LOUISIANA BAR
JOURNAL
February / March 2015 Volume 62, Number 5

The Brand New Louisiana Business Corporation Law: *Diving Into Act 328*

Also Inside:

- **The Crisis in Public Defense Funding:** The Approaching Storm and What Must Be Done
- **Military Divorce:** Returning Warriors and "The Home Front"

The Needle In A Haystack

Ask how we can help you file BP Oil Spill Claims utilizing the latest court-supervised settlement methodology.

Complex financial litigation cases often require the engagement of experts who can find "the needle in a haystack." A substantial edge is gained when you have Legier & Company's Forensic & Investigative CPA and Expert Witness Group on your team to help you find obscured financial facts that build and prove stronger cases.

Expert Testimony • Fraud • Forensic & Investigative Accounting • Calculating and Refuting Financial Damages
Business Valuations • Bankruptcies • Shareholder Disputes • Lost Profits • Business Interruptions
Lost Wages • Corporate Veil Piercing • Marital Dissolutions

For more information, contact William R. Legier (504) 599-8300

LEGIER & COMPANY
apac

1100 Poydras Street • 34th Floor • Energy Centre • New Orleans, LA 70163
Telephone (504) 561-0020 • Facsimile (504) 561-0023 • http://www.legier.com

PAYMENT PROCESSING, EXCLUSIVELY FOR ATTORNEYS.

Louisiana State Bar Association

Serving the Public. Serving the Profession.

Proud Member Benefit Provider

1.95% per transaction | No swipe required | No equipment needed

Helping law firms get paid.

It is critical for attorneys to handle credit card transactions correctly. IOLTA guidelines and the ABA Rules of Professional Conduct require attorneys to ethically accept credit cards. LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your transactions are always handled the right way.

www.LawPay.com/lsba | 866.376.0950

LAWPAY
CREDIT CARD PROCESSING

This is market-leading technology.
This is transforming the way you do research.

This is Lexis Advance®.

Confidently deliver better outcomes with the essential research and validation solution that makes researching efficient and delivers comprehensive results.

See how at
thisisreallaw.com

Louisiana State Bar Association
Serving the Public. Serving the Profession

LexisNexis®

Louisiana State Bar Association
Serving the Public. Serving the Profession.

LOUISIANA BAR JOURNAL

February / March 2015 Volume 62, Number 5

Departments

Also Inside

Features

Hon. James R. McClelland

Editorial Board

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.

MEMBER SERVICES

Louisiana State Bar Association

Serving the Public. Serving the Profession.

601 St. Charles Ave.
New Orleans, La. 70130
Web site: www.LSBA.org

(504)566-1600
(800)421-LSBA
Fax (504)566-0930

Programs

For information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA. If you have questions regarding the negotiated corporate rates offered at the hotels listed, contact Kayuyum Koban for assistance.

- Alternative Dispute Resolution Program
- Client Assistance Fund
- Continuing Legal Education Program
- Ethics Advisory Service
- Lawyers' Substance Abuse Hotline • (866)354-9334
- Legal Specialization Program
- Loss Prevention Counsel
  Johanna G. Averill, Lindsey M. Ladouceur and Elizabeth LeBlanc Voss • (800)GILSBAR
- SOLACE (Support of Lawyers/Legal Personnel All Concern Encouraged)

Publications

- *Louisiana Bar Journal*
- "Bar Briefs" (online)
- Louisiana Bar Today (online newsletter)

Online Services

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

Young Lawyers Division

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

Insurance through Gilsbar

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

Car Rental Programs

The following car agencies have agreed to discount rates for LSBA members.

- **Avis –** (800)331-1212 • Discount No. A536100
- **Budget Rent-a-Car –** (800)527-0700 • Discount No. Z855300
- **Hertz –** (800)654-2210 • Discount No. 277795

Other Vendors

The following vendors have agreed to discount rates for LSBA members.

- **ABA Members Retirement –** (800)826-8901
- **CoreVault –** (866)945-2722
- **Geico -** (800)368-2734
- **LexisNexis –** (800)356-6548
- **LawPay -** (866)376-0950
- **United Parcel Service** – (800)325-7000

National Hotel Chains*

- **Holiday Inn,** (800)HOLIDAY
  Use ID No. 100381739
- **LaQuinta Inns & Suites**, (866)725-1661
  www.LQ.com
  Use corporate rate code LABAR

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

Louisiana Hotels

The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

New Orleans

- **Bienville House**, (800)535-9603
  e-mail: reservations@bienvillehouse.com
  www.lsba.org/GoTo/BienvilleHouse
- **Hilton St. Charles**, (504)524-8890
- **Hilton Garden Inn**, (504)281-4004
  email: csoler@hriproperties.com
  www.neworleansfrenchquartercbd.hgi.com
- **Hotel InterContinental**, (877)866-9005
  e-mail: dawn.pembo@ihg.com
- **Hotel Monteleone**, (800)535-9595
  e-mail: reservations@hotelmonteleone.com
  www.lsba.org/GoTo/HotelMonteleone
- **Hyatt Regency New Orleans**, (888)591-1234
  www.hyatt.com, Corporate #95147
- **Hyatt French Quarter**, (504)281-4004
  email: csoler@hriproperties.com
  www.frenchquarter.hyatt.com
- **Hyatt Place**, (504)281-4004
  email: csoler@hriproperties.com
  www.hyattplaceneworleansconventioncenter.com
- **JW Marriott New Orleans** • *www.jwmarriottneworleans.com*
- **Le Pavillon Hotel**, (800)535-9095 • *http://bit.ly/LPLSBAR*
- **Loews New Orleans Hotel** • (504)595-5370, (866)211-6411
- **Marriott Courtyard Downtown**
  www.courtyardneworleansfrenchquarter.com
- **New Orleans Marriott**
  www.lsba.org/GoTo/NewOrleansMarriott
- **New Orleans Marriott at the Convention Center**
  www.lsba.org/GoTo/MarriottCC
- **Renaissance Pere Marquette**
  www.renaissanceperemarquette.com
- **The Ritz-Carlton**, (800)826-8987, (504)670-2845
  e-mail: amanda.weaver@ritzcarlton.com
- **The Roosevelt New Orleans** • (504)335-3138, 1(800)WALDORF
- **Sheraton New Orleans**, (504)595-6292
  e-mail: dana.smith@sheraton.com
- **Westin Canal Place**, (504)553-5110
  e-mail: ashley.bonner@westinneworleans.com
- **The Whitney Wyndham**, (504)581-4222
- **Windsor Court**, (800)262-2662, (504)523-6000
  e-mail: plambert@windsorcourthotel.com
- **Wyndham Riverfront New Orleans**, (504)524-8200

Baton Rouge

- **Courtyard Baton Rouge Acadian Thruway**
  www.courtyardbatonrouge.com • (Corporate Code: ABA)
- **Crowne Plaza Baton Rouge**, (225)925-2244, (225)930-0100
  e-mail: dbond@executivecenterbr.com
- **Hilton Baton Rouge Capitol Center**, (800)955-6962, (225)344-5866
  Corporate ID #0921780 • *www.lsba.org/GoTo/HiltonBRCapitol*
- **Sheraton Baton Rouge**, (225)378-6177
  e-mail: susan.ringwald@bellofbatonrouge.net

Lafayette

- **SpringHill Suites Lafayette South at River Ranch**
  www.lsba.org/GoTo/SpringHill

Lake Charles

- **Best Western Richmond Suites**, (337)433-5213

Shreveport

- **Clarion Shreveport Hotel**, (318)797-9900
- **The Remington Suite Hotel**, (318)425-5000
  www.remingtonsuite.com

Our Friend Jim

By Barry H. Grodsky

We all know special people, and, when we refer to them, it's not just "Bill" or "Mary." We first say "our friend" before the name. It is reserved for those we really enjoy seeing and spending time with, sharing a good story or two. It does not matter if we don't see them very often but, when we do, it is always an enjoyable time, something we look forward to.

Such is the case of Our Friend Jim — The Honorable James McClelland of the 16th Judicial District Court. Also known among his friends and colleagues as Mac or simply Judge, Jim lives in Franklin which is 200 miles and a world away from New Orleans, where I live and practice. We don't get to see each other very often, but our time together at Bar events has always been special to me.

I recently had a chance to visit with Jim at his home, but this was not just an ordinary visit. Jim was diagnosed with amyotrophic lateral sclerosis — commonly known as ALS and Lou Gehrig's disease — almost three years ago and he had recently decided to retire from the bench effective March 1, 2015.

Jim epitomizes all that is good about the practice of law: professionalism, honesty, integrity and fairness. He has given so much to the profession as the quintessential small-town lawyer, then judge, and active participant in the Louisiana State Bar Association (LSBA), the Inn on the Teche Inn of Court and the Louisiana Bar Foundation (LBF). I thought it was important for our members to get to know Jim as I do.

Jim is from Elton, La. (population 1,100), where he grew up on his family's farm. He had not initially planned to become a lawyer. He went to Louisiana State University where he earned a bachelor's degree in chemical engineering (which he admits is a lot harder than being a lawyer) and an MBA. During this time, he met and married Sandra (Sandy) Tate. They have been married for 44 years.

While at LSU, Jim was in ROTC, which resulted in active military duty after graduation. Because the war in Vietnam was winding down, he was fortunate enough to serve all of his brief active duty stateside.

He loved small-town Louisiana life and soon learned that a career as a chemical engineer would ultimately mean relocating, possibly every few years. While pondering his future, Jim was intrigued by certain Supreme Court cases which indicated to him that there would be a need for lawyers so he took the LSAT and enrolled in LSU Law School. A devoted Tiger fan since his undergraduate days at LSU, Jim's love for his alma mater is evident throughout his home. Counting himself among Les Miles' supporters, Jim and his son Joe traveled to every football game during the Tigers' 2012 season. And did I mention that in addition to football, the McClellands hold season tickets for baseball, basketball and softball?

After graduating from law school, Jim settled in Franklin with Sandy and raised sons Joe and Jeff, as well as twin foster daughters Jodie and Jamie. He began his practice in the indigent defense system and became the chief of that operation. Because of his success as an indigent defender, he was wooed away by the District Attorney and began prosecuting felony cases. During this time, he also practiced with Aycock, Horne & Coleman, where he later became litigation partner and remained until his election to the bench (the only time in his adult life that he has held only one job!).

Jim epitomized the small-town practice. He appreciated the collegiality and professionalism and notes that it is good to know everyone you practice with and against.

Giving back has always been a part of Jim's life and his career. Since helping to found the Inn on the Teche a number of years ago, he has remained active in an effort to promote professionalism and assist young lawyers with their transition into the practice of law. It was no surprise that in 2012 the Inn honored Jim with its Professionalism Award, voted on annually by members of the Inn.

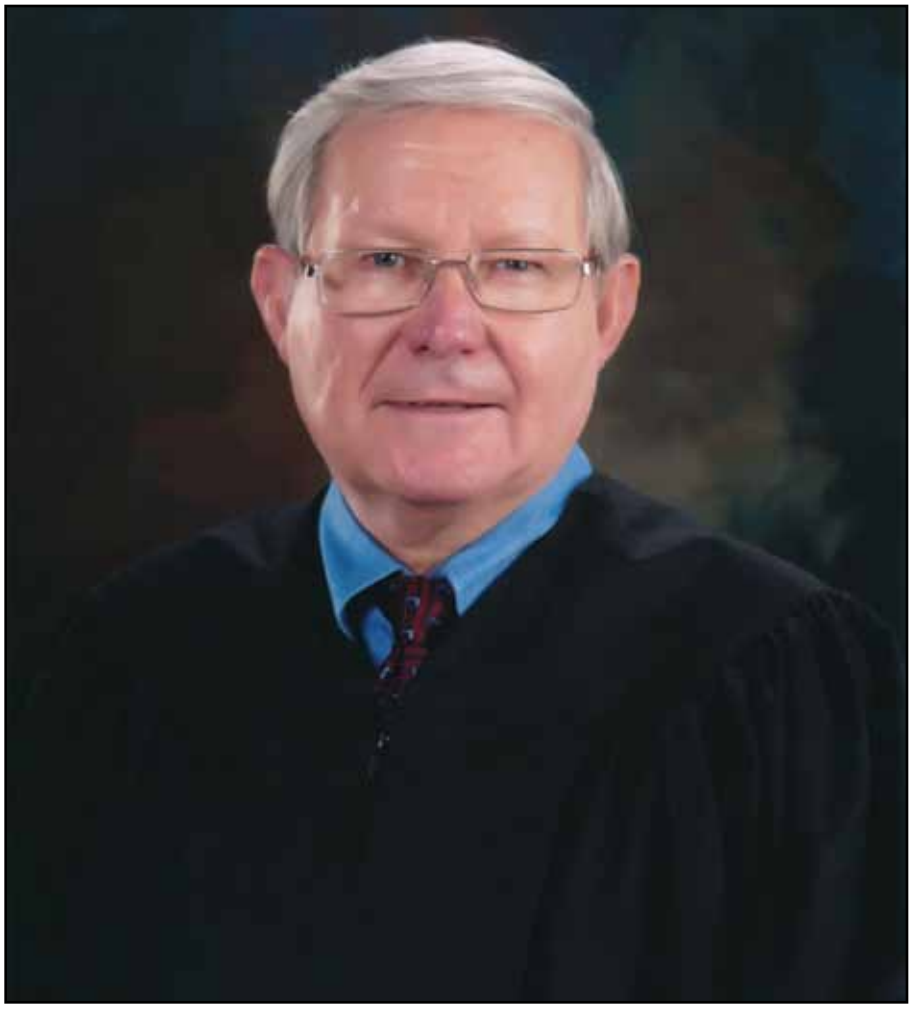
The LSBA and LBF have likewise been the beneficiaries of Jim's commitment to the profession he loves. He served for roughly 20 years as a member of the LSBA House of Delegates, and three terms on the Board of Governors, one of those as Secretary. Once a Board member, he began to serve as the parliamentarian for the House of Delegates, a position he held until becoming a judge. His work with the LBF includes starting the Community Partnership Panel for the Bayou Region (comprised of Terrebonne, Lafourche and

St. Mary parishes) and serving on the Board of Directors (his term ends this April).

Jim thought about being a judge early in practice. He saw what judges did and knew he could do it (he was, of course, correct, as he has served on the bench with distinction). In 2008, there was a vacant seat and he ran unopposed. He credits the collegiality and support of the judges of the 16th JDC for his smooth transition to the bench and he loved being a judge — even more than he loved being a practitioner. The 16th is a general jurisdiction court where the judges "ride the circuit" between the parishes of Iberia, St. Martin and St. Mary. Jim enjoys the variety of the bench, but finds domestic cases involving non-support to be the most difficult. As a father and an all-around good guy (my assessment not his), he cannot understand people who do not want to support their children.

In 2011, Jim started to notice some physical changes, which he initially attributed to age. Over time, these changes impacted his ability to comb his hair, shave or continue with his bowling (which he loved to do), and that's when he knew there was some other issue. Jim underwent fusion surgery but that did not relieve the problems. Then on April 17, 2012, the diagnosis came — it was ALS.

He never wallowed in self-pity or wondered "why me?" Instead he and Sandy resolved to face this challenge with their usual resourcefulness and tenacity, so that their lives could continue uninterrupted for as long as possible. They knew that Jim wanted to continue to serve on the bench, and that they wanted to spend time with family and friends and to travel as much as possible. Being pragmatists, early in his diagnosis, they modified their home to accommodate what they knew would be Jim's needs once his disease progressed. Jim consulted with his physicians who advised him that he could and should continue his career as long as it was comfortable for him to do so. So, he did what he truly loved: he stayed on the bench and served as a judge. While ALS affected him physically, his considerable intellectual abilities remained unchanged. Never let Jim's claim that "I'm just a country boy" fool you. While his fairness cannot and should not be questioned, he is truly a force to be reckoned with.



Hon. James R. McClelland

Judge McClelland has nothing but praise and appreciation for his colleagues on the 16th Judicial District Court bench and the Louisiana Supreme Court, calling them great judges and great people. Since Jim's diagnosis, they have been supportive of his decision to continue his work and have assisted in any way necessary. His fellow judges have pitched in whenever necessary, and when Jim could no longer sign his name, the Supreme Court accommodated him by allowing the use of a stamp for his signature as long as he supervised its use. Quite simply, Jim says, "They are the best."

While his disease progressed some in the first two years, it had no impact on his ability to serve as judge. In 2014, he qualified for a second term, again being elected without opposition. But ALS is an insidious disease and, after routine but necessary surgery in October, Jim says he never fully recovered. His doctors had warned that any trauma to the body could accelerate the disease and that is apparently what happened in Jim's case. By mid-December, he had lost the ability to walk and was having trouble with his voice. Both he and Sandy could see how much he was struggling as he continued to go to the court every day. "At this stage, the disease really saps your energy," he confided.

While home during the holidays, Jim and his family, which has now expanded to include 11 grandchildren, noticed how much better he was doing. He was breathing easier and could go longer periods without having to rely on the ventilator. His body benefited from not having to make the trip to the court every day. So, after the holidays, he began working from home, where his secretary Julie LeBourgeois and his law clerk Brady Holtzclaw visit each

day at lunch to discuss Jim's docket. Here, Jim's theme of appreciativeness continues, as he praises Julie, the *only* secretary he has had since becoming a lawyer in 1975, and Brady, his law clerk since August 2014.

After much soul-searching and in consultation with his family and Justice John Weimer (who oversees the 16th JDC for the Supreme Court and who Jim considers a personal friend), Judge McClelland decided to step down from the bench effective March 1, 2015. He says that he would have never qualified for a second term had he known his disease would progress so rapidly, but it is still hard to leave a position he loves and people for whom he has so much respect and admiration. Both Jim and Sandy could not stress enough how the assistance of his fellow judges, staff and lawyers who appeared before him was instrumental in his ability to remain on the bench as long as he did.

Jim cherishes his time on the bench and sees his life's work as a legal career and not just a job. The love for his profession is best seen by those who have so much respect and admiration for Jim now. Without exception, when you mention his name, people have only positive things to say about Judge Jim McClelland. It is obvious that he is held in very high esteem among his peers on the bench and the lawyers who appear before him.

Virtually every day Jim has visitors and well-wishers. Jim said that "people have

Judge James McClelland with his wife of 44 years, Sandra.

come out of the woodwork" to spend time with him and Sandy. They come to see their friend; someone who has given so much not just to the legal community but to the community he calls home. He treasures these visits and those who make them.

Jim and Sandy also draw strength from their faith, symbols of which fill their home. One such symbol which is especially dear to him is a painting of St. Thomas More — the patron saint of lawyers — which was a gift from their parish priest. It hangs just above the recliner where Jim spends much of his time these days.

What the McClellands believe is truly touching, and a great show of respect, is the support they have received from those they do not even know, people who live in their community and who have heard about their plight through mutual friends. They are also most appreciative of the support they have received from the Veterans Administration, which has determined that veterans develop ALS at rates higher than the general population. They have provided Jim with much of the equipment required to live with ALS, including a power wheelchair, hospital bed, patient lift, ventilator and specially outfitted van, to name just a few. The McClellands credit the VA assistance to the fact that in 2008 ALS became a presumptively compensable illness for all veterans with 90 days or more of continuously active military service.

Despite the challenges of life with ALS, both Jim and Sandy are quick to tell you that they are blessed. Blessed with a loving family, wonderful friends and supportive professional colleagues. Blessed to have enjoyed small-town life and all the benefits it has to offer. Blessed to have had a career in a profession he loves, capped off by serving as judge.

Jim engaged in his legal career for as long as he was able. He has been so influential and embodies what professionalism is on every level, as a judge, a lawyer and a friend. It was good to spend time with my friend Jim.

Barry Grodsky

Background: Amyotrophic Lateral Sclerosis (ALS)

Amyotrophic lateral sclerosis (ALS) was first found in 1869 by French neurologist Jean-Martin Charcot, but it wasn't until 1939 that baseball great Lou Gehrig brought national and international attention to the disease. The disease is now often referred to as "Lou Gehrig's Disease."

ALS is a progressive neurodegenerative disease that affects nerve cells in the brain and the spinal cord. Motor neurons reach from the brain to the spinal cord and from the spinal cord to the muscles throughout the body. The progressive degeneration of the motor neurons in ALS eventually leads to their death. When the motor neurons die, the ability of the brain to initiate and control muscle movement is lost. With voluntary muscle action progressively affected, patients in the later stages of the disease may become totally paralyzed.

Early symptoms of ALS often include increasing muscle weakness, especially involving the arms and legs, speech, swallowing or breathing. When muscles no longer receive the messages from the motor neurons that they require to function, the muscles begin to atrophy (become smaller). Limbs begin to look "thinner" as muscle tissue atrophies.

Most commonly, ALS strikes people between the ages of 40 and 70, and as many as 30,000 Americans have the disease at any given time.

Although the cause of ALS is not completely understood, there is new scientific understanding regarding the physiology of this disease. While there is not a cure or treatment today that halts or reverses ALS, one FDA-approved drug, riluzole, modestly slows the progression of ALS. Other drugs are in clinical trials.

There are significant devices and therapies that can manage the symptoms of ALS to help people maintain as much independence as possible and prolong survival. ALS is a variable disease, so no two people will have the same experiences.

To learn more about ALS, visit the ALS Association's website: *www.alsa.org*.

We Can Help.

The signs of depression aren't easy to read. No one is completely immune. If you or a colleague experiences signs of depression, please call.

L · A · P

LAWYERS ASSISTANCE PROGRAM, INC.

Your call is absolutely confidential as a matter of law.

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

Traditions and Professionalism

By Joseph L. (Larry) Shea, Jr.

There are many long-standing traditions observed by our courts, our state and local bars, and our attorneys in Louisiana. There are Opening of Court ceremonies throughout the state. While these ceremonies are held at different times in the fall or the first of each year, the tradition dates back to a time before air-conditioning when most of our courts closed during the heat of the summer months. It is an opportunity for the judges and lawyers in a community to get together each year in a formal, but collegial, atmosphere. The court openings are frequently preceded by a Red Mass.

This, too, is a long-standing tradition in Louisiana with the first Red Mass having been celebrated in New Orleans at the St. Louis Cathedral on Oct. 5, 1953. The Mass is offered to request guidance from the Holy Spirit for the legal profession and the pursuit of justice. Further, the Louisiana Supreme Court and local courts customarily have ceremonies to memorialize, eulogize and show respect for those attorneys who have passed on in the last year. Many local courts combine these events with recognition of the sitting and retiring judges, as well as welcoming new attorneys to the practice. These traditions are some of the clearest examples of professionalism.

Over the last year, I have had the distinct privilege and honor to attend and participate in gatherings of this nature in Alexandria, Lafayette, Lake Charles, Monroe, New Orleans, Ruston, Shreveport and, only a few weeks ago, in Baton Rouge. At these events, I have had the opportunity of visiting with the new lawyers, the families of the deceased attorneys, local bar leaders, and the sitting and retired judges. Whenever and wherever held, the one theme that reverberates among those participating and attending such events is a pride in the legal profession. These ceremonies can almost be described as a celebration of the law and the profession. Unfortunately, for many lawyers, attendance at these functions may be the only time during a year that such feelings are the focal point.

It is a simple principle but one that is worth repeating: Being ethical is what you *must* do to practice law, but being professional is what you *should* do in the practice of law. Professionalism is essential to the proper practice of law. Professionalism is a concept that seems clear to me, yet the clarity of what is professional is often questioned. Abraham Lincoln captured the spirit of professionalism in writing: "When I do good, I feel good; when I do bad, I feel bad, and that is my religion."

More than 20 years ago, the Louisiana State Bar Association's Professionalism and Quality of Life Committee developed a Code of Professionalism for its members. The Louisiana Supreme Court approved that Code on Jan. 10, 1992. The Code begins with the old but never truer adage, "My word is my bond," and goes on to delineate 11 specific types of conduct that should be engaged in or should be avoided. If you have not read the Code in a while, it is worthy of revisiting.

To me, honesty, candor and integrity are not just words to a lawyer. They are traits exhibited by all good lawyers each and every day. While the American system of justice is an adversary system, good lawyers know how to be worthy adversaries while still being courteous and respectful to everyone involved. I and my predecessors have made it a point to advise every new lawyer who we have welcomed into the profession that professionalism is contagious. The more you do it, the more others admire you for it, and the more those around you want to be like you. Some may say this is corny but I believe it, and I have observed these principles in the conduct of some very good lawyers for more than 35 years.

At the traditional gatherings of our courts and local bars, without exception,

Follow LSBA President Joseph L. (Larry) Shea, Jr. on Twitter @LSBA_President.

the new lawyers are encouraged to be professional in their practices. The retired judges are most often recognized for the respectful and courteous manner in which they have treated attorneys and litigants who have appeared before them. Rarely is there a focus on an important opinion or decision unless the rendering of the decision was under circumstances exhibiting great courage — a sign of professionalism among judges. With very few exceptions, the eulogies of deceased members of the Bar that I have heard (and I have heard a lot of them) do not focus on the economic successes of the deceased lawyer or his or her "winning percentage." Instead, far more time is spent recounting the professional example that the deceased attorneys have set for those who have been around them, and the friendship, advice and encouragement they have provided.

From the beginning to the end, from the commencement of a legal career to its conclusion, the most important aspect of a lawyer's career can be summed up in professionalism. In and of itself, *professionalism is the greatest of all of our traditions*.

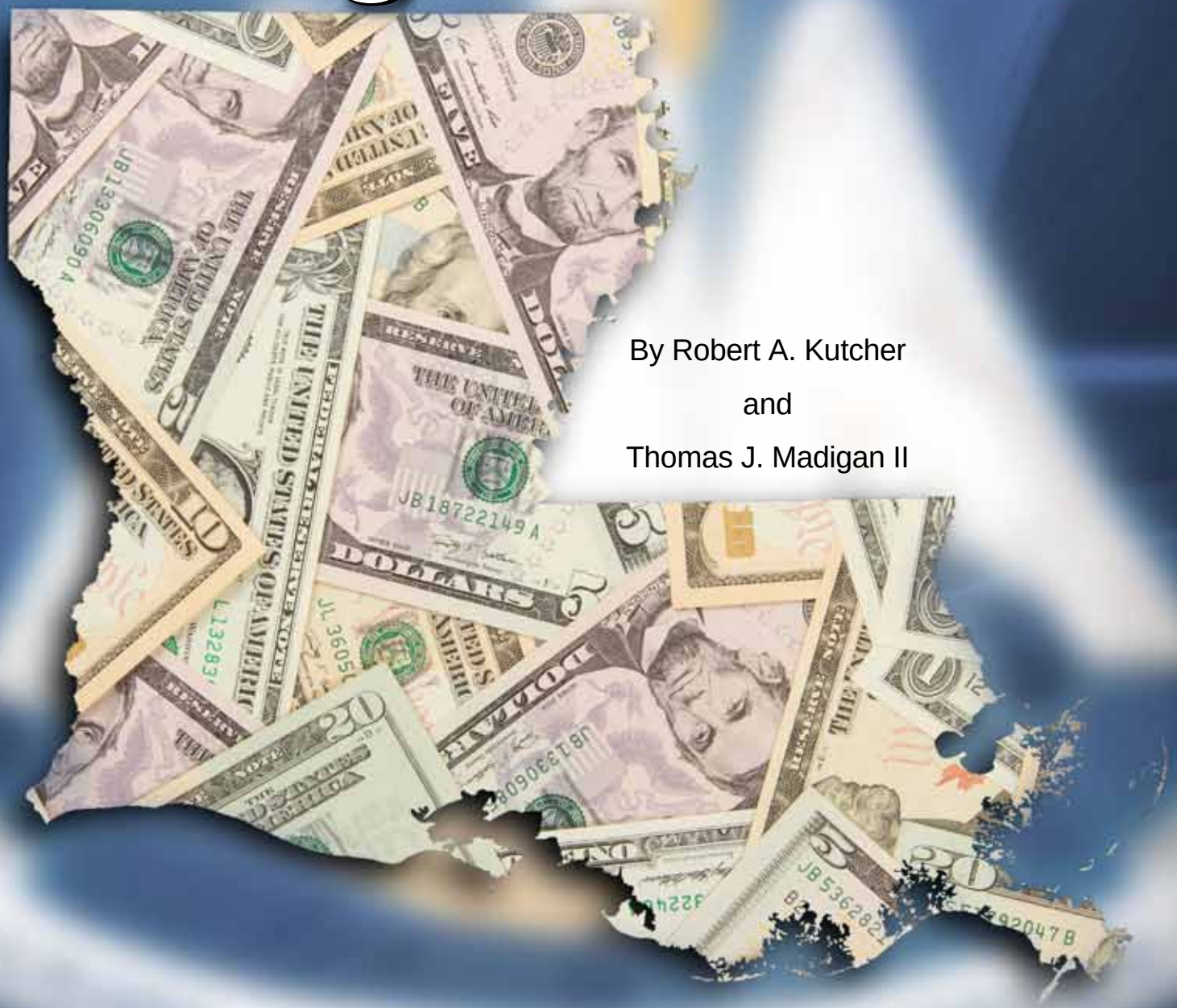
Joseph L. Shea, Jr.

