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Mark A. Cunningham

75th LSBA President

New Orleans





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Mark A. Cunningham of New Orleans is the 75th President of the Louisiana State Bar Association. With him are family members, from left, son Alistair, wife Meredith, son Pierce and daughter Virginia. Photo by K&D Photo + Video.

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By Alainna R. Mire

Coming of Age

As most children growing up, I thought the phrase “coming of age” meant maturing and entering into adulthood. Unlike the transition between adolescence and adulthood, the Louisiana State Bar Association’s (LSBA) coming of age is a change of guard of leadership.

I am honored to serve as secretary following in the footsteps of Barry Grodsky. Barry is someone I truly admire and thank for his guidance as I transition into my new role. I am also elated to come of age with Mark Cunningham, the first LSBA Generation X president.

As a past chair of the Young Lawyers Division, I am pleased to bring my perspective as a young lawyer to the leadership of the LSBA and our membership. Our membership is as diverse as the areas in which we practice so the *Journal* should reflect this diversity.

During my tenure, we will add a *Journal* section devoted to practice tips for lawyers and coordinate an issue for municipal law practitioners, such as myself. The *Journal* also will publish at least two “themed” issues each year, as well as regular articles such as Recent Developments and updates

from committees. Suggestions for *Journal* articles (or themes) are always welcomed and encouraged.

With the assistance of the wonderful, talented staff of the LSBA and the hardworking members of the Editorial Board, I believe the *Journal* will continue to be a publication of which we all can be proud.

I look forward to serving as editor of the *Journal* and secretary of the LSBA.

Letters to the Editor Policy

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

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

3. Letters should be no longer than 200

words.

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

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

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

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

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

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



One on One with Mark A. Cunningham, 75th LSBA President:

Master “Multi-Tasker” Tackling Challenges for the Legal Profession

Interviewed by Marta-Ann Schnabel

Mark Cunningham is the kind of fellow who is almost always running late — not hours late, but just a sufficient number of minutes to make the room expectant. He usually arrives with his attention lowered toward his cell phone and his fingers furiously working the small patented keyboard attachment that hints at techno-cool. Then he snaps his head up, smiles and directs his attention to those in front of him, offering a simple and heartfelt apology that melts away any annoyance. He is the walking, breathing symbol of “multi-tasking.” His little secret: Many of the multiples that he is tasking are his children, Alistair, 12, Virginia, 9, and Pierce, 6.

Mark A. Cunningham of New Orleans is the 75th President of the Louisiana State Bar Association. With him are family members, from left, son Alistair, wife Meredith, son Pierce and daughter Virginia. Photo by K&D Photo + Video.

He and his wife of 15 years, Meredith, also a busy and accomplished lawyer who works as staff counsel for LSU Health Sciences Center, view the challenge of career and family as a joint venture.

“We grew up in the 70s and 80s in a time defined by Carter and Reagan rather than Kennedy and Nixon, when the nation was focused on busing and affirmative action rather than the March on Washington. We have lived most of our lives after the fall of the Berlin Wall. The assassination that we remember is John Lennon. Our children are still young, and we have long careers ahead of us. The practice and lifestyle trends of the 80s and 90s are not an option for us. We can learn from those who came before us, but we can’t stand still and expect the same result,” Mark says.

A senior partner in the New Orleans office of Jones Walker LLP, Mark is a member of its Corporate Compliance and White Collar Defense Team, where his practice focuses on antitrust, intellectual property and other federal regulatory issues. Although he enjoys his trial practice and even occasionally indulges in telling war stories, Mark believes that success is better defined by the cases that are never filed than it is by courtroom victories. In his view, “[w]hile litigation is sometimes unavoidable and occasionally even necessary, the best outcome is often found outside of the courtroom.”

A graduate of Claremont’s Pitzer College and Tulane Law School, where he was the senior managing editor of the *Law Review*, Mark went on to clerk for United States District Judge Charles Schwartz in the Eastern District of Louisiana before earning an LLM at New York University Law School in Trade Regulation and then returning to New Orleans to serve as the first law clerk for Judge Sarah S. Vance, current chief judge of the Eastern District.

Drawn to public interest law, he found that his substantial debt obligations did not permit him to consider any options other than private practice. Yet, Mark was unwilling to jettison the penchant for the underserved instilled in him by his parents.

His mother, Marina, had come to the United States with her family after fleeing communist regimes in Russia and China (where they had lived in the Russian-Jewish enclave in Shanghai). His father,

Roger, was raised in the Chicago area by a single mother of limited resources who struggled to provide for him. Both of his parents experienced discrimination in various forms, and both suffered as a result of others abusing their power and authority. Growing up in the suburbs of Chicago and New York, Mark and his younger sister, Larissa, learned the lessons of hard work, family, commitment to the community, diversity and tolerance. Their parents also instilled in them an appreciation for the arts by bringing them “kicking and screaming” to every museum and free cultural event.

Abiding by these lessons, even as a new associate, Mark took on both civil and criminal pro bono cases. He soon found that there was tremendous practical benefit: pro bono cases afforded the inexperienced young lawyer an opportunity for motion and trial practice. Working with a wide range of clients with different backgrounds and legal issues encouraged him to become a better communicator and provided him with a better understanding of how to manage client expectations. Also, the work was tremendously rewarding. Mark still remembers his first pro bono client, a man who had been sentenced to life in prison at Angola in the 1970s for possession of a small amount of narcotics. He was in his 60s when Mark finally won his release, and Mark witnessed the tremendous impact that a comparatively small amount of legal work had on his client’s life.

Considering his upbringing in the suburbs of Chicago and New York and then attending undergraduate school in Los Angeles, Mark may seem an unlikely transplant to Louisiana. But he believes the values emphasized by his parents run deep in Louisiana and his decision to settle here (despite having no extended family in the area) was an easy one.

Mark brings a fervor to his commitment to Louisiana and to New Orleans that few locals can match. As a board member for the Pro Bono Project and a number of nonprofits ranging from WRBH Radio for the Blind to the New Orleans Regional Leadership Institute, Mark also has learned how valuable it is to bring business and commercial standards to the nonprofit world. In keeping with his “Gen X” sensibilities, Mark is both an idealist and a realist, both a pee wee soccer coach and a boardroom

negotiator, both a former skateboarder and an experienced corporate litigator.

The contradictions are what his wife and children savor most about him. Meredith is fond of telling stories about Mark’s aspirations to live off the land, even if that “land” is the backyard of their home near Bayou St. John. Unfortunately, Daddy’s Easter gifts (family life incorporates both Christian and Jewish traditions) of live chicks and a rabbit were short-lived in an environment that included two dogs and some irritated neighbors. Indeed, after the demise of *two* chain saws, even the beloved “farm” in St. Francisville was sold off to more adept country folk. “Both chain saws remained lodged in the tree, so they were included in the sale price of the property,” Meredith offers with a straight face but a gleam in her eye.

Mark chuckles and concedes the accuracy of the chain saw story, but insists that the chickens — “La Lune, Godzilla, Brittany and Pearl” — were wonderful laying hens. He adds, “I really have no business around farms, farm animals or felled trees.”

Embracing his own contradictions as a bedrock qualification for the task ahead, he changes the subject and proclaims that he and Louisiana State Bar Association (LSBA) President-Elect Darrel Papillion represent the next generation of leadership in the practice of law.

This hallmark ironic, self-deprecating and yet determined style is both charming and unnerving. When asked why, in heaven’s name, he would spend a year of his life at the helm of the LSBA, a role which many would view as anachronistic, the answer flows without hesitation: “In the course of my bar work, I have met extraordinary men and women from across the state who are changing the communities they live in. Like me, these individuals were drawn to law school by the belief in the transformative power of the law. Some are fighting against injustice and to keep our communities safe. Others are focused on economic development. They work for legal aid and civil rights law firms, but they are just as likely to have a solo family law practice or to work in-house or at a small oil and gas firm. Some are fighting in the courts. Many will never see a courtroom. But they all share a common commitment

to making this world a better place and are guided by the ethical standards we live by as officers of the court.”

Yet, Mark knows that the legal profession faces serious challenges. He is particularly aware that the practice today is vastly different from what it was like when he first passed the bar.

“We can’t ignore that our profession is undergoing systemic changes as a result of advances in technology, changing demographics, increasing competition, and growing consumer demand for low-cost legal services,” he observes. “Many lawyers in Louisiana are struggling in both their professional and personal life. Many new lawyers are saddled with extraordinary debt. Lawyers with established practices are seeing their costs increase and their incomes decline. Non-lawyers increasingly cross the line into the practice of law with impunity, which is not only an economic threat to our members, but endangers the public and undermines the rule of law.”

While the LSBA does not have the resources or regulatory authority to solve these problems on its own, Mark is adamant that the LSBA owes a duty to its members, particularly solo and small firm practitioners, to represent their interests effectively, to provide them with meaningful services, and to continually reassess the value proposition that it offers members.

In direct response to these problems, Mark has collaborated with Immediate Past President Larry Shea and the Board of Governors to engineer an expansion of practice management services for solo and small firm practitioners. During his year as president, Mark has plans to continue these efforts by expanding the technology solutions offered by the LSBA to small firms. “Lowering overhead is a pivotal factor in increasing lawyer income, and technology is a key component in that effort. Small firms often suffer from an information deficit when it comes to technology, and this is a deficit that the Bar is particularly well-suited to fill.”

Similarly, as a way to address the shrinking job market for law school graduates, Mark believes that the LSBA can take an active role in reframing the link between the underserved public and young entrepreneurial practices. He has endorsed and cultivated a program called



Mark and Meredith Cunningham with their children Virginia, Pierce (seated) and Alistair.
Photo by K&D Photo + Video.

LIFT (Legal Incubators for Tomorrow) started by the LSBA-affiliated Louisiana Civil Justice Center. This program provides practice management training, technology advice, network and referral opportunities, and mentoring to young attorneys from throughout the state who are committed to developing a law practice which can sustainably serve modest means or public interest clients.

In addition, Mark is working with the LSBA staff and statewide banking institutions to develop a program that will provide young lawyers with free credit counseling. He remembers his own experience with

post-graduate, high-interest-rate loans, the many long years he spent paying them off, and the delay it caused in his own economic solvency. Yet, he acknowledges that his debt burden was considerably smaller than what many law school graduates now experience. “Young lawyers today face twice the debt I did, and we have an obligation to assist them in managing this challenge if we want our profession to continue to thrive.” IBERIABANK is the first to agree to provide young lawyers with personalized credit counseling, but Mark is working to draw other institutions into the program.

Mark's plans also include an ambitious effort to more fully engage corporate and in-house counsel in Bar activities and services. Toward this end, Mark acknowledges he will have to be as much a good listener as a good implementer. "This is a segment of the Bar which is often called upon for contributions to good causes, but about whom we make very little effort to offer services or encourage personal participation."

A champion for the good that the organized Bar can do, Mark is not afraid to offer criticism where warranted. In a recent letter to the National Center for State Courts and the American Bar Association, Mark vociferously objected to the trend to endorse "limited license legal technicians" as a solution to providing legal representation for the poor. Mark rejects the view, espoused in some circles, that the practice of law by non-lawyers is "inevitable."

On the home front, Mark has encouraged the work of the LSBA's Unauthorized Practice of Law (UPL) Committee which has resulted in proposed legislation with regard to UPL. In its current configuration, the Louisiana statute makes UPL a felony, which many local prosecutors choose not to charge. The proposed legislation expands the standing of the Attorney General and private individuals to take action against unauthorized practitioners. "Neither the public nor the profession is served by allowing UPL. Non-lawyers are not subject to the same ethical standards as attorneys. They lack the education, expertise and judgment to provide competent legal services, and they are certain to take advantage of consumers if permitted to practice law outside of the regulatory controls applicable to licensed attorneys."

More seasoned lawyers also stand to

benefit from Mark's plans to work with the Louisiana Supreme Court to address the problems faced by lawyers looking to retire. Many small and solo practitioners struggle to find successors or succession plans which benefit clients as well as lawyers. "Far too many of us don't stop working when we should, or even when we would like to, because we cannot figure out how to effectively transfer the business. This often means that court-appointed administrators and even the ODC must intervene." Mark wants to help senior practitioners avoid having the courts or the Office of Disciplinary Counsel intervene in their practices by providing support to older lawyers who want assistance with succession planning. Mark cautions, "We are not here to insert ourselves into law practices or the lives of attorneys. The job of the Bar Association is to help attorneys succeed in business and

Through the Eyes of the Cunningham Children

Alistair, Virginia and Pierce Cunningham (referred to in family circles as "Ali," "Gingi" and "Elf") are singularly unimpressed by their father's involvement with the Louisiana State Bar Association. Unless, of course, it means a visit to the beach at Sandestin!

Family road trips are their favorite time with Dad, particularly the annual jaunt to Big Bend National Park in Texas. Mark packs them into the car each summer, leaving Mom behind for some well-deserved R&R, and hits the highway toward the far western side of Texas, sometimes taking Highway 90 the entire distance. "Getting there is half the fun!" Mark jokes.

Nine-year-old Gingi agrees, noting that sometimes the exploration of Big Bend can itself be rigorous. Whispering as though she is revealing a family secret, Virginia confides about a time when Dad insisted on a particularly long hiking trail. "Even *he* had to stop and rest! He told us he had the flu, but I don't think so."

The older and wiser Ali shushes his sister and talks instead of the pink flamingo motif at the Kathy's Kosmic Kowgirl Kafe, a favorite stop on the road to Big Bend



Alistair and Virginia Cunningham with the ill-fated chickens. Photo provided by Cunningham family.

(until Kathy's recent retirement). "And the hiking's the best part of Big Bend!" he tells her.

Young Pierce, exactly half the age of his 12-year-old brother, zooms past on his scooter, but agrees rather heartily with Ali. He's clearly the one who is always in motion, and a little hike must certainly be easier for him than Dad.

The children also share fond memories of La Lune, Godzilla, Brittany and Pearl, the four pet chicks, who grew to adulthood, but then met their demise at the hands of grumpy neighbors and feisty dogs.

Cutting off the discussion of exactly



Mark and Pierce Cunningham on a family vacation. Photo provided by Cunningham family.

what happened to the chickens, Meredith intervenes with the observation that they were acquired one day when she was in court and inaccessible for consultation by cell phone. "Mark was convinced that Easter would be incomplete without live bunnies and chicks. I think the result here has tempered his holiday gift enthusiasm a bit, but I never turn my phone off during Christmas and Hanukkah season!" she adds.

—Marta-Ann Schnabel

life by providing them with a platform for support when they need it.”

Success comes in a variety of forms, but no lawyer can be successful without tools for managing stress and assuring good mental health. Mark points out, “We are at least three times more likely to be depressed than other professionals and rank at the very top of all professions in burnout, substance abuse and suicide. The LSBA *must* take a leading role in addressing these issues.” A prime mover in the recent restructuring and expansion of the Lawyers Assistance Program, Inc. — a Bar program dedicated to providing programs and services for lawyers, judges and other members of the legal community who suffer from substance abuse, depression and other mental health challenges — Mark is a staunch believer that the LSBA owes a duty to its membership to make sure that support and treatment are available to all lawyers who need it.

Mark also believes that the LSBA should do more to respond to attacks on the judiciary in Louisiana. “Our judicial system is often unfairly and inaccurately portrayed in the national media. The truth is that the Supreme Court aggressively enforces ethical standards in the judiciary and the Bar, and the Court has shown no tendency to favor plaintiffs or defendants. We should be developing partnerships with business groups in the state and nationally to get this message out.”

While he seldom tires of policy talk, Mark’s phone beeps with a reminder that his son needs to get to tennis practice. “Ali is passionate about tennis,” Mark says, proudly. “He brings more heart and will to the game than anyone I have ever seen. He inspires me to do the same.” Equally admiring of young Virginia, Mark notes that she has “an independence and wit that I have only known in one other person — her mother.” Pierce, the youngest, is “elf-like” and “whimsical,” bringing balance to a family of high achievers.

More than aware of his good fortune, Mark insists on rattling off the names of many who have provided support and guidance, including law partners, judges and colleagues. Then he pauses as he once again mentions his wife. “I am the luckiest person ever,” he says. “I wake up every morning amazed that Meredith married me at all and I couldn’t be more excited about our future



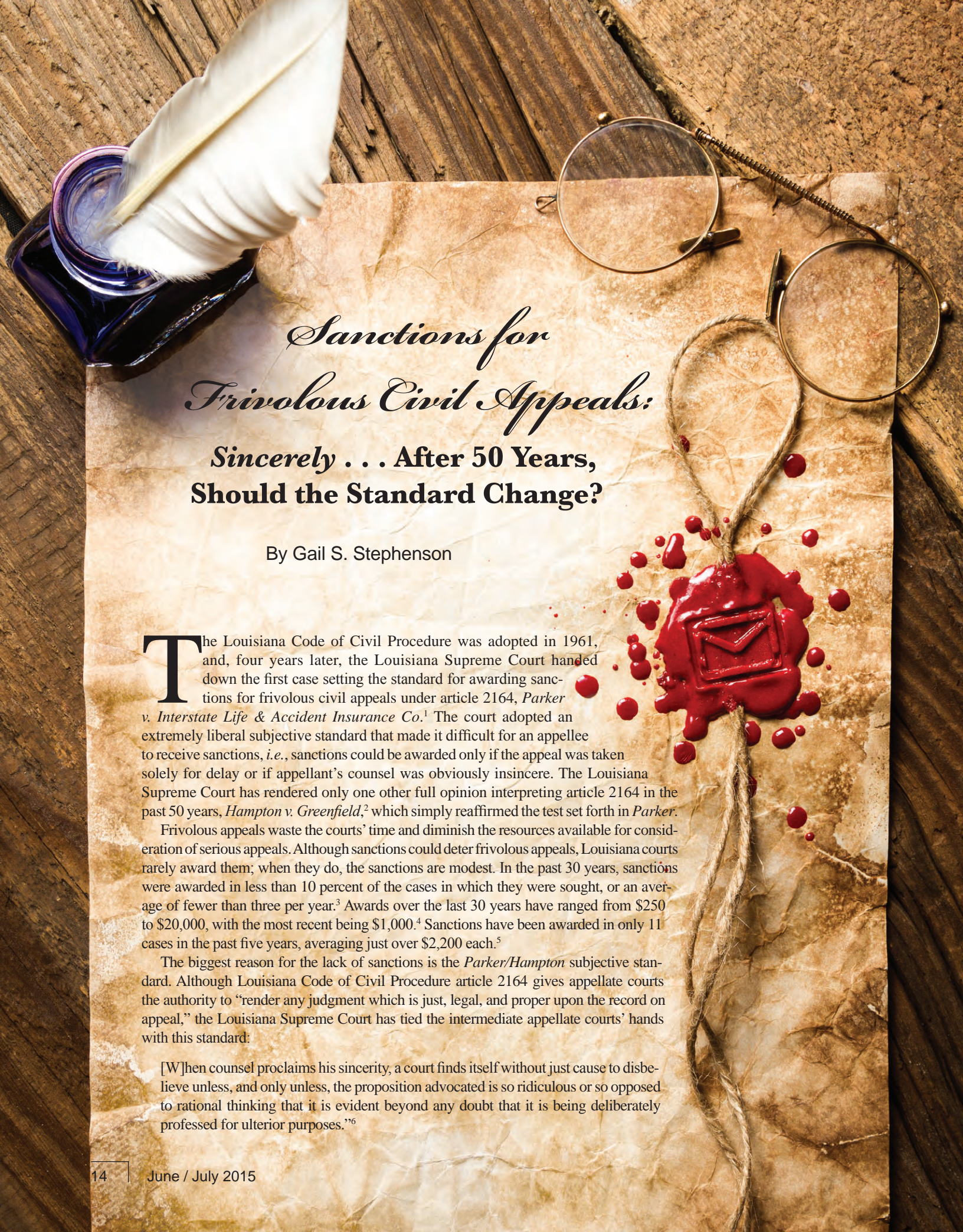
Mark and Meredith Cunningham with their children Alistair, Pierce and Virginia. Photo by K&D Photo + Video.

and the future of Louisiana in the years to come.” Then he flashes that smile, offers a simple and clearly heart-felt apology for having to leave, and dashes away again.

Marta-Ann Schnabel, a shareholder in the New Orleans law firm of O’Byron & Schnabel, P.L.C., served as the first woman president of the Louisiana State Bar Association (LSBA) in 2006-07. She also served as the LSBA secretary and Louisiana Bar Jour-



nal editor from 2001-03. She chairs the LSBA’s Access to Justice Committee and the Access to Justice Policy Committee and heads the board of the nonprofit Louisiana Civil Justice Center. She is currently the president of the Louisiana Association of Defense Counsel and the chair of the Louisiana Supreme Court’s Judicial Campaign Oversight Committee. She is a Fellow of the Louisiana Bar Foundation (LBF) and was recently recognized as the 2014 LBF’s Calogero Justice Award recipient. She has served in the American Bar Association’s House of Delegates and as a member of the ABA Standing Committee on Bar Activities and Services. (Ste. 1950, 1010 Common St., New Orleans, LA 70112)

A quill pen is shown in a dark blue inkwell on the left. A pair of round, wire-rimmed glasses is positioned at the top right. A red wax seal, featuring a square design with a stylized 'M' or 'W' inside, is attached to a piece of twine on the right side of the paper. The background is a rustic wooden surface.

Sanctions for Frivolous Civil Appeals:

Sincerely . . . After 50 Years, Should the Standard Change?

By Gail S. Stephenson

The Louisiana Code of Civil Procedure was adopted in 1961, and, four years later, the Louisiana Supreme Court handed down the first case setting the standard for awarding sanctions for frivolous civil appeals under article 2164, *Parker v. Interstate Life & Accident Insurance Co.*¹ The court adopted an extremely liberal subjective standard that made it difficult for an appellee to receive sanctions, *i.e.*, sanctions could be awarded only if the appeal was taken solely for delay or if appellant's counsel was obviously insincere. The Louisiana Supreme Court has rendered only one other full opinion interpreting article 2164 in the past 50 years, *Hampton v. Greenfield*,² which simply reaffirmed the test set forth in *Parker*.

Frivolous appeals waste the courts' time and diminish the resources available for consideration of serious appeals. Although sanctions could deter frivolous appeals, Louisiana courts rarely award them; when they do, the sanctions are modest. In the past 30 years, sanctions were awarded in less than 10 percent of the cases in which they were sought, or an average of fewer than three per year.³ Awards over the last 30 years have ranged from \$250 to \$20,000, with the most recent being \$1,000.⁴ Sanctions have been awarded in only 11 cases in the past five years, averaging just over \$2,200 each.⁵

The biggest reason for the lack of sanctions is the *Parker/Hampton* subjective standard. Although Louisiana Code of Civil Procedure article 2164 gives appellate courts the authority to "render any judgment which is just, legal, and proper upon the record on appeal," the Louisiana Supreme Court has tied the intermediate appellate courts' hands with this standard:

[W]hen counsel proclaims his sincerity, a court finds itself without just cause to disbelieve unless, and only unless, the proposition advocated is so ridiculous or so opposed to rational thinking that it is evident beyond any doubt that it is being deliberately professed for ulterior purposes."⁶

As Justice Ortique noted in his dissent in *Hampton*, “Any attorney schooled in the art of advocacy may interpose sincerity in the position he advocates on appeal, under threat of the imposition of damages against him or his client.”⁷

What Are the Procedural Requirements?

Even when the position advocated is ridiculous, courts will not award sanctions unless they are requested properly. Procedural deficiencies accounted for 17 percent of the denials of sanctions in the past 30 years.⁸ The most common mistake was failing to ask for sanctions in an answer to appeal or cross-appeal.⁹ Other mistakes include asking for frivolous-appeal damages prematurely when there was no final judgment,¹⁰ asking for frivolous-appeal damages under Louisiana Code of Civil Procedure article 863, which applies only in the trial court,¹¹ and asking the trial court, rather than the appellate court, to award damages for a frivolous appeal.¹²

Louisiana Code of Civil Procedure article 2133(A) requires that a party answer an appeal within 15 days of the return date or the date the record is lodged with the appellate court, whichever is later, if he seeks modification of the judgment or damages against the appellant. In 1865, the Louisiana Supreme Court denied frivolous-appeal sanctions that were requested only by brief, stating: “Counsel’s brief is not considered an answer.”¹³ The rule that damages for frivolous appeal must be requested in an answer to appeal or cross-appeal has been followed through 150 years of jurisprudence.¹⁴ The one exception was when an appellee filed a motion to dismiss the appeal as frivolous and asked for sanctions within the 15-day delay for answering the appeal. In *Bouzon v. Bouzon*, the Louisiana Supreme Court treated the motion as an answer to appeal and summarily remanded the case to the 5th Circuit to award sanctions.¹⁵

Judge Billie Woodard of the Louisiana 3rd Circuit described the rule requiring that sanctions be requested in an answer or cross-appeal as “an old, lame ‘duck’” that should be “retire[d] . . . to gumbo.”¹⁶ Article 2133 requires an answer to appeal or cross-appeal when a party seeks to modify, revise or partially reverse the trial court’s

judgment or seeks damages against the appellant. Judge Woodard stated in a dissent that it is “a logical and legal impossibility” to say that the appellate court is amending the trial court’s judgment when it awards additional attorney fees for appellate work, as the trial court never had authority to award attorney fees for work performed in the appellate court. Instead, “[t]he appellate court is rendering its own distinct judgment for attorney fees earned for work done on the appeal, which only it has the power to do and which is before it, only.”¹⁷ Nevertheless, the rule is still being followed by the intermediate appellate courts.¹⁸

One problem with the short 15-day time limit for answering the appeal and requesting sanctions is that the appellee must answer before the appellant files a brief. The appellant’s brief is due 25 days after the record is lodged, or 10 days after the deadline for filing an answer to appeal.¹⁹ Thus, the appellant is forewarned that the appellee is seeking sanctions and may defeat the sanction request simply by stating in its brief that counsel is sincere. The other problem with the request for sanctions being due before the appellant’s brief is that the appellee must request sanctions without knowing what errors the appellant will assign or what arguments the appellant will raise in its brief. If the appellant raises a novel issue or one of the assignments of error may have merit, however slight, the appellee often abandons the sanctions request by not briefing it.²⁰

What Makes an Appeal Frivolous?

Appeals that are found to be frivolous fall into four categories: (1) those where the appellant has something to gain from the delay, such as postponing an eviction; (2) harassment appeals, often filed in domestic suits; (3) repetitive appeals, which are usually related to harassment appeals; and (4) appeals with no serious issue either at trial or on appeal, lacking evidence and legal support.

When the purpose of the appeal is obviously nothing more than to gain additional time before an eviction, the court is likely to grant the request and impose back rent and attorney fees as the sanction.²¹ The most recent harassment case involved an attorney making allegations against opposing coun-

sel that were “thoughtless and needlessly cruel” and “were essentially premised on barbershop gossip.”²² Domestic cases tend to fall into the harassment category when they become repetitive, and the courts are most likely to impose sanctions when the harassing appellant is an attorney.²³

Appeals that raise long-settled legal issues without making a valid argument for change may be sanctioned in the “no serious legal issue” category.²⁴ More commonly, appeals with poor briefs, or no brief at all, fall into this category.²⁵ The circuits are split over whether sanctions can be awarded when the appellant abandons the appeal by not filing a brief. In *Weathers v. Herald Life Ins. Co.*, the 3rd Circuit held that when the original appeal is dismissed, the answer, “being unsupported and without foundation, falls also,” and that article 2133 “does not allow the maintenance of an answer independently of the appeal from which it arose.”²⁶ *Weathers* was followed by two other 3rd Circuit cases²⁷ and one from the 5th Circuit.²⁸

The 2nd Circuit, in a well-reasoned opinion in *State ex rel. Muse v. Ross*, expressly declined to follow *Weathers* and its progeny.²⁹ The court noted the language in article 2133 that the answer to appeal “shall be equivalent” to a separate appeal and stated it “would not truly be equivalent” if the appellant could cause the answer to fall simply by dismissing his appeal.³⁰ The court also cited the official revision comments to article 2133, which state that filing an answer to appeal is the proper method to request damages for frivolous appeal.³¹ The court thus found that the answer to appeal survived dismissal of the original appeal.³²

Who Can Be Sanctioned?

Article 2164 does not say against whom frivolous-appeal sanctions may be imposed, although the appellant/client is usually the party cast. Federal courts have imposed sanctions in some cases against both the appellant and counsel because “attorney and client are in the best position between them to determine who caused [the] appeal to be taken”³³ and, in some cases, solely against the attorney.³⁴ In the past 30 years, however, Louisiana courts have sanctioned only counsel for a frivolous appeal just once³⁵ and have sanctioned both client and counsel in only three cases, all involving attorneys behaving very badly.³⁶

Conclusion

In summary, if you believe your opponent has filed a frivolous appeal and you are entitled to sanctions, answer the appeal or file a cross-appeal timely. If you missed the 15-day deadline, don't waste the effort asking for sanctions in your brief. To have the best chance of success, do not ask for modification of the judgment. If you think the judgment should be modified, weigh the value of the potential modification against the likely modest sanction. Then, just hope your opponent doesn't respond in brief, "Of course my appeal is sincere." Until the Louisiana Supreme Court changes the standard, that's all it takes to defeat your request for sanctions.

If you are a judge, however, and the appellee has complied with the procedural requirements for sanctions, don't automatically deny the request because you think the Supreme Court will reverse you. As Judge Morris Lottinger of the 1st Circuit said, "The failure to award frivolous appeal damages sends forth a message to all appellees to not waste the time and effort seeking frivolous appeal damages, because they are not to be awarded."³⁷ Shouldn't the message instead be, "Don't waste our time with frivolous appeals?" The Supreme Court recently awarded \$10,000 in damages, plus legal fees, for a frivolous writ application,³⁸ perhaps after 50 years the court is ready to reconsider the standard.

