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Louisiana Pet Trusts and How to Avoid Some Hairy Situations

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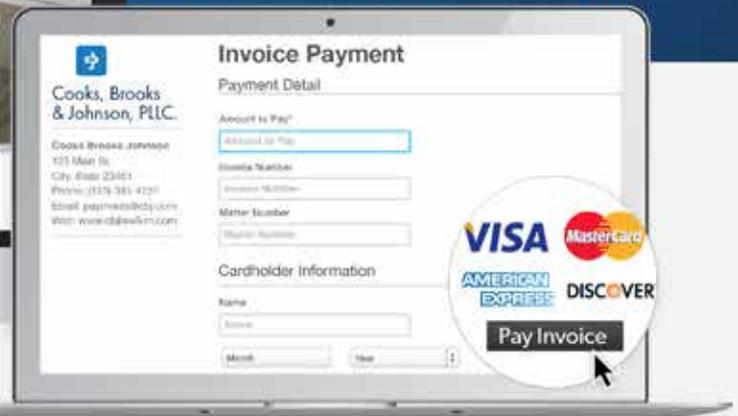
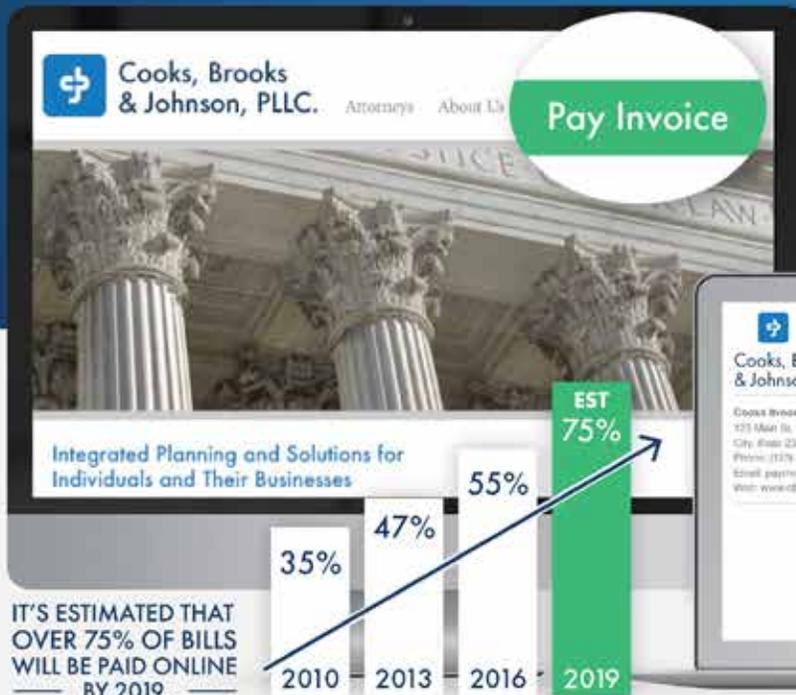
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Cover photo: "A Hairy Situation," Avery Island, Louisiana. Photo by Barbara Baldwin.

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By Alainna R. Mire

New Year and New Hopes: Bring on 2017!

Another year is in the history books . . . 2016 is over. The year 2016 brought with it a lot of turmoil, fear and sadness, but, hopefully, self-reflection, too. The year also saw mass shootings, high-profile criminal trials and too many natural disasters that affected our friends and family in Louisiana. But, the year 2016 also brought bouts of happiness and joy for some, including me.

Personally, 2016 allowed me to bring a new puppy, Beaux, into my house at a time when I was not looking. In 2016, my Dad's life was saved through an emergency bypass after a scheduled stent procedure tore an artery. 2016 also brought me closer to my friends, all of whom I truly care about.

Many are looking forward to 2017 and the hope of a year that begins much better than 2016 ended. My hope for the legal profession is that we continue to grow together as we are stronger together than when we are divided. The word "together" includes diversity in all aspects, including age.

The creation of the Senior Lawyers Division (SLD) a few years ago gives continued voice and involvement to the segment of our profession aged 65 and

Senior Lawyers Division Resources

The goals of the Senior Lawyers Division are to encourage and maximize participation of senior lawyers in the operation and betterment of the Louisiana State Bar Association, while providing services and support to the senior members of the bar.

To submit articles for *Seasonings*, Senior Lawyers Division quarterly e-newsletter:

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older. These members are automatically enrolled in the Division. The goals of the SLD are to encourage and maximize participation of senior lawyers in the operation and betterment of the Louisiana State Bar Association, while providing services and support to the senior members of the Bar.

The SLD also coordinates a quarterly e-newsletter titled *Seasoning*. *Seasoning* is cleverly composed of subsections titled sweet, savory, salty, spicy and tangy, and articles cover a variety of topics, ideas and opinions. The coordinators are always looking for more articles of interest to this group of members. If you are interested in submitting an article for consideration in a future issue of *Seasoning*, the following simple guidelines apply — articles must be relevant to being a senior lawyer in general, to being a senior lawyer in Louisiana, or to the Louisiana legal profession. Email me with your ideas or topics, alainna.mire@cityofalex.com.

To get a look at past *Seasoning* articles or for more information about the SLD, go to: www.lsba.org/goto/senior-lawyers.

So, to conclude . . . In the words of Lady Gaga, "[E]verybody's got to love each other. Stop throwin' stones at your sisters and your brothers."

Happy 2017!



By Darrel J.
Papillion

Walter Cronkite and a New Color Television Set

I will never forget when my world changed from black-and-white to color. I was about 8 years old. I came home around 5:30 in the afternoon from some school-related activity, and things were never the same. When my mind goes back to the early- to mid-1970s, everything seems to take on a green, orange or gold hue. Back then, new refrigerators and other kitchen appliances were typically gold or green, while carpets and sofas seemed to come in various shades of orange, gold, green and brown. Manufacturers used names like Harvest Gold, Rust or Avocado for these new appliance colors that replaced the plain white of the 1950s and 1960s. For those of you under 40, Google “Brady Bunch house interior” and you’ll understand what I mean.

On that afternoon, in our “autumn-toned” 1970s living room, my family’s 1960s model black-and-white television set had been replaced by a shiny, new Zenith color console. Granted, we were probably the last family in our social circle to get a color TV but, when we finally got one, my parents seemed to spare no expense. They bought the big, fancy wooden “Solid State-Space Command” console model that looked more like an armoire than a television set.

I will never forget who I first saw “in color” on our new TV. He was the most



trusted man in America in those post-Watergate days. His name was Walter Cronkite.

It’s hard to believe that, just a generation ago, almost all Americans got their news from a few basic — but highly trusted — sources. The news came mainly from local or national newspapers, several now-largely-extinct weekly news magazines, and radio and television news. We live in a very different world today. Americans get their news — real and sometimes not-so-real — from innumerable sources. The traditional press has been supplemented, and some might even say largely replaced in some quarters, by cable news, online news sources, blogs and social media. Sources of information are almost endless, and many Americans, at least those who follow the news, often seem to choose their news sources based

upon their political or social ideology.

Today, even for us — trained legal professionals who deal in facts and evidence — it is sometimes hard to separate “news” from “analysis.” Walter Cronkite once said, “I am a news presenter, a news broadcaster, an anchorman, a managing editor — not a commentator or analyst.” He said he felt “no compulsion to be a pundit.” Now, everyone seems to be a pundit. On today’s network and cable television news shows, after a few basic “facts” are “presented,” the analysts and commentators start “spinning.” As lawyers, we are keenly aware that if the story is a law-related one, within moments, so-called “network legal analysts” — usually lawyers who no longer practice, if they ever practiced, or who practice in a different jurisdiction and who generally have very few facts about the case at hand — are all-too-ready to give “expert” opinions on what a court or jury might do, often second guessing the decisions of the real lawyers and judges involved in the case. The viewing public is often confused, if not misled, by these talking heads.

When Uncle Walter, as Cronkite was sometimes called, ended his broadcast each night, as he did that particular evening on our new color television set, with his famous closing line, “And that’s the way it is,” we had a high level of confi-

dence that things really were as he had just described them. Today, we're not so sure. In those days, before "news" — both real and not-so-real — could be "shared" with a couple of clicks on social media or in a mass email, we all knew that "fake news" was limited to the "publications" on sale next to the chewing gum and candy bars in the grocery store check-out area.

Some believe basic American institutions, like the press, are in jeopardy. Maybe. Maybe not. Certainly, Cronkite and his colleagues did not always get it right, but today's news consumers must be more vigilant than a generation ago when Cronkite delivered the evening news. Indeed, some question whether other American institutions critical to our existence as an open and free society are also in jeopardy. Some contend a decline in civics education in our schools has made these challenges greater. Only 25 percent of upper elementary and secondary students are proficient in civics and government.

As Louisiana State Bar Association (LSBA) president, I am tremendously proud of the work the LSBA has done in the area of civics education. Every year, scores of Louisiana lawyers and judges volunteer their time or treasure to support the Louisiana Center for Law and Civic Education, an important program that promotes the teaching of legal and civics concepts in Louisiana schools. This important educational arm of the LSBA works to teach students about legal rights, responsibilities, and, perhaps most importantly, the role of a responsible citizen in our democracy. The program focuses on critical thinking and potential real-life legal situations designed to help students better understand how our system of government works and the principles on which it is based.

Walter Cronkite may be gone, but hopefully our children's educations — and our own — will help us all understand, and when necessary affect, "the way it is" in our American democracy for generations to come. For more information about how you can participate in this important project, visit online: www.lalce.org.



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Louisiana Pet Trusts and How to Avoid Some



Situations

By Christian N. Weiler

Many people consider their pets as more than companion animals. Many consider their pets as family members. In August 2015, the Louisiana Legislature enacted La. R.S. 9:2263 titled “Trust for the Care of an Animal” or, more commonly referred to as, a “Pet Trust.” Louisiana was one of the last remaining states to enact a Pet Trust law (currently 49 states plus the District of Columbia have enacted Pet Trust laws).

According to the American Pet Products Association (APPA), it is estimated that this year the pet industry will reach \$62 billion in the United States. Also according to the APPA, 65 percent of U.S. households own at least one pet.

This author has had personal experience with several estate-planning clients who were concerned about the well-being and care of their pets upon death. Now, the Louisiana Legislature has offered a solution. While some may think considering

a pet in estate planning unnecessary, for some clients, a legal estate planning document ensuring care for their pet after death provides peace of mind and a defined mandate for future caregivers.

Background: Louisiana Pet Trust

The controlling provisions of a Pet Trust are found in La. R.S. 9:2263. A Louisiana inter vivos or testamentary trust may be created to provide for the care of one or more animals in existence on the date of the creation of the trust. The trust instrument should designate a caregiver for each animal. An animal’s caregiver will have physical custody of the animal after the death of the owner(s) and will bear responsibility for the animal’s care. If a caregiver is not designated or if the designated or appointed caregiver is unable or unwilling to serve, the trustee is

free to appoint a caregiver or he/she may act as the caregiver. The trust instrument also may designate a person to enforce the provisions of the trust. If a person is not designated to enforce the provisions of the trust or if the designated person is unable or unwilling to do so, the caregiver, the trust settlor or any of the settlor’s successors may enforce the trust terms.

Under the Pet Trust provisions, trust assets may be used only for the care of each animal and for compensation and expenses of the trustee and the caregiver. Louisiana law indicates “reasonable compensation” may be afforded to the trustee and the caregiver. A Louisiana court may determine that the value of the trust “substantially exceeds the amount required to care for each animal and for reasonable compensation and expenses of the trustee and the caregiver.” Upon such a determination, the court may partially terminate the trust, but only as to the excess assets held in trust.

A Pet Trust terminates upon the death of the last surviving animal provided for in the trust. The trust instrument may designate a person to receive the trust's principal upon a partial or complete termination. In the absence of a designation, the trust assets are distributed to the settlor, if living, or to the settlor's successors upon termination.

Unless otherwise provided for, a Pet Trust shall be governed by the provisions of the Louisiana Trust Code. Consequently, a trustee's fiduciary duty and obligation to render an accounting remains.

According to the Comments found in La. R.S. 9:2263, the Pet Trust provisions are modeled after similar provisions in the Uniform Trust Code, the Uniform Probate Code and laws from a variety of other states.¹ The Comments also state that a Pet Trust "creates a unique exception to a foundational principle of Louisiana law and allows an animal to serve as the beneficiary of a trust, through a mechanism sometimes referred to as a 'statutory pet trust.'" The Comments to the Pet Trust provision also state: "This Section contemplates the existence of a tetra partite, rather than tripartite relationship, under which there exists a settlor, trustee, caregiver, and beneficiary."

However, this author questions some of these Comments and found material differences between the various state laws. In some states, there is no mention of a caregiver in the applicable law and it is permissible for the trustee to retain one or more persons to assist with animal care and well-being. If a Pet Trust names a caregiver, is that caregiver not also a beneficiary of the Pet Trust since he/she receives funding needed for the day-to-day maintenance and care of the pet? The pet is presumed to be a beneficiary under the Comments; however, this animal has no other rights under Louisiana law. Additionally, this provision now found in the Trust Code seems to conflict with the law of persons.² Furthermore, as discussed below, while the Louisiana Trust Code now provides for an animal to be a beneficiary, there is no federal law to the equivalent, resulting in some uncertain tax consequences.

A Pet Trust can be funded with any-

thing from cash and investment assets, to retirement benefits and life insurance. The only limitation on funding a Pet Trust is that an excessive amount of funds may be prohibited from being transferred to the Pet Trust. As stated above, if a court finds that the value of the trust "substantially exceeds" the amount required to care for each pet and for realistic compensation and expenses of the trustee and caregiver, the court may terminate the trust as to the excess portion. However, what exactly is meant by "substantially exceeds"? Guidance for developing an answer to excessive funding would likely require knowledge on the life expectancy of the pet and the average cost of maintenance for that type of animal. Furthermore, drafting a Pet Trust with an explanation of the settlor's maintenance and care desires, including a description of the pet's current lifestyle, will presumably help to establish the amount of appropriate funding of the Pet Trust. How a trust is to work for distribution purposes is as varied as the funding mechanism. A Pet Trust is really only limited by a client's imagination or the attorney's creativity.

What are the Tax Implications of a Pet Trust?

Pet Trusts are funded with assets transferred into the trust to provide for the care and well-being of the animal. While this transfer or funding does not trigger income tax, the earnings of this trust are taxable. If the trust is a revocable inter vivos trust, it would be considered a grantor trust for federal income tax purposes, resulting in taxation to the trust's settlor. If the trust is irrevocable, the trust would be considered a "complex trust" under federal income tax laws and distributions from the trust would be taxable, presumably to the named caregiver. Consequently, a Pet Trust could result in unintended consequences to the pet's caregiver.

Alternatively, if the animal is deemed as the trust beneficiary, all trust income, whether distributed or not, is taxed to the trust itself; however, trusts usually pay income taxes at a higher rate of tax. This approach was recognized by the IRS in Revenue Ruling 76-486.³ The future income tax obligations of the trust or care-

taker should be taken into consideration when establishing and funding the trust.

Based on the Internal Revenue Code, the IRS ruled in Revenue Ruling 78-105⁴ that charitable remainder trusts which name animals as income beneficiaries or pay income for the benefit of animals will not qualify for a charitable federal estate tax deduction. The IRS ruled on several scenarios, with the primary thrust limiting a trust beneficiary as a "person" which includes an individual, trust or other company and excludes animals.

Conclusion

The overall goal of this revision to the Louisiana Trust Code by the Legislature is intended to honor the legality of a settlor's bequest at his/her death, or in life. Louisiana-domiciled clients concerned about the well-being of their pets after their deaths can now consider a Pet Trust in their estate plans. The Pet Trust provision provides for personalization or customization and merely acts as a basic framework for the attorney drafting such a trust, whether it is an inter vivos or a testamentary trust. When advising clients, however, attorneys should make them aware of the potential ramifications of such a trust, particularly the unique and complex federal tax implications.

FOOTNOTES

1. See, Comment (a) citing to: Unif. Trust Code § 408; Unif. Prob. Code § 2-907; 12 Del. C. § 3555; Cal. Prob. Code § 15212; N.C. Stat. § 36C-4-408; Tex. Prop. Code Ann. § 112.037; Fla. Stat. Ann. § 736.0408.

2. La. Civ.C. art. 24 *et. seq.*; see Comment (b).

3. Rev. Rul. 76-486, 1976-2 CB 192.

4. Rev. Rul. 78-105, 1978-1CB 295.

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Louisiana Supreme Court Interpreter Training and Certification Program:

Attorneys Can Access List of Certified
and/or Registered Interpreters Online

By J. Richard Williams



Does your practice involve clients, parties, witnesses or others who have a limited English proficiency? Do you need to utilize the services of a qualified court interpreter? The Louisiana Supreme Court provides and maintains a list of qualified court interpreters for use by courts, attorneys and other legal professionals. This regularly updated interpreter list is a result of the Supreme Court's interpreter training and certification program and can be found under the "Court Interpreters" link on the Louisiana Supreme Court's website: www.lasc.org/court_interpreters/court_interpreters.asp.

Currently, Louisiana has approximately 127 "Certified" and/or "Registered" court interpreters in the languages of Amharic, Arabic, French, German, Haitian Creole, Italian, Laotian, Mandarin, Polish, Portuguese, Spanish, Thai, Vietnamese and American Sign. While recognized as Certified or Registered by the Supreme Court, these interpreters are not court employees.

Program Creation

The Louisiana Supreme Court interpreter training and certification program was created in 2012 and was funded in part by a grant from the State Justice Institute. This grant provided for the creation of training material, judicial education for judges and court administrators, and the development and implementation of a series of court interpreter training courses and testing around the state. The program has developed to include resources such as a bench card for judges regarding court interpreters, the adoption of an interpreter code of ethics, and advanced skills classes for court interpreters. Louisiana Supreme Court staff participates in the National Center for State Courts' Council for Language Access Coordinators (CLAC), a group of language access coordinators from various state supreme courts. This group shares ideas and resources, including

lists of qualified interpreters, particularly in rare languages.

Historically, in 1813, Louisiana Gov. William C.C. Claiborne approved an act passed by the Louisiana Legislature "to organize the supreme court of the state of Louisiana, and to establish courts of inferior jurisdiction." This act included Section 24, a provision regarding court interpreters:

And be it further enacted, that the district judges may, when they shall deem it necessary, appoint in each parish within their jurisdiction an interpreter of the English and French languages, who shall take the oath required by law, and be entitled to the emoluments allowed by law for similar services.

Two hundred years later, in accordance with Supreme Court policy adopted in 2013, Louisiana court interpreters maintain one of two levels of qualifications, either the base level of Registered or the advanced level of Certified. An interpreter is added to the Louisiana Supreme Court's list of Registered court interpreters (in the language tested) after completing a two-day training class, passing a standard written English examination, passing a written translation examination, agreeing to be bound by Part G, Section 14 of the General Administrative Rules for all Louisiana Courts (the Code of Professional Responsibility for Language Interpreters) and passing a criminal background check.

Certification is the highest-level court interpreter in the Louisiana judicial system. To become a Certified court interpreter in Louisiana, a candidate must already be a Registered court interpreter and additionally must pass the National Center for State Courts (NCSC) oral certification exam as administered by the Louisiana Supreme Court in accordance with NCSC testing protocols. A court interpreter who has passed the certification exam in another state may apply to the Louisiana Supreme Court for

reciprocity. While registration indicates a basic level of language proficiency, certification as a court interpreter indicates a high skill level and that the interpreter has successfully passed tests in sight translation, consecutive interpreting and simultaneous interpreting. Certification is a generally recognized standard in most state court systems.

