

LOUISIANA BAR JOURNAL

December 2010 / January 2011

Volume 58, Number 4

Cell-Shocked:

**Bystander
Damages
for Viewing
An Event
Electronically**

**ALSO INSIDE:
LSBA inCircle
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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: P.O. Box 2600, Mississauga, ON, L4T 0A8.

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

Subscriber Service: For the fastest service or questions, call Darlene M. LaBranche at (504)619-0112 or (800)421-5722, ext. 112.

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2011 Judicial Interest Rate is 4%

Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2011 will be four (4.0%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, 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 2011 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2010, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75%) of one percent.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on Oct. 1, 2010. Thus, the effective judicial interest rate for the calendar year 2011 shall be four (4.0%) percent per annum.

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

— John P. Ducrest, CPA
Commissioner of Financial Institutions
Date: October 5, 2010

Judicial Interest Rates Through 2011

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

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 Web site.

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By Michael A. Patterson

Get Involved in Your Bar: Great Opportunities Await You

One of the frequent questions I get asked as I visit lawyers throughout our state starts like this: "What is the LSBA going to do about . . .?"

My answer is always prefaced with this question: "What activities of the LSBA are you involved in?" Sadly, the answer for many is none. This answer is usually followed by a laundry list of reasons why the individual does not have time to participate in his/her profession.

Variations on this exchange have been an ongoing element since I began practicing law. Along the way, I have taken the opportunity to remind these individuals that if you want to see change, you must make the commitment of time and effort to work to see that change occurs.

Structurally, the governing body of our association is the House of Delegates whose members are elected in accordance with the articles and bylaws of our association. Yet, in each election cycle, many of the House seats remain vacant because not enough people step up to qualify to run. When this happens, the president is required to make appointments to fill the vacancies. At meetings of the House of Delegates, we seldom have more than 60 percent of the members present to conduct the business of our association. This is not a healthy situation.

While I totally understand that membership in our association is mandatory by rule of our Supreme Court, I also know that if we do not participate in the work of our association, we run the risk of abdicating our governance to others outside our profession.

These threats are real. For example, last year, there was a bill in the Louisiana Legislature which sought to limit

It is easy to get involved. Go to the Louisiana State Bar Association's website and review the drop-down menu of sections and committees:

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Sections

or

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Committees

the activities of the law clinics in our law schools — in effect, regulating the practice of law. Our association, along with all the law schools, testified against this bill. There are frequent attempts by the Federal Trade Commission to regulate lawyers which the American Bar Association has lobbied against on the same grounds. The practice of law should only be regulated by the highest courts of each state. These attacks on our self-regulation are ongoing and require constant diligence by members of our profession to resist such attempts.

If for no other reason, you should consider being involved to help *your* practice. What am I talking about? Whether you have considered this or not, a lot of what most lawyers do comes to them by referral

from other lawyers. If you participate in the sections or committees of our association, you will meet lawyers from all over the state. You will get to know them and they will get to know you. They will learn in what area of the law you practice and chances are good they will be a great referral source.

Another practice-related benefit is you can create a network of lawyers around the state who can, for instance, give you local information on lawyers and judges in their areas or indicate what juries are like in their jurisdictions. It is like having a group of consultants available to you — free of charge.

You also may discover you have made a bunch of new friends, people you may never have met if you did not participate in your profession.

It is easy to get involved. Go to the Louisiana State Bar Association's website and review the drop-down menu of sections and committees: www.lsba.org/Sections or www.lsba.org/Committees.

Find something that interests you and make a commitment to yourself to get involved. Ask others who are active to give you advice on what work of the LSBA might be of interest to you.

I am sure once you get involved you will quickly realize the benefits of your decision and your participation will be helping your profession to fulfill its mission: *Serving the Public. Serving the Profession.*

Clarifying Information in “Hooray for Hollywood” Article

This letter comments on statements in the article “Hooray for Hollywood! A Film-by-Film Primer on the Louisiana Film Industry’s Blockbuster Success Thanks to Motion Picture Tax Incentives” (August/September 2010 *Louisiana Bar Journal*), particularly “15 percent tax credit” for Louisiana “motion picture infrastructure” approved “after June 2005” when “at least \$300,000 was expended prior to 2008” and “the law sunset,” which leaves an incorrect impression that infrastructure projects earn no tax credits after 2008.

La. R.S. 47:6007 (Acts 2005, No. 456) mandates 40 percent tax credits on “base investment” (“actual investment made and expended” by “a person in the development of a state-certified infrastructure project” approved after July 1, 2005) if base investment is “greater than \$300,000,” i.e., 15 percent on in-state expenditures (statutory sunset extension beyond 2008) and 25 percent on all investment without sunset.

Nearly a dozen state infrastructure contracts executed per this 2005 law mandate

40 percent tax credits on base investment, some with restrictions not in the law. (See, *Red Stick v. State of La., et al*, 1st Cir. Ct. Appeal, No. 2009, CA 1347, prohibiting such restrictions in an infrastructure contract, writ granted, writ denied S. Ct. 2010).

House Concurrent Resolution #35 (2005 First Extraordinary Session) reaffirms legislative intent of 40 percent infrastructure tax credits. Attorney General Opinion #06-0216 confirms 40 percent tax credits, 15 percent on in-state and 25 percent on all infrastructure expenditures, including land, equipment, distribution investment, etc., on which the state issued 40 percent credits.

The amended law of 2007 mandates 40 percent tax credits applicable to subsequent infrastructure contracts. Since each infrastructure tax credit dollar returns \$4 per the state’s economic research, more tax credits benefit the state.

Michèle LeBlanc
Baton Rouge

Author’s Response

I appreciate Ms. LeBlanc’s efforts to shed light on the murky history of the now sunsetted infrastructure credit of 15 percent provided for in former La. R.S. §47:6007(C)(1)(b)(iii) and for correcting any misimpression regarding how the applicable percentage for infrastructure projects was ultimately interpreted due to ambiguities in the original legislation. The Attorney General Opinion she cites is a good reference for those who wish to know more about the issue. Riding off into the sunset (again) then . . .

Jaye A. Calhoun
New Orleans

Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

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

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

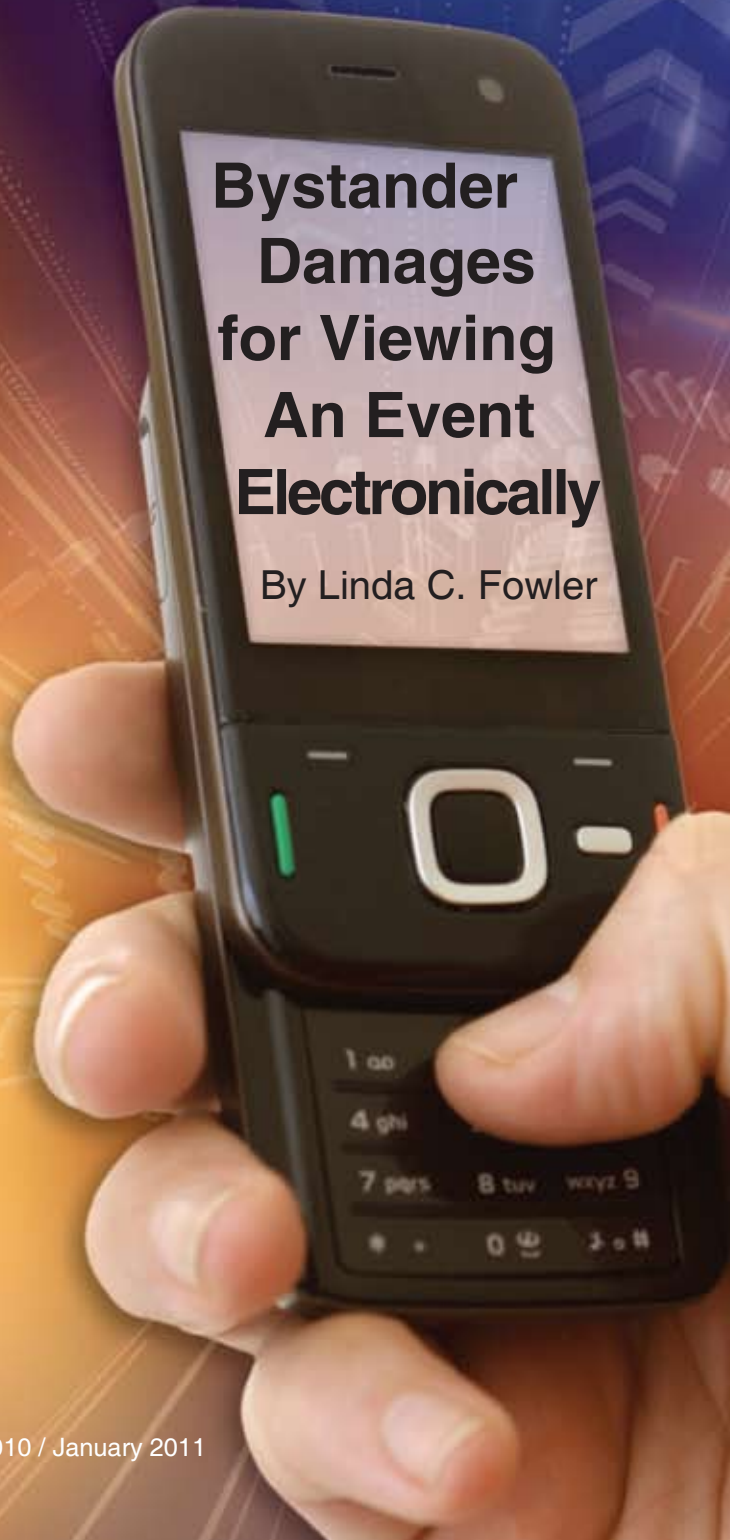
8. No letter shall be published that contains defamatory or obscene material, violates the Rules of Professional Conduct or otherwise may subject the LSBA to civil or criminal liability.

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

Cell-Shocked:

Bystander Damages for Viewing An Event Electronically

By Linda C. Fowler



Imagine the following scenario: Susan is commuting to work when she is involved in a horrific automobile collision, inflicting mortal injuries upon her. As she lies dying in her vehicle, a passerby attempts to comfort her and asks if he should contact anyone. She requests that he call her husband Bob using a cellular phone. The passerby then calls Bob, informs him of the accident, and points the camera on the phone at the crushed car and injured victim. Bob views the crushed vehicle and his injured spouse. May Bob recover bystander mental anguish damages under Louisiana law for viewing the scene and injury to his wife on the cell phone?

Background of the Louisiana Bystander Law

In 1990, the Louisiana Supreme Court created a cause of action for bystander mental anguish, enabling close relatives to recover damages for witnessing injury to a loved one in *Lejeune v. Rayne Branch Hospital*.¹ In *Lejeune*, the plaintiff entered the hospital room of her comatose husband shortly after he had been bitten on his face, neck and legs by rats and saw a nurse still cleaning blood from his wounds. *Lejeune* overruled prior jurisprudence denying this type of recovery dating back to the 1855 Louisiana Supreme Court case of *Black v. Carrollton R.R. Co.*² The Legislature codified *Lejeune* the following year as Civil Code article 2315.6, which provides that the bystander must view or come upon the scene of the event, the injured person must suffer such harm that mental anguish by a loved one is foreseeable, and the mental anguish endured by the claimant must be severe and debilitating. Article 2315.6 further defined the class of potential claimants entitled to recovery, specifically enumerating the close relatives who could be classified as bystanders under the law referenced in *Lejeune*.

But “view” was not defined in the statute. This article examines whether changes in electronic technology and the proliferation of technology since *Lejeune* was decided and Louisiana Civil Code

article 2315.6 was enacted impact the requirements for viewing injuries to the direct victim under the statute.

Viewing Electronically Under Article 2315.6

Advances in electronic technology such as camera cell phones and streaming Internet have changed the way people view events. Today’s parents can look in on their children in daycare thanks to cameras and the Internet, and one can almost instantaneously see an image of a person thousands of miles away on a cell phone. Also, images are becoming more true-to-life due to innovations such as high-definition televisions. Many events, such as sporting events, are actually viewed better on a television monitor because of high-quality video and the close-up capability of modern cameras.

The frequency with which events are now seen electronically raises the issue of whether such a viewing would satisfy the requirements of Louisiana Civil Code article 2315.6 that the claimant “view or come upon the scene of an event.” Would viewing an injury to a loved one on a television, a closed-circuit TV monitor, a cell phone or a live broadcast on the Internet suffice? Or would it have to be in person? It could be argued that since some requirements of the statute are specified, *e.g.*, those persons entitled to recovery, the Legislature left it to the courts to define “view.”

Almost all the Louisiana jurisprudence regarding the requirement that the claimant “view or come upon the scene of the event” concerns incidents witnessed in person.³ Only *Daigrepont v. Louisiana State Racing Commission*⁴ involved a viewing of the incident electronically. The 1st Circuit in *Daigrepont* denied bystander recovery to a father who viewed a videotape of his son’s accident after it occurred and after he had learned of the accident. There, a jockey was severely injured during a race when he lost control of his horse, fell to the ground and was struck in the head by an oncoming horse.⁵ His father arrived at the race track shortly thereafter, was informed of the accident

and rushed to the hospital emergency room where his son had been taken.⁶ He later viewed a videotape of his son’s fall and injury.⁷ The court held that article 2315.6 “does not provide for the situation where a parent arrives upon the scene, is informed of the accident, rushes to the hospital where his son has been taken and later views a videotape of the accident.”⁸

At the time of the jockey’s accident in *Daigrepont*, his stepmother was working at the race track and observed the accident on a television monitor. The court denied bystander recovery to her because she did not fall into the class of persons allowed to recover.⁹ The court then stated in dicta, regarding her observance of the accident, that it was “questionable whether the statute is applicable to one who views an accident on a television monitor.”¹⁰

Did the Legislature intend that televised events could qualify under the bystander mental anguish statute? It could be argued the answer is no — television was in widespread use in 1991 when the statute was drafted, and if the Legislature intended for electronic viewing of events to qualify, it would have been specifically included. Additionally, the dicta in *Daigrepont* appear to reject viewing events electronically under article 2315.6.

It also could be argued that seeing an event electronically is not the same as seeing it physically because it is not three-dimensional and the in-person aspect is missing. *Lejeune* noted in citing out-of-state jurisprudence that the essence of the tort is the shock caused by the perception of the event.¹¹ It could be argued that the shock of the event is reduced if it is not in real person.

But the statute does not specifically prohibit viewing incidents electronically from qualifying under the statute. Since 1995 when the dicta in *Daigrepont* were written, high-speed Internet, digital cameras and cell phones have become ubiquitous in our society. Also, it could be asserted that viewing an event electronically can be even more shocking or disturbing than in person. A close-up view of a football player being tackled and seriously injured in a televised game may be more distressing than if viewed from the stands. Consider the hypothetical case

at the beginning of this article where the husband sees his mortally injured wife on the cell phone — emergency crews may have prevented him from going to his wife's vehicle if he had been present at the scene.

Learning of the occurrence by viewing or coming upon the event appears to be a requirement under article 2315.6. The *Lejeune* court stated:

The emotional injury must be directly attributable to the emotional impact of the plaintiff's observation or contemporaneous sensory perception of the accident and immediate viewing of the accident victim. Therefore, recovery will not be permitted for emotional distress when the plaintiff is merely informed of the matter after the accident¹²

Potential claimants under article 2315.6 could learn of the traumatic event via an electronic device as well as in person. The father in *Daigrepont*, who was denied bystander recovery, did not learn of his son's accident via watching the videotape; he already knew about the event when he viewed it.

What if the potential claimant views an event electronically that is thousands of miles away? Or even just across town? The Louisiana Supreme Court seems to address this situation when it stated in the 1999 case of *Trahan v. McManus* that:

recovery of damages for mental anguish has almost never been extended to one who observed the victim's suffering at a place other than where the injury-causing event occurred or at a time not closely connected to the event.¹³

Thus, even if the event is viewed electronically under article 2315.6, physical proximity is a requirement under *Trahan*.

Suppose seeing an event electronically satisfies the view requirement of the statute. Would a videotaped recording of the event viewed hours or days later qualify? *Lejeune* and the Legislature apparently contemplated a non-contemporaneous



viewing as they both indicated that the plaintiff may satisfy the statute by “coming upon” the event.¹⁴ If the plaintiff learns of the event via the recording, it would not seem to differ from a real-time electronic observance. However, *Lejeune* also requires “observation or contemporaneous sensory perception of the accident and immediate viewing of the accident victim.”¹⁵ This must occur before the condition of the victim has substantially changed.¹⁶ As the *Trahan* court noted above, bystander recovery has almost never been allowed where the observation of the event is not closely connected in time to the event. The court reasoned in *Trahan* that bystander damages are intended to provide a remedy when severe mental distress arises “directly and immediately from the claimant’s observing a traumatic injury-causing event to the direct victim.”¹⁷ The court also noted that limitations on bystander recovery established in *Lejeune* would not allow recovery to someone “who learned of the injury by telephone call several days after the injury-causing event.”¹⁸

Allowing recovery under article 2315.6 for viewing an injury electronically would expand bystander mental anguish recovery some, but it is not likely to “open floodgates” of litigation. *Lejeune* requires that the claimant learn of the event from the viewing. *Trahan*

indicates that the viewing must be closely connected to the event in time and space. These requirements would likely preclude recovery for one who observes the event electronically from across the country and probably from across town. Satisfaction of the view requirement of article 2315.6 by viewing an incident electronically is not likely to be a common occurrence considering these constraints.

Conclusion

In sum, since neither the statute nor the jurisprudence prohibits electronically viewing an event under the bystander mental anguish law, it could be permitted under certain narrow instances: where the claimant is in the general physical vicinity of the direct victim and sees the injury either contemporaneously or soon after the event. The Louisiana Supreme Court emphasized in *Trahan* that recovery for bystander mental anguish damages has almost never been granted to a claimant who viewed the direct victim's suffering at a location other than where the injury-causing event occurred or at a time not closely connected with the event.¹⁹

Other unanswered questions, not discussed herein, remain concerning bystander recovery. One is the temporal requirement of the statute. How much time may elapse between the event and

the claimant coming upon it? No time limit appears in article 2315.6 for arrival at the scene to satisfy the requirement that the claimant “come upon the event soon after.” How serious an injury the direct victim must suffer for bystander recovery is not specified. Article 2315.6 requires that the claimant prove that the injured person suffered “such harm that would reasonably be expected to cause another to suffer mental pain and anguish.” Also, what qualifies as an “event” under the statute? These questions are not clearly answered in the statute or the jurisprudence and merit additional analysis.

FOOTNOTES

1. *Lejeune v. Rayne Branch Hosp.*, 556 So.2d 559 (La. 1990).
2. 10 La. Ann. 33 (1855). Black held that

mental pain and anguish sustained by a person not directly injured, because of the negligent infliction of injury on a third person, was not recoverable under Louisiana tort law.

3. *See, e.g., Lejeune*, 556 So.2d 559; *Ruttley v. Lee*, 99-1130 (La. App. 5 Cir. 5/17/00), 761 So.2d 777, writ denied, 00-1781 (La. 9/22/00), 768 So.2d 1287; and *Edwards v. Pelican St. Mut'l Ins. Co.*, 95-253 (La. App. 3 Cir. 5/31/95), 657 So.2d 440.

4. 95-0539 (La. App. 4 Cir. 10/26/95), 663 So.2d 840, writ denied, 95-2828 (La. 2/2/96), 666 So.2d 1085.

5. *Id.* at 840.

6. *Id.*

7. *Id.* at 841.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Lejeune*, 556 So.2d 559, 570, citing *Gates v. Richardson*, 719 P.2d 193 (Wyo. 1986).

12. *Id.*, quoting *Corso v. Merrill*, 119 N.H. 647, 406 A.2d 300 (1979).

13. 728 So.2d 1273, 1279.

14. La. Civ.C. art. 2315.6; *Lejeune*, 556 So.2d at 570.

15. *Id.*, quoting *Corso*, 406 A.2d 300.

16. *Id.*

17. *Trahan*, 728 So.2d at 1279.

18. *Id.* at 1278.

19. *Id.* at 1279.

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Coming in the February/March 2011 Louisiana Bar Journal...

The LSBA's Role in the Louisiana Legislature: Why Is It Necessary to the Profession?

In 2004, the Louisiana State Bar Association (LSBA), through its Legislation Committee, renewed its active role in opposing and/or supporting proposed legislation affecting the practice of law or access to justice. The aim is always to strike a balance between respecting members' individual concerns and protecting the legal system.

To educate the legal community about the LSBA's role in

this process, Shawn L. Holahan, the LSBA's liaison to the Legislation Committee, interviewed Michael A. Patterson, current LSBA president; Michael W. McKay, LSBA past president and current chair of the Legislation Committee; Loretta Larsen, LSBA executive director; and Larry L. Murray, the LSBA's lobbyist. Read this enlightening Q&A article in the February/March 2011 *Louisiana Bar Journal*.

Calendar these important dates for the 2011 Louisiana legislative session and the LSBA Legislation Committee:

- April 15, 2011 — Pre-filing deadline for bills for state legislators.
- April 21, 2011 — First LSBA Legislation Committee meeting.
- April 25, 2011 — Louisiana legislative session begins.
- May 21, 2011 — Second LSBA Legislation Committee meeting (open meeting) at the Hilton Capitol Center in Baton Rouge.
- May 21, 2011 — LSBA Board of Governors' meeting (to immediately follow the second LSBA Legislation Committee meeting in Baton Rouge).
- June 21, 2011 — Louisiana legislative session adjourns.

