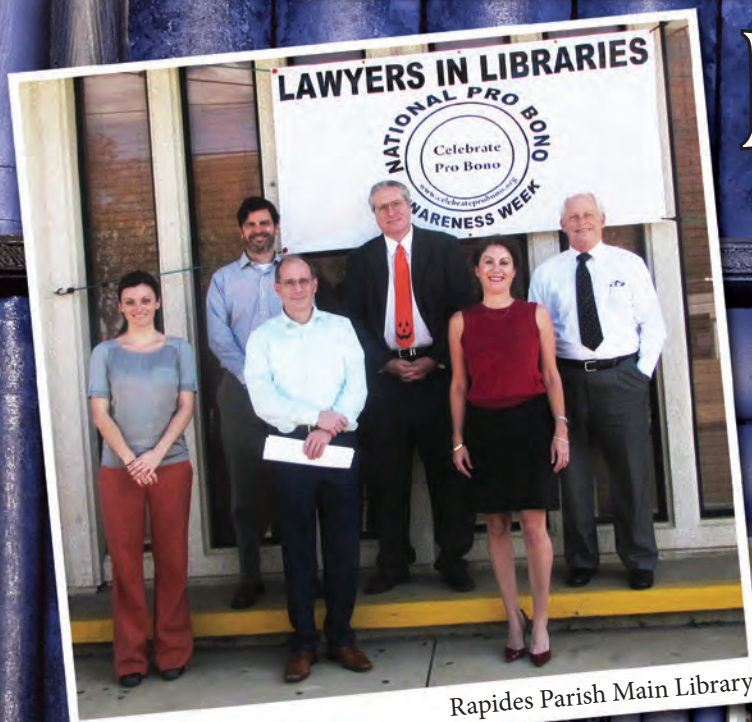


# LOUISIANA BAR JOURNAL

December 2015 / January 2016

Volume 63, Number 4

## Lawyers in Libraries *Day of Service*



Rapides Parish Main Library



Ascension Parish Library



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- Lessor Liability
- Interview: Associate Justice Greg G. Guidry
- Book Review: *Civil Code*





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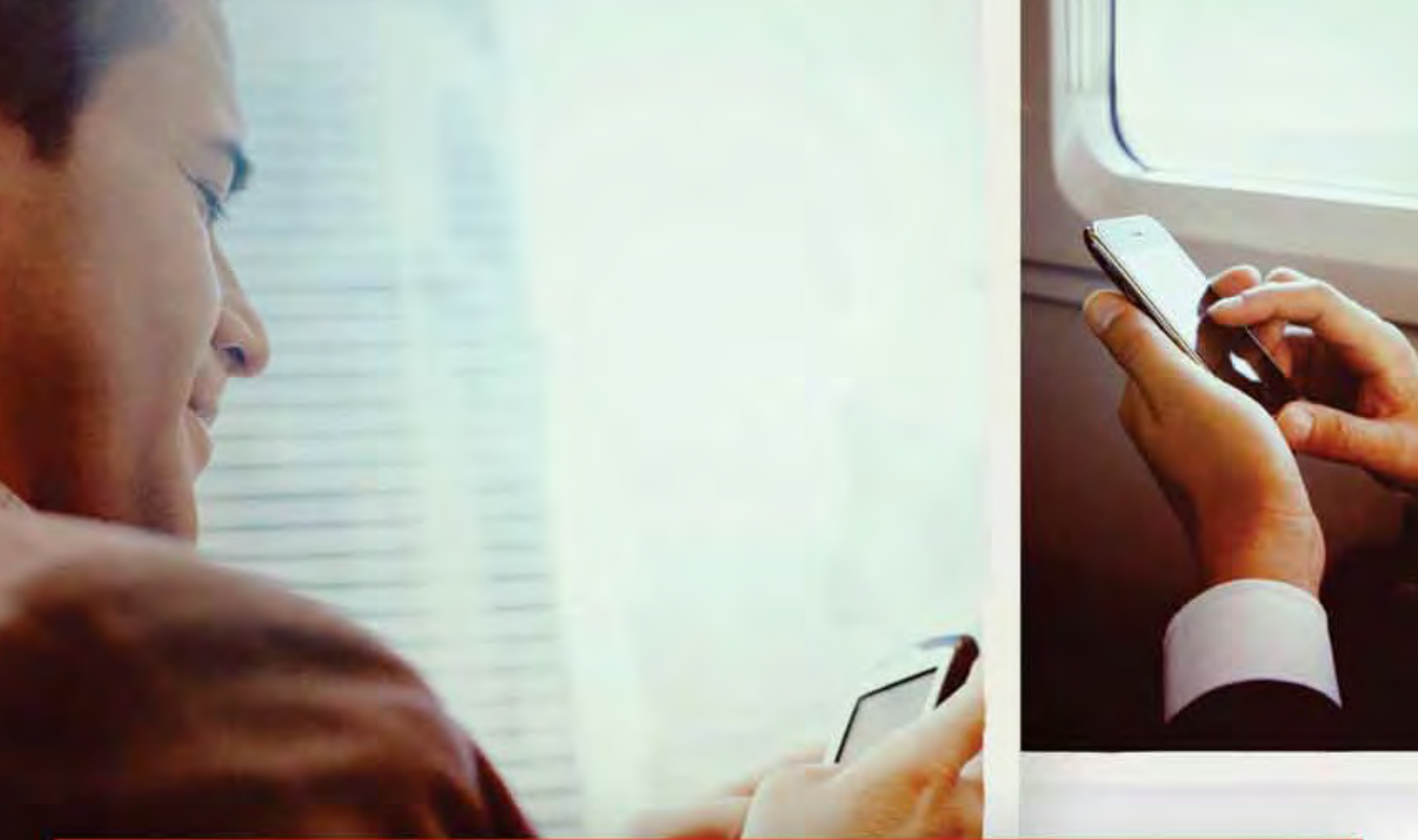
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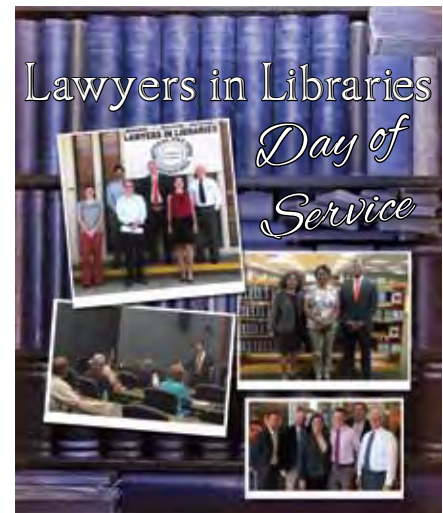
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# Looking Forward to 2016 and Wonderful Opportunities!



By Alainna R. Mire

**O**h, the holidays! What a joyous time of year for some. For me, it is not filled with so much. The holidays are always a great source of stress for me and, lately, sadness. A few years ago, I suffered a great loss the day after Christmas. Needless to say, things have been different for me since 2012. Family has always been important to me so I've always made family members a priority. The one person who has not always been at the top of the list is me.

As lawyers, many of us place more importance on the profession, status and the people around us that count on us for support. We do not always take into account our own health and feelings. Personally, it has always been easier for me to try to please everyone and do what is asked of me than to not make the attempt. This behavior often tends to place additional stress on the person doing all the giving. It has also caused friction in the workplace because some individuals may think of you as "people pleaser" or "know it all." Unfortunately, that is not the case. I'm just a person who will get the work done no matter whose job it is. I not only take pride in my work, but pride in whatever organization I'm a part of. It's like the old Vidal Sassoon commercial, "If you don't look good, then we don't look good."

As lawyers and members of the Louisiana State Bar Association (LSBA), we should all want to look good. That also includes

being mindful of our judiciary and the state of Louisiana. When our judiciary is attacked, it makes all of us look bad. When our state is attacked, it makes all of us look worse. We should not wait for a tragic event to occur, such as the Grand Theater shooting in Lafayette, for the entire state to come together as one.

I'm proud to be a Louisiana attorney who was born and raised in Scott. I hope that each of you is proud to be a Louisiana attorney, too. This holiday, I'm thankful to be a member of the LSBA, a daughter, a sister and a friend. But, most of all, I'm thankful to be able to take time for myself and family to enjoy the rest of 2015.

Looking forward to 2016 and all the wonderful opportunities the year will bring. Happy holidays!

## Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

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

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

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

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

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



# 2016 Judicial Interest Rate is 4%

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 2016 will be four (4.0%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, and Acts 2012, No. 825, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2016 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2015, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75%) percent.

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. 1, 2015. Thus, the effective judicial interest rate for the calendar year 2016 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, (3) a poverty impact statement, (4) a small business statement, (5) a provider impact statement, and (6) a notice of intent are not required to be filed with the Louisiana Register.

— **John P. Ducrest, CPA**  
**Commissioner of Financial Institutions**  
 Date: October 8, 2015

## 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](http://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](http://www.LSBA.org) website.

## Judicial Interest Rates Through 2016

Date	Rate
Prior to Sept. 12, 1980 .....	7.00 percent
Sept. 12, 1980 to Sept. 10, 1981 .....	10.00 percent
Sept. 11, 1981 to Dec. 31, 1987 .....	12.00 percent
Jan. 1, 1988 to Dec. 31, 1988 .....	9.75 percent
Jan. 1, 1989 to Dec. 31, 1989 .....	11.50 percent
Jan. 1, 1990 to Dec. 31, 1990 .....	11.50 percent
Jan. 1, 1991 to Dec. 31, 1991 .....	11.00 percent
Jan. 1, 1992 to Dec. 31, 1992 .....	9.00 percent
Jan. 1, 1993 to Dec. 31, 1993 .....	7.00 percent
Jan. 1, 1994 to Dec. 31, 1994 .....	7.00 percent
Jan. 1, 1995 to Dec. 31, 1995 .....	8.75 percent
Jan. 1, 1996 to Dec. 31, 1996 .....	9.75 percent
Jan. 1, 1997 to July 31, 1997 .....	9.25 percent
Aug. 1, 1997 to Dec. 31, 1997 .....	7.90 percent
Jan. 1, 1998 to Dec. 31, 1998 .....	7.60 percent
Jan. 1, 1999 to Dec. 31, 1999 .....	6.73 percent
Jan. 1, 2000 to Dec. 31, 2000 .....	7.285 percent
Jan. 1, 2001 to Dec. 31, 2001 .....	8.241 percent
Jan. 1, 2002 to Dec. 31, 2002 .....	5.75 percent
Jan. 1, 2003 to Dec. 31, 2003 .....	4.50 percent
Jan. 1, 2004 to Dec. 31, 2004 .....	5.25 percent
Jan. 1, 2005 to Dec. 31, 2005 .....	6.00 percent
Jan. 1, 2006 to Dec. 31, 2006 .....	8.00 percent
Jan. 1, 2007 to Dec. 31, 2007 .....	9.50 percent
Jan. 1, 2008 to Dec. 31, 2008 .....	8.50 percent
Jan. 1, 2009 to Dec. 31, 2009 .....	5.50 percent
Jan. 1, 2010 to Dec. 31, 2010 .....	3.75 percent
Jan. 1, 2011 to Dec. 31, 2011 .....	4.00 percent
Jan. 1, 2012 to Dec. 31, 2012 .....	4.00 percent
Jan. 1, 2013 to Dec. 31, 2013 .....	4.00 percent
Jan. 1, 2014 to Dec. 31, 2014 .....	4.00 percent
Jan. 1, 2015 to Dec. 31, 2015 .....	4.00 percent
<b>Jan. 1, 2016 to Dec. 31, 2016 .....</b>	<b>4.00 percent</b>



By Mark A.  
Cunningham

## The Importance of Speaking Out for the Profession and Rule of Law in Response to Unwarranted Attacks on Louisiana Attorneys and Judicial Independence

**T**his past fall, the *Washington Post* called the Caddo Parish DA's race the "most important local election of 2015."

National press coverage started months before the election and focused on race, capital punishment and a case of prosecutorial misconduct dating back decades. Reporters paid little attention to the policy positions of the candidates or their experience. They paid no attention to the critical role assistant district attorneys play in Caddo Parish and elsewhere in preserving public safety or the financial sacrifice many of them make by pursuing a public service career. None considered the impact on the public when the State failed to fund indigent criminal defense fully.

We have all seen this dynamic before. It plays itself out in the media every day. Sometimes the target of ridicule is a district attorney; other times, the spotlight is on the judiciary or trial lawyers. However, no matter what the story, we can always count on two things. First, the media will never acknowledge our commitment and service to the public — attorneys doing good works does not sell papers. Second, the profession will never speak out in its own defense. The irony should not be lost on anyone — the profession with the greatest number of blowhards (myself included) per capita has nothing to say when its own members are unjustly attacked.



Louisiana State Bar Association President Mark A. Cunningham, third from left, attended a dinner meeting with members of the Plaquemines Parish Bar Association. Among the attendees were Plaquemines Bar officers, including President S. Jacob Braud, Treasurer Adrian A. Colon, Jr. and Secretary Dominick Scandurro, Jr.; Judge Michael E. Kirby and Judge Joy Cossich Lobrano; and members Stephen C. Braud, Valeria M. Sercovich, Francis J. Lobrano, W. Allen Schafer, George Pivach II, Mark A. Pivach, Corey E. Dunbar, Joel P. Loeffelholz and Leo J. Palazzo.

Please do not misunderstand my concern. With the prominent position we hold in public policy debates and the administration of justice, scrutiny of our profession should not only be expected but welcomed. We want to know when our profession falls short. Our self-regulating status demands that we embrace criticism and address our shortcomings. Nor should we publicly defend attorneys or judges who disgrace the profession by failing to meet the standards of ethical conduct and professionalism that we have established for ourselves.

On the other hand, if we do nothing

to defend attorneys and judges when they are unjustly attacked, public respect for our profession will continue to wane and our self-regulating status will come under attack. Further, when a particular segment of our profession is attacked without cause, we cannot expect that group to mount an effective defense without support from the rest of the bar. Defense lawyers must speak out for plaintiff lawyers and vice versa. Prosecutors must speak out for criminal defense lawyers and vice versa. All Louisiana attorneys must speak out for judges when those purporting to speak for Louisiana and economic





Louisiana State Bar Association President Mark A. Cunningham, second from left, attended a dinner meeting with members of the Inn on the Teche American Inn of Court. From left, M. Bofill (Bo) Duhe, district attorney, 16th Judicial District; Cunningham; Judge Curtis Sigur, 16th JDC; Judge Vincent J. Borne, 16th JDC; Judge Keith R.J. Comeaux, 16th JDC; attorney Adolph B. Curet III; and Anthony J. (Tony) Saleme, Jr., assistant district attorney, St. Mary Parish.

development tear the state down by characterizing our court system as a “judicial hell hole.”

I recognize that many attorneys and their clients believe in the reforms espoused by interest groups that sometimes attack attorneys and judges unfairly. I am not suggesting that our members should pull their punches on important public policy issues. There is often plenty of room for debate when it comes to deciding issues related to the administration of justice. But debate and effective advocacy can happen without us tacitly endorsing media and public information campaigns intended to demean and sideline our colleagues through our silence. I find guidance in the poem by Protestant Cleric Martin Niemöller:

*First they came for the Socialists, and  
I did not speak out—  
Because I was not a Socialist.*

*Then they came for the Trade Union-  
ists, and I did not speak out—  
Because I was not a Trade Unionist.*

*Then they came for the Jews, and I did  
not speak out—  
Because I was not a Jew.*

*Then they came for me—and there  
was no one left to speak for me.*

Lack of courage has consequences. The public pays attention when lawyers do not stand up for each other and fail to live up to their own standards. As public respect for our profession declines, our ability to stave off efforts to open up the practice of law to non-lawyers diminishes. Lawyers in Washington State are already seeing these effects firsthand. There, over the strenuous objections of the state bar, the Washington Supreme Court authorized a special class of non-lawyers to practice law and, in some instances, serve as courtroom advocates in practice areas historically served by solo and small-firm practitioners. The educational requirements and ethical obligations for these so-called “limited license

practitioners” are substantially less rigorous than those imposed on attorneys, yet they can practice without attorney supervision and can even open their own businesses. Our profession should not make it easier for their advocates by letting attacks on Louisiana attorneys and judges go unanswered. There could be no worse fate for the administration of justice and rule of law in Louisiana than limited license practitioners.

Recently, I had dinner in St. Mary Parish with the attorneys and judges of the Inn on the Teche American Inn of Court and, before that, with members of the Plaquemines Parish Bar Association. At both dinners, there was clear consensus that unwarranted attacks on the legal profession and judiciary in the media undermine public confidence in the administration of justice and the rule of law and that the LSBA should respond to these attacks in a timely, effective and responsible manner. We will be working toward that goal.

In the meantime, I encourage all members to speak out for the profession and judiciary whenever they are unjustly attacked and to let me or the LSBA staff know when they see any group target lawyers or judges unfairly, particularly when the attack is motivated by political interests. In the long run, we can provide no greater service to the public than to combat misinformation intended to undermine and politicize the administration of justice and rule of law.

*Mark A. Cunningham*

## LSBA Member Services

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

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



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

# Louisiana Attorneys Volunteer Time and Talent for “Lawyers in Libraries” Day of Service Programs

By Michael W. Schachtman

**L**ouisiana pro bono attorneys provided much-needed legal assistance to the public during the Louisiana State Bar Association’s (LSBA) “Lawyers in Libraries” Day of Service on Oct. 29. A total of 133 attorneys volunteered for 73 events, reaching more than 600 people statewide.

“Lawyers in Libraries,” an ongoing collaboration between the LSBA’s Access to Justice Department and the Louisiana Library Association, directly connects the public with counsel, and makes people aware of the resources and options available to them when they cannot afford an attorney.

The Oct. 29 Day of Service was scheduled to mark Louisiana’s participation in “National Celebrate Pro Bono Week” (Oct. 25-31), but attorneys are encouraged to volunteer throughout the year. Helpful resources are available at [www.LouisianaLawyersinLibraries.org](http://www.LouisianaLawyersinLibraries.org) and LSBA staff will help coordinate events with libraries throughout the state.

“Lawyers in Libraries” is part of the Legal Education & Assistance Program (LEAP), which delivers information and assistance to the public via libraries. Earlier this year, representatives of the LSBA, Louisiana State University Law Library and the Law Library of Louisiana toured the state to provide training for library staff



Attorneys participating in the “Lawyers in Libraries” program at Rapides Parish Main Library were, front row from left, Amanda Westergard, Terry Aubin and Laurel White. Back row from left, Ted Roberts, Walter McClatchey and Robert Levy. A total of 40 people were served through the Central Louisiana Pro Bono Project, Inc.

on how to respond to legal inquiries. Also, Louisiana’s legal aid organizations have helped develop specialized print and on-line resources available to the public via local libraries.

The LSBA would like to acknowledge Louisiana libraries, the LSBA members who volunteered on Oct. 29 in their communities, and the agencies helping to coordinate this annual event.

## “Lawyers in Libraries” Volunteers

Acadia Parish: Greg Landry  
 Allen Parish: Adam Johnson  
 Ascension Parish: Artis Ulmer and Pamela Moran  
 Assumption Parish: Leah Poole  
 Avoyelles Parish: Cory Roy, Ben James, Doug Bryan, Charles Riddle and Brandon Scott  
 Beauregard Parish: Lawanda Gibson  
 Bienville Parish: Melanie Shrell  
 Bossier Parish: Felicia Hamilton and Dayan Ryan  
 Caddo Parish: John Frazier

Calcasieu Parish: Tom Shea  
 Caldwell Parish: Dina Domangue  
 Cameron Parish: Jennifer Jones  
 Catahoula Parish: Christie Wood  
 Claiborne Parish: Jerry Edwards and Charlie Tabor  
 Concordia Parish: Amelia Hoppe and Jonathan Rhodes  
 DeSoto Parish: Hon. Gary Evans  
 East Baton Rouge Parish: Annette Peltier and Luis Leitzelar  
 East Carroll Parish: Laurie Brister  
 East Feliciana Parish: Sara Bradley  
 Evangeline Parish: Laura Picard  
 Franklin Parish: Emily Shields, E. McIntyre, Scott Sartin and Caroline Hemphill  
 Grant Parish: Gwenda Lamb  
 Iberia Parish: Julie Rosenzweig  
 Iberville Parish: Wendy Ramnarine and Thomas McCormick  
 Jackson Parish: Mike Rhymes  
 Jefferson Parish: Jeremy Epstein, Jacqueline Ep-



Terrebonne Parish attorney volunteer John Sirois presented a program on elder law and other legal information.





**St. James Parish librarian Betsy Octave and attorney volunteer David Handelman.**



**Ascension Parish attorney volunteers Pamela Moran and Artis Ulmer, and librarian Chriselle Henry.**



**Pointe Coupee Parish attorney volunteers Lane Ewing and Don Cazayoux with Pointe Coupee Library Director Melissa Hymel.**

stein, James Maguire, Shayna Beevers, Thomas Robbins and Martha Maher

Jefferson Davis Parish: David Marcantel

Lafayette Parish: Lafayette Volunteer Lawyers

Lafourche Parish: John Sirois

LaSalle Parish: Carmen Ryland and Brian Frazier

Lincoln Parish: Paul Lensing

Livingston Parish: Sam Pleasant

Madison Parish: Edwin Moberley

Morehouse Parish: Jay Mitchell

Natchitoches Parish: Lewis Gladney

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Freas, Michelle Semmes, John Bihm, Margaret  
Woodward, Roy Bellina, Leandro Area, Bonnie  
Dye and Thomas Dunn

Ouachita Parish: Clint Hanchey and Dayna Ryan

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**St. Bernard Parish attorney volunteers, from left, Alan Bouterie, Mike Ginart, Adele Faust, Paul Tabary and Daniel Nodurft.**



**St. Bernard Parish attorney volunteers, from left, David Serio, Cullen Tonry, Lisa Borne, Cory Grant, Brian Page and Van Robichaux.**



# Treacherous Territory:

## Lessor Liability for the Condition of Premises and Its Proper Limitation by Contract

By Melissa T. Lonegrass

**F**ew aspects of lease law are as anxiety provoking as liability for defective premises. A landlord's responsibility for damages caused by defects in the premises can significantly increase the cost of doing business. And for tenants, the prospect of injury to person or property can be sobering. As a result, clauses in a lease that attempt to shift or otherwise limit this liability are critical. However, the law governing these clauses is not optimized for most leases. Arguably, the current regime fails to sufficiently protect both commercial landlords and residential tenants. Perhaps more disturbing, the law governing the parties' power to waive or transfer landlord liability is not only unbalanced, but also confusing and unsettled. This article provides guidance for practitioners attempting to navigate the treacherous territory of landlord premises liability.<sup>1</sup>

### Lessor Liability in Contract and Tort

A lessor's liability for defects arises from two sources: the lease contract and the law of delict, or tort. First, implied in every lease is a warranty against vices and defects, according to which a lessor's liability is "strict" — the warranty extends to all defects whether known or unknown to the lessor.<sup>2</sup> Second, the lessor's delictual liability arises principally from the lessor's custody of the leased thing or the lessor's status as the owner of a building.<sup>3</sup> Since 1996, a lessor's tort liability requires negligence — failure to exercise reasonable care to prevent damage caused by a defect of which the lessor knew or should have known.<sup>4</sup> Because the law imposes contractual and delictual obligations upon landlords concurrently, injured tenants may recover under either theory, or both.<sup>5</sup> Non-tenants instead have only the tort theory at their disposal, although an exception to this rule exists for family members and roommates of a residential lessee.<sup>6</sup> Thus, in general, a lessor is strictly liable to tenants for damages caused by defects in the premises, and liable to third parties only for negligence.

### Louisiana Revised Statutes 9:3221

However, the contractual and delictual responsibilities described above are not unalterable. Instead, a lessor may shift some liability for the condition of the premises to a lessee who agrees to hold the lessor harmless for any injury to the lessee or third parties. The primary provision governing these liability-shifting clauses is La. R.S. 9:3221, which was first enacted in 1932. In pertinent part, the statute reads as follows:

[T]he owner of premises leased under a contract whereby the lessee assumes responsibility for their condition is not liable for injury caused by any defect therein to the lessee or anyone on the premises who derives his right to be thereon from the lessee, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time.<sup>7</sup>

By its letter, this statute appears to permit a lessor-owner to shift liability for defective premises to the lessee, provided the lessor did not act negligently by failing to remedy



a defect of which the lessor knew or should have known. For decades, courts have applied this statute to nearly all cases involving lessors' attempts to shift both contractual and delictual responsibility for the condition of the premises to their lessees.<sup>8</sup>

Unfortunately, since 9:3221 was first enacted, courts, legislators and practitioners have struggled to appreciate the statute's proper role and application within the broader framework of the law. In particular, recent legislative reforms of tort and lease law have caused this statute to operate in a manner far different from what the Legislature initially intended. Its continued application impedes both the contractual freedom of the parties to a lease and important public policies embedded in the Civil Code. Indeed, when read *in pari materia* with basic principles of obligations law, this statute is impossible to sensibly apply.

### Shifting a Lessor's Liability in Tort

The Legislature's aim in enacting 9:3221 was narrow. By the 1930s, the jurisprudence on lessor premises liability and its susceptibility to waiver was well settled. Relying on French jurisprudence, Louisiana courts held uniformly that parties to a lease were free to broaden or restrict the lessor's liability by contract, even with respect to the warranty against vices and defects.<sup>9</sup> Furthermore, according to the Supreme Court, a lessor's tort liability could be negated by the victim's assumption of the risk.<sup>10</sup> The obligations of the lessor, no matter the source, were therefore freely waivable by any party who might suffer harm. However, the Supreme Court jurisprudence placed an important limitation on this waiver — the rule of contractual privity.<sup>11</sup> Thus, a lessee's agreement to assume responsibility for the premises could have no effect on a lessor's responsibility to a *third party*.

The Legislature's response to this limitation was to enact 9:3221. According to that rule, when a lessee assumed responsibility for the condition of the premises, the lessor could not be held liable for injuries suffered by the lessee or anyone on the premises with the lessee's consent *unless* the lessor knew or should have known of the defect and failed to remedy it within a reasonable

time.<sup>12</sup> Therefore, when the lease contained a liability-shifting clause, the statute reduced a lessor's delictual premises liability from strict liability to negligence.

