LOUISIANA BAR
JOURNAL
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Features

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#NOAPOLOGIES #NOTSORRY

By Alainna R. Mire

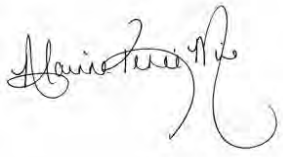
Weekends are normally my time to check the mail, lounge around, watch mindless television and generally unwind. Now, of course, this is only when I'm at my house for the weekend with absolutely no plans at all.

On a recent day when I checked the mail, I noticed I had an issue of *Teen Vogue* in my mailbox, which was actually addressed to me. Although I am an individual born at the end of one generation and beginning of the current one, I am definitely not a TEENAGER. LOL! So while eating breakfast on Sunday morning, I decided to peruse the magazine since the words "[p]ower girls" was on the cover. An article about camouflaging caught my attention. Henriquez, Jessica Ciencin. "Sound of Silence." *Teen Vogue*. February 2016:110-113. Print.

Camouflaging is "[w]hen women go out of their way to express themselves in a manner that won't offend anyone," *Id* at 111. Henriquez discusses how the change from strong, vocal young girls to somewhat timid and less vocal teenagers and young women occurs during adolescence. Luckily, camouflaging can be reversed, but it isn't an easy process. It takes encouragement and knowledge that a young girl's voice matters. My hope is that many adults, just like me, read the article.

As recently as a few months ago, I had an older gentleman with whom I had to work with in my community who basically told me that I should camouflage. I was offended by his comments but, instead of camouflaging, I told him that he could not speak to me that way and that I was an individual, not a puppet. Just because a female voices her opinion does not make her a diva or impossible to work with. It means she is self-assured and willing to work toward her goals.

I'm not apologizing for being who I am and where I've been. I'm not sorry for the path that I've taken on the journey to where I am today. I am not sorry that I don't allow myself to fit into a single box or category. I'm not sorry that I don't have the rest of my life scripted or have any idea what I want it to look like. I'm not sorry for being me.



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.

LETTERS

In Re: Article on "Mediation and Religion"

Although the sentiments expressed in the article "Mediation and Religion" (*Louisiana Bar Journal*, October/November 2015) are nice, the truth matters. In my Quran, I read that the only permissible dispute mediation is between Muslims. See Surah 49:9-10, for example. A relationship between believers and non-believers is not on an equal basis. The Quran does not encourage dispute resolution between believes and non-believers.

Moreover, there is a more fundamental problem that complicates dispute resolution. Allah is pure power and will. Allah cannot be known rationally. The creation does not make known to us the invisible attributes, contrary to the assurances found in Romans 1. What are the consequences? The Muslim cannot have a will for that would diminish the power of Allah. There is no secondary cause of things for that, too, diminishes Allah. There cannot be cause and effect. As such, there is little, if any, room for reason, logic and rational thought.

In short, Islam is voluntaristic. A sin is not a sin because it is inherently immoral. Rather, a sin is a sin because Allah has said so.

If the truth really matters, then the article, based on false information, should be corrected.

Lacey P. Wallace
Bossier City

Thanks from South Carolina

Words cannot express our appreciation for the kindness, compassion and generosity of the Louisiana Bar Foundation, the Louisiana State Bar Association and the legal community in Louisiana. Thank you for the generous donation of $5,795. Thank you for being a resource we can readily turn to at this time. In fact, on Nov. 10, attorney Ranie Thompson, a managing attorney from Southeast Louisiana Legal Services, trained our staff on outreach, advocacy and the representation of disaster survivors.

South Carolina is still recovering from the flood disaster of October, especially those citizens living in the rural areas of the state. We have developed and distributed disaster-related brochures throughout the state in an effort to provide information and assistance. We will use your donation to help defray some of the cost.

Andrea Loney
Executive Director,
South Carolina Legal Services
Columbia, SC

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.

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

By Mark A. Cunningham

Remarks to the LSBA's House of Delegates at the Midyear Meeting / Jan. 16, 2016

Ladies and Gentlemen of the House and LSBA Members:

I am pleased to report that since our annual gathering in June 2015, the Louisiana State Bar Association (LSBA) continues to make great strides in its mission of serving the public and our members.

SOLACE Program

SOLACE (Support of Lawyers/Legal Personnel — All Concern Encouraged) offers support to members of the legal community, including paralegals and administrative staff, facing tragedy due to an unexpected disaster, death, illness, sickness or injury. Assistance can range from simply sending the family a card signed by local and state leaders to providing a family with meals and clothing after a fire or help with grocery shopping or child care when family members are facing medical emergencies. The program does not solicit money, but rather relies on contributions of gift cards, frequent flyer miles, a rare blood type donation, transportation, medical community contacts and referrals, and a myriad of other possible solutions.

Over the past several months, the LSBA program has expanded its volunteer network to more than 20,000 members of the Louisiana legal community and arranged for an emergency medical flight for the child of one of our members, experimental medical treatment coverage for another member, and transportation, housing and other needed assistance to scores of other members facing crisis.

Louisiana Gov. John Bel Edwards, right, with Louisiana State Bar Association President Mark A. Cunningham. *Photo by Matthew Hinton Photography.*

I am pleased to report that the Federal Bar Association and South Carolina Bar Association have recently created SOLACE chapters joining Alaska, Delaware, Georgia, Iowa, Massachusetts, Nebraska, Nevada, New Hampshire, New York, Ohio, Rhode Island, Texas and Washington, D.C.

SOLACE started in Louisiana. The program was developed by Louisiana lawyer Mark C. Suprenant and Judge Jay C. Zainey and has been a savior to hundreds of families. We should be proud that our innovation is now helping lawyers, legal secretaries, paralegals and other members of the legal community throughout our country. Please join me in thanking Judge Zainey and Mark for their service.

JLAP Program

Over the past several months, we also have made a substantial investment to expand the programming of the Judges and Lawyers Assistance Program (JLAP). With our profession suffering among the highest levels of suicide, substance abuse and career burnout, this investment was a moral necessity.

But it also represents an effort to protect our members against further assessments. The direct link between attorney misconduct and substance abuse had led to lobbying in some quarters to impose a special assessment to fund this program. Our investment neutralized this discussion, ensuring that JLAP would not become an independent agency funded by attorney dollars, a result supported by the Louisiana Supreme Court and Office of Disciplinary Counsel.

Tech Center

I am also pleased to report that our staff and attorney volunteers continue to develop and implement programs to help lawyers better serve their clients and are particularly focused on services that will benefit solo and small-firm practitioners. The LSBA will soon launch a web-based program called the "Tech Center." The Tech Center contains an expansive library of educational resources and information to help members leverage technology effectively in practicing law and running their businesses. The LSBA also updated

Louisiana Gov. John Bel Edwards, seated seventh from left, met with members of the Louisiana State Bar Association's Board of Governors during their Jan. 15 meeting. Seated from left, S. Jacob Braud, House of Delegates Liaison Committee chair; Michael E. Holoway, Fifth District; President-Elect-Designate Dona K. Renegar; Secretary Alainna R. Mire; Treasurer Robert A. Kutcher; President-Elect Darrel J. Papillion; Gov. Edwards; President Mark A. Cunningham; Young Lawyers Division Chair Erin O. Braud; Marjorie L. Frazier, Eighth District; Kevin C. Curry, Louisiana State Law Institute; and John M. Frazier, at-large. Standing from left, Mickey S. deLaup, at-large; C.A. (Hap) Martin III, Seventh District; Blake R. David, Third District; Patrick A. Talley, Jr., First District; David W. Leefe, First District; Donald W. North, Southern University Law Center; Monica Hof Wallace, Loyola University College of Law; Immediate Past President Joseph L. (Larry) Shea, Jr.; C. Kevin Hayes, Fifth District; Charles D. Elliott, Sixth District; Shayna L. Sonnier, Fourth District; John E. McAuliffe, Jr., Second District; Julie Baxter Payer, House of Delegates Liaison Committee member; and Marcus A. Augustine, House of Delegates Liaison Committee member. Not in photo, Rachael D. Johnson, at-large. *Photo by Matthew Hinton Photography.*

its website to add new content and made it easier to navigate and use from mobile devices. To remain competitive in this new world, our profession must leverage technology more effectively, and the LSBA plans on taking a leading role in providing lawyers with the resources they need to achieve this objective. I want to particularly thank the volunteer members of the Technology Task Force — Ernie Svenson, Andrew Legrand, Todd Slack, John Norris, Micah Fincher, Andy Lee, Judson Mitchell and Task Force Chair Abid Hussain — who have been working with staff on this project. Access the online Tech Center from the LSBA's home page at: *www.lsba.org*.

Flat-Fee Study

In recent weeks, many of you have expressed the importance of guarding against efforts to change our ethical rules in a way that would prohibit lawyers from depositing flat-fee payments into their operating accounts. I share your concerns. Our first obligation as a profession is to the public. But any rule that prohibits or restricts flat-fee arrangements would disproportionately impact solo and small-firm lawyers and increase the cost of legal representation to those who can least afford the services of a lawyer. Driving lawyers out of business, thereby making it more difficult for members of the public to hire lawyers, is not in the public interest. Your views are known to the study committee looking at this issue, and I have every confidence that any proposal that comes to this House in the future will take your concerns into account.

Discipline System and Mentoring

The LSBA continues to work with lawyers to help them avoid getting embroiled in the disciplinary system. The LSBA operates a Diversion Program in coordination with the Office of Disciplinary Counsel for attorneys found to have engaged in minor ethical violations, as well as the Attorney-Client Assistance Program that seeks to resolve client complaints outside the disciplinary system.

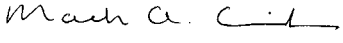
This month, the LSBA is also completing the first session of its pilot mentoring program. By all accounts, the program was a real success and my thanks and congratulations go to the Committee on the Profession and its Chair Barry Grodsky for their fine work. The LSBA is currently developing additional programming to address the challenges of an aging lawyer population and to assist attorneys in navigating the discipline system.

Legislative Session

The LSBA also is gearing up to be the voice of our profession in the Legislature in what is expected to be an active year. Governor John Bel Edwards met with the LSBA Board of Governors yesterday and confirmed that he will not be seeking to tax professional services in the coming fiscal session. Governor Edwards is one of our members and believes deeply in our profession and mission. He is a friend and, no matter where you may fall on the political spectrum, he deserves our blessings as he begins to confront the many challenges facing Louisiana during this fiscal crisis. I assure you the LSBA will be a visible presence in Baton Rouge this year and will speak out against any legislation that attacks or imposes an undue burden on our profession.

Conclusion

Let me conclude by thanking each of you for taking the time to be here today. It is this body that sets the policies of the LSBA and it is only through your support that the LSBA is able to continue advocating for lawyers and supporting our members in both their business and life. May God bless Louisiana.



The Prematurity Defense to Contractual Indemnity Claims in Louisiana:

How Recent Decisions Have Lessened Its Effectiveness — For Better or Worse

By Philip G. Watson

A common occurrence in many construction and premises liability cases is the demand for contractual defense and indemnity. Take this example: A passerby injures her foot on a jagged piece of concrete at a construction site and brings suit against the general contractor of the project. Citing language in the subcontract, the general contractor, asking the concrete subcontractor to defend the general contractor's interests and pay any damages that it might owe, tenders its defense and indemnity to the subcontractor. Now, the subcontractor must decide whether to accept the responsibility of defending the general contractor and of paying any damages it caused or to reject the tender and risk a lawsuit for failing to comply with the provisions in the subcontract.

If the subcontractor chooses the latter option and the general contractor sues him for defense and indemnity, he is armed with a solid defense. Under Louisiana law, the claim for defense and indemnity is premature until the general contractor has actually sustained a loss. Accordingly, the subcontractor could be entitled to a dismissal of the claim if the general contractor's fault has not yet been adjudicated.

However, a recent appellate decision rejected that defense, holding that the mere claim for defense and indemnity is not premature. This decision underscores a potential conflict between Louisiana Supreme Court jurisprudence and more recent appellate court rulings and between the basic principles of expediency and ripeness. Clarity in the form of a Supreme Court ruling could have far-reaching implications for contractual indemnity claims in Louisiana; in the meantime, however, the absence of clarity leaves litigants and their lawyers with tough choices to make in terms of defending these claims.

Meloy, *Suire* and the "well-settled" principle that a claim for defense and indemnity is premature because the indemnitee has not sustained any compensable loss.

As the Louisiana Supreme Court has long recognized, an indemnity agreement is a specialized type of contract, one that does not hold the indemnitor liable until the indemnitee actually makes a payment or sustains a loss. *Meloy v. Conoco, Inc.*, 504 So.2d 833, 839 (La. 1987); *see, Alwell v. Meadowcrest Hosp., Inc.*, 07-376 (La. App. 5 Cir. 10/30/07), 971 So.2d 411, 414 n. 2. "Therefore, a cause of action for indemnification for cost of defense does not arise until the lawsuit is concluded and defense costs are paid." *Meloy*, 504 So.2d at 839.

A decade ago, the Supreme Court handed down an important decision in this area of the law, *Suire v. Lafayette City-Parish Consol. Gov't*, 04-1459 (La. 4/12/05), 907 So.2d 37. In *Suire*, the city of Lafayette reached an agreement with plaintiff Suire to dredge and improve a channel that ran through Suire's land. *Id.* at 42. The city hired Dubroc Engineers to design the project and hired Boh Brothers to perform the work. *Id.* Suire later sued the city, Dubroc and Boh Brothers for cracks and damage to his house that were caused by the dredging project. *Id.* at 43.

Following the commencement of Suire's suit, the city and Dubroc filed a cross-claim against Boh Brothers for defense and indemnification under the contract between the city and Boh Brothers. *Id.* at 43. The city and Dubroc followed this cross-claim with a motion for summary judgment seeking defense and indemnity, which the trial court granted and the Louisiana 3rd Circuit Court of Appeal affirmed. *Id.* at 44, 47.

The Louisiana Supreme Court reversed the ruling, holding that, under well-settled law, the claim for defense and indemnity was premature because neither the city nor Dubroc had sustained any compensable loss. *Id.* at 51. The Court found that the lawsuit was still pending and that no determination of liability had been made; thus, it was error to hold that Boh Brothers owed a duty to defend or pay for defense costs at that stage. *Id.* As the Court saw it, "a cause of action for indemnification for cost of defense does not arise until the lawsuit is concluded and defense costs are paid." *Id.*

Having reinforced the *Meloy* holding, *Suire* set the stage for many litigants to argue that a claim for defense and indemnity was premature if the indemnitee had not sustained a loss of some kind. Numerous appellate courts followed the Supreme Court's lead and held that defense and indemnity claims were premature unless a loss had been sustained. *See, e.g., Bates v. Alexandria Mall I, L.L.C.*, 09-361 (La. App. 3 Cir. 10/7/09), 20 So.3d 1207; *Gently v. West Jefferson Medical Center*, 05-687 (La. App. 5 Cir. 2/27/06), 925 So.2d 661.

Post-*Suire*, the distinction is drawn between the right to claim defense and indemnity and the right to collect it.

The holding of *Suire* and *Meloy* laid the groundwork for an effective impediment to defense and indemnity claims — the dilatory exception of prematurity. *See*, La. C.C.P. art. 926. By utilizing such an exception, the putative indemnitor could obtain a dismissal of the claim before any monies were incurred defending and/or indemnifying the indemnitee.

In the wake of these decisions, however, a central question has emerged — is the actual *claim* for defense and indemnity premature or only the litigant's ability to *collect* defense costs and indemnification? In other words, can an indemnitee file a timely lawsuit for defense and indemnity, with the understanding that collection of these costs could not occur until the indemnitee sustains a loss of some kind?

The jurisprudence has offered conflicting answers to this question. *Suire* itself holds that a "claim" for defense and indemnity is premature if the indemnitee has not sustained any compensable loss. 907 So.2d at 51. Moreover, the *Suire* court held that a cause of action does not even arise until defense costs are paid and the lawsuit is concluded. *Id.* Given that the highest court in the state has held that a claim for defense and indemnity is premature and has specifically held that such a cause of action does not arise until the lawsuit is concluded, the effect of the decision should bar any claims for defense and indemnity unless a loss has been sustained.

However, subsequent appellate court decisions and Supreme Court concurrences have reached the opposite conclusion. These opinions are rooted in the Louisiana Code of Civil Procedure, which specifically allows a main defendant to file a third-party demand against one who is *or may be* liable to the defendant for all or a portion of the main demand. La. C.C.P. art. 1111. The very purpose of this procedural mechanism is to permit a defendant to bring a claim against a third-party defendant for defense and indemnity; as the Supreme Court has acknowledged, "[T]he third party demand is a device principally used for making claims of contribution or indemnity in the event that defendant is cast in judgment on the principal demand." *Union Service & Maintenance Co. v. Powell*, 393 So.2d 94, 95 (La. 1980).

Furthermore, the failure to bring such a third-party demand could have serious consequences for the putative indemnitee — if he brings no such demand, the indemnitor could argue that the indemnitee has forfeited his cause of action by failing to assert a means of defeating the action that the indemnitor possessed. La. C.C.P. art. 1113.

Based on these code articles, several reported cases have drawn a distinction between the timeliness of a claim for defense and indemnity and the actual collection of such. *See, Burns v. McDermott, Inc.*, 95-0195 (La. App. 1 Cir. 11/9/95), 665 So.2d 76, 79 (holding that although ultimate responsibility for defense costs in indemnity agreements is governed by whether the indemnitee sustains a loss, there is no prohibition against asserting the claim for defense costs in a third party demand); *Dean v. Entergy Louisiana, L.L.C.*,, 10-887 (La. App. 5 Cir. 10/19/10), 2010 WL 9447498, *4 ("*Meloy* and *Suire* . . . do not stand for the proposition that there

is a prohibition from asserting the claim for indemnification in a third party demand.").

Perhaps the most notable of these decisions is one of the most recent — *Pizani v. St. Bernard Parish*, 12-1084 (La. App. 4 Cir. 9/26/13), 125 So.3d 546. *Pizani* is notable because it relies upon post-*Suire* pronouncements from Supreme Court justices to reach the conclusion that, while collection of defense and indemnity cannot occur until the indemnitee sustains a loss, the mere claim is not premature. *See id.* at 553. In *Pizani*, the Louisiana 4th Circuit Court of Appeal seized upon language in two concurrences — one from Justice Weimer in a 2008 Supreme Court decision, *Reggio v. E.T.I.*;[1] and the second from Justice Victory in a 2011 decision, *Moreno v. Entergy Corp.*[2] The thrust of those concurrences was: "[T]here is a distinction between the right to claim indemnity and the right to collect indemnity." *Pizani*, 125 So.3d at 553 (citing *Reggio*, 15 So.3d at 960 (Weimer, J., concurring)). The *Pizani* court also seized on Justice Victory's reasoning that third-party procedure was vital because it allowed a third party to participate in the trial on the principal demand, thereby potentially warding off a large judgment the third party would have to indemnify in the future. *Id.* (citing *Moreno*, 64 So.3d at 765-66 (Victory, J., concurring)).

Pizani gives a clear picture of how the Supreme Court might ultimately address this central issue of a premature claim or merely of a premature right to collect. While *Suire* spoke in terms of the prematurity of a "claim," the Court was not analyzing the specific distinction brought into focus by *Pizani*. Furthermore, *Suire* reviewed the lower court's grant of a summary judgment in favor of the indemnitees, the city of Lafayette and the engineer Dubroc. This summary judgment awarded the city and Dubroc defense and indemnity despite the fact that the main demand against them was still pending and neither had sustained any loss. Would *Suire* have reached a different conclusion if Boh Brothers, the would-be indemnitor, had only filed an exception of prematurity that asked for the dismissal of the claim for defense and indemnity? Under that scenario, would *Suire* have permitted the claim itself to survive? *Pizani* suggests that the answer to both questions is yes and its use of two Supreme Court concurrences gives it an imprimatur.

Litigants must choose the best path but, because the issue creates a conflict between basic issues of economy and ripeness, the Supreme Court should issue a definitive ruling.

The current state of the law on this issue leaves litigants and practitioners with an important decision to make when faced with a defense and indemnity demand — to seek dismissal of the claim based on prematurity grounds, or to forego the exception and participate in the lawsuit. Prevailing on an exception of prematurity would result in dismissal, certainly, and could save the indemnitor needless fees and expenses. But it would not preclude an action for defense and indemnity once the indemnitee has actually sustained his loss. Also, as Justice Victory pointed out, third-party practice actually allows putative indemnitors to play a vital role in the main demand when they otherwise could have been excluded from the process. *See, Moreno*, 64 So.3d at 765-66 (Victory, J., concurring). By participating, the third party can influence the presentation of evidence, the witness testimony and all other facets of the litigation. As Justice Victory observed, this could allow the third party to avert a large damage award that it could have been forced to indemnify if not for its involvement in the case. Therefore, a third party has a valid reason to participate in the defense of a third-party demand rather than seek its dismissal on prematurity grounds.