Use Step-by-Step Tutorial for a Quick and Easy Start!



LSBA Launches inCircle: A Fun and Professional Networking Tool

By Tony LaVerde and Danielle E. Boveland

The Louisiana State Bar Association (LSBA) has launched **inCircle**, the new professional/social networking website designed exclusively for Louisiana lawyers. inCircle is similar to Facebook for lawyers, but with access limited only to LSBA members.

inCircle is a unique member benefit as it provides a chance to reconnect with old classmates and colleagues who are LSBA members. The user-friendly site shares many of the common social network features, such as user profiles, public and private groups, direct messaging, photo albums, discussion boards, blogs and job opportunities.

To log in to inCircle, go to the "Members Log In" tab on www.LSBA.org and enter your Bar ID and password, as you would to access Fastcase, another popular member benefit. If you have not yet created a member account, or if you have forgotten your password, the "Create Member Account" link to the left will walk you through the process. After you have entered your information, select the inCircle quick connect and hit "Log In."

Once you have logged in, you can begin with "My Profile." You can add a personal photo, as well as any information about your job, firm and education you would like to share; the name of your firm and your job title are the only required fields. After your profile is complete, you can begin to build your network by inviting people you know to be "friends" and joining or creating groups. Groups can be public or private, invitation-only groups. Any information shared in a private group is only shared by the members of the group.

There are many ways to utilize the full potential of inCircle to expand your personal network. You may set up a discussion board to reconnect with old classmates, create and post a blog, offer and receive advice, or maybe just talk about the Saints and Hornets. You can create a group for your law firm or join an LSBA Section group to view links to CLE materials. You can post job openings, view upcoming events, or join a golf or photography group. If you have a blog, you can enter its feed into "My Blog"

so that other members can view your latest posts as you make them.

As with other social networking sites, protecting your privacy settings are a key concern. An important step once you create your profile is to review the "My Account" settings. In this area, you can manage your privacy settings and control your e-mail notifications. You can also block access to any "friends" you don't want. If you elect to receive e-mails based on your group activity or discussions, inCircle will send you e-mails based on the criteria you set here; review these settings carefully and make sure you confirm your e-mail address.

The log-in area provides links to several useful help topics. If you have any specific questions, contact LSBA Communications Coordinator of Online Media Danielle E. Boveland at (504)619-0147 or e-mail danielle.boveland@lsba.org.

For a simple step-by-step guide to help you get started with this fun new member benefit, see box on the next page.

LOG-IN

How do I log in to inCircle?

- 1) From the www.LSBA.org home page, click "Members Log In."
- 2) Enter your Bar ID number (Bar roll number) and password.
- 3) Choose the "LSBA inCircle" quick connect option and click "Log In."
- 4) You may now choose to either view the "Help" resources or enter "inCircle."
- 5) On your first log-in, you will be asked to provide profile information. "Job title" and "employer" are the only required fields.

GROUPS

How do I join a group?

- 1) Navigate to the "Groups" tab.
- 2) Select the "Find" subcategory under the "Groups" tab, or from the Groups home page, click on "Find Groups."
- 3) Enter keywords and click "Search."
- 4) Select your group and click "Join Group." The group moderator will approve your membership.

How do I create a post in a group?

- 1) Select the group from the "My Groups" section.
- 2) Click on the "Posts" link located beneath the group name on the left-hand side of the page.
- 3) Click on the "New Post" button.
- 4) Fill out the "Subject" and "Message" fields.
- 5) Click "Post."

How do I create an event/album in a group?

- 1) Select the group from the "My Groups" section.
- 2) Click on the "Event/Album" link located beneath the group name on the left-hand side of the page.
- 3) Click on the "New Event/New Album" button.
- 4) Fill out the respective fields.
- 5) Click "Post" or "Finish" depending on action.

How can I receive e-mail notification triggered off group activity?

- 1) Navigate to the "My Account" tab.
- 2) Click "Update My E-mail Address."
- 3) Add an e-mail address or click "Verify" next to the e-mail address you would like to use. A verification e-mail will immediately be sent to your inbox.
- 4) Set this e-mail address as the "Primary" address.
- 5) Navigate to the "Groups" tab.
- 6) Select the group from the "My Groups" section.
- 7) Click on the "Settings" link located beneath the group name on the left-hand side of the page.
- 8) Specify the situations for which you would like to receive an e-mail notification.

How do I view the recent participation in my groups?

- 1) Navigate to the "Groups" tab.
- 2) Select the "What's New" subcategory.
- 3) You will be presented with a table of statistics describing the new posts, events, albums and users that have occurred in groups in which you belong.

Tony LaVerde is the Louisiana State Bar Association's information technology director. Danielle E. Boveland is the Louisiana State Bar Association's communications coordinator of online media. They can be e-mailed at tony.laverde@lsba.org or danielle.boveland@lsba.org, respectively.



inCircle Sign-Up Offer!

Join the **2011 LSBA Annual Meeting group on inCircle** by April 15 and be entered for a chance to win a free Annual Meeting registration, valued at up to \$695! The 70th LSBA Annual Meeting is Tuesday through Thursday, June 28-30, 2011, at the Wynn Las Vegas. Already registered for the meeting? If you win, we'll reimburse your registration fee. Enjoy all the great meetings, receptions and networking opportunities on us! Log on to **inCircle** today at www.lsba.org/inCircle for your chance to win.

The Cy Pres Doctrine: “A Settling Concept”

By Calvin C. Fayard, Jr.
and
Charles S. McCowan, Jr.



In December 2010, the Louisiana Bar Foundation (LBF) received a \$38,600 cy pres distribution from a class settlement in the “In Re: Vulcan Litigation April 2001 incidents” lawsuit. From left, Bradley C. Myers, with Kean, Miller, Hawthorne, D’Armond, McCowan & Jarman, L.L.P., representing Vulcan Materials Company; Philip Bohrer, with Bohrer Law Firm, representing the plaintiffs; Mathile W. Abramson, LBF vice president; and Andrew P. Sellers, Jr., with Powers, Sellers, Mixon & Chapoton, L.L.P., representing Industrial Coating Contractors, Inc.

Following a class-action or mass-joinder settlement, certain funds often cannot be distributed to individual class members. For instance:

- ▶ class members do not come forward to file the necessary proof of claim to qualify for an allocation and distribution;
- ▶ the allowed claims do not equal the available settlement funds, reserves or allocations for class costs, and expenses are not exhausted;
- ▶ distributions of monies to individual class members have been found impracticable because the amounts owed to each individual plaintiff are exceedingly small; and/or
- ▶ calculation of the amount due each individual would be excessively difficult and costly.

In such situations, many Louisiana state and federal courts have employed the “Cy Pres Doctrine,” an equitable remedy intended to put the residual funds to a worthy purpose in accordance with their availability.¹

In 1985, Judge Gordon E. Causey (now deceased) was innovative in his use of the concept as a basis to foster the settlement in the Livingston train derailment class action.² As part of the settlement, \$1 million was allocated to the Environmental Division of the Louisiana Attorney General's Office, and several millions more, plus residual and unclaimed funds, were allocated to the Livingston Intergovernmental Commission to provide environmental monitoring at the site of the derailment and to construct a facility to provide medical services and annual physical examinations for affected class members. These programs have subsequently been supplemented by other cy pres awards and are still in existence and functioning today.³

Judge Eldon E. Fallon of the United States District Court for the Eastern District of Louisiana explained:⁴

In class action suits filed in federal court, the district court's ability to determine the use of unclaimed funds derives from the court's inherent power to manage its own docket and its power under Rule 23(d) of the Federal Rules of Civil Procedure to make such orders as necessary to manage the class action. When a class action settlement agreement is silent as to the distribution of excess funds, or when there is an adjudicated aggregate class recovery that results in unclaimed funds, the district judge must make the determination about the appropriate distribution of the surplus. *See*, 3 Newberg and Conte, *Newberg on Class Actions* § 10.15 (4th ed. 2002); *see also*, *In re Lease Oil Antitrust Litigation* (No. II), 2007 WL 4377835, *16 [2007 U.S. Dist. LEXIS 91467] (S.D. Tex. Dec. 12, 2007); *see also*, *Wilson v. Southwest Airlines, Inc.*, 880 F.2d 807, 811 (5th Cir. 1989).

This distribution is usually done according to the tenets of the cy pres doctrine. This doctrine has its origin in Roman law. The term translated loosely means: as near as possible. The doctrine was first used in the charitable trust field when courts took steps to prevent

the failure of trusts. *In re Lease Oil Antitrust Litigation* (No. II), [*supra* at *20]; *see also*, Note, *Damage Distribution in Class Actions: The Cy Pres Remedy*, 39 U. Chi. L. Rev. 448, 452 (1972). For example, where a testator attempted to create a perpetuity — which is prohibited in civil law — the courts, instead of entirely voiding the bequest, would explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities would allow. The cy pres doctrine has migrated and appeared with increased vigor in class-action/multi-district litigation milieu. As used in this context, a court should endeavor to distribute unused funds in a manner most consistent and compatible with the issues which gave rise to the lawsuit which created the fund.

The cy pres doctrine has been described as the "disposition of funds that have not been individually distributed, by distributing them for the next best use which is for indirect class benefit." *In re Lease Oil Antitrust Litigation* (No. II), [*supra* at *20]. Under the cy pres doctrine, the courts, guided by the parties' original purpose, direct that the unclaimed funds be distributed for the indirect prospective benefit of the class. *Powell v. Georgia-Pacific Corp.*, 119 F.3d 703 (8th Cir. 1997) (citations omitted); *see also*, *In re Lease Oil Antitrust Litigation* (No. II), [*supra* at *20].⁵

The practical value of the use of a cy pres residual settlement award is illustrated by retired 18th Judicial District Court Judge Jack T. Marionneaux's comments in approving a distribution to the Greater New Orleans Area Foundation to establish a multi-million-dollar environmental fund following a state court class-action settlement:⁶

It's been a learning experience for me. I'm not the oldest guy on the bench. I've been here about eight years, but there's always room to

learn. I'm particularly proud that the money will go to a lot more than four or five packs of cigarettes per person . . . so much more can be done to help the people[.]

With this observation, Judge Marionneaux approved the settlement of the largest certified Louisiana individual member class resulting from a 1981 discharge into the Mississippi River, causing the water supply in Orleans and Jefferson parishes to smell bad and requiring residents to buy water from alternative sources. The parties agreed that, after the payment of the individual class members' documented expenses for purchasing water from other sources, the remainder of the settlement proceeds would be allocated to the Greater New Orleans Foundation as an environmental Field of Interest Fund for Orleans and Jefferson parishes.

The original cy pres award of \$6 million has grown to \$10 million. The endowment's perpetual goal is to encourage ecological, economic and cultural vitality, resilience and sustainability through environmentally focused policies, programs and projects. The Foundation partners with environmental experts and community leaders to set goals and chart effective strategies to support work critical to the health and resiliency of the class area.⁷

Other Louisiana state and federal courts have concluded class-action litigation through the use of a cy pres distribution with respect to some of the settlement funds. Parties involved in class actions have increasingly seen the wisdom of consolidating remaining settlement payments into a community foundation or other nonprofit educational or charitable organization. By use of cy pres, funds that are not allocated to or are unclaimed by a specific class member can benefit the whole affected defined class in a way that addresses the issue which gave impetus to the suit. The following Louisiana cases illustrate the parameters that federal and state courts have used to test the propriety and benefit of cy pres settlements.

Cy Pres Cases

Southeastern Louisiana University was awarded a cy pres grant of \$4.5 million as

one of the conditions of settlement in the *In Re: Combustion, Inc.* class action.⁸ This initial award was used as seed money to obtain additional millions of dollars from federal and state governments which funded acquisition of property and construction and staffing of the first phase of a literacy and technology center campus. In this case, more than 10,000 eligible class members sued more than 150 defendants and their insurers for damages emanating from a waste oil recycling and reclamation facility in Livingston Parish, previously designated as a Superfund site. A settlement was reached, proof of claim forms submitted, and, in due course, individual allocations, fees and expenses were approved and paid. Remaining monies from the settlement's reserve, contingency funds and unclaimed allocations were awarded as cy pres grants to fund the Livingston Parish Literacy and Technology Center, partnered by Southeastern Louisiana University and the Livingston Parish School Board. Under cy pres, the grants were awarded based on the theory that the site caused a severe inconvenience and problems to the residents of the class area. The resulting facility provides vocational, educational and technological programs to residents in the class area and, as a result, has helped to increase high school graduation rates and the number of class area residents entering the work force and higher education. Thus, the court found that the cy pres awards in *In Re: Combustion, Inc.* were of benefit to the entire class area and the class members.

Judge Richard T. Haik Sr. said, "Education is the most important legacy a society of human beings can leave to the next generation. It is the first and foremost business of government."⁹

Numerous other Louisiana cases,¹⁰ involving both tort and commercial causes of action, have employed cy pres residual distributions to a variety of nonprofit, public service and educational organizations.

One case of particular interest to the Louisiana Bar Foundation and the Louisiana State Bar Association is *In Re: Eunice Train Derailment*.¹¹ In this case, Judge Richard T. Haik, Sr. awarded:

► \$20,000 to Acadiana Legal Services Corp., dedicated for use in the class area for providing legal services for civil

litigation;

► \$20,000 to the Louisiana Bar Foundation, dedicated for long-term investment to provide an annual income stream to fund and coordinate a pro bono panel utilizing attorneys in St. Landry Parish; and

► \$80,000 to the Tri-Parish Health Center for the use and benefit of working and nonworking underinsured in the class area.

Additional examples of cases using the cy pres doctrine include: *In Re: Matter of the Complaint of Ingram Barge Co.* (Judge John V. Parker);¹² *Lincoln v. Shell Pipeline* (Judge Carl J. Barbier);¹³ *Accounting Outsourcing, L.L.C. v. Verizon Wireless Personal Communications, L.P.* (Judge James J. Brady);¹⁴ *Accounting Outsourcing v. Kappa Publishing Group, Inc.* (Judge James J. Brady);¹⁵ *Baumann v. D&J Fill, Inc.* (Judge Pegram J. Mire Jr.);¹⁶ and *Survey Communications, Inc. v. Corporate Express* (Judge James J. Brady).¹⁷

The cy pres alternative is not without question¹⁸ and limitations.¹⁹ For instance, in *Cavalier v. Mobil Oil Corp.*,²⁰ a refinery had an accidental airborne release that allegedly impacted the surrounding neighborhoods. Separate lawsuits were filed in Orleans and St. Bernard parishes. All cases were consolidated. Resolution was achieved, with various geographic boundaries established for a class area, notice was given, a consolidated fairness hearing was held, and the trial court approved the class-action settlement. Eventually, a disagreement arose between the parties and the special master concerning certain cy pres designations for a project that had no connection to the class action or the beneficiaries of the class actions. The special master contended that the trial court had vast discretion in allocating cy pres funds to community-based charities located anywhere and was not required to allocate cy pres funds for projects only within artificially drawn geographical boundaries. The court disagreed and found instead:

The equitable doctrine of *Cy Pres* permits distribution of excess class action damage or settlement funds to the "next best" class, in order to parallel the intended use of the funds as nearly as possible. This distribu-

tion does not subject defendants to greater liability or alter their substantive right, because it affects interests of silent class members only. Further, distributing proceeds through *Cy Pres* satisfies class action goals by deterring similar conduct and disgorging the defendant of profits wrongfully obtained, and using those funds in a way that at least indirectly benefits the class members. Susan Beth Farmer, *More Lessons from the Laboratories: Cy Pres Distributions in Parens Patriae Antitrust Actions Brought by State Attorneys General*, 68 Ford. L. Rev. 361 at 394.

In this particular case, residual funds were available from class actions that were filed because of the ill effects of chemical releases that impacted the lower end of Algiers in the City of New Orleans. Although all previous allocations of these funds were made to community service projects that directly benefited those persons impacted by the chemical releases, the March 26, 2004, order allocated 20% of the final disbursement (approximately \$47,200.00) to . . . a project which provides services to residents and citizens of the lower ninth ward of the City of New Orleans, an area not involved in this class action settlement [W]e agree with Plaintiffs' argument that the trial court apparently believed that one of the companion cases to the Civil District Court cases involved New Orleans residents in the lower ninth ward, and merely erred in allocating funds to an organization outside the geographical boundaries of these class action settlements.²¹

The geographic limitation has, however, been subject to additional interpretation in *Turner v. Murphy Oil USA, Inc.*,²² which confirms that if there is actual benefit to the class area, an award is proper even though the award is not to an organization actually located within the class area. In *Turner*, the court determined that the surplus funds could be used in a cy pres distribution to

confer a benefit to the class as a whole:

After examining the purpose of the fund and whom it was to benefit, as well as the purpose of the litigation, this Court has concluded that the funds should be used for the redress of the destruction and damage throughout St. Bernard Parish. The Court would not be in favor of use of the funds for beautification outside of the Parish. However, these funds can be used outside of the class area in a way that benefits the class. Whether damaged by water or oil, much of the area has been devastated, and the development of part of the Parish is linked to the recovery of the entire community. Many parts of St. Bernard Parish that are out of the area defined by the class serve as the gateway to the class area. The proposed use of a portion of the excess funds will serve to increase the tax base of the Parish and will inure to the benefit of the class members.²³

Conclusion

The use of cy pres distributions for residual or unclaimed class-action funds provides a beneficial method for case conclusion. Often, if an additional distribution were required to individual class members, the extra expenses would likely be disproportionate to the individual amount distributed. The equitable remedy of cy pres offers a solution: a court can, with creativity and cooperation, endeavor to distribute unused funds in a way that most consistently benefits the class (and often the surrounding community) as a whole.

As illustrated above, the cy pres doctrine also has been used as the basis to encourage settlement in non-class/mass-joinder cases.

From community centers to educational outreach programs, from environmental protection funds to legal aid and assistance programs — in short, all benefit from cy pres distribution.

FOOTNOTES

1. See *Black's Law Dictionary* (8th Ed. 2004),

Cy Pres.

2. *Livingston Parish Police Jury v. Illinois Central Gulf R. Co.*, 432 So.2d 1027 (La. App. 1 Cir. 1983).

3. The Livingston train derailment occurred in Livingston, La., and involved more than 3,500 class members. It was certified as a class action and settled during jury selection for nearly \$40 million.

4. *Turner v. Murphy Oil USA, Inc.*, 05-4206 (E.D. La.), 2009 U.S. Dist. LEXIS 50509 (May 27, 2009), 2009 WL 1507414.

5. *Id.*, at 3-4.

6. For the certification portions of the decision, see *Ellis v. Georgia-Pacific Corp.*, 550 So.2d 1310 (La. App. 1 Cir. 1989); *Ellis v. Georgia-Pacific, Inc.*, 536 So.2d 1217 (La. 1989); *Ellis v. Georgia Pacific Corp.*, 559 So.2d 121 (La. 1990). The cy pres order was not appealed and can be found in the record of Iberville Parish, 18th Judicial District Court, Div. "D," Nos. 26328, 26574.

7. www.gnof.org/programs/environment/.

8. In *Re: Combustion, Inc.*, 94 MDL 4000 (W.D. La. 1986). See also, In *Re: Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997), discussing the fairness of the overall settlement and related issues. The cy pres distribution in the case also included \$1.5 million to the Livingston Parish Intergovernmental Commission.

9. Record, In *Re: Combustion, Inc.*

10. There are many illustrations from other jurisdictions including: In *re Motorsports Merch. Antitrust Lit.*, 160 F.Supp.2d 1392, 1394 (N.D. Ga. 2001) (distributing unclaimed remainder funds to charitable purposes according to cy pres doctrine); *Jones v. National Distillers*, 56 F.Supp.2d 355, 358 (S.D. N.Y. 1999) (authorizing that unclaimed funds in securities litigation case be paid to legal aid charity); *New York v. Reebok Int'l Ltd.*, 903 F.Supp. 532, 536-37 (S.D. N.Y. 1995) (holding settlement fair that distributed to charitable purposes \$8 million recovery for overcharging of athletic shoes, where each individual claims ranged from \$1-\$4 and cost of administering individual recovery would be around \$2.50 per claimant); *Superior Beverage Co. v. Owens-Illinois, Inc.*, 827 F.Supp. 477, 478-79 (N.D. Ill. 1993) (settlement in antitrust case distributed unclaimed remainder funds according to cy pres doctrine to several different charities); *Pray v. Lockheed Aircraft Corp.*, 644 F.Supp. 1289, 1303 (D.D.C. 1986) (allowing punitive damage portion of settlement fund case be given to charitable cause in case involving recovery for claims stemming from 1975 airplane crash in Saigon).

11. CA 00-1267, United States District Court, Western District of Louisiana.

12. CA 97-226, United States District Court, Middle District of Louisiana, where a cy pres award of remaining funds was made to Southern University, Baton Rouge Area Foundation, Baton Rouge Community College and Louisiana State University for the "common benefit of the settlement class members and all others in the geographic area who were potentially affected by the incident... that gave rise to this litigation." Document 4303, filed 10/13/2006.

13. CA 2005-4197, United States District Court, Eastern District of Louisiana, cy pres distribution to the United Way for the GNO Plaquemine Capital Campaign Fund.