CODE OF PROFESSIONALISM

► My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.
► I will clearly identify for other counsel changes I have made in documents submitted to me.
► I will conduct myself with dignity, civility, courtesy and a sense of fair play.
► I will not abuse or misuse the law, its procedures or the participants in the judicial process.
► I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.
► I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
► I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
► I will not use the threat of sanctions as a litigation tactic.
► I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
► I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.

The Brand New Louisiana Business Corporation Law: *Diving Into Act 328*



By Robert A. Kutcher

and

Thomas J. Madigan II

In May 2014, Louisiana enacted Act 328 of the 2014 Regular Legislative Session, overhauling Louisiana's statutory business corporations law. Effective Jan. 1, 2015, a modified version of the American Bar Association's Model Business Corporations Act (MBCA) governs Louisiana corporations. Act 328 repeals Louisiana Revised Statutes sections 12:1 through 12:178 and 12:1605 through 12:1607. In its place, Act 328 enacts 12:1-101 through 12:1-1704 in a numbering system that corresponds to the MBCA. Act 328 also amends other related legislation, including Louisiana Code of Civil Procedure article 611 regarding derivative actions.

Act 328 itself provides little guidance on the impetus or purpose behind the new legislation. Practitioners and the business community may lament such an apparent overhaul without a stated purpose. One obvious purpose behind Act 328, however, is to keep pace with the rest of the country, lest Louisiana be perceived as receding into a corporate backwater without enough awareness to adopt modern model legislation. At a minimum, Act 328 will number Louisiana's corporations legislation in conformity with most other jurisdictions, making it easier to locate corresponding jurisprudence from other jurisdictions — not only for the litigator arguing *res nova* issues, but also for guidance to the transactional practitioner. In short, Act 328 puts Louisiana in, and keeps Louisiana closer to, the national discourse on corporations law, and it eschews potential misperceptions about Louisiana attitudes towards business.

Act 328 is more of a detailed re-codification than a substantive overhaul of Louisiana corporations statutes. Act 328 retains many of Louisiana's non-uniform provisions, ranging from retaining civilian terminology such as "immovable" property when it is located in Louisiana (new § 1-141) to retaining the retroactivity of corporate existence when a corporate agent acquires an immovable on behalf of a corporation not yet formed (new § 1-203 retains the substance of old § 25.1). Act 328 does, however, effect some significant changes, several of which are discussed below.

News of Act 328 certainly will raise questions, and Louisiana lawyers should be prepared. Clients will call their lawyers asking: How does this affect my business? Forward-thinking lawyers are sure to ask themselves now: How does this affect my present and future clients who are and/or deal with Louisiana corporations?

Transition

How does Act 328 affect existing corporations? This question ranks among the first substantive questions likely posed to Louisiana lawyers, particularly considering the prevalence of limited liability companies as the preferred form for newly formed companies. New § 1-1701 provides the answer: "This Chapter applies to all domestic corporations in existence on its effective date that were incorporated under the laws of this state for a purpose or purposes for which a corporation might be formed under this Chapter." Importantly, new § 1-1703 provides a savings statute, listing instances under which the repeal of a statute effected by Act 328 does not affect past actions or events, including:

► "The operation of the statute or any action taken under it, before its repeal;"

► "Any ratification, right, remedy privilege, obligation, or liability acquired, accrued, or incurred under the statute, before its repeal;"

► "Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal" (provided that, if the new statute provides a lesser penalty or punishment, then the penalty or punishment will be reduced to the new penalty or punishment if the penalty or punishment was not already imposed); and

► "Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed."

Unanimous Governance Agreements

Not only does Act 328 tell us how to treat existing corporations, the Act potentially contains the "Endangered Species Act" for business corporations. Act 328's new § 1-732 creates "Unanimous Governance Agreements (UGAs)," which may breathe new life into business corporations as a viable alternative to limited liability companies, or at least cause lawyers and businesses to pause and consider implementing an UGA in an existing corporation before conversion. In effect, UGAs allow private corporations to behave more like limited liability companies. The term "Unanimous Governance Agreement" is non-uniform, although the concept is contained in the MBCA.

UGAs, authorized by new § 1-732, are written agreements governing the exercise of corporate powers or management that "shall be interpreted with principles of freedom of contract, subject only to the limitations of public policy." The UGA must be approved in one or more writings signed by all persons who are shareholders at the time of the UGA. The UGA is enforceable even though it is inconsistent with legislation. The UGA may eliminate or limit the board of directors. The UGA may transfer all or part of the corporate power to one or more shareholders. Further, the UGA shall not be the basis of shareholder liability, and, if the UGA limits the powers of directors, it relieves the directors from liability. The UGA designation must be noted conspicuously on the share certificates. A UGA may have an initial term of 20 years and may be renewed for an additional 20 years. It is not clear whether the original term must expire before renewal. The UGA ceases if the corporation becomes public.

Director and Officer Exculpation

Under new § 1-832, director and officer exculpation is the default rule, with four exceptions. New § 1-832 provides: "Except to the extent that the articles of incorporation limit or reject the protection against liability provided by this Section, no director or officer shall be liable to the corporation or its shareholders for money damages for any action taken, or any failure to take action, as a director or officer . . . ." This default exculpation rule contains exceptions for breach of the duty of loyalty, intentional infliction of harm on the corporation or shareholders, unlawful distributions prescribed by new § 1-833 (unlawful distributions), and intentional violation of criminal law — all of which may not be limited, although insurance may be purchased against them. Note that new § 1-833's exceptions are non-uniform as the MBCA limits its exceptions to the extent of any improper benefit received by the director. Under new § 1-202, the articles of incorporation must make an express election of exculpation, choosing whether the corporation "accepts, rejects, or limits, with a statement of limitations, the protection against liability of directors and officers" established under new § 1-832.

"Self-Dealing" Transactions n/k/a "Director's Conflicting Interest Transactions"

Act 328 changes the law regarding "self-dealing" transactions. Special provisions now apply to "director's conflicting interest transactions," which new § 1-860 defines as a transaction with the corporation to which the director is a party or a transaction with the corporation of which the director had contemporaneous knowledge and in which the director (or a related person) had a material financial interest known to the director. "Related person" and "material financial interest" are also defined terms, among several others located in new § 1-143 and new § 1-860. Material relationship is broadly defined as a relationship which "would reasonably be expected to impair the objectivity of the director's judgment."

Vote of the shareholders or "qualified directors" on a "director's conflicting interest transaction" now has much greater effect. Under the old law, such votes merely prevented the transaction from being void ab initio. Under the new law, votes by the shareholders or "qualified directors," which comply with detailed statutory procedures, now insulate the director from liability under new § 1-861 and validate the transaction by deeming it effective under new § 1-862 ("qualified director" vote) and new § 1-863 (shareholder vote). In addition to votes by the shareholders or "qualified directors," new § 861(B)(3) also retains the traditional defense to director liability when the "transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation."

Derivative Proceedings

Act 328 also made changes regarding derivative actions. Act 328 amended Article 611 of the Louisiana Code of Civil Procedure to exempt "derivative proceedings" from the procedures contained in Articles 591 through 617 of the Louisiana Code of Civil Procedure (*i.e.*, "Chapter 5. Class and Derivative Actions"): "If a derivative action is a 'derivative proceeding' as defined in the Business Corporation Act, the action is exempt from the provisions of this Chapter other than this Subsection, and is subject instead to the provisions of the Business Corporation Act concerning derivative proceedings." New § 1-740 defines "derivative proceeding" as "a civil suit in the right of a domestic corporation or, to the extent provided in R.S. 1-747, in the right of a foreign corporation." New §§ 1-740 through 1-747, therefore, establish specialized procedures for "derivative proceedings."

Prior shareholder demand, under new § 1-742, is one important new feature applicable to derivative proceedings. Under new § 1-742, the shareholder must make a written demand on the corporation to take suitable action, and 90 days must elapse before the shareholder may file suit (unless rejected sooner or irreparable harm would result). This new "absolute" or "universal" demand requirement is a departure from prior law — both the Delaware demand-futility rule announced in *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), and Louisiana's variation on it allowing demand to be excused as futile when the majority of the directors were named as defendants.

Other features of the Act 328 procedures pertaining to "derivative proceedings" include new § 1-741's standing requirement, requiring the plaintiff to be a shareholder at the time of the action or omission complained of or later through transfer by operation of law from one who was a shareholder at the time, which is similar to the requirement contained in existing Article 615 of the Louisiana Code of Civil Procedure. Under new § 1-742.1, which is a non-uniform provision retained from Article 615, the plaintiff must specifically allege compliance with new § 1-741's standing requirement, specifically allege compliance with new § 1-742's absolute demand requirement, join the corporation and obligor as defendants, pray for relief in favor of the corporation against the obligor, and include a verification by the plaintiff or plaintiff's counsel. New §§ 1-743 and 1-744 include a stay and early dismissal procedure, allowing the corporation defendant to commence an inquiry in which the majority vote of the qualified directors (or committee appointed by them) or a court-appointed panel may determine that the maintenance of a derivative proceeding is not in the best interest of the corporation, resulting in dismissal of the proceeding. A good faith inquiry ordinarily will require a written report prepared with the assistance of independent legal counsel, according to the 2014 Official Revision Comments.

The new derivative procedures also contain, in new § 1-746, a "loser pays" provision at the conclusion of the derivative proceeding. The court may order the corporation to pay the plaintiff's expenses if the proceeding has resulted in substantial benefit to the corporation. Conversely, the court may order the plaintiff to pay the defendant's expenses if the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

Holding Annual Meetings

Also of interest to litigators, new § 1-701 makes a change to the procedures enforcing

annual meeting requirements. New § 1-701 legislates that corporations must hold annual meetings, unless directors are elected by written consent in lieu of an annual meeting (see new § 1-704). While the old law allowed a shareholder to call the meeting directly when the board failed to do so, new § 1-701(D) only permits the shareholder to demand that the secretary call the meeting:

> If no annual shareholders' meeting is held for a period of eighteen months, and directors are not elected by written consent in lieu of an annual meeting during that period, any shareholder may by notice to the secretary demand that the secretary call such a meeting, to be held at the corporation's principal office or, if none in this state, at its registered office. The secretary shall call the meeting and shall provide notice of the meeting as required by R.S. 12:1-705 within thirty days after the notice to the secretary of the shareholder's demand for the meeting.

If the secretary fails or refuses to call the meeting (which must be set between 10 and 60 days after the secretary's notice) as requested by the shareholder, a mandamus proceeding under Louisiana Code of Civil Procedure article 3864 provides the remedy, as explained in 2014 Official Revision Comment (c) to new § 1-701. In addition, new § 1-703 provides for court-ordered meetings in a summary proceeding upon application by a shareholder in two circumstances: (1) an annual meeting was not held (and no written consent action in lieu thereof) within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting, or (2) the shareholder made an unsuccessful demand under new § 1-702 and either (a) notice of the meeting was not given within 30 days after demand or (b) the notice was given but the meeting was not held in accordance with the notice.

Majority Instead of Supermajority Voting on Fundamental Issues as New Default Rule

Act 328 also lessens the supermajority required under the old law for certain fundamental transactions. Previously, a two-thirds vote was required for actions such as amendments to the articles of incorporation (old § 31(B)) and mergers (old § 112(C)(2)). New § 1-727 allows the articles to require greater quorum or voting requirements, but the default rule allows action by a majority vote. New § 1-1003(A)(3) provides for amendment of the articles by majority vote. Note also that new § 1-1005 allows amendment to the articles of incorporation in certain enumerated respects, including deleting the names and addresses of the initial directors and amending the articles to conform to the corporation's secretary of state filings with respect to its registered agent and principal office. New § 1-1104(E) permits merger (or share exchange) by majority vote, provided the board complies with detailed requirements for submitting a merger plan to the shareholders. Relatedly, new § 1-1302 generally enhances the rights of dissenting shareholders, providing for fair value appraisal rights without minority discounts, although appraisal rights are the exclusive remedy in some circumstances.

No Remote Attendance for Shareholders?

Notwithstanding its apparent progressive purpose of modernization, Act 328 did not adopt MBCA's Section 1-708, which would permit the board to implement procedures allowing shareholders to participate in shareholder meetings remotely: "Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series." Why not afford shareholders the modern convenience of participating in shareholder meetings remotely?

Dive In or Wade In?

Space limitations prevent identification of every change effected by Act 328. The text of Act 328 spans almost 300 pages. There are many other specific changes, such as the time for reserving a corporate name, issuance of shares for a promissory note, the minimum number of directors required, required officers, electronic shareholder proxies, and elimination of the higher inspection rights percentage requirement for business competitors. Louisiana lawyers should dive into the text of Act 328 to educate themselves so they may embrace the questions sure to arise in the wake of Act 328 — or at least wade in far enough to determine that the best course is a referral to those who did dive in.

Robert A. Kutcher, a partner in the Metairie firm of Chopin Wagar Richard & Kutcher, L.L.P., divides his practice between business litigation and transactional work. He presents programs on business entities, litigation issues, federal jurisdiction and ethics. Currently serving as Louisiana State Bar Association treasurer and as a member of the Louisiana Bar Journal *Editorial Board, he is a past chair of the Louisiana Attorney Disciplinary Board, the New Orleans Chapter of the Federal Bar Association, and the Louisiana Advisory Committee, U.S. Civil Rights Commission. He graduated from Cornell University in 1972 and received his JD degree,* cum laude*, in 1975 from Loyola University Law School. He has been designated a Louisiana Super Lawyer and was named to Best Lawyers in America for commercial litigation and real estate. (rkutcher@chopin.com; Two Lakeway Center, Ste. 900, 3850 N. Causeway Blvd., Metairie, LA 70002)*

Thomas J. Madigan II is a member in the firm of Sher, Garner, Cahill, Richter, Klein & Hilbert, L.L.C., in New Orleans. His practice involves litigation, including commercial, bankruptcy, creditors' rights, maritime, expropriation, inverse condemnation and real estate, as well as commercial and construction arbitration. He has presented CLE seminars on bankruptcy, landlord-tenant law, water rights, appellate procedure, spoliation and Daubert*. Before starting his law practice, he clerked for Hon. John M. Roper, chief U.S. magistrate judge for the Southern District of Mississippi. He received his BA degree in history from the University of Alabama and his JD degree,* cum laude*, from Tulane Law School, where he served on the* Tulane Law Review*. (tmadigan@shergarner.com; 909 Poydras St., 28th Flr., New Orleans, LA 70112)*

The Crisis in Public Defense Funding: The Approaching Storm & What Must Be Done

By John Burkhart

"If you cannot afford an attorney, one will be appointed to you." For many members of the Louisiana Bar, these words have not been relevant since a law school course or their most recent viewing of a network crime drama. Unless the structure of Louisiana's public defense funding is drastically reformed, these words will have a profound impact on every Louisiana attorney. It will not matter the firm an individual belongs to, his background, education or how many years of practice he has. If public defense funding stays on its present course — and there is no indication it would do otherwise — every attorney in Louisiana must be prepared to defend an undetermined number of criminal defendants pro bono.

How We Got Here

When the Louisiana Legislature passed Act 307 in 2007, the Louisiana Public Defender Act, it organized what until then had been a less-than-consolidated delivery system for indigent defense. Previously, each jurisdiction was overseen by a local Indigent Defense Board. In addition to varying methods of supervising indigent counsel, the prior arrangement all but ensured significant influence from judges, district attorneys and local officials, severely compromising a defendant's impartial counsel. With Act 307, the Louisiana Public Defender Board (LPDB) was established, granting supervisory authority into a statewide body responsible for accountability and transparency.

New standards brought an increase in state appropriations, at least initially. Throughout Louisiana, public defenders' offices were finally able to hire new attorneys and conduct more thorough investigations. These new luxuries would be considered staples in most other fields, highlighting just how behind the times Louisiana's funding for public defense was.

Unfortunately, the modernized public defense delivery system was not accompanied by a modernized funding system. The increased state appropriation brought greater capacity to LPDB and district offices but also highlighted the instability, unreliability and inadequacy of the present funding structure.

Unstable, Unreliable, Inadequate

Almost two-thirds of funding for Louisiana's public defenders comes from court fees, the majority of which derive from traffic violations. In addition to having no control over traffic enforcement, this funding mechanism is highly unstable. If sheriffs choose to reduce traffic enforcement (as is their right), public defenders' revenues drop. If a periodic storm hits one part of the state, be it a hurricane or temporary freeze, the impact on road traffic causes a direct hit on the public defenders' wallets.

Even without a calamity, the present funding structure is unreliable. Besides there being no relationship between traffic infractions and public defense needs, 13 of Louisiana's judicial districts do not contain a stretch of major interstate — the surest resource for traffic violations. Not only is local law enforcement hesitant to ticket its constituents when reliant on their votes, but a significant number of violators do not have the means to pay. Compounding this dilemma is the lack of enforcement. District offices are reliant on counterparts in the criminal justice system to collect and remit the fines on which they are dependent. "The check is in the mail" would be more comforting were funding not also grossly inadequate.

At present, Louisiana's public defenders are understaffed and overworked according to the American Bar Association's *Ten Principles of a Public Defense Delivery System*. In the short term, a client with an overburdened public defender is more likely to unjustly lose his or her freedom or face a punishment disproportionate to the crime. In the long term, public defenders burn out from having to work late nights and frequent weekends.

On the surface, it is a familiar refrain and one not unique to Louisiana. Unfortunately, the clouds on the horizon look to beget an unprecedented crisis that will affect not only public defenders and clients, but also every practicing attorney in Louisiana.

The Approaching Storm

The increased appropriation funded an improvement in indigent defense delivery, even permitting several districts to operate with a modest fund balance. As both the state appropriation and local revenues have plateaued, district offices have had to dip into these fund balances to keep up with high caseloads. What in 2010 was a statewide fund balance of $17.7 million is now slightly more than one-third and dipping fast. Making matters worse is that, in a few years, any remaining fund balance will be concentrated in no more than five districts.

A number of districts have needed last-minute "lifelines" to make it through the fiscal year in years past. Fortunately, the districts in need were smaller, requiring sizeable, albeit manageable, lifelines measured in tens of thousands of dollars. Not so in the future. By the end of the approaching fiscal year on June 30, 2015, up to 12 public defender offices are projected to go insolvent, including populous East Baton Rouge, Caddo, Bossier and Lafayette parishes. And that's not the worst of it.

St. Tammany and Jefferson parishes are projected to go insolvent by the end of the 2016 fiscal year, in addition to nine more. Of course, these are only projections. If the past is any indication, even an accurate forecast will likely be conservative. Upcoming elections may bring a decrease in traffic tickets in several jurisdictions and just one high-profile case would be enough to plunge an otherwise solvent district into the red. Even a local sheriff's decision to divert one officer away from traffic enforcement could have repercussions for someone else's Sixth Amendment right to counsel.

R.O.S.

What is the result? What happens if LPDB does not receive a significant boost to its statewide allocation? What if a new, equitable funding stream is not implemented in the coming year?

If you are an attorney in Louisiana, you will be a part of the Band-Aid for an indefinite period.

As each public defender's office (PDO) goes insolvent, it will be forced to implement a Restriction of Services (ROS) protocol. Simply, PDOs will only be able to represent the number of clients for which they have funding. In adherence to Louisiana and United States requirements for effective assistance of counsel, district offices must refuse any cases beyond this threshold. The remainder will either be placed on a waiting list or fall to locally registered members of the Louisiana State Bar Association.

These members will surely include criminal defense attorneys in firms and small private practices alike. Soon after, there will be no option but for cases to be allocated to attorneys working outside of criminal defense. No practice area will be immune, meaning tax, civil, maritime, oil and gas and other attorneys will find themselves at their local criminal district

court with clients to represent. There is no guarantee judges will be amenable to repeated continuances for non-criminal attorneys to catch up to speed. On a similar note, exceptional accommodations for an attorney's malpractice insurance will likely not be available.

What type of cases might these be? In all probability, the local PDO will represent the cases with the greatest severity and complexity, with the lower classifications falling to private members. Many private attorneys may not mind taking their turn at a *pro bono* case here or there, but the number of these cases will only grow with time.

Public defenders represent close to 90 percent of all defendants in Louisiana's criminal courts, depending on the district. The more prolonged the budget crisis lasts, the greater will be the volume of cases imposed on the private bar. With so many non-criminal attorneys forced to practice in the criminal courts, proceedings will be far from efficient. The time and costs to private attorneys will compound even before factoring in appeals. As news of ROS spreads, claims of inadequate representation or lack of a speedy trial will proliferate, even in cases with dubious merits. As for the fiscal angle, the aggregate cost to the system will far dwarf the sum needed to entirely avoid this catastrophe in the first place.

What Can Be Done

Considering the scale of the impending insolvencies and the billowing long-term costs of inaction, it is surprising so little has been done. Then again, public defense has always been underfunded; it has just been a matter of degree. At least, so it was in the era of "Tough on Crime." The only possibilities of hope are tied to a sea change in how Louisianians and Americans regard their criminal justice system.

Fortunately, we are approaching, if not already in, such an era. Reform of our criminal justice system is an issue with champions on both sides of the aisle, rare in our otherwise polarized political climate. Liberals and conservatives are galvanized by the issue, whether by fear of government overreach, preservation of human rights, fiscal prudence or some combination thereof.

The issue of indigent defense, in particular, is no different. George Soros and the Koch brothers, individuals on opposite ends of most ideological debates, have given money to improve public defense delivery. Recent indigent defense reforms in Michigan and Texas were bipartisan endeavors, as is interest in the nascent movement here in Louisiana. If ever there was a propitious moment for reform, it is now.

What Must Be Done

Louisiana's public defenders need a stable, reliable and adequate funding source. Unlike most agencies, public defense has been spared the scalpel during the budget process and there is no small amount of gratitude for that. Unfortunately, the status quo is not enough. Though a one-time injection of funds would keep the public defender system on its legs, depending on the sum, this too would be insufficient.

Rather than a stopgap measure or, worse, inaction, the lone option is to restructure public defense funding entirely. At a minimum, Louisiana's funding structure provides a blueprint for what *not* to do.

For one, funding has to be tied to the mandate so no false disparities are created. Each local public defender's office needs a stable, reliable and adequate funding source to provide constitutional representation to its clients. Jurisdictions with equivalent populations and caseloads should have equivalent funding. There is no reason for one district to be flush while another wants — the only difference being that one boasts a stretch of interstate.

Additionally, funding our courts through user fees has been an unmitigated disaster. Close to 90 percent of all criminal defendants in Louisiana are deemed indigent. These are our tired, poor and huddled masses; even if one believes it is appropriate for them to pay for our criminal justice system, decades have shown they are unable. Increases to court costs and introductions of application fees have not made an appreciable difference to public defenders' offices over the years. The biggest impact these costs have is on the people on which they are imposed. An individual otherwise successfully rehabilitated already faces countless challenges in finding employment, housing and a way forward. Thousands of dollars in fines and fees are an additional burden for these individuals to successfully integrate into society. Unsuccessful reentry threatens our public safety.

Such a move would not be without short-term cost, but also attendant savings in the not-too-distant future. Louisiana spends more than $3.5 billion as the jurisdiction with the world's highest incarceration rate. More representation at the front end of the system, through better funding of public defenders, would allow Louisiana to relinquish this distinction. Considering the workforce needs of the large industries developing in Louisiana, we have the rare opportunity to transform so many "tax burdens" into self-sustaining taxpayers. Never has transformational reform held such promise across so many otherwise distinct interests.

Unfortunately, there does not appear to be such a silver bullet in the 2015 legislative session. The upcoming gubernatorial and legislative races, along with the anticipated state budget shortfall, suggest our lawmakers' thoughts may be elsewhere in the near term. But hope is far from lost.

What you can do as a law professional is help our effort, the Louisiana Campaign for Equal Justice, educate constituents across Louisiana about the importance of public defense and the consequences of inaction. Prosecutors and judges need to know about the impending bottlenecks and inefficiencies threatening their dockets. Attorneys outside of criminal defense need to know they will be called upon to represent clients if nothing is done. Business leaders need to know about the impact of a shrinking labor force on their balance sheet, church leaders about the dangers facing their congregants, citizens about the compromising of their personal safety, and taxpayers about the stewardship of their hard-earned money. The clock is ticking and there are no winners if time expires.

John Burkhart is the campaign manager for the Louisiana Campaign for Equal Justice, dedicated to reforming funding for Louisiana's public defenders. He can be emailed at john@lcej.org.

YOUR ADVOCATE.
YOUR PARTNER.
YOUR LSBA COMMITTEE.

The Legal Malpractice Insurance Committee of the Louisiana State Bar Association holds the endorsed malpractice insurance carrier to a high standard of accountability for the benefit of all its members.