American Sign Language interpreters are not required to take a written translation exam but instead must provide proof of a valid Specialist Certificate Legal (SC:L) or a national generalist certificate from the Registry of Interpreters for the Deaf (RID).

Modes of Court Interpreting

Qualified spoken-language interpreters are able to work in the three primary modes of court interpreting — simultaneous interpretation, consecutive interpretation and sight translation.

Simultaneous interpretation is the rendering of interpretation continuously at the same time someone is speaking and is used when the Limited English Proficient (LEP) person is not part of the conversation (*e.g.*, opening statements, jury instructions).

Consecutive interpretation is the rendering of statements from the source language into the target language after a pause between each completed statement and is used when the LEP person is part of the conversation (*e.g.*, witness testimony, plea colloquy).

Sight translation involves reading a document written in one language while translating it orally into the other, or target, language (*e.g.*, pleadings, forms and written statements).

For rare languages, or languages for which there is not a qualified interpreter on the Supreme Court's interpreter list, Louisiana Supreme Court staff can contact members of CLAC to find a qualified interpreter in the rare language. Often these rare-language interpreters are available to render their services remotely via video or audio. The use of audio and video remote interpreting is

continually expanding and is being utilized by a number of courts across the country for certain types of proceedings. The Louisiana Supreme Court received additional grant funds to study the use of audio and video remote interpreting and to explore such use in Louisiana courts.

Laws and Court Rules Regarding Court Interpreters

Several provisions from Louisiana law and court rules discuss court interpreters.

Louisiana Code of Evidence Article 604 states, “An interpreter is subject to the provisions of this Code relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.”

To establish the interpreter’s qualifications for the court’s record, the judge may voir dire the interpreter by asking questions about training, qualification, and proficiency in both languages.

In **Louisiana District Court Rules: Chapter 5, Courtroom Use, Accessibility, and Security**, Rule 5.1, Accessibility to Judicial Proceedings, it states:

(a) The facilities, services, and programs of the court shall be readily accessible to persons with disabilities. Attached as Appendix 5.1A is a form that may be used to request reasonable accommodations extended under the ADA. Attached as Appendix 5.1B is a form that may be used to request an interpreter. Attached as Appendix 5.1C is a form that may be used as an interpreter’s oath.

(b) In addition to the above requirements, courts having fifty or more employees shall develop, promulgate, and maintain a problem-resolution process and designate a responsible court officer or employee to coordinate access

to court programs and services by persons with disabilities and to resolve complaints regarding lack of access for such persons.

After being qualified, and before rendering interpretation services, an interpreter should be sworn in by the Court in accordance with the **Interpreter’s Oath** found in District Court Rule 5.1, Appendix 5.1C:

Do you solemnly swear or affirm that you will accurately, completely and impartially make a true interpretation to the person needing interpretation services of all the proceedings of this case in the language understood by said person, and that you will repeat, in as literal and exact manner as possible, said person’s answers and statements to the court, counsel or jury, to the best of your skill and judgment?

In **Louisiana Code of Criminal Procedure Article 25.1**, it states:

A. If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony.

B. The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount.

In **Louisiana Code of Civil Procedure Article 192.2**, it states:

A. If a non-English-speaking person who is a principal party in interest or a witness in a proceeding

before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter to interpret or translate the proceedings to him and to interpret or translate his testimony.

B. The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount, and that amount shall be taxed by the court as costs of court.

Conclusion

As language needs in the Louisiana legal and judicial system evolve and the corresponding need for court interpreters is assessed, the Louisiana Supreme Court will continue to respond to these needs by regularly offering orientation classes, advanced skills classes and testing in an effort to continually update the roster of qualified court interpreters.

For a list of upcoming classes, registration and other forms, the list of Registered and Certified court interpreters by language, and additional information, see the “Court Interpreters” link on the Louisiana Supreme Court website at: www.lasc.org.

For more information on the court interpreter program, contact Deputy Judicial Administrator J. Richard Williams at (225)382-3182 or email rwilliams@lasc.org.

J. Richard Williams serves as Deputy Judicial Administrator for the Louisiana Supreme Court and directs the Louisiana court interpreter program. A graduate of Texas A&M University and Louisiana State University Paul M. Hebert Law Center, he is a fourth-generation Williams’ family attorney. (rwilliams@lasc.org; 1600 N. 3rd St., 4th Flr., Baton Rouge, LA 70802)



Code of Professional Responsibility for Language Interpreters

Court interpreter ethics and protocol are addressed in the interpreter code of ethics, known as the “Code of Professional Responsibility for Language Interpreters.” The provisions of the 10 canons in this ethics code are taught to the court interpreters in the initial orientation class and court interpreters must sign a statement that

they agree to be bound by this code in order to reach the status of Registered court interpreter. Attorneys, judges and others who utilize court interpreters should be familiar with this code of ethics and should be aware of what the court interpreter may, and may not, do in the role.

Supreme Court Rules, Part G, Section 14. Code of Professional Responsibility for Language Interpreters:

Canon 1: Accuracy and Completeness. Interpreters shall render a complete and accurate interpretation, translation, or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Canon 2: Representation of Qualifications. Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Canon 3: Impartiality and Avoidance of Conflict of Interest. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias or impropriety. Interpreters shall disclose to the presiding judge any real, perceived or potential conflict of interest.

Canon 4: Professional Demeanor. Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Canon 5: Confidentiality. Interpreters shall protect the confidentiality of all privileged and other confidential information.

Canon 6: Restriction on Public Comment. Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential, except upon court approval.

Canon 7: Scope of Practice. Interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to the court, counsel, or individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Canon 8: Assessing the Reporting Impediments to Performance. Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the presiding judge.

Canon 9: Duty to Report Ethical Violations. Interpreters shall report to the presiding or administrative judge any effort to influence or impede the performance of their duty or their compliance with any legal requirement, provision of this code, or other official policy governing court interpreting and legal translating.

Canon 10: Professional Development. Interpreters shall continually improve their skill and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Blue Jeans Network Offers LSBA Members the Videoconferencing Convenience to Meet, Collaborate and Reach Goals

The Louisiana State Bar Association (LSBA) strives to identify and develop ways in which technology can assist members' participation in committee meetings, section meetings and other Bar-governance activities. The LSBA has taken a great leap forward in this area by partnering with the Blue Jeans Network — a provider of cloud-based, videoconferencing services. The Blue Jeans service offers LSBA members a convenient way to meet, collaborate and further the association's goals through widely available videoconferencing. The service is available to members in their offices and on-the-go, and without the hassle and expense of installing and maintaining a room-based videoconferencing system.

Following are some details about the service and how it can be used.

What is Blue Jeans?

Blue Jeans is a virtual conferencing system (similar to products like Go-To Meeting) that allows users to host and join video and tele-conferences from a variety of devices. Blue Jeans's belief is that "video collaboration should be as flexible as your favorite pair of jeans."¹ The service achieves this goal by being platform and device "agnostic." This means that users can connect to Blue Jeans videoconferences in numerous ways — through any number of conference-room videoconferencing systems, web browsers, tablets or mobile devices. So, members can participate in a Blue

Jeans meeting not only in the traditional conference-room setting, but also from their offices or while traveling.

How Do I Set Up a Blue Jeans Videoconference?

Setting up a Blue Jeans videoconference can be accomplished in two ways.

Reserve on the Web: LSBA members may reserve a Blue Jeans videoconference online through the LSBA's website, www.lsba.org. On the home page, choose the "Meeting RM / Video Conf." tab. From there, click on the "Meeting Room Manager" link.² Members also may reach the "Meeting Room Manager" by clicking the "Calendar" link on the LSBA home page.

Once in the "Meeting Room Manager" application, click the "Meeting Request Form" and input the particular details of the meeting — date, time, location and name of host.³ Note that "Location" will default to "Meeting LSBA Bar Center." The dropdown menu includes three videoconferencing options — Louisiana Bar Center; Offsite Office, no room required; and Designated Bar Associations. The dropdown menu below it ("Room Requested") will allow selection of the venue for the meeting. Videoconferences may be conducted in the Louisiana Bar Center's New Orleans conference rooms, at three local Bar offices in the state⁴ or remotely at any other location chosen.⁵ If reserving a room online, remember to check the "Video Conference" box in the "Equipment

Needed" section.

Reserve via phone: Although online scheduling is preferred, members may contact their local Bar Center by phone if they are having trouble using the website or need to set a meeting on short notice.⁶

First-come/first-served; LSBA events take precedence: Blue Jeans videoconferences will be scheduled on a first-come/first-served basis, with LSBA events, such as committee meetings, taking precedence over any other conferences scheduled by members. The Blue Jeans system is capable of hosting up to 10 simultaneous meetings (each with up to 100 participants).

What Happens After I Set Up My Videoconference?

Once the videoconference is scheduled, LSBA staff will send an email invitation to the host that can be forwarded to the other meeting participants (hosts also may create and send participants an electronic calendar invitation that includes the meeting information).

The invitation contains information that will allow hosts to participate in the meeting as they choose:

► A link to a URL that will allow participants in the meeting to use a web browser, such as <https://bluejeans.com/922189459?ll=en>;

► Instructions on how to access the meeting using either a traditional, room-based videoconferencing system or other connection options like desktops or

mobile devices;⁷ and

► A dial-in number and meeting passcode should hosts want phone participation.

On the day of the conference, there are several ways for members to participate:

► If the videoconference is at the Louisiana Bar Center or at a local Bar office, arrive a few minutes prior to the appointed time. The Bar staff will have set up the videoconference system.

► If there is access to the room-based videoconferencing system, use the information from the invitation email to connect to the meeting.

► If meeting participants plan to use a web browser, click on the link in the invitation email. Note: If you choose this option and want the other meeting participants to see you, you'll need a webcam that's either built into your computer or connected to it.

► If meeting participants are not in their offices (or don't have a webcam), they can use their iPhone, iPad or Android-based device. Participants should download the Blue Jeans app, enter the Meeting ID (from the invitation email) and their name, and they are ready to go.⁸

► Finally, for members who can't videoconference but still want to participate in a meeting, they can dial in as they would for a conference call. Use the phone number and Meeting ID provided in the meeting invitation email.

Blue Jeans Features and Helpful Hints

Once members are connected to a videoconference, Blue Jeans provides a number of ways to share information and make the meeting experience more productive.

Room and computer-based users have the option to share their computer screens with other meeting participants. The Blue Jeans apps for Apple and Android-based devices also have options for sharing photographs, documents and webpages contained on those devices.

Moderators of a Blue Jeans meet-

ing will have access to additional features designed to streamline the meeting experience. One important feature is the moderator's ability to mute all participants' microphones, requiring speakers to hold the spacebar and unmute themselves whenever they wish to speak. This can be particularly useful in large meetings, where the likelihood of speakers interrupting each other or background-noise interruption is greater. Blue Jeans meeting participants also have the option to mute their microphones and turn off their video stream. In fact, the LSBA technical staff recommends muting your microphone during a conference even when the moderator does not use this setting.⁹

Conclusion

Whether you're just growing interested in participating in Bar governance or have been doing so for some time, the LSBA hopes you'll find the Blue Jeans service makes that participation more convenient and productive. The service is simple to set up and use, and there are helpful instructional videos available both on the Blue Jeans¹⁰ and LSBA¹¹ websites. Members of the LSBA's technical staff, including IT Director Tony LaVerde, are encouraging the use of the service and are ready to answer any questions you may have about it.¹²

The Blue Jeans service enables LSBA members from the four corners of Louisiana (and beyond) to participate actively in leadership of the Bar — and it allows them to do so without leaving their offices, homes or even their vacation destinations. Videoconferencing technology makes interaction more personal and useful than an ordinary telephone conference. And, with Blue Jeans, it's just as simple.

If you have not participated in an LSBA committee or section because of time or travel constraints, Blue Jeans is for you.

FOOTNOTES

1. <http://bluejeans.com/works-with>.

2. If you have any other problems working through the "Meeting Room Manager" ap-

plication, there is a "How To" guide with helpful information located on the "Bar Center Services" page at: <https://www.lsba.org/Members/BarCenterServices.aspx>.

3. Note that if you have any problem accessing one of the dropdown menus on the "Meeting Request Form," the simplest solution is to open the site in Internet Explorer and add it to "Compatibility View." This can be accomplished by going to the "Meeting Request" page, clicking to open the "Tools" menu, then choosing "Compatibility View Settings." Once you are in the "Compatibility View" window, make sure the name of the site is in the box and click "Add." If you have any additional questions, consult the "How To" guide or contact the LSBA's IT Director Tony LaVerde. He can be reached by phone at (800)421-5722, ext. 117, and by email at tonylaverde@lsba.org.

4. You can choose from three rooms at the Louisiana Bar Center in New Orleans (Founders, Lafayette and Presidents). Rooms in the Baton Rouge, Lafayette and Shreveport Bar offices are available, but must be requested through the local bar association. Each room has the capacity to host a videoconference.

5. If you will not be conducting your meeting at the Louisiana Bar Center or another Bar office in the state, choose "Offsite Video Meeting."

6. Contact people for Blue Jeans scheduling assistance at the various Bar offices are: (1) New Orleans, Mike Montamat, Operations Coordinator, (800)421-5722, ext.140; (2) Baton Rouge, Ann Gregorie, Executive Director, (225)214-5563; (3) Lafayette, Josette Abshire, Executive Director, (337)237-4700, ext. 105; and (4) Shreveport, Dana Southern, Executive Director, (318) 222-3643, ext. 3.

7. For a list of Blue Jeans-compatible room videoconference programs (as well as web browsers and other compatible devices), visit the Blue Jeans website at: <http://bluejeans.com/works-with>.

8. Some of the Blue Jeans mobile apps have spaces for the entry of a meeting "passcode." Unless a passcode is provided to you in the invitation email, entering one is not necessary.

9. The Blue Jeans default video setting is to emphasize (by enlarging) the video of the person currently speaking. Background noises (such as a ringing phone, typing on a keyboard or someone entering your office) can cause the video perspective to shift, which can sometimes be distracting. You also can address this issue by making the video images on the screen static, which is one of the display options available.

10. Blue Jeans support videos can be found at <http://bluejeans.com/support>. For particular instructions with respect to participating via web browser, try <http://bluejeans.com/support/video/joining-meeting-using-browser-access>. For those wanting to use an iPhone or iPad, try <http://bluejeans.com/support/video/bluejeans-iphone-and-ipad-app>. Blue Jeans also has a toll-free support telephone number: (800)403-9256.

11. www.lsba.org/BarGovernance/vc.aspx.

12. For LaVerde's contact information, see note 3, *supra*.

Book Review

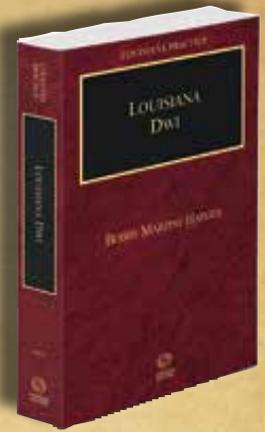
Louisiana Practice: Louisiana DWI

By Bobby M. Harges

Reviewed by R. Judson Mitchell, Jr.



Bobby M. Harges



Bobby M. Harges makes an invaluable contribution to the field of Driving While Intoxicated (DWI) laws in Louisiana with his newly published *Louisiana Practice: Louisiana DWI* (2016 ed., Thomson Reuters, 678 pages). This unique volume provides a comprehensive, scholarly overview of Louisiana DWI statutes and regulations, along with valuable practice-related tips.

Prior to the publication of this book, attorneys wanting to get up to speed on DWI had to rely on the statutes alone, old CLE manuals and/or advice from wizened veterans at the courthouse. Now, all information relevant to prosecuting, defending or judging a DWI case can be found in this one Louisiana-specific treatise.

The book is ideal for lawyers new to DWI practice who are looking to learn this complicated field and indispensable for experienced practitioners who seek guidance on complex, technical areas. Indeed, this reviewer used a draft copy of Harges' chapter on field sobriety tests in a recent successful DWI defense and can attest personally to the book's indispensability for the serious DWI practitioner.

Harges, a law professor at Loyola University College of Law in New Orleans for more than two decades, structured the book to provide the most efficient understanding of DWI laws and regulations, presenting educational (and rather interesting) information relevant for parties on either side of a DWI case. The book is clearly intended to serve as a neutral and reliable source, beneficial to all practitioners regardless of whether they are looking to use DWI provisions as a sword or as a shield.

The book is large in scope, covering virtually every issue arising under Louisiana DWI laws. It touches upon many "non-legal" and scientific areas that are useful, if not essential, for understanding the DWI law practice. The opening chapters thoroughly cover the statutes and case law related to driving while intoxicated and implied consent. From there, Harges provides an illuminating explanation of the rules relating to suspension of driving privileges, a subject that is surely arcane but of vital importance to those facing a DWI. Chapters 4 and 5 provide a detailed look at the major and minor offenses related to DWI, such as vehicular homicide and hit-and-run. After a thorough discussion in Chapter 6 of search and seizure as it relates to this topic, Harges then provides a masterful chapter dealing with field sobriety tests which, along with probable cause, are the areas in which most DWI cases are won and lost. In addition to providing the history and scientific background of field sobriety testing (FST), Harges provides specific explanations of how each part of the field test works (e.g., there is a thorough discussion of the Horizontal Gaze Nystagmus Test and related criticisms) and tips to help practitioners determine the validity of the FST in a given case. The book closes with a helpful chapter on expungements and DWI, which includes relevant forms.

Harges' professorial skills and experience are apparent from the organization and structure of the book. He opens each chapter with the basics, i.e., the statutory language. Every DWI statute is closely scrutinized so that any unfamiliar word or phrase deserving explanation is subsequently defined within the meaning of

each statute. These clarifications and additions are detailed and, oftentimes, engaging. Individual sections of *Louisiana DWI* thoroughly examine how the different statutes and rules governing DWI are applied in Louisiana, offering commentary on most recent court decisions, laws and regulations. By ensuring uniformity of structure and information covered in relation to various DWI topics throughout the book, Harges made the book practical and user-friendly. Regardless of whether readers are looking for a little or a lot of information on a specific DWI regulation, they will find it effortlessly. To the extent possible, Harges manages to turn somewhat dry material into an arresting and educational treatise suitable for any audience.

Louisiana DWI is a remarkable treatise on DWI laws in Louisiana and is sure to become the authoritative reference on the subject in the years to come. As the first of its kind, the book is a significant achievement and deserves close attention. This reviewer highly recommends *Louisiana Practice: Louisiana DWI* to any practitioner, layperson or a student of DWI laws for contextual information, analysis and understanding of this area of law. The book is available for purchase online at: <http://legalsolutions.thomsonreuters.com>.

R. Judson Mitchell, Jr. is a clinical professor at Loyola University College of Law in New Orleans. He focuses in the fields of criminal defense and the application of technology to law practice. (jmitchel@loyno.edu; 540 Broadway, New Orleans, LA 70118)



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2016 Secret Santa Project a Success! 689 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 2016 Secret Santa Project. This was the 20th year for the Project.

Because of the generous participants throughout the state — from “adopting” Santas and from monetary donations — 689 children, represented by 16 social service agencies in five Louisiana parishes, received gifts.

These children were represented by St. Bernard's Battered Women's Program, Methodist Home for Children, Southeast Advocates for Family Empowerment, Incarnate Word Early and Preschool Head Start, CASA Jefferson, Metropolitan Center for Women and Children, Children's Special Health Services Region 9, CASA New Orleans, Gulf Coast Social Services, Boys Hope Girls Hope, CASA Lafourche, Children's Bureau, North Rampart Community Center, JEFFCAP Head Start, CASA Terrebonne and Eden House.