In addition to helping resolve the difficulties inherent in making this choice, there is good reason why clarity from the Supreme Court is preferable in this situation. What *Pizani* and similar decisions seemingly ignore is the concept that no matter how expedient third-party practice may be, the process casts aside the basic justiciability requirement of ripeness. As the 4th Circuit held, little more than a month before it decided *Pizani*: "An action that is brought before the right to enforce it has accrued is deemed premature." *Burandt v. Pendleton Memorial Methodist Hosp.*, 13-0049 (La. App. 4 Cir. 8/7/13), 123 So.3d 236, 240. This should mean that an indemnitee's claim for defense and indemnity, which does not accrue until the indemnitee sustains a loss, is premature and not ripe for adjudication. *See, Lexington Ins. Co. v. St. Bernard Parish Gov't*, 548 F. App'x 176, 180 (5 Cir. 2013) ("Accordingly, Louisiana law generally provides that the issue of indemnity is premature and *non-justiciable* until the underlying issue of liability is resolved and the defendant is cast in judgment.") (emphasis added).

Yet, *Pizani* and other authorities hold that the claim is nevertheless viable, apparently under the auspices of judicial expediency and the benefit to the parties. This presents a slippery slope — it might be expedient and beneficial to allow a non-injured motorist to file a placeholder claim the day after his vehicle collision in the event he later experiences pain, or it may behoove all involved parties to allow a patient just out of surgery to file a malpractice claim if he later finds out that his physician erred on the operating table. But such lawsuits would be dismissed out of hand for lack of any cognizable damages. Here, however, *Pizani* and similar decisions would allow that very thing to occur. Therefore, the Supreme Court may, and probably should, be called upon to determine whether the worthy goals of expediency and economy should prevail over the fundamental requirement of ripeness.

In the meantime, those involved in civil litigation must weigh the costs and benefits of the various methods of handling defense and indemnity claims. The choices are ample. Of course, the individual facts of the lawsuit — as is so often the case — will be the determinative factors in deciding the best approach.

FOOTNOTES

1. 07-1433 (La. 12/12/08), 15 So.3d 951.
2. 10-2268 (La. 2/18/11), 64 So.3d 761.

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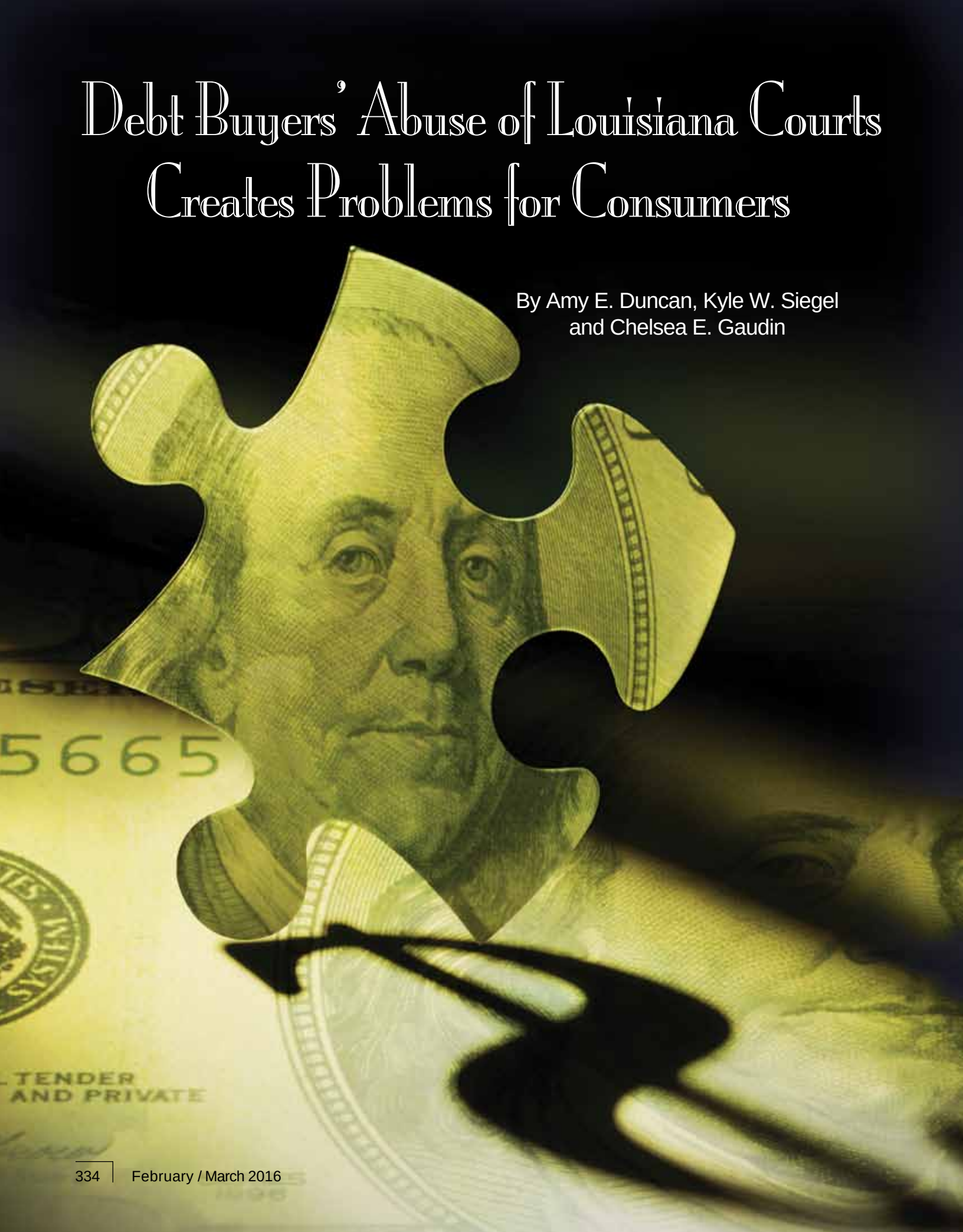
Debt Buyers' Abuse of Louisiana Courts Creates Problems for Consumers

By Amy E. Duncan, Kyle W. Siegel
and Chelsea E. Gaudin



Louisiana consumers are feeling the adverse effects of the growing debt-buying industry. The industry is composed of a few large and many small companies that purchase past-due debt for pennies on the dollar from issuers of consumer credit, and then try to recover that debt from consumers. Because the debt buyers own the debt they are collecting, their profit margin is determined solely by their ability to recover the debt at minimal cost. This often inspires the use of aggressive tactics, which can include familiar maneuvers like incessant telephone calls, and now, in an increasingly popular tactic, the improper use of the court system through the filing of unlawful suits.

In 1977, the United States Congress passed the Fair Debt Collection Practices Act (FDCPA) to address abusive, deceptive and unfair debt collection practices by debt collectors.[1] The Federal Trade Commission recently has noted specific areas of concern with regard to recovery through judicial action, including: (1) filing suits based on insufficient evidence; (2) failing to properly notify consumers of suits; (3) the high prevalence of default judgments; and (4) improperly garnishing exempt funds from bank accounts.[2] In fact, in many cases, the debt buyer has not even satisfied the prima facie elements needed for a debt-recovery suit.

Abuses by debt buyers are of urgent concern. In some Louisiana courts, more than 10 percent of new cases in the past few years have been lawsuits filed by debt-buying companies.[3] Sometimes, this percentage is even higher. In Jefferson Parish's 2nd Parish Court, for example, nearly 25 percent of the total filings in 2012 were made by six major debt-buying companies.[4]

The lack of regulation of this industry makes the court system a weapon for debt-buying companies to the detriment of Louisiana consumers. The Louisiana Unfair Trade Practices Act (LUTPA), based on federal law, appears to allow the state government and consumers to sue debt buyers for unjust actions.[5] Yet, while other state governments have been proactive in protecting consumers from abusive practices in the debt-buyer industry, there have been few actions in Louisiana against debt-buying companies for unfair or deceptive conduct.

Filing Suits on Open Account

In Louisiana, a suit to collect credit-card debt is called a suit on an open account. In order to prevail, the plaintiff must prove a valid credit agreement, ownership of the debt through a lawful chain of title, and the amount owed. Problems typically begin in the debt-buying plaintiff's petition. Often, the petition will state the amount owed but fail to provide any material facts regarding the date the credit line was issued, the date the debt went into default, or any sort of breakdown of the amount owed.[6] Most alarming are instances when the petitioner fails to state how it obtained the account because, without establishing chain of title or ownership of the open account, the debt buyer presents no right of action to claim the amount owed.[7]

Regardless, suits of this kind frequently move forward. A lack of information presents a major hurdle, especially for unrepresented consumer defendants. The deficiency of information can be attributed to the debt-buying process itself, during which portfolios containing debts with varying age and little historical information are sold and resold. This makes it confusing for the defendant who, after the lawsuit is filed, is served with a petition notifying him or her of a debt owed to an unfamiliar company with which he or she has never done business.

Even before a lawsuit is filed, this lack of information is particularly harmful when the prescriptive period to file suit has already run. Debt buyers sometimes induce unaware consumers to make a payment by threatening suit despite the fact that the debt has prescribed and is unenforceable.[8] Some debt buyers go so far as to use false affidavits to prove the debt.[9] Such practices conducted by debt buyers without proper inquiry may constitute violations of the FDCPA.[10]

Defendant consumers, who are likely unfamiliar with the litigation process and frequently do not have means to hire an attorney, may do nothing, usually resulting in a default judgment in favor of the debt collector. Armed with the default judgment, the debt buyer can then seek garnishment of the debtor's wages and bank accounts and pursue other means to enforce the judgment. Sometimes the debt buyer and the consumer will enter into a consent judgment to pay the full amount of the principal and interest in addition to costs and fees; the consumer is told that by entering into the agreement, he or she can avoid litigation and additional fees, even though the debt buyer has failed to make a prima facie case against the typically unrepresented defendant.

Deficient and Inaccurate Pleadings

Because the information provided by debt-buying plaintiffs is sparse and at times inaccurate, a defendant who knows and understands his or her rights or is represented by counsel should have numerous defenses available. A review[11] of debt-collection cases in the Orleans Parish 1st City Court gives an idea of the predicament faced by Louisiana consumers, particularly highlighting the impact a proper defense makes:

- 91 percent of defendants did not have counsel.
- Half of the cases resulted in default judgments.
- All cases resulting in consent judgments involved defendants without counsel.
- The majority of cases where the defendant was represented resulted in either a settlement or dismissal of the case.

Possible Solutions

There are a number of ways to address the pervasive issues in Louisiana, which include efforts to impede the plaintiff debt buyer from taking advantage of the judicial system and to educate the defendant debtors of their rights. A multipronged approach is suggested.[12]

First, there should be enforcement and clarification of existing Louisiana laws. Although prosecution power exists under LUTPA, it appears to be a toothless threat against the debt-buying industry. Some advocates would encourage the Louisiana Attorney General's Office to take a more assertive role in supporting the widespread use of LUTPA against unfair and deceptive trade practices by debt buyers. For example, the website of the Texas Attorney General provides public information regarding debt-collection practices, including material on practices prohibited by the Texas Debt Collection Act and penalties for violations.[13]

Second, additional state legislation could

be implemented. To begin, state and municipal governments should enact legislation that prohibits a debt-collection claim from being brought unless certain documentation is presented, including (1) the account name or credit card name; (2) the account number; (3) the date of issue or origination of the account; (4) the date of the charge-off or breach of account; (5) the full chain of title of the debt; and (6) whether the plaintiff seeks ongoing interest and attorney fees. The presentation of these elements enforces the requirement that plaintiffs meet their evidentiary burden prior to judgment (specifically default judgment) in their favor.[14]

Also, the Legislature should pass reforms requiring that, along with the service of a debt buyer's petition, the plaintiff must include a notice with the basic information about the debt, including a description of the collector, why the plaintiff is bringing the suit, that the debt sold to the debt buyer originated from the named issuer, and proof of ownership of the debt or chain of title. Furthermore, the plaintiff also should include the time period in which the defendant debtor must respond with an answer and directions to the defendant about legal service options.

Additionally, like the federally required notice the debt collector must provide to the debtor five days after initial contact, the Legislature also should require that the following information be included in the notice: (1) the name of the original creditor; (2) an itemization of the principal, total interest and total fees that make up the debt; (3) the fact that if the debtor disputes the debt, then the debt buyer must suspend collection efforts until the debt buyer obtains verification of the debt and mails this verification to the consumer; and (4) the fact that the debtor can request the debt buyer cease contacting the debtor about the debt if the debtor requests so in writing.

Third, judicial checklists should be created for cases instituted by debt buyers. Implicitly included in this proposal is the simultaneous education of the judiciary about the issue, which is necessary to remedy the problem. State court judges should be informed regarding the collection of past due debts. A checklist would ensure that debt buyers are meeting the burdens of proof to establish a right to judgment on an open account.

Fourth, debt-buyer litigation should become a pro bono focus. Increased awareness about the need for volunteer services in these cases would help to address the issue, particularly because debtors typically appear without counsel. While some pro bono programs exist to aid defendants in debt-buyer and debt-collection cases, opportunities involving additional training and continuing legal education can lead to the involvement of more attorneys.

Fifth, additional information should be made available to defendant debtors regarding their rights and options in responding to a debt-collection suit. For example, state-sanctioned publications on the Internet and a checklist of the debtor's rights in such a suit would help alleviate the informational disparity between debt buyers and self-represented debtors. Also, the creation of a standardized petition would streamline litigation and expedite resolution by the courts, especially when dealing with unrepresented defendants.

Conclusion

In summary, the crux of the concern in Louisiana debt-buyer cases is twofold — the consumer's understandable lack of knowledge about his rights and the paucity of evidence provided by debt buyers to establish a prima facie case for a suit on open account. Other states have enacted consumer-friendly measures, protecting their access to justice. It may be time for Louisiana to consider reforms that would ensure fairness for all parties.

FOOTNOTES

1. "Debt buyers" are included in the definition of debt collectors. *See* 15 U.S.C. § 1692(a)(6).

2. Fed. Trade Com'n, "Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration," ii (July 2010), available at: *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf*.

3. Statistics are based on a study by Louisiana Appleseed volunteers Andrew J. Graeve, Kyle W. Siegel and Amy E. Duncan.

4. *Id*.

5. *See, e.g.*, La. R.S. 51:1404, 1408.

6. *See* Complaint No. 11-51881 (2012) (1st City Court for the City of New Orleans).

7. *See, e.g.*, Bureaus Inv. Grp. No. 2, L.L.C. v. Howard, 06-273 (La. App. 5 Cir. 11/14/06), 947 So.2d 37 (finding that the record did not support the plaintiff's allegations that it owned the debt owed by the defendant because the record contained no "bill of sale" from the original creditor to the plaintiff).

8. An action on an open account is subject to liberative prescription of three years, La. Civ.C. art. 3494 (4), which begins to run from the date of the last charge, purchase, payment or credit entry on the account.

9. Mark A. Moreau, Strategies for Representing the La. Consumer § 3.11 (Debt Buyer Lawsuits) 125, *in La. Legal Services & Pro Bono Desk Manual* (2013), available at: *http://loyno.edu/~probono/manual/consumer.pdf*.

10. *Id*.

11. Statistics are based on a sample of 117 debt-collection cases filed in 2011 in Orleans Parish 1st City Court, studied by Andrew J. Graeve, Kyle W. Siegel and Amy E. Duncan.

12. The multipronged approach was developed by Amy E. Duncan, Andrew J. Graeve and Kyle W. Siegel. It is based on strategies of other jurisdictions, the needs of vulnerable defendants and the data the authors collected.

13. Atty. Gen'l of Texas Ken Paxton, *Debt Collection, www.texasattorneygeneral.gov/cpd/debt-collection* (last visited 1/3/16).

14. These requirements are modeled after Tex. R. Civ. Pro. § 508.2 (2013), available at: *www.supreme.courts.state.tx.us/rules/trcp/trcp_part_5.pdf*.

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MISSION TO HANOI:

"Rule of Law" in a Communist One-Party State

By David A. Marcello

The flight from Tokyo's Narita Airport lands in Hanoi at 10 p.m., so a visitor's first impressions of Vietnam are gathered at night. A four-lane highway lays down a ribbon of light through enveloping darkness, broken sporadically by large billboards illuminating Vietnam's connection to products from other countries in the global economy — "Toyota" and "Toshiba" from Japan, "Lotte" from South Korea, "Haier" from China and "Kohler" from the United States. These billboards account for why I'm in Vietnam.

To maintain and exploit those economic opportunities, the Vietnamese need a "rule of law" system — statutes and regulations that trading partners trust will resolve disputes fairly and predictably. The Public Law Center (TPLC) of Tulane University Law School was invited to support the rule of law by training legislative drafters in the Ministry of Justice, the National Assembly and other national and local governmental entities.

We visited in August and September 2014 and again in March 2015 to provide technical assistance through Governance for Inclusive Growth (GIG), funded by the U.S. Agency for International Development. We will return for three more visits in 2016.

At the GIG offices, I was briefed by Phan Cam Tu, a Vietnamese lawyer retained to assist in our assessment and training activities. The next day, we met at Hanoi Law

Stepped rice fields in Mu Cang Chai, Vietnam.

University (HLU) with administrators and faculty to discuss how TPLC's Legislative and Administrative Advocacy course might be adapted to teach drafting skills to HLU students. Our collaboration with HLU will build its capacity to train both law students and "real world" legislative drafters in Vietnam.

Economic and Political Transitions in Vietnam

Vietnam fought a successful revolution in 1945, then resisted three decades of intervention by France and the United States to remain independent. Displayed on the walls of the Metropole Hotel, where I stayed during my visit to Hanoi, is a 1975 *Time* magazine cover with a red background and a map of unified Vietnam that identifies the former Saigon as "Ho Chi Minh City," alongside a drawing of Ho as big as the country itself, declaring him "The Victor."

The Metropole is the most historic hotel in Hanoi. I toured its bomb shelter, which was lost to history after the war ended and only rediscovered in 2011 when drilling to expand the poolside Bamboo Bar ran into unexpected concrete.

Joan Baez took refuge in the shelter during the 1972 Christmas bombing campaign. She returned 40 years later for its reopening and, during her stay at the hotel, painted an arresting portrait of a young boy monk. Her painting now occupies a prominent place of honor in the lobby.

Much changed during the decade after U.S. withdrawal in 1975. The Vietnamese political elite embraced three new "fundamental and transformational" ideas:

► [A] rejection of the Marxist central-planning model in the 1980s and of the idea that the party (and its leadership) was always right, far-seeing and wise.

► [A] shift from confrontation to accommodation, along with the related upgrading of economic development as Vietnam's top priority and downgrading of military force as the ultimate guarantor of Vietnam's national interests.

► [The] adoption of a policy of "becoming friends" with all countries who would agree to normal relations with Vietnam — which implicitly rejected the zero-sum "us against the enemy" foundation of previous Vietnamese strategic thinking.[1]

Following this period of crisis and change in the 1980s, the Soviet Union's collapse in 1991 delivered a "hammer-blow shock" that "definitively undermined any possibility of avoiding real change" and was "the beginning of the end for the conservative resistance to reform," ushering in "decisions to reconcile with former adversaries, join ASEAN, and to embark on a path of deep integration with the global economy."[2]

In 1995, former Foreign Minister Nguyen Co Thatch described a new, more fluid world in which Vietnam transitioned from "us-versus-them" thinking and from military to economic priorities: "The bipolar and tripolar world has become multipolar. And the world is moving from cold war and arms races to an era of economic competition."[3]

By July 2003, the Central Committee of the Communist Party had adopted "a new national security strategy that remove[d] ideology as a criterion for selecting friends and foes;" it "opened the door for strategic engagement with the United States, which had been identified as a strategic enemy by the preceding national security strategy."[4] Vietnam's relationship with China also changed, "since now national interest rather than socialist solidarity was the touchstone for making decisions about Vietnam's national security."[5]

An Emerging International Economy

Economic necessity forced changes in Vietnam's attitude toward foreign investment: "In 1986, foreign investment was nonexistent, more than seven in ten Vietnamese lived below the poverty line, and the economy required support from the Soviet Union."[6] Agriculture was the country's dominant economic sector, and Vietnam described itself as "201 of 203 countries (the most poor and backward) in the world."[7]

But "a party consensus . . . since the early 1990s [held] that the scientific-technological revolution and the process of globalization [would be] the main factors"[8] in meeting the challenges of a new millennium. Accordingly, "the government began to court foreign investors, first to

produce goods for which a domestic shortage existed, later for export production. The export-led growth model has taken hold and is the dominant economic policy priority today."[9]

► Vietnam is the world's largest producer of cashew nuts and black pepper, commanding a one-third share of the global market for each.

