anti-Corruption Department (ACD) within Azerbaijan’s Prosecutor General’s Office. The ACD prosecuted 298 defendants in 2012 and 229 defendants in 2011 — all of them, unsurprisingly, mid-level officials.

Further, Azerbaijani law makes it difficult for prosecutors to gain access to a target’s bank, financial or commercial records by requiring disclosure authorization from a court. Such proceedings are time-consuming and subject to capricious judicial outcomes, which often produce no concrete results. But, to its merit, when judicial authorization is given, the ACD follows through to conclusion. In the Tidewater Marine investigation, the ACD cooperated fully with the U.S. Embassy. Pursuant to an official DOJ request, ACD sought and obtained judicial search warrant approval to retrieve documents from Tidewater’s office in Baku. Those documents were then promptly delivered to the U.S. Embassy.

**An Overview of the Corruption in Georgia**

A decade ago, Georgia had an appalling reputation for corruption. But subsequent political changes have brought about substantial reform. By 2012, Georgia was ranked by the World Bank as the 12th most favorable country in the world for the ease of doing business. Nonetheless, many Georgians dispute that their new and ostensibly showcase system of transparency tells the whole story. Despite President Mikheil Saakashvili’s vow in 2009 to bring about a “new wave of democratization,” his government perpetuated the highly criticized Soviet practice of using the police to safeguard the security of the ruling regime rather than serving the larger community.

Immediately after being elected president in January 2004, Saakashvili made it clear that fighting corruption would be one of his top priorities. Capitalizing on his election mandate, he quickly implemented reforms, although often circumventing time-consuming democratic procedures to achieve his goals. He further ensured that Parliament adopted certain constitutional amendments that strengthened presidential powers at the expense of the legislative and judicial branches.

Saakashvili also hijacked the state’s administrative resources — police, prosecutor’s offices, courts, prisons, national banks, tax inspection and the media — to serve his own ends. It was not long before major commercial interests, such as telecommunications, broadcasting, advertising, oil,
pharmaceuticals and mining, were under the ownership of then-current members of the government, their allies and relatives, all via a complicated web of companies registered offshore. As evidenced by Daniel Álvarez’s guilty plea, Saakashvili’s top officials frequently used the government apparatus to control and extort money from businesses. Further, the administration often used the state’s resources as tools for the persecution of political opponents, with the police freely engaging in the excessive use of force. Top officials also appropriated private land for investment projects, telling the owners they had to gift the land to the state or face prosecution.

In cynically fabricated cases, plea bargaining was abused to extract both land and money. In fact, plea bargaining was viewed as an effective revenue-raising tool in criminal cases. If a defendant wanted a sentence reduced, he had to pay a specified amount for each year deducted from the maximum sentence. Under this scheme, a total of $50 million was collected. As the new speaker of the Georgian Parliament told The Economist, “We had a system where the prosecutor was the chief economist in the country.”

The Georgian judiciary, whose mandate it is to review each case for evidentiary sufficiency and sentence fairness, practically rubber-stamped every guilty plea. Monitoring groups reported that judges not only routinely sided with motions from the prosecution, they also based judgments on questionable evidence. As a result, the judiciary today is viewed as “one of the least trusted institutions in the country.”

However, democracy is still, at least in part, very much alive in Georgia. Less than two weeks before the October 2012 parliamentary elections, public outrage was ignited when leaked videos showing sexual torture and other egregious abuse of prison inmates were broadcast on national television. Those images triggered mass demonstrations and had a decisive impact on the elections. Saakashvili’s party was voted out of office. Although Saakashvili himself still had a year remaining in his presidency, there was now a new government headed by his rival, billionaire Bidzina Ivanishvili.

However, the history of this region is all about settling scores. Soon after the new government was seated, a string of Saakashvili’s former ministers and party officials were under investigation. Reminiscent of what happened after Saakashvili’s Rose Revolution ousted President Eduard Shevardnadze, officials who did not flee the country were arrested and prosecuted. Commenting on this state of affairs, the chair of the Board of Transparency International Georgia stated:

Is it politically motivated? Yes. Is it a reasonable exercise in the rule of law? Yes, because there were so many laws broken. The thing to watch is the trend line — will this continue? Is this going to be a way of making sure there is no opposition?

Conclusion

The threshold consideration in deciding what, if any, FCPA enforcement action will be taken is, of course, the target’s conduct. Regardless, the DOJ and the SEC place a high premium on self-reporting. As the different outcomes in the Tidewater, Kozeny and Álvarez cases indicate, cooperation and remedial efforts are major factors in determining the appropriate resolution of FCPA matters.

Those efforts can and should start in the foreign country itself. Even though bribery is still a part of the culture of the Caucasus, the attitudes of the governments of Azerbaijan and Georgia have changed. Both are now parties to the United Nations Convention Against Corruption. As such, both have implemented specific anti-corruption measures to encourage disclosure. Bribers who are extorted and subsequently report the bribe are often “relieved of responsibility” because of their cooperation.

The director of the Azerbaijani ACD has been working closely with DOJ attaches and understands the legal dilemmas facing American companies operating there. He is committed to implementing the new Azerbaijani National Anti-Corruption Action Plan for 2012-15, which provides for better legislation on the protection of witnesses and collaborators in corruption cases. He is steadfast and emphatic to the ideal that any American business that reports extortion and cooperates in ACD investigations will receive the Azerbaijani government’s personal protection.

Likewise in Georgia, the new Deputy Minister of the Interior is adamant that any American business that reports extortion and cooperates with law enforcement will receive the government’s gratitude and protection. The new Minister of Justice, a former lawyer at the European Court of Human Rights, faces the daunting task of overhauling the courts, the prosecutor’s office and the prison system to restore faith in the much-maligned criminal justice system. He knows the eyes of the West are upon Georgia, and he is reversing many of his predecessor’s predatory policies. Many senior policemen who were fired after objecting to Saakashvili’s practices have been reappointed. In the spirit of the times, the Georgian Parliament has adopted a sweeping amnesty, releasing some 8,400 pre-trial and convicted inmates. The Parliamentary speaker told The Economist:

We have not emptied the prisons to fill them up again. The only way to serve justice is to make the process as transparent as possible by subjecting it to the scrutiny of the media and international watchdogs.

Footnotes

6. Alexandre Kukhianidze, George Mason University, Terrorism, Transnational Crime and Corruption Center, Rethinking Organized Crime and...


10. Id.; see also United States v. Amaro Goncalves, Court Doc. No. 09-CR-335 (D.D.C. 2012). At trial, the government’s primary informant was repeatedly attacked by defense counsel as a cocaine addict, tax cheat and admitted thief of millions of dollars from his prior employer. In addition, defense counsel cited examples of “vulgar” and “unprofessional” text messages between FBI agents and the informant. See id.


19. The judicial sector in Azerbaijan is weak, primarily because of the executive branch’s excessive influence over the judiciary, due not only to the regulatory framework of the judicial system, but also to the historical, Soviet-based perception that judges are viewed as an extension of the state. In cases where the state is a party, regardless of the merits of the case, the expectation is that the interests of the state will prevail. Despite the highly structured written and oral examination process (instituted only within recent years as a result of Western pressure), appointments for judgeships allegedly are still either purchased or allocated to those who are acceptable to the Ministry of Justice. It is widely perceived that judges must abide by the government’s explicit interests and implicit demands. See United States Agency for International Development, Analytical Paper on Corruption in the Judicial Sector of Azerbaijan (2005), available at http://pdf.usaid.gov/pdf_docs/PNADP873.pdf.

20. Those convicted include heads of regional education departments, regional labor and social protection departments, teachers, doctors, chairmen of small municipalities and mid-level employees of the Ministry of Defense, Interior Ministry, etc. See generally, Office of the Prosecutor, Azerbaijan, Anti-Corruption Department, Guidebook (2013) (copy of files with author).


24. Id. at 10.


30. Rimple, supra note 25.


33. This immunity can apply, at the prosecution’s discretion, to a person who is either (1) extorted, or (2) after giving a bribe voluntarily, makes a report of the occurrence. In practicality, the immunity is given to those who are arguably extorted and then quickly report the payment. Even though the Azeri and Georgian authorities designed this loophole to encourage disclosure in exchange for amnesty, no parallel protection is afforded under U.S. law. Thus, even though the improper payment may be explicitly forgiven under foreign law, this forgiveness is not a bar to federal prosecution. See, United States v. Kozeny, No. 05-518 (SAS) (S.D.N.Y Oct. 21, 2008). In a pre-trial motion, Bourke argued that the FCPA includes an affirmative defense that provides that if a payment to a foreign official was legal under the law of the country in which it was made (Bourke claimed Kozeny was extorted and thus was not a voluntary briber), then the person who paid the bribe is immune from prosecution under the FCPA. The district court ruled, however, that for the lawful payments exception to apply, the payment must have been specifically permitted under the foreign law at the time it was made. Azerbaijani (and Georgian) law, of course, specifically criminalizes all bribe payments (whether extorted or not), and thus the court held that the affirmative defense did not apply. Bourke never raised the extortion argument at trial, but, in a motion for a new trial, he complained that the court should have issued the FCPA lawful payments (i.e., extortion payment) exception as an affirmative defense jury instruction. The district court again denied the motion. United States v. Kozeny, 664 F. Supp. 2d 369, 394 (S.D.N.Y. 2009).

34. The Economist, supra note 26.

Peter G. Strasser is a partner in the New Orleans office of Chaffe McCall, L.L.P, working with the Government Investigations and White Collar Criminal Defense Group. A former assistant U.S. attorney, he served as the Department of Justice Legal Attaché at the U.S. Embassies in Baku, Azerbaijan, from 2008-10 and Tbilisi, Georgia, from 2002-06. In 2010, under the auspices of the Organisation for Economic Co-operation and Development, he co-authored the 2010 OECD Anti-Corruption Monitoring Report of Georgia. In July 2013, he returned to the South Caucasus for the United States European Command to analyze what progress Azerbaijan and Georgia had made in anti-corruption compliance during the intervening years. (Ste. 2300, 1100 Poydras St., New Orleans, LA 70163)
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Portraits & Perspectives: Louisiana Supreme Court Associate Justices

One on One with Louisiana Supreme Court Associate Justice Jefferson D. Hughes III

Interviewed by Brendan P. Doherty
Justice Jefferson D. Hughes III represents the Fifth Supreme Court District of Louisiana. He was raised and attended school in Denham Springs. At Denham Springs High School, he played four sports, was salutatorian of his class and was recognized as a National Merit Scholar Finalist. He attended Louisiana State University on an academic scholarship and received a degree in history with honors. He attended LSU Paul M. Hebert Law Center and was selected for the Louisiana Law Review.

Justice Hughes served as a law clerk for the Hon. Frank J. Polozola and began private practice in Baton Rouge with the firm of Adcock, Dupree & Shows. He then began a solo practice and was the first attorney to practice law in Walker. After 12 years of private practice, he was elected to the 21st Judicial District Court in 1990, serving for 14 years. In 2004, he was elected to the 1st Circuit Court of Appeal, serving for eight years. He was elected to the Louisiana Supreme Court in 2012 and began his service on Feb. 1, 2013.

**Journal:** Tell the Bar a little about your background.

**Hughes:** I grew up in Denham Springs. It was a wonderful place to grow up. We went to school and played sports after school and all summer long, rode our bicycles all over town. It was just a good place to grow up.

**Journal:** Where did you go to college?

**Hughes:** LSU. Both of my parents had graduated from LSU, so there was really no doubt where I was going to go to college. I could have gone to school on a basketball scholarship to Southern Mississippi in Hattiesburg. But then I had an academic scholarship to LSU so it really kind of made it an easy choice. With both of my parents being Tigers, that was the way I was going to go.

**Journal:** Do you still play basketball?

**Hughes:** Only in my driveway.

**Journal:** Where did you go to law school?

**Hughes:** LSU. I just kept on going. I got a degree in history at LSU and, from there, went right on to law school.

**Journal:** How did you end up getting into the legal profession? Was that something that you always knew you wanted to do?

**Hughes:** My dad actually advised me. My uncle was an attorney and my dad is a forester. He is actually in the LSU School of Forestry Hall of Fame. He chose forestry because he liked the outdoors — he hunts, fishes, everything, which is the way I was brought up — but he advised me to go to law school. He told me that I could practice law, or I could go into business, or I could be an FBI agent. He said that there were a lot of different things you could do with a law degree. So, that is why I went to law school.

**Journal:** Had you not entered the legal profession, was there a backup plan or anything else that you could see yourself doing?

**Hughes:** Well, my goal was really to be a professional baseball player but I was not really good enough for that, so law school was actually my backup plan. I suppose I have always loved history. I may have ended up teaching history somewhere had I not gone into law. My two favorite things are sports and history, and in a way I always thought that the legal profession was kind of a combination of the two. It is a competition and you can go out and fight against somebody all day in the courtroom and then go have a beer after it is over with. So it is kind of like sports. A lot of history is also built into the legal profession. It seemed like a natural fit for what I like.

**Journal:** Did you start out in a small firm, big firm? What kind of work did you do?

**Hughes:** When I got out of LSU, I clerked for a year for Judge Frank Polozola, which was very eye-opening and educational. I was grateful for that opportunity. Then I went to work for Adcock, Dupree & Shows, which was a medium-sized firm in Baton Rouge. They represented clients all over the state in a really varied practice. I stayed with them for about a year and it was also very educational. Whenever there was a rule in an outlying parish that was probably not a winner, as a junior member of the firm, I got the file. I would drive to Jena, Lake Charles, Donaldsonville or wherever. And often it would be a loser rule, but you learn a lot more from losing than you do by winning.

**Journal:** A lot of younger lawyers who will be reading this will sympathize with traveling throughout the state and arguing loser files. In any event, after you left that firm, what type of work were you doing?

**Hughes:** After I did that for a little over a year, people I knew from Denham Springs, Livingston Parish, asked me to handle their cases — injury cases, divorces, whatever. So I opened an office in Walker. There were several lawyers in Denham Springs and there were a couple in Livingston, but there were no lawyers in Walker. I opened an office there as a solo practitioner and never looked back. I had clients from day one and got busy and stayed pretty busy.

**Journal:** What type of work did you enjoy the most as a practicing attorney?

**Hughes:** We did everything — real estate, personal injury, family law, and some criminal defense. The only thing I didn’t want to do was bankruptcy because it’s just a little tedious and there were specialists who could do it for less than I was willing to charge. So I would refer people to somebody who practiced in bankruptcy. But we did everything else. If you could settle a boundary dispute in your office instead of people going to court, it was pretty satisfying.

**Journal:** As a young lawyer, did you have any mentors or role models who were particularly memorable to you?

**Hughes:** In my district, which was the 21st Judicial District, Joe Simpson and Duncan Kemp were actually political enemies but they were very good smart lawyers. I learned a lot from both of those guys. Just to watch them in court and watch them going at each other, you learned a lot. In early years, I got to see Lewis Unglesby in the courtroom a lot and that was very educational. Some of these guys were so smooth in the courtroom. The way they addressed the judge, they could be saying something that totally disagreed with the judge, but they were always polite and tactful and respectful. Even when they were getting into a fight with their opposing counsel, they would still have that demeanor in the courtroom, and I always enjoyed watching that. Minos Simon was more of a plaintiff’s lawyer in the Lafayette area. I remember that he would always argue big ideas, appeal to the intellect of the jury, and I always appreciated that. I remember watching Wallace Hunter here in Baton Rouge; he was more of a defense lawyer, and he was just a very good negotiator and very good in the courtroom. When you are a young lawyer and you see one of these older guys who know what they are doing, you need to just soak it up like a sponge because it comes in handy later.
But at the Supreme Court, we get cases from all over the state and all seven judges have to vote on every case. Every Tuesday and Wednesday, we meet and vote on that week’s writ applications and then, every six weeks or so, we have oral arguments on the cases that we are going to write full opinions on. All seven of us have to discuss and vote on those so you are locked into a more structured time frame because every Tuesday and Wednesday you’re going to be meeting with the other six justices.

Journal: What surprised you the most about being a district judge?
Hughes: Well, I enjoyed doing it while I was doing it. But as a district judge, you’ve got DAs, public defenders, attorneys, jurors, bailiffs, clerks and court reporters, and you’ve got to make sure the train runs on time and that everybody’s in their right place and that the wrong people are not running into the wrong people at the wrong time. It is more of a management challenge, but it is very satisfying to make sure that everything is running right and good results happen. It’s very rewarding. I enjoyed it.

Journal: What led to your decision to run for the Louisiana Supreme Court?
Hughes: Well, originally it was kind of a philosophical difference, I guess. I just thought that judges should concentrate on being judges and not be overly involved on outside committees, search committees and blue ribbon panels, and all of that. So that’s what originally got me interested in the position back in 2008. And, of course, I got beat pretty badly by Kitty Kimball in 2008. But then, when 2012 came along and she retired, I knew what was expected and what it involved. I just thought that I could do a good job at it and thought I’d take a chance.

Journal: Did you enjoy the campaign process?
Hughes: Yes. People think that it is strange when I say that it is really an enjoyable process while you’re going through it. You are getting up early and going to bed late and really stretching yourself to the max. You certainly wouldn’t want to do it all of the time but for that short run it is really interesting. You find yourself doing things you didn’t really think that you could do but you enjoy it and you get out and meet a lot of people. I have always been kind of an introvert and it gave me an excuse to go ahead and talk to people. It is kind of fun while you are doing it, but, when it is over, you are glad it is over.

Journal: What surprised you the most about being a district judge operated that you weren’t aware of before you took the bench?
Hughes: I really feel like I have had to go back to work. At the 1st Circuit, we had 12 judges and four three-judge panels, so the total caseload was divided four ways. But at the Supreme Court, we get cases...

Journal: What is your biggest adjustment to the Supreme Court?
Hughes: There have been several 4-3 votes and it is a different four and a different three almost every time. It is similar to a jury.

Journal: What is your biggest adjustment to the Supreme Court?
Hughes: If you could offer younger attorneys any additional advice, whether it is related to a successful appeal or just a successful career, what would that be?
Hughes: Don’t be afraid to make mistakes. As I’ve said, I’ve found that you learn more from your mistakes than you do from your wins. Every case you lose, every rule you lose, every big case you lose, you learn something that you will not forget and you can use that in the future. Even running for the Supreme Court, I learned so much the first time. Experience is the best teacher, so embrace your experience, enjoy it, don’t worry too much about making mistakes, and just know that you don’t need to make that mistake again.

Brendan P. Doherty is a member of the Houston, Texas, office of Gieger, Laborde & Laperouse, L.L.C. He received his BA degree in 2000 from Loyola University and his JD degree in 2003 from Loyola Law School, where he was a member of the Law Review and the Maritime Law Journal. He has served as a member of the Louisiana Bar Journal’s Editorial Board since 2006. (Ste. 750, 1177 West Loop South, Houston, TX 77027)
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Louisiana Justice Community Conference: Celebrating 10 Years of Strengthening Access to Justice

The Louisiana legal community has made great strides over the past 10 years in promoting access to justice. Even in the aftermath of Hurricane Katrina/Rita and the economic downturn, legal aid and pro bono programs have expanded and welcomed numerous new attorneys to the practice of public interest law. Each year, the Louisiana State Bar Association (LSBA) gathers these practitioners at the Louisiana Justice Community Conference to celebrate their achievements and provide a forum to strengthen public interest practice.