FOOTNOTES

1. 179 So.2d 634 (La. 1965).
2. 618 So.2d 859, 863 (La. 1993).
3. The author searched Westlaw for cases between 1985 and 2015, finding courts awarded frivolous-appeal sanctions in only 83 of the 834 civil cases for which they were sought.
4. Cox v. O'Brien, 49,278 (La. App. 2 Cir. 8/13/14), 147 So.3d 809, 817, writ denied, 14-1907 (La. 11/21/14).
5. *Id.* (\$1,000); McMaster v. Progressive Sec. Ins. Co., 13-1411 (La. App. 4 Cir. 3/26/14), 2014 WL 1260979 (\$5,000), writ granted, 14-1038 (La. 9/19/14), 147 So.3d 687 (denying sanctions for frivolous writ application, but awarding damages of \$10,000 and assessing against the applicant all "legal fees, costs, and expenses" in connection with the writ application); Flowers v. La. Citizens Property Ins., 12-0100 (La. App. 1 Cir. 11/2/12), 2012 WL 5383162 at *2 (\$1,500); Gray v. Gray, 11-2360, 2012 WL 4501002 at *1 (La. App. 1 Cir. 10/1/12)

(\$750); Davisson v. O'Brien, 47,384 (La. App. 2 Cir. 8/8/12), 104 So.3d 467, 476 (\$2,500); Acosta v. B & B Oilfield Servs., Inc., 12-0122 (La. App. 3 Cir. 6/6/12), 91 So.3d 1263, 1270 (\$2,500); Echelon, Inc. v. Cassidy, 11-1517 (La. App. 3 Cir. 4/4/12), 2012 WL 1142280 at *2 (\$2,500); Bandaries v. Cassidy, 11-1267 (La. App. 3 Cir. 3/7/12), 86 So.3d 125, 133 (\$2,500); Nesbitt v. Nesbitt, 46,514 (La. App. 2 Cir. 9/21/11), 79 So.3d 347, 353 (\$2,500); Avenue Surgical Suites v. Jo Ellen Smith Convalescent Ctr., 11-0026 (La. App. 4 Cir. 5/18/11), 66 So.3d 1103, 1111 (\$1,000); Rockett v. Neupert, 10-1311 (La. App. 1 Cir. 3/25/11), 2011 WL 1260069 at *5 (\$2,500).

6. Hampton, 618 So.2d at 863, quoting Parker, 179 So.2d at 637.

7. *Id.* at 866 (Ortique, J., dissenting).

8. Sanctions were denied in 128 of 751 cases due to procedural deficiencies.

9. Requests for frivolous-appeal sanctions were denied for failure to file a cross-appeal or answer to appeal in 118 of 834 cases between 1985 and 2015.

10. *See*, Stephens v. Strahan, 11-0236 (La. App. 3 Cir. 4/20/11), 62 So.3d 894, 897. The bulk of the procedural blame in this case was on the appellant, who appealed prematurely.

11. *See*, Hornot v. Cardenas, 10-1569 (La. App. 1 Cir. 3/25/11), 2011 WL 1103151, at *5; Calahan v. Midland Risk Ins. Co., 99-0132 (La. App. 3 Cir. 1999), 743 So.2d 690.

12. *See*, Schmitt v. Schmitt, 09-0415 (La. App. 4 Cir. 12/16/90), 28 So.3d 537, 543 (appellee filed answer to appeal in trial court); Clement v. Graves, 04-1831 (La. App. 1 Cir. 9/28/05), 924 So.2d 196, 201-02 (appellee filed motion to dismiss the appeal and for damages in trial court).

13. Verges v. Noel, 17 La. Ann. 67, 67 (1865).

14. *See*, e.g., Guerrero v. Guerrero, 12-0527 (La. App. 5 Cir. 3/27/13), 110 So.3d 723, 728 (answer "incorporated" in brief and not filed as a separate pleading was both untimely and procedurally deficient); Roberts v. Robicheaux, 04-1405 (La. App. 3 Cir. 3/2/05), 896 So.2d 1232, 1235 ("Appellee's 'Answer Brief' . . . [was] neither an answer nor an appeal" and did not satisfy the requirements of article 2133); Gaughan v. J.J. Lips, Inc., 137 So. 363, 363 (La. App. Or. 1931) (refusing to award sanctions where appeal was "plainly frivolous" but sanctions were requested only at oral argument and in brief).

15. 532 So.2d 1386, 1387 (La. 1988).

16. Perot v. Link Staffing Servs., 99-0229 (La. App. 3 Cir. 6/23/99), 744 So.2d 80, 87 (Woodard, J., dissenting in part).

17. *Id.*

18. *See*, e.g., David v. David, 14-0126 (La. App. 3 Cir. 6/4/14), 144 So.3d 1110, 1118.

19. La. Ct. App. R. 2-12.7.

20. *See*, e.g., Watts v. Watts, 08-0834 (La. App. 4 Cir. 4/8/08), 10 So.3d 855, 861; Levert v. Martinez, 06-0011 (La. App. 5 Cir. 9/26/06), 939 So.2d 615, 619 n.1. Rule 2-12.4(B)(4) of the Louisiana Uniform Rules, Courts of Appeal, provides, "The court may consider as abandoned any assignment of error or issue for review which has not been briefed."

21. *See*, e.g., Wilson v. Fuqua, 553 So.2d 926, 928 (La. App. 4 Cir. 1989); La. Home Builders, Inc. v. Fontenot, 546 So.2d 325, 328 (La. App. 3 Cir. 1989).

22. McMaster v. Progressive Sec. Ins. Co., 13-1411 (La. App. 4 Cir. 3/26/14), 2014 WL 1260979, at *5-6, writ granted, 14-1038 (La. 9/19/14), 147 So.3d 687.

23. *See*, e.g., Nesbitt v. Nesbitt, 46,514 (La. App. 2 Cir. 9/21/11), 79 So.3d 347 (three appeals); Hester v. Hester, 874 So.2d 859, 861 (La. App. 4 Cir. 4/14/04) (five published and numerous unpublished appeals); Gardner v. Gardner, 616 So.2d 1280, 1281 (La. App. 4 Cir. 1993) (three appeals).

24. *See*, e.g., I.D.C., Inc. v. Natchitoches Dev. Co., 482 So.2d 958, 961 (La. App. 3 Cir. 1986).

25. *See*, e.g., Mitchell v. Accent Constr. Co., 00-0996 (La. App. 4 Cir. 3/14/01), 785 So.2d 864, 866 (brief "failed to include any authority"); Zeringue v. Zeringue, 94-1411 (La. App. 1 Cir. 4/7/95), 654 So.2d 721, 723 (appellant's "brief contained only two pages of argument" and did not attempt to distinguish the case relied on by the trial court).

26. 284 So.2d 624, 625 (La. App. 3 Cir. 1973).

27. Crochet v. Pritchard, 509 So.2d 501 (La. App. 3 Cir. 1987); Moity v. Guillott, 466 So.2d 511 (La. App. 3 Cir. 1985).

28. Edwards v. Lousteau Auto Sales, 424 So.2d 460 (La. App. 5 Cir. 1982).

29. 26,544 (La. App. 2 Cir. 1995), 651 So.2d 364, 365-66.

30. State *ex rel.* Muse v. Ross, 26,554 (La. App. 2 Cir. 3/1/95), 651 So.2d 364, 365-66.

31. *Id.* at 365.

32. *Id.* at 366.

33. *See*, e.g., United States v. Potamkin Cadillac Corp., 689 F.2d 379, 382 (2 Cir. 1982).

34. *See*, e.g., Coghlan v. Starkey, 852 F.2d 806, 816-17 (5 Cir. 1988).

35. Succession of Horn, 02-0430 (La. App. 5 Cir. 9/30/02), 827 So.2d 1241, 1247-48.

36. Davisson v. O'Brien, 47,384 (La. App. 2 Cir. 8/8/12), 104 So.3d 467; Mitchell v. Brown Builders, 39,673 (La. App. 2 Cir. 5/11/05), 902 So.2d 1288; Olympia Roofing Co. v. Henican, 534 So.2d 16 (La. App. 4 Cir. 1988).

37. Rogers v. Daubin, 498 So.2d 253, 257 (La. App. 1 Cir. 1986) (Lottinger, J., dissenting). Judge Lottinger also authored the majority opinion but filed a separate opinion indicating his dissent at the majority's refusal to award damages for frivolous appeal.

38. McMaster v. Progressive Sec. Ins. Co., 14-1038 (La. 9/19/14), 147 So.3d 687. Article 2164 was amended in 2010 to allow damages for frivolous writ application. La. Acts 2010, No. 184.

Gail S. Stephenson is director of legal analysis and writing and an associate professor of law at Southern University Law Center. She was the Louisiana Bar Foundation's Distinguished Professor for 2014. She has been a longtime member of the Louisiana Bar Journal's Editorial Board. For a more thorough discussion of frivolous-appeal sanctions, see Gail S. Stephenson, "Sanctions for Frivolous Civil Appeals in Louisiana," 75 La. L. Rev. 1125 (2015). (gstephenson@sulc.edu; 2747 Purvis Dr., Baton Rouge, LA 70809-1922)



Procrastination, file stagnation & neglect, inability to meet professional or personal obligations or deadlines

Inability to open mail or answer phones, "emotional paralysis"

Feelings of bafflement, confusion, loneliness, isolation, desolation and being overwhelmed

Persistent apathy or "empty" feeling

Drug or alcohol abuse

Changes in energy, eating or sleep habits

Trouble concentrating or remembering things

Loss of interest or pleasure, dropping hobbies

Guilt, feelings of hopelessness, helplessness, worthlessness, or low self-esteem

A Johns Hopkins study found that lawyers suffer from depression at a rate 3.6 times higher than the general employed population.

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New Supreme Court Rule Allows CLE Credit for Pro Bono Representation

By Christy F. Kane, Jeffrey E. Richardson and Martin A. Stern

The Louisiana Supreme Court adopted a new rule on Feb. 25 that gives Louisiana attorneys the opportunity to earn CLE credit for pro bono legal representation. This important change was the result of a proposal by the authors of this article and other volunteers with Louisiana Appleseed, a nonprofit organization that works with attorneys and other professionals to increase access to education, opportunity and justice. With this new rule, which became effective on May 1, Louisiana joins the vanguard of states addressing the chronic and severe need for pro bono legal assistance.

The Need for Pro Bono

One of the most pressing societal problems is that legal services are priced beyond the reach of the disadvantaged. Nationally, it is reported that approximately 80 percent of the legal needs of the poor are unmet.¹ As the United States Supreme Court noted 50 years ago, “There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v. Illinois*, 351 U.S. 12, 19 (1956). Increasing the number of pro bono hours worked by Louisiana lawyers would attack this problem at its root cause.

Louisiana Rules of Professional Conduct Rule 6.1 provides that every lawyer “should aspire to render at least 50 hours of pro bono publico legal services per year.” This sentence was taken from, and is identical to, a sentence in the American Bar Association (ABA) Model Rule of Professional Conduct 6.1 (2002). The official comment to the ABA Model Rule explains the drafters’ intent: “It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year the number of hours set forth in this Rule.”

Unfortunately, however, in 2012-13, less than 10 percent of Louisiana attorneys reported to the Louisiana State Bar Association (LSBA) that they had performed pro bono work. No state makes pro bono hours mandatory for every attorney,² but some states have explored creative ways to encourage attorneys to do more pro bono work.

Encouraging Pro Bono Through CLE Credit

One method of encouraging pro bono work (adopted by some states) is to give CLE credit to attorneys who perform such work. According to a survey by the ABA Standing Committee on Pro Bono and Public Service, the number one reason lawyers give for not performing pro bono work is a lack of time.³ Reducing the need to obtain CLE credit in exchange for pro bono work helps to address some of this burden.

Currently, 10 other states award CLE credit for pro bono representation. While the specifics of the rule vary from state to state, the general practice has been to give

Some examples of alternative methods to obtain CLE credit in Louisiana include:

- ▶ Credit for teaching an approved CLE activity, ranging from three to six hours of CLE credit for each one hour of teaching. Rule XXX, Rule 3, Reg. 3.7.
- ▶ Serving as a bar examiner (eight hours of CLE credit) or an assistant bar examiner (six hours of CLE credit). Rule XXX, Rule 3, Reg. 3.10.
- ▶ Attending Louisiana State Law Institute meetings. One hour of CLE credit is awarded for two hours of participation, not to exceed 10 hours of CLE credit. Rule XXX, Rule 3, Reg. 3.12.
- ▶ Serving as a member of the Louisiana Legislature, Secretary of the Louisiana Senate or Clerk of the House of Representatives. Eight hours of CLE credit. Rule XXX, Rule 3, Reg. 3.15.
- ▶ Serving on the Attorney Disciplinary Board (four hours of CLE credit), the Judiciary Commission (four hours of CLE credit), the LSBA Ethics Advisory Committee (one hour of CLE credit) or the LSBA Legal Fee Dispute Resolution Program. Rule XXX, Rule 3, Regs. 3.16, 3.17, 3.18, 3.20.

about one hour of CLE credit for every five or six hours of pro bono work performed, often with a cap of three CLE credits per year.⁴ The approach taken by these 10 states served as a template for Louisiana’s new rule.

Louisiana’s Regulation 3.21

Louisiana’s rules on continuing legal education for attorneys are found in Louisiana Supreme Court Rule XXX. Rule 3 of Rule XXX contains the requirement that each member of the Louisiana Bar obtain 12.5 hours of CLE credit each calendar year. There are many regulations corresponding to Rule 3. Effective May 1, 2015, the Supreme Court added Regulation 3.21:

Credit may also be earned through providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients. To be eligible for credit, the matter must have been assigned to the Member by a court, a bar association, or a legal services or pro bono organization that has as its primary purpose the furnishing of such pro bono legal services and that has filed a statement with the Louisiana Committee on MCLE. A Member providing such pro bono legal representation shall receive one (1) hour of CLE credit for each five (5) hours of pro bono representation, up to a maximum of

three (3) hours of CLE credit for each calendar year. To receive credit, the Member shall submit MCLE Form 6 (“Application for CLE Credit for Pro Bono Services”).

The goal of Regulation 3.21, like the similar rules in the 10 other states, is to provide an incentive to attorneys to perform pro bono work. By handling a pro bono matter, the attorney not only provides important legal assistance to the client that the client could not otherwise afford but also has three fewer hours of CLE to worry about (and saves the cost of attending another three hours of traditional CLE). It is a win-win, with the potential to help a large number of individuals in Louisiana who need but cannot afford legal representation.

The Louisiana Committee on Mandatory Continuing Legal Education has drafted MCLE Form 6, and lawyers should consult that form when seeking to take advantage of Regulation 3.21. Another excellent resource for Louisiana lawyers looking to undertake pro bono representation is the LSBA’s Access to Justice Committee web page at: www.lsba.org/ATJ/.

But Isn’t CLE for Learning?

As this proposal was being drafted, most of the feedback was positive. On the rare occasion that negative feedback was received, it typically came in the form of this question:

CLE is supposed to be for learning about being a better lawyer. By awarding CLE credit for something other than sitting in a classroom, does that take away from the value of CLE?

It is a reasonable question, but, to the contrary, Regulation 3.21 promotes the goals of CLE. While one can learn much in a classroom, one can learn at least as much by doing. As Aristotle wrote around 350 B.C.: "For the things we have to learn before we can do them, we learn by doing them, e.g., men become builders by building and lyre players by playing the lyre; so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts."⁵ It is impossible for an attorney to handle a pro bono representation without learning to be a better lawyer. A lawyer often must either learn or refresh his/her knowledge of an area of the law in order to provide pro bono representation. Moreover, and especially for young lawyers, pro bono representation provides unique opportunities, e.g., communicating directly with clients and explaining options to clients, examining a witness at trial, or otherwise appearing before a judge.

Additionally, although in-person attendance at CLE activities is the typical method of obtaining credits, Louisiana has long provided numerous alternatives. Some of these reflect less traditional ways to obtain legal education, while others are more oriented toward incentivizing lawyers to perform a function integral to the legal profession and its service of society as a whole.

Some examples of alternative methods to obtain CLE credit in Louisiana include:

► Credit for teaching an approved CLE activity, ranging from three to six hours of CLE credit for each one hour of teaching. Rule XXX, Rule 3, Reg. 3.7.

► Serving as a bar examiner (eight hours of CLE credit) or an assistant bar examiner (six hours of CLE credit). Rule XXX, Rule 3, Reg. 3.10.

► Attending Louisiana State Law Institute meetings. One hour of CLE credit is awarded for two hours of participation, not to exceed 10 hours of CLE credit. Rule XXX, Rule 3, Reg. 3.12.

► Serving as a member of the Louisiana Legislature, Secretary of the Louisiana Senate or Clerk of the House of Representatives. Eight hours of CLE credit. Rule XXX, Rule 3, Reg. 3.15.

► Serving on the Attorney Disciplinary Board (four hours of CLE credit), the Judiciary Commission (four hours of CLE credit), the LSBA Ethics Advisory Committee (one hour of CLE credit) or the LSBA Legal Fee Dispute Resolution Program. Rule XXX, Rule 3, Regs. 3.16, 3.17, 3.18, 3.20.

Like many of these, new Regulation 3.21 falls into both categories; it both represents an alternative way to obtain legal education, while at the same time incentivizing lawyers to perform a function integral to the profession and, indeed, to all of society.

Conclusion

In adopting Regulation 3.21, the Louisiana Supreme Court has provided an additional incentive for Louisiana lawyers to undertake pro bono representation. Louisiana attorneys are encouraged to take advantage of the new rule and, in doing so, assist the state's substantial population of indigent and near-indigent people needing legal services.

FOOTNOTES

1. Evelyn Nieves, "80% of Poor Lack Civil Legal Aid, Study Says," Wash. Post, Oct. 15, 2005.

2. New York has a mandatory pro bono program for new attorneys that went into effect this year. Every applicant to the New York Bar on or after Jan. 1, 2015, who will take the bar exam must complete 50 hours of qualifying, supervised pro bono hours prior to filing an application for admission. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16.

3. American Bar Association Standing Committee on Pro Bono and Public Service, "Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers" 25-30 (March 2013), available at: www.americanbar.org/groups/probono_public_service/publications.html.

4. Arizona Supreme Court Rule 45(a)(5), one CLE credit hour for every five hours of pro bono service, cap of five credit hours per year; Colorado Rule of Civil Procedure 260.8, one CLE credit hour for every five hours of pro bono service, cap of nine credit hours every three years; Rule 8(D) of Delaware's Rules of the Commission on Continuing Legal Education, one CLE credit hour for every six hours of pro bono service, cap of six credit hours every three years; 22 N.Y.C.R.R. part 1500.22(j), one CLE credit hour for every two hours of pro bono service, cap of 10 credit hours every two years; Policy 1.19 of Section 1 of the North Dakota CLE Commission Policies, one CLE credit hour for every six hours of pro bono service, cap of three credit hours every three years; Rule X § 5(H) of the Ohio

Supreme Court Rules, one CLE credit hour for every six hours of pro bono service, cap of six credit hours every two years; Tennessee Supreme Court Rule 21 § 4.07(c), one CLE credit hour for every five hours of pro bono service, cap of three credit hours every year; Regulations of the Washington State Board of Continuing Legal Education, Regulation 103(g), six CLE credit hours awarded each year for two hours of pro bono training and four hours of pro bono service; Rule 4(g) of the Rules for Continuing Legal Education of Members of the Wyoming Bar, one CLE credit hour for every five hours of pro bono service, cap of three credit hours every year.

6. Aristotle, *Nicomachean Ethics*, bk. II (W.D. Ross trans.), available at: <http://classics.mit.edu/Aristotle/nicomachaen.2.ii.html>.

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

By the Louisiana State Bar Association's
Outreach Committee

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

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

What is Blue Jeans?

Blue Jeans is a virtual conferencing system (similar to products like Go-To Meeting) that allows users to host and join video and tele-conferences from a variety of devices. Blue Jeans's belief is that "video collaboration should be as flexible as your favorite pair of jeans."¹ The service achieves this goal by being platform and device "agnostic." This means that users

can connect to Blue Jeans videoconferences in numerous ways — through any number of conference-room videoconferencing systems, web browsers, tablets or mobile devices. So, members can participate in a Blue Jeans meeting not only in the traditional conference-room setting, but also from their offices or while traveling.

How Do I Set Up a Blue Jeans Videoconference?

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

Reserve on the Web: LSBA members may reserve a Blue Jeans videoconference online through the LSBA's website, www.lsba.org. On the home page, choose the "For Members" tab and then select "Bar Center Services" under the heading "Members Tools and Services." From there, click on the "Meeting Room Manager" link.² Members also may reach the "Meeting Room Manager" by clicking the "View Event Calendar" link on the LSBA home page.

Once in the "Meeting Room Manager" application, click the "Meeting Request Form" and input the particular details of the meeting — date, time, location and name of host.³ Note that "Location" will always be "LA Bar Center." The dropdown menu below it ("Room Requested") will allow

selection of the venue for the meeting. Videoconferences may be conducted in the Louisiana Bar Center's New Orleans conference rooms, at three local Bar offices in the state⁴ or remotely at any other location chosen.⁵ If reserving a room online, remember to check the "Video Conference" box in the "Equipment Needed" section.

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

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

What Happens After I Set Up My Videoconference?

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

information).

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

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

▶ Instructions on how to access the meeting using either a traditional, room-based videoconferencing system or other connection options like desktops or mobile devices;⁷ and

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

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

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

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

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

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

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

Blue Jeans Features and Helpful Hints

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

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

on those devices.

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

Conclusion

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

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

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

FOOTNOTES

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

2. If you have any other problems working through the "Meeting Room Manager" application, there is a "How To" guide with helpful information located on the "Bar Center Services" page, www.lsba.org.

3. Note that if you have any problem accessing

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

4. You can choose from three rooms at the Louisiana Bar Center in New Orleans (Founders, Lafayette and Presidents), as well as rooms in the Baton Rouge, Lafayette and Shreveport Bar offices. Each room has the capacity to host a videoconference.

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

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

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

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

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

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

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

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

The Louisiana State Bar Association's (LSBA) Outreach Committee is chaired by Shreveport attorney John M. Frazier and composed of 10 members from across the state, plus two LSBA staff liaisons. The committee's mission is to identify and develop the means to permit more members from across the state to benefit from the programs and activities of the LSBA. The committee's aim is to use rapidly advancing but widely available technology to achieve its mission. The committee meets exclusively via videoconference.

Book Review

Speeches by Paul R. Baier

(published by the Louisiana Bar Foundation, 2014)

Reviewed by R. Patrick Vance

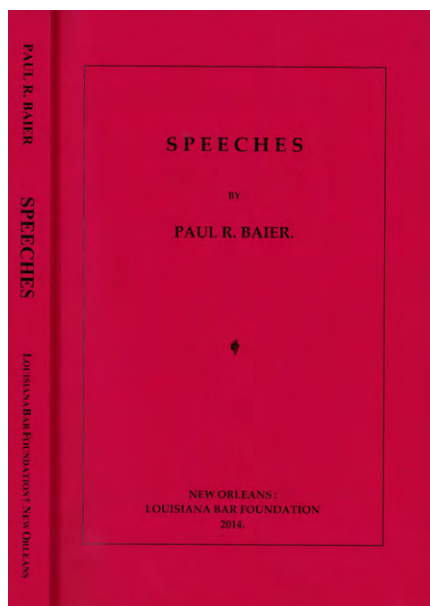
Professor Paul R. Baier is a keen observer of the law and the jurists and scholars who are lovingly profiled in his latest publication, *Speeches*. His portraits range from the Olympian U.S. Supreme Court where he served as a Judicial Fellow in 1975 to a selection of Louisiana's distinguished jurists and Civil Code scholars.



Our Paul Baier is not the 6'4" former American professional ice hockey defenseman one finds with a Google search. Rather our Paul Baier is the young professor who came to Louisiana in 1972 from Harvard Law School by way of Michigan and Tennessee where he first instructed aspiring lawyers. Prof. Baier credits that legal lion from Ville Platte, Albert Tate Jr., with the sweet words of persuasion to join the Louisiana State University faculty in Baton Rouge. It was a variation of "*laissez les bon temps rouler*" — "you'll have fun," as Judge Tate phrased it — that closed the deal. And fun he had.

What the close reader will observe in his *Speeches* is that Prof. Baier arrived in Louisiana as a student of the U.S. Constitution, and, in time, became an acknowledged scholar of that great document and a devotee of Louisiana's Civil Code heritage. Over the course of the next 40 years in recognition of his considerable facility with words and immense knowledge of judicial history, Prof. Baier's inner Cicero was called upon to add gravitas to an event. He participated in events of celebration from the U.S. Supreme Court Historical Society in Washington, D.C. to the *Louisiana Law Review* banquet at Juban's Restaurant in Baton Rouge, with numerous significant retrospectives in between. While he arrived as a Harvard man, he morphed into a Professeur de Faculté de Droit, a Marcus Tullius Baierus, so to speak.

Although this 264-page volume is modestly titled *Speeches, Orations* seems a more apt appellation for this collection of grand words and perceptive observations on the giants in U.S. and Louisiana jurisprudence, including a trio of Chief Justices, Edward Douglas White, Louisiana's contribution of the ninth chief justice of the U.S. Supreme Court, William Rehnquist and Louisiana Chief Justice John Dixon; Associate Justices Antonin Scalia, Hugo Black, Lewis Powell and Harry Blackman; a trio of Louisiana associate justices, the beloved Albert Tate, Jr., who also served on the U.S. 5th Circuit Court of Appeals,



Justices John Weimer and Luther Cole; and a brace of Louisiana judges, one state and one federal, Judges Melvin Shortess and Jane Triche Milazzo.

How judges judge is the recurring theme that runs through *Speeches*. As an example, one of Prof. Baier's sketches is found in his Retrospective of our own Chief Justice John Dixon upon the occasion of his retirement in 1990. The picture painted of Justice Dixon is not abstract. It is simple, unadorned and direct, as straight forward and plain as Dixon's adherence to the edict of Strunk and White's *The Elements of Style* — "omit needless words." Indeed, Prof. Baier's final brushstroke in summing up Dixon's march to mete out justice is to quote the justice himself — "It is almost a contradiction in terms to speak of the thought and actions of a human being as 'objective.' A man's thoughtful decisions are a product of his whole life and his whole environment."

Clearly, Prof. Baier's "main man" for his orations, whom he draws upon time and again, is Oliver Wendell Holmes, Jr., himself a Harvard man and a long-serving associate justice of the U.S. Supreme Court who published his own *Speeches* in 1891. We learn from Prof. Baier's introduction that Holmes' *Speeches* was described at a black-tie

dinner in the LSU Union in 1979 which he attended as "not quite a Bible, still a Book of most uncommon prayer." The existence of Holmes' *Speeches* was a revelation to Prof. Baier, not on the road to Damascus, but on his subsequent journey as both an advocate for constitutional principles and as a sought-after commentator on the work of jurists and scholars.

Yet, Prof. Baier was not blinded by Holmes' brilliant light on the law and human condition — "The life of the law has not been logic; it has been experience." — but he was inspired, went forth and observed. As Holmes' disciple, Prof. Baier echoes his muse — "law is a human enterprise. It is more interesting, as life is more interesting, by virtue of its intellectual personalities. . . ." The thesis of *Speeches* so stated, Prof. Baier notes, "These pages are a scrapbook of a few friends who have tintured my landscape. . . ."

Ironically, Prof. Baier's *Speeches* captures moments in his own life as he celebrated the present by reminding us of the importance of the wisdom of the past. In so doing, Prof. Baier, as an observer extraordinaire, without design, has found a place in the Pantheon of those he has observed. Well said, *mon professeur*, and to paraphrase the sage of Ville Platte — *c'est si bon*.

The book was published by the Louisiana Bar Foundation (LBF). Prof. Paul R. Baier was the LBF's first Scholar-in-Residence. Claitor's Law Books in Baton Rouge is marketing the book, with a 20 percent royalty being paid to the LBF to benefit the LBF's Civil Justice Initiative. To order the book, go to: www.claitors.com.

R. Patrick Vance is a senior partner and the head of commercial litigation in the New Orleans office of Jones Walker, L.L.P., where he has worked since his graduation in 1975 from Louisiana State University Paul M. Hebert Law Center. While in law school, he took several classes taught by Prof. Paul R. Baier. (pvance@joneswalker.com; Ste. 5100, 201 St. Charles Ave., New Orleans, LA 70170)





2015-2016

Officers and Board of Governors

Officers 2015-16

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JD degree in 1992 from Tulane University Law School (senior managing editor, *Tulane Law Review*, 1992) and an LLM (Trade Regulation) degree in 1994 from New York University Law School. He was admitted to practice in Louisiana in 1996.

Before entering private practice, he clerked for United States District Court Judges Sarah S. Vance and Charles Schwartz, Jr. He has been an adjunct professor of antitrust law at Loyola University College of Law since 2001.

Mark has served in several leadership positions for the Louisiana State Bar Association (LSBA), including president-elect, treasurer, secretary, *Louisiana Bar Journal* editor and Executive Committee member. He also served on the Board of Governors and in the House of Delegates. He chaired the LSBA Lawyer Advertising Committee from 2000-04 and has served on the Committee on

the Profession and the Client Assistance Fund Committee.

He serves on the boards of directors of the Louisiana Center for Law and Civic Education (president, 2011-14), the New Orleans Regional Leadership Institute and the New Orleans Bar Association. He chaired The Pro Bono Project (New Orleans) in 2009-10 and received the Project's 2009 Leadership Award and the Project's 2007 and 2008 Distinguished Service Award. He has been annually recognized by other publications, including *Benchmark Litigation*, *Super Lawyers* and *The Best Lawyers in America*.

Mark was appointed to the National Center for State Courts' Lawyers Committee and to the Louisiana Supreme Court's Post-Conviction Relief Ad Hoc Committee. He has edited the American Bar Association's Trade Associations Committee newsletter since 2003 and has been an American Bar Foundation Fellow since 2011.

He is a former board chair of WRBH Radio for the Blind and Print Handicapped and a former board member for the New Orleans Center for the Creative Arts.

Mark and his wife, Meredith, have been married for 15 years and are the parents of three children.

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Darrel J. Papillion

Darrel has served on the Louisiana State Bar Association's (LSBA) Board of Governors as the Fifth District representative and as an at-large member. He is co-chair of the LSBA Continuing Legal Education Committee and a former chair of the Ethics Advisory Service. He also served several terms in the House of Delegates. He received the 2005 LSBA Young Lawyers Section's Hon. Michael Pitard Wynne Professionalism Award.

He is an adjunct professor of law at LSU Paul M. Hebert Law Center. He is the 2015 chair of the LSU Law Center Diversity Task Force and is a member of the Middle District of Louisiana Magistrate Selection Committee. He served as 2014 president of the Baton Rouge Bar Association and is a member of the Wex Malone American Inn of Court.

In his community, he serves on the Louisiana Public Broadcasting Foundation's board of directors and was the 2013-14 president of the Rotary Club

of Baton Rouge. He is a parishioner of St. George Catholic Church.

Darrel and his wife, Shirley, have been married for 23 years and are the parents of two children.

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Alainna R. Mire **Secretary**

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Alainna served as Louisiana State Bar Association (LSBA) Young Lawyers Division chair, chair-elect, secretary and District 6 Council representative. She served on the LSBA Board of Governors as House of Delegates Liaison Committee chair.

A former chair of the Alexandria Bar Association's Young Lawyers Council, she is a member of the Alexandria Bar Association, the American Bar Association and the Louisiana Bar Foundation's Budget Committee. She is secretary of the Central Louisiana Pro Bono Project board and vice chair of the United Way of Central Louisiana.

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Robert A. Kutcher **Treasurer**

Robert A. Kutcher is the managing partner in the Metairie firm of Chopin Wagar Richard & Kutcher, L.L.P. He received his BS degree in 1972 from Cornell University and his JD degree, *cum laude*, in 1975 from Loyola University Law School. He was admitted to practice in Louisiana in 1976 and in New York in 1976.

