

LOUISIANA BAR JOURNAL

December 2016 / January 2017

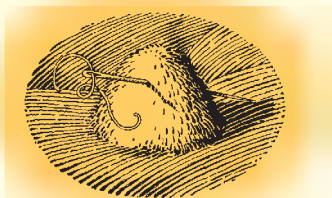
Volume 64, Number 4

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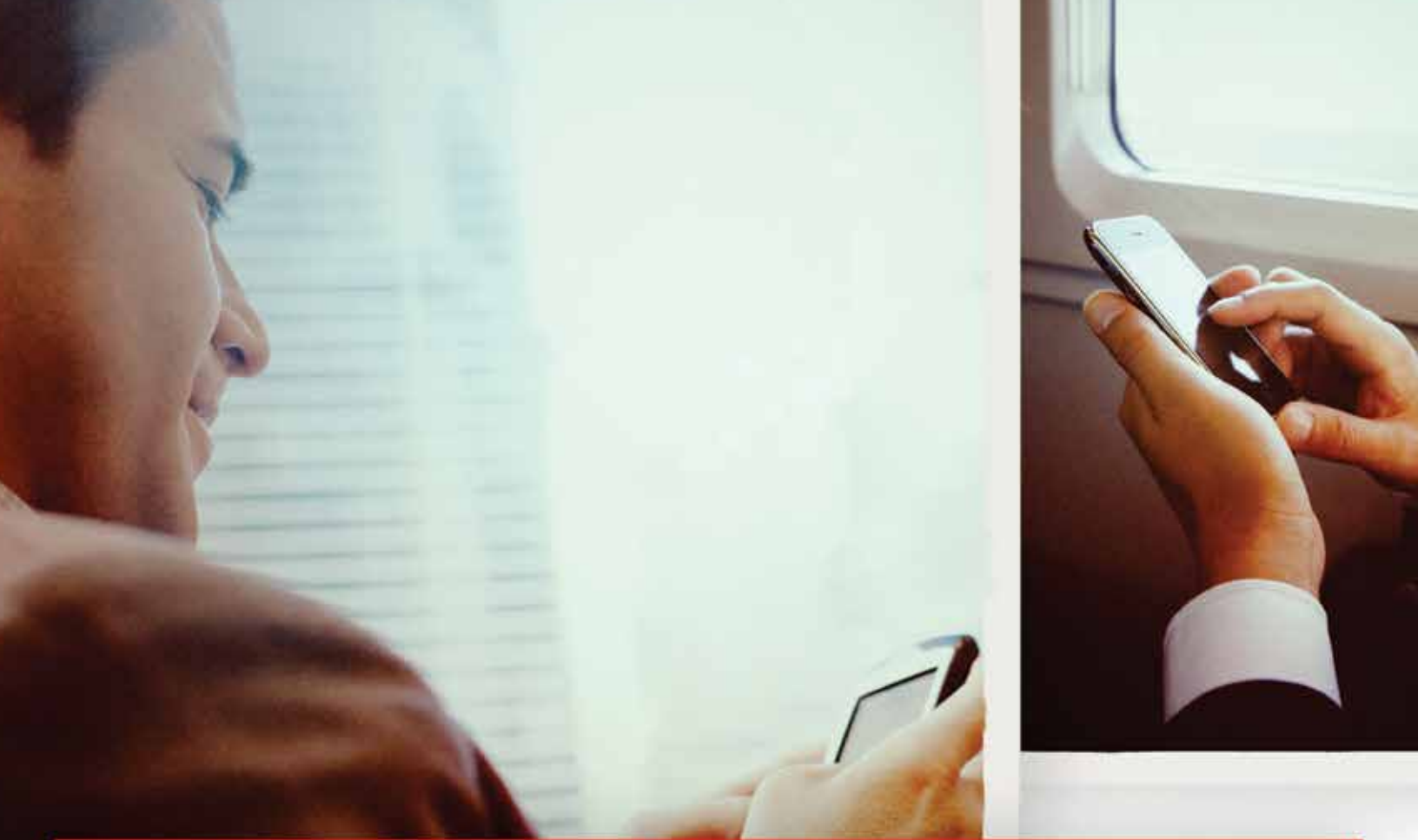
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2017 Judicial Interest Rate is 4.25%

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 2017 will be four and one quarter (4.25%) 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 2017 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 3, 2016, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was one (1.00%) 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 the first business day of October 2016. Thus, the effective judicial interest rate for the calendar year 2017 shall be four and one quarter (4.25%) 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 3, 2016

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.

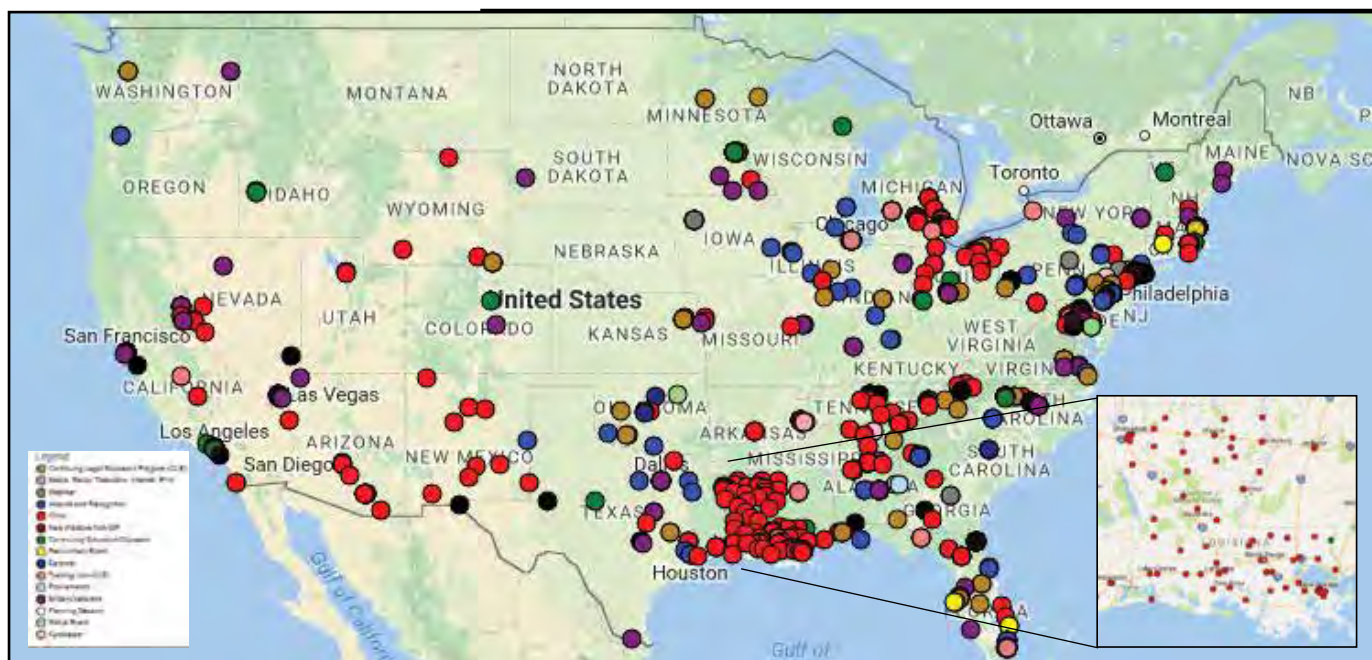
Judicial Interest Rates Through 2017

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
Jan. 1, 2016 to Dec. 31, 2016	4.00 percent
Jan. 1, 2017 to Dec. 31, 2017	4.25 percent

True Access to Justice Starts with Each of Us



By Alainna R. Mire



In the October/November 2016 *Louisiana Bar Journal*, I focused on lessons learned, acknowledging that all lawyers have something to offer the profession, whether it be wisdom or creativity.

All lawyers also owe each other the duty to be professional, acknowledging that our profession is a noble, distinguished one with a profound history to accommodate and pursue positive change. And with that comes the responsibility to preserve access to justice.

To that end, Louisiana now has a Supreme Court-sanctioned Access to Justice Commission, working very hard on a number of issues, including *in forma pauperis*, self-represented litigants and funding.

But true access to justice also starts with each of us. I want to thank all Bar members who participated and celebrated Pro Bono Week in October, particular-

ly those who presented “Ask a Lawyer” programs and law-related discussions for the “Lawyers in Libraries” Day of Service on Oct. 27. Our members fanned out to libraries throughout the state.

The “Lawyers in Libraries” Project was first established by Louisiana State Bar Association (LSBA) Past President Richard K. Leefe, then enhanced through the terms of Joseph L. (Larry) Shea, Jr., Mark A. Cunningham and currently Darrel J. Papillion.

The project offers a way for lawyers to bring their skills and experience to citizens in all 64 parishes. For many citizens, this was the only time they were able to speak with a lawyer because there are no organized pro bono programs or local bar associations in their respective area. The response was so overwhelming that Louisiana had the most representation in the United States during Pro Bono Week this year. The illustrative

maps on this page tell that story.

I am proud to be a member of the LSBA and serve as secretary of this great Association, joining so many wonderful people who serve the public and serve the profession. It makes Louisiana a wonderful place to practice.

I encourage you to continue reading as we dedicate this issue of the *Journal* to Access to Justice, including articles on the new ATJ Commission, the importance of Louisiana Bar Foundation funding to the civil legal system, a host of projects in the “Continuum of Legal Services,” a discussion of several Criminal Justice elements, and updates on Civil Legal Aid Organizations and Pro Bono Projects.

Enjoy!



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By Darrel J.
Papillion

The Justice Gap Appears to Be Getting Wider: How Are We Going to Deal With It?

Mary and John are a Louisiana couple in their early 30s who pay a monthly mortgage, car payments, credit card bills, and school tuition for their two school-aged children. In addition to these bills, this hypothetical family of four, who are almost done paying off Mary's and John's college loans, recently incurred substantial unexpected expenses to help care for John's elderly mother who has been suffering from a chronic illness and sometimes requires help at home that John and Mary cannot provide. If these expenses were not enough, this middle-class American family knows that, while their incomes from work will only increase by a few percentage points over the next few years, they are certain to face increased educational costs when their children enter high school in a few years. Orthodontic bills are looming. Music lessons, sports team uniforms, eyeglasses, prescription drug bills, grocery bills and the like consume this little family's income, leaving very little for savings. They are not extravagant spenders. They are prudent and responsible with their money, yet they are very worried about how they will be able to afford to send their children to college, and retirement seems like an unattainable dream for which they are hardly able to save.

Are Mary and John poor? They are college graduates and homeowners.

Mary works in human resources for a health care company, and John works in the IT department at a local college. They earn a combined income of just over six figures, but, at this stage of life, they have only minimal savings. They could pay all their recurring expenses for about three months if they both suddenly found themselves out of a job.

As a general matter, Mary and John are not the people we think of when we think of the "Access to Justice" problem in America — or Louisiana. We think of single mothers working the night shift at a fast food restaurant, the uneducated, the elderly, tenants facing issues with their landlords, women who are victims of domestic abuse, veterans in need of help with benefits, or we think of the very poorest among us, but not Mary and John.

Our perception of the "Access to Justice" problem may be at the heart of one of the biggest challenges facing the legal profession, courts and the general public for years to come. *Are we reaching a point where most Americans cannot afford lawyers?* Surely this is a scary thought. But, let me phrase it another way — how many of us could afford ourselves?

What happens to a family like Mary's and John's when some complex legal problem arises? Can they pay a \$5,000 retainer? Can they afford \$300 an hour with no guarantee of success? Maybe.

Maybe not.

Regardless of their ability to afford traditional legal services — what lawyers do after a client makes an appointment to meet with a lawyer and pay a retainer, an hourly rate or some fixed fee for legal services — more and more consumers like Mary and John are bypassing traditional legal services and taking matters into their own hands because they are either unable or unwilling to pay for legal services the ways consumers have in the past. A growing number of people like Mary and John are turning to the Internet, to companies that sell forms, self-help legal books and the like to solve their legal problems — without lawyers. Many educated Gen-Xers and Millennials view legal problems as something that can be tackled "DIY" like a new bathroom or kitchen project. Recent studies suggest *pro se* bankruptcy filings are increasing dramatically, and roughly 10 percent of non-prisoner suits in federal court are now being filed *pro se*. Some legal commentators have suggested that *pro se* filings are beginning to have a serious, negative impact on the ability of courts to properly and effectively do their work. Louisiana courts are seeing record numbers of *pro se* litigants in family and domestic cases.

Granted, a family like John's and Mary's has the ability to adjust its lifestyle and make sacrifices the truly indi-

gent and unfortunate could never make and could, of course, hire a lawyer to tackle a serious, unexpected legal problem. John and Mary also have educational and other resources that make them better suited to help themselves than a poorly-educated person living in poverty, but the fact that people like John and Mary are bypassing the traditional providers of legal services — lawyers — is a troubling trend. We know that lawyers are the best deliverers of legal services. We have the best product, but do consumers understand that? And, why are they suddenly less willing — or able — to pay for quality legal work?

How do we solve *these* kinds of “Access to Justice” issues? It is an axiomatic truth that a complex problem usually does not have a simple solution.

Our profession must devote time and resources to ensuring that all citizens have fair access to justice. The Louisiana State Bar Association’s (LSBA) Access to Justice Committee, the Louisiana Bar Foundation and the Louisiana Access to Justice Commission, a collaborative project between the Louisiana Supreme Court and the LSBA, are all working mightily to ensure that all Louisiana’s citizens, regardless of their economic circumstances, have access to equal justice under law. These programs have, of course, focused primarily on helping our poorest and least-resourced citizens gain access to our courts.

The American Bar Association (ABA) has spent a tremendous amount of time studying many issues related to the delivery of legal services in the future and recently released its long-

awaited Report on the Future of Legal Services. Indeed, Judy Perry Martinez, a member of the Louisiana Bar, chaired the ABA Commission that did this important work. Lawyers and judges around the country are studying the report and working to determine which of the ABA Commission’s recommendations are workable or appropriate in their states.

Access to Justice is something we would all like to believe is guaranteed in our system, but it is not. It is something we must work hard to preserve and ensure. The LSBA is focused on this important goal and welcomes your help.





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Access to Justice

Word cloud terms include: Social Justice, Legal Services for Persons with Disabilities Committee, Justice Reinvestment, L.A. Free Legal Answers.org, Legal Technology, Dispute Resolution, Public Interest, RE-ENTRY COURT, PRO BONO PROGRAM, Service Innovation, Volunteer, LawHelp.org, Rule 6.1, Equality, Risk Forces, Economic Impact Study, Social Justice, Legal Incubator, Gap Assessment, Live Legal Aid, and many others.

Access to Justice:

The Past, the Present and the Future

By Monte T. Mollere

Each day, thousands of attorneys dedicate themselves to ensuring the Louisiana State Bar Association's (LSBA) motto of "Serving the Public, Serving the Profession" is honored. Whether fighting for a corporate client or defending the rights of the homeless, these attorneys uphold the rule of law and serve the public. This special Access to Justice issue of the *Louisiana Bar Journal* is dedicated to the attorneys who help ensure that justice is provided to ALL Louisiana citizens, especially those who cannot otherwise afford to hire an attorney.

The LSBA has a long history of service to the public. However, it was 20 years ago this year that the LSBA demonstrated the significance of its commitment by devoting full-time staff and establishing the Access to Justice (ATJ) Program within the Bar. Ever since, it has played a leadership role in carrying out the ATJ Program's mission "to assure that every Louisiana citizen has access to competent civil legal representation by

promoting and supporting a broad-based and effective justice community through collaboration between the Louisiana State Bar Association, the Louisiana Bar Foundation, Louisiana Law Schools, private practitioners, local bar associations, pro bono programs and legal aid providers."

The mission hints at the hundreds of individuals and organizations required to begin to address this Herculean task of guaranteeing justice. Louisiana is fortunate to have a robust justice community and these last 20 years of collaboration have awarded us numerous advancements and successes. During this time, hundreds of thousands of poor individuals have been given redress for their legal needs. Whether it was obtaining custody of a child, saving a home from foreclosure, obtaining protection from financial fraud, or protecting a veteran's or elderly person's rights, the effect on the parties, children, families, communities and employers is real and the strongest proof that we all have a vital stake in ensuring access to the justice system.

We can be proud of our accomplishments! Yet, many still don't have the access to our legal system that everyone should be afforded. We have much more work to do, and the LSBA encourages you to take serious your responsibility under Rule 6.1 of the Louisiana Rules of Professional Conduct and provide your services and counsel pro bono to the poor.

In this issue of the *Louisiana Bar Journal*, Louisiana justice community

members (both private and public interest attorneys) will assess past efforts, but, more importantly, tell the story of today's Access to Justice Community and examine its future. The articles will explore the concept of "100% access" (where assessment of an individual's needs allow for a match with the most appropriate services), some services that may not include an attorney at all, and other services that may provide an attorney with financial reward.

Always of importance is the issue of funding justice. The Louisiana Bar Foundation has been an important part of all of these efforts and reports on its recent efforts.

While the Access to Justice Program has focused on *civil* legal justice, this issue also allows for the examination of new methods being used in our criminal justice system to decrease recidivism and initiatives aimed at reducing incarceration rates through pre-trial assessment.

The articles in this issue provide a good assessment of where we've been, where we are now, and where we want to be. Let's continue the discussion.

Monte T. Mollere has served as the Louisiana State Bar Association's Access to Justice director since the position was first created in 1997. (mmollere@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130)



A Long History of Service Gets Renewed Energy:

Louisiana's Access to Justice Commission is a Collaboration of the Supreme Court, the LSBA and the LBF

By Marta-Ann Schnabel

Louisiana's poverty rates are the third highest in the nation. About 20 percent of our citizens live in poverty, compared with the national average of just under 16 percent. This means that more than 900,000 of us earn incomes at or below the federal poverty level, and that number comprises more than 300,000 children. On average, about 225,000 of our poor will experience a civil legal problem this year — and often that problem will directly impact their health, their shelter or their ability to earn a living. Yet, barely 40,000 of those will get any legal assistance at all.

These numbers have improved significantly over the last 20 years. Louisiana's Access to Justice (ATJ) Program

was initially established as a joint effort of the Louisiana Bar Foundation (LBF), the Louisiana State Bar Association (LSBA) and the Louisiana legal services programs under the leadership of LSBA President David F. Bienvenu and LBF President Cyrus A. Greco. Originally staffed by Monte T. Mollere alone, over the last 19 years, the program has grown exponentially in its direct support to all legal services providers in the state and to a staff of five. Bolstered by the ATJ Committee, the program's long-standing mission has been to ensure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad-based and effective justice community.

Still, there is much to do. Reductions

in federal funding for legal services programs has resulted in a 41 percent cut in dollars available for legal aid, and, unfortunately, Louisiana is one of only four states in the country which does not make any form of statewide appropriation or dedicated fee to civil legal aid.

Thus, in September of last year, the ATJ Program welcomed the formation of the Louisiana Access to Justice Commission with its stated mission "to assure continuity of policy and purpose in the collaboration between the Louisiana State Bar Association, 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." The ATJ Commission operates as a standing committee of the LSBA and

Timeline / Important Dates in ATJ History

1996: Creation of ATJ Committee.

1997: Creation of ATJ Department; Monte T. Mollere hired as director.

1998: ATJ Committee was asked to facilitate a broader planning effort. The Committee involved more than 120 individuals from various interested organizations in the development of the original "Louisiana Plan for the Delivery of Legal Services to the Poor."

► Established voluntary Pro Bono Reporting mechanism.

1999: Facilitation of Statewide Substantive Law Task Forces.

2000: Began participating in ABA Day in Washington.

2000-2003: Committee addressed the monumental task of merging eight Louisiana programs into four. These mergers were completed by Jan. 1, 2003. The 1998 evaluation of Louisiana's delivery system included the mandated restructuring of Louisiana's Legal Services organizations funded by the Legal Services Corporation.

2001: Created ATJ dues check-off procedure and the Louisiana Bar Foundation's ATJ Fund.

2002: First training counsel hired.

► The Legal Services for Persons with Disabilities Committee and the Children's Law Committee became the responsibility of the ATJ Department.

consists of 21 voting members appointed by the LSBA President in collaboration with the Chief Justice of the Louisiana Supreme Court.

Upon creation of the Commission, Chief Justice Bernette Joshua Johnson observed, "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."

History of Civil Justice Efforts in Louisiana

In 1998, just one year after it was formed, the ATJ Program was asked to facilitate a broader planning effort. ATJ involved more than 120 individuals from various interested organizations in the development of the original "Louisiana Plan for the Delivery of Legal Services

to the Poor." These stakeholder organizations helped to formulate a plan to guide the delivery of legal services to the poor in Louisiana. In the process of spearheading this project, the ATJ Committee became recognized as the centralized statewide organization for formulating new policies and projects, and facilitating the statewide delivery of legal services.

An important aspect of this evaluation of Louisiana's delivery system included the mandated restructuring of Louisiana's legal services organizations funded by the Legal Services Corporation. Working with the programs and their boards, the committee addressed the monumental task of merging eight Louisiana programs into four. These mergers were completed by Jan. 1, 2003, and indeed the four programs compressed into three after Hurricanes Katrina and Rita.

Over the course of 19 years, the ATJ Program has made a concerted effort to include all members of the justice community by focusing on issues that are common to all providers and their clients. This community includes not just the LSBA and the LBF and their many volunteers, but also Louisiana law schools, private practitioners, local bar associations, pro bono programs and all types of legal aid providers. The historic work of the ATJ Committee has been to

promote increased funding and increased *pro bono* participation by those in private practice or in corporate settings.

The ATJ Committee has sought practical and systemic solutions for many of the common legal problems encountered by the poor. The committee has been comprised of more than 30 volunteer members. Membership has been geographically diverse and has included corporate counsel, judges, legal services attorneys, legal educators, large and small firm representatives, as well as pro bono directors. Six major subcommittees — Disaster Planning, Funding, Gap Assessment, Pro Bono, Pro Se, and Technology — have formed the foundation of the work accomplished.

Technology has been a key component of the support offered to the justice community by the ATJ Program. Compounded benefits can inure to clients through appropriate implementation of technology. Engagement of a technology counsel to work with the justice community has expedited and augmented technology endeavors.

Ensuring that the legal representation provided by Louisiana's justice community is competent and effective is also paramount. CLE is expensive and public interest legal salaries are significantly less than their private counterparts, with

Timeline / Important Dates in ATJ History

- 2003:** First LSBA-hosted Louisiana Justice Community Conference conducted.
 - ▶ Technology counsel hired.
- 2004:** The Access to Justice Committee convened a group of 40 providers to examine the state of the justice community. It is from this meeting that committees were created.
- 2005:** The Criminal Justice (Right to Counsel) Committee came under the ATJ Department umbrella.
 - ▶ After Hurricane Katrina, the ATJ staff established the Disaster Hotline.
- 2006:** ATJ coordinated statewide disaster response and developed the Disaster Response Plan for Legal Services.
 - ▶ Supervised Pro Bono Legal Corps.
 - ▶ First statewide appropriation to Louisiana Legal Services Programs.
- 2008:** Implementation of the Statewide Legal Services Case Management System (Prime).
 - ▶ ATJ Pro Bono Summit conducted.
- 2009:** LSBA President created a 15-member ATJ Steering Committee to oversee the work of ATJ subcommittees and to strengthen ties to the private bar and judiciary.
 - ▶ ATJ Programs began participating in the first ABA-sponsored Celebrate Pro Bono Week.
 - ▶ Creation of Pro Bono Century Awards.
 - ▶ First Criminal Justice Summit conducted.
 - ▶ Pro Bono video produced.

the result that justice community lawyers struggle to be able to afford quality educational programs. To address that problem, the ATJ Program provides low- or no-cost continuing legal education to *pro bono* volunteers and legal aid lawyers. ATJ projects counsel also works with legal services task forces and others to create training specifically aimed at the practice areas which serve Louisiana's indigent.

While Louisiana's justice community is robust, the fact remains that at most only 20 percent of the legal needs of the poor are addressed through direct representation. While working to augment the number of lawyers available to represent those in need, ATJ also attempts to support self-represented litigants (SRL), many of whom find themselves in court without any help and without the means to obtain help. The ATJ self-represented litigation counsel, in collaboration with local bar associations and clerks of court, has been working for a number of years to expand the system of self-help resource centers around the state.

New Initiatives and Directions for the Access to Justice Commission

The advent of the ATJ Commission will expand the capacity of the justice community to serve the public.

Co-chaired by Chief Justice Bernette Joshua Johnson and Marta-Ann Schna-

bel, the Commission includes the following members: Dale N. Atkins, New Orleans; Valerie Briggs Bargas, Baton Rouge; Simone Bacchus Boustead, New Orleans; Marcus V. Brown, New Orleans; Jeffrey K. Coreil, Lafayette; Marjorie L. Frazier, Shreveport; Laura Tuggle Issokson, New Orleans; Christy F. Kane, New Orleans; Sheral C. Kellar, Baton Rouge; Alainna R. Mire, Alexandria; Luz M. Molina, New Orleans; Monte T. Mollere, New Orleans; Joseph R. Oelkers III, Lafayette; Jee Yeong Park, New Orleans; Christopher K. Ralston, New Orleans; Hon. Harry F. Randow, Alexandria; Stacy E. Seicshnaydre, New Orleans; Mark C. Surprenant, New Orleans; Sandra A. Vujnovich, New Orleans; and Hon. Lisa M. Woodruff-White, Baton Rouge.

Matters on the agenda for the Commission include:

- Raise the public perception about the importance of equal access to the justice system;

- Develop a program for civil legal assistance for participants in the statutorily created "Re-entry" Program which is intended to assist those leaving prison acclimate to civilian life and maintain rehabilitation;

- Develop initiatives to increase access to legal services for clients who do not qualify for free legal aid but who cannot afford market rates;

- Augment and improve a strong statewide civil legal services delivery system by licensed attorneys;

- Enlarge the LIFT (Legal Innovators

for Tomorrow) Project, an incubator and accelerator program designed to assist new attorneys build sustainable practices with a public interest focus;

- Work with the District Judges Association and the Clerks of Court Association to develop and adopt a set of uniform pleadings which will increase consistency of outcome for self-represented litigants (and decrease the strain on the court system);

- Encourage young lawyers and law students to develop an interest in and commitment to public service by establishing a collaboration between private firms and civil legal aid organizations for the use of interns;

- Update and expand the Economic Impact Study undertaken in 2011 with the intent to measure the impact of civil legal aid on the state's economy with the intent of demonstrating the benefit of investment in civil legal aid services;

- Develop programs which reduce systemic barriers to access to the courts;

- Encourage and promote new sources of funding for civil legal aid;

- Broaden the participation of the private and corporate bar in *pro bono*; and

- Develop additional sources of funding and support for civil legal aid in Louisiana.

Conclusion

As the ATJ Commission tackles the challenges on its ambitious agenda, it invites the lawyers of Louisiana to support its mission and contribute to the justice community. Commission members have

Timeline / Important Dates in ATJ History

2010: Economic Impact Study created.

- Introduction of Language Access Interpreters Standards Resolution.
- Introduction of Model Pro Bono Policy.
- First Self-Help Resource Center established at CDC New Orleans.

2011: ATJ Steering Committee was made a standing committee of the LSBA and its name changed to the ATJ Policy Committee to better represent the mission and work of the committee.

- Second Self-Help Resource Center established at Family Court in Baton Rouge.
- Children's Law Committee developed foster care video.
- Developed *in forma pauperis* brochure to support Louisiana Appleseed White Paper.

2012: Supreme Court hosted the LSBA Pro Bono Awards for the first time.

- SRL counsel hired; first Self-Help Desk/Pilot Program created; opening of subsequent self-help desks.

2013: Establishment of the Legal Education & Assistance Program and first statewide "Lawyers in Libraries" Day of Service conducted.

- Technology Summit conducted.
- Children's Law Committee developed CINC video "Who's Looking Out for Me?"



The first Access to Justice Commission meeting was conducted in January 2016. Attending the first meeting were, front row from left, Amy E. Duncan, Louisiana State Bar Association (LSBA) Access to Justice (ATJ) training and projects counsel; Nicole Louque, LSBA ATJ administrative assistant; LSBA Secretary Alainna R. Mire; Judge Lisa Woodruff-White, Family Court for East Baton Rouge Parish; Louisiana Bar Foundation (LBF) Vice President Valerie Briggs Bargas; Christy F. Kane, Louisiana Appleseed; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, co-chair of the Commission; Jee Park, Innocence Project New Orleans; Sheral C. Kellar, Louisiana Workforce Commission; Laura Tuggle Issokson, Southeast Louisiana Legal Services; Joseph R. Oelkers III, Acadiana Legal Service Corp.; Professor Stacy E. Seicshnaydre, Tulane University Law School; Dale N. Atkins, clerk of Orleans Parish Civil District Court; LBF Executive Director Donna Cuneo; Linda K. Johnson, LSBA ATJ technology counsel; and Professor Luz M. Molina, Loyola University College of Law. Back row from left, Angela White-Bazile, Louisiana Supreme Court; Michael W. Schachtman, LSBA ATJ self-represented litigation counsel; Judge (Ret.) Harry F. Randow; Christopher K. Ralston; Sandra A. Vujnovich, Louisiana Supreme Court; LBF Immediate Past President H. Minor Pipes III; LSBA Immediate Past President Mark A. Cunningham; Marta Ann Schnabel, co-chair of the Commission; Mark C. Surprenant; Linton W. Carney, Pro Bono Project litigation director (retired); Wendi Hickok Robinson; Rachael M. Mills, LSBA ATJ projects counsel; and Monte T. Mollere, LSBA ATJ director. *Photo by David Rigamer.*

found the work to be tremendously rewarding in an echo of the sentiments of former U.S. Supreme Court Justice Sandra Day O'Connor:

Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public ser-

vice marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure.

78 Or. L. Rev. 385, 391 (1999).

Marta-Ann Schnabel, a shareholder in the New Orleans law firm of O'Bryon & Schnabel, P.L.C., served as the first woman president of the Louisiana State

Bar Association (LSBA) in 2006-07. She also served as the LSBA secretary and Louisiana Bar Journal editor from 2001-03. She co-chairs the Louisiana Access to Justice Commission and heads the board of the nonprofit Louisiana Civil Justice Center. She has served in the American Bar Association's House of Delegates and as a member of the ABA Standing Committee on Bar Activities and Services. (mas@obryonlaw.com; Ste. 1950, 1010 Common St., New Orleans, LA 70112)



Timeline / Important Dates in ATJ History

2014: Immigration Working Group organized.

- LIFT (Legal Innovators for Tomorrow) Program created (brought under ATJ in 2015).

2015: Supreme Court rule approved allowing CLE credit for pro bono.

- Creation of ATJ Commission.
- Launch of ATJ Internship Program.
- ATJ Summit organized.
- Pro Hac Vice fee increase set to benefit LSCs.
- First Civil Legal Aid Awards presented.
- Re-Entry Court Working Group created to address civil legal needs and collateral consequences of incarceration.
- Hackcess to Justice event conducted.
- Pro Bono Court Reporter Program created.

2016: The Criminal Justice Committee expanded online resources available to private attorneys for criminal appointments and created a data repository to increase transparency of funding in the criminal justice system.

What is Justice?

By Marta-Ann Schnabel

In the ancient world, the concept of “justice” described the natural order of things rather than a legal, moral or societal imperative. The Roman incarnation of *iustitia*, which forms the derivation of the modern word “justice,” over time grew to mean righteousness and equity within judicial systems. *Iustitia* was personified by the blindfolded young goddess in flowing robes bearing a sword and balancing scales. “Lady Justice” has survived to the modern age and still adorns courthouses, law firm letterheads and far too many websites.