14. CA 03 CV 161, United States District Court, Middle District of Louisiana, where cy pres awards

were made to Baton Rouge Marine Institute, Baton Rouge Bar Foundation, Boys and Girls Club of Baton Rouge, Louisiana Arts and Science Center, O'Brien House, Louisiana Coalition Against Domestic Violence, Southern University Law Center, LSU Foundation and Adult Literacy Advocates, totaling \$1,648,135.

15. CA 03 CV 169, United States District Court, Middle District of Louisiana, where cy pres awards were made to Southeastern Development, Southern University Law Center, LSU Law Center, Louisiana Bar Foundation, Greater Baton Rouge Food Bank, American Red Cross and Capital Area CASA, totaling \$431,262.

16. No. 82-488, 23rd Judicial District Court, Ascension Parish, where a cy pres award was made to a volunteer fire department located in the class area.

17. CA 05-40, United States District Court, Middle District of Louisiana, where cy pres awards were made to Our Lady of the Lake Foundation, Louisiana Disaster Recovery Foundation and Mary Bird Perkins Cancer Center.

18. See 3 *Newberg on Class Actions* § 10:21-24 (4th ed.) discussing the pros and cons of certain criticisms of cy pres aspects of class-action settlements, including class-action manageability, cy pres distribution as creating windfall, cy pres distributions as noncompensatory, and noncompensatory distributions as punishments; Kent A. Lambert, "Class Action Settlements in Louisiana," 61 La. L. Rev. 89 (2000) at 104; Robert H. Klonoff and Mark Herrmann, "Class Action Fairness Act: An Ill Conceived Approach to Class Action Settlements," 80 Tul. L. Rev. 1695 (2006) at 1704.

19. The Louisiana Unclaimed Property Act, La. R.S. 9:151, *et seq.*, also has applicable provisions regarding the disposition of unclaimed allocated funds.

20. 2004-1543 (La. App. 4 Cir. 3/2/05), 898 So.2d 584.

21. *Id.*, at 588 (citations omitted).

22. *Turner, supra*, 2009 U.S. Dist. LEXIS 50509, at 4, 2009 WL 1507414.

23. *Id.* (citation omitted).

Calvin C. Fayard, Jr., a partner in the Denham Springs law firm of Fayard & Honeycutt, received his JD degree from Louisiana State University Law Center in 1969. He is a Fellow of the International Academy of Trial Lawyers and the Louisiana Bar Foundation. (519 Florida Blvd., Denham Springs, LA 70726)

Charles S. McCowan, Jr., a partner in the Baton Rouge law firm of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, is a 1967 graduate of Louisiana State University Law Center and was a member of the Order of the Coif and the Louisiana Law Review.

He is a Fellow of the American College of Trial Lawyers and the Louisiana Bar Foundation. (P.O. Box 3513, Baton Rouge, LA 70821-3513)



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. 4, 2010, honoring members of the Bench and Bar who died in the past year. The exercises followed the 58th 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.

(See related articles and photos on Red Masses in New Orleans and Shreveport on pages 291.)

LSBA President Michael A. Patter-

son of Baton Rouge opened the memorial exercises, requesting that the court dedicate this day to the honor and memory of those members of the Bench and Bar who have passed away during the last 12 months. On behalf of the LSBA, he extended condolences to the families and friends of the judges and lawyers.

LSBA President-Elect James J. Davidson III of Lafayette read the names of all deceased members being recognized. Hon. Jeannette Theriot Knoll, associate justice of the Louisiana Supreme Court, gave the closing remarks. The invocation was given by Hon. Raymond

S. Steib, Jr., a judge in the 24th Judicial District Court in Gretna. The benediction was given by Archbishop Gregory M. Aymond, Archdiocese of New Orleans.

David F. Bienvenu, a past LSBA president and an attorney with the firm of Simon, Peragine, Smith & Redfearn, L.L.P., in New Orleans, gave the general eulogy.

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

The members recognized included:

Members of the Judiciary 2009-10

Hon. Julian E. Bailes.....	Natchitoches
Hon. Allen Bergeron, Jr.....	Baton Rouge
Hon. Dewey Burchett.....	Benton
Hon. Oliver S. Delery	Metairie
Hon. Louis G. DeSonier, Jr.....	Metairie
Hon. George M. Foote	Alexandria
Hon. K. Perrell Fuselier	Oakdale
Hon. Guy E. Humphries, Jr.....	Alexandria
Hon. Ingard O. Johannesen.....	Metairie
Hon. Ronald P. Loumiet.....	Lafitte
Hon. Alfred Mansour	Alexandria
Hon. Andrew J. Sciambra	River Ridge
Hon. Steven P. Shea	Cade
Hon. Michael G. Sullivan	Lafayette
Hon. David C. Treen	Mandeville
Hon. Shirley G. Wimberly, Jr.....	New Orleans

Members of the Bar 2009-10

Roland J. Achee	Shreveport
Robert J. Adams	Lafayette
Terry E. Allbritton.....	Monroe
Frank Clinton Allen, Jr.....	New Orleans
Richard D. Alvarez.....	Metairie
Walter G. Andry	Slidell
Jessie H. Ankeny.....	Roland, AR
George V. Baus.....	Pass Christian, MS
Eugenie S. Bollier	New Orleans
Jonathan L. Bookman	New Orleans

Robert J. Boudreau.....	Lake Charles
George S. Bourgeois, Jr.....	Opelousas
Jack P. Brook.....	Baton Rouge
Brent Douglas Burley	Gonzales
James C. Cockfield.....	Metairie
Thomas W. Collens	Covington
Regina C. Cooper.....	Duluth, GA
Sam J. D'Amico.....	Baton Rouge
Claiborne Dameron.....	Baton Rouge
V. Gerald Dean.....	Monroe
Richard A. Deas	Metairie
Harvey P. Delaune.....	Bossier City
Melissa F. Doise.....	Lafayette
J. Stuart Douglass.....	Metairie
Ernest S. Easterly III.....	Watson
Jonathan A. Eckert	New Orleans
Francis Emmett	New Orleans
Stephen E. Everett.....	Alexandria
Francis Burke Fenerty.....	New Orleans
Nathan Joseph Folse	Baton Rouge
Major Edward J. Gay III	Covington
Hugh M. Glenn, Jr.....	New Orleans
Brace B. Godfrey, Jr.....	Baton Rouge
Abraham Goldfarb	New Orleans
Robert M. Green	Mandeville
Frances L. Griffis	Houston, TX
Arthur Buford Haack	Baton Rouge
Leven Hill Harris	Shreveport
Carol B. Hart.....	Brunswick, GA

M. Glenn Hawkins Many
 Gerald I. Hebert Lafayette
 Haywood Hansell Hillyer III Granbury, TX
 William M. Hudson III Lafayette
 John Hanson Jackson Madisonville
 William C. Jones New Orleans
 Thomas K. Kirkpatrick Baton Rouge
 William L. Koerber Vidalia
 John D. Kopfler Hammond
 Roselyn B. Koretzky New Orleans
 Edgar H. Lancaster, Jr. Tallulah
 Thaddeus Joseph Michael Lassai Houston, TX
 Robert S. Leake Baton Rouge
 Patrick C. Leitz Metairie
 Stanley Harry Levin Metairie
 Guy Campbell Lyman, Jr. Monteagle, TN
 Michael Mangham Lafayette
 Washington Marshall Baton Rouge
 Wilton T. McCay, Jr. Slidell
 Robert M. McHale Lake Charles
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 Bryan K. McMinn New Orleans
 John G. Miller, Jr. Metairie
 Kendall R. Moses Kenner
 James F. Mulla, Jr. New Orleans
 Wayne Brown Mumphrey Slidell
 Edmund T. O'Brien New Orleans
 James J. O'Connor Metairie
 Judy A. Pace New Orleans
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Louisiana State Bar Association President Michael A. Patterson addressed participants attending the October 2010 Louisiana Justice Community Conference. The seventh annual conference was hosted by the LSBA's Access to Justice Program.

Access to Justice Program Hosts 7th Annual Louisiana Justice Community Conference

As part of the effort to strengthen Louisiana's public interest legal community, the Louisiana State Bar Association's (LSBA) Access to Justice Program hosted its seventh annual Louisiana Justice Community Conference in October 2010 in Baton Rouge. This year's conference boasted new record attendance, with more than 120 public interest and pro bono attorneys participating in the discussion and networking events.

Conference participants were greeted by leaders of the Louisiana legal community, including addresses by LSBA President Michael A. Patterson and Louisiana Bar Foundation Vice President Mathile W. Abramson. In a welcome address, Julie

Baxter of the Rhorer Law Firm shared her perspective on public interest from her background in both civil litigation and investigative journalism.

Participants had the opportunity to choose from two training tracks. The "Effective Advocacy" track focused on practice skills and technology training, such as trial preparation techniques taught by members of the American College of Trial Lawyers. The "Substantive Law" track provided advanced training in pertinent public interest topics, including foreclosure prevention and defense, health care reform, and advocating for victims of domestic violence and elder abuse.

Register Now for 2011 Solo and Small Firm Conference

Participants registering now for the Louisiana State Bar Association's (LSBA) fourth annual Solo and Small Firm Conference can earn up to 13.5 CLE hours for just \$250! This advance registration fee is effective through Jan. 14, 2011; the fee will increase to \$300 from Jan. 15-Feb. 21. The conference is set for Feb. 24-25 at the Hilton New Orleans Riverside, 2 Poydras St.

Conference organizers have announced that two nationally known speakers have been confirmed: James A. Calloway and Catherine Sanders Reach. Calloway, a legal technology and legal management expert, is the co-author of *Winning Alternatives to the Billable Hour — Strategies that Work* and *How Good Lawyers Survive Bad Times*, and author of the blog, *Jim Calloway's Law Practice Tips*. Reach is the director of the American Bar Association's Legal Technology Resource Center and an editorial board member for *Law Technology News*, *Law.com's Legal Technology* and *Law Practice Today*.

Two "tech tips" sessions just for legal assistants (\$40 each session) have been added to the line-up for the conference. A full schedule of all topics and speakers will be available online soon.

To register for the event online or to download a mail-in form, go to: www.lsba.org/2011solo.

Also, conference exhibitors and sponsors can sign up to participate through Jan. 28. To sign up as an exhibitor or sponsor, contact LSBA Program Coordinator/Marketing and Sections Christine A. Richard, (504)619-0105, e-mail crichard@lsba.org.



LSBA 2011 Midyear Meeting Registration Information Online

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 20-22, 2011, at the New Orleans Marriott at the Convention Center, 859 Convention Center Blvd. The meeting will feature free CLE events, including the Young Lawyers Section's Professional Development Seminar and a professionalism seminar, "DO Sweat the Small Stuff and Enhance Professionalism in the Process;" a reception honoring the 50-, 60- and 70-year members of the LSBA; and several business meetings, including the Board of Governors, the House of Delegates and various committees. For more information or to register online, go to: www.lsba.org/midyear2011.

Online Registration Open for Annual Meeting in Las Vegas

Louisiana State Bar Association (LSBA) members may now register online for the 70th LSBA Annual Meeting, Tuesday through Thursday, June 28-30, 2011, at the Wynn Las Vegas. The online registration process is easy! Members must first register for the meeting. Once registration is complete, members will receive a link to the Wynn Las Vegas reservation system and will be able to reserve a room at the negotiated rate. For more information on all aspects of the Annual Meeting, go to: www.lsba.org/annualmeeting2011/. Several airlines have daily flights between Louisiana cities and Las Vegas. Book early to get the best flight deals!

LSBA Encourages Volunteerism with Model Pro Bono Policy

The Louisiana State Bar Association's (LSBA) Board of Governors, at its August 2010 meeting, approved the development of a model pro bono policy for law firms and asked to review the final policy. The policy was developed by pro bono program coordinators from across the state to encourage greater pro bono volunteerism among Louisiana law firms.

As part of its action plan for the 2010-11 Bar year, the LSBA's Access to Justice Department is working with the various pro bono programs to distribute the plan to law firms and encouraging firms to adopt an official firm pro bono policy. The model policy is being distributed to firms identified by local pro bono organizations along with a letter of support signed by LSBA President Michael A. Patterson. Bar leaders and pro bono coordinators will follow up with the identified law firms.

Firms creating a Pro Bono Policy will be recognized by the LSBA at events and in LSBA publications beginning in January 2011.

For more information on development of a pro bono policy, or to review the LSBA Model Pro Bono Policy, visit the Access to Justice website, www.lsba.org/atj, or contact Access to Justice Director Monte T. Mollere at (800)421-5722, ext. 146.

Louisiana Attorneys Donate Nearly \$13 million in Service

Louisiana attorneys, in the past year, collectively donated 129,213 pro bono hours to those who could not otherwise afford to hire an attorney, according to statistics compiled recently by the Louisiana State Bar Association's (LSBA) Access to Justice Department. This translates into approximately \$13 million worth of service to Louisiana's indigent.

As part of the continued effort to promote and record pro bono activities throughout the state, the LSBA collects statistics annually on the number of pro bono hours performed by Louisiana attorneys. This is done through voluntarily self-reporting in response to a request distributed with the Bar dues. Rule 6.1 of the Rules of Professional Conduct sets an aspirational goal for every attorney to provide 50 hours of pro bono service each year.

On average, each Louisiana attorney who reported his/her hours provided 73 hours of pro bono service for the year, well above the aspirational goal set forth in Rule 6.1.

It is not too late to report pro bono hours completed for the period beginning on July 1, 2009, and ending on June 30, 2010. These hours can be reported online at: www.lsba.org/pbreporting.

To find out about pro bono opportunities, visit the LSBA's Access to Justice website, www.lsba.org/atj.

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Deadline Jan. 14 for LSBA Human Rights Award

The nomination deadline is Jan. 14, 2011, for the Louisiana State Bar Association's (LSBA) Human Rights Award. The award will recognize outstanding efforts made by a bar association, a law firm or law department, an individual attorney or judge, a court, or a community organization or individual in promoting diversity in the legal profession, in particular, to recognize efforts ensuring the full and equal opportunity of all persons for entry and advancement in Louisiana's legal profession.

One award will be presented during the 2011 Annual Meeting in June.

To review the award guidelines and to download a nomination form, go to: www.lsba.org/lsbadocuments/285.pdf and [www.lsba.org/lsbadocuments/285\(1\).pdf](http://www.lsba.org/lsbadocuments/285(1).pdf). Or e-mail LSBA Director of Member Outreach and Diversity Kelly McNeil Legier, kelly.legier@lsba.org.

Nominations Open for 2011 Pro Bono Publico Awards

The Louisiana State Bar Association's Access to Justice Committee is currently accepting nominations for its annual Pro Bono Publico Awards. Nominations must be received by 4:30 p.m. on Friday, Feb. 25, 2011.

The Pro Bono Publico Awards recognize pro bono and public interest attorneys dedicated to serving Louisiana's indigent. The awards include the Friend of Pro Bono Award, the Pro Bono Publico Award, the Career Public Interest Award, the David A. Hamilton Lifetime Achievement Award and the Law Student Award. Awards will be presented at a pro bono reception in May 2011.

For more information on the award categories and to submit nominations online, visit the website, www.lsba.org/probonoawards.



Staff Member Receives 2010 NABE Luminary Award

Louisiana State Bar Association (LSBA) Communications Coordinator Barbara D. Baldwin received a Thomson Reuters Legal Luminary Award for communications excellence from the National Association of Bar Executives (NABE). Baldwin was honored in the Excellence in Web Sites category for her design of the LSBA's 2010 Annual Meeting/Summer School web pages.

The LSBA was among only 16 bar associations and their communications professionals to receive Luminary Awards this year. The NABE Communications Section's Luminary Awards program, created in 1992 and named for the New Mexican "luminaria," recognizes excellence in marketing, public relations, regular publications, special publications, electronic publications and Web sites.

Mini Diversity Conclaves in Baton Rouge, Shreveport

The Louisiana State Bar Association (LSBA) is partnering with the Greater Baton Rouge Louis A. Martinet Legal Society, Inc. and the Baton Rouge Bar Association to host a free mini diversity conclave on Wednesday, Jan. 26, at the Embassy Suites Hotel, 4919 Constitution Ave., Baton Rouge.

The LSBA is partnering with the Shreveport-Bossier Black Lawyers Association and the Shreveport Bar Association to host a free mini diversity conclave on Thursday, Feb. 3, at the Petroleum Club, 416 Travis St., Shreveport.

Both conclaves have been approved for 3 CLE professionalism hours. To register online or for more information, go to: www.lsba.org/2007cle/cle.asp. Or, contact LSBA Member Outreach and Diversity Director Kelly McNeil Legier, (504)619-0129 or e-mail kelly.legier@lsba.org.

Employers' Deadline is Jan. 30 for Legal Internship Fair

The Louisiana State Bar Association (LSBA) Minority Involvement Section's third annual Minority Legal Internship Fair is 8 a.m. to 2 p.m. Saturday, March 26, 2011, at Louisiana State University Paul M. Hebert Law Center.

Employers are encouraged to take advantage of the opportunity to receive inexpensive or free legal assistance from law students for the summer. Registration is free for employers; registration deadline is Jan. 30, 2011.

To register online, go to: <https://law-lsba-csm.symlicity.com/employers/>. To RSVP for the luncheon or to receive more information, contact LSBA Member Outreach and Diversity Director Kelly McNeil Legier, (504)619-0129 or e-mail kelly.legier@lsba.org.

Deadlines Extended for Annual Meeting/Summer School Exhibitors, Sponsors, Advertisers

The participation deadlines have been extended for exhibitors, sponsors and advertisers interested in the 2011 Louisiana State Bar Association (LSBA) Annual Meeting and LSBA/Louisiana Judicial College Joint Summer School.

The Joint Summer School is Sunday through Wednesday, June 5-8, at Sandestin Golf and Beach Resort in Destin, Fla. The 70th LSBA Annual Meeting is Tuesday through Thursday, June 28-30, at the Wynn Las Vegas.

The LSBA would like to acknowledge Gilsbar, Inc. and LexisNexis for participating as Platinum Sponsors for the Annual Meeting.

To sign up as an exhibitor, vendor or sponsor, contact LSBA Program Coordinator/Marketing and Sections



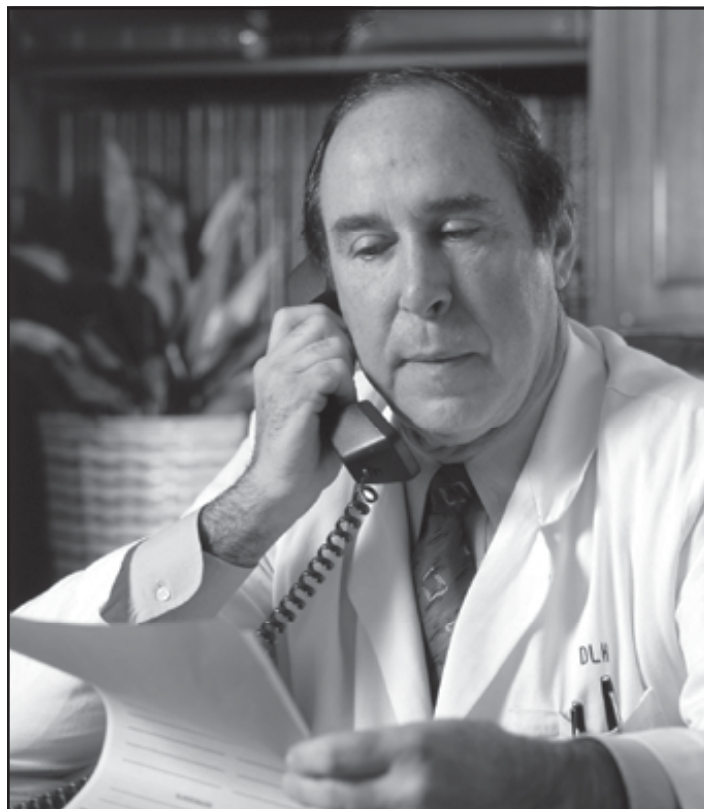
Christine A. Richard, (504)619-0105, e-mail crichard@lsba.org, by March 4, 2011. To book advertising space in the LSBA Annual Meeting Program, contact LSBA Communications Assistant Krystal L. Bellanger at (504)619-0131, e-mail kbellanger@lsba.org, by Jan. 31, 2011.

Planning Underway for 2011 Diversity Conclave

Planning is underway for the Louisiana State Bar Association's (LSBA) fourth annual Conclave on Diversity in the Legal Profession. The conclave is set for March 18, 2011, at the New Orleans Marriott at the Convention Center, 859 Convention Center Blvd., New Orleans.

The theme of this year's conclave is "The Professional Workplace: Implementing Solutions and Cultivating An Inclusive Atmosphere."

To sign up as an exhibitor or sponsor, contact LSBA Program Coordinator/Marketing and Sections Christine A. Richard, (504)619-0105, e-mail crichard@lsba.org. For more information on the conclave, contact LSBA Member Outreach and Diversity Director Kelly McNeil Legier, (504)619-0129 or e-mail kelly.legier@lsba.org.



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Lawyer Specialization Available in Five Areas

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for 2012 certification in business bankruptcy law, consumer bankruptcy law, estate planning and administration, family law and tax law.

Deadline for accepting applications for estate planning and administration, family law and tax law certification is April 15, 2011. Applications for the two areas of bankruptcy law will be accepted through September 2011.

In accordance with the Plan of Legal Specialization, any Louisiana State Bar Association member who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. The five-year practice requirement must be met for the period ending Dec. 31, 2011. A further requirement is that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought.

