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Dona Kay Renegar

77th LSBA President

Lafayette



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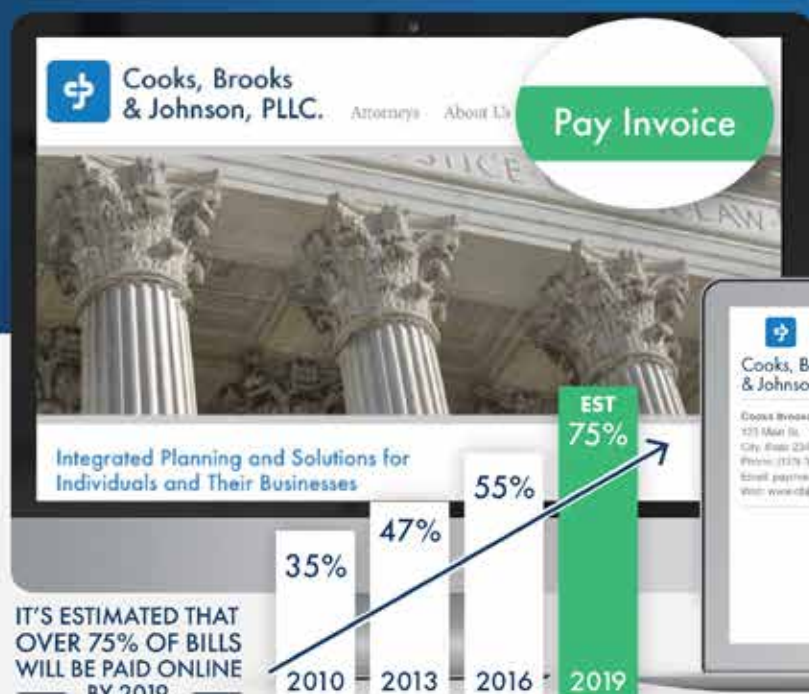
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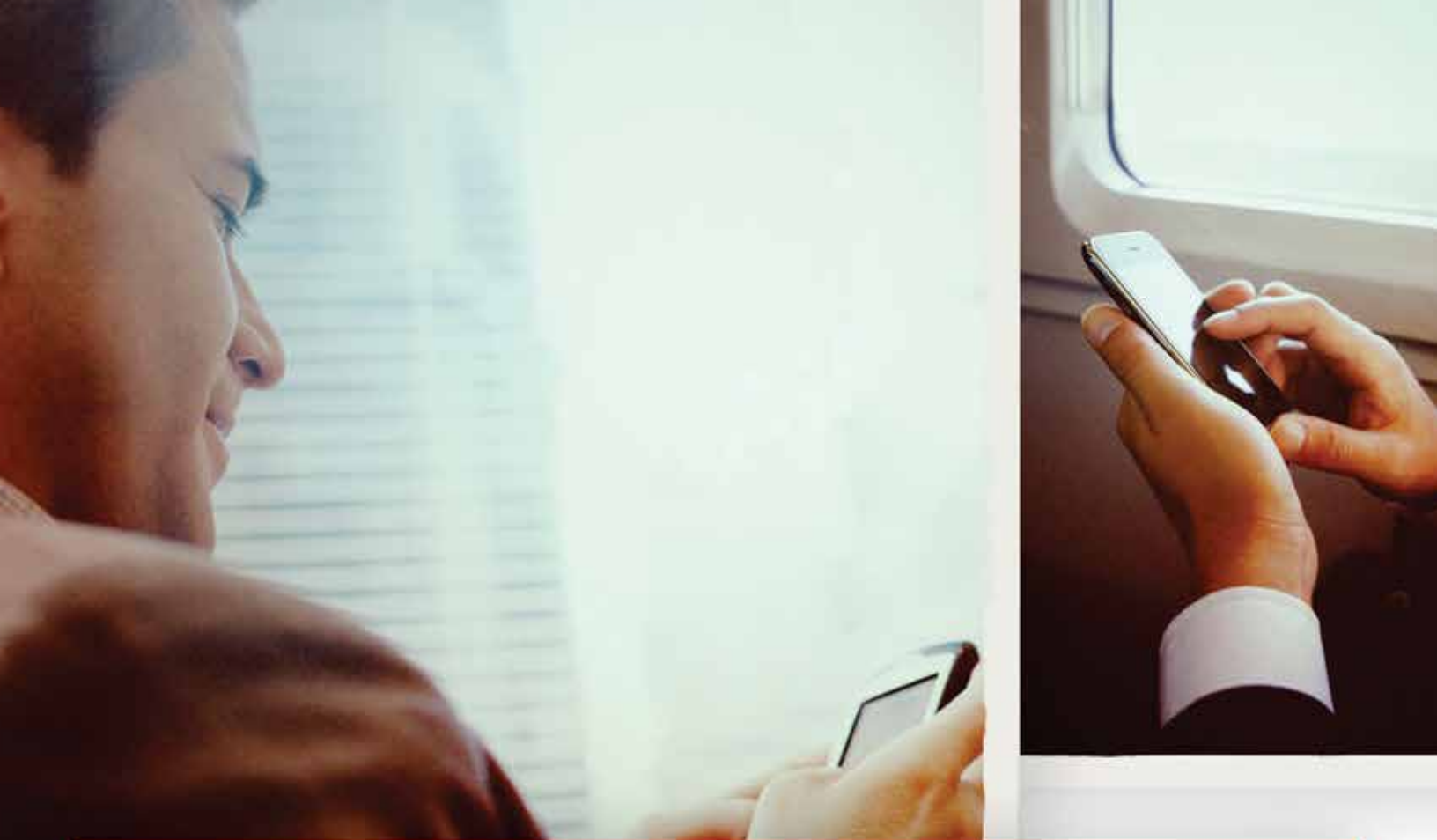
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Dona Kay Renegar, the 77th president of the Louisiana State Bar Association, is a member in the Lafayette firm of Veazey, Felder & Renegar, L.L.C. She was photographed on the grounds of her alma mater, the University of Louisiana at Lafayette. *Photo by Jay Faugot Photography.*

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By John E.
McAuliffe, Jr.

Highlighting the Varied Paths in the Legal Profession

In 1978, upon being sworn in as a newly minted attorney, it never occurred to me that I would one day become secretary of the Louisiana State Bar Association. Yet, here I am, and it is both gratifying and humbling.

I want to thank my immediate predecessor, Alainna R. Mire, for her hard work over the past two years. She has extended advice and help as I have prepared for my new "job."

My continuing thanks also go to the members of the *Louisiana Bar Journal* Editorial Board and the LSBA Communications Department staff. All are professional, talented and dedicated

to the *Journal*. Their collective efforts will make my job easier. They deserve credit for this and every *Journal*.

As I began to draft this message, I realized that my three best "lawyer" friends are a district attorney, a banking/bankruptcy lawyer and an attorney involved in business who has never "practiced" but has kept his license current since graduation. What a variety of paths my friends have taken, which, of course, led me to wonder: What other specialties, pursuits, opportunities and roads traveled have other members of our profession taken?

Over the next two years, I hope to

highlight many of the varied positions our members have pursued. Rural lawyers, city lawyers, commercial lawyers, trial lawyers and others all have something to tell us about our profession and our contributions to society and the law.

So, if you see my name in your missed calls or receive an email from me, I may just be requesting that you submit an article on your specialty, your locality or the road you have taken to your present position. BE FOREWARNED!

Letters to the Editor Policy

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

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

3. Letters should be no longer than 200 words.

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

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

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

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

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

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

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



One on One with Dona Kay Renegar, 77th LSBA President:

A Spirit of Collaboration

Interviewed by Maggie T. Simar

Dona Kay Renegar, the 77th president of the Louisiana State Bar Association (LSBA), likes a challenge — which is a good thing as she is about to lead 22,000+ attorneys, all members of a mandatory bar association, into the future. Sitting across from her, you notice the fire this challenge lights in her. Dona is excited about this upcoming Bar year.

A member in the firm of Veazey, Felder & Renegar, L.L.C., in Lafayette, Dona grew up in Alexandria and then moved to Lafayette to attend the University of Southwestern Louisiana (now the University of Louisiana at Lafayette), receiving her BA degrees in both French and English, *magna cum laude*, in May 1988. She next earned her JD degree, *cum laude*, in 1992 from Tulane University Law School where her passion for helping those less fortunate took root.

Dona has served in many different roles with the LSBA. She was an original member of the Committee to Review Proposed Changes to the Louisiana Bar Exam in 2010 and continued her work with the project until the first test changes were instituted in 2012. She served on the Young Lawyers Division (YLD) Council from 1995-2007, chairing the Division in 2005-06. She was named the YLD's Outstanding Young Lawyer in 1999. She co-chaired the 2008-09 Leadership LSBA Class. In 2014, she received both the LSBA Pro Bono Century Award for her pro bono service and the Stephen T. Victory Memorial Award for co-authoring the *Journal* article on the Bar Exam changes. She has served on the Board of Governors and in the House of Delegates.

Her time in the House of Delegates, the LSBA's policymaking branch, was her introduction to state Bar service. She says that time was invaluable because it introduced her to other Bar leaders around the state and taught her about the sometimes diverging needs of LSBA members based upon the particular jurisdictions they represent and the most critical issues facing members in their practices around the state.

Dona Kay Renegar, the 77th president of the Louisiana State Bar Association, is a member in the Lafayette firm of Veazey, Felder & Renegar, L.L.C. She was photographed on the grounds of her alma mater, the University of Louisiana at Lafayette. Photo by Jay Faugot Photography.



2005: Dona Kay Renegar, left, was sworn in as chair of the LSBA's Young Lawyers Division by then-Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball. *Photo from LBJ Archives.*



1999: Dona Kay Renegar received the Outstanding Young Lawyer Award from 1998-99 Young Lawyers Section Chair Steven C. Lanza. *Photo from LBJ Archives.*

Journal: What are the big overarching goals for your presidency?

Renegar: My first goal is for the Bar to be of service to all of the LSBA's members. This includes assisting our members in their practices with technological advances; establishing more diversity in Bar leadership; supporting young lawyers, solo practitioners and small firms; and addressing the very real needs of lawyers who are struggling with burnout, depression and/or substance abuse problems. My second goal is to support and increase access to justice for our citizens, both in the civil and criminal systems.

Journal: Can you tell us more about the technology that is available, or that you would like to make available, to our members?

Renegar: Not everyone is aware that the LSBA offers free videoconferencing services to its members. This helps lawyers save case-handling costs and avoids extensive or unnecessary travel. Also, the LSBA now hosts the Tech Center on our website with on-demand videos, including training videos for our

members.

I would like to increase and improve electronic access to court documents and paperless filings. This can be done by coordinating efforts with the Louisiana District Judges Association, the Louisiana Supreme Court and the Louisiana Clerks of Court Association to investigate the possibility of helping local JDCs provide electronic access to their files and accept electronic filing.

I also plan to encourage more CLE options to address technological advances, such as paperless offices, the implications of social media for attorneys and their clients, etc.

Journal: In your vision, what would more diversity in Bar leadership look like, and how would you accomplish that?

Renegar: I would like the LSBA leadership to look like a courtroom looks on rule day — diverse in all ways. Diverse perspectives are crucial to identifying issues facing our profession and crafting solutions to address those issues. I intend to accomplish this by asking members of the Board of Governors to identify leaders that they

see in their communities from a variety of backgrounds, practicing in a variety of fields, from a variety of practice situations (civil, criminal, solo, small firm, big firm, in-house, etc.) and asking them to serve on committees or sections, or, if time permits, in more time-intensive leadership roles.

Journal: What can the LSBA do to support young lawyers, solo practitioners and small firms?

Renegar: In addition to the access that the LSBA provides to training videos through the Tech Center, our YLD hosts the Bridging the Gap CLE program for newly admitted attorneys. This program includes LSBA Ethics School sessions which cover critical areas such as trust accounts, lawyer advertising, ethical pitfalls, etc.

We offer the Solo and Small Firm Conference, a two-day, low-cost conference dedicated to solos and small firms which offers both substantive and law office management topics.

The LSBA offers a Practice Aid Guide which covers all practical aspects of operating a law office. The 2017 version is complete and is available online.

The LSBA also offers the Four Corners CLEs, free outreach CLEs which highlight law office management in the four corners of the state. The LSBA employs two ethics counsel and practice management counsel who are available to members who need or want to consult with them.

In the last couple of years, we have created the Transition Into Practice (TIP) Program, a mentoring program that was recently opened for statewide participation.

Journal: We have all heard the grim statistics about lawyers, stress, burnout, depression and substance abuse. Tell us more about the LSBA programs that help members with these issues.

Renegar: Yes, unfortunately, lawyers as a profession experience a high rate of depression and substance abuse. Through the Judges and Lawyers Assistance Program (JLAP), the LSBA has made a commitment to provide confidential help for members suffering from mental health or substance abuse issues. The program has changed dramatically from its inception. It began as a lawyers-only substance abuse program but has developed into a broader program serving more

interests. I am proud to say the LSBA has made a lofty financial commitment to the program. It now serves both the bench and bar with a myriad of mental health and substance abuse issues. It is 100 percent confidential and, contrary to what some may think, the Louisiana Attorney Disciplinary Board is not associated with the program at all.

In addition to the financial contributions, JLAP also has begun proactive programming to take care of our members' mental health prior to it developing into problems that affect our practice or clients. This starts with our outreach to law schools. We have identified prospective attorneys as a group in need of tools to prepare them for the challenges of practicing law and to help them transition into the profession, and so the leadership of the LSBA has made a commitment to that group to help them succeed. We need to advertise our wonderful programs more. We are working on that!

Journal: Along those lines, in order to continue the success of our Bar Association, investing time and effort into future leaders is key and a wonderful (and very strategic) plan. Where does the Bar stand with the

mentoring program since its inception?

Renegar: The Transition Into Practice (TIP) program began as a voluntary mentoring program via a Louisiana Supreme Court order from 2013. In January 2015, two-year pilot programs were begun in the greater Shreveport, New Orleans and Baton Rouge areas. In February 2017, the Louisiana Supreme Court formally expanded the voluntary program to the entire state. Mentors earn CLE hours for their participation and mentees are given tasks related to an introduction into the practice of law which they must accomplish to receive recognition for completion of the program. Matches of mentors and mentees are made by the LSBA. The Louisiana Supreme Court hosts receptions at the beginning of each program with mentors and at the end of the program with both mentors and mentees. There is no cost for mentees to participate in the TIP program but they are required to attend the Bridging the Gap CLE, albeit at a reduced registration cost. Those interested in registering to be mentors or mentees can apply on the LSBA's website where they will find the qualifications for mentors and the obligations for mentees.



2003: Dona Kay Renegar, left, with Laura Sylvester at the Annual Meeting in Florida. Photo from LBJ Archives.



2016: A group of LSBA presidents, from left, Joseph L. (Larry) Shea, Jr., Dona Kay Renegar, Darrel J. Papillion, Richard K. Leefe and S. Guy deLaup at the Annual Meeting. Photo by Matthew Hinton Photography.



2017: Dona Kay Renegar at her alma mater, the University of Louisiana at Lafayette. Photo by Jay Faugot Photography.



2005: At the LSBA Annual Meeting in Las Vegas, from left, Clyde and Catherine D. (Kitty) Kimball, Dona Kay Renegar, and Tracy and Frank X. Neuner, Jr. Photo from LBJ Archives.

Journal: The TIP Program will undoubtedly aid our young colleagues who may have difficulty navigating the profession. What else is being done on the discipline side for those who may have made mistakes?

Renegar: While the LSBA offers some programming for our members who become the subject of a disciplinary matter, I think an equally important discussion is what the LSBA offers to our members to avoid the pitfalls of practice that may result in an Office of Disciplinary Counsel (ODC) investigation. In addition to the TIP Program, the LSBA's Member Outreach and Diversity team designs welcoming activities to create mentoring opportunities for the newest members of the Bar Association.

After an attorney becomes involved in our discipline side, the LSBA's Practice Assistance and Improvement Program offers "alternatives to discipline" assistance. The Attorney-Client Assistance Program is a voluntary program whose goal is quick resolution of minor complaints about lawyer conduct, such as lawyer-client communications, that do not rise to a

level of ethical violations triggering investigation by the ODC.

The Diversion Program provides a vehicle for lawyers who are guilty of minor misconduct to be diverted from the disciplinary process to an education monitoring program coordinated by the LSBA's Practice Assistance Counsel. This usually requires attendance at the LSBA Ethics School, held twice a year, and, if applicable, the Trust Accounting School which is offered once a year for those who have had disciplinary issues involving their trust accounts.

Journal: A lofty goal that I am sure the LSBA and you, in particular, will spend a great deal of time on. You mentioned that access to justice is also a priority for you. Can you tell us more about that?

Renegar: Access to justice has always been near and dear to me. I started my career working in the trenches of the Legal Service Corporation. The ability of our Bar to ensure not only criminal access to courts but also representation for our civil litigants is essential to our adversarial system. The LSBA has made

a commitment to our citizens to ensure competent access to justice by increasing funding allocations for self-help products like kiosks, phone banks, help desks, self-represented litigant kits and legal services organizations.

On the civil side, I plan on working with Valerie Briggs Bargas, president of the Louisiana Bar Foundation (LBF), to address civil legal aid issues including funding sources. (Louisiana is one of four states that provide no statewide appropriation or dedicated fee to civil legal aid.) A recent economic impact study using 2016 data showed that *for every \$1 invested in Louisiana's civil legal aid services, these programs deliver \$8.73 in immediate and long-term consequential financial benefits.* Val and I have already met about how to coordinate the efforts of the LSBA and LBF to best address the civil legal aid needs of our state in the upcoming year. We hope to continue to address this issue through the Access to Justice (ATJ) Commission committees investigating how to provide help to self-represented litigants navigating our legal system and, importantly, to those with modest means who do not qualify for free representation but

cannot afford the average market rates for legal representation.

On the criminal side, the LSBA has a Criminal Justice resource center on our website for attorneys who are appointed to represent indigent defendants. The ATJ Commission also has a Building Bridges Committee to connect the criminal and civil legal aid communities to strengthen Louisiana's justice system, and the LSBA hosts the Criminal Justice Summit to address the crises facing our members who practice in that field.

Journal: Wow, that's a lot of commitment to help people who need to access courts. How will you get the message to the members and the public of all that good work?

Renegar: We will continue to travel the state and let members know. We will continue our public service announcements and internal communication. The LSBA's website provides citizens with information regarding self-help services by parish. The LSBA's Legal Education & Assistance Program (LEAP) provides legal resources and information to the public and connects people with attorneys in their areas through "Lawyers

in Libraries" events because so many citizens in rural areas go to their local libraries for use of the computer to locate legal help. We also rely on our Member Outreach and Diversity team to inform the local and specialty bars of LSBA programs and increase the presence of LSBA leadership at events throughout the state. The members of the Board of Governors also relay information to their districts through constituent messages after each meeting.

One of the reasons I wanted to serve is because I wanted to give recognition to attorneys for the great work they do in their communities, careers and homes. It is important to me that we spread the news to the public of the good work and public service our members do. As we all know, it is an uphill battle to counter the sometimes negative public image of attorneys as a profession, but I have met so many of our members who are committed to access to justice and pro bono work, and I am happy to be out in the world raising awareness about the important community services LSBA members provide.

Journal: Communication, both within the profession and to the public,

is the key to success and you are a great person to spread that message. You are always so kind and friendly to everyone! How did you decide you wanted to be an attorney?

Renegar: I have wanted to be a lawyer for as long as I can remember. While a few professions briefly caught my attention and distracted me, such as psychology and marine biology, I always felt pulled to the legal field. I like to read and analyze materials, which, of course, is a large part of our job description. I was also drawn to the opportunity to help people through the legal system and was honored when they chose me to represent them. I am competitive by nature, so the adversarial system was a draw as well. I enjoy evaluating a case and making an argument. My mother likes to say that I turned bullheadedness into a career.

Journal: What kinds of cases are your favorites?

Renegar: I like to think on my feet so I like litigation, although I recognize it is not always the best course of action for my clients for many reasons. In the years I've been practicing, I have seen a decrease in litigation and a significant



2017: Dona Kay Renegar at the LSBA's Mid-year Meeting during the 50-, 60- and 70-Year Member Reception. Photo by Matthew Hinton Photography.



2017: Dona Kay Renegar at the Louisiana Bar Foundation's Gala with LBF President Valerie Briggs Bargas. Photo by Matthew Hinton Photography.



2007: Maggie Simar and Dona Kay Renegar at the Annual Meeting in Florida. Photo from LBJ Archives.



2005: Dona Kay Renegar with her mother Linda, left, sister Dana Renegar and brother Todd Renegar at the LSBA Annual Meeting in Las Vegas. Photo from LBJ Archives.

increase in alternative dispute resolution. I have been surprised at how much I enjoy crafting agreements for clients that can dissolve their disputes in creative and innovative ways.

I like the long-term relationships you develop with corporate clients as you get to know their business and become able to craft policies and forms that may help them avoid situations that resulted in litigation in the past. My business relationship with my clients over the years has been invaluable to my practice.

I do have vivid memories of a client I represented in removing her child from an abusive situation. The young girl chose some yarn and had her grandmother crochet a blanket for me. It's a prized possession of mine. I assisted another client in obtaining child support from her spouse. She and her daughter made me a 4-foot-tall Christmas stocking to thank me. Santa would be hard pressed to fill it.

Journal: I love hearing those stories about times at Legal Services. Those of us who work in that space know and understand it is sometimes a thankless job, but one that trains us so well. For

you to get recognition and praise is a special thing. Onto our final topic . . . Tell us a little about your feeling on the state of our profession and the future.

Renegar: The practice of law is the last profession that society has allowed to regulate itself. The public holds us in such high regard solely based on the profession we have chosen that we are allowed to discipline our own members. We are responsible for setting the qualifications of our members for admission to practice, their educational obligations to maintain that license, and administer discipline when their practice falls below the standards we have set. These obligations drive the programming of the LSBA in service to our members. The magnitude of that trust is tremendous and comes with great responsibility. It is our duty as a mandatory bar association to champion the success and accomplishments of our members both in their practices and in their communities, support our members who are struggling for any number of reasons, and discipline our members who do not adhere to our ethical obligations. Louisiana citizens have placed this trust in us, and our duty is to protect and serve them and

our members.

I believe the future of our profession rests solely in our hands. We must adapt to changing technology, address some of our citizens' lack of access to our judicial system, and harness the availability of legal forms and advice with a few strokes of the computer keys.

Interviewer's Note: Dona and I ended our visit with her speaking about what relaxes her. I would be remiss if I did not report on her passions and hobbies that some may find interesting (because I did). Anyone who already knows Dona will tell you she is an avid University of Louisiana at Lafayette fan. She hosts a long-standing tailgate party with several of her friends, and she loves watching ULL football and baseball. She has a passion for NASCAR, particularly driver Ryan Newman. She loves to garden and "get dirty" (a hobby she has had less time for since she became LSBA president-elect). She loves to travel and told me the story of her 18-day trip to Ireland with her parents. She loved the Irish, but, more importantly, she loved spending time with her parents. Always an ambassador of Louisiana culture, Dona brought along

several small bottles of Tabasco and canisters of “Slap Ya Mama” seasoning and distributed them to people she met there. Her stories about her visit were interesting and typify who Dona is — a kind, gracious and committed daughter, friend, and, by extension, attorney. As a friend of hers, I am excited to see her lead this association into the future because I know she will do great things!

Maggie T. Simar has worked as a Family Court hearing officer for the past six years with the 16th Judicial District Family Court in St. Martin Parish. She received her BA degree in broadcast journalism in 1995 from Louisiana State University and her JD degree in 1998 from LSU Paul M. Hebert Law Center. She was admitted to the Louisiana Bar in October 1998. She is a member of the Louisiana Bar Journal Editorial Board. She has served as District 3 representative on the Louisiana State Bar Association's Young Lawyers Division Council. She also is active with the Junior League of Lafayette, the Lafayette Young Lawyers Association and other community organizations. (msimar@16jdc.org; 415 South Main St., 2nd Flr., St. Martinville, LA 70582)



Helpful Links to LSBA Services

Online links for LSBA projects, programs and services referenced in the interview.

- ▶ **Videoconferencing Services**
www.lsba.org/Members/BarCenterServices.aspx
- ▶ **LSBA Tech Center**
www.lsba.org/PracticeManagement/TechCenter.aspx
- ▶ **Practice Aid Guide**
www.lsba.org/PracticeManagement/PracticeAidGuide.aspx
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2007: Miles Matt and Dona Kay Renegar at the Lafayette Bar Association's crab boil.
Photo from LBJ Archives.



2005: Dona Kay Renegar with former presidents of the Lafayette Bar Association at the LSBA's Annual Meeting in Las Vegas, from left, Frank X. Neuner, Jr., Joseph R. Oelkers, Jr. and Joseph C. Giglio, Jr. *Photo from LBJ Archives.*

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Availability of Treble Damages Under the Louisiana Unfair Trade Practices Act

By Alexander M. McIntyre, Jr.

Pursuant to the Louisiana Unfair Trade Practices Act (LUTPA), La. R.S. 51:1401-1430, in the case of a LUTPA violation, “[i]f the court finds the unfair . . . act or practice was knowingly used, after being put on notice by the attorney general, the court *shall award* three times the actual damages sustained.” La. R.S. 51:1409(A) (emphasis supplied.)

There is little jurisprudence discussing this provision; to date, there are only two Louisiana federal district court opinions and only one published state appellate court opinion granting treble damages under the LUTPA since the statute was enacted in 1972.

The only published state court opinion in which a treble damage award survived is *McFadden v. Import One, Inc.*, 56 So.3d 1212 (La. App. 3 Cir. 2011).¹

The final two cases both come from the same section of the federal court sitting in the Western District of Louisiana — *AIM Business Capital, L.L.C. v. Reach Out Disposal*, 2014 WL 1401526 (W.D. La. 4/9/14); and *Hadassa Investment Security Nigeria, Ltd. v. Swiftships Shipbuilders, L.L.C.*, 2016 WL 156264 (W.D. La. 1/12/16). These last two cases, in particular, illustrate a potential flaw in the application of the treble damages provision of the LUTPA. This problem can put a defendant in a totally untenable position of facing the possibility of treble damages without any reasonable means of avoiding such a penalty.