The statute's reduction in the standard of care was an important protection for landlords — at least until 1996. In that year, the Louisiana Legislature enacted sweeping tort reform by reducing a lessor's tort liability from strict liability to negligence.<sup>13</sup> After this change in the law, 9:3221, which also reduced a lessor's standard of care from strict liability to negligence, ceased to serve a protective function for lessors. For example, if today a defective stairway railing in a leased building fails, causing the lessee's guest to fall and suffer harm, the lessor is liable only if (1) the lessor knew, or in the exercise of reasonable care, should have known of the defect in the railing, (2) the damage could have been prevented by the lessor's exercise of reasonable care in repairing the defect, and (3) the lessor failed to exercise such reasonable care.<sup>14</sup> Although the lessor may attempt to shift this responsibility in tort to the lessee, 9:3221 negates any such attempt when the lessor (1) knew or should have known of the defect or had received notice thereof, and (2) failed to remedy it in a reasonable time.<sup>15</sup> Thus, under present law, the same showing that gives rise to a third party's action against the lessor likewise negates the effect of any attempt to shift this responsibility to the lessee.<sup>16</sup>

Also by 1996, another reason existed for 9:3221's repeal. In 1985, the Legislature enacted Louisiana Civil Code article 2004, dealing with exculpatory clauses and limitations of liability.<sup>17</sup> Article 2004 places only two limitations on exculpatory provisions, both derived from public policy. First, parties may not agree in advance to exclude or limit a party's intentional or gross fault.<sup>18</sup> Second, parties may not agree in advance to exclude or limit a party's liability for physical injury.<sup>19</sup> The text and structure of the article both suggest that, aside from these limitations, parties are free to waive the obligations of another. The retention of 9:3221 in 1996 perpetuated an important anomaly in lease law. Although under article 2004 parties to a contract are free to negate their liability for negligence, under 9:3221 this is not possible in a lease. Thus, this statute unintentionally became an impediment to

contractual freedom.<sup>20</sup>

Although 9:3221 no longer serves the purpose for which it was originally enacted, it has not been repealed. In 1996, the prevailing belief was that 9:3221 provided important protections for lessors in the realm of contract.<sup>21</sup> This mistaken understanding of the statute resulted in its retention, even after its utility to lessors had ended.

### Shifting a Lessor's Liability in Contract

Whereas 9:3221 was once a sensible rule in the tort setting, the statute has always fit poorly with contract law. In the 1930s, the implied warranty against vices and defects was freely waivable by the parties to the lease.<sup>22</sup> However, 9:3221 negates the effect of a warranty waiver when the lessor knew or should have known of the defect and failed to make timely repairs.<sup>23</sup> Because a broad interpretation of the statute was inconsistent with the law's purpose, in the years following its enactment, courts and commentators applied 9:3221 only to waivers of a lessor's *tort* liability.<sup>24</sup>

In 1981, the Supreme Court altered the trajectory of the statute by applying it to negate a waiver of the warranty against vices and defects. In *Tassin v. Slidell Mini-Storage, Inc.*, lessees of a storage unit sued their lessor, seeking compensation for water damage to their personal property caused by a defect in the storage unit doors.<sup>25</sup> The lessor defended by relying on the lease contracts, which absolved the lessor from any liability resulting from water damage.<sup>26</sup> The court found the waivers invalid, applying 9:3221 and concluding that the lessee knew or should have known that the doors would leak.<sup>27</sup> Following *Tassin*, courts have applied 9:3221 in nearly every case involving an attempted waiver of the lessor's contractual warranty obligations, despite its clear tort-based origins.

While the approach of *Tassin* is certainly contrary to the original intent of 9:3221, it has allowed courts to introduce public policy limitations on warranty waivers where none otherwise existed in the law. The Legislature later introduced its own limitations on warranty waivers in the 2005 revision of the Civil Code title on Lease. Article 2699 now provides that although the lessor's warranty



against vices and defects may be waived, this may be accomplished only “by clear and unambiguous language that is brought to the attention of the lessee.”<sup>28</sup> Moreover, an otherwise valid waiver is ineffective under three distinct circumstances:

- (1) To the extent it pertains to vices or defects of which the lessee did not know and the lessor knew or should have known;
- (2) To the extent it is contrary to the provisions of Article 2004; or
- (3) In a residential or consumer lease, to the extent it purports to waive the warranty against vices or defects that seriously affect health or safety.<sup>29</sup>

Despite Article 2699’s comprehensive regulation of warranty waivers, 9:3221 was not repealed in 2005 and was instead, shockingly, amended and reenacted.<sup>30</sup> Furthermore, an introductory phrase suggests that 9:3221 must operate as an exception to the Civil Code.<sup>31</sup> As in 1996, the statute’s preservation appears to be an error. A comment to 2699 inaccurately claims that 9:3221 applies only to “delictual or quasi-delictual obligations incurred as a result of injury occurring in the leased premises.”<sup>32</sup> While this statement may have been correct at the time of the statute’s enactment, it has not been accurate since 1981, when courts first applied 9:3221 to contract claims.

9:3221’s reenactment resulted in disorder and confusion in the jurisprudence. Courts, reading article 2699 and 9:3221 *in pari materia*, have tended to hold that the statute supersedes the Code.<sup>33</sup> Attempting to find some purpose for this statute in delict, numerous courts have now concluded — quite wrongly — that a case involving personal injuries, even when predicated on the warranty against vices and defects, is necessarily an action in “tort.”<sup>34</sup> Moreover, 9:3221’s application in lieu of 2699 has impeded the carefully constructed policies of the new code provision on warranty waivers. While examples of the conflicts between 9:3221 and article 2699 are numerous, two warrant special mention.

First, in commercial leases, 9:3221 unnecessarily restricts the contractual freedom of the parties to the lease. Under the Civil Code, a waiver of the lessor’s warranty is

generally enforceable if it is clear and unambiguous and brought to the attention of the lessee. Once properly executed, the waiver is invalid only if its application violates the rules of public policy articulated in article 2699. Under 9:3221, on the other hand, the lessor remains responsible for damage caused by any defect of which he knew or should have known and failed to timely repair. This excessive limitation undermines the intent of most commercial leases, in which sophisticated parties routinely shift responsibility for the premises to the lessee to the fullest extent permitted by law.

Second, in residential leases, 9:3221 is insufficiently protective of lessees. Article 2699 negates the waiver of any defects that “seriously affect the health or safety” of residential tenants. 9:3221 contains no such restriction, negating a waiver only when the lessor fails to remedy a defect of which he knew or should have known. By holding that 9:3221 supersedes the article 2699, courts have denied lessees the protection of legislation carefully crafted to ensure the safety of residential dwellings.

## Conclusion

Complete clarity will come to the law of the lessor’s premises liability only when the Legislature finally repeals 9:3221. Principles of the Civil Code, and not an outmoded and defunct statutory relic, should govern here. In the interim, courts should apply 9:3221 restrictively so as to minimize confusion and conflict in the law. In the tort setting, article 2004 — not 9:3221 — should regulate liability waivers. And, in light of new article 2699, 9:3221 has no place in the enforceability of waivers of the lessor’s contractual obligations. Coherence and stability must be reintroduced to this vital area of the law and, in turn, to the lessor-lessee relationship.

## FOOTNOTES

1. This essay is adapted from Professor Melissa T. Lonegrass’ article, “The Anomalous Interaction Between Code and Statute — Lessor’s Warranty and Statutory Waiver,” 88 Tul. L. Rev. 423 (2014).
2. La. Civ.C. arts. 2696, 2697.
3. La. Civ.C. arts. 2317.1, 2322.
4. 1996 La. Acts 710. Prior to 1996, owners and custodians were strictly liable in tort.
5. Traditionally, lessees have favored the contract theory. See Lonegrass, *supra* note 1, at 444.

6. La. Civ.C. art. 2698.

7. La. R.S. 9:3221.

8. See generally, *Terrenova v. Feldner*, 28 So.2d 287 (La. App. Orleans 1946); *Tassin v. Slidell Mini-Storage, Inc.*, 396 So.2d 1261 (La. 1981).

9. See, e.g., *Pecararo v. Grover*, 5 La. App. 676, 678 (La. App. Orleans 1927); *Cordona v. Glenn*, 1 Teiss 22, 24 (La. App. 1903).

10. See, e.g., *Clay v. Parsons*, 81 La. 597, 597 (1919).

11. *Klein v. Young*, 111 So. 495, 496-97 (La. 1926).

12. 1932 La. Acts 552.

13. 1996 La. Acts 710.

14. La. Civ.C. arts. 2317.1, 2322.

15. La. R.S. 9:3221

16. Compare La. Civ.C. arts. 2317.1, 2322 with La. R.S. 9:3221.

17. 1984 Acts No. 331.

18. La. Civ.C. art. 2004.

19. *Id.*

20. After 1996, there is no conflict between 9:3221 and article 2004’s limitation on exculpation of liability for physical injury, as the facts giving rise to a lessee’s claim would simultaneously negate any attempted waiver of that right of action.

21. Lonegrass, *supra* note 1, at 464 & n. 256.

22. See *supra* note 9.

23. La. R.S. 9:3221.

24. See Lonegrass, *supra* note 1, at 452-53.

25. 396 So.2d 1261, 1261 (La. 1981).

26. *Id.*

27. *Id.* at 1264.

28. La. Civ.C. art. 2699.

29. *Id.*

30. 2004 La. Acts 2614.

31. La. R.S. 9:3221 (“Notwithstanding the provisions of Louisiana Civil Code Article 2699 . . .”).

32. La. Civ.C. art. 2699, cmt. (h).

33. See, e.g., *Wells v. Norris*, 46,458, pp. 6-7 (La. App. 2 Cir. 8/10/11), 71 So.3d 1165, 1169; *Stuckey v. Riverstone Residential SC, LP*, 2008-1770, p. 10 (La. App. 1 Cir. 8/5/09), 21 So.3d 976-77.

34. See, e.g., *Wells v. Norris*, 46,458 (La. App. 2 Cir. 8/10/11), 71 So. 3d 1165, 1169; *Greely v. OAG Props., LLC*, 44,240 (La. App. 2 Cir. 5/13/09), 12 So.3d 490, 495.

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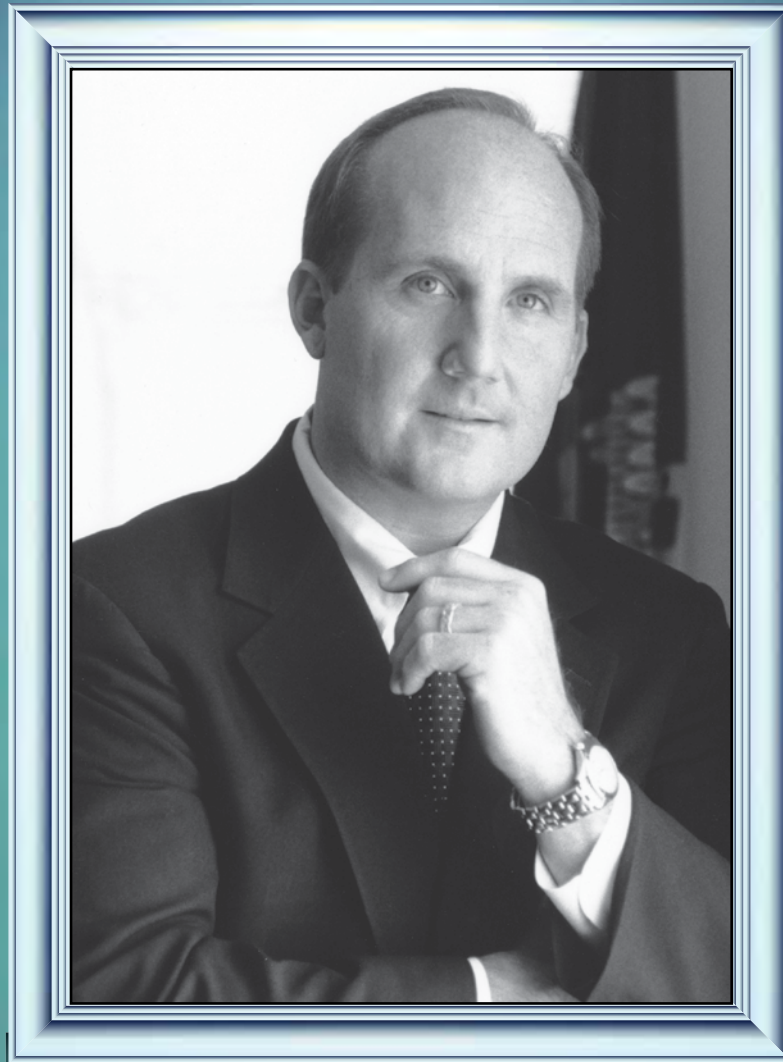
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# **Portraits & Perspectives: Louisiana Supreme Court Associate Justices**



**One on One with Louisiana Supreme Court  
Associate Justice Greg G. Guidry**

**Interviewed by Margaret E. Judice**



Associate Justice Greg G. Guidry has served on the Louisiana Supreme Court since January 2009.

Previously, he was a judge on the Louisiana 5th Circuit Court of Appeal and a district court judge for the 24th Judicial District Court in Jefferson Parish.

He was employed in the New Orleans office of Liskow & Lewis, A.P.L.C., as a member of the commercial litigation section. For nearly 10 years, beginning in 1990, he served as an assistant United States attorney with the U.S. Attorney's Office for the Eastern District of Louisiana.

Justice Guidry is a past president of the Judge John C. Boutall American Inn of Court and the Louisiana 5th Circuit Judges Association. He was appointed to the Louisiana Sentencing Commission by Louisiana Gov. Bobby Jindal. He is the Supreme Court's representative to the Louisiana State Law Institute and the Louisiana Commission of Law Enforcement and Administration of Criminal Justice.

He is a 1985 graduate of Louisiana State University Paul M. Hebert Law Center where he was inducted into the Order of the Coif and selected for the Louisiana Law Review. In 2010, he earned a master's degree in judicial studies from the National Judicial College.

**Journal:** Tell us a little bit about yourself.

**Guidry:** I was born and raised in Jefferson Parish where I attended public schools from the first grade all the way through high school. I attended Louisiana State University for my undergraduate studies and law school. I also earned a master's degree from the National Judicial College in judicial studies.

**Journal:** What was your undergraduate degree?

**Guidry:** My major was political science with a minor in classical civilizations. I was fortunate to be able to study subjects that interested me.

**Journal:** At what point in your life did you decide you wanted to become a lawyer?

**Guidry:** In high school. I did not have



Louisiana Supreme Court Associate Justice Greg G. Guidry and his wife Cathy Guidry on election night. Photo provided by the Guidry Family.

a specific idea of exactly what I wanted to do as a lawyer, but that is when I decided to go to law school. I really never strayed from that goal. Even back then, I could see that lawyers played an integral role in public life, and I wanted to be a part of that. It was an easy decision for me.

**Journal:** Do you have any lawyers in your family?

**Guidry:** No, my background is much more blue-collar. One of my grandfathers was born on a sugar plantation in Lafourche Parish. He was taken out of school in the first grade and put to work bringing water to people working in the cane fields. He later became one of the first bulldozer operators for Boh Brothers Construction Co. in New Orleans. He loved that company and worked well into his 80s. My other grandfather was an Italian barber. He loved being with his family and making wine from Japanese plums.

**Journal:** I noticed in your biography on the website that you have served as a court of appeal judge and now a justice of the Supreme Court. What made you decide to run for the Louisiana Supreme Court?

**Guidry:** I wanted to serve the people of Louisiana in the most meaningful way possible. The decisions we make on a

daily basis are important and difficult. The high volume of work makes it even more challenging. Yet, the Supreme Court is a wonderful place to work.

I have been blessed in that I have enjoyed every one of my jobs. I was a district court judge for six years. Nothing is more interesting than presiding over a jury trial. There are critical moments in a trial that are absolutely fascinating to watch. The court of appeal was equally rewarding.

I must say that I also found my campaign to be quite rewarding. My current district covers both sides of Lake Pontchartrain from the Mississippi/Louisiana state line in the north to the west bank of Jefferson Parish in the south. I now have wonderful friends in six parishes that I remain in close contact with. The campaigns allowed me to understand the people and culture of my election district in a manner that could not be duplicated.

Before I became a judge, I was a federal prosecutor with the United States Attorney's Office in New Orleans. I was there for almost 10 years and could have made it my career. It was a difficult decision to leave. I prosecuted scores of cases involving political corruption, fraud and civil rights violations. Many resulted

in federal jury trials, and I argued cases before the United States 5th Circuit Court of Appeals. I served as a supervisor, ethics officer and grand jury coordinator.

I began my career in the New Orleans office of Liskow & Lewis where I was able to learn good habits from some of the best lawyers in the nation.

**Journal:** Which judicial position has been the most challenging?

**Guidry:** They are each challenging in their own way. District court judges are in the middle of the action. They interact with the public much more than appellate court judges on matters that are extremely important to the people appearing in their courts. I have tremendous respect for, and confidence in, our jury system. It was an honor for me to serve as the guide and host for jurors while they served in my court. We should never take them for granted. They are called upon to make difficult decisions, and this pressure takes a toll on them. However, I never met a juror who did not find the experience gratifying or who did not walk away with a greater appreciation for our system of justice.

Of course, the Supreme Court is much quieter. However, it is a misconception that we live an isolated existence. We interact with each other, and the members of our staff, on a daily basis. The Supreme Court enjoys an incredibly bright and dedicated group of employees. Quite the opposite from being alone, I am part of a very impressive team.

**Journal:** Have any of the cases you have heard during your service as a Louisiana Supreme Court justice been particularly significant or stand out in your mind?

**Guidry:** The ones that stand out to any judge are those involving the death penalty and the termination of parental rights. These are the two categories of cases that are most likely to cause me to lose sleep at night because of their extreme consequences. However, every case is critically important to those involved. Our work at the Supreme Court includes civil cases involving hundreds of millions of dollars, matters of constitutional importance, and all types of criminal cases. I try to never lose sight of the hard



Louisiana Supreme Court Associate Justice Greg G. Guidry has been riding and showing Western performance horses since he was nine years old. Photo provided by the Guidry Family.

work put into these cases by the dedicated attorneys involved. They are all difficult and interesting in their own way, but we are required to pick and choose from the thousands of writ applications we receive every year in accordance with our rules.

**Journal:** I've noted that you have basically been in the judicial system since the year 2000. Have there been any changes or anything noteworthy or significant in the practice of law or any other area in the past 15 years?

**Guidry:** The cost of accessing our court system has risen to a level which I believe is not acceptable. Hiring an attorney, and litigating a case through the justice system, is beyond the financial reach of many people. I believe that is why the majority of cases settle before trial. It appears to me that attorneys and members of the public are selectively using our district court judges to resolve significant pre-trial issues on an inevitable path towards settlement. Very few civil cases actually go to trial.

With regard to criminal cases, we cannot ignore the fact that court costs,

finances and fees are always moving in only one direction — up. A first offense misdemeanor charge could lead to a massive financial obligation for someone of meager means. Sometimes, we are setting people up to fail.

**Journal:** Is there any kind of movement that the judges are pushing for with the Legislature to try and make it somewhat more affordable for the indigent or the lower socioeconomic people?

**Guidry:** Yes. Our Judicial Council is currently reviewing each and every cost imposed in criminal cases. It is my hope that some could be reduced or eliminated. In the civil context, there is a continuing effort to raise money for free legal representation. Our attorneys have been generous in donating their time on a pro bono basis. I am extremely proud of them.

**Journal:** Do you have any advice for lawyers who are preparing to argue before the Supreme Court?

**Guidry:** Lawyers should be organized, concise and completely accurate in everything they represent to the Court. We do read the briefs. We do delve into the record. A misleading or false statement will inevitably be revealed. Attorneys should be able to attribute every factual statement they make to the record on appeal. A surprising number of attorneys cannot answer the simple question of whether or not a fact they referenced is in the record.

**Journal:** What part of your seven years on the Supreme Court have you enjoyed the most?

**Guidry:** I enjoy our collegiality. There are seven of us, and all seven discuss and vote on every matter that comes before the Court, no matter how important or insignificant. We have quite different personalities and philosophies, but we are required to work with each other. We know each other's families, hobbies, likes and dislikes, and it makes us close. This helps us get through the rough spots. This collegial atmosphere extends beyond the justices to include the members of our staff. They are all part of the Supreme Court family. We have a tremendous amount of respect for each other, and this has been very rewarding.



**Journal:** If you had not been a lawyer, what other career do you think you would have chosen?

**Guidry:** I would have chosen a career in the foreign service. In fact, I was offered a position as a Foreign Service Officer with the United States Department of State but turned it down to become a judge. I love traveling and suffer from wanderlust. When I was in law school, I was awarded a Rotary Foundation Scholarship for International Understanding. I spent a year in South Africa where I studied classical civilizations and Roman law at the University of the Witwatersrand. This was where Nelson Mandela earned his law degree many years earlier. When I was with the United States Department of Justice, I served as a legal advisor and trial advocacy instructor to the Republic of South Africa and the United States Virgin Islands. I have also helped to train judges and prosecutors in the African nation of Malawi as they come to grips with complex financial fraud and corruption cases.

**Journal:** I would like to lighten things up a bit. Tell us about your family.

**Guidry:** I am married and have two

children. My wife is from Canada. We met while I was in South Africa. She is an emergency room nurse. She loves Louisiana! My daughter recently graduated from Louisiana State University and is beginning her career as a teacher with the St. Tammany Parish Public School System. My son is in high school. He has always wanted to be a firefighter, and I believe that he will actually become one. He is only 16, but he has already been taken in by our local fire department. He works entire shifts and goes on calls. However, he is not allowed to go into a burning building, much to his chagrin. His parents have no problem with that restriction. Both of our children are public service-oriented, and that makes us proud.

**Journal:** Is there anything fun or interesting about you that we do not know that you care to share with us?

**Guidry:** Most people do not know that I have been riding and showing Western performance horses since I was nine years old. It has been the greatest constant in my life and something I could not do without. It is my great passion and the perfect escape.

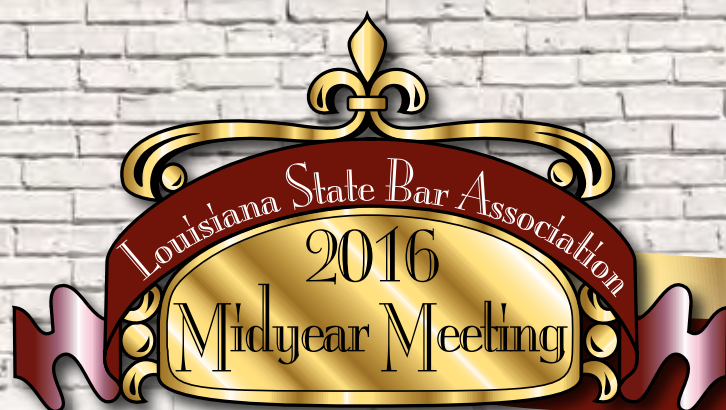
**Journal:** Do your children share your love of horses?

**Guidry:** My children were brought up around horses in a way that I could not have imagined when I was young. But the love of horses is like the love of sailing or riding motorcycles. You are either born with that affection or you are not. If you are, nothing can replace it. They have little interest in riding horses at all, but my wife does. So there were many times over the years when the kids were inside watching television while we were outside riding horses. Can you imagine that?

**Journal:** How many horses do you have?

**Guidry:** We have three horses, two dogs, three cats, four chickens and about 30 cows on a farm in St. Tammany Parish. Do you think that is enough?

*Margaret E. Judice is a partner in the Franklin law firm of Aycock, Horne & Coleman. She has been a member of the Louisiana Bar Journal's Editorial Board for several years. (margaretjudice@cox-internet.com; P.O. Box 592, Franklin, LA 70538-4101)*



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# Book Review

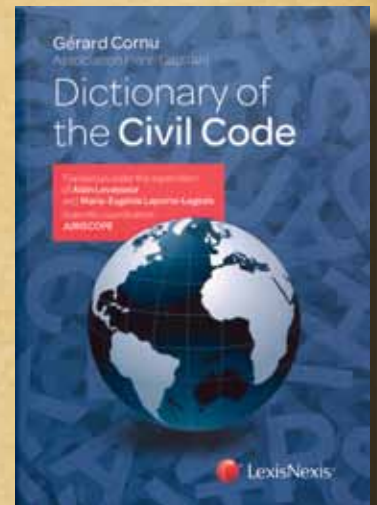
## *Dictionary of the Civil Code*

Translation under the supervision of Alain A. Levasseur and Marie-Eugénie Laporte-Legeais

Reviewed by Benjamin West Janke

The year 2014 was a busy one for legal lexicographers. Bryan Garner's extensive undertaking of adding 7,500 new entries to his fourth unabridged edition of *Black's Law Dictionary* (10th ed.) illustrates that the work of defining the law is never complete. But there is another impressive work of legal scholarship that should be particularly appealing to the Louisiana lawyer: the *Dictionary of the Civil Code*.

At its root, the *Dictionary of the Civil Code* is an English translation of more than 1,600 civil law concepts in the French *Vocabulaire juridique*, first published in 1936 under the direction of Henri Capitant and later revised extensively under the supervision of Gérard Cornu, dean of the University of Poitiers Law School. The *Vocabulaire juridique* was translated into the *Dictionary of the Civil Code* under the supervision of Alain A. Levasseur, leading the Louisiana team, and Marie-Eugénie Laporte-Legeais, leading the Poitiers-Juriscopes team at the University of Poitiers. A close study of the Dictionary reveals that it is so much more than a translation: it is an essential tool for exploring the civil law of France through a Louisiana lens.





While the enormity of this translation project is self-evident, the difficulty is underscored by Cornu's preface of the *Vocabulaire*: "Monolingual and monolithic, this work draws only from the French language and expresses only the French juridical system." In other words, "keep out" if you are not the intended audience.

The lexicographer's pursuit of precision is often at odds with the limits of literal translation. This tension is clear in the way courts interpreted Louisiana's 1808 Digest of Civil Laws and the 1825 Civil Code, both of which were originally drafted in French and translated into English. Even though there was no legislative provision for the resolution of conflicts between the French and English texts of the 1825 Code, the prevailing view among courts was that the original French text was controlling.<sup>1</sup> As Louisiana's adherence to French authority eroded, and the influence of the common law in Louisiana reached its peak, E.D. Saunders sought to rekindle the French connection as he wrote in his Preface to the 1909 edition of the Louisiana Civil Code: "There is probably no legal literature in the world so rich and instructive as that of modern France."<sup>2</sup> A hundred years later, in spite of the "monolingual" and "monolithic" nature of the *Vocabulaire*, translators Levasseur and J. Randall Trahan acknowledge and adopt in their approach to translation the more encouraging and inviting words of Cornu, who wrote that "language of the law is a public, social language, a civic language" and that "the language of the law is, to a major extent, a legacy of tradition."<sup>3</sup>

Instead of lamenting the shortcomings of literal translations, the translators include fundamental and essential meanings of the entries, together with reference to the subject matter and related concepts, and citation to French and Louisiana authorities. This is where the work of the translators truly shines, and where the reader can embark upon a deeper study more suitable for the Louisiana legal scholar. A citation to *peremption*, for example, invites the reader to compare the concepts of *forclusion*, *déchéance*, *prescription extinctive*, and *caducité*. Turn a few pages back and the entry for *Paulien* (for a Paulian action) gives reference to Louisiana Civil Code article 2036 (on revocatory actions), and the Roman praetor Paulus for whose namesake it

was adopted.

