

LOUISIANA BAR JOURNAL

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EXPERT WITNESS

The Qualification of Witnesses to Offer Opinion Testimony: “EXPERT” OR NOT?



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- **Impeachment in Louisiana State Courts:** La. Code of Evidence Recognizes Eight Ways
- **Louisiana’s Legal Legends:** Life, Career and Legacy of William J. Guste, Jr.
- **Attorneys Volunteer Talent for** “Lawyers in Libraries” Service Programs



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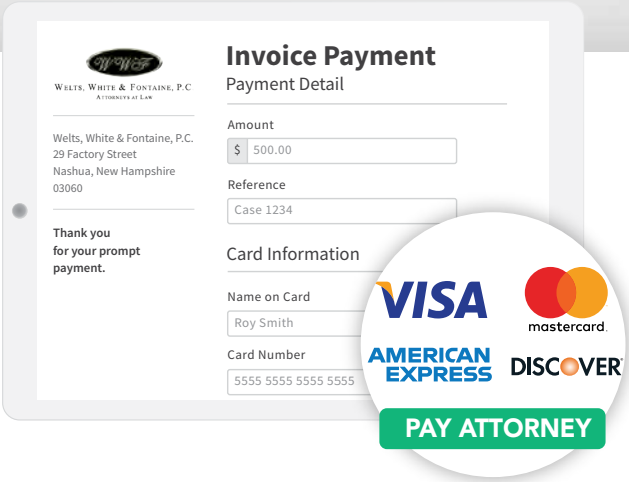
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2019 Judicial Interest Rate is 6%

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 2019 will be six (6%) 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 2019 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2018, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was two and three quarters (2.75%) percent.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on the first business day of October 2018. Thus, the effective judicial interest rate for the calendar year 2019 shall be six (6%) 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 9, 2018

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.lsb.org/Members/JudicialInterestRate.aspx.

Judicial Interest Rates Through 2019

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
Jan. 1, 2018 to Dec. 31, 2018	5.00 percent
Jan. 1, 2019 to Dec. 31, 2019	6.00 percent



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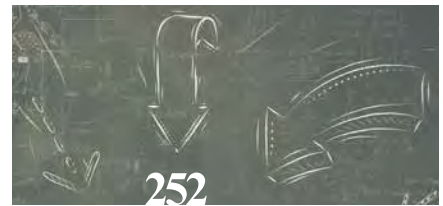
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By John E. McAuliffe, Jr.

Lawyer (Irish) Passion

Just finished reading a historical novel, *Rebels*. This book chronicles the preparations for and the actions involved in the 1916 “uprising” in Dublin, Ireland. (Yes, I am 100 percent Irish.)

This work included a good study of the personalities of the leaders of the revolt. Once the “incident” (the British description of the revolt) was put down, a number of its leaders were tried summarily and executed.

I was struck by the passion exhibited by the leaders in the hours and minutes before their demise. All showed an undying passion for their families, their religion and the “cause.” They were universally proud and HAPPY to die for Ireland.

Surely, many of us display passion for a spouse, our children or the “home team.” But, what about our profession? Are we at all passionate about our cause?

Our district attorneys and their assistants seem to exhibit a certain zeal in

their work. Our indigent defense lawyers are passionate about the rights of their clients. And, any public interest attorney handling a pro bono matter displays a fervent attitude. What about the rest of us?

It is not only about the number of hours we have billed or the acquisition of the latest algorithm-filled computer program. Yes, we have to bill to eat and the new program helps us in our work every day. But, money and technology are not substitutes for passion for our profession.

Our clients deserve at least some degree of passion. Whether an individual, corporation, insurance company or other entity, that client has trusted a legal matter to us. It is important to them. It should be humbling and gratifying that someone would trust us to that extent.

Perhaps any decrease or loss of passion for our work is related (at least in part) to the dispassionate use of computers and their associated technologies. We now tend to email or text clients rather than pick up the telephone. Most of our “interactions” with

courts are through faxes and e-filings. Our personal contacts with clients, opponents and courts have continued to decrease at an ever-increasing rate. (No, I do not consider the “sender photograph” attached to some emails a “personal” contact.)

I am certainly no expert, but perhaps some effort at personal communication with clients and even our opponents would help to renew some of our passion and enthusiasm. Personal relationships continue to be all important.

In closing, as we reflect on the year just past and begin planning for the next one, consider these words taken from an Irish blessing:

May you have the hindsight to know where you’ve been, the foresight to know where you are going, and the insight to know when you have gone too far.

Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

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

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

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

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

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



By Barry H. Grodsky

“So, Do We Really Need It?... Yes, We Do!”

A few years ago, I presented a professionalism CLE and talked about the Code of Professionalism. About a week later, I received a call from an attorney whose name I do not recall but he said he had practiced for 60 years. He said he had been at my presentation and then said, “The Code of Professionalism is B.S. and we don’t need it.” (For the sake of disclosure, he did not use the abbreviation). He went on for a few minutes and ended the call.

This attorney truly caught me off guard and I was not able to respond to him in this short conversation. Frankly, from his tone, I don’t think he was looking for dialogue. Then I thought about one part of what he said, “. . . we don’t need it.” I later realized that, perhaps, there was some merit in that comment; however, it was clear to me that his statement was that he just did not like any rules or regulations. In the call, this attorney also said we don’t need the Rules of Professional Conduct either.

But is there possibly another meaning to his message? We’re lawyers and judges. We are professionals. Do we really need to be told to be civil, courteous, honest and fair? Aren’t these character traits that were, or should have been, instilled in all of us at an early age? Perhaps they were. So, as we progress through our legal careers, starting with law school, have we just lost our focus?

It seems I often give professionalism lectures reminding those in attendance to do things we already know we should do but may not always be doing. But how hard can it be to take a quick look at the Code, now newly amended, and ask ourselves: Are we doing this? And, if not, how can we?



But do we, in fact, always know? A young lawyer told a story in a professionalism talk about his first few weeks in law school. He asked his father, a prominent New Orleans attorney, “Dad, how can I figure out who is the class ass?” His father replied, “Wait a couple more weeks. If you can’t figure it out, it’s probably you.” Maybe we just don’t realize that our conduct is not as professional as it should be. Maybe we just don’t know.

I tried a case in St. Martin Parish with two other lawyers. It was the first trial for a young attorney who had practiced for just over a year. He did a fine job but, during the entire trial, he never once stood up when the judge entered or left the courtroom. Even his own client stood up. I thought how rude and discourteous that was until I realized late in the day that he simply did not know to do this. A simple act of respect for the dignity of the court was missed. A little attention to the Code of Professionalism could have helped.

Much of the Code is just plain old common sense. Do we really need to codify such things as being punctual, cooperate in scheduling matters and being reasonable and fair when some extra time is requested? I suspect everyone who reads this will certainly agree that,

in theory, this sounds great. But let’s be honest. How many times has each of us drifted from such simple ideals? Sometimes we just don’t know but other times we need a reminder. A few weeks ago, an attorney told me he had been engaging in unnecessary back-and-forth with another attorney about scheduling a deposition. The inference was that he may not have been quite as cooperative as he could have been. He also mentioned the other attorney forwarded him my message sent to all 23,000 lawyers licensed to practice in the state, with a copy of the amended Code of Professionalism. Message delivered.

Sometimes common sense, or the lack thereof, can be problematic. A contentious piece of litigation involving ownership of multiple tracts of land was on the verge of settling. An attorney from a large New Orleans firm snuck in a phrase (which he never pointed out) in a random paragraph reserving certain rights just for his client. An eagle-eyed attorney caught it and, of course, the settlement fell apart. It took another year — and the removal of that clause — to get the case resolved. What a waste of time and money! About a month after that, the offending attorney gave a CLE on “Ethics in Real Estate Transactions.” (Some things just can’t be made up.)

We all read stories about personal insults hurled at lawyers (and even to and from judges) during litigation. Perhaps the heat of the moment, or our education as advocates under a Socratic teaching approach, or just a “win at all costs” mentality is to blame. But is it worth it? What is gained? Have we come to a point where, while we know such conduct is wrong, we still need a document to tell us?

I was in rule day in the 15th JDC (Lafayette) and sixth on the docket. In each of the five hearings which preceded mine (two were very hotly contested), once the judge ruled, all lawyers shook hands. Very professional. In one hearing where an older lawyer prevailed over a poorly prepared younger lawyer, as they walked out, the older attorney put his arm around his opposing counsel's shoulders and was speaking quietly to him. The younger attorney was just nodding. I don't know what was said, of course, but I would like to think they were words of encouragement and civility.

As we move further into the 21st century, do we need to be reminded to use social media responsibly and stay up-to-date on technology and changes in the law? Shouldn't we already know we should protect and improve the image of the legal profession? Isn't it in everyone's best interest to be supportive of new members

in the profession? Of course, but sometimes we just need a gentle nudge. A quick glance at the Code can do wonders.

I spoke to an attorney in Monroe who I had never dealt with before. The issue in the case was if an original note was marked as paid. I had the original note in my possession but told him I obviously could not send it to him. He asked, "Is it marked paid?" I said I was looking at both sides and it had no such marking. He replied, "Good enough for me." I offered to send him a copy, and he said, "Why? You just told me the answer. I have no reason to disbelieve you." He certainly knew that, if I was not being truthful and he later saw the note, then there could be serious problems for me. Nonetheless, his response was refreshing. That same day, a lawyer in a different case told me he was going to file a motion for extension of time to file an answer to a lawsuit his client was served with. I told him an email

or a letter would be sufficient. He said no. I even offered to email him to confirm the extension. He said no. He said he would file a motion. I asked why and he said, "I don't know you and you don't know me. Even with an email, you might still try to default me!" My next communication with that lawyer was when he forgot to file his answer on time. The first thing he said was "Did you default me?" Not "Sorry" or "I'll do it now" or "Thanks for the call." Of course, there was no default taken but that call was a reminder that we still do need the Code of Professionalism. Maybe one day we won't.

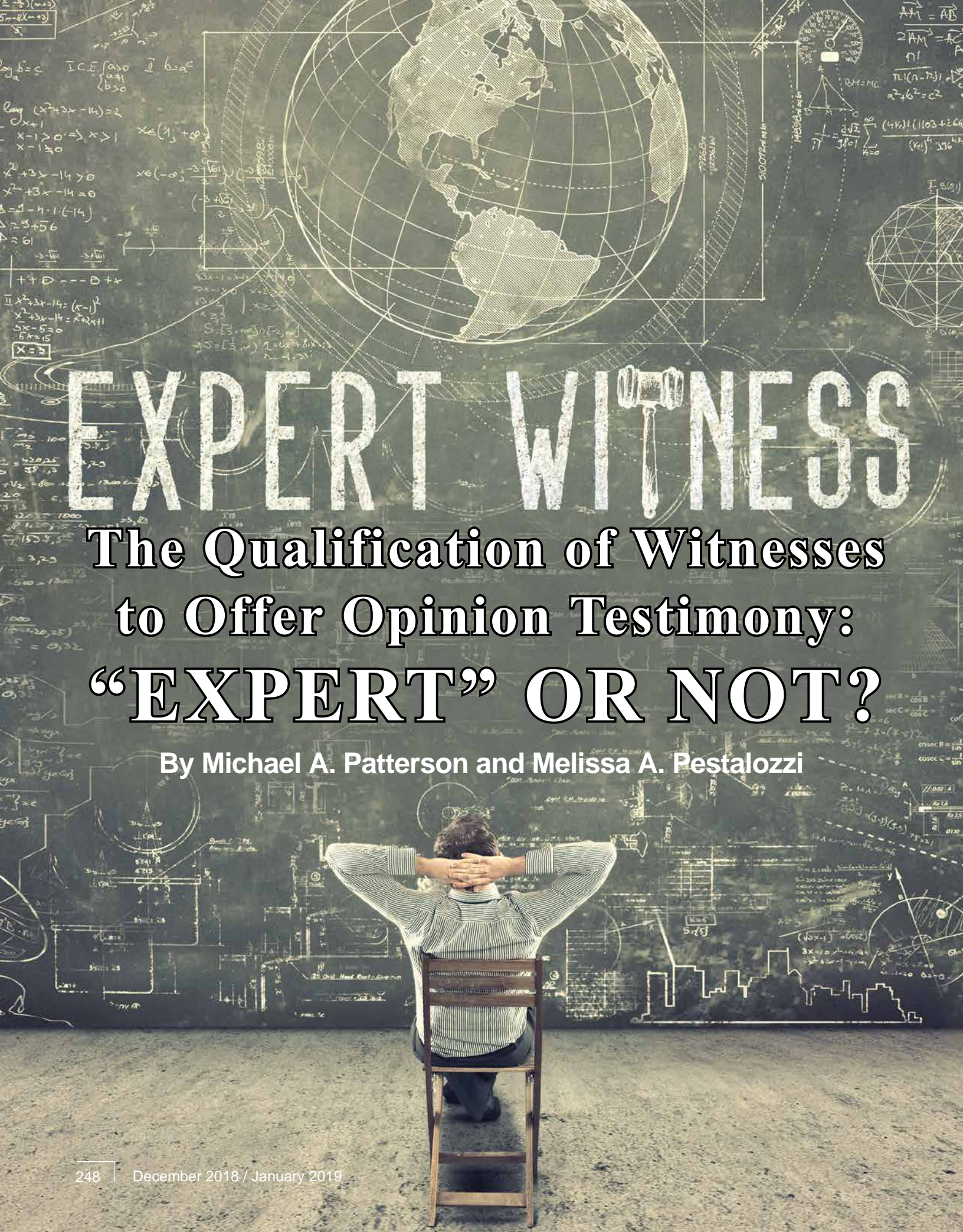
To review online or download a copy of the new Code of Professionalism, go to: www.lsba.org/goto/CodeofProfessionalism.



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EXPERT WITNESS

The Qualification of Witnesses to Offer Opinion Testimony: “EXPERT” OR NOT?

By Michael A. Patterson and Melissa A. Pestalozzi

The federal courts' disapproval of the use of the term "expert" in the presence of the jury does not govern the state courts. As a result, there exists a lack of uniformity among federal and state courts with respect to identifying a witness as an "expert" during testimony and in final jury instructions. Additionally, the American Bar Association's Civil Trial Practice Standards instruct both the court and counsel *not* to declare a witness as an "expert" before the jury.

Tendering a Witness to Be Formally Accepted as an Expert

The Advisory Committee on Rules of Evidence recognizes the practice of referring to a qualified witness as an "expert" as problematic:

[T]here is much to be said for a practice that prohibits the use of the term "expert" by both the parties and the court at trial. Such a practice "ensures that trial courts do not inadvertently put their stamp of authority" on a witness' opinion, and protects against the jury's being "overwhelmed by the so-called 'experts.'"¹

While Federal Rules of Evidence 702 and 703 continue "the practice of . . . referring to a qualified witness as an 'expert,'"² the Advisory Committee on Rules of Evidence has observed the use of the term "expert" does not necessarily mean "a jury should actually be informed that a qualified witness is testifying as an 'expert.'"³

ABA Updated Civil Trial Practice Standards

The American Bar Association's recommendation set forth in its Updated Civil Trial Practice Standards cites the Advisory Committee Note to the 2000 amendment to Rule 702 as support for Standard 14, which expressly prohibits the practice of tender and acceptance of expert witnesses before the jury.

Specifically, Standard 14 addresses the process of qualifying expert witnesses as follows:

14. "Qualifying" Expert Witnesses. The court should not, in the presence of the jury, declare that a witness is qualified as an expert or to render an expert opinion, and counsel should not ask the court to do so.⁴

The Comment to Standard 14 states, in part: "The tactical purpose, from the proponent's perspective, is to obtain a seeming judicial endorsement of the testimony to follow. It is inappropriate for counsel to place the court in that position."⁵

Use of the Term "Expert" in Final Jury Instructions: A Comparison

To better recognize the lack of uniformity among courts with respect to identifying a witness as an "expert" during final jury instructions, a comparison of the model/pattern civil jury instructions of the U.S. 5th Circuit Court of Appeals, Louisiana state courts and other surrounding state courts provides some helpful insight.

U.S. 5th Circuit Court of Appeals

The current 5th Circuit Pattern Jury Instruction on expert witness testimony does *not* refer to the witness as an "expert,"⁶ which is expressly acknowledged in a footnote.⁷

Louisiana Supreme Court

The Louisiana Supreme Court Plain Jury Instructions⁸ expressly refer to the witnesses as "experts." This rule includes an "advance" closing instruction and a general closing instruction, both of which discuss "expert" witness testimony.

Louisiana and Other Southern State Courts

The Louisiana Civil Jury Instructions,⁹ Alabama Civil Pattern Jury Instructions¹⁰ and Mississippi Model Jury Instructions¹¹ also refer to the witness as an "expert."

On the other hand, the Florida Model Civil Jury Instructions¹² do *not* refer to the witness as an "expert."¹³ The Georgia Suggested Civil Pattern Jury Instruction for expert witnesses provides two options — one of which expressly refers to the witness as an "expert," while the other adopts the 11th Circuit Court of Appeal Pattern Jury Instruction, which does *not* refer to the witness as an "expert."¹⁴

Background on Elimination of the Use of the Word "Expert" in Federal Courts

In 1994, Judge Charles R. Richey, U.S. District Court judge for the District of Columbia, proposed to eliminate the use of the word "expert" when identifying witnesses permitted to offer opinion testimony.¹⁵ Judge Richey argued a judicial acknowledgment of the status of a witness as an expert was unfair and prejudicial. He further argued the use of the word "expert" causes jurors to give more weight to testimony than it may deserve.

The argument to eliminate this designation is premised on the fact that witnesses are either qualified as experts or not, and the designation by the court is superfluous. Several courts have ruled there is no requirement that a trial court certify or accept a witness as an expert.¹⁶ The reasoning is the proponent of the expert is not really seeking a ruling but rather is notifying the court the proponent is ready to tender the witness for *voir dire*.

Perhaps the most powerful argument against judicial certification of "expertise" is such certification by the court is equivalent to the court commenting on the evidence. This argument accepts the premise that use of the word "expert" overly influences jurors.

Current Louisiana District Court Practice

Are jurors overly influenced by the court's use of the term "expert" at trial? In an effort to gain a better understanding of how the process currently works at the state court level, a survey was circulated to several trial court judges in

Louisiana District Court Judges Survey

1. When a party introduces a witness to offer opinion testimony as an expert, do you require the attorney proponent to present the qualifications and then tender the witness as an expert? If “no,” how do you handle the qualification process?

2. After the witness is tendered and the opposing attorney has an opportunity to question the witness, do you formally accept the witness as an expert? If “no,” what do you do?

3. At trial, do you allow a party to object to the qualifications and/or methodology of an expert witness if that party failed to timely file a La. C.C.P. art. 1425(F) motion in limine (*Daubert* motion)? Explain any rulings/limitations you might impose.

4. After you accept the witness as an expert, do you tell the jury that qualifying a witness as an expert allows the witness to offer opinion testimony? If “no,” what do you do?

5. Would you be in favor of a uniform practice in which the term “expert” is not used in front of the jury? If “no,” why not?

6. Do you think the use of the term “expert” impacts or has the potential to impact the perception and decision-making of a juror? If “no,” why?

7. Do you think simply informing the jury a particular witness is permitted to offer opinion testimony would accomplish the same objective(s) as introducing a witness as an “expert” witness? If “no,” why?

8. In the closing instructions to the jury, how do you instruct the jurors on opinion testimony?

9. Do you have any additional comments/suggestions on this topic?

Louisiana.¹⁷ (*The survey questions are listed on this page.*)

The responding judges indicated, after a proponent offers the qualifications of a witness to testify as an expert and the other party and/or parties are provided an opportunity to conduct *voir dire*, if the court finds the witness has the requisite qualifications to provide opinion testimony, then the court will formally accept the witness as an expert. After the witness is formally accepted as an expert, the court informs the jury the witness will be permitted to provide opinion testimony.

Interestingly, none of the responding trial court judges favored the adoption of a uniform practice in which the term “expert” is not used in the presence of the jury. There were several notable reasons for disfavoring such a change, such as: “If the witness is not designated as an expert, how does the jury understand why the witness is allowed to express an opinion?” and “If the term ‘expert’ is reserved for individuals who have a unique set of education, skills, training or experience, then that person is an ‘expert.’”

Most responses indicated the use of the term “expert” does not impact the perception and decision-making of jurors. Several judges also pointed out a proper jury charge concerning credibility determinations the jury is permitted to make effectively deals with this.

To conduct the survey, judges from different geographic areas in the state were approached to see if there were any significant geographic differences in practices. Several district judge groups and the Louisiana Supreme Court were contacted to get potential names of judges who are both active and would likely respond to the survey. Based on the information received, 20 judges from throughout the state were selected to participate in the survey. Seven replies were received (a 35 percent response rate). The key question was #5, which asked the judges if they would favor a practice in which the term “expert” was no longer used in front of the jury. Every single responding judge was not in favor of adopting the federal practice.

Benefits of Continuing the Current Practice

There appear to be several benefits in continuing the current practice. Typically, when a proponent wishes to qualify a witness as an expert in a given field, the proponent will alert everyone by stating her intention to qualify the next witness as such. This practice has several valuable benefits. First, it establishes the area of expertise and allows the judge to focus on whether the proponent has sufficiently established the expertise. Likewise, it puts the opponent on notice as to what the offered area will be, so she can adequately explore the qualifications on *voir dire*.

After the qualifications of the witness are presented, the opponent will typically either accept the witness’ expertise or challenge it on some basis. If the witness’ expertise is challenged, the judge must decide whether the proponent has sufficiently established the witness is qualified to testify about the particular subject-matter. If it is determined the witness is in fact qualified, before the testimony proceeds, the judge must specify whether the witness has the expertise or not. If the court finds the witness does have the relevant expertise, the judge will indicate the witness possesses the expertise necessary to give opinion testimony. Typically, this is accomplished by the court’s express acceptance of the witness as an “expert” in the proffered area. Thereafter, many judges briefly explain to the jury the effect of accepting a witness as an expert allows the witness to offer opinion testimony, unlike ordinary witnesses.

Recommendations

The authors are aware there have been suggestions that Louisiana state courts follow the federal court model and eliminate the use of the word “expert” in the presence of the jury.¹⁸ Before any changes are made, the authors suggest a study be conducted of district court jury trials to determine whether there truly is a negative impact on jurors as a result of the court’s use of the word “expert.”

FOOTNOTES

1. Fed. R. Evid. 702 Committee Note on 2000 amendments (quoting Hon. Charles R. Richey, "Proposals to Eliminate the Prejudicial Effect of the Use of the Word 'Expert' Under the Federal Rules of Evidence in Civil and Criminal Jury Trials," 154 F.R.D. 537, 559 (1994)).

2. *Id.* (quoting Fed. R. Evid. 702 Committee Note on 2000 amendments).

3. Fed. R. Evid. 702 Committee Note on 2000 amendments.

4. American Bar Association, "Updated Civil Trial Practice Standards," Standard 14 (last updated August 2007), available at: www.americanbar.org/content/dam/aba/migrated/2011_build/litigation/ctps.authcheckdam.pdf.

5. "Updated Civil Trial Practice Standards," Standard 14, *supra*, note 4.

6. Pattern Civ. Jury Instr. 5th Cir. 3.5 (2016).

7. Pattern Civ. Jury Instr. 5th Cir. 3.5, n.1 (2016).

8. La. Sup. Ct. R. XLIV.

9. 18 La. Civ. L. Treatise, Civil Jury Instructions § 2.5 (3d ed.).

10. 1 Ala. Pattern Jury Instr. Civ. 15.06 (3d ed.).

11. Miss. Plain Lang. Model Jury Instr. Civ. 213; Miss. Prac. Model Jury Instr. Civil § 1:41 (2d ed.).

12. Fla. Std. Jury Instr. (Civ.) 601.2(b).

13. "You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given

by the witness for the opinion expressed, and all the other evidence in the case." *Id.*

14. Georgia Suggested Pattern Jury Instructions - Civil 02.120; Pattern Civ. Jury Instr. 11th Cir. 3.6.1 (2013).

15. Hon. Charles R. Richey, "Proposals to Eliminate the Prejudicial Effect of the Use of the Word 'Expert' Under the Federal Rules of Evidence in Civil and Criminal Jury Trials," 154 F.R.D. 537 (1994) (arguing the term "expert" is so prejudicial it should never be used in a jury trial).

16. *See*, United States v. Kozminski, 821 F.2d 1186 (6 Cir. 1987), *aff'd in part and remanded in part*, 487 U.S. 931, 108 S.Ct. 2751, 101 L.Ed.2d 788; *see also*, Berry v. City of Detroit, 25 F.3d 1342 (6 Cir. 1994).

17. *See* the attached "Louisiana District Court Judges Survey."

18. John H. Musser V and Tarryn E. Walsh, "Try A Little Less Tenderness: A Proposal for Presenting Expert Witness Testimony," 65 La. B.J. 226, 227 (2018).