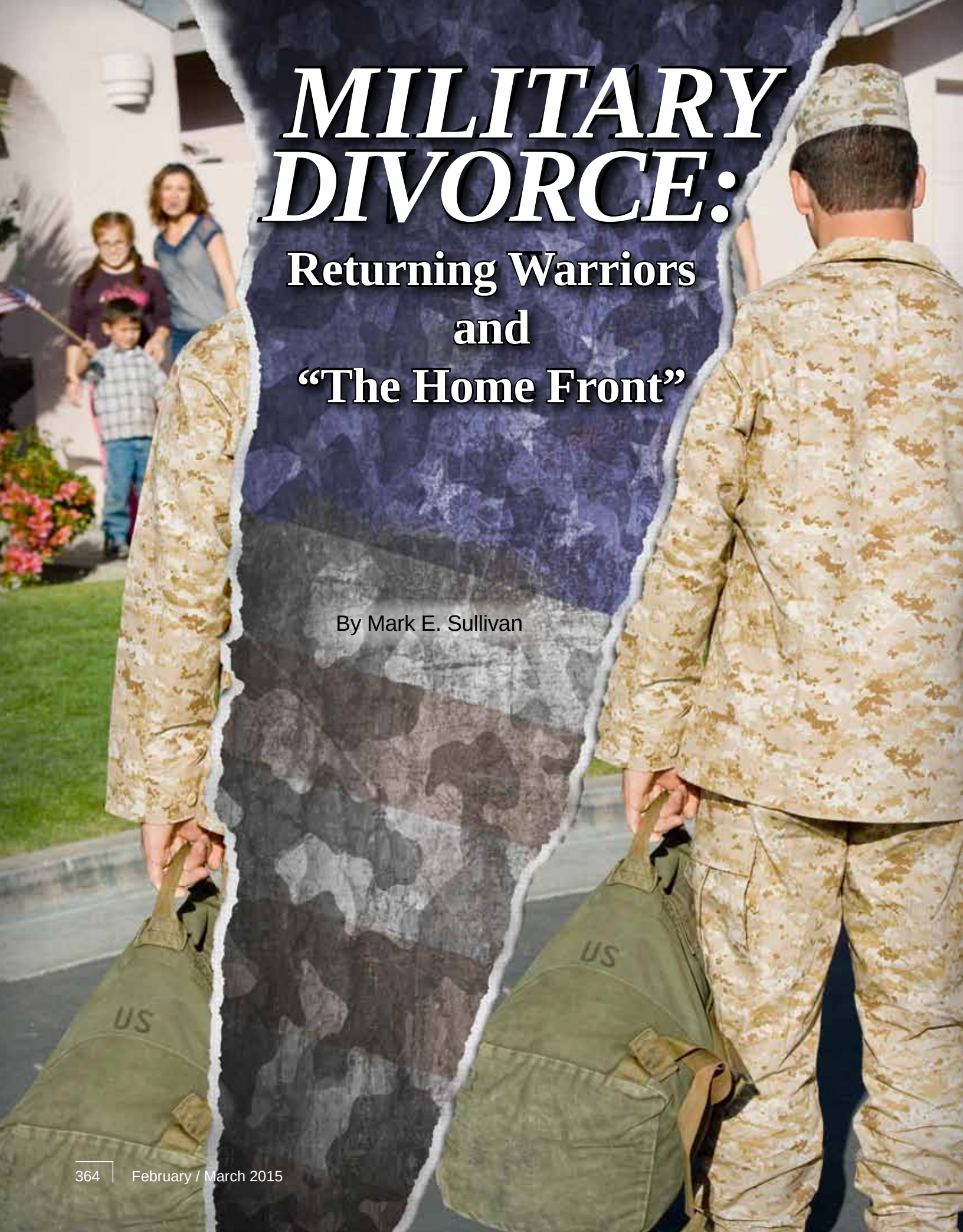
Your LSBA Committee serves you by ensuring:

- A strong policy offering essential coverages.
- An opportunity for coverage for the majority of Louisiana attorneys.
- Continuous oversight to ensure adequate and fair premium rates for a stable program.

gilsbarpro.com **800.906.9654**

Louisiana State Bar Association™
Serving the Public. Serving the Profession.

GILSBARPRO CNA



MILITARY DIVORCE:

Returning Warriors and "The Home Front"

By Mark E. Sullivan

In 2014, the Pentagon announced plans for massive cuts in manpower and spending in the next two years. With plans to reduce up to $75 billion from the defense budget in 2015-16, the United States Army will lose two brigade combat teams in Europe, and the Air Force will see the inactivation of a squadron in Germany and one in Italy. Similar cuts will affect the Navy.

Empty outposts overseas mean full billets and bedrooms back at home. Many servicemembers (SMs) are being redeployed back to stateside assignments and their homes. While reuniting with one's family will be a joyous experience for SMs, it may create significant stresses for others. These stresses may lead to legal consequences.

Stresses may arise due to one party's having been solely in charge of the home for the entire deployment, without any help and with heavy responsibilities for running the home, managing the budget, taking care of children and — quite often — holding down a job as well. Having been away for a year in most cases, the returning SMs have their own issues. They may need time to decompress and to adjust to new responsibilities, routines and duties — both at home and at work.

Sometimes these stresses can lead to trouble in the marriage. The impacts on the parties next can include separation, interim support, domestic violence, temporary custody and more issues.

The result for the family law attorney is a confusing welter of rules, laws, cases and problems. When does state law govern? When should the injured party seek redress through the military? How does federal law affect the conflict? Where can one locate co-counsel who is familiar with these matters, a consultant who can give quick and accurate advice, or an expert witness who is available in person or by phone or Skype to assist the court?

Rules and Resources

Where to find the resources for a military divorce case will depend on the issue involved. The usual matters involved are custody and visitation for minor children, support for the spouse and children, the role of the Servicemembers Civil Relief Act in default rulings and motions to stay proceedings, and division of the military pension. Domestic violence may also be involved in some family law cases involving military personnel. The well-read attorney is the one best armed to defend or prosecute in these areas. They are complex and often counter-intuitive.

There are several sources of information for the attorney caught up in these problem areas.

Servicemembers Civil Relief Act (SCRA)

Formerly known as the Soldiers' and Sailors' Civil Relief Act, the SCRA is found at 50 U.S.C. App. § 501 *et seq.* The two most important areas in civil litigation are the rules for default judgments (when the SM has not entered an appearance) and the motion for stay of proceedings. The former requires an affidavit as to the SMs military status and the appointment of an attorney for the SM by the judge. The duties of the attorney are not specified, and there are no provisions for payment. The default section of the SCRA is at 50 U.S.C. App. § 521.

At 50 U.S.C. App. § 522 are the requirements for the SM's obtaining a continuance (called a "stay of proceedings" in the Act) for 90 days or more. Here are the requirements:

Elements of a Valid 90-Day Stay Request. *Does the request contain:*

► *A statement as to how the SM's current military duties materially affect his ability to appear, and stating a date when the SM will be available to appear?*

► *A statement from the SM's commanding officer stating that the SM's current military duty prevents appearance, and stating that military leave is not authorized for the SM at the time of the statement?*

An overview of the Act is found in "A Judge's Guide to the Servicemember's Civil Relief Act," located on the website of the American Bar Association Family Law Section's Military Committee at: *www.abanet.org/family/military*.[1] The guide includes information about the requirements and protections of the SCRA and the steps one should take to comply with the Act's requirements.

Family Support / Military Rules and Regulations

SMs are required to provide adequate support to spouses and their children; each of the military services has a regulation requiring adequate support of family members.

The Air Force's support policy is found at SECAF INST. 36-2906 and AFI 36-2906. (Note: Numbered rules and regulations can be located by typing the number of the regulation into an online search engine.)

The Marine Corps' policy on support of dependents is found at Chapter 15, LEGALADMINMAN, found at: *www.military-divorce-guide.com/military-family-support/marine-corps-family-support.htm*.

The Navy's Policy for support issues is at MILPERSMAN, arts. 1754-030 and 5800-10 (paternity). Go to: *www.public.navy.mil/bupers-npc/reference/milpersman/Pages/default.aspx*.

The Coast Guard's policy is located at COMDTINST M1000.6A, ch. 8M, found at: *http://isddc.dot.gov/OLPFiles/USCG/010564.pdf*.

The Army's non-support policies and rules are found at AR [Army Regulation] 608-99. See also the SILENT PARTNER info-letter on "Child Support Options" at the ABA website above.

Knowing the pay and allowances of the SM is a key factor in determining support. All SMs receive a twice-monthly LES (leave-and-earnings statement). To learn how to decipher one of these, just type into any search engine "read an LES" to find a guide explaining the various entries on the form. Base pay is the "salary" which each SM receives. There is also the BAH (Basic Allowance for Housing) and BAS (Basic Allowance for Subsistence), which are non-taxable. Those stationed overseas

and living off-base receive a non-taxable OHA (Overseas Housing Allowance). Information on these allowances is at: *http://militarypay.defense.gov/Pay/Allowances.html*.

Pay received in a combat zone is tax-free. The Internal Revenue Service (IRS) publishes a guide to the various forms of pay and allowances, as well as the tax benefits for SMs and family members, the *Armed Forces Tax Guide*, IRS Publication 3 (available at *www.irs.gov*).

There are numerous garnishment resources at the website for the Defense Finance and Accounting Service (DFAS), located at *www.dfas.mil*. The statutory basis for garnishment is at 42 U.S.C. §§ 659-662 and the administrative basis is at 5 C.F.R. Part 581. A list of designated agents (and addresses) for military garnishment is found at 5 C.F.R. Part 581, Appendix A. Military finance offices will honor a garnishment order that is "regular on its face." 42 U.S.C. § 659 (f).[2]

Custody and Visitation

Louisiana's Military Parent and Child Custody Protection Act, found at La. R.S. 9:359-359.13, contains robust protections for servicemembers and their children. The specific provisions include:

► Termination of temporary modification orders by operation of law upon completion of the servicemember's deployment (La. R.S. 9:359.5.A.);

► Reasonable visitation during periods of military absence (La. R.S. 9:359.4.B.);

► Expedited hearings when the member's military absence is imminent (La. R.S. 9:359.4.D.);

► Delegation of visitation during periods when the servicemember is absent due to military orders (La. R.S. 9:359.6);

► Electronic testimony when the member cannot appear in person for court because of his/her military duties (La. R.S. 9:359.7);

► Appointment of counsel for the child when a stay of proceedings is denied by the court under the SCRA (La. R.S. 9:359.10);

► Retention of custody jurisdiction when the court has entered a custody order and a child is absent from the state during deployment (La. R.S. 9:359.11); and

► The award of attorney fees when either party causes unreasonable delay or fails to provide information required by the Act (La. R.S. 9:359.12).

In addition to the above specific references, there is available more general information on the military aspects of parental access. The ABA website listed above contains "Silent Partner" info-letters on "Counseling on Custody and Visitation Issues," "Custody and Single-Parent Enlistment," and a guide to custody and visitation during deployment, "Good to Go (and Return Home)."

Relocation and removal are also issues in military custody cases. In the event an SM is retaining the children beyond the date of return in the custody order or keeping the children, and a custody order requires their return, then the custodial parent can use Department of Defense Instruction 5525.09, 32 C.F.R. Part 146 (Feb. 10, 2006), to obtain the return of children from a foreign country. In general, this Instruction requires SMs, employees and family members outside the United States to comply with court orders requiring the return of minor children who are subject to court orders regarding custody or visitation. When relocation of a servicemember-parent is involved, key guidance is available in the leading Louisiana cases of *Richardson v. Richardson*[3] and *Cass v. Cass*.[4]

Military Pension Division

Rules on retired pay garnishment are at *www.dfas.mil*, "Find Garnishment Information," "Former Spouses' Protection Act." In addition to a legal overview, there is a section on what the maximum allowable payments are and an attorney instruction guide on how to prepare pension division orders. Information on the Survivor Benefit Plan (SBP) is at the "Retired Military and Annuitants" tab (under "Survivors and Beneficiaries") and at the "Provide for Loved Ones" link at this tab. Military pension division is set out at 10 U.S.C. § 1408, and the Survivor Benefit Plan is located at 10 U.S.C. § 1447 *et seq.* The Defense Department rules for both are in the DODFMR (Department of Defense Financial Management Regulation), *http://comptroller.defense.gov/FMR.aspx*.

There are eight "Silent Partner" info-letters on dividing military retired pay and SBP coverage. All of these are found at the ABA website listed above.

Domestic Violence

The Defense Department Instruction on domestic violence is DoDI 6400.6, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel" (Aug. 21, 2007). Other websites containing useful information about the rules and procedures in this area are:

► National Online Resource Center on Violence Against Women, *www.vawnet.org*.

► National Center on Domestic and Sexual Violence, *www.ncdsv.org/ncd_militaryresponse.html*.

► Battered Women's Justice Project, *www.bwjp.org*.

FOOTNOTES

1. The Guide also may be found under "Resources" at the website of the North Carolina State Bar's military committee, which contains more than 20 "Silent Partner" info-letters for attorneys in all states who are handling military divorce cases, a similar number of client handouts called "Legal Eagle," and a large number of articles and papers on military family law topics under "Resources."

2. *See also*, United States v. Morton, 467 U.S. 822 (1983) (holding that legal process regular on its face does not require that the court have personal jurisdiction, only subject matter jurisdiction). Limits on garnishment are found in the Consumer Credit Protection Act, 15 U.S.C. § 1673.

3. Richardson v. Richardson, 25 So.3d 203 (La. App. 2009).

4. Cass v. Cass, 52 So.3d 215 (La. App. 2010).

Mark E. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, N.C., and is the author of The Military Divorce Handbook *(Am. Bar Assn., 2nd Ed. 2011) and many Internet resources on military family law issues. A Fellow of the American Academy of Matrimonial Lawyers, he has been a board-certified specialist in family law since 1989. He works with attorneys and judges nationwide as a consultant and an expert witness on military divorce issues in drafting military pension division orders. (mark.sullivan@ncfamilylaw.com; Ste. 320, 5511 Capital Center Dr., Raleigh, NC 27606)*

NEW

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

LOUISIANA CHAPTER

WWW.LOUISIANAMEDIATORS.ORG

The following attorneys are recognized for

Excellence in the field of Alternative Dispute Resolution

David S. Cook
(337) 234-4155

Mimi Methvin
(337) 501-1055

A. J. Krouse
(504) 599-8016

Steven Crews
(318) 527-0142

Thomas Juneau
(337) 269-0052

Scott Love
(225) 389-9899

Andrew McGlathery
(337) 493-7271

Bernie McLaughlin
(337) 310-1609

Elizabeth Middleton
(318) 487-9406

Lynne Stern
(504) 259-4488

Check your preferred available dates or schedule appointments online, directly with Academy Members - for free.

Visit www.LouisianaMediators.org/quicksearch

* The National Academy of Distinguished Neutrals is an invitation-only professional association of over 900 litigator-rated mediators & arbitrators throughout the US and a proud partner of the AAJ and DRI. For more info, please visit www.NADN.org/about

Justice Community Conference Focuses on "Preserving Civil Legal Aid"

The 11th annual Louisiana Justice Community Conference, conducted Oct. 16-17, 2014, in Baton Rouge, focused on the theme of "Preserving Civil Legal Aid."

The Louisiana State Bar Association (LSBA) gathers practitioners at the conference each year to celebrate their achievements and provide a statewide forum to strengthen public interest practice and strengthen partnerships among the key players in the civil justice system.

The 2014 conference's focus on "Preserving Civil Legal Aid" was in collaboration with the Louisiana Bar Foundation's statewide campaign to raise funds for civil legal aid and increase awareness of the growing civil legal needs of indigent citizens.

LSBA President-Elect Mark A. Cunningham offered welcoming remarks for the more than 140 public interest attorneys in attendance.

The conference kicked off with an inspiring keynote address from Judge C. Wendell Manning, president of the Louisiana Bar Foundation. He discussed the impact of civil legal aid on society and the importance of ensuring that these legal services receive the support needed.

During the conference, sessions focused on the economic impact of civil legal aid, with presentations from the Louisiana Bar Foundation and the national advocacy group Voices for Justice.

The "Preserving Civil Legal Aid" track focused on the significant, but often overlooked, economic impact of legal services in Louisiana. Attendees learned from experts at the state and national levels about how they can improve their communications strategies and build awareness about their important work. The substantive law sessions were developed by the six statewide legal service task forces and included training on family law, consumer advocacy, elder law, housing rights and technology. The practice skills sessions were taught by leading members of the National Institute for Trial Advocacy and clinical professors. Additionally, Louisiana Appleseed organized a Mortgage Services Settlement training pre-conference for attorneys providing services under that program.

Throughout the two-day conference, attendees had the opportunity to network with colleagues from around the state during smaller group meetings, such as the Pro Bono Strategic Planning Meeting and the Self-Represented Litigant Network meeting.

Judge C. Wendell Manning, president of the Louisiana Bar Foundation, delivered an inspiring keynote address for the 2014 Louisiana Justice Community Conference in October. He discussed the impact of civil legal aid on today's society. Also participating in the conference was Louisiana State Bar Association President-Elect Mark A. Cunningham.

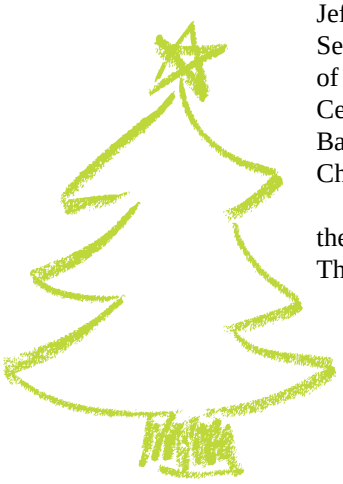
2014 Secret Santa Project a Success! 691 Children Assisted

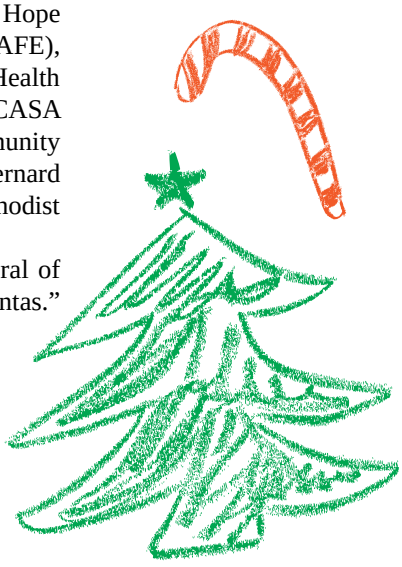
The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee would like to thank all legal professionals who participated in the 2014 Secret Santa Project.

Because of the generous participants throughout the state — from "adopting" Santas and from monetary donations — 691 children, represented by 14 social service agencies in five Louisiana parishes, received gifts.

These children were represented by St. John the Baptist, Boys Hope Girls Hope, Southeast Advocates for Family Empowerment (SAFE), Jefferson Parish Head Start Program, Children's Special Health Services Region IX, Children's Bureau, CASA of Terrebonne, CASA of Lafourche, CASA of New Orleans, North Rampart Community Center, Metropolitan Center for Women and Children, St. Bernard Battered Women's Program, Gulf Coast Social Services and Methodist Children's Home of Greater New Orleans.

This was the 19th year for the Secret Santa Project. Several of the children send "thank you" cards and drawings to their "Santas." Thank you!





LBLS Accepting Requests for Certification Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting application requests for January 2016 certification in five areas — bankruptcy law (business and consumer), estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is March 31, 2015. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2015.

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

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

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

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

► Family Law — 18 hours of family law.

► Tax Law — 20 hours of tax law.

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

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

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

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2015-16 Bar year. Louisiana State Bar Association (LSBA) President-Elect Mark A. Cunningham will make all committee appointments. Widespread participation is encouraged in all Bar programs and activities. Appointments to committees are not guaranteed, but every effort will be made to accommodate members' interests. When making selections, members should consider the time commitment associated with committee assignments and their availability to participate. Also, members are asked to list experience relevant to service on the chosen committees. The deadline for committee assignment requests is Friday, April 17. The current committees are listed below.

Access to Justice Committee

The committee works to assure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad-based and effective justice community through collaboration between the Louisiana State Bar Association, the Louisiana Bar Foundation, Louisiana law schools, private practitioners, local bar associations, pro bono programs and legal aid providers.

Access to Justice Policy Committee

The committee works to assure continuity of policy, purpose and programming in the collaboration between the private bar and the civil justice community so as to further the goal of assuring that Louisianians, regardless of their economic circumstance, have access to equal justice under the law.

Committee on Alcohol and Drug Abuse

The committee protects the public by assisting, on a confidential basis, lawyers and judges who have alcohol, drug, gambling and other addictions. The committee works with the Lawyers Assistance Program, Inc. to counsel, conduct interventions and locate treatment facilities for impaired lawyers, and to monitor recovering attorneys and attorneys referred by the Louisiana Attorney Disciplinary Board or Office of Disciplinary Counsel.

Bar Governance Committee

The committee ensures effective and equitable governance of the association by conducting an ongoing evaluation of relevant procedures and making recommendations to the House of Delegates regarding warranted amendments to the association's Articles of Incorporation and/or Bylaws.

Children's Law Committee

The committee provides a forum for attorneys and judges working with children to promote improvements and changes in the legal system to benefit children, parents and the professionals who serve these families.

Client Assistance Fund Committee

The committee protects the public and maintains the integrity of the legal profession by reimbursing, to the extent deemed appropriate, losses caused by the dishonest conduct of any licensed Louisiana lawyer practicing in the state.

Community Action Committee

The committee serves as a catalyst statewide for lawyer community involvement through charitable and other public service projects.

Continuing Legal Education Program Committee

The committee fulfills the Louisiana Supreme Court mandate of making quality and diverse continuing legal education opportunities available at an affordable price to LSBA members.

Criminal Justice Committee

The committee develops programs and methods which allow the Bar to work with the courts, other branches of government and the public to ensure that the constitutionally mandated right to counsel is afforded to all who appear before the courts.

Diversity Committee

The committee assesses the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana, identifies barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds, and proposes programs and methods to effectively remove barriers and achieve greater diversity.

Group Insurance Committee

The committee ensures the most favorable rates and benefits for LSBA members and their employees and dependents for Bar-endorsed health, life and disability insurance programs.

Lawyers in Transition Committee

The committee studies rules and practices regarding curatorships of lawyers' practices; studies methods for preserving the practice of lawyers and protecting clients for lawyers unable to temporarily practice, either voluntarily or involuntarily, as a result of disability due to health, or arising out of the disciplinary process; studies voluntary methods of designating a successor or other transitioning process for a lawyer's practice in advance of any disability or death; and provides a method of involuntary intervention for lawyers suffering a severe age-related impairment to protect the clients and to deliver assistance to the age-impaired attorney.

Continued next page

Committees continued from 370

Legal Malpractice Insurance Committee

The committee ensures the most favorable rates, coverage and service for Louisiana lawyers insured under the Bar-endorsed legal malpractice plan by overseeing the relationship between the LSBA, its carrier and its third-party administrator, and considers on an ongoing basis the feasibility and advisability of forming a captive malpractice carrier.

Legal Services for Persons with Disabilities Committee

The committee provides members of the bench, Bar and general public with a greater understanding of the legal needs and rights of persons with disabilities, and helps persons with disabilities meet their legal needs and understand their rights and resources.

Legislation Committee

The committee informs the membership of legislation or proposed legislation of interest to the legal profession; assists the state Legislature by providing information on substantive and procedural developments in the law; disseminates information to the membership; identifies resources available to the Legislature; provides other appropriate non-partisan assistance; and advocates for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services.

Medical/Legal Interprofessional Committee

The committee works with the joint committee of the Louisiana State Medical Society to promote collegiality between members of the legal and medical professions by receiving and making recommendations on complaints relative to physician/lawyer relationships and/or problems.

Practice Assistance and Improvement Committee

The committee serves the Bar and the public in furtherance of the association's goals of prevention and correction of lawyer misconduct and assistance to victims of lawyer misconduct by evaluating, developing and providing effective alternatives to discipline programs for minor offenses, educational and practice assistance programs, and programs to resolve minor complaints and lawyer/client disputes.

Committee on the Profession

The committee encourages lawyers to exercise the highest standards of integrity, ethics and professionalism in their conduct; examines systemic issues in the legal system arising out of the lawyer's relationship and duties to his/her clients, other lawyers, the courts, the judicial system and the public good; provides the impetus and means to positively impact those relationships and duties; improves access to the legal system; and improves the quality of life and work/life balance for lawyers.

Public Information Committee

The committee promotes a better understanding of the law, legal profession, individual lawyers and the LSBA through a variety of public outreach efforts.

Rules of Professional Conduct Committee

The committee monitors and evaluates developments in legal ethics and, when appropriate, recommends changes to the Louisiana Rules of Professional Conduct; acts as liaison to the Louisiana Supreme Court on matters concerning the Rules of Professional Conduct; reviews issues of legal ethics and makes recommendations to the LSBA House of Delegates regarding modifications to the existing ethical rules; oversees the work of the Ethics Advisory Service and its Advertising Committee, Publications Subcommittee and other subcommittees; and promotes the highest professional standards of ethics in the practice of law.

Unauthorized Practice of Law Committee

The committee protects the public from incompetent or fraudulent activities by those who are unauthorized to practice law or who are otherwise misleading those in need of legal services.

Louisiana State Bar Association
2015-16 Committee Preference Form

Indicate below your committee preference(s). If you are interested in more than one committee, list in 1-2-3 preference order. On this form or on a separate sheet, list experience relevant to service on your chosen committee(s).

Print or Type

____ Access to Justice
____ Access to Justice Policy
____ Alcohol and Drug Abuse
____ Bar Governance
____ Children's Law
____ Client Assistance Fund
____ Community Action
____ Continuing Legal Education Program
____ Criminal Justice
____ Diversity
____ Group Insurance
____ Lawyers in Transition
____ Legal Malpractice Insurance
____ Legal Services for Persons with Disabilities
____ Legislation
____ Medical/Legal Interprofessional
____ Practice Assistance and Improvement
____ Committee on the Profession
____ Public Information
____ Rules of Professional Conduct
____ Unauthorized Practice of Law

Response Deadline: April 17, 2015

Mail, email or fax your completed form to:

Christine A. Richard, Program Coordinator/Marketing & Sections
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404
Fax (504)566-0930
Email: crichard@lsba.org

LSBA Bar Roll Number _____
Name _____
Address _____
City/State/Zip _____
Telephone _____
Fax _____
Email Address _____
List (on a separate sheet) experience relevant to service on the chosen committee(s).

Updating Members on the Management of the Legal Malpractice Program

By Kevin C. O'Bryon and Henry J. (Hank) Miltenberger, Jr.

The Louisiana State Bar Association (LSBA)-sponsored professional liability insurance program is one of the most successful programs in the country. The LSBA has designated its Legal Malpractice Insurance Committee to work with Gilsbar to manage the program and the relationship with the sponsored insurance carrier. The model is analogous to a corporation's management of its insurance coverage, except that decisions on the LSBA programs are made by colleagues who represent the interests of Bar members. The result is a competitive, stable program covering most members with strong policy provisions.

Legal Malpractice Insurance Committee

The LSBA's Board of Governors controls the sponsored insurance portfolio. The Legal Malpractice Insurance Committee (LMIC), comprised of LSBA members appointed by the president annually, handles the detailed analysis of all aspects of the legal malpractice insurance program, including rates and policy, and recommends appropriate action to the Board of Governors. Endorsed life, long-term disability, accident and related coverages are handled by the Group Insurance Committee.

The LMIC, which meets a minimum of twice a year, monitors the market and program, advises the LSBA if it ever becomes appropriate to form its own malpractice insurer (captive carrier), reviews or recommends proposed rate or policy changes, and analyzes program data. The LMIC, with Gilsbar, negotiates specific policy language to ensure the policy is broad and fair. The LMIC reviews the premiums received by the carrier, claims data, reserves and carrier retention charges, then, if changes are necessary, makes a recommendation to the Board of Governors.

To obtain the best available coverage and to select an endorsed carrier to underwrite the program, the LMIC examines a carrier's experience as well as internal costs, financial stability, flexibility, underwriting, claims handling, industry expertise and commitment to staying with the LSBA in difficult periods of high claims. The LMIC's Declination and Administration Subcommittee assists members whose application for coverage has been declined.

Gilsbar's Role

Gilsbar was formed in 1959 to handle the LSBA insurance programs. The name is an acronym for Group Insurance Louisiana State Bar. Gilsbar is an independent insurance services provider retained by the Board of Governors to represent the Bar and performs the brokerage, consulting, sales and administrative duties on the sponsored programs.

Carriers Selected

The LMIC maintains an endorsed carrier for program stability and to ensure reasonable, adequate and fair premium rates, a strong policy with essential coverages and an opportunity for coverage for the majority of Louisiana attorneys. The carrier is selected by requesting proposals from the marketplace. The LMIC compares the premiums, rating methodology, underwriting approach, coverages, transparency, reporting, operating efficiency, claims handling, reserving practices, and other factors of each bid. Recently, this was done when the program moved from Westport to CNA.

Key Premium Factors

The primary factor in setting the premium is the actual claims experience of Louisiana lawyers in the program. Carrier retention costs are important. Carrier retention is the aggregation of the various internal costs and charges of each insurance company. These costs, which include premium taxes, risk charges, profits, underwriting, legal claims handling, actuarial and printing expenses, can have a significant impact on the program over the long term. The LMIC takes special care in checking the retention information on each carrier bid and reviews reserving practices, interest earnings, long-term commitment and objectives, and historic performance on reserves if available.

