

# LOUISIANA BAR JOURNAL

February / March 2009

Volume 56, Number 5



Louisiana Supreme Court Chief Justice Catherine D. Kimball



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# LOUISIANA BAR JOURNAL

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Volume 56, Number 5

## Departments

President's Message ..... 325

Editor's Message ..... 327

Association Actions ..... 346

Technology Corner ..... 352

Local Practice Guide ..... 354

Legal History ..... 356

Puzzle ..... 358

Focus on Professionalism .... 360

Disciplinary Reports ..... 362

Recent Developments ..... 365

Young Lawyers ..... 378

Judicial Notes ..... 382

People ..... 386

Classified ..... 389

News ..... 392

Lucid Intervals ..... 396

## Also Inside

Member Services ..... 333

SOLACE ..... 357

Alcohol/Drug Abuse Hotline.. 358

## Features

**Louisiana Supreme Court Chief Justice Catherine D. Kimball: Louisiana's First Woman Chief Justice Makes History...Again** ..... 328

**The Best Article of All Time**  
*By E. Phelps Gay* ..... 334

**"You've Been Served! LOL": Is Service Through Facebook Really Possible?**  
*By Eric Michael Liddick* ..... 338

**Law Firm Reality Check – The Time Is Now!**  
*By Charles S. McCowan, Jr.* ..... 342



**2008 Louisiana State Bar Association Annual Report Follows 358**

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Louisiana Supreme Court Chief Justice Catherine D. Kimball.  
*Photo by Ross Foote.*



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By Elizabeth Erny Foote

# Induction Ceremony of Chief Justice Catherine D. Kimball

**A**s president of the Louisiana State Bar Association, I was invited to be one of the speakers at the induction ceremony of Louisiana Supreme Court Chief Justice Catherine D. Kimball on Jan. 12 on the front steps of the Louisiana Supreme Court Building. Following are my remarks from that occasion:

Chief Justice and Associate Justices, Distinguished Public Officials, Distinguished members of the Bench and Bar, family and friends of Justice Kimball:

The Louisiana State Bar is honored to be part of this historic occasion. As president of that organization, I am personally honored to bring these remarks to you on behalf of the almost 20,000 men and women who make up the state Bar.

Today is an historic occasion for two reasons: the importance of the role of the chief justice in our court system and the importance of the particular person who is today assuming this role, Justice Catherine Kimball, Kitty to her many friends and supporters.

In preparing these remarks, I wondered if the average citizen has any idea of the enormity of the role of the chief justice and the role of our Supreme Court in ensuring the smooth operation of our justice system and, in turn, the continuity of our freedom and our democracy. Most everyone knows that the court decides cases between parties. The Supreme Court has the final say on what is the law in Louisiana. Justice Kimball has described this duty of the court as an "awesome responsibility." It is a responsibility that she has taken seriously, with great intelligence and diligence. But the court is also charged with the duty of overseeing the court system in Louisiana and regulating the practice of law. It is upon the chief justice that this responsibility falls most heavily. It is the duty of the chief justice to map out a course of action and to steer the justice system on that course.

The chief must simultaneously champion the justice system publicly while striving for its improvement.

Our new chief welcomes and embraces that challenge. She is an innovator, an organizer, and, to everyone she touches, a motivator. Entering her 27th year as a judge, Justice Kimball served as state district court judge before her 16 years of service on this court. She has studied our court system and that of other states. She is dedicated to the betterment of our system of justice. In the days and months following Katrina, she battled to re-establish and maintain the Louisiana justice system.

Calling upon her experience as a lawyer in private practice, Justice Kimball has been the face of the court system in the Legislature for many years. She is the voice for court funding and improvement. Recently she partnered with the Bar and championed the Indigent Defense Bill, creating a statewide uniform system of criminal public defense. A staunch believer in the independence of the judiciary, she has defended any encroachment by the Legislature on the constitutional responsibility of the Supreme Court to regulate the judiciary or lawyers.

But improvement in our system must come not just from the top down. Justice Kimball is an advocate for increasing competency in our judiciary and was the impetus behind the recent new judges training program.

From the Bar's perspective, the new chief justice has always made the Bar a partner in her efforts. Hardly a week goes by that she does not personally call a member of leadership. She also has made herself available to us by cell phone and, of course, her ubiquitous Blackberry. The Bar thanks you, Justice Kimball.

As the first female justice on the Supreme Court, Justice Kimball changed the way that the court looked. Now, she assumes the position of the first female chief justice.

I think that Justice Kimball would concur in the words of Sandra Day O'Connor when asked about what was the significance of being the first female justice of the United States Supreme Court:

"At the end of the day, a wise woman and a wise man will reach the same decision. But half the population or more in our country are women, and it makes a difference for women to see women in high office. It gives them greater confidence in the fairness and openness of the system."

But I assure you that Justice Kimball has not been motivated in her life by a desire for personal recognition. Justice Kimball has only two real passions: the law, about which we have spoken, and her family. To Clyde, and Katherine, Kevin and Lyria, and to her grandchildren: Please know that in planning the events for today, Justice Kimball was not as concerned about what would be done to honor her as she was that you all would be an integral part of these activities. She derives comfort and support from your presence here today.

I will conclude with the words that Justice Kimball herself used when she was sworn in as an associate justice 17 years ago today:

"It is my belief that our system is to serve and not to be served; to improve efficiency, but not at the expense of justice; and most importantly, to operate fairly and responsibly for the ordinary person whose expectations of justice rest in our hands."

Justice Kimball, the Bar congratulates you and looks forward to working with you on behalf of the "ordinary person" for many years to come.

*Elizabeth Erny Foote*

# Indulge your creativity!

## LSBA Tagline Contest Open to Bar Members

It's time for the Louisiana State Bar Association to have a tagline, a little "lagniappe" to be used with our branded Bar logo. The Bar leadership has decided to go to the best sources possible for input — Bar members themselves!

The LSBA leadership is seeking a tagline that will:

- > reinforce the LSBA brand;
- > position Louisiana lawyers and the Association as the primary resources for legal services; and
- > brand lawyers as honorable, trusted professionals committed to serving the interests of their clients and the public.

The author of the chosen tagline will receive free registration to the LSBA Annual Meeting in June 2009.

Some examples include:

*"Defending Liberty, Pursuing Justice"* — American Bar Association

*"Lawyers Render Service"* — Alabama State Bar Association

Submit your ideas by April 30, 2009, to LSBA  
Communications Director Kelly Wells Ponder by mail, fax or e-mail:  
601 St. Charles Ave., New Orleans, LA 70130-3404;  
fax (504)566-0930; or e-mail [Kelly.ponder@lsba.org](mailto:Kelly.ponder@lsba.org).







By Mark A. Cunningham

# Tagline Contest Aside: I Am Proud to Be a La. Lawyer!

This issue of the *Louisiana Bar Journal* should cure anyone who may be having doubts about the state of the practice of law in Louisiana. We begin by celebrating the induction of the Hon. Catherine D. Kimball as the first woman Chief Justice of the Louisiana Supreme Court. At her induction ceremony, the Chief Justice left tears in the eyes of many by the time she concluded her remarks. We wanted to share those remarks with you and have reprinted them in full in this issue. Please take the time to read what the Chief Justice had to say. Her observations about our legal system are thoughtful and her expectations of lawyers and judges heartening.

In this issue, we also bring you "The Best Article of All Time." The title of the article is, of course, a play on its subject matter — lists and rankings of "best" lawyers — but it is

also arguably a statement of fact. E. Phelps Gay provides a considered and provocative discussion about the ubiquitous lawyer lists published in local and national periodicals. Even though he finds himself on these lists more often than not, Phelps does not let his ego stand in the way of taking on the publishers who are making subjective judgments with real consequences.

This issue also contains two exceptional practice-oriented articles. The first article, "You've Been Served! LOL: Is Service Through Facebook Really Possible?" by Eric Michael Liddick, explores how lawyers are now looking to modern social networking sites as a means of tracking down those hard-to-find, and even harder to serve, party-defendants. In the second practice-oriented piece, Charles S. McCowan, Jr. discusses the need for law firms to review their systems and procedures in these tough economic times and

suggests several methods for undertaking an effective, critical self-examination. Whether you are a newly admitted young lawyer or have been practicing for 50 years, reading these articles will be time well spent.

Finally, on the page opposite this message, you will see an announcement for a friendly competition in which the LSBA is asking its members to submit suggested taglines for the association. Many bar associations have them, and the marketing pros have told the LSBA it is high time to adopt one of our own. For example, the American Bar Association uses "Defending Liberty, Pursuing Justice" and the Alabama State Bar Association selected "Lawyers Render Service." I am confident that our membership can come up with something catchy that fits our unique history and commitment to the rule of law — something that conveys our pride in being lawyers from Louisiana.

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# Louisiana Supreme Court Chief Justice Catherine D. Kimball:

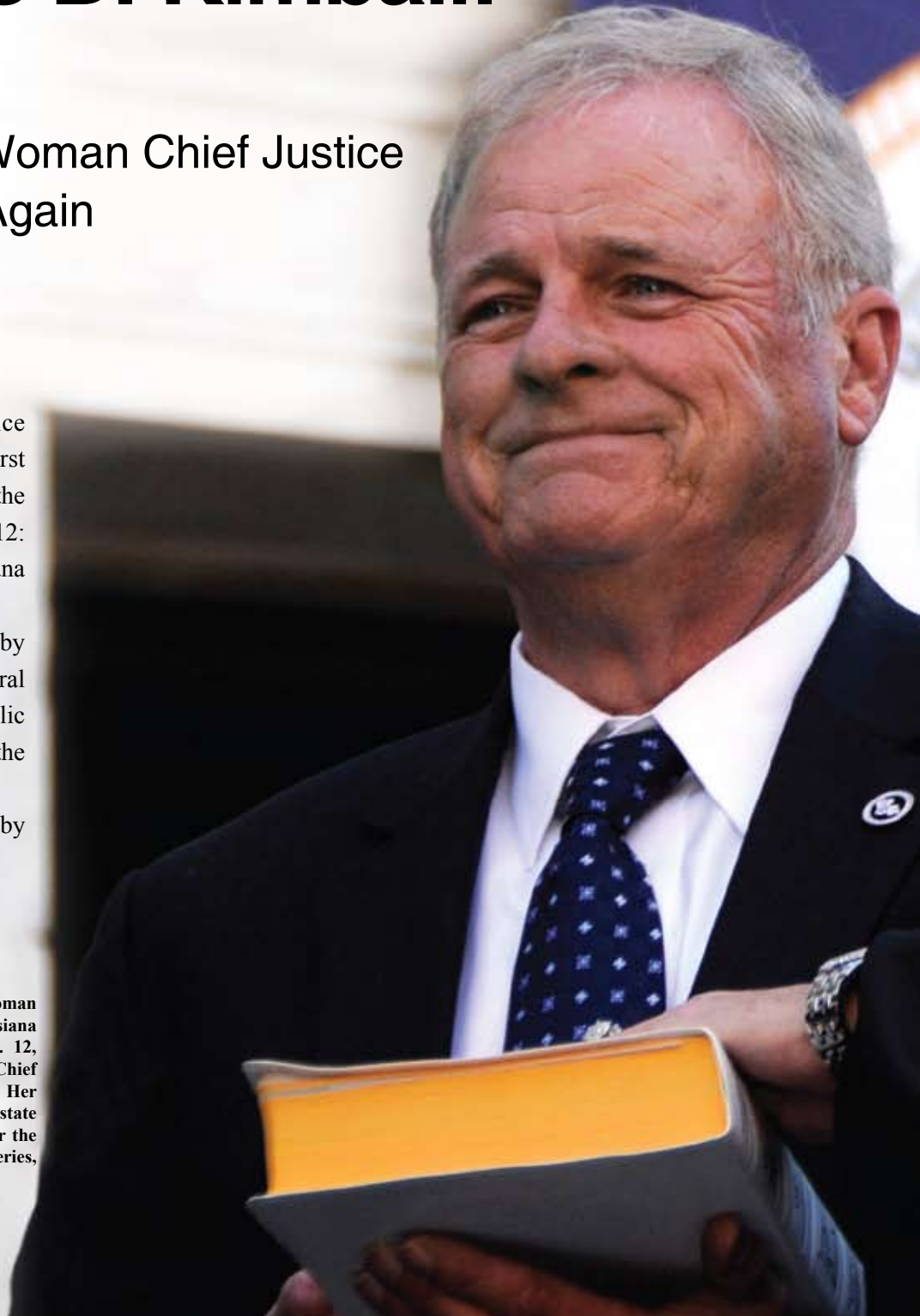
## Louisiana's First Woman Chief Justice Makes History... Again

Louisiana Supreme Court Justice Catherine D. (Kitty) Kimball, the first woman in Louisiana to be elected to the high court, made history again on Jan. 12: becoming the first woman in Louisiana to be sworn in as Chief Justice.

This historic event was marked by a special Mass at St. Louis Cathedral in New Orleans, followed by a public induction ceremony on the steps of the Louisiana Supreme Court Building.

Following is the speech delivered by Chief Justice Kimball:

**Justice Catherine D. (Kitty) Kimball, the first woman in Louisiana's history to be elected to the Louisiana Supreme Court, made history again on Jan. 12, becoming the first woman to be sworn in as Chief Justice of the Louisiana Supreme Court. Her husband, Clyde W. Kimball, former Louisiana state representative and former deputy secretary for the Louisiana Department of Wildlife and Fisheries, held the Bible. Photo by Ross Foote.**





Good morning! What a wonderful day this is! I am humbled and honored by your presence here today on this very special day for me and my family. I am also honored by my family and friends, and the public officials, especially my dear friend Kathleen Babineaux Blanco, who are on the dais this morning. I am so very grateful for the kind and generous words (though sometimes perhaps too generous) by the previous speakers and I so appreciate your taking the time to be here today.

I have the most incredible life! By a great deal of good fortune and the tremendous support you have given me throughout my career, I have been privileged to have worked with six of our state's governors, five attorneys general, and countless numbers of legislators and judges, business leaders, labor leaders, Bar association leaders, state, federal and local officials, nonprofit groups, plaintiffs' attorneys and defense attorneys, prosecutors, defenders, law enforcement officials and so many others who, like all of us here, love this state and who devote so much of their time and effort to make it better. That is clearly the goal of those who spoke this morning.

I am also extremely fortunate to have served with outstanding men and women on Louisiana's highest court, some who have now retired and three who are no longer with us. I am honored by the presence today of the sitting Justices of the Supreme Court, as well as retired justices, including Chief Justice Pascal F. Calogero, Jr., who recently retired after 36 years on the Supreme Court, 18 as Chief Justice. Pas, you were an exemplary jurist and Chief Justice, and I know I have large shoes to fill. And I hope to rise to the challenge, although I might be wearing heels.

I am also honored that so many public officials took time out of their hectic schedules to share this day with me. I thank all of you, as well as all my friends and supporters, for being here today.

It has been suggested to me that I tell you about my vision for the judiciary, and so I shall. It is really quite simple. I would envision a judiciary with competent, hardworking judges of integrity, who treat all within their purview with

kindness, fairness and respect and who require that same treatment by his or her employees and of the attorneys who appear before the court. I envision a judiciary that is recognized by our state and nation as having those qualities. I envision a judiciary that handles its work efficiently, timely and appropriately, and cares as deeply about the disposition of a child abuse, a juvenile or a custody case as it does about a high-profile, multi-million-dollar lawsuit.

This may not be a lofty vision, and may seem rather simplistic. However, it is vast in its scope. During the past 16 years I have spent as a Justice on this Court, I have encountered many members of our state judiciary who share this vision, and who toil daily to make our justice system work for each of our citizens. Through the efforts of our state judges, and in a historic collaboration of the three branches of government, we have experienced great progress in reforming our juvenile justice system. Many of our state judges have committed themselves to helping solve the drug epidemic and the damages it causes by presiding over drug courts, the number of which has grown over the last few years. Our State District Judges Association has undertaken a universal "best practices" effort to discover and then implement the best methods of handling cases in our court system. And just a few weeks ago, about 20 of the best and brightest members of the state judiciary gave up a week of their time and countless hours of preparation to train the newly elected judges on how to begin their careers in a competent and knowledgeable way, and our newly elected judges demonstrated their commitment by attending the several days of rigorous "new judge training." We have also bolstered our judicial discipline system to speed up the processing and handling of complaints brought against our state judges. Unfortunately, as with any profession, there are a few errant judges with ethical lapses. However, as hopefully you realize from press accounts, we have been very active in prosecuting and disciplining the judges who choose to violate the Code of Judicial Conduct.

These are just a few examples of the

efforts already being undertaken by our state judges to improve the system. We are on our way to making the vision I just expressed a reality.

We have some tremendous talent in the ranks of our state judges, and I am proud to serve them, and you, as Chief Justice. I realize that today I undertake an awesome responsibility, and let me assure you that I do not do it lightly. As Chief Justice, I serve as Chief Administrative Officer of the Louisiana court system, and it is my responsibility, with the help of our court, to lead our judiciary towards making the vision I have shared with you a reality. While we have taken some steps toward this end, the journey is far from over. And it is not a journey we can take alone. We need your help.

You will begin to see us look at our system in a new way, ask some hard questions and perhaps even ruffle some feathers as we institute greater reforms of this judicial system in the next few years. We will not shy away from asking the hard questions, like why do we add more judgeships because population shifts and other factors around this state cause some districts to be overworked, but never reduce or eliminate judgeships or combine districts when those same population shifts leave some with not enough work. Why can one judge handle his or her docket consistently in a six- to nine-month time frame when another judge's docket with a similar caseload takes one to two years? Why do some courts go to great extremes to let jurors know about trial cancellations so as not to interrupt their lives while other courts leave citizens languishing in hallways with little or no information about the progress of their day? Why do we not have consistent and easy to understand jury instructions? Why does it take so long for a matter to come to trial? These and others are legitimate inquiries and they will be made. They are also complicated situations to remedy sometimes.

We all know change does not come easily here or anywhere. One of the things praised about our Louisiana Constitution when it was adopted was its local autonomy, and the power vested in the

people at the local level. We have very strong local governments in this state, and it has been our strength in many instances. However, sometimes great strengths can also be great weaknesses. Changing the usual way of doing things will require cooperation from elected judges, elected clerks of courts, elected sheriffs and police chiefs and elected governing bodies. We are seeing these collaborations occur right now in improving our juvenile justice system throughout this state. They can be powerful but can also make change a slow process. For real reform to be workable, in my opinion, whether it be in the judicial system or elsewhere, you — those of you who are the voters and citizens of our state — must care, and must act accordingly. You must be willing to voice your desire for reform. Your interest and your caring are what cause change to happen. You should be outraged when a child, the most innocent of victims, has been abused, but yet gets lost in our judicial system. You should be outraged when a judge does not handle his or her docket in an appropriate amount of time, because it is in fact true that justice delayed is justice denied. And you should be outraged when jurors, witnesses or litigants are treated rudely by personnel in a courthouse.

These are not the norm in our judicial system by any means, but they are the events that cause the good hardworking members of our judicial system to be cast into disrespect by the public, the media and the users of the system, along with the few who operate in this fashion.

I know that the vast majority of judges and lawyers in Louisiana want a system where they work hard and their hard work is valued. I, as Chief Justice, and the Justices on this Court, are committed to leading the effort to improve the operations of our judicial system and simply to make it operate as well as it can — timely, efficiently and fairly.

Recently, a movie was made about an inspirational teacher named Ron Clark who believed that by challenging his students and expecting more of them, they would rise to the challenge and meet his expectations. And he was right. With Ron Clark's encouragement and his believing in his students, their

performances improved and their test scores improved dramatically. I believe we can learn a lot from Ron Clark. Along with the Bar Association, we will set the bar high both for our lawyers and our judges.

I am committed to seeking help from all areas of our state's communities in this effort, from those same business leaders, labor leaders, legislators and others who I have been so fortunate to have had the opportunity to meet through this job. I will also call upon the leaders of our state Bar Association and the members of the Bar to assist us. Our state Bar has been very active in our prior reform efforts, and have in fact taken the lead on several particular issues, such as recovery of our criminal justice system after Katrina, and, in particular, our indigent defense system. To Beth Foote, on behalf of the state Bar, please accept my thanks and the appreciation of the entire Court for all of the work of the Bar, and I look forward to your continued help as we continue on our journey.

As Chief Justice, my first commitment to you, the citizens of Louisiana, is to do my best to make the vision of a competent, caring state judiciary a reality. And I believe that working together we can accomplish this goal.

I am always reminded that speakers who like the sound of their own voices ad nauseum are rarely joined in that appreciation by those who must sit and listen, so I will end with the best this morning before it turns into afternoon. That is the thank yous. The most sincere thank you is to all of you who made this ceremony possible with all of your hard work, including Fr. CLE, Beth Foote and her Committee, and our wonderful court staff, the participants both here and at the Mass earlier today, my colleagues on the Supreme Court, both past and present, and all of the judges who join me in wanting to make positive changes. Thank you as well to all my friends and supporters who have helped me throughout the years in my several elections. A special thank you to Mike St. Martin, who was the lawyer who convinced me to run for the Supreme Court 16 years ago when he challenged me to believe that the work I loved as district judge could be more

important at this higher level. Thank you to all of you who have placed your faith and trust in me to handle this job.

And "the last shall be first," those who are and will always be first in my life and first in my heart — my family. I grew up as an only daughter with four brothers, three of whom are here today — Austin, Kelley with his wife, Shelly, and Bill — with wonderful parents who challenged us to accomplish whatever we wanted to accomplish in life and who suggested that there were no barriers that could stop us. And my beautiful grandchildren (the most beautiful ones, of course) whom I love dearly. My three children, Kevin, Catherine and Lyria, and spouses Shawn and Trish, whom I adore and who make me proud each and every day of my life. I could never begin to explain how blessed I am to have them all. And last but most important, I thank my husband Clyde whom I love and who has been my partner in everything we have ever done for the last 42 years and who has encouraged me and supported me throughout our marriage and our respective careers of public service. It was he who taught me about public service through his 16 years of service in the Louisiana House of Representatives where he listened with tremendous patience to the problems of his constituents whether night or day, Sunday or holiday, and never failed to return a phone call no matter how small the issue. He was my role model for public service. He is the other half of my incredible life.

Thank you to each of you for all you have given me today and every day. I hope you share my vision. With your help, and with the continued cooperation and assistance of our state judges and our Bar Association, I believe we can continue our reform of the state judiciary, and we can realize the vision together. I will do everything in my power to never let you down and to appreciate each and every day the phenomenal opportunity you have given me to be your Chief Justice.

# Profile / Chief Justice Catherine D. (Kitty) Kimball

Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball received her JD degree in 1970 from Louisiana State University Paul M. Hebert Law Center.

## *Career Experience*

- Associate Justice, Louisiana Supreme Court, 1992-2008.
- Judge, 18th Judicial District Court, Division A, 1982-92; Chief Judge, 1990-92.
- Assistant District Attorney, 18th Judicial District, 1978-82.
- Attorney, Sole Practitioner, 1975-82.

## *Professional Associations*

- Member, Louisiana State Bar Association
- Member, American Judicature Society
- Member, State-Federal Judicial Council
- Member, Wex Malone American Inn of Court
- Member, COSCA/NACM National Association for Court Management
- Chair, Louisiana Supreme Court Case Management Information System Task Force
- Chair, Louisiana Supreme Court Technology Committee
- Chair, Southeast Louisiana Criminal Justice Recovery Task Force
- Chair, Judicial Budgetary Control Board
- Board Member, Juvenile Justice Implementation Commission
- Member, Louisiana Law Enforcement Commission
- Member, U.S. Department of Justice National Integration Resource Center Task Force
- Chair of the Integrated Criminal Justice Information System Policy Board
- Member, Leadership Louisiana, Class of 1999
- Member, Louisiana Children's Cabinet
- Member, Judicial Council
- Member, Ethics Committee, 2001
- Member, Louisiana Protective Order Registry (LPOR)
- Supreme Court Liaison to the Louisiana Legislature
- Supreme Court Liaison to District Judges' Association
- American Bar Association Site Committee for Ongoing Accreditation for Southern Law Center, March 2008



## *Honors*

- Received the Outstanding Judicial Award from Victims & Citizens Against Crime, Inc.
- Louisiana CASA Association President's Award, 2002
- Received an Ambassador for Children Award from the Louisiana CASA Association, 2003
- Louisiana Bar Foundation, Distinguished Jurist Award, 2006
- Received the Crimestoppers Special Award for Commitment to Community, Southeast Louisiana Criminal Justice Recovery Task Force, 2006
- Louisiana Association of Drug Court Professionals Alton E. "Jake Hadley Award"
- Inducted into the Louisiana Justice Hall of Fame, 2006
- Honorary Member of the Louisiana Chapter of Order of the Coif
- Founder of the Sunshine Foundation, which distributes free books annually to Louisiana's pre-schoolers

# MEMBER Services

TOTAL LSBA MEMBERS: 20,442



## Louisiana State Bar Association

601 St. Charles Ave.  
New Orleans, La. 70130  
(504)566-1600  
(800)421-LSBA Nationwide WATS line/members only  
Fax (504)566-0930  
Web site: [www.LSBA.org](http://www.LSBA.org)

### Programs

For information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA.