Purists will especially appreciate the inclusion of translations to avoid. For the lawyer who maligns the square peg/round hole organization of Louisiana legal concepts in the West Key Number System (see, e.g., predial servitudes under "easements"), despite can be found in the direction to avoid the term "joint and several" under *solidarité*, or "merger" under *confusion*.

Should the Louisiana lawyer shelve *Black's* in preference to this bespoke dictionary for the civilian? Not exactly. The *Dictionary of the Civil Code* will not help the bemused law student to understand what it means to say that "[t]he propinquity of consanguinity is established by the number of generations,"<sup>4</sup> but *Black's* will. In fairness to West Publishing, the influence and contributions of Louisiana jurists who have served on its panel of academic contributors are evident. But, the audience for "the most widely cited lawbook in the world"<sup>5</sup> is not the same as that of the *Vocabulaire juridique* or of the *Dictionary of the Civil Code*. For the Louisiana lawyer, the *Dictionary of the Civil Code* is a helpful companion to *Black's*.

The *Dictionary of the Civil Code* should be regarded for what it is and not confused with what it is not. It is not, strictly speaking, a primary source of Louisiana law. Likewise, it is not a compendium of every civilian concept found in the Louisiana jurisprudence. To consider it as such neglects the multiple sources from which Louisiana law is drawn and the evolution of certain concepts that are indigenous to Louisiana. It is, however, a window to understanding civil law terminology in a format that invites the reader to learn more about the foundations from which much of Louisiana law was built. The translators' reasons for including references to the Louisiana Civil Code in the otherwise "monolithic" *Vocabulaire* "are meant to stress that the French juridical system, at least insofar as the 'civil law' part of it is concerned, is not the only juridical system to be expressed in the *Vocabulaire* and, further, that the French language is not the only language in which the concepts/notions addressed in the *Vocabulaire* may be expressed."<sup>6</sup>

Given the continued efforts to translate the French civil law into English over the past several decades — from the Louisiana State Law Institute's *Civil Law Transla-*

*tion* series, to Planiol's Civil Law Treatise and to the *Dictionary of the Civil Code* — one might be misled into thinking that the origin of any civilian expression is exclusively French. To the contrary, other ambitious endeavors such as the Louisiana Civil Code Translation Project by the Center of Civil Law Studies at Louisiana State University Paul M. Hebert Law Center demonstrate that the civil law originates — and evolves — in multiple languages. As the translators proudly observe: "After all, we are, and have long been, English-speaking civilians!"<sup>7</sup>

Readers will find that the *Dictionary of the Civil Code* is much more than a translation of a dictionary. While it will surely find its way into the footnotes of countless briefs where a lawyer "just needs a definition," the enlightened jurist will use it as a springboard for further exploration of the civil law.

## FOOTNOTES

1. A.N. Yiannopoulos, *The Civil Codes of Louisiana*, in the La. Civ.C. LVII (2015).

2. E.D. Saunders, *The Law of Louisiana*, in La. Civ.C. xxxv-xxxvi (1909).

3. Alain A. Levasseur and J. Randall Trahan, *Our Approach to Translation*, in *Dictionary of the Civil Code* XIII (2014).

4. La. Civ.C. art. 900.

5. Bryan A. Garner, "The Tortuous Tale Behind the 10th Edition of the Most Widely Cited Lawbook in the World," *ABA Journal* (May 2014).

6. Alain A. Levasseur and J. Randall Trahan, *Our Approach to Translation*, in *Dictionary of the Civil Code* XIII (2014).

7. Alain A. Levasseur and J. Randall Trahan, *Our Approach to Translation*, in *Dictionary of the Civil Code* XIII (2014).

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## Louisiana Justice Community Conference Focuses on Innovation and Technology

The 12th annual Louisiana Justice Community Conference (LJCC) in October in Baton Rouge focused on innovation and technology.

When advances in technology and innovation are changing the way people think and work, almost daily, civil legal aid providers are learning and incorporating new methods of delivering legal services that directly increase access to justice. Some come in the form of new models, such as Southeast Louisiana Legal Services' "Single Stop Project" that offers direct legal services on-site at Delgado Community College to at-risk students, including financial planning consultation and expungements. Others come in the form of new technology such as Justice and Accountability Center of Louisiana's "Clean Jacket" app that helps users determine whether they can get a criminal conviction expunged under Louisiana law. These innovators, along with more than 150 public interest attorneys and advocates from around the state, participated in the annual conference.

Hosted by the Louisiana State Bar Association's (LSBA) Access to Justice Program, the two-day statewide conference joins all aspects of the civil legal aid community to discuss and address issues related to the delivery of legal services in Louisiana to low-income residents.

On the heels of the initiatives of LSBA President Mark A. Cunningham, the focus of this year's conference was the transformative power of the legal profession and civil legal aid with an eye toward new and innovative methods for delivering legal services.

The conference opened with welcome remarks from Cunningham and Louisiana Bar Foundation President H. Minor Pipes III.

R. Judson Mitchell, clinical professor and creator of the Technology and Legal



Two awards were presented at the 12th annual Louisiana Justice Community Conference. Sachida R. Raman, left, managing attorney of the Family Law Unit at Acadiana Legal Services Corp., received the Legal Service Excellence in Advocacy Award for his dedication to representing vulnerable clients for more than 20 years. Southeast Louisiana Legal Services, represented by Jay Welch, right, received the Legal Service Innovation Award for its Single Stop Project that offers direct legal services on-site at Delgado Community College to at-risk students.

Innovation Clinic at Loyola University College of Law, delivered the keynote address, discussing technology and the future of legal services. He also answered the top-of-mind question: "Are Robots Coming for Your Jobs?" Fortunately, he answered with a firm "no" while recognizing the improvements made to the practice of law through the use of technology.

Additional programming covered substantive, public-interest-focused topics ranging from new eviction protection laws for domestic violence victims to public benefits and interdiction law. The conference provided effective advocacy skills training on such topics as advanced direct and cross-examination and communication skills for trial and beyond. In keeping with the theme, a panel on technology showed attendees how apps are not only increasing access to justice, but also increasing efficiency.

On the first day, the conference offered Children in Need of Care (CINC) attorneys

with a pre-conference focused on enhancing child advocacy skills in dependency cases. The Louisiana Bar Foundation sponsored and hosted a training event for board members of their grantee organizations on the second day of the conference.

New this year, two civil legal aid awards were presented.

Sachida R. Raman, managing attorney of the Family Law Unit at Acadiana Legal Services Corp., received the Legal Service Excellence in Advocacy Award for his dedication to representing vulnerable clients for more than 20 years and his outstanding work in increasing access to the court system. Raman's development and review of form pleadings provided at court-based, self-help desks and 11 individual court websites throughout the state have changed the landscape for self-represented litigants in Louisiana.

The Legal Service Innovation Award was presented to Southeast Louisiana Legal Services' "Single Stop Project," discussed above. To date, Single Stop has helped nearly 1,000 students stay on track by addressing a legal crisis.

Also new this year, TED-style talks with four short presentations on innovative models for delivering legal services were presented over an hour time period. The presentations were designed to be precise and inspire attendees on ways in which new models can be developed to address the legal needs of Louisiana's most vulnerable citizens.

The conference hosted participants from the state's three legal service programs and nonprofit public interest firms, including the Advocacy Center, Greater New Orleans Fair Housing, the Louisiana Civil Justice Center, AIDS Law and the Mental Health Advocacy Center.



# Supreme Court Establishes Access to Justice Commission

The Louisiana Supreme Court, by court order, established the Louisiana Access to Justice (ATJ) Commission, said Chief Justice Bernette Joshua Johnson.

The mission of the ATJ Commission is to ensure continuity of policy and purpose in the collaboration between the Louisiana State Bar Association (LSBA), the courts and the civil justice community in furtherance of the goal to ensure that all Louisiana citizens have access to equal justice under the law.

“Recognizing the importance of civil equal justice to the proper functioning of our democracy, and the need for leadership and effective coordination of civil justice efforts in our state, the Supreme Court was pleased to support the outstanding work of the LSBA’s Access to Justice Committees and to encourage the continuation of that

ongoing work with the creation of this commission. Through the ATJ Commission, the Supreme Court and the LSBA will work in concert, promoting effective and economical civil legal services delivery for low and moderate income citizens of Louisiana,” Chief Justice Johnson said.

The ATJ Commission will operate as a standing committee of the LSBA, consisting of 21 voting members appointed by the LSBA president and the Supreme Court chief justice. Members will represent diverse ethnic, gender and geographic communities of Louisiana. Lawyers serving on the commission will have demonstrated a commitment to access to justice issues and will reflect the various types of legal aid providers in Louisiana.

Some of the commission’s goals are:

- ▶ educating the people of Louisiana

about the importance of equal access to justice and the challenges many face in effectively accessing the civil justice system in Louisiana;

- ▶ developing a strong statewide civil legal services delivery system by licensed attorneys;

- ▶ developing and recommending initiatives intended to maximize resources and funding for access to justice in civil matters and to encourage efficient use of the available resources;

- ▶ recommending initiatives to reduce systemic barriers to access to justice, including enhancing resources for self-represented litigants; and

- ▶ encouraging members of the bar to provide *pro bono* legal services as a regular component of their practices.

## LBSL Accepting Requests for Applications

The Louisiana Board of Legal Specialization (LBSL) is currently accepting requests for applications for January 2017 certification in five areas—bankruptcy law (business and consumer), estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is March 31, 2016. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2016.

With the expanding complexity of the law, specialization has become a means of improving competence in the legal profession and thereby protecting the public. An increasing number of attorneys are choosing to be recognized as having special knowledge and experience by becoming certified specialists. As a matter of practical necessity, most lawyers specialize to some degree by limiting the range of matters they handle. Legal specialization helps the general public locate a lawyer who has demonstrated ability and experience in a certain field of law.

In accordance with the Plan of Legal

Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum of 35 percent of the attorney’s practice must be devoted to the area of certification sought, passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered:

- ▶ Estate Planning and Administration Law — 18 hours of estate planning law.

- ▶ Family Law — 18 hours of family law.



- ▶ Tax Law — 20 hours of tax law.

- ▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

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

Applications are mailed. Anyone interested in applying for certification should contact LBSL Executive Director Barbara M. Shafranski, email [barbara.shafranski@lsba.org](mailto:barbara.shafranski@lsba.org), or call (504)619-0128. For more information, go to the LBSL website at: <https://www.lascmcle.org/specialization>.

## LBSL Amends LSBA Plan of Legal Specialization to Add Appellate Practice Specialty

An amendment to the Louisiana State Bar Association's (LSBA) Plan of Legal Specialization to add a new specialization certification in Appellate Practice was approved by the Louisiana Supreme Court.

An Appellate Practice Advisory Commission has been appointed and is currently working on implementing the specialty. The Louisiana Board of Legal Specialization (LBSL) anticipates accepting applications for certification in Appellate Practice in 2016.

A copy of the amended Plan of Legal Specialization and the Appellate Practice Standards may be downloaded from the LBSL website at <https://www.lascmcle.org/specialization>.

For more information or if you are interested in applying for this certification, email LBSL Executive Director Barbara M. Shafranski, [barbara.shafranski@lsba.org](mailto:barbara.shafranski@lsba.org).



**BAR 101**  
ONLINE VIDEO SERIES

To see Bar 101 videos, visit  
[www.lsba.org/Members/bar101.aspx](http://www.lsba.org/Members/bar101.aspx)

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

## MCLE Committee Can Assist with Hardship Provisions for MCLE Credits

Preliminary transcripts of 2015 attorney MCLE credits were mailed at the end of November.

LSBA members facing undue hardships (such as disability, sickness or other clearly mitigating circumstances) that are preventing them from earning their CLE hours before year's end should contact the MCLE Committee. Depending on the severity of the situation, the committee can grant extensions of time, credit substitutions, late-fee waivers and sometimes a complete waiver of the yearly requirement. But the committee needs to be aware of the specific situations as soon as possible.

Members needing assistance should contact MCLE Committee Director Kitty

Hymel — fax (504)828-1416; email [kit-tyh@LASCMCLE.org](mailto:kit-tyh@LASCMCLE.org); or regular mail to MCLE Committee, Ste. 355, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

Members are required to provide minor documentation, including the basis for the requests. The requests are reviewed by a three-person subcommittee. All requests are confidential. The committee is currently reviewing requests, so there is no need to wait until next year before seeking assistance.

If problems are financial, the committee will direct members to free or low-cost CLE programs. Availability of these programs at the end of the year is limited, so members are encouraged to contact the committee as soon as possible.

## LSBA Launching Online TECHCENTER in January

Preparations are underway for the January 2016 launch of the Louisiana State Bar Association's (LSBA) online TECHCENTER, a virtual comprehensive resource just a click away on the LSBA's website. Accessible to all LSBA members, from the tech savvy to the not-so-tech savvy, the TECHCENTER will become the one-stop shop for legal technology news and guidance to improve the efficiency and productivity of law practices.

Through the TECHCENTER, LSBA members will be offered assistance in:

- ▶ Choosing the right technology for law practices via product directories, product reviews by lawyers, video clips and podcasts by lawyers, articles and books.

- ▶ Accessing general tech training with free, anywhere, anytime, on-the-spot videos and written materials.

- ▶ Accessing detailed, lawyer-centric

**LSBA** | **TECH**  
**CENTER**

tech training through the Chicago Bar Association's online "How To" video library.

- ▶ Registering for tech-related CLE and non-CLE programming and tech webinars.

The TECHCENTER is an initiative of LSBA President Mark A. Cunningham. "Technology is dramatically affecting lawyers and the practice of law, and this powerful trend will continue for the foreseeable future," Cunningham said. "Lawyers in Louisiana who need help integrating technology into their practices can benefit from the TECHCENTER, which promises to be a practical, comprehensive resource for learning how to harness digital technology."



**T**he Louisiana State Bar Association (LSBA) has approved several enhancements proposed by CNA to the bar-endorsed Lawyers Professional Liability insurance policy form. New and renewal policies processed Nov. 1, 2015, or after will be more robust. A few of the improvements are listed below.

1. The Risk Management Incentives section of the policy was amended to read:

*Engagement Letters — If the Insured utilized an engagement letter in connection with the legal services that are the subject of a claim . . . then the Insured's deductible applying to such claim will be reduced by 50% up to a \$25,000 maximum reduction, provided the engagement letter includes:*

- 1. a specific description of the scope of legal services to be performed by the Insured;*
- 2. the identity of all clients for whom the Insured agreed to perform such legal services;*
- 3. the fee arrangement for such legal services;*
- 4. a description of the Named Insured's file retention and destruction policy; and*
- 5. was signed by all clients identified in such engagement letter prior to the Insured's commencement of representation of such clients . . . but in no event more than thirty (30) days after the commencement . . .*

2. The Supplementary Payments section of the policy increased the reimbursement and now reads:

- 1. Loss of Earnings — The Company will reimburse each Insured up to \$500.00 for loss of earning for each day . . . of*

*such Insured's attendance at the Company's written request . . . not to exceed \$50,000 . . .*

- 2. Disciplinary Proceedings — The Company will reimburse the Named Insured up to \$50,000 for each Insured . . . for attorney fees and other reasonable fees paid to third parties . . . In the event of a determination of No Liability . . . the Company shall reimburse fees, including those in excess of the \$50,000 cap, up to \$100,000.*

3. The definition of "Insured" has been expanded and now provides:

*"Insured" means:*

- A. any lawyer (including a government affairs advisor or lobbyist), partnership, professional corporation . . . who is or becomes a partner, officer, director, stockholder-employee, associate, manager, member or employee . . .*

*. . .*

- F. the spouse or domestic partner of an Insured, but only to the extent that such Insured is provided coverage under this Policy.*

4. The definition of "Legal Services" has also been expanded and now provides:

*"Legal Services" means:*

- D. . . . services performed . . . as an expert witness, provided Insured was retained to offer expert opinion on issues related to the law, legal procedure or practice, or the legal profession; or*
- E. . . . services performed . . . as an author or publisher of le-*

*gal research materials or the presenter of legal seminars . . . where such services are performed without compensation or compensation . . . is less than \$25,000.*

5. The Insuring Agreement Settlement section has deleted the "hammer clause" so that if an insured refuses to settle a claim acceptable to the company and claimant, the insured is no longer personally liable for any amounts of a later judgment in excess of the proposed settlement.

6. The Limits of Liability & Deductible section added a provision that no deductible will be charged for malpractice claims arising from firm preapproved pro bono work.

7. Pro bono work and acting solely as a mediator or arbitrator will not be considered the "private practice of law" for purposes of terminating the Non-Practicing Extended Reporting Period.

To see these actual enhancements and policy language, make sure you read the policy when it first arrives or at renewal. These enhancements will allow you to practice with fewer worries.

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



# LAWYERS Assistance

By J.E. (Buddy) Stockwell

LAP IS NOW JLAP

**T**he Lawyers Assistance Program, Inc. (LAP) is now the Judges and Lawyers Assistance Program, Inc. (JLAP). The program has always helped both lawyers and judges and now the new name formally recognizes that JLAP provides direct, confidential services to the judiciary.

Members of the bench and bar are encouraged to contact JLAP for confidential assistance in addressing any concerns about the mental health of a member of the judiciary. Early intervention is the key to saving lives and careers and the key to protecting the public and the profession.

JLAP also has introduced its new website: [www.louisianajlap.com](http://www.louisianajlap.com).

The comprehensive website has information for judges, lawyers, law firms, law students and family members. The site has links and resources on the most common mental health issues challenging the legal profession, allowing those seeking information to discretely investigate issues on their own in total privacy. There are links to "self-tests" that members of the bench and bar can individually utilize to explore the possibility that they or someone they know may be experiencing difficulty and should reach out to JLAP.

Day in and day out, behind the scenes and absolutely out of anyone else's view, JLAP works tirelessly to literally save lives, families and legal careers.

Due to strict confidentiality, and rightly so, the public and the profession do not have direct views of the genuine miracles of personal recovery that have taken place at JLAP.

JLAP receives a volume of confidential "thank you" letters and notes. The majority of people prefer to keep their mental health issues private, but, once in a great while, a person wants to share the JLAP experience.

This "thank you" letter is from a person who had an *extremely* close brush with death and finally reached out to JLAP:

## Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334  
[www.louisianajlap.com](http://www.louisianajlap.com)  
Email: [lap@louisianalap.com](mailto:lap@louisianalap.com)

Dear Buddy:

*I thank you and all of your staff for your help over the last couple of years. Due in no small part to your efforts, I am happy and healthy, both personally and professionally, for the first time in decades.*

*My story is not uncommon. I started drinking as a teen and continued until mid-2013. Through innate talent and a lot of hard work, I built a law practice that was very successful, both professionally and financially, despite the booze. It had its effect in the social and family spheres, but I stayed out of trouble with my peers and the legal system. I also frittered away an awful lot of money in my attempt to buy happiness. My alcoholism finally caught up with my practice about five years ago, leaving me broke, despondent and physically ill. I found myself in a hospital, almost dead.*

*When I was discharged from the hospital, several friends recommended that I speak with you. After a lot of initial resistance on my part, I finally came to see you. An afternoon with you and Leah literally changed my life. At your suggestion, I sought inpatient rehab. While I was there, you even came to visit. That meant a lot to me. I am now able to practice and to live and deal with the stresses that occur in life without using.*

*Again, many thanks. If I can ever help in any way, please call me.*

This letter provides a direct view of many of the core issues that JLAP encounters every day in helping members of the profession: 1) the power of alcoholism can kill if left untreated; 2) material success as a lawyer will not provide a defense to alcoholism nor will it buy happiness; and 3) reaching out for help from JLAP can be hard, even when the person has had a near death experience and *knows* he/she needs help.

What JLAP sees foremost in the above miracle, and many more like it, is one simple truth: If an alcoholic or addict will just have faith for that one moment and reach out to JLAP, a seemingly irreparable and broken life can often be fully restored. No matter how far down the scale one has fallen into alcoholism or addiction, there is a confidential path at JLAP that can lead back to health and happiness.

Visit the website at [www.louisianajlap.com](http://www.louisianajlap.com) and know that JLAP's confidential help and assistance is one simple call or email away!

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



**J · L · A · P**  
JUDGES AND LAWYERS ASSISTANCE PROGRAM, INC.

**YOUR CALL IS  
ABSOLUTELY  
CONFIDENTIAL AS  
A MATTER OF LAW.**





The final CLE in a five-part diversity series with the Louisiana Attorney Disciplinary Board was Sept. 30 in Alexandria. Front row from left, Alexandria Mayor Jacques M. Roy and presenter Travis J. Broussard. Back row from left, Louisiana State Bar Association Secretary Alainna R. Mire and presenter Lynn Luker.

## Fifth CLE in Diversity Series Presented

The fifth and final CLE program in the five-part diversity series with the Louisiana Attorney Disciplinary Board (LADB) was conducted on Sept. 30 in Alexandria.

Attorneys Lynn Luker with the Law Offices of Lynn Luker, L.L.C., and Travis J. Broussard with Durio, McGoffin, Stagg & Ackermann facilitated the presentation "Minimizing the Impact of Unconscious Bias in Decision Making."

In partnership with the LADB, the Diversity Committee's Diversity Integration Subcommittee presented the series of one-hour diversity CLE seminars. Luker, a frequent presenter of LSBA diversity

seminars, coordinated the team of LSBA facilitators to bring the seminar to more than 1,400 attorneys in five locations across Louisiana.

The first program was in April in Shreveport, facilitated by attorney I.J. Clark-Sam. In May, Administrative Law Judge Kelly McNeil Legier and attorney Chauntis T. Jenkins spoke about generational differences to the attendees in Baton Rouge. In June in Kenner, attorneys Cherrilynne Washington Thomas and Luker discussed the impact of unconscious bias. The fourth CLE in July in Lafayette was facilitated by Luker and Broussard.



Presenters for "The Impact of *Obergefell v. Hodges*: What Does the Future Hold?," included, from left, Rachel W. Wisdom, Stone Pigman Walther Wittman, L.L.C.; Scott J. Spivey, Landry & Spivey; and Ryan P. Delaney, Delaney & Robb.

## Free CLE Addresses *Obergefell v. Hodges*

The Louisiana State Bar Association Diversity Committee's LGBT Subcommittee sponsored a free CLE, "The Impact of *Obergefell v. Hodges*: What Does the Future Hold?," on Oct. 8 in New Orleans, addressing the developing issues resulting from the landmark U.S. Supreme Court decision allowing gay couples to marry.

Seminar presenters Professor Paul R. Baier (Louisiana State University Paul M. Hebert Law Center), Ryan P. Delaney (Delaney & Robb), Scott J. Spivey (Landry & Spivey) and Rachel W. Wisdom (Stone Pigman Walther Wittmann, L.L.C.) discussed topics including adoption, divorce, step-parent adoption, estate planning and employment benefits.

CONCLAVE ON DIVERSITY IN THE LEGAL PROFESSION

# 9<sup>TH</sup> ANNUAL

# DIVERSITY & INCLUSION:

# MOVING

FROM A "FOOT IN THE DOOR" TO A "VOICE AT THE TABLE"



MARCH 4, 2016

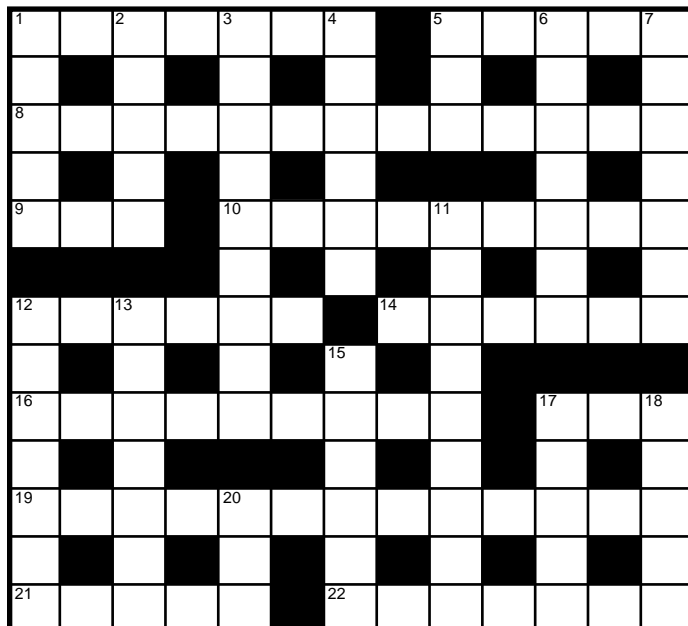
Hilton Baton Rouge Capitol Center  
201 Lafayette Street • Baton Rouge, LA



# Crossword PUZZLE

By Hal Odom, Jr.

## A TWO-WAY STREET



### ACROSS

- 1 Kind of property that may be pledged (7)
- 5 Breast or intimacy (5)
- 8 Such as Libertarian, Green or Bull Moose (8, 5)
- 9 \_\_\_-de-sac (3)
- 10 Give up, as for adoption (9)
- 12 The correlative of "loan" or "lend" (6)
- 14 Type of engine, fuel or locomotive (6)
- 16 Baseless or unsound, as a legal argument (9)
- 17 "\_\_\_ Talks," a trendy conference of 18-minute lectures (3)
- 19 Bilateral, as a civil-law contract (13)
- 21 Fifty-two week periods (5)
- 22 Invalidity that may be absolute or relative (7)

### DOWN

- 1 Imitate (5)
- 2 Easily bought, as a politician (5)
- 3 Succumbs to flames, as a house (5, 4)
- 4 Threaten to harm someone, for a price (6)
- 5 A swat in the head; early form of jazz (3)
- 6 Long, vigorous steps (7)
- 7 Pertaining to the chief executive of a city or town (7)
- 11 Pertaining to the outer layer of the skin (9)
- 12 "\_\_\_ Law," former name of Louisiana Securities Law (4-3)
- 13 Round building, loosely used to describe dome of the Old State Capitol (7)
- 15 Fancy word for "get" (6)
- 17 The losing side in an infamous Rwandan conflict (5)
- 18 Wooden duck (5)
- 20 Miles of LSU football (3)

Answers on page 319.