The Louisiana Justice Community Conference is an annual statewide conference that provides substantive legal training for attorneys providing legal services to the poor. The event provides these legal service and public interest attorneys with the opportunity to obtain comprehensive education, otherwise unavailable through most CLE providers. It encourages strengthening of partnerships among the key players in the civil justice system. Through plenary sessions, training workshops and special programs, the conference has for 10 years provided a wide range of important learning and networking experiences for all attendees.

The 2013 conference (Thursday and Friday, Oct. 10-11) kicked off with a welcome from Louisiana State Bar Association (LSBA) President Richard K. Leefe and from Louisiana Bar Foundation President Leo C. Hamilton. An inspiring keynote address was presented by Donald W. North, former director of clinical programs at Southern University Law Center. A reception on Thursday evening allowed participants the opportunity to network. Friday’s events included recognition of the careers of many dedicated advocates in the justice community, as well as a discussion with longtime program directors about the future of legal services.

For the 10th annual conference, the programming recognized the past decade of legal service work while looking ahead to the future of the justice community.

The “Looking Ahead” track focused on where the legal service community is going, including sessions on innovative delivery systems, justice community collaborations, technology and how lawyers can manage their educational debt as they embark on public interest law careers. The training sessions were developed by six substantive law task forces, and practice skills sessions were taught by members of the American College of Trial Lawyers and the National Institute for Trial Advocacy.

At the request of the Legal Services Children in Need of Care (CINC) attorneys, a one-day track on CINC issues helped satisfy 6 accreditation hours. Additionally, Louisiana Appleseed organized a mortgage services settlement training pre-conference for attorneys providing services under that program.

Each year the conference grows bigger and better, both in terms of attendance and programs offered. This year was no exception, with 139 attorneys registered for two days of training, networking, meetings and pre-conferences. The conference hosted participants from the state’s three legal service programs and nonprofit public interest firms such as the Advocacy Center, Greater New Orleans Fair Housing, AIDS Law and the Mental Health Advocacy Center.
The Louisiana State Bar Association (LSBA) would like to thank the participants who volunteered their time and talents during October’s Month of Legal Service. A variety of events took place, many focusing on the needs of self-represented litigants. The Month of Service culminated with Celebrate Pro Bono Week, a national ABA program supporting pro bono work. The LSBA recognizes the following:

**Alexandra Bar Association**
Graham Bateman, Mike Bollinger, Leanne Bridges, Neal Chadwick, Sara Dantzler, Charles Elliott, Leslie Halle, Paul Miles, Mike Koch, Maria Losavio, Kay Michiels, Alainna Mire, Joe Perez Montes, Paul Tellarico, Laurel White

**Baton Rouge Bar Association**

**Jefferson Parish Bar Association**
Ashley Becnel, Sherman Boughton, Guy deLaup, Mickey deLaup, Cara Hall, Robert Kutscher, Tatiana Mouton, Kent Smith, Channing Warner

**New Orleans CDC**
Lanson Bordelon, Jimmy Courtenay, Cristin Fitzgerald, Kelly Legier, Andrew Lily

**New Orleans Pro Bono Project**
Paul D. Johnston, John Marzullo, Rachel Piercey, Cynthia Lee-Sheng, Scott Umberger, John F. Young

**Northshore Pro Bono Project**
William Burr, Sondra Cheek, Ellen Creel, Suelan Richardson

**Shreveport Bar Association**

**Slidell Bar Association**
Ernest Anderson, Joseph Anderson, Shandy Arguelles, Michele Blanchard, Laura Borchert, Robert Brandt, Ann Duve, Joseph Harvin, Mark Myers, Georgia Turgeau, Gary Williams
LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 7, 2013, honoring members of the Bench and Bar who died in the past year. The exercises followed the 61st annual Red Mass held earlier that morning at St. Louis Cathedral in New Orleans. The Red Mass was sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.

LSBA President Richard K. Lee of Metairie opened the memorial exercises, requesting that the court dedicate this day to the honor and memory of those members of the Bench and Bar who have passed away during the last 12 months. On behalf of the LSBA, Leeve gave the general eulogy and extended condolences to the families and friends of the judges and lawyers.

LSBA President-Elect Joseph L. (Larry) Shea, Jr. of Shreveport read the names of all deceased members being recognized.

Joseph W. Mengis, a partner in the law firm of Perry, Atkinson, Balhoff, Mengis & Burns, L.L.C., in Baton Rouge, gave a special eulogy for Louisiana Supreme Court Justice (Ret.) Luther F. Cole.

Hon. Bernette Joshua Johnson, chief justice of the Louisiana Supreme Court, gave the closing remarks. The invocation and benediction were given by Kenneth A. Mayeaux, professor of professional practice at Louisiana State University Paul M. Hebert Law Center.

Following the exercises, the Supreme Court was adjourned in memory of the deceased members of the Bench and Bar.

The members recognized included:

**Members of the Judiciary 2012-13**

Hon. Benjamin C. Bennett, Jr. .................Marksville
Hon. Edward E. Carriere, Jr. ..................Decatur, GA
Hon. James E. Clark ..........................Shreveport
Hon. Luther F. Cole ..........................Baton Rouge
Hon. James C. Gulotta, Sr. ...................New Orleans
Hon. William Joseph Guste, Jr. ...............New Orleans
Hon. Jack Holt ......................Pineville
Hon. Daniel W. LeBlanc .................Baton Rouge
Hon. Cecil C. Lowe ..........................Minden
Hon. Floyd W. Newlin ......................New Orleans
Hon. Frank J. Polozola ..........Baton Rouge
Hon. Charles Schwartz, Jr. ...............Metairie
Hon. Woodrow Wilson ...........Bastrop

**Members of the Bar 2012-13**

Herschel C. Adcock, Sr. ............Baton Rouge
Donald L. Baker ......................Shreveport
Carl W. Bauer ......................Lafayette
David S. Bell .......................Baton Rouge
Adrian C. Benjamin, Jr. .........New Orleans
Edward B. Benjamin, Jr. ..........New Orleans
John D. Bernhardt ..................Lafayette
Numa V. Bertel, Jr. ..................Metairie
William Joel Blass ...............Gulfport, MS
Bruce J. Borrello .................Mandeville
Gerald J. Breaux .................Lake Charles
Patrick D. Breeden ...............New Orleans
Jack R. Brown ...........Shreveport
Harold A. Buchler ..................Metairie
Maurice L. Burk .....................Kenner
Richard V. Bures .................Alexandria
John S. Campbell, Jr. ...........Baton Rouge
John T. Cullotta .....................Metairie
Daniel Joseph Dazet ..........Baton Rouge
Gregory B. Dean .................Opelousas
Rene B. deLaup .................New Orleans
Dennis K. Dobear .................Jefferson
Margaret Ann Edwards .........Lake Charles
Albert George Elias ..........Dallas, TX
Michael H. Ellis .................Metairie
Kenneth G. Fink, Jr. ..............Zwolle
Horace F. Foster III .............New Orleans
Kennedy J. Gilly ...............St. Louis, MO
Sally S. Gilmore ...............Metairie
Donald J. Gisevius ..............Kenner
Julian H. Good ..............Savannah, GA
Benjamin M. Goodman ..........New Orleans
John A. Gordon ..............New Orleans
George Grifing ..................Pineville
Jack C. Groner .................Baton Rouge
Frank B. Hayne III ..........New Orleans
George W. Healy III ..........New Orleans
Edward Max Heller ..........New Orleans
Carlton James Hicks ..........Alexandria
Henry G. Hobbs .................Minden
Donald G. Horton ..............Coushatta
Harry D. Hoskins III .........New Orleans
Harley B. Howcott, Jr. ...........New Orleans
Donald A. Hyatt ...............Shreveport
Lee E. Ineichen, Jr. ..........Highlands Ranch, CO
Janie Gorak Jackson ..........Lafayette
Clayton Joseph Joffrin .......Baton Rouge
Alma S. Jones .................Shreveport
David Bruce Jones ..............Sulphur
Louis M. Jones .............Covington
Wilbert Frazier Jordan, Jr. ...Baton Rouge
Henry J. Jumonville III ......New Orleans
Donald J. Juneau ..........Hammond
Edward H. Keiler ..............Covington
Robert L. Kleinpeter .........Baton Rouge
David B. Koretzky ..........Humble, TX
J. Bennett Kraft ..........Palestine, TX
Stephen J. Laborde ..........Kenner
Jules Burton LeBlanc, Jr. ...Baton Rouge
James A. Leithead ..........Lake Charles
Salvador J. Liberto, Jr. .......Mandeville
Robert C. Lowther, Jr. .......Alexandria
Charles F. Lozes ...............New Orleans
Kenneth R. Martinez .........Opelousas
Clyde D. Merritt ..........New Orleans
Edward M. Meyers ..........Covington
Edward J. Milligan, Jr. ..........Lafayette
Catherine A. Mills ............New Orleans
Paul J. Mirabile .................New Orleans
Elizabeth A. Morrison .........New Orleans
Lee Sterling Mudd ..........Shreveport
Laurice Dean Napper .........Ruston
Robert J. Neal .............Metairie
Sam Nelken ................Natchitoches
Irving Novick ..............New Orleans
J. Huntington Odum .......Baton Rouge
Billups P. Percy ...............Covington
John B. Peuler ..............New Orleans
Elin Elias Psarellas .........New Orleans
Jean H. Pugh .................Baton Rouge
A. Bruce Rozas ..........Mamou
William M. Russell III ....Fort Worth, TX
Charles R. Ryan ...............Houma
Edmond C. Salassi .............Metairie
Richard L. Salmon ..........Waskom, TX
Artthel J. Scheuermann ....Scottsdale, AZ
J. Philip Stein .................New Orleans
Gerald A. Stewart ..............Metairie
William S. Strain ..........Baton Rouge
Kenneth J. Stumpf ..........New York, NY
Susan S. Tete .................New Orleans
Thomas W. Thorne, Jr. .........New Orleans
David Edward Tippett ......Baton Rouge
Christopher Tompkins .......New Orleans
Charles C. Trasher III ......Monroe
Deborah A. Van Meter ........New Orleans
Dennis J. Vidrine .............Lafayette
Joseph L. Waitz .................Houma
Thomas B. Waterman ..........Ponchatoula
Marion Guarriero Welborn ....New Orleans
Lynn L. White .................Kenner
George Edward Williams, Jr. ....Lafayette
G. Ann Winchester ............West Monroe
Albert Joseph Winters, Jr. ....New Orleans
Dorothy D. Wolbrette .........New Orleans
Roy L. Wood .................Amite
J. Gregory Wyrick ............New Orleans

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Attorneys Apply for Recertification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for recertification as legal specialists.

Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, no later than Jan. 31, 2014.

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

**Tax Law**
Byron Ann Cook ..............New Orleans
Kyle Christopher McInnis.....Shreveport
Robert F. Mulhearn...........Baton Rouge
Leon Hirsch
Rittenberg III ...............New Orleans
John Kevin Stelly .............Lafayette
John R. Williams .............Shreveport

**Family Law**
Terry George Aubin ............Alexandria
Suzanne Ecuyer Bayle.........New Orleans
Craig H. Cabral ...............Metairie
Michael D. Conroy ...........Covington
Kenneth P. Haines ..........Shreveport
Margaret H. Kern ..........Covington
Charles O. LaCroix ..........Alexandria
Susan Helene Heathamer .......Gretna
Vincent Anthony
Saffiotti ......................Baton Rouge
Laurel Annette Salley ..........Metairie
Lila Molaison Samuel ..........Gretna
Sandra Lynn Walker ..........Shreveport

**Estate Planning & Administration Law**
Byron Ann Cook ..............New Orleans
James G. Dalfenes .............Harahan
Mary Lintot Dougherty ......Houston, TX
Miriam Wogan Henry .........New Orleans
Jimmy D. Long, Jr ..........Natchitoches
Christine Wendt Marks ..........Metairie
Kyle Christopher McInnis ....Shreveport
Leon Hirsch
Rittenberg III ...............New Orleans
Cherish Dawn
Van Mullem ................Baton Rouge
Todd Michael Villarrubia....New Orleans
H. Aubrey White III .........Lake Charles

**Business Bankruptcy Law**
Ralph L. Bowie, Jr ..........Shreveport
Rudy J. Cerone ...............New Orleans
Bradley Loy Drell ............Alexandria
Sessions A. Hootsell III ..New Orleans
Robert W. Raley .............Bossier City
Paul Douglas Stewart, Jr ....Baton Rouge
Stephen P. Strohschein .......Baton Rouge
Arthur A. Vingiello ..........Baton Rouge
David Felicien
Waguespack .................New Orleans

**Consumer Bankruptcy Law**
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The Lawyers Assistance Program, Inc. (LAP) has selected “Reach Out” as its central theme for 2014. This focus seeks to encourage lawyers, judges and their family members to be confident in reaching out to help themselves or to help peers and family members in need of LAP’s confidential assistance.

Statistics on mental illness in the legal profession are dismal. Literally thousands of Louisiana lawyers and judges are currently suffering from depression, alcoholism and addiction, and other stress-related conditions such as compassion fatigue.

More than two decades ago, our Supreme Court began to recognize the alarming severity of alcoholism in the legal profession in *LSBA v. Arthur Dumaine*, 550 So.2d 1197 (1989):

“In fact, there is now convincing evidence that chemical dependency is so widespread among the legal profession that it cannot be deterred or even coped with by the normal enforcement of the disciplinary rules. Instead, it is clear that the evil has become ascendant and, if it is to be curbed, must be addressed openly, vigorously and holistically by the entire organized bar;” and that due to the unique nature of the problem, those who suffer should be “assisted by another attorney who is himself a recovering alcoholic.”

Unfortunately, our profession’s mental health challenges have drastically changed for the worse since Dumaine. Nowadays, the practice of law is more stressful than ever and the ascendant mental health evils are no longer limited to alcoholism. In fact, depression has displaced alcoholism as the number one mental health impairment impacting legal professionals.

It is inescapable that the risk of suicide, the harshest outcome of all, is significantly intensified within our ranks. Each year we continue to lose a stunning number of Louisiana legal professionals to suicide. With each report of another lawyer who has taken his or her own life, the attendant questions weigh heavily upon us all: Could we or should we have somehow detected the person was at risk for suicide? Could the suicide have been prevented? What, if anything, could any of us have done to avert such tragedies?

That is the focus of this first 2014 installment of “Reach Out to LAP!” All employees at LAP are now certified “suicide prevention gatekeepers” via training through the QPR Institute, an educational organization dedicated to preventing suicide. Headed by Dr. Paul Quinett, a clinical psychologist who has worked in the field of suicide for more than 35 years, the QPR program has developed a methodology for action to save lives. Just like “CPR” (cardiopulmonary resuscitation) is an acronym for the emergency action undertaken to try and save a heart attack victim until professional help arrives, the “QPR” acronym stands for Question, Persuade and Refer — a series of immediate action steps that can actually prevent some suicides.

QPR teaches the individual to listen carefully for warning signs and then ask the right questions to identify whether there may be a suicide risk. If a risk presents, the QPR-trained individual will be prepared to take immediate and effective steps toward encouraging the individual to accept help. The person can then be referred to effective professional help.

In addition to all LAP employees now being certified in QPR, LAP’s full-time clinical director, Leah Rosa, MHS, NCC, LPC, has become certified to actually train and certify others in QPR. Accordingly, LAP hereby reaches out to all Louisiana legal professionals by announcing that LAP now provides QPR training and certification to all those in our profession who are interested in becoming QPR-certified gatekeepers.

Against that backdrop, let’s revisit the hard questions.

Can we ever see a suicide coming? Yes. With training, warning signs can often be spotted in time to effectively reach out to the person.

Can suicides ever be prevented? Yes. There is no way to prevent all suicides, but suicide is, in fact, highly preventable if QPR is administered.

What can we do to reduce suicides in Louisiana’s legal profession? Reach out to LAP! Get trained in QPR! Get involved!

Either as an individual, or as a representative of your court or law firm, QPR training can make a life-saving difference. Every person who becomes a certified QPR gatekeeper through LAP increases Louisiana’s fabric of legal professionals who are equipped to recognize the warning signs of suicide and ready to take action.

Our Supreme Court’s watershed Dumaine opinion of 1989 as to alcoholism is now directly applicable to the ascendant mental health evils we face in the form of depression and suicide. Precisely like alcoholism, the evils of depression and suicide cannot be curbed unless we work together, as lawyers helping lawyers, to openly, vigorously and holistically fight back.

So “Reach Out” to LAP if you need help, are concerned about someone, or would like to be certified in QPR. As always, your call is confidential and you do not have to give your name. Call LAP at (985)778-0571 or visit LAP online at: www.louisianalap.com.

By J.E. (Buddy) Stockwell

J.E. (Buddy) Stockwell is the executive director of the Lawyers Assistance Program, Inc. (LAP) and can be reached at (866)354-9334 or via email at LAP@louisianalap.com.
In the course of our lives, we are all confronted with choices. Three of my older brothers followed one another in the time-honored profession of law. I chose not to follow their career paths and I now understand why. As the youngest of five brothers and with an eight-year gap to the next oldest, I was forced to be vigilant. Keeping an astute eye on them was a matter of survival. There was a period of time (when I was about 2) that they could only leave the house after supper if I was in bed and sleeping for the night. That’s the way mother ran things. So to quiet me down, they would crack open the bedroom door and shake a large broom intending it to be a monster of some sort. Their heinous actions squelched any further squeaks from their little brother and they were free to leave the house after supper if I was in bed (when I was about 2) that they could only keep an astute eye on them 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. For assistance, contact a coordinator:

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<th>Area</th>
<th>Coordinator</th>
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<td><a href="mailto:sbboyle@bellSouth.net">sbboyle@bellSouth.net</a></td>
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<td>Denham Springs Area</td>
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<td>(225)564-9508</td>
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<tr>
<td>Houma/Thibodaux Area</td>
<td>Danna Schwab</td>
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<td>Jefferson Parish Area</td>
<td>Pat M. Franz</td>
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<td><a href="mailto:emsmith@lsl.state.la.us">emsmith@lsl.state.la.us</a></td>
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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 attorneys, law, court personnel, paralegals, legal secretaries and their families who have experienced a death or catastrophic illness, sickness or injury. For assistance, contact a coordinator:

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

Professionalism in law, as in the other professions, is aspirational. For some, success at achieving professionalism may become elusive, particularly when you believe you work in a competitive environment where colleagues cannot be trusted and only the fittest will survive. When you begin to examine the cost of incivility and loss of professionalism, the personal cost to you may generate a motive for change. A lack of professionalism and the incivility that often goes along with it leads to elevated levels of stress that in turn may create difficult collegial relationships. It is this stress that will cost more than you may be aware — for some, maybe even your life.

