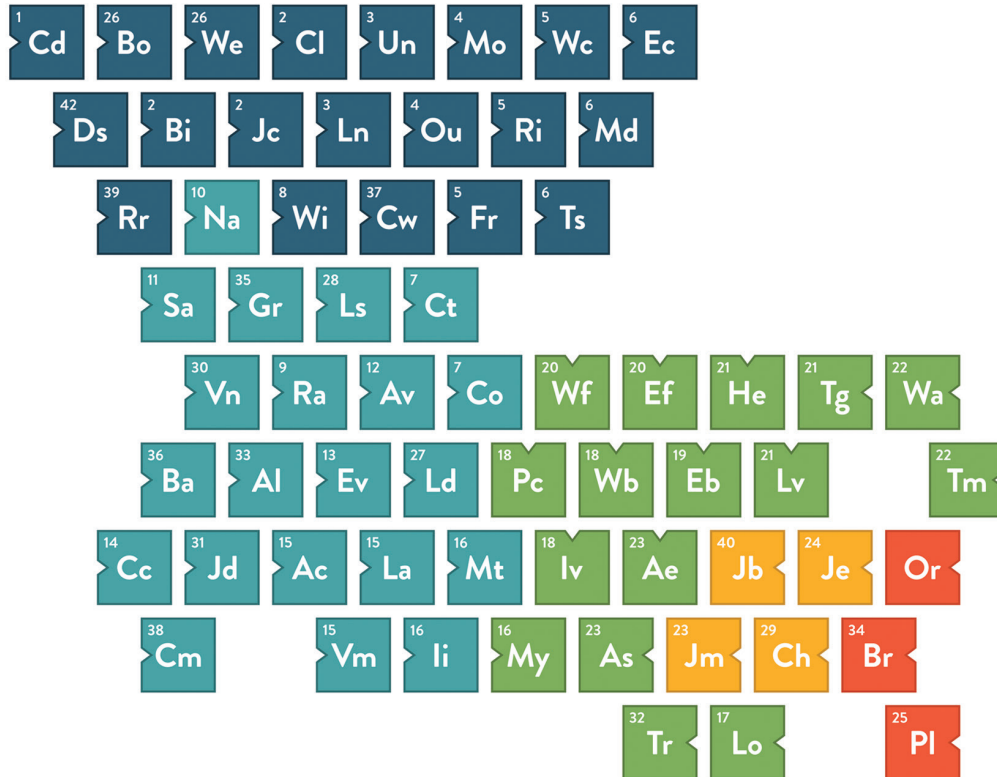


# LOUISIANA BAR JOURNAL

February / March 2018

Volume 65, Number 5



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and CIRCUITS

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Middle District

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- The Louisiana Balance Billing Act: An Analysis from the Trenches
- The Public Side of Lawyer Discipline: The Role of Non-Lawyer Public Members
- Observations from One Layman at the Bench
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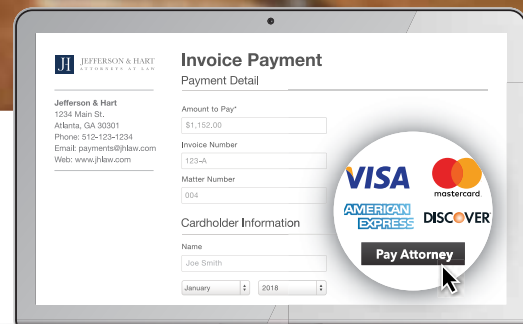
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By John E. McAuliffe, Jr.

# The Point? Get Involved!

My involvement in “Bar” activities began with the New Orleans Bar Association (NOBA). Helena Henderson, the NOBA’s executive director (and longtime friend), asked if I would consider making a CLE presentation at the year-end Procrastinators’ Program. I then authored some parody songs for the NOBA’s annual gathering at the Grand Hotel in Point Clear, Ala. At some point, I was asked to act as the NOBA’s designee to the board of the Pro Bono Project. I did that for about 10 years.

Concurrently with my NOBA involvement, I gradually became involved with the Louisiana State Bar Association (LSBA). First, I was asked to give a CLE program on insurance law. Several years later, I was asked to fill in for the attorney who had been making one of the presentations for the Bridging the Gap (BTG) program.

Then, one of our LSBA presidents (unbelievably) appointed me to the Unauthorized Practice of Law Committee. Later, again to my surprise, another LSBA president appointed me chair of that committee.

My involvement has continued over the years. I served three years on the LSBA’s Board of Governors from the Second District. Now, I serve as LSBA secretary and editor of the *Louisiana Bar Journal*.

The point of all of this, of course, is not to pre-write my obituary. (I have many others willing and eager to work

on that little chore.) The point is to GET INVOLVED.

I did not have a plan to serve on the Board of Governors. I had no plan to serve as secretary. All of this evolved as I gave more time to the profession, met more of those members already involved in Bar leadership and realized the worth of our collective efforts. My involvement became a constant in my “legal life.”

As professionals, we should be involved. We need to be involved. If you are concerned about issues confronting the profession, then mere complaining will not do. We as a profession must engage ourselves in those organizations where questions related to the profession are debated and, hopefully, resolved to the benefit of the public and the Bar.

Your choices for involvement are many.

Become active in your local bar association.

Join a Section of the LSBA akin to your work or experience. You will find both like-minded attorneys and others who have opposing views on the issues facing your practice.

Ask for a committee appointment



with your local bar association or the LSBA. (*The LSBA is currently seeking Committee Preferences from members. See pages 320-321 for a list of committees and preference submission procedures.*)

Run for office in a local bar or the LSBA.

Consider any pro bono opportunities in your area.

The old recruiting poster told us that “Uncle Sam Wants You.” Your local bar, your specialty bar and the LSBA also “wants” you and your efforts. Those efforts will be rewarded.



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By Dona Kay Renegar

## Judges, Lawyers and the Legal System: Unity of Purpose and Vision

I recently made a decision as president of the Louisiana State Bar Association (LSBA) that disappointed a few people. When I ran into one of those individuals for the first time since making the decision, I inquired as to how he was dealing with my decision and whether I made his life more difficult. His response struck a chord with me. He said he looked at my decision just as he would a decision from a judge — while he respectfully disagreed with my decision, he respects me and the position I hold.

Judges are required to issue written rulings to record the legal and factual basis of their decisions. They sit ready and willing to have their decisions reviewed by higher courts. The losing side in a dispute has every right to appeal a decision if the party believes it was not based on solid legal ground. However, personally attacking the judge for rendering a decision against you erodes the integrity of our legal system. Judges are ethically prohibited from responding to personal attacks, and, thus, it falls to those of us in the legal system to defend them.

On Sept. 12, 2005, U.S. Supreme Court Chief Justice John Roberts in his opening remarks during his nomination hearing before the Senate Judiciary Committee said:

President Ronald Reagan used to speak of the Soviet constitution, and he noted that it purported to

grant wonderful rights of all sorts to people. But those rights were empty promises, because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. We do, because of the wisdom of our founders and the sacrifices of our heroes over the generations to make their vision a reality.

We, as judges and lawyers, safeguard the rights granted to our citizens by our Declaration of Independence, United States Constitution, and the laws of our land. The granting of rights means nothing to a country's citizens without a fair and impartial system of protecting those rights.

I have heard much debate over the presidential appointment of our most recent Supreme Court Associate Justice, Neil Gorsuch, by President Donald Trump. Some have expressed the feeling that Justice Gorsuch lacks legitimacy as his appointment followed the unsuccessful appointment of Merrick Garland by former President Barack Obama. Regardless of your political affiliation or feeling on the procedures used in appointing either Justice Gorsuch or not holding a hearing on the appointment of Merrick Garland, Justice Gorsuch is an associate justice of the U.S. Supreme Court and deserves the respect that position holds on the bench and in our civilized society. The same holds true for ev-

ery judge sitting on every state or federal bench, in every state, whether appointed or elected. Because when we deride a judge or judges, we slowly but surely erode the legitimacy of the decisions of the court, and ultimately the legitimacy of the institution of the judiciary and the legal system as a whole.

As our justice system is comprised of humans, so it necessarily involves human frailties. While mistakes are made and corruption occasionally creeps into our system, we have rules of ethics and professionalism to address those lawyers and judges who do not abide by our high standards. My message is by no means meant to defend judges or lawyers who behave unethically or criminally. I believe that the American legal justice system is the fairest in the world, and I will wholeheartedly defend her — and the judges and lawyers of whom she is comprised.

While I have always been proud to be a lawyer, very early in my career I was hesitant to admit my vocation publicly. I believe my early response to hiding my profession may have arisen from a family member jokingly telling me that “I don't know whether to be proud or ashamed to have a lawyer in the family” and a fear of being judged by society's preconceived notion of what a lawyer is. About five years into my practice, I was leaving the deposition of a doctor, who was also my doctor and a friend. Upon leaving, he told me a lawyer joke in front of his

staff members. I was disappointed and reminded of the times I had given some of his staff members legal advice for their personal matters so I decided to speak up. This is my first recollection of defending my profession, a job I have wanted since I was 12 years old. The doctor apologized and has not told a lawyer joke in front of me since then. I found it empowering to defend my profession and believe I found my voice that day in that doctor's office.

Early in my practice, I laughed at lawyer jokes out of fear of being thought of as not being able to take a joke or not having a sense of humor. I now realize that my job is to defend the legal system, my colleagues, and the judiciary in one of the most respected legal systems in the world. Lawyers were critical in the formation of our democracy and the drafting of the revered documents on which our legal system is based and by which our society lives and operates every day. We continue to be a vital part of society and, more specifically, legal justice in every town in Louisiana and across America.

We continually strive to assess our laws and justice system to ensure access to justice for all and the administration of the rule of law in a fair and impartial manner. At times we may fall short of this goal, but it is our duty to fairly evaluate our efforts and address the changes in society and technology and help the law grow to accommodate those changes. The vast majority of our members and judges practice law every day with the highest ethical and professional standards. Attorneys advocate for their clients be they citizens, the United States government, the State of Louisiana, or corporations, and they do so with honesty, integrity, and compassion. I am proud to be a member of the LSBA, and I am privileged to advocate in our courts of law. I firmly believe lawyers, be they advocates or judges, ensure the administration of justice in our courtrooms every day.

We are all honored to have the opportunity to advocate for our fellow citizens, civilly or criminally, or sit in judgment of the laws of our fine state in our courtrooms. As members of the American legal system, we must respect our

adversaries in the courtroom and the judges on the benches. Society depends upon us to ensure that the rule of law is upheld in a fair and impartial way. Our legal system is based upon an independent judiciary that is not subject to the powers of the other two branches of government, private interest, or partisan interests. We should not hesitate to defend our fellow attorneys and judges from unjust attacks. It is our duty to ourselves, to our profession, and to the public to maintain respect for and confidence in our legal system.

The motto of the LSBA is "Serving the Public. Serving the Profession." One of the ways we serve the public is by administering the Louisiana Board of Legal Specialization and ensuring that specialists earn and maintain their credentials. Recently, the Louisiana Supreme Court ordered that the LSBA resume the administration of Mandatory Continuing Legal Education which ensures that lawyers remain abreast of changes and developments in the law. In addition to these reg-

ulatory functions, we as the LSBA must defend our attorneys and judges from unwarranted attacks to maintain the public's confidence in our legal system and champion our roles in the administration of justice.

The LSBA and you, its members, are critical to maintaining the public's respect for the legal system and rule of law in Louisiana. As the last self-regulated profession, we are required to police our members to ensure all are meeting the highest ethical and professionalism standards which we have set for ourselves. We must also commit to defending our judges, who are prohibited from responding to unjust attacks, as well as our colleagues, whether those colleagues are our opponents in court or not. We are united as a profession and united we will stand or fall.



## #yourLSBA: A Pro Bono Hero Providing Justice for ALL

“ Doing Pro Bono work is an indispensable aspect of evidencing my commitment to the legal profession and to professionalism. I think that being in the legal profession and being professional within the profession means appreciating how my thoughts and actions can add value to other peoples' lives, especially people who often receive little respect and/or no consideration, because of their limited means and challenged circumstances.

To me there is power in serving others with no expectation of receiving anything in return materially. When I do pro bono work, the return on the investment I make in helping someone who is truly in need is, more often than not, as valuable as any amount of money the person could have paid me, because I cannot put a price on the appreciation my pro bono clients express. ”

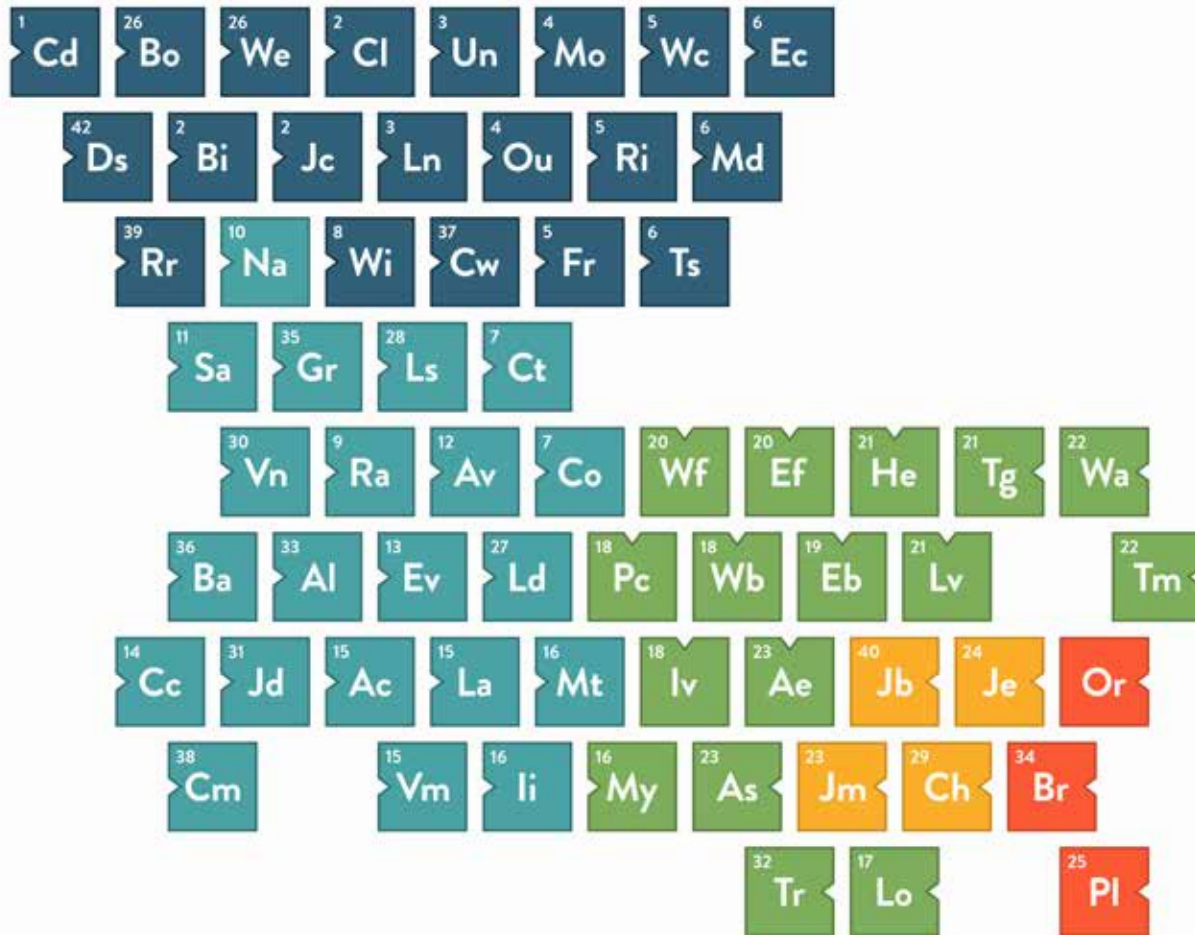
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# Louisiana Judicial Map:

New Orleans Attorney's Creation Offers Useful Intersection of Law and Design

Interviewed by Tyler G. Storms



LOUISIANA  
JUDICIAL DISTRICTS  
and CIRCUITS



- Western District
- Middle District
- Eastern District
- Circuit Court of Appeal

- 1
- 2
- 3
- 4
- 5

DESIGNED by JOSHUA J. DOGUET of KUCHLER POLK WEINER

Download a digital version of the map at: [www.lsba.org/goto/0218lbjmap](http://www.lsba.org/goto/0218lbjmap) or <http://jjdoguet.com/files/la-map.png>.

## Louisiana Judicial Map: Parish Legend

Parish	Abbreviation
Acadia Parish	Ac
Allen Parish	Al
Ascension Parish	Ae
Assumption Parish	As
Avoyelles Parish	Av
Beauregard Parish	Ba
Bienville Parish	Bi
Bossier Parish	Bo
Caddo Parish	Cd
Calcasieu Parish	Cc
Caldwell Parish	Cw
Cameron Parish	Cm
Catahoula Parish	Ct
Claiborne Parish	Cl
Concordia Parish	Co
DeSoto Parish	Ds
East Baton Rouge Parish	Eb
East Carroll Parish	Ec
East Feliciana Parish	Ef
Evangeline Parish	Ev
Franklin Parish	Fr
Grant Parish	Gr
Iberia Parish	Ii
Iberville Parish	Iv
Jackson Parish	Jc
Jefferson Parish	Je
Jefferson Davis Parish	Jd
Lafayette Parish	La
Lafourche Parish	Lo
LaSalle Parish	Ls
Lincoln Parish	Ln
Livingston Parish	Lv
Madison Parish	Md
Morehouse Parish	Mo
Natchitoches Parish	Na
Orleans Parish	Or
Ouachita Parish	Ou
Plaquemines Parish	Pl
Pointe Coupee Parish	Pc
Rapides Parish	Ra
Red River Parish	Rr
Richland Parish	Ri
Sabine Parish	Sa
St. Bernard Parish	Br
St. Charles Parish	Ch
St. Helena Parish	He
St. James Parish	Jm
St. John the Baptist Parish	Jb
St. Landry Parish	Ld
St. Martin Parish	Mt
St. Mary Parish	My
St. Tammany Parish	Tm
Tangipahoa Parish	Tg
Tensas Parish	Ts
Terrebonne Parish	Tr
Union Parish	Un
Vermilion Parish	Vm
Vernon Parish	Vn
Washington Parish	Wa
Webster Parish	We
West Baton Rouge Parish	Wb
West Carroll Parish	Wc
West Feliciana Parish	Wf
Winn Parish	Wi

Joshua J. Doguet, an associate in the New Orleans office of Kuchler Polk Weiner, L.L.C., has found a unique and useful way to integrate his love of law with his interest and experience in design. This Louisiana Judicial Map is one of his creations offering an intersection of the two disciplines. The *Louisiana Bar Journal* interviewed him about this project and other projects on the horizon.

**Journal:** Tell us about the map you created.

**Doguet:** The map illustrates the state judicial district, the state appellate circuit and the federal district of which each parish is a part. It does this via the number in the upper left-hand corner of each parish's square, its color and the location of its "notch." These graphical elements are intended to convey the corresponding jurisdictional data as quickly and as clearly as possible.

**Journal:** Why do you think the map is helpful?

**Doguet:** It provides a handy way of reminding yourself to which appellate circuit you would be appealing or to which federal district you would be removing. These things are fairly easy to remember for parishes we practice in regularly, but it can be easy to forget for parishes that we don't practice in regularly. The purpose of creating the map was to consolidate all of the information in one place — to save from having to search around for it.

**Journal:** Are there any particular goals that you set when designing something like this?

**Doguet:** The goal of any graphic design project is effective visual communication. As to the map specifically, once you have a grasp of how the jurisdictional information is conveyed, it should take only a cursory

glance to find what you're looking for. A challenge you run into when creating something like this is navigating the trade-off between information and aesthetics. A pretty map which is confusing or that tells you nothing is useless, as is a cumbersome one that tries to tell you everything. So the real goal is to find the balance between the two.

**Journal:** Can you tell us about how you tried to strike that balance here?

**Doguet:** Well, the shape of each parish isn't important in this context, so that information can be discarded in favor of a form that is easier to organize. Parish-specific data, *i.e.* its abbreviation and JDC, has to be presented for each one, but more inclusive relationships like appellate circuit and federal district membership can be displayed in a broader graphical way that allows for "cursory glances." I opted for shorter parish abbreviations rather than longer ones, which permitted me to use a larger type size, thereby making the map legible from farther distances. Otherwise, I would have needed to use, *e.g.*, rectangular parishes, which would have distorted the overall shape of the state. I may be getting into the weeds here, but these are just a few of the considerations that I kept in mind.

**Journal:** How long did it take you to create the map?

**Doguet:** In one sense, just a weekend. In another, over a year. It's a mantra that "design is never done," and that's certainly the case here. This map is actually an overhauled version of an earlier effort. I made the first version a little more than a year ago, and using it for the past 12+ months has given me the opportunity to identify ways that it could be improved — primarily in terms of reducing complexity and ambiguity. And I think this revised version does that.

**Journal:** It seems to have familiar format, although I cannot discern why. There is a bit of a déjà vu about it. What is that?

**Doguet:** Holistically — color, shape, type composition and placement — I was leaning heavily on the visual language of the periodic table of elements. I wanted the map to feel familiar to everyone in an unconscious kind of way.

**Journal:** What inspired you to create the map?

**Douget:** Aside from the practical reasons already outlined, I'd say that I'm keenly interested in exploring the ways that design can assist in the communication of legal concepts. I look at Stanford's Legal Design Lab as evidence that there's a growing movement in the academy to do that as well. We work in an information-dense profession. So I think we could see material benefits from integrating more design and design-based principles into our practice. That could mean more thoughtful and digestible demonstrative exhibits. It could also mean better reference tools like this map.

**Journal:** Is this map your first project that explores the intersection between law and design?

**Douget:** No, my first project in this area was actually an online Civil Code reference that I put together during law school. Its purpose was to make preparing for class a lot less tedious. While the Code articles haven't been updated since then, it's still online as a proof of concept — at <http://code.jjdoguet.com>.

**Journal:** Do you have any other projects in the pipeline?

**Douget:** My next one may be an infographic on “how to count days” for purposes of deadlines and prescriptive periods. I'd also love to tackle Louisiana's “Form of the Pleadings” rules, as I think legal typography still needs to come a long way. Just take a look at the formatting of U.S. Supreme Court briefing and opinions, and you'll get a good idea of the direction I think we should be headed.

**Journal:** Do you think that design can also help non-lawyers interface with the law?

**Douget:** Sure. For example, during my clerkship, I realized how confusing verdict forms could be in complex civil cases, and how much jurors might appreciate having the possible outcomes presented to them as a flowchart. It would make their job less difficult, and, as a result, we could be more confident in the conclusions they reach. Jerry Fang, a Duke student, has actually written a law review comment on this topic within the last few years, so I'm

certainly not the only one who's thinking about these things. And considering my background, I intend to keep thinking about them.