► It's the second largest exporter of rice and coffee in the world.

► In Southeast Asia, it ranks third among oil-producing countries.

► In the Asia-Pacific region, it's the eighth-largest producer of crude petroleum products.

In just three decades, Vietnam's economic initiatives boosted it from the lowest of the low into the bottom tier of middle-income countries.[10]

In 1997, the World Bank ranked Vietnam the second-biggest recipient of foreign direct investment by share of gross domestic product.[11] Today, it's first in the world. The Communist Party of Vietnam currently "considers its own interests best served by economic growth and the resultant social peace."[12]

Deep integration into the world's economy is increasingly the order of the day in Vietnam, but the economic rewards come with a political price: "The central government, grudgingly at first, accepted local reforms as a necessary, ideologically questionable evil as long as it fed the people and helped the Party maintain its performance legitimacy."[13] But some Vietnamese leaders fear international integration and foreign investment "could

be a Trojan Horse for 'peaceful evolution' [that] could result in defeat, and a defeat that could be more serious than a military defeat."[14]

This challenge between domestic political order and international economic success is a worldwide phenomenon: "The international economic system has become global, while the political structure of the world has remained based on the nation-state. . . . The international order thus faces a paradox: its prosperity is dependent on the success of globalization, but the process produces a political reaction that often works counter to its aspirations."[15] In Vietnam, this tension is particularly acute because the party perceives communism as a threatened minority in the new world order.

How many Communist countries are there in the world today?

When my Vietnamese colleague, Ms. Tu, matter-of-factly referred to Vietnam as "one of the four Communist countries," I was astounded — and it must have been obvious because she commented on my surprise. I had never done the math. "Whatever happened to the worldwide conspiracy?" I asked. A subsequent Google search actually yielded five self-proclaimed Communist countries: China, North Korea, Vietnam, Laos and Cuba. Russia? It's now identified as a "constitutional federation."

Political Implications of Change

When economic and military failures in the 1980s undermined "infallibility" as a supporting rationale for the party leadership, the government had to accept "performance legitimacy to sustain its authority [which] will lock it into international integration as will the security model (stability and cooperation) it adopted at the end of the Cold War."[16] This need for international economic success requires legal changes with significant domestic political ramifications: "a more predictable rule of law and greater transparency are important for encouraging foreign investment."[17] Those legal developments could conceivably empower civil society to challenge the central government's control.

The Association of Southeast Asian Nations consists of 10 member states collaborating in the ASEAN Economic Community — Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

But Vietnam is still a Communist one-party state, and the government has no interest in giving up authoritarian control of the country's politics. A group of 72 intellectuals joined the debate about a new constitution in January 2013, calling for a system where "political parties are free to set up and operate according to the principles of democracy."[18] In a nationally televised speech one month later, the General Secretary firmly rejected their proposal of a multiparty system.

Vietnam's new constitution, adopted in November 2013, promises greater public participation: "At the national and provincial levels, government units drafting legal and policy documents are now required to seek public comment."[19] This increased commitment to public participation does not, however, portend the emergence of civil society as an alternate source of policy-making authority.[20]

The party still has no interest in sharing power, but when "performance values" become a source of legitimacy, government needs to know what concerns the public so that it can respond ("perform") accordingly. Civil society organizations (CSOs) can be a valuable source of information about public policy concerns, even if the government does not cede to CSOs or the public any power to decide policy outcomes. Public participation can be a useful information-gathering tool without making it a vehicle for democratic decision-making.

In a June 2013 confidence vote, for example, National Assembly delegates cast secret ballots "for" or "against" various ministers; the results were then made public. This seemingly oppositional accountability mechanism actually enabled the government to acquire "valuable information on citizen preferences and views of the regime, while at the same time maintaining order and stability in an authoritarian parliament:"[21]

> Top officials in Vietnam can learn about which issues are of importance to Vietnamese citizens and can adjust policy and personnel to make improvements, *if they choose*. Similarly, individuals who received relatively low confidence votes can adjust their own performance, *if they choose*. The system is designed to be highly stable, providing opportunities for policy voice and information acquisition without putting top leaders or delegates at risk through full transparency.[22]

My meetings in Hanoi took place against this backdrop of significant political and economic changes that transpired over the eventful four decades after U.S. withdrawal from Vietnam.

Vietnamese Perceptions of Needed Changes

In one of my meetings, a CSO participant suggested that "ordinary people" should be able to understand the laws. I agreed and mentioned that Professor Richard Wydick's book, *Plain English for Lawyers*,[23] sounds a similar theme by counseling drafters to use ordinary words in their writing.

Dr. Nguyen Thi Thu Trang, director of the Vietnam Chamber of Commerce and Industry, noted that legislation is often too complicated to be understood. Her staff at the Chamber sometimes can't even understand the titles of bills.

The Chamber's annual Ministerial Effectiveness Index evaluates 14 ministries on their drafting and implementation of laws. Most received scores of 5-6 on a scale of 1-10, leaving ample room for

improvement.

Dr. Trang said that drafters need to improve capabilities in two distinct areas — training on how to draft and training on how to listen when receiving public comments about their drafts. They do not have a "hearing" problem; they have a "listening" problem.

Ministries and drafters sometimes invite public participation, but, since Vietnam has no tradition in this area, citizens are often passive and make no comments. Cynicism is a problem; people don't believe government will be responsive to them. When the public does comment on proposed legislation and gets no answer from drafters, this lack of feedback discourages people from making comments in the future.

Dr. Trang strongly believes that the drafting process is not exclusively the business of government; it should be the business of "both sides" of the equation. But government officials have long been accustomed to working on their own, deciding legislative policy questions without challenge. It's hard for them to open their minds to other views — especially if those views are perceived as criticism of the officials themselves.

Everyone I encountered agreed on the need for better legislative drafting skills and better laws in Vietnam. Enhancing the skills of drafters will improve the quality of the country's laws because, in this case, function follows form: Better-formulated legislation will produce better-functioning laws. Indeed, it's hard to conceive of a system that works in reverse. How could laws be improved without first improving the skills of legislative drafters?

In 2016, TPLC will organize training sessions on legislative drafting and will develop a manual to standardize drafting practices. The drafting manual will improve drafting skills and serve as a training resource for new drafting staff. It will also enhance "professionalism," enabling drafters to push back when skeptical traditionalists ask, "Why are we drafting bills this way rather than the old way we're used to seeing?" Drafters can pull out their copy and reply, "Because that's how the manual now says we're supposed to do it."

In my presentation to HLU faculty and students, I posed the question, "What impedes economic progress?," and suggested four possible answers — corruption, incompetent administration, citizens' distrust of government, and poorly drafted laws. Then I asked, "Which of the four is easiest to solve?" The answer is obvious: Corruption, incompetence and distrust may endure forever, but we can improve the quality of legal drafting within a very reasonable time period. Improved legislative drafting will improve the laws and institutions that fight corruption, and those developments will foster economic progress.

Concluding Observations

Vietnam's startling economic progress in a short span of years speaks powerfully to why this nation matters in our increasingly interconnected world. PricewaterhouseCoopers predicts Vietnam will be the fastest growing among the world's emerging economies by 2025. Goldman Sachs projects Vietnam will have the world's 21st largest economy by 2025. HSBC believes that by 2050, Vietnam will surpass the combined GDP of Norway, Singapore and Portugal. In brisk pursuit of these ambitious targets, Vietnam and the European Union negotiated a Free Trade Agreement in 2014.

Vietnam's population of 90 million makes it the world's 13th most populous country — and with a median age of 24, it's growing rapidly.[24] This potent combination of economic progress and a booming population will make Vietnam an emerging power to be reckoned with in the 21st Century.[25]

Author's Note: The ride from the airport into Hanoi has changed since my first visit. No billboards loom in the night alongside the new six-lane highway and a soaring $600 million bridge built by the Japanese. But the global ties are still there, and the drive to improve Vietnam's standing in the world economy has not abated.

FOOTNOTES

1. David W.P. Elliott, *Changing Worlds: Vietnam's Transition from the Cold War to Globalization* 323 (New York: Oxford University Press, 2012) (hereinafter, "*Changing Worlds*").

2. *Id.*at 323. The Association of Southeast Asian Nations consists of 10 member states collaborating in the ASEAN Economic Community — Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

3. *Id*. at 234.

4. *Id*. at 237.

5. *Id*. at 237.

6. Jonathan D. London (ed.), *Politics in Contemporary Vietnam: Party, State, and Authority Relations* 69 (Palgrave Macmillan 2014) (hereinafter, "*Politics in Contemporary Vietnam*").

7. *Changing Worlds* at 242.

8. *Id.* at 235.

9. *Politics in Contemporary Vietnam* at 69.

10. *Id.* at 3.

11. *Id*. at 69, citing a World Bank 1997 analysis.

12. Thomas Jandl, "State versus State: The Principal-Agent Problem in Vietnam's Decentralizing Economic Reforms" at 65 in *Politics in Contemporary Vietnam*.

13. *Id*. at 72.

14. *Changing Worlds* at 238-39.

15. Henry Kissinger, *World Order* (Penguin Press: New York, 2014) 368-369.

16. *Id*. at 324.

17. *Id*.

18. Andrew Wells-Dang, "The Political Influence of Civil Society in Vietnam" at 176-77 in *Politics in Contemporary Vietnam.*

19. Thaveeporn Vasavakul, "Authoritarianism Reconfigured: Evolving Accountability Relations within Vietnam's One-Party Rule" at 49 in *Politics in Contemporary Vietnam.*

20. Articles 16, 31, 102 and 103 promise greater freedom of expression and an end to arbitrary arrests of critics and political trials, but Article 14 undercuts that promise by allowing authorities to override human rights protections when necessary for national security, public order or other purposes.

21. Edmund J. Malesky, "Understanding the Confidence Vote in Vietnamese National Assembly: An Update on 'Adverse Effects of Sunshine'" 85 in *Politics in Contemporary Vietnam.*

22. *Id.* at 98 (emphasis added).

23. Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Press: 2005).

24. See *Changing Worlds* at 328: "the under-24 crowd . . . makes up over half of the population."

25. *Politics in Contemporary Vietnam* at 3.

David A. Marcello is executive director of The Public Law Center at Tulane University Law School, where he teaches legislative and administrative advocacy. For more than 20 years, he has organized a two-week International Legislative Drafting Institute in New Orleans. He also has conducted distant training events for legislative drafters in Bulgaria, the Dominican Republic, Georgia, Moldova, Mongolia, South Africa and Vietnam. (dmarcello@tulane.edu; Ste. 130, 6329 Freret St., New Orleans, LA 70118)

2015 Secret Santa Project a Success! 765 Children Assisted

The Louisiana State Bar Association/ Louisiana Bar Foundation's Community Action Committee would like to thank all legal professionals who participated in the 2015 Secret Santa Project. This was the 19th year for the Project.

Because of the generous participants throughout the state — from "adopting" Santas and from monetary donations — 765 children, represented by 15 social service agencies in five Louisiana parishes, received gifts.

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

Some agency "thank you" letters and children's "thank you" art are included below. Thank you!

"Because of your generous donation of Christmas toys to Metropolitan Center for Women and Children, Christmas time was one of joy for the children who call us home or who come to us from their own homes in need of help. It is not easy to believe in the goodness of people when a person has been hurt or a mother is in doubt about how she can provide Christmas joy for her children when she has no money. Then the miracle happens. Good people like you step forward and donate, and the individuals who we serve can believe again in the goodness of people and the true meaning of Christmas . . . We wish to express our sincere thanks for the Christmas donation that you provided . . . We are a family, and you are part of that family." — **Metropolitan Center for Women and Children**

"Christmas has always been a special time for our youth. Our Home has been blessed throughout the years in gaining community support. We would like to thank you for the very generous Christmas donation of child-specific gifts of toys, games, electronics, books and more . . . Our youth enjoyed their Christmas experience to the fullest. To see their faces and hear their laughter as they opened their presents was wonderful. It is truly people like you who make a difference." — **Methodist Home for Children of Greater New Orleans**

"Thank you so much for all you did for our CASA kids this Christmas. It was amazing to see all their faces light up as we handed over the Secret Santa bags filled to the brim. It was so much more than we expected and we are grateful to all of you." — **CASA of Jefferson, Inc.**

LBLS Accepting Requests for 2017 Certification Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting requests for applications for Jan. 1, 2017, certification in six areas — appellate practice, bankruptcy law (business and consumer), estate planning and administration, family law and tax law.

The deadline to submit applications for consideration for appellate practice, estate planning and administration, family law and tax law certification is March 31, 2016. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2016.

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

The criteria for certification can be found in the Plan of Legal Specialization, the LBLS Rules and Regulations and the respective specialty standards. A copy of these documents may be obtained from the LBLS website, *https://www.lascmcle.org/specialization*.

Applications are mailed. Anyone interested in applying for certification should contact LBLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org, or call (504)619-0128.

More information on specialization is available at the website.

Attorney Applies for Recertification as Legal Specialist

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorney has applied for recertification as a legal specialist for the certification period of Jan. 1, 2015, to Dec. 31, 2019. Any person wishing to comment upon the qualifications of this applicant should submit his/her comments no later than March 31, 2016, to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, or email barbara.shafranski@lsba.org.

It is also requested that any knowledge of sanctions or other professional action against this applicant be reported during this comment period.

Tax Law

Laura Walker Plunkett.....New Orleans

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2016-17 Bar year. Louisiana State Bar Association (LSBA) President-Elect Darrel J. Papillion will make all committee appointments. Widespread participation is encouraged in all Bar programs and activities. Appointments to committees are not guaranteed, but every effort will be made to accommodate members' interests. When making selections, members should consider the time commitment associated with committee assignments and their availability to participate. Also, members are asked to list experience relevant to service on the chosen committees. The deadline for committee assignment requests is Friday, April 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.

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

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

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.

Continued next page

Committees continued from 344

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.

Public Information Committee

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

Rules of Professional Conduct Committee

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

Unauthorized Practice of Law Committee

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

Louisiana State Bar Association
2016-17 Committee Preference Form

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

Print or Type

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

Response Deadline: April 15, 2016

Mail, email or fax your completed form to:

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

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

JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM

March, 2016

To Members of the Bar,

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

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

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

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

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

Sincerely,

Barbara Turner Windhorst
President
Louisiana Center for Law
and Civic Education

Mark A. Cunningham
President
Louisiana State Bar
Association

Marilyn C. Castle
President
Louisiana District
Judges Association

Louisiana CENTER FOR LCLCE LAW & CIVIC EDUCATION

Louisiana State Bar Association

Serving the Public. Serving the Profession.

STATE OF LOUISIANA UNION JUSTICE CONFIDENCE

JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM

Louisiana CENTER FOR LCLCE LAW & CIVIC EDUCATION

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?
Please feel free to refer to the attached list of topics for presentation ideas.

Name of Judge/Lawyer: _____

Address: _____

City: _____ Zip: _____

Primary Email Address: _____

Secondary Email Address: _____

Phone: _____ Best time to call: _____

Examples of teachers' requests:

- *I am going to review the three branches of government with my 7th grade class the first week of November. I would like a member of the legal community to address my class that week.*
- *I would like a Law Day presentation for my 2nd graders on May 1st.*
- *I would like a Constitution Day presentation for my 10th graders on 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,
LCLCE will contact lawyers and/or judges in the appropriate area to discuss scheduling a school visit.

Please return to Kandis Showalter, LCLCE Program Coordinator
Email to: Kandis.Showalter@lsba.org or Fax to: (504)528-9154
For additional information: (504)619-0141
Mail to: Louisiana Center for Law and Civic Education, 601 St. Charles Avenue, New Orleans, LA 70130
www.lalce.org

By Ashley M. Flick | BILLING PRACTICES

Rule 1.5 of the Louisiana Rules of Professional Conduct states, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. Factors to be considered in determining reasonableness of a fee include the following: time and labor required; novelty and difficulty of the questions involved; the skill requisite to perform the legal service properly; if apparent to the client, the likelihood of preclusion of other employment; fee customarily charged in the locality; amount involved and results obtained; time limitations imposed by the client or by the circumstances; nature and length of the professional relationship with the client; experience, reputation, and ability of the lawyer performing the services; and whether the fee is fixed or contingent."

The comments to Rule 1.5 clarify these factors are not exclusive nor will each factor be relevant in each instance. However, "courts may inquire into the reasonableness of fees as part of their inherent authority to regulate a lawyer who practices before the court."[1] This analysis will include the risk of recovery.

Additionally, *expenses* charged to a client must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or other expenses such as telephone charges, as long as the expense is reasonable and the client has agreed in advance, or as long as the amount reasonably reflects the cost incurred by the lawyer. The courts may inquire into the reasonableness of litigation-related expenses. It constitutes sanctionable misconduct to "pad" legitimate expenses and to charge for "fictitious expenses."[2]

Rule 1.5(b) explains that once the scope of representation and the basis or rate of the fee and expenses are determined, the lawyer shall communicate this to the client before or within a reasonable time after commencing representation. This does not apply to a client that the attorney regularly represents as long as the basis or hourly rate is the same; however, any changes to the basis or rate of the fee or expenses must be communicated to the client.

While not all fee agreements are required to be in writing, it is considered a best practice to do so and to have the agreement signed by the client. It is mandatory that all contingency fee agreements be in writing as part of an engagement letter to be enforceable.[3] Note that courts construe any ambiguity in a fee agreement against the lawyer who drafted the agreement.[4]

Fees can be divided between lawyers who are not in the same firm if the following provisions are met:

► The client agrees to the arrangement in writing;

► The client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; and

► The total fee is reasonable.[5]

When billing clients, keep these ABA opinions in mind:

► It is unreasonable for a lawyer to bill more time to a client than the lawyer, in fact, spent on that client's matter.[6]

► It is prohibited for a lawyer to double bill the same amount to clients. For example, it is unreasonable for a lawyer to bill one client for four hours of travel time while simultaneously billing another client for the same four hours of work performed during the travel.[7]

► It is unreasonable to reuse old work product and bill several clients for the same time or same work product. The lawyer who has agreed to bill solely on the basis of time spent is obliged to pass those economic benefits on to the client.[8]

If a fee dispute arises, Louisiana Rules of Professional Conduct Rule 1.5(f)(5) sets forth detailed guidelines addressing how a lawyer must hold and account for monies received from, or on behalf of, a client during the course of representation. The lawyer should deposit any disputed funds in the lawyer's trust account and suggest a means for prompt resolution such as mediation or arbitration.[9]

Here are tips to secure payment for services while minimizing the risk of disciplinary action:

► Utilize a written fee in an engagement letter setting forth the scope of the representation and itemizing the fees and expenses the client will be responsible for and have the agreement signed by the client.

► Secure a retainer if the client expresses concern about the affordability of an hourly fee.

► Track time and expenses billed to each client. In the event of a fee dispute, you will have the records to back the work billed to the client.

► Bill clients timely and regularly to ensure timely payment and no buildup of fees and expenses.

► Timely refund unearned fees.

FOOTNOTES

1. *See,* In re Simpson, 959 So.2d 836, 841 (La. 2007); Succession of Bankston, 844 So.2d 61, 64 (La. App. 1 Cir. 2003); La. Dept. of Transp. & Dev. v. Williamson, 597 So.2d 439, 441-42 (La. 1992); *see also,* Saucier v. Hayes Dairy Prods., Inc., 373 So.2d 102 (La. 1978).

2. *See,* In re Dyer, 750 So.2d 942, 948 (La. 1999); In re Mitchell, 145 So.3d 305 (La. 2014).

3. La. R. Prof. Conduct 1.5(c) (2015).

4. *See,* Classic Imports, Inc. v. Singleton, 765 So.2d 455, 459 (La. App. 4 Cir. 2000).

5. La. R. Prof. Conduct 1.5(e) (2015).

6. *See,* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379 (1993).

7. *See,* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379 (1993).

8. *See,* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379 (1993).

9. La. R. Prof. Conduct 1.5(f)(5) (2015).

Ashley M. Flick is professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C. in Covington. She received her BA degree in political science in 2005 from Southeastern Louisiana University and her JD degree in 2010 from Loyola University College of Law. As loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. Email her at aflick@gilsbar.com.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

JLAP'S ASSESSMENT/TREATMENT CRITERIA

The most widely used and comprehensive set of guidelines for treating patients with addiction disorders is the ASAM Criteria. The American Society of Addiction Medicine (ASAM) was founded in 1954. Its membership includes more than 3,600 professionals practicing medicine within the specialized field of addiction. Within ASAM criteria is a special category — Safety Sensitive Workers (SSW).

The SSW population specifically includes lawyers, doctors, nurses and airline pilots — people who hold the public's trust and are required in the performance of their duties to utilize a complex body of knowledge and training while making real-time decisions wherein mistakes can severely damage the public.

