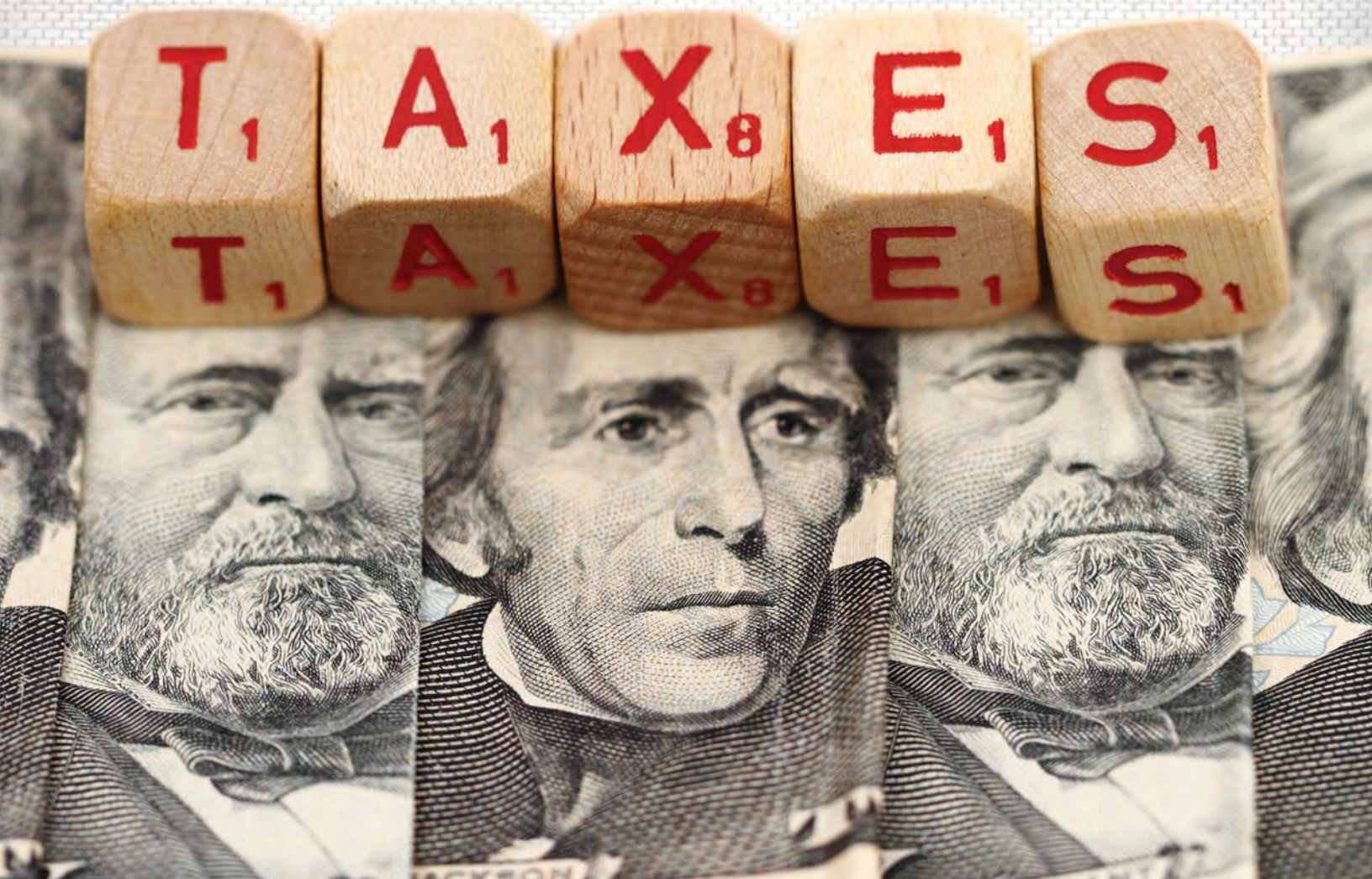


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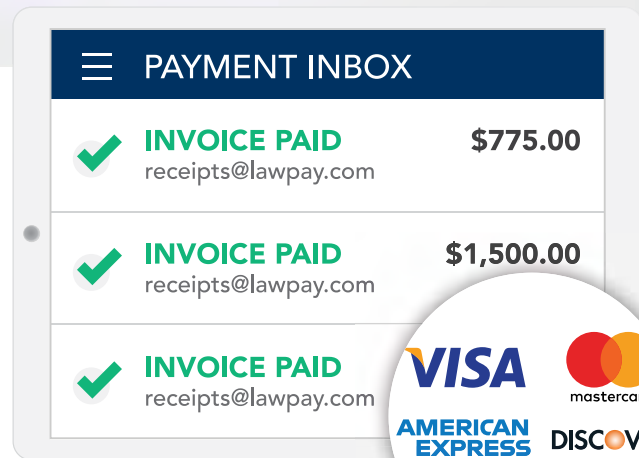
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By John E. McAuliffe, Jr.

French Civility

Recently, my wife Jean and I were fortunate to travel to France. Our first stop was Pau since both sides of her family are from that area. We then spent several days in Paris.

Now, Parisians are said to have a reputation for being rude to tourists. We found that NOT to be the case. Of course, we both sprinkled our conversations with “mercis” and “bonjours.” We might even begin a sentence with “Oust” and then break quickly into English. I had even memorized a sentence to tell all who would listen that I had studied French for three years and then had forgotten it all. This would always bring a smile. (We were upset because not once was the word “bibliothèque” used.)

We found that most every French person we spoke to was pleasant and wanted to help with whatever we were asking. We did not detect any rudeness

from anyone. We have to think that because we “just tried” as much as we could to use their language to communicate, they appreciated that very effort. And, all of this pleasantries took place while Paris was constantly threatened by an outbreak of the “yellow vests” protests.

Perhaps we should all consider just trying a bit more in our communications with our fellow attorneys and judges. Why not allow your opponent some extra time to prepare an answer? Perhaps a telephone call could be used to explore certain issues before an exception is filed? And, if it does not cause a substantive problem, why not grant an extra day to file that opposition memorandum?

Just before the Christmas holidays, an attorney called me about his tardy discovery responses. He thanked me for my reminder letter instead of that

Rule 10.1 letter. I thanked him for his telephone call since I seldom receive a call in response to my discovery letters. He was even surprised that I had answered my own telephone. (Oh, mon Dieu!) Our conversation was pleasant and, in the end, I told him that I did not want him to work too hard during the holidays. We agreed on a date sometime after the New Year.

Our Parisian friends remained civil as tear gas canisters and burning vehicles were a common occurrence on weekend days. We can use their example of continued civility in our practices and in our daily lives.

Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

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

differing perspectives. Authors, editorial staff or other LSBA representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

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

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

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

Alternatives for Professionalism CLEs

This letter is in reply to Louisiana State Bar Association (LSBA) President Barry H. Grodsky's President's Message on the appropriateness of including "professionalism" as a CLE topic (December 2018/January 2019 *Louisiana Bar Journal*).

With all due respect, I do not believe that generic "let's play nice in the sandbox" talks on professionalism have any usefulness. While several programs I have attended on the topic have been entertaining, most are dull and dry. From my perspective, while the goal of teaching professionalism is most noble, the current approach is about as effective as requiring a sinner to sit through a sermon or two in the hope of resetting his/her moral compass.

As an alternative, let me respectfully suggest that those giving substantive CLE talks be required to carve out five to 10 minutes of their programs to point out where and how professionalism issues arise within that area of practice and how best to address them. Presumably, experienced practitioners ought to be able to share meaningful anecdotes on successes or failures of professionalism and how those helped or hurt under the circumstances. Regardless of whether the substantive topic is motion practice, discovery, maritime damages or real estate transactions, anyone competent to speak on the topic has encountered professionalism (and ethical) challenges and (hopefully) can guide those who practice in the area in navigating those shoals. It also occurs to me that raising the topic in this format likely would result in the opportunity for some meaningful questions and comments from those in attendance.

Scott E. Silbert
New Orleans

LSBA President's Response to Letter

I very much appreciate Mr. Silbert's letter and the time he took to review my article on the professionalism CLE programs and to voice his concerns. Unlike substantive CLE programs, including ethics, professionalism is a nebulous topic without formal structure. After all, our Code of Professionalism is a set of aspirational, not mandatory, goals. Nonetheless, I am steadfast in my belief that it is still an important component of our CLE requirements.

I will admit I have been to professionalism programs which are not the most exciting but who among us can say that they have not attended a few less than stellar programs even on substantive topics? I give numerous professionalism presentations each year and I try to vary the topics and keep as high an interest level as I can. I have spoken on issues relating to what the Bar does for its members, the role of the mandatory bar, the importance of Bar participation (and how to do it), the role of the lawyer in all of this, and about the unfounded attacks on lawyers and the judiciary.

For younger lawyers, I have spoken

about their path ahead and being professional from the start. I have tried to get lawyers involved in Bar programs. I agree that anecdotes as Mr. Silbert suggests (commonly known as "war stories") are a vital teaching method and can enliven programs. They should be encouraged in such presentations.

As I suggested in my article, there are still many attorneys who need the "let's play nice in the sandbox" speech because, frankly, they often just don't play nice. Maybe, just maybe, a good professionalism CLE will help.

Certainly presenters on substantive topics can weave into their programs professionalism pointers. That can never hurt. The Bar's CLE department is always looking for new and exciting programs and I encourage all lawyers, including Mr. Silbert, to share their thoughts and present a professionalism CLE. The more which is shared the better off we all will be.

Barry H. Grodsky
2018-19 President,
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By Barry H. Grodsky

Along the Way

As I roll towards the end of my term as president, I have reflected a bit on what I have experienced over the past couple of decades, a time when I became actively involved in the Louisiana State Bar Association (LSBA). There have been great Annual Meetings, board meetings, committee activities and programming. I have watched and participated in activities where the Bar has grown and prospered — all for the benefit of our members.

But with all of that, the best thing I have experienced can be summed up in one word: PEOPLE. It is the people I have encountered who have absolutely had the most significant impact on me personally, particularly during my term as president. There is no doubt that, but for LSBA activities, these relationships would never have existed.

These relationships have come in all shapes, sizes and forms, but all are part of what makes the Bar so special for me. Larry Shea and I gave a professionalism program at Loyola University. Afterwards, a second-year student thanked us for the program but specifically how the character and fitness training specifically helped her. Over the years, I have had dozens of law students at each of the state's law schools thank me for assisting with the programs. I remember instances at Bridging the Gap programs where many about to be admitted told me how much they appreciated the presentations.

I have had calls from a number of young lawyers over the years telling me how important the mentoring pro-

gram was for them. For me, I enjoyed speaking to everyone and getting their feedback. The members (and soon-to-be members) of our profession took the time to let me know that what the Bar has done, and was doing, was meaningful. Without Bar involvement, I never would have learned of this or had these interactions.

Some relationships are brief but no less meaningful. In 2014 and 2015, I traveled the state promoting the mentoring program. I'll never forget the warm welcomes I always received and how nice everyone was. I specifically recall programs in Shreveport, Lafayette, Thibodaux, Baton Rouge and New Orleans. I walked into each as a presenter and walked out with a room full of friends. From a Bar perspective, I still speak to and meet with some of the attorneys I have met in these programs. It is wonderful to visit with them at other programs the LSBA presents.

Recently, an attorney I did not know called to tell me of a personal problem which led to me getting her in touch with someone at the Bar to help her. The issue was resolved and I know she was very thankful. One phone call, one new relationship, one more attorney assisted by the LSBA.

Earlier this year, I was walking out of my parking lot heading to work and a man was right behind me. I did not know him but, being courteous, I did tell him hello. It seemed he knew me, though, and said, "I hope you are enjoying your year as President." I stopped and said that, indeed, I was. It turned out this gentleman was Hugh Straub, a su-

perstar volunteer at the Self-Help Desk at Orleans Parish Civil District Court and a recipient of the LSBA's Pro Bono Award. He told me how gratifying it is to assist at the self-help desk. Hugh is an unsung hero for the Bar and a chance encounter led me to meet him.

On the Board of Governors, lawyers from all over the state work to promote the LSBA, work on governance and financial issues and develop programs. But it is much more than that. It is the people on the Board who make LSBA activities so special. Those who started as Board members are soon friends. These are often lifelong relationships. And it is not just the Board. I have been blessed to work with LSBA presidents for nearly 20 years — men and women who I respect as much as anyone in this profession. Over the years, these presidents became former presidents but most remain active in the LSBA. More importantly, we have become and remain friends, friendships which transcend Bar activities. (I will discuss LSU football with former Presidents Mike Patterson, Guy deLaup and Richard Leefe as often as I discuss Bar matters with them). Plus, these are all leaders I can turn to for advice and guidance — true relationships.

There also have been relationships established with those who are associated with related activities, such as Chuck Plattsmier with the Office of Disciplinary Counsel, Mike Street with the Louisiana Bar Foundation and Buddy Stockwell with the Judges and Lawyers Assistance Program (JLAP). And, of course, starting with Loretta

Larsen, our outstanding executive director, all of our friends at the LSBA office are important relationships.

I tried to think of all of those I have encountered over the years, including volunteers at law school programs, judges, committee members and Annual Meeting attendees. While names and events may escape me, I recall the friendships.

I also realize it is not just in Louisiana where such relationships are built. As a former president of the Southern Conference of Bar Presidents, I think of all the friends I have made among Bar leaders from all over the South. The LSBA is working on specific programs with Mississippi to enhance our relationships there.

I recall a dinner I attended where a discussion took place with leaders from the Bars of Paris, Switzerland, Austria and Japan. It was a fascinating dinner which started with a number of attorneys who had never met and ended with a group of friends who exchanged information and ideas about their Bars.

Of course, not all interactions are perfect. I have had an attorney complain to me that there were too many photos of my child in the *Louisiana Bar Journal* and another attorney complaining about certain CLE programs. But that comes with the job and I hope my responses to them were helpful. These too are relationships nonetheless.

For me, the work of the LSBA is very important to our members and to the public and, personally, it has introduced me to literally hundreds of lawyers I would never have met but for the Bar. As I've stated before, the more you give to the Bar, the more you get out of it, and this is particularly true of those you meet. Experience what the LSBA has to offer; it's more than what meets the eye and you'll be forever grateful for those you meet along the way. Bar activities may last for just a while; friendships last forever.

Barry G. Giddens

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A Member's Powerful Story of Addiction, Surrender, Recovery and Hope

By Sean Corcoran

Editor's Note

Sean Corcoran is a young lawyer with a solo practice in Lake Charles. On June 27, 2018, Sean made an emotional and shocking Facebook post that “went viral” — in that it was shared more than 34,000 times and received more than 5,000 comments — because of its powerful message.

Before June 27, 2018, Sean's close friends, family, various doctors and the Bar Association knew of his younger years of drug addiction, and his recovery. But he kept the gruesome, raw and full truth to a council of very few — himself, trusted friends, and those doctors and counselors. The past was the past. With a young family, a thriving practice, and people who respected and depended on him, he knew that those distant days were in the rearview mirror — and, surely, no successful person would voluntarily bring those to bear before the world.

Today, Sean attributes the bottling up of his story to his own fear and the shame that our society places on addiction. Since his bottom days, he has made it:

he slipped free of the pain from his other life. He graduated from college, was president of the Student Bar Association at Louisiana State University Paul M. Hebert Law Center and has a successful family practice in Lake Charles.

The constant reminder of Sean's addiction was only the Judges and Lawyers Assistance Program-required counseling he still attends due to his conditional admission to the practice of law. Even that reinforced the shame. Still, in times of solitude and prayer, he knew that he should be proud and forthright. He knew God was telling him that his story of triumph over addiction could have meaning and give comfort to others.

On June 23, 2018, Sean received a call that a family member, a cousin, had died of a heroin overdose. The next day, he sat at his computer and started typing. His wife was at the beach with his two small children. On June 27, 2018, Sean posted this testimony (reprinted in this issue of the *Journal* with Sean's permission) on Facebook, including with that post the photo of his family that is featured in

his law firm advertisements on local billboards in Lake Charles. He cried. He boarded a plane for his cousin's funeral. He texted his wife and family that they should read his Facebook page. This would be the first time any of them would know just how close to the edge he had gone before pulling himself back and building a better life.

Despite writing it, Sean says he has never sat down and read the post from beginning to end. It instantly went viral. When he got off the plane in Atlanta, it had been shared thousands of times. It continued to spread across the world and eventually received more than 5,000 comments, 33,000 likes and 34,000 shares. In the months that followed, Sean has been featured in media, as a guest speaker, and an inspirational story for those struggling with addiction in their lives and families.

The Louisiana State Bar Association wishes to thank Sean for allowing the reprinting of his testimony and agreeing to a question-and-answer session about his experiences.

— Scott L. Sternberg

Sean Corcoran's story as posted on his personal Facebook page on June 27, 2018, at 8:40 a.m.

This is the picture of an addict.

I lay on the floor, alone in the dark, dying. My breathing was shallow and purposeful and took all of my energy and focus. With each breath I silently repeated the same prayer I had said dozens, if not hundreds, of times before — “God, please pull me out of this one last time.” It was not said out of a desire to live or to change, but out of a desire to protect myself and my family from the embarrassment of me being found dead this way. Somewhere on the floor near me was a broken light bulb with burnt methamphetamine residue, a lighter, and a straw used as a makeshift pipe.

Yes, this is real. This is my memory from sometime after dark on December 13, 2005. My childhood had been amazing. My parents had raised three children in the same way, with the same guidance, the same attention, and the same opportunities, and, at 27 years old, each of the other two were years into successful careers. I'm not sure what was so special about me that, at 27 years old, I was homeless, unemployed, desperately alone, and dying in the corner of a hotel room of an addiction to meth.

A lot happened leading up to that point, and a lot has happened since. For years I have felt God putting on my heart to share my experience, in case anyone needed to hear. But fear controlled me and kept me silent. Fear of embarrassment, stigma, isolation . . .

fear of how everything I have built since that time would be affected.

The recent attention to the suicides of Kate Spade and Anthony Bourdain brought these feelings back to the front of my mind. At first I was confused and upset upon hearing person after person in the media say the same thing, “I can't imagine what it is like to feel that way.” Though the words were said with a show of compassion, every time those words were said, each person watching who was at that point of hopelessness felt more alone and less like there was anyone who would understand them or what they were going through, perpetuating a cycle of despair. Suicide is the tenth leading cause of death in the United States. Nearly Forty-Five Thousand people commit suicide each year in America . . . 123 each day. And everyone who talks about it has no idea what it is like to feel that hopeless. That, my friends, is the power of stigma.

Eventually people started coming forward to talk about their own experiences with depression, anxiety, panic attacks, hopelessness, loneliness. I felt grateful that the ice was broken but was still reluctant to thrust myself into the conversation. The pull from God was getting stronger. Finally this past Saturday, it reached a head. It was clear that He was telling me that the time was here. On Sunday morning as I kneel in the church pew, I challenged Him one more time — “If this is really what you

want from me, show me. Let me clearly hear your call”

Sunday afternoon, while celebrating birthdays with family, we got the call. Someone close to us had overdosed. A housemate in the sober-living house he was staying in found him. He was taken to a hospital, but it was too late. Later today, I'll be boarding a plane en route to attend a funeral for someone whose number I had, but whom I never called . . . for someone whose addiction was known to me, but to whom I never reached out to say, “You're not alone. I've been where you are, and I know what you're going through. I know how hard it is and that it seems like there is nothing in front of you but impossible situations, and I know and am proof that it is possible to come out on the other side.”

In the nearly thirteen years that I have been in recovery, I have seen addicts rise high, and I've seen addicts fall hard. I've seen the disease take so much from amazing people, and I've seen it take so many lives. I know that I am not responsible for anyone else's recovery, whether successful or failing. I know that I am not responsible for this person's death. But I also know that unless people who are winning the fight against addiction in their own lives come forward and talk about it, the stigma and the cycle of solitude will continue in perpetuity. Which brings me here . . .

My childhood was as good as it

Continued next page

gets. I was raised by devoted parents who are coming up on their 45th anniversary. I attended the best schools, learned musical instruments, played team and individual sports, was a boy scout, and while I wasn't spoiled with material things, my parents never said no if I asked to do something that would result in self-improvement. They attended every event that I or my siblings had, most of the time as a coach or otherwise active participant. I was never neglected and there is no single event, act, or period which can be pinpointed as the causation resulting in the future addict.

For me it wasn't the first drink, the first time I smoked weed, or the pain pills I got when my wisdom teeth were pulled. Alcohol, marijuana, and opiates either made me sick or dumb, or both. A less-than-stellar athlete, my brain was all I had, so I couldn't get enjoyment out of anything that slowed my mind. For me the hook was Adderall. With amphetamines, I was awake, alert, and hyper focused on whatever I wanted to do. I liked it so much that I used the Adderall I'd gotten from friends to research ADD to the point of having all the right answers for psychological testing to prove that I needed my own prescription.

Before long I was taking ten 30mg Adderall pills every day. I hardly ever slept, and was consequently always looking for something to do when nobody else was awake . . . except other people who didn't sleep. Nothing good ever happens after 2 a.m. I still remember the first time I tried cocaine. I remember everything about that night. I remember where I was, who I was with, what movie we watched,

what we talked about. It was nineteen years ago and I remember it much better than I remember yesterday. That was the greatest high of my life . . . and though I tried for years, I never was able to get to that point again.

Once I had done cocaine, and was seeking it out on a regular basis, there was really no reason to hold back. Ecstasy was next, and before long I was taking 5 or 6 Ecstasy pills every Thursday, every Friday, and every Saturday night. I'm sure the only thing holding me back Monday through Wednesday was that everyone else had to work and wouldn't do that on a work night. I had to work, too, though it didn't bother me as much, but I'd be damned if I was going to do drugs by myself . . . that's what addicts did.

It was easier to mask the high to the public if during the week I stuck to Adderall and cocaine. When meth came around, it was even better because the high lasted so long and was undetectable unless someone noticed my eighty-pound weight loss, huge dark circles under my eyes, or my newfound ability to clean and organize irrelevant things for hours at a time. I would take things apart just to fix them, even though they weren't broken. I never got to my car, but I witnessed friends with no automobile knowledge (and no instructional YouTube videos) dismantle their engines in an attempt to fix a problem that didn't exist.

I spent nights high lying on the couch wide awake peeking behind the curtains because I believed someone was out there who knew what I was doing and was getting ready to bust me. I became a slave to the drugs, working 18-20 hours

a day just to pay for my addiction. I spent six years systematically tearing apart every relationship I had with friends and with family. I made each person miserable and blamed them for all of it, until they got fed up and protected themselves by removing me from their lives. I lost jobs and I lost homes. I neglected everything else in my life. No, neglect isn't strong enough. I laid waste to everything in my life outside of my addiction.

The last four or five years of my active addiction, I didn't get high in the way that we generally define the word. There was physiological or biochemical reactions, but there was no euphoria or positive feelings, either physically or mentally. I was not continuing because I enjoyed the rush. I was continuing because I could not stop even though it was killing me. I was very aware that it was killing me. Paralysis, dangerously low blood pressure, inability to breathe . . . the worst possible physical feelings I have experienced coupled with a complete void in my mind and my soul. That was my life. Every. Day.

With Hurricane Rita came FEMA and free hotel rooms for people who knew how to get them. That's how I ended up in the corner of a crappy hotel room, by the bathroom, under the room's single remaining light . . . the only one I hadn't turned into a meth pipe . . . dying of an overdose. I wasn't scared to die. I truly believed I had no reason left to live. I was worthless. I was hopeless. I was stuck in a cycle of living just long enough to bring myself a little closer to death than the last time. My prayers for salvation were solely based in the fear of disappointing my family one more time . . . of giving them

Continued next page

a lifetime of a last memory of my complete failure.