**Journal:** Tell us about your background in design.

**Douget:** I'm actually one of those people who has wanted to be an attorney since they were a kid. So here I am. Design was just a distraction along the way. I began building websites early on in high school. I took my first programming class back then, and a few more of them after getting to college. Pretty soon, I started a side hustle with a classmate — developing websites and web applications for small businesses. We also tried our luck with a few startups of our own, which never really got anywhere (unfortunately). My business partner was a far more talented programmer than I ever aspired to be, so it wasn't long before he was handling that aspect of our operation, which forced me to hone my design chops. And I ended up loving it. From user interface design, I started to branch out into branding, print, etc. My entire education in design came from ebooks, blogs, YouTube — and with a lot less student-loan debt.

**Journal:** Has this background helped you in your practice?

**Douget:** Yes and no. Is it ever going to make a difference in the outcome of a case? I seriously doubt it. Does it help me provide better legal services to our clients? Definitely. Whenever my firm is working on litigation graphics, I try to weigh-in with any “art direction” or constructive criticism that I may have. I also think that what I learned about information architecture during my web days has made me the “go-to guy” at my firm when it comes to structuring and organizing case data. Especially when dealing with the kind of mass tort cases that we're frequently involved in, you learn pretty quickly that developing a robust way to handle all of that information from the start will have saved everyone a lot of time and money by the time it's all over with. So there's certainly a practical benefit to this kind of skillset. From a principles perspective, I think the paradigmatic thinking you learn as a programmer and as a designer can often put you at odds with the approach that lawyers

often take. And that's certainly not a bad thing. There's something of a tradition in our profession to overcomplicate, to overwrite, to copy by rote the work product of those who came before us. None of that appeals to me. I always try to keep my design style in mind, which is sort of a minimalist one — eliminating all non-substantive details and focusing on clarity over everything else. I try to think, “Would this practice ever be tolerated in a startup environment?” “What's the bottom-line value of what I'm doing?” “Can we automate or standardize this process to realize gains in efficiency without sacrificing efficacy?” Overall, I believe it's had a real impact on my philosophy of writing, and it's had an impact on how I think about — and how I might revise — the practices of the legal profession.

**Journal:** We at the *Bar Journal* appreciate your contribution and we believe it will be a benefit to us all. Any final thoughts?

**Douget:** Obviously, I'm proud of the way the map turned out, and I hope people think it's great. But in the grand scheme of things, it's just a map. Really, what I see it as is one more bite of the elephant.

**Editor's Note:** A digital copy of the map can be downloaded at:

<http://jjdoguet.com/files/la-map.png>.

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# The Louisiana Balance Billing Act: An Analysis from the Trenches

By J. Lee Hoffoss, Jr.





**O**n Jan. 1, 2004, the Health Care Consumer Billing and Disclosure Protection Act (La. R.S. 22:1871 *et seq.*) became law in Louisiana. In particular, La. R.S. 22:1874 prohibits health care providers from “discount billing”<sup>1</sup> and “dual billing”<sup>2</sup> patients if the provider has contracted to be in the patient’s health insurers’ network.<sup>3</sup> These terms are interchangeably defined as “balance billing.”

Despite the passage of La. R.S. 22:1874, it was not unusual for contracted providers to balance bill patients injured in accidents caused by the fault of a third party. In fact, it was the norm, not merely the exception. For many years, there was no jurisprudence on the Balance Billing Act. However, recently, there has developed a wealth of case law strongly favoring insured patients over contracted health care providers.

### What the Act Prohibits

La. R.S. 22:1874(A) prohibits contracted providers from billing, collecting or attempting to collect from an insured patient any amount in excess of the applicable co-payment, deductible or co-insurance. La. R.S. 22:1874(B) makes the provider liable for attorneys’ fees and all costs if the provider maintains “any action at law” attempting to collect a prohibited amount. The term “any action at law” is not defined in the Act.

### The Medical Lien Statute vs. The Balance Billing Act

Louisiana’s Medical Lien Statute, La. R.S. 9:4752, allows health care providers to assert a lien against an injured patient’s third-party tort claim. After the passage of

the Balance Billing Act, the question arose as to whether there was a conflict between it and the Medical Lien Statute. In 2005, the Attorney General issued an opinion stating there was no conflict.<sup>4</sup>

### Development of Case Law

#### **Anderson v. Ochsner Health System — Private Right of Action**

*Anderson v. Ochsner Health System*<sup>5</sup> dealt with whether an individual consumer has a private right of action for a violation of the Balance Billing Act. At issue was the statutory language at La. R.S. 22:1877, which provides that an aggrieved patient *may* file a complaint with the Attorney General seeking an administrative remedy. Ochsner averred that La. R.S. 22:1877 provided an exclusive administrative remedy, and, thus, Anderson could not maintain a private direct action against Ochsner.

The Louisiana Supreme Court based its holding that consumers have a private right of action on principles of statutory interpretation, as well as the constitutional guarantee of open courts and access to justice. The Court found that while the Act gave consumers the option to file a claim with the Attorney General, there was nothing in the Act that prohibited a private right of action. With regard to legislative intent, the Court stated:

The title of the statute, La. R.S. 22:1871, *et seq.*, is the “Health Care Consumer Billing and Disclosure Protection Act.” This language makes clear that the legislature enacted this statutory scheme with the protection of the consumer in mind. Accordingly, *it is difficult to envision a law denying recourse to individuals when that law’s principal aim is individual protection.*<sup>6</sup>

#### **Anderson v. Ochsner Health System — “Maintaining Any Action at Law”**

In addition to considering whether consumers have a private right of action, the Court considered whether the assertion of a medical lien constitutes “maintaining any action at law.” Noting that legal con-

sequences attach when a medical lien is ignored, the Court held that asserting such a lien constitutes “maintaining any action at law,” mandating the recovery of attorneys’ fees and costs.

#### **Emigh v. West Calcasieu Cameron Hospital — Promesse de Porte-Fort and Health Insurers**

In *Emigh v. West Calcasieu Cameron Hospital*,<sup>7</sup> the issue was whether insureds have a cause of action against health insurers when their contracted providers balance bill. Agreeing with plaintiffs, the Supreme Court held that, as the very least, insureds have such a cause of action under La. Civ.C. art. 1977, which provides:

The object of a contract may be that a third person will incur an obligation or render a performance.

The party who promised that obligation or performance is liable for damages if the third person does not bind himself or does not perform.

One of the objects of health insurance contracts is that a third person, *i.e.*, the contracted provider, will limit the insureds liability to only their copay, deductible and coinsurance. Having promised that the provider will so perform, the insurer is liable for any non-performance by the provider. This is the essence of the ancient civilian concept of *promesse de porte-fort*.

#### **Baker v. PHC-Minden, L.P. — Class Action is Superior Vehicle for Balance Billing Cases**

In *Desselle v. Acadian Ambulance Service, Inc.*<sup>8</sup> the Louisiana 3rd Circuit Court of Appeal approved class certification of a balance billing case, with the Supreme Court denying writs. In *Baker v. PHC-Minden, L.P.*,<sup>9</sup> the 2nd Circuit reversed the trial court’s certification of balance billing case as a class action finding novel issues of law existed prohibiting certification.

The Louisiana Supreme Court granted writs in *Baker* and unanimously reinstated class certification.<sup>10</sup> In reversing the 2nd Circuit, the Supreme Court highlighted that class certification is purely procedural in nature. The Court considered all of the

factors for certification and concluded that a class action was the superior method for resolving these types of balance billing cases.

### **Rabun v. St. Francis Medical Center, Inc. — Consent and the Medical Lien Statute**

Another turn in the labyrinth was in *Rabun v. St. Francis Medical Center, Inc.*<sup>11</sup> In *Rabun*, the health care provider argued that the injured patient consented to being balance billed. The trial court had granted the provider's motion for summary judgment, which decision was reversed by the 2nd Circuit. In doing so, the court held that the patient had not, and could not, consent to being balance billed.

The 2nd Circuit went on to consider the provider's argument that the Medical Lien Statute allowed it to collect its full undiscounted charge from the patient's tort recovery. The 2nd Circuit, quoting from Justice Guidry's dissent in *Anderson v. Ochsner*,<sup>12</sup> noted that the Medical Lien Statute limits the lien to "reasonable charges and fees." The court concluded, in passing the Balance Billing Act, the Legislature had determined that a contracted provider's reasonable charges and fees may not exceed the contracted rate for its services. What makes *Rabun* particularly noteworthy is its terse disapproval of the longstanding practice of balance billing through the use of medical liens:

By alleging that the medical lien statute authorizes it to collect more than the contracted rate from the third party, St. Francis is circuitously stating that it can avoid the strict bans imposed by the BBA by simply crafting its bill as a medical lien instead of as a claim filed with the medical insurance company. Not only does this court reject this notion but we also *find this practice to be disingenuous and somewhat deplorable*. If such methods were permissible, there would be no need for the BBA.<sup>13</sup>

### **Vallare v. Ville Platte Medical Center — Prescription**

In *Vallare v. Ville Platte Medical*

*Center*<sup>14</sup> the provider filed an exception of prescription, arguing that a one-year prescriptive period applied.<sup>15</sup> The trial court denied the exception, and the provider filed a writ application with the 3rd Circuit. The 3rd Circuit denied that writ application, issuing an opinion explaining why the trial court's denial of the exception was correct.

The court agreed with plaintiffs that there is a contract between the patient and provider which, in accordance with La. Civ.C. arts. 2054 and 2055, incorporates a provision prohibiting balance billing. The court agreed that the prohibition on balance billing contained in La. R.S. 22:1874 is founded upon contractual relationships, and since it is contractual or quasi-contractual in nature, a 10-year prescriptive period applies.

In *Vallare*, the health insurer named as a defendant, Blue Cross Blue Shield of Louisiana, also filed an exception of prescription. Blue Cross argued that the 15-month limitation on filing legal actions contained in its policy applied. The trial court rejected that argument, and the 3rd Circuit agreed that the 15-month limitation did not apply to balance billing litigation. The Louisiana Supreme Court denied writs on both issues.

## **Conclusion**

The courts' strong disapproval of health care providers' utilization of medical liens to ignore the plain language of the Balance Billing Act has led to a virtual sea change in favor of injured patients seeking to use their health insurance to cover medical expenses resulting from a third-party liability accident. Through the private right of action, patients can now seek to enforce their rights instead of relying on elected officials to use their discretion.

The threat of total reimbursement and complete forfeiture of charges, along with costs and attorneys' fees, has become a considerable deterrent against contracted providers circumventing the Balance Billing Act. Now, patients with health insurance who have already been traumatized due to their injuries can avoid the additional distress caused by balance billing. They can have the peace of mind in using

their health insurance and not worrying about whether the contracted provider will seek to collect more than they are owed from the patient's third-party liability claim — the precise way the Legislature intended the system to work.

## **FOOTNOTES**

1. "Discount Billing" means any written or electronic communication issued by a contracted health care provider that appears to attempt to collect from an enrollee or insured an amount in excess of the contracted reimbursement rate for covered services, as defined by La. R.S. 22:1872(9).

2. "Dual Billing" means any written or electronic communication issued by a contracted health care provider that sets forth any amount owed by an enrollee or insured that is a health insurance issuer liability, as defined by La. R.S. 22:1872(10).

3. La. R.S. 22:1872(6) defines "Contracted Health Care Provider" as a health care provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered health care services.

4. La. Atty. Gen. Op. No. 05-0056, 2005 WL 1429238 (La. A.G. 5/17/05).

5. 13-2970 (La. 7/1/14), 172 So.3d 579.

6. *Anderson*, 172 So.3d at 584.

7. 13-2985 (La. 7/1/14), 145 So.3d 369.

8. *Desselle v. Acadian Ambulance Service, Inc.*, 11-742 (La. App. 3 Cir. 2/1/12), 83 So.3d 1243.

9. 49,122 (La. App. 2 Cir. 8/31/14), 146 So.3d 921.

10. *Baker v. PHC-Minden, L.P.*, 14-2243 (La. 5/5/15), 167 So.3d 528.

11. 50,849 (La. App. 2 Cir. 8/10/16), 206 So.3d 323.

12. See footnote 7.

13. *Rabun*, 206 So.3d at 328.

14. *Vallare v. Ville Platte Med. Ctr., L.L.C.*, 16-863 (La. App. 3 Cir. 2/22/17), 214 So.3d 45, *writ denied*, 17-049 (La. 5/12/17), 221 So.3d 73, and *writ denied*, 17-0513 (La. 5/12/17), 221 So.3d 73.

15. Prior to the issuance of the opinion in *Vallare*, the U.S. District Court in *Stewart v. Ruston Louisiana Hospital Co.*, 2016 WL 1715192 (W.D. La. 2016), on an *Erie* guess, found prescription on Balance Billing Act claims to be one year, being delictual in nature rather than contractual or quasi-contractual. Since that unpublished ruling was issued, no Louisiana court has followed it as precedent and all have rejected its analysis.

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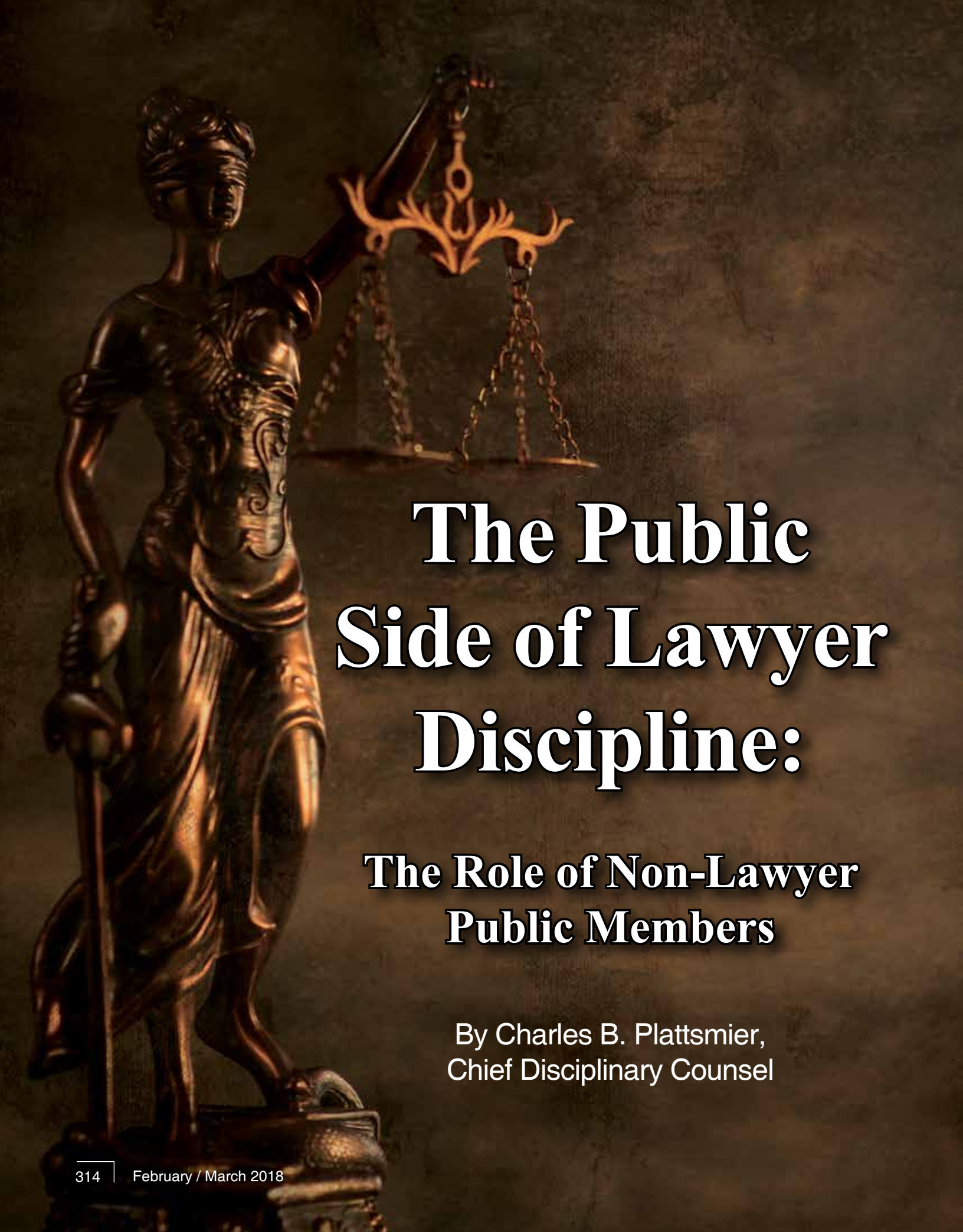
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# **The Public Side of Lawyer Discipline:**

## **The Role of Non-Lawyer Public Members**

By Charles B. Plattsmier,  
Chief Disciplinary Counsel

If someone called and asked if you would be willing to volunteer your time for the next six years helping to regulate a profession of which you were not a part of, would you? If told it paid nothing, generated little or no fanfare, would entail spending hundreds of hours of your time annually reviewing documents, listening to testimony and helping to draft opinions, would you be interested? I suspect many of us would politely decline and chuckle at the notion after hanging up the phone.

But since April 1, 1990, literally hundreds of non-lawyers have volunteered their time and effort to support the Supreme Court's regulation of Louisiana's legal profession. The inclusion of non-lawyers in our disciplinary system has proven to be perhaps the most significant and successful part of the Court's decision to enact Rule XIX nearly 28 years ago and it continues to pay dividends today.

Mindful that the public traditionally has held some in our legal profession in pretty low regard, many lawyers were apprehensive about such a radical change. How would non-lawyers possibly understand the ethical issues presented? Others were firm in the belief that placing non-lawyers on hearing committees as well as on the Disciplinary Board would result in unreasonable and perhaps draconian recommendations for discipline. What we quickly learned, however, was that the non-lawyer public member had much to contribute and, in some ways, made the disciplinary system itself even more accountable, balanced and fair.

Every day we entrust the fate of clients to the fact-finding wisdom of juries composed largely of non-lawyers in both our civil and criminal justice systems. The historical exclusion of members of the public from our lawyer discipline system was odd and frankly did little to engender trust and confidence of consumers of legal services (clients) in our secretive, "lawyers-only" regulatory process. While opening up the disciplinary process to the sunshine of public scrutiny once formal charges were filed did much to sweep away skepticism and mistrust, the inclusion of non-lawyers into the process ce-

mented the public's ownership in one of the few self-regulatory professions in the nation — the legal profession.

The result has been successful by any measure. Public members take the task seriously, come prepared for hearings having read the briefs and record, and ask some of the most probing and fundamentally sound questions of everyone involved. In fact, it has often been a source of embarrassment for the lawyer participants in disciplinary hearings when the most cogent, probing and direct questions come from the public member, leaving many of the lawyers in the room to wonder, "Why didn't I ask that?"

Who are these folks and where do they come from? They are bankers, teachers, insurance agents, secretaries, cement contractors, psychologists, counselors, nurses, financial planners, principals and farmers, to name just a few. From every corner of the state, these folks sit on the nearly 50 hearing committees that currently serve the Court's disciplinary agency. They also sit on the Disciplinary Board by appointment of the justices. They are recruited by board members, lawyers, Supreme Court justices, and former committee or board members.

Perhaps the most interesting question is *why* they would choose to serve in the first place. When introduced to the Louisiana Disciplinary Board, many are surprised that such a regulatory apparatus even exists. As they hear about the system, its history and its structure, whether in Rotary meetings, over lunch with a current or former committee member, or in a chat with a justice, the public member may be a bit skeptical, but also intrigued. When told they would play an important role in the regulatory process, many no doubt feel the draw of curiosity and public service. Whatever the motivation, the new participant is soon immersed in a two-day training seminar — conducted annually — that not only introduces them to the Court's regulatory system found in Rule XIX, but also the Rules of Professional Conduct, how they apply, and the Court's rich jurisprudence on enforcement. Instructors include board members, hearing committee members, respondent's counsel, board counsel, dis-

ciplinary counsel and others. When training is completed, they are assigned to a committee panel with two attorney members to serve within their Court of Appeal district when called upon.

What we've seen is that non-lawyers are often the conscience of the panel they sit on. There can be an insight that public members bring to the task, born of common sense and experience that can level the advocacy and bring into sharp focus the gravity — or lack thereof — stemming from a lawyer's mistake. Over the last three decades, many public member dissents have been so persuasive for the board and the Court that their view ultimately prevails. While it is hard to quantify the importance of the public members' contribution on any given case, it is unquestionably true that their participation brings value to the process and sensitivity to outcomes.

As lawyers, we owed an enormous debt of gratitude to all members of the discipline system, particularly our volunteers. But among those many hundreds of volunteers who have served the Court's regulatory system over nearly three decades, none are more deserving of our thanks, our appreciation and our admiration than those non-lawyer public members who take the time to help us be better as a profession. We salute you.

*Editor's Note: See companion article on page 317.*

*Charles B. Plattsmier became Louisiana's chief disciplinary counsel in 1996 and today stands as the longest-serving chief counsel under the Louisiana Attorney Disciplinary Board. He has authored amendments to the Rules of Professional Conduct and Supreme Court Rule 19, served in the Louisiana State Bar Association's House of Delegates from 1983-95, and was a member of the Ethics 2000 Committee which updated and amended Louisiana's ethics rules. He was a 2002 nominee for the ABA Michael Franck Professional Responsibility Award and, in 2009, received the ABA CoLAP Meritorious Service Award for his commitment to Louisiana Lawyers Assistance Program. He received his JD degree in 1978 from Louisiana State University Paul M. Hebert Law Center. (chuckp@ladb.org; Ste. 607, 4000 S. Sherwood Forest Blvd., Baton Rouge, LA 70816)*



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# Observations from One Layman at the Bench

By Michael DesJardins

I had worked with attorneys extensively handling litigation claims when one attorney asked if I would like to become an Attorney Disciplinary Hearing Committee lay member. It was with some trepidation that I agreed to apply for the position but I was accepted. I had no idea what I had gotten myself into, but was pleasantly surprised by the experience.

The three-member committee was comprised of myself and two attorneys. My expectation was that the attorneys would handle most everything and I would be “window dressing.” However, that was not my experience. I was somewhat dumbfounded when we heard our first case. I attempted to give input during the committee discussion about what our recommendation would be for the attorney brought up on disciplinary charges. I expected a courteous hearing by the two attorney committee members, but not much else. In fact, what they said was that my opinion was very important to them in reaching a decision.