## Alcohol and Drug Abuse Hotline

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

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

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Baton Rouge	Steven Adams.....(225)921-6690 (225)926-4333	Monroe	Robert A. Lee ....(318)387-3872, (318)388-4472
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## 160+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 16th 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 160 attorneys and judges from across the state participated in the programs in August.

LSBA President Mark A. Cunningham led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included LSBA Immediate Past President Joseph L. (Larry) Shea, Jr.; Louisiana Supreme Court Justices, Marcus R. Clark, Scott J. Crichton, Greg G.

Guidry, Jefferson D. Hughes III and John L. Weimer; 5th Circuit Court of Appeal Judge Fredericka H. Wicker; LSBA Committee on the Profession Chair Barry H. Grodsky and committee member Bobby J. Delise; and American Bar Association representative Maurine W. Laborde.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Associate Dean Gregory Smith, Loyola University College of Law Interim Dean Lawrence W. Moore, S.J., Southern University Law Center Interim Chancellor John K. Pierre and Tulane Law School Dean David D. Meyer.

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

Lisa M. Africk  
Bradley J. Aldrich  
Jesse H. Bankston, Jr.  
Judge (Ret.) Jerome J. Barbera III  
Leah A. Barron  
Russell W. Beall

Judge Randall L. Bethancourt  
Judge James J. Brady  
Jessica G. Braun  
Travis J. Broussard  
Andrew M. Casanave  
Judge Marilyn C. Castle  
Mark A. Chavez  
Angelina Christina  
Jeffrey K. Coreil

S. Guy deLaup  
Bobby J. Delise  
Bridget B. Denicola  
L. Paul Foreman  
John M. Frazier  
Todd E. Gaudin  
Stephen W. Glusman  
Tyler P. Gray  
Barry H. Grodsky

John Clay Hamilton  
Lila T. Hogan  
Michael E. Holoway  
Philip J. House  
Katherine L. Hurst  
Susan R. Kalmbach  
Judge (Ret.) Charles W. Kelly IV  
Gary P. Kraus

Continued next page



Louisiana State University Paul M. Hebert Law Center: Associate Dean Gregory Smith opened the orientation program. Other panelists included Louisiana State Bar Association (LSBA) Immediate Past President Joseph L. (Larry) Shea, Jr., LSBA Committee on the Profession Chair Barry H. Grodsky and committee member Bobby J. Delise, and Louisiana Supreme Court Justices Marcus R. Clark and Scott J. Crichton.



Loyola University College of Law: Louisiana Supreme Court Justice Jefferson D. Hughes III participated in one of the breakout sessions.



**Southern University Law Center:** Participants included, from left, Vice Chancellor Russell L. Jones, Academic Affairs; Barry H. Grodsky, chair of the Louisiana State Bar Association's (LSBA) Committee on the Profession; LSBA President Mark A. Cunningham; Interim Chancellor John K. Pierre; Louisiana Supreme Court Justice John L. Weimer; SULC SBA President Patrick Harrington; and Vice Chancellor Roederick White, Student Affairs.



**Tulane University Law School:** Dean David D. Meyer opened the orientation program. Also on the panel were, from left, ABA Representative Maurine W. Laborde, 5th Circuit Court of Appeal Judge Fredericka H. Wicker, Louisiana Supreme Court Justice Greg G. Guidry, Louisiana State Bar Association (LSBA) President Mark A. Cunningham and LSBA Committee on the Profession Chair Barry H. Grodsky.

Paulette P. LaBostrie  
Robert C. Lehman  
David A. Lowe  
Gregory K. Moroux  
Gregory K. Moroux, Jr.  
Judge William A. Morvant  
Judge Pamela A. Moses-Laramore  
Frank X. Neuner, Jr.  
Tammy P. Northrup  
Charles B. Plattsmier  
Judge Patrick F. Robinson  
Sera H. Russell III  
Rene I. Salomon  
Judge John D. Saunders  
Robert E. Shadoin  
Joseph L. (Larry) Shea, Jr.  
Anthony J. Staines  
Kristen Stanley-Wallace  
Chais L. Sweat  
Marsha M. Wade  
Edward J. Walters, Jr.  
John R. Whaley  
Thomas M. Womack  
John David Ziober

### **Loyola University College of Law**

Georgia N. Ainsworth  
Pierce C. Azuma  
Kay B. Baxter  
Rebecca J. Beck  
Judge Raylyn R. Beevers  
Shayna Lynn Beevers  
Tracey R. Bryan

Caitlin R. Byars  
Michael G. Calogero  
Sandra K. Cosby  
Bobby J. Delise  
Judge Dee D. Drell  
Ashley A. Edwards  
Darryl J. Foster  
Lauren E. Godshall  
Barry H. Grodsky  
Judge (Ret.) John C. Grout, Jr.  
Hunter P. Harris IV  
Jessica W. Hayes  
Christy M. Howley  
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James H. Looney  
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Carl D. Michel  
Emily S. Morrison  
Francis B. Mulhall  
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Cassie E. Preston  
Judge Scott U. Schlegel  
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Patricia A. Traina  
Laura Tuggle  
Georgia G. Turgeau  
Barbara M. Weller  
Colby F. Wenck  
Robert M. White  
Sheila M. Wilkinson

### **Southern University Law Center**

Rashida D. Barringer  
Virginia G. Benoist  
Alfreda T. Bester  
Judge Paul A. Bonin  
Harley M. Brown  
Monique M. Edwards  
Douglas K. Foster  
Lisa A. Freeman  
E. Phelps Gay  
Eugene G. Gouaux III  
Judge Roxie F. Goynes  
Barry H. Grodsky  
Michael E. Holoway  
Raushanah S. Hunter  
Johanna P. Kyles  
Judge Quintillis K. Lawrence  
Robert C. Lehman  
Wendell Jay Luneau  
Martin K. Maley, Sr.  
Jackie M. McCreary  
Charlotte M. McGehee  
Ashley Mitchell  
Elisa S. Randall  
Deidre D. Robert  
La Koshia R. Roberts  
Adrejia B. Swafford  
Marsha M. Wade

### **Tulane University Law School**

Judge Roland L. Belsome, Jr.  
Jack C. Benjamin, Jr.  
Alan G. Brackett

Judge Jerry A. Brown  
Christopher E. Carey  
Lauren E. Checki  
Kevin J. Christensen  
Leonard A. Davis  
S. Guy deLaup  
Judge Dee D. Drell  
Richard M. Exnicios  
Judith A. Gainsburgh  
Lauren E. Godshall  
David Greenberg  
Judge Piper D. Griffin  
Barry H. Grodsky  
Mark E. Hanna  
Michael E. Holoway  
Robert C. Lehman  
Lynn Luker  
Gregory J. McDonald  
Brian J. Munson  
Julian R. Murray, Jr.  
Mark A. Myers  
James R. Nieset  
James R. Nieset, Jr.  
H. Philip Radecker, Jr.  
John C. Saunders, Jr.  
Mark P. Seyler  
Judge Raymond S. Steib, Jr.  
Roger A. Stetter  
Christopher R. Teske  
Judge Max N. Tobias, Jr.  
Laura Tuggle  
Sheila M. Wilkinson  
Judge Fredericka H. Wicker  
John G. Williams



## REPORT BY DISCIPLINARY COUNSEL

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

### Decisions

**James Ward Davis**, Shreveport, (2015-OB-1284) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on Sept. 11, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2015. *Gist:* Commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**Frank T. Fradella**, Gretna, (2015-B-0981) **Disbarred, retroactive to April 26, 2013, the date of the suspension imposed in *In re: Fradella*, 13-0461 (La. 4/26/13), 116 So.3d 649**, ordered by the court on Aug. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2015. *Gist:* Neglected a client's legal matter; failed to place an advance payment of fees into his client trust account; failed to return \$3,000.00 in unearned fees or provide an accounting to show the fees were earned; and failed to cooperate with the ODC in its investigation.

**Darryl Brent Johnson, Jr.**, Nixa, MO, (2015-B-0891) **Reciprocal discipline of suspension indefinitely from the practice of law** ordered by the court on Aug. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2015. *Gist:* Engaged in a conflict of interest by attempting to initiate a sexual relationship; and commingled client funds.

**Joyce Nanine McCool**, Mandeville, (2015-B-0284) **Disbarment** ordered by the court on June 30, 2015. Rehearing denied on Aug. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Aug. 28,

2015. *Gist:* Seeking to influence a judge by means prohibited by law; ex parte communications with a judge during the proceeding; violating or attempting to violate the Rules of Professional Conduct; engaging in dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice.

**Donald R. Pryor**, New Orleans, (2015-B-0243) **Suspended one year and one day** ordered by the court on

Sept. 1, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 15, 2015. *Gist:* Commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct prejudicial to the administration of justice; and violating the Rules of Professional Conduct.

Continued on page 280

## Callihan Law Firm, LLC

Representation in lawyer disciplinary complaints and proceedings

### Damon S. Manning

Former Investigator, Prosecutor & 1st Assistant Disciplinary Counsel  
15 years experience with ODC (1998-2014)

14465 Wax Road, Suite A  
Baton Rouge, LA 70818  
(225)261-6929  
damon@callihanlaw.com

## CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

*DEFENSE OF ETHICS COMPLAINTS AND CHARGES*

**E. PHELPS GAY      KEVIN R. TULLY**  
**ELIZABETH S. CORDES**  
**H. CARTER MARSHALL**

**(504)561-5700**  
**601 POYDRAS STREET, SUITE 2300**  
**NEW ORLEANS, LA 70130**

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 7, 2015.

Respondent	Disposition	Date Filed	Docket No.
Gerald Joseph Asay	[Reciprocal] Interim suspension.	9/24/15	15-3113
Diedre Pierce Kelly	Suspended.	7/2/15	15-1285
John Roumain Peters III	Suspended.	9/8/15	15-2070
William Clifton Stoutz	[Reciprocal] Interim suspension.	9/8/15	15-2069

### Discipline continued from page 279

**Richard C. Teissier**, New Orleans, (2015-B-1435) **Interim suspension** ordered by the court on July 28, 2015. JUDGMENT FINAL and EFFECTIVE on July 28, 2015.

**Michael Coleman Weber**, Baton Rouge, (2015-B-0982) **Disbarred** ordered by the court on Aug. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2015. *Gist*: Neglect of a legal matter; failure to communicate with a client; conversion of client funds; and failure to cooperate with the ODC in its investigation.

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

	No. of Violations
Commingle, conversion and misuse of trust .....	1
Conduct prejudicial to the administration of justice.....	1
Failure to act with reasonable diligence and promptness when representing a client.....	1
Failure to communicate and comply with reasonable requests for information.....	1

Reasonable efforts to ensure that a person who is not a member of the bar does not engage in the unauthorized practice of law..... 1 |

Represented a client with interests materially adverse to those of a prospective client in the same or a substantially related matter after receiving information from the prospective client that could be significantly harmful to that person in the matter .....

Responsibilities regarding non-lawyer assistants .....

**TOTAL INDIVIDUALS  
ADMONISHED.....5**

Advice and counsel concerning legal and judicial ethics

Defense of lawyer and judicial discipline matters

Representation in bar admissions proceedings

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**STEVEN SCHECKMAN**

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Judiciary Commission (1994-2008)  
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Former Prosecutor,  
Office of Disciplinary Counsel (1998-2006)  
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Phone (225)293-4774 • Fax (225)292-6579  
[julie@sswethicslaw.com](mailto:julie@sswethicslaw.com)

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December 2015 / January 2016





### Arbitration Provision Consented to by Performance

*Delta Admin. Servs., L.L.C. v. Limousine Livery, Ltd.*, 15-0110 (La. App. 4 Cir. 6/17/15), \_\_\_\_ So.3d \_\_\_\_, 2015 WL 3814456.

The parties entered into an administrative services agreement containing an

“either/or” provision regarding dispute resolution. Option B stated that the agreement was governed by Louisiana law and that the parties must engage in mediation before resorting to arbitration or other methods of dispute resolution, while Option 2B contained only the choice-of-law provision. Both parties signed the agreement without selecting either option. DAS filed a petition for declaratory judgment seeking a determination that the parties had no agreement to arbitrate. Although the court of appeal found that the agreement was ambiguous because it contained both provisions, it held that considering extrinsic evidence of the parties’ post-contract actions and the legislative policy favoring arbitration, the trial court did not err in finding that the parties consented by

performance to arbitrate disputes arising out of the agreement as authorized by La. C.C.P. art. 1927.

### FAA is Reverse Preempted by MFA and Inapplicable to Insurance Issues

*Courville v. Allied Prof'l Ins. Co.*, 13-0976 (La. App. 1 Cir. 6/5/15), 174 So.3d 659.

A foreign insurer of a chiropractor refused to participate in a medical-malpractice lawsuit filed against the chiropractor, his clinic and the insurer. The insurer filed a motion to compel arbitration and stay proceedings based on the arbitration



Ronald E. Corkern, Jr.



Brian E. Crawford



Steven D. Crews



Herschel E. Richard



Joseph Payne Williams



J. Chris Guillet

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For other panelists, please call Kathy Owsley at the Natchitoches location (318-352-2302 ext. 116) or email Kathy at [katcamcal@yahoo.com](mailto:katcamcal@yahoo.com).

agreement between the insurer and chiropractor. The district court ruled valid the arbitration clause, which stated that even if a non-party claimant invoked rights under the policy against the insurer, all disputes arising therefrom "shall be resolved by binding arbitration" governed by California law. Moreover, the McCarran-Ferguson Act (MFA), which established a federal policy of deferring to state regulation of insurance matters, effectively "overturns the normal rules of preemption." Thus, the MFA "reverse preempted" the Federal Arbitration Act, rendering it inapplicable to insurance issues. Also, the federal Liability Risk Retention Act of 1986 preempted La. R.S. 22:868, which prohibits enforcement of arbitration provisions for insurance disputes, and made the Louisiana Direct Action Statute, which gives the injured person or his survivors a right of direct action against the insurer, inapplicable to foreign insurers. The court of appeal affirmed the trial court's judgment, allowing arbitration among the insurer, the chiropractor and his clinic, but reversed as to the judgment mandating that the plaintiffs arbitrate because the arbitration agreement was not executed between the plaintiffs and the clinic or chiropractor, but only between the chiropractor and the insurer.

## State Court Lacks Jurisdiction over Arbitration Ordered by the Federal Court

*Law Office of Paul C. Miniclier, P.L.C. v. La. State Bar Ass'n*, 14-1162 (La. App. 4 Cir. 5/27/15), 171 So.3d 1013.

A law office's client terminated her relationship with the law firm and retained associate attorneys who resigned from the law office while working on her case. The firm filed an intervention in the former client's lawsuit seeking fees and costs associated with its representation of the client. The federal district court compelled the client to arbitrate, and a petition to arbitrate legal fees was filed with the Louisiana State Bar Association (LSBA). After the LSBA dismissed the arbitration, the law office filed a separate lawsuit against the LSBA in state court seeking to compel the LSBA to reinstate the arbitration pursuant to the federal court's order. The LSBA responded by filing an exception of lack of subject matter jurisdiction. The state court found that any procedural challenge regarding arbitration of the fee dispute among the law firm, its former law associates and its former clients must be determined by the federal district court that had ordered the

arbitration rather than by a state court. State courts do not have subject matter jurisdiction regarding the arbitration of fee disputes when arbitration has previously been ordered by a federal district court.

## Mere Error of Fact or Law Cannot Invalidate an Arbitral Award

*Crescent Prop. Partners, L.L.C. v. Am. Mfrs. Mut. Ins. Co.*, 14-0969 (La. 1/28/15), 158 So.3d 798.

A property owner and a builder entered into a construction contract to build multiple structures. Alleging defects in the builder's performance, the property owner moved for arbitration pursuant to the contract's arbitration provision. The last certificate of occupancy was issued on July 24, 2003, at which time La. R.S. 9:2772 provided for a seven-year preemptive period for construction claims. However, the statute was amended in August 2003, decreasing the seven-year preemptive period to five years. The builder's motion for summary judgment alleging that the claims were preempted because they were not timely filed was granted by the arbitration panel and confirmed by the

## NOTICE / Attorney Fee Review Board

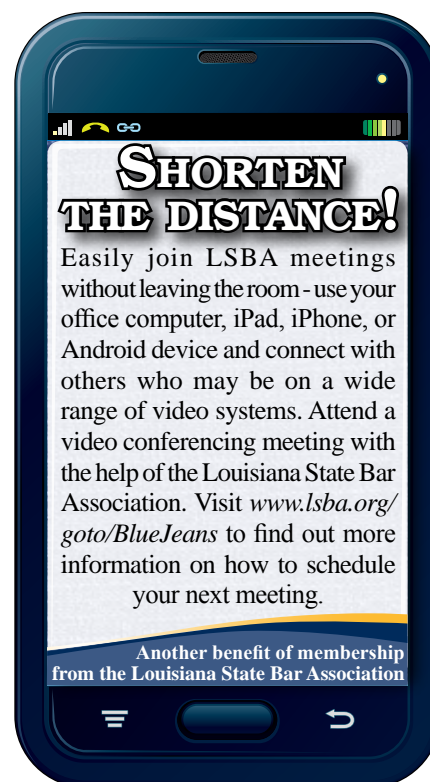
2001 Louisiana Acts 208 created the Attorney Fee Review Board. The Act allows for payment or reimbursement of legal fees and expenses incurred in the successful defense of state officials, officers or employees who are charged with criminal conduct or made the target of a grand jury investigation due 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 October 6, 2015, 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 \$425 per hour. These rates will remain in effect through 2017.

Attorneys who represent state officials and employees should be prepared to provide their clients and the Board with sufficient information to enable the Board to assess the reasonableness of attorney fees and expenses.

Any questions regarding the Attorney Fee Review Board should be addressed to Louisiana Supreme Court Deputy Judicial Administrator Richard Williams, 1600 N. 3rd St., 4th Floor, Baton Rouge, LA 70802.





district court, but reversed by the court of appeal, which held that the 2003 amendment could not retroactively apply to preempt the property owner's claims. The Louisiana Supreme Court disagreed, concluding that a wrong interpretation of the law does not provide sufficient grounds for vacating the arbitration panel's award. In the absence of evidence indicating the arbitrators' willful misconduct, imperfect execution of their authority, dishonesty, bias, bad faith or any conscious attempt of the panel to disregard Louisiana law, a mere error of fact or law cannot invalidate an otherwise fair and honest arbitral award.

—**Ilijana Todorovic**

Law Student,

Under the Supervision of

**Professor Bobby M. Harges**

Member, LSBA Alternative Dispute

Resolution Section

Loyola University New Orleans

College of Law

7214 St. Charles Ave., CB 901

New Orleans, LA 70118



## Knowingly and Voluntarily Consenting to *Stern* Claims

In *Wellness International Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015), the Supreme Court analyzed whether bankruptcy judges may adjudicate *Stern* claims where the parties knowingly and voluntarily consent to waive their Article III rights.

Wellness International is a producer of health and nutrition products. Respondent Sharif agreed to distribute Wellness' products; however, the relationship quickly deteriorated. In 2005, Sharif initiated suit against Wellness but repeatedly ignored discovery requests, as well as his other legal obligations. A default judgment was

entered in favor of Wellness awarding over \$650,000 in attorney's fees.

In 2009, Sharif filed for Chapter 7 bankruptcy. Wellness obtained a loan application that Sharif had filed in 2002 listing more than \$5 million in assets. Sharif informed Wellness and his Chapter 7 trustee that he had lied on the application, and that those assets were actually owned by a trust that he operated on behalf of, and for the benefit of, certain relatives.

Wellness filed a five-count adversary complaint against Sharif in bankruptcy court, objecting to the discharge of the debts (Count I-IV) because, among other reasons, Sharif had concealed assets using the trust, and sought a declaratory judgment (Count V) that the trust was Sharif's alter ego, and that the assets should be treated as part of the bankruptcy estate.

Sharif continued to ignore discovery requests, and Wellness filed a motion for sanctions or, in the alternative, a motion to compel. After Sharif failed to fully comply with the court's order, the bankruptcy court issued a ruling denying his request to discharge his debts. The bankruptcy court also

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entered a default judgment against Sharif in the adversary proceeding and declared that the assets allegedly held in the trust were actually part of the bankruptcy estate.

Sharif appealed the decision to the district court, which denied as untimely Sharif's motion to file a supplemental brief on the *Stern* issue and affirmed the bankruptcy court's judgment. On appeal, the 7th Circuit acknowledged that the *Stern* objection would ordinarily be waived because Sharif failed to raise it timely. However, because the argument concerned "the allocation of authority between bankruptcy courts and district courts," the general rule would not apply. Because the *Stern* objection raises an issue of separation of powers, the 7th Circuit held that litigants cannot waive it. The 7th Circuit affirmed Counts I through IV of the adversary complaint; however, it determined that Count V raised a "*Stern* claim" because it was "designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter." The 7th Circuit thus held that the bankruptcy court lacked constitutional authority to enter a final judgment on Count V.

After granting certiorari, the Supreme Court held that bankruptcy judges can adjudicate *Stern* claims with the parties' knowing and voluntary consent. The Supreme Court noted that adjudication by consent is nothing new and was commonly in practice. Modern cases explain that Article III's guarantee of an impartial and independent federal adjudication is a personal right that can be waived.

Reserving a limitation to its holding, the Supreme Court noted that Article III serves an important role in the system of checks and balances. To the extent that a case implicates this structural principle, the parties' consent would not cure the constitutional problem. Apart from structural concerns, the parties' consent to opt out of the Article III protections would have full effect and will not offend separation of powers as long as Article III courts retain supervisory authority over the process.

In its reasoning, the Supreme Court analogized the bankruptcy court judges to the role of magistrate judges, stating that a bankruptcy court hears matters only on the district court's reference just as the district court decides to invoke a magistrate judge's assistance. The Court also pointed out that the scope of traditional Article III claims that a bankruptcy court can resolve is quite limited, and the federal judiciary retains the power to take jurisdiction over the matter.

Because of the vast control that the district courts retain over the selection of bankruptcy judges and the cases they adjudicate, the Supreme Court determined that

allowing them to decide *Stern* claims would not threaten the integrity of the judiciary or "usurp the constitutional prerogatives of Article III courts."

The Supreme Court noted that its decisions in *Stern*, and its predecessor, *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982), would not alter the result in this case. Both of those cases turned on the parties' lack of consent to have their claims adjudicated in non-Article III courts. The question presented here did not involve an objecting defendant being forced to litigate before a non-Article III court.

Finally, the Supreme Court held that the parties' consent to adjudication need not be express, but still must be knowing and voluntary. Again analogizing this case to the role of the magistrates, the Supreme Court noted that the parties' consent to use a magistrate judge need not be express, so to require express consent in a bankruptcy proceeding would be improper. The Supreme Court remanded the issue of whether Sharif's consent was knowing and voluntary.

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## Negligent Spoliation of Evidence

*Reynolds v. Bordelon*, 14-2362 (La. 6/30/15), 172 So.3d 589.

On June 30, 2015, the Louisiana Supreme Court held that Louisiana law does not recognize a cause of action for negligent spoliation of evidence. This resolved a highly disputed issue of Louisiana law.

In this case, the plaintiff was involved in a multi-vehicle accident that totaled his vehicle. After the accident, the plaintiff's insurer took possession of the wrecked vehicle and transported it to a local auction house for sale. The plaintiff then filed suit against the other driver and the manufacturer of his wrecked vehicle and allegedly

gave notice to his insurer and the auction house that he would like the wrecked vehicle preserved in its current state as evidence. The auction house subsequently disposed of the wrecked vehicle on behalf of the insurer, and the plaintiff filed claims against both for negligent spoliation of evidence. These defendants filed exceptions of no cause of action, which were granted by the trial court and affirmed by the 1st Circuit. The Louisiana Supreme Court granted a writ and agreed with the courts below that no cause of action exists in Louisiana for negligent spoliation of evidence.

This holding was based on the court's refusal to recognize any general duty to preserve evidence in the context of negligent spoliation. Specifically, the court found that none of the policy considerations supporting the imposition of such a legal duty — deterrence of future conduct, compensation of the victim, predictability, satisfaction of the community's sense of justice, proper allocation of judicial resources, and legislative will/intent — weighed in favor of

allowing a cause of action for negligent spoliation. It repeatedly referred to the loss as "speculative" and recognized the cost that such a duty would impose on society as a whole.

The court did not limit its ruling to third-party spoliation and expressly found that the same rationale applies to parties in a pending lawsuit. With respect to negligent spoliation by parties to a lawsuit, it found discovery sanctions, criminal sanctions and the adverse presumption to be equally effective and far more practical remedies. With respect to negligent spoliation by third parties, the court found that, unless and until the Legislature establishes a preservation duty, plaintiffs should take proactive steps — such as entering a contract or obtaining a court order — to protect any relevant evidence outside their possession.

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## Corporations and Religion

***Fairchild Pentecostal Church v. Johnson***, 15-0068 (La. App. 3 Cir. 6/3/15), 170 So.3d 357.

A church, incorporated as a Louisiana non-profit corporation, split into two factions when its pastor sought to retire and a new pastor took over. When the retired pastor purported to sell the church property, multiple lawsuits were filed, resulting in “a Kafkaesque labyrinth of pleadings.” The major issue was whether the church members followed proper procedure in determining who was the pastor.

The trial court held a hearing to determine the membership for voting purposes. One faction argued that certain persons were not members because they had not attended regularly, had not tithed, had turned in their keys or were regularly attending church elsewhere. Opining that these factors involved ecclesiastical determinations that were beyond the authority of the court, the trial court determined the membership based purely on the corporate articles, by-

laws and corporate law. Also, concerned by allegations at pretrial conferences that new members were being brought in for purposes of litigation rather than for religious reasons, the court determined the voting membership as of immediately before the first suit was filed, which was several months earlier, effectively setting that date as the record date for a meeting of members to decide whether to dismiss the leader of one faction as pastor.