I had been at this point before. I had brought myself to the emergency room on several occasions and lied each time about my motivation for being there. I knew this time was different. I couldn't move. I couldn't breathe. I couldn't open my eyes. The curtains were closed, and the "Do Not Disturb" sign hung on the outside of the door where it had stayed for the previous two weeks. No one was looking for me. Nobody was going to find me. And I was out.

I don't know how long I was out. I don't know what happened or how I survived. I don't know what kind of work God did on my heart and soul during that time that motivated me to my next steps. I know that my motivation was still the same . . . to save my family from one last grand gesture of disappointment.

I left the hotel room and rummaged through my little truck which held every possession I had left. I found a pamphlet for a treatment center that someone had given me years before and I somehow hadn't lost. It was free, which was all I could afford. I called and they said they had a bed available.

I was able to convince someone to fill my truck with gas. Nobody was dumb enough to let me "borrow" cash anymore. I drove 200 miles in a beat down S-10 that hadn't had the privilege of an oil change in years. I broke down in the parking lot and had to push it into a spot. There was no hesitation. I walked right in. I knew that nothing could possibly be worse than the life I was currently living. They were expecting me.

My father had already called. He called to find out when my fam-

ily could come and what they could do to support the process I was beginning. I had spent years violently dismantling every positive connection that I had with my family and they stood there ready to welcome me back.

I spent 45 days in an inpatient treatment facility. I've spent twelve and a half years going to meetings, working with counselors, and actively fighting to ensure that I never return to that place of anguish and despair. I have been clean since December 13, 2005, but that's not where it ends. It takes a tremendous amount of work and slips and falls and get-back-ups, even without the chemicals in my system. I didn't just destroy everything around me, I destroyed who I was, and building that person back is no easy task.

Twelve and a half years later, and I have graduated from college and law school. I own two successful businesses, and am married to an amazing woman who is too good for me, is a beautiful mother, and a successful business owner in her own right. I have the two most perfect children who have ever existed. I will raise them using the example that was given to me, and I will do everything in my power to protect them from the demons that conquered me for so long.

Most importantly, I will talk to them about the past, in an effort to avoid its repetition. There is so much failure and sadness and hopelessness surrounding conversations of addiction. There is so much misunderstanding among those who have been blessed to never experience it in their own lives. As a recovering addict, it is so easy to want so badly to put that entire period of my life behind

me and ignore that it ever existed, and in doing so I am neglecting my responsibility to show others that there is hope. I have been blessed in my career to be able to counsel parents of addicts. Not one has ever come in with an attitude of anything other than "I want so badly for them to come out of it so that they can be a good parent to their children, but for now I need to protect the child."

It's too late for me to reach out to the person whose funeral I'll be attending tomorrow. But we as a country are not on the verge of solving this crisis, so it is not too late for me to reach someone else who may be struggling. If you are the family member or friend of someone dying from addiction and they have destroyed your relationship, text them and tell them you love them. I'm not suggesting forgive and forget. You have to protect yourself until they are ready to be who they were meant to be. Their recovery is not your responsibility. Their response to your message of love is not our responsibility. But it may get to them in a way that they can't express at this time and it may help them to save their own life.

And if you are a person struggling with addiction, please know that all is not lost. Hope and redemption are just on the other side of a whole lot of work and participation in changing your status quo. The people out there who loved you still love you. They are praying that God will help you because they feel their own hopelessness that they cannot do it themselves. They are waiting for the you that used to be to return to them. You are not alone. I am here and there are millions of stories like mine waiting to be heard. You are loved.

See Interview on page 334.

Q&A Interview with Sean Corcoran

Interviewed by Scott L. Sternberg

Sternberg: Sean, I've known you a long time. This post was as raw and emotional as I've ever seen you. How hard was this post to write?

Corcoran: It was really hard. It took three days to write. I wrote it out several times. I had to stop at times because I was having to wipe tears from my eyes just to see the screen. It wasn't something I thought I would want to relive.

Sternberg: Did your wife and family know about your addiction?

Corcoran: They all knew something, but this is the first time that I have ever sat down and said this is how bad it was. My mom never knew the extent of my addiction until the Facebook post.

Sternberg: You were scared.

Corcoran: Yes. I was scared. I was scared of the same thing that held me back for years — being judged, shame, people judging me, or worse, my family. People looking at me differently. In public. Behind closed doors.

Sternberg: So you wrote the post, and then what?

Corcoran: I cried for three hours. It was this huge mixture of fear, catharsis, of finally being free of that. From a personal standpoint, the most impactful thing that has come for me is complete freedom. I literally have nothing to hide. I now have less reservation about what people think of me, in general. Because I know that they already know my worst secrets. Life is easier.

Sternberg: I know you said your wife, Michelle, and your kids were at the beach. Did you tell her what you were

doing before you posted?

Corcoran: I texted her to let her know I had done it. She eventually read it, and we didn't talk about it for a few days. I think it just took her a long time to process it. She had the immediate concern I had: how are people going to act toward us now?

Sternberg: How long did it take for you to realize that your Facebook post meant something more for your friends and family?

Corcoran: When I arrived in Atlanta, it had been shared 2,000 times and it was going at something like 5 shares a second. I was just trying to figure out how fast it was happening and why. I post pictures of my kids all the time. They are beautiful, but it doesn't get shared that fast.

Sternberg: Did you stop and think to yourself, what if people don't walk through my door anymore?

Corcoran: I was not scared of losing my practice. There was a thought of: Would I be the drug addict lawyer? I wasn't scared of that. I've learned a lot through the process. I reminded myself that in 2005 I was homeless with nothing to my name, having failed out of college three times. If I lost this practice, I am 100 percent confident that I could start all over again and be so blessed.

Sternberg: Lake Charles isn't a small town but it's not a big one either. The legal community is tight-knit. What kind of reaction did you get?

Corcoran: The reaction has been overwhelmingly positive. Court staff, lawyers, people even stop me in gro-

cery stores. They pull me aside to tell me about their own addiction stories, family members. And they are whispering it so that the person on the other side of me doesn't hear them, but then that person on the other side whispers an identical story.

Sternberg: Is it an instant trust with someone who has an addiction story?

Corcoran: By baring it all, I built it. People trust that I am not going to judge them because I have been there. People know they are not alone. That's what I wanted when I hit "post."

Sternberg: The tragic loss of your cousin set you on the course to write, but who did you write the post for?

Corcoran: I wrote it hoping that one other person who was in my cousin's position right before he overdosed would read it. Or a friend would read it and say to someone else, we need to talk. I just imagined my cousin, in a room, dying of heroin, alone. I've been there. People don't have to be there.

Sternberg: You do a lot of family law. Is your struggle with addiction something you've brought into your counsel to clients?

Corcoran: I have had grandparents come in and say my daughter, my son is an addict and they are ruining their lives. I take those opportunities to tell them my story. I had never gotten into the gory details before, but I have told them that I was addicted to drugs and have been to treatment. There are times when my addiction story has given me the opportunity to ease clients' minds that they might not lose this person in their lives.

Sternberg: You said that you have never read the post from front to back, even though you wrote it. I believe you. That must have been very hard. Why won't you read it?

Corcoran: I'm scared of the emotion. It's an uncomfortable feeling to relive that. There's still shame. I think that's the power of the stigma. All of this, that's the power of the stigma that society has put on addiction. Even with the positive reaction, the radio, the news, talking about it over and over and the grocery store encounters, I still feel shame. It's very hard to relive it.

Sternberg: What can you do to be free of that shame?

Corcoran: The shame is what I was trying to change. If I had called my cousin and said, hey, I know what you are going through because I have gone through it. He would not have felt alone and maybe he would still be with us. It was a story of shame I wrote out of guilt. I wouldn't allow myself to hide that anymore. My hope was that if one person read it and it helped them to feel better, then I would feel that it was worth it no matter what else happened.

Sternberg: You told me that your wife sits in the front row of all of your speaking engagements. What do you tell people about your story during your speeches?

Corcoran: I think that every person in recovery can change lives by talking to people. I know that there is nothing super unique about my story. I know that because, being in recovery, I know doctors, lawyers, janitors, pharmacists, yoga instructors, financial advisors, and teachers who have been to the bottom and fought their way back and to their career heights.

Sternberg: How can you change people's lives?

Corcoran: The only thing that makes me unique is that I talked about it. If I can continue talking about it and empower someone else to not be afraid of talking about it, it can snowball, just build and build until there's not a stigma anymore. Then the kid who got his parents opiates

and now finds himself craving it all the time isn't going to be scared to ask for help.

Sternberg: You told me you had prayed about telling people about your addiction.

Corcoran: God is 100 percent the only reason that I had the courage to do it. I believe that this is what God was telling me to do. I went to church that Sunday morning and prayed about it. After church, I asked God to tell me very clearly. Then my Dad called to tell me about my cousin dying later that day. I knew it was God giving me my sign. I didn't have a choice at that point.

Sternberg: You just adopted a new baby. What will you tell your children about your story?

Corcoran: When the time is right, I'm going to be transparent. I believe that my children have the same genetic predisposition to addiction. My adopted child was born to a mother who was also addicted to amphetamines. Education is the best chance we have to help them avoid the place where I am.

Sternberg: What's the strangest thing that's happened to you since the post?

Corcoran: Other than adopting a baby? I was shocked at the correspondence I received from New Zealand, Australia, Ireland. The post really had some serious reach. It was God doing that work.

Sternberg: What should readers of the *Journal* take away from your experience?

Corcoran: We, as lawyers, have people come to us with their problems. They know that once they sit down with us we are under an obligation not to say anything. We are the person that people come to with their problems. We are the people they are going to come to and open up to. We have the ability to point them in the right direction and let them know they are not alone.

Sternberg: You want lawyers to talk more freely about addiction?

Corcoran: I want people to know they are not alone. Help their clients

know *they* are not alone. It's not just addiction. It's suicide. When we shame it, people don't talk about it either. When we don't talk about it, people think it's just them with problems. It's not.

Sternberg: What can society do to be better about treating addicts and accepting those who are rehabilitated?

Corcoran: What we have done is we have made it into a moral thing versus a disease. We need to stop looking at this like good vs. bad. Addiction is a chronic brain disease. I was an addict before I did drugs. I had a predisposition to addiction.

Sternberg: You have been on the news, the radio, in print. I know you've maintained your practice as well. Is this what you thought you'd be doing with your time when you finished law school?

Corcoran: Of course not. But in my mind, I know that I shouldn't be alive. I know that I shouldn't have been to law school after failing out of college three times. I know that I should not be successful. I have always believed that God has a plan for me. Maybe God's plan had nothing to do with my business. Maybe it had to do with providing a different platform to have this conversation about addiction. It resonates more. If I hadn't gone to law school, or graduated college, people wouldn't listen. Maybe this is what all of that was all about.

Sean Corcoran is a divorce and child custody attorney and a licensed family law mediator in Lake Charles. He is owner of Corcoran Law Firm, L.L.C. He has three children and is married to Dr. Michelle Swift Corcoran.



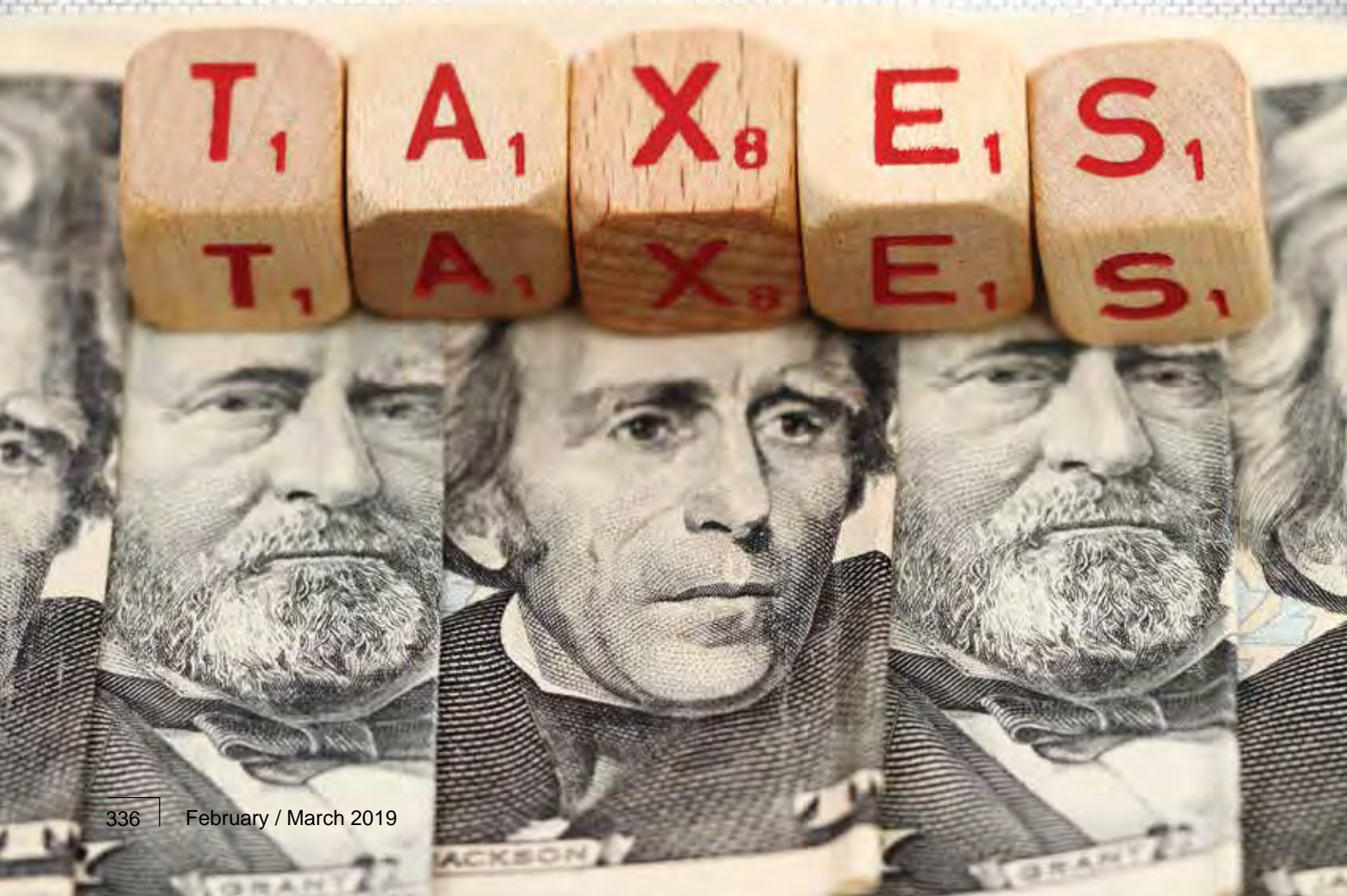
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OVERVIEW:

How the Tax Cuts and Jobs Act Affects You and Your Law Practice

By Christian N. Weiler



The Tax Cuts and Jobs Act (TCJA or Tax Act) is a sweeping tax package that certainly impacts your federal personal income tax obligation beginning in 2018. Here is a look at some of the more important elements of the new law that will have an impact on you as an individual and as a Louisiana attorney.¹

Important Changes to Your Individual Federal Income Tax Return

Beginning after Dec. 31, 2017, seven tax rates now apply for individuals — 10 percent, 12 percent, 22 percent, 24 percent, 32 percent, 35 percent and 37 percent. The standard deduction is also increased to \$24,000 for married individuals filing a joint return, \$18,000 for head-of-household filers, and \$12,000 for all other taxpayers, adjusted for inflation in tax years beginning after 2018. No changes are made to the additional standard deductions for the elderly and blind. The deduction for personal exemptions is effectively suspended by reducing the exemption amount to zero.

Here are some highlights to relevant changes which will impact your personal income tax return.

Casualty Losses

The new Tax Act suspends the personal casualty and theft loss deduction, except for personal casualty losses incurred in federally declared disaster areas.

Gambling Activities

Under the new Tax Act, the limitation of wagering losses is modified to provide that all deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are limited to the extent of gambling winnings.

Child and Family Tax Credit

The child tax credit is increased to \$2,000, and the phaseout limits are increased to \$400,000 for married taxpayers filing jointly and \$200,000 for

all other taxpayers. The amount of the tax credit that is refundable is increased to \$1,400 per qualifying child, and this amount is indexed for inflation.

State and Local Taxes

Under the new Tax Act, a taxpayer may claim an itemized deduction up to \$10,000, \$5,000 for married taxpayers filing separately, for the aggregate of (i) state and local property taxes not paid or accrued in carrying a trade or business or an activity undertaken for profit, and (ii) state and local income taxes, or sales taxes in lieu of income, paid or accrued in the year. Foreign real property taxes may not be deducted.

Mortgage Interest

The deduction for interest on home equity indebtedness is suspended, and the deduction for mortgage interest is limited to underlying indebtedness of up to \$750,000 (\$375,000 for married taxpayers filing separately). After Dec. 31, 2025, the former rules are reinstated.

Medical Expenses

For taxable years beginning after Dec. 31, 2016, and before Jan. 1, 2019, the threshold on personal medical expense deduction is reduced to 7.5 percent.

College Sporting Event Tickets

Under prior law, special rules applied to certain payments to institutions of higher education, in exchange for which the payor received the right to purchase tickets or seating at an athletic event. For contributions made in tax years beginning after Dec. 31, 2017, no charitable deduction is allowed for these types of payments.

Alimony

Per any divorce or separation agreement executed after Dec. 31, 2018, or executed before that date, but modified after, alimony and separate maintenance payments are not deductible by the payor spouse and are not included in the income of the payee spouse. Note: This provision is effective after Dec. 31, 2018, and not Dec. 31, 2017.

Overall Limitation on Itemized Deductions

The deduction for miscellaneous itemized deductions that are subject to the 2 percent floor is suspended, meaning the deduction may no longer be claimed. This includes deductions for tax preparation and out-of-pocket employee expenses.

Moving Expenses

The deduction for moving expenses is suspended. There is an exception for members of the armed forces.

Health Care “Individual Mandate”

The new Tax Act repeals the individual mandates of Obamacare by reducing the amount of the individual shared responsibility (penalty) to zero. The new Tax Act leaves intact the 3.8 percent Net Investment Income Tax, and the 0.9 percent additional Medicare Tax, both enacted by Obamacare.

ABLE Accounts

Under the new Tax Act, changes have been made to Internal Revenue Code Section 529A, which provides for “ABLE Accounts.” This is a provision that allows individuals with disabilities, and their families, to fund a tax-preferred savings account to pay for “qualified” disability-related expenses. Under prior law, annual limitation on contributions is the amount of the annual gift tax exemption (\$15,000 for 2018). Effective for tax years after the enactment date, and before Jan. 1, 2026, the contribution amount is increased, the lesser of (i) the federal poverty line for a one-person household or (ii) the individual’s compensation for the year.

College Savings Plans

Under prior law, funds in a Code Section 529 College Savings Account could only be used for qualified higher education expenses. For distributions after Dec. 31, 2017, “qualified higher education expenses” include tuition at an elementary or secondary public, private or religious school, up to a \$10,000 limit per tax year.

Estate and Gift Tax Exemption

Effective for testamentary and *inter vivos* gifts in 2018, the estate and gift tax exemption has been increased to roughly \$11.2 million (\$22.4 million for married couples).

Alternative Minimum Tax (AMT) Exemption

The AMT has been retained for individuals by the new law but the exemption has been increased to \$109,400 for joint filers (\$54,700 for married taxpayers filing separately) and \$70,300 for unmarried taxpayers. The exemption is phased out for taxpayers with alternative minimum taxable income over \$1 million for joint filers and over \$500,000 for all others.

Bottom Line

While these changes will lower rates at many income levels, determining the overall impact on any particular individual or family will depend on a variety of other changes made by the Tax Cuts and Jobs Act, including increases in the standard deduction, loss of personal and dependency exemptions, a dollar limit on itemized deductions for state and local taxes, and changes to the child tax credit.

Important Changes to Your Law Practice

New Corporate Income Tax Rate

C corporations were historically subject to graduated tax rates of 15 percent for taxable income up to \$50,000, 25 percent (over \$50,000 to \$75,000), 34 percent (over \$75,000 to \$10,000,000), and 35 percent (over \$10,000,000). Personal service corporations pay tax on their entire taxable income at the rate of 35 percent. Beginning with the 2018 tax year, the new Tax Act makes the corporate tax rate a flat 21 percent, and it also eliminates the corporate alternative minimum tax.

Meal, Entertainment and Fringe Benefit Changes

There are changes to note in this area, all effective for amounts incurred or paid

after Dec. 31, 2017:

▶ Deductions for business-related entertainment expenses are disallowed.

▶ The 50 percent limit on the deductibility of business meals is retained and expanded to meals provided through an in-house cafeteria or otherwise on the premises of the employer.

▶ Deductions for employee transportation fringe benefits (*e.g.*, parking and mass transit) are denied, but the exclusion from income for such benefits received by an employee is retained (except in the case of qualified bicycle commuting reimbursements).

▶ No deduction is allowed for transportation expenses that are the equivalent of commuting for employees (*e.g.*, between the employee's home and the workplace), except as provided for the safety of the employee. However, this bar on deducting transportation expenses does not apply to any qualified bicycle commuting reimbursement, for amounts paid or incurred after Dec. 31, 2017, and before Jan. 1, 2026.

Expensing Rules Liberalized

For property placed in service in tax years beginning after Dec. 31, 2017, the maximum amount a taxpayer may expense is increased to \$1 million, and the phaseout threshold amount is increased to \$2.5 million.

Net Operating Losses (NOLs)

Under pre-TCJA rules, a net operating loss (NOL) for any tax year was generally carried back two years, and then carried forward 20 years. The new Tax Act repeals the general two-year NOL carryback and also provides that NOLs may be carried forward indefinitely.

New Business Income Deduction

Under the new Tax Act, a new 20 percent income tax deduction for so-called "passthrough business income" is afforded. With the corporate tax rate being reduced under the new tax law to a flat 21 percent, a deduction for "pass through" forms of business was designed by Congress to give a reduction to those businesses approximating the lower corporate tax rate. If applicable, the

20 percent deduction can be claimed by the owners of S corporations, partnerships, sole proprietorships, and even beneficiaries of trusts. These are generally referred to as "pass-through tax entities" that pay no income tax at the entity level. This business income is "passed through" to the owners (or trust beneficiaries) who must report the income on his or her individual income tax return.

It is an understatement to say this 20 percent deduction found in new IRC § 199A is saddled with exclusions, phase-outs, technical issues and uncertainties. Commentators are still attempting to analyze and figure out how this new deduction actually works.

For most pass-through business owners, the deduction is the lesser of (i) the "combined qualified business income" of the taxpayer, or (ii) 20 percent of the excess of taxable income over the sum of any net capital gain. The term "combined qualified business income" is then defined as the lesser of (i) 20 percent of the business owner's qualified business income, called QBI or (ii) the greater of (a) 50 percent of the W2 wages of business allocable to the owner; or (b) 25 percent of the W-2 wages of the business plus 2.5 percent of the unadjusted tax basis in property of the business allocable to the business owner.² Qualified business income is generally profit from the active income and expenses from the operation of the pass-through business and does not include passive income, such as interest, dividends or even capital gains.