La. Board of Legal Specialization Sets Dates for Certification Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting requests for applications for certification in six areas — business bankruptcy law, consumer bankruptcy law, appellate practice, estate planning and administration, family law and tax law.

The application period for appellate practice, estate planning and administration, family law and tax law certification is underway and will continue through Feb. 28, 2017.

Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted from Jan. 1, 2017, through Sept. 30, 2017.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association (LSBA) member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that

each year a minimum percentage of the attorney's practice must be devoted to the area of certification sought, passing a written examination to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review will 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. LSBA members should refer to the LBLS standards for the applicable specialty for a more detailed description of the requirements for application.

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

- ▶ Appellate Practice — 18 hours of appellate law.
- ▶ Estate Planning and Administration Law — 18 hours of estate planning law.

- ▶ Family Law — 18 hours of family law.
- ▶ Tax Law — 18 hours of tax law.
- ▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the LBLS 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).

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: <https://www.lascmcle.org/specialization/>.

Introduce a new partner to your law firm

Joining Louisiana Association for Justice
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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 for our clients' rights in the legislature to providing second-to-none networking opportunities, LAJ works 24/7 to help members succeed.

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

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

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

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



442 Europe Street, Baton Rouge, Louisiana 70802-6406

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2017-18 Bar year. Louisiana State Bar Association (LSBA) President-Elect Dona Kay Renegar 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 Monday, April 17. The current committees are listed below.

Access to Justice Committee

The committee works to ensure 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.

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 Judges and 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.

Ethics Advisory Service Committee

The committee encourages ethical lawyer conduct by supporting the LSBA's Ethics Counsel in his/her provision of informal, non-binding ethics opinions to members of the Bar.

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.

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.

Outreach Committee

The committee develops and implements sustained outreach to local and specialty bars throughout the state and increases awareness of the member services and benefits provided by the LSBA. The committee encourages member participation in all aspects of the LSBA and facilitates participation through the use of technology and other feasible alternatives.

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.

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.

Transitioning Lawyers Committee

The committee safeguards the public by educating members of the legal profession about age-related disabilities. The committee also helps attorneys suffering from impairments that prevent them from practicing law competently to transition out of the practice of law with dignity.

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 2017-18 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
- Alcohol and Drug Abuse
- Bar Governance
- Children's Law
- Client Assistance Fund
- Community Action
- Continuing Legal Education Program
- Criminal Justice
- Diversity
- Ethics Advisory Service
- Group Insurance
- Legal Malpractice Insurance
- Legal Services for Persons with Disabilities
- Legislation
- Medical/Legal Interprofessional
- Outreach
- Practice Assistance and Improvement
- Committee on the Profession
- Rules of Professional Conduct
- Transitioning Lawyers
- Unauthorized Practice of Law

Response Deadline: April 17, 2017

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 separate sheet) experience relevant to service on the chosen committee(s).

JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM

March, 2017

To Members of the Bar,

The Louisiana Center for Law and Civic Education (LCLCE) is partnering with the Louisiana State Bar Association and the Louisiana District Judges Association to promote the Lawyers in the Classroom and Judges in the Classroom programs.

Our goal is to compile a pool of volunteer professionals from the legal community who are willing to go into classrooms and present on law related topics. Students will benefit from having members of the legal community share their practical and real world experiences.

The Lawyers in the Classroom and Judges in the Classroom programs have materials available on a wide variety of topics in the area of civics and law related instruction, appropriate for elementary, middle and high school levels. Contact the LCLCE for an illustrative listing of the many topics/lessons that may be used to assist in classroom presentations and are available to judges and attorneys upon request.

If you would like to volunteer to participate in the Lawyers in the Classroom and Judges in the Classroom programs, please complete and return the attached form. The LCLCE will attempt to match your schedule with a classroom in your area that has requested a presentation.

If you have any questions, please utilize the contact information found on the enrollment form. We look forward to hearing from you.

Sincerely,



Lawrence J. Centola III
President
Louisiana Center for Law
and Civic Education



Darrel J. Papillion
President
Louisiana State Bar Association



John J. Molaison
President
Louisiana District Judges
Association



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.



JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.



Volunteer to Visit a Classroom in your Area!

Would you like to make a law-related presentation in a classroom in your area?

Name of Judge/Lawyer: _____

Address: _____

City: _____ Zip: _____

Primary Email Address: _____

Secondary Email Address: _____

Phone: _____ Best time to call: _____

Examples of teachers' requests:

- *I am going to review the three branches of government with my 7th grade class the week of November. I would like a member of the legal community to address my class that week.*
- *I would like a Law Day presentation for my second graders on May 1.*
- *I would like a Constitution Day presentation for my 10th graders on Constitution Day, September 17.*
- *I have no specific topic in mind but would appreciate the opportunity to have someone from the legal community visit my middle school classroom the first week of October.*

Specific topic you would like to present: _____

Grade level preference: Elementary School Middle School High School

Please indicate two or more days of week that work best for you: _____

Please indicate month/time of year that works best for you: _____

*As requests are received from educators across the state,
the LCLCE will contact lawyers and/or judges in the appropriate area to discuss scheduling a school visit.*

Please return to Kandis Showalter, LCLCE Program Coordinator

Email to: Kandis.Showalter@lsba.org or Fax to: (504)528-9154

For additional information: (504)619-0141

Mail to: Louisiana Center for Law and Civic Education, 601 St. Charles Avenue, New Orleans, LA 70130

www.lalce.org

By Ashley M. Flick

IMPORTANCE OF DISASTER PLANNING

According to the Federal Emergency Management Agency, nearly 40 percent of small businesses, including law firms, never reopen their doors following a disaster and another 25 percent fail within one year following a disaster. To survive disasters, we must prepare and take steps to minimize the damage to our practices.

We face foreseeable disasters (hurricanes) and unforeseeable disasters (fire, flooding, tornadoes, earthquakes, illnesses) throughout our lives. As recently experienced, disasters can strike anywhere and anytime. While we can't completely prepare, having a good disaster recovery plan in place will minimize our losses and increase our chances for a quick recovery.

When dealing with a disaster, the immediate safety and physical wellbeing of our families and our homes come first. Then we should focus on our practices, taking necessary steps to protect our clients and our livelihoods.

When disasters strike, clients' needs do not disappear. In fact, they may increase. We will be expected to quickly carry on with business as usual. Imagine a fire destroying your entire office, including your client files, calendar, backup servers, etc. How are you going to contact your clients if client contact information is only located on your office computer's hard drive or in hard-copy files? How will you recreate your client files, keep up with deadlines, or prepare for hearings/trials? Despite suffering through a disaster, we remain obligated to safeguard client property, communicate with clients and meet all required deadlines.

Do attorneys have an ethical obligation to prepare for disasters? The Louisiana Rules of Professional Conduct do not explicitly place an obligation to have a

Disaster Planning and Business Continuity Resources

www.lsba.org/PracticeManagement/DisasterPlanningandBusinessContinuity.aspx

disaster plan nor do they excuse failure to comply with the Rules due to a disaster, but they do imply there is an ethical obligation for attorneys to plan for disasters.

Louisiana Rule of Professional Conduct 1.3 requires attorneys to act with reasonable diligence and promptness in representing a client. If an attorney doesn't have a plan to back up client files to a cloud-based server, the attorney will not have access to his/her files and will struggle to comply with Rule 1.3 in the aftermath of a disaster.

Louisiana Rule of Professional Conduct 1.4 requires attorneys to consult with clients and keep clients reasonably informed about the status of their cases. An attorney who loses client contact information because the office was destroyed or loses contact with his/her client in the aftermath of a disaster will be unable to keep the client reasonably informed of the status of the case.

Louisiana Rule of Professional Conduct 1.15 requires attorneys to identify client property, other than client funds, and appropriately safeguard it. In the event of a disaster, attorneys may find that they violated this rule if they don't make arrangements ahead of time to properly safeguard client property.

Items to consider in disaster planning include:

► Where will you set up a temporary

office?

► How often, when and where will you back up files? Will you utilize a cloud-based server? Will you back up every night or twice a day?

► How will you communicate with clients after a disaster? Will you update your website with a post-disaster phone number or email?

► What will you do with client property you are holding?

► How will you communicate with your office staff after a disaster?

It is a good risk-management practice to have a disaster recovery plan in place to prevent a violation of the rules, which can open the door to a disciplinary complaint or a professional liability claim.

Don't give up if you create a disaster plan and it doesn't work perfectly the first time it is utilized. Just because it looks good on paper doesn't mean it will work in practice. Test your plans, make adjustments to the items that didn't work, and be ready for the next disaster!

For more information, visit the Louisiana State Bar Association's (LSBA) Practice Management webpage to review the LSBA's Disaster Planning and Business Continuity Guide. Go to: <https://www.lsba.org/PracticeManagement/DisasterPlanningandBusinessContinuity.aspx>.

Ashley M. Flick 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 BA degree in political science in 2005 from Southeastern Louisiana University and her JD degree in 2010 from



Loyola University College of Law. As loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. Email her at aflick@gilsbar.com.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

LAW STUDENTS AND DEPRESSION

A 2016 study on attorney mental health confirmed a 28 percent depression rate in the legal profession. Also, 48 percent of lawyers have experienced issues with depression during their careers.¹ To put this into perspective, the general population suffers depression at rates under 10 percent.

There are approximately 23,000 licensed attorneys in Louisiana. Per the 28 percent and 48 percent depression rates noted above, 6,440 attorneys are likely suffering from depression *right now*, and 11,040 attorneys have, or will likely have, issues with depression at some point.

What sparks high depression rates in the legal ranks? It begins in law school. Students entering law school suffer depression at the same rate as the general population. But something about the dynamics of the law school experience lights new fuses on depression. Astoundingly, up to 40 percent of the members of any given law school class will likely suffer depression in one form or another by the time they graduate.²

A considerable number of students will eventually overcome their bout with depression, but others will complete law school with both a law degree *and* chronic depression that must be managed long-term.

Dan Lukasik of Buffalo, NY, is in recovery from depression. He is perhaps the most recognized lawyer in the nation on the topic of depression in the legal profession. His website includes discussions on law student depression: <http://www.lawyerswithdepression.com/law-school-depression>. The site also includes input from others about law student depression (citations are on the site).

William M. Treanor of Fordham Law School: "Depression is a very important issue that often gets swept to the side. It's a real concern and a problem in the legal profession. Studies indicate that it is com-

mon among law students and common among lawyers. Given that, it's important to try to figure out ways to combat it and to let people know if they are suffering, they are not alone."

Florida State University Law Professor Lawrence Krieger: "There is a wealth of, which should be alarming, information about the collective distress and unhappiness of our [law] students and the lawyers they become. We appear to be practicing a sort of organizational denial because, given this information, it is remarkable that we are not openly addressing these problems . . . The negative phenomena we ignore are visible to most of us and are confirmed by essentially unrebutted empirical evidence."

According to Lukasik, people tend to confuse student unhappiness and dissatisfaction with depression: "They're not the same thing, not even close. Unhappiness and discontent are relatively transitory; other emotions aren't pushed to the margins or extinguished. We are adaptable in response to our environment. We might feel stressed or exasperated by the law school grind, but everyone bumps up and down throughout their days. We deal with our stress and balance ourselves out either with exercise, socializing or just by having stress-resilient genes. Not so with depression."

In 2008, the American Bar Association produced a law student mental health tool kit.³ It's a general mental health "wellness" guide, but Lukasik sees that effort, as laudable as it may be, as a "lump-it-all-together" message that does not adequately address the severity of depression head on: "Students need to hear about depression *straight-up*." Lukasik deems it imperative that students hear about depression from other students and lawyers who have suffered from it and are willing to talk about it.

Moreover, Lukasik feels that when law

schools pool a list of mental ills together into a small program on "mental health," their students fail to see how any of it is connected to them. Also, if only a "sliver of time" is allocated to depression, students don't perceive the school takes it seriously.

In Louisiana, steps are being taken to address law student depression. The Judges and Lawyers Assistance Program (JLAP) has increased its interaction with all four law schools. JLAP sponsors "Uncommon Counsel" presentations by Dr. Kate Bender from the Dave Nee Foundation.⁴ JLAP also hosts "JLAP Office Hours" at the law schools wherein one of JLAP's licensed professional counselors visits the school and provides free and confidential clinical advice to law students. These efforts are a good start, but the issue of adequately addressing law student depression still remains a very formidable challenge.

If you or someone you know needs help with depression, place a confidential call to JLAP at (985)778-0571, email JLAP@louisianajlap.com, or visit the website at: www.louisianajlap.com.

FOOTNOTES

1. American Society of Addiction Medicine, *Journal of Addiction Medicine*, Volume 10, Number 1, January/February 2016, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," Patrick R. Krill, JD, LL.M.; Ryan Johnson, MA; and Linda Albert, MSSW.

2. <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/>.

3. <http://abaforlawstudents.com/events/initiatives-and-awards/mental-health-resources/>.

4. <http://www.daveneefoundation.org/uncommon-counsel/>.

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



Attorneys, Judges Attend Natchitoches Lights CLE

The Natchitoches Lights CLE Seminar on Dec. 16, 2016, was hosted by the Louisiana State Bar Association Diversity Committee's Specialty Bars Subcommittee and co-hosted by the Jesse N. Stone Legal Society of Shreveport. The seminar, during the Natchitoches Christmas Festival of Lights, was conducted at the Chateau Saint Denis Hotel. Following the seminar, speakers attended a luncheon hosted by T. Taylor Townsend Law Firm at The Landing Restaurant.

Later that evening, registrants were invited to attend The Dreams Scholarship 13th Annual Party with a Purpose Toy Drive at the historic Prudhomme-Rouquier House. Attorney Cloyd Benjamin, Jr. presented scholarships to high school students on behalf of the Dreams Foundation.

Save the Date!

Conclave on Diversity in the Legal Profession

"Diversity is Good for Everyone"
March 24, 2017
New Orleans Marriott, 555 Canal St.

Speaker Highlights

- **Keynote speaker:** Samuel Reeves, SVP and senior counsel at Walmart Stores, Inc., nationally recognized advocate for diversity in the legal industry.
- **Diversity and Inclusion Workshop Presenter:** Shawn C. Marsh, Ph.D., director of judicial studies and associate professor of communication studies and social psychology, University of Nevada-Reno.

More info and to register: www.lsba.org/Diversity/DiversityConclave.aspx



Presenters at the Natchitoches CLE, from left, Louisiana State Bar Association Ethics Counsel Eric K. Barefield; attorney Julie Brown White; and LSBA Ethics Counsel Richard P. Lemmler, Jr.



Presenters at the Natchitoches CLE, from left, attorneys Erica F. Durr, M. Thomas (Tom) Arceneaux, Stacey A. Smith and Jerry Edwards.



Presenters at the Natchitoches CLE, from left, U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart and Caddo Parish District Attorney James E. Stewart, Sr.



Presenters at the Natchitoches CLE, from left, attorneys Catherine L. Davidson and Brandon H. Robb.

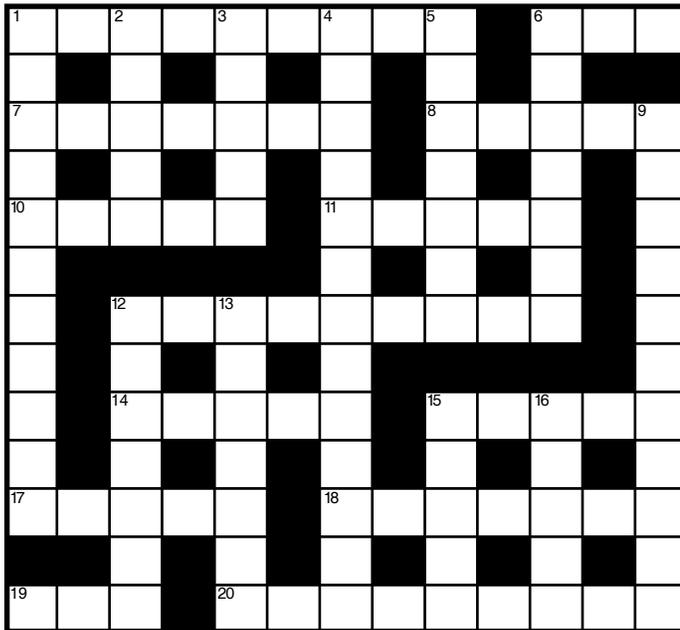


The Louisiana State Bar Association's (LSBA) Diversity Committee held a Professionalism Facilitator Training Workshop in Baton Rouge on Oct. 8, 2016. Attorneys increased their knowledge of unconscious bias, discovered new ways to reduce bias, learned how to help others become more culturally competent, gained tools to promote diversity and inclusion, and boosted confidence in delivering effective CLE presentations. LSBA facilitators included, from left, I.J. Clark-Sam, Monique M. Edwards, Nicholas J. Hite, Kandace R. Hamilton and Cherrilyne Washington Thomas.

Crossword PUZZLE

By Hal Odom, Jr.

DOWN ON THE BAYOU



ACROSS

- 1 Bayou that separates Orleans and St. Bernard (9)
- 6 Nightmarish street name (3)
- 7 Take under consideration again (7)
- 8 ___ Springs, home of a microbrewery (5)
- 10 ___ Island Swamp, home to an alleged hominid monster (5)
- 11 Proportion or quotient (5)
- 12 Bayou running from Donaldsonville to the Gulf of Mexico (9)
- 14 Adorable puppy (5)
- 15 John Philip ___, USA's "March King" (5)
- 17 "___ Did For Love," anthem from "A Chorus Line" (4, 1)
- 18 Site of largest Pacific Ocean amphibious assault of World War II (7)
- 19 Hard substance rarely found in bayou waters (3)
- 20 Lecture halls (classical spelling) (9)

DOWN

- 1 World's longest bayou, running from Pine Bluff to Sterlington (11)
- 2 ___ E. Ponder, former judge of First Circuit Court of Appeal (5)
- 3 Denmark ___, who led an 1822 slave rebellion (5)
- 4 "You can't drive across this" (2, 7, 4)
- 5 Stretchy (7)
- 6 Installment, as of a TV show (7)
- 9 Large wetlands basin running from Simmesport to Morgan City (11)
- 12 Where I-55 meets I-10 (7)
- 13 ___ Parishes, those not included in the Louisiana Purchase (7)
- 15 Bayou ___ John, running alongside Old Spanish Fort (5)
- 16 Former aviation carrier (5)

Answers on page 399.

Alcohol and Drug Abuse Hotline

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

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

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

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

FOCUS ON Professionalism

By Christy M. Howley Connois

EVERYDAY PRACTITIONER'S RULES

We talk a lot about professionalism. Yet sometimes the talk is too generalized and we could use an honest, real-world refresher for our daily practices. We have all been guilty at one time or another of getting caught up in our own headspace and forgetting some of these tenets. Here's that refresher, in no particular order, but based on years of practice.

► Return a phone call. If someone calls you, use common courtesy and call or email back, but respond in some way within 24-36 hours. If you are in trial, have your staff respond for you. Refusing to respond in any manner is highly unprofessional.

► Maintain a voice mail, fax and email account. Don't attempt to practice law by smoke signal without the bare minimum of contact information. Yes, this *is* the bare minimum of contact information. The Code of Civil Procedure does not allow for service of process by fax or email, so get over your paranoia that someone will serve you this way.