Liberte, Egalite, Fraternite remains the motto of the French, just as Patrick Henry’s “Give me liberty or give me death!” is still taught in American classrooms. The connection between freedom and justice in the history and culture of Western Democracies is a strong one. In 1788, James Madison wrote, in *The Federalist Papers*, No. 51, that “it is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of society against the injustice of another part.” He went on to describe the purpose (“end”) of government and society:

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.

In short, the Founders of our nation so believed in justice that they developed

our form of government to ensure it and built our society with it as the premise.

Fast forward 200 years, and our nation continues the struggle to understand and preserve the parameters of justice and the rights of our citizens to access it. The balance of the rule of law against modern populist sentiment is uneasy at best, perhaps even in a fashion that would be recognizable to James Madison. It is that struggle that gives purpose to what we, as lawyers, do.

Lawrence M. Friedman, the renowned Stanford Law professor and legal historian, has eloquently acknowledged the struggle:

Improving access to justice can be, in short, a procedural or an institutional issue; and, at the same time, a substantive issue. It is also very much a matter of economics. Justice can be expensive. If justice is too expensive, it has to be subsidized. . . . [T]he ideal system of justice would be cheap and convenient, open to the claims of the underdogs, and would give participants, within reason, what they want — provided what they want is what society agrees they ought to have. *Cheapness and convenience, while obviously important, are hollow and meaningless without a working system of relevant rights.*

...

In the history of legal systems,

cheap and convenient courts have not been rare. In fact, it is the modern, formal, slow and expensive systems that are exceptional. Tribal justice is quick and cheap.¹

Lawyers are the “gatekeepers” of the justice system. In that role, as is noted in the preamble to the American Bar Association Model Rules of Professional Conduct, we recognize that “a lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen *having a special responsibility for the quality of justice.*”² In Louisiana, that “special responsibility” translates into a commitment to civil legal justice even for the poor or those of limited or modest means. A large cross section of lawyers and the judiciary devote countless hours of their time supporting these sorts of civil legal services.

Alan G. Brackett, a member of Mouldoux, Bland, Legrand & Brackett, L.L.C., in New Orleans, is a former member of the Louisiana Bar Foundation board of directors and a newly elected member of the board of the Louisiana Civil Justice Center. In describing what he views as his obligation to participate in efforts which support and grow civil legal access programs for those of limited means, he observes:

It’s a sad truth that those who can afford competent counsel can make the legal system work for their benefit (or, at the very least,

can protect themselves within it), but people who cannot afford counsel are at the mercy of that same system and usually get lost in a labyrinth they rarely escape from unscathed. If this is truly a “noble profession” we’re in, we need to be committed to making it work for those who cannot afford us on the same footing as those who can.

Louisiana State Bar Association (LSBA) President Darrel J. Papillion of Baton Rouge sees the Access to Justice Commission as evidence of the profession’s commitment to justice:

One of the great promises of life in the United States is the concept of Equal Justice Under Law. It is emblazoned on buildings and monuments, but it is meaningless if our citizens cannot have fair and adequate access to our courtrooms and the full protection of our legal system. Justice is not justice if it is not available to all, and this is why the work of the LSBA Access to Justice Commission is so critically important to our citizens.

Similarly, in rallying the members of Louisiana’s civil justice community at its conference in 2014, Judge C. Wendell Manning of the 4th Judicial District Court in Monroe, then also the president of the Louisiana Bar Foundation, quoted Chief Justice Warren Burger in reminding the pro bono, legal aid and public interest lawyers present that “concepts of justice have hands and feet” and that “you are the hands and feet in this critical pursuit of access to justice for all. Let us not grow weary in this most important task. Let us join together to meet the civil legal aid needs of our fellow citizens.”

Current Louisiana Bar Foundation President E. Jane Sherman practices with Phelps Dunbar, L.L.P., in Baton Rouge and speaks of her long-term commitment to access to justice as an “opportunity and call within our profession to strengthen our society. . . . We are judged by how we treat the weakest and the most vulnerable.”

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson speaks eloquently of her commitment to justice,

which underpins the work of the Supreme Court and her advocacy for pro bono and legal aid:

Justice is about fairness and how we treat others. The Golden Rule, “treat others as you would want to be treated,” cannot properly be implemented into the justice system without eliminating the legal barriers of race, ethnicity, national origin, religion, gender, age, sexual orientation and disability. Justice can be defined as simply treating everyone fairly and equally, despite differences in backgrounds, experiences, perspectives, talents and interests. JUSTICE FOR ALL is always foremost in my mind, whether I am acting as Chief Justice of the Louisiana Supreme Court or just as Bernette Joshua Johnson.

Judge W. Ross Foote, who served on the 9th Judicial District Court in Rapides Parish from 1991 until 2004 and currently sits *ad hoc* on occasion on the Shreveport City Court, observes that “if public confidence in a judicial system is necessary for democracy, then the City Court judges are on the front line.” With that in mind, Judge Foote believes that “justice occurs when, regardless of the outcome, the parties, staff and the attending public leave knowing the hearing was fair and the law was properly applied. A right ruling without a feeling of fairness fosters no confidence in a ‘justice system.’ To build trust, the public must see a system that respects the individual.”

Former LSBA President Wayne J. Lee of New Orleans said, “Justice is difficult to explain in one or two sentences because justice or a denial of justice can arise in many contexts. In general, it means that access to the judicial processes is available to all regardless of race, ethnicity, financial status, gender, age, religious beliefs, sexual orientation or physical limitations. It also includes the concept that the rules of law, including the rules that allow one to challenge and seek to change unfair, unjust or what one perceives as ‘bad’ laws, are applied and administered fairly and in a comparable manner for all persons.”

LSBA President-Elect Dona Kay Renegar of Lafayette agrees that justice is a

cornerstone for our system of government, but worries about the Louisiana resources dedicated to it. “Access of all citizens, regardless of their economic means, to our civil judicial system is a critical issue facing our state. Pro bono programs, law school clinics and the Legal Service Corporation can only provide a portion of the time needed to fully address the civil legal needs of our citizens.” Moreover, she notes that the criminal justice system in Louisiana “falls woefully short in meeting its constitutional mandate. Funding sources are largely dependent on fines and court costs are often disproportionately borne by our citizens with little means of paying. Increasing court costs and fines is the ‘path of least resistance’ to increasing funding for the system, but it is a zero sum gain for justice. We, as lawyers, must lead the movement to address this problem and to craft a system that works for our modern society.”

Aristotle is credited with saying that “at his best, man is the noblest of all animals; separated from law and justice, he is the worst.” From this likely derives the view that ours is a noble profession. Today lawyers follow the traditions begun in ancient Greece and Rome and resurrected by our Founders as the cornerstone of our society. Justice may not always be achieved, but it is the “end” or purpose of our toil.

FOOTNOTES

1. *Fordham Law Journal*, Volume 37, Issue 1, 2009, p. 4, “Access to Justice: Some Historical Comments” by Lawrence M. Friedman.

2. ABA Model Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities, Section 1.

Marta-Ann Schnabel, a shareholder in the New Orleans law firm of O’Byron & Schnabel, P.L.C., served as the first woman president of the Louisiana State Bar Association (LSBA) in 2006-07. She also served as the LSBA secretary and Louisiana Bar Journal editor from 2001-03. She co-chairs the Louisiana Access to Justice Commission and heads the board of the nonprofit Louisiana Civil Justice Center. She has served in the American Bar Association’s House of Delegates and as a member of the ABA Standing Committee on Bar Activities and Services. (mas@obryonlaw.com; Ste. 1950, 1010 Common St., New Orleans, LA 70112)



LBF Funding of Civil Justice: You've Come a Long Way, Baby!

New Initiatives Beyond IOLTA to Combat Growing Civil Legal Needs

By E. Jane Sherman

"No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."

— Article 39, Magna Carta (1215)

Our society is judged by how we treat the weakest and the most vulnerable. Ensuring access to justice through civil legal aid is fundamental to our society based on the rule of law and is our opportunity and call within our profession to strengthen our society.

The rule of law, established by the historic Magna Carta in England and later the United States, guaranteed that life, liberty or property cannot be arbitrarily taken away, and that everyone is entitled to a fair and impartial hearing with judgment by the subject's peers or the law of the land. We must ask ourselves, is access to justice truly fair and equal if only one party has legal representation due to financial means?

Historically, state bar foundations, including the Louisiana Bar Foundation (LBF), made grants to legal aid programs for civil legal aid to indigents using funding exclusively from Interest on Lawyer's Trust Accounts (IOLTA). For example, in fiscal year 2004-05, 80 percent of the LBF's \$2.1 million budget was from IOLTA funds. However, between 2007 and 2011, IOLTA income declined by a dramatic 74 percent nationally due to drastic reductions in interest rates. The LBF wisely opened its eyes and efforts to seek innovative approaches

to identify new funding sources and new systemic remedies and programs to assist the ever-growing need for civil legal aid services. This fiscal year, the LBF budget has grown to \$8.3 million with only 30 percent from IOLTA, and the LBF's program support has expanded by funding additional direct legal services and leveraging technology to provide additional awareness, advocacy and new models for the delivery of legal services. The LBF is the largest state funder of civil legal aid.

We've come a long way, but with great reason and drive to continue. Louisiana's poverty rates are among the nation's highest. Nearly one in five (19 percent) live in poverty, and another 21 percent qualify as ALICE (Asset Limited, Constrained, Employed) meaning they struggle to make ends meet and are one small emergency from being destitute. Our state has one of the highest rates of economic inequality in the country along with high racial disparities. Louisiana's child poverty rate is the third highest rate in the nation with almost half (46 percent) of African-American children in Louisiana living in poverty. It is estimated that one quarter of our poverty population will experience a civil legal problem each year. However, 80 percent will go without the legal help they need. It is our duty to serve the public and it is our duty to deliver justice, not just to

some, but to all. Civil legal aid provides free legal assistance to those who cannot afford a lawyer and makes the difference between staying in a home and living on the street; between a safe family and a life of fear and violence; between getting paid earned wages and having nothing to eat. The LBF is seeking innovative answers to enhancing access to and the delivery of legal services, as well as systemic changes to reduce the growing need for such services in our state.

Highlights of the LBF's recent funding sources and program initiatives follow.

New Funding

In addition to the IOLTA funding of civil legal service providers, the LBF has secured new funding sources:

► **Child in Need of Care Program (CINC).** Beginning 2009, the LBF has served as administrator for the Louisiana Supreme Court's CINC Program, providing governance and oversight of funds for free legal representation to children in foster care. More than \$2 million annually is subgranted to the three legal services corporations. Last year, the program provided representation to 3,384 children, made more than 15,162 court appearances on their behalf, and participated in 1,459 family team conferences.

LBF Funding of Civil Justice: You've Come a Long Way, Baby!

► **Cy Pres.** In 2012, the Louisiana Supreme Court adopted Rule XLIII (43) naming the LBF a permissible recipient of Cy Pres funds and the only organization specifically identified in the rule. Over the past two years, the LBF has received nearly \$90,000 in Cy Pres funds from Orleans Parish Civil District Court judges.

► **Mortgage Servicing Settlement.** In 2013, the LBF began serving as administrator of partial funding from the Office of the Louisiana Attorney General for the federal mortgage servicing settlement. With services by the legal services corporations, Louisiana Appleseed and the Louisiana Civil Justice Center, this program provided free legal representation to affected consumers. In fiscal year 2014-15, the program handled 280 bankruptcies, 469 landlord-tenant matters, 70 wrongful foreclosures, provided foreclosure prevention, mediation and relief to 966 clients, provided loan modification, principal reduction and refinancing to 603 clients, and participated in 670 housing counseling education sessions.

► **Pro Hac Vice Fees.** In 2015, the LBF and the Louisiana Attorney Disciplinary Board entered into an agreement regarding the increase of pro hac vice fees from \$250 to \$450. The increased funds are directed to the LBF and then awarded to the three legal services corporations.

► **Unidentified Funds.** A 2016 amendment to the Louisiana Rules of Professional Conduct, Rule 1.15 (Safekeeping Property), enables lawyers to properly dispose of unidentified funds remaining in their IOLTA accounts for at least one year after diligent efforts to document them as belonging to a client. These unidentified funds are remitted to the LBF for funding of civil legal services.

► **Bank of America.** In 2015 and 2016, the LBF received funds from the U.S. Department of Justice Bank of America settlement to continue helping families stay in their homes and out of foreclosure and bankruptcy.

New Initiatives

In addition to securing new funding

sources, the LBF has launched support of new program areas:

► **Advocacy.** In 2008, the LBF began financial and in-kind support of Louisiana Appleseed, part of a national network of public interest justice centers that use pro bono attorneys to develop policy solutions to legal injustices. In 2016, the LBF expanded support to Louisiana Appleseed to increase advocacy on behalf of civil legal aid in a proactive, not reactive, manner and to bring systemic, rather than piecemeal, relief to the poor.

► **Technology.** Hotline: In 2016, the LBF provided \$125,000 to the Louisiana Civil Justice Center for a statewide hotline to provide intake, brief service and referral to the legal service corporations and pro bono organizations.

Self-Represented Litigants. In 2016, the LBF created a new funding category to create self-help centers and kiosks in each parish using court-approved forms and young lawyers to give guidance and referral information, and pro bono lawyers in the district court-houses to assist with direct client advice.

► **Awareness.** Economic Impact Study. In 2016, the LBF funded a professional, expansive and accurate assessment of the social and economic value of civil legal aid to help spread the message that civil legal aid is essential to improving the economic, social and health conditions of our state and those living in poverty.

Philanthropic Community. The LBF is educating and engaging the broader philanthropic community about the value of supporting civil legal aid and integrating civil legal aid services throughout their work. Through strategic partnerships with Louisiana community foundations, these organizations are learning about the value of supporting civil legal aid. Together we are working to identify co-funding opportunities to enhance foundation support for access to justice and civil legal aid.

► **Training.** As part of the LBF's commitment to strengthen grantee board leadership and the Louisiana's civil legal aid network, the LBF began in 2013 to host board training for grantees. The training is designed to strengthen leadership by

reviewing board member responsibilities, program and administrative priorities for the organizations, and evaluation of mission outcome goals.

► **Flood Recovery.** In 2016, the LBF established a Louisiana Flood Recovery Fund following the March and August federally-declared flood disaster occurrences. Funds were provided to the three legal services corporations and to the pro bono organizations in the affected areas to assist post-disaster civil legal needs, such as title clearing, homeowner's insurance and federal fund eligibility issues.

The LBF is committed to serving all Louisiana households in poverty. Investing in civil legal aid impacts people to solve critical problems and prevent events that are personally harmful and expensive for society. Civil legal needs have a ripple effect, not only affecting the families served, but the community at large. Schools, businesses, government agencies and the state as a whole benefit from resolving civil legal problems.

Our society improves when people understand the law and have equal access to justice. It is our job to continue to provide civil legal assistance to Louisiana's most vulnerable citizens because access to affordable legal services is critical in a society that depends on the rule of law. As our needs, resources and technology change, so must our approach to addressing the unmet civil legal needs of those in our state. The profession must ensure that the justice system serves everyone and that the rule of law is preserved. We've come a long way. Innovation is underway. Innovation continues to be essential.

E. Jane Sherman, senior counsel in the Baton Rouge office of Phelps Dunbar, L.L.P., is the current president of the Louisiana Bar Foundation. She is a Charter Fellow of the Foundation and a member of the board since 2011. She currently serves on the Access to Justice Commission Fundraising Committee and on the board of the Louisiana Supreme Court Historical Society. (jane.sherman@phelps.com; 422 Highland Crossing St., Baton Rouge, LA 70810)



A Continuum of Legal Services: Can 100% Access be Achieved Through Diversified Programming?

By Monte T. Mollere

The ability of poor and modest means individuals to access legal representation in civil matters is a challenge not only to these individuals, but one faced daily by Louisiana courts, civil legal aid organizations and the private bar. One study estimates that only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of a private attorney or legal aid lawyer.¹ The difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income individuals has been termed the “justice gap.”² In 2015, the Conference of Chief Justices and the Conference of State Court Administrators set out to address the justice gap issue in a resolution, “Reaffirming the Commitment to Meaningful Access to Justice for All.” The resolution reads, in part:

*NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs. . . .*³

While the resolution recognizes 100 percent access to justice may be aspirational, the concepts included in the six short paragraphs have become the subject of significant conversation and enthusiasm throughout the nation’s civil justice community. That enthusiasm and optimism (and sometimes skepticism) have not been lost on Louisiana’s civil justice community as it strives to increase access to the courts.

The resolution suggests that “100% access” is not simply a display of unbridled

optimism, but the basis exists in the “*significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs. . .*”

This “continuum” of services presents the possibility of a range of resources in which our justice system might match needs to the most appropriate level of services, thus conserving limited resources and reaching more individuals in the justice gap. The continuum will be most effective when all members in the justice system participate. The Louisiana State Bar Association’s (LSBA) access to justice efforts have long encouraged involvement of civil justice system stakeholders and development of resources that can support and strengthen this continuum.

On one end of that continuum is the litigant who cannot afford an attorney, but may be able to help himself with access to more reliable legal information, forms or expanded self-help services provided by the court. The central portion of the continuum may focus on full representation by legal aid or pro bono attorneys to individuals who don’t have the capacity to assist themselves. The other end may focus on individuals with both capacity and some financial resources to benefit from a measured amount of legal advice from an attorney.

The resolution suggests that the work of the private bar must be included in the spectrum through “discrete task representation by counsel.” More commonly known as limited scope or unbundled representation, this practice has been facilitated by changes in Louisiana court rules. Through modest means panels and incubator programs, attorneys can also provide services to litigants who otherwise

could not afford market-rate legal services, but who may be able to afford some legal services or advice and successfully pursue their legal matters.

Viewing the provision of legal services to the poor through this continuum requires examining traditional ways of serving the poor and providing pro bono services. It also requires changes by the courts, private bar and civil legal aid providers. The LSBA’s access to justice activities regularly assess the greatest “gaps” in service to the poor and how best to close them. Our recent work with self-represented litigants, technology, the LIFT incubator program and pro bono provide a fine structure for this continuum. As the Supreme Court-established Louisiana Access to Justice Commission focuses its work on issues of modest means, funding, language access and self-represented litigation, it will only build on this structure, make the resources in this continuum more robust and move Louisiana closer to a goal of 100 percent access to justice.

FOOTNOTES

1. Legal Servs. Corp., “Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans” (2009), p. 16.

2. Legal Servs. Corp., “Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans” (2009), p. 1.

3. Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All, Conference of State Court Admins. 1 (2015).

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Entergy Leads by Example

By Amelia Williams Koch

Under the leadership of Entergy Corp. Executive Vice President and General Counsel Marcus V. Brown, Entergy's Legal Department launched an expansion of its pro bono work in 2012. Entergy's Pro Bono Initiative has included Entergy's 79 lawyers and all department staff, spanning 10 offices spread over six states. Each member of the Legal Department performs a minimum of 10 hours of community service every year, with an aspirational goal of performing 50 hours each of pro bono legal work each year. Entergy's pro bono commitment has seen continued growth since the initiative began. In 2015, 83 percent of Entergy's lawyers performed pro bono work, delivering 2,072 hours of legal work to the indigent.

Brown explained Entergy's commitment to the effort:

Louisiana is Entergy's corporate home. It's also a state where many citizens face great economic hardship. Traditional legal services organizations are stretched to capacity and are able to serve only a small segment of the poorest members of our community. It is our professional responsibility as lawyers, and Entergy's responsibility as a corporate citizen, to assist with filling the gap of desperately needed legal information and representation. All of us who live and work in the community, and the overall community itself, benefit when these legal needs are met.

The type of pro bono work performed by Entergy lawyers includes staffing legal clinics and handling cases involving successions, wills, divorces, name changes, immigration issues and adoptions. Entergy lawyers also serve on the boards of pro bono organizations, provide legal advice to non-profits, and work at civil court self-help desks to aid unrepresented litigants.

In 2013, Entergy collaborated with the Orleans Parish Civil District Court, the Louisiana State Bar Association (LSBA) and the Pro Bono Project to develop the

Self-Help Resource Center (SHRC), a help desk that assists unrepresented, low-income domestic court litigants. Entergy has provided volunteers to staff the SHRC, partnered with the court and others to draft uniform pleadings for the volunteers to use, created an onsite training model for volunteers, and developed an online system to recruit additional volunteers and schedule shifts.

The SHRC averages 25 visitors a day and, since 2013, has served nearly 8,000 individuals with domestic legal issues. A majority of the time, the issue is ultimately resolved with the SHRC's assistance. This helps keep court proceedings running smoothly, reduces the burden on judicial staff, and underscores for public that the courts are manageable, fair and open to all. Recognizing that an all-volunteer effort simply could not keep up with the high demand, Entergy also has underwritten grants that have permitted the Louisiana Civil Justice Center (LCJC) to take on the management of the SHRC team. Since late 2014, LCJC has provided staff lawyers and administrative support for the help desk, as well as assistance with volunteer recruitment and training. The combination of staff lawyers and volunteers has been a key component in providing this much-needed service.

Entergy has also been a committed supporter of the LCJC through board member Sandra Diggs-Miller, an Entergy lawyer. The LCJC, with Entergy's support, piloted a smaller scale help desk in Jefferson Parish and is working toward implementing the concept at courts around the state.

Wendy Hickok Robinson was co-chair of the Legal Department's Pro Bono Initiative at its inception and has worked to grow and formalize the department's efforts ever since. In 2015, the department created a Pro Bono and Community Service Committee, with 10 lawyers and staff representing all geographic and practice areas of the department. The committee is responsible for developing volunteer opportunities and relationships, serving as role models, setting policy, and other-

wise administering the program. Robinson highlights the satisfaction pro bono work brings:

I love hearing from colleagues what I have seen first-hand — that we can make a true positive difference in someone's life. In addition to being personally rewarding, we develop skills useful in our practice, build closer relationships with our colleagues and outside counsel, and concretely support our Company's corporate responsibility mission of creating and sustaining healthy, vibrant communities.

Entergy and its lawyers have won many awards in recognition of their commitment to providing legal services to the indigent. Corporate Pro Bono is a global partnership between the Pro Bono Institute and the Association of Corporate Counsel. It will be presenting its 2016 Pro Bono Partner Award to Entergy in partnership with the Orleans Parish Civil District Court and the LCJC for their collaborative development of the SHRC. Entergy also has received pro bono awards from the LSBA and the Pro Bono Project, which named Entergy its 2013 Pro Bono Law Firm of the Year. General Counsel Marcus Brown served as honorary chair of the Pro Bono Project's 2014 Justice For All Ball, and Wendy Hickok Robinson is on the Pro Bono Project Board. Entergy's lawyers are committed to promoting in-house, pro bono volunteerism on the local, state and national levels, and they have led by example. They are a model for corporate commitment to making legal services available to all.

Amelia (Mimi) Williams Koch practices in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., primarily in the labor and employment area. (akoch@bakerdonelson.com; Ste. 3600, 201 St. Charles Ave., New Orleans, LA 70170)



Modest Means Committee Addressing Struggles of “Working Poor”

By Mark C. Surprenant and Amy E. Duncan

There are many economically struggling Louisiana citizens who are unfortunately denied access to the legal justice system because their income slightly exceeds the eligibility requirement for free legal services. However, their income is so low that it prevents them from paying a lawyer’s regularly charged fee rate.

In establishing this first-ever Louisiana Modest Means Committee¹ (Committee), the Louisiana State Bar Association (LSBA) and the Louisiana Access to Justice Commission want to reach out and assist the “working poor” in obtaining much needed legal assistance at an affordable fee rate. Thus, the primary goals of the Committee are to 1) identify those Louisiana lawyers who are willing to assist these prospective clients at a significantly reduced fee rate; and 2) communicate that list of lawyers with their potential sliding scale or flat fee rates — determined by the legal task at issue and the client’s income level — to the interested public.

To accomplish its goals, the Committee has completed an initial survey of lawyers across Louisiana who have a desire to be involved in this program. The survey results indicate that a significant interest exists.² Moreover, the Committee has analyzed those actions taken by other states to address this justice gap. More specifically, states like Arkansas,³ Wisconsin⁴ and Washington⁵ already have statewide modest means referral programs in place. The attorneys participating in these modest means programs agree to provide unbundled services, flat fees or reduced per-hour rates to individuals who do not qualify for free legal services, but cannot afford the services of attorneys at the standard rate.⁶ The legal issues covered range from criminal misdemeanors to family law and immigration. The majority of the programs reviewed allow participating attorneys to charge a maximum hourly rate of \$75.⁷ Other programs actually set a sliding-scale fee schedule based on income eligibility.⁸

While some states have set up referral

programs, others have created legal directories used by courts and made available online. The First Judicial District Access to Justice Committee in Colorado, for instance, administers a “Discounted Fee/Unbundled Attorney List,” a directory of attorneys who offer legal services at “discounted fees” or “unbundled.”

The Committee members have been carefully researching and reviewing this information to develop a program in Louisiana that addresses the unmet legal needs of modest means clients. The United Way ALICE Project recently released a report finding that, in addition to the 19 percent poverty rate in Louisiana, 21 percent (or 368,682) of Louisiana households earn above the Federal Poverty Level, but not enough to afford a basic household budget for transportation, child care, health care and food.⁹ Although access to legal representation was not a focus of the report, it is safe to assume that access to legal services is out of reach for these individuals.

The LSBA has already begun working to increase access to affordable legal services through its incubator program, Legal Innovators for Tomorrow (LIFT).¹⁰ The program supports new attorneys in building solo practices focused on providing cost-effective legal services to modest means clients. As more and more attorneys begin to meet the demand for these services, the need to develop a system that can match modest means clients with attorneys offering reduced-rate legal representation is more important than ever. The Committee is launching a statewide program in the 2016-17 Bar year to accomplish these goals.

Attorneys interested in participating in the program should email Amy E. Duncan at amy.duncan@lsba.org.

FOOTNOTES

1. The Modest Means Committee members are Chair Mark C. Surprenant, Adams and Reese, L.L.P.; Judge Sheral C. Kellar, Louisiana Workforce Commission; Marjorie L. (Meg) Frazier, Weiner, Weiss & Madison, A.P.C.; and Stacy Seicshnaydre, Tulane University Law School.

2. The survey was distributed to solo and small

firm attorneys throughout the state. The purpose of the survey was to determine how attorneys define modest means clients; whether they were offering affordable legal rates to those clients; what those rates were and the areas of law covered; and if the attorneys would be interested in participating in a program that matched modest means clients with attorneys offering reduced cost legal services.

3. See, Arkansas legal Services Partnership: Center for Arkansas Legal Services & Legal Aid of Arkansas, *Modest Means Panel*, www.arlegalservices.org/modestmeanspanel (last visited Aug. 20, 2016) [hereinafter Arkansas Program].

4. See, State Bar of Wisconsin, For Public, I Need A Lawyer, *Modest Means*, www.wisbar.org/forPublic/INeedALawyer/Pages/Modest-Means.aspx (last visited Aug. 20, 2016).

5. See, Washington State Bar Association, *How the WSBA Moderate Means Program Works*, www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program/Moderate-Means-Legal-Help (last visited Aug. 20, 2016).

6. The pricing of these Modest Means Programs vary. For instance, the Modest Means Program operated by the Atlanta Bar Association defines what legal issues are offered on an hourly basis with a maximum hourly rate of \$75 or an initial retainer fee of no more than \$600, and which services are offered for flat fees. www.atlantabar.org/LRISModestMeans [hereinafter, Atlanta Program].

7. See e.g., Atlanta Program, *supra* n. 6; and Arizona Foundation for Legal Services and Education Modest Means Project, <https://www.azflse.org/modestmeans/>.

8. See, Arkansas Program, *supra* n. 3 (stating that the hourly rate depends on income with price per hour ranging from \$35 to \$75).

9. United Way ALICE Louisiana Report Executive Summary, www.launitedway.org/united-way-alice-report-louisiana.

10. www.lsba.org/LIFT.

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New Directions:

Pro Se, Self-Help, LEAP and More

By Michael W. Schachtman

The appearance of pro se litigants, now referred to as self-represented litigants (SRLs), is common in virtually every courtroom in the state that hears civil matters. Most of these individuals are unrepresented due to circumstance, not choice, which poses unique challenges for Louisiana courts. In response, the Louisiana Supreme Court, the Louisiana State Bar Association (LSBA), the Louisiana District Judges Association (LDJA) and other partners have made great strides in recent years to better serve the public, while also increasing the efficiency of courts.

Pro Se and SRLs

In 2009, the Louisiana Supreme Court created a Pro Se Litigant Task Force chaired by Judge Harry F. Randow and composed of judges across the state (including Chief Justice Bernette Joshua Johnson), LSBA Access to Justice (ATJ) staff, and representatives from the Clerks of Court Association, Louisiana Legal Service Corporations and other civil legal aid providers. The Task Force made recommendations to the Supreme Court on a variety of issues, but generally each judicial district has been free to decide if and how it would like to provide assistance to unrepresented parties.

The LSBA's ATJ Committee has since become the leader in developing programming and coordinating local and, ultimately, statewide partnerships. A Self-Represented Litigation Subcommittee was formed in 2010 to create resources for SRLs and to develop a strategic plan, and a full-time SRL counsel position was created in 2011 within the ATJ Department. During this time, the Bar was networking with individual judges interested in providing self-help services in their courts.

Self-Help

The Orleans Parish Civil District Court Self-Help Resource Center (SHRC), the first "live" Self-Help Center in the state, opened in 2011 as a pilot project coordinated by Judge Tiffany Gautier Chase and the LSBA ATJ program. Since that time, East Baton Rouge Parish has launched a similar project, as well as Caddo, Rapides, Calcasieu, Lafourche, St. Tammany, Washington, Jefferson and St. Charles parishes. Several other jurisdictions utilize online services, and at least 20 judicial districts have approved the template domestic forms provided by the ATJ Committee. All of these services were created in partnership with the LSBA, but administered by local partners.

The SHRCs provide legal information, referrals to local attorneys and legal aid providers and, for certain family law issues, fill-in-the-blank pleadings. The SHRCs also serve a valuable triage function for the court because staff are limited in their ability to assist self-represented litigants, and the SHRC is a free and reliable place to refer them. Unlike the many variations of forms sold online, court-approved forms comply with the law, are limited in scope, and much more user friendly.

Based on the success of these initiatives, the quality and prevalence of SRL programming continues to rise across the state, as does the public's perception of the court system. Courts, legal aid and pro bono organizations, private attorneys, legislators, libraries, and other community partners all play important roles in meeting the public's legal needs. For self-represented litigants in particular, collaboration is key. This is why Louisiana continues to be recognized as a national leader in this field.

To access a parish-by-parish list of live Self-Help Centers, SRL websites and courts and local bars offering forms and other information, go online to: <https://www.lsba.org/ATJ/ATJSelfRepresentedLitigants.aspx>.

Legal Education and Assistance Program (LEAP)

Louisiana public libraries play a valuable role in helping to meet the legal needs of the public. For many, libraries are the only available access point to the Internet and legal resources. This is particularly true in areas without a physical legal aid office. Growing numbers of Americans look for legal assistance at local libraries when they can't afford to hire an attorney, and the Law Library of Louisiana is proud to partner with the LSBA and the LSU Law Library to help Louisiana public libraries better serve the public's legal needs.

The Legal Education and Assistance Program (LEAP) provides specialized resources for libraries on legal topics known as "libguides." In addition, law librarians have traveled across the state to present training sessions for public library staff on how to respond to legal inquiries and access current local, state and federal law. These initiatives are supplemented by the LSBA's "Lawyers in Libraries" program which places attorney volunteers at public libraries in every parish for free brief consultations.