The starting point for determining "QBI" is difficult, since the starting point is "profit of the business," which is not really defined under the Internal Revenue Code. Profit might be defined as gross revenue less expenses. The 20 percent deduction of this profit amount, subject to a number of limitations, passes through to the owner as a deduction, which can be claimed on his or her individual income tax return to offset other taxable income, such as wages, dividends, interest and other forms of income.

The deduction is 20 percent of your "qualified business income" (QBI)

from a partnership, S corporation or sole proprietorship, defined as the net amount of items of income, gain, deduction and loss with respect to your trade or business. The business must be conducted within the United States to qualify, and specified investment-related items are not included, *e.g.*, capital gains or losses, dividends and interest income (unless the interest is properly allocable to the business). The trade or business of being an employee does not qualify. Also, QBI does not include reasonable compensation received from an S corporation or a guaranteed payment received from a partnership for services provided to a partnership's business.

The deduction is taken "below the line," *i.e.*, it reduces your taxable income but not your adjusted gross income, but is available regardless of whether you itemize deductions or take the standard deduction. In general, the deduction cannot exceed 20 percent of the excess of your taxable income over net capital gain. If QBI is less than zero, it is treated as a loss from qualified business income

the following year.

There is also a different phase-out for service businesses, which is applicable to those trades or businesses involving the performance of services in the fields of health, law, consulting, athletics, financial or brokerage services, or where the principal asset is the reputation or skill of one or more employees or owners. The exemption amounts and phase-in amounts are different. It is interesting to note that certain personal service providers have been excluded from the personal service rules.

Conclusion

This article only briefly covers some of the most significant changes to you and your law practice. There are additional rules and limitations which may apply and, as with any piece of large legislation, there will be many lingering questions regarding implementation. Should you have any questions regarding the Tax Act, it is recommended that you consult your paid tax professional,

particularly since the new Tax Act could result in material changes to your law practice.

FOOTNOTES

1. Unless otherwise noted, the changes are effective for tax years beginning in 2018 through 2025.

2. Exemptions exist for meeting the requirements of the wage limitation, where taxable income for a single filer is \$157,500 or less; or for married filing jointly, \$315,000 of income or less. Then there is a phase-out amount, and then the wage test becomes applicable.

Christian N. Weiler holds a master of law degree in taxation from Southern Methodist University Dedman School of Law. He practices with the law firm Weiler & Rees, L.L.C., with offices in New Orleans and Covington. His law practice includes all areas of tax law, including federal, state and local tax matters, tax disputes, tax litigation, business planning and estate planning. (cweiler@wrtaxlaw.com; Ste. 1250, 909 Poydras St., New Orleans, LA 70112)



Ethics Advisory Service

www.lsba.org/goto/ethicsadvisory

For assistance with dilemmas and decisions involving legal ethics, take full advantage of the LSBA's Ethics Advisory Service, offering - at no charge - confidential, informal, non-binding advice and opinions regarding a member's own prospective conduct.

Eric K. Barefield, Ethics Counsel

LSBA Ethics Advisory Service, 601 St. Charles Ave., New Orleans, LA 70130-3404

(504)566-1600, ext. 122 • (504)619-0122 • toll-free: (800)421-5722, ext. 122

Fax: (504)598-6753

E-mail: ebarefield@lsba.org



The Attorney Oath

I SOLEMNLY SWEAR OR AFFIRM:

I will support the Constitution of the United States and the Constitution of the State of Louisiana.

I will maintain the respect due to courts of justice and judicial officers.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed or delay any person's cause for lucre or malice.

SO HELP ME GOD!



The Attorney Oath: The Foundation of the Practice of Law

By Charles R. Moore

Attorneys have taken an oath to protect our Constitution and the Rule of Law. This oath, which some may have forgotten, is the foundation of who we are as a profession and the bedrock of our discipline, accompanied by other professionalism rules and guidelines. I took my oath 46 years ago. Until I watched my daughter, Meredith, being sworn in as an attorney 16 years ago, I had forgotten much of what was in the oath, its importance, how sweeping, grand, inspirational and aspirational it was, and the importance of the role we as attorneys play in a properly functioning nation.

The Oath

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SO HELP ME GOD!

The Bar

What a profession we have chosen! How grand it is, how sweeping our commitments, pledges and promises are. At our core, we are pledged to and bound by justice, integrity, truth, honor, fairness, civility and the cause of the defenseless or oppressed. This oath sets us apart from other professions. How proud we should be to be a member of a profession which binds itself to such high ideals and makes them a part of who we are. As attorneys, we are responsible for the fundamental principle of our democracy — the rule of law. We are officers of the court. This means we have an obligation to promote justice and the effective operation of the judicial system, just as judges and their court personnel are required to do. As officers of the court, we have an absolute ethi-

cal duty to tell the truth, which includes the responsibility of not being evasive.

As lawyers, we are an *ex facto* part of our government, foot soldiers in the implementation of the rule of law. If we fail, our system fails. If we are dishonest, our system is dishonest. Where we succeed, we all succeed. Without lawyers, our laws would be only ink on paper or electronic bytes in a database. We are an integral, indispensable, necessary and that-which-our-nation-cannot-do-without part of our national fabric based on the rule of law.

We ensure that commerce is possible, promises are kept and debts are paid. We are charged with preserving, protecting and applying the most fundamental principles of our nation, those that make us who we are and are part of our national identity, including equal justice for all; due process; free speech and freedom of the press; freedom of religion; freedom from unreasonable search and seizure; an independent judiciary; and a fair and impartial forum.

Our oath is required because of the power we exercise. We sometimes forget the great power with which we have been entrusted and its impact on others. It is these powers which we must exercise within the boundaries of our oath. They are powers which should only be entrusted to those who bind themselves to the principles stated in the oath. We do not have a choice. As attorneys, like it or not, we are role models. We have promised it; it is part of our job description. Being a professional trumps our role as a busi-

nessman. It is a way of life and a promise on how we will conduct ourselves in dealing with others. However, we must find our place, meeting the requirements of the “business side” while being faithful to our oath and the promises we have made on the “professional side.”

There can be no “equal justice under law” where all cannot enter the courthouse. There are those who work hard to close those doors. Our job is to keep them open. Attorneys represent not only the monied and powerful but also ordinary people, people who cannot afford to pay an hourly rate or the expenses of litigation and who, as a practical matter, cannot enter the courthouse unless an attorney chooses to represent them. A litigant who does not have an attorney has little chance of success, especially against those who have “lawyered-up.”

The Bench

Justice cannot be fair and impartial unless the judiciary is independent and insulated from outside influences. Do nothing to undermine it. There are those who, because of religious or political beliefs, have chosen intimidation of courts and judges as a means to influence their decisions.

One of the most egregious examples of judicial intimidation involved Judge George W. Greer, a Florida Republican probate judge and a former land use attorney whose claim to fame before being allotted the Terri Shiavo case was that he was the college roommate of Jim Morrison of The Doors. Terri Schiavo was a married woman who had a heart attack, sustained massive brain damage and was in a persistent vegetative state. Her husband filed a petition to remove her feeding tube and end life support. His petition was opposed by Terri’s parents. A trial was held, five neurologists testified, and the court found that Terri was brain dead and it was proper that she be removed from life support. The decision was affirmed on appeal.

The result was a political firestorm with the active intervention of the Governor of Florida and the President of the United States. The Speaker of the House of Representatives referred to Judge Greer’s decision as “judicial

terrorism.” Upon my invitation, Judge Greer came to Baton Rouge to speak at a joint seminar sponsored by the American Board of Trial Advocates (ABOTA) and the Baton Rouge Bar Association. It was during his speech that we learned of the fear and anxiety with which he and his family had to live. He required a police escort. He had to wear a bullet-proof vest. Dead flowers were delivered to his house to send him a message. He was a Southern Baptist and his church asked him to resign his membership. Judge Greer, however, had the support of his local bar association. He received multiple awards from state and national bar associations for his courage, dignity, honor and independence in the face of an orchestrated national campaign of intimidation directed against him.

Louisiana judges also have faced attempts at intimidation. The late Judge Frank J. Polozola of the U.S. District Court, Middle District of Louisiana, had a contract placed on him because of his involvement in the Barry Seal case. He lived in fear for himself and his family which was intensified when a judge he knew was murdered. He limited his public appearances and was always looking over his shoulder. He was never at peace.

Also, 19th Judicial District Court Judge William A. Morvant was called upon to decide the constitutionality of a bill calling for an amendment to the state Constitution prohibiting same-sex unions. He found the statute unconstitutional because it did not comply with the requirement that the subject matter of the bill be stated in the title of the bill. As a consequence, Judge Morvant received threats and intimidating mailings. He was the subject of a national conservative radio talk program which urged its listeners to send the judge a message on the error of his decision. Like the others, Judge Morvant was in fear for his safety and that of his family. He, like Judge Greer, required police protection.

These judges were simply doing their jobs in accordance with their oath of office, regardless of their personal beliefs. They reached decisions which they believed were required by the law and the facts and, because of their decisions, they became the target of those who opposed their rulings

because it did not fit their political or religious agenda. As lawyers, subject to this oath we all take, we must protect and defend our judiciary, stand up for them and with them and not let them stand alone when they are attacked for doing their jobs.

We also must understand that we can undermine judicial independence. Suggesting to a client or other attorney that the judge is a friend and will give you special consideration is patently wrong. Suggesting that because you have been a political supporter (financial or personal) you would expect the judge to be biased in your favor is wrong. Hiring a friend or political supporter of the judge for the hope of a more favorable ruling is wrong. These actions undermine and diminish the independence of the judiciary in the eyes of the public as well as with other attorneys. It is also a confession by the lawyer performing these acts that he believes the judge can be influenced and will decide the case on a basis other than the law and the evidence.

Conclusion

There is no profession with a greater responsibility to honor the sacrifice so many others have made than the legal profession. We must fulfill our oath. We must read and reread it, understand it, remember it and live by it and ensure that the law is rightfully applied, our courts and judges respected, that dealings are fair and just, and the defenseless and oppressed are not rejected. Such is the oath we have taken.

Charles R. Moore is a 1972 graduate of Louisiana State University Paul M. Hebert Law Center (Order of the Coif and member of the Louisiana Law Review). He was appointed co-chair of the Louisiana State Bar Association committee which drafted the Code



of Professionalism, for which he received the President’s Award in 1990. He is a board-certified civil trial attorney with Moore & Hunter, A.P.L.C., in Baton Rouge. Over his 46-year career, he has held many positions of leadership in the Bar and has been a frequent speaker on professionalism. (moore@moorelawbr.com; 6513 Perkins Rd., Baton Rouge, LA 70808)

EVOLUTION of the PROFESSION

LJC / LSBA JOINT SUMMER SCHOOL
& 2019 LSBA ANNUAL MEETING
WWW.LSBA.ORG/ANNUALMEETING

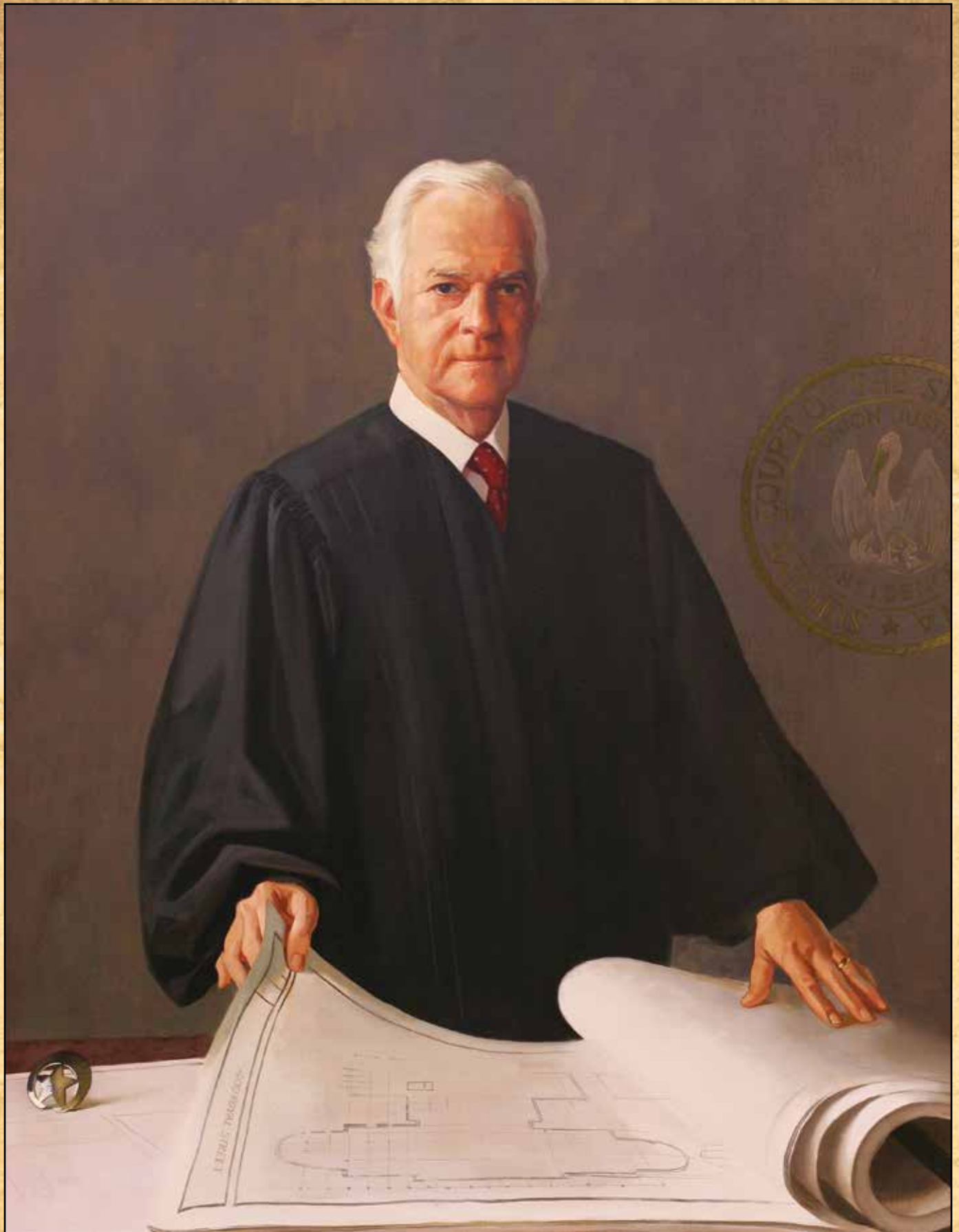
Destin, Florida



JUNE 2-7, 2019



What a long
strange trip
it's been



Portrait of Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr., 2008. *Reproduced with permission of the Louisiana Supreme Court.*

In Memoriam: Retired Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr.

Retired Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr., 87, died on Dec. 20, 2018. He was the longest-serving justice in the history of the Louisiana Supreme Court, serving for 36 years from Jan. 10, 1973, to Dec. 31, 2008. He served as chief justice for 18 years, from April 1, 1990, to Dec. 31, 2008.

A native New Orleanian, Chief Justice Calogero attended St. Aloysius High School (now Brother Martin High School) and Loyola University. He earned his law degree from Loyola University Law School in 1954, graduating first in his class and serving as president of the Student Editorial Board of the *Loyola Law Review*. He later received a Master of Laws degree in judicial process from the University of Virginia (1992). He served three years in the U.S. Army, first as a military police officer, then as a JAG in the Judge Advocate General's Corps. He worked as a law clerk at Orleans Parish Civil District Court prior to practicing law from 1958-72 with the law firm of Landrieu, Calogero & Kronlage with lifelong friends Moon Landrieu and Charles A. Kronlage, Jr.

In 1972, Chief Justice Calogero was elected to the Louisiana Supreme Court from the First Supreme Court District, consisting of the parishes of Orleans, Jefferson, St. Bernard and Plaquemines. He was re-elected in 1974, 1988 and 1998. His impact on the Supreme Court was felt immediately when he became the majority vote for opinions that followed the directive of the



Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr., looking out of the courtroom window, with part of the renovated Louisiana Supreme Court building in the background. *Reproduced with permission of the Louisiana Supreme Court.*

U.S. Supreme Court in the criminal justice field, directives that were being resisted in Louisiana.

During his historic tenure on the Supreme Court, he authored more than 1,000 learned majority opinions, concurrences and dissents, including numerous historic and groundbreaking decisions, and participated in more than 6,000 oral arguments and published opinions. His opinions and writings reflected his intellect, his integrity, his respect for the rule of

law, and his passionate dedication to fairness and justice.

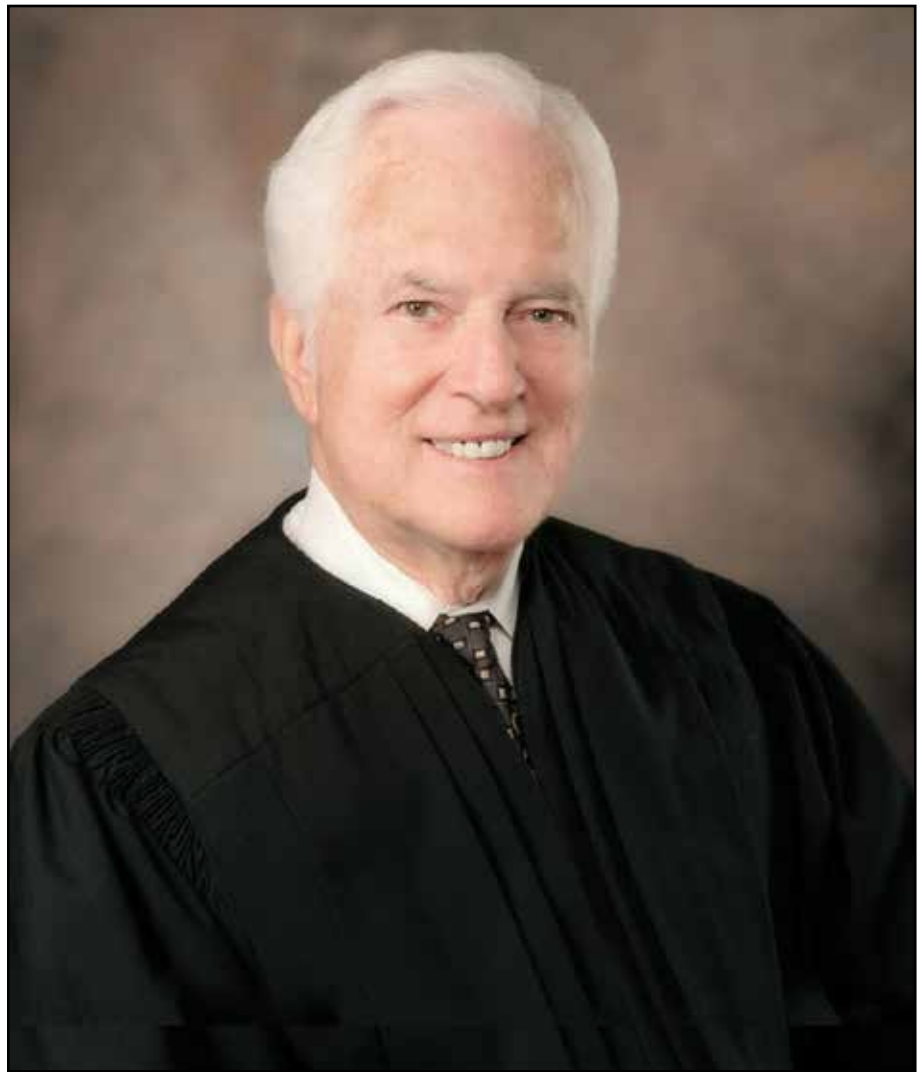
As chief justice, he spearheaded numerous reform initiatives in the area of the law, the legal system and the administration of justice in Louisiana, many of which serve as national models of court improvement. He considered his Court's most important administrative achievements to be completion of the restoration of the Royal Street Courthouse, improvements in Louisiana's indigent defense

system, improvements in both the attorney and judicial disciplinary systems, and the maintenance of a consistently current court docket for 36 years.

Following his retirement from the Louisiana Supreme Court in 2008, he returned to the private practice of law. He opened his own boutique firm focused on appellate practice.

During his illustrious career, Chief Justice Calogero was the recipient of numerous accolades and awards, including the Louisiana Bar Foundation's 1991 Distinguished Jurist Award; an honorary Doctor of Laws degree from Loyola University College of Law; induction as an honorary member of Louisiana State University Paul M. Hebert Law Center's Order of the Coif and Hall of Fame; the Justice Albert Tate, Jr. Award from the Louisiana Association of Criminal Defense Lawyers; and the distinguished Medal of Honor Award from the Mayor of New Orleans. In 2007, the American Judicature Society, a national nonpartisan organization dedicated to the effective administration of justice, awarded Chief Justice Calogero the Dwight D. Opperman Award for Judicial Excellence. He continued to receive honors after his retirement in 2008, including the dedication in his honor of an issue of the *Louisiana Bar Journal* and the Louisiana Association of Criminal Defense Lawyers' Lifetime Achievement Award. The Louisiana Bar Foundation instituted the Calogero Justice Award, presented annually to recognize a significant contribution to the Louisiana justice system. He also received the Integritas Vitae Award, Loyola University's highest honor, presented to individuals who possess a high moral character in a lifetime of service, and the ACLU's Ben Smith Award for his commitment to the advancement of civil liberties in Louisiana.

Upon his retirement in 2008 from the Louisiana Supreme Court, Chief Justice



Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. *Reproduced with permission of the Louisiana Supreme Court.*

Calogero expressed that he hoped he would be remembered as "an energetic, hard-working, honest and able judge who contributed to maintaining stability in the law and jurisprudence while serving the least privileged of our citizens with compassion, integrity and fairness."

Chief Justice Bernette Joshua Johnson commented, "Today we lost a giant in our legal profession. I served with Justice Calogero for 14 years on the Supreme

Court and, during that time, I developed a deep respect for my colleague's intellect, his integrity, and his dedication to fairness and justice. His contributions to Louisiana law and judicial administration are immeasurable."

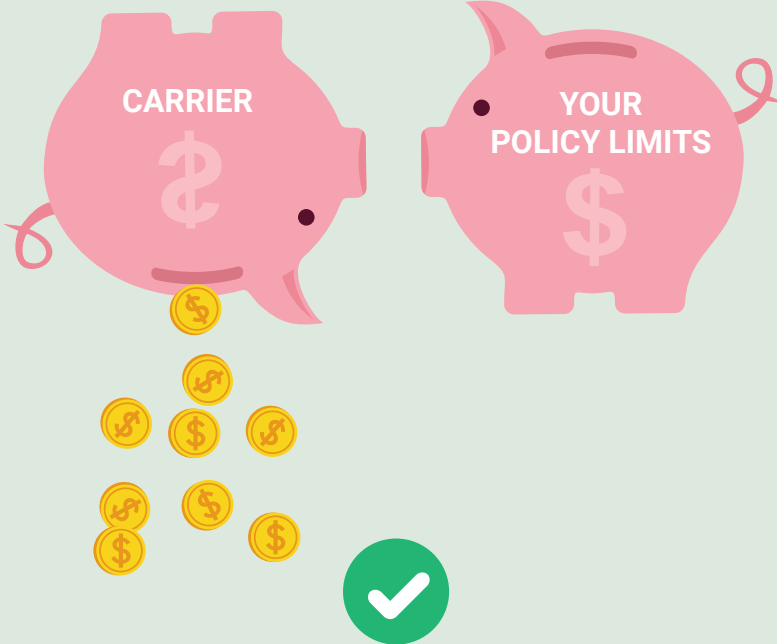
Chief Justice Calogero is survived by his wife, Leslie M. Langhettee, 10 children, and many grandchildren, nieces, nephews and extended family.