Candid conversations with attorneys often reveal a growing dissatisfaction related to negative attitudes toward the profession. I have personally heard comments from older attorneys claiming that the practice of law is not what it used to be — referring to the decline of professionalism. Studies have revealed that attorneys, as a whole, have become increasingly more dissatisfied with their jobs. Correlated with this dissatisfaction is the well-documented observation that attorneys are experiencing higher levels of depression and substance abuse, more so than are practitioners in other professions. We have learned that stress overload, along with reduced quality of life, is considered to be a key symptom of many, if not most, psychological and physical disturbances. The World Health Organization defines health as a state of complete physical, mental and social well-being and not simply an absence of disease. Research as well as clinical practice has demonstrated that an enhanced quality of life leads to harmony within oneself, more effective resources for dealing with stress and a reduction in burnout, along with more satisfying relationships, both in our personal and professional lives.

Were a panel of psychologists repre-
Quality continued from page 275

senting an array of theoretical models to be questioned as to what they consider as the most significant factor in helping an individual change a maladaptive behavioral pattern, by far, the majority would agree that the common denominator in the change process is the ability to observe oneself and to recognize one’s maladaptive behavior (at the moment). The capacity to observe oneself is absolutely essential if one is going to bring about change in one’s behavior. Being mindful of your actions will permit you to see where change is required, and either on your own or with professional guidance, you will be able to make the necessary adjustments, improve the quality of your life and in turn experience greater satisfaction in your professional life. There is no quick fix for achieving professionalism; it is a process that requires daily attention.

A prominent barrier to achieving professionalism in the practice of law is excessive and prolonged stress. If you take care of yourself and improve your quality of life, everything else will tend to fall into place, at least for the majority of attorneys. There are others who may bring to the work environment certain personality traits and characteristics which were probably long embedded in their unique personality structure and perhaps even fostered by law school. While for some the barriers may appear to be insurmountable, with effort they can be overcome.

In the early 1970s, Type A behavior, and its relation to coronary heart disease, was of keen interest to researchers in psychosomatic medicine. Type A behavior was described by high levels of competitiveness and ambition (attorneys are no strangers to these traits), chronic fast-paced activity and being easily moved to hostility and anger. These Type A characteristics were observed more frequently in coronary heart disease patients than in patients with other types of illness. This observed association between Type A behavior and coronary disease in patients led to a study to determine whether individuals with Type A behavior went on to develop coronary disease more so than those without Type A characteristics. Those without the characteristics were called Type B.

In an eight-year followup, it was determined that twice as many of the Type A subjects developed coronary disease as did the Type B subjects. There was another interesting finding. Smoking, elevated blood pressure and high cholesterol levels, commonly thought of as the traditional risk factors, were not solely responsible for the higher coronary rates. The findings set off a flurry of activity for psychologists. Studies began to show that another factor was involved — hostility. It was observed that people with higher hostility counts tended to not only have more severe coronary artery disease but even more significant was the finding that elevated hostility scores correlated more with coronary artery disease than did the Type A scores. Psychologists were able to break out specific factors in hostility that accounted for higher mortality rates. The factors were the cynical mistrust of others, the frequent experience of angry feelings and the overt expression of cynicism and anger. These aspects of hostility are often a component in instances of incivility, particularly where there is an overload of stress. Prolonged levels of elevated stress are often associated with risky behaviors such as smoking, excessive eating and consumption of alcohol — a vicious cycle that can impact not only your professional relationships but your health as well.

Logic would seem to demand that, as rational and critical thinkers, you would embrace the need to pay closer attention to how you relate to your colleagues. Perhaps the following story will inspire you to do so. Take yourself back to a small town in Poland around 1900. Visualize the times of Fiddler on the Roof. Once, a married couple came to visit the town rabbi. They were in dispute over a marital problem. As tradition required, the rabbi was to hear both sides of the argument and then decide who was right. He first heard the husband’s side and, when he was finished, the rabbi said to him, “You are right.” The rabbi then heard the wife’s side. Again, he said, “You are right.” When the couple left the rabbi’s home, the rabbi’s wife stepped out from behind the draperies where she had been hiding. She had overheard everything and inquired, “But how could they both be right?” The rabbi answered, “You are right.”

Despite the rabbi’s seemingly contradictory statements, they do hang together, if not in a logical way, in an elegant way that preserves the rabbi’s illusion of infallibility. The rabbi’s responses are not permeable or open to other possibilities. Were the rabbi to have said, “I believe you are right,” he would not have pronounced a judgment and may even have opened the door to civil dialogue. When we respond to others in such a way that civil dialogue is not possible and where there may be strong and underlying motives, incivility may be lurking close by.

The environment can become highly charged in the practical world of law where honorable men and women are often adversaries with one another. Incivility and the increased and prolonged stress that often accompanies this conflict can be a natural consequence. Attorneys have been urged by their professional organizations to reduce their stress levels and to focus and work at enhancing their quality of life for it is well known that stress overload and a compromised quality of life can ignite incivility. To these urgings from your peers and mentors, you are likely to say, “They are right.” As you come to the end of this article, you may think, “This guy Klein is right.” Just remember, stress makes you more rigid in your processing of problems and impairs logical and rational thinking, which the successful attorney must rely upon.

There is nothing inherently wrong with carrying a “Big Broom” if the big broom is the law, if the big broom is rationality and critical thinking, if the big broom is justice. When the waving of that broom is associated with incivility, remember that the cost (to you) may be greater than you expect.

Dr. A. James Klein is a clinical psychologist with a MS degree in experimental psychology from the University of Southern Mississippi and a doctorate in clinical psychology from Texas Tech University (1974). He was a staff psychologist at Southeast Louisiana State Hospital and on the faculty at Tulane School of Medicine in the Department of Psychiatry and Neurology. He specializes in clinical and forensic assessments of children and adults as well as consulting with law enforcement agencies. He is board-certified in clinical psychology by the American Board of Professional Psychology and is a Fellow in the American Academy of Clinical Psychology. He has been qualified as an expert witness in Louisiana state district courts and in Louisiana juvenile courts. (Ste. D-1, 5001 Highway 190, Covington, LA 70433)
Crossword PUZZLE

By Hal Odom, Jr.

PARTNERSHIP MATTERS

ACROSS

1. Partnership in ___ means one with participation limited to contribution (9)
6. Coll. in Hammond (1, 1, 1)
8. Speaker’s platform (7)
9. Material for blue jeans (5)
10. In the work cited (abbr.) (2, 3.)
11. Not reached, as a quota, or not satisfied, as needs (5)
13. Concept formerly taught with partnership in law school (6)
15. Frightened (6)
18. Cotta or firma (5)
20. Newton who gave us the three laws of motion (5)
22. ___ de lis (5)
23. Bistro, south of the border (7)
24. Louisiana’s only four-term governor (1, 1, 1)
25. Financial obligation shared equally by partners (9)

DOWN

1. Shared by members but not in a partnership (9)
2. Pleasant sounds (5)
3. Unpredictable (7)
4. Ad ___ clause, part of petition stating the amount of money demanded (6)
5. “___, I’m Adam” (famous palindrome) (5)
6. Counterpart of representative (7)
7. Coll. in Monroe (1, 1, 1)
12. Kind of duty owed by partners (9)
14. Kind of unction in the Catholic church (7)
16. Popular dry red wine of Tuscany (7)
17. Diego ___, tiny atoll used as Naval base in Operation Iraqi Freedom (6)
19. Not urban (50
21. ___ curiae are friends of the court (5)
22. Enemy (3)

Answers on page 318.

Alcohol and Drug Abuse Hotline
Director J.E. (Buddy) Stockwell III, 1(866)354-9334
1405 W. Causeway Approach, Mandeville, LA 70471-3045 • e-mail lap@louisianalap.com

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John A. Gutierrez .................(225)715-5438
Lafayette .................................(337)364-5408,
Alfred “Smitty” Landry .................(337)364-5408,
Thomas E. Guilbeau .........(337)232-7240
James Lambert .................(337)233-8695

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(318)572-8260 (cell)
Steve Thomas .................(318)872-6250

The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.
For the 14th consecutive year, the Louisiana State Bar Association’s (LSBA) Committee on the Profession hosted law school orientations on professionalism at Louisiana’s four law schools. More than 170 attorneys and judges from across the state participated in the programs in August.

LSBA President Richard K. Leefe led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included Louisiana Supreme Court Chief Justice (Ret.) Catherine D. Kimball, Justice Greg G. Guidry, Justice Jeff D. Hughes III and Justice John L. Weimer III; LSBA Committee on the Profession Chair Barry H. Grodsky; and American Bar Association representatives.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Vice Chancellor Gregory Smith, Loyola University College of Law Dean Maria Pabon Lopez, Southern University Law Center Chancellor Freddie Pitcher, Jr. and Tulane Law School Dean David Meyer.

Following the opening remarks, the law students were divided into smaller groups, where they discussed various ethics and professionalism scenarios with attorney and judge volunteers.

This orientation program, inaugurated in August 2000, has been institutionalized as a yearly project for the LSBA and the law schools. The deans and admissions staffs of the law schools have been accommodating in assisting with the logistical challenges of putting this program together.

Attorneys and judges volunteering their services this year were:

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

Bradley J. Aldrich
William F. Bailey
Hon. Jerome J. Barbera III
Leah A. Barron
Fred Sherman Boughton, Jr.
Hon. Frances M. Bouillion
Hon. James J. Brady
Hon. Curtis A. Calloway (Ret.)
Andrew M. Casanave
Mark A. Chavez
Henry T. Dart
Donald G. D’Aunoy, Jr.
S. Guy deLaup
Bobby J. Delise
Bridget B. Denicola
Jennifer Montgomery Durham
Sally D. Fleming
L. Paul Foreman
Jennifer B. Frederick
Todd E. Gaudin
Barry H. Grodsky
John Clay Hamilton
Orlando N. Hamilton, Jr.
Holly G. Hansen

Jack P. Harrison
Michael E. Holoway
Philip J. House
James Eric Johnson
Johnny T. Joubert
Gary P. Kraus
Paulette Porter LaBostrie
Madeline J. Lee
David A. Lowe
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Gregory K. Moroux, Jr.
Jennifer W. Moroux
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Hon. Pamela A. Moses-Laramore
Tammy P. Northrup
Michael A. Patterson
Jason K. Placke
Charles B. Plattsmier
Claire A. Popovich
Hon. Laura A. Prosser
Betty A. Raglin
Kristi W. Richard
Louisiana State Bar Association Committee on the Profession Chair Barry H. Grodsky addressed first-year students at the opening of the professionalism orientation at Loyola University College of Law. Photo by LSBA Staff.

Patrick F. Robinson  
Sera H. Russell III  
Hon. John D. Saunders  
Robert E. Shadoin  
Joseph L. Shea, Jr.  
Maggie Trahan Simar  
Shayna L. Sonnier  
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Dylan T. Thriffiley  
Marsha M. Wade  
Michael S. Walsh  
John David Ziober

Michael E. Holoway  
Roger A. Javier  
Hon. Carolyn W. Jefferson (Ret.)  
Hon. Charles R. Jones (Ret.)  
Hon. Jeanne Nunez Juneau  
Robert A. Kutcher  
Nahum D. Laventhal  
Melissa M. Lessell  
Hon. Lynn L. Lightfoot  
James H. Looney  
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Sandra K. Cosby  
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Darryl J. Foster  
Lauren E. Godshall  
Barry H. Grodsky  
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Hon. Roxie F. Goynes  
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Barry H. Grodsky  
Hon. John Michael Guidry  
Grant J. Guillot  
Raveen A. Hills  
Malinda Hills Holmes  
Michael E. Holoway  
Raushanah S. Hunter

Addressing first-year students at the opening of the professionalism orientation at Southern University Law Center were Chancellor Freddie Pitcher, Jr., Louisiana State Bar Association President (LSBA) Richard K. Leefe, Louisiana Supreme Court Justice John L. Weimer III and LSBA Committee on the Profession Chair Barry H. Grodsky. Photo by LSBA Staff.
Tulane Law School first-year students participated in the professionalism orientation’s breakout sessions facilitated by attorneys and judges. *Photo by LSBA Staff.*

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Denise J. Lee
April M. Leon
Charlotte C. McDaniel McGehee
Caroline Russ Minor
Harry J. (Skip) Philips, Jr.
Joyce Marie Plummer
Cynthia N. Reed
La Koshia R. Roberts
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Mary Ann M. White
Hon. Trudy M. White
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REPORT BY DISCIPLINARY COUNSEL

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

Decisions

Rodney A. Brignac, LaPlace, (2013-B-1535) Suspended for one year and one day ordered by the court as consent discipline on Sept. 20, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 20, 2013. Gist: Commingling of personal funds with client funds in her trust account.

Maria del Carmen Broce Calvo, New Orleans, (2013-B-1536) Suspended for six months, fully deferred, subject to two years’ unsupervised probation, ordered by the court as consent discipline on Sept. 20, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 20, 2013. Gist: Accepting fees from clients; failing to complete the agreed upon legal tasks; and then failing to refund the unearned fees.

Bruce Allen Craft, Baton Rouge, (2013-OB-2171) Permanent resignation in lieu of discipline ordered by the court on Sept. 18, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 18, 2013. Gist: Accepting fees from clients; failing to complete the agreed upon legal tasks; and then failing to refund the unearned fees.

Derek Dave Gambino, Metairie, (2013-OB-2094) Transfer to disability inactive status ordered by the court on Sept. 11, 2013. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2013.

William F. Henderson, Alexandria, (2013-B-1301) Disbarred, retroactive to March 31, 2010, the date of his interim suspension, ordered by the court

Continued next page
2001 Louisiana Acts 208 created the Attorney Fee Review Board. The Act allows for payment or reimbursement of legal fees and expenses incurred in the successful defense of state officials, officers or employees who are charged with criminal conduct or made the target of a grand jury investigation due to conduct arising from acts allegedly undertaken in the performance of their duties.

The Board is charged with establishing hourly rates for legal fees for which the State may be liable pursuant to R.S. 13:5108.3. Pursuant to R.S. 13:5108.4, the rates “shall be sufficient to accommodate matters of varying complexity, as well as work of persons of varying professional qualifications.”

The Board met on Oct. 1, 2013, and decided that requests for payment or reimbursement of legal fees should be evaluated on a case-by-case basis in accordance with the factors set forth in Rule 1.5 of the Louisiana Rules of Professional Conduct. As directed by statute, the Board set a minimum rate of $125 per hour and a maximum rate of $400 per hour. These rates will remain in effect through 2015.

Discipline continued from page 281


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

<table>
<thead>
<tr>
<th>No. of Violations</th>
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<tr>
<td>Failure to communicate with a client...1</td>
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<tr>
<td>Failure to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it, except for an openly expressed claim of a constitutional privilege .............................................1</td>
</tr>
<tr>
<td>Failure to properly supervise a non-lawyer employee ........................................................1</td>
</tr>
<tr>
<td>Improper use of trust account ........1</td>
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TOTAL INDIVIDUALS ADMONISHED......................................3
Mediations Keep BART Negotiations on Track

Tense negotiations waged between Bay Area Rapid Transit (BART) and the agency’s two largest unions, the Service Employees International Union 1021 and the Amalgamated Transit Union Local 1555. When employee contracts expired on June 30, 2013, renewal talks rapidly deteriorated. The next day, 2,400 unionized workers for the San Francisco commuter rail system left their posts and went on strike. Alex Park, “What's Behind the BART Strike?,” Mother Jones (July 1, 2013), www.motherjones.com/mojo/2013/07/bay-area-transit-strike-why-it-matters.

BART President Tom Radulovich wrote to California Gov. Jerry Brown days before the labor agreements expired, requesting state mediators to help move negotiations forward. Perhaps the move came in anticipation of political intervention in the dispute. Previous BART strikes in 1997 and 2001 were largely affected by political maneuvering, resolving after union workers emerged from negotiations with double-digit pay raises in both instances. BART management was looking for a more reasonable way out of the strike by relying on two top state mediators to bring the two sides together. The mediators were essential in helping to broker a 30-day deal to stop the first shutdown on July 5, 2013. “BART Strike Called Off for at Least a Week After Gov. Jerry Brown Steps In,” San Jose Mercury News (Aug. 4, 2013), www.mercurynews.com/bart/ci_23793808/.

Despite months of talking beforehand, the opposing proposals were nearly $100 million apart. After a five-year pay freeze, the largest discrepancy in the negotiations was salary increases. BART had seen a revenue surplus in fiscal year 2012, and employees hoped for a piece of that gain after enduring wage stagnation throughout the recession from 2009. Early on in the negotiation, BART’s total four-year proposal would cost the agency another $18.5 million,
while the unions’ offer would cost $117.8 million over the same time. The parties were closer to compromise on smaller issues, such as contributions to healthcare benefits, where they were just $4.3 million apart. Mike Rosenberg, “BART Strike: Opposing Proposals Released,” San Jose Mercury News (Aug. 7, 2013), www.mercurynews.com/bart/ci_23813630. On the main issues, however, large gaps remained.

While the recent dispute primarily centered on a demand for salary increases, there was also a growing concern by the unions for improvements in safety protocols. Union members pointed to thousands of “serious crimes” committed on the transit system in the last three years, including physical attacks on commuters and BART employees alike. The safety issue was not purely incidental to the contract discussions. The two major unions filed suit against BART, charging that the suit was a “smokescreen” meant to apply pressure and obscure the fact that the unions were demanding over 20 percent in pay increases. Lee Romney, “BART Strike Possible Tuesday as Talks Continue,” L.A. Times (Oct. 14, 2013), www.latimes.com/local/lanow/la-me-ln-potential-bart-strike-20131014-0,6453666.story#axzz2miLqZidX. The lawsuit came less than a week before the contract renewal deadline, and the escalating acrimony between the two parties was clear.

BART commuters received a 60-day reprieve from strikes when a San Francisco Superior Court judge ordered a “cooling-off” period requested by Gov. Brown. Maria L. Ganga, “Judge Orders Cooling-off Period to Prevent Another BART Strike,” L.A. Times (Aug. 11, 2013), http://articles.latimes.com/2013/auug/11/local/la-me-ln-judge-orders-cooling-off-period-to-prevent-another-bart-strike-20130811. The nearly five-day strike in July left 400,000 commuters extremely affected, and Gov. Brown believed that another strike would be crippling to the transit system. In seeking to avoid this significant harm to the public, he gave the two parties a period in which they could come to an agreement.

Management and the unions took a break from bargaining during the first month, but, at the halfway point in September, negotiations finally began by talking about minor supplemental issues. Michael Cabanatuan, “BART, Unions Scheduling New Talks with Mediators,” Sfgate.com (Aug. 12, 2013), www.sfgate.com/bayarea/article/BART-unions-scheduling-new-talks-with-mediators-4727009.php. This is a classic mediation tool that allows the parties to start discussions with matters that have seen progress. If no deal was reached on the major issues, the unions threatened another strike on Oct. 11 and BART would be powerless to stop them because the law allows for only one “cooling-off” period. After three weeks of small concessions, and just minutes before the expiration of the “cooling-off” period, union negotiators agreed to remain at the bargaining table.