To learn more about LEAP and other Lawyers in Libraries events, go online to: <https://www.lsba.org/LouisianaLawyersinLibraries/LouisianaLawyersLibraries.aspx>.

Michael W. Schachtman is the Louisiana State Bar Association Access to Justice Department's self-represented litigation counsel. He works with Louisiana's network of Self-Help Resource Centers and coordinates the Lawyers in Libraries program and similar access to justice-related programs. (michael.schachtman@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130)



Three Years Make 20: LIFT Assists 20 New Attorneys to Date

By Amy E. Duncan

In its third year of operation, the Louisiana State Bar Association's Legal Innovators for Tomorrow (LIFT) Incubator and Accelerator Program has assisted more than 20 attorneys¹ in building public interest-focused solo practices. Started in April 2014, the program is designed to address two issues: 1) the lack of affordable legal services available to people of modest means and vulnerable Louisiana residents; and 2) the challenging job market for recent law graduates. The program accomplishes this by providing new attorneys with the support, resources and guidance they need to build low bono² practices that serve the unmet legal needs of so many falling into the growing justice gap.

The program operates under two

Continued next page



LIFT Fellows in the Domestic Violence Project and partners from Southeast Louisiana Legal Services (SLLS) came together at the annual Louisiana Justice Community Conference in October. Front row from left, Laura Tuggle Issokson, SLLS executive director; C. Nicole Gaither, SLLS attorney; Amy E. Duncan, Louisiana State Bar Association Access to Justice training and projects counsel. Back row from left, Coby A. Venable, LIFT Fellow; Warren C. Ehlers, LIFT Fellow; Shawon J. Bernard, LIFT Fellow; Evelyn A. Bryant, SLLS attorney; and Douglas F. Carey, SLLS managing attorney.

Interview / LIFT Incubator Fellow, Nicholas J. Hite

2014 LIFT Fellow Nicholas J. Hite, who participated in the Domestic Violence Project with Southeast Louisiana Legal Services and the New Orleans Family Justice Center, discussed reasons he joined the program and decided to go solo shortly after graduating law school.

I started my legal career as . . . a contract attorney during tough economic times for new law graduates, but knew I wanted to do more in terms of advocacy for people without access to representation due to income or a lack thereof.

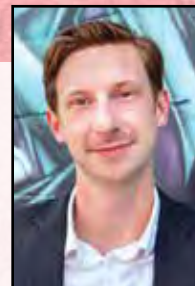
I decided to go solo because . . . I wanted to become a legal advocate and have passion for the people I represent. I heard about the LIFT Incubator program at the same time that I was planning on going solo. It just felt like everything suddenly became clear and the pieces just started falling into place.

My practice mostly focuses on . . . affordable domestic court advocacy especially for LGBTQ and Latina people with an additional focus in accessing civil remedies for adult and child survivors of domestic abuse and sexual assault.

I address the legal needs of those falling into the justice gap by . . . offering services on a sliding scale if I'm charging an hourly rate. But I try to do as much flat-fee billing as possible to make it easier for my clients and for me.

My practice is different because . . . I chose to take a third route, I guess. It's not a standard market-rate firm and it's not a super-restricted, free legal non-profit. Instead I meet my clients where they are financially. My practice is the kind of law firm I would need and want as a client.

The best resources I've received through the incubator program have been . . . two things: office space and colleagues. LIFT literally gave me the space to spread my wings and experiment with my new practice. The incubator also hooked me up with some of the best attorneys around. Those experienced in their fields, total professionals, and just really kind people who have shared countless hours answering my questions, calming my fears, and encouraging me to keep pushing.



Nicholas J. Hite

models — the accelerator and the incubator model. Participants in the 18-month accelerator model receive a number of benefits designed to “accelerate” their low-bono law firm. Under the accelerator model, attorneys receive:

- ▶ training that includes office startup and law practice management, business training and assistance in the areas of accounting, marketing and management for solo practitioners, and procedural and substantive legal training with CLE credits;
- ▶ mentoring from experienced attorneys;
- ▶ networking opportunities with judges and solo practitioners;
- ▶ pro bono case referrals;
- ▶ opportunities to work in the courts and assist self-represented litigants;
- ▶ free case management and legal research database software;
- ▶ access to networks through the Louisiana State Bar Association; and
- ▶ referrals from legal aid programs and partner organizations.

A few participating attorneys have led the way in expanding the type of training and hands-on experience received through the program. Attorney DeVonn H. Jarrett, a 2015 LIFT Accelerator Fellow, led the way in forming a partnership between LIFT and the Entertainment Law Legal Assistance (ELLA) Project. The ELLA Project, operated by Tulane Law School Professor Ashlye M. Keaton, Gene Meneray and the Tipintina’s Foundation, provides legal assistance to low-income artists and musicians state-



Professor Ashlye M. Keaton, left, and DeVonn H. Jarrett at the musicians’ legal clinic in New Orleans.

wide.

Three LIFT incubator project models have developed through collaborations between LIFT, Legal Services Corporation programs and nonprofit organizations. They include:

▶ **Domestic Violence Project.**

Through a collaboration with the New Orleans Family Justice Center and Southeast Louisiana Legal Services, LIFT Fellows receive office space and work with attorneys in family and domestic violence law to increase access to legal presentation to survivors.

▶ **Immigration Bond Project.** LIFT, in collaboration with the New Orleans Pro Bono Project, provides support and mentorship to LIFT Fellows practicing immigration law.

▶ **Post-Conviction Relief Project.**

The Justice and Accountability Center of Louisiana (JAC) works with LIFT,

in support of its collaborative lawyering initiative, to address legal barriers individuals face after incarceration, including expungement services and civil legal needs of participants in the Re-Entry Court programs.

FOOTNOTES

1. For an overview of the LIFT Incubator and Accelerator Program and a list of participating attorneys, go to: <https://www.lsba.org/LIFT/>.

2. “Low bono is a term that many bar leaders, law faculty and new graduates have heard but may not fully understand. A definition of low bono is not yet in Black’s Law Dictionary but the frequency of its use is increasing in the legal profession. Low bono is used synonymously with the practices of offering reduced legal fees.” Luz E. Herrera, “Encouraging the Development of ‘Low Bono’ Law Practices,” U. M.D. L.J. Race, Relig. Gender & Class 2-3 (2014). Types of reduced rates can include a sliding-fee schedule based on income, flat fees or unbundled legal services. However, the meaning of reduced is typically subjective as viewed from the client’s perspective of what he/she can afford and the lawyer’s perspective of what he/she can charge.

Amy E. Duncan is the Louisiana State Bar Association’s Access to Justice training and projects counsel and directs Legal Innovators for Tomorrow (LIFT), a statewide legal incubator and accelerator program that provides young attorneys with resources to develop innovative, public interest-focused, solo law firms. She received her JD and MBA degrees from Loyola University College of Law. (amy.duncan@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130-3404)



Coming Soon (to Your Inbox)

Louisiana Statewide Pro Bono Survey of Attorneys

The Louisiana State Bar Association (LSBA) is announcing participation in a new project to gather information about Louisiana’s commitment to pro bono. The LSBA’s Access to Justice Program and Louisiana pro bono projects are partnering with the American Bar Association to distribute a statewide survey to collect valuable information concerning pro bono access throughout the state. Specifically, the survey is designed to assess the state of pro bono in the legal profession, quantify and recognize the pro bono work done by attorneys, and understand the factors that encourage or discourage pro bono service.

The LSBA needs your help and input, whether you’ve volunteered within the last year or not. The survey will be distributed electronically in January 2017. Stay tuned!

Louisiana Civil Justice Center:

Justice is Just a Call Away

By Jonathan M. Rhodes

With nearly 20 percent of all Louisiana residents living in poverty, the state has the second highest poverty rate in the United States and the highest in the South. These statistics indicate that, for the approximately 1 million people in Louisiana who cannot afford even the basic costs of living, they are also likely unable to pay the cost of legal counsel in connection with critical issues. The reality is that those citizens who cannot afford the cost of representation may not be granted equal access to justice.

Recognizing this fundamental unfairness, Louisiana's legal service providers have worked tirelessly to provide access to free legal services for our most vulnerable citizens. However, Louisiana's federally funded legal service programs and pro bono organizations — the primary source of legal assistance for the poor — estimate that they can only serve about 20 percent of those in need of legal services. This leaves 80 percent of those in need unable to secure assistance on issues that could significantly impact their children, families and financial security. As the gap in legal services continues to grow, Louisiana is in need of a legal assistance program that can effectively reach greater numbers of those in need.

Founded in 2005 during the immediate aftermath of Hurricane Katrina, the Louisiana Civil Justice Center (LCJC) was established to provide disaster legal assistance and connect displaced residents with legal services through a statewide, toll-free legal assistance hotline. In this role, LCJC is proud to partner with the American Bar Association, FEMA and the Louisiana State Bar Association (LSBA) as the agency responsible for emergency legal assistance under the LSBA emergency disaster plan. Over the years, LCJC has been at the front line of disasters, providing critical legal services in response to Hurricanes Gustav and Ike in 2008, the BP Oil Spill in 2010, Hurricane Isaac in 2012 and the historic and catastrophic flooding in March

and August 2016.

In addition to disaster response, LCJC's role in the justice community has grown to meet the growing legal needs of Louisiana's poverty population. By developing innovative service delivery systems and community partnerships, LCJC is now the first line of communication for nearly 15,000 individuals a year in resolving legal problems that affect their basic quality of life, such as maintenance of housing and income, stability of a family, or the health and well-being of their children.

The core program is the toll-free legal assistance hotline, which provides easy access to legal assistance regardless of income or geographic location. Through the hotline, LCJC attorneys and paraprofessionals help nearly 10,000 callers a year with legal information, brief advice and limited scope services all designed to help them resolve their legal issue. Similarly, the Help Desk for self-represented litigants at the Orleans Parish Civil District Court allows LCJC to help thousands more resolve family law and domestic violence issues. Visitors to the help desk can meet with attorneys and receive assistance filing court forms and moving through the litigation process.

LCJC is always looking for innovative ways to serve those in need. For example, to serve Louisiana's many rural parishes that are not covered by a pro bono program, and may be hours from the nearest legal aid office, LCJC launched the "Justice Tour" in 2016. During the tour, LCJC attorneys traveled to 15 of the poorest parishes across Louisiana with a focus on providing services in rural locations that would not otherwise be served.

Most recently, LCJC launched the Family Legal Center at Children's Hospital in New Orleans to help improve health outcomes for vulnerable children. Simply put, those living in poverty are more likely to suffer from poor health and chronic health conditions. This is particularly troubling for children in the Greater New Orleans region — with nearly 40 percent

living below the poverty line, children are especially vulnerable to the negative health impacts of poverty. Whether it's a child whose family suffers from housing instability or unsafe housing conditions, a child in need of protection from abuse, or a child in need of equal access to education, these and many other social determinants experienced by the poor are often the root cause of poor physical and mental health. Through a medical-legal partnership, LCJC has the unique opportunity to identify health-harming issues, resolve the problem at its source and evaluate the impact on health for vulnerable children in the region.

We know that with poverty comes inequality, and with inequality comes injustice. At LCJC, we believe that lawyers have an important role to play in helping to build more just, equitable and prosperous communities. As a small organization with a large mission to serve Louisiana's poverty population, LCJC is focused on developing innovative and cost-effective programs to reach those in greatest need.

For more information, visit LCJC online at: www.laciviljustice.org. To reach the hotline, call 1-800-310-7029.

Jonathan M. Rhodes is executive director of the Louisiana Civil Justice Center, where his work focuses on providing legal assistance to vulnerable populations across Louisiana. He serves on several boards and committees, including the Louisiana State Bar Association's Criminal Justice Committee, and has participated in several commissions of the Louisiana Legislature, including the Louisiana State Law Institute Expungement Reform working group and the Criminal Justice Funding study group. He is a graduate of the Loyola University New Orleans Institute of Politics and studied as an associate student at Oxford University's Centre for Socio-Legal Studies. He received his BA degree in philosophy from the University of Dayton and his JD degree from Chicago-Kent College of Law. (jonathan.rhodes@laciviljustice.org; 601 St. Charles Ave., New Orleans, LA 70130)



Overview:

Criminal Justice Committee Brings Together Stakeholders on Key Issues

By William L. Kline and Amy E. Duncan

Since its creation in 2006, the Louisiana State Bar Association's Criminal Justice Committee¹ has brought together criminal justice stakeholders within the legal profession, representing all sides, to address critical issues facing the criminal justice community.

Today the committee, composed of 48 members,² is specifically focused on: 1) recognizing and addressing issues affecting the Louisiana criminal justice system; 2) providing a forum for discussion; and 3) working with stakeholders to develop programs and solutions for the fair and effective administration of justice. In the past, the committee has focused on issues ranging from capital defense guidelines to sentencing reform and juvenile justice.

Each year, the committee hosts a summit to discuss issues like the ones mentioned above. Recommendations from the summits in years past include implementing a uniform fine and cost assessment worksheet, improving access to the expungement process, and eliminating and/or reducing mandatory minimums for nonviolent offenses. In 2014, the committee also proposed legislation to study a state general fund for criminal justice in Louisiana.

More recently, the committee narrowly focused on addressing three key issues: 1) increasing access to relevant information, such as agency financial

reporting and resources for private attorneys appointed to criminal cases; 2) reducing incarceration and recidivism rates; and 3) justice reinvestment initiatives to improve the funding system.

Last year, in response to the first issue, the committee launched a new criminal justice webpage³ that includes a resource center for private attorneys who have been appointed to represent criminal defendants⁴ and a criminal justice data repository to increase transparency of financial information associated with the defense and prosecution of criminal cases across the state.⁵

A Subcommittee on Over-Incarceration, chaired by Mercedes H. Montagnes and Kline was established to address the second issue. The members of the subcommittee focused their efforts on exploring methods of reducing incarceration rates through pre-trial reform. Additionally, subcommittee members began working with Re-Entry Court Judges — Judge Scott U. Schlegel, 24th Judicial District Court, and Judge William J. (Rusty) Knight, 22nd Judicial District Court — who have implemented programs designed to reduce recidivism through re-entry initiatives and to improve support for the participants.

The Subcommittee to Support Legislative Activities, chaired by Jonathan M. Rhodes, was formed to study the third issue of developing a more unified, stable and statewide funding structure

for the effective administration of the criminal justice system.

These three issues are discussed in greater detail in the articles on pages 276, 277 and 278.

FOOTNOTES

1. Formerly the Right to Counsel Committee from 2006-09.

2. For a list of all committee members, go to: <https://www.lsba.org/CJC/CJCCommitteeRoster.aspx>.

3. <https://www.lsba.org/cjc/default.aspx>.

4. <https://www.lsba.org/CJC/CJCResourceCenterIntro.aspx>.

5. <https://www.lsba.org/CJC/DataRepositoryIntro.aspx>.

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Committee, the Legal Innovators for Tomorrow (LIFT) Program, the Criminal Justice Committee and Louisiana's pro bono organizations. (amy.duncan@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130-3404).



Pretrial Detention Reform as a Jail Population Reduction Strategy

By Mercedes H. Montagnes and Royce I. Duplessis

This year, the Louisiana State Bar Association Criminal Justice Committee's Subcommittee on Over-Incarceration is addressing the issue of reducing incarceration through pretrial reform.

The subcommittee identified pretrial incarceration as a problem in several respects. First, the subcommittee noted inconsistent approaches to pretrial incarceration for low-level offenses. Second, the subcommittee noted that the system tends to favor pretrial bond, without an evaluation of whether an individual has the ability to pay, or the use of a risk assessment tool to evaluate an individual's likelihood to appear in court. Finally, the subcommittee became concerned about the dramatic impact that short-term incarceration can have on someone's life.

At the annual Criminal Justice Summit, the subcommittee invited judges to talk about initiatives they have undertaken to decrease the amount of pretrial detention in their own courts. Speaker Judge (Ret.) W. Ross Foote announced the start of a pilot program in Shreveport City Court, requiring the release on one's own recognizance for misdemeanor charges, except for enumerated offenses. This program will serve as a way to immediately reduce incarceration rates in Shreveport city jails. The new policy is also meant to require a judicial determination in the setting of bond for those arrested for the enumerated offenses, such as domestic abuse battery and aggravated assault.

The subcommittee also heard from

Rachel Logvin from the Pretrial Justice Initiative who spoke on the national trending away from pretrial detention. She gave a compelling presentation about the high costs borne, by both the individual and the state, with over-incarceration. She met with representatives from the Louisiana Supreme Court to discuss methods for approaching pretrial detention reform.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson similarly recognizes pretrial reform as a key method to reducing Louisiana's notoriously high incarceration rate, particularly through the use of data-driven, objective risk assessments. After extensively researching national best practices, the overwhelming data supports the use of evidence-based risk assessments to assist judges with their pretrial decision-making.

This pretrial reform effort is not solely for the purpose of reducing the jail population, but, more importantly, for achieving greater public safety. In furtherance of this objective, the Louisiana Supreme Court has been working closely with the City of New Orleans to develop a district-court-operated pretrial services pilot program. This pilot program is modeled after the Louisiana Supreme Court Drug Court Program which funds and monitors 50 drug courts across Louisiana. The anticipated start date is Jan. 1, 2017, whereby Orleans Parish Criminal District Court will operate New Orleans Pretrial Services, under program and fiscal standards established by the Louisiana Supreme Court, to promote accountability

and best practices. Thereafter, the Louisiana Supreme Court plans to expand the use of pretrial services statewide.

Vera Institute of Justice, which developed a pretrial services program in 2012, also collects and analyzes pretrial detention and other incarceration data for the City of New Orleans. In its 2016 First Quarterly Report, Vera reported that the majority of people in jail on March 2, 2016, were not serving a sentence, but awaiting adjudication.¹ Additionally, of those held in jail assessed for risk, 48 percent were found to present a low or low-moderate risk.² This demonstrates the importance of pretrial detention reform initiatives in Louisiana.

FOOTNOTES

1. Mathilde Laisne, et. al., Vera Institute of Justice, New Orleans Jail Population First Quarterly Report, January-March 2016 (August 2016).

2. *Id.*

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Louisiana's Re-Entry Court: An Alternative Sentencing Program that Begins with Lessons from "Lifers"

By Judge Scott U. Schlegel

Without successful re-entry into the community, recidivism is likely to occur, causing detrimental effects to public safety, communities, families, taxpayers, and ex-offenders. Offender re-entry is a crime prevention strategy, which serves to reduce crime and the number of crime victims and ultimately ensures opportunities for safer communities. Successful re-entry is also a cost-saving measure to state and local criminal justice systems." La. R.S. 15:1199.2(I)(J).

Louisiana has the highest incarceration rate in the United States with revocations making up 59 percent of prison admissions.¹ Regardless of your opinion about sentencing ("lock 'em up & throw away the key" vs. "no one deserves jail"), offenders sentenced to jail will be released back to our communities unless they receive a life sentence without the benefit of probation, parole or suspension of sentence. In fact, it is estimated that approximately 18,000 people were released from prison in 2015 and that releases now outpace admissions, according to a recent report released by The Pew Charitable Trusts.² Thus, it is our responsibility to do everything within our power to ensure that those returning to our communities are prepared for the challenges ahead. If we do not, the cycle of recidivism will continue, our state budgets will continue to soar, and crime rates will skyrocket, causing more pain to victims and their families. As a former prosecutor and victim of violent crime myself, I understand the real cost of crime.

In 2010, Judge Arthur L. Hunter, Jr. and Judge Laurie A. White from Orleans Parish Criminal District Court devised a novel way to address the problem. They asked "lifers" in prison to assist with the rehabili-

tation of new prisoners. Carefully vetted lifers, who have transformed after years in prison and who now want to give back, have been selected as mentors. Through their actions behind bars, these mentors are able to help mold and change the hearts of those sentenced to the Offender Rehabilitation & Workforce Development Program (program) at the Louisiana State Penitentiary (Angola). The lifers also teach the men a trade, such as welding and automotive mechanics, so that when the men are released, they can earn a livable wage.

Currently, there are 13 jurisdictions in the State of Louisiana permitted to sentence offenders to the Re-Entry Court Program, and only non-violent, non-sex offenders who receive a sentence of 10 years or less may be considered. Once an offender reaches Angola after sentencing, the moral rehabilitation and vocational training takes a minimum of two years. If the offender successfully completes the program at Angola, he may petition the court to re-enter society. Upon re-entry, the returning citizen is placed on probation under the intensive supervision of a Re-Entry Court for five years, where he will continue to receive the services needed to succeed, including substance abuse treatment and counseling. The Department of Corrections also has recently expanded the Re-Entry Court Program to another prison so that women can participate.

Since September 2015, the Louisiana State Bar Association's Criminal Justice Committee, stakeholders and advocates have been working together with Re-Entry Court Program judges to address some of the legal impediments participants in the Re-Entry Court Program face upon release. For instance, municipal attachments and driver's license suspensions can prevent a participant from attaining gainful employ-

ment, housing and financial stability – outcomes the program is designed to support. This year, a collaborative project model, involving five programs in the Greater New Orleans area, will be launched to provide legal assistance to returning citizens of certain courts that will reduce the barriers faced. If successful, this model could be replicated and used by other courts to address the unmet legal needs of participants throughout the state.

Attorneys who are interested in volunteering in the program should email Amy E. Duncan at amy.duncan@lsba.org.

The Louisiana Supreme Court is committed to supporting alternative sentencing measures such as Re-Entry Courts. To this end, the Court has appointed District Court Judge William J. (Rusty) Knight to lead these efforts and to develop best practices throughout the state.

As one lifer mentor said, "We need to meet them at the gate." And that's exactly what is happening here in Louisiana! People from all walks of life are coming together to give those returning from Angola an opportunity to succeed, which in turn will make our communities safer and more financially secure.

FOOTNOTES

1. *Id.*

2. The Pew Charitable Trusts, *Louisiana Data Analysis Part 1: Prison Trends* Presentation (part of a three-series report on prison drivers for the Justice Reinvestment Task Force created under HCR 82 in 2015).

Hon. Scott U. Schlegel is a judge on the 24th Judicial District Court bench, Division D. (Ste. 5400, 200 Derbigny St., Gretna, LA 70053)



Justice Reinvestment Initiatives Might be Answer to Criminal Justice Funding Dilemma

By Carla S. Sigler and Jonathan M. Rhodes

Already dealing with staggering incarceration rates, and now faced with an unprecedented budget crisis, Louisiana's criminal justice system has found itself in a difficult dilemma. Although there is broad agreement that Louisiana should work to reduce its prison population, there is little or no funding to support alternatives to incarceration. At the same time, finding money to support these alternative programs is difficult when so much of our criminal justice funding is allocated for corrections costs. When taken together, these may seem like insurmountable problems. However, one strategy known as Justice Reinvestment Initiatives (JRI) might help us find our way out of the dilemma.

Justice reinvestment begins from the premise that the state can free up funds to support certain criminal justice reforms. After decades of tough sentencing laws, states like Louisiana have come to agree that certain alternatives to incarceration can actually improve public safety while reducing prison populations. Since any new money is unlikely to be found in the state's coffers, Louisiana needs to be creative in freeing up existing funds to support programs that can improve safety and reduce incarceration.

One way that many states have achieved this is by coming together to pass measures aimed at reducing incarceration rates for nonviolent offenders or to reduce the numbers incarcerated for technical probation violations. In a recent report, Louisiana's Legislative Auditor found that the state could save hundreds of millions of dollars over the years by finding alternatives to incarceration for nonviolent offenders.

The report identifies reforms such as reducing the use of mandatory minimum sentences and habitual offender laws, providing more rehabilitation services to inmates, offering pretrial diversion programs, and expanding drug courts as alternatives to incarceration for nonviolent offenders.¹

These measures reduce incarceration in the short term, resulting in cost savings that can then be reinvested into evidence-based programs that improve public safety and further reduce prison populations. Utilizing this strategy over the long term, states can see significant cost savings and reduced incarceration rates while improving public safety and ensuring the best use of taxpayer dollars. Simply put, justice reinvestment is a strategy to reform the system and improve outcomes with no new money needed. If this strategy sounds too good to be true, consider that to date at least 24 states have undertaken JRI that have significantly reduced incarceration rates and are estimated to save more than \$4 billion over 10 years.²

In fact, many southern States have led the way in these reforms. South Carolina launched JRI that have saved the state \$12.5 million while reducing incarceration rates by more than 8 percent, reducing recidivism by more than 3 percent and reducing probation revocations by 6 percent. Better still, South Carolina saw a 14 percent overall reduction in its crime rate during the same period, effectively improving public safety while saving money. Kentucky has projected that JRI will save the state \$422 million over 10 years and support an 18 percent reduction in its prison population. In just the first few years, one pretrial re-

form program alone has saved Kentucky roughly \$25 million, which can be reinvested in other cost-saving public safety programs. Similarly, North Carolina has passed JRI legislation that is projected to save the state more than \$560 million over 10 years and reduce incarceration rates by 13 percent. In just the first two years, their state has seen a nearly 6 percent reduction in incarceration rates.³

We can be proud that Louisiana has, at least to a small degree, been one of the early adopters of JRI. As is well known, Louisiana's prison population had doubled over the period from 1990 to 2010, resulting in the highest incarceration rate in the nation. In 2011 and 2012, Louisiana passed a series of JRI legislation that included enhancements to the use of good time and earned time credits and more effective probation and parole operations. According to the Louisiana Department of Public Safety and Corrections, these strategies have reduced Louisiana's prison population by 10.5 percent, which equates to a cumulative taxpayer savings of roughly \$38 million per year.⁴

Louisiana's JRI legislation resulted in important cost savings and lowered incarceration rates, but did not include a formal plan for reinvesting savings over the long term. To build on Louisiana's initial success, the Louisiana Legislature passed resolutions in 2015 to study funding and reinvestment for the criminal justice system. HCR 134 was a product of the LSBA's Criminal Justice Committee to study funding across the system, resulting in a recommendation to focus on JRI. HCR 82 created the Justice Reinvestment Commission to develop sentencing and corrections

policy recommendations. The Task Force is chaired by James LeBlanc, secretary of the Louisiana Department of Public Safety and Corrections, and is composed of at least 14 members with experience in criminal justice reform. Their task will be to identify strategies that can further improve public safety, reduce incarceration rates and conserve our limited public funds.

We can look to many of the existing programs in Louisiana for examples of success. In fact, our criminal justice system has found that sometimes the best justice reinvestment we can make is in the defendants themselves. This is particularly true when they are eligible for participation in an alternative treatment court, such as a Drug, DWI, Mental Health or Veterans Treatment Court. For career prosecutors charged with holding offenders accountable and protecting public safety, there is great interest in alternative programs that can effectively reduce recidivism and ultimately improve public safety. For example, the 14th Judicial District Adult Drug Treatment Court, formed in 2007, has effectively transformed once ordinary defendants into people filled with promise and the realistic expectation of better things for both them and their families.

The Louisiana Supreme Court is firmly behind treatment courts and offers continued and critical funding and programmatic support for Drug Courts

and new DWI Courts. According to 2016 statistics published by the Louisiana Supreme Court Drug Court Program in Louisiana, today there are 30 Adult Drug Courts, 17 Juvenile Drug Courts and three Family Preservation Courts. Forty programs have been in operation 10 years or longer, demonstrating Louisiana's early commitment to treatment courts as a reinvestment in justice. Those same statistics show that 89.8 percent of 2012 graduates of Drug Court programs were free from additional convictions three years after they graduated, for a recidivism rate of just 10.2 percent, a remarkable feat given the national average of 77 percent of prisoners being rearrested within five years of their release from prison, an alarming statistic detailed by the Bureau of Justice Statistics in a September 2015 summary of recidivism rates of state prisoners. In treatment courts, the clients' educational and career goals are achieved along with sobriety, counseling helps them understand and correct the destructive drives that once fueled them, and within a matter of months, lives that once seemed invested only in crime become rich with promise. If we are serious about reducing both the need for incarceration and its rate, then we should invest more time and money in the very programs that achieve a renewed system of justice — treatment courts.

Balancing the need to hold offenders

accountable and protect public safety with the need to reduce incarceration rates, cut costs and develop successful rehabilitation programs will require some creativity and finesse. This is the work of the Justice Reinvestment Task Force and for all members of the criminal justice community to engage in if we are to see meaningful progress.

FOOTNOTES

1. [http://app.lla.state.la.us/PublicReports.nsf/0/DB26F2309F9783F2862580200077A2CD/\\$FILE/00010B73.pdf](http://app.lla.state.la.us/PublicReports.nsf/0/DB26F2309F9783F2862580200077A2CD/$FILE/00010B73.pdf).
2. <https://www.bja.gov/Publications/UI-JRI-ThinkingLocal.pdf>.
3. https://www.bja.gov/programs/justicereinvestment/success_stories.html.
4. http://www.theadvocate.com/baton_rouge/opinion/article_cc7afd9c-5b10-5a6b-aaa6-d4977bc04dde.html.

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Update / Baton Rouge Bar Foundation

The Baton Rouge Bar Foundation has a number of programs designed to aid the underprivileged and to engage its attorney volunteers, such as the Capital Area Med-LAW Partnership (CAMP) and the Self-Help Resource Center.

CAMP's mission is to assist healthcare providers in improving health in low-income communities. Generally, providers can only treat and resolve health issues in a clinical setting but are unable to address their patients' social and environmental conditions. These conditions can often be detrimental to their patients' health and well-being. By integrating medical and legal services, the social and environmental conditions can be improved leading to better health and financial outcomes.

The Self-Help Resource Center provides forms (*e.g.*, petition for divorce, custody and child support modification) and notary services for low-income pro se litigants. The Center is located at the Family Court of East Baton Rouge on the fourth floor of the 19th JDC. Typically, law students are present with a Baton Rouge Bar Association staff member to assist the individuals with the completion of the forms. Also, an attorney volunteer is present to provide supervision and notary services. No legal advice is given at the Self-Help Resource Center, only general legal information.

—Cody C. Passman
Chair, Baton Rouge Bar Foundation Pro Bono Committee

Assuring Justice Through Civil Legal Aid

By Laura Tuggle Issokson
Southeast Louisiana Legal Services

For almost 50 years, Southeast Louisiana Legal Services (SLLS), previously known as New Orleans Legal Assistance Corp. in the New Orleans area, has provided award-winning, life-changing civil legal aid. SLLS is Louisiana's largest non-profit provider of free civil legal aid. Our mission is to help low-income and other vulnerable people achieve justice through direct case work, advocacy and community legal education. We serve half of Louisiana's low-income population. In many parts of our 22-parish service area, SLLS is the only legal safety net available for families and children in crisis.

SLLS began in 1979 with a grant from the Legal Services Corporation. Back then, SLLS gave legal help to poor people in five northshore parishes. In 2003, SLLS merged with the New Orleans Legal Assistance Corp. (NOLAC), which served the greater New Orleans area since 1967. SLLS grew by 12 more parishes when we more than doubled our footprint through expansion to Baton Rouge, Hou-

ma and the surrounding region. We now have six offices, 85 employees and operate five Self-Help Desks in partnership with local courts. We are embedded on-site with community partners, like hospitals, health clinics, community colleges, domestic violence shelters, senior centers and homeless shelters, to ensure that civil legal aid is part of a holistic solution to making a difference in people's lives.

