

LOUISIANA BAR JOURNAL

December 2019 / January 2020

Volume 67, Number 4

*IT'S A BRAVE NEW
WORLD OUT
THERE*

The Emerging Duty of

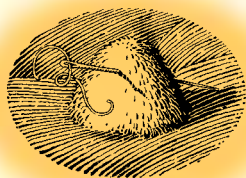
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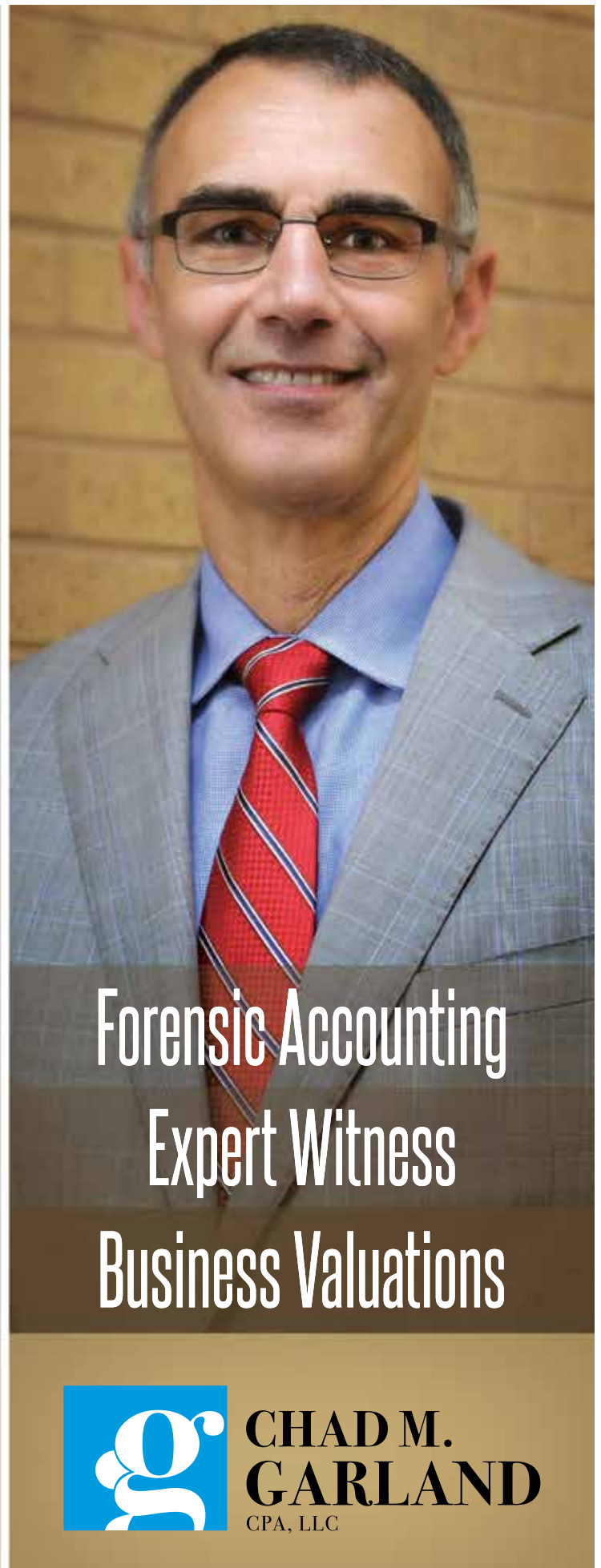
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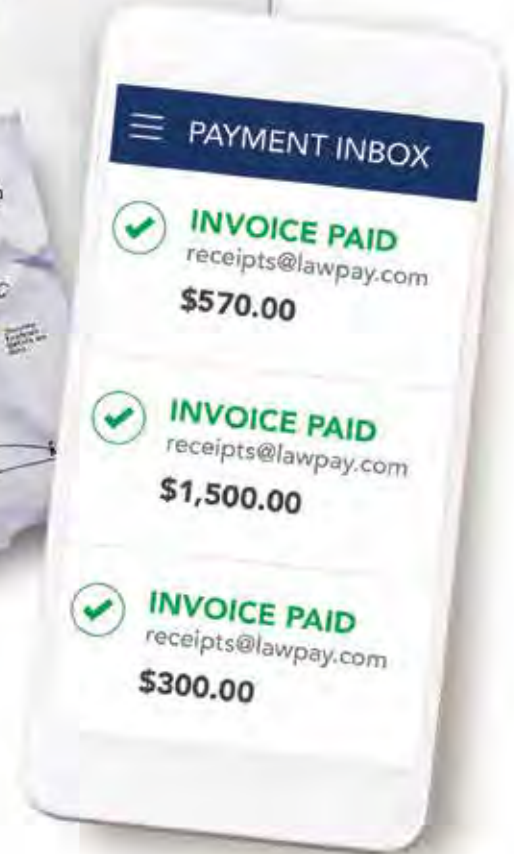


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Departments

Editor's Message 238
 President's Message 239
 Association Actions 258
 Lawyers Assistance 268
 Practice Management 269
 Focus on Diversity 270
 Puzzle 272
 Focus on Professionalism 273
 Discipline Reports 274
 Client Assistance Fund 278
 Recent Developments 280
 Young Lawyers 294
 Judicial Notes 298
 People 300
 News 303
 Classified 308
 Legal Services Classifieds 310
 The Last Word 312

Also Inside

Judicial Interest Rate 237
 SOLACE 272
 Attorney Fee Review Board.. 276
 Advertisers' Index 311

Features

It's a Brave New World Out There:
The Emerging Duty of Technological
Competence

By John G. Browning 240

Cybersecurity: How Safe Are You?

*By Pamela W. Carter and
Francine M. Giugno* 246

Your Firm Needs a Tech Philosophy

*By Michael S. Finkelstein and
Scott L. Sternberg* 252

**LEAP and Lawyers in Libraries
Project: Connecting Libraries, Library
Patrons and the Law**

*By Joanna Laidler and
Jordan Maier* 254

**LSBA Honors Deceased Members of
the Bench and Bar**

► **General Eulogy**

*By Hon. Fredericka
Homborg Wicker* 262

► **Special Eulogy for Retired Chief
Justice Pascal F. Calogero, Jr.**

By Sandra A. Vujnovich 264



240



246



254



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The Louisiana Bar Journal (ISSN 0459-8881) is published bimonthly by the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Periodicals postage paid at New Orleans, Louisiana and additional offices. Annual subscription rate: members, \$5, included in dues; nonmembers, \$45 (domestic), \$55 (foreign). Canada Agreement No. PM 41450540. Return undeliverable Canadian addresses to: 4240 Harvester Rd #2, Burlington, ON L7L 0E8.

Postmaster: Send change of address to: Louisiana Bar Journal, 601 St. Charles Avenue, New Orleans, Louisiana 70130.

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2020 Judicial Interest Rate is 5.75%

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 2020 will be five and three quarters (5.75%) 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 2020 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2019, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was two and one-half (2.5%) 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 2019. Thus, the effective judicial interest rate for the calendar year 2020 shall be five and three quarters (5.75%) 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 7, 2019

Judicial Interest Rates Through 2020

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
Jan. 1, 2020 to Dec. 31, 2020	5.75 percent

Judicial Interest Rate Calculator Online!

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

Go to: www.lsba.org/Members/JudicialInterestRate.aspx.

Let's Focus on All We Have Accomplished This Year



By Patrick A. Talley, Jr.

Here we are, thinking about the holidays again! It's really hard to believe that another year has flown by. I suspect many of us are also thinking about the many things we didn't get around to doing, what we did not accomplish this year, or what is still left undone. This is especially true in our profession when most of us leave the office every night with emails unanswered and tasks incomplete, despite working diligently and despite best intentions to get everything done. As a profession, we can be too hard on ourselves sometimes.

As this year draws to a close, let's not do that. Instead, let's focus on all that we have accomplished this year. Rather than becoming bogged down thinking about what we didn't get done, let's focus on what we actually did get done. I think we'll be able to look back with a certain satisfaction. Finally, let's focus on the many blessings that have come our way this year and be thankful for all that we have experienced. In particular, let's be thankful that we have the honor and privilege of practicing law in Louisiana, and think about all the folks in Louisiana who we have represented and been able to help this year.

As I look back on the year, I'm particularly gratified for the opportunity and honor you have given me as editor of the *Louisiana Bar Journal*. There are certainly things I should have done that I didn't get around to doing, or that I could have done better given more time, but, all in all, I'm very proud of the *Journal* publications this year and I hope you are, too. After all, the *Journal*



Back row, from left: LSBA Communications Director Kelly Ponder, LSBA Executive Director Loretta Larsen and Communications Coordinator Barbara Baldwin. Front row: Communications Assistant Krystal Bellanger Rodriguez, LSBA Secretary Patrick A. Talley, Jr. and Publications Coordinator Darlene LaBranche.

May you have a wonderful holiday season!

is published for all of us as members of the Louisiana State Bar Association (LSBA).

Of course, I am merely the editor. The *Journal's* Editorial Board is largely responsible for the content of the magazine, and I am grateful for the support and dedicated service of all of the Editorial Board members. The real credit for the *Journal* goes to the professional editorial staff in the LSBA Communications Department who do a tremendous job day-in and day-out to make the *Journal* the high-quality, professional publication it is — our

Executive Director Loretta Larsen and Communications Department staff Kelly Ponder (director), Darlene LaBranche, Barbara Baldwin and Krystal Bellanger Rodriguez.

I'd like to close this Editor's Message (and the year) with a very simple, but heartfelt, editorial message from all of us at the *Journal*: May you have a wonderful and happy holiday season! Take some time to enjoy your holiday traditions, and don't focus too much on the things you didn't get done this year!

Membership in the Bar is a Privilege Burdened with Conditions



By Robert A. Kutcher

Chief Justice Warren Burger stated those words almost 35 years ago, and they hold true today. Our license to practice comes with obligations, foremost of which is professionalism. Over the past six months, I've had the opportunity to travel around the state and attend multiple local and specialty bar functions. I appreciate the hospitality shown to me by everyone. These Bar meetings are professionalism at its best.

One of the most enjoyable experiences I have had as Bar president was to attend and speak at the swearing in of the 312 new members of our Bar. Those of us who have been practicing for a few decades forget the enthusiasm and excitement of taking the oath. These new lawyers have virtually their entire future in front of them. They are our future. For those new lawyers who don't have a mentor, I urge you to look into our Mentoring Program. Practicing law can be a challenge, and we want to help.

In the continuum of time, it was only the week before that I attended the Red Mass and the memorial service held at the Supreme Court where I heard those lawyers who preceded us being honored and remembered. Especially moving was the special tribute paid to our late Chief Justice Pascal F. Calogero, Jr. (*Read the eulogy beginning on page 264.*)

Similar events took place around our state. Court opening or memorial ceremonies were held in Lake Charles, Shreveport, Covington and Monroe. While the ceremonies vary slightly, their fundamental messages and experiences are the same. We honor those on whose shoulders we stand and welcome those new lawyers who will stand on our shoul-

ders. The world is changing, but it is up to each of us to honor those who preceded us and help those who will succeed us.

Giving back is important. In October, we held our annual Lawyers in Libraries program. I am pleased to report that our fellow members gave their time to volunteer at 139 separate events in every parish that issued an invitation. All of these lawyer volunteers should be applauded. They appreciate that they are in a position to help others. All of us should do so. By volunteering, they each made someone's life easier. (*Read more about the Lawyers in Libraries events beginning on page 254.*)

In addition to Lawyers in Libraries, the Bar has been active in other areas. Our Community Action Committee expanded its Secret Santa Project and is planning a project to collect personal items for female prisoners. Our annual Conclave on Diversity will be in March, and our Committee on the Profession has had programs in all four Louisiana law schools. Our attorney volunteers have been busy helping our fellow members and the community. I encourage everyone to do likewise.

Recently, the judges of the Eastern District of Louisiana held a day-long program for practicing lawyers. It was remarkably successful, not just from a substantive point of view but from the ability of judges and lawyers to interact professionally and personally. Events such as these foster the camaraderie that we can lose in today's demand society.

We each have our practices but, when it comes to guarding our judicial system, we aren't plaintiff lawyers, we aren't defense lawyers, we aren't business lawyers or transactional lawyers.

It doesn't matter on what side of the

V you are. We should all remember that our adversaries are not our enemies. The judge is not our enemy. The judiciary is the foundation of the system upon which the law sits. Judges can't protect themselves from unwarranted attacks. The very nature of judging dictates that half the litigants will be unhappy. It is up to us to safeguard the integrity of the judicial system and honor the rule of law.

It is very easy these days to conduct business by email and text. Unfortunately, this absence of personal interaction also creates keyboard bullies who would never behave as rudely in a phone call or face-to-face meeting. Personal relationships are important. Sometimes just picking up the phone works. It is important to remember that we all live in small towns, and all any of us have to sell is our reputation. Guard it carefully. Honor your obligations, show up on time, and remember that you're not the most important person in the room.

It seems that, today, it is very difficult for people to disagree without being disagreeable. It is up to all of us to not only uphold the rule of law but also to set the example of being civil and courteous while doing so. Chief Justice Burger once noted that everyone involved in the judicial process owes a duty of courtesy to each other. On behalf of the Court, he stated, "[t]he license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of Justice." *In Re Snyder*, 472 U.S. 634, 644-645 (1985).

For the benefit of society, we should all dedicate ourselves to the rule of law, not just for our profession but for our communities as well.

IT'S A BRAVE NEW WORLD OUT THERE

The Emerging Duty of Technological Competence

By John G. Browning



In 2012, a sea change occurred in the legal profession, particularly for those who came of age in the “good old days” when being competent in representing one’s clients meant staying abreast of recent case law and statutory or code changes in one’s area of concentration. In August 2012, the American Bar Association (ABA) — following the recommendations of its Ethics 20/20 Commission — formally approved a change to the Model Rules of Professional Conduct to make it clear that lawyers have a duty to be competent not only in the law and its practice, but in technology as well. Specifically, the ABA’s House of Delegates voted to amend Comment 8 to Model Rule 1.1, which deals with competence, to read as follows:

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.¹

Now, of course, the ABA Model Rules are precisely that — a model. They provide guidance to states in formulating their own rules of professional conduct, and each state is free to adopt, ignore or modify the Model Rules. For a duty of technology competence to apply to lawyers in a given state, that state’s particular rule-making body (usually the state’s highest court) would have to adopt it.

Since 2012, 36 states have adopted the duty of technology competence by formally adopting the revised comment to Rule 1.1. In Louisiana, it was approved by the Louisiana Supreme Court on April 11, 2018, and was referenced via Public Ethics Opinion on Feb. 6, 2019.

For some of these states, even before the formal adoption of a technology competence requirement, there were clear indications that lawyers would be held to a higher standard when it came to technology impacting the practice of law.

For example, in a 2012 New Hampshire Bar Association ethics opinion on cloud computing, the Bar noted that “competent lawyers must have a basic understanding of the technologies they use. Furthermore, as technology, the regulatory framework, and privacy laws keep changing, lawyers should keep abreast of these changes.”²

Even the one state that has not adopted the ABA Model Rules, California nevertheless acknowledges the importance of technology competence. In a 2015 formal ethics opinion on e-discovery, the California Bar made it clear that it requires attorneys who represent clients in litigation either to be competent in e-discovery or to get help from those who are competent. Its opinion even expressly cited ABA’s Comment 8 to Rule 1.1, stating, “Mandatory learning and skill consistent with an attorney’s duty of competence includes ‘keeping abreast of changes in the law and its practice, including the benefits and risks associated with technology.’”³

Louisiana was actually ahead of the curve in calling for tech competency. In 2005, an appeal from the 1st Circuit was part of a national wave of cases ushering in a “duty to Google.” In *Weatherly v. Optimum Asset Mgmt. Inc.*, there was a dispute over the invalidation of a tax sale, with the mortgagee (Dr. Weatherly) alleging he hadn’t received notice of the proceedings.⁴ The mortgagor alleged that service by publication had been adequate, since the out-of-state Weatherly was not “reasonably identifiable.” The trial court itself ran an Internet search, located Weatherly and concluded that he was indeed “reasonably identifiable” and voided the tax sale. The appellate court affirmed, holding that the trial judge’s online search was not an abuse of discretion and that the mortgagor’s failure to make use of online search tools did not constitute “reasonably diligent efforts.”

Recent disbarments of Louisiana attorneys for online activities have revealed a disconnect on the part of some lawyers between their conduct on Internet and social media platforms and their ethical obligations as attorneys. In June 2015, the Louisiana Supreme Court disbarred then 52-year-old Joyce McCool for using

Twitter and an online petition to engage in what it called a “social media blitz” against two judges presiding over child custody cases.⁵ Upset with these judges’ rulings, McCool had posted on social media what the Court described as many “false, misleading, and inflammatory statements,” including accusing the judges in question of refusing to admit audio recordings of children talking about alleged abuse. McCool circulated an online petition calling for the judges’ removal and solicited others to make ex parte contact with the judges (and with the state Supreme Court) to express their feelings about these sealed domestic proceedings. On one day alone (Aug. 16, 2011), McCool sent 30 tweets about the case and online petitions, including ones that indicated an awareness of the potential consequences of her actions: “I am SO going 2 have 2 change jobs after this. . . ! I’m risking sanctions by the LA supreme court; u could be a HUGE help.”⁶ In ordering McCool’s disbarment, the Court found that the social media campaign she launched was “part of a pattern of conduct intended to influence the judges’ future rulings in pending litigation,” and that her actions “threaten[ed] the independence and integrity of the judicial system, and caus[ed] the judges concern for their personal safety and well-being.”⁷

More recently, the Louisiana Supreme Court disbarred another attorney for online misconduct. On Dec. 5, 2018, the Court ordered the disbarment of former federal prosecutor Salvador (Sal) Perricone for posting anonymous online comments about pending investigations and cases being handed by himself or the U.S. Attorney’s Office. The Court found that Perricone’s “caustic, extrajudicial comments about pending cases strikes at the heart of the neutral dispassionate control which is the foundation of our system,” and said its decision “must send a strong message . . . to all members of the bar that a lawyer’s ethical obligations are not diminished by the mask of anonymity provided by the internet.”⁸ Between November 2007 and March 2012, using online pseudonyms like “Henry L. Mencken 1951,” Perricone had posted more than 2,600 comments on nola.com (the website of the New Orleans *Times-*

Picayune). These comments included references to a defense lawyer who had “screwed his client” in a case Perricone was prosecuting as well as commentary about the prosecution of New Orleans police officers in the Danziger Bridge shootings of six civilians (saying of the officers involved that “NONE of these guys should have ever been given a badge”).⁹

Not surprisingly, given the McCool and Perricone episodes, the Louisiana State Bar Association (LSBA) issued a newly updated Code of Professionalism in October 2018, with new amendments including a vow to use “technology, including social media, responsibly.” In February 2019, the LSBA formally addressed the issue of tech competence with the issuance of an ethics opinion, “Lawyer’s Use of Technology.”¹⁰ The opinion acknowledged that “technology and the Internet can modify the way a lawyer practices, affecting communication, practice management, handling evidence and data storage,” before concluding, “a lawyer must consider the benefits and risks associated with using technology in representing a client.” En route to that conclusion, the opinion identified the Louisiana Rules of Professional Conduct most likely to be implied by a lawyer’s use of technology, including Rules 1.1(a) (competent representation); 1.3 (acting with reasonable diligence); 1.4 (communicating with a client); 1.6 (maintaining confidentiality); 1.15(a) (safeguarding a client’s property); and 5.3 (supervision of nonlawyers employed by or associated with the lawyer).

The opinion notes that whether it was a natural disaster like Hurricane Katrina or cybersecurity risks like computer hacking or data breach events, part of a lawyer being competent and diligent is using appropriate technology to safeguard a client’s information (like maintaining backup systems). In addition, because use of technology may involve working with nonlawyer employees or contractors (such as in the areas of cloud storage or e-discovery vendors), the opinion reminds lawyers that they are responsible for ensuring that such nonlawyers’ conduct lives up to the lawyer’s ethical standards.



And in communicating with clients and maintaining confidentiality, this ethics opinion cautions that attorneys must take into consideration the particular security needs of each client as well as the dangers of inadvertent disclosure of information due to email “web bugs,” email “opens” and “forwards,” and other risks.

What consequences does this sea change hold for Louisiana practitioners? First, you don’t have to go from Luddite to Geek Squad member; just understand the basics of the technology you use, and become conversant in how it can impact your practice as well as how it functions. This includes law practice management technology, such as email and document creation and document management software. It also can include things like e-discovery and technology-assisted review (TAR) for litigators. With use of filesharing sites like Dropbox and Box becoming commonplace, lawyers have to be conversant in cloud computing and the ethical questions its use raises. With

cybersecurity’s importance for both law firms and the clients they serve, basic working knowledge of cybersecurity measures (such as encryption for confidential communications) and risks like ransomware and phishing schemes are a vital part of being tech competent. For example, the most recent opinion from the ABA Standing Committee on Ethics and Professional Responsibility, which called for lawyers to use “reasonable efforts” (such as encryption) to ensure that communications with clients are secure, highlighted how these efforts spring from not only the ethical duty to preserve client confidences but also the duty of competence as well.¹¹ It states that a lawyer must “act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”¹²

Perhaps the best way to illustrate the mistakes lawyers need to avoid making when it comes to these newly raised standards of technology competence is to share some cautionary tales about lawyers whose lack of tech competence led to disciplinary problems, court sanctions and even malpractice exposure. Some of the following examples may provoke a “but I would never do that” reaction, while others may fall under the category of “thus but for the grace of God go I.” All of them, however, demonstrate the dangers of not living up to technology competence standards.

CAUTIONARY TALES OF THE CONSEQUENCES OF TECH INCOMPETENCE

DO N'T BLAME THE SPAM FILTER

In *Emerald Coast Utilities Auth. v. Bear Marcus Pointe, L.L.C.*, a Florida appellate court administered a tough lesson for the Pensacola law firm of Odom & Barlow: Keep your email system's spam filter up to date or risk the consequences.¹³ Odom & Barlow was counsel to Emerald Coast in an eminent domain case. On March 18, 2014, the trial court rendered judgment granting approximately \$600,000 in attorney fees to Bear Marcus, starting the clock running on a 30-day window to appeal the ruling. Emerald Coast's lawyers missed the deadline but filed a May 12, 2014, motion for relief, citing Florida Rule of Civil Procedure 1.540(b) which gives courts discretion to set aside final judgments in cases due to “mistake, inadvertence, surprise or excusable neglect.” They claimed they had not received the email within their system.

The court engaged in extensive fact-finding, and the picture that emerged was not a flattering one for Odom & Barlow. The IT director for the Clerk of Court retrieved logs from the clerk's e-service system, showing that emails containing the order were sent to both primary and secondary emails designated by the firm on March 20, 2014, and that there were

no error messages or bouncebacks indicating that the email had not been delivered. Another witness, from an independent consulting firm, reviewed the email log printouts and examined the servers and work stations at the firm. While he found no evidence of destruction of the emails, he conceded that it was “fairly unusual for a company to configure their system to not create any email logs,” and that, if it had, he could have had complete logs to determine if the server had received the emails in question.¹⁴ Some of the most damning testimony came from Odom & Barlow's own IT consultant who had provided services to the firm since 2007. He confirmed that the firm's email filtering system was configured to drop and permanently delete emails perceived to be spam without alerting the recipient that email was deleted. The IT consultant further testified that he had advised the firm on the danger of this spam filtering due to the risk of legitimate emails being identified as spam. He had recommended a vendor to the firm to handle spam-filtering, but the firm rejected this recommendation because it “did not want to spend the extra money.”¹⁵

Even the opposing counsel at Fixel & Willis got in a few jabs, describing their protocol to cover email loopholes. The firm assigned a paralegal to check the court's website every three weeks in order to catch and respond to any posted orders. The appellate court was not sympathetic to Odom & Barlow's plight either. It affirmed the trial court's ruling that the firm's misplaced reliance on its questionable email system did not constitute excusable neglect. The court held that the firm “made a conscious decision to use a defective email system without any safeguards or oversight in order to save money.”¹⁶ On rehearing, the appellate court reiterated its reasoning, concluding that “Counsel has a duty to have sufficient procedures and protocols” in place, including “use of an email spam filter with adequate safeguards and independent monitoring.”¹⁷ With the passage of time on appeal, the attorney fee award at issue had grown to more than \$1 million.

KNOW WHETHER YOUR REDACTION IS REALLY REDACTED

It can be both embarrassing and damaging to one's case to produce “redacted” documents that aren't actually redacted. In 2017, lawyers at the Department of Justice (DOJ) learned—thanks to an alert *Law360* reporter—that the redactions they made in a motion hadn't been properly redacted. The case was a high-profile Libor-rigging case against a former Deutsche Bank trader, Gavin Black, in which protected testimony was included (in redacted form) in a motion filed in federal court in New York. But during the roughly 12 hours that the document was publicly viewable in its original form, it was apparent that the redactions hadn't been done properly. “One sentence was highlighted in black and written in a gray font that was clearly legible,” while other portions that had been blocked out “were easily read by copying and pasting the contents of the brief into another text document” and word searches returned “text that was barely hidden behind the faulty redactions.”¹⁸ A DOJ spokesperson blamed the improper redactions on “a technical error in the electronic redaction process,” but clearly the error was, in fact, human. Quick tip: To test whether a document is properly redacted, highlight the redacted portion, copy it and paste it into a document and see if the underlying text still appears.

TECHNOLOGICAL INCOMPETENCE IN E-DISCOVERY IS NO EXCUSE [PART I]

In *James v. National Financial, L.L.C.*, the Delaware Court of Chancery was not sympathetic to the lead defense counsel's explanation for failures to produce requested electronically stored information—the explanation was that he was “not computer literate.”¹⁹ The case involved class action claims against a payday loan lender for violating the Delaware Consumer Fraud Act as well as the federal Truth in Lending Act. National Financial had been ordered to produce electronically

stored information about each of its loans between September 2010 and September 2013. After multiple deficient discovery responses, and several court orders, the court's patience was at an end, and it sanctioned the defense with both deemed admissions as well as monetary sanctions. But it also turned a deaf ear to defense counsel's protests that "I am not computer literate. I have not found presence in the cybernetic revolution . . . This was out of my bailiwick." Pointing out that "technological incompetence is not an excuse for discovery misconduct," the court reminded counsel that technological competence was specifically included in Rule 1.1 of the Delaware Lawyers' Rules of Professional Conduct. It further stated that "deliberate ignorance of technology is inexcusable . . . If a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant."²⁰

TECHNOLOGICAL INCOMPETENCE IN E-DISCOVERY IS NO EXCUSE [PART II]

Even if you are not the sharpest knife in the drawer when it comes to e-discovery, what is the worst that can happen? A sanctions order, perhaps, or maybe an unhappy client? Try one of the biggest data breaches of the year.

New Jersey lawyer Angela Turiano was outside counsel for Wells Fargo and Steven Sinderbrand, one of its financial advisers, in a defamation lawsuit brought by Gary Sinderbrand, also a Wells Fargo adviser. In his case, Gary sought third-party discovery from Wells Fargo, including emails between Steven and the bank. In response to the subpoena, Wells Fargo agreed to conduct a search of certain custodians' email accounts using designated search terms. Using a third-party vendor's e-discovery software, Turiano reviewed what she believed was the entire universe of potentially relevant information and excluded privileged documents

and nonresponsive information. She also conducted a "spot check" of the production, before placing the information on an encrypted CD marked "confidential" and providing that CD to opposing counsel. Unfortunately, because she did not understand the software's functionality, she wound up producing documents that had not been reviewed by her for confidentiality and privilege.²¹ In addition, documents that she had flagged as needing redactions were not redacted before production. The result was the production of "a vast trove of confidential information" about tens of thousands of Wells Fargo's wealthiest clients, revealing billions of dollars of client account information from all over the United States and possibly Europe as well.²² The 1.4 gigabytes of Wells Fargo files included customer names, Social Security numbers, the size of their investment portfolios, portfolio performance, mortgage details and other information — much of it about the bank's high net worth investors. One file, for example, was that of a hedge fund billionaire with at least \$23 million in holdings with Wells Fargo.²³

As bad as this was, Turiano found out when her opposing counsel disclosed the information to the *New York Times*. He also initially refused to return the inadvertently produced information, and Wells Fargo had to obtain court orders in New York and New Jersey to prevent its further dissemination. In the meantime, Wells Fargo had to contend with the adverse publicity and data breach notification obligations triggered by such an event. In an affirmation filed in court, Turiano acknowledged her colossal blunder, stating that she "misunderstood the role of the vendor," "may have miscoded some documents during my review," and that she "had not reviewed certain emails containing, or with attachments containing, Confidential Information."²⁴

Turiano's mistake highlights the ethical risks as well as malpractice exposure that can accompany errors brought about by tech incompetence. Potential claims could include not just damages for potential claims made by the public, but also the costs that the client might incur such

as legal fees for responding to the data breach and subsequent regulatory actions. It also underscores the importance of the guidelines delineated by the State Bar of California Standing Committee on Professional Responsibility and Conduct in its Formal Opinion No. 2015-193. In that opinion, lawyers engaging in e-discovery are directed to either become competent technologically, have other counsel or experts who have such competence, or refrain from handling such matters altogether.