Higher claims drive increases in premium. Since the Bar's program is rated on the experience of Louisiana lawyers, the carrier takes the Bar's own historic claims and applies current trend factors to determine the future need for premium changes. The cycles in Louisiana experience are moderated by using national experience to smooth cycles caused by the smaller numbers of one state. The current LSBA-endorsed carrier, CNA, is the largest writer of lawyers' malpractice insurance in the country and should theoretically be the most stable.

Regarding claims trends, the unique extended economic slump has precipitated a rise in suits against lawyers, nationwide and in Louisiana. Certain areas of practice are particularly affected by a bad economy. These events, coupled with low earnings from passive investments, caused the recent need for increased premiums in Louisiana as well as the rest of the country.

The LMIC has learned that the long-term view works in managing professional liability insurance, believing that the wise approach is to seek stability and reasonable, fair rating practices. Switching carriers also risks possible gaps in coverage or an insurability issue. The ideal situation is a carrier committed to covering most lawyers and making a reasonable profit over time.

The LMIC sees its job as maintaining the program to benefit all participating members fairly. The LSBA-endorsed carrier utilizes credits and debits based on the areas of practice, size of firm, nature of practice, claims history and other risk factors. As a result, when claims paid jeopardize the stability of the program and require some of the higher risk firms to pay a larger share of the risk, the LMIC ensures a balanced spreading of risks with fair rating differences. This keeps low-risk firms in the program while treating high-risk firms reasonably. Higher but reasonable rates are far better than cancellation. The goal is to have competitive rates for everyone, encouraging each firm to keep its dollars in the pool that pays claims incurred by all program members.

Kevin C. O'Bryon, a partner in the firm of O'Bryon & Schnabel, A.P.L.C., in New Orleans, is chair of the Louisiana State Bar Association's Legal Malpractice Insurance Committee. He can be reached at (504) 799-4200 or email kob@obryonlaw.com.

Henry J. (Hank) Miltenberger, Jr., president and CEO of Gilsbar, L.L.C., can be reached at (985)892-3520 or email hmiltenberger@gilsbar.com.

PRACTICE Management

By Johanna G. Averill | BUSINESS TRANSACTIONS WITH CLIENTS

Are you sure you want to enter into a business transaction with your client — one where you end up owning a percentage of your client's business or agree to act as an officer, director or manager of your client? It seems to be the perfect situation: you have the know-how your client seeks and/or some money or time to invest (by accepting an ownership interest instead of fees). The ethics rules don't outright prohibit you from doing so, so what's the problem? The problem could be that you fail to follow the strict ethical requirements and your client sues you or files a disciplinary complaint against you — and you have no malpractice insurance coverage for the claim.

Louisiana Rule of Professional Conduct 1.8, Conflict of Interest, Current Clients, Specific Rules subsection (a) states: "A lawyer may not enter into a business transaction with a client or knowingly acquire an ownership or other pecuniary interest adverse to the client *unless:*

1. the transaction is fair and reasonable to the client;
2. the terms are fully disclosed and given to the client in writing, in a manner clearly understood by the client;
3. the client is advised in writing well in advance of the transaction to seek advice of independent counsel; and
4. the client gives informed consent in writing."

While Rule 1.8 does not require that the client actually engage an independent counsel to advise in the business transaction, you should strongly recommend it in writing. This will definitely help you if the client later alleges inadequate disclosure.

Louisiana Rule of Professional Conduct 1.4, Communication subsections (a) and (b) states: "A lawyer shall:

1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required;
2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued."

The obligation to disclose information to your client in Rule 1.4 is a continual one. It is insufficient that you initially obtain the client's informed consent for the business transaction if you take no further action. Rule 1.4 requires that, throughout the representation, you must provide the client with sufficient information to participate intelligently and meet the objectives of the representation. This means that, as soon as you learn it, you must provide your client with any pertinent information, even if it means it is detrimental to your interest in the business or your position as an officer, director or member of the client's business.

Ethics rules violations can complicate malpractice suits, and, although disciplinary complaints and claims can be covered under legal malpractice policies, they must arise from wrongful acts or omissions committed in the rendering of legal services and not otherwise excluded in the policy. There are at least two exclusions that directly apply to attorney/client business transactions:

First, the Capacity exclusion typically states the "policy does not apply to any claim arising out of an insured lawyer's capacity as a former, existing or prospective officer, director, partner, manager, member, or trustee of any entity including pension, welfare, profit-sharing, mutual or investment fund or trust, if such entity is not named in the Declarations page."

Second, the Owned Entity exclusion typically states the "policy does not apply to any claim arising out of legal services performed for any entity not named in the Declarations, if at the time of the act or omission giving rise to the claim, the percentage of ownership interest in such entity by any insured lawyer(s) exceeds 10%."

Business transactions with clients are risky. If you decide to take the risk anyway, be careful to follow all the requirements of the ethics rules and assess if you will have malpractice insurance coverage for any claim or disciplinary complaint brought against you by your client.

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

LAWYERS Assistance

By J.E. (Buddy) Stockwell | MINDFULNESS REDUCES STRESS

A large portion of my time practicing law was either focused on past events to determine what had already happened in a case or focused on the future as to what litigation steps should be taken and probable outcomes. As for time spent totally in the "present moment," it was consumed with meeting the day-to-day pressures of filing deadlines, managing the office, and landing new cases so payroll would be met each month. It seemed there was never any time to practice something like mindfulness.

Mindfulness is described as the practice of directing your full attention to the present moment without judging it. It is the ability to live fully in the Now without running multiple soundtracks in your head. I knew nothing about mindfulness back then, much less how to practice it. I didn't know an "off switch" was necessary, much less available, to reduce stress and improve my mental health. As far as I was concerned, high stress was just part of practicing law.

Experts say that learning mindfulness and meditation techniques can effectively reduce stress and make the high-pressure environment of practicing law more manageable. Simply put, one does not have to suffer unrelenting stress to successfully practice law. By forming new mindfulness habits and taking time to incorporate those habits into your regular routine, you can, in fact, become a happier and more productive lawyer.

I first had a glimpse of mindfulness by accident. I stepped totally outside of my solo practitioner's pressure-cooker life for several years to undertake a sailing adventure. I took my Type-A-perfectionism to sea with me, along with my wife, Melissa, and we covered 19,000 nautical miles aboard a 38-foot catamaran.

The results were interesting. Sailing was not an easy, carefree life. I was up very early every day, completing the hard work to sustain the adventure. It felt less stressful than practicing law, though, because a large portion of my time was directed to addressing tasks occurring in the *present moment*.

Lawyers Assistance Program, Inc. (LAP)

Your call is absolutely confidential as a matter of law.

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

While living on a boat, things are often so demanding that you can't think about anything except what is actually happening in the Now. You have no choice but to be fully engaged in the present. For example, when awakened at anchor at 3 a.m. by a violent squall blowing through, you may fear dragging onto a reef. You don't have time to judge or ponder the fairness of what is happening or worry about what you will do if your vessel is eventually impaled by the reef. Instead, you jump out of the rack and all of your cognitions and actions are instantly directed toward securing the decks and activating all systems to ready the vessel for getting underway if the anchor does not hold. Likewise, sailing in the open ocean often presents challenges that require full attention and quick action. There is only the present moment and nothing else matters.

Basically, mindfulness was externally imposed upon me to a large degree, and without me even knowing it, by the very nature of the sailing adventure. It dramatically shifted my perspective. What I know now is that even though law is a fast-paced pressure-cooker full of deadlines, lawyers can actually learn new tools and adopt new perspectives that will train them to use mindfulness techniques that reduce stress. You don't have to sail away to master mindfulness. Instead, you can readily learn about mindfulness and incorporate it into your life regardless of your circumstances.

The Lawyers Assistance Program (LAP) is here to help lawyers learn these new techniques. In the coming year, LAP will produce professionally designed programs on mindfulness so every lawyer will have direct access to training in mindfulness and meditation.

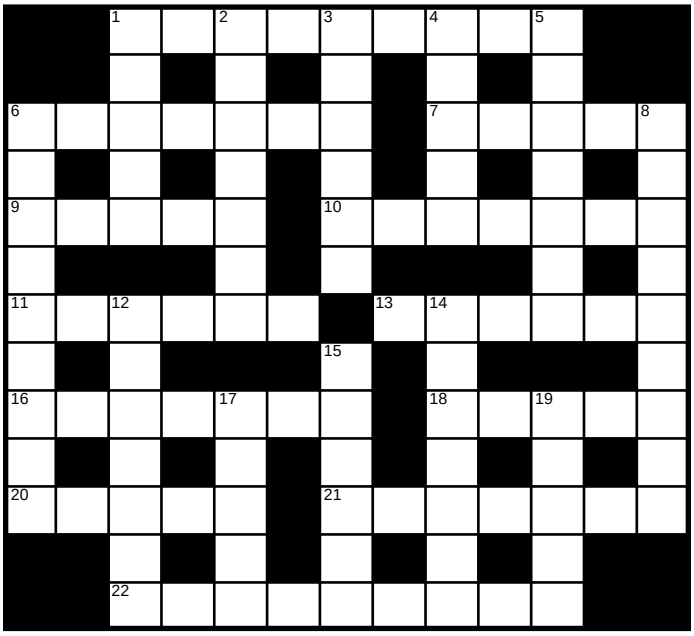
The challenge for LAP will be convincing busy lawyers that it is safe to occasionally press an "off switch" and "let go of the tiller" in their practice as necessary to achieve a new balance that includes dedicating time on a regularly scheduled basis to self-care and mindfulness activities. A lawyer really *can* escape being run ragged by the fast pace and stress of the practice of law. All the lawyer has to do is be willing to learn a new perspective and implement new practices.

It is hard to make life changes. Many of us need support and a "coach" to help us stick to the program, whatever it may be. If you are stressed out, want to regain control of your life, and need support and guidance in implementing mindfulness techniques and tools into your daily life as a busy lawyer, call LAP for *confidential*, free and professional clinical advice. You really can set boundaries and incorporate mindfulness into your life. For more information, call (866)354-9334, email lap@louisianalap.com, or visit LAP online at: *www.louisianalap.com*.

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

Crossword PUZZLE

By Hal Odom, Jr. | CORRECTIONALLY SPEAKING



ACROSS

1 Site of Elayne Hunt Correctional Center (2., 7)
6 Mislead; commit fraud (on someone) (7)
7 "___ Dark Hall," gothic fiction novel by Lois Duncan (4, 1)
9 Declares null (5)
10 Quivering musical sound (7)
11 Dilatory tactics (6)
13 Person from New England, or baseball player from New York (6)
16 Kind of harp played by ambient wind (7)
18 Ole Miss player or fan (5)
20 Crib course (4, 1)
21 Stinky (7)
22 Kind of conditional release from corrections (9)

DOWN

1 Site of 2014 Winter Olympics (5)
2 Obsolete word meaning "deny" (7)
3 Kind of test for DWI (6)
4 Holder ___ course is normally immune from prior claims (2, 3)
5 According to Uncle Earl, the best place to hide something from Jack P.F. Gremillion (7)
6 State correctional center in Homer (5, 4)
8 State correctional center in Cottonport (9)
12 Admires, with "to" (5, 2)
14 Deduced from general principles (1, 6)
15 Site of Louisiana State Penitentiary (6)
17 "My Own Private ___," 1991 Gus Van Sant film (5)
19 ___ *v. Board of Education*, landmark 1954 opinion (5)

Answers on page 415.

FOCUS ON Professionalism

By Hon. Raymond S. Steib, Jr.

TRUE PROFESSIONALISM IS IN THE DETAILS

It doesn't matter whether you are a doctor, a lawyer, a judge or a plumber; it is the attention to detail that is the mark of the true professional. Your reputation is built on the little things you do or don't do from the first day that you begin your career.

Professionals are on time.

How many of us enjoy waiting in a doctor's office or for the cable guy? Recently, my son had an appointment with an orthopedist. He waited for almost two hours. As he railed to me about the doctor's tardiness, I told him to note how this made him feel and to remember when he is older that it does not matter what your profession, no one wants to wait on you.

In my four short years on the bench, I never cease to be amazed how nonchalantly some attorneys handle scheduled court appearances. We schedule pretrial conferences and status conferences for 8:30 a.m. or 8:45 a.m. and motions are set for 9 a.m. in open court. Unfortunately, it is a rare occasion when all parties arrive on time. When just one attorney arrives late, it pushes the whole docket back. Arriving late for a conference is disrespectful to opposing counsel, as well as everyone waiting in court to have matters heard. Professionals arrive on time, prepared, well rested and able to get the job done.

Professionals advise the court and/or opposing counsel if they are running late. They will also alert the court when their matter can be removed from the court's docket. Often we call the docket and no one has checked in on a particular case. Hence, one of the running jokes in my section during a civil trial week is "I didn't know that 'just not showing up' was an option." You would be surprised how often no one calls to advise that a case has been settled, a motion is moot or a stipulation or consent has been reached. Promptly notifying the court that the matter is resolved shows respect for the court's time because we do spend time preparing for your hearing. We read the memoranda, review the exhibits and outline questions to be asked during oral argument.

Here's a practice pointer to those of you who do let us know that a matter is settled or being continued: Please begin your letter with this sentence, "This matter is set on your docket on the ____ day of ____, 20__." That simple sentence allows the clerk to locate the matter on the docket without a search and will win you points with the staff.

Professionals know and follow the rules.

Professionals know which motions are appropriate for an "ex parte order" and which should be set for hearing. When a motion requires a hearing and you attempt to submit it "ex parte," you could get the reputation of being unscrupulous.

Professionals know that just filing their opposition memos timely greatly enhances their reputation with the court and opposing counsel. Few behaviors irritate the court and opposing counsel more than filing your opposition memo the morning of the hearing. Such behavior does not promote your client's cause. You might be denied oral argument, or the matter might be continued to allow opposing counsel time to file a reply memo and you could be assessed costs incurred as a result of the continuance. Also, filing your opposition memo late leads the court and opposing counsel to believe that this matter may not be important to you. Not only is your professional reputation diminished, but also the value of your client's claim may be depreciated in the eyes of the court and your opponent.

Professionals treat everyone with dignity and respect.

Professionals do not raise their voices to the court, opposing counsel or a witness. Professionals do not display exasperation,

disgust or disbelief while opposing counsel makes an argument or argues an objection. All of these behaviors are inappropriate, attract the court's attention and may draw a reprimand or, if continued, a contempt citation. Such behavior indicates to opposing counsel that they perhaps have struck a nerve or stumbled upon a weakness in your case. Professionals also will take the time to advise their clients that such behavior will not be tolerated and that such displays do little to advance their cause.

Professionals address everyone with respect. They address each other as Mr., Ms. or Mrs. and witnesses by their titles while in open court. They do not argue with each other but address their remarks to the court. Regardless of how heated an argument may become, the civility with which counsel conducts himself/herself exemplifies the professional.

Professionals are not bullies. They do not question opposing counsel's ethics as a means of gaining an advantage. They do not take advantage of self-represented litigants or young or inexperienced counsel. They win their cases on the merits and not through intimidation.

Professionals do not file pleadings for a collateral purpose, such as publicity or intimidation. They do not file motions just to consume their opponent's time and money researching and writing a reply. Professionals do not squabble over simple procedural issues or silly discovery disputes before the court. Professionals work these matters out between themselves.

Professionals care about their appearance and their clients' appearance.

Professionals take time to dress neatly and appropriately for the task at hand. As lawyers, you provide services in various venues — the courtroom, the office, a client's home or office. Attire that is appropriate in one venue might not be appropriate in another. Proper attire does not require the latest fashion or expensive suits; it only needs to be neat and indicate to those you represent that you care about your appearance and take your job seriously. In an extreme example, a lawyer in Kansas showed up at his disbarment hearing dressed as Thomas Jefferson. He obviously put some time and thought into his appearance, but it clearly demonstrated to the board that he did not take the matter seriously.

Professionals pay attention to details. Men are required to wear a coat and tie to court. Professionals know that the length of their neckties should extend to just over the belt buckle. If the first time they tie it, it is short, then they untie it, adjust it and tie it again. Getting it right shows they care.

Professionals know that their client's appearance reflects on them. They are aware that inappropriately attired clients may be barred from entering the courtroom or they might be held in contempt. Professionals take the time to be sure that their clients appear for court dressed appropriately. They explain to their clients that T-shirts with inappropriate images or messages (*i.e.*, any design that includes a reference to illegal drugs), tank tops, halters, low hanging pants, cut-offs, etc., will not be tolerated in court.

Professionals apologize when they act unprofessionally.

If they breach the rules of professional conduct, professionals say they are sorry. Apologizing is not a sign of weakness. Genuine professionals admit when they fail to live up to the standards they set for themselves. Professionals know that an apology goes a long way to healing wounds that might hamper the successful resolution of their client's matter.

A professional respects others in all ways and, in so doing, garners respect.

Hon. Raymond S. (Ray) Steib, Jr. is the Division A judge for the 24th Judicial District Court in Jefferson Parish. He had a general civil practice for 28 years prior to his election in 2010. He serves on various Louisiana State Bar Association committees and has been a member of the Committee on the Profession since 1995. He is a regular participant at the 1L and 3L professionalism programs conducted at Loyola University College of Law and Tulane University Law School. (rays@24jdc.us; Ste. 3700, 200 Derbigny St., Gretna, LA 70053)

LOUISIANA **RISING**

Lessons in Leadership, Innovation, and Balance

2015 LSBA Annual Meeting & LSBA/LJC Summer School

Don't miss the combined Louisiana State Bar Association 74th Annual Meeting and LSBA/Louisiana Judicial College Joint Summer School! We have a full week of activities, allowing participants to enjoy six days of substantive programming, exciting social events and fascinating speakers, all for one great price! **This year's mega event will feature:**

- **Nationally Renowned Keynote Speakers**
- **Dynamic, Interactive Panels**
- **Multiple Substantive Law Tracks**
- **Networking Opportunities With Leading Judges and Lawyers**
- **New Business Development/Practice Management Track**
- **Lively Evening Receptions and Law School Gatherings**
- **Fun Supervised Kids' Activities During Evening Social Events**

REGISTRATION **OPTIONS**

	By March 31	By April 24	By May 29	On-Site
Lawyers	$750	$795	$850	$895
Judges	$625	$675	$725	$775
Gov't/Legal Services/ Academia[1]/New Lawyer[2]	$625	$675	$725	$775

- ► includes seminar registration, programs, business meetings and admission to Lawyers' Expo;
- ► electronic version of the seminar materials for attendees to download;
- ► daily continental breakfast/coffee/refreshment breaks;
- ► up to two adult tickets to the Opening Reception, YLD Reception*, LCLCE Reception, Beach Bash*, Supreme Court Reception, Installation Luncheon* and the Family Poolside Party*!

Registration is for LSBA member and spouse/guest when indicated on Registration Form.

* Spouse/guest name must be indicated on the Registration Form to receive tickets included in registration. Additional tickets for children and guests are available for purchase for the social functions.
*To purchase additional tickets for events, please contact: Kaya Koban, Program Coordinator / Meeting & Events, Louisiana State Bar Association, kaya.koban@lsba.org or call (504)619-0116 or call tollfree (800)421-LSBA, ext. 116.

[1] Special pricing applies to judges, law professors, lawyers employed full-time by local, state, or federal government, and lawyers employed full-time by legal aid agencies or indigent defense agencies.
[2] New Lawyer special pricing applies to those lawyers admitted to practice on or after June 1, 2011.

June 7-12, 2015 ***#SeeYouInDestin***

Sandestin Golf & Beach Resort, Destin, Florida
Register today at *www.lsba.org/AnnualMeeting*

Registration Form

□ Judge Bar Roll Number _____ First Name for Badge _____

□ Ms. □ Mr. Name _____

Firm Name _____

Address _____

City/State/Zip _____

Office Phone _____ Fax _____

□ I am a local bar association president. □ I am a local bar association officer. □ I am a first-time attendee.

□ Please register my spouse/guest for social events at no additional charge. *(Spouse/guest must be registered to receive tickets.)*

Spouse/Guest Name _____

First Name for Badge _____

Registration Options	by March 31	by April 24	by May 29	On-Site	Subtotal
Lawyers	$750	$795	$850	$895	_____
Judges	$625	$675	$725	$775	_____
Legal Services/Gov't/Academia/New Lawyer	$625	$675	$725	$775	_____

Special Pricing applies to judges, lawyers employed full-time by local, state, or federal government, and lawyers employed full-time by legal aid agencies or indigent defense agencies or those lawyers admitted to practice on or after June 1, 2011.

Important Note: A link to the seminar materials will be emailed to you prior to the event; we suggest you print the materials in advance and bring them with you. The link will be sent to the email address of record you provided to the LSBA. If you choose to review the materials from your laptop, we strongly suggest you charge your laptop battery, as electrical outlets may be limited. Internet access will not be available in the meeting room.* ***PLEASE NOTE: Printed materials will not be available.*

Golf Tournament **Subtotal**

Golf Tournament Registration form should be returned with your Annual Meeting Registration. Include the entry fee with your total payment. Use the form to register yourself for the tournament, or to request players for foursome. If no other players are requested, LSBA staff will assign foursomes based on handicap.

□ Player #1 Name: _____ Handicap_____ $150 _____
Email (for foursome confirmation): _____

□ Player #2 Name: _____ Handicap_____ $150 _____
Email (for foursome confirmation): _____

□ Player #3 Name: _____ Handicap_____ $150 _____
Email (for foursome confirmation): _____

□ Player #4 Name: _____ Handicap_____ $150 _____
Email (for foursome confirmation): _____

To purchase additional tickets for events, please contact
Kaya Koban, Program Coordinator / Meeting & Events
Louisiana State Bar Association
kaya.koban@lsba.org or call (504)619-0116 or call tollfree (800)421-LSBA, ext. 116

□ Pay by Check: Make checks payable to the Louisiana State Bar Association. Amount Enclosed $_____

□ Pay by Credit Card: The LSBA accepts MC, Visa & Discover. Please visit *www.lsba.org/AnnualMeeting* to pay by credit card.

□ Please check here or contact the LSBA if you have a disability which may require special accommodations at this conference. The LSBA is committed to ensuring full accessibility for all registrants.

Please return this form with your remittance to:
Seminar Registration – Louisiana State Bar Association
601 St. Charles Ave. • New Orleans, LA 70130-3404
(504)619-0137 • (800)421-5722 • fax (504)598-6753

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2014.

Decisions

Adam Anthony Abdalla, Lafayette, (2014-B-2142) **Interim suspension (consent)** ordered by the court on Oct. 22, 2014.

Daniel G. Abel, Metairie, (2014-B-2239) **Interim suspension for threat of harm** ordered by the court on Nov. 6, 2014.

William Harrell Arata, Bogalusa, (2014-B-1695) **Suspension of three years, fully deferred, subject to a five-year period of probation to coincide with a LAP agreement**, ordered by the court on Oct. 31, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 14, 2014. *Gist:* Admitted to illegally buying opiates, using marijuana and using cocaine one time.

James H. Dowling, Jr., New Orleans, (2014-B-1345) **Suspended for one year and one day** ordered by the court on Sept. 19, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 3, 2014. *Gist:* Accepted a representation and a legal fee when he was ineligible to practice law; neglected a legal matter; failed to communicate with his client; and failed to refund an unearned fee.

Christopher Luke Edwards, Lafayette, (2014-OB-2341) **Transferred to disability/ inactive status** ordered by the court on Nov. 13, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 13, 2014.

Kevin Lenn Hanchey, Baton Rouge, (2014-B-1683) **Permanent disbarment** ordered by the court on Oct. 3, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 17, 2014. *Gist:* Multiple issues of conversion of client funds; neglect of client

Continued next page

matters; failure to communicate; practicing while ineligible; and failure to cooperate with the Office of Disciplinary Counsel.

Laura J. Johnson, Winnfield, (2014-B-1942) **Public reprimand by consent** ordered by the court on Oct. 24, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 24, 2014. *Gist:* Engaging in conduct constituting a conflict of interest.

Allen A. Krake, Alexandria, (2014-B-1760) **Suspended for one year and one day** ordered by the court on Oct. 24, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 7, 2014. *Gist:* Failure to comply with the minimum requirements for continuing legal education; failure to pay bar dues and disciplinary assessments; failure to cooperate with the Office of Disciplinary Counsel; and practicing during a period of ineligibility.

Claude C. Lightfoot, Jr., New Orleans, (2014-OB-2013) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on Oct. 1, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 1, 2014. *Gist:* Allegations of a criminal act (bankruptcy fraud and concealment of assets) with charges dropped in consideration of permanent resignation.

Roderick T. Morris, New Roads, (2014-B-1936) **Suspended for six months, fully deferred, subject to two years' supervised probation**, ordered by the court as consent discipline on Oct. 24, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 24, 2014. *Gist:* Commingling earned fees with client and third-party funds in his client trust account; and using those earned fees to pay operating expenses directly from the trust account.

Stacy Morris, New Orleans, (2014-B-1067) **Suspended for three years and to provide accounting to clients and refund unearned fees** ordered by the court on Oct. 15, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2014. *Gist:* Converted client funds; facilitated the unauthorized practice of law by a non-lawyer; and shared legal fees with a non-lawyer.

Cory Scott Morton, New Orleans, (2014-B-2194) **Disbarred by consent from the practice of law retroactive to June 27, 2014, the date of his interim suspension in *In Re: Morton*, 14-1349 (La. 6/27/14), 144 So.3d 1033,** ordered by the court on Nov. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 14, 2014. *Gist:* Commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Howard N. Nugent, Jr., Alexandria, (2014-OB-1954) **Permanent resignation in lieu of discipline** ordered by the court on Oct. 9, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 9, 2014. *Gist:* Conversion of third-party funds.

John Brewster Ohle III, Northfield, IL, (2014-B-1083) **Permanent disbarment** ordered by the court on Oct. 24, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 7, 2014. *Gist:* Federal conviction for tax evasion, conspiracy to defraud the United States and to commit wire fraud.

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 Dec. 3, 2014.

Respondent	Disposition	Date Filed	Docket No.
Geraldine Broussard Baloney	(Reciprocal) Deferred suspension.	10/14/14	14-1582
Donita Yvette Brooks	(Reciprocal) Suspension.	10/14/14	14-1662
David Buehler	(Reciprocal) Suspension.	10/14/14	14-1404
David Augustus Capasso	(Reciprocal) Deferred suspension.	10/14/14	14-1587
John Foster Dillon	(Reciprocal) Deferred suspension.	10/14/14	14-1584
Donna U. Grodner	(Reciprocal) Suspension.	11/25/14	14-2038
Claude C. Lightfoot, Jr.	(Reciprocal) Permanent resignation.	11/25/14	11-966
William Steven Mannear	(Reciprocal) Permanent resignation.	10/14/14	14-1660
David J. Mitchell	(Reciprocal) Permanent disbarment.	10/14/14	14-1589
Cory Scott Morton	(Reciprocal) Interim suspension.	11/25/14	14-1863
Clarence T. Nalls, Jr.	(Reciprocal) Disbarment.	10/14/14	14-1590
Otha Curtis Nelson, Sr.	(Reciprocal) Suspension.	10/14/14	14-1588
Charles Tanner Phillips II	(Reciprocal) Disbarment.	10/14/14	14-1591
Bridget Brennan Tyrrell	(Reciprocal) Suspension.	10/14/14	14-1586
Channing J. Warner	(Reciprocal) Deferred suspension.	10/14/14	14-1585

Discipline continued from page 381

Wade Richard, Crowley, (2014-B-1684) **Permanent disbarment** ordered by the court on Oct. 3, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 17, 2014. *Gist:* Attempt to sell controlled substances to an undercover narcotics officer.