► Speaking of documents, send a courtesy copy within 24 hours of filing of every single document or letter you file with the court. Period. This simple courtesy allows for easier management of our calendars. Far too many people are disregarding this practice these days. Whatever ground you think you may gain by only serving someone with a pleading is lost when compared with the professionalism you've lost in that other attorney's estimation.

► File pleadings in a timely manner. If you're sent a consent or judgment to file, file it.

► Cut others in our profession some slack when their lives intrude on the work, particularly in incidences of death, illness, or flooding of homes and offices. I gained a whole new respect for the attorneys who helped me out

Professionalism LSBA Resources

- Visit the Lawyer's Oath and Code of Professionalism at www.lsba.org/Members/LegalLibrary.aspx
- *The Four Agreements: A Practical Guide to Personal Freedom* by Don Miguel Ruiz

and were compassionate when serious illness of a beloved family member intruded into my practice — and a whole new disrespect for the ones who could have cared less and showed it.

► Be respectful of yourself and others and be on time. Don't be late for court, meetings or anything else. It's rude, eats into everyone's time and should not be tolerated.

► Don't ask for continuances as a litigation tactic. It's unethical and unprofessional. Prepare for your case, do the work, answer discovery as timely as possible and your work life will be easier. If you're so busy that you cannot be timely, stop taking clients for a few days or weeks.

► You should handle some cases outside of the courthouse if they are capable of settlement. I don't understand the attorneys who will only settle cases at the courthouse.

► Under no circumstances is it reasonable to ask someone to do business on his/her cell phone. We all deserve a life, time off, evening time with family and friends. Have respect for your own life and the lives of others and do your business between 8:30 a.m. and 5 p.m.

► Respect everyone's staff. They are your friends and allies sometimes, even when the attorney who employs them is not. This goes triple for court staff. They put up with a lot from us and a simple

smile and courteous request goes a long way.

► There is never a reason to raise your voice, throw something, or verbally or physically attack another attorney. Never. I have seen reports of this on the Disciplinary Board website and have been the recipient of it myself. This must end. Far too many of us take what happens in court or with other practitioners personally. This means you think the world revolves around you.

► The world does *not* revolve around you or your one client. Your reputation is everything. Guard it. No one case is worth ruining your reputation. No one case is the end of the world. Getting justice for a client is a great thing. But, remember, you still have to see those attorneys, judges and court staff after this one case is over.

I highly recommend a book titled *The Four Agreements: A Practical Guide to Personal Freedom* by Don Miguel Ruiz. It offers sound advice. Be impeccable with your word. Don't take anything personally. Don't make assumptions. Always do your best. These four principles, if followed daily, will never steer you wrong.

Christy M. Howley Connois, a member of the firm Bowman & Howley, is the vice chair of the Louisiana State Bar Association's (LSBA) Committee on the Profession. She is a member of the LSBA's House of Delegates and a Fellow of the Louisiana Bar Foundation. She received her undergraduate degree in 1990 from Loyola University and her law degree in 1994 from Loyola University College of Law. She was recognized by Jefferson Life magazine (tied for Best Attorney in Jefferson Parish in 2010), by Louisiana Super Lawyers in 2011 and by the National Academy of Family Law Attorneys in 2015. (christyhowley@bowmanandhowley.com; 629 Lafayette St., Gretna, LA 70053)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 6, 2016.

Decisions

Alan Dean Alario II, Metairie, (2016-B-1770) **Previously-deferred suspension made executory** by order of the Louisiana Supreme Court on Oct. 28, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2016. *Gist:* By consent, previously-deferred one-year-and-one-day suspension from the practice of law is made executory due to the respondent's failure to comply with the conditions of the prior disciplinary order.

Jeffrey N. Aldous, Utah, (2016-B-0748) **Public reprimand imposed by the Supreme Court of Utah made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on June 17, 2016. JUDGMENT FINAL and EFFECTIVE on June 17, 2016. *Gist:* Failure to communicate; and failure to respond to a lawful demand for information from the Utah Office of Professional Conduct.

Vincent J. Desalvo, Baton Rouge, (15-DB-029) **Public reprimand** ordered by the Louisiana Attorney Disciplinary Board on July 25, 2016. *Gist:* Negligent mismanagement of his trust account.

Victoria Baker Flores, Jennings, (2016-B-1652) **Consented to a six-month suspension, fully deferred, with two years' unsupervised probation**, by order of the Louisiana Supreme Court on Oct. 17, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 17, 2016. *Gist:* Respondent practiced law while ineligible to do so.

Anthony Hollis, Shreveport, (2016-B-1360) **Adjudged guilty of additional violations warranting discipline, which shall be considered in the event**

he seeks readmission to the practice of law, by order of the Louisiana Supreme Court on Oct. 10, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 24, 2016. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct prejudicial to the administration of justice; violating or attempting to violate the Rules of Professional Conduct; and failure to cooperate with the Office of Disciplinary Counsel in an investigation.

Diedre Pierce Kelly, New Orleans, (2016-OB-1810) **Reinstated to the practice of law in Louisiana** by order of the Louisiana Supreme Court on Nov. 15, 2016.

Roger Wayne Kitchens, Ponchatoula, (2016-B-1833) **Transferred to interim suspension for threat of harm**, by order of the Louisiana Supreme Court on Oct. 19, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 19, 2016.

Gerson Charles Martin, Metairie, (2016-OB-1314) **Transferred to dis-**

ability/inactive status by order of the Louisiana Supreme Court on July 19, 2016. JUDGMENT FINAL and EFFECTIVE on July 19, 2016.

Randal Paul McCann, Lafayette, (2016-B-1756) **Suspended from the practice of law by consent for one year and one day, fully deferred, subject to probation**, by order of the Louisiana Supreme Court on Oct. 28, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2016. *Gist:* Commission of a criminal act, particularly one that reflects adversely on the lawyer's honesty, trustworthiness or fitness in other respects.

Hugh E. McNeely, Jeddah, Saudi Arabia, formerly of New Orleans, (2016-B-1250) **Adjudged guilty of additional violations warranting discipline, to be considered in the event he seeks readmission after becoming eligible to do so**, ordered by the Louisiana Supreme Court on Oct. 10, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 24,

Continued on page 366

CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

E. PHELPS GAY KEVIN R. TULLY

ELIZABETH S. CORDES

H. CARTER MARSHALL

(504)561-5700

601 POYDRAS STREET, SUITE 2300

NEW ORLEANS, LA 70130

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. 1, 2016.

Respondent	Disposition	Date Filed	Docket No.
Douglas M. Schmidt	(Reciprocal) Public reprimand.	10/20/16	16-11287

Discipline continued from page 365

2016. *Gist:* Neglect of a legal matter; failure to communicate with a client; obligations upon termination of representation; and failure to cooperate with the ODC in an investigation.

Edward Bissau Mendy, New Orleans, (2016-B-0456) **Disbarred** by order of the Louisiana Supreme Court on Oct. 19, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 2, 2016. *Gist:* Respondent neglected legal matters, failed to refund unearned fees, and failed to cooperate with the Office of Disciplinary Counsel in its investigations.

Joseph N. Mole, New Orleans, (2016-B-1498) **Suspended from the practice of law for one year, with all but six months deferred**, by order of the Louisiana Supreme Court on Sept. 23, 2016. JUDGMENT FINAL and EFFECTIVE on Sept. 23, 2016. *Gist:* Engaging in conduct prejudicial to the administration of justice; and implied an ability to improperly influence a judge.

June A. Placer, Kentwood, (2016-B-1590) **Disbarred from the practice of law retroactive to her interim suspension in *In Re: Placer*, 15-0463 (La. 3/25/16), 164 So.3d 169**, by order of the Louisiana Supreme Court on

Nov. 7, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 21, 2016. *Gist:* Violation of the Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct prejudicial to the administration of justice; commission of a criminal act; knowingly making a false statement of fact or law to a tribunal; offering evidence that the lawyer knows to be false; and falsifying evidence.

Michael Brian Rennix, Shreveport, (2016-B-1965) **Suspension on an interim basis from the practice of law** ordered by the Louisiana Supreme Court



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

SCHIFF, SCHECKMAN & WHITE LLP
www.sswethicslaw.com

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Disciplinary Counsel ('98-'06)
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Disciplinary Counsel ('98-'14)
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Hammond, Louisiana 70401
Phone (985) 602-9201
Fax (985) 393-1130
damon@sswethicslaw.com

on Nov. 18, 2016. JUDGMENT FINAL and EFFECTIVE on Nov. 18, 2016.

Murray Neil Salinas, Shreveport, (2016-B-1381) **Disbarred** by order of the Louisiana Supreme Court on Oct. 17, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 31, 2016. *Gist*: Failure to act with reasonable diligence and promptness in representing a client; failure to refund unearned fees; conversion for failure to remit funds to third party; failure to return client files; failure to cooperate with the Office of Disciplinary Counsel in its investigation; and engaging in dishonest conduct.

Jerry L. Settle, New Orleans, (2016-B-1747) **Suspended on consent from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation**, by order of the Louisiana Supreme Court on Oct. 28, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2016. *Gist*: Failing to properly maintain

his client trust account and failure to supervise a non-lawyer employee.

John E. Settle, Jr., Bossier City, (2016-B-0290) **Previously-deferred one-year-and-one-day suspension from the practice of law made executory, all but six months deferred**, by order of the Louisiana Supreme Court on Oct. 28, 2016. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2016. *Gist*: Failure to comply with the conditions of a prior disciplinary order imposing a fully-deferred suspension.

Thomas G. Wilkinson, Gretna, (2016-OB-1056) **Reinstated to the practice of law, subject to a two-year period of supervised probation**, by order of the Louisiana Supreme Court on Sept. 6, 2016. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2016. Mr. Wilkinson has proved by clear and convincing evidence that he satisfies the criteria for readmission to the practice of law in Louisiana.

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

	No. of Violations
Violation of Rule 1.7 — Conflict of interest.....	1
Violation of Rule 8.4(a) — Violating, or assisting another in violating, the Rules of Professional Conduct, and merits professional censure and formal discipline.....	1
Violation of Rule 8.4(d) — Conduct prejudicial to the administration of justice.....	1
TOTAL INDIVIDUALS ADMONISHED.....	3

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CLIENT ASSISTANCE FUND PAYMENTS - MAY 2016 & AUGUST 2016

Attorney	Amount Paid	Gist
Jade R. Blasingame	\$25,000.00	#1694 — Conversion in a personal injury matter
Jade R. Blasingame	\$25,000.00	#1732 — Conversion in a domestic matter
Jade R. Blasingame	\$17,376.67	#1735 — Conversion of funds in a personal injury matter
Carla A. Brown-Manning	\$1,500.00	#1723 — Unearned fee in a succession matter
Olita Magee Domingue	\$219.00	#1679 — Unearned fee in a divorce
Olita Magee Domingue	\$2,467.00	#1728 — Unearned fee in an insurance claim matter
Janinne L. Gilbert	\$2,400.00	#1693 — Unearned fee in a succession matter
Glynn J. Godwin	\$2,500.00	#1691 — Unearned fee in a real estate matter
Michael W. Kelly	\$2,000.00	#1489 — Unearned fee in a post-conviction matter
James E. Moorman III	\$1,385.61	#1672 — Unearned fee in a domestic matter
Murray N. Salinas	\$4,643.35	#1736 — Conversion in a tort matter
Richard C. Teissier	\$5,000.00	#1687 — Unearned fee in a post-conviction matter
Randal A. Toaston	\$3,200.00	#1452 — Unearned fee in a criminal matter
Randal A. Toaston	\$500.00	#1535 — Unearned fee in a civil matter
Randal A. Toaston	\$2,000.00	#1615 — Unearned fee in a criminal matter
Randal A. Toaston	\$500.00	#1708 — Unearned fee in a criminal matter
Randal A. Toaston	\$300.00	#1716 — Unearned fee in a succession matter
Randal A. Toaston	\$1,800.00	#1722 — Unearned fee in a post-conviction matter
Michael C. Weber	\$3,448.76	#1669 — Conversion in an insurance claim matter
Jermaine D. Williams	\$3,000.00	#1700 — Conversion in a personal injury claim

Q&A

LOUISIANA CLIENT ASSISTANCE FUND

What is the Louisiana Client Assistance Fund?

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

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



Gov. Edwards Mediates Dispute

In 2013, the State and Louisiana State University (LSU) asked BRF Hospital Holdings, formerly known as “Biomedical Research Foundation,” to save their two north Louisiana hospitals from closure. In October 2013, the hospitals came under private management by BRF. The privatization of these two hospitals in Shreveport

and Monroe, newly renamed University Health and University Health Conway, respectively, is part of a larger effort under LSU Health Care Services Division to cut costs across the 10 state-owned charity hospitals. After deep cuts in state funding were enacted in 2012, the Louisiana Legislature hoped this plan would save the state \$100 million annually. Helen Adamopoulos, “Louisiana Panel Approves Privatization of LSU Hospitals,” www.beckershospitalreview.com/hospital-transactions-and-valuation/louisiana-panel-approves-privatization-of-lsu-hospitals.html (*Becker's Hospital Review*, Sept. 26, 2013). This deal turned over patient care previously handled by LSU at its hospitals and clinics to outside managers. Yet, this privatization process has been anything

but easy.

In July 2015, LSU alleged that BRF failed to live up to its contract responsibilities as a breach of public purpose and, therefore, should withdraw as the parent company of the University Health System. “LSU Cuts Ties with BRF as Operating Partner of University Health Hospitals,” www.ksla.com/story/30108684/lsu-cuts-ties-with-brf-as-operating-partner-of-university-health-hospitals (KSLA 12 News, Sept. 24, 2015). BRF denied these claims and refused to budge. Supporters of BRF said that the State asked more from them than from the State’s other partners; however, the Governor said that the hospital’s relationship with LSU’s Shreveport medical school presented different circumstances. BRF is the only private partner required to increase payments of

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\$37 million to be paid to LSU without assurances of supplemental payments from the State. No other private partner was asked to give LSU millions of dollars for electronic-health-records software and licensing without compensation. Seth Dickerson, "BRF: State Offers Raw Deal to Run University Health," www.citizen-times.com/story/news/2016/09/22/brf-state-offers-raw-deal-run-university-health/90856854/ (*Citizen Times*, Asheville, N.C., Sept. 23, 2016).

As a response to LSU's complaint, BRF asserted it would prefer that LSU withdraw its breach notice and allow third-party mediation to resolve any disputes. LSU had wanted to oust BRF since it was chosen as the hospital operator under former Gov. Bobby Jindal's privatization plan. LSU felt that BRF had failed as operator and did not have enough resources to run the hospitals. In September 2015, LSU announced it would begin cutting ties with BRF and formed a new non-profit to take over.

When BRF refused to withdraw, LSU sued for breach of contract, asking the court to remove the foundation. After a hearing in November 2015, Judge Hernandez in Baton Rouge ruled that LSU failed to negotiate the contract in good faith because it should work collaboratively with the defendant to remedy the alleged public-purpose breach. LSU's case was effectively dismissed because the university had filed its suit too early. "The [agreement] is replete with provisions that require the parties to exhaust all possible remedies to

a breach in advance of termination," Judge Hernandez said. Greg Hilburn, "Judge Rules Against LSU in Biomed Case," www.shreveporttimes.com/story/news/local/2015/11/19/judge-rules-lsu-biomed-case/76064922/ (*The Times*, Shreveport, La., Nov. 19, 2015). "These provisions obligate each party to collaborate towards curing any alleged or perceived breach, including a breach of the public interest as alleged in [LSU's] petition." John Kennedy, "LSU's Bid to Oust Hospital Operator Premature, Judge Rules," www.law360.com/articles/729717/l-su-s-bid-to-oust-hospital-operator-premature-judge-rules (*Law360*, Nov. 20, 2015).

Since taking office in January 2016, Gov. John Bel Edwards has been involved in this dispute at every milestone. When the parties could not reach an agreement regarding the operation of the two hospitals in Shreveport and Monroe, the State began the process of terminating its contract with BRF in September 2016. Edwards said, "When I set out to renegotiate these contracts, I did so in an effort to provide quality health care to our citizens while ensuring that the agreements were in the best interests of the taxpayers." During the 45 days it was supposed to take to terminate the contract, the negotiations continued. Greg Hilburn, "State to BRF: You're out . . . maybe," www.azcentral.com/story/news/2016/09/22/state-brf-youre-out/90844882/ (*AZ Central*, Sept. 22, 2016).

The biggest dispute between the two concerned how much BRF would pay for physician services provided by medical students. Once the dispute escalated to the point that neither side expressed confidence in the other, Gov. Edwards stepped in to mediate the renegotiation of the contract. The parties were able to reach an agreement in October 2016, thanks to mediation efforts by Gov. Edwards. "Resolution for Conway," www.thenewsstar.com/story/opinion/2016/10/11/resolution-conway/91917928/ (*The News Star*, Monroe, La., Oct. 12, 2016). Ultimately, BRF agreed to pay \$37 million to LSU medical school in exchange for the state government's agreement to reimburse BRF the same amount. The parties also agreed to participate in arbitration to settle all remaining disputes over the amounts that LSU says BRF owes. Both parties were satisfied with the agreement. The utilization of the ADR techniques of mediation and arbitration in combination led to both sides obtaining what they needed to satisfy their respective interests.

—Virginia L. Brown

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Under the Supervision of
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Homestead Exemption

Hennigan v. Smith (In re Smith), No. 16-20241 (5 Cir. 2016), 2016 WL 4394560.

Robert Smith, the debtor, moved from Australia to Texas to care for his aunt until her death. The aunt's will provided that the debtor should receive her property located in Texas where he and the aunt resided (the property) as well as 50 percent of her residual estate. A dispute arose between the debtor and the aunt's executor. After four years of litigation (the litigation), the parties reached a settlement pursuant to which the debtor received the property and forfeited the 50 percent share of the residual estate. One month after he was deeded the property, the debtor filed for Chapter 7 bankruptcy and claimed the homestead exemption on the property.

The debtor's attorneys in the litigation asserted a claim against the debtor based on their contingency fee contract and argued that the debtor should be prohibited from claiming the homestead exemption on the property because he intended on selling the property and returning to Australia. The bankruptcy court ruled that the debtor could claim the homestead exemption because he had lived on the property for eight years and claimed the property as his homestead. The district court affirmed.

On appeal to the 5th Circuit, the attorneys asserted that the debtor always intended to sell the property and move back to Australia, and that he remained on the property only due to the four-year litigation.

In Texas, the individual who seeks homestead protection has the burden of establishing the homestead of his property. In determining homestead status, the 5th Circuit looks to the facts as they exist on the date of the bankruptcy filing. The 5th Circuit found that while the debtor made clear he intended to sell the property and move back to Australia, there was no evidence that, when he declared bankruptcy, he lacked the desire to make the property

his homestead. The court ruled that "[t]he fact that a party desires to sell the property and move does not defeat the exemption."

Civil Sanctions for Violating Bankruptcy Court Preliminary Injunction

Goldman v. Bankton Fin. Corp. (Matter of SkyPort Global Commc'ns, Inc.), No. 15-20243 (5 Cir. Oct. 12, 2016), 2016 WL 5939415.

SkyPort Global Communications (debtor) entered into a plan of reorganization that provided that the debtor would merge with its sole shareholder, SkyComm Technologies Corp. (SkyComm and, collectively with the debtor, SkyComm parties). The confirmation order enjoined derivative claims filed on either company's behalf, but not direct claims against third parties. Approximately six months after confirmation, a group of 49 investors, the Schermerhorn parties, filed suit seeking \$32 million in damages for misdeeds alleg-

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edly committed by the SkyComm parties in their investment and management practices. The debtor and SkyComm removed the lawsuit to the bankruptcy court and sought an injunction while the bankruptcy court determined which claims were prohibited by the injunction in the confirmation order. The bankruptcy court granted a preliminary injunction enjoining the Schermerhorn parties from “pursuing any and all claims or causes of action, derivative or otherwise, against the defendants, and from contacting SkyPort’s former or current vendors, employees, and customers without permission of SkyPort’s counsel or the bankruptcy court.”