TECHNOLOGICAL INCOMPETENCE CAN GET YOU DISBARRED

James Edward Oliver was a veteran bankruptcy practitioner in Oklahoma for 30 years, with a spotless disciplinary history. But, thanks to his admitted "lack of expertise in computer skills," he lost his right to practice before a bankruptcy court and received a public censure. Licensed since 1967, Oliver had practiced extensively and the Oklahoma Supreme Court even acknowledged that "no testimony nor any documents showed an insufficiency in Oliver's knowledge of substantive bankruptcy law." The problem, it seemed, was "technological proficiency."

Specifically, that meant e-filing. After Oliver failed repeatedly to properly submit documents electronically (even with assistance from court staff), Judge Sarah Hall of the U.S. Bankruptcy Court for the Western District of Oklahoma suspended him for 30 days. When he failed to show improvement, Judge Hall suspended him for another 60 days after directing Oliver to "have a lawyer on board" to help him. After Oliver failed to get such assistance and failed at nine "homework" documents that she told him to submit (error-free and without third-party assistance), Judge Hall permanently suspended Oliver on June 15, 2015, from practice before the Western District bankruptcy court, after finding that Oliver had paid another lawyer to "ghost write" his assignments.

When Oliver failed to report this discipline to the Oklahoma Bar, he wound

up in front of the Oklahoma Supreme Court. In its March 29, 2016, opinion, that Court imposed a public censure, and encouraged Oliver “to continue to improve his computer skills, or better, to hire an adept administrative assistant to do his pleadings.” The dissent, however, took a harsher view, faulting Oliver for his “demonstrated incompetency to practice law before the bankruptcy court” and calling for a two year plus one day suspension.²⁵

WHEN TECHNOLOGICAL COMPETENCE ALSO MEANS BEING AWARE OF CYBERSCAMS

Lawyers and law firms have been called the “soft underbelly” of business security due to their perpetual game of catch-up when it comes to cybersecurity. From law firms getting hacked (witness the “Panama Papers” case), or being victimized by viruses, data breaches, ransomware or other cyberintrusions, a law firm’s commitment to cybersecurity is more important than ever. Moreover, failure to adopt reasonable cybersecurity measures can not only endanger client data, but it can trigger malpractice liability and disciplinary concerns. In an era rife with Internet scams, this also means lawyers who aren’t tech savvy when it comes to scams are begging for ethics troubles.

Take, for example, Robert Allen Wright, Jr. In 2013, the Iowa Supreme Court suspended his license to practice law for at least a year. Wright, who was licensed in 1981 and who handled a general practice that included criminal and family law, came to believe that one of his criminal clients was the beneficiary of an \$18.8 million bequest from a long-lost relative in Nigeria. All he needed, it seemed, was to pay the \$177,000-plus in taxes, and the funds in Nigeria would be released. Not only was Wright taken in by this “Nigerian prince” Internet scam, he presented a number of his even more gullible clients with this “investment opportunity” in an attempt to come up with the money needed to pay the “taxes” in order to collect the “inheritance funds.”

Needless to say, neither Wright nor the clients from whom he had solicited funds ever saw their money again. The Iowa Supreme Court observed that “Wright appears to have honestly believed — and continues to believe — that one day a trunk full of . . . one hundred dollar bills is going to appear upon his office doorstep,” and it also took note of the fact that Wright was not the first lawyer in Iowa or elsewhere to have fallen for a variation on this “Nigerian prince/inheritance” Internet scam. However, the Court found that, among other disciplinary violations, Wright’s failure to do any Internet due diligence constituted a failure of his duty of competence under Iowa’s rules. His license was suspended for a minimum of one year.²⁶

CONCLUSION

The “new normal” of requiring lawyers to be tech competent encompasses much more than the mastery of substantive legal skills and knowledge that once defined “competent representation.” In today’s era of Google, Snapchat, Facebook, Twitter and cloud computing, lawyers must be knowledgeable of both the benefits and the risks of the technology that is out there, including the functionality of the technology they are actually using (or, in some cases, should be using). Doing so also involves a heightened appreciation for the importance of cybersecurity measures, such as using encryption for attorney-client communications. But a necessary first step, whether you are a dinosaur or a digital native, a Luddite or a thought leader, is education.

FOOTNOTES

1. ABA Model Rules of Prof. Conduct, Rule 1.1, Comment 8 (2012) (emphasis added).
2. New Hampshire Bar Ass’n, Advisory Op. 2012-13/4.
3. California State Bar Formal Op. No. 2015-193.
4. 2004-2734 (La. App. 1 Cir. 12/22/05), 928 So. 2d 118.
5. In re McCool, 2015-0284 (La. 6/30/15), 172 So.3d 1058.
6. *Id.* at 6, 172 So.3d at 1063.

7. *Id.* at 13, 172 So.3d at 1067.
8. In re Perricone, 2018-1233 (La. 12/5/18), 263 So.3d 309.
9. *Id.* at 6, 263 So.3d at 312.
10. LSBA Public Op. 19-RPCC-021 (Feb. 6, 2019).
11. ABA Formal Ethics Op. 477 (May 4, 2017).
12. *Id.*
13. Emerald Coast Utilities Auth. v. Bear Marcus Pointe, L.L.C., 227 So.3d 752 (Fla. 1st DCA 2017).
14. *Id.* at 754.
15. *Id.* The cost would have been \$700-\$1,200 annually.
16. *Id.*
17. *Id.*
18. Robert Ambrogi, “Stupid Lawyer Tricks: Legal Tech Edition,” Above the Law (Oct. 16, 2017 1:02 PM), <https://abovethelaw.com/2017/10/stupid-lawyer-tricks-legal-tech-edition/>.
19. James v. Nat’l Fin., L.L.C., C.A. No. 8931-VCL (Dec. 5, 2014), 2014 WL 6845560.
20. *Id.* at *12.
21. Christine Simmons, “Lawyer’s ‘Inadvertent’ E-Discovery Failures Led to Wells Fargo Data Breach,” N.Y. Law J. (Oct. 14, 2017 2:02 a.m.), <https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2017/07/26/lawyers-inadvertent-e-discovery-failures-led-to-wells-fargo-data-breach/?sreturn=20180127080210>.
22. *Id.*
23. Serge F. Kovaleski and Stacy Cowley, “Wells Fargo Accidentally Releases Trove of Data on Wealthy Clients,” N.Y. Times (July 21, 2017), <https://www.nytimes.com/2017/07/21/business/dealbook/wells-fargo-confidential-data-release.html>.
24. Affirmation of Angela Turiano, Doc. No. 36, Mill Lane Mgmt., L.L.C. and Gary Sinderbrand v. Wells Fargo Advisors, L.L.C. and Steven Sinderbrand, Index No. 652025/2017, Sup. Ct. of N.Y. (July 24, 2017).
25. State ex rel. Oklahoma Bar Ass’n v. Oliver, 2016 OK 37, 369 P. 3d 1074. Oklahoma is not the only state to take a lawyer to task for incompetence in e-filing. In 2008, the Kansas Supreme Court suspended another bankruptcy lawyer for the same thing.
26. Iowa Supreme Court Attorney Disciplinary Bd. v. Wright, 840 N.W. 2d 295 (Iowa 2013).

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CYBERSECURITY

How Safe Are You?

By Pamela W. Carter and Francine M. Giugno



In 2012, former FBI Director Robert Mueller said, “[T]here are only two types of companies, those that have been hacked and those that will be.” Such vulnerability is evidenced by the Equifax hacking in 2017 that affected the data of 143 million Americans and exposed them to the threat of identity theft and fraud; the 2013 data breach of Target which resulted in the leak of tens of millions of credit and debit cards; and the record breach at Anthem in early 2015.

Cyber Risks

The cloud is a major focus in cybersecurity and it is oftentimes ignored. Open authorization risks and poor management of single privileged user accounts can create security risks. According to the Internet Crime Complaint Center, \$5.3 billion was stolen due to business email compromises (BEC) between October 2013 and December 2016. These attacks send emails purportedly by someone in authority at the company to employees in the financial department who directs them to wire transfer funds.

The Internet of Things (IoT) is the network of physical objects — devices, vehicles, buildings and other items — embedded with electronics, software, sensors and network connectivity that enables these objects to exchange data. Businesses need to be aware of what devices are connected to their network and have measures in place to secure them; botnets have already launched which shut down networks of companies including Internet performance management company DynDNS. Old spam emails with exploit kits have been used to contain attachments that are macro-laden malicious documents. Modern ransomware is being placed into emails that employees are downloading inadvertently and they are costing businesses millions of dollars in lost data and recovery efforts.

Legal Update

Organizations that have not purchased cyber insurance have tried to argue that their traditional coverages apply to a cyber-event. While many insureds have

turned to their crime or commercial general liability insurance policies for coverage, they have experienced mixed success, particularly as insurers clarify the coverage through new language or specific cyber exclusions.

Three cases have been handed down on the application of traditional coverage with respect to a cyber-event wherein the court found coverage for the losses. In *Medidata Solutions, Inc. v. Federal Insurance Co.*, 729 Fed. Appx. 117 (2 Cir. 2018), the 2nd Circuit upheld a lower court ruling awarding plaintiff Medidata Solutions, Inc. \$5,941,787.37 from its insurer, Federal Insurance Co., on a coverage dispute on whether a commercial crime insurance policy covers wire transfer losses resulting from a spoofing attack. The spoof email directed employees to wire transfer funds to an account and the spoof email appeared to be sent from the company’s president and outside counsel. The fraudsters did not hack the computer system but rather manipulated the company’s email system. The language of the policy defined computer fraud as the “unlawful taking or fraudulently induced transfer of money, securities or property resulting from a computer violation.” The provision covered losses stemming from “any entry of Data into” or “change to Data Elements or program logic of” a computer system. The court determined that the email system was a computer system and the email element was changed to mislead the company’s employees that the email was from a high-ranking company official. Finding that there was a causal relationship between the spoofing attack and the losses incurred, the court found that there was proximate cause between the attack and the losses.

The 2nd Circuit reversed the district court in *American Tooling Center Inc. v. Travelers Ins. Co.*, 895 F.3d 455 (2 Cir. 2018), and determined that an insured’s business insurance policy covered its loss stemming from fraudulent emails causing its employees to wire money to a party impersonating its Chinese vendor because the insured suffered a “direct loss” caused by “computer fraud” under the policy. A Michigan tool and die firm, American Tooling Center (ATC)

wired approximately \$800,000 in funds to a fraudster’s account based on the fraudster’s impersonating one of ATC’s vendors. ATC sought coverage under its Wrap Business Policy issued by Travelers. The 2nd Circuit determined that the computer fraud directly caused ATC’s “direct loss” and no exclusion applied. The policy language provided that “[t]he Company will pay the Insured for the Insured’s direct loss of, or direct loss from damage to, Money, Securities and Other Property caused by Computer Fraud.” The court determined that ATC lost the money when it transferred it to the fraudster. At issue was the definition of computer fraud in the policy, which stated that “Computer Fraud means: the use of any computer to fraudulently cause a transfer of Money, Securities, or Other Property from inside the premises or Financial Institution Premises: 1) to a person (other than a Messenger) outside the premises or Financial Institution Premises or 2) to a place outside the Premises or Financial Institution Premises.” Travelers argued that the definition of computer fraud required that the computer fraudulently caused the transfer rather than simply be used. The court found that the fraudster sent ATC fraudulent emails using a computer and those emails fraudulently caused ATC to transfer the money to the fraudster and that the Travelers’ policy did not require that that fraud cause any computer to do anything. Travelers sought to limit the definition of computer fraud to hacking or other type of behaviors where a party gains access to and controls the insured’s computer; however, the court did not agree. Since the court did not find that any exclusion in the policy precluded coverage, it reversed the district court and found that the Travelers’ policy provided coverage for the loss.

In *Spec’s Family Partners Limited v. The Hanover Ins. Co.*, 739 Fed. Appx. 233 (5 Cir. 2018), the 5th Circuit held that an insurer had a duty to defend its insured, a retailer, in a data breach case with respect to costs assessed to it by a credit card payment processing company with whom it contracted under a Merchant Agreement. The insurer issued a Private Company Management Liability

Insurance Policy which contained an exclusion for contractual liability. The 5th Circuit found that the allegations in the underlying complaint implicated theories of negligence and general contract law that implied the insured's liability of assessments from its credit card processor separate and apart from any obligations based upon or attributable to any actual or alleged liability under the Merchant Agreement.

Other cases demonstrate the mixed results on coverage issues in traditional policies. In *Camp's Grocery, Inc. v. State Farm Fire and Casualty Co.*, 2016 U.S. Dist. LEXIS 147361, 4:16-cv-0204 (N.D. Alabama 10/25/16), Camp's Grocery sought defense and indemnity coverage from State Farm in a suit filed by three credit unions against Camp's and its franchisor, Piggly Wiggly. The three credit unions alleged that Camp's computer network was hacked, compromising confidential data on its customers, including their credit card, debit card and check card information. The three credit unions sought damages for their losses relating to reissuance of cards, reimbursement for its customers for fraudulent charges, lost interest and transaction fees, diminished good will and the administrative expenses associated with investigating, correcting and preventing fraud. The court granted State Farm's motion for summary judgment, finding that the Inland Marine Endorsements, which Camp's claimed provided coverage, is a first-party insuring agreement, not a third-party insuring agreement, that affords a defense and indemnity where the insured is sued to redress a loss suffered by another party. The court found that Coverage L for Business Liability did contain a third-party agreement for "property damages" but also noted that "property damages" was limited to "tangible property" and not "electronic data." The court noted that, even if the credit and debit cards were tangible property, there was no coverage because the credit unions did not allege that Camp's actions caused physical damage to the cards but rather that Camp's lax computer network security allowed the intangible electronic data contained on the cards to be compromised, thereby causing purely economic

harm flowing from the need to issue replacement cards with new electronic data. *See, also e.g., Recall Total Information Mgmt, Inc. v. Fed. Ins. Co.*, 317 Conn. 46, 115 A.3d 458 (Conn. 2015) (no coverage under CGL for data breach because loss of computer tapes with personal identifying information on them did not constitute a "personal injury" as defined by the policies because there had been no "publication" of the information stored on the tapes resulting in a violation of a person's right to privacy.); *RVST Holdings, L.L.C. v. Main Street Am. Assurance Co.*, 136 A.D. 3d 1196 (N.Y. App. Cir. 2016) (no coverage under a CGL policy because the policy expressly excluded electronic data from covered losses); *Zurich Am. Ins. Co. v. Sony Corp. of Am.*, (2014 NY Misc LEXIS 5141) (no coverage under CGL for claims asserted against policyholder by customers whose data was stolen during data breach). *But see, Ellicott City Cable, L.L.C. v. Axis Ins. Co.*, 196 F. Supp. 577 (D. Md. July 22, 2016) (the court found the term "data" in multimedia liability policies ambiguous within the meaning of the unauthorized access exclusions and also noted that data appeared to relate to Internet, not television, programming so the court construed the policy in favor of the policyholder and found coverage).

Insureds are more likely to find coverage for cyber-events under cybersecurity policies than traditional policies, but even so, coverage is not guaranteed and depends on the policy language. For example, in *P.F. Chang's China Bistro, Inc. v. Fed. Ins. Co.*, 2016 U.S. Dist. LEXIS 70749, No. CV-15-01322-PHX-SMM (D. Ariz. May 26, 2016), the court found that there was no coverage for nearly \$2 million in expenses for credit card association assessments due to an exclusion for contractual liability in the cybersecurity policy. The court also noted that the insurer had reimbursed P.F. Chang's for \$1,700,000 pursuant to the policy for costs incurred because of the data breach including conducting a forensic investigation and costs of defending litigation by customers whose data was breached and one bank that issued credit cards.

Defending Consumer Data Breach Class Actions

Rule 12 Motions

Currently, the federal circuits are split as to whether fear of identity theft in the wake of a data breach is sufficient to meet the standing requirements of Article III of the U.S. Constitution. Therefore, in addition to moving for dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b) (6), defendants should consider moving to dismiss claims of plaintiffs who fear — but have *not* experienced — identity theft or fraudulent charges as a result of a breach for lack of standing under Rule 12(b)(1).

For example, the 4th and 8th Circuits have adopted a defense-friendly view, dismissing for lack of standing the claims of putative class representatives who fail to allege identity theft or fraudulent charges as a result of the purported breach. *See e.g., In re Supervalu, Inc.*, 870 F.3d 763 (8 Cir. 2017); *Beck v. McDonald*, 848 F.3d 262 (4 Cir. 2017), *cert. denied*, 137 S.Ct. 2307 (2018). These circuits held that fear of future harm as a result of a data breach is too speculative to meet the standing requirements of Article III, as interpreted by the Supreme Court in *Clapper v. Amnesty International USA*, 568 U.S. 398, (2013) (standing under Article III requires that any alleged "future harm" be "certainly impending" and that "allegations of possible future injury are not sufficient"). *See generally Beck*, 848 F.3d at 275-76 (relying on *Clapper* to hold that "substantial risk" requirement for standing was not met where the majority of those whose information was stolen in data breach would not suffer identity theft, and that plaintiffs could not manufacture standing by the alleged expenditure of resources to avoid identity theft).

Therefore, the 4th and 8th Circuits have allowed putative data breach claims to continue *only* if the named plaintiff alleges identity theft or fraudulent charges as a result of the breach. *See, e.g., Hutton v. Nat'l Board of Examiners in Optometry, Inc.*, 892 F.3d 613 (4 Cir. 2018) (standing require-



ment was met where named plaintiffs alleged that fraudulent credit card applications were submitted using their names and social security numbers); *In re Supervalu*, 870 F.3d at 773-74 (standing requirement was met as to the lone plaintiff who alleged that he incurred fraudulent credit card charges as a result of the data breach).

By contrast, the District of Columbia, 6th, 7th and 9th Circuits have adopted a plaintiff-friendly view, holding that plaintiffs who alleged fear of future identity theft in the wake of a data breach satisfied the injury-in-fact requirement for standing under Article III. *See, e.g., In re Zappos.com, Inc., Customer Data Sec. Breach Litig.*, 888 F.3d 1020 (9 Cir. 2018) (distinguishing *Clapper*'s standing analysis as "especially rigorous" because it arose in the "national security context"); *Attias v. CareFirst*, 865 F.3d 620 (D.C. Cir. 2017), *cert. denied*, 138 S.Ct. 981 (2018); *Galaria v. Nationwide Mut. Ins. Co.*, 663 F. App'x 384 (6 Cir. 2016); and *Remijas v. Neiman Marcus Grp., L.L.C.*, 794 F.3d 688 (7 Cir. 2015).

However, even in these plaintiff-friendly circuits, some district courts have denied standing-based Rule 12(b) (1) motions only to dismiss claims under Rule 12(b)(6). *See, e.g., Moyer v. Michaels Stores, Inc.*, No. 12014 U.S. Dist. Lexis 96588 (N.D. Ill. July 14, 2014) (finding Article III's standing

requirement was met in a putative data breach class action notwithstanding *Clapper*, but granting motion to dismiss various claims because the plaintiffs failed to allege actual monetary damages — a required element of their claims — as neither an increased risk of identity theft nor the purchase of credit monitoring services constitute cognizable monetary damages).

Limiting Class Certification

Limiting the class claims to those who have suffered identity theft may significantly reduce the size of the potential class. In addition to the numerosity requirement, would-be representatives of an identity theft class may fail Federal Rule of Civil Procedure Rule 23(a)'s commonality and typicality requirements; classes seeking monetary relief under Rule 23(b)(3) may also fail to satisfy the predominance and superiority requirements. For example, in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), the Supreme Court held that Rule 23(a)'s commonality requirement requires not just common questions, but also common answers. Yet the answer to the question of whether the data breach in question caused each class member's identity theft may vary for each putative class member. Pursuant to the Rules Enabling Act, 28 U.S.C. § 2072(b), the class action device cannot abridge a de-

fendant's substantive right to raise lack of causation, lack of damages and any other applicable defenses. Moreover, defendants may argue that an identity theft class seeking monetary relief under Rule 23(b)(3) is not ascertainable, as defendants presumably have no way of knowing what (if any) use third parties make of each consumer's data once it is stolen unless it has been used and damages are ascertainable. *See, e.g., Marcus v. BMW of N. Am., L.L.C.*, 687 F.3d 583 (3 Cir. 2012) (certification of Rule 23(b) (3) class action is appropriate only if the class members are "currently and readily ascertainable based on objective criteria;" cautioning against any method that would allow potential class members to self-identify); *but see, Mullins v. Direct Digital, L.L.C.*, 795 F.3d 654 (7 Cir. 2015) (rejecting any heightened ascertainability requirement; allowing class members to self-identify by affidavit is not *per se* improper). In addition, a named plaintiff who alleges identity theft or fraudulent charges may be inadequate to represent putative class members who have *not* suffered identity theft or unauthorized charges as a result of a breach.

Exposure to Other Types of Litigation Related to Data Breaches

Even if defendants are able to defeat consumer class actions filed in the wake of a data breach, other class action risks remain. For example, credit and debit card issuers have filed class actions against retailers in the wake of data breaches to recover the cost of reissuing credit cards and reimbursing cardholders for fraudulent charges. Such cases are generally not subject to dismissal based on lack of standing and may prove easier to certify and more costly to settle. *See, e.g., In re Target Corp. Customer Data Security Breach Litig.*, 309 F.R.D. 482 (D. Minn. Sept. 15, 2015) (certifying a class of: "[a]ll entities in the United States and its Territories that issued payment cards compromised in the payment card data breach that was publicly disclosed by [defendant retailer] on December 19, 2013").

Also, defendants have been successful

in defeating tort claims asserted by card issuers pursuant to the economic loss doctrine where the contracts between the parties address and allocate the risk of loss in the event of a breach. *See, e.g., Cmty. Bank of Trenton v. Schnuck Markets, Inc.*, 887 F.3d 803, 826 (7 Cir. 2018) (upholding dismissal of putative financial institution class action against defendant retailer based on the economic loss doctrine; finding tort claims were barred where the banks had already entered into voluntary and complex liability sharing agreements when entering into the credit card payment network).

In addition, publicly traded companies face derivative litigation exposure. Yahoo filed a proposed \$80 million settlement of securities litigation pending in federal district court in San Francisco and stemming from defendant's 2013 and 2014 data breaches. The court granted the parties' motion for preliminary approval. *In re Yahoo! Inc. Sec. Litig.*, No. 17-CV00373, slip op. (N.D. Cal. May 9, 2018). The proposed settlement comes in the wake of updated guidance on cybersecurity disclosure by the Securities and Exchange Commission (SEC). The SEC guidance calls on public companies to be more forthcoming when disclosing cybersecurity risks. Hence, publicly traded entities should pay particular attention to their disclosures in the event of a data breach, in anticipation that their statements will be scrutinized by both regulators and the plaintiff's bar.

In addition to card issuer and derivative litigation, a data breach may spur class actions by a defendant's employees if their personal information is compromised in the breach. *See e.g., Corona v. Sony Pictures Entm't, Inc.*, No. CV 14-09600, 2015 205 U. S. Dist. Lexis 85865 (C.D. Cal. Jun. 15, 2015) (denying motion to dismiss employees' putative class action negligence and state privacy claims and the court granted the preliminary approval of class action settlement, providing up to \$4.5 million to reimburse employees for identity theft and credit monitoring, plus up to \$3.5 million in attorneys' fees). In the wake



of the Supreme Court's decision upholding the use of class action waivers in employment arbitration agreements in *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018), employers may consider adding such provisions as a way to reduce employee class action litigation exposure.

Conclusion

Recent data breaches have made it clear that companies can no longer hope to simply avoid cyberattacks through IT security. Even organizations with top-of-the-line and robust security measures are not immune. As such, besides litigation and compliance with federal reporting requirements to federal agencies, most states, including Louisiana, have breach notification statutes for instances when personally identifiable information has become compromised, requiring the breached entity to notify the state and comply with the state notification requirements. Louisiana's Data Breach Notification Statute, La. R.S. 51:3071 *et seq.*, was amended to include biometric data, state identification card and passport, as well as social security, driver's license, financial information, birth date and medical information, and a mandatory notification of any breach to the state no later than 60 days from the breach.

Pamela W. Carter is the managing partner of Carter Law Group, L.L.C. Her practice focuses on general litigation with an emphasis on insurance defense, employment, transportation and product liability cases. She is active in the NAMWOLF, ABA and DRI legal communities. She is a former DRI National Director who has authored and coauthored many articles and publications, including a chapter in Truck Accident Litigation, Third Edition (Laura A. Ruhl & Mary Kay Owen, eds., 2012). (pcarter@carterlawgroupllc.com; 9217 Jefferson Hwy., River Ridge, LA 70123))



Francine M. Giugno is an attorney with the firm of Mickey S. deLaup, A.P.L.C. She has been a trial and insurance defense attorney for more than 22 years. Her practice focuses on general liability, insurance defense (coverage/bad faith), product liability construction and labor law. She represents management companies, insurers, business owners and commercial property owners in all aspects of civil defense. (fgiugno@delaulplawfirm.com; 2701 Metairie Rd., Metairie, LA 70001)

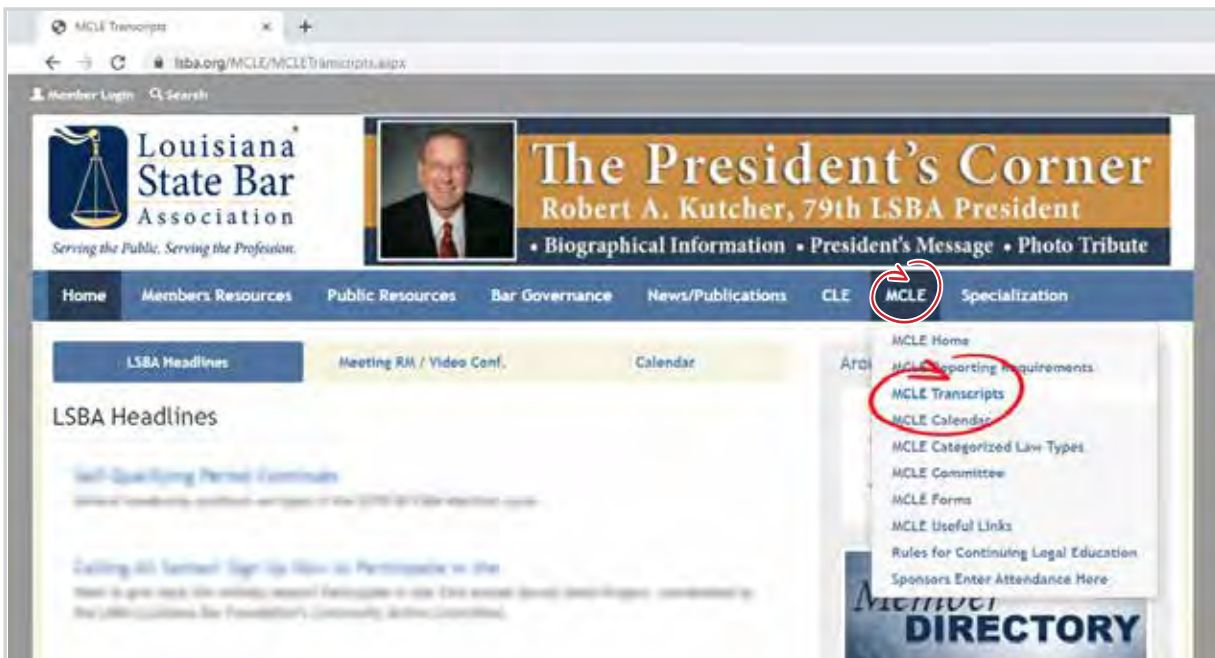


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- If you need CLE hours, visit for a list of approved courses: www.lsba.org/MCLE/MCLECalendar.aspx



YOUR
FIRM NEEDS
A TECH
PHILOSOPHY

By Michael S. Finkelstein and Scott L. Sternberg

In October 2019, the American Bar Association's Young Lawyers Division came to New Orleans for its fall conference and CLE. As part of the weekend's programming, we gave a presentation on how we built our own "tech stack" for our young, tech-forward law firm. Our premise was simple: There are a number of all-in-one solutions for legal tech, but they didn't work for us, so we suggested building our own. To do that, you need a tech philosophy.

Three years ago, our new firm was born and set a few young attorneys (and one young-at-heart attorney) off on the adventure of a lifetime. With 12 attorneys now, we attribute our significant growth to the environment of the firm. One of the key things we did early on to build our environment is to define our "tech philosophy."

A tech philosophy is just like a billing philosophy or a firm philosophy: When you're in doubt, ask yourself whether your tech (or your billing or your work) meshes with your ideals.

Our firm's tech philosophy is elegant and simple: *We implement technology to help our lawyers be efficient, flexible and collaborative in a high-paced and fun practice.*

With this philosophy in mind, we have committed ourselves to finding the technology that fits our ambitions. Early on, we agreed that our firm would implement the most cutting-edge legal technologies available in order to run as efficiently as possible. This would help us be lean and, ultimately, keep costs down.

At the same time, we envisioned being paperless and having the flexibility to work from anywhere. On a personal level, this was especially important for our personal goals of t-ball games, fulfilling service, and those days when it's just too hard to get out of bed after a Saints game.

We quickly found that the highly marketed all-in-one law practice solutions weren't going to work for a boutique with our breadth and scope from

transactional to litigation. They were cumbersome to implement and required hours of inputting information. Scalability questions highlighted, for us, further concerns of price and capabilities. In other words, these systems didn't fit our philosophy.