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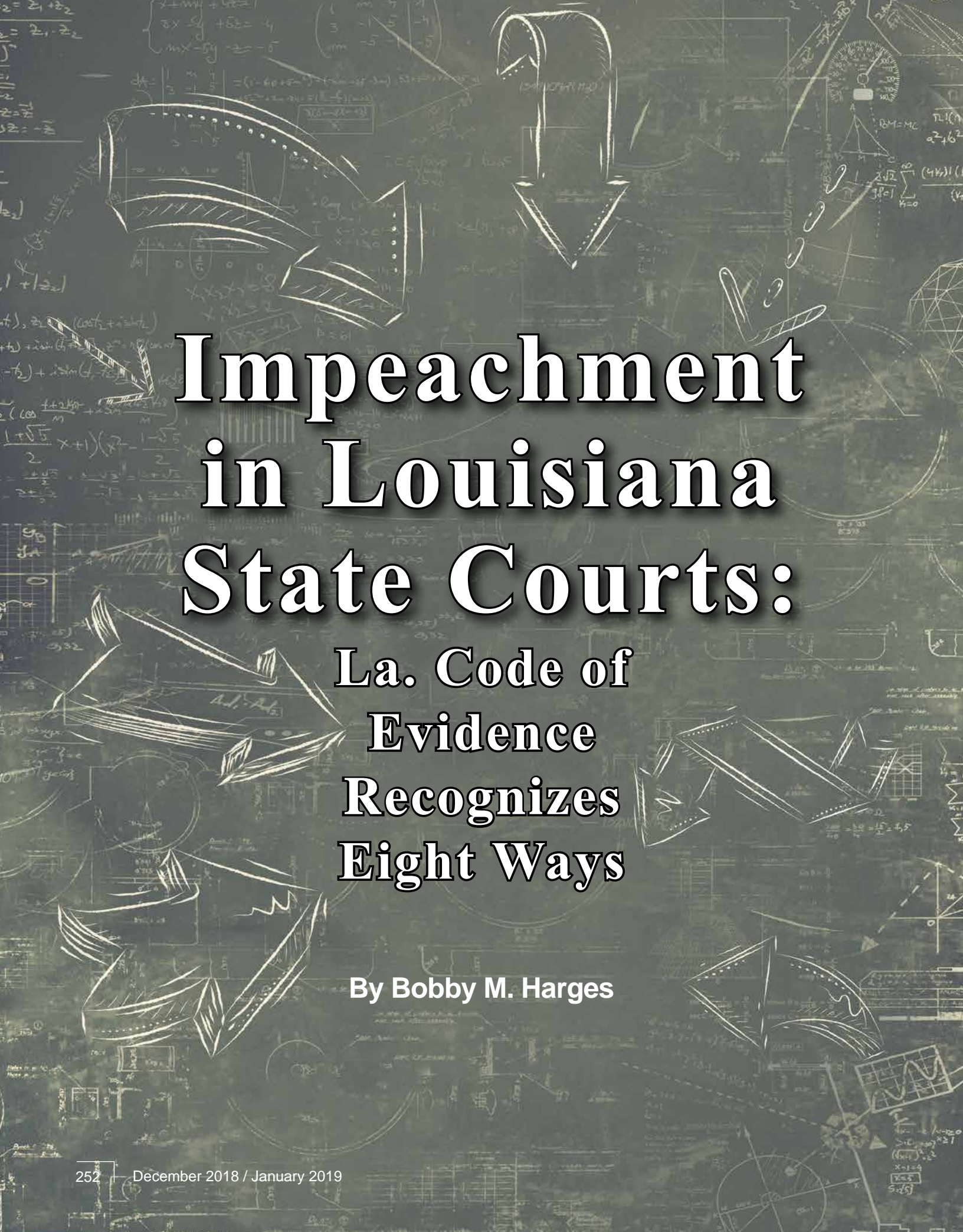
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Impeachment in Louisiana State Courts:

La. Code of
Evidence
Recognizes
Eight Ways

By Bobby M. Harges

To impeach or attack the credibility of a witness in Louisiana state courts, a party may examine the witness about *any* matter having a reasonable tendency to disprove the truthfulness or accuracy of his testimony.¹ Although there may be other means of impeachment, the Louisiana Code of Evidence (LCE) recognizes eight ways to impeach a witness. A witness may be impeached in a Louisiana state court with evidence of: (1) bias, (2) interest, (3) corruption, (4) defect of capacity, (5) a prior inconsistent statement, (6) contradiction, (7) reputation for untruthfulness, and (8) conviction of a crime.² To impeach a witness is to introduce evidence to suggest that the witness's testimony is not credible, that is, that the testimony does not accord with the truth.³ This article will address the ways that an examiner can suggest that a witness is not telling the truth.

Bias

Evidence of a witness's bias is allowed under Article 607 of the LCE.⁴ A witness's bias suggests that the witness has a reason to testify for or against a party. The fact-finder has a right to know of any relationship that the witness has with one of the parties and how that relationship could influence testimony.⁵ For example, the fact that the mother of a criminal defendant is testifying at the trial would be a critical relationship that should be known to the trier of fact. Impeachment based on a witness's bias can occur through intrinsic impeachment with Article 607(C) and extrinsic impeachment with Article 607(D).⁶ Article 607(C) allows a witness to be intrinsically impeached with evidence of bias, which occurs when a witness is questioned directly about matters that may affect her character for truthfulness or veracity.⁷ Asking questions about the facts supporting the bias allows the examiner to create a narrative that could show the witness is unable to be impartial and truthful because of her existing bias. This, in turn, achieves the examiner's goal of creating doubt surrounding

the witness's credibility. An example is the cross-examiner asking the witness, "Isn't it a fact that the defendant is your son?"

Additionally, Article 607(D) allows bias to be shown by extrinsic evidence.⁸ Extrinsic impeachment involves presenting evidence from any source except the witness, such as the testimony of another witness, the use of documentary evidence such as a deposition, a tape recorded statement, or a videotaped statement, to impeach the witness.⁹ Extrinsic impeachment is permitted when the witness has denied the fact asked by the examiner.¹⁰ When this occurs, the examiner can either "take the answer" or proceed with extrinsic impeachment. Stated differently, extrinsic impeachment allows the examiner to introduce other evidence to impeach the witness.¹¹

Interest

Closely related to bias is the witness's interest in the lawsuit, which may demonstrate that the witness may be personally affected by the outcome of the case. For example, under Article 607(C), a witness could be intrinsically impeached about the fact that she would be affected by the outcome of the matter.¹² In a civil matter, if the plaintiff won a breach of contract action filed against the defendant, a witness with personal knowledge of the contract could be questioned about the fact that the verdict would have a positive impact on her business. If the witness denied this fact, she could be extrinsically impeached with evidence showing that she would profit after a favorable verdict for the plaintiff.¹³ Extrinsic evidence from a deposition, showing that the plaintiff testified that the witness would receive a windfall if the plaintiff won the lawsuit, could be introduced to show the witness's interest in the matter. Although the unquestionable benefit to the witness does not necessarily mean that the witness's testimony is untruthful, this is certainly something that a fact-finder would want to know.

Corruption

A witness's corruption (also referred to as "corrupt intent") is allowed to be inquired into under Article 607(C).¹⁴ Corruption is evidenced by "conduct indicating a general scheme to make false charges or claims."¹⁵ In *State v. Cappel*, the Louisiana Supreme Court stated that the defendant should have been allowed to introduce extrinsic evidence of a prosecution witness's disposition to make false charges against others.¹⁶ In a burglary prosecution, the defense theory in *Cappel* was that Tallent, the alleged corrupt witness, demonstrated a pattern of falsely accusing prominent local citizens of involvement in his crimes throughout the state, and the entire defense was predicated upon proving that Tallent's charges against defendant were part of that pattern. In subsequent jurisprudence, the court held that a criminal defendant in a sexual assault case should be able to ask the victim about prior false allegations of sexual molestation by the victim and present evidence regarding same at trial.¹⁷ In this instance, the Louisiana rape shield statute, Article 412, is inapplicable as the issue is one of credibility, not prior sexual behavior.¹⁸

Defect of Capacity

Defects of capacity, sensory or mental, that may lessen the witness's ability to perceive the facts the witness purports to have observed¹⁹ may be inquired into intrinsically or extrinsically.²⁰ For example, a cross-examiner should be allowed to cross-examine an eyewitness to an accident or crime about whether she used drugs or alcohol prior to the incident in question since it may affect her capacity to perceive the circumstances surrounding the incident.²¹ Evidence of such drug or alcohol use has independent relevance because it may show a defect of capacity in the witness, which may affect her ability to observe, remember and recount the matters testified about.

Prior Inconsistent Statement

Under Article 607(C), a witness's prior inconsistent statement may be used to intrinsically impeach the witness.²² A prior inconsistent statement suggests that the witness is mistaken because she made two different statements about the same matter, one at trial and another on a prior occasion. To be admissible for impeachment, the prior inconsistent statement need not be made under oath.²³ For example, it could be a statement made after a motor vehicle accident to an investigating officer, a statement made after a criminal act, or a statement made in a deposition. The prior inconsistent statement suggests that the witness could be mistaken about the matter in which she testified.

Contradiction

Contradiction is another form of intrinsic impeachment allowed under Article 607(C).²⁴ Contradictory evidence could be the testimony of another witness, an audio or video recording, photographic evidence, a document or any other evidence that differs from the testimony given by the witness.²⁵ This opposing evidence should cast doubt on the testimony given by the witness. When contradictory evidence is introduced extrinsically, that is, from a source other than the witness, it constitutes extrinsic impeachment permitted by Article 607(D).²⁶

Reputation for Untruthfulness

Article 608(A) allows a cross-examiner to attack the credibility of a witness by calling a reputation witness who is familiar with the principal witness's credibility to testify that, in the relevant community, the principal witness has a reputation for being untruthful.²⁷ Before the reputation witness can testify regarding the reputation of the principal witness who has already testified, a foundation must be laid showing

that the reputation witness is familiar with the principal witness's reputation.²⁸ This foundation is established by showing that the reputation witness has heard the principal witness's reputation for truth and veracity discussed in the community a sufficient amount of times and had learned of this reputation through discussions with other members of the relevant community.²⁹ Furthermore, the reputation witness may not express his personal opinion as to the character of the witness whose credibility is in issue.³⁰ In other words, although the reputation witness is allowed to express the opinion of the community as to the credibility of the principal witness, the reputation witness may not express her own opinion of the principal witness's character trait for truthfulness or untruthfulness.

Conviction of a Crime

The LCE contains two articles addressing the use of a criminal conviction to impeach the credibility of a witness — Article 609 for civil cases and Article 609.1 for criminal cases.³¹ Article 609 allows two classifications of crimes to be used to impeach a witness in civil cases.³² The first classification consists of those crimes punishable by death or imprisonment in excess of six months under the law in which the witness was convicted.³³ The second classification of crimes admissible under Article 609 deals with crimes involving dishonesty or false statement, regardless of the punishment, such as crimes involving fraud, deceit, perjury, false swearing or embezzlement.³⁴ These crimes have a direct bearing on a witness's credibility because they show that the witness has been convicted in the past for some deceitful or fraudulent conduct. There is a time limitation placed on the admissibility of crimes under Article 609 as evidence of a conviction is only admissible if no more than 10 years have elapsed since the date of conviction.³⁵ Under Article 609, evidence of crimes where more than 10 years have elapsed since

the date of the conviction is not admissible.³⁶

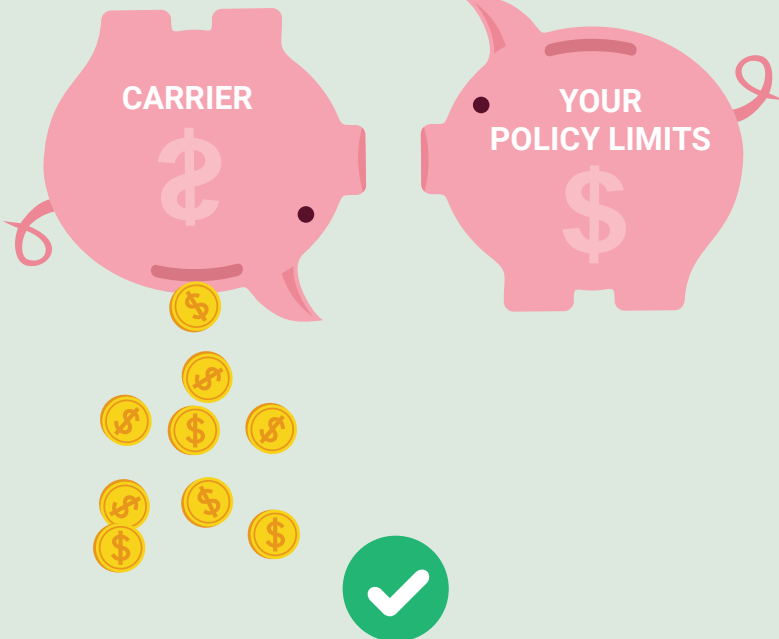
In criminal cases, Article 609.1 allows a witness to be examined about his criminal convictions; however, unlike Article 609, Article 609.1 does not contain a time limitation on the admissibility of the crime.³⁷ Consequently, the amount of time that has passed since the crime was committed is not a consideration under Article 609.1. As stated by Loyola University College of Law Professor Dane S. Ciolino, in criminal cases, "any crime committed at any time" may be used to impeach a witness in criminal cases in Louisiana.³⁸ Both intrinsic impeachment and extrinsic impeachment (if the witness denies the conviction) are permitted for criminal convictions.³⁹

Prior Bad Acts Not Resulting in a Conviction Cannot Be Used to Impeach

Article 608(B) explicitly prohibits extrinsic and intrinsic impeachment of a witness's prior bad acts that did not result in a conviction, meaning that the examiner is prevented from asking the witness about any prior bad act that has not resulted in the conviction of a crime.⁴⁰ For example, the examiner may not ask the witness whether she falsified her income tax return, cheated on an examination, or was accused of stealing money from her employer if these matters did not result in a conviction. One exception to this general rule exists — if the prior bad act has independent relevance, it is a proper subject of inquiry.⁴¹ For instance, evidence of drug use or alcohol use that shows a defect of capacity in the witness that may affect her ability to observe, remember or recount the matters testified about has independent relevancy and may be inquired about for the purpose of impeachment.⁴² If the witness fails to admit the impeaching fact, the witness may be impeached extrinsically with other evidence of the fact.⁴³

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Foundation for Extrinsic Impeachment Generally

Before a witness can be impeached with extrinsic evidence of bias, interest, corruption, prior inconsistent statements, conviction of crime or defects in capacity, Article 613 requires a foundation to be laid.⁴⁴ That is, the examiner must have directed the witness's attention to the impeaching statement, act or matter alleged, and the witness must have the opportunity to admit the fact and must have failed to do so.⁴⁵ A proper foundation may be laid by directing the witness's attention to the time, place and circumstances in which the statement was made.⁴⁶ This requirement is one of efficiency because, if the witness admits the fact, the witness has been impeached and no further evidence of the fact is necessary. On the other hand, if the witness denies the fact after having an opportunity to admit the fact, extrinsic evidence is allowed under Article 613.⁴⁷

Article 613 does not require a foundation before the introduction of extrinsic evidence of contradiction.⁴⁸ Consequently, the proponent of the extrinsic evidence of contradiction can simply introduce the extrinsic evidence without directing the witness's attention to the evidence. The difference between contradiction and the other forms of impeachment is that the witness should be fully aware of the other matters listed in Article 613 such as bias, interest, corruption, prior inconsistent statement, conviction of crime and defects of capacity, whereas the witness may not necessarily be aware of contradictory information.

Conclusion

Impeachment of a witness is critical to the prosecution or defense of any case. Knowledge of the various impeachment techniques will give advocates the best opportunity to get to the truth and the best prospects for victory.

FOOTNOTES

1. La. Code Evid. art. 607(C) (2018).
2. *Id.* arts. 607-609.
3. *See id.* art. 607.
4. *Id.*
5. *See generally*, John L. Kane, "Judging Credibility," 33 Litig. 31 (2007) (describing the importance of the fact-finder's role in evaluating witness's credibility).
6. La. Code Evid. art. 607(C)-(D).
7. *Id.* art. 607(C).
8. *Id.* art. 607(D).
9. *See*, Frank L. Maraist et al., 19 Civil Law Treatise: Evidence and Proof § 9.1 (2d ed. 2018).
10. La. Code Evid. art. 613.
11. *See*, Maraist et al, *supra* note 9.
12. La. Code Evid. art. 607.
13. *See id.* art. 613.
14. *Id.* art. 607 cmt. 1998 (h).
15. State v. Cappo, 345 So.2d 443, 445 (La. 1977).
16. *Id.*
17. *See*, State v. Smith, 98-2045 (La. 9/8/99), 743 So.2d 199.
18. *Id.*
19. *See*, State v. Robinson, 01-0273, p. 6 (La. 5/17/02), 817 So.2d 1131, 1135.
20. La. Code Evid. art. 607(C)-(D).
21. State v. Galliano, 96-1736, p. 11 (La. App. 1 Cir. 6/20/97), 696 So.2d 1043, 1050 ("Clearly, a defect in capacity may result from the use of drugs or alcohol. If a witness was intoxicated, by use of drugs or alcohol, on the occasion respecting which he is called upon to testify, that fact goes to his credibility and the weight of his testimony.").
22. *Id.* art. 607(C).
23. *See*, Bobby Marzine Harges and Russell L. Jones, *Louisiana Practice Series: Evidence*, ch. 8 (2018) (explaining that in 2004 the Louisiana Legislature removed the requirement that prior inconsistent statements be made under oath).
24. La. Code Evid. art. 607(C).
25. *See*, Maraist et al, *supra* note 9 ("Evidence from other sources adduced at the trial also assists the trier of fact in determining credibility of the witnesses. Contradictory testimony by another witness may weaken a witness's credibility, such as where, in an intersectional collision, one witness testifies that the light facing a driver was red and another testifies that the light was green.").
26. La. Code Evid. art. 607(D).
27. *See id.* art. 608(A).
28. *Id.*
29. State v. Deaton, 412 So.2d 586, 589 (La. 1982) ("Character testimony is the opinion by a member of the community exposed over an extended period of time to hearing the discussion by other members of the community shared by himself and the person whose reputation is at issue. Before being permitted to testify, the reputation witness must be shown to be qualified to testify on the subject as a member of the community in a

position to speak with authority on the subject.").

30. La. Code Evid. art. 608(A).
31. *See id.* arts. 609-609.1.
32. *See id.* art. 609.
33. *Id.*
34. *See id.*
35. *Id.*
36. *Id.*
37. *See id.* art. 609.1.
38. Email from Dane S. Ciolino, Professor, Loyola University College of Law, to author (Oct. 3, 2018, 16:54 CDT) (on file with author).
39. *See*, State v. Smothers, 02-277, pp. 13-14 (La. App. 5 Cir. 12/30/02), 836 So.2d 559, 568 ("Evidence of other crimes is generally inadmissible in the guilt phase of a criminal trial unless the probative value of the evidence substantially outweighs its prejudicial effect and unless other safeguards are met. An exception to the rule allows evidence of a conviction for impeachment purposes of a witness, or of a defendant that chooses to testify.") (footnotes omitted).
40. La. Code Evid. art. 608(B).
41. *See id.* arts. 404, 608.
42. *See*, Smothers, 02-277 at p. 14, 836 So.2d at 568 ("[E]vidence regarding previous arrests, indictments, prosecutions, or other criminal proceedings not resulting in convictions is prohibited.").
43. La. Code Evid. art. 613.
44. *Id.*
45. *See id.*
46. *See*, State v. Laymon, 97-1520, p. 26 (La. App. 4 Cir. 3/15/00), 756 So.2d 1160, 1178.
47. *See id.* art. 613.
48. *Id.* cmt. 1998(h).

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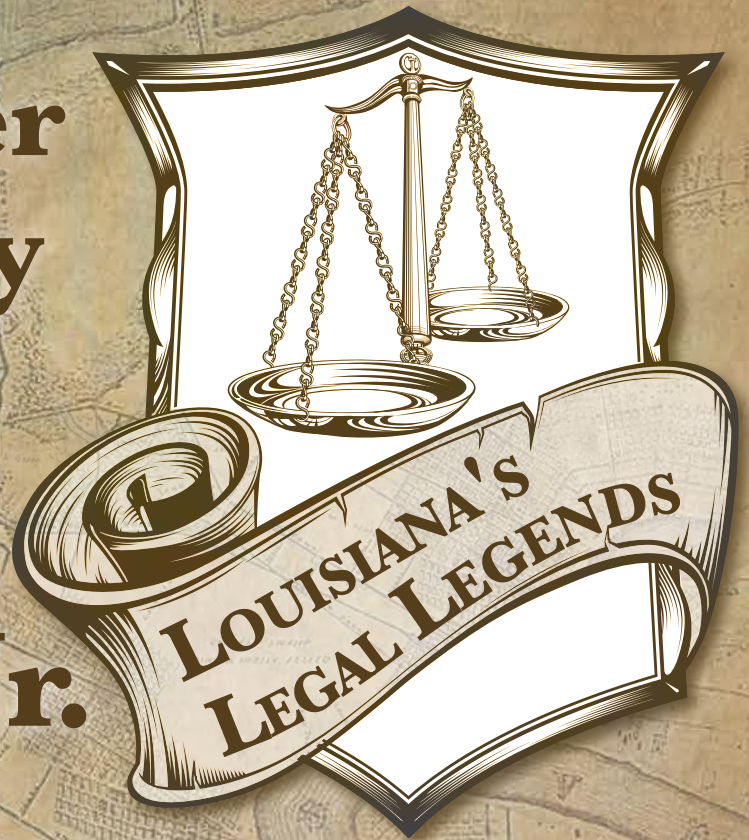
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Life, Career and Legacy of William J. Guste, Jr.



By Anne D. Guste



William J. Guste, Jr. Photo provided by the Guste Family.

Louisiana's legal legacy is deep-rooted in every corner of the state. Inspired by the New Orleans' Tricentennial, the Louisiana Bar Journal began a series to commemorate and recognize the state's legal legends, including "legends in their own time." For this issue, New Orleans attorney Anne D. Guste recaps the life, career and legacy of her father, William J. Guste, Jr.

The Beginning

My father's political career had, perhaps, an unusual start at the front end. Waking up one morning, assembling the younger handful of his nine children with my mother off on their way for another school day, and getting ready to head off to work as an attorney in a private law practice, my father received a phone call from the sister of the incumbent in an ongoing election for the State Senate in our district in New Orleans.

Upon the unexpected passing during the night of her brother, who had often consulted with my father over lunch during his tenure as a well-liked Senator, she tells my father she wanted to suggest and urge that he run for the Senate seat in her brother's place considering the respect and admiration that her brother had for him during his life. Somewhat taken aback, my father tells her he will give it some thought and consideration and will get back in touch with her.

His day at work began, and phone calls then ensued to professional colleagues, family and friends asking for their own thoughts, suggestions and opinions as to the possibility of a run for a public office. Candidly being advised by some that he would need the help of a myriad of folks to pull off such a run, such as a campaign manager, campaign consultants, an accountant, fund raisers, drivers and the like, my father confidently reassured them he had all of the help he needed for those tasks — in his wife, our mother! Others more simply just encouraged him and offered their support.

So, by the end of that business day, my mother received a phone call from him letting her know that he was over at Loyola (where the local qualifying for elections was done at that time) and that he had qualified for the race. The opening of his official public statement would, therefore, read that “at the urging of close friends of George Tessier and mine, I have decided to run for State Senator. . . .”

Shortly thereafter, a map of the district was prominently hung over the fireplace in the living area of our house and our mother was soon out walking the streets of the district door-to-door talking to the residents and urging them to vote for her husband. We had just about six weeks to get the job done, and there were 11 candidates in the race!

But, to be sure, by the time my father had entered this race, he had already had a fairly strong foothold in the community, having played a significant and influential role in a variety of community and public service endeavors. As one of the founding members of the Metropolitan Crime Commission in New Orleans, he had served as its secretary and later as its president during its earliest of years. He



Mr. and Mrs. William J. Guste, Jr. and their children in early campaign materials. *Photo provided by the Guste Family.*

had served as counsel for the Housing Authority of New Orleans for 20 years and as the chair and a board member of the National Housing Conference. In this latter role, he was able to secure the necessary funding by way of a significant loan for the Archdiocese of New Orleans to build its first home for the elderly, the Monsignor Wynhoven Apartments, on the west bank; he then served as the first president of this non-profit organization. Other homes for the elderly, including the Chateau de Notre Dame, would soon follow.

Also, during the mid-1960s, my father helped draft the charter by which the administration of Xavier University was turned over from the religious order of sisters that owned the university to a lay board of trustees. Upon this reorganization, he then served as the chair of its first board of directors and for many years following as a board member.

Also by this time, my father had served for two years as the state deputy of the Knights of Columbus, as president of the Young Men's Business Club in New Orleans, as president of Associated Catholic Charities, as chair of the Council of Civic Club Presidents, and as one of the original organizers and first secretary of the United Fund. Addressing public health issues, he had also served on the board of Charity Hospital, as president of the Cancer Association of Greater New Orleans and

as a two-term national president of the United Cancer Council.

Running a determined and effective race for the Senate seat, therefore, our father was the front runner and was elected, serving from 1968 to 1972.

Our lives, as to the younger of his children at this point, were particularly colorful and inspired by our father's new role in the State Legislature. We did, indeed, get the biggest of thrills by running through the halls of the Jack Tar Hotel in Baton Rouge (now the Hilton Baton Rouge Capitol Center), checking into the hotel coffee shop for grilled cheese and club sandwiches, ordering a late-night hot fudge sundae from room service and taking many a dive into the hotel swimming pool. Our presence at the State Capitol was also equally well known, running up and down the elevators in the building, enjoying the rooftop view, climbing the steps to the balcony seating area in the Senate chamber, and other generalized romping and roaming about through the building.

At this time, our ages, as his children, ranged from about age 20, as to my oldest brother, William Guste III, an attorney in private practice now for about 45 years, on to about age 7, as to myself, the youngest. The 10th child in our family, a Down's Syndrome baby at birth, had passed away unexpectedly approximately two years earlier at the age of 2.



Mr. and Mrs. William J. Guste, Jr. and their family at the celebration of their 50th wedding anniversary at St. Patrick's Church in New Orleans in April 1997. Photo provided by the Guste Family.

Moving On

Somewhere about mid-stream into his four-year term as a State Senator, our father jumped into the 1970 mayor's race in New Orleans. It was a crowded field of many colorful candidates, and our father fell short of the runoff after the first primary, placing a strong third in the race behind Moon Landrieu and Jimmy Fitzmorris.

Not too long thereafter, and upon the advice of and after consultation with a tight and experienced group of political consultants and strategists who almost weekly sat around the dinner table at our house, my father's political focus would change from a local perspective to a state-wide one. There, he would find success in getting elected, initially in 1972, as the State Attorney General. He would then go on to serve five consecutive terms in this office. He did not choose, for his own personal reasons, primarily health concerns relating to both his hip and his heart, to proceed with any election for either Governor or the U.S. Senate, although it

had been proposed and suggested to him that he pursue these offices. My mother has not neglected to tell me, however, of an incident at a local political function whereby she was summoned over to talk to a small group of gentlemen who did not hesitate to tell her that my father would have to "learn how to lie a little" in order to get elected to the top gubernatorial spot. She reared back and informed them that they would have to tell that to my father themselves and drew back from the conversation.

Getting There

As a State Senator from 1968-72, some of my father's primary activities, accomplishments and achievements were:

- ▶ organizing the Louisiana Housing Council;
- ▶ authoring Louisiana's Turnkey Housing Law which provided low-cost housing for residents who qualified for FHA or VA housing;
- ▶ authoring urban renewal enabling

legislation for the City of New Orleans;

- ▶ chairing the Ad Hoc Committee of New Orleans which prepared and secured approval of the City's Model City Planning Grant;

- ▶ co-authoring legislation to secure a projected \$35 million for streets in New Orleans;

- ▶ co-authoring legislation to require the Department of Highways to file long-range planning projections with the Legislature;

- ▶ working for legislation that brought the Department of Highways under legislative budget control;

- ▶ co-authoring the Coordinating Council for Higher Education Bill;

- ▶ supporting the adoption of a progressive program for the management of state debt;

- ▶ authoring laws to protect citizens' deposits in securities and financial institutions;

- ▶ establishing a special commission to investigate organized crime in Louisiana; and



Louisiana Attorney General William J. Guste, Jr., far right, greeted Pope John Paul II during the Pope's visit to New Orleans in 1987. Photo provided by the Guste Family.

- ▶ serving on the Advisory Committee for the Governor's Commission on Law Enforcement and the Administration of Justice.

As the State Attorney General, some of his major achievements in office were:

- ▶ The Tidelands case whereby \$140 million in oil revenues due to the State of Louisiana by the federal government were recovered, *U.S. v. Louisiana*.

- ▶ The impounding of federal highway funds, forcing the federal government to release \$2 billion in transportation funds appropriated by Congress for state highway development. Filing the lead class action suit for Louisiana and all states, the state Attorney General's Office recovered \$204 million for Louisiana's roads and highways as a result of this lawsuit. See, *Louisiana v. Brinegar*.