Don L. Simmons, Jr., Baton Rouge, (2012-B-1824) **Interim suspension** ordered by the court on Aug. 10, 2012, ordered dissolved by the court on Oct. 3, 2014.

Rickey K. Swift, Arcadia, (2014-B-1756) **Public reprimand (consent) subject to one-year unsupervised probation** ordered by the court on Oct. 3, 2014. JUDGMENT FINAL and EFFECTIVE on Oct. 3, 2014. *Gist:* Filing a frivolous lawsuit; engaging in conduct prejudicial to the administration of justice; threatening to bring disciplinary charges against an attorney solely to obtain an advantage in a civil matter; and violating or attempting to violate the Rules of Professional Conduct.

Charles Gary Wainwright, New Orleans, (2014-OB-2054) **Reinstatement** ordered by the court on Nov. 7, 2014. JUDGMENT FINAL and EFFECTIVE on Nov. 7, 2014.

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

No. of Violations

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. 1

Commingling personal funds in client trust account.....1

Declining or terminating representation .1

Diligence 1

Failed to act with reasonable diligence and promptness when representing a client...1

Mismanagement of his client's trust account.....1

TOTAL INDIVIDUALS ADMONISHED.....5

Introduce a new partner to your law firm

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

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

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

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

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

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

Louisiana Association *for* JUSTICE

To join, contact us at 225-383-5554 or visit www.lafj.org.

Recent Cases in Louisiana Courts

Several recent cases in Louisiana courts addressed mediation and arbitration issues. One decision held that a mediated settlement was reduced to writing by virtue of email exchanges between the mediator and the parties. The decisions discussing arbitration issues addressed how an arbitrator violated the due process rights of one of the parties by failing to grant a continuance; how an arbitration clause in a contract between a homeowner and a home inspection company is not invalid simply because it requires the arbitrator to be a licensed home inspector; and how a party waives a contractual right to mediate and arbitrate by raising the issue for the first time on appeal.

Mediated Settlement Reduced to Writing by Virtue of Email Exchanges

Holt v. Ace American Ins. Co., 14-0380 (La. App. 3 Cir. 10/1/14), 149 So.3d 886.

After the formal mediation of a personal injury dispute, the parties corresponded by email with the mediator and agreed to a settlement. A formal settlement and release agreement was later signed by the parties. The settlement check was dated 50 days after the exchange of emails. However, the case was not dismissed. About 10 months after the email settlement, both parties filed a motion to enforce the settlement agreement. The plaintiffs also sought attorneys' fees and penalties pursuant to La. R.S. 22:1973 because the insurance company failed to pay the settlement amount within 30 days after the agreement was reduced to writing by the email exchange. The court of appeal affirmed the trial court's judgment that the settlement agreement was reduced to writing by the email exchange and awarded the plaintiffs penalties of $5,000 but no attorneys' fees.

Arbitration Award Vacated Because Arbitrator Violated Plaintiff's Due Process Rights

Mayeaux v. Skyco Homes, 13-1053 (La. App. 3 Cir. 7/2/14), ____ So.3d ____, 2014 WL 2958453.

This case involved a redhibitory action filed by the purchaser of a doublewide manufactured home against the seller and manufacturer of the home. The court of appeal found that the arbitrator violated the plaintiff's due process rights by denying the plaintiff's request for a continuance. The request for a continuance was based on the inability of one of the plaintiff's expert witnesses to attend the arbitration hearing on the date set; another of her expert witnesses could attend only a portion of the scheduled arbitration hearing. The arbitrator denied the request for a continuance and ruled that the expert unable to attend could testify by telephone and the other expert could appear at the hearing to testify. After the arbitration hearing, the arbitrator ruled against the plaintiff. The trial court vacated the arbitration award and ordered the matter be resubmitted to arbitration with a different arbitrator.

Although the arbitrator has broad discretion in conducting arbitration proceedings, and mere errors of law or fact are not sufficient to vacate an arbitrator's award, the court of appeal affirmed the district court's determination. The court of appeal found that the arbitration proceedings had not been fundamentally fair to the plaintiff. This is because forcing the plaintiff's expert witness to testify by telephone did not grant that witness the opportunity to hear the defendants' witnesses so that the expert could effectively rebut such testimony.

Arbitration Clause in Contract Not Invalid

Williams v. Keller Williams Realty, 14-0202 (La. App. 4 Cir. 11/5/14), ____ So.3d ____, 2014 WL 6851463.

A homeowner filed suit against a home inspection company due to an alleged improper inspection. The trial court dismissed the claim based on the defendant's exception of prematurity because the contract required arbitration. The homeowner appealed, arguing that the arbitration clause was invalid because it required the arbitrator to be a licensed home inspector. The court of appeal affirmed the district court, finding that there was no evidence in the record that the homeowner was not in equal bargaining power with the home inspection company. Additionally, the court found that no evidence was produced showing that a licensed home inspector could not serve as a neutral decision maker.

Party Waives Contractual Right to Mediate, Arbitrate by Raising Issue for First Time on Appeal

Robert M. Coleman & Partners, Architects v. Lewis, 13-0549 (La. App. 1 Cir. 9/30/14), 2014 WL 4919689 (unpublished).

The plaintiff, an architectural firm, obtained a judgment for money damages against the owners of a commercial office building after the owners refused to pay the architectural fee. The owners appealed and for the first time argued that the jury erred in awarding damages because the contract mandated that all disputes should be submitted to mediation and arbitration. The court of appeal found that by failing to file a dilatory exception raising the objection of prematurity in the trial court, or by raising the arbitration defense for the first time on appeal, the owners had waived any right to demand mediation or arbitration.

—Bobby M. Harges
Member, LSBA Alternative Dispute Resolution Section
Mediation Arbitration Professional Systems
Ste. 400, 3850 N. Causeway Blvd.
Metairie, LA 70002

Lack of Credibility and Failure to Maintain Records Warrant Denial of Discharge

In the Matter of Goff, No. 13-41148 (5 Cir. Aug. 22, 2014).

The debtor, Tommy L. Goff, filed for Chapter 7 bankruptcy relief and one of his creditors, Graham Mortgage Corp. (Graham), filed an adversary proceeding to challenge the debtor's ability to discharge his debt for failure to maintain adequate records. After discovery, Graham moved for summary judgment, listing numerous missing documents which prohibited Graham from tracing the debtor's assets. The bankruptcy court granted partial summary judgment in favor of Graham, finding that it satisfied its burden by showing the lack of records kept it from tracing the debtor's finances. The debtor moved for reconsideration of the bankruptcy court's ruling, but since the debtor failed to include any supporting evidence, the bankruptcy court denied the motion.

After the conclusion of a trial in which the bankruptcy court determined the debtor lacked credibility and justification for his failure to maintain adequate records, the bankruptcy court entered a judgment in favor of Graham and denied the debtor Chapter 7 relief. The district court affirmed.

In reviewing the grant of summary judgment, the 5th Circuit reasoned that Graham bore the initial burden of producing evidence that the debtor failed to keep adequate records. The court found Graham satisfied that burden by retaining accounting experts who demonstrated certain unavailable documents were needed in order to reconstruct the debtor's finances. The burden then shifted to the debtor who must "go beyond the pleadings" and show demonstrative evidence that specific facts exist over which there is a genuine issue for trial. Since the debtor failed to present any evidence in opposition, the 5th Circuit affirmed the bankruptcy court's grant of partial summary judgment. The 5th Circuit further affirmed the denial of the motion for reconsideration, reasoning that the debtor's motion was very brief, contained no legal citations and did not include any attached evidence.

Finally, with regards to the ruling that the debtor's failure to maintain records was not justified, the 5th Circuit discussed the lack of a set standard for such justification. The 5th Circuit reviewed the bankruptcy court's determination that the debtor was a sophisticated debtor but that his sole testimony was not credible. Because the debtor's testimony was the only evidence provided to support his defense of justification, the 5th Circuit affirmed the bankruptcy court's ruling denying discharge for failure to maintain records without justification.

Fraudulent Transfer Defense Limited to Net Value Received

In the Matter of Positive Health Management, 769 F.3d 899 (5 Cir. 2014).

Ronald T. Ziegler was the president and sole shareholder of Positive Health Management, Inc. (PHM). In 2005, First National Bank (First National) made a loan to another entity owned by Ziegler, secured by a building in Garland, Texas (the Garland property). For a few years, PHM used the Garland property for its office space and made a series of payments to First National. PHM later filed for bankruptcy and the trustee sought to recover the payments made to First National as fraudulent transfers under 11 U.S.C. § 548.

The bankruptcy court first assessed whether a constructive fraudulent transfer occurred, which requires that the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation." 11 U.S.C. § 548(a)(1)(B). The court found that no constructive fraudulent transfer occurred, reasoning that PHM received at least reasonably equivalent value as: (1) the payments kept First National from foreclosing on the property, allowing PHM to continue running its operations and generating cash flow; and (2) the payments were reasonable market rent for the office space. However, as PHM's financial condition was deteriorating and it was facing lawsuits and judgments around the time of the transfers, the bankruptcy court concluded the transfers constituted actual fraud as PHM made the transfers "with actual intent to hinder, delay or defraud." 11 U.S.C. § 548(a)(1)(A).

In reviewing the affirmative defenses available to First National under 11 U.S.C. § 548(c), the bankruptcy court determined that First National "provided value" in exchange for the transfers and acted in "good faith." First National was, therefore, entitled to keep the funds. The district court adopted the report and recommendation of the bankruptcy court and allowed First National to retain all of the funds it received.

On appeal, the 5th Circuit reviewed the fraudulent transfer defense set out in Section 548(c) which requires that a transferee "provided value in good faith" for the transfer. Value is provided when a transferee receives the transfer in question in exchange for "property, or satisfaction or securing of a present or antecedent debt of the debtor." 11 U.S.C. § 548(d)(2)(A). The 5th Circuit reviewed its decision in *Jimmy Swaggart Ministries v. Hayes (in re Hannover Corp.)*, 310 F.3d 796 (5 Cir. 2002), in which it held that "value" is measured from the transferee's perspective. The 5th Circuit reasoned that the "market rent" value found by the bankruptcy court analyzes this "value" from the correct perspective. By "giving up the chance to foreclose and find a new tenant, First National incurred an opportunity cost in the form of foregone market rent." Since First National accepted the loan payments in lieu of rent it would have otherwise earned, the 5th Circuit found First National gave value pursuant to Section 548(c). The 5th Circuit, therefore, affirmed the finding that First National was entitled to the Section 548(c) defense as it acted in good faith and provided value in return.

The trustee further argued that even if the affirmative defense of Section 548(c) applies, the court is required to reduce the value of the transfers by the value of the market rent and award the difference to the estate. Section 548(c) provides that if a transferee has taken in good faith and for value, then it "may retain any interest transferred . . . to the extent that such transferee . . . gave value to the debtor in exchange for such transfer or obligation." While the bankruptcy court found First National was entitled to keep the entirety of the transfers because the rental value was "reasonably equivalent" to the amount of the transfer, the 5th Circuit disagreed. The 5th Circuit reasoned that it is unlikely that the drafters of the Bankruptcy Code intended for "value" under Section 548(c) to mean "reasonably equivalent value," as the "latter term is explicitly used in another subsection of the same statute." *See*, 11 U.S.C. § 548(a)(1)(B)(i). If the phrase "value" is equated to mean "reasonably equivalent value," the 5th Circuit determined that the "to the extent" language of Section 548(c) would be rendered meaningless.

Courts have netted the amounts received in fraudulent transfers against the value given to the debtor as "a good faith transferee is entitled to the protections of Section 548(c) when it gives any value in return, but only to the extent of that value." When a transferee receives a fraudulent transfer, Section 548(c) requires netting to the extent the value of the transfer exceeds the consideration given in return. Therefore, the 5th Circuit held that the trustee was entitled to recover the difference between the payments First National received (the value of the loan payments) and the value it gave in return (the value of the market rent).

—**Tristan E. Manthey**
Chair, LSBA Bankruptcy Law Section
and
Alida C. Wientjes
Member, LSBA Bankruptcy Law Section
Heller, Draper, Patrick, Horn
& Dabney, L.L.C.
Ste. 2500, 650 Poydras St.
New Orleans, LA 70130

Corporate and Business Law

LBCA Adopts "Universal Demand" Requirement for Shareholder Derivative Proceedings

The revised and renamed Louisiana Business Corporation Act (LBCA), effective Jan. 1, 2015, adopts a "universal demand" requirement for a shareholder to bring a derivative proceeding asserting a right on behalf of the corporation. This requirement is a departure from previous Louisiana corporate law, as well as current Delaware law.

Demand on Corporation Now Required in All Instances

The LBCA now requires a shareholder to always make written demand on the corporation to take "suitable action" prior to commencing a derivative claim to enforce the right on behalf of the corporation (La. R.S. 12:1-742). The corporation then has 90 days to respond to the shareholder's demand. A majority vote of "qualified directors" (at a meeting of the board of directors at which the qualified directors constitute a quorum) or a committee appointed by the board of directors consisting of two or more qualified directors is sufficient for the corporation to reject the shareholder's demand (La. R.S. 12:1-744). Either of those groups can reject the shareholder's demand if they have "determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of [a] derivative proceeding is not in the best interests of the corporation" (La. R.S. 12:1-744(A)). If a derivative proceeding is commenced after a shareholder's demand has been rejected, the petition must allege either that a majority of the board of directors were not qualified directors at the time the rejection was made; that the decision to reject the demand was not made in good faith after a reasonable inquiry; or that a derivative proceeding was not in the best interests of the corporation. If a majority of qualified directors rejected the shareholder's demand, the burden falls on the shareholder to prove that the decision was not made in good faith, after reasonable inquiry, or that a derivative proceeding is in the best interests of the corporation. If there was not a majority of qualified directors at the time the rejection was made, the burden of proof falls on the corporation. A derivative proceeding commenced prior to rejection of the shareholder's demand shall be dismissed by the court if the relevant party sustains its burden of proof.

A "qualified director" entitled to act on a shareholder demand is defined by La. R.S. 12:1-143 as a director who, at the time, does not have a material interest in the outcome of the proceeding or a material relationship with a person who has such an interest. "Material relationships" include familial, financial, professional, employment or other relationships "reasonably expected to impair the objectivity of the director's judgment." Section 143 defines a "material interest" as an actual or potential benefit or detriment, other than one extended to the corporation or its shareholders generally, that would be expected to impair the objectivity of the director's judgment (La. R.S. 12:1-143 B).

Revised Pleading Requirements

The LBCA also amends the pleading requirements formerly contained in La. C.C.P. art. 615. Previously, art. 615 drew a distinction between derivative proceedings treated as class actions from those that required the joinder of all shareholders as parties. La. R.S. 12:1-142.1 no longer draws this distinction and only requires the joinder of the corporation and the obligor of the obligation being enforced as defendants. Additionally, the petition must allege that the shareholder was a shareholder at the time of the act or omission or became a shareholder through a transfer by operation of law from someone who was a shareholder at that time, and the shareholder "fairly and adequately represents the interests of the corporation in enforcing the right" (La. R.S. 12:1-142.1).

Departure from Louisiana and Delaware Corporate Law

Adoption of the universal demand requirement is a departure from previous Louisiana law and current Delaware corporate law. Under previous Louisiana law, a shareholder had to make written demand on the corporation unless a majority of the board of directors members were named as defendants in the suit. *Robinson v. Snell's Limbs & Braces of New Orleans, Inc.*, 538 So.2d 1045 (La. App. 4 Cir. 1989); *Smith v. Wembley Indus., Inc.*, 490 So.2d 1107 (La. App. 4 Cir. 1986). This rule allowed plaintiffs to avoid having to make written demand on the corporation by naming a majority of its board of directors as defendants. The universal demand requirement also deviates from current Delaware law, which is premised on a series of judicial decisions determining when demand on the corporation is "futile." This cumbersome analysis requires a court to make a determination at the complaint stage of the proceeding as to whether the directors are potentially subject to personal liability sufficient to disqualify them from determining whether to reject a plaintiff's demand on the corporation.

—Joshua A. DeCuir
Reporter, LSBA Corporate and
Business Law Section
Counsel, Chicago Bridge & Iron
4171 Essen Lane
Baton Rouge, LA 70809

Relevancy of *Mens Rea* and Criminal Intent in Modern Prosecutions

State v. Prince, 14-0740 (La. App. 3 Cir. 12/10/14),____So.3d____,2014WL6946175.

Successful defenses using an accused's lack of *mens rea* or criminal intent have become increasingly rare. One conclusion of the U.S. House Judiciary Committee's Task Force on Over-Criminalization is that "there are now more than 4,000 federal criminal provisions plus hundreds of thousands of federal regulations that impose criminal penalties, often without requiring that criminal intent be shown to establish guilt." In this case, the 3rd Circuit Court of Appeal buttressed these basic legal principles by reversing both the conviction and habitual-offender status of the defendant and entering a judgment of acquittal for lack of proof that the defendant intended any criminal act to be committed.

Acadia Parish sheriff's deputies claim to have received a tip from an unnamed source informing them that Daniel Brandon Prince, a detainee in their jail, would be receiving a package containing contraband. When the package arrived, it was marked as "legal mail" and addressed from an attorney in Crowley. Jail officials brought Prince into a private room, instructed him to open the box, and then arrested him for four counts of introducing contraband into a penal institution for the marijuana, rolling papers, pornography and cigarettes found inside, a violation of La. R.S. 14:402(A).

The State billed Prince with four counts, one for each category of contraband. However, the trial court dismissed three counts after a double jeopardy challenge in a motion to quash. An Acadia Parish jury became deadlocked after the first trial, but a second jury found Prince guilty of one count of

"*attempted* introduction of contraband into a penal institution," La. R.S. 14:402(B). He was sentenced to five years at hard labor, which was increased to 25 years after the State successfully deemed him a habitual offender. The Louisiana Appellate Project sought relief on multiple grounds, including insufficiency of evidence.

"Attempts" make up a special category of crimes, "a separate, but lesser grade of crime," governed by La. R.S. 14:27. Virtually every set of responsive verdicts given to juries before deliberation under La. C.Cr.P. art. 814 contains at least one attempt. However, more is required than just a failure to complete what would have been a crime. The State must prove that the act constituting the attempt was done with *specific intent* to commit the predicate crime. Specific intent is, in turn, defined as "that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1).

When reviewing the sufficiency of the evidence, "an appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proven beyond a reasonable doubt." *State v. Bryant*, 12-0233, p. 5 (La. 10/16/12), 101 So.3d 429, 432 (*quoting State v. Tate*, 01-1658 (La. 5/20/03), 851 So.2d 921). In this case, the identity of the sender was never determined, and the court agreed with the Appellate Project's assertion that "[a]ll that was proven was that the package contained marijuana, it was addressed to Daniel Prince and that, at the direction of law enforcement, he opened the package in their presence."

Given that the jury chose to find Prince guilty of an attempt, the court held that the State was required to prove specific intent but failed to address that element. Accordingly, the 3rd Circuit reversed the conviction, entered a judgment of acquittal, and vacated and set aside the habitual-offender adjudication.

—Chase J. Edwards
Conflict Counsel, 15th JDC
Indigent Defender's Office
415 South Pierce St.
Lafayette, LA 70501

Judge Clark Concludes Act 544 is Unconstitutional

Act 544 was signed into law following the 2014 Louisiana legislative session. It amends Louisiana's Coastal Zone Management Act, adding a new subsection (O) to La. R.S. 49:214.36. That new subsection (O) provides, in pertinent part:

> O. (1) Except as provided in this Subpart, no state or local governmental entity shall have, nor may pursue, any right or cause of action arising from any activity subject to permitting under R.S. 49:214.21 *et seq.*, 33 U.S.C. § 1344 or 33 U.S.C. § 408 in the coastal

area as defined by R.S. 49:214.2, or arising from or related to any use as defined by R.S. 49:214.23(13), regardless of the date such use or activity occurred. . . .

(4) Nothing in this Section shall prevent or preclude any person or any state or local governmental entity from enforcing contractual rights or from pursuing any administrative remedy otherwise authorized by law arising from or related to a state or federal permit issued in the coastal area pursuant to R.S. 49:214.21 *et seq.*, 33 U.S.C. § 1344 or 33 U.S.C. § 408.

(5) Nothing in this Section shall alter the rights of any governmental entity, except a local or regional flood protection authority, for claims related to sixteenth section school lands or claims for damage to property owned or leased by such governmental entity. . . .

Section 2. The provisions of this Act shall be applicable to all claims existing or actions pending on the Act's effective date and all claims arising or actions filed on or after that date.

On Oct. 31, 2014, Judge Janice Clark of the 19th Judicial District Court for East Baton Rouge Parish issued a minute entry in which she concluded the newly minted Act 544 is unconstitutional. Judge Clark signed a judgment to that effect on Dec. 3, 2014.

Judge Clark presides over the matter filed by the Louisiana Oil and Gas Association (LOGA) against Attorney General James D. (Buddy) Caldwell. LOGA filed its suit seeking to invalidate the attorney general's approval of the resolution authorizing retention of counsel by the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) with regard to SLFPA-E's separate suit against oil, gas and pipeline companies for damages caused to the coastal wetlands. SLFPA-E intervened into LOGA's suit to protect SLFPA-E's interest in its contract with its attorneys, and, after trial on the matter, Judge Clark dismissed LOGA's suit, labeling it as "frivolous."

Proponents of Act 544 contend the new law prevents SLFPA-E from pursuing the claims asserted in its pending suit for damages to coastal wetlands. Notably, Act 544 appears to spare the 20-plus lawsuits filed on behalf of Jefferson Parish and Plaquemines Parish in which the parishes seek to enforce the coastal-use permits issued in their geographical jurisdictions.

Following the enactment of Act 544, SLFPA-E filed a motion for entry of final judgment in LOGA's suit. SLFPA-E's motion outlined the reasons Act 544 does not apply to SLFPA-E, the reasons Act 544 is unconstitutional and, thus, the reasons Act 544 should have no impact on Judge Clark's earlier rulings dismissing LOGA's suit.

In addressing the issues presented, Judge Clark agreed. In her Oct. 31, 2014, minute entry, she concluded Act 544 is "an unconstitutional violation of the separation of powers under Article II, Section 2 of the Louisiana Constitution" insofar as it seeks to retroactively abrogate her previous determination that SLFPA-E is an independent political subdivision. Judge Clark specifically found that Act 544 "treads upon the province and duty of the judiciary to interpret the law," emphasizing "that no other branch of government can exercise power reserved to another branch." She further concluded the passage of Act 544 was an unconstitutional violation of constitutional-notice requirements. Finally, she concluded Act 544 is an unconstitutional violation of the public-trust doctrine under Louisiana Constitution Article IX, Section 1 "pursuant to which the state may not take away claims from governmental entities that enable them to redress issues with coastal restoration particularly insofar as those are related to hurricane protections."

The issue of Act 544's unconstitutionality remains unsettled as Judge Clark's judgment remains subject to appellate review. The issue also awaits treatment by Judge Nannette V. Jolivette Brown of the U.S. District Court for the Eastern District of Louisiana in SLFPA-E's suit for damage to coastal wetlands. As to the latter, the issue was raised in defendants' joint motion to dismiss heard by Judge Brown on Nov. 12, 2014, and in SLFPA-E's motion for partial summary judgment heard by Judge Brown on Dec. 10, 2014.

—Emma Elizabeth Antin Daschbach
and
Harvey S. Bartlett III
Members, LSBA Environmental Law Section
Jones, Swanson, Huddell & Garrison, L.L.C.
Ste. 2655, 601 Poydras St.
New Orleans, LA 70130

Community Property

Allen v. Allen, 13-2778 (La. 5/7/14), 145 So.3d 341.

After a detailed review of the rules of statutory construction and analysis, the Louisiana Supreme Court reversed the court of appeal and reinstated the trial court's holding that the family court divisions of the 22nd Judicial District Court have subject-matter jurisdiction over the partition of separate property between divorcing spouses. The court stated that:

> it is logical and consistent with the intent of the legislature to have one forum determine all matters relating to divorce and division of former spouses' property, regardless of whether the property is community or separate.

Succession of Meyerer, 13-1015 (La. App. 1 Cir. 3/19/14), 146 So.3d 574.

Mr. Meyerer's two daughters, after his death, sued his second wife, claiming that proceeds she received from his 401(k) plan and surviving-spouse benefits she received from his pension plan should have been paid by her to them. Their claim was based on a separate property agreement Mr. Meyerer and she had signed stating that she transferred to him any interest she had or might acquire in those plans. They sought to enforce the contract to require her to pay them what she had received. Her motion for summary judgment was granted because Mr. Meyerer had not changed the beneficiary designation on the plans and no Qualified Domestic Relations Orders had been executed. Thus, the employer appropriately paid the funds to the second wife. Moreover, the separate property contract provided that the obligations therein were "personal obligations only of each party." Therefore, her obligation to transfer her interest in the plans to him was enforceable only by him; since he did not enforce it prior to his death, his daughters could not enforce it.

Spousal Support

Pepper v. Pepper, 49,185 (La. App. 2 Cir. 6/25/14), 146 So.3d 276.

Because the partition of Mr. Pepper's U.S. Postal Service Thrift Savings Plan was not actually litigated or adjudicated in the previous partition judgment and settlement, *res judicata* did not apply to Ms. Pepper's supplemental petition to partition it, even though her previous descriptive list referred in a "string of terms" to his "Retirement/Pension/Annuity/Thrift Savings Plan." She testified that she did not discover that he had a Thrift Savings Plan separate from his pension plan until after the partition had occurred.

Richards v. Richards, 49,260 (La. App. 2 Cir. 8/13/14), 147 So.3d 800.

After the parties' daughter turned 18 and

graduated from high school, Ms. Richards filed a rule to reinstate spousal support, which had previously terminated upon her beginning to receive Social Security disability benefits. Following a remand, in which the court of appeal determined that she was entitled to seek support under those circumstances, the trial court denied her request. The court of appeal reversed, finding that she had "an acute and devastating financial need" based on her serious health issues and that even with Social Security, because the child support had terminated, she was in need of support, although "the loss of child support cannot be the sole reason for reinstituting final periodic spousal support."

Custody

Wilson v. Finley, 49,304 (La. App. 2 Cir. 6/25/14), 146 So.3d 282.

Joint custody with the father designated as domiciliary parent was in the child's best interest because the child had lived primarily with the father's family throughout his life and was doing well under the arrangement that the parties had been functioning under, even though neither parent alone was fully capable of caring for the child.

Fradella v. Rowell, 49,350 (La. App. 2 Cir. 8/13/14), 147 So.3d 817.

After Mr. Fradella's wife died, the maternal grandparents obtained a consent judgment awarding them visitation with their grandchildren. They subsequently filed a rule for contempt against Mr. Fradella for interfering with their visitation. The court found Mr. Fradella in contempt for interference and for failing to provide the grandparents with information regarding the children's school and extracurricular activities. The court also modified the visitation schedule to more easily facilitate the grandparents' visitation, which the court found did not violate Mr. Fradella's constitutional rights as a parent because it did not change the amount of visitation but simply modified the schedule to be more workable.

Lawrence v. Lawrence, 49,373 (La. App. 2 Cir. 8/13/14), 147 So.3d 821.

A change of circumstances existed to modify the prior award because the stipulated shared-custody agreement was not working, the parties were unable to function under it, and they were involved in constant litigation. After examining the custody factors, the court of appeal affirmed the trial court's change of custody to Mr. Lawrence as primary domiciliary parent.

T.D. v. F.X.A., 13-0453 (La. App. 1 Cir. 1/9/14), 148 So.3d 187.

The trial court ordered that the parties' 17-year-old child attend an out-of-state boarding school. The mother tried to suspensively appeal. While the appeal was pending, the father filed a rule to change custody and for contempt. The court of appeal ruled that the judgment related to custody and could not be suspensively appealed. The father's rule for contempt was granted after the trial court found that the mother failed to cooperate with having the daughter attend the school.