Special Issue on Chief Justice Calogero's Retirement Published in December 2008/January 2009

On the occasion of Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr.'s retirement from the Court, a special commemorative issue of the *Louisiana Bar Journal* was published. That issue is available for review online at: www.lsba.org/goto/JournalDec2008.

DEFENSE EXPENSES

CLAIMS EXPENSES



ENDORSED POLICY

DEFENSE & CLAIMS EXPENSES



NON-ENDORSED POLICIES

NOT ALL MALPRACTICE POLICIES ARE

CREATED EQUAL

DOES YOUR MALPRACTICE POLICY QUOTE SEPARATE DEFENSE LIMITS?

Attorneys know expenses start before a claim settlement is reached. Even a potential claim costs time and money. You may reach your coverage limit prematurely if defense costs are included in your coverage limit. Your LSBA-endorsed policy can provide defense and claims costs outside of the damage limits. Compare policies and make sure you know all the facts. Remember, less premium may mean less coverage.



This information is intended to present a general overview for illustrative purposes only. It is not intended to constitute a binding contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured.

800.906.9654

GilsbarPRO.com

733 Children Assisted Through LSBA/LBF's Secret Santa Project

The Louisiana State Bar Association (LSBA)/Louisiana Bar Foundation Community Action Committee's 2018 Secret Santa Project made the holiday season brighter for 733 children, represented by 15 social service agencies in six Louisiana parishes. This was the 22nd year for the Project.

Via the Project, Louisiana attorneys and other legal professionals volunteer to be anonymously matched with the children. Each "adopting" Santa receives the "wish list" prepared by the child and purchases toys, books, clothes and other gifts based on the list.

"It warms my heart every year to see the generosity exhibited by our attorneys and legal professionals. Often, there are more attorney volunteers who want to participate than there are children to adopt," said LSBA President Barry H. Grodsky. "On gift drop-off week, the Louisiana Bar Center's conference rooms and hallways become Holiday Central, overflowing with bikes, trikes, stuffed animals and bags of gifts, all guaranteed to bring smiles to hundreds of children for the holidays," he added.

The 733 children this year were represented by Boys Hope Girls Hope (Orleans Parish), CASA Jefferson (Jefferson Parish), CASA Lafourche (Lafourche Parish), CASA New Orleans (Orleans Parish), CASA Terrebonne (Terrebonne Parish), Children's Bureau (Orleans Parish), Children's Special Health Services Region IX (Tangipahoa Parish), Gulf Coast Social Services (Orleans Parish), Incarnate Word Head Start (Orleans Parish), JEFFCAP Head Start (Jefferson Parish), Methodist Children's Home of



Louisiana State Bar Association President Barry H. Grodsky showcased some of the gifts purchased by Louisiana attorneys and legal professionals for the 2018 Secret Santa Project, which assisted 733 children represented by 15 social service agencies.

Southeast Louisiana and Greater New Orleans (Orleans Parish), Metropolitan Center for Women and Children (Orleans Parish), North Rampart Community Center (Orleans Parish), Southeast Advocates for Family Empowerment (Tangipahoa Parish) and St. Bernard Battered Women's Program (St. Bernard Parish).



Original art submitted by children assisted by the Secret Santa Project.

LBLS Accepting Requests for Certification Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for certification in four specialties — appellate practice, estate planning and administration, family law and tax law — through Feb. 28, 2019. The LBLS is accepting applications for certification in the new specialty of health law through March 31, 2019. The LBLS will accept applications for business bankruptcy law and consumer bankruptcy law certification through Sept. 30, 2019.

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

ciency in the area for which certification is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBLS standards for the applicable specialty for a detailed description of the requirements: www.lsba.org/goto/specialization.

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

- ▶ Appellate Practice — 18 hours of approved appellate practice law.
- ▶ Estate Planning and Administration Law — 18 hours of approved estate planning law.
- ▶ Family Law — 18 hours of approved family law.
- ▶ Health Law — 15 hours of approved health law.

▶ Tax Law — 18 hours of approved tax law.

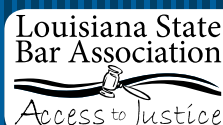
▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

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 to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s) and can be viewed online at: www.abworld.org.

Anyone interested in applying for certification should contact LBLS Specialization Director Mary Ann Wegmann, email maryann.wegmann@lsba.org, or call (504)619-0128. For more information, go to the LBLS website link listed above.



A FREE ONLINE FORUM FOR CIVIL LEGAL QUESTIONS



LBLS 2019 Annual Dues Notices Mailed

All qualified Louisiana Board of Legal Specialization (LBLS) specialists have been mailed dues notices. The completed original dues notice, together with proof of professional liability insurance and the appropriate fee, should be mailed or delivered to the LBLS office, 601 St. Charles Ave., New Orleans, LA 70130, no later than Feb. 28, 2019, to avoid a penalty assessment. For more information, contact LBLS Specialization Director Mary Ann Wegmann, (504)619-0128, email maryann.wegmann@lsba.org.

How do you address your stress? Don't go it alone.
*Call JLAP,
we'll show you the way.*

Judges and Lawyers Assistance Program, Inc. (JLAP)

Toll-free (866)354-9334
Email: jlap@louisianajlap.com

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2019-20 Bar year. Louisiana State Bar Association (LSBA) President-Elect Robert A. Kutcher 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 15. 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 information to the membership; identifies resources available to the Legislature; provides other appropriate non-partisan assistance; and advocates for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services.

Medical/Legal Interprofessional Committee

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

Outreach Committee

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

Practice Assistance and Improvement Committee

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

Committee on the Profession

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

Rules of Professional Conduct Committee

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

Transitioning Lawyers Committee

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

Unauthorized Practice of Law Committee

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

Louisiana State Bar Association 2019-20 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 15, 2019

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).

LAWYERS IN THE CLASSROOM

JUDGES IN THE CLASSROOM

March, 2019

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.



Randall L. Bethancourt
President
Louisiana Center for Law
and Civic Education

Sincerely,

Barry H. Grodsky
President
Louisiana State Bar Association



Lisa Woodruff-White
President
Louisiana District Judges
Association



LAWYERS IN THE CLASSROOM

JUDGES IN THE CLASSROOM



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.



Volunteer to Visit a Classroom in your Area!

*Would you like to make a law-related presentation in a classroom in your area?
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 2nd graders on or around Law Day (May 1st).*
- *I would like a Constitution Day presentation for my 10th graders on or around Constitution Day (September 17th).*
- *I have no specific topic in mind but would appreciate the opportunity to have someone from the legal community visit my middle school classroom the first week of October.*

Specific topic you would like to present: _____

Grade level preference: Elementary School Middle School High School

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

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

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

Please return to Kandis Showalter, LCLCE Program Coordinator

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

For additional information: (504)619-0141

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

[C]ivility means more than manners or politeness. It is the self-discipline produced by thought and practice that enables one to live in a community without offending others or violating established norms of behavior.

—Judge John L. Kane, Jr., United States District Court

The practice of law requires actively engaging in the adversarial process. For the legal profession, at least, that process does not require — nor permit — behavior that is demeaning, offensive, obstructive, obnoxious or prejudicial to judges, other officers of the court or the administration of justice, nor does it include personal attacks against anyone.

Every attorney takes an oath to “maintain respect due to courts of justice and judicial officers” and to “pledge fairness, integrity and civility” to opposing parties and their counsel in court and in communications. The Louisiana Code of Professionalism states that a lawyer will conduct himself or herself with “honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.”

Pandering to the ill-informed expectations of potential clients (who may have based their opinions of the perfect lawyer on television or film) does a disservice to the entire legal profession and the judicial system as a whole. The role of a lawyer is not to satisfy the client’s appetite for vengeance (or theatrics); it is to provide calm, reasoned guidance. As Judge Kane observed:

Litigants can be expected to have their emotions override their reason and do things out of anger, frustration or peevishness, but the very function of a lawyer is to stand between the client and his own destructive impulses. Lawyers are expected to act with grace and good judgment under conditions of extreme stress. It is essential for a lawyer to step back from the exigencies of the moment and think calmly for the client’s benefit. Being uncivil means that a lawyer is out of control.

Emotional responses have no place in the courtroom, between attorneys or between counsel and the bench. Incivility not only violates a state’s guidelines for lawyer conduct, but it also can place a lawyer on the fast track to suspension. States are becoming increasingly intolerant of lawyer incivility — not only for verbal infractions in court, but for written communications and dishonorable tactics as well.

According to the American Bar Association (ABA), a lawyer’s alleged incivility could implicate Rule 1.1 of the ABA Model Rules of Professional Conduct (competence) but would most likely and most often violate the rule against misconduct, Rule 8.4. The Louisiana Rules of Professional Conduct¹ provide:

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; . . .

An attorney’s “rude and antagonistic behavior” resulted in a public reprimand and a two-year suspension. *Fla. Bar v. Norkin*, 132 So.3d 77 (Fla. 2013). Among other actions, the attorney accused a judge and a former judge of improper conduct, improperly threatened to file a legal action against the former judge, “engaged in unceasing efforts to denigrate and humiliate opposing counsel,” yelled at judges during hearings and demonstrated disrespectful conduct during several court hearings. His actions violated Florida’s Rules of Professional Conduct prohibiting false statements concerning the integrity of judges or other legal officers, engaging in conduct intended to disrupt a tribunal, and engaging in conduct prejudicial to the administration of justice.

An attorney who was overheard saying “lie, lie, lie” during opposing counsel’s direct examination of a witness also repeatedly kicked the leg of opposing counsel’s table, threw documents on counsel’s table, and was rude, overly aggressive, unprofessional and, at times, appeared to try to

intimidate a witness. The attorney was disbarred for engaging in such conduct. *Fla. Bar v. Ratiner*, 238 So.3d 117, 118 (Fla. 2018). In its decision, the court stated:

One can be professional and aggressive without being obnoxious. Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward opposing counsel. This Court has been discussing professionalism and civility for years. We do not tolerate unprofessional and discourteous behavior. We do not take any pleasure in sanctioning [Respondent], but if we are to have an honored and respected profession, we are required to hold ourselves to a higher standard.

Fla. Bar v. Ratiner, 238 So.3d 117, 126-27 (Fla. 2018) (citing *Norkin*, 132 So.3d at 92-93).

Incivility is not a new concern in the legal profession, but it is one we can control. The groundswell of destructive impulses that has flooded seemingly every facet of life serves no purpose in our profession.

We should reject incivility as bad policy, bad advocacy, and — usually — factually wrong. Besides, incivility is hardly risk-free: if we try to be good lawyers without also being good people, we run the risk of being neither.
—Judge J. Frederic Voros, Jr. (Ret.),
Utah Court of Appeals

FOOTNOTE

1. Louisiana adopted the ABA’s Model Rules of Professional Conduct in 1986.

Nisha Sandhu is a contract attorney for Gilsbar, L.L.C., in Covington. She received a BA degree in history from the University of Chicago and her JD degree from Loyola University College of Law. Her practice includes appellate law, family law and criminal defense. Email her at firm@nsacla.com.



More and more, people are shedding the veil of anonymity and going public about their personal recovery from the diseases of addiction and alcoholism. This shift is overdue because the only way to reduce stigma and focus on better treatment solutions is for people to speak out publicly about their recovery experiences and normalize them.

The 2013 film, *The Anonymous People*, by Greg Williams challenges old perspectives that can discourage people from revealing their personal recovery stories at the level of press, radio and films.

Of course, anonymity is a sacrosanct cornerstone of A.A. and anonymity is afforded each member unconditionally. It is up to A.A. members as to whether they will ever, outside of their closed group, reveal they are alcoholics or in A.A. Just like absolute confidentiality at JLAP, people must have the promise of anonymity in A.A. Without total privacy, it's too hard for many alcoholics and addicts to initially ask for help.

Anonymity is the "spiritual foundation" of A.A. and it is necessary to foster humility, equality and unconditional inclusiveness which are core properties essential to A.A.'s success. Remaining anonymous about A.A. at the level of press, radio and films has been historically more important than the stigma reduction that might be accomplished by public figures sharing they are personally in A.A.

But the compelling question these days is what happens when people and public figures are in solid recovery and want to speak out at the level of press, radio and films? Historically, A.A. traditions have deterred public figures from openly sharing they are active in long-term recovery, but, in fact, it's fine to openly state you are in recovery without referring to A.A.

The Anonymous People makes an argument that fierce boundaries of anonymity may have been appropriate decades ago but may now be counterproductive. It's arguable that silencing those who would speak out is harming our ability to connect, openly support each other, and truly reduce stigma in ways that can really normalize addiction and alcoholism as the treatable health issues they are. If everyone in recovery "came out," the national conversation would be very different.

The Anonymous People storyline on IMDB per the film's creator Greg Williams:

*Deeply entrenched social stigma have kept recovery voices silent and faces hidden for decades. The vacuum created by this silence has been filled by sensational mass media depictions of addiction that continue to perpetuate a lurid public fascination with the dysfunctional side of what is a preventable and treatable health condition. Just like women with breast cancer, or people with HIV/AIDS, a grassroots social justice movement is emerging. Courageous addiction recovery advocates have come out of the shadows and are organizing to end discrimination and move toward recovery-based solutions. The moving story of *The Anonymous People* is told through the faces and voices of the citizens, leaders, volunteers, corporate executives, and public figures who are laying it all on the line to save the lives of others just like them. This passionate new public recovery movement is fueling a changing conversation that aims to transform public opinion and finally shift problematic policy toward lasting solutions.*

As an example of what is possible, the film tracks what happened with the HIV/AIDs epidemic. People were dying.

There was little hope for a cure. The disease was cloaked in shadows, shame and stigma. Misinformation, ignorance and fear drove narratives. Facts were hard to come by.

When the death toll mounted, people then became willing to come out of the shadows and go public. There were marches. Celebrities spoke out. We could all see the real gravity of the AIDs epidemic. Resources and research were directed at the problem. There are still deaths from AIDs, but at vastly reduced rates than before. Going public worked because it allowed the world to see a huge health problem with compassion instead of judgment.

The bottom line: If you need help, IT IS OKAY. YOU ARE NOT ALONE. There are an estimated 23 million people in recovery from addiction and alcoholism. People in all walks of life have experienced these health issues and WON — airline pilots, doctors, lawyers, nurses, athletes, authors, actors, musicians and captains of industry. Some of the most talented and gifted people on this planet are in personal recovery and are living full and productive lives.

Don't let stigma and fear get in your way. A confidential call to JLAP connects you with lawyers who have *personal experience* in overcoming these issues. JLAP connects you to powerful resources that save lives. No one else will ever know you called JLAP unless you decide to tell them. Call (985)778-0571, email jlap@louisianajlap.com or visit www.louisianajlap.com.

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



EVENT UPDATES



Several new admittees attended the New Admittees Reception on Nov. 8, 2018, in New Orleans. From left, Jackson M. Smith, Geiger Laborde & Laperouse; Leigh B. Ackal, Geiger Laborde & Laperouse; J. Tyler Clemons, Southern Poverty Law Center; Deandra N. De Napoli, Scott, Vicknair, Hair and Checki, LLC; Katherine D. Honeywell, Garrison, Yount, Forte & Mulcahy, LLC; and Whitney M. Wilson, Sangisetty Law Firm, LLC.



J.E. (Buddy) Stockwell III, executive director of the Judges and Lawyers Assistance Program (JLAP), presented “When, Where and How to Get Meaningful Assistance When Needed” at the LSBA Disabilities CLE “Fit to Practice” in November 2018.



The Louisiana State Bar Association (LSBA) Member Outreach and Diversity Department hosted the annual New Admittees Reception on Nov. 8, 2018, at the Louisiana Bar Center in New Orleans. LSBA President Barry H. Grodsky, center, welcomed the new attorneys along with other local and specialty bar leaders. Attending from left, Lynn Luker, at-large member, LSBA Board of Governors; LSBA President-Elect Robert A. Kutcher; Grodsky; LSBA Secretary John E. McAuliffe, Jr.; and Dylan T. Thriffiley, chair of the LSBA Young Lawyers Division.



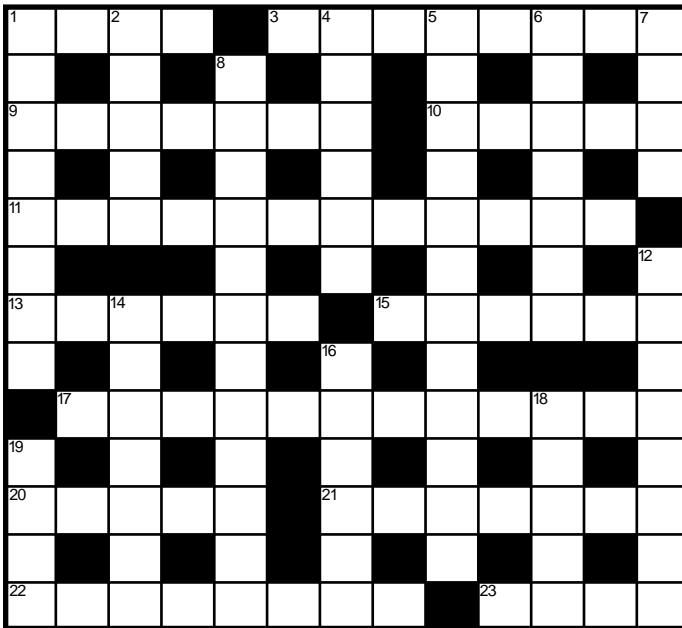
The Louisiana State Bar Association’s (LSBA) Diversity Committee held the LSBA Disabilities CLE “Fit to Practice” on Nov. 1, 2018, at the Louisiana Bar Center. Presenters included, from left, Richard P. Lemmler, Jr., LSBA ethics counsel, New Orleans, “Ethical Obligations/Reasons for Advance Planning by Lawyers;” Ashley M. Flick, loss prevention counsel, Gilsbar, Inc., Covington, “Loss Prevention & the Legal Malpractice Policy;” and Damon S. Manning, Schiff, Scheckman & White, LLP, Hammond, “Potential Ethical/Disciplinary Consequences.”

To view the Conclave materials, agenda, speaker bios and list of sponsors and co-hosts online, visit: www.lsba.org/goto/2019Conclave. Click on “View Conclave 2019 Details.”

Crossword PUZZLE

By Hal Odom, Jr.

FIND THE PRESIDENTS DAY



ACROSS

- 1 Shrub, or wild area (4)
- 3 Lunged with great force (8)
- 9 Submit to, as an operation (7)
- 10 Card that takes any trick (5)
- 11 Driving somebody around (12)
- 13 Puncture or make a hole through (6)
- 15 One pushing a small wagon (6)
- 17 Quality for which photos may be excluded from evidence (12)
- 20 Government money that need not be repaid (5)
- 21 Element Re, in full (7)
- 22 Old name for Denali (8)
- 23 Shallow place to cross a river (4)

DOWN

- 1 What Texas Rangers fans wear on their heads (4, 4)
- 2 The half of a single that everybody listened to (4, 1)
- 4 Vacuum cleaner, generically (6)
- 5 Never subjected to danger (12)
- 6 Genuine weirdo (4, 3)
- 7 Con game victim (4)
- 8 Having great ability with, e.g., a foreign language (10, 2)
- 12 Taken as true (8)
- 14 Legislative setaside (7)
- 16 Seat of Ouachita Parish (6)
- 18 Communal farmland, in Mexico (5)
- 19 "Never so rich ___ / Was set in worse than gold," line from *The Merchant of Venice* (1, 3)

Answers on page 389.

SOLACE: Support of Lawyers/Legal Personnel — All Concern Encouraged

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

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

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

FOCUS ON Professionalism

By Lauren E. Godshall

STAYING ETHICAL IN FACE OF DISASTER

In fall 2018, the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility must have been feeling pessimistic. In September, the committee released Formal Opinion 482, “Ethical Obligations Related to Disasters.” Then, in October, the committee released Formal Opinion 483, “Lawyers’ Obligations After an Electronic Data Breach or Cyberattack.”

In 2018, disasters of both sorts abounded. Summer 2018 saw “an unprecedented spate of extreme floods, droughts, heat waves and wildfires break out across North America.”¹ The World Economic Forum’s “Global Risks Report 2018” (a truly terrifying report) names cyberattacks and cyber warfare as top causes of disruption in the next five years, coming only after natural disasters and extreme weather events.² Law firms are increasingly coming under attack by hackers, and an ABA survey saw 22 percent of firms reporting a data breach in 2017, with the numbers jumping higher every year.³

There is no “free pass” on attorney ethical obligations during times of disaster or strife. Louisiana lawyers practicing in the aftermath of Hurricane Katrina know firsthand the unique problems faced in attempting to represent clients when lines of communication are unreliable and physical documents are missing or destroyed. While the ABA has created guides, checklists and even a committee to address the *practical* issues faced following a natural disaster,⁴ there is a “dearth of guidance on a lawyer’s *ethical* responsibilities (i) when a disaster threatens and (ii) after a disaster occurs.”⁵

Formal Opinion 482 is straightforward, reminding attorneys that they are required under the rules of professional responsibility to maintain communications with clients. But that, practically speaking, can become difficult when one cannot physically get into the office and locate clients’ phone numbers. The ABA recommends maintaining lists of clients with contact information that attorneys can keep with them without having to access office files or specific computers. Saving information on the cloud seems to be

one answer. In addition, the ABA suggests that attorneys start early and provide clients with alternative contact information when hurricanes are predicted to occur.

Similarly, client files must be accessible to attorneys during and after emergencies. Again, storage in the cloud is likely the best way to go. However, this runs up against another ethical duty — the duty of confidentiality. Any time documents are saved in a cloud, there is a third party now involved — the company that is providing that storage space. Thus, attorneys’ ethical obligations include finding a reputable cloud service provider and actually reading the terms of service.

For example, Google’s free Drive service notes in its “Terms of Service” that, when content is stored to Drive, “you give Google a worldwide license to use, host, store, reproduce, . . . , communicate, publish, . . . and distribute such content.”⁶ This sounds like a potential breach of client confidentiality to me. Other services, like Dropbox, make clear they will not access — or publish! — your data, while more secure services guarantee double encryption and other protections. Attorneys need to be aware that available multiple cloud storage options may or may not offer sufficient protections of client data.

Formal Opinion 482 addresses other ethical issues common to disasters, including planning for a successor lawyer if an attorney dies in the disaster; properly withdrawing from representation if necessary; temporarily practicing in another jurisdiction or in an unfamiliar area of law; dealing with the loss of files or valuable client property; and how to ethically solicit or advertise to people affected by disaster.

Formal Opinion 483 addresses cyberattacks and data breaches. However, the duty to keep clients reasonably informed and the duty to protect client information are both similarly triggered by cyberattacks. This opinion addresses attorneys’ ethical obligations to prevent or avoid cyberattacks by staying reasonably informed about the risks and ensuring that electronic data in their custody is protected from outside breaches. However, the opinion also acknowledges that, to a certain

extent, cyberattacks are like hurricanes and may still hit even the best-prepared attorneys. When cyberattacks do occur, lawyers have “a duty to notify clients of the data breach under Model Rule 1.4 in sufficient detail to keep clients ‘reasonably informed’ and with an explanation to the extent necessary to permit the client to make informed decisions regarding the representation.”⁷

The ABA is predicting that lawyers might be facing circumstances that will make the normal practice of law difficult or impossible. While it is hoped that no attorney will ever need to consult these opinions in the middle of an ongoing disaster, it is a good idea to review them now, on a calm day lacking natural or manmade disasters, and get ready for the potentially tougher times ahead.