- ▶ The release of "8G" funds, by negotiating a settlement with the federal government that resulted in the release of \$654 million plus in oil and gas revenues.

- ▶ Securing the recovery of \$100 million in oil overcharges in a lawsuit against Exxon.

- ▶ Drafting Louisiana's Consumer Protection Law with New Orleans attorney Patrick Breeden.

- ▶ Blocking a \$260 million annual increase in workers' compensation rates in proceedings before the State Insurance Commissioner.

- ▶ Recovering \$100 million plus in unpaid royalties in a lawsuit against Texaco.

- ▶ Working against the destruction of Louisiana's estuaries, opposing shell dredging.

- ▶ Opposing and preventing the disposal of superfund waste in Louisiana.

- ▶ Serving as president of the National Association of Attorneys General and receiving its Wyman Memorial Award as the AG "who has done the most to advance the objectives of the National Association."

Outside of his career in public service, my father served as the chair of the Lake Pontchartrain Basin Foundation and as one of the organizers and advocacy members of the board of directors of UNITY for the Homeless in New Orleans upon the request of then-Archbishop of New Orleans Philip M. Hannan.

My father was recognized by Loyola University as a Doctor of Laws Honoris Causa and received Spring Hill College's Gautrelet Award "in recognition of his outstanding leadership on behalf of his religious heritage, his continuing dedication to the service of other men and for his singular contributions in the field of public service." He also received an Honorary Doctor of Letters from Notre Dame Seminary and the Torch of Liberty Award from the Anti-Defamation League.

When I think of my father's life and service, as a person "for others" in the Jesuit

tradition of his high school, college and law school, I often also think of a particular scene in the movie, *To Kill a Mockingbird*. As the lawyer packs his briefcase and exits the emptied courtroom alone after losing a hopeless case defending a black man charged with a criminal offense before an all-white jury in the racially segregated South, the elderly town Reverend, who is seated, presumably with members of his congregation, in the rear balcony of the courtroom with the lawyer's two children, leans over to one of the children and says, "Stand up. Your father is passing."

I guess those words alone are enough to express and to convey my own experience of appreciation, gratitude and respect for my father's life and work.

Anne D. Guste, the daughter and ninth child of Mr. and Mrs. William J. Guste, Jr., is an attorney in private practice handling general practice matters in the Greater New Orleans area. She received a BA degree in 1982 from Georgetown University in Washington, D.C., and her JD degree in 1989 from Loyola University Law School. She is a member of the Louisiana State Bar Association's Solo and Small Firms Section and the Alternative Dispute Resolution Section. She received certification in civil (commercial and employment) mediation training and is a former member of the Louisiana Association for Justice. (anneguste@yahoo.com; 3030 Nashville Ave., New Orleans, LA 70125)



William J. Guste, Jr. with friends on a fishing trip. Guste received several awards during his career for his environmental and conservationist work. Photo provided by the Guste Family.

Attorneys Volunteer Talent for “Lawyers in Libraries” Service Programs

By Joanna Laidler

For the fifth consecutive year, Louisiana attorneys provided much-needed legal assistance to the public during the Louisiana State Bar Association's (LSBA) "Lawyers in Libraries" week of service, held in conjunction with National Celebrate Pro Bono Week. Between Oct. 22-27, Louisiana attorneys provided free, limited legal services to the public via libraries across the state, helping hundreds of Louisiana residents who likely would not otherwise have access to counsel.

In proclaiming Oct. 22-27 as "Celebrate Pro Bono Week" in Louisiana, Gov. John Bel Edwards noted that "access to civil legal aid attorneys can mean the difference between shelter and homelessness, economic stability and bankruptcy, positive work and unemployment." Currently, 19.7 percent of Louisianians live below the federal poverty line, the second highest poverty rate in the nation.

"The Lawyers in Libraries project and other access to justice initiatives are vital to ensure that people receive justice, are able to identify their legal options, and have access to the court system, regardless of financial circumstance," said Louisiana Supreme Court Justice James T. Genovese, co-chair of the Louisiana Access to Justice Commission.

There were many success stories during the "Lawyers in Libraries" week of service. This year, more than 115 attor-



Attorney Adolph B. Curet III, center, presented a program at the St. Mary Parish Library in Franklin. With him are Connie Durocher and Franklin branch staff.

ney volunteers provided legal assistance to hundreds of people, with 81 separate events scheduled in 60 parishes.

LSBA Secretary John E. McAuliffe, Jr. said there was an "unbelievable turnout" at Ascension Parish Library for attorney Linda S. Melancon's presentation on "Estate and Elder Law Planning." Ascension Parish Librarian Chriselle Henry concurred, saying the response to

Melancon's presentation was "huge."

In St. Bernard Parish, library staff member Janet Perez said attorney volunteers served 52 residents seeking advice and indicated that the total number of people served was "probably higher as several people were accompanied by a second individual." Perez, who worked closely with attorneys J. Van Robichaux, Jr. and Daniel W. Nodurft to coordinate the event in St. Bernard Parish, noted, "I am so very proud of what our attorneys do. It is my privilege to be able to assist them."

Launched in 2014, "Lawyers in Libraries" is part of the Legal Education & Assistance Program (LEAP), an ongoing collaboration between the LSBA's Access to Justice Department, the Law Library of Louisiana and Louisiana public libraries statewide. LEAP aims to provide support to public librarians throughout the state by providing them with appropriate training and resources to help patrons with their legal questions. Although librarians are unable to provide legal advice, they are well placed to provide critical legal information for people in search of legal assistance, including referrals to attorneys and legal aid organizations.



Attorney Lakethia B. Bryant, center, presented a program at the Assumption Parish Library in Napoleonville. With her are Librarian Alexis Richard, left, and Librarian Paula Blanchard.



Attorney Linda S. Melancon, left, presented a program at Ascension Parish Library in Prairieville. With her is Librarian Chriselle Henry.



Attorney Aaron R. Wilson, left, presented a program at the Webster Parish Library. With him is Library Assistant Director Savannah Jones.

The LSBA would like to acknowledge Louisiana libraries, the LSBA members who volunteered in their communities, and the pro bono agencies, bar associations, private practitioners and legal service providers who helped to coordinate events in individual parishes. Attorneys are encouraged to volunteer at their local libraries throughout the year. For more information on the program, go to: www.LouisianaLawyersinLibraries.org.

“Lawyers in Libraries” Attorney Volunteers

Acadia Parish: Taylor M. Robinson.
Allen Parish: Adam P. Johnson.
Ascension Parish: Linda S. Melancon.
Assumption Parish: Lakethia B. Bryant.
Avoyelles Parish: Douglas L. Bryan and Charles A. Riddle III.
Beauregard Parish: Jodi C. Andrews.
Bienville Parish: Russell A. Woodard.
Bossier Parish: Pamela R. Jones.
Caddo Parish: Brittany B. Arvie, Monique I. Davis, Felicia M. Hamilton,

Ebonee R. Norris and Sherron Phae Williams.

Calcasieu Parish: Mark M. Judson.
Cameron Parish: Jennifer A. Jones and Shermin S. Khan.
Catahoula Parish: Walter P. McClatchey, Jr.
Claiborne Parish: Jerry Edwards and Charles E. Tabor.
Concordia Parish: Harrece C. Gassery.
DeSoto Parish: Aaron R. Wilson.
East Baton Rouge Parish: Andrea M. Agee, Joaquin M. Johnson, Chambolyn C. Terrance and Jane Arieux Thomas.
East Carroll Parish: Laurie Reis Brister.
East Feliciana Parish: Sarah J. Bradley.
Evangeline Parish: Alexander T. Hautot.
Grant Parish: Lewis M. Gladney.
Iberia Parish: Mckinley B. James, Jr.
Iberville Parish: Leah Poole and Perry W. Terrebonne.
Jackson Parish: J. Michael Rhymes.
Jefferson Davis Parish: Lauren C. Heinen.

Jefferson Parish: Herman L. Bastian, Jr., David W. Birdsong, Jeremy S. Epstein, Keren E. Gesund, Robert A. Kutcher, James G. Maquire and Dayal S. Reddy.

Lafayette Parish: Aaron D. Beyt, Stuart R. Breaux, Claire B. Edwards and Courtney H. Guillory.
Lafourche Parish: David C. Peltier.
LaSalle Parish: Christie C. Wood.
Lincoln Parish: Tracy W. Houck.
Livingston Parish: Amanda L. Brown.
Madison Parish: Angela L. Claxton.
Morehouse Parish: Kandice N. Guice.
Natchitoches Parish: O. Edwin Dunahoe, Jr., C. Edward Harrington and K. Jacob Ruppert.
Orleans Parish: Andrea M. Agee, Dara L. Baird, A. Patrick Dehon, Jr., Veleka Eskinde, Amanda J. Hunt, James A. Lightfoot, Leonor E. Prieto, Matthew S. Smith and Mark A. Vicknair.
Ouachita Parish: Shereba L. Diaz and LaKeisha J. Johnson.
Plaquemines Parish: Elizabeth S. Meneray.
Pointe Coupee Parish: Donald J. Cazayoux, Jr., J. Lane Ewing, Jr. and Scott L. Smith, Jr.

Rapides Parish: Michael S. Koch, Chris J. Roy, Jr. and H. Gregory Walker, Jr.

Red River Parish: Aaron R. Wilson.

Richland Parish: Myrt T. Hales, Jr. and Joshua L. Strickland.

St. Bernard Parish: Eric A. Bopp, Lisa Borne, Michael C. Ginart, Jr., Daniel W. Nodurft and J. Van Robichaux, Jr.

St. Charles Parish: Scott J. Falgoust and Michele C. Stross.

St. Helena Parish: Sean P. Brady.

St. James Parish: Monique M. Edwards.

St. John the Baptist Parish: Nghana Lewis Gauff.

St. Landry Parish: George F. Severson.

St. Martin Parish: Neal C. Angelle.

St. Mary Parish: Adolph B. Curet III.

St. Tammany Parish: Clayton J. Borne, Jason M. Freas, Janet L. MacDonell, Michael W. Margiotta, Jr., Daniel A. Oppenheim, Patrice W. Oppenheim, Frances M. Strayham, Michelle D. Sunseri and Angela Cox Williams.

Tangipahoa Parish: Elsbet C. Smith and Chehardy Sherman Williams.

Tensas Parish: J. McCaleb Bilbro.

Terrebonne Parish: Michael J.



Attorney Shereba L. Diaz, third from left, presented a program at the Ouachita Parish Library. With her are, from left, Jade Wheeler, head of reference; Holly Priestly, main branch manager; and Leslie Plauche, IT assistant.

Billiot, Lakethia B. Bryant, Maria E. Dugas and Linda A. Mitchell.

Union Parish: Kandice N. Guice.

Vermilion Parish: Burton P. Guidry.

Vernon Parish: Michael S. Koch, Paul J. Tellarico and H. Gregory Walker, Jr.

Washington Parish: Cynthia F. Schmidt.

Webster Parish: Aaron R. Wilson.

West Carroll Parish: Sophia Dixon Brown.

West Feliciana Parish: Gregory L. Hughes.

Winn Parish: Lewis M. Gladney.

Continued next page



Attorney Michele C. Stross, left, presented a program at St. Charles Parish Library in Destrehan. With her is Librarian Lauren Pitz.



Attorney Leonor E. Prieto, right, presented a program at Orleans Parish's Rosa Keller Library. With her is Librarian Rachel Bailey.



Attorneys, from left, Michael C. Ginart, Jr., J. Van Robichaux, Jr., Lisa Borne and Daniel W. Nodurft presented a program at the St. Bernard Parish Library in Chalmette.

“Lawyers in Libraries” Organizations

Acadiana Legal Service Corp.
 Central Louisiana Pro Bono Project
 Crescent Care Legal Services
 Family Justice Center
 Lafayette Bar Association

Legacy Estate & Elder Law of Louisiana, L.L.C.
 Loyola University Law Clinic
 Southeast Louisiana Legal Services
 Southwest Louisiana Law Center
 Terrebonne Parish Bar Association

Joanna Laidler is the administrative assistant for the Louisiana State Bar Association’s Access to

Justice Department. She works with the access to justice director to coordinate and facilitate the work of the Access to Justice Committee, including the “Lawyers in Libraries” project. (joanna.laidler@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130)



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.

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Friday, December 14, 2018

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New Orleans

got CLE??

Monday, December 17, 2018

Hyatt Centric French Quarter Hotel

800 Rue Iberville

New Orleans

The Art of Depositions ~ REPLAY

Monday, December 17, 2018

Hyatt Centric French Quarter Hotel

800 Rue Iberville

New Orleans

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& Spa

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A Multi-Topic CLE Seminar

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Fairmont Le Château Frontenac

Quebec



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For more information, visit www.lsba.org/cle

MEMBER BENEFITS:

Geico Offers Auto Insurance Discounts to LSBA Members

By Arielle L. Young

The Louisiana Bar Journal Editorial Board, in collaboration with the Louisiana State Bar Association's (LSBA) Outreach Committee, continues its series of articles highlighting benefits available to LSBA members. This article profiles Geico.

Did you know that, as a mandatory bar, the LSBA has the opportunity to give back to its members? The LSBA is one of many mandatory bars in the nation. In addition to producing magazines and other publications and encouraging participation across various committees, programs and projects, the LSBA takes it one step further and negotiates discounted business and service rates for its members.

There are several discounts that the LSBA has negotiated on behalf of its members, but the hidden gem is the discount on Geico insurance!

Louisiana has some of the highest insurance rates in the nation. That's no secret. However, knowing that everyone feels the effect of higher-than-average car insurance rates, the LSBA negotiated a discount for its members.

The best thing about this discount is that it doesn't discriminate. Whether you're in the private or public sector, or you have a homeowner's or auto insurance policy, the LSBA's discounted rate may be applied to save you money, offering all attorneys a way to cut expenses while obtaining quality

services. You may think it isn't that easy to obtain a discount on insurance, but it is. It also gets better. The Geico discount is a percentage-based discount calculated on the tier of your insurance. In other words, it's not just a flat rate.

The vast network of the LSBA allows this benefit for all of its members who are interested. The LSBA gives back in many ways, but this percentage-based discount helps combat the inevitable increase in insurance premiums.

If you've never used these services, they're easy to find. Log in to your LSBA account, go to Member Resources, select Tools and Services, and you'll see Discount Business Services.

If you're interested in learning more about the Geico discount, go to: www.geico.com/bar/lsba.

Have you used a member benefit through the LSBA? Tell us about it! Contact the Outreach Committee at outreach@lsba.org with questions, comments and ideas for future "Member Benefits" articles. Remember . . . you can always learn more about discounts on the LSBA's website at www.lsba.org/Members/DiscountBusinessServices.aspx.

Arielle L. Young is a domestic violence staff attorney with Southeast Louisiana Legal Services in Hammond. She received her JD degree from Southern University Law Center in 2015. In addition to her practice, she volunteers as a crisis and suicide intervention specialist and is an associate professor with South Louisiana Community College.



Other Business Discounts

- ▶ ABA Members Retirement — (800)826-8901
abaretirement.com/welcome/louisiana
- ▶ Citrix ShareFile — (805)617-7027
- ▶ Clio — (888)858-2546
- ▶ CosmoLex — (866)878-6798
- ▶ Dell — (800)999-3355 or 1-877-568-3355
- ▶ Geico — (800)368-2734
- ▶ LawPay — (866)376-0950
- ▶ LexisNexis — (800)356-6548
- ▶ MyCase — (866)463-6110
- ▶ Office Depot — (800)650-1222
- ▶ Shop ABA — (800)285-2221
- ▶ United Parcel Service — (800)325-7000

Programs

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Johanna G. Averill, Lindsey M. Ladouceur and Elizabeth LeBlanc Voss
• (800)GILSBAR

For more information on LSBA Member discount business services, visit www.lsba.org/goto/businessservices

160+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 19th consecutive year, the Louisiana State Bar Association's (LSBA) Committee on the Profession hosted law school orientations on professionalism at Louisiana's four law schools. More than 160 attorneys and judges from across the state participated in the programs in August.

LSBA President Barry H. Grodsky and LSBA Past President Joseph L. (Larry) Shea, Jr. led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included Louisiana Supreme Court Justices Greg G. Guidry,

Jeff D. Hughes III and John L. Weimer III; LSBA Committee on the Profession member Judith A. Gainsburgh; U.S. District Court Judge Jay C. Zainey, Eastern District of Louisiana; and American Bar Association President-Elect Judy Perry Martinez.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Dean Thomas C. Galligan, Jr.; Loyola University College of Law Dean Madeleine M. Landrieu; Southern University Law Center Chancellor John K. Pierre and SBA President Xavieria Jeffers; 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 judge volunteers.

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

Attorneys and judges volunteering their services this year were:

Louisiana State University Paul M. Hebert Law Center

H. Kent Aguillard
ReAzalia Z. Allen
Hon. Dawn Amacker
Hon. Jerome J. Barbera III (Ret.)
Hon. Randall L. Bethancourt
Jay R. Boltin

Stephen F. Butterfield
Andrew M. Casanave
Hon. Marilyn C. Castle
Donald G. D'Aunoy, Jr.
S. Guy deLaup
Bridget B. Denicola
Chase Edwards
Monique M. Edwards
Todd E. Gaudin

Stephen W. Glusman
John Clay Hamilton
Michael E. Holoway
Katherine Hurst
James Eric Johnson
John T. Joubert
Hon. Luke LaVergne (Ret.)
David A. Lowe
Betty L. Marak

Cary J. Menard
Pam P. Mitchell
Warren L. Montgomery
Hon. Daniel Milton Moore III
Gregory K. Moroux
Gregory K. Moroux, Jr.
Hon. William A. Morvant
Hon. Pamela Moses-Laramore

Continued next page



Louisiana State University Paul M. Hebert Law Center: Addressing the first-year students were, from left, Louisiana Supreme Court Justice Jeff D. Hughes III; Dean Thomas C. Galligan, Jr.; and Louisiana State Bar Association Past President Joseph L. (Larry) Shea, Jr.



Louisiana State University Paul M. Hebert Law Center: First-year law students discussed ethics and professionalism scenarios with attorney and judge volunteers in breakout groups.



Loyola University College of Law: Addressing the first-year students were, from left, Louisiana State Bar Association President Barry H. Grodsky; Dean Madeleine Landriou; and Louisiana Supreme Court Justice Greg G. Guidry.



Loyola University College of Law: First-year law students discussed ethics and professionalism scenarios with attorney and judge volunteers in breakout groups.

Tammy P. Northrup
 Harry J. (Skip) Philips, Jr.
 Michael H. Piper III
 Charles B. Plattsmier
 Hon. Laura A. Prosser
 Sera H. Russell III
 Rene I. Salomon
 Robert E. Shadoin
 Joseph L. (Larry) Shea, Jr.
 Kristen Stanley-Wallace
 Wayne T. Stewart
 Amanda A. Trosclair
 Lykisha R. Vaughan
 Jerome M. Volk, Jr.
 Marsha M. Wade
 Hon. Trudy M. White

Michael C. Wynne
Loyola University College of Law
 Kristin L. Beckman
 Keith J. Bergeron
 Hon. Randall L. Bethancourt
 Linda G. Bizzarro
 Hon. Paul A. Bonin
 Caitlin R. Byars
 Sandra K. Cosby
 Elizabeth M. Davis
 Hon. Blair Downing Edwards
 Daniel H. Edwards
 Hon. Richard M. Exnicios
 Val P. Exnicios

Darryl J. Foster
 Vincent J. Glorioso, Jr.
 Lauren E. Godshall
 Hon. John C. Grout, Jr. (Ret.)
 Michael E. Holoway
 Christy M. Howley
 Jessica L. Ibert
 Nahum Laventhal
 Hon. Ivan L.R. Lemelle
 Hon. Lynn L. Lightfoot
 Misha M. Logan
 Hon. Diane R. Lundeen
 John E. McAuliffe, Jr.
 Lorraine P. McInnis
 John K. Parchman
 Leonor E. Prieto

Bessie L. Renfrow
 Doris A. Royce
 Christina Seanor
 Tiffany D. Snead
 Hon. Raymond S. Steib, Jr.
 Tina Suggs
 Hon. Max N. Tobias, Jr. (Ret.)
 Patricia A. Traina
 Jerome M. Volk, Jr.
 Tessa Vorhaben
 Robert M. White
 Forrest Ren Wilkes
 Scott T. Winstead



Southern University Law Center: Chancellor John K. Pierre spoke to the first-year law students at the orientation. *Photo by Steve Jarreau.*



Southern University Law Center: New law students take their oath of professionalism and integrity. *Photo by Steve Jarreau.*



Tulane University Law School: Addressing the first-year students were, from left, U.S. District Court Judge Jay C. Zainey; Louisiana State Bar Association President Barry H. Grodsky; Louisiana Supreme Court Justice Greg G. Guidry; and American Bar Association President-Elect Judy Perry Martinez.



Tulane University Law School: First-year law students were welcomed to the orientation by several speakers before being divided into breakout groups.

**Southern University
Law Center**

Brett L. Bajon
Virginia Gerace Benoist
Alfreda Tillman Bester
Hon. Paul A. Bonin
Taryn C. Branson
Harley M. Brown
Hon. Paula A. Brown
Janice L. Campbell-Miller
Linda Law Clark
Hon. Nakisha Ervin-Knott
Steven J. Farber
Lisa A. Freeman
Todd E. Gaudin
Eugene G. Gouaux III
Hon. Roxie F. Goynes
Raveen A. Hills
Malinda Hills Holmes
Lila Tritico Hogan
Michael E. Holoway
Roderick A. James

Quintillis K. Lawrence
James H. Looney
Martin Maley, Sr.
Judy Perry Martinez
Charles S. McCowan, Jr.
Lisa M. Parker
Johanna Posada
Brittany L. Reed
La Koshia Roberts
Michael J. Sipos
Stacey B. Stephens
Tina L. Suggs
Adreja Boutte Swafford
Marsha M. Wade
Shandrea Williams

**Tulane University
Law School**

Franklin D. Beahm
Jack C. Benjamin, Jr.
Caroline G. Bordelon
Alan G. Brackett

Christine C. Bruneau
Carl A. Butler
Thomas B. Calvert
Christopher E. Carey
Kevin Christensen
Sandra K. Cosby
S. Guy deLaup
Hon. Richard M. Exnicios
Val P. Exnicios
Judith A. Gainsburgh
Margaret V. Glass
Meghan F. Grant
Hon. John C. Grout, Jr.
(Ret.)
Galen M. Hair
Cashauna M. Hill
Michael E. Holoway
Grady Hurley
Alan P. Jacobus
Hon. Christopher H. Juge
Kelly M. Legier
James B. Letten

Kelsey L. Meeks
Shayna Beevers Morvant
John H. Musser IV
James R. Nieset
James R. Nieset, Jr.
H. Philip Radecker, Jr.
Valerie T. Schexnayder
Hon. D. Nicole Sheppard
Imtiaz A. Siddiqui
William J. Sommers, Jr.
Hon. Ulysses Gene
Thibodeaux
Hon. Max N. Tobias, Jr.
(Ret.)
Jonathan M. Walsh
Marshall G. Weaver
John G. Williams
Micah C. Zeno

Past Presidents Promoting Professionalism

Kim. M. Boyle
S. Guy deLaup
Larry Feldman, Jr.
E. Phelps Gay
Robert E. Guillory, Jr.
Wayne J. Lee

John H. Musser IV
Frank X. Neuner, Jr.
Patrick S. Ottinger
Darrel J. Papillion
John Dale Powers
Dona Kay Renegar

Michael H. Rubin
Leslie J. Schiff
Joseph L. (Larry) Shea, Jr.
Bob F. Wright

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. 1, honoring members of the Bench and Bar who died in the past year. The exercises followed the 66th 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 Barry H. Grodsky of

New Orleans 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. He next read the names of all deceased members being recognized.

Hon. Randall L. Bethancourt, judge in the 32nd Judicial District Court in Houma and president of the Louisiana Center for Law and Civic Education, gave the general eulogy. (*The eulogy begins on page 273.*)

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson gave the closing remarks.

The Rev. E. Gary Taylor with Trinity Episcopal School in New Orleans gave the invocation. Archbishop Gregory M. Aymond with the Archdiocese of New Orleans gave the benediction.