Even if we were to implement an all-in-one platform, we still needed external platforms such as email and word processing suites. They didn't always play well together and were expensive and difficult to scale. Those systems work well for certain practices but none of them did all the things we wanted exceptionally well. So, instead, we built our own "stack" of technology tools.

Ultimately, we found Google's business tools, including email with an integrated calendar, and separate providers for our billing, accounting and e-fax (which we hope to no longer need one day) would serve as our foundational platform. We found a professional file management platform that integrated into our existing hardware to appear native on the hard drive and would even notify us if another user was in the same file. This proved incredibly helpful as we emphasize collaboration and often team up to draft documents.

At the core of our stack is a real-time communications system called Slack. There are many alternatives to Slack, but, for our firm, Slack is like a chat room, phone conference and email conversation in one. We create a Slack channel for every case and add the team members working on that controversy into that channel. There is a running dialogue about each case 24 hours a day, seven days a week. Our email traffic was cut in half almost instantly. Slack integrates with our task management and assignment software, too.

It fits perfectly with our tech philosophy, particularly the "high-paced" and "fun" part. We use cloud-based videoconferencing and billing software which allows us to operate from anywhere as if we were in the office — an important goal given our flexible "office" dreams. This has the added benefit of ensuring

the firm's operations are also hurricane-ready.

All of this is in furtherance of the tech philosophy of the firm.

Over the course of the past two years, our firm has been invited to beta-test certain platforms and we have swapped out some of our initial suites for others. While our implementation of tech has not always been perfect, we have kept open a healthy dialogue about the role each one serves in our practice and how to best serve our attorneys and staff. As our firm expanded to a Baton Rouge office, weathered hurricanes and survived floods and "freezing condition" shutdowns, these tools have cemented their roles in our firm's business model. Our clients like them, too. Because they save money!

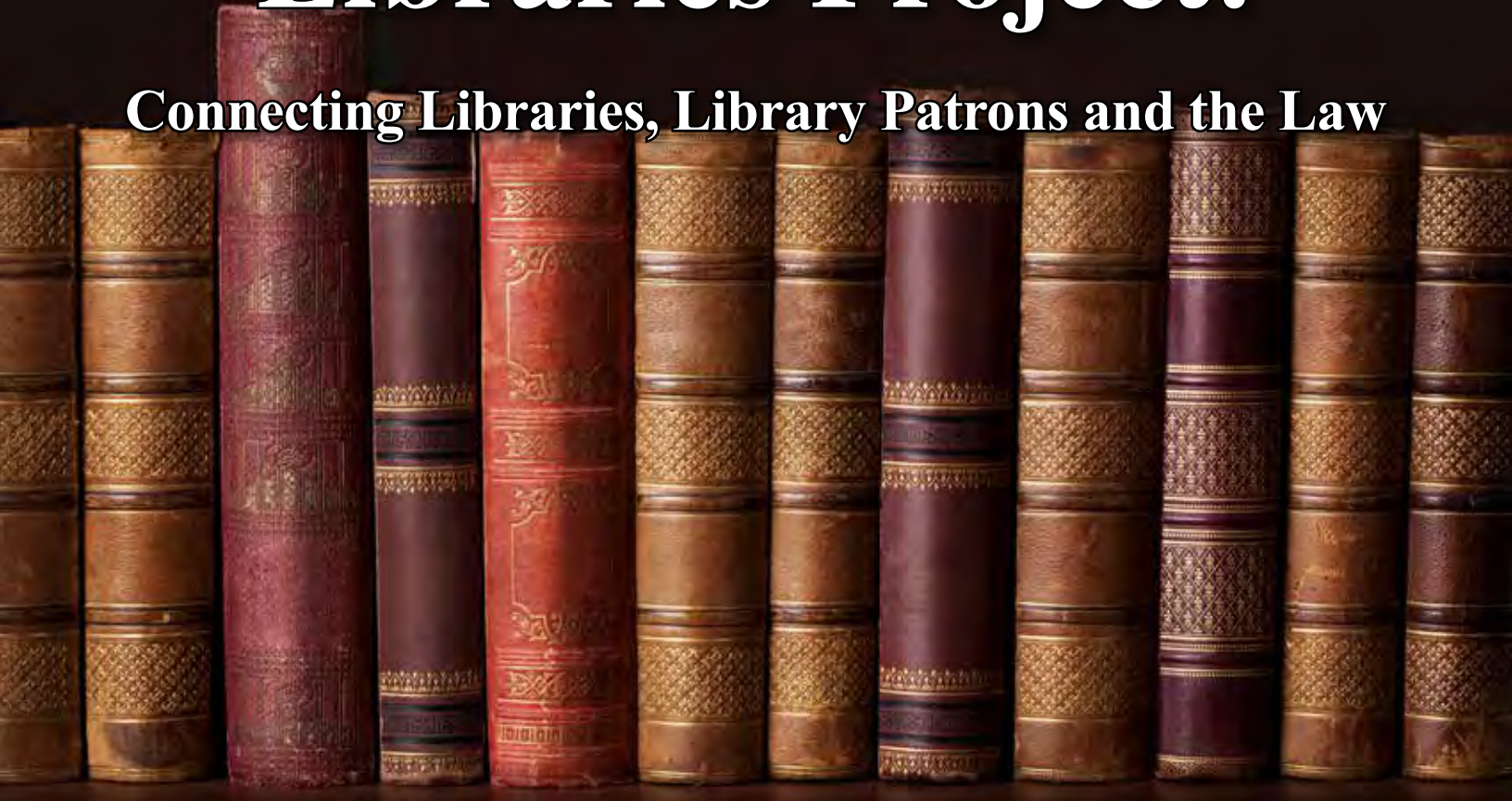
We like the rhyme and rhythm to our tech stack. That is not to say it is never changing. The parts may be replaced, but our philosophy remains as our guiding post. As a part of that philosophy, we are committed to vetting new platforms and wouldn't hesitate to change out a piece when necessary. Every firm is different, and every firm's needs are different. But one thing is sure, in order to build your own "tech stack," you've got to know what your tech philosophy is and the goals you want to achieve.

Scott L. Sternberg is a founding partner of Sternberg, Naccari & White, L.L.C., and chair of the Louisiana State Bar Association's Young Lawyers Division. Michael S. Finkelstein, the new firm's first hire two years ago, is a partner at the firm and serves as its chief technology officer. (scott@swn.law, michael@swn.law; Ste. 2020, 935 Gravier St., New Orleans, LA 70112)



LEAP and Lawyers in Libraries Project:

Connecting Libraries, Library Patrons and the Law



By Joanna Laidler and Jordan Maier

Public libraries are natural starting points for people in search of resources, information and services. This includes those seeking legal assistance. Although librarians cannot provide legal advice, they are particularly well-placed to provide critical legal information to public library patrons. The Legal Education and Assistance Program (LEAP) works to support connections between public libraries and the legal profession. LEAP is a collaboration between the Louisiana State Bar Association (LSBA), the Law Library of Louisiana, Southeast Louisiana Legal Services, the Acadiana Legal Service Corp. and Louisiana public libraries. Established in 2014, LEAP's programming empowers librarians to

provide appropriate assistance to library patrons seeking legal information.

Sarah Lewis from the New Orleans Public Library explains "librarians deal everyday with members of the public and are often asked by patrons about legal issues. It is critical, therefore, that librarians are trained on how to appropriately respond to these requests." To this end, LEAP provides in-person training at libraries across Louisiana and the Louisiana Library Association Annual Conference. During the trainings, LEAP staff offer librarians practical information and best practices for assisting patrons with legal questions, as well as information detailing statewide legal resources, reference materials and referral information. This training is now being made

into a series of educational videos, which will be distributed to all Louisiana library branches later this year.

LEAP has also created a series of online research guides, called "libguides," which offer librarians and the public basic information on different areas of law. Most recently, LEAP created a guide to Louisiana Mayor's Courts designed to answer commonly asked questions about mayor's courts for non-attorneys. The guide also includes contact information for mayor's courts throughout the state.

LSBA President Robert A. Kutcher said, "By working with the LSBA's Building Bridges Committee, LEAP and the Law Library were able to identify a great need by the public to access information about Mayor's Courts to



Rapides Parish: From left, attorney Ted Roberts, attorney Kay Michiels, Pro Bono Project Executive Director Debbie Smith, attorney Robert Levy and attorney Paul Tellarico.



Jefferson Davis Parish, Jennings Branch: Attorney LaWanda Gibson, left, and Jefferson Davis Parish Headquarters Manager Suzanne Young.



St. James Parish, Lusher Branch: Attorney Kristina Collins Harrison, left, and librarian Susan Duhe.

resolve minor criminal matters. This resource provides basic information about Mayor’s Courts in plain language for which the public can easily access and understand.”

The connection that LEAP fosters between public libraries and the legal profession in Louisiana is most visibly underscored during the LSBA’s Lawyers in Libraries Week of Service, held in conjunction with National Celebrate Pro Bono Week the last full week each October (Oct. 21-26, 2019). For the sixth year, 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.

“To effectively serve the public, attorneys are reaching out through Lawyers in Libraries events,” said Louisiana

Supreme Court Chief Justice Bernette Joshua Johnson. “Across our state, attorneys donate tens of thousands of hours of pro bono service every year. This donation of time and experience yields benefits which are highly impactful in clients’ lives and represent the highest degrees of professionalism. Lawyers in Libraries events facilitate an opportunity for lawyers to provide much-needed assistance to the citizens of our state.”

The Lawyers in Libraries program has consistently grown since its launch in October 2014. These events have assisted more than 3,000 Louisianians in public libraries and reached patrons in every parish. This year, the event boasted a total of 102 attorney volunteers participating in 139 events at 78 library branches across the state. Additionally, some libraries have expanded the program lo-

cally to host recurring events throughout the year.

LSBA President Kutcher, a Lawyers in Libraries volunteer for many years, believes this program “demonstrates the LSBA’s commitment to helping the courts and our members to better serve the public.”

The LSBA would like to acknowledge Louisiana library staff and 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. The names of attorney volunteers are listed below. Attorneys are encouraged to volunteer at their local libraries throughout the year.

More information is available online at: www.LouisianaLawyersinLibraries.org.

Continued next page



St. Mary Parish, Franklin Branch: Attorney Adolph B. Curet III, left, and librarian Connie Durocher.



Terrebonne Parish: Librarian Brigid Laborie, left, and attorney Lakethia Bryant.



Webster Parish, Minden Branch: Attorney R. David Harvey and librarian Savannah Jones.



Iberia Parish: From left, librarian Stephanie Lee, attorney Sandra A. Broussard, and Alexis Batiste, Brandi Prout and Glenn Krieg with the Department of Children and Family Services.



Lafayette Parish, Main Branch: From left, library staff member Chris Melancon, Lafayette Bar Association Director of Pro Bono Services Marilyn Lopez and attorneys Alex Stanford, Courtney Guillory and Stuart Breaux.

Attorney Volunteers by Parish

Acadia: Taylor Robinson.
 Allen: LaKeisha A. Ford and Adam Johnson.
 Ascension: Jason Stinnett and Chris Pierce.
 Assumption: Lakethia Bryant.
 Avoyelles: Debbie Smith.
 Beauregard: Glen Cella.
 Bienville: Tyler C. Cooley.
 Bossier: Pamela R. Jones.
 Caddo: Angela Ginn Waltman, Ebonee Norris, Monique I. Davis, Brittany Arvie, Terrell Myles, Courtney Ray and Sherron Williams.
 Calcasieu: Shayna Sonnier.
 Cameron: Ashley Freeman, Jennifer Jones, Shermin Khan and Max Guthrie.
 Catahoula: Lewis Gladney.
 Claiborne: Patrick O. Jefferson.
 Concordia: McCaleb Bilbro.
 DeSoto: Lewis Gladney.
 East Baton Rouge: Cherita McNeal, James Word II, Allen Posey, Jr., Scott L. Smith, Jr. and Averil Sanders, Jr.
 East Carroll: Kelly Massey.
 East Feliciana: Kirk A. Williams and Rodney Hastings.
 Evangeline: Tamiko Chatman.
 Franklin: Rossanna McIlwain.
 Grant: Lewis Gladney.
 Iberia: Sandra A. Broussard, Alexis Batiste, Brandi Prout and Glenn Krieg.
 Iberville: Perry W. Terrebonne.
 Jackson: Douglas L. Stokes.
 Jefferson Davis: LaWanda Gibson.
 Jefferson: Cynthia Schmidt, James Maguire,

Julie Jochum, Herman L. Bastian, Jr. and Donita Y. Brooks.
 Lafayette: Stuart Breaux, Blake David, Courtney Guillory, Marilyn Lopez, Chris Ortte, Sandra A. Broussard, Prof. Chase Edwards, Phillip Smith and Alex Stanford.
 Lafourche: David C. Peltier and Lakethia Bryant.
 LaSalle: Walter McClatchey.
 Lincoln: NiKayla Smith.
 Livingston: Gregory Hughes.
 Madison: Angela L. Claxton.
 Morehouse: Amy C. Johnson.
 Natchitoches: Lewis Gladney and NiKayla Smith.
 Orleans: Jules Cattie, Cortney Dunn, Eric Torres, Stephanie M. Hartman, Kim Madere, Patrick Dehon, Meagan Miller, Camille Patti, Mark A. Vicknair, James A. Lightfoot III, Andrea Agee, Dara L. Baird, Elizabeth Meneray and Leonor Prieto.
 Ouachita: Elizabeth Brown and NiKayla Smith.
 Plaquemines: Matt Smith.
 Pointe Coupee: Scott L. Smith, Jr.
 Rapides: Robert Levy, Kay Michiels, Ted Roberts, Debbie Smith and Paul Tellarico.
 Red River: R. David Harvey.
 Richland: Rossanna McIlwain and Josh Strickland.
 St. Bernard: J. Van Robichaux, Jr., Daniel Nodurft, Scott Tillery, David Gerhauer, Joyce Young, Ryan Early, Paul Tabary, Elizabeth Borne, Keith Couture, William McGoey, Edward Bopp and Eric Bopp.
 St. Charles: Rachel Naquin, Kellie Fox and

Kim Madere.
 St. Helena: Sean Brady.
 St. James: Kristina Collins Harrison.
 St. John the Baptist: Marissa Delgado, Elizabeth Goree and Kellie Fox.
 St. Landry: LaKeisha A. Ford and Jeffrey Coreil.
 St. Martin: Neal C. Angelle.
 St. Mary: Adolph B. Curet III.
 St. Tammany: Jason Freas, Suzanne Jones and Robert Kemp.
 Tangipahoa: Elsbet Smith.
 Tensas: McCaleb Bilbro.
 Terrebonne: Lakethia Bryant.
 Union: Brian Granville Smith.
 Vermilion: Bernard F. Duhon.
 Vernon: Debbie Smith.
 Washington: Theresa Robertson and Paula Charles.
 Webster: R. David Harvey.
 West Baton Rouge: Talya Bergeron.
 West Carroll: John M. Lancaster.
 West Feliciana: Talya Bergeron.
 Winn: Rossanna McIlwain and Lewis Gladney.

Partner Organizations

38th District Attorney's Office
 38th Judicial District Court
 Loyola Law Clinic / Workplace Justice Project
 Acadiana Legal Service Corp.
 Baton Rouge Bar Foundation Pro Bono Project
 Central Louisiana Pro Bono Project
 Department of Children & Family Services
 Lafayette Bar Foundation
 Legal Aid of North Louisiana
 Northshore Pro Bono Project
 Southeast Louisiana Legal Services
 University of Louisiana-Lafayette
 Staffs of 78 library branches across 62 parishes.

Joanna Laidler is the Louisiana State Bar Association's Access to Justice projects counsel. Jordan Maier is the Access to Justice administrative assistant. (joanna.laidler@lsba.org, jordan.maier@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130-3404)



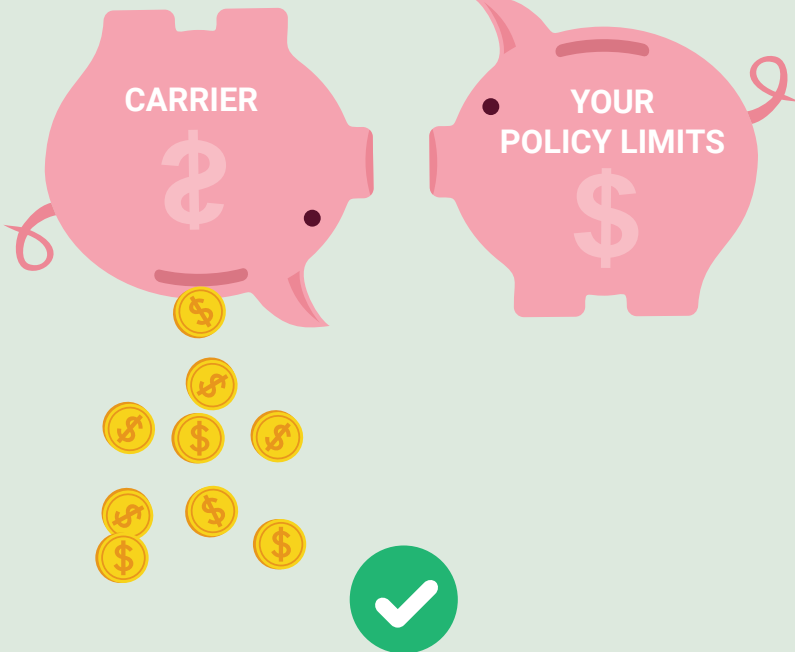
Orleans Parish, Main Library: From left, librarian Sarah Lewis, attorney Meagan Miller and librarian April Martin.



West Feliciana Parish: Talya Bergeron with Southeast Louisiana Legal Services.

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140+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 20th 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 140 attorneys and judges from across the state participated in the programs in August.

LSBA President Robert A. Kutcher led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included Louisiana Supreme Court Justice John L. Weimer III, Justice Scott J. Crichton and Justice James T. Genovese; Judge Jay

C. Zainey, U.S. District Court, Eastern District of Louisiana, representing the SOLACE Program; Judge Paul A. Bonin, Orleans Parish Criminal District Court; LSBA Committee on the Profession Chair Barry H. Grodsky and members Sandra K. Cosby and Monique M. Edwards; and LSBA member Valerie T. Schexnayder.

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 Vice Dean

Onnig Dombalagian.

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
Bradley J. Aldrich
Leah A. Barron
Ardney James Boland III
Fred Sherman Boughton, Jr.
Jennifer L. Brown
Andrew M. Casanave
Linda Law Clark

Chase J. Edwards
Hon. John Clay Hamilton
Katherine L. Hurst
Hon. Charles W. Kelly IV
Karen J. King
James B. Letten
David A. Lowe
Betty L. Marak
Cary J. Menard
Pam P. Mitchell
Hillar C. Moore III

Gregory K. Moroux
Gregory K. Moroux, Jr.
Hon. Pamela Moses-Laramore
Frank X. Neuner, Jr.
Tammy P. Northrup
Harry J. (Skip) Philips, Jr.
Hon. Laura A. Prosser
Kelly M. Rabalais
Michael H. Rubin
Sera H. Russell III
Rene I. Salomon

Robert E. Shadoin
Joseph L. (Larry) Shea, Jr.
Maggie Trahan Simar
Lawrence P. Simon, Jr.
Kristen Stanley-Wallace
Wayne T. Stewart
Hon. John D. Trahan
Amanda A. Trosclair
Lykisha R. Vaughan
Hon. Jason M. Verdigets



Louisiana State University Paul M. Hebert Law Center: Addressing the first-year students were, from left, Louisiana State Bar Association (LSBA) President Robert A. Kutcher; Louisiana Supreme Court Justice John L. Weimer III; Dean Thomas C. Galligan, Jr.; and LSBA Committee on the Profession Chair Barry H. Grodsky (at podium).



Loyola University College of Law: Among those addressing the first-year students was Louisiana Supreme Court Justice James T. Genovese.



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



Tulane University Law School: Addressing the first-year students were, from left, Louisiana State Bar Association (LSBA) Committee on the Profession Chair Barry H. Grodsky; Louisiana Supreme Court Justice Scott J. Crichton; LSBA President Robert A. Kutcher; Vice Dean Onnig Dombalagian; and U.S. District Court Judge Jay C. Zainey.

Loyola University College of Law

Georgia N. Ainsworth
 Kay B. Baxter
 Angel L. Byrum
 Hon. Amanda C. Calogero
 Rachel Jeandron Caluda
 Hon. Tiffany Gautier Chase
 Sandra K. Cosby
 Casey C. DeReus
 Mary L. Dumestre
 Hon. Richard M. Exnicios
 Val P. Exnicios
 Darryl J. Foster
 Vincent J. Glorioso, Jr.
 Deborah Spiess Henton
 Michael E. Holoway
 Edwin Ford Hunter III
 Jessica L. Ibert
 Kellie J. Johnson
 Teresa D. King
 Nahum D. Laventhal
 Robert C. Lehman
 James B. Letten
 Lorena McPhate Lisi
 Barbara L. Malik
 Jennifer S. Martinez
 John E. McAuliffe, Jr.

Emily S. Morrison
 John K. Parchman
 Leonor E. Prieto
 Bessie L. Renfrow
 Sophie D. Rosado
 Alexander R. Saunders
 Hon. D. Nicole Sheppard
 Hon. Raymond S. Steib, Jr.
 Tina L. Suggs
 Jerry W. Sullivan
 Jerome M. Volk, Jr.
 Robert L. Walsh
 John S. Williams
 Scott T. Winstead
 Hon. Jay C. Zainey

Southern University Law Center

ReAzalia Z. Allen
 Hon. Ernestine L. Anderson-Trahan
 Rashida Danielle Barringer
 Virginia Gerace Benoist
 Hon. Paul A. Bonin
 Justin S. Brashear
 Hon. Paula A. Brown
 Linda Law Clark
 Jennifer D. Cruz

Monique M. Edwards
 Hon. Nakisha Ervin-Knott
 Steven J. Farber
 Eugene G. Gouaux III
 Malinda Hills Holmes
 Michael E. Holoway
 Roderick A. James
 Arlene D. Knighten
 Paulette Porter LaBostrie
 Iriane B. Lee
 Martin K. Maley, Sr.
 Charles S. McCowan, Jr.
 Jackie M. McCreary
 Barbara Pilat
 Hon. D. Nicole Sheppard
 Michael J. Sipos
 Stacey B. Stephens
 Tina L. Suggs
 Henry G. Terhoeve
 Hon. Jewel E. Welch, Jr.

Tulane University Law School

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 Caroline F. Bordelon
 Hon. Jerry A. Brown
 Christopher E. Carey
 Jennifer C. Carter

Kevin J. Christensen
 Hon. Richard M. Exnicios
 Judith A. Gainsburgh
 Alayne K. Gobeille
 Hon. Piper D. Griffin
 Galen M. Hair
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 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. 7, honoring members of the Bench and Bar who died in the past year. The exercises followed the 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 Robert A. Kutcher of Metairie opened the memorial exercises,

requesting that the court dedicate this day to the honor and memory of those members of the Bench and Bar who have passed away during the last 12 months. LSBA President-Elect Alainna R. Mire read the names of all deceased members being recognized.

Hon. Fredericka Homberg Wicker, judge on the 5th Circuit Court of Appeal in Gretna, gave the general eulogy. Sandra A. Vujnovich, judicial administrator for the Louisiana Supreme Court, gave a special eulogy for retired Chief Justice Pascal F. Calogero, Jr. (*The eulogies can be found*

on pages 262 and 264).

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

Rabbi Deborah Silver with the Shir Chadash Conservative Congregation gave the invocation. Rev. Thomas R. Bouterie with the Diocese of Houma-Thibodaux 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 2018-19

Hon. Ted R. Broyles Leesville, LA August 9, 2019	Hon. Thomas A. Early, Jr. New Orleans, LA October 30, 2018	Hon. Bruce James McConduit New Orleans, LA September 13, 2019	Hon. Andrew G.T. Moore II Wilmington, DE December 10, 2018	Hon. Rosemary T. Pillow Baton Rouge, LA July 7, 2019
Hon. Pascal F. Calogero, Jr. New Orleans, LA December 20, 2018	Hon. H. Charles Gaudin Metairie, LA June 29, 2019	Hon. Patricia Head Minaldi Lake Charles, LA December 1, 2018	Hon. F. Jean Pharis Alexandria, LA February 8, 2018	Hon. Patrick M. Schott New Orleans, LA June 3, 2019

In Memoriam Members of the Bar 2018-19

Salvador J. Barcelona, Sr. Marrero, LA December 2, 2018	Joseph P. Brantley IV Baton Rouge, LA January 7, 2019	Ben E. Coleman Shreveport, LA April 15, 2019	Marc Dupuy, Jr. Marksville, LA April 19, 2019	Joseph P. Gordon, Jr. New Orleans, LA January 16, 2019	Ronald R. Inderbitzin Shreveport, LA August 25, 2019
Frank P. Battard Mandeville, LA July 4, 2019	Jean C. Breaux, Jr. Lafayette, LA April 30, 2019	James J. Coleman, Jr. New Orleans, LA March 21, 2019	Shannon Gammill Eastman-Stuart Baton Rouge, LA September 4, 2018	Edward R. Greenlee Monroe, LA April 19, 2019	Jane Bishop Johnson Monroe, LA June 29, 2019
Samuel Beardsley, Jr. Marrero, LA May 30, 2019	Russell L. Breckenridge Amite, LA May 8, 2019	Robert M. Cordell Lafayette, LA December 1, 2018	Assad C. Elias New Iberia, LA October 8, 2018	Charles M. Gremillion Lecompte, LA March 9, 2019	Julien Freida Jurgens Metairie, LA December 2, 2018
Wiley J. Beevers Gretna, LA November 25, 2018	Lisa Brener New Orleans, LA January 7, 2019	George M. Cotton Baton Rouge, LA July 29, 2019	Ronald J. Fahrbacher Kansasville, WI April 21, 2019	Randall L. Guidry Lafayette, LA February 22, 2019	Donna G. Klein New Orleans, LA May 14, 2019
W. Mente Benjamin New Orleans, LA September 18, 2018	E.J. Buhler III New Orleans, LA November 26, 2018	Amy Elizabeth Counce Baton Rouge, LA August 19, 2019	Joseph E. Fick, Jr. Metairie, LA February 9, 2019	Marcelynn Hartman Lake Charles, LA November 9, 2018	Mildred L. Krieger Mandeville, LA July 29, 2019
John A. Bernard Lafayette, LA February 2, 2019	Richard N. Burt Baton Rouge, LA July 23, 2019	James L. Davis Many, LA March 9, 2019	Frank A. Flynn Lafayette, LA May 14, 2019	Lovell Eugene Hayden III Monroe, LA October 8, 2018	John D. Lambert, Jr. New Orleans, LA July 7, 2019
J. Hunter Bienvenu Gretna, LA January 25, 2019	Greene S. Butler Homer, LA April 23, 2019	Aubrey E. Denton Lafayette, LA May 25, 2019	John F. Fox, Jr. New Orleans, LA April 3, 2019	Eric Todd Hebert Baton Rouge, LA August 19, 2019	Robert J. Landry Mandeville, LA July 29, 2019
Benjamin J. Birdsall, Jr. New Orleans, LA March 28, 2019	Barbara Travis Carter Franklinton, LA July 19, 2019	Edmond L. Deramee, Jr. Thibodaux, LA October 26, 2018	Scott E. Frazier Baton Rouge, LA January 17, 2019	J. Harrison Henderson III Metairie, LA December 5, 2018	Paul Barry Lauve Baton Rouge, LA July 11, 2019
Edward H. Booker Covington, LA May 18, 2019	Robert R. Casey Baton Rouge, LA June 5, 2019	William M. Detweiler New Orleans, LA March 27, 2019	William J.F. Gearheard Mandeville, LA February 17, 2019	Dennis W. Hennen Monroe, LA August 14, 2019	Patrick F. Lee New Orleans, LA November 9, 2018
Frederick R. Bott New Orleans, LA August 23, 2019	Dando B. Cellini Chevy Chase, MD December 28, 2018	Richard Emile deVargas Natchitoches, LA March 15, 2019	Juan B. Gerala Huntsville, AL January 6, 2019	Leslie Evalyn Hodge New Orleans, LA August 16, 2019	Robert Allen Lee West Monroe, LA February 23, 2019
Victor E. Bradley, Jr. Destrehan, LA August 29, 2019	J. Reginald Coco, Jr. Baton Rouge, LA January 11, 2019	Karen Cooney Duncan New Orleans, LA December 7, 2018		David Joseph Hynes Seattle, WA March 2, 2019	Thomas N. Lennox Covington, LA August 24, 2019

In Memoriam Members of the Bar 2018-19, continued

Will E. Leonard, Jr. Washington, D.C. January 2, 2019	Sam J. Mattina Houston, TX July 31, 2019	Philip E. O'Neill Westwego, LA March 30, 2019	John S. Sciambra Baton Rouge, LA February 10, 2019	John J. Talton Whitehouse, TX October 17, 2018	Leonard Alvin Washofsky Mandeville, LA May 25, 2019
James R. Lewis Baton Rouge, LA June 28, 2019	Roy H. Maughan Baton Rouge, LA December 12, 2018	Vincent A. Paciera Mandeville, LA January 14, 2019	Jason Gerard Senegal Carencro, LA October 26, 2018	Gene E. Teague Springhill, LA November 1, 2018	William W. Watson St. Joseph, LA August 18, 2019
Albert E. Loomis III Monroe, LA February 18, 2019	Lee S. McColloster Holden, LA April 14, 2019	Howat A. Peters, Jr. Hahnville, LA December 3, 2018	Joel Mack Sermons Shreveport, LA November 27, 2018	James B. Thompson III Baton Rouge, LA November 17, 2018	Harold Markham Westholz, Jr. Metairie, LA September 5, 2019
William M. Lucas, Jr. New Orleans, LA May 11, 2019	Patrick C. McGinity Metairie, LA July 16, 2019	Bryan August Pflieger Metairie, LA December 13, 2018	H. Paul Simon Covington, LA November 1, 2018	Jack W. Thomson Carriere, MS October 31, 2018	Walter J. Wilkerson New Orleans, LA September 13, 2018
Charlton H. Lyons, Jr. Shreveport, LA August 1, 2019	Donald A. Meyer Santa Fe, NM January 8, 2019	Michel O. Provosty Mandeville, LA January 19, 2019	Randolph C. Stone Slidell, LA March 31, 2019	C. Jack Toler Zachary, LA March 13, 2019	Anna-Kathryn Paley Williams Baton Rouge, LA May 29, 2019
Rev. Cuthbert H. Mandell Alexandria, VA August 21, 2019	Michael D. Minogue Dallas, TX May 10, 2019	Robert Lee Raborn Baton Rouge, LA December 14, 2018	Jana E. Smith Edwards, CO February 1, 2019	Leigh A. Traverse Metairie, LA November 8, 2018	Jack A. Williams Shreveport, LA March 12, 2019
Rachel C. Marinovich New Orleans, LA October 15, 2018	Donald Lee Moore Chapel Hill, NC September 4, 2019	David W. Robertson Austin, TX December 28, 2018	Leroy Smith, Jr. Tallulah, LA June 26, 2019	Frank J. Varela, Sr. New Orleans, LA June 13, 2019	Charles J. Willoughby Washington, D.C. October 14, 2018
Paul Marks, Jr. Baton Rouge, LA March 8, 2019	John E. Morton Angel Fire, NM April 30, 2019	Kathleen Louise Rogge Pascagoula, MS August 30, 2019	James H. Stroud Shreveport, LA August 15, 2019	Noel E. Vargas II New Orleans, LA October 26, 2018	Rev. Joseph R. Wilson, Sr. Cypress, TX August 10, 2019
Steven James Matt Lafayette, LA April 14, 2019	Sarah Beth Mumphy New Orleans, LA February 5, 2019	James W. Schwing, Sr. New Iberia, LA April 17, 2019	James R. Sutterfield New Orleans, LA November 9, 2018	Robert W. Varnado, Jr. Robert, LA November 28, 2018	George C. Winn Tampa, FL June 3, 2019

LBSL Accepting Requests for Certification Applications

The Louisiana Board of Legal Specialization (LBSL) is accepting applications for certification in five specializations — appellate practice, estate planning and administration, family law, health law and tax law — from now through Feb. 28, 2020.