After reviewing jurisprudence to the effect that civil courts may not interfere in ecclesiastical matters of a religious group, but may interpret and enforce corporate articles and bylaws in conjunction with state corporate law to resolve non-ecclesiastical corporate governance issues, the appellate court affirmed, concluding that the trial court analyzed the church’s regulations along with state law “without interfering in ecclesiastical matters,” and noting the “trial court’s careful adherence to the law where the court repeatedly stopped questions and comments by the lawyers that involved church doctrine.” Recognizing that the Louisiana non-profit corporation law provides that a board of directors may set a record date only in advance and no earlier than 60 days before a meeting (but does not address what a court may do), the appellate court concluded the trial court’s approach “was a reasonable and equitable solution, and perhaps the only solution where the membership dynamic had become a moving target.”

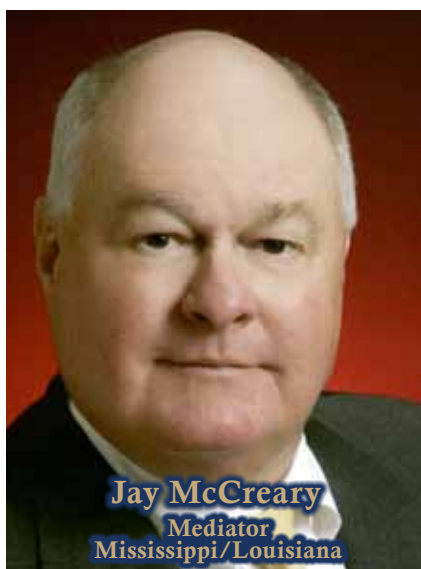
## Employees’ Action Against Employer’s Officer

***Blank v. Equisol, L.L.C.***, 14-1462 (La. App. 1 Cir. 6/18/15), 2015 La. App. LEXIS 305 (not designated for publication).

Two brothers, the Blanks, entered into employment agreements with Equisol, L.L.C., a Pennsylvania limited liability company, to be employed as president and vice president of its affiliate, Gulf States Chlorinator and Pump, Inc. (GSC). Parrish was president of Equisol. Three years later, Parrish left his position at Equisol and became the CEO of the parent company of Equisol and GSC. A year later, both Blanks resigned and sued Equisol, GSC and Parrish. Trial proceeded without the defendants present, and they were found liable in solido to both brothers.

In their petition, the Blanks alleged:

Parrish owed a fiduciary duty to Equisol, and thus to [GSC], to discharge his duties in good faith, with diligence, care, judgment and skill in order to protect and promote the success of the company. Instead, whether through his gross negligence, intentional tortious conduct, or intentional breaches of duty, Parrish has failed to discharge his duties as required by law and thus stands responsible for the acts taken by him as alleged herein.



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Parrish argued, among other things, that the Blanks had no right of action. The appellate court disagreed, reasoning that “the Blanks claim that actions by the defendants caused business to be inconvenienced and suffered damages due to breaches of contract and fiduciary duties,” and, “[d]ue to Mr. Parrish’s close involvement with Equisol,” the Blanks had a right of action.

## Corporate Formalities

*Tracer Protection Servs., Inc. v. Burton*, 14-1111 (La. App. 1 Cir. 6/5/15), 2015 WL 3545616 (unpublished), writ denied, 15-1313 (La. 10/2/15), \_\_\_\_ So.3d \_\_\_\_, 2015 WL 6113902.

In 2004, Redlich signed an agreement in his individual capacity in which he purportedly sold, among other things, all of the stock in Tracer Protection Services, Inc. (TPSI) to Burton, even though the stock was actually owned by Ansted, Inc. Redlich, however, claimed to be the sole shareholder of Ansted, and the stock in TPSI appears to have been the major asset of Ansted. The trial court found that Redlich was not the sole shareholder of Ansted and that there

was no evidence that Ansted had agreed to the sale. The court thus granted partial summary judgment declaring the agreement null and invalid with respect to the sale of the TPSI stock for, among other things, the complete lack of corporate formalities.

The appellate court reversed, noting that Ansted’s articles provided that (1) the affirmative vote of 51 percent of the outstanding shares was necessary for the sale of the major part of the assets of the corporation and (2) whenever the affirmative vote of the shareholders was required to authorize or constitute corporate action, written consent to that action signed by only “the shareholders holding that proportion of the total voting power on the question that is required by law or these Articles of Incorporation, [whichever] is the higher requirement, shall be sufficient for the purpose, without necessity for a meeting of the shareholders.”

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## The MRGO

*State v. U.S. Army Corps of Eng’rs*, \_\_\_\_ F.Supp.3d \_\_\_\_ (E.D. La. 2015), 2015 WL 5083683.

Following Hurricane Katrina, Congress took a particular interest in the Mississippi River-Gulf Outlet (the MRGO)—the well-known and much-maligned commercial-access route from the Gulf of Mexico to the Port of New Orleans. Specifically, Congress recognized the devastating impacts that this underused, poorly designed and largely unmaintained channel had caused and the need for the federal government to act swiftly to mitigate the potential future harm from this waterway. Congress acted. The MRGO was a component of at least three acts of Congress between 2005 and 2007, all of which contained

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various directives to the U.S. Army Corps of Engineers (the Corps) to decommission the MRGO and to undertake the closure and ecosystem restoration of the land devastated by the navigation project. The channel was closed by the construction of a rock dike in 2009, and, in 2012, the Corps reported that the cost of restoring the ecosystem damaged by the construction and poor maintenance of the MRGO was approximately \$2.9 billion.

The question of who was responsible for paying this massive cost was at the heart of a lawsuit brought by the State of Louisiana in 2014 against the Corps. Under the Corps' interpretation of the relevant law, the State was obliged to share in the costs of the restoration to the tune of approximately \$975 million. Louisiana disagreed with this interpretation, alleging that Congress had mandated full federal funding of the MRGO closure and ecosystem restoration.

This dispute was submitted to Judge Lance Africk of the Eastern District of Louisiana via cross motions for summary judgment in July 2015. On Aug. 27, 2015, two days shy of the 10th anniversary of Hurricane Katrina's landfall, Judge Africk rendered his decision, granting the State's motion for summary judgment and declaring that, under the Administrative Procedure Act and other laws, the federal government was mandated to fully fund the closure and restoration of the MRGO and its ecosystem.

The ultimate question of whether the State is responsible to share in the cost

of closing the MRGO and restoring its ecosystem turned on questions of statutory interpretation and whether, in the three primary post-Katrina enactments, Congress left any ambiguity with regard to this issue in which the Corps was entitled to interpretational deference under *Chevron v. National Resources Defense Council*, 104 S.Ct. 2778 (1984).

Although the three laws — supplemental spending bills in 2005 (119 Stat. 2680) and 2006 (120 Stat. 418) and the Water Resources Development Act of 2007 (121 Stat. 1041) — did not contain one concise directive on the MRGO closure and ecosystem restoration funding, Judge Africk found a clear progression of congressional intent and expression in the series of laws, noting that “[t]here is nothing that requires Congress to legislate using the clearest possible language, and although the benefit of hindsight often reveals that legislation could have been more precisely worded, such retrospection does not inject ambiguity into a statute that contains none.” (Op. at \*9). Because Judge Africk concluded that Congress had clearly articulated that the MRGO closure and restoration was to be fully federally funded, he held that the Corps' contrary interpretation of the law was not entitled to *Chevron* deference. Accordingly, the Corps' conclusion that Congress intended for the State to shoulder a third of the MRGO closure and restoration costs and the Corps' transmission of funding recommendations to Congress for appropriation contingent on Louisiana's agreement to

pay nearly \$1 billion toward the MRGO closure and ecosystem restoration were arbitrary and capricious and were vacated and remanded to the Corps for reconsideration.

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## **Case Alleging DuPont Covered Up Toxic Gas Leaks Gets Second Chance Before a Jury**

In a surprising turn of events, a False Claims Act suit filed by a whistleblower employee at a DuPont plant in Ascension Parish was revived after a judge set aside a jury verdict favoring DuPont.

The case, *Simoneaux v. E.I. duPont de Nemours & Co.*, No.12-219 (M.D. La. 6/25/15), 2015 WL 3905069, involved former DuPont employee Jeffrey M. Simoneaux, who filed under the False Claims Act (FCA) alleging that DuPont knowingly violated the Toxic Substances Control Act by leaking carcinogenic sulfur trioxide gas for five months. The FCA, 15 U.S.C. § 2601 *et seq.*, allows individuals to sue on the government's behalf and receive a share of funds recovered through the lawsuit, if any. In his petition, Simoneaux claimed that he noticed a leak in the system at the sulfuric acid plant in Burnside, La., and that the company both failed to take action and retaliated against him for attempting to document the leak and his inability to repair it.

By the time the case reached the jury, it was undisputed that DuPont's process equipment did leak and DuPont employed temporary measures — *i.e.*, a vacuum-hose recovery system to capture the leaks while the plant continued to operate. The jury was presented with the question: Do you find by a preponderance of the evidence that DuPont obtained information that reasonably supported the conclusion that the leaks of chemicals or chemical mixtures at its Burnside facility presented

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a substantial risk of injury to health or the environment?

Had the jury answered “yes,” it would have been directed to answer another question as to whether DuPont knowingly concealed information about the leaks in order to avoid paying fines. However, on Jan. 23, 2015, the jury answered “no,” and the case against DuPont was dismissed. (The jury also found that there had been no retaliation against Simoneaux for his efforts to disclose the leaks.)

Plaintiff then filed a motion for relief from judgment under Rule 60(b)(3), alleging that (1) DuPont failed to disclose “newly discovered leak calculation spreadsheets” and (2) DuPont failed to disclose a recent OSHA citation, both of which had been called for in discovery.

The newly discovered leak-calculation spreadsheets provided “significantly more quantifiable information about the subject leaks than the calculations previously made available to Relator . . . regarding leak quantity, concentration, duration and capture rates.” (Op. at \*3). This was

important to the case — and bad for DuPont — because DuPont had argued that “dose makes the poison” and Simoneaux had no evidence of the dose or quantity and concentration of the gas leaks at the plant. The court found that the information on the spreadsheets, which would have provided additional information about the size, scope and duration of the leaks, would have enhanced Simoneaux’s ability to fully and fairly present his case.

Likewise, the court took a dim view of DuPont’s failure to disclose five OSHA violations issued approximately two months before trial. DuPont argued that there was no intent or effort to hide the citation, which had been publicly posted at the plant and made available on the Internet. Simoneaux argued that DuPont’s failure to disclose the OSHA citation made it impossible for him to rebut DuPont’s defense that it had not been subject to regulatory action on the leak issue despite being highly regulated. The court agreed, holding that Simoneaux had established by clear and convincing evidence that the

newly discovered leak calculations and the OSHA citation were called for in discovery, and that “DuPont’s failure to produce them is misconduct for the purposes of Rule 60(b)(3).” The court found that the “unavailability of this evidence impacted the integrity of the trial process and prevented [Simoneaux] from fully and fairly presenting his case.” (Op. at \*7).

The reversal of a jury verdict is a major upheaval and enormously costly, which the court acknowledged: “The Court is loathe to set aside the hard work and deliberative process of the jury, and the Court does not do so lightly, but the Court’s duty to uphold the integrity of the judicial process requires the result reached herein.”

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## Community Property

**Wood v. Wood**, 14-0405 (La. App. 5 Cir. 11/25/14), 165 So.3d 181.

Ms. Wood filed a petition alleging that Mr. Wood had mismanaged and closed the former community business and had established a new business in the same location, performing the same services. The trial court sustained his exceptions of no cause of action and vagueness and granted his motion for summary judgment. The court of appeal reversed and remanded, finding that the allegations were sufficient to state a cause of action because La. Civ.C. art. 2369.3 not only applied to spouses, but continued to apply to the parties, even after they were divorced; and that the entity was “former community property” because even though the community regime had been terminated, the property had not yet been partitioned. The allegations were also sufficient to put Mr. Wood on notice of the claims against him and were not vague. His claim that he had no continuing duty to prudently manage the former community entity under La. Civ.C. art. 2369.3 because it could no longer be managed consistently with the way it had been managed prior to termination of the regime was without merit. Because a genuine issue of material fact existed as to his ability to continue

to manage the entity as it had been managed, the motion for summary judgment was also reversed.

**Durden v. Durden**, 14-1154 (La. App. 4 Cir. 4/29/15), 165 So.3d 1131.

Ms. Durden’s response to a request for admissions that Mr. Durden owned his home, land and a shed prior to their marriage was insufficient on its own to prove his ownership of the land. He presented no other documentation evidencing he actually owned the land on which the parties built a home during their marriage using community property. Thus, the court of appeal, on its own, found that his motion for return of separate property failed to state a cause of action and reversed the trial court’s order declaring that the property was his and evicting her from the home.

Moreover, because she had previously been granted use of the home under La. R.S. 46:2135, the legal implication was that the home was not his separate property as that statute does not allow one spouse to be awarded use of the other spouse’s separate property. Admissions are directed toward facts, not ultimate legal conclusions, and must address specific facts, rather than the general reference to “land.” Moreover, the ownership of the property was clearly at issue throughout the pleadings. Finally, the trial court also erred in not following the mandates of La. R.S. 9:2801 in determining the ownership of contested property, as there had been neither descriptive lists nor traversals filed, and the determination that the land belonged to him was, effectively, a piecemeal partition.

## Interim Spousal Support

**LaRocca v. LaRocca**, 14-0255 (La. App. 5 Cir. 10/29/14), 164 So.3d 207, *writ denied*, 14-2512 (La. 2/27/15), 159 So.3d 1068.

Ms. LaRocca’s motion to extend the period for the payment of interim spousal support, which was filed more than 180 days after the parties’ divorce, was not untimely, as the statute does not establish a time period within which such a motion must be filed. Mr. LaRocca argued that once the interim spousal support terminated as a matter of law, it could not be resurrected by a motion filed more than 180 days after the divorce. Good cause to extend the interim-spousal-support period past 180 days can be found for compelling reasons — circumstances beyond the parties’ control — and can be based upon the parties’ “age, work history, and education.” Moreover, “the initial assessment of the *eligibility* requirements under La. C.C. art. 113 for interim spousal support are not the same as for the *extension* of support.” The dissent argued that once the right to support had been extinguished, it could not be revived.

## Custody/Co-Domiciliary Parents

**Hodges v. Hodges**, 14-1575 (La. App. 1 Cir. 3/6/15), 166 So.3d 348.

The 1st Circuit addressed the split between the circuits regarding whether a trial court can designate the parents as co-domiciliary parents, finding that when the court awards equal physical custody it can designate the parents as co-domiciliary parents if in the best interest of the child; but the court must also render a joint-custody-implementation order or find that there is good cause not to issue an implementation order. That order must address the parents’ responsibilities for the child’s health, education and welfare, not just the physical custody schedule. The Louisiana Supreme Court has granted a writ, which should resolve this circuit split. **Hodges v. Hodges**, 15-0585 (La. 5/15/15), 169 So.3d 380.

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## Child Support/ Abandonment

*Adams v. Adams*, 14-0387 (La. App. 1 Cir. 3/11/15), 166 So.3d 1066.

After a partial hearing in 1998, the court continued the matter but orally awarded interim child support. In 2013, Ms. Adams filed a motion to make past-due child support executory, for contempt and to modify the child support award. Mr. Adams filed an exception of no cause of action. The court then signed a judgment ruling that the prior support award was an interim order, but remained in effect. Mr. Adams' motion for new trial was denied. Before Ms. Adams' motions were set, Mr. Adams filed an ex parte motion to have the court acknowledge that her proceedings had been abandoned, which the court signed, dismissing the case without prejudice. On appeal, the court reversed the dismissal, finding that his exception of no cause of action and mo-

tion for new trial, filed before his motion for abandonment, evidenced "an intent to seek judicial resolution of the dispute on the merits and a willingness or consent to achieve judicial resolution." Thus, he had waived his right to claim abandonment due to his own actions. The court noted, in a footnote, "Having found that Mr. Adams revived the action, we pretermit discussion as to whether there was a final, appealable judgment that precluded abandonment."

## Procedure/Contempt

*Hedlesky v. Hedlesky*, 15-0117 (La. App. 3 Cir. 6/3/15), 166 So.3d 1221, writ denied, 15-1308 (La. 10/2/15), \_\_\_\_ So.3d \_\_\_\_, 2015 WL 6114354.

After obtaining a community-property-partition judgment against Ms. Hedlesky for \$263,485.10, Mr. Hedlesky stopped paying child support, claiming an offset of the two judgments. The

trial court denied her rule for contempt, finding that he was entitled to the offset. The court of appeal reversed, finding that the strong policy of the state required court intervention before a child-support judgment could be modified without the express agreement of both parties. It distinguished *Saunier v. Saunier*, 47 So.2d 19 (La. 1950), a Louisiana Supreme Court case that had allowed a partial setoff, and also found that statutory developments since then provided great protection for child-support awards. In sum, self-help is not allowed, and he should have sought judicial intervention before unilaterally modifying the support award.

—David M. Prados

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## Collateral Source Rule

*Hoffman v. 21st Century N. Am. Ins. Co.*, 14-2297 (La. 10/2/15), \_\_\_\_ So.3d \_\_\_\_, 2015 WL 5776131.

Hoffman, injured when his vehicle was rear-ended by Elzy, sued for damages. In a bench trial, the court found Elzy 100 percent at fault, and awarded \$4,500 in general damages and \$2,478 for special medical expenses. Hoffman appealed, alleging that the amount for special medical expenses was erroneous, noting that he had presented evidence of expenses totaling \$4,528. The appellate court found that the trial court, having been presented with two conflicting medical bills, chose the lesser, which choice was not manifestly erroneous, and affirmed the judgment.

Included in the medical expenses were two MRIs at \$1,500 each. In fact, Hoffman's attorney had negotiated with the imaging center for a \$950 reduction in the charge, and the company accepted payment of \$2,050 rather than \$3,000. Hoffman contended that, under the collateral source rule, he was entitled to the total billed amount, without reduction for adjustments or write-offs. The Louisiana Supreme Court granted certiorari to determine the *res nova* issue of whether the collateral source rule applies to the "written-off" portion of a medical expense when the plaintiff's attorney negotiated the write-off.

Under the collateral source rule, a tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced because of monies received by the plaintiff from sources independent of the tortfeasor's procurement or contribution. The rule has ancient roots in the common law. In *The Propeller Monticello v. Mollison*, 58 U.S. (17 How.) 152, 15 L.Ed. 68 (1854), two ships, *Propeller* and *Northwestern*, collided, sinking the *Northwestern*, whose insurer paid for the loss of the ship and its cargo. The issue before the Supreme Court was whether the owner of the other ship was released from liability because of the payment. The court held that "the contract with the insurer is in the nature of a wager between third parties, with which the trespasser has no concern. The insurer does not stand in the relation of a joint trespasser, so that satisfaction accepted from him shall be a release of others." Originally a common-law doctrine, the rule has been accepted jurisprudentially by Louisiana courts, though not incorporated in Louisiana statutes. Several public-policy purposes are served. A tortfeasor should not gain an advantage from outside benefits provided to the victim independently of any act of the tortfeasor. The rule promotes tort deterrence and accident prevention. Absent such a rule, victims would be dissuaded from purchasing insurance or other forms of reimbursement available to them.

The court applied the principle of La. Civ.C. art. 2315 that the wrongdoer is responsible only for the damages she has caused. Hoffman suffered no diminution of his patrimony to obtain the write-off, and Elzy cannot be held responsible for any medical expenses Hoffman did not actually incur and need not repay. The court adopted "a bright-line rule that such

attorney-negotiated discounts do not fall within the ambit of the collateral source rule because to do otherwise would invite a variety of evidentiary and ethical dilemmas for counsel."

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## Insurance Claims

*Kelly v. State Farm Fire & Cas. Co.*, 14-1921 (La. 5/5/15), 169 So.3d 328.

The Louisiana Supreme Court was tasked with answering two certified questions from the U.S. 5th Circuit: 1) whether an insurer could be found liable for a bad-faith failure-to-settle claim when the insurer never received a firm settlement offer; and 2) whether an insurer could be found liable for misrepresenting or failing to disclose facts that are not related to the insurance policy's coverage.

Kelly was injured after being struck in a motor-vehicle accident with Thomas, a driver insured with State Farm. Kelly's attorney attempted to settle the claim with State Farm but ultimately rejected its offer. Kelly eventually obtained an excess judgment against Thomas and State Farm. After State Farm paid its policy limits, Kelly entered into a compromise with Thomas whereby Thomas assigned to Kelly his rights to pursue a bad-faith action against State Farm. Kelly brought claims against State Farm for failing to notify Thomas of Kelly's settlement letter and failing to settle the claim.

Breaking down the first certified question into two operative clauses, the Supreme Court first asked whether an insurer *could* be held liable for a bad-faith failure-to-settle claim. The court articulated that insurers owe their insureds the duty to act in good faith when dealing with claims against their insureds. Further, the court instructed that, under jurisprudence and the plain language of La. R.S. 22:1973(A), both the insured and third-party claimants are entitled to enforce this duty through bad-faith failure-to-settle claims. *Kelly*,



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169 So.3d at 338-39.

Turning to the second component of the first question, the court held that a firm settlement offer is not required in order to hold an insurer liable due to the insurer's affirmative duty to conduct a thorough investigation, "to adjust claims fairly and promptly," and "to make a reasonable effort to settle claims with the insured or the claimant, or both." In arriving at this conclusion, the court wrote that the insurer's duty should not be subject to whether the insurer received a firm settlement offer, but instead is based on the evidence the insurer develops during the claims process. *Id.* at 341; *see also*, *Smith v. Audubon Ins. Co.*, 95-2057 (La. 9/5/96), 679 So.2d 372, 377.

Proceeding to answer the second certified question, the court undertook a statutory analysis of La. R.S. 22:1973(B)(1), which provides: "Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A: (1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue." The court read the "or" language of the statute as disjunctive and held that the statute prohibits both the misrepresentation of "pertinent facts" and the misrepresentation of "insurance policy provisions relating to any coverages at issue," thereby separating the requirement that the misrepresentation of pertinent facts relate to coverages at issue. Accordingly, the court answered the second question in the affirmative, finding that an insurer *can* be held liable for misrepresenting or failing to disclose facts that are not related to the insurance policy's coverage. *Kelly*, 169 So.3d at 343-44.

By opening up the requirements for a bad-faith claim, the *Kelly* opinion will have implications across the spectrum of insurers, their insureds and third-party claimants. However, this decision is not expected to open the floodgates of insurance bad-faith claims. As the court remarked in *dicta*, "tight [reins] must be kept on a cause of action for insurer settlement practices." *Id.* at 343, n. 34.

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## United States

**Department of Commerce, International Trade Administration**, 80 Federal Register 46793-46795 (8/6/15).

The U.S. Department of Commerce, International Trade Administration, published a Federal Register notice of determination indicating how it intends to apply certain statutory directives contained in the Trade Preferences Extension Act of 2015.

This legislation provides a number of amendments to the U.S. antidumping (AD) and countervailing duty (CVD) laws, including: (1) modification of the provisions addressing adverse facts available in AD or CVD proceedings; (2) modification of the "material injury" definition applicable in AD or CVD proceedings; (3) changes to "ordinary course of trade" and "particular market situation" definitions in AD proceedings; (4) alteration to the treatment of distorted prices or costs in AD cases; and (5) changes to the procedures for accepting mandatory respondents in AD and CVD proceedings. The legislation does not contain dates of application for any of the amendments.

The Department of Commerce issued the Federal Register notice to notify litigants that it will implement the amendments immediately. Immediate application will certainly raise some scrutiny, for example where a remand determination is made after implementation of the changes.

## Court of Justice of the European Union

**Schrems v. [Irish] Data Protection Comm'r**, C-362/14 (Oct. 6, 2015).

The European Court of Justice (ECJ) issued a significant decision on a request for preliminary ruling from the Irish High Court. The ECJ invalidated the U.S.-E.U. "safe harbor" agreement regarding the transfer of personal data between the E.U. and U.S. The case was initiated by Schrems

in a complaint lodged at the Irish Data Protection Commissioner. Schrems is an Austrian national residing in Austria and a Facebook social media user since 2008. Some or all of his personal data is transferred from Facebook's Irish subsidiary to Facebook servers in the U.S. for processing. This personal-data transfer triggers several important E.U. privacy safeguards that were examined in the complaint.

Schrems' complaint surrounds the 2013 revelations made by Edward Snowden regarding U.S. law enforcement and intelligence activities involving personal data. In particular, the complaint asserts that U.S. law and practice does not ensure sufficient protection of his personal data transferred to Facebook servers, and the surveillance activities in the U.S. violate his fundamental rights. *Schrems*, at 28. The Irish authority rejected the complaint, in part, on the ground that the U.S.-E.U. "safe harbor" agreement ensures the U.S. provides adequate protection to personal data. *Id.* at 29, citing European Commission Decision 2000/520/EC (July 26, 2000).

Schrems challenged the Irish Commissioner's decision at the Irish High Court.

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The High Court criticized the “significant over-reach” of U.S. intelligence activities and the lack of procedures for E.U. citizens to address indiscriminate surveillance. The High Court further found that the “mass and undifferentiated accessing of personal data is clearly contrary to the principle of proportionality and fundamental values protected by the Irish Constitution.” *Id.* at 33. The case before the Irish High Court presented an issue of E.U. law insofar as Schrems’ complaint raises the legality of the E.U.’s “safe harbor” decision. *Id.* at 35. Accordingly, the High Court stayed the proceeding and referred the question of whether it has authority to investigate a complaint raised by an E.U. citizen that a third country does not afford an adequate level of personal-data protection. *Id.* at 36.

The ECJ accepted the referral and ruled that the U.S.-E.U. “safe harbor” agreement contained in Decision 2000/520 is invalid and violates the fundamental rights provided to E.U. citizens under the Charter of Fundamental Rights of the European Union (E.U. Charter) and community law.

The ECJ first ruled that no provision of the “safe harbor” directive prevents the national supervisory authorities from independently examining whether the transfer of one person’s data to a third country complies with E.U. law. *Id.* at 63-65. The ECJ then found that the European Commission’s “safe harbor” decision fails to make an adequate determination regarding the level of protection of fundamental rights afforded by the U.S. *Id.* at 75. The Court specifically criticized the Commission’s failure to address the fact that U.S. law allows national security, public interest and law enforcement rights to prevail over the “safe harbor” scheme without limitation when a conflict arises. *Id.* at 86. The ECJ added that U.S. legislation allowing public authorities broad access to electronic communications compromises the very essence of the fundamental right to respect for private life. *Id.* at 87.