FOOTNOTES

1. Michael E. Mann, “It’s not rocket science: Climate change was behind this summer’s extreme weather,” *Washington Post*, Nov. 2, 2018.

2. World Economic Forum, “The Global Risks Report 2018, 13th ed.,” Jan. 17, 2018, available at: www3.weforum.org/docs/WEF_GRR18_Report.pdf.

3. Vivian Hood, “Law Firms and Cyber Attacks: What’s a Law Firm to Do?” *The National Law Review*, July 17, 2018.

4. ABA Committee on Disaster Response and Preparedness, www.americanbar.org/groups/committees/disaster/.

5. ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 482, “Ethical Obligations Related to Disasters,” Sept. 19, 2018, p. 2, emphasis added.

6. www.google.com/drive/terms-of-service/ (accessed 12/21/18).

7. ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 483, “Lawyers’ Obligations After an Electronic Data Breach or Cyberattack,” Oct. 17, 2018, p. 15-16.

Lauren E. Godshall is a mass torts attorney at Morris Bart, L.L.C., in New Orleans. She is current chair of the Louisiana State Bar Association’s (LSBA) Environmental Law Section, co-chair of the LSBA’s Legal Services for Persons with Disabilities Committee and a member of the LSBA’s Committee on the Profession. (lgodshall@morrisbart.com; 601 Poydras St., 24th Flr., New Orleans, LA 70130)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 7, 2018.

Decisions

Andrew T. Adams, Shreveport, (2018-B-1700) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on Oct. 29, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2018.

Raymond C. Burkart III, Covington, (2018-B-1077) **Disbarred** by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2018. *Gist:* Respondent was disciplined for acts of misconduct involving mismanagement of client trust account; failure to return unearned fees; failure to cooperate with the ODC; improper withdrawal; failure to communicate; and failure to exercise due diligence.

Durward D. Casteel, Baton Rouge, (2018-B-1745) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 5, 2018.

Joshua William Christie, New Orleans, (2018-OB-1537) **Permanently**

resigned in lieu of discipline by order of the Louisiana Supreme Court on Oct. 29, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2018.

Larry Curtis, Lafayette, (2018-B-1553) **Consented to a suspension from the practice of law for a period of six months, fully deferred**, by order of the Louisiana Supreme Court on Nov. 14, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 14, 2018.

Mitchel M. Evans II, DeRidder, (2018-B-0976) **Suspension of one year and one day** by order of the Louisiana Supreme Court on Oct. 8, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 22, 2018. *Gist:* Failed to provide competent representation; scope of representation; failed to communicate with clients; failed to refund unearned fee; violated the Rules of Professional Conduct; and engaged in conduct prejudicial to the administration of justice.

Tracey Michel Favorite, New Orleans, (2018-B-1078) **Disbarred** by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and

EFFECTIVE on Nov. 19, 2018. *Gist:* Respondent engaged in a pattern of issuing worthless checks over a three-year period and presented a check drawn on a closed account in the name of her mother to pay for office furniture.

Timmy James Fontenot, Mamou, (2018-B-1213) **Permanent disbarment from the practice of law** by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2018. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; knowingly making a false statement of material fact in connection with a disciplinary matter; failure to cooperate with the ODC in its investigation; violating the Rules of Professional Conduct; commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice.

George Martin Gates IV, New Orleans, (2018-B-0977) **Suspended for six months, fully deferred, and placed on unsupervised probation for a period of one year**, by order of the Louisiana Supreme Court on Oct. 29, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 12, 2018. *Gist:* Respondent violated duties owed to his clients, the legal system and the legal profession. His conduct was negligent in some instances and knowing in others which caused actual harm and potential harm to clients.

Kristy E. Griffin, St. Francisville, (2018-OB-1699) **Permanently resigned**

Continued next page

CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

E. PHELPS GAY KEVIN R. TULLY
H. CARTER MARSHALL
MARY BETH MEYER

(504)561-5700

601 POYDRAS STREET, SUITE 2300
NEW ORLEANS, LA 70130

Discipline continued from page 359
in lieu of discipline by order of the Louisiana Supreme Court on Dec. 3, 2018. JUDGMENT FINAL and EFFECTIVE on Dec. 3, 2018.

Frank Stanton Hardee III, Kaplan, (2018-B-1555) **By consent, suspended from the practice of law for a period of one year and one day, with all but six months deferred, subject to probation**, by order of the Louisiana Supreme Court on Nov. 14, 2018. ORDER FINAL and EFFECTIVE on Nov. 14, 2018. *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.

Bradley O. Hicks, Leesville, (2018-B-1211) **Suspended from the practice of law for a period of two years** by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2018. *Gist*: Respondent's professional misconduct derives from his failure to return unearned fees; failure to cooperate with the ODC;

improper withdrawal; failure to communicate with clients; and failure to exercise due diligence.

Scott Robert Hymel, Madisonville, (2018-OB-1680) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Nov. 20, 2018. ORDER FINAL and EFFECTIVE on Nov. 20, 2018. *Gist*: Lack of diligence; lack of communication; failure to cooperate with an ongoing disciplinary investigation; commission of a criminal act; engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Juan Carlos Labadie, Gretna, (2018-B-1033) **Disbarred** by order of the Louisiana Supreme Court on Oct. 29, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 12, 2018. *Gist*: Respondent violated duties owed to his clients, the public, the legal system and the legal profession. His conduct was both knowing and intentional and caused actual harm.

Jeanne Marie Laborde, Lafayette, (2018-B-1481) **Consented to a public rep-**

rimand by order of the Louisiana Supreme Court on Oct. 15, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 15, 2018. *Gist*: Respondent accepted the legal representation of a husband and wife whose legal interests were directly adverse to each other, and, then, after terminating the legal representation of the husband, filed suit on behalf of the wife against the husband in the same matter.

Robert A. Lenoir, Amite, (2018-B-1149) **On joint motion, had his conditional admission to the practice of law in Louisiana revoked** by order of the Louisiana Supreme Court on Oct. 8, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 8, 2018. *Gist*: Mr. Lenoir may not re-apply for admission until he can demonstrate at least a one-year period of sobriety and compliance with the terms and conditions of a contract with the Judges and Lawyers Assistance Program.

Shelley Ann Martin, New Orleans, (2018-B-0900) **Disbarred from the practice of law, retroactive to her interim**

Continued next page



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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. 3, 2018.

Respondent	Disposition	Date Filed	Docket No.
Jonathan B. Andry	Suspended for 12 months.	10/24/18	15-2478
Michael J. Billiot	Reciprocal suspension (fully deferred).	11/1/18	18-8587
Gregory Timothy Discon	Permanent resignation.	11/1/18	18-8586
Lionel Howard Sutton III	Suspended for 12 months.	10/24/18	15-2477

Discipline continued from page 360

suspension in *In Re: Martin*, 12-0328 (La. 2/7/12), 82 So.3d 1232, by order of the Louisiana Supreme Court on Sept. 21, 2018. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2018. *Gist*: Violating or attempting to violate the Rules of Professional Conduct; commission of a criminal act; engaging in conduct prejudicial to the administration of justice; conflict of interest; current clients; engaging in the unauthorized practice of law.

Sabinus A. Megwa, Phoenix, AZ, (2018-B-0778) **Reciprocal discipline of**

a 30-day suspension, followed by 18 months of supervised probation, by order of the Louisiana Supreme Court on Sept. 14, 2018. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2018.

Linda Louise Stadler, Mandeville, (2018-B-1212) **Suspended from the practice of law for a period of six months, fully deferred, followed by a two-year period of probation**, by order of the Louisiana Supreme Court on Nov. 5, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2018. *Gist*: Respondent's suspension is a result of two DWI matters.

Tyrone F. Watkins, New Orleans,

(2018-B-1332) **Suspended for three months, fully deferred, subject to a one-year period of probation**, by order of the Louisiana Supreme Court on Nov. 14, 2018. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2018.

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

Violation of Rule 8.4(g) — Threatening to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

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

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Inadvertent Omission of Executory Contract

RPD Holdings, L.L.C. v. Tech Pharmacy Servs. (In re Provider Meds, L.L.C.), 907 F.3d 845 (5 Cir. 2018).

The 5th Circuit recently held that when an executory contract is inadvertently omitted from a Chapter 7 debtor's schedules and,

neither assumed nor rejected, it is automatically rejected as a matter of law pursuant to Section 365(d)(1) of the Bankruptcy Code. Section 365(d)(1) provides that under Chapter 7: "[I]f the trustee does not assume or reject an executory contract . . . of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract . . . is deemed rejected."

RPD Holdings involved six debtors (OnSite debtors) who all operated as independent business entities, but all used the same pharmaceuticals dispensing software, OnSite. Prior to the bankruptcy filings, Tech Pharmacy Services sued several

parties, including OnSite debtors, claiming the OnSite software infringed on the patent for its software. The dispute was resolved through a "Compromise, Settlement, Release and License Agreement" (license agreement). The license agreement released all claims that were or could have been brought, granted the OnSite debtors a "non-exclusive perpetual license" and required OnSite debtors to pay a one-time licensing fee of \$4,000 for each new OnSite machine placed into use going forward and to provide quarterly reports to Tech Pharm.

Subsequent to resolution of the patent disputes, OnSite debtors filed for protection under Chapter 11 of the Bankruptcy Code, which cases were later converted

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to Chapter 7. None of the schedules filed in the bankruptcy cases listed the license agreement as an executory contract, nor did the schedules mention Tech Pharm.

In three of the bankruptcy cases, RPD Holdings, which held secured claims in the bankruptcies, purchased its collateral pursuant to an asset purchase agreement (APA). Each of the APAs listed certain categories of property as sold and further provided that, to the extent any of the subject property was an executory contract, it was assumed and immediately assigned to RPD. The APAs did not explicitly reference the license agreement. Subsequent to the court approving the APAs, RPD became aware of the Tech Pharm licenses, and the remaining bankruptcy cases included in a settlement agreement a provision wherein RPD would be “entitled to all remaining available Tech Pharm Licenses (such as those otherwise acquired from” the other three bankruptcies).

The dispute before the 5th Circuit arose almost a year later when Tech Pharm filed suit in state court alleging that OnSite debtors were in breach of the license agreement by not providing the quarterly reports and not paying the \$4,000 license fees. RPD intervened and removed the case to the bankruptcy court, claiming that it owned the licenses. The bankruptcy court held that the license agreement was an executory contract, and because it was neither assumed nor rejected by the trustee within 60 days of the previous bankruptcy cases

being converted to Chapter 7 cases, the license agreement was rejected under 365(d)(1) as a matter of law. As such, the license agreement was not part of OnSite debtors’ estates when the APAs were signed and, thus, could not have been assigned to RPD under the APAs. The district court agreed, and RPD appealed to the 5th Circuit.

After a lengthy discussion, the court determined that the license agreement qualified as an executory contract because both parties were still obligated to perform and failure to perform would relieve the other party from its obligation. Tech Pharm had an ongoing obligation to refrain from suing OnSite debtors, and OnSite debtors had the obligation to provide the \$4,000 license fee for each new machine put into use and to provide the quarterly operating reports.

RPD argued for an “implicit exception” to Section 365 when a debtor fails to schedule the executory contract and the trustee is unaware of the contract within the 60-day period. Recognizing that this was a new issue in the 5th Circuit, the court drew on rulings from other circuits. Under one theory, a contract will not be deemed rejected when it was intentionally concealed from a trustee. However, the license agreement was a matter of public record and, as such, was not intentionally concealed. Where a contract was inadvertently omitted from a debtor’s schedules, most courts ruled that it can still be deemed rejected, although the 5th Circuit noted at least one example

where even an inadvertent omission would prevent the contract from automatic rejection.

The court ultimately relied on the trustee’s affirmative duty under Section 704(a) to investigate the financial affairs of the debtor and the absence of an actual or constructive notice requirement in Section 365(d)(1). When an executory contract is inadvertently omitted from a Chapter 7 debtor’s schedules and neither assumed nor rejected within 60 days of the order for relief, such a contract is deemed to be rejected by operation of law under Section 365(d)(1). Regardless of whether the settlement agreement in the later bankruptcies purported to sell those licenses, that they were rejected meant that they were no longer part of the estate and, thus, could not be sold to begin with. The court was careful to limit its holding to cases involving inadvertent omissions and did not comment on intentional concealment of contracts.

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Liability of Corporate Officer/Shareholder/Nurse

Sam v. Genesis Behavioral Hosp., Inc., 18-0009 (La. App. 3 Cir. 8/29/18), 255 So.3d 42.

In 2011, according to the majority, plaintiff, a female patient of an outpatient day program run by Genesis Behavioral Hospital, Inc., was “lured off the facility grounds and into the nearby apartment” of a co-participant in the program, where she was raped and exposed to HIV. *Id.* at 43. The chief operations officer/nursing administrator of the corporation handled the clinical aspects of the facility, had some personal contact with the patients, and was familiar with plaintiff, who had

received inpatient and outpatient treatment from Genesis facilities on and off for several years. She described plaintiff as a very mildly mentally handicapped young woman with schizophrenia and bipolar disorder. No security was provided at the facility.

The curatrix for plaintiff filed suit on her behalf against, among others, the chief operations officer/nursing administrator of the corporation, who also owned 49 percent of its stock but was not present at the facility at the time of the incident. Defendant moved for summary judgment on the grounds that she had no personal liability to third persons, such as plaintiff, for any negligence or fault of the corporation. The trial court granted the motion, and the 3rd Circuit Court of Appeal affirmed, with one judge dissenting.

After briefly discussing duty-risk analysis and basic corporate law principles, the majority quoted at length from a 2010 2nd Circuit case that praised the benefits of the corporate shield and treated the principle that a corporate officer is liable for his own personal torts as an ex-

ample of piercing the corporate veil. The majority also quoted at length *Canter v. Koehring*, 283 So.2d 716 (La. 1973), which held engineer employees personally liable for failure to relay correct information to their employer that resulted in the death of another employee. The majority summarized *Canter* as requiring plaintiff to prove, in order to pierce the corporate veil, that (1) the corporation owed a duty to plaintiff, (2) the corporation delegated that duty to defendant and (3) defendant breached the duty through personal fault.

Plaintiff argued (1) that the corporation, as a hospital, owed a duty to its patients to exercise the necessary care that their particular condition required, (2) that defendant, as chief operations officer/nursing administrator, was responsible for causing such care to be provided and (3) that she failed to implement or enforce any policy to protect plaintiff from the other patients at the hospital. The majority emphasized that “personal liability cannot be imposed upon the officer . . . simply because of [her] general

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administrative responsibility for performance of some function of the employment” and that she “must have a personal duty towards the injured plaintiff, breach of which specifically has caused the plaintiff’s damages.” *Sam*, 255 So.3d at 47, quoting *Canter*, 203 So.2d at 721. The majority held that the hospital had no duty to protect plaintiff while she was not on its premises, much less against her being assaulted by a third party off premises, and that there was no evidence that any duty the corporation may have owed plaintiff had been “delegated” to defendant or that she had “assumed” such duty. As “no security was provided” at the facility, the majority reasoned, “[i]t would be nonsensical to find that a corporate officer such as [the COO/nursing administrator] assumed a personal duty to provide a service beyond that offered by the corporation.” *Sam*, 255 So.3d at 50.

The dissent, after noting that plaintiff was a 42-year-old, mentally handicapped individual who functions with the understanding of a 4-to-9-year-old special-needs child, emphasized that the corporation was licensed as a hospital, that the outpatient program was at a psychiatric facility, that defendant was a registered nurse with a specialty in psychiatry and that no one was assigned to monitor the front door. The dissent opined that the majority, by focusing on piercing of the corporate veil, “misse[d] the point entirely,” as under the majority’s reasoning “every . . . licensed professional could avoid all personal exposure for their tortious conduct by simply incorporating and pointing every plaintiff to the

corporate entity as their shield for their own tortious, negligent conduct.” *Id.* at 53 (Cooks, J., dissenting). The dissent emphasized that “if an officer or agent of a corporation through his fault injures another to whom he owes a personal duty, whether or not the act culminating in the injury is committed by or for the corporation, the officer or agent is liable personally to the injured third person, and it does not matter that liability might also attach to the corporation.” *Id.* at 54, quoting *H.B. Buster Hughes, Inc. v. Bernard*, 318 So.2d 9, 12 (La. 1975).

After reviewing supporting evidence, the dissent concluded that defendant, as the director of nursing in charge of the plaintiff’s care, owed a personal duty to plaintiff to make sure the plaintiff was not left alone at the facility and allowed to be lured away by another patient, which duty defendant breached. In the dissent’s view, “the law imposes a high level of responsibility on nurse [defendant] for [plaintiff’s] safety and wellbeing while under her care.” *Sam*, 255 So.3d at 55. The dissent also emphasized that if a shareholder “personally commits a tort . . . , he becomes personally liable without regard to whether some other person, either his corporation or his neighbor, happens to exist.” *Id.* at 57.

—**Michael D. Landry**

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La., U.S. Supreme Courts Weigh In By Not Weighing In on Highly Watched Cases

Bayou Canard, Inc., v. State, through Coastal Prot. & Restoration Auth., 18-0095 (La. 10/29/18), 254 So.3d 1209 (denying writ).

As discussed in the August/September 2018 *Louisiana Bar Journal*, the Louisiana 1st Circuit Court of Appeal overturned the 19th Judicial District Court and found that the indemnity language in all state-issued oyster leases barred leaseholders from bringing suits against the state even for challenges to the administrative process. *Bayou Canard, Inc. v. State*, 17-1067 (La. App. 1 Cir. 5/14/18), 250 So.3d 981. Previously, the indemnity clauses had been stretched to cover only physical losses rather than claims challenging a state agency’s administrative procedure (the Coastal Protection and Restoration Authority’s (CPRA) application of the Oyster Lease Acquisition and Compensation Program prior to conducting a restoration project in Bayou Canard). The 1st Circuit’s decision was a resounding victory for the CPRA and solidified the state’s indemnity for suits brought by oyster-lease holders, which have at times been at odds with coastal restoration efforts. *See, Avenal v. State*, 03-3521 (La. 10/19/04), 886 So.2d 1085.

Bayou Canard, Inc. applied for a writ to the Louisiana Supreme Court on June 13, 2018. On Oct. 29, 2018, the Louisiana Supreme Court denied the application, thereby leaving the 1st Circuit decision unchanged.

Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., 139 S.Ct. 361 (2018).

In this highly publicized case centered in St. Tammany Parish around the historic and potentially future home of the



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dusky gopher frog (*Rana sevosa*), the U.S. Supreme Court waded yet again into the timeless environmental law tussle between private property rights and the federal government’s authority over property. In particular, a group of landowners sued the U.S. Fish and Wildlife Service (FWS) who, acting under the color of the Endangered Species Act (ESA), designated a portion of private property slated for development as “critical habitat” for the rare amphibian. Although likely part of its historic range, FWS acknowledged that the 1,500 acres in Louisiana did not presently support a population of frogs. Rather, the agency posited that the land was prime for future expansion of the frog’s habitat.

A group of landowners led by Weyerhaeuser Co. challenged the FWS decision at the U.S. 5th Circuit Court of Appeals in *Markle Interests, L.L.C. v. U.S. Fish & Wildlife Serv.*, 827 F.3d 452 (5 Cir. 2016) (the previous styling of the *Weyerhaeuser* case), which found that even though the amphibians did not currently live in Louisiana, the FWS designation was not arbitrary and capricious and was within the limits of its statutory authority. The Supreme Court granted certiorari in January 2018 to review the 5th Circuit’s decision. Although covering many legal and factual issues, the arguments on appeal were focused on what became known as the “habitability requirement” or whether the ESA could be applied to property that was not currently habitat for a protected species.

Arguments were held on Oct. 1, 2018, and on Nov. 27, 2018. The Court issued a unanimous 8-0 ruling (Justice Kavanaugh took no part) authored by Chief Justice Roberts vacating the 5th Circuit’s decision and remanding the case for further proceedings. In its decision, the Court first addressed the habitability question and held that “[a]n area is eligible for designation as critical habitat under [the ESA] only if it is habitat for the species.” *Weyerhaeuser*, 139 S.Ct. at 369 n.2. This finding seemingly mirrored the petitioners’ argument that for a place to be *critical habitat*, it must first be *habitat*. At the argument, FWS did not dispute this grammatical truism; instead, the agency argued that the definition of

habitat should include those areas imbued with special features requisite for a species’ habitat that could support the species with “some degree of modification to support a sustainable population of a given species.” *Id.* at 369. However, stopping shy of a clear win for the landowners, the Court noted that the 5th Circuit did not interpret the term *habitat* or review FWS’ administrative findings to that point. Accordingly, the Court vacated the decision and remanded to the U.S. 5th Circuit to explicitly consider what constitutes *habitat* under the ESA and what FWS’ findings are regarding the same.

In addition to the habitability question, the Court also addressed the petitioners’ additional argument that FWS did not appropriately consider all relevant statutory factors when balancing the costs and benefits of the restrictions placed on the property by the critical habitat designation. The remand decision also contained instructions for the 5th Circuit to consider whether FWS’ assessment of the costs and benefits was arbitrary and capricious, which was not done before.

—S. Beaux Jones

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Community Property

Reagan v. Reagan, 52,080 (La. App. 2 Cir. 6/27/18), 250 So.3d 1122.

In this community property partition case, the Reagans were divorced in 2014 and Mr. Reagan died in 2015. Three months later, Ms. Reagan filed a petition to partition the community property. The executrix of Mr. Reagan’s succession was substituted for Mr. Reagan,

and the succession and partition suits were consolidated.

A loan was taken during the community to assist the functioning of Mr. Reagan's separate property business, which generated most of the community funds on which the parties lived. It was secured by Mr. Reagan's separate property but was nevertheless a community obligation as it was incurred during the existence of the community and used for community benefit. The court specifically noted: "It is irrelevant what property secured the loan." *Id.* at 1129.

The trial court erred in awarding each party 50 percent of an LLC. It should have awarded the LLC to Mr. Reagan's succession and awarded Ms. Reagan an equalizing payment for one-half of the assets of the LLC, which were composed of the proceeds from the sale of the LLC's only asset, as well as funds in its bank account. Regarding a second LLC, the trial court erred in ordering the parties to receive 50 percent ownership each, instead of having the remaining funds in the LLC's bank account valued and Ms. Reagan receiving credit for one-half of the value of those funds at the termination of the regime. Although federal law may have required that funds in a Morgan Stanley retirement account be paid to a beneficiary, Ms. Reagan was entitled under La. R.S. 9:2801.1 to receive an offsetting value from the community property for 50 percent of the value of that account. A piece of property transferred to Mr. Reagan's separate property LLC in payment of a loan made by that LLC was property of the LLC, and, therefore, Mr. Reagan's separate property.

Mr. Reagan was not entitled to a reimbursement for Ms. Reagan's gambling debts, as he was aware of and condoned her gambling during the marriage. Approximately \$800,000 in receivables earned by Mr. Reagan's separate property LLC prior to his death but not paid until after his death belonged to the entity, not the community, and Ms. Reagan was not entitled to half of those funds. The court found that Mr. Reagan had been compensated in the interim.

Berthelot v. Berthelot, 17-1055 (La. App. 1 Cir. 7/18/18), 254 So.3d 800.

Ms. Berthelot alleged only in her post-trial memorandum that her husband mismanaged a rental property by not evicting a tenant who was not paying rent. The appellate court found the trial court properly disregarded her claim because it was not properly raised in the trial court. Because both parties managed the rental property together, the trial court did not abuse its discretion when it awarded her the uncollected rent as an asset. The parties cohabitated for over two years after their divorce, and Ms. Berthelot was not entitled to reimbursement for the rent collected during the cohabitation as it was used for them both.