Over the period of my term, I was involved in several cases with a few different attorney committee members. All of the attorneys held my opinion in high regard as a layman. They were very in-

terested in what a non-attorney thought about the activities by the respondent attorney who was the subject of the hearing. My opinion was less about whether the respondent attorney had run afoul of the ethical guidelines than about a common-sense opinion of whether the actions in question met the smell test. My criteria included, in addition to the ethical standards at question, whether the actions of the respondent put the bar in a bad light with the public and, therefore, undermined the integrity of the justice system.

In some cases, I agreed that a technical violation had occurred but that the violation was not offensive to the eyes of the public. My opinion in these cases would somewhat mitigate the recommendation of the committee. In other cases, I found that there was an attempt to abuse the disciplinary system by the complainant for reasons not related to ethical behavior. There were also cases that were a clear ethical lapse that would inure to the detriment of the legal system. In these cases, I recommended strong disciplinary action and found the attorney committee members moved by my opinion to make a strong ruling.

In addition to the final discussions that led to a recommendation, I also

learned to enjoy the role of factfinder with the three-member hearing committee sitting and listening to testimony. I was encouraged to ask questions of the witnesses and found the experience enlightening. After years of investigating facts and evaluating liability ranges in insurance claims, it was a very helpful experience to actually sit in the position of factfinder.

The Attorney Disciplinary Board is a very important piece of keeping the legal system in our state ethical. I was honored to be a part of it and recommend the experience to others. I also appreciate that the attorneys who served with me were open to my input and judgment.

*Michael DesJardins recently retired after 24 years as a liability claims adjuster for State Farm Insurance and about 16 years previously in the ministry. The experiences with giving pastoral care and handling insurance claims helped him develop a strong concern for justice and integrity.*

*Both concerns helped him in his tenure with the Louisiana Attorney Disciplinary Board Hearing Committee. DesJardins and his husband live in New Orleans. Email: mike953@comcast.net.*



# MEMBER BENEFITS:

## Save 10% on Clio Practice Management Software

By Micah J. Fincher

**T**he *Louisiana Bar Journal* Editorial Board, in collaboration with the Louisiana State Bar Association's (LSBA) Outreach Committee, continues its series of articles highlighting benefits available to LSBA members. This article features Sarah L. Pfeiffer in a Q&A about Clio, a web-based practice management software platform.

**Q.** Hi Sarah, tell us about yourself and where you live and practice.

**A.** I was born and raised in rural Oklahoma and moved to New York City for work and earned my bachelor's degree from Columbia University. I began law school at the University of Kentucky but spent my last year at Tulane as a visiting student. I remember driving into New Orleans for the first time and feeling like I was finally home. I am a family mediator and divorce attorney. I help families maintain important relationships while resolving their legal and financial issues.

**Q.** What is Clio? How do you use it?

**A.** I have used Clio since I began my own practice for practice management and time keeping. In addition to managing my calendar and organizing contacts, time and notes by matter, Clio helps me track clients as they review documents

and communications I send them. The software uses an intuitive dashboard layout that shows me where I left off work the last time I logged in. The software is easy to use and fast.

**Q.** Tell us about some of your other favorite features.

**A.** Clio integrates with many of the other services I use in my practice. These include Google Apps (for contacts and email), Zero (for accounting) and Law Pay (to accept credit card payments). But my favorite thing about Clio is the customer service. It's superb. A real person helps resolve my questions with helpful step-by-step instructions. Clio also has a mobile app, so you can check your calendar and files on the go.

**Q.** How do your clients use Clio?

**A.** I share documents and files with clients through Clio's client portal. Then Clio's dashboard shows me what my clients have reviewed and when. This makes it easy to follow up to answer clients' questions about the materials my clients and I share.

**Q.** What discount does Clio offer LSBA members? How do you claim it?

**A.** LSBA members receive a 10 percent discount. You can claim the discount by following this link: <https://landing.clio.com/labar>.

*Micah J. Fincher is the chair of the LSBA's Outreach Committee. He is a graduate of Louisiana State University Paul M. Hebert Law Center and currently practices in intellectual property and technology law at Jones Walker LLP in New Orleans.*



*Sarah L. Pfeiffer is a graduate of Columbia University and Tulane University Law School. As a principal of the Law Office of Sarah Pfeiffer, her practice includes all aspects of family law with a focus on mediation in the Greater New Orleans area.*



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



## 2017 Secret Santa Project a Success! 715 Children Assisted

**T**he Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee would like to thank all legal professionals who participated in the 2017 Secret Santa Project. This was the 21st year for the Project.

Because of the generous participants throughout the state — from “adopting” Santas and from monetary donations — 715 children, represented by 16 social service agencies in six 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 and Early Head Start, CASA Terrebonne and Eden House.



## La. Board of Legal Specialization Sets Dates for Certification Applications

**T**he application period for appellate practice, estate planning and administration, family law and tax law certification will continue through Feb. 28, 2018.

Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2018.

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 certi-

fication 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 — 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 Specialization Director Mary Ann Wegmann, email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org) or call (504)619-0128. For more information, go to the LBLS website: <https://www.lascmcle.org/specialization/>.

# Committee Preferences: Get Involved in Your Bar!

*Committee assignment requests are now being accepted for the 2018-19 Bar year. Louisiana State Bar Association (LSBA) President-Elect Barry H. Grodsky 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 16. 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.

## **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

nates 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 in-

tegrity, 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  
2018-19 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
- 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 16, 2018**

**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

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# LAWYERS IN THE CLASSROOM

March, 2018

To Members of the Bar,

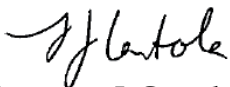
The Louisiana Center for Law and Civic Education (LCLCE) is partnering with the Louisiana State Bar Association and the Louisiana District Judges Association to promote the Lawyers in the Classroom and Judges in the Classroom programs.

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.

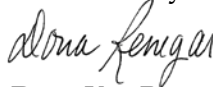
If you would like to volunteer to participate in the Lawyers in the Classroom and Judges in the Classroom programs, please complete and return the attached form. The LCLCE will attempt to match your schedule with a classroom in your area that has requested a presentation.

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



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

Sincerely,



**Dona Kay Renegar**  
President  
Louisiana State Bar Association



**C. Wendell Manning**  
President  
Louisiana District Judges  
Association



*Serving the Public. Serving the Profession.*



# JUDGES IN THE CLASSROOM

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# LAWYERS IN THE CLASSROOM



## Volunteer to Visit a Classroom in your Area!

*Would you like to make a law-related presentation in a classroom in your area?  
A list of topics for presentation ideas is available at the LCLCE.*

Name of Judge/Lawyer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Primary Email Address: \_\_\_\_\_

Secondary Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Best time to call: \_\_\_\_\_

Juris Doctorate (name of school): \_\_\_\_\_

### Examples of teachers' requests:

- *I am going to review the three branches of government with my 5th grade class the first week of April. 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 (Law Day).*
- *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](mailto: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](http://www.lalce.org)**

By Ashley M. Flick

## TIPS FOR LATE-PAYING OR NO-PAYING CLIENTS

**Y**ou may have a client who either doesn't pay at all or is consistently late in paying your invoices. It can be difficult and sometimes impossible to determine which clients will pay and which clients won't pay before you commence the representation. Below are a few tips you should consider to minimize the risk of running into a late-paying or no-paying client.

First, make sure you have an engagement letter signed by each client. Your engagement letter should include specifics detailing the following:

- ▶ timelines related to when you will bill (*i.e.*, first of the month or 15th of the month) and when payment is due (*e.g.*, within 30 days of receipt);
- ▶ explanation of how your fees are determined (hourly, flat rate, contingent);
- ▶ rate information (*i.e.*, attorney's rate, paralegal's rate, filing fees, etc.);
- ▶ the services you will handle (be specific as possible);
- ▶ interest penalties for paying late;
- ▶ payment options; and
- ▶ termination clause for failure to pay fees or for non-cooperation in accordance with Rule 1.16(b). Consider including a method of resolving fee disputes such as the Louisiana State Bar Association's Lawyer Fee Dispute Resolution Program.

While an engagement letter will not guarantee payment, once signed and agreed to by your client, it is a binding contract that gives you remedies to explore when your client doesn't pay.

Second, utilize good billing practices. Your fee must be reasonable in accordance with Rule 1.5 and it necessitates recording your time contemporaneously with the work product. This billing practice prevents erroneously billing for work not yet performed, while ensur-

ing that you will not forget to bill for all completed work. Most importantly, if you want to be paid for your time, make sure you itemize entries on the invoice with enough detail that the client can validate your billed charges. Remember, you cannot bill clients for drafting documents you don't actually draft, nor can you bill clients for services you haven't provided. These practices are a violation of the Rules of Professional Conduct and they will cause you to lose trust with your client, which directly impacts your client's willingness to pay your invoices.

Third, make sure you bill your clients regularly. Smaller monthly invoices will have a better chance of getting paid than one large invoice at the end of the representation. If your client is late paying the invoice, immediately follow up. If you are sending follow-up invoices and still not getting paid, call your client. You may have more success collecting your fees by speaking with your client rather than sending letters. Also, consider setting up a payment plan with late-paying or no-paying clients. Getting \$100 a month for a year is better than getting nothing.

Fourth, consider accepting payment by credit card. Credit cards and electronic payments are two of the most convenient methods of payment. There are service providers that allow your clients to pay your invoices with just a click of a button. Paying your invoice should be as simple as online shopping. The easier the payment process, the more likely you will get paid.

Lastly, if you have exhausted all other means to secure payment, consider a fee dispute resolution program. The LSBA's Lawyer Fee Dispute Resolution Program is much cheaper than litigation. It does not require either party to attend court, and it is in a relaxed setting. Most

importantly, the judgment is binding and may be enforced by the courts. This alternative has the potential to save a lot of time and money and help you obtain the necessary means to secure payment.

Suing your client for unpaid legal fees should be carefully considered. Suing clients for unpaid fees more often than not triggers a countersuit for malpractice. Not only do you run the risk of defending a malpractice claim, suits for fees can be very expensive and time-consuming and do not guarantee you will be made whole. Before considering suing for fees, carefully evaluate whether the amount in controversy is critical to your firm and worth the risk of a malpractice countersuit. Avoiding the whole scenario is why you want to bill early in smaller amounts. If you don't get paid, then you can cut your losses.

If the amount is critical to your firm and you do not foresee any risks of malpractice, consider whether the client will have the ability to fulfill a judgment. While judgments give you the ability to file a lien against property or garnish wages, those actions take even more of your time and money to carry out, without a guarantee you will recoup your fees. Usually it isn't worth it.

*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 [aftlick@gilsbar.com](mailto:aftlick@gilsbar.com).*

# Introduce a new partner to your law firm

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

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

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

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

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

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



442 Europe Street, Baton Rouge, Louisiana 70802-6406

# LAWYERS Assistance

By J.E. (Buddy) Stockwell

PROFESSIONAL DUTY OF SELF-CARE

Last year, I began presenting the Judges and Lawyers Assistance Program's (JLAP) new CLE program, "The Professional Duty of Self-Care." This presentation for all lawyers and judges focuses on general wellness and how to improve one's quality of life.

The starting point for every person is an honest self-assessment. The question is not whether you are simply *okay* but whether you are also *happy*. JLAP's goals in supporting the legal profession aim considerably higher than just helping people *survive* the legal profession. Instead, JLAP is promoting levels of self-care that are expected to result in competent *and* happy professionals.

With two full-time licensed professional counselors, JLAP's professional clinical services are now comprehensive. The majority of JLAP's work is rendering *totally confidential* assistance to lawyers, judges, law students and families of Bar members in cases that have nothing to do with discipline or bar admissions.

JLAP's services include education, tools and professional clinical advice to individuals under stress and feeling burned out. JLAP helps them identify and implement wellness initiatives that are right for them and that can effectively increase their happiness and reduce stress.

This lawyer wellness initiative at JLAP is part of a nationwide trend as evidenced by a recent American Bar Association Task Force Report<sup>1</sup> that stresses the importance of self-care. At least one state has actually codified a duty of self-care.

For comparison, here is Louisiana's rule on competency:

## Rule 1.1 (a) Competence

A lawyer shall provide competent



## JUDGES AND LAWYERS ASSISTANCE PROGRAM, INC. (JLAP)

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334 • Email: [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com)

representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Now, contrast California's new rule on competency with its addition of Subpart 3) requiring reasonable mental, emotional and physical health:

### Rule 3-110 Section (B) Competence

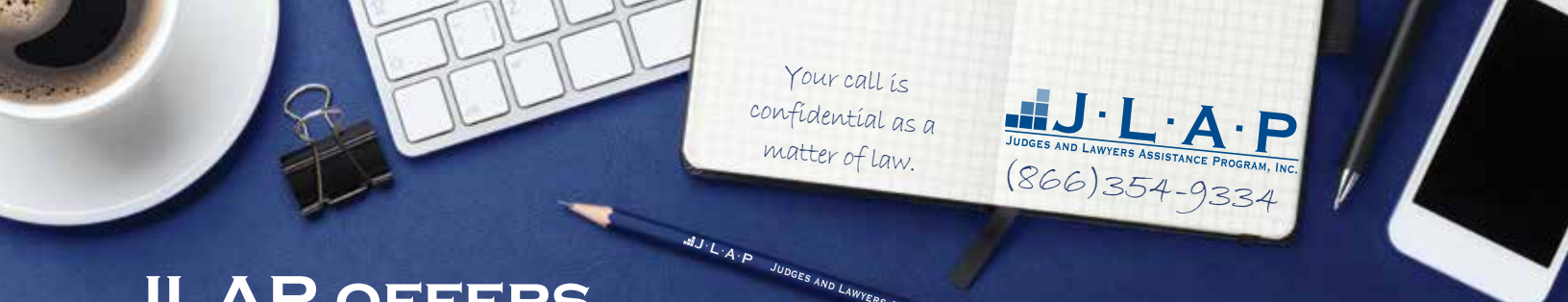
For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) *mental, emotional, and physical ability* reasonably necessary for the performance of such service (emphasis supplied).

Stress and burnout in the legal profession have been topics of concern for years. In 2015, Leslie A. Gordon

wrote an excellent *ABA Journal* article, "How Lawyers Can Avoid Burnout and Debilitating Anxiety."<sup>2</sup> It cites that unchecked stress and poor or non-existent wellness practices can negatively impact the executive functioning of legal professionals. Effects can include obsessive thoughts, feelings of inadequacy, difficulty concentrating, a sense of worry and impending danger, sleep disturbances, heart palpitations, sweating, fatigue and muscle tension.

How do we identify best-practices guidelines for self-care? As lawyers are both attorneys and *counselors* at law, perhaps lawyers can learn from social workers who often practice in settings where clients are in distress, under pressure and difficult to deal with. Social workers take self-care very seriously and some even have detailed wellness guidelines to follow. These excerpts are from references at the North Carolina





Your call is confidential as a matter of law.  
**J·L·A·P**  
JUDGES AND LAWYERS ASSISTANCE PROGRAM, INC.  
(866)354-9334

# JLAP OFFERS REAL WAYS TO COMBAT STIGMA AROUND MENTAL HEALTH THROUGH COMPREHENSIVE SERVICES:

- Licensed Professional Counselors on staff
- Appropriate referrals to individuals experienced in working with professionals
- *Love First* certified clinical interventionist on staff
- Helping individuals demonstrate a good record of recovery through monitoring
- Lawyer-only recovery support groups throughout the state
- MCLE Opportunities offered throughout the year

Chapter of the National Association of Social Workers.<sup>3</sup>

**Universal Right to Wellness:** Every helper, regardless of his/her role or employer, has a right to wellness associated with self-care.

**Physical Rest and Nourishment:** Every helper deserves restful sleep and physical separation from work that sustains him/her in the work role.

**Emotional Rest and Nourishment:** Every helper deserves emotional and spiritual renewal both in and outside the work context.

**Sustenance Modulation:** Every helper must utilize self-restraint with regard to what and how much he/she consumes (e.g., food, drink, drugs, stimulation) since it can compromise competence as a helper.

In an overarching directive, practitioners are encouraged to put their

own well-being at the top of the list: “First, do no harm to yourself in the line of duty when helping/treating others. Second, attend to your physical, social, emotional, and spiritual needs as a way of ensuring high-quality services to those who look to you for support as a human being.”

Lawyers can learn a lot from social workers about wellness, setting boundaries and making self-care a priority. If we as lawyers and judges are not at our best and not taking good care of ourselves, we can’t give our very best to those we serve.

Are you interested in reducing stress and improving your health? Would you like to be happier in your practice of law? If so, call JLAP’s clinical professionals and learn how you can take control and implement new wellness techniques that are proven to be effective. Call JLAP at (985)778-0571, email JLAP@LouisianaJLAP.com or visit

the website at: [www.louisianajlap.com](http://www.louisianajlap.com). Your call is privileged and confidential as a matter of law.

## FOOTNOTES

1. ABA Study, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” Online at: <http://louisianajlap.com/news/> or <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

2. [http://www.abajournal.com/magazine/article/how\\_lawyers\\_can\\_avoid\\_burnout\\_and\\_debilitating\\_anxiety](http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety).

3. [http://c.yimcdn.com/sites/www.naswnc.org/resource/resmgr/Standards\\_of\\_Self\\_Care-1.pdf](http://c.yimcdn.com/sites/www.naswnc.org/resource/resmgr/Standards_of_Self_Care-1.pdf).

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](mailto:jlap@louisianajlap.com).



## Tureaud Chapter Recognizes Barney as 2017 LSU Legend

Louisiana State University's A.P. Tureaud, Sr. Black Alumni Chapter hosted the 2017 Legends Forum in September 2017, recognizing the late Clarence L. Barney, Jr. as the 2017 LSU Legend. Mr. Barney was a former Tureaud Chapter member and first African-American chair of the LSU Board of Supervisors.

The Tureaud Chapter celebrated the 25th anniversary of the opening of the African-American cultural center which Mr. Barney worked tirelessly for decades to establish. This occasion was commemorated with a ribbon-cutting and renaming of the LSU cultural center as the Clarence L. Barney, Jr. African-American Cultural Center.

The Tureaud Chapter also awarded scholarships to several LSU students.



Attending the LSU Legends Forum, presented by Louisiana State University's A.P. Tureaud, Sr. Black Alumni Chapter, were several family members of 2017 LSU Legend Clarence L. Barney, Jr. From left, Todd Schexnayder, Chapter treasurer; Shaun R. Mena, Chapter LSU Legends Forum co-chair; Gary Huntley, Chapter president; Tammy Barney; Keith Barney; Marie Barney; Shawn Barney; Ivy Barney, holding daughter Lucille "LuLu" Barney; and James M. Williams, LSU Board of Supervisors chair-elect. *Photo by Pamela Blackwell.*



The Louisiana State Bar Association Diversity Committee's Integration Subcommittee held a Professional Facilitator Training Workshop in New Orleans on Nov. 18, 2017. Attorneys increased their level of understanding on why diversity and inclusion are important in society and the legal profession and learned effective ways to deliver presentations. Senior facilitators, from left, Arlene D. Knighten, executive counsel, Louisiana Department of Insurance (Integration Subcommittee co-chair); Monique M. Edwards, The Edwards Law Group, L.L.C.; Troy N. Bell, Courington, Kiefer & Sommers, L.L.C.; Kandace R. Hamilton, associate director, investigator, Tulane University (Integration Subcommittee co-chair); and attorney I.J. Clark Sam.

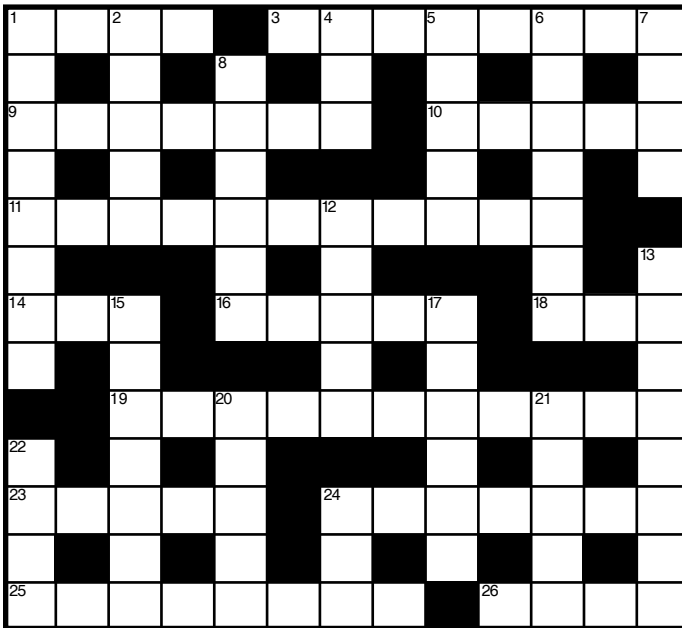
### Diversity Committee's Strategic Planning Workshop Conducted

The Louisiana State Bar Association Diversity Committee's Strategic Planning Workshop was conducted in October 2017. The workshop was facilitated by Lauren Stiller Rikleen, founder and president of the Rikleen Institute for Strategic Leadership.

# Crossword PUZZLE

By Hal Odom, Jr.

## A STATE OF SERVITUDE?



### ACROSS

- 1 What is regulated by a servitude of drip (4)
- 3 Estate on which a charge is placed (8)
- 9 Not personal, as a servitude (7)
- 10 Kind of jurisdiction or liability (2, 3)
- 11 Kind of servitude abolished by the 13th amendment (11)
- 14 Conclusion (3)
- 16 Boundary line (5)
- 18 Org. for Pelicans and Hawks (3)
- 19 Kind of prescription that may apply to servitudes (11)
- 23 Give consent (5)
- 24 Servitude owed to an enclosed estate (7)
- 25 Estate to which a charge is owed (8)
- 26 Acidic, to the tongue (4)

### DOWN

- 1 Restored to original condition, as a common area (8)
- 2 Fifth heading in a formal outline (4, 1)
- 4 Snaky fish (3)
- 5 Gallic equivalent of "lookie here!" (5)
- 6 In the beginning phases (5, 2)
- 7 Hefty volume (4)
- 8 Religious-based campus organization (6)
- 12 Haloes, or dark clouds (5)
- 13 A commonlaw term for servitude (8)
- 15 Schematic drawing (7)
- 17 Condition resulting from insufficient water (6)
- 20 Elizabeth II, for example (5)
- 21 The Donald's first (5)
- 22 Real property, usually (4)
- 24 Needed to use an ATM (3)

Answers on page 367.

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Lafayette	David E. Cooley.....(225)753-3407		
	Alfred "Smitty" Landry.....(337)364-5408 (337)364-7626	Shreveport	Michelle AndrePont.....(318)347-8532 Nancy Carol Snow.....(318)272-7547 William Kendig, Jr. ....(318)222-2772 (318)572-8260 (cell)
Lake Charles	Thomas E. Guilbeau.....(337)232-7240 James Lambert.....(337)233-8695 (337)235-1825		Steve Thomas.....(318)872-6250
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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 7, 2017.