ASAM criteria, and other professionals' programming guidelines, are utilized by Louisiana JLAP on a case-by-case basis to provide specialized clinical assistance purposefully designed both to help the person experiencing difficulty and to help protect the profession and the public.

Per ASAM SSW criteria:

► SSWs with untreated, or insufficiently treated, substance use disorders place the public at undue risk and therefore should not practice until safely in remission via professionals' program guidelines;

► Assessment, treatment and recovery efforts must meet ASAM SSW and professionals' program guidelines to produce reliable long-term recovery rates that protect the public and provide confidence that the person is fit to practice; and

► ASAM SSW criteria seek to greatly reduce the risk of relapse within SSW professionals.

According to ASAM, assisting SSWs often includes objective, in-depth clinical assessments facilitated by programs such as JLAP to reliably diagnose substance use disorders and to identify any other mental health concerns present. JLAP-approved treatment facilities have expertise in diagnosing and treating SSWs. When both the treatment team and the patient understand and meet ASAM SSW criteria, the odds of post-treatment relapse are *dramatically* reduced. Avoiding relapse is the central goal of professionals' programs and SSW-level treatment. Per ASAM:

> With Safety Sensitive Workers, there is not the luxury for the treating clinician to stand back and sagely watch while a series of lapses and relapses helps the patient internalize full acceptance of his or her addiction. For many Safety Sensitive Workers, there can be little or no tolerance for relapse**.** This intolerance comes from two places: 1) the potential for real public harm; and 2) the reprisal from licensing agencies, legal action, professional organizations, or command structures.

Louisiana JLAP's full-service, "broad brush" program provides comprehensive mental health professionals' programming to Louisiana's legal profession. By following appropriate ASAM SSW criteria and professionals' programming guidelines, JLAP's participants achieve an 85-90 percent relapse-free success rate at the completion of JLAP's program. As such, Louisiana's JLAP is one of the most effective professionals' programs in existence today and has been recognized as a top-tier program nationally.

JLAP's remarkable effectiveness rests in large measure upon its careful utilization of ASAM SSW and professionals' programming guidelines in three main stages of assistance for substance use disorders: 1) facilitation of a JLAP-approved evaluation or assessment to reliably identify an individual's mental health needs; 2) referral to a JLAP-approved professionals' track treatment facility best suited to address the specific issues identified in the assessment; and 3) formal post-treatment recovery monitoring services provided directly by JLAP.

JLAP recovery monitoring post-treatment typically includes requirements for random drug screens to facilitate total abstinence from alcohol and drugs, attendance of support group meetings, and participating in other clinical follow-up recommendations or therapy as the individual may need to support quality, long-term remission without relapse. On average, at any given time, JLAP has more than 100 people participating in recovery monitoring.

It is paramount to keep in mind that alcoholism and addiction are very serious, chronic diseases that are often fatal if not successfully treated. While the ASAM SSW criteria and professionals' programming guidelines are no doubt demanding and designed to help save a SSW professional's career, the most important outcome is that these professionals' lives are literally being saved.

The effectiveness of full-service professionals' programs like JLAP is catching experts' eyes. In 2013, Robert L. DuPont, MD, of the Institute for Behavior and Health, Inc. hosted a symposium in Washington, D.C., on the "New Paradigm for Recovery,"[1] a new strategy to dramatically reduce relapse in the general population.

If you or someone you know has an alcohol or drug problem, call JLAP at (985)778-0571 or go online at: *www.louisianajlap.com*. Your call is confidential and you do not have to give your name.

FOOTNOTE

1. "The New Paradigm for Recovery: Making Recovery — and Not Relapse — the Expected Outcome of Addiction Treatment," A Report of the John P. McGovern Symposium hosted by the Institute for Behavior and Health, Inc., Nov. 18, 2013, Washington, D.C.

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 via email at LAP@louisianalap.com.

UPDATE ON COMMITTEE AWARDS

The Louisiana State Bar Association's (LSBA) Committee on Diversity in the Legal Profession approved recommendations made by its Awards Subcommittee in November 2015. These changes to restructure the committee's awards were unanimously approved by the LSBA's Board of Governors in January.

Combined Award

The Trailblazer and Human Rights Awards were combined and will now be known as the "Louisiana State Bar Association Chief Justice Bernette Joshua Johnson Trailblazer Award." It will next be awarded at the 2017 LSBA Annual Meeting. The nomination procedure and deadline will be announced in future print and online publications.

The award will recognize individual attorneys and judges who champion the ideals set forth by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, the first African-American chief justice who has exhibited an unwavering commitment to enhancing diversity and inclusion in the legal profession.

Lawyers must be admitted to practice in Louisiana. Judges must have been elected or appointed to a state or federal court in Louisiana. Lawyers and judges can be on active or inactive status and from any practice setting, and cannot be current members of the LSBA Committee on Diversity.

The award recipient should demonstrate a unique blend of experience, skills and accomplishments which translate into successful diversity and inclusion efforts, including, but not limited to, the following:

► supporting and encouraging attorneys who are members of an unrepresented group within the legal profession to reach their career and personal potential;

► ensuring opportunities for the advancement of diverse people through mentoring efforts and diversity outreach;

► commitment to addressing issues of equality, fairness and injustice in the legal profession; and

► participation in community service activities which promote and broaden the diversity pipeline to the legal profession.

Guardian of Diversity

The Guardian of Diversity Award will now be known as the "Louisiana State Bar Association Guardian of Diversity Award." It will next be presented at the 2017 LSBA Annual Meeting. The nomination procedure and deadline will be announced in future print and online publications.

The award will recognize exceptional efforts of bar associations, courts, law firms/departments and community organizations (non-profits and public interest organizations) within Louisiana that demonstrate a sustained, long-term commitment to encouraging, increasing and/or retaining diversity in the legal profession.

The recipient should demonstrate the following diversity and inclusion efforts:

► creating and implementing innovative strategies to promote and advance the concept and spirit of diversity and inclusion in society;

► making a significant impact on diversity issues in the legal profession;

► advocating and promoting an understanding and awareness of diversity;

► dedication to improving and bridging the relationship between diverse groups; and

► proven commitment to creating a culture of diversity and inclusion.

New Award Established

The Committee on Diversity in the Legal Profession also will recognize a current member (all categories of membership) of the committee who has demonstrated a commitment to diversity and has gone above and beyond committee service to address the needs of underrepresented groups or public interest causes.

The recipient will be nominated by a current member of the committee and chosen by the current chair(s) of the committee. The recipient may receive the award just once in his/her lifetime.

The recipient should demonstrate the following diversity and inclusion efforts:

► enhances inclusion through positive communication between persons of different backgrounds;

► develops innovative methods for increasing and valuing diversity through wide-ranging activities;

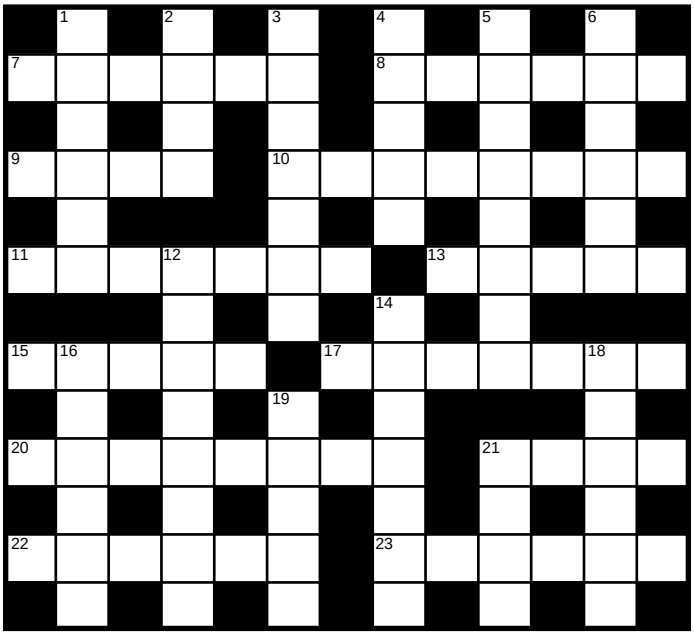
► demonstrates outstanding efforts to promote an environment free from bias and discrimination; and

► organizes, creates and facilitates various community events promoting diversity, respect and inclusiveness.

The recipient should demonstrate an ongoing commitment to the committee and make active contributions to the betterment of the greater community as an agent for social change.

Crossword PUZZLE

By Hal Odom, Jr. | LET'S SHAKE ON IT



ACROSS

7 Spiny sea creature, sometimes called a "sea hedgehog" (6)
8 One behind the wheel; No. 1 wood (6)
9 Part of a fleet of 1492 (4)
10 Range of liability, on an insurance claim, or of sentence, for a crime (8)
11 Set (something) apart (7)
13 Emerald or aquamarine (5)
15 Hidden supply (5)
17 Gin + vermouth (7)
20 Tendering, as evidence at trial (8)
21 What is limited at oral arguments (4)
22 Extinguish an existing obligation and substitute it with a new one (6)
23 Reflexive pronoun (6)

DOWN

1 Characteristics (6)
2 Perlman who played Carla on "Cheers" (4)
3 International understanding (7)
4 Take as one's own (5)
5 Happiest from drink (8)
6 Per annum (6)
12 "Viva ___," noted Elvis Presley movie (3, 5)
14 Try to reach an agreement; a good deal (7)
16 Nonstick coat (6)
18 "Jack be ___, Jack be quick" (6)
19 Compare, or see as similar (5)
21 Exam (4)

Answers on page 383.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334
1405 W. Causeway Approach, Mandeville, LA 70471-3045 • email jlap@louisianajlap.com

Alexandria	Steven Cook	(318)448-0082
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The Judges and Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2015.

Decisions

Elizabeth A. Alston, Covington, (2015-OB-1882) **Transferred to disability/ inactive status** ordered by the court on Oct. 22, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 22, 2015.

Twilia A. Andrews, Walker, (2015-OB-1907) **Permanent resignation in lieu of discipline** ordered by the court on Nov. 16, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2015. *Gist:* Committed serious attorney misconduct, including a pattern of accepting advance fees in connection with her representation of clients but then failing to communicate with them; failing to complete the necessary work to bring their legal matters to a conclusion; and failing to refund the unearned fees.

William Harrell Arata, Bogalusa, (2015-B-1837) **Suspended for one year and one day, with all but six months deferred,** ordered by the court as consent discipline on Nov. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2015. *Gist:* Failure to communicate; attempting to settle a claim or potential claim without advising client to seek independent counsel; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

David H. Bernstein, Metairie, (2015-OB-1769) **Readmission denied to the practice of law** ordered by the court on Nov. 16, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 30, 2015. Mr. Bernstein may not reapply for readmission until at least two years have passed from the date of this judgment.

Malcolm Brasseaux, Church Point, (2015-OB-1654) **Permanent resignation in lieu of discipline** ordered by the court on Oct. 2, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 2, 2015. *Gist:* Lack of diligence; failure to communicate; conversion of client funds; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating the Rules of Professional Conduct.

Matthew B. Collins, Jr., New Orleans, (2015-B-183) **Six-month suspension, fully deferred, subject to six months' unsupervised probation**, ordered by the court as consent discipline on Nov. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2015. *Gist:* Failed to communicate; failed to protect client's interest upon resignation of representation; and neglected client's legal matter.

Olita M. Domingue, Lafayette, (2015-B-1719) **Interim suspension** ordered by the court on Oct. 5, 2015.

Steven Courtney Gill, New Orleans, (2015-B-1373) **Suspended one year and one day** ordered by the court on Oct. 23, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2015. *Gist:* Knowingly making a false statement in connection with a disciplinary matter; commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and violating the Rules of Professional Conduct.

Glyn J. Godwin, Slidell, (2015-OB-1610) **Permanent resignation in lieu of discipline** ordered by the court on Oct. 2, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 2, 2015. *Gist:* Lack of diligence; failure to communicate; failure to refund unused advance costs; failure to return unearned fees; safekeeping property of clients or third parties; conversion of client funds; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating the Rules of Professional Conduct.

Andre Thomas Haydel, New Orleans, (2014-OB-1385) **Reinstated to active status from disability inactive status** ordered by the court on Aug. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Aug. 6, 2015.

Anthony Hollis, Shreveport, (2015-B-0876) **Adjudged guilty of additional violations warranting discipline, which shall be considered in the event he seeks readmission after becoming eligible to do**

Continued on page 353

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Dec. 1, 2015.

Respondent	Disposition	Date Filed	Docket No.
Madro Bandaries	Suspended.	10/19/15	15-61

so, ordered by the court on Aug. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 11, 2015. *Gist:* Failed to return a client's complete file; engaged in criminal conduct; neglected a legal matter; failed to communicate with a client; and failed to cooperate with the ODC in its investigations.

Scott R. Hymel, Mandeville, (2015-B-1069) **Suspended for 18 months** ordered by the court on Sept. 11, 2015. JUDGMENT FINAL and EFFECTIVE on Sept. 25, 2015. *Gist:* Failure to act with reasonable diligence; failure to communicate; failure to refund an unearned fee; failure to cooperate with the ODC; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; failure to comply with obligations upon termination of representation; and violating or attempting to violate the Rules of Professional Conduct.

George William Jarman, Baton Rouge, (2015-B-2015) **Interim suspension** ordered by the court on Nov. 18, 2015.

Laura J. Johnson, Winnfield, (2015-B-1946) **Interim suspension** ordered by the court on Nov. 12, 2015.

Keisha M. Jones-Joseph, Shreveport, (2015-B-1549) **Minimum period to seek readmission to practice law extended for five years from date eligible to seek readmission from prior disbarment plus restitution to clients and Client Assistance Fund** ordered by the court on Oct. 9, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 23, 2015. *Gist:* Accepted fees in two cases for which she abandoned her clients, without doing any work and failed to protect the clients' interests; failed to account for and/or return unearned fees; and failed to cooperate with ODC in its investigation.

Henry H. Lemoine, Jr., Pineville, (2015-OB-1931) **Transferred to disability/inactive status** ordered by the court on Oct. 29, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2015.

Gregory Wayne Minton, Jackson, TN, (2015-B-1530) **Suspension for five years** ordered by the court as reciprocal discipline for discipline imposed by Tennessee on Sept. 25, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 9, 2015. *Gist:* Reciprocal discipline imposed for misconduct occurring in Tennessee.

William Paul Polk II, Alexandria, (2015-B-1408) **Suspended for one year and one day** ordered by the court on Sept. 25, 2015. JUDGMENT FINAL and EFFECTIVE on Oct. 9, 2015. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; engaging in representation that will result in a violation of the Rules of Professional Conduct or other law; failure to comply with obligations upon termination of representation; engaging in the unauthorized practice of law; and violating or attempting to violate the Rules of Professional Conduct.

Satrica Williams-Bensaadat, Lake Charles, (2015-B-1535) **Suspended one year with six months deferred, subject to two years' supervised probation conditioned with completion of LSBA Ethics School**, ordered by the court on Nov. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Nov. 20, 2015. *Gist:* Failure to safekeep property pending resolution of dispute; obligations upon termination of representation; meritorious claims; communication with represented party; knowingly making a false statement in connection with a disciplinary matter; engaging in conduct involving fraud, dishonesty, deceit or misrepresentation; and violating the Rules of Professional Conduct.

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

	No. of Violations
Commingling, conversion and misuse of trust	1
Conduct involving fraud, dishonesty, deceit or misrepresentation	1
Conversion/commingling; failure to maintain a trust account	1
Diligence	1
Failing to adequately communicate with a client	1
Failing to inform the tribunal of all material facts known to the lawyer that would enable the tribunal to make an informed decision	1
Neglect of a legal matter	1
Responsibilities regarding non-lawyer assistants	1
TOTAL INDIVIDUALS ADMONISHED	**5**

Small Business Mandatory Set-Aside Rule Doesn't Apply to Federal Supply Schedule

In re Aldevra, B-411752 (Oct. 16, 2015), 2015 WL 6723876.

In June 2015, the Army National Guard Bureau (Agency) issued a request for quotations for certain food-preparation equipment. The solicitation was issued via the General Services Administration's (GSA) e-Buy portal pursuant to the Federal Supply Schedule (FSS) procedures outlined in the Federal Acquisition Regulation (FAR) subpart 8.4 (2015). The requirement was valued at approximately $4,300, but was not set aside exclusively for small business concerns. On July 9, Aldevra, a small business that holds a FSS contract, protested the solicitation to the Government Accountability Office (GAO).

A protest is a written objection by an interested party to a solicitation or other federal agency request for bids or offers, cancellation of a solicitation or other request, award or proposed award of a contract, or termination of a contract if terminated due to alleged improprieties in the award. *See*, FAR § 33.101. Three fora are available to potential protestors to hear these challenges, and reasons for protesting in each are litigation-strategy dependent. The fora are: (1) the federal agency soliciting the requirement; (2) the Court of Federal Claims; and (3) the GAO. The GAO adjudicates protests under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-56. The GAO hears the majority of reported protests, likely due to two unique characteristics of a GAO protest — the 100-day decision, and the CICA automatic statutory stay of contract award. *See*, 31 U.S.C. §§ 3553(c), (d); FAR 33.104(b), (c), (f).

In this case, Aldevra alleged that the Agency failed to set aside the subject requirement for small businesses in accordance with the total set-aside mandate under the Small Business Act, 15 U.S.C. § 644(j), as implemented under FAR § 19.502-2. A set-aside in this context is a federal procurement award valued within the Simplified Acquisition Threshold (SAT), whether partial or total, exclusively reserved for small business concerns. *See*, 15 U.S.C. § 644(j)(1). An award valued between $3,000 and $150,000 is within the SAT. *See*, FAR § 2.101. Prior to 2010, the only exception to this mandate was when market research conducted by a federal contracting officer established that competitive offers from two or more small businesses are not reasonably expected. *See*, FAR § 19.502-2.

The question presented before the GAO was whether the Small Business Act's total set-aside mandate under § 644(j) was

modified by the Small Business Jobs Act of 2010, Pub. L. 111-240 (Jobs Act) by the addition of 15 U.S.C. § 644(r). Section 644(r) addresses multiple-award contracts (MAC) under the Small Business Act. It is important to note that a contract under the FSS is a MAC. *See*, FAR § 8.402. In reaching its decision, the GAO first examined the language in § 1331 of the Jobs Act. Under § 1331, the GAO noted that the Small Business Act seemed to be amended to permit, not mandate, small business set-asides in a MAC context. *See*, 15 U.S.C. § 644(r). In support of its reasoning, the GAO noted that the committee report accompanying the underlying Senate bill for the Jobs Act indicated that the general set-aside requirements have been interpreted to not apply specifically to MACs. *See*, S. Rpt. 111-343.

Next, the GAO examined the interim implementation rules amending relevant sections of the FAR by the Department of Defense, GSA and NASA. Further, because this protest involved the Small Business Act, the GAO examined the Small Business Administration's (SBA) revision of its own regulations. The SBA is the executive agency responsible for promulgating regulations implementing the Small Business Act. *See*, FAR § 19.401; 13 § C.F.R. 121.

In examining the two seemingly competing regulations, the GAO determined that:

> [g]iven the language of the Jobs Act, as well as regulatory provisions implementing the Jobs Act, it is readily apparent that the general small business set-aside rule for contracts valued [within the SAT], set forth under § 644(j), and implemented under FAR §19.502-2, does not apply when placing orders under the FSS program.

In support of its decision, the GAO reasoned:

> [T]he Jobs Act clearly provides for granting agency officials discretion in deciding whether to set-aside orders under multiple-award contracts. Moreover, the regulatory provisions implementing this statutory provision (FAR §8.405-5(a)(1)(i) and FAR §19.502-4(c)) establish that the small business rules set forth under FAR part 19, which includes FAR §19.502-2, are not mandatory, and instead afford contracting officers with the discretion to set aside orders under the FSS program.

The SBA and Aldevra argued, among other things, that to construe 15 U.S.C. §§ 644(j) and (r) as a harmonious whole, the GAO should read section (j) as requiring:

> all FSS orders with values in the [SAT] be set aside unless market research shows that competitive offers from two or more small business cannot be expected, and to read section (r) as merely creating an exception to the requirement in 10 USC § 2304c(b) (and 41 U.S.C. § 4106) that all multiple-award contract holders be given a fair opportunity to compete for orders.

The GAO did not find this argument persuasive, noting that an equivalent harmony to what the SBA argued could be reached by just "understanding section 644(r) as having carved out a limited exception with respect to section 644(j) for orders under multiple-award contracts." Further, the GAO reasoned that its interpretation is supported because the SBA's reading of the two sections is at odds with the above-mentioned executive agencies' regulatory framework adopted to implement section 644(r), specifically FAR §19.502-2, and its own regulations contained in 13 C.F.R. § 125.2(e).

Consequently, the GAO determined that the set-aside provisions under the Small Business Act were changed by the Jobs Act to be permissive for MACs, to include the FSS, and denied the protest.