The ECJ directed the Irish authority to examine the merits of Schrems’ complaint, and decide whether Facebook’s transfer of European subscribers’ data to the U.S. should be suspended for lack of adequate protection. The decision caused immediate waves on both sides of the Atlantic. U.S.-E.U. negotiators are frantically working on a new safe-harbor data-sharing agree-

ment. Some observers suggest that only comprehensive surveillance reform in the U.S. can address the deficiencies outlined by the ECJ.

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## Mineral Lessee’s Obligations to Its Lessor

***McCarthy v. Evolution Petroleum Corp.***,  
14-2607 (La. 10/14/15), \_\_\_\_ So.3d \_\_\_\_,  
2015 WL 5972515.

The Louisiana oil and gas industry watched this case with bated breath. *McCarthy* involves the interpretation of a mineral lessee’s obligations to its lessor, pursuant to article 122 of the Louisiana Mineral Code. Article 122 specifically states that a mineral lessee *does not* owe a “fiduciary obligation” to his lessor. However, the Louisiana 2nd Circuit Court of Appeal concluded, in *McCarthy II* (discussed below), that lessees might owe an implied duty to disclose information to their lessor regarding the future development of minerals.

Plaintiffs are former mineral royalty owners. They claimed that Evolution Petroleum, the lessee, fraudulently induced the sale of plaintiffs’ royalty interests by misrepresenting the future value of the minerals. According to plaintiffs, Evolution did not tell the royalty owners (who were elderly or unsophisticated in oil-and-gas matters) that it was in the process of negotiating a sale of the Delhi Unit to Denbury, another oil-and-gas company that would later perform tertiary recovery of about 30 to 40 million barrels of oil by injecting carbon dioxide into the un-

derlying formations. Plaintiffs alleged in their petition that it was Evolution’s plan, following the sale to Denbury, to retain certain royalty interests obtained from plaintiffs and profit therefrom on about 9 to 14 million barrels of oil. Evolution also did not tell any of the royalty owners about the proven reserves underlying the Delhi Unit. Because Evolution failed to disclose this information, plaintiffs argued that the sale should be rescinded.

Evolution filed a peremptory exception of no cause of action. The trial court granted that exception. Plaintiffs appealed to the 2nd Circuit, which reversed and remanded the case to the district court with instructions requiring plaintiffs to amend and restate their causes of action. *See, McCarthy v. Evolution Petroleum Corp.*, 47,907 (La. App. 2 Cir. 2/27/13), 111 So.3d 446, *writ denied*, 13-1022 (La. 6/28/13), 118 So.3d 1097 (*McCarthy I*).

Plaintiffs amended their petition, and Evolution again filed an exception of no cause of action. It was also granted. Plaintiffs appealed, again, to the 2nd Circuit. *See, McCarthy v. Evolution Petroleum Corp.*, 49,301 (La. App. 2 Cir. 10/15/14), 151 So.3d 148 (*McCarthy II*). Plaintiffs alleged that the exception should not have been granted because it was clear from the pleadings that Evolution purposefully omitted production valuation information *viz.* the Denbury deal in order to undervalue its offer(s) to purchase plaintiffs’ royalty interests. The 2nd Circuit found that the failure to disclose such information could constitute fraud by silence given the mineral lessor/lessee relationship between the parties. The appellate court further found that because Evolution was planning a long-term development plan, as a reasonably prudent operator, Evolution was obligated to inform its lessors about those plans and not remain silent.

Evolution appealed *McCarthy II* to the Louisiana Supreme Court. Evolution argued that the 2nd Circuit’s ruling was not supported by current law, nor was it supported by the express words of Louisiana Mineral Code article 122. Following full briefing by both sides and oral argument, the Louisiana Supreme Court agreed. On Oct. 14, 2015, the court reversed the 2nd Circuit’s decision in *McCarthy II* and reinstated the ruling of the trial court.



The Supreme Court found that, under article 122, a lessee does not have an obligation to disclose information about future development to his lessor. That is not part of the panoply of obligations of a reasonably prudent operator under Louisiana law. Further, the clear and unambiguous language of article 122 states as much. Thus, in the absence of a contractual duty between the parties requiring the lessee to disclose such information, article 122 cannot impliedly create such a duty. As to the claim of fraud by affirmative misrepresentation, the court found that plaintiffs' petition fails to establish such a claim in the absence of a fiduciary duty owed by the lessee. The court, relying in part on legislative history and prior jurisprudence, found that Louisiana law historically sought to protect a mineral lessee's valuation of its future business prospects. Therefore, just because plaintiffs were not happy with

the deal they struck with Evolution (after the fact), the court would not step in to unwind that deal.

## Expedited Permit Processing Rules

The Louisiana Department of Natural Resources, Office of Conservation, has proposed rules relating to an Expedited Permit Processing Plan (LAC 43: XIX, Subpart 20, Sections 4701, 4703, 4705, 4707 and 4709, as authorized by Act 362 of the 2015 Legislative Session). Applicants/operators will be able to request that the Office of Conservation expedite the processing of permits, modifications, orders, licenses, registrations or variances. Whether such expedited consideration will be provided is at the discretion of the Commissioner of the Office of Conservation. There are

certain eligibility requirements, and a fee will be associated with the application for expedited consideration, which will be determined by the Commissioner.

The proposed rules may be found at Louisiana Register, Vol. 41, No. 8, Aug. 20, 2015, pp. 1569-1572. A public hearing was held on Sept. 28, 2015, and comments were submitted by the public on Sept. 30, 2015.

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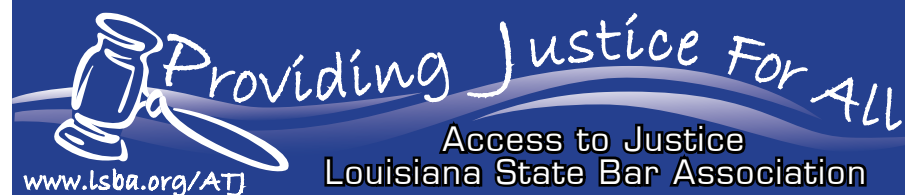
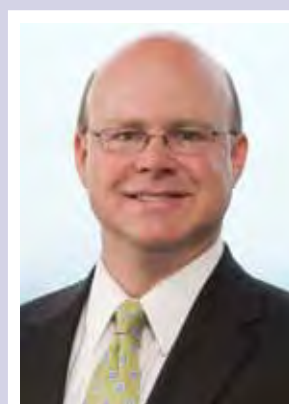
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## Panel Opinion, Informed Consent and Pleading Loss of Chance of Survival

*Matranga v. Parish Anesthesia of Jefferson, L.L.C.*, 14-0448 (La. App. 5 Cir. 5/14/15), 170 So.3d 1077, writ denied, 15-1168 (La. 9/18/15), \_\_\_ So.3d \_\_\_\_.

Plaintiffs appealed the admissibility of the panel opinion and a jury verdict in favor of medical-malpractice defendants, wherein the jury was given an unredacted copy of the underlying panel opinion. Plaintiffs asserted that the opinion should have been redacted to exclude the panel's findings of fact, which unduly confused and prejudiced the jury. Pursuant to La. R.S. 40:1299.47(G), whenever a medical-review panel is confronted with a material issue of fact that bears on liability, the panel is required to "simply acknowledge the material issue and defer to the factfinder's consideration." Plaintiffs contended that where a medical-review panel oversteps that limitation, those factual findings should be redacted from its opinion before it may be admitted as evidence in a subsequent civil action. The 5th Circuit agreed, holding that the trial court committed a prejudicial error of law by admitting the unredacted opinion into evidence.

Although plaintiffs' original claim was based on a lack of informed consent, the parties later stipulated that informed consent would not be an issue at trial. In the panel opinion, the panelists concluded that "the medical records indicate that a consent form was signed by the patient, and risks for anesthesia were discussed with the patient." Plaintiffs argued that this finding was not probative to any triable, material fact of the case. They further argued that allowing the jury to review the panel's opinion on informed consent was "inherently confusing and prejudicial to the jury," as it was improperly suggestive that the patient was willing to risk injury and death to undergo preoperative anesthesia.

The 5th Circuit agreed that there was no triable question regarding the patient's informed consent, and thus the issue was irrelevant and should have been excluded. However, the court declined to consider "whether irrelevant evidence of informed consent in a medical malpractice is *per se* prejudicial." The court noted that although other jurisdictions "regularly" address whether informed-consent evidence might prejudice a jury when informed consent is not at issue at the trial, "Louisiana appellate courts have not substantively addressed this issue." The court likewise declined to opine on whether the admission of informed-consent evidence is *per se* prejudicial where informed consent is not an issue at trial. It noted, however, that "the danger of jury confusion was especially acute because of the factual issues which predominated at trial" and found that this error, in conjunction with the trial court's failure to instruct the jury on loss of chance of survival, mandated reversal.

Defendants also argued that the trial court erred in excluding from its jury instructions an explanation of Louisiana law on the loss of chance of survival. Defendants contended that because the petition did not explicitly assert a loss-of-chance-of-survival claim, plaintiffs could not recover under that theory, citing *Smith v. State, Department of Health & Hospitals*, 95-0038 (La. 6/25/96), 676 So.2d 543, 547. Defendants asserted that *Smith* held that "loss of chance of survival is not recoverable as an element of damage in either a wrongful death or survival action." *Matranga*, 170 So.3d at 1094. Thus, defendants argued, a loss-of-chance-of-survival claim could not be "read into" those causes of action.

The 5th Circuit rejected defendants' argument, including their interpretation of *Smith*, stating:

*Smith* does not stand for the proposition that plaintiffs in a wrongful death or survival action are prohibited from supporting their theory of recovery with regard to causation using the loss of chance of survival doctrine. Instead, *Smith* revolves around the method of calculating damages in a case where a plaintiff claims loss of chance of survival.

The court then observed that "it is well established that Louisiana is a fact pleading

state" and that plaintiffs can recover any relief to which they are entitled under the pleadings and evidence. Though plaintiffs did not specifically plead loss of chance of survival, the claim was properly asserted because plaintiffs claimed the patient died as a result of defendants' malpractice. The 5th Circuit thus held that the trial court erred in omitting the jury instruction on loss of chance of survival. But, as with the 5th Circuit's finding on the admission of informed consent evidence, this holding was likewise issued with limitations:

As discussed above with regard to evidence of [the patient's] informed consent, we decline to opine as to whether the trial court's refusal to instruct the jury on lack of chance of survival, in isolation, constitutes reversible error. However, in this case, in which evidence of [the patient's] advanced age and declining health was a persistent theme throughout trial, we find that the trial court's failure to instruct the jury on loss of chance of survival probably contributed to the jury's verdict. This prejudicial error, together with the admission of the portion of the Medical Review Panel on informed consent, contributed to the verdict to the extent that the jury was unable to dispense justice, mandating reversal of the jury's verdict.

The jury's verdict was reversed and the case was remanded for a new trial.

## Summary Judgment and La. R.S. 9:2794

*LeBoeuf v. Hospital Serv. Dist. No. 1*, 14-1730 (La. App. 1 Cir. 9/21/15), 2015 WL 5547469.

Ms. LeBoeuf passed away following a complicated, and contested, course of medical care. Her children filed a request for a medical-review panel regarding the propriety of her treatment and the cause of her death. The panel issued a unanimous opinion favorable to the defendants and her children then filed suit. The defendants moved for summary judgment, based on the plaintiffs' lack of any expert medical opinion to substantiate their claims. Defendants supported their own position with the unanimous panel



opinion and asserted that if plaintiffs did not submit expert medical testimony contradicting it, the claim must be dismissed. During oral argument in the trial court, “plaintiffs’ counsel admitted they had no expert nor did they have any intention of obtaining one.” Plaintiffs conceded that they could not prove defendants caused Ms. LeBoeuf’s death; nevertheless, they claimed that they could maintain a loss-of-chance-of-survival claim, which they asserted need not be supported by expert testimony.

The trial court granted defendants’ summary judgment.

Plaintiffs appealed, relying primarily on La. R.S. 9:2794(B), which provides that “(a) party . . . shall have the right to subpoena any physician . . . for a deposition or testimony at trial, or both, to establish the degree of knowledge or skill possessed, or degree of care ordinarily exercised” as described in La. R.S. 9:2794(A). Plaintiffs asserted that the use of the word “shall” in this statutory subsection is mandatory, thus concluding that this provision grants the parties in any medical-malpractice proceeding “the absolute right to proceed to trial and once there, the right to subpoena a physician to satisfy their burden of proof.” How, then, they argued, could summary proceedings be used to deprive them of an *absolute* right?

The 1st Circuit rejected this argument on multiple procedural grounds, first noting that La. C.C.P. art. 966(A)(2) expressly provides that the summary judgment mechanism is permitted in “every action, except those disallowed by Article 969.” C.C.P. art. 969 explicitly states that summary judgment is impermissible only regarding certain matters ancillary to divorce proceedings. Second, the court rejected plaintiffs’ interpretation of La. R.S. 9:2794(B), finding that it constituted an improper interpretation of the intent of the totality of that statute, especially when considered *in pari materia* with article 966. Accordingly, the court found La. R.S. 9:2794 “does not grant a party in a medical malpractice case the absolute right to satisfy his burden of proof at trial, thereby prohibiting disposition by summary judgment.”

—Robert J. David

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## Constitutional Challenge to HCR No. 8 of 2015 Regular Session

On Aug. 13, 2015, the Louisiana Department of Revenue (LDR) issued Statement of Acquiescence No. 15-001 to announce that the LDR will acquiesce in a final, non-appealable judgment rendered by a court of competent jurisdiction in the matter of *Louisiana Chemical Ass’n v. State*, 19th Judicial District Court, Docket No. 640501, Section 24, regarding the constitutionality of House Concurrent Resolution No. 8 (HCR 8) of the 2015 Regular Session of the Legislature. The Louisiana Chemical Association (LCA) sued the State, alleging that the passage of HCR 8 was unconstitutional by asserting that the legislation passed was not in conformity with constitutional procedural requirements. Although the LDR disagrees that the passage of the legislation at issue was unconstitutional, the LDR’s Statement of Acquiescence was issued in the event that there is a final, non-appealable judgment holding that HCR 8 is unconstitutional.

HCR 8 of the 2015 Regular Session of the Legislature suspended the exemptions

from the tax levied pursuant to R.S. 47:331 for sales of steam, water, electric power or energy, and natural gas, including but not limited to the exemptions found in R.S. 47:305(D)(1)(b), (c), (d) and (g), and any other exemptions provided in those portions of Chapter 2 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, which provide for exemptions for business utilities from state sales tax. The effective date of the suspension of these exemptions was July 1, 2015.

The business-utilities exemptions suspended by HCR 8 are as follows:

I. Utilities listed under La. R.S. 47:305(D)(1)(b), (c), (d) and (g) as follows:

(b) Steam.

(c) Water (not including mineral water or carbonated water or any water put in bottles, jugs or containers, all of which are not exempted).

(d) Electric power or electric energy and any material or energy sources used to fuel the generation of electric power for resale or used by an industrial manufacturing plant for self-consumption or cogeneration.

(g) Natural gas.

II. Utilities in La. R.S. 47:305(D)(1)(h), which are all energy sources when used for boiler fuel, except refinery gas.

III. Utilities in La. R.S. 47:305.51, which are those utilities used by steelworks and blast furnaces.

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- ▶ I will not use the threat of sanctions as a litigation tactic.
- ▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
- ▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

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In response to the passage of HCR No. 8, the LCA filed a declaratory judgment action alleging various procedural constitutional arguments. The LCA has attempted to file suit on behalf of alleged industrial, chemical and petrochemical manufacturers with facilities and operations within Louisiana.

Pending the outcome of the lawsuit, taxpayers may pay the sales taxes as they become due and then file an administrative claim for refund under La. R.S. 47:1621, using the LDR Claim for Refund of Overpayment Form (R-20127). If a final, non-appealable judgment is issued by a court of competent jurisdiction declaring HCR No. 8 to be unconstitutional, then LDR will acquiesce that the sales tax payments made pursuant to HCR No. 8 are overpayments within the meaning of La. R.S. 47:1621 regardless of whether the taxpayer initiated its own lawsuit or paid under protest. All claims for refund must be filed in accordance with the prescriptive period imposed by La. R.S. 47:1623.

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### Inventory Tax Credit Permitted on Equipment Rented Prior to Sale

In *Louisiana Machinery Co. v. Bridges*, 15-0010 (La. App. 1 Cir. 9/18/15) (not designated for publication), 2015 WL 5515156, Louisiana's 1st Circuit ruled on a taxpayer's ability to receive inventory-tax credits on equipment that the taxpayer rented while holding for sale. The taxpayer in this case held all of its equipment for sale at any time, but it rented some of its equipment in order to reduce the purchase price so that more customers could afford to purchase the equipment. The taxpayer included the equipment in inventory for purposes of *ad valorem* taxes and claimed a credit under La. R.S. 47:6006 for inventory taxes paid on its equipment. After an audit, the Department of Revenue

disallowed a portion of the taxpayer's inventory-tax credit on the basis that rental property could not be held for sale and could not qualify as "inventory." The taxpayer filed a petition for refund with the Board of Tax Appeals, which agreed that the taxpayer was entitled to the full amount of the credit, and the Department appealed.

La. R.S. 47:6006 allows manufacturers, distributors and retailers to claim a credit against Louisiana income or corporation franchise tax for *ad valorem* taxes paid on inventory. On appeal, the Department argued that "inventory" for purposes of this tax credit applies only to items sold and not those leased or rented and that the taxpayer was not a "retailer" when it leased the equipment because the taxpayer was not engaged in a sale. While La. R.S. 47:6006 defines "retailer" as a person engaged in the sale of products to the ultimate consumer, it does not define "inventory." However, under the *ad valorem* tax statutes, all goods held in inventory as finished goods by retailers are considered "inventory," without any other restrictions. The court explained that courts cannot add restrictions to tax statutes that are not present, and nothing in the statute restricted the credit only to those goods that have only been sold without being rented first. The court also relied on precedent in *Southlake Development Co. v. Sec. of Dep't of Rev.*, 98-2158 (La. App. 1 Cir. 11/5/99), 745 So.2d 203, in allowing the use of the definition of "inventory" for purposes of *ad valorem* taxes since La. R.S. 47:6006 does not define the term. Upon finding (1) that the taxpayer was engaged in the sale of products to the ultimate consumer and, therefore, a "retailer," and (2) that the equipment at issue was held for sale in the ordinary course of its business, even if it had been previously rented, and, therefore, was "inventory," the court affirmed the decision of the Board of Tax Appeals.

—**Christie B. Rao**  
Member, LSBA Taxation Section  
McGlinchey Stafford, P.L.L.C.  
601 Poydras St., 12th Flr.  
New Orleans, LA 70130

## CHAIR'S MESSAGE

### Exciting Events and Opportunities Ahead in 2016

By Erin O. Braud

Happy New Year! 2016 is starting out with a lot of exciting events and opportunities ahead. Eat healthy, work out, stop procrastinating, learn Spanish — and take time to make your New Year's resolutions. One big resolution you should add to your list is to improve your legal career by being more professional.

Be a nice lawyer. The temptation is to react to jerky opposing counsel with equal hostility. Do not go there. Don't use zealous advocacy as an excuse to be



Erin O. Braud

rude or disrespectful.

Remember as members of the Louisiana State Bar Association, we agree to abide by the Code of Professionalism. Among other things, the Code requires us to conduct ourselves with dignity, civility, courtesy and a sense of fair play, and to cooperate with counsel. Now is a good time to read (or reread) the Code.

Being courteous and nice does not mean rolling over or allowing yourself to get sandbagged. Acting like a courteous attorney will get better results for your clients, not worse. A Juris Doctor is a professional degree — so act like a professional.

Your reputation will be comprised of your skill, talent, personality, integrity,

ethical standards, imagination, judgment and diligence. Each encounter you have with another attorney, judge or client either builds on or detracts from your reputation. You want to be regarded as reliable, intelligent, diligent, practical, talented and trustworthy.

Another great New Year's resolution. . . Attend an upcoming Young Lawyers Division (YLD) event! There are several Wills for Heroes events coming up, including in New Orleans, Lafayette and Baton Rouge. If you are interested in volunteering or want to have an event in your city, email Adam P. Johnson at [adam@johnsonandvercher.com](mailto:adam@johnsonandvercher.com), or Kristi W. Richard at [krichard@mcglinchey.com](mailto:krichard@mcglinchey.com).

We have other exciting events happening this spring, including the state High School Mock Trial Competition on Saturday, March 12, 2016, at the 19th Judicial District Courthouse, 300 North Blvd., Baton Rouge. Volunteers are always needed. If you are interested in participating, email Carrie L. Jones at [carrie@scwllp.com](mailto:carrie@scwllp.com) or Kassie L. Hargis at [khargis@32ndjdc.org](mailto:khargis@32ndjdc.org).



## YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers  
Division news online

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

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



## YOUNG LAWYERS SPOTLIGHT

### Marcus E. Edwards Shreveport

The Louisiana State Bar Association's Young Lawyers Division is spotlighting Shreveport attorney Marcus E. Edwards.

An associate at Mayer, Smith & Roberts, L.L.P., in Shreveport, Edwards devotes a majority of his practice to civil defense litigation, focusing on workers' compensation defense, premises liability, personal injury and successions.

He earned a BA degree in political science from Morehouse College, where he served as Student Government president. He earned his JD degree from Tulane University Law School with a Certificate in International and Comparative Law, and was



inducted into the Order of Barristers. He served on a successful Presidential Search Committee while at Morehouse and on a successful student subcommittee of the Law School Dean's Search Committee while at Tulane. He interned for the U.S. State Department Office of War Crimes Issues and for U.S. 5th Circuit Chief Judge Carl E. Stewart. After law school, he returned to Shreveport to begin a clerkship in the 1st Judicial District Court, gaining valuable experience working in the chambers of Judge Leon L. Emanuel III and Judge Ramona L. Emanuel.

Edwards currently serves on the Shreveport Bar Association's (SBA) Executive Board, the SBA's Professionalism Committee and the Louisiana State Bar Association's (LSBA) Legislation Committee. He is a team leader for the Harry V. Booth/Judge Henry A. Politz American Inn of Court, focusing on legal technology. He also is a member of the Louisiana Association of Defense Counsel and the Shreveport-Bossier Black Lawyers' Association.

Over the past five years, he has consistently given his time in service to the com-

munity, participating in the SBA Young Lawyers Section's Adopt-a-School Program and for pro bono projects, including the LSBA Young Lawyers Division's Wills for Heroes Program. He was a member of the 2012-13 Leadership LSBA Class. He participated in the Community Foundation of North Louisiana's 2012 Community Leaders Program and served as a 2014 co-chair of the SBA Law Day Program.

Edwards also has been involved in the Hugh O'Brien Youth (HOBY) World Leadership Congress for more than a decade. HOBY is a student leadership organization that inspires and develops youth and volunteers to a life of leadership, service and innovation. He has been selected to serve as chair of the 50th HOBY World Leadership Congress in 2017, where more than 400 HOBY leaders from all 50 states and more than 10 countries will meet for a week of intensive training in Chicago, Ill.

This past April, Edwards married Jabrina Clayton Edwards, a 2012 graduate of the University of Mississippi School of Law. She is an attorney with Legal Services of North Louisiana and is admitted to practice in Mississippi and Louisiana.

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

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

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

For more information, go to: [www.lsba.org/goto/solace](http://www.lsba.org/goto/solace).

## Nomination Deadline is Feb. 12, 2016: Young Lawyers Division Awards Nomination Form

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 **Dylan T. Thriffley, Chair, LSBA Young Lawyers Division Awards Committee, c/o Ochsner Health System, 1201 Dickory Ave., Harahan, LA 70123**. Any nomination packet that is incomplete or is not received or postmarked on or before **Feb. 12, 2016**, 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 2016.

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.)

- |  |   |
|--|---|
| <input type="checkbox"/> Hon. Michaelle Pitard Wynne Professionalism | <input type="checkbox"/> Outstanding Young Lawyer |
| <input type="checkbox"/> Service to the Public                       | <input type="checkbox"/> Service to the Bar       |
| <input type="checkbox"/> YLD Pro Bono                                |   |

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 Dylan T. Thriffley at (504)842-4517 or email [dylan.thriffley@ochsner.org](mailto:dylan.thriffley@ochsner.org).



## Lawyers/Judges in the Classroom Programs Reach 2,800+ Students on Constitution Day

In observance of Constitution Day on Sept. 17, the Louisiana Center for Law and Civic Education (LCLCE) organized 76 in-school presentations statewide, reaching more than 2,800 students. The presentations were organized through the Lawyers/Judges in the Classroom Programs.

State representatives, judges and lawyers participating in Constitution Day activities included: Rep. Frank A. Hoffmann, Judge E. Adrian Adams, Judge Dawn Amacker, Judge Candice Bates Anderson, Judge Ernestine L. Anderson-Trahan, Judge Reginald T. Badeaux, Judge Paul P. Bonin, Judge John E. Conery, Judge June Berry Darensburg, Judge Lee V. Faulkner, Jr., Judge Andrea P. Janzen, Judge Sandra C. Jenkins, Judge Marc E. Johnson, Judge Benjamin Jones, Judge Keva M. Landrum-Johnson, Judge John J. Lee, Jr., Judge Michael A. Pitman, Judge Curtis Sigur, Judge Sheva M. Sims, Judge Charles G. Tutt, Judge Zorraine J. Waguespack, Alison C. Bondurant, Damon J. Baldone, Charles C. Bourque, Jr., Jessica G. Braun, John F. Dillon, Jackie Dove Broussard, Richard C. Drew, Henri P. Dufresne, C. Berwick Duval II, Shytishia (Sam) M. Flugence, A. Spencer Gulden, Felicia M. Hamilton, Thomas J. Hogan, Jr., Misael A. Jimenez, Jr., Kendra S. Joseph, Laura H. Katzenmeyer, Tanner D. Magee, Jackie M. McCreary, Brittany L. Myers, Mark Myers, DeVonna M. Pon-thieu, Edward F. Rudiger, Jr., Brad P. Scott, Celeste H. Shields, Jessica L. Thornhill and J. Richard Williams.