Having an SLLS lawyer prevents loss of family, food, shelter, income, medical care or personal safety. Last year, SLLS handled more than 11,000 cases, reached another 12,050 people through community education, and provided legal information to more than 120,000 more through the public information website we administer, *LouisianaLawhelp.org*. Priorities for our work include:

- ▶ protecting domestic violence victims and abused children;
- ▶ preserving homes, improving housing conditions and defending housing rights;
- ▶ safeguarding the rights of special populations like disaster victims, seniors,

veterans, the homeless or people living with disabilities;

- ▶ increasing the income of consumers and the working poor;
- ▶ improving health, education access and employment opportunity; and
- ▶ providing self-help resources, community education, and legal information to the public

The direct economic impact of our 2015 work for clients was \$17.7 million, an almost 3:1 rate of return on investments in justice. Pro bono lawyers working with SLLS donated 5,465 hours of service valued at almost \$1 million while law students racked up more than 10,000 hours of volunteer service.

As we approach our 50th anniversary in the New Orleans area, SLLS is excited about the future of civil legal aid. To learn more about SLLS and how you can help, review our 2015 Annual Report online at www.slls.org, like us on Facebook, or sign up for our newsletter.

Laura Tuggle Issokson is executive director of Southeast Louisiana Legal Services and can be reached at ltuggle@slls.org.

Update / Pro Bono Project, New Orleans

In the last year, The Pro Bono Project embarked on two new projects to engage volunteers. The Project is working with Southeast Louisiana Legal Services (SLLS) and Daughters of Charity in a medical-legal partnership that adds lawyers to the healthcare team to address health-harming determinants from a legal standpoint. Volunteers can participate in clinics, educational outreach and direct representation of clients by contacting our staff attorney, Patricia Guzman-Weema at (504)581-4043 or email pweema@probono-no.org.

Starting in April, The Project also assumed responsibility for the self-help desk at the 24th JDC in Jefferson Parish. Volunteers help self-represented litigants fill out court-approved forms for family law matters and explain the steps they need to take in order to successfully complete their cases. Since no legal advice is given but only legal information, volunteers don't have to be attorneys to help out. To participate, email Siri Alay, our Louisiana Delta Service Corps/AmeriCorps volunteer, at salay@probono-no.org, or sign up through VolunteerSpot: <http://vols.pt/V61fy2>.

—Linton W. Carney
Chief Legal Officer, The Pro Bono Project, New Orleans

Cup of Justice: Half Empty or Half Full?

By Judge (Ret.) Leon L. Emanuel III
Legal Services of North Louisiana

Upon accepting the helm as the new director of Legal Services of North Louisiana (LSNL), I was immensely grateful for the entrustment and privilege to serve the LSNL's client community. Understanding current challenges of "access to justice" for the poor, I quickly recognized that greater opportunities are emerging to answer the question: "Is the Cup of Justice half empty or half full?"

LSNL, along with fellow state legal services programs, is uniquely positioned to work with the National Legal Services Corporation, Louisiana Bar Foundation, Louisiana State Bar Association and the Louisiana judiciary in a plethora of positive and innovative ways. In addition, Louisiana's recent access to justice initiatives readily promotes confidence for more meaningful delivery of legal ser-

vices to low-income populations.

Looking towards the future to answer the stated question, "Is the Cup of Justice half empty or half full?," LSNL enthusiastically embraces the answer by its core vision of helping more people. In 2017, LSNL will utilize additional funding opportunities provided by the Louisiana Bar Foundation, Department of Housing and Urban Development and City of Shreveport to achieve greater access to the client community. LSNL will better train its attorneys regarding consumer debts, foreclosure prevention, juvenile expungements and housing law. LSNL also will become more instrumental in counseling pro se litigants for court hearings to ease the burden upon judges and private attorneys.

LSNL has a heritage deeply rooted in providing legal help to indigent cli-

ents. LSNL is comprised of Shreveport, where offering legal aid predates the national Legal Services program; Monroe, where legal services extends throughout the immensely poor territory of northeast Louisiana; and Natchitoches, where true Louisianians extol the commitment for giving.

Under new leadership, LSNL shall continue to distinguish itself for addressing the unique and diverse legal needs of people living in poverty throughout north Louisiana. LSNL will accentuate the values of determination and steadfastness, while striving to ensure that the Cup of Justice is not half empty, but instead, more than half full.

Judge (Ret.) Leon L. Emanuel III is executive director of Legal Services of North Louisiana and can be reached at jlemanuel3@gmail.com.

Update / Northshore Pro Bono Project of Southeast Louisiana Legal Services

When tragedy strikes, first responders selflessly serve and protect the public. Despite the inherently dangerous nature of their jobs, statistics show that 80 percent to 90 percent of first responders do not have even a simple will.

This year, the Northshore Pro Bono Project of Southeast Louisiana Legal Services (SLLS), located in downtown Covington, decided to change this surprising statistic and give back to those who give so much. With funding provided by the Jock Scott Community Partnership Panel of the Louisiana Bar Foundation, SLLS partnered with the Louisiana State Bar Association's Young Lawyers Division to coordinate four free Wills for Heroes events to both St. Tammany and Washington parishes. The Wills for Heroes Foundation works nationwide with organizations like the Northshore Pro Bono Project to provide free wills and other estate planning documents to America's first responders. Qualified first responders include active, volunteer and retired police officers, firefighters, paramedics, corrections and probation officers. Working together, the community events were a huge success! Approximately 83 first responders benefited from the service, all thanks to the many local lawyers, paralegals and area businesses who generously volunteered their resources and time to prepare wills, living wills, and healthcare powers of attorney.

If you or your firm is interested in this or other volunteer opportunities, email Cynthia M. Bordonaro, pro bono coordinator for the Northshore Pro Bono Project, at cbordonaro@slls.org.

—Cynthia M. Bordonaro
Pro Bono Coordinator, Northshore Pro Bono Project

The Future of Civil Legal Services in Louisiana

By Gregory L. Landry
Acadiana Legal Service Corp.

What civil legal services will look like in the immediate future depends on what funding is available and how effectively we capture and leverage that funding to best serve those in need.

We have a tri-partite governmental system. No one would think of charging citizens to access one of the executive branch agencies for assistance or to speak to their legislators about needed change. Yet, we complacently accept that to access the third branch of government for needed services, even if dragged into it unwillingly, one must pay to do so. Pretending that most non-attorneys can enter that arena and get “equal justice” is delusional. Demand will steadily increase as the open-market cost of legal help continues to rise, the middle-class shrinks,

and so many of our citizens fail to receive the education or life skills training necessary to avoid many of the most common legal problems.

The recent trend to stagnant or decreasing governmental funding will necessitate formalizing development work if we are to effectively compete in the non-profit grant sector for the scarce funding of day-to-day operations. A significant challenge will be raising compensation to levels at which bright, motivated legal workers can make this work a career, instead of an entry-level job in which we pay to train them so that they can quickly leave us to earn a living wage in the private sector.

Non-profit legal service providers will focus on select legal areas and services in which limited funding can have the greatest impact on the lives of the great-

est number of people.

Technology will play a larger role to maximize the work a reduced legal staff can do. As in medicine, “preventative law” will prove to be a force multiplier, through online legal educational materials and webinars, community legal education outreach, and even computerized legal systems and smartphone apps.

As the baby boomers and first-wave Gen Xers age out of our workforce, we will have to increasingly focus on training and preparing the next generation of like-minded legal professionals to take up the promise of our Pledge to become a nation of “justice for all.”

Gregory L. Landry is executive director of the Acadiana Legal Service Corp. and can be reached at greg@la-law.org.

Update / Shreveport Bar Association Pro Bono Project

In June, the Shreveport Bar Association’s Pro Bono Project was awarded a substantial grant to help fund our new Protective Order Project. This new project started on July 1 and we are excited to announce that, from that grant, we are able to hire a part-time staff attorney, Heidi Kemple Martin. Heidi will provide free legal representation to victims of domestic violence by obtaining protective orders. Heidi is thrilled to be joining our team at the Pro Bono Project. This project is supported by a grant from the Community Foundation and the United Way Grant Fund of the Community Foundation. In addition to this grant, we also received a grant from the Louisiana Bar Foundation to hire a paralegal to help with this project.

To further support the Louisiana Supreme Court-mandated Access to Justice Initiative, we are also happy to announce that we were awarded a grant from the Louisiana Bar Foundation to help fund a self-represented litigation legal forms kiosk that will be maintained at the Shreveport Bar Center. It is important to recognize that this obligation extends to all those in need of legal services, including those unable to afford an attorney. The Pro Bono Project is able to do all that we do because of the support we receive from our grantors, the Louisiana Bar Foundation, Legal Services of North Louisiana, the Community Foundation and the United Way.

—Nellie Walton
Shreveport Bar Association Pro Bono Project

ATJ Developing Leadership Internship Program Established

By Mark C. Surprenant

During the March 2015 Access to Justice Summit, participants concluded that cultivating the next generation of access to justice leaders should not only be a priority but is necessary as sensible succession planning to ensure continued efforts within Louisiana's justice community.

In response, representatives of the Louisiana State Bar Association (LSBA), the Louisiana Bar Foundation, Louisiana civil legal aid providers, the Louisiana District Judges Association, Louisiana law schools, the Louisiana Supreme Court and private bar law firms joined forces to create the ATJ Developing Leadership Intern Program. This new initiative is a unique opportunity for law students to gain the insight and skills needed to become the next generation of access to justice leaders.

Only four students were selected to participate in the inaugural program, one from each of Louisiana's law schools. The interns worked with several civil legal aid providers and judges and were sponsored by law firms with records of dedication to access to justice issues. Weekly programming focused on the various civil legal needs of low-income people; the ways in which organizations within the justice community address those needs; and how these services are increasing the quality of life for those served.

The sponsoring law firms were Adams and Reese, L.L.P.; Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Jones Walker, L.L.P.; and Phelps Dunbar, L.L.P.

On the first day of the program, the interns were treated to lunch with Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and toured the Louisiana Supreme Court.

During the remainder of the five-week program, the two Baton Rouge interns worked with Judge Suzan S. Ponder (Baton Rouge City Court), Judge Lisa M.



The inaugural ATJ Developing Leadership Intern Program included four current law students and involved four sponsoring law firms. From left, Christopher K. Ralston, Phelps Dunbar, L.L.P.; Sarah Smith-Clevenger, Tulane Law School; Annie Lemoine, Loyola University College of Law; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; Kara Brown, Southern University Law Center; Hilary Renshaw, Louisiana State University Paul M. Hebert Law Center; Christopher M. Vitenas, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; and Mark C. Surprenant, Adams and Reese, L.L.P.

Woodruff-White (East Baton Rouge Family Court), the Baton Rouge Bar Foundation's Pro Bono Program, Catholic Charities of the Diocese of Baton Rouge and Southeast Louisiana Legal Services. The two New Orleans interns worked with Judge John J. Molaison, Jr. (24th Judicial District Court), Judge Bernadette G. D'Souza (Orleans Parish Civil District Court), Catholic Charities of the Archdiocese of New Orleans, the Louisiana Civil Justice Center, The Pro Bono Project of New Orleans and Southeast Louisiana Legal Services.

In addition, all interns were invited to attend an Access to Justice Commission meeting, the LSBA's Pro Bono and Children's Law Awards Ceremony, and a lunch panel with Judge Jay C. Zainey (U.S. District Court, Eastern District of Louisiana) and Judge Stephen A. Higginson (U.S. 5th Circuit Court of Appeals).

Attorney Christopher K. Ralston with the New Orleans office of Phelps Dunbar, L.L.P., said of the program, "Phelps Dunbar and its attorneys feel passionately about ensuring that our legal system is fair, just and accessible to all. This means not only dedicating our time and resources to providing pro bono assistance to those less fortunate, but also ensuring that this

commitment is carried on by future generations. The ATJ Developing Leadership Internship Program allows our firm to mentor and develop future access to justice leaders in our community — an opportunity we cannot resist and a responsibility we will not ignore."

Intern Annie Lemoine, a Loyola University College of Law student and Adams and Reese intern, said, "This program was a rare opportunity that has invigorated my passion for social justice and solidified my commitment to public interest work. Through this program I have begun to develop the skills of a leader — I can identify problems, brainstorm solutions, and partner with others knowledgeable in the area to put these ideas into action. It is a newfound confidence that I have never felt so powerfully, and I cannot wait to see what will happen."

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., assisted in the coordination of the ATJ Developing Leadership Intern Program for this firm. (mark.surprenant@arlaw.com; One Shell Square, Ste. 4500, 701 Poydras St., New Orleans, LA 70139)



Portraits & Perspectives: Louisiana Supreme Court Associate Justices



One on One with Louisiana Supreme Court Associate Justice Jeannette Theriot Knoll

Interviewed by Winfield E. Little, Jr.



Louisiana Supreme Court Justice Jeannette Theriot Knoll with her family. Front row from left, Lyla Knoll; husband Eddie Knoll, Sr.; Jeanne Elyse Knoll; Justice Knoll; Sunni Claire Knoll; Jameson Knoll; Lauri Knoll; and Andree Knoll. Back row from left, Sonny Knoll, Laura Knoll, Jonathan Knoll, Emily Knoll, Jamie Knoll, Blake Knoll, Lawson Knoll (in front of Blake), Trey Knoll and Eddie Knoll, Jr. Photo by Bernie Saul.

On Oct. 19, the Louisiana Supreme Court justices sat *en banc* in a courtroom ceremony to honor Associate Justice Jeannette Theriot Knoll on her last day sitting on the Supreme Court bench. Surrounded by friends, family and colleagues, Justice Knoll celebrated 34 years of being a member of the Louisiana state judiciary. Her service began in 1983 when she was elected to the 3rd Circuit Court of Appeal, becoming the first woman to be elected to an appellate court in the history of Louisiana.

"Twenty years ago, Justice Knoll joined the Louisiana Supreme Court bench and she has since devoted herself to serving the Court, the judiciary and the people of Louisiana. She has established an impressive record during her time here, having read and voted on more than 58,000 writ applications and authoring nearly 200 Louisiana Supreme Court full opinions. When you add this to the 856 opinions she wrote during her 14-year tenure at the 3rd Circuit Court of Appeal, it is impossible to overstate Justice Knoll's contribution to the development of Louisiana law," said Chief Justice Bernette Joshua Johnson.

Justice Knoll received her undergraduate degree and law degree from Loyola University. She cut her teeth as an indigent defender in Avoyelles Parish and, for 13 years, she practiced law with Knoll and Knoll. From 1972-82, she served as the first assistant district attorney for the 12th Judicial District. In 1996, she earned a Master of Laws degree in the judicial process from the University of Virginia School of Law.

She is the recipient of several honors and awards, including the 2017 St. Ives Award from Loyola University College of Law; the 2016 Distinguished Jurist Award from the Louisiana Bar Foundation; the 2002 Outstanding Judicial Award from Victims and Citizens Against Crime, Inc.; and the 2000 Outstanding Jurist of the Year Award from Louisiana Crimefighters. In 2007, she and her whole family were inducted into the Louisiana Justice Hall of Fame.

Justice Knoll has been married for nearly 50 years to Jerold Edward (Eddie) Knoll, with whom she raised five sons and has nine grandchildren.

Her official last day before retirement is Dec. 31.

Journal: What did you do in college to get ready for law school?

Knoll: I had no idea I was going to law school. All my young life, I was going to be an opera singer, and could have been. The Metropolitan Opera was very interested in me, gave me a scholarship, and I was under the tutelage of Maestro Kourt Adler. My horizons were not in the field of law nor did we have anybody in our family who was a lawyer. I'm one of 10 children, and my dad graduated from Tulane in 1930 in business administration. He was a businessman but he was not involved in law or politics. We were a musical family. My mother was a classic pianist and everybody in the family sang. I started studying at the age of 11. Dad discovered I had a very pretty voice. God blessed me with a very good talent.

Journal: Where were you raised?

Knoll: In New Orleans from second grade on because of my Dad's work.

Journal: Did you finally go to college as a voice major?

Knoll: I gave up my voice scholar-

ship and majored in political science and minored in history at Loyola University. I lost a year because I had a year of music and those credits just didn't apply. After my first year of college, I went and studied with the Met. And my mother died. I was 19 and mom had five little ones under me, and it was very tragic. I just couldn't live without my mom. I couldn't get my arms around the grief. I cried for seven years. I got into law through my husband, and I really reluctantly went to law school.

Journal: Was your husband already an attorney at that time?

Knoll: Yes, he was. I worked my way through college teaching a glee club and liturgical music at Mount Carmel Academy, St. Joseph Academy and St. James Major High School. I also worked for a couple of the professors at the university to lower my tuition. I met my husband-to-be while I was an undergraduate. He graduated from law school in 1966, and I graduated as an undergraduate the same year.

After receiving my undergraduate degree, I attended Loyola Law School in the three-year program. Eddie asked me to go to law school. I fell very much in love with him. He was not from New Orleans. I had never heard of the little town he was from because my roots are in Gueydan where my father was born and raised, and I lived there the early years of my childhood in Vermilion Parish. My daddy's name is Alfred Joseph Theriot, Sr. I always loved the country and hoped that I would live back in Vermilion Parish, preferably Abbeville or Gueydan. When Eddie said he was from Simmesport, I had never heard of the little town. He was raised by wonderful parents who had a mom-and-pop grocery store in the country, the little rural, general merchandise store. They made a very successful living. His idea of a husband-and-wife team was a mom-and-pop business, too. So, he asked me to go to law school. It never entered my mind to be a lawyer. In those days, many women did not go to law school. The Bar Association was predominantly white male. All of the judges throughout the state were all white male. But he was persistent because he wanted us to have a law office together. I told him I would give law school two weeks, then I'd know if I liked it or not. Of course, I fell in love with it, and I did very well.

Journal: Were you married while you were in law school?

Knoll: We married after my first year in law school in June of 1967. He lived and practiced in Marksville. I was the one who commuted back and forth from New Orleans. I'd go home on Fridays. There used to be a passenger train that would pass through Mansura, five miles from Marksville. I'd catch the train at the Fontainebleau train station near the Fontainebleau Hotel at the intersection of Tulane and Carrollton. It was a grueling schedule. Then, I started driving back and forth on Fridays. I'd call my little car the "mailman" because, no matter the weather, I was going home.

Journal: So, you and Mr. Knoll practiced law for a number of years in Marksville?

Knoll: Yes. At first, my husband Eddie was in a partnership with Mr. Riddle. It was assumed I would go in the partnership with them, which is what Eddie and I were hoping. But Mr. Riddle was not accustomed to women lawyers. There were no women lawyers. His financial offer to me was the same as his secretary's salary, and I was not going to go into the courtroom, but just write briefs and pleadings and do whatever Mr. Riddle told me to do. I said to myself, for \$500 per month, I could stay home and teach music. My husband was very disappointed as well. Eddie went off to the National Guard to do his summer duty. The Vietnam War was on. While he was gone, I made up my mind. I would be miserable not being able to go in the courtroom and not being able to really practice law. I told him I was going to strike out on my own. I tried to clerk for judges. I tried to get a job. But all the clerkships were taken up. I had waited too late. I struck out on my own. For one year, I practiced alone.

Journal: You had your own shingle for a year?

Knoll: Yes, that's exactly the traditional "hanging of the shingle." I remember the day I hung it. I didn't know anybody there in Marksville. My family wasn't there. I was still grieving the loss of my mother. But I was successful from the get-go.

Journal: What type of cases did you have?

Knoll: Anything that walked through the

door. I had one man walk in and say he just wanted to see what a woman lawyer looks like. That's how strange it was. That concept of a woman lawyer just wasn't the norm.

Journal: After the first year, how did your practice change?

Knoll: After my first year, my husband joined me and we opened a law firm, Knoll and Knoll. I always teased him that I was the "Knoll" and he was the "and Knoll." But, one thing is true. You can't hold a good lawyer down, and I was a good lawyer because I did my homework. I won cases I should have won, and I won cases I should have lost.

One of the cases I tried as a young lawyer was a rape case of an African-American man, Siltan James, charged and indicted with the aggravated rape of a white woman. He was an ex-con with a record of a burglary but not a sexual offense. I was appointed to represent him. You had to have five years' experience, so the district judge appointed an older member of the Bar, Mr. Bennett, to assist me. But I literally tried the case and did all of the work. In 1971, women were not allowed to sit on the jury unless the woman formally requested it by going to the clerk's office or registrar of voters' office and placing her name in the jury pool. My jury selection was confined to all men. They didn't have the Batson Challenge then, either. And I won that case. He was truly innocent, and I think God placed me there at that time to save this man's life because he was looking at the electric chair. My defense of him was the prosecution of who really raped her, so parallel to *To Kill a Mockingbird*.

Let me describe the courtroom. It was just like in *To Kill a Mockingbird*. It had racial overtones, the prosecution. All the whites were on one side and all the African-Americans were on the other side. We didn't have central air and heat. We had these big, old windows and the air conditioner was in the window. They'd have to turn the air conditioner off when somebody was testifying so everybody could hear. There was just no evidence against him. They came back with a "not guilty" verdict.

After the trial, there was sitting on my desk a little package wrapped with legal paper. I opened it and it was the "not guilty" pen. The jury signed the verdict with a little,

inexpensive BIC pen, and one of the jurors was a cabinet maker—Rudie Hydel. He put the BIC in a beautiful piece of cherry wood, oval-shaped, and called it the “Not Guilty Pen, State versus James” and the year. I’m often asked which case I’m the proudest of, and that’s the case. My family and I were inducted into the Louisiana Justice Hall of Fame at Angola. They wanted memorabilia, so the pen is there.

Journal: Later on, you became the first assistant district attorney?

Knoll: Yes. In those days, they didn’t have anti-nepotism laws. My husband became DA and he named me his first assistant. I was truly a hardworking first assistant. When I won a judgeship in 1982, he had to hire two to replace me. It was nepotism, but the state really got its money’s worth out of me.

Journal: You mentioned you ran for a judgeship. That would have been to the 3rd Circuit?

Knoll: My subdistrict consisted of eight parishes, with one French-Catholic parish, Avoyelles. Then right above Avoyelles, straight across the state, from the Texas border to the Mississippi border, starting with Sabine Parish, Natchitoches, Lasalle, Concordia, Rapides, Catahoula and Grant.

Journal: How long were you on the Court of Appeal?

Knoll: Fourteen years, until I was elected to the Louisiana Supreme Court in 1996.

Journal: Let’s talk about your time on the Court of Appeal.

Knoll: I wanted to get out of the courtroom. The courtroom is a stressful place, and I had a huge family practice. Couples would pull me in when they got in a fight. Husbands would call and say, “My wife and I are fighting. She’s going to go see you, but I’m going to hire you, so you’re my lawyer, if she gets to you before I do.” I’d say, “Sir, whoever pays me first is who I’m going to represent.” I also don’t like bargaining negotiations on personal injury, but you have to do that in the personal injury field.

Then a vacancy opened up on the Court of Appeal when Judge Culpepper planned to retire. I had never dreamed of being a judge. Never. I certainly didn’t want to be a trial



Louisiana Supreme Court Justice Jeannette Theriot Knoll’s home office in Marksville. Photo provided by the Knoll Family.

judge. I did not know how to campaign. You have to be able to ask people for their vote. You have to go up to them, perfect strangers, and say, “My name is Jeannette Knoll. I’m running for the 3rd Circuit Court of Appeal. I sure would appreciate your vote and support.” My husband and my brother, Paul Theriot, taught me how to be a politician.

When I was a trial lawyer, clients would call and come to my house (I could never say no) and I was dealing with them following Caesarean sections and through breast-feeding. I never lost a case or a client because I had to feed a baby.

But my work with the Court of Appeal was more of an academic atmosphere. My first love always has been family life and wanting to do for my family. The Court of Appeal gave me the opportunity for a less stressful life in trying to raise my five wonderful boys.

Journal: You’re able to schedule every day for a week in advance of what’s going to happen at the 3rd Circuit.

Knoll: I think most of the intermediate courts in the state, the five Courts of Appeal, have the same system. They get their docket three months ahead of time. We get their records so when you hear oral argument you have a draft opinion already. Then, you make your adjustments accordingly after oral argument. You work ahead on the Court of Appeal level.

Journal: How important were oral arguments to you at the Court of Appeal level and then at the Supreme Court level?

Knoll: I found the Court of Appeal level very important, but we were criticized by the lawyers because they knew we had a draft opinion ready. Most good appellate lawyers know that the Courts of Appeal work ahead. They felt like they’re going to have a hard time getting a judge to go back on an opinion and rewrite it. But I would. I would go back. Most of the time, lawyers’ arguments at the Court of Appeal or Supreme Court aren’t very different from their briefs. You can’t introduce new evidence. You can’t have new assignment of error. It’s pretty well set. It would have to be something I didn’t think of. And my technique in appellate work, to include on the Supreme Court, the way I’m questioning you is the way I’m thinking of ruling. So if I’m wrong, here’s your opportunity to correct me. I was very honest with the lawyers. Let me hear your side. And I still do that to this day.

Journal: Let’s talk about the procedure at the Supreme Court.

Knoll: The procedure here is totally different. It’s a discretionary court whereas the Court of Appeal is not. You have a constitutional right to appeal. The only way to dismiss an appeal is if you haven’t appealed timely or filed your briefs timely. We don’t deny appeals. We deny writs be-

cause you don't have a constitutional right to our court, only in limited circumstances. The death penalty cases are a direct appeal. The declaration of unconstitutionality is an appeal. The Supreme Court gets 3,000 writs a year, and the Justices have to read them. The perfect description of this court is it's a deadline court for the Justices. At the Supreme Court, we meet our deadlines every week. We meet every Tuesday and Wednesday to vote. You have to do all that reading and you have opinions to write. We meet for oral argument every six weeks, and for one period, it is seven. We have about six times that we sit a year. There also are many other functions that the Supreme Court handles that the appellate level does not do. We have original jurisdiction sanctioning lawyers and judges. We have many committees that work for us. There are many, many other things that we do besides our work.

Journal: How did you learn to balance your private family life with your trial work and later with your judicial work?

Knoll: That's always been a challenge. I was able to successfully do it as a trial lawyer with the wonderful women who worked for me in my home helping with my children. In the Court of Appeal level, I could participate more and have more of a schedule to my life because of the stressless atmosphere. Now, I'm in the grandmother days. I'm a granny first and foremost now. Whenever I do something for the children, I always have to make up for the time in reading. If one of my sons asks me to babysit, most of the times, I cannot. But when I do, I'll make up the time by getting up early in the morning and reading or working on the weekends. It's very common, and it causes stress.

Journal: Do you have an office at your house?

Knoll: I have an office in Marksville, one in my home and one at the Supreme Court building. You have to maintain an office in your home because we're never closed. The Supreme Court never closes. We get writs constantly. We're not in three-person panels like at the Court of Appeal. But we're in recess now, and I'm on writ duty. Each Justice, except the Chief, puts in 10 days and, at the end of the 10 days, the

new Justice for that writ duty period comes on. All that means is that they have to do the homework on the writ, the priority writ or emergency writ that's filed. The weekly meetings are not scheduled. But that doesn't mean we have stopped working.

Journal: In the Court of Appeal, you said that basically most of the appellate judges had already read the record or reviewed the briefs and come up with at least a draft of an opinion, and then you had oral argument. At the Supreme Court, is it different?

Knoll: Completely opposite. Four or five days before oral argument, we are assigned the case we're going to author. We don't even know which case we're going to author until that time. There's absolutely no time to read the record before oral argument. We only know the writ application. So we ask a lot of questions. If we get a particularly hard case, we ask even more questions, trying to get our arms around it and understand the positions of the different issues from the parties. More questions are asked up here than at the intermediate level. I call it a hot bench. Don't send the lawyer who has not read that record.

Journal: Over all your years of practice, are there any cases besides *State of Louisiana v. James* that were significant for you?

Knoll: One that was significant to New Orleans, the State and to history is the fence around the Cabildo. The fence was not always there. Homeless people would mingle there and the area was being abused with bodily excretions. The stench was an abomination and it was getting to be a bad spot for one of the most historic buildings in the state. There was a big battle between the Vieux Carre Commission and the State Museum over the building of that fence, and it ended up in the Supreme Court. I authored the opinion on that. It was state Constitution issues. I was very proud of that case for the city, the people and the history of the building.

I authored the criminal case on the serial killer, Derrick Todd Lee, who killed so many wonderful, beautiful women. The U.S. Supreme Court denied writs on it. It took me a whole summer to read that voluminous record. I met Cheney Joseph, who I deeply admire, a criminal law professor at LSU. He remarked that, in teaching criminal law

to his students, my case on Derrick Todd Lee was excellent. The discussion that he said was the best he's ever read was the inevitable discovery doctrine of search and seizure. Search and seizure is one of the most highly litigated criminal law areas. That compliment by Professor Joseph has been one of my hallmark compliments.

Journal: Do you have any view on electing judges versus appointing judges?

Knoll: Yes, I have a very strong view. I'm not for appointment of judges at all. Both are very political. I'd rather see the politics in the hands of the people rather than in the hands of a few. You can get good judges from both systems. If you could ever get the politics out of appointment, then I could be for appointment. I know people who got federal appointments for no other reason than they worked for the Democratic Party or the Republican Party. That leaves the people out and puts it in the hands of a few. In 1982, when I was elected, I was the first woman ever elected to the Court of Appeal in Louisiana history or to any reviewing bench in the state. There were no women. There were no African-Americans. There were only white males. But times have changed and women are in the profession now. Who would have appointed a woman back in 1982? I ran against a very worthy opponent. If he wanted the job, I can assure you he had the political stroke to get an appointment. I didn't pay attention to politics. I was very worthy of an appointment. I took it to the people.

Journal: Thank you for this interview and congratulations on your retirement.

Winfield E. Little, Jr. is a sole practitioner in Lake Charles. He is a member of the Louisiana Bar Journal's Editorial Board and served on the Louisiana State Bar Association's Board of Governors and in the House of Delegates. He received a BS degree in physics in 1967 from Louisiana Tech and his JD degree in 1974 from Louisiana State University Law School. (wllittle@littlelawfirm.com; 616 Broad St., Lake Charles, LA 70602-3759)



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130+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 17th 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 130 attorneys and judges from across the state participated in the programs in August and October.

LSBA President Darrel J. Papillion led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included LSBA Past President Richard K. Leefe; Louisiana Supreme Court Justices Greg G. Guidry

and John L. Weimer III; LSBA Committee on the Profession Chair Barry H. Grodsky and committee member Marsha M. Wade; and American Bar Association representative Judy Perry Martinez.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Associate Dean Andrea Carroll; Loyola University College of Law Interim Dean Lawrence W. Moore, S.J.; Southern University Law Center Chancellor John K. Pierre and SBA President Jordan Franklin; 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

Bradley J. Aldrich
Adrianne L. Baumgartner
Judge Randall L. Bethancourt
Harley M. Brown
Andrew M. Casanave
Shannon S. Dartez

Donald G. D'Aunoy, Jr.
Bobby J. Delise
Bridget B. Denicola
Lisa A. Freeman
Judge Roxie F. Goynes
Judge Piper D. Griffin
Michael E. Holoway
Philip J. House
Katherine L. Hurst

James Eric Johnson
Susan R. Kalmbach
Nahum D. Laventhal
Caroline Russ Minor
Hillar C. Moore III
Judge Pamela Moses-Laramore
Adrian G. Nadeau
Frank X. Neuner, Jr.

Charles B. Plattsmier
Claire A. Popovich
Sandra B. Ribes
Sera H. Russell III
Rene I. Salomon
Richard A. Sherburne, Jr.
Chais L. Sweat
Jerome M. Volk, Jr.
Robert M. White



Louisiana State University Paul M. Hebert Law Center: Louisiana Supreme Court Justice John L. Weimer III addressed the students. Other panelists were Louisiana State Bar Association Committee on the Profession Chair Barry H. Grodsky and committee member Marsha M. Wade, and Associate Dean Andrea Carroll.