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 2017-18

Hon. Joan M. B. Armstrong New Orleans, LA June 9, 2018	Hon. Charles R. Brackin Lake Providence, LA November 23, 2017	Hon. George C. Connolly, Jr. New Orleans, LA March 26, 2018	Hon. Clare F. Jupiter New Orleans, LA May 18, 2018	Hon. Bernard N. Marcantel Jennings, LA May 9, 2018	Hon. Ernest V. Richards IV Covington, LA March 31, 2018
Hon. Peter H. Beer New Orleans, LA February 9, 2018	Hon. James J. Brady Baton Rouge, LA December 9, 2017	Hon. Lewis S. Doherty III Baton Rouge, LA December 31, 2017	Hon. Ronald L. Lewellyan Columbia, LA November 22, 2017	Hon. Thomas P. McGee Santa Rosa Beach, FL September 5, 2018	Hon. Walter J. Rothschild Metairie, LA April 26, 2018
Hon. Denald A. Beslin Rayne, LA October 29, 2017	Hon. Merwin M. Brandon, Jr. Bastrop, LA March 18, 2018	Hon. Bob H. Hester Baton Rouge, LA December 3, 2017	Hon. John L. Lolley Monroe, LA February 18, 2018	Hon. Anthony D. Ragusa Belle Chasse, LA March 27, 2018	Hon. Kaliste J. Saloom, Jr. Lafayette, LA December 2, 2017
			Hon. Glynn A. Long Donaldsonville, LA April 19, 2018		

In Memoriam Members of the Bar 2017-18

James S. Andes Canton, NY December, 11, 2017	Anthony M. Bertucci Baton Rouge, LA January 4, 2018	Charles T. Carr III Gretna, LA July 29, 2018	John M. Coman, Jr. Metairie, LA May 17, 2018	Donald J. De Gabrielle, Jr. Houston, TX January 22, 2018	Paul T. Gallagher Baton Rouge, LA January 18, 2018
Susan L. Armstrong Keithville, LA January 29, 2018	Michel F. Bertucci Lafayette, LA October 13, 2017	Harold B. Carter, Jr. Little Rock, AR October 16, 2017	James P. Conner Covington, LA April 9, 2018	Patricia A. G. Dean Metairie, LA June 14, 2018	Jane M. Gisevius Metairie, LA May 29, 2018
Robert L. Atkinson III Baton Rouge, LA January 11, 2018	William E. Borah New Orleans, LA September 25, 2017	Kenneth M. Carter St. Francisville, LA August 3, 2018	Robert A. Contreras Kenner, LA July 27, 2018	Blaine A. Doucet Lake Charles, LA May 15, 2018	Warren A. Goldstein New Orleans, LA November 14, 2017
Kenneth E. Barnette Baton Rouge, LA December 6, 2017	John O. Braud Hammond, LA May 21, 2018	Thomas A. Casey, Sr. Metairie, LA March 29, 2018	Irvy E. Cosse, Jr. New Orleans, LA January 12, 2018	Thomas D. Dunn, Jr. New Orleans, LA April 23, 2018	Diane M. Gravois Kenner, LA June 27, 2018
Louis H. Beard Beaumont, TX March 22, 2018	John M. Brown Shreveport, LA October 26, 2017	Donald G. Cave Baton Rouge, LA February 12, 2018	Oris R. Creighton Folsom, LA July 31, 2018	James R. Fair, Jr. Natchitoches, LA January 7, 2018	Maria B. Groff Houston, TX March 5, 2018
Theresa A. Beckler Ponchatoula, LA November 24, 2017	Matthew Burroughs Haughton, LA March 8, 2018	Charles L. Chassaignac New Orleans, LA January 18, 2018	Samuel S. Dalton Jefferson, LA September 5, 2017	Peter R. Flowers Shreveport, LA March 19, 2018	Verna R. Guesnon Slidell, LA September 5, 2017
Jack C. Benjamin, Sr. Metairie, LA June 11, 2018	Gerard W. Caire Edgard, LA February 12, 2018	Robert E. Clark Vidalia, LA June 1, 2018	Thomas W. Davenport, Jr. Haughton, LA April 27, 2018	Scott J. Folse Baton Rouge, LA November 13, 2017	James T. Guglielmo Opelousas, LA January 21, 2018
Nicholas D. Bernard Lafayette, LA December 6, 2017	Robert H. Carpenter, Jr. Baton Rouge, LA December 8, 2017	Maumus F. Claverie, Jr. New Orleans, LA February 14, 2018	David P. Daye Shreveport, LA November 30, 2017	Russell J. Fontenot Cedar Park, TX March 21, 2018	Rose Hager New Orleans, LA June 24, 2018

In Memoriam Members of the Bar 2017-18, continued

Charles L. Hamaker Monroe, LA January 7, 2018	Gordon K. Konrad River Ridge, LA December 17, 2017	Joseph P. Morella Patterson, LA December 25, 2017	Kenney L. Riley San Antonio, TX December 16, 2017	Grove Stafford, Jr. Alexandria, LA December 7, 2017	William R. Weatherford Baton Rouge, LA November 27, 2017
Gary E. Harvey Baton Rouge, LA April 5, 2018	Charles W. Lane III New Orleans, LA November 15, 2017	Julian R. Murray, Jr. Metairie, LA September 27, 2017	Gayle S. Ringo Pensacola, FL June 10, 2018	Michael A. Stroud Shreveport, LA May 9, 2018	Scott T. Welch Metairie, LA January 21, 2018
Ike F. Hawkins, Jr. Shreveport, LA January 2, 2018	John F. LaVern Lake Charles, LA August 23, 2018	Lewis V. Murray III Franklinton, LA April 29, 2018	V. Ray Rose New Orleans, LA December 31, 2017	Troye A. Svendsen Baton Rouge, LA March 10, 2018	Harold M. Wheelahan III Metairie, LA February 3, 2018
Charlotte A. Herman Bentonville, AR November 17, 2017	Joseph H. Lawson New Orleans, LA November 17, 2017	Hugh B. O'Connor Baton Rouge, LA November 3, 2017	James H. Roussel New Orleans, LA February 1, 2018	John H. Taylor Mangham, LA November 6, 2017	Walter J. Wilkerson New Orleans, LA September 13, 2018
Jerry L. Hermann Houma, LA December 30, 2017	John G. Loftin Monroe, LA March 31, 2018	Robert A. Pascal Baton Rouge, LA January 19, 2018	Tommy C. Rutledge Dequincy, LA December 1, 2017	Brad G. Theard Metairie, LA September 10, 2017	Fernand F. Willoz III New Orleans, LA April 23, 2018
Brooks E. Hester Baton Rouge, LA September 8, 2017	Elizabeth A. Long Lafayette, LA August 17, 2018	M. Dale Peacock Monroe, LA May 1, 2018	C. Lenton Sartain Baton Rouge, LA November 15, 2017	Gerard F. Thomas Natchitoches, LA February 10, 2018	William T. Wise Sarasota, FL September 14, 2017
Jack N. Huval Lafayette, LA November 6, 2017	Bernard Marcus New Orleans, LA June 2, 2018	F. Jean Pharis Alexandria, LA February 8, 2018	Francis A. Smith, Jr. New Roads, LA January 4, 2018	Nathalie M. Walker New Orleans, LA April 10, 2018	Ronald S. Wood Metairie, LA June 26, 2018
Donald L. King New Orleans, LA November 14, 2017	Robert S. Mellon Morro Bay, CA October 12, 2017	Randolph A. Piedrahita Baton Rouge, LA June 7, 2018	H. David Smith, Jr. Baton Rouge, LA May 18, 2018	Arthur M. Wallace, Jr. Benton, LA January 17, 2018	Lynn C. Woods, Jr. Houston, TX January 31, 2018
Arthur G. Kingsmill Roswell, GA July 22, 2018	Phil E. Miley Baton Rouge, LA January 19, 2018	Thomas R. Pixton Elk City, OK May 8, 2018	Lawrence H. Smith Baton Rouge, LA July 14, 2018	Kenneth V. Ward New Orleans, LA September 2, 2017	Marcella M. Ziffle Folsom, LA May 28, 2018
Thomas H. Kingsmill III New Orleans, LA November 23, 2017	Shelley R. Miller Glendale, CA June 12, 2018	George R. Ramier Arnaudville, LA July 24, 2018	Wood T. Sparks Monroe, LA May 12, 2018	Errol J. Ware New Orleans, LA August 9, 2018	

General Eulogy:

LSBA Memorial Exercises 2018

Delivered by Hon. Randall L. Bethancourt
Judge, 32nd Judicial District Court
President, Louisiana Center for Law and Civic Education



Hon. Randall L.
Bethancourt

Madame Chief Justice Johnson, Associate Justices, Judges, Reverend Clergy, the distinguished President of the Louisiana State Bar Association, members of the Bar, and, most importantly, to the families and friends of our departed colleagues:

We have come together today from many places, and we are all at different stages in our respective journeys

through life. Our paths are varied and we look at life in a variety of ways. But there is one thing we have in common, and that is we have been touched by those whom we honor today.

You have all previously, among friends and families, celebrated the lives of our esteemed colleagues. Thank you for allowing us to do the same within our legal community.

We are honoring a group of men and

women who had different backgrounds, types of practices and philosophies about the law — what is or isn't best for our profession and its role in how the citizens of this nation choose to live together peacefully.

So, this morning, we put aside our usual daily activities for a while and gather here to remember our colleagues of the Louisiana Bar who passed away

Continued next page

Eulogy continued from page 273

this year. We are here today so that in our own way we can celebrate, honor and pay tribute to the lives of these men and women, and, in so doing, we express our love and admiration for them.

We come here today seeking to reinforce our memories of ones so well worth remembering. We also come to express our condolences to their loved ones who survived them, to show those nearest and dearest to them that their deep sense of loss is shared. As a community of lawyers, this is part of what we do. It is our duty to each other in this “helping profession” for we are truly a legal community, not just a collection of individuals practicing law.

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 our state and our 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 toward the greater good. These lives and contributions mattered. Our State Bar has been strengthened by these people we pause to remember. Their service to the legal community and the community as a whole was invaluable. And for that, we shall forever be thankful.

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.

If we seek a true monument to our deceased colleagues, the ones whom we memorialize today, look around you. These men and women whom we honor and remember today have gone home, leaving those of us with the memories they gave, the good they did, and their contributions to this “helping profession.” This remains as *their* monuments.

Thank you all for being here today, and on behalf of the Louisiana State Bar Association, we hope that in some way, by acknowledging our own sense of loss and fond remembrance today, we can help further the sense of lives well lived by our deceased colleagues, a time on earth well spent, and a heritage of lasting meaning in the noble career of the law.

May God bless you. May our colleagues who have gone before us Rest in Eternal Peace.



LBSL Accepting Requests for Certification Applications

The Louisiana Board of Legal Specialization (LBSL) is accepting applications for certification in five areas — appellate practice, estate planning and administration, family law, health law and tax law — from Nov. 1, 2018, through Feb. 28, 2019. Also, the LBSL will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2019, through Sept. 30, 2019.

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

cation is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBSL standards for the applicable specialty for a detailed description of the requirements: www.lascmcle.org/specialization/index.aspx.

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

- ▶ Appellate Practice — 18 hours of approved appellate practice law.
- ▶ Estate Planning and Administration Law — 18 hours of approved estate planning law.
- ▶ Family Law — 18 hours of approved family law.
- ▶ Health Law — 15 hours of approved health law.
- ▶ Tax Law — 18 hours of approved

tax law.

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

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the LBSL simultaneously with the testing agency to avoid delay of board certification by the LBSL. Information concerning the American Board of Certification will be provided with the application form(s) and can be viewed online at: www.abworld.org.

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

Deadline Soon for Earning CLE Credits; Transcripts Mailed Dec. 1

It's that time of year when continuing legal education credits are due. Preliminary transcripts were mailed to the membership on or before Dec. 1.

Remember that all hours must be earned by Dec. 31, 2018, and must be reported no later than Jan. 31, 2019, or late penalties will apply.

The annual requirement for attorneys is 12.5 hours, including 1 hour each of ethics and professionalism credit.

Attorneys admitted in 2017 are also required to earn a total of 12.5 hours, but must have 8 hours of ethics, professionalism or law office management credits in-

cluded within that total. Hours earned in the calendar years 2017 and 2018 are counted together for this initial compliance period.

In-house counsel admitted to practice under LASC 12, Section 14, must earn 12.5 hours annually, including 1 hour of ethics and 1 hour of professionalism, and must follow the same reporting requirements as all other attorneys. They do not qualify for the MCLE exemption.

The form for attorneys who do qualify for an exemption from the requirements will be available online on Dec. 1. Attorneys may mail, fax or email the exemption to the MCLE Department, and it is recommend-

ed that attorneys keep any confirmation documentation related to that exemption on file in their offices. Attorneys who were impacted by this past year's severe weather events will again have the option to claim a disaster exemption. Exemption forms must be reported by Jan. 31, 2019.

Information regarding attorney requirements and pre-approved courses can be found on the website at: www.lsba.org/MCLE. Click "MCLE" on the header for information on the calendar, rules, forms and transcript information.

Attorneys Apply for Recertification as Legal Specialists

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for recertification as legal specialists for the period Jan. 1, 2019, to Dec. 31, 2023. 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, or email maryann.wegmann@lsba.org, no later than Friday, Dec. 28, 2018.

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

Estate Planning & Administration Law

Byron Ann Cook.....New Orleans
Miriam Wogan Henry New Orleans
Julie Renee JohnsonHammond
Jimmy D. Long, Jr.Natchitoches

Christine Wendt Marks..... Metairie
Kyle Christopher McInnis..... Shreveport
Leon Hirsch Rittenberg III... New Orleans
Cherish Dawn Van Mullem . New Orleans
Todd Michael Villarrubia New Orleans
H. Aubrey White III..... Lake Charles

Tax Law

Cade Richard Cole..... Sulphur
Byron Ann Cook..... New Orleans
Kyle Christopher McInnis..... Shreveport
Leon Hirsch Rittenberg III... New Orleans
Richard Joseph Roth III..... New Orleans
John Kevin Stelly.....Lafayette
Ryan Charles Touns New Orleans
John R. Williams..... Shreveport

Family Law

Terry George AubinAlexandria
Gregory Holland Batte Shreveport
Suzanne Ecuyer Bayle..... New Orleans
H. Craig Cabral..... Metairie
Michael D. ConroyCovington
Bradford Hyde Felder.....Lafayette

Kenneth P. Haines..... Shreveport
Margaret H. Kern.....Covington
Charles O. LaCroix.....Alexandria
Susan Helene Neathamer Gretna
Vincent Anthony Saffiotti..... Baton Rouge
Laurel Annette Salley Metairie
Lila Molaison Samuel Gretna

Business Bankruptcy Law

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

Consumer Bankruptcy Law

Ralph S. Bowie, Jr. Shreveport
Raymond L. Landreneau, Jr. Houma
David J. Williams Lake Charles

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 Mary

Ann Wegmann, Specialization Director, no later than Friday, Dec. 28, 2018.

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

Appellate Practice

Jeffrey E. Richardson New Orleans
Leigh Ann Schell New Orleans

Desirée Marie Valenti..... New Orleans

Estate Planning & Administration Law

Craig Stephen Daste, Jr. Metairie
Lisa Vienne Johnson.....Natchitoches
Rose S. Sher New Orleans

Tax Law

Jeannette S. Waring New Orleans

Third Hearing Scheduled for Comments on LBLs Employment Law Standards, Labor Law Standards

The Louisiana Board of Legal Specialization (LBLs) will hold a third public hearing beginning at 5 p.m. Tuesday, Feb. 12, 2019, at the Lafayette Bar Association, 2607 Johnston St., Lafayette, to provide a forum for Bar members to comment on the LBLs Employment Law Standards and Labor Law Standards.

The resolutions of two members of the Louisiana State Bar Association (LSBA) House of Delegates (HOD) to suspend the LBLs's Employment Law Standards and Labor Law Standards were approved by the LSBA HOD and the Board of Governors (BOG) at the Jan. 20, 2018, meeting. Both the Employment Law Standards and the Labor Law Standards had been approved by the HOD and BOG a year earlier at the Jan. 21, 2017, meeting without any opposition.

The HOD and BOG have now requested that the LBLs conduct further study on both the Employment Law Standards and Labor Law Standards, in-

cluding whether a majority of affected practitioners support the standards and whether concerns over discriminatory effects and unfair competitive advantages can be adequately addressed.

The LBLs has already held two public hearings. The first public hearing was Aug. 16, 2018, in New Orleans. LBLs Chair Carl J. Servat III presided over the meeting and board member William R. Corbett attended. The LBLs thanks LSBA President Barry H. Grodsky for his attendance and participation in the hearing and the interested members of the Bar who attended and voiced their opinions.

The second public hearing was Oct. 3, 2018, in Baton Rouge. LBLs board member William R. Corbett presided over this meeting. The LBLs thanks 2019-20 LSBA President-Elect Alainna R. Mire for her attendance and participation in the hearing, as well as the interested members of the Bar who attended and voiced their opinions.

The purpose of the public hear-

ings is to determine whether the LBLs Employment Law Standards and Labor Law Standards need to be revised based upon the Resolutions passed on Jan. 20, 2018. LSBA members also may submit comments concerning the LBLs Employment Law Standards and Labor Law Standards to Mary Ann Wegmann by email, maryann.wegmann@lsba.org, or by letter addressed to LBLs, 601 St. Charles Ave., New Orleans, LA 70130.

The Standards may be reviewed on the LBLs website at: www.lsba.org/goto/2018mclemploymentlawstandards and www.lsba.org/goto/2018mclelaborlawstandards.

In order to receive input on the Employment Law Standards and Labor Law Standards from interested members of the Bar throughout the state, the LBLs plans to hold one additional hearing in Shreveport in early 2019.

For more information, email Mary Ann Wegmann or visit the LBLs website at: www.lascmcle.org/specialization/index.aspx.



The 2018-19 Leadership LSBA Class participated in an orientation on Aug. 24 in conjunction with the Board of Governors meeting. The class is comprised of 16 up-and-coming young lawyers and is led by two co-chairs. Front row from left, Denia S. Aiyegbusi, Deutsch Kerrigan, LLP; Betty Ann Maury, Leadership Class co-chair, law clerk, 24th Judicial District; Senae D. Hall, attorney at law; Valerie E. Fontenot, Baldwin Haspel Burke & Mayer, LLC; Melissa M. Lessell, Deutsch Kerrigan, LLP; Teresa D. King, attorney at law; Alyson V. Antoon, Antoon Law Firm, LLC; Cortney M. Dunn, Calcasieu Parish Public Defender's Office; and Taryn C. Branson, attorney at law. Back row from left, Aaron R. Wilson, Wilson and Wilson, APLC; Ronald J. Sholes, Jr., attorney at law; Christopher J. Sellers, Jr., Leadership Class co-chair, Ochsner Health System; and Christopher R. Mistich, Ochsner Health System. Not in photo, R. Danielle Barringer, Louisiana House Legislative Services; Collin R. Melancon, Mansfield, Melancon, Cranmer & Dick; and Joseph B. Williams III, Calcasieu Parish District Attorney's Office.

By Nisha Sandhu

EXERCISING CARE IN ONLINE PRESENCE

Social media provides an instant means of communicating with people. Individual blogs and social media sites, such as Facebook and Twitter, have been and continue to be used as forums for interacting with the public. For lawyers, these forums create dangerous ethical issues. Lawyers must exercise care when choosing to engage in public commentary online. Like other members of the general public, lawyers post on social media sites, tweet, blog about issues and promote themselves on professional forums (e.g., LinkedIn). Social media has become a tool for firms and lawyers to share information about their areas of representation and level of experience in a particular area of practice. Social media is also used as a means of gaining publicity — both personally and professionally. But lawyers and law firms with an online presence risk breaching client confidentiality, affecting the outcome of legal proceedings and even damaging the legal profession, to say nothing of the administration of justice. Whether posting on Facebook, tweeting on a trending topic or actively commenting on submitted issues in an online forum, certain obligations should be observed to ensure that lawyers and law firms maintain compliance with professional and ethical standards.¹

Public commentary can result in sharing ideas, explaining concepts and educating people on certain issues. However, such commentary could, under certain circumstances, be considered legal advice. Readers may (and often do) submit fact-based questions seeking specific advice on how best to approach a particular situation. Care should be taken that a lawyer-client relationship is not accidentally formed or advice given without enough context or facts. Rule 1.18 provides the duties owed by lawyers to prospective

clients. Especially in online communications and social media, disclaimers should be included that expressly disavow the formation of a lawyer-client relationship.

Lawyers are specifically prohibited from disclosing confidential information related to client representation without the client's informed consent. Rule 1.6(a) of the Louisiana Rules of Professional Conduct provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Unless the circumstances fall under one of the Rule's exceptions, a lawyer may not reveal confidential client information. Such protected information includes a client's identity or facts about representation, even if the information is found in public records. If information about a client's case has been covered in the news, Rule 1.6 still controls. In fact, even using hypotheticals requires caution. A violation could occur if a client's identity or the details of a client's case could be reasonably inferred from a hypothetical example used online. If a lawyer wants to discuss specific details of a case publicly, the lawyer must comply with Rule 1.6.

Even with a client's informed consent to discuss a matter, public commentary may not be appropriate. Lawyers are obligated to maintain impartiality of the courts and the integrity of the legal profession. Rule 3.5 specifically prohibits a



lawyer from influencing a judge, juror, prospective juror or other official by means prohibited by law. Commenting on a case in public can potentially contaminate a jury pool. Lawyers must take care not to disrupt legal proceedings. Rule 3.6 prohibits a lawyer who is participating in an investigation or litigation from making an "extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing" a proceeding in the matter. Finally, Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. In other words, lawyers must think very carefully before they "speak" online.

FOOTNOTE

1. See ABA Formal Op. 480 (2018).

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, family law and criminal defense. Email her at firm@nsacla.com.

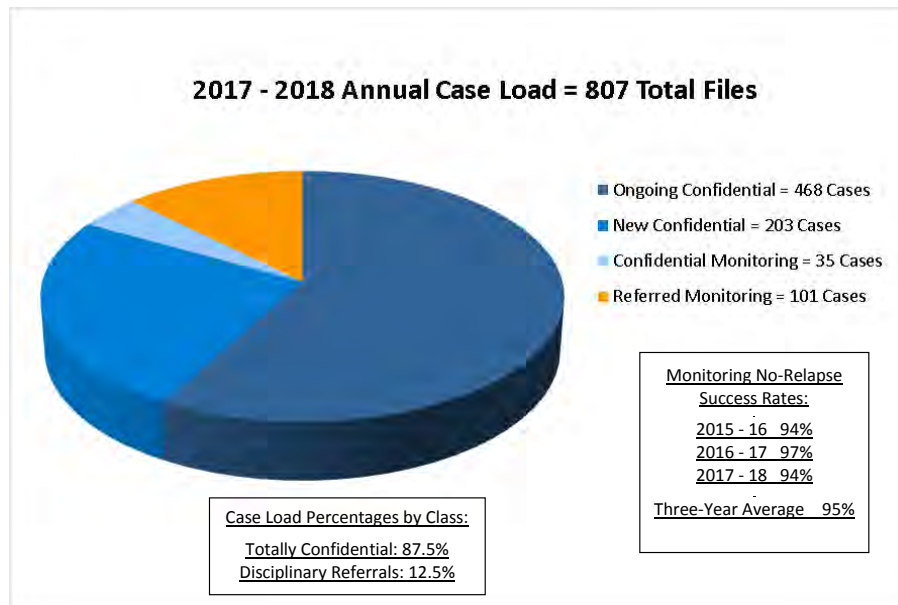


The Judges and Lawyers Assistance Program, Inc. (JLAP) is pleased to report it has experienced another banner year of tremendous growth in many categories, including the most precious of all — providing 100 percent confidential clinical assistance to lawyers and judges, their family members, law firm and court staff, and law schools and law students.

JLAP's total case load was 807 last year, a breakthrough in overall numbers of people assisted in a single year. JLAP also experienced a remarkable increase in the number of people who reached out for help in absolute privacy and without any disciplinary or bar admissions involvement. Last year, JLAP serviced 706 totally confidential files. At the same time, only 101 of JLAP cases involved disciplinary or bar admissions matters. As such, 87.5 percent of JLAP's work was totally confidential last year.

The assistance rendered by JLAP is now highly specialized to meet the specific needs of lawyers and judges, and JLAP continues to hone its programming based upon the 2015 JLAP Performance Audit which certified JLAP as a top-tier program in the nation.

Lawyers and judges coming to JLAP confidentially are often in serious distress and have nowhere else to turn. JLAP rou-



From JLAP 2017-18 report, 2017-18 Annual Case Load.

tinely sees cases involving issues with alcohol use, drug use, depression, anxiety, compassion fatigue and burnout.

Some people reaching out to JLAP are literally on the brink of harming clients or even harming themselves. Many are submerged in deep despair and are on the verge of incurring serious consequences, such as being arrested for DUI or receiving client and disciplinary complaints due to an unaddressed or insufficiently addressed substance use or other mental health issue.

It is a spectacular “WIN” for all of us each time one single person in our profession reaches out to JLAP confidentially and avoids harming himself/herself, the profession and the public. It is wonderful to see hundreds receiving that valuable help from JLAP each year.

The positive “ripple-effect” of recovery through JLAP is far-reaching and extremely powerful. When one legal professional receives JLAP's help and that person's fitness-to-practice is restored, it not only benefits his/her immediate family, law practice and clients but also directly benefits scores of others in the profession with whom he/she interacts. Staff members, peers, opposing counsels and the courts all benefit. When hundreds receive JLAP's help each year and are restored to good health, it literally benefits thousands of others with whom these individuals will interact going forward in their personal lives and professional careers.

On another note of progress, JLAP continues to see large increases each year in the ratio of people receiving JLAP's professional clinical assistance for “pure men-

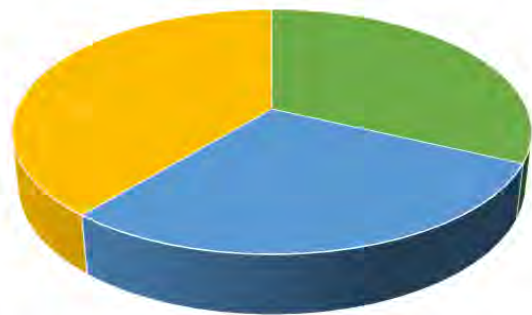
Real Trust – Real People

JLAP's life-saving services are trustworthy and CONFIDENTIAL as a matter of law. Here are real examples of actual feedback from JLAP clients:

“I have complete confidence that the service JLAP provides is 100% confidential. Simply put, JLAP is unquestionably a trustworthy program.”

“Today, I am indebted to JLAP for all of those good things that recovery brought to my life; and there are many.”

Mental Health and SUD Referrals



■ Substance Use Only 32% ■ Comorbid 29% ■ Mental Health Only 39%

From JLAP 2017-18 report, *Mental Health and SUD Referrals*.

tal health” concerns that have nothing to do with alcohol or drug use.

Last year, just more than 300 of JLAP’s open files involved “pure mental health” issues such as depression, anxiety, compassion fatigue, bipolar and ADHD. This is not surprising, considering that today’s legal professionals suffer depression rates significantly higher than rates for alcohol and drug use issues. Accordingly, 39 percent of JLAP’s total case load last year involved mental health issues that had nothing to do with alcohol or drugs.

As to those cases that did involve alcohol or drugs, there is also great news to report. JLAP’s annual no-relapse success rate in its formal recovery monitoring

program was 94 percent. In the last three years, JLAP’s no-relapse rates have been 94 percent, 97 percent and 94 percent, thus rendering a striking 95 percent success rate on average.

It is clear that JLAP’s monitoring participants, and JLAP’s clients in all other categories, have benefitted tremendously from the 2015 JLAP Performance Audit that certified JLAP’s current professional staffing composition, clinical standards and protocols as needed to render a comprehensive state-of-the-art “peer-support professionals’ program.”

There is more positive news to report on topics such as JLAP’s new law school initiatives, JLAP’s lawyer well-being and

mindfulness initiatives, and the recognition of JLAP’s programming by a leading psychiatrist in the field of diagnosing and treating licensed professionals. Visit JLAP’s website at www.louisianajlap.com and access the 2018 Summer Newsletter for more information.

In conclusion, JLAP is making a tremendous difference in the personal and professional lives of hundreds of legal professionals. This is a team effort, and JLAP can’t do it alone. JLAP is extremely grateful for the strong support it receives from all corners of the profession. The issue of improving mental health in the legal profession, and fully supporting Lawyers Assistance Programs, has become an important ABA priority nationally. In Louisiana, by working together, we are succeeding!

If you or someone you know needs JLAP’s help, don’t wait! Contact JLAP confidentially at (985)778-0571 or email JLAP confidentially at jlap@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 jlap@louisianajlap.com.



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

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

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

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

QUALITY of Life

By Maurice J. Le Gardeur, Jr., Bard of Boston Street

MAKE SOMEONE HAPPY!

“Quality of life” is just a fancy phrase for happiness. I don’t mean in the material sense — three or four cars, vacation home, offshore fishing boat, lots of money — but in the emotional sense, loosely translated for me as “peace of mind.” Despite all the TV ads and love songs, there’s only one person on this earth who can make you happy. If you want to meet that person, just look in the mirror. Ask yourself, how can I make myself happier? I’ve found the easiest way for me is to make someone else happy, and that’s why I write.

People ask me, “Are you a writer who practices law, or a lawyer who writes?” This is the old chicken/egg conundrum. I answer, “both,” but, truthfully, the lawyer came first, then with age (74 years and counting), adversity and the activities of daily living, the writer emerged and now basically controls the lawyer but can’t suppress him.