Bob has served on the Louisiana

State Bar Association's (LSBA) House of Delegates Liaison Committee on four different occasions. In addition to service in the House of Delegates, he is a member of the LSBA Legislation Committee, a member of the *Louisiana Bar Journal* Editorial Board and a co-chair of the Summer School Planning Committee. He is a Fellow of the Louisiana Bar Foundation.



Robert A. Kutcher

He has been listed in *The Best Lawyers in America* as the 2013 New Orleans Litigation-Real Estate Lawyer of the Year; *Best Lawyers* (2012-14) in the practice areas of closely held companies and family business law, commercial litigation and litigation-real estate; *Louisiana Super Lawyers* (2008-14); and New Orleans *CityBusiness* "Leadership in Law," 2007.

He and his wife, Renee B. Kutcher, have been married for 29 years. They have four children.

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Joseph L. (Larry) Shea, Jr. **Immediate Past President**

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Joseph L. (Larry) Shea, Jr.

Hebert Law Center (Order of the Coif and *Louisiana Law Review* executive editor). He was admitted to practice in Louisiana in 1978 and in Texas in 1996.

Larry served as the 2014-15 president of the Louisiana State Bar Association (LSBA) and was president-elect in 2013-14. He has chaired the LSBA's Ethics Advisory Service Subcommittee and the Multijurisdictional Practice Committee. He also served on the Ethics 2000 Committee. He received the

LSBA President's Award in 2002.

He chaired the Louisiana Bar Foundation's Northwest Community Partnership Panel and is a member of the American Board of Trial Advocates and the Harry V. Booth and Judge Henry A. Politz American Inn of Court. He served as an adjunct professor of business law from 1998-2010 at Centenary College.

He was inducted into the LSU Paul M. Hebert Law Center Hall of Fame. He also has been listed in several *The Best Lawyers in America* directories, including as 2013 Shreveport Litigation-Environmental Lawyer of the Year and 2014 Shreveport Mass Tort Litigation/Class Actions-Defendants Lawyer of the Year; in several *Louisiana Super Lawyers* directories; and in the 2013-14 *Chambers USA* directory as a leader in the field for Energy & Natural Resources: Oil & Gas.

In his community, Larry is a member of St. Mark's Episcopal Church. He and his wife, Jane, have been married for 41 years and are the parents of two children.

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Board of Governors 2015-16

David W. Leefe **First Board District**

David W. Leefe is a shareholder in the New Orleans office of Liskow & Lewis, P.L.C., and chair of the firm's Maritime Practice Group. He received a BS degree in 1978 from Louisiana State University and his JD degree in 1982 from Loyola University College of Law. He was admitted to practice in Louisiana in 1982.



David W. Leefe

David has served in the Louisiana State Bar Association's (LSBA) House of Delegates for more than 10 years. He has chaired the LSBA's Client Assistance Fund Committee for seven years.

He is a Louisiana Bar Foundation Fellow. He is a member of the Maritime

Law Association, the Southeastern Admiralty Law Institute and the Louisiana Association of Defense Counsel. He is a past president of the Loyola Law Alumni Association.

In his community, he is a member of Lakeview Presbyterian Church and the Touro-Bouligny Neighborhood Association.

David and his wife, Stephanie Skinner, have been married for seven years. He is the father of two children.

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**Patrick A. Talley, Jr.
First Board District**

Patrick A. Talley, Jr. is a partner in the New Orleans office of Phelps Dunbar, L.L.P. He received a BA degree in 1976 from Armstrong College, his JD degree in 1982 from Louisiana State University Paul M.



Patrick A. Talley, Jr.

Hebert Law Center and an LLM in Energy and Environmental Law in 1993 from Tulane Law School. He was admitted to practice in Louisiana in 1980. He also is admitted in Texas.

Patrick has served in the Louisiana State Bar Association's (LSBA) House of Delegates since 1994 and is a member of the Louisiana Bar Foundation.

He is a member of the New Orleans, American, Federal, 5th Circuit and Baton Rouge bar associations, the State Bar of Texas, the National Association of Railroad Trial Counsel (Executive Committee member), the Maritime Law Association of the United States (proctor), among others.

He is AV-rated by Martindale-Hubbell and has been recognized by *The Best Lawyers in America*, *Louisiana Super Lawyers* and *New Orleans CityBusiness* "Leadership in Law" for 2008.

In his community, Patrick currently serves on the boards of the Louisiana Southeast Council Boy Scouts of America and Holy Name of Jesus School. He also was a member of the Louisiana Recovery

Authority (Environmental Task Force member), the New Orleans Charter Schools Foundation (vice president), Pi Kappa Alpha Fraternity (international president), the Carrollton Boosters, Inc. (president), the Louisiana Children's Museum, St. George Episcopal School (trustee) and the Academy of the Sacred Heart (president).

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**John E. McAuliffe, Jr.
Second Board District**

John E. (Eddie) McAuliffe, Jr. is an attorney in the Metairie office of Frederick A. Miller & Associates. He received a BS degree in accounting in 1975 from the University of New Orleans and his JD degree in 1978 from Loyola University Law School. He was admitted to practice in Louisiana in 1978.



John E. McAuliffe, Jr.

Eddie chairs the Louisiana State Bar Association's (LSBA) Unauthorized Practice of Law Committee, has presented programs on State Court Rules and Motions for the LSBA's Bridging the Gap CLE seminar, and is a participant for the LSBA's Law School Professionalism Orientations at Loyola University College of Law. He received the LSBA President's Award in 2012 and the LSBA Pro Bono Publico Award in 2003.

He is a member of the Louisiana Association of Defense Counsel, the New Orleans Association of Defense Counsel (president, 1998-99) and the New Orleans Bar Association.

Eddie and his wife, Jean, have been married for 32 years and are the parents of two children.

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**Blake R. David
Third Board District**

Blake R. David is founding partner of the Lafayette firm of Broussard & David, L.L.C. He received a BA degree in 1997 from Louisiana State University and his JD degree in 2001 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2001.



Blake R. David

Blake served in the Louisiana State Bar Association's (LSBA) House of Delegates from 2010-12. He was a presenter for the LSBA's Admiralty Symposium in 2009, 2011, 2012 and 2013 and for the LSBA's CLE "Preparing and Handling the Big Case" in 2012 and 2013. He was the recipient of the LSBA Young Lawyers Division's Outstanding Young Lawyer Award in 2009.

He is the immediate past president of the Lafayette Bar Association and serves on the Executive Committee. He is a member and past president of the Federal Bar Association's Lafayette Chapter and the American Inn of Court of Acadiana. He is AV-rated by Martindale-Hubbell and was recognized by *Louisiana Super Lawyers* (2012-14), *National Trial Lawyers* (2012-14) and the *Lafayette Daily Advertiser* (20 Under 40) in 2006.

In his community, Blake is past chair of the Lafayette Downtown Development Authority and hosts several fundraisers for Catholic Charities. He is co-chair of Opus Christi Magnum and a foundation board member for Our Lady of Fatima Church.

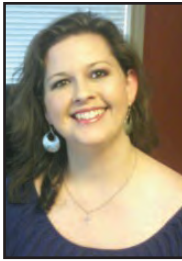
He is and his wife, Amber, have been married for 10 years and are the parents of three children.

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**Shayna L. Sonnier
Fourth Board District**

Shayna L. Sonnier is a partner in the Lake Charles firm of Hunter, Hunter & Sonnier, L.L.C. She received a bach-

elor's degree in 2000 from the University of Louisiana-Lafayette and her law degree in 2003 from Dedman School of Law, Southern Methodist University. She was admitted to practice in Texas in 2003 and in Louisiana in 2005.



Shayna L. Sonnier

Shayna has served as chair, immediate past chair, chair-elect, secretary and District 4 representative on the Louisiana State Bar Association's Young Lawyers Division Council and was co-chair of the Wills for Heroes Committee.

She serves as president-elect on the board of the Southwest Louisiana Bar Association and is a past president of the Southwest Louisiana Bar Association's Young Lawyers Section.

In her community, she is a board member for the Whistle Stop and a member of St. Luke Simpson United Methodist Church, where she serves as secretary on the Church Council. She is a board member of the Southwest Louisiana Law Center and an active member and past board member of the Greater Lake Charles Rotary Club. She was chosen as the 2008-09 Rotarian of the Year.

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**Michael E. Holoway
Fifth Board District**

Michael E. (Mike) Holoway is a partner in the Covington office of Milling Benson Woodward, L.L.P. He majored in accounting at the University of North Florida and received his JD degree in 1983 from Tulane Law School. He was admitted to practice in Louisiana in 1983.



Michael E. Holoway

Mike is a member of the Louisiana State Bar Association's (LSBA) Committee on the Profession. He was a member of the LSBA's Practice Assistance and Improvement Committee and

now serves as the Board of Governors' liaison to that committee. He has been actively involved in the LSBA's Law School Professionalism Orientations for first-year students since 2001 and the third-year programs since their inception. He has chaired the LSBA's Mentoring Subcommittee and is a member of the 22nd Judicial District Bar Association (formerly the Covington Bar Association).

In his community, he chairs the board of the New Orleans Chapter of AMORC. He is the father of six children and has five grandchildren.

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**C. Kevin Hayes
Fifth Board District**

C. Kevin Hayes is a capital partner in the Baton Rouge office of Adams and Reese, L.L.P. He received a BA degree in 1987 from Louisiana State University and his JD degree in 1991 from Southern University Law Center. He was admitted to practice in Louisiana in 1992.



C. Kevin Hayes

Kevin has served in the Louisiana State Bar Association's (LSBA) House of Delegates and is a member of the LSBA's Bar Governance Committee. He received the LSBA Young Lawyers Division's Outstanding Young Lawyer Award in 2001. He serves on the board for the Louisiana Center for Law and Civic Education. In 2014, he was named a Fellow of the Louisiana Bar Foundation.

He served as 2008 president of the Baton Rouge Bar Association (BRBA), chaired the BRBA's Young Lawyers Section in 1998 and received the BRBA's Judge Keogh Memorial Award in 2002. He was the 2010 president of the Association of Louisiana Lobbyists and is a member of the State Capitol Group and the Supreme Court of Louisiana Historical Society. He was a member of the

2011 Leadership Louisiana class for the Council for a Better Louisiana. He was recognized by the *Baton Rouge Business Report* (40 Under 40) in 2001. In 2014, he was chosen as the Baton Rouge Government Relations Lawyer of the Year by *The Best Lawyers in America*.

In his community, he is a member of the Rotary Club of Baton Rouge, the Baton Rouge Area Chamber of Commerce and First Presbyterian Church.

Kevin is the father of two children.
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**Charles D. Elliott
Sixth Board District**

Charles D. Elliott is a partner in the Alexandria firm of Vilar & Elliott, L.L.C. He received a BS degree in science/math education in 1986 from Louisiana Tech University, an MS degree in computer science in 1989 from Louisiana State University and his JD degree in 1993 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1993.



Charles D. Elliott

Charles is a member of the Louisiana State Bar Association's (LSBA) House of Delegates, a former member of the Board of Governors and a member of the LSBA's Legal Malpractice Insurance Committee.

He is a member of the Alexandria Bar Association, the Alexandria Crossroads Inn of Court and the Louisiana Association for Justice. He is president of the Central Louisiana Pro Bono Project.

In his community, he serves on the Salvation Army's board. He is the father of one child.

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Continued next page

**Clarence Allan (Hap) Martin III
Seventh Board District**

Clarence Allan (Hap) Martin III is a member in the Monroe firm of Shotwell, Brown & Sperry, A.P.L.C. He received a BS degree in civil engineering in 1977 from Louisiana Tech University and his JD degree in 1980 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1980.



**Clarence Allan
(Hap) Martin III**

Hap is a former member of the Louisiana State Bar Association's (LSBA) House of Delegates. He serves on the Governing Council of the LSBA's Insurance, Tort, Workers' Compensation and Admiralty Law Section and is a member of the LSBA's Alternative Dispute Resolution Section.

He is a member of the American Arbitration Association, serving on the Commercial Arbitration Panel and the Construction Arbitration Panel. He also is a master emeritus of the Fred Fudickar Inn of Court.

In his community, he is a member of St. Paul's United Methodist Church.

Hap and his wife, Diane Caraway Martin, have been married for 37 years and are the parents of two children.

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**Marjorie L. (Meg) Frazier
Eighth Board District**

Marjorie L. (Meg) Frazier is a shareholder in the Shreveport firm of Wiener, Weiss & Madison, A.P.C. She received a BA degree in 2001 from Hendrix College and her JD degree in 2004 from Washington University in St. Louis. She was admitted to practice in Ohio in 2004, in Arkansas in 2009 and in Louisiana in 2010.



**Marjorie L. (Meg)
Frazier**

Meg is a member of the Shreveport Bar Association and the Society for Human

Resources Management.

In her community, she is a member of the Junior League of Shreveport/Bossier and is a youth basketball coach.

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**Erin O. Braud
Chair, Young Lawyers Division**

Erin O. Braud is staff counsel for Liberty Mutual Insurance Co. (Law Offices of Robert E. Birtel) in Metairie. She received a BA degree in mass communications in 2002 from Louisiana State University and her JD degree in 2005 from Loyola University College of Law. She was admitted to practice in Louisiana in 2005.



Erin O. Braud

Erin served as chair-elect, secretary and District 2 representative on the Louisiana State Bar Association's Young Lawyers Division Council. She has participated in several Law Day and Constitution Day presentations. She is a member of the Plaquemines Parish Bar Association and the Jefferson Bar Association.

She and her husband, S. Jacob Braud, live in Belle Chasse, have been married for eight years and are the parents of two children (expecting their third child in May).

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**Mickey S. deLaup
At-Large Member**

Mickey S. deLaup is the owner of Mickey S. deLaup, A.P.L.C., in Metairie. She has practiced insurance litigation defense for more than 30 years. She received a BA degree in political science in 1978 from Louisiana Tech University and her



Mickey S. deLaup

JD degree in 1981 from Louisiana State University Paul M. Hebert Law Center.

Mickey is a member of the American Board of Trial Advocates, the American Bar Association and the Defense Research Institute. She is the secretary/treasurer of the Louisiana Association of Defense Counsel and is on the board of Southeast Louisiana Legal Services. She is president-elect of the Jefferson Bar Association and a founding member and former Executive Board member of the Judge John C. Boutall American Inn of Court.

She is a Louisiana Bar Foundation Fellow and has worked with the New Orleans Pro Bono Project as a volunteer since 1990, serving on its board and as its chair. She has been recognized by *Louisiana Super Lawyers* (2012, 2013, 2014 and 2015) and is listed in Martindale-Hubbell's Bar Register of Preeminent Women Lawyers. She was honored by New Orleans *CityBusiness* as one of the 50 attorneys chosen for the 2014 "Leadership in Law" recognition.

Mickey and her husband, S. Guy deLaup, also an attorney and 2007-08 president of the Louisiana State Bar Association, are the parents of two children.

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**John M. Frazier
At-Large Member**

John M. Frazier is a shareholder in the Shreveport law firm of Wiener, Weiss & Madison, A.P.C. He attended Louisiana Tech University and received his JD degree in 1976 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1976.



John M. Frazier

He has served as an assistant city attorney for the City of Shreveport for more than 30 years.

John has served in the Louisiana State Bar Association's (LSBA) House of Delegates, on the Board of Governors as the Eighth District representative and on the

LSBA's Committee to Review Proposed Changes to the Louisiana Bar Exam. He also served for several years on the LSBA Legislation Committee.

He is a former president of the Shreveport Bar Association and the Shreveport Bar Foundation, as well as a former director of the Caddo Parish Public Defenders' Office. He is the recipient of the Professionalism Award from the Shreveport Bar Association, the Clyde E. Fant Memorial Award for Community Service from the United Way of Northwest Louisiana and the Distinguished Leadership Award from the National Association of Community Leadership Organizations.

In his community, John has been the president of the Shreveport Chamber of Commerce, president of the Shreveport Committee of One Hundred, chair of the Independence Bowl, and board and campaign chair of the United Way of Northwest Louisiana.

He and his wife, Alice, have been married for 40 years and are the parents of a daughter, Meg, also a shareholder in Wiener, Weiss & Madison, A.P.C.

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**Rachael D. Johnson
At-Large Member**

Rachael D. Johnson is senior staff attorney with the Law Offices of Julie E. Vaicius (employees of The Hartford) in Metairie. She received a BA degree in psychology in 1998 from Spelman College in Atlanta, Ga., an MSW degree in 2000 from Smith College School for Social Work in Northampton, Mass., and her JD degree in 2005 from Tulane University Law School. She was admitted to practice in Louisiana in 2005 and in Florida in 2006.



Rachael D. Johnson

Rachael has participated in Louisiana State Bar Association Diversity Committee projects as a member of the Louis A. Martinet Legal Society, Inc. Executive Board.

She is a Region V officer for the National Bar Association and a board member of the Louisiana Association of Defense Counsel. She is a 2015 graduate of the Loyola Institute of Politics, as well as a graduate of the Ortique Leadership Institute.

In her community, Rachael is a member of the New Orleans Chapter of The Links, a board member of the Partnership for Youth Development and a board member of the Paul S. Morton Scholarship Foundation.

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**Monica Hof Wallace
Faculty, Loyola University College of Law**

Monica Hof Wallace is the Dean Marcel Garsaud, Jr. Distinguished Professor of Law at Loyola University College of Law. She received a BS degree in finance in 1993 from Louisiana State University and her JD degree in 1998 from Loyola University College of Law. She was admitted to practice in Louisiana in 1998.



**Monica Hof
Wallace**

Monica is a reporter for the Louisiana State Law Institute's Tutorship Procedure Committee, an Educating Tomorrow's Lawyers Fellow and a member of the St. Thomas More Inn of Court Executive Committee. She received the 2014 Gillis Long Poverty Law Center's Public Service Award. She was named Professor of the Year from 2002-05 and on the Outstanding Research in Law Faculty in 2007.

In her community, she is a board member for Cancer Crusaders, a member of the Lakeview Civic Improvement Association and a board member for Archbishop Chapelle High School.

Monica and her husband, K. Todd Wallace, have been married for 14 years and are the parents of two children.

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**Donald W. North
Faculty, Southern University
Law Center**

Donald W. North is a law professor at Southern University Law Center. He joined the faculty in 1998. He received a BS degree in political science in 1980 from Grambling State University and his JD degree in 1983 from Southern University Law Center. He was admitted to practice in Louisiana in 1984. He also is admitted to the U.S. District Court for the Middle District of Louisiana and the U.S. 5th Circuit Court of Appeals.



Donald W. North

Also, he is a 1988 graduate of the Combined Army and Services Staff College in Fort Leavenworth, Kan., and a 1997 graduate of the Command General Staff College, also in Fort Leavenworth.

He served on the Louisiana State Bar Association's (LSBA) Board of Governors for several terms and has served on the LSBA's Committee on the Profession and the Client Assistance Fund Committee. He is a member of the American Bar Association.

In his community, Donald is a church deacon, volunteers with the Zachary Food Bank and is a pro bono worker at Baton Rouge City Court.

He and his wife, Jyotibala, have been married for 28 years and are the parents of two children.

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**Kevin C. Curry
Louisiana State Law Institute**

Kevin C. Curry is a partner in the Baton Rouge firm of Kean Miller, L.L.P. He received a BS degree in accounting in 1991 from Louisiana State University, his JD degree in 1994 from LSU Paul M. Hebert Law Center (Order of the Coif) and an LLM degree in taxation in



Kevin C. Curry

1995 from New York University. He was admitted to practice in Louisiana in 1994.

Kevin is a board-certified tax law specialist and a board-certified estate planning and administration specialist, both certified by the Louisiana Board of Legal Specialization. He is a member and former chair of the Estate Planning and Administration Advisory Commission.

He has been a Louisiana State Law Institute Council member since 2004, serving on various committees. He is a member and former president of the Estate and Business Planning Council of Baton Rouge. He has volunteered for the Louisiana State Bar Association's Wills for Heroes program, is AV-rated by Martindale-Hubbell and has been listed in *Louisiana Super Lawyers*.

In his community, he serves as treasurer for St. James Episcopal Church in Baton Rouge and as a board member for the Ollie Steele Burden Manor, Inc.

Kevin and his wife, Melissa N. Curry, have been married for 19 years and are the parents of two children.

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S. Jacob Braud
Chair, House of Delegates
Liaison Committee

S. Jacob Braud is a partner in the Belle Chasse firm of Ballay, Braud & Colon, P.L.C. He received a BA degree in mass communications in 1999 from Louisiana State University and his JD degree in 2002 from Loyola University College of Law. He was admitted to practice in Louisiana in 2003.



S. Jacob Braud

Jacob serves in the Louisiana State Bar Association's (LSBA) House of Delegates, representing the 25th Judicial District (Plaquemines Parish). He also has participated as a judge in the LSBA Young Lawyers Division's mock trial competitions.

He is a member of the Plaquemines

Parish Bar Association, the Jefferson Bar Association, the Louisiana Association for Justice and the American Association for Justice.

Jacob and his wife, Erin O. Braud, have been married for eight years and are the parents of two children (expecting their third child in May).

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Marcus A. Augustine
Member, House of Delegates
Liaison Committee

Marcus A. Augustine is senior counsel for Cleco Corporation in Pineville. He received a BS degree, *magna cum laude*, in mathematics in 2002 from Southern University and his JD degree, *magna cum laude*, in 2009 from Southern University Law Center. He was admitted to practice in Illinois in 2009 and in Louisiana in 2010.



Marcus A. Augustine

Marcus is a member of the Louisiana State Bar Association's (LSBA) House of Delegates, representing the 9th Judicial District. He was a member of the 2014-15 Leadership LSBA Class.

He is a junior board member for the Just the Beginning Foundation and a member of the Alexandria Bar Association and the Crossroads American Inn of Court in Alexandria/Pineville.

He was the recipient of a full academic scholarship to Southern University Law Center and received the Phelps Dunbar, L.L.P., Academic Scholarship and the Chancellor's Leadership Award.

In his community, Marcus volunteers at the Central Louisiana Food Bank.

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Julie J. Baxter
Member, House of Delegates
Liaison Committee

Julie J. Baxter is an attorney for the Louisiana Senate. She received a BA degree in broadcast journalism in 1993 from Bob Jones University and her JD/BCL degree in 2005 from Louisiana State University Paul M. Hebert Law Center.



Julie J. Baxter

She was admitted to practice in Louisiana in 2005.

Julie co-chairs the Louisiana State Bar Association's (LSBA) Public Information Committee and serves on the Summer School CLE Committee. She also served on the LSBA's Legislation Committee from 2008-11.

She is a member of the Baton Rouge Bar Association and the Wex Malone American Inn of Court.

She is the recipient of the Edward R. Murrow Award for television investigative reporting, is a Distinguished Academy Fellow with the Academy of Applied Politics in the LSU Manship School of Mass Communications, and was named one of the "Top 40 Under 40" by the *Baton Rouge Business Report* in 2004.

In her community, she is board president for both the Rebuilding Together Baton Rouge and The ARC Baton Rouge. She also volunteers as a mentor in the public schools. She is the founding chair of the Tiffany Circle Society of Women Leaders and works with the Louisiana Capital Area Chapter of the American Red Cross.

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LSBA Launches LEAP/ Lawyers in Libraries Program

The challenge of meeting the public's legal needs in Louisiana has never been greater. Legal aid organizations are experiencing funding reductions statewide. Judges and court staff are prohibited from providing certain guidance. Several parishes have just a few local attorneys. The inability to access legal information, if not counsel, carries significant consequences for people at a time when they are likely dealing with several legal and non-legal issues.

To help the residents in every parish learn about their options and available resources, the Louisiana State Bar Association (LSBA) has launched the Legal Education & Assistance Program (LEAP)/Lawyers in Libraries Program in partnership with Louisiana public libraries.

Libraries are at the center of communities and natural conduits of information to the public. At least 95 percent of the state's libraries provide patrons with Internet access, library staff members are trained to respond to questions on a variety of topics, and many branches routinely host presentations to the community. Yet, when it comes to legal issues, librarians are extremely limited in how much information they can provide due to the specialized nature of legal questions and rules regarding the "unauthorized practice of law."

"As a trusted, free, reliable and helpful resource, public libraries are often the first stop in the unsure patron's quest for legal information. Such queries can be daunting for front-line library staff without specialized or degree-level training. The subject can quickly lead to dangerous ground, with the librarian being caught between fear of malpractice and the desire to assist a patron. Through the efforts of the LEAP program, library staff now have a practical and reliable resource to reference and share with patrons," said Jeremy Bolom of the Lincoln Parish Library and chair of the Public Library Section of the Louisiana Library Association.

To expand the scope and effectiveness of assistance provided via libraries, LEAP partners have developed specialized "Libguides" for frequently-queried topics, training for library staff on how to best respond



to legal questions and identify reliable resources, and an advanced referral system to local attorneys and resources.

All of these services are supplemented by Lawyers in Libraries, an initiative to bring attorneys into their local library branches to handle limited pro bono services. Specifically, volunteers are asked to provide individual Ask-a-Lawyer consultations or community presentations on a specific topic. The LSBA's Access to Justice Program has resources available to attorneys and library staff to help facilitate these events.

"Public libraries play a vital role in our communities as centers of information. Last year, the LSBA partnered with a public library in every parish in the state during our Day of Service to provide limited scope legal services to attendees. More than 125 attorneys participated in the event and we are looking forward to increasing those numbers this year. Please join us on Oct. 29 so we can expand the number of libraries involved in the program. Your day of service could result in a lifetime of change for the people you meet," said 2015-16 LSBA President Mark A. Cunningham.

For pro bono resources, information on the Oct. 29 Day of Service and a list of additional Lawyers in Libraries events, go to: www.LouisianaLawyersinLibraries.org.

LEAP is a partnership of the LSBA, the Louisiana State University Law Library, the Law Library of Louisiana, the Louisiana Library Association, the State Library of Louisiana, Southeast Louisiana Legal Services and other contributors.

For more information on the LSBA's efforts to assist self-represented litigants, go to: www.lsba.org/ATJ/ATJSelfRepresentedLitigants.aspx. Or email Michael Schachtman in the LSBA's Access to Justice Department, michael.schachtman@lsba.org.

Clarification: Sentence in "Casenote: Arbitration" Article

The Louisiana State Bar Association's Rules of Professional Conduct Committee would like to clarify a sentence in the "Casenote: Arbitration" article, published in the October/November 2014 issue of the *Louisiana Bar Journal* (Volume 62, No. 3). The article discusses the 2012 decision of the Louisiana Supreme Court in *Hodges v. Reasonover, et al.*

The compound sentence on page 192, middle column, states: ". . . Some conversations will also need to touch on uncomfortable subjects for the lawyer, such as disciplinary complaints and the claims, including legal malpractice, that will be covered in arbitration. . . ."

The LSBA Rules of Professional Conduct Committee, out of an abundance of caution, notes that, while legal malpractice claims may be suitably included within and contractually covered by an arbitration clause in a lawyer-client fee agreement, disciplinary complaints may not.

Attorneys Apply for Recertification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for recertification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, no later than June 30, 2015.

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

Tax Law

Stanley B. Blackstone.....Lafayette
 Dorrell J. Brister..... Alexandria
 Jacob S. Capraro.....Baton Rouge
 Susan K. Chambers.....New Orleans
 Kevin Courtney
 Curry.....Baton Rouge
 Michele Moore Echols..... Covington
 Jeffrey Wood Koonce.....Baton Rouge
 Raymond P. Ladouceur.....Abita Springs
 Caroline Devereaux
 Lafourcade.....Covington
 Brett Salvador Lala.....Covington

Alyce B. Landry.....Prairieville
 Francis Joseph Lobrano.....Belle Chasse
 Ashley Kelton
 Longwell.....New Orleans
 Joseph Michael Placer, Jr.Lafayette
 Brienne Star Rome.....New Orleans

Family Law

Layne M. Adams.....Downsville
 Charlene Ory Kazan.....Mandeville
 Bernadette Rocco Lee.....New Orleans
 Mark Joseph Mansfield.....Covington
 Terri McDonough Miles.....Gretna
 Evelyn M. Oubre.....Lake Charles
 Jane C. Scheuermann.....Metairie
 Frank P. Tranchina, Jr.Covington
 Angela Cox Williams.....Slidell
 Jeffrey S. Wittenbrink.....Baton Rouge

Estate Planning & Administration Law

Kevin Courtney Curry.....Baton Rouge
 Mary Cole Hester.....Baton Rouge
 David Gregory Koch.....Baton Rouge
 Carl Joseph Servat III.....Metairie
 James Graves Theus, Jr.Alexandria

Consumer Bankruptcy Law

Robin Ronquillo DeLeo.....Mandeville

Attorneys Apply for Certification as Legal Specialists

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Barbara M. Shafranski, Executive Director, no later than June 30, 2015.

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

Family Law

Leslie A. Burns.....Denham Springs
 Louis J. Cosenza.....Gonzales
 Tracy Ellen Gold.....Covington
 Ivy L. Graham.....Denham Springs
 Christy M. Howley Connois.....Gretna
 Tracey T. Powell.....Slidell
 Suellen Richardson.....Covington
 J. Marie Rudd.....Mandeville
 Kristyl R. Treadaway.....Metairie
 Georgia G. Turgeau.....Slidell
 Zara Lyn Zeringue.....Covington

Tax Law

Angela Smith Bryson.....Lafayette
 Cary Brian Bryson.....Lafayette
 Schalyece Marie Harrison..New Orleans
 Matthew P. Miller.....New Orleans
 Carli Beckett Simpson.....New Orleans
 Daniel J. Walter.....New Orleans


Estate Planning & Administration Law

Beth-Anne Perez Bracey.....Metairie
 Catherine Elizabeth
 Blappert Martinez.....Baton Rouge
 Michael G. Calogero.....Metairie
 Erin E. Kriksciun.....New Orleans
 Ryan S. McBride.....Metairie
 Jonathan Perry.....Kaplan


Pro Bono Heroes: Providing Justice for All

“ We regularly recite the words to our great nation’s Pledge of Allegiance, but seldom stop to think about what those words mean. When the law pervades all parts of our lives, there can’t be “Justice for All” if millions of our citizens can’t afford legal representation. Until we make adequate funding for legal services for the poor a national priority, there will continue to be an overwhelming need for attorneys to “fill the gap”. After all, we raised our hands and swore not to reject the cause of the defenseless for any of our own personal considerations.