### Decisions

**Jeanne Marie Bourque**, Lafayette, (2017-OB-1692) **Reinstated to active status** by the Louisiana Supreme Court on Nov. 6, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2017. *Gist:* Reinstated to active status in practice of law.

**Joseph M. Bruno**, New Orleans, (2017-B-1012) **Suspended from the practice of law for a period of 90 days, with all but 30 days deferred**, by order of the Louisiana Supreme Court on Oct. 9, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 23, 2017. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; and failure to communicate with a client.

**Lynden J. Burton**, New Iberia, (2017-B-0560) **Interim suspension** by order of the Louisiana Supreme Court on Sept. 22, 2017. JUDGMENT FINAL and EFFECTIVE on Sept. 22, 2017. Burton may not practice law until further orders from the Court.

**J. Michael Cutshaw**, Baton Rouge,

(2017-OB-1435) **Denied reinstatement to the practice of law** by order of the Louisiana Supreme Court on Nov. 13, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 27, 2017. Cutshaw may reapply for reinstatement upon a showing that he has complied with any and all recommendations made to him by the JLAP.

**Philip T. Deal**, Monroe, (2017-OB-1337) **Permanent resignation from the practice of law in lieu of discipline** ordered by the Louisiana Supreme Court on Sept. 22, 2017. JUDGMENT FINAL and EFFECTIVE on Sept. 22, 2017. *Gist:* Conversion of client and/or third-party funds; violating or attempting to violate the Rules of Professional Conduct; and conduct involving dishonesty, fraud, deceit and misrepresentation.

**Peter Brian Derouen**, Lafayette, (2017-B-1289) **Disbarment** ordered by the Louisiana Supreme Court on Oct. 16, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 30, 2017. *Gist:* Neglected a client's settlement; converted client and third-party funds; failed to cooperate with

the ODC in its investigation; and violated the Rules of Professional Conduct.

**Timmy James Fontenot**, Mamou, (2017-B-1661) **Disbarment** ordered by the Louisiana Supreme Court on Nov. 28, 2017; rehearing denied. JUDGMENT FINAL and EFFECTIVE on Dec. 14, 2017. *Gist:* Settled clients' case without informing them; forged clients' signatures on settlement documents; misled clients as to status of matter; failed to disburse settlement funds for five years; failed to reduce contingency fee agreement to writing; made cash withdrawals from client trust account; and violated the Rules of Professional Conduct.

**John Thomas Fuller**, New Orleans, (2017-B-1688) **Consented to a public reprimand** by order of the Louisiana Supreme Court on Nov. 6, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2017. *Gist:* Respondent communicated with two persons known to be represented by counsel about the subject of the representation and without the consent of their counsel.

**Wayne E. Garrett**, New Orleans, (2017-B-1460) **Suspended for six months, fully deferred, followed by a supervised probationary period of one year**, by order of the Louisiana Supreme Court on Nov. 17, 2017. JUDGMENT FINAL and EFFECTIVE on Dec. 2, 2017. *Gist:* Respondent failed to timely pay a third-party provider and mishandled his client trust account, resulting in the commingling and conversion of client funds.

**Janinne Latrell Gilbert**, Delcambre, (2017-B-0524) **Permanently disbarred** by order of the Louisiana Supreme Court on Sept. 22, 2017. JUDGMENT FINAL

Continued next page

## CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

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NEW ORLEANS, LA 70130

**Discipline** continued from page 330

and EFFECTIVE on Oct. 7, 2017. *Gist:* Respondent neglected a legal matter, failed to communicate with a client, failed to account for or refund an unearned fee, failed to properly withdraw from a representation, engaged in the unauthorized practice of law, engaged in dishonest conduct, and failed to cooperate with the ODC.

**C. Mignonne Griffing**, Shreveport, (2017-B-0874) **Suspended from the practice of law for one year and one day, with all but six months deferred, subject to one-year unsupervised probation**, by order of the Louisiana Supreme Court on Oct. 18, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 1, 2017. *Gist:* Conflict of interest; failure to uphold the duties of a prosecutor; conduct involving dishonesty and misrepresentation; conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

**Todd A. Harris**, Mansura, (2017-B-

0726) **Suspended from the practice of law for a period of one year and one day, with all but 90 days deferred, subject to probation following the active portion of his suspension**, by order of the Louisiana Supreme Court on Sept. 15, 2017. ORDER FINAL and EFFECTIVE on Sept. 15, 2017. *Gist:* Commission of a criminal act, particularly one that reflects adversely on the lawyer's fitness in other respects; and violating or attempting to violate the Rules of Professional Conduct.

**Erica May Lotz**, Tennessee, (2017-B-1431) **Publicly reprimanded** by order of the Louisiana Supreme Court on Oct. 27, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 27, 2017. *Gist:* Respondent's reciprocal discipline of public reprimand is a result of her violating rules regarding the safekeeping of client property and violation of declining or terminating representation. Supreme Court of Tennessee issued its order of a Public Censure on July 11, 2017.

**Ramsey T. Marcello**, New Orleans, (2017-OB-1436) **Denied readmission**

**to the practice of law** by the Louisiana Supreme Court on Nov. 17, 2017. JUDGMENT FINAL and EFFECTIVE on Dec. 1, 2017. Marcello may not reapply for readmission until he has fully complied with the Court's Nov. 16, 2011, Order.

**Michael Louis Martin**, New Orleans, (2017-B-1288) **Suspended for two years from the practice of law** by order of the Louisiana Supreme Court on Oct. 16, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 30, 2017. *Gist:* Respondent grossly mishandled his client trust account, resulting in the commingling and conversion of client funds. Respondent also failed to cooperate with the Office of Disciplinary Counsel in its investigation.

**Everett H. Mechem**, Tennessee, (2017-B-1390) **Order of disbarment imposed by the Supreme Court of Tennessee made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Oct. 27, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 10, 2017. *Gist:* Commission of a

Continued next page

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**Discipline** continued from page 331

criminal act.

**Raymond J. Pajares**, Mandeville, (2017-OB-1779) **Transferred to disability inactive status** ordered by the Louisiana Supreme Court on Nov. 13, 2017. JUDGMENT FINAL and EFFECTIVE on Nov. 13, 2017.

**Lucretia P. Pecantte**, New Iberia, (2017-B-0552) **Interim suspension** ordered by the Louisiana Supreme Court on Sept. 22, 2017. JUDGMENT FINAL and EFFECTIVE on Sept. 22, 2017. Pecantte may not practice law until further orders from the Court.

**Robert B. Purser**, Opelousas, (2017-B-1170) **Permanent disbarment** ordered by the Louisiana Supreme Court on Oct. 9, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 23, 2017. *Gist:* Neglected legal matters; failed to communicate with clients; converted client funds; allowed trust account to become overdrawn; practiced law after being interimsly suspended; failed to refund unearned fees; and violated the Rules of Professional Conduct.

**Mark G. Simmons**, Baton Rouge, (2017-B-1043) **Suspended for one year and one day, with all but 60 days deferred, followed by two years of supervised probation**, by order of the Louisiana Supreme Court on Oct. 16, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 30, 2017. *Gist:* Respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the Office of Disciplinary Counsel in two investigations.

**Richard C. Teissier**, New Orleans, (2017-B-1559) **Disbarred** by order of the Louisiana Supreme Court on Oct. 27, 2017, retroactive to July 28, 2015. *Gist:* Teissier engaged in unauthorized practice of law, accepted legal fees from clients, failed to complete legal matters, engaged in deceitful and dishonest conduct and conduct prejudicial to the administration of justice.

**Kenneth Michael Waguespack, Jr.**, Marrero, (2017-B-1468) **Permanently disbarred** by order of the Louisiana Supreme Court on Nov. 13, 2017. JUDG-

MENT FINAL and EFFECTIVE on Nov. 27, 2017. *Gist:* Respondent neglected legal matters, failed to communicate with clients, repeatedly misused his trust account, converted client and third-party funds, and failed to cooperate with the ODC. Respondent also failed to comply with his professional obligation to provide timely notification of changes in his address and to properly disclose his client trust account information.

**Kenneth Todd Wallace**, New Orleans, (2017-B-0525) **Suspended from the practice of law for a period of 30 months, with all but 12 months deferred, retroactive to his interim suspension of Jan. 8, 2016**, by order of the Louisiana Supreme Court on Sept. 22, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 6, 2017. *Gist:* Conduct involving dishonesty, fraud, deceit and misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**Trish Ann Ward**, New Orleans, (2017-B-1047) **Suspended from the practice of law for one year and one day, retroactive to her interim suspension of Dec. 1,**



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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Dec. 1, 2017.

Respondent	Disposition	Date Filed	Docket No.
Spencer Brimmer Bowman	(Reciprocal) Suspension.	11/20/17	17-10162
Todd A. Harris	(Reciprocal) Suspension.	11/20/17	17-9938
Alvin A. Johnson, Jr.	(Reciprocal) Suspension.	11/20/17	17-9722
Catherine L. Stagg	(Reciprocal) Public reprimand.	10/24/17	17-9125
Randal Alandre Toaston	(Reciprocal) Permanent disbarment.	11/20/17	17-9723

**Discipline** continued from page 332

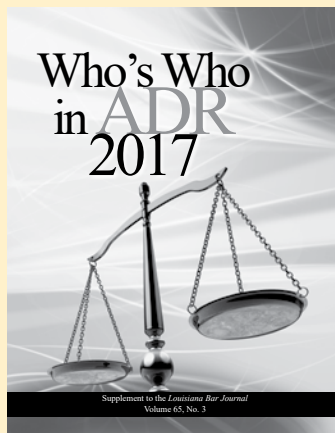
2016, by order of the Louisiana Supreme Court on Sept. 29, 2017. JUDGMENT FINAL and EFFECTIVE on Oct. 13, 2017. *Gist*: Commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

**Bradley G. Wood**, Baton Rouge, (2017-B-1949) **Interimly suspended by consent from the practice of law** by order of the Louisiana Supreme Court on Nov. 22, 2017. ORDER FINAL and EFFECTIVE on Nov. 22, 2017. He may not practice law in Louisiana until further orders of the Court.

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

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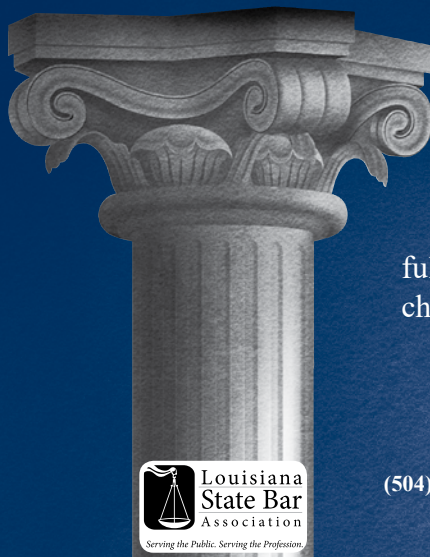
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E-mail: [ebarefield@lsba.org](mailto:ebarefield@lsba.org)



### CLIENT ASSISTANCE FUND PAYMENTS - SEPTEMBER & DECEMBER 2017

Attorney	Amount Paid	Gist
Malcolm Brasseaux	\$12,500.00	#1757 — Conversion of succession funds
Bruce A. Craft	\$4,900.00	#1804 — Unearned fee in criminal and domestic matter
Walter C. Dumas	\$25,000.00	#1754 — Conversion of client funds
J. Renee Martin	\$1,400.00	#1793 — Unearned fee in a domestic matter
Michael Sean Reid	\$3,000.00	#1794 — Unearned fee in a domestic matter
Michael Sean Reid	\$3,925.00	#1806 — Unearned fee in a domestic matter
Michael Sean Reid	\$2,250.00	#1795 — Unearned fee in a domestic matter
Michael B. Rennix	\$2,000.00	#1811 — Unearned fee in a bankruptcy matter
Michael B. Rennix	\$1,167.60	#1812 — Unearned fee in a bankruptcy matter
Randal A. Toaston	\$500.00	#1827 — Unearned fee in a criminal matter

## Q&A

### LOUISIANA CLIENT ASSISTANCE FUND

#### What is the Louisiana Client Assistance Fund?

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

#### How do I qualify for the Fund?

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

#### Who can, or cannot, qualify for the Fund?

Almost anyone who has lost money due

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

#### How do I file a claim?

Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South

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

#### Who decides whether I qualify for reimbursement?

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



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### Subcontractor's Unsuccessful Gamble Doesn't Create an Implied-in-Fact Contract with the Government

*Engineering Solutions & Products, L.L.C.*, 17-1 BCA P 36822 (A.S.B.C.A. 8/4/17), No. 58633 2017 ASBCA LEXIS 309.

In 2004, Engineering Solutions & Products, L.L.C. (ESP) leased a warehouse in Haymarket, Va., to provide support to the U.S. Army under a contract issued by the Department of the Treasury. In 2005, the requirement was transferred to a geographically separated Army-contracting activity. However, ESP continued to provide the warehouse space to the Army as a subcontractor to various prime contractors.

At some point during the period of performance, various Army personnel indicated that they would be interested in leasing more warehouse space from ESP. ESP, without obtaining authorization from a warranted contracting officer, negotiated with its landlord to expand the warehouse. To this end, ESP entered into a 10-year lease that obligated it to pay an early-termination fee if the expanded warehouse was leased for less than seven years. Twice ESP unsuccessfully attempted to get the Army to accept liability for early termination of the lease in the prime contract. In March 2012, the Army vacated the expanded warehouse, five years into ESP's lease, thereby obligating ESP to pay the

early-termination fee.

In response, ESP submitted a certified claim contending that an implied-in-fact contract existed between it and the Army requiring the Army to pay the early-termination fee and other costs totaling around \$4.5 million. The contracting officer denied the claim, and ESP appealed to the Armed Services Board of Contract Appeals (ASBCA or the Board), asserting its implied-in-fact contract argument and two other theories of recovery not addressed herein.

The Board reviews administrative appeals of contracting officer's final deci-

sions under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. This Board is one of a handful that are available to contractors dissatisfied with a contracting officer's final decision as an alternative to pursuing litigation at the Court of Federal Claims for contract disputes that occur after contract award. The Board has jurisdiction to decide appeals regarding contracts made by the Department of Defense or an agency that has designated the Board to decide its disputes (like the Central Intelligence Agency). Of the boards, the ASBCA is the largest and issues the vast majority of decisions.

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## Authority by Ratification

The primary question before the Board was whether the actions of a few Army employees, with no contracting authority, created an implied-in-fact contract with the Government through their interactions with ESP. In its inquiry into the matter, the Board analyzed the four elements of an implied-in-fact contract with the Government: (1) mutuality of intent to contract; (2) consideration; (3) unambiguous offer and acceptance; and (4) actual authority on the part of the Government representative whose conduct is relied on. *See, e.g., City of El Centro v. United States*, 922 F.2d 816, 820 (Fed. Cir. 1990). While ESP asserted numerous unsuccessful theories as how the four elements of an implied-in-fact contract between it and the Army were satisfied, two theories it asserted to prove Government authority to contract stand out — institutional ratification and ratification by acceptance of benefits.

In its institutional ratification argument, ESP relied partially on the holding in *Janowsky v. United States*, 133 F.3d 888 (Fed. Cir. 1998). In that case, the plaintiff owned a vending machine business and was concerned with a possible decline in business value if he cooperated with the FBI on a sting operation. Janowsky received a verbal promise of indemnifica-

tion from an FBI agent who lacked actual contracting authority for the Government; he had his lawyer prepare a written agreement, with input from the FBI. The FBI allowed the undercover operation to continue, and not until after capturing one of the targets of the probe did the FBI inform Janowsky that he would not receive the promised indemnification. The Federal Circuit reversed the grant of summary judgment in favor of the Government because there was a factual issue regarding whether the FBI had “institutionally ratified” the agreement.

The Board distinguished the facts in *Janowsky* and ESP’s case. Specifically here, unlike in *Janowsky*, there was no ratification of a purported understanding of the parties that the Army would compensate ESP for early-termination costs. Indeed, the Army explicitly rejected ESP’s attempts to include the liability for early termination of the lease in the Contract — twice. The Board found that the widespread institutional rejection of the contract terms proposed by ESP foreclosed any finding of institutional ratification of such terms.

In its ratification-by-acceptance argument, ESP alleged that a contracting officer’s acceptance of the benefits of an implied-in-fact contract can constitute ratification. In its argument, ESP relied

on two cases — *Healthcare Practice Enhancement Network, Inc.*, VABCA No. 5864, 01-1 BCA ¶ 31,383 at 154,986, and *Sociometrics, Inc.*, ASBCA No. 51620, 00-1 BCA ¶ 30,620. The Board distinguished those cases as involving situations where it should have been clear to the contracting officer that services were being provided without a contract, unlike in this case where the contracting officers were physically separated from the warehouse and did not know about the lease — except that they rejected it.

In the end, the Board commented that what the evidence did show was that ESP made a business decision to enter into a 10-year lease for the expansion of the warehouse with the hope of growing its business with the Army. That ESP’s gamble did not pay off did not create an implied-in-fact contract with the Army. Consequently, because ESP did not prove all of the elements of an implied-in-fact contract, the Board determined that ESP did not establish a contract with the Army and denied the appeal.

—Bruce L. Mayeaux

Major, Judge Advocate  
U.S. Army  
Member, LSBA Administrative  
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## Mediation on International Scale: Role of Bias in Brokering Peace in the Middle East

President Trump's endorsement of Jerusalem as Israel's capital has called into question whether the United States is a viable mediator between Israelis and Palestinians. The United States has maintained the main mediator role between Israelis and Palestinians for decades, but Trump's assertion has led to calls for the United States to step down. Though a large portion of the international community previously considered the United States biased toward Israeli interests, Trump's endorsement has sparked increasing concern for the future of a successful Israeli-Palestinian peace agreement.

On Dec. 6, 2017, Trump determined, consistent with the Jerusalem Embassy Act adopted by Congress in 1995, that it was "time to officially recognize Jerusalem as the capital of Israel." Trump found this recognition was a step toward peace between the Israelis and the Palestinians. Though Trump acknowledged the city's importance to Jews, Muslims and Christians, he found Jerusalem to be the "heart" of Israel's successful democracy, and, there-

fore, the capital of Israel. <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/>.

Trump did not outline the borders of Israel's capital or refer to an undivided capital. In addition, he stated that the United States would support a two-state solution if the Israelis and Palestinians agreed, leaving room for negotiation in his rhetoric. Nonetheless, his announcement has been widely perceived as confirmation that the United States officially aligns with Israel.

Unlike Trump's perceived message that Israel is the rightful owner of Jerusalem, many find the most realistic route to achieving peace is to award the western section of Jerusalem to Israel and the eastern section to a forthcoming Palestinian state. Likewise, the international community considers the city's status a primary point that negotiations between the Israelis and the Palestinians alone must resolve. In 2000, a peace compromise was nearly achieved, but negotiations stalled when the Israelis and Palestinians could not agree over who would have control of a labyrinth of underground tunnels underneath Jerusalem. No fruitful negotiations regarding the city have taken place since that time. Meanwhile, for more than two decades, U.S. presidents have remained neutral on the city's status by introducing waivers regarding the Jerusalem Embassy Act to avoid moving the U.S. embassy to Jerusalem and recognizing Jerusalem as Israel's capital. Therefore, Trump's recent statement, whether he intended it to or not, has tipped the scales.

Trump's perceived bias toward Israel's

interest in Jerusalem has prompted Mahmoud Abbas, the Palestinian president, to find the United States no longer "fit" to mediate the dispute. Abbas stated Palestinians will not allow the United States to mediate the peace negotiations. He publicly announced at an Organization of Islamic Cooperation meeting in Istanbul that he plans simultaneously to seek full United Nations (UN) membership and request the UN take over the mediation process. Abbas found Trump's remark was "an announcement of the US administration's withdrawal from its role" as mediator. <https://www.theguardian.com/world/2017/dec/13/recep-tayyip-erdogan-unite-muslim-world-trump-east-jerusalem>.

Trump's endorsement further prompted Muslim nations to call for the international community to recognize east Jerusalem as the Palestinian state's capital.

Though many applauded Trump's announcement, others echoed concerns surrounding the United States' mediator role in the peace process. One main concern is that Arab governments may be forced to withdraw from the peace process out of the need to save face; cooperation in what may be considered a group effort by the United States and Israel to disadvantage Palestinians may lead to local unrest against current Palestinian leaders. Debra DeLee, president of Americans for Peace Now, associated with Israeli peace group Shalom Achshav, said that Trump's announcement has caused substantial damage to any potential peace agreement. In addition, Pope Francis publicly disapproved of Trump's statement.

Studies suggest, however, that establishing the United States' bias toward Israel does not necessarily make the United States a less effective international mediator. International mediation typically contemplates multiple international actors with individual interests coming together to manage an interstate or intrastate conflict through negotiations. Third parties, such as state actors, representatives of states and representatives of global organizations, may act as the mediator. Unlike in standard mediation, which generally requires mediators remain neutral and impartial throughout the negotiations, international mediation operates using a

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significantly different approach.

The mediator's impartiality may be less important than the mediator's leverage when state actors enter the mediation field. International-conflict-management scholar Sinisa Vukovic argues that the Arab world initially accepted the United States as a mediator not because it found the United States an unbiased third party, but because it believed that the combination of the United States' resources and its strong ties with Israel could leverage Israel to compromise. The 1979 hostage crisis is another example of this approach, in which the United States allowed Algeria to mediate rescue efforts precisely because of its close relationship with the Khomeini regime. Though bias may be one factor in international mediation, resources, leverage and technique nonetheless remain substantial reasons to partake in mediation with a biased state actor.

Trump's recent endorsement signifies a shift in the United States' approach to mediating the Middle East dispute. It remains unclear, however, whether Trump's announcement will ultimately

help or hurt the United States' efforts to mediate peace between the Israelis and the Palestinians.

For more information, see: <https://www.nytimes.com/2017/12/09/world/middleeast/jerusalem-trump-capital.html?mtrref=www.google.com&gwh=9BDB834A65E75B124F67F3ED3E99560E&gwt=pay>; <https://www.vox.com/world/2017/12/6/16741528/trump-jerusalem-speech-israel-tel-aviv>; <http://www.emeraldinsight.com/doi/pdfplus/10.1108/IJCA-02-2012-0015>; <http://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1026&context=jlia>.

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## Circuits Split on Wage Garnishment Issue

*In re Jackson*, 850 F.3d 816 (5 Cir. 2017), cert. denied sub nom. *Tower Credit, Inc. v. Schott*, \_\_\_ S.Ct. \_\_\_, 2017 WL 4269679.