Also, the LBSL will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2020, through Sept. 30, 2020.

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

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

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 — 15 hours of approved appellate practice.
- ▶ Estate Planning and Administration — 18 hours of approved estate planning and administration.
- ▶ 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.

Approved specialization CLE courses can be viewed on the LBSL Approved Course Calendar at: www.lbsa.org/MCLE/MCLECalendar.aspx?L=S.

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).

Anyone interested in applying for certification should contact LBSL Specialization Director Mary Ann Wegmann, email mary-ann.wegmann@lbsa.org, or call (504)619-0128. For more information, go to www.lbsa.org/specialization/.

General Eulogy:

Memorial Exercises on Oct. 7, 2019

Delivered by Hon. Fredericka Homberg Wicker
Judge, 5th Circuit Court of Appeal



Hon. Fredericka
Homberg Wicker

May it please the Court, Madam Chief Justice, justices, judges, members of the bar, and friends and family members of those we have lost:

Today we come together to remember those members of the Louisiana bench and bar who left us in the last year. We gather not to grieve, but rather to celebrate their lives and careers; to applaud their contributions to our system of justice, to our state, and to our communities; to rejoice in our good fortune to be able to call them teacher, mentor, partner, colleague, friend, mom or dad, life partner, husband or wife, big sister, or little brother.

Among those we honor are 10 judges, included among those are our former Chief Justice of a long and storied career, a Delaware Supreme Court justice, the first African-American judge elected to New Orleans Municipal Court, the first woman to graduate from Tulane University School of law, a federal district judge who was the first woman to serve on the Louisiana 14th JDC, several Louisiana Court of Appeal judges

and two Louisiana district court judges.

Today we also honor the 118 lawyers who were members of the Louisiana State Bar Association and are gone from us this year. Among those we lost are men and women who lived very long lives and those we lost far too early. We have friends among these who passed peacefully on to the next life, those taken too suddenly and tragically, and those who we watched suffer at the end.

Included in this number are men who saw combat experience in World War II in both the European and Pacific theatres, men and women who fought in the Korean and Vietnam wars, and those who saw action in the Middle East. There are men and women who broke racial and gender barriers, who were on the forefront of the civil rights and women's rights movements. There are folks who practiced in large metropolitan firms, as well as sole practitioners and others who were country lawyers, handling all the varied needs of their neighbors and community. We have lost lawyers who handled criminal and

civil cases, those who protected the interests of children and families as well as adoption lawyers who helped folks create their own family. We have lost mothers and sisters, soul mates and friends. We have lost teachers and students, partners and opponents, and with each of these losses, our state and our communities are less joyous, less lively, emptier.

We members of the legal profession have been given a great gift. We are part of an impactful, consequential and influential profession. We are the protectors of our system of justice. As many legal philosophers over the ages have aptly stated, lawyers and judges shaped the foundations of our state and our nation. We continue to form the indispensable bulwark which protects our free and democratic society. We protect the rights of the mighty and the weak, those who have much and those of little means. This year tragically we lost some of those who led the way for us in our relentless stride toward justice.

We can promise those who have now gone this, we who are left behind will pick up your mantle, continue to strive on your behalf to make our state and community a better place of equal justice for all. As Justice John Paul Stevens, also recently gone from us, repeatedly reminded us — on your behalf, we will continue to strive toward a more perfect union.

So, to each of the judges and lawyers to whom we said adieu this year, we all say thank you. Thank you for teaching us, for mentoring us, for being our friend, our student, our companion, our colleague, for making our state and community a better place and, yes, for leaving your indelible mark upon our ongoing effort to protect our priceless and fragile system of justice.

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- Louisiana State Bar Association
- Follow @LSBA_President on Twitter

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Special Eulogy:

Retired Chief Justice Pascal F. Calogero, Jr.

Delivered by Sandra A. Vujnovich
Judicial Administrator, Louisiana Supreme Court



Sandra A. Vujnovich

May it please the Court, Chief Justice Johnson, Justices, Mr. Kutcher, Rabbi Silver, Rev. Bouterie, Judge Wicker, members of the Judiciary, members of the Bar, relatives and friends of the departed members of the Bench and Bar, and in particular, the Calogero family and friends:

It is the Supreme Court's long-standing custom to recognize and specially eulogize on this occasion recently deceased Supreme Court justices. I am extremely honored today to deliver this special eulogy for Chief Justice Pascal F. Calogero, Jr., who passed away last December.

I first met Chief Justice Calogero when he hired me as his senior law clerk. I had decided to take a break from a non-stop litigation practice, and it was my intent to clerk for a year or so, then return to private practice. However, 25 years later, I am still here at the Court, after working with the Chief for 14 years, first as his law clerk, then as Executive Counsel. With the Chief's recommendation, I had the good fortune subsequently to serve as Executive Counsel to both Chief Justice Kimball and Chief Justice Johnson, and I now serve as the Judicial Administrator. But Chief Justice Calogero was my first "Chief." He was my boss, my mentor and my friend.

Chief Justice Calogero loved God, his family and the law. He was a devout Catholic. It is fitting that we are gathered here today on Red Mass Monday. He rarely missed a Red Mass, including after his retirement with the help of his family. While on the Court, he proudly led the annual procession of judges from the Courthouse to the Cathedral, a tradition that he instituted shortly after moving into

this building.

The Chief loved his family deeply — his beautiful and brilliant wife Leslie, and his children. He was proud of his children and he recognized and appreciated their individuality and talents. Spending time with his children, their spouses and his grandchildren was one of his greatest joys until the day he died.

And he loved the law, even though it was not his first choice of careers.

Pascal Frank Calogero, Jr. was born in New Orleans in 1931, the son of a New Orleans police officer and an auburn-haired, Irish-German mother. His father's policeman's badge is depicted in his official Chief Justice portrait, reminding all of his everyman roots. He attended public grammar school and St. Aloysius High School, and then went on to Loyola University on an academic scholarship. Justice Calogero had dreams of becoming a professional baseball player, or even an accountant like his brother and aunts, but his father had other plans and insisted that he pursue a legal career.

At Loyola, the social justice teachings of Father Louis Twomey and Father Joseph Fichter had a profound effect as Justice Calogero learned about the civil rights challenges facing Louisiana and the urgent need for change. The Jesuit teachings on moral values and social justice made a deep impression on the future Chief Justice.

At Loyola, Justice Calogero met up again with one of his old competitors, Moon Landrieu. They knew each other as teenagers from playing baseball at competing playgrounds, and both had played on the All-Star team of 1949. This time, the former competitors became lifelong

friends.

And so it began. After graduating first in his law school class, Justice Calogero embarked on an illustrious legal career, which culminated in serving over 18 years as Chief Justice and 36 years as a Justice on the Louisiana Supreme Court, the longest serving Justice in the history of the Court. One cannot overstate the influence that Pascal Calogero has had on Louisiana law and jurisprudence. This impact was felt immediately upon joining the Supreme Court, when he became the fourth vote for passage of opinions that followed directives of the United States Supreme Court in the criminal justice field, directives that were being resisted in Louisiana. He went on to participate in about 6,000 oral arguments and authored over 1,000 majority opinions, concurrences and dissents, including cases of immeasurable historic significance, such as *State v. Peart*, where the Court acknowledged a defendant's entitlement to an adequately funded defense and established standards for an indigent defender system; or *Plaquemines Parish Commission Council v. Delta Development Co.*, where the Court unanimously applied the legal principle of *contra non valentum* where a plaintiff was prevented from pursuing financial claims because of the defendant's affirmative acts of concealment, misrepresentation, legal challenges and fraudulent conduct.

The opinions authored by Chief Justice Calogero, without exception, were the product of thoughtful study and analysis and exuded a respect for the rule of law and a commitment to fairness. As one of his law clerks explained it, "What more would you want from a judge than someone who treats everyone who comes in

front of him the same and without any preconceived notions.”

The Chief’s work ethic was legendary, as attested to by his law clerks and court staff who would tell you of loaded brief cases taken home daily, 6 a.m. phone calls, his pursuit of perfection in legal analysis and numerous opinion rewrites, and daily conversation and debate over lunch in the office library. The Chief engendered in his clerks a love of the law, a passion for justice, and a lack of prejudice or pretension. He taught us how to write, how to think, how to consider every angle of every argument. He never wrote a result-oriented opinion. He always wanted to be sure he knew all of the facts and would consider every side of every issue, sometimes painstakingly so, before making a decision.

Chief Justice Calogero’s passion for justice resonated in his opinions and in his actions. He always made sure the little guy’s rights were protected. Legendary criminal defense lawyer Sam Dalton described it this way: “The bill of rights gave the people the absolute right to challenge authority in its own house, without being shot. That’s freedom and that’s the freedom the Chief Justice has always protected in his decisions, in his actions, and in his attitude.”

Chief Justice Calogero excelled at organizational structure, and he believed that all of the Justices should be involved in the administrative decisions of the Court. His “administrative conferences” are still held weekly. His preferred leadership style was to lead by consensus, and it proved quite effective. With the assistance and support of his fellow justices, Chief Justice Calogero led a court that was renowned for its administrative reforms, such as creation of a statewide indigent defender board and rules to ensure a functioning indigent defender system; ensuring effective and well-staffed attorney and judicial discipline systems; the establishment of the IOLTA program to fund law-related programs benefitting the public and the legal system of Louisiana; the adoption of a pay plan and human resources policy to ensure fairness and parity in the hiring and salaries of appellate court employees; the creation of the Judicial Campaign Oversight Committee to promote ethical campaigning; the creation of a Court Community



Chief Justice Pascal F. Calogero, Jr.

Relations Department to improve public outreach; and, one of the most significant accomplishments, the maintenance of a consistently current docket for 36 years, embodying the philosophy “justice delayed is justice denied.”

Perhaps one of his greatest achievements, and definitely the one that took the longest to realize, was bringing the Louisiana Supreme Court back home to 400 Royal Street, with the support and assistance of his colleagues and the Supreme Court Historical Society. This past summer, with the endorsement of Chief Justice Johnson and the Justices, the Legislature passed a bill to name this building the “Chief Justice Pascal F. Calogero, Jr. Courthouse.” The Justices are currently reviewing proposals on how to execute the renaming, and a ceremony will be held in December. What a lasting and fitting tribute.

Yes, Chief Justice Calogero was a brilliant and accomplished jurist, perhaps one of the most notable justices ever to serve on this Court. But he was also one of the nicest people you would ever meet, with a constant twinkle in his eye, a gentle demeanor, and a warm and ready smile. He was also kind and humble. Just one example. Within days after Katrina struck, the Supreme Court relocated to the First Circuit Court of Appeal in Baton Rouge. By coincidence, the Chief and his family, and I and my family, ended up at the same apartment complex in Gonzales. Before leaving for yet another busy and hectic day at the First Circuit,

the Chief would drive several blocks to the Shell station to buy the *Times-Picayune* and bring it to his apartment. I happened to mention how great it would be to see a paper from home, and before I knew it, there was the *Times-Picayune* by my doorstep every morning. Of course, when I arrived at the office, he would remind me that I owed him 50 cents, which I gladly paid. One day, there was a knock on my door and it was my neighbor. She asked me how I had arranged to get the paper delivered, and could I please ask the elderly gentleman who delivered my paper how she could be added to his route.

Chief Justice Calogero retired from the Supreme Court on Dec. 31, 2008. But he was not ready to retire for good, and he joined a boutique law firm, focusing in an appellate practice, which he enjoyed for several years. His passion for and fidelity to the law continued in his representation of clients and his authoring of several amicus briefs and editorials.

Chief Justice Pascal Calogero died on Dec. 20, 2018, surrounded by his loving family. My sincerest condolences to Leslie, and to all of the Calogero children, spouses, grandchildren and extended family. Thank you for the many sacrifices you endured to share the Chief with us.

I also offer my sincerest condolences to those here today who lost a loved one this past year. Please know that Chief Justice Calogero dedicated his life to championing justice and to improving the legal and judicial systems in which your loved ones spent their days, both for their benefit and the benefit of all of the citizens of Louisiana.

When he was nearing retirement, the Chief was asked how he would like to be remembered, and he replied: “I hope history looks back on me kindly. I would like to be remembered as an energetic, hard-working, honest and able judge who contributed during his service on the Louisiana Supreme Court to maintaining stability in the law and jurisprudence, while serving the least privileged of our citizens with compassion, integrity and fairness.”

Chief, let me assure you, history will remember you as you wish. May you rest in peace.

CLE Compliance for Board-Certified Specialists is Dec. 31

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as set forth in the individual Specialty Standards for each field of legal specialization, board-certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2019. The requirement for each area of specialty is as follows:

- ▶ Appellate Practice — 15 hours of approved appellate practice.
- ▶ Estate Planning and Administration — 18 hours of approved estate planning and administration.
- ▶ 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.

CLE credits will be computed on a calendar year basis and all attendance information must be delivered to the Committee on Mandatory Continuing Legal Education (MCLE) no later than Jan. 31, 2020. Failure to earn and/or timely report specialization CLE hours will result in a penalty assessment.

Preliminary specialization transcripts were sent in late November to all specialists who are delinquent in their specialization CLE hours for 2019. *Be sure to satisfy your specialization CLE requirements by Dec. 31, 2019.*

For more information, contact LBLS Specialization Director Mary Ann Wegmann, email maryann.wegmann@lsba.org, or call (504)619-0128.

Obtain a copy of your specialization transcript online at: www.lsba.org/specialization/. Specialization transcripts may be accessed directly at: www.lsba.org/Specialization/SpecializationTranscripts.aspx. To find approved specialization CLE courses, consult the specialization CLE calendar at: www.lsba.org/MCLE/MCLECalendar.aspx?L=S.

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 wanting to comment on 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 Dec. 30, 2019.

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

Appellate Practice

Louis R. Koerner, Jr. New Orleans
David M. Prados New Orleans

Estate Planning & Administration

Ralph R. Alexis III New Orleans
Rachel South Boquet..... Houma
Shelley Babineaux
Bouillion Lake Charles
Gregory S. LaCour..... Metairie
Amanda Pendleton Sigur Metairie

Health Law

Robert J. Bozeman Monro
Carolyn Stewart Buckley New Orleans
Clay J. Countryman..... Baton Rouge
Kathleen Lewinski DeBruhl... New Orleans
Sean L. Finan Baton Rouge
Tara L. Foto Marrero
Gregory D. Frost..... Baton Rouge
Emily B. Grey Baton Rouge
Lesleigh Hobbs Hall Covington
W. Scott Keaty Baton Rouge
Peter Alden Kellogg Metairie
Vinson J. Knight Mandeville
Paul A. Lea, Jr. Covington
Louis J. Lupin New Orleans
R. Christopher Martin Metairie
Conrad Meyer Metairie
Elizabeth France (Lisa) Pretus.. New Orleans
Lamar P. Pugh..... Shreveport
Robert W. Robison, Jr. Baton Rouge
Lyn Smith Savoie Baton Rouge
Daniela Kratka Schmidt New Orleans
Jacob S. Simpson..... Baton Rouge
Danielle Trostorff..... New Orleans
Jennifer Jones Thomas Baton Rouge

Tax Law

Marla Anne Miller Lake Charles
Jacob Carter White Shreveport

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, 2020, to Dec. 31, 2024. Any person wanting to comment on 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 Dec. 30, 2019.

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

Orr Adams, Jr. Metairie
M. Elizabeth Bowman..... Gretna
David M. Charlton..... Baton Rouge

Laura Elizabeth Fine New Orleans
Ronda Mary Gabb Covington
Carl S. Goode..... Baton Rouge
Steven Anthony Grenier..... Shreveport
Lawrence Dietrich Huter..... Lafayette
Gregory Jesse Logan Lafayette
Conrad Meyer IV Metairie
Ronald Wayne Morrison, Jr. Metairie
Joseph Michael Placer, Jr. Lafayette
Joseph A. Prokop, Jr. Baton Rouge
Beau P. Sagona..... Metairie
Eric M. Schorr..... New Orleans
Carla Hines Sibille..... Baton Rouge
Scott Joseph Sonnier New Orleans

Tax Law

Hirschel T. Abbott, Jr. New Orleans
A. Albert Ajubita..... New Orleans
Robert S. Angelico..... New Orleans
Walter Antin, Jr. Hammond
Jane E. Armstrong New Orleans

Continued next page

William M. Backstrom, Jr. ... New Orleans
 Dale R. Baringer Baton Rouge
 Alton E. Bayard III Baton Rouge
 Hilton S. Bell..... New Orleans
 Thomas G. Blazier..... Lake Charles
 Sidney M. Blitzer, Jr. Baton Rouge
 Robert T. Bowsher..... Baton Rouge
 Timothy Paul Brechtel..... New Orleans
 Susan J. Burkenstock..... New Orleans
 Richard M. Campbell Monroe
 Donald A. Capretz Lafayette
 David R. Cassidy Baton Rouge
 John P. Cerise New Orleans
 David M. Charlton..... Baton Rouge
 John W. Colbert New Orleans
 J. Grant Coleman New Orleans
 George R. Collier, Jr. Monroe
 Katherine Conklin New Orleans
 Gary L. Conlay Natchitoches
 Paul D. Cordes, Jr. New Orleans
 David N. Corkern Dallas, TX
 Jeanne T. Cresson Metairie
 Christopher J. Dicharry Baton Rouge
 Michael L. Eckstein..... New Orleans
 Gary J. Elkins New Orleans
 Mark S. Embree..... New Orleans
 James C. Exnicios..... New Orleans
 Mandy Mendoza Gagliardi..New Orleans
 Edward N. George III..... New Orleans
 Carl S. Goode..... Baton Rouge
 Steven Anthony Grenier.....Shreveport
 Michael E. Guarisco..... New Orleans
 David S. Gunn Baton Rouge
 Kernan August Hand, Jr. Metairie
 Steven E. Hayes..... Metairie
 Robert L. Henderson, Jr..... Slidell
 Ted W. Hoyt Lafayette
 Edwin Kidd Hunter Lake Charles
 Steven I. Klein New Orleans
 William H. Langenstein III ..New Orleans
 John Paul LeBlanc..... Mandeville
 Brian T. Leftwich..... New Orleans
 Lawrence M. Lehmann New Orleans
 Lawrence L. Lewis III..... Lafayette
 Dwayne O. Littauer New Orleans
 Peter J. Losavio, Jr. Baton Rouge
 John L. Luffey, Jr. Monroe
 David J. Lukinovich Metairie
 Richard E. Matheny..... Baton Rouge
 Michael A. Mayhall..... Covington
 Van R. Mayhall, Jr. Baton Rouge
 Ray C. Mayo, Jr. Shreveport
 John F. McDermott..... Baton Rouge
 W. Deryl Medlin Shreveport
 Donald M. Meltzer Baton Rouge
 Joel A. Mendler..... New Orleans

Bruce A. Miller Metairie
 J. Tracy Mitchell Baton Rouge
 William A. Neilson New Orleans
 Daniel A. Palmer..... Waco, TX
 Paul C. Pepitone..... Baton Rouge
 Laura Walker Plunkett..... New Orleans
 Eugene F.
 Pollingue, Jr.. Palm Beach Gardens, FL
 Edward M. Porche II Mandeville
 Betty Ann Raglin Lake Charles
 Rudolph R. Ramelli New Orleans
 Jerome John Reso, Jr. New Orleans
 Patrick K. Reso Hammond
 Earl C. Reynolds..... Baton Rouge
 F. Kelleher Riess New Orleans
 John A. Rouchell..... New Orleans
 Robert E. Rowe..... Lafayette
 H. Brenner Sadler Alexandria
 Douglas L. Salzer New Orleans
 Robert C. Schmidt Baton Rouge
 David R. Sherman Metairie
 David L. Sigler..... Lake Charles
 Scott Joseph Sonnier New Orleans
 Paul D. Spillers Monroe
 David Bruce Spizer New Orleans
 Mark S. Stein New Orleans
 William P. Stubbs, Jr. Lafayette
 Robert E. Tarcza New Orleans
 Barry E. Waguespack Baton Rouge
 Jess J. Waguespack..... Napoleonville
 J. Benjamin Warren, Jr.....Shreveport
 William Brooks Watson Monroe
 Charles S. Weems III..... Alexandria
 John J. Weiler..... New Orleans
 Jack G. Wheeler..... Lake Charles
 Lester J. Zaunbrecher Lafayette
 Karl J. Zimmermann New Orleans

Family Law

Dawn Amacker Covington
 Ernest S. Anderson Slidell
 D. Rex Anglin Shreveport
 James H. Askew..... Shreveport
 Alfred R. Beresko Shreveport
 David A. Blanchet Lafayette
 Lisa Leslie Boudreaux..... Baton Rouge
 David L. Carriere Opelousas
 Jennifer C. Carter..... New Orleans
 Robert P. Cuccia..... Houma
 Mary Clemence Devereux Covington
 Karen D. Downs Baton Rouge
 Jack L. Dveirin..... New Orleans
 Patricia M. Franz Metairie
 Frank A. Granger Lake Charles
 Nancy S. Gregorie Baton Rouge
 Grace Phyllis Gremillion..... Covington

Steven W. Hale..... Lake Charles
 Helen Popich Harris Lafayette
 Mitchell J. Hoffman New Orleans
 Lila Tritico Hogan Hammond
 Melanie Newkome Jones Baton Rouge
 Patricia M. Joyce Gretna
 Debra M. Kesler Metairie
 Philip C. Kobetz..... Lafayette
 Robert D. Levenstein..... Laplace
 Robert G. Levy Alexandria
 Robert C. Lowe..... New Orleans
 Christine O'Brien Lozes Covington
 Lorraine Jane Andresen
 McCormick Baton Rouge
 Edith H. Morris New Orleans
 Kim M. O'Dowd New Orleans
 Patrice Wightman Oppenheim.. Mandeville
 David R. Paddison Covington
 David M. Prados New Orleans
 Philip Riegel, Jr. Metairie
 Walter M. Sanchez..... Lake Charles
 Diane A. Sorola..... Lafayette
 D. Reardon Stanford..... Lafayette
 Susan L. Theall Lafayette
 Linda A. Veazey Abbeville
 Barbara J. Ziv New Orleans

Business Bankruptcy Law

Patrick Shawn Garrity New Orleans
 Michael David Rubenstein... Houston, TX

ACE
ADULT CIVICS
EDUCATION

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

In the past four years, several groundbreaking American Bar Association (ABA) studies and reports¹ have been generated regarding mental health and substance use issues in the legal profession. It has been sobering to learn about the elevated levels of mental health issues in our profession, and it is also a formidable task to chart a healthy course forward. ABA materials include:

► 2016: The ABA facilitated the first nationwide lawyer mental health study, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,” and the results were a serious “wake-up call” to our profession.

► 2017: In response to the 2016 ABA study, the ABA published comprehensive recommendations to all stakeholders in “The Path to Lawyer Well-Being: Practical Solutions for Positive Change” to provide an effective road map toward improving the mental health wellness of *all* legal professionals.

► 2018: The ABA published the “Well-Being Toolkit for Lawyers and Legal Employers” that provides comprehensive lawyer-specific mental health wellness tools that benefit our profession.

The overarching message is loud and clear — our passionate work ethic must be intentionally tempered with healthy boundaries and well-being practices if we are to ever improve our profession’s mental health statistics.

Heretofore, the well-being message has primarily focused on lawyers, but the ABA has just released its 2019 “Survey on Judicial Stress and Resiliency.” This newest ABA study included responses from 1,034 judges across all levels of jurisdiction and is the largest such survey ever conducted. It is very important information because judges face mental health challenges that are unique due to the specialized nature of their work.

Here are some “Fast Facts” from the

2019 Judicial Survey:

Top Five Sources of Judicial Stress

1. The importance and impact of rendering decisions.
2. Heavy dockets (workload).
3. Unprepared attorneys.
4. Self-represented litigants.
5. Dealing with the same parties without addressing the underlying issues.

Top Five Symptoms of Judicial Stress

1. Fatigue and low energy after hearing several cases in a row.
2. Sleep disturbances (insufficient sleep, awakenings, daytime drowsiness).
3. Interference with attention and concentration; tend to be distracted.
4. Rumination or worry about cases after they have been decided.
5. Increased health concerns (high blood pressure, etc.).

Suicidal Ideations

2.2% of judges surveyed reported suicidal ideations (this is “good news” when compared to 11.5% for lawyers and 6% for law students).

Top Five Symptoms of Judicial Depression

1. Fatigue and low energy after several cases.
2. Not having initiative to do what I used to.
3. Preoccupation with negative thoughts.
4. Feeling that work is no longer meaningful.
5. Can’t wait for the day’s work to end.

Top Five Symptoms of Judicial Anxiety

1. Increased health concerns.
2. Feelings of apprehension or anxiety.
3. Intrusive thoughts of traumatic images of people or evidence.
4. Find it difficult to ask a respected col-

league for a critique of my work.

5. Difficulty breathing, excessively rapid breathing.

“Risky” Alcohol Use in the Judiciary

9.5% scored in the “at risk” range for alcohol problems (this is “good news” when compared to 20.6% for lawyers).

Top Five Resiliency Activities Used by Judges

1. Physical exercise (walk, jog, bike, swim).
2. Relaxation, stretching (yoga, tai chi, etc.).
3. Meditation, mindfulness, mind-quieting.
4. Spiritual, faith traditions.
5. Hobbies and pastimes.

In response to the Judicial Survey, the ABA Taskforce on Well-Being rendered recommendations for judicial stakeholders including state Supreme Courts, presiding judges and judicial regulators, etc.

Supreme Courts are encouraged to communicate and demonstrate that judicial well-being is a priority, make sure the judiciary has access to well-being resources, and ensure that confidential JLAPs have adequate resources to help judges.

Presiding judges are encouraged to be an example of well-being by taking vacations and sick leave, exercising, meditating and eating healthfully. They should monitor and support judges/staff who may show signs of vicarious trauma. Well-being content should be included at bench meetings.

Judiciary Commissions are encouraged to include JLAP in educating staff and leadership on judicial stress, mental health and substance issues. They should allow for a JLAP diversion or intervention program that’s separate from other complaints and an alternative confidential referral option to JLAP.

Continued next page

By Kenzie Schott Cardella

MALPRACTICE POLICY: PAYMENTS AND PERKS

Time to brush up on your malpractice policy. CNA's professional liability policy for Louisiana attorneys, endorsed by the Louisiana State Bar Association (LSBA), offers several benefits that you may not remember or have yet to encounter. This article highlights three supplementary payments covered in the malpractice policy. If any of these scenarios come into play, you will know how your policy might help you.