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

### Publications

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

### Online Services

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

### Young Lawyers Section

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

### Insurance through Gilsbar

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

### Louisiana Hotels

The following hotels have agreed to corporate discount rates for LSBA members. Call the hotel for the current discounted rates. *When making reservations, you must identify yourself as an LSBA member.*

#### New Orleans

- ▶ Hotel InterContinental (504)525-5566
- ▶ Wyndham Canal Place (504)566-7006
- ▶ Royal Sonesta Hotel (504)553-2345
- ▶ "W" Hotel French Quarter (504)581-1200  
333 Poydras St. (504)525-9444
- ▶ Whitney Wyndham (504)581-4222
- ▶ Loews New Orleans Hotel (504)595-5370

#### Baton Rouge

- ▶ Holiday Inn Select (225)925-2244
- ▶ Sheraton Hotel & Convention Center (225)242-2600
- ▶ Marriott (225)924-5000
- ▶ Richmond Suites Hotel (225)924-6500
- ▶ Hilton Capitol Center (800)955-6962

#### Lafayette

- ▶ Hotel Acadiana (800)826-8386 (337)233-8120  
Use VIP No. 71 when making your reservations.
- ▶ Hilton Garden Inn Lafayette/Cajundome (337)291-1977

#### Lake Charles

- ▶ Best Western Richmond Suites (337)433-5213

#### Shreveport

- ▶ Clarion Shreveport Hotel (318)797-9900

### Chain Hotels

The following national hotel chains have agreed to corporate discount rates for LSBA members. Call for the current discounted rates.

- ▶ Holiday Inn (800)HOLIDAY  
Use ID No. 100381739 for reservations.
- ▶ La Quinta (866)725-1661  
[www.lq.com](http://www.lq.com)  
Rate Code: LABAR

### Car Rental Programs

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

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

### Other Vendors

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


- ▶ ABA Members Retirement Program (800)826-8901
- ▶ Lexis/Mead Data Central (800)356-6548
- ▶ Bank of America (800)441-7048
- ▶ United Parcel Service (800)325-7000

A man in a dark grey suit jacket, light blue dress shirt, and patterned blue tie is pulling open his dress shirt. Underneath, a white t-shirt is visible with the text "THE BEST ARTICLE OF ALL TIME" printed in red, block letters. The background is a bright blue sky with white clouds.

THE  
BEST  
ARTICLE  
OF ALL TIME

By E. Phelps Gay





After considerable reflection, I have reached the earth-shattering conclusion that people like lists. From David Letterman's nightly Top 10 to the E! Channel's top 100 SNL Moments, we are treated to lists of everything under the sun: the best movies, the best books, the best-dressed celebrities, the worst-dressed celebrities, the best mid-sized sedans, the best restaurants, the best hotels, and, of course, my favorite: the best golfer never to win a major.<sup>1</sup>

All in fun, I suppose, and no harm done. So why is it that I tend to recoil when I see all these lists of the so-called *Best Lawyers in America* and (worse) the *Super Lawyers*? Isn't that just more of the same? A harmless listing of lawyers who are well-known, well-connected or well-liked that no one really cares about. Surely clients in need of a good lawyer do not consult lists like these and exclude others from consideration.

Well, not so fast. There is evidence that more and more Fortune 500 companies choose their lawyers from these lists, and, unsurprisingly, more and more lawyers strive to get on them.<sup>2</sup> If and when they do, many lawyers tout themselves as the legal equivalent of Senators from Krypton by virtue of this high exalted status. "So and so has been elected to the *Best Lawyers in America*," one reads in the alumni magazine, or "So and so has been named a *Super Lawyer*," one reads in the local bar rag.

Once anointed by these peddlers of puffery, you are invited to purchase a plaque, which you can hang on your wall or perhaps put on a highway billboard, telling the world what a wonderful lawyer you are. In addition, you can pay extra money to have your picture prominently placed in your state's *Super Lawyers* magazine.<sup>3</sup> To cap it off, you can say with a (somewhat) straight face that it wasn't you but other people — namely, your very discerning colleagues — who elected you to this really swell club.

So what's the problem? Companies like Woodward/White, Inc., publishers of *The Best Lawyers in America*, and Key Professional Media, Inc. (*Super Lawyers*) get to make money, and the chosen lawyers get to market themselves. "Consumers," which is what clients are called these days, get information which they may or may not find useful.

Isn't this good old American capitalism? If you don't like it, hey, get someone to nominate you and try to join the in-crowd.

Deciding to look into the issue, I was pleased to discover that a group of Bar types — specifically, the Committee on Attorney Advertising appointed by the New Jersey Supreme Court — shared my distaste for these dubious lists. In July 2006, this gutsy committee caused a stir when it issued Opinion No. 39.<sup>4</sup> Responding to complaints about attorneys advertising themselves as "*Super Lawyers*" or "*Best Lawyers*," the committee ruled that such advertising violates the New Jersey Rules of Professional Conduct. More specifically, Rule 7.1(a)(3) of the New Jersey Rules of Professional Conduct states that a communication is misleading if it "compares the lawyer's services with other lawyers' services." Not illogically, the committee reasoned that "use of superlative designations by lawyers is inherently comparative." Such descriptions "lack both court approval and objective verification of the lawyer's ability." They have the potential to lead "an unwary consumer to believe that the lawyers so described are, by virtue of this manufactured title, superior to their colleagues who practice in the same areas of law."

Further, the committee held that such advertising violates New Jersey Rule 7.1(a)(2), which says a communication is misleading if it "is likely to create an unjustified expectation about results the lawyer can achieve...." Those who read the "*Super Lawyer*" or "*Best Lawyer*" ads may well believe that the results which can be achieved by such an attorney "surpass those that can be achieved by a mere 'ordinary' attorney."

Fairly bold words from the Garden State committee, but these folks were just warming up. They proceeded to look at the survey forms sent to New Jersey lawyers as part of the *Super Lawyer* selection process. They must not have liked what they saw because they pronounced: "It is the Committee's position that participation in a survey of this type, where an attorney knows or reasonably should know that the survey would lead to a descriptive label that is inherently comparative such as 'Super Lawyer' or 'Best Lawyer,' is inappropriate."

To put it mildly, this got the elite First Amendment lawyers — and they are certainly a smart, well-educated bunch — a tad excited. The big guns came out. Reviewing their submissions, one might wonder whether the Republic could survive the nuclear fallout from Opinion No. 39. The result was that, in March 2007, the New Jersey Supreme Court granted a petition for review of the Opinion, stayed its enforcement, and then did what any respectable State Supreme Court does when faced with such a hot-button issue: punted to a Special Master.<sup>5</sup> In this case, he was retired Appellate Division Judge Robert A. Fall. His charge was to develop

an evidentiary record on the facts and legal issues presented and file a report with the court. This he did in late June 2008. Comprising more than 300 pages (not including appendices), the report can be found at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us).

Anticipating that you might not want to put down this magazine and rush to read every word of the report on your computer, I will summarize what it says. Judge Fall reviews the history of the ABA Model Rules, the New Jersey Rules, and the Rules and Ethics Opinions issued by other states. He describes the testimony and evidence presented during the course of the New Jersey hearings. These relate in part to the selection methodologies employed by *Super Lawyers*, *Best Lawyers in America*, *The New Jersey Monthly*, LexisNexis Martindale-Hubbell, and other lawyer-rating organizations. Expert reports from various parties are included, mercifully in lieu of live testimony. In general, the ratings organizations assert that their selection criteria are appropriate, objective and follow generally accepted standards.

The issue, in my humble opinion, comes down to this: you can't advertise that you are one of the best lawyers in the world or that you are a super lawyer — that would be comparing yourself to other lawyers and/or raising unjustified expectations. But you can say that *someone else* thinks you deserve such elite status, and that those people have conducted a survey which they maintain supports their position. Now I ask you: other than to the uniquely twisted mind of a lawyer, does this make sense?

Rummaging among the New Jersey material, I found persuasive the *amicus curiae* brief offered by the New Jersey Board of Attorney Certification. The board expressed concern that attorneys selected for inclusion in the *Best Lawyers* or *Super Lawyers* lists will have no incentive to participate in the rigorous and time-consuming certification process. Allowing such advertising “may lead to fewer and fewer attorneys choosing the more difficult process of applying for attorney certification . . . That would not serve the public's interest as the certification program was created to assist the legal consumer in selecting an attorney

with a demonstrated level of expertise.” The board suggested, therefore, that if the New Jersey Supreme Court were to permit attorneys to advertise their inclusion in these lists, it should require the following disclaimer:

The “Super Lawyer” and “Best Lawyer” designations are not recognized attorney certifications by the Supreme Court of New Jersey or an authority approved by the American Bar Association, and they are the result of peer recognition only. The lawyer so designated [is/is not] an attorney certified by the Supreme Court of New Jersey or an ABA-approved certifying authority.<sup>6</sup>

Ultimately, the Special Master's report suggests that the court might want to consider relaxing the ban on comparative advertising and identifies various “regulatory components” from other states which may provide guidance to the court in its interpretation of the New Jersey Rules.

In the “breaking news” department, after writing the first draft of this article, I learned that the New Jersey Supreme Court has now formally vacated Opinion 39 of the Committee on Attorney Advertising. On Dec. 17, 2008, the court concurred with the Special Master's analysis that “state bans on truthful fact-based claims in lawful advertising could be ruled unconstitutional when the state fails to establish that the regulated claims are actually or inherently misleading.” Since Opinion 39 “does not provide the carefully nuanced analysis that informs the Special Master's Report,” it should be scrapped. Deciding the question is best addressed through the court's administrative functions, the court referred the matter to three separate committees for consideration of a redrafted Rule.<sup>7</sup> This decision places New Jersey in line with other states which have considered the issue.<sup>8</sup>

As readers of this magazine know, the new Louisiana rules on lawyer advertising, not effective until Oct. 1, 2009, prohibit a communication which “compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.”<sup>9</sup> The new rules

also prohibit communications which contain a reference or testimonial to past successes or results obtained and which promise results.<sup>10</sup> However, new Rule 7.8(c) exempts from the filing and review requirements “a listing or entry in a law list or bar publication.” Query whether this contemplates not only a generic rating in Martindale-Hubbell (AV or BV), but also an advertisement that one has been listed as a “*Super Lawyer*” or as “one of the *Best Lawyers in America*.”

In their Motion for Preliminary Injunction, plaintiffs in *Public Citizen, Inc., et al. v. Louisiana Attorney Disciplinary Board, et al.*,<sup>11</sup> contend that neither the Louisiana Supreme Court nor the Louisiana State Bar Association has articulated any justification for the new rule prohibiting reference to past successes or results obtained. They criticize a “paternalistic” approach which assumes consumers will irrationally conclude that a lawyer's success in past cases will necessarily lead to the same result in the future. They claim the U.S. Supreme Court has rejected state attempts to restrict advertising based on the “fear that people would make bad decisions if given truthful information.”<sup>12</sup> According to plaintiffs, Louisiana consumers “are bombarded every day by testimonials for a wide range of products and services” and are able to make judgments about how credible or useful particular testimonials may be. “There is no reason to believe consumers will be any less capable of making judgments concerning testimonials about lawyers.”<sup>13</sup> Further, they point out that most states permit advertisements which refer to past results, with only six allowing them if accompanied by a disclaimer. Only Florida, they claim, prohibits such advertisements entirely.<sup>14</sup>

Recognizing there is virtually no prospect of stopping the publication of these lists or of preventing attorneys from bragging about inclusion in them, and recognizing that the Republic faces one or two more important issues, I would still like to register my personal regret that the profession has reached this point. Why? Two reasons: (1) I know many fine, accomplished lawyers who work diligently and successfully for their clients every day, but who for one reason or another do

not show up on these peer-review lists; and (2) by virtue of having become members of the Bar and of meeting our ongoing continuing legal education requirements, we are all presumed to be able and competent attorneys. Historically, we resisted the notion that we should brag in public about being better than our peers. We were professionals who devoted ourselves to highly individualized, fact-specific cases. Now, we are giving way (or have given way) to the marketers who want to designate some of us as “super” or “the best,” leaving legions of hard-working, competent lawyers to remain unrecognized — or to face the unfortunate fact that they, too, must join the burgeoning group of self-promoters.<sup>15</sup>

In the interest of full disclosure, I write as someone who, from time to time, makes these lists. I have been around long enough to know that inclusion in them hardly makes me “super” or “the best.” More likely, it means I am regarded as reasonably conscientious in my work — or perhaps just well known for excessive Bar service.

In the final analysis, as with so many other things in life, we probably should not take this subject too seriously. This was the wise counsel of Judge Robert S. Lasnik in the case of *Brown v. AVVO, Inc.*<sup>16</sup> In that matter, two lawyers filed suit claiming that AVVO’s Web site, containing a numerical rating system of attorneys, violated the Washington Consumer Protection Act. AVVO asserted that the opinions expressed through the ratings system are protected by the First Amendment. One of the plaintiffs relied upon his designation as a *Super Lawyer* by Washington Law & Politics Magazine as evidence that he could not possibly deserve an “average” rating from AVVO. Judge Lasnik noted that in 2004 he imposed sanctions of almost \$40,000 against a supposedly *Super Lawyer* for engaging in unreasonable and vexatious litigation tactics. Notwithstanding these sanctions, the lawyer was re-elected a *Super Lawyer* the following year. He went on to say:

... Comparisons and comparative ratings are often based as much on the biases of the reviewer as

on the merits of the reviewed: they should, therefore, be relied upon with caution. For example, in 2006, a new magazine called Lawdragon purported to identify the 500 leading judges in the United States. The undersigned was chosen to be one of the privileged 500 and was described as follows: “Seattle’s judicial star cites Bob Dylan in opinions while providing contraceptives and protecting orca whales.” *The Leading Judges in America*, Lawdragon, Winter 2006, at 72. What can one say about such nonsense? As my parents would tell me when I informed them of some of my amazing achievements as a child in Staten Island, NY, “that and five cents will get you a ride on the ferry.”<sup>17</sup>

In the end, for those (like me) who do not care for these rankings and ratings, the more effective method of opposing them may be to expose them for what they are, rather than attempting to shut them down. In the marketplace of ideas, perhaps it remains true that more speech will cause the truth to prevail.

## FOOTNOTES

1. This is easy: Sergio Garcia.
2. *Best Lawyers* maintains that its Web site “hosts more than three million visits a year, many of them by Fortune 1000 companies.” [www.bestlawyers.com](http://www.bestlawyers.com).
3. *Super Lawyers* does not charge attorneys to be listed in its publications, but the cost of a full-page attorney profile can exceed \$10,000. See, “Simply the ‘Best?’,” Hawaii B.J., June 2008, p. 12. This article provides a good overview of the selection methodologies of *Best Lawyers in America*, *Super Lawyers*, Martindale-Hubbell, Chambers USA, and *Who’s Who Legal*.
4. N.J. Sup. Ct. Advisory Comm. on Attorney Adver., Ethics Op. 39 (2006).
5. *In re Opinion 39 of Committee on Attorney Advertising*, 190 NJ 250, 919 A.2d 845 (N.J. March 23, 2007).
6. *In Re: Opinion 39 of the Committee on Attorney Advertising, Report of Special Master*, pp. 291-293 (6/18/08).
7. *In Re Opinion 39 of the Committee on Attorney Advertising* (A-30/31/32-08), 12/17/08, p.2.
8. *Ariz. State Bar Comm. Rules Prof’l Conduct*, Op. 05-03 (July 2005); *Conn. Statewide Grievance Comm., Adv. Op. 07-01008-A* (11/16/07); *Delaware State Bar Assn. Comm. Prof. Ethics, Op. 2008-2* (2/29/08); *Iowa State Bar Ass’n Cmte. on Ethics &*

*Practice Guidelines, Ethics Op. 07-09* (10/30/07); *State Bar of Mich. Ethics Comm., Ethics Op. RI-341* (June 8, 2007); *N.C. State Bar, 2007 Formal Op. 14* (1/25/08); *Tenn. Bd. Prof’l Resp., Advisory Ethics Op. 2006-A-841* (9/21/06); *Va. State Bar, Legal Adv. Op. A-0114* (8/26/05). See also *Mason v. Florida*, 208 F.3d 952 (11 Cir. 2000) (Florida Bar failed to meet burden of showing an attorney’s advertisements of an AV rating by Martindale-Hubbell was misleading) and *Allen, Allen, Allen & Allen v. Williams*, 254 F. Supp. 2d 614 (E.D. Va. 2003) (enjoining enforcement of Virginia Rule prohibiting advertisements comparing the quality of a lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated, pending a determination on the merits). The *Allen* case deals directly with a television advertisement touting inclusion in *The Best Lawyers in America*.

9. See Order of Louisiana Supreme Court, June 26, 2008, approving amendments to Rule 7 of the Louisiana Rules of Professional Conduct. Proposed Rule 7.2(c)(1)(G) prohibits comparisons. By order dated Oct. 31, 2008, the effective date of the amendments to Rule 7 was postponed until April 1, 2009, in light of a constitutional challenge filed in the United States District Court, Eastern District of Louisiana. (The effective date has since been moved to Oct. 1, 2009.)

10. See proposed Rule 7.2.(c)(1)(D) and (E).

11. 2008 WL 4870947 (E.D. La. 10/27/08).

12. Citing *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 374 (2002).

13. 2008 WL 4870947, at p.13.

14. *Id.* at p.13, footnote 7.

15. Sympathetic to this viewpoint is Emily M. Feuerborn, whose *Comment: What’s Not So ‘Super’ About Comparative Descriptions: The Need for Reform in Attorney Advertising*, 45 Hous. L. Rev. 189 (Symposium 2008), suggests that states should consider tighter restrictions on self-laudatory statements in order to protect the public from misleading advertisements, preserve the integrity of the legal profession, insulate small firms and solo practitioners from market exploitation, and to comport with U.S. Supreme Court precedent and policy concerns.

16. 525 F. Supp. 2d 1249 (W.D. Wash. 2007).

17. *Id.* at 1253, footnote 1.

*E. Phelps Gay has practiced law for 29 years at the firm of Christovich & Kearney, L.L.P. He also is affiliated with the mediation firm of ADR inc. He obtained his undergraduate degree from Princeton University in 1975 and his JD degree from Tulane Law School in 1979. He is a member of the Louisiana State (1979) and Texas (1993) Bar Associations. He served as president of the Louisiana State Bar Association during the 2000-2001 term. (Ste. 2300, 601 Poydras St., New Orleans, LA 70130)*



# **“You’ve Been Served! LOL”:**

## **Is Service Through Facebook Really Possible?**

By Eric Michael Liddick



**T**ry and imagine the following scenario: You are trying to serve a surprisingly evasive defendant. You have his last-known address, but the sheriff's return reads "unable to serve." Much to your chagrin, the private process server appointed by the court is equally unsuccessful and neither the Louisiana Code of Civil Procedure nor the Federal Rules of Civil Procedure provide alternative means. But, on a hunch, you decide to search for the defendant on Facebook, a popular social-networking Web site. After locating the defendant's Facebook page, you decide to do the unthinkable: serve the defendant via Facebook. "You've been served! LOL."<sup>1</sup>

Surely this scenario is a far-fetched scheme that could never succeed in advanced judicial systems that begin — and end — with the basic dictates of fairness. Yet, this scenario came to fruition recently when the Supreme Court of the Australian Capital Territory permitted service of a default judgment through Facebook.

Now, before you take to the streets in revolt or begin staging a coup d'état over this seemingly ridiculous procedure, step back and consider whether our judicial system, which increasingly, if not reluctantly, accepts technological advances, will give in to additional, substitute means of service. Although the use of Facebook to effectuate substitute service seems suspicious, closer analysis reveals that use of social-networking Web sites as a means for service is not entirely foreign to current methods of service.

## A Facebook Tutorial

For many young adults, gone are the days of networking at high-priced, fancy cocktail receptions. Instead, many are turning to the Internet as a means of

cyber-networking.

Created in 2004, Facebook is a social-networking Web site that has amassed more than 140 million members to date.<sup>2</sup> This site generally operates as a collection of mini-pages in a larger database where each registered member manages his/her own site and chooses to provide public access to some (or all) of his/her personalized information. Facebook allows users to join groups with whom they share common beliefs, add "friends," write "notes" on each others' cyber-wall, upload personal photographs of themselves and others, "poke" (electronically) each other, and send internal e-mails to other users. And, where a member foregoes privacy protections, any user can locate that member by a simple name search.

The information that any given member posts on Facebook, moreover, can range from the extremely personal to the extremely professional. Many members supply their date of birth, current residence, place of employment, e-mail address, phone number and relationship status. In short, the wealth of information that one may glean from social-networking Web sites like Facebook is remarkable.

## ***MKM Capital v. Corbo***

In what may become known as the "service heard round the world," the Supreme Court of the Australian Capital Territory permitted service of a default judgment through Facebook.<sup>3</sup>

*MKM Capital v. Corbo* involved Carmel Rita Corbo and Gordon Kingsley Maxwell Poyser, an Australian couple who entered into a six-figure loan to purchase a home.<sup>4</sup> After they defaulted on the loan, the mortgage lender filed suit and then obtained a default judgment permitting seizure of the property when the defendants failed to appear in court.<sup>5</sup> But, when the attorneys sought to serve

the judgment upon the defendants, the defendants were, predictably, nowhere to be found.

To be sure, MKM Capital's attorneys attempted more traditional means of service.<sup>6</sup> They sought to serve the petition personally, but were unable to find the defendants at their residence or their last-listed place of employment.<sup>7</sup> Since the defendants moved to a different address and changed their phone number, the mortgage lender could not serve the default judgment by mail or telephone the defendants for an updated address.<sup>8</sup> The lender's attorneys even hired private investigators and advertised the default judgment in *The Canberra Times*, but to no avail.<sup>9</sup> Without service, the mortgage lender appeared out of luck.

While the two defendants managed to evade service by moving their house and changing jobs, they were less diligent in concealing their Facebook pages.<sup>10</sup> Here is where a few entrepreneurial young lawyers entered the mix.

In a final effort to render MKM Capital whole, two young lawyers decided to search for the defendants on Facebook.<sup>11</sup> Using one of the defendant's e-mail addresses, the lawyers were able to locate that defendant's Facebook page.<sup>12</sup> As luck would have it, each defendant had confirmed the other as a "friend" on the Web site.<sup>13</sup>

Because neither defendant utilized the various security options available to members to shield information, the attorneys were able to compare biographical information listed on the Web site to information provided in the lender's loan applications.<sup>14</sup> After confirming the defendants' identity by comparing birth dates, e-mail addresses and "friend" lists, the lender's attorneys made application to the court for permission to serve the default judgment through Facebook's internal e-mail,<sup>15</sup> an innovative means of substitute service.

Rule 116(1) of the Australian Uniform Civil Procedure Rules permits

substituted service “where, in effect, there is a practical impossibility of personal service and that the method of service proposed is one which in all reasonable probability, if not certainty, will be effective in bringing knowledge or notice of the proceedings to the attention of the defendant.”<sup>16</sup> Thus, in seeking the court’s permission, the attorneys needed to show that (1) they had been unable to serve the defendants through traditional means, and (2) service through Facebook had a reasonable prospect of success.

While there was little doubt that the mortgage lender could not serve the defendants through traditional means, the attorneys faced considerable difficulty in demonstrating a “reasonable probability” of success. In a prior decision, *Citigroup Party Ltd. v. Weerakoon*, the Queensland District Court denied a similar request to serve documents via Facebook. Judge Ryrie, in denying the request, highlighted a chief concern attendant to social-networking Web sites:

I am not so satisfied in light of looking at the uncertainty of Facebook pages, the facts that anyone can create an identity that could mimic the true person’s identity and indeed some of the information that is provided there does not show me with any real force that the person who created the Facebook page might indeed be the defendant, even though practically speaking it may well indeed be the person who is the defendant.<sup>17</sup>

Faced with the *Citigroup Party Ltd.* decision, MKM Capital’s attorneys informed the court that the defendants’ names, birth dates and e-mail addresses listed on Facebook matched identically those listed on the lender’s application.<sup>18</sup> This information satisfied the court’s concern over achieving sufficient notice to the defendants.<sup>19</sup> As such, Master David Harper granted the lender’s request, concluding that service could be effectuated by sending a private, electronic message (with the documents attached) to both defendants’ Facebook pages informing them of the entry of

and the terms of the default judgment.<sup>20</sup>

This is not the first time, though, that Australian courts have surrendered to technology. Indeed, Australian courts are by no means reluctant to exploit technological innovations. Australian courts have previously issued orders permitting substitute service of documents by e-mail and text message.<sup>21</sup> *MKM Capital*, however, represents the first time that an Australian court has permitted service via a social-networking Web site.<sup>22</sup>

But, how much can the decision in *MKM Capital* inform attorneys about the future of service of process in the United States? As preposterous as it may seem, “service by Facebook” might just make a future appearance in American litigation.

## A Possibility for U.S. Civil Procedure?

Many of my more senior colleagues may find offensive the thought of service of process through Internet Web sites that they, until now, may have heard little about absent passing conversations with their children. But the possibility of service of process through Facebook, which amounts to little more than an electronic transfer of information, is not entirely implausible given certain protections.

Domiciliary (or personal) service is the preferred means of service of process under both the Louisiana Code of Civil Procedure and the Federal Rules of Civil Procedure. However, alternative means of service exist under both sets of rules. Indeed, the Federal Rules of Civil Procedure explicitly recognize service of documents (except for initial pleadings) via e-mail, but only when the opposing party agrees in advance to this form of service.<sup>23</sup>

While the days of “tacking” a summons to the courthouse door are past, certain jurisdictions permit even less reliable forms of service under certain circumstances. By way of example, the Texas Family Code allows for service of citation by publication if a person entitled to service “cannot be notified by

personal service or registered or certified mail and to persons whose names are unknown.”<sup>24</sup> Similarly, the Local Rules of Court in Geauga County, Ohio, provide for service by publication “if the residence of a defendant is unknown.”<sup>25</sup> In order to effect service by publication, a party must submit an affidavit averring that the defendant’s place of residence is unknown, detailing the efforts made to ascertain the defendant’s location, and averring that the party cannot locate the defendant with reasonable diligence.<sup>26</sup> In Wisconsin, a party may serve divorce, legal separation or annulment actions by publication if, “after reasonable diligence, the respondent cannot be served personally.”<sup>27</sup>

Texas, Ohio and Wisconsin by no means constitute an exhaustive list of jurisdictions permitting service by publication. But these states’ substitute procedures help illustrate the “constructive notice” end of the service spectrum. The issue posed by the decision in *MKM Capital*, and the question of whether such service is possible in the United States, is how (and where) “service by Facebook” falls on the service of process spectrum. This method of service is certainly not akin to personal or domiciliary service; however, it is more likely to provide actual, as opposed to constructive, notice of a proceeding than service by publication. If we allow service by publication in limited circumstances, why is the notion of “service by Facebook” so incomprehensible?