Loyola University College of Law: Louisiana Supreme Court Justice Greg G. Guidry addressed the first-year students.



Southern University Law Center: Panel members leading breakout sessions included, from left, Elisa Stephens Randall, Judge Jewel E. Welch, Jr., Jeray Jambon Jarreau, Carlton Jones III, Ericka L. Green, Judge Paula A. Brown, Raushanah S. Hunter and Judge Ernestine Anderson-Trahan. Photo provided by Southern University Law Center.



Southern University Law Center: Panel members leading breakout sessions included, from left, Wendell Jay Luneau, ReAzalia Z. Allen, Judge Trudy M. White, Judy Perry Martinez and Caroline Russ Minor. Photo provided by Southern University Law Center.

Loyola University College of Law

Georgia N. Ainsworth
Judge (Ret.) Jerome J.
Barbera III
Kay B. Baxter
Judge Raylyn R. Beevers
Keith J. Bergeron
Linda G. Bizzarro
Judge Paul A. Bonin
R. Christian Bonin
Judge Susan M. Chehardy
Sandra K. Cosby
Maria E. Dugas
Richard M. Exnicios
Darryl J. Foster
Vincent J. Glorioso, Jr.
Michael E. Holoway
Christy M. Howley
Julie M. Jochum
Teresa D. King
Mandie E. Landry
Catherine E. Lasky
Nahum D. Laventhal
Robert C. Lehman
Judge Lynn L. Lightfoot
John E. McAuliffe, Jr.
Carl D. Michel
Emily S. Morrison
Francis B. Mulhall
Suzette Tagesen Murphy
Bryan A. Pfleeger
Claire A. Popovich
Cassie E. Preston
Alexander R. Saunders
Anna F. Scardulla
Matthew S. Smith
Judge Raymond S. Steib, Jr.
Tina L. Suggs
Patricia A. Traina
Forrest Ren Wilkes
Sheila M. Wilkinson

Southern University Law Center

ReAzalia Z. Allen
Judge Ernestine Anderson-
Trahan
Virginia Gerace Benoist
Jean Marc Bonin
Harley Mark Bonin
Judge Paula A. Brown
James C. Carver
Steven J. Farber
Lisa A. Freeman
E. Phelps Gay
Eugene G. Gouaux III
Judge Roxie F. Goynes
Erika L. Green
Judge (Ret.) Carey R.
Holliday
Raushanah S. Hunter
Jeray Jambon Jarreau
Carlton Jones III
Judge Quintillis K. Lawrence
Wendell Jay Luneau
Martin K. Maley, Sr.
Judy Perry Martinez
Charlotte C. McDaniel
McGehee
Caroline Russ Minor
Kathleen E. Petersen
Johanna A. Posada
Elisa Stephens Randall
Michael H. Rubin
Judge Jason M. Verdigets
Judge Jewel E. Welch, Jr.
Judge Trudy M. White
Judge Kirk A. Williams
Sirena T. Wilson

Tulane University Law School

Adrienne L. Baumgartner
Franklin D. Beahm
Judge Roland L. Belsome, Jr.

Jack C. Benjamin, Jr.
Alan G. Brackett
Judge Jerry A. Brown
Christine C. Bruneau
Christopher E. Carey
Judge Tiffany Gautier
Chase
Leonard A. Davis
S. Guy deLaup
Bobby J. Delise
Judith A. Gainsburgh
Michael E. Holoway
Roger J. Larue, Jr.
Robert C. Lehman
Judy Perry Martinez

Lisa C. Matthews
Lauren T. Michel
John H. Musser IV
Jeff D. Peuler
Michael W. Rutledge
Matthew S. Smith
William J. Sommers, Jr.
Judge Raymond S. Steib, Jr.
Adam J. Swensek
Judge Max N. Tobias, Jr.
Jonathan M. Walsh
Sheila M. Wilkinson
Judge Fredericka H.
Wicker
Micah C. Zeno



Tulane University Law School: Louisiana State Bar Association Past President Richard K. Leefe addressed the students. Also offering comments were Dean David D. Meyer, ABA Representative Judy Perry Martinez, Louisiana Supreme Court Justice Greg G. Guidry, and LSBA Committee on the Profession Chair Barry H. Grodsky and member Marsha M. Wade.

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 3, honoring members of the Bench and Bar who died in the past year. The exercises followed the 64th annual Red Mass held earlier that morning at St. Louis Cathedral in New Orleans. The Red Mass was sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.

LSBA president Darrel J. Papillion of Baton Rouge opened the memorial

exercises, requesting that the court dedicate this day to the honor and memory of those members of the bench and bar who have passed away during the last 12 months.

LSBA president-elect Dona Kay Renegar of Lafayette read the names of all deceased members being recognized.

LSBA Board of Governors member Rachael D. Johnson, senior staff attorney with the Law Offices of Julie E. Vaicius in Metairie, gave the general eulogy. (The eulogy begins on page 293.)

Louisiana Supreme Court Justice Jeannette Theriot Knoll gave the closing

remarks.

The invocation was given by LSBA Treasurer H. Minor Pipes III, a member in the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. The benediction was given by Deacon Don M. Richard, a partner in the New Orleans firm of Kinney, Ellinghausen, Richard & DeShazo.

Following the exercises, the supreme court was adjourned in memory of the deceased members of the bench and bar.

The members recognized included:


In Memoriam Members of the Judiciary 2015-16

Hon. John R. Ballard Shreveport, LA October 10, 2015	Hon. Philip C. Ciccio New Orleans, LA November 12, 2015	Hon. Nestor Currault, Jr. Gretna, LA March 26, 2016	Hon. Richard J. Garvey River Ridge, LA October 10, 2015	Hon. James R. Mitchell Leesville, LA July 24, 2015
Hon. Robert Brinkman Opelousas, LA June 8, 2016	Hon. D. Irvin Couvillion Baton Rouge, LA October 17, 2015	Hon. Robert Martin Fleming Lafayette, LA October 16, 2015	Hon. Steven C. Graalman Alexandria, LA March 19, 2016	Hon. John P. Navarre Trophy Club, TX July 6, 2016
Hon. Harold J. Brouillette Marksville, LA February 23, 2016	Hon. William A. Culpepper Alexandria, LA October 4, 2015	Hon. Robert L. Freeman Plaquemine, LA May 16, 2016	Hon. Clarence E. McManus Metairie, LA September 22, 2016	Hon. William Norris III West Monroe, LA July 13, 2016

In Memoriam Members of the Bar 2015-16

William R. Alford, Jr. Covington, LA August 5, 2016	Henry J. Berthelot Metairie, LA May 16, 2016	Jane Baker Buie New Orleans, LA June 20, 2016	Karen Crosby Hammond, LA August 1, 2016	Robert B. Fisher, Jr. New Orleans, LA April 25, 2016	Thomas A. Harrell Baton Rouge, LA January 20, 2016
George D. Allspach New Orleans, LA April 24, 2016	George R. Blue, Jr. Covington, LA March 21, 2016	Laurie J. Burkett Monroe, LA October 15, 2015	Michael G. Crow Jefferson, LA September 17, 2015	Norman P. Foret Lafayette, LA November 28, 2015	William Earl Harrison Livingston, LA October 6, 2015
Henry B. Alsobrook, Jr. New Orleans, LA November 13, 2015	John A. Boatner, Jr. Bunkie, LA January 16, 2016	Lawrence K. Burleigh, Sr. Lafayette, LA July 14, 2016	Louis D. Curet Baton Rouge, LA June 9, 2016	C. B. Forgetston, Jr. Hammond, LA January 3, 2016	Maurice T. Hattier New Orleans, LA November 3, 2015
Walter Gerard Amstutz Harvey, LA November 7, 2015	Frank R. Bolton, Jr. Alexandria, LA February 14, 2016	Richard A. Campbell, Jr. St. Francisville, LA December 31, 2015	Ronald A. Curet Hammond, LA January 13, 2016	Abraham P. Friedman Houston, TX November 6, 2015	Amber D. Huffman Watt Shreveport, LA May 7, 2016
Dana Darice Anderson-Carson Slidell, LA October 26, 2015	Edward Sidney Bopp Mandeville, LA September 16, 2015	Roy F. Cangelosi, Jr. Baton Rouge, LA December 11, 2015	Carruther J. Davis, Jr. Terry, MS October 17, 2015	Salvador J. Giardina, Jr. Laplace, LA August 19, 2016	David A. Hughes Alexandria, LA May 22, 2016
Robert E. Arceneaux Metairie, LA April 2, 2016	Bruce Wareing Boudreaux Metairie, LA June 18, 2016	Kenny M. Charbonnet New Orleans, LA November 1, 2015	Jackson B. Davis Shreveport, LA August 22, 2016	Morgan J. Goudeau III Lafayette, LA September 23, 2016	Michael L. Hughes St. Francisville, LA April 9, 2016
John Villars Baus New Orleans, LA January 7, 2016	Gary T. Breedlove Carriere, MS September 6, 2015	O. Ray Cornelius New Orleans, LA December 6, 2015	Charles I. Denechaud III New Orleans, LA October 27, 2015	Aubrey J. Gregory, Jr. Natchitoches, LA June 3, 2016	Cheney C. Joseph, Jr. Baton Rouge, LA December 18, 2015
William Harold Beck, Jr. White Sulphur Springs, WV February 4, 2016	Ralph Brewer Baton Rouge, LA March 5, 2016	George R. Covert Baton Rouge, LA November 24, 2015	Albert I. Donovan, Jr. New Orleans, LA September 18, 2016	Michael P. Hantel Houston, TX December 17, 2015	Elizabeth B. Joyce Shreveport, LA January 20, 2016
John Moncrief Bee New Orleans, LA March 11, 2016	Jack O. Brittain, Sr. Natchitoches, LA January 11, 2016	John M. Crosby Metairie, LA July 3, 2016	Nancy K. Durant New Orleans, LA March 11, 2016	Harry T. Hardin III Marrero, LA February 19, 2016	James G. Kambur New Orleans, LA July 2, 2016

Continued next page

Elizabeth Spink Karmazin Charlotte, NC January 1, 2016	Bernard F. Levy Houma, LA October 4, 2015	Ronald L. Moore Houston, TX June 30, 2016	J. Michael Placer Lafayette, LA January 26, 2016	Jean E. Senac, Jr. Folsom, LA March 24, 2016	Edwin O. Ware III Alexandria, LA July 10, 2016
Duncan S. Kemp III Hammond, LA September 13, 2015	Ellis C. Magee Covington, LA June 26, 2016	Edgar G. Mouton, Jr. Lafayette, LA March 24, 2016	Albert J. Rebennack, Jr. Metairie, LA April 26, 2016	Henry C. Sevier, Jr. Covington, LA March 4, 2016	Richard P. Weimer Lafayette, LA July 30, 2016
Paul H. Kidd, Jr. Monroe, LA June 11, 2016	Richard J. McGinity, Jr. Metairie, LA February 6, 2016	Richard B. Nevils Baton Rouge, LA May 13, 2016	William Boyd Reeves Mobile, AL January 18, 2016	Ralph E. Smith Metairie, LA September 22, 2015	Hal Clayton Welch New Orleans, LA November 7, 2015
David L. Kimball Lake Charles, LA May 3, 2016	James C. McInnis Lake Charles, LA August 12, 2016	Caroline C. Norton Baton Rouge, LA April 25, 2016	Frank W. Roccaforte Covington, LA April 24, 2016	Robert W. Stockstill, Jr. Los Angeles, CA June 8, 2016	Richard B. Wilkins, Jr. Houston, TX February 14, 2016
Jerry Delbert Kirk Westlake, LA September 26, 2015	Jack H. McLemore, Jr. Vidalia, LA April 17, 2016	Robert E. Orth Houston, TX June 5, 2016	Robert L. Roland Baton Rouge, LA June 25, 2016	Clement Story III Lafayette, LA April 17, 2016	John B. Wilkinson New Orleans, LA October 2, 2015
John D. Kitchen New Orleans, LA February 15, 2016	Philip J. McMahon Houma, LA September 28, 2015	Joseph A. Oths Baton Rouge, LA January 4, 2016	Edward Dewey Rubin II Lafayette, LA February 27, 2016	Aline Nobile Thompson Mandeville, LA April 2, 2016	David B. Wilson New Orleans, LA September 27, 2015
Karl E. Krousel, Sr. Baton Rouge, LA January 29, 2016	C. Donald McNeill Shreveport, LA August 8, 2016	Mary-Elizabeth D. Paltron New Orleans, LA February 1, 2016	A. Lester Sarpy Metairie, LA June 22, 2016	John Edward Thompson Mineral Bluff, GA June 29, 2016	Martha Kristen Wray Grand Isle, LA January 13, 2016
Samuel Edgar Lee, Jr. Winnboro, LA March 20, 2016	Al Jules Mendoza Harvey, LA November 17, 2015	Marilyn Gimatis Pepper Larose, LA November 18, 2015	Thomas F. Schexnayder New Orleans, LA November 25, 2015	Kevin P. Torres Prairieville, LA March 7, 2016	Stephen A. Yazbeck Covington, LA March 5, 2016
Joe C. Lesage, Jr. Shreveport, LA September 22, 2015	Leo A. Miller, Jr. West Monroe, LA December 28, 2015	Joshua J. Pitre Opelousas, LA May 4, 2016	Guy B. Scoggin New Orleans, LA October 5, 2015	James E. Toups, Jr. Baton Rouge, LA August 10, 2016	
			Jeffrey S. Seligman New Orleans, LA April 2, 2016	Mac R. Trelles, Jr. Sunset, LA December 25, 2015	

General Eulogy: LSBA Memorial Exercises 2016

By Rachael D. Johnson

Madame Chief Justice, Associate Justices, Judges, the distinguished President of the Louisiana State Bar Association, members of the Bar and, most importantly, to the family and friends of our departed colleagues. We gather here to pay tribute to the lawyers and judges who have passed over this past year.

The classic Greek meaning of eulogy is “praise.” In many cultures and traditions, it is customary to *celebrate* a person’s life after he/she passes on — not to celebrate the passing but to celebrate and honor the life the person lived while here on earth. We all know it is hard to say goodbye to our loved ones. Whether the death came suddenly or after a prolonged illness doesn’t matter. The loss is no less painful and leaves a void in our

lives. To the families and friends of our departed, I pray that the loss becomes easier to bear over time.

We bring you condolences on behalf of the LSBA while also pausing to acknowledge and celebrate the lives of our colleagues and the contributions they have made to our profession. These contributions have been marked by service, professionalism and a quest for justice/change.

It is easy to consider our time here on earth as short-lived. There is never enough time with those we love. This sobering reality makes us all contemplate our mortality. But, instead of thinking of life in terms of time — years, days and hours — I challenge you to measure these lives in terms of the ways they were spent here on earth. The lives we celebrate today were spent pursuing

purpose and making an impact on their communities.

I believe, as lawyers, we are called to a life of service. Martin Luther King, Jr. said, “Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness. This is the judgment. Life’s most persistent and urgent question is, what are you doing for others?”

Even though these words were spoken in the 1960s, they still ring true today — maybe even more so. The legacy of the attorneys and judges we celebrate today is comprised mostly of service done for others. No matter what type of law they practiced every day and no matter how little or how much they were paid, there was an element of service in everything they did. Their lives were characterized by service to this state and

Continued next page

Eulogy continued from page 293

the profession. Whether it was taking a pro bono case that was not necessarily convenient or easy; or, a small-town lawyer who was willing to help his neighbors with anything from a simple will to a major contract dispute; or, a public interest lawyer whose life's goal was to right some wrong; or, the judge who made sure every litigant who entered the halls of the courthouse was afforded equal access and was heard. We celebrate each of their individual contributions to the pursuit of justice, equality and fundamental fairness. These lives and contributions mattered. There is a saying that the body is no greater than its members. Such is the case here. Our State Bar has been strengthened by these people we pause to remember and the service they rendered. Their service to the legal community, and the community as a whole, was invaluable. And for that we are thankful.

Muhammad Ali once said, "The service you do for others is the rent you pay for your room here on earth." Our colleagues paid their rent for the "rooms" they occupied here on earth. Now, we must carry on this legacy and continue to pay our rent by serving others.

We also celebrate these departed colleagues for their professionalism. I am sure many, if not all, of you can recall a time (or two) when one of our departed friends displayed a level of professionalism that may have seemed to go above and beyond what was necessary. We can recall times in court or litigating around the state when these individuals set a high standard for behaving as an adversary. They demonstrated how to advocate for their clients while remaining collegial. In the current day and age of a "win at any cost" mentality, these individuals often found ways to fight for clients while maintaining the utmost civility. They made most lawyer jokes inapplicable because of the way they interacted with other attorneys and with the general public. We celebrate them and the times when they led by example.

I am reminded of the oath every attorney takes on the occasion of being

sworn in as members of Louisiana Bar. As we began our service here in the state of Louisiana, this oath gave us a roadmap of what our work as attorneys should be. I would venture to say that the lawyers and judges we honor today may not have remembered much of the oath. The exact words were long forgotten after the newness of being sworn in had faded. But, I am certain that these lawyers and judges led their lives and navigated their careers with these words in mind.

I SOLEMNLY SWEAR OR AFFIRM:

I will support the Constitution of the United States and the Constitution of the State of Louisiana.

I will maintain the respect due to courts of justice and judicial officers.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all

written and oral communications.

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed or delay any person's cause for lucre or malice.

SO HELP ME GOD!

As we remember our departed colleagues, I challenge each of us to remind ourselves what our guiding principles as attorneys should be, and that we use the example of those who have gone before us and ensure that our individual practices never fall short of these standards.

And finally, I assure the family and friends of these departed attorneys and judges that their lives and work were spent advancing a noble cause. Be proud and celebrate your departed loved ones for their sacrifice and service to the community, and their service to a profession that changes lives and makes a difference on a daily basis. Thank you for sharing them with us. May God bless you.

Rachael D. Johnson, senior staff attorney with the Law Offices of Julie E. Vaicius in Metairie, is an at-large member on the Louisiana State Bar Association's Board of Governors. (rachael.johnson@thehartford.com; Ste. 1040, 3900 N. Causeway Blvd., Metairie, LA 70002)



Attorneys Apply for Certification as Legal Specialists

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Executive Director Barbara M. Shafranski, no later

than Dec. 31, 2016.

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

Business Bankruptcy

Edgar Stewart Spielman Baton Rouge

Consumer Bankruptcy

Booker T. Carmichael Baton Rouge

The practice of law revolves around creating cost-effective solutions to small and big problems. Being a lawyer may be rewarding, but it is undeniably demanding, with endless deadlines, meetings, hearings, negotiations and trials. These constant pressures, coupled with often toxic professional relationships and negative work environments, can be catastrophic for one's own practice, career and well-being, if mishandled.

The legal profession has seen a rise in mental health distress, alcoholism, drug use and depression.¹ A landmark study, conducted by the Hazelden Betty Ford Foundation and the American Bar Association's Commission on Lawyer Assistance Programs, has identified marked levels of alcohol abuse and other behavioral health issues affecting U.S. lawyers — most notably, 21 percent of licensed, employed attorneys are problematic drinkers; 28 percent struggle with depression; and 19 percent struggle with anxiety.

Escape and Feeling Good

It starts harmlessly enough. A long day at the office, a trying day in court, the difficult client who doesn't understand all the work you're doing on the case . . . time to blow off steam. You meet a friend for drinks before heading home. The after-work drinks become a habit. Over time, nightly drinks don't cut it. You need something more. In reality, substance abuse, addiction and depression have neurobiological processes that can be and are affected by environmental factors and stressors. When the attorney refuses to seek help, disciplinary action will follow.

Rules to Consider

Lawyers have an obligation to report misconduct under Rule 8.3(a). Specifically, a lawyer with knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises

a question as to the lawyer's honesty, trustworthiness or *fitness* as a lawyer in other respects shall inform the Office of Disciplinary Counsel (ODC). Under Rule 8.4, it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or *fitness* as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice.

Where an attorney has engaged in a violation of Rule 8.4 through the use of illegal drugs or getting a DUI, disciplinary action typically includes periods of suspension. *See, In re Clegg*, 41 So.3d 1141 (La. 7/6/10) (suspending attorney for one year and one day with all but six months deferred for drug use). The drug use, erratic behavior and disheveled appearance were reported to the firm's managing partners. Partners consulted the LSBA's Judges and Lawyers Assistance Program (JLAP) and performed an intervention. The attorney underwent treatment for illegal drug use and was permitted to return to work, subject to JLAP monitoring, including a waiver so JLAP could inform the firm of the attorney's progress and random drug testing. When the attorney's drug use continued, he was asked to resign. When he refused, employment was terminated and a formal complaint with the ODC was filed. *See also, In re Ward*, 195 So.3d 436 (La. 6/17/16) (reciprocally suspending attorney for two years for attorney's violations of Illinois R. 8.4(b) and R. 8.4(d)). The attorney fled the scene of an accident involving property damage. He was sentenced to probation and ordered not to consume alcohol, to submit to weekly random drug and alcohol testing, and to complete an alcohol/drug assessment, treatment program and risk assessment. The lawyer was suspended for two years, with the entire suspension

stayed, pending successful completion of a two-year probation period with conditions. However, the lawyer subsequently appeared in court impaired and smelling of alcohol on multiple occasions, resulting in several judges reporting the lawyer's conduct to the Disciplinary Commission. The lawyer violated several conditions of his probation. Thereafter, the attorney's two-year suspension was imposed.

Getting Help

Lawyers are trained to be objective, detached and reasonable with clients, the court, opposing counsel and society in general. However, lawyers are NOT always objective about their own conduct or distress. As professionals, lawyers have a duty to manage the stresses and demands of practice. Whether you or a colleague is struggling with stress or addiction, it is vitally important to understand that you are not alone. JLAP offers confidential support and assistance in the areas of alcoholism, drug abuse, compassion fatigue, aging, gambling, mental health issues, suicide prevention and wellness. Visit www.louisianajlap.com for specific programs available or to make a confidential referral for a colleague who needs help.

FOOTNOTE

1. Patrick R. Krill, JD, LL.M.; Ryan Johnson, MA; Linda Albert, MSSW, *Journal of Addiction Medicine*, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," February 2016, http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.

Nisha Sandhu is a contract attorney for Gilsbar, L.L.C., in Covington. She received a BA degree in history from the University of Chicago and her JD degree from Loyola University College of Law. Her practice includes appellate law and criminal defense. Email her at firm@nsacla.com.



LAWYERS Assistance

By J.E. (Buddy) Stockwell

JLAP HELP ON THE RISE

Over the past five years, the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) has been significantly improved on many fronts, including the development of a highly-skilled, in-house professional clinical staff and the expansion of JLAP's services to include assistance with all mental health issues, not just substance abuse.

For JLAP, the most central mission is encouraging people to reach out for JLAP's help confidentially *before* the problem impacts the person's ability to practice law. When a person gets help early, everyone wins — the person, their peers, the profession, the public and, of course, their family.

JLAP has now reached an inflection point wherein it currently provides more help to totally voluntary and confidential clients than any other category of referral. In JLAP's most recent fiscal year (July 1, 2015, through June 30, 2016), 55 percent of JLAP's new cases were totally voluntary and confidential. Those people obtained JLAP's help without anyone else ever knowing about it. That is how it works under the plain language of La. R.S. 37:221 — no one at JLAP can disclose any information whatsoever about a case unless the person waives confidentiality and instructs JLAP to share information with a third party.

There has been a longstanding misperception in some quarters that JLAP's help is not confidential and that JLAP is only involved with people who are in disciplinary trouble, perhaps because court orders are published and refer to JLAP participation, whereas nothing gets published about JLAP's large percentage of totally confidential cases.

Worse still, some misperceive that JLAP is an arm of discipline and punitive, and that a call to JLAP will result in JLAP referring the case to discipline. That is patently false. JLAP never contacts discipline unless the person waives confiden-

Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

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

tiality and instructs JLAP to do so.

It is JLAP's current challenge to overcome these misperceptions by providing assertive and ongoing education about JLAP and its reliable mandate of confidentiality. There is no downside to calling JLAP and the caller remains in total control. Very effective, professional clinical assistance is free and readily accessible. There is no obligation for callers to give their names, much less do anything else. JLAP is simply there to help if the person is willing.

The good news for those who choose to receive JLAP's help is that success rates are spectacular. JLAP is a true professionals' program that facilitates demanding assessment and treatment standards that are appropriate for licensed professionals who hold the public's trust. In short, it means that long-term recovery without relapse and remaining fit-to-practice is far and away the expected outcome in alcohol and drug abuse cases, rather than relapse and a return to substance abuse and impairment.

During its last fiscal year, JLAP provided formal recovery monitoring agreements to a total of 130 participants who qualified by completing JLAP-approved assessments and treatment as indicated. Only eight experienced relapse — five relapsed on alcohol, two relapsed on drugs, and one relapsed on alcohol and drugs. As such, JLAP's participants had a 94 percent relapse-free success rate for the year.

Of the eight people who experienced relapse, six of them very quickly accepted the help they needed from JLAP to get back into solid recovery in JLAP. They followed JLAP's recommendations

for JLAP-approved clinical assessment and relapse treatment as needed. Having reliably detected and clinically addressed any and all unresolved issues that sparked their relapse, they are now back under JLAP monitoring and are expected to do very well going forward. Unfortunately, two people declined further JLAP involvement after relapse.

Gauged by that outcome, JLAP's monitoring participants enjoyed a striking 98.5 percent overall success rate as to remaining in the JLAP monitoring program and effectively addressing their substance use disorders in a manner that is reliable and appropriate for those who hold the public's trust.

JLAP's work extends far beyond formal monitoring in substance abuse cases. Last year, JLAP serviced 780 formal files, comprised of 130 monitoring files, 170 new files, and 480 additional files either ongoing from the prior year(s) or reopened due to the client experiencing new or increased mental health challenges. A total of 23 percent of JLAP's cases involved mental health issues such as depression, compassion fatigue and burnout.

The best news of all is that the majority of those who reached out to JLAP last year *did so in total confidence* and more and more members of the profession are taking advantage of JLAP's life-saving services. If you or a peer needs help with any mental health or substance use issue, call JLAP at (985)778-0571; email JLAP@louisianajlap.com; or visit the website, www.louisianajlap.com.

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



Specialty Bars Subcommittee Hosts Aug. 20 Conference

The Louisiana State Bar Association (LSBA) Diversity Committee's Specialty Bars Subcommittee hosted its first Specialty Bars Conference, "Changing the Profession from Within," on Aug. 20 in New Orleans.

Topics and featured speakers included:

► "Louisiana Circuit Courts of Appeal Recent Developments" session with Chief Judge Susan M. Chehardy, Louisiana 5th Circuit Court of Appeal; Chief Judge James F. McKay III, Louisiana 4th Circuit Court of Appeal; Chief Judge Ulysses G. Thibodeaux, Louisiana 3rd Circuit Court of Appeal; and Chief Judge Vanessa Guidry-Whipple, Louisiana 1st Circuit Court of Appeal.

► "Defending Disciplinary Action" session with moderator William N. (Billy) King, LSBA Professional Programs practice assistance counsel; Richard P. Lemmler, Jr., LSBA ethics counsel; Eric P. McClendon, ODC screening counsel, Louisiana Attorney Disciplinary Board; and William M. Ross, respondent's coun-



"The Continuing Struggle of Desegregation" session, from left, moderator Kellen J. Mathews, Leo C. Hamilton and Chief Judge Brian A. Jackson.

sel, Stanley, Reuter, Ross, Thornton & Alford, L.L.C.

► "The Continuing Struggle of Desegregation" session with moderator Kellen J. Mathews, Adams and Reese, L.L.P.; Leo C. Hamilton, Breazeale, Sachse & Wilson, L.L.P.; and Chief Judge Brian A. Jackson, U.S. District Court, Middle District of Louisiana.

► "Overview of Federal Practice" session with Kenneth A. Polite, Jr., U.S. Attorney, Eastern District of Louisiana.

► "The Future of the Legal Profession: Making Strides with Technology" session with Matthew Stubenberg, IT director, Maryland Volunteer Lawyers Service; and Abid Hussain, Hussain Law, L.L.C.



"Overview of Federal Practice" session with Kenneth A. Polite, Jr., U.S. Attorney, Eastern District of Louisiana.



"Defending Disciplinary Action" session, from left, Eric P. McClendon, Richard P. Lemmler, Jr. and moderator William N. (Billy) King. Not in photo, William M. Ross.



Chief Judge Susan M. Chehardy



Chief Judge James F. McKay III



Chief Judge Ulysses G. Thibodeaux



Chief Judge Vanessa Guidry-Whipple

Save the Date! Conclave on Diversity in the Legal Profession

"Diversity is Good for Everyone"

March 24, 2017

New Orleans Marriott, 555 Canal St.

Speaker Highlights

► **Keynote speaker:** Samuel Reeves, SVP and senior counsel at Walmart Stores, Inc., nationally recognized advocate for diversity in the legal industry.

► **Diversity and Inclusion Workshop Presenter:** Shawn C. Marsh, Ph.D., director of judicial studies and associate professor of communication studies and social psychology, University of Nevada-Reno.

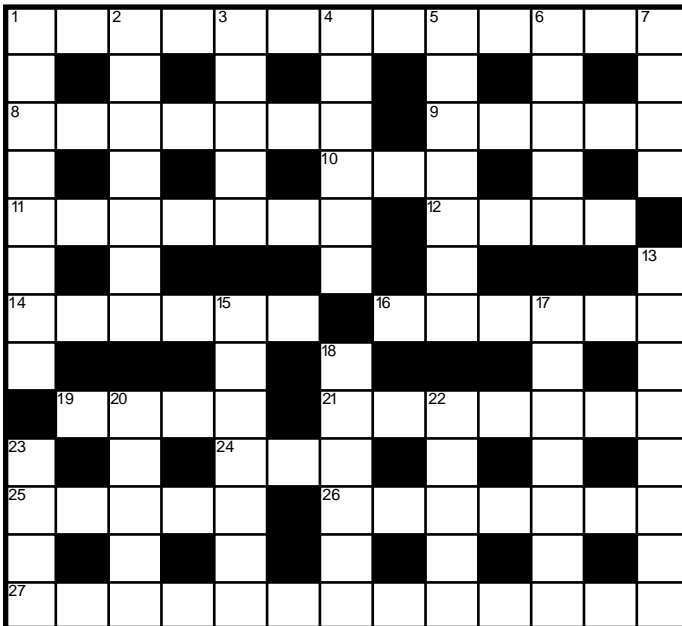


"The Future of the Legal Profession: Making Strides with Technology" session with Matthew Stubenberg, left, and Abid Hussain.

Crossword PUZZLE

By Hal Odom, Jr.

HAPPY HOLIDAYS



ACROSS

- 1 An evergreen with a holiday theme (9, 4)
- 8 Decorated (7)
- 9 Not inner (5)
- 10 What cattle do, that wakes up a baby (3)
- 11 Copy, or follow as an example (7)
- 12 Three wise men from the East (4)
- 14 Foamy yellow quaff (6)
- 16 Anxious, tense (2, 4)
- 19 "My Country 'Tis of ____" (4)
- 21 Goes over the limit (7)
- 24 "Rudolph, the ____-Nosed Reindeer" (3)
- 25 Kind of pie that's more tart than sweet (5)
- 26 Organized; running smoothly (2, 5)
- 27 Greek bishop noted for giving presents in December (5, 8)

DOWN

- 1 Single-reed woodwind (8)
- 2 It may need to be repaired after a sleigh and reindeer land on it (7)
- 3 Jolly old elf in a sleigh (5)
- 4 Pastiche of tunes (6)
- 5 White effigies built in colder climates (7)
- 6 Put a new price on (5)
- 7 Brontë governess (4)
- 13 Pumpkin pie, bûche de Noël, rugelach, etc. (8)
- 15 What is all too easy to do over holiday season (7)
- 17 Seasonal spinning top (7)
- 18 Famous Florentine family that yielded four popes (6)
- 20 Existential cat of Youtube fame (5)
- 22 Fabric (5)
- 23 Holiday celebration, for short (4)

Answers on page 333.