Although exact details of the negotiations are unknown due to confidentiality, the focus was on the terms of the contract regarding raises and benefits.

Cohen’s involvement led to a narrowing of the deep divides regarding benefits and compensation issues. He may have arrived too late, however, as suddenly the issues of work rules soared to the head of the line in discussions. Five days after his arrival, the acclaimed mediator packed up and left the negotiations. Marisa Lagos, “BART Gap Too Wide for Respected Mediator to Bridge,” Sfgate.com (Oct. 19, 2013), www.sfgate.com/bayarea/article/BART-gap-too-wide-for-respected-mediator-to-bridge-4908378.php. On Oct. 18, BART workers went on strike for a second time, rejecting BART’s “final offer” represented by a move from a 10 percent to a 12 percent increase in pay raises.

After more than six months of negotiations, two crippling rail shutdowns and threats of many more strikes, the labor war finally ended on Oct. 21, 2013, just two days after two track workers were killed in a BART train accident. Federal investigators revealed that an inexperienced operator drove the train. Union representatives warned management that training operators to operate trains during the walkout could be dangerous. Mike Rosenberg, “BART Strike Deal: How It Happened and Who Gets What,” San Jose Mercury News (Oct. 22, 2013), www.mercurynews.com/bart/ci_24366001/bart-strike-deal-how-it-happened-and-who. In a joint press conference, BART disclosed that the offer made was more than it wanted to pay, but that both sides made a compromise to reach the agreement and to keep the Bay Area moving. The new contract is expected to give workers at least a 15.4 percent total raise over the next four years, and ultimately reflects the headway made throughout the mediations.

—Breanna Green

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Under the Supervision of

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Chair, LSBA Alternative Dispute Resolution Section

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Mere Notice is Not Sufficient “Participation” in Bankruptcy to Effectively Void Liens

Acceptance Loan Co. v. S. White Transp., Inc. (In re S. White Transp., Inc.), 725 F.3d 494 (5 Cir. 2013).

In 2004, Acceptance Loan Co., Inc. perfected a security interest in S. White Transportation, Inc.’s (SWT) principal asset. SWT contested Acceptance’s security interest in Mississippi state court and later filed for bankruptcy in 2010. In its schedules, SWT listed Acceptance’s claim as “disputed.” While Acceptance never filed a proof of claim in the bankruptcy, it received notice of the bankruptcy on several occasions. SWT confirmed a plan of reorganization that invalidated Acceptance’s lien and provided that Acceptance would receive nothing under the plan. Acceptance sought a declaratory judgment that its lien survived the bankruptcy or, in the alternative, requested that the bankruptcy court amend its confirmation order to provide for Acceptance’s lien.

The bankruptcy court denied Acceptance’s motion, citing to section 1141(c), which provides that “the property dealt with by the plan is free and clear of all claims and interests of creditors . . . .” While 5th Circuit jurisprudence dictates that section 1141(c) voids only liens held by a “lien holder [who] participates in the reorganization,” Elixir Indus., Inc. v. City Bank & Trust Co. (In re Ahern Enters., Inc.), 507 F.3d 817 (5 Cir. 2007), the bankruptcy court held that Acceptance had “participated” in the bankruptcy since it received several bankruptcy notices. Acceptance appealed, and the district court reversed, holding “mere notice does not constitute participation within the meaning of In re Ahern.” SWT appealed to the 5th Circuit.

The 5th Circuit reviewed its decision in Ahern, in which it held that four conditions must be met for a lien to be voided under section 1141(c): “(1) the plan must be confirmed; (2) the property that is subject to the lien must be dealt with by the plan; (3) the lien holder must participate in the reorganization; and (4) the plan must not preserve the lien.” 507 F.3d at 822.

The Ahern court did not, however, specify what constitutes “participation” under the third prong. In assessing the requirements for participation as to Acceptance’s lien, the 5th Circuit noted that the word “participation” connotes activity, and not mere nonfeasance.

The 5th Circuit affirmed the decision of the bankruptcy court, holding that a lien holder’s passive receipt of notice is not sufficient “participation” in a bankruptcy to void a lien through the plan confirmation process under 11 U.S.C. § 1141(c).
Sanctions for Failure to Comply with Rule 9’s Particularity Requirement


Jason D. Anderson worked as an attorney at Weinstein & Riley, P.S., a law firm that represented Discover Bank in various bankruptcy matters. In Monteagudo, Anderson on behalf of Discover alleged the debtor, Gene Michael Monteagudo, made fraudulent charges on his Discover credit card, and that pursuant to 11 U.S.C. § 523(a)(2)(A), the amount was nondischargeable.

Rule 9 of the Federal Rules of Civil Procedure requires a party alleging fraud to “state with particularity the circumstances constituting fraud or mistake.” Anderson’s initial complaint failed to allege any facts to support the fraud claim against the debtor. The bankruptcy court instructed Anderson to comply with Rule 9; however, Anderson failed to amend his complaint. Subsequently, the bankruptcy court ordered Anderson to show cause why he and Discover should not be compelled to comply with Rule 9 and scheduled a hearing requiring that Anderson and a Discover representative attend. Anderson appeared at the hearing but was not accompanied by a Discover representative. Consequently, the bankruptcy court ordered Anderson to appear in court twice a day each day until he was joined by a Discover representative. Several days later, when the Discover representative appeared, the bankruptcy court proceeded with the show cause hearing in order to receive assurances from Discover and Anderson that they would comply with Rule 9. Concerned that Anderson would continue to plead section 523(a)(2) complaints without particularity in other cases, the bankruptcy court issued an order directing Anderson and every attorney from Weinstein & Riley to comply with Rule 9 in all section 523(a)(2) complaints and to file a copy of the order along with all such pleadings for one year.

Anderson appealed the bankruptcy court’s decision, and the district court remanded the case instructing the bankruptcy court to specify its authority for entering the order. The bankruptcy court entered a supplemental order stating that it used its inherent authority to impose sanctions, and the district court affirmed. Anderson then appealed to the 5th Circuit.

On appeal to the 5th Circuit, Anderson argued that the district court erred in affirming the bankruptcy court’s order because:

(1) the bankruptcy court did not properly invoke its inherent power to sanction because it did not make an explicit finding of bad faith in its initial order; (2) the bankruptcy court erred in finding Anderson acted in bad faith because, inter alia, he amended his deficient complaints; (3) the order was improper because it had the practical effect of suspension; and (4) the order violated his constitutional right to Due Process because it did not afford him proper notice.

The 5th Circuit rejected Anderson’s arguments. The 5th Circuit found that the bankruptcy court made a finding of bad faith in the supplemental order and bad faith could be inferred from the original order. The 5th Circuit recognized that typically a bankruptcy court can invoke its inherent power to sanction only if there is a finding of bad faith; however, “when bad faith is patent from the record and specific findings are unnecessary to understand the misconduct giving rise to the sanction, the necessary finding of ‘bad faith’ may be inferred.”

The 5th Circuit also rejected Anderson’s second argument, finding that, while Anderson amended the complaints, the sanction was imposed not only because of his initial failure to comply with Rule 9, but also due to his refusal to acknowledge the bankruptcy court’s instructions and abide by them.

Finally, the 5th Circuit rejected the last two arguments, finding that nothing in the order prevented Anderson from practicing law and Anderson was not denied due process. As the show cause order clearly instructed Anderson to show cause why he should not be compelled to file future section 523(a)(2) pleadings in accordance with Rule 9, the 5th Circuit found he was adequately put on notice that if he failed to comply with the order, an appropriate sanction may be fashioned. The 5th Circuit thereby affirmed the decision of the district court.

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and

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Ineffective Assistance of Counsel

State v. Thomas, 12-1410 (La. 9/4/13), ____ So.3d ____, 2013 WL 4734577.

When the defendant was found guilty of attempted aggravated burglary in the first trial (instead of the charged offense of aggravated burglary), that verdict served as an acquittal for the offense of aggravated burglary. Thus, retrying the defendant for aggravated burglary violated double jeopardy. Counsel’s failure to file (prior to the new trial) a motion to quash based on double jeopardy was deficient representation even though the issue was not recognized by eight previous attorneys who represented the defendant, the district attorney or the trial court. Because the verdict in the final trial was the responsive verdict of unauthorized entry of an inhabited dwelling (not aggravated burglary), the verdict cured the double jeopardy implications of retrying the defendant for aggravated burglary. Counsel’s failure to file a motion to quash did not establish prejudice as required for a claim of ineffective assistance of counsel. If such a motion had been filed, the state could have simply amended the charging document to cure the defect. Finding the defendant failed to satisfy the prejudice prong of the test for ineffective assistance of counsel, the Supreme Court reversed the trial court’s ruling that had granted the defendant’s application for postconviction relief.

Postconviction Relief

State v. Pierre, 13-0873 (La. 10/15/13), ____ So.3d ____, 2013 WL 5789031 (per curiam).

The defendant was found guilty of aggravated rape of the granddaughter of his live-in partner. The victim was 12 when she reported intense sexual abuse that had occurred over the years. At trial, the defendant testified and denied sexually abusing the victim. Defense counsel argued that the defendant had, in effect, become an unwitting pawn in an intra-family custody dispute in which the victim used allegations of sexual abuse to facilitate her perceived interests in where and how she wanted to live. After trial, and while the appeal was pending, the victim reported to police that a teenage boy had forced her and a friend to perform sex acts. The victim later admitted the sex with the boy was consensual. Later that same year, the victim revealed that another man also had been sexually abusing her during the same period of time the defendant was abusing her. At trial, she had denied having sexual activity with anyone other than the defendant.

After holding an evidentiary hearing, the trial court granted postconviction relief. The court found that the evidence revealed at the hearing undermined the prosecution’s entire case and deprived the defendant of being able to use the information to cross-examine the victim at the trial.

The Supreme Court concluded the trial court erred in its ruling for two reasons. First, the issue of whether free-standing claims of actual innocence not based on DNA evidence are cognizable in state postconviction proceedings was left open in State v. Conway, 01-2808 (La. 4/12/02), 816 So.2d 290, and this case was not the one for the court to decide definitively that issue. The claims in the application for postconviction relief went to the victim’s credibility, not to actual innocence. Second, the district court appeared to use a lower standard of materiality under the guise of implementing a Conway claim of actual innocence, but the time for raising the claim under the lower standard in a motion for new trial had expired. The Supreme Court reinstated the conviction and sentence and remanded for the trial court to consider the remaining claims for postconviction relief.

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Federal Power Act Preempts Property Damage Claims Brought Under State Tort Law

On Oct. 9, 2013, the 5th Circuit Court of Appeals in Simmons v. Sabine River Authority Louisiana, 732 F.3d 469 (5 Cir. 2013), found that the Federal Power Act (FPA) preempts property damage claims brought under state tort law. The court affirmed the dismissal of an action that 28 property owners filed against the operators of a hydroelectric project, finding that the FPA preempts these claims “where the alleged damage is the result of ‘negligently’ operating in compliance with a FERC-issued license.” Id. at 474.

The Federal Power Commission granted a license to Louisiana and Texas authorities for the construction, operation and maintenance of a hydroelectric project on the Sabine River, which includes a dam, reservoir, spillway and a hydroelectric plant. The state authorities then granted Entergy Corporation and its affiliates the right to oversee power generation and the right to purchase that power, subjecting Entergy to the terms of the license. The license dictates the reservoir water levels, which the state authorities and Entergy maintain through spillway gates and/or power turbines.

The plaintiffs allege that the defendants negligently operated the spillway gates during the heavy rainfall by failing to open them soon enough and then releasing water from the reservoir too quickly, causing the water to flood their property. The 5th Circuit noted that FERC had denied plaintiffs’ previous request to make changes that would address their concerns of flooding. The court considered plaintiffs’ claims as an attempt to use state law to accomplish the same objective. The 5th Circuit interpreted the complaint as alleging that defendants “were negligent because they failed to act in a manner FERC had expressly declined to require.” Id. at 471.

Section 10(c) of the FPA provides that “[e]ach licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.” But the FPA’s savings clause in Section 27, which the 5th Circuit read as broadly as possible, provides:
Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

16 U.S.C. § 821. The 5th Circuit agreed with the 9th Circuit’s statement that the Supreme Court has “read the broadest possible negative pregnant into [the FPA’s] savings clause,” exempting only “a state property law regime [that] enables users of streams and wells to obtain proprietary rights in a continuing quantity of water.” Id. at 476, quoting Sayles Hydro Assocs. v. Maughan, 985 F.2d 451, 454-55 (9 Cir. 1993). The court concluded that the claims “infringe on FERC’s operational control” because “FERC, not state tort law, must set the appropriate duty of care for dam operators.” Id. at 476.

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Community Property

**Rush v. Rush**, 12-1502 (La. App. 1 Cir. 3/25/13), 115 So.3d 508, writ denied, 13-0911 (La. 5/31/13), 118 So.3d 398.

The parties signed a pre-nuptial agreement before a notary, but without witnesses. After Mr. Rush filed a petition for divorce, he signed an acknowledgment of his signature by authentic act. He then issued a request for admissions to Ms. Rush, who admitted her signature on the matrimonial agreement. The trial court found the agreement to be valid because their signatures were thus duly acknowledged.

Although the trial court designated the judgment as final for appeal, the court of appeal found that it was not, but converted the appeal to a writ. It reversed the trial court, finding that La. Civ.C. arts. 2329 and 2331 had to be read together and required that the appropriate form exist at the time of the parties’ marriage. As it was invalid for form at their marriage, it could not subsequently be validated.

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**Moore v. Moore**, 12-959 (La. App. 3 Cir. 4/10/13), 116 So.3d 18, writ denied, 13-1065 (La. 6/21/13), 118 So.3d 421.

The parties were separate in property. Following Ms. Moore’s death, Mr. Moore sued her succession and heirs for reimbursement for taxes he paid on her separate property income and for her share of a tax lien established against him for unpaid taxes during the parties’ marriage. Even though he filed his suit after the succession was closed, his suit was not untimely because (1) demand had been made prior to her death and (2) the defendants did not properly raise an exception of prescription. As the succession was closed prior to the suit, the trial court’s judgment against the succession and heirs was revised to delete the succession and render judgment against the heirs only.

**Succ. of Amaro**, 13-0022 (La. App. 4 Cir. 5/15/13), 116 So.3d 913.

After the trial court signed an ex parte judgment of possession in favor of the decedent’s husband, his son filed a petition to intervene and an appeal alleging that he was her heir and that he possessed a will she had made. The court of appeal found that while the trial court may not have erred in rendering the judgment based on the evidence it had before it, because appellant had an appealable interest, the judgment needed to be vacated so that a hearing could be held to determine his status, the status of the will and the classification of the property.

**Buffone v. Mangano**, 12-0819 (La. App. 4 Cir. 5/17/13), 116 So.3d 922.

Mr. Buffone and Mr. Mangano were each issued 100 of the 1,000 shares of a closely held corporation. Mr. Mangano was named the president and Mr. Buffone the vice president. Subsequently, the remaining 800 shares were issued to Mr. Mangano’s wife by a stock certificate signed by Mr. and Mrs. Mangano as president and secretary. There were no minutes from a board of directors’ meeting, no vote to issue the stock and no corporate resolution authorizing the stock issuance. However, because Mr. Buffone made no effort to involve himself in the workings of the corporation and, after receiving information that Ms. Mangano had been issued the 800 shares, did nothing for three more years, the court found that he had ratified the issuance of the stock as a result of his indifference, lack of due diligence and avoidance of his fiduciary
responsibilities as a shareholder. The court found that it was unreasonable for him to allow her to manage the business for 25 years and then complain after he had failed to take any action regarding the operation of the entity even after he became aware of the issuance of the stock to her.

Crovetto v. Crovetto, 12-1895 (La. App. 1 Cir. 6/7/13), 118 So.3d 1258.

After this community property partition case had been tried, but before judgment was rendered, Mr. Crovetto died. The trial court then, sua sponte, determined, on the basis of McCann v. McCann, 11-2434 (La. 5/8/12), 93 So.3d 544, that it now lacked subject matter jurisdiction. Both parties sought a new trial, which was denied, and both sought writs. The 1st Circuit reversed the trial court, finding that the statutory basis underlying the Supreme Court's decision in McCann, which concerned the Family Court for East Baton Rouge Parish, was a different enabling statute than that which created the two family court seats in the 22nd Judicial District Court, and that under the enabling legislation for the 22nd Judicial District Court, it did not lose jurisdiction over a community property partition after one of the spouses died.

Schexnayder v. Yolande Schexnayder & Son, Inc., 12-0885 (La. App. 5 Cir. 5/23/13), 119 So.3d 624.

Mr. Schexnayder donated 7,500 shares of his separate property stock in a corporation to Ms. Schexnayder with the stipulation that the property would become community property. She then called a meeting of the shareholders and voted him out as president, and voted herself in as president and as treasurer of the entity. He filed a petition for mandamus and quo warranto, which was granted by the trial court, and affirmed by the court of appeal, which found that the donation only made the shares community property, and as they remained in his name, he alone had the right to vote them. The donation to her, to make the shares community property, did not make the stock her separate property, nor did it give her voting rights.

Custody/Bergeron

Mulkey v. Mulkey, 12-2709 (La. 5/7/13), 118 So.3d 357.

In this change of custody case, the Supreme Court addressed one of those “narrow class of cases” where a modification of custody is appropriate even though the present arrangement is not harmful to the child, but the harm caused by the modification, if any, was substantially outweighed by the advantages to the child, and the change was in the child’s best interest. Here, the 15-year-old child had a strong and well supported preference to live with his father, and the parents’ abilities were relatively equal. The changes that had occurred since the prior judgment favored the child living with his father, and the Supreme Court could find no basis to rule that the trial court’s allowing the modification was manifestly erroneous, particularly given the deference allotted to the trial court’s evaluation of the case before it.

Final Spousal Support

Anderson v. Anderson, 48,027 (La. App. 2 Cir. 5/15/13), 117 So.3d 208.

The court found that final spousal support was “limited to an amount sufficient for maintenance as opposed to continuing an accustomed style of living.” The court did not err in assigning Ms. Anderson an imputed wage based on 40 hours per week, even though she worked only 36 hours per week. The court included in her spousal support $600 per month for rent, even though she was living with her father and not actually paying any rent. It also found that she was entitled to funds for utilities, Internet, cable, hair dresser and dining out, given her depression and anxiety. Mr. Anderson’s income was also adjusted for expenses paid for him by his companies.