Current Practice Under La. R.S. 51:1409

Under the statute, after receiving a copy of the LUTPA petition pursuant to La. R.S. 51:1409(B), the attorney general's office² sends out an official notice to the defendant that suit has been filed alleging LUTPA violations. The notice is a form letter, noting that the suit alleging LUTPA violations has been filed and stating, *inter alia*:

This office has not investigated this matter and makes no determination as to the merits thereof. The purpose of this notice is to place [defendant] on notice of this claim, and provide the defendant with the opportunity to evaluate and if necessary cease such activity. Having received this notice, should the same be found, by a court of competent jurisdiction, to constitute a violation of Louisiana Revised Statute 51:1401, *et seq.*, the Unfair Trade Practices and Consumer Protection Law, the petitioner in said suit will have fulfilled the notice requirement under La. R.S. 51:1409, and may be entitled to treble damages under the statutes. (Emphasis supplied.)

Accordingly, merely by filing suit and sending a copy to the attorney general alleging violations of the LUTPA, and before any adjudication by anyone that an unfair trade practice has been or may have been committed, the plaintiff has fulfilled the requirement for a potential award of treble damages.³

In fact, as notice of allegations of a violation of the LUTPA, the form is actually either meaningless or contrary to the meaning of the law. Because the attorney general is doing nothing more than informing the defendant that he has been sued (a fact of which the defendant is presumably already aware) and, pointedly, *not* informing the defendant that there has been a determination that an unfair trade practice has or may have been committed, the attorney general is not informing the defendant of anything he does not already know except that a procedural requirement of the statute has been satisfied. Alternatively, if the statute

contemplates some finding of a violation (or the possibility of a violation) by the attorney general, then the notice is nullified by the statement that the attorney general's office takes no position on the matter.⁴

The Jurisprudence

McFadden v. Import One, Inc.

In the *McFadden* opinion, released in 2011, the 3rd Circuit was the first court to sustain an award of treble damages under the LUTPA. In *McFadden*, a consumer agreed to buy a new car assuming she could obtain a car loan at 7.82 percent interest. She left her Saturn as a trade-in and drove off the lot with a used Infiniti G35. The dealer was unable to obtain a loan for the customer at the agreed-upon interest rate but was able to arrange a loan from a different bank at 9.69 percent interest. The plaintiff rejected the new loan provisions and sought to return the Infiniti and pick up her Saturn. The dealer then undertook a course of conduct to bully the plaintiff to complete the original transaction at the higher interest rate, including refusing to take the Infiniti or to give back the Saturn. The defendant also had the plaintiff arrested for theft and had the Infiniti seized and returned to the dealership. However, even though it now had both cars, the dealership refused to return plaintiff's Saturn for approximately six months after suit was filed and three months after the attorney general's notice issued. After trial, the district court awarded damages and attorneys' fees, but not treble damages.

The 3rd Circuit reversed on this point and trebled the award. The court noted: "[Defendant] continued its conversion of [plaintiff's] Saturn causing [plaintiff] damages for the loss of use of her Saturn in an attempt to coerce [plaintiff] into a sale until September 2008. Thus, the conduct continued after June 19, 2008, the date notice was received by [defendant.]" 56 So.3d at 1223. While it appears that the defendant was clearly in the wrong, in fact, the conduct being penalized by the treble damage award was not *adjudicated* to be a violation of the LUTPA until after trial, far past the September 2008 date.⁵

AIM Business Capital, L.L.C. v. Reach Out Disposal

In the *Reach Out Disposal* case,

decided in 2014, the plaintiff, a factoring business, was defrauded by defendants who manipulated and fabricated invoices sent to the plaintiff in the amount of almost \$500,000. Plaintiff sued and the attorney general's notice went out shortly after suit was filed. Liability was never seriously in doubt, and the court granted plaintiff's motion for partial summary judgment, awarding treble damages of almost \$1.5 million under the LUTPA. The court held:

After notification from the Louisiana Attorney General's Office, [defendant] failed to pay [plaintiff] on outstanding invoices it verified. This failure to honor the invoices, leaving [plaintiff] with worthless paper, constitutes part of the overall scheme. Additionally, those acts taken which hindered [plaintiff's] ability to investigate, leading to possible further damage, are considered by this Court to be bad acts. Consequently, treble damages are recoverable in this case. 2014 WL 1401526 at *3.

The court ruled that the *continued failure* of the defendant to repay the sums reflected on the invoices after notification by the attorney general justified the treble damage award, even though no further invoices were submitted after the attorney general's form letter was received.

Hadassa Investment Security Nigeria, Ltd. v. Swiftships

Late last year, another treble damages case was decided in the Western District. In *Swiftships*, the defendant accepted a \$500,000 down payment from the plaintiff for a boat. But, thereafter, the defendant sold the boat to a third party and failed to return the down payment. The court found that the defendant's conduct constituted a clear violation of the LUTPA and awarded actual damages and attorneys' fees and treble damages under 51:1409(A). The court did so notwithstanding that the LUTPA claim was not raised until plaintiff's Third Amended Complaint, filed over a year after suit was originally brought, which prompted the attorney general's notification at that time. The court ruled: "To date, the ongoing violation is occurring as the funds have not been returned or deposited into the registry of the court As such,

it is held the plaintiff is entitled to treble damages.” *Swiftships* at *7. According to the court’s ruling, even though the form letter sent by the attorney general’s office is nothing more than a standard notification that a LUTPA suit has been filed and not an adjudication that there actually has been an unfair trade practice, a defendant accused of an unfair trade practice is automatically penalized with treble damages if he loses.

Discussion

The outcomes of these cases may have been warranted from a visceral standpoint, but the same result would appear somewhat less defensible in cases where the defendant has colorable (even if weak) defenses. Further, these cases suggest that, pursuant to the statute, if the form letter is sent by the attorney general, then, *despite any defenses the defendant may have had*, if the verdict is for the plaintiff, the court has no discretion in the matter: “The court *shall award* three times the actual damages sustained.” *See*, La. R.S. 51:1409(A) (emphasis added).

Allowing treble damages merely because plaintiff *makes allegations* of unfair trade practices in his petition and sends a copy of the lawsuit to the attorney general puts a defendant in the position of, for example, having to return funds *only alleged* to have been misappropriated by an act or practice violative of the LUTPA before there has been any adjudication that the funds were wrongly obtained and only thereafter to seek return of the monies from the plaintiff if the unfair trade allegations are not proved. The alternative is to run the risk of treble damages, even though the defendant may have a valid, or at least colorable, argument that there was no wrongdoing or LUTPA violation.

The result of these opinions effectively is a presumption of guilt instead of innocence.⁶ If an unfair trade practice can be said to continue because the effects of a past wrong perpetuate each day the *alleged* wrong is not rectified, then a defendant served with the attorney general’s form letter is forced to tender the disputed amount *before there is any adjudication of wrongdoing* in order to avoid the possibility of a treble damage award.⁷

Conclusion

A defendant sued for purported violations of the LUTPA who receives the standard attorney general’s notice must be very careful about its moves and actions during litigation since the defendant could face treble damages for actions not as yet adjudicated to be violative of the statute.⁸ This could be particularly sensitive in businesses where corporate policies concerning the processing of claims may be implicated. In addition, it remains unclear what happens in situations where an alleged unfair trade practice creates an obligation “to do” on the part of the defendant, but the extent of the obligation is not ascertainable from the allegations in the petition.

FOOTNOTES

1. Late last year, the Louisiana 1st Circuit Court of Appeal issued its opinion in *Pierrotti v. Johnson*, 16-0204 (La. App. 1 Cir. 10/28/16), 2016 WL 6330423. The *Pierrotti* opinion is not designated for publication.

2. While the statute states that, when a LUTPA suit is filed, plaintiff’s counsel “shall” mail a copy of the suit to the attorney general, it also states that failure to send the suit to the attorney general “shall not affect any of plaintiff’s rights under this section.” La. R.S. 51:1409(B). Accordingly, the failure to notify the AG “does not defeat the claim for actual damages and attorney fees, but only defeats the claim for treble damages.” *Laurents v. Louisiana Mobile Homes, Inc.*, 689 So.2d 536, 542 (La. App. 3 Cir. 1997).

3. Any number of courts has recognized that notice by the attorney general is a prerequisite to the award of treble damages. *See, e.g.*, *B&G Crane Service, L.L.C. v. Duvic*, 05-1798 (La. App. 1 Cir. 6/30/06), 935 So.2d 164, 170; *Conry v. Ocwen Financial Corp.*, 2012 WL 5384681 at *2 (E.D. La. 2012). However, in most of these cases, either there was no attorney general notice or no proper LUTPA claim was alleged or proved. Thus, none of these cases discusses whether the notice requirement refers solely to the ministerial matter of the attorney general forwarding the petition to the defendant or whether it contemplates some *actual finding* by the attorney general that the complained-of activity is or appears to be a violation of the LUTPA.

4. If the reason for the treble damage notification is merely to have the defendant evaluate whether it would be prudent to desist ongoing, affirmative behavior complained of in the lawsuit, then the notice would seem to be redundant — presumably, any reasonable defendant will be put on notice by the lawsuit itself that certain activity is alleged to be causing plaintiff damages for which the defendant could be liable.

5. In the unpublished *Pierrotti* opinion, plaintiff arranged to refinance certain property in which plaintiff and defendant had an interest, thereby releasing defendant from any obligation associated with the property. In return, defendant executed an “Act of Donation,” transferring his ownership interest in the property to plaintiff. Five years later, however, when plaintiff sought to sell the property, technical problems with the Act of Donation were discovered. At that time, defendant refused to execute any corrective documents and, in eventual response to plaintiff’s suit to clear the title to the property, filed a wholly meritless reconventional demand, seeking a 50 percent interest in all income accruing from the property. After five years of litigation, the district court ruled in plaintiff’s favor, finding that defendant’s steadfast refusal to allow plaintiff to sell the property long after defendant had relinquished all his interest in it was an unfair trade practice and, because the standard attorney general notice had been issued, awarded treble damages. With virtually no discussion or analysis, the 1st Circuit affirmed the district court’s award.

6. *C.f.*, *Miller v. Conagra*, 08-0021 (La. 9/8/08), 991 So.2d 445, 456, where the court noted: “It is axiomatic that [defendant] is allowed to explain its reasoning for seeking to terminate the contract without having its assertions construed as a continuing violation of LUTPA. To hold otherwise would be to require a defendant to choose between admitting liability on the one hand and extending prescription by pursuing his defense on the other.” The same logic applies here; a defendant would be required to choose between immediately paying what is asked for in the petition or risk treble damages if the plaintiff is ultimately successful.

7. Consider, too, the situation where the plaintiff can only be made whole by an award of damages (as opposed to, for example, specific performance) yet the amount of damages are not knowable until after trial. Can the defendant be liable for treble whatever the damages that the plaintiff ultimately proves at trial?

8. A defendant probably should raise this issue early as in, for example, an affirmative defense that treble damages are not available to the plaintiff because the conduct alleged in the petition to constitute an unfair trade practice is no longer continuing. That doesn’t necessarily speak to the situation where, for instance, there are allegations of monies due that continue not to be tendered, but at least it preserves the issue of the propriety of awarding treble damages before any LUTPA violation is proved.

Alexander M. McIntyre Jr., of counsel in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., concentrates his practice in the area of antitrust and trade regulation and serves as chair of the Louisiana State Bar Association’s Antitrust and Trade Regulation Section. (amcintyre@bakerdonelson.com; Ste. 3600, 201 St. Charles Ave., New Orleans, LA 70170)



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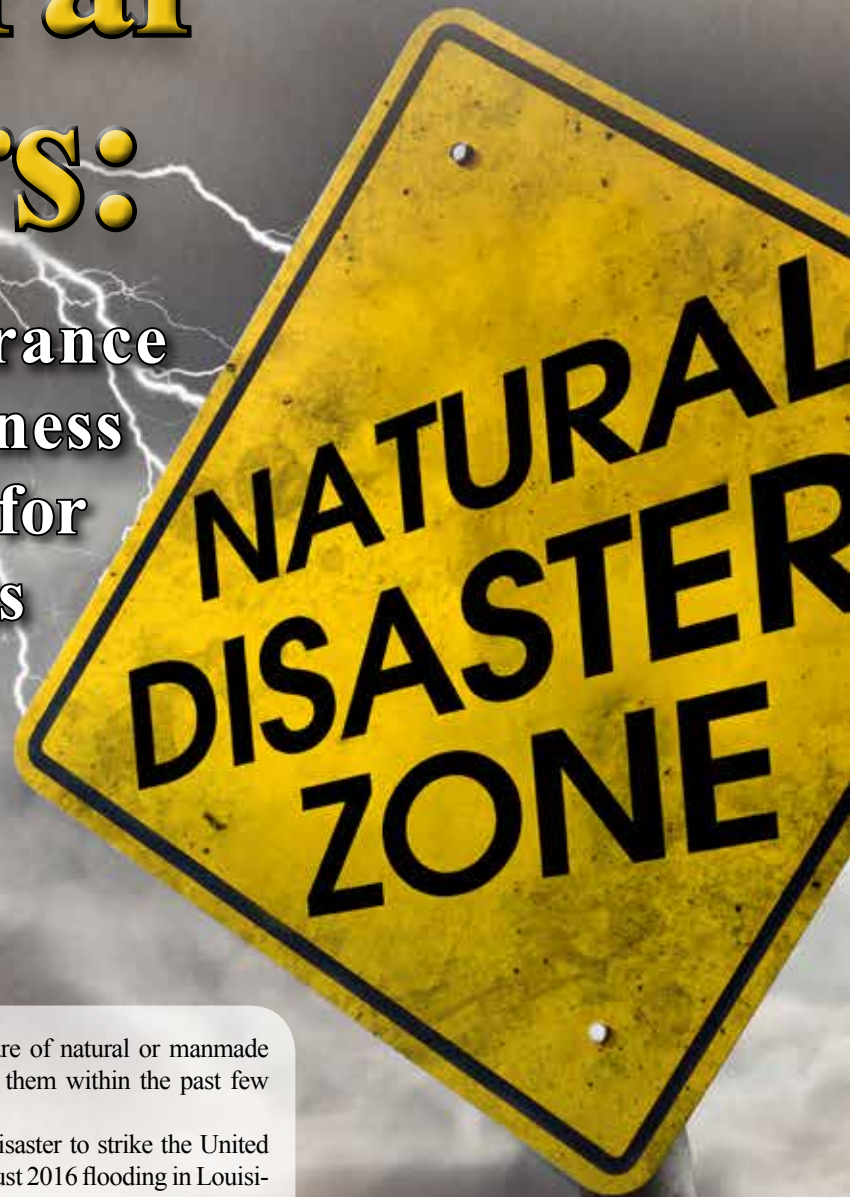
In the Aftermath of Natural Disasters:

An Update on Insurance Coverage for Business Interruption Claims for You and Your Clients

By José R. Cot

Unfortunately, Louisiana has had more than its share of natural or manmade disasters in the past few years — and several of them within the past few months.

As an example, considered the worst natural disaster to strike the United States since Superstorm Sandy in 2012, the unprecedented August 2016 flooding in Louisiana caused catastrophic damage to residential and commercial properties, with 26 parishes receiving a Major Disaster Declaration by the federal government. According to a report commissioned by Louisiana Economic Development (LED), an estimated 109,000 housing units flooded and nearly 20,000 businesses were interrupted by the flooding, with an estimated economic loss of more than \$300 million in labor productivity and a business interruption loss (in terms of value added) of more than \$800 million. At the peak, an estimated 278,500 Louisiana residents were unable to work due to temporary closures, suspension of operations, transportation impasses, and residential and commercial flooding.¹ At least 13



deaths were reported across the state, with tens of thousands of residents rescued or evacuated from their homes or forced to seek refuge in shelters. Because the impacted areas were in elevated zones not included in the FEMA flood plains, the vast majority of those impacted by the flooding did not have flood insurance. Nevertheless, it was estimated that industry ground-up insurable losses were between \$8.5 billion and \$11 billion.² As of December 2016, FEMA had issued more than \$588 million in Federal Assistance Disaster grants to those affected, including more than \$2 billion to National Flood Insurance Program (NFIP) policyholders to repair or rebuild damaged properties, and more than 63,000 families had sought FEMA assistance for housing.³

Add in the March 2016 flooding in the northern part of Louisiana and powerful tornadoes in many parts of the state and it becomes very obvious that disaster preparedness should be on the “to-do” list of all legal practitioners.

As in the aftermath of Hurricanes Katrina and Rita in 2005, many business owners across Louisiana filed insurance claims in connection with damage to their buildings, equipment and other assets as a result of the 2016 floods. Coverage with respect to these claims is generally provided under comprehensive first-party property policies. These policies are typically written on an “all-risk,” “multi-peril” or “named peril” basis, meaning that they are designed to indemnify the policy holder for all direct physical loss or damage to his/her premises caused by a covered peril, as well as business personal property (the so-called “contents loss” coverage), unless coverage for the loss is otherwise excluded under the policy. Generally speaking, these policies contain water or flood exclusions, and resolution of the scope of coverage afforded under the policy — particularly after a hurricane or similar natural disaster — centers on the proverbial “wind v. flood” controversy, *i.e.*, whether the ensuing losses were caused by high winds (which is a covered peril under the policy) as opposed to wind-driven water or tidal surge flooding (which are excluded perils). The risk of damage as a result of water or flooding, however, is typically covered through a separate policy (such as a flood

policy), designed to complement the coverage afforded under the property policy.⁴

Because of the potential application of policy exclusions, particularly regarding losses caused by rain, flood, surface water, overflow of bodies of water, rainfall runoff, etc., counsel must consider whether a particular loss is attributable to “rain” or “flood” as opposed to other causes. Accordingly, issues regarding apportionment of the loss, or concurrent causation, and interpretation of the corresponding policy wording are central to the successful presentation, or defense, of a claim. This analysis is fact-intensive and, in many cases, requires the testimony of expert witnesses, such as engineers, meteorologists and other technical experts.

For example, in the absence of a definition in the policy, most courts define “surface water” as water on the surface of the ground, generally derived from falling rain, that does not have a permanent existence, has no banks, and follows no defined course or channel. However, some courts have made distinctions among claims for property damage caused by “surface water” depending upon differences in the way in which the water accumulated and caused the property damage. The distinctions generally fall into three categories — rainwater runoff, rainwater collected on a rooftop, and rainwater after it has reached the ground and been channeled or contained. There are also reported cases discussing whether “surface water” that becomes collected or contained (or diverted) loses its character as “surface water.”⁵

Because the wording of water damage exclusions may differ depending on specific policy provisions, counsel should conduct a thorough analysis of the policy wording and the applicable jurisprudence and work closely with the appropriate experts to effectively frame the issue of coverage.

Scope of Business Interruption Coverage

A significant component of commercial first-party property insurance policies is the so-called “business interruption” insurance.⁶ This type of coverage is designed to protect the insured for the risks

associated with an interruption of the insured’s business because of damage to the insured’s property that results in a total or partial suspension of the insured’s business operations. Although business interruption insurance is designed to protect the insured, it is also designed to prevent the insured from being placed in a better position if no loss or interruption of business had occurred.⁷

Although the phrase “business interruption” is widely used in the insurance industry, many commercial policies incorporate other terms such as “delay,” “loss of market” and/or “consequential” loss or damages. Practitioners should be mindful of the fact that differences in the phraseology used in many of the policies providing such coverage have resulted in a significant amount of litigation regarding the interpretation and application of policy terms and conditions to specific factual scenarios. A comprehensive analysis of the terms and conditions of a particular policy is essential to determine the insurer’s obligations with respect to covered perils and any applicable policy exclusions or limitations, as well as the proper methodology to compute the insured’s business interruption losses. While there is not a plethora of reported cases interpreting business interruption insurance policies under Louisiana law, the reported cases provide some guiding principles in evaluating coverage under these types of policies.

For example, some policies provide that the insurer will pay for the actual loss of business income that the insured sustains due to the suspension of his/her business “operations” during the “period of restoration.” “Operations” generally means business activities occurring at the insured’s premises.⁸ Moreover, the “period of restoration” generally means the period of time that begins with the date of direct physical loss or damage caused by, or resulting from, a covered peril and ends on the date when the property should be repaired, rebuilt or replaced, or the date when business is resumed at a permanent or new location.⁹ Some policies actually provide a specific time frame (for example, 12 or 18 months) to delineate the “period of restoration.”

In addition to any loss of net income, most business interruption policies

also cover normal operating expenses incurred by the insured, including payroll, employee benefits, FICA payments, union dues and insurance premiums. However, officers, executives, department managers and contract employees are typically excluded from the standard payroll expense coverage.

Computation of the Loss

Business interruption insurance is either “valued,” meaning that the parties have agreed upon the value of the insured’s loss in advance, or “open,” which requires proof of the actual loss of business sustained by the insured.

Under most business interruption policies, the loss is calculated by reference to the insured business’ net income, *i.e.*, the net profit or loss (before income taxes) that would have been earned or incurred if no physical loss or damage had occurred.

In other words, the loss is based on the difference between the net profit the insured business would have received without the interruption and the net profit that it actually received. Some policies define net income so as to *exclude* any income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the covered cause of the loss on customers or other businesses.

Other types of business interruption policies provide that the formula for calculating the insured’s loss is in terms of reduction of gross earnings. Under these policies, a “projection” of earnings is an accepted method of calculating the business interruption loss.

Therefore, in determining gross earnings, due consideration is given to the experience of the business *before* the date of damage or destruction and the *probable* experience thereafter had no loss occurred.¹⁰ Some policies include specific appraisal provisions for valuing the loss of income and extra expense. Appraisal clauses may provide for the selection of independent appraisers and an impartial umpire to adjudicate disputes under the policy.

An important issue concerning the valuation of business interruption claims is whether the claim calculation should take into account the effects that the

catastrophic event had on the surrounding region, positive or negative, including its impact on the insured’s competitors and the local economy. Louisiana jurisprudence allows consideration of post-catastrophe economic conditions in valuing the loss, although depending on the policy wording.¹¹

Extra Expenses

The typical business interruption policy also indemnifies the insured for any necessary “extra expense,” which refers to expenses incurred to avoid or minimize the suspension of business and to continue business operations either at the insured premises or at a temporary location. An “extra expense” is by nature a temporary expense — one that makes it possible for the insured to maintain business operations that otherwise would have been interrupted pending permanent repair or restoration of the insured’s property.¹² Extra expense usually includes any moving or relocation expenses, the cost to equip and operate temporary locations, and the cost to research, replace or restore lost information on damaged valuable papers and records, provided that it reduces the amount of the loss that otherwise would be paid under the business interruption coverage.¹³

Standard Exclusions

Damage resulting from a covered cause of loss is a prerequisite for business income coverage, which means that business income claims caused by flood are usually not covered unless the policy provides flood coverage. As with most types of insurance coverage, standard business interruption policies also contain certain policy exclusions. For example, there is no coverage for any extra expense or increase of business income loss caused by enforcement of any ordinance or law regulating the use, construction, repair or demolition of property. Delays in rebuilding, repairing or replacing the property, or in resuming business operations, which are attributable to interference by strikers or other persons, is also excluded. Similarly, business interruption policies typically exclude

extra expense or increase of business income loss due to suspension, lapse or cancellation of any license, lease or contract. Some policies also provide that delay in adjustment of the claim (if there is a dispute between the insurer and the insured) will not extend the period of time for which coverage applies.

Additionally, some business interruption policies contain “idle period” clauses designed to exclude coverage for a period during which the insured’s business operations would not have been maintained even if no peril insured against had occurred. Generally, there is no coverage for additional business income loss due to the enforcement of any ordinance or law requiring the insured to test for, clean up or remove any pollutants. Finally, business interruption policies typically exclude “consequential or remote” loss and/or delay, loss of use or loss of market.

Civil Authority Coverage

A standard coverage extension contained in most business interruption policies provides that the insurer will indemnify the insured for the actual loss of business income and any necessary extra expense caused by action of civil authority that prohibits access to the insured’s premises as a result of off-premises damage caused by, or resulting from, a covered peril under the policy.¹⁴ This coverage is commonly referred to as the Civil Authority Coverage and is often available for a period of up to 30 consecutive days from the date of the action of civil authority. This type of coverage is significant in the context of mandatory evacuation orders imposed before a hurricane and curfews or road closures that may impact operation of the insured’s business after the storm. The typical Civil Authority Clause is triggered only if the following elements are met: (1) there is a loss of earnings by the insured and (2) access to the business is prohibited (3) by an order or action of civil authority (4) as a result of direct physical loss to property other than a covered location, and (5) the loss or damage to the property other than a covered location was caused by, or resulted from, a covered cause of loss.

Some business interruption policies also contain coverage for prevention of ingress/

egress as a result of physical damage and do not require an order of civil authority. However, generally speaking, ingress/egress coverage is inapplicable when it is possible to gain access to the insured's premises, even if access is limited.

Duty to Mitigate and Adjustment of the Claim

As with most first-party policies, the insured has an affirmative obligation to mitigate or reduce the loss by taking reasonable steps to shorten the indemnity period. For example, if possible, the insured must reduce the business interruption loss by complete or partial resumption of the business at a temporary location or by making use of the merchandise or other property at the insured premises.

As with other forms of property insurance, adjustment of a business interruption claim usually requires assistance from expert witnesses, such as a forensic accountant. This is particularly important in calculating and documenting the amount of lost earnings that the insured has suffered as a result of the business interruption caused by damage to covered property. Courts have generally recognized that lost earnings need only be proved to a reasonable certainty. Where it is not possible to state or prove a precise measure of lost earnings, the trier of fact has reasonable discretion to assess damages based on all the facts and circumstances of the case.¹⁵ From an evidentiary standpoint, the insured's books and other financial records are admissible to establish the extent of the loss. Additionally, the insured's accounting practices are also considered, although they are not necessarily controlling in terms of the ultimate adjustment of the loss. Practitioners should consult applicable state statutes and jurisprudence with respect to the admissibility of business records, claim support documentation and related evidentiary issues.

Insurance coverage disputes involving business interruption insurance are not significantly different from most other insurance coverage litigation.¹⁶ From the insured's standpoint, it is important to note that business interruption insurance claims are, as are most first-party insurance claims,

subject to established claims handling and settlement requirements under Louisiana law, including the bad faith statutes. From a defense perspective, the insurer's counsel should be proactive in the investigation of the claim, affirmatively raise applicable policy defenses and, where appropriate, issue reservation of rights under the policy. Of course, all of this is particularly important if it appears that a coverage dispute is likely to result in litigation.