The mother had filed an exception of no cause of action, claiming that the prior judgment was a considered judgment, requiring the father to meet the *Bergeron* standard to modify the prior judgment, which had also continued in effect the custodial arrangement. The trial court denied the exception of no cause of action and subsequently awarded sole custody to the father. It also vacated its prior order requiring the child to attend the out-of-state boarding school.

The court of appeal reversed, finding that because the prior judgment dealt with custody, the father was required to meet the *Bergeron* standard since that decision "essentially stripped [the mother] of her domiciliary parent status, which was a change of custody." Further, after analyzing the difference between a criminal and civil contempt, it found that the court had held the mother in criminal contempt, which it reversed because the father had failed to prove her contempt beyond a reasonable doubt. Finally, it reversed the award of sole custody to the father. The denial of physical custody to the mother was also an abuse of discretion and was reversed.

—David M. Prados
Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, L.L.P.
Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735

Juror's Complaint

Warger v. Shauers, ____ S.Ct. ____ (2014), 2014 WL 6885952.

On Aug. 4, 2006, Gregory Warger and Randy Shauers were involved in an automobile accident in Pennington County, South Dakota. Warger suffered serious injuries in the crash and subsequently filed a negligence action against Shauers in federal court. The case proceeded to a jury trial in September 2010, which resulted in a verdict in favor of Shauers.

Shortly after the trial, one of the jurors contacted Warger's attorney and informed him that the jury forewoman may have unduly biased the panel during deliberations. According to the complaining juror, the forewoman told the other jurors during deliberations that her daughter was at fault

in a similar collision and that a lawsuit would have ruined her daughter's life. The complaining juror subsequently signed an affidavit to this effect, alleging that the forewoman "was influenced by her own daughter's experience, and not the facts, evidence, and law that was presented." *Warger v. Shauers*, (W.D. S.D. 3/28/12), 2012 WL 1252983, at *8 (unpublished). Relying on the statements in this affidavit, Warger's attorney filed a motion for new trial based on the alleged misconduct of the forewoman in lying during *voir dire* about her ability to be impartial.

Although the district court acknowledged that a new trial is appropriate when a party presents admissible evidence of juror bias, it ultimately denied Warger's motion because it found the complaining juror's affidavit to be inadmissible under Federal Rule of Evidence 606(b). Rule 606(b) bars the use of juror testimony regarding statements made during the jury's deliberations in any proceeding inquiring into the validity of that jury's verdict, unless the testimony pertains to (1) extraneous prejudicial information brought to the jury's attention, (2) an outside influence improperly brought to bear on jurors, or (3) a mistake made in filling out the verdict form. On appeal, the 8th Circuit agreed that the juror affidavit fell squarely within the exclusionary provisions of Rule 606(b) and affirmed the district court's ruling in its entirety.

The Supreme Court granted certiorari and, in a unanimous opinion authored by Justice Sotomayor, held that Rule 606(b) applies to preclude the use of juror testimony in a post-verdict motion seeking a new trial based on another juror's dishonesty during *voir dire*. The Court deemed Rule 606(b) applicable in all proceedings where a verdict may potentially be rendered invalid, which certainly includes a motion for new trial. The Court also deemed Rule 606(b)'s statutory exceptions inapplicable to situations involving juror dishonesty during *voir dire*. Specifically addressing the "extraneous prejudicial information" exception, the Court found its applicability to be limited to information deriving from a source external to the jury. Finally, the Court reviewed Rule 606(b)'s common law origins and found its holding to be consistent with Congress' legislative intent.

The Supreme Court's decision resolved a growing circuit split on the issue of whether Rule 606(b) should apply to bar a juror from testifying about the alleged dishonesty of another juror during *voir dire* in a post-trial challenge to the jury's verdict. Before it was handed down, the 5th Circuit generally found Rule 606(b) to be inapplicable in such circumstances. Thus, a major effect of the Supreme Court's holding will be to bring 5th Circuit courts in line with Louisiana state courts, which have long held that juror-deliberation evidence is inadmissible in subsequent challenges to the verdict. *See, State v. Cloud*, 959, 58 So. 827, 829 (1912).

—Bradley J. Schwab
Member, LSBA Insurance, Tort, Workers' Compensation and Admiralty Law Section
Gieger, Laborde & Laperouse, L.L.C.
Ste. 4800, 701 Poydras St.
New Orleans, LA 70139

Insurance: UM Coverage

Green ex rel. Peterson v. Johnson, 14-0292 (La. 10/15/14), 149 So.3d 766.

Dave Peterson, while driving a motorcycle he co-owned with Benjamin Gibson, was killed in a collision with a vehicle driven by Michael Johnson. Ashanti Green filed suit on behalf of her and Peterson's two minor children, naming, *inter alia*, Allstate Insurance Co. as a defendant in its capacity as Gibson's automobile insurer on the grounds that uninsured/underinsured motorist (UM) coverage was provided to Peterson under that policy. Allstate moved for summary judgment, arguing that Peterson did not have UM coverage under the policy as the definitions for "insured person" and "insured auto," as set forth in the *liability section* of the policy, were not met. Plaintiff contended the motorcycle met the "insured auto" definition necessary for coverage as an after-acquired vehicle as set forth in the *UM section* of the policy. The district court granted the motion, dismissing Allstate, and the court of appeal affirmed. Both courts relied upon the holdings in *Magnon v. Collins*, 739 So.2d 191 (La. 1999), and its progeny that "a person who does not qualify as a liability insured under a policy of insurance is not entitled to UM coverage under the policy."

The Supreme Court distinguished its holdings in this line of cases as having been in reference to Louisiana's UM statute. "UM coverage is determined by contractual provisions and by applicable statutes. Under the UM statute, currently LSA-R.S. 22:1295, the requirement of UM coverage is an implied amendment to any automobile liability policy, even when not expressly addressed, as UM coverage will be read into the policy unless validly rejected." (Footnote omitted.) Gibson's policy contractually provided both liability and UM coverage.

> We find no ambiguity in the Gibson policy; the parties clearly intended to extend greater UM coverage to after-acquired vehicles, by defining an "insured auto" to encompass any "land motor vehicle". . . , than for liability coverage, which was limited to "four wheel" autos.

Thus, by its own contractual terms, the coverage requirements and limitations of the UM statute were inapplicable to the Gibson policy. Reversed and remanded.

—John Zachary Blanchard, Jr.
Past Chair, LSBA Insurance, Tort, Workers' Compensation and Admiralty Law Section
90 Westerfield St.
Bossier City, LA 71111

U.S.-Cuba Relations

On Dec. 17, 2014, President Obama announced the most significant move of the American government in 50 years to ease sanctions with Cuba. The United States severed diplomatic ties with Cuba in 1961, and Cuba was ejected from the Organization of American States in 1962. After 18 months of negotiations facilitated by Canada, the Vatican and even Pope Francis, the White House announced the reestablishment of diplomatic relations with Cuba, as well as various measures to ease trade, travel and financial restrictions associated with the economic embargo.

The administration's actions do not lift the economic embargo, which is held together by various complementary statutes and regulations. While executive authority can certainly ease parts of the economic sanctions that have been in place for decades, it cannot change substantive elements maintained by legislation. The Helms-Burton Act of 1996 and the Cuban Democracy Act of 1992 are a few pieces of legislation that need congressional action to fully liberate the embargo. The President's announced changes will operate through amendments to regulations issued by the Department of Treasury's Office of Foreign Assets Control (OFAC), which administers the Cuban Assets Control Regulations, and the Department of Commerce's Bureau of Industry and Security (BIS), which maintains various Export Administration Regulations pertaining to Cuba.

Some of the key components of the President's "new course" on Cuba include:

► Reestablishing diplomatic relations, including the opening of a U.S. embassy in Havana;

► Allowing for general travel licenses under the 12 existing categories of permissible Cuban travel, making it easier for Americans to provide services to Cubans in the 12 categories;

► Raising remittance levels from $500 to $2,000 per quarter for general donative remittances to Cuban nationals;

► Authorizing expanded commercial sales and exports to Cuba, including building materials for private residential construction, goods for use by the private sector and agricultural equipment;

► Increasing allowable imports by U.S. visitors to $400 worth of goods, $100 of which can consist of alcohol and tobacco products;

► Permitting U.S. banks to open correspondent accounts at Cuban financial institutions and allowing the use of U.S. credit and debit cards by travelers in Cuba;

► Increasing the commercial export of various items to facilitate Cubans' access to communications, including consumer-communication devices, related software, applications, hardware and services;

► Discussion of disputed maritime boundaries in the Gulf of Mexico; and

► Initiating a review of Cuba's designation as a State Sponsor of Terror.

H-2B International Worker Program

Comite de Apoyo a los Trabajadores Agricolas v. Perez, ____ F.3d ____, (3 Cir. 2014), 2014 U.S. App. LEXIS 23001.

A recent appellate decision brings some clarity to an international labor issue that has been winding its way for nearly a decade through various levels of bureaucracy at the Department of Labor, numerous committees and subcommittees of the United States Congress and multiple district and appellate courts. The subject matter is the so-called H-2B worker program that allows U.S. employers to hire international workers on a temporary basis to supply unskilled, non-agricultural labor. The program historically pits U.S. employers against U.S. domestic and international labor organizations. The H-2B program is designed to accommodate temporary international labor that does not displace available U.S. labor. One key determinative component of the program is the prevailing wage. As part of the Department of Labor's investigation into whether U.S. labor is available to perform the job at hand, the Department must look at prevailing wages for the occupation. Employers generally prefer to use privately funded wage surveys that can potentially provide more in-depth information on local labor-market conditions. Labor groups prefer the Department use broader national wage surveys when making prevailing-wage determinations. The Department's prevailing-wage determination establishes what the employers are required to pay, either to available U.S. workers or their temporary international substitutes. The H-2B program is vital to many Louisiana industries, including the shrimp and crawfish processing sectors.

The 3rd Circuit reviewed a decision of the Eastern District of Pennsylvania dismissing a challenge by several labor groups against the Department of Labor on ripeness grounds. 2014 U.S. App. LEXIS 23001, *3. Plaintiffs challenged several Department of Labor regulations pertaining to the prevailing-wage determination under the H-2B program, contending the regulations violate the Administrative Procedures Act. *Id.* at *4. The district court dismissed the complaint on the ground that it was not ripe for adjudication insofar as the Department of Labor should be allowed to promulgate regulations on labor issues without judicial intervention. *Id.* at *18-19.

The 3rd Circuit accepted the appeal and immediately dispelled the district court's concern about judicial temperance, noting that "in view of the subject nature of this litigation, we are concerned with the congressional policy to protect American workers from a depression of their wages attributable to the entry of foreign workers into the domestic labor market." *Id.* at *2. After recounting the tortured history of the numerous iterations of the Department of Labor's rulemaking on implementing various aspects of the H-2B prevailing-wage determination measures, as well as the numerous congressional interventions frustrating same, the court concluded that the case was ripe for review because the Department of Labor was currently using a specific prevailing-wage determination procedure, despite not having issued final rulemaking. *Id.* at *2. The Department's ongoing practice was a *de facto* final agency decision, making judicial review appropriate. *Id.* at *21. The court noted in this respect that "workers in this country are being prejudiced by the current administration of the H-2B program . . . ." *Id.* at *31.

The court concluded that the Department of Labor's current practice of allowing private wage surveys violated the Administrative Procedures Act. From a procedural standpoint, the court ruled that the Department had not explained its rationale for allowing private wage surveys when valid national wage rates are available for the same purpose. *Id.* at *32-33. Moreover, the court found the agency action arbitrary in light of its prior endorsement of valid national wage rates as the more appropriate, comprehensive and accurate method of determining the prevailing-wage rate for the H-2B program. *Id* at *38. The court vacated the current rule allowing for local wage surveys and directed "that private surveys no longer be used in determining the mean rate of wage for occupations except where an otherwise applicable OES survey does not provide any data for an occupation in a specific geographical location . . . ." *Id.* at *43.

—Edward T. Hayes
Leake & Andersson, L.L.P.
Ste. 1700, 1100 Poydras St.
New Orleans, LA 70163

National Labor Relations Board Developments

Purple Commc'ns, Inc., 361 NLRB No. 126 (Dec. 11, 2014), 2014 WL 6989135.

In this decision, the National Labor Relations Board (NLRB) prompts employers to review their policies prohibiting non-business-related use of employer-provided email systems. The NLRB reviewed the administrative law judge's finding that the electronic-communications policy of the employer (a sign language service provider) prohibiting non-business use of its email system by employees was lawful and not objectionable. The specific issue before the NLRB was employees' rights under Section 7 of the National Labor Relations Act to effectively communicate with one another regarding self-organization and other terms and conditions of employment. The NLRB ultimately held that employee use of email for statutorily protected communications on non-working time must presumably be permitted by employers who have chosen to give employees access to their email systems.

In so ruling, the NLRB overturned its previous decision in *Guard Publ'g Co.*, 351 NLRB 1110 (2007), which held that, under ordinary circumstances, even employees who have been given access to their employer's email system have no right to use it for Section 7 purposes. The NLRB explained its previous decision focused too much on the employer's property rights rather than on the importance of email as a means of workplace communications, and, as such, failed to adequately protect employee rights under the Act.

The NLRB emphasized its decision is "carefully limited" in the following ways:

► First, it applies only to employees who have already been granted access

to the employer's email system in the course of their work and does not require employers to provide email access.

► Second, an employer may justify a total ban on non-work use of email, including Section 7 use on non-working time, by demonstrating that "special circumstances" necessary to maintain production or discipline justify restricting its employees' rights. Where special circumstances do not justify a *total* ban, the employer may nonetheless apply uniform and consistently enforced controls over its email system to the extent such controls are necessary to maintain production and discipline. The NLRB noted that an assertion of special circumstances will require the employer to articulate the interest at issue and demonstrate how that interest supports the email-use restrictions it has implemented.

► Finally, the NLRB noted its decision does not address either email access by *nonemployees* or any other types of electronic-communications systems.

Rather than ruling on the particular electronic-communications policy at issue, the NLRB ultimately remanded the case for the employer to present evidence of special circumstances justifying its restrictions on employee use of the email system.

New NLRB Rules for Representation-Case Procedures

The NLRB adopted a final rule regarding union representation-case procedures that will alter many of the board's prior procedures. *See*, 79 Fed. Reg. 74307. The new rule was published in the Federal Register on Dec. 15, 2014, and will take effect on April 14, 2015.

The new rule was approved by the board in a 3-2 vote. All three Democratic board members — NLRB Chair Mark Gaston Pearce, Nancy J. Schiffer and Kent Y. Hirozawa — voted in favor of the new rule and both Republican board members — Philip A. Miscimarra and Harry I. Johnson III — dissented. In a press release posted on the NLRB website, Pearce said, "I am heartened that the board has chosen to enact amendments that will modernize the representation-case process and fulfill the promise of the National Labor Relations Act. Simplifying and streamlining the process will result in improvements for all parties. With these changes, the board strives to ensure that its representation process remains a model of fairness and efficiency for all." Pearce's statements notwithstanding, many commentators have argued that the practical effect of the new rules will be to create several advantages for unions during the representation-case process.

Some of the changes in the new rule include:

► Elections may be held on an abbreviated time frame, in as little as 10 to 21 days.

► In many instances, voter eligibility and inclusion issues will not be addressed until after the conclusion of an election.

► Pre-election hearings will generally be set eight days after a hearing notice has been served. The day prior to the

pre-election hearing, non-petitioning parties will be required to provide a Statement of Position concerning the following: the board's jurisdiction to process the election petition; whether the petitioned-for unit is appropriate; whether a party has any proposed exclusions from the petitioned-for unit; whether any bar exists to the election; the type, dates, times and location of the election; and any other issues that a party intends to raise at hearing. The non-petitioning party would largely be precluded from litigating any issues inconsistent with the terms contained in a Statement of Position or from litigating most issues raised in a late-filed Statement of Position.

► As part of the Statement of Position, employers will be required to provide a list of prospective voters, including job classifications, work locations and shifts. Once the regional director approves an election agreement or decision directing an election, the employer must provide a voter list that includes employee's personal phone numbers and email addresses, if available to the employer.

The NLRB has provided a fact sheet on its website highlighting these and some of the other changes included in the new rule. As previously noted, many of the new procedures are a significant departure from prior processes in representation-case matters. Moving forward, both employers and unions would be well served to become familiar with the changes instituted in the NLRB's new rule.

—Jacob C. Credeur
Member, LSBA Labor and Employment Law Section
and
Lindsey M. Johnson
Member, LSBA Labor and Employment Law Section
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Shell Square
Ste. 3500, 701 Poydras St.
New Orleans, LA 70139

Joinder of Required Parties

Wilson v. Samson Contour Energy E&P, L.L.C., 14-0109 (W.D. La. 12/9/14), 2014 WL 6909416.

The plaintiff brought a claim in state court against Samson Contour Energy, asserting that Samson had paid her for only 17/48ths of the mineral production attributable to land that she owned. After removing the case to federal court, Samson conceded that it had paid the plaintiff for only 17/48ths of the mineral production, but asserted that this was the proper amount because the plaintiff's land was subject to mineral servitudes that entitled other persons to the remaining fraction. The plaintiff argued that the servitudes had prescribed.

The plaintiff had not joined as parties the putative owners of the servitudes that she asserted were prescribed. Samson filed a motion to dismiss for failure to join a required party. Federal Rule of Civil Procedure Rule 19 requires that a party subject to service of process be joined if that person's joinder will not destroy subject-matter jurisdiction and a judgment rendered in the person's absence might, as a practical matter, impair that person's ability to protect his interest. The court reasoned that a judgment in favor of the plaintiff might, as a practical matter, impair the ability of the putative servitude owners to protect their interests. Although a judgment would not have *res judicata* effect against them if they were not parties, the judgment would have precedential effect. The court denied Samson's request that the case be dismissed, but ordered the plaintiff to join the putative servitude owners.

Contamination Claims Against Servitude Owner

Crooks v. La. Pac. Corp., 14-0724 (La. App. 3 Cir. 12/10/14), ____ So.3d ____, 2014 WL 6967567.

The plaintiffs own land that is subject to mineral servitudes. A servitude owner had granted a mineral lease, and that lease was held by production. The plaintiffs brought suit against the servitude owners, seeking compensation for contamination allegedly caused by oil-and-gas activities. A defendant filed an exception of prematurity, arguing that the suit was premature because oil-and-gas operations still were ongoing. The district court sustained the exception and dismissed the case. The Louisiana 3rd Circuit reversed and remanded, relying in part on Louisiana Mineral Code article 22, which states that a servitude owner "is obligated, insofar as practicable, to restore the surface to its original condition at the earliest reasonable time." The 3rd Circuit also noted that, in certain cases, the Louisiana Supreme Court has held that a lessor need not wait until a lease terminates before bringing a contamination claim against the lessee.

Whether Servitude was Subject to Term

Moffett v. Barnes, 49,280 (La. App. 2 Cir. 10/1/14), 149 So.3d 475.

The parties disputed whether a mineral servitude was subject to a 10-year term. Under Louisiana law, a reservation of mineral rights in a sale creates a mineral servitude in favor of the seller. La. R.S. 31:15 and 31:21. The act creating a mineral servitude may set a term for the servitude, La. R.S. 31:74, but a mineral servitude need not have a term, and most do not. On the other hand, all mineral servitudes are subject to prescription of nonuse, with the prescriptive period being 10 years, unless the parties have agreed to a shorter prescriptive period. La. R.S. 31:27 and 31:74. A mineral servitude terminates upon the earlier of the running of prescription, the expiration of the term (if the servitude has a term) or certain other events. La. R.S. 31:27.

The plaintiffs own two tracts of land that they purchased from the defendants. The act of sale stated, "Vendor retains all oil, gas and other mineral rights in the land herein conveyed for ten (10) years." The defendants granted mineral leases covering the tracts. The lessees drilled and established produc-

tion on each tract before the 10th anniversary of the plaintiffs' purchase of the land.

The plaintiffs argued that the act of sale's statement that the defendants retained mineral rights "for ten (10) years" established a 10-year term. Accordingly, the servitudes terminated on the 10th anniversary of the act of sale. The district court disagreed, ruling that the servitudes were not subject to a term and that prescription had been interrupted by drilling and production. The Louisiana 2nd Circuit affirmed, stating the act of sale's reference to "ten (10) years" was simply a restatement of the 10-year prescriptive period established by law. The 2nd Circuit rejected the plaintiffs' contention that they should have been allowed to present evidence regarding the intent of the parties. The court stated that the act of sale was unambiguous, and therefore evidence of intent was not appropriate.

Whether Servitude was Subject to Term

Taylor v. Morris, 49,425 (La. App. 2 Cir. 10/14), ____ So.3d ____, 2014 WL 4854188.

A case with facts very similar to those in *Moffett* (discussed above) was decided by a different 2nd Circuit panel. This panel similarly held that an act of sale referring to a "period of ten (10) years" did not establish a term, and instead merely referred to the law's default prescriptive period. Notably, Judge Caraway submitted a concurring opinion stating that, under the court's decision, "the literal words for a term period of years are being avoided and effectively interpreted out of the contract," but that such a result was justified "[i]n this unusual setting."

—Keith B. Hall
Member, LSBA Mineral Law Section
Louisiana State University
Paul M. Hebert Law Center
1 E. Campus Drive
Baton Rouge, LA 70803
and
Colleen C. Jarrott
Member, LSBA Mineral Law Section
Slattery, Marino & Roberts, A.P.L.C.
Ste. 1800, 1100 Poydras St.
New Orleans, LA 70163

Bystander Damages

Castille v. La. Med. Mut. Ins. Co., 14-0519 (La. App. 3 Cir. 11/5/14), ____ So.3d ____, 2014 WL 5668204.

Complications arose during the delivery of Castille's daughter. The baby was weak and unresponsive at birth, and she died 36 days later.

Castille filed suit against several defendants, claiming damages for her child's damages and her own, including her own claim for bystander damages pursuant to La. Civ.C. art. 2315.6. The trial court sustained the defendants' peremptory exceptions of no cause of action as to the bystander claim.

Castille contended on appeal that the trial court erred by sustaining the exception as to only the bystander claim because that claim was not an independent cause of action and was thus improperly dismissed by a partial judgment.

The appellate court disagreed. Survival and wrongful death claims are two separate causes of action, as are bystander damages. Bystander injuries occur at different times from wrongful death and survival claims and compensate for different injuries. Survival claims compensate the "direct victim" for the damages sustained, begin at the time of injury, and continue until death; wrongful death damages begin from the moment the victim dies; bystander injuries occur from the moment of witnessing (or becoming contemporaneously aware of) the event that caused injury to the direct victim. As the court stated, "Thus, by the same jurisprudential logic by which a wrongful death and survival claim are separate causes of action, a bystander claim is also a separate cause of action."

Castille also contended that her petition stated a valid claim for bystander damages. The appellate court found otherwise in that Castille was "silent" as to what she saw, became aware of, or when either of those things occurred. Describing the infant upon delivery as "limp, apneic, cyanotic," without reference to whether Castille personally made those observations or learned about them in some other way, made it "hard to gauge the severity or foreseeability of any resulting" damages. Nevertheless, the court ruled that the petition was "not beyond repair," and pursuant to La. C.C.P. art. 934, the peremptory exception of no cause of action was sustained and the case remanded to the district court to permit a remedial amendment.

Service of Process

Velasquez v. Chesson, 13-1260 (La. App. 4 Cir. 10/8/14), ____ So.3d ____, 2014 WL 5034609.

During the medical-review-panel proceedings, Velasquez was notified by the Division of Administration that Chesson was a qualified *state* health care provider. Following panel proceedings, Velasquez filed a lawsuit, naming only Chesson as a defendant.

Chesson filed a declinatory exception of insufficiency of service of process, contending that the "State" must be served within 90 days of filing of a lawsuit against it or any of its employees. The exception was sustained.

Velasquez argued on appeal that service on the State was not necessary because Chesson was not sued in his "official capacity as a qualified State health care provider."

When the State, a state agency and any of its officers or employees are named parties to a lawsuit, service on the State or agency must be requested within 90 days of filing suit. La. R.S. 13:5107(D) and La. C.C.P. art. 1201(C). Absent "good cause," the failure to request service within 90 days requires dismissal of the action. Plaintiffs are held strictly to serving the correct agent for service of process, which includes serving the named state defendants. *Barnett v. La. State Univ. Med. Ctr.-Shreveport*, 02-2576 (La. 2/7/03), 841 So.2d 725. Service was required on:

(1) the head of the department for the Board of Supervisors or Louisiana State University Agricultural and Mechanical College; (2) the Office of Risk Management; *or* (3) the Attorney General of Louisiana. La. R.S. 13:5107; La. R.S. 39:1538; *Whitley v. State ex rel. Bd. of Sup'rs of Louisiana State Univ. Agr. Mech. Coll.*, 11-0040, p.18 (La.7/1/11), 66 So.3d 470, 481.

Velasquez contended that the service requirements of La. R.S. 13:5107 and 39:1538 were inapplicable, as Chesson was sued only in his individual capacity. The court noted, however, that Velasquez was notified that Chesson was a qualified *state* provider by the Division of Administration at the onset of panel proceedings. Thereafter, a petition to institute discovery was filed by the State, LSU Board of Supervisors, LSU Health Sciences Center, LSU Health Care Services Division and Dr. Chesson. Another militating factor, it said, was that the plaintiff voluntarily underwent a surgical procedure at University Hospital, a state-owned facility.

Although not a central issue in its opinion, the court nevertheless mentioned that service at a party's place of business is effective only if that party is served personally (citing *Roper v. Dailey*, 393 So.2d 85, 87 (La. 1980)). In *Velasquez*, the plaintiff requested service at the wrong business, and despite the sheriff's return stating that Chesson was personally served, Chesson contended that the service address was not his correct address and that he was never personally served.

The exception was sustained, and the suit dismissed without prejudice.

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

Recent 5th Circuit Tax Cases

In December 2014, the 5th Circuit affirmed the Tax Court's decision on the disallowance of the use of the installment method to report income attributable to unrealized receivables and the IRS's ability to change a taxpayer's accounting method. The taxpayers in *Mingo v. Comm'r of Internal Revenue*, ____ F.3d ____ (5 Cir. 2014), 2014 WL 6914367, received a convertible promissory note in exchange for a partnership interest that contained unrealized receivables from consulting services rendered. The taxpayers reported the sale of the partnership interest as an installment sale on their 2002 federal income tax return and did not recognize any income relating to the note other than interest income on their tax returns until 2007, when they converted the note and reported long-term capital gain from the conversion.

The Tax Court found in favor of the commissioner's position that the portion of the gain realized on the sale of the partnership interest attributable to unrealized receivables was ineligible for the installment method, and, consequently, the taxpayers should have reported ordinary income in 2002. The 5th Circuit agreed and concluded that the proceeds from the unrealized receivables, classified as ordinary income, were not eligible for installment method reporting because they did not arise from the sale of property. Both courts found that the installment method did not adequately reflect the taxpayers' income from the unrealized receivables. Since I.R.C. § 446 grants discretion to the commissioner to change a taxpayer's accounting method upon determining that a different accounting method should have been used, and I.R.C. § 481(a) permits the commissioner to make any necessary adjustments to prevent taxable income from being omitted or duplicated following a change of accounting method, the courts also allowed the commissioner's adjustments to be made to the taxpayers' 2003 return as the statute of limitations on assessment had expired on the 2002 return.