On Dec. 4, 2017, the Supreme Court denied certiorari of the 5th Circuit decision *In re Jackson*, wherein the 5th Circuit disagreed with three other circuit courts. The 5th Circuit held that, for preference purposes, the transfer of a Chapter 7 debtor's wages did not occur at the time the garnishment order was served, but rather occurred when an interest in the wages was acquired.

In *Jackson*, Tower Credit, Inc. obtained a money judgment against the debtor, Christon Jackson, in 2009, and, subsequently in 2012, obtained a garnishment order in

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an effort to collect. Jackson filed his Chapter 7 bankruptcy petition later that year.

The Chapter 7 trustee initiated an adversary proceeding against Tower Credit, seeking to void the pre-petition garnishments of Tower that occurred within the 90 days prior to the petition date as preferential transfers pursuant to 11 U.S.C. § 547(b). The Chapter 7 trustee sought to recover the garnished wages totaling \$1,756.04. The bankruptcy court granted summary judgment in favor of the trustee, and the district court affirmed. Tower appealed, arguing that the garnished wages should be considered transferred on the date the garnishment order was served, which fell outside of the 90-day preference period.

On appeal, the 5th Circuit cited the Supreme Court's decision in *Barnhill v. Johnson*, 112 S.Ct. 1386 (1992), which held that federal law governs what a transfer is and when the transfer is completed. The court then pointed out that § 547(e) provides the rules for determining the timing of a transfer. As a general rule, a transfer is typically made at the time it is perfected, which for non-real property, occurs when the creditor on a simple contract can no longer acquire a lien superior to the interest of

the transferee. Thus, Tower argued, at the time of the garnishment order, no creditor on a simple contract could have acquired a lien superior to Tower's interest. However, the 5th Circuit pointed out that § 547(e)(3) qualifies the general rule by providing that the transfer is not made until the debtor has acquired rights in the property being transferred.

Citing another Supreme Court case, the 5th Circuit noted that earnings do not become property, for bankruptcy purposes, until they come into existence. Therefore, in the wage-garnishment context, the debtor cannot obtain rights in future wages until he performs the services entitling him to those wages. In this case, because the debtor did not earn the disputed wages prior to the 90-day preference period, he had not acquired rights to the wages, and thus could not have transferred those rights to Tower before the preference period.

Tower relied on three older decisions from the 11th, 7th and 2nd Circuits that held that the transfer of garnished wages occurred at the time the employer was served with the garnishment order. However, each of those cases was decided before the Supreme Court's decision in *Barnhill*, and the cases either did not consider § 547(e), or, in the 5th Circuit's opinion, ignored its applicability. The 5th Circuit noted that numerous lower courts have largely criticized the holdings of these three older cases and joined in rejecting their reasoning, holding that a creditor's collection of garnished wages during the preference period is an avoidable transfer even where the garnishment order was served prior to the preference period.

The Supreme Court's denial means that the circuit split on this issue will continue until the lower courts resolve the issue themselves or until the issue is large enough for the Supreme Court to decide to resolve the split once and for all.

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## Applicability of Oppressed Shareholder Remedy to Pre-Effective Date Acts

*Cole v. Sabine Bancshares, Inc.*, 17-0272 (La. App. 3 Cir. 12/6/17), \_\_\_ So.3d \_\_\_, 2017 WL 6029783.

On Jan. 7, 2016, Cynthia Cole, a minority shareholder, filed suit against Sabine Bancshares, Inc., alleging that she was an oppressed shareholder under La. R.S. 12:1-435, the oppressed shareholder statute, and seeking to enforce her right under the statute to have Sabine purchase her shares at fair value. Sabine filed an exception of no cause of action because the acts alleged in Cole's petition occurred before the effective date of the statute, Jan. 1, 2015. The trial court ultimately issued an amended judgment granting Sabine's exception in part. It dismissed Cole's pre-Jan. 1, 2015, claims, ordered her to amend her petition to allege only acts of oppression occurring on or after Jan. 1, 2015, and certified the judgment as final and appealable. Cole appealed to the Louisiana 3rd Circuit Court of Appeal.

On appeal, Cole first argued that the oppressed shareholder statute was procedural in nature, not substantive as the trial court held, and thus should apply retroactively to acts of oppression that occurred prior to its effective date. The 3rd Circuit applied a two-part test. First, the court examined whether the Louisiana Legislature "expressed an intent concerning the retroactive or prospective application" of the oppressed shareholder statute, as the court must adhere to the intent of the Legislature. The 3rd Circuit found that neither the oppressed shareholder statute specifically nor the Louisiana Business Corporation Act as a whole expressed the Legislature's intent on that subject. The court thus applied step two, determining whether the law is substantive, procedural or interpretive. The 3rd

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Circuit reasoned that neither the oppressed shareholder statute nor the rights provided thereby existed prior to its enactment. Because the statute created rights not previously available to shareholders, rather than an avenue by which such a right is enforced, the court held that the oppressed shareholder statute was a substantive law that applied prospectively only.

Cole next argued that even if the oppressed shareholder statute does not apply retroactively, pre-2015 acts of oppression can still be considered because the statute requires courts to consider actions that took place “over an appropriate period of time.” In support of her argument, Cole cited the Louisiana Supreme Court’s decision from *Walls v. American Optical Corp.*, 98-0455 (La. 9/8/99), 740 So.2d 1262, 1266, for the proposition that “a law may permissibly change the future consequences of an act and even the consequences of acts committed prior to the law’s enactment without operating retroactively.” Under *Walls*, the 3rd Circuit noted, a law operates retroactively only “when it goes back to the past either to evaluate the conditions of the

legality of an act, or to modify or suppress the effects of a right already acquired” (quoting *Walls*, 740 So.2d at 1267).

In rejecting Cole’s argument, the 3rd Circuit first reasoned that Cole could not acquire “a right in a cause of action for oppression prior to the statute’s effective date since an oppression remedy failed to exist” before that date. Next, the court reasoned that “[c]onsideration of [Sabine]’s acts prior to January 1, 2015, would attach new legal consequences to [Sabine]’s conduct prior to enactment of the statute. This would operate as an impermissible retroactive application of the statute.”

Lastly, Cole argued that even if the oppressed shareholder statute applies prospectively only, pre-Jan. 1, 2015, facts that are relevant to acts of oppression, such as motive and intent, should be considered under Louisiana Code of Evidence art. 404(B). To support this argument, Cole relied on *Monroe Medical Clinic, Inc. v. Hospital Corporation of America*, 622 So.2d 760 (La. App. 2 Cir. 1993), *writ denied*, 629 So.2d 1135 (La. 1993), in which the Louisiana 2nd Circuit allowed

evidence of events occurring before the commencement of a preemptive period to demonstrate motive, intent or plan under art. 404(B). However, the 3rd Circuit rejected this argument, noting that it involved acts barred by preemption, not acts barred by retroactivity.

Thus, the 3rd Circuit affirmed the trial court’s judgment granting Sabine’s exception of no cause of action and assessed costs of the appeal to Cole.

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## Eastern District Finds Pipeline Companies Owe Duty to Servient Estate Landowner

While most court watchers have been focused on the Southeast Louisiana Flood Protection Authority-East's pipeline damage case's rise to and burnout at the U.S. Supreme Court or on the 41 ambitious coastal land-loss cases brought by the parish and state governments, another pipeline damage case has been weaving its way through the Eastern District of Louisiana.

*Vintage Assets, Inc. v. Tenn. Gas Pipeline Co.*, No. 16-713 (E.D. La. 2017), is a relatively focused pipeline-

damage case brought by a single group of landowners against pipeline companies who executed servitudes across their property. Unlike the more high-profile cases previously mentioned, this case does not involve a government plaintiff or regulatory body and, although it was originally brought under theories of tort and breach of contract, the case was narrowed to focus on the responsibilities that pipeline companies had by virtue of their servitude agreements and the laws interpreting them.

The *Vintage* trial took place in September 2017 before District Judge Jane Triche Milazzo and, as of the writing of this update, the court had not ruled on the ultimate merits of the case. However, based on a pair of rulings on motions for summary judgment, this case is shaping up to be an important component in the jurisprudential development of the duties and liabilities related to pipeline operations in the Louisiana coastal zone.

The court's preliminary rulings were a mixed bag for both sides. On one hand, the court rejected several of the plaintiff's theories and claims like trespass. The plaintiff argued that the erosive widening of the canals since their construction amounted to a trespass that was not contemplated by the original agreement. The court found that Louisiana law required an intentional or active step to constitute a trespass and that the failure to maintain the width of the canals simply constituted the passive work of erosion. *Vintage*, 2017 WL 3601215, at \*4 (E.D. La. 2017).

However, the court also found that a combination of the servitude agreements and the suppletive law imparted a duty on the pipeline companies to maintain the canals where the agreements possessed an internal inconsistency by allowing the pipeline company to leave the canals "open" but also contemplating a maximum width. The court further found that this duty was ongoing, and, in several of the agreements, the duty had been breached.

There is no dispute that Defendants did not maintain the canals at issue and allowed the

canals to widen to widths far exceeding that set forth in the servitude agreements. Indeed, some of the canals have eroded into open water. Defendants do not dispute these facts. Accordingly, this Court holds that Defendants had a duty to maintain the canals, and that duty was breached. *Id.* at 7.

For the contracts that did not contain language providing for a maximum width, the court also found that there was no duty.

Regardless of the outcome in the Eastern District, the *Vintage* case will likely make its way to the U.S. 5th Circuit and become a relevant jurisprudential signpost as Louisiana continues to reconcile historic oil and gas activities with coastal restoration.

## LDEQ and U.S. EPA Settle Clean Air Act Allegations with ExxonMobil

On Oct. 31, 2017, the Louisiana Department of Environmental Quality (LDEQ) and the U.S. Environmental Protection Agency (EPA) filed a complaint and consent decree in case no: 4:17-cv-03302 in the Southern District of Texas to memorialize a settlement with Exxon Mobil Corp. and ExxonMobil Oil Corp. (collectively ExxonMobil) for alleged violations of the Clean Air Act.

The settlement concerns 26 flares at ExxonMobil's chemical, olefin, polymer and plastic manufacturing facilities located in or near Baton Rouge and Texas facilities located in Baytown, Beaumont and Mont Belvieu. It requires ExxonMobil to implement numerous pollution-control measures, pay civil penalties and contribute to environmental projects. These measures include a requirement to implement flare-gas-recovery systems and other technology at the facilities, which are expected to reduce emissions of volatile organic compounds by 7,000 tons and benzene by 1,500 tons. ExxonMobil will also



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be required to pay \$2.5 million in civil penalties, \$470,000 of which will go directly to LDEQ.

The settlement also contains requirements for fence-line-monitoring systems and for ExxonMobil to contribute \$2.5 million to a federal supplemental environmental project to plant trees in Baytown and to purchase a mobile air-quality-monitoring laboratory for LDEQ. According to the proposed consent decree, "LDEQ expects the new [laboratory] will be deployed throughout the state of Louisiana on special monitoring projects to provide instantaneous, onsite data directly related to air quality issues. It will allow the LDEQ to provide a more proactive approach to improving Louisiana's air quality. . . ." All told, between the civil penalties and injunctive relief, including investments in new technology, ExxonMobil will spend nearly \$300 million to resolve the allegations.

In the complaint alleging violations of its Title V permits, the Texas and Louisiana State Implementation Plans, the Clean Air Act, and its accompanying

regulations, the regulators very clearly acknowledged ExxonMobil's cooperation with the EPA and mitigation measures undertaken prior to the consent decree. This mitigation and cooperation were likely significant contributors to the relatively low civil penalty compared to the scope of the allegations, the size of which created consternation among environmental organizations. But regardless of the civil penalty, the result of this consent decree will be a significant investment in new pollution controls and a large contribution of resources and money to LDEQ.

The public comment period for the proposed consent decree tolled on Dec. 7, 2017. Subject to a review of those comments, the consent decree will likely become final in 2018.

—S. Beaux Jones

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## Marriage Contract

*Acurio v. Acurio*, 50,709 (La. App. 2 Cir. 6/22/16), 197 So.3d 253, *rev'd*, 16-1395 (La. 5/3/17), 224 So.3d 935.

The trial court ruled that the parties' prenuptial marriage contract establishing a separation of property regime could not be introduced at the time of the property partition because it was not an authentic act and, although an act under private signature, was not duly acknowledged prior to the marriage. The court relied on *Ritz v. Ritz*, 95-0683 (La. App. 5 Cir. 12/13/95), 666 So.2d 1181, *writ denied*, 96-0131 (La. 3/8/96), 669 So.2d 395, and *Deshotels v. Deshotels*, 13-1406 (La. App. 3 Cir. 11/5/14), 150 So.3d 541, which held that the acknowledgment had to be accomplished before the marriage.

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The 2nd Circuit reversed the trial court, noting the above cases, but distinguishing them by holding that the acknowledgment had no statutory time requirement and was not required to occur before the marriage. The court stated that the “purpose of the acknowledgment is simply for the parties to recognize the signatures as their own.” 197 So.3d at 256. In essence, the contract is effective upon the parties’ signatures, and the need for acknowledgment arises only if a challenge is made to the validity of the signatures. Moreover, the parties had subsequently acquired immovable property in which they had acknowledged the existence of the separate property regime.

The Louisiana Supreme Court reversed, finding that the acknowledgment was a form requirement and had to occur before the marriage. Two justices dissented.

*Neivens v. Estrada-Belli*, 17-0225 (La. App. 4 Cir. 9/27/17), 228 So.3d 238.

A prenuptial agreement for a separate property regime, signed by the parties in Tennessee and valid under Tennessee law, was enforceable in Louisiana. Although the agreement was not in authentic form, it was valid under Tennessee law and appropriately acknowledged as an act under private signature at the time executed. The parties did not have to enter into a new separate property regime in Louisiana or record the Tennessee agreement in Louisiana to avoid a community property regime. That part of the prenuptial agreement providing for a waiver of interim support, although invalid under Louisiana law, was severable, pursuant to a severability clause in the contract. Defendant’s requests for continued interim spousal support after the divorce and for final support were appropriately denied due to waivers in the contract. Fees and costs were appropriately awarded to plaintiff as provided in the contract.

## Relocation

*Singleton v. Singleton*, 51,476 (La. App. 2 Cir. 6/21/17), 224 So.3d 1134.

The trial court did not err in denying Ms. Singleton’s request to relocate five

and one-half hours away in Texas with the 9-year-old child. Ms. Singleton’s husband was being transferred to Texas for a better job there, and Mr. Singleton had a past history of theft and drug issues. The court found, however, that Mr. Singleton had a good relationship with the child, and that the 11-hour travel time would disrupt that relationship. Further, extended family members lived in the local area, the child attended school there, where he participated in extracurricular activities, and he had friends there. Although the court of appeal noted that it might have reviewed some of the relocation and article 134 factors differently than the trial judge did, the trial court did not abuse its discretion in its review or decision. The court also considered the child’s preference not to move.

## Recusal

*Rodock v. Pommier*, 16-0809 (La. App. 3 Cir. 2/1/17), 225 So.3d 512, *writ denied*, 17-0631 (La. 5/1/17), 221 So.3d 70.

Ms. Rodock moved to recuse the trial judge, alleging that, following a pretrial conference, he had “pre-judged this relocation matter.” The court of appeal affirmed the denial of the motion to recuse, stating:

Pretrial conferences in chambers frequently are sought by counsel to foster and promote settlement discussions. While it may be the better practice for these discussions to be held with a court reporter present so that a transcript can be available, statements made by a trial judge that he or she is “leaning” one way or the other are not, generally, evidence of bias. To the contrary, “adverse rulings alone do not show bias or prejudice.”

*Id.* at 519, quoting *Earles v. Ahlstedt*, 591 So.2d 741, 746 (La. App. 1 Cir. 1991).

The court of appeal found that the trial court had not pre-judged the case. No facts showed that the court was biased or prejudiced, and the allegation emanated from rulings made within the case itself

rather than statements of an extrajudicial nature.

*England v. England*, 16-0936 (La. App. 4 Cir. 6/28/17), 223 So.3d 582.

The trial court had ex parte communications with a detective investigating child abuse allegations, the parenting coordinator, the custody evaluator, social workers and a physician at Children’s Hospital. These, however, were not sufficient bases to recuse her; as no actual bias or prejudice against Ms. England was shown, she failed to rebut the presumption that the judge was impartial. Moreover, Ms. England had waited over six months to raise the allegations, waiting until right before trial started. The 4th Circuit held that even though the communications “may have given the appearance of impropriety, . . . this is insufficient to mandate recusal under La. Code Civ. Proc. art. 151.”

The trial court did not err in designating Mr. England the domiciliary parent and did not employ the “parental alienation syndrome theory” in awarding that designation to him, although it did find that Ms. England had engaged in attempts to alienate the children from him. The court of appeal affirmed the trial court’s sanction of \$95,450 in attorney’s fees to Mr. England as a result of Ms. England’s requests for protective orders. The court found that those requests were neither supported by evidence nor sufficiently investigated prior to filing, and that the testimony of Ms. England and the children was inconsistent and not credible. The granting of Mr. England’s exception of no cause of action to Ms. England’s petition to annul an earlier judgment denying her request for a protective order was upheld because she did not proffer evidence and failed to appeal the ruling. Furthermore, a petition for nullity is not a substitute for an appeal.

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## Oil Pollution Act: Responsible Parties

*United States v. Am. Commercial Lines, L.L.C.*, 875 F.3d 170 (5 Cir. 2017).

The tugboat M/V MEL OLIVER was pushing an oil-laden barge along the Mississippi when it started moving erratically and, despite warnings, veered into the path of an ocean-going tanker, the TINTOMARA, which collided with the barge, breaking it loose and causing it to sink, spilling 300,000 gallons of oil into the river.

The MEL OLIVER's crew consisted of Captain Terry Carver, Steersman John Bavaret and two deckhands. Only Carver had a valid United States Coast Guard Master of Towing Vessels license, authorizing him to lawfully operate tugboats on the lower Mississippi River. Bavaret's Apprentice Mate (Steersman) license authorized him only to serve under the direct supervision of a properly licensed master, not to operate the vessel without continuous supervision.

Two days after Carver had gone ashore,

leaving Bavaret in charge of the vessel, American Commercial Lines (ACL) ordered the MEL OLIVER to pick up oil at a Gretna terminal. The MEL OLIVER, with Bavaret at the helm, proceeded on the mission. An hour after departing the terminal, the collision occurred. In addition to being unqualified to operate the vessel without proper supervision, Bavaret was found to be in violation of several Coast Guard crew-rest regulations.

The M/V MEL OLIVER was owned by ACL and, under complex contractual agreements, was chartered to DRD Towing Company, the operator. As the statutorily defined responsible party under the Oil Pollution Act (OPA), 33 U.S.C § 2704(a), ACL incurred approximately \$70 million in removal costs and damages. The United States also incurred \$20 million in removal costs and damages. The government prosecuted DRD, Carver and Bavaret for criminal violations of federal environmental law, resulting in guilty pleas to various counts of violating the Ports and Waterways Safety Act and the Clean Water Act. The government sued ACL and DRD to recover \$20 million in cleanup costs. DRD promptly declared bankruptcy, and the district court granted the government's motion for summary judgment against ACL.

OPA was enacted in 1990 in response to the 1989 Exxon Valdez oil spill of 11 million gallons, with Congress enacting the final draft without a single dissent-

ing vote. It "was intended to streamline federal law so as to provide quick and efficient cleanup of oils spills, compensate victims of such spills, and internalize the costs of spills within the petroleum industry." OPA places strict liability on the "responsible party," defined, in the case of vessels, as "any person owning, operating, or demise chartering the vessel." OPA has specified dollar-amount liability limits for a responsible party that do not apply if "the incident was proximately caused by . . . the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party . . ." (emphasis added). OPA also provides for a complete defense to liability if the party establishes by a preponderance of the evidence that the discharge and resulting damages were caused solely by: "(1) an act of God; (2) an act of war; (3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party" or any combination of (1), (2) and (3) (emphasis added).

ACL contended that it was entitled to a complete defense to liability under 33 U.S.C. § 2703(a)(3) on the ground that the conduct of DRD, a third party, caused



Ronald E. Corkern, Jr.



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J. Chris Guillet

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the spill. The 5th Circuit focused on the significance of the statutory language “pursuant to” and “in connection with,” finding the terms not defined within the statute and their interpretation being of first impression. Following an exhaustive semantic analysis with reference to *Webster’s Third New International Dictionary* (2002), the *Oxford English Dictionary* (2d ed. 1989) and *Black’s Law Dictionary* (10th ed. 2014), the court affirmed the district court’s grant of summary judgment, stating:

Here, there is no dispute that the . . . spill was caused by DRD’s wrongful conduct and regulatory violations, committed in the course of carrying out its contractual obligation to transport ACL’s fuel-filled barge. Accordingly, the spill was caused by the gross negligence, willful misconduct or regulatory violations of “a person acting pursuant to a contractual relationship with” ACL, and ACL is therefore not entitled to limited liability.

—**John Zachary Blanchard, Jr.**  
Past Chair, LSBA Insurance, Tort,  
Workers’ Compensation and  
Admiralty Law Section  
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Bossier City, LA 71111



## U.S. Department of Commerce

### *Imports of Common Alloy Aluminum Sheet from the People’s Republic of China*, Nov. 28, 2017.

The U.S. Department of Commerce (DOC) recently announced the first self-initiation of an international-trade-remedy case in more than 25 years. Following through on the Trump Administration’s pledge to get tough on unfair trade practices, the self-initiated case alleges dumping margins between 56.54 percent to 59.72 percent and subsidy rates above *de minimis* (1 percent). The U.S. market has absorbed rising import volumes over the 2014 through 2016 period of investigation. Trade cases like this are usually launched by domestic producers through petition prepared by private counsel. In this case, the DOC prepared the petition and filed the case, which will now follow the usual bifurcated agency process with the DOC ruling on dumping and subsidy margins and the International Trade Commission ruling on injury. Critics of

the self-initiation process complain the DOC has an inherent conflict of interest because it has partial jurisdiction over the case. This aluminum self-initiation arrives while the Section 232 national security investigation on aluminum imports remains stalled in the administration.

### *Imports of Aluminum Foil from the People’s Republic of China*, Oct. 27, 2017.

Aluminum sheet is not the only Chinese product to make waves in international trade circles. The DOC issued its affirmative preliminary determination in the antidumping investigation of aluminum foil imports from China. In the course of its analysis finding dumping by several Chinese producers, the DOC confirmed that it will continue to treat China as a non-market economy for the purposes of U.S. trade laws. This decision comes as China seeks a ruling by the World Trade Organization (WTO) that it must be treated as a market economy in trade-remedy cases. The stakes are high, with the United States Trade Representative stating that an adverse WTO ruling on this issue will be “cataclysmic” for the international trading system. China contends that its Protocol of Accession to the WTO requires it to graduate to market-economy status as of 2017. For now, the U.S. DOC will continue to apply non-market economy factors to China in AD/CVD cases.