On the other hand, because adjustment of business interruption claims requires interpretation of technical policy provisions and is generally based on evaluation of objective financial data, consideration should be given to the resolution of these claims by means of ADR mechanisms, particularly mediation. In most cases, an effective mediator should be able to assist the parties in identifying the key issues and in reaching a prompt and cost-effective, out-of-court settlement.

FOOTNOTES

1. See, "The Economic Impact of the August 2016 Floods on the State of Louisiana," a report commissioned by LED and prepared by Dek Terrell, Ph.D. (Lewis Terrell and Associates, L.L.C.).

2. Press release issued by catastrophe modeling firm AIR Worldwide, Sept. 19, 2016, www.air-worldwide.com.

3. See, "2016 Roundup: Louisiana August Flood Recovery" (FEMA, Release No. NR-118, Dec. 28, 2016).

4. Years after Hurricanes Katrina and Rita, most of the unanswered questions that triggered the hurricane-related litigation now have been addressed by state and federal courts throughout Louisiana. For a discussion of the post-Katrina hurricane litigation, see generally, James M. Garner, Darnell Bludworth and Martha Y. Curtis, "The Status and Evolution of First-Party Property Insurance Bad Faith Claims after Hurricane Katrina," 62 Loy. L. Rev. 25 (Spring 2016); and Judy Y. Barrasso and Kristin L. Beckman, "Katrina's Impact on Litigation of Insurance Claims under Louisiana Law," 62 Loy. L. Rev. 47 (Spring 2016).

5. Compare *Cal v. Republic Fire & Cas. Ins. Co.*, 2009 U.S. Lexis 117299 (E.D. La. 2009) (rain water that accumulated on ground and seeped into house through weep holes in brick façade was "surface water" within policy exclusion), with *Cochran v. Travelers Ins. Co.*, 606 So.2d 22 (La. App. 5 Cir. 1992) (rainwater that collected on roof, overflowed, and seeped into building was not included in policy's surface water exclusion).

6. For a comprehensive discussion of business interruption insurance, see generally "Business Interruption Insurance," 37 A.L.R. 5th 41 (1996-2016).

7. See, *United Land Investors, Inc. v. Northern Ins. Co. of America*, 476 So.2d 432 (La. App. 2 Cir. 1985). The general purpose of business interruption coverage is to protect the earnings which the insured would have enjoyed had no interruption or suspension of business had occurred. Generally,

a business interruption is a temporary cessation or impairment of the operations of an established business. *Young v. Lafayette Ins. Co.*, 4 So.3d 162 (La. App. 4 Cir. 2009).

8. See, *Copes v. American Central Ins. Co.*, 85 Fed. Appx. 391 (5 Cir. 2004). However, some business interruption policies extend coverage where damage occurs to the property of the insured's suppliers and/or customers, as opposed to the insured's own property. This is referred to as "contingent" business interruption coverage. See, *C II Carbon, L.L.C. v. National Union Fire Ins. Co. of La., Inc.*, 918 So.2d 1060, 2005 WL 3528761 (La. App. 4 Cir. 2005). Another form of "off premises" coverage is the "Service Interruption Coverage." This covers business interruption losses resulting from damage to personal property of a utility necessary for supplying the insured premises with things such as power, water, natural gas, communication, Internet access, etc. Typically, the property damage of the utility must be caused by a covered cause of loss under the policy.

9. But see, *United Land Investors, supra* at 437-438 (providing coverage for the "actual length of the business interruption" where the insured could not begin rebuilding until it received payment from the insurer).

10. See, *Cotton Bros. Banking Co. v. Industrial Risk Insurers*, 774 F.Supp. 1009 (W.D. La. 1989), *aff'd*, 951 F.2d 54 (5 Cir. 1992). For a discussion of the standard form business interruption loss valuations provisions, see Christopher C. French, "The Aftermath of Catastrophes: Valuing Business Interruption Insurance Losses," 30 Ga. St. U. L. Rev. 461 (Winter 2014).

11. See e.g., *Finger Furniture Co. v. Commonwealth Insurance Co.*, 404 F.3d 312 (5 Cir. 2005); *Orrill, Cordell & Beary, L.L.C. v. CNA Ins. Co.*, 2009 WL 701714 (E.D. La. 2009); *Sher v. Lafayette Ins. Co.*, 973 So.2d 39 (La. App. 2007), *aff'd in part and rev'd in part on other grounds*, 988 So.2d 186 (La. 2008); *Berk-Cohen Associates, L.L.C. v. Landmark Insurance Co.*, 433 F.App'x 268 (5 Cir. 2011).

12. See, *Chalmette Retail Ctr., L.L.C. v. Lafayette Ins. Co.*, 21 So.3d 485 (La. App. 4 Cir. 2009).

13. See generally, M. Quinn and P. Hopper, "Extra Expense and Business Interruption Coverage," 26 No. 3 Ins. Litig. Rep. 97 (2004).

14. See, *730 Bienville Partners, Ltd. v. Assurance Company of America*, 2002 WL 31996014 (E.D. La. 2002) (Feldman, J.).

15. *Cotton Bros. Banking Co.*, 774 F.Supp. at 1028.

16. See generally, D. Polin, "Recovery Under Business Interruption Insurance," 41 Am. Jur. Proof of Facts 3d 319 (2005).

José R. Coti is a partner in the New Orleans firm of Hurley & Cot, A.P.L.C., where he practices in maritime, insurance defense and coverage litigation. He has more than 25 years of litigation experience in state and federal courts across the country. He is a graduate of Tulane University and Tulane Law School. (j.coti@hurleycot.com; Canal Place, Ste. 2750, 365 Canal St., New Orleans, LA 70130)





JUDGES AND LAWYERS ASSISTANCE PROGRAM, INC.

RELEASES PERFORMANCE AUDIT

July 22 – October 26, 2015

By Mark C. Surprenant

Over the past five years, the Judges and Lawyers Assistance Program, Inc. (JLAP) has conducted an enthusiastic educational and networking campaign to promote its life-saving *confidential* services in an effort to grow the program. Many important, positive milestones have been reached in recent years, including, but not limited to:

- ▶ Significantly increasing JLAP's budget to expand its professional staff and programming and to broaden its expertise to render assistance with all mental health issues, such as depression and burnout, not just alcohol and drug addiction issues;

- ▶ Improving its programming quality on all fronts and specifically improving clients' long-term success rates by implementing appropriate professionals' programming criteria in clients' evaluation, assessment and treatment facilitation;

- ▶ Through outreach and education, significantly increasing the ratio of legal professionals utilizing JLAP's confidential services early in the process of impairment and before unethical conduct, discipline or harm to the public is involved;

- ▶ Restructuring JLAP's corporate governance so as to ensure that confidentiality is always sacrosanct, while concurrently providing necessary fiscal and fiduciary oversight at the board of directors' level;

- ▶ Modifying the program's name from the Lawyers Assistance Program (LAP) to the Judges and Lawyers Assistance Program (JLAP) so as to acknowledge formally that JLAP's full services are delivered to the judiciary, and broadening mission language to include all mental health issues; and

- ▶ Amending La. R.S 37:221 to formalize the new JLAP and its broader mission.

The Need for a Performance Audit

To ensure that JLAP continues along a solid path to excellence, JLAP took the initiative to commission a comprehensive Performance Audit to obtain feedback and expert advice on its operations and what steps it should take at this juncture to strive for the highest level of quality in professionals' programming. JLAP (and formerly as LAP since 1992) has never before commissioned an internal performance audit.

JLAP's Board of Directors, Operations Committee and professional staff, in conjunction with various members of the legal community, worked together to identify and assemble an unprecedented, exceptional Expert Audit Team comprised of leaders from both the legal professionals' program and medical professionals' program spheres. The resulting audit effort was described by the team as one of the most comprehensive professionals' programming performance audits ever conducted anywhere in the nation. The four-person team included:

- ▶ a Brooklyn, NY, judge who is the immediate past chair of the American Bar Association's Commission on Lawyers Assistance Programs (ABA CoLAP);

- ▶ a state LAP director from Michigan who operates a well-developed Broad Brush Lawyers Assistance Program and who is both a lawyer and a licensed mental health care professional;

- ▶ a psychiatrist MD who is the associate medical director of a large professionals' program in Florida and also the former director of the Louisiana Physicians' Health Program; and

- ▶ an addiction medicine expert and MD who is one of the pioneers in the field of addiction medicine in the United States, a former director of the Washington State Physicians' Health Program and the past president of the Federation of State Physicians' Health Programs (FSPHP).

JLAP was uncompromising in its goal to retain a team of leading, objective national experts to examine the program in detail and provide expert guidance on how JLAP can provide the highest level of programming excellence to Louisiana's legal profession.

About the Performance Audit

The JLAP Performance Audit was conducted over the course of a three-month period (July 22 to Oct. 26, 2015). The Expert Audit Team initiated its efforts on site in Louisiana at JLAP's offices in Mandeville and at the Adams and Reese, L.L.P., law offices in New Orleans.

For several days, the Expert Audit Team conducted personal interviews with an extremely broad and diverse population of entities and individuals who interact directly with JLAP. All segments of feedback about JLAP, from the most positive to the most negative known, were actively solicited in full force and carefully considered by the Expert Audit Team.

The mission was to assess thoroughly JLAP's current operations and: 1) establish its current level of effectiveness compared to other professionals' programs in the nation; 2) review the appropriateness of its operating protocols and clinical criteria for making evaluation, treatment and monitoring recommendations; 3) identify challenges and define barriers to progress that can be addressed to help move the program forward; and 4) fashion appropriate recommendations that may help guide JLAP to the very highest level of programming and services.

Audit Results

The written report, *Louisiana Judges & Lawyers Assistance Program Performance Audit, July 22- October 26, 2015, New Orleans, LA*, contains 88 pages of information, including, among other things: 1) JLAP's specific performance statistics; 2) broader commentaries about professionals' programming criteria and challenges in general; 3) anonymous surveys of JLAP's actual clients and services providers; 4) educational information about the different types of Lawyers Assistance Programs in the nation and the specific types of services they may or may not provide depending on their structures; 5) differences in addressing substance use disorders versus other mental health issues; 6) a survey of different states' processing of conditional admission cases involving Bar applicants with past

clinical or conduct issues; and 7) specific recommendations to aid Louisiana's JLAP in its ongoing quest for excellence.

As to the results of the audit, JLAP is very encouraged by the Expert Audit Team's overarching opinion that: "*JLAP's overall operation unequivocally qualifies it as a top tier program.*"

Accordingly, the Audit Report underscores that JLAP has, in large measure, already achieved much if its mission to grow Louisiana's program into a fully-staffed, full-service, top-quality professionals' program.

A program's success can be measured in many ways, but there can perhaps be no more important statistic than whether or not the program's participants can expect to achieve reliable long-term recovery rates from diseases such as alcoholism and addiction.

It is of note that the Expert Audit Team established that, over the last five years, JLAP participants have enjoyed a 90 percent success rate in long-term recovery at the completion of JLAP's protocol for addressing alcoholism and drug addiction. As such, JLAP has one of the very highest long-term recovery rates to be found in any professionals' program anywhere.

The Expert Audit Team's findings are very reassuring. Louisiana's legal profession can be confident that successful long-term clinical outcomes and a return to fitness without relapse are by far the norm at JLAP rather than the exception.

But there also are challenges that have been identified by the Expert Audit Team and certain things can be done at JLAP to improve upon the program and make it even more effective.

The biggest challenges that JLAP will be focusing on in light of the Expert Audit Report are within the category of Public Relations.

The Expert Audit Team has determined that significant misperceptions about JLAP have developed over the last 20-plus years and especially within some quarters of the profession wherein LAP (and now JLAP) has been viewed primarily as an arm of the disciplinary counsel and sometimes as a punitive entity.

Much of this "arm of discipline" misperception stems from the fact that

JLAP has a very long history of being predominantly known within the profession for its monitoring of participants who have alcohol or drug problems and who are also entangled in public disciplinary matters.

For many years, the bulk of written information about JLAP has appeared only in court opinions and court orders regarding disciplinary and bar admissions matters, wherein JLAP's participation and monitoring are required by the court. Moreover, in the past, even JLAP's own publications were predominantly geared toward explaining what to expect at LAP/JLAP when a lawyer runs afoul of the disciplinary or bar admissions systems.

Conversely, over the last two decades, there has been comparatively very little promotion of JLAP's purely confidential services to the profession and how reaching out early to LAP/JLAP can confidentially, discretely and effectively resolve mental health and substance abuse issues and restore fitness to practice *before* any unethical or inappropriate conduct occurs.

As to the basis for JLAP's clinical recommendations, the Expert Audit Team conducted an extensive internal review of JLAP's clinical criteria and protocol for rendering clinical recommendations and, according to the experts, JLAP's services are very reasonable and in line with what is expected from a full-service professionals' program.

To begin to address any misperceptions about JLAP, to the extent that they exist, the Expert Audit Team recommends that JLAP embark upon an intense educational effort to the Louisiana State Bar Association, Office of the Disciplinary Counsel, Louisiana Supreme Court and its Committee on Bar Admissions, and the entire profession as a whole so as to fully explain professionals' programming and why rigorous clinical criteria for safety-sensitive occupations are necessary (and are restorative and certainly not punitive), and that JLAP renders appropriate clinical recommendations on a case-by-case basis.

JLAP has already substantially increased its educational efforts over the last several years, including launching its new and comprehensive website. Some progress has been made in the promotion of JLAP's confidential services. But much more has

to be done. Per the Expert Audit Team, it will take an "enormous" educational effort and quite some time to correct the past misperceptions about JLAP.

Publishing the JLAP Performance Audit Report and JLAP's Response

JLAP has now published both the full Audit Report and JLAP's official response on its website. Both documents are available for download at www.louisianajlap.com. On the JLAP homepage, hover on "About JLAP" and then select "JLAP Performance Audit." Or go directly to the Audit at: <http://louisianajlap.com/wp-content/uploads/2017/03/JLAPAudit2015.pdf>.

Summary

Louisiana's JLAP has now successfully completed one of the most arduous and comprehensive performance audits ever performed of a professionals' program.

JLAP is extremely thankful for all of the participation and support it received from all parts of the profession. Many people dedicated enormous amounts of time and effort to this project, including but not limited to, JLAP's professional and administrative staff, JLAP's Board of Directors and Operations Committee, JLAP's Special Audit Subcommittee, Louisiana Supreme Court justices and staff, Louisiana State Bar Association presidents and executive director, the chief disciplinary counsel of the Office of Disciplinary Counsel, ethics defense counsels, anonymous JLAP program participants, several sister state LAP programs, professionals track treatment centers and several mental health care professionals. Without the interest and dedicated participation of all of these individuals, the Performance Audit would not have been possible. JLAP is extremely grateful to all who contributed to the Performance Audit effort.

In the spirit of doing all it can to help support the development of effective, full-service professionals' programming across the nation and beyond, JLAP is very pleased to publish its Performance Audit Report for unlimited distribution.

Every program has its own unique set of challenges and must traverse its own landscape toward its own visions for success. Of course, Louisiana JLAP's experiences may or may not be of interest to other programs depending on their specific needs and circumstances.

Nonetheless, it is Louisiana JLAP's sincere hope that openly sharing the Performance Audit Report and JLAP Inc.'s response may be of some utility to others and in some way, large or small, be of assistance to sister states and their professionals' programs in their individual quests for robust funding and high-quality programming.

If you have any questions or would like additional information about the JLAP Performance Audit, email mark.surprenant@arlaw.com or JLAP's Executive Director Buddy Stockwell at buddy@louisianajlap.com.

Our Louisiana JLAP is now saving more lives and careers than ever before, and JLAP is providing professional clinical assistance with all types of mental health issues, not just alcohol and drug problems. If you or someone you know needs help, reach out immediately to JLAP. All calls to JLAP are privileged and confidential as a matter of law pursuant to La. R.S. 37:221 and Louisiana Supreme Court Rule XIX 16(j). Contact JLAP at (985)778-0571, email jlap@louisianajlap.com or visit the website at www.louisianajlap.com.

Editor's Note: *The LSBA encourages all of its members to review the JLAP Performance Audit on the JLAP website, <http://louisianajlap.com/about-us/jlap-audit-2015/>. The Louisiana Bar Journal also would like to acknowledge and thank Mark Surprenant for his continuing efforts with JLAP and its staff.*

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., is the president of the Louisiana Judges and Lawyers Assistance Program, Inc. (mark.surprenant@arlaw.com; One Shell Square, Ste. 4500, 701 Poydras St., New Orleans, LA 70139)



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Deadline is July 1 for Payment of 2017-18 LSBA Dues and LADB Assessments

Louisiana State Bar Association (LSBA) members have the option to pay their LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessment by ACH electronic check or credit card, or members may download and mail their Attorney Registration Statement and checks for payment. The deadline is July 1, 2017, for all payments and submission of all forms.

Members are encouraged to pay and file electronically, as this access is available 24/7, including times when the Bar Center is closed or mail service is disrupted. Electronic payment also gives members more control over their database information and allows for more timely updates to their member records.

Electronic filing is handled through the online member accounts that participants have used to register for CLE seminars and to access Fastcase. If an attorney has not set up a member account, one can be created at: <https://www.lsba.org/Members/member-accts.aspx>. This webpage also allows members to edit their existing accounts and to reset lost or forgotten passwords.

After member data is confirmed but before the payment/filing process begins, members will be advised that they need to go to <https://www.LADB.org> to complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement.

The collection schedule is the same as in prior years. In lieu of mailing a statement to each member, in May, the LSBA mailed members a 4x6 postcard, which provides instructions to go online to <https://www.LSBA.org> to complete the registration process and to go online to <https://www.LADB.org> to complete the Trust Account Form. **This is the only mailing members will receive**

prior to the July 1, 2017, due date; attorney registration statements will NOT be mailed.

Once members have electronically filed their Attorney Registration Statements (including any necessary changes and/or updates) and made the required payments, they will receive email confirmations. The filing and payment deadline is 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 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.

Processing fees of 3%, 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:

- ▶ 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.

2017-2018 Officers and Board of Governors

Officers 2017-18

Dona Kay Renegar President

Dona Kay Renegar is a member in the firm of Veazey, Felder & Renegar, L.L.C., in Lafayette. She received two BA degrees in English and French, *magna cum laude*, in 1988, both from the University of Louisiana-Lafayette. She was named the Fall 1988 Outstanding Graduate at the University of Louisiana-Lafayette. She received her JD degree, *cum laude*, in 1992 from Tulane University Law School. She was admitted to practice in Louisiana in 1992.



Dona Kay Renegar

Dona served as 2016-17 Louisiana State Bar Association (LSBA) president-elect. She also served a three-year term as the Third District representative on the Board of Governors and as a member in the House of Delegates (15th Judicial District).

She was a member of the LSBA's Client Assistance Fund Committee, a member of the Louisiana Board of Legal Specialization and a member of the Committee to Review Proposed Changes to the Louisiana Bar Exam I and II. She has held several leadership positions in the LSBA's Young Lawyers Division (YLD), including chair, chair-elect, secretary and District 3 Council representative. She also co-chaired the 2008-09 Leadership LSBA Class.

Dona received the YLD's

Outstanding Young Lawyer Award in 1999, the LSBA's President's Award in 2009, the LSBA's Pro Bono Century Award in 2014 and the LSBA's Stephen T. Victory Memorial Award in 2014 for co-authoring the *Journal* article on the Bar Exam changes.

She was a member of the Lafayette Bar Association's board of directors and served for several years on the Louisiana Bar Foundation's Grants Committee. She is a past president of the John M. Duhe, Jr. American Inn of Court.

In her community, Dona is an instructor of the "Parents and the Law" course and is an avid sports fan of the University of Louisiana-Lafayette.

2 Flag Place
Lafayette, LA 70508
(337)234-5350 • fax (337)234-5310
email: drenegar@vflawfirm.com

Barry H. Grodsky President-Elect

Barry H. Grodsky is a partner in the New Orleans firm of Taggart Morton, L.L.C. He received a BBA degree, with honors, in 1979 from the University of Texas-Austin and his JD degree in 1982 from Tulane University Law School. He was admitted to practice in Louisiana in 1982.

Barry served as Louisiana State Bar Association (LSBA) secretary and editor of the *Louisiana Bar Journal* from 2013-15. He represented the First Board District on the LSBA's Board of Governors and chairs the Committee on the Profession. He coordinates several law school professionalism programs for the Bar. In 2009, he accepted the American Bar Association's Smythe Gambrell Professionalism Award on behalf of the Committee on the Profession. He is a member of the Budget Committee and the Bar Governance Committee and serves on the LSBA Fee Arbitration Panel. He also served on the Continuing Legal Education Committee. He received the LSBA's President's Award in 2008 and 2010.



Barry H. Grodsky

He is an instructor at Tulane University and received the Tulane University Teacher Recognition Award in 1993. He was a Tulane University Faculty Fellow from 2000-02.

Barry and his wife, Cheri Cotogno Grodsky, are the parents of a daughter.

Ste. 2100, 1100 Poydras St.
New Orleans, LA 70163
(504)599-8535 • fax (504)599-8501
email: bgrodsky@taggartmorton.com
website: www.taggartmorton.com

John E. McAuliffe, Jr. Secretary

John E. 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.

Eddie served as the Second District representative on the Louisiana State Bar Association's (LSBA) Board of Governors from 2014-17. He chaired the LSBA's Unauthorized Practice of Law Committee, has presented programs on state court rules and motions for the Bridging the Gap CLE seminar and participated in the Law School Professionalism Orientations at Loyola University College of Law. He received the LSBA's President's Award in 2012 and the LSBA's 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.

Ste. 1700, 3850 N. Causeway Blvd.
Metairie, LA 70002
(504)840-4909 • fax (504)835-3464
email: eddie.mcauliffe.hpqo@statefarm.com



**John E.
McAuliffe, Jr.**

H. Minor Pipes III Treasurer

H. Minor Pipes III is a founding member of the New Orleans firm of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. He received a BA degree in 1991 from Penn State University and his JD degree in 1996 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1996.

Minor represented the First District on the Louisiana State Bar Association's (LSBA) Board of Governors and has served in the House of Delegates. He has co-chaired the LSBA's Summer School for Lawyers. He was a member of the Leadership LSBA Class in 2002 and received the LSBA's President's Award in 2009. He served as 2015-16 president of the Louisiana Bar Foundation.

In his community, he volunteers his time with the Hogs for the Cause program, Kid Smart and Trinity Episcopal School.

Minor and his wife, Jill McKay Pipes, have been married for 18 years and are the parents of three children.

Ste. 2400, 909 Poydras St.
New Orleans, LA 70112
(504)589-9700 • fax (504)589-9701
email: mpipes@barrassousdin.com
website: www.barrassousdin.com



H. Minor Pipes III

Darrel J. Papillion Immediate Past President

Darrel J. Papillion is a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C. He received a BA degree in 1990 from Louisiana State University and his JD degree in 1994 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1994.

Darrel served as president and president-elect of the Louisiana State



Darrel J. Papillion

Bar Association (LSBA). He served two terms on the Board of Governors as the Fifth District representative and as an at-large member. He co-chaired the Continuing Legal Education Committee (2009-16), chaired the Ethics Advisory Service Committee (2002-04) and was a member of the Federal Bench-Bar Liaison Committee (2000-06). He also served several terms in the House of Delegates. He received the 2005 LSBA Young Lawyers Division's Hon. Michaelle Pitard Wynne Professionalism Award.

He is a member of the board of directors of the Louisiana Bar Foundation (2009-present). He was a member of the U.S. District Court Middle District of Louisiana Magistrate Selection Committee in 2013 and served as 2013-14 president of the Baton Rouge Bar Association.

Darrel is AV-rated by Martindale-Hubbell and was recognized by *Louisiana Super Lawyers* (2008-present), *Best Lawyers in America* (2015-present) and the *Baton Rouge Business Report's* Top 40 Under 40 (2006). In his community, he was the 2013-14 president of the Rotary Club of Baton Rouge.

Darrel and his wife Shirley have been married for 25 years and are the parents of two children.

12345 Perkins Rd., Bldg. One
Baton Rouge, LA 70810
(225)236-3638 • fax (225)236-3650
email: papillion@lawbr.net
website: www.lawbr.net

Board of Governors 2017-18

D. Skylar Rosenbloom First Board District

D. Skylar Rosenbloom is an associate in the New Orleans office of Fishman Haygood, L.L.P. He received a BS degree in 2001 from Georgetown University's McDonough School of Business and his JD degree in 2007 from Washington and Lee University School of Law. He was admitted to practice in Louisiana in 2007. He also is admitted in Washington, D.C. (2013) and in New York



D. Skylar
Rosenbloom

(2014).

Skylar was a member of the Leadership LSBA 2012-13 Class and is a member of the Louisiana State Bar Association's Committee on the Profession and the Practice Assistance and Improvement Committee.

In his community, he is a member of the National World War II Museum Young Benefactors and serves as a Louisiana Philharmonic Orchestra Prelude advisory board member.

Skylar and his wife Brittany have been married for six years and are the parents of two children (expecting a third child in June 2017).

201 St. Charles Ave., 46th Flr.
New Orleans, LA 70170
(504)556-5507 • fax (504)586-5250
email: srosenbloom@fishmanhaygood.com
website: www.fishmanhaygood.com

Darryl J. Foster First Board District

Darryl J. Foster is a partner in the New Orleans office of Bradley Murchison Kelly & Shea, L.L.C. He attended Louisiana State University in Baton Rouge and the University of New Orleans. He earned his JD degree, with honors, in 1975 from Loyola University College of Law (*Law Review*, 1973-75). He was admitted to practice in Louisiana in 1975.

Darryl served on the Louisiana State Bar Association's (LSBA) Board of Governors in 2002-05. He served in the House of Delegates from 1995-2002 and from 2005-present. He also has been a member of the Bar Governance Committee since 2013.

He is a member of the Louisiana Association of Defense Counsel, the New Orleans Association of Defense Counsel (past chair) and the Defense Research Institute. He has been recognized in *Best Lawyers in America* since 2010.

Darryl and his wife Jamie have been married for 24 years and are the parents of two children.

2700 Energy Centre, 1100 Poydras St.
New Orleans, LA 70163



Darryl J. Foster

(504)596-6304 • fax (504)596-6301
email: dfoster@bradleyfirm.com
website: www.bradleyfirm.com

Stephen I. Dwyer Second Board District

Stephen I. Dwyer is a partner in the Metairie firm of Dwyer, Cambre & Suffern, A.P.L.C. He received an AB degree in 1970 from the College of the Holy Cross, an MA degree in 1972 from the University of New Orleans and his JD degree in 1976 from Loyola University College of Law. He was admitted to practice in Louisiana in 1976. He also is admitted in Texas.