The trial court did not err in finding Mr. Berthelot used his separate funds to purchase Ms. Berthelot's one-half undivided community interest in a home. He overcame the presumption of community with his own limited testimony, which was not considered inadmissible parol evidence because of the parties' conflict-

ing testimony regarding the source of the funds.

The parties owned three tracts of land subject to a single mortgage. The trial court did not abuse its great discretion in dividing community property in awarding her two tracts and him one so that each received an equal net value. She argued she was unemployed and could not pay her portion of the mortgage, but the court noted the properties were income-producing.

Custody

S.L.B. v. C.E.B., 17-0978 (La. App. 4 Cir. 7/27/18), 252 So.3d 950.

The trial court granted an order to protect two children from their mother. The appellate court affirmed, finding that the mother hitting the child, taking him to the ground, sitting on top of him and continuing to hit him was physical abuse, not reasonable discipline. The mother failed to preserve her claims

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that her due process rights were violated because the children did not testify; she failed to subpoena them or call them as witnesses and did not object that the father did not bring them to court.

The trial court did not err in allowing the testimony of the doctor who interviewed the child regarding the abuse or allowing into evidence the audiotape made at that time because they were relevant to the medical treatment and diagnosis of the child and the recording was properly authenticated. Interestingly, the court noted that the relaxed evidentiary standard for custody matters under La. Code of Evidence art. 1101 could be applied to this matter.

Laurent v. Prevost, 18-0126 (La. App. 4 Cir. 7/11/18), 251 So.3d 504.

As a form of discipline, Mr. Prevost had the children kneel on concrete for 20-30 minutes. The trial court found that this was abusive and changed the previous custody order to award Ms.

Laurent sole custody. The 4th Circuit held the court did not abuse its discretion in modifying the custody award; it noted that the trial court “was presented with two permissible views concerning whether [his] use of kneeling as a form of discipline was abusive.” Further, the court found that the trial court erred in requiring Mr. Prevost to pay for an outside supervisor for his visitation with the children and ordered, instead, that family members could supervise.

Miller v. Dicherry, 17-1656 (La. App. 1 Cir. 5/29/18), 251 So.3d 428.

Although Dicherry, the mother, was the domiciliary parent, the court did not err in granting Miller, the father, the right to make medical decisions as Dicherry failed to comply with recommended medical practices, failed to notify Miller of doctors’ appointments and refused to vaccinate the children. Her reasoning for refusing vaccinations was, “It’s just my belief.” The court noted:

“The mere assertion of a religious belief, however, does not automatically trigger First Amendment protections ‘Philosophical and personal’ belief systems are not religion, in spite of the fact that these belief systems may be held with ‘strong conviction’ and inform critical life choices.” The court found no error in the trial court’s conclusion, after considering Dicherry’s testimony that her beliefs against vaccinations were not “sincerely and genuinely held ‘religious’ beliefs,” but instead arose “from a personal, moral, or cultural feeling against vaccination for her minor child.” *Id.* at 435.

Torts

Hoddinott v. Hoddinott, 17-0841 (La. App. 4 Cir. 8/1/18), 253 So.3d 233; *reversed*, 18-1474 (La. 12/17/18), 2018 WL 6649593, ___ So.3d ___.

On the same day the parties obtained their judgment of divorce, they also entered into a consent judgment providing that any claims Ms. Hoddinott made under La. Civ.C. art. 103(4) and any claims for interim or final support under that article and under La. R.S. 9:327 were dismissed with prejudice. Subsequently, she filed a tort action against him to recover damages for domestic abuse she alleged occurred during the marriage, including, but not limited to, those acts alleged in the divorce proceedings. The trial court granted Mr. Hoddinott’s exception of *res judicata*, but the court of appeal reversed, three judges to two, finding that exceptional circumstances existed under the *res judicata* statute since La. R.S. 9:291 prevented Ms. Hoddinott from bringing her tort claim until the parties’ divorce was final. The Supreme Court reversed, finding that Ms. Hoddinott had dismissed her claims of abuse with prejudice.

—David M. Prados

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Louisiana Uniform Trade Secrets Act Preemption

Brand Servs., L.L.C. v. Irex Corp., 909 F.3d 151 (5 Cir. 2018).

Brand Services, an industrial scaffolding company, claims that its former employee stole trade secrets and confidential and proprietary information — software that Brand Services uses to invoice customers and track productivity — and gave them to his new employer, Irex, a competitor. Brand Services' suit alleges misappropriation, asserting claims under the Louisiana Uniform Trade Secrets Act (LUTSA), La. R.S. 51:1431, *et seq.*, and for conversion under Louisiana civil law. The district court granted summary judgment for Irex on the LUTSA claim, concluding that Brand Services failed to proffer evidence sufficient to create a fact issue on the amount of unjust enrichment damages Irex obtained from use of the trade secrets. It also granted summary judgment on Brand Services' conversion claim, holding LUTSA preempted that claim.

To recover damages under LUTSA, a complainant must prove (a) the existence of a trade secret, (b) a misappropriation of the trade secret, and (c) actual loss caused by the misappropriation. He also may recover for the unjust enrichment caused by the misappropriation that is not taken into account in computing damages for actual loss. A plaintiff fulfills its burden for proving trade secret damages by identifying evidence a factfinder could use to reasonably estimate damages in its favor. “[U]ncertainty in damages should not preclude recovery But a plaintiff must be able to show ‘the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.’” *Id.* at 157, quoting *Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 879 (5 Cir. 2013).

Brand Services provided some evi-

dence from which a factfinder could reasonably estimate unjust enrichment damages: it demonstrated that Irex's use of the information saved it at least two to three days a month in time spent invoicing. The 5th Circuit concluded that Brand Services met its summary-judgment burden of proof regarding the amount of its damages and reversed the district court's judgment on the LUTSA claim.

LUTSA's preemption provision states:

A. This Chapter displaces conflicting tort, restitutionary, and other laws of this state pertaining to civil liability for misappropriation of a trade secret.

B. This Chapter does not affect:

(1) contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or

(2) criminal liability for misappropriation of a trade secret.

The court concluded that “the plain text of LUTSA would preclude a civilian law conversion claim involving confidential information that qualifies as a trade secret under LUTSA.” *Id.* at 158. The court further concluded that “if confidential information that is not a trade secret is nonetheless stolen and used to the unjust benefit of the thief or detriment of the victim, then a cause of action remains under Louisiana law.” *Id.* The court thus reversed the grant of summary judgment regarding the LUTSA claim and the civilian law claim for conversion of allegedly non-trade secret information but affirmed the summary judgment dismissing the civilian law claim for conversion of trade

secret information.

—**John Zachary Blanchard, Jr.**
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U.S. Supreme Court

Jam v. Int'l Fin. Co., 138 S.Ct. 2026 (2018) (granting writ).

The U.S. Supreme Court held arguments on Oct. 31, 2018, in a case determining whether the International Organizations Immunities Act (IOIA) confers the same immunity to international organizations as that provided to foreign governments. The case involves a lawsuit filed by a group of fishermen and farmers from India who were allegedly harmed by a coal-fired power plant funded by the International Finance Corp. (IFC), the private sector financial arm of the World Bank. The IFC contends that it has absolutely immunity under IOIA, which grants international organizations “the same immunity from suit and every form of judicial process enjoyed by foreign governments.” Plaintiffs contend that IOIA immunity runs parallel to the 1976 Foreign Sovereign Immunities Act, which carves out an immunity exception for the foreign



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government's commercial activities. If the Court finds an immunity exception, it will pave the way for many new cases involving alleged harm by the commercial actions of international organizations.

European Court of Justice

Wightman v. Sec'y of State for Exiting the European Union, C-621/18 (Dec. 10, 2018).

The European Court of Justice (ECJ) issued a decision on a preliminary ruling reference from a petition for judicial review in the Court of Session, Inner House, First Division (Scotland, United Kingdom) by members of the UK parliament related to Brexit. The petition in the lower court sought clarification on whether the UK could unilaterally reverse its decision to withdraw from the European Union. The ECJ agreed to hear the case under its expedited procedural rules because of the impending UK exit deadline. The ECJ full court ruled that, under Article 50 of the Treaty on European Union (TEU), a Member State is free to revoke a previously lodged withdrawal request. Any revocation must be lodged with the European Council before any withdrawal agreement between the Member State and the EU comes into force, or if no withdrawal agreement is in place, before the expiration of the two-year period from the date of notification of the intention to withdraw from

the EU. The revocation must be conducted following a democratic process in accordance with the Member State's national constitutional requirements.

The UK notified the European Council of its intention to withdraw from the EU on March 29, 2017. Under TEU Article 50, the withdrawal becomes effective either upon the execution of a withdrawal agreement between the UK and EU, or two years from the March 29, 2017, notification of withdrawal. The UK Parliament is currently deadlocked regarding the withdrawal agreement negotiated by Prime Minister Theresa May. If no agreement is reached by March 29, 2019, the withdrawal takes place by operation of EU law absent an extension. The ECJ's decision raises the specter of a potential second referendum to reverse Brexit. However, given the TEU timeline, it is unlikely that a referendum could be conducted without an extension of the two-year period.

World Trade Organization

Korea-Measures Affecting Trade in Commercial Vessels (Japan), WT/DS571/1G/L/1279G/SCMD121/1 (Nov. 13, 2018).

Japan submitted a request for dispute settlement consultations at the World Trade Organization (WTO) regarding illegal financial subsidies provided by the Republic

of Korea to its domestic shipbuilding industry. Japan alleges numerous violations of the WTO Subsidies and Countervailing Measures Agreement, including the following financial support measures provided in connection with purchases of Korean-built vessels: (1) illegal corporate export subsidies by the Korea Development Bank, Export-Import Bank of Korea, Korea Trade Insurance Corp., Marine Finance Center and the Korea Ocean Business Corp.; (2) refund guarantees and other insurance financing on non-commercial terms by various state-run enterprises; (3) pre-shipment loans to finance customer purchases, purchase of bonds to fund customer purchases and capital injections to finance purchases; (4) non-commercial financial assistance to purchasers for replacement vessels that comply with certain environmental standards from Korean shipbuilders; and (5) broad-based non-commercial support provided under the Development Strategy for the Shipbuilding Industry and the Five-Year Marine Transportation Industry Rebuilding Plan.

This consultation request is the first step in the dispute-settlement process. A panel will be established to adjudicate the dispute after 60 days.

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Male Applications of #MeToo Movement in Employment

The #MeToo movement has pervaded the conversation about sexual harassment, especially in the workplace. The Equal Employment Opportunity Commission (EEOC) filed 41 sexual harassment lawsuits as of October 2018, more than 50 percent more than sexual harassment suits filed in 2017.

Although #MeToo originated to protect women, some men have not hesitated to apply it to their situations. Travis Hardwick referenced the movement in his Title VII sexual harassment case in the Southern District of Indiana, but the court rejected his argument. *Hardwick v. Ind. Bell Tel. Co.*, No. 1:15-01161 (S.D. Ind. Sept. 26, 2018), 2018 WL 4620252. Recently, Paul Engeliien filed a complaint blaming #MeToo and the media for his wrongful termination by influencing his employer to conduct a pretextual sexual harassment investigation against him. *Engeliien v. Alaska Airlines, Inc.*, No. 18-2-27481-8 (Wash. Super. Ct., King Cty. Nov. 1, 2018), 2018 WL 5729877.

Hardwick was a technician for Indiana Bell Telephone Co. in 2008. In mid-2013, Brantley, Hardwick's supervisor, a female, went to Hardwick's job site. While there, Brantley questioned why Hardwick was not wearing his company-issued pants. Hardwick claimed Brantley then commented, "Nice ass." Hardwick did not file any charges or report Brantley to any supervisors.

In December 2013, Brantley audited Hardwick's garage and found Hardwick violated company guidelines, including falsifying timesheets. Brantley suggested that Hardwick be terminated. Hardwick presented evidence to rebut Brantley's findings at his pre-term hearing, to no avail. The company disagreed with

Hardwick and terminated him.

Hardwick sued Indiana Bell for sexual harassment, hostile work environment and retaliation based on Brantley's comment. Indiana Bell responded that Hardwick failed to prove the comment was severe or pervasive. In response, Hardwick said that, because of the #MeToo movement, "what should be tolerated and what creates a hostile work environment for any and all employees is changing for the better and Title VII is providing more protection than ever before. Isn't one degrading and humiliating act of any supervisor abusing their power enough in this day and age[?]"

The court held that Title VII remains unchanged and this one comment was not enough. The court further stated that Hardwick's comparison of himself to the women who brought the #MeToo movement to national attention was "insulting to the movement and women involved. . . . Sexual assault, sexual violence, and sexual abuse are a far cry from the isolated comment that Mr. Hardwick describes." The court granted Indiana Bell's motion.

In an arguably more compelling application of the #MeToo movement, Paul Engeliien, a male Alaska Airlines pilot, filed a complaint against Alaska, co-pilot Betty Pina and Alaska's workplace-investigation agency. His claims include wrongful termination, negligence, tortious interference, defamation and invasion of privacy. Note that this matter is at the complaint stage, so the below statements are only allegations.

Engeliien and Pina were selected to fly together, with a return trip scheduled for the next morning. The night between flights, Engeliien and Pina went to the hotel bar for drinks. Alaska prohibits pilots from consuming alcohol within 10 hours of reporting for duty. Engeliien alleged that they stopped drinking at 8 p.m., more than 10 hours before report time, and headed back to their adjacent rooms.

Engeliien allegedly did not remember entering his hotel room or anything else until his cell phone rang at 10:47 p.m. When he woke up, he saw Pina asleep in the other bed. On the call, the duty officer said a flight attendant saw Engeliien with wine and felt uncomfortable with him flying. Engeliien mistakenly told the

officer he had alcohol during the 10-hour window because of alleged phone-clock issues, and so the officer pulled Engeliien from the morning flight. Pina requested to be pulled from duty as well because she was distraught about potentially losing her job as a probationary pilot.

Alaska then began an investigation into the potential 10-hour violations. After Pina began to question her memory, Engeliien alleged that "Alaska's investigation shifted from both pilots' alcohol use to solely a #MeToo investigation" against Engeliien. Pina then filed a "#MeToo lawsuit" against Alaska, alleging it failed to protect her against Engeliien's sexual assault. The lawsuit gained national attention because of Pina and her attorney's media campaign. Engeliien then claimed that shortly after Pina filed her lawsuit the investigation ended, concluding that Engeliien had violated the 10-hour rule, but Pina did not. Alaska subsequently terminated Engeliien.

Engeliien alleges that he provided evidence of the inconsistencies of the investigation and that Pina had a second alcohol incident where she was not able to fly. In spite of this, Alaska refused to reopen his case.

These cases reflect how male employees can implement the #MeToo movement to their claims and the challenges it raises for employers. Men who are victims of harassment are likely more willing to bring sexual harassment claims in this more accepting environment, so employers must take all complaints seriously. Conversely, Engeliien's complaint exemplifies the tightrope that employers walk when the male employee is the accused. The employer must be cautious not to ignore an employee's allegations of sexual harassment, but also must be cognizant of how it handles the investigation because lawsuits wait on both sides of this difficult position. The best practice is to treat all complaints as legitimate and perform thorough investigations.

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1st Circuit Allows Legacy Suit to Proceed as Citizen Suit

Global Marketing Solutions acquired land by cash sale in 2005. *Global Marketing Sols. v. Blue Mill Farms*, 18-0093 (La. App. 1 Cir. 11/6/18), ___ So.3d ___, 2018 WL 5816971. Later, Global sued several oil and gas companies, alleging that their pre-sale operations had contaminated the land. The district court granted an exception of no right of action based on the subsequent-purchaser doctrine.

Global amended its petition, seeking to assert a claim based on La. R.S. 30:14 and 30:16. R.S. 30:14 states in part:

Whenever it appears that a person is violating or is threatening to violate a law of this state with respect to the conservation of oil or gas, or both, or a provision of this Chapter, or a rule, regulation, or order made thereunder, the commissioner shall bring suit to restrain that person from continuing the violation or from carrying out the threat.

R.S. 30:16 states in part:

If the commissioner fails to bring suit within ten days to restrain a violation as provided in La. R.S. 30:14, any person in interest adversely affected by the violation who has notified the commissioner in writing of the violation or threat thereof and has requested the commissioner to sue, may bring suit to prevent any or further violations, in the district court of any parish in which the commissioner could have brought suit.

Global alleged that it had notified the Commissioner of Conservation of oil-field contamination and asked that the Commissioner file suit against the defendants, but the Commissioner failed to do so. Instead, the Commissioner ordered the defendants to submit a work plan for evaluating contamination at the site. The defendants apparently submitted such a plan, but Global filed suit, seeking a judicial remedy.

The defendants filed an exception of no cause of action, arguing that La. R.S. 30:16 authorizes citizens only to bring suit to stop an ongoing violation of the conservation laws or to prevent a threatened violation, not to remedy a past violation. Because Global alleged its land had been contaminated by past operations, the defendants asserted that Global could not bring suit under R.S. 30:16. The district court agreed and dismissed Global's suit. Global appealed.

A five-judge panel of the Louisiana 1st Circuit reversed and remanded the case to the district court to allow the litigation

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to proceed. The majority noted that the plaintiffs stated the violations of conservation rules “are ongoing.” Judge Guidry dissented, stating that R.S. 30:16 cannot be used to remedy past violations and that the plaintiffs were complaining about past conduct. Judge Holdridge issued a concurring opinion. He agreed with the defendants that some of the language of R.S. 30:16 seems to authorize citizen suits only for ongoing or threatened violations. He stated, however, that he thought some of the language in R.S. 30:14 and R.S. 30:16 was ambiguous and could be read as authorizing a broader range of citizen suits. For that reason, he concurred with the judgment.

Western District Allows Legacy Suit to Proceed with Citizen Suit Theory

In *Watson v. Arkoma Dev., L.L.C.*, No. 17-1331 (W.D. La. Nov. 15, 2018), 2018 WL 6274070, the plaintiffs asserted that the defendants were liable for oilfield contamination that resulted from past operations. The plaintiffs asserted several legal theories, including a citizen suit pursuant to La. R.S. 30:16.

The defendants moved to dismiss several of the claims, including the citizen suit. They argued that R.S. 30:16 citizen suits can be used only to prevent ongoing or threatened future violation of the conservation statutes and regulations, not to remedy past violations. Because the conduct that allegedly caused contamination was past conduct, the defendants argued that the plaintiffs could not rely on R.S. 30:16. In response, the plaintiffs contended that the defendants’ failure to remediate the property was an ongoing violation. Magistrate Judge Karen L. Hayes recommended denying the motion to dismiss with respect to the citizen suit, concluding that the plaintiffs were alleging an ongoing violation. Thus, she reasoned, she did not need to decide whether R.S. 30:16 can be used to remedy past violations.

Judge Hayes recommended granting the motion to dismiss with respect to the following claims — a “Good Samaritan Doctrine” claim based on Restatement

(Second) of Torts § 324A; continuing tort; a Civil Code art. 2688 obligation to notify plaintiffs that the leased property needed repairs; unjust enrichment; Act 312 (because it is procedural only, not an additional source of liability); land loss and subsidence; and fraud. She recommended denying the motion to dismiss with respect to an ultrahazardous activities doctrine claim under a prior version of Civil Code art. 667; *garde* liability under Civil Code art. 2317 and 2322; unauthorized disposal of salt water; and breach of express lease terms. She also recommended that the plaintiffs’ claims for breach of “Lease #3” be dismissed because the plaintiffs had not given the defendants notice of the alleged breach and an opportunity to cure, which are prerequisites to filing suit under the terms of that lease. The district court entered a judgment consistent with the recommendation of Judge Hayes. *Watson v. Arkoma Dev., L.L.C.*, No. 17-1331 (W.D. La. Nov. 30, 2018), 2018 WL 6274008.

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Service of Process on State Employee

Wright v. State, 18-0825 (La. App. 4 Cir. 10/31/18), ___ So.3d ___ (2018 WL 5660127.)

Following the issuance of a medical-review-panel opinion, Wright filed a lawsuit against five individual healthcare providers (HCPs) and effected service against each them at their various addresses. The HCPs filed declinatory exceptions of insufficiency of citation and service of process, complaining that only individual state employees, and no state institutions or agencies, were named or served. The trial court denied the exceptions.

The HCPs successfully obtained a supervisory writ. The appellate court began its analysis by referencing La. R.S. 13:5107 and its subparts, which together require that service of suits against the state, state agencies, political subdivisions or any state officer or employee be requested within 90 days of the filing of the action. Failure to name and file suit against the proper state entity and to request service within that 90-day period results in the action being dismissed without prejudice. The HCPs argued that the plaintiff’s failure to sue the correct state agencies called for the dismissal of the case.

The plaintiff admitted that all of the

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HCPs were state employees, but he argued that, pursuant to La. R.S. 13:5107(D), his service was timely because he requested service, albeit improperly, within the 90 days, a position for which he cited no case law. The court found the plaintiff's reliance on 13:5107(D) was misplaced. It noted the timeliness of the request for service of process was not the deciding issue; rather, the issue was "the failure to request service on the proper party or parties." The court explained in a footnote:

Necessarily, timeliness is *an* issue. Clearly, service of process in this matter was not requested on the proper party/parties. Thus, service was not requested "on all named defendants within ninety days of commencement of the action." La. C.C.P. art. 1201(C). To hold otherwise would be to allow a plaintiff to request service on anyone within 90 days of filing an action and technically comply with the requirement of the article.

Likewise, that the state employees had actual knowledge of the suit was irrelevant because "[k]nowledge of the existence of an action on the part of the defendant, no matter how clearly brought home to him, cannot supply the want of a citation," quoting *Guaranty Energy Corp. v. Carr*, 490 So.2d 1117, 1120 (La. App. 5 Cir. 1986). The healthcare providers' exceptions were granted and the case was dismissed without prejudice.

Mailbox Rule

In re Anderson, 17-1576 (La. App. 1 Cir. 11/14/18), ___ So.3d ___ (2018), 2018 WL 6579553.

After receiving Ms. Anderson's request for a medical-review panel, the PCF advised her by letter that it must receive a filing fee "within forty-five days of the postmark of the notice" and that failure to strictly comply with this requirement would invalidate the request and would "not suspend the time within which suit must be instituted."

Three days prior to the expiration of the PCF's deadline for payment, the filing fee was mailed to the PCF via certified mail. The payment was not received by the PCF until seven days after the 45-day deadline.

The PCF then notified Anderson and all of the respondents that it considered her claim "invalid and without effect."

Anderson filed a petition asking the district court to reverse the PCF's decision. The court affirmed the PCF's determination and denied all relief, from which Anderson appealed.

Anderson's position on appeal was that the "mailbox rule" as explained in La. R.S. 1:60(A)(2) should apply to the mailing of the filing fee. Under the mailbox rule, the date of mailing, not the date of actual receipt, would determine the date payment was "received." Noting that La. R.S. 40:1231.8(A)(2)(b) already applied the mailbox rule to the mailing of complaints, Anderson argued that, because the filing of a complaint and the payment of the filing fee are inexorably joined under the Medical Malpractice Act, the mailbox rule should likewise apply to the payment of filing fees.