After the injunction was entered, Samuel Goldman and Franklin Craig, the attorney and an investment advisor for several of the Schermerhorn parties, continued to contact third parties in violation of the bankruptcy court’s injunction. Specifically, Goldman and Craig continuously contacted the debtor’s former president, Dawn Cole, and used information from her without her permission.

The debtor discovered the communications and sought to hold Goldman and Cole in contempt. The bankruptcy court issued a 187-page opinion holding Goldman and Craig in contempt and awarded the SkyComm parties attorneys’ fees and costs. Goldman and Craig appealed, arguing that (1) the bankruptcy court had no jurisdiction to enter the contempt order because it was criminal in nature; (2) the

fees awarded were not reasonable and necessary; (3) the award was erroneous; and (4) according to their understanding of the preliminary injunction, they had not violated its terms.

In affirming the bankruptcy court’s decision, the 5th Circuit held that the sanction was a civil sanction rather than a criminal sanction because the sanction restored the SkyComm parties to their position before having to incur attorney’s fees and costs to enforce the preliminary injunction. The court held that because the sanction compensated the SkyComm parties for enforcing the injunction and was civil in nature, the bankruptcy court had jurisdiction to award the sanction. The court also held that the fees awarded were reasonable as they were used to compensate the SkyComm parties for expenses incurred in protecting the debtor and enforcing the injunction. Finally, the court rejected Goldman’s and Craig’s argument that they misunderstood the injunction, finding the injunction was clear and unambiguous, and, therefore, their conduct was not “inadvertent.”

—Cherie Dessauer Nobles

Member, LSBA Bankruptcy Law Section and

Tiffany D. Snead

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Child Support

State, Dept. of Soc. Servs. v. Reed, 16-0171 (La. App. 5 Cir. 7/27/16), 197 So.3d 817.

The trial court did not err in denying Mr. Reed’s motion to reduce child support, finding that he failed to show a material change of circumstances. The court-appointed forensic expert found that his income was “difficult to determine” due to his self-employment and complicated personal income, businesses and assets, as well as income shared with his present wife. Moreover, he was voluntarily underemployed, as he had similar jobs available to him on which he had previously acted as a consultant, but on which he had stopped accepting work. The court also found that he benefitted from expense-sharing with his present wife. The trial court did not err in not including a lump-sum injury settlement received by the mother as part of her support, except for the interest earned on those funds. The trial court did not err in apportioning the forensic expert’s costs 75 percent to Mr. Reed and 25 percent to the mother, particularly given the difficulty regarding determining his income and his lack of forthrightness concerning it.



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State ex rel. K.J.W. Minor Child of A.R.W. v. D.J.P., 15-1409 (La. App. 1 Cir. 8/5/16), 199 So.3d 654.

After DCFS filed a petition against the father to establish paternity and child support on behalf of the child, the mother and father could not stipulate before the court's hearing officer that the support would be paid directly to the mother, bypassing DCFS. Moreover, the trial court could not close the DCFS proceeding, as DCFS's request for a medical-support order remained pending, as it was not addressed by the hearing officer or trial court. Notably, the trial court could not simply accept the preprinted form filled out by the hearing officer and make it a judgment, but was required to issue a judgment with decretal language, identifying the parties, and identifying the relief granted, "tailored to the particular circumstances" of the case.

State v. Jones, 16-0175 (La. App. 5 Cir. 8/24/16), 199 So.3d 1201.

The court of appeal remanded this matter to the hearing officer because the trial

court's judgment was defective, lacking specific decretal language, and it was unclear whether appropriate procedural steps had been followed concerning the numerous hearings and matters pending.

Divorce

Roebuck v. Roebuck, 16-0221 (La. App. 4 Cir. 8/17/16), 198 So.3d 1210.

Mr. Roebuck's several arguments to nullify a default judgment of divorce against him were all rejected. There was no failure to attempt service upon him since he accepted the service. His filing a nullity action under La. Civ.C. art. 2004 on the grounds of fraud and ill practices in the existing divorce proceeding case number was an improper procedure, as he was required to file a separate petition in order to raise such claims; therefore, his nullity claims under that article were not properly before the court of appeal. The trial court had subject matter jurisdiction over the divorce as Ms. Jones was living in Louisiana and domiciled in the parish in which the

petition was filed. The trial court was not required to continue the Louisiana divorce proceeding because a divorce proceeding was also pending in Mississippi. La. C.C.P. art. 532 is discretionary; additionally, the trial court was not made aware of a previously pending matter in Mississippi.

Community Property

Smith v. Smith, 15-1231 (La. App. 4 Cir. 9/14/16), 200 So.3d 1007.

Ms. Smith's loan acquired post-termination, but secured with a community-property asset, was her separate property obligation because it was obtained after the community-property regime terminated. His mismanagement claim that she did not rent part of a double home was rejected because he failed to contravene her testimony that the property actually generated only \$10,000 in rent, for which he received reimbursement of \$5,000. His claim of mismanagement that she allowed someone to drive the community-property vehicle who then got into a wreck and to-

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taled the car was rejected because he failed to show that she was negligent or acted imprudently.

Community Property: Enforcement

Caballero v. Caballero, 15-2039 (La. 5/3/16), 198 So.3d 1163.

After Ms. Caballero obtained a judgment for an equalizing payment from Mr. Caballero in their community-property partition, she attempted to seize his alleged membership interest in an LLC. The LLC filed an exception of lack of subject matter jurisdiction and a motion to quash a subpoena duces tecum. The Family Court overruled the exception of lack of subject matter jurisdiction; the appellate court granted writs and reversed, sustaining the exception; and the Supreme Court granted writs and reversed the 1st Circuit Court of Appeal. The Supreme Court found that the Family Court's jurisdiction was broad enough to encompass enforcing a community-property-partition judgment through garnishment of a third-party LLC under its jurisdictional parameters set forth in La. R.S. 13:1401. The Court discussed, distinguished and analogized to prior jurisprudence addressing similar arguments. Because the enforcement arose from a judgment arising from the parties' community-property regime and partition, the Family Court retained jurisdiction to

enforce the judgment, including jurisdiction encompassing third parties. The Court stated: "To interpret La. R.S. 13:1401 otherwise would hamper judicial economy and increase expense and delay."

Domestic Abuse

Shaw v. Young, 15-0974 (La. App. 4 Cir. 8/17/16), 199 So.3d 1180.

On a matter of first impression, the 4th Circuit found that cyberstalking met the criteria for domestic abuse to obtain a protective order under the Louisiana Domestic Abuse Assistance Law, La. R.S. 46:2131, *et seq.* Both stalking and cyberstalking are "offenses against the person" in the Louisiana Criminal Code, and, because they constitute harassment under the stalking statute, La. R.S. 14:40.2, they also qualify as domestic abuse under La. R.S. 46:2136. Facebook postings by Mr. Young regarding Ms. Shaw were part of the abuse. The trial court did not err in denying Mr. Young interim and final spousal support because, even though he had little income, she had no ability to pay support. The trial court did not err in not addressing the fault issue since, in any event, Ms. Shaw was unable to pay any support to Mr. Young.

Spousal Support

Brown v. Brown, 50,833 (La. App. 2 Cir. 8/10/16), 200 So.3d 887.

The trial court did not err in accepting Ms. Brown's testimony regarding assets, income and need for interim spousal support and in rejecting his claims regarding his ability to pay, primarily due to his failure to produce documents and his "evasive" and "contradictory" testimony regarding his previously very profitable business that he "shut down." Ms. Brown's actions concerning financial transactions of which Mr. Brown was not aware until the petition for divorce was filed did not constitute fault because they did not contribute to the breakup of the marriage. The trial court did not err in awarding her final spousal support after considering her need and his ability to pay based on his past earnings as he filed no income-and-expense list and failed to provide a current tax return or financial records. The trial court did not err in ordering him to pay \$12,500 to her for past-due support and \$14,000 to her attorney for fees incurred on contempt rules due to his failure to pay support from the time of the first order through the appeal.

—David M. Prados

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No Piercing Corporate Veil to Member of Construction Company

Provosty v. ARC Constr., L.L.C., 15-1219 (La. App. 4 Cir. 11/2/16), ___ So.3d ___, 2016 WL 6473022.

Plaintiffs contracted with ARC Construction, L.L.C., to build a new home in Orleans Parish. After encountering numerous setbacks and disputes with ARC Construction, plaintiffs filed suit against ARC Construction and all of its members for negligence, bad faith breach of contract, misrepresentation, misappropriation of funds, fraud and violations of the Louisiana Unfair Trade Practices Act. Plaintiffs later amended

their suit to ask the court to hold all of the defendants solidarily liable under the “piercing the corporate veil/alter ego” doctrine on the basis of fraud and undercapitalization. Defendant Icehouse Capital Management, L.L.C., was a member of ARC Construction, and the managing member of Icehouse was Marc Winthrop.

After the trial resulted in a jury verdict in favor of plaintiffs, the district court rendered judgment finding the members of ARC Construction, including Icehouse, solidarily liable to plaintiffs. Subsequently, Icehouse filed a motion for new trial as to its solidary liability, asserting that an erroneously worded jury interrogatory caused juror confusion. The trial court granted Icehouse’s motion for new trial, and a bench trial was held as to the individual liability of Icehouse, through Winthrop, for the fraud perpetrated against plaintiffs. The trial court rendered judgment in favor of Icehouse, dismissing it from all liability, and plaintiffs appealed both the granting of the motion for new trial

and the dismissal of Icehouse from liability.

The 4th Circuit affirmed the granting of the motion for new trial, holding that the jury interrogatory was erroneously worded such to imply that Icehouse (which itself was a member of ARC Construction) was also a member of a separate limited liability company that was also a member of ARC Construction. The 4th Circuit agreed with the trial court that there was clearly an error in identifying Icehouse as a member of the other limited liability company and further held that the trial court neither abused its discretion nor committed a legal error in granting Icehouse a new trial.

In challenging the dismissal of Icehouse as solidarily liable along with the other defendant members of ARC Construction, plaintiffs averred that the trial court committed legal error in its analysis and application of *Bossier Mill Work & Supply Co. v. D. & R. Const. Co.*, 245 So.2d 414 (La. App. 2 Cir. 1971), which the trial court found

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inapplicable to pierce the corporate veil of ARC Construction as to Winthrop. Plaintiffs argued that pursuant to *Bossier*, a member of a corporation can be held individually liable for fraud through the theory of piercing the corporate veil, when he or she had equal authority and participation in the management of the financial affairs of the corporation, knew of the fraud or deceit being practiced on a third party and profited from the fraud. The district court had rejected the application of *Bossier* to Winthrop, further holding that there was a lack of proof of fraud, so as to hold Winthrop personally liable under the fraud exception under La. R.S. 12:1320(D).

In affirming the dismissal of Icehouse as solidarily liable, the 4th Circuit agreed with the trial court that facts in *Bossier* were distinguishable from those in the present matter. While there was conflicting testimony as to whether Winthrop was involved in the day-to-day management of ARC Construction, the trial court resolved that he was not and that he was not physically present at ARC Construction to have been involved in the daily management of the corporation. Further, no evidence was presented to indicate that fraud perpetrated against plaintiffs by other members of ARC Construction was communicated to Winthrop, or that he directly acted to defraud the plaintiffs. Winthrop's inquiries into payments made by plaintiffs coupled with the financial updates he received on ARC Construction's financial status did not equate to fraud on his part or knowledge of fraudulent activity committed

by any of the other ARC Construction members and/or employees. Lastly, Winthrop, via Icehouse, did not profit from plaintiffs being defrauded.

Unlicensed Contractor Entitled to *Quantum Meruit*

Crescent City Cabinets & Flooring, L.L.C. v. Grace Tama Dev. Co., 16-0359 (La. App. 4 Cir. 10/19/16), ___ So.3d ___, 2016 WL 6094372.

Grace Tama contracted with Crescent City for the purchase and installation of kitchen and bathroom cabinets and countertops throughout a 40-unit apartment complex owned by Grace Tama. After paying 40 percent of the contract value as a material deposit, Grace Tama made only partial payments toward the remaining balance under the contract, leaving a balance of approximately \$42,000. Crescent City filed a lien against Grace Tama's property on which the work was performed and then subsequently filed suit to enforce its lien. Grace Tama answered and reconvened, alleging that any money owed was offset by damages suffered because Crescent City was unlicensed, uninsured and unqualified, and further seeking costs incurred from correcting alleged problems and repairing damage to the property caused by Crescent City.

During the bench trial, the owner of Crescent City admitted that neither he nor Crescent City had a contractor's license. He further testified that

the remaining balance due represented Crescent City's overhead and profit on the sale of the materials (approximately \$20,000) and the actual cost of the labor (\$22,800) without profit or overhead. Grace Tama's owner, in turn, testified that payment was withheld because Crescent City did not possess a contractor's license, did not obtain insurance as required under the contract, performed improper work and caused damages to the property that Grace Tama had to repair.

After the close of Crescent City's case, Grace Tama moved for an involuntary dismissal. On the following day, the trial court rendered judgment finding that Louisiana law required Crescent City to obtain a contractor's license in order to enter a commercial construction contract, and, therefore, the contract between Crescent City and Grace Tama was null and void. However, the trial court awarded Crescent City an amount sufficient to compensate Crescent City for the actual cost of the materials and labor pursuant to the *quantum meruit* doctrine.

In affirming the decision of the trial court, the 4th Circuit cited to the long line of jurisprudence that has allowed for contractors to recover the value of the actual cost of materials and labor, including general overhead, and a reasonable or fair profit, in the absence of a contract under the doctrine of *quantum meruit*. The 4th Circuit further noted that there is no special rule as to the type of evidence required to support a *quantum meruit* claim and refused to overturn the trial court's judgment as an abuse of discretion in awarding Crescent City the balance of the actual cost of the labor and materials in light of the evidence of the contract (even considered null and void), the invoices, and the testimony regarding the actual costs of the labor and materials.

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LHWCA and Collateral-Source Rule

dePerrodil v. Bozovic Marina, Inc., 842 F.3d 352 (5 Cir. 11/17/16).

Plaintiff Robert dePerrodil, a 70-year-old employee of Petroleum Engineers, Inc., filed suit against Bozovic Marine after sustaining injuries while aboard a vessel operated by Bozovic. While returning to port, the vessel encountered high seas. Captain Bozovic confronted a 10-foot wave by properly accelerating full throttle into it but improperly failing to decelerate after cresting. dePerrodil, who was situated in the wheelhouse, fell, sustaining injuries to his back. dePerrodil filed suit against Bozovic in the United States District Court for the Western District of Louisiana.

Pursuant to the LHWCA, dePerrodil's employer carried workers' compensation insurance for dePerrodil. The LHWCA carrier paid \$57,385.50 for dePerrodil's medical expenses.

Following a bench trial, the trial court

concluded Bozovic was negligent for failure to request that dePerrodil go to the passenger area of the vessel, failure to stay apprised of the weather conditions, and "erratic operation" of the vessel. At the conclusion of the trial, dePerrodil was allocated 10 percent liability and Bozovic Marine was allocated 90 percent. dePerrodil was awarded a total of \$984,395.52, which included the full amount of billed medical expenses, \$186,080.30, although the LHWCA carrier had paid only \$57,385.50. In calculating future lost wages, the court used an above-average work-life expectancy of 75 years, as recommended by an expert vocational-rehabilitation counselor.

Bozovic appealed, contending that it did not breach its duty of reasonable care because the risks encountered were open and obvious to dePerrodil, a longshoreman with four decades of experience in the Gulf of Mexico. Bozovic contended that the captain did not have a duty to protect dePerrodil from the open-and-obvious risk of losing his balance in rough seas.

The 5th Circuit rejected this argument, explaining that the accident would have occurred regardless of whether dePerrodil knew the risks of rough seas. The court found that although dePerrodil was aware of the weather, the captain's operation of the vessel could not be con-

sidered an "open and obvious" risk.

The 5th Circuit next turned to Bozovic's argument that the trial court should not have awarded dePerrodil the full amount of his "billed" medical expenses, as opposed to the medical expenses actually paid by the LHWCA carrier. The court noted that there was no direct authority regarding the treatment of written-off LHWCA medical expenses in the maritime-tort context. After reviewing analogous state and maritime law authorities, the court concluded that the trial court erred in this aspect of the judgment. The court stated that "LHWCA medical-expense payments are collateral to a third-party tortfeasor only to the extent paid." Thus, it held that a plaintiff in a maritime tort action may not recover for medical expenses billed but not paid.

Finally, the court turned to Bozovic's argument that the trial court should have calculated future wage losses based on the Bureau of Labor Statistics (BLS) average work-life expectancy of 72, as opposed to age 75. In reviewing the evidence on this point, the 5th Circuit noted that dePerrodil presented a vocational-rehabilitation counselor who concluded that it was "very reasonable" that dePerrodil would work until age 75. This conclusion was based on dePerrodil's testimony that he and his wife had an

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agreement that he would work until age 75, his work history, his earnings records and his healthcare providers' recommendations for future treatment.

The 5th Circuit distinguished two prior decisions on this issue and found that the trial court did not err in using the 75-year work-life expectancy. The court explained that dePerrodil fully developed the evidentiary basis for such a departure from the BLS average.

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Presidential Authority over International Commerce

President Donald J. Trump was elected partially on a platform of implementing a new direction in U.S. trade policy. During the campaign, he suggested that his administration would unilaterally impose increased import tariffs on imported goods from countries engaging in unfair trade, in particular, China. Campaign rhetoric aside, the U.S. Constitutional system strikes a delicate balance between the legislative and executive branches in international trade matters. The Constitution delegates to Congress authority to regulate international commerce, including the ability to collect and levy taxes, tariffs and duties. The President lacks unilateral competence over international commerce and tariffs, yet the Oval Office is charged with negotiating international agreements and conducting foreign affairs. Over time, Congress has delegated some of its international commerce authority to the President. The most controversial of these delegations is the so-called "Fast Track" or "Trade Promotion Authority," whereby the President negotiates and executes Free Trade Agreements and submits them to Congress for an up-or-down vote without amendment or markup. Until this election cycle, very little attention was given to congressional delegations of trade authority to increase tariffs.

The following is a brief outline of three delegated tariff powers allowing the President to act unilaterally under certain conditions. Note that the mere presence of delegated authority does not validate action under such authority. Even assuming the congressional delegation is valid and the President's exercise of such authority comports with the delegating statute, the United States has "bound" its tariff rate obligations under various international trade agreements. Most notably, the

United States has committed itself to Most Favored Nation tariff treatment under the multilateral agreements comprising the World Trade Organization (WTO). This obligation prevents the United States from imposing tariffs above its "bound" rates except in specific situations recognized by the WTO Agreements, such as in antidumping, countervailing duty and safeguard cases. Unilateral action increasing tariff obligations beyond the "bound" rates outside of these specific exceptions raises the immediate prospect of litigation under the WTO Dispute Settlement Understanding. Nonetheless, the President does have such statutory authority under U.S. law. Three examples follow.