Stephen is a member of the *Louisiana Bar Journal's* Editorial Board. He is an active pro bono volunteer. He is a member of the New Orleans Bar Association and the State Bar of Texas. He also serves as an adjunct faculty member for Loyola University College of Law.

He was named to the 2011 *CityBusiness* Leadership in Law list and has been listed in "Who's Who Among American Lawyers." He is a member of Alpha Sigma Nu Honor Society.

In his community, Stephen chaired the founding and development of St. Tammany Recreation District #14 (Coquille Parks and Recreation), chairs the Miracle League for special needs children, is the current treasurer and the incoming president of the Jefferson Performing Arts Society, is a member of the Loyola University College of Law Visiting Committee, and serves on the boards of directors of the College of the Holy Cross Lawyers' Association and the College of the Holy Cross Alumni Association.

Stephen is the father of five children.
Ste. 200, 3000 W. Esplanade Ave.
Metairie, LA 70002
(504)838-9090 • fax (504)838-9187
email: sdwyer@dwycercambre.com



Stephen I. Dwyer

Shannon Seiler Dartez Third Board District

Shannon Seiler Dartez is an attorney with the Glenn Armentor Law Corporation

in Lafayette. She received a BA degree in 1990 from Louisiana State University and her JD degree in 1994 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 1994.



**Shannon Seiler
Dartez**

Shannon has served on the Louisiana State Bar Association's (LSBA) Board of Governors and House of Delegates and chairs the LSBA's Group Insurance Committee. She is the recipient of the 2002 LSBA Young Lawyers Division's Outstanding Young Lawyer Award.

She chairs the Louisiana Bar Foundation's Acadiana Community Partnership Panel, serves on the Lafayette Bar Association's board and is a member of the Louisiana Association for Justice.

In her community, Shannon is a eucharistic minister for Our Lady of Fatima Church and a former president of the Junior League of Lafayette and the Healing House Hope for Grieving Children.

She and her husband Mike have been married for 18 years and are the parents of two children.

300 Stewart St., Lafayette, LA 70501
(337)233-1471 • fax (337)233-5655
email: sdartez@glennarmentor.com
website: www.glennarmentor.com

**J. Lee Hoffoss, Jr.
Fourth Board District**

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.

Lee served as chair, chair-elect, secretary, immediate past chair and the American Bar Association's Young Lawyers Division representative on the Louisiana State Bar Association's Young



**J. Lee
Hoffoss, Jr.**

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 the 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.

517 W. College St., Lake Charles, LA 70605
(337)433-2053 • fax (337)433-2055
email: lee@HDIInjuryLaw.com
website: www.HDIInjuryLaw.com

**Edward J. Walters, Jr.
Fifth Board District**

Edward J. Walters, Jr. is a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C. He received a BS degree in accounting in 1969 from Louisiana State University and his JD degree in 1975 from LSU Law School.

Ed served as Louisiana State Bar Association (LSBA) secretary and editor of the *Louisiana Bar Journal* in 2012-13. He continues to serve on the *Louisiana Bar Journal* Editorial Board. He is currently chair of the LSBA's Senior Lawyers Division and is a member of the Rules of Professional Conduct Committee.

He has been the editor of the Baton Rouge Bar Association's monthly publication, *Around the Bar*, since its first issue in 1985. He received the LSU Law Center's Distinguished Alumnus Award in 2015, the LSBA's President's Award in 2011, the Louisiana Bar Foundation's Distinguished Attorney Award in 2008 and the Baton Rouge Bar Association's President's Award in 1995, 1998 and 2014. He is a member of the American College of Trial Lawyers, the International Academy of Trial Lawyers and the LSU Law Center



**Edward J.
Walters, Jr.**

Board of Trustees.

Ed and his wife Norma have been married for 48 years and are the parents of two children.

12345 Perkins Rd., Bldg. One
Baton Rouge, LA 70810
(225)236-3636 • fax (225)236-3650
email: walters@lawbr.net
website: www.lawbr.net

**Valerie Turner
Schexnayder
Fifth Board District**

Valerie Turner Schexnayder is a solo practitioner and mediator in Baton Rouge. She received a BBA degree in 1986 from Loyola University and her JD degree, *cum laude*, in 1989 from Tulane University Law School. She was admitted to practice in Louisiana in 1989.

Valerie represents the 19th Judicial District in the Louisiana State Bar Association's (LSBA) House of Delegates. She also is a member of the Bar Governance Committee and served on the Continuing Legal Education Committee from 1999-2002. She is the recipient of the 1999 LSBA Young Lawyers Division's Michaelle Pitard Wynne Professionalism Award.

She is a member of the Baton Rouge Bar Association and the Defense Research Institute. In her community, she currently serves on the board of directors for the Junior League of Baton Rouge and has served as secretary-treasurer on the Capital Area Finance Authority's board of trustees since 2010.

Valerie and her husband Todd have been married for 29 years and are the parents of two children.

4831 Woodlake Dr.
Baton Rouge, LA 70817
(504)813-3633
email: vschex@cox.net



**Valerie Turner
Schexnayder**

**Charles D. Elliott
Sixth Board District**

Charles D. Elliott is a solo practitioner at Charles Elliott & Associates, L.L.C. He received a BS degree in science/math education in 1986 from Louisiana Tech University, an MS degree in com-

puter 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 former member of the Louisiana State Bar Association's (LSBA) House of Delegates, a member of the Board of Governors and a member of the 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, who will graduate from the College of Charleston soon.

*720 Murray St., Alexandria, LA 71301
(318)704-6511 • fax (318)704-6523
email: charles@elliott.legal
website: www.elliott.legal*

C.A. (Hap) Martin III Seventh Board District

C.A. (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



**C.A. (Hap)
Martin III**

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.

Hap is a former member of the Louisiana State Bar Association's (LSBA) House of Delegates. He serves on the Governing Council of the Insurance, Tort, Workers' Compensation and Admiralty Law Section and is a member of the 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 and has held several leadership positions in his denomination on the local, district and conference levels. He also has volunteered with the Louisiana Purchase Council of the Boy Scouts of America and with several youth sports organizations.

Hap and his wife, Diane Caraway Martin, have been married for 40 years and are the parents of two children.

*1101 Royal Ave., Monroe, LA 71201
P.O. Box 14140, Monroe, LA 71207-4140
(318)388-4700 • fax (318)388-4736
email: camiii@centurytel.net*

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



**Marjorie L. (Meg)
Frazier**

Washington University in St. Louis. She was admitted to practice in Ohio in 2004, in Arkansas in 2009 and in Louisiana in 2010.

She represents clients in the areas of labor and employment and civil litigation. She has experience in a wide range of labor and employment matters, including wage and hour, employment discrimination, wrongful discharge, whistleblower and other employment-related torts. She has represented employers and employees before various administrative agencies and state and federal courts. She regularly assists and advises clients on personnel matters, including the hiring, counseling, discipline and termination of employees, and on the development, application and enforcement of employment agreements, including non-competition, confidentiality and non-solicitation agreements, contractor agreements, employee handbooks, and employee policies and procedures. She also has substantial experience litigating and advising clients in state foreclosure matters.

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

Resources Management and the Henry V. Booth/Judge Henry A. Politz American Inn of Court.

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

*Ste. 2350, 333 Texas St.
Shreveport, LA 71101
(318)213-9205 • fax (318)424-5128
email: mfrazier@wwmlaw.com
website: www.wwmlaw.com*

Bradley J. Tate Chair, Young Lawyers Division

Bradley J. Tate is tax manager for the firm of Carr, Riggs & Ingram, L.L.C. 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 has served as chair-elect, secretary and 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 was a member of the *Louisiana Bar Journal's* Editorial Board and has served on the LSBA's Budget Committee.

He is a member of the American Bar Association (ABA) where he has served as chair of the ABA Young Lawyers Division's (YLD) Committee on Real Property, Estates and Trusts and the ABA YLD's Committee on Taxation.

*200 B Greenleaves Blvd.
Mandeville, LA 70448
(504)585-4433 • fax (504)837-0123
email: btate@cricpa.com*

Daniel A. Cavell At-Large Member

Daniel A. Cavell is a partner in the Thibodaux firm of Morvant & Cavell, A.P.L.C. He received a BA degree in 1977 from Nicholls State University and his JD degree in 1980 from Louisiana State Univer-

sity Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1980.

Danny served as the at-large member on the Louisiana State Bar Association's (LSBA) Board of Governors from 2011-14. He also has served in the House of Delegates, as a member of the Nominating Committee and Budget Committee, and chaired the LSBA's Mandatory Continuing Legal Education Committee.

He is a former president of the Lafourche Parish Bar Association and served on the LSU Alumni Board of Trustees. He was named 2005 Thibodaux Citizen of the Year and was named a Nicholls State University Outstanding Alumnus.

In his community, he is a member of the Rotary Club, a commissioner of the Thibodaux Regional Medical Center and finance chair of Christ the Redeemer Catholic Church Parish.

Danny and his wife, Belinda, have been married for 38 years. They are the parents of six children and have three grandchildren.

402 W. 4th St., Thibodaux, LA 70301
(985)449-7500 • fax (985)449-7520
email: dcavell@bellsouth.net



Daniel A. Cavell

Jermaine Guillory At-Large Member

Jermaine Guillory is section chief for the 19th Judicial District Attorney's Office. He received a BA degree in 2005 from McNeese State University and his JD degree in 2008 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2008.

Jermaine is president of the Louisiana Chapter of the National Black Prosecutors Association. He has participated in various community outreach activities with the district attorney's office including neighborhood canvass and cleanup. He was honored as Outstanding Prosecutor in 2014.

He and his wife Stephanie were mar-



Jermaine Guillory

ried in 2016.

222 St. Louis St., Baton Rouge, LA 70802
(225)389-8846 • fax (225)389-8947
email: jermaine.guillory@ebrda.org

Monique Y. Metoyer At-Large Member

Monique Y. Metoyer is an assistant district attorney and chief of Section 3 for the Caddo Parish District Attorney's Office in Shreveport. She received a BS degree in criminal justice in 1985 from St. Mary's Dominican College and her JD degree in 1988 from Southern University Law Center. She was admitted to practice in Louisiana in 1988.

Monique is a member of the Louisiana District Attorneys' Association, the Shreveport Bar Association and the Internet Crimes Against Children Task Force. She is a recipient of the Service to the Children Award presented by the Rapides Parish Advocacy Center and the Member of the Year Award presented by the Children's Advocacy Centers of Louisiana.

In her community, she is social media director and a board of trustees member for the St. James Memorial Catholic Church in Alexandria.

501 Texas St., 5th Flr.
Shreveport, LA 71101
(318)729-1880 • fax (318)841-5533
email: mmetoyer@caddoda.com



Monique Y. Metoyer

John M. Church Faculty, LSU Paul M. Hebert Law Center

John M. Church is a professor of law at Louisiana State University Paul M. Hebert Law Center. He received a BS degree in 1983 from Central Michigan University, an MS degree in economics in 1985 from the University of Illinois and his JD degree in 1988 from the University of Colorado. He was admitted to practice in Colorado in 1988.

John previously served as a member



John M. Church

of the Louisiana State Bar Association's Board of Governors. He is a member of the American Law and Economics Association, the American Association of Wine Economists and the American Intellectual Property Association.

In his community, he is a member of the Sacred Heart of Jesus Catholic Church. He and his wife Karen have been married for four years. He is the father of three children.

110 LSU Union Building
Baton Rouge, LA 70803-0106
(225)578-8701 • fax (225)578-5937
email: john.church@law.lsu.edu

Ronald J. Scalise, Jr. Faculty, Tulane University Law School

Ronald J. Scalise, Jr. is the A.D. Freeman Professor of Civil Law at Tulane University Law School where he served as vice dean from 2012-16.

He received a BA degree in 1997 from Tulane University, his JD degree in 2000 from Tulane Law School and an LLM in 2003 from Cambridge University (Trinity College). He was admitted to practice in Louisiana in 2000.

Ronald served on the LSBA's Board of Governors from 2013-15. He has served on the Louisiana Board of Legal Specialization since 2011 and the Louisiana Bar Exam Advisory Committee since 2008.

He was elected as an academic fellow of the American College of Trusts and Estate Counsel in 2014 and as an associate member of the International Academy of Comparative Law in 2013. He is a member of the American Society of Comparative Law, the American Bar Association and the Louisiana State Law Institute (council member, committee member and reporter). He received the *New Orleans City Business Leadership in Law Award* in 2015, the Chancellor's Distinguished Service Award from Louisiana State University Paul M. Hebert Law Center in 2009, the Hessel Yntema Prize for Outstanding Comparative Law Scholarship in 2008 and a Gates Fellowship in 2003.

Ronald is married to Sally Richardson



Ronald J. Scalise, Jr.

and is the father of a daughter.

6329 Freret St., New Orleans, LA 70118
(504)865-5958 • fax (504)862-8856
email: rscalise@tulane.edu
website: www.law.tulane.edu

L. Kent Breard, Jr.
Louisiana State
Law Institute

L. Kent Breard, Jr. is an attorney in the Monroe firm of Snellings, Breard, Sartor, Inabnett & Trascher, L.L.P. He received a BA degree in English in 1973 from Davidson College and his JD degree in 1976 from Louisiana State University Law School. He was admitted to practice in Louisiana in 1976.

Kent was a member of the Louisiana State Bar Association's Group Insurance Committee from 2005-16. He is a member of the Louisiana State Law Institute's Council and the Louisiana Bankers Association (Bank Counsel Committee) and is an agent for First American Title Insurance Co.

He is a member of Grace Episcopal Church. He and his wife, Charlotte Wilton Breard, have been married for 35 years and are the parents of three children.

1503 N. 19th St., Monroe, LA 71201
(318)387-8000 • fax (318)387-8200
email: kbreard@sbsitlaw.com
website: www.snellingslawfirm.com

Julie Baxter Payer
Chair, House
of Delegates
Liaison Committee

Julie Baxter Payer serves as executive counsel for the Louisiana Department of Veterans Affairs. She formerly served as deputy chief of staff for Louisiana Gov. John Bel Edwards, senior communications advisor for the Louisiana Legislative Auditor's Office, staff counsel for the Louisiana Senate, and, prior to that, worked in private practice in Baton Rouge. She earned her JD/BCL degree in 2005



**L. Kent
Breard, Jr.**



Julie Baxter Payer

from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2005.

For 14 years, Julie worked as a journalist in radio and television, receiving the Edward R. Murrow Award in 2001 for Investigative Reporting in Television.

She is a member of the Louisiana State Bar Association's (LSBA) House of Delegates, co-chairs the 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.

Julie 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 serves as board president for Rebuilding Together Baton Rouge, has previously served on the boards of The ARC Baton Rouge, the Baton Rouge Blues Foundation and the Capital City Rotary Club, and has volunteered as a mentor in public schools.

733 Wiltz Dr., Baton Rouge, LA 70806
(225)223-0332
email: julie.baxterpayer@la.gov

Sandra K. Cosby
Member, House
of Delegates
Liaison Committee

Sandra K. Cosby is an associate with Frederick A. Miller & Associates in Metairie. She received a BA degree in 1974 from Lincoln Memorial University and her JD degree, *magna cum laude*, in 1990 from Loyola University Law School. She was admitted to practice in Louisiana in 1990.

Sandra serves in the Louisiana State Bar Association's (LSBA) House of Delegates and is a former chair and current member of the Committee on the Profession. She is co-chair of the Loyola Law School Professionalism Orientation and a member of the Louisiana Bar Foundation.

She was case note and quantum editor



Sandra K. Cosby

of the *Loyola Law Review* from 1989-90 and was a Loyola Moot Court semi-finalist. She is a former president and member of the local advisory board of directors for the American Lung Association of Louisiana.

3850 N. Causeway Blvd.
1700 Lakeway II, Metairie, LA 70002
(504)452-7719 • fax (855)847-1379
email: sandra.k.cosby:gbcj@statefarm.com

Jeffrey A. Riggs
Member, House
of Delegates
Liaison Committee

Jeffrey A. Riggs is a partner in the Lafayette office of Lewis Brisbois Bisgaard & Smith, L.L.P. He received his BS degree in business/accounting in 1983

from Indiana University and his JD degree in 1986 from Indiana University Law School (associate editor, *Indiana Law Review*; National Order of Barristers, Dean Frandsen Award). He was admitted to practice in Louisiana in 1986 and in Texas in 2005.

Jeff is a member of the Louisiana State Bar Association's House of Delegates (15th Judicial District) and served on the House of Delegates Liaison Committee in 2007-08 and 2010-13. He currently serves on the Client Assistance Fund Committee and has served on various other committees.

He is a member of the Acadiana Society for Human Resource Management, the Duhe Inn of Court (master) and the Maritime Law Association of the United States (proctor). He served on the Lafayette Bar Association's board of directors from 2009-12 and has served on several of its committees. He was a member of the Central Louisiana Pro Bono Project board (1991-96), chairing the board in 1994-96. He received the Central Louisiana Chamber of Commerce Member of the Year Award in 2001.

Jeff and his wife, Colin Neblett Riggs (from Alexandria), have been married for 28 years. He is the father of four children.

Ste. 300, 100 E. Vermilion Blvd.
Lafayette, LA 70501-6939
(337)326-5777 • fax (337)504-3341
email: jeff.riggs@lewisbrisbois.com
website: www.lewisbrisbois.com



Jeffrey A. Riggs

PRACTICE Management

By Nisha Sandhu

PRO BONO SERVICES

For everyone to whom much has been given, from him much will be required.

—Luke 12:48 (New King James Version)

It's a quote we all know, and the depth of this quote applies to every lawyer with particular force. Lawyers are trained, professional problem solvers. Some aspect of everyday life is affected by the law — whether someone's constitutional rights have been violated, someone has been accused of wrongdoing, has a contract dispute or has been harmed through the actions of another. For lawyers, each workday is marked by at least some element that affects an individual's life. Much has been given to lawyers — in gifting, education and livelihood — and lawyers have the ability to help people. For many people, though, getting such help is beyond their resources.

Lawyers have a responsibility under Rule 6.1 of the Louisiana Rules of Professional Conduct to provide *pro bono publico* services to individuals who are unable to pay. The Latin term, “pro bono publico,” usually shortened to “pro bono,” means “for the public good.” Under the Rules, a lawyer's responsibility to provide pro bono services is aspirational. Specifically, this duty encourages a lawyer to voluntarily provide at least 50 hours of service per year without fee or the expectation of fees to individuals of limited means. A lawyer also should provide services by: 1) delivery of legal services at no fee or substantially reduced fees to individual organizations or groups whose mission is to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of such organizational purposes, where

“
For everyone to whom much has been given, from him much will be required.”
— Luke 12:48
(New King James Version)

the payment of standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate; 2) delivery of legal services at a substantially reduced fee to persons of limited means; or 3) participation in activities for improving the law, legal system or the legal profession.

In the criminal justice system, many firms have graciously provided assistance to defendants who would otherwise not have representation due to cuts in state and federal funding. As clearly established in the Rules, however, the bounds of pro bono service encompass civil rights, civil liberties and public rights. For those who are appointed to provide pro bono services, Rule 6.2 must be observed. It provides that a lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause. Good cause includes: a) representation of the client where the representation would likely result in violation of the Rules of Professional Conduct or other law; b) where representation of the client would likely result in an unreasonable financial

burden on the lawyer; or c) where the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Lawyers are expected to help the greater good. For many, that was at least partly the basis for entering the profession. Regardless of whether the impetus is grounded in ethical and moral principles, or simply to aid in the administration of justice, the virtue of providing pro bono legal services to individuals in need is simply good practice. We are privileged to have a profession where we can actually do *good* for society. Although the profession is stressful, the rewards of doing what we are trained to do for those who otherwise would have no means of professional help, simply put, can outweigh the concerns. The Rules encourage us to allocate a manageable hourly commitment per year. Thankfully, firms increasingly develop their own traditions of providing pro bono service to meet the needs of society-at-large. At the end of the day, we have the tools to fix wrongs and it would be poor stewardship not to use them. It is a basic principle of our profession that, to those whom much is given, much is expected. Our commitment to our fellow man works to make the world better — one issue at a time.

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



FOCUS ON Diversity

10TH YEAR: CONCLAVE ON DIVERSITY 3/24/17



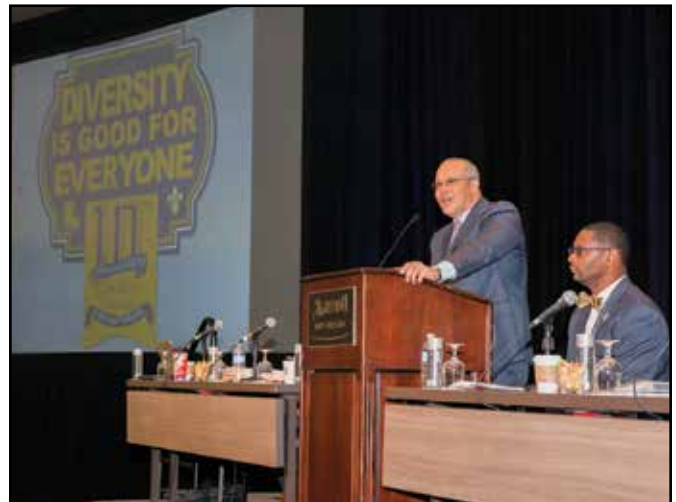
Photos by Christy Roux Photography.



Conclave Co-Chair Troy N. Bell (Courington, Kiefer & Sommers, L.L.C.) with, from left, Louisiana State Bar Association 2016-17 President Darrel J. Papillion (Walters, Papillion, Thomas, Cullens, L.L.C.), Chief Justice Bernette Joshua Johnson (Louisiana Supreme Court), keynote speaker Samuel Reeves (Wal-Mart Stores, Inc.), Conclave Co-Chair Hon. Quintillis K. Lawrence (19th JDC), and Conclave Co-Chair Scott J. Spivey (Scott J. Spivey, Esq., A.P.L.C.).



"Diversity and Equity in the Legal Practice" Best Practices breakout session panelists, from left, Kevin Woodson, Ph.D. (Drexel University Thomas R. Kline School of Law), Lori E. Andrus (Andrus Anderson, L.L.P.), moderator Luis A. Leitzelar (Jones Walker LLP), and Hon. Teri L. Jackson (Superior Court of San Francisco County).



Louisiana State Bar Association 2016-17 President Darrel J. Papillion (Walters, Papillion, Thomas, Cullens, L.L.C.) welcomed attendees. Seated, Conclave Co-Chair Hon. Quintillis K. Lawrence (19th JDC).



Conclave Co-Chair Hon. Quintillis K. Lawrence (19th JDC) with, from left, Louisiana State Bar Association 2016-17 President Darrel J. Papillion (Walters, Papillion, Thomas, Cullens, L.L.C.); workshop speaker Shawn Marsh, Ph.D. (University of Nevada, Reno), "Implicit Social Cognition and the Justice System: The Pros and Cons of Autopilot;" Conclave Co-Chair Troy N. Bell (Courington, Kiefer & Sommers, L.L.C.); and Conclave Co-Chair Scott J. Spivey (Scott J. Spivey Esq., A.P.L.C.).



“The Connect” In-House Corporate Breakfast “Pitch Perfect” session featured moderators, from left, Sandra Diggs-Miller (Entergy Services, Inc.) and Gary M. Carter, Jr. (Kelly Hart & Pitre); and panelists Daniel E. LaGrone (Pan-American Life Insurance Group), Max C. Marx (Turner Industries Group, L.L.C.), Cory J. Vidal (Fidelity Bank), Malka Herring (BP America, Inc.), and Debra Page Coleman (Macy’s, Inc.). The session was sponsored by Gold Sponsor Wal-Mart Stores, Inc. and Coffee Sponsor Association of Corporate Counsel.



Panelists for the Legal Pipeline session, “Leading the Charge: Inspiring Students and Committing to Sustained Engagement,” were, from left, Dean David D. Meyer (Tulane University Law School), Hon. Karen Wells Roby (U.S. District Court, Eastern District of Louisiana), Richard E. Meade (Prudential, Inc.), and Willie Hernandez (Hewlett Packard Enterprise).



Conclave keynote speaker Samuel Reeves (Wal-Mart Stores, Inc.) presented “The Power of Diversity.”



“The 360° Perspective of Immigration Law” breakout session panelists, from left, Elaine D. Kimbrell (Ware|Immigration) and Ashley Foret Dees (attorney at law).



Michelle A. Beaty (Blue Williams, L.L.P.), left, and Tara Nunez Smith (Wal-Mart Stores, Inc.), Gold Sponsor.



Panelists for the plenary session, “Navigating Implicit Bias in the 21st Century Economy,” were, from left, Professor Jonathan N. Kahn (Mitchell|Hamline School of Law), Eileen M. Letts (Zuber Lawler & Del Duca, L.L.P.), and moderator Antonio D. Robinson (Carter’s, Inc.).



Judge (Ret.) Max. N. Tobias, Jr. received the Committee on Diversity in the Legal Profession Award.

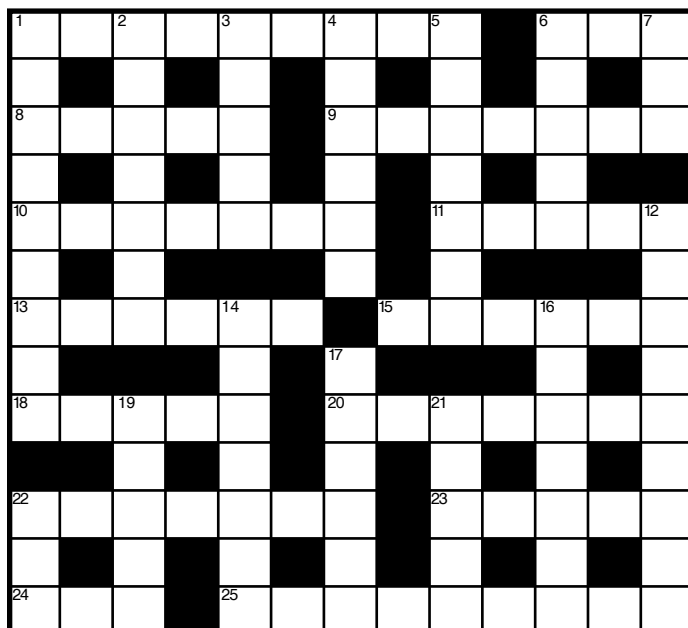


Kara K. McQueen-Borden (Jones Walker LLP), left, accepted the Platinum Plus Sponsor recognition award from Conclave Co-Chair Hon. Quintillis K. Lawrence (19th JDC). Not in photo, Platinum Plus sponsor LSBA Corporate and Business Law Section.