The PCF argued that the deadline for payment of the filing fee is distinct from that of filing a complaint, citing *In re Benjamin*, 14-0192 (La. App. 5 Cir. 11/25/14), 165 So.3d 161, 162, writ denied, 15-0142 (La. 4/10/15), 163 So.3d 814, wherein the 5th Circuit determined the filing fee must be actually received by the Board within the 45-day period.

The *Anderson* court noted, however, that the 5th Circuit had recently clarified its position in *Benjamin* with its later opinion in *Glover* where it declared its statement in *Benjamin* that "payment occurs when the filing fees are received by the PCF Board" was dicta. *In re Glover*, 17-0201 (La. App. 5 Cir. 10/25/17), 229 So.3d 655, 662; see also, *Glover* discussion, 65 La. B.J. 429-30 (2018). The *Anderson* court found the facts and arguments before it to be similar to those in *Glover* and concluded that the 5th Circuit's reasoning in *Glover* was more persuasive than in *Benjamin*. Consequently, the *Anderson* court held "that the mailbox rule should apply when determining the timeliness of filing fees paid to the PCF Board, pursuant to LSA-R.S. 40:1231.8(A)(1)(c)."

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No Refund Allowed Based on a Misinterpretation of Law by the Department

Bannister Props., Inc. v. State, 18-0030 (La. App. 1 Cir. 11/2/18), ___ So.3d ___, 2018 WL 5732839.

Bannister Properties, Inc. and Southold Properties, Inc. (Taxpayers) filed amended Louisiana corporation income and corporation franchise tax (CFT) returns claiming they were not subject to CFT for the years beginning Jan. 1, 2008, Jan. 1, 2009, Jan. 1, 2010, and Jan. 1, 2011. Taxpayers claimed they were not subject to CFT based on the decision *UTELCOM, Inc. v. Bridges*, 10-0654 (La. App. 1 Cir. 9/12/11), 77 So.3d 39, writ denied, 11-2632 (La. 3/2/12), 83 So.3d 1046. *Utelcom* declared the regulation invalid, finding that the CFT regulation Louisiana Administrative Code 61:I.301(D) was promulgated on was based on a mistake of law due to the Department's misinterpretation of La. R.S. 47:601.

The Department denied the Taxpayers' overpayment refund claims filed pursuant to the overpayment refund procedure, La. R.S. 47:1621, asserting they were not refundable under any provision of law. In response to the Department's denials, the Taxpayers filed petitions at the Louisiana Board of Tax Appeals (BTA) pursuant to the overpayment refund procedure and/or in the alternative a claim against the state under La. R.S. 47:1481. While the BTA matters were pending, the Taxpayers and the Department entered into a settlement to resolve the claim against the state whereby the parties stipulated an overpayment had been made and the amount thereof. The BTA issued recommendations to the Legislature that funds be appropriated to pay such claims. An appropriation has not yet been made,

and Taxpayers sought to avail themselves of the overpayment refund procedure.

The Department filed a motion for summary judgment asserting that Louisiana law prohibited the issuance of a refund. La. R.S. 47:1621(F) states: "This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the secretary of the provisions of any law or of the rules and regulations promulgated thereunder." The Department argued that since the Taxpayers' claims were based on the *Utelcom* decision, La. R.S. 47:1621(F) applied. The Taxpayers filed a cross motion for summary judgment.

The 1st Circuit reversed the BTA's decision that granted the Taxpayers' motion for summary judgment and ordered the Department to repay the taxes. The 1st Circuit in turn granted the Department's motion for summary judgment and held the Taxpayers were not entitled to a refund pursuant to the Overpayment Refund Procedure.

In a unanimous decision granting the Department's motion for summary judgment, the 1st Circuit held that statutes providing for tax refunds must be strictly construed against the taxpayer. The court found Section 1621(F), which prohibits the authorization of any refund of overpayment based on the Department's misinterpretation of tax law, is clear and unambiguous and must be applied as written. In holding the Taxpayers' claims do not qualify as refund claims under the overpayment refund procedure, the court found the Taxpayers voluntarily paid the taxes and are not entitled to a refund of taxes overpaid based on the Department's misinterpretation of tax law as recognized in the *Utelcom* decision. The court held the Taxpayer's only available remedies were to have paid the taxes under protest and filed suit for recovery under La. R.S. 47:1576, which the Taxpayers did not do, or through the claim against the state, which the Taxpayers already received.

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Limitations on Tax Credit for Income Taxes Paid to Other Jurisdictions Ruled Unconstitutional

Smith v. Robinson, 18-0728 (La. 12/5/18), ___ So.3d ___, 2018 WL 6382118.

The Smiths are Louisiana resident shareholders of S corporations that operated in both Louisiana and Texas. La. R.S. 47:33 offers a Louisiana resident individual-income-tax credit for "net income taxes imposed by and paid to another state on income taxable" in Louisiana. Act 109 of the 2015

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Louisiana Regular Legislative Session restricted the availability of the credit to net income taxes paid to another state that offered a reciprocating credit like La. R.S. 47:33.

The Texas Franchise Tax (TFT) does not offer a reciprocating credit, so the Smiths paid the portion of their 2015 Louisiana individual-income -tax liability attributable to Act 109 under protest and filed a refund petition. The 19th Judicial District Court agreed with the Smiths that Act 109 was unconstitutional, triggering an automatic appeal to the Louisiana Supreme Court.

There the Smiths argued that Act 109 violated the Dormant Commerce Clause of the U.S. Constitution. The Supreme Court agreed, relying on *Comptroller of Treas. of Md. v. Wynne*, 136 S.Ct. 1787 (2015), to determine that the effect of Act 109 violated two parts of the four-part test for the constitutionality of state taxes established in *Complete Auto Transit, Inc. v. Brady*, 97 S.Ct. 1076, 1079 (1977).

The Department argued that the Smiths were ineligible for the credit because (1) the TFT was not a net-income tax, and (2) the TFT was imposed on the businesses, not the Smiths. The Louisiana Supreme Court rejected the first argument because, under Louisiana jurisprudence, the type of a tax is determined by its operational effect, and the TFT's operational effect was to tax net income. The Supreme Court also rejected the second argument, deciding to follow the Louisiana 1st Circuit's opinion in *Perez v. Sec'y of La. Dep't of Rev. & Taxation*, 98-0330 (La. App. 1 Cir. 3/8/99), 731 So.2d 406, which held that S corporation shareholders qualify for the La. R.S. 47:33 credit for taxes paid to another state by their S corporation. An application for rehearing has been filed in this matter.

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Effects of a Will if Notary Only Attests to Authenticity of Signatures

On appeal of *In re Succession of Dale*, 18-0405 (La. App. 1 Cir. 9/24/18), ___ So.3d ___, 2018 WL 4562153, the court analyzed whether a 2016 will was valid as to form and, if invalid, whether it was a valid authentic act that revoked a 2014 will. The attestation clause in the 2016 will contained all language and signatures required by law, but next to the notary's signature was a disclaimer stating: "The notary has neither prepared nor read this document and is solely attesting to the authenticity of the signatures affixed hereto."

The court found two issues with the disclaimer: (1) if the notary attested only to the authenticity of the signatures, it is unclear whether the testator declared in the presence of the notary and two witnesses that the instrument was her last will and testament; and (2) it nullified the declaration that the document was signed in the presence of the testator and each other. Thus, the court held: (1) the will was absolutely null; (2) an absolutely null will cannot constitute a valid and effective revocation of prior wills because it is "void ab initio, and can have no effect of any sort;" and (3) the null will did not provide a basis to reopen the succession.

When is a Servitude by Implication Created?

In the 1st Circuit's opinion in *Templeton v. Jarreau*, 18-0240 (La. App. 1 Cir. 9/24/18), ___ So.3d ___, 2018 WL 4561669, the court analyzed whether implied dedication created a predial servitude over the defendant's property. The plaintiff owned Lots 6A, 6C and 6D, and the defendant owned Lot 6B. The plaintiff argued a servitude existed over Lot 6B for the benefit of Lots 6C and 6D, but the defendant argued a predial servitude never existed.

Two surveys are central to this case — the Pringle map, prepared before the resubdivision of Lot 6; and the Mistic map, prepared after the resubdivision of Lot 6 and provides for a servitude of passage along the southern boundary of Lots 6C and 6B. A servitude by implication is created only if "the servitude is shown on a recorded survey map pursuant to which the property is sold and described" and the deed or survey "clearly expresses" intent to create a "servitude for the benefit of owners of neighboring property."

The court found in favor of the defendant and held no servitude existed because: (1) the act of sale to the defendant was silent as to the servitude claimed by the plaintiff (the only plat referenced therein was the Pringle map); and (2) the subdivision plat at issue was not recorded in the conveyance records.

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CHAIR'S MESSAGE

“Build Your Brand” at Inaugural Young Lawyers Conference

By Dylan T. Thriffiley

As I'm writing this message, I've just finished providing remarks at the inaugural Louisiana Young Lawyers Conference in Baton Rouge.



Dylan T. Thriffiley

The conference was themed “Build Your Brand” and developed by the Young Lawyers Division Council to engage with our membership and provide dedicated programming applicable to young lawyers, regardless of where they practice or who they represent. This conference came to life over the past year because of the hard work and dedication of Dani Borel, Scott Sternberg, Jeff Hufft and countless other

council members and volunteers.

Over the course of the day, we offered five hours of CLE credit, including ethics, professionalism and law practice management. A total of 24 young lawyer speakers were on hand to present a variety of panels, breakout sessions, sprint sessions and an idea exchange. Topics included bankruptcy, transactions, criminal law, marketing, how to succeed in a law firm, and how to build a law practice from the ground up. These were young lawyers providing real-life advice and education to their peers on topics that impact and interest young lawyers. The sessions were engaging and informative, with active audience participation. Trust me when I say that this is how you want to spend your time obtaining required CLE hours.

The highlight of the day was the lun-

cheon where YLD Secretary-Elect Graham Ryan and I had the honor of recognizing the Young Lawyers Division Award finalists and winners, and we all enjoyed a keynote address from young lawyer and Louisiana District 53 State Representative Tanner Magee. Hearing the achievements of these incredible young lawyers and local affiliates makes me proud to be a Louisiana young lawyer. The day concluded with a networking reception sponsored by the LSBA Labor Relations and Employment Law Section.

We have high hopes for future versions of the Young Lawyers Conference. If you were able to join us in 2019, thank you so much! Please reach out to us and let us know what you liked and what you didn't like. If you weren't able to join us this year, we hope to see you at the 2020 Young Lawyers Conference! *See next pages for photos.*

YOUNG LAWYERS SPOTLIGHT

Alyson Vamvoras Antoon Lake Charles

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Lake Charles attorney Alyson Vamvoras Antoon.

Antoon began a solo private practice in 2014 at Antoon Law Firm, L.L.C., and recently joined her husband, Michael Antoon, and father, Glen Vamvoras, in private practice at Vamvoras & Antoon in Lake Charles. She practices mainly in the areas of child



Alyson Vamvoras
Antoon

custody and criminal defense, but also has a passion for animals and is one of a handful of attorneys who practices animal law in Louisiana. She is a certified family and divorce mediator and a former instructor at Delta Tech School of Business.

Born and raised in Lake Charles, she attended Louisiana State University as an undergraduate where she obtained a degree in history. She obtained her JD degree from Southern University Law Center in 2010. During law school, she twice received the CALI Excellence for the Future Award in Legal Writing and served as an officer in Phi Alpha Delta fraternity. She was admitted to the Louisiana Bar in 2011.

Antoon is a member of the Fusion Five Young Professionals Organization, the American Association of Premier DUI

Attorneys, the Southwest Louisiana Bar Association (SWLBA) Young Lawyers Section (board member, 2016; president-elect, 2017; president 2018) and the SWLBA Family Law Section. She chairs the Louisiana State Bar Association's Animal Law Section.

She has been selected three consecutive years as a *Louisiana Super Lawyers* “Rising Star,” is a current member (2018-19) of the Leadership LSBA Class and is one of Thrive Magazine's “13 Thriving 30 somethings” in 2017.

When not at work, Antoon and her husband love spending time with their multiple rescue animals (and sometimes “foster” animals). She enjoys volunteering with the Lake Charles Pitbull Rescue and advocating for animal rescue and animal welfare.



Tanner D. Magee, young lawyer and Louisiana State Representative for District 53 of Houma, gave the keynote address at the Louisiana Young Lawyers Conference.



Louisiana YOUNG LAWYERS Conference

Photos by Matthew Hinton Photography.



YLD Outstanding Young Lawyer of Louisiana



The first Louisiana Young Lawyers Conference was held on Jan. 18 at the Renaissance Baton Rouge Hotel in conjunction with the Louisiana State Bar Association's Midyear Meeting. The theme was "Build Your Brand" and offered young lawyers up to 5.0 hours of CLE credit and valuable networking opportunities, including a reception sponsored by the LSBA Labor Relations and Employment Law Section. Highlights included social media sessions, practical legal sessions, Sprint Sessions, the Idea Exchange, and the presentation of awards.



The finalists for the Outstanding Young Lawyer of Louisiana, from left, Micah J. Fincher, Mekisha S. Creal, Francisca M. Comeaux and Joseph P. Briggett. Not pictured is finalist Rachel I. Silvers.

Inset: Outstanding Young Lawyer of Louisiana recipient Francisca M. Comeaux with Dylan T. Thriffiley, 2018-19 YLD Chair.



Keynote speaker Tanner D. Magee addressed the Louisiana Young Lawyers Conference during a luncheon keynote



YLD Pro Bono Award



The finalists for the YLD Pro Bono Award, from left, Phillip M. Smith, Jesse C. Stewart and Jennifer G. Prescott.

Inset: YLD Pro Bono Award recipient Jesse C. Stewart with Dylan T. Thriffiley, 2018-19 YLD Chair.

The Honorable Michaëlle Pitard Wynne Professionalism Award



The finalists for the Honorable Michaëlle Pitard Wynne Professionalism Award, from left, Brittany O. Rosenbloom, Jeremy A. Bazile and Erin S. Kenny.

Inset: Honorable Michaëlle Pitard Wynne Professionalism Award recipient Jeremy A. Bazile with Dylan T. Thriffiley, 2018-19 YLD Chair.



Outstanding Program of the Year Award



The finalists for the Outstanding Program of the Year Award, from left, Valerie E. Fontnot (representing the Greater New Orleans Louis A. Martinet Legal Society, Inc.), Rachal D. Cox and Sara A. Johnson (New Orleans Chapter of the Federal Bar Association Younger Lawyers Division).

Inset: Graham H. Ryan (YLD Representative to the ABA House of Delegates), Scott L. Sternberg (YLD Chair-Elect), Valerie Fontnot and Dylan T. Thriffiley (YLD Chair) celebrate the Outstanding Program of the Year Award recipient, Greater New Orleans Louis A. Martinet Legal Society, Inc.'s Pathways and Pipelines to Success program. Accepting is Valerie E. Fontnot.

Outstanding Local Affiliate Award



The finalists for the Outstanding Local Affiliate Award, from left, Jeremy A. Bazile (Lafayette Bar Association Young Lawyers Section), Landon T. Hester (Baton Rouge Bar Association Young Lawyers Section) and Valerie E. Fontnot (Greater New Orleans Louis A. Martinet Legal Society, Inc.)

Inset: Outstanding Local Affiliate Award recipient, Baton Rouge Bar Association Young Lawyers Section represented by Ann K. Gregorie, BRBA Executive Director, with Dylan T. Thriffiley, 2018-19 YLD Chair.

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Bruce E. Hampton was elected judge, Division C, 3rd Judicial District Court. He earned his BS degree, *cum laude*, in 1978 from Louisiana Tech University, his JD degree, *magna cum laude*, in 1981 from Tulane University Law School and his LL.M. degree in taxation in 1990 from Southern Methodist University. Prior to his election to the bench, he served as an assistant district attorney in Lincoln and Union parishes for 18 years. He served as president of the Union Parish Bar Association. Judge Hampton is married to Cindy Kay Hampton and they are the parents of two children.



Bruce E. Hampton

Marcus L. Hunter was elected judge, Division G, 4th Judicial District Court. He earned his bachelor's degree in 2002 from Southern University and his law degree in 2005 from Southern University Law



Marcus L. Hunter

Center. Prior to his election to the bench, he served in the Louisiana House of Representatives, District 17, from 2011-18. He also worked as an attorney for the Indigent Defender Board of the 4th, 5th and 26th Judicial Districts from 2008-11. Judge Hunter is married to Tonya Hunter and they are the parents of two children.

Lowell C. (Chris) Hazel was elected judge, Division B, 9th Judicial District Court. He earned his bachelor's degree in 1990 from the University of New Orleans

and his JD degree in 2000 from Western Michigan University. He interned for U.S. Congresswoman Lindy Boggs in 1989 and served as a law clerk for retired 9th JDC Judge Thomas M. Yeager from 2000-02. He then served as an assistant district attorney in Grant and Rapides parishes. In 2007, he was elected to the Louisiana House of Representatives, District 27, where he served until his election to the bench. Judge Hazel is married to Karen Centanni Hazel and they are the parents of two children.



Lowell C. Hazel

Jonathan W. Perry was elected judge, 3rd District, Section 4F, 3rd Circuit Court of Appeal. He earned his BA degree in 1995 from Northeast Louisiana University and his JD degree in 2003 from Southern University Law Center. He previously served as a Kaplan City Council member, 2002-06; in the Louisiana House of Representatives, District 47, 2008-11; and in the Louisiana Senate, District 26, 2011-18. Judge Perry is married to Christine LeBeouf Perry and they are the parents of four children.



Jonathan W. Perry

Amanda Chauvin Calogero was elected judge, Division B, Jefferson Parish Juvenile Court. She earned her bachelor's degree in 1991 from Nicholls State University and her JD degree in 1997 from Loyola University College of Law. She served as an assistant district attorney in Jefferson Parish from 1998-2018, most recently serving as chief of the Juvenile

Division. In 2017, she was selected as a Fellow at Tulane University School of Medicine's Early Childhood Policy Leadership Institute and was appointed to the Louisiana Governor's board on Juvenile Justice and Delinquency Prevention. Judge Calogero is married to Michael Calogero and they are the parents of two children.



Amanda Chauvin Calogero

Appointments

► 5th Circuit Court of Appeal Judge John J. Molaison, Jr. and 14th Judicial District Court Judge Sharon D. Wilson were appointed, by order of the Louisiana Supreme Court, to the Judiciary Commission of Louisiana for terms of office which began on Jan. 1 and will end on Dec. 31, 2022.

► Lloyd Clark was appointed by the Louisiana District Judges Association to the Judiciary Commission of Louisiana for a four-year term which began on Oct. 12, 2018.

► Linda G. Bizzarro, Wendy E.W. Giovingo, Laura B. Hennen, Melissa L. Theriot and Charles Hamilton Williamson, Jr. were reappointed, by order of the Louisiana Supreme Court, to the Attorney Disciplinary Board for terms of office which began on Jan. 1 and will end on Dec. 31, 2021.

Retirements

► 1st Circuit Court of Appeal Judge John T. Pettigrew retired, effective Dec. 31, 2018. He earned his bachelor's and law degrees in 1965 and 1972, respective-

ly, from Louisiana State University. He was elected to the 32nd Judicial District Court in 1990 and to the 1st Circuit Court of Appeal in 1998. Prior to his election to the bench, he served as an assistant district attorney and was a sole practitioner in a general civil practice in Terrebonne Parish. He is also a former captain in the U.S. Army and served as an adjunct professor at Nicholls State University.

► 3rd Circuit Court of Appeal Judge Marc T. Amy retired, effective Dec. 31, 2018. He earned his law degree in 1978 from Louisiana State University Paul M. Hebert Law Center after undergraduate work at the University of Southwestern Louisiana and LSU. He was elected to the 3rd Circuit Court of Appeal in 1994 after serving as an assistant district attorney for the 15th Judicial District.

► 34th Judicial District Court Judge Kirk A. Vaughn retired, effective Dec. 31, 2018. He earned his bachelor's degree in 1972 from the University of New Orleans and his law degree in 1975 from Louisiana State University Paul M. Hebert Law Center. He was elected to the 34th JDC in 1990. He is a founding member and former president of the 34th JDC Bar Association and helped establish the St. Bernard Parish Indigent Defender's Office.

► Ascension Parish Court Judge Marilyn M. Lambert retired, effective Dec. 31, 2018. She earned her bachelor's degree from MSU and her law degree from Louisiana State University Paul M. Hebert Law Center. She was elected to the Ascension Parish Court in 1997. Prior to her election to the bench, she served as an assistant district attorney for the 23rd Judicial District and was in private practice in Gonzales.

► Baton Rouge City Court Judge Laura A. Prosser retired, effective Dec. 31, 2018. She earned her BS and M.Ed. degrees in 1972 and 1974, respectively, from the University of Virginia and her JD degree in 1991 from Louisiana State University Paul M. Hebert Law Center. She was elected to Baton Rouge City Court in 2000.

► Jefferson Parish Juvenile Court Judge Andrea Price Janzen retired, effective Dec. 31, 2018. She earned her BA degree from the University of New Orleans

and her JD degree from Louisiana State University Paul M. Hebert Law Center. She was elected to the Jefferson Parish Juvenile Court in 1992. Prior to her election to the bench, she was an assistant district attorney in Jefferson Parish and served as president of the board of directors of the Jefferson Children's Advocacy Center.

Deaths

► Retired Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr., 87, died Dec. 20, 2018. He attended St. Aloysius High School and Loyola University. He earned his law degree in 1954, graduating first in his class and serving as president of the Student Editorial Board of the *Loyola Law Review*. Prior to his 1972 election to the bench, he worked as a law clerk at Orleans Parish Civil District Court and practiced law with the firm of Landrieu, Calogero & Kronlage. Chief Justice Calogero was the longest-serving justice in the history of the Louisiana Supreme Court, serving for 36 years, from Jan. 10, 1973, to Dec. 31, 2008. He served as chief justice for 18 years, from April 1, 1990, until his retirement on Dec. 31, 2008. He was the recipient of numerous accolades and awards, including the Louisiana Bar Foundation's 1991 Distinguished Jurist Award; an honorary Doctor of Laws degree from Loyola University College of Law; induction as an honorary member of Louisiana State University Paul M. Hebert Law Center's Order of the Coif and Hall of Fame; the Justice Albert Tate,

Jr. Award from the Louisiana Association of Criminal Defense Lawyers; and the distinguished Medal of Honor Award from the Mayor of New Orleans. In 2007, the American Judicature Society, a national nonpartisan organization dedicated to the effective administration of justice, awarded Chief Justice Calogero the Dwight D. Opperman Award for Judicial Excellence. He continued to receive honors after his retirement in 2008, including the dedication in his honor of an issue of the *Louisiana Bar Journal* and the Louisiana Association of Criminal Defense Counsel's Lifetime Achievement Award. The Louisiana Bar Foundation instituted the Calogero Justice Award, presented annually to recognize a significant contribution to the Louisiana justice system. He also received the Integritas Vitae Award, Loyola University's highest honor, given to individuals who possess a high moral character in a lifetime of service, and the ACLU's Ben Smith Award for his commitment to the advancement of civil liberties in Louisiana.

► Retired Judge Patricia H. Minaldi, 60, died Dec. 1, 2018. She earned her BA degree, *cum laude*, from Wesleyan University in Middleton, CT, and her JD degree from Tulane University Law School. She began her legal career as an assistant district attorney in Orleans and Calcasieu parishes. In 1996, she was elected to the 14th Judicial District Court. In 2003, she was appointed by President George W. Bush as federal judge in the Western District of Louisiana, where she served until her retirement in 2017.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication Deadline

June/July 2019

April 4, 2019

August/Sept. 2019

June 4, 2019

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.**

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Gwendolyn Y. Driggers and Chaséray L. Griffin have joined the firm's New Orleans office as associates.