Participating schools included Allen Ellender School, Archbishop Hannan High School, Bayou Blue Middle School, Boyet Junior High School, Cohen College Preparatory School, East Iberville School, Eden Gardens Magnet School, Edna Karr High School, Emily C. Watkins Elemen-



Attorney Damon J. Baldone conducted an in-school Constitution Day presentation at Mulberry Elementary School in Houma.

tary School, Folsom Junior High School, Gethsemane Christian Academy, Gramercy Elementary Magnet School, Helen Cox High School, Holy Ghost School, Huntington High School, Jefferson Chamber Foundation Academy, Lake Shore Middle School, Lawrence Crocker College Preparatory School, Live Oak Middle School, Mulberry Elementary School, New Iberia Senior High School, Park Forest Middle School, Renew Charter Organization's Therapeutic Program, Roseland Elementary Montessori School, SJP Science & Math Academy, Southside Junior High School, St. Augustine High School, St. Helena College & Career Academy, St. James High School, Sylvanie Williams College Preparatory Charter School, West Monroe High School, Westgate High School and Woodlawn Leadership Academy.

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



Judge C. Wendell Manning, third from left, is the recipient of the first Louisiana Center for Law and Civic Education's (LCLCE) Judge Benjamin Jones Judges in the Classroom Award. From left, Judge Benjamin Jones, Louisiana Supreme Court Justice Marcus R. Clark, Judge Manning and LCLCE President Barbara Windhorst.

## Judge Manning Receives First Judge Benjamin Jones Judges in the Classroom Award

Judge C. Wendell Manning, a judge in 4th Judicial District Court, is the recipient of the first Louisiana Center for Law and Civic Education's (LCLCE) Judge Benjamin Jones Judges in the Classroom Award. Judge Manning was recognized for his contributions to the law-related education of Louisiana's youth.

Louisiana Supreme Court Justice Marcus R. Clark presented the award to Judge Manning at the 2015 Fall Judges Conference in New Orleans.

Judge Jones, the award's namesake, attended the inaugural presentation. Judge Jones began the Judges in the Classroom Program several years ago. Between April and September 2015, more than 8,300 Louisiana students benefited from the Lawyers/Judges in the Classroom Program, a joint venture of the Louisiana State Bar Association, the Louisiana District Judges Association and the LCLCE.





Teachers participating in the 2015 Justice Catherine D. Kimball Summer Institute at the Louisiana Supreme Court this past summer.

# LCLCE Hosts 2015 Justice Catherine D. Kimball Summer Institute

The Louisiana Center for Law and Civic Education (LCLCE) conducted several professional development programs for Louisiana teachers this past summer.

In addition to three back-to-school teacher training workshops for St. James Public School educators, the LCLCE coordinated the Justice Catherine D. Kimball Summer Institute, a four-day teachers' workshop offering instruction in and educational materials for law-related curricula such as "We the People: The Citizen and the Constitution" and "iCivics." The Institute is offered at no cost to teachers.

As an adjunct to the Institute, the LCLCE conducted "Order in the Court." Taught by a distinguished faculty of Louisiana state and federal judges, administrative law judges and hearing officers, "Order in the Court" provided attendees a better understanding of the various courts in the judicial system and further insight into the structure of the government. Twenty-eight teachers, representing six Louisiana congressional districts at the elementary, middle and high school levels, participated.

The "Order in the Court" portion of the Institute was hosted at the Louisiana Supreme Court. The faculty included Justice John L. Weimer, Louisiana Supreme Court;



**Emily Held, a 2014-15 senior at Haynes Academy for Advanced Studies in Metairie, is the recipient of the 2015 Civics in Action Award. Her award was presented by Louisiana Supreme Court Justice John L. Weimer at the Justice Catherine D. Kimball Summer Institute. The award recognizes a middle or high school student who has demonstrated outstanding civic virtue and involvement in the community.**

Judge Candice Bates-Anderson, Orleans Parish Juvenile Court; Judge Peter H. Beer, U.S. District Court, Eastern District of Louisiana; Orleans Parish District Attorney Leon A. Cannizzaro, Jr.; Judge Bernadette G. D'Souza, Orleans Parish Civil District Court/Domestic Section; Judge James E. Graves, Jr., U.S. 5th Circuit Court of Ap-

peals; Chief Judge Sheral C. Kellar, Louisiana Department of Labor; Judge Madeleine M. Landrieu, Louisiana 4th Circuit Court of Appeal; Judge C. Wendell Manning, 4th Judicial District Court; Judge Rebecca M. Olivier, 1st Parish Court; Jack C. Benjamin, Sr., Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.; Kim M. Boyle, Phelps Dunbar, L.L.P.; Danatus N. King, Danatus N. King & Associates; Thomas O. Lind, Canal Barge Company, Inc. (Ret.); and Joseph B. Stahl. Also participating were LCLCE board member Val P. Exnicios, Liska, Exnicios & Nungesser; Valerie S. Willard, Louisiana Supreme Court deputy judicial administrator, community relations; and Georgia D. Chadwick, director of the Law Library of Louisiana.

The second portion of the Institute included a presentation by Stacie Schrieffer LeBlanc on "Teens, Sex and the Law" and "Louisiana Mandatory Reporting Laws." LeBlanc is the department head of the Audrey Hepburn CARE Center of Children's Hospital. Additional instruction and pedagogy on law-related curricula were provided by Vickie Hebert, Ann Majeste, Michelle Molina, Chris Totaro and Elizabeth Tullier.

By David Rigamer, Louisiana Supreme Court

## NEW JUDGES... APPOINTMENTS

### New Judges

**John C. Reeves** was elected judge, Division B, 7th Judicial District Court. He earned his BA degree in 1978 from Louisiana Tech and his JD degree in 1984 from Southern University Law Center.



John C. Reeves

He began his legal career in his family's law practice with his father and two brothers-in-law. In 1989, he became an assistant district attorney and served in that capacity for 18 years. He is past president of the 7th Judicial District Bar Association. Judge Reeves is married to Debbie McClure Reeves and they are the parents of two children.

**William Mitchell Redd** was elected judge, Division A, 14th Judicial District Court. He earned his bachelor's degree in 1987 from Louisiana Tech and his JD degree in 1990 from Louisiana State University Paul M. Hebert Law Center. He was a partner in the firm of Liles & Redd in Lake Charles for 16 years before becoming managing partner of W. Mitchell Redd, L.L.C. He served as city attorney for Sulphur from 2010-14. Judge Redd is married to Dawn Ferguson Redd and they are the parents of two children.



William Mitchell Redd

**Beau M. Higginbotham** was elected judge, Division M, 19th Judicial District Court. He earned his bachelor's degrees, with honors, in 1998 and 1999 from Louisiana State University and

his JD degree, *cum laude*, in 2003 from Southern University Law Center. He served 11 years as an assistant district attorney in East Baton Rouge Parish. Judge Higginbotham is married to Carrie Madge Higginbotham and they are the parents of two children.



Beau M. Higginbotham

**E. Charles Jacobs** was elected judge, Division D, 26th Judicial District Court. He earned his bachelor's and JD degrees in 1992 and 1995, respectively, from Louisiana State University and LSU Paul M. Hebert Law Center. He began his legal career in the law office of his predecessor, Judge John M. Robinson. He served 11 years as a part-time assistant district attorney in the 26th JDC and 15 years as the city attorney for Springhill. He also served as city attorney for the towns of Cullen and Sarepta in Webster Parish. Judge Jacobs is married to Melanie McConnell Jacobs and they are the parents of one child.



E. Charles Jacobs

**Desiree Cook-Calvin** was elected judge, Section E, Orleans Parish Juvenile Court. She earned her BA degree in 1991 from Carnegie Mellon University and her JD degree in 1994 from Tulane Uni-



Desiree Cook-Calvin

versity Law School. Prior to her election to the bench, she maintained a private law practice. She served as an assistant city attorney and administrative hearing officer for the City of New Orleans and as a staff attorney for Southeast Louisiana Legal Services. She also was an adjunct professor at Southern University New Orleans and Delgado Community College. Judge Cook-Calvin is the mother of three children.

**Gary K. Hays** was elected judge of Pineville City Court. He earned his BS degree in 1988 from Northeast Louisiana University and his JD degree in 1993 from Southern University Law Center.



Gary K. Hays

He served as a law clerk for 9th Judicial District Court Judges Alfred A. Mansour and W. Ross Foote from 1993-94 before joining Smith & Farrar law firm as a staff attorney. He began his solo practice in Pineville in 1997. He served as Pineville city prosecutor from 1998-2014 and as magistrate for the town of Ball from 2012-14. Judge Hays is married to Michelle Hays and they are the parents of two children.

### Appointments

► John C. Anjier was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions as an examiner for Business Entities and Negotiable Instruments for a term of office which ends on Sept. 15, 2020.

► Allen P. Jones and J. Kevin Stelly were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization for terms of office which end on June 30, 2018.

► Professor Nadia E. Nedzel was appointed, by order of the Louisiana Supreme Court, to the Equivalency Determination Panel for a term of office that ends on Sept. 5, 2019.

## Retirement

2nd Circuit Court of Appeal Judge James E. Stewart, Sr. retired effective Sept. 6. He earned his BA degree in 1977 from the University of New Orleans and his JD degree in 1980 from Loyola University College of Law. He served eight years as an assistant district attorney before being elected to the 1st Judicial District Court in 1990. In 1994, he was elected to the 2nd Circuit Court of Appeal, filling the position vacated by his brother

U.S. 5th Circuit Court of Appeals Judge Carl E. Stewart.

## Deaths

► Retired 21st Judicial District Court Judge E. Brent Dufreche, 96, died Sept. 1. He earned both his undergraduate and law degrees from Louisiana State University. A WWII veteran of the 338 Field Artillery Battalion, 88th Infantry Division, he was awarded the Bronze Star for heroic service in a combat zone. He also served during the Korean Conflict as an artillery instructor at Fort Sill, OK. After law school, he opened a practice in Ponchatoula and served as Ponchatoula city attorney. He served as Hammond city judge from 1973-79 and as assistant district attorney in 1966. He

was elected to the 21st JDC in 1980 and served as judge until his retirement in 1997.

► Retired 34th Judicial District Court Judge Richard H. Gauthier, 82, died July 25. He attended Notre Dame University from 1950-52 and graduated from Louisiana State University, receiving his law degree in 1956. He served two years of active duty in the U.S. Army where he was a captain JAGC, USAR. He practiced law in Arabi for 10 years before his appointment and subsequent election to the 25th JDC in 1966. In 1979, the 25th JDC was split into two districts, creating the 34th JDC, where Gauthier served as chief judge until his retirement in 1984. An active member of the judiciary, he served as president of the Louisiana District Judges Association.

# LSBA Member Services – Business Services

**F**or information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA. These services are benefits of membership with the Louisiana State Bar Association.

### Programs

- **Alternative Dispute Resolution Program**
- **Client Assistance Fund**  
[www.lsba.org/goto/clientassistancefund](http://www.lsba.org/goto/clientassistancefund)
- **Continuing Legal Education Program**  
[www.lsba.org/cle](http://www.lsba.org/cle)
- **Ethics Advisory Service**  
[www.lsba.org/goto/ethicsadvisory](http://www.lsba.org/goto/ethicsadvisory)
- **Lawyers' Substance Abuse Hotline**  
[www.LouisianaJLAP.com](http://www.LouisianaJLAP.com) • (866)354-9334
- **Legal Specialization Program**
- **Loss Prevention Counsel**  
Johanna G. Averill, Lindsey M. Ladouceur and Elizabeth LeBlanc Voss • (800)GILSBAR
- **SOLACE** (Support of Lawyers/Legal Personnel All Concern Encouraged)  
[www.lsba.org/goto/solace](http://www.lsba.org/goto/solace)

### Publications

- **Louisiana Bar Journal**
- **"Bar Briefs"** • online
- **Inside the LSBA** • online e-newsletter

### Online Services ([www.lsba.org](http://www.lsba.org))

- **Louisiana Bar Opinion Service**
- **Membership Directory**
- **Fastcase** (free online legal research)
- **Law Office Management Assistance Program**
- **Lending Library**
- **Twitter, Pinterest & Facebook**

### Young Lawyers Division

- **Barristers for Boards**
- **Bridging the Gap**
- **Choose Law**
- **Mentor Program**
- **Wills for Heroes**
- **Young Lawyers' Directory**

### Insurance through Gilsbar

- **Group Insurance, Major Medical, Disability and Malpractice Insurance**  
(800)GILSBAR • (504)529-3505  
See inside back cover

### Car Rental Programs

- **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
- **LexisNexis** – (800)356-6548
- **LawPay** - (866)376-0950
- **United Parcel Service** – (800)325-7000



For more information on  
LSBA Member discount business services,  
visit [www.lsba.org/goto/businessservices](http://www.lsba.org/goto/businessservices)



# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Tori M. Bennette**, **Anna F. Cavnar**, **Kelsey L. Meeks** and **Madison A. Sharko** have joined the firm as associates.

Barrios, Kingsdorf & Casteix, L.L.P., in New Orleans announces that Emma E. Kingsdorf has joined the firm as an associate.

Caraway LeBlanc, L.L.C., has relocated its offices to 3936 Bienville St., New Orleans, LA 70119; phone (504)566-1912.

Cashe Coudrain & Sandage in Hammond announces that Patrick G. Coudrain has joined the firm as an associate.

Coats, Rose, Yale, Ryman & Lee announces that **Imtiaz A. Siddiqui** has joined the firm as of counsel in the New Orleans office.

Couch, Conville & Blitt, L.L.C., in New Orleans announces that Benjamin G. Lambert was named a partner.

Deutsch Kerrigan, L.L.P., in New Orleans announces that **Cassie E. Preston** and **Kari M. Rosamond** have joined the firm as associates.

Dunlap Fiore, L.L.C., in Baton Rouge announces that **Claire E. Sauls** has joined the firm as an associate.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Matthew W. Bailey** has joined the firm as a member in the Baton Rouge office.

King, Krebs & Jurgens, P.L.L.C., in New Orleans announces that Andrew J. Rebenack has joined the firm as an associate.

The Kullman Firm announces that **Jessica L. Marrero** and **Geoffrey A. Mitchell** have joined the firm as associates in the New Orleans office.

Liskow & Lewis, A.P.L.C., announces that eight attorneys have joined the firm as associates — Philip R. Dore, Carson M. Haddow, Collin R. Melancon, Catherine Sens Napolitano and Patrick B. Reagin in the New Orleans office; and Edward M. Duhe, Jr., Michael H. Ishee and Caleb J. Madere in the Lafayette office.

Meneray Family Law, L.L.C., has relocated its offices to 710 Carondelet St., New Orleans, LA 70130; phone (504)330-5522.

Preis, P.L.C., announces that Charmaine B. Borne has joined the firm's Lafayette office.

Sher Garner Cahill Richter Klein & Hilbert, L.L.C., in New Orleans announces that Kevin M. McGlone, Jeffrey D. Kessler and Ryan O. Luminais have been elected as members in the firm.

Shields Mott, L.L.P. in New Orleans announces that **Jessica A. Roberts** has joined the firm as an associate.



Richard J. Arsenaault



Matthew W. Bailey



Tori M. Bennette



Anna F. Cavnar



Kaye N. Courington



Lawrence N. Curtis



Blake R. David



Lillian E. Eyריך



Scott B. Kiefer



Kevin P. Maney



Jessica L. Marrero



David A. Martinez

Steeg Law Firm, L.L.C., in New Orleans announces that **Zachary I. Rosenberg** has joined the firm as an associate.

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

Claiborne P. (Clay) Tanner announces that he has opened his firm Tanner Law Firm, L.L.C., located at Ste. B, 4232 Bluebonnet Blvd., Baton Rouge, LA 70809; phone (225)215-1900.

Tranchina & Mansfield, L.L.C., in Covington announces that **Kevin P. Maney** has joined the firm as an associate.

The Unglesby Law Firm and Jason Williams & Associates have joined to form the litigation firm Unglesby+Williams, based in New Orleans. Partners are Lewis O. Unglesby, Lance C. Unglesby and Jason R. Williams. The firm is located at 607 St. Charles Ave., New Orleans, LA 70130; phone (504)345-1390; [www.unglesbywilliams.com](http://www.unglesbywilliams.com).

## NEWSMAKERS

George Arceneaux, a shareholder in the Lafayette office of Liskow & Lewis, A.P.L.C., was named a Fellow of the American College of Trial Lawyers.

Barry W. Ashe, a member in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., received the John R. (Jack) Martzell Professionalism Award from the New Orleans Chapter of the Federal Bar Association for outstanding professionalism in the practice of law.

J. Dalton Courson, a member in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., received the 2015 Louisiana State Bar Association's Trailblazer Award for his contributions in promoting diversity and inclusion in the legal profession.

**Blake R. David**, a founding partner of Broussard & David, L.L.C., in Lafayette, was named Maritime Section chair for the Louisiana Association for Justice.

Donna Y. Frazier, parish attorney for Caddo Parish, was elected chair of the American Bar Association's Section of State and Local Government Law for a one-year term.

Patricia A. Krebs, a member of King, Krebs & Jurgens, P.L.L.C., in New Orleans, received the President's Award from the New Orleans Chapter of the Federal Bar Association for her contributions to community leadership.

Kerry J. Miller, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was inducted into the International Academy of Trial Lawyers.

**MaryJo L. Roberts**, an associate in the New Orleans office of Phelps Dunbar, L.L.P., received the Louisiana Association of Defense Counsel's inaugural Frank L. Maraist Award for her commitment to pro bono work, community service and professional excellence.

**Paul M. Sterbcow**, managing partner of the firm Lewis, Kullman, Sterbcow & Abramson in New Orleans, was inducted into the International Academy of Trial Lawyers.

**Judge Karelia R. Stewart**, 1st Judicial District Court, Shreveport, is one of five recipients of the 2015 National Bar Association's (NBA) Excellence in Leadership Award for her commitment to the legal profession and her work on the bench as a new judge. She also was recognized at the NBA's 40 Under 40 Awards Luncheon as one of the Nation's Best Advocates.

Frank P. Tranchina, Jr., a partner in the firm of Tranchina & Mansfield, L.L.C., in Covington, has become a member of the Louisiana State Law Institute's Marriage Persons Committee.

Continued next page



Kelsey L. Meeks



Geoffrey A. Mitchell



Randy Opotowsky



Barbara B. Ormsby



Cassie E. Preston



Jessica A. Roberts



MaryJo L. Roberts



Kari M. Rosamond



Zachary I. Rosenberg



Claire E. Sauls



Madison A. Sharko



Imtiaz A. Siddiqui

## PUBLICATIONS

### *Best Lawyers in America 2016*

**Adams and Reese, L.L.P.** (Baton Rouge, New Orleans): Charles P. Adams, Jr., Henry B. Alsobrook, Jr., E. Gregg Barrios, Mark R. Beebe, Philip O. Bergeron, Charles A. Cerise, Jr., Robin B. Cheatham, V. Thomas Clark, Jr., O. Ray Cornelius, Scott E. Delacroix, Kathleen F. Drew, John M. Duck, Brooke Duncan III, Richard B. Eason II, Mark S. Embree, Philip A. Franco, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., C. Kevin Hayes, E.L. Henry, Edwin C. Laizer, Leslie A. Lanusse, Francis V. Liantonio, Jr., Don S. McKinney, Patricia B. McMurray, Robert B. Nolan, Glen M. Pilié, Jane C. Raiford, Edward J. Rice, Jr., Jeffrey E. Richardson, James T. Rogers III, Deborah B. Rouen, Robert C. Schmidt, Elizabeth A. Roussel, E. Paige Sensenbrenner, Ronald J. Sholes, Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Janis van Meerveld, Roland M. Vandenweghe, Jr., Robert A. Vosbein and David M. Wolf.

**Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.** (Baton Rouge, Mandeville, New Orleans, Englewood, Colo.): Alissa J. Allison, Edward H. Arnold III, Gerardo R. Barrios, Alton E. Bayard III, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Stephen F. Chiccarelli, Christopher O. Davis, John B. Davis, Nancy Scott Degan, Warner J. Delaune, Jr., Robert S. Emmett, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Jan M. Hayden, William H. Howard III, Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Alexander M. McIntyre, Jr., Mark W. Mercante, Kerry J. Miller, Christopher G. Morris, William N. Norton, Dickie W. Patterson, Anne E. Raymond, David C.

Rieveschl, James H. Roussel, Danny G. Shaw, Margaret M. Silverstein, Danielle L. Trostorff, Paul S. West, Anne Derbes Wittmann, Matthew A. Woolf and Adam B. Zuckerman.

**Baldwin Haspel Burke & Mayer, L.L.C.** (New Orleans): David L. Carrigee, Thomas J. Cortazzo, Joel A. Mendler, Jerome J. Reso, Jr., Leon H. Rittenberg, Jr., Leon H. Rittenberg III, John A. Rouchell, William B. Schwartz, Paul N. Vance and Karl J. Zimmermann.

**Beirne, Maynard & Parsons** (New Orleans): Ernest L. Edwards, Jr., William R. Forrester, Jr., Patrick Johnson, Jr., B. Richard Moore, Jr., Benjamin R. Slater III, Scott J. Sonnier and Hal C. Welch.

**Breazeale, Sachse & Wilson, L.L.P.** (Baton Rouge, New Orleans): Robert L. Atkinson, Thomas M. Benjamin, Robert T. Bowsher, Jude C. Bursavich, David R. Cassidy, David M. Charlton, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Emily Black Grey, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, Joseph R. Hugg, David R. Kelly, Eve B. Masinter, Van R. Mayhall, Jr., Trenton J. Oubre, Richard G. Passler, Claude F. Reynaud, Jr., Jerry L. Stovall, Jr., Thomas R. Temple, Jr. and B. Troy Villa.

**Cook, Yancey, King & Galloway, A.P.L.C.** (Shreveport): Samuel W. Caverlee, Sidney E. Cook, Jr., J. William Fleming, Albert M. Hand, Jr., Brian A. Homza, Bernard S. Johnson, John T. Kalmbach, William C. Kalmbach III, Robert Kennedy, Jr., Kenneth Mascagni and Herschel E. Richard, Jr.

**Law Office of Larry Curtis, A.P.L.C.** (Lafayette): **Lawrence N. (Larry) Curtis.**

**Deutsch Kerrigan, L.L.P.** (New Orleans): Francis J. Barry, Jr., Keith J. Bergeron, Frederick R. Bott, Terrence L. Brennan, Bertrand M. Cass, Jr., Jimmy A. Castex, Jr., John Jerry Glas, Robert E. Ker-

rigan, Jr., Frederick Theodore Le Clercq, Charles E. Leche, Nancy J. Marshall, Joseph L. McReynolds, Ellis B. Murov, Isaac H. Ryan, Charles F. Seemann, Jr., A. Wendel Stout III, Kelly E. Theard, William E. Wright, Jr. and Marc J. Yellin.

**Flanagan Partners, L.L.P.** (New Orleans): Sean P. Brady, Harold J. Flanagan and Thomas M. Flanagan.

**Lewis, Kullman, Sterbcow & Abramson** (New Orleans): **Paul M. Sterbcow.**

**Liskow & Lewis, A.P.L.C.** (Lafayette, New Orleans): George Arceneaux III, George Denegre, Jr., Jonathan A. Hunter, Robert B. McNeal, Leon J. Reymond III and Richard W. Revels, Jr.

**McGlinchey Stafford, P.L.L.C.** (Baton Rouge, New Orleans): Richard A. Aguilar, Rudy J. Aguilar, Jr., Brad J. Axelrod, Samuel A. Bacot, Stephen P. Beiser, Mark N. Bodin, Jaye A. Calhoun, Rudy J. Cerone, Katherine Conklin, Richard A. Curry, Larry Feldman, Jr., Michael D. Ferachi, R. Marshall Grodner, L. Eades Hogue, Ronnie L. Johnson, Mary Terrell Joseph, Bennet S. Koren, Christine Lipsey, Kathleen A. Manning, B. Franklin Martin III, Colvin G. Norwood, Jr., Jay M. O'Brien, Erin Fury Parkinson, R. Andrew Patty II, Jean-Paul Perrault, Anthony J. Rollo, Jr., Michael H. Rubin, John F. Sieberth, Stephen P. Strohschein, Dan E. West, Kenneth A. Weiss, Constance Charles Willems and Gerard E. Wimberly, Jr.

**Sher Garner Cahill Richter Klein & Hilbert, L.L.C.** (New Orleans): Mary Beth E. Akin, John T. Balhoff II, Darnell Bludworth, Elwood F. Cahill, Jr., Christopher T. Chocheles, Martha Y. Curtis, Debra J. Fischman, Joshua S. Force, James M. Garner, Peter L. Hilbert, Jr., Karen T. Holzenthal, Steven I. Klein, Neal J. Kling, Ryan O. Luminais, Thomas J. Madigan II,

Continued next page



William J. Sommers, Jr.



Robert M. Steeg



Paul M. Sterbcow



Charles L. Stern, Jr.



Judge Karelia R. Stewart



Kelly E. Theard



David A. Marcello, Kevin M. McGlone, Alvin C. Miester III, Deborah J. Moench, Marie A. Moore, Chad P. Morrow, Richard P. Richter, Amanda R. Schenck, Leopold Z. Sher and Robert P. Thibeaux.

**Steeg Law Firm, L.L.C.** (New Orleans): **Lillian E. Eyrich, David A. Martinez, Randy Opatowsky, Robert M. Steeg** and **Charles L. Stern, Jr.**

**Stone Pigman Walther Wittmann, L.L.C.** (Baton Rouge, New Orleans): Hirschel T. Abbott, Jr., Barry W. Ashe, Carmelite M. Bertaut, Stephen G. Bullock, Joseph L. Caverly, Douglas J. Cochran, John W. Colbert, Noel J. Darce, Mary L. Dumestre, John P. Farnsworth, Michael R. Fontham, James C. Gulotta, Jr., John M. Landis, Wayne J. Lee, Paul J. Masinter, Heather Begneaud McGowan, Michael W. McKay, C. Lawrence Orlansky, Laura Walker Plunkett, Michael R. Schneider, James E.A. Slaton, Susan G. Talley, Peter M. Thomson, William D. Treeby, Michael W. Walshe, Jr., Scott T. Whittaker, Rachel

Wendt Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

#### **Chambers USA 2016**

**Beirne, Maynard & Parsons** (New Orleans): Patrick Johnson, Jr..

#### **Louisiana Super Lawyers 2016**

**Beirne, Maynard & Parsons** (New Orleans): William R. Forrester, Jr., Patrick Johnson, Jr., Benjamin R. Slater III and Hal C. Welch.

**Courington, Kiefer & Sommers, L.L.C.** (New Orleans): **Kaye N. Courington, Scott B. Kiefer** and **William J. Sommers, Jr.**

**Neblett, Beard & Arsenault** (Alexandria): **Richard J. Arsenault.**

#### **New Orleans CityBusiness 2015**

**Deutsch Kerrigan, L.L.P.** (New Orleans): **Barbara B. Ormsby** and **Kelly E. Theard**, 2015 Class of "Women of the Year."