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

and the examination is administered:

- ▶ Estate Planning and Administration — 18 hours of estate planning law.
- ▶ Family Law — 18 hours of family law.
- ▶ Tax Law — 20 hours of tax law.
- ▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

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

To apply for certification, complete and mail, fax or e-mail the form below. For more information, go to the Louisiana Board of Legal Specialization's Web site at www.lascmcle.org/specialization.

Lawyer Specialization Application

Deadline for accepting applications for estate planning and administration, family law and/or tax law certification is April 15, 2011. Applications for business bankruptcy law and consumer bankruptcy law will be accepted until September 2011. To receive an application, complete the following.

(Please print or type.)

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Please indicate area of certification desired _____

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Louisiana Board of Legal Specialization

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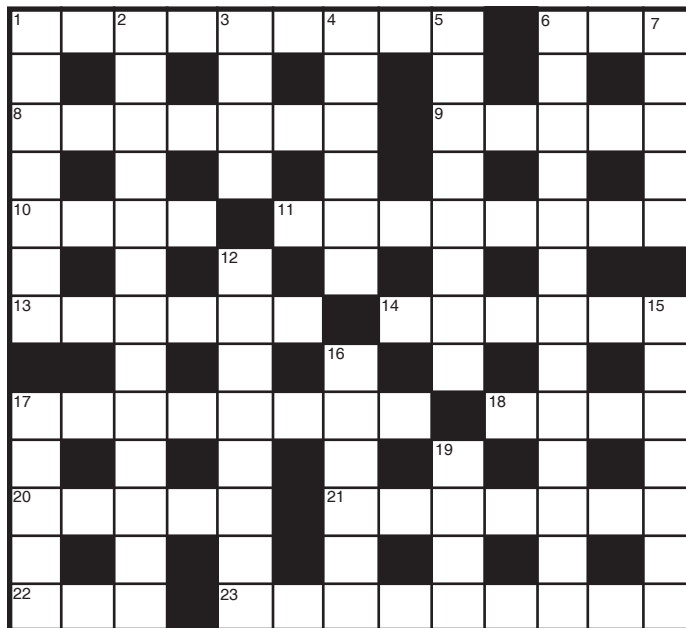
Lafayette Volunteer Lawyers
www.lafayettebar.org/volunteer.php

**The Pro Bono Project,
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Crossword PUZZLE

By Hal Odom, Jr.

LEGAL TITANS



ACROSS

- 1 Legal titan Samuel ___, author of a treatise on contracts (9)
- 6 ___ & Bradstreet (3)
- 8 Typically, one eligible for a pension (7)
- 9 Like diet foods (2-3)
- 10 What's more (4)
- 11 Naïvely optimistic character in Dickens (8)
- 13 "We ___ One," 1989 Eurythmics album (3, 3)
- 14 What "nuncupative" means, literally (6)
- 17 Constructors of houses (8)
- 18 ___ mater (4)
- 20 A friend south of the border (5)
- 21 Often worn at ABA conventions (4, 3)
- 22 Relatives (3)
- 23 It broke the camel's back (4, 5)

DOWN

- 1 Authorization to arrest or search (7)
- 2 Meditative posture (5, 8)
- 3 Common expression in case titles (2, 2)
- 4 Diana Ross/Michael Jackson movie musical of 1978 (3, 3)
- 5 Serious, but not too serious (8)
- 6 Automated external ___ (13)
- 7 Saltpeter (5)
- 12 Substance associated with Deepwater Horizon (5, 3)
- 15 Scots population center (7)
- 16 Items associated with Space Shuttle Challenger (1-5)
- 17 Legal titan Hugo ___, author of *Gideon v. Wainwright* (5)
- 19 Ratite birds (4)

Answers on page 290.

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FOCUS ON Professionalism

By Barry H. Grodsky

CALLING ALL MENTORS!

Imagine a young lawyer, one year out of law school, sitting in his office on a Thursday morning in Bunkie when his boss comes in, puts a file on his desk and says, "I've got a family emergency out of the country and I need to leave town right away. You need to handle this rule tomorrow in Plaquemines. Good luck." With that, the boss in this two-person law firm walks out. By the time the young lawyer hears the office door slam, he immediately has two questions: What is a "rule"? Where is Plaquemines?

The young lawyer knows the legal issues; he prepared the legal memorandum. However, the only time he has been in court was when he watched his boss handle a couple of hearings and once tried a case. But a "rule"! And he was on his own! The young lawyer reviewed the file and figured out that he had to be in the Parish of Plaquemines, not the city. He felt he knew "the law" but was unsure about the little things — things more seasoned and experienced lawyers take for granted.

At that moment, this young lawyer had no one to ask about very basic information. What happens at a "rule"? Where exactly is the court? What does he do when he arrives in court? Is there anything special he should be aware of

concerning the process?

This is not a unique situation. Less experienced lawyers often face these dilemmas, particularly when they have no one to ask. Such issues also can be of concern to more experienced lawyers going into a court in which they have never practiced.

These issues have been addressed by the Louisiana State Bar Association (LSBA) and, through the efforts of the Committee on the Profession and the Practice Assistance and Improvement Committee, a voluntary online mentoring program was created. The first step in the program is well underway — registering volunteers to be mentors. This simple step is only a click away at the LSBA's website, www.lsba.org/Mentoring. Select the option to become a mentor and, after answering a few questions, you will be listed in a mentor database. As a mentor, you can then be contacted by e-mail by young lawyers to assist with practice questions and other issues.

The purpose of the program is not to help with legal analysis or case strategy, but rather to lend a guiding hand to assist with very basic information. Such help is a prime example of professionalism — sharing information and experiences with young lawyers to guide them through

situations such as hearings, depositions or facing a certain judge. Communications can be as simple as an e-mail exchange or phone call or two — or as much as the mentor and mentee want.

There will always be room for more mentors and, with the quick-and-easy registration process, this is a great opportunity to share the wisdom, experience and guidance you have accumulated throughout your years of practice with those who can truly benefit from such mentoring. There is no other obligation other than to take a moment to sign up.

This database information will be given soon to prospective mentees who can avail themselves of this program. The LSBA has, in recent years, expanded its programming to assure that young lawyers and law students are headed down the proper path of professionalism and can benefit from the experiences of more seasoned lawyers. This programming includes annual professionalism orientations in the state's four law schools and the creation of a Law Student Division of the LSBA. The LSBA takes great pride in its Leadership Classes and in promoting professionalism for all lawyers. This voluntary mentoring program is just one more step in this direction.

Remember, it was not that long ago when many of us were that "young lawyer." Think about how much easier it would have been if we had a mentor. Support this program by being that mentor. It is easy to sign up and can greatly help a young colleague.

Barry H. Grodsky, a partner in the New Orleans law firm of Taggart Morton, L.L.C., is a member of the Louisiana State Bar Association's Board of Governors and the chair of the LSBA's Committee on the Profession. He can be e-mailed at bgrodsky@taggartmorton.com.

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 4, 2010.

Decisions

Robert C. Arledge, Vicksburg, Miss., (2010-B-1014) **Permanent disbarment** ordered by the court on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 17, 2010. *Gist:* Violation of the Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

Harry J. Boyer, Jr., Metairie, (2010-B-1441) **Adjudged guilty, as consent discipline, of additional violations that warrant disbarment and that will be added to his record for consideration in the event that he applies for readmission from his disbarment in 2009-B-1740** ordered by the court on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 3, 2010. *Gist:* Neglected legal matters; failed to communicate with clients; failed to refund unearned fees; and arrested for possession of cocaine.

Donald R. Brown, Alexandria, (2010-B-1590) **Suspended for one year and one day, fully deferred, subject to a two-year period of supervised probation**, ordered by the court on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 3, 2010. *Gist:* Failure to adequately supervise his non-lawyer employee; and failing to properly charge clients for certain expenses.

John D. Conry, Metairie, (2010-B-1929) **Interim suspension** ordered by the court on Aug. 25, 2010.

Robert L. Hackett, New Orleans, (2010-B-1013) **Permanent disbarment**

ordered by the court on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 17, 2010. *Gist:* Multiple instances of intentional conversion of client funds totaling in excess of \$720,000; and no restitution offered or made to any client.

Scott M. Hawkins, Lafayette, (2010-B-1093) **Suspended for two years, retroactive to the date of his Jan. 7, 2009, interim suspension, and ordered to serve two years' probation with**

conditions, ordered by the court on July 2, 2010. JUDGMENT FINAL and EFFECTIVE on July 2, 2010. *Gist:* Plead guilty to felony second-degree battery and misdemeanor simple battery in two separate criminal matters.

Charles D. Jones, Monroe, (2010-B-2047) **Interim suspension** ordered by the court on Sept. 20, 2010.

Johnnie A. Jones, Jr., Baton Rouge, (2010-B-2010) **Interim suspension or-**

Continued next page



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Discipline continued from 261

dered by the court on Sept. 15, 2010.

Edward A. Kaplan, Alexandria, (2010-B-2112) **Interim suspension** ordered by the court on Sept. 20, 2010.

W. Scott Maxwell, Baton Rouge, (2009-B-2658) **Permanent disbarment** ordered by the court on July 6, 2010. Rehearing denied on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 3, 2010. *Gist:* Convicted of felony theft of funds from his mentally disabled client and her mother; multiple instances of intentional conversion of client funds; engaged in the practice of law during his interim suspension; and failure to cooperate with ODC in the underlying investigations.

Randal L. Menard, Lafayette, (2010-B-1798) **Suspended for one year and**

a day, fully deferred, and ordered to pay restitution to his workers' compensation client, ordered by the court on Sept. 24, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 24, 2010. *Gist:* Collected a fee that exceeded the fee awarded by the workers' compensation judge and exceeded the amount permitted by the workers' compensation statute in a lump sum settlement.

Lori P. Moser, Covington, (2010-B-1777) **Suspended for one year and one day, fully deferred, subject to two years' supervised probation**, ordered by the court on Sept. 24, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 24, 2010. *Gist:* Charging or attempting to charge an excessive or improper fee and expenses; conduct involving dishonesty, fraud, deceit

or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Edward M. Nichols, Jr., Lake Charles, (2010-B-0079) **Suspended for one year, with all but six months deferred, followed by a one-year period of supervised probation**, ordered by the court on July 6, 2010. Rehearing denied on Sept. 3, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 3, 2010. *Gist:* Failure to abide by the client's decisions regarding the objectives of the representation; neglect of his client's legal matters; and failure to communicate with his client.

John B. Ohle III, New Orleans, (2010-B-1707) **Interim suspension** ordered by the court on Aug. 13, 2010.

Warren Rush, Lafayette, (2010-OB-2104) **Transfer to disability inactive status** ordered by the court on Sept. 28, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2010.

Stephen R. Streete, Lake Charles, (2010-OB-2074) **Transfer to disability inactive status** ordered by the court on Sept. 15, 2010. JUDGMENT FINAL and EFFECTIVE on Sept. 15, 2010.

Randy P. Zinna, Baton Rouge, (2010-B-1778) **Interim suspension** ordered by the court on July 29, 2010.

Elizabeth A. Alston

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 1, 2010.

Respondent	Disposition	Date Filed	Docket No.
Kenneth Back	[Reciprocal] Suspension.	8/17/10	10-1486 "I"
Joseph W. Bailey	[Reciprocal] Suspension.	8/19/10	10-1681 "F"
John T. Bennett	[Reciprocal] Suspension.	9/20/10	10-1431 "R"
Donald G. Cave	[Reciprocal] Suspension.	8/19/10	10-1432 "F"
John D. Conry	[Reciprocal] Interim suspension.	9/30/10	10-2916 "J"
Margrett Ford	[Reciprocal] Suspension.	8/19/10	10-1680 "N"
Robert U. Goodman	[Reciprocal] Permanent resignation.	8/23/10	10-1774 "B"
Darryl Jackson	[Reciprocal] Disbarment.	8/30/10	03-1394 "R"
Stephanie Lawrence	[Reciprocal] Suspension.	8/13/10	10-2045 "J"
Kevin P. Monahan	[Reciprocal] Permanent resignation.	8/17/10	06-3986 "I"
William H. Sibley	[Reciprocal] Permanent resignation.	8/17/10	10-1433 "L"
Arden Wells	[Reciprocal] Disbarment.	9/3/10	07-9308 "N"
Randy Zinna	[Reciprocal] Interim suspension.	9/30/10	10-2736 "I"

Discipline continued from 262

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

No. of Violations

A lawyer shall abide by a client's decisions concerning the objectives of the representation and shall consult with the client as to the means by which they are to be pursued. 1

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. 1

An attorney shall not knowingly disobey an obligation under the rules of a tribunal.... 1

A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. 1

A lawyer shall promptly inform the client of any decision or circumstance with respect to which client's informed consent is required..... 1

Concurrent conflict of interest 1

"Confirmed in writing" when used in reference to the informed consent of a person..... 1

Commit a criminal act especially that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects 1

Each affected client gives informed consent regarding concurrent conflict of interest..... 1

Engaging in conduct intended to disrupt a tribunal 1

Failing to act with reasonable diligence and promptness in representing a client.....2

Failure to communicate with client.....3

Failure to properly withdraw from representation..... 1

Failure to terminate representation properly..... 1

Improperly charging a client for recoverable costs without regard for the actual invoiced expenses..... 1

Lack of diligence..... 1

Relating to the handling of advanced fees 1

Regarding "informed consent" 1

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Agency Subpoena Power Has Limits

The Louisiana State Board of Nursing (board) served a subpoena duces tecum on the Baton Rouge sheriff and district attorney for the production of records in their possession and pertaining to their investigations of allegations against a nurse licensed by the board for sexual abuse of a patient. Law enforcement produced the initial police report but refused to produce any additional documents because they were not public records. The board filed suit seeking various relief, all of which aimed at compelling production of the records. The trial court declined to rule in the board's favor.

In *Louisiana State Board of Nursing v. Gautreaux*, 09-1758 (La. App. 1 Cir. 6/11/10), 39 So.3d 806, the appeals court affirmed the trial court, holding that although the matter was moot by the time it was being considered, the board subpoenas constituted an unreasonable interference with the prosecutorial responsibilities of the district attorney.

—**Brian M. Bégué**
Chair, LSBA Administrative
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New Orleans, LA 70116



Fraudulent Intent

In *re Herman*, 09-41226, 2010 WL 3824246 (5 Cir. Sept. 24, 2010) (unpublished).

Creditors of Verna Kay Herman, the

debtor, filed an adversary proceeding challenging the discharge of her debts. The bankruptcy court held that false statements and fraudulent omissions in the debtor's bankruptcy schedules and statement of financial affairs precluded a discharge of her debts. The district court and the 5th Circuit affirmed.

In this case, the creditors argued that the debtor violated 11 U.S.C. §§ 727(a) (2) for omitting certain transactions that occurred within one year of the filing of her bankruptcy petition from her schedules and statement of financial affairs.

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Topic: Medicare & MSAs: Update II

Speaker: Roger J. Larue

February 24, 2011 (1 hr.)

Topic: Back to Basics: Fundamentals of Negotiation

Speaker: Robert A. Jenks



Roger J. Larue

BATON ROUGE:

8550 United Plaza Blvd • 1st Floor

January 28, 2011 (2 hrs.)

Topic: Medicare & MSAs: Update II

Speaker: Roger J. Larue

February 25, 2011 (1 hr.)

Topic: Back to Basics: Fundamentals of Negotiation

Speaker: Robert A. Jenks



Robert A. Jenks



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Specifically, the debtor failed to disclose the following transactions: (1) withdrawals from her checking account, which were allegedly used to pay for physical improvements to her home; (2) transfer of title of a truck to her husband for \$1 and then paid off the balance; and (3) the purchase of a television and laptop on her personal line of credit at Best Buy.

To obtain a denial of discharge under Section 727(a)(2)(A), the creditors had to prove by a preponderance of the evidence that the debtor transferred property belonging to the debtor within one year of the filing of the petition with intent to hinder, delay or defraud a creditor or officer of the estate.

The debtor argued that she did not believe the assets belonged to her and the omission was an “honest mistake.” The debtor asserted that she did not own the truck, but the 5th Circuit found that she paid off the balance and did not produce any evidence that her husband made the payments. The debtor also argued that the items from Best Buy were used by her husband for his business and she thought he was the owner. However, the 5th Circuit found that the debtor attempted to discharge the debt owed to Best Buy. Finally, the 5th Circuit noted that the debtor did not produce any evidence that physical improvements to her home were made with the funds she withdrew from her account, but rather, that she withdrew these funds just days after the enforcement of a state court judgment by the creditors.

The bankruptcy court inferred the intent to hinder or defraud from the evidence and found from the facts:

too many omissions from significant transactions occurring only weeks prior to the bankruptcy filing to support the supposition that these omissions were the result of honest mistakes or inadvertence.

The 5th Circuit held that the bankruptcy court did not clearly err by finding the debtor acted with fraudulent intent in violating Section 727(a)(2)(A).

Judicial Estoppel

Reed v. City of Arlington, 620 F.3d 477 (5 Cir. 2010).

Kim Lubke, the debtor, obtained a judgment against the City of Arlington for violations of the Family Medical Leave Act. The debtor failed to list the pending \$1 million judgment on his schedules and statement of financial affairs and on his sworn statements and filings. The debtor obtained a discharge of \$300,000.

The issue before the 5th Circuit was “whether judicial estoppel should prevent not only Lubke but his bankruptcy trustee from collecting the judgment against the City.” The 5th Circuit reversed the district court’s ruling, holding that “to protect the integrity of judicial processes, judicial estoppel bars the trustee from collecting the judgment.”

The district court applied the following three requirements for judicial estoppel: “(1) inconsistent positions, (2) the court’s acceptance of inconsistent positions, and (3) absence of inadvertence.” The district court found that while all of the requirements applied to the debtor, they did not apply to the trustee. The district court ordered the City to pay the judgment to the trustee, but, concerned the debtor would benefit from any remaining funds, ordered those funds returned to the City.

Upon a review of the facts, the 5th Circuit held that the district court erred in holding that judicial estoppel did not apply to the trustee. First, the 5th Circuit noted that it was “not sufficient to distinguish the debtor’s conduct from that of the trustee in applying judicial estoppel.”

Second, the 5th Circuit found that the “balance of harms disfavors permitting th[e] litigation to continue.”

Upon learning of the judgment, the trustee reopened the debtor’s bankruptcy case, and upon reopening, only one-sixth of the debtor’s creditors timely filed new claims with the court. Thus, the 5th Circuit recognized that the debtor’s creditors would not be “materially advantaged” if the case proceeded any further. The 5th Circuit found that the only principal claimants in the bankruptcy were the trustee and the debtor’s trial attorney, and equity did not favor “ignoring [the debtor’s] misuse of the court system for the primary benefit of attorneys.” The 5th Circuit also noted that the debtor benefited from his continued possession and use of other unscheduled assets that the trustee did not pursue. Accordingly, the 5th Circuit reversed the district court’s ruling, holding that the district court failed to “consider the [judicial estoppel] doctrine from a fact-specific perspective concerning all parties involved.”

—**Tristan E. Manthey**

Chair, LSBA Bankruptcy Law Section
and

Cherie D. Nobles

Member, LSBA Bankruptcy
Law Section

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Custody

Chandler v. Chandler, 45,308 (La. App. 2 Cir. 5/19/10), 37 So.3d 569.

Naturally occurring changes in the 10 years since the previous stipulated custody judgment — such as the mother's finishing her education and becoming a doctor, both parents' remarriages, the father's subsequent divorce, and the child's advanced age as a young teenager — were not alone changes that materially affected the child's welfare to support a change of the custody arrangement. Because the child was flourishing under the present schedule, and the father failed to show that a change would be in his best interest, the trial court did not err in dismissing his case involuntarily under La. C.C.P. art. 1672.

Pylant v. Pylant, 45,378 (La. App. 2 Cir. 6/23/10), 41 So.3d 1282.

After entering a consent judgment regarding custody in 2006 on a petition for an article 102 divorce filed by Ms. Pylant, the divorce action was abandoned when no rule for divorce was timely filed. In 2009, Mr. Pylant filed a petition for an article 103 divorce and sought custody and child support. Ms. Pylant's exception of no cause of action as to the custody was maintained, and when Mr. Pylant failed to amend his petition

to allege that a change of circumstances had occurred since the last judgment, his claim was dismissed. The court of appeal affirmed, finding that although the article 102 action was abandoned, the consent judgment of custody remained in effect.

Child Support

State ex rel. Dept. of Soc. Servs. v. Peteet, 09-1219 (La. App. 4 Cir. 5/12/10), 40 So.3d 1015.

The Louisiana Department of Social Services at the request of an Ohio support enforcement agency filed to register an Ohio child support judgment for enforcement by wage assignment, which was granted. The court of appeal found that Ohio had personal jurisdiction over the defendant, who had to raise any such objections in Ohio, which had continuing jurisdiction over the matter; Ohio law controlled as to the prescriptive period under UIFSA; and the Ohio and Louisiana Departments had standing to bring the action.

Divorce

Noto v. Noto, 09-1100 (La. App. 5 Cir. 5/11/10), 41 So.3d 1175.