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Chapter 7 Trustee Removed from All Cases

Smith v. Robbins (In re IFS Fin. Corp.), 803 F.3d 195 (5 Cir. 2015).

The chapter 7 trustee for IFS Financial Corp. traveled to New Orleans with his wife, who represented the chapter 7 trustee in the bankruptcy case along with their law firm, and children to attend an oral argument in front of the 5th Circuit. The chapter 7 trustee charged the estate more than $3,000 in travel expenses for five days of travel, even though two of those days neither he nor his wife performed any work related to the oral argument. The chapter 7 trustee sought reimbursement from his firm, and then filed an application for distribution, seeking the authority to reimburse his firm from estate funds. The debtor's secured creditor objected. The bankruptcy court disallowed most of the travel costs, and then *sua sponte* entered an order to show cause why the chapter 7 trustee should not be removed under 11 U.S.C. §324(a), which allows a trustee to be removed "for cause" and "after notice and hearing," for breaching his fiduciary duties by attempting to charge the debtor's estate for the extended stay in New Orleans when there was no legitimate estate purpose for the extended stay.

After a hearing, the bankruptcy court removed the chapter 7 trustee from the IFS bankruptcy case and all other bankruptcy cases in which he served as a chapter 7 trustee. On appeal, the 5th Circuit affirmed, finding the chapter 7 trustee breached his fiduciary duties to the estate.

The 5th Circuit found "cause" existed to remove the chapter 7 trustee regardless of whether his actions involved gross negligence or actual injury or fraud. The 5th Circuit noted that the chapter 7 trustee failed to itemize the expenses in his distribution request, and then only days before the hear-

ing before the bankruptcy court provided the necessary detail. Also, the chapter 7 trustee was not forthcoming with the bankruptcy court at the hearing that his children attended the trip, and the bankruptcy court did not find the chapter 7 trustee's testimony credible and instead found credible the chapter 7 trustee's expert, who stated he would not have charged the estate for the two days not spent working. Finally, the 5th Circuit noted that the chapter 7 trustee had been involved in two other incidents in which he had placed his firm's interests ahead of the estates he represented.

The 5th Circuit also held that 11 U.S.C. §324(b), which requires that a trustee be removed from all of his cases if he is removed from one case, was constitutional.

Debtor Judicially Estopped from Pursuing Claims

United States v. GSDMIDEA City, L.L.C., 798 F.3d 265 (5 Cir. 2015).

In 2009, the debtor filed for chapter 13. The debtor's plan, which paid 100 percent of pre-petition claims, was confirmed. Prior to his discharge in 2013, the debtor filed a False Claims Act lawsuit against GSD & M IDEA City, L.L.C., the defendant. The debtor never disclosed the False Claims Act claims to the bankruptcy court while his chapter 13 case was pending.

The defendant moved to dismiss the False Claims Act claims, asserting that because the debtor failed to disclose his claims to the bankruptcy court, he had taken inconsistent positions in two different matters and, thus, should be judicially estopped from pursuing the claims. The district court offered the chapter 13 trustee the opportunity to pursue the claims, but he declined. The district court dismissed the debtor's False Claims Act based on judicial estoppel, and the 5th Circuit affirmed.

When determining whether judicial estoppel should apply, courts look to the following: (1) whether the party against whom judicial estoppel is sought has asserted a legal position that is plainly inconsistent with a prior position; (2) whether a court accepted the prior position; and (3) whether the party did not act inadvertently.

The debtor argued that he acted inadvertently because he mistakenly believed that he did not have to disclose the claims as his chapter 13 plan provided for 100 percent repayment to his creditors. The 5th Circuit found that the debtor's failure to disclose was not inadvertent and that the debtor had a financial motive to conceal the claims because his plan did not provide interest to the unsecured creditors and paid the claims over five years rather than a shorter period. The 5th Circuit found irrelevant the debtor's argument that the law on whether he needed to disclose the claims was not well settled at the time because the debtor's plan specifically provided that, upon confirmation, the property of the estate did not vest in the debtor but remained property of the estate. Based on the foregoing, the 5th Circuit held that the debtor was judicially estopped from bringing the False Claims Act claims.

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and
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Joint Ventures and Immovable Property

Brignac v. Barranco, 14-1578 (La. App. 1 Cir. 9/10/15), 2015 WL 5306216, *writ denied*, 15-1889 (La. 11/20/15), 2015 WL 8232696.

The defendant signed an agreement to purchase three apartment complexes in his own name "or assignees." A month later, the defendant signed an agreement to purchase a fourth apartment complex in his own name only. Shortly thereafter, the defendant and the two plaintiffs formed a limited liability company (the LLC), each of them apparently having an indirect one-third interest through other limited liability companies. The fourth complex was evidently purchased and resold and the proceeds deposited in the LLC's checking account. Meanwhile, each of the two plaintiffs assisted in getting extensions of time from the seller of the first three complexes, wrote a $10,000 check to the defendant with a memo line indicating a "1/3 interest" or "1/3 deposit" in those three complexes, and submitted financial statements to a bank at defendant's request. Later, defendant wrote a $50,000 check on the LLC checking account to make an additional deposit on one of the three complexes. The defendant then found a buyer, sold the agreement (now split into three agreements) on the three complexes to the buyer at a profit of $1.32 million, and sought to keep all the profits for himself alone.

The district court found that the parties had agreed to enter into a joint partnership and share the profits made from the sale of the purchase agreements. The defendant argued on appeal that the district court had improperly allowed parol evidence to prove a verbal joint-venture agreement involving the transfer of interests in immovable property. The court of appeal noted the three checks and the LLC articles constituted evidence of a written joint-venture agreement, and then upheld the district court, reasoning that "[w]hen findings are based upon determinations regarding the credibility of witnesses, the manifest error--clearly wrong standard demands great deference to the trier of fact's findings." The court of appeal also noted the factual similarity to a 1972 Louisiana Supreme Court case. A concurring opinion emphasized the need for clarification by the Supreme Court regarding the extent of writing, if any, required for establishing joint ventures relating to immovable property.

Sufficient Disclosure of Entity Principal

Wirthman-TAG Constr. Co.v. Hotard, 14-1394 (La. App. 8/19/15), 2015 La. App. LEXIS 1582.

Mr. and Mrs. Hotard entered into a construction contract with "Wirthman-TAG Construction;" the contract was signed for Wirthman-TAG Construction "by" Mr. Gennusa and Mr. Wirth. The Hotards argued that they believed Wirthman-TAG was a trade name, that they were not aware it was a limited liability company, and that, had they known, they would not have contracted. The plaintiff countered that, before the agreement was signed, it had provided the Hotards with two insurance policies, each covering "Wirthman-TAG Construction, L.L.C." The plaintiff also emphasized that the individuals' names did not appear in the body of the contract and that the word "by" indicated their representative capacity.

The trial court did not find Gennusa and Wirth individually liable. On appeal, the court of appeal found no error, concluding that, "[w]hen considering the totality of the circumstances and the record evidence, we find that there was sufficient notice to the Hotards that Wirthman-TAG Construction was operating as a juridical entity."

Reinstatement of a Nonprofit Corporation

Phi Iota Alpha Fraternity, Inc. v. Schedler, 14-1620 (La. App. 1 Cir. 9/21/15), 2015 La. App. LEXIS 1796.

In 1998, the articles of incorporation of "Phi Iota Alpha Fraternity," a Louisiana nonprofit corporation that was the Eta chapter of a national fraternity of the same name, were revoked for failure to file an annual report for three years. In June 2012, four individuals filed an annual report with the Louisiana Secretary of State to reinstate the Eta chapter as a Louisiana nonprofit corporation and to name themselves the officers. Three months later, the national fraternity filed a petition for writs of mandamus and quo warranto against the Louisiana Secretary of State, three of the four individuals (the fourth had resigned) and the Eta chapter, seeking to cancel the Eta chapter's corporate articles, to remove the three individuals as officers and to preclude anyone not authorized by the national fraternity from seeking to obtain the corporate franchise of the Eta chapter.

The trial court held there was no cause of action against the Secretary of State, but the three individuals were not authorized to hold office in the Eta chapter nor to reinstate its articles. The court of appeal held that the national fraternity had sufficiently established such a real and actual

interest in the action as to have a right of action. As it was conceded the individuals did not meet the criteria in the articles to be officers, the court of appeal upheld the trial court's determination that they were not authorized to be officers nor to reinstate the corporation. The court of appeal added, however, that this did not mean that the reinstatement was invalid, noting that under La. R.S. 12:205(B), the issuance of a certificate of incorporation is conclusive evidence of incorporation, such that validity of the incorporation or reinstatement can be attacked only by the state.

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Covenant Marriage

Johnson v. Johnson, 14-0564 (La. App. 1 Cir. 12/23/14), 168 So.3d 641.

The covenant marriage statutes do not require the parties to attend marital counseling prior to filing a petition for divorce or seeking ancillary relief such as child support, child custody and spousal support, although they must receive counseling prior to obtaining the judgment of divorce or separation.

Custody

Barker v. Barker, 14-0775 (La. App. 1 Cir. 11/7/14), 167 So.3d 703.

Over Ms. Barker's objection, the court tried the custody case before the expert appointed to assess the child had submitted his findings. Following the trial, the court held the matter open to review the expert's report, which he did, and then rendered judgment, without allowing the parties to review the report or to cross-examine the expert. The court of appeal reversed and remanded, finding that the court erred in not following the mandatory provisions of La. R.S. 9:331 that required the report to be provided to the parties and allowed the parties the opportunity to cross-examine the evaluator.

Wilson v. Wilson, 15-0074 (La. App. 5 Cir. 4/29/15), 170 So.3d 340.

Prior to interviewing the child in chambers, the court addressed the matter with the parties' counsel, who did not object to the court meeting with the child outside of counsel's presence. The court of appeal stated that *Watermeier* does not ordain a mandatory procedure, and where the parties do not object, the court can examine the child "on or off the record, and with or without parents and/or counsel being present."

LaGraize v. Filson, 14-1353 (La. App. 4 Cir. 6/3/15), 171 So.3d 1047.

The mother was allowed to relocate out of the country with the minor child for three years to pursue a Ph.D. fellowship program in Italy. However, the court reversed and remanded for a more detailed access schedule that would allow the father to maintain contact with the child through Skype and for a physical custody schedule, to be set over that three-year period.

Baxter v. Baxter, 15-0085 (La. App. 4 Cir. 6/24/15), 171 So.3d 1159.

Ms. Baxter's move with the minor child to Canada in 2012 established Canada as the child's home state under the UCCJEA. Even though Canada is a foreign country, it is a "state" under the international provision of the UCCJEA. Moreover, the move to Canada was permanent and not a "temporary absence." Because Louisiana lacked subject matter jurisdiction under the UCCJEA, the Louisiana relocation statutes did not apply. Moreover, the court lacked jurisdiction to enforce a contempt rule regarding violation of an interim visitation order. Mr. Baxter's arguments under the Military Parent and Child Custody Procedure Act were inapplicable. However, the court did have jurisdiction over the divorce and incidental matters due to Mr. Baxter's continuing domicile in Louisiana and Ms. Baxter's prior and continuing contacts. The court of appeal converted the appeal to a writ, as the judgment at issue was interlocutory, had not been designated as a final judgment for appeal purposes, the appeal was filed within the 30-day time period applicable to writ applications, an immediate decision was necessary to ensure fundamental fairness and judicial efficiency, and a reversal would terminate the litigation on this issue.

Adoption

In Re T.E.N., 15-0100 (La. App. 5 Cir. 6/30/15), 171 So.3d 1219.

The Louisiana Children's Code provides that a father who opposes an intra-family adoption and who files a written opposition stating that he cannot afford to hire an attorney is entitled by due process to a hearing on whether counsel should be appointed prior to the court hearing the adoption matter. Here, the trial court did not adequately address the father's financial situation before proceeding on the adoption, which was subsequently vacated, and the matter remanded.

Community Property

Richard v. Richard, 14-1365 (La. App. 4 Cir. 6/3/15), 171 So.3d 1097.

Because Mr. Richard was not served with notice of the community-property-partition trial, even though Ms. Richard argued that he was intentionally avoiding service and was aware of the proceedings, the property-partition judgment was nullified. Further, he did not acquiesce in the judgment nor did he make an appearance to subject himself to the requirement of providing the court with his address. Finally, the partition judgment was legally invalid because the trial court did not comply with the mandatory procedural provisions of La. R.S. 9:2801, which requires the filing of descriptive lists and traversals.

McClanahan v. McClanahan, 14-0670 (La. App. 5 Cir. 3/25/15), 169 So.3d 587.

The trial court did not err in finding that Mr. McClanahan had sufficient income to pay the child support and final periodic spousal support ordered by the trial court. The court of appeal noted:

> That the trial court was unable to place an exact figure on Mr. McClanahan's income was due in large part to the opacity of the complicated transactions among his various companies and himself, and the inadequate documentation thereof, as well as the fact that it appears, even as trial was in progress, Mr. McClanahan had not provided the court with complete and updated financial information.

The court further found that his reported salary of $60,000 per year was inconsistent with his records and lifestyle and that "[c]ourts may consider evidence of the standard of living of the obligor when the actual income he claims is inconsistent with his lifestyle."

However, the trial court erred in making the support awards retroactive to the point at which it believed the parties had reached an off-the-record agreement as to a retroactive date, finding, instead, that as an interim agreement, even though not made a judgment of the court, was in place, once the final award was determined, it was prospective only, and terminated the interim award as of the date of judgment pursuant to La. R.S. 9:315.21(B)(1) and 9:321(B)(1). *Vaccari*, 10-2016 (La. 12/10/10), 50 So.3d 139, was inapplicable, as there had been no allegations of impropriety in the confecting of the interim award, and retroactivity to the date of demand would have penalized Ms. Folse for Mr. McClanahan's non-compliance with discovery requests for his records.

—David M. Prados
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Insurance, Tort, Workers' Compensation & Admiralty Law

Gravamen of the Complaint and Sovereign Immunity

OBB Personenverkehr AG v. Sachs, 136 S.Ct. 390 (2015).

Sachs, a California resident, purchased a Eurail pass via the Internet from a Massachusetts-based travel agent. Using it to attempt boarding an OBB (Austrian state-owned railway) train in Innsbruck, she fell onto the tracks, suffering grievous injury, including the loss of both legs above the knees. She filed suit in U.S. District Court, which granted OBB's motion to dismiss pursuant to the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §1605(a)(2). The Act shields foreign states and their agencies and instrumentalities from suit in United States courts, unless a specified exception applies. Sachs argued for the Act's commercial-activity exception, which abrogates sovereign immunity for suits "based upon a commercial activity carried on in the United States by [a] foreign state." The 9th Circuit reversed, finding that the sale of the pass could be attributed to OBB through common law principles of agency, that Sachs' suit was "based upon" that sale, and that the sale established a single element necessary to recover under each cause of action brought by Sachs.

The Supreme Court reversed. Chief Justice Roberts, writing the unanimous opinion, cited the Court's earlier decision in *Saudi Arabia v. Nelson*, 113 S.Ct. 1471 (1993), to the effect that "an action is 'based upon' the 'particular conduct' that constitutes the 'gravamen' of the suit." *OBB Personenverkehr*, 136 S.Ct. at 396. In *Nelson*, suit was brought against Saudi Arabia seeking damages for intentional and negligent torts stemming from Nelson's allegedly wrongful arrest, imprisonment and torture by Saudi police while he was employed at a hospital in Saudi Arabia. The Saudis claimed sovereign immunity, arguing that section 1605(a)(2) was inapplicable because the suit was based upon sovereign acts — the exercise of Saudi police authority. Nelson countered that the suit was based upon the Saudis' commercial activities in that they "recruited Scott Nelson for work at the hospital, signed an employment contract with him, and subsequently employed him." *Nelson*, 113 S.Ct. at 1478.

In finding that the FSIA applied, barring Sachs' suit, the Court stated:

> Rather than individually analyzing each of the Nelsons' causes of action, we zeroed in on the core of their suit: the Saudi sovereign acts that actually injured them. . . . Under this analysis, the conduct constituting the gravamen of Sachs's suit plainly occurred abroad. All of

her claims turn on the same tragic episode in Austria, allegedly caused by wrongful conduct and dangerous conditions in Austria, which led to injuries suffered in Austria. . . . However Sachs frames her suit, the incident in Innsbruck remains at its foundation. . . . A century ago, in a letter to then-Professor Frankfurter, Justice Holmes wrote that the "essentials" of a personal injury narrative will be found at the "point of contact" — "the place where the boy got his fingers pinched."

OBB Personenverkehr, 136 S.Ct. at 396-97.

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Trans-Pacific Partnership Agreement

Ministers of the 12 Trans-Pacific Partnership (TPP) countries — Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam — on Oct. 4, 2015, announced agreement on a sweeping regional free-trade agreement covering roughly 40 percent of global GDP. The United States ships nearly US $2 billion in goods to TPP countries daily. The United States maintains a *dualist* system of international law that prevents the executive economic agreement reached by President Obama from becoming law until a Congressional act of transformation. The transformation process, formerly referred to as "fast track," is governed by the 2015 Bipartisan Congressional Trade Priorities and Accountability Act (Trade Priorities Act). President Obama has already submitted the TPP to Congress under the Trade Priorities Act. Congress will now have to enact legislation passing the TPP under domestic law. The Congressional process is restricted inasmuch as no markups are allowed and the TPP is subject to a simple yes or no vote without amendment. The current timeframe for a vote is unknown but most observers do not predict a vote until after American presidential elections.

TPP is an ambitious and comprehensive trade agreement involving both small and very large trading partners. The agreement contains 30 chapters broadly covering trade in goods and services. Some TPP highlights are:

► Comprehensive market access that eliminates or reduces tariff and non-tariff barriers to trade in goods and services across the full spectrum of trade categories.

► A regionalization of commitments and rules of origin allowing for streamlined production and supply-chain management across the TPP region.

► Inclusion of "21st century" trade issues like the digital economy and state-owned enterprises.

► Trade provisions recognizing the role of small- and medium-sized enterprises in the world economy, including trade-capacity-building programs to ensure both compliance and productivity.

► A TPP-centric dispute-settlement process providing for dispute-settlement panels across all substantive agreements with complete transparency and public access to proceedings.

U.S. House of Representatives

Trade Facilitation and Trade Enforcement Act of 2015, HR 644 (114th Congress, 2015-16).

The U.S. House of Representatives recently approved a conference report for important legislation that seeks to streamline and strengthen Customs and Border Protection's (CBP) role in the enforcement of U.S. trade laws. The Trade Facilitation and Trade Enforcement Act of 2015 (Trade Enforcement Act) was one of three major trade bills running through Congress this year, along with the Trade Priorities Act and the Trans-Pacific Partnership Agreement. The conference report is a compromise between differing House and Senate versions of the legislation.

Many U.S. industries rely on U.S. trade remedy laws to level the international market playing field, including Louisiana shrimp and crawfish industries. Those industries often face frustrating delays and administrative inability to address complex trade issues. Chinese evasion of antidumping orders through transshipment and abuse of the U.S. new-shipper-review process are just a few examples of tactics that have frustrated U.S. industry for many years.

The Trade Enforcement Act addresses many of these issues through simple

language changes and common-sense administrative procedures. One major change incorporated in the legislation is the delegation of new and broad enforcement powers to CBP. One of the more controversial aspects of the legislation did not find its way into the conference report. Sen. Schumer and others had included a currency-manipulation provision allowing trade remedy action to address currency manipulation. Currency manipulation is included in the final report but without specific trade remedies.

A few of the important changes included in the conference report are:

► Specific provisions requiring CBP to effectively act against evasion of both antidumping and countervailing-duty orders through an entirely new CBP process with strict deadlines and judicial review.

► Empowers the Office of the United States Trade Representative with trade-enforcement oversight powers.

► Creates the new Interagency Center on Trade Implementation, Monitoring and Enforcement to ensure interagency cooperation on trade issues.

► Includes a new negotiating objective requiring future trade agreements to address barriers to fisheries trade, including fisheries subsidies and illegal fishing.

One interesting inclusion in the final adopted conference report is the Permanent Internet Tax Freedom Act. This provision makes permanent the ban on state and local governments' taxing Internet access or placing multiple or discriminatory taxes on Internet commerce. Existing taxes are grandfathered through a June 2020 required phase-out date.

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WARN Act Litigation

With the downturn in oil prices over the past year, layoffs have become more common in the energy industry. As a result, the likelihood of lawsuits brought under the Workers Adjustment and Retraining Notification Act (WARN) will continue to increase. WARN requires covered employers to give notice to their employees before implementing layoffs impacting a substantial number of employees.