— Greg Landry
 Acadiana Legal Service Corporation
 Lafayette, LA



Providing Justice For All
 Access to Justice
 Louisiana State Bar Association
 www.lsbba.org/ATJ



LSBA Announces Electronic Billing for FY 2015-16 Dues, Assessment Collections

The Louisiana State Bar Association (LSBA) will once again utilize electronic billing for the collection of LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessments. The collection method will continue to allow payment of fees either by an ACH electronic check or credit card, and will also include a component whereby members will be able to download their Attorney Registration Statements and mail checks for the payment of fees. Members are still encouraged to pay and file electronically, as this access will be available 24/7, including times when the Bar Center is closed or if mail service is disrupted due to inclement weather. Further, electronic payment gives members more control over their information in the database and allows for more timely updates to their member records.

“There were some growing pains with last year’s transition to electronic billing and we have modified our procedures which we hope will make the entire process more user friendly,” said LSBA President Joseph L. (Larry) Shea, Jr. “We encourage members to pay and file electronically if at all possible, but are incorporating options which will allow payment by check for those who are more comfortable with that approach.”

Filing electronically should be a quick and simple process, utilizing the online member accounts that participants have relied on for years to register for CLE seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: www.lsba.org/Members/memberacct.aspx. This webpage also allows members to edit their existing accounts and to reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to www.LADB.org to complete the Louisiana Supreme Court

2015-2016 ONLINE REPORTING NOTICE

The 2015-16 Louisiana State Bar Association membership dues, the Louisiana Attorney Disciplinary Board assessment, the Attorney Registration Statement, and the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form are due on July 1.

To complete the process, visit
www.lsba.org

Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule will be the same as in prior years. In lieu of mailing a statement to each member, on May 13, the LSBA mailed to each member a 4x6 postcard, which will provide instructions to go online to www.LSBA.org to complete the registration process and also to go online to www.LADB.org to complete the Trust Account Form. **This is the only mailing members will receive prior to the July 1, 2015, due date; attorney registration statements will NOT be mailed.**

Once they have electronically filed their Attorney Registration Statements (including any necessary changes and/or updates) and made the required payments, members will receive email confirmations. The filing and payment deadline will remain July 1. The LSBA will continue to mail delinquency and ineligibility notices to those who fail to meet the deadlines.

Members who elect to pay by electronic check will continue to pay the following fees:

- ▶ LSBA dues (practicing more than three years): \$200;
- ▶ LSBA dues (practicing three

years or less): \$80;

- ▶ LADB assessment (practicing more than three years): \$235; and
- ▶ LADB assessment (practicing three years or less): \$170.

Those who are planning to pay by electronic check should contact their financial institutions to confirm that their accounts allow payment by this method.

As was the case last year, processing fees of 3 percent plus a .20 transaction fee will be passed along to those choosing to pay by credit card. Total amounts including credit card processing fees are as follows:

- ▶ LSBA dues (practicing more than three years): \$206.20;
- ▶ LSBA dues (practicing three years or less): \$82.60;
- ▶ LADB assessment (practicing more than three years): \$242.25; and
- ▶ LADB assessment (practicing three years or less): \$175.30.

Bar staff members will be available to answer questions and provide assistance to members. All questions and concerns should be directed to:

- ▶ Email — processing@LSBA.org
- ▶ Telephone — (504)566-1600 or (800)421-LSBA; ask for Payment Processing.

JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM

June, 2015

To Members of the Bar,

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

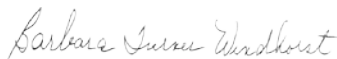
Our goal is to compile a pool of volunteer professionals from the legal community who are willing to go into classrooms and present on law related topics. Students will benefit from having members of the legal community share their practical and real world experiences.

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

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

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

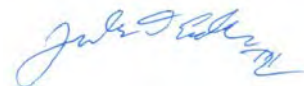
Sincerely,



Barbara Turner Windhorst
President
Louisiana Center for Law
and Civic Education



Mark A. Cunningham
President
Louisiana State Bar
Association



Jules D. Edwards, III
President
Louisiana District
Judges Association



JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM



Volunteer to Visit a Classroom in your Area!

*Would you like to make a law-related presentation in a classroom in your area?
Please feel free to refer to the attached list of topics for presentation ideas.*

Name of Judge/Lawyer: _____

Address: _____

City: _____ Zip: _____

Primary Email Address: _____

Secondary Email Address: _____

Phone: _____ Best time to call: _____

Examples of teachers' requests:

- *I am going to review the three branches of government with my 7th grade class the first week of November. I would like a member of the legal community to address my class that week.*
- *I would like a Law Day presentation for my 2nd graders on May 1st.*
- *I would like a Constitution Day presentation for my 10th graders on Constitution Day, September 17th.*
- *I have no specific topic in mind but would appreciate the opportunity to have someone from the legal community visit my middle school classroom the first week of October.*

Specific topic you would like to present: _____

Grade level preference: Elementary School Middle School High School

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

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

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

Please return to Kandis Showalter, LCLCE Program Coordinator

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

For additional information: (504)619-0141

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

www.lalce.org

Solo SPEAKING

By Dana D. Atchison

DATA SECURITY TIPS: STORAGE

The American Bar Association (ABA) Model Rules of Professional Conduct Rule 1.6(c) provides: “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” While the rule is not new, its implementation in a world where lawyers maintain more documentation in electronic format rather than in paper format presents challenges. Consider this scenario.

An attorney, Sharon, created a document at work on Friday and emailed it to her personal Yahoo email address so she could work on it over the weekend from home. On Saturday, she accessed her Yahoo email from her personal computer, opened the document, finished it and saved it to her hard drive. She then emailed the final version back to her work email where it would be waiting for her Monday morning. Sharon does not password-protect her home computer, which is also used by her husband and son. Because her son has a tendency to download free software that has caused her computer to crash, she has an agreement with a service provider, Mozy, to back up the computer each night. Her sister, a baker, told her that, because she has Mozy, she doesn’t need virus-protection software so she never installed it. Mozy backed up the document for Sharon on Saturday night. Sharon emailed the document to a colleague working on the same project Sunday morning, but he had problems opening it and called Sharon in a panic. Sharon’s sister, who shares recipes with other bakers, was there when the call came in and told her about “Dropbox.” This is an inexpensive file-sharing and storage service where Sharon can load and store the document, then provide a password that will allow her colleague to access it for review. Because of the urgent request, Sharon used her sister’s Recipe Dropbox account to share the document with her colleague.

Though well-meaning, Sharon created several copies of a confidential document

that are stored in locations over which neither she nor her law firm has any control, and where other unauthorized (and unknown) individuals can view the document.

► **Yahoo email.** Email is not necessarily secure. Yahoo is now a storage site for the confidential document. Neither Sharon nor her law firm has control over the security of the site or any likely remedy against Yahoo when, and if, the security of the document is compromised as Sharon likely waived liability against Yahoo when she signed up for the free service. Likewise, Yahoo has no duty to Sharon or her law firm to protect the document.

► **Sharon’s home drive.** Storing legal documents on her home drive creates some security risks. Sharon’s computer may be an attractive target for hackers because it is likely less protected than her work computer. Her law firm has no way to monitor or control the risks to Sharon’s personal computer. While she may trust her husband and son, it is not appropriate for them to have access to her legal documents. More importantly, her son’s risky downloading activities may result in a malware download that affords hackers access to the computer’s contents. In addition, if the computer is ever stolen, Sharon’s failure to secure the document may contribute to their compromised confidentiality.

► **Mozy.** Sharon signed up for Mozy backup service because the website promised “World-Class Security” and “Fort Knox” for her files. Her home computer is now backed up by this cloud service provider¹ each night. However, Sharon did not read through the fine print when she signed up for the service. She is not aware that she is using the service at her own risk; she agreed not to upload others’ proprietary information (such as the confidential document on which she was working); she agreed to provide indemnification protection to Mozy if it is ever sued over the content that she submits; and she agreed to waive liability against Mozy for lost data or claims. Furthermore,

she does not know where her documents are stored, or that they may be stored outside the United States. When, and if, she terminates the service, she will discover that Mozy has no obligation to return or destroy the data that it has backed up. If the data is ever compromised, she will have no one but herself to blame.

► **Dropbox.** This file-sharing service also employs the cloud model. Users can deposit a document to the site, then grant others access to it by sharing a password that allows the access. They also may create a hyperlink to the stored item, which may then be shared. As with Mozy, the terms of the Dropbox service afford Sharon or her firm little in the way of remedies when, and if, the documents that she shares through the service are compromised. Sharon’s use of her sister’s Dropbox account means that her sister and anybody else who is a member of her sister’s baking group will have access to the document.

The American and state bar associations recognize that attorneys cannot guarantee absolute security² and have not specifically prohibited the use of these services for storing confidential documents. However, their commentary likens the relationship that attorneys have with these providers to the relationship attorneys have with other service providers who have access to client files. The American Bar Association’s Commission on Ethics emphasizes that lawyers must use “reasonable care” to ensure that service providers act “in a manner that is compatible” with their professional obligations, particularly as they pertain to “the protection of client information. . . .”³ To meet the “reasonable-care” standard, attorneys must “understand the basics of technology” and “make informed decisions;” they cannot assume that “the most well-known companies are the best choice by default.”⁴

Sharon did not likely meet the ABA’s reasonable-care standard as she made little effort to understand the technology and corresponding risks, did not employ even

the most basic virus-protection software, and assumed that just because her sister used Dropbox for her recipe exchange, the service was an acceptable storage site for her confidential document.

So, what could Sharon have done? The following are just a few of the options available to attorneys to help them mitigate the risks that arise from storing confidential information.

► **Remote access to her work drive.** Sharon could have set up remote access to her firm’s drive before she left work if the firm’s IT department has, in fact, established this protocol for its attorneys. This remote access would have allowed her to work securely on the document without it ever leaving her firm’s network or “duplicating” itself in multiple unsecure locations.

► **Firm-controlled document sharing site.** Sharon’s firm could have set up a secure document-sharing site for storing and sharing firm documents. This is, effectively, a “Dropbox-like” location that the firm would vet for security and actively manage. Many of these types of sites allow users such as Sharon to control (1) who is allowed access to the particular site, and (2) who is allowed to access particular documents. Such a site would have allowed Sharon to rely on her firm to mitigate the risk of compromised data instead of bearing that burden herself.

► **Encrypted law firm laptop.** If Sharon’s work-issued laptop is encrypted,

she could have saved the document to her laptop’s hard drive and taken the laptop home with her. Encrypted laptops would require a person to provide a password in order to access the laptop’s contents.

► **Encrypt the document.** This requires a little more effort and, typically, the assistance of a law firm’s IT department. Once encrypted, Sharon could have emailed the document to the recipient. Then, in a separate email, she could have sent the password.

Most law firms require all employees, not just attorneys, to protect the confidentiality of the firm’s documents. Attorneys have a heightened duty to protect confidential information, make themselves aware of basic technology that affects the confidential information in their care, and exercise reasonable care in storing and accessing that information outside of their firm’s network when a legitimate need to do so arises. If your law firm offers such assistance, it is in your best interest, your law firm’s best interest and your clients’ best interest to take advantage of it. If your law firm does not offer such options, consider engaging assistance to create secure storage solutions that best fit your firm’s needs.

FOOTNOTES

1. Cloud storage, generally, is a service model in which data is stored remotely by a third party and made available to users over the Internet.
2. See, New York State Bar Ass’n Committee on

Professional Ethics, Op. 842 (“[E]xercising ‘reasonable care’ under Rule 1.6 does not mean that the lawyer guarantees that the information is secure from any unauthorized access”); NJ Advisory Committee on Professional Ethics, Op. 701 (“Reasonable care, however, does not mean that the lawyer absolutely and strictly guarantees that the information will be utterly invulnerable against all unauthorized access. Such a guarantee is impossible, and a lawyer can no more guarantee against unauthorized access to electronic information than he can guarantee that a burglar will not break into his file room, or that someone will not illegally intercept his mail or steal a fax.”)

3. Resolution, ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing May 2, 2011. Several state bar associations that have addressed this issue have confirmed the “reasonable care” standard. See, New York State Bar Ass’n Committee on Professional Ethics, Op. 842; Oregon State Bar Op. 2011-188; and Commentary to Mississippi Rules of Professional Conduct.

4. “Take Reasonable Care When Storing Client Data in the Cloud,” American Bar Ass’n. Litigation News, June 21, 2011.

Dana D. Atchison is senior counsel with Entergy Services, Inc. Her practice includes privacy and data security, particularly in the area of commercial transactions. She is a graduate of Tulane Law School (JD, 1998), Harvard University (CSS, 1990; ALM, 1995) and Lake Forest College (BA, 1986). She maintains a CIPP-US certification from the International Association of Privacy Professionals. She is the author of Notes on Constitutionalism for a 21st-Century Russian President (Cardozo J. Int’l & Comp. L. 1998). (datchis@entergy.com; 639 Loyola Ave., L-ENT-22A, New Orleans, LA 70113)



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

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

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

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

By Johanna G. Averill

BEST PRACTICES TO AVOID ERRORS

We all make mistakes, but mistakes made in the course of a legal representation can have far-reaching consequences. When you find you may have made a mistake, you have an obligation to mitigate the consequences of errors when possible. Of course, the best practice is to avoid errors in the first place.

When viewing our own practice behaviors, professional liability claims patterns and the experience of thousands of attorneys affords us the opportunity to learn the easy way from the mistakes of others. Recognizing the types of behaviors that lead to malpractice sets the foundation for error avoidance.

Professional liability carriers categorize attorney mistakes into four categories: substantive, administrative, client relations, and intentional wrongs.

Substantive errors deal with the true

substance of the practice of law and include conflict of interest, inadequate discovery of facts or inadequate investigation, failure to know or ascertain deadlines correctly, improper drafting, planning error in choice of procedures, and failure to know or properly apply the law.

Administrative errors are office-related and include calendaring errors, clerical errors, procrastination and lost client files.

Client relations errors result from poor attorney-client relationships and include inadequate communication with client, failure to obtain client consent, and improper withdrawal from a representation.

Intentional wrongs result when an attorney's action is deemed to be willful and deliberate and include slander, defamation, violation of civil rights and fraud.

The top malpractice traps generally fall

into one of these error categories:

1. Failure to know or properly apply the law (substantive).
2. Failure to document the scope of representation (client relations).
3. Failure to calendar or react to calendar and procrastination (administrative).
4. Failure to conduct proper client screening (client relations).
5. Failure to communicate with client (client relations).
6. Failure to check for conflicts of interest (substantive).
7. Failure to perform adequate research and investigation (substantive).
8. Dabbling in unfamiliar areas of practice (substantive).
9. Suing clients for fees (client relations).
10. Stress and substance abuse (intentional wrong).

You can minimize these errors by

Continued next page

Ethics Advisory Service



www.lsba.org/ethicsadvisory

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

Eric K. Barefield, Ethics Counsel

LSBA Ethics Advisory Service, 601 St. Charles Ave., New Orleans, LA 70130-3404
(504)566-1600, ext. 122 • (504)619-0122 • toll-free: (800)421-5722, ext. 122 • Fax: (504)598-6753
E-mail: ebarefield@lsba.org

instituting the following loss prevention pointers.

To avoid substantive errors:

1. Establish a conflicts screening procedure, which is required in every representation, and know the many types of conflicts.
2. Never file a lawsuit without proper and thorough investigation.
3. Know the applicable statute of limitations or prescription deadlines, and calendar them.
4. Stay within your area of experience or associate with an expert, with client consent, when venturing into a less familiar area of practice.
5. Thoroughly research the law.

To avoid administrative errors:

1. Use a standard filing system and follow it.
2. Use checklists for opening and closing files.
3. Maintain a central file location and require the use of file removal receipts when a file is removed from the central location. Also require prompt return of the actual or electronic file.
4. Enhance your calendaring system making sure to have at least two independently controlled calendars and accurately calculate, record and put all deadlines on all calendars. Storing two calendars in one location, such as a hand-written calendar, and an electronic calendar saved to your computer desktop may not effectively operate as two independent calendars in the event of certain natural or manmade disasters (fire, flood, tornado, theft).

5. Once all dates are properly recorded, use them to make daily to-do or action lists.

6. For matters that do not have deadlines, establish your own deadline and stick to it. Don't procrastinate.

7. Utilize a tickler or reminder system and, when the alarm sounds, don't ignore it.

To avoid client relations errors:

1. In every representation, use engagement letters to:
 - a. document the exact scope of the representation you've been retained to handle;
 - b. explain your billing procedures at the outset; and
 - c. help your clients set realistic expectations.
2. Use non-engagement and disengagement letters for clarity.
3. Return client telephone calls promptly; if you are not able to do so, have a member of your staff let the client know when you can return the call.
4. Inform your clients how the legal system works, as well as how long the legal process takes in the first meeting.
5. Consult with your clients frequently, keep them abreast of all developments and delays in their cases, do not make any decisions for them, and document this.
6. Do not commingle your funds with that of your clients.
7. Meticulously document every aspect of your clients' matters.
8. Investigate all prospective clients. Establish a standardized client screening process and turn down any clients who do not fit your acceptable client model.

9. Follow the requirements contained in the withdrawal from representation rules making sure to protect the clients' interests and maintain their confidentiality.

To avoid intentional wrongs:

If the willful and deliberate action arises from extreme stress and substance abuse, to avoid a recurrence of these acts, seek out help from mental health and substance abuse professionals. If your heavy workload is causing you anxiety, if you are often tardy, missing deadlines and appointments, and neglecting case-related mail and phone calls, then these may be signs that you are suffering from anxiety, depression and substance abuse. Don't wait to get help. The Louisiana State Bar Association has an excellent Lawyers Assistance Program: <https://www.lsba.org/LAP/>.

If you would like help with setting up these loss prevention pointers, contact LSBA Loss Prevention Counsel at (985)898-1584 and (985)871-1833.

Johanna G. Averill is professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C., in Covington. She received her BS degree in marketing in 1982 from Louisiana State University and her JD degree in 1985 from Loyola University Law School. In her capacity as loss prevention counsel, she lectures on ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in Louisiana. She can be emailed at javerill@gilsbar.com.



LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. The LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community.



In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive.

**For more information,
visit www.lsba.org**

LAWYERS Assistance

By J.E. (Buddy) Stockwell

“ENABLING” THE ALCOHOLIC OR ADDICT

Alcoholics and drug addicts often have “enablers” behind the scenes who, without even realizing it, play a role in supporting, rather than arresting, the diseases of alcoholism and addiction.

Enabling emanates from a sense of duty to protect loved ones and to help friends. We assist in getting the person out of immediate troubles with a DWI arrest, financial difficulty or failed responsibilities. We assume that the person will have learned his/her lesson, be thankful for the help and will “fly right” thereafter.

But when it comes to the alcoholic or addict, the bitter truth is that when family and friends protect a person from the full consequences of his/her substance-use-related behavior, they also participate indirectly in minimizing the true severity of the problem. With the severe consequences abated, the problem is no longer seen as serious so clinical intervention is not sought.

Authors Jeff and Debra Jay, experts in the field of clinical intervention, write about “enabling” in their book *LOVE FIRST, a Family’s Guide to Intervention* (2008, 2nd Edition, Hazelden Press) and delineate two categories: 1) Innocent Enabling; and 2) Desperate Enabling.

Innocent Enabling occurs during the incubatory stages of substance-use disorders. It is rooted in love for the person and in denial as to the true potential for an alcohol or drug problem. The substance-related problems of a loved one or friend are written off as bad luck, youthful indiscretions, stress-related or perhaps all deemed the result of a “wild phase” that will surely pass in the fullness of time.

As the person’s team of enablers continues to bail the person out of recurring scrapes, the enablers likely find themselves going to greater and greater lengths to protect the person from

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consequences. Enablers will do things such as concoct alibis for the person’s behavior, loan the person money, or use influence to sway police, prosecutors or the court to “go easy” on repeat substance-related arrests, etc.

Despite all of the enablers’ help, eventually the person gets into more scrapes and more troubles due to alcohol (or drugs). In their book *LOVE FIRST*, the Jays describe this first, innocent stage of enabling as “fertilizer” that actually *supports* the growth of the disease of alcoholism or addiction in the person.

To the enablers’ credit and recognizing that their intentions are good, it’s often very difficult to see these situations for what they really are. When a son or daughter is arrested for driving drunk or for possession of illegal substances, for example, the parents usually seek the aid of a lawyer to help their loved one navigate the criminal justice system. Most of the time, no one even thinks about sending the son or daughter to a high-quality treatment center or for an in-depth, substance-use-disorder assessment. The focus is on avoiding prosecution, not on finding real answers as to why the loved one behaved in a way that resulted in arrest.

So, in many cases, the opportunity to address alcoholism and addiction in the early stages is missed. While the enablers wait and hope that the person will outgrow the alcohol or drug problem, the disease does not wait; it uses the time to strengthen its grip upon the person.

Desperate Enabling is the next phase. It is rooted in reality and fear. The alcohol

(or drug) use is out of control and family and friends know it. There is no longer any way to pretend with a straight face that the person is not an alcoholic or addict. But, even then, enabling and covering up problems are still the default settings. Families fear that the family’s reputation will be harmed if the truth gets out. There is also fear of what might happen to the alcoholic or addict, including the possibility of being incarcerated in some cases. Friends begin to stay clear and don’t know how to help anymore.

Extreme examples involve adult alcoholics or addicts moving back in with parents. The parents will house, clothe, feed and supply the son or daughter with money (for drugs, if need be, even illegal drugs). Parents will pay off gambling debts, continue to pay off drug dealers or give an allowance for drugs, and do whatever it takes to try and reduce the alcoholic’s or addict’s pain.

The Jays report that, on average, it takes 11 years for a family to shift the efforts from enabling to promoting clinical intervention and treatment. Unless the enablers change, there is little or no incentive for the alcoholic or addict to change.

The mission at the Lawyers Assistance Program (LAP) is to confidentially help families help their loved ones NOW and avoid years of pain and consequences. Make a confidential call to LAP at 1(866)354-9334, (985)778-0571 or email LAP@louisianalap.com. Or visit the website at www.louisianalap.com.

J.E. (Buddy) Stockwell is the executive director of the Lawyers Assistance Program, Inc. (LAP) and can be reached at (866)354-9334 or via email at LAP@louisianalap.com.



Diversity Conclave Celebrates “50 Years of Civil Rights”

The Louisiana State Bar Association (LSBA), in cooperation with the Louisiana Supreme Court and local and specialty bar associations, hosted the eighth annual Conclave on Diversity in the Legal Profession on March 6 in New Orleans. With the theme “Celebrating 50 Years of Civil Rights: Moving the Pendulum Forward,” the conclave’s discussions were reflective of the work that still needs to be done to move toward equality and inclusion for all diverse groups.

Need for Attorneys in Immigration Proceedings

The immigration breakout session, “Navigating the Troubled Waters of Immigration,” addressed immigration challenges at the national and state level; the problems related to Unaccompanied Alien Children; the detention of foreign nationals and how to effectively represent foreign nationals; and the intersection of immigration and litigation. Panel members — Graham Bateman, Central Louisiana Interfaith Immigration Center; Kathleen Gasparian, Gasparian Immigration; Ivan Torres Hidalgo Gato, Torres Hidalgo Gato, P.A.; Prof. Hiroko Kusuda, Loyola University College of Law; and Emily Trostle, Catholic Charities of Baton Rouge — encouraged participants to accept pro bono cases.

The Case for Marriage Equality

The LGBT breakout session, “The Changing Landscape and Effects of Marriage Equality,” presented an overview of the evolving law on state and federal recognition of same-sex marriages. Also addressed were intra-family adoption in Louisiana and other states; the Defense of Marriage Act; *United States v. Windsor*; the difference between state and federal recognition of same-sex marriages; and the extra layer of complexity regarding a per-



Henry (Hank) James Thomas, one of the original 13 Freedom Riders, provided an inspiring historical perspective of his experience as a Freedom Rider and highlighted civil rights issues faced then and today. “We’ve made progress, but there is more to be done,” he said. Photo by Matthew Hinton Photography.

son’s gender identity. Panel members were attorneys Nicholas Hite, The Hite Law Group, L.L.C.; Melanie C. Lockett, Lowe, Stein, Hoffman, Allweiss & Hauver, L.L.P.; Scott J. Spivey, Landry & Spivey; and Julie Wilensky, Lewis, Feinberg, Lee, Renaker & Jackson, P.C.

Freedom Rider on the Struggle for Civil Rights

LSBA 2014-15 President Joseph L. (Larry) Shea, Jr. introduced Henry (Hank) James Thomas, one of the original 13 Freedom Riders. Thomas provided an inspiring historical perspective of his experience as a Freedom Rider and highlighted civil rights issues faced then and today. “We’ve made progress, but there is more to be done,” Thomas said, receiving a standing ovation.

The “Privilege Walk”

Judge Wendell L. Griffen presented the workshop “Inclusion 8.” Incorporated into the presentation was the interactive and powerful “Privilege Walk” exercise — designed

to help attendees recognize that privilege and the deficits that occur from lack of privilege are unearned; how privilege and lack of privilege affect different populations; and that different types of privilege dramatize (through silence, movement and eye contact) how we can take for granted the benefits received from and the disadvantages suffered as result of privilege, or its absence.

Privilege Walk participants were asked to silently rise from their seats and stand shoulder to shoulder in a straight line across the room. Judge Griffen made a series of statements. After each statement, participants silently took steps forward or backward if the sentence applied to them. If the sentence did not apply, no step was taken and the participants remained in position.

Upon completion of the exercise, participants were directed to remain in position and silent and to make eye contact while observing where other participants were standing. Judge Griffen completed the workshop by asking questions that allowed participants to bring closure to the experience.

Continued next page

The Privilege Walk was a dramatic way of confronting the myth of meritocracy. One participant shared, “The Privilege Walk was most thought-provoking and would be a good exercise for everyone to undertake. It provides a three-dimensional mirror of privileges one may have had, but not realize. It further points out how your colleagues may have been more or less ‘privileged’ through no merit or fault of his/her own.” Another participant said, “I encourage all attorneys to attend a Diversity Conclave to learn more about the issues and challenges of many members of our profession. This better understanding will make you a better attorney, a better businessperson and a better human.”

Keynote “Civil Rights: Then, Now and Forever”

Keynote speaker Kim M. Keenan, president/CEO of the Multicultural Media, Telecom and Internet Council, spoke passionately about minorities and the historical impact of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. She addressed evidence of progress in the 21st century and the movement being made to hold on to that progress. She discussed the awakening of communities through social media and how televised moments have sparked communities to mobilize and make an impact. She elaborated on what opportunities exist in the 21st century framework and encouraged participants to think about what aspects of the law are engaged when injustice is immediate and due process digital. She referenced her time as past counsel for the NAACP. At the NAACP, she said, the belief is, “Ever forward, never backwards” and “no permanent enemies, no permanent friends, just permanent issues.”

Also at the lunch, Conclave cohosts and sponsors were recognized by Conclave Subcommittee Chair Luis A. Leitzelar and Co-Chair Barbara B. Ormsby. LSBA President Shea made a special presentation to Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and thanked the Court for its continued collaboration, participation and support.

Civil Rights: Living, Defining and Leading the Movement

The civil rights session, “Just How Far



Conclave participants were treated to “The Freedom Riders,” a traveling exhibition developed by the Gilder Lehrman Institute of American History in partnership with American Experience, funded through the National Endowment for Humanities. Photo by Matthew Hinton Photography.

Has the Pendulum Moved? Striving for Justice,” included a slideshow of haunting imagery of the civil rights and voting rights movements. Panel members were Professor Kareem U. Crayton, University of North Carolina School of Law; Judge Bernice B. Donald, U.S. 6th Circuit Court of Appeals; Henry (Hank) James Thomas, Freedom Rider; Alexander P. Tureaud, Jr., education consultant and author; and moderator Judge Roland L. Belsome, Jr., 4th Circuit Court of Appeal. The speakers offered a valuable perspective on how the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 changed the moral landscape of the country. These laws forced the country into self-examination and transformed the movement. The panel also addressed the role of the judiciary in shaping the civil rights movement; public education at the height of the civil rights movement and continuing obstacles; the impact of the case *Shelby County v. Holder*; and the obstacles to access to justice.

Prejudgments that Lead to Bias and Systematic Deficiencies

The criminal law session, “Moving the Pendulum to Justice, Fairness and Accountability,” highlighted the complexities in the criminal justice system due to ongoing negative views of minorities and prejudgments that lead to bias, as well as the systematic deficiencies due to bias. Panel members — Angela A. Allen-Bell, Southern University Law Center; attorney Kevin Boshea; Cathy Harris, C. Harris Companies, Inc.; Sen. Edwin R. Murray; Jefferson Parish Sheriff Newell Normand; and moderator Chief Judge Kern A. Reese, Orleans Parish Civil District Court — emphasized the value of

training to recognize and address bias.

Freedom Riders Exhibition

A highlight of the conclave was the opportunity to receive a free, originally-designed, 18x24-inch commemorative poster. Participants also were able to view “The Freedom Riders,” a traveling exhibition developed by the Gilder Lehrman Institute of American History in partnership with American Experience, funded through the National Endowment for Humanities.

Diversity Continues to be a Goal

Conclave participants were very pleased with the events.

“I have attended more than five Conclaves, and this year’s conclave was, in my opinion, the best, most substantive, most informative and thought-provoking conclave thus far. Anyone who missed it missed a treat.”

“This was the first Diversity Conclave I have attended. I will be attending all of them in the future. It was one of the most exciting and thought-provoking CLEs I have attended. I left feeling proud to be a lawyer and rededicated to our justice system.”

“Participating in the Diversity Conclave was both a humbling and an empowering experience, and I am bringing what I learned with me into my daily work. I am grateful to the speakers and to my fellow participants for generously serving as my teachers.”

The LSBA’s ninth annual Conclave on Diversity in the Legal Profession will be Friday, March 4, 2016, at the Hilton Baton Rouge Capitol Center.

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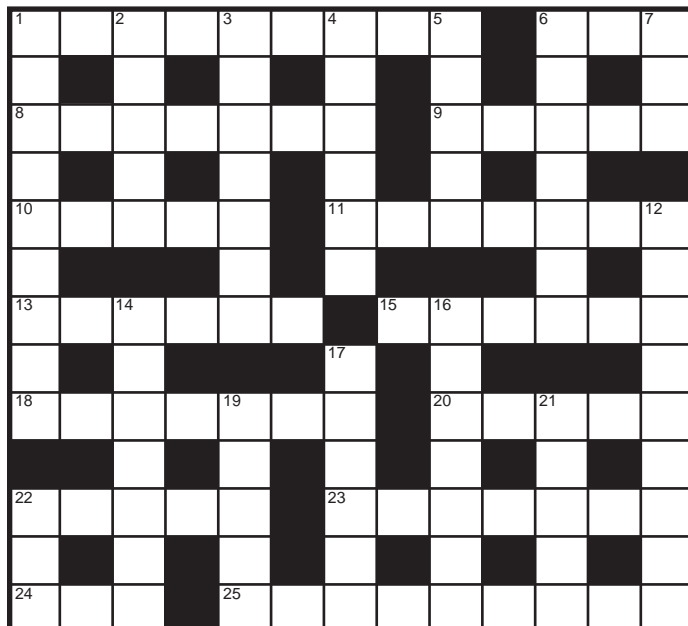
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Crossword PUZZLE

By Hal Odom, Jr.