The answer to this question might be rooted in traditional notions of due process. In *Mennonite Board of Missions v. Adams*, the United States Supreme Court held that neither notice by publication nor posting ensured actual notice to a mortgagee who stood to suffer adverse effects to property interests from notice to the property owner alone.<sup>28</sup> Justice O’Connor writing in dissent, however, stated that:

notice is constitutionally adequate when the practicalities and peculiarities of the case... are reasonably met.... The key focus is the “reasonableness” of the

means chosen by the State.... Whether a particular method of notice is reasonable depends on the outcome of the balance between the “interest of the State” and “the individual interest sought to be protected by the Fourteenth Amendment.”<sup>29</sup>

In short, “notice will vary with the circumstances and conditions.”<sup>30</sup>

Circumstances may arise, then, that justify “service by Facebook,” albeit as a last resort. Undoubtedly, a colorable argument can be made that service in this manner is more likely to ensure the minimum constitutional precondition to a proceeding affecting life, liberty or property: actual notice.

Courts, though, may be reluctant to accept this argument at present. Certain challenges exist to the claim that one can reasonably presume that “service by Facebook” will provide actual notice. For example, little controls exist to ensure that the person registering for a Facebook account is actually who he/she claims to be. A real possibility exists that highly devious miscreants might surreptitiously create Facebook pages in the name of random defendants for purposes of sabotage.<sup>31</sup> Another example of a problem with this means of service is the potential difficulty in determining the frequency with which any individual uses Facebook. That is, if the defendant is not a Facebook “addict,” then timely receipt of notice may be less certain. Where timeliness of notice matters, such as in default judgment scenarios, this uncertainty presents serious due process concerns.

As it stands, these two concerns alone are sufficient to abate attempts to effectuate service via Facebook at present. Given the pace of technology, though, these concerns could be addressed with relative ease. Facebook could adopt certain protocols or programs that ensure that the user is actually who he/she claims to be. Additionally, Facebook already includes a feature that indicates the user’s most recent visit to the Web site. This feature, then, might conveniently serve as a factor for determining the reasonable likelihood

of receipt of service because it indicates approximately how often a particular user visits the Web site. But, one point remains clear: If jurisdictions in this country can allow service by publication, surely “service by Facebook,” with the addition of adequate safeguards, could become a legitimate form of substitute service of process that comports with basic notions of due process.

## Conclusion

The recent Australian decision permitting service of a default judgment via a popular social-networking Web site appears facially preposterous. It is quite easy to dismiss this decision out-of-hand. Yet, deeper inspection reveals that “service by Facebook” may, in the future, be considered a valid form of substitute service and adopted by those states that frequently embrace, rather than shun, technological advances. With proper safeguards and enhanced security measures, “service by Facebook,” whether we like it or not, and as unlikely as it may seem, could become a future means of substitute service. In the future, if your client gets that private Facebook e-mail reading “re: You’ve been served,” don’t say I didn’t warn you.

## FOOTNOTES

1. “LOL” is common Internet slang for “laugh out loud.”

2. See Facebook Home Page, <http://www.facebook.com>. Other examples of popular social-networking Web sites include MySpace and LinkedIn.

3. See FoxNews.com, *Australian Couple Loses Home Via Facebook*, Dec. 16, 2008, <http://www.foxnews.com/story/0,2933,467525,00.html> (last visited Dec. 17, 2008). See also MKM Capital v. Corbo [2008] ACTCA \_\_ (Austl.) (not yet released for publication).

4. See Agnes Gajewska, *Facebook the new frontier for default judgements*, Dec. 17, 2008, <http://au.ibtimes.com/articles/20081216/facebook-the-frontier-for-default-judgements.htm> (last visited Dec. 17, 2008).

5. See FoxNews.com, *supra* note 3.

6. See Norrie Ross, *Lawyers given permission to serve debtors with default judgement through Facebook*, Dec. 16, 2008, <http://www.news.com.au/technology/story/0,28348,24806438-5014239,00.html> (last visited Dec. 17, 2008).

7. See *id.*

8. See Alison Caldwell, *The World Today – Facebook features as long arm of the law*, Dec. 16, 2008, <http://www.abc.net.au/worldtoday/content/2008/s2447627.htm> (last visited Dec. 17, 2008). See also Kate Scroggins, *Facebook OK for legal documents: Australian court*, Dec. 17, 2008, <http://www.nationalpost.com/news/world/story.html?id=1084050> (last visited Dec. 17, 2008).

9. See Noel Towell, *You’ve been served: court approves Facebook notice*, Dec. 16, 2008, <http://www.canberratimes.com.au/news/local/news/general/youve-been-served-court-approves-facebook-notice/1387146.aspx> (last visited Dec. 17, 2008).

10. See *id.*

11. See *id.*

12. See *id.*

13. See *id.*

14. See *id.*

15. See Caldwell, *supra* note 8.

16. See Citigroup Party Ltd. v. Weerakoon [2008] QDC 174, 1 (Austl.).

17. *Id.* at 3-4.

18. See Gajewska, *supra* note 4.

19. See Scroggins, *supra* note 8 (“It was enough to convince the judge . . . that the profiles belonged to the defendants and that social networking was an appropriate way to contact them.”).

20. See FoxNews.com, *supra* note 3.

21. See *id.*

22. See Ross, *supra* note 6.

23. See Fed. R. Civ. P. 5(b)(E) (2008).

24. Tex. Fam. Code Ann. § 102.010 (Vernon 2008).

25. Geauga County L.R. 29.

26. See *id.*

27. Wis. Stat. Ann. § 801.11(1)(c) (West 2008).

28. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800 (1983).

29. *Id.* at 801 (O’Connor, J., dissenting) (internal quotation marks and citations omitted).

30. *Id.* at 802 (O’Connor, J., dissenting) (quoting *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956)).

31. See, e.g., *Draker v. Schreiber*, No. 04-07-00692, 2008 WL 3457023 (Tex. App. Ct. 2008) (involving a fake MySpace page created by students in the name of their principal). Although I doubt that attorneys (or their clients) would go to great lengths to fraudulently create a page for purposes of service, it appears that I am less cynical than many of my colleagues.

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# Law Firm Reality Check

## — *The Time Is Now!*

By Charles S. McCowan, Jr.

The country is fixated with whether the 1,000-plus-page American Recovery and Reinvestment Act,<sup>1</sup> or near trillion dollars economic stimulus package, contains the necessary elements and spending mix to reinvigorate the economy. Equally important to every lawyer's financial future, however, should be whether his firm, be it large or small, is ready to meet the 2009 economic challenges presented; or, does the firm need to enact a "Law Firm Evaluation and Recovery Act?" To answer this important question, each firm should consider reviewing its own procedures and systems to take the legal pulse of the firm's health.

Law firm procedures are those formalized methods in place that control day-to-day operations, such as billing and accounting practices, operations manuals, intake and engagement rules, conflict of interest evaluation, management of facilities and supplies procurement. Law firm systems are much more complex and controversial. They constitute the issues that form the heart of a law firm, including attorney management issues, training, review and compensation.

When money is flowing into a law firm and profits and distributions are high, firm procedures and systems often receive less attention than they should even though they are an essential element of any successful firm's operations. However, "Economic distress will teach men, if anything can, that realities are less dangerous than fancies, that, fact-finding is more effective than fault-finding."<sup>2</sup>

A "procedures and systems peer review" can serve as a reality check on the questions of "How well are we really doing?" and "What can we do better?" The purpose is not to dictate the future. It is an inventory

of the present strengths and weaknesses undertaken with a core principle: "Each problem has hidden in it an opportunity so powerful it literally dwarfs the problem. The greatest success stories were created by people who recognized a problem and turned it into an opportunity."<sup>3</sup>

Lawyers are often hesitant to acknowledge that there are a lot of "good" attorneys in their market. However, in order to compete in the new legal marketplace and today's challenging economy, a firm must be realistic about its strengths and weaknesses and the competitive landscape. It also must be willing to change in order to maximize efficiency in delivering legal services to its clients. Thus, whether your firm is a one-person shop or a multi-office operation, a critical examination of your firm's operational health is essential to your success, as, "Many people dream of success . . . success can only be achieved through repeated failure and introspection."<sup>4</sup>

### Getting Started — Select a Reviewer

The first step in an effective review of your firm's procedures and systems is for the firm members to determine the willingness of the firm to embrace change and accept that, "The critical power . . . tends to make an intellectual situation of which the creative power can profitably avail itself . . . to make the best ideas prevail."<sup>5</sup>

The next step is to determine whether a strictly internal review will produce meaningful results. An internal review has obvious advantages. It is inexpensive. It can be done on your timetable. However, it also has disadvantages. Attorneys and staff may be reluctant to discuss problems and challenges frankly. To acknowledge

the need for change or improvement is often construed as admitting failure or criticizing "the boss." Also, there is a natural reluctance to acknowledge that there is a better way to do what has been done in the past. An internal review also may be put aside in favor of more pressing matters if the firm does not make the review a priority. Procrastination is often the death knell of any self-critical analysis.

Seminars focusing on practice management abound. These can provide insight into the pertinent areas of inquiry for a firm internal review and suggestions as to what worked elsewhere. However, these seminars are not always tailored to particular needs of specific circumstances. The speakers may drift to "war stories" that have little applicability to the attendee's issues. There are also numerous regional and national law firm consultants available to firms. These organizations certainly provide expertise in law firm management, but many firms feel that they are not large enough to utilize these services in view of the attendant cost.<sup>6</sup>

An alternative effective concept is a peer review from a non-competing attorney outside of the local community. Even though lawyers often counsel clients to do so, they are reluctant to hire lawyers as a preventive measure. A legal peer review, however, can provide a practical and beneficial insight into the strengths and weaknesses of a particular firm's systems and operations. It is an option that can be much more localized. The peer reviewer should be chosen on the basis of practical experience, a reputation for success and respect in the legal community. The reviewers should not mandate change. The desired result of a peer review is to present the firm with an inventory of the existing procedures and systems and allow the firm members to evaluate revealed



strengths, weaknesses, opportunities and alternatives.

A key element in an effective peer review is a clear understanding that the engagement will be like any other legal representation. Thus, there is comfort that communications are confidential and that none of the information shared with the reviewer will be used to subsequently compete with the reviewed firm. With such agreement, a constructive and critical analysis can take place that will result in beneficial experience sharing and advice.

### **Does Your Firm Promote an Effective Philosophy?**

Most attorneys are proud of their firm and their accomplishments. However, they never thought that they would have worked as hard, had the variety of legal experiences, or made as much money as they have made. Those same lawyers also realize there have been rough bumps in the road and disagreements with their clients, partners, associates and employees as to how to do things.

Achieving just the right blend between

a “Numbers” and “People” philosophy, which results in a unique, but profitable, internal business culture, is the desirable result. Yet, there is a danger that the same philosophy will result in complacency.

One of my first bosses said, “A client wants to know that the train is on the track and getting to the station. You can be doing the right thing and, if the client doesn’t know it, you are not doing any good in maintaining a good relationship with the client.” That is true. The base line is quality service. That is expected and deserved. If a firm is not providing that, the firm has failed the first test, which centers around an inquiry of whether the firm has instilled on a firmwide basis the need to be responsive and let the clients know what you are doing for them. We often lose sight of this and take clients for granted. It is their case and they are entitled to respect and communications about their case.

Another threshold issue is a determination of whether the firm’s philosophy is putting undue emphasis on the number and amount of expected hourly fees in order to meet the rising expense demands and maintaining income, with an unintended result of the firm pricing itself out of the

market or producing a high employee, associate and partner turnover. A successful firm’s philosophy must recognize that each partner, associate and employee can contribute. It is a fact of life that not all of us are suited for the same type of marketing activities or practicing in the same area of law. The purpose of the “people aspect” of a peer review should be to examine the role of each person in the firm and make recommendations that avoid trying to fit round pegs in square holes. All firm members are important to the success of a firm and the peer reviewer should seek to determine and document how each and every person in the firm can fit into a vital role for a successful firm. It is also important for a firm to recognize that it cannot always be all things to all clients. When there is an area of law or issue presented that the firm cannot comfortably or cost effectively handle, there is no stigma in associating help from a trusted colleague.

### **The Peer Review Process**

Having clearly defined expectations is also critical. There must be an acknowledgement from firm members that there

may be a better way of doing things. The result of a review will be both constructive praise and constructive criticism. Firm management must make it clear that this is a sanctioned collaborative process and that all attorneys and employees should take the necessary time to cooperate with the reviewer.

During the systems review segment, the reviewer should interview the firm members and have them articulate the firm's core values and objectives. A historical perspective of the firm's growth and client base is important in understanding these issues. There must be a critical examination of the role that each individual contributed to the firm's success or shortcomings and the firm's marketing<sup>7</sup> and compensation systems to determine what works, what can be improved, or what is counterproductive. It is also important to examine the identifiable practices that keep the employees, associates and partners productive or promotes dissatisfaction, and how the firm can better deliver legal services in a cost-effective manner. The systems review also should identify whether responsibilities for clients are shared and if the firm fosters individuals in connection with a transition plan, and whether the firm has a single leader or shared responsibilities and the firm members' reaction to such a management system. It is also pertinent to determine if the attitude of the partners is one of "owners" or "employees."

The examination of the compensation system is often the most challenging part of the review. The reviewer's job is not to recommend a particular compensation system. It is to flesh out the perceptions of the firm members as to the strengths and weaknesses of the existing system and to open discussion within the firm regarding alternatives. Billable-hour requirements are a fact of life for many firms today. However, those requirements can often lead to the destruction of an organization if they are the only consideration for compensation. Formula-based compensation systems are susceptible to the introduction of other factors that recognize individual firm members' unique contributions to the success of the firm. For instance, even though a compensation system is driven by productivity or origination, consideration of participation in marketing

efforts, administrative matters, recruiting of law students, professional development and civic involvement can be important additions that result in a higher overall satisfaction level and perception of fairness. Staff compensation, satisfaction and suggestions are also important factors to be considered in a review. A related issue is examining the existence and sufficiency of a periodic personnel evaluation process that enables a person to recognize his strengths and weaknesses and institute timely corrective action.

An effective peer review also encompasses an examination of firm procedures for personnel training, physical assets, technology, client intake and accounting issues such as requiring retainers and the process and approvals necessary for write-downs and write-offs. These issues include an examination of firm personnel and practices manuals, training, CLE policies, engagement letters, docket control systems, library adequacy and opportunities for economies of scale. These issues are the "nuts and bolts" of the practice of law and all are factors in the profitability of a firm.

## Conclusion

The peer review process is an option that should be considered by law firms. It is a relatively inexpensive operation that allows an independent examination of the firm's operations by a respected non-competing attorney. The success of the review is largely dependent upon a commitment by the firm members to take the necessary time and to cooperate with the reviewer and recognition that an open and honest exchange with the reviewer is for constructive purposes. Thus, the results of a well-conducted peer review can provide the firm with a critical self-analysis and ideas for the future success of the organization.

## FOOTNOTES

1. Economic Stimulus Act of 2008 (Pub.L. 110-185, 122 Stat. 613), enacted Feb. 13, 2008.
2. Carl Lotus Becker, *Progress and Power*, 1935.
3. Joseph Sugarman, *The Best of Business Quotations* 13 (1993).
4. Soichiro Honda, *Id.* at 19.
5. Matthew Arnold, *The Function of Criticism*

at the Present Time, 1864.

6. Since law firm consultants use various proprietary methodologies, this article will focus on a peer review process.

7. See Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association and related orders of the Louisiana Supreme Court regarding advertising.

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LSBA/LBF Community Action Committee Chair Gina P. Campo, left, with Gaynell Anderson, representing the assisted agencies of El Yo-Yo Bilingual Head Start and El Yo-Yo Bilingual Early Head Start. Photo by Barbara D. Baldwin.

## 2008 Secret Santa Project a Success Thanks to Generous Participants

Hundreds of Louisiana children experienced a brighter holiday season because of the generosity of members of the Louisiana legal community participating in the 2008 Secret Santa Project, a project of the Louisiana State Bar Association/Louisiana Bar Foundation's (LSBA/LBF) Community Action Committee.

"The Secret Santa Project allows our legal family to help make Christmas brighter for families who are less fortunate throughout the community," said Gina P. Campo, chair of the Community Action Committee. "I am particularly

glad that we were able to bring the Project to agencies in parishes affected by Hurricanes Gustav and Ike. I am very proud of every one of our members that participated in making this year's project a huge success," she said.

The 1,125 children assisted were represented by 16 social services agencies in the New Orleans metropolitan area, Houma, Thibodaux, Hammond, Lafitte, Crown Point and Jefferson Parish.

The LSBA and LBF would like to acknowledge the Project's generous participants, listed either by firm or individually (participant's choice).

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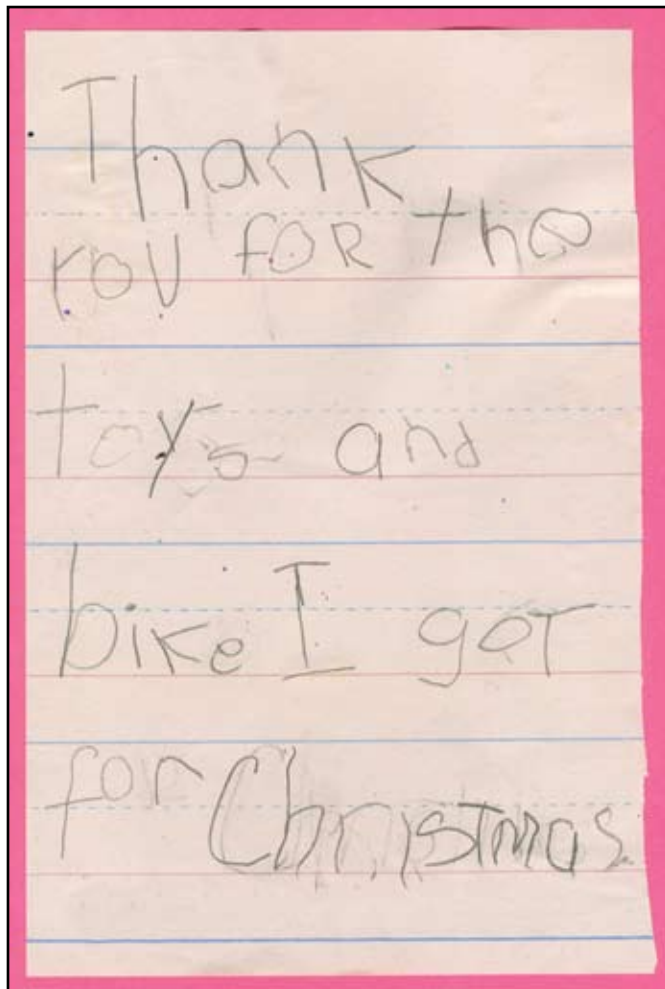
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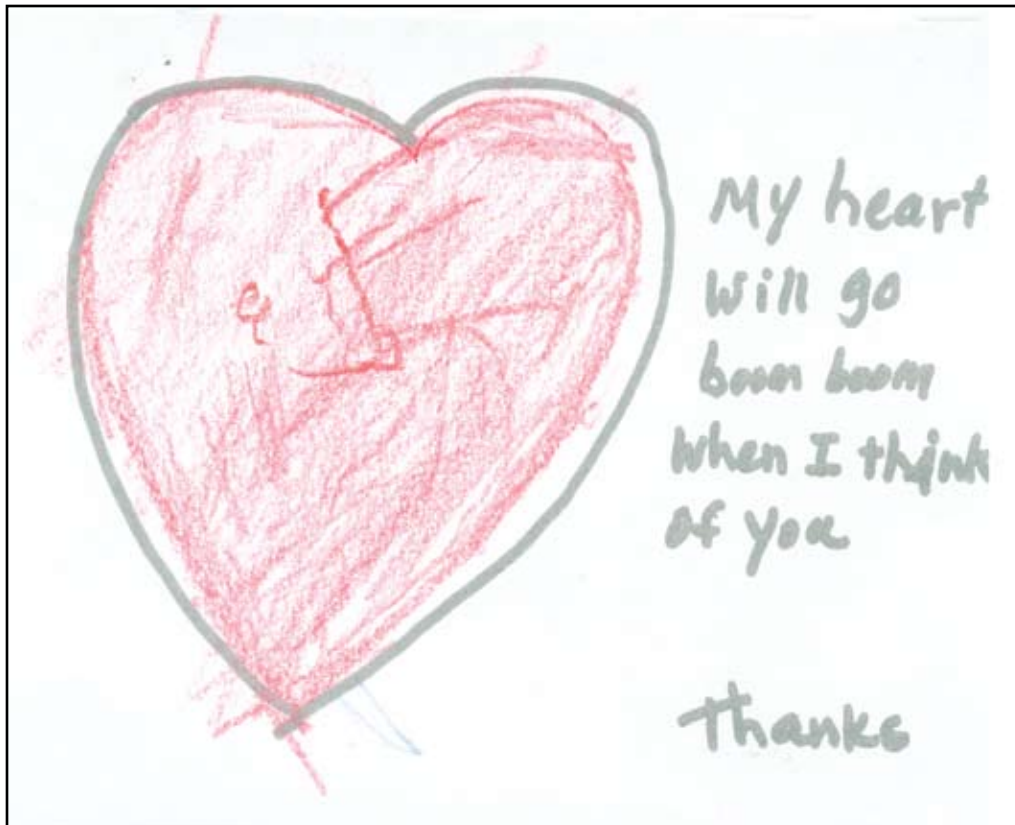
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Continued next page

## Individual Participants

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Sidney J. Zeller  
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Gerard Zomerdijk



## ASSOCIATION ACTIONS

### Ad Rules Effective Date Now Oct. 1, 2009

Louisiana Supreme Court Chief Justice Catherine D. Kimball announced that the court's recently adopted amendments to the Rules of Professional Conduct pertaining to lawyer advertising will become effective on Oct. 1, 2009, rather than April 1, 2009. The court has decided to defer implementation of the new rules until Oct. 1 to allow the LSBA and the court to further study certain rules in light of the constitutional challenges that have been raised.

To read the full text of the court's press release: [www.lasc.org/press\\_room/press\\_releases/2009/2009-04.asp](http://www.lasc.org/press_room/press_releases/2009/2009-04.asp).

### Registration Still Open for LSBA Solo and Small Firm Conference

Registration is still open for the Louisiana State Bar Association's second Solo and Small Firm Conference. The conference is set for Thursday and Friday, March 26-27, at the Sheraton New Orleans Hotel, 500 Canal St. The dual-track program has been approved

for 12.5 hours of CLE, including ethics, professionalism and law office management. The event will include a wellness screening booth manned by Gilsbar, Inc. representatives.

To review the conference schedule, register online or download a mail-in registration form, go to: [www.lsba.org/2007cle/seminardetail.asp?CLEID=111](http://www.lsba.org/2007cle/seminardetail.asp?CLEID=111).

### Nomination Deadline April 15: Leah Hipple McKay Memorial Award

The Louisiana State Bar Association is seeking nominations for its 2009 Leah Hipple McKay Memorial Award for Outstanding Volunteerism, the premier award of the LSBA's Crystal Gavel Awards program. The nomination deadline is Wednesday, April 15.

The award is named in honor of the late Leah Hipple McKay, a member of the Louisiana State Bar Association and a deeply committed volunteer. The award will be presented during the 2009 LSBA Annual Meeting.

For a nomination form, go to: [www.lsba.org/2007InsideLSBA/CrystalGavelAwards.asp](http://www.lsba.org/2007InsideLSBA/CrystalGavelAwards.asp).



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# Technology CORNER

By Garrett P. LaBorde and Craig Bayer

## TOOLS FOR BECOMING A MOBILE LAWYER

If you are out of town on business, displaced by a disaster or just need a day to bill in your pajamas, there are tools and tips you need to know to truly become a mobile, always-productive lawyer. Many busy professionals and clients rely heavily on mobile technologies, an ever-growing set of telecommunications skills and remarkable remote access to data in order to stay efficient and flexible with billable time. We lawyers can push the bounds of these innovations to remain connected to our files, to stay responsive

to our clients' time-sensitive matters and always to be aware of the management issues within our firms.

Whether you have a large-firm IT department and all the latest gadgets or you're a solo/small operation *sans* large-firm resources, there's no reason why your work output cannot remain steady, in or out of the office.

### Mobile Computing

If you don't own a laptop, get one! Major computer manufacturers can pack

serious desktop quality and power into the smallest of mobile PCs. Laptops can come with built-in WiFi, mobile broadband cards, desktop-quality peripherals, encrypted hard drives and even HDMI high-definition output for vivid presentations.

If possible, purchase your next laptop with a built-in cellular broadband card that allows you to connect to the Internet through the cell network or add the USB version from AT&T, Sprint or Verizon to your existing laptop. The super-fast

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3G Network works very well for web browsing, e-mail, document generation and remote access to your servers and client data. In 3G coverage areas and when correctly configured, there is no noticeable difference between a cellular broadband connection and a wired Internet connection back at the office. (Tip: Certain PDA/mobile phones can even be used as a broadband modem by “tethering” it to your laptop. However, check with your cellular provider because there are certain plans dedicated to this type of data usage.)