WARN requires employers who have 100 or more full-time employees to provide affected employees with a 60-day notice before ordering a plant closing or a mass layoff. 29 U.S.C. § 2102. A "plant

closing" is defined as the permanent or temporary shutdown of a "single site of employment" that results in 50 or more employees losing employment during any 30-day period. 29 U.S.C. § 2101(a)(2). In addition, under WARN, a "mass layoff" is a reduction in force that causes 50 or more employees at a "single site of employment" who comprise at least 33 percent of the total employees at that site to lose employment for any 30-day period. 29 U.S.C. § 2101(a)(3). Employers who fail to give the required notice are liable to the aggrieved employees for back pay and benefits for each day of the violation. 29 U.S.C. § 2104(a)(1).

In *Voisin v. Axxis Drilling, Inc.*, ____ F.Supp.2d ____ (E.D. La. 2015), 2015 WL 6438918, the Eastern District of Louisiana addressed whether oil rigs constitute single sites of employment under WARN. Axxis Drilling operated five rigs in the territorial waters of Louisiana and Texas, and though the rigs were not self-propelled, they were moved periodically to adjust to various business needs. The rigs all had between 24 and 43 employees. Axxis also employed about 20 additional individuals at an office along the Intracoastal Waterway in Houma, La. Each rig operated independently but maintained daily contact with the Axxis office. When the rigs were between jobs, they would be "stacked" at a dock adjacent to the Axxis office for repairs or other routine maintenance. Rig employees continued to work their normal shifts when the rigs were stacked at the office. Rigs could be stacked for as long as a month before being sent out on a new drilling job. Ultimately in February 2015, a total of 101 employees were laid off while two separate rigs were stacked at the Axxis office.

The issue before the court was whether the Axxis office and rigs constituted a single site of employment. If the office and rigs were not a single site, there would be no WARN violation despite failure to provide notice to the employees. This result would occur because there was an insufficient number of individuals subject to a layoff at any single site (rig or office) to invoke WARN protections. Because WARN does not define "single site of employment," the Eastern District looked to Department of Labor guidance and to prior case law from the 5th Circuit to help determine what may constitute a single site of employment. The Eastern District concluded that separate facilities could constitute a single site of employment only if "1) the separate facilities are in 'reasonable geographic proximity of one another'; 2) they are 'used for the same purpose'; 3) and they 'share the same staff and equipment.'" *Voisin* at *2, quoting *Viator v. Delchamps, Inc.*, 109 F.3d 1124, 1127 (5 Cir.1997).

The Eastern District determined that the evidence before the court on summary judgment indicated:

> that the rigs maintained their independent operations even while stacked at the Houma office. The rig facilities and the Axxis office were not "used for the same purpose." Nor did the office "share the same staff and equipment" with the rigs. The rigs were separate facilities that functioned independently from each other and the office, and each rig had its own employees who reported for duty to wherever the rig was located.

Voisin at *4. Thus, the Eastern District found that the five rigs and the Axxis office together did not constitute a single site of employment under WARN; instead, each individual rig and the Axxis office constituted a single site of employment. As Axxis did not lay off 50 employees from its office or any single rig, summary judgment was entered dismissing the plaintiffs' WARN claims.

While *Voisin* addressed applicability of the WARN to a specific subset of the energy industry pertaining to offshore drilling, continued WARN litigation can be expected as energy industry employers cope with prolonged low oil prices.

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Prudent Operator Claim

Hayes Fund for First United Methodist Church v. Kerr-McGee Rocky Mountain, L.L.C., 14-2592 (La. 12/8/15), ____ So.3d ____, 2015 WL 8225654.

The plaintiffs were mineral lessors who brought suit against multiple defendants who held rights under a mineral lease. The plaintiffs alleged that the defendants had constructed two wells in an imprudent manner, thereby causing the wells to produce less oil than they should have. The plaintiffs argued that the defendants' alleged imprudence constituted a violation of Mineral Code art. 122 and caused the plaintiffs to earn less in royalties than they otherwise would have.

The case was tried before a judge who heard testimony from several expert wit-

nesses. The district court entered judgment in favor of the defendants, stating in written reasons that the plaintiffs had not proven that the allegedly improper construction of the wells had caused them to produce less oil. The Louisiana 3rd Circuit reversed, holding that the trial court's judgment was manifestly erroneous and that the plaintiffs had proven their case. The 3rd Circuit then resolved certain legal issues and entered a judgment of approximately $13.4 million in favor of the plaintiffs.

The Louisiana Supreme Court has now reversed the 3rd Circuit's decision and reinstated the trial court's judgment in favor of the defendants. The Supreme Court explained in a unanimous opinion that the proper standard of review for a trial court's factual finding is the manifest error rule. Although the 3rd Circuit purported to apply that standard, the appellate court did not properly do so. The Supreme Court stated that the record contained evidence sufficient to support the trial court's judgment, which should have led the 3rd Circuit to affirm, but instead the appellate court reversed the judgment and substituted its own view of the evidence for that of the trial court.

The case received significant attention, and multiple *amicus* briefs were filed. One of the reasons the case received so much attention was controversy regarding the 3rd Circuit's resolution of various legal issues, including its application of the collateral-attack doctrine in the context of a "geographic" drilling unit, and its interpretation of a surface-damages clause that contained language that had been modified from the language in a printed-form lease. Those issues were relevant to the plaintiffs' measure of damages and whether the plaintiffs needed to show negligence in order to recover. Because the Supreme Court based its decision on its conclusion that the record contained evidence sufficient to support the trial court's finding that the plaintiffs had failed to prove that imprudent construction of the wells had reduced the amount of oil recovered, the Supreme Court did not reach those legal issues. In footnote 1, the Supreme Court acknowledged that multiple *amici curiae* had addressed these legal issues. The court then closed its footnote 1 with the statement: "We note our reversal of the Court of Appeal's judgment effectively vacates its ruling on these issues."

Disclosure: Article co-author Colleen C. Jarrott filed an *amicus* brief on behalf of a client.

Plaquemines Parish Wetlands Litigation

In November 2015, the Plaquemines Parish Council voted to dismiss a pending suit it had filed against several oil and gas companies. The decision apparently was not the result of a settlement, but instead was simply a decision not to pursue the case. The suit alleged that the defendants' activities have increased the rate of coastal land loss, thereby harming Plaquemines Parish.

Flood Protection Authority's Wetlands Litigation

The Southeast Louisiana Flood Protection Authority brought suit against more than 90 oil and gas companies, alleging that the defendants' activities had accelerated the

rate of coastal land loss and that this would cause the plaintiff to spend more money on flood protection. The United States District Court for the Eastern District of Louisiana granted the defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim on which relief may be granted. The plaintiff appealed. Proceedings before the United States 5th Circuit were stayed for a time due to one of the defendants filing for bankruptcy, but the plaintiff dismissed that defendant from the litigation, and the appeal is now proceeding.

Disclosure of Hydraulic Fracturing Fluid Composition

Like several other states, Louisiana requires operators to publicly disclose on a well-by-well basis the chemical composition of the fluid used in hydraulically fracturing anywhere in the state. *See*, La. Admin. Code 43.XIX.118. The disclosures are made using the FracFocus website. As originally promulgated in 2011, Louisiana's rule required that the disclosure be submitted either to the Louisiana Office of Conservation or directly to FracFocus within 20 days after completion of the hydraulic fracturing operation. Effective Nov. 20, 2015, the reporting deadline is amended to be 30 days after completion. *See*, 41 La. Reg. 2379 (11/20/15). The 30-day deadline is consistent with the length of time allowed under the mandatory disclosure rules of several other states.

Expedited Permit Process

As reported in a previous "Recent Developments" article, the Office of Conservation proposed a procedure that would allow the expedited processing of permit applications. The Nov. 20, 2015, Louisiana Register reported that the proposal has been adopted. The regulations regarding the program are codified at La. Admin. Code 43.XIX.4701 *et seq.*

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Attorney Fraud and Peremption

Lomont v. Myer-Bennett, 14-2483 (La. 6/30/15), 172 So.3d 620.

The plaintiff sued her former attorney for malpractice more than three years after the alleged negligent act. The attorney filed an exception of peremption, claiming the protection of La. R.S. 9:5605. The plaintiff responded by invoking the fraud exception of section E of the statute. She argued that peremption did not apply because the defendant fraudulently prevented her from learning of the malpractice within the three-year peremptive period. She submitted that her claim was timely because it was filed within one year of the date she became aware of the defendant's deceit. The district court nonetheless sustained the defendant's exception, and the court of appeal affirmed dismissal of the case on this basis.

Granting the plaintiff's writ application, the Louisiana Supreme Court began its analysis by observing that Louisiana appellate courts had "largely rejected" the idea that concealment of legal malpractice constitutes fraud under R.S. 9:5605(E), holding instead that section E applies only if the alleged fraudulent act itself constitutes malpractice. The court found no valid basis for these

prior jurisprudential rulings, however, and declared that all appellate court cases holding that "post-malpractice actions consisting of fraudulent concealment cannot amount to fraud within the meaning of Subsection (E) . . . are overruled." *Id.* at 628.

The court also found no support for any interpretation of the statute that would condone attorneys concealing malpractice until the three-year peremptive period expired, quoting this dictum from *Borel v. Young*: "Presumably, by excepting claims of fraud, the legislature intended to restore the . . . category of contra non valentem *so as to prevent a potential defendant from benefiting from the effects of peremption by intentionally concealing his or her wrongdoing*." *Id.* at 628-29, citing *Borel v. Young*, 07-0419 (La. 11/27/07), 989 So.2d 42, *on reh'g*, (La. 7/1/08), 989 So.2d at 61, n.3.

The court acknowledged that presently there are three peremptive periods in R.S. 9:5605(E):

> 1) a one-year peremptive period from the date of the act, neglect or omission; 2) a one-year peremptive period from the date of discovering the act, neglect or omission; 3) and a three-year peremptive period from the date of the act, neglect, or omission when the malpractice is discovered after the date of the act, neglect, or omission.

Id. at 636, citing *Jenkins v. Starns*, 11-1170 (La. 1/24/12), 85 So.3d 612, 626).

As each of the time periods is peremptive, the clear wording of the fraud exception mandates that none of the peremptive time periods can be applied to legal malpractice claims once fraud is proven: "After de novo review we interpret the statute to provide once fraud is established, no peremptive period set forth in the statute is applicable." *Id.* at 636. Accordingly, the court reasoned that, absent applicability of the entirety of the statute in the case at bar, it was "proper to revert to the limitation period in effect prior to the enactment" of the statute, *i.e.*, to the one-year prescriptive period of La. Civ.C. art. 3492, which governs delictual causes of action. As the plaintiff had filed her claim within one year from the date she became aware of the attorney's deception, her filing was timely under the "discovery doctrine" applicable in prescription cases, and the lower courts had erred in sustaining the defendants' exception of peremption. The case was reinstated and remanded to the trial court for further handling.

Petitions to Have Docket Numbers Assigned: To What Effect?

In re Prof'l Liability Claim of Snavely (D), 15-0207 (La. App. 3 Cir. 11/4/15), ____ So.3d ____, 2015 WL 6735492.

After receiving notice of the plaintiff's request for a medical-review panel, a defendant filed a "Petition to Have Docket Number Assigned." The plaintiff was not personally served with this petition, and the court was "unclear" as to whether service was made on her attorney. The defendant subsequently filed an exception of prescription, in response to which the plaintiff filed several exceptions, including an "Exception of Insufficiency"

in which she argued that the totality of the proceedings were absolutely null because the defendant had failed to personally serve her with the docket-number pleading.

The trial court dismissed this exception, and, on appeal, the plaintiff argued that La. C.C.P. art. 1201(A) required personal service of the "Petition to Have Docket Number Assigned" upon her because it was this docket-number pleading that "initiated" court proceedings. Thus, according to the plaintiff, the failure to serve her pursuant to art. 1201(A) rendered absolutely null everything filed thereafter.

The court of appeal observed that medical-malpractice claims must first complete the medical-review-panel process before damage claims can be filed in a court of law. However, once the panel request is filed, parties are allowed to request a docket number to conduct discovery and file certain exceptions. The court concluded that it is the *panel request* that "initiates medical malpractice proceedings," whereas a request for a docket number is simply another step in medical-review-panel proceedings that have already begun. Thus, the docket-number request is not the type of filing that must comply with art. 1201(A). It is not a civil action that demands enforcement of legal right and does not require any response from any party, and thus there is no need to comply with the personal-service requirements.

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Inventory Tax Credit-Lease/Rental Equipment

La. Machinery Co., L.L.C. v. Bridges, 15-0010 (La. App. 1 Cir. 9/18/15), 2015 WL 5515156 (writ application pending).

In a majority opinion, the 1st Circuit Court of Appeal affirmed a decision by the Louisiana Board of Tax Appeals (Board) that found Louisiana Machinery Co., L.L.C. (LMC) was entitled to a credit on its income taxes for ad valorem taxes it paid to political subdivisions on equipment that had been previously leased or rented under the inventory-tax-credit statute, La. R.S. 47:6006.

LMC, which sells and services heavy construction equipment, claimed a credit on its income taxes for ad valorem taxes it paid to various political subdivisions on items claimed to be inventory. The Louisiana Department of Revenue audited the corporate return of LMC and determined that some of the property that LMC had classified as inventory had been rented or leased to third parties, thereby not qualifying for the credit. The Department permitted only a portion of the refund due as a result of the credit because it determined that lease or rental property did not qualify as inventory for purposes of the credit.

R.S. 47:6006(A)(1) provides that "[t]here shall be allowed a credit against any Louisiana income or corporation franchise tax for ad valorem taxes paid to political subdivisions on inventory held by manufacturers, distributors, and retailers." A retailer is defined in R.S. 47:6006(C)(4) as "a person engaged in the sale of products to the ultimate consumer." "Inventory" is not defined by statute.

The Department argued that LMC was not a "retailer" when it leased equipment because LMC was not engaged in a "sale." The Department also asserted that "inventory" for purposes of the tax credit contained in R.S. 47:6006 applies only to items sold, not those previously rented or leased. Based on the rules of statutory construction applicable to the interpretation of a tax exemption or credit, which provide that such must be strictly construed, expressly and clearly conferred in plain terms and any doubt is to be resolved by denying the exemption or credit, the Department asserted that the statute does not permit a tax credit for leased or rented items. Additionally, the Department asked the court to adopt the holdings from a number of out-of-state cases that held leased or rented equipment does not qualify as inventory for similar types of credits.

In upholding the Board's decision, the 1st Circuit held that leased or rented equipment qualified as "inventory" under La. R.S. 47:6006. The 1st Circuit found that LMC was attempting to sell all of its equipment and used the lease and rental agreements to promote its sales.

Judge Welch dissented, being of the opinion that the inventory-tax credit under R.S. 47:6006 does not include rental equipment. Judge Welch's reasoning was based in part on the use of the word "held" in R.S. 47:6006(A). He stated the word "held" denotes that inventory awaiting sale is a nonrevenue-generating asset, the method of valuation of inventory for assessment purposes does not factor in depreciation, and the purpose of the statute cannot be said to include the recovery of depreciation losses by lessors of revenue-producing property.

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Sales Tax Exclusion vs. Sales Tax Exemption

Odebrecht Constr., Inc. v. La. Dep't of Rev., 15-0013 (La. App. 1 Cir. 9/18/15), ____ So.3d ____, 2015 WL 5474864.

The 1st Circuit Court of Appeal upheld a finding by the Board of Tax Appeals (Board) that the statutory language that removes sales of certain movable property ultimately transferred to the United States and incorporated into a final product from the definition of "retail sale" operates as an exclusion that must be construed in favor of the taxpayer, rather than an exemption that must be strictly construed.

In this case, Odebrecht Construction entered into a contract with the U.S. Corps of Engineers (COE) pursuant to which Odebrecht acquired clay from an approved borrow pit and delivered it to a levee site where Odebrecht then incorporated it into a hurricane-protection levee. Essentially, Odebrecht purchased the clay from the borrow pit and then incorporated the material into a levee pursuant to its contract with the COE. Once the material was delivered to the levee site, title of the clay transferred to the COE. The COE paid Odebrecht monthly based on a survey of how much clay was incorporated into the levee. Odebrecht then paid the owner of the borrow pit based on the COE's survey.

Pursuant to La. R.S. 47:301(10)(g), the definition of "retail sale" specifically does not include "a sale of corporeal movable property which is intended for future sale to the United States government or its agencies, when title to such property is transferred to the United States government or its agencies prior to the incorporation of that property into a final product." Because the clay Odebrecht purchased from the borrow pit was transferred to the COE, a government agency, prior to its incorporation into the COE's hurricane-protection levee, Odebrecht did not pay any sales or use taxes on its purchase from the borrow pit. The Department eventually assessed sales tax on Odebrecht's purchases of the clay from the borrow pit. Odebrecht paid the assessment and then filed a Claim for Refund based, in part, on its belief that the language in R.S. 47:301(10)(g) rendered its purchase of the clay subsequently incorporated into the levee nontaxable.

The Board held in favor of Odebrecht and granted the taxpayer's claim for refund. During the hearing, the Department tried to argue that the language in R.S. 47:301(10)(g) did not relieve Odebrecht of tax liability because the term "final product" only encompasses movables, rather than immovable property such as the levee. The Board was not persuaded by any of the testimony that purported to establish that "final product" encompassed only movables and for that reason found in Odebrecht's favor. In so finding, the Board also held that the language in R.S. 47:301(10)(g) was an exclusion that should be construed in favor of the taxpayer rather than an exemption. This decision was subsequently upheld on appeal by the Louisiana district court.

The Department then appealed the district court's decision to the 1st Circuit Court of Appeal. In its decision, the court first noted that during the Board hearing both a fact witness for the Department as well as the Department's counsel referred to the language in R.S. 47:301(10)(g) as an exclusion rather than an exemption. Second, the court examined the definitional provisions of the statute and found that statutory language operated to exclude a certain category of sale from the definition of a taxable sale. As a result, the language contained in the statute operated as an exclusion rather than an exemption and thus must be construed in favor of the taxpayers. As a result of this examination, the court of appeal found that the Board's findings were not manifestly erroneous and affirmed the judgment.

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CLIENT ASSISTANCE FUND PAYMENTS - SEPTEMBER 2015

Attorney	Amount Paid	Gist
Clarence T. Nalls, Jr.	$9,899.50	#1523 — Conversion of client funds
Richard C. Teissier	$2,500.00	#1632 — Unearned fee in a criminal matter
Richard C. Teissier	$5,000.00	#1637 — Unearned fee in a criminal matter
Richard C. Teissier	$2,500.00	#1645 — Unearned fee in a criminal matter
Randal A. Toaston	$900.00	#1639 — Unearned fee in a criminal matter
Jermaine D. Williams	$9,000.00	#1634 — Unearned fee in a criminal matter
Jermaine D. Williams	$15,384.19	#1619 — Conversion of client funds in malpractice matter

Q&A LOUISIANA CLIENT ASSISTANCE FUND

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

How do I qualify for the Fund?
Clients must be able to show that the money or property came into the lawyer's hands.

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

How do I file a claim?
Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel's office will investigate your complaint. To file a complaint with the Office of Disciplinary Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.

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

CHAIR'S MESSAGE

Busy Time for YLD Projects and Programs

By Erin O. Braud

Erin O. Braud

Welcome spring and Louisiana State Bar Association Young Lawyers Division (LSBA YLD) events, including the High School Mock Trial, Barristers for Boards, Local Affiliates, the Law School Mock Trial and Wills for Heroes.

On Jan. 15, during the LSBA's Midyear Meeting, the YLD hosted "Louisiana64," connecting young lawyers across Louisiana's 64 parishes. The goal was to strengthen communication, resources and coordination among the legal community of Louisiana's parishes, while increasing access to LSBA and local affiliate initiatives that serve the public and the profession. We had participation from 25 Louisiana parishes.

A panel of great guests — Dona Renegar, Valerie Bargas, Kyle Ferachi and Larry Centola — welcomed the group and gave insight on YLD issues and opportunities for Louisiana's young lawyers. Thereafter, there were breakout roundtable sessions to discuss the local bar and to exchange ideas. The attendees kept the discussion going with practical questions about obtaining funding, meeting planning and more.

Thanks to all of our speakers, presenters, Graham Ryan, Bradley Tate and especially all of our attendees for a great event. We were thrilled with the participation and look forward to next year.

I would like to personally invite all young lawyers to participate in the YLD by sharing their talents with others. If you are interested in the many YLD projects and programs, contact the LSBA YLD to get more involved.

Here are two great ways to get involved in the LSBA YLD.

► **LSBA YLD Awards.** The LSBA YLD coordinates its annual awards of achievement program. This program is an opportunity for state and local young lawyer organizations affiliated with the LSBA YLD to submit their best projects for evaluation and recognition by a jury of their peers. The awards program encourages project development by recognizing the time, effort and skills expended by young lawyer organizations in implementing public service and bar service projects in their communities. Individual awards also are presented honoring professionalism, recognizing a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public; and honoring pro bono service. The Outstanding Young Lawyer Award recognizes a young lawyer who has made outstanding contributions to the legal profession and his/her community.