Visitation/Grandparents

Rogers v. Pastureau, 12-2008 (La. App. 1 Cir. 4/26/13), 117 So.3d 517, writ denied, 13-1833 (La. 8/8/13), 120 So.3d 47.
After the mother’s death, the maternal grandparents were awarded visitation over the objection of the children’s father and adoptive mother. His new wife’s adopting the children did not divest the family court of jurisdiction and change jurisdiction to juvenile court where the adoption took place because the grandparents’ custody suit was initiated prior to the petition for adoption. The trial court’s finding of contempt for the father’s refusing to allow the grandparents court-awarded visitation was affirmed. The court found that the father attempted to alienate the children from the grandparents and that his testimony was not credible regarding the reasons for his non-cooperation with the grandparents. The court’s limiting the father’s contact with the children while they were with the grandparents did not impermissibly infringe on his parental rights due to his prior actions in preventing visitation, which made the restrictions necessary.

Furthermore, there was no violation of the Equal Protection Clause on the allegation that La. R.S. 9:344 treated adoptive parents differently from biological parents. Because the burden of travel, expenses and time was greater for the grandparents, the father’s fundamental rights as a parent were not violated. Given the “extensively documented loving and nurturing relationship with the children that had existed for the duration of the children’s lives,” the trial court did not err in awarding visitation to the grandparents.

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In a construction-defect case initiated by a project owner against the general contractor, the general contractor filed a third-party demand against both the manufacturer and distributor of the windows and doors for alleged defects in the products supplied for a high-rise residential condominium complex at the Lakefront in New Orleans. Both the manufacturer and supplier pleaded prescription and were dismissed from the case by the trial court. The court of appeal affirmed the judgment of the trial court in nearly all respects. The principal lawsuit was filed after

Prescription/Peremption

Marseilles Homeowners Condominium Ass’n v. Broadmoor, L.L.C., 111 So.3d 1099, 12-1233 (La. App. 4 Cir. 2/27/13).

In a construction-defect case initiated by a project owner against the general contractor, the general contractor filed a third-party demand against both the manufacturer and distributor of the windows and doors for alleged defects in the products supplied for a high-rise residential condominium complex at the Lakefront in New Orleans. Both the manufacturer and supplier pleaded prescription and were dismissed from the case by the trial court. The court of appeal affirmed the judgment of the trial court in nearly all respects.

The principal lawsuit was filed after
the condominium building was apparently completed (the case is not abundantly clear on the completion date) and followed after Tropical Storm Isidore and Hurricane Lili hit New Orleans in 2002. For its part, following the storms, the manufacturer resealed the windows and doors in late 2002 and also provided a new 10-year warranty that commenced Dec. 9, 2002. Finally — and critically — the court determined that in 2005 following Hurricane Katrina, the general contractor noted additional problems with the manufactured products. However, the window-and-door manufacturer and distributor were not added as third-party defendants by the general contractor until 2008. According to the court of appeal, that was too late.

The court of appeal analyzed the chain of events leading to the naming of the window-and-door manufacturer and distributor as third-party defendants, as well as the fact that the manufactured products in question were provided with a 10-year warranty that commenced in late 2002. Central to the court’s dismissal of the manufacturer and distributor was the court’s finding that recovery against parties such as the manufacturer and distributor — even based on a theory of express warranty (such as the 10-year warranty) — are “subsumed under the Louisiana Products Liability Act,” a statutory scheme which, for the intents and purposes of this case, provided a one-year period of prescription (one year from the day the injury or damages sustained, in accordance with La. Civ.C. art. 3492), or otherwise subject to the laws governing redhibition claims in Louisiana (also subject to one-year prescription following discovery of the defect, La. Civ.C. art. 2534).

While acknowledging that the express 10-year warranty was absolutely in effect in 2005 when the general contractor alleges it became aware of additional defects in the manufactured products, the court declared that upon such knowledge the one-year prescriptive periods applicable to both the Louisiana Products Liability Act and to redhibition claims applied, requiring that suit against the manufacturer and/or distributor be brought within one year. (The court rejected an additional argument that prescription had not run because the general contractor had been lulled into believing that the manufacturer was not contesting liability. The court left open, however — and remanded to the trial court for further evaluation and decision — the matter of an alleged contractual indemnity obligation of the window-and-door distributor, an obligation which was memorialized in extremely fine print on the reverse side of the standard purchase order used by the general contractor.)

Construction Liens

A subcontractor brought suit to enforce its lien against a homeowner after the general contractor on the construction of a home in Minden, La., defaulted on the project and failed to pay the subcontractor. The homeowner counterclaimed against the subcontractor, demanding that the lien of the subcontractor be removed (following the homeowner providing the statutorily required 10-day demand for removal of the lien pursuant to La. R.S. 9:4833) and seeking its attorney’s fees.

The court in *Urban’s Ceramic Tile, Inc. v. McLain*, 47,955 (La. App. 2 Cir. 4/10/13), 113 So.3d 477, was faced with the difficult task of determining what constituted “actual substantial completion” of the constructed home based on myriad facts and circumstances, but with no overt substantial completion certificate or other official declaration of substantial completion. The importance of the actual substantial completion date is this: by law, the subcontractor had 60 days to file its lien following actual substantial completion (because the general contractor had not filed in the public records notice of its general contract; see La. R.S. 9:4822). The subcontractor had filed its lien on Feb. 16, 2011.

Confounding the issue was that the owner placed the general contractor in default for failing to perform, a matter that the subcontractor urged should be proof sufficient that the project never achieved substantial completion. The subcontractor’s arguments that its lien was timely was based on the default plus the fact that a list of incomplete work — including work that was never commenced — was provided by the owner with the notice of default to the general.

On the other hand, the owner presented relatively unrefuted testimony that in late October 2012 the home was “just about finished.” He contended that the list of items provided to the contractor on default was a punch list of relatively minor items only. Unfortunately for the subcontractor, the sub’s own witnesses tended to confirm the general completeness of the home more than 60 days before the subcontractor filed its lien, one such witness noting that the house appeared to be “pretty much complete” in early November 2010.

Relying on the definition of substantial completion contained in La. R.S. 9:4822, the court of appeal affirmed the trial court’s finding that the subcontractor’s lien was untimely. According to the court, the key to assessing whether substantial completion was achieved was whether any of the unfinished items — indeed, even those items of work that had not been started (including, for example, installation of attic insulation) — “defeat[ed] the intended use of the house.” Finding that the house was suited for its intended use and actually in use — based in part on a photograph taken in mid-December 2011 "showing..."
a mayonnaise jar on the counter” — the court established that substantial completion occurred more than 60 days before the subcontractor’s lien was filed, requiring dismissal of the lien.

Remaining for the court to consider was the trial court’s assessment of attorney’s fees awarded to the owner. The applicable statute, La. R.S. 9:4833, provides for attorney’s fees if the decision to refrain from honoring the request to remove the lien is “without reasonable cause.” Notwithstanding the subcontractor’s myriad arguments concerning the potential bases for finding that substantial completion had not occurred more than 60 days before filing of its lien, the court upheld the trial court’s assessment of a finding that the failure to deliver the cancellation of the lien when requested was without reasonable cause, and affirmed the attorney’s fees award. The court declared that it was essentially constrained to uphold the district court’s decision because the witnesses for the subcontractor confirmed the testimony of the owner concerning the relative completeness of the home as early as November 2010, and none of the witnesses for the subcontractor testified that the work items remaining to be done on the home were “difficult to correct or impaired the intended use of the house.”

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Skye Sonnier was a crew member aboard Estis Rig 23, a barge supporting a truck-mounted drilling rig operating in Bayou Sorrell, a navigable waterway in Iberville Parish, when a derrick pipe shifted, causing the rig and truck to topple over. Sonnier was killed and three crew members were injured. Haleigh McBride, individually, on behalf of Sonnier’s minor child and as administratrix of his estate, filed suit in federal court stating causes of action for unseaworthiness under general maritime law and negligence under the Jones Act and seeking compensatory as well as “punitive and/or exemplary” damages.

The magistrate judge granted Estis’s motion to dismiss the claims for punitive damages, finding such damages are not an available remedy for unseaworthiness or Jones Act. The 5th Circuit certified the judgment for immediate appeal and reversed and remanded.

Courts look to the two primary sources of federal maritime law: common law developed by federal courts and statutory law. Traditionally, ill or injured seamen had two causes of action under general maritime law, maintenance and cure without regard to fault and unseaworthiness for injury caused by a vessel’s operational unfitness. No separate cause of action existed for injury resulting from employer negligence or wrongful death or survival actions.

In 1920, Congress enacted the Jones Act and the Death on the High Seas Act to create causes of action for employer negligence in navigable waters and on the high seas and survival and wrongful death remedies. Congress did not address punitive damages, historically available in general maritime actions.

In 1990, the Supreme Court stated in Miles v. Apex Marine Corp., 111 S.Ct. 317 (1990), that an admiralty court should look primarily to legislative enactments for policy guidance. The court denied non-pecuniary damages in a suit for the wrongful death of a Jones Act seaman under general maritime law. In Guevara v. Maritime Overseas Corp., 59 F.3d 1496 (5 Cir. 1995), the court reasoned that because punitive damages are not an available remedy for personal injury to a seaman under the Jones Act, they are likewise not available for personal injury resulting from a maintenance and cure violation. This was perceived to “portend the disappearance of punitive damages from the entire body of maritime law.”

The trend was reversed in 2009 when the Supreme Court in Atlantic Sounding Co., Inc. v. Townsend, 129 S.Ct. 2561 (2009), abrogated Guevara and restored the availability of punitive damages for maintenance and cure violations, reasoning that “punitive damages have long been an accepted remedy under general maritime law,” and “nothing in the Jones Act altered this understanding.” The court stated that the Jones Act “created a statutory cause of action for negligence, but it did not eliminate pre-existing remedies available to seamen for the separate common-law cause of action based on a seaman’s right to maintenance and cure,” noting that the Act’s purpose “was to enlarge [seamen’s] protection, not to narrow it.”
In *McBride*, the plaintiffs urged that punitive damages remain available as a remedy for the general maritime law cause of action for unseaworthiness because, like maintenance and cure, unseaworthiness was established as a cause of action before passage of the Jones Act, courts traditionally awarded punitive damages under general maritime law, and the Jones Act does not address unseaworthiness or purport to limit its remedies. Estis countered that because the crew members sought redress for wrongful death and personal injuries arising from a maritime accident — types of harm compensable under both general and statutory maritime law — and punitive damages are not available under statutory maritime law, punitive damages are not available.

The 5th Circuit found that *Townsend* established a rule that if a general maritime law cause of action and remedy were established before the passage of the Jones Act, and the Jones Act did not address that cause of action or remedy, then that remedy remains available under that cause of action unless and until Congress intercedes. It concluded that:

Like maintenance and cure, unseaworthiness was established as a general maritime claim before the passage of the Jones Act, punitive damages were available under general maritime law, and the Jones Act does not address unseaworthiness or limit its remedies . . . . [T]herefore, . . . punitive damages remain available to seamen as a remedy for the general maritime law claim of unseaworthiness.

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As previously reported in this column, several U.S. states recently passed legislation attempting to preclude or significantly diminish the applicability of international law in U.S. courts. Legislation enacted by the state of Oklahoma, titled the “Save Our State Amendment,” sought to amend the Oklahoma state Constitution to preclude Oklahoma courts from “look[ing] to the legal precepts of other nations or cultures. Specifically the courts shall not consider international or Sharia law.” The legislation was placed on an electoral ballot for a vote of the people on Nov. 2, 2010. More than 70 percent of those who voted favored the amendment.

Plaintiff Awad sought an injunction and challenged the constitutionality of the amendment, urging Establishment Clause and First Amendment Free Exercise Clause violations. After granting a preliminary injunction and allowing an amended complaint to add new parties and additional constitutional challenges, the court resolved cross-motions for summary judgment on whether the election results should be permanently enjoined due to constitutional deficiencies. The court focused solely on the Establishment Clause claim and applied the *Larson* test as the proposed amendment allegedly discriminated among religions by singling out Sharia law. *Larson* imposes a strict scrutiny standard, requiring a compelling government interest and a close fit between the amendment and the compelling government interest.

The court granted Awad’s motion for summary judgment, finding that Oklahoma supplied absolutely no compelling state interest for a law that fails to remedy any specific problem. Oklahoma argued that the state has a compelling interest in determining what law is applied by its courts, but the district court was not persuaded due to the lack of any concrete problem that the challenged amendment sought to remedy.

The court went on to address a severability argument by Oklahoma, contending that, to the extent the amendment does violate the Establishment Clause, the court should sever the offending portions and leave the remainder of the amendment intact. The court found that the unconstitutional Sharia law provisions were not severable from the remainder insofar as it would significantly alter the substance of the amendment. Numerous statements were made by the amendment’s legislative authors indicating that the “primary purpose of the amendment was to specifically target and outlaw Sharia law and to act as a preemptive strike against Sharia law to protect Oklahoma from a perceived ‘threat’ of Sharia law being utilized in Oklahoma courts.”
Permanent Normal Trade Relations with Russia

On Dec. 14, 2012, President Obama signed into law the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act, 126 Stat. 1496. The law extends normal trade relations treatment to products of the Russian Federation and Moldova and paved the way for Russia’s final and complete accession to the World Trade Organization (WTO). Russia became the 156th member of the WTO on Aug. 22, 2012, but Russia and the United States had issued notices of non-application because the United States had not yet extended normal trade relation status. This is an important step in increasing bilateral trade relations between the two nations, especially in light of the Intellectual Property Rights Action Plan the United States and Russia executed on Dec. 20, 2012, which will promote strong intellectual property protection.

European Commission Directorate-General for Trade


The European Union (EU) concluded negotiations on a free trade agreement with Ukraine on July 19, 2012. The parties hope that the DCFTA will be part of a future Association Agreement whereby Ukraine formally joins the EU. The DCFTA is not yet in force as each side will have to alter its internal laws and regulations to conform to the agreement. The signing provoked a significant reaction in Moscow, where economic officials remain hopeful that Ukraine will join the existing Customs Union between Russia, Belarus and Kazakhstan. Russia actually blocked Ukrainian cargo from entering its territory for a short time in protest of the developing EU-Ukraine relationship.

World Trade Organization


A WTO Dispute Settlement Body Panel issued its report regarding China’s Ministry of Commerce imposition of anti-dumping and countervailing measures on certain chicken “broiler products” exported from the United States to China. The United States initiated consultations and later requested a formal panel to review numerous alleged inconsistencies in the application of China’s anti-dumping and countervailing duty law, in violation of the WTO Anti-Dumping and SCM Agreements.

China initially imposed AD rates ranging from 50.3 to 53.4 percent for the U.S. producers responding to China’s investigation. A rate of 105.4 percent was applied to all other producers. CVD rates were applied between 4.0 and 12.5 percent for participating producers and 30.3 to all others. The WTO panel found in favor of the United States almost universally, including in the following aspects: (1) imposing CVD rates in excess of the amount of subsidies; (2) relying upon inaccurate pricing comparisons when examining injury to the domestic industry; and (3) improperly calculating the “all others” rates.

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Protecting Those Who Protected Us

Collaboration between businesses and government to help our nation’s veterans reenter the workforce is on the upsurge. Campaigns such as the I Heart Radio “Show Your Stripes” Initiative (www.showyourstripes.org), Walmart’s “Veterans Welcome Home” Commitment (www.walmart.com) and the National Chamber Foundation and Capital One’s “Hiring 500,000 Heroes” (www.uschamber.com/hiringourheroes/hiring500000heroes) showcase the importance of hiring veterans and the unique skills they offer.

The Louisiana Department of Veterans Affairs (LDVA) provides many services to veterans and their families in health care, education, disability benefits, long-term care and burial honors (www.vetaffairs.la.gov). In addition, the LDVA provides information regarding all state and federal programs geared toward employing veterans and using veteran-owned businesses in government contracting (www.vetaffairs.la.gov/Employment).

Hiring veterans (and those serving in the reserves) is a laudable goal, but protecting their employment is both laudable and required by state or federal law. The Uniformed Services Employment and Re-employment Rights Act (USERRA) is a federal statute that provides job protection and employment rights to military personnel who serve on active or reserve duty. In 2011, the Department of Labor Veterans Employment and Training Service (VETS) program received more than 1,500 USERRA complaints, nearly 35 percent of which included allegations of some form of employment discrimination (www.dol.gov/vets/programs/userra). Twenty-five percent of the complaints involved allegations of improper reinstatement into civilian jobs following military service.

Many businesses are familiar with USERRA, but Louisiana has some little known and rarely used state laws that also protect veterans and reservists. In particular, the Military Service Relief Act, La R.S. 29:401-425, provides, among other things, reemployment rights and retirement credit, life, health and accident insurance coverage. The act also prohibits (1) academic penalties in higher education, (2) employment practices that discriminate against workers or applicants because they are members of the “uniformed services” and (3) retaliation against any person because the person exercises his rights under the law or assists another person in doing so, regardless of whether the person assisting is a member of the military.

Employers should be mindful that if Louisiana law provides more protection than federal law, Louisiana law can be applied in addition to the federal law. For example, USERRA mandates that a reservist who is called to active duty must be restored to his same or comparable position (with no less pay, seniority status or benefits). In addition, Louisiana law requires that once his position is restored, he may not be discharged from his position “without cause within one year after restoration to the position.” La. R.S. 29:38(B). Employers should be aware of this added one-year protection, which basically alters the employment-at-will doctrine for one year after a leave for active duty. In addition, Louisiana law provides that if an employer refuses to appropriately restore a reservist to his position, he can bring suit to require compliance and apply to the district attorney to appear and act as attorney for such person in the prosecution or settlement of the claim. Attorney’s fees are available for good cause, including in cases where the district attorney may be unwilling or unable to act as the service member’s attorney.

The Louisiana Legislature recently enacted a new protection for veterans: leave for veterans who need to attend medical appointments in order to obtain veteran’s benefits. La. R.S. 23:331, which went into effect on Aug. 1, 2013, makes it unlawful for an employer to “discharge, otherwise discipline, threaten to discharge, or threaten to discipline” any veteran for time off work...
needed to “attend medical appointments necessary to meet the requirements to receive his veteran benefits.”

The statute extends to all veterans, defined as “any honorably discharged veteran of the armed forces of the United States including reserve components of the armed forces, the Army National Guard and the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the president in time of war or emergency.”

An employer may request that the veteran employee verify his attendance at a medical appointment by presenting “a bill, receipt, or excuse from the medical provider.” The law does not state how the time should be counted or that such time would not count as sick or personal leave. Therefore, employers likely can deduct the leave for medical appointments from the employee’s usual sick or personal leave, similar to how employers often count time off taken under the Family Medical Leave Act (FMLA). However, if the employee has exhausted his sick or personal leave, the statute would prohibit the employer from then using those absences as a basis for discipline or termination.

Even absent this new statute, veterans may have leave rights. To the extent that the medical appointment is for medical treatment, rather than just to meet the requirements to obtain benefits, other federal leave and accommodation statutes may apply. For example, the veteran may have a “serious health condition” that would qualify for intermittent leave for medical appointments under the FMLA, or a disability that may require accommodation over and above the FMLA under the Americans with Disability Act.