The court of appeal found that the trial court did not err in finding Ms. Noto free from fault because the trial court believed her testimony, and Mr. Noto had no corroborating evidence to prove his claims for fault by a preponderance of the evidence. The court of appeal also affirmed that the parties going on a family vacation together after he confessed his infidelity was not sufficient to prove a reconciliation had taken place. Even though she had a salary of \$47,787,

with benefits, she was still in need, and he could afford to pay final spousal support. Although he claimed that the court erred in considering entertainment/miscellaneous, gifts, credit cards, veterinary bills, cell phone, cable/Internet, medical, pharmacy and utilities, the court of appeal found that "[d]espite the fact that 'maintenance' allows for the basic necessities of life and does not include luxury items, the evidence submitted supports a \$1,500.00 award without including the luxury items." There was also no error in the duration for at least 24 months. The court could not consider his claim that her expenses decreased because a mortgage note had been paid; his remedy was a rule to decrease.

Property

Iles v. Ogden, 09-0820 (La. App. 4 Cir. 2/26/10), 37 So.3d 427, writs denied, 10-0863, 10-0986 (La. 9/3/10), 44 So.3d 694, 695.

The court addressed, among other community-property-related issues, the *res nova* issue of whether a cause of action exists in a wrongful death case (automobile accident) in favor of the decedent's spouse for unearned/passive income derived from decedent's separate property, which would have been community-property income, and found that she was entitled to one-half of the value of such income. This was particularly so because he was on his way to sign a will that would have provided her with most of his separate estate and one-half of his community property when he was killed. The court established factors to be met to establish a cause of action to determine the loss to be replaced. The court found there was no cause of action established for her "loss of inheritance," but did not rule out that such a cause could be established under the appropriate extraordinary circumstances.

Succ. of Firmin v. Loudon, 09-0411 (La. App. 4 Cir. 4/21/10), 38 So.3d 445, writ denied, 10-1176 (La. 9/17/10), 45 So.3d 1046.

The trial court did not err in finding Ms. Firmin was not entitled to the marital portion or in how it calculated the value of her and Mr. Firmin's respective estates. She was not due as community property one-half of the undistributed income retained in his business at his death, which was his separate property. Although his will granted her use and occupancy of the family home (his

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separate property), after it was destroyed by Hurricane Katrina, she was not entitled to use the proceeds in lieu of her living in the home, which she declined to repair.

Barber v. Barber, 09-0780 (La. App. 1 Cir. 5/7/10), 38 So.3d 1046.

The trial court found the parties' prenuptial contract valid, but a paragraph regarding waiver of interim spousal support and final spousal support was struck in its entirety because it is unlawful to waive interim spousal support and the provisions were "inextricably bound." It also ruled that her right to seek reimbursement for contributions to his estate was reserved "as per law." On his appeal, the court of appeal found that while interim spousal support could not be waived, "there is no prohibition against the waiver of post-divorce permanent spousal support." Further, it reversed the trial court's striking of the whole paragraph, finding that the two waivers were distinct. It also found that she had waived her right to reimbursement, and reversed this, too.

Jemison v. Tipton, 09-1166 (La. App. 4 Cir. 5/6/10), 38 So.3d 1021.

Because Ms. Tipton did not include reimbursement claims on her descriptive list and did not timely file a motion to include them or a pre-trial memo on the issues to be presented, the trial court did not err in refusing to allow her to introduce evidence regarding her reimbursement claims.

Martin v. Martin, 09-1960 (La. App. 1 Cir. 5/26/10), 38 So.3d 1174.

Mr. Martin and his wife borrowed money from his father while they were domiciled in Mississippi. They later established a domicile in Louisiana, where they were divorced. The father sued both after default on the loan, and the trial court found them solidarily liable on the debt as a community debt. The court of appeal, however, applying the conflicts of laws articles regarding contracts, rather than those regarding the parties after divorce, found that it was not a community debt because it was incurred before the parties established their community regime in Louisiana. However, the classification as community property or as his separate debt was "ultimately irrelevant" as to the father's claim because he was entitled to judgment against both as the debt could be satisfied from former community property held by either, although her liability was only to the extent of the community property, not to her separate property.

—David M. Prados

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Louisiana Surety Law

A plaintiff subcontractor in *Texas Contract Carpet, Inc. v. Echelon Constr. Servs., L.L.C.*, No. 09-6695, 2010 U.S. Dist. LEXIS 52320 (E.D. La. May 27, 2010), sought to recover unpaid subcontract sums totaling \$348,750.46 from the general contractor's payment-bond surety on a St. Tammany Parish private project. At issue in the litigation were periodic lien waivers executed by the subcontractor and submitted with pay applications, and the defense by the surety that the lien waivers absolved the surety of potential liability to the subcontractor.

The lien waivers were required by the subcontract and provided in pertinent part that the subcontractor acknowledged receipt of certain monies. However, the lien waivers also set forth that the purpose of the lien waiver was to induce the general contractor to make a payment to the subcontractor (and, correspondingly, for the owner to make disbursements to the general contractor in connection with the subcontractor's payment request).

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The surety argued that the lien waivers effectively released the surety from claims and demands to the extent the amounts sought in the litigation were the subject of a lien waiver. The federal district court disagreed. The court found the lien waivers to be ambiguous as to whether the subcontractor had already been paid (which it clearly had not) when it submitted the lien waivers to the general contractor, as well as on the issue of whether the lien waivers were conditioned on the subcontractor actually receiving payment. Finding the lien waivers to be susceptible of more than one interpretation, and considering the lien waivers in context with the subcontract and the payment applications, the federal district court rejected the surety's motion for summary judgment on the claims against it by the subcontractor.

Contractor Immunity/ Construction Experts

Plaintiff, a patron of a bank, stumbled

over a lawn sprinkler head on the bank's property and was injured. The plaintiff in *Lingoni v. Hibernian National Bank*, 10-0714 (La. 5/28/10), 36 So.3d 255, sued the bank, its insurer, the contractors responsible for the installation of the sprinkler system and the parties involved in the design of the system. Plaintiff settled with the bank and its insurer, leaving the construction-related defendants in the suit. All of those defendants filed motions for summary judgment.

The contractor defendants filed motions for summary judgment pursuant to La. R.S. 9:2771. That statute provides that a contractor that constructs a work based on plans and specifications that were provided to the contractor and not created by the contractor is immune from liability for construction defects related to insufficiencies in the plans and specifications. That immunity applies unless the contractor can be shown to have breached a duty of care owed to the injured third party, which, in this case, required a showing that the contractor knew or should have

known that the placement of the sprinkler head would result in an unreasonable risk of harm to the plaintiff. The plaintiff asserted that at the time of the accident the sprinkler head in question was not at the location shown in the plans. The court found, however, that there was insufficient proof that the contractors had not constructed in accordance with the plans. As the plaintiff could not show that the contractors breached an independent duty to the plaintiff or otherwise show that the contractors did not construct according to the plans and specifications furnished to them, summary judgment was granted in favor of the contractor defendants.

The summary judgment motion of the designer defendants was predicated principally upon the failure of the plaintiff to provide an expert on the issue of the alleged negligent design. The designer defendants urged the court to hold that the issue of negligent placement of a sprinkler head too close to a sidewalk could be established only through expert testimony. Noting that a common sense standard in

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regard to the sprinkler head placement was not within the purview of the average lay witness, the court held that the plaintiff could not establish that the sprinkler head locations shown in the plans constituted professional negligence of the designers. The designers were dismissed from the lawsuit as well.

—**Daniel Lund III**

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Admiralty: Fault and Liability in Allisions

Combo Maritime, Inc. v. United Bulk Terminal, 615 F.3d 599 (5 Cir. 2010).

Several barges broke free of their moorings at United's barge fleeting facility and drifted downstream, alliding with Combo's vessel, which lay at anchor nearby. Allision is the impact of a moving vessel with a stationary object. The incident was contemporaneous with the passage by United's fleeting yard of a Carnival cruise ship, allegedly too close and at full speed. United brought action against Carnival for contribution and indemnity and damage to its fleeting equipment and barges. Carnival moved for and received summary judgment on United's claim based on the ancient *LOUISIANA* rule, which creates a rebuttable presumption that, in allisions involving a drifting vessel, the drifting vessel is at fault. *THE LOUISIANA*, 3 Wall. (70 U.S.) 164, 173, 18 L.Ed. 85 (1866), and the similarly hoary *OREGON* rule, that creates a presumption that shifts the burden of production and persuasion to a moving vessel that, under her own power, allides with a stationary object. *THE OREGON*, 15 S.Ct. 804 (1895). The district court further ruled that, at trial with Combo, United could not present evidence that

Carnival's alleged negligence contributed to the breakaway, and dismissed United's third-party complaint against Carnival with prejudice. United then settled with Combo, releasing all parties of all its claims, and appealed the district court's order of summary judgment dismissing Carnival and its third-party claims.

Noting that "[d]ifficult and interesting contribution questions arise where one or more tortfeasors settle before trial," the court cited the companion cases of *McDermott, Inc. v. Amclyde*, 114 S.Ct. 1461 (1994), and *Boca Grande Club, Inc. v. Fla. Power & Light Co.*, 114 S.Ct. 1472 (1994). The court held that when one defendant settles with a plaintiff, the liability of the remaining non-settling defendants is calculated based upon their proportionate injuries, and "actions for contribution against settling defendants are neither necessary nor permitted." Citing its reliance upon these holdings in previous opinions, the court stated:

We have held that *AmClyde's* proportionate liability scheme bars a settling tortfeasor from seeking contribution from a non-settling tortfeasor . . . [n]or may a settling tortfeasor seek recovery from a non-settling tortfeasor based on an assignment of the property damage claim by the plaintiff. However... we indicated that when a settling tortfeasor obtains a full release from the plaintiff for all parties, an action for contribution might not conflict with *AmClyde*. We now make explicit what we have previously implied and hold that *AmClyde* does

not prevent an action for contribution for a settling tortfeasor who obtains, as part of its settlement agreement with the plaintiff, a full release for all parties. Where the settling tortfeasor takes an assignment of the plaintiff's claim, then [he] essentially steps into the plaintiff's shoes and pursues the plaintiff's claim. In that scenario, the plaintiff's claim is not extinguished.

The rules articulated in *THE LOUISIANA* and *THE OREGON* shift the burden of proof on the issue of fault. These are "[e]videntiary presumptions . . . designed to fill a factual vacuum. Once evidence is presented . . . presumptions become superfluous because the parties have introduced evidence to dispel the mysteries that gave rise to the presumptions." The district court's grant of summary judgment in favor of Carnival and its judgment against United on its claims against Carnival was reversed, and the case was remanded to the district court.

Workers' Compensation: Post-Termination Coverage

Ardoyn v. CLECO Power, L.L.C., 10-0815 (La. 7/2/10), 38 So.3d 264.

Ardoyn was discharged from CLECO's employ at its Opelousas Work Center on Friday, Oct. 24, 2008. He obtained CLECO's permission to return to his office in Eunice on Monday, Oct. 27, 2008, to clear his office and clean out his desk. In the process, he sustained serious injuries in a slip-and-fall accident. He filed a disputed claim for compensation

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seeking wage benefits, medical treatment, penalties and attorney fees. The Office of Workers' Compensation (OWC) hearing officer considered each party's motion for summary judgment regarding Ardoin's employment status at the time of the accident, granting CLECO's motion and denying Ardoin's. The 3rd Circuit affirmed. The Supreme Court cited Larson's *Workers' Compensation Law*, § 26.01 for the proposition that:

Compensation coverage is not automatically and instantaneously terminated by the firing or quitting of the employee. The employee is deemed to be within the course of employment for a reasonable period while winding up his or her affairs and leaving the premises. The difficult question is: What is a reasonable period?

CLECO allowed Ardoin to go to his office on Monday to remove his personal effects, and, thus, as a matter of law, he "was within a reasonable period of time to wind up his affairs." The case was remanded to the OWC.

—**John Zachary Blanchard, Jr.**
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U.S. Department of Commerce International Trade Administration

Proposals to Support National Export Initiative and Enhance U.S. Competitiveness (Aug. 26, 2010).

U.S. Secretary of Commerce Gary Locke announced a series of proposals to strengthen U.S. trade-enforcement mechanisms and support President Obama's National Export Initiative, which aims to double exports in the next five years. There are 14 proposals, half of which apply exclusively to illegal import practices from non-market economies (NMEs). The following is a brief summary of some of the proposed changes:

- Expanded use of random sampling to select foreign companies as individual respondents in antidumping investigations.

- Clarification of Commerce's current NME practices with respect to import prices for valuing production factors (including freight and handling costs) and reporting of production inputs for all products produced at foreign facilities (not simply those facilities used for U.S.-destined products).

- Reconsideration of the treatment of export taxes and value-added taxes in Commerce's non-market economy methodology.

- Increasing the focus on resellers and non-reviewed parties in NME cases

to ensure collection of all owed antidumping duties.

- Eliminating the ability of individual companies to seek removal from antidumping or countervailing duty orders based on zero margins or rates for three (antidumping) or five (countervailing duty) consecutive years.

- Consider requiring importers to post cash deposits in lieu of bonds for imports subject to antidumping and countervailing duty investigations at the time of the preliminary determination.

- Increasing the accountability of attorneys and non-attorneys practicing before the Department of Commerce.

U.S. 9th Circuit Court of Appeals

Cassirer v. Kingdom of Spain, 616 F.3d 1019 (9 Cir. 2010).

The U.S. 9th Circuit Court of Appeals addressed an important issue related to the Foreign Sovereign Immunities Act (FSIA) in *Cassirer*. The FSIA provides immunity from suit in U.S. courts to foreign states unless the foreign state's conduct satisfies one of the act's various exceptions. The question before the court was whether the illegal taking of a painting that was originally confiscated by Nazis in 1939 and then legally sold to Spain, shielded Spain from suit under the FSIA. The FSIA allows prosecution against a sovereign where the issue involves "property taken in violation of international law." This so-called "expropriation exception" was invoked by the American plaintiff, who alleged that his grandmother's painting was originally confiscated by the Nazi government in Germany and, after changing hands numerous times, ended up being purchased by a Spanish government foundation in violation of international law. Spain sought dismissal of the case on narrow FSIA sovereign immunity grounds because it was a state entity, and not the state itself, that purchased the painting. Both the district and appellate courts refused to dismiss the case, holding that FSIA immunity pertains to events involving state actors generally and is not limited to state actors. A dissenting opinion noted the "important diplomatic implications" of the case and the majority's failure to use principles of statutory construction in

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determining that the FSI was unambiguous with respect to state actors.

World Trade Organization

Certain Measures Affecting Imports of Poultry from China (WT/DS392).

A World Trade Organization (WTO) dispute-settlement panel recently issued a ruling on certain measures implemented by the United States regarding poultry imports from China. In April 2006, the U.S. Food Safety and Inspection Service (FSIS) published a final rule allowing importation of certain poultry products from China. FSIS was prohibited from implementing the rule, however, due to various appropriations measures enacted after 2006. The FY 2010 Agriculture appropriations bill contained language addressing the issue by allowing the Department of Agriculture to use certain funds to implement the rule as long as certain preconditions were satisfied. The preconditions sought to ensure the safety of Chinese poultry imports but also sought to address collateral U.S.-China trade concerns. China is the third largest supplier of food and agricultural products

to the United States and many advocates contend that China lacks effective food safety programs, citing problems with dairy products, infant formula, wheat gluten and farmed seafood.

China requested a WTO dispute-settlement panel to address the issue, and the panel issued its final report on Sept. 29, 2010. The panel found the U.S. measure was a prohibition on imports in violation of numerous provisions of the WTO Agreement on Sanitary and Phytosanitary Measures and not justified under Article XX (b) of GATT 1994. The U.S. measure has now expired, and the WTO panel made no recommendations regarding further U.S. action necessary to comply with the ruling.

North American Free Trade Agreement

Ad Hoc NAFTA Arbitration under UNCITRAL Rules, Chemtura Corp. v. Canada (Aug. 2, 2010).

An ad hoc NAFTA arbitral tribunal reached a significant decision in August 2010 in a case involving claims by Chemtura, a U.S. manufacturer of pesticide

(lindane), against Canada under NAFTA. Chemtura had previously registered its pesticide, but Canada revoked the registration. Chemtura invoked arbitration for Canada's alleged failure to conduct a fair review of Chemtura's registration, in violation of NAFTA articles 1105 (minimum standard of treatment), 1103 (most favored nation) and 1110 (illegal expropriation).

In order to address the expropriation claim, the tribunal first had to determine whether the registration was an "investment" as defined by the treaty. The tribunal developed a significantly expanded definition of investment to include elements such as goodwill, customers and market share. Despite broadening the scope of what qualifies as an investment, the tribunal found that Chemtura had not been subjected to "substantial deprivation" of its investment as a result of the registration revocation.

—Edward T. Hayes

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Prematurity

Lucky v. EnCana Oil & Gas, 45,413 (La. App. 2 Cir. 8/11/10), ____ So.3d ____.

Landowners granted multiple mineral leases to Fite Oil & Gas. Each lease required the landowners to give the lessee written notice and 60 days to cure any failure of the lessee to conduct its "operations . . . in compliance" with the lease. A few weeks after Fite transferred certain rights under the leases to EnCana, the landowners wrote a letter to EnCana, alleging lease violations and demanding lease cancellations. EnCana forwarded the letter to Fite, and also responded to the landowners, denying liability and stating that the landowners should direct their claims to Fite. The landowners then sent a second letter, which they delivered to both Fite and EnCana.

The landowners subsequently sued for lease cancellation. They filed suit more than 60 days after sending their first letter, but fewer than 60 days after sending their second letter. The defendants filed exceptions of prematurity based on the landowners' failure to allow Fite 60 days to cure. The trial court sustained the exceptions and dismissed. The plaintiffs appealed. The 2nd Circuit began its analysis by stating that the first letter did not satisfy the leases' notice requirement because the landowners did not send it to the lessee, Fite. It did not matter that EnCana forwarded the letter to Fite.

The landowners argued, however, that they were not required to give notice or an opportunity to cure because they were suing for damages to property. They relied on *Broussard v. Hilcorp*, in which the Louisiana Supreme Court held that Mineral Code Art. 136's requirement that a lessor give notice and a reasonable opportunity to cure before filing suit does not apply to actions based on contamination of property. The 2nd Circuit distinguished *Broussard*, holding that it does not control the scope of a lessor's contractual duty to give notice and an opportunity to cure. The 2nd Circuit interpreted the notice and

cure requirements in the leases as applying to any breach by the lessee, and affirmed the order dismissing the suit.

Contract Formation

Adams v. JPD Energy, 45,420 (La. App. 2 Cir. 8/11/10), ____ So.3d ____.

A landowner signed a lease that provided for a one-eighth royalty, but he later claimed that he and the landman who negotiated the lease actually had agreed to a one-fourth royalty. The landowner explained that he had not read the lease before signing it because he had poor eyesight and had trusted the landman. The landowner sued to rescind the lease on the basis of fraud or error. In the alternative, he asked that the lease be reformed to provide for a one-fourth royalty.

The landman testified that the lease's reference to a one-eighth royalty was a mistake, but that he and the landowner had agreed to a one-fifth royalty, not a one-fourth royalty. The defendants contended that the lease should be reformed to provide for a one-fifth royalty. They further argued that the plaintiff's claim of fraud or error was



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barred by his failure to read the lease.

The district court held that there was no valid lease because there had been no “meeting of the minds” between the parties. The 2nd Circuit affirmed.

Lost Opportunity to Lease

Rathborne Land Co. v. Ascent Energy, 610 F.3d 249 (5 Cir. 2010).

The lessor’s predecessor-in-interest granted a mineral lease that covered more than 5,000 acres, but, over numerous years, a series of partial releases had reduced the area under lease to about 450 acres. The lessor’s lawyer wrote a letter to the lessee, demanding a release of the remaining acreage because of the lessee’s failure to reasonably develop the premises. After negotiations failed to resolve the dispute, the lessor filed suit for lease cancellation and also for damages for the lost opportunity to enter new leases. The plaintiff explained that it was entitled to damages for the lost opportunity to lease approximately 5,800 acres, not just the 450 acres still leased to the defendant, because the 450 acres was in the middle of the 5,800 acres, the defendant had refused to participate in 3-D seismic activity, that refusal had made a survey of the 5,800 acres impossible, and that impossibility prevented the plaintiff from leasing the 5,800 acres. After a bench trial, the district court entered

a judgment granting the relief sought by the plaintiff.

On appeal, the United States 5th Circuit resolved several issues. It held that the plaintiff’s letter to the defendant satisfied Mineral Code Art. 136’s pre-suit notice requirement. The court purported to distinguish jurisprudence that suggests that a letter demanding lease cancellation, rather than demanding performance, fails to satisfy Art. 136 because it does not give an opportunity to cure. The court held that a plaintiff can recover for lost leasing opportunities if he shows that it is more probable than not that he could have leased the property but for the defendant’s conduct. Finally, the court reduced the damages award, holding that the plaintiff could not recover damages for lost leasing opportunity for land other than the 450 acres leased to the defendant. Damages for lost opportunity to lease the other land would constitute consequential damages, which the court concluded were not available in a suit based on a failure to reasonably develop.

—Keith B. Hall

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Summary Judgment: Timeliness of Filing Affidavits

Guillory v. Chapman, 10-1370 (La. 9/24/10), 44 So.3d 272.