Alcohol and Drug Abuse Hotline

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

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

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

The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

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Glen Scott Love



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Thomas Juneau Sr.

South Louisiana



Patrick Briney



Jeffrey M. Cole



H. Ward Fontenot
Judge, Ret.

Baton Rouge



Daniel Balhoff



David Butler Jr.



Carey Guglielmo



Trippe Hawthorne



William Helm



Richard Hymel



Jim Lochridge Jr.



Steven Judice



Doug Moreau
Judge, Ret.



Darrel Papillion



Michael Ponder
Judge, Ret.



Keely Scott



Katherine Loos



Emmett Sole



Patrick Wartelle

New Orleans & Northshore



Robert Burns Sr.
Judge, Ret.



David Clement



James Cobb Jr.



René DeRojas



Michael Helm



Richard Kingrea



A. J. Krouse



Donald Armand Jr.



Brian Homza

North Louisiana



Peggy Landry



Andrew Lemmon



Lynn Luker



Daniel Lund III



Christopher Moody



Michael Pulaski



David Shea



Hodge O'Neal III



Chet Traylor
Justice, Ret.

FOCUS ON Professionalism

By Holly G. Hansen

A LAWYER'S RESPONSIBILITIES

The American Bar Association's (ABA) Standing Committee on Professionalism advocates six professionalism responsibilities for lawyers aimed at the improvement of our profession and ensuring ethical conduct.

Special Responsibility for the Quality of Justice

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having responsibility for the quality of justice. ABA Model Rules of Professional Conduct Preamble, Section (1). A lawyer's role includes providing quality legal representation on behalf of clients, doing pro bono work, and ensuring that the judiciary has the proper facts and law before it in order to render fair and correct legal decisions.

Integrity and Independent Judgment

Many of a lawyer's professional responsibilities are included in the Rules of Professional Conduct and substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. ABA Model Rules of Professional Conduct Preamble, Section (7). Where the Rules of Professional Conduct do not address a particular ethical dilemma, a lawyer's conscience and personal integrity should be instrumental in resolving the situation in an ethical manner. To maintain independent judgment, lawyers should ensure that there is no conflict of interest before legal representation is undertaken. When a conflict of interest is present, representation should be declined or terminated.

Civility

A lawyer can be a zealous advocate on behalf of a client and, at the same time,

maintain a professional, courteous and civil attitude toward all persons involved in the legal system. ABA Model Rules of Professional Conduct Preamble, Section (9). Civil behavior is one of the core elements of professionalism. A lawyer should always be polite and courteous during communications with other lawyers and in the courtroom. The challenges of dealing with difficult or impossible counsel can make the basic tenets of civility difficult to follow. The 24-hour rule is a good one to follow when an immediate response is not required. If you give yourself 24 hours to formulate a proper response to opposing counsel's upsetting tactics, you are more likely to respond in a professional and courteous manner and, in turn, de-escalate the situation. Your professional reputation is in large part based on how you treat other lawyers — do not let bullying tactics from the other side adversely impact your responsibility to maintain professionalism in your practice.

The Service Ethic

A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service. ABA Model Rules of Professional Conduct Preamble, Section (7). The Louisiana State Bar Association (LSBA) encourages all Louisiana attorneys to fulfill their professional obligations established by Rule 6.1 of the Louisiana Rules of Professional Conduct, which sets an aspirational goal of 50 hours of pro bono legal services per attorney per year.

Mentoring

The Transition Into Practice (TIP) Mentoring Program is implemented through the LSBA's Committee on the Profession. The program matches one mentor with one mentee, allowing more

experienced attorneys to share their knowledge with those starting their careers. Lawyers serving as mentors can receive six hours of CLE credit. Other mentoring opportunities include the LSBA's Law School Professionalism Orientations and the Louisiana Center for Law and Civic Education's Lawyers/Judges in the Classroom Program.

Commitment to the Future of the Profession

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. ABA Model Rules of Professional Conduct Preamble, Section (6). If we mentor our young lawyers, provide public service within our communities, strive to improve the legal profession and maintain civility and integrity in our daily practice, the future of the legal profession will be advanced. We all have a professional responsibility not only to serve our clients, but also to embrace the legal profession's commitment to professionalism and ethical behavior.

Holly G. Hansen practiced in state and federal courts in Louisiana for more than 15 years in the areas of tort and insurance litigation and general civil litigation. She is a member of the Louisiana State Bar Association's Committee on the Profession. Judge Hansen has recently been appointed as an administrative law judge with the Social Security Administration. This article was prepared by Judge Hansen in October 2016 while she was in private practice. The views expressed in the article are Judge Hansen's personal views and do not represent the views of the Social Security Administration or the United States. (hhansenlaw@gmail.com; 13734 Kimbleton Ave., Baton Rouge, LA 70817)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 11, 2016.

Decisions

Dana Annette Bolton, Prairieville, (2016-B-1488) **Consented to a one-year-and-one-day suspension, with all but six months deferred**, by order of the Louisiana Supreme Court on Sept. 23, 2016. JUDGMENT FINAL and EFFECTIVE on Sept. 23, 2016. *Gist:* Respondent neglected a legal matter, failed to communicate with a client, failed to timely refund court costs, and failed to

remit funds to third-party medical providers.

Vincent J. Desalvo, Baton Rouge, (15-DB-029) **Public reprimand** by order of the Louisiana Attorney Disciplinary Board on July 25, 2016. JUDGMENT FINAL and EFFECTIVE on Aug. 8, 2016. *Gist:* Negligent mismanagement of trust account.

Juan Carlos Labadie, Gretna, (2016-B-0884) **Interimly suspended from the practice of law** by order of the Louisi-

ana Supreme Court on Aug. 31, 2016. JUDGMENT FINAL and EFFECTIVE on Aug. 31, 2016.

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

Violation of Rule 1.3 — Failure to act with reasonable diligence and promptness when representing a client..... 1

Continued on page 302



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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 3, 2016.

Respondent	Disposition	Date Filed	Docket No.
Darryl J. Becnel	(Reciprocal) Disability inactive status.	8/9/16	16-6684
Daniel J. Becnel, Jr.	(Reciprocal) Disability inactive status.	9/7/16	16-12518
Ericka Schexnayder Brignac	(Reciprocal) Suspension.	8/9/16	16-9447
David Kent Buie	(Reciprocal) Suspension.	8/9/16	16-9445
John J. Finckbeiner, Jr.	(Reciprocal) Suspension.	8/9/16	16-7110
Carl N. Finley	(Reciprocal) Suspension.	8/9/16	16-9444
Jalila E. Jefferson-Bullock	(Reciprocal) Suspension.	8/9/16	16-3571
Harry J. Morel, Jr.	(Reciprocal) Permanently prohibited from practice.	8/9/16	16-6685
Jalonda Marie Morris	(Reciprocal) Suspension.	8/10/16	16-8549
Walter P. Reed	(Reciprocal) Interim suspension.	8/9/16	16-9446

Discipline continued from page 301

Violation of Rule 1.4 — Failure to communicate with client and failure to comply with a reasonable request for information 1

Violation of Rule 1.7 — Conflict of interest..... 1

Violation of Rule 1.15(a)—Commingling funds by failing to hold property of clients or third persons separate from the lawyer's own property 1

Violation of Rule 8.1(c) — Failure to cooperate with the Office of Disciplinary Counsel in its investigation of a disciplinary matter 1

Violation of Rule 8.4(a) — Violating or assisting another in violating the Rules of Professional Conduct..... 2

Violation of Rule 8.4(d) — Conduct prejudicial to the administration of justice 1

**TOTAL INDIVIDUALS
ADMONISHED..... 8**

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GAO Will Not Easily Limit Award of Protest Costs in a Clearly Meritorious Protest

In re: Fluor Energy, Technology Services, L.L.C.—Costs, B-411466.3 (June 7, 2016).

In April 2015, Fluor Energy Technology Services, L.L.C., protested to

the Government Accountability Office (GAO) the Department of Energy's (Agency) award of a contract for research and development services to Lockheed Martin Corp. In its protest, Fluor generally alleged three points of error: (1) the Agency double-counted various costs in its cost realism analysis of Fluor's proposal; (2) the Agency unreasonably evaluated Fluor's technical proposal; and (3) the Agency conducted an unreasonable best-value (trade off) decision.

After development of the administrative record, the parties conducted an "outcome prediction" alternative-dispute-resolution (ADR) conference with GAO. Outcome prediction is "where GAO will advise the parties of the likely

outcome of the protest in order to allow the party likely to be unsuccessful to take appropriate action to resolve the protest without a written decision." *Bid Protests at GAO: A Descriptive Guide*, www.gao.gov/decisions/bidpro/bid/timetable.html.

As a result of the ADR conference, GAO advised the Agency that it would likely sustain Fluor's protest of the basis of Fluor's first allegation of error, but was unlikely to object to the Agency's technical evaluation, which was the basis for the second allegation of error.

In response, the Agency informed GAO it intended to take "corrective action;" subsequently, the GAO dismissed the protest as "academic" or moot. Corrective action is an agency's voluntary



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decision to address an issue in response to a protest; it can occur at any time during a protest and may involve a re-evaluation of proposals, a new award decision, an amendment to a solicitation or other actions. *See, Have You Already Filed a Bid Protest?*, www.gao.gov/legal/have-you-already-filed-a-bid-protest/about.

As a result of the dismissal, Fluor filed a request for reimbursement of its costs of filing and pursuing the subject protest. The Agency then filed challenges to Fluor's request, alleging that Fluor's recovery should be limited to reasonable protest costs relating to Fluor's first allegation of error only. In support of its challenges, the Agency argued that it believed the other allegations of error were discrete and severable from the first, and that the Agency would have prevailed on those allegations; therefore, Fluor would not be entitled to recovery on those allegations. The Agency gave no further explanation or argument.

Severability of Challenges

Generally, when a procuring agency takes corrective action due to a protest, GAO may recommend the agency reimburse the protester its reasonable protest costs. This happens when GAO determines that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. *See*, 4 C.F.R. § 21.8(e); *Pemco Aeroplex, Inc.—Recon. and Costs*, B-275587.5, B-275587.6, Oct. 14, 1997 07-2 CPD ¶ 102 at 5. A protest is "clearly meritorious" when a reasonable agency inquiry into the protest allegations would show facts disclosing the absence of a defensible legal position. *See, The Real Estate Ctr.—Costs*, B-274081.7, March 30, 1998, 98-1 CPD ¶ 105 at 3. Generally, when GAO through outcome prediction indicates it would sustain a protest, it is an indication that the protest is clearly meritorious. *See, Nat'l Opinion Research Ctr.—Costs*, B-289044.3, March 6, 2002, 2002 CPD ¶ 55 at 3; *Inter-Con Sec. Sys., Inc.; CASS, a Joint Venture—Costs*, B-284534.7, B-284534.8, March

14, 2001, 2001 CPD ¶ 54 at 3.

In the case at hand, GAO found Fluor's first allegation of error to be clearly meritorious. The Agency concurred; however, it argued that because the other allegations of error were discrete and severable, Fluor should not recover on those allegations. GAO did not find this argument persuasive and opined that the GAO "generally considers all issues concerning the evaluation of proposals to be intertwined — and thus not severable" *See, Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, L.L.C.—Costs*, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197 at 5. As an exception, GAO noted that if the issues were "so clearly severable as to essentially constitute a separate protest," the GAO will limit the recommendation of protest costs. *See, e.g., BAE Tech. Servs., Inc.—Costs*, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 3; *Interface Flooring Sys., Inc.—Claim for Attorney's Fees*, B-225431.5, July 29, 1987, 87-2 CPD ¶ 106 at 2-3.

In the end, the GAO found that the

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Agency did not meet its evidentiary burden on its challenge. Specifically, the GAO found that “the agency has presented no argument or evidence to support its contention that Fluor’s other challenges should be severed from its clearly meritorious challenges to the agency’s cost realism analysis.” Consequently, the GAO refused to deviate from the general rule that all protest issues are intertwined and thus recommended Fluor’s protest costs be reimbursed.

—**Bruce L. Mayeaux**
Member, LSBA Administrative
Law Section
Major, Judge Advocate
U.S. Army



Mediation Helps Family of Murder Victim Heal

“Punishment is not for revenge, but to lessen crime and reform the criminal.” This quote, famously attributed to 19th century prison reformer Elizabeth Fry, communicates what many Americans would like the justice system to accomplish. Ideally, the system would teach criminals “the errors of their ways” and how to harmoniously participate in society. Unfortunately, many Americans agree that today’s criminal justice system falls short of this goal. The Orleans Parish District Attorney’s Office, however, may have found the secret to moving closer to this goal — mediation.

In March 2015, Cornell Augustine, 38, was tending bar at the Spice Bar and Grill. Around 1 a.m., he found himself in a fight with a customer, Ken Daley. That confrontation resulted in Augustine firing seven shots at Gregory Journee, consequently hitting him in the chest, back and arm. Journee died in the street that night. See, “Mediation effort produced guilty plea in 2015 7th Ward killing,” NOLA.com, www.nola.com/

crime/index.ssf/2016/09/mediation_effort_produces_guil.html.

The District Attorney’s Office had an open-and-shut manslaughter case on its hands as Augustine surrendered peacefully to police less than 30 minutes after the incident. However, Journee’s family wanted more than to simply throw Augustine behind bars. Like many families who have lost loved ones as a result of crime, they wanted Augustine to take responsibility for his actions and understand the pain he had caused their family. Moreover, Augustine was ready to accept the consequences of his actions. According to prosecutor Laura Rodrigue, this made Augustine’s case a perfect candidate for mediation.

In the past, the Orleans Parish District Attorney has found mediation to be successful in minor cases of theft or property damage, but never before had mediation been attempted in a homicide case. The District Attorney emphasized that for mediation to be successful, it needed cases with the precise combination of a sufficiently repentant defendant and a victim’s family willing to consider forgiveness over vengeance. Augustine’s remorse and the family’s readiness for closure made this case unique.

The mediation consisted of gathering the parties in a room and discussing grievances. Augustine was forced to listen attentively and respond to the condemnations of a family that had lost a loved one due to his negligence. Augustine then had the opportunity to explain his actions, to apologize for the event and, most importantly, to accept responsibility. Both the prosecutor and defense attorneys commented that they had never witnessed anything like this before. At the end of the mediation, Augustine agreed to enter a guilty plea to the manslaughter charge and to serve 30 years in prison, a step down from the potential life sentence that he could have received at trial.

In a society with vast mistrust of the criminal justice system, mediating cases as well suited as Augustine’s could provide people with closure they otherwise would not get. Had these parties gone to trial as opposed to mediation, they would have waited even longer for a

resolution, past the trial and any subsequent appeals. Furthermore, the victim’s family would have had to sit in a trial and listen to the defense counsel argue the many ways in which the defendant did not deserve to be found guilty or receive a life sentence. Most importantly, Augustine may never have had the chance to apologize to the family of the victim, an act that granted closure to both himself and the victim’s family. Additionally, with a determination of charges and sentencing happening at the mediation, all parties eliminated the uncertainty of trial and were able to discuss whether a certain charge or a certain sentence may have been more or less appropriate. Adding this element of control to the situation can cause the defendant to better understand his sentence and why it has been set, and provides the family of the victim the opportunity to take part in the decision making process, which in itself can aid in healing.

The National Institute of Justice and the American Bar Association have supported what they call Victim-Offender Mediation for some time now, suggesting that the process (1) supports the

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healing process of victims by providing a safe and controlled setting for them to meet and speak with the offender on a strictly voluntary basis, (2) allows the offenders to learn about the impact of the crime on the victim and to take direct responsibility for their behavior, and (3) provides an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime. *Victim-Offender Mediation*, National Institute of Justice, www.nij.gov/topics/courts/restorative-justice/promising-practices/pages/victim-offender-mediation.aspx.

These mediations are strongly encouraged particularly in the case of juvenile offenders. The National Institute of Justice also reports that a multi-state study of victim-offender-mediation programs involving juveniles found that victims who met with their offender in the presence of a trained mediator were more likely to be satisfied with the justice system than similar victims who went through the normal court process. The same study reported that victims

were significantly less fearful of being re-victimized, and fewer offenders who participated in mediation recidivated; furthermore, participating offenders' subsequent crimes, if they occurred, tended to be less serious.

While mediation is certainly not appropriate for every homicide case, the Orleans Parish District Attorney's Office should continue to look for cases such as these that provide more closure for the parties, allow defendants to take responsibility for their actions, and give parties an opportunity to move on after a final resolution of a matter.

—**Endya Hash**

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Standing to Appeal a Bankruptcy Court Order

Mandel v. Mastrogiovanni Schorsch & Mersky (In re Mandel), 641 F. App'x 400 (5 Cir. 2016).

The issue was whether the Chapter 7 debtor had standing to appeal a bankruptcy court order allowing claims against his estate by the appellees.

Prior to the bankruptcy filing, the debtor and a second principal shareholder of a company called White Nile Software, Inc. were involved in extensive litigation over the company. The state court appointed a receiver to represent the interests of the company in the litigation. The receiver hired a law firm

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to represent her, and the parties agreed to split the costs of the receiver and her law firm. In the meantime, the debtor filed for Chapter 11 bankruptcy protection, and the receiver and law firm filed claims against the debtor's estate for their compensation. The bankruptcy court entered a Claim Allowance Order (an order allowing the claim), and the debtor appealed to the district court.

In the meantime, the bankruptcy court appointed a Chapter 11 trustee who decided not to pursue the appeal initiated by the debtor. The debtor's case was then converted to a Chapter 7 bankruptcy.

During the case, the receiver and law firm filed a complaint objecting to the dischargeability of their claims and to the debtor's discharge. The bankruptcy court continued the trial on that complaint and, therefore, never ruled on the dischargeability of the claims that were the subject of the appeal brought by the debtor.

On appeal, the district court found that the debtor lacked standing to pursue the appeal and dismissed the case as moot; the debtor appealed to the 5th Circuit.

While the 5th Circuit recognized that a debtor-out-of-possession rarely has sufficient interest to appeal a bankruptcy court order because it is the trustee's obligation to represent the estate, it held otherwise here in light of the dischargeability complaint.

First, the 5th Circuit found a successful appeal of the Claim Allowance Order would have a dispositive impact on the determination of the discharge complaint because if the district court ruled in favor of the debtor on the appeal, there would be no claims to find nondischargeable. The 5th Circuit recognized that "[c]ourts have generally held that '[a] Chapter 7 debtor qualifies as a 'person aggrieved' . . . if he can demonstrate that defeat of the order on appeal . . . would affect his bankruptcy discharge.'"

Second, the 5th Circuit found that the "Claim Allowance Order function[ed] as an adjudication of Appellees' claims against [the debtor]." The court reasoned:

Absent the stay in the bankruptcy proceedings, the Appellees could march straight into court with the Claim Allowance Order in hand

and pursue their claim directly against him individually. Courts have held that challenges to non-dischargeable debt are not moot precisely because of the possibility of future proceedings directly against the debtor. (Footnote omitted.)

Therefore, the court found the debtor was a "person aggrieved," meeting the requirements to maintain standing for his appeal.

False Oaths on Assets and Interests

Comu v. King Louie Mining Enters., L.L.C. (In re Comu), No. 15-10804 (5 Cir. 6/9/16), 2016 WL 3209220.

In 2009, the debtor filed for Chapter 7 bankruptcy as the result of a default judgment against him in a civil action for fraud initiated by the appellees. The debtor attended a creditor's meeting where he testified that his debts were true and accurate. He subsequently had his debts, including the default judgment, discharged by the bankruptcy court. The appellees filed an adversary proceeding to revoke the discharge, and the bankruptcy trustee intervened, claiming the debtor intentionally failed to disclose significant assets. The bankruptcy court ruled in favor of the appellees and trustee, finding the debtor made

numerous false oaths with intent to defraud and withheld numerous assets and valuable interests. The bankruptcy court also found that there was "ample evidence" that the appellees were not aware of the false oaths and hidden assets until after the discharge.

The debtor appealed the revocation to the district court, which affirmed. On appeal to the 5th Circuit, the debtor did not challenge the finding that he failed to disclose assets; instead, he challenged the conclusion that the creditors did not know about the fraud prior to the discharge. The 5th Circuit found that the district court had plenty of evidence to support its findings, including the testimony of both the appellees and the trustee that they had not learned of the debtor's financial situation or the scope of his fraud until after discovery conducted in 2013. Without contradictory evidence and because the debtor had no other persuasive argument to overturn the revocation, the 5th Court determined that there was no error and affirmed.

—**Cherie Dessauer Nobles**
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Enforcing Creditor Rights After Dissolution by Affidavit

Krebs, Lasalle, Lemieux Consultants, Inc. v. G.E.C., Inc., 16-24 (La. App. 5 Cir. 7/27/16), 197 So.3d 829.

In 2011, Krebs, Lasalle, Lemieux Consultants, Inc. (KLL) executed an Asset Purchase Agreement whereby the corporation transferred certain assets and liabilities to the defendant, G.E.C., Inc. In connection with the purchase agreement, G.E.C. executed a promissory note in favor of KLL. In December 2012, prior to the payment of all sums owed by G.E.C. under the note, KLL was voluntarily dissolved by affidavit pursuant to former La. R.S. 12:142.1.

In November 2013, almost a full year after the dissolution of KLL, the corporation's former shareholders filed a petition to enforce the promissory note. The shareholders alleged that G.E.C. was in default and that, as the former shareholders of KLL, they were entitled to enforce the note as holders in due course. G.E.C.

responded to the suit with an exception of no right of action, which the trial court sustained subject to the plaintiffs' right to amend to add KLL as a party. Rather than amend, the shareholders filed a separate action on behalf of the defunct corporation, again seeking to enforce the promissory note against G.E.C. The cases were consolidated and ultimately came before the Louisiana 5th Circuit after the trial court concluded that KLL had no right of action and dismissed the corporation's claims with prejudice.

The Louisiana Business Corporations Act (LBCA) became effective on Jan. 1, 2015, more than two-years *after* KLL was dissolved by affidavit. On appeal, KLL argued that the trial court erred in concluding that the corporation lacked the right to enforce the note because the LBCA, specifically La. R.S. 12:1-1405, allows a dissolved corporation to continue its corporate existence to wind up and liquidate its affairs, which includes the "collecting [of] its assets." The 5th Circuit rejected KLL's contention that the new law afforded the dissolved corporation a right of action against G.E.C., finding that La. R.S. 12:1-1405 "changed the fundamental rights of the parties concerning the dissolution of corporations. Therefore, the . . . statute qualifies as a substantive enactment and is applied prospectively" only, not retroactively, to corporations that dissolved prior to its enactment. *Id.* at 832. Thus, the issue

of whether KLL had a right to enforce the note after dissolution would need to be resolved under the law in effect at the time KLL was dissolved. La. R.S. 12:142.1.

For guidance on KLL's right to maintain the suit after dissolution, the court turned to *Gendusa v. City of New Orleans*, 93-1527 (La. App. 4 Cir. 2/25/94), 635 So.2d 1158, *writ denied*, 94-1508 (La. 9/23/94), 642 So.2d 1296. In *Gendusa*, the Louisiana 4th Circuit addressed the right of a corporation's former shareholders to collect the debts owed to the corporation after it had been dissolved by affidavit. "Where a corporation has such outstanding claims or obligations, the appropriate method of dissolution is through a voluntary liquidation, with appointment of a liquidator and the orderly collection of claims, payment of debts and transfer of assets." *Id.* at 1162. Based on this reasoning, the *Gendusa* court held that, while public policy dictated the survival of claims against a corporation following its dissolution by affidavit, there was no reciprocal mandate that shareholders, in possession of relevant information concerning their corporation's inchoate claims, be protected against the loss of those claims upon the voluntary dissolution of the corporation by affidavit. Accordingly, shareholders seeking to collect a debt owed to a corporation dissolved by affidavit pursuant to La. R.S. 12:142.1 lacked the right to pursue the action.

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Following the analysis of the *Gendusa* court, the 5th Circuit found that at the time of its dissolution, KLL was aware of the corporation's inchoate claims against G.E.C., and despite this knowledge, chose to voluntarily dissolve itself by affidavit rather than utilize a liquidator, who would have been vested with the authority to preserve the corporation's inchoate claims against G.E.C. The court concluded that following KLL's dissolution by affidavit, the corporation forfeited the right to enforce its claims against G.E.C. Thus, it affirmed the trial court's ruling sustaining the exception of no right of action and dismissing KLL's claims with prejudice.

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Reversal of Fortune: U.S. 5th Circuit Overturns State's MRGO Victory

Just over a year ago, in a suit by the State of Louisiana against the U.S. Army Corps of Engineers, Eastern District of Louisiana Judge Lance Africk ruled that, after Hurricane Katrina, Congress clearly and unambiguously directed the Corps to close and restore the Mississippi River Gulf Outlet (MRGO) at full federal expense. *Louisiana v. U.S. Army Corps of Engineers*, 126 F.Supp.3d 697 (E.D. La. 2015). In August 2016, on appeal to the U.S. 5th Circuit, a three-judge panel partially reversed and vacated Judge Africk's decision. *Louisiana*

v. U.S. Army Corps of Engineers, 834 F.2d 574 (5 Cir. 2016). In a ruling authored by Judge Edith Jones, the 5th Circuit held that the State was timely in filing its lawsuit regarding the closure of MRGO, but that Congress was ambiguous in its post-Katrina enactments with regard to the MRGO closure. The 5th Circuit also held that the State's lawsuit regarding the ecosystem restoration of the MRGO was premature. Essentially, the 5th Circuit's decision and its dicta therein suggest that the approximately \$3 billion cost of restoring the damage to Louisiana's coastal ecosystem wrought by that failed navigation project must be borne by both Louisiana and the United States.

Part of the appeal related to the timelines of the State's original suit in 2014 and the other part to the State's substantive allegations that the Corps improperly followed Congress' directive for the closure of MRGO. The thrust of the timeliness portion of the case focused on what was the triggering event in the MRGO saga that began the tolling of the six-year statute of limitations for actions under the Administrative

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Procedure Act (APA). For this inquiry, the court looked to the time at which the State incurred legal consequences as a result of the Corps' action. The court found that the event did not occur when the Corps made any decisions regarding the closure and ecosystem restoration of MRGO. Instead, the court reasoned that an APA final agency action occurred only when the State signed an agreement with the Corps that obligated the State to participate in the closure of the MRGO. For this reason, the six-year statute of limitations had not run as to the closure of the MRGO when the State filed suit in 2014, as the document in question — a memorandum of understanding — was signed in 2008. This portion of the decision tracked the State's arguments precisely. The State had argued that none of its claims were prescribed because all of the events on which this suit was based flowed from the signing of that document in 2008.

At this point, the court deviated from the State's arguments and bifurcated the issues of timeliness for the closure of the MRGO channel — which was based on the signing of the 2008 document — and any activities related to the restoration of the MRGO ecosystem. With regard to the latter, the court found that the State's challenge was premature, as no correlative document had been signed related to ecosystem restoration. For this reason, the court vacated as premature Judge Africk's ruling that Congress was clear when it directed the Corps to restore the MRGO ecosystem at full federal expense. In effect, the court held that Louisiana had to obligate itself to incurring substantial financial responsibilities for the restoration of the MRGO ecosystem in order to challenge the correctness of that obligation.

The most puzzling component of the court's analysis followed the prematurity finding. Rather than merely dismissing the suit as premature, and after stating that it had no jurisdiction to reach the merits of the State's claims regarding the correctness of the Corps' or the State's interpretation of the applicable law relating to the funding of the MRGO ecosystem restoration, the court did just that — it opined on the merits of the case. While the merits portion of the case applies directly only to the closure of the MRGO, the 5th Circuit stated that Judge Africk's interpretation that Congress

had clearly and unambiguously directed that the restoration of the ecosystem damaged by the MRGO was to be undertaken at full federal expense was incorrect. The 5th Circuit, applying the analysis in *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 104 S.Ct. 2778 (1984), stated that Congress had been vague when it instructed the Corps to undertake the MRGO work and, because of this vagueness, the Corps was entitled to *Chevron* deference in its interpretation of the law. Thus, the court felt that the Corps' interpretation that the State of Louisiana should share in the costs of restoring the damaged MRGO ecosystem was correct. Nonetheless, as the merits decision simply affirmed the Corps' decision to fund the construction of the closure of the MRGO at full federal expense, with the State responsible for the costs of land-rights acquisition and future operation and maintenance, it is unclear whether the ecosystem restoration should be funded in similar fashion or whether the Corps has discretion under *Chevron* to provide for the construction of the ecosystem restoration work to be at a 65 percent/35 percent cost share.

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Custody

Duhe v. O'Donnell, 15-0683 (La. App. 5 Cir. 5/26/16), 193 So.3d 455.

An extrajudicial agreement signed by the parties providing that the child would attend private school for PK-4 only and would then attend public school after PK-4 was unenforceable because child custody arrangements are “not forever binding and may be modified and/or vacated by the court. Child custody and child support

decrees are never final and are always subject to modification.” Further, a later judgment superseded this agreement, since the agreement did not incorporate any prior agreement between the parties.

Bailey v. Bailey, 16-0212 (La. App. 1 Cir. 6/3/16), 196 So.3d 96, writ denied, 16-1426 (La. 8/2/16), 196 So.3d 605.

Because the trial court failed completely to address the relocation factors before granting the mother's request to relocate, the trial court's decision was legally erroneous, entitling the court of appeal to review the matter *de novo* (had the court considered the relocation factors, then the court of appeal would have reviewed for abuse of discretion). The court found that her proposed move to Mississippi, 5.5 hours away, would dramatically affect the father's ability to remain involved in the children's lives. Moreover, she failed to introduce any evidence supporting what advantages may have existed for her and the children by moving. It also remanded the matter for the court to name a domiciliary parent, despite its ordering that the parties have “equal authority in making all major decisions.” (As the court of appeal ordered joint legal custody with equal decision-making authority, its remand to name a domiciliary parent would make sense only if limited to the issue of physical custody, as equal legal custody was established.)

Albitar v. Albitar, 16-0167 (La. App. 5 Cir. 6/30/16), 197 So.3d 332.

Mr. Albitar enrolled counsel for the limited purpose of filing exceptions to Ms. Albitar's petition for divorce and incidental relief. After those exceptions of personal and subject matter jurisdiction and venue were denied — as the court found that Ms. Albitar had established residency in St. Charles Parish and that Mr. Albitar, a resident of Saudi Arabia, had sufficient significant connections with Louisiana for Louisiana to exercise personal jurisdiction over him — the trial court then proceeded to hear the merits. The court first clarified procedural errors regarding the appeals and appeal delays related to the fact that there were two judgments, one on the exceptions on which counsel had made a limited appearance, and another on the

merits, in which no counsel appeared. The court then affirmed that Ms. Albitar was domiciled in St. Charles Parish for purposes of the divorce suit; that the court had personal jurisdiction over Mr. Albitar for purposes of the incidental relief; and that St. Charles Parish was the parish of the child's home state for custody proceedings under the UCCJEA.

Child Support

Wiles v. Wiles, 15-1302 (La. App. 4 Cir. 5/18/16), 193 So.3d 397.