However, in some circumstances, whether the federal laws would apply may be less clear — one example may be if the medical appointment was necessary only for filling out paperwork and did not implicate any actual medical need. In addition, if the employer does not employ more than 50 people, the employee has not worked for the employer for more than a year, or if the employee has not worked more than 1,250 hours in the preceding year, the employer would not be subject to the FMLA, and the new Act would not provide protection for that person’s job.

In sum, veterans and employers need to be aware of these Louisiana statutes. There may be circumstances under which they provide more protection than the more well known federal leave and accommodation statutes. Employers often understand the need for such leave and accommodation of veterans, but they should be aware of the technical aspects required by law, especially because noncompliance could generate negative publicity while also subjecting the employer to suit, potentially with the parish’s district attorney as its opponent.

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Assumption of a Seismic License

_in re Virgin Offshore USA, Inc._


This case involved the assumption of a seismic license by a trustee for a bankruptcy debtor, pursuant to 11 U.S.C. §365(c). TGSNOPEC Geophysical Co., L.P. (TGSN) granted a non-exclusive license to Virgin Offshore to review and use certain seismic data gathered by TGSN covering Ship Shoal 153 (OCS-G 18011). Virgin made a one-time payment as consideration for the seismic license. Eight years later, a petition for involuntary Chapter 11 bankruptcy was filed against Virgin by a number of oil and gas service companies. The trustee for Virgin moved to assume the TGSN seismic license. The bankruptcy court granted the trustee’s motion over TGSN’s opposition. TGSN appealed the ruling to the district court.

The crux of TGSN’s argument on appeal rested on the application and interpretation of 11 U.S.C. § 365(c) of the Bankruptcy Code. Under that provision, a movor must prove the following in order to assume a contract: (1) that the contract is executory, (2) that some non-bankruptcy law applies, (3) that such non-bankruptcy law bars assignment, (4) that such non-bankruptcy law bars assumption, and (5) that the mover does not consent to the assumption of the contract. The district court analyzed each of these factors, concluded that 11 U.S.C. § 365(c) did not apply and, therefore, affirmed the bankruptcy court’s ruling because Section 365 could not bar the assumption.

The court made the following findings. As to the first factor, the district court found

**Mineral Lease Royalties**

_Moore Family Resources, L.L.C. v. QEP Energy Co._


The Moores owned property in Bienville Parish. A portion of the property — 433 acres — was covered by a mineral lease originally let to Petro-Chem Operating Co. Petro-Chem later transferred the lease to QEP Energy. Months after, QEP mistakenly sent a royalty check to the Moores in the amount of $330,673.73. The check should have been sent to Petro-Chem. The Moores sued QEP for fraud.

The district court found that (1) because there was no evidence that the Moores used subterfuge or misrepresented any facts in order to obtain the $330,673.73 check from QEP and (2) because QEP admitted that the payment of the royalties to the Moores (instead of the Moores’ business) was its own internal error, those claims were not valid and, thus, should be dismissed. On the attorneys’ fee issue, the court dismissed the claim because QEP abandoned it in its opposition briefing.
that the law supported the proposition that the license was an executory contract, despite Virgin’s one-time payment to use the seismic data. As to the second factor, the district court found that TGSN’s argument that seismic data is “copyrightable” was unavailing, because (1) the license itself stated that the data constituted trade secrets and (2) TGSN did not provide enough proof to allow the court to determine whether the data was in fact copyrightable. Regarding the third factor, the district court found that even if copyright law did apply, it would bar assignment of the license because intellectual property licenses do not bestow ownership rights and, thus, cannot be assigned without the consent of the licensor. As to the fourth factor, the court, relying on U.S. 5th Circuit precedent, applied the “actual test” (versus “hypothetical test”) under Section 365(c) and found that because the trustee had no intention of assigning the license to a third-party, the trustee could assume the license. Finally, as to the fifth factor, the district court found, despite having conducted an analysis under Section 365, that that law did not apply because the license itself said that the trustee could “use” the seismic data. Section 365(c) is relevant only when the contract is silent on permission; here, the contract expressly permitted use of the data. Thus, the court affirmed the bankruptcy court’s ruling regarding assumption of the license.

**Notice-and-Cure Provision**


The Louisiana 1st Circuit Court of Appeal upheld a district court judgment, which, in part, stayed the case based on a notice-and-cure provision in a terminated lease. The appellate court stated that “[t]he trial court correctly found that the notice provision of the lease [which terminated prior to the filing of the action] . . . requires that respondents are entitled to notice and opportunity to cure before an action can proceed.” This ruling is significant because in many legacy lawsuits such provisions, particularly in a terminated lease, are rarely recognized by the courts.

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**Does the MMA Affect Prescription Rights of Non-Healthcare Providers?**

*Milbert v. Answering Bureau, Inc.*, 13-0022 (La. 6/28/13), 120 So.3d 678.

Following surgery, Milbert was discharged from Lafayette General Medical Center (LGMC) on Sept. 7, 2008. Two days later, Milbert’s wife phoned the surgeon to complain of complications. The call was automatically routed to the surgeon’s answering service (Dexcomm). The surgeon then contacted Milbert and told him to call if his pain worsened.

The next day, Milbert’s pain worsened. Mrs. Milbert called Dexcomm, but after not receiving the surgeon’s return call within a few minutes, the Milberts went to LGMC’s emergency room. No physician examined him for hours.

A surgeon had received Dexcomm’s message, called the Milberts and got their voice mail. He then asked Dexcomm to call his mobile phone if the Milberts called again. The Milberts continued calling Dexcomm from the emergency room. In one of those calls, Dexcomm said “office policy” prevented it from taking any additional steps because Milbert was already in an emergency room. Dexcomm never notified the surgeon of Milbert’s phone calls from the hospital, but he was eventually contacted by LGMC, following which he promptly saw Milbert, diagnosed right leg compartment syndrome and ordered emergency surgery.

On Aug. 28, 2009, the Milberts requested a panel to review the healthcare providers’ conduct, claiming a delay in treatment. On Nov. 20, 2009, they amended their request to add Dexcomm for its contribution to the delayed treatment. On Dec. 7, 2009, the PCF notified the Milberts that Dexcomm was not a qualified healthcare provider, following which they filed a lawsuit against Dexcomm on Dec. 23, 2009. On Dec. 14, 2011, after rendition of the panel’s opinion, the Milberts filed a lawsuit against the healthcare providers, followed by a motion to consolidate the two lawsuits.

Dexcomm filed a motion for summary judgment, alleging the claims against it for the Sept. 27, 2008, phone call mixups sounded in general negligence and that the lawsuit, which was filed more than one year after that date, was prescribed. The Milberts countered that Dexcomm was a joint tortfeasor with the healthcare providers named in their panel request and their suit against Dexcomm was filed while prescription was suspended against all joint tortfeasors, pursuant to R.S.40:1299.47(A)(2)(a). That statute provides that prescription is suspended “against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review.”

The district court judge granted Dexcomm’s motion for summary judgment because the action was prescribed, irrespective of whether Dexcomm was “joint and several or not,” and because the alleged negligence of Dexcomm was dissimilar to medical malpractice such that the MMA’s prescription statutes should not apply. The judge also decided that the Milberts became aware of Dexcomm’s failures to forward the phone messages on the day of those failures — Sept. 7, 2008.

The appellate court affirmed the district court’s ruling in a 2-1 decision, with the majority deciding that Dexcomm was neither a healthcare provider, a joint or solidary obligor with a healthcare provider nor a joint tortfeasor with a healthcare provider.

The Louisiana Supreme Court granted certiorari and reviewed the MMA’s prescription statute. It wrote that healthcare providers who are not qualified under the MMA — and, therefore, not protected by the cap — are nonetheless covered by the MMA’s provi-
Dexcomm then argued this interpretation of the statute “impermissibly” extends prescription, i.e., plaintiffs in some circumstances will have a longer time to file suit against non-healthcare providers than they ordinarily would. Perhaps, said the court, but that consequence “is a direct result of the language and clear legislative intent of [the statute]. As such, these arguments are more appropriately addressed to the legislature.”

The Milberts claimed that Dexcomm’s negligence occurred on Sept. 7, 2008, and that all of the injuries sustained by them were the result of the combined joint and several negligence of Dexcomm and the healthcare providers against whom they had timely filed a panel request (on Aug. 28, 2009). The panel rendered its opinion on Sept. 14, 2011. The Milberts sued Dexcomm, alleging joint liability with the healthcare providers, on Dec. 23, 2009, prior to the rendition of the panel’s opinion and prior to the expiration of the time for filing suit after the opinion was rendered.

Dexcomm countered that it did not owe the same duty to the Milberts as did the healthcare providers. Its responsibility was simply to relay telephone calls. Any duty owed to the Milberts was not encompassed by the risk of medical malpractice committed before or after its alleged negligence. The court thought otherwise: Dexcomm had a duty to act as a “reasonable physician answering service.” It was required promptly and accurately to report messages to the appropriate physician/hospital/healthcare provider. Under the duty/risk analysis, it is reasonable to expect such a service has duties that include the risk that delay or accuracy of a message could result in harm to a patient.

The court found that the Milberts were not precluded, as a matter of law, from including Dexcomm as a joint tortfeasor with the healthcare providers, stating:

We find a non-health care provider may be a joint tortfeasor with a health care provider against whom a medical malpractice complaint has been filed, such that the suspension of the time limitations for filing suit under La. R.S. 40:1299.47(A)(2)(a) may apply to the filing of suit against the non-healthcare provider. Applying La.R.S. 40:1299.47(A)(2)(a) to the facts of this case, we hold the petition was filed timely. Under the asserted facts of this case, we further find the plaintiffs are not precluded as a matter of law from asserting the defendant is a joint tortfeasor with health care providers against whom a medical malpractice claim was filed.

The summary judgment granted by the district court and affirmed by the court of appeal was reversed, and the case was remanded to the district court.

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Federal: IRS Updates Equitable Innocent Spouse Relief Procedures

On Sept. 17, 2013, the IRS issued updated guidance for taxpayers seeking equitable relief from income-tax liability under Code Sections 66(c) or 6015(f) to reflect some taxpayer-friendly changes in timing restrictions, the presence of abuse, and the weight of other factors. Revised Procedure 2013-34 supersedes Revised Procedure 2003-61. The agency also described procedures for streamlined determinations.

Abuse. Revised Procedure 2013-34 is intended to give greater deference to the presence of abuse than Revised Procedure 2003-61, when its presence impacts the analysis of other factors. Now, if the requesting spouse establishes that he or she was the victim of abuse not amounting to duress, then depending on the facts and circumstances of the requesting spouse’s situation, the abuse may result in certain factors weighing in favor of relief. Abuse may include physical, psychological, sexual or emotional abuse, including efforts to control, isolate, humiliate and intimidate the requesting spouse, or to undermine the requesting spouse’s ability to reason independently and be able to do what is required under the federal tax laws.

Factors. Revised Procedure 2013-34 includes factors designed as guides and not an exclusive list. Under Revised Procedure 2013-34, lack of a finding of economic hardship does not weigh against relief, as it did under Revised Procedure 2003-61, and instead will be neutral. Revised Procedure 2013-34 also clarifies that actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors, as it did under Revised Procedure 2003-61. Additionally, any significant benefit a requesting spouse may have received from the unpaid tax or understatement will be neutral if the nonrequesting spouse abused the requesting spouse or maintained financial control and made the decisions regarding living a more lavish lifestyle. Compliance with the federal income-tax laws is now a factor that weighs in favor of relief, instead of being neutral as under Revised Procedure 2003-61.

Streamlined Determinations. Revised Procedure 2013-34 also describes when the IRS will make streamlined determinations granting equitable innocent-spouse relief. Revised Procedure 2013-34 is effective for requests for relief filed on or after Sept. 16, 2013. In addition, the procedure is effective for requests for equitable relief pending on Sept. 16, 2013, whether with the Service, the IRS Office of Appeals or in a case docketed with a federal court. Revised Procedure 2003-61, 2003-2 CB 296, is superseded.

Deadline for Requesting Innocent Spouse Relief. The IRS issued proposed regulations on Aug. 13, 2013, reflecting its decision in Notice 2011-70 to remove the two-year deadline for requesting Code Section 6015(f) equitable innocent-spouse relief. NPRM REG-132251-11. The IRS had provided transitional rules in Notice 2011-70 pending issuance of proposed regulations.

The proposed regulations would amend Reg. Section 1.6015-5 and Reg. Section 1.66-4 on the time and manner for requesting relief from joint and several liability pursuant to Code Section 6015(f) or for requesting relief from taxes on community income of which the spouse reasonably had no knowledge pursuant to Code Section 66(c). In accordance with Notice 2011-70, the proposed regulations would remove the two-year deadline for requesting relief to be replaced with a requirement that a request for equitable innocent-spouse relief must be filed with the IRS within the period of limitation in Code Section 6502 for collection of tax or the period of limitation in Code Section 6511 for a credit or refund of tax, as applicable to the specific request.

The proposed regulations would also provide that a requesting spouse may seek equitable innocent-spouse relief (or request the application of Code Section 6015(b) or Code Section 6015(c)) as part of the collection-due-process hearing (CDP) procedures under Code Sections 6320 and 6330. However, a requesting spouse may not seek Code Section 6015 relief during a CDP hearing if the IRS had previously ruled on the issue by making a final administrative determination.

The proposed regulations on deadlines were effective July 25, 2011, the date that Notice 2011-70 was issued. Otherwise, the proposed regulations will be effective when they are published as final regulations.

—Caroline D. Lafourcade
Vice Chair, LSBA Taxation Section
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State: Service Requirements for Petition for Judicial Review Met

Bridges v. Bullock, 48,231, (La. App. 2 Cir. 9/25/13), ___ So.3d ____, 2013 WL 5345630.

Kenneth and Margret Bullock filed a petition at the Louisiana Board of Tax Appeals for review of the Louisiana Department of Revenue’s (LDR) denial of their administrative claim for refund. The Board ruled in favor of the Bullocks, and LDR filed a petition for judicial review. The Bullocks filed numerous exceptions and sought an involuntary dismissal on the basis that service of the petition for review on the Bullocks’ counsel of record in the proceedings before the BTA was not proper service of an original petition that commences a civil action. The district court granted the Bullocks’ motion for involuntary dismissal on the basis that the LDR had neither requested nor made service on the Bullocks or a proper agent for them. The LDR appealed.

The main issue on appeal was whether a petition for judicial review is an original petition commencing a civil action subject to involuntary dismissal pursuant to La. C.C.P. art. 1672(C) and the service requirements of La. C.C.P. art. 1201.
2nd Circuit reversed the judgment of the district court and remanded the matter for further proceedings, holding:

La. R.S. 47:1431, et seq., sets forth a procedure by which a taxpayer may challenge the collector’s action or failure to act on a refund of overpayment claim and other allowed claims. Under this procedure, the board is the trier of fact, and the district court exercises appellate review.

The Bullocks invoked this procedure by filing petitions for refunds and thus submitted themselves to all the process and procedures provided for a determination of their claim, including appellate review before the judiciary. The LDR complied with the requirements of La. R.S. 47:1434 in providing the required notice of the petition for judicial review to the Bullocks through their counsel of record in these proceedings. [W]e find that the trial court abused its discretion in granting the Bullocks’ motion for involuntary dismissal and in dismissing the petition for judicial review.

—Florence Bonaccorso-Saenz and Antonio Charles Ferachi
Members, LSBA Taxation Section Litigation Division, La. Dept. of Revenue
617 North Third St.
Baton Rouge, LA 70821

Local: Supreme Court Resolves Circuit Split on ULSTC Notice Requirements

The Louisiana Supreme Court resolved a split between the 1st and 3rd Circuits regarding the sufficiency of notices of assessment. In Catahoula Parish School Board v. Louisiana Machinery Co., 12-2504 (La. 10/15/13), ____ So. 3d ____, 2013 WL 5788749, and Washington Parish Sheriff’s Office v. Louisiana Machinery Co., 13-0583 (La. 10/15/13), ____ So. 3d ____, 2013 WL 5788763, the tax collectors sued Louisiana Machinery Company and Louisiana Machinery Rentals for sales-and-use taxes that the companies allegedly failed to collect on their taxable sales, leases and/or repairs. After the district courts granted partial summary judgment in favor of the tax collectors and declared the assessments to be final and executory judgments of the court that could not be challenged, the 1st Circuit affirmed, but the 3rd Circuit reversed on the basis of deficiency of the notices of assessment and lack of evidence to support the summary judgments. All parties applied for writs, which the Supreme Court granted. The court consolidated the cases for argument and affirmed the 3rd Circuit’s decision.

After issuing revised notices of assessment to which the companies did not respond, the tax collectors pursued summary proceedings against the companies. Although tax collectors are not required to issue assessments before bringing a summary proceeding, the adequacy of the notices of assessment was at issue. The collectors’ motions for summary judgment in the summary proceedings were based solely on the assertions that they followed the statutory requirements of the assessment procedure and the companies’ failure to respond made the assessments final and equivalent to judgments against the companies.

At the time the notices were sent, La. R.S. 47:337.51(A) (prior to its amendment, effective Jan. 1, 2011) provided that notices of assessment must inform the “taxpayer” that he has 60 days from the date of the notice to pay the assessment, request a hearing with the collector, or pay under protest in accordance with La. R.S. 47:337.63. L. R.S. 47:337.51(B) further provided that any “dealer” aggrieved by any findings or assessment of the collector may, within 30 days of the receipt of notice of assessment or finding, file a protest with the collector. The revised notices issued by the collectors informed the companies of their right to file protest or file suit within state court within 30 days or pay the amount of the assessment or pay the amount under the payment under protest procedure within 60 days. The tax collectors argued that Section B provides separate notice requirements for dealers, but the court disagreed and found that Section A provides mandatory notice requirements that must be sent to all taxpayers against whom an assessment is imposed. Because the notices failed to advise the companies they had 60 days to request a hearing with the collector, the court held that the notices of assessment failed to adhere to the strict mandatory requirements of La. R.S. 47:337.51(A) and did not become final, meaning the tax collectors were required to support their claims for taxes with evidence.

—Jaye A. Calhoun and Christie B. Rao
Members, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
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True to form, I was going about my daily work when an email arrived from our friendly Bar staff reminding me that my column was due (by due, I mean well past due). Being the kind and forgiving professional staff they are, I was granted a brief extension. The extension jogged my memory regarding something I swore to more than 12 years ago—The Lawyer’s Oath. I was privileged to attend the most recent admissions ceremony for our newly admitted members. During the ceremony, I heard the Oath for the first time since my own swearing-in. The statements in the Oath should not be shelved for annual meetings and admission ceremonies; instead, we should review the statements as often as possible.

We are entering a new year and a new year calls for new resolutions. I resolve to read the Lawyer’s Oath daily before I begin my work. I challenge you to do the same, if not daily, weekly, monthly or at an acceptable interval to you and your conscience. For your convenience, I supply the nine paragraphs below with comments on how the Oath applies to some of today’s challenges.