► **Section 232 of Trade Expansion Act of 1962** (19 U.S.C. § 1 862 (b)-(c)): If the Secretary of Commerce determines that imports are entering the U.S. market "in such quantities or under such circumstances as to threaten to impair the national security," the President may take unilateral action "necessary to adjust the imports of such article so that the imports will not threaten or impair the national security." Section 232 may be initiated by interested parties, the head of any department or agency, or self-initiated by the Department of Commerce. This law has been used in many different situations involving imports that can threaten or impair national security, including uranium, steel products and semiconductors. One notable section 232 investigation involved imports of crude oil and refined petroleum products that could impact U.S. energy security.

► **Section 301 of Trade Act of 1974** (19 U.S.C. § 2 411): The President has authority to increase U.S. tariff obligations where "an act, policy, or practice of a foreign country" (1) violates or denies U.S. benefits under any trade agreement; or (2) is unjustifiable and burdens or restricts U.S. commerce. This provision is primarily used by the United States to increase tariffs on products in a so-called "retaliation list" generated after obtaining WTO authority to suspend bound tariff obligations. The long-running dispute between the United States and the EU over EU restrictions on hormone-treated beef generated more than 10 years of U.S. retaliation on various EU imports.

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► **Section 338 of U.S. Tariff Act of 1930** (19 U.S.C. § 1338(a)): The President has authority to unilaterally declare new tariffs and duties whenever a foreign country (1) imposes unreasonable charges, extractions, regulations or limitations on products of the United States where such are not applied to products of other foreign countries; or (2) discriminates in fact against the commerce of the United States. Assuming the President makes the requisite section 338 determination, the statute authorizes increased duties beyond bound rates up to 50 percent of the particular product's value, and the ability to block the subject imports if discrimination continues after the duty imposition. One notable historical record regarding section 338 involves a 1949 telegram from then-U.S. Secretary of State Dean Acheson to a consular official in Shanghai regarding potential deployment of section 338 in response to Chinese discrimination against U.S. trade.

World Trade Org.

United States-Conditional Tax Incentives for Large Civil Aircraft, WT/DS487/R (Nov. 28, 2016).

A WTO dispute-settlement panel recently issued its decision in a dispute brought by the EU against the United States involving conditional tax incentives issued by the State of Washington related to the development, manufacture and sale of large aircraft. The State of Washington passed legislation offering approximately \$8.7 billion in tax breaks in exchange for Boeing's development and construction of a 777Xwing plant in Everett, Washington. The EU asserted that the State of Washington's aerospace tax incentives are illegal subsidies under the WTO Subsidies and Countervailing Measures Agreement (SCM). The EU targeted seven tax incentives, including a reduced business and occupation tax rate, credits against business taxation, and other state tax exemptions. The EU asserted that the tax incentives contained domestic-content requirements in violation of Articles 3.1(b) and 3.2 of the SCM Agreement. Subsidies with

domestic-contents requirements require the use of domestic goods over imported goods in order to qualify for the subsidy.

The panel first determined that each of the seven aerospace tax measures at issue satisfied the definition of subsidy (*i.e.*, conferred a monetary benefit) under Article 1 of the SCM Agreement. The panel then found that the subsidies were not *de jure* (directly) contingent on the use of domestic over imported goods and, therefore, were not inconsistent with the SCM Agreement. However, the panel did find that one of the subsidies was *de facto* (in effect) contingent on the use of domestic over imported goods and thus WTO inconsistent. That particular subsidy involved a reduced business and occupation tax rate for the manufacturing or sale of commercial airplanes under the 777X program. The United States announced its appeal of the panel ruling on Dec. 16, 2016.

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Legal, Operational Implications of EEOC's Updated Strategic Enforcement Plan

On Oct. 17, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued its revised Strategic Enforcement Plan (SEP) for Fiscal Years 2017-2021, which makes publicly available its updated priorities for enforcement of federal EEO laws across certain protected classes of individuals. The EEOC generally identifies its substantive area priorities for 2017-2021 as follows: (1) eliminating barriers in recruitment and hiring; (2) protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination; (3) addressing selecting emerging and developing issues; (4) ensuring equal pay protections for all workers; (5) preserving access to the legal system; and (6) preventing systemic harassment.

But what do these strategic priorities actually entail, and how will EEOC's new measures affect employers in the public and private sectors? This article will offer a summary and recommendations for clients and businesses based on these new enforcement priorities.

Eliminating Barriers in Recruitment and Hiring

The EEOC maintains its stance of eradicating discrimination in recruiting and hiring of workers, but has placed an increased focus on "class-based recruitment and hiring practices that discriminate against racial, ethnic, and religious groups, older workers, women, and people with disabilities." Particularly, the SEP places increased scrutiny on hiring in the fields of technology and law enforcement whenever there is evidence

of a systemic lack of diversity. Related areas of investigation will be application processes that are viewed as restrictive (e.g., computer programs or websites that may be inaccessible to persons with disabilities) and data-driven candidate selection tools (e.g., pre-employment tests, background checks, medical questionnaires).

Take-Away: Re-examine your recruiting and hiring procedures. Confirm that online recruiting tools are equally accessible by individuals with physical or other disabilities. Review whether your pre-employment background checks and screening processes (1) are appropriately tailored to the requirements of the job, and (2) do not exclude applicants from certain positions, or "funnel" them to certain positions, based on race or other demographics.

Protecting Vulnerable Workers from Discrimination

The EEOC recognizes that immigrant and migrant workers, as well as members of underserved minority communities, are often unaware of their federal employment rights and face socioeconomic barriers such as "work status, language, financial circumstances, or lack of work experience."

Take-Away: Employers operating in geographic areas with significant populations of foreign workers or within underserved African-American, Native American, Latino or other minority communities should ensure that their employment practices do not adversely impact these individuals. Important in this process could be a larger emphasis on training for employees and managers regarding EEO policies and internal-complaint procedures.

Addressing Selected Emerging and Developing Issues

This subject tends to garner the most interest from employers because it indicates how the EEOC sees the developing landscape of discriminatory employment practices and how it is likely to allocate its resources to ramp up enforcement in certain substantive areas. The five issues specified by the SEP are: (1) qualification standards and leave

policies that adversely impact disabled employees; (2) increased accommodations for pregnant workers; (3) discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals; (4) "employee" status of workers in certain temporary, contractual or "on-demand" lines of work; and (5) discrimination against Muslim and Sikh employees and those of Arab, Middle Eastern or South Asian descent based on stereotypical racial, cultural or social perceptions.

Take-Away: Be aware of EEOC's areas of increased focus on workers who are disabled, pregnant, LGBT or Muslim/Sikh/Arab/Middle Eastern/South Asian, and incorporate information on these protected categories into your workplace training tools for managers, supervisors and employees. To the extent necessary, determine whether your workers should be deemed "employees" for purposes of EEOC jurisdiction (most federal employment statutes apply to business with at least 15 to 20 employees).

Ensuring Equal Pay Protections for All Workers

While continuing its focus on pay practices and systems that are discriminatory on the basis of sex under the Equal Pay Act and Title VII, the EEOC is expanding its purview to encompass compensation systems that "discriminate based on any protected basis." Thus, the EEOC will shift its focus from purely gender-based pay disparities to practices that appear to discriminate based on race, ethnicity, age, disability or other protected characteristics.

Take-Away: Analyze employee pay rates, pay bands and actual pay records to confirm that any disparities within certain job classifications do not statistically appear to be based on protected class status, but rather on legitimate business reasons (e.g., length of service, level of education or industry experience).

Preserving Access to the Legal System

The EEOC will continue to challenge policies and procedures that discourage individuals from exercising their rights

under employment discrimination statutes, limit access to the EEOC or impede its investigation efforts. The SEP lists three areas of primary focus in this area: (1) waiver, releases and mandatory arbitration provisions complicate or prohibit filing of charges with EEOC or assisting in its investigation or prosecution of claims; (2) failure to maintain employee data and records as required by EEOC regulations; and (3) “significant retaliatory practices” that chill the exercise of workplace rights.

Take-Away: Evaluate whether your employment and severance agreements, including any included mandatory arbitration provisions, releases or waivers, might have a negative effect on an employee’s rights to pursue charges with the EEOC or other state/local EEO agencies or to assist in EEOC investigations. To the extent necessary, work with legal counsel on revising these agreements to appropriately preserve these rights. Also, confirm record-retention policies to ensure that applicant and employee data is properly maintained and accessible.

Preventing Systemic Harassment

The EEOC notes that harassment continues to be the most frequently reported workplace issue it confronts,

making up more than 30 percent of all charges filed, with sex, race and disability harassment being complained of with the highest frequency. The EEOC will aim its investigative efforts at employers who appear to maintain a policy, practice or pattern of harassment. According to the SEP, the agency will encourage “holistic prevention programs, including training and outreach” to curb future violations, in addition to seeking monetary relief for victims and injunctive relief to prevent ongoing incidents of harassment.

Take-Away: Implement training for managers, supervisors and employees, emphasizing the many forms that workplace harassment may take (e.g., verbal or physical, opposite-sex or same-sex, known or perceived disabilities). Remind employees periodically about the process for reporting workplace harassment, and consider expanding the available methods to include a hotline or email complaint procedure.

Other Developments and Closing Thoughts

To effectively implement these substantive area priorities, the EEOC intends to engage in coordinated efforts among its district offices to streamline investigations, exchange information

and ideas, and coordinate enforcement efforts. To this end, the agency has expressed its commitment to a three-pronged approach: (1) a “targeted approach” whereby the EEOC will proactively identify and investigate priority cases; (2) an “integrated approach” whereby it will implement uniform procedures to create a more consistent system of collaboration and coordination between its various offices and staff; and (3) an “accountability” initiative to underscore its goal of meeting public expectations for enforcement of EEO laws.

In light of these new enforcement priorities, employers should review and discuss the SEP (available on EEOC’s website, <https://www.eeoc.gov/eeoc/plan/sep-2017.cfm>) and create an action plan for implementing new or modified policies to address and correct any potentially problematic issues.

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For the past nine years, the Louisiana State Bar Association has convened a “Conclave on Diversity in the Legal Profession,” as a “conclave” signifies “an assembly or gathering, especially one that has special authority, power or influence.” Join the LSBA for the 10th anniversary celebration of the Diversity Conclave on **March 24, 2017, in New Orleans**, with keynote speaker Samuel Reeves (senior vice president and counsel at Walmart, Inc.), workshop presenter Dr. Shawn Marsh and other dignitaries. **Reserve your spot and register before Feb. 17, 2017**, for a discounted rate - visit <https://www.lsba.org/CLE/>.



Unrecorded Ratification of Unit Agreement

AIX Energy, Inc. v. Bennett Props., L.P., No. 13-cv-3304 (W.D. La. 9/26/16), 2016 WL 5395870.

In this case, the parties disputed whether a mineral servitude had terminated. The landowners argued that the servitude had terminated by prescription of nonuse because there had not been any production or drilling on the servitude tract for more than 10 years. Other parties argued that production from the unit well for a drilling unit that was created by agreement had interrupted prescription. Neither the landowners nor their predecessor-in-interest had signed the agreement, but the predecessor-in-interest had signed division orders that purported to ratify the agreement, and he had accepted payments from unit production. The court held that this was sufficient to constitute a ratification of the unit agreement.

The landowners argued that even if their predecessor-in-interest had ratified the agreement, they were not bound by it because the ratification was not reflected in the public record. The United States District Court for the Western District of Louisiana disagreed, relying on La. Civ.C. art. 3339, which provides that third persons are bound by certain things even if they are not evidenced in the public record. That article states:

A matter of capacity or authority, the occurrence of a suspensive or a resolutive condition, the exercise of an option or right of first refusal, a *tacit acceptance*, a termination of rights that depends upon the occurrence of a condition, and a *similar matter pertaining to rights and obligations evidenced by a recorded instrument* are effective as to a third person although not evidenced of record. (Emphasis added.)

The court concluded that the ratification was “a similar matter.” Thus, the landowners were bound by the unrecorded ratification and the servitude was still alive because prescription had been interrupted by unit production.

Mandatory Reports from Unit Operator

XXI Oil & Gas, L.L.C. v. Hilcorp Energy Co., 16-0269 (La. App. 3 Cir. 9/28/16), ___ So.3d ___, 2016 WL 5404650.

La. R.S. 30:103.1 provides that whenever a compulsory unit includes “lands producing oil or gas, or both, upon which the operator . . . has no valid oil, gas, or mineral lease,” the operator must provide certain sworn financial reports to any unleased owners who request such reports. La. R.S. 30:103.2 puts teeth into this requirement by providing that, if the operator fails to send these reports to “the owner or owners of unleased oil and gas interests” who request them, and the operator also fails to timely correct such an omission after written notice, the operator will “forfeit his right to demand contribution from the owner or owners of the unleased oil and gas interests for the costs of the drilling operations of the well.”

In this case, XXI Oil & Gas held rights as a mineral leaseholder in a compulsory drilling unit operated by Hilcorp. In a prior decision, the 3rd Circuit held that certain information provided by Hilcorp was not sufficient to satisfy the La. R.S. 30:103.1 reporting requirements because the information was not sworn. Here, the 3rd Circuit addressed the question of whether La. R.S. 30:102.2’s penalty provision can apply with respect to land that is under lease, but not under lease to the operator.

Hilcorp argued that the penalty would not apply in such a situation because La. R.S. 30:102.2 refers to a forfeiture of the “right to demand contribution from the owner or owners of the *unleased* oil and gas interests.” (Emphasis added.) Hilcorp asserted that the most natural reading of “unleased” means not under lease to anyone. The 3rd Circuit disagreed (with one of the three judges on the panel dissenting), holding that, for purposes of La. R.S. 30:103.2, “unleased” means not under lease to the operator.

It is noteworthy that in an unrelated case earlier this year, a federal district court faced the same legal question and gave a contrary answer, holding that for purposes of La. R.S. 30:103.2, “unleased” means not under lease to anyone. See, *TDX Energy, L.L.C. v. Chesapeake Operating, Inc.*, No. 13-1242 (W.D. La. 3/24/16), 2016 WL 1179206. The Louisiana Supreme Court has never ruled on this legal question.

Challenge to Recusals

Hughes v. Johnson, No. 15-7165 (E.D. La. 10/20/16), 2016 WL 6124211.

In two legacy litigation cases in 2015, the Louisiana Supreme Court required Justice Jefferson D. Hughes to recuse himself from the court’s decision whether to grant the plaintiffs’ writ applications. (The lower courts had dismissed the plaintiffs’ claims in each of the two cases based on the subsequent-purchaser doctrine.) The ground for the recusal was that an organization that had received large donations from a law firm that often represents plaintiffs in legacy litigation cases had spent a considerable sum of money supporting Hughes’ election to the Louisiana Supreme Court. Justice Hughes challenged the recusal orders by filing a federal court action in which he asserted that the orders violated his constitutional rights. The United States District Court for the Eastern District of Louisiana dismissed Justice Hughes’ suit without prejudice, holding that the 11th Amendment to the U.S. Constitution deprived the court of subject matter jurisdiction.

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Uniformity of Exemptions and Exclusions for Local Taxing Authorities Is Required

Arrow Aviation Co. v. St. Martin Parish School Bd. Sales Tax Dept., 16-1132 (La. 12/6/16), ___ So.3d ___, 2016 WL 7118912.

The St. Martin Parish School Board Sales Tax Department (the collector) inspected the tax returns of Arrow Aviation Co., L.L.C. Arrow leases and repairs

helicopters, including shipping repaired helicopters to customers outside of Louisiana. During the audit period, the collector found that Arrow failed to pay a use tax or charge a parish sales tax to its customers. The collector issued an assessment for additional tax, interest and penalties.

Arrow paid the assessment under protest and filed suit to recover. Arrow asserted that the collector failed to apply a legislative tax exclusion, La. R.S. 47:301(14)(g)(i)(bb), which excludes from state and local sales tax the charges for repairs on certain property delivered to customers out of state. When Arrow delivered repaired helicopters to customers located in other states, it did not charge a sales tax. The collector replied by asserting that none of the tax authorities in St. Martin Parish adopted the exclusion.

Both parties also sought declarations on the constitutionality of the exclusion.

Under the Louisiana Constitution, Article VI, § 29(D)(1), the Legislature may provide for “exclusions uniformly applicable to the taxes of all local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state.” The district court ruled that the collector did not have to apply the exclusion to its assessment of Arrow and found the 2013 version of the exclusion was unconstitutional. The 2013 version of the exclusion was mandatory for tax authorities in East Feliciana Parish and optional for all other parishes, municipalities and school boards. Specifically, the district court ruled the 2013 version of the exclusion was unconstitutional because it mandated that East Feliciana Parish grant the exclusion, while at the same time gave other parishes the option to grant the exclusion. The district court then severed the mandatory language applicable to East Feliciana Parish. The

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effect, going forward, is tax authorities in St. Martin Parish do not have to apply the exclusion authorized by La. R.S. 47:301(14)(g)(i)(bb).

In reviewing the district court's ruling, the court found that the 2013 amendment to the exclusion does not treat all local governmental subdivisions, school boards and other political subdivisions the same because tax authorities in all parishes are not able to apply the exclusion in the same form, manner or degree. The exclusion being mandatory for tax authorities in East Feliciana, but optional for those in other parishes, was an example of non-uniformity prohibited by the state Constitution. The court held that, under Article VI, § 29(D)(1), the exclusion provided by La. R.S. 47:301(14)(g)(i)(bb), as amended in 2013, is unconstitutional. The court ordered that the offending language in La. R.S. 47:301(14)(g)(i)(bb), as amended in 2013, applicable to tax authorities in East Feliciana Parish, be severed and removed.

—**Antonio Charles Ferachi**
Member, LSBA Taxation Section
Director, Litigation Division
Louisiana Department of Revenue
617 N. Third St.
Baton Rouge, LA 70821

Louisiana State and Local Use Tax Collection by Remote Vendors

Since most individual Louisiana consumers and many small- to mid-sized Louisiana businesses still believe that purchases may be made tax-free over the Internet, Louisiana, like many other states, has attempted to require remote vendors to collect these taxes. The fact that Louisiana consumers are not self-reporting and paying Louisiana state and local use taxes on Internet purchases is impacting state revenues. Complicating matters for state and local tax collectors, in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), the U.S. Supreme Court held that the Commerce Clause of the U.S. Constitution limited any

state's jurisdiction to require out-of-state retailers collect its use taxes. The rationale was that, unless the remote vendor has property or workers in the state, the vendor did not have sufficient connection with the state (nexus) to be required to do anything for that state. The U.S. Supreme Court said that simply having tax-owing customers in the state was not enough. Unfortunately for the states, including Louisiana, most consumers do not voluntarily pay use tax on Internet purchases (in fact, most Louisiana consumers remain unaware of the obligation or the fact that use taxes can be paid on the Louisiana state income tax return). In response, the states have sought ways to assert that *Quill* does not apply and to nonetheless compel non-resident vendors to collect use tax.

Despite constitutional concerns, states' efforts to compel out-of-state retailers to collect state and local use taxes appear to be paying off, for Louisiana in particular. On Dec. 19, 2016, a spokesperson for online retailer Amazon.com stated that Amazon would begin collecting Louisiana state and local use tax on purchases shipped to recipients in Louisiana. Amazon's statement may be in response to the U.S. Supreme Court's denial of certiorari in *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (10 Cir. 2016), *cert. denied*, No. 16-267 (Dec. 12, 2016), ___ S.Ct. ___, 2016 WL 4565072, which upheld a Colorado law that requires an online retailer with no in-state physical presence to provide the Colorado Department of Revenue with information on taxable purchases made by Colorado customers. In 2016, Louisiana enacted a similar law, Act No. 569, H.B. 1121, 2016 Regular Session (effective July 1, 2017), that requires a remote retailer to provide information to both the Louisiana Department of Revenue and to the purchaser about purchases delivered in Louisiana if the retailer's cumulative annual gross receipts from taxable sales delivered to Louisiana made by the retailer and its affiliates exceed \$50,000 in a calendar year.