WE CAN'T DO IT WITHOUT "U"



ACROSS

- 1 Kind of property administered by Louisiana State Treasurer (9)
- 6 Coll. in Monroe (1, 1, 1)
- 8 A handyman probably has one in his truck (7)
- 9 Kind of motorscooter (5)
- 10 More impolite (5)
- 11 Upstart (7)
- 13 Centers of atoms (6)
- 15 Latin American chaperon (6)
- 18 Made of dirt; made of baked clay (7)
- 20 Marisa of "My Cousin Vinny" (5)
- 22 Wedlock; labor organization (5)
- 23 Smearred on thickly, as paint (7)
- 24 Female sheep (3)
- 25 Personal servitudes conferring the right to alienate consumable things (9)

DOWN

- 1 An excited one may be admissible hearsay (9)
- 2 Murmured, like a dove (5)
- 3 L'___, casino in Baton Rouge and Lake Charles (7)
- 4 Confused situations (6)
- 5 Raise an objection, at common law (5)
- 6 Lotsa (7)
- 7 Wet dirt (3)
- 12 What a verdict must be to impose a death sentence (9)
- 14 Script handwriting (7)
- 16 Feeling, or performing, in a satisfactory way (2, 2, 3)
- 17 Where originally found (2, 4)
- 19 Adherent of India's major religion (5)
- 21 Pleasing sounds (5)
- 22 Right of ___ is a limited personal servitude (3)

Answers on page 87.

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	Thomas E. Guilbeau(337)232-7240	Shreveport	Michelle AndrePont(318)347-8532
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The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

REPORT BY DISCIPLINARY COUNSEL

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

DECISIONS

Malcolm Brasseaux, Church Point, (2015-B-0458) **Interim suspension** ordered by the court on March 6, 2015. JUDGMENT FINAL and EFFECTIVE on March 6, 2015.

Timothy B. Burnham, Shreveport, (2014-OB-2716) **Readmission denied to the practice of law** ordered by the court on March 5, 2015. JUDGMENT FINAL and EFFECTIVE on March 19, 2015. Mr. Burnham may not reapply for readmission until three years have passed from the date of this judgment.

Michael C. Colwart, Franklin, (2014-B-2676) **Public reprimand** ordered by the court as consent discipline on Feb. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 6, 2015. *Gist:* Formerly represented a client in a matter and then represented another person in the same or related matter in which that person's interests were adverse to the interests of the former client. The former client did not give informed consent, confirmed in writing.

John D. Conry, formerly of New Orleans, now residing in Xinyu City, Jiangxi Province 1, China, (2014-B-1761) **Permanent disbarment** ordered by the court on Jan. 28, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 11, 2015. *Gist:* Engaging in multiple instances of intentional conversion of client funds with substantial harm; and knowingly and intentionally violated duties owed to his clients, the public, the legal system and the profession.

Continued next page

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Discipline continued from page 47

Derrick Damond Jones, Baton Rouge, (2014-B-2449) **Six-month suspension** ordered by the court as consent discipline on Feb. 13, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 13, 2015. *Gist:* Practiced law while ineligible to do so; and failed to cooperate with the ODC in its investigation.

Phil C. Nugent, New Orleans, (2015-B-0219) **Suspended for one year and one day, with all but 90 days deferred, subject to two years' unsupervised probation**, ordered by the court as consent discipline on March 6, 2015. JUDGMENT FINAL and EFFECTIVE on March 6, 2015. *Gist:* Commission of a criminal act; threatened to present criminal or disciplinary charges solely to obtain an advantage in a civil matter; and violated or attempting to violate the

Rules of Professional Conduct.

Tiffany M. Peterson, Plaquemine, (2015-B-0249) **Suspended for one year, fully deferred, subject to two years' supervised probation**, ordered by the court as consent discipline on March 16, 2015. JUDGMENT FINAL and EFFECTIVE on March 16, 2015. *Gist:* Failed to provide competent representation to a client; failed to act with reasonable diligence in representing a client; failed to adequately communicate with a client; failed to honor her obligations upon terminating representation; violated the Rules of Professional Conduct; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct that is prejudicial to the administration of justice; and candor toward the tribunal.

Thomas R. Pittenger, Baton Rouge, (2015-OB-0191) **Readmitted to the practice of law, subject to a two-year period of supervised probation**, ordered by the court on March 6, 2015. JUDGMENT FINAL and EFFECTIVE on March 6, 2015.

Peggy M. Hairston Robinson, Baton Rouge, (2015-B-0410) **Interim suspension from the practice of law** ordered by the court on March 11, 2015.

John E. Settle, Jr., Bossier City, (2014-B-2606) **Public reprimand** ordered by the court as consent discipline on Feb. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 6, 2015. *Gist:* Acknowledged that he disrupted the courts of two judges; and compromised the confidentiality of a Judiciary Commission investigation.

Larry G. Starns, Denham Springs, (2014-B-2425) **Suspended for one year, to be followed by a one-year supervised probation**, ordered by the court as consent discipline on Feb. 13, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 13, 2015. *Gist:* Neglected a client's legal matters, which resulted in actual harm.

Richard C. Teissier, New Orleans, (2014-B-2442) **Suspended for one year and one day, with all but 60 days deferred, followed by a period of unsupervised probation**, ordered by the court

Continued on page 50

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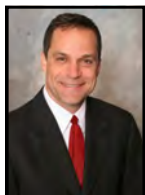
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David Shea

North Louisiana



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Brian Crawford



Brian Homza



Hodge O'Neal III



Chet Traylor
Justice, Ret.

Discipline continued from page 48

on Feb. 6, 2015. JUDGMENT FINAL and EFFECTIVE on Feb. 20, 2015. *Gist:* Practiced law while ineligible to do so; failed to return a client’s file upon request; and failed to cooperate with the ODC in its investigation.

Frank Zaccaria, Jr., Bossier City, (2015-OB-0560) **Transfer to disability inactive status** ordered by the court on March 25, 2015. JUDGMENT FINAL and EFFECTIVE on March 25, 2015.

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

No. of Violations

Failed to act with reasonable diligence and promptness when representing a client... 1

Failing to safeguard client funds, failing to

reconcile client trust account periodically, and drawing upon client trust account checks made payable to “Cash”1

Knowingly represented another person in the same or substantially related matter in which that person’s interests are materially adverse to the interests of the former client, without consent of that former client, confirmed in writing.....1

Making a false statement of material fact in connection with a bar admission application, and failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter1

TOTAL INDIVIDUALS ADMONISHED.....4

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Responsiveness and the Offeror's Duty to Read Closely

Business Integra, Inc. v. United States, 116 Fed.Cl. 328 (2014).

In 2010, the Department of Homeland Security (DHS) issued a request-for-proposals (RFP) solicitation for information-technology services. This RFP contemplated issuing multiple-award, indefinite-delivery/indefinite-quantity contracts that were solicited under two different "tracks" — small business and unrestricted.

Business Integra, Inc. (BI) submitted an offer on the small-business track; however, it was not awarded a contract because it had omitted labor-rate-pricing data for a single position in the fourth option year of its proposal. Because of the omission, BI's proposal was eliminated from consideration for award. After receiving a post-award debriefing, BI filed a bid protest with the Government Accountability Office (GAO) challenging DHS' determination that its proposal was not in conformance with the requirements of the solicitation.

The GAO denied the protest, reasoning that "[i]t is a fundamental principle of government contracting that, in a negotiated procurement such as this, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award." Furthermore, the GAO noted, "[t]he solicitation here clearly instructed offerors to propose labor rates for 'ALL labor categories' and warned that failure to omit

even a single rate would result in a 'material non-conformity' and 'offer ineligibility.' (emphasis in original)." Finally, the GAO reasoned that "because the protester failed to comply with the solicitation's unequivocal directive to do so, its proposal did not conform to the material terms of the RFP, and, therefore, could not be accepted for award." BI then filed a complaint with the U.S. Court of Federal Claims (COFC).

The COFC reviews bid protests under the standards in the Administrative Procedures Act. Under that standard, the COFC can only set aside an agency's decision if the agency's actions were arbitrary, capricious or not otherwise in accordance with the law. Here, besides the firm's claims, COFC considered

two issues: first, whether the applicable solicitation's provision that proposals include all labor rates is a material term; and, second, what the Government's obligations were in addressing the errors, if any.

Materiality

Regarding materiality, BI argued that its errors were *de minimis* because the omitted price data would have amounted to only 0.0041 percent of the projected total value of its proposal. BI relied upon the GAO's opinion in *W.B. Constr. & Sons, Inc.*, B-405818 (Comp. Gen. Jan. 4, 2012), which held that failure to bid on a line item was a minor informality because the price of the item was *de minimis* compared to the total

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cost of the contract, about 0.077 percent, and would not have affected the competitive standings of the bidders; therefore, the agency should have waived the omission as a minor informality. COFC found BI's argument unpersuasive because the contract at issue was a Federal Acquisition Regulation (FAR) Part 15, negotiated procurement, and the contract in *W.B. Constr. & Sons, Inc.* was a sealed bid procurement under FAR Part 14. Specifically, the COFC pointed out, under Part 14, while the Government is required to seek clarification for minor irregularities, under Part 15, the Government is not; the Government is merely permitted to allow offerors to resolve "minor or clerical errors" instead.

In defining "minor or clerical errors," the COFC noted that Part 15 provides no definition for such errors; however, it found its opinion in *ST Net, Inc. v. U.S.*, 112 Fed. Cl. at 110 (July 25, 2013), to be persuasive. In *ST Net*, the protestor omitted pricing information in its proposal for a negotiated procurement which would have increased the total price by about 7 percent; however, while the COFC determined that

the error was material, it was because of the importance of the price information to the Government's evaluation of the offer, not the dollar amount of the error. Here, BI attempted to distinguish *ST Net* by arguing that its error was substantially less than the error in *ST Net*. Again, the COFC did not find BI's argument persuasive because "[t]his argument is at odds with the solicitation, which explicitly states that omission of even a single labor rate, no matter its significance, will result in a material non-conformity." Eventually, the COFC found that the requirement to provide pricing for all labor categories for all years was a material term of the solicitation and that DHS reasonably construed BI's failure to submit complete pricing data as a material deficit.

Government's Obligations

Considering the Government's obligations in addressing the error, BI argued alternatively that, even if the error was not *de minimis*, the Government should have recognized the error and waived or corrected it. The COFC did not find this argument to be persuasive either, noting that

BI's relied-upon authorities contemplated a FAR Part 14 sealed bid procurement, and not a FAR Part 15 negotiated procurement as the case at issue, and that "[b]ecause Business Integra's error was material, the government was under no obligation to waive the error or allow Business Integra to correct the error."

Prospective offerors should read RFPs closely, even in cases where an error is minor to the overall price of the proposal; it may involve an important non-price consideration. Especially if the Government specifically says so!

To review the *Business Integra, Inc.* decision, go to: www.gao.gov/products/D06917. To review the *W.B. Construction & Sons, Inc.* decision, go to: www.gao.gov/products/P00061.

—Bruce L. Mayeaux

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the Chair of the Louisiana Supreme Court's Judicial Oversight Committee and served as the first woman president of the Louisiana State Bar Association.



Thomas M. Hayes, III has also joined the Patterson Resolution Group. His practice has focused on product liability, redhibition, insurance coverage, industrial accidents, medical malpractice, lawyer's professional liability and professional responsibility, construction, architect and engineering liability, successions, real estate disputes,

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5th Circuit Adopts “Reasonably Likely to Benefit” Standard for Attorneys’ Compensation

Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner), ___ F.3d ___ (5 Cir. 2015), 2015 WL 1591143.

Barron & Newburger, P.C. (B&N) represented a Chapter 11 debtor for 11 months until the debtor’s case was converted to a case under Chapter 7. Upon termination of its services, B&N filed a fee application seeking approval of fees of approximately \$130,000. The bankruptcy court allowed fees of \$20,000, determining that the remainder of the fees were unreasonable mainly due to B&N’s lack of success in the case and, more specifically, because B&N’s services were not of an identifiable benefit to the debtor’s estate. In analyzing the services rendered, the bankruptcy court applied the standard set forth by the 5th Circuit in *In re Pro-Snax Distributors, Inc.*, 157 F.3d 414 (5 Cir. 1998), in which the 5th Circuit applied a “hindsight” approach or actual “material benefit” approach in evaluating fee applications. That approach requires courts to determine whether services rendered actually “resulted in an identifiable, tangible, and material benefit to the bankruptcy estate.” *Id.* at 426 (emphasis added).

On appeal, the 5th Circuit granted rehearing en banc to reexamine its decision in *Pro-Snax*, and, in particular, its application of the material-benefit standard. Upon a review of the plain language of Section 330, which sets forth the standard for approving compensation in bankruptcy cases, the legislative history of Section 330 and the standard applied in other circuits, the 5th Circuit concluded that rather than apply a material-benefit standard in evaluating fee applications, courts should apply the prospective standard — “reasonably likely to benefit the estate.” Under this standard, courts need to look to “the necessity or

reasonableness of legal services *at the time they were rendered*,” rather than whether the services actually resulted in a material benefit to the estate. *Barron & Newburger*, at *8 (emphasis added).

The 5th Circuit noted that courts employing this reasonable-at-the-time standard usually consider the following factors: “the probability of success at the time the services were rendered, the reasonable costs of pursuing the action, what services a reasonable lawyer or legal firm would have performed in the same circumstances, whether the attorney’s services could have been rendered by the Trustee and his or her staff, and any potential benefits to the estate (rather than to the individual debtor).” *Id.*

The 5th Circuit remanded the case to the bankruptcy court to determine whether B&N was entitled to its fees under the new reasonable-at-the-time standard.

Golf Channel Burned by Stanford’s Ponzi Scheme

Janvey v. Golf Channel, 780 F.3d 641 (5 Cir. 2015).

For almost two decades, Stanford International Bank (Stanford) operated a multi-billion-dollar Ponzi scheme. In 2006, Stanford and the Golf Channel, Inc. entered into a two-year agreement pursuant to which the Golf Channel would provide marketing services to Stanford, including commercial airtime and live coverage of a golf tournament hosted by Stanford. Stanford entered into this agreement in an attempt to reach the Golf Channel’s high-net-worth viewership that would be likely to invest in its Ponzi scheme. In connection with this advertising agreement, Stanford paid the Golf Channel approximately \$5.9 million.

In 2009, the SEC uncovered the Stanford Ponzi scheme and filed a lawsuit in the Northern District of Texas. The district court appointed a receiver over Stanford. The receiver sued the Golf Channel to recover the \$5.9 million as a fraudulent conveyance under the Texas Uniform Fraudulent Transfer Act (TUFTA). The Golf Channel asserted an affirmative defense under the TUFTA, *i.e.*, it received the payments in good faith and in exchange for reasonably

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equivalent value, the market value of the advertising on the Golf Channel. The district court agreed with the Golf Channel and held that, even though the payments to the Golf Channel were fraudulent conveyances, the Golf Channel was entitled to judgment as a matter of law on its affirmative defense. The district court stated, "Golf Channel looks more like an innocent trade creditor than a salesman perpetrating and extending the Stanford Ponzi scheme."

On appeal, the receiver argued the Golf Channel failed to prove the second element of its affirmative defense, *i.e.*, its advertising services provided reasonably equivalent value. The 5th Circuit analyzed value from the perspective of the creditors of the transferor, not market value. Applying this approach, the 5th Circuit found that the Golf Channel presented only evidence proving the *market* value of its services, and that it did not present any evidence that its services preserved the value of Stanford's estate or had any benefit from the creditors' perspective. The 5th Circuit then held that the Golf Channel's advertising services did

not, as a matter of law, provide any value to Stanford's creditors, finding that while the Golf Channel's services may have been quite valuable to the creditors of a legitimate business, those services had no value to the creditors of a Ponzi scheme. The 5th Circuit rendered judgment in favor of the receiver, who was entitled to void the agreement, and the Golf Channel was required to return the full \$5.9 million.

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All Means ALL in *Guillory*

Guillory v. Pelican Real Estate, Inc., 14-1539 (La. 3/17/15), ___ So.3d ___, 2015 WL 1208632.

The suit centers on the abandonment of an action as to one party. The record reflects that the suit was filed on June 25, 2008. On March 4, 2010, all parties participated in depositions. The next "step in prosecution" was on Dec. 17, 2012, when the plaintiffs sent written discovery directed to Pelican and did not serve the other defendants. The plaintiffs and Pelican engaged in the discovery process and settlement negotiations. On June 20, 2013, St. Paul, a separate defendant, filed an *ex parte* motion to dismiss plaintiffs'

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suit as abandoned.

The district court signed the motion, and plaintiffs filed a motion to vacate, which was denied because the discovery was not “served on all parties” and, therefore, did not constitute a step sufficient to interrupt the abandonment period.

The court of appeal, in a split decision, reversed the district court. The Louisiana Supreme Court ultimately reinstated the district court’s judgment, which dismissed the action as to St. Paul because the wording in La. C.C.P. art. 561(B) states that the discovery must be served on all parties. Anything short of *all* cannot constitute a step in the prosecution as to that party.

Criminal and Civil Collide in *Lemoine*

Lemoine v. Wolfe, 14-1546 (La. 3/17/15), ___ So.3d ___, 2015 WL 1212165.

The Louisiana Supreme Court answered a certified question of the U.S. 5th Circuit Court of Appeals in *Lemoine v. Wolfe*. In *Lemoine*, the plaintiffs sued a number of defendants for malicious prosecution. All of the facts, as presented here, and in the Louisiana Supreme Court’s Answer to the Certified Question, are presented in the facts most favorable to the plaintiffs, the Lemoines, as this issue was raised on summary judgment.

The facts that led to the suit read like a high school drama: Lemoine was a friend of Daniel Hoover. Hoover was having difficulties with his ex-wife, Kelly. After divorcing Hoover, Kelly married the son of the Hon. Elizabeth P. Wolfe, a sitting judge of the 21st Judicial District Court. It is unclear whether the domestic proceedings between Daniel and Kelly were in the 21st JDC or elsewhere. However, Lemoine took to the Internet, and along with Lori Hoover Barrient, Daniel’s sister, began a dialogue questioning Kelly’s actions. The dialogue also contained statements regarding Judge Wolfe.

In September 2009, Lori made a complaint to a detective with the Tangipahoa Parish Sheriff’s Office regarding Lemoine’s posts. In November, Kelly contacted the same detective and reported “being threatened and harassed by Internet postings that were authored by

Scott Lemoine and others.” According to the Lemoines, Judge Wolfe also contacted the detective to report her feelings regarding the posts.

Lemoine was ultimately arrested for alleged violations of La. R.S. 14:40.3, the “cyberstalking statute.” At the time of his arrest, Lemoine was under federal supervised release on an earlier, unrelated charge. His discharge from his prior release was revoked by a federal district judge based on the results of a routine drug screen. Other details are omitted, due to space, regarding Lemoine’s charge for solicitation for murder of Judge Wolfe.

Ultimately, in September 2010, the district attorney dismissed the cyberstalking charge pursuant to La. C.Cr.P. art. 691, which constitutes the basis for Lemoine and his wife’s tort claim for malicious prosecution. Judge Wolfe moved for summary judgment. Five of the six elements for malicious prosecution were met. The sixth, however, was whether this dismissal pursuant to art. 691 counted as a bona fide termination of the proceedings in Lemoine’s favor. As a part of her motion for summary judgment, Judge Wolfe attached an affidavit from an assistant district attorney in which he attested that the reason he dismissed the charges against Lemoine was not due to a lack of merit, but instead “the policy of the District Attorney . . . not to extradite a defendant for misdemeanor offenses,” and that had “Mr. Lemoine been in Tangipahoa Parish, the District Attorney’s office would have moved forward.”

The certified question at hand is regarding this sixth element: whether the district attorney’s dismissal pursuant to art.

691 constituted a bona fide termination of the criminal proceeding in his favor. The main hinge here is whether the circumstances surrounding the dismissal of the criminal proceeding support an inference that there existed a lack of reasonable grounds to pursue the criminal prosecution. Louisiana, like many other states, has adopted the position “that a *nolle prosequi* will constitute a bona fide termination in favor of the accused for purposes of the malicious prosecution cause of action where the circumstances surrounding the dismissal of the criminal proceeding support an inference that there existed a lack of reasonable grounds to pursue the criminal proceeding.”

The Court left open for the court of appeals to resolve if, based on the record, there was sufficient evidence of a factual dispute as to the circumstances surrounding the dismissal of the cyberstalking prosecution such to preclude summary judgment on this element. The dismissal, and the district attorney’s policies, will likely come into play here. Justice Hughes even hinted at this in his one-sentence dissent, wherein he stated that he “would find that the dismissal of the prosecution due to a policy of not extraditing misdemeanor defendants does not constitute a bona fide termination in favor of the malicious prosecution plaintiff.”

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Conclusory Statements Regarding Predicate Traffic Violations Lead to Suppressed Evidence

United States v. Alvarado-Zarza, 782 F.3d 246 (5 Cir. 2015).

The U.S. 5th Circuit Court of Appeals recently issued a major decision regarding the suppression of evidence seized subsequent to stops for purported traffic infractions.

Marco Antonio Alvarado-Zarza was stopped by the Texas Highway Patrol near the U.S.-Mexico border. Like the vast majority of non-residential drug seizures, the case began with the patrolman initiating a traffic stop for a purported traffic violation, in this case, a Texas law requiring drivers

to signal 100 feet in advance of a turn.

Instead of notifying the driver of his infraction and issuing a traffic ticket, the patrolman immediately began questioning Alvarado-Zarza and requested consent to search the vehicle, which was given. After the officer found cocaine in the car, he then advised the defendant of his rights. Alvarado-Zarza was charged with possession with intent to distribute a Schedule II narcotic. Before trial, he moved to suppress all evidence as fruits of a search subsequent to an illegal stop.

In support of his motion to suppress, the defendant provided expert-witness testimony from a private investigator who used the patrolman's dashcam video to recreate the scene of the traffic stop. Based on visual cues included in the video, the private investigator was able to conclude that the defendant signaled his turn 200 to 300 feet before his turn, two to three times more than the distance required by law. Accordingly, the defendant argued, the officer could not have reasonably suspected that a traffic violation had occurred, and thus the entire traffic stop was a pretext

to search for drugs. On cross-examination by the defense, the officer could provide no explanation as to why he misjudged the distance so greatly while enforcing such a specific traffic regulation.

Despite clear evidence that the defendant had been improperly stopped, and despite that the government did not contest the measurements made by the expert witness, the district court denied the defendant's motion. In its written findings, the court stated that the expert witness lacked credibility because he could not answer complex mathematical questions regarding the differing rates of speed of each vehicle and complex scientific concepts such as the distortion effect caused by video from dashcams and its potential to affect depth perception. Finally, the district court found that, even if Alvarado-Zarza signaled more than 100 feet before turning, the officer reasonably suspected that he had not done so.

The 5th Circuit analyzed the lower court's finding in light of the fundamental "fruit-of-the-poisonous-tree doctrine." See, *United States v. Cotton*, 722 F.3d

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271, 278 (5 Cir. 2013). It should be noted that one major exception to this doctrine is when an arrestee consents to the search and that consent is: (1) “voluntarily given” and (2) “an independent act of free will.” *United States v. Chavez-Villareal*, 3 F.3d 124, 127 (5 Cir. 1993). The same standard applies to an arrestee’s admissions. *See, United States v. Tovar*, 719 F.3d 376, 387-88 (5 Cir. 2013). However, the district court failed to address each of these required elements, and the government conceded on appeal that if the stop is deemed illegal, the evidence must be suppressed.

Warrantless seizures are “per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.” *United States v. Hill*, 752 F.3d 1029, 1033 (5 Cir. 2014) (quoting *Katz v. United States*, 88 S.Ct. 507, 514 (1967)). One such exception comes from *Terry v. Ohio* and its progeny. 88 S.Ct. 1868, 1880 (1968). Under *Terry*, police officers may stop and briefly detain an individual if they reasonably suspect that criminal activity is occurring or about to occur. *Id.* Reasonable suspicion must be “particularized,” *United States v. Cortez*, 101 S.Ct. 690, 695 (1981), meaning that “the police officer must be able to point to specific and articulable facts” justifying the stop, *Terry*, 88 S.Ct. at 1880. Additionally, reasonable suspicion cannot rest on a mistake of law or fact unless the mistake is objectively reasonable. *See, Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014) (mistake of law); *Illinois v. Rodriguez*, 110 S.Ct. 2793, 2806 (1990) (mistake of fact).

Based on his own testimony, the officer thought that the signaling requirement applied to movement from a lane of travel into a turn lane when, in fact, the statute applies only to turns, not lane changes. Thus, he failed to construe the traffic statute narrowly. The court compared the results in *Heien* to the facts of the defendant’s case, and found that, unlike in *Heien*, the statute in this case contains no ambiguity. Thus, the officer’s mistake of law was not objectively reasonable.

With regard to the officer’s mistake of fact, the court stated that it is unclear whether the district court’s findings were intended to indicate that the expert incor-

rectly determined the points at which Alvarado-Zarza activated his turn signal, erred in measuring the distance between those points, or both. Either way, the video plainly supports the expert’s conclusion that the defendant signaled well before the required 100 feet. The 5th Circuit rejected the *non sequitur* arguments of the district court regarding the speed of cars, which has no bearing on the measurement of distance, and video distortions, noting that no such distortion exists in the clear dashcam footage. Therefore, the district court erred in its rejection of the expert’s testimony.

The final question is whether it was objectively reasonable for the officer to conclude that Alvarado-Zarza failed to signal 100 feet prior to turning when he, in fact, signaled 300 feet prior to turning. *See, Rodriguez*, 110 S.Ct. at 2806. The court reviewed jurisprudence from both state and federal courts that consistently agree that the government cannot carry its burden to demonstrate reasonable suspicion when the only evidence of the traffic infraction is an officer’s “conclusory statements.” The affirmation of this principle by the 5th Circuit provides another corollary to the standards initially set forth in *Terry*, specifically, that reasonable suspicion be supported by “specific and articulable facts.” *See, Terry*, 88 S.Ct. 1880; *see also, Cortez*, 101 S.Ct. at 695.

In this case, the officer conceded that he could not “really be measuring” the exact signaling distance. The fact that the actual distance between the signal and the turn was approximately 300 feet, and that Officer Barrientos provided no explanation as to why he might have thought the distance was less than 100 feet, only reinforces this conclusion. Accordingly, the 5th Circuit reversed the district court’s denial of the motion to suppress, and thereby established the principle that subsequent discovery of contraband does not alleviate the government of its burden to prove the validity of the predicate traffic stop.

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Community Property

Delaney v. McCoy, 49,523 (La. App. 2 Cir. 11/19/14), 152 So.3d 1049.

Applying *Hare v. Hodgins*, 586 So.2d 118 (La. 1991), the trial court held that Delaney was entitled to a share of McCoy’s retirement benefits based on his rank in the Shreveport Fire Department at the time of the termination of the regime. His rise from a driver to deputy chief at retirement was due to extraordinary personal effort that led to a substantial increase in his retirement benefits. Although seniority played a part in his various promotions, he also had to pass written and working tests and evaluations to obtain and maintain the promotions. However, basing his benefits at retirement on his salary for his rank in 2004 was erroneous.


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The court of appeal remanded for a more accurate calculation of his salary on which to base the benefits and for consideration of other available benefits.

Paternity

In Re Succession of Hebert, 13-0954 (La. App. 3 Cir. 2/12/14), 153 So.3d 1101.

Because Ms. Coleman did not file a filiation action before she reached age 19, her claim was perempted under prior La. Civ.C. art. 209. The 2005 amendment to the filiation articles and enactment of La. Civ.C. art. 197, which redefined the preemptive period, and which would have allowed her to file a claim within one year of the alleged father's death, could not resurrect her already perempted claim. Further, even if art. 197 applied, she did not file pleadings to establish paternity within one year of Mr. Hebert's death. Her filing parentage tests into the record did not commence a proceeding. Because the recognized heir's exception of peremption was filed prior to the submission of the case to the court of appeal for oral argu-

ment, it was timely filed in the court of appeal under La. C.C.P. art. 2163.

Custody

Manno v. Manno, 49,533 (La. App. 2 Cir. 11/19/14), 154 So.3d 655.

In 2006, Ms. Manno alleged that Mr. Manno had abused their child and sought a protective order in juvenile court. She later moved to dismiss that proceeding and confirmed therein that she was not coerced into doing so. The parties entered into a consent judgment in their divorce proceedings in 2007, providing for joint custody, including a joint-custody-implementation plan. In 2011, she requested that his custody be supervised, claiming that the child was suffering from the alleged prior abuse. The trial court limited testimony to only events occurring after the consent judgment in 2007 and, after trying the case over three days and hearing from numerous experts, denied her request for supervised visitation. On appeal, she argued that the court was required

to consider those past events in order to address the child's current situation. The court of appeal disagreed, finding that she had voluntarily dismissed the juvenile court proceedings and entered into the consent judgment, and thus she could not revisit those past claims. Moreover, the child and father had developed a good relationship over the past several years. The court of appeal further found that her late arising claims of coercion were without merit.

C.M.J. v. L.M.C., 14-1119, 156 So.3d 16 (La. 10/15/14).

After the trial court granted sole custody to the father, finding that the mother had mentally and physically abused the children by making false allegations of sexual and physical abuse by the father, had abused the court and medical system to her advantage, and had attempted to alienate the children from the father, the court of appeal reversed, finding that the trial court had erred in not allowing the children to testify, in not requiring a sexual-abuse evaluation and



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in limiting the testimony of the maternal grandmother. The Supreme Court granted writs, reversed the court of appeal, and reinstated the trial court's judgments.

The Supreme Court agreed with the trial court that the children's testimony had been so tainted, particularly by a videotape made by the mother in which she clearly attempted to "coach" one of the children, that their testimony was unhelpful. In any event, testimony and records by the court-appointed evaluator included the children's claims, so that information had been made available to the trial court. Further, no new expert was needed to perform a sexual-abuse evaluation. The court-appointed evaluator did not err in not doing an evaluation, as the children's testimony was so tainted that an evaluation would be useless. The trial court did not err in relying on the evaluator's opinion that a sexual-abuse evaluation was not justified under the circumstances. Finally, the Supreme Court found that regardless of how the maternal grandmother's testimony was limited, her proffered testimony was very similar to that reported in the custody-evaluator's report, which the trial court had reviewed, so the evidence available to the court was not lacking.

Child Support

Hatfield v. Hatfield, 49,493 (La. App. 2 Cir. 11/19/14), 155 So.3d 70, writ denied, 14-2680 (La. 3/27/15), ___ So.3d ___, 2015 WL 1609628.