## **People Deadlines and Notes**

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

<b>Publication</b>	<b>Deadline</b>
April/May 2016	Feb. 4, 2016
June/July 2016	April 4, 2016
Aug./Sept. 2016	June 4, 2016

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

**Publications Coordinator**  
**Darlene M. LaBranche**  
**Louisiana Bar Journal**  
**601 St. Charles Ave.**  
**New Orleans, LA 70130-3404**

or email  
**dlabranche@lsba.org**

## **LSBA Member Services – Louisiana Hotels**

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.

#### **New Orleans**

- ▶ **Blake Hotel** • (504) 962-7220  
alebouef@nolahotelgroup.com
- ▶ **Hampton Inn Hotels & Suites of New Orleans**  
cmohamed@highpointe.com  
(504) 529-5077
- ▶ **Hotel Monteleone** • (504) 648-4717  
mlopez@hotelmonteleone.com  
[www.lsba.org/GoTo/HotelMonteleone](http://www.lsba.org/GoTo/HotelMonteleone)
- ▶ **Hyatt French Quarter** • (504) 266-6362  
csoler@hriproperties.com
- ▶ **Hyatt Regency New Orleans**  
(888) 591-1234 • Corporate ID #: 95147
- ▶ **Intercontinental Hotel** • (504) 585-4309  
judith.smythe@icneworleans.com
- ▶ **Le Meridien Hotel** • (504) 207-5025  
Christopher.Couvillion@starwoodhotels.com
- ▶ **Le Pavillon Hotel** • (504) 620-4132

- ▶ **Loews New Orleans Hotel** • (504) 595-5314  
dpembo@loewshotels.com
- ▶ **Maison Dupuy Hotel** • (504) 648-6117  
jneyrey@maisondupuy.com
- ▶ **Omni Hotels of New Orleans**  
(504) 756-1141 • Jyates@omnihotels.com
- ▶ **The Ritz-Carlton** • (504) 670-2845  
Matthew.Mcdaniel@ritzcarlton.com
- ▶ **The Roosevelt New Orleans**  
(504)335-3008 • Corporate ID #: 2742353  
peter.honan@waldorfasteria.com
- ▶ **Sheraton New Orleans** • (800) 937-8461  
dana.smith@sheraton.com
- ▶ **St. James Hotel** • (504) 926-7720  
alebouef@nolahotelgroup.com
- ▶ **W French Quarter Hotel** • (504) 207-5025  
Christopher.Couvillion@starwoodhotels.com
- ▶ **Westin New Orleans Canal Place**  
(504) 553-5110  
robin.mccoy@westinneworleans.com
- ▶ **The Whitney Hotel** • (504) 212-8688  
Stephanie.Borrello@whitneyhotel.com
- ▶ **Windsor Court** • (504) 596-4364  
plambert@windsorcourthotel.com

#### **Baton Rouge**

- ▶ **Crowne Plaza Baton Rouge**  
(225)930-0100  
dbond@executivecenterbr.com
- ▶ **Hilton Baton Rouge Capitol Center**  
(800)955-6962, (225)906-5754  
Corporate ID #0921780 • sdaire@hiltonbr.com  
[www.lsba.org/GoTo/HiltonBRCapitol](http://www.lsba.org/GoTo/HiltonBRCapitol)
- ▶ **SpringHill Suites Lafayette South at River Ranch**  
[www.lsba.org/GoTo/SpringHill](http://www.lsba.org/GoTo/SpringHill)

#### **Lafayette**

- ▶ **SpringHill Suites Lafayette South at River Ranch**  
[www.lsba.org/GoTo/SpringHill](http://www.lsba.org/GoTo/SpringHill)

#### **Lake Charles**

- ▶ **Best Western Richmond Suites** • (337)433-5213

#### **Shreveport**

- ▶ **Clarion Shreveport Hotel** • (318)797-9900
- ▶ **The Remington Suite Hotel** • (318)425-5000

#### **National Hotel Chains\***

- ▶ **Holiday Inn** • (800)HOL-IDAY • ID: 100381739
- ▶ **LaQuinta Inns & Suites** • (866)725-1661  
[www.LQ.com](http://www.LQ.com) • Corp. rate code: LABAR

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



*Serving the Public. Serving the Profession.*

For more information on  
LSBA Member discount business services,  
visit [www.lsba.org/goto/businessservices](http://www.lsba.org/goto/businessservices)

## UPDATE



Louisiana Supreme Court justices, judges from throughout the state and members of the Louisiana State Bar Association attended the Oct. 5 Red Mass at St. Louis Cathedral. Photo by Darryl Schmitt Photography.

## Red Mass Celebrated at St. Louis Cathedral

The 63rd annual Red Mass, organized by the St. Thomas More Catholic Lawyers Association and Catholic bishops of Louisiana, was celebrated on Oct. 5 at St. Louis Cathedral in New Orleans. The Red Mass signifies the traditional opening of the judicial year, always the first Monday in October.

Before the Mass, Louisiana Supreme Court justices and judges from throughout the state gathered at the Supreme Court building and formed a procession to the cathedral. The Mass was con-celebrated by numerous priests and attended by ministers of other faiths.



Archbishop Gregory M. Aymond, far left, was the principal celebrant for the Oct. 5 Red Mass at St. Louis Cathedral. From left, Julia C. Spear, Bishop Fernand J. Cherie III and Judge Raymond S. Steib, Jr. at the Supreme Court reception. Photo by Darryl Schmitt Photography.

Archbishop Gregory M. Aymond was the principal celebrant. Bishop Fernand J. Cherie III was the homilist.

Following the Red Mass, the Louisiana State Bar Association conducted its annual Memorial Exercises at the Supreme Court, recognizing all members of the bench and bar who died in the past year.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, with Archbishop Gregory M. Aymond at the Oct. 5 Red Mass. Photo by Darryl Schmitt Photography.

## LSBA Members Inducted into Louisiana Justice Hall of Fame

Five Louisiana State Bar Association members were among nine people inducted into the Louisiana Justice Hall of Fame this past August. The Louisiana Justice Hall of Fame recognizes individuals who have made an impact on Louisiana's criminal justice system.

The 2015 inductees included Emma J. Devillier, assistant attorney general, Baton Rouge; Louisiana Supreme Court Justice Jefferson D. (Jeff) Hughes III; District Attorney Charles Rex Scott, Caddo Parish; District Attorney Joseph L. Waitz, Jr, Terrebonne Parish; and Sheriff Craig Webre, Lafourche Parish.

## U.S. Attorney's Office Participates in Feds Feed Families Drive

The United States Attorney's Offices in Shreveport and Lafayette (Western District of Louisiana) collected more than 275 pounds of food and non-perishable items as part of the Feds Feed Families Drive in October, said U.S. Attorney Stephanie A. Finley.

The donations were delivered to two food pantries — the Food Bank of Northwest Louisiana in Shreveport; and the FoodNet: The Greater Acadiana Food Bank in Lafayette.

Donation boxes for the food drive campaign were located at the federal courthouses in Shreveport and Lafayette.



# Introduce a new partner to your law firm

**Joining Louisiana Association for Justice is like introducing a new partner to your law firm — one who works around the clock and doesn't take holidays.**

LAJ exists for one purpose only: to serve the Louisiana trial bar. From battling for our clients' rights in the legislature to providing second-to-none networking opportunities, LAJ works 24/7 to help members succeed.

Networking through LAJ offers you a wide range of practice sections, list servers, regional luncheons with decision makers, and our popular Annual Convention.

**Participating in a practice section and list server is like adding a team of experienced lawyers to your firm.**

In today's world, everybody expects value, which is exactly what LAJ brings to your practice.

LAJ's annual dues for lawyers start at just \$95 and monthly payment plans are available.



To join, contact us at 225-383-5554 or visit [www.lafj.org](http://www.lafj.org).





The 73rd annual Louisiana State NAACP Conference was Sept. 24-26 in Chalmette. Among the participants were, from left, Michael W. McClanahan, JD; Judge (Ret.) Sharon K. Hunter; attorney Danatus N. King; attorney Arthur R. Thomas; Louisiana State Bar Association President Mark A. Cunningham; Judge Pamela T. Taylor-Johnson; Judge Jules D. Edwards III; attorney Joyce Marie Plummer; attorney Taryn C. Branson; attorney Alfreda Tillman Bester; and Judge Donald T. Johnson.



The newly established Specialty Bars Subcommittee's inaugural meeting was Oct. 3 in Baton Rouge. Specialty bar representatives discussed their programs and challenges their organizations face. Louisiana State Bar Association (LSBA) President Mark A. Cunningham and LSBA staff also attended the event. From left, Eve Goudeau, LSBA staff; Demarcus J. Gordon, chair, LSBA Minority Involvement Section; Cunningham; April D. Davenport, secretary, Greater New Orleans Louis A. Martinet Legal Society, Inc.; Patsy A. Randall, president, Greater Lafayette Louis A. Martinet Legal Society, Inc.; Mary L. Jackson, president, Shreveport-Bossier Black Lawyers Association; Rene DeRojas, treasurer, Hispanic Lawyers of Louisiana; George W. Britton III, president, Northeast Louisiana Louis A. Martinet Legal Society, Inc.; Christine T. Bruneau, president, Louisiana Asian Pacific American Bar Association; and Derrick D. Kee, president, Lake Charles Louis A. Martinet Legal Society, Inc.



The 2015-16 officers of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. were installed on Oct. 6 at the U.S. District Court, Eastern District of Louisiana. Judges participating in the swearing-in ceremony were Judge Ivan L.R. Lemelle, Judge Nannette Jolivet Brown and Judge Piper D. Griffin. Officers, from left, are Dana M. Douglas, president; Justin I. Woods, vice president; Ashley J. Heilprin, corresponding secretary; April D. Davenport, recording secretary; Royce I. Duplessis, president-elect; and Cashauna M. Hill, immediate past president. Not in photo, James L. Moffett III, treasurer.



In commemoration of the 10th anniversary of Hurricane Katrina, attorneys from the Houston, Texas, law firm of Beck Redden, L.L.P., participated in a Day of Service Sept. 19 in New Orleans. Firm members partnered with HandsOn New Orleans to prepare the Einstein Charter School's Sarah Towles Reed Campus for its first academic year. Beck Redden lawyers and spouses painted the school's bathrooms and hung bulletin boards. Participants included, from left, partner Alex Roberts, of counsel Gretchen Sween, associate Kate Skagerberg, associate Patrice Childress, Shane Burroughs, associate Chris Cowan, Emily Gannaway, Katie Cowan, partner Geoff Gannaway, associate Kyle Lawrence, Caitlin Lawrence, associate Leslie Honey Tronche and John Laurent Tronche.

## SLLS Receives LSC Grant for Medical-Legal Partnership

Southeast Louisiana Legal Services Corp. (SLLS) received a 24-month \$290,520 Pro Bono Innovation Fund grant from the Legal Services Corp. (LSC) to launch a medical-legal partnership to integrate legal aid into eight community-based health clinics.

Through a partnership with the Pro Bono Project in New Orleans and the Daughters of Charity Services of New Orleans, this project will allow legal volunteers to provide services on critical disability, Medicaid and housing issues to patients using those clinics. This new project will help remove access barriers for low-income clients through new and expanded pro bono services delivered by volunteer lawyers, paralegals and law students.

The Pro Bono Innovation Fund is a competitive grant program that invests in projects that identify and promote replicable innovations in pro bono for low-income legal aid clients. This is the second year LSC has awarded the funds.



Judge (Ret.) Charles L. Porter, left, received the Legal Excellence and Professionalism Award from the American Inn of Court, Inn of the Teche Chapter, on Sept. 24. Before his retirement from the bench, Judge Porter represented Division G in the 16th Judicial District, comprising the parishes of Iberia, St. Martin and St. Mary. With him is his wife Jimmie Kay Porter.



In recognition of the Louisiana State Bar Association's Month of Service, on Oct. 3, two New Orleans law firms — Irwin Fritchie Urquhart & Moore, L.L.C., and Phelps Dunbar, L.L.P. — provided the lunch at Ozanam Inn, a homeless shelter in New Orleans. The event was coordinated through the New Orleans Bar Association's Public Service Committee. The law firms purchased the ingredients, and the firms' volunteers prepared, cooked and served more than 250 lunches that day.



The Baton Rouge Bar Association's (BRBA) 2015 annual softball tournament champion is a team from Breazeale, Sachse & Wilson, L.L.P. Joseph J. Cefalu III, left, and Jordan L. Faircloth, representing the firm, were presented with a custom-made bat from Marucci Bat Co. during the BRBA Fall Expo and Conference on Sept. 17.



The Baton Rouge Bar Association's (BRBA) 30th annual Fall Expo and Conference was Sept. 17 at L'Auberge Casino and Hotel Baton Rouge. The event featured the BRBA's September Bar Luncheon, three hours of CLE and 34 exhibitor booths. A Q&A seminar titled "Lassoing with the Judges" opened the event and featured a real cowboy/lawyer, E.I. Holden Hoggatt, who practices law in the Lafayette area, and four Baton Rouge judges. Hoggatt presented a lassoing demonstration. From left, 19th Judicial District Court Commissioner Quintillis K. Lawrence; Judge Trudy M. White, 19th JDC, Criminal Division; Hoggatt; Judge Pamela A. Moses-Laramore, Louisiana Office of Workers' Compensation; and Judge Pamela J. Baker, East Baton Rouge Parish Family Court.



The Baton Rouge Bar Association's (BRBA) Fall Expo and Conference was Sept. 17. Attending, from left, BRBA President Robert J. (Bubby) Burns, Jr., Law Expo Committee Chair Michael R. Brassett II, Mary Ann White and BRBA board member David Abboud Thomas.

## SEND YOUR NEWS!

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

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

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



## Lafayette Lawyers Inducted into Hall of Fame

The Lafayette Bar Association (LBA) inducted seven of Lafayette's outstanding legal professionals into the Hall of Fame during ceremonies in September.

The LBA established its Hall of Fame to recognize the contributions of outstanding attorneys and members of the local bar. Inclusion in the Hall of Fame recognizes an exemplary career as an attorney, dedicated service to the community, and participation in the Bar.

The 2015 inductees are:

► James J. Davidson III is senior partner at Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P.

► Joel E. Gooch is a founding partner in the law firm Allen & Gooch.

► John A. Jeansonne, Jr. is a founding partner in the law firm Jeansonne & Remondet, L.L.C.

► Patrick A. Juneau is a founding partner in the law firm Juneau David, A.P.L.C.

► Timothy J. McNamara currently works for the Onebane Law Firm, A.P.C.

► J.J. Davidson, Jr. and James



The Lafayette Bar Association inducted seven of Lafayette's outstanding legal professionals into the Hall of Fame during ceremonies in September. Seated from left, Joel E. Gooch and Timothy J. McNamara. Standing from left, John A. Jeansonne, Jr., James J. Davidson III and Patrick A. Juneau. Photo by Danny Landry.

Domengeaux were inducted posthumously.

In addition to the Hall of Fame inductees, Miles A. Matt received the LBA President's Award and Cliff A. LaCour received the Outstanding Young Lawyer Award.



Attending the Sept. 9 Alexandria Bar Association's annual cocktail reception were, from left, Bradley L. Drell, president, Alexandria Bar Association; Judge Patricia E. Koch, 9th Judicial District Court; Michael S. Koch; Barbara Bell Melton, board member, Alexandria Bar Association; Eugene P. Circardo, secretary, Alexandria Bar Association; and Aaron L. Green, vice president and president-elect, Alexandria Bar Association.



Several new Bar admittees from Alexandria attended the Alexandria Bar Association's annual cocktail reception on Sept. 9. From left, Alexander J. Baynham, Jerome Andries, Kenneth A. Doggett, Lauren M. Barletta, Nicole Morgan, Tamera N. Branham, Jeremiah J. Sams and Priya Kumar.

## LBF Seeks 2016-18 Scholar in Residence

The Louisiana Bar Foundation (LBF) is accepting applications for a Scholar in Residence (SIR) to serve a two-year term beginning in July 1, 2016. A \$7,500 honorarium will be paid to the scholar as consideration for his/her work product.

Over the term of the appointment, the scholar will produce for publication a scholarly quality written contribution on a subject and in a form agreed upon with the LBF, such as a law review article, book, booklet, essay or other legal publication, including film, television projects, etc., suitable for the intended LBF purpose.

The purpose of the SIR appointment is to incorporate an academic and scholarly dimension to the LBF's overall efforts of preserving, honoring and improving the system of justice by funding and promoting efforts that enhance the legal profession, increase public understanding of the legal

system, and advance the reality of equal justice under the law. The SIR appointment is intended to enrich the academic and intellectual perspective of the LBF's efforts, to enhance the LBF's overall educational program, and to support legal education in Louisiana by bringing the practicing bar and Louisiana's law schools closer together.

Applicants must submit a specific proposal, including topic, prospectus, suggested format, proposed timeline and applicant's qualifications. Applications must be received by Friday, Feb. 19, 2016 — by mail to Louisiana Bar Foundation, Education Committee, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112; by fax (504)566-1926; or by email to [dennette@raisingthebar.org](mailto:dennette@raisingthebar.org).

For more information, contact Dennette L. Young at the LBF at (504)561-1046.



Louisiana State Bar Association President-Elect Darrel J. Papillion welcomed judges and attorneys to the Rapides Parish annual court-opening ceremony at the Rapides Parish Courthouse on Sept. 9.



The 4th Judicial District Court conducted its annual court-opening ceremony and reception on Sept. 11 in Monroe. The reception followed the ceremony at the Ouachita Parish Courthouse and the Red Mass at St. Matthew's Catholic Church. From left, Judge H. Stephens Winters, 4th JDC; Shereba L. Diaz, immediate past president, 4th Judicial District Bar Association; and Thomas M. (Tommy) Hayes IV, president, 4th Judicial District Bar Association.



## President's Message

### The Giving Season

*By President H. Minor Pipes III*

'Tis the season for spending time with family and friends, eating delicious food and, hopefully, reflecting on the spirit of the season. Thank you to all our Fellows for your continued support. 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, the services we provide, and the more than 70 grantees we help to fund. 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:

- ▶ Help victims in domestic violence shelters.
- ▶ Protect children who need a stable home.
- ▶ Aid the elderly through financial crises.
- ▶ Assist families in retaining their homes.



**H. Minor Pipes III**

- ▶ Give children a voice in court.
- ▶ Bring families back together.
- ▶ Provide education to youth about the legal process.
- ▶ 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](http://www.raisingthebar.org/gift) or mail directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. For more information, contact Development Director Laura Sewell at (504)561-1046 or email [laura@raisingthebar.org](mailto:laura@raisingthebar.org).

## Sponsors Sought for LBF's 30th Anniversary Gala

The Louisiana Bar Foundation (LBF) will celebrate the 30th Anniversary Gala on Friday, April 8, 2016. The gala and live auction will be held at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans.

The LBF will honor the 2015 Distinguished Jurist Sarah S. Vance, Distinguished Attorneys Judy Y. Barrasso and Herschel E. Richard, Jr., Distinguished Professor Alain A. Levasseur and Calogero Justice Award recipient, The Family Justice Center of

Ouachita Parish.

Sponsorships are available at several levels: 30th Anniversary Circle; Benefactor; Cornerstone; Capital; Pillar; and Foundation. To learn more about each sponsorship level, and to purchase sponsorships or individual tickets, go to: [www.raisingthebar.org/gala2016/](http://www.raisingthebar.org/gala2016/).

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

Discounted rooms are available Thursday, April 7, and Friday, April 8, 2016, at \$229 a night. To make a reservation, call the Hyatt at 1(888)421-1442 and reference the "Louisiana Bar Foundation" or go to: [www.raisingthebar.org](http://www.raisingthebar.org). Reservations must be made before Monday, March 14.

For more information, contact Laura Sewell at (504)561-1046 or email [laura@raisingthebar.org](mailto:laura@raisingthebar.org).

## LBF Seeking Nominations for 2016 Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2016 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Friday, Feb. 5, 2016.

Nominations should include 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 Dennette Young, Communications Director, Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or emailed to

[dennette@raisingthebar.org](mailto:dennette@raisingthebar.org) by the 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 non-profit, law-related program or association of his/her choice.

This trial advocacy award was established through an endowment to the Louisiana Bar Foundation in memory of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the Louisiana Association of Defense Counsel.

## Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

Jennifer E. Adams.....	New Orleans
James D. Caldwell, Jr. ....	Baton Rouge
Stephanie A. Cornay Dugan.....	Lafayette
Trenton A. Grand.....	Baton Rouge
Prof. Alain A. Levasseur .....	Baton Rouge
S. Christie Smith IV .....	Leesville

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**Metairie defense firm** seeks seven-year to 10-year lawyer with excellent writing and analytical skills to perform legal research and document review, and to prepare written analysis of complex legal issues. Insurance coverage experience helpful. The position offers competitive salary and benefits. Email résumé to [attycmte@gmail.com](mailto:attycmte@gmail.com).

**Metairie defense firm** seeks four-year to six-year lawyer with excellent writing and analytical skills to perform legal research and document review, and to prepare written analysis of complex legal issues. The position offers competitive salary and benefits. Email résumé to [attycmte@gmail.com](mailto:attycmte@gmail.com).

**Curry & Friend, P.L.C.**, a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for two positions. The firm offers competitive salary and benefits and an excellent work

environment. 1) Environmental litigation attorney — Senior associate to join environmental legal team; minimum five years' civil litigation experience preferred with emphasis on complex litigation; A/V rating preferred; environmental law, oil and gas law and/or toxic tort experience preferred. 2) Environmental and toxic tort, first-chair attorney to join environmental and toxic tort legal team — Minimum eight years' defense experience preferred in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; environmental, oil and gas and/or toxic tort experience preferred. Those interested in these positions should visit the Curry & Friend, P.L.C., website at: [www.curryandfriend.com/careers](http://www.curryandfriend.com/careers).

**Minimum qualifications** of defense attorneys for the Patient's Compensation Fund. In accordance with La. R.S. 40:1299.41(J), attorneys appointed to defend PCF cases must meet the following minimum qualifications as established by the Patient's Compensation Fund Oversight Board: (1) Must be a defense-oriented firm with at least 75 percent of practice dedicated to defense; (2) Defense firm appointed to PCF cases shall have **NO** plaintiff medical malpractice cases; (3) Defense firm must provide proof of Professional Liability coverage with a minimum limit of \$1 million; (4) Defense

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attorney must have a minimum of five years' experience in the defense of medical malpractice cases; (5) Defense attorney must have completed three trials within the past three years. Presentation of five submissions to a medical review panel may be substituted for each of two trials. However, the defense attorney must have tried at least one case in the past three years. Interested persons may submit written comments to Ken Schnauder, Executive Director, Patient's Compensation Fund, P.O. Box 3718, Baton Rouge, LA 70821.

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## NOTICE

**Notice is hereby given** that Philip Lawrence is filing a petition and application for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for reinstatement may file notice of their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.



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# The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: THINGS I WISH I LEARNED...

**H**ere are a few things I wish I had learned in law school.

In order to solve a problem, you must first identify the problem.

Your character and integrity are your most valuable assets.

There are four kinds of tasks: important and urgent; important and non-urgent; unimportant and urgent; and unimportant and non-urgent. If not important, don't let the apparent urgency of the task draw you away from those tasks that are truly important.

Attention to detail is the most important trait of a good lawyer. Preparation beats talent 99 times out of 100 (and the one time it didn't, talent just got lucky).

Appreciate challenges. They make you a better and stronger person.

Appreciate losses. They make you wiser and also make you a better and stronger person.

Appreciate victories. They hold you up between the challenges and losses.

Don't be afraid of the big megafirms. Some of the people there are not that smart.

Don't underestimate the intelligence of that small-town bumpkin lawyer. He may be much smarter than you are.

When evaluating the merits of a case either for the plaintiff or the defense, recognize that the case will look its best the day it first comes in — it's all downhill from there.

Whenever possible, visit the scene and take pictures if necessary. Whether you are dealing with a personal injury case or a commercial dispute, being there gives you insights that you can never get from reading about it.

There is no such thing as dicta, what they told you in law school notwithstanding. If it appears in a relevant opinion, be prepared to deal with it substantively or lose.

Break projects down into manageable, bite-sized pieces, then just take on one piece at a time.

Take time just to sit, alone, and think about your cases. You'll be surprised by the ideas you get.

Pick your battles. You don't have to fight every issue in every case. If you fight too many issues, your important ones will get lost.

You decide what case you want to try, not your opponent. If they choose what case you will try, you will not like it.

Be yourself. Don't try to act like that other lawyer with whom you were really impressed. You're not that good an actor.

Never turn in the first, second or third draft of a brief, and, when a senior lawyer asks you for a "draft," he or she means your very best final product.

Proofread everything at least twice. Many people (including judges and opposing counsel) will form their first impression of you based upon your written work product. If your paperwork is sloppy, you will be perceived as unprepared and sloppy in all that you do.

When preparing a case, don't become so focused on liability that you forget about damages. A clear liability case with zero proof of damages is worth . . . zero.

When preparing a case, don't become so focused on damages that you forget about liability. A \$10,000,000 case with zero liability is worth . . . zero.

In oral argument or at trial, treat opposing counsel as you would treat your grandfather. Sharp remarks, even when deserved, will make you seem petty and detract from the force or substance of your argument.

Never refuse opposing counsel a favor when it is within your ability to grant it, and granting the favor will not cost you

or your client anything. You will quickly build up a bank of trust and credibility with other lawyers.

When you learn a neat new trick, share it with others.

Laugh when something funny happens, either in the office, in a deposition, or in the courtroom. Keep your sense of humor.

Whether arguing to a judge or a jury, speak slower than you think you need to, and don't be afraid to pause and think before answering questions.

Remember that until a witness does something to turn the jury against him or her, the jury likes the witness more than they like you. Handle the witness with that in mind.

Don't ever stop being nervous the minutes before a hearing, deposition or trial. Adrenaline is just your brain's way of getting you pumped up and ready to go.

Listen to the war stories that old(er) lawyers tell. You can learn a lot from other people's experiences (mistakes).

Nothing is as simple as it seems, and nothing is as complex, either.

You never know unless you try.

If you think you can't, you're right.

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



The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed, but the scope has broadened to include "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email LSBA Publications Coordinator Darlene M. LaBranche at [dlabranche@lsba.org](mailto:dlabranche@lsba.org).



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