During 2016, Louisiana also enacted a "click-through nexus law," Act No. 22, H.B. 30, 2016 First Extraordinary Session (effective March 14, 2016),

which requires an out-of-state retailer with in-state affiliates to collect and remit use taxes if the retailer's cumulative gross receipts from sales of tangible personal property to customers in Louisiana that are referred to the retailer through the affiliate exceed \$50,000 during the preceding 12 months. In response to the click-through nexus law, Amazon ended its Louisiana affiliate program.

Louisiana's click-through nexus law applies *only* to an out-of-state retailer with Louisiana affiliates. Therefore, an out-of-state retailer without Louisiana affiliates may be subject to Louisiana's notification law if its sales delivered to Louisiana exceed the gross-receipts threshold. Further, an out-of-state retailer without a Louisiana affiliate program whose gross receipts from purchases delivered to recipients in Louisiana may be required to provide the Louisiana Department of Revenue a list of customer names, dates and amounts of purchases, and, if known by the retailer, whether the item purchased is exempt from sales-and-use taxes.

It is important to understand that a taxpayer's receipt of a notice under the Louisiana notification law does not mean that the taxpayer's purchase is taxable. Louisiana sales-and-use tax law contains a host of exclusions and exemptions, and the out-of-state retailer issuing the notice is not required to determine whether a purchase is excluded or exempt from taxation. Moreover, in certain instances, the notice may be issued to a taxpayer that Louisiana is prohibited from taxing by federal law, *e.g.*, Commerce Clause or the 14th Amendment Due Process Clause of the U.S. Constitution. Therefore, a person who receives a use-tax notice from an out-of-state retailer should carefully review the transactions listed in the notice and consider contacting a tax professional if the taxability of a transaction is at issue.

—**Jaye A. Calhoun and
William J. Kolarik II**
Members, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
601 Poydras St., 12th Flr.
New Orleans, LA 70130

CHAIR'S MESSAGE

Reputation: A Lifetime's Worth Gone in a Second

By Scotty E. Chabert, Jr.

A long time ago, an older attorney told me: "When the facts aren't in your favor, argue the law. When the law isn't in your favor, argue the facts." Recently, I was, unfortunately, taught the last part of that saying: "When neither the law nor facts are in your favor, personally attack your opponent attorney!" I was part of a team prosecuting a murder case and opposing counsel resorted to personal attacks on us instead of addressing the merits of the case. The opposing attorney had no facts in favor of her client, the law did not favor her client, and she resorted to a place that, as licensed attorneys, we should never go.



Scotty E.
Chabert, Jr.

Just prior to this unfortunate and outrageous experience, as chair of the Young Lawyers Division (YLD), I had the honor and privilege to address the 2016 Louisiana State Bar Association (LSBA) new admittees at their Bar Admissions Ceremony. The highlight of the event is always their swearing-in by the Louisiana Supreme Court. I ended my talk with a borrowed quote, "Do not allow your clients' problems to become a bigger problem for you

than it is for them!" The quote may not have had much meaning for my audience at this time as they had not had the privilege of representing their first clients yet. But, I believe that these new admittees will soon be faced with this dilemma that all of us have been dealt at times. Evidently, counsel for defense in the murder case had never been aware of this quote and made her client's problem bigger for her than for her client.

We spend a professional lifetime building our reputations, but those reputations can be ruined by just one comment before a jury.

Therefore, to assist our new LSBA members into making the transition from law school into the active practice of law, I'd like to offer some words of advice to get the ball rolling on building those all-important reputations.

As members of the LSBA, we abide by the Code of Professionalism which, among other things, requires us to conduct ourselves with dignity, civility, courtesy and a sense of fair play, and to cooperate with counsel. It's a good idea to read (and reread) the Code at least once a year. But, remember, being courteous and nice does not mean allowing yourself to be used or abused by opposing counsel. Stand up for yourself and project professionalism and, hopefully, that professionalism will be

mirrored back to you.

Your reputation will be comprised of your skill, talent, personality, integrity, ethical standards, imagination, judgment and diligence. Each encounter you have with another attorney, judge or client will either build on or detract from your reputation. Your aim is to be regarded as reliable, intelligent, diligent, practical, talented and trustworthy.

Work hard and focus on doing a great job, on time, on all the assignments you've been given. But guard against taking on too much. If you let yourself get overworked, you are asking for mistakes, missed deadlines and other problems.

When you get an assignment, pay attention to what is being requested from your supervisor. Take notes. Try to ask all questions, if necessary, at the outset, rather than sending several emails or making phone calls.

And about those emails and phone calls...If you are in an office, every now and then, take a walk and talk to your colleagues in person. You may learn more and it will help build relationships for your future.

Finally, take advantage of the LSBA's Transition into Practice (TIP) Mentor Program. With a mentor on your side, you can learn from another's experience, seek advice and learn the unwritten rules of being a lawyer. Learn more about the TIP Mentor Program at: <https://www.lsba.org/Mentoring/>.

One more reminder... All new admittees are automatically members of the Young Lawyers Division. Get involved and learn about all projects, programs and volunteer opportunities at: <https://www.lsba.org/YLD/default.aspx>.

YOUNG LAWYERS SPOTLIGHT

Thomas A. Pressly Shreveport

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Shreveport attorney Thomas A. Pressly.

Pressly's principal practice involves commercial litigation, insurance defense and commercial trucking. He received his undergraduate degree, *cum laude*, in 2009 from Texas Christian University (TCU) in Fort Worth, Texas, where he served as student body president. He received his law degree in 2013 from Loyola University College of Law. Prior to joining the Shreveport law firm of Cook, Yancey, King & Galloway, A.P.L.C., he

clerked for Hon. S. Maurice Hicks, Jr., U.S. District Court, Western District of Louisiana. He is admitted to practice in all Louisiana state and federal courts and the U. S. 5th Circuit Court of Appeals.

He enjoys giving back to the community through his work with the Shreveport Bar Association (SBA) and local non-profits. He is serving as the 2017 president of the SBA's Young Lawyers Section. He serves on the board of directors of the Robinson Film Center, Ark-La-Tex Ambassadors and the John V. Roach Honors College Board of Visitors at TCU, and is a member of the Louisiana Bar Foundation's Northwest



Thomas A. Pressly

Community Partnership Panel and the Federal Bar Association. He also promotes pro-business legislation as a member of the Legislative Policy Committee of the Greater Shreveport Chamber of Commerce.

Pressly is a founding member, and served as the first chair, of the Community Renewal International Young Professionals Organization (YoPro) in 2016. Together with the YoPro board, he created a program to develop community mentoring and networking opportunities for young professionals in the area and inner-city youth. Through his involvement with YoPro, he was a part of a board that successfully raised \$10,000 to fully fund a playground for an inner-city community center.

He is married to Maggie Nelson Pressly, also an attorney in Shreveport. They are the parents of a son.

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Lawyers/Judges in the Classroom Programs Reach 2,600+ Students

In observance of Constitution Day in September 2016 and in the succeeding three months, the Louisiana Center for Law and Civic Education (LCLCE) organized 68 in-school presentations statewide, reaching more than 2,600 students.

Judges participating in Constitution Day activities included Judge Paul A. Bonin, Judge Marilyn C. Castle, Judge John E. Conery, Judge John D. Crigler, Judge June Berry Darensburg, Judge Katherine C. Dorroh, Judge Lee V. Faulkner, Jr., Judge Charles G. Fitzgerald, Judge W. Ross Foote, Judge C. Wendell Manning, Judge Juan W. Pickett, Judge Mike A. Pitman, Judge Richard J. Putnam III, Judge Curtis Sigur, Judge Sheva M. Sims, Judge Raymond S. Steib, Jr. and Judge H. Stephens Winters.

Lawyers participating in Constitution Day activities included Virginia D. Alexander, W. T. Angers, John W. Bihm, John Z. (Zack) Blanchard, Jr., Dan M. Boudreaux, Trina T. Chu, John F. Dillon, Mary L. Dumestre, Ashly V. Earl, Elizabeth A. Elliot, Shytishia M. (Sam) Flugence, Lauren E. Godshall, A. Spencer Gulden, Felicia M. Hamilton, Sarah M. Hood, William R. Huguet, Glen L. Langley, Sowmya Mandava, Angel V. Manzanares, Betty A. Maury, Jackie M. McCreary, Mark A. Myers, Corey P. Parenton, DeVonna M. Ponthieu, Seth D. Reeg, Celeste H. Shields, Steven E. Soileau, Taylor C. Stone, Edward L. Tarpley, Jr. and Gabrielle A. Wilson-Prout.

Participating schools included Bolton High School, Bossier Parish School for



Judge Raymond S. Steib, Jr. presented a Constitution Day program at John Ehret High School in Marrero.

Technology & Innovative Learning, Boyet Junior High School, Buchanan Elementary School, C.E. Byrd Magnet High School, Central Park Elementary School, Cohen College Prep High School, Comeaux High School, David Thibodaux STEM Magnet Academy, Eden Gardens Magnet School, Einstein Middle/High Charter School, Folsom Junior High School, General Trass High School, Greenacres Middle School, Helen Cox High School, Huntington High School, Iberville Math, Science and Arts Academy, John Ehret High School, Live Oak Middle School, Louise McGehee School, Metairie Park Country Day, Mulberry Elementary School, New Iberia Senior High School, Northside High School, Northwood High School, Nunez Community College, Roseland

Elementary Montessori School, St. James High School, Summer Grove Elementary School, Sylvanie Williams College Prep School, West Jefferson High School, West Monroe High School, Westgate Senior High School and Woodlawn Leadership Academy.

The Louisiana Center for Law and Civic Education partners with the Louisiana State Bar Association and the Louisiana District Judges Association to bring lawyers, judges and educators together (all volunteers) to provide interactive, law-related presentations to Louisiana schools through the Lawyers in the Classroom/Judges in the Classroom Programs. For more information, visit the LCLCE website, www.lalce.org, or read more about involvement on pages 358-359.

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Adam J. Haney was elected judge, Division A, East Baton Rouge Juvenile Court. He earned his BA degree in 2000 from Loyola University New Orleans and his JD degree in 2006 from Louisiana State University Paul M. Hebert Law Center. Prior to his election to the bench, he served as the chief gang prosecutor and a chief homicide prosecutor for the East Baton Rouge Parish District Attorney's Office. Judge Haney is married to Tara Trahan Haney and they are the parents of two children.



Adam J. Haney

E. David Deshotels, Jr. was elected judge, Division B, 33rd Judicial District Court. He earned his BA degree in 1989 from McNeese State University and his JD degree in 1992 from Southern



E. David Deshotels, Jr.

University Law Center. Prior to his election to the bench, he was a partner in the firm Deshotels, Mouser & Deshotels and served as chief public defender for Allen Parish. He also served as attorney and magistrate for the Town of Oberlin from 1992-2014. Judge Deshotels is married to Sherrie Thomas Deshotels and they are the parents of four children.

Appointments

► Angelette A. Jackson was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office ending April 21, 2018.

► Rosy W. Bromell and Prof. Patrick R. Hugg were reappointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for four-year terms ending April 21, 2020.

► C. Peck Hayne, Jr. was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term ending Feb. 15, 2021.

► Orleans Parish Juvenile Court Judge Ernestine S. Gray was appointed, by order of the Louisiana Supreme Court, to the Judicial Budgetary Control Board for a term of office ending Sept. 19, 2019.

► Carrie LeBlanc Jones, Anderson

O. Dotson III and Markey W. Pierré were appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office which began Jan. 1, 2017, and will end on Dec. 31, 2019.

► Jeffrey L. Little was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1, 2017, and will end on Dec. 31, 2017.

► Prof. Chunlin Leonhard was appointed, by order of the Louisiana Supreme Court, to the Equivalency Determination Panel for a term of office ending Dec. 31, 2020.

► Jan M. Hayden, Robert G. Pugh, Jr. and Mike C. Sanders were reappointed to the Mandatory Continuing Legal Education Committee for terms of office ending Dec. 31, 2019.

► Franchesca L. Hamilton-Acker was designated, by order of the Louisiana Supreme Court, as chair of the Mandatory Continuing Legal Education Committee for a term of office ending Dec. 31, 2017.

Deaths

► Retired 14th Judicial District Court Judge James C. McInnis, 77, died Aug. 12, 2016. He earned his BA degree in 1965 from McNeese State College and his JD degree in 1968 from Loyola University Law School. He served as assistant district attorney for Calcasieu Parish for many years. In 1981, he was elected to the 14th JDC where he served until his retirement in 1996.

► Retired Franklin City Court Judge Charles R. Prevost, Sr., 89, died Oct. 16, 2016. He served in the U.S. Army during World War II. He earned his undergraduate degree in 1948 from the University of Southwestern Louisiana and his LLB degree in 1951 from Tulane University Law School. Over his 40 years in the practice of law, he served as Franklin city attorney and as the first judge of Franklin City Court (serving nearly 30 years).

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Lisa E. Maurer and Mary K. Peyton have joined the firm as special counsel in the News Orleans office.

The Glenn Armentor Law Corp. in Lafayette announces that **Jeremy A. Bazile** has joined the firm as an associate.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Michael F. West has joined the firm's Baton Rouge office as an associate. Ashley E. Arnold, Lauren N. Brink and Jordan B. Redmon have joined the firm's New Orleans office as associates.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Eric J. Drury**, **Anna Matejcek** and **Shaun P. McFall** have joined the firm as associates.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., in Metairie announces that **Matthew A. Sherman** is the firm's newest equity partner. Also, **Zachary R. Smith**, **Erin B. Rigsby** and **Caitlin E. Spieker** have joined the firm as associates. **Dr. Clark G. Warden** has joined the firm as of counsel.

Cosse Law Firm, L.L.C., in New Orleans announces that **Jake J. Weinstock** has joined the firm as an associate.

Curry & Friend, P.L.C., announces that **Laura R. Caviness** and **Meghan E. Smith** have been named partners in the New Orleans office. Also, **Jefferson B. Goldman** has joined the firm as a senior associate.

Erlingson Banks, P.L.L.C., in Baton Rouge announces that **Rachel M. Abadie** has joined the firm as an associate.

Gieger, Laborde & Laperouse, L.L.C., announces that **Tucker T. Bohren**,

Stephen W. Gieger and **Rachel A. Richardson** have joined the firm as associates in the New Orleans office.

Johnson Gray McNamara, L.L.C., announces that **Aimee E. Chalin** has joined the firm as an associate in the Mandeville office.

King, Krebs & Jurgens, P.L.L.C., announces that Diana J. Masters has joined the firm as an associate in the New Orleans office.

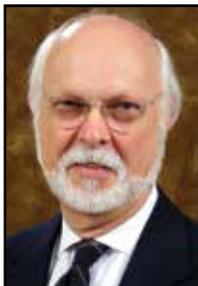
Perrier & Lacoste, L.L.C., announces that **Michael W. Robertson** and **Dustin L. Poché** have joined the firm as associates in the New Orleans office.

Preis, P.L.C., announces that Briana L. Drescher has joined the firm's Lafayette office.

The Scott Law Firm, L.L.C., announces that **Philip J. Hunter** has joined the firm as an associate in the Baton Rouge office.



Rachel M. Abadie



W. Paul Andersson



Richard J. Arsenault



Jeremy A. Bazile



Tucker T. Bohren



Laura R. Caviness



Aimee E. Chalin



Blake R. David



Eric J. Drury



George D. Fagan



Stephen W. Gieger



Jefferson B. Goldman

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

Stone Pigman Walther Wittmann, L.L.C., announces that Leon H. Whitten and Parker N. Smith have joined the firm as associates in the New Orleans office.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that Charles A. Anzelmo and Clare E. Sanchez have joined the firm as associates.

Wolfe, Begoun & Pick, L.L.C., and attorneys Mark R. Wolfe, Michael J. Begoun, T. Daniel Pick and Nancy S. Silbert have relocated their law offices to the second floor of the Campus Federal Credit Union Building, Ste. 200, 2200 Tulane Ave., New Orleans, LA 70119; phone (504)569-9500; website, www.wbplaw.com.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was a speaker at the Duke Law School's Complex Litigation Conference in Washington, D.C., and the Masters of Mass Tort Inaugural Seminar in Cancun, Mexico. He also chaired the Louisiana State Bar Association's Annual Admiralty Symposium and Annual Complex Litigation Symposium.

J. Dalton Courson, a member in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., was chosen for the Young Leadership Council's Role Model Class of 2016.

Blake R. David, a partner in the Lafayette firm of Broussard & David, L.L.C., has achieved board certification as a civil trial advocate from the National Board of Trial Advocacy.

Robert E. (Bob) Kleinpeter, managing partner at Kleinpeter & Schwartzberg, L.L.C., in Baton Rouge, received the 2016 Public Service Award from the Louisiana Association for Justice.

Van R. Mayhall, Jr., senior partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., released his third book in the Cloe LeJeune thriller series. The book's title is 7. His debut novel in the series, "Judas the Apostle," is slated for film production in 2017.

Patrick C. Morrow, senior partner in the Opelousas firm of Morrow, Morrow, Ryan, Bassett & Haik, received the 2016 Stalwart Award from the Louisiana Association for Justice.

William D. (Bill) Shea, partner in charge of the Baton Rouge office of Adams and Reese, L.L.P., was appointed to the Baton Rouge Area Chamber's board of directors.

PUBLICATIONS

Best Lawyers in America 2017

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): E. Gregg Barrios, Mark R. Beebe, Philip O. Bergeron, Charles A. Cerise, Jr., Robin B. Cheatham, V. Thomas Clark, Jr., Scott E. Delacroix, Kathleen F. Drew, John M. Duck, Brooke Duncan III, Richard B. Eason II, Mark S. Embree, Philip A. Franco, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., E.L. Henry, Edwin C. Laizer, Leslie A. Lanusse, Francis V. Liantonio, Jr., Don S. McKinney, Robert B. Nolan, Glen M. Pilié, Jane C. Raiford, Edward J. Rice, Jr., Jeffrey E. Richardson, James T. Rogers III, Deborah B. Rouen, Elizabeth A. Roussel, E. Paige Sensenbrenner, Ronald J. Sholes, Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Roland M. Vandenberghe, Jr., Robert A. Vosbein and David M. Wolf.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Alissa J. Allison, Edward H. Arnold III, Alton E. Bayard III, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Robert C. Clotworthy, Christopher O. Davis, John B. Davis, Nancy Scott Degan, Warner J. Delaune, Jr., Robert S. Emmett, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven

Continued next page



Philip J. Hunter



Allan Kanner



Robert E. Kleinpeter



Lynn M. Luker



Anna Matejcek



Shaun P. McFall



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Jones Walker, L.L.P. (Baton Rouge, Lafayette, New Orleans, Houston, TX): Robert B. Acomb, Jr., H. Mark Adams, Jesse R. Adams III, William M. Backstrom, Jr., Edward Hart Bergin, Richard D. Bertram, Robert B. Bieck, Jr., John C. Blackman IV, James E. Boren, Timothy P. Brechtel, John J. Broders, Boyd A. Bryan, Andre B. Burvant, Robert R. Casey, Thomas A. Casey, Jr., Susan K. Chambers, Michael A. Chernekoff, Fred L. Chevalier, R. Keith Colvin, Mark A. Cunningham, J. Kelly

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Lamothe Law Firm, L.L.C. (New Orleans): Frank E. Lamothe III.