The trial court did not abuse its discretion in imputing a \$100,000 income to Mr. Hatfield for child support purposes because of his failure to comply with the court's order that he produce income documentation to the special master who was attempting to determine his income, particularly after there was a hearing and testimony as to exactly what information the special master needed. Furthermore, Mr. Hatfield had been warned that if he did not provide the information, he would be imputed the \$100,000 income. Further, there was no abuse in the court's order that he pay \$3,500 in attorney's fees to Ms. Hatfield and that he pay the special master fees of \$4,700, as La. Civ.C. art. 1471(C) allows the court to impose sanctions for

failure to comply with a discovery order.

Carter v. Carter, 49,517 (La. App. 2 Cir. 11/26/14), 155 So.3d 81.

Because Mr. Carter did not introduce evidence to show that his claiming the child-dependency deductions would substantially benefit him without significantly harming the domiciliary parent, the trial court did not err in ordering that the deduction be alternated between the parties. The trial court did not err in including (1) VA non-taxable disability income to Mr. Carter as he failed to show that that amount was included in his military-retirement income; (2) seasonal income he received by working as an umpire; and (3) rental income he was receiving less property tax expenses, given that he proved no other expenses regarding that rental property. Further, the court was correct in not deviating from the child-support guidelines to account for his expenses for his new wife and children because he failed to show that the guidelines were unfair or that a deviation was in the best interest of the child. That the court had previously allowed a downward deviation did not entitle him to a continued downward deviation.

—David M. Prados

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Who Is An Employer? The Ruiz Factors

Johnson v. PPI Tech. Servs., L.P., No. 14-30423, ___ Fed.Appx. ___ (5 Cir. March 31, 2015), 2015 WL 1434928.

James Johnson was working as a drilling superintendent on the oil rig High Island VII off the coast of Nigeria when he was shot in the leg by Nigerian gunmen who boarded the rig using stairs that rig employees had left extended in violation of company security rules. He filed suit seeking remedies under the Jones Act, 46 U.S.C § 30104, and general maritime law against his employer, PPI Technology Services, L.P. (PPI Tech), and others. The district court ultimately granted PPI Tech's motion for summary judgment, finding as a matter of law that PPI Tech was not Johnson's employer.

The rig was staffed and operated under a complex multi-corporate Consulting Service Agreement (CSA). Afren operated the rig and contracted with PPI Technology Services Nigeria (PPIN) to provide services, including furnishing skilled, professional workers to PPI Tech and Petroleum Services Limited (PSL) for PPIN's business and operations. PPIN paid a monthly fee and reimbursement of employee expenses to PPI Tech. The CSA provided that PPIN and PSL would

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indemnify PPI Tech for all claims brought by PPIN's or PSL's employees for bodily injury. Contractually, PPI Tech acted as an employment agency for PPIN and PSL, staffing PPIN's jobsite. Johnson was recruited by PPI Tech. Under his employment contract with PSL, the parties agreed that Johnson was an independent contractor and not a PSL employee and that he had sole control over the manner and means of performance. To sustain Johnson's argument on appeal that he was PPI Tech's employee, he had to be able to demonstrate that he was a borrowed servant of PPI Tech.

In deciding the issue on appeal, the 5th Circuit considered nine factors, commonly referred to as the *Ruiz* factors, enunciated in *Ruiz v. Shell Oil Co.*, 413 F.2d 310, 312-13 (5 Cir. 1969), which are used to determine when an employer has borrowed a servant:

- (1) Who has control over the employee and the work he is performing?
- (2) Whose work is being performed?
- (3) Was there an agreement, understanding or meeting of the minds between the original and the borrowing

employer?

(4) Did the employee acquiesce in the new work situation?

(5) Did the original employer terminate his relationship with the employee?

(6) Who furnished tools and place for performance?

(7) Was the new employment over a considerable length of time?

(8) Who had the right to discharge the employee?

(9) Who had the obligation to pay the employee?

No single factor is determinative; courts look to the venture as a whole. The district court held that all but Factor 8 weighed against a finding that Johnson was PPI Tech's borrowed servant. Johnson contested only the district court's conclusions as to Factors 1, 2 and 3. The court's findings were as follows:

Factor 1: Control. Johnson and his work were controlled by consultants employed by Afren, which had no relationship with PPI Tech.

Factor 2: Whose Work. Johnson was performing Afren's work on the High

Island VII, as Afren owned the rights to the minerals it sought to extract from the seabed and Johnson was the company man on the rig.

Factor 3: Meeting of the Minds. Nothing in the CSA indicated an agreement that Johnson would work for PPI Tech rather than for PPIN, Afren or PSL.

Factor 8: Right to Discharge. The 5th Circuit concurred with the district court's assessment that the factor has only slight weight when balancing the issues governing the determination of a borrowing employer.

Further, the 5th Circuit agreed with the trial court's holding that the other five *Ruiz* factors did not support a conclusion that PPI Tech was Johnson's borrowing employer, affirming its summary judgment dismissing claims against PPI Tech.

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Trade Promotion Authority

Bipartisan Congressional Trade Priorities and Accountability Act of 2015, S. 995 (114th Congress).

On April 16, 2015, the U.S. Congress introduced legislation empowering the President to negotiate free trade agreements. The last iteration of such legislation, the 2002 Trade Promotion Authority legislation, expired in 2007. Despite the lack of congressionally delegated negotiating authority, President Obama is on the brink of completing the largest free trade agreement since the North American Free Trade Agreement. The proposed Trans-Pacific Partnership (TPP) Agreement with 11 Asia-Pacific nations will cover roughly 65 percent of global trade. The Bipartisan Congressional Trade Priorities and Accountability Act (TPA-2015) provides the Administration with the necessary authority to not only complete the TPP negotiations but also to continue progress on what would be the largest free trade agreement in the world — the proposed Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union.

TPA-2015 contains three main components: (1) directs the Administration to conduct negotiations in the context of congressionally mandated objectives; (2) enhances the White House-Congress consultation process by providing greater access to negotiating texts; and (3) retains congressional approval of trade agreements through an up-or-down vote without amendments.

TPA-2015 contains many updated and new negotiating objectives that will guide U.S. trade policy over the next three to six years. Some of the highlights of TPA-2015 include:

- ▶ New digital-age trade objectives recognizing the importance and role of the Internet in international trade;
- ▶ Heightened protections for intel-

lectual property, including provisions addressing government roles in cybersecurity;

- ▶ Agricultural provisions recognizing the critical importance of enforceable sanitary and phytosanitary measures and improper application of geographical indications;

- ▶ Updated labor and environment provisions recognizing core labor standards and environmental agreements;

- ▶ Elimination of trade barriers to cross-border investment;

- ▶ New negotiating objective for the first time addressing the role of currency manipulation in global trade;

- ▶ Statutory requirement that all members of Congress and their staffs have access to negotiating texts;

- ▶ Creation of a new Transparency Officer in the Office of the U.S. Trade Representative tasked with guiding congressional consultations;

- ▶ Extends Trade Promotion Authority for three years, with a three-year renewal option; and

- ▶ Provides a new compliance resolution allowing Congress to remove the expedited procedures for trade agreement approval (up-or-down vote without amendments) if the agreement does not satisfy TPA negotiating objectives.

2015 Annual Report: Committee on Foreign Investment

The Committee on Foreign Investment in the United States (CFIUS) published its annual report summarizing its activity in 2013. As previously reported in this section, CFIUS is a committee composed of various federal agency representatives that conducts national security reviews of foreign direct investment into the United States. The annual report shows a decline in reviewed transactions for 2013, but an increase in cases taken to the 45-day phase. China continues to lead the number of reviews.

CFIUS conducted 97 reviews in 2013, down from 114 in 2012. The total value of all U.S. mergers and acquisitions was above \$122 billion. China leads the way with 22 reviews, followed by Japan with

18. Canada was third with 12, and the United Kingdom was involved in seven notified transactions. FDI in the manufacturing sector continues to account for the largest number of covered and reviewed transactions. Of note in the 2015 report is the conclusion by the U.S. Intelligence Community that one or more foreign governments or companies continue efforts to acquire U.S. companies involved in research, development or production of certain critical technologies.

—Edward T. Hayes

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Payment of Lessor's Royalties by Non-Participating Lessee

Fite Oil & Gas, Inc. v. SWEPI, L.P., No. 13-31244 (5 Cir. Feb. 5, 2015), 2015 WL 468981.

At issue in this case was the obligation to make payments to the lessors of a lessee that did not participate in the drilling of a unit well in DeSoto Parish. The parties are Fite Oil & Gas, Inc. and SWEPI, L.P. In October 2009, SWEPI informed Fite that it planned to drill a unit well in a unit approved by the Louisiana Commissioner of Conservation, which covered some of Fite's leased property.

Fite did not participate in the drilling of the well, which was completed by SWEPI in March 2010. The well did not provide a good revenue stream, and SWEPI did not recoup its costs of drilling. SWEPI did not pay any money to Fite because Fite elected not to share in the costs of the well. SWEPI also did not make any royalty payments to Fite's lessors or to Fite for its lessors' benefit. SWEPI claimed it did not owe any payments to lessors, pursuant to La. R.S. 30:10(A)(2)(b)(i), because it had not recouped its costs to drill the well. SWEPI argued that Fite should have paid its lessors out of its own pocket.

Fite filed a lawsuit in the U.S. District Court for the Western District of Louisiana seeking a declaratory judgment that SWEPI was responsible for the royalty payments to Fite's lessors. Fite's lessors were not party to this lawsuit. Both Fite and SWEPI filed cross-motions for summary judgment. The district court ruled in favor of SWEPI and held that Fite had the obligation to pay its lessors, but the court never ordered Fite to actually pay its lessors.

Fite appealed. The U.S. 5th Circuit, in analyzing the issues before it, held that the lawsuit was moot because the

lessors' potential claims had prescribed under the three-year prescriptive period provided by La. Civ.C. art. 3494 for royalty claims. Fite argued that its suit had preserved its lessors' claims, but the court disagreed. As crafted, the lawsuit did not toll the prescriptive period for the lessors' potential claims because the suit was solely a controversy between Fite and SWEPI, which did not involve or preserve the lessors' claims.

Fite also argued that, although its lessors' potential claims against Fite itself would be royalty claims, their potential claims against SWEPI would be quasi-contractual claims under La. R.S. 30:10(A)(3) by owners of "unleased interests" for a share of production proceeds, and such claims prescribe in 10 years. The court held, however, that 30:10(A)(3) applies only if mineral interests are not leased to anyone, and the lessors' interests were leased to Fite.

The 5th Circuit vacated the district court's ruling and remanded the case to the district court to dismiss the litigation because it no longer contained any live case or controversy, as required for federal court jurisdiction.

Subsequent Purchaser Rule; Legacy Lawsuit

Bundrick v. Anadarko Petroleum Corp., 14-0993 (La. App. 3 Cir. 3/4/15), ____ So.3d ____, 2015 WL 895561.

This case involves alleged environmental contamination of seven tracts of land located in St. Martin Parish. Plaintiffs sued 23 oil and gas companies, claiming that ongoing oil and gas operations caused soil and groundwater contamination to plaintiffs' property. Plaintiffs claimed that defendants were negligent and strictly liable for the damage. Plaintiffs sought the types of damages that are typically prayed for in legacy lawsuits — money damages, stigma damages, diminution in property value, punitive damages, etc.

Defendants filed motions for summary judgment. At the outset of the hearing on the motions, the parties stipulated that plaintiffs purchased the property *after the mineral leases expired* and that

plaintiffs did not obtain an assignment of their predecessors-in-interests' rights to proceed against the oil and gas companies for the alleged contamination. The trial court granted defendants' motions, finding that plaintiffs lacked any right of action against defendants.

Plaintiffs appealed the matter to the Louisiana 3rd Circuit Court of Appeal. Plaintiffs assigned 12 legal errors. After conducting an extensive analysis of Louisiana case law on the issue of the "subsequent purchaser doctrine," the 3rd Circuit found that:

(1) the subsequent purchase rule applies in matters involving mineral leases, pursuant to the 1st Circuit's holding in *Global Marketing Solutions, L.L.C. v. Blue Mill Farms, Inc.*, 13-2132 (La. App. 1 Cir. 9/9/14), 153 So.3d 1209;

(2) Article 11 of the Mineral Code does not provide that plaintiffs, as subsequent purchasers, may sue prior mineral interest owners without an assignment of their predecessors' rights because the right to sue is a personal right that is enforceable only by the property owner against the tortfeasor. Should the property pass to a subsequent owner, that owner has no right to sue the tortfeasor for the previously inflicted damage absent an assignment or subrogation of the prior owner's right to sue for that damage; and

(3) Mineral Code Articles 11 and 134 contemplate that leases convey personal rights only and that the current lessor can sue only a lessee or lessees for damage to his or her property that occurred while he or she owned it.

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Informed Consent: Alternative Therapies

Taylor v. La. Mut. Med. Ins. Co., 14-0727 (La. App. 4 Cir. 1/14/15), 158 So.3d 900.

The plaintiff was offered three treatment options for her uterine fibroid tumors—hysterectomy, myomectomy or Depo-Provera (birth control medication). She opted for a hysterectomy. During the surgery, her bowel was perforated.

A review panel concluded that the defendant breached no standard of care. The ensuing lawsuit was tried, judgment was rendered for the defendants, and Taylor appealed, contending that the defendants failed to obtain her informed consent by not offering her another treatment choice, namely Lupron (hormone agonist medication).

Physicians are “required to provide their patients with sufficient information to permit the patient himself to make an informed and intelligent decision on whether to submit to the proposed course of treatment.” *Hondroulis v. Schuhmacher*, 553 So.2d 398, 411 (La. 1988). To avail themselves of the protections of the Louisiana Uniform Consent Law, physicians who will perform surgical procedures must “disclose reasonable therapeutic alternatives and risks associated with such alternatives....” La. R.S. 40:1299.40 (repealed and re-codified June 12, 2012, as La. R.S. 40:1299.96 and La. R.S. 39:1299.39.7). Although Louisiana’s consent doctrine requires physicians to provide “sufficient information” to enable consent to be informed, physicians have no duty to disclose alternative treatment methods that are not accepted as reasonable. *Pertuit v. Tenant Louisiana Health Systems*, 10-0654 (La. App. 4 Cir. 9/22/10), 49 So.3d 932, 936-37.

After learning that Lupron would have allowed shrinkage of her fibroids, Taylor contended she would have been “interested in knowing” about that possibility because, according to her expert, it could have led to a vaginal hysterectomy instead of one done laparoscopically. Her expert further testified that the consent obtained by the defendant was

inadequate because the information he gave did not contain “all practical alternatives.”

The defendant and his expert witness contended that the standard of care did not require all possible alternatives to be disclosed, that recommending only three alternatives was reasonable, and that the Lupron alternative carried with it additional serious risks. They admitted that an American Congress of Obstetricians and Gynecologists article stated that Lupron could reduce the size of the tumor within three months of treatment, but both stated it was only a temporary fix. The defendant added that treatment with Lupron would have made the hysterectomy more difficult and that a vaginal hysterectomy was not an option for plaintiff because of her three prior Cesarean sections. Neither defense witness could see any benefit provided by Lupron for this patient.

The appellate court noted “there is no statutory requirement in Louisiana that a patient be informed of alternative therapies,” yet Louisiana jurisprudence does require a physician to provide sufficient information and “disclose reasonable therapeutic alternatives.” *Snider v. LAMMICO*, 13-0579 (La. 12/10/13), 130 So.3d 922, 930, 934. “Concomitantly, patients must be informed only of ‘feasible or appropriate’ alternative treatments.” *Pertuit*, 49 So.3d at 937. The court of appeal concluded that the trial court committed no manifest error when it ruled that the defendant fulfilled her duty to obtain informed consent.

Abandonment

Hudson v. Town & Country Nursing Ctr., L.L.C., 49,581 (La. App. 2 Cir. 3/4/15), ____ So.3d ____, 2015 WL 889178.

The 2nd Circuit upheld a trial court’s decision to dismiss the plaintiffs’ medical malpractice case as abandoned, pursuant to La. C.C.P. art. 561.

The plaintiffs had argued on appeal that formal discovery (interrogatories and request for production of documents) had been exchanged within three years of the defendant’s motion and that art. 561B recites that any formal discovery served on all parties, whether or not filed in the record, is a step in the prosecution or defense of an action.

In the three-year period in question, the only document of record was a motion to withdraw and substitute counsel, which the

court held was not a step in the prosecution of an action as contemplated by art. 561. *Johnson v. American Bell Fed. Credit Union*, 49,321 (La. App. 2 Cir. 10/1/14), 149 So.3d 1267.

The plaintiffs served the discovery on counsel of record for the two defendants who had first enrolled, but they did not serve them on later-substituted counsel within the three-year period prior to the motion to dismiss. Plaintiffs’ counsel contended that she had never received, from anyone, notice of the withdrawal or substitution, and she was not aware that either had occurred, thus qualifying this case for one of the exceptions to the abandonment rule, *i.e.*, circumstances beyond the plaintiff’s control or proving that the defendant took action inconsistent with an intent to treat the case as abandoned. *See, Wolf Plumbing, Inc. v. Matthews*, 47,822 (La. App. 2 Cir. 9/25/13), 124 So.3d 494, *writs denied*, 13-2510, 13-2516 (La. 1/17/14), 130 So.3d 949, 950.

The appellate court explained that although the mailing of discovery requests to counsel of record constitutes a step in the prosecution of an action, art. 561 requires service on *all* counsel of record, and mailing to the defendant’s former counsel of record,



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though done within the applicable three-year period, is not “service on a party” as required by the language of art. 561 and authorized by La. C.C.P. art. 1313(A)(1) and 1474.

Similarly, two weeks after the *Hudson* opinion, the Supreme Court in *Guillory v. Pelican Real Estate Inc.*, 14-1539 (La. 3/17/15), ___ So.3d ___, 2015 WL 1208632, issued a *per curiam* on the same subject and ruled that neither discovery sent to only one party nor a subsequent Rule 10.1 discovery conference with only one defendant interrupted the abandonment period.

The court distinguished *Guillory* from its earlier decision in *Louisiana Department of Transportation & Development v. Oilfield Heavy Haulers, L.L.C.*, 11-0912 (La. 12/6/11), 79 So.3d 978, 984, in which it held that while correspondence scheduling a Rule 10.1 conference “serves as a step in the prosecution or defense of an action, as it is an essential component of a motion to compel,” the plaintiff in *Oilfield* had served all parties with notice of the conference.

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Courts Have No Jurisdiction to Review “Final” State Tax Assessments

Shields & Shields, A.P.L.C. v. State/La. Dept. of Rev., 14-0693 (La. App. 1 Cir. 3/4/15), ___ So.3d ___, 2015 WL 965746.

The 1st Circuit Court of Appeal affirmed a trial court’s decision to dismiss *Shields & Shields, A.P.L.C.’s* (*Shields*) suit against the Louisiana Department of Revenue (Department) for the alleged improper seizure of funds, damages for breach of agreement, fraud, loss of use of funds, unjust enrichment and conversion for lack of subject-matter jurisdiction because *Shield’s* claims were based on events that occurred after the Department’s tax assessment became final and collectible.

In March 2009, the Department seized more than \$50,000 from *Shields’s* bank account pursuant to a warrant for distraint to satisfy a tax assessment that had become final and collectible. In January 2011, *Shields* instituted suit against the Department. *Shields* alleged that *Shields’s* president/counsel met with Department employees and presented proof of the Department’s errors in the tax assessment and seizure of funds, and that Department employees agreed that an error had been made and promised to return the funds.

In upholding the district court’s dismissal of *Shields’s* suit, the court found that all causes of action alleged by *Shields* to have been erroneously dismissed by the trial court were premised on events that occurred after the tax assessment became final and collectible pursuant to La. R.S. 47:1565. *Shields* had 60 days to pay the taxes under protest or appeal to the Louisiana Board of Tax Appeals. *Shields* did neither.

After the expiration of the 60-day period, *Shields* tried to challenge the assessment. The court held that if a taxpayer fails to timely appeal an assessment or make payment under protest, the taxpayer has no right of action to challenge the assessment and the trial court lacks subject-matter jurisdiction to review the

assessment. The court further noted that La. R.S. 47:1565(C) provides that in cases involving alleged errors in tax assessments that are final, relief lies solely within the discretion of the Secretary of the Department to determine whether any error of fact or law was made. The court found that provision is clear that the courts do not have any jurisdiction to review those decisions of the Secretary. The court held that *Shields* did not appeal its assessment within the statutory time period and the court lacked subject-matter jurisdiction over all of *Shields’s* causes of action.

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Trade-In Credit Properly Reduces Taxable Sales Price

GameStop, Inc. v. St. Mary Parish Sales & Use Tax Dept., 14-0878 (La. App. 1 Cir. 3/19/15), ___ So.3d ___, 2015 WL 1260311.

Louisiana’s 1st Circuit Court of Appeal affirmed the district court’s granting of partial summary judgment in favor of the taxpayer, *GameStop*, holding that *GameStop* properly applied trade-in credits in calculating its taxable sales prices.

In the normal course of its business, *GameStop*, a nationwide video-game retailer, accepts used games from its customers in exchange for cash or trade-in credit. Trade-in credit may be stored on an “Edge Card” to be used at *GameStop* at a later date. When customers use their Edge Card trade-in balances against purchases, *GameStop* computes sales taxes on the reduced purchase price of the game. After an audit of *GameStop*, St. Mary Parish Sales & Use Tax Department (the Parish) issued a notice of assessment to *GameStop*, and *GameStop* subsequently paid the amount under protest and filed suit to recover. Both parties filed motions for summary judgment regarding the issue of whether *GameStop* properly applied the trade-in credits relating to the Edge Card transactions and properly calculated the taxable sales price and resulting sales tax owed for each of the Edge Card



transactions.

The Parish took the position that sales tax was due on the total sales price of the games without any reduction in the sales price for trade-in credit. Under La. R.S. 47:301(13)(a), “sales price” is defined as “the total amount for which tangible personal property is sold, less the market value of any article traded in.” The court noted that while this provision specifically excludes trade-in value from the determination of sales price, the statute does not define “trade in” or set forth any time frame within which such trade-in must occur. Because the term “trade in” must be liberally construed in favor of the taxpayer and against the Parish and because the plain language of La. R.S. 47:301(13)(a) does not restrict the timing of the trade-in nor suggest that a trade-in must occur simultaneously with the sale, the court found that GameStop’s Edge Card transactions came within the meaning of “traded in” and the value of the items traded in can be excluded from the sales price. Thus, GameStop properly calculated the sales tax owed to the Parish based on the sales price of the items less the Edge Card credit amount.

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Deposit of Funds into Joint Savings Account as an Inter Vivos Gift

Succession of Gassiot, 14-1019 (La. App. 3 Cir. 2/4/15), ___ So.3d ___, 2015 WL 445850.

In this case, the husband in a separate-property regime deposited one-half of his proceeds from a medical-malpractice lawsuit into a joint savings account held with his wife. After the husband’s death, the husband’s heirs challenged the donation to his wife. The issue presented to the court was whether the husband’s deposit of the funds into a joint savings account constituted a valid inter vivos gift.

The heirs argued that the donation was not valid because donations inter vivos must be by authentic act unless an exception applies, and there were no “special rules” applicable to a savings account. Accordingly, the default rule, which requires two witnesses and notary, must have been adhered to for the donation to be valid. La. Civ.C. art. 1541. However, the 3rd

Circuit Court of Appeal disagreed, holding that, pursuant to La. Civ.C. art. 1550, an authentic act is not required for transfers evidenced by certificates or documents as long as the requirements applicable to that type of transfer have been met.

The court reasoned that the joint savings account was validly created, and, thus, once the husband negotiated the settlement check and deposited the funds into the joint account, when coupled with his donative intent, the donation was effectively complete. The court also noted that a donation inter vivos of a corporeal movable may be made by the delivery of the thing to the donee without any other formality. La. Civ.C. art. 1543. The court reasoned that the wife had the ability to withdraw the funds at any time, making the funds a corporeal movable, and, thus, the donation inter vivos was effectuated either via donation at the time of the creation of the account or via the conversion of the funds to a corporeal moveable upon the wife’s withdrawal, thus requiring no formality.

—**Christina Peck Samuels**

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By Erin O. Braud

I am excited to serve as the 2015-16 chair of the Louisiana State Bar Association's (LSBA) Young Lawyers Division (YLD). In the upcoming year, my goal will be promoting the YLD and increase young lawyer participation in the Bar/YLD activities.



Erin O. Braud

"NOT ENOUGH HOURS IN A DAY!" This is such a true statement often voiced by many young lawyers. Sometimes there just isn't enough time in the day to get it all done. We work hard, often long hours, every week. For many, after working, we return home to small children who are amazing and exhausting all in one fabulous pint-sized package. We are often tired and overwhelmed.

Given our limited amount of hours in the day, giving up even a precious minute has to be worth it. I know this. I get it. For me, the Young Lawyers Division *is* worth it. Someone recently asked me if the YLD was *student council* for young lawyers. It is not. The YLD is the public service arm of the LSBA. Every year, the YLD creates and advances projects that benefit not only the communities of Louisiana but also LSBA members. For example, the YLD partners with the Wills for Heroes program. This event allow lawyers to work directly with first responders — those who often need wills and do not have means to obtain one — and more experienced estate planning lawyers who assist with

technical questions.

The impact YLD projects have made in Louisiana is truly remarkable. YLD involvement accelerates lawyer success by strengthening relationships that enhance business networks and through hands-on activity. Meanwhile, YLD public service work improves our communities and enhances the legal profession in Louisiana.

As we start the 2015-16 Bar year, several YLD projects are directed to benefit our members and address issues that are important to you, such as achieving your desired level of work-life balance.

We need your help. I'm not asking that you take on a second job (though I

would love for you to join a committee). I know that your time is limited, and the YLD does not want to monopolize it. I do ask that you give the YLD a shot. Let the YLD show you with our level of service how we are worth it. If you are interested in participating in projects planned for this year or want to learn more about the YLD, go to the YLD's webpage, www.lsba.org/YLD, or contact me or any Council member.

Your participation level is up to you. Simply showing support by sending an email with a question can make a huge difference in the direction of a project or possibly the creation of one.

I am honored to step into the large shoes of those who have had the privilege of serving as YLD chair. If I can be of any help to you this year, do not hesitate to contact me. I look forward to working with the YLD Council, the Board of Governors, the entire LSBA and all of the young lawyers on a fulfilling Bar year.



The mock trial team from Caddo Parish Magnet High School in Shreveport is the 2015 state winner of the Richard N. Ware IV High School Mock Trial Competition. The team will represent Louisiana in the national competition. Front row from left, teacher/sponsor Ginger Marks and team members Emiley Dillon, Akeylah Wellington and Mary Cash. Back row from left, attorney/coach Steven E. Soileau, team members Sydney Canfield, Vijay Letchuman, Caretia Washington and timekeeper Ankur Khanna, and teacher/sponsor Karen Soileau.

YOUNG LAWYERS DIVISION OFFICERS 2015-16

Erin O. Braud Chair

Erin O. Braud is staff counsel for Liberty Mutual Insurance Co. (Law Offices of Robert E. Birtel) in Metairie. She received a BA degree in mass communications in 2002 from Louisiana State University and her JD degree in 2005 from Loyola University College of Law. She was admitted to practice in Louisiana in 2005.



Erin O. Braud

Erin served as chair-elect, secretary and District 2 representative on the Louisiana State Bar Association's Young Lawyers Division Council. She has participated in several Law Day and Constitution Day presentations. She is a member of the Plaquemines Parish Bar Association and the Jefferson Bar Association.

She and her husband, S. Jacob Braud, live in Belle Chasse, have been married for eight years and are the parents of three children.

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email: erin.braud@libertymutual.com*

Scotty E. Chabert, Jr. Chair-Elect

Scotty E. Chabert, Jr. is an assistant district attorney for the 18th Judicial District and a partner in the Baton Rouge law firm of Saunders & Chabert. He previously served as an adjunct professor at Southern University Law Center. He received a BS degree in 2002 from Louisiana State University and his JD degree in 2006 from Southern University Law Center. He was admitted to practice in the state and federal courts of Louisiana in 2006 and in Mississippi in 2007.



Scotty E.
Chabert, Jr.

Scotty served as secretary and District 5 representative on the Louisiana State

Bar Association's (LSBA) Young Lawyers Division Council. He was a member of the 2009-10 Leadership LSBA Class and co-chaired the 2010-11 Leadership LSBA Class. He is a past chair of the Baton Rouge Bar Association's (BRBA) Young Lawyers Section and a 2010 recipient of the BRBA's President's Award.

In his community, he is a member of First United Methodist Church.

Scotty and his wife, Katie D. Chabert, have been married for six and a half years and are the parents of three children.

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Bradley J. Tate Secretary

Bradley J. Tate is tax manager for the firm of Prejean Romero McGee in Lafayette. He received a BS degree in accounting in 2005 from Southeastern Louisiana University, his JD degree in 2008 from Louisiana State University Paul M. Hebert Law Center and an LLM in taxation in 2012 from the University of Alabama. He was admitted to practice in Louisiana in 2009.



Bradley J. Tate

Brad served as the District 5 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. He was a member of the 2011-12 Leadership LSBA Class and co-chaired the 2012-13 Leadership LSBA Class. He is a member of the *Louisiana Bar Journal's* Editorial Board.

He is a member of the American Bar Association, the Baton Rouge Bar Association and the Lafayette Bar Association.

In his community, he is a member of The 705 for young leaders in Acadiana.

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J. Lee Hoffoss, Jr. Immediate Past Chair

J. Lee Hoffoss, Jr. is a partner in the Lake Charles firm of Hoffoss Devall, L.L.C. He received a BA degree and an MA degree in 2000 and 2001, respectively, from Louisiana Tech University and his JD degree in 2004 from Southern University Law Center. He was admitted to practice in Louisiana in 2004 and in Texas in 2010.



J. Lee Hoffoss, Jr.

Lee served as chair, chair-elect, secretary and the American Bar Association's Young Lawyers Division representative on the Louisiana State Bar Association's Young Lawyers Division Council. He is a member of the Louisiana Association for Justice, the Southwest Louisiana Bar Association and the Judge Albert Tate, Jr. American Inn of Court.

He was chosen as a Young Lawyers Fellow by the ABA GP Solo Division. He also was recognized as a "Top 40 Under 40" trial lawyer and as a *Louisiana Super Lawyers* "Rising Star."

In his community, he works with St. Nicholas Center for Children and is a member of Immaculate Conception Cathedral.

Lee and his wife, Corlissa Nash Hoffoss, have been married for nine years and are the parents of three children.

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YOUNG LAWYERS DIVISION COUNCIL 2015-16

Dylan T. Thriffiley District One Representative

Dylan T. Thriffiley is an associate in the New Orleans office of Kean Miller, L.L.P. She received a BS degree, *magna cum laude*, in 2005 from the University of Tennessee at Chattanooga and her JD degree, *cum laude*, in 2008 from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008.