Under the LSBA's endorsed policy, CNA agrees to make three supplementary payments discussed below which are not subject to the deductible (so CNA will make these payments regardless of whether you have met your deductible) and are in addition to your limits of liability (which means any payments made by CNA will not reduce your limits). As an insured, these are both wins for you.

► **Loss of earnings payments.** CNA reimburses each insured attorney up to \$500 per day for the attorney's attendance, if requested in writing by the insurer, at a trial, hearing or other proceeding involving a claim against the

insured. CNA will pay up to \$15,000 per insured attorney and \$50,000 total for each policy period. These payments help offset lost billable hours and allow you to focus more on the proceeding.

► **Disciplinary proceedings payments.** CNA also reimburses you up to \$50,000 for attorney fees and other costs and expenses paid to third parties resulting from a disciplinary proceeding, if notice of such proceeding was received by the insured and reported in writing to the insurer during the policy period or within 60 days after termination of the period. If there is a determination of "no liability" of the insured, CNA will reimburse you up to \$100,000.

► **Subpoena assistance payments.** If you receive a subpoena for documents or testimony arising from legal services performed by you, you may request CNA's assistance in responding and CNA will pay the attorney fees (excluding disbursements) incurred for the subpoena assistance. The subpoena must arise from a civil lawsuit to which you, the insured, are not a party and you must not have been engaged to provide

advice or legal testimony in connection with the lawsuit.

Of course, refer to your policy or ask questions regarding your specific coverage. This information is a general overview and only your specific insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions. Coverage determinations are always subject to interpretation.

Kenzie Schott Cardella is an attorney at Gilsbar, L.L.C., and serves as business development manager of the professional liability division. She received her BBA degree in accounting from Southern Methodist University, is a CPA and earned her JD degree from Louisiana State University Paul M. Hebert Law Center, where she served as editor-in-chief of the Louisiana Law Review. Before joining Gilsbar, she worked in private practice for a New Orleans law firm, practicing in business and transactional law. Email her at kcardella@gilsbar.com.



Lawyers Assistance continued from page 268

Judges and Lawyers Assistance Programs are encouraged to publicize the CoLAP Judicial Survey, offer programming for judges, develop a peer support network, advocate for well-being efforts and educate new judges about JLAP's services.

Your Louisiana JLAP provides comprehensive, professional clinical support that spans everyone's needs, including all the needs of judges.

From well-being education all the way

to conducting an intervention to save an individual's life and career, JLAP offers confidential services to judges, lawyers, law students, family members and staff. Call JLAP at (985)778-0571, email jlap@louisianajlap.com or visit the website at www.louisianajlap.com.

FOOTNOTES

1. All of the studies cited in this article are available online at www.louisianajlap.com and resources for judges are available online at <http://louisianajlap.com/who-we-help/judges/>.

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.

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.



Boyle Creates New Scholarship to Improve Diversity

Kim M. Boyle, a partner in the New Orleans office of Phelps Dunbar, L.L.P., and a Tulane University board member, is creating a scholarship to improve diversity at Tulane University. Boyle served as the 2009-10 president of the Louisiana State Bar Association.



Kim M. Boyle

The Ernest and Connie Boyle Scholarship Endowed Fund, named in honor of Boyle's parents, aims to improve diversity by giving underrepresented groups the opportunity to receive an education at Tulane University. Preference will be given to students graduating from New Orleans area high schools.



The Louisiana State Bar Association (LSBA) Specialty Bars Subcommittee met with LSBA 2019-20 President Robert A. Kutcher on Aug. 23. Representatives of Specialty Bars 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 David D. Meyer, Tulane University Law School; Lykisha R. Vaughan, Baton Rouge Chapter Louis A. Martinet Legal Society, Inc.; Victor J. (Vic) Suane, Jr., Baton Rouge Chapter Louis A. Martinet Legal Society, Inc.; Christine T.C. (Chrissy) Bruneau, president, Louisiana Asian Pacific American Bar Association; George W. Britton III, president, Northeast Louisiana Chapter Louis A. Martinet Legal Society, Inc.; Michael B. Victorian, co-chair, LSBA Outreach Committee; William C. Bradford, Jr., president, Jesse Stone Legal Society; LSBA President Kutcher; Franchesca L. Hamilton-Acker, president, Greater Lafayette Chapter Louis A. Martinet Legal Society, Inc.; Cory J. Vidal, immediate past president, Greater New Orleans Chapter Louis A. Martinet Legal Society, Inc.; Ezra Pettis, Jr., president, Lake Charles Chapter Louis A. Martinet Legal Society, Inc.; and Demarcus J. Gordon, chair, LSBA Minority Involvement Section.

Save the Date!

13TH ANNUAL
CONCLAVE ON
DIVERSITY IN THE
LEGAL PROFESSION

“Celebrating 55 Years of
Civil Rights: Moving from
Why to How”

Hosted by the LSBA Diversity
Committee

MARCH 27, 2020
Sheraton New Orleans Hotel
500 Canal St., New Orleans

For more, see page 302



The 2019-20 Louisiana State Bar Association's Diversity Committee met in New Orleans on Sept. 7 for an orientation and business meeting. Committee members engaged in ice-breaking activities and reviewed Diversity Committee and Subcommittee programming for the 2019-20 Bar year. Seated from left, Troy N. Bell, Courington, Kiefer & Sommers, LLC; John A. Womble, Frederick A. Miller & Associates, co-chair; Denia S. Aiyegbusi, Deutsch Kerrigan, LLP, co-chair; J. Dalton Courson, Stone Pigman Walther Wittmann, LLC, co-chair; and Lynn Luker, Stanley, Reuter, Ross, Thornton & Alford, LLC. Standing from left, Sowmya Mandava, 24th JDC; Jared E. Nelson, Louisiana Attorney General's Office; Wayne J. Lee, Stone Pigman Walther Wittmann, LLC; Dan L. Tran, attorney at law; Demarcus J. Gordon, Kelly Hart & Pitre; Courtney H. Payton, Aaron and Ginna; Monica M. Vela-Vick, Phelps Dunbar, LLP; Susan R. Laporte, Kuchler Polk Weiner, LLC; Justin W. Stephens, Tabary & Borne, LLC; and Deidre D. Robert, Southern University System.

CLE at The *Greenbrier* Resort

A multi-topic CLE seminar



The *Greenbrier* AMERICA'S RESORT® March 18-20, 2020 • A Multi-Topic CLE

Combining graciousness of the past with exceptional comforts of today, a new era of elegance awaits you at The Greenbrier. Surrounded by the wondrous Allegheny Mountains, The Greenbrier offers exclusive services and amenities such as championship golf, fine dining, more than 55 activities, designer boutiques, our world-renowned mineral spa and a 103,000 square foot gaming and entertainment venue. Explore your personal 11,000 acre playground and discover an unparalleled selection of luxury leisure pursuits and outdoor adventures designed to satisfy and stimulate your widest range of interests.

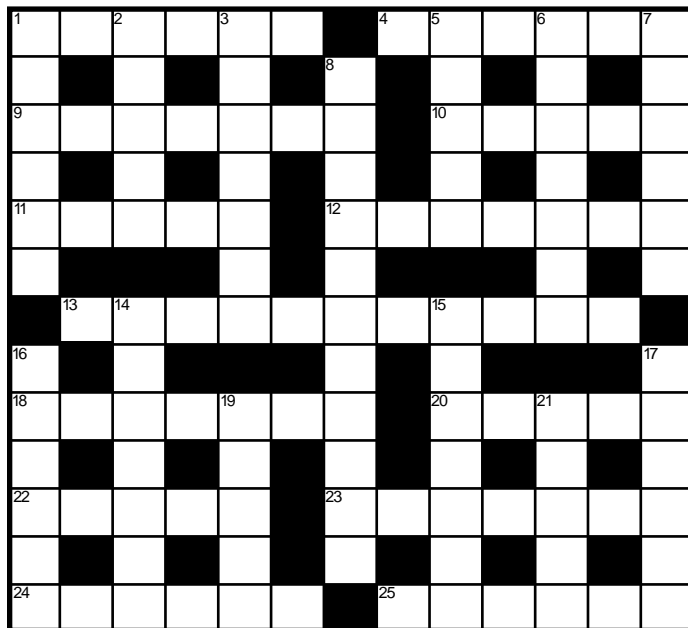


Register Online: www.lsba.org/CLE

Crossword PUZZLE

By Hal Odom, Jr.

WHO'S ON THAT TREATISE?



ACROSS

- 1 Wex S. ____, original author of Workers' Compensation treatise (6)
- 4 David N. ____, author of Motions in Louisiana treatise (6)
- 9 Answer; be affected by (5, 2)
- 10 Boy Scout unit (5)
- 11 Word similar to "swell" or "cool" (5)
- 12 Corpus __ (7)
- 13 The appearance of which should be avoided (11)
- 18 Play set in Grover's Corners (3, 4)
- 20 Visual media (5)
- 22 Oust, as a tenant (5)
- 23 Most favorable, ideal (7)
- 24 Frankfurter, but not Felix (6)
- 25 Glenn G. ____, coauthor of Business Organizations treatise (6)

DOWN

- 1 Richard D. ____, coauthor of Matrimonial Regimes treatise (6)
- 2 Andean pack animal (5)
- 3 "This is __ Daddy's" means a thing is vastly improved (3, 4)
- 5 Big name in Core™ Processors (5)
- 6 Impressive coiffure for a domestic feline (4, 3)
- 7 Nickname of author of Property, Personal Servitudes and Predial Servitudes treatises (6)
- 8 Compliment to an appellate court judge (4, 7)
- 14 Frank L. ____, author of Civil Procedure and coauthor of "La. Lawyering" treatises (7)
- 15 Kind of fertilization (2, 5)
- 16 Cheney C. ____, coauthor of Criminal Jury Instructions treatise (6)
- 17 Wendell H. ____, coauthor of Business Organizations treatise (6)
- 19 Exceed, defeat (5)
- 21 Raise an exception, in common law (5)

Answers on page 309.

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	Pam Landaiche 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.

FOCUS ON Professionalism

By Marsha M. Wade

COMPETENCY AND TECHNOLOGY

Is the smartphone a threat to your professionalism? The new Louisiana State Bar Association's Code of Professionalism includes a commitment regarding our use of technology: "I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer."

What we say and what we share on social media can reflect badly on us as a profession. Our words can be harmful to the targets of our comments and even invite disciplinary action.

Misuse of social media, however, is not the only risk to professionalism posed by our smartphone. A more pervasive challenge is how it impacts our competency. Professionalism includes our ability to use knowledge and skill of the law in service to our clients. Exercising our knowledge and skills requires an ability to maintain focus and give sustained attention to complex and sometimes boring tasks.

In their book, *The Distracted Mind: Ancient Brains in a High-Tech World*, Adam Gazzaley and Larry D. Rosen explain the science behind why we have difficulty maintaining sustained focus on our work, how we are driven by the myth of multitasking, the role technology plays, and how we can make peace with our fascination with and need for digital engagement to create a more focused, balanced life.

Cognitive control is the ability to focus on information critical to our goal, while ignoring distractions and interruptions, including an incoming barrage of irrelevant information. Gazzaley and Rosen report that our cognitive control is more limited than we suspect. Our modern brains have developed to set goals that are more complex, while our cognitive control abilities necessary to enact those goals have not evolved to the same degree. In the area of cognitive control, we are not too far ad-

vanced from our nearest primate relatives.

Human capacity for sustained attention peaks at about age 20, then begins to diminish. By the time we are admitted to the Bar, we are already on the downside of peak attention. Interestingly, it is not our ability to concentrate that is the problem. Rather, it is our inability to suppress or ignore extraneous distractions. Our distraction filters are not as robust as they were in our teens when we could do our homework while listening to music or following a sports broadcast.

The authors identify three "game changers" — the Internet, smartphones and social media — that degrade our ability to maintain a sustained focus on our work. These modern information delivery systems promise us a valuable commodity, all the information we could hope for at our fingertips. The downside is they are designed to easily capture and relentlessly hold our attention, disrupting our concentration and pulling us away from our work.

The solution to improving focus and our capacity for sustained attention is not to concentrate harder but to reduce or eliminate distractions. Even if you are well past the age of peak attention, there are steps you can take to increase focus when working on a mentally demanding project.

Begin by taking control of some of the more common sources of interruptions and distractions, starting with your physical environment. Clutter and noise are environmental distractions. Clear your desk or workspace of any nonessential files, books or papers. Try to find or create a quiet environment in which to work. Close your office door. Ask not to be disturbed except for emergencies.

Manage your technology. This can present the more difficult challenge, accustomed as we all are to remaining constantly in the information loop. Close any

programs or apps on your computer that are not necessary for the task that needs your attention. One of the biggest attention hogs is our digital inbox. Close your email program. Turn off any notifications on your computer. Silence your smartphone. If you find you are still tempted to reach for your phone, move it to another room.

When you find your concentration flagging, even with digital distractions under control, you may be in need of a physical break. Sustained concentration is mentally and physically draining. Brief breaks from a long project can help you stay focused. Work standing up for increased energy. Take an exercise break. Even a few minutes of energetic movement improves brain function and attention. Enjoy a 10-minute power nap. Go outside. Being in nature for as little as 10 minutes is restorative.

The struggle to maintain sustained attention is a challenge we all face. No one living in the 21st century is immune and lawyers least of all. A few simple changes to daily work habits can improve cognitive control. The ability to maintain focus and sustained concentration on complex and challenging work enhances competency, a key component of professionalism. In addition, you may find you enjoy a more focused, balanced life.

Marsha M. Wade is a member of the Louisiana State Bar Association's (LSBA) Committee on the Profession and a volunteer for the LSBA's Law School Professionalism Orientation Program. She earned her JD degree from Louisiana State University Paul M. Hebert Law Center. After a career in legislative and public policy work, including with the Louisiana Senate and Louisiana Association for Justice, she devotes her efforts to promoting mindfulness and other wellness practices among the legal community. (mwade50@gmail.com; 1511 Richland Ave., Baton Rouge, LA 70808)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 3, 2019.

Decisions

Paul E. Brown, Houma, (2019-OB-0864) **Permanently resigned from the practice of law in lieu of discipline** by order of the Court on Aug. 28, 2019. JUDGMENT FINAL and EFFECTIVE on Aug. 28, 2019.

Dante Jerome Butler, New Orleans, (2019-B-1199) **Consented to an 18-month period of suspension, with all but one year and one day deferred; suspension shall be retroactive to May**

8, 2019, the date of respondent's prior suspension imposed in *In Re: Butler*, 2018-1812 (La. 5/8/19), ___ So.3d ___, by order of the Court on Sept. 24, 2019. JUDGMENT FINAL and EFFECTIVE on Sept. 24, 2019. *Gist:* Respondent mishandled his client trust account and did not maintain adequate financial or client records; failed to submit an opposition to a motion for summary judgment and then concealed his neglect; and failed to diligently pursue discovery on his client's behalf.

Carl B. Duke, Jr., Baton Rouge, (2019-B-1215) **Interimly suspended from the practice of law for threat of harm** by order of the Louisiana Supreme Court on July 31, 2019. JUDGMENT FINAL and EFFECTIVE on July 31, 2019.

Laura Blair Naquin Green, Mandeville, (2019-OB-1189) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on July 25, 2019. JUDGMENT FINAL and EFFECTIVE on July 25, 2019.

STANLEY, REUTER, ROSS
THORNTON & ALFORD, LLC

Legal & Judicial Ethics



William M. Ross
wmr@stanleyreuter.com

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

909 Poydras Street, Suite 2500 • New Orleans, Louisiana 70112
(504) 523-1580 • www.stanleyreuter.com

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. 21, 2019.

Respondent	Disposition	Date Filed	Docket No.
John C. Alexander	[Reciprocal] Reprimand.	8/15/19	19-11136
Dante Jerome Butler	[Reciprocal] Suspension.	8/15/19	19-11137
Donald C. Douglas, Jr.	[Reciprocal] Public reprimand.	9/5/19	19-11472
Forrest E. Guedry	[Reciprocal] Suspension, fully deferred.	8/15/19	19-11135
John Julius Steger IV	[Reciprocal] Suspension.	8/15/19	19-11138
Alan B. Tusa	[Reciprocal] Public reprimand.	8/15/19	19-11134

Discipline continued from page 274

Erica May Lotz, Nashville, TN, (2019-OB-1103) **Consented to a suspension from the practice of law for one year and one day, with all but 30 days deferred, followed by a two-year period of unsupervised probation**, by order of the Louisiana Supreme Court on Sept. 17, 2019. JUDGMENT FINAL and EFFECTIVE on Sept. 17, 2019.

Gist: Respondent mismanaged her client trust account.

Everett H. Mechem, Tennessee, (2019-B-0862) **Order of disbarment imposed by the Supreme Court of Tennessee made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Sept. 6, 2019. JUDGMENT FINAL and EFFECTIVE on Sept. 20, 2019. *Gist:*

Misconduct related to accepting settlement without clients' permission; settlement funds received but not disbursed.

William A. Pigg, Dallas, TX, (2019-B-0912) **Public reprimand imposed by the State Bar of Texas made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Sept. 6, 2019. JUDGMENT FINAL and

Continued next page



Advice and Counsel Concerning Legal & Judicial Ethics
 Defense of Lawyer & Judicial Discipline Matters
 Representation in Bar Admissions Proceedings

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 Fax (985) 393-1130
damon@sswethicslaw.com

Discipline continued from page 275

EFFECTIVE on Sept. 20, 2019. *Gist:* Failure to supervise; facilitating the unauthorized practice of law; and improperly terminating representation.

Michael David Roche, Metairie, (2019-B-1338) **Transferred to interim suspension for threat of harm** by order of the Court on Aug. 22, 2019. JUDGMENT FINAL and EFFECTIVE on Aug. 22, 2019.

Lionel H. Sutton III, New Orleans, (2019-B-1216) **Following an Oct.**

24, 2018, order by the U.S. District Court for the Eastern District of Louisiana, the Louisiana Supreme Court imposed reciprocal discipline of a 12-month suspension, by order of the Court on Aug. 2, 2019. JUDGMENT FINAL and EFFECTIVE on Aug. 2, 2019. *Gist:* Respondent was suspended because of his improper fee sharing; lack of candor toward the tribunal; violating or assisting another in violating the Rules of Professional Conduct; conduct involving dishonesty, fraud, deceit

or misrepresentation; conduct prejudicial to the administration of justice.

Brian D. Williams, Marrero, (2019-B-0865) **On joint motion, had his conditional admission to the practice of law in Louisiana revoked** by order of the Court on Sept. 24, 2019. JUDGMENT FINAL and EFFECTIVE on Sept. 24, 2019.

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

Rule 1.1(b) — Mandatory annual professional requirements.

Rule 1.1(c) — Mandatory annual professional requirements.

Rule 1.3 — Diligence.

Rule 1.4 — Failure to communicate.

Rule 5.5(a) — Practicing law while ineligible.

Rule 8.4(a) — Violating or attempting to violate the Rules of Professional Conduct.

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NOTICE / Attorney Fee Review Board

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

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

The AFRB held its biennial meeting on Oct. 1, 2019. Requests for payment or reimbursement of legal fees are evaluated on a case-by-case basis. As directed by statute, the Board set a minimum rate of \$125 per hour and a maximum rate of \$425 per hour. These rates will remain in effect through 2021.

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

Any questions regarding the AFRB should be addressed to the Louisiana Supreme Court’s Office of the General Counsel, Ste. 1190, 400 Royal St., New Orleans, LA 70130.

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◀ **W. Ross Foote** retired from the 9th Judicial District Court in 2004 after 13 years on the bench and joined Smith Foote, LLP as a partner dealing exclusively with national class action antitrust cases. He is an AAA Certified Neutral, has taught mediation courses at the National Judicial College, and assisted in the formation of ADR groups in Louisiana. He has served on the Executive Committee for the Louisiana District Judges Association and the Louisiana State Bar Association Bar Governance Committee. He continues to serve the Supreme Court on ad hoc judicial appointments and as a Member of the Louisiana Public Defender Board. His primary focus at PRG is commercial arbitration and mediation.

CLIENT ASSISTANCE FUND PAYMENTS - FEBRUARY, MAY & SEPTEMBER 2019

Attorney	Amount Paid	Gist
Guy J. D'Antonio	\$4,000.00	#1930 — Unearned fee in a domestic matter
Peter B. Derouen	\$18,627.68	#1935 — Conversion in a personal matter
Timmy J. Fontenot	\$3,350.00	#1912 — Conversion in a personal injury matter
Timmy J. Fontenot	\$4,500.00	#1944 — Unearned fee in a criminal matter
Kristy E. Griffin	\$5,500.00	#1775 — Unearned fee in a domestic matter
Kristy E. Griffin	\$1,200.00	#1840 — Unearned fee in a domestic matter
Kirby Dale Kelly	\$5,223.68	#1941 — Conversion in a personal injury matter
Juan C. Labadie	\$2,750.00	#1695 — Unearned fee in a criminal matter
Anthony T. Marshall	\$3,000.00	#1883 — Unearned fee in a criminal matter
Anthony T. Marshall	\$8,000.00	#1867 — Conversion in a succession matter
Harold D. Register, Jr.	\$1,500.00	#1890 — Unearned fee in a criminal matter
Roy J. Richard, Jr.	\$1,300.00	#1917 — Unearned fee in a criminal matter
Channing J. Warner	\$570.00	#1954 — Unearned fee in a domestic matter
Jermaine D. Williams	\$20,000.00	#1932 — Conversion in a personal injury matter

Q&A

LOUISIANA CLIENT ASSISTANCE FUND

What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to \$25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

Who can, or cannot, qualify for the Fund?

Almost anyone who has lost money due to a lawyer's dishonesty can apply for reimbursement. You do not have to be a United States citizen. However, if you are the spouse or other close relative of the lawyer in question, or the lawyer's business partner, employer or employee, or in a business controlled by the lawyer, the Fund will not pay you reimbursement. Also, the Fund will not reimburse for losses suffered by government entities or agencies.

How do I file a claim?

Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary

Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.

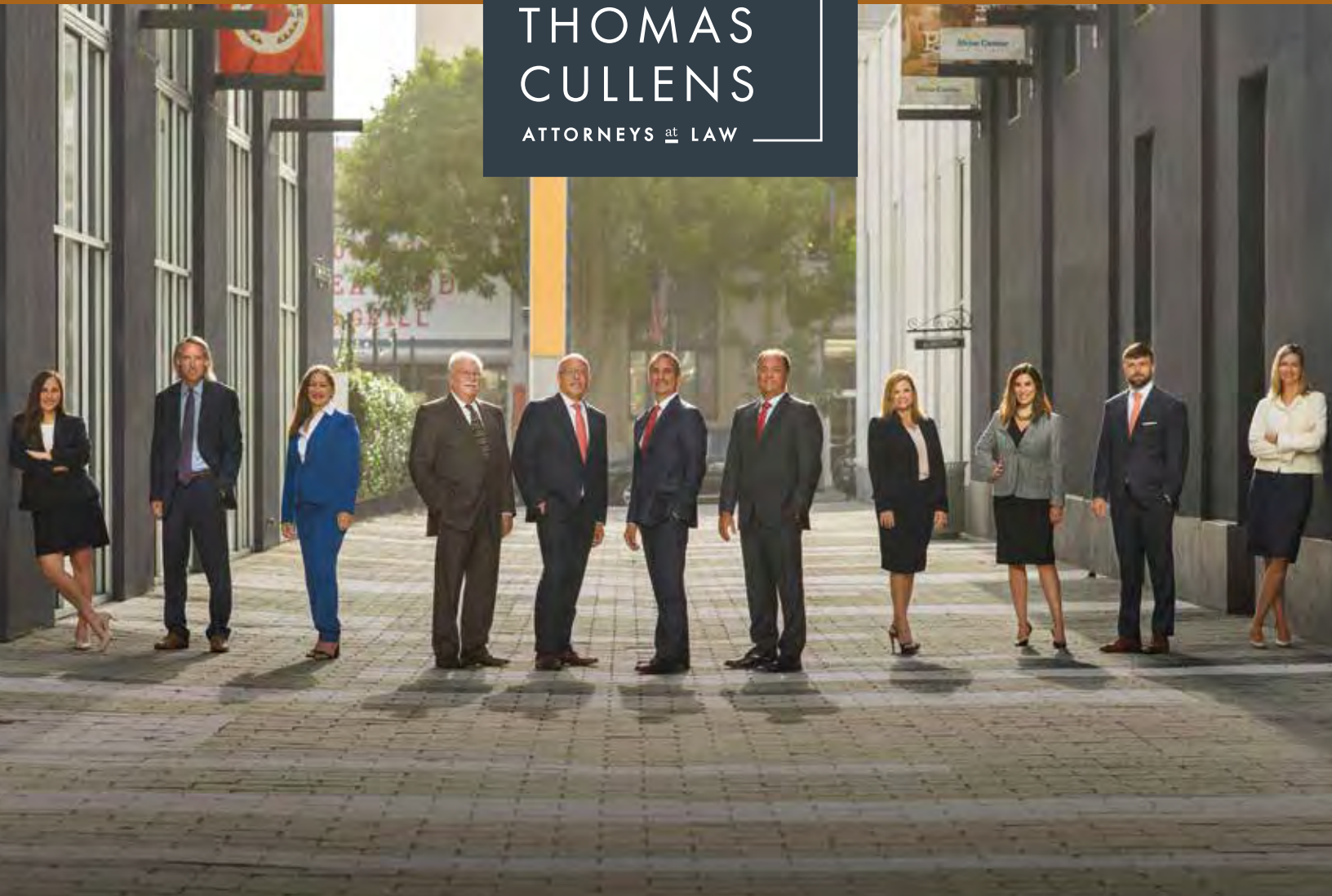
Who decides whether I qualify for reimbursement?

The Client Assistance Fund Committee decides whether you qualify for reimbursement from the Fund, and, if so, whether part or all of your application will be paid. The committee is not obligated to pay any claim. Disbursements from the Fund are at the sole discretion of the committee. The committee is made up of volunteer lawyers who investigate all claims.

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It's a Security, at Least When It Comes to Claim Priority

In re Linn Energy L.L.C., 936 F.3d 334
(5 Cir. 2019).

According to the 5th Circuit, if it looks like a security, walks like a security and

quacks like a security, it is a security — at least when it comes to claim priority. Under Section 510(b) of the Bankruptcy Code, any claim that arises from the “purchase or sale of a security of the debtor or an affiliate of the debtor” is automatically subordinated. The question in *Linn Energy* was whether promised payments that were not technically “dividends,” but whose value and frequency were linked to dividends of the debtors, could be treated as “securities” for purposes of subordination under Section 510(b). The court, seeking to uphold the central policy underlying Section 510(b) (*i.e.*, “that creditors are entitled to be paid ahead of shareholders in the distribution of assets,” *id.* at 340), held

that such claims should be subordinated as being equivalent to equity interests in the debtor. *Id.* at 344-45.

In *Linn*, the representative of the estate of Peter Bennet (the Estate) sought payment of nearly \$10 million in unpaid “deemed dividends.” In 1930, Bennet’s wealthy uncle died and the uncle’s will created a trust of which Bennet was a beneficiary. Bennet belonged to two classes within the trust — one of which was to receive 37.5% of income earned from Bennet’s uncle’s shares in Berry Holding Company (BHC) (the Income Beneficiaries); and one of which was to receive 25% of the income earned from the shares and, upon the youngest mem-

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ber turning 21, was to receive the corpus of the trust (the Principal Beneficiaries). Despite transfer of the corpus, distributions to the Income Beneficiaries would continue until their deaths. In 1949, the youngest Principal Beneficiary turned 21. As a result, Bennet became the owner of his portion of the shares as a Principal Beneficiary and was entitled to his additional 37.5% of the income as an Income Beneficiary.

BHC subsequently underwent two transitions. First, in 1986, BHC underwent a merger and became Berry Petroleum Company (BPC). As part of that merger and a related dispute with a third party, some of the shares were retired, which hampered the Income Beneficiaries. As such, the arrangement in the trust was altered such that, instead of receiving 37.5% of the dividends issued on the shares, the Income Beneficiaries would receive “deemed dividends” that were payments equal to whatever amounts the payments would have been had the shares not been retired. In other words, the amount of the deemed dividends was tethered to the value of the BPC dividends, but were not technically dividends.

Second, in 2013, BPC entered into a share-for-share exchange with Linn Energy, and BPC became Berry Petroleum Company, L.L.C. In the exchange, Linn agreed to continue to pay the deemed dividends to the Income Beneficiaries. (At

this point, Bennet was the sole survivor.) Those payments never occurred.

As fate would have it, Linn and Berry both filed for bankruptcy in 2016, shortly after Bennet’s death, and the Estate filed a claim for the missed payments. The debtors argued that the deemed dividends were subordinated under Section 510(b) as being securities. The Estate argued that the deemed dividends were not securities because Bennet could not transfer his interest in the payments, he did not have any voting or shareholder rights and he had no right to demand a dividend payment. In its analysis, the court posed three questions: 1) Is it a claim for “damages”?; 2) Does the claim involve “securities of the debtor”?; and 3) Does the claim arise from a “purchase or sale” having a nexus with those securities? *Id.* at 341. Neither side challenged that the claim was for damages.