After Ms. Wiles filed a petition for divorce under article 102, the parties reached a consent judgment for Mr. Wiles to pay child support. Because no rule to show cause to obtain the divorce was filed within two years of service of the original petition, the request for divorce was abandoned. However, the consent judgment for child support continued and was not "abandoned" when the divorce action itself was abandoned. The court distinguished child support actions from alimony pendente lite/interim-spousal-support arrangements, which are dependent on the divorce proceeding, and which would terminate on abandonment of the divorce action.

Brossett v. Brossett, 49,883 (La. App. 2 Cir. 6/24/15), 195 So.3d 471.

The trial court did not err in imputing a \$20,000 monthly income to Mr. Brossett after reviewing his income tax records, bank statements, deposits, spending and lifestyle, all of which were very complicated and confusing and contradicted the parties' claimed lifestyle. The court found that it was almost impossible to determine what his actual income was but that sufficient reason existed to support the imputation of that sum.

Property

Carmichael v. Brooks, 16-0093 (La. App. 3 Cir. 6/22/16), 194 So.3d 832.

In this community property partition, Ms. Carmichael was awarded \$22,000 as a credit representing one-half of Social Security benefits to be received by Mr. Brooks, which would otherwise not be classified

as community property as a result of the federal preemption regarding Social Security benefits. The court found that La. R.S. 9:2801.1 was constitutional and not in contravention of federal law. Although there was expert testimony concerning the calculation, the court noted that the expert made numerous assumptions, but it accepted the expert's valuation nevertheless. Unfortunately, the court's explication of the methodology for determining the claim is not entirely clear.

Succession of O'Krepki v. O'Krepki, 16-0050 (La. App. 5 Cir. 5/26/16), 193 So.3d 574, writ denied, 16-1202 (La. 10/10/16), ____ So.3d ____, 2016 WL 6212958.

In a pre-nuptial contract establishing a separate property regime, it is not necessary to reserve fruits of one's separate property as separate property, as the separate property regime excludes all provisions of the community property regime. Thus, article 2339, which provides that fruits of separate property are community property, did not apply.

Acurio v. Acurio, 50,709 (La. App. 2 Cir. 6/22/16), 197 So.3d 253.

The trial court ruled that the parties' pre-nuptial marriage contract establishing a separation of property regime could not be introduced at the time of the property partition because it was not an authentic act and, although an act under private signature, was not duly acknowledged prior to the marriage. The court relied on *Ritz v. Ritz*, 95-0653 (La. App. 5 Cir. 12/13/95), 666 So.2d 1181, writ denied, 96-0131 (La. 3/8/96), 669 So.2d 395; and *Deshotels v. Deshotels*, 13-1406 (La. App. 3 Cir. 11/5/14), 150 So.3d 541, which held that the acknowledgment had to be accomplished prior to the marriage. The 2nd Circuit reversed, noting the above two cases, but distinguishing them by holding that there was no statutory time requirement for the acknowledgment to occur prior to the marriage and that "the purpose of the acknowledgment is simply for the parties to recognize the signatures as their own."

Haley v. Haley, 50,602 (La. App. 2 Cir. 5/31/16), 197 So.3d 202.

Immature "pre-merchantable" trees on

Ms. Haley's separate property were not fruits, since the property was not a tree farm. The trees thus were a capital asset of the land, not a crop being managed for continuous production and exploitation for regular profit.

Final Spousal Support

Gordon v. Gordon, 16-0008 (La. App. 4 Cir. 6/8/16), 195 So.3d 687.

Mr. Gordon's monthly payments to Ms. Gordon under an interim order requiring him to pay support pending the trial on her rule for final spousal support were not acknowledgments so as to interrupt the abandonment period regarding her rule. His payments were conditional payments based on the consent judgment and should not have lulled her into believing that he would not contest her rule for final support, since the interim judgment was not intended to be indefinite.

Procedure / Special Master

Casey v. Casey, 15-1269 (La. App. 4 Cir. 6/29/16), 196 So.3d 748.

The notice requirement under the Special Master statute does not allow for notice to be provided by attaching the Special Master's report to a rule for contempt. However, it is satisfied when the Special Master files the report and sends notice to the parties that he has done so. The court did not address the statute's requirement that the notice be "served upon all parties," essentially finding that the Special Master's mailing the report to the parties with the statement that it had been filed and that his letter constituted notice was sufficient.

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Attorney Fee Awards: Exceptions to the “American Rule”

Moench v. Marquette Transp. Co. Gulf-Inland, L.L.C., ____ Fd.3d ____ (5 Cir. 2016), 2016 WL 5485122.

Moench owned the SES EKWATA, a 116-foot-long, fiberglass-hulled vessel that was moored at a fleeting facility on the Atchafalaya River, which was swollen to historic levels, creating extreme cross-currents. The M/V SALVATION, a steel-hulled tug owned and operated by Marquette, was proceeding on the river with two barges in tow. Having reached a holding point, the SALVATION's captain left the controls to get a cup of coffee, while the deckhand on

watch was below deck. When the captain returned, the river's currents had taken control of the SALVATION. Failing to regain control, the captain decided to allide with the EKWATA to avoid damaging his tow, causing severe damage to the EKWATA.

Moench sued, invoking the admiralty and maritime jurisdiction of the district court and asserting general maritime law negligence and unseaworthiness claims against Marquette, which contested liability up to and through trial. Moench's expert testified that the EKWATA's pre-casualty value was \$850,000 to \$1.5 million. Marquette's three experts set the value at \$50,000 to \$120,000. All agreed that the vessel was a total loss, *i.e.*, not economically repairable. After a bench trial, the district court found Marquette at fault, awarding Moench \$322,890 in damages and \$295,436.09 in attorney fees. Marquette appealed, asserting, *inter alia*, error in imposing attorneys' fees as a sanction for its handling of the case.

The general rule in federal court, the so-called “American Rule,” is

that litigants are responsible for their own fees. Federal courts, however, possess “inherent power” to assess fees as sanctions when the losing party has “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” . . . Pursuing “an aggressive litigation posture” is not an abuse of the judicial process, “[b]ut advocacy simply for the sake of burdening an opponent with unnecessary expenditures of time and effort clearly [is].” (Citations and footnotes omitted.)

Marquette persistently contested liability, though it was obviously liable, based on the circumstances of the case and the actions of its captain. Two of its experts could not properly name the vessel at issue. One expert opined on value without including comparables, without considering the vessel's equipment, without an accurate description of the vessel, and without reliable underlying information, and a second expert “not only failed to correct the *glaringly* incorrect information in [that] report, but

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incorporated it into his own.” The district court’s decision was affirmed. See the full report for the 12 *Johnson* factors to be used in calculating attorney fees.

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Prescription Interrupted by Timely Filing Suit in Federal Court

Arnouville v. Crowe, 16-0046 (La. App. 1 Cir. 9/16/16).

Three plaintiffs filed suit on April 11, 2011, in the U.S. District Court for the Eastern District of Louisiana against a defendant driver and her insurer following an automobile collision in Tangipahoa Parish on April 13, 2010. The plaintiffs based their federal court lawsuit on diversity jurisdiction pursuant to 28 U.S.C. § 1332, alleging that they were domiciled in Louisiana while the defendant driver and her insurance company were domiciled in Arkansas and Missouri, respectively.

Defendants filed a motion to dismiss based on lack of subject matter jurisdiction, alleging that the parties were not diverse, as the defendant, Ms. Crowe, was a Louisiana resident at the time the federal court complaint was filed. The court denied defendants’ motion, indicating that the motion was premature but permitting defendants leave to file a motion for summary judgment following adequate time for discovery.

On June 20, 2012, defendants refiled their Motion to Dismiss for lack of subject matter jurisdiction. While the motion was pending, on June 28, 2012, the plaintiffs filed suit in the 21st Judicial District Court based on the April 13, 2010, motor vehicle collision. On July 11, 2012, the federal court entered an order dismissing plaintiffs’ claims. The order memorializes that plaintiffs and defendants consented to a voluntary dismissal of the federal court action, without prejudice to the state court proceedings.

In state court, defendants filed a peremptory exception of prescription, argu-

ing that plaintiffs’ claims had prescribed since the state court lawsuit was filed over two years after the date of the collision. After a hearing on defendants’ exception, the trial court denied the exception, holding that the filing of the lawsuit in federal court interrupted prescription, as the case had been pending a court of competent jurisdiction and had not been dismissed. Defendants later reurged their exception, which was again denied. Defendants sought supervisory review to the 1st Circuit, which denied writs until final judgment was rendered. *Arnouville v. Crowe*, 14-1678 (La. App. 1 Cir. 11/26/14).

The plaintiffs proved victorious following a trial on the merits on Dec. 4, 2014. During trial, defendants proffered evidence relating to Ms. Crowe’s domicile in 2011. After trial, defendants filed a motion for new trial, which was denied. On appeal, defendants alleged that the trial court erred in denying their Exception of Prescription and in denying their Motion for New Trial.

On *de novo* review, the 1st Circuit affirmed the trial court’s multiple rulings, holding that plaintiffs had interrupted prescription by timely filing suit in a court of competent jurisdiction and that the trial court did not abuse its discretion in denying defendants’ Motion for New Trial. The 1st Circuit noted that the federal court had maintained its subject matter jurisdiction over the lawsuit by denying defendants’ earlier Motion to Dismiss.

Notably, the matter was still pending in federal court at the time suit was filed in state court. Citing La. Civ.C. arts. 3462 and 3463, the 1st Circuit wrote, “Until there was a decision by the federal court that it lacked jurisdiction, the federal suit served to interrupt prescription, an interruption that continued as long as the federal suit was pending.” Thus, as the dismissal had not yet been ordered by the federal court at the time the lawsuit was filed in state court based on the same incident, the case remained pending in federal court, which was sufficient to interrupt prescription under Louisiana law.

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U.S. Court of Appeals for the Federal Circuit

Viet I-Mei Frozen Foods Co. v. United States, 2016 U.S. App. LEXIS 18312 (Fed. Cir. Oct. 11, 2016).

In a classic case of “be careful what you wish for” in the U.S. international-trade remedy-review process, the U.S. Court of Appeals for the Federal Circuit recently affirmed a Court of International Trade (CIT) decision sustaining the U.S. Department of Commerce’s (Commerce) rejection of Viet I-Mei’s request to withdraw itself from voluntary respondent review in the 4th Administrative Review of the Antidumping Order on shrimp.

The 4th Administrative Review of the Antidumping Order on shrimp began in 2009. Because of the large number of shrimp exporters, Commerce followed its normal practice of selecting the largest two companies for mandatory examination. Viet I-Mei was not selected but exercised its right to request that Commerce review it individually as a voluntary respondent. The rationale behind the request is that it would receive an individual dumping rate instead of the “all others” separate rate that non-mandatory respondents receive. Commerce declined Viet I-Mei’s request and eventually assigned it a 3.93 percent “all others” dumping margin for the 4th Administrative Review period. Vietnam is a non-market economy, and Commerce applied a 25.76 percent dumping margin to all companies that did not demonstrate freedom from government control.

Viet I-Mei filed suit in the CIT challenging Commerce’s refusal to examine it as a voluntary respondent. After several years of litigation, the CIT agreed with Viet I-Mei and ordered Commerce to re-conduct its 4th Administrative Review by examining Viet I-Mei as a voluntary respondent. Two months after Commerce

published Federal Register notice that it would re-conduct the review as required by the CIT, Viet I-Mei had a change of heart and sought to withdraw its request for individual examination, citing the costs and administrative burdens associated with an individual review.

Commerce did not respond to Viet I-Mei's request to withdraw. Indeed, Commerce warned the company that if it did not respond to supplemental questionnaires, it would be subject to an adverse-facts-available dumping finding. Viet I-Mei did not respond to the questionnaires and maintained its request to withdraw. Commerce conducted the review based on the information available and applied the 25.76 percent rate to Viet I-Mei as an adverse-facts-available finding.

Viet I-Mei appealed Commerce's re-conducted 4th Administrative Review results, arguing that Commerce abused its discretion in disallowing its request to withdraw from the voluntary review.

The CIT affirmed Commerce's new results, noting that Commerce is under no statutory or other regulatory obligation to terminate a voluntary-respondent examination once requested. The Federal Circuit affirmed the CIT ruling that, if anything, "Commerce's regulations point away from granting an individual respondent's request to cancel an individual examination it had requested." 2016 U.S. App. LEXIS 18312, * 22.

The end result of over six years of protracted litigation is that Viet I-Mei's antidumping rate for all shrimp exported to the United States during the 4th Administrative Review period jumps from 3.92 percent to 25.76 percent.

Permanent Court of Arbitration

Republic of Philippines v. People's Republic of China, PCA Case No. 2013-9 (July 12, 2016).

An arbitration panel convened at the Permanent Court of Arbitration (PCA) issued a final award concerning the rights of marine entitlements in the South China Sea. The Philippines initiated proceedings against China in 2013 at the PCA under the United Nations Convention on the Law of the Sea (UNCLOS). Both the Philippines and China properly ratified UNCLOS.

The dispute surrounds Chinese actions in the South China Sea, a 1.4-million-square-mile area that includes several hundred small reefs, islands and other mostly uninhabitable areas. China asserts jurisdiction and sovereignty over this entire area within its so-called "Nine-Dash Line." The Philippines claims that Chinese activity in the area interferes with its exclusive-economic-maritime zone under UNCLOS. China did not appear or participate in the arbitration. However, it did issue various diplomatic notes and a "position paper" wherein it asserted historical rights in

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the area and denounced the arbitration panel's jurisdiction over issues of territorial sovereignty.

The panel first used UNCLOS Article 288 to determine the propriety of its own jurisdiction. The panel affirmed its jurisdiction on the ground that the claims made by the Philippines involve the interpretation or application of UNCLOS. On the merits, the arbitral panel found that China's claim to historical rights in the area directly conflicts with UNCLOS' allocation of rights and maritime zones. To the extent China did have historical rights in the area, its rights were extinguished by UNCLOS as incompatible with the maritime zones set forth therein. Moreover, the panel determined that the waters of the South China Sea are part of the high seas available to navigation and fishing by vessels from any nation. Any historical navigation and fishing by China in the area represents the exercise of high seas freedoms, and not any particular historical right.

China refuses to accept the decision and continues to perform navigational and enforcement patrols in the area.

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Exclusion of Evidence; Environmental Damage

Mary v. QEP Energy Co., ___ F.Supp.3d ___ (W.D. La. Aug. 25, 2016), 2016 WL 4487804.

Plaintiffs claim that defendant QEP Energy Co. is a bad-faith trespasser of plaintiffs' property because QEP, among other things, improperly constructed a 16-inch pipeline (instead of a 12-inch pipeline) across plaintiffs' property out-

side the bounds of the servitude. Plaintiffs sued QEP based on La. Civ.C. art. 486 (disgorgement of profits). An element of disgorgement of profits is bad-faith possession ("[A] possessor in bad faith is bound to restore to the owner the fruits he has gathered, or their value."). Plaintiffs attempted to introduce evidence of environmental damage to show QEP's bad faith. QEP filed a motion *in limine* to exclude such evidence on the basis that it was irrelevant. The district court agreed and found that any evidence of environmental damage was not relevant to plaintiffs' disgorgement-of-profits claim. The court found that plaintiffs' claim boiled down to the fact that plaintiffs believed that QEP wrongfully possessed portions of the property at issue by constructing a short segment of pipeline outside of the designated boundaries of the servitudes granted to QEP. The court found that the "presence or absence of environmental damage around the well site or production facilities [had] no bearing upon the determination of whether QEP was in good faith or bad faith when it built the pipeline." Thus, the court granted QEP's motion to exclude.

New FAA Regulations: Rules for Drones 55 Pounds or Less

Drones are being used more and more by the oil and gas industry. On Aug. 29, 2016, the U.S. Federal Aviation Administration (FAA) issued new regulations relating to small unmanned aircraft ("sUAS," more commonly known as "drones"). The new regulations are codified at Title 14 of the Code of Federal Regulations as Part 107. Some of the new regulations include requirements that:

- ▶ all drone operations must be performed during daylight hours or civil twilight hours (30 minutes before sunrise or 30 minutes after sunset) with appropriate anti-collision lighting;

- ▶ while being operated, the drone must be within the visual line of sight of the remote pilot (*i.e.*, person operating the drone). This means that the unmanned aircraft must remain close enough to the remote pilot that the pilot can see and avoid

other aircraft without the aid of any device, except glasses or contacts;

- ▶ a drone may not operate (1) over any persons not directly participating in the operation, (2) under a covered structure, or (3) inside a covered stationary vehicle;

- ▶ a drone must yield the right-of-way to other aircraft. The maximum altitude for a drone is 400 feet above ground level or, if higher, within 400 feet of a structure. The maximum groundspeed is limited to 100 mph (87 knots);

- ▶ a drone cannot be operated from a moving car (unless in a sparsely populated area) or a moving aircraft;

- ▶ drones cannot be operated carelessly or recklessly;

- ▶ a drone cannot carry hazardous materials;

- ▶ a pre-flight inspection must be conducted by the remote pilot to ensure that the drone will not violate any state or federal laws;

- ▶ a person may not operate a drone if he or she knows or has reason to know of any physical or mental condition that would interfere with its safe operation; and

- ▶ external load operations are allowed only if the object being carried by the drone is securely attached and does not adversely affect the flight characteristics or controllability of the drone.

The new regulations establish certain operator-certification requirements. In order to operate a drone, a person must either hold a remote-pilot-airman certificate with a drone rating or be under the direct supervision of a person who holds a remote-pilot certificate. To qualify for a remote-pilot certificate, a person must demonstrate aeronautical knowledge by either: (a) passing an initial aeronautical knowledge test at an FAA-approved testing facility, or (b) hold a Part 61 pilot certificate, complete a flight review within the prior 24 months, and complete a small-drone online training course. The cost to receive the certification is about \$150. A candidate must be vetted by the Transportation Security Administration (TSA) in the interest of national security. All drone pilot candidates must be at least 16 years of age or older.

Once a remote-pilot certificate has been obtained, the pilot must make available to the FAA, upon request, the drone

itself for inspection and testing, and any associated documents/records required to be kept by law. A pilot must report to the FAA, within 10 days, any operation that results in serious bodily injury, loss of consciousness or property damage of at least \$500. A pilot must also ensure that the drone complies with the existing registration requirements specified in 14 CFR § 91.203(a)(2). An FAA airworthiness certificate is not required to operate a drone, but the remote pilot must conduct a preflight check of the drone to ensure that it is safe for operation.



Does Suspension of Prescription Apply Only to Those Who Participated in Panel Proceedings?

—**Keith B. Hall**

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Truxillo v. Thomas, 16-0168 (4 Cir. 8/31/16), ____ So.3d ____, 2016 WL 4557666.

Following the death of her mother, her daughter filed a medical review panel request. The panel rendered its opinion over two years later, following which the daughter filed a wrongful death lawsuit. Six days later, a supplemental and amending petition was filed, adding as a plaintiff the son of the decedent.

A defendant filed a peremptory exception of prescription based on the son's not having been included as a claimant in the panel proceedings. The trial court granted the exception and dismissed his claims, following which he appealed.

The issue presented by the son's appeal was *res nova*: Does the suspension of prescription under the MMA, specifically La. R.S. 40:1231.8 A(2)(a), apply only to those who participated in the panel proceedings?

The court noted that prescription is

suspended during the pendency of a medical review panel, for 90 days following notification to the plaintiff of the panel's opinion, plus the additional time unused between the date of the alleged malpractice and the filing of the panel request. In the instant case, the original petition was timely filed, as was the amending petition; thus the only question is whether the claim of the previously unidentified child was also suspended during the pendency of the panel proceedings.

Though the MMA states that a request for review "shall contain, at a minimum, . . . [t]he names of the claimants," there is nothing in the MMA that bars one who was not named as "a claimant" in the panel request from filing a lawsuit after the conclusion of the panel proceedings. Furthermore, La. R.S. 40:1231.1 A(4) shows that irrespective of how many people sustained damages as a result of the injuries or death to any one patient, "All . . . are considered a single claimant." This language "clearly contemplates" that a single panel request protects the rights of all potential claimants, and La. R.S. 40:1231.1 E(1) does not specify that only those who participated in panel proceedings may file suit.

The court's ultimate conclusion was that a medical review panel request "need not be invoked by each and every person who may ultimately have a claim in medical malpractice," and the suspension of prescription triggered by a request for review "accrues to the benefit of all persons who have claims arising out of the alleged medical malpractice, including

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those who did not participate in requesting the medical review panel.”

The appellate court found that the Louisiana Supreme Court’s opinion in *Warren v. La. Med. Mut. Ins. Co.*, 07-0492 (La. 12/2/08), 21 So.3d 186, *on reh’g*, (6/26/09), supported its opinion. In *Warren*, two survivors of an alleged malpractice victim proceeded through panel and thereafter timely filed a lawsuit. Two years thereafter (and more than three years after the alleged malpractice), an amended petition was filed seeking to add another wrongful death claimant. The trial, appellate and Supreme Courts all allowed the claim under the relation-back doctrine of La. Civ.C. art. 1153. However, the Louisiana Supreme Court on rehearing reversed itself, finding that the relation-back doctrine was inapplicable in medical malpractice cases because those claims “are governed exclusively by the specific provisions of the Act regarding prescription and suspension of prescription,” *Warren*, 07-0492, 475 So.2d at 208, thus concluding that the amending petition had prescribed. The significance of *Warren* to the instant case was “that the *Warren* Court did not find, as it readily could have, that the second daughter’s claim was prescribed because she had not been included in the medical review panel request. Had the Court so found, it would not have needed to consider whether the amended petition related back.”

In the case at bar, the court of appeal reversed the granting of the defendant’s peremptory exception of prescription and remanded the case to the trial court.

Plaintiff Alleges Intentional Tort to Avoid MMA

White v. Glen Retirement Sys., 50,508 (2 Cir. 4/27/16), 195 So.3d 485.

A resident of the Glen Retirement System (Glen) sustained injuries when she fell out of her bed. Her legal representative (White) sued for damages, alleging that Glen committed an intentional tort and breached fiduciary duties and contract obligations that were not

covered by the MMA. She also filed a medical review panel request for claims she contended did fall under the MMA’s umbrella.

Glen filed an exception of prematurity, asking that the lawsuit be dismissed because its allegations clearly established a medical malpractice claim. White countered that the claims included in the lawsuit, though basically the same as those included in the panel request, also alleged that the resident was a known fall risk, who also suffered from dementia and behavioral disturbances that required 24-hour care. Thus, White alleged, it was obvious to Glen that her risk level was such that she required every precautionary measure, including round-the-clock close monitoring. Glen’s failure to provide this care was “intentional and custodial in nature,” which removed it from the ambit of the MMA, *e.g.*, placing her bed in the highest position from the floor and intentionally returning her to the same bed after the fall without notifying either her physician, a registered nurse or her family, thus acting “with the conscious goal of avoiding detection” of its negligence.

Glen conceded that the bed was in the highest position at the time of the resident’s fall and that it should have been in a lower position with complete guard protection. However, the evidence showed that although the family was not notified, Glen staff did notify the resident’s physician, and the bed had been lowered to its lowest position before they left her room. The defendant’s evidence led the court to determine that the claim of intentional tort was unsupported by evidence. The court further found that “the primary claim concerning the failure to position the bed relates . . . to the negligent rendering of care, and the assessment of the patient’s condition and [was] not merely a custodial act claim.” Thus, the conduct fell within the ambit of the MMA, and the exception was granted.

—Robert J. David

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Court Denies Qualification to Sales Tax Exemptions/Exclusions Related to Medicare

Crowe v. Bio-Medical Application of La., L.L.C., 14-0917 (La. App. 1 Cir. 6/3/16), ___ So.3d ___, 2016 WL 3126425.

Bio-Medical Application of Louisiana, L.L.C., operates a dialysis facility in Washington Parish. Bio-Medical submitted a claim for refund of Washington Parish sales taxes for various purchases of prescription drugs administered to patients suffering from End Stage Renal Disease (ESRD). Bio-Medical alleged that such purchases were exempt or excluded from local taxation to the extent that it administered the drugs to Medicare patients treated at its facility. Specifically, Bio-Medical asserted that La. R.S. 47:315.3 provides for a refund of taxes on sales “paid by or under the provisions of Medicare,” that La. R.S. 47:301(10)(u) provides a broad exclusion from local taxes for sales of tangible personal property made “under the provisions of Medicare,” and that La. R.S. 47:337.9(F) provides an exemption from local sales tax for prescription drugs purchased “through or pursuant to a Medicare Part B and D plan.” On cross motions for summary judgment, the district court ruled that Bio-Medical’s purchases did not qualify under the aforementioned exemptions or exclusions. Bio-Medical appealed the district court’s ruling as it related to La. R.S. 47:301(10)(u) and 47:337.9(F).

Bio-Medical contended that La. R.S. 47:301(10)(u) is clear and unambiguous, arguing that any sale made under the provisions of Medicare that the taxpayer defines as “instructed or required by the Medicare statute or rules” is excluded from sales tax. Bio-Medical further contended that the legislative history prior to

the enactment of La. R.S. 47:301(10)(u) supports its position. Bio-Medical argued that Act 60 of the 2001 Regular Session, now codified in Section 301(10)(u), does not limit the provisions to transactions involving Medicare patients or require direct payment by Medicare as the Legislature removed the language “paid by” as contained in La. R.S. 47:315.3, effectively broadening the scope of the exclusion.

The court disagreed and held the language “sale . . . made under the provisions of Medicare” contained in La. R.S. 47:301(10)(u) was ambiguous. The court found the legislative history of the enactment of the provision showed the Legislature did not intend to broaden the applicability of the exclusion to include third-party transactions such as those at issue in this case. The court noted that Medicare is not a party to these transactions, which are structured such that these sales are not paid by Medicare; the particular drugs purchased, the price

negotiated, the vendor used and the payment of sales tax thereon are not controlled or governed “under the provisions of Medicare”; and only a portion of the drugs purchased in these sales are ultimately administered to Medicare patients and thereafter potentially reimbursed as part of the delivery of dialysis services to a Medicare patient. Even reading the statute liberally in favor of the taxpayer, the court concluded that reading this provision to apply to third-party sales of prescription medication would require a strained interpretation.

The court also held that La. R.S. 47:337.9(F) is clear that it grants an exemption from local sales tax only as to prescription drugs purchased through or pursuant to “a Medicare Part B or D plan.” The court found the clear language, which must be interpreted strictly against the taxpayer, supported the reading of the statute as not applying to bulk drug sales between a dialysis clinic and

pharmaceutical vendor (sales in which the provisions of Medicare play no part in determining which drugs are purchased, which vendor is used, what price is paid or whether sales tax is charged) to supply the entire population of the clinic’s ESRD dialysis patients, including Medicare and non-Medicare patients. Finding that the drugs at issue were purchased for administration to all patients and that the purchases were not made through any Medicare Part B or D plan and are not paid by Medicare, the court agreed with the district court that Bio-Medical was not entitled to the sales tax exemption pursuant to La. R.S. 47:337.9(F).

—**Antonio Charles Ferachi**

Member, LSBA Taxation Section

Director, Litigation Division

Louisiana Department of Revenue

617 N. Third St.

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CHAIR'S MESSAGE

"Access Granted: Not Just to Your Clients, to All"

By Scotty E. Chabert, Jr.

Admittedly, I stole this quote from a friend; however, Albert Einstein said, "In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same." In 2013, the American Bar Association in its National Lawyer Population by State Count said there was approximately one lawyer for every 265 people living in the United States, but there was only one legal aid attorney available for every 6,415 low-income



Scotty E.
Chabert, Jr.

people.

As a young lawyer, we all struggle budgeting our time between family, work, paying bills, good clients, bad clients and needy clients. Fortunately, many times the greatest payment comes from helping people who cannot help or afford to help themselves. One in five Louisianians live at or below the federal poverty level. These people need help, too, and many times your bar license (which, just as a reminder, is a "privilege") is the only thing they need to help them get out of a problem.

Since the occurrence of the two 2016 Louisiana floods, there are many ways that you can get involved and help others. Take a moment and look into getting involved. Use technology to increase the

effectiveness of your pro bono representation. Reach out and help those attorneys in other practice areas around you to know how to access basic self-help forms and how to teach clients to use those services. Encourage your fellow attorneys to visit the courthouses specifically to find out what self-help services are available to clients without lawyers. Contact and collaborate with your local bars.

Visit the LSBA's website and tour the Disaster Response Donations page if you are willing to donate, or are in need of donations. *Probono.net* provides more information about how to get involved, also offering a list of pro bono and legal service organizations searchable by parish. Take part in Lawyers in Libraries. And, finally, you can keep your pajamas on and register today to help with *LA.FreeLegalAnswers.org*.

As young lawyers, we are all trying in one way or another to "climb that ladder." I encourage you to just stand on your rung for a few extra hours, look down, and take a moment to help those below you who will never be able to even get on a ladder without your assistance.



YOUNG LAWYERS DIVISION NEWS

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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

Zita Jackson Andrus Lake Charles

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Lake Charles attorney Zita Jackson Andrus.

Andrus received her BA degree in sociology in 2004 from Xavier University of Louisiana and



**Zita Jackson
Andrus**

her JD/BCL degree in 2008 from Louisiana State University Paul M. Hebert Law Center, where she was the recipient of the CALI Award in Insurance, the Best Oral Advocate Award in the Robert Lee Tullis Moot Court Competition, and was a Southern Regional quarter finalist in the Thurgood Marshall Mock Trial Competition. She also was a member of the Wex Malone American Inn of Court, the LSU Moot Court Board and the LSU Trial Advocacy Team and served as treasurer of the Black Law Students Association.

She is currently employed with the law firm of Baggett, McCall, Burgess, Watson & Gaughan, L.L.C., in Lake Charles, where 100 percent of her practice is focused on civil litigation. She

is admitted to practice in Louisiana; the U.S. District Court for the Middle, Eastern and Western Districts of Louisiana; and the U.S. 5th Circuit Court of Appeals.

Andrus is actively involved in the community in southwest Louisiana. She is the immediate past president of the Southwest Louisiana Bar Association's Young Lawyers Section and is a member of the Louisiana Association for Justice. She was recently appointed by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson to the Louisiana Public Defender Board.

She and her husband Kerry Andrus, Jr. are the parents of a son.

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Nomination Deadline is Feb. 10, 2017: 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 **Christie C. Wood, Chair, LSBA Young Lawyers Division Awards Committee, c/o Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404**. Any nomination packet that is incomplete or is not received or postmarked on or before **Feb. 10, 2017**, 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 2017.

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 |
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2. Nominator Information:

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3. Nominee Information:

Name _____
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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 Christie C. Wood at (318)619-7755 or email cwood@fairclothlaw.com.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., announces that Brandon T. Darden has joined the firm as an associate in the New Orleans office.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., in Metairie announces that **Adam M. Stumpf** has joined the firm as an associate.

Todd Clemons & Associates in Lake Charles announces that attorney **La’Ketha Walker Holmes** has joined the firm.

Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport announces that W. Drew Burnham has joined the firm as an associate.

Deutsch Kerrigan, L.L.P., announces that Victor M. Jones has joined the New Orleans office as an associate.

Tom Foutz announces the formation of TomFoutzADR, located at Ste. 2900, Energy Centre, 1100 Poydras St., New Orleans, LA 70163; (504)237-3183; www.TomFoutzADR.com.

King, Krebs & Jurgens, P.L.L.C., announces that Robin D. Cassidy has joined the firm’s New Orleans office as an associate.

Liskow & Lewis, A.P.L.C., announces that Jack M. Weiss has become of counsel in the firm’s New Orleans office.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that **Meredith S. Grabill** has become of counsel in the firm’s New Orleans headquarters.