In September 2014, the 5th Circuit ruled on the use of various discounts for determining the value of a decedent's fractional interest in works of art for federal estate-tax purposes. In *Estate of Elkins v. Comm'r of Internal Revenue*, 767 F.3d 443 (5 Cir. 2014), the IRS assessed an estate-tax deficiency based on its disallowance of the estate's use of a "fractional-ownership discount" to determine the taxable values of the decedent's fractional interests in various works of art. Although the Tax Court rejected the commissioner's argument that no fractional-ownership discount was allowable, it also rejected the estate's evidence of discount quantum and concluded that, instead, a nominal fractional-ownership discount of 10 percent should apply across the board to the decedent's ratable share of the stipulated fair market value of the art.

The central issue on appeal was whether the estate was (1) taxable on the decedent's undiscounted ratable share of the fair-market value of the art, or (2) taxable only on the values reduced by fractional-ownership discounts of either (a) a uniform 10 percent or (b) the percentages the estate argued and supported through testimony and expert-witness reports. Both courts agreed that the application of the willing buyer/willing seller test for determining fair-market value ("the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts") warranted fractional-ownership discounts. However, the 5th Circuit took issue with the lack of factual or legal support for the Tax Court's nominal 10 percent discount and noted that nominal discounts are appropriate in cases with a lack of proof by the taxpayer that any greater discount should be applied. Since only the estate presented evidence as to quantum of the discounts, which were eminently correct, the court reversed the Tax Court's decision to reject the estate's fractional-ownership discount quantum and adopt its own percentage.

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

CHAIR'S MESSAGE

Hanging Your Own Shingle? The Scariest Decision for a Young Lawyer

By J. Lee Hoffoss, Jr.

J. Lee Hoffoss, Jr.

Thinking about hanging your own shingle? Thinking about leaving the big firm and going solo? Make sure you are fully aware of the coming highs and lows and be realistic in your expectations.

When I began practicing law, I went to work for a long established law firm and life was really easy. I did not have to worry about payroll, or paying case expenses, electricity bills, copier bills or telephone bills. I did not have to worry about paying malpractice insurance coverage. All I had to do was practice law. My paycheck would come every two weeks and health insurance was covered. No worries.

Then, I became a partner and the paradigm shifted. Rather than spending 100 percent of my time practicing law, this went down to about half. My work hours were consumed with marketing strategies, building up more contacts, finance meetings, etc. Becoming a partner had become a nightmare. The partners no longer got along, and the firm eventually split. My now-partner and I left and started our own shop. While we were certainly experienced attorneys and had a great caseload, we were on our own. And the fun actually began. Instead of trying to micro-manage everything, like the old firm did, we decided to hire professionals to do the marketing, to handle the business operations, and to handle the IT issues. We were free to practice law again.

When I started my own practice, I had the luxury of a number of years under my belt, had built a good caseload, and was financially sound. However, these luxuries often are not available for young lawyers who come out of law school and hang their own shingle, whether by choice or lack of any other option.

The economic downturn following the Great Recession and a pile of debt have forced more law graduates to open their own law firms rather than take the law firm or corporate attorney route. Many new lawyers come out of school not knowing the nuances of practicing law and with little knowledge about how to run a law office. Running a law firm is daunting, even for the most experienced practitioner. Imagine starting out with literally nothing and making a go of it. Since around 2005, this has been the ever-increasing norm with new lawyers.

If you make the choice to start your own firm, seek out advice from those who have plowed the field. The great advances in technology now require a new lawyer's attention as never before — decisions such as a standard phone system versus a voice-over IP phone, computer servers versus a cloud-based setup, and case management software are just a few. While all the technological choices can be overwhelming at times, they certainly can make the practice of law more efficient.

While starting your own firm can be daunting, it will most likely be the best decision you have ever made. It certainly was mine. My best piece of advice to those who choose this path — Run your law firm. Don't let it run you.

YOUNG LAWYERS SPOTLIGHT

Erin Leigh Waddell Garrett
Shreveport

Erin Leigh Waddell Garrett

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Erin Leigh Waddell Garrett of Shreveport.

Born and raised in Shreveport, Garrett graduated from Southwood High School and attended college at Louisiana Tech University. She worked her way through college by waiting tables and working as a tutor for disabled students. After teaching school for a short time, she decided to pursue her legal education at Southern University Law Center. She received her JD degree, *magna cum laude*, in 2006 and was admitted to practice in Louisiana the same year. During law school, she was a member of the American Inns of Court and the Louisiana Trial Lawyers Association, served as secretary of Phi Alpha Delta for two years and worked as a research assistant for Dr. B.K. Agnihotri.

She spent her first year, post-law school, as a law clerk for Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. During her time at the Supreme Court, she reported on a variety of different cases and drafted briefs and opinions on those cases.

In 2007, Garrett moved back to Shreveport and began working as an associate attorney, first for the Law Office of Katherine Clark Dorroh and next for Simmons, Morris & Carroll (formerly Klotz, Simmons & Brainard). In December 2010, she opened her own law firm and maintained a successful, diverse law practice. Since 2011, she has served as the mental health attorney for University Health (formerly known as Louisiana State University Health Sciences Center).

Garrett has been an active member of the LSBA and the Shreveport Bar Association (SBA). She served as the SBA Young Lawyers Section secretary (2009), treasurer (2010), vice president (2011) and president (2012), as well as the SBA Women's Section secretary (2008 and 2009). She was elected duchess of the Krewe of Justinian during the 2011 Mardi Gras season and has been a member of the Junior League of Shreveport-Bossier since 2007. In 2011, she was recognized as one of the "Top 40 Under 40" by the Shreveport/Bossier Chamber of Commerce.

In the recent primary election, Garrett was elected as the newest, and youngest, judge in the 1st Judicial District Court (Caddo Parish).

Garrett and her husband Greg are the parents of two children.

JUDICIAL Notes

By David Rigamer, Louisiana Supreme Court | JUDGES... APPOINTMENTS

Circuit Court Judges Re-Elected

1st Circuit Court of Appeal Judges Jewel E. (Duke) Welch and Ernest G. (Ernie) Drake.
2nd Circuit Court of Appeal Judge James E. Stewart, Sr.
3rd Circuit Court of Appeal Judge James T. (Jimmy) Genovese.
4th Circuit Court of Appeal Judge Terri F. Love.
5th Circuit Court of Appeal Judge Marc E. Johnson.

District Court Judges Re-Elected

1st JDC Judges Robert P. (Bobby) Waddell, Ramona L. Emanuel, John D. Mosely, Ramon Lafitte, Brady Dennis O'Callaghan, Craig Owen Marcotte, Michael A. (Mike) Pitman and Katherine Clark Dorroh.
Caddo Parish Juvenile Court Judges David N. Matlock, Shonda D. Stone and E. Paul Young.
2nd JDC Judges Jenifer Ward Clason, Jimmy C. Teat and C. Glen Fallin.
3rd JDC Judges Jay B. McCallum and Cynthia T. (Cindy) Woodard.
4th JDC Judges C. Wendell Manning, Carl V. Sharp, Alvin R. Sharp, Robert C. Johnson, B. Scott Leehy, Sharon Ingram Marchman, J. Wilson Rambo, H. Stephens Winters, Frederic C. (Fred) Amman and Daniel J. (Danny) Ellender.
5th JDC Judges Terry A. Doughty and James M. (Jimbo) Stephens.
6th JDC Judges John D. Crigler and Michael E. Lancaster.
7th JDC Judge Kathy A. Johnson.
8th JDC Judge Jacque D. Derr.
9th JDC Judges George C. Metoyer, Jr., Thomas M. (Tom) Yeager, Mary L. Doggett, John C. Davidson and Patricia E. Koch.
11th JDC Judge Stephen B. Beasley.
12th JDC Judge William J. (Billy) Bennett.
14th JDC Judges David A. Ritchie, Lilyn A. Cutrer, Sharon D. Wilson, Ronald F. (Ron) Ware, Clayton A. Davis, Guy E. Bradberry, Robert L. Wyatt and G. Michael Canaday.
15th JDC Judges Kristian D. Earles, Jules D. Edwards III, Edward D. Rubin, David A. Blanchet, Thomas R. Duplantier, Patrick L. Michot, Marilyn C. Castle, John D. Trahan and Edward B. Broussard.
16th JDC Judges Lori A. Landry, Paul J. deMahy, Vincent J. Borne, James R. McClelland and Keith R.J. Comeaux.
17th JDC Judges John E. LeBlanc, Walter I. Lanier III and F. Hugh Larose.
18th JDC Judges William C. Dupont, Alvin Batiste, Jr., J. Robin Free and James J. Best.
19th JDC Judges Michael R. Erwin, Donald R. Johnson, Janice Clark, Trudy M. White, Bonnie F. Jackson, Wilson E. Fields, Todd W. Hernandez, Richard D. Anderson, Richard M. (Chip) Moore III, Louis R. Daniel, William A. Morvant, Timothy E. Kelley, Anthony J. Marabella, Jr. and R. Michael Caldwell.
East Baton Rouge Parish Juvenile Court Judge Pamela Taylor Johnson.
East Baton Rouge Parish Family Court Judges Pamela J. Baker, Lisa Woodruff White and Charlene Charlet Day.
20th JDC Judge William G. Carmichael.
21st JDC Judges Robert H. Morrison III, Bruce C. Bennett, M. Douglas Hughes, Brenda Bedsole Ricks, Elizabeth P. Wolfe, Blair Downing Edwards and Jeffery T. Oglesbee.
22nd JDC Judges William J. (Rusty) Knight, Raymond S. Childress, A.J. Hand, Richard A. Swartz, Jr., Peter J. Garcia, William J. Burris, Martin E. Coady, Scott C. Gardner, Allison Hopkins Penzato, Reginald T. Badeaux III, Mary C. Devereux and Dawn Amacker.
23rd JDC Judges Thomas J. Kliebert, Jr., Alvin Turner, Jr. and Jessie M. LeBlanc.
24th JDC Judges June Berry Darensburg, John J. Molaison, Jr., Stephen C. Grefer, Henry G. Sullivan, Jr., Raymond S. Steib, Jr., Cornelius E. Regan, Scott U. Schlegel, Michael P. Mentz, Glenn B. Ansardi, Nancy A. Miller, Ellen Shirer Kovach, Donald A. Rowan, Jr., Steven D. Enright, Jr. and Lee V. Faulkner, Jr.
Jefferson Parish Juvenile Court Judges Ann Murry Keller, Andrea Price Janzen and Barron C. Burmaster.
25th JDC Judges Kevin D. Conner and Michael D. Clement.
26th JDC Judges Michael O. Craig, Jeffrey S. Cox, Michael Nerren and A. Parker Self.
27th JDC Judges Alonzo Harris and James P. Doherty, Jr.
28th JDC Judge J. Christopher Peters.
29th JDC Judges Emile R. St. Pierre and M. Lauren Lemmon.
30th JDC Judges Vernon B. Clark and James R. Mitchell.
31st JDC Judge C. Steve Gunnell.
32nd JDC Judges Randall L. Bethancourt, George J. Larke, Jr., John R. Walker and David W. Arceneaux.
33rd JDC Judge Joel G. Davis.
34th JDC Judges Robert A. Buckley, Jeanne Nunez Juneau, Kirk Andrew Vaughn and Jacques A. Sanborn.
35th JDC Judge Warren Daniel Willett.
36th JDC Judges Martha Ann O'Neal and C. Kerry Anderson.
38th JDC Judge Penelope Q. Richard.
39th JDC Judge Lewis O. Sams.
40th JDC Judges Madeline Jasmine, Mary Hotard Becnel and J. Sterling Snowdy.
42nd JDC Judges Robert E. Burges and Charles B. Adams.
Orleans Parish Civil District Court Judges

Kern A. Reese, Tiffany G. Chase, Regina Bartholomew, Sidney H. Cates IV, Clare F. Jupiter, Christopher J. Bruno, Robin M. Giarrusso, Piper D. Griffin, Paula A. Brown, Paulette R. Irons, Ethel Simms Julien and Bernadette G. D'Souza.

Orleans Parish Criminal District Court Judges Benedict J. Willard, Laurie A. White, Tracy Flemings-Davillier, Frank A. Marullo, Jr., Keva Landrum-Johnson, Robin D. Pittman, Camille G. Buras, Karen K. Herman, Darryl A. Derbigny, Arthur L. Hunter, Jr., Franz L. Zibilich and Magistrate Commissioner Harry E. Cantrell, Jr.

Orleans Parish Juvenile Court Judges Ernestine S. Gray, Tammy M. Stewart, Candice Bates Anderson and Mark Doherty.

City Court Judges Re-Elected

Abbeville City Court Judge Richard J. Putnam III.

Alexandria City Court Judge Richard E. Starling, Jr.

Backer City Court Judge Kirk A. Williams.

Bastrop City Court Judge Phillip M. Lester.

Bogalusa City Court Judge Robert J. Black.

Bossier City Court Judge Thomas A. Wilson, Jr.

Breaux Bridge City Court Judge Randy P. Angelle.

Crowley City Court Judge Marie B. Trahan.

Denham Springs City Court Judge Charles W. Borde, Jr.

Hammond City Court Judge Grace Bennett Gasaway.

Jeanerette City Court Judge Cameron B. Simmons.

Jefferson Parish 1st Parish Court Judge Rebecca M. Olivier.

Jefferson Parish 2nd Parish Court Judges Roy M. Cascio and Raylyn R. Beevers.

Jennings City Court Daniel E. Stretcher.

Lafayette City Court Judges Frances Moran Bouillion and Douglas J. Saloom.

Lake Charles City Court Judge John S. Hood.

Leesville City Court Judge Elvin C. Fontenot, Jr.

Marksville City Court Judge Angelo J. Piazza III.

Morgan City Court Judge Kim P. Stansbury.

Monroe City Court Judges Tammy D. Lee and Jefferson B. Joyce.

Natchitoches City Court Judge Fred S. Gahagan.

New Orleans Municipal Court Judge Sean P. Early.

New Orleans Traffic Court Judges Mark J. Shea and Steven M. Jupiter.

Oakdale City Court Judge Judi F. Abrusley.

Opelousas City Court Judge Vanessa G. Harris.

Plaquemine City Court Judge Michael M. Distefano, Sr.

Port Allen City Court Judge William T. Kleinpeter.

Rayne City Court Judge James M. Cunningham III.

Ruston City Court Judge Danny W. Tatum.

Shreveport City Court Judges R. Lee Irvin, Pammela S. Lattier and Sheva M. Sims.

Slidell City Court Judge James R.E. Lamz.

Springhill City Court Judge John B. Slattery, Jr.

Sulphur City Court Judge Charles Schrumpf.

Thibodaux City Court Judge Mark D. Chiasson.

West Monroe City Court Judge Alan J. (Jim) Norris.

Winnfield City Court Judge K. Anastasia Wiley.

Judges Elected

► 1st JDC Judge Scott J. Crichton was elected to District 2, Louisiana Supreme Court.

► 23rd JDC Judge Guy P. Holdridge was elected to District 1, Division C, 1st Circuit Court of Appeal.

► 21st JDC Judge Wayne Ray Chutz was elected to District 3, Division A, 1st Circuit Court of Appeal.

► 14th JDC Judge D. Kent Savoie was elected to District 2, 3rd Circuit Court of Appeal.

► Monroe City Court Judge Larry D. Jefferson was elected to Division H, 4th Judicial District Court.

► Winnsboro City Court Judge Ann B. McIntyre was elected to Division C, 5th Judicial District Court.

Retirements

► Louisiana Supreme Court Justice Jeffrey P. Victory retired effective Dec. 31, 2014, after serving 20 years on the Supreme Court bench.

► The following judges also retired effective Dec. 31, 2014:

1st Circuit Court of Appeal Judges Randolph H. Parro and James E. Kuhn.

3rd Circuit Court of Appeal Judge Joseph David Painter.

3rd JDC Judge R. Wayne Smith.

4th JDC Judge Benjamin Jones.

7th JDC Judge Leo Boothe.

9th JDC Judges Donald T. Johnson and Harry F. Randow.

10th JDC Judges Eric R. Harrington and Dee Ann Hawthorne.

13th JDC Judges J. Larry Vidrine and Thomas F. Fuselier.

15th JDC Judges Herman C. Clause, Glenn P. Everett and Durwood W. Conque.

16th JDC Judges Gerard B. Wattigny, Edward M. Leonard, Jr. and Charles L. Porter.

17th JDC Judges Jerome J. Barbera III and A. Bruce Simpson.

19th JDC Judge L. Kay Bates.

East Baton Rouge Parish Family Court Judge Annette M. Lassalle.

East Baton Rouge Parish Juvenile Court Judge Kathleen S. Richey.

20th JDC Judge George H. (Hal) Ware, Jr.

21st JDC Judge Zorraine M. (Zoey) Waguespack.

23rd JDC Judge Ralph E. Tureau.

24th JDC Judges Robert A. Pitre, Jr. and Ross P. LaDart.

26th JDC Judges Ford E. Stinson, Jr. and John M. Robinson.

30th JDC Judge John C. Ford.

32nd JDC Judge Timothy C. Ellender.

33rd JDC Judge Patricia C. Cole.

37th JDC Judge Don C. Burns.

Orleans Parish Civil District Court Judge Lloyd J. Medley, Jr.

Orleans Parish Criminal District Court Judge Julian A. Parker II.

Orleans Parish Juvenile Court Judge Lawrence L. Lagarde, Jr.

Bunkie City Court Judge James H. Mixon.

Eunice City Court Judge Lynette Y. Feucht.

Franklin City Court Judge Terry G. Breaux.

Houma City Court Judge Jude T. Fanguy.
Jefferson Parish 1st Parish Court Judge George W. Giacobbe.
Kaplan City Court Judge Frank E. LeMoine, Sr.
Lake Charles City Court Judge Thomas P. Quirk.
Minden City Court Judge John C. Campbell.
New Iberia City Court Judge Robert L. Segura.
Shreveport City Court Judge Charles W. Kelly IV.

Appointments

► Judge C. Wendell Manning was appointed, by order of the Louisiana Supreme Court, to the board of the Louisiana Supreme Court Attorney Intern Program for a term of office which began Dec. 1, 2014, and will end Nov. 30, 2016.

► Professor Donald W. North was appointed, by order of the Louisiana Supreme Court, to the board of the Louisiana Supreme Court Attorney Intern Program for a term of office which began on Dec. 1, 2014, and will end Nov. 30, 2017.

► Richard K. Leefe was appointed and designated chair, by order of the Louisiana Supreme Court, to the board of the Louisiana Supreme Court Attorney Intern Program for a term of office which began on Dec. 1, 2014, and will end Nov. 30, 2017.

► Joseph L. (Larry) Shea, Jr. was appointed, by order of the Louisiana Supreme Court, to the board of the Louisiana Supreme Court Attorney Intern Program for a term of office which began on Dec. 1, 2014, and will end Nov. 30, 2016.

► Leo C. Hamilton was appointed, by order of the Louisiana Supreme Court, to the board of the Louisiana Supreme Court Attorney Intern Program for a term of office which began on Dec. 1, 2014, and will end Nov. 30, 2015.

► Beau P. Sagona was designated, by order of the Louisiana Supreme Court, as chair of the Mandatory Continuing Legal Education Committee for a term of office which began Jan. 1 and will end Dec. 31, 2015.

► Judge Charles L. Porter, Robert G. Levy and Edward J. Walters, Jr. were appointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for terms of office which began Jan. 1 and will end Dec. 31, 2017.

► Jeffrey L. Little, Tara L. Mason, Dominick Scandurro, Jr., Col. Evans C. Spiceland (Ret.) and Walter D. White were appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office which began Jan. 1 and will end Dec. 31, 2017.

SOLACE Support of Lawyers/Legal Personnel — All Concern Encouraged

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

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

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

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Michael A. Balascio** and **David N. Luder** have become members of the firm. Also, **Joshua O. Cox**, **Robert J. Dressel** and **Laurence D. LeSueur** have joined the firm as associates.

Broussard & David, L.L.C., in Lafayette announces that **J. Derek Aswell** has joined the firm as an associate.

Burleson, L.L.P., announces it has opened an office in New Orleans, headed by partner Mark L. Clark. Lisa M. Africk joined the New Orleans office as a partner. The office is located at Ste. 1400, 650 Poydras St., New Orleans, LA 70130; (504)299-3427.

Cashe Coudrain & Sandage in Hammond announces the association of Jamie Polozola Gomez with the firm.

Chaffe McCall, L.L.P., announces that **Horace A. (Topper) Thompson III** has joined the firm as of counsel in the New Orleans office.

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., in Metairie announces that **Thomas A. (Tac) Crosby** has joined the firm as an associate.

Courington, Kiefer & Sommers, L.L.C., announces that **J. Jené Liggins** and **Mathilde V. Semmes** have joined the firm as associates in the New Orleans office.

Deutsch, Kerrigan & Stiles, L.L.P., in New Orleans announces that **Andrew J. Baer** has joined the firm as an associate.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that Gretchen A. Fritchie and Claire A. Noonan have joined the firm as associates in the New Orleans office.

Jones Walker, L.L.P., announces that Alex P. Prochaska has joined the firm as special counsel and will practice from the Lafayette and Baton Rouge offices.

King, Krebs & Jurgens, P.L.L.C., in New Orleans announces that Laura E. Avery and Brian A. Clark have joined the firm as associates.

The Kullman Firm announces that **Caroline A. Spangler**, **Geoffrey M. Sweeney** and **Joseph R. Ward III** have joined the firm as associates in the New Orleans office, and **Jeremy J. Landry** has joined the firm as an associate in the Baton Rouge office.

Leake & Andersson, L.L.P., in New Orleans announces that **Cristin F. Bordelon** and **Kaliste Joseph Saloom IV** have joined the firm as associates.


Richard J. Arsenault


J. Derek Aswell


Ralph J. Aucoin, Jr.


Andrew J. Baer


Michael A. Balascio


Cristin F. Bordelon


Nicholas J. Chauvin


Richard A. Chopin


Joshua O. Cox


Thomas A. Crosby


Robert J. Dressel


R. Joshua Koch, Jr.

Liskow & Lewis, A.P.L.C., announces that Louis E. Buatt has joined the firm's New Orleans office as a shareholder. Monica Derbes Gibson and Katherine Seegers Roth have rejoined the firm's New Orleans office as of counsel. Also, Jaclyn E. Hickman, Mirais M. Holden and Randy J. Marse, Jr. have joined the New Orleans office as associates, and William E. Kellner has joined the Lafayette office as an associate.

Looper Goodwine & Ballew, P.C., with offices in New Orleans and Houston, Texas, announces that Paul J. (P.J.) Goodwine has joined the firm in the New Orleans office.

Ogwyn Bonaventure, L.L.C., in Baton Rouge announces that Michael E. Platte has joined the firm.

Robert A. Kutcher

Perrier & Lacoste, L.L.C., in New Orleans announces that **Nicholas J. (Nick) Chauvin** has joined the firm as special counsel and **Ralph J. Aucoin, Jr.** has joined the firm as an associate.

Preis, P.L.C., announces that Brian J. Lindsey has joined the firm's Lafayette office.

NEWSMAKERS

Raymond G. Areaux, a founding partner of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., in New Orleans, presented a program, "IT, IP, Security & Privacy Legal Issues Facing CIOs: Reality vs. Myths and Misconceptions," to IT professionals at the third annual Louisiana IT Symposium in November 2014.

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was recognized on the *National Law Journal*'s list of Top 50 Verdicts & Settlements of 2014 for *Allen v. Takeda Pharmaceuticals International*.

Toni J. Ellington, an attorney with Taggart Morton, L.L.C., in New Orleans, has earned the Certified Medicare Secondary Payer certification provided by the Louisiana Association of Self-Insured Employees.

Kernan A. (Kerry) Hand, Jr., an attorney in the New Orleans office of Coats, Rose, Yale, Ryman & Lee, was appointed to the Louisiana Board of Tax Appeals by Louisiana Gov. Bobby Jindal.

Steven J. Lane, managing partner of Herman, Herman & Katz, L.L.C., in New Orleans, was elected 2015-16 treasurer of the New Orleans Bar Association.

Judge John J. Molaison, Jr., with the 24th Judicial District Court in Jefferson Parish, was selected to serve on the faculty of the National Judicial College in Reno, Nev.

Paul M. Sterbcow, a partner in the firm of Lewis, Kullman, Sterbcow & Abramson in New Orleans, was named a Fellow of the American College of Trial Lawyers.

IN MEMORIAM

Bernard Harris Berins, 75, of Metairie died Oct. 29, 2014. He received his BA degree in 1959 from Tulane University and his law degree in 1962 from Tulane University Law School. In 1961, while

Jeremy J. Landry

Laurence D. LeSueur

J. Jené Liggins

David N. Luder

Bradley J. Luminais, Jr.

Kaliste J. Saloom IV

Mathilde V. Semmes

Caroline A. Spangler

Geoffrey M. Sweeney

Horace A. Thompson III

Nelson W. (Chip) Wagar III

Joseph R. Ward III

still attending Tulane Law School, he was employed as a law clerk with Heller & Heller, beginning his nearly 53-year tenure with the firm. He retired from Heller, Draper, Patrick & Horn on Dec. 31, 2013, to focus on fighting his cancer. Mr. Berins was widely respected for his experience in real estate and security interests and was known for his practice in various business entities, bankruptcy and related matters. Most notable, he successfully confirmed many allegedly "non-confirmable" Chapter 11 plans of reorganization. He handled numerous commercial transactions, including commercial leases, acquisitions, mergers and industrial revenue bond issues. He was invited to share his knowledge as a speaker at conferences and educational seminars. While he may have retired from law practice, he continued his mission to educate others about male breast cancer and the need to use molecular profiling for Cancer of Unknown Primary. Mr. Berins is survived by his wife of more than 46 years, Jane Z. Berins; his three children; and three grandchildren.

Bernard Harris Berins

Charles Gary Blaize, Sr., 71, died on Nov. 10, 2014. Born in Bay St. Louis, Miss., he was a resident of Houma for many years. He received his law degree in 1973 from Louisiana State University Law Center and began his law practice in Houma, practicing for several years until health concerns required him to close the practice. He served on the Republican State Central Committee and was a member of the New Orleans Jerusalem Temple Shriners and the Terrebonne Fellowship No. 481 Masons. Prior to beginning his legal career, he had a military career. He graduated from the U.S. Naval Academy in 1965 and entered active duty with the U.S. Navy, serving with distinction aboard the USS Topeka and the USS Horne. After active duty, he continued service in the U.S. Naval Reserves, earning the rank of commander. He trained with the Navy Seal Reserve "River Rats" at the Naval Air Station in Belle Chasse. Mr. Blaize is survived by two sons and their wives, his sister, three grandchildren and other relatives.

Charles Gary Blaize, Sr.

PUBLICATIONS

***The Best Lawyers in America* 2015**

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C. (New Orleans): Roy E. Blossman, Stacy Smith Brown, M. Hampton Carver, M. Taylor Darden, William T. Finn, I. Harold Koretzky, Leann Opotowsky Moses, Philip D. Nizialek, Frank A. Tessier and David F. Waguespack.

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

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

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

***Louisiana Super Lawyers* 2015**

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

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

Herman, Herman & Katz, L.L.C. (New Orleans): Joseph E. Cain, John S. Creevy, Leonard A. Davis, Jennifer J. Greene, Maury A. Herman, Russ M. Herman, Stephen J. Herman, Brian D. Katz, James C. Klick and Steven J. Lane.

Koch & Schmidt, L.L.C. (New Orleans): **R. Joshua Koch, Jr.**

People Deadlines and Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2015	April 3, 2015
Aug./Sept. 2015	June 4, 2015
Oct./Nov. 2015	Aug. 4, 2015
Dec. 2015/Jan. 2016	Oct. 2, 2015

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

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

or email
dlabranche@lsba.org

NEWS

FRANCOPHONE...LOCAL BARS... LBF

UPDATE

LSBA's Francophone Section Presents Civil Law Symposium

The Louisiana State Bar Association's Francophone Section presented the 2014 Judge Allen M. Babineaux International Civil Law Symposium in November 2014. The symposium, titled "Commemorating the Civil Rights Act of 1964," was conducted at The Historic New Orleans Collection.