► **LSBA Annual Meeting.** We hope you will join us for YLD events on June 5-10 during the LSBA's Annual Meeting and Joint Summer School at Sandestin Golf and Beach Resort in Destin, Fla. Earn CLE credit, make valuable connections and have your voice heard by participating in the YLD events.

The Louisiana State Bar Association's Young Lawyers Division hosted "Louisiana64" on Jan. 15. The event connected young lawyers across Louisiana's 64 parishes to strengthen communication, resources and coordination within Louisiana's legal community.

YOUNG LAWYERS SPOTLIGHT

Ashley J. Heilprin
New Orleans

Ashley J. Heilprin

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting New Orleans attorney Ashley J. Heilprin.

An associate in the New Orleans office of Phelps Dunbar, L.L.P., Heilprin practices in commercial litigation with a focus on construction litigation, contract disputes and professional liability. Prior to joining Phelps Dunbar, she served as a litigation associate at Stone Pigman Walther Wittmann, L.L.C., as well as an extern for Judge Ivan L.R. Lemelle, U.S. District Court for the Eastern District of Louisiana.

She has counseled businesses in employment discrimination and breach of contract disputes, public and private entities involved in contractor disputes over defective work, individuals in divorce and custody disputes, and a national educational reform organization on compliance with state lobbying laws.

An executive council member for the New Orleans Bar Association's Young Lawyers Section, Heilprin also is involved with the organization's Women in the Profession Committee and serves as the 2015 chair for the Young Lawyers Section's Procrastinator CLE program.

She is corresponding secretary for the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. and is on the board of directors for the Young Leadership Council, Collegiate Academies and the American Civil Liberties Union of Louisiana. She is a member of the LSBA's Minority Involvement Section and the American Bar Association.

Heilprin is a 2014 graduate of the Emerging Philanthropists of New Orleans. She also has been an active member of Delta Sigma Theta Sorority, Inc. for more than 10 years.

She received a BA degree in public policy and economics in 2007 from the University of North Carolina at Chapel Hill. She received her JD degree in 2014 from William & Mary Law School and her Master of Public Policy the same year from the College of William and Mary.

The Seattle native who moved to New Orleans in 2012 enjoys cooking, playing tourist in New Orleans, visiting art museums, attending live performances and volunteering.

JUDICIAL Notes

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

New Judges


Gary J. Ortego

Gary J. Ortego was elected judge, Division A, 13th Judicial District Court. He earned his BS degree in 1976 from the University of Southwestern Louisiana and his JD degree in 1982 from Louisiana State University Paul M. Hebert Law Center. Following law school, he entered into private practice in Ville Platte. He is a member and past president of the Evangeline Parish Bar Association and served as chair and member of the Louisiana Board of Tax Appeals from 2004-10. He served as a 13th JDC hearing officer from 2010-13. Judge Ortego is married to Carlene Fontenot Ortego and they are the parents of three children.


Laurie A. Hulin

Laurie A. Hulin was elected judge, Division G, 15th Judicial District Court. She earned her BA degree in 1998 from Louisiana State University and her JD degree in 2002 from Loyola University College of Law. During law school, she taught street law at Martin Luther King, Jr. Middle School in New Orleans and was a member of the St. Thomas More Society. Following law school, she served as clerk for 15th JDC Judge Durwood W. Conque. She served as an assistant district attorney in the 15th JDC, where she was the first female full-time felony assistant for Vermilion Parish. She also served as town prosecutor in Delcambre and Gueydan. Judge Hulin is married to Shane Langlinais.


Jeffrey C. Cashe

Jeffrey C. Cashe was elected judge, Division J/ Family Court, 21st Judicial District Court. He earned his BA degree in 1996 from Southeastern Louisiana University and his JD degree in 2001 from St. Mary's University. He began his legal practice with the firm of Baucum Steed Barker, L.L.C., in San Antonio, TX. In 2004, he returned to Louisiana and joined the firm of Cashe, Lewis, Coudrain & Sandage, founded by his late father, Rodney Cashe. He has served on the board and as pro bono counsel for the Richard Murphy Hospice and is a past president of the 21st JDC Bar Association. Judge Cashe is married to Sandra T. Cashe and they are the parents of one child.


Derrick G. Earles

Derrick G. Earles was elected judge of Bunkie City Court. He earned his bachelor's degree in 1999 from the University of Louisiana-Lafayette and his JD degree in 2004 from Southern University Law Center. Prior to his election to the bench, he was in practice with Laborde Earles Injury Lawyers in Marksville. He was recognized in 2012 as one of the National Trial Lawyers "Top 40 Under 40." In 2013 and 2014, he was ranked by his peers as a Thomson Reuters "Rising Star." Judge Earles is married to Amy Earles and they are the parents of three children.


J. Gregory Vidrine

J. Gregory Vidrine was elected judge of Ville Platte City Court. He earned his BA degree in 2005 from Louisiana State University and his JD degree and graduate degree in civil law in 2009 from LSU Paul M. Hebert Law Center. Following law school, he served a year as clerk for 3rd Circuit Court of Appeal Judge John D. Saunders. He served as an Evangeline Parish assistant district attorney from 2011-14. He practiced with Mahtook & LaFleur, L.L.C., in Ville Platte and Lafayette from 2011 until his election to the bench. Judge Vidrine is married to Amanda Vidrine and they are the parents of two children.

Appointments

► 15th Judicial District Court Judge Jules D. Edwards III and Baker City Court Judge Kirk A. Williams were appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for terms of office which began Jan. 1 and will end on Dec. 31, 2018.

► Orleans Parish Civil District Court Judge Robin D. Pittman was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for a term of office which began on Jan. 1 and will end on Dec. 31, 2018.

► Jefferson Parish Juvenile Court Judge Andrea P. Janzen was reappointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for a term of office ending on Nov. 1, 2017.

► Linda G. Bizzarro, Laura B. Hennen, Melissa L. Theriot and Charles H. Williamson, Jr. were appointed, by order of the Louisiana Supreme Court, to the

Louisiana Attorney Disciplinary Board for terms of office which began on Jan. 1 and will end on Dec. 31, 2018.

► Jeffrey L. Little was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began on Jan. 1 and will end on Dec. 31, 2016.

► Jerry Edwards was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office which began on Jan. 1 and will end on Dec. 31, 2019.

► Sheri M. Morris was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office which began on Nov. 2, 2015, and will end on April 30, 2018.

Retirement

18th Judicial District Court Judge William C. Dupont retired effective Oct. 31, 2015. He earned his bachelor's degree in 1972 from Southeastern Louisiana University and his JD degree in 1975 from Loyola University Law School. He served as city attorney for Plaquemine from 1976-84. He served two terms as Plaquemine City Court judge from 1985-90 and 1997-2004. Between terms as City Court judge, he was an assistant district attorney in the 18th JDC. He was elected to the 18th JDC bench in 2004.

Deaths

► Retired 1st Judicial District Court Judge John Richard Ballard, 76, died Oct. 10, 2015. He earned his BA and JD degrees in 1961 and 1964, respectively, from Louisiana State University. Following law school, he served two years in the Army with a tour in Vietnam. He returned to Louisiana to practice law in Shreveport from 1966-72, then was elected as judge for Shreveport City Court. In 1976, he was elected to the 1st JDC where he served until his retirement in 1990.

► Retired 4th Circuit Court of Appeal Judge Philip C. Ciaccio, 88, died Nov. 13, 2015. He earned his BS and JD degrees in 1946 and 1950, respectively, from Tulane University. He served in the U.S. Air Force from 1951-53. He practiced law from 1953 until his election to the bench in 1982. He served in the Louisiana House of Representatives from 1962-66 and on the New Orleans City Council, District E, from 1966-82. He served on the 4th Circuit Court of Appeal from 1982 until his retirement in 1997. In retirement, Judge Ciaccio often handled *ad hoc* cases, including some with the Louisiana Supreme Court.

► Retired 3rd Circuit Court of Appeal Judge William Albright Culpepper, 99, died Oct. 4, 2015. He earned his BA and LLB degrees in 1937 and 1939, respectively, from Tulane University. He served in the U.S. Marine Corps during WWII in the South Pacific. During his three years of active duty, he was awarded the Bronze Star and the Navy Commendation Medal. He retired from the Marine Corps Reserve in 1959 with the rank of brigadier general. He practiced law in Alexandria from 1945-54, then was elected to the 9th Judicial District Court bench. In 1960, he was elected to the 3rd Circuit Court of Appeal and served there until his retirement in 1982. He served as chair of the Judiciary Commission from 1970-74 and served on the Louisiana Supreme Court *ad hoc* from October 1973 to January 1974.

► Retired 16th Judicial District Court Judge Robert M. Fleming, 90, died Oct. 16, 2015. He briefly attended the University of Southern Louisiana before serving as a pilot and lieutenant in the Army Air Corps in World War II. After the war, he earned his LLB degree in 1948 from Tulane University. He practiced law until his election to the 16th JDC in 1968, serving there until his retirement in 1994. He chaired the Judiciary Commission from 1985-89. He was a member of the Advisory Committee for the Louisiana Judges Benchbook series and was on the Executive Committee of the Louisiana District Judges Association, serving as president from 1989-90. He was the Louisiana Bar Foundation's Distinguished Jurist in 1990.

► Retired Orleans Parish Civil District Court Judge Richard J. Garvey, 89, died Oct. 10, 2015. He served as an aviation radioman third class in the U.S. Navy during World War II. He earned his BBA and JD degrees in 1950 and 1952, respectively, from Loyola University. He was elected to Orleans Parish Civil District Court in 1966 and served there until his retirement in 1996. He served as chief judge of Civil District Court and as president of the District Judges Association and the 4th and 5th Circuit Judges Association.

PEOPLE

LAWYERS ON THE MOVE

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Taylor M. Norton** has joined the firm as an attorney and **Jennifer (Jenny) Rigterink** has joined the firm as an associate.

Breazeale, Sachse & Wilson, L.L.P., announces that **Catherine A. Breaux** and **Kelsey A. Clark** have joined the firm as associates in the Baton Rouge office.

Garrett M. Condon, Ray L. Wood and Diane M. Burkhart announce the formation of Condon, Wood & Burkhart, L.L.C., located at 457 Louisiana Ave., Baton Rouge, LA 70802; phone (225)372-8877; website: *www.cwbllc.com.*

Herman, Herman & Katz, L.L.C., in New Orleans announces that **Alexandra E. Faia** and **Anne E. (Bess) DeVaughn** have joined the firm as associates.

Johnson Law Office in Eunice announces that **Danielle M. Toups** has joined the firm as an associate.

The Joubert Law Firm, A.P.L.C., in Baton Rouge announces that **Jennifer G. Prescott** has joined the firm.

The Kullman Firm announces that **Alexander C. Landin** and **Bryan Edward Bowdler** have joined the firm as associates in the New Orleans office.

Mang, Bourgeois, L.L.C., in Baton Rouge announces that **Garrett S. Callaway** has been named a partner in the firm. The firm will change its name to Mang, Bourgeois & Callaway, L.L.C.

Montgomery Barnett, L.L.P., in New Orleans announces that **Michael E. Landis** has joined the firm as an associate.

Talley, Anthony, Hughes & Knight, L.L.C., announces that **Bruce A. Cranner** has been named a partner in the firm's Mandeville office.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was a speaker at a recent Multi-District Litigation Conference in New York. He also chaired the Louisiana State Bar Association's Annual Admiralty Symposium and Annual Complex Litigation Symposium.

Francis J. Barry, Jr., a partner of Deutsch Kerrigan, L.L.P., in New Orleans and chair of the Tulane Admiralty Law Institute, has assisted in the creation of an endowed Admiralty Law scholarship for maritime law students. He also was named the 2016 commander-elect of the Louisiana Commandery of the Military Order of Foreign Wars.

Kim M. Boyle, a partner in the New Orleans office of Phelps Dunbar, L.L.P., and a former president of the Louisiana State Bar Association, was selected as a Fellow of the Litigation Counsel of America.


Richard J. Arsenault


Francis J. Barry, Jr.


Bryan E. Bowdler


Kim M. Boyle


Catherine A. Breaux


Garrett S. Callaway


Kelsey A. Clark


Bruce A. Cranner


Anne E. DeVaughn


Alexandra E. Faia


Donna Y. Frazier


Alexander C. Landin

Donna Y. Frazier of Shreveport, the first African-American woman appointed as parish attorney for Caddo Parish, was elected chair of the American Bar Association's Section of State and Local Government Law for a one-year term.

Leslie L. Lacy, an attorney with the Child Advocacy Program of Louisiana Mental Health Advocacy Services in Baton Rouge, received the Catherine Lafleur Legal Advocacy for Children and Families Award from Together We Can.

Warren A. Perrin, an attorney with Perrin, Landry, deLaunay, A.P.L.C., in Lafayette and one of three co-directors/authors of the book *Acadie Then and Now: A People's History*, received le Prix France-Acadie 2015 Award for the book from the French association Amities France-Acadie and the Foundation of France. The other co-directors/authors are Mary Broussard Perrin of Lafayette and Phil Comeau of Montreal.

Edwin G. Preis, Jr., managing partner and founder of Preis, P.L.C., with offices in Lafayette, New Orleans and Houston, Texas, received the 2015 Distinguished Achievement Award from Louisiana State University Paul M. Hebert Law Center.

Lawrence P. Simon, Jr., of counsel in the Lafayette office of Liskow & Lewis, A.P.L.C., received the 2015 Institute of Energy Law's Lifetime Achievement in Energy Litigation Award.

William E. Wright, Jr., a partner of Deutsch Kerrigan, L.L.P., in New Orleans, received the St. Martin's Episcopal School's 2015 Martin de Tours Award.

PUBLICATIONS

***Best Lawyers in America* 2016**

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans, Jackson, Miss.): **Gerald E. Meunier** and **Irving J. Warshauer**, New Orleans "Lawyers of the Year;" and **Walter C. Morrison IV**, Jackson, Miss. "Lawyer of the Year."

Unglesby + Williams (Baton Rouge): Lewis O. Unglesby.

***Chambers USA* 2015**

Beirne, Maynard & Parsons (New Orleans): Patrick Johnson, Jr.

***Louisiana Super Lawyers* 2016**

Law Office of John W. Redmann, L.L.C. (Gretna): **John W. Redmann**, **Edward L. Moreno** and **Patrick B. Sanders**.

Benchmark Litigation

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, George C. Freeman III, Craig R. Isenberg, Stephen H. Kupperman, H. Minor Pipes III, Richard E. Sarver, Steven W. Usdin and Andrea Mahady Price.

Gambit Weekly

Cashio Law Firm (Kenner): Brad C. Cashio, "40 Under 40" for 2015.

***New Orleans Magazine* "Top Lawyers"**

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

Continued next page


Michael E. Landis


Gerald E. Meunier


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Jennifer G. Prescott


John W. Redmann


Jennifer Rigterink


Patrick B. Sanders


Danielle M. Toups

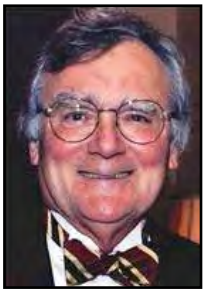

Irving J. Warshauer


William E. Wright, Jr.

IN MEMORIAM


Henry B. (Bernie) Alsobrook, Jr.

Henry B. (Bernie) Alsobrook, Jr., a longtime partner in the New Orleans office of Adams and Reese, L.L.P., and the 1982-83 president of the Louisiana State Bar Association (LSBA), died Nov. 13, 2015. He was 85. He joined Adams and Reese as a law clerk in 1954, while attending Tulane University Law School. After law school graduation in 1957, six years after the firm's founding, he was made the firm's first associate. He became a partner in 1958 and served as managing partner from 1970-83. For nearly 60 years, he played a significant role in training young associates and preparing them for the courtroom. In addition to serving as LSBA president, Mr. Alsobrook served on the LSBA's Board of Governors, 1964-72, 1979-84; in the House of Delegates, 1965-67; and as *Louisiana Bar Journal* editor, 1967-69. He was named the Outstanding Young Lawyer of Louisiana in 1968. He was a Fellow of the American College of Trial Lawyers and state chair in 1982. He was the 1986-87 president of the International Association of Defense Counsel and chaired the Standing Committee on Commerce for the American Bar Association from 1967-70. He chaired the Medical-Legal Committee of the Defense Research Institute from 1967-82 and served on the Executive Committee from 1986-87. In 1965, he was the first president of the New Orleans Association of Defense Counsel. He was the Louisiana State Law Institute counsel from 1963-64, 1983-89; a Tulane Law School faculty member; and chair of the Dean's Council of Tulane Law School, 1982-87. He received several awards throughout his career, including the U.S. Supreme Court Historical Society's Louisiana Chair Award in 1986 and 1987. He was listed in *Louisiana Super Lawyers* and *Best Lawyers in America*. He served in the U.S. Navy during the Korean Conflict. He is survived by three children, a sister, grandchildren and other relatives.


Cheney C. Joseph, Jr.

Cheney C. Joseph, Jr., an attorney, legal scholar and co-dean of Louisiana State University Paul M. Hebert Law Center, died Dec. 18, 2015. He was 73. He graduated, *cum laude*, in 1964 from Princeton University. A 1969 graduate of LSU Law Center, he was a member of the *Law Review* and Order of the Coif. He served as the LSU Law Center's Dale E. Bennett Distinguished Professor of Law, vice chancellor for academic affairs and interim co-dean. He taught, counseled and mentored thousands of Louisiana lawyers and judges for nearly 50 years. He served as the executive director of the Louisiana Judicial College for many years and was named director emeritus by the Louisiana Supreme Court in 2015. During his legal career, he served as administrative assistant, East Baton Rouge Parish District Attorney's Office; U.S. attorney, Middle District of Louisiana; district attorney, East Baton Rouge Parish; judge pro tempore, 16th Judicial District Court and 40th Judicial District Court; and executive counsel to the Louisiana Governor. He was a reporter for the Louisiana State Law Institute and for the Louisiana Supreme Court's Advisory Committee for the Louisiana Judges' Bench Book on Criminal Jury Instructions. He has been a member of the Louisiana Commission on Law Enforcement, the Louisiana Sentencing Commission and the Louisiana Law Institute's Advisory Committee for the Louisiana Code of Evidence. He was the co-author of West's *Treatise on Criminal Jury Instructions and Procedure*. He was honored by the Louisiana Bar Foundation as the 2008 Distinguished Professor and by the LSU Law Center as one of its Distinguished Alumni in 2013. He is survived by his wife of 48 years, Mary Terrell Joseph, two sons, two brothers, grandchildren and several other relatives.

People Deadlines and Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2016	April 4, 2016
Aug./Sept. 2016	June 4, 2016
Oct./Nov. 2016	August 4, 2016
Dec. 2016/Jan. 2017	October 4, 2016

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

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

or email dlabranche@lsba.org

UPDATE

France Consul General Speaks at Francophone Section Symposium

The Louisiana State Bar Association's (LSBA) Francophone Section presented the 2015 Judge Allen M. Babineaux International Civil Law Symposium on Nov. 19 at the Old U.S. Mint in New Orleans. The symposium, "Commemorating the Civil Rights Voting Act of 1965," was coordinated by Francophone Section Chair Warren A. Perrin and event co-chair Paul R. Solouki.

Opening the symposium was Consul General of France Grégor Trumel, speaking just days after the Nov. 13 Paris terrorist attacks by jihadi militants that killed 129 people and injured more than 350. Calling the attackers "cowards," he said the attack targeted "Paris at its heart and, by attacking Paris, attacked humanity, human rights, freedom, France and the United States." He thanked Americans for their support and solidarity toward France.

"We've been together more than ever to defend our adored and cherished shared values," Trumel said of the cooperation between France and the United States. "I have received so many messages of support," he said. "This is very important now, to be all together."

Consul General of France Grégor Trumel, left, spoke at the Civil Law Symposium. With him is Louisiana State Bar Association Francophone Section Chair Warren A. Perrin.

Other symposium presenters were Ronald Wilson, cooperating attorney with the NAACP Legal Defense Fund; Sharonda R. Williams, former city attorney, City of New Orleans, Law Department; Marjorie R. Esman, executive director of the ACLU of Louisiana; and María Pabón López, Loyola University New Orleans College of Law.

The Shreveport Bar Association held its annual Court Opening/Memorial and Recognition Ceremony on Nov. 5, 2015, at the First United Methodist Church in Shreveport. A reception followed at the Shreveport Bar Center. From left, attorney Robert G. Pugh, Jr.; attorney Robert G. Pugh III; Judge James J. Caraway, Louisiana 2nd Circuit Court of Appeal; attorney Nathan M. Telep; and Judge D. Milton Moore III, Louisiana 2nd Circuit Court of Appeal.