Crossword PUZZLE

By Hal Odom, Jr.

DO YOU HEAR THE NOISE?



ACROSS

- 1 A noisy disturbance (9)
- 6 Loud noise (3)
- 8 Sound of a large falling object (5)
- 9 Sound following lightning (7)
- 10 TV show, or computer routine (7)
- 11 Restaurant patron (5)
- 13 Skeptical acknowledgment (2, 4)
- 15 Bela ___, famous as Count Dracula (6)
- 18 Alternative to Google (5)
- 20 "Liberté, ___, fraternité!" (7)
- 22 Noise of stacking dishes (7)
- 23 La ___, Milanese opera palace (5)
- 24 Affirmative response (3)
- 25 Quality of radio or TV signal (9)

DOWN

- 1 Loud and confusing noise (9)
- 2 ___ Museum of Art, at Centenary College (7)
- 3 None of the above (5)
- 4 Narrow strips of land (6)
- 5 ___ riche (7)
- 6 Committed the deed (3, 2)
- 7 Neither partner (3)
- 12 Complain loudly and angrily (5, 4)
- 14 One that cocks at dawn (7)
- 16 Art of folding paper (7)
- 17 System of measure not used in the U.S. (6)
- 19 Listens to (5)
- 21 Source of the expression "sour grapes" (5)
- 22 Weep, or shout (3)

Answers on page 71.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334

1405 W. Causeway Approach, Mandeville, LA 70471-3045 • email lap@louisianalap.com

Alexandria	Steven Cook(318)448-0082	Lake Charles	Thomas M. Bergstedt.....(337)558-5032
Baton Rouge	Steven Adams.....(225)921-6690 (225)926-4333	Monroe	Robert A. Lee(318)387-3872, (318)388-4472
	David E. Cooley.....(225)753-3407	New Orleans	Deborah Faust(504)304-1500
	John A. Gutierrez.....(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
			Dian Tooley.....(504)861-5682 (504)831-1838
Lafayette	Alfred "Smitty" Landry(337)364-5408 (337)364-7626	Shreveport	Michelle AndrePont(318)347-8532
	Thomas E. Guilbeau(337)232-7240		Nancy Carol Snow.....(318)272-7547
	James Lambert(337)233-8695 (337)235-1825		William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
			Steve Thomas.....(318)872-6250

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, 2017.

Decisions

Francis C. Broussard, West Monroe, (2016-B-1441) **Disbarred, retroactive to his Feb. 26, 2014, interim suspension**, by order of the Louisiana Supreme Court on Jan. 25, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 8, 2017. *Gist*: Federal criminal conviction for making false, fictitious or fraudulent claim to the IRS in violation of 18 U.S.C. §§ 287 & 2.

Olita Magee Domingue, Lafayette, (2017-OB-0044) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Feb. 3, 2017. ORDER FINAL and EFFECTIVE on Feb. 3, 2017. *Gist*: Engaging in conduct prejudicial to the administration of justice; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; failure to safeguard the funds of clients; failure to properly terminate representation and return files and fees; failure to cooperate with ODC investigation; and violating or attempting to violate the Rules of Professional Conduct.

Frank J. Ferrara, Jr., Walker, (2017-OB-0069) **Reinstated to the practice of law, subject to a two-year period of supervised probation**, ordered by the Louisiana Supreme Court on Feb. 17, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 17, 2017.

Romualdo Gonzalez, New Orleans, (2017-B-0212) **Public reprimand (consent)** by order of the Louisiana Supreme Court on Feb. 24, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 24, 2017. *Gist*: Failure to hold property of a client separate from his own; failure to make reasonable

efforts to ensure that conduct of non-lawyer employee under his supervision was compatible with his professional obligations; and violating or attempting to violate the Rules of Professional Conduct.

J. Renee Martin, Baton Rouge, (2017-B-0220) **Interimly suspended** by order of the Louisiana Supreme Court on Feb. 15, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 15, 2017.

James D. Mecca, Covington, (2016-B-1116) **Suspended from the practice of law for a period of one year** by order of the Louisiana Supreme Court on Jan. 20, 2017. ORDER FINAL and EFFECTIVE on Feb. 3, 2017. *Gist*: Commission of a criminal act.

Everett H. Mechem, Tennessee, (2016-B-2115) **Interim suspension imposed by the Supreme Court of Tennessee made reciprocal in the state of Louisiana** by order of the Louisiana Supreme Court on Feb. 3, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 3, 2017.

Jeffrey L. Sanford, Baton Rouge,

(2016-B-2102) **Suspended, on consent, for a period of 30 days, fully deferred, subject to a one-year period of supervised probation**, by order of the Louisiana Supreme Court on March 31, 2017. JUDGMENT FINAL and EFFECTIVE on March 31, 2017. *Gist*: Suspended for disrupting a court proceeding by using vulgarities in the courtroom.

Cynthia Ann Sternberg, Mandeville, (2016-OB-1823) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Feb. 3, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 3, 2017.

Michael L. Theil, Hammond, (2017-B-0104) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on Feb. 9, 2017. ORDER FINAL and EFFECTIVE on Feb. 9, 2017.

Keith D. Thornton, Baton Rouge, (2017-OB-0291) **Reinstated to the practice of law, subject to a two-year**

Continued on page 38

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ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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

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

Respondent	Disposition	Date Filed	Docket No.
Joslyn Renee Alex	(Reciprocal) Suspension.	2/7/17	16-17828
Trisha Ann Ward	(Reciprocal) Interim suspension.	2/7/17	16-17826

Discipline continued from page 37

period of supervised probation, with conditions, by order of the Louisiana Supreme Court on March 31, 2017. JUDGMENT FINAL and EFFECTIVE on March 31, 2017.

Quenton White, Tennessee, (2016-B-2101) **Disbarment imposed by the Supreme Court of Tennessee made reciprocal in the state of Louisiana** by order of the Louisiana Supreme Court on Feb. 3, 2017. JUDGMENT FINAL and EFFECTIVE on Feb. 17, 2017.

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

No. of Violations

Violation of Rule 4.4 — When representing a client, a lawyer shall not “use methods of obtaining evidence that violate the legal rights of such a person.”..... 1

Violation of Rule 1.16(a)(3) — Requires a lawyer to withdraw from further representation of a client upon being discharged..... 1

Violation of Rule 8.2(b) — Failure to comply with the applicable provisions of the Code of Judicial Conduct as a lawyer who is a judicial candidate for judicial office 1

TOTAL INDIVIDUALS

ADMONISHED..... 3



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Leslie J. Schiff

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Disciplinary Defense Counsel
117 W. Landry Street
Opelousas, Louisiana 70570
Phone (337) 942-9771
Fax (337) 942-2821
leslie@sswethicslaw.com

Steven Scheckman

Former Special Counsel
Judiciary Commission ('94-'08)
650 Poydras Street, Suite 2760
New Orleans, Louisiana 70130
Phone (504) 309-7888
Fax (504) 518-4831
steve@sswethicslaw.com

Julie Brown White

Former Prosecutor,
Disciplinary Counsel ('98-'06)
11715 Bricksome Ave, Suite B-5
Baton Rouge, Louisiana 70816
Phone (225) 293-4774
Fax (225) 292-6579
julie@sswethicslaw.com

Damon S. Manning

Former Investigator, Prosecutor
Disciplinary Counsel ('98-'14)
201 NW Railroad Ave, Suite 302
Hammond, Louisiana 70401
Phone (985) 602-9201
Fax (985) 393-1130
damon@sswethicslaw.com



Arbitration of Fee Disputes

Carleton Loras & Hebert, L.L.C. v. Owens, (La. App. 1 Cir. 12/22/16), 2016 WL 7407402.

This case provides instruction for attorneys seeking to compel arbitration of fee disputes and malpractice claims.

Carleton Loras & Hebert, L.L.C. (CLH) and Owens Collision entered

into a fee agreement where the law firm would provide services to Owens for an hourly rate; Owens was to pay an initial advance deposit of \$5,000. CLH drafted a fee agreement that included an alternative-dispute-resolution clause. The clause stated that (1) Owens agreed to have any dispute decided by neutral binding arbitration, (2) Owens gave up its right to have a jury trial or access to the courts, (3) Owens gave up its right to discovery and appeal, and (4) Owens had notice that it could be compelled to arbitrate under the Louisiana Arbitration Law. Both parties initialed and signed the fee agreement.

In August 2015, CLH filed a petition to force arbitration and sought an order requiring Owens to arbitrate the fee dispute through the Louisiana State

Bar Association's (LSBA) Lawyer Fee Dispute Resolution Program. CLH also sought attorneys' fees under La. R.S. 9:4203(E). Owens argued that the dispute-resolution provision did not comply with the requirements set forth by the Louisiana Supreme Court in *Hodges v. Reasonover*, 12-0043 (La. 7/2/12), 103 So.3d 1069, 1077. CLH argued that *Hodges* was inapplicable as it dealt with a legal-malpractice claim, not a fee dispute between attorney and client.

The trial court denied CLH's petition. On appeal, CLH argued the trial court erred in its findings. The 1st Circuit noted that there was no rule against arbitration clauses in attorney-client retainer agreements but stated that, at a minimum, the attorney must disclose that binding

Mediation AND Arbitration OF COMPLEX DISPUTES



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arbitration waives the right to a jury trial, the right to appeal and the right to broad discovery under the Louisiana and federal codes and rules of civil procedure and that arbitration may involve substantial upfront costs as compared to litigation. The agreement also must explicitly disclose the nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims, and must state that the arbitration clause does not impinge on the client's right to make a disciplinary complaint to appropriate authorities and that the client has the opportunity to speak with independent counsel before signing the contract.

The 1st Circuit specifically noted that the fee-arbitration provision did not explicitly state what types of claims were subject to arbitration, and the language of the arbitration clause conflicted as the first sentence referred to arbitration by the LSBA's Lawyer Fee Dispute Resolution Program while the second sentence stated that the parties were agreeing to have any dispute decided by neutral binding arbitration. Additionally, the first sentence stated that any dispute or disagreement would be submitted to the LSBA's Lawyer Fee Dispute Resolution Program. The 1st Circuit concluded that a valid contract to arbitrate did not exist due to the conflicting language.

The 1st Circuit's opinion should be instructive as it specifically lays out the acceptable and non-acceptable language in any attorney-client agreement seeking to arbitrate or resolve fee disputes and other specific legal matters. The CLH case recognizes the strong leanings of the appellate court in favor of the clients regarding the wording of these agreements, which are drafted by law firms.

—**Charles N. Branton**
Member, LSBA Alternative
Dispute Resolution Section
Branton Law Firm, L.L.C.
Ste. 2, 202 Village Circle
Slidell, LA 70458



Chapter 11 and WARN Claimants

Czyzewski v. Jevic Holding Corp., 137 S.Ct. 973 (2017).

Jevic Transportation (debtor) filed a Chapter 11 petition. Former employees of the debtor filed a lawsuit against the debtor for violating the Worker Adjustment and Retraining Notification (WARN) Act. The WARN claimants obtained a judgment granting them a \$8.3 million priority wage claim under 11 U.S.C. § 507(a)(4).

In addition, the unsecured creditors committee (UCC) filed a lawsuit asserting a fraudulent conveyance action in connection with the leveraged buyout of the debtor. The UCC and the parties to that litigation ultimately settled. As part of the settlement, the parties agreed to a structured dismissal of the Chapter 11 proceeding whereby the WARN claimants would receive nothing for their claims and the general unsecured creditors would receive an agreed-upon payment for their claims and legal fees. The bankruptcy court approved the settlement over the WARN claimants' objection that the terms of the settlement violated the Bankruptcy Code's priority scheme. The bankruptcy court reasoned that, unlike a Chapter 11 plan, a structured dismissal need not follow the priority scheme. The district

court and 3rd Circuit affirmed.

On appeal, the Supreme Court first held that the WARN claimants had Article III standing. They rejected the argument that the WARN claimants would not suffer any injury because they could not receive any payment on their claims due to the debtor's insolvency and inability to reorganize. The Court found the injury could likely be redressed by an unwinding of the settlement judgment and potential for judgment or settlement in the fraudulent transfer case, which could have provided some type of distribution to the WARN claimants.

Next, the Supreme Court analyzed whether the bankruptcy court could authorize a "priority-skipping kind of distribution" in the specific context of a Chapter 11 dismissal, without the approval of the affected creditors. The Court noted that a Chapter 11 may produce three distinct consequences: (1) a confirmed plan; (2) a conversion of the case to a Chapter 7 liquidation; or (3) the dismissal of the case whereby the business is returned to its prepetition status quo. In scenarios where it is difficult or impossible to return to this status quo, the Bankruptcy Code allows a court to issue a structured dismissal, which alters a Chapter 11 dismissal's terms "for cause" to achieve the intended purposes.

The Supreme Court noted that Chapter 11 plans must follow the ordinary priority scheme in order to be valid pursuant to Congress' intent to affect an orderly, organized distribution of a debtor's assets. With this principle being so fundamental to the Bankruptcy Code's operation, the Court stated, "We would expect to see some affirmative indication of intent if Congress

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actually meant to make structured dismissals a backdoor means to achieve the exact kind of nonconsensual priority-violating final distributions that the Code prohibits in Chapter 7 liquidations and Chapter 11 plans.” *Id.* at 984. The Court went on to note that “cause” under 11 U.S.C. § 349(b) is insufficient to grant a court authority to violate the priority scheme. While there are instances where courts may grant interim distributions that violate priority rules, the Supreme Court stated these are largely cases where distributions are critical to a debtor’s successful reorganization and ultimately benefit all parties involved. The Court refused to uphold a “rare case” exception to the general priorities rule for fear that it would leave the issue too open-ended to contain and risk undermining the foundational principles of bankruptcy. Therefore, the Court held that there is no “rare case” exception to the priorities rule in approving structured dismissals, and such dismissals may not be approved over the objection of the affected parties. Justices Thomas and Alito dissented.

Wage Garnishments

Tower Credit, Inc. v. Schott (In re Jackson), 850 F.3d 816 (5 Cir. 2017).

In *Matter of Jackson*, Tower Credit obtained a judgment against Christon Jackson and began garnishing his wages pursuant to a 2012 judgment. Later that year, Jackson filed a Chapter 7 bankruptcy petition. The trustee initiated an adversary proceeding seeking to avoid the garnishments collected in the 90 days prior to the petition date as preferential transfers under 11 U.S.C. § 547(b). The bankruptcy court granted summary judgment in favor of the trustee, and the district court affirmed. On appeal to the 5th Circuit, Tower Credit argued that the garnished wages should be considered “transferred” as of the date of the garnishment order, before the 90-day period, and therefore the trustee should not be entitled to the payments.

The 5th Circuit pointed to § 547(e), which provides that a transfer is typically made at the time it is perfected, which for non-real property occurs “when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.” This rule is qualified by § 547(e)(3), which

provides that the transfer is not made until the debtor has acquired rights in the property.

It is this qualifying provision on which the 5th Circuit relied in affirming the lower courts’ decisions. While no creditor on a simple contract could have acquired a lien superior to Tower’s interest when Tower served the garnishment order, Jackson, the debtor, did not yet have a right to the property in question. The 5th Circuit, citing the Supreme Court, noted that a debtor’s earning power does not become property until the earnings have been brought into existence. Thus, the 5th Circuit held that the trustee would be permitted to recover garnishments made within the 90-day period as preferential transfers because the debtor would not be deemed to have had a right in the wages until they were earned.

—Cherie Dessauer Nobles

Member, LSBA Bankruptcy Law Section
and
Tiffany D. Snead
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Dan E. West
Member, Baton Rouge
(225) 382-3619
dwest@mcglinchey.com



Christine Lipsey
Member, Baton Rouge
(225) 382-3683
clipsey@mcglinchey.com



Vicki Elmer
Of Counsel, New Orleans
(504) 596-2872
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Piercing the Corporate Veil of a Limited Liability Company

Fausse Riviere, L.L.C. v. Snyder, 16-0633 (La. App. 1 Cir. 2/15/17), ____ So.3d ____, 2017 WL 639396.

In 2009, Fausse Riviere, L.L.C., leased 40 acres of land to John River Cartage, Inc., a corporation solely owned by John K. Snyder, Jr. At the end of the initial term, the parties agreed to extend the lease under the name of a different entity owned by Snyder, John River Aggregate of Louisiana (omitting “L.L.C.”), as lessee. During the extended term, Snyder filed personal bankruptcy and Fausse Riviere stopped receiving rental payments. By oral agreement, the parties changed the lessee to yet another entity owned by Snyder,

Synthetic Aggregates of Louisiana, L.L.C. Subsequently, Synthetic Aggregates stopped making rental payments and Fausse Riviere terminated the lease.

In 2014, Fausse Riviere filed a petition naming John River Cartage, Inc., John River Aggregate, L.L.C., Synthetic Aggregates of Louisiana, L.L.C., and Snyder as defendants, seeking back rent, the cost of restoring the property, attorneys’ fees and a writ of sequestration for the seizure of movables located on the leased premises. The trial court rendered judgment in favor of Fausse Riviere and against Synthetic Aggregates and Snyder for past due rent and against all defendants for the restoration of the property and attorneys’ fees. The court further decreed that the defendants had forfeited the movable property on the leased premises under the terms of the lease and, thus, became the property of the lessor. The defendants appealed, arguing that the court erred in (1) piercing the corporate veil and holding Snyder personally liable for the debts of the defendant entities, and (2) finding that the defendants had abandoned the seized movable property.

The appellate court affirmed the trial

court’s piercing the veil of the defendant entities, finding that they were not operated as separate businesses and there was significant comingling of assets among them. The court noted that “only exceptional circumstances warrant disregarding the concept of a corporation or LLC as a separate entity,” but that a court may pierce the veil of a corporation or an LLC under two circumstances—first, where the shareholders commit fraud or deceit on a third party through the corporation; and second, where shareholders fail to conduct business on a corporate footing, disregarding corporate formalities and operating the corporation as an “alter ego” of the shareholder. The facts that supported a finding that Snyder conducted the defendant entities as his alter ego include: (1) he commingled the debts and assets of the businesses, testifying that they all “ran together” and he “ran all of them;” (2) he operated the businesses with a lack of formality, failing to recognize the separate existence of entities owned by him; (3) he paid rent by personal check; and (4) when the lessee entity changed, the initial lessee did not transfer or lease its assets to the subsequent lessor. The court found that these facts presented a reasonable basis for the trial court’s finding that exceptional circumstances existed to pierce the corporate veils of the defendant entities and hold Snyder personally liable for the debts incurred by them.

The appellate court reversed the trial court’s ruling that the defendant lessees had abandoned their movable property under the forfeiture clause of the lease. The court recognized that the lease did contain a forfeiture clause, providing that the lessee forfeited any movable property left on the leased premises at the termination of the lease, but found no evidence that defendants abandoned the movable property. Rather, the property was seized under the writ of sequestration obtained by Fausse Riviere to secure payment of rent and other lease obligations. Thus, defendants were entitled to a credit equal to the value of the movable property seized.

—Julie S. Chauvin

Secretary, LSBA Corporate and Business Law Section
Liskow & Lewis, A.P.L.C.
822 Harding St.
Lafayette, LA 70503



Custody

Jaligam v. Pochampally, 16-0249 (La.App. 4 Cir. 12/7/16), 206 So.3d 298, *writ denied*, 17-0255 (La. 3/13/17), ____ So.3d ____, 2017 WL 1076474.

The trial court did not err, in two judgments, in changing the domiciliary status of the two children from Dr. Pochampally to Dr. Jaligam, and, further, in awarding Dr. Jaligam temporary sole custody and suspending Dr. Pochampally's communications with the children until she received professional therapy and written authority by the court to resume contact with the children.

After being allowed to relocate with the children to Jackson, Miss., Dr. Pochampally was found in contempt three times for interfering with and thwarting Dr. Jaligam's

access to the children and for explicit violations of specific court orders. Although the court changed the domiciliary parent in accordance with La. R.S. 9:346(H), which allows custody to be modified where there is a pattern of willful and intentional violations of custody decrees, the court also considered the La. Civ.C. art. 134 factors and *Bergeron*. The court of appeal noted that the trial court's initial judgment modifying the domiciliary status did not modify the prior joint custody ruling, but only the domiciliary status and the physical custody arrangement, and was thus warranted under La. R.S. 9:346(H).

Dr. Pochampally's husband also had participated in interfering with Dr. Jaligam's access to the children, including having the police go to his home on more than one occasion. They also encouraged the children not to cooperate with their father. The trial court did not err in not allowing the children to testify because Dr. Pochampally did not identify them as witnesses until two days before the trial and because the court found that the children had been alienated and that involving them further in the proceedings would

further traumatize them, particularly since they had already been adversely affected by the mother's inappropriate behavior.

In re Ben, 16-0453 (La.App. 5 Cir. 12/7/16), 206 So.3d 438.

After the mother's death, the trial court did not err in naming the maternal and paternal grandmothers as joint custodians, rather than the stepfather, who had previously been awarded interim custody. The court found that the grandmothers had been intimately involved with the children and that Sanchez did not really become involved until after the death of his wife, the boys' mother. The trial court also appropriately considered the children's preference. In response to Sanchez's argument that the court's judgment contradicted a judgment from a tutorship proceeding, which had appointed him the legal tutor for the children, the court of appeal found that that issue was not before it and had to be resolved in the lower courts. Because neither side prayed for physical custody, the trial court did not err in not awarding physical custodial time to the stepfather,

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but the court of appeal acknowledged that he could petition for access.

Prather v. McLaughlin, 16-0604 (La. App. 3 Cir. 11/2/16), 207 So.3d 581.

On McLaughlin's motion to modify a stipulated judgment of custody, the trial court found that although there had been no showing of a material change in circumstances, a modification to increase McLaughlin's custodial time was nevertheless in the child's best interest. The court of appeal affirmed, finding that she had shown a change of circumstances, despite the trial court's finding. The court of appeal stated that the real question was whether McLaughlin should be granted additional time with the child, even though it was "not essential to a decision in this case" whether there had been proof of a material change of circumstances. The court identified changes since the original judgment, when the child was only four months old, including the improvements in McLaughlin's health and ability to take care of the child, the child's increased age, and the overall change in her and the child's positions. It remanded for the court to consider McLaughlin's claim that she should be named domiciliary parent, since the court failed to address that issue.

Brown v. Chategnier, 16-0373 (La. App. 4 Cir. 12/14/16), 208 So.3d 410.

Brown failed to preserve her claim to the trial court's perceived bias when she failed to object contemporaneously in the trial court. In any event, the trial court's comments did not evidence bias. The custody evaluator's report was hearsay and was erroneously admitted as the evaluator did not testify, but that claim was also waived due to lack of a timely objection and could not be raised on appeal. The trial court did not err in naming Mr. Chategnier as the domiciliary parent, or in not ordering equal sharing of physical custody, which, in large measure, relied on the evaluator's report, but was also based on the parties' testimony, which showed their significant communication problems and the extreme conflict and non-cooperation between them. Shared custody was not feasible or in the child's best interest under these circumstances.

Property

In re Succession of Dysart, 50,927 (La. App. 2 Cir. 9/28/16), 206 So.3d 357.

In this succession contest between the decedent's mother and his wife, the court found that funds received by the wife as a result of a personal injury claim were her separate property, as was a mobile home/trailer purchased with funds from that suit, even though the decedent had received funds in the suit as well. The court employed the presumption that funds drawn from the account came from her separate funds. The court also found no manual donation of the trailer, as the wife had no intent to divest herself of ownership, even though an act of donation had been signed, albeit in improper form, and she had moved out of the trailer, prior to moving back in.

Licciardi v. Licciardi, 16-0289 (La. App. 5 Cir. 12/7/16), 207 So.3d 638, *writ denied*, 17-0015 (La. 2/10/17), 210 So.3d 797.

The trial court did not err in ordering that a community-property-partition equalizing payment owed by Ms. Licciardi to Mr. Licciardi of \$43,077.49 be paid in installments of \$416 per month for 120 months, and that that sum be offset against Mr. Licciardi's monthly child support payments by reducing them by \$416 per month. Even though part of the child support payments were offset, the payment plan nevertheless did not affect Ms. Licciardi's ability to maintain a stable home environment for the children and allowed for their continued support. The court did provide that, if the child support sums were subsequently amended, the offset could be readressed.

The trial court did not err by setting a fixed interest rate, rather than tying the equalization payment to the legal interest rate. Further, although she testified that he had received \$20,000 in an inheritance, and that it had been spent during the marriage, the court of appeal affirmed the trial court's denial of a reimbursement claim to him for failure to provide sufficient proof, finding that her acknowledgment of the gift and expenditure was insufficient to allow the reimbursement claim because he failed to show compelling proof that the funds were available and how and when they were spent.

Belt v. Belt, 16-0136 (La. App. 3 Cir. 9/28/16), 209 So.3d 974, *writ denied*, 16-2247 (La. 2/3/17), ____ So.3d ____, 2017 WL 527679.

Upon his retirement, Mr. Belt elected a payment option that reduced the immediate benefits during his lifetime in order to provide a survivor benefit to Ms. Belt after his death. Upon their later divorce, and the community-property partition, he argued that he should be granted an offset from her share of the benefits in the amount of the reduction in the present monthly benefits to accommodate the survivor benefits after his death. The court rejected his arguments, finding that the cost of the survivor benefit was not a liability, that the election he made during the marriage could not be changed, that he was entitled to no reimbursement for that cost, and that she did not agree to relinquish her right to the survivor benefit.

Paternity

Succession of Younger, 50,876 (La. App. 2 Cir. 9/28/16), 206 So.3d 1088, *writ denied*, 16-2202 (La. 1/25/17), ____ So.3d ____, 2017 WL 462551.

The decedent's alleged daughter's claim of paternity would have been prescribed under prior La. Civ.C. art. 209 as she did not file a claim for filiation prior to her 19th birthday. That statute was replaced by La. Civ.C. art. 197, which allowed, for succession purposes, a prescriptive period of one year to institute an action to prove paternity from the death of the alleged father. Her claim was thus timely, as it was filed within one year of his death. The court of appeal rejected the argument of the decedent's acknowledged children that her claim had prescribed on her 19th birthday and could not be resurrected, finding that the Legislature in enacting article 197 must have intended, as a public policy matter, to allow filiation suits to be brought one year from the death of the decedent when the claim was filed in the context of a succession, even though such claim may have been perempted under the prior article.