Mona, my cartoon character, makes me happy because she makes some people laugh — but some is enough to keep her going. She sprang fully formed from my head like Athena did from Zeus. Her full name is *Mona Lisa Beagle, Eagle Paralegal*, and she tells lawyer jokes among other things.



Season’s Greetings and have a very, very Happy New Year.
From Mona, Minnie Moi and Maurice!

When people ask me, “Who is Mona?,” I reply, “C’est mois.” Her persona is loosely based on my Girl Friday, Norma, who is also around Monday through Thursday and sometimes on weekends when we’re prepping for trial.

People are fascinated that I could create a funny female character like Mona, but do you know any women who aren’t complex or capable of being easily understood? I tell everyone my mother was a woman, my sister was a woman, my legal assistant is a woman, some of my clients are women, and so far both of my wives (past and present) are women, so I have a wealth of life experience to draw upon.

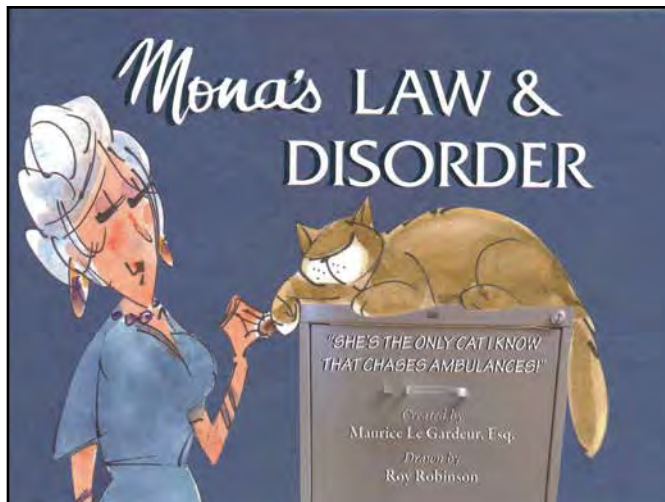
By the way, Mona

has a cat, Minnie Moi, her *feline familiar* with whom she shares her deepest thoughts and feelings. So she is a real cat person. Mona made her debut on July 19, 2014, at the St. Tammany Art Association when I celebrated the publication of my first hard-cover poetry collection — *Gulf Coast Stimulus Package* (subtitled *Viagra® for the Soul*). As a voluptuous beach bunny, Mona was the cover girl. Her nickname was *Viagra® on the Hoof*. In her belated coming-out party, she announced, “I’m the only 9th Ward broad to make her debut and 30 years late at that!” Following her debut, she was featured on a 16-inch-by-20-inch full-color poster titled *Mona Takes on NOLA TV Lawyers* (dressed in boxing shorts and gloves) with 11 original cartoons by illustrator Roy Robinson.

Among the captions:

- ▶ *We don’t put a WOMAC on anybody, but we use a GRIS-GRIS when necessary!*
- ▶ *We don’t need strong arms — our trial lawyers carry assault weapons.*
- ▶ *We don’t have free legal minutes but our illegal minutes are half-off!*





► *If you haven't been maimed by an 18-wheeler, don't waste our time!*

Soon after, I was asked to do a cartoon for the *St. Tammany Farmer* and the rest is history. Five years later, Mona appears weekly in the *St. Tammany Farmer* section of the *New Orleans Advocate*. Fifteen posters later, *Mona's Law & Disorder* was published, and, two years thereafter, *Mona's Cruisin' the Coast*.

All three books have received a total of 35 national and international book awards plus a 5-star review in *Writer's Digest* for *Cruisin'*:

So entertaining! Mona is a hoot, with fabulous wit and delectable sarcasm aplenty. The illustrations add a tremendous amount of depth in the tiniest of details, and we get a great sense of movement in many of the panels. Well done. Mona brings us to NOLA, LSU, and the beach with such fabulous observations and humor that we're well warmed-up when we take our first steps into the well-positioned politics and election section. Author keeps great consistency with Mona's cocktail and beef cake affinities, creating a layered character for us to enjoy. She's like the sassy southern lady on a bus tour abroad. You want to sit next to her so as not to miss any of her sparkling comments. Very likable, with some stellar panels standing out ("Let's make some lemonade" and "Before I say 'wrong number,' what did you have in mind?"). Very enjoyable, and

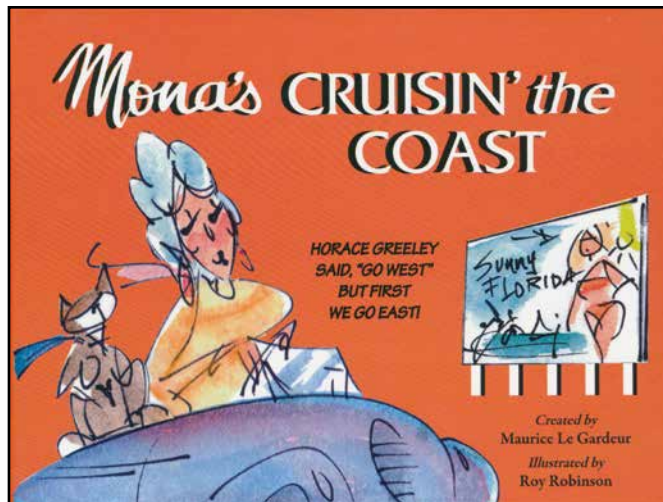
the expressions on her cat's face are so much fun. The last page was well-chosen by the author for its timeliness and terrific humor. A strong finish to an enjoyable read, as well as a fun visit to the south through the eyes and witty insights of a character who personifies the active senior with so much unique perspective and joie de vivre. Well done.

—**Judge, 25 Annual Writer's Digest Self-Published Book Awards**

Lately, Mona has been completely absorbed with the antics of Donald Trump and a soon-to-be released poster titled *Mona Goes to Trumpland*. Mona can be found on my website, *bardspress.com*, where we post recent cartoons which have appeared in the paper as well as items for sale.

Even though Mona is a jealous mistress — one of my captions reads, *When it comes to being a jealous mistress, Mona is above the law!* — I still dabble in poetry, my first love. *Southern Soul* is my latest, and perhaps greatest, poem, a 24-line epilogue of the South which will be online and available as a framed poster measuring 14-inches-by-24-inches. People tell me, as lyrics, it would make a great country song. So write some music and we'll take a bus ride to Nashville.

In conclusion, writing is my yin to the law's yang and keeps me centered and between the rails. I can't think of doing one without the other and as long as I can do both well and make others and myself happy I will. (As Mona complained about her last boyfriend, *He didn't do much, and he didn't do it well!*)



Let's part with one of my favorite poems:

Dirt Diggers

*We spent the day in our garden digging
Our hands deep into the warm moist dirt
Trying to coax new life from the fertile loam;
Once again aware of the reality –
That the dirt we see is the dirt we'll be;
Just dirt digging dirt through eternity.*

Now let's complete the original title and lesson of this article. It's an old lyric by Betty Comden and Adolph Green. *Make someone happy and you will be happy, too!* Sharing this article with you has made me very, very happy!

P.S. *Mona* books make great holiday gifts. See *bardspress.com* for ordering information.

Maurice J. Le Gardeur, Jr. has 45 years of trial experience. He received a BA degree from Tulane University and his JD degree from Tulane Law School. He attended Graduate Aviation Officer Candidate School in Pensacola, FL; is a commissioned officer in the U.S. Navy Reserve; graduated with honors from the Naval Justice School, Newport, R.I.; and is a recipient of the Navy League's Naval Justice Award (first in class). He is a former member of the Louisiana State Bar Association's House of Delegates and is a member of the Covington, St. Tammany and American Bar Associations, the AAJ and the ACLU. (mauricelegardeur@yahoo.com; 335 E. Boston St., Covington, LA 70433)



FOCUS ON Diversity

MEETINGS... SUMMIT



The Louisiana State Bar Association's Diversity Committee met Sept. 8, 2018, in New Orleans for an orientation and business meeting. Members reviewed Diversity Committee and Subcommittee programming for the 2018-19 bar year. Seated from left, Sharonda R. Williams, Fishman Haygood Phelps Walmsley Willis & Swanson, LLP; Angela White-Bazile, Louisiana Supreme Court; Dominique R. Bright-Wheeler, Toyota Financial Services; Scherri N. Guidry, 15th JDC Public Defender Office; and Deidre D. Robert, Southern University System. Standing from left, Troy N. Bell, Courington, Kiefer & Sommers, LLC; Pamela S. Moran, Louisiana Attorney General's Office; J. Dalton Courson, Stone Pigman Walther Wittmann, LLC; Robert E. Lancaster, LSU Paul M. Hebert Law Center; Wayne J. Lee, Stone Pigman Walther Wittmann, LLC; Denia S. Aiyegbusi, Deutsch Kerrigan, LLP; John A. Womble, Frederick A. Miller & Associates; Cory J. Vidal, Hancock Whitney Bank; and Kenneth R. Barnes, Jr., Louisiana Supreme Court.



The Louisiana State Bar Association (LSBA) Specialty Bars Subcommittee met on Aug. 24, 2018, in New Orleans with 2018-19 LSBA President Barry H. Grodsky, in conjunction with the LSBA Board of Governors meeting. The committee members discussed upcoming events and how the LSBA can continue to support specialty bar initiatives. From left, Micah C. Zeno, co-chair, LSBA Outreach Committee; Dean Thomas C. Galligan, Jr., LSU Paul M. Hebert Law Center; Cory J. Vidal, president, Greater New Orleans Louis A. Martinet Legal Society, Inc.; Christine T. Bruneau, president, Louisiana Asian Pacific American Bar Association; Dean David Meyer, Tulane University Law School; Franchesca L. Hamilton-Acker, president, Louis A. Martinet Legal Society, Inc., Greater Lafayette Chapter; Demarcus J. Gordon, chair, LSBA Minority Involvement Section; Michael B. Victorian, co-chair, LSBA Outreach Committee; Derrick D. Kee, president, Louis A. Martinet Legal Society, Inc., Lake Charles Chapter; and Ezra Pettis, Jr., president-elect, Louis A. Martinet Legal Society, Inc., Lake Charles Chapter.

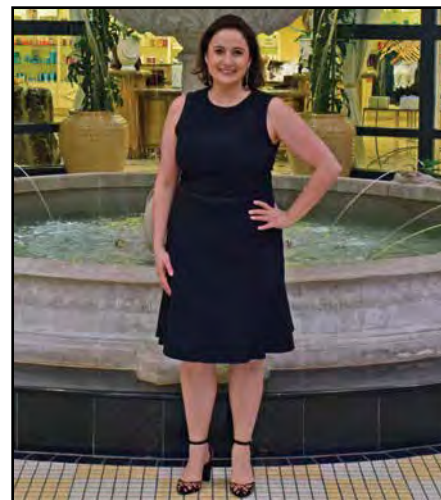
The Louisiana State Bar Association's Diversity Committee conducted the Diversity and Inclusion Managers Summit CLE in New Orleans on Aug. 24, 2018.



Presenting Session 1, "Minority in a Majority Firm: Combating the Status Quo," were, from left, Luis A. Leitzelar, Jones Walker LLP, Baton Rouge; Heather S. Lonian, Stone Pigman Walther Wittmann, LLC, New Orleans; Kim M. Boyle, Phelps Dunbar, LLP, New Orleans; and Kellen J. Mathews, Adams and Reese, LLP, Baton Rouge.



Presenting Session 2, "A Pragmatic Look at the Work of Career Service Professionals," were, from left, Director of Career Development Diana A. Mercer, Loyola University College of Law, New Orleans; Denia S. Aiyegbusi, Deutsch Kerrigan LLP, New Orleans; Associate Dean for Career Development Sarka Cerna-Fagan, Tulane University Law School, New Orleans; and Director of Career Services Tavares A. Walker, Southern University Law Center, Baton Rouge.

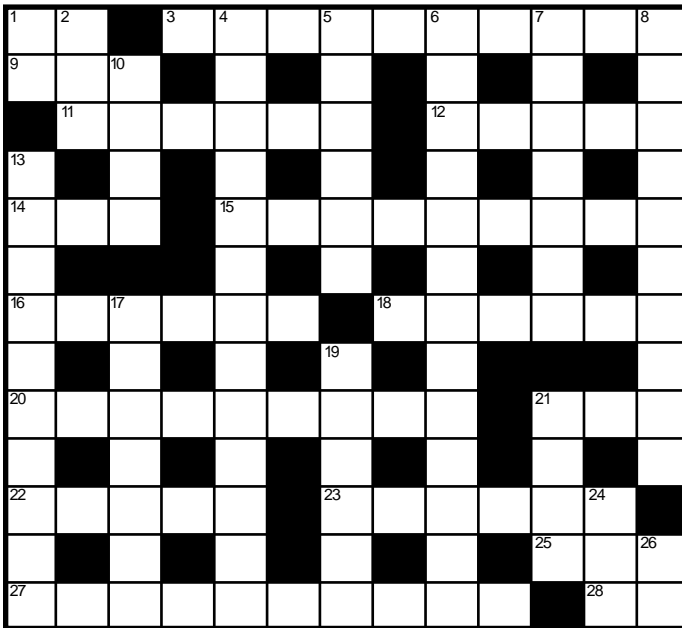


Dima Ghawi, with Dima Ghawi LLC in Baton Rouge, presented Session 3, "How to Future-Proof Your Firm: Engaging Gen Y to Z," and Session 4, "Diversity and Inclusion: Worth More Than Gold" (facilitated discussion and round table).

Crossword PUZZLE

By Hal Odom, Jr.

MONOCHROME



ACROSS

- 1 St. where Obama was elected senator (2)
- 3 National Wildlife Refuge in Ouachita Parish (5, 5)
- 9 Bodily part often made black in barroom brawl (3)
- 11 Cream-filled pastry (6)
- 12 Covered with zits (5)
- 14 Home of Death Valley (3)
- 15 Louisiana's state mammal (5, 4)
- 16 Seals and ____, Texas duo who sang "Summer Breeze" (6)
- 18 Famous Roman who was never emperor (6)
- 20 Kind of tire popular in the 1950s (9)
- 21 Negating word (3)
- 22 Consumer product containing 2 Down (5)
- 23 Wimbledon sport (6)
- 25 Regret (3)
- 27 1600 Pennsylvania Ave. (5, 5)
- 28 "Some material may not be suitable for children" (2)

DOWN

- 1 Namely (1., 1)
- 2 Caustic, white chemical (3)
- 4 Manipulate or wield control over (someone) (4, 2, 3, 4)
- 5 Website giving vehicle history reports (6)
- 6 Acts of rejecting a candidate by secret ballot (13)
- 7 New York AL team (7)
- 8 Provide insurance for (10)
- 10 A shade of tan (4)
- 13 Deadly spider (5, 5)
- 17 Japanese paper folding (7)
- 19 Body art (6)
- 21 Absence of color, to Françoise (4)
- 24 Eat an evening meal (3)
- 26 For example (1, 1)

Answers on page 296.



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FOCUS ON Professionalism

By Lauren E. Godshall

THE UNCOMFORTABLE OTHER

A new Code of Professionalism for Louisiana lawyers was approved and adopted by the Louisiana State Bar Association's (LSBA) House of Delegates and Board of Governors and the Louisiana Supreme Court earlier this year. Previous *Louisiana Bar Journal* articles have introduced the new Code — more properly described as a revised Code, still entirely based on the same underlying principles that have always underlain our profession, but expanded to fit the wider contours of today's legal landscape.

Language is vital to attorneys, and you can well imagine the hours spent in subcommittee meetings, agonizing over word choices and debating the purpose of each word either newly added or removed from the original text. We are, after all, the profession that continues to hotly debate the merits of the Oxford comma.

Language itself, or rather the significance of our language's role in maintaining professionalism, also features throughout the new Code, from the very first words: My word is my bond.

Our Code now goes on past that bold and uncompromising beginning to further state: "I will conduct myself with honesty, dignity, civility, courtesy, and fairness and will not engage in any demeaning or derogatory actions or commentary toward others."

Others. This concept is newly added. *We will not demean or derogate others.* I have thought quite a bit about this new addition to the Code. To me, this may be one of the most challenging exhortations of the entire Code. In all instances, without exception, we are being asked to rise above the daily fray. Frankly, I'm worried. Am I up for this? I'll admit to being somewhat at fault here. I served on the subcommittee. I agreed with the addition of these specific new words. I voted in favor of their inclusion. And here I am now, stuck with them.

Who is this "other"? There is no defi-

"I will conduct myself with honesty, dignity, civility, courtesy, and fairness and will not engage in any demeaning or derogatory actions or commentary toward others."

- Code of Professionalism

inition, nor any limitation. This is anyone — our colleagues, our opposing counsel, judges, clients, clerks, the parking lot attendant, the Starbucks barista. This is, most importantly, the difficult other, the person we do not want to deal with, that one human being whose presence we dread. The new law graduate from the very bottom of the class. The bombastic and truth-stretching opposing counsel. The client who cannot tell the same story twice. The inexplicably angry co-worker. Those "others" who cause us to complain the most are those others we are called upon to treat with respect.

There also is the "other" whose "otherness" we cannot see. Those people all around us with an invisible disability, or the background we do not know, or the religion we are unaware of. In June, the LSBA's Legal Services for Persons with Disabilities Committee hosted a CLE called "Professional Considerations when Interacting with Clients, Colleagues and Community Members with Disabilities," presented by Debra Weinberg of the Advocacy Center of Louisiana. One of Weinberg's slides stated simply, "Don't assume that just because you can't see someone's disability, it doesn't exist." The next slide quoted Toni Morrison's Nobel Prize

lecture: "Oppressive language does more than represent violence; it is violence; does more than represent the limits of knowledge; it limits knowledge."

An easy step toward the goal of "watching our mouths" as professionals is eliminating pejorative terms like "retarded" from our language. There is, in fact, an entire online pledge campaign, www.r-word.org, focused on the elimination of the use of the words "retard" or "retarded" as general shorthand terms for something considered bad, lazy, useless or "less than." As the R-Word website explains, "When they were originally introduced, the terms 'mental retardation' or 'mentally retarded' were medical terms with a specifically clinical connotation; however, the pejorative forms, 'retard' and 'retarded,' have been used widely in today's society to degrade and insult people with intellectual disabilities. Additionally, when 'retard' and 'retarded' are used as synonyms for 'dumb' or 'stupid' by people without disabilities, it only reinforces painful stereotypes of people with intellectual disabilities being less valued members of humanity." The term "mental retardation" itself has been phased out of medical use and, consequently, the federal government has replaced the term with "intellectual disability" in regulations where it once appeared. (*See, e.g., 78 Fed. Reg. 46499, 9/3/2013.*)

Our word is our bond. Our language is significant. Let's do our best.

Lauren E. Godshall is a mass torts attorney at Morris Bart, L.L.C., in New Orleans. She is current chair of the Louisiana State Bar Association's (LSBA) Environmental Law Section, co-chair of the LSBA's Legal Services for Persons with Disabilities Committee and a member



of the LSBA's Committee on the Profession. (*lgodshall@morrisbart.com; 601 Poydras St., 24th Flr., New Orleans, LA 70130*)

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 9, 2018.

Decisions

Gregory Timothy Discon, Mandeville, (2018-OB-1323) **Permanently resigned in lieu of discipline** by order of the Louisiana Supreme Court on Aug. 10, 2018. JUDGMENT FINAL and EFFECTIVE on Aug. 10, 2018.

Brian Anthony Dragon, Slidell, (2018-B-1606) **Transferred to interim suspension for threat of harm status** by order of the Louisiana Supreme Court on Oct. 8, 2018. JUDGMENT FINAL and

EFFECTIVE on Oct. 8, 2018.

John Morris Dunn III, Covington, (2018-B-0340) **Disbarred** by order of the Louisiana Supreme Court on May 11, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018. *Gist*: Conversion of third-party funds.

Robert B. Evans III, Metairie, (2018-B-1433) **Consented to be transferred to interim suspension status** by order of the Louisiana Supreme Court on Sept. 28, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2018.

Norman R. Gordon, Shreveport, (2018-OB-1312) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on Aug. 7, 2018. JUDGMENT FINAL and EFFECTIVE on Aug. 7, 2018.

Nichole Goudeau, Denham Springs, (2018-B-0638) **Suspended from the practice of law for a period of one year and one day** by order of the Loui-

Continued next page

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Legal & Judicial Ethics



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

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Discipline continued from page 286

siana Supreme Court on Aug. 31, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 14, 2018. *Gist:* Failure to comply with MCLE requirements; failure to pay bar dues and disciplinary assessment; fee arrangements, charging an unreasonable fee; and engaging in the unauthorized practice of law.

Sherry Alane King, Ponchatoula, (2018-B-1354) **Consented to a six-month suspension, fully deferred, subject to one year of unsupervised probation**, by order of the Louisiana Supreme Court on Sept. 28, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2018. *Gist:* Respondent prepared a falsified document and filed it into the court record in support of a motion to continue.

Jules B. LeBlanc III, Baton Rouge, (2018-OB-1523) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on Sept. 21, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 21, 2018.

Ronald B. Manning, Amite, (2018-

B-0688) **Order of disbarment imposed by the Supreme Court of Texas made reciprocal in the state of Louisiana** by order of the Louisiana Supreme Court on Sept. 14, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2018. *Gist:* Commission of a criminal act.

Neil Dennis William Montgomery, Destrehan, (2018-B-0637) **Suspended for one year and one day** by order of the Louisiana Supreme Court on Aug. 31, 2018.

JUDGMENT FINAL and EFFECTIVE on Sept. 15, 2018. *Gist:* Respondent failed to comply with bar obligations; neglected legal matters; failed to communicate with clients; failed to account for fees; and failed to cooperate with the Office of Disciplinary Counsel in its investigations.

Joseph Burchman Rochelle, Destrehan, (2018-B-1150) **Publicly reprimand-**

Continued next page

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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. 1, 2018.

Respondent	Disposition	Date Filed	Docket No.
Bruce Ashley	[Reciprocal] Suspension (fully deferred).	8/16/18	18-6050
Robert O'Neal Chadwick, Jr.	[Reciprocal] Suspension (partially deferred).	8/16/18	18-6238
John Morris Dunn III	[Reciprocal] Disbarment.	8/16/18	18-6236
Arthur L. Harris, Sr.	[Reciprocal] Suspension.	8/16/18	18-6235
Robert Lenter	Permanent resignation.	8/16/18	18-6237

Discipline continued from page 287

ed by consent by order of the Louisiana Supreme Court on Sept. 14, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 14, 2018. *Gist:* Improper notarization of an Act of Donation.

Phyllis Southall, Gonzales, (2018-B-1401) **Adjudged guilty of additional violations by consent which warrant discipline, and which may be considered in the event she applies for reinstatement from her 2015 suspension** by order of the

Louisiana Supreme Court on Sept. 21, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 21, 2018.

A. Wayne Stewart, Livingston, (2018-OB-1648) **Permanently resigned in lieu of discipline** by order of the Louisiana Supreme Court on Oct. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2018.

Brian K. Thompson, Alexandria, (2018-B-1237) **By consent, suspended for a year and a day, fully deferred, subject to two years of probation**, by order of the Louisiana Supreme Court on Sept. 14,

2018. JUDGMENT FINAL and EFFECTIVE on Sept. 14, 2018. *Gist:* Respondent mishandled his trust account and failed to supervise a non-lawyer employee.

Christopher Gerard Young, Baton Rouge, (2018-B-0798) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on Sept. 28, 2018. ORDER FINAL and EFFECTIVE on Sept. 28, 2018.

No admonitions reported.

MEDIATION AND ARBITRATION OF COMPLEX DISPUTES



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Ross Foote



Phelps Gay



Thomas Hayes, III



Mike McKay



Pat Ottinger



Mike Patterson



Larry Roedel



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Disclosure of Labor Rates by Contractor Employees Does Not Necessarily Violate PIA

AlliantCorps, L.L.C., B-415744.2 (Apr. 4, 2018), 2018CPD ¶ 118. (Accessed at: <https://www.gao.gov/products/B-415744.2>.)

AlliantCorps, L.L.C. (Alliant) protested the corrective action taken by the Department of the Navy in response to Alliant's earlier protest of the award of a \$62.9 million task order, No. N61340-18-F-0018, to DKW Communications, Inc. under the General Services Administration Alliant Small Business Government-wide Acquisition Contract for software-maintenance services on naval-pilot-training simulation systems at the Government Accountability Office (GAO). In its protest, Alliant primarily alleged that DKW improperly received Alliant's bid and proposal information, which resulted in a violation of the Procurement Integrity Act (PIA), 41 U.S.C. §§ 2101–2107.

For a discussion on what is a bid protest and corrective action, see Bruce L. Mayeaux, "Corrective Action, Presumption of Good Faith, and Speculation at the GAO," Vol. 65, No. 6, La. B.J. 418.

The Competition and the Email

On June 22, 2017, the Navy issued the subject task-order solicitation. Both Alliant (incumbent) and DKW submitted offers by the proposal due date. On Nov. 14, 2017, the Navy made an initial award to DKW. Shortly thereafter, DKW informed Navy

personnel in an email that Alliant employees working under the incumbent contract could apply to work on the new contract using an emailed link.

After being informed it was not selected for the award, Alliant requested a debriefing, which was conducted on Nov. 28, 2017. After the debriefing, the Navy forwarded the DKW email to Alliant employees working on the incumbent contract. The email contained the following: "For immediate action!!!! Hopefully [another individual] already gave [the DKW employment application electronic link] to you or [the] company did." The next day, Alliant filed a post-award protest at the GAO challenging the Navy's past performance evaluation. In response, the agency requested the GAO dismiss this protest because of a proposed corrective action of amending the solicitation, re-evaluating proposals and making a new award decision; the GAO did so dismiss. *See, AlliantCorps, L.L.C.*, B415744, Dec. 7, 2017 (unpublished).

On Dec. 8, 2017, Alliant notified the Navy of an alleged violation of the PIA. In its notice, Alliant asserted that "direct labor rates and cost or pricing data that form the basis for Alliant's proposal (indeed they are included in the proposal) have improperly been furnished to DKW at the direction of the [Navy], and DKW has knowingly obtained bid and proposal information in violation of the [PIA]." *See, AlliantCorps, L.L.C.*, B-415744.2 (Apr. 4, 2018), 2018 CPD ¶ 118 at 3. Essentially, Alliant's employees working on the current contract applied for new positions with DKW and in that process disclosed their labor rates.

On Jan. 23, 2018, the Navy finally amended the solicitation and set the new proposal due date for Feb. 2, 2018. On Feb. 1, 2018, Alliant filed its pre-award protest contesting the Navy's corrective action and asserting its PIA allegations. In reply, the Navy requested the GAO dismiss the protest as being legally and factually insuf-

ficient and untimely. While Alliant alleged multiple protest grounds, its PIA allegation stands out.

Procurement Integrity and Contractor Employees

The initial question before the GAO was whether the agency's emails encouraging Alliant employees to apply for positions with DKW — inevitably resulting in the discovery of Alliant's direct labor rates and cost and pricing data — violated the PIA. In rendering its decision, the GAO primarily relied on the procurement-integrity prohibitions within the PIA — specifically, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1).