Judge Conery Elected President of American Judges Association

Judge John E. Conery

Louisiana 3rd Circuit Court of Appeal Judge John E. Conery was elected president of the American Judges Association (AJA) at the organization's annual meeting. Also at the meeting, he received the association's Domestic Violence Award for his judicial work in that field. He has previously received AJA's Excellence in Judicial Education Award.

He has served on the AJA's Board of Governors and Executive Committee and as secretary, vice president and president-elect. He will serve as AJA president for one year.

Judge Conery received a BA degree in English from the University of Southwestern Louisiana and his JD degree, *cum laude*, in 1970 from Loyola University Law School (*Law Review* and outstanding student). He practiced law for 24 years in Franklin before his election in 1994 as a judge in the 16th Judicial District. He was elected without opposition to the Louisiana 3rd Circuit Court of Appeal in 2013.

He has served as president of the Louisiana District Judges Association and is a founding member, first president and current administrator of the Inn on the Teche American Inn of Court.

Judiciary Commission Chair and Counsel Named

Judge Jules D. Edwards III with the 15th Judicial District Court was elected as chair of the Judiciary Commission of Louisiana, the Louisiana Supreme Court announced. Also, attorney Kelly McNeil Legier was appointed as the new Judiciary Commission counsel. Citizen-member Carol LeBlanc will serve as vice-chair.

Judge Edwards served as chief judge of the 15th Judicial District Court from 2001-03 and has been a pioneer of drug courts and re-entry courts. Prior to serving on the court, he served as an indigent defender attorney, assistant district attorney, counsel to the Louisiana Senate's Select Committee on Crime and Drugs, and a partner of the Edwards and Edwards Law Offices. He was inducted into the Louisiana Justice Hall of Fame in 2013. He received his undergraduate and law degrees in 1981 and 1984, respectively, from Loyola University. He earned a master's in public administration in 1994 from Louisiana State University and a master of strategic studies in 2005 from the U.S. Army War College.

Judge Jules D. Edwards III

Kelly McNeil Legier

Legier most recently served as an administrative law judge for the Louisiana Division of Administrative Law in Baton Rouge. She also was the Louisiana State Bar Association's (LSBA) first director of member outreach and diversity. During her legal career, she has worked in the Staff Attorney's Office of the U.S. 5th Circuit Court of Appeals and spent several years in private practice with large Louisiana and international firms. She also clerked for Judge Carl E. Stewart, U.S. 5th Circuit Court of Appeals; and Judge Ivan L.R. Lemelle, U.S. District Court for the Eastern District of Louisiana. She received her undergraduate and law degrees in 1989 and 1993, respectively, from Loyola University. She serves on the LSBA's Diversity Committee and is a former member of the LSBA's Board of Governors.

The Louisiana State Bar Association (LSBA), the Association of Women Attorneys, the National Bar Association and the Greater Baton Rouge and Greater New Orleans chapters of the Louis A. Martinet Legal Society, Inc. hosted a reception in honor of American Bar Association (ABA) President Paulette Brown, the first woman of color to serve as ABA president. The Nov. 6, 2015, reception was held at the Louisiana Supreme Court. From left, attorney Dana M. Douglas; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; President Brown; and LSBA President Mark A. Cunningham.

LOCAL / SPECIALTY BARS

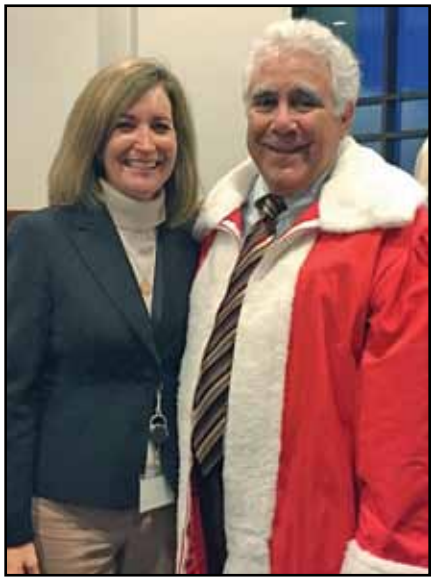
Comeaux Installed as 2016 BRBA President

Jeanne C. Comeaux

Jeanne C. Comeaux, a partner in the Baton Rouge firm of Breazeale, Sachse & Wilson, L.L.P., was sworn in as the 87th president of the Baton Rouge Bar Association (BRBA) on Jan. 14 during ceremonies at the U.S. District Court, Middle District of Louisiana.

Also installed were President-Elect Karli G. Johnson, Treasurer Linda Law Clark, Secretary Amy C. Lambert and Immediate Past President Robert J. (Bubby) Burns, Jr.

The 2016 BRBA directors-at-large are S. Dennis Blunt, Melissa M. Cresson, Lauren Smith Hensgens, Christopher K. Jones, Melanie Newkome Jones and David Abboud Thomas.



The Lafayette Chapter of the Federal Bar Association hosted its annual swearing-in ceremony and CLE program for new admittees on Dec. 3, 2015, at the U.S. District Court, Western District of Louisiana, in Lafayette. The day concluded with a reception honoring retiring U.S. District Court Judge Richard T. Haik, Sr., right, and welcoming Magistrate Judge Carol B. Whitehurst.

The DeSoto Parish Bar Association (DPBA) hosted the Lawyers in Libraries Program on Oct. 29, 2015, at the Stonewall Branch Library. From left, DPBA Vice President Dave Knadler; DeSoto Parish District Attorney Gary V. Evans; Theresa Donald; attorney Amy Burford McCartney; DPBA President Adrienne D. White; Hollie Burford; DPBA Secretary-Treasurer Katherine E. Evans; and attorney Murphy J. White.

DeSoto Parish Bar Co-Hosts Lawyers in Libraries Program

The DeSoto Parish Bar Association hosted the Lawyers in Libraries Program on Oct. 29, 2015, in conjunction with the Louisiana State Bar Association during National Celebrate Pro Bono Week.

The Lawyers in Libraries Program was held in the Stonewall Branch Library in Stonewall. DeSoto Parish District Attorney Gary V. Evans (42nd Judicial District) was the Lawyers in Libraries Program speaker on the topic "Gwen's Law," domestic violence legislation named after Gwen Cox Salley who died as a result of domestic violence. Attending the presentation were Theresa Donald, the sister of Gwen Cox Salley, and Hollie Burford, who handles ODARA domestic violence risk assessments.

The Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. hosted its annual year-end CLE seminar, "All Hail the Chiefs," on Dec. 2, 2015, at the law firm Frilot, L.L.C., in New Orleans. The seminar included presentations from Greater New Orleans area chief judges and Louisiana Supreme Court Chief Justice Bernette Joshua Johnson. From left, Royce I. Duplesiss, special counsel, Louisiana Supreme Court; attorney Krystle M. Ferbos; attorney Dana M. Douglas; and Chief Judge Kern A. Reese, Orleans Parish Civil District Court.

Phillip A. Wittmann, right, a partner in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., received the New Orleans Bar Association's (NOBA) Presidents' Award during ceremonies in October 2015. Presenting the award is NOBA President Walter J. Leger, Jr.

Wittmann Receives NOBA Presidents' Award

Phillip A. Wittmann, a partner in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., received the New Orleans Bar Association's (NOBA) Presidents' Award during ceremonies in October 2015. The Presidents' Award recognizes professional excellence, integrity and dedication to service in the highest ideals of citizenship.

Wittmann, considered by many to be among the best trial advocates and transactional lawyers nationally, has spent a lifetime in service through pro bono, bar association and community service programs. "Phil Wittmann is the dean of New Orleans litigators. His opponents fear him, his co-counsel turn to him for leadership, and all respect and admire him," said NOBA President Walter J. Leger, Jr.

The 34th Judicial District Bar Association hosted a two-hour "The Judges Speak Out" CLE on Oct. 9, 2015, in New Orleans. The well-attended CLE included presentations by 5th Circuit Court of Appeal Judge Stephen J. Windhorst and 4th Circuit Court of Appeal Judge Daniel L. Dysart. From left, Judge Paul A. Bonin, 4th Circuit Court of Appeal; Judge Dysart; Judge Kim Cooper Jones, 34th JDC; Judge Windhorst; and Judge Roland L. Belsome, Jr., 4th Circuit Court of Appeal.

Derrick D. Kee, left, president of the Lake Charles Louis A. Martinet Legal Society, Inc., is the recipient of a Louisiana State Bar Association Citizen Lawyer Award. Presenting the award is Southwest Louisiana Bar Association President 2016 Shayna L. Sonnier.

The New Orleans Chapter of the Federal Bar Association hosted its annual swearing-in ceremony and CLE program for new admittees on Dec. 1, 2015. Attending, from left, attorney Stephen G. Myers; attorney J. Christopher Zainey, Jr.; Judge Lance M. Africk, U.S. District Court, Eastern District of Louisiana; attorney Timothy F. Daniels; and attorney Scott L. Sternberg.

The Southwest Louisiana Bar Association's (SWLBA) annual Fall Opening Ceremony was Oct. 23, 2015, at the Calcasieu Parish Courthouse. Attending were, from left, SWLBA 2015 President Todd S. Clemons and Louisiana State Bar Association President Mark A. Cunningham.

Louisiana State Bar Association President Mark A. Cunningham, back row second from left, attended a dinner meeting in November 2015 with members of the Plaquemines Parish Bar Association. Attending the event were, front row from left, Plaquemines Bar Secretary Dominick Scandurro, Jr., Plaquemines Bar Treasurer Adrian A. Colon, Jr., Stephen C. Braud, Valeria M. Sercovich and Judge Joy Cossich Lobrano. Back row from left, Joel P. Loeffelholz, Cunningham, Leo J. Palazzo, Plaquemines Bar President S. Jacob Braud, Mark A. Pivach, Judge Michael E. Kirby, Leigh A. Melancon and Francis J. Lobrano. Not in photo, W. Allen Schafer, George Pivach II and Corey E. Dunbar.

Rubye E. Noble, left, with the Jefferson Parish Attorney's Office, welcomed new admittees Lauren E. Baye and Janet C. Kearney at the Louisiana State Bar Association's New Orleans area new admittee reception in November 2015.

The Louisiana State Bar Association's (LSBA) Member Outreach and Diversity Department hosted its annual New Orleans area new admittee reception on Nov. 12, 2015, at the Louisiana Bar Center. New Orleans area attorneys and judges attended the reception and welcomed the Bar's new members. Attending, from left, I. Rene DeRojas, Hispanic Lawyers Association of Louisiana treasurer; LSBA Treasurer Robert A. Kutcher; Father Lawrence W. Moore, interim dean, Loyola University College of Law; new admittee Floyd A. Buras III; and former LSBA President S. Guy deLaup.

President's Message

Make Plans to Attend the 30th Anniversary Gala on April 8

By President H. Minor Pipes III

Make plans to attend the 30th Anniversary Gala on Friday, April 8, as we honor the 2015 Distinguished Jurist Sarah S. Vance, Distinguished Attorneys Judy Y. Barrasso and Herschel E. Richard, Jr., Distinguished Professor Alain A. Levasseur and Calogero Justice Award recipient The Family Justice Center of Ouachita Parish. Other highlights of the evening include live music from Shamarr Allen and the Underdawgs, a Kendra Scott jewelry pull, dinner and live auction. Become a sponsor or purchase your tickets today. Visit our website for more details, *www.raisingthebar.org*.

With the installation of our new officers at the Gala, my term as president will come to an end. One of my goals this year has been to increase Louisiana Bar Foundation (LBF) membership. Membership in the LBF is a statement of commitment to fairness and equal access for all in the justice system. LBF members are judges, lawyers and law professors whose professional, public and private careers demonstrate their dedication to the improvement of the administration of justice.

H. Minor Pipes III

Members of the LBF are referred to as Fellows. Benefits of Fellowship include committee participation; invitations to special events and meetings; participation in annual nominations for Louisiana's distinguished jurist, attorney and professor awards; recognition of one's contribution to the profession; association with an organization directly impacting the legal profession; and alliance with the Foundation's mission.

I believe every member of the Bar should be a Fellow and I invite you to join us. Become a FELLOW. Make a DONATION. Volunteer your TIME.

It has been an honor and privilege to serve the LBF. Special thanks to my Board, Executive Committee, Fellows, the LBF staff and everyone who has supported the LBF during my term.

Sponsors Sought, Tickets Available for LBF Annual Fellows Gala

By Harry J. (Skip) Philips, Jr. and Christopher K. Ralston
2016 Gala Co-Chairs

Sponsorships and tickets are still available for the Friday, April 8, Louisiana Bar Foundation (LBF) 30th Anniversary Gala at the Hyatt Regency New Orleans, 601 Loyola Ave. The gala begins at 7 p.m. A patron party will be held prior to the gala.

Support this fundraising event by becoming a sponsor. Proceeds help strengthen the programs supported and provided by the LBF. To review sponsorship packages, go to: *www.raisingthebar.org/gala2016/*.

Individual tickets are $150. Young lawyer individual tickets are $100. Ticket reservations can be made by credit card at the website. For more information, contact Laura Sewell at (504)561-1046 or laura@raisingthebar.org.

We would like to thank the Gala Committee — Board Liaison Charles C. Bourque, Jr.; and members Kristin L. Beckman, Francisca M. Comeaux, Michael B. DePetrillo, Timothy B. Francis, Charles F. Gay, Jr., Joseph I. Giarrusso III, Lauren E. Godshall, Steven F. Griffith, Jr., Jan M. Hayden, Colleen C. Jarrott, Amy C. Lambert, Adrian G. Nadeau, Brooke C. Tigchelaar, Laranda Moffett Walker, Anthony M. Williams, Sharonda R. Williams and Justin I. Woods.

Acknowledgment also goes to the Past Presidents Honorary Committee members David F. Bienvenu, Elwood F. Cahill, Jr., Leo C. Hamilton, Suzanne M. Jones and Patricia A. Krebs.

Discounted rooms are available Thursday, April 7, and Friday, April 8, at $229 a night. To make a reservation, call the Hyatt at 1(888)421-1442 and reference the "Louisiana Bar Foundation" or go to *www.raisingthebar.org*. Reservations must be made before Monday, March 14.

LBF Annual Fellows Membership Meeting is April 8

The Louisiana Bar Foundation (LBF) Annual Fellows Membership Meeting will begin at noon on Friday, April 8, at the Hyatt Regency New Orleans. 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 2015 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.

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ADS ONLINE AT WWW.LSBA.ORG

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

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For the June issue of the Journal, all classified notices must be received with payment by April 18, 2016. Check and ad copy should be sent to:
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To respond to a box number, please address your envelope to:
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Metairie law firm (AV-rated) seeks an experienced health care regulatory attorney with a current book of business but with the capacity to take additional work representing hospitals, medical practices and other health care providers. Reply in strict confidence to: Office Administrator, P.O. Box 931, Metairie, LA 70004-0931.

AV-rated maritime and insurance defense firm with offices in Texas and Louisiana seeks attorneys for its Lafayette and New Orleans offices. Great opportunity for motivated and ambitious self-starter who is seeking considerable hands-on experience, a progression to partnership commensurate with experience, excellent compensation and fringe benefits package. Prior admiralty and/or coverage experience preferred. Mail confidential résumé to: C-Box 274, c/o Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404.

Lake Charles defense firm seeks associates for auto, property, workers' compensation and medical malpractice trial and appellate work. The positions offer a competitive salary and benefits with a three- to five-year partnership track. Excellent research, writing and computer skills required. Respond to C-Box 275.

Boutique New Orleans CBD/Northshore law firm seeks litigation attorneys to join its environmental team. The ideal candidate for the environmental litigation attorney — Minimum of five years' civil litigation experience is preferred with emphasis on complex litigation; A/V rating preferred; and environmental law, oil and gas law and/or toxic tort experience preferred. The ideal candidate for the environmental and toxic tort first chair attorney — Minimum of eight years' defense experience is preferred in first chair civil jury trials, complex litigation and primary case management; A/V rating is required; and environmental and/or toxic tort experience preferred. To learn more about this position and to apply, visit the website at: *www.curryandfriend.com/careers*.

Downtown New Orleans, AV-rated commercial law firm seeks associate attorney with three-five years' experience in commercial litigation. High academic achievement, advanced legal writing skills and attention to detail are required. Position will be partnership-track with competitive salary. Interested persons should call (504)585-3813 to arrange submission of application materials.

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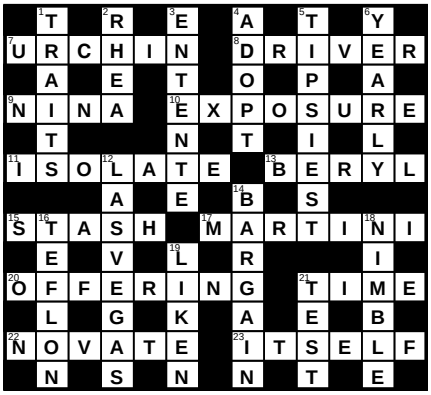
ANSWERS for puzzle on page 351.



The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: ITEMS FOR *BLACK'S LAW*?

Here are a few new words, phrases and definitions that should be in *Black's Law Dictionary* but aren't . . . .

Anti-Social Media. Postings of either embarrassing drunken debaucheries or hateful threatening texts which your client thought were good ideas at the time, but which eventually find their way into evidence.

App. A means of transferring your attention span and your money, in small but frequent quantities, to Apple.

App Stinginess. The act of mulling over whether you should really spend a whole $1.99 to install an app you want when you don't think twice about doling out $4.45 for a Grande half-caf Caramel Macchiato.

"Are You Sure?" The message your computer gives you that challenges your prowess at the computer. "Am I sure? Of COURSE I am sure!"

AutoCorrect. Software that automatically corrects spelling era — ears — erratic — areas — hell, mistakes, as you typical *(oops, missed one)*.

Circular Texting Squad. The act of all four people at a table looking at their cellphones and totally ignoring each other. (In a standard table setting, does the cellphone go to the left of the bread plate or above the water glass?)

The Cloud. A remote server in which unicorns insecurely protect your files from hackers using only rainbows and pixie dust.

Counselitis. The constriction in the throat and inability to speak during oral argument when the judge asks you that one question you hoped she wouldn't think of.

Cyber Insecurity. An ever-present worry about whether you can get hacked or come down with a virus by someone in a foreign country or whether your kids will do it to you at home.

Delete. The act of making absolutely sure you will never find that document again, but the government can.

Deliberata. The useless small talk you engage in with the other lawyers, witnesses, defendants, plaintiffs and court personnel while the jury is out.

Depobortion. The unfortunate problem that prohibits any deposition from actually being held on the original date it was set.

Electronic Filing. The act of soliciting error messages from a court computer.

ESI. Evasively Stored Information.

Friending. The act of telling someone on Facebook that you actually DO want to see endless pictures and videos of their fun vacations, weddings, drunken reunions, and, of course, posts of what THEY find funny, especially a cat riding on a Roomba.

Futillation. The act of saying "May it please the court" when you know that nothing you do does.

Insecuritization. The act of turning your car around and driving back home because you forgot your cellphone and can't even take a 10-minute trip to the damn grocery store without it.

Internet Browser. An attendee of a CLE presentation.

Lexting. Communicating with another lawyer by text because he or she doesn't return emails.

Nocturnal Editions. Waking up in the middle of the night, dutifully checking your email and groggily responding.

PACER. Paralegal-only Access to Court Electronic Records.

Password. Must have an UPPERCASE letter, a lowercase letter, a numb3r, a symb*l and a wing✪ding, none of which you will ever remember or write down.

Person-to-Person Voice Mail. That awkward conversation you have with someone when you call them at 6 p.m. trying to leave them a voice mail.

Post-Meridian Caps. When autocorrect infers the end of a sentence after you type 1 p.m. In a sentence.

Reply All. That action you accidently take when you REALLY only wanted to respond to the person who sent you the email, but now everybody knows.

Save. Place the document in a computer file at a location which you will never again find.

Save As. Save the document in a new name which you will never remember.

"Save Changes?" The question your computer asks you when you didn't make any.

Scanning. The act of turning paper into an electronic document to be lost forever in the electronic case file.

Social Media. Facebook, Twitter, Instagram and other sites you access while you are on a conference call or telephone deposition.

Texting. Email that u don't have 2 spellcheck.

Undo. A key that undoes nothing.

Upgrade. The act of your IT guy changing everything on your computer system so that only he knows how to use it and you will have to be retrained.

Voice Mail Relief. That feeling when you called someone and got the voice mail, because you really didn't want to talk to them anyway.

Website. A place where lawyers can list all of the firm's grandiose, almost-truthful accomplishments, flattering, but not current, pictures of the firm members, and lists of the types of legal work they wish they had.

Wi-Fi. An invisible and magical computer aura which no one understands and which, when not working, brings the office to a complete standstill.

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

The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed, but the scope has broadened to include "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

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

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