—David M. Prados

Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, L.L.P.

Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735



Arbitration Ruling Refusing Pay-if-Paid Clause Defense Affirmed

Favalora Constrs., Inc. v. Grillo Elec. Co., 16-0550 (La. App. 4 Cir. 11/30/16), 204 So.3d 1064.

Favalora Constructors, Inc. contracted with Grillo Electric Co. for the performance of electrical work. Upon conclusion of the construction work, Favalora submitted final invoices of all services, including those of its subcontractors, to the property owner. Because the cost of the finished project exceeded the original estimate by \$230,000, the property owner disputed the amount over the original estimate, and the matter went to arbitration. The arbitra-

tor found that Favalora failed to submit timely "control estimates" as required by the prime construction contract between the parties and, accordingly, Favalora did not receive the \$230,000 claimed in excess of the construction contract estimate. In turn, because Favalora did not receive the disputed \$230,000, Favalora did not pay Grillo in full. Grillo then filed for arbitration of the disputed amount (\$16,484.88) and, after a hearing, the arbitrator awarded Grillo the sum of \$16,484.88. Favalora then filed a petition for vacatur in the district court. After a hearing on the petition, the district court found in favor of Grillo, denied Favalora's petition for vacatur, and confirmed the arbitration award. Favalora appealed.

On appeal, Favalora contended that the district court manifestly disregarded the law because the subcontract between Grillo and Favalora contained a "pay-if-paid" clause. Favalora averred that the district court erred in failing to apply the judicially created doctrine that an arbitration award may be overturned when the arbitrator commits an error "which is obvious and capable of being readily and instantly perceived

by an average person qualified to serve as an arbitrator," thereby implying that "the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore it." *Id.* at 1066.

In affirming the district court's ruling, the 4th Circuit looked to the findings of the arbitrator. The arbitrator noted that the subcontract between Favalora and Grillo contained typical language setting forth the incorporation of the terms of the prime contract and various contract documents. However, the arbitrator found that the requirement in the prime contract that Favalora submit control estimates could only be applicable to the general contractor—Favalora—and not the subcontractors. The arbitrator held that the language incorporating in each subcontract all contract documents is read to include only such provisions of the prime contract that are applicable to all subcontractors and such provisions that are applicable only to each subcontractor's trade or specialty. Thus the arbitrator found that an electrical subcontractor could not be bound to assume the risk of payment for failure of the prime contractor to submit control estimates. Further, the

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arbitrator found the pay-if-paid provision, in the context of this case, was a harsh and unconscionable defense where Favallora's breach of the contract is imputed to Gril-lot, which had fully performed its scope of work. Based upon its *de novo* review of the record, the 4th Circuit held that Favallora did not meet its burden of establishing that the arbitrator made an obvious legal error or ignored a governing legal principle.

—Kaile L. Mercuri

Member, LSBA Fidelity, Surety and
Construction Law Section
Simon, Peragine, Smith
& Redfeam, L.L.P.
1100 Poydras St., 30th Flr.
New Orleans, LA 70163



Tort: Jambalaya, Crawfish Pie, Summary Judgment

In re Louisiana Crawfish Producers,
852 F.3d 456 (5 Cir. 2017).

Louisiana Crawfish Producers Association-West and some 80-plus crawfishermen filed suit against several oil and gas companies whose dredging activities allegedly damaged their fisheries. The district court granted summary judgment in favor of, *inter alia*, Southern Natural Gas Co., finding that plaintiffs did not create a genuine issue of material fact as to whether its activities constituted "dredging" so as to support maritime tort claims. Prior to the court's deliberation, the parties agreed on a case-management order that required plaintiffs to file "any dispositive motions or supplemental oppositions necessitated by factual information learned during the deposition" within 30 days from receipt of the transcript of the Southern Natural Gas Co. deposition.

Southern Natural filed a motion for summary judgment and dismissal. While the motion was pending, Southern Natural's corporate representative was deposed on Sept. 22, 2015, his earliest available date. He testified that Southern Natural engaged in dredging in connection with the subject fishing ground's spoil banks. Plaintiffs also forwarded requests for admissions ahead of the agreed-upon discovery cutoff date. In its response, Southern Natural admitted to using dredge vessels in the construction of the canal.

On Nov. 12, 2015, while plaintiffs were still awaiting the official deposition tran-

script, the district court granted summary judgment in favor of Southern Natural, finding that plaintiffs did not provide evidence that created a genuine issue of material fact as to whether Southern Natural had engaged in dredging activities. Plaintiffs moved for reconsideration under Federal Rule of Civil Procedure 59(e), arguing that the ruling was procedurally erroneous because they did not have an opportunity to supplement their opposition under the terms of the case-management order with new evidence obtained at Southern Natural's deposition and in its response to requests for admissions. The district court denied plaintiffs' motion for reconsideration, and plaintiffs appealed the court's original order granting summary judgment as well as its order denying reconsideration.

The 5th Circuit reviewed the district court's denial of plaintiffs' Rule 59(e) motion for abuse of discretion, finding that the trial court declined to reconsider its grant of summary judgment in favor of Southern Natural despite plaintiffs' providing three types of new evidence — (1) Southern Natural's deposition transcript; (2) documentary evidence offered during Southern Natural's deposition; and (3) Southern Natural's responses to requests for admission.

The court stated that the district court should have considered several factors



Ronald E. Corkern, Jr.



Brian E. Crawford



Steven D. Crews



Judge Eric R.
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Joseph Payne Williams



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when determining whether to grant plaintiffs' motion for reconsideration in light of plaintiffs' new evidence. The court gave the following "simply illustrative and not exhaustive" list of factors — (1) the probative value of the evidence; (2) plaintiffs' reason for default; (3) whether the evidence was available to plaintiffs at the time of the summary judgment motion; and (4) the potential prejudice to Southern Natural.

Southern Natural's deposition transcript and responses to requests for admissions were clearly probative. Plaintiffs, relying on the terms of the case-management order, had no reason to believe the district court would grant the defendant's motion while they were still awaiting Southern Natural's official deposition transcript. While plaintiffs had much relevant documentary evidence in their possession before Southern Natural moved for summary judgment, the admission made by Southern Natural at deposition that the company dredged the canal was information learned by plaintiffs, carrying considerably more weight than inferences drawn from documentary evidence. The court noted, "Indeed, an admission by a party 'is conclusively established' as fact in the case."

In reversing and remanding, the court concluded:

There are "two important judicial imperatives" relating to a motion for reconsideration: "(1) the need to bring litigation to an end; and (2) the need to render just decisions on the basis of *all* the facts." . . . The district court's failure to reconsider its grant of summary judgment as to Southern Natural in light of this new evidence amounted to an abuse of discretion.

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



United States

Presidential Executive Orders 13785 (82 Fed. Reg. 16719) and 13786 (82 Fed. Reg. 16721).

President Trump issued two Executive Orders (EO) on March 31 that could set the stage for significant action on international commerce.

EO 13785 calls for enhanced collection and enforcement of anti-dumping and countervailing duties. The United States is purportedly owed \$2.3 billion in uncollected anti-dumping and countervailing duties. The EO requires the Department of Homeland Security to conduct a risk assessment and develop a plan within 90 days to identify importers posing a risk of non-payment and recommend additional security measures to ensure payment. One of the suggested measures is additional bonding. The United States previously imposed enhanced bonding requirements and lost a dispute at the World Trade Organization regarding the imposition of enhanced bonding requirements on imported shrimp. *See, U.S. Measures Related to Shrimp from Thailand*, WT/DS343/AB/R (16 July 2008) and *U.S.-Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS345/AB/R (16 July 2008).

EO 13786 requires an "omnibus report on significant trade deficits." The EO notes that the U.S. annual trade deficit in goods exceeds \$700 billion and looks to address the "challenges to economic growth and employment that may arise from large and chronic trade deficits and the unfair and discriminatory trade practices of some of our trading partners." The Secretary of Commerce and the United States Trade Representative (USTR) are required to issue the omnibus report within

90 days that identifies each trading partner where the United States runs a significant trade deficit, and for each identified partner, identify any import practices impairing the national security and assess (1) the major causes of the trade deficit; (2) whether the trading partner is imposing unequal burdens on, or unfair discrimination against, U.S. commerce; and (3) the effects of the trade relationship on the production capacity of the United States and wage-and-employment growth. In accordance with the EO, Commerce and the USTR issued a request for public comments regarding the order. *See*, 82 Fed. Reg. 1810 (April 17, 2017). The Federal Register notice specifically identifies 13 trading partners with which the United States had a significant goods-trade deficit in 2016, including the European Union, China, Canada, Mexico, India, Thailand and Japan. This entire process could be an effort to build a record supporting Presidential unilateral action under Section 122 of the Trade Act of 1974, which authorizes the President to deal with "large and serious United States balance-of-payments deficits" through the use of temporary import tariffs of up to 15 percent ad valorem. Any such duties are subject to a 150-day time limit, unless extended by Congressional action.

United States and World Trade Organization

A very significant issue percolating under the radar that could impact not only the United States' economic but also political relations with China involves its status as a Non-Market Economy (NME) under U.S. laws. China has notified the World Trade Organization (WTO) by written request for consultations with the United States and the European Union (EU) regarding the continuing propriety of using an NME methodology with respect to China in anti-dumping and countervailing duty investigations. China's position is based on the Dec. 11, 2016, expiration of Paragraph 15(a)(ii) of its Protocol of

Accession to the WTO. China believes that this provision's expiration now prevents WTO members from treating it as an NME for purposes of determining dumping margins. This unprecedented move could potentially conflict with U.S. domestic law that provides six factors for determining whether a country qualifies as a market economy for purposes of U.S. anti-dumping and countervailing duty investigations. Nearly all commentators believe that China fails the U.S. domestic test as its home market prices and costs are not set by market forces. As such, and without further direction from the WTO or U.S. agencies, the United States will continue to use surrogate values from third countries when determining Chinese margins.

China decided not to bring a WTO dispute-settlement challenge on this issue against the United States, instead selecting the EU as its initial target. China launched its dispute against the EU on March 9, 2017. In *European Union-Measures Related to Price Comparison Methodologies*, WT/DS516/9, China identifies provisions in

EU dumping law that purportedly violate its rights as set forth in the now-expired paragraph 15(a)(ii) of its Protocol of Accession. The United States has indicated that it will participate in this dispute as a third-party participant.

The United States also is not sitting idly by back home and has taken action to preemptively address the China NME issue. As part of a recently filed anti-dumping case against certain aluminum foil from China, the Department of Commerce has issued public notice of its intent to inquire into the status of China as an NME under U.S. AD/CVD laws. *See*, 82 Fed. Reg. 16162 (April 3, 2017). The Department is seeking public comment regarding the six aforementioned factors that U.S. law uses to make a market/non-market economy determination.

—**Edward T. Hayes**
Chair, LSBA International
Law Section
Leake & Andersson, L.L.P.
Ste. 1700, 1100 Poydras St.
New Orleans, LA 70163



Prevent the Mess of Emotional Distress Under the FLSA

On Dec. 19, 2016, the 5th Circuit Court of Appeals set new standards concerning potential recovery under the Fair Labor Standards Act (FLSA). In a ruling on matters of first impression for the circuit, the court's holding in *Pineda v. JTCH Apartments, L.L.C.*, 843 F.3d 1062 (5 Cir. 2016), will allow retaliation victims suing under the FLSA to recover emotional-distress damages.

How might this holding affect employers and employees? How are other circuits ruling? This article provides a summary of the practical implications of the decision.

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FLSA Plaintiffs May Now Seek Emotional Damages in the 5th Circuit

Pineda may mean employers could now pay greater penalties in the face of retaliation claims. Santiago Pineda was an employee of JTCH Apartments, L.L.C., performing maintenance work in and around the apartment complex. Pineda and his wife, Maria Pena, were allowed to live in the complex at a discounted rate as part of Pineda's compensation. After Pineda filed suit against JTCH and its owner/manager under the FLSA regarding overtime pay, the couple was served with a notice to vacate their apartment for nonpayment of rent. The notice claimed unpaid rent equal to the amount of the rent discount over the course of Pineda's employment. In response, Pineda amended his complaint to include a retaliation claim. Pena also joined the suit.

While the district court denied recovery for plaintiffs' claimed emotional distress damages, the 5th Circuit viewed the issue in a different light. The 5th Circuit's *de novo* review found that the 1977 amendment to the FLSA contemplated recovery not just for wages and liquidated damages, but also for "such legal or equitable relief as may be appropriate." *Id.* at 1064, citing 29 U.S.C. § 216(b). The 5th Circuit found this language contemplated emotional distress damages, relying on precedent in other circuits holding the same.

For example, the 7th Circuit found the amended language encompassed emotional distress damages for intentional torts, like retaliatory discharge. *See, Travis v. Gary Cmty. Mental Health Ctr.*, 921 F.2d 108, 112 (7 Cir. 1990). The *Pineda* court relied on *Travis*, reasoning that whereas a failure to pay minimum wage or appropriate overtime under the FLSA may be a mistake by an employer, retaliation by its very nature is *intentional*, and thus warrants additional damages. *Id.*

The 6th Circuit also has looked to *Travis*, expressly holding that the 1977 FLSA amendment did away with the old limitations on recovery, without establishing new ones. *Moore v. Freeman*, 355 F.3d 558, 563 (6 Cir. 2004). The amendment was targeted to allow any legal or equitable relief appropriate to further the purpose of 29 U.S.C. § 215(a)(3), which is to ensure that employees feel free to report grievances under the FLSA. *Id.* The 1st, 8th and 9th Circuits also have allowed damages for

emotional distress to stand without directly addressing the issue on appeal. *See, Travers v. Flight Servs. & Sys., Inc.*, 808 F.3d 525, 539-42 (1 Cir. 2015) (affirming a \$50,000 award for emotional distress); *see also, Broadus v. O.K. Indus., Inc.*, 238 F.3d 990, 992 (8 Cir. 2001); *Lambert v. Ackerley*, 180 F.3d 997, 1011 (9 Cir.1999) (finding an emotional distress damages award of \$75,000 to each plaintiff employee on a successful FLSA retaliation claim was not excessive).

In *Pineda*, the 5th Circuit offered some guidance as to what specific factual circumstances may justify a jury instruction on emotional damages. The court found sufficient facts were established in the trial court to allow such an instruction, where Pineda had testified to experiencing marital discord, sleepless nights and anxiety about where his family would live if they were expelled from JTCH Apartments. *Pineda*, 843 F.3d at 1066 (citing *Salinas v. O'Neill*, 286 F.3d 827, 832 (5 Cir. 2002) ("Damages for emotional distress may be appropriate, however, where the plaintiff suffers sleeplessness, anxiety, stress, marital problems, and humiliation."))

The Take-Away: The *Pineda* holding may leave employers liable for additional damages for an employee's retaliation claim brought pursuant to the FLSA. Unlike claims for back pay of wages, which are capped by formulas contained within the statutory framework of the FLSA, or damages that are capped under other statutes, such as Title VII of the Civil Rights Act, retaliation claims could present relatively boundless recovery to FLSA plaintiffs. Most essentially, this means the cost of settlement may rise, as employers must consider the broader scope of potential liability.

Even so, the factual scenario in *Pineda* is unique; it is not every circumstance in which an employer can retaliate by evicting an employee from his residence. In that sense, the *Pineda* holding arose from the "perfect factual storm," offering a relatively extreme example of retaliation to allow for an award of emotional distress damages. Yet, all employers must remain vigilant in the face of this precedent. Even a frivolous claim can lead to real problems for employers who do not react with care in the face of a lawsuit. To limit exposure, employers must avoid transferring an employee who has filed suit to an

unfavorable position or demoting that employee.

Claimants for Retaliation Under the FLSA Are Restricted

Although settlement costs for employers may be on the rise in light of *Pineda*, the 5th Circuit did restrict recovery for retaliation claims in one aspect. The court found Pineda's wife, Ms. Pena, could not also recover emotional distress or other damages by way of a retaliation claim because she herself was not a JTCH employee. Because the FLSA explicitly uses the word "employee," a non-employee spouse is not within the zone of interest protected by the statute. *Pineda*, 843 F.3d at 1067 (citing 29 U.S.C. § 215(a)(3)).

The Take-Away: *Pineda* shrinks the zone of potential plaintiffs for FLSA retaliation claims, indicating that only *employees* may file suit successfully.

—Ashley E. Arnold

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Coastal Land Loss Litigation

Board of Comm'rs of Southeast La. Flood Prot. Auth.-East v. Tenn. Gas Pipeline Co., 850 F.3d 714 (5 Cir. 2017).

In July 2013, the Southeast Louisiana Flood Protection Authority (SLFPA) filed suit in state court against 97 defendants from the oil and gas industry, alleging that the defendants were responsible for coastal land loss off southern Louisiana. SLFPA asserted that such land loss would increase the risk that future storms would cause flooding and that, in response to the increased risk, SLFPA would

spend more money on preventative measures. SLFPA's factual theory was that canals drilled by the defendants in coastal areas — canals that the defendants drilled in order to facilitate access to drilling sites — have caused coastal land loss. SLFPA's legal theories were based on several causes of action, including negligence, strict liability, the natural servitude of drainage, public nuisance, private nuisance and breach of contract.

The defendants removed the case to the U.S. District Court for the Eastern District of Louisiana based on federal question jurisdiction. After denying SLFPA's motion to remand, Judge Nannette Jolivet Brown granted the defendants' Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. SLFPA appealed.

The U.S. 5th Circuit affirmed the district court's denial of the motion to remand. The 5th Circuit reasoned that, although SLFPA asserted only state-law causes of action, federal question jurisdiction existed because deciding

SLFPA's claims would require resolution of substantial, disputed federal issues, and because the exercise of federal jurisdiction would not disturb the balance of federal and state judicial responsibilities.

The 5th Circuit also affirmed the district court's dismissal of SLFPA's claims. The court concluded that neither federal law nor state law creates a duty that required the defendants to protect SLFPA from increased flood protection costs that might arise from coastal land loss. The absence of such a duty required dismissal of SLFPA's negligence and strict liability claims. Further, the district court properly dismissed the claim for breach of the natural servitude of drainage because SLFPA had not alleged any facts showing either that the defendants' properties constituted dominant estates or that any lands that SLFPA oversees constitute "[a]n estate situated below" a location where the defendants had altered the flow of water.

For similar reasons, the district court's dismissal of SLFPA's nuisance claims was proper. Louisiana nuisance law provides a remedy for circumstances when the "proprietor" of an estate engages in activities on his estate that either "deprive a neighbor of the liberty of enjoying his own estate" or cause damage to the neighbor's estate. But SLFPA had not alleged any facts showing that it was a "neighbor" to any of the defendants. The 5th Circuit stated that a party's estate need not be contiguous to a defendant's estate in order to be a "neighbor," but that "some degree of propinquity" is necessary. SLFPA, however, did not plead facts showing any degree of propinquity.

The 5th Circuit did not expressly address the merits of SLFPA's breach of contract claims, but it affirmed the dismissal of the contract claims as well. SLFPA argued that (1) the defendants had breached permit conditions, (2) the permits were analogous to contracts and (3) SLFPA was a third-party beneficiary. The district court had disagreed, rejecting SLFPA's third-party beneficiary theory.

Production Payments Dispute

Hackett v. Murphy Exploration & Prod. Co. USA, 16-0707 (La. App. 3 Cir. 3/15/17), 2017 WL 1002926.

Ownership of a disputed strip of land

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turned on an ambiguous 1921 deed. In 2012, the plaintiffs brought suit, asserting ownership of the strip, which was located within a production unit operated by Murphy Exploration. The plaintiffs also sought several years' worth of production payments from Murphy, which had been making payments to certain other persons who claimed ownership of the strip. After trial, the district court determined that the plaintiffs owned the strip and that they were entitled to the sum of each of the production payments that had accrued since 2002, along with interest on that sum, running from 2002 until paid.

On appeal, the 3rd Circuit affirmed most of the lower court's judgment. It affirmed the ruling that the plaintiffs owned the strip. It concluded that the plaintiffs' failure to join the rival claimants to ownership of the strip was improper, but that the failure had been mooted by Murphy's joinder of those individuals. It stated that an unleased owner's claim for production payments is subject to a 10-year prescriptive period, and it affirmed the portion of the judgment holding that the plaintiffs' claims for pre-2002 production payments had prescribed. It rejected an argument that the running of prescription had been suspended because of Murphy's erroneous assertion that the plaintiffs did not own the strip. It reasoned that prescription would almost never run if such a good faith (though erroneous) assertion would be sufficient to suspend prescription.

The 3rd Circuit held, however, that the district court erred by awarding interest starting from 2002 on the sum of all production payments that accrued from 2002 through 2012. Instead, interest would accrue on each payment owed from the time that it became due.

—**Keith B. Hall**

Member, LSBA Mineral Law Section
Director, Mineral Law Institute
Campanile Charities Professor of Energy Law
LSU Law Center, Rm. 428
1 E. Campus Dr.
Baton Rouge, LA 70803-1000
and

Colleen C. Jarrott

Member, LSBA Mineral Law Section
Baker, Donelson, Bearman,
Caldwell & Berkowitz, P.C.
Ste. 3600, 201 St. Charles Ave.
New Orleans, LA 70170-3600



Pleading Requirements of a Request for Panel Review

Coulon v. Endurance Risk Partners, Inc.,
16-1146 (La. 3/15/17), ____ So.3d ____,
2017 WL 1034626.

Mr. Coulon developed a post-operative infection, following surgery by Dr. Juneau. The patient and his wife file a *pro se* panel request against the surgeon and the Surgery Center, alleging, with respect to the Surgery Center:

[The Surgery Center] failed to develop, maintain, and enforce proper policies and procedures to prevent surgical infections. [The Surgery Center is] responsible under the theory of *respondeat superior* for the actions of its employees acting within the course and scope of their employment.

The Coulons filed a "Submission of Evidence," attaching to it medical records, their affidavits and photographs of the patient.

The medical-review panel found no breach of any standard of care by any respondent as charged in the complaint and no evidence to indicate that the Surgery Center failed to maintain proper procedures to prevent surgical infections, and it added that the Surgery Center's personnel properly monitored the patient and performed all duties in an appropriate and timely fashion.

The Coulons then filed a lawsuit against the Surgery Center, alleging the failure of the Center to do what was necessary to prevent and/or treat infections, including ensuring a sterile surgical environment. Additionally, they alleged failure to supervise and train the nurses who treated Mr. Coulon.

The Surgery Center followed with a

partial exception of prematurity, contending that the allegations concerning training and supervising were "premature," as the plaintiffs did not allege these claims in their panel request. The plaintiffs countered that the language in their panel request was broad enough to encompass the claims in their lawsuit.

The trial court sustained the Surgery Center's exception of prematurity and dismissed the plaintiffs' petition in part, commenting (as noted in the hearing's transcript) that while the language in the lawsuit need not be identical to that in a request for panel review, "the plaintiffs cannot bring 'entirely new theories of liability.'" The court of appeal then denied plaintiffs' writ for supervisory review because:

1. The plaintiffs made a general allegation that the Center was responsible under the theory of *respondeat superior* for its employees but did not specify which employees.

2. In their submission of evidence, they alleged only that Dr. Juneau was negligent "in various way while employed" by the Center.

3. Their submission of evidence did not brief any argument regarding the Center's alleged failure to train or supervise its nurses.

4. The panel found nothing in the evidence presented to it to indicate any negligence.

5. The panel did not specifically address any allegation against the Center concerning any alleged failure to train or supervise personnel.

These points convinced the appellate court that the plaintiffs failed to present sufficient information to determine whether the Center "was entitled to protection under the Medical Malpractice Act."

The Supreme Court granted the plaintiffs' writ application. It noted that defendant healthcare providers often use exceptions of prematurity when there are questions as to whether claims against them fall "within the definition of medical malpractice" and are thus required first to be submitted to a medical-review panel. In the case at bar, the parties did not dispute that the failure to train or su-

pervise nurses sounded in malpractice as defined by La. R.S. 40:1231.1(A)(13). The Surgery Center argued, however, that the claims concerning supervising and training were “new and separate claims from those raised in the complaint” that were not first presented to the panel and therefore should be dismissed.

The court observed that R.S. 40:1231.8(A)(1)(b) sets forth the seven minimum requirements to establish a statutorily acceptable request for panel review, the first five of which pertain to initiating the panel process by identifying the parties and the dates of the alleged malpractice and the seventh requiring a brief description of the alleged injuries. The Surgery Center contended that the plaintiffs had not satisfied the sixth subpart, *i.e.*, they did not provide in their complaint “a brief description of the alleged malpractice as to each named health care provider.” The plaintiffs countered that their panel request alleged a failure to prevent the infection, which “*was*” the malpractice, and it encompassed all causes of action listed in their lawsuit.

The court referenced *Perritt v. Dona*, 02-2601 (La. 7/2/03), 849 So.2d 56, a case it decided prior to the amendment of the MMA, which now requires a brief description of the alleged malpractice as to each named defendant. The court explained that a panel claim is not a fact pleading that required the same specificity as a petition in a lawsuit:

Rather, “the claim need only present sufficient information for the panel to make a determination as to whether the defendant is entitled to the protection of the Act.” *Id.* at 65. We see nothing in the amendment to La. R.S. 40:1231.8(A)(1)(b) that makes the pleading requirement any more onerous. It is still the duty of the medical review panel to specify the health care provider’s standard of care and determine thereafter if such standard was breached. *Perritt*, 849 So. 2d at 65 The requirement of a “*brief*” description of the alleged malpractice” supports this conclusion and is in line with the history of the LMAA, which favors a layman plaintiff’s access to medical expertise as a “filtering” or “pre-screening” process against “frivolous” and “worthless” claims. . . . Thus, the pertinent question is whether the claims raised in the complaint contain enough information for the medical review panel to consider and conclude that the [defendant] was entitled to the protection of the LMMA, as opposed to claims that sound in tort. *Perritt*, 849 So. 2d at 65.