As to the second question, the court stated that interests would be deemed “securities if they bear hallmarks of interests commonly known as securities.” *Id.* at 342 (internal quotes omitted). The court emphasized the difference between shareholders (who have potentially limitless benefits from the company’s success, but bear the risk of subordination in the event of failure) and creditors (who have a limited benefit in terms of a set repayment amount, but are paid ahead of shareholders in the event of failure). The court held

that, ultimately, Bennet had the same benefit expectations as a shareholder in that his payments, being directly tied to the companies’ dividends, were dependent on the success of the company and were potentially limitless. As such, the Estate should be made to bear the same risk as a shareholder and be subordinated.

As far as whether the claim arose from the purchase or sale of a security, the court stated that the claim need only undergo a “but for” analysis. Would the claim exist but for a purchase or sale of securities? *Id.* at 344. The court pointed to both the 1986 merger and the 2013 exchange and stated that but for either of those transactions (both of which qualify as a purchase or sale), the Estate’s claim would not exist. *Id.* Having satisfied all three elements, the Estate’s claim was subordinated under Section 510(b) as arising out of the purchase or sale of securities of the debtors despite that it was not technically a security.

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Lightning Strikes Twice in 5th Circuit, Creating Split with the 4th

In a pair of cases released on the same day, the Louisiana 5th Circuit Court of Appeal grappled with the tension between the competing interests of adequate discovery and disposition of a case by summary judgment.

Both cases involved personal injury claims based on theories of merchant or premises liability. Plaintiffs in both cases appealed summary judgment in favor of the respective defendants, arguing that summary judgment was premature because it denied them the “opportunity for adequate discovery” required under La. C.C.P. art. 966(3). The 5th Circuit affirmed both judgments, one unanimously and the other with one dissent.

In *Hill v. Hobby Lobby Stores, Inc.*, 19-0089 (La. App. 5 Cir. 10/2/19), ___ So.3d ___, 2019 WL 4855045, Hill sued Hobby Lobby for premises and/or object defect for injuries sustained after a chair displayed in the store collapsed when she tried to sit in it. Hobby Lobby moved for summary judgment on grounds that she

had failed to present positive evidence of essential elements of her claim. At the hearing on the motion, Hill argued that she had inadequate time for discovery and requested additional time to depose Hobby Lobby employees.

Judges Chaisson, Windhorst and Liljeberg presided over Hill’s appeal. The court stated that motions for summary judgment may be made at any time, and it is within the judge’s discretion either to render summary judgment or to allow further discovery. Further, while a party must be given an opportunity for “adequate discovery,” there is no absolute right to delay action on a motion for summary judgment until discovery is complete. Parties need only a “fair opportunity” to present their claims, the court reiterated, and a suit should not be delayed pending discovery when it appears at an early stage that there is no genuine issue of material fact, unless the plaintiff can show probable injustice arising from the dismissal.

The court observed that Hill’s accident occurred June 1, 2015, one year to the day before she filed suit on June 1, 2016. Hill propounded discovery requests to Hobby Lobby on Oct. 12, 2016. Hobby Lobby responded on April 11, 2018, but Hill did nothing in the interim to compel responses. Further, Hobby Lobby supplemented its responses on June 5 and June 15, 2018.

Hobby Lobby filed its motion for summary judgment on April 17, 2018, and the hearing on the motion was set for June 13. The hearing was continued to Sept. 26, at Hill’s request, for the very purpose of al-

lowing Hill time to conduct further discovery. The record is void of any actions taken by Hill between the June 13, 2018, continuance and the Sept. 26, 2018, hearing. While Hill argued that Hobby Lobby’s delinquency in responding to discovery supported her position, the court emphasized the fact that Hill did not file a motion to compel in the 18 months it took Hobby Lobby to answer. Finally, Hill never actually filed for a continuance of the summary judgment hearing, instead requesting additional time for discovery at the hearing itself. All of these facts considered, the panel unanimously decided there was adequate opportunity for discovery and the trial court committed no error in proceeding with the summary judgment hearing.

In *Milton-Gustain v. Salvage Store, Inc.*, 19-0042 (La. App. 5 Cir. 10/2/19), ___ So.3d ___, 2019 WL 4855045, the Gustains sued the Salvage Store for premises liability after Mrs. Gustain slipped on an unidentified oily substance on the store’s floor. In contrast to *Hobby Lobby*, the plaintiffs argued that summary judgment was premature because of specifically identified pending discovery.

The Gustains had previously attempted to secure the believed key witness’ deposition testimony before the hearing on the motion for summary judgment, but she did not appear for the deposition. In lieu of the forthcoming deposition testimony, the plaintiffs admitted, they had no positive evidence for their claim, but they speculated that her testimony would raise a genuine issue of material fact.

The Gustains did not file a request to continue the hearing; rather, they argued at the hearing that they should be able to conduct the deposition before proceeding. The defendant refused to acquiesce in a continuance until after the deposition on the basis that five employees had already been deposed, none of whom provided any positive evidence as to plaintiffs’ claims. Moreover, it was uncertain that the witness would even attend the rescheduled deposition.

The trial court proceeded with the hearing, and the Salvage Store prevailed on summary judgment. Plaintiffs appealed, arguing that proceeding on summary judgment before the final deposition could be conducted denied them

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adequate discovery.

Judges Gravois and Molaison issued the opinion that restated the law as in *Hobby Lobby*, adding that the mere contention that one lacks sufficient information to defend against summary judgment, and therefore requires further discovery, is insufficient to defeat summary judgment. The court observed that the plaintiffs knew the name and address of the former employee from discovery provided to them in December 2017 but did not ultimately serve her with a notice of deposition until July 22, 2018, and further took no action to continue the summary judgment hearing. Moreover, the witness' presence was not even guaranteed at the later deposition since the motion to compel was deficient. Considering these facts, the court determined that the Gustains received a fair opportunity for discovery and it was, therefore, proper to proceed on the summary judgment hearing.

Judge Wicker, the third panel member, strongly dissented, arguing that the passage of time did not necessarily indicate a fair opportunity for discovery, instead citing the four-factor test given in *Roadrunner*

Transportation System v. Brown, 17-0040 (La. App. 4 Cir. 5/10/17), 219 So. 3d 1265, 1272-73:


- 1) whether the party was ready to go to trial;
- 2) whether the party indicated what additional discovery was needed;
- 3) whether the party took any steps to conduct additional discovery during the period between the filing of the motion and the hearing on it; and
- 4) whether the discovery issue was raised in the trial court before the entry of the summary judgment.

Judge Wicker stated that plaintiffs' predicament was precisely the situation contemplated by *Roadrunner* — where the Gustains believed that the final witness was *the* crucial witness for their case, had specifically identified her as the remaining discovery to be conducted and had made significant efforts to obtain her deposition prior to the filing of the motion for summary judgment. Under these facts, proceeding in summary judgment was premature, as adequate discovery had not been allowed, and injustice would result therefrom. Furthermore, where the witness' failure to


show up for the prior deposition date was out of plaintiffs' control, the plaintiffs had demonstrated good cause for which a continuance should have been granted under La. C.C.P. art. 996.

Ultimately, time is not the key in the 4th Circuit but, based on these decisions, the passage of time will be given weight in the 5th Circuit. These three cases give rise to differing results in the circuits, making the issue ripe for legislative clarification of "adequate discovery" or Supreme Court interpretation.

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Louisiana Regional Haze

Sierra Club v. U.S. EPA, 939 F.3d 649 (5 Cir. 2019).

The 5th Circuit recently heard competing challenges — from both environmental groups and from industry — to the EPA’s approval of Louisiana’s plan to control regional haze. In its lengthy opinion, which conceded that Louisiana had failed to correctly and thoroughly vet its plan, the 5th Circuit nonetheless determined that EPA was within its power to approve the inadequate plan.

Two energy companies, Entergy Louisiana, L.L.C., and Cleco Power, L.L.C., argued that the Louisiana regional haze plan overestimated the pollution their plants produced by using a faulty model to measure emissions. The 5th Circuit cited the “significant deference” to agency decisions, deferred to EPA’s choice of an emissions model and re-

fused to consider that the data generated by the model was wrong. Interestingly, the EPA had agreed “in part” with the energy companies’ contention that the model “uses oversimplified and unrealistic assumptions.” *Id.* at 686. However, because the EPA decided to use the perhaps oversimplified and unrealistic model based on policy decisions that apply nationwide, the court deferred to EPA’s decision to apply the model here, even where other models would have been more accurate.

At the same time, Sierra Club and National Parks Association argued that Louisiana was supposed to weigh five mandatory factors when determining the Best Available Retrofit Technology (BART) to control emissions at an Entergy power plant. The 5th Circuit agreed that Louisiana skipped multiple parts of the mandatory statutory factors. In fact, the 5th Circuit noted that the EPA told Louisiana that its plan was based on erroneous data, but it was nonetheless still fine for the EPA to defer to Louisiana’s decision. The Louisiana DEQ did not expressly address all five required factors in its written plan, and instead simply stated that it “reviewed and weighed the five factors carefully.” The 5th Circuit determined this was sufficient to support the EPA’s approval of the state

plan: “Although the LDEQ could have offered a more thorough explanation of its reasoning. . . . [t]he EPA’s approval of that determination was not arbitrary or capricious.” *Id.* at 673.

Clean Water Act

Ctr. for Biological Diversity v. U.S. EPA, 937 F.3d 533 (2019).

The 5th Circuit dramatically increased the burden on plaintiffs in Clean Water Act (CWA) citizens’ suits to prove standing in this CWA decision.

Various environmental groups filed a CWA suit against the EPA after that agency approved a “General Permit” covering multiple oil and gas operations that discharge to federal waters in the Gulf of Mexico, attacking the permit on multiple grounds.

The 5th Circuit addressed standing first and noted that “[i]n environmental cases, courts must carefully distinguish between injury to the petitioner and injury to the environment. Article III standing requires injury to the petitioner. Injury to the environment is insufficient.” *Id.* at 537. The court agreed that “[s]ometimes an individual’s aesthetic, recreational, and scientific interests provide that link,” so long as those interests are actually harmed or are in imminent dan-

Deadlines Approaching for Earning, Reporting CLE Credits

The deadlines are quickly approaching for earning and reporting continuing legal education credits for the year. Preliminary transcripts were mailed to the membership on Nov. 27.

Remember that all hours must be **earned** by Dec. 31, 2019, and must be **reported** no later than Jan. 31, 2020, or late penalties will apply.

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

Attorneys admitted in 2018 are also required to earn a total of 12.5 hours but must have 8 hours of ethics, professionalism or law office management credits included within that total. Hours earned in the calendar years 2018 and 2019 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 MCLE exemption will be available online on Dec. 1. Attorneys may mail or email the exemption form to the MCLE Department, and it is recommended that attorneys keep a copy of any documentation related to that exemption on file. 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, 2020.

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. Access a “how-to” flyer on transcripts: www.lsba.org/documents/Members/MCLETranscriptHowTo.pdf.



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ger of being harmed. *Id.*

The court looked for a “geographic nexus” between the challenged discharges into the Gulf and the plaintiffs’ individual interests in the waters of the Gulf. Three of the four plaintiffs planned on snorkeling, viewing and photographing the Gulf waters from the shore; this was deemed an insufficient nexus to the deeper discharge area out in the Gulf.

The fourth plaintiff was different in that he spent a significant amount of time in boats and planes monitoring the offshore oil and gas industry and searching for oil spills. While this established a geographic nexus, the court found there was insufficient evidence of a “temporal nexus” between the complained-of discharges and this plaintiff’s presence: “No evidence suggests [plaintiff’s] boat trips and flyovers will coincide with the timing of discharges.” *Id.* at 540.

In addition, the fourth plaintiff could not show any adverse effect: “Someone who goes looking for pollution cannot claim an aesthetic injury in fact from seeing it. . . . [C]rucial to an aesthetic injury is that the aesthetic experience was actually offensive to the plaintiff.” *Id.* The court considered this plaintiff’s monitoring of the Gulf to constitute a possible self-inflicted injury.

The court concluded at this point that all plaintiffs had failed to prove they had standing to sue. The court went on in dicta to note that plaintiffs also failed to meet the traceability requirement for standing. The court did not believe that plaintiffs could trace a discharge allowed under the general permit to the plaintiffs’ specific injury from diminished use of the Gulf waters. The Gulf was simply too big and too complex to allow the court to infer “that a discharge in one place will necessarily affect a plaintiff’s interest in another place.” *Id.* at 545.

Compliance Dates for BAT and PSES

Clean Water Action v. U.S. EPA, 936 F.3d 308 (Aug. 28, 2019).

In this consolidated multidistrict litigation (MDL), various environmental groups petitioned for review of the EPA’s

final order that revised the earliest compliance dates for new BAT (“best available technology economically achievable”) effluent limitations and PSES (“pretreatment standards for existing source”) concerning waste streams from steam electric-power generating-point sources.

The complained-of compliance dates pertained to a 2015 rule that represented the culmination of 10 years’ work by the EPA to update steam electric-power generating-plant standards for compliance with the Clean Water Act. In the 2015 rule, the agency defined much more stringent BAT limits and pretreatment standards for seven defined waste-streams.

Knowing it would take a substantial amount of time for companies to plan, fund and build compliant new facilities, the agency allowed plants to defer compliance with the rules anytime from 2018 through 2023. Four separate lawsuits challenging this decision were filed and consolidated as an MDL. The EPA in response then reconsidered the 2015 rule with regard to two of the affected waste streams (FGD wastewater and bot-

tom ash transport water) and issued the “Postponement Rule” pertaining to these streams.

The 5th Circuit determined that the EPA’s 2015 rule and the subsequent postponement rule were well justified by the agency. First, it noted that the postponement rule was a properly noticed rulemaking, which was an appropriate way to modify the 2015 rule. Second, it addressed plaintiffs’ argument that the EPA violated the APA by focusing on only two out of the seven original waste streams and concluded that this decision also was well supported by the EPA. Finally, the EPA’s decision to grant a longer-than-three-year compliance rule was not arbitrary or capricious, given the circumstances surrounding the costs and difficulty expected in reaching compliance with these new standards.

—Lauren E. Godshall

Member, LSBA Environmental Law
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Final Spousal Support

Bloxom v. Bloxom, 52,728 (La. App. 2 Cir. 8/14/19), ___ So.3d ___, 2019 WL 3808020.

Ms. Bloxom obtained a protective order against abuse by Mr. Bloxom, and, subsequently, a divorce based on his domestic abuse of her and an award of final spousal support. The appellate court found that the award of support was appropriately set on the available evidence, including the uncertainty of Mr. Bloxom's actual income. There was no error in not fixing a time limit on the duration of the award, although it could be modified or terminated upon an appropriate change of circumstances. Subsequent amendments to the relevant articles, La. Civ.C. art. 103(4), 103(5) and 112, which were enacted after the filing of the petition and the signing of the judgment, were not retroactively applicable.

Custody

Calhoun v. Calhoun, 52,915 (La. App. 2 Cir. 8/14/19), 2019 WL 3807034.



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After having drug and alcohol abuse issues and attending a rehabilitation program, Ms. Calhoun sought to modify the existing custody plan. The court of appeal noted her allegations that she had remained sober for more than two years, purchased a home near the child's school, regularly attended his activities and had the ability to provide for him through her employment, and stated:

Although these alleged changes can be considered somewhat significant, given the prior events that have transpired, these cited circumstances also appear self-serving and superfluous, as these provide only negligible benefits to E.M.C.'s well-being. Thus, like the trial court, we cannot conclude that the circumstances cited by Jennifer actually rise to the level of material changes within the meaning of the law.

The appellate court agreed with the trial court's assessment that there was still the potential for relapse and that she needed to "prove herself" further. The appellate court also affirmed the trial court's decreasing her time with the child to end her physical custodial periods earlier because of the father's allegations that the child's school work was being affected. The appellate court also affirmed the trial court's fixing of the child support she was to pay, finding that the fact that there had not been a change of circumstances for custody did not also mean that there had not been a change of circumstances regarding child support; and that child support was not dependent on the amount of time that a parent spent with the child.

Guidry v. Guidry, 18-0639 (La. App. 5 Cir. 5/22/19), 274 So.3d 709.

The appellate court affirmed the trial court's award of joint custody, designating the father as domiciliary parent and requiring the mother's custody periods to be supervised. The mother had had drug abuse issues, and, although she had received treatment, the trial court had previously ordered that she be drug tested and have negative results for six months. She had only been tested for three months, only the last of which was negative. The

appellate court found that under these circumstances her visitation should be supervised, pending later review upon her showing continuing rehabilitation over a period of time. There was testimony from the assistant principal at the child's school as well as the Dean of Students that the child performed better under the father's care than under the mother's.

Protective Order

Pellerano v. Pellerano, 17-0302 (La. App. 1 Cir. 4/12/19), 275 So.3d 947, writ denied, 19-0756 (La. 9/17/19), ___ So.3d ___, 2019 WL 4881855.

The ex-husband's standing behind the ex-wife's car and not allowing her to back out and leave after a custodial transfer of the parties' children was sufficient to constitute false imprisonment, thereby supporting the issuance of an order for petition for protection from abuse against the ex-husband. There had also been physical and verbal abuse both during and after the parties' marriage.

Community Property

Burtner v. Burtner, 19-0175 (La. App. 1 Cir. 10/1/19), 2019 WL 4855334 (unpublished).

Following Mr. Burtner's petition for divorce, Ms. Burtner filed a petition to have the parties' pre-marital separate-property-regime contract declared invalid due to alleged fraud, duress and misrepresentation. She alleged that she did not see the contract until three days before the scheduled wedding and that he told her that if she did not sign it, she and her minor child would have to move out of his home. She also claimed that she was under duress because she had a custody battle going on with the father of her child. She also claimed that she was not allowed time to obtain counsel to review the agreement. Both he and the attorney who drafted and notarized the contract testified that she was offered the opportunity to obtain independent counsel but declined. Mr. Burtner also testified that she had been given the contract over two weeks before the day it was signed. The appellate court affirmed the trial court's denial of her petition, finding that, based

on credibility decisions, the trial court did not err. Further, her argument that the trial court erred in allowing a copy of the contract to be introduced was rejected, since she had the burden to provide evidence to invalidate the contract; and, additionally, both parties had offered copies of the contract into evidence, and a copy had been attached to her petition. Notably, the court specifically held that her claim that his telling her he would not marry her unless she signed the contract created duress was rejected because that position — the threat of doing a lawful act or of exercising a lawful right — “does not rise to the level of duress-inducing threats sufficient to vitiate her consent.”

Child Support

Pittman v. Flanagan, 19-0038 (La. App. 1 Cir. 9/27/19), ___ So.3d ___, 2019 WL 4729515.

The trial court did not err or deprive Flanagan of due process by limiting the amount of time each party could present his or her child-support claim at trial. The appellate court reviewed five factors for determining whether a party has been denied due process rights regarding time limitations for presenting a case and found that there had been no denial of rights under these circumstances. Further, it did not err in refusing to allow Flanagan’s financial expert to testify at the trial because the expert was not timely disclosed; nor did it err in refusing to allow his testimony to be proffered, particularly since he was not timely disclosed. The dissent argued that the trial court’s time limits were not reasonable, and, therefore, Flanagan was denied a fair opportunity to present his evidence; the dissenting judge would have remanded the matter to allow him additional time to present his case.

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Court of International Trade

Trendium Pool Prods., Inc. v. United States, Case 1:19-cv-00113 (Ct. Intl. Trade Aug. 20, 2019).

Trendium Pool Products filed suit against the Department of Commerce at the Court of International Trade challenging a scope ruling regarding imported pool kits and pool walls. Trendium imports the finished pool products from Canada into the United States. The products are partially made from corrosion-resistant steel imported into Canada from Italy and China. Corrosion-resistant steel products are subject to an antidumping order upon entry into the United States. In order to produce the finished pool products, Trendium first paints the imported steel from Italy and China. It next stamps or flattens the steel into individual corrugated

pieces shaped as needed for a particular pool design. The pool kits are shipped ready for installation with no additional manufacturing necessary.

Trendium requested a scope ruling from Commerce, contending that its finished pool products should not be subject to the antidumping order because the steel products that are subject to the order are mere inputs that undergo substantial transformation into a new product through processing in Canada. Commerce denied Trendium’s scope request based upon the Federal Circuit’s decision in *Mid-Continent Nail Corp. v. U.S.*, 725 F.3d 1295 (Fed Cir. 2013). Commerce ruled that the pool products were mixed-media items (products that are merely a combination of subject and non-subject merchandise) subject to the Commerce presumption that they are within the scope of the antidumping order. The Court of International Trade reversed the Commerce Department’s decision as unsupported by substantial evidence and contrary to law.

The court first ruled that the finished pool products are not subject to the plain scope language of the order. The order does not cover downstream products that

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cannot be used as a raw input. The subject pool products were never part of the underlying investigation, and the record lacked any evidence that Commerce considered downstream products. The court further ruled that the finished pool products were never subject to an International Trade Commission injury analysis, and therefore the antidumping order is inapplicable by operation of law under 19 U.S.C. § 1673 (requirement that a U.S. industry must be materially injured prior to imposition of antidumping duties).

World Trade Organization

United States-Tariff Measures on Certain Goods from China, (DS 543) (U.S. First Written Submission Aug. 27, 2019).

The United States released its first written submission provided to a World Trade Organization (WTO) dispute-settlement panel in a case brought by China challenging U.S. tariffs imposed as a result of its March 2018 Section 301 Report on China's policies and practices relating to technology transfer, intellectual property and other unfair trade acts. The U.S. Section 301 tariffs are at the heart of the ongoing trade battles between the United States and China. China alleges that the U.S. tariffs violate the WTO foundational Most Favored Nation principle (Article I) by imposing tariffs above the bound rate contained in the U.S. schedule of conces-

sions (Article II).

The United States' first written submission contends that China's request for Dispute Settlement Body findings violates nine separate core principles of the WTO. The United States contends that China's request violates, *inter alia*, DSU Article 12.7 (China and the United States have taken sovereign actions in their own interest and, therefore, they have both recognized that the matter does not involve WTO obligations); DSU Article 3.2 (China's unfair trade practices are not covered by existing WTO "rights and obligations" under covered agreements and, therefore, the DSU has no role); DSU Article 3.3 (China's retaliatory measures taken in response to U.S. Section 301 tariffs negates the "prompt settlement of disputes" principle of the DSU; DSU Article 3.4 (DSB findings in this case would not help resolve the underlying dispute because the issues are not covered by existing WTO agreements); and DSU Article 3.2 (DSB findings in this dispute would not add to WTO "security and predictability" because China's unfair trade actions are not subject to WTO rules and China has already taken countermeasures that would result from a favorable DSB ruling).

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5th Circuit Holds that Class Arbitrability is Gateway Issue for Court to Decide

The U.S. 5th Circuit Court of Appeals held that, absent clear and unmistakable language to the contrary, class arbitrability is a gateway issue for courts, not arbitrators, to decide. *See 20/20 Communc'ns, Inc. v. Crawford*, 930 F.3d 715, 717 (5 Cir. 2019).

In *20/20 Communications*, 18 field-sales managers individually filed for arbitration of their claims against their employer, 20/20 Communications, for failure to pay overtime compensation in violation of the Fair Labor Standards Act. *Id.* As a condition of their employment with 20/20 Communications, the field-sales managers had signed a mutual arbitration agreement that permitted arbitration on an individual basis but not on a class wide/collective action basis. *Id.*

After the field-sales managers filed an amended claim for arbitration clarifying that they wished to proceed collectively in all 18 actions, 20/20 Communications

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sought, *inter alia*, a declaration from the district court that the issue of class arbitrability was for the court, not the arbitrator, to decide as per the arbitration agreement. *Id.* When the district court held otherwise, 20/20 Communications appealed. *Id.* at 718.

Noting that the Supreme Court had not decided whether class arbitrability was a gateway issue for the courts to decide, the 5th Circuit recognized that several of its “sister circuits” had already decided the issue and determined that class arbitrability was, in fact, a threshold issue for the courts to decide. *Id.* (citing *Del Webb Cmtys., Inc. v. Carlson*, 817 F.3d 867, 877 (4 Cir. 2016); *Reed Elsevier, Inc. ex rel. LexisNexis Div. v. Crockett*, 734 F.3d 594, 599 (6 Cir. 2013); *Herrington v. Waterstone Mortg. Corp.*, 907 F.3d 502, 506-07 (7 Cir. 2018); *Catamaran Corp. v. Towncrest Pharmacy*, 864 F.3d 966, 972 (8 Cir. 2017); *Eshagh v. Terminix Int’l Co., L.P.*, 588 F. App’x 703, 704 (9 Cir. 2014) (unpublished); *JPay, Inc. v. Kobel*, 904 F.3d 923, 935-36 (11 Cir. 2018)).

The 5th Circuit agreed with the reasoning of its sister circuits that class arbitrability was a gateway issue for the courts to decide because of the fundamental differences between class arbitrations and individual arbitrations, like size and complexity. *Id.* at 719. Moreover, the court reasoned, class arbitrations implicate certain due process concerns (*i.e.*, receipt of notice, opportunity to be heard and right to opt-out) that raise the cost and reduce the efficiency of arbitration. *Id.* Finally, the court concluded that it was illogical for the parties to prohibit class arbitration in their agreement yet allow the arbitrator the authority to decide whether class arbitration was available. *Id.* at 720. Because the language in the agreement did not clearly and unmistakably overcome the legal presumption, the 5th Circuit held that class arbitrability was a threshold issue for the district court to decide in the matter. *Id.*

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Well Costs Reporting Statute; Penal Statutes; Notice

B.A. Kelly Land Co., L.L.C. v. Aethon Energy Operating, L.L.C., ____ F.Supp.3d ____, (W.D. La. 2019), 2019 WL 5021267.

This case teaches a lesson about following the letter of the law with regard to notice requirements pursuant to penal statutes. *B.A. Kelly Land Co., L.L.C.*, owns a tract of land in Bossier Parish that is within two compulsory drilling and production units — the Lower Cotton Valley Zone, Reservoir A, and the Haynesville Zone, Reservoir A. The land was subject to a mineral servitude, but the servitude terminated in 2013 when the servitude owner died. A mineral lease that had been granted by the servitude owner terminated when the servitude terminated, and Kelly then became an unleased owner.

Aethon became operator of the units in 2016. By then, 15 wells in the Lower Cotton Valley unit and one well in the Haynesville unit had reached payout. As an unleased owner, Kelly was entitled to its pro rata share of the wells’ monthly revenues after payout, subject to a deduction of Kelly’s share of ongoing operating costs. On Dec. 15, 2017, Kelly sent

a certified letter to Aethon. The letter identified the units, stated that Kelly was an unleased owner and requested certain information about well costs and revenue.

On April 17, 2018, Kelly sent a second certified letter. This letter asserted that Aethon had not complied with Louisiana law because it failed to send a sworn detailed statement that provided the operating costs and expenses requested by the first letter. A representative of Aethon then contacted a representative of Kelly and ultimately provided certain summary reports, but these did not contain the level of detail that Kelly sought about revenue and expenses.

In September 2018, Kelly filed a lawsuit based on La. R.S. 30:103.1 and 103.2 (Well Cost Reporting Statute). Kelly alleged that Aethon’s reports failed to include the information required under R.S. 30:103.1, and, pursuant to R.S. 30:103.2, the penalty for this failure was that Aethon forfeited its right to collect Kelly’s pro rata share of the wells’ operating costs. Kelly filed a motion for partial summary judgment that Aethon had forfeited its right to charge costs to Kelly.

The district court denied Kelly’s motion. Under R.S. 30:103.1, a unit operator must send sworn detailed reports to an unleased owner who makes a request by certified mail. Under R.S. 30:103.2, if the operator fails to send such reports within 90 days after the completion of a well, and the operator also allows 30 additional days to elapse after receiving a certified letter providing notice that it has failed to send the required reports in response to the first letter, the operator forfeits its right to collect costs from the unleased owner.



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However, because the statute is penal, it is strictly interpreted, and the forfeiture does not apply unless the unleased owner complies with the statute to the letter.

Here, the district court found that the December 2017 letter did not meet the requirements of R.S. 30:103.1 to request information and that the April 2018 letter did not meet the requirements of R.S. 30:103.2 to notify an operator of its failure to comply with a prior request for information. The court explained that one of the shortcomings of the letters was that they failed to reference R.S. 30:103.1 or R.S. 30:103.2. Further, when a proper request is made, R.S. 30:103.1 requires the operator to send initial reports and quarterly reports, but Kelly's letters did not specifically request initial and quarterly reports. The court concluded that the "formal notice" requirement of the statute was paramount given the statute's penal nature and that any ambiguity in the notice was to be construed against the party who sent the notice. Thus, because Kelly failed to follow the statutory requirements of the Well Costs Reporting Statute, its motion for partial summary judgment was denied. Indeed, the court stated that it planned to enter a sua sponte summary judgment in favor of Aethon.

Diversity Jurisdiction; Jurisdictional Amount; Attorney's Fees

Zip, L.L.C. v. Zachry Expl., L.L.C., ___ F.Supp.3d ___, (W.D. La. 2019), 2019 WL 5096092.