Affidavits submitted in opposition to a motion for summary judgment must be served at least eight days prior to the date of the hearing. La. C.C.P. art. 966 (B)(2). The date in *Guillory* for the submission of the plaintiff’s opposition to the defendants’ motion was March 1, a Sunday, thus making the deadline March 2. On March 2, the plaintiff filed his opposition memorandum, which included an affidavit from an expert witness, all of which were hand-delivered to the defendants’ counsel. The expert’s affidavit, however, was not notarized. On March 3, the plaintiff filed the notarized affidavit and faxed a copy

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to defense counsel.

At the hearing on the motion, the defendants objected to the expert's affidavit on the ground that it was not timely filed. The plaintiff argued that a snowstorm in the area where the expert lived — an act of God — prevented the timely filing of the notarized affidavit. The trial court rejected this argument and disallowed the admission of the affidavit.

On appeal to the 3rd Circuit, 09-1005 (5/12/10), the trial court's decision was reversed. The court of appeal noted that trial judges have discretion, absent prejudice to the moving party, to consider affidavits served after the time provided by Art. 966. The defendants in this case did not allege that they were prejudiced by the late-filed affidavit. The court of appeal found that the trial court abused its discretion in refusing to admit or to consider the affidavit of the expert witness. After considering the affidavit, the court of appeal found that it created genuine issues of material fact as to whether there had been a breach of the applicable standard of care and whether any breach resulted in the death of the patient.

In *per curiam* opinion, the Supreme Court reversed the decision on defendants' motion and reinstated the trial court's ruling. The court noted that Art. 966(B)(2) coincides with Rule 9.9(b) of the Uniform Rules of the Louisiana District Courts concerning the time for

filing an opposition memorandum. The court also pointed out that "the trial court was informed the case was six years old and the plaintiff was aware of the expert for years. As such, the trial court did not abuse its discretion in excluding the affidavit."

Summary Judgment: Lack of Support for an Essential Element of the Claim

Thibodeaux v. Lafayette Gen. Surgical Hosp., (La. App. 3 Cir. 5/5/10), 38 So.3d 544.

The defendant-hospital filed a motion for summary judgment in which it contended that the plaintiffs would be unable to sustain their burden of proof on the issues of negligence and causation. The trial court, without written reasons, granted summary judgment.

One assignment of error argued by the plaintiffs was that the trial court gave no weight to Mrs. Thibodeaux's affidavit or to the deposition testimony of an attending physician. The court of appeal agreed that this evidence "arguably" created a genuine issue of material fact concerning the issue of negligence. As to the causal link between the potential negligence and damages, the court concluded that the plaintiffs did not present evidence sufficient to create a genuine issue of

fact. But, the defendant, as mover, did not have the burden to negate all essential elements of a claim against it. La. C.C.P. art. 966 (C)(2). Mover's burden was only to point out a lack of support for "an essential element" of the claim, which it did.

Summary Judgment: Trial Judge May Not Make Ruling Based on Credibility

Janney v. Pearce, 09-2103 (La. App. 1 Cir. 5/7/10), 40 So.3d 285, *writ denied*, 10-1356 (La. 9/24/10), 45 So.3d 1078.

A medical-review panel unanimously opined that Dr. Pearce breached no standard of care. The plaintiffs then filed a wrongful death and survival action against her. She moved for summary judgment, and, in support of the motion, attached the opinion of the panel, the deposition of a physician, the affidavit of one of the panel members and her own affidavit. The plaintiffs filed in opposition the affidavit of a physician, the affidavits of three of the plaintiffs, the emergency room record and the defendant's notes from her office chart. A physician's letter that was not in the form of an affidavit was also attached to the opposition and was thus not considered by the trial court or by the court of appeal.

The trial court granted the motion for partial summary judgment, dismissing



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the plaintiffs' claim for wrongful death. Much of the plaintiffs' focus in their appeal was on the difference between a wrongful death claim and a "loss of chance of survival claim." The court of appeal did not reach the merits of that assignment of error because it determined that the trial court had made credibility determinations in granting the summary judgment and that this called for reversal. The court, citing *Willis v. Medders*, 00-2507, p. 2 (La. 12/8/00), 775 So.2d 1049, 1050, stated:

Despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor.

The appellate court reviewed controlling cases on the issue and noted that the trial court's role is not to evaluate the weight or credibility of evidence but only to determine whether there is a genuine issue of triable fact. The court cited *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181, pp. 16-17 (La. 2/29/00), 755 So.2d 226, 236, for the proposition that in deciding the motion for summary judgment, "the trial court must assume that all of the witnesses are credible."

The evidence before the trial court was found to have raised genuine issues of material fact; thus, the court of appeal ruled that the trial court erred in granting summary judgment because to do so required it to decide disputed genuine issues of fact and to make credibility determinations, both of which should have been determined by a trial on the merits.

— **Robert J. David**

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Federal Taxation

In a decision that has implications for law firms providing legal opinions for transactions in which tax benefits are subsequently disallowed by the Internal Revenue Service, the 5th Circuit Court of Appeals has held that, although malpractice claims may be appropriate, RICO and securities fraud claims could not be brought against the law firm providing the opinions at issue. In a recent decision in *Affco Investments 2001 v. Proskauer Rose*, ___ F.3d ___ (5 Cir. 2010), the court reviewed claims brought by plaintiffs who invested in a tax shelter involving digital options. The tax scheme was later disallowed by the IRS and, as a result, the IRS charged plaintiffs with back taxes, interest and penalties. Plaintiffs then

sued Proskauer, along with 16 other defendants, bringing claims under state law, the Racketeering Influenced and Corrupt Organizations Act (RICO) and the Securities Exchange Act of 1934.

Addressing the claims brought against Proskauer, which had provided plaintiffs with legal opinions on the tax shelter, the court affirmed the dismissal of plaintiffs' RICO claim, holding that Congress had limited RICO claims where the conduct "would have been actionable as fraud in the purchase or sale of securities." The court also affirmed the dismissal of plaintiffs' securities-fraud claims, finding that the elements of reliance and scienter were not sufficiently pleaded. The court stated that a securities claim would require a showing of reliance upon Proskauer's role in the tax scheme. As plaintiffs were assured only that a "major national law firm" would be giving an opinion, and because plaintiffs had no knowledge of Proskauer's role in the investment scheme before deciding to invest in the digital options scheme, the court affirmed the dismissal of the securities claim.

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Increased Form 1099 Reporting

Section 9006 of the recently enacted, and highly controversial, Patient Protection and Affordable Care Act amended and broadened Internal Revenue Code Section 6041 to require, beginning in 2012, all companies to use Form 1099 to report payments to vendors of \$600 or more in any given tax year. The Small Business Jobs Act of 2010, signed by President Obama in September, while extending the SBA's America's Recovery Capital Loan Program and establishing additional small business loan funds and incentives, offset a portion of the bill's costs by further amending Internal Revenue Code Section 6041 to require that, beginning in 2011, persons receiving rental income to use Form 1099 to report payments to a vendor of \$600 in a given tax year made with respect to expenses in maintaining the rental property. These two provisions are feared to create a heavy reporting burden, and two failed attempts have already been made in the Senate to repeal or soften the reporting requirement. Congress has now recessed for the election cycle, and no recourse appears to be presently forthcoming.

State: Department of Revenue Audit Protest Bureau

The Louisiana Department of Revenue has instituted a new Audit Protest Bureau (APB), intended to provide taxpayers with an opportunity to appeal certain audit findings

to an independent, impartial administrative authority before a final assessment is issued. The department cited La. R.S. 47:1563 as statutory authority for creation of this new division. The APB will handle certain matters previously handled by the department's Field Audit Services Division. A taxpayer, unsatisfied with the decision of the APB, still retains its rights to appeal to the Board of Tax Appeals or to pay the tax under protest and file a lawsuit in district court.

To obtain an APB hearing, a taxpayer must submit a completed protest petition within 30 days from the date of the Notice of Proposed Tax Due. The protest petition must identify relevant facts, outstanding issues and the reasons that the taxpayer disputes the proposed assessment, and should cite relevant statutes, cases and other authority in support of the taxpayer's position. Hearings, which are informal, may be conducted by telephone, and no transcript is made of the proceeding. The department does not intend for decisions of the APB to have precedent beyond any particular case under consideration, and taxpayers may be asked to sign agreements to suspend prescription in connection with a protest.

The APB will not consider all protests that may be made. The APB will not consider cases in which fraudulent or criminal behavior is suspected or ascertained; where the department is committed to litigate on an issue or where constitutional issues are involved; where the department has issued a Revenue Ruling; where the only issue is collectability; where the protest is untimely; and in other instances specified by the department.

Local: Assessor Lacks Standing to Challenge

In *Gisclair v. Louisiana Tax Commission*, 10-0563 (La. 9/24/10), 44 So.3d 272, the Louisiana Supreme Court held that a parish assessor does not have standing to challenge the constitutionality of the Louisiana Tax Commission's valuation of public service property. In *Gisclair*, the assessor complained that the Tax Commission improperly recognized certain tax exemptions in its determination that reduced the taxes to be paid to the parish. The court rejected the assessor's position that La. R.S. 47:1998(C), which gives assessors the authority to sue to protect the interest of the state, permitted the instant lawsuit. The court held that 47:1998(C) authorized suits only with respect to assessments by local assessors and did not apply to the Tax Commission's assessment of public-service property. Although a local assessor may be made a party to such a suit, the sole right to bring a lawsuit challenging a Tax Commission determination is granted to taxpayers under La. R.S. 47:1856(G).

—**Jaye A. Calhoun**
Member, LSBA Taxation Section
and
Jeffrey P. Good
McGlinchey Stafford, P.L.L.C.
601 Poydras St., 12th Flr.
New Orleans, LA 70130



Need some HELP managing your law office?

The Louisiana State Bar Association (LSBA) has established the Law Office Management Assistance Program (LOMAP, for short). This program is designed to assist lawyers in increasing the quality of the legal services they provide.

Questions or comments about LOMAP may be sent to Shawn L. Holahan, shawn.holahan@lsba.org or call (504)619-0153 or (800)421-5722, ext. 153.

And don't forget about the LSBA's other programs assisting lawyers...

Fastcase for free online legal research, accessible from the LSBA's home page, www.lsba.org.

Lawyer Fee Dispute Resolution Program for quick, inexpensive, informal and final resolution of attorney/client and attorney/attorney fee disputes. Contact Bill N. King at bking@lsba.org or call (504)619-0109 or (800)421-5722, ext. 109.

Ethics Advisory Service for confidential, totally free ethics advice and opinions to each of its licensed members in good standing. Contact Richard P. Lemmler, Jr. at rlemmler@lsba.org or call (504)619-0144 or (800)421-5722, ext. 144.

For more information on all of the LSBA's programs, go to www.lsba.org.

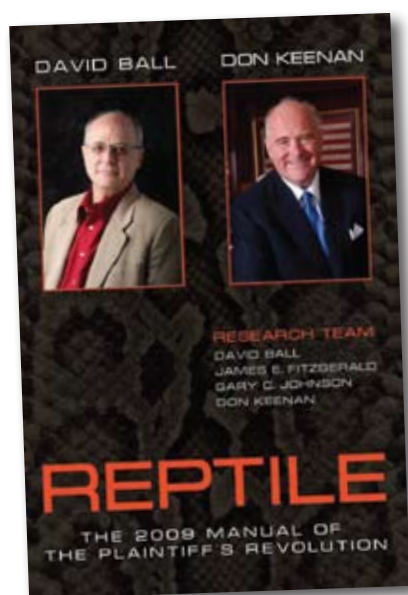
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LOUISIANA STATE BAR ASSOCIATION FOURTH ANNUAL



FEBRUARY 24 & 25, 2011
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This popular four-track conference features national and regional speakers who will deliver: substantive law updates, law technology tips, law practice management information, and quality of life topics.

Registration Fees*

Advance Registration (until Jan. 14, 2011).....	\$250
Regular Registration (until Feb. 21, 2011)	\$300
On-Site Registration.....	\$350
Flash Drive with Conference Materials.....	\$25

**The fee includes electronic course materials, conference attendance and coffee/refreshment breaks.*

Cancellation of registration must be received in writing by the LSBA no later than February 14, 2011. Timely cancellations will result in a full refund, less a \$25 administrative charge. Absolutely no refunds after February 14, 2011.

*The LSBA is providing an electronic version of the conference materials for attendees to download. The electronic materials will be made available in advance of the conference via links sent by e-mail. Internet access will not be available at the conference. **THE LSBA WILL NOT HAVE PRINTED MATERIALS FOR PARTICIPANTS.** See F. A. Q. on website for more information.*

Register Online: www.lsba.org/2011Solo

CHAIR'S MESSAGE

Play Fair and Be Nice

By Alainna R. Mire

Professionalism. What does it mean? How does someone behave professionally? Even after attending a number of continuing legal education classes on ethics and professionalism, I still go back to my definition.



Alainna R. Mire

In the simplest of terms, I believe that being professional is to abide by the golden rule and "do unto others as you would have them do unto you." Basically, "be nice." Unfortunately I have realized that the older I get, the more I see and meet "not so nice" or unprofessional people. I often wonder why that is and have come to the conclusion that many allow their drive for success or status to block the part of their brains that holds the lessons learned from kindergarten, such as sharing and being polite. For that matter, does it really hurt to say "good morning" when walking into the office at 8:30 a.m.? No, it doesn't, but for some people, it is torture.

The ABA Model Rules of Professional Conduct Preamble 5 states:

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve

it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process. (Emphasis added.)

So, the next time you are in a deposition with rude opposing counsel or the judge is denying all your motions, just remember to uphold the rules of the profession and kindergarten. *Play fair and be nice.*

YOUNG LAWYERS SPOTLIGHT

Catherine Saba Giering Baton Rouge

The Louisiana State Bar Association's Young Lawyers Section (LSBA YLS) is spotlighting young lawyer Catherine (Cathy) Saba Giering.

Giering was born in Portland, Ore., but she calls Winnsboro, La., home. After graduating from Louisiana State University in 1996 with a major in English and a double minor in Russian studies



Catherine Saba Giering

Continued next page



The New Orleans Bar Association's Young Lawyers Section sponsored its annual Health and Legal Fair in October at Touro Infirmary in New Orleans. Attorney volunteers offered free legal assistance and materials to the public. The focus was on health and legal issues, including living wills, medical powers of attorney and related matters. Volunteers were from private firms, the Pro Bono Project and Southeast Louisiana Legal Services. The Southern Eye Bank and the Louisiana Organ Procurement Agency were on hand to assist with organ and tissue donations. A grant from the American Bar Association helped fund the event. Seated from left, Katy M. Caraway, Jacqueline L. Childers, Renae Davis, Margaret Kuklewicz and Ayanna R. Lee Butler. Standing from left, Christopher K. Ralston, Stephanie V. Lemoine, Mark A. Moreau, Linton W. Carney, Conrad Meyer, Megan C. Misko and Michael J. Ecuyer.

and business administration, she attended LSU Paul M. Hebert Law Center. She received her JD degree in 1999 and began practicing with Laborde & Neuner. In 2004, she joined the Baton Rouge firm of Crawford & Lewis and was named partner in 2008.

She is the 2010 chair of the Baton Rouge Bar Association's (BRBA) Young Lawyers Section Council. The BRBA is extremely active, and Giering and the council have strived to increase young lawyer participation in several BRBA activities, including the Bench/Bar Conference, luncheon meetings, Cocktails with the Court, Opening of Court in the fall and Belly Up to the Bar.

Giering serves on the Junior League of Baton Rouge and is the current Policy Governance chair. She is also a supporter of the downtown YMCA and is a past chair of the Charles Lamar YMCA board of directors.

Her LSBA YLS activities include serving on a law school professionalism orientation panel in 2005, serving as a high school essay contest competition judge in 2006, and serving as a member of the YLS Awards Committee in 2007.

Her husband, Edmund Giering, also practices law in Baton Rouge. They are the parents of a son and a daughter.

Giering said that the greatest influence her mentors have had on her is teaching her the value of a strong work ethic and a job well done. She also cites her father's positive attitude as inspiration. She has inherited her father's positive attitude. That positive attitude and strong work ethic are evident in everything she does.

LOCAL AFFILIATES



The St. Tammany Young Lawyers Association presented its first "Day at the Court" program in October. During the event, students from the law studies class at Covington High School spent the day at 22nd Judicial District Court.

St. Tammany Young Lawyers Association Receives Award for "Day at the Court"

The St. Tammany Young Lawyers Association was the recipient of the 2009-10 Louisiana State Bar Association Young Lawyers Section (LSBA YLS) Council's Local Affiliate Support Award in connection with its first "Day at the Court" program, said Allison L. Becknell, chair of the LSBA YLS Local Affiliates Outreach Committee.

In October, 25 students from the law studies class at Covington High School spent the day at 22nd Judicial District Court. The students attended Drug Court, observed trials, toured the Justice Center, and participated in a panel discussion with a judge, an assistant district attorney, a public defender and a sheriff's officer. The day provided students with the unique opportunity to observe firsthand all aspects of the 22nd Judicial District Court.

The purpose of the LSBA YLS Council's Local Affiliate Support Award is to help local affiliates fund existing local programs, to encourage the development of new programs,

and to strengthen the relationship between the YLS Council and its local affiliates.

St. Tammany young lawyers helping to organize the "Day at the Court" program were Nancy Brechtel, Elizabeth Sconzert, Gino Forte, Lauren Hudson, Klint Beckendorf, Anna Wong and Jesse Wimberly III.



The St. Tammany Young Lawyers Association presented its first "Day at the Court" program in October. Among those helping to organize the event were, from left, Gino Forte, Klint Beckendorf, Elizabeth Sconzert and Nancy Brechtel.



YOUNG LAWYERS SECTION NEWS

Get the latest Young Lawyers Section news online
Go to: www.lsba.org/YLS

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

Nomination Deadline is March 4, 2011: Young Lawyers Section Awards Nomination Form

The Young Lawyers Section is accepting nominations for the following awards:

- **Michaëlle Pitard Wynne Professionalism Award.** This award is given to a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public.
- **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made outstanding contributions to the legal profession and his/her community.
- **Service to the Public Award.** This award is given to a local affiliate organization that has implemented a program or provided a service to that local community by which the non-attorney public has been helped.
- **Service to the Bar Award.** This award is given to a local affiliate organization that has implemented a program or provided a service that has benefited and/or enhanced the attorney community in that area.
- **YLS Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community.

All entries must include a nomination form, which may not exceed 10 pages. In addition, entries should include a current photo and résumé of the nominee, newspaper clippings, letters of support and other materials pertinent to the nomination. Nomination packets must be submitted to **Barbara Bell Melton, Chair, LSBA Young Lawyers Section Awards Committee, Ste. 203, 1412 Centre Court, Alexandria, LA 71301**. Any nomination packet that is incomplete or is not received or postmarked on or before **March 4, 2011**, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets. All winners will be announced at the Louisiana State Bar Association Annual Meeting in Las Vegas, Nev., in June 2011.

1. Award nominee is being nominated for: (Individuals/local affiliate organizations may be nominated for more than one award. Please check all that apply. Candidates will only be considered for the award(s) for which they have been nominated.)

<input type="checkbox"/> Michaëlle Pitard Wynne Professionalism	<input type="checkbox"/> Outstanding Young Lawyer
<input type="checkbox"/> Service to the Public	<input type="checkbox"/> Service to the Bar
<input type="checkbox"/> YLS Pro Bono	

2. Nominator Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____

3. Nominee Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____
Birth Date _____
Marital Status/Family Information _____

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

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

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

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

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

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

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

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

12. Provide other significant information concerning the nominee.

For more information, contact Barbara Bell Melton at (318)619-7755 or e-mail b.melton@fairclothlaw.com.



CONSTITUTION DAY



Attorney Ariel Campos presented a Constitution Day program at Our Lady of Fatima School.



Attorney Lance Harwell presented a Constitution Day program at Patrick Taylor Science and Technology Academy.



Judge Danny Ellender presented a Constitution Day program at Jesus the Good Shepherd School.

Lawyers/Judges in the Classroom Program Participants Celebrate Constitution Day

On Sept. 17, 1787, 42 of the 55 delegates to the Constitutional Convention held their final meeting. Only one item of business occupied the agenda that day: to sign the Constitution of the United States of America. The signing of the Constitution — a document designed to clearly define and separate the powers of the central government, the powers of the states, the rights of the people, and how the representatives of the people should be elected — is celebrated across the nation every year on Sept. 17. In observance of Constitution Day, the Lawyers in the Classroom/Judges in the Classroom programs organized 70 in-school presentations statewide by members of the legal community. Nearly 2,500 students participated in these activities.

Constitution Day presenters included: Rep. Damon Baldone, Judge Randall

Bethancourt, Chuck Bourque, Judge Guy Bradberry, Eirleen Brown, Ariel Campos, Kelly Carmena, Sandy Clause, Judge June Berry Darensburg, Louis DiRosa, Penny Douciere, Judge Danny Ellender, J. Albert Ellis, Roy Fletcher, David Green, Spencer Gulden, Lance Harwell, Jim Hautot, Eden Heilman, Ingrid James, Judge Andrea Janzen, Bernadine Johnson, Judge Pamela Johnson, Judge Charles Jones, Judge Patricia Koch, Holly Lamarche, Molly McEacharn, Ben Miller, Ashley Nichols, David Peterson, Judge Robin Pittman, Robert Shadoin, Ernestine Trahan, Judge Jane Triche-Milazzo, Frank Wagar, Judge Zorraine Waguespack, Henry Walker and Zachary Wool.