The court reasoned that in alleging both direct and vicarious liability, it was a “natural conclusion” that the plaintiffs

were asking the panel to review all of the policies and procedures and employees’ conduct that could have caused the patient’s injuries. Furthermore, the medical panelists understood the scope of their review as evidenced by their opinion, which found no negligence on the part of the Surgery Center “*and/or* its employees.” The court wrote that the allegations in the panel request, “taken separately, under direct *or* vicarious liability, are sufficient to encompass the causes of action at issue,” adding that “*coupling* the two allegations renders the complaint more than sufficient to satisfy the pleading requirements of the Act.” The ruling that sustained the exception of prematurity was reversed and the case was remanded.

Part of Panel Opinion Ruled Inadmissible

Jones v. Jefferson Parish Hosp. Dist. No. 1, 16-2030 (La. 1/9/17), ____ So.3d ____.

The patient’s injury was caused by the use of a surgical instrument that was temperature-hot and which therefore should not have been used. The patient claimed in her panel request that both the surgeon and the hospital were at fault. One issue that put the defendants at odds with each other was whether the surgeon knew or should have known that the instruments were “hot” when she used them.



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The medical-review panel exculpated the surgeon, noting:

Dr. Taylor, in preparation for the surgery, used a weighted speculum that was on the surgical table appearing to be ready for use. At no time was Dr. Taylor informed that the instrument was hot and should not be used.

The panel also opined, however, that the hospital did breach the standard of care, specifically commenting that hospital personnel “failed to follow proper protocol by putting out an instrument that was not ready to be used.”

The hospital’s motion to strike from evidence the entirety of the panel opinion, because it answered a question of fact, was granted by the trial court. The court of appeal granted the surgeon’s supervisory writ and vacated the trial court’s judgment because the evidence submitted with the writ application gave no indication that the surgeon “was specifically told that the instruments on the table were not ready for use;” thus the panel “did not make an impermissible finding of fact” in exculpating the surgeon, nor did it make an impermissible finding of fact in deciding that the hospital *did* fail to follow proper protocol when it made available to the surgeon an instrument not ready for use. The court of appeal ruled that the entire panel opinion was admissible.

The Supreme Court granted the hospital’s writ and reversed the court of appeal. However, while reinstating the judgment of the district court, it amended that judgment:

to provide that only the portion of the medical review panel’s opinion addressing Dr. Taylor is inadmissible; in all other respects, the panel opinion is admissible. *See, McGlothlin v. Christus St. Patrick Hospital*, 2010-2775 (La. 7/1/11), 65 So.3d 1218.

—Robert J. David

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



Taxpayer’s Duty to Keep Records and Burden of Proof

Barfield v. Diamond Constr. Inc., 51,291 (La. App. 2 Cir. 4/5/17), ____ So.3d ____, 2017 WL 2017WL1244132.

The Louisiana Department of Revenue conducted a sales-and-use-tax audit of Diamond Construction, Inc. Diamond was a construction business that performed various services and sold equipment, which resulted in taxable transactions, including welding, fabrication, repairs, rentals, gate guards and hauling. The Department determined that Diamond failed to charge state sales tax on taxable sales and that it had failed to provide any information demonstrating that the additional sales or the customers were tax-exempt.

The Department filed a motion for summary judgment arguing that there were no genuine issues of material fact as Diamond was unable to carry its burden of disproving the allegations of the petition for collection of taxes, which were *prima facie* true under La. R.S. 13:5034. In opposition, Diamond filed affidavits asserting that a portion of the work was performed out of state or was exempt from tax. The Department replied that the affidavits were self-serving, conclusory and irrelevant

unsupported statements and that Diamond failed to provide any evidence of the sales, their amounts, the dates they took place or that any sales-and-use taxes were paid in other states. The Department argued Diamond’s affidavits were not adequate to meet its burden of proof and, because Diamond failed to keep records, it would be unable to disprove the Department’s estimated audit findings. The district court granted the Department’s motion. Diamond appealed.

The court held all of Diamond’s transactions are subject to tax under La. R.S. 47:302, and it was incumbent on Diamond to keep records. Because the Department could not determine from Diamond’s records which transactions were taxable, the court found it was appropriate for the Department to exercise its authority under La. R.S. 47:307 to audit the company and make an estimate of the amount of taxes due. The court found no genuine issues of material fact remained, and Diamond’s affidavits were not sufficient to create any genuine issue of material fact because there was not sufficient proof to support the positions raised therein. The court affirmed the granting of the Department’s motion for summary judgment.

—Antonio Charles Ferachi

Member, LSBA Taxation Section
Director, Litigation Division
Louisiana Department of Revenue
617 N. Third St.
Baton Rouge, LA 70821



CHAIR'S MESSAGE

Moving the Needle Forward

By Bradley J. Tate

As both a member of the Louisiana State Bar Association (LSBA) and someone who believes in servant leadership, I am thrilled to serve as the 2017-18 chair of the LSBA's Young Lawyers Division (YLD) Council. Our purpose as YLD members is to foster discussion and interchange ideas relative to the duties, responsibilities and problems of the younger members of the legal profession in our state.

The YLD has enjoyed continued success serving both the public and the Bar. Our annual projects include the high school mock trial competition, law school outreach, Barristers for Boards, law-related education programs and Wills for Heroes. Our newest project, Louisiana64, will hold its third conference in January, with a continued goal of connecting young lawyers



Bradley J. Tate

from every parish in the state. However, we can always do more and it will be my goal to move the needle forward. This year, I will work to further enhance our current projects, find new ways to serve the public and the Bar, and to implement a plan that will ensure the continued advancement of YLD projects and programming for years to come.

Doing this will require participation by members of the YLD. Every member of the LSBA who has not reached the age of 39 or who has been admitted to practice for fewer than five years is, by virtue, a member of the YLD. In total, there are 6,022 members of the YLD, which includes a

diverse and talented group of young attorneys who each have something unique to offer. If each of you can find just one way to get involved in our programs or suggest new ways we can serve you in your practice and community, there could be a significant impact.

As a council, we are constantly seeking to encourage each of you as members to become more involved in our projects and activities. I ask that you consider attending a CLE, judging the high school mock trial in your area, or signing up for a Saturday morning to help provide wills for those who serve and protect our communities.

On the following pages, we introduce the 2017-18 YLD Council members. These fantastic individuals from across the state will work constantly for you as members of the YLD. Everyone is willing to speak to you about what the YLD can offer you, personally and professionally.

It is an honor to serve as the YLD chair and I look forward to meeting many more of you and working together to ensure a successful year and put in place plans for many more.



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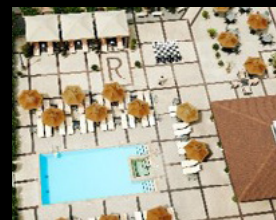
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YOUNG LAWYERS SPOTLIGHT

L. Sean Corcoran Lake Charles

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Lake Charles attorney L. Sean Corcoran.

Corcoran moved to Lake Charles from upstate New York at a young age but has always considered Louisiana his home. He received a BS degree in accounting from McNeese State University and his JD and BCL degrees in 2011 from Louisiana State University Paul M. Hebert Law Center. While at LSU, he served as executive president of the Student Bar Association, was a member of Phi Alpha Delta and The

Federalist Society, and was a co-commissioner of the annual Barristers Bowl.

Following law school graduation, he moved home to Lake Charles to work as an associate attorney at the law firm of Hunter, Hunter & Sonnier, L.L.C., practicing general civil litigation. In January 2015, he was hired as an assistant district attorney for Calcasieu Parish and, simultaneously, formed his own firm, the Corcoran Law Firm, L.L.C. By November 2015, his private practice had grown significantly, and he left the DA's office to focus on family law. He now focuses on divorce, child custody and division of



L. Sean Corcoran

community property.

In his community, Corcoran is an active member of Our Lady Queen of Heaven Catholic Church, where he calls upon his experience to facilitate a program through the church to help participants work through the hardships and aftermath of divorce. He has been an appointed commissioner of the Calcasieu Parish Communications District since 2012. He is an active member of the Southwest Louisiana Bar Association's Young Lawyers Section and has served as treasurer and chair of the annual Holiday Helping Hands charity event. He was a member of the 2015-16 Leadership LSBA Class and has served on the boards of the Literacy Council of Southwest Louisiana and Rebuilding Together Calcasieu.

Corcoran is married to Dr. Michelle Corcoran and has two children.

YOUNG LAWYERS DIVISION OFFICERS 2017-18

Bradley J. Tate Chair

Bradley J. Tate is tax manager for the firm of Carr, Riggs & Ingram, L.L.C. 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 has served as chair-elect, secretary and 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 has served on the *Louisiana Bar Journal's* Editorial Board and on the LSBA's Budget Committee.

He is a member of the American Bar Association (ABA) where he has served as chair of the ABA Young Lawyers Division's (YLD) Committee on Real Property, Estates and Trusts and the ABA YLD's Committee on Taxation.

200 B Greenleaves Blvd.

Mandeville, LA 70448
(504)585-4433 • fax (504)837-0123
email: btate@cricpa.com

Dylan T. Thriffiley Chair-Elect

Dylan T. Thriffiley is director of compliance for Ochsner Health System in New Orleans. 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.

Dylan served as the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council secretary in 2016-17 and as a District 1 Council representative from 2012-16. She was a member of the 2010-11 Leadership LSBA Class and co-chaired the 2011-12 Leadership LSBA Class. She is a member of the LSBA's Committee on the Profession and the Bar Governance Committee. She also was a member of the *Louisiana Bar Journal* Editorial Board and serves on the board of trustees for the Louisiana Civil Justice Center.



Dylan T. Thriffiley

She is a former president of the New Orleans Association for Women Attorneys and a member of the American Health Lawyers Association. In 2015, she was named a *Louisiana Super Lawyers* "Rising Star." In 2016, she became certified in healthcare compliance.

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 five years and are the parents of two children.

1450 Poydras St., New Orleans, LA 70112
(504)842-4517

email: dylan.thriffiley@ochsner.org

Scott L. Sternberg Secretary

Scott L. Sternberg is a partner at Sternberg, Naccari & White, L.L.C., in New Orleans, where he focuses on business, media and general litigation. He received a BA degree in journalism from Louisiana State University and his JD/DCL degree in



Scott L. Sternberg

2010 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2010.

Scott has served as the District 1 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. He has served on the LSBA's Public Information Committee, was a member of the 2012-13 Leadership LSBA Class and is a former member of the LSBA's Crystal Gavel Committee. In 2015, he received the LSBA's Stephen T. Victory Memorial Award for most outstanding *Louisiana Bar Journal* article.

He is chair-elect of the Federal Bar Association New Orleans Chapter's Younger Lawyers Division and is an adjunct professor at Loyola University. He serves on the board of the Louisiana Center for Law and Civic Education. He has been recognized as one of *Gambit Weekly's* "40 Under 40," as a *Louisiana Super Lawyers* "Rising Star" and on *New Orleans Magazine's* "Top Lawyers" list.

In his community, he serves on the board of the Jefferson Chamber of Commerce.

Scott and his wife Breland are the parents of two children.

Ste. 402, 643 Magazine St.

New Orleans, LA 70130

(504)324-2141 • fax (504)534-8961

email: scott@snw.law

Scotty E. Chabert, Jr. **Immediate** **Past Chair**

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 served as chair, chair-elect, secretary and District 5 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. He



**Scotty E.
Chabert, Jr.**

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 eight and a half years and are the parents of three children.

6525 Perkins Rd.

Baton Rouge, LA 70808

(225)771-8100 • fax (225)771-8101

email: schabert@saunderschabert.com

website: www.saunderschabert.com

YOUNG LAWYERS DIVISION COUNCIL 2017-18

Cristin F. Bordelon **District** **One Representative**

Cristin F. Bordelon is an associate in the New Orleans office of Leake & Andersson, L.L.P. She received a BAS degree in 2001 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 and is admitted in New York and Georgia.

Cristin served as Louisiana's representative on the American Bar Association Young Lawyers Division Council for three years and assisted in disaster recovery operations in Louisiana following Hurricane Isaac.

She serves on the board of directors for the Louisiana Civil Justice Center and on the advisory board for the Legal Innovators for Tomorrow (LIFT) Program. She also is a member of the New Orleans Bar Association and the New York Bar Association.

Cristin and her husband, Lanson Bordelon, have been married for five years and are the parents of two children.

Ste. 1700, 1100 Poydras St.

New Orleans, LA 70163

(504)585-7922 • fax (504)585-7555

email: cbordelon@leakeandersson.com

website: www.leakeandersson.com



Cristin F. Bordelon

James E. Courtenay **District** **One Representative**

James E. Courtenay is an attorney with The King Firm in New Orleans. He received a bachelor's degree in accounting in 2003 from Louisiana State University, a master's degree in public administration in 2005 from LSU and his JD degree in 2008 from Southern University Law Center. He was admitted to practice in Louisiana in 2008.

Jimmy served as the District 1 representative on the Louisiana State Bar Association's Young Lawyers Division Council from 2013-15. He is a member of the New Orleans Bar Association and the Jefferson Bar Association. He was recognized as a *Louisiana Super Lawyers* "Rising Star" from 2015-17 and has an AV rating from Martindale-Hubbell (2014-17).

He and his wife Brittany have been married for seven years and are the parents of three children.

2912 Canal St., New Orleans, LA 70119

(504)909-5464 • fax (800)901-6470

email: jimmy@kinginjuryfirm.com

website: www.kinginjuryfirm.com



James E. Courtenay

Shayna B. Morvant **District Two** **Representative**

Shayna B. Morvant is managing partner of the Gretna firm of Beevers & Beevers, L.L.P. She received a BSM degree in 2009 from Tulane University's A.B. Freeman School of Business and her JD degree in 2012 from Tulane Law School. She was admitted to practice in Louisiana in 2012.

Shayna serves in the Louisiana State Bar Association's House of Delegates and is a member of the Civil Law and Litigation Section. She was a member of the 2015-16 Leadership LSBA Class. She is the current secretary for the Tulane Inn of Court and is a former chair of the Jefferson Bar Association's Young Lawyers Division.

In her community, she is chair of busi-



Shayna B. Morvant

ness evaluation and legislative affairs for the Junior League of New Orleans and is a member of the Italian American Ladies Auxiliary.

Shayna and her husband, Wesley C. Morvant, have been married for four years and are the parents of one child.

210 Huey P. Long Ave., Gretna, LA 70053
(504)361-4287 • fax (504)362-1405

Jeffrey D. Hufft
District Two
Representative

Jeffrey D. Hufft is the sole member of Jeffrey D. Hufft, Attorney at Law, L.L.C., in New Orleans. He received a BA degree in psychology in 2003 from



Jeffrey D. Hufft

Louisiana State University and his JD degree in 2009 from Loyola University College of Law. He was admitted to practice in Louisiana in 2009 where he began his career as a criminal prosecutor for the State of Louisiana before opening his own firm in 2017.

Jeffrey serves on the board of directors for the Louisiana Center for Law and Civic Education. He is a member of the Jefferson Bar Association and a former member of the Louisiana District Attorneys Association.

In his community, he is the 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 four years and are the parents of one child.

825 Baronne St., New Orleans, LA 70113
(504)517-3380 • fax (504)613-0307
email: jeff@hufftlawfirm.com
website: www.hufftlawfirm.com

Lauren L. Gardner
District Three Representative

Lauren L. Gardner is an associate in the Onebane Law Firm in Lafayette. She received her BA degree in 2003 from Louisiana State University and her JD/BCL degree in 2006 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2006 and is admitted to practice in Texas. Her areas of prac-

tice include oil and gas title and transactions, labor and employment law and special needs estate planning.

Lauren is a member of the Lafayette Association of Professional Landmen and the Acadiana Society of Human Resource Management. She also serves on the board of directors for the Lafayette Education Foundation.

She and her husband, Paul Gardner, are the parents of two children.

Ste. 300, 1200 Camellia Blvd.
Lafayette, LA 70508
(337)237-2660 • fax (337)266-1232
email: gardnerl@onebane.com
website: www.onebane.com



Lauren L. Gardner

Adam P. Johnson
District Four
Representative

Adam P. Johnson is a partner in The Johnson Firm in Lake Charles. He received a bachelor's degree in business management in 2006 from Louisiana State University and his JD degree in 2009 from Southern University Law Center. 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 co-chairs the Louisiana State Bar Association Young Lawyers Division's Wills for Heroes Committee.

He serves on the Executive Council for the Southwest Louisiana Bar Association and is a member of the American Association of Premier DUI Attorneys. He was recognized as a "Top 40 Under 40" professional and as a "Top Criminal Defense Lawyer" by *Acadiana Magazine* (2014 and 2017).

In his community, he is a member of the V.I.S.A. Coalition of Lake Charles and a member of Trinity Baptist Church in Lake Charles.

Adam and his wife, Ashley Leonards Johnson, have been married for seven years



Adam P. Johnson

and are the parents of two children.

910 Ford St., Lake Charles, LA 70601
(337)433-1414 • fax (337)433-3234
email: adam@johnsonfirmllc.com
website: www.johnsonfirmllc.com

Kristi W. Richard
District Five
Representative

Kristi W. Richard is a member 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 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 and served as co-chair of the Wills for Heroes program in 2014-16. She served as chair of the Young Lawyers Professional Development Seminar this year.

In her community, she is a community council member of the Junior League of Baton Rouge, serving on the board of directors in 2016-18. She was a member of the 2015 class of the Baton Rouge Area Leadership Program.

She and her husband, Daniel Richard, have been married for 14 years and are the parents of two children.

301 Main St., 14th Flr.
Baton Rouge, LA 70801
(225)382-3704 • fax (225)343-3076
email: krichard@mcglinchey.com
website: www.mcglinchey.com



Kristi W. Richard

Carrie L. Jones
District Five Representative

Carrie L. Jones is a partner 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 serving her second term on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. She has co-chaired the Richard N. Ware High School Mock Trial Competition and served on the Young Lawyers Division's Awards Committee. She was a member of the 2013-14 Leadership LSBA Class.

She is the 2017 chair of the Louisiana Attorney Disciplinary Board and has served as a board member since 2014. She is a member of the Baton Rouge Bar Association and the Bar Association of the 5th Federal Circuit. She also serves on the Louisiana Bar Foundation's Capital Area Community Partnership Panel.

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

628 St. Louis St., Baton Rouge, LA 70802
(225)346-1461 • fax (225)346-1467
email: carrie@scwillp.com



Carrie L. Jones

Nicholas R. Rockforte
District Six
Representative

Nicholas R. Rockforte is a partner in the firm of Pendley, Baudin & Coffin, L.L.P., in Plaquemine. He received a BS degree in construction management in 2004 from Louisiana State University and his JD degree in 2007 from Southern University Law Center. He was admitted to practice in 2007.

Nicholas is a member of the American Association for Justice, the Louisiana Association for Justice and the Public Justice Foundation. He was recognized in the "Young Lawyer Spotlight" section of the *Louisiana Bar Journal*.

He and his wife Hannah have been married for five years and are the parents of one child.

24110 Eden St., Plaquemine, LA 70765



Nicholas R. Rockforte

(225)687-6396 • fax (225)687-6398
email: nrockforte@pbclawfirm.com
website: www.pbclawfirm.com

Ethan A. Hunt
District Seven
Representative

Ethan A. Hunt is a solo practitioner in Monroe. He earned a degree in biology in 2001 from Louisiana Tech and his JD degree in 2006 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2006. His practice includes estate planning, corporate transactions, insurance law and general litigation.

Ethan is a member of the 4th Judicial District Bar Association and the 4th Judicial District Young Lawyers Section.

In his community, he is a member of the board of directors for Ouachita Parish Habitat for Humanity, a member of the board of directors of the Northeast Louisiana Chapter of Delta Waterfowl and an adult Sunday school teacher for First Methodist Church in Monroe.

Ethan and his wife Erin have been married since 2004 and are the parents of three children.

1315 Cypress St., West Monroe, LA 71291
(318)235-1412
email: ethanh007@gmail.com



Ethan A. Hunt

Joshua K. Williams
District Eight
Representative

Joshua K. Williams is an assistant district attorney for Caddo Parish in Shreveport. He received a BS degree in business in 2009 from the University of New Orleans and his JD degree in 2013 from Southern University Law Center. He was admitted to practice in Louisiana in 2014.

Joshua was a member of the 2016-17 Leadership LSBA Class.

He is a member of the Shreveport Bar Association, the Louisiana District Attorneys Association and the National Association of Bond Lawyers. He was



Joshua K. Williams

recognized by *SB Magazine* as a "Top Attorney" in 2017.

Joshua and his wife Samerrial have been married for a year.

501 Texas St., Shreveport, LA 71101
(318)393-5008 • fax (318)459-9019
email: jkwilliamsattorney@mail.com

Travis J. Broussard
At-Large
Representative

Travis J. Broussard is a partner in the firm of Durio, McGoffin, Stagg & Ackermann in Lafayette. He received a BA degree in sociology in 2003 from Louisiana State University and his JD degree in 2010 from Southern University Law Center. He was admitted to practice in Louisiana in 2010.

Travis was a member of the 2013-14 Leadership LSBA Class and co-chaired the 2014-15 Leadership LSBA Class. He is secretary-treasurer of the Louisiana State Bar Association's (LSBA) Civil Law and Litigation Section and a member of the LSBA's Outreach Committee.

He is the current president of the Lafayette Young Lawyers Association, a member of the board of directors of the Lafayette Bar Association and a member of the American Inn of Court. He was named the Lafayette Bar Association's Outstanding Young Lawyer in 2016. He also participates with the Lafayette Volunteer Lawyers Program.

220 Heymann Blvd., Lafayette, LA 70503
(337)233-0300 • fax (337)233-0694
email: travis@dmsfirm.com
website: www.dmsfirm.com



Travis J. Broussard

Graham H. Ryan
ABA YLD
Representative

Graham H. Ryan is a business litigation associate in the New Orleans office of Jones Walker LLP, where he advises and represents businesses and individuals in all phases of litigation. He graduated *summa cum laude* in finance from Louisiana State University and received



Graham H. Ryan

both a JD and a diploma in comparative law in 2011 from LSU Paul M. Hebert Law Center, where he served as online editor on the *Louisiana Law Review*.

Graham serves on the Louisiana State Bar Association Access to Justice Committee's Disaster Leadership Team and co-chairs the LSBA's Annual Meeting and Summer School Planning Committee. He was a member of the 2014-15 Leadership LSBA Class.

He is a council member of the Louisiana State Law Institute, a board member of Young Lawyers Divisions of the American Bar Association and the Jefferson Bar Association and a member of the New Orleans Bar Association and the New Orleans Chapter of the Federal Bar Association.

As the Louisiana representative for the American Bar Association's Young Lawyers Division, he oversees a FEMA-funded program to provide legal services to low-income Louisiana residents following a presidentially declared disaster.

In his community, he is past chair of HandsOn New Orleans, a nonprofit volunteer center founded in the wake of Hurricane Katrina that has engaged more than 40,000 volunteers to rebuild south

Louisiana. He also provides pro bono legal services to the homeless and veterans at the Father Harry Thompson Rebuild Center in New Orleans.

Graham and his wife Erin live in New Orleans.

*Ste. 5100, 201 St. Charles Ave.
New Orleans, LA 70170
(504)582-8370 • fax (504)589-8370
email: gryan@joneswalker.com
website: www.joneswalker.com*

Kristen L. Burge
Young Lawyer
Member/ABA
House of Delegates

Kristen L. Burge is an associate in the Metairie office of Sessions, Fishman, Nathan & Israel, L.L.C. She received a BS degree in neuroscience in 2005 from Vanderbilt University, her JD degree in 2010 from Samford University's Cumberland School of Law and an LL.M. in 2011 from the University of Washington School of Law. She was admitted to practice in Louisiana in 2014 and is admitted in Washington (2012) and



Kristen L. Burge

Florida (2013).

Kristen is a member of the Louisiana State Bar Association's (LSBA) Diversity Committee and its Pipeline to Diversity Subcommittee. She also is an editor for the American Bar Association (ABA) Section of Litigation and a member of the A.P. Tureaud American Inn of Court. She also has volunteered as a mock trial judge and helped to organize the LSBA's Law School Mock Trial Competition.

In law school, she was recognized for the best thesis in the LL.M. intellectual property program (2010-11), the best casenote in the *Law Review* and the highest grade in law school courses. She also has published three articles in law reviews and two online articles for the ABA.

In her community, she is a youth soccer coach and plays on a tennis team.

Kristen and her husband, Chris Burge, have been married for eight years and are the parents of three children.

*Ste. 200, 3850 N. Causeway Blvd.
Metairie, LA 70002
(504)846-7945 • fax (504)828-3737
email: kburge@sessions.legal
website: www.sessions.legal*

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



Metairie School Wins “We the People” State Competition

The team from Haynes Academy for Advanced Studies in Metairie won the state title in the “We the People” state competition held at Loyola University in New Orleans. The team, led by teacher Chris Totaro, now will represent Louisiana in the national competition in Washington, D.C.

Also competing in the state finals were teams from Helen Cox High School, John Ehret High School and Glenbrook School. “We the People” (WTP) team teachers Haley Bonsall, Jonetta Jackson, Bradley Kiff and Totaro are to be commended for bringing their students to this level of academic achievement.

WTP is one of the programs that the Louisiana Center for Law and Civic Education (LCLCE) utilizes to promote civic competence and responsibility among Louisiana’s students. Taken to its highest level, this instructional civics curriculum has students “testify” at simulated congressional hearings before a panel of judges. Students demonstrate their knowledge and understanding of constitutional principles and have opportunities to evaluate, take and defend positions on relevant historical and contemporary issues.

Attending the state finals was guest speaker Louisiana House Rep. Walter J. Leger III, District 91.

The panel of judges consisted of attorneys, educators and WTP alumni, including attorney and WTP alumna



The team from Haynes Academy for Advanced Studies in Metairie won the state title in the “We the People” state competition. The team will represent Louisiana in the national competition in Washington, D.C.

Heather W. Angelico; attorneys Jason D. Asbill and Jessica G. Braun; Louisiana WTP Alumni Representative Tyler Barker, Ph.D.; educator Belinda M. Cambre, JD, Ph.D.; attorney and LCLCE President Lawrence J. Centola III; WTP alumni Mariarenee Contreras and Kathryn Cook; educator Josh Dyer; Loyola University Political Science Chair Philip A. Dynia, Ph.D.; attorney Lauren F. Godshall; attorney and educator Marie Hoeven; attorney Nahum

D. Laventhal; WTP alumna Philip Lundy; attorney Christopher A. Meeks; WTP alumni Bryce Menge, Sabine Mohamed and Hugh Ngo; educator Martha Palmer; attorney and LCLCE Board Member Scott L. Sternberg; WTP alumni Rana Thabata and Brandon Thornton; Loyola University Interim Dean of the College of Social Sciences Roger White, MA, Ph.D.; and Loyola political science Professor Christopher Wiseman, Ph.D.