### **An Anywhere Office: Welcome to “Hosted” Solutions**

What is hosted (“cloud” or “Software as a Service”) computing? It is where software is provided to the customer over the Internet and is securely maintained by a third-party vendor, but not necessarily its manufacturer. Instead of purchasing an application, the customer pays the vendor a monthly fee to use the latest version of the software. When the product goes down or needs tweaking, the provider handles it. The actual software does not reside on the user’s computer but rather at the host site. (Think: Always up-to-date software that you “rent” at a fixed monthly cost.)

One of the first hosted solutions was the (free) Google Docs. This suite allowed users to create documents in their web browser and easily access and share them with colleagues. Now more in the mainstream, the most commonly deployed hosted solutions in the legal industry are Microsoft Exchange, Microsoft SharePoint and their related applications. Outlook is one of the most widely used e-mail programs in the world and Exchange is essentially the program which manages all of your e-mail, calendar items, contacts, tasks, etc. Microsoft SharePoint is a browser-based team/company collaboration platform which serves as: 1) your private Intranet for document storage, team projects, group scheduling, etc.; 2) your Extranet for secure, authorized client access; and 3) your Internet Web site for public access. Each of these server-based applications works extraordinarily well in a hosted environment.

### **Data Storage and Security**

Where is your data? Most hosting providers have multiple, redundant data centers across the country. If one location goes down, everything switches over to the next data center. As a result, most hosted companies guarantee a 99 percent uptime, which means you will not lose any money from business interruption (no matter what’s brewing in the Gulf). Moreover, if you keep all your data in a remote/hosted environment, you no longer have to worry about backing up your data or making that police-escorted trip to get your servers after that hurricane hits. The data center takes care of backup and continuous access. If client confidentiality or data security is of concern, you can be assured that most hosting companies use cutting-edge layers of encryption and enterprise level firewall components.

### **Fixed Cost Benefits**

If you use a hosted solution, much of your routine IT support costs can be reduced (at least the unpredictable charges associated with failure of hardware and applications). The hosted provider handles applying the latest patches and upgrades and, since you do not have any of the hardware at your office (other than your individual workstations, scanners, printers, etc.), you do not have to worry about costly server outages and

expensive, on-demand IT service calls. With reliable Internet access, you can drastically reduce the number of network purchases you must make.

### **More Tips**

Ready to become more mobile? Find more tips on the Law Office Technology blog ([www.lawotblog.com](http://www.lawotblog.com)) or the Mobile Lawyer’s Info Center ([www.abanet.org/tech/ltrc/mobicomm.html](http://www.abanet.org/tech/ltrc/mobicomm.html)) or attend the 2009 ABA Techshow ([www.abanet.org/techshow/](http://www.abanet.org/techshow/)).

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By Edward J. Walters, Jr.

## PRACTICING IN THE RED STICK

### The Courthouse

It is now the beginning of 2009 — the year the “new” East Baton Rouge Parish Courthouse will open. It will be the envy of every other courthouse in the nation... or so we are told.

The current courthouse at 222 St. Louis St. is not a courthouse — it is a “governmental building.” It seems that, in 1977, the powers-that-be were not giving out money to build “courthouses,” but they *were* giving out money to build “governmental buildings,” so we built a great big one. The big difference between a courthouse and a “governmental building” is its tenants — the 10 floors of our governmental building house the office of emergency preparedness, the assessor, the sheriff’s civil division, the district attorney’s office, the city parish offices, the 19th Judicial District Court and the Family Court. We, of course, still call it “The Courthouse.”

Currently, the criminal divisions of the

19th Judicial District Court are mostly located on the sixth floor, the civil divisions mostly on the seventh and eighth floors, and the Family Court on the ninth floor.

When finished, the “new” courthouse will be right across the street, on the corner of St. Louis Street and North Boulevard.

### Getting There

From New Orleans, take I-10 West to Baton Rouge. Do not cross the Mississippi River on I-10. Instead take I-110 North, exit on Government Street, bear left, head toward the river, turn right at St. Louis Street and immediately park in one of the parking garages on either side of the street. Walk north to 222 St. Louis St., almost at the corner of St. Louis Street and North Boulevard. You will pass the Baton Rouge City Court on your right.

From the west, take I-10 East, cross the Mississippi River Bridge, veer left, exit on Convention Street and proceed to Fourth Street, take a left, proceed to

Government Street, take a right, proceed to St. Louis Street and immediately park in one of the parking garages. Walk north to 222 St. Louis St.

### Being There

Monday is Rule Day, designated for hearing rules, motions, exceptions and arguments. When Monday is a legal holiday, Tuesday is Rule Day.

The Duty Court is located on the 10th floor. All of the civil judges rotate to serve on the duty court.

In accordance with La. R.S. 13:850, the clerk’s office accepts filing by fax 24 hours a day, seven days a week. The fax number is (225)389-3392 and the cost for faxing is \$5 plus 50 cents per page. The original is required to be filed within five days from the date of the fax, along with payment of charges.

Attorneys cannot check out suit records from the clerk’s office. You are allowed to view them in the office. For a fee, the clerk



The Baton Rouge City Court is across the street from the 19th Judicial District courthouse.



The East Baton Rouge Parish courthouse, housing the 19th Judicial District Court, among other agencies.

will make copies for you.

The Web site for the East Baton Rouge clerk of court is: [www.ebrclerkofcourt.org/departments/mis/online\\_services](http://www.ebrclerkofcourt.org/departments/mis/online_services).

## Food, Beverages and Lodging

For a casual lunch a short walk from the courthouse, I suggest Poor Boy Lloyds (205 Florida Blvd.). There you will find everything from plate lunches to New Orleans-style poboys at inexpensive prices. Another restaurant close to the courthouse is Christina's (320 St. Charles St). For a slightly more formal experience, I suggest Little Village (453 Lafayette St.), which serves both Italian and seafood dishes. Other wonderful options nearby are Capital City Grill (100 Lafayette St.) and Tsunami (100 Lafayette St.).

For the perfect watering hole after a long day in court, I suggest the Kingfish Lounge in the newly refurbished Heidelberg Hotel, now known as the Hilton Baton Rouge

Capitol Center (201 Lafayette St.).

Another local-lawyer and LSU-student watering hole is the Pastime Lounge (252 South Blvd.) just down the street from the courthouse.

For lodging close to the courthouse, there is the Hilton Baton Rouge Capitol Center, just blocks from the courthouse. This hotel is on the National Register of Historic Places. It was once the favorite haunt of Gov. Huey Long. In 1931, the Heidelberg itself served as the Louisiana Capitol during a dispute between Long and Lt. Gov. Paul Cyr. Long, newly elected as senator, refused to relinquish his duties as governor and Cyr set up operations in the hotel. You can also find accommodations at the Sheraton Baton Rouge Convention Center Hotel (102 France St.)

## Other Courts

The United States District Court for the Middle District of Louisiana is located at 777 Florida Blvd., adjacent to Interstate I-110.

The Baton Rouge City Court is across

the street from the 19th JDC Courthouse, located at 233 St. Louis St., Room 208, Baton Rouge, LA 70802.

Juvenile Court is located at 8333 Veterans Memorial Blvd. near the Baton Rouge Metropolitan Airport.

## More Information in "Survival Guide"

The Baton Rouge Bar Association's Young Lawyers Section has published "The New (and Not-So-New) Lawyers' Survival Guide," with contact information and practical tips for both new and established lawyers. To download a copy, go to: [www.brba.org/forms/YLS\\_survival\\_guide.pdf](http://www.brba.org/forms/YLS_survival_guide.pdf).

*Edward J. Walters, Jr. is a member of the Louisiana Bar Journal Editorial Board and the board's Local Practice Guide team.*

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## How did the abortion issue enter the annals of American jurisprudence and what are the latest developments?

Abortion, in the words of U.S. Supreme Court Justice Sandra Day O'Connor, is one of the "most contentious and controversial [issues] in contemporary American society."<sup>1</sup> I doubt this will change any time soon. It is important that everyone understands the history of abortion rights in American jurisprudence, regardless of one's position.

"[T]he law in effect in all but a few States until [the] mid-19th century was the pre-existing English common law,"<sup>2</sup> which stated that "abortion[s] performed before 'quickening' — the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy — was not an indictable offense."<sup>3</sup> Abortions performed post-quickening may have been indictable.<sup>4</sup> Connecticut, coincidentally "the first State to enact abortion legislation" and whose laws precipitated a challenge in *Griswold v. Connecticut*<sup>5</sup> that created the "right of privacy" from which abortion rights are derived, criminalized post-quickening abortions in 1821 and pre-quickening abortions in 1860.<sup>6</sup> Other states followed with legislation of their own, criminalizing abortion in varying degrees based on this quickening framework.<sup>7</sup> But over time, the quickening distinction vanished.<sup>8</sup> By the late 1950s, most abortions, except those necessary to save the life of the mother, were banned altogether.<sup>9</sup> By the time of the *Roe v. Wade* decision in 1973, approximately one-third of the states had adopted less stringent abortions laws.<sup>10</sup>

In *Roe v. Wade*, Jane Roe, single and pregnant, challenged the constitutionality of certain Texas statutes that criminalized all abortions except those necessary to save the life of the mother.<sup>11</sup> Specifically,

Roe argued that the statutes were "unconstitutionally vague and that they abridged her right of personal privacy."<sup>12</sup>

The trial court held that the "fundamental right of single women and married persons to choose where to have children is protected by the Ninth Amendment, through the Fourteenth Amendment," and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs' Ninth Amendment rights.<sup>13</sup>

On appeal, the Supreme Court affirmed and held that the Texas statutes regulating abortions violated the Due Process Clause of the 14th Amendment.<sup>14</sup> The "right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, [it] is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."<sup>15</sup>

Despite this assertion, the court acknowledged that the "right of privacy" is not mentioned in the Constitution.<sup>16</sup> The court also recognized that a woman's right to an abortion is not absolute "and that at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant."<sup>17,18</sup> As a result, the Supreme Court developed a "rigid trimester framework,"<sup>19</sup> which applied the strict scrutiny standard, to determine whether the Texas statutes at issue passed constitutional muster.<sup>20</sup>

Concerning states' interests in the health of the mother, the Supreme Court held that states could regulate "the abortion procedure to the extent that the

regulation reasonably relate[d] to the preservation and protection of maternal health," but only after the first trimester.<sup>21</sup> Concerning states' interests in potential life, the court held that states could make abortions illegal only after the fetus had reached viability,<sup>22</sup> except "when . . . necessary to preserve the life or health of the mother,"<sup>23</sup> which was defined in *Doe v. Bolton* (the companion suit to *Roe*) as "all factors physical, emotional, psychological, familial, and the woman's age relevant to the well-being of the patient."<sup>24</sup> In view of this newly created test, the Supreme Court held that the Texas statute, which proscribed all abortions except those performed to save the life of the mother, was unconstitutional.

After the decisions in *Roe*, an "era of Court-mandated abortion on demand" followed, in the opinion of Justice Clarence Thomas.<sup>25</sup> But in 1992, in *Planned Parenthood v. Casey*, the Supreme Court reversed course and stated that a number of its post-*Roe* decisions had been incorrect.<sup>26</sup> The court found that application of the trimester framework established in *Roe* had "undervalue[d] the State's interest in the potential life within the woman."<sup>27</sup> In an effort to correct this problem, the Supreme Court rejected the trimester framework and adopted the "undue burden" test.<sup>28</sup> This new test gives much more deference to states' "important and legitimate interests." Today, "a provision of law is [only] invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion."<sup>29</sup>

The next big battle over abortion rights took place in this century. In 2000, in *Stenberg v. Carhart*, a Nebraska regulation that outlawed partial birth abortions was held unconstitutional because (1) the state failed to provide an exception for the health of the mother; and (2) the law was an "undue burden on a woman's

right to make an abortion decision.<sup>30</sup> As written, the court found that the law criminalized not only partial birth abortions but also the most regularly used abortion procedure for second-trimester abortions.<sup>31</sup> But in 2007, in *Gonzales v. Carhart*, the Supreme Court seemingly reversed course when it upheld a federal ban on partial birth abortions, even though it too lacked an exception for the health of the mother.<sup>32</sup>

The pendulum has swung back and forth over the years regarding abortion rights. With an aging Supreme Court and a newly elected president, it will be interesting to see where it will swing next. Of interest to Louisiana citizens, if the decision in *Roe v. Wade* is ever overturned, abortions here will become illegal overnight, unless performed to preserve the life of the mother.<sup>33</sup>

## FOOTNOTES

1. Stenberg v. Carhart, 530 U.S. 914, 947 (2000) (concurring opinion).
2. *Roe v. Wade*, 410 U.S. 113, 138 (1973).
3. *Id.* at 132.

4. *Id.* at 134-136.
5. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (laws prohibiting the use of contraceptives in a marital relationship were held an unconstitutional violation of the right of privacy). *See also*, *Planned Parenthood v. Casey*, 505 U.S. 833, 852-853, 857 (1992) (plurality opinion) (the right to an abortion is considered an extension of the liberty established in *Griswold*).
6. *Roe*, 410 U.S. at 138.
7. *Id.* at 139.
8. *Id.*
9. *Id.*
10. *Id.* at 140.
11. *Id.* at 118-119.
12. *Id.* at 120.
13. *Id.* at 122.
14. *Id.* at 165.
15. *Id.* at 153.
16. *Id.* at 168.
17. *Id.* at 152.
18. *Id.* at 153-155.
19. *Planned Parenthood v. Casey*, 505 U.S. at 873 (plurality opinion).
20. *Roe* at 155.
21. *Id.* at 163.
22. At the time of *Roe*, viability of a fetus was usually placed at 28 weeks but recognized to occur as early as 24 weeks. *See, Id.* at 160.
23. *Roe* at 163-164.
24. *Doe v. Bolton*, 410 U.S. 179, 192 (1973).
25. *Stenberg*, 530 U.S. at 980 (Thomas, J., dissenting).
26. *Casey*, 505 U.S. at 870. *See also*, at 994

(Scalia, J., concurring in part and dissenting in part; Rehnquist, C.J., White, J., and Thomas, J. joining).

27. *Id.* at 871-873.
28. *Id.* at 876.
29. *Id.* at 878.
30. *Stenberg*, 530 U.S. at 946.
31. *Id.* at 945.
32. *Gonzales v. Carhart*, 550 U.S. 124 (2007).
33. *See* La. R.S. art. 40:1299.30.

*Scott U. Schlegel serves as an assistant district attorney for Jefferson Parish in the Family Violence Prosecution Unit. He also volunteers as an allied attorney with the Alliance Defense Fund. He received his JD degree from Loyola University College of Law in 2004. (200 Derbigny St., Gretna, LA 70053)*



*Have a legal history question you want answered? Want to volunteer to answer a question? E-mail your questions or submissions to Louisiana Bar Journal Editorial Board members Lawrence E. Marino (Legal History team leader), lmarino@oatshudson.com; Katherine Tonnas, ktonnas2@msn.com; or John S. (Chip) Coulter, ccoulter@lasc.org.*

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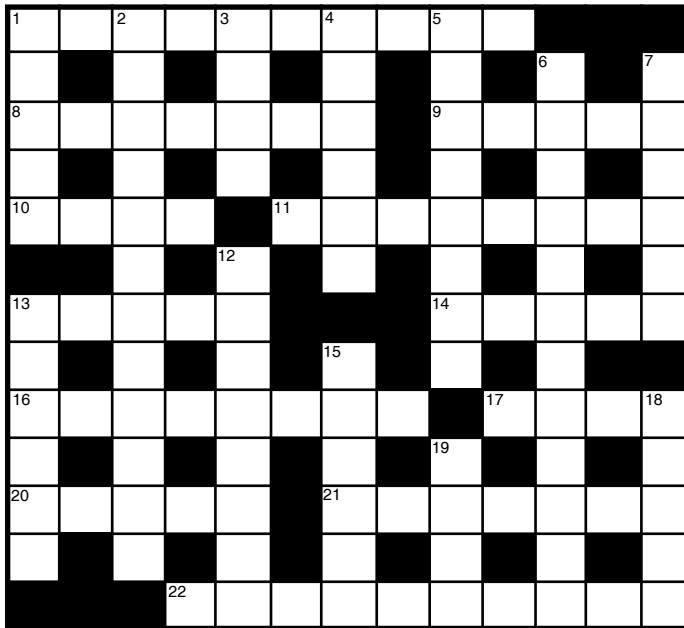
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# Crossword PUZZLE

By Hal Odom, Jr.

## IT'S YOUR DEFAULT



### ACROSS

- 1 \_\_\_ check, claim for which no hearing is required to confirm (10)
- 8 Time after which confirmation may be made (3, 4)
- 9 Part of a puzzle (5)
- 10 \_\_\_ account, claim for which no hearing is required to confirm (4)
- 11 League championships (8)
- 13 \_\_\_ facie, standard of proof for confirmation (5)
- 14 Corporate bigwigs (5)
- 16 So much empty talk (8)
- 17 Rave about telling the truth? (4)
- 20 \_\_\_ *decisis* (5)
- 21 Often-extended state shopping program (3, 4)
- 22 \_\_\_ note, claim for which no hearing is required to confirm (10)

### DOWN

- 1 Obnoxious agreement (5)
- 2 What President Lincoln wore (9, 3)
- 3 Casual agreement (4)
- 4 How some houses are built (2, 4)
- 5 Certain items which may be taxed as costs (8)
- 6 *Actio* \_\_\_\_, form of revocatory claim (2, 2, 3, 5)
- 7 What "v." stands for (6)
- 12 1942 Alfred Hitchcock film, set in California ranch (8)
- 13 One of sixty-four (6)
- 15 *Obiter* \_\_\_\_ (6)
- 18 Thin and fragile (5)
- 19 Germany, Japan and Italy, at one time (4)

Answers on page 395.

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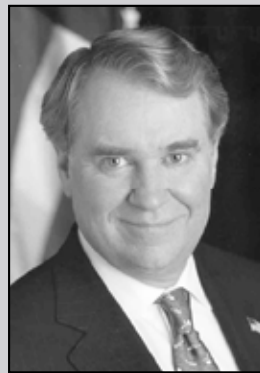
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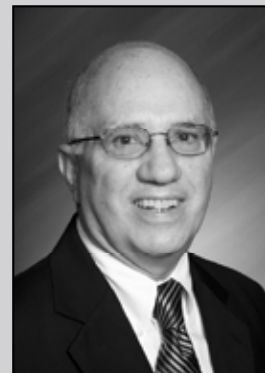
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# FOCUS ON Professionalism

By Fritz B. Ziegler

## LAW PRACTICE IS A MARTIAL ART

Litigation is the best alternative our clients have to violence. In a sense, we are their warriors. We are trained in the use of the modern weapon of litigation. Can the practice of law benefit from a study of the ancient fighting traditions of the East?

Gichin Funakoshi was born in 1868 and died in 1957 at age 90, still practicing karate. He was the teacher who brought karate-do, as he called it, from Okinawa to Tokyo and from there through his students to the world. His life was replete with fantastic stories of negotiating skill and martial prowess. Funakoshi wrote a little book entitled *The Twenty Guiding Principles of Karate* (Tokyo: Kodansha, 2003, trans. John Teramoto, hardcover; hereinafter cited as "*Principles*"). His memoirs are even more interesting. (Funakoshi, Gichin. *Karate-Do My Way of Life*. Tokyo: Kodansha, 1975.)

This article discusses the extent to which Master Funakoshi's 20 principles might apply to law practice, and, if they do apply, how they may be employed profitably in practical ways by the practicing lawyer. The references will allow you to follow any paths that interest you. Space limitations require me to limit the discussion to

a few of the key principles.

Here is the Louisiana Supreme Court's definition of professionalism, for CLE purposes:

Professionalism concerns the knowledge and skill of the law faithfully employed in the service of client and the public good, and entails what is more broadly expected of attorneys. It includes courses on the duties of attorneys to the judicial system, courts, public, clients, and other attorneys, attorney competency, and pro bono obligations. (S. Ct. Rule XXX, MCLE Rule 3.)

This guidance from the Supreme Court can be parsed to show that a professional aspires to:

- ▶ Civility
- ▶ Competence
- ▶ Contribution

### Civility

Funakoshi's first principle is respect: "Do not forget that karate-do begins and ends with *rei*." (*Principles*, p.19.) He tells us that "*rei*" is the bow before one steps onto the martial arts mat, and that the re-

spect given implies self-esteem sufficient to be nice to others without feeling weak or threatened.

Respect is where it all begins, and not respecting courts, staff and other lawyers can get us into ethical trouble or jail if we go too far. "An attorney at law is an officer of the court. . . . He shall treat the court, its officers, jurors, witnesses, opposing party, and opposing counsel with due respect. . . ." (La. C.C.P. art. 371.)

Funakoshi's second principle is: "There is no first strike in karate." I think we also should worry about the second strike, the one we might inflict on another lawyer for a perceived offense. David Burns, M.D., in his respected book on cognitive behavioral therapy for depression and anxiety, warns us against irrational thinking:

**MIND-READING:** You make the assumption that other people are looking down on you, and you're so convinced about this that you don't even bother to check it out. . . . You may respond to these imagined negative reactions by withdrawal or counterattack. This self-defeating behavior pattern may act as a self-fulfilling prophecy and set up a negative interaction in a relationship when none exists in the first place. (Burns, David. *Feeling Good: The New Mood Therapy*. Avon: New York. 1999 rev. ed., paperback: 36-37.)

### Competence

My favorite of Funakoshi's principles on competence is number five: "Mentality over technique." It can be illustrated by a martial arts legend about a great master named Bukoden. Bukoden's star pupil walked behind a horse, who tried to kick him. The student was so skillful that he slipped the kick, avoiding injury. The villagers wondered how Bukoden would reward the student for this show

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of expertise. Bukoden surprised them all by suspending the student.

So the villagers decided to test Bukoden. They put another mean horse in Bukoden's path to work and watched in secret. When Bukoden approached the horse, he stepped to the other side of the road, skirted the horse completely, and returned to his path. Then the villagers understood. A true master never relies on skill when preparation will avoid the danger.

Herrigel's famous martial arts book, which gave us countless knock-offs entitled "Zen and the Art of . . .," illustrates how hard the eastern masters work at their arts:

"Well, at least we've got over the worst," I said to the Master, when he announced one day that we were going on to some new exercises [after more than four years of training in the Japanese Zen art of archery]. "He who has a hundred miles to walk should reckon ninety as half the journey," he replied, quoting the proverb. "Our new exercise is shooting at a target." (Herrigel, Eugen. *Zen in the Art of Archery*. Vintage, New York, 1953, 1989: 54.)

An amusing aspect of preparation, at least for lawyers who duel with words, is Funakoshi's number 15: "Think of the opponent's hands and feet as swords." It's amusing until you've been wounded by words. An excellent contemporary book on boxing, talking about hard-hitting Earnie Shavers, illustrates how some of us have reacted in court when the harpoon went in:

Boxers get hit and they fall down; there's nothing extraordinary about that. But boxers hit by Shavers, even those known for their good chins and self-possession, responded with peculiarly exaggerated distress. [Larry] Holmes was out cold for only a moment as he fell, but in that moment he had the awful stateliness of a spaceship, its crew and mechanical systems wiped out by some hideous force, adrift forever in the cosmos. (Rotella, Carlo. *Cut Time*. University of Chicago Press, Chicago, 2003: 107.)

### Contribution

Funakoshi's teaching on contribution is difficult to encapsulate. He offered several principles that apply, such as number 10: "Apply the way of karate to all things, therein lies its beauty." Yet it's difficult to be sure that he's talking about contribution similar to our Supreme Court's definition. But Funakoshi's focus in his memoirs illustrates that his whole life, first as teacher in a public school in Okinawa and then as a teacher of karate, was a contribution to society.

Perhaps the best illustration of his attitude of contribution and his measure as a true professional is something that happened to Funakoshi after World War II. He was about 85 years old. Invited to a poetry reading outside Tokyo, he returned by train to the city late at night and took a shortcut through a dangerous area. He was accosted by a large younger man who grabbed Funakoshi's umbrella and tried to hit the old man with it. Here is what happened next, in Funakoshi's own words:

His stance was full of openings. When he swung the umbrella at me, I ducked under and, with my right hand, took a firm grasp of his testicles. The pain was, I have no doubt, very nearly unbearable. The umbrella fell to the ground, and the man himself, after a sudden sharp cry, looked as though he might well pass out. . . . Jobless, he had decided to rob me on the spur of the moment, and I, also on the spur of the moment, had done what I constantly tell my young trainees never to do: I had taken the offensive. . . .

I did not feel very proud of myself. (Funakoshi, Gichin. *Karate-Do My Way of Life*. Tokyo: Kodansha, 1975, paper: 112.)

Here we see the consummate professional in action. Funakoshi was competent enough to gain the advantage. He was civil enough to use only necessary force. He was enough of a contribution to chide himself for going too far. If we follow Master Funakoshi's example, perhaps we can still be practicing our "martial art" when we're 90.