Zip, L.L.C., filed a lawsuit against Zachry Exploration, L.L.C., in state court, alleging that Zachry's operations damaged plaintiff's rice, crawfish and land. Zip demanded \$73,000 in damages. Zachry removed the case to federal court on the basis of diversity jurisdiction. Zip filed a motion to remand, arguing that the case should not stay in federal court because it did not seek the requisite amount (\$75,000) in damages to satisfy federal jurisdictional requirements. Zachry argued that that it did not matter that plaintiff only sought \$73,000 (\$2,000 shy of \$75,000) because plaintiff's attorney's fees would

likely exceed \$2,000, thus meeting the jurisdictional threshold. The court agreed. Although the court did not have before it any specific information about Zip's counsel's rate or the hours expended, it was not a reach for the court to find that any combination of typical rates and anticipated hours could result in an attorney's fee award in excess of \$2,000. Thus, the court found that Zachry met its burden regarding the amount in controversy and could stay in federal court.

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Discovery of Credentialing Records

Danos v. Minnard, 19-0268 (La. App. 5 Cir. 8/28/19), ___ So.3d ___, 2019 WL 4051706.

The trial court denied the plaintiffs' discovery request to a hospital for the "entire file" of each of the three physicians, determining that the documents were privileged pursuant to the peer-review statutes. The plaintiffs responded that, in addition to a medical malpractice claim, they had filed a separate negligent credentialing claim against the hospital, that a medical-review panel determined that the physicians had committed malpractice and that there was evidence that a hospital had "prior issues" with one of the physicians. The plaintiffs contended that the credentialing informa-

tion did not fall under the purview of the peer-review privilege.

The defendants countered that the only exception to La. R.S. 13:3715.3 was when physicians' hospital privileges are suspended or revoked, whereupon the physicians can obtain a copy of their own credentialing file if they file a lawsuit against a hospital for reinstatement. This argument led the plaintiffs to inquire how, after the Louisiana Supreme Court ruled a cause of action existed outside the MMA for negligent credentialing, there was no way to obtain credentialing evidence.

After discussing the peer-review statute's discovery limitations and recent Supreme Court decisions, the 5th Circuit determined that the failure of the trial court to conduct "an *in camera* review of the discovery documentation at issue" before denying the plaintiffs' motion to compel was error, and such a review "is required for a proper determination . . . as to whether the privilege provided in La. R.S. 13:3715.3 is applicable to the discovery documentation at issue." The appellate court then instructed the hospital to produce the "entirety" of the records requested, under seal, for an *in camera* review and recommended how the trial court, thereafter, should proceed:

Respondent WJMC shall produce to the trial court, *under seal*, for an *in camera* review, the documents requested by relators responsive to the discovery requests in their entirety, with proposed redactions of the analysis and conclusions of the peer review panel claimed by WJMC to be privileged. As to any purely factual information available to relators through other means of discovery, WJMC shall provide a statement indicating where and how such information is otherwise available to relators. After conducting an *in camera* review of the documentation provided, the trial court should render judgment either denying the motion to compel and clearly stating that the documents and information sought are protected by the statutory privilege under La. R.S. 13:3715.3 and contain no factual accountings or

documentation otherwise unavailable through ordinary discovery, or it should render judgment granting the motion to compel and clearly indicating which documents are to be produced, either in their entirety or with redactions, and providing all respondents with the opportunity to seek supervisory review of that determination prior to production of those documents to relators.

Discovery of DHH Records

Sawyers v. Naomi Heights Nursing Home & Rehab. Ctr., L.L.C., 19-0331 (La. App. 3 Cir. 8/21/19), ___ So.3d ___.

Disturbed by the care rendered by two nursing homes, and prior to the resident being moved to a third facility, the patient's family complained to the Louisiana Department of Health and Hospitals (DHH), which conducted unannounced investigations. DHH found both nursing homes' deficient practices in violation of federal and state regulations. The defendants filed a motion *in limine* to prevent use at trial of any DHH records about the patient or any complaint surveys conducted while she was a resident at the nursing homes. The motion was denied, and the defendants sought a supervisory writ.

The defendants acknowledged that Louisiana Code of Evidence art. 803(8)(a) (iii) allows factual findings from an investigation made pursuant to authority granted by law as an exception to the hearsay rule and, therefore, renders them admissible at trial. They argued, however, that Louisiana Code of Evidence art. 803(8) (b)(iv) excludes this exception when those factual findings result from an investigation of a particular case, *i.e.*, factual findings of general investigations are admissible; those of specific incidents are not.

The plaintiffs responded that all the information in the DHH reports is admissible pursuant to La. R.S. 13:3715.3, a statute they contend was specifically enacted for cases such as this one. The defendants countered that the plaintiffs' "reliance on La. R.S. 13:3715.3(G)(4)(e) [was] misplaced because that statute applies to peer

review proceedings, rather than to medical malpractice claims;" the plaintiffs' rejoinder was that the same statute was enacted as an exception to the hearsay rule *for* the admissibility of such records if they are related to an injury suffered by a patient in a civil suit.

The 3rd Circuit decided that La. R.S. 13:3715.3(G)(4)(e) favored admissibility and that the exclusion of evidence under the Louisiana Code of Evidence "does not mean that that evidence cannot be expressly designated admissible under another statutory provision, such as La. R.S. 13:3715.3(G)(4)(e)."

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Ad Valorem Tax Exemption Does Not Apply to Leased Property

Aaron's, Inc. v. Foster, 19-0443 (La. App. 4 Cir. 9/25/19), ___ So.3d ___, 2019 WL 4924307.

Aaron's, Inc. operates 50 stores in Louisiana, focusing primarily on the rent-to-own personal property business. Aaron's received two ad valorem tax bills from the City of New Orleans, which Aaron's paid under protest. Pursuant to Art. VII, Section 21 (C)(9) of the Louisiana Constitution, Aaron's claimed an exemption from the Orleans Parish ad valorem taxes because the personal property was being used in the homes of its customers. Aaron's and the tax assessor filed motions for summary judgment, contending each was entitled to judgment as a matter of law. The trial court granted the tax assessor's motion for summary judgment, finding that no exemption applied to Aaron's. Aaron's appealed the

district court's ruling.

Art. VII, Section 21 (C)(9) of the Louisiana Constitution provides that "personal property used in the home or on loan in a public place" shall be exempt from ad valorem taxation. Aaron's contended that its personal property, leased out with its customers, constitutes personal property used in the home.

The court held, based on a plain reading of the language, that the constitutional provision intended that the owner of the personal property be the party using the item in the owner's home in order to qualify for the ad valorem tax exemption. The court held the provision was intended to exempt personal property being used in someone's home by the owner or personal property being used for the public good as opposed to personal property owned by a business being used in a customer's home. In addition, the court noted that if Art. VII, Section 21(C)(9) was intended to exempt Aaron's leased personal property, there would be no need for the Legislature to enact a state statute providing tax credits for ad valorem taxes paid (La. R.S. 47:6006). The exemption provided by Art. VII, Section 21(C) (9) was found to not explicitly apply to Aaron's leased personal property.

In addition, Aaron's contended that the trial court failed to apply La. R.S. 9:3362 to find that its personal property being leased was not subject to the constitutional exemption. Aaron's contended that the statutory provision required the lessee be considered the owner of the leased property, thus obviating the payment of ad valorem taxes. The tax assessor contended that the provision applied only to sales taxes. The court agreed with the tax assessor and held Aaron's failed to prove La. R.S. 9:3362 created an exemption from ad valorem taxes that would apply to Aaron's leased personal property. The court held the tax assessor was entitled to summary judgment and affirmed the district court's ruling.

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Continued next page

Federal Court Dismisses Constitutional Challenge over State Tax Penalties

Rock Creek Oil, Inc. v. La. Dep't of Revenue, No. 2:19-CV-00815 (W.D. La. Sept. 13, 2019), 2019 WL 4413260.

After an audit, the Louisiana Department of Revenue (LDR) determined that Rock Creek Oil, Inc. (RCO) had failed to properly report an oil-and-gas well on its severance-tax returns. Accordingly, the LDR issued proposed assessments for tax, interest and penalties. Ultimately, the LDR waived half of the penalties but issued Notices of Assessment for the remainder. RCO filed a civil rights complaint against the LDR in the United States District Court for the Western District of Louisiana.

The LDR moved for dismissal for lack of jurisdiction and failure to state a claim. Under the Tax Injunction Act (TIA), 28 U.S.C. § 1341, a district court may not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a sufficient remedy may be had in state court. The court held that under *Direct Marketing Ass'n v. Brohl*, 135 S.Ct. 1124, 1130-31 (2015), notice and reporting requirements were a form of “information-gathering” for purposes of establishing tax liability. The court further held that information-gathering as such was not equivalent to the assessment, levy or collection of a tax. The court, therefore, reasoned that a federal suit concerning information-gathering functions did not affect the scope of collection activities protected by the TIA. RCO’s suit dealt with penalties related to reporting requirements, and so the court concluded that the TIA did not preclude federal jurisdiction over the case.

The Eighth Amendment prohibits fines that are grossly disproportional to the gravity of the defendant’s offense. However, the court recognized that the state Legislature had the first say in defining appropriate penalties. RCO did not challenge the facial constitutionality of the penalty statute itself and did not claim that the LDR had exceeded its statutory authority. To the contrary, the court noted that the LDR had in fact already waived

half the penalties that would have been due under the law. Consequently, the court held that RCO had failed to state a claim under the Eighth Amendment.

The court dismissed RCO’s due process claims because RCO elected not to exercise its procedural rights in Louisiana tribunals. The court also dismissed RCO’s estoppel claims. Finding no cause of action, the court dismissed the complaint. However, the court stated that the dismissal did not affect any remedies available to RCO under state law.

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Is House Flooding During a Natural Disaster a Redhibitory Defect?

In *Radlauer v. Curtis*, 19-0311 (La. App. 4 Cir. 2019), 2019 WL 3818794, the Louisiana 4th Circuit Court of Appeal reviewed whether a house flooding during a natural disaster created a redhibitory defect.

When Dr. Brint purchased the property in 1999, he signed a property disclosure statement stating the property sustained a “small amount of water seepage” in May 1995 (the 1999 property disclosure). In 2004, Mr. and Mrs. Radlauer (the purchasers) executed an agreement to purchase with Dr. Brint (the seller). Purchasers asked their agent prior to executing the act of sale whether the property ever flooded, and the agent stated the property had no history of flooding. The parties disagreed whether seller provided purchasers with the 1999 property disclosure. Seller, seller’s real estate agent and purchasers’ real estate agent testified that seller’s agent provided the 1999 property disclosure to purchasers’ agent, who then provided it to purchasers, but purchasers denied receiving it.

The Act of Sale was executed on Nov.

15, 2004, along with a property disclosure (the 2004 property disclosure) and an “As Is Clause” addendum, which included a waiver of redhibition. On the 2004 property disclosure, seller checked “no,” indicating that no flooding had been experienced on the property. The property later flooded as a result of Hurricane Katrina.

Purchasers sued seller and purchasers’ real estate agent for damages and redhibition. Seller filed a motion for summary judgment, which was granted on Jan. 2, 2019, and purchasers timely appealed. On appeal, purchasers’ main assignment of error was the district court’s finding that, because the property only flooded twice during major natural disasters, purchasers failed to show a redhibitory defect existed. The 4th Circuit reviewed whether the property’s “propensity to flood or experience water seepage” is a redhibitory defect.

Purchasers argued that the May 1995 flooding disclosed in the 1999 property disclosure was not proven to be connected to the May 8, 1995, flood. However, the 4th Circuit found that a copy of the National Flood Insurance Program Property Loss History for the property sent by FEMA reflected a flood payment was made for property loss sustained on “05/08/1995” and “08/29/2005,” and no other dates were listed.

Although susceptibility to flooding can be a redhibitory defect, the mere fact that a house has flooded under extraordinary rainfall is not a redhibitory defect. The record showed the property flooded only twice in a 10-year period, and each flood occurred during a natural disaster. Seller established the absence of facts that the property has a predisposition to flood under normal conditions, and purchasers failed to establish a genuine issue of material fact. Thus, the 4th Circuit held that the property did not have a redhibitory defect and affirmed the district court’s judgment granting seller’s motion for summary judgment.

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FORENSIC AND VALUATION SERVICES



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

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CHAIR'S MESSAGE

Don't Be Afraid to Be the Innovator

By Scott L. Sternberg

It happens all the time. Someone asks you to explain technology. They assume you are Bill Gates. Why? Because you're a young lawyer, of course.

My friends on the Young Lawyers Division (YLD) Council will tell you that something I very much dislike about the "young lawyer" label is that people assume we have an intuitive sense on how to operate technology. Often, we are asked to explain it to more seasoned lawyers.

We young lawyers (mostly) do have a natural, built-in advantage. Chances are you grew up with a computer in your classroom or even your home. Chances are you had a smartphone in college or definitely by law school.

This built-in advantage means there's less of a learning curve the first time we sit down in front of a new computer or operating system. Technology proficiency is a part of the Louisiana Code of Professionalism which was amended

to state, "I will stay informed about changes in the law, communication, and *technology* which affect the practice of law."

Recently, the YLD partnered with the Senior Lawyers Division to give a tech-focused CLE. It was a great success. In discussing the program, someone remarked as to how much the practice of law has changed in the past 30 years. Today, technology is a huge part of the practice — you bill using programs and not timesheets, you research using websites and not books, and you email pleadings instead of snail-mailing them.

Think about how long it took to research a simple legal issue in 1989. Now, you can go to Fastcase, Westlaw or LexisNexis and the answer is at your



Scott L. Sternberg


fingertips. Somebody, somewhere, had to clue everyone in on this amazing technology. Every firm or group is different to be sure, but, if there's an opening, I encourage you to be a gatekeeper.

My law partner, Michael Finkelstein, and I recently gave a presentation at the American Bar Association's Young Lawyers' Fall Conference in New Orleans on how we designed, tested and built our own "technology stack" at our firm — a collection of websites and apps designed to increase efficiency and accountability that any firm could implement, regardless of its size. We really enjoy technology, including demoing the latest and greatest. But we know that's not for everyone.

Luckily, there are numerous guides available online and from third-party providers on how to use technology to improve your practice. For example, you might be able to cut down your intra-office email traffic using a chat application like Microsoft Teams or Slack. Task management between you and your fellow associates and partners can be completely digitized using Trello, Wrike or Asana. The answers may just be a search away. (The LSBA Tech Center is an online resource at: www.lsba.org/PracticeManagement/TechCenter.aspx.)

Most of these improvements aren't incredibly expensive, but they may just not be on your firm's radar. I recently read that it won't be long before every law firm in the country of any significant size has a chief technology officer to make sure they are taking advantage of the newest and greatest ways to serve clients.

Maybe your office is a bit behind. People will look to you to be a tech expert because you're young. Don't be afraid to embrace that role and be the innovator for technology in your practice. It'll improve your practice, your efficiency and, just maybe, make your life a little easier.



YOUNG LAWYERS DIVISION NEWS

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

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

Introduce a new partner to your law firm

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

LAJ exists for one purpose only: to assist experienced and new lawyers so that they may better serve their clients. From battling for our clients' rights in the legislature to providing second-to-none networking opportunities, LAJ works 24/7 to help members succeed.

Members can expand their knowledge base by reading articles in the association's monthly magazine, joining a wide range of practice sections and participating on those list servers, and attending LAJ's outstanding CLE programs at a discounted rate. Events like LAJ's always popular Annual Convention and Fall Conference provide additional chances to build relationships with colleagues.

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

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

LAJ's annual dues for lawyers start at just \$95 and monthly payment plans are available. To join, contact us at 225-383-5554 or visit www.lafj.org.



442 Europe Street, Baton Rouge, Louisiana 70802-6406

YOUNG LAWYERS SPOTLIGHT

Felicia M. Hamilton Shreveport

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Shreveport attorney Felicia M. Hamilton.

Hamilton is the principal attorney of the Law Offices of Felicia M. Hamilton, L.L.C., in Shreveport. The firm's practice areas include criminal defense, wills, successions, personal injury, family law, real estate and other consumer matters. An avid volunteer, Hamilton regularly hosts workshops throughout the community to educate the public on

topics including expungements, consumer credit, wills and successions. She formerly served as a prosecutor and assistant city attorney for the City of Shreveport.

She earned her BA degree in accounting from Dillard University, her MBA degree from University of Phoenix/Atlanta and her JD degree, *cum laude*, from Southern University Law Center.



Felicia M. Hamilton

Hamilton was selected as a GP Solo Practice Fellow, vice chair of the National Conferences Team and Young Lawyers Division scholar by the American Bar Association. She is the 2018 recipient of the NAACP Jesse N. Stone Pioneer Award. She is a member of the Volunteers for Youth Justice Board and is a Diamond Life member of Delta Sigma Theta Sorority, Inc., where she serves both locally and on a national committee.

She is a classically trained pianist, jazz vocalist and church choir director and has shared her gift of music nationally and internationally.

LOCAL AFFILIATES

SWLBA Young Lawyers Section Receives ABA Award

The Southwest Louisiana Bar Association's Young Lawyers Section (SWLBA YLS) was selected as one of three recipients of the American Bar Association Young Lawyers Division's (ABA YLD) Affiliate Stars of the Quarter Award at the 2019 Fall Conference.

The SWLBA was highlighted for its Law Day program. The Law Day ceremony featured keynote speaker attorney Ted Justice Williams, a legal contributor to CNN, MSNBC, Fox News and other nationally broadcasted radio and television programs. He spoke on the theme "Free Speech, Free Press, Free Society," which originated from the ABA. Poster and essay contests among local elementary and high schools were held in connection with the theme, and winners of the contests were honored at the ceremony. Local news TV stations and newspapers covered the event.

The ABA YLD has more than 300 local affiliates and only three were selected to be highlighted at the fall conference. The ABA YLD presents Affiliate Star of the Quarter Awards to state and local bar associations affiliated with the ABA YLD who have had a meaningful impact on the ABA YLD's work in public service, member and professional service, diversity, and advocacy



The Southwest Louisiana Bar Association's Young Lawyers Section (SWLBA YLS) was selected as one of three recipients of the American Bar Association Young Lawyers Division's Affiliate Stars of the Quarter Award at the 2019 Fall Conference. The SWLBA was highlighted for its Law Day program featuring keynote speaker attorney Ted Justice Williams. Front row from left, Stephanie Buehler, SWLBA YLS member; Alyson V. Antoon, SWLBA YLS immediate past president; keynote speaker Williams; Janet D. Madison, SWLBA YLS secretary; and Dominique Nicholson, SWLBA YLS board member. Back row from left, Elizabeth F. (Liz) Shea, Louisiana State Bar Association Young Lawyers Division District 4 representative; Chastity R. (Chas) Swinburn, SWLBA YLS board member; Alexander L. (Alex) Reed, SWLBA YLS president; and Max E. Guthrie, SWLBA YLS treasurer.

on behalf of the profession. Stars of the Quarter are normally given to projects

whose level of professionalism and service deserve special recognition.

Louisiana
YOUNG LAWYERS
Conference

**YOUR
PRACTICE
YOUR
FUTURE**

2020



Friday, January 17, 2020

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LUNCH &
RECEPTION
INCLUDED

The Louisiana State Bar Association's Young Lawyers Division will sponsor its second annual Louisiana Young Lawyers Conference. Join in this innovative conference for an inspired day of learning and networking where you invest in yourself and renew your own excitement about the work you do. Make positive, professional connections that will help your business thrive.

CONFERENCE HIGHLIGHTS

PLENARY

Taking Charge of Your Career

MARKETING POWER HOUR

An Idea Exchange

Chat with other attendees about law-related topics that interest you in this speed networking format.

ROUNDTABLE SESSIONS

Your Brand: **Developing**
Your Elevator Speech and Personal Brand

Goal Setting:
Developing A Five-Year Career Plan

Tech Talk

**The Benefits of Pro Bono
and Community Service**

Social Media Marketing

Presentation of YLD Awards and Lunch

BREAKOUT SESSIONS

Session A: **#firmlife: Advancing at Your Firm**

Session B: Solo and Small Firm Success:
Tips and Tricks for Building Your Practice

SPRINT SESSIONS

Session A: **Transactions 101**

Session B: **Law Clerk Insider**

Session C:
Criminal Law for the Uninitiated

Session D: **Show me the Money**
Managing Student Loan and Financial Literacy

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

**The conference is open to the first 175 young lawyers who register for a cost of \$50. Online registration will close at 4:30 p.m. on Monday, Jan. 13, 2020, however on-site registration will be available if there are spots available. The conference has applied for 4 hours of CLE credit (including 1 hour of ethics, 1 hour of professionalism and 1 hour of law office management).*

Appointments

► Retired Judge Melvin C. Zeno was appointed, by order of the Louisiana Supreme Court, as chair of the Louisiana Judicial Campaign Oversight Committee for a term of office which began Sept. 25, 2019, and will end upon amendment through future orders of the Court.

► Orleans Parish Juvenile Court Judge Candice Bates Anderson was appointed, by order of the Louisiana Supreme Court, to the Judicial Budgetary Control Board for a term of office which began Sept. 20, 2019, and will end on Sept. 19, 2022.

► Jerry Edwards, Jr. was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a term of office which began Sept. 15, 2019, and will end on Sept. 14, 2024.

► Robert W. Kostelka was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office which ends on May 1, 2023.

Retirements

► East Baton Rouge Parish Juvenile Court Judge Pamela Taylor Johnson retired Aug. 1, 2019. She earned her BS degree in 1976 from Jackson State University and her JD degree in 1979 from Southern University Law Center. She was a partner in the law firm Johnson, Ritzie, Taylor & Thomas. Thereafter, she served as general counsel for the Louisiana Department of Education and as staff attorney for Capital Area Legal Services and the Louisiana Department of Health and Human Resources. In 1988, she was co-counsel for *Clark v. Edwards*, which

made it possible for African-Americans to become elected to the judiciary in Louisiana. She was elected Juvenile Court judge in 1994 and reelected in 1996, 2002, 2008 and 2014. She created the Juvenile Justice Community Task Force which led to the creation of the first Juvenile Drug Court Program in Louisiana in 1998. She was an active member of the Louis A. Martinet Legal Society, Inc., the National Organization of Public Education Lawyers, the National Association of Women Judges, the Children's Code Task Force, the National Council of Negro Women, the Louisiana Judicial Council/National Bar Association and the National Council of Juvenile and Family Court Judges and was general counsel for the Louisiana State NAACP. She was an adjunct professor at Southern University's Department of Criminal Justice. She is married to Baton Rouge attorney Ernest Johnson and they are the parents of two children.

► 19th Judicial District Court Judge Michael R. Erwin retired Aug. 1, 2019. He earned his BA degree in 1972 from Southeastern Louisiana University, another BA degree in 1976 from Louisiana State University and his JD degree in 1979 from Southern University Law Center. He was elected to the 19th Judicial District Court in 1992 and was reelected in 1996, 2002, 2008 and 2014. He is married to Debra Sue Erwin and they are the parents of two children.

Deaths

► Retired 30th Judicial District Court Judge Theodore Ralph Broyles, 92, died Aug. 9, 2019. He earned his BA degree from Centenary College and his JD degree from Louisiana State University Paul M. Hebert Law Center.

He was admitted to the practice of law in 1948. He served 12 years as city attorney of the Town of Leesville and six years as assistant district attorney for the 30th Judicial District. He practiced law in Leesville until his election to the 30th JDC in 1976. He won an additional term in 1979 and was reelected without opposition in 1985 and 1991. He retired in 1996.

► Retired Baton Rouge City Court Judge Rosemary Torbet Pillow, 94, died July 7, 2019. She earned her BA degree in 1946 from Louisiana State University and was one of the first women to earn a JD degree in 1949 from Tulane Law School. She was elected Baton Rouge City Court judge in 1980, becoming the first woman elected to that court. She was reelected without opposition in 1983 and won an additional term in 1989. Prior to becoming parish clerk/council administrator in 1971, she was the first woman assistant parish attorney in Baton Rouge in 1962. She retired from the bench in 1995.

► Retired New Orleans Municipal Court Judge Bruce James McConduit, 70, died Sept. 13, 2019. He earned his BS degree in 1971 from Xavier University of Louisiana and his JD degree in 1976 from Loyola University College of Law. He took the oath of office in 1987 becoming the first African-American Municipal Court judge elected in Orleans Parish. He served as ad hoc judge for the Louisiana Supreme Court. He was a member of the Community Organization of Urban Politics, the 4th and 5th Circuit Court Associations, the Louis A. Martinet Legal Society, Inc., the American Bar Association and the Louisiana City Judges Association. He retired in 2007.



Brian Abels



Harold Adkins



Glenda Barkate



Ashley Bass



T. Peter Breslin



Michele Crosby



Winston Decuir, Sr.



Charles Duhe, Jr.



Hon. Glennon
 Everett (ret.)



Gabriel Feldman



Frank Fertitta



Carolyn
 Gill-Jefferson



Jay Ginsberg



Harvey Godofsky



Hon. Skip
 Hanemann (ret.)



Bobby Harges



Joe Hassinger



Grady Hurley



Roger Javier



Robert Jenks



Robert Johnston



Randall Keiser



Peter Kopfinger



Harold Koretzky



Roger Lame



John Lawrence, Jr.



Patricia Leblanc



Brad Luminais, Jr.



Lourdes Martinez



Jay McCreary



Charles Minyard



Michael Moran



Hon. Freddie
 Pitcher, Jr. (ret.)



Hon. Suzan
 Ponder (ret.)



Steven Rabalais



Hon. Nadine
 Ramsey (ret.)



George Recile



Stephanie Roberts



Jack Roethele



Elizabeth Ryan



Rocky Seydel, Jr.



Martin Simone, Jr.



Billy Stark



Jim Thompson



Thomas Usdin



Colby Wenck



Kathryn Wiedorn



Gary Zwain

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

King & Jurgens, L.L.C., announces that Laurent J. Demosthenidy has joined the New Orleans office as of counsel and Kyle T. Townsley has joined the New Orleans office as an associate.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that **Stephen F. Butterfield** has joined the New Orleans office as an associate.

Milling Benson Woodward, L.L.P., announces that **Andrew R. Capitelli**, **Shannon Howard-Eldridge** and **Andrew C. Wilson** have joined the firm's Northshore (Mandeville) office as partners. Also, **Cody J. Acosta**, **Cynthia M. Bologna**, **Jenna K. Fugarino** and **Nicholas G. Grest** have joined the Mandeville office as associates.

Saul R. Newsome announces that he has opened his new firm, Newsome International Law, L.L.C., located at

918 N. Foster Dr., Baton Rouge, LA 70806; (225)384-0204; website www.newsome-law.com.

Perry Dampf Dispute Solutions announces that **Robert J. David, Jr.** and **Pride J. Doran** have joined the firm as mediators. David, with Juneau David, A.P.L.C., in Lafayette, is based in Perry Dampf's Lafayette mediation office. Doran will continue to practice with Doran & Cawthorne in Opelousas.



Cody J. Acosta



W. Raley Alford III



Richard J. Arsenault



Andrew Blanchfield



Cynthia M. Bologna



Stephen F. Butterfield



Andrew R. Capitelli



Blake R. David



Robert J. David, Jr.



James H. Domengeaux



Pride J. Doran



Eva J. Dossier



Jenna K. Fugarino



Darrinisha Gray



Nicholas G. Grest



Meredith L. Hathorn



Fred L. Herman



Shannon Howard-Eldridge

Shackelford, Bowen, McKinley & Norton, L.L.P., announces that Donald L. Cunningham, Jr. has joined the Baton Rouge office as of counsel.

Smith & Fawer, L.L.C., in New Orleans announces that **Darrinsha Gray** has joined the firm as an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was a speaker at a Colloquium seminar at the University of Texas Law School on “Current Issues in Complex Litigation,” including class actions and MDLs. He was selected by the American Institute of Personal Injury Attorneys as one of the “10 Best Attorneys for Louisiana.” He is serving on the Louisiana State Bar Association’s Continuing Legal

Education Committee for 2019-20.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Noah B. Kressler, a shareholder in the New Orleans office, and Layna Cook Rush, a shareholder in the Baton Rouge office, were elected Fellows of the American Bar Foundation. Also, Kressler was appointed to the board of directors and executive committee of the New Orleans Business Alliance.

Andrew Blanchfield, managing partner of Keogh, Cox & Wilson, Ltd., in Baton Rouge, became a Fellow of the American College of Trial Lawyers.

Blake R. David, founding partner with Broussard & David in Lafayette, was accepted into the American Board of Trial Advocates.

Donna D. Fraiche, senior counsel in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was conferred with the Order of the Rising Sun, Gold Rays with Neck Ribbon, by the Government of Japan for her contributions as Honorary Consul of Japan.

Meredith L. Hathorn, managing partner in the New Orleans office of Foley & Judell, L.L.P., was elected to the board of directors of the Municipal Securities Rulemaking Board.

Christy M. Howley, member in the firm of Bowman & Howley in Gretna, was elected chair of the board of directors of Volunteers of America Southeast Louisiana.

Continued next page



Lynn M. Luker



Conrad Meyer IV



Kathryn W. Munson



Thomas P. Owen, Jr.



C. Michael Parks



Matthew J. Paul



Patrick W. Pendley



Patrick K. Reso



Bryan C. Reuter



William M. Ross



James Parkerson Roy



David R. Sherman



Richard C. Stanley



Elwood C. Stevens, Jr.