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## Customs and Border Protection

### *Notice of Issuance of Final Determination Concerning Roasted Coffee*, 82FR 55387, 55387-55388 (Nov. 21, 2017).

U.S. Customs and Border Protection (CBP) issued a final ruling regarding the country of origin of roasted coffee for purposes of U.S. government procurement. Keurig Green Mountain sought the final determination concerning roasted coffee produced from raw green coffee beans roasted in Canada or the United States. Keurig imports the green coffee, after which it is roasted and packaged. The Keurig coffee must originate in the

United States to comply with, and be eligible for, U.S. government procurement. The issue is whether the roasting and packaging process substantially transforms the imported product into a domestic product. The CBP cited 30 years of precedent recognizing that roasting green coffee constitutes a substantial transformation into a new and different article of commerce. Accordingly, for purposes of U.S. government procurement, Keurig's coffee is considered a product of the country (either Canada or the United States) where the raw green coffee beans are roasted.

## World Trade Organization

**Korea — Import Bans, and Testing and Certification Requirements for Radionuclides**, WT/DS495/7 (Sept. 29, 2017).

Japan sought the establishment of a WTO dispute-settlement panel on June 1, 2015, regarding temporary special measures undertaken by South Korea in September 2013 banning imports of seafood from eight prefectures in Japan located near the site of the Fukushima nuclear disaster. The panel issued a communication on Sept. 29, 2017, seeking additional time to formulate its opinion on the seafood-import ban. However, on Oct. 19, 2017, reports leaked that the panel distributed its full opinion on Oct. 17. According to press reports, the panel ruled against South Korea, finding that its import ban on seafood from the Fukushima area was unjustified under WTO rules. Details of the panel's findings will be reported once made public. This is an important case because it pits WTO Members' rights to protect citizens from potentially harmful foods with WTO Members' obligations to refrain from enacting trade barriers without sufficient scientific justification.

—**Edward T. Hayes**  
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## Mineral Servitudes

**Magee v. BHP Billiton Petroleum Props. (N.A.), L.P.**, 2017 WL 5472521 (W.D. La. 2017).

Members of the Magee family owned land in DeSoto Parish. Members of the Worley family asserted that they owned a mineral servitude covering the land, but the Magees believed that the servitude had terminated by prescription of nonuse. The Magees granted four separate leases covering different portions of the land to a predecessor of BHP Billiton (BHP). The leases each provided for compensation to the Magees, but also provided that if the Magees prevailed in establishing that the servitude was terminated, the lessee would pay them an additional bonus. The leases

also each provided that the lessee's deadline to pay an additional bonus and start making royalty payments would be 30 days after the Magees furnished the lessee with a certified copy of an acknowledgment or judgment establishing that the servitude had terminated.

The Magees obtained a declaratory judgment against the Worleys from a district court, establishing that the servitude had terminated by prescription of nonuse. The Worleys appealed, but the Louisiana 2nd Circuit affirmed. After the 2nd Circuit's judgment became final, the Magees' lawyer sent BHP a certified copy of the trial court judgment and a copy (but not a certified copy) of the 2nd Circuit judgment. In the correspondence, the Magees' lawyer requested payment of royalties and the additional bonus. After more than 30 days had passed, the Magees' lawyer wrote to BHP again. About a month after the second letter, the Magees filed suit against BHP, seeking the amount they asserted was due under the leases, as well as penalties that they alleged were due under Mineral Code articles 137 and 139. Article

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137 provides that a lessor must give the lessee notice of an alleged failure to pay royalties before filing suit. Article 139 provides that, if the lessee then pays the royalties due, but that “the original failure to pay royalties was either fraudulent or willful and without reasonable grounds,” the “court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney’s fee.”

The United States District Court for the Western District of Louisiana rejected the Magees’ argument and granted partial summary judgment in favor of BHP. The court noted that Mineral Code article 139 can apply if the lessee fails to timely pay the royalties that are due, but that had not occurred here. The parties’ contract expressly provided that royalties would not be due until 30 days after the Magees provided a certified copy of any judgment resolving the dispute regarding whether the Worleys’ servitude had terminated. The federal district court explained that it was the 2nd Circuit’s judgment, not the state district court’s judgment, that had resolved the dispute regarding the Worleys’ mineral servitude. BHP had timely made payment within 30 days of receiving a certified copy of the 2nd Circuit judgment. Therefore, Mineral Code article 139 did not apply.

## OCSLA Regulations

*United States v. Moss*, 872 F.3d 304 (5 Cir. 2017).

In 2012, a welding accident caused an explosion on an offshore platform, killing three people, injuring others and leading to a discharge of pollutants into the Gulf of Mexico. Three years later, criminal indictments were filed against the lessee-operator, as well as certain contractors and individuals, charging them with violations of the Clean Water Act and various safety regulations promulgated under the Outer Continental Shelf Lands Act (OCSLA). In addition, the lessee and two contractors were charged with manslaughter. The defendants moved to dismiss all charges. The district court dismissed the charges against persons other than the lessee for breaches of OCSLA regulations, but left

the other charges in place. The federal government appealed.

The United States 5th Circuit affirmed. The court noted that 43 U.S.C. § 1348(b) states: “It shall be the duty of any holder of a lease or permit under this subchapter . . .” to comply with regulations governing workplace safety and health for their own employees and those of any “contractor or subcontractor.” Thus, the only persons identified by § 1348(b) as being obligated to comply with OCSLA regulations are the holders of a lease or permit. Further, OCSLA’s welding regulations refer to “you” being obligated to comply with the regulations, and 30 C.F.R. § 250.105 states: “*You* means a lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.”

The federal government pointed to various provisions in support of its argument that persons other than a lessee can be criminally liable. One of the provisions was 30 C.F.R. § 250.146(c), which states that “the person actually performing” an activity is jointly and severally liable with the lessee-operator for complying with requirements governing the activity. The 5th Circuit concluded, however, that when such provisions are read in context with OCSLA and the regulations promulgated under it, the better conclusion is that only lessee-operators are bound by the OCSLA welding regulations. Therefore, the court affirmed dismissal of the OCSLA charges against the defendants other than the lessee.

—**Keith B. Hall**

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## Health Care Provider Claim Non-Qualified HCP Status

*In re: Med. Review Panel Proceeding of Lyons*, 51,750 (La. App. 2 Cir. 11/15/17), \_\_\_ So.3d \_\_\_, 2017 WL 5473698.

The same day that Lyons, a dementia-resident at St. Joseph’s Home, was returned to her room after being found wandering in a parking lot, she was discovered unconscious on the ground below an open third-story window. Weeks earlier, Lyons was diagnosed with severe dementia, and Christus Health Central (owner of St. Joseph’s) advised Lyon’s sister that she needed to transfer her to a more appropriate facility, but Lyons was injured before her sister took any action.

In response to a panel request, the PCF advised that St. Joseph’s was “qualified for acts of medical malpractice . . . for the claim.” Christus disagreed and moved for dismissal, contending that its assisted living facility was not a “health care provider” and did not provide “health care” as defined by the MMA. Thus the claim was one of ordinary negligence, outside the scope of the MMA and had by then prescribed. The trial court agreed with Christus and dismissed the panel proceeding.

Was the defendant a health care provider? The appellate court wrote that a certificate of PCF enrollment establishes a *prima facie* case for the applicability of the MMA, and “[t]his presumption also applies to a letter from the PCF identifying a party as enrolled in the PCF.” The burden then shifts to the defendant to prove it was not covered by the MMA.

Christus provided no PCF document indicating that its assisted-living section was not included in the certification, nor any evidence to prove St. Joseph’s was a separate legal entity. Christus argued that the assisted-living facility operated under a license different from St. Joseph’s, but it did

not produce the license at trial.

After determining “qualified” status, the appellate court turned to “the more difficult and pivotal question” of whether Christus provided health care services to Lyons. While the court agreed that the contract with Lyons did not provide for health care services for dementia, the facility routinely accepted such patients and transferred them when the symptoms became severe. The court suspected the transition to severe dementia occurred over time, as Lyons was diagnosed with “severe dementia” two weeks before her family was notified. By virtue of the contract to monitor Lyons and provide care as needed to secure her safety, the omission to do so was a failure to provide treatment under the MMA, and Lyons became a “patient” when the dementia progressed to the point that a higher level of care was required.

*Evans v. Heritage Manor Stratmore Nursing & Rehab. Ctr., L.L.C.*, 51,751 (La. App. 2 Cir. 9/27/17), \_\_\_ So.3d \_\_\_, 2017 WL 4273693.

Following a severe stroke, Evans was admitted to Heritage, with standing orders to prevent the development of decubitus ulcers. Two months later, a nursing assistant (NA) tried to change Evans’ diaper and undershirt. Evans resisted; the NA became “more aggressive,” and the plaintiff then struck the NA, who (describing her own response as “an immediate reflex type”) struck Evans with her “fist and long acrylic fingernails.” The NA was immediately fired.

The State (DHH) investigated and reported that Heritage had violated regulations, among which were the failure to obtain references before hiring the NA and the failure to exercise reasonable supervision. The NA had disclosed in her employment application a prior simple battery conviction; thus, Heritage failed to follow its own policy of not employing anyone convicted of a crime.

A medical-review panel found that Heritage failed to “adequately vet the ACNA for past history and employment record[s] . . . . However, the action of hitting Mr. Evans was the ACNA’s action alone. The resulting injury . . . is related to this incident. However, no long-term complications, change in behavior, or other det-

rimonial effects resulted from the incident.”

The panel later issued a “supplemental opinion” that stated:

The panel finds that [the ACNA] was an employee of Heritage Manor when the conduct . . . occurred . . . . [T]he conduct of [the ACNA] failed to comply with the appropriate standard of care. That conduct caused the injuries to the patient, as described in the panel’s [earlier opinion]. Thus both Heritage Manor and [the ACNA] were at fault . . . .

After Evans filed suit, Heritage claimed that the battery did not arise from medical treatment and, therefore, was not a “malpractice” claim. The otherwise timely filed panel request did not interrupt any statute of limitations, and the claim was prescribed.

At the hearing on the exception of prescription, Evans’ treating physician testified that the changing of a patient’s clothing was “good medical care,” but not considered “medical treatment,” despite Evans’ admission form that called for him to be turned periodically and kept clean and dry.

The trial court sustained the exception, finding that striking a patient, even when it occurs during the confinement or handling of a patient in a nursing home, was an intentional tort, not medical malpractice. Evans appealed.

Heritage argued that Louisiana appellate courts have consistently found that diaper changing is not medical treatment. However, the appellate court found such cases distinguishable because Evans’ injury occurred during a diaper change, which was medical-treatment-related (to prevent the development of decubitus ulcers), as it involved assessment of the patient’s condition and required medical evidence to determine whether any standard of care had been breached. The court determined this was “more in the nature of gross negligence rather than an intentional act and, thus, is susceptible to a claim for medical malpractice.”

—Robert J. David

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.  
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## Constitutional Sales Tax Exemption for Prescription Drugs Does Not Extend to Medical Devices

*Willis-Knighton Med. Ctr. v. Robinson*, BTA Docket No. 9734D (11/8/17).

Acts 25 and 26 of the 2016 1st Extraordinary Session (Acts) suspended almost all exemptions and exclusions from two pennies of Louisiana sales-and-use tax and added an additional penny that was imposed with a similarly reduced set of exemptions and exclusions. The only exemptions or exclusions that were not suspended were those explicitly retained by a list in those Acts (Retained Exemptions List). Those that were not maintained included the statutory exemptions provided by La. R.S. 47:305(D)(1)(j) and (s), which separately exempted prescription drugs and medical devices, respectively. In recognition of the constraints of article VII, section 2.2 of the Louisiana Constitution, the Legislature excluded from temporary suspension the exemption for prescription drugs by including them on the Retained Exemptions List. Consequently, the question arose as to whether the scope of the constitutional exemption included medical devices.

Beginning with the April 2016 period, Willis-Knighton Medical Center (taxpayer) paid the sales taxes due on medical devices under protest to the Board of Tax Appeals. The parties filed cross motions for summary judgment on the issue. The taxpayer contended that the term “prescription drugs” in the constitutional exemption should be read to also include medical devices. The taxpayer’s argument was primarily based on La. R.S. 47:301(20), which defined “drugs” for purposes of the

statutory sales-tax exemptions as “all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease” and that such definition should be applied to the constitutional exemption.

The Louisiana Department of Revenue countered by relying on the common or ordinary meaning of the phrase “prescription drugs.” The Department relied on Louisiana Supreme Court jurisprudence that has held that the words and terms of Louisiana’s Constitution are to be interpreted by the courts by using definitions that would have been given to those terms by the people. It contended the presumption in favor of the natural and popular meanings in which words are usually understood by the people who adopt them should be followed and the courts should generally first look to the dictionary definition.

The Board agreed, granting the Department’s motion for summary judgment and denying the taxpayer’s cross motion. The Board found the phrase “prescription drugs” was clear and unambiguous. Based on the definitions offered and ordinary understanding of the meaning of “prescription drugs,” the Board found no basis for including medical devices within the scope of the constitutional exemption. The Board recognized that the Legislature knows how to import statutory definitions into this particular constitutional section but did not do so in this case. The Board also noted that, in 2017 through Act 426, the Louisiana Legislature reinstated the statutory medical-device exemption by adding it to the Retained Exemptions List, effective July 1, 2017. Finding that when the Legislature changes the wording of a statute it is presumed to have intended a change in the law, the Board held there would have been no need for Act 426 under the taxpayer’s reading of the 2016 enactments.

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

## Claim for Refund and Assessment of Use Taxes

*Turner Bros. Crane & Rigging, L.L.C. v. Ascension Parish Sales & Use Tax Auth.*, 16-0673 (La. App. 1 Cir. 7/5/17), 2017 WL 2875914, writ denied, 17-1367 (La. 11/6/17), 229 So.3d 470.

Turner Bros. Crane and Rigging, L.L.C., appealed Ascension Parish’s denial of a claim for refund and assessment of use taxes. Turner’s crane company leased and imported large cranes into Louisiana for use on various jobs throughout the state. In connection with its business, Turner stored several cranes in a yard in Ascension Parish. The parish assessed \$130,937.87, inclusive of tax, penalties and interest, for the use of nine of Turner’s cranes. The district court upheld the assessment. Turner then appealed to the 1st Circuit.

Turner advanced a number of arguments on appeal. First, Turner asserted that five of the nine cranes were transferred in an “isolated and occasional” sale not subject to use tax under La. R.S. 47:301(10)(c)(ii)(bb). However, the 1st Circuit held that Turner had introduced no persuasive evidence supporting that assertion because, among other things, none of the trial witnesses (including the current controller and chief financial officer of Turner) had contemporaneous and personal knowledge of the transaction itself and the former officer of the taxpayer who signed the transaction documents did not testify. Because the burden of proof was on the taxpayer, and in the absence of convincing evidence to the contrary, the 1st Circuit held that the district court’s characterization of the transaction was not manifestly erroneous.

Second, Turner claimed it was entitled to a tax credit for amounts paid under a settlement agreement resulting from a previous audit that had revealed use tax due on cranes used in Ascension Parish during a prior tax period. However, the assessment appealed from identified nine specific cranes subject to use tax, and the settlement agreement relied on by Turner was silent as to which cranes it applied. Turner failed to otherwise demonstrate that the settlement agreement applied to the cranes at issue. Accordingly, the 1st Circuit upheld the district court’s factual determination that Turner failed to

prove what, if any, amounts paid under the settlement agreement were for taxes on the specific cranes identified in the assessment and therefore had not demonstrated its entitlement to a credit.

Third, Turner argued that it was entitled to a credit for taxes paid on the cranes to other jurisdictions. The 1st Circuit held that the district court erred in holding that, under La. R.S. 47:337.86, the taxpayer was first required to seek a refund for taxes paid to another jurisdiction. The 1st Circuit reasoned that while La. R.S. 47:337.86(E) requires a taxpayer to demonstrate an attempt to obtain a refund for taxes paid to the wrong taxing authority, no such requirement exists when the taxes paid were for different taxable moments, concerning different events, and were paid to the correct taxing authority. Because the sales tax paid on the purchase of the cranes was correctly paid for the separate taxable event (the sale), the 1st Circuit held that the statute did not apply. Notably, the 1st Circuit also appeared to rely in part on the parish’s allowance of some credit even without the existence of a refund claim, apparently contradicting the parish’s stated position that an attempt to obtain a refund was a prerequisite to obtaining the credit. The 1st Circuit then remanded the case for a determination of the proper amount of credit due.

—**Michael Bardwell**  
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## CHAIR'S MESSAGE

# Changing Perspective Brings Innovation and Growth

By Bradley J. Tate

For anyone who knows me, it is unlikely you will find me at home on a weekend. My bags are usually packed and I have a plane ticket, train ticket or tank full of gas to go somewhere. For New Year's 2018, I spent a week traveling through Europe with friends. Since it was my first trip to Europe, I was in awe the entire trip wondering why I had not made myself take the trip sooner. Each country I visited and learned from gave me a new outlook on how I see travel and how I see the world around me. Even after returning home, I am still thinking about the experience and how I may travel differently in the future.

As a new year starts, I encourage each of you to seek out ways to reexamine the world around you. Our jobs as at-



Bradley J. Tate

torneys can inundate us with work and responsibilities that prevent us from taking a step back and seeing the purpose in everything we do. Throughout my year as Young Lawyers Division (YLD) chair, I have been encouraging our board members to change the way they look at all of our projects and programs. Doing this has given us an opportunity for change and growth. It has become my theme and I believe that it is important. Repetition and doing things because they've always been done that way prevents innovation and change.

This is an introspective process that each of us should do in our practices and other activities. Take some time to determine if there are things that you could do differently or improve to make your life a little different or a little better.

As we turn the midway point in the Bar year, I am impressed with the dedication and hard work of the YLD Council members. We have presented several Wills for Heroes programs, held successful CLE events and brought young lawyers from across the state together at Louisiana64. With the year only halfway done, we still have a number of programs and projects ongoing. I encourage each of you to nominate an outstanding young lawyer for one of our awards this year. It is important that we recognize the accomplishments of our members. High school mock trials are underway and more Wills for Heroes events are taking place. Also be on the lookout for our Barristers for Boards programs later in the spring.

I also want to encourage you to consider attending the Annual Meeting and Summer School in June in Destin, Fla. It is a fantastic opportunity to network with your fellow attorneys, gain CLE hours and enjoy time on the beach!



## YOUNG LAWYERS DIVISION NEWS

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## YOUNG LAWYERS SPOTLIGHT

### P. Heath Hattaway Ruston

The Louisiana State Bar Association's (LSBA) Young Lawyers Division Council is spotlighting Ruston attorney P. Heath Hattaway.



P. Heath Hattaway

As an attorney practicing in Ruston, Hattaway he has taken on complex civil rights, corporate and succession cases. He is particularly fulfilled and engaged by his "Check the Constitution" approach to representation on behalf of his clients. He enjoys complex cases, such as his current First Amendment-related endeavor — challenging Louisiana's "anti-mask" statute for a U.S. Army veteran who was arrested for wearing a "Guy Fawkes" mask in public while protesting.

Hattaway has grown the practice formerly owned by his mentor, Grambling State University President Rick Gallot. Hattaway is known for his focus on ho-

listic services for his clients by reaching across practice areas and connecting them with the very best resources for success in and out of the courtroom. His firm recently accepted its first associate attorney, Ranee L. Haynes.

"It's true when they say you'd be surprised at just how much you don't know until you start practicing. Even so, sometimes you just need to get in there, roll up your sleeves, and remember your training. Mistakes will happen. That's why we carry insurance," Hattaway said. "The key is to not be afraid to try."

Hattaway earned an undergraduate degree from Louisiana State University and pursued graduate courses in business administration at Louisiana Tech. The law is not his only foray into business. Hattaway is the former owner of J&B Poultry, a family-owned chicken farm in north Louisiana; and Left | Right Strategies, a political consulting firm representing clients across the state. He also became the youngest "judge" in Louisiana when he won his election as Lincoln Parish justice of the peace in 2008.

He directly credits his election as a justice of the peace, where he performed weddings and evictions, to his decision to attend law school at Mississippi College of Law, where he graduated in 2013.

Hattaway has built a reputation in

north Louisiana as a passionate advocate who goes the extra mile to get results for his clients, exploring creative procedural pathways to justice. His focus on community engagement — in tandem with advocacy — was evident throughout his young life. He was recently honored as a "Friend of 4-H" and serves on the 4th Judicial District Public Defender Board in Ouachita Parish. He has served as an adjunct professor at Grambling State University where he taught criminal investigations and criminal procedure and evidence.

He credits his experience in law school clerking for the Mississippi Supreme Court, the Mississippi Attorney General's Office and the United States Attorney's Office for his early success in practice. As a young lawyer building his own practice, he said that he can dispel the stigma of not having "enough experience" by emphasizing his creativity, quality service and individual attention.

Hattaway also said that the ability to collaborate with other attorneys in his region has been essential to his growing firm's success. He is licensed to practice law in the states of Louisiana, Washington and Alabama and can be reached at [hh@heathhattaway.com](mailto:hh@heathhattaway.com).

## UPCOMING EVENTS

Check the Young Lawyers Division website at [www.lsba.org/YLD](http://www.lsba.org/YLD) for the most up-to-date listing of upcoming events.

Do you have an event to add to the list?

Email YLD Secretary, Scott Sternberg, at [scott@snw.law](mailto:scott@snw.law).

### ► Nominations Open for 2018 Young Lawyers Division Awards

The nomination deadline is Feb. 9 for five LSBA Young Lawyers Division awards — the Hon. Michaele Pitard Wynne Professionalism Award, the Outstanding Young Lawyer Award, the Service to the Public Award, the Service to the Bar Award and the YLD Pro Bono Award. For more information, contact YLD Awards Committee Chair Kristi W. Richard, (225)382-3704 or email [krichard@mcglinchey.com](mailto:krichard@mcglinchey.com).

### ► 2018 Richard N. Ware IV State High School Mock Trial Competition

The 2018 Richard N. Ware IV State High School Mock Trial Competition is scheduled for March 10. The event will take place at the 24th Judicial District Court (200 Derbigny St., Gretna). The competition is named in memory of the Hon. Richard N. Ware IV, who enthusiastically volunteered for nearly a decade as the presiding judge of the final round of the Louisiana High School Mock Trial Competition. This year's state case, *State of Louisiana v. Hendrix Rhodes*, was written by the members of the University of Louisiana-Monroe Mock Trial Team.