*Fritz B. Ziegler is a solo practitioner in Covington and is outside general counsel to Gilsbar, Inc., the sponsored insurance administrator to the Louisiana State Bar Association. Before returning to the full-time private practice of law in 1994, he served as senior vice president and general counsel of Gilsbar, where he headed the lawyers' professional liability insurance division of the firm and represented Gilsbar in all transactional and litigation matters. He currently engages in a general law practice emphasizing business transactions and litigation. He graduated with a JD degree (Order of the Coif, Law Review) from Louisiana State University Paul M. Hebert Law Center in 1977, and has practiced in large and small law firms and large and small corporate law departments. Except for law practice, he claims no special skill in martial arts, his experience having been limited to fist fights in junior high school, Airborne Ranger training in the U.S. Army, and intermediate-level study of Ed Parker's American Kenpo Karate, the martial art of Elvis Presley. (P.O. Box 2244, Covington, LA 70434)*



**Fritz B. Ziegler, in the black gi, illustrating a karate technique with a classmate. (No, the classmate was not injured!)**

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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2008.

### Decisions

**Anthony Bertucci**, Baton Rouge, (2008-B-1349) **Suspended for two years, fully deferred, and Mr. Bertucci shall be placed on unsupervised probation for two years, subject to conditions set forth by the hearing committee**, ordered by the court on Sept. 26, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 10, 2008. *Gist*: Commission of a criminal act.

**Ann G. Dafford**, Carencro, (2008-OB-

2637) **Transfer to disability inactive status** ordered by the court on Nov. 19, 2008. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2008.

**Howard P. Elliott, Jr.**, Baton Rouge, (2008-B-2401) **Suspended for one year, fully deferred, subject to two years' supervised probation**, ordered by the court on Oct. 31, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 31, 2008. *Gist*: Failure to properly maintain a client trust account.

**Mayer Finkelstein**, New Orleans, (2008-OB-2403) **Permanent resignation in lieu of discipline** ordered by the court on Oct. 28, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2008. *Gist*: Voluntary permanent resignation in lieu of discipline was a result of his criminal conviction of possession of child pornography in violation of Rules 8.4(b); the commission of a criminal act, particularly one that reflects adversely on the lawyer's honesty, trustworthiness or fitness in other respect; and 8.4(a), violating or attempting to violate the Rules of Professional Conduct.

**William Ken Hawkins**, Ponchatoula, (2008-B-2543) **One-year suspension, fully deferred, subject to successful completion of one year of unsupervised probation with conditions**, ordered by the Louisiana Supreme Court on Nov. 14, 2008. JUDGMENT FINAL and EFFECTIVE on Nov. 14, 2008. *Gist*: Commingling and otherwise mishandling client and third-party funds.

**Tera Marie Sims Hotard**, Haughton, (2008-OB-2740) **Transfer to disability inactive status** pending further orders by the court, ordered by the court on Nov. 24, 2008. JUDGMENT FINAL and EFFECTIVE on Nov. 24, 2008.

**Alvin Jones**, Baton Rouge, (2008-B-0204) **Public reprimand plus restitution** ordered by the court on Sept. 19, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 3, 2008. *Gist*: Charging an excessive fee and disbursing settlement funds without his client's consent.

**Kent Mercier**, Lafayette, (2008-OB-2472) **Permanent resignation in lieu of discipline** ordered by the court on Nov. 6, 2008. JUDGMENT FINAL and EFFECTIVE on Nov. 6, 2008. *Gist*: Permanent

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resignation in lieu of discipline due to Mr. Mercier's multiple occasions of mishandling client and third-party funds in violation of Rules 1.15(a), 8.4(a) and 8.4(c).

**Erik Stafford Pittman**, Denham Springs, (2008-B-2658) **Interim suspension** ordered by the court on Nov. 19, 2008.

**David F. Post**, Farmerville, (2008-B-1678) **Public reprimand** ordered by the Louisiana Attorney Disciplinary Board and affirmed by the Louisiana Supreme Court on Nov. 10, 2008. JUDGMENT FINAL and EFFECTIVE on Nov. 10, 2008. *Gist:* Failing to act with reasonable diligence and promptness in representing clients in a tax sale matter; failing to promptly refund an unearned fee; failing to promptly refund an unearned fee upon termination of the representation; and violating the Rules of Professional Conduct.

**Roy J. Rodney, Jr.**, New Orleans, (2008-B-2318) **Suspended for one year, with all but six months deferred, followed by a two-year period of supervised probation**, ordered by the court on Oct. 31, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 31, 2008. *Gist:* Failure to timely file a tax return.

**Gideon T. Stanton III**, New Orleans, (2008-B-1472) **Six-month suspension, fully deferred, and placed on supervised probation for one year**, ordered by the court on Oct. 3, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 17, 2008. *Gist:* Failure to act with reasonable diligence and promptness in representing clients; and failure to communicate with clients.

**Daniel F. Tyrrell, Jr.**, Lewes, Del., (2008-B-2136) **Interim suspension** ordered by the court on Nov. 10, 2008. *Gist:* Reciprocal interim suspension as a result of the Delaware Supreme Court suspending Mr. Tyrrell in that state pending further proceedings based upon evidence that Mr. Tyrrell converted client funds in an estate matter. The imposition of identical discipline in Louisiana is appropriate.

**Barbara-Ann Valvo**, formerly of Kenner and a resident of North Carolina, (2008-B-1670) **Public reprimand** ordered by the court on Sept. 19, 2008. JUDGMENT FINAL and EFFECTIVE on Sept. 19, 2008. *Gist:* Failure to timely withdraw from a representation when her physical condition materially impaired her ability to represent her client.

**Hany A. Zohdy**, Baton Rouge, (2008-OB-1575) **Reinstatement denied** by the court on Oct. 10, 2008. JUDGMENT FINAL and EFFECTIVE on Oct. 24, 2008.

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

	No. of Violations
Failing to act with reasonable diligence and promptness in representing a client .....	2
Failing to consult with the client as to the means by which the objectives of the representation are to be pursued.....	1
Failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished .....	1
Commingling personal funds with client and/or third-person funds in the trust account .....	1

Engaging in a dual representation of clients that constituted a concurrent conflict of interests.....

Failed to comply with bar membership requirements for continuing legal education and trust account disclosure .....

Failure to keep a client reasonably informed about the status of the legal matter .....

Failure to promptly comply with a client's reasonable requests for information .....


Maintaining personal funds in trust account in excess of amount allowable under Rules of Professional Conduct .....

Failing to give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued .....

**TOTAL INDIVIDUALS ADMONISHED.....**


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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Dec. 1, 2008.

Respondent	Disposition	Date Filed	Docket No.
Anthony M. Bertucci	[Reciprocal/consent] Suspension two years deferred.	12/11/08	04-3044 "B"
Mayer Finkelstein	Permanent resignation.	11/21/08	08-671 "K"
C. Blase McCarthy, Jr.	Reinstated.	11/6/08	08-1380 "S"
Dennis F. Nalick	Reinstated.	11/7/08	06-9085 "J"
Ashton R. O'Dwyer, Jr.	Suspended five years.	11/7/08	08-1492 "B"
Roy J. Rodney, Jr.	[Reciprocal] Suspension one year.	11/21/08	08-4211 "C"

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### Amendments to Federal Rules of Bankruptcy Procedure

On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was enacted into law. In light of BAPCPA, the Advisory Committee on Bankruptcy Rules designed interim rules to implement the changes of BAPCPA. After three years of interim rules, on Dec. 1, 2008, final amendments to the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules) took effect. While most of the final Bankruptcy Rules are similar to the interim rules, some variations do exist. The final Bankruptcy Rules relate to, among other things, consumer, business, health care, small business, direct appeal and cross-border issues.

Below are some examples of the amendments that took effect on Dec. 1, 2008. For a complete review, go to: [www.uscourts.gov/rules/supct0108/BK\\_Clean.pdf](http://www.uscourts.gov/rules/supct0108/BK_Clean.pdf).

#### Federal Rule of Bankruptcy Procedure 1020

Prior to the BAPCPA, a small business debtor could elect to be considered a small business. However, a small business debtor can no longer elect to be treated as a small business after the amendments. Therefore, the election provision set forth in Bankruptcy Rule 1020 has been eliminated.

Accordingly, Bankruptcy Rule 1020 is entirely new. It now provides that a small

business debtor in a chapter 11 bankruptcy shall state in its petition whether it is a small business, and an involuntary debtor must file within 15 days after the order for relief a statement as to whether it is a small business debtor. The case shall then proceed according to the debtor's statement unless and until the bankruptcy court determines otherwise.

The trustee or a party in interest is allowed to file an objection to the debtor's self-designation as a small business debtor. However, subdivision (b) pro-

vides a time limit for objecting to this designation. It provides, in part, that the trustee or a party in interest may file an objection to the debtor's statement not later than 30 days after the conclusion of the meeting of the creditors, or within 30 days after any amendment to the statement, whichever is later. Subdivision (d) provides the procedure for any objections to the self-designation as a small business or any requests for a determination as to whether a debtor constitutes a small business debtor.

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## Federal Rule of Bankruptcy Procedure 2002

Bankruptcy Rule 2002 is amended in several ways, but most importantly, subsection (p) was added to implement Section 1514(d) of the Bankruptcy Code, which requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim.

Specifically, subdivision (p)(1) provides that if a party in interest, or the trustee or the court finds that a notice mailed within the time prescribed by the Rules would not be sufficient to give a creditor with a foreign address reasonable notice, then the court may order that the notices be supplemented with notice by other means or that the notice period be enlarged.

Also, subdivision (p)(2) provides that unless the court for cause orders otherwise, a creditor with a foreign address to which notices are mailed shall be given

at least 30 days' notice of the time fixed for filing proofs of claims.

## Federal Rule of Bankruptcy Procedure 8001

Bankruptcy Rule 8001 has also been amended in several ways. One of the most important changes is the addition of subdivision (f). Subdivision (f) implements the 2005 amendments to 28 U.S.C. § 158(d), which authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A) (i)-(iii). The grounds for appeal under § 158(d)(2)(A) are:

- (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

- (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

- (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken

28 U.S.C.A. § 158.

Under Bankruptcy Rule 8001(f), certification can be made by a party to the judgment, order or decree, all of the appellants and appellees (if any) or the court on its own initiative. Certification is effective only when a timely appeal is commenced under subdivision (a) or (b) of Bankruptcy Rule 8001, and the notice of appeal has become effective under Bankruptcy Rule 8002. Subdivisions (f)(1)(B) and (f)(3)(F) require that all the appellants and appellees make their certification by filing the appropriate Official Form and that a party to the judgment, order or decree, or the court make its certification on a separate document. Subdivision (f)(2) provides that a certification shall be filed in the court where the matter is pending.



Finally, subdivision (f)(5) requires that any party that intends to pursue the appeal in a court of appeals must seek the appeal court's permission in accordance with Rule 5 of the Federal Rules of Appellate Procedure within 30 days after the certification has become effective under 8001(f).

—**Tristan E. Manthey**

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## Arbitration Agreement

In *Chase Bank USA, N.A. v. Leggio*, 43,567 (La. App. 2 Cir. 11/19/08), \_\_\_ So.2d \_\_\_, on appeal from Shreveport City Court, the 2nd Circuit reversed and rendered judgment rejecting Chase Bank USA, NA's efforts to use an arbitration award from National Arbitration Forum (NAF), where Chase could not prove Leggio had ever agreed to arbitrate. When contacted by a debt collector, Leggio had advised Chase and the debt collector that he never agreed to arbitrate.

Instead of filing a motion to compel arbitration and asking the court to consider evidence, if any, of an arbitration agreement, Chase and NAF proceeded with the

arbitration, and NAF issued an award for Chase. The city court judge affirmed.

Chase argued that Leggio had to take action to vacate the NAF award within 90 days of its rendition.

The 2nd Circuit found that Leggio was not constrained to a 90-day window. The "gateway" issue of whether there is an agreement to arbitrate is a "first and crucial step in any confirmation proceeding before a court. . . . The time limitation imposed by Section 12 [of the FAA] is not at issue unless there is a valid written agreement to arbitrate." In dicta, the court reminded us that an arbitration clause may be attacked "upon any grounds that could be used for revocation of a contract."

In this case, Chase submitted to the trial court an unsigned, undated, generic "Cardmember Agreement" and claimed that it applied to Leggio and was part of his agreement. Leggio denied receipt of or agreement to the terms of that exemplar. The court also addressed Chase's argument that Leggio must have impliedly consented through use of the credit card,

citing *Bank of Louisiana v. Berry*, 94-0576 (La. App. 5 Cir. 12/14/94), 648 So.2d 991, a case involving implied acceptance by a non-cardholder who had authority to use and who made charges on the cardholder's charge card and account, thereby impliedly consenting to pay for the charges he made. Indeed, the non-party's use of the card in *Berry* and receipt of goods and services on another person's credit account could give rise to the non-party's [purchaser's] liability under *Berry's* facts, but *Berry* has no application to Leggio.

The *Leggio* court specifically held that:

the mere use of a credit card would not logically give rise to the presumption that the consumer thereby understood that he was consenting to arbitration of any dispute concerning such use, particularly when there has not been a showing that the debtor received notice of the alleged arbitration clause.

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The unsigned, undated, generic Cardmember Agreement had no signs or indications to tie it to Leggio. The court concluded that there was no valid arbitration agreement between the parties.

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See page 326.



### Environmental Appeals Board Decision and Aftermath May Affect Air Permitting in Louisiana

A recent decision by the Environmental Appeals Board (EAB) coupled with EPA’s failure to establish a coherent regulatory framework for greenhouse gas (GHG) regulation may subject air permits in Louisiana and elsewhere to possible legal challenges.

#### The *Deseret* Decision

In *In Re Deseret Power Electric Cooperative*, PSD App. No. 07-03 (Nov. 13, 2008), the EAB reversed EPA’s issuance of a prevention of significant deteriora-

tion (PSD) permit on the grounds that EPA failed to include an emissions limit for CO<sub>2</sub> based on best available control technology (BACT). The Clean Air Act (CAA) prohibits the issuance of a PSD permit unless it includes a BACT determination for “each pollutant subject to regulation” under the Act. In *Massachusetts v. EPA.*, 127 S.Ct. 1438 (2007), the Supreme Court determined that CO<sub>2</sub> is a “pollutant” under the CAA but left open the question of whether CO<sub>2</sub> is actually “subject to regulation” under the Act. The plaintiffs in *Deseret* argued that the term “subject to regulation” is unambiguous and that CO<sub>2</sub> is subject to regulation under the CAA because the Act includes regulations requiring monitoring and reporting of CO<sub>2</sub> emissions. EPA, on the other hand, argued that the term “subject to regulation” is open to interpretation by the agency and that, historically, EPA has interpreted the term to describe pollutants presently subject to a provision requiring actual control of emissions of that pollutant.

Trial Counsel.

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The EAB found that the term “subject to regulation” is not so clear as to preclude EPA from exercising discretion in interpreting its meaning. Thus, under the CAA, EPA is not *compelled* to apply BACT to CO<sub>2</sub>, which is subject only to monitoring and reporting requirements. Nevertheless, the EAB found that EPA’s rationale for not imposing a CO<sub>2</sub> BACT limit in this case, specifically, its reliance on a historical agency interpretation of the phrase, was not supported by the administrative record. The EAB, therefore, remanded the case for EPA to reconsider whether to impose a CO<sub>2</sub> BACT limit and to develop an adequate record for its decision.

#### Response to *Deseret*

On Dec. 12, 2008, the Louisiana Attorney General’s Office issued an advisory opinion stating that unless and until EPA classifies CO<sub>2</sub> as a pollutant subject to regulation under the CAA, it is the opinion of the attorney general that Louisiana is under no duty to include a BACT emission limitation for CO<sub>2</sub> in its PSD permit program. *See Op. La. Att’y Gen. 08-0320 (Dec. 12, 2008)*. Subsequently, on Dec. 18, 2008, EPA Administrator Stephen Johnson issued a response to the *Deseret* decision. *See Memorandum from Stephen Johnson, EPA Administrator to EPA Regional Administrators, EPA’s Interpretation of*

Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program (Dec. 18 2008). The stated purpose of the response memorandum is to establish a clear interpretation of EPA’s regulations in order to ensure consistent implementation of the PSD program. The memorandum reiterates EPA’s position that pollutants “subject to regulation” do not include pollutants for which CAA regulations require only monitoring or reporting. The memorandum also requests that regional offices implement this position in all PSD permitting actions.

#### Uncertainty Remains

Despite EPA’s response to *Deseret*, permit applicants throughout the country still face considerable uncertainty. First, it is unclear whether EPA’s response memorandum constitutes an adequate justification for EPA’s decision under the holding in *Deseret*. Thus, individuals challenging PSD permits that lack CO<sub>2</sub> BACT determinations could presumably argue that despite EPA’s proposed explanation, CO<sub>2</sub> is in fact “subject to regulation” under the CAA.

Furthermore, the conclusions reached in EPA’s response memorandum are subject to change. On June 11, 2008, in the wake of *Massachusetts v. EPA*, EPA issued an Advanced Notice of Proposed Rulemaking seeking public comment on

the regulation of GHG emissions under the CAA. *See Advance Notice of Proposed Rulemaking, Regulating Greenhouse Gas Emissions under the Clean Air Act (EPA-HQ-OAR-2008-0318; FRL-8694-2)*. The comment period ended on Nov. 28, 2008, and EPA has not yet published regulations implementing the *Massachusetts v. EPA* decision. As explained in the response memorandum to *Deseret*, if, after completing the rule-making process, EPA determines that it should establish controls for GHGs under the CAA, such a conclusion could lead to the requirement that PSD permits include a BACT determination for CO<sub>2</sub>.

Finally, at least one state court has decided that agencies must include a BACT limit for CO<sub>2</sub> when issuing PSD permits. In *Friends of the Chattahoochee, Inc. v. Longleaf Energy Associates*, 2008-CV-146398 (June 30, 2008), which was decided five months before *Deseret*, the Superior Court of Fulton County, Georgia, found that in light of existing CO<sub>2</sub> monitoring requirements as well as other CAA regulations that address CO<sub>2</sub>, CO<sub>2</sub> is “subject to regulation” under the Act. Thus, the issuance of a PSD permit requires a BACT determination for CO<sub>2</sub>. Although the *Longleaf* decision has been appealed to the Georgia Court of Appeals, parties could use the logic of the Superior Court’s decision to challenge PSD permits that lack a CO<sub>2</sub> BACT limit.

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It appears that the only way clarity can be restored to the permitting process is for EPA to complete the rule-making process and set forth a coherent regulatory response to *Massachusetts v. EPA* or for Congress to step forward and enact new legislation that focuses specifically on the regulation of GHGs. Until then, permit applicants will be forced to determine whether and how to address CO<sub>2</sub> in their applications without risking potential permit challenges.

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## Custody

**Wolfe v. Hanson**, 06-1434 (La. App. 1 Cir. 5/2/08), 991 So.2d 13, *writ denied*, 983 So.2d 403.

The court of appeal amended the trial court's decision to remove Ms. Hanson as the domiciliary parent, and not to name a domiciliary parent, finding that a trial court can decline to name a domiciliary parent only where an implementation order is in place, or where good cause is shown. Here, there was no implementa-

tion order made, and the parties' history of non-cooperation with each other required that one be named domiciliary parent in order to resolve expected continued conflicts. Because Ms. Hanson had previously acted as the domiciliary parent, the court of appeal determined that she should remain so. Two dissenters argued that the matter should have been remanded for the trial court to establish an implementation order.

**Dufresne v. Dufresne**, 08-0215 (La. App. 5 Cir. 9/16/08), 992 So.2d 579, *writ denied*, 08-2843 (La. 12/17/08).

Once the court finds a history of domestic violence, the provisions of the Post-Separation Family Violence Relief Act become operative. Thus, because the trial court believed Ms. Dufresne and her witnesses and not Mr. Dufresne, its award of sole custody to her with supervised visitation to him was affirmed. Even if the statute did not apply because she did not plead under it, the court can order supervised visitation if needed for the child's safety or in the child's best interest. He was not denied due process because he knew the hearing was on fault for final spousal support, and the first several witnesses testified as to abuse, with no objection, and her pleadings were expanded by the testimony. The court of appeal vacated and remanded the attorney's fee award for the trial court to determine the fees associated with the domestic violence issues. The child support award was remanded because it was unclear if the parties were on or off the Guidelines. Interim spousal support was affirmed. The trial court was

also affirmed in finding her free from fault. The final spousal support award was vacated and remanded because there was no showing that the court considered her needs or the other relevant factors in making its award. There was no abuse of discretion in the court's not awarding credit for payments of tuition when such payments were not part of the initial child support award.

**Kees v. Kees**, 08-0124 (La. App. 4 Cir. 8/13/08), 992 So.2d 568.

The court of appeal affirmed the trial court's award of joint custody with the father as the domiciliary parent because, although the article 134 factors and the custody evaluator's report were "neutral," the children, one of whom was autistic, had thrived during the interim placement with the father, which was serving their best interests. Her rights to access to the children would be protected by the plan of implementation. Transfer of venue to Calcasieu Parish was affirmed, where he had relocated after Hurricane Katrina, and she had also relocated to Beaumont, Texas.

## Child Support

**Scott v. Scott**, 43,455 (La. App. 2 Cir. 8/13/08), 989 So.2d 290.

The trial court did not err in finding that Mr. Scott was not in arrears or in contempt because the parties agreed that he, instead of Ms. Scott, would begin carrying health insurance for the children and would reduce his monthly child support by \$50. When a party has control over a closely held corporation, child support is not to be based on the salary he chooses to pay himself, but on the gross receipts less ordinary and necessary business expenses, which can be shown by the federal K-1 tax form information claimed on the party's personal tax return. Gross income for child support purposes excludes the "probable need" for the business to retain some income for business acquisitions or other reasons. After calculating the parties' combined gross income at \$28,180 per month, the court of appeal noted that, at the top of the Guidelines amount of \$20,000, the child support for two children would be \$2,647, and so fixed the child

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support at \$3,000, without explanation. Ms. Scott's request for court costs was premature as no hearing on that issue had yet been had in the trial court.

**Cory v. Cory**, 43,447 (La. App. 2 Cir. 8/13/08), 989 So.2d 855.

Domestic abuse occurred because Ms. Cory was "in reasonable fear of a battery and unlawful touching." Even though the court allowed the testimony of a witness who did not comply with the sequestration order, there was no proof of prejudice or that her testimony had been tainted. There was no abuse in basing Mr. Cory's income for child support on his earning potential based on his previous income even though he was presently receiving unemployment.

### Property

**Goines v. Goines**, 08-0042 (La. App. 5 Cir. 6/19/08), 989 So.2d 794.

Mr. Goines' affidavit signed with Ms. Goines to refinance the home and his several descriptive lists and motions stating

that the home, which was purchased before his marriage, was community property were sufficient to classify the home as community property. The descriptive lists were held to be judicial confessions.

**In re Succession of Hendrix**, 08-0086 (La. App. 5 Cir. 8/19/08), 990 So.2d 742.

Ms. Wactor (Hendrix's second wife) was in good faith when she married Mr. Hendrix, who was not yet divorced from his first wife, under Mississippi law. After his first wife died, the impediment of the prior marriage was removed, and the marriage between Ms. Wactor and Mr. Hendrix was deemed valid. The trial court ruled in favor of Ms. Wactor, finding that Ms. Wactor was a putative wife under Louisiana law. While the trial court had applied the wrong law, the conclusion as to her right to property acquired by him during the marriage was correct. Donations by Ms. Pevey (a third wife) were thus invalid because the property was community property of Ms. Wactor and Mr. Hendrix. Ms. Pevey did not acquire

the property by 10 years acquisitive prescription because she was not in good faith when she acquired title as she knew or should have known that Mr. Hendrix was still married to Ms. Wactor.

**Champagne v. Champagne**, 07-1078 (La. App. 1 Cir. 6/27/08), 992 So.2d 1072.

Mr. Champagne successfully proved that stock inherited from his father was his separate property, even though it eventually became registered in his and Ms. Champagne's names; however, he failed to rebut the presumption of community regarding the one-half interest in the stock received from his mother, which was thus treated as community property.

—David M. Prados

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## United States Supreme Court

*United States v. Eurodif S.A., et al* (Docket No. 07-1059) c/w *USEC, Inc. v. Eurodif S.A.*, (Docket No. 07-1078).

On Nov. 4, 2008, the United States Supreme Court conducted oral argument in the first antidumping to reach the court. The two consolidated appeals are especially significant insofar as they provide the court with its first opportunity to interpret and potentially significantly expand U.S. antidumping law. The antidumping orders at issue involve imports of low enriched uranium from various countries. The U.S. Court of International Trade and Court of Appeals for the Federal Circuit overturned a decision by the Department of Commerce, ruling that contracts for the enrichment of uranium entered into by U.S. buyers and Eurodif, S.A. (France) were contracts for services, rather than contracts for sale of goods. U.S. antidumping laws only pertain to goods, not services. Accordingly, the low enriched uranium processed under the subject contracts would not enter into the Department of Commerce's dumping calculation.

The Supreme Court's ruling could have a major impact on the interpretation and application of U.S. trade law, as it may further define and expand the scope of products and processes that are subject to antidump-

ing law. This case is also important from an administrative law perspective as the Supreme Court is reviewing the decision under the *Chevron* deference standard, and its decision may provide further guidance on the measure of deference courts owe to administrative agency decisions.

*Kay v. United States*, 129 S.Ct. 42 (2008).

On Oct. 6, 2008, the United States Supreme Court denied a petition for writ of certiorari in a case involving the scope of liability under the Foreign Corrupt Practices Act (FCPA). The decision upholds the U.S. 5th Circuit Court of Appeals' decision regarding bribes made by petitioners David Kay and Douglas Murphy. Petitioners were executives at an American public corporation exporting rice to, among other places, Haiti. At the time, Haiti maintained significant duties and taxes on imported rice and petitioners authorized payments to Haitian officials in order to reduce the corporation's tax liability in Haiti.