1. I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana . . . . (We are all well aware of the U.S. Constitution, but how many of us consider the Louisiana Constitution when we are advising clients?)

2. I will maintain the respect due to courts of justice and judicial officers . . . . (Think of this paragraph the next time you receive a call or email from a colleague or client inquiring about a judge or jurisdiction.)

3. I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land . . . . (This one is self explanatory — I hope.)

4. I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law . . . . (While this statement seems obvious, what about withholding matters that are true, but do not support your case? Is that honorable?)

5. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client’s business except from the client or with the client’s knowledge and approval . . . . (I want to focus on the first clause that deals with client confidences. In today’s world, we are quick to respond to a social media post without considering this paragraph. When your “friend” sends you an obvious legal question over Facebook and you respond, have you violated that confidence? What about when you comment on an innocuous question?)

6. To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications . . . . (If we all upheld this paragraph, no negative comments regarding lawyers would be made.)

7. I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged . . . . (For all of us litigators, let’s remember this paragraph when we are questioning the witness during deposition.)

8. I will never reject from any consideration personal to myself the cause of the defenseless or oppressed or delay any person’s cause for lucre or malice. (How easy is it to ignore the unsolicited call from a stranger who you do not want to help, but probably could?)

9. So help me God.

I hope you accept my challenge and add the Oath to your resolutions. The first half of the “Bar year” is now over. While it was great, the second half will only be better if we strive to work and live by the Oath we all took.

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

Get the latest Young Lawyers Division news online, go to: www.lsba.org/YLD

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YOUNG LAWYERS SPOTLIGHT

Lauren Stokes Laborde
Alexandria

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Alexandria attorney Lauren Stokes Laborde.

Laborde is an associate in the Alexandria office of the Faircloth Law Group, L.L.C. She began her career as a law clerk to Hon. John C. Davidson and Hon. Harry F. Randow at the 9th Judicial District Court in Alexandria. At Faircloth, she practices in a wide range of litigation matters, including commercial litigation, governmental litigation, general tort litigation, medical malpractice defense, and collection. In addition, she advises clients in matters of Louisiana wills and successions. She is admitted to practice in all Louisiana state courts, the U.S. District Court for the Western, Middle and Eastern Districts of Louisiana, and U.S. 5th Circuit Court of Appeals.

She received her BS degree in business administration, magna cum laude, in 2005 from Northwestern State University in Natchitoches and her JD/bachelor of civil law degree in 2008 from Louisiana State University Paul M. Hebert Law Center. While in law school, she was on the Chancellor’s List, a member of the Tullis Moot Court Competition, a member of the Legal Association for Women (Philanthropy chair, 2006-08), and a participant in the Law Ambassador Recruitment Program, 2006-08.

Laborde is the 2013-14 secretary of the Alexandria Bar Association’s Young Lawyers Council and a member of the Crossroads American Inn of Court of Alexandria-Pineville.

In her community, she serves on the board of Hope House of Central Louisiana, is a member of the Krewe of Mariposa and is a parishioner of Our Lady of Prompt Succor Catholic Church.

Laborde is married to David Laborde, a CPA at Cleco, a power company in Pineville. They are the parents of two children. Her hobbies are watching her daughter’s soccer games, spending time on the back porch with family, fishing and reading.

Lawyers Helping Lawyers

Take full advantage of LAP’s professionally moderated Depression Recovery Groups in New Orleans, Baton Rouge and Shreveport. Remember, all barriers to entry have been removed:

► There is no cost for participation
► No medical records are kept
► No waiting for weeks or months to get an appointment

To participate in the Depression Recovery Groups in the New Orleans, Baton Rouge, Shreveport and surrounding areas:

► call (985)778-0571 or (866)354-9334
► email LAP@louisianalap.com
The Young Lawyers Division is accepting nominations for the following awards:

- **Hon. Michaelle 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.
- **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made outstanding contributions to the legal profession and his/her community.
- **Service to the Public Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service to that local community by which the non-attorney public has been helped. The program or service must be sponsored by the young lawyer local affiliate organization.
- **Service to the Bar Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service that has benefited and/or enhanced the attorney community in that area. The program or service must be sponsored by the young lawyer local affiliate organization.
- **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.

All entries must include a nomination form, which may not exceed 10 pages. In addition, entries should include a current photo and résumé of the nominee, newspaper clippings, letters of support and other materials pertinent to the nomination. Nomination packets must be submitted to Jennifer H. Johnson, Chair, LSBA Young Lawyers Division Awards Committee, 2400 Forsythe Ave., Ste. 2, Monroe, LA 71201. Any nomination packet that is incomplete or is not received or postmarked on or before Feb. 14, 2014, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets. All winners will be announced at the combined LSBA Annual Meeting and LSBA/LJC Summer School in Destin, Fla., in June 2014.

1. Award nominee is being nominated for: (Individuals/local affiliate organizations may be nominated for more than one award. Please check all that apply. Candidates will only be considered for the award(s) for which they have been nominated.)
   - [ ] Hon. Michaelle Pitard Wynne Professionalism Award
   - [ ] Outstanding Young Lawyer Award
   - [ ] Service to the Public Award
   - [ ] Service to the Bar Award
   - [ ] YLD Pro Bono Award

2. Nominator Information:
   - Name ___________________________________________________________________________________________
   - Address/State/Zip ______________________________________________________________________________
   - Telephone/Fax __________________________________________________________________________________
   - E-mail __________________________________________________________________________________________

3. Nominee Information:
   - Name ___________________________________________________________________________________________
   - Address/State/Zip ______________________________________________________________________________
   - Telephone/Fax __________________________________________________________________________________
   - E-mail __________________________________________________________________________________________
   - Birth Date ______________________________________________________________________________________
   - Marital Status/Family Information __________________________________________________________________

4. Describe the nominee’s service to the public for the past five years (or longer, if applicable). Include details as to the nature of the service, value to the public, amount of time required, whether nominee’s activities are a part of his/her job duties, and other pertinent information.

5. Describe the nominee’s service to the Louisiana State Bar Association Young Lawyers Division for the past five years.

6. Describe the nominee’s service to the legal profession for the past five years.

7. Describe the nominee’s particular awards and achievements during his/her career.

8. Provide a general description of the nominee’s law practice.

9. Describe what has made the nominee outstanding (answer for Outstanding Young Lawyer Award only).

10. Has the nominee overcome challenges (handicaps, limited resources, etc.)?

11. Why do you believe your nominee deserves this award?

12. Provide other significant information concerning the nominee.

For more information, contact Jennifer H. Johnson at (318)361-3140 or email jjohnson@mkmblaw.com.
To encourage all Americans to learn more about the Constitution, Congress established Constitution Day to be celebrated each year on Sept. 17, the date when delegates to the Convention signed the Constitution. In observance of Constitution Day, the Lawyers/Judges in the Classroom Program organized 76 in-school presentations statewide, reaching more than 4,400 students.


Participating schools included Archbishop Hannan High, Belaire High, Belle Chasse High, Booker T. Washington High, Bowling Green School, Cabrini High, Caddo Magnet High, Central Middle, Claiborne Fundamental Magnet Elementary, Clearwood Junior High, Devall Middle, East Iberville High, Eden Gardens Magnet, Edna Karr High, Folsom Junior High, Hammond Junior High Magnet, Holy Ghost School, Huntington High, Iberville Math, Science & Arts Academy East Campus, Iberville Math, Science & Arts Academy West Campus, Jeannette Senior High, Jennings High, Jesus the Good Shepherd School, John Curtis Christian School, Joseph J. Davies Elementary, Judge Lionel R. Collins Montessori, Lee High STEM and VPA Magnet Academy, Lee Road Junior High, Live Oak Middle, Montessori Educational Center, New Iberia Senior High, North Crowley Elementary, Our Lady’s School, Park Forest Middle, Ponchatoula Junior High, Roseland Elementary Montessori, Slidell High, St. Anthony of Padua School, St. Helena Central High, St. John Berchmans Catholic School, St. Matthew’s Episcopal School, West Monroe High, Westgate High and Woodlawn Leadership Academy.


The Louisiana Center for Law and Civic Education (LCLCE) partners with the Louisiana State Bar Association and the Louisiana District Judges Association to bring volunteer lawyers, judges and educators together to deliver interactive, law-related presentations to Louisiana schools through the Lawyers in the Classroom/Judges in the Classroom programs. For more information, visit the LCLCE website, www.lalce.org.
New Judges

Michael P. Mentz was elected as judge of Division F, 24th Judicial District Court, Jefferson Parish. He earned his BS degree in 1978 from Louisiana State University and his JD degree in 1981 from Loyola University Law School. From 1981-2013, he was an attorney in the firm of Hailey, McNamara, Hall, Larmann & Papale, L.L.P., where he was a managing partner from 1999-2013. He has served on a number of committees, including the Louisiana State Bar Association’s Legal Malpractice Insurance Committee from 1996-present, the Committee on Professional Economics and Law Office Management from 1988-90, the Jefferson Parish Crime Prevention and Reduction Task Force from 2006-present and the Jefferson Parish Housing Authority from 2011-12. He is married to Wendy Martin Mentz and they are the parents of two children.

Michael Nerren was elected as judge of Division E, 26th Judicial District Court, Bossier and Webster parishes. He earned his undergraduate degree in 1989 from Louisiana State University-Shreveport and his JD degree in 1994 from LSU Paul M. Hebert Law Center. Prior to his election to the bench, he served as an assistant district attorney in the 26th JDC, working with that office’s Juvenile Division, in addition to his private practice, which he maintained since 1994. He is a member of the Bossier, Webster and Shreveport bar associations. He served as president of the Bossier Bar Association from 2003-05. He is married to Suzanne Nerren and they are the parents of three children.

Raylyn R. Bevers was elected as judge of Division B, 2nd Parish Court of Jefferson. She earned her BS degree in 1986 from the University of New Orleans and her JD degree in 1997 from Loyola University Law School, where she was a member of the Moot Court and Moot Court Board. Following law school graduation, she became a partner in Bevers & Bevers, L.L.P., in 1998. From 2008 through August 2013, she served on the Gretna City Council, representing District 4. She has been a member of the LSBA’s House of Delegates (2001-03 and 2011-13), the LSBA’s Civil Law and Litigation Section (treasurer from 2004-present) and the LSBA Bench and Bar Section (2005-06). She is married to Wiley J. Bevers and they are the parents of two children.

Retirements

► 14th Judicial District Court Judge Wilford D. Carter retired effective Oct. 31. He received his BBA degree in 1961 from Loyola University and his JD degree in 1964 from Loyola University Law School. Following law school, he practiced law from 1964-70 with the firm of Landrieu, Calogero & Kronlage and was in private practice from 1970-78. From 1970-74, he was an assistant city attorney for the City of New Orleans, where he was chief prosecutor for traffic court from 1970-73 and chief of the Criminal Division in the City Attorney’s Office from 1973-74. He served as judge ad hoc in traffic and municipal courts in New Orleans from 1971-74. In 1974, he was appointed commissioner of the Magistrate Section for Orleans Parish Criminal District Court. In 1978, he was elected magistrate judge of Criminal District Court, where he presided until his retirement. During his time on the bench, he helped develop that court’s Drug Court program.

► Jefferey Parish Juvenile Court Chief Judge Nancy Amato Konrad retired effective Oct. 31. She earned her BS degree in 1962 from Loyola University and her JD degree in 1965 from Loyola University Law School. She served as judge ad hoc in Section B of Jefferson Parish Juvenile Court from 1976-80, making her the first female judge in Jefferson Parish. In 1980, she was elected to Section C of that same court, which she presided over until her retirement. She has been a member and past president of the Louisiana Council of Juvenile and Family Court Judges and served as chair of the Louisiana Children’s Code Project. She served on the Judicial Council of the Louisiana Supreme Court, the Judicial Budgetary Control Board, the Juvenile Courts Subcommittee of the Louisiana Judicial Planning Committee and the State Liaison Committee with the Department of Corrections and the Department of Social Services. She was co-lead judge of the Louisiana Task Force for Foster Care Reform, a pilot program for Citizen Review of Foster Care, and chair of the Juvenile Judges’ Benchbook Committee.

► Orleans Parish Criminal District Court Magistrate Judge Gerard J. Hansen retired effective Oct. 31. He received his BBA degree in 1961 from Loyola University and his JD degree in 1964 from Loyola University Law School. Following law school, he practiced law from 1964-70 with the firm of Landrieu, Calogero & Kronlage and was in private practice from 1970-78. From 1970-74, he was an assistant city attorney for the City of New Orleans, where he was chief prosecutor for traffic court from 1970-73 and chief of the Criminal Division in the City Attorney’s Office from 1973-74. He served as judge ad hoc in traffic and municipal courts in New Orleans from 1971-74. In 1974, he was appointed commissioner of the Magistrate Section for Orleans Parish Criminal District Court. In 1978, he was elected magistrate judge of Criminal District Court, where he presided until his retirement. During his time on the bench, he helped develop that court’s Drug Court program.
he also served on the Lake Charles City Council, representing District B (1977-80) and District A (1980-83), holding the office of president in 1982. In 1983, he was elected as Louisiana State representative for District 34, serving until 1992. He took his oath in 1992 as judge of Division F on the 14th JDC, becoming one of the first African-American judges on that court. He served there until his retirement.

**Appointments**

- Melanie C. Lockett and Carl J. Servat III were appointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization for terms of office ending on June 30, 2016.
- Monique Babin Clement was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization for a term of office ending on June 30, 2016.

**Deaths**

- Retired 24th Judicial District Court Judge Floyd W. Newlin, 95, died Aug. 24. He was elected to Division F of the 24th JDC in 1966 and served there until his retirement in 1987. He was a graduate of Tulane University Law School, where he earned his LLB degree. He also attended Harvard Law School. He served from 1942-46 in the U.S. Army, attaining the rank of first lieutenant. He was in the practice of law in Jefferson Parish and served as an assistant district attorney prior to his election to the bench.
- Retired 4th Circuit Court of Appeal Chief Judge James C. Gulotta, Sr., 89, died Aug. 31. He was a U.S. Army veteran, serving in the Pacific Theatre during World War II, and was awarded the Silver Star Medal. He earned his BA degree in 1947 from Tulane University and his LLB degree in 1949 from Tulane Law School. He was in the practice of law from 1949-61, when he took office as judge of Orleans Parish Juvenile Court, serving there until 1970. In 1970, he joined the bench of the 4th Circuit Court of Appeal and served there until his retirement in 1988. He was past president of the National Council of Juvenile and Family Court Judges and the Louisiana Council of Juvenile Court Judges, vice president of the International Association of Youth Magistrates, and the former chair of the Juvenile Delinquency Committee Section of Criminal Law, American Bar Association. He was the recipient of several awards, including the Louisiana State Bar Association’s President’s Award, the Louisiana Bar Foundation’s Distinguished Jurist Award and the Metropolitan Crime Commission Award in Recognition of Extraordinary Service to Law Enforcement and Criminal Justice.

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**Upcoming LSBA CLE Seminars**

**MDL CLE**
March 14, 2014
Westin Canal Place Hotel

**Healthcare Law CLE**
March 14, 2014
Sheraton New Orleans Hotel

**LSBA Uncorked CLE**
March 24 - 26, 2014
Sonoma, California

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For up-to-date information, visit [www.lsba.org/CLE](http://www.lsba.org/CLE)

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Stephanie Noriea Murphy has joined the firm as an associate in the New Orleans office.

Curry & Friend, P.L.C., announces that Meredith M. Miceli has been named a partner in the New Orleans office and Barbara L. Bossetta has been named a partner in the Covington office.

Domengeaux Wright Roy & Edwards, L.L.C., in Lafayette announces that Andrew J. Quackenbos has joined the firm as a member.

Duplass, Zwain, Bourgeois, Pfister & Weinstock, A.P.L.C., in Metairie announces that Rachel S. Guttman has joined the firm as an associate.

Donna Y. Frazier has been appointed by the Caddo Parish Commission in Shreveport as parish attorney. The first woman to serve as parish attorney, Frazier has worked as the assistant parish attorney for the past eight years.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C., announces that Victor M. Jones has joined the firm as an associate in the New Orleans office.

The Javier Law Firm, L.L.C., in New Orleans announces that Bobby M. Harges has joined the firm as of counsel.

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

Lassiter, Tidwell & Davis, P.L.L.C., in Nashville, Tenn., announces that Timothy R.W. Kappel has joined the firm as of counsel.

Lee, Futrell & Perles, L.L.P., in New Orleans announces that M. Scott Minyard, Daphne M. Lancaster, Bradley M. Smolkin, Darren M. Guillot and Michael J. Sepanik are now associated with the firm.

Liskow & Lewis, A.P.L.C., announces that Julie S. Chauvin has joined the firm as an associate in the Lafayette office.


Montgomery Barnett, L.L.P., in New Orleans announces that Edward L. (Ted) Fenasci has joined the firm.

Mark D. Pearce was named general counsel of Cleco Power, L.L.C., in Pineville. The
company is a subsidiary of Cleco Corp.

Plauché Maselli Pankerson, L.L.P., in New Orleans announces that Peter M. Gahagan, Jessica S. Savoie and Conrad C. Rolling II have joined the firm as associates.

Preis & Roy, P.L.C., announces that John E. Simmons has joined the firm’s Lafayette office.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., in New Orleans announces that Jacqueline A. Romero has been named a partner in the firm.

Steeg Law Firm, L.L.C., in New Orleans announces that Ryan M. McCabe has joined the firm as an associate.

Taggart Morton, L.L.C., in New Orleans announces that Toni J. Ellington has joined the firm as a partner.

Walters, Papillion, Thomas, Cullens, L.L.C., of Baton Rouge announces that John S. McLindon has joined the firm as of counsel.

The Willis Law Group, P.L.L.C., a multistate regional law firm, announces that W. Glenn Burns has joined the firm as the New Orleans resident partner.

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired the Sept. 20 Louisiana State Bar Association’s 20th annual Admiralty Symposium in New Orleans and the Nov. 22 13th annual Complex Litigation Symposium in New Orleans.

Pamela W. Carter, founder of Carter Law Group, L.L.C., in New Orleans, received the Claims and Litigation Management Alliance 2013 Litigation Management Professional of the Year Award.

James G. Cowles, Jr., assistant U.S. attorney for the Western District of Louisiana in Shreveport, received the Council of Inspectors General on Integrity and Efficiency Award from Assistant Special Agent-in-charge Carlos Capano, Office of Inspector General, Houston Division.

Christine Lasseigne Crow, clerk of court for the Louisiana 1st Circuit Court of Appeal in Baton Rouge, was elected treasurer of the National Conference of Appellate Court Clerks.

Christopher O. Davis, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was elected vice president of the Comité Maritime International.

Nancy Scott Degsn, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., is serving as chair-elect for the American Bar Association’s Section of Litigation. She will become chair at the 2014 ABA Annual Meeting.