In its protest, Alliant reasserted the allegation it proffered to the Navy on Dec. 8, 2017, and explained that "because the communication from the [Navy to incumbent contractor personnel] said that it was for immediate action and had four exclamation points, virtually all incumbent personnel immediately signed up and divulged their salary information to DKW;" thus, DKW had such data when it resubmitted its proposal during the corrective action, which violated the PIA. *See, AlliantCorps, L.L.C.*, B-415744.2 at 4.

In its decision, the GAO noted that generally the relevant PIA prohibition applies to anyone who is a current or former member of the federal government and is acting for or on behalf of a federal agency procurement. *See*, 41 U.S.C. § 2102(a)(3)(A). The GAO contrasted that with this protest in which the incumbent contractor employees — not government officials — provided their own salary information to DKW. *See, AlliantCorps, L.L.C.*, B-415744.2 at 4. The GAO found the prohibition did not ap-

ply to the incumbent contractors and, therefore, Alliant's allegations did not describe a violation of the PIA.

The GAO's bid-protest regulations require that a protest ground must (1) include a sufficiently detailed statement of the grounds supporting the protest allegations, and (2) establish a reasonable potential that the protester's allegations may have merit. See 4 C.F.R. §§ 21.1(c)(4), 21.1(f), 21.5(f); *Ahtna Facility Servs., Inc.*, B-404913, June 30, 2011, 2011 CPD ¶ 134 at 11. In dismissing the protest ground, the GAO reasoned that "because the incumbent contractor employees are not prohibited from disclosing their own salary information, the protest [ground] lack[ed] a sufficient factual basis to support a claim of a violation of the [PIA]."

Incumbent contractors should consider how the GAO applies the PIA in this situation when developing non-disclosure agreements (NDA) with their employees. Absent an NDA, or positive direction from an agency for an employee to "act on its behalf" in regard to a procurement, the common practice of post-award acceptance of job applications may disclose cost or pricing data to which the aggrieved contractor may have no recourse under the GAO's bid-protest regulations.

Disclaimer: The views presented are those of the writer and do not necessarily represent the views of DoD or its components.

—**Bruce L. Mayeaux**
Major, Judge Advocate
U.S. Army
Member, LSBA Administrative
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Mobile Home Costs

21st Mortg. Corp. v. Glenn, 900 F.3d 187 (5 Cir. 2018).

Should the cost of delivery and set up of a mobile home be included in the home's value for purposes of confirming a Chapter 13 plan? 21st Mortgage financed Glenn's purchase of a used mobile home. The base price of the home included the cost of delivery and set up. When Glenn filed for Chapter 13 protection under the Bankruptcy Code, 21st Mortgage filed a claim secured by the value of the mobile home.

Under Glenn's proposed plan, she would retain the home and pay 21st Mortgage the secured value (*i.e.*, the value of the home) plus 5 percent interest. 21st Mortgage objected to the plan, claiming that the value Glenn provided for the home did not include the value of delivery and set up, which 21st Mortgage claimed must be included under 11 U.S.C. § 506(a)(2).

Section 506(a)(2) provides that the value of property in a Chapter 13 case means the replacement value of the property "without deduction for costs of sale or marketing." 11 U.S.C. § 506(a)(2). 21st Mortgage argued that because the cost of delivery and set up of the mo-

bile home in question was included in the base price when Glenn purchased the home, it fell under the category of costs of sale or marketing and could not be deducted from the home's value. Both the bankruptcy court and the district court disagreed. They considered the Supreme Court's decision in *Associates Commercial Corp. v. Rash*, 117 S.Ct. 1879 (1997), and the language in Section 506(a)(1), which states that the proposed disposition or use of the property should be taken into account when valuing property. Glenn was keeping the home and would not have to pay the delivery and set up fees again, and thus such costs should not be considered a cost of sale or marketing.

The Supreme Court in *Rash* held that creditors are not entitled to receive value for items that the debtor does not receive when he retains the property "such as warranties, inventory storage, and reconditioning." The 5th Circuit held that costs of sale or marketing means the repeat costs of doing business, such as storage and restocking fees, but does not include the cost of delivery and set up because those costs are completed service charges that will not be repeated, especially in a case where the debtor is retaining the property. The 5th Circuit, therefore, upheld the district court and ruled, as every other court who has faced this issue has, that the costs of delivery and set up of a mobile home are not included in the value of a mobile home for purposes of a Chapter 13 plan.

Mineral Lease

Fallon Family, L.P. v. Goodrich Petroleum Corp., 894 F.3d 192 (5 Cir. 2018).

Fallon stems from a 1954 mineral lease between the Fallon Family's predecessor in interest, as lessor, and Goodrich, as lessee. In 2012, the Fallon Family sought to terminate the lease because Goodrich had ceased continuous operations. In October 2014, the Fallon Family recorded notices of *lis pendens* in both parishes encompassing the leased premises. Four days later, the parties agreed to settle the dispute and signed a

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settlement agreement.

Under the agreement, Goodrich made a one-time payment of \$650,000 and gave the Fallon Family a \$1,000,000 promissory note to be paid in \$100,000 bi-annual installments. Having resolved the dispute over the lease, the parties filed a lease ratification that stated:

“NOW, THEREFORE, for the promises and covenants exchanged below, and other good and valuable consideration exchanged by the Parties on or near this date, *the receipt and sufficiency of which is hereby acknowledged*, the Parties agree to [the listed promises and covenants].” *Id.* at 196 (emphasis added).

The ratification went on to provide that the lease was affirmed, ratified and in full force and effect. Neither the settlement agreement nor the promissory note was mentioned.

Goodrich made one payment on the promissory note but failed to make the second payment and filed for protection under Chapter 11 of the Bankruptcy Code.

In bankruptcy, the Fallon Family sought to dissolve the settlement agreement because of Goodrich’s failure to make payments on the promissory note, which would allow the Fallon Family to terminate the lease and, presumably, lease it to another interested party. Goodrich took the position that Section 544 of the Bankruptcy Code, which provides a debtor-in-possession with the same powers as a hypothetical bona fide purchaser of real property as of the petition date, allowed Goodrich to avoid the settlement agreement as a bona fide purchaser of the lease, “strong-arming” the Fallon Family into continuing the lease despite the breach. The bankruptcy court and the district court allowed Goodrich to avoid the settlement agreement.

The 5th Circuit ruled that because the lease ratification stated that the lease

was in full force and effect and that consideration for the lease ratification had been fully paid, Goodrich, wearing the hat of a third party, could rely on the absence of any indication in the public record that the lease’s continuing viability was dependent on payment under the promissory note. Because the lease ratification showed consideration was paid, the Fallon Family could not dissolve the settlement agreement. Instead, it had a \$900,000 unsecured claim against Goodrich and could not terminate the lease.

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Wall v. Bryan: When Are Discounts Appropriate in Valuation?

In the 2nd Circuit's opinion in *Wall v. Bryan*, 52,165 (La. App. 2 Cir. 6/27/18), 251 So.3d 650, the court grappled with the collective interpretation of successive contracts and the propriety of discounting the value of a minority interest in a limited-liability company. On the latter issue, the 2nd Circuit was forced to confront and distinguish a recent holding by the Louisiana Supreme Court.

In *Wall*, a minority owner of a lim-

ited-liability company operating an ambulatory-surgery center (the LLC), a doctor, was forced to sell his interest in the LLC. Prior to the lawsuit, the doctor and the other members of the LLC entered into a series of agreements — the original operating agreement, the agreement in principle, and the settlement agreement. All three agreements dealt with the doctor's association with, and ultimate departure from, the LLC. While the first two agreements provided a method for valuing the departing member's interest, the third agreement lacked such an explicit valuation method.

When there is no agreement between the members of a limited-liability company on the valuation of a departing member's interest, La. R.S. 12:1325(C) requires that a member be paid the "fair market value" of his or her interest. The lower court and the 2nd Circuit were faced with determining whether a contractual-valuation method existed in the

series of agreements and, if not, what constituted the fair market value of the doctor's interest.

With regard to the first issue, the lower court and the 2nd Circuit agreed that the settlement agreement controlled. In reading the settlement agreement, the court found that the plain language of its merger-and-integration clause was persuasive. It read, in part: "This Agreement supersedes all prior understandings, negotiations, and agreements between and among the parties." The LLC attempted to overcome this reading by pointing out that the settlement agreement included a section regarding referral documents as well as a single reference to the agreement in principle.

However, the court did not find this argument persuasive, noting that no referral documents were attached to the settlement agreement and that the agreement in principle was merely an agreement to agree and did not bind the parties. In support of this finding, the court looked to the plain language of the agreement in principle, which stated that it was "subject to the reduction to writing of the final agreements." Accordingly, the settlement agreement superseded the two prior agreements between the parties and would serve as the controlling agreement for the remaining issues.

Because the settlement agreement lacked a specific contractual method for valuing the doctor's non-controlling interest, the court used La. R.S. 12:1325(C). Under the statute, if a method of valuation is not provided in a written operating agreement, a withdrawing member of a limited-liability company is entitled to receive "the fair market value of the member's interest as of the date of the member's withdrawal or resignation."

The valuation of the doctor's interest in the LLC hinged on the two parties' competing experts and the applicability of discounts on the value of the interest. The court took particular note of the definition of fair market value put forth by the LLC's expert and taken from the International Glossary of Business Valuation Terms. This definition of fair market value contemplates the cash

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price that would change hands between a hypothetical buyer and hypothetical seller who possess reasonable knowledge of the facts. Further, the court was persuaded that the fair market value of the non-controlling interest required the application of minority discounts and lack-of-marketability discounts.

The LLC's expert admitted, however, that because the interest was to be purchased by the existing members of the LLC, there would normally be a departure from the actual fair market value. As a practical matter, there was not a hypothetical buyer out in the market, but a specific buyer. Regardless, fair market value was the standard required by La. R.S. 12:1325(C), and the prevailing definition of fair market value required the application of discounts.

In order to affirm the lower court and apply the discounts, the 2nd Circuit had to confront *Cannon v. Bertrand*, 08-1073 (La. 1/21/09), 2 So.3d 393. *Cannon* is a Louisiana Supreme Court case involving similar facts (*i.e.*, the remain-

ing stakeholders buying shares from a withdrawing stakeholder). In *Cannon*, the Supreme Court found that "[m]inority discounts and other discounts, such as for lack of marketability, may have a place in our law; however, such discounts must be used sparingly and only when the facts support their use." *Id.* at 396. According to the 2nd Circuit, *Cannon* did not serve as a universal bar to the application of discounts, despite its broad language. In fact, *Cannon* did not serve as a bar against discounts in this facially similar case.

The 2nd Circuit's logic can be summarized as follows: In *Cannon*, the entity involved was a limited-liability partnership. The value to be paid for a departing partner's interest is controlled, in part, by La. Civ.C. art. 2328. That specific article uses the term "value" but does not define the term any further. Because the term value is explicitly used but also undefined, the interpreting court can read value in that context to mean a host of different values, such as

book value or fair market value. *Wall*, on the other hand, involved a limited-liability company that was subject to La. R.S. 12:1325(C), which explicitly requires the payment of fair market value, and the 2nd Circuit determined that discounts were applicable to fair market value determinations.

In valuing the interest of a departing stakeholder, the courts will not apply a one-size-fits-all approach. The courts will look to the plain language of the agreements between the parties and the statutes or code articles that are applicable to the particular type of entity. A valuation of the interest by the courts will then proceed according to the language and requirement of these writings.

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Remand to Begin Again

Vintage Assets, Inc. v. Tenn. Gas Pipeline Co., L.L.C., No. 18-30688, Doc. No. 00514665708 (5 Cir. 10/3/18).

The U.S. 5th Circuit Court of Appeals recently issued an order of note in the long-running litigation, *Vintage Assets, Inc. v. Tennessee Gas Pipeline Co., L.L.C.* This case, originally filed in state court in 2015, arises out of claims against various companies who have, at some time, been involved in certain pipeline construction activities in Plaquemines Parish. The Eastern District of Louisiana concisely summarized the nature of the action thusly:

Between 1953 and 1970, Defendants' predecessors received multiple right-of-way servitudes on Plaintiff's property, which authorized the construction and operation of pipelines and dredge canals. Defendants have dredged canals and laid pipelines pursuant to these agreements. Plaintiff al-

leges that its property has suffered damage because of Defendants' failure to maintain the pipeline canals and banks. Plaintiff alleges that this failure has caused ecological damages and loss of acreage due to erosion.

Vintage Assets, Inc., 2016 U.S. Dist. LEXIS 97467, *2.

In May 2018, Judge Milazzo in the Eastern District issued her findings of fact and conclusions of law that, while doing away with several of the plaintiffs' claims, found in their favor for some of the erosion damages caused by questionable maintenance of pipeline rights-of-way and dredged canals. *Vintage Assets, Inc.*, 2018 U.S. Dist. LEXIS 75736, *15-16.

On appeal, the 5th Circuit, in an order on July 30, 2018, directed the parties to brief the issue of whether the federal court system even had subject matter jurisdiction over the current suit. In the order handed down on Oct. 2, 2018, the 5th Circuit court upheld the bench trial at the district court not on substantive grounds, but rather found that no subject matter jurisdiction existed in the federal system and that the case should be remanded to the 25th Judicial District Court for Plaquemines Parish.

The practical effect of such an outcome was the vacating of the federal

district court's merits decision. The basis for the lack of subject matter jurisdiction in this case related to the 5th Circuit's suspicion that there was a lack of diversity in a matter removed originally from the state court system solely on diversity grounds. The plaintiffs in this case were undisputedly Louisiana citizens. At first blush, it appeared that the defendants were all citizens of other states, thus meeting the diversity of citizenship requirement to invoke federal court jurisdiction. However, upon closer examination, it was determined, as the court suspected, that some of the defendants — namely, High Point Gas Transmission, L.L.C., and High Point Gas Gathering, L.L.C. — were entities held by a limited partnership, the latter of which was composed of at least one Louisiana partner.

Pursuant to federal jurisprudence, citizenship of partnerships depends on the citizenship of their individual partners. With a single partner of the parent entity to these two defendants being a citizen of Louisiana, complete diversity did not exist, and the federal court lacked subject matter jurisdiction. The practical result of this outcome is that, due to lack of jurisdiction, all of the subsequent proceedings, including the bench trial of this matter, were null *ab initio*. From a decision on the merits in this matter, the litigants must now reboot the entire case



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in the state court system.

To the extent that there is a lesson to take from the *Vintage Assets* case, it is that initial discovery upon removal to federal court must include inquiries into the detailed corporate structure and history of each of the defendants. In the event that any non-diversity is identified through this discovery, the parties should immediately file a motion to dismiss for lack of subject matter jurisdiction. The risk of missing such details represents a significant drain on both litigants and the judicial system. For now, the determination of whether or how much liability exists for the erosion alleged to have been caused by pipeline construction and canal dredging under the laws of servitude will have to wait for the procedural do-over.

—**Ryan M. Seidemann**
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Community Property

Knowles v. Knowles, 51,872 (La. App. 2 Cir. 2/28/18), 246 So.3d 758.

Although the trial court judge who heard this partition of community property was recused after he rendered judgment, since his former law firm represented Mr. Knowles, the judge to whom the matter was reallocated did not err in denying Mrs. Knowles' motion for new trial because the original trial judge was recused. The appellate court found that, even though the original trial judge was recused, there was no evidence that he was prejudiced or biased at the time he rendered the judgment. Moreover, most of the items addressed in the judgment were by consent of the parties. Moreover, the new judge "presided

over a form and content hearing," in which Mrs. Knowles' counsel acknowledged that the judgment accurately represented the judgment issued by the initial judge.

The motion for new trial was also properly denied because the judgment was in accordance with the parties' agreement. Further, claims for reimbursement had been heard by the court, and Mrs. Knowles had waived her complaints by not raising them at the "form and content" hearing. Regarding other errors she assigned, she also failed to raise those at the form and content hearing and thus could not do so for the first time on appeal. The appellate court also found that the trial court did not err in granting Mr. Knowles a reimbursement claim based on his testimony alone, with no supporting documentation, because the court had also awarded Mrs. Knowles a similar reimbursement claim for which the only proof was a credit card bill with no evidence of payment. The court found that the trial court could award the reimbursement claims based on the parties' testimony and its credibility determinations alone.

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Patterson v. Patterson, 51,929 (La. App. 2 Cir. 5/23/18), 247 So.3d 1148.

Ms. Patterson claimed that she did not see or read this pre-marital agreement, prepared by Mr. Patterson's attorney, until two days before their wedding, and that she did not intend to, nor could she because of shareholder-transfer restrictions, transfer her separate interest in a corporation to the community, so as to make it community property. The court found that the "conversion clause" was readily apparent, and that she should have been aware of it, and that the corporation was not listed on the attached schedule, which reserved certain items as separate property. Regarding the stock-transfer restriction, because she did not actually transfer ownership of the shares of stock itself to him, but, rather, only changed the classification, the agreement was sufficient to make the entity community property. Moreover, her signing the matrimonial agreement would have been a waiver of the stock-transfer restrictions. The court resolved the conflicts in testimony between her, Mr. Patterson, Mr. Patterson's attorney who prepared the document, and her former attorney, in favor of Mr. Patterson. Because the court found the agreement to be a contract, not a donation, it was not subject to revocation for ingratitude. The contract was not also voidable as being unconscionable on the basis of converting their separate property to community property but retaining their separate debts as separate.

Mendoza v. Mendoza, 17-0070 (La. App. 4 Cir. 6/6/18), 249 So.3d 67, writ denied, 18-1138 (La. 8/31/18), 251 So.3d 1083.

Although Ms. Mendoza filled out and applied for Road Home grant money on her own regarding the former community property home, which had not been partitioned, and of which she had an order of use and occupancy, the funds were, nevertheless, community funds, and she was not entitled to reimbursement for using those funds to repair the home after Hurricane Katrina. There were two dissents that would have found that the Road Home money was her separate property, as the community was terminated and the funds were obtained post-termination.

Interim Spousal Support

King v. King, 51,942 (La. App. 2 Cir. 4/11/18), 247 So.3d 973.

Although the evidence showed that Ms. King had begun cohabitating with another man prior to the parties' physical separation, she was, nevertheless, entitled to an award of interim spousal support from the date of demand through the date of judicial determination of cohabitation. Mr. King argued that she should be entitled to no interim spousal support as she was cohabitating prior to the filing of the petition for divorce. The trial court did not err in setting the amount of the award, as it was significantly less than the parties' lifestyle expenses. Moreover, he was entitled to certain offsets for direct payments he had made, which reduced the amount of support to be paid to her. She was not entitled to a cash allowance for fuel expenses and automobile insurance, as he had paid these. His claim that her award should be reduced for expense sharing

was rejected, as expense sharing is a child support, not a spousal support, concept. In any event, she would have had the same expenses, regardless of contributions from her cohabitor.

Custody

Mercer v. Mercer, 52,101 (La. App. 2 Cir. 4/11/18), 249 So.3d 924.

The court of appeal affirmed the trial court's judgment modifying a prior considered decree of custody to divide time equally between the parties on alternating two-week periods and changing the domiciliary-parent designation from the mother to the father. The child was 4 months old when the first judgment was rendered, and he was now 9 years old. Moreover, Mr. Mercer had remarried and had established a stable relationship, including the birth of another child with his second wife. The mother's living arrangements were not as stable. The parties' child would also be able to attend school with and spend more time with his half-brother. The dissent argued that the *Bergeron* standard had not been overcome.

—David M. Prados

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ANSWERS for puzzle on page 283.

1	I	L	3	B	L	A	5	C	K	6	B	A	7	Y	8	O	U
9	E	Y	10	E	A	11	L	A	12	N							
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26	A				27	Y	X	B	28	E	W						
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41	O	M	S	O	G	42	R	U	E								
43	W	H	I	T	E	H	O	U	S	E	44	P	G				



Materialman's Claim Against General Contractor and Surety on a Bond Under La. R.S. 38:2247

Amtek of La., Inc. v. Woodrow Wilson Constr., L.L.C., 17-1156 (La. App. 1 Cir. 8/6/18), ___ So.3d ___, 2018 WL 3719719.

A materialman to a site-work subcontractor, on a public project, alleged that it was not paid in full by the general contractor, pursuant to a joint-check agreement.

The materialman made 10 deliveries of materials to the subcontractor, from March 25, 2014, to June 11, 2014. It was undisputed that the materials were delivered, received in "good condition" and installed into the project. It was further undisputed that the materialman billed the general contractor for the materials, the general contractor billed the public owner for the materials, and the public owner fully paid the general contractor for the materials.

At some point during the project, a dispute arose between the general contractor and the subcontractor. It was undisputed that the general contractor, its surety and the subcontractor made no payments to the materialman for the materials provided. Accordingly, the materialman transmitted to the general contractor notice of nonpayment via certified mail on Oct. 29, 2014, which was 121 days from the last day of the month in which the materials were delivered.

A certificate of substantial completion for the project was recorded on Dec. 2, 2014. Thirty-three days thereafter, on Jan. 5, 2015, the materialman filed a statement of claim, alleging it was owed for the materials it supplied on the project. Also on Jan. 5, 2015, the materialman

transmitted, via certified mail, notices of filing its statement of claim as well as demand letters to the public owner, the general contractor and the surety.

Thereafter, the parties filed various petitions, reconventional demands and cross claims. Following a bench trial solely on the materialman's claims against the general contractor, the surety and the subcontractor, the trial court rendered judgment in favor of the general contractor and surety and against the materialman. The trial court found that no notice was given to the general contractor by the materialman that the subcontractor had defaulted on its payment obligations "until after a lapse of time for issuing a notice of nonpayment," and, therefore, the general contractor and the surety had no obligations to pay the subcontractor's debt to the materialman. Nevertheless, the trial court found that the materialman was entitled to recover from the subcontractor for the amount of the unpaid invoices. The materialman appealed the trial court's dis-

missal of its claims against the general contractor and the surety under La. R.S. 38:2242 (B) and La. R.S. 38:2247.

Public construction contracts are governed by the Louisiana Public Works Act (LPWA), La. R.S. 38:2241, *et seq.*, which provides the exclusive remedies arising out of a public work. The court of appeal noted the following notice requirements found in the LPWA:

► La. R.S. 38:2242(B) provides that a claimant may file a sworn statement of the amount due after the maturity of his claim and within 45 days after the recording of acceptance of the work by the governing authority or of notice of default of the contractor or subcontractor.

► La. R.S. 38:2242(F) provides that prior to filing a lien or privilege, a materialman must give written notice of nonpayment via certified mail to the general contractor and owner within 75 days from the last day of the month in which the materials were delivered.

► La. R.S. 38:2247 provides that a claimant not in privity of contract with

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the general contractor must, in addition to the notice and recordation requirements of La. R.S. 38:2242(B), give written notice via certified mail to the contractor within 45 days from the recordation of the notice of acceptance by the owner of the public work in order to bring an action on the bond.

The court of appeal noted that in *Pierce Foundation, Inc. v. Jaroy Constr., Inc.*, 15-0785 (La. 5/3/16), 190 So.3d 298, 304, the Louisiana Supreme Court explained that the plain language of La. R.S. 38:2242(B) and La. R.S. 38:2247 conflict. The court in *Pierce Foundation* interpreted the statutes to provide that where a claimant fails to comply with the notice and recordation requirements of La. R.S. 38:2242(B), the claimant loses his privilege against the funds in the hands of the public authority; however, the failure to comply with La. R.S. 38:2242(B) does not affect the right of the claimant, *in contractual privity with the contractor*, to proceed directly against the contractor and its surety on the bond pursuant to La. R.S. 38:2247.

It was undisputed that the material-

man timely filed its statement of claim pursuant to La. R.S. 38:2242(B) but did not timely give written notice of non-payment within 75 days from the last month in which materials were delivered in accordance with La. R.S. 38:2242(F). The issue before the court of appeal, then, was whether the LPWA requires a materialman to comply with La. R.S. 38:2242(B) and La. R.S. 38:2242(F) in order to file an action against the general contractor and surety on the bond, as set forth in La. R.S. 38:2247.

The court of appeal concluded that “[b]ased upon a plain reading of La. R.S. 38:2242(B) and La. R.S. 38:2242(F), a materialman’s failure to provide the 75-day notice of nonpayment to the general contractor and owner results *only* in the materialman’s loss of the right to file a privilege against the unexpended funds in the hands of the public entity.” (Emphasis added.) The court noted, “Aside from the mention of La. R.S. 38:2242(B), La. R.S. 38:2247 contains *no mention* of La. R.S. 38:2242(F)’s materialman claimant 75-day notice of nonpayment requirement.” Extending the Supreme Court’s holding in *Pierce Foundation*, the court found that a materialman’s failure to comply with La. R.S. 38:2242(F) does not affect the right of the materialman to proceed directly against the contractor and the surety on the bond pursuant to La. R.S. 38:2247 provided that the materialman gave the 45-day notice set forth therein.

Accordingly, the court held that the materialman had preserved its right of action on the bond against the general contractor and the surety. The court reversed the trial court’s dismissal of those claims and remanded for further proceedings.

—**Benjamin R. Grau**

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Insurance: Crown Zellerbach Clause

SCF Waxler Marine, L.L.C. v. Aris M/V, 902 F.3d 461 (5 Cir. 2018).

Two towing vessels, the *Loretta G. Cenac* and the *Elizabeth M Robinson*, were proceeding down the Mississippi River pushing large barge trains when a passing maneuver caused the *Aris T*, moving upriver, to collide with a tank barge in a chain reaction that damaged several vessels and riverside facilities, estimated to exceed \$60 million. Waxler, Valero, Shell and Motiva filed suit against the *Aris T*, who, seeking to limit its liability, filed a Verified Complaint in Limitation under the Limitation of Liability Act, 46 U.S.C. §§ 30501-12, arguing that it was not at fault in the accident.

The vessel most relevant to this appeal — the *Loretta G. Cenac* through its owner — similarly filed a Verified Complaint for Exoneration from or Limitation of Liability, seeking declaratory relief from the district court providing that Cenac was not liable or, if found liable, that its liability be limited to the value of Cenac’s interest in the vessels involved, \$14,602,365 (value of vessels plus freight). A quarrel ensued between the litigants and the excess insurers as to whether the primary P&I policy, issued by the primary insurers and followed by all excess insurers, had language indicating that the insurers could limit their liability to that of the *Loretta G. Cenac*, *i.e.*, whether the P&I policy contained a “Crown Zellerbach clause.” See, *Crown Zellerbach Corp. v. Ingram Indus., Inc.*, 783 F.2d 1296 (5 Cir. 1986).

Valero, Motiva and Shell filed a motion for partial summary judgment to settle the *Crown Zellerbach* issue. The district court denied the motion, concluding that the following provision satisfied *Crown Zellerbach’s* requirements for an

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Id. at 464.

Valero, Motiva and Shell timely appealed, asserting the court's jurisdiction to hear the appeal pursuant to 28 U.S.C. § 1292(a)(3), which provides that appellate courts may entertain appeals from a district court's "[i]nterlocutory decrees . . . determining the rights and liabilities of the parties to admiralty cases."