The company self-reported the payments, and petitioners were indicted on, *inter alia*, violations of the anti-bribery provision of the FCPA that prohibits willful bribing of foreign officials to "obtain or retain business." Petitioners were convicted, and their primary argument on appeal was that the bribes were not made to "obtain or retain business" but rather were offered only to reduce foreign tax liability. The 5th Circuit rejected their arguments, finding that any payment to a foreign official that lowers costs to a company can provide an unfair advantage and therefore assists the company in "obtaining or retaining" business in violation of the FCPA. The

Supreme Court's denial of cert provides further evidence of the expansive enforcement of the FCPA.

## Department of Homeland Security: "10 + 2" Initiative

The Department of Homeland Security (DHS) issued an interim final rule on Nov. 24, 2008, regarding the "10 + 2" initiative for importers and carriers. A final rule is expected during the second half of 2009. The "10 + 2" rule is designed to enhance the security of inbound cargo by requiring importers to electronically submit 10 pieces of information known as "data elements" regarding cargo to Customs and Border Protection before lading, and requires the actual cargo carrier to submit two additional pieces of information. DHS' interim rule provides a six-month pilot program with a subsequent review for its impact on business costs.

## Committee on Foreign Investment in the United States

*Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States*, 73 Federal Register 74567 (Dec. 8, 2008).

The U.S. Treasury Department, as chair of the Committee on Foreign Investment in the United States (CFIUS), has for the first time provided guidance on what types of mergers, acquisitions and takeovers by foreign persons may pose "national security" considerations triggering CFIUS investigation. The guidance, published in the Federal Register, outlines some of the transactions that have previously caused national security considerations. CFIUS indicates that a significant portion of the transactions subject to review involve U.S. businesses engaged in research, development, production or sale of technology, goods, services or software subject to U.S. export control laws. The following is a brief outline of some of those transactions.

► Transactions involving critical U.S. infrastructure, including energy.

► U.S. businesses producing advanced technologies that are useful in defending U.S. national security. Most of the prod-

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ucts include semiconductors and other components that have so-called “dual use” military and commercial applications.

► U.S. businesses that engage in transactions as prime contractors or subcontractors to provide products and services to agencies of the United States, state and local governments.

► U.S. businesses engaged in transactions involving domestic transportation, including maritime carriers, port terminal operations and aviation maintenance and repair.

► Transactions involving U.S. businesses that can directly affect the U.S. financial system.

► U.S. businesses engaged in all aspects of the energy sector value chain, including exploitation of natural resources, transportation of natural resources, power conversion and provision of power.

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### Prescription Post-Borel

**Pickett v. Willis-Knighton Pierremont Health Ctr.**, 43,692 (La. App. 2 Cir. 11/5/08), \_\_\_ So.2d \_\_\_.

Dr. Cline performed a hysterectomy on Mrs. Pickett on March 12, 2001, at Willis-Knighton Health Center. Complications developed. Mr. and Mrs. Pickett hired counsel, who on August 17, 2001, requested a narrative report from Dr. Cline. Based on that report, a medical-review-panel request was filed on Sept. 21, naming only the hospital for its negligence in providing a defective suture.

A medical-review panel rendered an opinion that found no evidence of a defective suture, as claimed by Dr. Cline, but found that the hospital was negligent

through the actions of its nurse-employees. The panel also found that two anesthesiologists had breached the standard of care. Plaintiffs’ counsel did not receive the opinion until July 11, 2005.

On March 27, 2006, the plaintiffs filed a lawsuit against the hospital and a “supplemental claim” with the PCF, in which they named Dr. Cline and the two anesthesiologists as panel-defendants. The Picketts asserted that Dr. Cline was negligent in the performance of the hysterectomy and that she attempted to conceal her fault by blaming a defective suture for Mrs. Pickett’s injuries.

Dr. Cline filed an exception of prescription. The trial court granted the exception, relying on the initial *Borel v. Young* opinion, 07-0419 (La. 11/27/07), 989 So.2d 42, which found La. R.S. 9:2658 to be peremptive. The plaintiffs contended on appeal that the trial court erred in relying on *Borel* to find that their claims against Dr. Cline were perempted. The trial judge had relied on the initial Supreme Court opinion in *Borel* when he granted the exception, but an application for rehearing



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was pending at the time of the trial court's ruling. On rehearing, the Supreme Court found that it erred in its original opinion when it found the statute to be peremptive; on rehearing the court found that La. R.S. 9:2658 is prescriptive. The *Pickett* court decided that the granting of the exception of prescription was incorrect, and it undertook to determine whether the plaintiffs' claims against Dr. Cline were timely filed.

The supplemental PCF claim against Dr. Cline was filed in 2006, more than five years after the alleged malpractice. On its face, the claim was prescribed. The burden thus fell upon the Picketts to prove that their claim was suspended, interrupted or renounced because *Borel* also stated that prescription rules in medical malpractice cases are governed by the Medical Malpractice Act (MMA) to the exclusion of the general Civil Code articles on interruption of prescription. The court's analysis, therefore, focused on whether prescription had been suspended rather than interrupted.

The court of appeal noted that La. R.S. 40:1299.47(A)(2)(a) involves suspension of malpractice actions. The statute states that a request for a panel suspends the time

within which suit must be filed until 90 days after notification of the panel's opinion and suspends the running of prescription against all joint and solidary obligors and all joint tort-feasors, to the same extent prescription is suspended against the parties before the medical-review panel.

In the instant case, the panel request naming the hospital was filed 194 days after the alleged malpractice (171 days before prescription tolled), and this suspended the running of prescription against all joint and solidary obligors, such as Dr. Cline, during panel proceedings. Furthermore, the MMA allows for another 90-day suspension period following notification of the panel's decision (the notification having occurred on July 11, 2005). On March 27, 2006, 259 days after the July notification of the panel's opinion, the plaintiffs filed their supplemental claim with the PCF, which named Dr. Cline and the two anesthesiologists.

The *Pickett* court added the 90 days after notification of the panel's opinion to the 171 days of unused prescription time and ruled that because the plaintiffs had filed their claim against Dr. Cline within 261 days of notification of the panel's opinion,

their claim had not prescribed.

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



### **IRS No Longer “Disregards” an Otherwise “Disregarded” Entity for Employment Tax Purposes**

In Treasury Decision 9356, the IRS published final regulations that change the method in which single-owner disregarded entities report and remit employment taxes. Now, both Qualified Subchapter S Subsidiaries (QSubs) and eligible single-owner disregarded entities are to be treated as separate entities for em-

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ployment tax and reporting purposes and so will be required to obtain an employer identification number. The new regulations are applicable to wages paid on or after Jan. 1, 2009. They make clear that the disregarded entities will be treated as entities separate from their owners only for employment tax purposes but will still be “disregarded” for all other tax purposes and that the owner of a disregarded entity treated as sole proprietorship is liable for self-employment tax.

Services performed for a disregarded entity owned by an organization exempt under IRC § 501(c)(3) remain excepted under IRC § 3306(c)(8) from the definition of employment for Federal Unemployment Tax Act (FUTA) purposes so, although the disregarded entity will be regarded for employment tax purposes, the § 501(c)(3) organization will not be subject to FUTA tax on wages it pays its employees.

Finally, the IRS addressed the applicability of the backup withholding provisions of IRC § 3406 to disregarded entities as they would apply, for example, where a payee refused to provide a valid taxpayer identification number for a payment reportable on a Form 1099, and held that the owner of the disregarded entity is responsible for any backup withholding that is required with respect to reportable payments considered made by the owner.

The regulations do not address the information reporting requirements for QSubs other than to state that, under § 1361(b)(3)(E), disregarded entities that are QSubs are subject to information reporting requirements on non-wage payments unless the Secretary provides otherwise.

### **If Disregarded Entity Didn't Remit Payroll Taxes, Owner May Still Be Held Personally Liable**

In *Kandi v. United States*, (unpublished in Federal Reporter) 102 A.F.T.R.2d 2008-6373, 2008-2 USTC P 50,599 (9 Cir. 2008), the United States 9th Circuit Court of Appeals has ruled that the sole owner of a limited liability company (LLC) was personally liable for the LLC's unpaid payroll taxes, despite acknowledging that the Internal Revenue Code does not clearly address the tax treatment of LLCs. The court reviewed both IRC § 7701 which does not define a “limited liability company,” and the “check the box” regulations of Treas. Reg. § 301.7701-2(a), which allows the owner of an unincorporated business entity to elect to be classified as either a corporation or as a sole proprietorship (to be “disregarded as an entity separate from its owner”), to find that the IRS's interpretation of the

relevant law was reasonable. The court stated that “the regulations. . . were a reasonable attempt. . . to fill in gaps left in the statute regarding the taxation of LLCs and other new forms of business entities.” The court noted that, although the IRS has changed its position and now will require LLCs to obtain taxpayer identification numbers and to be responsible for collecting and remitting payroll taxes (see the discussion of Treasury Decision 9356 above), the new treatment is applicable only to taxes on wages paid on or after Jan. 1, 2009, and so would not apply to unpaid payroll taxes from the periods at issue in that case.

### **“Tax Matters Person” to Represent the Taxpayer Before the Louisiana Department of Revenue**

As a result of the decision in *Bridges v. X Communications, Inc.*, 861 So.2d 592 (La. App. 5 Cir. 2003), which created uncertainty as to when an individual was able to legally bind a corporate taxpayer to agreements with the Department, the Legislature enacted La. R.S. 7:1671(D). Effective Oct. 20, 2008, the Department of Revenue has adopted an emergency administrative rule (La. Admin. Code § 61:III.501) in accordance with the new

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law, which describes procedures available to legal entities to elect to designate a tax-matters person to represent the entity before the Department. The designation is accomplished by the filing of a written statement with the caption, "Designation of Tax Matters Person," with any Department of Revenue employee requesting it. The designation should identify the types of taxes covered as well as the taxable periods to which the designation applies. The designated tax-matters person may be authorized to sign returns, documents or forms and to act on behalf of the legal entity or any of its affiliates before the Department.

### **If TMP Executes an Extension of the Statute, Prescription May Be Suspended but Not Waived**

In *Bridges v. Mosaic Global Holdings, Inc.*, 08-0113 (La. App. 1 Cir. 10/24/08), \_\_\_ So.2d \_\_\_, the 1st Circuit reviewed the language of the standard extension form in use by the Department of Revenue to find that the language creates a "suspension" of prescription rather than a "waiver," so as to extend the time that the Department has to pursue a taxpayer by one day in that case. The court concluded

that because each of the agreements discussed focused on Dec. 31 as the date from which prescription would be suspended, when the period of suspension terminated on Dec. 31, 2005, prescription commenced to run again, with one day left on the three-year prescriptive period, which was no longer suspended. So the Department's filing was timely because that one day fell on a legal holiday and the filing was on the first business day thereafter, *i.e.*, Jan. 3, 2006.

Mosaic Global Holdings, Inc. was the successor through a merger and a name change to Freeport-McMoran Inc. (Freeport), a Delaware corporation, which ceased being qualified to do business in Louisiana after Dec. 22, 1997. The Department of Revenue filed suit against Mosaic on Jan. 3, 2006, alleging that the entity owed corporate income taxes for the period ending Dec. 22, 1997. Mosaic argued that the prescription had run on its timely filed return for that tax period, but the Department argued that the statute was extended until April 6, 2006. Four "Agreement[s] to Suspend Prescription of Louisiana Corporation Income Tax," executed between the taxpayer and the Department, and a letter dated Sept. 27, 2001, from the Department referring to the "Agreement[s] to Suspend Prescription" as "waivers of prescription" were

put into evidence.

The Louisiana 1st Circuit Court of Appeal cited both Article VII, § 16A of the Louisiana Constitution, which generally provides for a three-year prescriptive period from Dec. 31 of the year in which taxes are due but "may be interrupted or suspended as provided by law," and La. Civ.C. art. 3472, which provides that "[t]he period of suspension is not counted toward accrual of prescription. Prescription commences to run again upon the termination of the period of suspension." The court held that the parties intended to suspend prescription for one year from the last day of the prescriptive period and so the Department did not waive its right to timely file a lawsuit to collect the taxes after the suspensions ended. The court noted that the agreements did not use the word "waiver," and so the court was unwilling to consider the agreements to be "waivers," as referred to by the Department in its cover letter to the agreements.

—**Jaye A. Calhoun**

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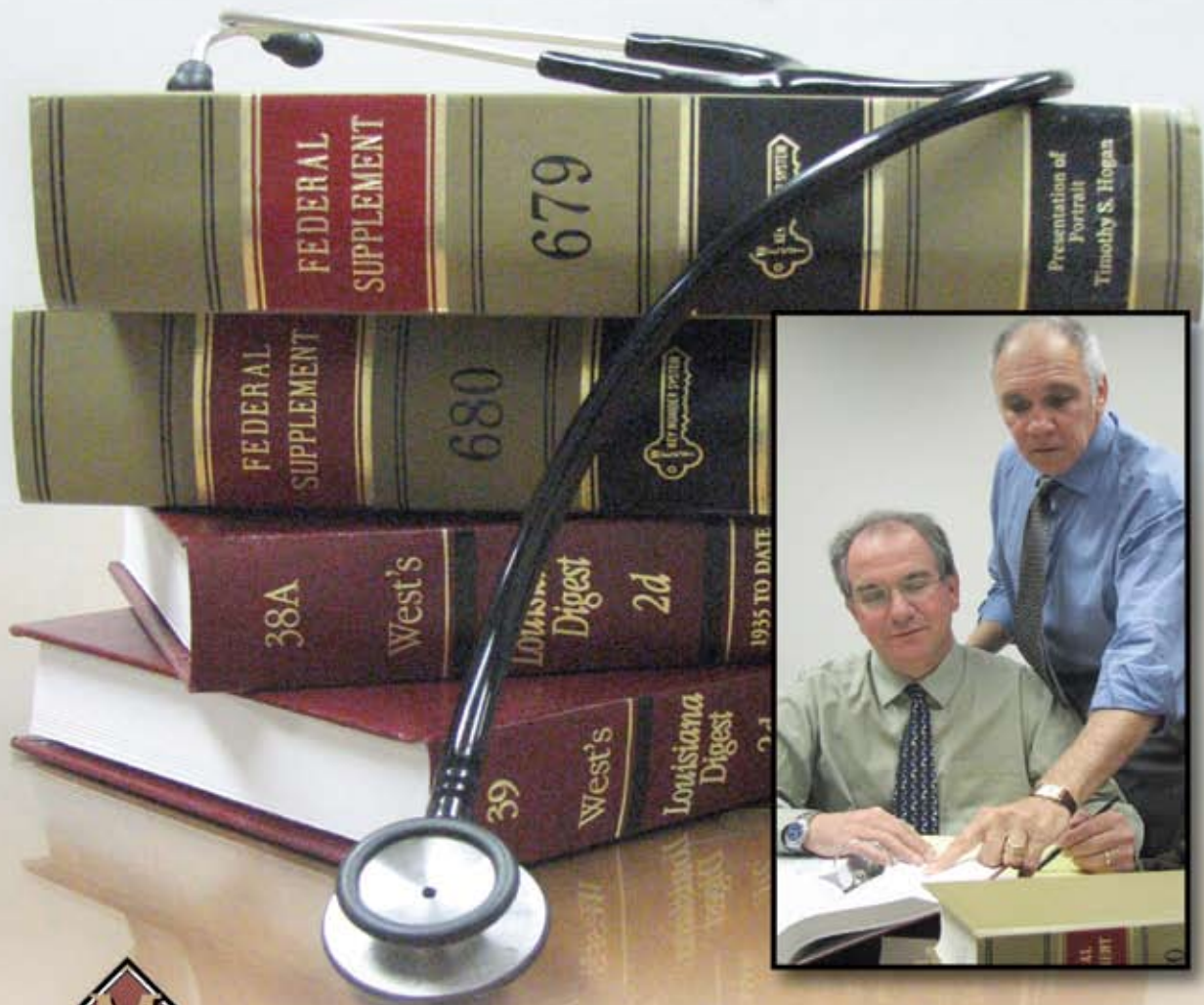
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## CHAIR'S MESSAGE

### Change the Subject, Please

By Valerie Briggs Bargas



Valerie  
Briggs Bargas

As lawyers, I believe we have a certain desire to challenge those who think differently than we do. It is our job, right?! Sometimes, though, it can get personal. I believe that discussing heated topics, like politics, can result in tragic professionalism issues. It can ruin friendships and business relationships. Why? Because lawyers take their politics very seriously. With the change in the political landscape, there is a new “perceived” opening to discuss the issues that plague our country in our current political atmosphere. Do not get drawn into this debate to your detriment.

Politics is not a source of small talk. Whether or not it's right, people judge one another based on their personal beliefs. As young lawyers, we tend to be an animated and passionate group. Therefore, we are most likely to suffer the consequences of inadvertently disclosing information which can only do us harm. You are much better off to listen to old war stories from other attorneys than to change the subject to the current “stimulus package,” or respond to that inviting question, “So, what do you think about the new administration?”

If you choose to navigate those waters, remember the following:

► When it gets heated, change the topic. “How ‘bout those Saints (or Tigers)?” This comment is sure to evoke a healthy passion that equally rises to the level of most lawyers’ political leanings.

► Try to avoid stereotypical analogies: All Democrats (or all Republicans) are \_\_\_\_\_. If you must discuss the issue, don't make it personal.

► End the discussion with a good laugh or joke that breaks up the seriousness of the topic. This benefits you in two ways: it shows that you have a sense of humor and you do not take yourself too seriously.

## YOUNG LAWYER SPOTLIGHT

### Olita Magee Domingue Scott



The Louisiana State Bar Association's Young Lawyers Section Council is spotlighting young lawyer Olita Magee Domingue from Scott.

A native of Lafayette, Domingue is a solo practitioner in the Law Firm of Olita Magee Domingue, L.L.C. She earned a bachelor of criminal justice degree from Loyola University in 2000 and her JD degree from Loyola University of College of Law in 2003. While in law school, she was a member of the Moot Court Team and president of the Board of Advocates/Trial Advocacy Team. In addition to concentrating on her studies, she worked as a law clerk and investigator for the Jefferson Parish District Attorney's Office. She also was a volunteer teacher at the Harbor Police Academy.

Domingue was admitted to practice in Louisiana in 2005. She is a member of the Lafayette Bar Association, the Acadiana Inn of Court and is actively involved in all aspects of the Lafayette Young Lawyers Association. She is a committee member for the Lafayette Volunteer Lawyers, a member of the board of directors for the Jefferson Parish Children's Advocacy Center and secretary/treasurer of the Bayou Vermillion District Board of Commissioners.

Her dedication to helping her community has led her to a future in public service. Following law school graduation, she clerked for Judge Fredericka H. Wicker in 24th Judicial District Court. Upon completion of her clerkship, she worked as a public defender for the 15th Judicial District Court's Indigent Defendant's Office. Later, she began employment in the private sector, becoming involved in numerous pro bono activities. Recently, she was employed as a law clerk for Judge Jules Edwards of the 15th Judicial District Court in Lafayette.

Domingue has twice received the Lafayette Parish Bar Association's highest award for pro bono advocacy, the Top Lafayette Volunteer Lawyer Pro Bono Award. She has continued her volunteer efforts by becoming involved in the Homeless Experience Legal Protection (H.E.L.P.) program, sponsored by the Lafayette Volunteer Lawyers. In 2007, she volunteered for 18 days, which equated to two full months of service. She also has been honored by the Lafayette Volunteer Lawyers as the Outstanding Pro Bono Attorney for 2007. Her strong commitment to the community and pro bono activities is providing a model example for all attorneys.

She returned to the private practice of law in July 2008 in Lafayette and focuses on family and criminal law.

She and her husband, Terry Domingue, reside in Scott, La.

## LOCAL AFFILIATES

### NOBA YLS Conducts Two Fundraisers

The New Orleans Bar Association's Young Lawyers Section (NOBA YLS) conducted two fundraisers last fall — its annual golf tournament in October and a charity poker tournament in September.

More than 100 lawyers, judges and friends participated in the golf tournament, which raised \$17,000 to support the New Orleans Legal Assistance Corp., an organization providing free legal assistance for the indigent.

The team from Liskow and Lewis finished first, with the teams from Taggart Morton and Jones Walker placing second and third, respectively. Larry Demmons chaired the golf tournament.

The first charity poker tournament raised more than \$13,000 for the New Orleans Pro Bono Project, which provides civil legal services to the indigent and disabled. More than 120 lawyers, judges, law students and members of the legal community participated. Tara Richard and Conrad Meyer co-chaired the event.



Participating in the New Orleans Bar Association Young Lawyers Section's golf tournament were, from left, Ross Molina, Lloyd Demmons, Larry Demmons (chair) and Laef Lowther.



The New Orleans Bar Association's Young Lawyers Section organized the Legal and Health Care Fair at Touro Infirmary in November 2008. The YLS used public service grant funds received from the American Bar Association. The fair, open to the public, provided free legal assistance and information on living wills, powers of attorney, organ and tissue donation, and cancer screening. Attorneys from the New Orleans Pro Bono Project, New Orleans Legal Assistance Corp. and GNO Fair Housing also participated, as well as representatives from Touro and the Louisiana Organ Procurement Agency. Among those participating in the fair were, front row from left, Debbie Reed, Amanda Furst and Natacha Hutchinson. Back row from left, Dexter Fields, Chris Ralston, Joshua Holmes, Jesse Lind, Angela Garrett, Margot Stouse and Kate Scott.

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## Nomination Deadline is March 20, 2009: Young Lawyers Section Awards Nomination Form

The Young Lawyers Section is accepting nominations for the following awards:

- **Michaëlle Pitard Wynne Professionalism Award.** This award is given to 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.
- **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made outstanding contributions to the legal profession and his/her community.
- **Service to the Public Award.** This award is given to a local affiliate organization that has implemented a program or provided a service to that local community by which the non-attorney public has been helped.
- **Service to the Bar Award.** This award is given to a local affiliate organization that has implemented a program or provided a service that has benefited and/or enhanced the attorney community in that area.
- **YLS Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community.

All entries must include a nomination form, which may not exceed 10 pages. In addition, entries should include a current photo and résumé of the nominee, newspaper clippings, letters of support and other materials pertinent to the nomination. Nomination packets must be submitted to **Brad J. Gegenheimer, Chair, LSBA Young Lawyers Section Awards Committee, Grant & Barrow, PLC, 238 Huey P. Long Avenue, Gretna, LA 70054 or LSBAYLS@gmail.com.** Any nomination packet that is incomplete or is not received or postmarked on or before **March 20, 2009**, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets. All winners will be announced at the Louisiana State Bar Association

Annual Meeting in Destin, Fla. in June 2009.

1. Award nominee is being nominated for: (Individuals/local affiliate organizations may be nominated for more than one award. Please check all that apply. Candidates will only be considered for the award(s) for which they have been nominated.)

- |   |   |
|---|---|
| <input type="checkbox"/> Michaëlle Pitard Wynne Professionalism | <input type="checkbox"/> Outstanding Young Lawyer |
| <input type="checkbox"/> Service to the Public                  | <input type="checkbox"/> Service to the Bar       |
| <input type="checkbox"/> YLS Pro Bono                           |   |

2. Nominator Information:

Name \_\_\_\_\_  
 Address/State/Zip \_\_\_\_\_  
 Telephone/Fax \_\_\_\_\_  
 E-mail \_\_\_\_\_

3. Nominee Information:

Name \_\_\_\_\_  
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 Birth Date \_\_\_\_\_  
 Marital Status/Family Information \_\_\_\_\_

4. Describe the nominee's service to the public for the past five years (or longer, if applicable). Include details as to the nature of the service, value to the public, amount of time required, whether nominee's activities are a part of his/her job duties, and other pertinent information.

5. Describe the nominee's service to the Louisiana State Bar Association Young Lawyers Section for the past five years.

6. Describe the nominee's service to the legal profession for the past five years.

7. Describe the nominee's particular awards and achievements during his/her career.

8. Provide a general description of the nominee's law practice.

9. Describe what has made the nominee outstanding (answer for Outstanding Young Lawyer Award only).

10. Has the nominee overcome challenges (handicaps, limited resources, etc.)?

11. Why do you believe your nominee deserves this award?

12. Provide other significant information concerning the nominee.

For more information, contact Brad J. Gegenheimer, Chair, LSBA Young Lawyers Section Awards Committee, Grant & Barrow, PLC, 238 Huey P. Long Avenue, Gretna, LA 70054 or LSBAYLS@gmail.com.

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By Robert Gunn, Louisiana Supreme Court

NEW JUDGES... RE-ELECTED JUDGES

## New Chief Justice

Louisiana Supreme Court Justice Catherine D. (Kitty) Kimball, the first woman elected to the state Supreme Court, was re-elected to her 5th District seat and became the state's first woman chief justice on Jan. 1.

## Appellate Judges Re-Elected

The following state appellate court judges were re-elected: 1st Circuit, Judge John T. Pettigrew; 2nd Circuit, Judges John Larry Lolley and R. Harmon Drew, Jr.; 3rd Circuit, Judge Marc Amy; and 4th Circuit, Judge Dennis R. Bagneris, Sr.

## JDC Judges Re-Elected

The following Judicial District Court judges were re-elected: 1st, Robert Waddell, Ramona Emanuel, Scott Crichton, Leon L. Emanuel, Mike Pitman, John Mosely, Jr., Jeanette Garrett and Roy L.