Jennifer L. Thornton



Andrew C. Wilson



Bob F. Wright



Timothy T. Yazbeck

C. Michael Parks, a member in the New Orleans office of Mouldoux, Bland, Legrand & Brackett, L.L.C., was elected to fill a vacancy on the Louisiana Association of Defense Counsel board in District 4.

Patrick W. Pendley, senior partner in the Plaquemine office of Pendley, Baudin & Coffin, L.L.P., and co-counsel were awarded Public Justice's 2019 Trial Lawyer of the Year Award.

PUBLICATIONS

Best Lawyers in America 2020

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): David L. Carrige (New Orleans Lawyer of the Year, Product Liability Litigation-Defendants), Lawrence R. DeMarcay III, Brian R. Johnson, Joel A. Mendler, Jerome J. Reso, Jr., Leon H. Rittenberg III (New Orleans Lawyer of the Year, Nonprofit/Charities Law), John A. Rouchell, William B. Schwartz, John A. Stewart, Jr., Andrew T. Sullivan, Matthew A. Treuting and Karl J. Zimmerman.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P. (Hammond, Metairie): **Fred L.**

Herman, Conrad Meyer IV, Patrick K. Reso and David R. Sherman.

Domengeaux Wright Roy & Edwards, L.L.C. (Lafayette): **James H. Domengeaux, James Parkerson Roy, Elwood C. Stevens, Jr. and Bob F. Wright.**

Juneau David, A.P.L.C. (Lafayette): **Robert J. David, Jr.**

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **W. Raley Alford III, Lynn M. Luker, Thomas P. Owen, Jr., Bryan C. Reuter, William M. Ross, Richard C. Stanley** (New Orleans Lawyer of the Year, Litigation-Real Estate) and **Jennifer L. Thornton.**

Louisiana Super Lawyers 2020

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **W. Raley Alford III, Lynn M. Luker, Thomas P. Owen, Jr., Bryan C. Reuter, William M. Ross, Richard C. Stanley and Jennifer L. Thornton; Eva J. Dossier, Kathryn W. Munson and Matthew J. Paul**, all Rising Stars.

New Orleans Magazine

Smith & Fawer, L.L.C. (New Orleans): **Timothy T. Yazbeck**, 2019 Top Lawyer.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication Deadline

April/May 2020	Feb. 4, 2020
June/July 2020	April 4, 2020
Aug./Sept. 2020	June 4, 2020
Oct./Nov. 2020	Aug. 4, 2020
Dec. 2020/Jan. 2021	Oct. 4, 2020

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

Publications Coordinator Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130-3404
or email dlabranche@lsba.org.

Celebrating 55 Years of CIVIL RIGHTS Moving from WHY to HOW

MARCH 27, 2020 • SHERATON NEW ORLEANS HOTEL • 500 CANAL ST., NEW ORLEANS, LA
13TH ANNUAL CONCLAVE ON DIVERSITY IN THE LEGAL PROFESSION

The Conclave will examine the history and future of civil rights, paying homage to the trailblazers of the past and looking to the future. Highlights include:

► **Luncheon Panel:** "The 5th Circuit Four." Moderated by Hon. Brian A. Jackson, U.S. District Court, Middle District of Louisiana; with speakers Hon. Stephen A. Higginson, 5th Circuit Court of Appeals; Hon. Carl J. Stewart, 5th Circuit Court of Appeals; and Jack M. Weiss, Liskow & Lewis, APLC. The panel will explore the cost of enforcing the rule of law and reupdating racism during the turbulent Civil Rights period.

► **Breakout Sessions:** Two breakout sessions (Criminal Justice and Voting Rights) facilitated by highly credentialed speakers that will provoke discussions regarding the scope and meaning of inclusion, the state of the profession, and the case for a diverse and inclusive legal profession.

► **Civil Rights Sessions:** Two Civil Rights sessions featuring a panel of academics and Civil Rights pioneers. Charles Person, one of the 13 original Freedom Riders, will share insights on the Civil Rights movement.

UPDATE

Access to Justice Commission Receives Justice for All Project Grant

The Louisiana Access to Justice Commission was awarded a grant under the Justice for All (JFA) Project, currently funded by the JPB Foundation, the Public Welfare Foundation, the Kresge Foundation and the Open Society Foundations and housed at the National Center for State Courts. Louisiana is one of only three state recipients in 2019 and one of 14 total recipients since the project was launched in 2016.

The JFA grants were created to implement two advanced resolutions promulgated by the Conference of Chief Justices and the Conference of State Court Administrators. Recognizing that the ever-increasing gap in meaningful access to the justice system coupled with severe funding deficiencies is thwarting the civil justice system’s promise of equal access, the resolutions aim to right the ship. One resolution sets the aspirational goal of 100%

meaningful access to effective assistance for essential civil legal needs, while the second calls on courts, civil legal aid organizations, Access to Justice Commissions and other traditional and non-traditional stakeholders to collaborate to develop a comprehensive and layered approach to achieve meaningful access to justice.

The award will support the Access to Justice Commission’s efforts to form partnerships with relevant stakeholders in the civil justice community and beyond to develop state assessments and strategic action plans to help reach the goal of 100% meaningful access. Louisiana, Illinois and Michigan each will receive an initial strategic action planning grant of up to \$100,000 and will be eligible to apply for funding in the following year to begin implementation of their plans.

During the JFA process, the Louisiana Access to Justice Commission is planning

to:

- ▶ conduct a statewide inventory assessment of legal, social and community services that exist;
- ▶ identify accessibility of services and programs by area and subject matter;
- ▶ identify gaps in services and resources;
- ▶ increase knowledge and awareness of available services and programs through strategic planning with traditional and non-traditional partners;
- ▶ prioritize components identified in gap analysis;
- ▶ continue collaborations with traditional and non-traditional partners; and
- ▶ support the rollout of the comprehensive Civil Legal Navigator system.

The Louisiana JFA grant will be administered through the Louisiana Bar Foundation.

Francophone Section Presents Symposium on “Acadian Diaspora”

The Louisiana State Bar Association’s (LSBA) Francophone Section celebrated the 40th anniversary of its collaboration with the University of Moncton School of Law on Aug. 20 by presenting the symposium titled “Acadian Diaspora: From Louisiana to Acadia” during the 25th anniversary of the *Congrès mondial acadien* 2019 in Moncton, New Brunswick. This also marked the 20th anniversary of the founding of the LSBA Francophone Section.

The symposium featured presenters Jason P. Theriot, Ph.D., Houston, Texas, “French Language Heritage: World War II Cajun Soldiers’ Use of French;” Jean-Robert Frigault, Moncton, New Brunswick, “Life and Times of Justice

Joseph A. Breaux, the First Cajun to Represent Louisiana at an International Acadian Conference;” Fernin Eaton, St. Francisville, and Warren A. Perrin, Lafayette, “*Où allons-nous à partir d’ici?* Mr. Perrin’s Petition — The Next 40 Years;” Barry Ancelet, Ph.D., Lafayette, “Dikes and Dialects, Songs and Stories, Legends, Possessions and Processions: Shared Identities Between *Acadie du Nord* and *Acadie Tropicale*;” John Schoonenberg, Houma, “Ethics and Professionalism;” Mary Perrin, Lafayette, “The Healing Traditions of Acadians;” and Warren A. Perrin, Lafayette, “The New Acadia Project — Seeking the First Acadian Settlement in Louisiana.”



The Louisiana State Bar Association’s (LSBA) Francophone Section celebrated the 40th anniversary of its collaboration with the University of Moncton School of Law on Aug. 20 by presenting a symposium at the law school. From left, Warren A. Perrin, co-chair of the LSBA Francophone Section and symposium presenter; Euclide Chiasson, former president of the *Société nationale d’Acadie*; and Mary Broussard Perrin, symposium presenter.

Judge Owen Becomes Chief Judge of U.S. 5th Circuit

Judge Priscilla Richman Owen of Austin, Texas, became the chief judge of the U.S. 5th Circuit Court of Appeals on Oct. 1, 2019. She succeeded Chief Judge Carl E. Stewart.



Judge Priscilla Richman Owen

Judge Owen earned a BA degree, *cum laude*, in 1976 from Baylor University and her JD degree, *cum laude*, in 1977 from Baylor University School of Law, where she served on the *Baylor Law Review*. After law school, Judge Owen joined the firm of Andrews & Kurth in Houston, Texas. In 1994, she was elected to serve on the Texas Supreme Court. She was reelected in 2000. President George W. Bush appointed her to serve on the 5th Circuit Court of Appeals. She took the oath of office on June 6, 2005.



The 4th Judicial District Bar Association held its annual Opening of Court ceremony on Sept. 6, 2019. Chief Judge Daniel J. Ellender, 4th Judicial District Court (JDC), opened the ceremony and recognized new members. 4th Judicial District Bar President April M. Hammett gave closing remarks. Judges attending included, front row from left, Hon. H. Stephen Winters, 4th JDC; Hon. B. Scott Leehy, 4th JDC; Hon. Robert C. Johnson, 4th JDC; Hon. Larry D. Jefferson, 4th JDC; and Hon. Marcus L. Hunter, 4th JDC. Back row from left, Hon. D. Milton Moore III, Louisiana 2nd Circuit Court of Appeal; Hon. James M. (Jimbo) Stephens, Louisiana 2nd Circuit Court of Appeal; Hon. Jefferson B. Joyce, Monroe City Court; Hon. C. Wendell Manning, 4th JDC; Hon. Alvin R. Sharp, 4th JDC; Hon. Daniel J. Ellender, 4th JDC; Hon. Sharon I. Marchman, 4th JDC; and Hon. J. Wilson Rambo, 4th JDC.

LOCAL / SPECIALTY BARS

FBA New Orleans Chapter Presents Awards, Elects Officers

The Federal Bar Association's New Orleans Chapter held its annual meeting and luncheon on Aug. 22, 2019, presenting awards and electing officers. Saad M. Soliman, founding executive director of the Peers Mentoring Center and Peace by Piece, Inc., was the keynote speaker.

Immediate Past President Kathryn M.

Knight presented the President's Award to Brian J. Capitelli, with Capitelli & Wicker; the John R. (Jack) Martzell Professionalism Award to Richard C. Stanley, with Stanley, Reuter, Ross, Thornton & Alford, L.L.C.; and the Camille F. Gravel, Jr. Award to Ernest L. Jones, with Elie, Jones & Associates.

Chief Judge Nannette J. Brown,

U.S. District Court, Eastern District of Louisiana, presided over the election of officers. Judge Brown was elected chapter president; Steven F. Griffith, Jr., president-elect; Michael J. Ecuyer, treasurer; Donna P. Currault, recording secretary; Brian J. Capitelli, membership chair; and Alysson L. Mills, Young Lawyers Division chair.



Attending the Federal Bar Association (FBA) New Orleans Chapter's annual meeting were, from left, Marcus V. Brown, Entergy; Chief Judge Nannette J. Brown, U.S. District Court, Eastern District of Louisiana, and 2019-20 FBA New Orleans Chapter president; and Louisiana State Bar Association 2019-20 President Robert A. (Bob) Kutcher.



Recipients of Federal Bar Association New Orleans Chapter awards were, from left, Richard C. Stanley, the John R. (Jack) Martzell Professionalism Award; Ernest L. Jones, the Camille F. Gravel, Jr. Public Service Award; and Brian J. Capitelli, the President's Award.



The Alexandria Bar Association held its annual Opening of Court ceremony on Sept. 4, 2019. Chief Judge W. Gregory Beard, 9th Judicial District Court, opened the ceremony. Alexandria Bar Association President Ronnie G. Beard gave introductory remarks. Joshua J. Dara, Jr. with the Young Lawyers Section introduced new attorneys. Louisiana State Bar Association 2019-20 President Robert A. (Bob) Kutcher welcomed new attorneys. Alexandria Bar Association officers, from left, Matthew L. Nowlin, treasurer; Ronnie G. Beard, president; LSBA President Kutcher; Michael S. Koch, immediate past president; and Jonathan D. Stokes, vice president.



The 22nd Judicial District Court (JDC) held its annual Opening of Court ceremony on Sept. 6, 2019. St. Tammany Parish Sheriff Randy Smith opened the ceremony. 22nd JDC Chief Judge Dawn Amacker, seated, gave introductory remarks. Louisiana State Bar Association 2019-20 President Robert A. (Bob) Kutcher welcomed new attorneys. Attending the event included, Hon. Allison H. Penzato, Louisiana 1st Circuit Court of Appeal; Hon. August J. Hand, 22nd JDC; Hon. William J. Knight, 22nd JDC; Hon. Reginald T. Badeaux, 22nd JDC; Hon. William J. Crain, Louisiana 1st Circuit Court of Appeal; Hon. Patricia A. Hedges, 22nd JDC (Ret.); Hon. Richard A. Swartz, Jr., 22nd JDC; Hon. Raymond S. Childress, 22nd JDC; Hon. Peter J. Garcia, 22nd JDC; Hon. Alan A. Zaunbrecher, 22nd JDC; and Hon. William H. Burris, 22nd JDC.



The Baton Rouge Bar Association hosted its Law Day event on May 1. Middle and high school students witnessed a naturalization ceremony and Baton Rouge Mayor-President Sharon Weston Broome delivered the Law Day Proclamation. From left, Magistrate Judge Erin J. Wilder-Doomes, U.S. District Court, Middle District of Louisiana; Magistrate Judge Richard L. Bourgeois, Jr., U.S. District Court, Middle District of Louisiana; and Judge John W. deGravelles, U.S. District Court, Middle District of Louisiana.



The Baton Rouge Bar Association (BRBA) hosted its 90th Anniversary celebration on Aug. 16, 2019. The event featured a reception and an awards ceremony. BRBA current President Amy C. Lambert, center, with former presidents, from left, Michael W. McKay, Michael H. Rubin, Lambert, Chistine Lipsey and Leo C. Hamilton.

Awards Presented at GNO Martinet Annual Scholarship Gala

The Greater New Orleans Louis A. Martinet Legal Society, Inc. celebrated its annual Scholarship Jazz Brunch on Sept. 14, 2019. The theme was “Honoring the Past, Celebrating the Present, and Building the Future.” Hon. Penny Brown Reynolds was the keynote speaker.

Several members of the legal community were honored. Recognized were Wayne J. Lee, Stone Pigman Walther Wittmann, L.L.C., Lifetime Achievement Award; Judge Terri F. Love, Louisiana 4th Circuit Court of

Appeal, Louis A. Martinet Award; Chief Judge Nannette J. Brown, U.S. District Court, Eastern District of Louisiana, Ernest Morial Award; Adria N. Kimbrough, The Kullman Firm, Dr. Norman C. Francis Award; Camille R. Bryant, McGlinchey Stafford, P.L.L.C., A.P. Tureaud Award; Robert Jones, Orleans Public Defenders Office, Earl J. Amedee Award; and April D. Davenport, Ebony S. Morris, Megan Hayes and Brent E. Bartholomew, Martinet President’s Award.



Kim M. Boyle, left, 2009-10 Louisiana State Bar Association president, joined officers of the Greater New Orleans Louis A. Martinet Legal Society, Inc. From left, Camille R. Bryant, president-elect; Ebony S. Morris, vice president of membership; Cory J. Vidal, immediate past president; Kimberly R. Silas, president; and Lezlie A. Griffin, Tulane University Law School.

President's Message

The Giving Season

By 2019-20 President Amanda W. Barnett

Soon we'll be busy shopping for holiday gifts, spending time with family and friends, eating delicious food, and, hopefully, reflecting on the spirit of the season — giving. As the end of the year approaches, our personal and professional to-do lists grow increasingly long. Please remember to put the Louisiana Bar Foundation (LBF) on your list this year.

The LBF is a non-profit 501(c)(3) entity organized under the state of Louisiana. As the largest state funder of civil legal aid, the LBF supports non-profits throughout Louisiana that provide free, civil legal rep-

resentation to the indigent, law-related education to the public, and administration of justice projects.

Civil legal aid helps people solve critical, life-changing problems. It provides free legal assistance to those who would otherwise go unrepresented. The help provided by civil legal aid programs supports the American core value of equal access to justice.

The LBF provides an opportunity for



Amanda W. Barnett

all lawyers to play a part in ensuring that every Louisiana citizen has equal access to the justice system. By working together, we can continue to provide free civil legal aid to Louisiana's most vulnerable citizens.

Take the time during this busy holiday season to reflect on the blessings in your life and consider a tax-deductible gift to the LBF. 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. For more information, contact Development Director Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

Scholarship Applications Available Online for LBF Kids' Chance Program

The Louisiana Bar Foundation (LBF) Kids' Chance Scholarship Program is the state chapter of a national organization that awards scholarships to the children of Louisiana workers who have been killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law. This year, the LBF awarded \$55,500 to 16 students to help with their education. Since 2004, the program has awarded 306 schol-

arships totaling \$719,000.

Scholarship applications for the 2020-21 school year are available online on the LBF's website, www.raisingthebar.org. Application deadline is Feb. 17, 2020.

Students who may qualify for a Kids' Chance Scholarship but who are not of college age should register with Kids' Chance of America: Planning for the Future online at: <https://www.kidschance.org/planning-for-the-future/>.



The Louisiana Bar Foundation (LBF) received a check for \$29,000 from the Louisiana Workers' Compensation Corp. (LWCC). The LWCC hosted the 16th annual Kids' Chance Golf Tournament on Sept. 23, 2019, and donated all proceeds to the LBF Kids' Chance Scholarship Program. From left, LBF Kids' Chance Committee Chair Matthew R. Richards; LWCC Senior Vice President and Chief Claims Officer Paul D. Buffone; and LBF President Amanda W. Barnett.

Sponsors Sought for the LBF's 34th Annual Fellows Gala

The Louisiana Bar Foundation will celebrate the 34th Annual Fellows Gala Friday, April 3, 2020, at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans.

Recognized during the gala will be Distinguished Jurist Robert H. Morrison III, 21st Judicial District Court; Distinguished Attorney Marcus V. Brown, Entergy Corp.; Distinguished Attorney Mary Terrell Joseph, McGlinchey Stafford, P.L.L.C.; and Distinguished Professor John

M. Church, Louisiana State University Paul M. Hebert Law Center.

Sponsorship levels are Pinnacle, Benefactor, Cornerstone, Capital, Pillar and Foundation. Individual tickets to the gala are \$200. Young lawyer individual gala tickets are \$150. To read more about sponsorship levels or to purchase tickets, go to: www.raisingthebar.org/gala.

Sponsorship opportunities for 365 Days of Justice, an interactive fundraiser featuring each day of the year, are also available.

For more information on the 365 Days of Justice or the gala, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

Discounted rooms are available at the Hyatt Regency New Orleans Thursday, April 2, and Friday, April 3, 2020, at \$259 a night. To make a reservation, call the Hyatt at 1(800) 233-1234 and reference the "Louisiana Bar Foundation" or go to: www.raisingthebar.org/gala. Reservations must be made before Friday, March 13.



Wayne J. Lee, third from left, the Louisiana State Bar Association (LSBA) 2003-04 president, received the Lifetime Achievement Award from the Greater New Orleans Louis A. Martinet Legal Society, Inc. Joining him are other LSBA presidents, from left, Darrel J. Papillion, LSBA 2016-17 president; Robert A. (Bob) Kutcher, LSBA 2019-20 president; Lee; Alaina R. Mire, LSBA 2019-20 president-elect; Kim M. Boyle, LSBA 2009-10 president; and Barry H. Grodsky, LSBA 2018-19 president.



The Southwest Louisiana Chapter Louis A. Martinet Legal Society, Inc. (SWLA Martinet) held its second annual CLE seminar and Scholarship Gala on Aug. 2, 2019. Southern University Law Center Professor Angela A. Allen-Bell was the guest speaker. Several attorneys and judges attended. From left, Marshall J. Simien, Jr., Kendrick J. Guidry, Taylor Alexander, Nadine D. Gills, Lee M. Schwalben, Curtis L. Guillory, James E. Burks; Ezra Pettis, Jr., president, SWLA Martinet; Mark A. Delphin, Lydia Guillory-Lee, Janet D. Madison; Hon. David A. Ritchie, 14th Judicial District Court; Danielle C. Claiborne; Hon. Ulysses G. Thibodeaux, chief judge, 3rd Circuit Court of Appeal; Brittany E. Bell, Amariha B. Fort, Ashley N. Freeman, Hon. Dianne M. Mayo, Bobby L. Holmes, Chantell M. Smith; Derrick D. Kee, immediate past president, SWLA Martinet; Pamela V. Mathews; Hon. Ronald F. Ware, 14th Judicial District Court; Professor Mark N. Melasky, Todd S. Clemons; Professor Evelyn L. Wilson, Southern University Law Center; and Arthur J. O'Keefe.



The New Orleans Bar Association's Tax Law Committee presented an inter-specialization CLE program on July 11, 2019. The program examined employment and taxes, wage and hour laws, benefits and other issues. Program organizer Dwayne O. Littauer analyzed legal issues with his law partners, Robert P. Lombardi and MaryJo L. Roberts. Presenting the program were, from left, Christopher K. Ralston, Matthew A. Treuting, MaryJo L. Roberts, Cayce C. Peterson and Scott D. Johnson.

LBF Seeking Nominations for 2020 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2020 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Monday, Feb. 10, 2020. 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. The recipient also will choose a non-profit, law-related program or association providing services in Louisiana for a \$1,000 donation in his/her name.

Nominations should include nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipi-

ent. Nominations should be forwarded to Dennette Young, Communications Director, Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or email dennette@raisingthebar.org.

This trial advocacy award was established through an endowment to the Louisiana Bar Foundation in memory of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the Louisiana Association of Defense Counsel. The award is presented to a Louisiana attorney who exhibits longstanding devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel.

LBF Announces New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

- Marcus V. Brown..... New Orleans
- Leroy Carter III..... Slidell
- Brooke H. Delaune..... Baton Rouge
- Bradley C. Guin..... Baton Rouge
- Meagan R. Impastato..... New Orleans
- Hon. Walter I. Lanier III..... Thibodaux
- Amber N. McMillan..... New Orleans
- Jonah M. Seligman..... New Orleans

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For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2020. Check and ad copy should be sent to:

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Acadiana Legal Service Corp. is seeking staff attorneys for the Litigation Unit and Family Law Unit in Monroe and the Child In Need of Care Units in Monroe, Shreveport, Natchitoches and Lafayette. Must be licensed to practice law in Louisiana. If interested, email résumé to taugustine@la-law.org.

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NOTICE

Notice is hereby given that Dante J. Butler intends to file a petition and application for reinstatement to the Louisiana State Bar Association. Anyone concurring with or opposing this petition and application for reinstatement must file a notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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

Notice is hereby given that Michael Wayne Kelly intends to file a petition seeking reinstatement and readmission to

the practice of law. Any person concurring with or opposing the petition must file such written notice within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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

Notice is hereby given that Robert Margavio intends to file a petition and application for reinstatement to the Louisiana State Bar Association. Anyone concurring with or opposing this petition and application for reinstatement must file a notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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

Notice is hereby given that Bernard J. Williams intends to file a petition and application for reinstatement to the Louisiana State Bar Association. Anyone concurring with or opposing this petition and application for reinstatement must file a notice of

concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

ANSWERS for puzzle on page 272.

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INDEX TO ADVERTISERS

Joseph G. Albe, Jr.....	309
D. Wesley Attaway.....	309
Bourgeois Bennett.....	280
Broussard & David	OBC
Christovich & Kearney, L.L.P.....	276
Expert Communications	308
Robert G. Foley.....	309
Chad M. Garland, CPA, LLC.....	233
James F. Gasquet III.....	309
Gilsbar, Inc.	257, IBC
International Maritime Consultancy	289
LaPorte, CPAs and Business Advisors	293
LawPay.....	234
Legier & Company, apac.....	IFC
Louisiana Association for Justice.....	295
MAPS, Inc.	299
J. Price McNamara Law Offices	287
Chris Moody	283
National Academy of Distinguished Neutrals	263
The Patterson Resolution Group.....	277
Randazzo Giglio & Bailey, L.L.C.....	285
Schiff, Scheckman & White, L.L.P.....	275
Stanley, Reuter, Ross, Thornton & Alford, L.L.C. .	274
Taggart Morton, L.L.P.	309
Upstate Mediation Group	281
Walters, Papillion, Thomas, Cullens, L.L.C.....	279
The Write Consultants	308

From Anacoco to Zwolle

By Edward J. Walters, Jr.

I have a friend named Albert (pronounced Al-Bear) Fraenkel. Not a lawyer, but an interesting man with deep Louisiana roots whose grandfather was born in Baton Rouge in 1867. Albert served in the Navy in the Korean War. He opened a wholesale furniture business in Baton Rouge called Fraenkel Wholesale Furniture. Long story.

In 1979, I was present when he gave a speech at a Toastmaster's meeting titled "From Anacoco to Zwolle: Louisiana from A to Z." I had not seen or spoken to him in the 40 years since, but I always remembered the speech. I was trying to recreate his speech, but it wasn't working. So I took a shot. Using the magic of the Internet, I found Albert in San Francisco and asked about the speech. He was thrilled. He remembered the speech AND he still had a yellowed copy of it. Incredible! Here is a lightly edited version of his 1979 speech.

“Our state is shaped like a boot, bounded on the North by Arkansas, the East by Mississippi, the South by the Gulf and the West by Texas. Louisiana is the leading producer of rice, sugar cane and sweet potatoes. It is in the top four states in production of sulphur, salt, petroleum and natural gas. Until World War II, agriculture was the major source of income. Since then, it has been manufacturing.

More important today is the variety of life you can experience in Louisiana. The state could be divided into seven geographical areas, each centered around a large city. In the Northwest, the area revolves around Shreveport. The Northeast, the territory of cotton fields, has Monroe as the hub. Central Louisiana stretches from Alexandria. South Louisiana is dominated by Baton Rouge. South Central is Acadiana, home of crawfish, with Lafayette in the middle. Southwest Louisiana is the heel of the boot surrounding the beautiful city of Lake Charles. Finally, the toe of the Louisiana boot, the Southeast in the middle of which is New Orleans.

I have lived in New Orleans, Baton Rouge and Shreveport, and I have traveled to all 64 parishes. I know this state from A to Z alphabetically — or from A, Anacoco, to Z, Zwolle, a maximum distance alphabetically, but an actual distance of only 40 miles.

There are 232 cities and towns geographically listed in the official Louisiana Highway map. The names of these communities fascinate me. Accompany me on an alphabetical trip through our state. Start with A, Anacoco. B is for Bayou Goula or Boutte. For

C, you could choose Carencro, Church Point or Chackbay. The town of Des Allemands is slurred. It's two French words pronounced like one and means "The Germans." Another D that always startles me is Dry Prong. E is for Epps, sounds like a belch. (We do have Belcher that I failed to mention). There's Fort Necessity. G is Grosse

Tete, translation is Big Head. Speaking of head, there is H for Head of Island. Then I for Iota; you've got to look for that one on the map. We have two Junction Cities on the Northern border; depending on where you live in town, you get your mail in Louisiana or Arkansas.

K, Krotz Springs, got important when Huey Long got angry with the people in Simmesport, a town on the Atchafalaya River. Instead of building the main bridge there, he built it 35 miles south at Krotz Springs.

There is L for Lake End, M for Maringouin (mosquito in English), N for Natchitoches (site of the oldest permanent settlement in the Louisiana Purchase), O for Opelousas, P for Plain Dealing, Q for Quitman, R for Ringgold, S for Sicily Island (which isn't an island at all), T for Turkey Creek, U for Urania, V for Vacherie (French for dairy.) I've always admired Westwego — think about it — a town named West we go!

There's no town in Louisiana beginning with X. (That doesn't mean there are no X-rated towns.) We do have Y for Youngsville and Z brings us back to Zwolle. I'd like to hear of any town in the country which would alphabetically come behind Zwolle. That's our trip.

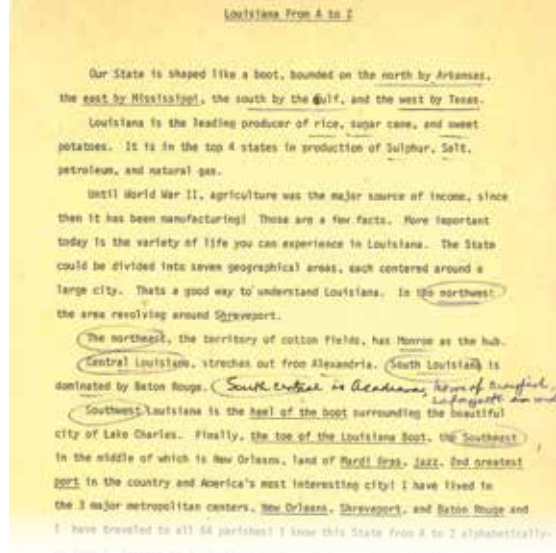
Additionally, I love Moreauville, Loreauville, Perryville and Merryville. There are 10 saints in Louisiana from St. Bernard to St. Tammany with St. Gabriel in between.

Finally, on a personal note, we opened a branch in Atlanta three years ago and sent two men to establish our warehouse there. Both from Louisiana. Our manager was from Cut Off and his assistant was from Pumpkin Center. When it comes to colorful names, how can you beat Louisiana?”

Albert is 94 now. (Google "Albert Fraenkel, Life Lessons on LPB" to hear a speech he gave at the Baton Rouge Rotary Club at age 91. You won't regret it, I promise.) Thanks, Albert! ♦



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