The 5th Circuit was not persuaded, adopting the holding of the 11th Circuit in *Wajnstat v. Oceania Cruises, Inc.*, 684 F.3d 1153, 1155 (11 Cir. 2012):

If, as [the Fifth Circuit in] *Ford Motor Co.* held, a district court does not determine the "rights and liabilities of the parties" when it decides the applicability of a statutory limitation of liability, it also does not determine the "rights and liabilities of the parties" when it determines the applicability of a contractual limitation of liability.

Id. at 467. The court found "no compelling reason to distinguish between a district court's determination of a contractual entitlement rather than statutory entitlement to limit liability" and noted that neither is reviewable on appeal under § 1292(a)(3). Thus, the appeal was dismissed for lack of jurisdiction.

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United States-Mexico-Canada Agreement

The U.S. Administration has formally submitted the United States-Mexico-Canada Agreement (USMCA) to Congress for review and vote under Trade Promotion Authority (TPA) legislation. The clock is now running for Congress to review the proposed agreement that replaces the North American Free Trade Agreement. Congress cannot amend the agreement and will hold an up-or-down vote after the statutorily mandated review period ends. The agreement will not likely see a lame duck vote, potentially leaving

it open for a new Congress that may see a different party in the majority.

The following is a brief outline of some of the important parts of the agreement.

► **Intellectual Property:** USMCA contains a 10-year protection period on biological-drug patents, which is an improvement over the Trans-Pacific Partnership Agreement time frame; copyright protection lasts for life plus 70 years; geographical indications receive new procedural safeguards.

► **Currency:** USMCA contains the first ever chapter covering macroeconomic and exchange rate matters, providing a mechanism to address unfair currency practices.

► **Automobile Rules of Origin & Labor-Value Content Rule:** New labor-value content rule requires 40 percent to 45 percent of auto content made by workers earning at least \$16 an hour; agreement also contains a 75 percent originating-value-content requirement for passenger vehicles, light trucks and parts, with 70

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► **Digital Trade:** Non-discrimination principles apply to trade in digital products; agreement ensures cross-border data transfer with limits to restrictions on storage and processing of data; limits government's ability to require disclosure of proprietary computer-source codes.

► **Sunset Clause:** The agreement contains a 16-year sunset clause, with mandatory review every six years, after which the parties can decide to extend the agreement.

► **Agriculture:** United States obtains additional market access for dairy, poultry and eggs, along with Canada agreement to eliminate certain programs on milk inputs; Canada obtains greater market access in United States for sugar and sugar-containing products.

► **Investor-State Dispute Settlement:** The controversial investor-state dispute mechanism from NAFTA is phased out between the United States and Canada over three years for existing investments and eliminated for new investments after USMCA enters into force; scope of allowable claims between the United States and Mexico is limited and includes a 30-month local-remedy exhaustion clause.

► **Chapter 19 Dispute Settlement:** USMCA eliminates bi-national panel review for Antidumping and Countervailing duty matters between the United States and Mexico; review remains available between the United States and Canada.

—Edward T. Hayes

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Employment Arbitration Update: 6th Circuit Upholds Collective Action Waiver Under FLSA

Gaffers v. Kelly Servs., Inc., 900 F.3d 293 (6 Cir. 2018).

The U.S. 6th Circuit Court of Appeals recently ruled that a class- or collective-action waiver in an arbitration agreement does not violate the Fair Labor Standards Act (FLSA) — an unsurprising result in light of the U.S. Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018), upholding such waivers under the National Labor Relations Act (NLRA). The 6th Circuit joins a number of other federal appeals courts that have upheld arbitration agreements containing FLSA class- or collective-action waivers, including the 2nd, 4th, 5th, 8th and 11th Circuits.

In *Gaffers*, the plaintiff had worked from home as an employee of Kelly Services' virtual call center. He (and about 1,600 opt-in plaintiffs) sued the company for back pay and liquidated damages, alleging that the company failed to pay them for time spent logging in and out of the network and fixing technical problems. Although Gaffers himself had not signed an arbitration agreement with the company, about half of the opt-in plaintiffs had, and those agreements included class- or collective-action waivers that stated that "individual arbitration is the 'only forum' for employment claims, including unpaid-wage claims." *Gaffers*, 900 F.3d at 295. After the company moved to compel individual arbitration under the Federal Arbitration Act (FAA), Gaffers argued that the employees' arbitration agreements were unenforceable under the NLRA and the FLSA.

While the appeal in *Gaffers* was pend-

ing, the U.S. Supreme Court issued its decision in *Epic*, which disposed of Gaffers' argument under the NLRA. Similarly, the 6th Circuit relied on *Epic* to reject the plaintiff's argument that the FLSA's collective-action provision is irreconcilable with the FAA and that the FLSA, therefore, displaces the FAA. Citing *Epic*, the court noted that to displace the FAA, a federal statute must do more than simply provide the right to engage in a collective action; rather, a statute can displace the FAA only if it contains a "clear and manifest" congressional intent to bar individual arbitration agreements by explicitly stating that "an arbitration agreement poses no obstacle to pursuing a collective action." *Id.* at 295-96. However, like the NLRA and other federal statutes considered by the Supreme Court, such as the Age Discrimination in Employment Act, the Sherman Act, the Clayton Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934 and the Racketeer Influenced and Corrupt Organizations Act, the FLSA has no such provision. Instead, the FLSA simply gives an employee the *option* to sue on behalf of himself and others. The court emphasized that the FLSA does not *require* employees to sue in a collective action; further, the FLSA does not state that an agreement requiring individual arbitration becomes null if an employee who signs such an agreement later decides to pursue a collective action. As such, the court reasoned that it "can give effect to both statutes: employees who do not sign individual arbitration agreements are free to sue collectively, and those who do sign individual arbitration agreements are not." *Id.* at 296.

The plaintiff further argued that the agreement was illegal under the FAA's savings clause because the FLSA gives employees the right to sue collectively, whereas the agreement required individual arbitration. Again citing *Epic*, the court explained that the FAA's savings clause does not permit contract defenses that apply only to arbitration agreements or that interfere with the fundamental aspects of arbitration. Because plaintiff's illegality argument attacked the "historically individualized nature" of arbitration, that defense failed.

This case is a good reminder for em-

ployers operating in multiple jurisdictions to continue to monitor developments in the area of mandatory individual-arbitration agreements. This is particularly so given the sharp increase in the use of arbitration agreements.

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Offshore Platforms; Decommissioning; Maritime Contract

In re Crescent Energy Servs., L.L.C., 896 F.3d 350 (5 Cir. 2018).

Recently, the U.S. 5th Circuit Court of Appeals answered a question of law that has gone unanswered for many years. Is a contract to decommission an offshore platform a maritime contract or a contract governed by state law? The answer is: a maritime contract.

This case involved the decommissioning of three wells located in coastal waters of Lafourche Parish, Louisiana. Carizzo, the owner of the wells, hired Crescent Energy pursuant to a Turnkey Bid to perform the decommissioning work. The equipment to be used for the job included: (1) a quarters barge with a 30-foot crane, (2) a tug boat and (3) a cargo barge. The crane was an essential piece of equipment for the decommissioning operation. Carizzo and Crescent Energy also had a preexisting master-service agreement (MSA) that included provisions requiring knock-for-knock indemnity/additional insurance between Carizzo and Crescent Energy.

While performing the decommissioning work, a Crescent Energy crewmember was severely injured when a pressurized pipe and flange separated. Carizzo

sought indemnity and insurance from Crescent and its insurers, pursuant to the MSA. Crescent Energy and its insurers rejected Carizzo's indemnity and insurance claims pursuant to the Louisiana Oilfield Anti-Indemnity Act (LOAIA) (La. R.S. 9:2780), arguing that because the incident occurred on a fixed platform and involved the decommissioning of a fixed platform (not a vessel), the LOAIA should apply.

On cross-motions for summary judgment, the federal district court ruled in favor of Carizzo and found that maritime law applied to the MSA/Turnkey Bid contract. Thus, Crescent Energy and its insurers were contractually bound to defend and indemnify Carizzo for the incident. Crescent Energy appealed to the 5th Circuit, which affirmed the district court's ruling, with an explanation of the application of the recently decided *Doiron* case in the context of decommissioning.

The first issue the 5th Circuit dealt with was whether the maritime-but-local doctrine should apply. It found it did not apply:

[T]he fact that [MSA/Turnkey Bid] was to be performed in the territorial waters of Louisiana does not justify causing the outcome of this lawsuit to be different than if the contract was for work on the high seas. Consistency and predictability are hard enough to come by in maritime jurisprudence, but we at least should not intentionally create distortions.

Id. at 355.

Next, the court addressed whether the MSA/Turnkey Bid was a maritime contract under *Doiron v. Specialty Rental Tools & Supply*, 879 F.3d 568 (5 Cir.2018). As to the first prong of *Doiron*, the court held that decommissioning is a necessary and inescapable activity in the "life-cycle" of a well and thus satisfies the "facilitates the drilling or production" and/or "concerns the drilling and production" prong of *Doiron*. The court also held that *even though* the MSA/Turnkey Bid involved otherwise non-maritime fixed-platform structures, it is not the location of the incident that determines the maritime-contract inquiry, but the *nature of the operations* called for by the contract. "We are no longer concerned about whether the worker



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was on a platform or vessel. The question is whether this contract concerned the drilling and production of oil and gas on navigable waters from a vessel.” *Crescent*, 896 F.3d at 356-57. Because the MSA/Turnkey Bid *involved and required* the use of vessels on navigable waters, this aspect of the *Doiron* was also satisfied.

The court also found that, under the second prong of *Doiron*, vessels “played a substantial role in the completion of the” decommissioning work. The court’s focus for the second *Doiron* prong was on the use of the crane and barge for P&A/decommissioning work. The court noted that essentially 50 percent of the work for the job involved use of wireline equipment, and that the wireline equipment was housed on the crane barge. It found:

[S]o long as the vessel is being used for more than transporting between land and the well site . . . its necessity as a work platform is particularly relevant. To the extent there was not enough space on the fixed

platform for the equipment, such as for the wireline unit, the role of the vessel becomes more significant. Its utility as a work platform comes from its being a vessel, as it could be positioned as needed at the well site, then proceed to the other wells to perform similar functions. . . .

In conclusion, this contract anticipated the constant and substantial use of multiple vessels. It was known that the [crane barge] would be necessary as a work platform; that essential equipment would need to remain on that vessel, including a crane; that the most important component of the work, the wireline operation, would be substantially controlled from the barge; and that other incidental uses of the vessel would exist such as for crew quarters.

Id. at 361.

In affirming the district court’s decision, the 5th Circuit also found that the

holding (although dealing with decommissioning in state waters) was equally applicable to decommissioning fixed platforms in the Outer-Continental Shelf (OCS). The court’s reliance on the “life cycle” argument, and its conclusion that the state law requirement for removal of platforms in state waters renders such operations “facilitative of oil and gas drilling/production” under the first *Doiron* prong, applies equally to the OCS.

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The Bullying Panelist

Bergeron v. Richardson, 18-0415 (La. 5 Cir. 8/8/18).

Three physicians serving on a medical-review panel agreed that two respondents met the applicable standard of care and that two respondents failed to meet the applicable standard, with an additional finding that this breach was not a factor in the patient's death. The panel chair circulated a written opinion to the panelists for their signatures. The chair, having received no response, contacted the physicians' offices and learned that panelists A and B did not agree with the panel opinion, as drafted, and they refused to sign it because they had been "bullied" by panelist X. A and B then submitted their own opinion in which they explained that, during the medical-review panel meeting, they were harassed and bullied by X, and "[a]fter an hour and a half of being berated [they] acquiesced, simply to end the panel."

A and B then wrote that the breach of the standard of care discovered by all three panelists "was a factor in the patient's death." Dr. X signed the original opinion, which recited that the breach was not a factor in the patient's death.

After suit was instituted, the physicians filed a motion in limine to strike and exclude the supplemental panel opinions of A and B on the basis that their opinions "were not medically-based, but were based on feelings of harassment and bullying by" Dr. X. The trial court denied the motion and the defendants' application for a supervisory writ. Noted the court: "We do not find this argument persuasive. In fact, it seems just as likely that [A and B's] verbal agreement with the initial opinion was the result of harassment and bullying by Dr. [X] and that their supplemental opinions were based on their medical assessments."

Thus, finding no abuse of discretion by the district court that had denied the motion in limine, the 5th Circuit denied the defendants' writ application.

Prescription

Guffey v. Lexington House, L.L.C., 18-0475 (La. App. 3 Cir. 8/22/18), ___ So.3d ___, 2018 WL 4000953.

Following the death of a Lexington House resident, her granddaughter timely filed a request for the formation of a medical-review panel. More than a year after the death, the granddaughter supplemented her panel request to include the decedent's children as claimants.

Lexington filed an exception of no right to action, asserting that the granddaughter was not a proper party claimant who has a right to file a survival or wrongful death action. The trial court (referencing *Truxillo v. Thomas*, 16-0168 (La. App. 4 Cir. 8/31/16), 200 So.3d 972), denied the exception based on the definition of "claimant" in La. R.S. 40:1231.1(A)(4), which "is not limited to those who will ultimately be allowed to assert a survival or wrongful death claim when the panel proceedings are concluded." Lexington's writ application was denied, and the panel process proceeded.

The panel found that Lexington breached the standard of care. Two of the decedent's children filed a lawsuit within 90 days of the panel opinion. Lexington filed an exception of prescription. The trial court denied the exception, again relying on *Truxillo*.

In its application for a supervisory writ, Lexington argued that the children's petition was prescribed on its face because it was filed more than one year from the date of the incident and from the date of the patient's death. This meant the plaintiffs had relied solely on the claim filed by the granddaughter to suspend prescription during panel proceedings, even though the granddaughter had no right to bring a claim that would interrupt prescription. Plaintiffs noted that she was never a beneficiary entitled to file a survival or wrongful death action under La. Civ.C. art. 2315.1 or 2315.2, all as was further proven by her absence as a party plaintiff in the pending suit.

The opinion of the 3rd Circuit contains an extensive discussion on this issue, including references to holdings in the other jurisdictions. Noting that prescription is suspended in all malpractice claims until at least 90 days following notification of the

panel opinion, and that the MMA suspends prescription against all joint and solitary obligors, as well as "against all other unnamed, potentially liable defendants," the court reasoned that the last sentence of La. R.S. 40:1231.1(1)(4) evidenced the Legislature's "intent 'for a similar application of the statute to benefit all other unnamed potential *plaintiffs* and claimants.'" La. R.S. 40:1231.1(1)(4) explicitly states that "[a]ll persons claiming to have sustained damages as a result of injuries to or death of any one patient are considered a single claimant." Relying on the language of the statute and the reasoning of *Truxillo*, the court found that the filing of a single request for a medical-review panel protected the rights of all potential plaintiffs. The granddaughter was a claimant under the MMA, and thus her filing of a medical-review-panel request suspended prescription as to all potential claimants.

—Robert J. David

Gainsburgh, Benjamin, David,
Meunier & Warshauer, L.L.C.
Ste. 2800, 1100 Poydras St.
New Orleans, LA 70163-2800



We wish to thank
our inaugural members
for their commitment
to fairness and equity
for all children
in the justice system:

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BONITA DAY
GEORGE C. FREEMAN, III
VICTOR M. JONES
ANDREW R. LEE
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Louisiana Center
for Children's Rights



Guidelines for What is a “False” Tax Return

Succession of Ciervo v. Robinson, BTA Docket No. 10832D (9/11/18).

The Succession of Anthony Ciervo, Jr. (taxpayer) appealed the Department’s assessments for individual income tax for the years 2006 through 2011 (tax period). The taxpayer’s defense to the assessments was that they were prescribed. Pursuant to Louisiana Constitution article 7, § 16, income taxes prescribe three years after the 31st day of December in the year in which they are due except when prescription is interrupted or suspended as provided by law.

At issue was whether prescription was

interrupted or suspended such that the Department’s assessments were timely. Specifically, at issue was whether prescription was suspended by the filing of a false return with intent to evade taxes.

For the tax period, the taxpayer’s original reported tax liability was \$7,963, \$10,184, \$4,155, \$2,747, \$2,698 and \$3,464. The taxable income per IRS account transcripts was \$3,029,568, \$3,526,104, \$3,104,861, \$1,229,816, \$740,411 and \$79,388. The account transcripts further indicated additional taxes were added after examination in the respective amounts of \$1,032,815, \$1,211,075, \$1,065,867, \$408,040, \$235,315 and \$17,724. Because of the large discrepancy in reported and actual income, the Board of Tax Appeals found it necessary to determine if taxpayer filed false returns with the intent to evade taxes.

La. R.S. 47:1580(A)(4) states that prescription against Louisiana tax is suspended by the “filing of a false or fraudulent return, as defined in La. R.S. 47:1605(2).” La. R.S. 47:1605(B)(2)

defines a false or fraudulent “report” as “any report filed with the intent to evade taxes, or a willful attempt to defraud or evade taxes that are due.”

Relying on federal jurisprudence, the Board noted the courts have equated the word “false” with “incorrect,” “untrue” or “an underpayment.” Based on the severe discrepancy between reported and actual income noted above, the Board held taxpayer’s returns would be considered “false” within R.S. 47:1580(A)(4) and R.S.1605(B)(2). The Board also reasoned that based on federal jurisprudence, intent to evade taxes or fraudulent intent may be proven by circumstantial evidence and reasonable inferences from the facts. The Board noted three specific factors supported such a finding. First, taxpayer consistently and substantially understated his income by millions of dollars over a six-year period and could not explain his conduct. This weighed in favor of finding an intent to evade tax. Second, taxpayer concealed assets overseas in foreign financial institutions, which showed taxpayer was sophisticated and knew how to hide his assets from state and federal authorities. The Board adopted the holdings of other courts that such conduct is indicative of an intent to evade taxes. Third, taxpayer filed false documents, which the Board held was an indicium of fraud. Based on the above reasoning, the Board held the Department’s assessments for the tax period were not prescribed and dismissed taxpayer’s petition with prejudice.

—Antonio Charles Ferachi

Member, LSBA Taxation Section
Director, Litigation Division
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

Opportunity Zones Guidance Now Available

Opportunity Zones (OZs) were added to the U.S. Tax Code by the 2017 Tax Cuts and Jobs Act (TCJA). OZs are economically distressed communities where new investments, under certain conditions, may be eligible for preferential tax treat-



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ment. Communities are nominated by the states and approved by the Treasury Department as designated OZs.

OZs are designed to spur economic development by providing tax benefits to investors. First, investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or Dec. 31, 2026. If the QOF investment is held for longer than five years, 10 percent of the deferred gain is excluded. If held for more than seven years, 15 percent of the deferred gain is excluded. Second, if investments in the QOF are held for at least 10 years, investors are eligible for an increase in basis of the QOF investment equal to its fair-market value on the date the QOF investment is sold or exchanged. Importantly, investors do not have to live in the OZs to take advantage of the benefits; they need only invest a recognized gain in a QOF and elect to defer the tax on that gain.

Recently, the Treasury Department released the first set of proposed regu-

lations and a related revenue ruling for OZs. The proposed regulations provide for the types of gains that may be deferred, the timing to invest such gains in QOFs, and the mechanism for selecting deferral of such gains. The proposed regulations also address self-certification of the QOF, valuation of QOF's assets and identification of OZ businesses.

Revenue Ruling 2018-29 addresses issues related to the qualification of an existing building and land in an OZ as OZ Business Property (OZBP). OZBP is tangible property used in a trade or business of the QOF: (1) that is purchased by the QOF after Dec. 31, 2017; (2) the original use of which commences with the QOF *or* the QOF substantially improves the property; and (3) during the QOF's holding period, substantially all of the use of such property is in the OZ. OZBP is treated as substantially improved by the QOF if, during any 30-month period beginning after the date of acquisition, additions to basis exceed the adjusted basis of such property at the beginning of such 30-month

period.

The Revenue Ruling notes that, given the permanence of land, land can never have its original use in an OZ commencing with a QOF. The Ruling holds that, regarding an existing building located on land that is wholly within an OZ, the original use of the building in the OZ is not considered to have commenced with the QOF, and the original-use requirement is not applicable to the land on which the building is located. Second, substantial improvement to the building is measured by the QOF's additions to the adjusted basis of the building. Finally, measuring substantial improvement to the building does not require the QOF to separately substantially improve the land on which the building is located.

—Angela W. Adolph

Member, LSBA Taxation Section
Partner, Kean Miller LLP
Ste. 700, 400 Convention St.
Baton Rouge, LA 70802

STRIDES IN DIVERSITY

SAVE THE DATE! MARCH 8, 2019
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Join the LSBA in cooperation with the Louisiana Supreme Court for the 12th annual Conclave on Diversity in the Legal Profession on March 8, 2019 at the Sheraton New Orleans Hotel, 500 Canal Street.

CONCLAVE HIGHLIGHTS

<p>Luncheon Keynote Speaker: Dima Ghawi Dima Ghawi LLC, Baton Rouge, LA</p>	<p>Excellence in Diversity Reception</p>
<p>Diversity and Inclusion Workshop Presenter: Dr. Katrice Albert Executive VP of Inclusion and Human Resources, NCAA, Indianapolis, IN</p>	<p>Breakout Session One – Immigration Breakout Session Two – Best Practices</p>
	<p>Plenary Session One – Labor and Employment Plenary Session Two – Trending Legal Issues</p>

Reserve your spot and register before February 8, 2019 for a discounted rate, visit
WWW.LSBA.ORG/GOTO/CONCLAVE

CHAIR'S MESSAGE

"Build Your Brand" at YLD Conference in January

By Dylan T. Thriffiley

In September, the Louisiana State Bar Association's Young Lawyers Division (YLD) Council gathered for a full-day strategic planning session in Covington. As a group, we spent the day outlining our strengths and opportunities for improvement, as well as trying to re-define who we are and what value we want to bring to young lawyers across the state.

In preparation for the strategic planning session, a survey was circulated to our members. This survey provided insight into how the YLD is viewed by our members and indicated the members' level of awareness about programs and services offered. The survey further asked respondents to identify their challenges. It was no surprise to learn that young lawyers are burdened by work-life balance, crushing law school debt and an uncertain legal economy.

There was also a common theme among respondents of a widespread interest in participating in YLD activities, but also a significant gap in their awareness of opportunities and expectations of service. We are working diligently to close that gap, but we need your help.

There are far more of you than there are of us. If you are interested in participating in projects planned for this year or want to learn more about the YLD, go to the YLD's webpage, www.lsba.org/YLD, or contact me or any Council member. We are actively seeking members for our Wills for Heroes and High School Mock Trial Committees. New Orleans has been named the host city for the American Bar Association



Dylan T. Thriffiley

Young Lawyers Division National Fall Conference in October 2019 and we could use your help identifying and contacting sponsors.

Finally, registration is now open for the inaugural Louisiana Young

Lawyers Conference set for Friday, Jan. 18, 2019, in Baton Rouge. The theme is "Build Your Brand" and we are offering great content for young lawyers in private practice, in solo practice, and for those who have questions and aren't sure who to ask. To register, go to: www.lsba.org/YLD/YLDConference.aspx.

Your participation level is up to you. Simply showing support by sending an email with a question can make a huge difference in the direction of a project or possibly the creation of one.

We are working over the next few months to revise and finalize the strategic planning documents, but, in the meantime, we have adopted the new vision statement for the LSBA YLD:

"We are an essential part of the young lawyer journey and provide invaluable support."

As we transition into the new year, let us know how we can provide invaluable support to you in your practice. The YLD looks forward to being an essential part of each of your journeys.

YOUNG LAWYERS SPOTLIGHT

Laura B. Hennen Monroe

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Monroe attorney Laura B. Hennen.

Hennen is a partner at Hennen & Hennen, L.L.P., a plaintiffs' personal injury firm in Monroe. She and her father/law partner, Dennis Hennen, work mostly on car and trucking accident litigation. She received her law degree and a civil law certificate from Tulane University Law School in 2008, after having been a part of the "Katrina class" of first-year students in 2005-06.

She currently serves as a member of the Louisiana Attorney Disciplinary Board. She is a board member of the Louisiana Association for Justice (LAJ) and is the former chair of the Women's Caucus. She also is a member of the American Association for Justice (AAJ) and serves on its Trial Lawyers Care Committee, organizing trial lawyers to work together to volunteer and improve the well-being of members of their communities. She is serving as an LAJ state delegate to the AAJ Board of Governors this year.

Hennen is an inaugural board member for Emerge Louisiana, an organization dedicated to recruiting, training and supporting Democratic women to run for office. She is passionate about supporting children's education (check out Donorschoose.org!) and social services in Monroe such as The Wellspring.



Laura B. Hennen



LCLCE Seeking Civic/Community Groups to Participate in ACE Program

Do you know of a civic organization or social group interested in having a speaker discuss civics education?

The Louisiana Center for Law and Civic Education (LCLCE) is seeking current contact information on civic/community groups for the new Adult Civics Education (ACE) Program. The program includes a series of law-related activities developed for adult, nonpartisan group presentations. Judges and lawyers have volunteered to visit local groups interested in learning more about the court system, the Bill of Rights and the Constitution.

Help grow this free service by contacting Louisiana Center for Law and Civic Education Executive Director Peggy V. Cotogno, (504)566-1600, ext. 134, or email peggy.cotogno@lsba.org. Or mail information to ACE, LCLCE, 601 St. Charles Ave., New Orleans, LA 70130.



Adult Civics Education (ACE) Program speaker Christopher A. Meeks, center, presented a program at the Kenner Kiwanis Club's monthly meeting. From left, Louisiana Center for Law and Civic Education Executive Director Peggy V. Cotogno, Kevin Nolan, Meeks, Michele Hart and Jim Perrier.



Louisiana Center for Law and Civic Education President Judge Randall L. Bethancourt joined 35 lawyers and judges in presenting 62 Constitution Day programs statewide. Nearly 2,500 students benefited from these programs. Judge Bethancourt presented a program at Mulberry Elementary School in Houma.

ACE
ADULT CIVICS
EDUCATION

ABOUT ACE

The Louisiana Center for Law and Civic Education's ACE Program includes a series of law-related activities developed for adult, nonpartisan group presentations by members of the legal community. Both attorneys and judges are encouraged to participate.

**FOR MORE INFORMATION, VISIT
WWW.LALCE.ORG**

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Judge John J. Molaison, Jr. was elected to the 5th Circuit Court of Appeal, Election Section 1, Division G. He earned his bachelor's and JD degrees in 1983 and 1986, respectively, from Loyola University and Loyola University



Judge John J. Molaison, Jr.

College of Law. Prior to his election to the 24th Judicial District Court in 2007, he held several positions in the Jefferson Parish District Attorney's Office including executive assistant district attorney and supervisor of parish courts. He is a former president of the Louisiana District Judges Association and served on the Judiciary Commission of Louisiana. Judge Molaison and his wife, Gaye Molaison, are the parents of one child.