Brun; 2nd, Jenifer Ward Clason, Jimmy Teat and Glenn Fallin; 3rd, Cynthia Woodard, R. Wayne Smith and Jay B. McCallum; 4th, Scott Leehy, Sharon Ingram Marchman, John Wilson Rambo, Stephens Winters, Marcus Clark, Wendell Manning, Carl Sharp, Benjamin Jones and Alvin Sharp; 5th, James M. Stephens and Rudy McIntyre; 6th, Michael Lancaster and John D. Crigler; 7th, Kathy Johnson and Leo Boothe; 9th, Donald Johnson, Thomas Yeager, John Davidson, Patricia Evans Koch, George Metoyer, Jr. and Harry Randow; 10th, Eric Rick Harrington and Dee Hawthorne; 11th, Stephen Beasley; 12th, Mark Jeansonne and William Bennett; 13th, J. Larry Vidrine and Thomas Fuselier; 14th, D. Kent Savoie, Robert Wyatt, Guy Bradberry, David Ritchie, Wilford Carter, Michael Canaday and Lilynn Cutrer; 15th, John D. Trahan, Jules Edwards, Ed Rubin, Herman Clause, Glenn Everett, Durwood Conque, David Blanchet, Thomas Duplantier, Kristian D. Earles, Patrick Michot, Marilyn Castle and Phyllis Montgomery Keaty; 16th, Gerard Wattigny, Paul deMahy, John Conery,

Keith Comeaux, Edward Leonard, Jr., Charles Porter and Lori Landry; 17th, John LeBlanc, Jerome J. Barbera III, Walter I. Lanier III, Bruce Simpson and F. Hugh Larose; 18th, James Best, J. Robin Free, Alvin Batiste, Jr. and William C. Dupont; 19th, Todd Hernandez, Donald Johnson, Louis Daniel, Janice Clark, William Morvant, Tim Kelley, Richard Anderson, Anthony Marabella, R. Michael Caldwell, Bonnie Jackson, Mike Erwin, Kay Bates, Chip Moore and Wilson Fields; 20th, George Hal Ware and William G. Carmichael; 21st, Wayne R. Chutz, Bruce Bennett, Robert H. Morrison, Milton D. (Doug) Hughes, Brenda Bedsole Ricks, Elizabeth Wolfe, Ernest Drake, Jr. and Zorraine Waguespack; 22nd, Raymond Childress, Peter J. Garcia, William J. Burris, Martin E. Coady, Reginald Badeaux and William Rusty Knight; 23rd, Ralph Tureau, Thomas Kliebert, Guy Holdridge and Alvin Turner, Jr.; 24th, Joan Benge, Cornelius Regan, June Darensburg, Robert Murphy, John Molaison, Patrick McCabe, Robert Pitre, Jr., Stephen Windhorst, Donald Rowan, Henry Sullivan, Hans Liljeberg and Ross

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LaDart; 26th, Ford Stinson, Jeff Cox, John Robinson, Bruce Bolin and Parker Self; 27th, James Doherty, Jr., Ellis J. Daigle, Alonzo Harris and Donald W. Hebert; 29th, Emile St. Pierre and Robert Chaisson; 30th, Vernon Clark and John Ford; 31st, Steve Gunnell; 32nd, George Larke, John Walker, Timothy Ellender, David Arceneaux and Randy Bethancourt; 33rd, Joel Davis and Patricia Cole; 34th, Robert Buckley, Manuel Fernandez, Wayne Cresap, Kirk Vaughn and Jacques Sanborn; 37th, Don Burns; 39th, Lewis Sams; 40th, Madeline Jasmine, Mary Hotard Becnel and Sterling Snowdy; and 42nd, Robert Burgess and Charles B. Adams.

### Judges Re-Elected

The following judges were re-elected: Caddo Parish Juvenile Court, David Matlock and Paul Young; East Baton Rouge Family Court, Pam Baker, Toni Higginbotham and Annette Lassalle; East Baton Rouge Juvenile Court, Kathleen Richey and Pamela Taylor Johnson; Jefferson Parish Juvenile Court, Ann Murry Keller, Andrea Price Janzen and Nancy Amato Konrad; Orleans Parish Civil District Court, Tiffany Chase, Rosemary Ledet, Sidney Cates, Lloyd Medley, Madeleine Landrieu, Robin Giarrusso, Michael Bagneris, Piper Griffin, Nadine Ramsey, Herbert Cade, Kern Reese, Paulette Irons and Ethel Simms Julien; Orleans Parish Criminal District Court, Laurie White, Lynda Van Davis, Benedict Willard, Frank Marullo, Julian Parker, Camille Buras, Darryl Derbigny, Arthur Hunter, Jr., Terry Alarcon and magistrate judge Gerard Hansen; Alexandria City Court, Richard Starling, Jr.; Bogalusa City Court, Robert Black; Bossier City Court, Thomas Wilson; Breaux Bridge City Court, Randy Angelle; Bunkie City Court, James Mixon; Denham Springs City Court, Charles Borde; Eunice City Court, Lynette Feucht; Franklin City Court, Terry Breaux; Hammond City Court, Grace Bennett Gasaway; Houma City Court, Jude Fanguy; Jeanerette City Court, Cameron Simmons; Jefferson 1st Parish Court, Rebecca Olivier and George Giacobbe; Jefferson 2nd Parish Court, Roy Cascio and Stephen Grefer; Kaplan City Court, Frank LeMoine; Lafayette City Court, Frances Bouillion and Douglas Saloom; Lake Charles City

Court, Thomas Quirk and John Hood; Leesville City Court, Elvin Fontenot, Jr.; Marksville City Court, Angelo Piazza III; Minden City Court, John Campbell; Monroe City Court, Tammy Lee, Frederic Amman III and Larry Jefferson; Morgan City Court, Kim Stansbury; Natchitoches City Court, Fred Gahagan; New Iberia City Court, Robert Segura; Orleans Municipal Court, Desiree Charbonnet; Oakdale City Court, Judi Abrusley; Pineville City Court, Phillip Terrell; Plaquemine City Court, Michael Distefano; Port Allen City Court, William Kleinpeter; Rayne City Court, James Cunningham; Ruston City Court, Danny Tatum; Shreveport City Court, Lee Irvin, Charles Kelly and Randy Collins; Slidell City Court, Jim Lamz; Springhill City Court, John Slattery; Sulphur City Court, Charles Schrupf; Ville Platte City Court, Donald Launey; and West Monroe City Court, Jim Norris.

### Judges Elected

- ▶ 5th Circuit Court of Appeal Judge Greg Guidry was elected to District 1, Louisiana Supreme Court.
- ▶ Orleans Traffic Court Judge Paul A. Bonin was elected to District 1, Division B, 4th Circuit Court of Appeal.
- ▶ Winnfield City Court Judge Jacques Derr was elected to the 8th JDC, Winn Parish.
- ▶ Abbeville City Court Judge Ed Broussard was elected to Division C, 15th JDC, Acadia, Lafayette and Vermilion parishes.
- ▶ Baton Rouge City Court Judge Trudy White was elected to Division J, 19th JDC, East Baton Rouge Parish.

### New Judges

**Glenn B. Ansardi** was elected to Division H, 24th Judicial District Court, Jefferson Parish. He earned his undergraduate degree from Southeastern Louisiana University in 1969 and his JD degree from Loyola University Law School in 1976. He served in the Louisiana National Guard from 1969-98 and retired with the rank of lieutenant colonel, having served as staff judge advocate and first chief of the Trial Defense Service. He served as a Louisiana state representative from 1986-2008, chairing the Civil Law and Procedure Committee from 2004-08 and serving as a member of the Insurance and House and Governmental Affairs Committees. He was a founding partner in his law firm from 1987 until his election to the bench, and he served as a magistrate judge and assistant city attorney for the city of Kenner. He was the state chair of the American Legislative Exchange Council's Civil Justice Task Force, and a member of the Louisiana State Law Institute's Committees on Children's Code, Civil Procedure and Family Law. He is a member of the Louisiana Association for Justice and served as chair of the Louisiana Supreme Court Committee on Lengthy Trial Fund. He is married to Lynn Ansardi and they are the parents of two children.



Glenn B. Ansardi

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**Karen K. Herman** was elected to Section I, Orleans Parish Criminal District Court. She earned her undergraduate degree, *magna cum laude*, from Emory University in 1991 and her JD degree, *cum laude*, from Tulane Law School in 1994, where she was on the Moot Court Board. After clerking for a law firm in 1991, she joined the Orleans Parish District Attorney's Office in 1992, becoming part of the Magistrate Division in 1994. She also worked in the Trial Division, 1995-97, on the Violent Offender Strike Force, 1997-98, as a homicide screener, 1998-99, and as supervisor of the Expedited Screening Division, 1998-99. From 2004-07, she was in the private practice of law. She also served as executive director of Court Watch NOLA. She served as an adjunct professor in trial advocacy at Tulane Law School from 1998-2001. She is married to Stephen Herman and they are the parents of two children.



**Karen K. Herman**

**Daniel E. Stretcher** was elected to Jennings City Court. He earned his undergraduate degree from McNeese State University in 1994 and his JD degree from Louisiana State University Paul M. Hebert Law Center in 1997. He is married to Jennifer



**Daniel E. Stretcher**

Stretcher and they are the parents of three children.

**Vanessa Harris** was elected to Opelousas City Court. She earned her undergraduate degree from Southern University in 1985 and her JD degree from Southern University Law Center in 1988. She began her private law practice with the Harris & Harris Law Firm in Opelousas in 1988 and served as an assistant district attorney in St. Landry Parish from 1989-2008. She is married to Senic Batiste and they are the parents of three children.



**Vanessa Harris**

**Jane Triche-Milazzo** was elected to Division D, 23rd Judicial District Court, Ascension, Assumption and St. James parishes, becoming the first woman judge elected to that bench. She earned her undergraduate degree from Nicholls State University in 1977, graduating *magna cum laude*, and her JD degree from Louisiana State University Paul M. Hebert Law Center in 1992. She began her general law practice with her family's firm in Napoleonville. She served as president of the Assumption Parish Bar Association and the 23rd Judicial District Bar Association. She served in the Louisiana State Bar As-



**Jane Triche-Milazzo**

sociation's House of Delegates, chairing the Legislation Committee in 2007. She is a member of the LSU Law Center Board of Trustees, the American Bar Association, the 5th Circuit Court of Appeal Bar Association, the Baton Rouge Bar Association, the National Association of Women Judges and the Louisiana District Court Judges Association.

**Keval Landrum-Johnson** was elected to Section E, Orleans Parish Criminal District Court. She earned her undergraduate degree from Washington University in St. Louis, Mo., and her JD degree from Tulane Law School. She joined the bench directly from serving as interim district attorney for Orleans Parish, where she became the state's first woman district attorney. For the past nine years, she has worked for the district attorney's office as an assistant district attorney, a homicide and sex crimes screener, chief of juvenile, chief of screening and interim first assistant district attorney. She taught criminal law at Southern University at New Orleans. She has volunteered with the Orleans Parish Indigent Defender program. She served as appellate chair for Tulane Law School's Moot Court and has won moot court championships with the Jessup International Law Appellate Team (Southern Region) and the Federal Bar Association's Frederick Douglass Moot Court Competition. She is a member of Delta Sigma Theta Sorority, Inc. and was a 2008 recipient of New Orleans *City Business*' Leadership in Law award.



**Keval Landrum-Johnson**

**James R. Mitchell** was elected to Division C, 30th Judicial District Court, Vernon Parish. He attended Louisiana State University as an undergraduate and earned his JD degree from LSU Paul M. Hebert Law Center in 1970. After serving in the U.S. Army as a captain in the Judge Advocate General's



**James R. Mitchell**

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Corps, he entered into private practice in Leesville in 1974. He has served as president of the 30th Judicial District Bar Association, acting city judge and attorney for the Leesville Housing Authority. He is married to Michelle Mitchell and they are the parents of four children.

**Terry A. Doughty**

was elected to Division A, 5th Judicial District Court, Franklin, Richland and West Carroll parishes. He earned his undergraduate degree from Louisiana Tech University in 1981 and his JD degree from Louisiana State



**Terry A. Doughty**

University Paul M. Hebert Law Center in 1984. He was in private practice and served as assistant district attorney for the 5th Judicial District for 24 years. He has been a member of the 5th Judicial District Bar Association, the Louisiana Association of Defense Counsel, the Louisiana District Attorneys Association and the National District Attorneys Association. He is married to Annie Doughty and they are the parents of three children.

**Clayton Davis**

was elected to Division B, 14th Judicial District Court, Calcasieu Parish. He earned his undergraduate degree from Centenary College in 1978 and his JD degree from Southern Methodist



**Clayton Davis**

University School of Law in 1981. He has served on the Judicial Council's Standing Committee to Evaluate Requests for Court Costs and Fees and is a former member of the Louisiana Board of Ethics, the Louisiana Mineral Board and the Lake Charles Policeman's and Fireman's Civil Service Board. He is married to GERALYN DAVIS and they are the parents of one child.

**Retirements**

► Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. retired effective Dec. 31, 2008, after serving nearly 36 years

on the bench of the Louisiana Supreme Court, making him the longest-serving justice in the history of the court. He began on the Supreme Court in 1973 and was sworn in as chief justice in 1990.

► The following judges retired effective Dec. 31, 2008: 5th JDC Judge Glen Strong; 9th JDC Judge F. Rae Swent; 15th JDC Judge J. Byron Hebert; 16th JDC Judge William Hunter; 19th JDC Judge Curtis Calloway; East Baton Rouge Family Court Judge Luke LaVergne; 22nd JDC Judges Elaine DiMiceli, Patricia Hedges, Larry Green and Donald Fendlason; 24th JDC Judges Kernan (Skip) Hand, JoEllen Grant, Martha Sassone and Melvin Zeno; 25th JDC Judge William Roe; 26th JDC Judge Dewey Burchett; 28th JDC Judge J.P. Mauffray, Jr.; 29th JDC Judge Kirk Granier; 36th JDC Judges Stuart Kay and Herman Stewart; 38th JDC Judge H. Ward Fontenot; Orleans Parish Civil District Court Judge Yada Magee; Orleans Parish Criminal District Court Judges Dennis Waldron and Raymond Bigelow; and Thibodaux City Court Judge David Richard.

► Orleans Parish Juvenile Court Judge C. Hearn Taylor retired effective Nov. 8, 2008.

► The following judges resigned effective Dec. 31, 2008: 14th JDC Judge Rick Bryant, 30th JDC Judge Lester Kees, and Baker City Court Judge Mark Plaisance.

**Appointments**

► 1st Circuit Court of Appeal Judge John Michael Guidry was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial College Board of Governors for a term of office ending Sept. 30, 2011.

► Jeffrey M. Cole was reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term of office ending Dec. 31, 2011.

► William D. Aaron, Jr. and Linda P. Spain were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office ending Dec. 31, 2011.

► Ralph K. Lee, Jr. was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary

Board for a term of office ending Dec. 31, 2011.

► George L. Crain was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office ending Dec. 31, 2010.

**Death**

Retired 13th Judicial District Court Judge Preston Aucoin, 76, died Oct. 30, 2008. He first attended the former SLI (now University of Louisiana at Lafayette) but left after two semesters to enlist in the U.S. Air Force, where he served for four years during the Korean War, with about half of that time overseas. He then resumed his studies at SLI and later earned his JD degree from Louisiana State University Law School in 1959. He began the practice of law upon graduation, serving as a sole practitioner until his election to the bench in 1990. Before becoming a judge, he served as city attorney and city prosecutor for the city of Ville Platte. He retired from the 13th JDC in 2002.

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# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Amedisys, Inc. in Baton Rouge announces that Celeste Rasmussen Peiffer has been promoted to vice president of legal.

The Glenn Armentor Law Corp. in Lafayette announces that **John Paul Charbonnet** has joined the firm as an associate.

Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport announces that **Kyle C. McInnis** is a new shareholder of the firm.

Dylan C. Utley and Ariel K. DiGiulio announce the formation of DiGiulio Utley, L.L.C., a New Orleans-based litigation firm.

Fowler Rodriguez Valdes-Fauli announces that **Jody John Fortunato** and **Cristina Fowler Chauvin** have joined the firm's New Orleans office as associates.

Gieger, Laborde & Laperouse, L.L.C., announces that Mark T. Mahfouz, Michael E. Hill and Stephen C. Kogos have joined the firm's New Orleans office as associates, Lauren C. Cancienne has joined the firm's Houston, Texas, office as an associate, and Heather M. Valliant has become of counsel in the firm's New Orleans office.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that Dow Michael Edwards, Jeanette F. Mills and Edward W. Trapolin have been elected as members of the firm, and Darleene D. Peters, Edie C. Ross and Paul R. Wegmann have been promoted to counsel.

Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P., announces the addition of new associates: Tokesha M. Collins and Erin Lutkewitte Kilgore in its Baton Rouge office and Sean T. McLaughlin in its New Orleans office.

Mayhall & Blaize, L.L.C., in Baton Rouge announces that Scott R. Patton has joined the firm as an associate.

McGlinchey Stafford, P.L.L.C., announces that Zelma M. Frederick has joined the firm's Baton Rouge office as a staff attorney and Lillian B. Luffey, Brook L. Thibodeaux and Dylan M. Tuggle have joined the Baton Rouge office as associates. Joining the firm's New Orleans office are associates Amanda J. Butler, Brian K. Marick, John M. McCammon, Michelle L. Miller and Sarah J. Murphy.



W. Raley Alford III



Elizabeth A. Alston



Patrick J. Babin



Kim M. Boyle



John Paul Charbonnet



Cristina Fowler Chauvin



Cara G. Mabe



Kyle C. McInnis



Elisa C. Mills



Patrick E. O'Keefe



Katherine M. Pollock



Robert N. Popich

Mouledoux, Bland, Legrand & Brackett, L.L.C., in New Orleans announces that **Patrick J. Babin**, **Robert N. Popich** and **Adam P. Sanderson** have joined the firm as associates.

Phelps Dunbar, L.L.P., announces that Micah A. Gautreaux has joined the New Orleans office as an associate.

Schonekas, Winsberg, Evans & McGoey, L.L.C., in New Orleans announces that **Elisa C. Mills** and **Katherine M. Pollock** have joined the firm as associates.

Sessions, Fishman, Nathan & Israel, L.L.P., announces that **Maria N. Rabieh** has joined the Metairie office as special counsel, **Cara G. Mabe** has joined the Metairie office as an associate and **Brandon H. Robb** has joined the New Orleans office as an associate.

Richard C. Stanley, Bryan C. Reuter, William M. Ross and Jennifer L. Thornton announce that Stanley, Flanagan & Reuter, L.L.C., has become Stanley, Reuter, Ross, Thornton & Alford, L.L.C. **W. Raley Alford III** has joined the firm as a new member and **Alison N. DeClouet** has joined the firm as an associate.

Charles E. Sutton, Jr. and Michael B. Alker announce the formation of Sutton & Alker, L.L.C., located at Ste. A, 4080 Lonesome Rd., Mandeville, LA 70448, phone (985)727-7501.

Taylor Porter in Baton Rouge announces that Dawn D. Bonnezeze, Thomas D. Gildersleeve III and M. Michelle Marney have become partners in the firm, and Cynthia M. Amedee, Katia Desrouleaux and Wesley P. Hebert have joined the firm as associates.

The Truitt Law Firm announces the relocation of its main office to 149 North New Hampshire St., Covington, LA 70433, phone (985)792-1062. The firm will retain its office at Ste. 209, 433 Metairie Rd., Metairie, LA 70005, phone (504)831-3393.

**Kim M. Boyle**, a partner in the New Orleans office of Phelps Dunbar, L.L.P., was recognized by *New Orleans City-Business* as one of 50 Women of the Year for 2008.

Preston J. Castille, Jr., a partner with the Taylor Porter firm, has been appointed to the Baton Rouge City Court bench by the Louisiana Supreme Court.

**Jeffrey W. Koonce**, a partner in the Baton Rouge office of Phelps Dunbar, L.L.P., has been selected by the *Baton Rouge Business Report* as a winner of the 2008 Forty Under 40 Award.

**Robert A. Kutcher**, a partner in the firm of Chopin, Wagar, Richard & Kutcher, L.L.P., has been named a Fellow in the Trial Lawyer Honorary Society of the Litigation Counsel of America.

Frank E. Lamothe III with The Lamothe Law Firm in Covington has been selected as a Fellow in the Trial Lawyer Honorary Society of the Litigation Counsel of America.

## NEWSMAKERS

**Elizabeth A. Alston** has been appointed to serve on the American Bar Association Standing Committee on Professional Discipline, having completed three years of service on the ABA Standing Committee on Ethics and Professional Responsibility.

Continued next page



Alison N. DeClouet



Jody John  
Fortunato



George J.  
Fowler III



Jeffrey W. Koonce



Robert A. Kutcher



Charles A. Landry



Maria N. Rabieh



Brandon H. Robb



Antonio J.  
Rodriguez



Adam P.  
Sanderson



Ryan C. Williams

**Charles A. Landry**, a member of the firm of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., is serving as chair of the board for the LSU Foundation, the primary academic fundraising organization for Louisiana State University.

**Kyle C. McInnis**, a shareholder with the firm of Cook, Yancey, King & Galloway, A.P.L.C., has been selected as a member of the Leadership Louisiana's Class of 2009. Also, he has been certified by the Louisiana Board of Legal Specialization as both a tax specialist and an estate planning and administration specialist.

**Patrick E. O'Keefe**, a partner in the New Orleans office of Montgomery Barnett, L.L.P., has been appointed by Louisiana Gov. Bobby Jindal to the Judicial Compensation Commission.

Thibodaux attorney Christopher H. Riviere has been elected to the board of directors of the Nicholls State University Foundation.

Martin A. Stern, a partner in the firm of Adams and Reese, L.L.P., received the 2008 Evelyn Singer Award for his contribution to Appleseed's network of public interest justice centers. He was instrumental in reviving Louisiana Appleseed and currently serves on the center's board of directors.

Shreveport attorney Henry C. Walker received the 2008 Justice Albert Tate, Jr. Award presented by the Louisiana Association of Criminal Defense Lawyers. He was honored for his accomplishments in the criminal justice field.

**Ryan C. Williams**, an associate in the firm of Cook, Yancey, King & Galloway, A.P.L.C., was honored as one of Louisiana State University's Top Scholars for 2008, making the list as a 2008 Presidential Management Fellow.

## PUBLICATIONS

### *The Best Lawyers in America 2009*

**Cook, Yancey, King & Galloway, A.P.L.C.:** Samuel W. Caverlee, J. William Fleming, William C. Kalmbach, F. Drake Lee, Jr., Kenneth Mascagni and Herschel E. Richard, Jr.

**Deutsch, Kerrigan & Stiles:** Francis J. Barry, Jr., Frederick R. Bott, Terrence J. Brennan, Bert M. Cass, Jr., Robert E. Kerrigan, Jr., Charles E. Leche, Nancy J. Marshall, Joseph L. McReynolds, Charles F. Seemann, Jr., A. Wendel Stout III and William E. Wright, Jr.

**Fowler Rodriguez Valdes-Fauli: George J. Fowler III and Antonio J. Rodriguez.**

**Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P.:** Kyle B. Beall, Gary A. Bezet, Dean P. Cazenave, G. Blane Clark, Jr., Christopher J. Dicharry, Vance A. Gibbs, Isaac M. (Mack) Gregorie, Jr., Maureen N. Harbourt, John F. Jakuback, G. William Jarman, Leonard L. Kilgore, Katherine W. King, Charles S. McCowan, Jr., Charles S. (Trey) McCowan III, Carey J. Messina, Ben R. Miller, Jr., Russel O. Primeaux, Linda G. Rodrigue and J. Randy Young.

**McGlinchey Stafford, P.L.L.C.:** Rodolfo J. Aguilar, Jr., Samuel A. Bacot, Stephen P. Beiser, Craig L. Caesar, Jaye

A. Calhoun, Rudy J. Cerone, Kathleen K. Charvet, R. Keith Colvin, Katherine Conklin, Larry Feldman, Jr., Michael D. Ferachi, Monica A. Frois, R. Marshall Grodner, Deborah D. Harkins, Mary T. Joseph, Errol J. King, Donna G. Klein, Bennet S. Koren, Kathleen A. Manning, Lisa E. Maurer, Michael M. Noonan, Colvin G. Norwood, Jr., R. Andrew Patty, Michael H. Rubin, Stephen P. Strohschein, Susan M. Tyler, Kenneth A. Weiss, Dan E. West, Paul S. West, Constance C. Willems, David S. Willenzik and Henri Wolbrette III.

**Phelps Dunbar, L.L.P.:** M. Nan Alessandra, Jane E. Armstrong, Robert J. Barbier, Brent B. Barriere, John A. Bolles, Patrick J. Butler, Jr., Allen D. Darden, Philip de V. Claverie, Sr., Richard N. Dicharry, Mark D. Dodart, Mark A. Fullmer, George B. Hall, Jr., Stephen P. Hall, Sessions Ault Hootsell III, Michael D. Hunt, H. Alston Johnson III, F. Scott Kaiser, Thomas H. Kiggans, Jeffrey W. Koonce, David B. Lawton, Steven J. Levine, John P. Manard, Jr., Marshall M. Redmon, Patrick Ragan Richard, Harry Rosenberg, Randy P. Roussel, Mary Ellen Roy, Bruce V. Schewe, Hugh R. Straub, James A. Stuckey, Brian D. Wallace, Alan C. Wolf and James G. Wyly III.

### *Louisiana Super Lawyers 2009*

**Cook, Yancey, King & Galloway, A.P.L.C.:** Samuel W. Caverlee, Bernard S. Johnson, F. Drake Lee, Jr. and Herschel E. Richard, Jr.

## People Deadlines & Notes

Deadlines for submitting People announcements (and photos) :

Publication .....	Deadline
June/July 2009 .....	April 4, 2009
Aug./Sept. 2009 .....	June 4, 2009
Oct./Nov. 2009 .....	August 4, 2009

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 e-mail [dlabranche@lsba.org](mailto:dlabranche@lsba.org).**

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**Oil and gas attorney** position. Curry & Friend, A.P.L.C., a growing CBD and Northshore, AV-rated defense firm, is currently seeking an associate: oil and gas attorney with minimum five years' defense experience in oil and gas (legacy site) remediation/NORM personal injury litigation. The firm offers excellent work environment, competitive salary and benefits. Send résumé and writing samples to [johnbattin@curryandfriend.com](mailto:johnbattin@curryandfriend.com).