Caroline McSherry (Sherry) Dolan, of counsel in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was appointed to the American Bar Association’s Commission on Homelessness and Poverty.

Lillian E. Eyrich, senior associate in Steeg Law Firm, L.L.C., in New Orleans, was appointed vice chair of the New Orleans Bar Association’s Real Property Law Committee.

U.S. Attorney Stephanie A. Finley, with the Western District of Louisiana in Lafayette, was the opening plenary speaker for the Blacks in Government 35th annual National Training Institute in Dallas, Texas. Finley also was appointed by the U.S. Attorney General to serve as vice chair of the Management and Budget Subcommittee.

Nzinga Hill, supervising attorney of the Orleans Public Defenders’ Child in Need of Care Unit, received the 2013 National Legal Aid and Defender Association’s Reginald Heber Smith Award. The award recognizes the dedication and outstanding achievements of civil or indigent defense attorneys.
Louisiana State Rep. Katrina R. Jackson, a solo practitioner in Monroe, was named Legislator of the Year by the Louisiana Municipal Association Black Caucus. Jackson serves as chair of the Louisiana Legislative Black Caucus.

Clyde H. Jacob III, a director in the Coats Rose law firm’s New Orleans office, is serving on the U.S. Chamber of Commerce Labor Relations Committee for his 10th year.

Kent A. Lambert, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was elected as an officer of the American Bar Association’s Section of Litigation Council.

Loulan J. Pitre, Jr., a member in the New Orleans office of Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C., was selected to serve as a member of the Mineral Law-Legacy Disputes Committee of the Louisiana Mineral Law Institute.

U.S. Magistrate Judge Karen Wells Roby, with the U.S. District Court, Eastern District of Louisiana, was the featured speaker for Xavier University of Louisiana’s Founder’s Day in October. Judge Roby is a Xavier graduate.

Roy J. Rodney, Jr., founder and managing partner of Rodney & Etter, L.L.C., in New Orleans, is currently chairing the National Bar Association’s Ad Hoc Committee on Nonprofits. He and attorney Veronica J. Lam recently authored an article published in the ABA Nonprofit Organizations Committee newsletter.


Scott R. Wolf, an attorney in the Shreveport firm of Blanchard, Walker, O’Quin & Roberts, was appointed to serve as chair-elect of the American Bar Association’s Medicine and Law Committee. He also is serving on the editorial board of TortSource and The Brief, publications of the ABA Tort Trial and Insurance Practice Section (TIPS). He is vice chair of TIPS’ Business Litigation Committee and Membership Committee.

IN MEMORIAM

Orlando Nicholas (Nick) Hamilton, Jr., 85, an attorney in Oak Grove, La., died Nov. 2. A longtime resident of Oak Grove, he graduated from Lake Providence High School, Louisiana State University Law School and Judge Advocate School/University of Virginia. He served in the U.S. Army during the Korean War. Mr. Hamilton began his law practice in Oak Grove in 1954. He practiced law for 61 years. He served on the Louisiana State Bar Association’s Board of Governors from 1988-90 and in the House of Delegates from 1984-88 and 1990-2010. He was an active member of the Louisiana Attorney Disciplinary Board and served as president of the Louisiana Trial Lawyers Association. He is survived by his wife, Charlotte Martin Hamilton, three children, grandchildren, great-grandchildren and other relatives.

PUBLICATIONS

The Best Lawyers in America 2014

People Deadlines & Notes

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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
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New Orleans, LA 70130-3404
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www.lsba.org/ATJ

Louisiana Bar Journal Vol. 61, No. 4 311
Louisiana Supreme Court Chief Justice Bernette Joshua Johnson was awarded the Joan Dempsey Klein Award by the National Association of Women Judges (NAWJ) in a ceremony on Oct. 10. The award presentation was in conjunction with the NAWJ 35th Annual Conference Oct. 9-13 in New Orleans. Nearly 300 judges attended the conference, co-chaired by Chief Justice Johnson and 40th Judicial District Court Judge Mary H. Becnel.

The Joan Dempsey Klein NAWJ Honoree of the Year Award is presented to a judge who brings distinction to her office and to NAWJ as exemplified by its founding mother, Justice Joan Dempsey Klein of California’s 2nd District Court of Appeal.

“The award recognizes Chief Justice Johnson’s assistance to women judges in becoming more proficient in their profession, help in solving the legal, social and ethical problems associated with the judiciary, and working to increase the number of women serving as judges. Chief Justice Johnson overcame many obstacles in her judicial career while making impressive contributions to women in the legal profession,” said NAWJ President Joan Churchill.

As the 2013 award recipient, Chief Justice Johnson joins a distinguished list of award honorees, including U.S. Supreme Court Justices Sandra Day O’Connor (1982), Ruth Bader Ginsburg (2003) and Sonia M. Sotomayor (2009).

“The NAWJ conference was a huge success with women judges participating from all states, the District of Columbia, and countries including Tanzania, Sri Lanka and the Netherlands. The Conference Planning Committee coordinated an outstanding program featuring mediation attorney Kenneth Feinberg and attorney Barbara Arnwine, president and executive director of the Lawyers’ Committee for Civil Rights Under the Law,” Chief Justice Johnson said.

Also serving on the Conference Planning Committee were 3rd Circuit Court of Appeal Judge Phyllis Montgomery Keaty; 4th Circuit Court of Appeal Judges Rosemary Ledet and Joyce C. Lobrano; Orleans Parish Criminal District Court Judge Laurie A. White; Orleans Parish Civil District Court Judges Ethel Simms Julien, Tiffany Gautier Chase and Bernadette G. D’Souza; and 24th Judicial District Court Judge June Berry Daresburg.

A highlight of the conference was the debut of a Louisiana Supreme Court Law Museum exhibit dedicated to the history of women in the law, “Making History: Women Judges in Louisiana.” The exhibit will be on display through Women’s History Month in March 2014.
Portrait of Retired Supreme Court Justice Dennis Unveiled

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson joined the family and friends of retired Supreme Court Justice James L. Dennis, now judge for the U.S. 5th Circuit Court of Appeals, for a ceremony in October to unveil the portrait of Judge Dennis. The portrait will hang in the halls of the Louisiana Supreme Court courthouse, alongside portraits of former justices dating back to the early 1800s.

“During his years at the Supreme Court, Judge Dennis had the distinction of serving with four Chief Justices and 11 associate justices. I remember fondly of my time on the Supreme Court bench with him,” Chief Justice Johnson said.

The portrait was presented to the court by Judge Dennis’ family during the annual meeting of the Louisiana Supreme Court Historical Society. Remarks were provided by attorney Donna D. Fraiche, president of the Historical Society, and members Retired Chief Justice Pascal F. Calogero, Jr. and Judge Eldon E. Fallon, U.S. District Court for the Eastern District of Louisiana.

Judge Dennis graduated from Louisiana Technical University in 1959, received his law degree from Louisiana State University Law School in 1962, and his master’s in law from the University of Virginia in 1984. Before being elected judge of the 4th Judicial District Court in 1972, he practiced law in Monroe and served as a state representative. In 1974, he was elected to the Louisiana 2nd Circuit Court of Appeal. In 1975, he joined the Louisiana Supreme Court bench as an associate justice, serving the court for 20 years. In 1995, he was appointed by President Bill Clinton to serve as a judge for the U.S. 5th Circuit Court of Appeals. Judge Dennis, a charter member of the Historical Society, has served on the board of directors since 2008.

2013-14 La. District Court Judges Association Officers Sworn In

The 2013-14 officers of the Louisiana District Court Judges Association were sworn in at the Fall Judges Conference in October. Louisiana Supreme Court Justice Marcus R. Clark administered the oath of office.

Judge Raymond S. Childress, 22nd Judicial District Court, will serve as president; Judge Jules D. Edwards, 15th Judicial District Court, first vice president; Judge Marilyn C. Castle, 15th Judicial District Court, second vice president; Judge John J. Molaison, 24th Judicial District Court, secretary; and Judge C. Wendell Manning, 4th Judicial District Court, treasurer.

Immediate Past President Judge Harry F. Randow, with the 9th Judicial District Court, took part in the ceremony.

The Shreveport Red Mass Society presented a donation in October to Providence House. From left, Lawrence W. Pettiette, Jr., Shreveport Bar Association president; Rhonda Watts, with Providence House; and Bishop Michael Duca. Not in photo, John C. Nickelson, Red Mass chair.

The Louisiana State Bar Association’s Francophone Section conducted its annual CLE seminar on Oct. 11 at Vermilionville in Lafayette. Chairing the event was Lafayette attorney James H. Domeneaux, Section treasurer. Speakers included Louisiana State University Paul M. Hebert Law Center Professor Olivier Moréteau, Benjamin West Janke and Leslie J. Schiff. Following the presentation, there was a panel discussion with Domeneaux, Section President Warren A. Perrin and Section Vice President Louis R. Koerner, Jr. From left, Janke, Koerner and Moréteau.
2013-14 Jefferson Bar Auxiliary Officers, Committee Chairs Installed

The Jefferson Bar Association Auxiliary recently held an installation luncheon for the 2013-14 officers and committee chairs. Patricia (Patti) Lee was elected president and sworn in by the new Gretna Mayor Belinda Constant.

During the luncheon, a check was presented to Renee Haase, development director of Holy Rosary Academy and High School, for the school’s educational programs assisting children with learning differences. This project is just one of the auxiliary’s philanthropic efforts.

The auxiliary is gearing up for its 2013-14 year with a program for the spouses of the Jefferson Bar Association. Meetings, alternating in the day and evening, are the third Wednesday of each month through May. The auxiliary also is developing a law-related activity to implement with some of the parish high schools.

Contact Patti Lee at (504)219-0881 or by email at patti682@aol.com for more information or to join the auxiliary.

In recognition of the Louisiana State Bar Association’s Month of Service in October, two law firms — Phelps Dunbar, L.L.P., and Irwin Fritchie Urquhart & Moore, L.L.C. — together purchased the ingredients for a few hundred meals, which volunteers from both firms then prepared, cooked and served to the homeless at Ozanam Inn in New Orleans on Oct. 19. From left, Alysha Jordan, Barbara L. Arras, Fran Sullivan, Darlene Peters, Kim E. Moore, Meera U. Sossamon, Christopher H. Irwin, Edward W. Trapolin, Kelly E. Brilleaux, Monica Betts, Tory Nieset, Lizzi Richard and Christopher K. Ralston. Volunteers not in photo were McDonald G. Provosty, Jimmy Irwin, Brigid Brown, Steven Guidry, Ali S. Mansfield, Shelita Burrell, Tessa P. Vorhaben and Susan Robinson.

The Jefferson Bar Association Auxiliary (JBAA) presented a check to Renee Haase, center, development director of Holy Rosary Academy and High School. Funds will be used for the school’s educational programs for children with learning differences. From left, JBAA Immediate Past President Bette Rogyom, Haase and JBAA President Patricia (Patti) Lee.

The New Orleans Bar Association’s Young Lawyers Section organized lunch service on Tuesdays this past October at the Ozanam Inn in New Orleans. Volunteering for a recent lunch service were attorneys, from left, Edward W. Trapolin, Sandra L. Sutak, Christopher K. Ralston, Lauren E. Godshall, Christopher D. Wilson and Matthew J. Lindsay.
President’s Message
The Giving Season

By Leo C. Hamilton

‘Tis the season for spending time with family and friends, eating delicious food, and hopefully reflecting on the spirit of the season. Please consider giving to the legal profession’s best exemplar by making a year-end gift to the Louisiana Bar Foundation (LBF). Contributions to the LBF ensure justice is a reality, not just for those who can afford it, but for everyone in Louisiana.

A gift to the LBF demonstrates your belief in our mission and will help strengthen the programs we support and the services we provide. Please support the work of the LBF and make your investment in access to justice. Working together, we can meet the legal needs of our state’s most vulnerable people.

With your support, the LBF is able to:
► give children a voice in court;
► bring families back together;
► provide education to youth about the legal process; and
► bring communities together to identify legal needs in their areas.

Please take the time during this busy holiday season to reflect on the blessings in your life and consider a gift to the LBF. Make your gift online at www.raisingthebar.org/gift or mail directly to the LBF at Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. If you have any questions, contact Development Director Laura Sewell at (504)561-1046 or laura@raisingthebar.org.

LBF Seeking Nominations for 2014 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2014 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Friday, Feb. 7, 2014.

Nominations should include the nominee’s name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations should be forwarded to Communications Director Dennette Young at the Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or emailed to dennette@raisingthebar.org by the Feb. 7 deadline.

The award will be presented at the Louisiana State Bar Association’s Annual Meeting in Destin, Fla., in June. The recipient will receive a plaque and $1,000 will be donated in his/her name to a nonprofit, law-related program or association providing services in Louisiana.

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

A consummate trial lawyer throughout his career, Boisfontaine adhered at all times to the highest standards of the profession not only in the way he demonstrated his extraordinary ability to prepare and try cases of all kinds, but in the exemplary way that he did so, consistent with the highest ideals of ethical and moral conduct. He served on the New Orleans Bar Association’s Executive Committee and in the American Bar Association’s House of Delegates. A charter member of the LBF, Boisfontaine served as state chair of the Fellows of the American Bar Foundation. He was a member of the American College of Trial Lawyers.

Golf Tournament Benefits LBF’s Kids’ Chance Program

The Louisiana Workers’ Compensation Corp. (LWCC) held its 10th annual golf tournament Sept. 23, donating all proceeds to the Louisiana Bar Foundation (LBF) Kids’ Chance Scholarship Program. The LBF Kids’ Chance program provides scholarships to dependents of workers who are permanently and totally disabled or killed in a work-related accident compensable under a state or federal Workers’ Compensation Act or law.

For more information or to make a donation to the Kids’ Chance recipients, go to: www.raisingthebar.org/ProgramsAndProjects/KidsChanceProgram.asp. Or contact Dennette Young at (504)561-1046 or dennette@raisingthebar.org.

Become a Sponsor of the LBF’s 28th Annual Fellows Gala

The Louisiana Bar Foundation will celebrate the 28th Annual Fellows Gala on Friday, April 11, 2014. The gala and live auction will be held at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans.

Sponsorships are available at the following levels:

► Pinnacle: $6,500 — Includes 40 patron party tickets, 40 gala tickets with four reserved tables (seats 40) and recognition at the event.

► Benefactor: $5,000 — Includes 30 patron party tickets, 30 gala tickets with three reserved tables (seats 30) and recognition at the event.

► Cornerstone: $3,500 — Includes 20 patron party tickets, 20 gala tickets with two reserved tables (seats 20) and recognition at the event.

► Capital: $2,000 — Includes 10 patron party tickets, 10 gala tickets with one reserved table (seats 10) and recognition at the event.

Individual tickets to the gala are $150. Young lawyer individual gala tickets are $100.

Discounted rooms at the Hyatt Regency New Orleans are available for $219 a night for Thursday, April 10, and Friday, April 11. Reservations must be made before Friday, March 21, 2014, to get the discounted rate. Call the hotel directly at 1-888-421-1442 and reference “Louisiana Bar Foundation” to make a reservation or go to: http://resweb.passkey.com/go/LABarfoundation2014.

For more information, contact Development Director Laura Sewell at (504)561-1046 or laura@raisingthebar.org.
CLASSIFIED NOTICES

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

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DEADLINE
For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2014. Check and ad copy should be sent to: LOUISIANA BAR JOURNAL Classified Notices 601 St. Charles Avenue New Orleans, LA 70130

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

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Legal Nurse Consulting Services. Sandra Daigle, RN, BSN, 17 years of legal nurse consulting and risk management. Services include organization of medical records and bills, preparing timelines and medical summaries, analysis of standard of care, and assessment of liability. 402L Longstreet Road, Pineville, LA 71360. Phone (318)640-9313. Cell (318)229-2059.

Ocean-Oil Expert. Hector V. Pazos, P.E., a naval architect, marine engineer and registered professional mechanical engineer, offers services in accident reconstruction and offshore oil cases and has provided expert witness services for admiralty and maritime cases. Offices in New Orleans and St. Petersburg, Fla. Contact Pazos at cell (504)367-4072. Website: www.oceanoilpazos@bellsouth.net.

Oil & Gas. S. Paul Provenza has 30-plus years’ experience in energy permitting and regulatory matters through state, federal and local governmental agencies, and in petroleum land and leasing issues with publicly owned tracts and private landowners. He offers expert witness testimony, Contact Provenza at (225)925-9638, cell (225)772-2554 or email: paulpro@bellsouth.net.

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The Louisiana Bar Journal is looking for authors and ideas for future “The Last Word” articles. Humorous articles will always be welcomed. But Editor Barry H. Grodsky is broadening the scope of the section, including “feel-good” pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you’d like to pitch, email Grodsky at bgrodsky@taggartmorton.com or LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

**The Last WORD**

*By Maggie Trahan Simar*

SAY WHAT? REPEAT THAT!

Att times, the practice of law may seem like a monotonous mountain of legal jargon. Even courts have issues at times making sense of the volumes of filings and pleadings that require consideration. But, sometimes in our legal careers, we hit the jackpot — either the facts are on our side, the law is on our side, or maybe, just maybe, both are on our side. Although very rare, not only can the case be good, it also could be FUN! When a case is fun, or, at the very least, not “boring,” attorneys sometimes get that glimmer in their proverbial eyes and their pleadings and preparatory material show enthusiasm. Their vernacular gets witty and full of glee. Here is a list of case citations that would cause even the most stoic of litigator to chuckle.

**United States v. 11 1/4 Dozen Packages of Articles Labeled in Part Mrs. Moffat’s Shoo-Fly Powders for Drunkenness, 40 F. Supp. 208 (W.D.N.Y. 1941).**

**United States v. Eighteenth Century Peruvian Oil on Canvas Painting, 597 F. Supp. 2d 618 (D. Va. 2009).**


**State v. Big Hair, 955 P.2d 1352 (Mont. 1998).**

**Batman v. Commissioner, 189 F.2d 107 (5 Cir. 1951), cert. denied, 342 U.S. 877 (1951).**

**Death v. Graves, CGC-06-451316 (filed April 17, 2006).**

**Schmuck v. United States, 489 U.S. 705 (1989).**

**Hamburger v. Fry, 338 P.2d 1088 (1959).**

**People v. Booger, 2010 N.Y. LEXIS 3511 (N.Y. 2010).**

**United States v. 2,116 Boxes of Boned Beef, Weighing Approximately 154,121 Pounds, and 541 Boxes of Offal, Weighing Approximately 17,732 Pounds, 726 F.2d 1481 (10 Cir. 1984).**

**United States v. Approximately 64,695 Pounds of Shark Fins, No. 05-56274 (9 Cir. March 17, 2008).**

**United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls, 413 F. Supp. 1281 (D. Wisc. 1976).**

Maggie Trahan Simar is a hearing officer for the 16th Judicial District Family Court in St. Martin Parish. She is a member of the Louisiana Bar Journal’s Editorial Board. (415 S. Main St., St. Martinville, LA 70582)
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