By David Rigamer, Louisiana Supreme Court

## NEW JUDGES... APPOINTMENTS

### New Judges

#### Judge James M. (Jimbo) Stephens

was elected judge, 2nd Circuit Court of Appeal. He earned his BA degree in 1978 from Louisiana State University and his JD degree in 1982 from LSU Paul M. Hebert Law Center. He was in private practice for 24 years before his election as judge of the 5th Judicial District Court, Division B, in 2007. He served there until his election to the 2nd Circuit. Judge Stephens is married to Faith Stephens and they are the parents of three children.



James M. Stephens

#### Van H. Kyzar

was elected judge, 3rd Circuit Court of Appeal. He earned his bachelor's degree in 1979 from Northwestern State University and his JD degree in 1982 from Louisiana State University Paul M.



Van H. Kyzar

Hebert Law Center. From 1985-2004, he was senior partner in the firm Kyzar, Celles & Fair. He was district attorney for the 10th Judicial District from 1997 until his election to the bench. He was president of the Louisiana District Attorneys Association (LDAA) in 2003 and served on the board of trustees of the LDAA's retirement system from 2008-16. He also served on the North Louisiana Criminalistics Laboratory Commission from 1997-2016. Judge Kyzar is married to Theresa Kyzar and they are the parents of five children.

**Judge Tiffany Gautier Chase** was elected judge, 4th Circuit Court of Appeal. She earned her BA and JD degrees in 1993 and 1996, respectively, from Loyola

University, where she received the Award of Excellence in Environmental Law and was a quarter-finalist in the Frederick Douglass Moot Court Competition in North Carolina. Following graduation, she worked as a staff attorney at the Louisiana Supreme Court before serving as law clerk to Justice Chet D. Traylor. She also was in private practice prior to taking the bench. In 2007, Chase was elected to Orleans Parish Civil District Court, Division A. Judge Chase served there until her election to the 4th Circuit.



Tiffany Gautier Chase

#### J. Kevin Kimball

was elected judge, Division A, 18th Judicial District Court. He earned his BA degree in 1986 from the University of Southwestern Louisiana and his JD degree in 1989 from Loyola University College of Law. He has practiced law for 28 years both in private practice and as an assistant indigent defender for the 18th JDC. Judge Kimball is married to Sherry Harvey Kimball and they are the parents of three children.



J. Kevin Kimball

#### Alan A. Zaunbrecher

was elected judge, Division H, 22nd Judicial District Court. He earned his undergraduate and graduate degrees from Tulane University, receiving his BA degree in



Alan A. Zaunbrecher

1976, his JD degree in 1979 and his LLM degree in 1992. In private practice, he was a founding member of the firm Zaunbrecher, Treadway & Bollinger. He also served as an assistant district attorney in the 22nd JDC and as a special assistant attorney general for the State of Louisiana. He is a former president of the Greater Covington Bar Association and was recognized by the Louisiana State Bar Association with the Citizen Lawyer Award (2015-16) and the Pro Bono Publico Award (2012). Judge Zaunbrecher is married to Susan Zaunbrecher and they are the parents of three children.

#### Robert Lane Pittard

was elected judge, Division C, 26th Judicial District Court. He earned his BA degree in 1978 from Northwestern State University and his JD degree in 1992 from the University of Arkansas at Little Rock. He has been in private practice for more than 20 years. For the past 14 years, he served as lead prosecutor for the Bossier-Webster District Attorney's Office. Judge Pittard is married to Adelise G. Pittard and they are the parents of two children.



Robert Lane Pittard

#### Jerry L. Denton, Jr.

was elected judge, Denham Springs City Court. He earned his undergraduate degrees in 1983 and 1984 from Nicholls State University and his law degree in 1987 from Southern University Law Center. He has 30 years of legal experience, both in law enforcement and as a practicing attorney. He served as Denham Springs city councilman from 2006-09 and as Denham



Jerry L. Denton, Jr.

Springs marshal from 2009 until his election to the bench. Judge Denton is married to Michelle Henderson Denton and they are the parents of two children.

## Appointments

► Retired Judges John W. Greene and Melvin C. Zeno were reappointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for four-year terms ending on April 21, 2021.

► Pamela W. Carter, Dominick Scandurro, Jr. and Col. (Ret.) Evans C. Spiceland were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office beginning Jan. 1 and ending on Dec. 31, 2020.

► Brian D. Landry was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office beginning Jan. 1 and ending on Dec. 31, 2020.

## Retirement

2nd Circuit Court of Appeal Judge R. Harmon Drew, Jr. retired Nov. 3, 2017. He earned his BA and JD degrees in 1968 and 1971, respectively, from Louisiana State

University. A fifth-generation judge, he served in Minden City Court from 1985-88, the 26th Judicial District Court from 1988-98 and the 2nd Circuit from 1999 until his retirement. Prior to his election to the bench, he served as assistant district attorney for Webster Parish.

## Deaths

► Retired Rayne City Court Judge Denald A. (Denny) Beslin, 88, died Oct. 29, 2017. He earned his BA degree in 1951 from Southwestern Louisiana Institute and his JD degree in 1952 from Loyola University Law School, where he was a member of the *Law Review*. He practiced law in Rayne for 60 years. He served as judge of the Rayne City Court from 1965 until his retirement in 1996. During his tenure, Judge Beslin served as president of the Louisiana City Judges Association and the Louisiana Juvenile Judges Association.

► Retired 37th Judicial District Court Judge Ronald L. Lewellyan, 71, died Nov. 22, 2017. He earned his BA degree in pre-law in 1970 from Northeastern Louisiana University and his JD degree in 1971 from Louisiana State University Law School. He was a partner in the firm of Burns & Lewellyan in Columbia from 1972-75

and in the firm of McKeithen, Burns & Lewellyan from 1976-77. He served as administrative assistant district attorney for the 28th Judicial District Court from 1973-76. In 1978, at the age of 31, he was elected to the 37th JDC, becoming the state's youngest district court judge. He served there until his retirement in 2002. In retirement, Judge Lewellyan served as an ad hoc judge on assignments for the Louisiana Supreme Court.

► Retired Lafayette City Court Judge Kaliste J. Saloom, Jr., 99, died Dec. 2, 2017. He earned his BA degree in 1939 from the University of Southwestern Louisiana and his JD degree in 1942 from Tulane University Law School. He served in the Army during WWII as a member of the Counterintelligence Corps. He entered private practice upon returning to Lafayette and, in 1949, he became the city attorney. In 1953, he began his 40-year tenure as Lafayette City Court judge, retiring in 1993. During his tenure, Judge Saloom served as president of the Louisiana Council of Juvenile Court Judges and the Louisiana City Judges Association. He also served on the Judicial Council of the Louisiana Supreme Court and on the board of directors for the Louisiana Judicial College.



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**11<sup>TH</sup> ANNUAL CONCLAVE ON DIVERSITY IN THE LEGAL PROFESSION**

Join the LSBA for the 11th annual celebration of the Diversity Conclave on **March 9, 2018**, in New Orleans, with keynote speaker Paulette Brown (Partner, Locke Lored LLP, Morristown, NJ), workshop presenter Ritu Bhasin (Founder and Principal, Bhasin Consulting Inc.) and other dignitaries. **Reserve your spot and register before March 8, 2018 - visit [www.lsba.org/goto/conclave](http://www.lsba.org/goto/conclave).**

# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Jennifer C. Bergeron, Alexandra G. Roselli and Hunter J. Schoen have joined the firm's New Orleans office as associates. Also, Matthew C. Guy has joined the firm's New Orleans and Houston, Texas, offices as special counsel.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Emily O. Kesler and Margaret A. Mentz have joined the firm's New Orleans office as associates.

Breazeale, Sachse & Wilson, L.L.P., announces that **Catherine M. Maraist** has joined the firm's Baton Rouge office as a partner and **Katherine M. Cook** has joined the Baton Rouge office as an associate.

Chaffe McCall, L.L.P., announces that **Rosalie M. Haug** has joined the firm's New Orleans office as an associate.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., announces that **Anya P. Jones** has joined the firm's Metairie office as an associate and **Jesse P. Lagarde** has joined the firm's Hammond office as an associate.

Conroy Law Firm, P.L.C., announces that **Brian A. Gilbert** has joined the firm's Metairie office.

Couhig Partners, L.L.C., in New Orleans announces that Ralph H. Wall has joined the firm as a partner.

Deutsch Kerrigan, L.L.P., announces that **Elizabeth Evans Tamporello** has joined the firm's New Orleans office as an associate.

The Dill Firm in Lafayette announces that Matthew S. Green has become a partner.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., announces that **Rachel M. Naquin** has joined the firm's New Orleans office as an associate.

Jones Walker LLP announces that Jeanne L. Amy, Nnaemeka K. Anyanwu, Madison M. Hentze and Joseph Z. Landry have joined the firm's New Orleans office as associates and Henry S. (Hank) Rauschenberger has joined the Baton Rouge office as an associate. The firm also announces lateral associates in the New Orleans office — Minia E. Bremenstul, Katelyn P. Gunn and Justin M. Woodard.

King, Krebs & Jurgens, P.L.L.C., announces that Amanda R. James and Marco J. Salgado have joined the firm's New Orleans office as associates.

Continued next page



Albert G.  
Alexander III



Richard J. Arsenaault



Sean P. Avocato



Marci L. Blaize



Danielle L. Borel



Katherine M. Cook



Doran L. Drummond



Imelda T. Frugé



J. Michael  
Fussell, Jr.



Brian A. Gilbert



J. Jerry Glas



Rosalie M. Haug

Lamothe Law Firm, L.L.C., in New Orleans announces that **Kristi S. Schubert** has joined the firm as an associate.

Leake & Andersson, L.L.P., announces that **Stephanie V. Lemoine** has joined the firm's New Orleans office as an associate.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Armand E. Samuels has joined the firm's New Orleans headquarters as an associate.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., announces that Atoyia Scott Harris, William H. Payne IV and Ellen C. Rains have joined the New Orleans office as associates.

Ottinger Hebert, L.L.C., in Lafayette announces that **J. Michael Fussell, Jr.** and **David J. Rogers** have joined the firm.

Perrier & Lacoste, L.L.C., announces that **Cory T. Stuart** has joined the firm's New Orleans office as an associate.

Perry Law Firm, L.L.C., with offices in Lafayette and Kaplan, announces that **Tucker W. Nims** has joined the firm's Lafayette office as the lead attorney.

Schutte, Terhoeve, Richardson, Eversberg, Cronin, Judice & Boudreaux, L.L.P., in Baton Rouge announces that **Imelda T. Frugé** has joined the firm as a partner and **Sean P. Avocato** and **Doran L. Drummond** have become associates.

Simien & Miniex, A.P.L.C., in Lafayette announces that Charity N. Bruce and Meagan M. Smith have joined the firm as associates.

Stone Pigman Walther Wittmann, L.L.C., announces that Gary M. Langlois, Jr. and Walter F. (Fritz) Metzinger III have joined the firm's New Orleans office as associates.

## NEWSMAKERS

**Albert G. (Alec) Alexander III**, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., has accepted a presidential appointment to serve as deputy administrator of the Centers for Medicare and Medicaid Services and director of the agency's Center for Program Integrity in Washington, DC, and Baltimore, MD.

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired HarrisMartin's MDL Conference on Opioid, Equifax & Talcum Powder Litigation in St. Louis, Mo., and spoke on "The Increasing Role and

Diverse Functions of Special Masters Managing Mass Torts." He also was selected as one of the Top 100 Litigation Lawyers in Louisiana for 2018 by the American Society of Legal Advocates.

**Marci L. Blaize**, who established the Blaize Law Firm, L.L.C., in Baton Rouge in 2003, received the Louisiana Association of Criminal Defense Lawyers' 2017 Criminal Justice Act Panel Attorney Award in December 2017.

**Danielle L. (Dani) Borel**, an associate in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., received the Star of the Quarter Award at the American Bar Association Young Lawyers Division Fall Conference. She received the award for her service as chair of the Health Law Committee and her planning of a networking event in New York, NY.

**J. Jerry Glas** and **Raymond C. Lewis**, partners in the New Orleans office of Deutsch Kerrigan, L.L.P., co-authored a chapter in the American Bar Association's witness preparation book, *From the Trenches II: Mastering the Art of Preparing Witnesses*. They contributed the chapter titled "Dancing with Antaeus: Twelve Unusual Questions to Ask Your Expert."

Continued next page



Anya P. Jones



Jesse P. Lagarde



Frank E. Lamothe III



Stephanie V. Lemoine



Raymond C. Lewis



Catherine M. Maraist



Ryan M. McCabe



Rachel M. Naquin



Tucker W. Nims



David J. Rogers



Zachary I. Rosenberg



Kristi S. Schubert

Warren A. Perrin, an attorney with Perrin, Landry, deLaunay in Lafayette, represented the Acadian Museum in Erath and presented a paper, "NAP: The Acadians' Relationship with the North American Native Americans," at the October 2017 Gulf South History and Humanities Conference.

**Zachary I. Rosenberg**, an associate with Steeg Law Firm, L.L.C., in New Orleans, joined the board of JNOLA.

## PUBLICATIONS

### *Best Lawyers in America 2018*

**Stone Pigman Walther Wittmann, L.L.C.** (Baton Rouge, New Orleans): Hirschel T. Abbott, Jr., Barry W. Ashe, Carmelite M. Bertaut, Stephen G. Bullock, Joseph L. Caverly, Douglas J. Cochran, John W. Colbert, Noel J. Darce, Mary L. Dumestre, John P. Farnsworth, Michael R. Fontham, James C. Gulotta, Jr., Kathryn M. Knight, John M. Landis, Wayne J. Lee, Paul J. Masinter, W. Brett Mason, Michael W. McKay, C. Lawrence Orlansky, Laura Walker Plunkett, Edward B. Poitevent II, David C. Rieveschl, Michael R. Schneider, James E. Slaton, Susan G. Talley, Peter M. Thomson, William D. Treeby, Michael Q. Walshe, Jr., Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L.

Zimmering.

**Taylor, Porter, Brooks & Phillips, L.L.P.** (Baton Rouge): Mary C. Hester, Baton Rouge Trusts and Estate Lawyer of the Year.

**Tollefson, Bradley, Mitchell & Melendi, L.L.P.** (Dallas, TX): John C. Tollefson.

### *Chambers USA 2017*

**Tollefson, Bradley, Mitchell & Melendi, L.L.P.** (Dallas, TX): John C. Tollefson.

### *Louisiana Super Lawyers 2018*

**Baldwin Haspel Burke & Mayer, L.L.C.** (New Orleans): David L. Carrigee, Thomas J. Cortazzo, Brodie G. Glenn, Joel A. Mendler, Jerome J. Reso, Jr., Leon H. Rittenberg, Jr., Leon H. Rittenberg III, John A. Rouchell, Stephen P. Schott, William B. Schwartz, Andrew T. Sullivan, Matthew A. Treuting, Jeannette S. Waring and Karl J. Zimmermann.

**Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.** (New Orleans): Judy Y. Barrasso, Jamie L. Berger, Celeste R. Coco-Ewing, George C. Freeman III, Catherine Fornias Giarrusso, John W. Joyce, Stephen H. Kupperman, David N. Luder, Kelsey L. Meeks, Stephen L. Miles, H. Minor Pipes III, Andrea Mahady Price, Richard E. Sarver, Kyle W.

Siegel, Kimberly R. Silas, Erica A. Therio and Steven W. Usdin.

**Conroy Law Firm, P.L.C.** (Metairie): Stephen K. Conroy.

**King, Krebs & Jurgens, P.L.L.C.** (New Orleans): Robert J. Burvant, J. Grant Coleman, George B. Jurgens III, Henry A. King, Patricia A. Krebs, Timothy S. Madden, Douglas P. Matthews and David A. Strauss.

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

**Steeg Law Firm, L.L.C.** (New Orleans): **Ryan M. McCabe, Robert M. Steeg and Charles L. Stern, Jr.**

### *New Orleans Magazine "Top Lawyers" 2017*

**Breazeale, Sachse & Wilson, L.L.P.** (New Orleans): Thomas M. Benjamin, Peter J. Butler, Jr., Alan H. Goodman, Michael C. Luquet, Eve B. Masinter, Richard G. Passler, E. Fredrick Preis, Jr. and Lydia H. Toso.

**Coats Rose, P.C.** (New Orleans): Walter W. Christy, Clyde H. Jacob III and Elizabeth Haecker Ryan.

**Lugenbuhl, Wheaton, Peck, Rankin & Hubbard** (New Orleans): Ashley L. Belleau, Joseph P. Brigggett, Christopher T. Caplinger, Nathan P. Horner, Benjamin W. Kadden, Rose McCabe LeBreton, Stewart

Continued next page



Robert M. Steeg



Charles L. Stern, Jr.



Cory T. Stuart



Elizabeth Evans  
Tamporello

## People Deadlines & Notes

### Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2018	April 2, 2018
August/September 2018	June 2, 2018
October/November 2018	August 3, 2018

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](mailto:dlabranche@lsba.org).**

F. Peck and David B. Sharpe.

**Steeg Law Firm, L.L.C.** (New Orleans): **Robert M. Steeg.**

**Stone Pigman Walther Wittmann, L.L.C.** (New Orleans): Hirschel T. Abbott, Jr., Barry W. Ashe, Carmelite M. Bertaut, Stephen G. Bullock, Joseph L. Caverly, John W. Colbert, J. Dalton Courson, Noel J. Darce, Daria B. Diaz, Mary L. Dumestre, James T. Dunne, Jr., John P. Farnsworth, Abigayle C. Farris, Michael R. Fontham, Samantha P. Griffin, James C. Gulotta, Jr., Lesli D. Harris, Kathryn M. Knight, Erin E. Kriksciun, John M. Landis, Michael D. Landry, Wayne J. Lee, Justin P. Lemaire, Paul J. Masinter, C. Lawrence Orlansky, Laura Walker Plunkett, Edward B. Poitevent II, David C. Rieveschl, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Peter M. Thomson, Brooke C. Tigchelaar, William D. Treeby, Michael Q. Walshe, Jr., Daniel J. Walter, Nicholas J. Wehlen, Scott T. Whittaker, Rachel W. Wisdom, Phillip

A. Wittmann, Bryant S. York and Paul L. Zimmering.

**Who's Who Legal: Real Estate**

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

**IN MEMORIAM**

**Donald Lucius King, Sr.**, an attorney in the New Orleans office of Jones Walker LLP from 1959 until his retirement in 2003, died on Nov. 14, 2017. He was 84. A resident of New Orleans, he attended Tulane University and earned his law degree from Tulane Law School. He was a member of the student board of editors



**Donald Lucius King, Sr.**

of the *Tulane Law Review* and the Law School Executive Council, president of the Tulane University student body and sports editor of the Tulane University yearbook. He also was a member of Phi Beta Kappa, Omicron Delta Kappa, Delta Kappa Epsilon, Pi Sigma Alpha, Kappa Delta Phi and the International Relations Club. He served in the Air Force as a lieutenant and worked as a JAG officer. In 1959, he joined the New Orleans office of Jones Walker, practicing admiralty law. He was a true professional and loved the practice of law. He was a member of several carnival groups and social clubs, including the School of Design, the Boston Club, the Louisiana Club and the Stratford Club, and a fan of sports teams, including the New Orleans Saints, the Tulane Green Wave and the St. Louis Cardinals. He is survived by his wife of 58 years, Lucile Monsted King, four children and 10 grandchildren.

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UPDATE

## SLLS Commemorating 50 Years of Civil Legal Aid Service in Louisiana

**S**outheast Louisiana Legal Services (SLLS) began its celebration of 50 successful years at “The Future of Civil Legal Aid” panel discussion and the “Justice is Golden” Reception on Nov. 9, 2017, at the Louisiana Supreme Court.

SLLS honored its past and focused on the future of civil legal aid. The panel discussion was led by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. Other panelists were American Bar Association President Hilarie Bass, SLLS Board President Vivian B. Guillory, Louisiana State Bar Association (LSBA) President Dona Kay Renegar and Legal Services Corporation President Jim Sandman. Both Chief Justice Johnson and Renegar were civil legal services attorneys early in their careers. The event concluded with the United Way of Southeast Louisiana presenting SLLS with a check for \$56,652 to support its continuing work to assist families recovering from the 2016 Louisiana floods.

The Nov. 9 event kicked off a year-long commemoration of SLLS’s 50th anniversary to celebrate impacts made and to discuss the future fight for fairness for low-income people for the next 50 years. As part of the anniversary celebration, its “Justice is Golden” exhibit, funded by the Louisiana Bar Foundation, was on display at the Louisiana Supreme Court Museum through mid-January and highlighted five decades showcasing how civil legal aid to vulnerable people strengthens communities.

More events are scheduled, includ-



Southeast Louisiana Legal Services (SLLS) began its year-long 50th anniversary celebration with a panel discussion and reception on Nov. 9, 2017. From left, Roxanne S. Newman, SLLS deputy director; Vivian B. Guillory, SLLS board president; Laura Tuggle, SLLS executive director; David F. Bienvenu, SLLS 50th Anniversary Kick-Off Celebration chair; Hilarie Bass, American Bar Association president; Dona Kay Renegar, Louisiana State Bar Association president; Jim Sandman, Legal Services Corporation president; and Judy Perry Martinez, SLLS 50th Anniversary Advisory Committee.

ing programs at Louisiana’s four law schools, from now through October 2018.

“SLLS is honored to join forces with so many other community leaders with a demonstrated commitment to equal justice to amplify our impact and drive future innovation and partnership in the interest of increased access to justice,” said SLLS Board President Guillory.

In preparation for the kickoff, SLLS created a 50th Anniversary Advisory Committee composed of judges, attorneys, foundation heads, business leaders and law school deans. Committee co-chairs are Immediate Past LSBA President Darrel J. Papillion and former SLLS Board President R. Patrick Vance.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, second from left, led the panel discussion opening Southeast Louisiana Legal Services’ (SLLS) 50th anniversary celebration. From left, R. Patrick Vance, SLLS 50th Anniversary Advisory Committee co-chair; Chief Justice Johnson; Laura Tuggle, SLLS executive director; and Hilarie Bass, American Bar Association president.

## CLE Program Recognizes 125th Anniversary of *State v. Plessy*

The Law Library of Louisiana, the Louisiana Supreme Court Historical Society, the Plessy and Ferguson Foundation, the A.P. Tureaud American Inn of Court and the New Orleans Bar Association co-sponsored a CLE on Nov. 14, 2017, to commemorate the 125th anniversary of the pivotal *State of Louisiana v. Homer Adolph Plessy* case. The program featured a reenactment of arguments and reflections from a panel of speakers on the development of civil rights in New Orleans over the past 125 years. A reception followed in the Louisiana Supreme Court Museum.