Jeffrey L. Robinson was elected judge, Division A, 3rd Judicial District Court. He served in the Louisiana Army National Guard from 1987-93 and is a veteran of Operation Desert Storm. He earned his bachelor's degree



Jeffrey L. Robinson

in 1992 from Louisiana Tech University and his JD degree in 1995 from Southern University Law Center. Prior to his election to the bench, he served as an assistant district attorney in the 2nd, 3rd and 8th Judicial Districts, as an indigent defender in the 2nd Judicial District, as the magistrate for the Town of Jonesboro, and as a hearing officer for the 8th Judicial District. Judge Robinson and his wife, Ginger Alexander Robinson, are the parents of three children.

John Clay Hamilton was elected judge, Division A, 5th Judicial District Court. He earned his bachelor's degree in 1982 from Louisiana State University and his JD degree in 1993 from Southern University Law Center. He served in the U.S. Navy from 1985-90. Prior to his election to the bench, he was in private practice and served as an assistant district attorney in the 5th Judicial District. Judge Hamilton and his wife, Sherry H. Hamilton, are the parents of two children.



John Clay Hamilton

Will Rhymes Barham was elected judge, Division B, 5th Judicial District Court. He earned his bachelor's degree in 2001 from the University of Louisiana at Monroe and his JD degree in 2007 from Loyola University College of Law. He began his career in private practice in Rayville, representing indigent defendants in the 4th and 5th Judicial Districts in adult and juvenile proceedings and handling family law matters. From 2013 until his election to the bench, he served as an assistant district attorney in the 5th Judicial District. Judge Barham is married to Sara Barham.



Will Rhymes Barham

Appointments

► 1st Judicial District Court Judge Brady D. O'Callaghan was appointed, by order of the Louisiana Supreme Court, to the Judiciary Commission of Louisiana for a term of office which began Sept. 13 and will end on Sept. 12, 2022.

► 21st Judicial District Court Chief Judge Robert H. Morrison III was reappointed, by order of the Louisiana Supreme Court, as a member of the Judicial Budgetary Control Board for a term of office ending on Dec. 31, 2020.

► 27th Judicial District Court Chief Judge Alonzo Harris and Orleans Parish Criminal District Court Judge Benedict J. Willard were reappointed, by order of the Louisiana Supreme Court, as members of the Judicial Budgetary Control Board for terms of office ending on June 30, 2021.

Retirement

2nd Circuit Court of Appeal Chief Judge Henry N. Brown, Jr. retired effective Oct. 3. He earned his JD degree, with honors, in 1966 from Louisiana State University Law School. After serving as a paratrooper during the Vietnam War, he began his legal career as an assistant district attorney in Orleans Parish. He served three terms as district attorney for the 26th Judicial District prior to his 1991 election to the 2nd Circuit Court of Appeal.

Death

Retired Jefferson Parish Juvenile Court Judge Thomas P. McGee, 84, died Sept. 5. He attended Loyola University before receiving his JD degree in 1956 from Tulane University Law School. He served as an assistant district attorney in Jefferson Parish prior to his 1974 election to the bench. During his judicial tenure, he served as president of the Louisiana Juvenile Court Judges Association and was named "Judge of the Year" in 1986 by the National Child Support Enforcement Association. He retired from the bench in 1996 and moved to Florida where he served as the fire commissioner for District 2, South Walton Fire District.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

The Borghardt Law Firm (and firm owner Franz N. Borghardt) announces the relocation of its offices to 301 St. Ferdinand St., Baton Rouge, LA 70802; phone (225)831-1465; website www.borghardtlawfirm.com.

The Bowling Law Firm, A.P.L.C., announces that Zachary R. Christiansen has been made a partner in the New Orleans office.

Brown Sims, P.C., announces that **Tina Crawford White** has joined the firm's New Orleans office as a shareholder.

Chaffe McCall, L.L.P., announces that **Alexander J. DeGiulio** and **Jesse G. Frank** have joined the firm's New Orleans office as associates.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., announces that Fred L. Herman has joined the Metairie office as a member and special counsel, **Mayra L. Scheuermann** has joined the Metairie office as a member, and **J. Garrison Jordan** and John D. Miranda have joined the Hammond office as members.

Foley & Mansfield announces it has opened an office at Ste. 1447, 650 Poydras St., New Orleans, LA 70130; phone (504)302-4800; website www.foleymansfield.com. The office will be led by partner Kay B. Baxter.

Hammonds, Sills, Adkins & Guice, L.L.P., announces that **Andrew F. Barr** has joined the Baton Rouge office as an associate. Also, **William P. Self** has joined the new Bossier City office as an associate. The office is located at Ste. 701, 1000 Chinaberry Dr., Bossier City, LA 7111; phone (318)507-3219.

The Johnson Firm in Lake Charles announces that **Kilburn S. Landry** has joined the firm as an associate.

Jones Walker LLP announces that partner R. Keith Colvin has relocated to the firm's Baton Rouge office.

Kelly Hart Pitre announces that **Lesli D. Harris** has joined the New Orleans office as of counsel.

The Kullman Firm announces that **William H. Payne IV**, **Karuna Davé** and **J. Hope Del Rio** have joined the New Orleans office as associates.

Lewis Brisbois Bisgaard & Smith, L.L.P., announces that Thomas J. Cortazzo and E. Stuart Ponder have joined the New Orleans office as partners. Also, Charlin S. Fisher, Nicole T. Bowyer and Leslie E. Knowles have joined the New Orleans office as associates.

Continued next page



Richard J. Arsenault



Andrew F. Barr



Brent E. Bartholomew



Walter F. Becker, Jr.



Frederick J. Burton



Sarah J.L. Christakis



E. Howell Crosby



Karuna Davé



Robert J. David



Alexander J. DeGiulio



J. Hope Del Rio



Michael J. Ecuyer

Liskow & Lewis, A.P.L.C., announces that Melanie N. Derefinko, Brady M. Hadden, Brady C. McMillin, Jacques C. Mestayer and Sara Grace Sirera have joined the New Orleans office as associates. Also, Aubrey E. Denton and John S. Troutman have joined the Lafayette office as associates.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Patricia C. Penton has joined its New Orleans headquarters as of counsel.

Sessions, Fishman, Nathan & Israel, L.L.C., announces that **Brent E. Bartholomew** and **Frederick J. (Rick) Burton** have joined the firm's Metairie office as associates.

Staines & Eppling in Metairie announces that Jessica B. Finley has joined the firm as an associate.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C., in New Orleans announces that **Endya L. Hash** has joined the firm as an associate.

Peter G. Strasser was confirmed by the U.S. Senate in August 2018 as United States attorney for the Eastern District of Louisiana.

Waters & Kraus, L.L.P., announces that **Lawrence G. Gettys** has joined the firm as of counsel and will practice in the firm's new Louisiana office at 9191 Siegen Lane, Building 7, Baton Rouge, LA 70810; phone (225)308-2617; website www.waterskraus.com.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was appointed to the Complex Litigation Board Certification Examination Committee. He also was appointed by the Louisiana Supreme Court to the committee revising the Complex Litigation Bench Book.

Sarah J.L. Christakis, a partner in the Metairie office of Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., earned her master of laws, *magna cum laude*, from Loyola University College of Law in May 2018.

Louisiana Judicial College faculty advisor William R. Corbett, also the Frank L. Maraist Professor of Law and the Wex S. Malone Professor of Law at Louisiana State University Paul M. Hebert Law Center, was named a 2018 Fellow by

the College of Labor and Employment Lawyers.

Rubye E. Noble, a senior assistant parish attorney and state legislative liaison for Jefferson Parish, is serving a two-year term as chair of the Volunteers of America national board of directors.

April L. Rolen-Ogden, a shareholder in the Lafayette office of Liskow & Lewis, A.P.L.C., was selected as a Fellow of the Litigation Counsel of America.

Sera H. Russell III, with the Law Offices of Sera H. Russell III in Lafayette, is a diplomate of the American Board of Professional Liability Attorneys and is board-certified in medical malpractice law.

Miles C. Thomas, a shareholder in the New Orleans office of Lugenhuhl, Wheaton, Peck, Rankin & Hubbard, was named president of the Kingsley House executive board.

Rae A. Vasquez, a partner in the Baton Rouge office of Jones Walker LLP, was named to the "Women Worth Watching" list in *Profiles in Diversity Journal*.



Leah Nunn
Engelhardt



Jesse G. Frank



Lawrence G. Gettys



Lesli D. Harris



Endya L. Hash



J. Garrison Jordan



Robert A. Kutcher



Frank E.
Lamothe III



Kilburn S. Landry



Gerald E. Meunier



Conrad Meyer IV



Thomas P. Owen, Jr.

PUBLICATIONS

Best Lawyers in America 2019

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): E. Gregg Barrios, Mark R. Beebe, Philip O. Bergeron, Charles A. Cerise, Jr., Robin B. Cheatham, V. Thomas Clark, Jr. (Baton Rouge “Lawyer of the Year,” Administrative/Regulatory Law), Jaimmé A. Collins, Johnny L. Domiano, Jr., Kathleen F. Drew, John M. Duck, Brooke Duncan III, Richard B. Eason II, Mark S. Embree, Philip A. Franco, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., Matthew C. Guy, Lisa Merz Hedrick, E.L. Henry, Louis C. LaCour, Jr., Edwin C. Laizer, Leslie A. Lanusse, Francis V. Liantonio, Jr., Kellen J. Mathews, Lisa E. Maurer, Don S. McKinney, Robert B. Nolan, Glen M. Pilié, Jane C. Raiford, Lee C. Reid, Robert L. Rieger, Jr., Edward J. Rice, Jr., Jeffrey E. Richardson, James T. Rogers III, Deborah B. Rouen (New Orleans “Lawyer of the Year,” Product Liability Litigation-Defendants), Elizabeth A. Roussel, E. Paige Sensenbrenner, Ronald J. Sholes, Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Roland M. Vandenweghe, Jr., Robert A. Vosbein, David M. Wolf and J. Robert Wooley.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Alissa J. Allison, Edward H. Arnold III, Alton E.

Bayard III (Baton Rouge “Lawyer of the Year,” Tax Law), Gregory E. Bodin, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood (New Orleans “Lawyer of the Year,” Appellate Practice), Robert C. Clotworthy, Christopher O. Davis, John B. Davis, Nancy Scott Degan, Warner J. Delaune, Jr., Robert S. Emmett, Sean L. Finan (Baton Rouge “Lawyer of the Year,” Health Care Law), Donna D. Fraiche (New Orleans “Lawyer of the Year,” Health Care Law), Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Jan M. Hayden, William H. Howard III (New Orleans “Lawyer of the Year,” Railroad Law), Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Alexander M. McIntyre, Jr. (New Orleans “Lawyer of the Year,” Litigation-Antitrust), Patricia B. McMurray, Mark W. Mercante, Kerry J. Miller, Christopher G. Morris, Anne E. Raymond, Margaret M. Silverstein, Danielle L. Trostorff, Paul S. West, Anne Derbes Wittmann, Matthew A. Woolf and Adam B. Zuckerman.

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): David L. Carrige, Lawrence R. DeMarcay III, Joel A. Mender, Jerome J. Reso, Jr., Leon H. Rittenberg III, John A. Rouchell (New Orleans “Lawyer of the Year,” Business Organizations), William B. Schwartz, Matthew A. Treuting and Karl J. Zimmermann.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, John W. Barton, Jr., Thomas M. Benjamin, Robert T. Bowsher, Jude C. Bursavich, Peter J. Butler, Jr., David R. Cassidy, David M. Charlton, Carroll Devillier, Jr., Cullen J. Dupuy, Murphy J. Foster III, Gregory D. Frost, Judith W. Giorlando, Alan H. Goodman, Emily Black Grey, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, David R. Kelly (Baton Rouge “Lawyer of the Year,” Litigation-Insurance), Van R. Mayhall, Jr. (Baton Rouge “Lawyer of the Year,” Corporate Law), Van R. Mayhall III, Eve B. Masinter, Trenton J. Oubre, Richard G. Passler, James R. Raines, Claude F. Reynaud, Jr., Melissa M. Shirley, Jerry L. Stovall, Jr., Thomas R. Temple, Jr., B. Troy Villa (Baton Rouge “Lawyer of the Year,” Mergers and Acquisitions Law), Stephen R. Whalen and Douglas K. Williams.

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C. (New Orleans): Raymond G. Areaux, Roy E. Blossman, M. Hampton Carver, M. Taylor Darden, Matthew J. Fantaci, William T. Finn, I. Harold Koretzky, Leann Opatowsky Moses, Philip D. Nizialek, Robert S. Stassi, Frank A. Tessier, Robert P. Thibeaux (New Orleans “Lawyer of the Year,” Financial Services Regulation Law) and David F. Waguespack.

Chaffe McCall, L.L.P. (New Orleans):

Walter F. Becker, Jr., G. Wogan Bernard, H. Michael Bush, Katharine R. Colletta, **E. Howell Crosby**, Anthony P. Dunbar, **Leah Nunn Engelhardt**, Thomas D. Forbes, Mandy Mendoza



William H. Payne IV



Patrick K. Reso



Bryan C. Reuter



Thomas M. Richard



Sera H. Russell III



Mayra L. Scheuermann



William P. Self



David R. Sherman



Richard C. Stanley



Nicole S. Tygier



Tina Crawford White

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New Orleans Magazine 2018

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): **Robert J. David, Michael J. Ecuyer** and **Gerald E. Meunier**, Top Lawyers.

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Benchmark Litigation

Chaffe McCall, L.L.P. (New Orleans): **Walter F. Becker, Jr.**, Local Litigation Star.

UPDATE



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, center, and other justices, judges and members of the legal community attended the Oct. 1 Red Mass at St. Louis Cathedral in New Orleans.



Father Paul Scalia, son of the late U.S. Supreme Court Justice Antonin Scalia, served as the homilist for the Oct. 1 Red Mass at St. Louis Cathedral in New Orleans.

Father Scalia is Homilist for Red Mass in New Orleans

Father Paul Scalia, son of the late U.S. Supreme Court Justice Antonin Scalia, served as the homilist for the 66th annual Red Mass on Oct. 1 at St. Louis Cathedral in New Orleans. Judges, lawyers and officials of all faiths attended the Mass offered for guidance in the ad-

ministration of justice in the year ahead. Louisiana Supreme Court Chief Justice Bernette Joshua Johnson said several judges attending the annual Fall Conference sponsored by the Louisiana Judicial College also attended.

The Most Rev. Gregory M. Aymond,

archbishop of New Orleans, was the celebrant of the Mass. The Red Mass is sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.



James Carville, center, political strategist and commenter, was the keynote speaker for the Federal Bar Association (FBA) Baton Rouge Chapter's annual meeting in May 2018. From left, Chief Judge Brian A. Jackson, U.S. District Court, Middle District of Louisiana; Catherine M. Maraist, FBA Baton Rouge Chapter president-elect; Carville; Magistrate Judge Richard L. Bourgeois, Jr., U.S. District Court, Middle District of Louisiana; and John M. Parker, Jr., FBA Baton Rouge Chapter president.



The Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. held a meet-and-greet in May 2018 at the Baton Rouge City Club. Chapter members met to revitalize commitment to the chapter. From left, attorney Taryn C. Branson; Deidre D. Robert, Southern University System; and attorney Joshua G. Hollins.



The Southwest Louisiana Bar Association (SWLBA) hosted its annual Bench Bar conference in March 2018. Among the attendees were six Louisiana 3rd Circuit Court of Appeal judges, from left, Judge Sylvia R. Cooks, Judge Ulysses G. Thibodeaux, Judge Phyllis M. Keaty, Judge Billy H. Ezell, Judge John E. Conery; Rebecca J. Hunter, 2017-18 SWLBA president-elect; and Judge Candyce G. Perret.

Brown Receives NOBA Presidents' Award

Marcus V. Brown, Entergy Corp.'s executive vice president and general counsel, is the recipient of the New Orleans Bar Association's (NOBA) prestigious Presidents' Award. The award, presented on Oct. 3, recognizes professional excellence, integrity and dedication to service in the highest ideals of citizenship.

Brown serves on the boards of Energy Insurance Mutual, the Pro Bono Institute and the Norman C. Francis Leadership Institute and on the advisory council for the Louisiana State University Laborde Energy Law Center. After Hurricane Katrina, Brown led the effort to secure funding to rebuild electric and gas systems to the citizens of New Orleans. Under his leadership, Entergy's legal department has provided more than 15,000 hours of pro bono and community service in the New Orleans metropolitan area.



Marcus V. Brown, left, Entergy Corp.'s executive vice president and general counsel, is the recipient of the New Orleans Bar Association's (NOBA) prestigious Presidents' Award. Presenting the award is NOBA President Dana M. Douglas.



The New Orleans Bar Association (NOBA) hosted "Lunch with Legends" in February 2018. The panel of civil rights descendants — Phoebe Ferguson, Keith Plessy and A.P. Tureaud, Jr. — discussed civil rights history in New Orleans 125 years after the *Plessy* decision. New Orleans attorney Kim M. Boyle, Phelps Dunbar LLP, served as moderator. From left, NOBA President Dana M. Douglas; Tureaud, board member, Plessy & Ferguson Foundation; Plessy, president, Plessy & Ferguson Foundation; and Ferguson, executive director, Plessy & Ferguson Foundation.



Rickey Miniex, Jr., center, is the recipient of a \$500 scholarship presented by the Louis A. Martinet Legal Society, Inc. Greater Lafayette Chapter. Presenting the award was Chapter President Franchesca L. Hamilton-Acker. The Scholarship Committee was chaired by JoAnn Nixon. Miniex will attend American University in Washington, D.C., then pursue a law career. Front row from left, Orida B. Edwards, JoAnn Nixon, Miniex, Hamilton-Acker and T. Dene Thibeaux. Back row from left, Rickey W. Miniex, Sr., Clyde R. Simien and Glenn M. Lazard.



The Judicial Committee of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. held its Sidebar luncheon in March 2018. During "Conversations with the Counselors," guests engaged with female legal pioneers, from left, Janice M. Foster, Jones Walker LLP; Judge Ernestine S. Gray, Orleans Parish Juvenile Court; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; attorney Theon A. Wilson; and Hattie M. Broussard, Orleans Parish Juvenile Court.

LBF Seeking Nominations for 2019 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2019 Curtis R. Boisfontaine Trial Advocacy Award.

Nominations should include the nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations should be forwarded by Monday, Feb. 11, 2019, to Communications Director Dennette Young at the Louisiana

Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or emailed to dennette@raisingthebar.org.

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

This trial advocacy award was es-

tablished 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. The award is given to a Louisiana attorney who exhibits long-standing devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel.

President's Message 'Tis the Season

By 2018-19 President W. Michael Street

As we reach the end of the year, we get preoccupied with shopping, holiday parties, travel plans and cooking delicious food. Don't overlook the spirit of the season — Giving. The ultimate motivation of any charitable gift should always be that you support the mission and vision of that particular organization.

The Louisiana Bar Foundation (LBF) funds civil legal aid and promotes access to justice. A gift to the LBF demonstrates your belief in our mission and will help strengthen the programs we support, the services we provide, and the more than 70 grantees we help to fund. Please support the work of the LBF and make your investment in access to justice. Working together, we can

meet the legal needs of our state's most vulnerable people.

With your support, the LBF is able to help people solve critical, life-changing problems:

- ▶ Women who are victims of domestic violence.
- ▶ Children who need a stable home or special education.
- ▶ Elderly whose economic security or health care is in jeopardy.
- ▶ Consumers impacted by improper lending practices.
- ▶ Workers denied lawful wages and



W. Michael Street

benefits.

- ▶ Disabled people denied opportunities.
- ▶ Immigrants who work the lowest-wage jobs without benefits or contracts.
- ▶ Communities devastated by natural disasters.

During this busy holiday season, our personal and professional to-do lists grow increasingly long. Please remember to put the LBF on your list this year and consider a tax-deductible gift.

Make your gift online at www.raisingthebar.org/YearEnd or mail directly to the LBF at Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. If you have any questions, contact Development Director Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

LBF Presents Students with Kids' Chance Scholarships

The Louisiana Bar Foundation (LBF) presented checks in September to five of the 15 Kids' Chance Scholarship Program recipients for the 2018-19 school year. The checks were distributed before the Louisiana Workers' Compensation Corp. (LWCC) golf tournament in Baton Rouge. All proceeds from the tournament were donated to LBF Kids' Chance Scholarship Program.

LBF President W. Michael Street and

LBF Kids' Chance Committee co-chairs Matthew R. Richards and Sherry A. Watters addressed the golfers and scholarship recipient families and presented mock checks during a lunch prior to the tee-off.

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.

Online applications for the 2019-20 school year are available online. The deadline to apply is Feb. 18, 2019.

For more information about the LBF Kids' Chance Scholarship Program, contact Dennette Young at (504)561-1046 or email dennette@raisingthebar.org. Or visit the website, raisingthebar.org/programs-and-projects/kids-chance-scholarship-program.

Attorney Input Sought for Louisiana Civil Legal Navigator Project

Are you an attorney experienced in family, housing or employment law? The Louisiana access to justice community needs your help!

To improve accessibility, effectiveness and efficiency of legal services in Louisiana, the Louisiana Bar Foundation is spearheading an effort to adopt an integrated civil legal aid service delivery portal that leverages artificial intelligence with experienced subject matter contributors. The project, derived from a Legal Service Corporation pilot program, aims to direct

Louisiana's under-served communities to the most appropriate resources within the civil legal network.

Attorneys experienced in family, housing and employment law are needed to help generate user interviews and to collect and classify legal information and resources.

For more information on the project and ways to get involved, go to: <https://tinyurl.com/lalegalnavigator>. For questions, email Amanda Brown, amanda@raisingthebar.org.

Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation announces new Fellows:

- Hon. E. Teena Anderson-Trahan...New Orleans
- Katherine M. Determan.....Metairie
- Eugene G. Gouaux IIILockport
- Kristina Brown GustavsonShreveport
- Hon. Robert E. Jones III..... New Orleans
- Hon. John J. Lee, Jr.Metairie
- Melissa L. Lessell..... New Orleans
- Hon. Mark J. Shea New Orleans
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- Hon. Felicia Toney Williams..... Shreveport

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

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Louisiana State University Paul M. Hebert Law Center seeks to hire an adjunct faculty member to teach a capital punishment course during the spring semester of 2019. The course is a two-hour course that will be taught once a week in the late afternoon to early evening. Course description: This course is a study of the constitutional and systemic issues related to the death penalty, including jury selection; restrictions on death-eligible crimes and offenders; aggravating and mitigating evidence in penalty proceedings; victim impact evidence; the appellate process and collateral attack; methods of execution; clemency; and international issues in death penalty cases, such as the application of treaty law and extradition issues. Education requirement: Juris Doctor degree from an ABA-accredited law school. Applicants should have superior academic credentials. Send a letter and résumé to Prof. William Corbett, Room 350, Paul M. Hebert Law Center, Louisiana State University, 1 East Campus Drive, Baton Rouge, LA 70803 or email wcorbe1@lsu.edu. Deadline: Dec. 18, 2018. The Paul M. Hebert Law Center of LSU is an Equal Opportunity/Equal Access Employer and is committed to building a culturally diverse faculty and encourages applications from female and minority candidates.

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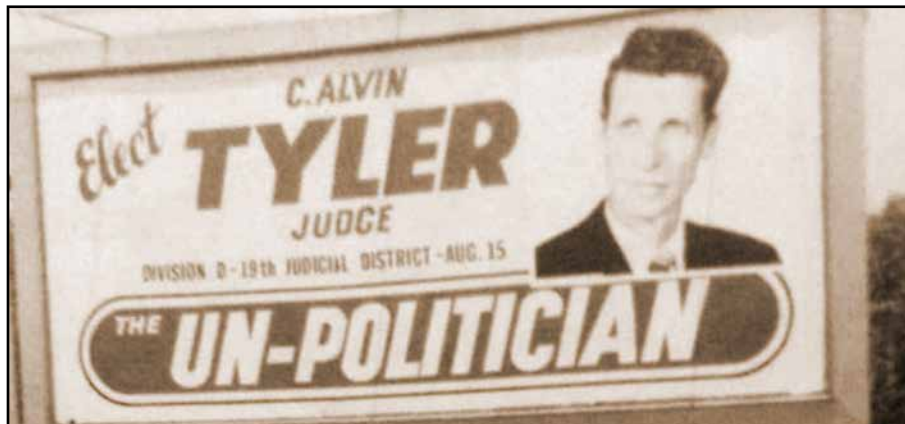
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The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: DRIVING MISS “PETERBILT”



A “Tyler For Judge” billboard during one of his judicial campaigns. Photo provided by John L. Tyler.

Back in the day, there was a lawyer in Baton Rouge named C. Alvin Tyler. He was a fixture in the courthouse — back when lawyers went to court almost every day. Stories about Alvin abound. He was well known for many reasons, including the fact that he ran (unsuccessfully) in most every judicial election in Baton Rouge. Once, he even ran for the Louisiana Supreme Court against a sitting justice.

You see, you couldn’t advertise back then, but you COULD put your name on big signs during election time. He ran against most anyone. His sign just said “C. Alvin Tyler — Judge” so he could use it over and over again.

He also hired a LOT of young lawyers. His office was a training ground for many, including some prominent lawyers and judges. Notably, one was Kenny Fogg from Denham Springs, who later ascended to become Judge Kenneth J. Fogg of the 21st Judicial District Court and later the 1st Circuit Court of Appeal. Kenny had just graduated from law school and needed a job. Kenny went to a lawyer named A.J. Kling — later Judge A.J. Kling of the 23rd Judicial District Court — to see if he had any openings. He told Kenny to go see Alvin Tyler. Kenny did and, 15 minutes later, he was in court with Alvin handling some of Alvin’s criminal matters.

Alvin also did a lot of collection work. He had a habit of collecting various (and numerous) vehicles and appliances at his office on Main Street. He either accepted them in partial payment of his fees, or he repossessed them and kept them at his office. His clients didn’t want to pay storage fees, so Alvin just kept the vehicles “out back.”

One day, Kenny had to go to court. Alvin didn’t like his associates to use their own vehicles to go to court, so he made them use one of the vehicles “out back.” Not a problem. Either it was the only vehicle that ran, or the only one he could find a key for, but Kenny took a big red dump truck. Kenny drove to the courthouse in Baton Rouge and, knowing he couldn’t get the dump truck in the parking garage, he used the parking lot of the Baton Rouge Blueprint store which is very near the courthouse.

Unbeknownst to him, the bed was full of trash from Alvin’s 60-70 rent houses.

Kenny, unaccustomed to dealing with all the levers in the cab of a dump truck, grabbed for the brake lever. Well, as luck would have it, the lever he chose was not “Brake,” but “Dump.” He frantically tried to stop it, but he couldn’t find the “Stop” lever and dumped the entire load all over the parking lot at Baton Rouge Blue.

He left the bed in the “up” position,



C. Alvin Tyler upon graduating from Louisiana State University Law School. Photo provided by John L. Tyler.

hurried to criminal court, accomplished his tasks and proceeded back to his noble steed. He picked up what trash he could and rushed out of there.

I’m sure that when he was Judge Fogg, he had a soft spot in his heart for young lawyers who complained that they were late because they had trouble parking.

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



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