Francophone Section Chair Warren A. Perrin said speakers included Dr. Justin Nystrom, assistant professor of history at Loyola University and author of *New Orleans after the Civil War: Race, Politics, and a New Birth of Freedom*; María Pabón López, dean of Loyola University New Orleans College of Law; A.P. Tureaud, Jr., co-author of *A More Noble Cause: A.P. Tureaud and the Struggle for Civil Rights in Louisiana*; Chief Judge Ulysses Gene Thibodeaux, 3rd Circuit Court of Appeal; former U.S. Attorney Donald Washington; and current U.S. Attorney Kenneth A. Polite, Jr.

U.S. Attorney Kenneth A. Polite, Jr., from left, Louis R. Koerner and U.S. Attorney Donald Washington at the 2014 Judge Allen M. Babineaux International Civil Law Symposium.

Louisiana State Bar Association Francophone Section Chair Warren A. Perrin, from left, with Dean María Pabón López and attorney Stephen N. Chesnut at the 2014 Judge Allen M. Babineaux International Civil Law Symposium.

LSU Law Center Announces Leaders for Chancellor's Council and Annual Fund

The Louisiana State University Paul M. Hebert Law Center announced the alumni leadership for the 2014-15 Chancellor's Council and Annual Fund.

J. Rock Palermo III and R. Patrick Vance will serve as chair and co-chair, respectively, of the Chancellor's Council, the leadership giving level of the Annual Fund.

Annual Fund Chair Amy C. Lambert and Co-Chair Timothy F. Daniels are asking fellow LSU Law graduates to increase alumni participation in annual giving.

Palermo is a partner in the Lake Charles firm of Veron, Bice, Palermo & Wilson. Vance is a partner in the New Orleans office of Jones Walker, L.L.P.

Lambert is a partner in the firm of Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge. Daniels is a member in the firm of Irwin Fritchie Urquhart & Moore, L.L.C., in New Orleans.

The Shreveport Bar Association hosted a December 2014 retirement reception for Louisiana Supreme Court Associate Justice Jeffrey P. Victory, far right. From left, Lawrence W. Pettiette, Jr., Shreveport Bar Association president, 2014; Judge Brady D, O'Callaghan, 1st Judicial District Court; Lillian E. Richie, clerk of court for the 2nd Circuit Court Appeal; and Justice Victory.

SEND YOUR NEWS!

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

Email your news items and photos to:
LSBA Publications Coordinator
Darlene LaBranche at
dlabranche@lsba.org.

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

Kyle L. Gideon, right, was sworn in as the 2014-15 president of the Lafayette Bar Association by his law partner (and former Louisiana State Bar Association president) James J. Davidson III.

Lafayette Bar Installs 2014-15 Officers, Board of Directors

Kyle L. Gideon, a partner in the firm of Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P., in Lafayette, was sworn in as the 2014-15 president of the Lafayette Bar Association by his law partner (and former Louisiana State Bar Association president) James J. Davidson III. Gideon and his fellow officers and board members were sworn in at a banquet in October 2014.

Also serving on the 2014-15 Executive Committee are President-Elect Danielle D. Cromwell, Acadiana Computer Systems, Inc.; Secretary/Treasurer Melissa L. Theriot, NeunerPate; and Immediate Past President Tricia R. Pierre, the Louisiana State Bar Association's director of member outreach and diversity.

Serving on the board are Ariel A. Campos, Sr., Jeffrey K. Coreil, Jean-Paul P. Coussan, Shannon S. Dartez, Glenn Edwards, Paul D. Gibson, Trey Hightower, Steven C. Lanza, Miles A. Matt, Lindsay L. Meador, John A. Mouton III, Donnie O'Pry, Helen Popich Harris, Patsy A. Randall, Maggie T. Simar, Cynthia K. Simon and William W. Stagg.

The 2014-15 Lafayette Bar Association officers and board members were sworn in during an October 2014 ceremony. In attendance were Ariel A. Campos, Sr.; Secretary/Treasurer Melissa L. Theriot; President Kyle L. Gideon; President-Elect Danielle D. Cromwell; Lindsay L. Meador, Paul D. Gibson, Maggie T. Simar, Steven C. Lanza, Shannon S. Dartez, Jean-Paul P. Coussan, Jeffrey K. Coreil, Trey Hightower, Glenn Edwards, John A. Mouton III and Donnie O'Pry.

Lafayette Bar Foundation Hosts 2014 Champions of Justice Awards Breakfast

The Lafayette Parish Bar Foundation (LPBF) hosted its annual Champions of Justice Awards breakfast in October 2014. This breakfast honors the members of the legal community who have given their time and energy to provide legal assistance and counsel to victims of domestic violence, the homeless and the disadvantaged through the programs run by the Foundation.

Outstanding Attorney Awards were presented to attorneys Mandi A. Borne, Philip H. Boudreaux, Marianna Broussard, Jeffrey K. Coreil, L'Reece David, Bradford H. Felder, Valerie G. Garrett, Valerie V. Guidry, Gregory A. Koury, Cliff A. LaCour, Craig D. Little, Seth T. Mansfield, Jason A. Matt, C. William Montz, Jr., Jason T. Reed, Dwazendra J. Smith and K. Wade Trahan.

The Foundation coordinates four programs offering legal assistance: the Lafayette Volunteer Lawyers, the Protective Order Panel, the Homeless Experience Legal Protection (H.E.L.P.) Program and Counsel on Call.

The Lafayette Volunteer Lawyer Award was presented to Dwazendra J. Smith for the hours she logged taking difficult cases such as divorce and custody.

The Protective Order Panel Award was presented to Cliff A. LaCour for handling 10 protective order cases.

The H.E.L.P. Program Award was presented to K. Wade Trahan for helping more than 70 clients obtain birth certificates and IDs.

The Counsel on Call Program Award was presented to C. William Montz, Jr. for providing free legal advice to more than 40 members of the community.

The LPBF also presented the Solo Practitioner Award to Valerie G. Garrett and the Outstanding Service to the Bar Award to Jeffrey K. Coreil and Jacob H. Hargett.

Firm Awards are presented to the firms providing the highest volume of volunteer service. The Small Firm Award (firms of seven or fewer attorneys) was presented to Koury & Hill, L.L.C. The Large Firm Award (firms of eight or more attorneys) was presented to NeunerPate.

The New Orleans Bar Association's Young Lawyers Section organizes lunch service twice a month at the Ozanam Inn homeless shelter in New Orleans. Participating in a recent lunch service were, from left, Catherine E. Lasky, Christopher K. Ralston, Lauren E. Godshall, Christopher D. Wilson, Kimberly Silas, Kerry A. Murphy and Sarah S. Graham.

Russ M. Herman, senior partner of the law firm of Herman, Herman & Katz, L.L.C., in New Orleans, is the recipient of the New Orleans Bar Association's 2014 Presidents' Award. The award, which recognizes professional excellence, integrity and dedication to community service, was presented at an October 2014 ceremony.

LBF Annual Fellows Gala Set for May 1

By Karli Glascock Johnson and Sharonda R. Williams, 2015 Gala Co-Chairs

Join the Louisiana Bar Foundation (LBF) on Friday, May 1, for its 29th Annual Fellows Gala at the Hyatt Regency New Orleans, 601 Loyola Ave. The LBF has announced that this year's honorees are Distinguished Jurist John W. Greene, Distinguished Attorney Allen L. Smith, Jr. (posthumously), Distinguished Professor Gail S. Stephenson and Calogero Justice Award recipient Marta-Ann Schnabel. The gala brings together lawyers, judges and professors to support the LBF's mission. The gala begins at 7 p.m. and will feature a live auction. A patron party will be held prior to the gala.

Event organizers are seeking sponsors. Proceeds raised will help strengthen the programs supported and provided by the LBF. Sponsorships are available at several levels: Pinnacle, $6,500; Benefactor, $5,000; Cornerstone, $3,500; Capital, $2,000; Pillar, $1,200; and Foundation, $400. For more on each level, go to: *www.raisingthebar.org*.

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

Gala ticket reservations can be made by credit card at *www.raisingthebar.org*. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

A special thank you is extended to the Annual Fellows Gala Committee: Christopher K. Ralston, board liaison; and members Hon. Raymond S. Childress, Francisca M. Comeaux, Michael B. DePetrillo, Carla A. Tircuit, Nakisha Ervin-Knott, Lauren E. Godshall, Steven F. Griffith, Jr., Jan M. Hayden, Colleen C. Jarrott, Chauntis T. Jenkins, Christopher K. Jones, John H. Musser IV, Adrian G. Nadeau, Hon. Sheva M. Sims, Brooke C. Tigchelaar, Laranda Moffett Walker and Justin I. Woods.

Discounted rooms at the Hyatt Regency New Orleans are available for $289 a night for Thursday, April 30, and Friday, May 1. Reservations must be made with the Hyatt before Monday, April 6, to get the discounted rate. Call the hotel directly at 1(888)421-1442 and reference "Louisiana Bar Foundation" to make a reservation, or go to: *http://resweb.passkey.com/go/LABFannualgala2015*.

President's Message

Join the Fight for Justice: Louisiana Campaign to Preserve Civil Legal Aid

By President Hon. C. Wendell Manning

"Equal Justice under the law is not merely a caption on the façade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists… it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

—U.S. Supreme Court Justice Lewis Powell, Jr.

Imagine facing having your home taken away, your children taken away or being a victim of domestic violence, and you have no advocate in court. This is the reality facing thousands of low-income citizens in Louisiana who can't afford an attorney. The constitutional guarantee of a lawyer does not apply to people fighting civil injustices — essential matters of personal safety, economic security and family support that can threaten basic survival.

Civil legal aid helps people solve critical, life-changing problems. It provides free legal assistance to those who would otherwise go unrepresented. The help provided by civil legal aid programs supports the American core value of equal access to justice. Organized measures to protect the poor in civil legal matters originated in 1903 with the Legal Aid Society of New York. As recently as September 2014, Justice Antonin Scalia noted, "Equal access to justice is a fundamental ideal." Today, those measures to protect the poor are provided by civil legal aid programs. Because of challenging economic times and Louisiana's high poverty rates, civil legal aid programs are struggling to provide these essential services — barely meeting a third of the poverty population's needs.

There are more than 847,000 Louisiana citizens — 161,000 households — in poverty, according to the 2012 American Community Survey/U.S. Census Report. The American Bar Association determined that low-income households face an average of 1.1 legal problems annually. To fully serve all Louisiana households in poverty, the "Louisiana Campaign to Preserve Civil Legal Aid" calls for funding a network of local and community-based service components that include:

Hon. C. Wendell Manning

► significantly increasing full-time staff attorney positions at civil legal aid offices;

► hosting attorney fellowship positions at civil legal aid offices to collaborate with the four law schools, leveraging law student participation in the delivery of civil legal aid through clinics;

► placing *pro bono* young lawyers within each Louisiana judicial district courthouse to assist with direct client advice, referral and case placement services;

► establishing community self-help centers and kiosks employing young lawyers and/or legal coordinators within each parish to provide court-approved forms, guidance and legal aid services information; and

► developing the statewide hotline call center to utilize attorneys, law students and client intake positions to provide information, referral and handling of brief service matters.

In addition to being an essential element of the justice system, civil legal aid provides substantial economic benefits. The Louisiana State Bar Association's Economic Impact Study estimates that the Louisiana legal services programs provide an economic impact of between $70 million to $107 million annually in total economic transactions to the state. It also found that for every dollar spent, the state is getting back $2.40. In addition, Louisiana's legal services programs support between 850 and 1,300 jobs. The study ensures that all dollars allocated to the legal services programs deliver unmistakable economic returns to the state as a whole.

Civil legal aid saves taxpayer dollars by keeping families together; reducing domestic violence; helping children leave foster care more quickly; reducing evictions; increasing access to benefits; helping communities devastated by natural disasters; and offering indigent citizens a way out of poverty.

Investing in civil legal aid is a powerful way to help people solve critical problems and prevent events that are harmful and expensive for society. Civil legal aid opens doors to the justice system and provides reinvestment in the community. Funding for civil legal aid will have a ripple effect, impacting not only the families served, but the community at large. Schools, businesses, government agencies and the state as a whole benefit from resolving civil legal problems.

Find out how you can "Join the Fight for Justice." Contact Louisiana Bar Foundation Development Director Laura Sewell for more information on the Louisiana Campaign to Preserve Civil Legal Aid at (504)561-1046 or email laura@raisingthebar.org. Or visit the website: *www.raisingthebar.org/campaign*.

LBF Annual Fellows Membership Meeting is May 1

The Louisiana Bar Foundation's (LBF) Annual Fellows Membership Meeting will be held at noon on Friday, May 1, at the Hyatt Regency New Orleans, 601 Loyola Ave. This luncheon meeting is an opportunity for Fellows to be updated on LBF activities and elect new board members. The President's Award will be presented and recognition will be given to the 2014 Distinguished Honorees and the Calogero Justice Award recipient.

All LBF Fellows in good standing will receive an official meeting notice with the board slate and a committee selection form in early March. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

CLASSIFIED NOTICES

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

RATES

CLASSIFIED ADS
Contact Krystal L. Bellanger at (504)619-0131 or (800)421-LSBA, ext. 131.

Non-members of LSBA
$85 per insertion of 50 words or less
$1 per each additional word
$20 for Classy-Box number

Members of the LSBA
$60 per insertion for 50 words or less
$1 per each additional word
No additional charge for Classy-Box number

Screens: $25
Headings: $15 initial headings/large type

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

DEADLINE
For the June issue of the Journal, all classified notices must be received with payment by April 17, 2015. Check and ad copy should be sent to:
LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES
To respond to a box number, please address your envelope to:
Journal Classy Box No. _____
c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for four positions. The firm offers competitive salary and benefits and an excellent work environment. 1) Healthcare/medical malpractice research and writing associate attorney — Three-plus years' medical malpractice defense experience; must have excellent research and writing skills; judicial clerkship experience preferred. 2) Healthcare/medical malpractice litigation attorney — Three-plus years' litigation experience; must have excellent organizational, case management and deposition skills; A/V rating and medical malpractice defense experience preferred. 3) Environmental litigation attorney — Minimum five-plus years' civil litigation experience with emphasis on complex litigation; A/V rating preferred; environmental, oil and gas and/or toxic tort experience preferred. 4) First-chair attorney/environmental law — Minimum eight-plus years' defense experience in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; environmental, oil and gas and/or toxic tort experience preferred. Those interested in these positions should visit the Curry & Friend, P.L.C., website at: *www.curryandfriend.com/careers*.

Mid-sized downtown New Orleans firm with diversified litigation and transactional practice seeks associate with two to four years' litigation experience (insurance defense preferred). Ideal candidate is eager to work in team environment on complex matters and prepared to take and defend depositions, draft and argue motions, and engage in investigative efforts. Salary and benefits competitive with downtown firms. Email résumé, transcript and writing sample to info@kingkrebs.com.

Suburban New Orleans AV-rated law firm seeks attorney to practice in the area of insurance coverage and defense. Minimum 10 years' experience required. Competitive salary and benefits package. All replies held strictly confidential. Send résumé to cbrechtel@grhg.net or fax (504)362-5938.

Duplass Zwain Bourgeois Pfister & Weinstock, A.P.L.C., is seeking an attorney with two to five years of insurance defense litigation experience. The candidate must have excellent academic credentials and work experience as an attorney. The position offers competitive salary and benefits. Interested candidates should email résumé with cover letter, transcript, writing sample and references to careers@duplass.com.

Metairie law firm (AV-rated) seeks an experienced attorney to join the firm with an established family law practice. The qualified candidate should possess excellent academic and professional credentials. Attorney compensation formula rewards productivity based on fees collected for work originated and work performed and includes attractive fringe benefits. The qualified candidate will have access to an experienced and well-trained legal support staff. Candidates wishing to bring their own support staff will be considered. Reply in strict confidence to Office Administrator, P.O. Box 931, Metairie, LA 70004-0931.

New Orleans office of multi-city law firm with an established oil and gas practice seeks associate attorney with two-three years' experience for position involving transactional, litigation and regulatory representation. Qualified candidates must exhibit strong academic and professional credentials and excellent attention to detail. Reply in strict confidence to C-Box 273, c/o Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130.

Phelps Dunbar, L.L.P., a regional law firm, is seeking an attorney for the firm's Environmental Practice based in the Baton Rouge office but will involve region-wide matters. The preferred candidate will have eight-plus years of experience in most facets of the environmental field, including regulatory counseling, real estate counseling and litigation. Must have excellent academic credentials (top 25 percent required). All outreach will be treated as strictly confidential. Interested candidates should send a cover letter, résumé and transcript to Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130, or email rachel.woolridge@phelps.com.

Phelps Dunbar, L.L.P., is seeking an attorney for the firm's Insurance and Reinsurance practice group in the New Orleans office. The preferred candidate will have four-plus years of experience in insurance coverage, litigation, strong research and writing skills, excellent academic credentials (top 25 percent required). The position offers competitive salary and benefits. Interested candidates should send a cover letter, résumé and transcript to Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130, or email rachel.woolridge@phelps.com.

Mid-sized law firm looking for an experienced paralegal to work in its New Orleans office on a broad range of general commercial litigation matters. Competitive salary will be commensurate with experience and qualifications. Email Rhonda Vizzini at rvizzini@blandpartners.com.

Shuart & Associates Legal Search & Staffing. In today's market, many law firms are growing by lateral acquisition of partners/practice groups. Some partners are choosing to relocate to firms where their unique strengths are valued and compensation competitive. This requires broad knowledge of the existing marketplace and insight into the culture of local law firms. Shuart & Associates has a proven track record in providing this service. All inquiries confidential. (504)836-7595. *www.shuart.com.*

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; email manfred@msternberg.com.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; 16 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.

Appellate briefs, motions, legal research. Attorneys: the appellate process is your last chance to modify or defend your judgment. Lee Ann Archer, former Louisiana Supreme Court clerk and Tulane Law honors graduate, offers your best chance, with superior appellate briefs, outstanding legal research, pinpoint record review and 20-plus years of appellate experience. Confidential; statewide service; fast response. Call (337)474-4712 (Lake Charles); email lee@leeaarcher.com; visit *www.leeaarcher.com*.

Need to relieve work stress in your law firm? Legal assistant/paralegal Lou Ann Scott offers legal services to lessen your work overload through *off-site employee assistance*, on an as-needed basis, with little or no supervision. For more information and a business proposal, contact Lou Ann Scott, (954)663-7016 or email scottlouann@gmail.com.

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 $400/month. Owner-broker: (985)867-0747 and (985)893-7480. Or email: lane.carson@att.net.

FOR RENT NEW ORLEANS

Offices available at 829 Baronne St. in prestigious downtown building, tastefully renovated. Excellent referral system among 35 lawyers. Includes secretarial space, receptionist, telephones, voice mail, Internet, conference rooms, kitchen, office equipment and parking. Walking distance of CDC, USDC and many fine restaurants. Call Cliff Cardone or Kim Washington at (504)522-3333.

Office space for lease, 631 Canal St., second floor overlooking historic Canal Street, 1,500 square feet, centralized location to courts. Contact Jack de la Vergne at (256)617-2519.

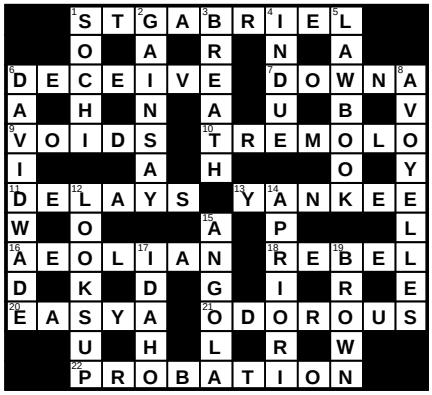
FOR LEASE OR SALE

Retiring attorney selling or leasing location of his established law practice in downtown Many, La. Turnkey ready, furnished. One-and-a-half blocks from courthouse. Minutes from Toledo Bend Lake and Cypress Bend Golf Resort. Perfect for attorneys wanting to relocate. Many options. Owner financing available. Serious inquiries only. (318)256-8858.

NOTICE

Notice is hereby given that Charles R. Whitehead III 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.

ANSWERS for puzzle on page 375.



INDEX TO ADVERTISERS

The Last WORD

By Edward J. Walters, Jr. | IPSE DIXIT: ...OH, BY THE WAY...

One of my favorite professors in law school was Judge Alvin Rubin. He taught an excellent course titled "Legal Negotiations." We were taught how to negotiate all sorts of cases back when THE LAWYERS negotiated cases themselves, without mediators, who were mostly unheard of in the 1970s. As we negotiated these cases, Judge Rubin had a hard-and-fast rule: If you didn't settle, you got a failing grade. Quite an incentive for settlement.

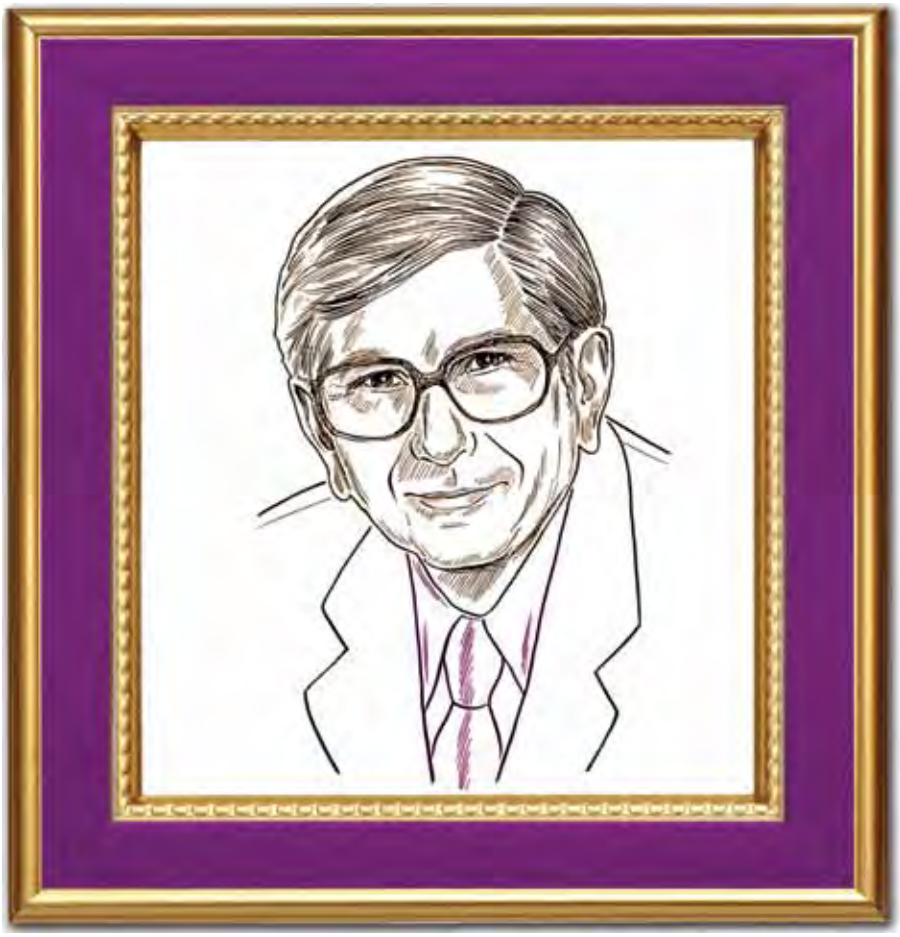
He was on the U.S. 5th Circuit at the time. Living in New Orleans, he would take the Greyhound bus (!) from New Orleans and a law student would pick him up at the bus station in downtown Baton Rouge and drive him to the law school. He would give his lecture and be driven back to the bus station for his return bus trip back to New Orleans. Such dedication is hard to believe.

Judge Rubin taught us many things that I have retained to this day. One of the best things he taught us was "a case that is prepared to settle will surely go to trial — a case that is prepared to try will surely settle." That adage has been true throughout the years of my practice.

The best advice Judge Rubin gave us, however, was something that, when he told it to us, seemed somewhat ridiculous and silly. In actuality, however, it has turned out to be one of the truest and most important pieces of advice he ever gave us.

He said, "If you are in a conversation with someone and you hear the words '. . . oh, by the way . . .,' be on guard and listen up. That thought didn't just pop into that person's head as he or she was leaving the room at the end of your conversation. What follows '. . . oh, by the way . . .' is THE reason that they came to speak to you. Whatever they were saying before that was merely a prelude to what comes after '. . . oh, by the way, . . .' — be on guard."

Next time you are in a conversation and you hear ". . . oh, by the way . . .," listen up. You will find that Judge Rubin was right, as usual.



Sketch of Judge Alvin Rubin provided by Louisiana State University Paul M. Hebert Law Center.

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

The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed. But Editor Barry H. Grodsky is broadening the scope of the section, including "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email Grodsky at bgrodsky@taggartmorton.com or LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

LSBA
ENDORSED

Louisiana State Bar Association
Serving the Public. Serving the Profession.

Gilsbar
Pro-op Exchange

ARE YOU A MEMBER?

Making good healthcare and benefit choices for you and your employees that are cost-effective has always been important. We can help save you time and money so you can get back to what you do best.

ELIGIBLE PRO-OP MEMBERS WILL RECEIVE THE FOLLOWING:

- Customized online benefits portal
- Compliance services required by new healthcare regulations
- Care Advocates services to help:
  - Explain your benefits
  - Provide cost comparisons
  - Locate a health provider
  - Resolve claims or billing issues
  - And much more!

WANT TO CONFIRM YOUR **ELIGIBILITY?**

CONTACT US TO LEARN MORE! *Today*

855.867.0057

gilsbar.com/pro-op

Accepting Referrals in Significant Personal Injury and Wrongful Death Litigation

Left to Right: Richard C. Broussard, Blake R. David, Jerome H. Moroux

Nationally acclaimed in the field of personal injury law, Broussard & David attorneys are consistently recognized for their achievements and results.

Through their representation of those in need, Richard Broussard and Blake David have received Martindale-Hubbell's highest possible rating in both legal ability and ethical standards, and have been named to the Super Lawyers list, along with Jerome Moroux, named to the Rising Stars list.

BROUSSARD & DAVID

We have moved – Our new location: 557 Jefferson St., Downtown Lafayette
888-337-2323 | 337-233-2323 | www.broussard-david.com

The History of the **Broussard & David Building**

For the last 200 years, the site of the historic "Moss Building" in downtown Lafayette was the epicenter of local activity in a growing Lafayette. Today the Moss Building plays an important role, once again, as downtown Lafayette enjoys a renewed vitality. **Broussard & David was eager to invest in an opportunity to restore one of Lafayette's landmarks and is committed to enhancing the downtown community** so that it is a great place to live, work and play.




Super Lawyers

Million Dollar Advocates Forum
Multi-Million Dollar Advocates Forum
The Top Trial Lawyers in America™

AV PREEMINENT 2014
Broussard & David

Richard C. Broussard: "AV" Bar Register of Preeminent Lawyers, Super Lawyers 2007-2015, National Board of Trial Advocacy, National Trial Lawyers Top 100 Trial Lawyers, Million Dollar Advocates Forum Top Trial Lawyers in America.

Blake R. David: "AV" Bar Register of Preeminent Lawyers, Super Lawyers 2012-2015, National Trial Lawyers Top 100 Trial Lawyers, National Trial Lawyers Top 40 Under 40, Million Dollar Advocates Forum, Multi-Million Dollar Advocates Forum Top Trial Lawyers in America.

Jerome H. Moroux: Super Lawyers Rising Stars 2014-2015, Million Dollar Advocates Forum Top Trial Lawyers in America