Participating on the *State v. Plessy* CLE program panel, were, from left, A.P. Tureaud, Jr., board member, Plessy and Ferguson Foundation; Keith Plessy, president, Plessy and Ferguson Foundation; Phoebe Ferguson, executive director, Plessy and Ferguson Foundation; reenactor and New Orleans attorney Val P. Exnicios; reenactor Chief Judge Kern A. Reese, Orleans Parish Civil District Court; reenactor Judge (Ret.) Max N. Tobias, Jr., Louisiana 4th Circuit of Appeal; and reenactor and New Orleans attorney Gregory P. DiLeo.



Louisiana State Bar Association (LSBA) President Dona Kay Renegar and Young Lawyers Division Chair Bradley J. Tate welcomed new attorneys at the Nov. 9, 2017, New Admittees Reception in New Orleans.



Louisiana State Bar Association President Dona Kay Renegar, far right, welcomed the new attorneys. From left, Ali Dehghannezhad, Jonas K. Nash, Susanne M. Meyer, Claudia Carrizales, Luisa S. Batista, Rosalie M. Haug, Amy E. Schapansky, Brittany R. Caronia and Joilynn A. Hollies.

## SEND YOUR NEWS!

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

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

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



The Louisiana State Bar Association's (LSBA) Alternative Dispute Resolution (ADR) Section hosted a CLE seminar on Oct. 13, 2017, presented by Lee Jay Berman, second from right. With him are, from left, Mark A. Myers, ADR Section Council chair; LSBA CLE Coordinator Annette C. Buras; Berman; and Paul W. Breaux, ADR Section Council member.

# Louisiana District Judges Association Elects New Officers

The Louisiana District Judges Association elected officers for the 2017-18 term during its October 2017 general membership meeting. Louisiana Supreme Court Justice Marcus R. Clark administered the oath of office to the newly elected officers who will serve through Sept. 30.

Judge C. Wendell Manning, 4th Judicial District Court, is serving as president. Joining him are Judge Lisa M. Woodruff-White, East Baton Rouge Family Court, first vice president; Judge Guy E. Bradberry, 14th Judicial District Court, second vice president; Judge Brady D. O'Callaghan, 1st Judicial District Court, secretary; Judge Piper D. Griffin, Orleans Parish Civil District Court, treasurer; and Judge John J. Molaison, 24th Judicial District Court, immediate past president.



Judge Guy E. Bradberry



Judge C. Wendell Manning



Judge Piper D. Griffin



Judge John J. Molaison



Judge Brady D. O'Callaghan



Judge Lisa M. Woodruff-White



The Baton Rouge Bar Foundation's Holiday Star Project Committee celebrated 26 years of success by providing 800 underprivileged children with gifts this past holiday season. Volunteers included Rudy J. Aguilar III, Danielle L. Borel, Joseph J. Cefalu III, Kelsey A. Clark, Katherine M. Cook, Jordan L. Faircloth, Melissa M. Grand (chair), Jeanine Green, Druitt G. Gremillion, Jr., John N. Grinton (vice chair), David B. Kelley, Catherine B. Moore, John M. Parker (Diesel Driving Academy), Lauren M. Temento (board liaison), Heidi H. Thompson, Monica M. Vela-Vick and members of the Baton Rouge Bar Association staff.

## RED MASS



Red Mass Shreveport chairs Richard E. Hiller, left, and Lawrence W. (Larry) Pettiette, Jr. were honored for their years of service during the reception following the Red Mass.

## Red Mass in Shreveport Celebrates 25th Anniversary

Shreveport judges and attorneys celebrated the 25th anniversary of the Red Mass in May 2017. The Diocese of Shreveport traditionally celebrates the Red Mass on the first Friday in May.

Bishop Michael Duca delivered the homily. Monsignor Earl Provenza served as master of ceremonies. Rabbi Dr. Jana De Benedetti and Pastor Pat Day delivered closing prayers. Music was provided by Brady Blade and the Hallelujah choir from Zion Baptist Church. Readers included Justice Scott J. Crichton, Louisiana Supreme Court; and Chief Judge Henry N. Brown, Jr., 2nd Circuit Court of Appeal.

At the reception following the Mass, event chairs Lawrence W. (Larry) Pettiette, Jr. and Richard E. Hiller were honored for their years of service and Trudy Daniel was honored as a charter member.

Judge Jeanette G. Garrett of the 2nd Circuit Court of Appeal served as liaison with the Bench and Bar. Also attending were Chief Judge Carl E. Stewart, U.S. 5th Circuit Court of Appeals; Lillian E. Richie, clerk of the 2nd Circuit Court of Appeal; and many members of the judiciary and elected officials. Holy Angels, a residential facility for children, was the honoree.



Attending the Southwest Louisiana Bar Association (SWLBA) Red Mass and Court Opening Ceremony were, from left, attorney Derrick D. Kee; Shane K. Hinch, SWLBA president; Robert A. (Bob) Kutcher, 2018-19 Louisiana State Bar Association president-elect; Shayna L. Sonnier, 2018-20 Louisiana State Bar Association treasurer; Rebecca J. Hunter, SWLBA treasurer; and Alyson V. Antoon, SWLBA Young Lawyers Section president-elect.

## Southwest Louisiana Bar Conducts Red Mass, Court Opening Ceremony

The Southwest Louisiana Bar Association (SWLBA) held its annual Red Mass and Court Opening Ceremony on Oct. 20, 2017. The Red Mass was held at the Immaculate Conception Cathedral and was followed by the Court Ceremony at Calcasieu Parish Courthouse. The Fall Court Ceremony was hosted in conjunction with the 14th, 36th and 38th Judicial District Courts.

The Membership Luncheon Meeting was conducted at the Pioneer Club. The program included the introduction of new members by Alyson V. Antoon, president-elect of the Young Lawyers Section, and remarks by Robert A. (Bob) Kutcher, 2018-19 Louisiana State Bar Association president-elect.

## 65th Annual Red Mass Conducted in New Orleans

Nearly 200 Louisiana judges and Louisiana State Bar Association members gathered at St. Louis Cathedral in New Orleans on Oct. 2, 2017, to celebrate the 65th annual Red Mass, sponsored by the Catholic Bishops of the State of Louisiana and the St. Thomas More Catholic Lawyers Association. This year's Mass was dedicated to the memory of longtime association member and past president, Evangeline M. Vavrck. Her daughter, Eve Vavrck, was the mistress of ceremonies.

The Most Rev. Gregory M. Aymond, Archbishop of New Orleans, was the celebrant of the Mass. Homilist was the Most Rev. David P. Talley, 12th bishop of the Diocese of Alexandria. Reader was Louisiana Supreme Court Justice Scott J. Crichton. The deacons were led by Deacon Don Richard.

## LOCAL/SPECIALTY BARS

### Douglas Sworn in as NOBA President

Dana M. Douglas, a shareholder in the New Orleans office of Liskow & Lewis, A.P.L.C., was sworn in as the 2017-18 president of the New Orleans Bar Association during the November 2017 Annual Dinner.



Dana M. Douglas

She received her JD degree from Loyola University College of Law and held several summer associate clerkships with leading law firms while in law school. She also worked for Judge Ivan L.R. Lemelle, U.S. District Court, Eastern District of Louisiana, before joining Liskow & Lewis.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, far left, swore in the officers of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc., at the organization's annual gala. Officers, from left, Ashley J. Heilprin, president; Cory J. Vidal, president-elect; Camille R. Bryant, treasurer; Kimberly R. Silas, vice president of internal communications; April D. Davenport, vice president of external communications; and Royce I. Duplessis, immediate past president.



The Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. celebrated 60 years at its annual Scholarship Jazz Brunch in September 2017. The theme was "Honoring the Past, Celebrating the Present, and Embracing the Future." Among the attendees were, front row from left, attorney Theon A. Wilson; Judge Ernestine S. Gray, Orleans Parish Juvenile Court; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; attorney Norman C. Francis; Judge Edwin A. Lombard, Louisiana 4th Circuit Court of Appeal; attorney Henry P. Julien, Jr.; and Judge Kern A. Reese, Orleans Parish Civil District Court. Standing from left, attorney Eric M. Ferrouillet; Judge (Ret.) Michael G. Bagneris; attorney James A. Gray; attorney Ernest L. Jones; attorney Willie M. Zanders; attorney Ron L. Wilson; Chief Judge Sidney H. Cates IV, Orleans Parish Civil District Court; attorney Anthony W. Skidmore; Judge (Ret.) Charles R. Jones; Terrel J. Broussard, Broussard Dispute Solutions, L.L.C.; attorney Wayne J. Lee; attorney Trevor G. Bryan; Judge Ivan L.R. Lemelle, U.S. District Court, Eastern District of Louisiana; and attorney Hilliard C. Fazande.



Panelists, from left, Eboni K. Williams, Dawn M. Barrios and Nandi F. Campbell shared their personal experiences during the “Powerful Women” CLE hosted by the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. and the New Orleans Chapter of the Association of Women Attorneys.

## AWA Chapter, Martinet Society Host “Powerful Women” CLE

**M**ore than 70 women attorneys and judges attended the “Not Just a Pretty Face: Developing Powerful Women of Substance for Success” CLE in October 2017, hosted by the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. and the New Orleans Chapter of the Association of Women Attorneys.

During the CLE at the New Orleans office of McGlinchey Stafford, P.L.L.C., panelists Eboni K. Williams, Dawn M. Barrios and Nandi F. Campbell shared their personal experiences and used vignettes to demonstrate how to deal with gender-based obstacles, balance issues of appearance and substance unique to women, and harness their power and achieve success in their professional lives. After the CLE, Williams, a Loyola University College of Law alumnus, author of the book *Pretty Powerful: Appearance, Substance and Success* and current news anchor at Fox News, signed books.



The Louisiana Chapter of the Association of Corporate Counsel (ACC-LA) presented 2017 scholarships for business law excellence to students at each of Louisiana’s four law schools. Attending the event, from left, Franck F. LaBiche, Jr., ACC-LA; Professor Lloyd (Trey) Drury III, Loyola University College of Law; scholarship recipient Courtney Harper, Loyola University College of Law; scholarship recipient Zachary T. Montgomery, Tulane University Law School; and Vice Dean Onnig Dombalagian, Tulane University Law School.

## Association of Corporate Counsel Presents Scholarships

**T**he Louisiana Chapter of the Association of Corporate Counsel (ACC-LA) presented 2017 scholarships for business law excellence to students at each of Louisiana’s four law schools. The chapter has awarded these scholarships since 2010. Recipients are Shawn Daray, Louisiana State University Paul M. Hebert Law Center; Courtney Harper, Loyola University College of Law; Michelle Gros, Southern University Law Center; and Zachary T. Montgomery,

Tulane University Law School.

ACC-LA represents more than 130 in-house attorneys in Louisiana. In addition to providing networking and CLE opportunities, the chapter supports non-profit causes that promote community access to legal resources. In 2017, the chapter contributed to The Pro Bono Project, Louisiana Applesseed, First 72+, Southeast Louisiana Legal Services, Court Watch NOLA and the Louisiana Bar Foundation.



The New Orleans Chapter of the Federal Bar Association hosted its annual Federal Judges’ Reception in November 2017, honoring the judiciary of the U.S. 5th Circuit Court of Appeals, the U.S. District Court, Eastern District of Louisiana, and Bankruptcy Courts. Among those attending the event were, from left, attorney David W. Leefe; Chief Judge Carl E. Stewart, U.S. 5th Circuit Court of Appeals; Kelly McNeil Legier, commission counsel, Judiciary Commission of Louisiana; attorney Lynn Luker; Robert A. Kutcher, past president, Federal Bar Association; and Judge James E. Graves, Jr., U.S. 5th Circuit Court of Appeals.



The Baton Rouge Bar Association (BRBA) at its November 2017 luncheon recognized Veterans Day and honored BRBA members who have served in the military. Maj. Gen. Glenn H. Curtis, back row sixth from left, the adjutant general of the Louisiana National Guard, was the guest speaker. With Curtis are Baton Rouge Bar Association members who have served in the military.

## New Orleans Bar Foundation Names Board of Directors

The New Orleans Bar Foundation elected its board of directors for 2017-18. Walter J. Leger, Jr. is president; Angelina Christina, vice president; Leonard A. Davis, secretary; Michael J. Mestayer, treasurer; and Dawn M. Barrios, immediate past president.

Directors are Brent B. Barriere, Patricia A. Krebs, Brian P. Quirk, Sandra Diggs-Miller and Mark C. Surprenant.



The New Orleans Bar Association's Young Lawyers Section conducted its Fall Legal Fair in October 2017, hosted at AARP in New Orleans. Attorney volunteers provided basic assistance and guidance on legal questions. Volunteers included, from left, R. Paul Tuttle, Johnathon Williams, Linedda McIver (AARP), Christopher K. Ralston, Kimberly R. Silas, Camille R. Bryant and Taylor C. Stone.



In December 2017, the Baton Rouge Bar Association (BRBA) held its Admission to the Courts Ceremony at the Russell B. Long Federal Building. Chief Judge Brian A. Jackson, U.S. District Court for the Middle District of Louisiana, presided over the ceremony organized by the Baton Rouge Bar Association (BRBA) and the Federal Bar Association (FBA), Baton Rouge Chapter. Twenty-four attorneys were introduced to the court by D. Abboud Thomas of the BRBA and Mark L. Barbre of the FBA. In photo, John V. Parker, Mag. Judge Erin J. Wilder-Doomes and Anthony D. Winters.

### LOUISIANA BAR FOUNDATION

## LBF Annual Fellows Gala Set for April 20

By Alan G. Brackett, Gala Chair

The Louisiana Bar Foundation's (LBF) 32nd Annual Fellows Gala is Friday, April 20, at the Hyatt Regency New Orleans, 601 Loyola Ave. This year, the LBF is honoring the 2017 Distinguished Jurist James J. Brady (posthumously); Distinguished Jurist W. Eugene Davis; Distinguished Attorney Kim M. Boyle; Distinguished Professor Oliver A. Houck; and Calogero Justice Award recipient Robert S. Noel II.

This event brings together lawyers, judges and professors from across the state to support the LBF's mission. The gala begins at 7 p.m. and includes a silent auction, a Kendra Scott mystery jewelry pull and, new this year, 365 Days of Justice, a new, interactive fundraiser

featuring the 365 days of the year, each available for purchase, with prizes and a raffle.

Support this fundraising event by becoming a sponsor. Proceeds raised will help strengthen the programs supported and provided by the LBF. To review sponsorship levels and sign up online, go to: [www.raisingthebar.org/gala](http://www.raisingthebar.org/gala).

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

Gala tickets can be purchased by credit card at [www.raisingthebar.org/gala](http://www.raisingthebar.org/gala). For more information, contact Laura Sewell at (504)561-1046 or email [laura@raisingthebar.org](mailto:laura@raisingthebar.org). For information on the 365 Days of Justice sponsorships, contact Sewell.

We would like to extend a special thank

you to the Gala Committee: Christopher K. Ralston, board liaison; Alexander N. Breckinridge V, Matthew M. Coman, Hon. Sylvia R. Cooks, Tiffany Delery Davis, Steven F. Griffith, Jr., Colleen C. Jarrott, W. Brett Mason, Raymond S. Steib, Jr., Patrick A. Talley, Jr., Brooke C. Tigchelaar, Sharonda R. Williams and Ta-Tanisha T. Youngblood.

Discounted rooms are available at the Hyatt Regency New Orleans on Thursday, April 19, and Friday, April 20, 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/gala](http://www.raisingthebar.org/gala). Reservations must be made before Thursday, March 29.

## President's Message

### Last Call

*By President Valerie Briggs Bargas*

**W**hen I was installed as Louisiana Bar Foundation (LBF) president last April, I followed in the footsteps of my predecessors, all of whom I am honored and privileged to have served after. This has been an amazing year and I'm honored to report in my last message some of the highlights.

▶ A new logo and a new look. If you haven't viewed our new website, go to: [www.raisingthebar.org](http://www.raisingthebar.org).

▶ Unveiling the findings of the Economic Impact and Social Return on Investment Analysis to reveal that civil legal aid is a good investment. We found that, for every \$1 invested in legal aid services, these programs deliver \$8.73 in immediate and long-term consequential financial benefits.

▶ Awarding more than \$6.7 million in grants for social justice initiatives to non-profit organizations and public interest attorneys throughout the state to address the civil legal needs of indigent citizens, provide a basic understanding of the law, and assist with improvements to the justice system.

▶ Successfully implementing a new online grants management system which made it easier to apply, populate and summarize data, and provide for the submission of electronic reports.

▶ Our Board Training for Grantees focused on an upgrade to the new statewide case management system offering many improvements and efficiencies, and a session on the importance of the ongoing collection of economic impact outcomes. I have been fortunate to audit several of our grantees and, through this process, have learned some organizations provide more effective services at a better cost. Providing our grantees direction and support is important. It validates the

LBF's mission and gives our supporters confidence in the work that is being done.

▶ Adding a seat on the board for a representative of the Louisiana philanthropic community helping to deepen our relationship with the community foundations and enhance our ability to work together on key civil legal aid initiatives.

▶ Holding the first meeting of the newly formed Past Presidents Advisory Council formed to engage LBF past presidents and utilize their institutional knowledge and leadership abilities.

▶ Louisiana Gov. John Bel Edwards proclaiming Nov. 13-17, 2017, as Louisiana Kids' Chance Awareness Week. The LBF awarded 20 students \$59,000 in scholarships for the 2017-18 school year.

▶ The LBF leadership continues working with the Access to Justice Commission to obtain a constant and



Valerie Briggs  
Bargas

sustainable yearly stream of income. This is a priority for the LBF.

As the curtain falls and the lights dim, I am very proud to announce that, in October, the LBF engaged Brent Henley of The Pyramid Group to conduct strategic planning with the board and staff. The leadership outlined a detailed plan to evaluate and maximize resources and outcomes for future years, find more sustainable forms of income to support civil legal aid initiatives and current grantees, and to better fund Legal Services Corporations in Louisiana.

I hope to see you this year at the 32nd Annual Fellows Gala on Friday, April 20, at the Hyatt Regency New Orleans. I would like to give special thanks to the amazing LBF staff and the LBF board who remain passionate and committed to making equal access to justice a reality in Louisiana. It has been a humbling experience to interact with and engage the civil legal aid community in Louisiana. I could not be more proud of the phenomenal work being done. Thank you for the opportunity to serve.

## Annual LBF Fellows Membership Meeting April 20 in New Orleans

**T**he Louisiana Bar Foundation's (LBF) Annual Fellows Membership Meeting will be held at noon on Friday, April 20, 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 2017 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](mailto:laura@raisingthebar.org).

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**Phelps Dunbar, L.L.P.**, a regional law firm, is seeking an attorney for the firm's Admiralty Practice Group in the New Orleans office. The preferred candidate will have two-plus years of litigation experience; maritime experience preferred. The candidate must have strong research and writing skills and excellent academic credentials (top 25 percent required). The position offers competitive salary and benefits. Interested candidates should send a cover letter, résumé and transcript to Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130, or email [rachel.woolridge@phelps.com](mailto:rachel.woolridge@phelps.com).

**Phelps Dunbar, L.L.P.**, a regional law firm, is seeking an experienced associate for its Insurance Practice Group in New Orleans. The preferred candidate will have four-plus years of experience in insurance coverage and litigation. The position offers competitive salary and ben-

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## NOTICE

**Notice is hereby given** that Trisha A. Ward has filed a petition and has applied for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for reinstatement must file notice of their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

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## ANSWERS for puzzle on page 329.

1	R	A	I	N	3	S	E	R	V	I	E	N	T
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# The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: ONE PIECE OF ADVICE

So, I am sitting on a sofa in a hotel hallway, waiting for the *Louisiana Bar Journal* Editorial Board meeting to begin. Doing what most of us do while waiting, I am looking on my phone and I see a very interesting article, “Advice a Man Should Give to His Son.” The first piece of advice was, “Never shake a man’s hand while sitting down.” I have never thought about it, but it sounded like good advice.

Just then, up walks Buzz Durio who offers his hand to shake. I am sitting down. I jump up to shake his hand and Buzz says, “No, don’t get up!” I respond, “But I have to. I just read this article that said . . .” Then — true story — I sit down and Minor Pipes walks up. Same thing happens. “No, don’t get up.” I explain yet again. I’ll never shake anyone’s hand while I am sitting down ever again. This shows how one little piece of good advice can affect your actions forever.

The article had 25 pieces of good advice between father and son (such as, return a borrowed car with a full tank of gas), but most would apply to any relationships, including lawyers. I thought it would be interesting to get that ONE great piece of advice from some great lawyers. I asked several lawyers and here is what they said:

- ▶ Never put off until tomorrow what you can avoid altogether.
- ▶ To the outside world (and even many times within your own firm), it is NEVER the fault of your secretary — it is your fault.
- ▶ Never ask anyone to do something you won’t do or haven’t done yourself.
- ▶ In order to solve a problem, you must first identify the problem.
- ▶ Never put anything in writing you don’t want to read in your opponent’s brief.
- ▶ Whatever you are meant to do, do



it now. The conditions are always impossible.

- ▶ Stop talking when you are winning.
- ▶ A continuance is as good as a win.
- ▶ Be courteous and polite with a judge’s staff. If you don’t, the judge will know.
- ▶ There’s never enough time to do it right, but always enough time to do it over.
- ▶ After writing an angry email, read it carefully. Then delete it.
- ▶ You give a little man a little power and he’ll show you how little a man he really is.
- ▶ If you think you can’t, you’re right.
- ▶ Perhaps figuring out what matters most matters most.
- ▶ Just because you CAN do it doesn’t mean you SHOULD do it.
- ▶ Never turn down a breath mint.
- ▶ Surround yourself with people smarter than you.
- ▶ Choose your mistakes carefully.
- ▶ Give credit. Take the blame.
- ▶ Remember WHO you are not WHAT you are.
- ▶ If the only tool you have is a hammer, every problem looks like a nail.
- ▶ Never write what you can speak. Never speak what you can nod. Never nod what you can wink. And never put anything in an email.

▶ The harder you work, the luckier you get.

▶ A case that is prepared to try will surely settle. A case that is prepared to settle will surely go to trial.

▶ Always look out for autocorrect hazards before sending emails (*i.e.*, intending to respond to a female CEO of an oilfield service company with “Let me take a look at it,” that is emailed, once autocorrected, as “Let men take a look at it.”)

▶ Ethics is what we must do. Professionalism is what we should do. Character is what we do when no one is looking.

**Author’s Note:** Some if these items were edited (or deleted) for content to enhance the writer’s lack of personality or to avoid lawsuits.

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





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Jerome H. Moroux: Super Lawyers Rising Stars 2014-2017, Million Dollar Advocates Forum, Top Trial Lawyers in America.