## Metairie Law Firm

**Shapiro & Daigrepoint, L.L.P.**, concentrating in bankruptcy, foreclosure and real estate, seeks a full-time attorney with one to three years' experience representing creditors or debtors in bankruptcy proceedings. Transactional real estate experience a plus. Some travel required. The position offers competitive salary and benefits, including health, vision and dental insurance. Academic credentials to be in the top 50 percent. Must be admitted to all Louisiana federal district courts. Interested candidates should send résumé and cover letter to Ms. Penny Daigrepoint, Ste. 600, 3510 N. Causeway Blvd., Metairie, LA 70002, or e-mail [pdaigrepoint@logs.com](mailto:pdaigrepoint@logs.com).

**Metairie AV-rated defense** firm seeks associate with five-10 years' experience. Experience in insurance coverage litigation preferred. Candidate must have strong work ethic and be capable of handling cases from start to finish with little supervision. Excellent legal writing and communication skills are required. The firm offers excellent work environment, competitive salary and benefits. A great opportunity for an attorney who wants to help grow firm and its practice. Send résumé and writing sample to Hiring Partner, Ste. 300, 3636 S. I-10 Service Road West, Metairie, LA 70001.

Continued next page

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**Suburban New Orleans** AV-rated law firm seeks attorneys to practice in the areas of business, transactional and insurance coverage and defense. Five years' minimum experience preferred but will consider other applicants with excellent academic background. Competitive salary and benefits. Please send résumé, transcripts and writing sample to: C. Brechtel, P.O. Box 1910, Gretna, LA 70054, fax (504)362-5938, or e-mail [CJB@grhg.net](mailto:CJB@grhg.net). All replies confidential.

**Staff attorney.** Office of Lucy G. Sikes, Chapter 13 Bankruptcy Trustee, seeks staff attorney for handling bankruptcy litigation matters. Successful candidate must be licensed to practice and a member of the bar in the state of Louisiana and the Western District of Louisiana, and have at least five years of litigation experience; bankruptcy experience helpful but not required. Must be detail oriented and able to manage a large caseload, including drafting pleadings, motions and handling contested court hearings. The office is located in downtown Shreveport. Salary depends on experience. Benefits include employer-paid health insurance, dental insurance and retirement program, paid parking, vacation. The office is not a government entity. Interested candidates should submit a cover letter and résumé by email to [lsikes@sikeschapter13.com](mailto:lsikes@sikeschapter13.com). All submissions will be confidential.

**Civil litigation/general practice law firm in Gretna** seeks associate with some portable business. Please send résumé to [jthibodeaux@grelalaw.com](mailto:jthibodeaux@grelalaw.com).

### Executive Director/ Managing Partner

**Multi-office law firm** based in Baton Rouge, La., with approximately 70 attorneys seeks an executive director/managing partner. Position is responsible for implementation of the firm's strategic plan, evaluation of possible merger/lateral candidates, management of the firm's client service program, and lawyer accountability. Administrative duties include oversight of all areas of management including financial and accounting, human resources, information systems, business development and marketing, research services, and facilities. This includes regular communication to management and the partnership regarding the firm's financial health and strategic progress. This is a high-level role, reporting to the Management Committee, which is afforded a great deal of authority and autonomy. Candidates should have a minimum of 10 years of executive management experience (preferably in a multi-office law firm), a bachelor's degree in business and/or an advanced degree (JD, MBA, CPA). The successful candidate will have exceptional leadership and communication skills, the ability to execute a strategic vision, be seen as trustworthy and fair, be operationally efficient, and hold a strong command of financial data. Interested candidates should submit résumé and salary information to Executive Director/Managing Partner Search, P.O. Box 3197, Baton Rouge, LA 70821-3197.

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**Brief writing/legal research.** Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than nine years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, [lee.harville@theharvillelawfirm.com](mailto:lee.harville@theharvillelawfirm.com), (318)222-1700.

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## INDEX TO ADVERTISERS

Addiction Recovery Resources . . . . .	384	Irpino Law Firm . . . . .	375
ABA Retirement Funds . . . . .	327	LaPorte Sehrt Romig Hand . . . . .	371
ADR inc/Thomas K. Foutz . . . . .	383	Legier & Company . . . . .	IFC
Alston Law Firm, L.L.C. . . . .	362	LexisNexis . . . . .	322
Aubert Law Firm . . . . .	390	MAPS, Inc. . . . .	359, 365
Babcock Law Firm . . . . .	368	Juneau David . . . . .	350
Berniard Law Firm . . . . .	382	J.M. Malone and Son, Inc. . . . .	374
Sanjay Biswas, Esq. . . . .	361	Nicaud, Sunseri & Fradella . . . . .	372
Bourgeois Bennett . . . . .	364	Rimkus Consulting Group, Inc. . . . .	355
Capital Appraisal Services . . . . .	389	James Rivera . . . . .	345
Christovich & Kearney, L.L.P. . . . .	362	Schafer Group, Ltd. . . . .	370
David S. Cook . . . . .	366	Mary Ann Sherry . . . . .	390
DMA and BMM . . . . .	367	Silvestri & Massicot . . . . .	369
Kay E. Donnelly & Associates . . . . .	385	Stanley, Reuter, Ross, Thornton & Alford L.L.C . . . . .	373
Robert G. Foley . . . . .	390	Template, Inc. . . . .	321
Forensic Psychiatric Institute . . . . .	376	Texas Corp. Supplies . . . . .	389
Garvey, Smith, Nehrbass & North, L.L.C. . . . .	353	Carey R. Varnado . . . . .	391
Gilsbar, Inc. . . . .	IBC	West, A Thomson Business . . . . .	OBC
The Law Offices of Deborah M. Henson . . . . .	363	Law Office of Julie Brown White, L.L.C. . . . .	363
Herman, Herman, Katz & Cotlar, L.L.P. . . . .	377	James F. Willeford . . . . .	360

## UPDATE

### Judge Thibodeaux Elected President of Chief Judges' Council

Judge Ulysses (Gene) Thibodeaux, chief judge of Louisiana's 3rd Circuit Court of Appeal, was elected president of the Council of Chief Judges of the State Courts of Appeal at the council's annual meeting in November 2008. He will serve a one-year term.



Judge Ulysses (Gene) Thibodeaux

Judge Thibodeaux, a graduate of Dartmouth College and Tulane Law School, practiced law in New York City and Lake Charles for 17 years before his election to the bench in 1992. He is the current chair of the Louisiana Conference of Courts of Appeal Judges and serves on the Louisiana Judicial College Board of Governors. He is active in the Louisiana State Bar Association as a member of the Minority Involvement, Appellate, Bench/Bar and Francophone sections. He chaired the Task Force on Judicial Independence and is a frequent lecturer at Bar-associated continuing legal education seminars.

He is the vice chair of the Louisiana Judicial Compensation Commission. He also serves on the board of directors of Lake Charles Memorial Hospital, SWLA Center for Health Services, Calcasieu Association for Retarded Citizens, Community Foundation of Southwest Louisiana, 100 Black Men of Metro Lake Charles, Louisiana Facilities Corporation and the Louisiana Civil Rights Museum Advisory Board.

The Council of Chief Judges is affiliated with the National Center for State Courts.

### Shemwell Retires as Clerk of USDC, Western District of La.

Robert H. Shemwell retired as clerk of the United States District Court, Western District of Louisiana, on March 15, with 38 years of federal service. He began his service in 1970 as an assistant U.S. attorney. He became clerk of court in 1975.



Robert H. Shemwell

He served as president of the Federal Court Clerks Association and on a number of national committees within the federal court system, including a nine-year effort to design a new personnel system for the federal courts. He served as chair of the Automation Umbrella Group for the U.S. District Courts, responsible for coordinating and providing advice for automation projects of the federal courts. He has overseen and managed the growth of a court operation, now consisting of 17 judges, eight court reporters and 51 deputy clerks. He introduced automation into the court. He spent four weeks in the Republic of Uganda for the U.S.I.A., working with the Ministry of Justice of Uganda designing an information management system for cases prosecuted within that judicial system.

### Capital Area Legal Services Celebrates 50-Year Anniversary

Nearly 500 friends and supporters attended the 50th-anniversary celebration of the Capital Area Legal Services Corp. (CALSC) in October 2008. Seventy-four

members of the legal community were recognized for their volunteer service to the organization. CALSC provides civil legal services to the indigent community.

Among the award recipients are attorney Garth J. Ridge, recipient of the Annie Smart Award; and attorney George E. Downing, recipient of the Going the Extra Mile-Good Samaritan Award.

Mississippi Supreme Court Associate Justice Jess H. Dickinson, an organizing and charter member of the Mississippi Access to Justice Commission, delivered the after-dinner remarks.

In 50 years, CALSC has grown from the small Legal Aid Society of Baton Rouge to an 11-person law firm with four offices handling thousands of matters in 12 parishes.

### The Pro Bono Project Elects New Officers, Directors

New officers and directors of The Pro Bono Project (New Orleans) assumed office on Jan. 1. Mark A. Cunningham succeeds Mark C. Surprenant as chair of The Project.

Justin I. Woods is first vice chair; Judge Jay C. Zainey, second vice chair; and Catherine E. Lasky, secretary/treasurer.

Newly elected directors are Donna Fraiche, Don K. Haycraft, Norman Rubenstein and Rafael Saddy. Incumbent directors are David Anderson, Judge Robin M. Giarrusso, Jan M. Hayden, Mark A. Moreau, Carole Cukell Neff and Marta-Ann Schnabel. Serving as ex officio to the board are A. Wendel Stout, Marion D. Floyd, John E. McAuliffe, Cindy M. Petry and J. Van Robichaux, Jr.

## LOCAL/SPECIALTY BARS

### ACC-LA Chapter Hosts Fall CLE Luncheon

The Louisiana Chapter of the Association of Corporate Counsel (ACC-LA) hosted its fall CLE luncheon in November 2008, focusing on immigration law and procedures for area in-house counsel. The law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., sponsored the event and provided its guest speaker.

Jay Ruby of the Atlanta office of Ogletree Deakins presented an overview of immigration laws and procedures and of non-immigrant visa procedures. This session provided guidance to employers on navigating the maze of temporary and permanent work visa processes. He spoke on the basic principles of U.S. immigration laws, including immigration vocabulary, agencies and the key concepts of the laws. He also discussed the assorted visa processes and how those processes are tailored to specific types of workers, such as intra-company transferees, seasonal workers, professionals and student workers.

Ruby also spoke on immigration documentation, enforcement and compliance. He answered common immigration questions, such as how employers should deal with Social Security "no match" letters and how to use the online system E-Verify to check the work status of new employees. He addressed the key issue of compliance and detailed the best policies

and procedures for ensuring I-9 compliance, giving advice on how employers can comply with the often conflicting state and federal laws.

"Our CLE luncheons provide invaluable information needed to be an effective in-house attorney," said Joni A. Johnson, ACC-LA president.

For information on upcoming ACC-LA events or for membership information, contact Johnson at (504)620-4183; e-mail [jonij@smartdogservices.com](mailto:jonij@smartdogservices.com); or visit [www.acc.com/chapters/louis/](http://www.acc.com/chapters/louis/).

### New Orleans Martinet Legal Society, Legal Foundation Host Scholarship Gala

The Greater New Orleans Louis A. Martinet Legal Society, Inc. and the New Orleans Martinet Legal Foundation, Inc. held the Scholarship Gala in September 2008. The theme was "Remembering Our Legacy: A Tribute to Civil Rights Pioneers."

Four scholarships were awarded to Louisiana law students based on a writing competition focused on civil rights issues plaguing the criminal justice system and impacting juveniles. Students from Louisiana State University Paul M. Hebert Law Center, Loyola University College of Law, Southern University Law Center and Tulane Law School participated. Winners are Kandace Hamilton, first place, \$3,000; Erica Bindom, second place, \$2,000; and Jamilla Bynog and



Carolyn D'Antonio, right, is the recipient of the American Lawyers Auxiliary's Individual Volunteer of the Year Award, presented by Edie Villarrubia, left, immediate past president of the Law League of Louisiana, at the ALA's national convention in New Orleans. D'Antonio was honored for her service to the legal community. She is a past president of the Jefferson Bar Association Auxiliary and the Law League of Louisiana, and currently serves on the Law League board and as president-elect of the Ladies Leukemia League.

Jatavian Williams, third place, \$1,000 each.

The Martinet Society and Foundation also honored civil rights pioneers, including Oretha Castle Haley, Louisiana Supreme Court Justice Revius O. Ortique, Jr. and Lolis E. Elie. The program also featured other leaders, including Louisiana Supreme Court Justice Bernette J. Johnson, Judge Ivan L.R. Lemelle and Louisiana State Bar Association President-Elect Kim M. Boyle, all recognized as Martinet's pioneers. National Bar Association President Rodney G. Moore also spoke at the event.

During a special presentation to the family of the late Justice Ortique, Miriam Ortique remembered her husband as one who believed in reaching back to uplift others. Alden McDonald announced the Liberty Bank Foundation's \$10,000 pledge to the Martinet Foundation Scholarship Fund. "We all must stand on the shoulders of giants" was the phrase often used by the late Justice Ortique at Martinet meetings, and it was the phrase reiterated by McDonald.

For more information on the Greater New Orleans Martinet Legal Society and Foundation and for contribution information, contact Cherrell R. Simms at (504)525-6802 or e-mail [csimms@gjtbs.com](mailto:csimms@gjtbs.com).



The Louis A. Martinet Legal Society, Inc. Greater Lafayette Chapter conducted its first Thanksgiving drive, "Bringing the Harvest to Our Communities in Need," in November 2008. With some of the donations is project Co-Chair Jocelin Sias. The Lafayette chapter also conducted its first school supply drive in October 2008, donating material to J.W. Faulk Elementary, Paul Breaux, Alice Boucher Elementary and Lafayette Middle schools.

## LOUISIANA BAR FOUNDATION

### Louisiana Bar Foundation Awards \$3.4 Million in 2009 Grants

The Louisiana Bar Foundation (LBF) awarded more than \$3.4 million in grants for 2009. These grants were awarded in the areas of legal assistance to the poor, law-related education, loan repayment assistance, building capital development and community partnership panels. Grants were also awarded in two new areas: children's legal services and supplemental pay for public interest attorneys and staff.

The LBF supports programs that provide free legal services for the poor in all of Louisiana's 64 parishes.

Since 1989, the LBF has distributed more than \$35 million throughout Louisiana to help address the legal needs of indigent citizens, provide a basic understanding of the law, and assist with improvements to the justice system. For more information, contact Kevin Murphy, Grants Coordinator, (504)561-1046. Listed below are the grantees and allocations.

#### Legal Assistance to the Poor — \$2,258,034

##### Domestic Violence Programs — \$372,316

Beauregard Community Concerns	\$17,105
Calcasieu Women's Shelter	\$17,105
Capital Area Family Violence Intervention Program	\$38,825
Catholic Charities of N.O./Project SAVE	\$28,605
Chez Hope	\$15,040
DART of Lincoln	\$15,105
Faith House	\$18,351
Family Counseling Agency/Turning Point	\$34,457
The Haven	\$18,105
Jeff Davis Communities Against Domestic Violence	\$12,260
Metropolitan Center for Women and Children	\$33,105
My Sister's House of the Felicianas	\$4,605
New Start Center	\$12,606
Project Celebration/Taylor House	\$12,270
Safe Harbor	\$32,104
Safety Net for Abused Persons	\$19,229
St. Bernard Battered Women's Shelter	\$10,229
The Wellspring Alliance for Families	\$16,105
YWCA of Northwest Louisiana	\$17,105

##### Legal Service Corporations — \$1,307,654

Acadiana Legal Services Corp.	\$341,716
Capital Area Legal Services Corp.	\$213,396
Legal Services of North Louisiana	\$320,624
Southeast Louisiana Legal Services	\$431,918

##### Other Legal Services — \$330,144

AidsLaw of Louisiana	\$43,231
Arts Council of New Orleans	\$5,000
Catholic Charities of B.R./Immigration Legal Services	\$25,000
Catholic Charities of N.O./Immigration Legal Services	\$30,682
Catholic Legal Immigration Network	\$7,500
Innocence Project New Orleans	\$85,000
Legal Aid Bureau	\$77,000
Louisiana Civil Justice Center	\$10,000
Southwest Louisiana Law Center	\$41,731
Volunteers of America (North and Central La.)	\$5,000

##### Pro Bono Projects — \$247,920

Baton Rouge Bar Foundation	\$30,000
Central Louisiana Pro Bono Project	\$19,000
Lafayette Parish Bar Foundation	\$35,402
Legal Services of North Louisiana (Monroe)	\$22,094

Northwest Louisiana Pro Bono Project	\$32,822
The Pro Bono Project	\$80,500
Southeast Louisiana Legal Services	\$28,102

#### Public Interest Attorney and Staff Supplemental Pay — \$551,000

Acadiana Legal Service Corp.	\$111,500
AidsLaw of Louisiana	\$12,000
Baton Rouge Bar Foundation	\$3,000
Beauregard Community Concerns	\$1,500
Capital Area Legal Service Corp.	\$64,500
Catholic Charities of N.O./Project SAVE	\$7,500
Catholic Legal Immigration Network	\$1,000
Faith House	\$1,500
Family Counseling Agency/Turning Point	\$3,000
The Haven	\$1,500
Innocence Project New Orleans	\$16,500
Lafayette Parish Bar Foundation	\$1,500
Legal Aid Bureau	\$9,500
Legal Services of North Louisiana	\$114,000
Metropolitan Center for Women and Children	\$5,000
New Start Center	\$1,500
Northwest Louisiana Pro Bono Project	\$3,000
The Pro Bono Project	\$20,500
Project Celebration	\$4,500
Safe Harbor	\$3,000
Southeast Louisiana Legal Services	\$144,500
Southwest Louisiana Law Center	\$16,000
St. Bernard Battered Women's Program	\$1,500
The Wellspring Alliance for Families	\$1,500
YWCA of Northwest Louisiana	\$1,500

#### Building Capital Development — \$200,000

Acadiana Legal Services Corp.	\$25,000
Capital Area CASA	\$25,000
Capital Area Legal Services Corp.	\$25,000
Lafayette Parish Bar Foundation	\$25,000
Legal Services of North Louisiana	\$25,000
Metropolitan Center for Women and Children	\$25,000
Southeast Louisiana Legal Services	\$25,000
The Wellspring Alliance for Families	\$25,000

#### Children's Legal Services — \$193,535

##### CASA Programs — \$16,791

CASA of the 16th JDC	\$5,409
CASA of the 18th JDC	\$4,210
CASA of Central Louisiana	\$7,172

##### Teen Court Programs — \$29,997

Baton Rouge Bar Foundation	\$1,440
Iberia Teen Court	\$10,804
Teen Court of Morehouse	\$3,348
Youth Empowerment Project	\$14,405

##### Other Juvenile Justice Programs — \$146,747

Advocacy Center	\$36,012
Dayspring Center/Hannah's House	\$7,202
Juvenile Regional Services	\$22,507
Mental Health America of Louisiana	\$43,214
Training, Education and Mediation for Students	\$18,006
The Whistle Stop	\$9,003
Youth Service Bureau of St. Tammany	\$10,803

#### Law-Related Education — \$99,600

Baton Rouge Bar Foundation	\$7,000
Foundation of the American Board of Trial Advocates	\$3,000
Louisiana Center for Law and Civic Education	\$40,000
Louisiana Justice Coalition	\$30,100
LSBA Young Lawyers Section	\$11,000
The Whistle Stop	\$2,500
Youth Service Bureau of St. Tammany	\$6,000

Continued next page

# Message from the Louisiana Bar Foundation

By Karleen J. Green and Tara G. Richard  
2009 Gala Co-Chairs

Join us on Friday, April 17, for the 23rd annual Fellows Gala, "Advancing Justice and Law-Related Education through Fellowship." New this year, the W New Orleans Hotel at 333 Poydras St. is the venue for the festivities. We are excited to announce that this year we are honoring Louisiana Supreme Court Justice Bernette J. Johnson as the 2008 Distinguished Jurist, Cheney C. Joseph, Jr. as the 2008 Distinguished Professor and Edward J. Walters, Jr. as the 2008 Distinguished Attorney.

Also presented at the gala will be the Calogero Justice Award. We hope to see you at this wonderful event that brings together lawyers, judges and professors from across the state to support the Foundation's mission.

The gala begins at 6:30 p.m. with cocktails, in conjunction with a silent auction. Dinner and presentations follow. A patron party will be held the evening before in New Orleans.

Rooms at the W New Orleans Hotel are available for both Thursday and Friday at a rate of \$179 plus tax per night. Call the hotel directly at (504)207-5071 and reference the Louisiana Bar Foundation to make the reservation. The cutoff date for making reservations is March 19.

Sponsorships are available at the following levels:

► **Cornerstone Level:** \$3,000. Includes 20 patron party tickets, 20 gala tickets with two reserved tables (seats 20) and program recognition.

► **Capital Level:** \$2,000. Includes 10 patron party tickets, 10 gala tickets with one reserved table (seats 10) and program recognition.

► **Pillar Level:** \$1,200. Includes six patron party tickets, six gala tickets and program recognition.

► **Foundation Level:** \$400. Includes two patron party tickets, two gala tickets and program recognition.

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

Gala ticket reservations can be made by credit card at [www.raisingthebar.org](http://www.raisingthebar.org). For more information, contact Danielle J. Marshall at (504)561-1046 or e-mail [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).

## LBF Grants continued from page 394

### Loan Repayment Assistance Program — \$68,525

Twenty grants were awarded for 2009.

### Community Partnership Panel — \$105,000

#### Acadiana CPP

The Extra Mile .....	\$5,000
Lafayette Parish Bar Foundation .....	\$5,000
Northside High School.....	\$5,000

#### Capital Area CPP

23rd JDC Bar Association Teen Court.....	\$3,000
Capital Area CASA.....	\$3,000
Child Advocacy Services.....	\$2,620
Southern University Law Center/Martinet Society.....	\$6,380

#### Greater New Orleans CPP

Catholic Legal Immigration Network.....	\$5,000
Innocent Project - Resurrection After Exoneration.....	\$5,000
Louisiana Justice Coalition.....	\$5,000

#### Northeast CPP

The Wellspring Alliance for Families.....	\$15,000
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#### Northshore CPP

The Advocacy Center.....	\$15,000
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#### Northwest CPP

Louisiana Justice Coalition.....	\$7,500
Training, Education and Mediation for Students.....	\$7,500

#### Southwest CPP

Southwest Louisiana Law Center .....	\$15,000
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## Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Hon. Phyllis M. Keaty . . . . .Lafayette  
William H. Langenstein III . . . . .New Orleans

## ANSWERS for puzzle on page 358

1	D	I	S	H	O	N	O	R	E	D									
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By Vincent P. Fornias

## STAND BY ME

At the heart of our story is the lifelong friendship of two extraordinary jurists, Judge Lenton Sartain and the late Justice Fred Blanche. They were raised a short distance from each other in the same Baton Rouge neighborhood at a time when Standard Oil was king and Huey Long was alive and well. Apparently young Fred was the local bully, and part of his *modus operandi* was the daily shakedown of young Lenton's school lunch money. After this situation had repeated itself one time too many, Lenton resorted to asking his mother to walk to school with him as protection. Call her personal Wells Fargo escort.

This tactic appeared to neutralize Fred (not to mention drastically reducing his daily income), but needless to say it did nothing to fan the fires of kinship between them. Finally, at some point henceforth during a school recess, Lenton summoned up his courage and approached Fred, inquiring as to why he so obviously disliked him. Having no real response and perhaps admiring Lenton's directness, Fred decided then and there to be halfway civil to Lenton.

The rest is friendship history. The two were inseparable comrades as they proceeded through the same high school and college. When World War II erupted, they both enlisted in the military and, upon returning to civilian life, the two friends graduated from LSU Law School. Both became outstanding attorneys and both ran for the office of district judge of the 19th Judicial District Court. Both were duly elected.

A few years later, Judge Sartain was elected to the 1st Circuit Court of Appeal while his lifelong friend remained at the time as a trial judge. Then the inevitable happened. Blanche made a ruling in a particular case that was routinely appealed. Sartain was on the appellate panel assigned to the case and (you guessed it) voted to reverse his buddy's ruling. Summarily, the notice of the ruling was sent to Judge Blanche. Soon thereafter, he dispatched himself to Judge Sartain's office. Fortuitously, Sartain was not present at the time, but his secretary asked if he would care to leave a written message for him. The proverbial hanging curve having been pitched to a very adept batter, Judge Blanche jumped on the opportunity.

When Sartain returned to his chambers, his secretary told him that Blanche had dropped by and left a note — which for the life of her she could not understand. It read simply:



*Dear Lenton:  
Don't come to work tomorrow without your momma!*

Old habits die hard, but lifelong friendships are eternal.

*Author's Note: I am indebted to retired Judge Bob Hester of the Baton Rouge Bar for the contents of this issue's story.*

*If you have experienced, seen or heard something humorous in your day-to-day legal practice, or if you just have an idea for a Lucid Intervals column, by all means, let the Louisiana Bar Journal know. Mail, fax or e-mail your stories, anecdotes, quotes or ideas c/o Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; e-mail [dlabranche@lsba.org](mailto:dlabranche@lsba.org). She'll make sure your "gems" get into the right hands. Keep smiling!*



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