Continued on page 70

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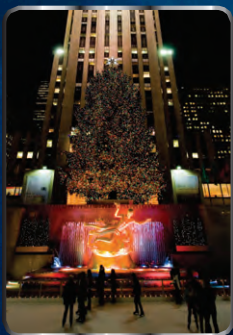
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Dylan has served as a District I representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council since 2012. She was a member of the 2010-11 Leadership LSBA Class and co-chaired the 2011-12 Leadership LSBA Class. She is co-chair of the LSBA's Public Information Committee and is a member of the Committee on the Profession and the Bar Governance Committee. She also is a member of the *Louisiana Bar Journal* Editorial Board. She was recently appointed to the board of the Louisiana Civil Justice Center.



Dylan T. Thriffiley

She is a Younger Lawyers Division board member for the New Orleans Chapter

of the Federal Bar Association, a former president of the New Orleans Association for Women Attorneys and a member of the American Bar Association. In 2015, she was named a *Louisiana Super Lawyers* "Rising Star."

In her community, Dylan is the volunteer coordinator for Hogs for the Cause, an organization which provides funding to families whose children are being treated for pediatric brain cancer.

She and her husband, Peter S. Thriffiley, Jr., have been married for three years and are the parents of one child.

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**Scott L. Sternberg
District One Representative**

Scott L. Sternberg is an associate in the New Orleans office of Baldwin Haspel Burke & Mayer, L.L.C. He received a BA degree in journalism in 2006 from Louisiana State University and his JD/DCL degree in 2010 from LSU Paul M.



Scott L. Sternberg

Hebert Law Center. He was admitted to practice in Louisiana in 2010.

Scott was a member of the 2012-13 Leadership LSBA Class and is a former member of the Louisiana State Bar Association's Crystal Gavel Committee (2013) and the Publications Subcommittee (2013).

He is an adjunct professor for the

LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. To this end, the LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community.

In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive. As the premier organization serving Louisiana's legal profession, the LSBA is working to advance its members' goals and interests through unparalleled programming and a comprehensive benefits package. Listed below are a few benefits of membership:

Lawyers' Assistance Program

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LAP provides confidential assistance to members of the Bar and their families who experience problems with alcohol, drugs, gambling and other addictions, as well as mental health issues. Call 1(866)354-9334 for assistance.

**LSBA Professional Programs
Department Services**

Client Assistance Fund

cgrodsky@lsba.org

This program helps consumers by providing compensation to clients who have been defrauded by their lawyers. For more information, contact Associate Executive Director Cheri Cotogno Grodsky at cgrodsky@lsba.org or (504)619-0107.

Fastcase

www.lsba.org/fastcase

In 2005, the LSBA launched Fastcase, a free web-based legal research product that provides unlimited access to all state and federal court cases. To access the program, go to www.lsba.org and click on the Fastcase icon. For more information, contact Practice Management Counsel Shawn L. Holahan at shawn.holahan@lsba.org or (504)619-0153.

Lawyer Advertising Filing and Evaluation

• rlemmler@lsba.org
This program provides screening of proposed lawyer advertising to confirm compliance with the Supreme Court's advertising rules. For information/inquiries, contact LSBA Ethics Counsel Richard P. Lemmler, Jr. at rlemmler@lsba.org or (504)619-0144.

Practice Assistance and Improvement

• bking@lsba.org
As mandated by the Louisiana Supreme Court, the Bar's Practice Assistance and Improvement Program offers alternatives to discipline via its Attorney-Client Assistance Program and the Diversion Program. The Office of Disciplinary Counsel diverts eligible matters enabling these members to avoid disciplinary proceedings. For more information, contact Professional Programs Counsel for Practice Assistance William N. King at bking@lsba.org or (504)619-0109.



For more information,
visit www.lsba.org

Loyola University School of Mass Communication. He is a member of the board of directors of the Federal Bar Association New Orleans Chapter's Younger Lawyers Division, a member of the LSU Law Chancellor's Young Alumni Leadership Council and a member of the Louisiana Press Association.

Scott has been recognized as a *Louisiana Super Lawyers* "Rising Star" in 2014 and 2015; on the *New Orleans Magazine*'s "Top Lawyers" lists in 2013 and 2014; as a Loyola Institute of Politics Fellow in 2011; and in the Meritas Law Firms Worldwide Leadership Class in 2013-14.

In his community, he is a board member of the Young Leadership Council in New Orleans.

Scott and his wife, Breland, have been married for five years and are the parents of one child.

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website: www.bhbmlaw.com*

**Jason M. Baer
District Two Representative**

Jason M. Baer is a partner in the firm of Pandit Law in New Orleans. He received a BS degree in accounting in 2005 from Louisiana State University and his JD degree in 2008 from Loyola University College of Law. He was admitted to practice in Louisiana in 2008.



Jason M. Baer

Jason is a member of the Jefferson Bar Association (JBA) and a board member of the JBA's Young Lawyers Division. He also is a member of the Louisiana Association of Defense Counsel and the Federal Bar Association.

He and his wife, Liz Lorio Baer, have been married for six years and are the parents of one child, expecting their second child in August.

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**Jeffrey D. Hufft
District Two Representative**

Jeffrey D. Hufft is an assistant attorney general (Criminal Division) with the Louisiana Department of Justice. He received a BA degree in psychology in 2003 from Louisiana State University and his JD degree in 2009 from Loyola University College of Law. He was admitted to practice in Louisiana in 2009.



Jeffrey D. Hufft

Jeffrey has served as a judge for the Louisiana State Bar Association Young Lawyers Division's mock trial program. He is a board member of the Jefferson Bar Association's Young Lawyers Division and a member of the Louisiana District Attorneys Association.

In his community, he is the vice president of the Homestead Brockenbraugh Civic Association and is an annual speaker for the Jesuit High School Career Day Law Curriculum.

Jeffrey and his wife, Danielle Treadaway Hufft, have been married for two years and are the parents of one child.

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**Kassie L. Hargis
District Three Representative**

Kassie L. Hargis is a law clerk for Judge John R. Walker, 32nd Judicial District Court, in Houma. She received her BA degree in English literature in 2000 from Louisiana State University and her JD degree in 2006 from Loyola University College of Law. She was admitted to practice in 2007.



Kassie L. Hargis

Kassie is a member of the Louisiana State Bar Association's Access to Justice Committee and the Unauthorized Practice of Law Committee.

In her community, she is involved with the Houma-Terrebonne Girls on the Run Program.

She and her husband, Jeffrey M. Hargis,

have been married for eight years.

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**Adam P. Johnson
District Four Representative**

Adam P. Johnson is an attorney in the Lake Charles firm of Johnson & Vercher, L.L.C. He received a bachelor's degree in business management from Louisiana State University and his JD degree from Southern University Law Center.



Adam P. Johnson

He was admitted to practice in Louisiana in 2009.

Adam was a member of the 2013-14 Leadership LSBA Class and co-chaired the 2014-15 Leadership LSBA Class.

He was the 2014 president of the Southwest Louisiana Bar Association Young Lawyers Section. He was recognized as a "Top 40 Under 40" professional and as a "Top Criminal Defense Lawyer" by *Acadiana Magazine*.

Adam and his wife, Ashley Leonards Johnson, have been married for four years and are the parents of one child.

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**Kristi W. Richard
District Five Representative**

Kristi W. Richard is a senior associate in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., and an adjunct instructor of business law and sports law at Louisiana State University. She received a BS degree in management, *summa cum laude*, in 2004



Kristi W. Richard

from LSU, a master's degree in business administration in 2009 from LSU, and her JD/BCL degree, *magna cum laude*, in 2009 from LSU Paul M. Hebert Law Center.

She was admitted to practice in Louisiana in 2009.

Kristi was a member of the 2012-13 Leadership LSBA Class. She is a member of the Baton Rouge Bar Association and will serve as chair of its Holiday Star Project in the upcoming year.

In her community, she is a community council member of the Junior League of Baton Rouge (serving as community vice president in 2015-16) and is a member of the 2015 class of the Baton Rouge Area Leadership Program.

She and her husband, Daniel Richard, have been married for 12 years and are the parents of one child.

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Carrie LeBlanc Jones **District Five Representative**

Carrie LeBlanc Jones is an associate in the Baton Rouge firm of Shows, Cali & Walsh, L.L.P. She received a BA degree in mass communication in 2004 from Louisiana State University, an MBA degree in 2005 from Southeastern Louisiana University and her JD/BCL degree in 2008 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008.

Carrie is a member of the Louisiana State Bar Association's (LSBA) Continuing Legal Education Committee and the Committee on Alcohol and Drug Abuse. She was a member of the 2013-14 Leadership LSBA Class.

She is a member of the Louisiana Attorney Disciplinary Board, the Baton Rouge Bar Association and the Bar Association of the 5th Federal Circuit.

In her community, she is a parishioner of St. George Catholic Church. She and her husband, Aaron Jones, have been married for four years and are the parents of one child.

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Carrie LeBlanc Jones

Christie C. Wood **District Six Representative**

Christie C. Wood is an associate in the firm of Faircloth Melton, L.L.C., in Alexandria. She received a BA degree in 1999 from Louisiana Tech University and her JD degree in 2008 from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008.

Christie is a young lawyer observer for the Louisiana State Law Institute.

She is chair of the Alexandria Bar Association's Young Lawyers Council and a member of the Crossroads American Inn of Court in Alexandria-Pineville. In law school, she was named to the Chancellor's List and was a member of the Legal Association of Women and the Civilian Student Society.

She and her husband, Jeremy Wood, have been married for seven years and are the parents of two children.

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email: cwood@fairclothlaw.com



Christie C. Wood

Ashley L. Smith Dayton **District Seven Representative**

Ashley L. Smith Dayton is an attorney in Monroe. She received a bachelor of business administration degree in accounting in 2001 from the University of Louisiana at Monroe and her JD degree in 2009 from Southern University Law Center. She earned an LLM in taxation in 2010 from Southern Methodist University. She was admitted to practice in Louisiana in 2009.

Ashley is a member of the Louisiana State Bar Association's (LSBA) Access to Justice Committee. She was a member of the 2012-13 Leadership LSBA Class and co-chaired the 2013-14 Leadership LSBA Class. She is a member of the Access to Justice Pro Bono Awards Nomination



Ashley L. Smith Dayton

Committee and the Self-Represented Litigant Subcommittee and was involved with the "Lawyers in Libraries" public service initiative. She also is a member of the Louisiana Bar Foundation's Northeast Community Partnership Panel.

She has been a member of the 4th Judicial District Bar Association and its Young Lawyers Section since 2011. In her community, she is a member of First Baptist Church in Tallulah.

Ashley is married to Brian Dayton and she is a stepmother to two children.

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Allison C. Foster **District Eight Representative**

Allison C. Foster is an associate in the Shreveport firm of Cook, Yancey, King & Galloway, A.P.L.C. She received a BS degree in general business in 2006 from Louisiana State University and her JD degree in 2009 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2009.

Allison was a member of the 2014-15 Leadership LSBA Class. She is a member of the Shreveport Bar Association, the Louisiana Association of Defense Counsel and the Defense Research Institute.

In her community, she is involved with Holy Angels Champions for Individuals with Disabilities.

Allison and her husband, Ben, have been married for a year and are expecting their first child.

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Allison C. Foster

Kellen J. Mathews **At-Large Representative**

Kellen J. Mathews is an associate in the litigation practice group in the Baton Rouge office of Adams and Reese, L.L.P. He received a BA degree in political

science in 2004 from Millsaps College and his JD degree in 2008 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2008.



Kellen J. Mathews

Kellen was a member of the 2010-11 Leadership LSBA Class and co-chaired the 2011-12 Leadership LSBA Class. He currently serves as the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) Diversity Committee chair and is a member of the LSBA Conclave on Diversity Subcommittee. He also has chaired the YLD's Law School Outreach Committee, helping to put on the Law School Mock Trial competition in 2013.

In his community, he is a board member of the Greater Baton Rouge Food Bank, assisting more than 130 charitable agencies in Baton Rouge and 11 surrounding parishes. He also is a member of the City Year Baton Rouge Associate Board, serving on the Host Committee charged with coordinating City Year Baton Rouge's signature fundraiser, the School House Rock Gala.

Kellen and his wife, Mikki Ceasar Mathews, have been married for two years.
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 website: www.adamsandrese.com*

**Graham H. Ryan
 ABA YLD Representative**

Graham H. Ryan is an associate in the New Orleans office of the Jones Walker, L.L.P. He received a BS degree, *summa cum laude*, in finance in 2007 from Louisiana State University and his JD/DCL degree in 2011 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2011.



Graham H. Ryan

Graham was a member of the 2014-15 Leadership LSBA Class. He chaired the Louisiana State Bar Association's first Hackathon to Justice hackathon to increase access to justice efforts and helped coordinate the greater New Orleans area high school mock trial competition.

He is a member of the American Bar Association, the New Orleans Bar Association and the Jefferson Bar Association.

In his community, Graham is chair of HandsOn New Orleans, a nonprofit volunteer center. He also provides pro bono legal services to the homeless and veterans at the Father Harry Tompson Rebuild Center in New Orleans.

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 website: www.joneswalker.com*

**Ryan M. McCabe
 Young Lawyer Member/
 ABA House of Delegates**

Ryan M. McCabe is an associate in Steeg

Law Firm, L.L.C., in New Orleans. He received BS and BA degrees in 2004 from the University at Albany, State University of New York, and his JD degree and certificate in maritime law in 2007 from Tulane University Law School. He was admitted to practice in Louisiana in 2007. He has been an associate professor of trial advocacy at Tulane Law School since 2013.



Ryan M. McCabe

Ryan is a member of the Louisiana State Bar Association's (LSBA) House of Delegates, 2011-15. He was a member of the 2012-13 Leadership LSBA Class. He also is a member of the LSBA Rules of Professional Conduct Committee (2009-11 and 2013-present). He is national chair of the Federal Bar Association Professional Ethics Committee (2013-present).

He received the 2013 LSBA Young Lawyers Division's Hon. Michaelle Pitard Wynne Professionalism Award. He was chosen as a *Louisiana Super Lawyers* "Rising Star" in real estate in 2014 and in professional liability defense in 2013. He also received the 2007 Tulane Admiralty Law Institute Award of Excellence and won the 2005 *Tulane Maritime Law Journal* annual writing competition.

In his community, Ryan has served as secretary and Land Use Committee member for the Irish Channel Neighborhood Association since 2012.

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 website: www.steeglaw.com*



YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division news online

Go to: www.lsb.org/YLD

The Young Lawyers Division Web site is a public service of the LSBA-YLD Council, providing YLD information to the public and communicating with YLD members.

SAVE THE DATE!

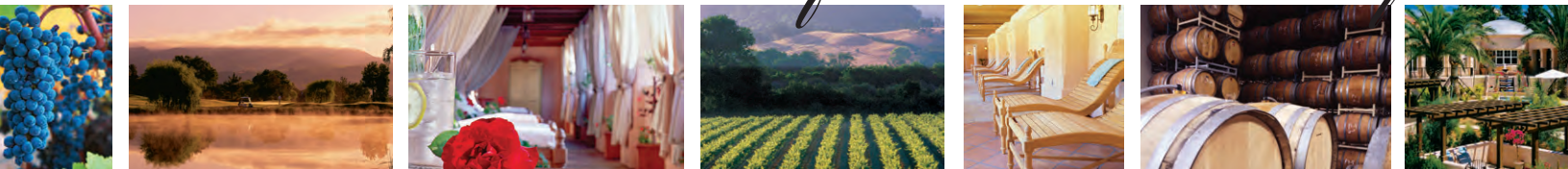
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By David Rigamer, Louisiana Supreme Court

NEW JUDGES... IN MEMORIAM

New Judges

Karelia R. Stewart was elected as judge, Division D, 1st Judicial District Court. She earned her BA degree in 2001 from Dillard University and her JD degree in 2004 from Loyola University College of



Karelia R. Stewart

Law, where she was a Merit Scholar. She served as a prosecutor with the Caddo Parish District Attorney's Office, where she was the Drug Court Section chief. She also worked as an adjunct professor teaching law-related courses at Louisiana State University-Shreveport and Bossier Parish Community College. She is the third member of the Stewart family to serve on the Caddo bench, following her father, U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, and her uncle, 2nd Circuit Court of Appeal Judge James E. Stewart, Sr. She is married to Frederick Green.

William G. (Greg) Beard was elected as judge, Division G, 9th Judicial District Court. He earned his bachelor's degree in 1987 from Louisiana State University and his JD degree in 1991 from Southern



William G. Beard

University Law Center. During this time, he worked in the Louisiana Legislature for Rep. Charlie DeWitt and Sen. Joe McPherson. Beard worked for the Law Offices of Cave & McKay in Baton Rouge. From 1993 until his election to the bench, he practiced at Beard & Beard, L.L.C. He is married to Lisa Ware Beard and they are the parents of one child.

Monique F. Rauls was elected as judge, Division A, 9th Judicial District Court. She earned her BA degree in 1990 from Northeast Louisiana University and her JD degree in 1993 from Mississippi College School of Law. She served as law clerk to 9th JDC Judge George C. Metoyer, Jr. before joining Provosty, Sadler & deLaunay as an associate from 1994-96. She was staff attorney for the Louisiana Department of Social Services from 1996-98 and was an assistant attorney general in the Litigation Division of the Louisiana Department of Justice from 1998-2003. In 2003, Rauls became the first African-American to work as a 9th JDC hearing officer, serving in that capacity until her election to the bench. She served on the Rapides Parish Indigent Defender Board and is currently a member of the National Council of Juvenile & Family Court Judges' Domestic Violence Task Force. She has been married to James Rauls III for 23 years and they are the parents of three children.



Monique F. Rauls

Kerry L. Spruill was elected as judge, Division A, 12th Judicial District Court. He returns to the court after previously serving as judge from 1997-2002. He received his BA degree in 1976 from Northwestern



Kerry L. Spruill

State University and his JD degree in 1978 from Louisiana State University Paul M. Hebert Law Center. Judge Spruill has 36 years of legal and judicial experience. He has been in private practice with the law firms of Knoll & Spruill and the Spruill

Law Office, both in Marksville. He also worked as a legal consultant for the Office of Community Service and as an administrative assistant investigator for the Avoyelles Parish District Attorney's Office. He is a member of the Crossroads American Inn of Court and the Louisiana Bar Foundation's Central Community Partnership Panel. He is married to Laura Roy Spruill and they are the parents of one child. They have one grandchild.

Charles G. Fitzgerald was elected as judge, Division M, 15th Judicial District Court. He earned his BS degree in 1997 and his JD degree in 2001 from Louisiana State University, where he was involved in the



Charles G. Fitzgerald

Louisiana Law Review and Order of the Coif. From 2001-02, he was an associate with Jones Walker, L.L.P., in Baton Rouge. From 2003 until his election to the bench, he was a partner in Cox Fitzgerald, L.L.C., in Lafayette, where he practiced in family law. He has presented lectures on family law issues to the Lafayette Bar Association, the National Business Institute and the Society of Louisiana CPAs. He is married to Jeanne Marie Fuselier Fitzgerald and they are the parents of three children.

David M. Smith was elected as judge, Division F, 15th Judicial District Court. He earned his BS degree in 1991 from McNeese State University and his JD degree in 1994 from Loyola University College of Law. He was in the private practice of law with David Smith & Associates, L.L.C., in La-



David M. Smith

fayette from 1995-2004. From 2000 until his election to the bench, he was a felony criminal prosecutor with the 14th Judicial District Attorney's Office. He also served as magistrate judge for the City Courts of Duson and Church Point. He is married to Alissa Smith and they are the parents of five children.

Anthony Thibodeaux was elected as judge, Division A, 16th Judicial District Court. He earned his bachelor's degree in 1985 from Northwestern State University and his JD degree in 1989 from Southern



Anthony Thibodeaux

University Law Center. He also is a graduate of the Louisiana Army National Guard Officer Candidate School. He served as a law clerk to 16th JDC Judge C. Thomas Bienvenu, Jr. in 1989. From 1990-92, he practiced law with the Ramsey Law Firm in Bayou Vista. From 1992 until his election to the bench, he maintained a solo practice in Morgan City. He is married to Jessica Fontenot Thibodeaux and they are the parents of four children.

Steven M. Miller was elected as judge, Division B, 17th Judicial District Court. He earned his BS degree in 1989 from Louisiana State University and his JD degree in 1994 from Tulane University Law School.



Steven M. Miller

In 1995, he began the practice of law as a sole practitioner in Thibodaux. In 1998, he began practicing with Charles J. LeBlanc, becoming a partner in the firm LeBlanc & Miller, L.L.C., in 2007. He served Lafourche Parish as assistant indigent defender in 2002 and as assistant district attorney/felony prosecutor from 2003 until his election to the bench. He is married to Ann James Miller and they are the parents of two children.

Jason M. Verdigets was elected as judge, Division A, 23rd Judicial District Court. He earned his BS degree in 2000 from Louisiana State University and his

JD degree, with honors, in 2003 from Southern University Law Center. Prior to his election to the bench, he served as a felony prosecutor for the 23rd JDC District Attorney's Office. His work there earned him recognition from the Louisiana Narcotics Officers Association as "Drug Prosecutor of the Year" in 2012. He volunteers with the Louisiana State Police Sudden Impact Program which conducts mock trials for high school students. He is married to Melissa Brown Verdigets and they are the parents of three children.



Jason M. Verdigets

Danyelle M. Taylor was elected as judge, Division O, 24th Judicial District Court. She earned both a BA degree and an AS degree in paralegal studies in 1991 from Nicholls State University. She worked



Danyelle M. Taylor

as a paralegal until earning her JD degree in 1996 from Loyola University College of Law, where she was recognized with Moot Court honors. From 1996-2006, she practiced with Howard, Reed & Taylor in New Orleans, before entering private practice in Westwego. She served on the 24th JDC's Domestic Court Rules Committee. She is married to Thomas A. Taylor and they are the parents of three children.

E. Adrian Adams was elected as judge, Division G, 24th Judicial District Court. He earned an AS degree in 1986 from Nicholls State University, a BA degree in 1987 from Southeastern Louisiana University and his JD degree in 1992 from Southern University Law Center. He served as law clerk in Division P, 24th JDC, to Judge Melvin C. Zeno and Judge Lee V. Faulkner, Jr. from 1992-2014. During this period, he



E. Adrian Adams

also maintained a private law practice focusing in civil and domestic cases. He also has served as a hearing officer for Jefferson's 2nd Parish Court. He is a member of the Jefferson Bar Association, currently serving as president. He is married to Lori A. Adams and they are the parents of two children.

A. Gerard Caswell was elected as judge, Division B, 27th Judicial District Court. He earned his BS degree in 1980 and his JD degree in 1983 from Louisiana State University, where he chaired



A. Gerard Caswell

the Moot Court Board. A practicing attorney for more than 30 years, he is a member and past president of the St. Landry Parish Bar Association and a member of the Hearing Committee for the Louisiana Attorney Disciplinary Board. He is married to Patti Caswell and they are the parents of three children.

Ashley Paul Thomas was elected as judge, 37th Judicial District Court. He earned his AA, BA and MA degrees from Northeast Louisiana University in 1993, 1995 and 1999, respectively.



Ashley Paul Thomas

He earned his JD degree in 2005 from Southern University Law Center, where he worked as a teaching assistant and served on the Moot Court Board. During law school, he worked as a law clerk in the Louisiana Attorney General's Office in Baton Rouge. From 2005-08, he served as an assistant district attorney in Caldwell Parish. From 2008 until his election to the bench, he was in the private practice of law focusing on criminal defense. He is a member and past president of the 37th JDC Bar Association. He has served on the Caldwell Parish Drug Court Team since its establishment, as both a prosecutor and a defense attorney. He is married to Victoria Z. Thomas and they are the parents of two children.

Monique E. Barial was elected as judge, Domestic Section 2, Division H, Orleans Parish Civil District Court. She earned her BA degree in 1994 from Xavier University, her JD degree in 2000 from Southern University Law Center and her LLM degree in estate planning in 2001 from the University of Miami. She served as a Civil District Court law clerk and minute clerk for Judge Roland L. Belsome, Jr. and Judge Christopher J. Bruno, respectively. She also was in the private practice of law with the Law Office of Monique E. Barial in New Orleans. She worked as attorney advisor for the U.S. Small Business Administration. She is a member of the Louisiana Association of Black Women Attorneys and has volunteered as a Court-Appointed Special Advocate. She is married to Michael Carey and they are the parents of two children.



Monique E. Barial

Matthew H. Hagen was elected as judge of Houma City Court. He earned his BS degree in 1986 from Nicholls State University and his JD degree in 1991 from Southern University Law Center.



Matthew H. Hagen

He has practiced law for 22 years, 17 of which were as a prosecutor with the Terrebonne Parish District Attorney's Office. In 2012 and 2013, he served on the Louisiana District Attorney Association's ADA Board, and, for the past 14 years, he has participated in the DA's Project Lead Program, which brings prosecutors to teach at grammar schools. He is married to Monique Guidry Hagen and they are the parents of two children.

Jamie B. Bice was elected as judge, Division A, Lake Charles City Court. He earned both his BA and JD degrees from Louisiana State University in 1989 and 1993, respectively. From 1993-94, he served as a law clerk in the 14th Judicial District Court. He entered into the private practice of law as a founding partner

in McLaughlin & Bice, 1994-2001. He later founded Veron, Bice, Palermo & Wilson, L.L.C., in Lake Charles. He was named "Best Lawyer" two times by *Lagniappe* magazine and recognized as "Best Lawyers/Family Law" by *Acadiana Profile* magazine. He is a member of the Southwest Louisiana Bar Association and serves as counsel for the Cholley Mac Scholarship Foundation.



Jamie B. Bice

Theodore M. (Trey) Haik III was elected as judge of New Iberia City Court. He earned his BA degree in 1994 from the University of Southwestern Louisiana and his JD degree in 1998 from Tulane University Law School. His 16-year legal career includes serving as a law clerk to 24th Judicial District Court Judge Henry G. Sullivan, Jr., as a special assistant attorney general, and, recently, as city attorney in New Iberia. He was in the private practice of law with Haik, Minvielle & Grubbs, L.L.P., in New Iberia, becoming a partner in 2006. He is married to Jeanne Arceneaux Haik and they are the parents of two children.



Theodore M. Haik III

Appointment

Glenn R. Langley was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a term of office which began May 1 and will end on April 30, 2020.

Retirement

Baton Rouge City Court Judge Alex W. (Brick) Wall, Jr. retired effective Feb. 20. He earned both his bachelor's and JD degrees from Louisiana State University in 1970 and 1973, respectively. He was elected to Baton Rouge City Court in 1999 and has served as the court's administrative judge.

Deaths

► Retired 16th Judicial District Court Judge James R. McClelland, 68, died March 15. Raised on a rice farm in Elton, La., he was valedictorian of his high school class. He continued to excel academically at Louisiana State University, where he earned a BS degree in 1969, an MBA degree in 1971 and his JD degree in 1975. He graduated with honors as a member of the Order of the Coif and was a member of the *Louisiana Law Review*. After being admitted to practice in 1975, he practiced with the law firm of Aycock, Horne & Coleman in Franklin, becoming a partner in 1978. He was the founder of the local Public Defender Board and served as a public defender from 1975-81. He served as an assistant district attorney in the 16th JDC from 1981-2008. In 2009, he was elected to the 16th JDC, where he served as judge of Division D until his retirement on March 1, 2015. Judge McClelland presided over the St. Mary Parish Adult Drug Treatment and DWI Court, and the Juvenile Drug Treatment Court for four years. He served on the Governor's Advisory Board of Juvenile Justice and Delinquency Prevention under Gov. Foster. He was an active member of the Louisiana State Bar Association, serving as secretary and editor of the *Louisiana Bar Journal*, on the Board of Governors and in the House of Delegates. He was a charter member of the Inn on the Teche American Inn of Court, serving as president from 2010-11 and receiving the Inn's Professionalism Award in 2012. He also served on the board of directors of the Louisiana Bar Foundation.



Hon. James R. McClelland

► Retired 2nd Circuit Court of Appeal Judge Charles B. Peatross, 74, died Jan. 28. Born in Shreveport, he earned both his BBA and JD degrees from Tulane University. Prior to election to the bench, he practiced law in Shreveport for more than 30 years. He served on the Shreveport City Council and as Shreveport city attorney. He was a past president of the Shreveport Bar Association and served for 20 years in the Louisiana State Bar Association's House of Delegates. Judge Peatross was elected to the bench in 1996 and served there until his retirement in 2012.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Anderson, Dozier & Blanda in Lafayette announces that **Keith P. Saltzman** has been named partner. The firm has changed its name to Anderson, Dozier, Blanda & Saltzman.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Nicholas R. Pitre has joined the firm's Mandeville office as an associate.

Breazeale, Sachse & Wilson, L.L.P., announces that Jennifer D. Sims has been named partner in the Baton Rouge office. Also, A.G. (Alec) Alexander III has joined the firm's Baton Rouge office as a partner.

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., announces that **Stephen P. Scullin** has been named a partner in the New Orleans office. Also, **Dominik J. Cvitanovic** and **Eric M.**

Ferrante have joined the firm's New Orleans office as associates.

Cashe Coudrain & Sandage in Hammond announces that Christopher J. Edwards, Jr. has joined the firm as an associate.

Christovich & Kearney, L.L.P., in New Orleans announces that Nicholas P. Arnold has become a partner in the firm.

Curry & Friend, P.L.C., in New Orleans announces that **Douglas R. Kraus** and **Ashley E. Gilbert** have joined the firm as partners, and **Kathy A. (Kat) Rito** has been named a partner in the firm.

The Derbes Law Firm, L.L.C., in Metairie announces that Rory V. Bellina has joined the firm as an associate.

Kathleen C. Gasparian has launched her new firm, Gasparian Immigration, located at 829 Baronne St., New Orleans, LA 70113; phone (504)262-9878; www.gasparianimmigration.com.

Herman, Herman & Katz, L.L.C., in New Orleans announces that Madelyn M. O'Brien has joined the firm as an associate.

Jones Walker, L.L.P., announces that R. Christian Johnsen was elected as a member of the board of directors for a four-year term. Nine attorneys have been elected to the partnership: Tarak Anada, William C. Baldwin, Matthew A. Mantle, Avery B. Pardee, Hope M. Spencer and Brett S. Venn in the New Orleans office; and Donald L. Cunningham, Matthew W. Kern and Alexandra Clark Layfield in the Baton Rouge office. Also, Charles J. (Chuck) Boudreaux, Jr. has joined the firm's Lafayette office as special counsel.

King, Krebs & Jurgens, P.L.L.C., in New Orleans announces that Nicole M. Babb has joined the firm as an associate.

Leake & Andersson, L.L.P., in New Orleans announces that **Alex P. Tilling** has been named a partner and **Jeremy H. Call** and **Anton L. Hasenkampf** have joined the firm as associates.