Oats & Marino, A Partnership of Professional Corporations, announces that **Todd M. Swartzendruber** and **Michael L. Barras** have joined the firm as partners, both in the Lafayette office.

Schrumpf Law Office announces that **Elizabeth K. Traub** has joined the firm as an associate in the Sulphur, La., area.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C., in New Orleans announces that **M. Rebecca Cooper** and **Kathryn W. Munson** have joined the firm as associates.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, is a contributing author for the 2017 second edition of the American Bar Association’s treatise, *A Practitioner’s Guide to Class Actions*.

Timothy M. Brinks, a litigation attorney in the New Orleans office of Adams and Reese, L.L.P., was selected for the 2017 Leadership Jefferson Class.

Nancy Scott Degan, managing shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz,



Richard J. Arsenault



Michael L. Barras



M. Rebecca Cooper



Larry Curtis



Leonard A. Davis



James M. Fantaci



Tom Foutz



Soren E. Gisleson



Meredith S. Grabill



Maury A. Herman



Russ M. Herman



Stephen J. Herman

P.C., was appointed chair of the Standing Committee on the Federal Judiciary of the American Bar Association.

J. Neale deGravelles, a partner in the Baton Rouge firm of deGravelles, Palmintier, Holthaus & Frugé, was elected chair-elect for the Admiralty Practice Section of the American Association for Justice.

Former Louisiana Attorney General Richard P. Ieyoub, now with Ieyoub Law Firm, L.L.C., in Port Allen, was inducted as a Living Legend by the Acadian Museum of Erath for his help in defining the Cajun culture of Louisiana.

Christopher K. Odinet, an assistant professor of law and the Horatio C. Thompson Endowed Professor at Southern University Law Center, was named an inaugural Real Property Scholar with the American College of Real Estate Lawyers.

Terry O. Trowbridge, with Trowbridge & Partner in Tegernsee, Germany, has written the book, *My Little Book of Big Sayings (A Powerful Guide of Living and Learning)*, available on iTunes (Books section at bottom of page) searching either by title or author, or in iBooks (Apple devices).

Lara E. White, a partner in the New Orleans office of Adams and Reese, L.L.P., was elected as an at-large council member

for the American Bar Association Section of Litigation for a three-year term.

PUBLICATIONS

Best Lawyers in America 2017

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.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P. (Metairie): **James M. Fantaci, Conrad Meyer IV, Julian R. Murray, Jr. and David R. Sherman.**

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, Robert Kennedy, Jr., Kenneth Mascagni and Herschel E. Richard, Jr.

Larry Curtis, A.P.L.C. (Lafayette): **Larry Curtis.**

Gregorio, Chafin & Johnson, L.L.C. (Shreveport): Sam N. Gregorio.

Herman, Herman & Katz, L.L.C. (New Orleans): **Leonard A. Davis, Soren E. Gisleson, Maury A. Herman, Russ M. Herman, Stephen J. Herman, Brian D. Katz, James C. Klick and Steven J. Lane.**

King, Krebs & Jurgens, P.L.L.C. (New Orleans): J. Grant Coleman, Eric E. Jarrell, George B. (Jack) Jurgens III, Henry A. King, Patricia A. Krebs, Robert J. Stefani, Jr. and David A. Strauss.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans): Christopher T. Caplinger, Rose M. LeBreton, Stewart F. Peck and Martin Sadler.

Montgomery Barnett, L.L.P. (New Orleans): A. Gordon Grant, Jr., Harvey C. Koch, Caroline D. Lafourcade, Daniel Lund, John Y. Pearce and Joseph P. Tynan.

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

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (New Orleans): Monique Gougisha Doucette, Greg Guidry, Steven Hymowitz, Mark N. Mallery, Christopher E. Moore and Christine M. White.

Wagar Richard Kutcher Tygier & Luminais, L.L.P. (Metairie): Robert A. Kutcher.

Louisiana Super Lawyers 2016

Gregorio, Chafin & Johnson, L.L.C. (Shreveport): Scott J. Chafin, Jr., Sam N. Gregorio and Julie Payne Johnson.

Louisiana Super Lawyers 2017

Wagar Richard Kutcher Tygier & Luminais, L.L.P. (Metairie): Robert A. Kutcher, Bradley J. Luminais, Jr., Thomas M. Richard and Nelson W. (Chip) Wagar III.

Continued next page



La'Ketha Walker Holmes



Brian D. Katz



James C. Klick



Steven J. Lane



Conrad Meyer IV



Kathryn W. Munson



Julian R. Murray, Jr.



Christopher K. Odinet



David R. Sherman



Adam M. Stumpf



Todd M. Swartzendruber



Elizabeth K. Traub

IN MEMORIAM

Lawrence Keith Burleigh, Sr.

of Lafayette died on July 14. He was 84. A native of Sunset, he graduated from the University of Southwestern Louisiana in 1954. He then enlisted in the U.S. Air Force, serving as a first lieutenant for three years in Europe. He received his JD degree in 1960 from Loyola University Law School, graduating second in his class. He moved to Morgan City in 1965 and practiced trial law with an emphasis on admiralty and maritime law. He obtained the largest verdict in a maritime case in Louisiana. He practiced in Morgan City for more than 25 years with his partner Joseph Strevia, then moving his office to Lafayette and practicing for 20 years with his son, Larry, Jr. He was a true "lawyer's lawyer" who was respected by judges and his colleagues for his legal skill and professionalism. He was recognized by *Best Lawyers in America* for more than 30 years and was inducted as a Fellow into the American College of Trial Lawyers. He was elected as president of the Louisiana Trial Lawyers Association in 1976 and served as president of the St. Mary Parish Bar Association in 1971. He taught trial tactics seminars for many years at Harvard University and Duke University. He is survived by five children, two brothers, eight grandchildren and other relatives.



Lawrence Keith Burleigh, Sr.

Morgan J. Goudeau III of Lafayette died on Sept. 23. He was 87. He received a BA degree in political science in 1948 from Louisiana State University at the age of 18. He received his JD degree in 1952 from Georgetown University Law School (*Georgetown Law Journal*). He was admitted to practice law in the District of Columbia and Louisiana, both in 1952. He opened his law office in his hometown of Opelousas in 1952 and became active in politics and the Louisiana Democratic Party, serving as vice chair. In 1955, he was appointed assistant district attorney for St. Landry Parish and later became district attorney in 1973, serving in that capacity until his retirement in 1997. He served as president of the Louisiana District Attorneys' Association and as the Louisiana Representative on the National District Attorneys' Association's board of directors. He was the first district attorney to be inducted into the Louisiana Justice Hall of Fame in 2005. He served as president of the St. Landry Bar Association and was a lecturer in criminal justice at LSU-Eunice. After his retirement, he and his wife moved to Lafayette and he became active in Crime Stoppers of Acadiana. He is survived by his wife of 51 years, Helen Roppolo Goudeau, six children, two sisters, 12 grandchildren and other relatives.



Morgan J. Goudeau III

Robert Ray Rainer of Baton Rouge died on Oct. 9. He was 77. Growing up in Sarepta, La., he attended Louisiana Tech University. He received a master of science degree in journalism from Louisiana State University before serving in the U.S. Air Force. He was a communications executive with U.S. Steel, professional experiences that brought opportunities to live in California, Alabama, Pennsylvania and Utah. He settled in Baton Rouge and pursued his law degree at LSU Law School. He cofounded the firm of Rainer & Anding. He was an accomplished and respected attorney, representing his clients in legal disputes involving tax matters at the state and local levels. Mr. Rainer served as president of the Baton Rouge Rotary Club, chair of the Baton Rouge General Foundation Board, president of Friends of the Baton Rouge Zoo and president of the Episcopal High School Squires. He served on numerous boards, including the Baton Rouge General Board of Trustees and the LSU Manship School of Mass Communication Alumni Association Executive Board. In 2008, he was named a "Volunteer Activist" by the Baton Rouge Speech and Hearing Foundation. He is survived by his wife of 55 years, Sue, two children, a brother, three grandchildren and other relatives.



Robert Ray Rainer

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
April/May 2017	Feb. 4, 2017
June/July 2017	April 4, 2017
Aug./Sept. 2017	June 4, 2017
Oct./Nov. 2017	Aug. 4, 2017

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.



Judge Bethancourt Receives 2016 Judges in the Classroom Award

Judge Randall L. Bethancourt with the 32nd Judicial District Court is the recipient of the 2016 Judge Benjamin Jones Judges in the Classroom Award. The award was presented at the annual Fall Judges Meeting.

The award honors a member of the judiciary who has contributed to the law-related education of Louisiana youth. It is named in honor of Judge Benjamin Jones who served as a 4th Judicial District Court judge for more than 22 years and who was the driving force in creating the Judges in the Classroom program many years ago.

Since January 2003, Judge Bethancourt has reached more than 17,000 students in classroom and courtroom presentations on civics and law-related education. In hundreds of one- to three-hour interactive presentations, he has shared practical, real world legal experiences with students K-12. When there was a local school bullying situation, he helped organize a team of speakers to talk to the classes involved in the problem and went into action to help the school raise awareness. Judge Bethancourt also has been a Project L.E.A.D. facilitator and presenter and has served as a mock trial judge at the local, state and national levels.

"I hope that by introducing students to the legal system in this fashion, giving them the opportunity to learn about the court, and ask questions and gain a better understanding of the process, we can have them return to the court as a lawyer or judge, instead of someone in trouble with the law," Judge Bethancourt said.



Judge Randall L. Bethancourt with the 32nd Judicial District Court, center, is the recipient of the 2016 Judge Benjamin Jones Judges in the Classroom Award. Presenting the award are Louisiana Center for Law and Civic Education President Lawrence J. Centola III, left, and 2015-16 Louisiana District Judges Association President Marilyn C. Castle.

Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — *are required to be filed* with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing

will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation process, the required filing fee(s) and the pertinent Rules are available online at: <http://www.lsba.org/members/LawyerAdvertising.aspx>.

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

UPDATE

LSBA Committees Hosting 3-Part Disability CLE Series

The Louisiana State Bar Association (LSBA) Diversity Committee's Pipeline to Diversity and Outreach Subcommittee and the LSBA's Legal Services for Persons with Disabilities Committee are hosting a three-part disability CLE series.

The first program in the series, "Special Education Law 101: Student Rights and School Responsibilities," was Sept. 24 at Southern University Law Center in Baton Rouge. The free session was also co-hosted by the LSBA's Children's Law Committee and Southern University Law Center.

Speakers included Jennifer M. Coco, Southern Poverty Law Center; Robert Garda, Loyola University College of Law; Joan E. Hunt, Louisiana Department of Education; Laureen Mayfield, Louisiana Association of Special Education Administrators; Wayne T. Stewart



Speakers for the Disability Series CLE program, "Special Education Law 101: Student Rights and School Responsibilities," included, from left, Laureen Mayfield, Joan E. Hunt, Robert Garda, Debra J. Weinberg, Jennifer M. Coco and Wayne T. Stewart.

with the law firm of Hammonds, Sills, Adkins & Guice, L.L.P.; and Debra J. Weinberg, the Advocacy Center.

The second part of the series will be

"Social Security Appeals" on Jan. 19, 2017, in conjunction with the LSBA's Midyear Meeting in Baton Rouge. The third part is planned for spring 2017.

LOCAL/SPECIALTY BARS

Vance Receives NOBA Presidents' Award

R. Patrick Vance, a partner in the New Orleans office of Jones Walker LLP, is the recipient of the 2016 Presidents' Award presented by the New Orleans Bar Association (NOBA). The award recognizes professional excellence, integrity and dedication to service in the highest ideals of citizenship. NOBA President Judy Y. Barrasso presented the award at the Sept. 14 ceremony.

Vance is a former president of NOBA and Southeast Louisiana Legal Services Corp. He is an officer and conferee of the National Bankruptcy Conference and a founding member of the LSU Law Center's National Alumni Board and the Advisory Board of the LSU Honors College.



R. Patrick Vance, right, is the recipient of the 2016 Presidents' Award presented by the New Orleans Bar Association (NOBA). NOBA President Judy Y. Barrasso presented the award.

SEND YOUR NEWS!

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

Email your news items and photos to:

LSBA Publications Coordinator
Darlene LaBranche at
dlabranche@lsba.org.

Or mail press releases to:

Darlene LaBranche, 601 St.
Charles Ave., New Orleans, LA
70130-3404

Alexandria Bar Coordinates Rapides Parish Opening of Court Ceremony

The Alexandria Bar Association coordinated events surrounding the Opening of Court in Rapides Parish on Sept. 7. Judges, attorneys and other legal professionals attended the ceremony which included the presentation of the Causidicus Award, and acknowledgment of new attorneys, attorneys whose careers have spanned more than 50 years, and attorneys who have died in the past year.

Alexandria attorney Dorrell J. Brister, with the firm of Gold, Weems, Bruser, Sues & Rundell, received the 2016 Causidicus Award, which recognizes an outstanding member of the Bar who has contributed to the profession and community. She is also a former Alexandria Bar president.

Judge Patricia E. Koch, chief judge of the 9th Judicial District Court, welcomed the audience. U.S. District Judge Dee D. Drell, Western District of Louisiana, was the keynote speaker.

Alexandria attorney Shane D. Williams introduced 11 new attorneys.

Alexandria Bar Vice President Eu-



At the Alexandria Bar Association's Opening of Court ceremony on Sept. 7, newly admitted attorneys were recognized. From left, Jared G. Price, Megan M. Clark, Lori R. Dowell, Tegan F. Rymer, Connor Junkin, Anne Kathryn Hunter, Erica Marchand, Elizabeth B. Carr and McKinley James.

gene P. Cicardo Jr. recognized 17 attorneys admitted to the Bar for 50 or more years. Three of those attorneys — Judge F.A. Little, retired Rapides Parish District Attorney James Downs and attorney Christopher J. Roy, Sr. — attended.

At the end of the program, four members who died during the past year — William A. Culpepper, Richard E. Lee, David A. Hughes and Edwin O. Ware III — were eulogized.



The Alexandria Bar Association officers are, from left, Eugene P. Cicardo, Jr., vice president; Hon. Joseph Henry Luis Perez-Montes, treasurer; and Aaron L. Green, president.

Sponsors Sought for LBF's 31st Annual Fellows Gala

The Louisiana Bar Foundation (LBF) will celebrate its 31st Annual Fellows Gala on Friday, April 21, 2017. The gala and live auction will be held at the Hyatt Regency New Orleans, 601 Loyola Ave. This year, the LBF will honor the 2016 Distinguished Jurist Jeannette Theriot Knoll, Distinguished Attorney Donna D. Fraiche, Distinguished Attorney Thomas M. Hayes III, Distinguished Professor Howard W. L'Enfant, Jr. and Calogero Justice Award recipient Joseph R. Oelkers III.

Sponsorships are available at several levels, including Pinnacle, Benefactor, Cornerstone, Capital, Pillar and Foundation. Individual gala tickets are \$200. Young lawyer individual gala tickets are \$150.

To review sponsorship levels, become a sponsor or to purchase individual tickets, go to: www.raisingthebar.org.

Discounted rooms are available for Thursday, April 20, and Friday,

April 21, 2017, at \$239 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.

Reservations must be made before Thursday, March 30, 2017.

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



The 2016-17 Leadership LSBA Class participated in an orientation in conjunction with the LSBA Board of Governors meeting in August. The class is comprised of 16 up-and-coming young lawyers and is led by two co-chairs. Class members attending included, from left, Jared G. Price, Joshua K. Williams, Kristen N. Stringer, Rebecca S. Helveston, Brandee Ketchum, Charles M. Thomas, Stacey A. Smith, Michael B. Victorian, Cassandra R. Hewlings, Brittany O. Rosenbloom, Rebecca Sha and Micah C. Zeno.

Federal Bar Association North Louisiana Chapter Raises Funds for Holiday Project

The North Louisiana Chapter of the Federal Bar Association, along with U.S. Magistrate Judge Mark L. Hornsby and Fundraising Chair Scott J. Chafin, Jr., organized the fourth annual Federal Bar Clay Shoot to benefit Operation Bright Holiday at Barksdale Air Force Base. Operation Bright Holiday sends first-term airmen stationed at Barksdale home for the holidays. The September event raised \$10,000.

Barksdale's new 2nd Bomb Wing Commander Col. Ty Neuman participated in the shoot, along with 30 volunteer airmen and 17 teams.

Airmen who are selected must demonstrate exceptional job performance and be nominated by their supervisor. In 2015, Operation Bright Holiday sent more than 100 airmen home to be with their families for the holidays.



The North Louisiana Chapter of the Federal Bar Association (FBA) organized the fourth annual Federal Bar Clay Shoot to benefit Operation Bright Holiday at Barksdale Air Force Base. Participating were, from left, Dan Ruder; Airman Kelsey Backmeire; Col. West Anderson, retired; Ron Hollingsworth; Col. Rob Gass, retired; Col. Ty Neuman, Barksdale 2nd Bomb Wing commander; FBA Fundraising Chair and attorney Scott J. Chafin, Jr.; Wes Chafin; FBA treasurer and attorney Jason B. Nichols; Captain Joseph Arora; and U.S. Magistrate Judge Mark L. Hornsby.

LBF Seeking Nominations for 2017 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2017 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Monday, Feb. 6, 2017.

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, LBF Communications Director, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or email 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 will

direct a \$1,000 donation in his/her name to a non-profit, law-related program or association providing services in Louisiana.

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. Generous donations from Sessions, Fishman, Nathan & Israel, L.L.P., the Boisfontaine Family and friends established the fund. The award is given to a Louisiana attorney who exhibits longstanding devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel.



H. Alston Johnson III, left, provided his annual legislative update seminar at the Baton Rouge Bar Association's (BRBA) 30th Anniversary Law Expo on Sept. 8. At the head table are BRBA President Jeanne C. Comeaux and William B. Kirtland, chair of the BRBA 2016 Law Expo Committee.

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President's Message

The Giving Season

By President E. Jane Sherman

'Tis the season for spending time with family and friends, eating delicious food and, hopefully, reflecting on the spirit of the season. Thanks 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 legal service organizations we help to fund. Support the work of the LBF

and make your investment in access to justice. By 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; help individuals and families after a disaster; assist families in retaining their homes; aid the elderly through financial crises; give children a voice in court; provide



E. Jane Sherman

education to youth about the legal process; and bring communities together to identify legal needs in their areas.

With the hustle and bustle of the season upon us, let's not forget the spirit of the season. Please take the time during this busy holiday season to reflect on the blessings in your life and consider a gift to the LBF. Make your gift online at www.raisingthebar.org/gift or mail directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. If you have any questions, contact Development Director Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

A wonderful holiday season to all!

LWCC Raises Funds for Kids' Chance

The Louisiana Bar Foundation (LBF) was presented with a check for \$35,000 from the Louisiana Workers' Compensation Corp. (LWCC). LWCC hosted the 13th annual Kids' Chance Golf Tournament on Sept. 19 in Baton Rouge. All proceeds from the tournament were donated to the LBF Kids' Chance Scholarship Program.

The Kids' Chance Program provides scholarships to dependents of workers who are permanently and totally disabled or killed in a work-related accident compensable under a state or federal Workers' Compensation Act or Law.

This year, the LBF awarded \$54,500 to 20 students to help with their education. Since 2004, the program has awarded 255 scholarships totaling \$533,100.

For more information or questions about the LBF Kids' Chance Scholarship Program, contact Dennette Young at (504)561-1046 or email dennette@raisingthebar.org, or visit the website: <http://raisingthebar.org/ProgramsAndProjects/KidsChanceProgram.asp>.



The Louisiana Bar Foundation's (LBF) Kids' Chance Scholarship Program received \$35,000 from the Louisiana Workers' Compensation Corp. (LWCC), proceeds from its 13th annual Golf Tournament. From left, LBF Kids' Chance Committee Co-Chair Michelle M. Sorrells; LBF President E. Jane Sherman; and LWCC Vice President Paul D. Buffone. Photo courtesy of LWCC.

<http://raisingthebar.org/ProgramsAndProjects/KidsChanceProgram.asp>.

Applications for the 2017-18 school year will be available on the LBF's website on Dec. 1. Application deadline is Feb. 20, 2017.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

Hon. Candice Bates Anderson	.....	New Orleans
Kelly E. Balfour	.....	Baton Rouge
Sean P. Brady	.....	Covington
Michelle D. Brooks	.....	Thibodaux
Douglas D. Brown	.....	Hammond
Matthew M. Coman	.....	New Orleans
Mary H. Drabnis	.....	New Orleans
Hon. Richard T. Haik, Sr.	.....	Opelousas
S. Mark Harris	.....	New Orleans
Jasmine J. Henderson	.....	Shreveport
Waldon M. Hingle	.....	Slidell
Christy M. Howley	.....	Gretna
Hon. William J. Knight	.....	Covington
Eric R. Miller	.....	Baton Rouge
Hon. Frances Jones Pitman	.....	Shreveport
Dominick Scandurro, Jr.	New Orleans
Jessica W. Williams	Monroe

CLASSIFIED

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

RATES

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Contact Krystal L. Bellanger at (504)619-0131 or (800)421-LSBA, ext. 131.

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\$85 per insertion of 50 words or less
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BOXED ADS

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

DEADLINE

For the April issue of the Journal, all classified notices must be received with payment by Feb. 17, 2017. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL
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RESPONSES

To respond to a box number, please address your envelope to:

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New Orleans, LA 70130

POSITIONS OFFERED

Curry & Friend, P.L.C., an established boutique defense firm, is currently seeking environmental attorneys. Curry & Friend, P.L.C., takes pride in the high engagement level of its members and is committed to fostering an inclusive atmosphere. 1) Environmental litigation attorney associate — Seeking an associate litigation attorney with excellent academic credentials (top 15 percent) to join the environmental legal team; candidate must be detail oriented with excellent organization skills; one-three years' civil litigation experience preferred with emphasis on complex litigation; environmental law, oil & gas law and/or toxic tort experience a plus. 2) Environmental litigation attorney — Eight-plus years' civil defense litigation experience preferred with emphasis on complex litigation; A/V rating preferred; environmental experience preferred. To learn more about the firm and available positions, visit: www.curryandfriend.com/careers.

Louisiana State University Paul M. Hebert Law Center seeks to hire a Director of Academic Success to assist in developing and implementing a comprehensive Academic Success Program focused on success in first-year courses and the development of strong legal writing

skills. Applicants should have earned a JD from an ABA-accredited law school, be admitted to practice law in at least one jurisdiction, and have a record of excellent academic success in law school. A minimum of two years' experience in law practice, law teaching, and/or law school academic support is preferred. Applicants should send a cover letter and a current curriculum vita to Faculty Appointments Committee, c/o Pam Hancock, Ste. 400, Paul M. Hebert Law Center, Louisiana State University, 110 LSU Union Building, Baton Rouge, LA 70803-0106. The LSU Paul M. Hebert Law Center is an Equal Opportunity/Equal Access Employer and is committed to building a culturally diverse faculty and encourages applications from female and minority candidates.

North Louisiana. Fantastic partnership-track opportunity for an attorney with five-plus years of experience. Our client is a well-established commercial litigator representing public and private companies all over the state and is willing to mentor an attorney as his second-in-command. There will be great opportunity for both client contact and working as lead chair on complex commercial litigation matters. This is really a unique opportunity. Contact Shuart & Associates for details: (504)836-7595. Email résumés to info@shuart.com.

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Texas attorney, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300; email manfred@msternberg.com.

Mobile, Ala., attorney accepting referrals of personal injury claims in South Alabama, including automobile, workers' compensation and slip & fall accidents. Licensed in both Louisiana (since 1979) and Alabama (1998). Russell E. Bergstrom, 955 Dauphin St., Mobile, AL 36604; (251)433-4214; fax (251)433-1166; email rebmouthpiece@aol.com. "No representation is made that the quality of legal services provided is greater than the quality of legal services provided by other attorneys."

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

Notice is hereby given that Melissa Sugar Gold intends on petitioning for reinstatement/readmission to the practice of law.

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ANSWERS for puzzle on page 298.

1	C	2	H	3	R	4	I	5	S	6	T	7	M	8	A	9	S	10	T	11	R	12	E
1	L	2	O	3	A	4	E	5	N	6	E	7	Y	8									
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The Last **WORD**

By Judge Jay C. Zainey

FLOODING, SOLACE & SENIOR LAWYERS

When I was asked to write this article, I immediately began to think of topics of interest to senior lawyers, as the article was originally intended for publication in *Seasoning*, the e-newsletter of the Louisiana State Bar Association's (LSBA) Senior Lawyers Division. Was I going to write about substantive law, procedure, mentoring young attorneys, winding down a law practice, or, even better, quality of life after retirement?

But, then things radically changed.

Devastating floods in August destroyed many parts of our state, and, in fact, dashed the hopes of retirement for many of our senior lawyers. Many lawyers, young and old, lost their homes and offices as a result of the overflow of numerous rivers in the Florida parishes, in Baton Rouge and as far west as Lafayette. (We also remember that, earlier this year, flooding devastated north Louisiana and other areas of the state.)

Instead of making arrangements to wind down, numerous senior lawyers are now faced with the daunting task of starting over and otherwise assisting younger lawyers with starting over.

It is said that the practice of law is an honorable profession.

Although the floods were of catastrophic proportions, our legal community rose to the challenge and our members came to the aid of our fellow attorneys in need.

Through the LSBA's SOLACE (Support of Lawyers/Legal Personnel: All Concern Encouraged) Program, members of the legal community help each other, and their families, in times of need.

Within minutes from the time the rivers started to overflow and cause havoc to members of our profession, our fellow attorneys leaped into action. Members of the legal community immediately opened the doors of their homes and offices and offered to provide housing and office space to those displaced by the flood. Before people even had the opportunity to ask for

specific items, our attorneys reached out to fellow attorneys who lost their homes and donated furniture, appliances, clothes, toiletries, gift cards, and just about anything that would help the victims of the flood attempt to start to resume some sense of normalcy.

Members of our legal community assisted total strangers by gutting their houses and removing debris in the hope of enabling the flood victims to return to their homes. Their only bond was that they were fellow members of the legal community.

One couple from New Orleans, who insisted on remaining anonymous, even donated their SUV to a fellow attorney in need.

To those members of our legal community who lost their offices, our fellow attorneys provided office space free of charge and donated computers, office furniture, law books, suits and dresses, and even covered court appearances for attorneys in need.

As we look back at our careers and take stock at what we have accomplished professionally, the SOLACE Program gives us the opportunity to proudly assist each other.

The SOLACE Program, which originated in Louisiana, is now in 24 states and Puerto Rico. Recently, the national Federal Bar Association adopted the program as one of its benefits of membership.

Why is this important? The more people who are aware of the program, the larger the pool of potential volunteers.

As an example, one afternoon after the floods, a SOLACE request was circulated

on behalf of Olivia, a 10-year-old terminally ill child of a member of the legal community. Our colleague's family lost most of Olivia's crucial supplies. Literally overnight, at 10:11 the next morning, in response to the SOLACE request, we received the following message from an LSBA member who now works for the City of Birmingham. Our member reached out to the Birmingham government officials for assistance:

"UPDATE: The City of Birmingham EMA official contacted me to say that all of the items on the list for the terminally ill child have been sent by Amazon."

If you have been adversely impacted by the floods, or if you have other needs, email the SOLACE Program at: JayZainey@LASOLACE.org. Your requests are confidential, and you will be pleasantly surprised at how quickly your fellow attorneys will spring into action to assist you and your family.

Yes, we are truly members of an honorable profession. Please give our fellow attorneys the opportunity to serve you.

Judge Jay C. Zainey has served as a U.S. District Court judge in New Orleans since 2002. In 2004, he and Mark C. Surprenant, senior partner in the New Orleans office of Adams and Reese, LLP, co-founded the SOLACE Program. (jay_zainey@laed.uscourts.gov; 500 Poydras St., C-455, New Orleans, LA 70130)



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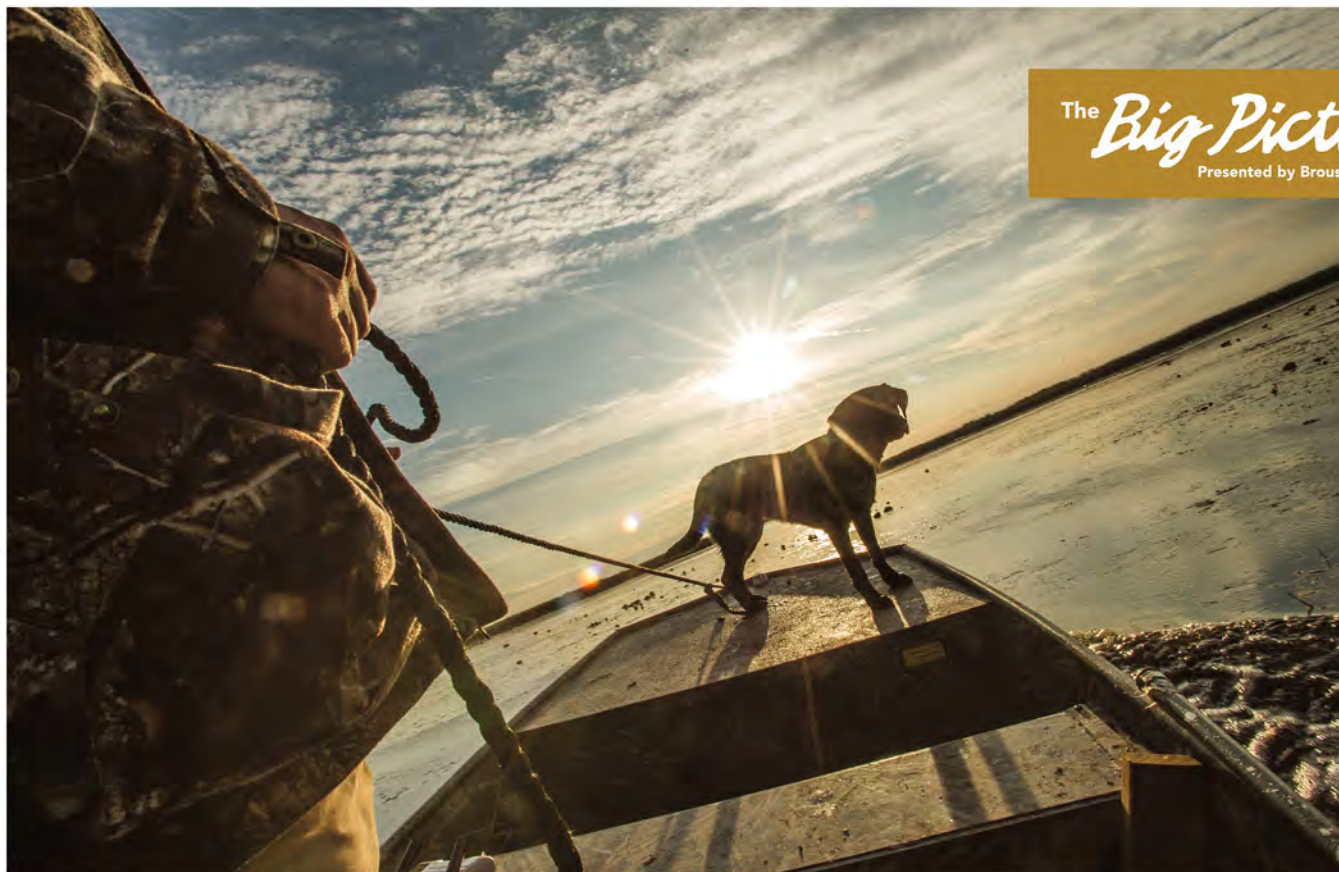


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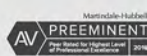
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