Leake & Andersson, L.L.P. (New Orleans): **W. Paul Andersson, George D. Fagan, Donald E. McKay, Jr., Stanton E. Shuler, Jr. and Patrick M. Wartelle.**

Liskow & Lewis, P.L.C. (Lafayette,



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Unglesby Law Firm (Baton Rouge): Lewis O. Unglesby.

Chambers USA 2016

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Louisiana Super Lawyers 2017

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Who’s Who Legal: Real Estate

Stone Pigman Walther Wittmann, L.L.C. (New Orleans): Susan G. Talley.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2017	April 4, 2017
Aug./Sept. 2017	June 4, 2017
Oct./Nov. 2017	Aug. 4, 2017
Dec. 2017/Jan. 2018	Oct. 4, 2017

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to: **Publications Coordinator Darlene M. LaBranche, Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404 or email**

dlabranche@lsba.org.

UPDATE

Corbett Named Faculty Advisor of La. Judicial College

Louisiana State University Paul M. Hebert Law Center Professor William R. Corbett has been named faculty advisor of the Louisiana Judicial College. As faculty advisor, he will provide information and analysis



William R. Corbett

on state, national and international legal trends and on state and federal legislation affecting the College. He will also prepare and revise benchbooks and other best practices and will further ensure that the vision, mission and goals of the College are met.

Corbett received his BA degree from Auburn University and his JD degree from the University of Alabama. He holds the Frank L. Maraist Professorship and the Wex S. Malone Professorship at LSU Law Center and was interim co-dean of the Law Center during the 2015-16 academic year.



The Louisiana State Bar Association's Family Law Section held its annual meeting in Baton Rouge in September 2016 and presented its Law School Writing Competition award. Randy J. Fuerst, right, 2015-16 Family Law Section chair, presented the \$1,000 first prize to Bryan J. O'Neill for the best paper, "The Supreme Court of O'Neill: Is a Polygamous Marriage Included in the Fundamental Right to Marry?" For the 2016-17 school year, the writing competition will be expanded to all Louisiana law schools and will offer a first-place award of \$1,000 and a second-place award of \$500 for the best papers on family law topics.

Ralston Installed as 2016-17 NOBA President

Christopher K. Ralston, a partner in the New Orleans office of Phelps Dunbar, L.L.P., was installed as the 2016-17 president of the New Orleans Bar Association in ceremonies in November 2016.



Christopher K. Ralston

Joining Ralston on the 2016-17 board of directors are Dana M. Douglas, president-elect; Steven J. Lane, vice president; Jason P. Waguespack, vice president; James M. Williams, vice president; Jan M. Hayden, secretary; Paul M. Sterbcow, treasurer; Judy Y. Barrasso, immediate past president; Dawn M. Barrios, New Orleans Bar Foundation president; and Aaron B. Greenbaum, Young Lawyers Section chair.

Board members with terms expiring in 2017 are Camala E. Capodice, Mark A. Cunningham, William B. Gaudet and Robert P. Thibeaux. Board members with terms expiring in 2018 are Rachael D. Johnson, Peter E. Sperling, Sharonda R. Williams and Joseph P. Tynan. Board members with terms expiring in 2019 are Lisa M. Africk, Albert J. Derbes IV, James C. Gulotta, Jr. and Darryl M. Phillips.



The Louisiana State Bar Association's Medical-Legal Interprofessional Committee met on Dec. 3, 2016. Attending the meeting were, from left, Jason R. Cashio, Dr. Chris Cenac, Sr., Dr. Cristina Lord, Dr. Paul Hubbell, Robert L. Bordelon, Lacey Bean, Dr. Anthony S. Ioppolo, Dr. Randy Roig, Richard S. Crisler, Stacey W. Marcel, David I. Burkett, D. Abboud Thomas, Charles D. Elliot and Dr. Gerald Berenson.

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Red Mass Conducted at St. Louis Cathedral in New Orleans

The St. Thomas More Catholic Lawyers Association coordinated the annual Red Mass on Oct. 3, 2016, at St. Louis Cathedral in New Orleans. Archbishop Gregory M. Aymond with the Archdiocese of New Orleans was the principal celebrant, and the Rev. David Caron, director of the archdiocesan Office of Evangelization, gave the homily. A reception followed at the Louisiana Supreme Court. The Louisiana State Bar Association conducted its annual Memorial Exercises to honor deceased members of the Bench and Bar following the Red Mass.



The Red Mass at St. Louis Cathedral in New Orleans opened with the procession. *Photo by Darryl Schmitt Photography.*



Several members of the judiciary and legal professionals attended the October Red Mass at St. Louis Cathedral in New Orleans. *Photo by Darryl Schmitt Photography.*



Attending the Red Mass were, from left, Louisiana State Bar Association President Darrel J. Papillion, Judge Raymond S. Steib, Jr. and LSBA President-Elect Dona Kay Renegar. *Photo by Darryl Schmitt Photography.*



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, from left, with Archbishop Gregory M. Aymond and Louisiana Attorney General Jeff Landry. *Photo by Darryl Schmitt Photography.*



Archbishop Gregory M. Aymond, left, with the Archdiocese of New Orleans, and Judge Raymond S. Steib, Jr., 24th Judicial District Court. *Photo by Darryl Schmitt Photography.*

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

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Darlene LaBranche at
dlabranche@lsba.org.

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

Jarrett Receives NOBA Distinguished Maritime Lawyer Award

R. Keith Jarrett, a shareholder in the New Orleans office of Liskow & Lewis, P.L.C., received the 2016 New Orleans Bar Association's Distinguished Maritime Lawyer Award. The award, presented in October 2016, recognizes maritime attorneys for their dedication in practicing admiralty law.

In his 30 years with the firm, Jarrett has been involved with maritime litigation including vessel collisions, well blowouts, pollution events, vessel construction, and personal injury and wrongful death cases.



R. Keith Jarrett, center, a shareholder in the New Orleans office of Liskow & Lewis, P.L.C., received the 2016 New Orleans Bar Association's Distinguished Maritime Lawyer Award. With him are fellow Liskow attorneys and past recipients of the Maritime Lawyer Award, S. Gene Fendler, left, and Donald R. Abauza.

Shreveport Bar Association Hosts Memorial and Recognition Ceremony

Eight deceased members and 19 new attorneys were recognized at the November 2016 Memorial and Recognition Ceremony sponsored by the Shreveport Bar Association and the 1st Judicial District Court.

Deputy Chief Judge Ramona L. Emanuel presided over the ceremony, and Shreveport Bar Association Memorial and Recognition Chair Marcus E. Edwards was master of ceremonies.

Deceased members recognized were Judge John Richard Ballard, John Alan Broadwell, Jackson Beauregard Davis, Huey L. Golden, Elizabeth Baucum Joyce, Joe C. LeSage, Jr., Judge William (Bill) Norris III and Amber Huffman Watt.

Newly admitted attorneys introduced to the court were Jack M. Bailey III, Haley G. Baynham, Rhys E. Burgess, Daniel L. Farris, Patrick J. Harrington, D. Garrett Hill, Jessica L. Greber, Matthew R. Lee, Mary Lauren Lock, Stephanie M. Lott, Brittany J. McKeel,



Louisiana State Bar Association Secretary Alaina R. Mire addressed the attendees at the Memorial and Recognition Ceremony sponsored by the Shreveport Bar Association and the 1st Judicial District Court.



Shreveport Bar Association Memorial and Recognition Chair Marcus E. Edwards was master of ceremonies for the November event.

Lance Gordon Mosely II, Alexandra Leigh Porubsky, William P. Self, Rachaela H. Ward, Luke D. Whetstone,

Aaron R. Wilson, Tanner C. Woods and Luc Daniel Zeller.

President's Message

That's a Wrap

By President E. Jane Sherman

As this last President's Message is being submitted, 2016 has just ended and the wrappings and trimmings of the holidays are being put away. Just around the corner, the Louisiana Bar Foundation's (LBF) governance year will be wrapping up in April. This 2016-17 year has seen a rallying of support on all levels as our communities faced difficult times brought on by disastrous flooding and its aftermath — 26 of our 64 parishes flooding in March, followed by more than 2 trillion gallons of water flooding a third of our southern parishes in August. The outpouring of support has allowed us to come a long way with new initiatives. It has truly been a pleasure and honor to serve as President and witness the wrappings of service from all areas that have moved us forward with civil legal aid giving comfort and care to the compromised. Those in darkness are seeing light as they find strength through the struggle.

Let's talk about the light brought about by new initiatives this year. On the funding side, in 2016, the LBF initiated the **Louisiana Flood Recovery Fund** and received donations in-state and from sister New York Bar and Alabama Law Foundations. More than \$200,000 was awarded to the legal service corporations and pro bono organizations for post-disaster civil legal services such as title clearing, FEMA eligibility and insurance issues. The **Unidentified Funds** 2016 amendment to the Louisiana Rules of Professional Conduct enabled lawyers to direct nearly \$200,000 in unidentified Interest on Lawyers' Trust Account (IOLTA) funds to the LBF to support legal aid. Most impactful, the U.S. Department of Justice's **Bank of America Class Action Settlement** awarded just over \$6.5 million to the LBF to help families stay in their homes and out of foreclosure

and bankruptcy and to provide a continuum of sustained grants over a period of years.

On the technology side, the LBF provided \$125,000 for a **Statewide Hotline** administered by the Louisiana Civil Justice Center to provide brief statewide intake advice and referrals to the legal service organizations. A new **Self-Represented Litigants** funding category was created to fund innovative access to justice solutions such as self-help centers and kiosks in each parish using court-approved forms and pro bono lawyers in the district courthouses to assist with client advice.

To increase awareness of civil legal aid, the LBF funded the 2016 **Economic Impact Study** (EIS) assessing the value of civil legal aid on the economic, social and health conditions of our state. The expansive study revealed that for every \$1 invested in Louisiana legal aid, Louisiana receives almost \$9 of immediate and long-term financial benefits. The EIS is a request of House Resolution No. 2 of the 2016 Regular Session of the Louisiana Legislature and a project of LBF's partnership with the newly formed **Access to Justice Commission**. Discussions are underway to request restored state funding of civil legal aid. The LBF and the Access to Justice Commission hosted a **Voices for Civil Justice Strategic Communications Training** session designed to provide tools for consistent messaging within our civil legal aid network.

For advocacy service, the LBF extended funds to **Louisiana Appleseed** to develop policy solutions to legal injustices and to increase legal services



E. Jane Sherman

proactively, rather than by piecemeal relief, to the poor. In November, a **Kids' Chance Proclamation** by Gov. John Bel Edwards was signed and celebrated declaring Nov. 14-18, 2016, as the first "Louisiana Kids' Chance Awareness Week." The Louisiana workers' compensation and legal communities came together and raised more than \$4,000 for scholarships.

For training, the LBF held a **Board Training** session led by the national Legal Services Corp. and local experts to strengthen our grantees' board leadership by reviewing board member responsibilities, administrative duties and mission goals. Additionally, nine new **Oral Histories** were recorded featuring retired judges and bar leaders for education and historical preservation usage. Interviews can be viewed at: www.raisingthebar.org.

Other changes this year included the recent award by the national Legal Services Corp. to Acadiana Legal Service Corp. of **La. Service Area 11**, formerly served by Legal Services of North Louisiana, Inc. Like most changes or renovations in life, they can inspire excitement or anguish. In this instance, all parties are together moving forward to ensure continued quality service for those in need.

It has been a long, difficult year for many Louisiana residents, but a much too short one for me as President. As the communities heal from the tragedies endured, I have seen that the character of our legal service providers, as a collective, is a passionate sense of mission. They do not simply want a job, but sincerely want to take action to positively impact each individual client they serve. Each day, rain or shine, there are those who rely upon the LBF to overcome basic life-changing crises. Become a Fellow of the LBF and wrap your support around those in need. We change lives because of you!



The Louisiana Bar Foundation (LBF) hosted a Civil Legal Aid Strategic Communications Training session presented by Voices for Civil Justice. Attending the session were, from left, Soren Rasmussen, Voices for Civil Justice communications associate; Martha Bergmark, Voices for Civil Justice executive director; Marta-Ann Schnabel, Access to Justice Commission co-chair; Louisiana State Bar Association President-Elect Dona Kay Renegar; and LBF President E. Jane Sherman.

LBF Hosts Communications Training Session

The Louisiana Bar Foundation (LBF) hosted a Civil Legal Aid Strategic Communications Training session presented by Voices for Civil Justice. The November 2016 training session was designed to help Access to Justice Commission partners gain the tools needed for consistent

messaging for the state's civil legal aid network. Voices for Civil Justice is a national communications initiative that taps the awareness-raising power of the media to spotlight the critical role of civil legal aid in ensuring fairness for all in the justice system.



Louisiana Gov. John Bel Edwards, third from left, proclaimed Nov. 14-18, 2016, as Louisiana Bar Foundation (LBF) Kids' Chance Awareness Week to coincide with the National Kids' Chance Awareness Week. The proclamation was made at a November 2016 fundraiser organized by the Louisiana workers' compensation and legal communities to benefit the LBF Kids' Chance Scholarship Program. From left, Michelle M. Sorrells, LBF Kids' Chance Committee co-chair; Katelyn Kerner, LBF Kids' Chance scholarship recipient; Gov. Edwards; and E. Jane Sherman, LBF president. For more information on Kids' Chance, go to: www.raisingthebar.org/kidschance. Photo courtesy of Louisiana Bar Foundation.

LBF's Annual Fellows Membership Meeting is April 21

The Louisiana Bar Foundation's (LBF) Annual Fellows Membership Meeting will begin at noon on Friday, April 21, at the Hyatt Regency New Orleans, 601 Loyola Ave. This luncheon meeting is an opportunity for Fellows to be updated on LBF activities and to elect new board members. The President's Award will be presented and recognition will be given to the 2016 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.

LBF Annual Fellows Gala Set for April 21

The Louisiana Bar Foundation's (LBF) 31st Annual Fellows Gala is set for Friday, April 21, at the Hyatt Regency New Orleans, 601 Loyola Ave. This year, the LBF is honoring 2016 Distinguished Jurist Jeannette Theriot Knoll, Distinguished Attorney Donna D. Fraiche, Distinguished Attorney Thomas M. Hayes III, Distinguished Professor Howard W. L'Enfant, Jr., and Calogero Justice Award recipient Joseph R. Oelkers III.

Harry J. (Skip) Philips, Jr. and Christopher K. Ralston, co-chairs of the 2017 Gala, are encouraging Bar members to attend the event that brings together lawyers, judges and professors from across the state to support the LBF's mission. The gala begins at 7 p.m. and will feature music from Shamarr Allen and the Underdaws and a live auction. A patron party will be held prior to the gala.

Sponsors are being sought to support the event. Proceeds will help strengthen the programs supported and provided by the LBF. Sponsorships levels include Pinnacle, Benefactor, Cornerstone,

Capital, Pillar and Foundation. To review sponsorship levels, go to: www.raisingthebar.org.

Individual gala tickets are \$200. Young lawyer individual gala tickets are \$150. 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.

Discounted rooms are available Thursday, April 20, and Friday, April 21, at \$239 a night. To make a reservation, call the Hyatt at 1(888)421-1442 and reference the "Louisiana Bar Foundation" or go to www.raisingthebar.org. Reservations must be made before Thursday, March 30.

Also serving on the Gala Committee are Kristin L. Beckman, Alexander N. Breckinridge V, Matthew M. Coman, Francisca M.M. Comeaux, Hon. Sylvia R. Cooks, Tiffany Delery Davis, Charles F. Gay, Jr., Steven F. Griffith, Jr., Marvin C. Gros, Colleen C. Jarrott, Brooke C. Tigchelaar, Laranda Moffett Walker and Sharonda R. Williams.

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ANSWERS for puzzle on page 363.

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The Last WORD

By Edward J. Walters, Jr. and C. Frank Holthaus

A GATHERING OF EAGLES... AND 2 BUZZARDS

What could bring a World War II soldier specially trained in linguistics and designated for insertion behind Hitler's "Atlantic Wall" together with a gathering of judicial eagles for lunch in Baton Rouge? That's easy . . . Retired law professor George W. Pugh.

On an October Monday, George met with a group of former students and judges at Serop's Café in Baton Rouge, and the 91-year-old retired law professor of evidence and federal courts held court as he told stories about the "old" days and his beginning. A young soldier from Napoleonville, La., he was U.S. Army-trained in linguistics to speak "Parisian" French and was designated to be sent behind enemy lines. As it turned out, his final course was over in September 1944, the month the Allies retook Paris. As George's training was no longer needed, he was sent to the "Repo Depot," a location from which soldiers were dispatched to replace casualties of war. George was assigned to an Intelligence unit and, he says, laughingly, he became a jeep driver. In December 1944, as the Battle of the Bulge was raging, George was a mere 100 miles away.

George was 20 years old when he returned to Napoleonville and civilian life. He quickly completed undergraduate work at LSU and, in 1947, went directly into LSU Law School, enrolling in what was called the 12-month (in contrast to the nine-month) curriculum. As expected, George was an excellent student. He was second in his class. In his final year, Professor Ira S. Flory, from whom George had previously taken the course in federal courts and jurisdiction, passed away.

In George's final semester, Dean Paul M. Hebert asked him to teach the federal courts class to his own classmates. George's friend, Bob Jordy, was well entrenched as the number one student in the class. George joked about the irony. If he had given his friend Bob a "D" in the class, he would have risen from second to first in the class. But,



Luncheon attendees, seated from left, included Judge James L. Dennis, Judge James J. Brady, Professor George W. Pugh, C. Frank Holthaus and Judge John W. deGravelles. Standing from left, Richard P. Ieyoub, Edward J. Walters, Jr., Judge Jay C. Zainey, Judge Brian A. Jackson, Judge Douglas D. Dodd and Judge Shelley D. Dick.

Bob got the highest grade in George's class, too, which added to his number one ranking. George graduated second in the class and went to Yale to achieve his advanced degree in 1952. This is where he met and married his wife Jean. George returned to LSU and taught evidence and federal courts until his retirement in 1994. During those years, George's eyesight diminished; Jean, also a lawyer, read his students' final exams onto cassette tapes for George to listen to and grade.

Now retired, George meets for lunch three or four times a year with local judges, many of them his former students. The luncheon table is redolent with fascinating historical vignettes, stories of Louisiana politics and political figures, and the long saga of George's time and tenure teaching the law. No one is immune from George's keen questioning and grilling into the meaning of Chief Justice Roberts' recent opinion or the dissent of another Justice in another case. George remains fully abreast with the law.

On that October Monday, the luncheon in George's honor was held and everyone present was the richer for it. Attendees included U.S. 5th Circuit Court of Appeals Judge James L. Dennis, LSU class of 1962; former Louisiana Attorney General Richard P. Ieyoub, LSU class of 1972; U.S. District Judge John W. deGravelles, LSU class of

1974; U.S. District Judge Jay C. Zainey, LSU class of 1975; U.S. Chief District Judge Brian A. Jackson, Southern class of 1985; U.S. District Judge Shelley D. Dick, LSU class of 1988; U.S. Bankruptcy Judge Douglas D. Dodd, Stanford class of 1982; U.S. District Judge James J. Brady, LSU class of 1969; and Edward J. Walters, Jr. and C. Frank Holthaus, both LSU class of 1975. Except for Judges Jackson and Dodd, everyone at the table had been taught by George! But don't think that exempted them from George's questions.

Unfortunately, our co-honoree, retired law professor Frank L. Maraist, LSU class of 1958, could not make the luncheon. But, you guessed it . . . *George taught him, too!*

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