Richard J. Arsenault



Pierce C. Azuma



Beth S. Bernstein



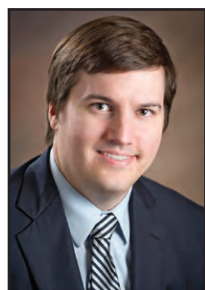
Wilton E. Bland III



Jeremy H. Call



Amy C. Cowley



Dominik J. Cvitanovic



Eric M. Ferrante



Ashley E. Gilbert



Anton L. Hasenkampf



Amy D. Hotard



Douglas R. Kraus

Liskow & Lewis, A.P.L.C., in New Orleans announces that Robert S. Angelico has been elected as the firm's new president and managing partner. Also, Stephen W. Wiegand was elected as a shareholder in the New Orleans office and Collette R. Gordon was elected as a shareholder in the Houston, Texas, office.

Lobman, Carnahan, Batt, Angelle & Nader in New Orleans announces that **Charles R. Rumbley** has been named a partner in the firm.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that Erin R. Rosenberg and Leslie Johns Ray have joined the New Orleans office as associates.

Manion Gaynor & Manning, L.L.P., announces the opening of offices in New Orleans, Lake Charles and Hattiesburg, Miss. Launching the new offices are G.L. Maximilian Swetman in New Orleans and Christopher O. Massenburg in Hattiesburg. Joining the firm are partners B. Adam Hays in Hattiesburg and Brandie M. Thibodeaux in New Orleans; associates Kevin R. Sloan, Meaghan M. Donovan, Natasha A. Corb in New Orleans; and of counsel David R. Frohn in Lake Charles. The offices are located at Ste. 3000, One Canal Place, 365 Canal St., New Orleans, LA 70130, phone (504)535-2880; Ste. 106,

2201 Lake St., Lake Charles, LA 70601, phone (337)419-1929; and Ste. D, 1700 S. 28th Ave., Hattiesburg, MS 39402, phone (601)255-0259.

McGlinchey Stafford, P.L.L.C., announces that L. Eades Hogue as become of counsel in the firm's New Orleans office.

Mouledoux, Bland, Legrand & Brackett, L.L.C. in New Orleans announces that **Jordan G. McFaul**, **Pierce C. Azuma** and **Maro Petkovich, Jr.** have joined the firm as associates. Also, **Adam P. Sanderson** and **Beth S. Bernstein** have been named members of the firm.

Niles, Bourque & Knight, L.L.C., in New Orleans announces that **A. Rebecca Wilmore** has joined the firm as a partner.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., announces that Greg Guidry has joined the firm as a shareholder. He will open the firm's satellite office in Lafayette.

Phelps Dunbar, L.L.P., announces that Philip deV. Claverie, Jr. has been elected a partner in the New Orleans office.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., announces that **Erzsebet M. (Liz) Pifko** has joined the firm's Covington office as an associate.

Rabalais Law in Metairie announces that Lisa A. Finn has joined the firm's southeast Louisiana office.

Salley, Hite, Mercer & Resor, L.L.C., in New Orleans announces that **Erika L. Mullenbach** and **Amy D. Hotard** have been named partners in the firm.

Scheef & Stone, L.L.P., announces that B. Jane Taber has joined the firm as a partner in the Dallas, Texas, office.

Tranchina & Mansfield, L.L.C., in Covington announces that **Amy C. Cowley** has joined the firm as of counsel.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was nominated for the 2015 Trial Lawyer of the Year Award by the Public Justice Foundation and was selected as a 2015 member of the Nation's Top One Percent by the National Association of Distinguished Counsel. Also, he was chosen to receive the National Academy of Personal Injury Attorneys' Top 10 Attorney Award for Louisiana.

Continued next page



Jordan G. McFaul



André J. Mouledoux



Erika L. Mullenbach



Maro Petkovich, Jr.



Erzsebet M. Pifko



Kathy A. Rito



Charles R. Rumbley



Keith P. Saltzman



Adam P. Sanderson



Stephen P. Scullin



Alex P. Tilling



A. Rebecca Wilmore

Lance J. Kinchen, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was elected chair of the YMCA of the Capital Area board of directors.

Van R. Mayhall, Jr., senior partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., is serving as 2015 board chair of the Baton Rouge Area Chamber.

Patricia B. McMurray, a partner in the Baton Rouge office of Adams and Reese, L.L.P., received the D. Jensen Holliday Award from the Baton Rouge Area Chamber for her leadership and service to the organization.

Judge Glynn F. Voisin, administrative law judge with the Social Security Administration in New Orleans, was recognized by the Worldwide Registry for his dedication, leadership and excellence in his legal career.

Irving J. Warshauer, a member in the New Orleans firm of Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., received the Barney D. Mintz Leadership Award at the Anti-Defamation League's (ADL) A.I. Botnick Torch of Liberty Dinner. He co-chairs the ADL South-Central Region's Civil Rights Committee.

Phillip A. Wittmann, a member in the New Orleans office of Stone Pigman Walther Wittmann, L.L.C., was inducted into the Tulane Law School Hall of Fame.

IN MEMORIAM

Peter Charles Piccione, Sr., 95, an attorney in Lafayette for 65 years, died April 12. A native of Lafayette, he is a graduate of Lafayette Senior High School, the University of Louisiana-Lafayette and Tulane University Law School (1950). He was a decorated World War II veteran, serving in the Army Air Corps as a combat cargo pilot flying C-46s and C47s over the Himalayas in



Peter Charles Piccione, Sr.

the China-Burma-India Theater. He was awarded two Air Medals, the Asiatic-Pacific Campaign Medal with two Bronze Stars and the World War II Victory Medal. He was a member of the American Bar Association, the American Trial Lawyers Association (former Louisiana State committeeman), the American Judicature Society, the Louisiana Trial Lawyers Association, the Southern Trial Lawyers Association and the Lafayette Parish Bar Association (a former president). In addition to being admitted to practice law in Louisiana state courts, he was admitted to practice in the U.S. District Courts for the Eastern, Western and Middle Districts of Louisiana; the U.S. 5th Circuit Court of Appeals; and the U.S. Supreme Court. He served as Lafayette City Court magistrate judge ad hoc from 1967-83 and served as inheritance tax collector for Lafayette Parish. He is survived by two sons, Peter C. Piccione, Jr. and Michael C. Piccione, two daughters-in-law, a brother, four grandchildren and five great-grandchildren.

PUBLICATIONS

The Best Lawyers in America 2015

Beirne, Maynard & Parsons, L.L.P. (New Orleans): Ernest L. Edwards, Jr., William R. Forrester, Jr., Patrick Johnson, Jr., B. Richard Moore, Jr., Benjamin R. Slater III and Hal C. Welch.

Du , Price, Guidry, Piedrahita & Andrews, P.A. (Baton Rouge): Paul H. Du  and Donald W. Price.

Chambers USA 2015

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Edward H. Arnold III, Phyllis G. Cancienne, Roy C. Cheatwood, Stephen F. Chiccarelli, Nancy Scott Degan, Donna D. Fraiche, Steven F. Griffith, Jr., Jan M. Hayden, Kenneth M. Klemm, Amelia W. Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Mark W. Mercante, William N. Norton, Dickie W. Patterson, David C. Rieveschl, James H. Roussel, Danny G. Shaw, Paul S. West and Adam B. Zuckerman.

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

Louisiana Super Lawyers 2015

Beirne, Maynard & Parsons, L.L.P. (New Orleans): William R. Forrester, Jr., Patrick Johnson, Jr., Marne A. Jones, Jeffrey T. Pastorek, Benjamin R. Slater III and Hal C. Welch.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): Robert L. Atkinson, Thomas M. Benjamin, Robert T. Bowsher, Peter J. Butler, Jr., David R. Cassidy, Carroll Devillier, Jr., Cullen J. Dupuy, Murphy J. Foster III, Alan H. Goodman, Emily B. Grey, Paul M. Hebert, Jr., Joseph R. Hugg, Rachael A. Jeanfreau, David R. Kelly, Eric B. Landry, Eve B. Masinter, Christopher A. Mason, Van R. Mayhall, Jr., Van R. Mayhall III, Wesley M. Plaisance, Jennifer D. Sims, Traci S. Thompson and Douglas K. Williams.

Du , Price, Guidry, Piedrahita & Andrews, P.A. (Baton Rouge): B. Scott Andrews, Paul H. Du , Kirk A. Guidry, Randy A. Piedrahita and Donald W. Price.

Fowler Rodriguez (New Orleans): Alanson T. Chenault IV, Todd G. Crawford, George J. Fowler III, W. Jacob Gardner, Jr., Mat M. Gray III, Michael A. Harowski, Edward F. LeBreton III, Eugene R. Preaus, Antonio J. Rodriguez, Norman C. Sullivan, Jr. and Jon W. Wise.

Jones, Swanson, Huddell & Garrison, L.L.C. (Baton Rouge, New Orleans): H.S. (Tad) Bartlett III, Bernard E. Boudreaux, Jr., Gladstone N. Jones III, Catherine E. Lasky and Kerry A. Murphy.

Mouledoux, Bland, Legrand & Brackett, L.L.C. (New Orleans): Patrick J. Babin, Beth S. Bernstein, Alan G. Brackett, Caitlin R. Byars, Trevor M. Cutaiar, C. William Emory, Daniel J. Hoerner, Georges M. Legrand, Andr  J. Mouledoux, Robert N. Popich, Adam P. Sanderson and Simone H. Yoder.

New Orleans CityBusiness **2015 Leadership in Law**

Stone Pigman Walther Wittmann, L.L.C. (New Orleans): J. Dalton Courson, C. Lawrence Orlansky and Scott T. Whittaker.

New Orleans Magazine "Top Lawyers"
Mouledoux, Bland, Legrand & Brackett, L.L.C. (New Orleans): **Andr  J. Mouledoux** and **Wilton E. Bland III.**

UPDATE

Judges Appointed to Judiciary Commission

Louisiana 2nd Circuit Court of Appeal Judge Felicia Toney Williams and 19th Judicial District Court Judge Timothy E. Kelley have been appointed as members of the Judiciary Commission of Louisiana and will serve four-year terms.

Judge Williams received her undergraduate degree in 1977 from Southern University and her law degree in 1980 from Southern University Law Center. She has served on the 2nd Circuit bench in Shreveport since 1993. She was an assistant district attorney for the 6th Judicial District from 1982-90 and a partner in the law firm of Williams & Williams, A.P.L.C. From 1991-92, she served as a judge for the 6th Judicial District.

Judge Kelley received his undergraduate degree in 1976 from Cornell University and his law degree from Louisiana State University Paul M. Hebert Law Center in



Judge Felicia Toney Williams



Judge Timothy E. Kelley

1983. Prior to his election as judge, he was a law clerk for Louisiana Supreme Court Justice Fred A. Blanche, Jr., a partner with the Phelps Dunbar, L.L.P., law firm and managing partner for the Kelley & Guerry law firm. He was a certified arbitrator and mediator for the American Arbitration Association.

Chief Justice Johnson Receives Diversity Leadership Award

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson is the recipient of the 2015 Diversity Leadership Award, presented by the American Bar Association's (ABA) Section of Litigation during its April 16 Diversity Leadership and John Minor Wisdom Awards Luncheon in New Orleans.



Chief Justice Bernette Joshua Johnson

The award recognizes individuals or entities who have demonstrated a commitment to promoting full and equal participation in the legal community through encouragement and inclusion of women, minorities, persons with disabilities and/or persons of differing sexual orientations and gender identities.

A 1964 graduate of Spelman College, Chief Justice Johnson was one of the first African-American women to attend Louisiana State University Paul M. Hebert Law Center, receiving her law degree in 1969. In 1984, she became the first woman elected to serve on the Orleans Parish Civil District Court. In 1994, she was elected to serve on the Louisiana Supreme Court and was re-elected without opposition in 2000 and 2010. She attained another "first" on Feb. 1, 2013, when she was sworn in as chief justice of the Louisiana Supreme Court, making her the first African-American chief justice.



The Judge Fred Fudickar, Jr. and Harry V. Booth/Judge Henry A. Politz chapters of the American Inns of Court celebrated the 800th anniversary of the Magna Carta at a Feb. 26 dinner meeting. Among those attending were, from left, U.S. Magistrate Judge Karen L. Hayes, Western District of Louisiana; Judge C. Wendell Manning, 4th Judicial District Court; Louisiana Supreme Court Justice Marcus R. Clark; Lawrence W. Pettiette, Jr., president of the Harry V. Booth/Judge Henry A. Politz American Inn of Court; Chief Judge Carl E. Stewart, U.S. 5th Circuit Court of Appeals; Jeffery R. Hankins, associate professor of history, Louisiana Tech University; U.S. District Judge S. Maurice Hicks, Jr., Western District of Louisiana; Judge D. Milton Moore III, Louisiana 2nd Circuit Court of Appeal; Judge J. Jay Caraway, Louisiana 2nd Circuit Court of Appeal; U.S. District Judge Elizabeth E. Foote, Western District of Louisiana; U.S. District Senior Judge Donald E. Walter, Western District of Louisiana; and David E. Verlander III, president of the Judge Fred Fudickar, Jr. American Inn of Court.



Presenters for the CLE program, “Dictionary of the Civil Code,” included, from left, attorney Benjamin W. Janke; Louisiana State University Law Library Associate Chancellor Beth Williams; LSU Paul M. Hebert Law Center Professors J. Randall Trahan and Alain A. Levasseur; Louisiana Supreme Court Associate Justice John L. Weimer; and U.S. 5th Circuit Court of Appeals Judge James L. Dennis.

CLE on “Civil Code” Conducted at Supreme Court

A free CLE program, “Dictionary of the Civil Code,” was held March 11 at the Louisiana Supreme Court. The program was co-sponsored by the Law Library of Louisiana, the Supreme Court of Louisiana Historical Society, the Louisiana Chapter of the Association Henri Capitant, the Louisiana State Bar Association’s Francophone Section and the French-American Chamber of Commerce Gulf Coast Chapter.

Louisiana Supreme Court Associate Justice John L. Weimer opened the program and introduced the speakers — Professors Alain A. Levasseur and J. Randall Trahan, Louisiana State University Paul M. Hebert

Law Center; Beth Williams, associate chancellor, LSU Law Library; U.S. 5th Circuit Court of Appeals Judge James L. Dennis; and attorney Benjamin W. Janke, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

The *Dictionary of the Civil Code* is a translation of Gérard Cornu’s *Vocabulaire juridique*, an introduction to the essential concepts of the French *code civil*. The translation work took more than two years to complete. The main themes discussed during the CLE were the relationship between law and language and the challenges of translation.



The New Orleans Bar Association (NOBA) conducted its annual Game Night for the Louisiana State University vs. Tulane University baseball game at Tulane’s Turchin Stadium. Among those attending were, from left, Christopher K. Ralston, NOBA vice president; R. Patrick Vance, NOBA past president; Camala E. Capodice, NOBA board member; Walter J. Leger, Jr., NOBA president; Helena N. Henderson, NOBA executive director; and Phillip A. Wittmann, NOBA past president.



The Baton Rouge Bar Foundation’s Easter Eggstravaganza Project organized egg hunts for inner-city school children at The Dufrocq School, University Terrace and St. Francis Xavier. Francisca M. Comeaux, Madison T. DeWitt, Erik E. Kjeldsen and Jeanne G. Rougeau were event chairs. Participating in the St. Francis Xavier event were, from left, Melissa K. Watson, Erin B. Sayes, Francisca M. Comeaux, Michael B. Victorian, bunny Erik E. Kjeldsen, Heather L. Landry, Katherine H. Dampf and Shanda J. McClain.

LOCAL / SPECIALTY BARS

ABOTA Chapter Elects Officers

M.H. (Mike) Gertler of Gertler Law Firm in New Orleans was elected president of the Louisiana Chapter of the American Board of Trial Advocates.

Other officers are J. Michael Veron, president-elect, Veron, Bice, Palermo & Wilson, Lake Charles; Don S. McKinney, secretary, Adams and Reese, L.L.P., New Orleans; T. Gregory Schafer, treasurer, Schafer & Schafer, New Orleans; and Sharon Stickling, executive director, Baton Rouge.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces two new Fellows:

Cade R. Cole	Lake Charles
Gregory Kent Moroux, Jr.	Baton Rouge
Benjamin H. Dampf	Baton Rouge
Robert T. Bowsher	Baton Rouge
Leisa B. Lawson	Alexandria
Robert W. (Bob) Barton ..	Baton Rouge



The Baton Rouge Bar Foundation presented a 17-foot clock tower to the City of Baton Rouge, located near the 19th Judicial District Courthouse. Attending the ceremony were, from left, Baton Rouge Bar Association (BRBA) 2015 President Robert J. (Bubby) Burns, Jr., BRBA 2003 President Mathile W. Abramson, Downtown Development District Director Davis Rhorer and Architect Skipper Post.

Baton Rouge Bar Foundation Presents Clock Tower to City

The Baton Rouge Bar Foundation presented a 17-foot clock tower as a gift to the City of Baton Rouge during an April 9 ceremony. The clock tower is located on the corner of North Boulevard and St. Louis Street.

Mathile W. Abramson was master of ceremonies. Baton Rouge Bar Association (BRBA) President Robert J. (Bubby) Burns, Jr. welcomed guests. John Price, assistant chief administrative officer for the City of Baton Rouge, accepted the donation of the clock on behalf of Mayor-President Melvin L. (Kip) Holden.

Designed by architect Skipper Post, the clock was constructed by Electric Time Co., Inc. from Medfield, Mass. The

concept for the clock originated a decade ago, but its installation was delayed until the completion of the 19th Judicial District Courthouse and the North Boulevard Town Square.

Funds to purchase the clock were raised during a foundation auction and block party in 2004 as part of the BRBA's 75th Anniversary Celebration.

Michael D. Ferachi was president of the BRBA at the time and helped plan this ceremony with the Gift Planning Committee —Abramson, Burns, Jeanne C. Comeaux, Cordell H. Haymon, Katherine Fremin, Kelsey K. Funes, Jay M. Jalenak, Jr., Ann B. McCrory, Gail S. Stephenson, Judge Suzan S. Ponder and Edward J. Walters, Jr.

CODE OF PROFESSIONALISM

- ▶ My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.
- ▶ I will clearly identify for other counsel changes I have made in documents submitted to me.
- ▶ I will conduct myself with dignity, civility, courtesy and a sense of fair play.
- ▶ I will not abuse or misuse the law, its procedures or the participants in the judicial process.
- ▶ I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.
- ▶ I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- ▶ I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- ▶ I will not use the threat of sanctions as a litigation tactic.
- ▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
- ▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.

SEND YOUR NEWS!

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

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

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

President's Message

Multitude of Ways to Become Involved in LBF's Missions

By President H. Minor Pipes III

As the Louisiana Bar Foundation (LBF) president, I encourage every member of the Bar to join in our efforts to ensure that equal access to justice is a reality. The LBF has a multitude of ways you can get involved. First, you can become a Foundation Fellow! In doing so, you can assist firsthand in helping the LBF obtain its goal of making civil legal services available to all. Moreover, being a Fellow will help you comply with the Rules of Professional Conduct regarding pro bono work and the Louisiana State Bar Association's Access to Justice Pro Bono Policy.

The LBF works tirelessly to secure funding for free civil legal aid for Louisiana's disadvantaged. The LBF is the visible public service organization of Louisiana attorneys. It reflects the social conscience and public responsibility of our profession

and our commitment to effective action.

Last month, the LBF board approved more than \$2.2 million in grant funding for the 2015-2016 fiscal year. The LBF continues to serve as administrator for the Child in Need of Care (CINC) Program, providing free legal representation to children in foster care throughout Louisiana. Last year, this program alone provided representation to 3,508 children, including more than 16,800 court appearances on their behalf, and participated in more than 2,700 family team conferences. The LBF also serves as administrator of funds provided by the Office of the Louisiana Attorney General from the federal mortgage servicing



H. Minor Pipes III

settlement. In partnership with the legal services corporations, Louisiana Appleseed and the Louisiana Civil Justice Center, this program provides free legal representation to affected consumers covered by that settlement.

Another way to get involved is to support the Louisiana Campaign to Preserve Civil Legal Aid. Civil legal aid helps people solve critical, life-changing problems. The mission of the Campaign is to spread awareness and raise funds to address the serious shortage of financing for continued civil legal aid for the most disadvantaged in Louisiana.

For information on how to become a Fellow and on the Campaign, contact the LBF at (504)561-1046 or visit the website, www.raisingthebar.org. You also can follow us on Facebook, LinkedIn, Twitter and YouTube. We look forward to you joining us on these important missions.

LBF's 2015-16 Officers Installed

H. Minor Pipes III of New Orleans was installed as the 2015-16 president of the Louisiana Bar Foundation at the 29th Annual Fellows Gala on May 1. Also installed were Vice President E. Jane Sherman, Baton Rouge; Treasurer Valerie Briggs Bargas, Baton Rouge; and Secretary W. Michael Street, Monroe.

Pipes, a founding member of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., provides counsel in construction law, general litigation, corporate litigation, insurance coverage, bad faith insurance defense and class action litigation. He received his BA degree from Pennsylvania State University and his JD degree from Louisiana State University Paul M. Hebert Law Center.

Sherman is a charter Fellow of the Foundation, becoming involved in 1987 as chair of the Louisiana State Bar Association's Young Lawyers Section. A former partner of Mangham, Hardy, Rolfs & Abadie and counsel of Phelps Dunbar,



Chief Justice Bernette Joshua Johnson swore in the 2015-16 LBF Officers H. Minor Pipes III, E. Jane Sherman, Valerie Briggs Bargas and W. Michael Street at the 29th Annual Fellows Gala on May 1. Photo by Matthew Hinton Photography.

L.L.P., she practiced expropriation, utility and real estate law for more than 20 years and now spearheads and volunteers in charitable and community campaigns. She received her undergraduate and JD degrees from Louisiana State University.

Bargas, a founding member of Kinchen, Walker, Bienvenu, Bargas, Reed & Helm, L.L.C., focuses her practice on insurance defense (bad faith, coverage and personal injury) and general casualty defense. She received her BA degree in

environmental science and policy from Smith College and her JD degree from Tulane University Law School.

Street, a partner of Watson, McMillin & Harrison, L.L.P., focuses his practice on construction law, employment law, medical malpractice, real estate and general litigation. He received BA degrees in philosophy and political science from Centenary College of Louisiana and his JD degree from LSU Paul M. Hebert Law Center.

IT'S TIME TO BOOK A LISTING IN 'WHO'S WHO IN ADR 2015'

One price gets
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The print version of the directory for arbitrators and mediators will be mailed with the October/November 2015 Louisiana Bar Journal.

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The Web version of the directory remains active for one full year!*

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directory at
[www.lsba.org/goto/
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The special Arbitrators and Mediators Directory will feature brief articles and photographs of arbitrators and mediators (**INDIVIDUALS ONLY**).

The articles should be **150 words MAXIMUM**. Provide your address, phone, fax, email address and website information at the end of the listing (not part of the word count).

Submit either original photos or digital photos. Digital photos should be submitted separately from the article, in either .tif, .jpg or .eps format (the order of preference). **DO NOT** submit digital photographs embedded in word processing programs; send the photograph as a separate file. High-resolution digital photos work best (at least 300 DPI/dots per inch).

DEADLINE IS JULY 31 FOR ALL LISTINGS AND PHOTOS! DIRECTORY/WEB COMBO PRICE IS \$125.

Articles and photographs must be for individuals only. No group articles or group photographs will be used. But, as an **ADDED BONUS**, firms which have three or more arbitrators/mediators purchasing individual listings will receive a free **firm** listing in the section. (Firms are responsible for submitting the additional information, 150 words maximum.)

If you would like to repeat a prior listing and photo, you may send us a photocopy of that listing along with your check; please provide the year the listing appeared. (Digital photos appearing in ADR directories are archived back to 2000.)

IT'S EASY TO RESERVE SPACE IN THE DIRECTORY!

• Email your listing and photo to Publications Coordinator Darlene M. LaBranche (email: dlabranche@lsba.org). Then mail your check for \$125 (payable to *Louisiana State Bar Association*) to: **Publications Coordinator Darlene M. LaBranche, 601 St. Charles Ave., New Orleans, La. 70130-3404.**

• Or, mail your listing, photo, disk and check to the above address.

For more information, contact

Darlene M. LaBranche
(504)619-0112 or (800)421-5722, ext. 112.

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

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No additional charge for Classy-Box number

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Headings: \$15 initial headings/large type

BOXED ADS

Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE

For the October issue of the Journal, all classified notices must be received with payment by August 18, 2015. Check and ad copy should be sent to:

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Classified Notices
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RESPONSES

To respond to a box number, please address your envelope to:

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POSITIONS OFFERED

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for two positions. The firm offers competitive salary and benefits and an excellent work environment. 1) Environmental litigation attorney—Minimum five-plus years' civil litigation experience with emphasis on complex litigation; A/V rating preferred; environmental, oil and gas and/or toxic tort experience preferred. 2) First-chair attorney/environmental law—Minimum eight-plus years' defense experience in first-chair civil jury trials, complex litigation and primary case management; A/V rating required; environmental, oil and gas and/or toxic tort experience preferred. Those interested in these positions should visit the Curry & Friend, P.L.C., website at: www.curryandfriend.com/careers.

The Baton Rouge office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., seeks an associate with two-four years of litigation experience. Academically distinguished applicants who have excellent writing and analytical skills and deposition, discovery and motion practice experience are sought to assume responsibility in an active and diverse federal and state court litigation practice. The associate will work closely with

senior litigators who will provide active mentoring and client contact. Louisiana law license required or candidate must be able to take the Louisiana Bar and obtain license promptly. We seek a bright, hardworking and responsive associate with good judgment and attention to detail. For consideration, email a cover letter, résumé and law school transcript to Helen Beasley, Recruiting Assistant, at hbeasley@bakerdonelson.com.

The New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., seeks an associate with three-five years of transactional experience to join its Real Estate/Finance/Corporate/M&A practice. Academically distinguished applicants who have excellent writing and analytical skills, sound judgment and experience with the drafting of complex contracts are sought to assume responsibility in an active and diverse business practice. This is a unique opportunity for the right individual to grow into leadership of a successful practice area. For consideration, email a cover letter (referencing job posting #554), résumé and law school transcript to Rebecca Simon, Director of Recruiting, at rsimon@bakerdonelson.com.

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ANSWERS for puzzle on page 46.

U	N	C	L	A	I	M	E	D	U	L	M
T	O	U	I	E	M	U					
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The Last **WORD**

By E. Phelps Gay

WHAT TO DO?

As a busy lawyer, you may be in the habit of drafting a “to-do” list every so often — perhaps once a week, if not every day — to make sure you don’t miss any deadlines and to remind yourself of everything you have to do. This won’t guarantee you will never slip up. You might forget to put something on your list or you might become so preoccupied with one item that another gets overlooked. Even so, unless you’re a modern-day Alan Turing, it can help to have a “to-do” list in written or electronic form. Presumably, this will allow you to juggle several legal hand grenades at once in hopes that one of them won’t drop — and explode.

The risk management folks whose job is to give us tips on malpractice avoidance tell us we need “ticklers” and “alert systems.” One source recommends a computerized calendar with a “loud” alert. (Perhaps a deafening air horn, like fans use at Saints games, followed by a Bill O’Reilly voice calling you a hopeless pinhead if you don’t show up for the status conference on time.) Others suggest an “early warning system” to give you a heads-up a few days before the deadline. (Maybe former Indiana basketball coach Bob Knight screaming: “Hey chump, the trial is next week. Get off your ass.”)

Another source admonishes us not to rely on ourselves alone. Instead, your law firm should set up an independently-controlled calendaring system so that a staff member reminds you every day of what you need to do. They can also offer the delightful additional service of telling you if and when you have screwed up.

Experts exhort lawyers to “protect your time.” For example, if you have to file a summary judgment motion by March 1, and you will need three days to complete the research and drafting, you should block off those three days and guard them with your life. So a judge calls and asks you to come down to court for an urgent conference. You

respond: “Gee, I wish I could Your Honor, but I’ve reserved the day to prepare a summary judgment motion. Can we make it some other time?”

Mixed into these considerations is the demographic fact that the legal industry is “graying quickly.” Baby-boomer lawyers are “stretching their careers” into their 70s, well past what used to be considered retirement age. We can expect these aging lawyers to exhibit symptoms ranging from simple decreased energy to “mild cognitive loss” all the way to incapacitating dementia. On this pleasant topic, the 40th ABA National Conference on Professional Responsibility recently presented a program titled “Shades of Gray: Challenges Related to Aging Lawyers.” A distinguished panel mulled over what to do if you suspect an aging colleague is struggling. All things considered, I think I prefer the other (fifty) shades of grey.

So: Let’s make lists and build in reminders and early warning systems. But some of these lists can take a weird turn. For example, in the midst of reminders like “File Answer in Jones case” and “Subpoena witness for Smith trial,” one may find on the lists of certain senior lawyers: “Call doctor re second colonoscopy” or “Get hip replaced.”

Our more aggressive colleagues, on the other hand, may come up with gems like: “Confirm default against Bill, that ass----” or “Move for sanctions against Joe for being one day late in filing his memorandum.”

Slightly different items will crop up on the lists of our more generous-hearted compatriots. Things like: “Spend all day on *pro bono* work for homeless” or “Cut invoice to XYZ Insurance Company in half to comply with their completely reasonable guidelines.”

And then there are our incorrigible over-achievers, highly successful lawyers who, having climbed one mountain, must immediately find and scale another. On their list, one may find in the margins: “Write law review

article on Trebellianic portion” or “Memorize new Louisiana Business Corporation Law.” These folks were memorably reviled by the great George Costanza of *Seinfeld* fame. In one episode, George was asked to identify a young man suitable to receive the Susan Biddle Ross Scholarship, named in honor of his late fiancée (the unfortunate victim, you will recall, of George’s cheap wedding invitations). Abjuring all A-student applicants, George recommended an eager young man boasting a solid “C” average. Queried about his qualifications, George responded: “He knows how to read.”

And then we come to this quandary. With all these to-do lists and “ticklers” popping up on our computer screens, with air horns blowing, do we run the risk of spending so much time making lists and building in reminders that little time is left to *do* the things we have worked so mightily to put on our list? Some people like reminding themselves of things they have to do; they just aren’t real wild about doing them.

Finally, perhaps from time to time we should ask ourselves: Do I really need to do all this? Could someone else do it — and just as well or better? Could this list be trimmed? Having quoted one world-class sage (George Costanza), let me end with another (Ferris Bueller): “Life moves pretty fast. If you don’t stop and look around once in a while, you could miss it.”

E. Phelps Gay has practiced law for 32 years at the firm of Christovich & Kearney, L.L.P. He also is affiliated with the mediation firm, Patterson Resolution Group. 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)



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

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