Baldwin Haspel Burke & Mayer, L.L.C., announces that **Jill S. Willhoft** has joined the firm's New Orleans office as a partner.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Laura C. Cannon**, **Lorcan L. Connick**, **Patrick J. Lorio** and **Janelle E. Sharer** have joined the firm as associates.

Breazeale, Sachse & Wilson, L.L.P., announces that **Philip J. Giorlando** has joined the New Orleans office as an associate.

Daigle Fisse & Kessenich announces that

Sheri M. Morris has joined the firm's new Baton Rouge office as a partner and **Thomas E. Devillier** has joined the Baton Rouge office as a senior associate. The office is located at Ste. F, 8480 Bluebonnet Blvd., Baton Rouge, LA 70810; phone (225)421-1800; website www.daiglefisse.com.

Deutsch Kerrigan, L.L.P., announces that **Audrey E. Gitz** and **Raymond L. Wilkes III** have joined the firm's New Orleans office as associates.

Eckert & Tarleton, L.L.C., announces the new location of its central/north Mississippi office at the Row 76 Building, 141 West Peace St., Canton, MS 39046. The firm also has offices in New Orleans and Gulfport, MS.

King & Jurgens, L.L.C., announces that Chelsea C. Crews has joined the firm's New Orleans office as an associate.

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

Liskow & Lewis, A.P.L.C., announces that the firm has opened an office in Baton Rouge located at Ste. 1150, 451 Florida St., Baton Rouge, LA 70801; phone (225)341-4660; website www.liskow.com. The Baton Rouge office will be managed by shareholder Matt Jones. Paul M. Adkins has joined the firm's Baton Rouge office as of counsel.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Destinee Finnin Ramos has joined the firm's New Orleans office as an associate.

New Orleans law firm Riess LeMieux, L.L.C., announces it has relocated its offices to the Energy Centre, Ste. 1100,

Continued next page



W. Paul Andersson



Richard J. Arsenault



Robert L. Bonnaffons



Laura C. Cannon



Jeanne C. Comeaux



Lorcan L. Connick



Andrée Matherne Cullens



Jessica R. Derenbecker



Thomas E. Devillier



Eva J. Dossier



George D. Fagan



Philip J. Giorlando

1100 Poydras St., New Orleans; phone (504)581-3300; website <https://rllaw.com>.

The Scott Law Firm, L.L.C., announces that **Meredith E. Hamblen** has joined the firm's Baton Rouge office as an associate.

Shields Mott, L.L.P., in New Orleans announces that **Jessica R. Derenbecker** has been elected as a partner and **Christopher D. Joseph, Jr.** has joined the firm.

Stanley, Reuter, Ross, Thornton & Alford, L.L.C., in New Orleans announces that **Eva J. Dossier** has joined the firm as a member.

Walters, Papillion, Thomas, Cullens, L.L.C., in Baton Rouge announces that **Andrée Matherne Cullens** has joined the firm as an attorney and special litigation counsel.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, recently chaired a Complex Litigation Conference in New York, "Current Mass Torts from E-Discovery Through Exit Strategies, Navigating Game-Changing Dynamics."

Jeanne C. Comeaux, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was appointed as the Baton Rouge Bar Association's delegate to the American Bar Association's House of Delegates for a two-year term. As the ABA delegate, she earned a seat on the Louisiana State Law Institute.

Christopher O. Davis, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was elected president of the Comité Maritime International, an organization based in Belgium and comprised of national maritime law associations.

Thomas E. Ganuchau, a partner in the Houston, Texas, office of Beck Redden, L.L.P., was elected to a three-year term as a national director of DRI, the Voice of the Defense Bar.

Thomas M. Flanagan, founder of Flanagan Partners, L.L.P., in New Orleans, was promoted to adjunct professor of law at Tulane University Law School. He teaches civil law torts.

Elizabeth A. (Liz) Roussel, a partner in the New Orleans office of Adams and Reese, L.L.P., was appointed Employment Practices and Workplace

Liability Section vice chair within the Federation of Defense and Corporate Counsel.

PUBLICATIONS

Best Lawyers in America 2019

Flanagan Partners, L.L.P. (New Orleans): Sean P. Brady, Harold J. Flanagan (New Orleans "Lawyer of the Year," Insurance Law), Thomas M. Flanagan and Ann R. Koppel.

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

New Orleans Magazine 2018 Top Lawyers

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

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans): Ashley L. Belleau, Christopher T. Caplinger, Stanley J. Cohn, Celeste D. Elliott, Delos E. Flint, Jr., Joseph P. Guichet, Benjamin W. Kadden, Rose M. LeBreton, Stewart F. Peck, Seth A. Schmeackle, David B. Sharpe, Miles C. Thomas and Kristopher T. Wilson.



Audrey E. Gitz



Meredith E. Hamblen



Christopher D. Joseph, Jr.



Julien G. Lamothe



Patrick J. Lorio



Donald E. McKay, Jr.



Sheri M. Morris



Janelle E. Sharer



Stanton E. Shuler, Jr.



Patrick M. Wartelle



Raymond L. Wilkes III



Jill S. Willhoft

UPDATE

Supreme Court of Louisiana Historical Society Presents Tricentennial Gala

The Supreme Court of Louisiana Historical Society presented a Tricentennial Gala on Sept. 29, 2018 in recognition of New Orleans' 300th year. The gala was in conjunction with the Louisiana Judicial College's Fall Judges Conference. Opening remarks were provided by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; Historical Society President Donna D. Fraiche; and Professor Paul R. Baier, Historical Society secretary and Gala Committee co-chair. The featured speaker was Chief Judge Carl E. Stewart, U.S. 5th Circuit Court of Appeals.



Attending the Supreme Court of Louisiana Historical Society's Tricentennial Gala in September 2018 were, from left, Miriam Childs, director, Supreme Court Law Library; N. Gail Bragg, Historical Society member; Donna D. Fraiche, Historical Society president; and Angela White-Bazile, executive counsel, Louisiana Supreme Court.



U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, left, and Louisiana Supreme Court Chief Justice Bernette Joshua Johnson were featured speakers for the Supreme Court of Louisiana Historical Society's Tricentennial Gala.



The Louisiana State Bar Association's (LSBA) Outreach Committee and the Southwest Louisiana Bar Association co-hosted the Member Outreach CLE series on Oct. 17, 2018 in Lake Charles. The series informs members about the LSBA and the services included with membership. The seminar featured J. Lee Hoffoss, Jr., LSBA Board of Governors Fourth District representative; Michael B. Victorian, co-chair of the Outreach Committee; and LSBA Ethics Counsel Eric K. Barefield. From left, Mark M. Judson, Southwest Louisiana Law Center, Inc.; Hoffoss; Barefield; Victorian; Ahmed K. Soussi, law clerk, 14th Judicial District Court; Courtnie N. Pollard, judicial law clerk, 36th Judicial District; and Breanne R. Istre, law clerk, 14th Judicial District Court.



The Louisiana State Bar Association's (LSBA) Outreach Committee hosted the Member Outreach CLE series on Oct. 29, 2018 in Shreveport. The series informs members about the LSBA and the services included with membership. The seminar featured Monique Y. Metoyer, center, LSBA Board of Governors at-large member; L. Gordon Mosley II, right, secretary of the Shreveport Bar Association's Young Lawyers Section. Also in photo, left, Patrick J. Harrington, LSBA Board of Governors Eighth Board District representative.

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442 Europe Street, Baton Rouge, Louisiana 70802-6406



The Alexandria Bar Association held its annual Opening of Court ceremony for the 9th Judicial District Court in September 2018. Attending, from left, Chief Judge W. Gregory Beard, 9th JDC; Michael S. Koch, president, Alexandria Bar Association; 2017-18 Louisiana State Bar Association President Dona Kay Renegar; Judge Patricia Evans Koch, 9th JDC; and Ronald G. Beard, vice president, Alexandria Bar Association.

Alexandria Bar Holds Opening of Court Ceremony

The Alexandria Bar Association held its annual Opening of Court ceremony for the 9th Judicial District Court on Sept. 5, 2018. 9th JDC Chief Judge W. Gregory Beard opened the ceremony.

Alexandria Bar Association President Michael S. Koch provided introductory remarks, and Young Lawyers Section Chair Matt Nowlin welcomed new attorneys.

Waguespack Sworn in as NOBA President

Jason P. Waguespack, managing director of the New Orleans office of Galloway, Johnson, Tompkins, Burr & Smith, A.P.L.C., was installed as the new president of the New Orleans Bar



Jason P. Waguespack

Association in November 2018. The 94th Annual Dinner continued the tradition of honoring the previous year's board members and committee chairs, and then turning business over to the incoming board.

Waguespack received his JD degree from Tulane University Law School. His commitments to the legal profession and his community are evidenced by his involvement in local and state bar associations, as well as multiple professional and civic organizations benefiting the Greater New Orleans area.

Shreveport Bar Association Hosts Memorial and Recognition Ceremony

The Shreveport Bar Association hosted its annual Memorial and Recognition Ceremony at the Caddo Parish Courthouse on Oct. 30, 2018. The program featured an opening eulogy from 1st Judicial District Court Chief Judge Robert P. Waddell and Shreveport Bar Association President James C. McMichael, Jr.

Shreveport Bar Young Lawyers Section President R. Gahagan Pugh III introduced new members. Robert A. Kutcher, 2018-19 Louisiana State Bar Association president-elect, also addressed the gathering.



Above: Several 1st Judicial District Court judges attended the Shreveport Bar Association's Memorial and Recognition Ceremony. From left, Judge Charles G. Tutt, Judge Karelia R. Stewart, Judge Craig O. Marcotte, Judge John D. Mosely, Chief Judge Robert P. Waddell, Judge Michael A. Pitman, Judge Brady D. O'Callaghan and Judge Ramona L. Emanuel.



Left: Robert A. Kutcher, 2018-19 Louisiana State Bar Association president-elect, addressed the attendees at the Shreveport Bar Association's Memorial and Recognition Ceremony.



Several judges attended the Southwest Louisiana Bar Association's annual Red Mass and Court Opening Ceremony. From left, Judge Robert L. Wyatt, 14th Judicial District Court; Judge Penelope Q. Richard, 38th Judicial District Court; Judge Ronald F. Ware, 14th Judicial District Court; Judge Sharon D. Wilson, 14th Judicial District Court; Judge Guy E. Bradberry, 14th Judicial District Court; Judge G. Michael Canaday, 14th Judicial District Court; and Judge W. Mitchell Redd, 14th Judicial District Court.

Southwest Louisiana Bar Holds Court Opening Ceremony

The Southwest Louisiana Bar Association (SWLBA) held its annual Red Mass at the Immaculate Conception Cathedral and its Court Opening Ceremony at the Old Calcasieu Parish Courthouse on Oct. 19, 2018. The Fall Court Ceremony was hosted in conjunction with the 14th, 36th and 38th Judicial Courts. The Membership Luncheon Meeting immediately followed the Court Opening Ceremony. The program included the introduction of new members by Young Lawyers Section President Alyson V. Antoon and remarks by 2018-19 Louisiana State Bar Association President Barry H. Grodsky.



Louisiana State Bar Association (LSBA) 2018-19 President Barry H. Grodsky, center, addressed the attendees at the Southwest Louisiana Bar Association (SWLBA) annual Red Mass and Court Opening Ceremony. From left, SWLBA President Jere J. Bice, Grodsky and former LSBA President Robert E. Guillory, Jr.



The New Orleans Bar Association's Young Lawyers Section sponsored and participated in an October 2018 legal clinic offering free assistance to people in need. The event was hosted by the American Association of Retired Persons. Among the volunteers were, from left, Cory J. Vidal, Stephanie Graf Gamble, Camille R. Bryant, Katherine L. Swartout, Ebony S. Morris, Laura Tuggle, Michael E. Parks, AARP coordinator Johnathan Williams, Eric W. Sella, Jennifer Gordon Lampton and Christopher K. Ralston.

NOBF Elects Board of Directors

The New Orleans Bar Foundation's board of directors for 2018-19 were elected. Angelina Christina is president; Mark C. Surprenant, vice president; Elizabeth S. Sconzert, secretary; Michael J.



Angelina Christina

Mestayer, treasurer; Walter J. Leger, Jr., past president; and Katherine L. Swartout, director.



The Greater New Orleans Louis A. Martinet Legal Society, Inc. conducted an election primer on Sept. 20, 2018. Panelists included, from left, Ronald L. Wilson, of counsel, Blake Jones Law Firm; Alanah E. Odoms-Hebert, executive director, ACLU of Louisiana; and Deuel Ross, assistant counsel, NAACP Legal Defense & Educational Fund, Inc.



Gary A. Hemphill, right, received the New Orleans Bar Association's Distinguished Maritime Lawyer Award at a November 2018 ceremony. The award honors maritime attorneys for their dedication in practicing maritime and admiralty law. Hemphill is a partner in the New Orleans office of Phelps Dunbar, L.L.P. With Hemphill is Hon. Martin L.C. Feldman.

President’s Message

The Louisiana Civil Legal Navigator Project

By 2018-19 President W. Michael Street

I am happy to report on one of our new projects, the Louisiana Civil Legal Navigator. To improve accessibility, effectiveness and efficiency of legal services in Louisiana, the Louisiana Bar Foundation is creating an integrated civil legal aid service delivery portal that leverages artificial intelligence and subject matter expert (SME) contributors. The project, which is derived from a Legal Services Corporation (LSC) pilot program, aims to direct Louisiana’s low-income and under-served communities to the most appropriate resources within the civil legal network.

In 2016, the LSC announced efforts to establish statewide access to justice portals. Since then, the LSC has partnered with Microsoft and Pro Bono Net to design, test and develop an intelligent technology platform that enables those falling within the “justice gap” to find actionable information and resources. Ultimately, the driving force is aggregat-

ing legal information and community and social resources in a meaningful way, empowering low-income and marginalized members of our community to take the first steps in addressing their most pressing legal needs.



W. Michael Street

As the project’s two pilot states — Alaska and Hawaii — continue efforts to bridge their own justice gaps, the access to justice community in Louisiana has moved forward with identifying our state’s highest needs and creating and collecting the information critical to the success of the platform. A survey of legal aid programs, unmet needs data and Louisiana Law Help web traffic revealed that landlord tenant, family and workers’ rights issues were among the highest priorities for the people that make up our

community. Armed with this knowledge, we’re already making strides in content creation and the data gathering that form the backbone of this project.

It truly takes a village to support a statewide initiative like this. To that end, we’ve already begun forging partnerships with great institutions like Loyola University New Orleans College of Law, Entergy and Suffolk University Law School Legal Innovation and Technology Lab.

The hope is that community-wide investment in this initiative will ensure its success now and in the many years to come. That’s why we also need you. Attorney volunteers with experience in workers’ rights, housing and family law are needed now. To learn more about volunteering, visit our website at www.raisingthebar.org and look for information on the Louisiana Civil Legal Navigator.

Annual LBF Fellows Membership Meeting Set for April 5

The Louisiana Bar Foundation (LBF) Annual Fellows Membership Meeting will begin at noon on Friday, April 5, 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 2018 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.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Ashley E. Armstrong.....	Denham Springs	Gregory D. Hopkins	Gretna
Kelsey L. Balzli	Baton Rouge	Rebecca R. Indest	Baton Rouge
Kristina V. Bison.....	New Orleans	Macy Lauren Ledet	Luling
Kristal A. Bourgeois	Prairieville	Christopher P. Leger	Metairie
Marlerie L. Bulot.....	New Orleans	Georges M. Legrand.....	New Orleans
Rachel Chappell.....	Baton Rouge	Anne C. Lemoine	New Orleans
Joshua L. Critselous	Ruston	Lorriane E. Lucas	Terrytown
Jumoke Joy Dara	Pineville	Victoria E. McIntyre.....	Pittsburg, PA
Jacquelyn L. Duhon.....	New Orleans	Jared Elijah-Akeem Nelson.....	Abbeville
Macy R. Esneault	Convent	Erin L. Pedrami	Prairieville
Ashley N. Freeman.....	Lake Charles	Hon. Candyce G. Perret.....	Lafayette
Landon P. Gauthier.....	Gonzales	Haddy Khaled Rikabi	Metairie
Antoinette C. Gouaux.....	Lockport	P. Nelson Smith, Jr.....	Minden
Tiffany L. Green	Baton Rouge	Hon. Robert L. Wyatt	Lake Charles
Jessica F. Hawkins.....	Baton Rouge	John M. Zazulak II	New Orleans

LBF Annual Fellows Gala Set for April 5

By Alan G. Brackett and Deidre Deculus Robert, Gala Co-Chairs

The Louisiana Bar Foundation's (LBF) 33rd Annual Fellows Gala is Friday, April 5, at the Hyatt Regency New Orleans, 601 Loyola Ave. This year, the LBF is honoring the 2018 Distinguished Jurist D. Milton Moore III, Distinguished Attorney H. Bruce Shreves, Distinguished Professor Thomas C. Galligan, Jr. and Calogero Justice Award recipient Kendall Vick Public Law Foundation. The gala brings together lawyers, judges and professors from across the state to support the LBF mission. The gala begins at 7 p.m. and includes a silent auction; 365 Days of Justice, an interactive fundraiser featuring the 365 days of the year, each available for purchase; prizes and a raffle.

Sponsors are being sought for this fundraising event. Proceeds raised will help strengthen the programs supported and provided by the LBF. Sponsorships are available at the following levels — Pinnacle, Benefactor, Cornerstone, Capital, Pillar and Foundation. Learn more about the levels at: 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 the web link above. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

A special thank you is extended to the Gala Committee — Travis A. Beaton, Alexander N. Breckinridge V, Tiffany Delery Davis, Katherine M. Determan, Steven F. Griffith, Jr., Colleen C. Jarrott, W. Brett Mason, Christopher K. Ralston, Hon. Raymond Steib, Jr., Patrick A. Talley, Jr., Brooke C. Tigchelaar and Ta-Tanisha T. Youngblood.

Discounted rooms are available at the Hyatt Regency New Orleans Thursday, April 4, and Friday, April 5, at \$244 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. Reservations must be made before Thursday, March 15.

LBF Offers Info on Handling Unclaimed, Unidentified Funds and Lists IOLTA Prime Partners

The Louisiana Bar Foundation is providing information on how to handle any unclaimed funds and/or unidentified funds. The online resource is available at: <https://raisingthebar.org/iolta/iolta-resources-for-attorneys>.

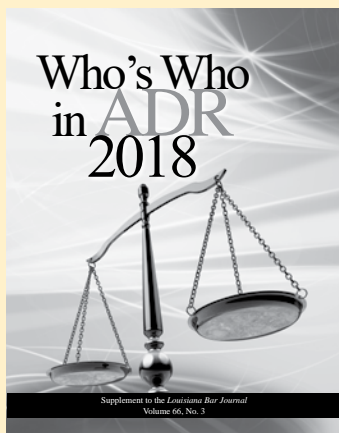
Also at this web link is a list of the Louisiana IOLTA Program Prime Partners and Eligible Institutions (as of January 2019).

Do you need other assistance? Contact the LBF office at (504)561-1046, IOLTA Program Coordinator Tina Ferrera at tina@raisingthebar.org or Executive Director Donna C. Cuneo at donna@raisingthebar.org.



The 2018-19 officers of the Feliciana Bar Association (East and West Feliciana Parishes) were installed in September 2018. From left, Joseph J. Zahorchak, secretary; Jessie Cannon Black, vice president; Molly G. O'Flynn, president; and Charles E. Griffin II, treasurer.

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Go to the LSBA's website: www.lsba.org/goto/adrdirectory2018.

Go to the free LSBA App. The app is available for iPad, iPhone and Android users. Search "Louisiana State Bar Association" in your devices' App Stores for the free download.

ANSWERS for puzzle on page 357.

B	U	S	H	T	H	R	U	S	T	E	D
L	I	P	O	N	R	U					
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M	C	K	I	N	L	E	Y	F	O	R	D

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

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For the June issue of the Journal, all classified notices must be received with payment by April 18, 2019. Check and ad copy should be sent to:

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The Derbes Law Firm, L.L.C., an eight-attorney, AV-rated Metairie firm, seeks an entry-level associate. The position will initially focus on bankruptcy. The firm's other practice areas include commercial and other litigation, transactions, successions, court orders dividing retirement accounts, and entity law. Further infor-

mation is located on the firm's website: www.DerbesLaw.com. Salary is commensurate with qualifications. Email (1) cover letter, (2) résumé, (3) writing sample and (4) references to ederbes@derbeslaw.com. All inquiries will be treated as confidential.

Wanek Kirsch Davies, L.L.C., is seeking a full-time and/or part-time attorney licensed in Louisiana with at least one-three years of experience in corporate defense, general insurance defense and litigation. The ideal applicant for the full-time position would have experience taking depositions, motion practice and defending corporate and insurance defense cases. For the part-time position, the ideal applicant would be willing to work 15-25 hours per week, with the flexibility to work in the office or remotely from home. Successful applicant will be provided a laptop computer to be able to work remotely. Candidates should have relevant work experience as an attorney, preferably top one-third in law school class. Full-time position will be salaried with excellent benefits. For the part-time position, the rate of pay will be hourly based on level of experience. Interested candidates should email résumé, law school transcript and a writing sample to msundquist@wkdlawfirm.com or pwanek@wkdlawfirm.com.




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NOTICE

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

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The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: ALL "TIED" UP

Vince Fornias (who we all miss writing in this space) tells this story about what happened at one of his mediations. Vince, of course, revealed no names, but you know who you are.

Many moons ago in Metairie, Vince had a mediation with a very well-dressed (and well-known) plaintiff's attorney. The parties were worlds apart at the start.

So Vince, being the skilled mediator that he is, worked all day and finally got them close, but they were at a spot where both sides dug in and said they were not gonna move. That's IT. Brinkmanship at its best, or worst. By late afternoon, despite every cheap trick imaginable, the parties were still \$10,000 apart on a potential deal of more than \$600,000.

The defense representative (whose fashion budget was quite obviously limited), vents, as he's getting up to leave the mediation, "If that plaintiff's lawyer with his fancy (flippin') tie thinks he's going to get another red cent out of me, he is sadly mistaken."

Is the end in sight? No. Vince guards the door. Time for a Hail Mary pass. He needs to get the two sides to a "WOWD" (a Way Out With Dignity). He asks the defense adjuster, "Just wondering, if I can get the plaintiff's lawyer to give up his 'fancy (flippin') tie' and present it to you as his battle trophy, can you call someone up the ladder and get an extra \$5,000?" Looking almost relieved and amused, the adjuster says, "You get me his tie, and I'll find the \$5,000." Vince says, "Cover me. I'm going into the other room." Do not try this at home. Void where prohibited.

In the other room, Vince comments to the plaintiff's lawyer that he has quite



a lovely tie, and that it must have cost a pretty penny, but certainly not 40 percent of \$5,000. He tells him, matter of factly, not to ask any questions but that if he will take off his tie and let Vince use it in the other room, he will come back with an extra \$5,000. The lawyer doesn't bat an eyelash. As he takes off his tie to hand it to Vince, he babbles under his breath, "Tell that so-and-so in there that he can have his tie — but that I'm walking out of here with my pants on."

Vince made it happen and got it all tied up.

Next time Vince mediated a case

with that plaintiff's lawyer, he came donning a starched button-down shirt, sport coat — but no tie.

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 and chair of the LSBA Senior Lawyers Division. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)



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