Participating schools included: A.C. Steere Elementary, Barbe High, Belaire High, Belle Chasse Middle, Clearwood Junior High, Coteau Bayou Blue, Delhi

Elementary, E.C. Pittman, Early College Academy, Eleanor McMain Secondary, Fairfield Elementary Magnet, Galvez Middle, Glen Oaks High, Hadnot-Hayes Elementary, Harriet Ross Tubman Charter, I.A. Lewis, Independence Middle, Istrouma High, James Singleton Charter, Jesus the Good Shepherd, Lafayette High, Lee Road Junior High, Lincoln Elementary, Madison James Foster Elementary, Mulberry Elementary, Myrtle C. Thibodeaux Elementary, Newton Smith Visual & Performing Arts Middle, Our Lady of Fatima, Our Lady of Prompt Succor, Park Forest Elementary, Patrick Taylor Science and Technology Academy, Quest, Romeville Elementary, Sarah T. Reed High, Scotlandville Pre-engineering Academy, St. Anthony of Padua, Sulphur High, Dufrocq, and Woodmere Elementary.

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



Judge June Berry Darensburg presented a Constitution Day program at Woodmere Elementary School.



Judge Randall Bethancourt presented a Constitution Day program at Coteau Bayou Blue School.

By Robert Gunn, Louisiana Supreme Court

APPOINTMENTS... IN MEMORIAM

Appointments

► 5th Circuit Court of Appeal Judge Fredericka H. Wicker was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College's Board of Governors for a term of office which began Oct. 1 and will end on Sept 30, 2013.

► Pineville City Court Judge Phillip J. Terrell was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College's Board of Governors for a term of office which began Oct. 1 and will end on Sept. 30, 2013.

► Wayne J. Lee was reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term of office which begins on Jan. 1, 2011, and will end on Dec. 31, 2013.

► Gordon L. James was appointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term of office which begins on Jan. 1, 2011, and will end on Dec. 31, 2013.

► Monique Babin Clement, James G. Dalferes and Chauntis T. Jenkins were ap-

pointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization for terms of office which will end on June 30, 2013.

► Charles V. Cusimano III was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office ending on April 21, 2014.

Deaths

► Retired 21st Judicial District Court Judge Joseph E. (Joe Eddie) Anzalone, Jr., 75, died Oct. 1, 2010. He earned his undergraduate degree from Southeastern Louisiana College in 1957 and his LLB degree from Loyola University in 1964, where he was elected to Alpha Sigma Nu, National Jesuit Honor Society, in 1963. From 1963-64, he served as law clerk to 4th Circuit Court of Appeal Judge Luther Hall. In 1974, he was a delegate to the Louisiana Constitutional Convention. He began service on the bench in 1985 and retired in 1990.

► Retired 15th Judicial District Court Judge Hugh Ellis Brunson, 83, died Oct.

5, 2010. He graduated from Louisiana State University in 1949 and earned his JD degree from LSU Law School in 1951. He also graduated from the United States Air Force's Air Command and Staff School. A decorated veteran of World War II and the Korean Conflict, he served as a research specialist with the Louisiana Legislative Council, funding director for the Acadia Parish Indigent Defender Program and assistant district attorney for the 15th Judicial District. In 1976, he began his service as judge of the 15th Judicial District Court and served until his retirement in 1996. He served as president and Executive Committee member of the Louisiana District Judges Association. He was a member of the American Judges Association and the National Council of State Trial Judges. He served on the Louisiana State Law Institute, the Judicial Ethics Committee, the Louisiana Judicial College's Board of Governors, the Governor's Drug Prevention Program, the Children's Code, the Louisiana Supreme Court's Time and Standards Committee, and the Science and Technology Committee of the Louisiana Supreme Court's Judicial Council.

Member Services

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



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.

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

**For more information,
visit www.lsba.org**

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

deLaup, Miranda & Enright, L.L.C., in Metairie announces that **Aimee A. Scheuermann** has joined the firm as an associate.

Deutsch, Kerrigan & Stiles, L.L.P., in New Orleans announces that David M. Geerken has joined the firm as an associate.

Brett M. Dupuy announces the relocation of his law office, Brett M. Dupuy, P.L.C., to the Poydras Center, Ste. 2750, 650 Poy-

dras St., New Orleans, LA 70130; phone (504)523-2266.

Nan Roberts Eitel has joined the office of the U.S. Department of Justice in Washington, D.C., working as associate general counsel for Chapter 11 in the Executive Office for U.S. Trustees.

Hymel, Davis & Petersen, L.L.C., in Baton Rouge announces that **Joseph E. Blackwell** has joined the firm.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Kelly E. Brilleaux** has joined the firm's New Orleans office as an associate.

Derren S. Johnson & Associates, A.P.L.C. in Baton Rouge announces that **Monica Griffith-Braud** has joined the firm.

Robein, Urann, Spencer, Picard & Cange-mi, A.P.L.C., in Metairie announces that **Paula M. Bruner** has joined the firm.

Seale, Smith, Zuber & Barnette, L.L.P., in Baton Rouge announces that **Willie G. Johnson, Jr.** has become a partner in the firm.

Roger A. Stetter announces the relocation of his law offices to the Whitney National Bank Building, Ste. 1435, 228 St. Charles Ave., New Orleans, LA 70130; phone (504)524-9100.

Stone Pigman Walther Wittmann, L.L.C., in New Orleans announces that Maggie A. Broussard has joined the firm as an associate.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that **Troy Houston Middleton IV** has joined the firm as an associate.

Woodley Williams Law Firm, L.L.C., in Lake Charles announces that Jeffery D. Fruge and Ann M. McSpadden have joined the firm as associates.

Continued next page



Joseph E. Blackwell



Monica
Griffith-Braud



Kelly E. Brilleaux



Paula M. Bruner



James M. Fantaci



Anthony M. Fazzio



Willie G.
Johnson, Jr.



W. Shelby McKenzie



Troy Houston
Middleton IV



Julian R. Murray, Jr.



Frank X. Neuner, Jr.



Aimee A.
Scheuermann



David R. Sherman



Roger A. Stetter

NEWSMAKERS

M. Thomas (Tom) Arceneaux, vice president of the firm Blanchard, Walker, O'Quin & Roberts, P.L.C., in Shreveport, was installed as president of the Louisiana City Attorneys Association. Also, the firm announces that it has been awarded recertification in Meritas, a global alliance of business law firms.

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., has been appointed as the 2010-11 chair of the Louisiana State Committee of the American College of Trial Lawyers.

IN MEMORIAM

John Wood Anthony of Bogalusa died Oct. 20 after a long illness. He was 90. Born in 1920 in New Orleans, he attended Fortier High School and Tulane University. He graduated from Tulane Law School in 1942, where he was Order of the Coif and civil law editor of the *Tulane Law Review*. He served as staff sergeant in Army Intelligence during World War II. He moved to Bogalusa in 1946 and joined the Talley Law Firm. He was affiliated with the firm of Talley, Anthony, Hughes & Knight, L.L.C., until 1989. Active in his community, he served on the Washington Parish Library Board for 26 years, chairing the board for 16 years. He served as president of the Washington Parish Bar Association and the Kiwanis Club, commander of the American Legion Post 24, and chair of the Welfare Advisory Board and the Washington Parish Boy Scouts of America. He is survived by his wife, Marie Ware Anthony, a brother, three daughters, two grandchildren and other relatives. Services were conducted at St. Matthews Episcopal Church in Bogalusa.



John Wood Anthony

Charles Aubrey Snyder, a partner in the law firm of Milling Benson Woodward, L.L.P., in New Orleans, died Oct. 2 in Covington. He was 69. Born in 1941 in Bastrop,

he received his law degree from Louisiana State University Law Center in 1966. He was a member of the American Law Institute and served on the Louisiana State Law Institute Council, chairing numerous committees on law reform. He lectured for the Practising Law Institute and was a continuing legal education speaker for the Louisiana State Bar Association, the Institute on Mineral Law and the National Business Institute. He served as board president of the Historic New Orleans Collection, on the New Orleans Museum of Art board of trustees and on the Dean's Council of the A.B. Freeman School of Business at Tulane University. He was president of Temple Sinai, a member of the City Park Board of Commissioners and a past member of the governing boards of the United Way and its Agency Relations Committee, Touro Infirmary, the New Orleans Speech and Hearing Center and the Friends of City Park. He is survived by his wife, Sharon Rae Veta Snyder, three children and four grandchildren.



Charles Aubrey Snyder

PUBLICATIONS

The Best Lawyers in America 2011

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

Anthony Fazzio, L.L.C. (Lafayette): **Anthony M. Fazzio**.

Laborde & Neuner (Lafayette): **Frank X. Neuner, Jr.**, Baton Rouge Area Maritime Lawyer of the Year, 2011.

Liskow & Lewis, P.L.C. (Lafayette, New Orleans, Houston, Texas): **Donald R. Abaunza, Marguerite L. Adams, Robert S. Angelico, John Anjier, George Arceneaux III, Wm. Blake Bennett, Thomas Beron, James A. Brown, George Denègre, Jr., James C. Exnicios, S. Gene Fendler, Joseph C. Giglio, Jr., Don K. Haycraft, Robert E. Holden, Jonathan A. Hunter, R. Keith Jarrett, Phillip K. Jones, Jr., Gene W. Lafitte, David W. Leefe, Thomas B. Lemann, Marilyn C.**

Maloney, James N. Mansfield III, Thomas J. McGoey II, Robert B. McNeal, Joe B. Norman, William W. Pugh, Richard W. Revels, Jr., Leon J. Reymond, Jr., George H. Robinson, Jr., Robert A. Seale, Jr., Lawrence P. Simon, Jr., Randy C. Snyder, John M. Wilson and John D. Wogan.

McGlinchey Stafford, P.L.L.C. (Baton Rouge, New Orleans): **Richard A. Aguilar, Rodolfo J. Aguilar, Jr., Brad J. Axelrod, Samuel A. Bacot, Stephen P. Beiser, Jaye A. Calhoun, Rudy J. Cerone, R. Keith Colvin, Katherine Conklin, Richard A. Curry, Larry Feldman, Jr., Michael D. Ferachi, R. Marshall Grodner, Deborah D. Harkins, Mary Terrell Joseph, Bennet Scott Koren, Kathleen A. Manning, Kai D. Midboe, Colvin G. Norwood, Jr., Jay M. O'Brien, Erin Fury Parkinson, R. Andrew Patty II, Anthony Rollo, Michael H. Rubin, Stephen P. Strohschein, Susan M. Tyler, Kenneth A. Weiss, Dan E. West, Constance Charles Willems, David S. Willenzik and Henri Wolbrette III.**

Taylor, Porter, Brooks & Phillips, L.L.P. (Baton Rouge): **W. Shelby McKenzie**, Baton Rouge Insurance Lawyer of the Year, 2011.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos) :

Publication	Deadline
April/May 2011	Feb. 4, 2011
June/July 2011	April 4, 2011
Aug./Sept. 2011	June 3, 2011

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 e-mail dlabranche@lsba.org.

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

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Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

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For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2011. Check and ad copy should be sent to:

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To respond to a box number, please address your envelope to:

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601 St. Charles Avenue
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POSITIONS OFFERED

Curry & Friend, P.L.C., a growing New Orleans CBD/Northshore AV-rated defense firm is currently seeking a med mal attorney. Must have excellent organizational skills, A/V rating and med mal experience preferred. The firm offers excellent work environment, competitive salary and benefits. Send résumé, writing sample and references to amyroberts@curryandfriend.com.

The Office of Jon C. Thornburg, Chapter 13 bankruptcy trustee, Alexandria, La., is seeking applications for the position of staff attorney. Applicants must be licensed to practice law in the state of Louisiana. Duties include, but are not limited to, conducting meetings of creditors; preparing pleadings that will include motions, oppositions and response statements; legal research and writing; discovery; litigation; court appearances and other duties as necessary. Litigation and bankruptcy experience are preferred. The position will be filled as quickly as possible. References will be requested prior to selection. Salary commensurate with experience. The office provides excellent health, retirement and other benefits. Résumés will be kept confidential and can be submitted by e-mail to jon@ch13alex.com or mailed to: Jon C. Thornburg, Chapter 13 Bankruptcy Trustee, P.O. Box 1991, Alexandria, LA 71309.

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seeks attorneys for its Lafayette office. Great opportunity for motivated and ambitious self-starter who is seeking considerable hands-on experience, a progression to partnership commensurate with experience, excellent compensation and fringe benefits package. Prior admiralty and trial experience preferred. Mail confidential résumé to: C-Box 256.

Suburban New Orleans AV-rated law firm seeks attorney to practice in the areas of business, transactional and business litigation. Also seeking attorney to practice in insurance coverage and defense. Three years' experience preferred but will consider other applicants with excellent academic background. Competitive salary and benefits package. Please send résumé to C. Brechtel, P.O. Box 1910, Gretna, LA 70054; fax (504)362-5938; or e-mail CJB@grhg.net. All replies held strictly confidential.

Loyola University College of Law seeks applications for the position of academic success instructor. Loyola's academic success instructors work closely with individual first-year and upper-level students to assist them in developing and improving legal study, writing and test-taking skills. This position is a 12-month renewable administrative appointment commencing August 2011. This position requires: (1) a Juris Doctor degree from an ABA-accredited law school; (2) a record of academic and extracurricular success in law school; and (3) superior writ-

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ten, oral and interpersonal communication skills. Applications will be accepted until the position is filled. Inquiries and applications should be addressed to: Professor Dian Tooley-Knoble, Loyola University College of Law, 7214 St. Charles Ave., Campus Box 901, New Orleans, LA 70118.

SERVICES

Texas attorney, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300.

Briefwriting/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than nine years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)222-1700 (Shreveport).

Briefs/Legal Research/Analysis of Unusual or Problem Cases

JD with honors, federal judicial clerk, graduate of top 10 law school, 20 years' experience, federal and state litigation. Available for briefs, research, court appearances, analysis of unusual or problem cases. References on request. Catherine Leary, (504)436-9648, statewide services, registered office Jefferson Parish.

Legal research/briefs, drafts of pleadings carried out efficiently and promptly. Thirty years' litigation and appellate experience; AV-rated. Résumé available on request. For more information, contact Bonnie Zakotnik, (504)296-6011 and (504)486-6011, zakotniklaw@cox.net (New Orleans).

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FOR RENT COVINGTON

Executive office suites, two blocks to Covington courthouse. Includes utilities, cleaning, conference room, library, kitchen, off-street parking, fax, copier and wireless Internet. From \$375/month. Owner-broker, (985)892-0632 or (985)867-0747.

FOR RENT NEW ORLEANS

For lease. The verdict is in. There's only one place for business, One Canal Place Office Tower. Convenient, easily accessible riverfront location in New Orleans CBD. 1,000 to 89,000 square feet of contiguous space available; unparalleled amenity package. Contact Andrea Huseman, CCIM, (504)587-1450 or ahuseman@Corp-Realty.com. 365 Canal St., Ste. 100, New Orleans. *OnlyOneCanalPlace.com*.

Mid-City offices up to 1,600 square feet. 219-221 N. Clark, New Orleans. Separate offices from \$450-550 or total for \$1,500/month. Off-street parking lot. Off Canal Street above Jeff Davis. Near street car line and restaurants. Nice. Kathleen Cresson, attorney, at (504)486-6666.

Offices available, downtown building. One Shell Square, 701 Poydras St., 41st floor, great views. Offices rent as a suite or individually. Excellent referral system among lawyers. Includes receptionist, telephones, voice mail, conference rooms and kitchen. Walking distance of courts. Call Astrid at (504)525-4361.

Offices on St. Charles Avenue at Julia in architecturally renovated building. Two suites: 879 square feet and 907 square feet. Each suite has two private offices and secretarial/reception space. Ideal for solo or two attorneys. Secure covered parking, easy in/out. Call (504)522-6222.

FOR RENT SHREVEPORT

Approximately 800-square-foot renovated office suite available in Kings Ridge in the heart of the Shreveport-Bossier metropolitan area. 831 Kings Highway. Call (318)222-8514 for details.

NOTICE

Notice is hereby given that Jean Marie Lacobee 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 given that Kervin W. Doyle intends on petitioning for reinstatement to the practice of law. Any person(s) concurring with or opposing his petition must file notice within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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UPDATE

Averill Selected for Supreme Court Judicial Administrator's Post

Attorney Timothy F. Averill has been selected to serve as Louisiana Supreme Court judicial administrator, filling the position after 20 years of service as a deputy judicial administrator/general counsel for the court, the Louisiana Supreme Court announced. He returned to the court on Dec. 13, 2010, to begin his service.



Timothy F. Averill

Averill received his BA degree in English from James Madison University in 1979 and his MPA degree from the University of Alabama in 1980. He received his law degree from Loyola University Law School in 1985.

He was a law clerk and then an attorney for the law firm Abbott, Webb, Best & Meeks in New Orleans before serving a one-year clerkship for Louisiana Supreme Court Justice Pascal F. Calogero, Jr. in 1986. From 1987-89, he practiced admiralty law at the New Orleans law firm of Phelps, Dunbar, Marks, Claverie & Sims. In 1989, he began service as general counsel in the Judicial Administrator's Office of the Louisiana Supreme Court. He served in this position until 2008 when he was selected to participate in the United States Supreme Court's Fellows Program in Washington, D.C. For two years, he was assigned to the Administrative Office of the United States Courts. Since returning to New Orleans earlier in 2010, he has worked in the law office of retired Chief Justice Calogero, providing legal representation in appellate, lawyer discipline and bar admission matters.

Collins, Louisiana Supreme Court Judicial Administrator, Announces Retirement

Hugh M. Collins, Ph.D., judicial administrator of the Louisiana Supreme Court, will retire effective Jan. 3, 2011, after 36 years of service to the state judiciary.



Hugh M. Collins

Under Collins' stewardship, the Office of Judicial Administration has grown to include oversight of several award-winning, good-government initiatives and departments, including the Louisiana Supreme Court Drug Court Program, the Children and Families Department, the Community Relations Department, the Court Management Information Systems Department and the Louisiana Protective Order Registry.

Collins received a BS degree in mathematics from Boston College in 1966 and his Ph.D. in mathematics from Tulane University in 1971. In 1980, he graduated from the National Center for State Court's Institute for Court Management. He is a Fellow of the Institute of Politics at Loyola University. From 1972-78, he was a consultant to the superintendent and the Research

and Planning Division of the New Orleans Police Department.

In 1974, Collins joined the staff of the Louisiana Supreme Court Judicial Administrator's Office as deputy judicial administrator for systems analysis. In 1980, he became chief deputy administrator and deputy chief executive officer of the Judiciary Commission of Louisiana. In 1987, he was designated acting judicial administrator of the Louisiana Supreme Court and, in 1988, was appointed judicial administrator. He is currently the chief executive officer of the Judiciary Commission of Louisiana.

He served in leadership positions for several professional organizations, including the Conference of State Court Administrators (COSCA), the National Association for Court Management and the Forum on the Advancement of Court Technology. In 2009, he became chair of the FBI Criminal Disposition Task Force.

Collins is the recipient of several awards, including the 1990 Distinguished Service Award from the National Center for State Courts (NCSC), the 1999 Glenn R. Winters Award from the American Judges Association and the 2007 Kenneth Palmer Award from COSCA.

SULC Recommended for AALS Full Membership

The Executive Committee of the Association of American Law Schools (AALS) voted to recommend that Southern University Law Center (SULC) be admitted to full membership in the association, Chancellor Freddie Pitcher, Jr., announced.

The Nov. 11 vote in Washington, D.C., followed presentations by Pitcher and SULC Professors Evelyn L. Wilson and Nadia E. Nedzel. AALS Executive Director Susan Prager said the committee will present its recommendation to the House of Representatives at the AALS Annual Meeting in

January 2011 in San Francisco, Calif.

"The AALS Executive Committee's vote and recommendation to the House of Representatives is an external validation of the quality of our program of legal education," Pitcher said.

The AALS, a nonprofit educational association of 171 law schools representing more than 10,000 law faculty in the United States, is a resource for the improvement of the quality of legal education by networking law school faculty, professional staff and deans to information and resources.

Chief Judge Carter Reappointed to ABA Committee

Chief Judge Burrell J. Carter of the Louisiana 1st Circuit Court of Appeal has been reappointed to the American Bar Association (ABA) Judicial Division's Ethics and Professionalism Committee.



Judge Burrell J. Carter

Judge Carter has been a member of the Louisiana judiciary since October 1974. He has served as chief judge of the Louisiana 1st Circuit Court of Appeal since 1999.

The Judicial Division is the judicial voice of the ABA. Its mission is to promote the ideals of fair and impartial courts, provide opportunities for judicial education and service, and enhance the public's confidence and trust in the judiciary. The Ethics and Professionalism Committee examines issues of ethics and judicial responsibility affecting the judiciary.



The Coughatta Indian Tribe presented its annual continuing legal education program in April 2010 in Elton. Among the attendees for the Coughatta Round Table on Native American Affairs were, from left, Madro Bandaries, Sandra Phillips, retired U.S. Sen. Ben Nighthorse Campbell, Coughatta Tribe Chair Kevin Sickey and Tribe Vice Chair David Sickey.

LOCAL/SPECIALTY BARS

BRAWA Hosts Judicial Forum for First Circuit

The Baton Rouge Association of Women Attorneys (BRAWA) hosted the only Judicial Forum held for the four 1st Circuit Court of Appeal candidates up for election this past October: Judge John Michael Guidry, Judge Wilson E. Fields, Judge Toni M. Higginbotham and Judge Timothy E. Kelley. Attending the September 2010 forum were 85 people, including judges and Baton Rouge Bar

Association President Fred T. Crifasi.

BRAWA Immediate Past President Jan M. Reeves introduced the candidates who presented statements regarding their qualifications. Event chair was Denise N. Akers. BRAWA President Teresa Hatfield and Vice President Ann Wise also assisted on the judicial forum committee.



Louisiana attorney Gerald M. Woods, far right, a member of the Poarch Band of Creek Indians, was one of the attendees at the Governor's 2010 New Year holiday celebrations at the Governor's Mansion in Baton Rouge. With Woods are Louisiana Gov. Bobby Jindal and First Lady Supriya Jindal.



The Baton Rouge Bar Association (BRBA) conducted its Law Expo trade show in September 2010. An after-Expo reception, with a luau theme, honored contributing writers of the BRBA's magazine, "Around the Bar," which is celebrating its 25th anniversary. From left, BRBA President Fred T. Crifasi; Cherie A. Lato, co-chair of the 2010 Expo Committee; Michael E. Platte, 2011 chair of the Law Expo Committee; Jennifer Fontenot DeCuir, co-chair of the 2010 Expo Committee; and Alana Robert of the Camelot Club of Baton Rouge. Photo by Pamela Labbe.



Lafayette Bar Association's President Chuck Ziegler and his wife Flo were among the attendees at the Who Dat party, held in conjunction with the Bench Bar Conference in New Orleans.

Lafayette Bar Holds Saints-Themed Bench Bar Conference



Lafayette Bar Association's Bench Bar Conference Chair Boyd Anderson and his wife Georgette were among the attendees at the Black & Gold Affair in New Orleans.

The Lafayette Bar Association held its annual Bench Bar Conference in New Orleans in September 2010, this year featuring a New Orleans Saints theme. The conference allowed judges and attorneys to obtain continuing legal education credits, socialize with Lafayette's legal community, and enjoy a fun weekend at the Roosevelt Hotel. Although the conference is always the premier event for Lafayette's legal community, this year's event capitalized on the city's excitement after the Saints' victory during its first home game of the season.

The attorneys and judges attending the conference watched the Thursday night game at Galatoire's with their very own Who Dat party. Friday's events included a full day of CLE with Frank X. Neuner, Jr., James P. Roy, Dr. David Barczyk, Sen. Mike Michot and Charles B. Plattsmier speaking on various topics. Friday evening featured a Black & Gold Affair, with food and a jazz band.

Lafayette Bar Association Launches New Website

The Lafayette Bar Association has announced the launch of its newly designed and upgraded website, www.lafayettebar.org. With this newly polished presence on the Web, the site's 1,300 unique visitors each month can not only learn about the association, but also can interact with it. When members of the association visit the site, they can register for events, reserve space in the mediation center, flip through a digital version of the newsletter, *The Promulgator*, make a donation, and even renew their membership by paying dues online.

For the public, the new website is organized to help those seeking assistance from the legal community access to information and resources. Visitors can read about the association's sections, committees and community outreach programs, find an attorney using the lawyer referral service, or search through the news section.

"We are now in a position where we can reach out to an up-and-coming generation of attorneys whose thumbs are ever busy on smart phones and who not only appreciate but expect online convenience," said Marketing Director Ruthie Toce. "At the same time, we are not abandoning our more traditional communication methods. The site is not meant to replace any other type of communication but to augment practices we already have in place."

ANSWERS for puzzle on page 259.

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Louisiana State Bar Association President Michael A. Patterson served as a reader during the New Orleans Red Mass. *Photo by Pasos Photo and Video.*



Archbishop Gregory M. Aymond with the Archdiocese of New Orleans was the main celebrant and homilist for the Red Mass. *Photo by Pasos Photo and Video.*



Past presidents of the St. Thomas More Catholic Lawyers Association served as gift bearers for the New Orleans Red Mass, Herman L. Bastian, Jr., Susan J. Burkenstock, Stephen P. Bruno, Michael S. Haddad and Val P. Exnicios. *Photo by Pasos Photo and Video.*

Red Mass Observances Held in New Orleans, Shreveport

Patterson, Clark, Archbishop Aymond Participate in New Orleans Red Mass

Louisiana State Bar Association President Michael A. Patterson and Louisiana Supreme Court Associate Justice Marcus R. Clark served as readers for the 58th annual Red Mass on Oct. 4, 2010, at St. Louis Cathedral in New Orleans. Archbishop Gregory M. Aymond with the Archdiocese of New Orleans was the main celebrant and homilist for the Mass.

The Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association (STMCLA) sponsored the event, which began with a processional assembly from the Louisiana Supreme Court to the cathedral. In the procession were Louisiana

Supreme Court justices, Louisiana judges and attorneys, and others in the legal profession. The Loyola Chorale also performed for the services.

The Red Mass, always held on the first Monday of October, recognizes the traditional opening of the judicial year.

Following the Mass, the STMCLA hosted a reception in the Supreme Court building.

Guests of STMCLA and the court were federal administrative law judges visiting from across the country. The judges were scheduled to be in New Orleans in October 2005, but the conference was cancelled because of Hurricane Katrina. The conference

was scheduled to be in Nashville, Tenn., in October 2010 but was cancelled by flooding of the Cumberland River. Because of the efforts of Judge Patrick McLaughlin, the delegation of judges arrived in New Orleans in time to participate in the Red Mass and reception.

After the reception, the court convened to memorialize members of the bench and bar who died in the preceding year.

Also attending the Red Mass were New Orleans Mayor Mitch J. Landrieu, Jefferson Parish President John Young and Orleans Parish District Attorney Leon A. Cannizzaro, Jr.



Bishop Michael G. Duca presided over the the 18th annual Red Mass in Shreveport at Holy Trinity Catholic Church.

18th Annual Red Mass Conducted in Shreveport

The 18th annual Red Mass in Shreveport was conducted at Holy Trinity Catholic Church. The homilist was the Rev. Matthew Tyler Long, a lawyer and a member of the Shreveport Bar Association.

Bishop Michael G. Duca, who had delivered the homily at the 57th annual Red Mass in New Orleans in 2009, presided.

Donald L. Baker, age 95, a member of the Louisiana State Bar Association for more than 50 years, chaired the event.



The Rev. Matthew Tyler Long, a lawyer and a member of the Shreveport Bar Association, was homilist for the 18th annual Red Mass in Shreveport.

Belleau Installed as National President of Federal Bar Association

Ashley L. Belleau, a partner in the New Orleans office of Montgomery, Barnett, Brown, Read, Hammond & Mintz, L.L.P., was installed as the 83rd national president of the Federal Bar Association (FBA) in September 2010, during the association's annual meeting in New Orleans.



Ashley L. Belleau

This brings the FBA presidency back to Louisiana after a 17-year hiatus. Malcolm W. Monroe of the firm Deutsch, Kerrigan & Stiles, L.L.P., was FBA president from 1992-93.

Belleau maintains a commercial practice with a concentration in arbitration, litigation on the federal and state court levels, mediation and transactional work. She advises businesses, financial institutions, and individuals concerning bankruptcies, contracts, construction, environmental

issues, insurance, medical malpractice, real estate, corporate and estate matters.

Belleau obtained a BA degree in American studies, *cum laude*, from Newcomb College of Tulane University, where she also met her husband, Michael Kiernan, now a doctor at Tulane. After a one-year deferment (Michael was in the Navy at the time and was stationed in Norfolk), Belleau began law school at Tulane.

Following graduation, she served two years as a judicial law clerk to the late Judge Henry A. Mentz, Jr. of the Eastern District, and was honored by the United States District Court, Eastern District of Louisiana, with its Distinguished Service Award.

During this time, she became actively involved in the Federal and Louisiana State bar associations. She was elected to the council of the Louisiana State Bar Association's (LSBA) Young Lawyers Section, eventually becoming its chair. For more than a decade, she has served as a member of the LSBA's House of Delegates and has held leadership positions in various LSBA sections and committees.

Belleau began her ascent in the FBA in 1992, when Robert Kutcher, then-president of the New Orleans FBA Chapter (and her partner), appointed her to its board of directors. Kutcher, Judge Edith Brown Clement (past president of the New Orleans Chapter and now 5th Circuit judge), Belleau and Robyn Spalter (who served as national FBA president from 2005-06) created the New Orleans Chapter's Young Lawyers Section. Working her way up through the New Orleans Chapter's Membership Committee, Belleau became president of the New Orleans Chapter in 1999.

Belleau's involvement in the FBA on a national level took off in 2000 when she was appointed to serve as vice president of the 5th Circuit, a position she held until 2005 and for which she received the FBA Award for Outstanding Service. She served as chair of the Circuit Vice Presidents from 2003-05, deputy secretary from 2005-06 and as the FBA's general counsel from 2006-08. She decided to run for FBA treasurer, then president-elect.

Belleau is active in her local community as well. She serves on the board of the

Mirabeau Family Learning Center, Inc., a nonprofit organization that provides housing and support services such as employment preparation, educational opportunities and child development. She also is active with the SOLACE program and various pro bono projects.

Belleau and the FBA's national leadership have ambitious plans. At the Presidential Summit, the leadership formulated the FBA's game plan for the next three to five years. Belleau recognizes that "the FBA is a voluntary bar association, which is membership-value driven." To increase the value of FBA membership, their plan for the next several years is to increase the FBA's VRV — Visibility, Relevance and Value. To accomplish the VRV vision, the FBA will offer and highlight additional activities and CLEs at the section, division and chapter levels, more national CLEs, continue to enhance its new website, and increase communications with FBA members via e-mail and other media.

The FBA also is involved with:

- ▶ promotion of high standards of professional competence and ethical conduct;
- ▶ promotion of independence of the federal judiciary;
- ▶ ensuring adequate funding for the federal courts;
- ▶ establishment of additional federal judgeships and support staff as rising caseloads threaten the prompt delivery of justice;
- ▶ adoption of adequate security measures to protect the federal judiciary, their families and court personnel in and outside the courthouse, while preserving meaningful public access to judicial proceedings; and
- ▶ promotion of the professionalism and esteem of attorneys employed by the federal government.

Founded in 1920, the FBA serves as the national representative of federal legal practitioners. The mission of the FBA (with more than 15,000 members nationwide) is to "strengthen the federal legal system and administration of justice by serving the interests and needs of the federal practitioner, both public and private, the federal judiciary and the public they serve."

**Watch the
Children's Law
Committee
video,
*Louisiana
Foster Care:
An Introduction*,
online at
[www.lsba.org/
fostercare](http://www.lsba.org/fostercare)**

Continuing Legal Education

In the legal community the more you know, the faster you'll get ahead. That's why the Louisiana State Bar Association offers a variety of seminars on a wide range of legal topics. Enrolling in them will help you stay competitive and keep up with the ever-changing laws. The Continuing Legal Education Program Committee sponsors more than 20 programs each year, ranging from 15-hour credit seminars to one-hour ethics classes. Check online for the most up-to-date list of upcoming seminars at www.lsba.org/CLE.

**Getting on Solid Ground
in Real Estate Law: Leases**

January 19, 2011
New Orleans

Baton Rouge Mini Diversity Conclave

January 26, 2011
Baton Rouge

Shreveport Mini Diversity Conclave

February 3, 2011
Petroleum Club of Shreveport
Shreveport

**Getting on Solid Ground
in Real Estate Law: Entity Formation**

February 9, 2011
New Orleans

**Red Rover, Red Rover, Send My Lawyer Over:
Children Need Lawyers Too, and How!**

February 11, 2011
New Orleans

**Louisiana Trusts: From Conception
to Natural Death**

February 18, 2011
New Orleans

**Getting on Solid Ground in Real Estate Law:
Introduction to Tax Credits & Tax Abatements**

February 23, 2011
New Orleans

4th Annual Solo and Small Firm Conference

February 24 - 25, 2011
Hilton New Orleans Riverside
New Orleans

Destination Disney! Multi-Topic CLE

March 7 - 9, 2011
Lake Buena Vista, Florida

Transactional Challenges in Distressed Times

March 11, 2011
New Orleans

Appellate Advocacy

March 18, 2011
New Orleans

**4th Annual Conclave on Diversity
in the Legal Profession**

March 18, 2011
New Orleans Marriott at the
Convention Center
New Orleans

Family Law CLE

March 25, 2011
New Orleans

Motion Practice

March 25, 2011
New Orleans

Immigration CLE Seminar

March 31, 2011
New Orleans

Tips for Avoiding Legal Malpractice

April 1, 2011
New Orleans

**French Quarter Fest:
3rd Annual White Collar Symposium**

April 8, 2011
New Orleans

**For more information or to register online, visit
www.lsba.org/CLE**

President's Message

'Tis the Season for Giving

By Herschel E. Richard, Jr.

'Tis the season for shopping, partying and, hopefully, reflecting on the spirit of the season — giving. With the season of giving upon us, please consider making a year-end gift to the Louisiana Bar Foundation (LBF). The LBF relies on gifts such as these to continue our mission to preserve, honor and improve our system of justice. A gift to the LBF demonstrates your belief in our mission and will help strengthen the programs we support and the services we provide.

The LBF provides an opportunity for all lawyers to play a part in ensuring that every Louisiana citizen has equal access to the justice system. By working together, we can enhance the Foundation's mission and meet the legal needs of our state's

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most vulnerable.

With your support, the LBF is able to:

- ▶ help women and children in domestic violence shelters;
- ▶ provide education to youth about the legal process;
- ▶ aid the elderly through financial

crises;

- ▶ assist families to retain their homes;
- ▶ give children a voice in court;
- ▶ bring families back together;
- ▶ build educational courtrooms in schools; and
- ▶ bring communities together to identify legal needs in their areas.

Please take the time during this busy holiday season to reflect on the blessings in your life and consider making a gift to the LBF. Make your gift online at: www.raisingthebar.org/gift or mail directly to the LBF, 909 Poydras St., Ste. 1550, New Orleans, LA 70112. If you have any questions, contact Development Director Laura Sewell, (504)561-1046 or e-mail laura@raisingthebar.org.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces the following new Fellows:

Paula B. Bertuccini Lafayette
 Hon. Edward B. Broussard Abbeville
 Hon. W. Eugene Davis Lafayette
 Stephen J. Herman New Orleans
 Kyle A. Ferachi Baton Rouge
 Sidney A.
 Marchand III Donaldsonville
 Chad E. Mudd Lake Charles
 Prof. Robert A. Pascal Baton Rouge
 Henry S. Provosty New Orleans
 R. Scott Ramsey, Jr. Morgan City
 Hon. Marie B. (Melise)
 Trahan Crowley

LBF Seeking Nominations for 2011 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2011 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Friday, Feb. 11, 2011. The award will be presented at the Louisiana State Bar Association's Annual Meeting in Las Vegas, Nev., in June. The recipient will receive a plaque and \$1,000 will be donated in his/her name to a non-profit, law-related program or association providing services in Louisiana (recipient's choice).

Nominations should include the nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations should be forwarded to Dennette Young, Communications Director, Louisiana Bar Foundation, 909 Poydras St., Ste. 1550, New Orleans, LA 70112; or e-mail to dennette@raisingthebar.org.

This trial advocacy award was es-

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

The award is given to a Louisiana attorney who exhibits long-standing devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel. Previous recipients are Wood Brown III, William K. Christovich, Patrick A. Juneau, John B. Scofield, Gene W. Lafitte, Charles S. Weems III, Herschel E. Richard, Jr., Jack C. Benjamin, Sr., Robert B. Acomb, Jr., John J. Weigel, Allen Lewis Smith, Jr., H. Alston Johnson III, John R. Martzell, George A. Frilot III, Phillip A. Wittmann, J. Michael Small and John M. McCollam.

LBF's 25th Anniversary Fellows Gala Set for April 8

The Louisiana Bar Foundation (LBF) will celebrate the 25th annual Fellows Gala on Friday, April 8, 2011. The gala and live auction will be held at the Ritz-Carlton New Orleans, 921 Canal St.

Discounted rooms at the Ritz-Carlton New Orleans are available for \$215 a night for both Thursday, April 7, and Friday, April 8. Reservations must be made on or before Thursday, March 17, 2011, to get the discounted rate. Call the hotel directly at (800)826-8987 and reference "Louisiana Bar Foundation" to make a reservation.

Sponsorships are available at the following levels:

► **25th Anniversary Circle, \$5,000:** Includes 30 patron party tickets, 30 gala tickets with three reserved tables (seats 30) and recognition at the event.

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

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

► **Pillar Level, \$1,200:** Includes six patron party tickets, six gala tickets and recognition at the event.

► **Foundation Level, \$400:** Includes two patron party tickets, two gala tickets and recognition at the event.

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

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

LBF Annual Membership Meeting Moves to New Orleans in April

The Louisiana Bar Foundation's board of directors approved holding the Annual Membership Meeting in conjunction with the 25th Anniversary Fellows Gala. The breakfast meeting will be held at 8 a.m. Friday, April 8, 2011, at the Ritz-Carlton New Orleans. This meeting is an opportunity for Fellows to be updated on LBF activities and to elect new board members.

A meeting notice will be sent to all Fellows in good standing in the spring. For more information, contact Laura Sewell at laura@raisingthebar.org or (504)561-1046.

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Lucid INTERVALS

By Vincent P. Fornias

UNDER THE TABLE

It was just another day at a law office in Wilmington, N.C., where a representative of an insurance company sued for bad faith was being deposed via videophone by a Miami lawyer representing the plaintiffs. The latter had dispatched a paralegal to the deposition to sit by for the marshalling of the exhibits in person.

Suddenly the paralegal noticed a strange noise coming from under the table, directly below the position of the deponent and the lawyer defending the deponent. It sounded like a Broadway musical under there. Tap-tap-tap. So he subtly peeked under the table, yanked out his smart phone and snapped a picture of the evidence. Then he sent it posthaste to his boss in Miami. Here is the resulting deposition exchange:

Miami lawyer: "Ms. Dennis?"

Witness: "Yes."

Miami lawyer: "Has he been tapping your foot? And you're under oath here."

Witness: "Yes."

Miami lawyer: "Yes, he has?"

Witness: "Yes. I didn't know it was his foot."

Alas, dear reader(s), we are haunted here by the limitations of a cold, dry transcript, leaving those of us without a life with persistent, searing questions about her intriguing answer, and specifically where the emphasis was placed by deponent:

A. Did she mean she didn't know it was *his* foot (as opposed to the foot of the court reporter or other counsel or the legendary Sasquatch of North Carolina)?

B. Did she mean she didn't know it was his *foot* (or perhaps he had exceedingly long arms or . . . let's not go there, OK)?

C. Did she mean she didn't *know* it was his foot (meaning she had simply either narrowed the list to her lawyer's foot or the presence of *very* large and over-caFFEinated termites)?

What we do know is that the deposition was promptly concluded and the Miami lawyer sought sanctions from the insurance company, accusing its lawyer of coaching the witness through dastardly foot-tapping. Attached to the motion was a reprint of the paralegal's Kodak Moment. The defendants replied in brief that there was no impropriety other than occasional foot *brushing* prompted by the



cramped quarters under the table, and that this was a "natural position for parties sitting for hours of cross-examination."

As a public service to our readership, and in the hope that future instances of unprofessional and unseemly conduct can be avoided, we provide below a Checklist of Indicia of Foot-Tapping Potential to be brought to all future depositions:

- ▶ Is the defense lawyer related to Fred Astaire, Gene Kelly, Cyd Charisse, Shirley Temple or Mr. Bojangles?
- ▶ Is there a Morse code cheat sheet near the deponent?
- ▶ Do deponent and his lawyer refuse to check their footwear at the door?
- ▶ Is the deponent wearing ballet slippers and her lawyer wearing steel-toed boots?
- ▶ Is deponent heard to whisper, "Ouch! That one hurt!"?

Better yet, an ounce of prevention is always worth a pound of incendiary sanction motions. Henceforth, all footsie flotsam can be avoided altogether by:

- ▶ Placing deponent at the other end of the table from her attorney and hoping that he was not an NBA center;
- ▶ Placing fly paper under the deposition room table;
- ▶ Installing barbed wire, broken bottles or electric wiring to encourage under-table foot separation;
- ▶ Spraying a detectable dye on the sole of deponent's attorney's foot; or
- ▶ Requiring all deposition tables to be glass-topped.

Notice that we have now almost concluded this important report without one single solitary reference to the (ugh!) footnote to this story. Well, almost . . .

If you have experienced, seen or heard something humorous in your day-to-day legal practice, or if you just have an idea for a Lucid Intervals column, by all means, let the Louisiana Bar Journal know. Mail, fax or e-mail your stories, anecdotes, quotes or ideas c/o Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; e-mail dlabranche@lsba.org. She'll make sure your "gems" get into the right hands. Keep smiling!

It's all about my family.

Name: Liz Schell

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When my husband was diagnosed with cancer, Gilsbar's case management program contacted us right away. Our case manager was extremely helpful and proactive in getting the "business" taken care of while my family was navigating through this difficult time. Throughout my husband's treatment, our case manager was always available when I had questions and helped us tremendously when negotiating rates and deciding on treatment options. My experience with Gilsbar was excellent, and their case managers are knowledgeable, prompt, and supportive.

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A portrait of Ben Skjold, a man with short brown hair, smiling. He is wearing a dark pinstripe suit jacket, a light blue dress shirt, and a purple patterned tie. The background is blurred, showing what appears to be a bookshelf.

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