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Paul A. Bonin was elected judge, Orleans Parish Criminal District Court, Division D. He earned his BA degree in 1973 from St. Joseph's Seminary College and his JD degree in 1976 from Loyola University College of Law. His judicial service began in 1990 with appointive positions of commissioner and judge *ad hoc* at Orleans Parish Civil District Court. He was elected to New Orleans Traffic Court, Division C, in 1997. In 2008, he was elected to the 4th Circuit Court of Appeal. Judge Bonin is married to Loree Buchert, and they are the parents of four children.



Paul A. Bonin

Allison H. Penzato was elected, without opposition, as judge, 1st Circuit Court of Appeal. She earned her BA degree in 1977 from Southeastern Louisiana University and her JD degree in 1981 from Loyola University College of Law. During law school, she was a law clerk to U.S. Magistrate Ingard O. Johannesen. In 2007, she received the Leadership in Law Award from *New Orleans CityBusiness*. In 2008, she was elected to the 22nd Judicial District Court, Division H. Judge Penzato is married to Russell Penzato, and they are the parents of two children.



Allison H. Penzato

Regina Bartholomew-Woods was elected judge, 4th Circuit Court of Appeal. She earned her BA degree in 1994 from Southern University-New Orleans and her JD degree in 1999 from Loyola University College of Law. She began her legal career as law clerk for 40th Judicial District Court Judges Madeline Jasmine, Mary Hotard Becnel and J. Sterling Snowdy. In 2011, she was elected to Orleans Parish Civil District Court, Section B. That same year, she received the Leadership in Law Award from *New Orleans CityBusiness*. Judge Bartholomew-Woods is married to Jimmie Woods, Sr. and they are the parents of three children.



Regina Bartholomew-Woods

Appointments

► Troy Nathan Bell and Lawrence J. Centola III were appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began on March 1 and will end on Feb. 28, 2022.

► Sheila Elizabeth O'Leary was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office ending on Dec. 31, 2019.

► Sibal S. Holt and 24th Judicial District Court Judge John J. Molaison, Jr. were appointed as members of the Judiciary Commission of Louisiana for four-year terms which began on March 22 and April 2, respectively.

Retirement

4th Circuit Court of Appeal Judge Dennis R. Bagneris, Sr. retired effective March 31. He earned his BA and MA degrees in 1970 and 1977, respectively, from Xavier University. He earned his JD degree in 1981 from Tulane University Law School. Tulane recognized him as Outstanding Alumnus in 1995. Before his 1999 election to the bench, Judge Bagneris served in the Louisiana Senate from 1983-90. During that time, he served two years as the president of the Louisiana Legislative Black Caucus.

Death

Retired 4th Circuit Court of Appeal Judge Denis A. Barry, 88, died Feb. 28. He earned his bachelor's degree from Louisiana State University and his law degree from Loyola University. He was a veteran of the Korean War with five combat stars and served as commander of American Legion Post 23. After admission to the Bar, Barry opened a law practice with James Garrison. When Garrison was elected Orleans Parish district attorney, Barry served as senior assistant district attorney in charge of narcotics and vice. In 1980, he was elected to the 4th Circuit Court of Appeal. He retired in 1999 after becoming chief judge.

Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

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

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Stefini W. Salles, Leigh Ann T. Schell and Sara C. Valentine have joined the firm's New Orleans office as special counsel.

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Karl J. Zimmermann** is the new managing partner in the New Orleans office and **Alex S. Aughtry** has joined the firm as an associate.

Jean C. Breaux, Jr. and J. Kevin Stelly announce the formation of their new firm, Breaux & Stelly Law Firm, L.L.C., located at Ste. 100, 413 Travis St., Lafayette, LA 70503, (337)233-4447.

Caraway LeBlanc, L.L.C., in New Orleans announces that **Erica L.**

Andrews has joined the firm as an associate.

Chaffe McCall, L.L.P., announces that **David J. Messina** and **Fernand L. Laudumiey IV** have joined the New Orleans office as partners.

Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P., announces that **Adrienne L. Ellis** and **Meghan E. Ruckman** have joined the Metairie office as associates.

Deutsch Kerrigan, L.L.P., announces that Barbara L. Bossetta has rejoined the firm as a partner in the New Orleans office. Jason P. Franco and Joseph A. Devall, Jr. have joined the firm as partners in the New Orleans office. Also, Bryce M. Addison, Michael T. Amy, Megan P. Demouy and Stephen R. Pokorski have joined the firm as associates in the New Orleans office.

Duval, Funderburk, Sundbery, Richard & Watkins, A.P.L.C., in Houma announces that retired federal **Judge Stanwood R. Duval, Jr.** and **Janet Louise Daley** have joined the firm as of counsel. Duval also has joined the senior arbitrator panel of U.S. Arbitration & Mediation.

The law firms of Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C., and Montgomery Barnett, L.L.P., announce their merger to become Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, L.L.C., which became effective on March 1. The firm has offices in New Orleans, Lafayette, Baton Rouge and Houston, TX.

Maureen Blackburn Jennings has relocated her law office to 1135 Heights Blvd., Houston, TX 77008; phone (713)209-2930.



Erica L. Andrews



Daniel R. Atkinson, Jr.



Alex S. Aughtry



Janet Louise Daley



Judge (Ret.) Stanwood R. Duval, Jr.



Adrienne L. Ellis



Thomas K. Foutz



Brian D. Grubb



Jordan M. Jeansonne



Maureen Blackburn Jennings



Frank E. Lamothe III



Kara A. Larson

The Joubert Law Firm, A.P.L.C., in Baton Rouge announces that attorney **Daniel R. (Danny) Atkinson, Jr.** has joined the firm.

Kean Miller, L.L.P., announces that Jaye A. Calhoun has joined the firm as a partner in the New Orleans office.

Catherine E. (Katie) Lasky and Kerry A. Murphy announce the opening of their firm, Lasky Murphy, L.L.C., located at Ste. 250, 715 Girod St., New Orleans, LA 70130, www.laskymurphy.com.

Lee, Futrell & Perles, L.L.P., in New Orleans announces that **M. Scott Minyard** has become a partner in the firm.

Legacy Estate & Elder Law of Louisiana, L.L.C., in Prairieville announces that Lisa L. Henson has joined the firm as senior associate.

Perrier & Lacoste, L.L.C., announces that **Jordan M. Jeanson** has joined the firm as an associate in the New Orleans office.

Sullivan Stoler, L.L.C., announces that the firm's name has changed to Sullivan Stoler Schulze & Grubb, L.L.C., and that **Brian D. Grubb** and **Michael E. Schulze** are managing members in the

New Orleans and Lafayette offices, respectively. Also, **Imtiaz A. Siddiqui** has joined the firm's New Orleans office.

The Law Office of Robert S. Toale in Gretna announces that **Kara A. Larson** has joined the firm as an associate.

NEWSMAKERS

Michael E. Botnick, a member in the New Orleans office of Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, L.L.C., has been admitted to the American Arbitration Association's National Roster of Arbitrators and Mediators.

Rudy J. Cerone, a member in the New Orleans office of McGlinchey Stafford, P.L.L.C., was named by the American Bankruptcy Institute to its newly formed Commission on Consumer Bankruptcy.

William M. Jorden, an assistant district attorney in the East Baton Rouge Parish's District Attorney's Office, is currently serving as president of the National Black Prosecutors Association.

Frank E. Lamothe III, with Lamothe Law Firm, L.L.C., in New Orleans, was part of a group of senior attorneys

participating in the American Board of Trial Attorneys' and German-American Lawyers Association's masters in trial demonstration on trial cross-examination.

Maria A. Losavio of Losavio Law Office, L.L.C., in Alexandria was appointed by Louisiana Gov. John Bel Edwards to the Workers' Compensation Advisory Council, representing the 4th Public Service Commission District.

Carole C. Neff, an attorney in the New Orleans office of Sessions, Fishman, Nathan & Israel, L.L.C., received the New Orleans Planned Giving Council's Aaron F. Marcus Outstanding Service Award.

Lauren E. Saucier, an attorney with Neblett, Beard & Arsenault in Alexandria, is the recipient of the "Top 10 Under 40" Attorney Award for Louisiana, presented by the National Academy of Personal Injury Attorneys.

Eric M. Schorr, an attorney in the New Orleans office of Sessions, Fishman, Nathan & Israel, L.L.C., was named to the Top 10 in the Elder Law Division by the American Institute of Legal Counsel.

U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart was appointed to the Executive Committee of the Judicial Conference of the United States by U.S. Supreme Court Chief Justice John G. Roberts, Jr.

Continued next page



Fernand L. Laudumiey IV



Maria A. Losavio



David J. Messina



M. Scott Minyard



John W. Redmann



Meghan E. Ruckman



Lauren E. Saucier



Michael E. Schulze



Imtiaz A. Siddiqui



Karl J. Zimmermann

IN MEMORIAM

Nancy L. Yeager of Hammond died on June 20, 2016, at the age of 66. A Native of New Orleans, she graduated from the University of New Orleans for her undergraduate studies and went on to study nursing at LSU Nursing School. After working as a registered nurse for several years, she pursued a career in law. She received her JD degree in 1992 from Loyola University Law School. She began practice as a public defender for the 22nd Judicial District, comprising St. Tammany and Washington parishes. After several years of practice as a public defender, she opened her own practice in Covington. Through use of her medical knowledge from her nursing background, she built a successful solo practice focusing on medical malpractice and personal injury. Later, she ran for district judge for the 22nd JDC, but fell short of victory. After several more years of solo practice, she retired from her law practice and focused on nursing, in particular, care for the elderly. She returned to legal practice in later years. She is survived by her two sons and two grandchildren.



Nancy L. Yeager

PUBLICATIONS

Best Lawyers in America 2017

TomFoutzADR (New Orleans):
Thomas K. Foutz.

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): J. David Forsyth, Carole C. Neff and Peter S. Title.

Chambers USA 2017

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Edward H. Arnold, Phyllis G. Cancienne, Roy C. Cheatwood, Nancy Scott Degan, Matthew R. Emmons, Donna D. Fraiche, Steven F. Griffith, Jr., Jan M. Hayden, Errol J. King, Jr., Kenneth M. Klemm, Amelia W. Koch, M. David Kurtz, Kent A. Lambert, Jon F. Leyens, Jr., Mark W. Mercante, David C. Rieveschl, James H. Roussel, Danielle L. Trostorff, Paul S. West and Adam B. Zuckerman.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, Thomas M. Benjamin, David R. Cassidy, Clay J. Countryman, Alan H. Goodman, Emily Black Grey, Murphy J. Foster III, Gregory D. Frost, Richard D. Leibowitz, Steven B. Loeb, Eve B. Masinter, Van

R. Mayhall, Jr., E. Fredrick Preis, Jr. and Claude F. Reynaud, Jr.

Louisiana Super Lawyers 2017

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

Law Office of John W. Redmann, L.L.C. (Gretna): **John W. Redmann.**

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): Max Nathan, Jr., J. David Forsyth, Carole C. Neff and Peter S. Title.

New Orleans CityBusiness 2017

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): April L. Watson, Leadership in Law Class.

New Orleans Magazine 2016

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): Joy G. Braun, Top Lawyers.

New Orleans Magazine 2017

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): Eric M. Schorr, Top Lawyers.

Texas Super Lawyers 2016

Maureen Blackburn Jennings, Attorney at Law (Houston, TX): **Maureen Blackburn Jennings.**

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
Oct./Nov. 2017	Aug. 4, 2017
Dec. 2017/Jan. 2018	Oct. 4, 2017
Feb./March 2018	Dec. 4, 2017
April/May 2018	Feb. 4, 2018

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to: **Publications Coordinator Darlene M. LaBranche, Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404 or email dlabranche@lsba.org.**

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

UPDATE

Standing Up for Justice: ABA President Attends Pro Bono Stakeholder Meeting

The Pro Bono Project (New Orleans) brought together 60-plus lawyers and jurists on April 7 to meet with American Bar Association President Linda A. Klein and 2017-18 Louisiana Bar Foundation (LBF) President Valerie Briggs Bargas and to discuss building a stronger pro bono partnership. The group met in the courtroom of Judge Jay C. Zainey, U.S. District Court, Eastern District of Louisiana.

Judge Zainey and The Project's Board Chair Caroline McSherry Dolan began the conversation on how private bar attorneys can better partner with nonprofits to serve the growing number of low-income families and individuals who need resolution of civil legal problems. This concern will become more pressing if the proposed federal budget cuts to, or elimination of, the Legal Services Corporation (LSC) pass in Congress.

"In 2016, The Project provided legal services to more than 2,500 low-income individuals, realizing an economic value to the community of \$2.9 million. Our private bar lawyer volunteers donated more than 10,000 hours and closed more than 1,200 cases," Dolan said.

But the "justice gap" is real. More than 60 million low-income Americans need civil legal services and cannot afford to hire a lawyer. Nationally, for every 6,400 potential low-income clients, there is only one legal aid attorney; in the private sector, there is only one private attorney providing volunteer legal services for every 429 potential clients.

"Justice for all" is not just a pretty phrase in the Pledge of Allegiance. It is a promise we make — and keep — to ev-



American Bar Association President Linda A. Klein. Photo by Jennifer Rizzo-Choi.

ery American," ABA President Klein said. She addressed how pro bono organizations keep the doors of justice open for those who need it and why private bar attorneys have an obligation to share their legal experience with the underserved.

"Many attorneys take pro bono cases because it reminds us of why we began practicing law in the first place — to help others. It reminds us of our constitutional obligation to advance the cause of justice and the rule of law. It makes good moral sense. It makes good ethical sense. And research has shown that what makes good moral and ethical sense, happily, improves business results," Klein said.

"Nearly 20 percent of Louisiana citizens live in poverty. We rank among the highest in the nation. Louisiana is one of only a few states in which civil legal services receive no state appropriation of funds," said LBF President Bargas. "For the last six years, civil legal aid organizations in Louisiana sustained a significant drop in state and federal funding while the poverty rate has increased. These funding declines, combined with the high poverty, put our already challenged civil legal aid

system in crisis," she said.

At the request of the Louisiana Legislature, the Access to Justice Commission conducted an Economic Impact and Social Return on Investment Analysis (SROI), funded by the Louisiana Bar Foundation, to determine the economic impact on the state of dollars spent on Louisiana's civil legal aid providers. The SROI showed that the dollars invested are well spent and deliver unmistakable economic returns to the state. For every \$1 invested in Louisiana's civil legal aid services, these programs provide \$8.73 in immediate and long-term consequential financial benefits — essentially, an 873 percent ROI.

Proposed elimination of LSC funding will shift all the responsibility for these cases to the private sector and nonprofit pro bono groups. The Project's Executive Director Jennifer Rizzo-Choi is concerned about the negative impact of these funding cuts on clients and is working to increase each firm's pro bono time commitment.

Law firm leaders attending the meeting offered ideas on strengthening their partnership with pro bono organizations, including asking for help in working with the courts to schedule pro bono cases early on the daily docket.

Judge Zainey and Rizzo-Choi spoke about how important it is for the law firm leaders to set an example for young lawyers. "By taking a case or mentoring a young lawyer through a case, leadership demonstrates their support of and helps to establish pro bono work as part of a firm's culture," Rizzo-Choi said.

Southeast Louisiana Legal Services' Board Elects Officers

The Southeast Louisiana Legal Services' (SLLS) board of directors elected 2017 officers at its March meeting. President is Vivian Guillory, retired chief administrative law judge with the State of Louisiana; First Vice President Mark C. Surprenant, partner at Adams and Reese, L.L.P.; Second Vice President Michael Hill, client community board member appointed by A Community Voice; Treasurer Patrick H. Yancey, Patrick Yancey Law Firm; Assistant Treasurer Regina Joseph, client community board member appointed by the Jefferson Parish Community Action Program; and Secretary Brandt M. Lorio, assistant general counsel, FA Richard & Associates.



Vivian Guillory



U.S. 5th Circuit Court of Appeals Chief Judge Carl E. Stewart, second from right, who is also serving as president of the American Inns of Court, was elected as an Honorary Master of the Bench of the Honourable Society of the Middle Temple in London, England. Following his election, he was "Called to the Bench" in a formal ceremony in the historic Middle Temple Hall on April 6. The Middle Temple dates back to 1501 and is one of four Inns of Court in London. The Parliament elects Honorary Masters of the Bench who are distinguished individuals from around the world who have excelled in their respective professions. Other Bench callees were, from left, barrister Clive Anderson, MP Bob Neill, Justice Nicholas Francis, QC David Mason, Judge Stewart and Sir Vernon Ellis.

LOCAL/SPECIALTY BARS



The Louisiana State Bar Association (LSBA) Diversity Committee's Integration Subcommittee presented a CLE program, "Generational Differences," on Feb. 2 at the Inn on the Teche Chapter (16th Judicial District) American Inn of Court meeting. From left, LSBA professionalism facilitators I.J. Clark-Sam, Micah J. Fincher and Deidre D. Robert. Not in photo, Arlene D. Knighten.



The Baton Rouge Bar Association's (BRBA) Feb. 15 luncheon was a joint meeting of the BRBA, the Baton Rouge Association of Women Attorneys, the Baton Rouge Chapter of the Federal Bar Association and the Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. Luncheon speaker was Baton Rouge Mayor-President Sharon Weston Broome, center. With her are Dean Thomas C. Galligan, Jr., left, Louisiana State University Paul M. Hebert Law Center; and Chancellor John K. Pierre, Southern University Law Center.



The Specialty Bars Subcommittee of the Louisiana State Bar Association's (LSBA) Diversity Committee convened at Galatoire's Bistro in Baton Rouge in January. The committee is comprised of presidents of specialty bar associations. From left, Kellen J. Mathews, LSBA Young Lawyers Diversity/Minority Involvement Committee; Derrick D. Kee, Lake Charles Chapter of the Louis A. Martinet Legal Society, Inc.; Royce I. Duplessis, Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc.; 2016-17 LSBA President Darrel J. Papillion; Demarcus J. Gordon, LSBA Minority Involvement Section; Maria Pabon Lopez, Hispanic Lawyers Association of Louisiana; Ashley J. Greenhouse, Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc.; Patsy A. Randall, Greater Lafayette Chapter of the Louis A. Martinet Legal Society, Inc.; and George W. Britton III, Northeast Louisiana Chapter of the Louis A. Martinet Legal Society, Inc..



The Louisiana Judicial Council/NBA hosted its 19th annual meeting and CLE in Lake Charles in March. Titled "Reassessing Our Judicial and Societal Roles," Louisiana judges attended CLEs, committee and business meetings. Attending were several St. Augustine High School alumni in the legal field, including, from left, Judge Byron C. Williams, Professor Raymond T. Diamond, Justin A. Jack, Royce I. Duplessis, Ezra Pettis, Jr., Judge (Ret.) Michael G. Bagneris and Judge Arthur L. Hunter, Jr.



The Baton Rouge Bar Association's (BRBA) Arts Judicata kickoff cocktail reception was March 30 at the Taylor Porter Rooftop Garden. From left, Renee M. Chatelain, Donna Buuck, Monica M. Vela-Vick, BRBA Executive Director Ann K. Gregorie, J. Richard Williams and Linda Law Clark. Chatelain, executive director of the Arts Council of Greater Baton Rouge, is co-chairing this event with Williams. The Arts Judicata event is Sept. 14 at the Arts Council and is a fundraiser for the Baton Rouge Bar Foundation that will allow the BRBA to highlight its members who are artists.



The Southwest Louisiana Bar Association hosted its annual Bench Bar Conference in Houston, Texas, in March. Attending were several 3rd Circuit Court of Appeal judges and Louisiana Supreme Court Justice James T. Genovese. Front row from left, Judge John D. Saunders and Judge Phyllis M. Keaty. Back row from left, Judge Billy H. Ezell, Justice Genovese, Judge Sylvia R. Cooks, Chief Judge Ulysses Gene Thibodeaux, Judge D. Kent Savoie, Judge John E. Conery and Judge Van H. Kyzar.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

G. Adam Cossey Monroe
Hon. Jeff D. Hughes III Walker
David R. Kelly Baton Rouge
Graham H. Ryan New Orleans

President's Message

Civil Legal Aid is a Good Investment

By President Valerie Briggs Bargas

Civil legal aid is free legal advice, representation or other legal assistance provided to low-income and vulnerable people who cannot otherwise afford legal help. Civil legal aid helps people solve critical, life-changing problems. Without legal help, even relatively minor problems can escalate. Often, the failure to resolve these issues can tear families apart or drive them further into poverty.

Nearly 20 percent of Louisiana citizens live in poverty. We rank among the highest in the nation. Louisiana is one of only a few states in the country in which civil legal services receive no state appropriation of funds. Over the last six years, civil legal aid organizations in Louisiana sustained a significant drop in state and federal funding while the poverty rate has increased. These

funding declines, combined with high poverty, place our already challenged civil legal aid system in crisis.

At the request of the Louisiana Legislature, the Access to Justice Commission conducted an Economic Impact and Social Return on Investment Analysis, or SROI, funded by the Louisiana Bar Foundation (LBF). Nearly 40 civil legal aid organizations providing services in Louisiana participated in the analysis for fiscal year 2016. For the full report, go to: www.raisingthebar.org.

The Analysis shows that dollars spent on Louisiana's civil legal aid providers are well spent and deliver unmistakable economic returns to the state. Key findings include:

► In fiscal year 2016, Louisiana's civil legal aid organizations provided assistance in 26,437 legal matters consisting of more than 100 types of civil legal problems including family law, housing, healthcare, public benefits, consumer protection, community support issues, government and legal system issues.

► The net economic impact value resulting from Louisiana civil legal activities during the year totaled \$93,977,000.

► The total net social return on investment for Louisiana's civil legal aid programs during the 2016 fiscal year was 873 percent.

► In other words, for every \$1 invested in Louisiana's civil legal aid services, these programs deliver \$8.73 in immediate and long-term consequential financial benefits.

Civil legal aid saves taxpayer dollars by keeping families together, reducing domestic violence, helping children leave foster care more quickly, reducing evic-



Valerie Briggs
Bargas

tions, increasing access to benefits and offering citizens a way out of poverty. Civil legal aid opens doors to the justice system and provides reinvestment in the community. Funding for civil legal aid has a ripple effect, impacting not only the families served but the community at large. Schools, businesses, government agencies and the state as a whole benefit from resolving civil legal problems.

It is our hope that the Analysis will help us better educate the public on the value of civil legal aid and will lead to restored funding of civil legal services to Louisiana's most vulnerable citizens. Continued funding of the civil legal aid providers will provide a substantial impact to our state.

How can you help? Pro bono hours worked by Louisiana lawyers are an important component of the legal community's efforts to meet the civil legal needs of the poor. According to the Rules of Professional Conduct, Article 6.1, "Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year."

In 2015, the Louisiana Supreme Court adopted a new rule that gives Louisiana attorneys the opportunity to earn CLE credit for pro bono legal representation. With this rule, the Court 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.

Our society improves when people understand the law and have equal access to justice. It is our job to continue to provide civil legal assistance to Louisiana's most vulnerable citizens because access to affordable legal services is critical in a society that depends on the rule of law.

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Bargas to Lead Louisiana Bar Foundation's 2017-18 Board

Valerie Briggs Bargas of Baton Rouge was installed as the 2017-18 president of the Louisiana Bar Foundation (LBF) on April 21. Other officers are Vice President W. Michael Street, Monroe; Treasurer Amanda W. Barnett, Alexandria; and Secretary Christopher K. Ralston, New Orleans.

Bargas is a founding member of Kinchen, Walker, Bienvenu, Bargas, Reed & Helm, L.L.C., in Baton Rouge. She received a BA degree in environmental science and policy from Smith College and her JD degree from Tulane University Law School.

Street is a partner of Watson, McMillan & Street, L.L.P., in Monroe. He received BA degrees in philosophy and political science from Centenary College of Louisiana and his JD degree



Valerie Briggs Bargas



W. Michael Street



Amanda W. Barnett



Christopher K. Ralston

from Louisiana State University Paul M. Hebert Law Center.

Barnett is general counsel and corporate secretary for Red River Bank and Red River Bancshares, Inc., with corporate offices in Alexandria. She received a BA degree in English literature from Newcomb College of Tulane University

and her JD degree from Louisiana State University Paul M. Hebert Law Center.

Ralston is a litigation partner and litigation group coordinator at Phelps Dunbar, L.L.P. He received his undergraduate degree from the College of William and Mary and his law degree from Tulane University Law School.

IT'S TIME TO BOOK A LISTING IN 'WHO'S WHO IN ADR 2017'

The print version of the directory for arbitrators and mediators will be mailed with the October/November 2017 Louisiana Bar Journal. For the one low price of \$125, your listing is first published in the print directory, then the directory is uploaded to the LSBA website in interactive PDF format (email addresses and website URLs are activated and instantly accessible).

The Web version of the directory remains active for one full year!

One price gets you in the print directory and on the Web!

View the 2016 directory at

www.lsba.org/goto/adrdirectory

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 28 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**, dlabranche@lsba.org, (504)619-0112 or (800)421-5722, ext. 112.

CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

CLASSIFIED NOTICES

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:

RATES

CLASSIFIED ADS

Contact Krystal L. Bellanger at (504)619-0131 or (800)421-LSBA, ext. 131.

Non-members of LSBA

\$85 per insertion of 50 words or less
\$1 per each additional word
\$20 for Classy-Box number

Members of the LSBA

\$60 per insertion for 50 words or less
\$1 per each additional word
No additional charge for Classy-Box number

Screens: \$25

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, 2017. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL
Classified Notices
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New Orleans, LA 70130

RESPONSES

To respond to a box number, please address your envelope to:

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601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

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New Orleans-based, AV-rated firm seeks an independent attorney, with established client base, seeking opportunity for expansion and growth in corporate and/or civil litigation practice. All inquiries will be treated with the strictest confidence. Qualified individuals should submit résumé, transcript and writing samples to: HR, 701 Poydras St., Box 3007, New Orleans, LA 70139.

If you are an attorney wishing to participate on a litigation team and provide legal research, writing and strategical litigation support, without the necessity of making any court hearings or deposition appearances, then our New Orleans CBD and Northshore law firm is seeking you as a qualified candidate for litigation research and writing attorney. Must enjoy and have excellent legal research and writing skills. Must have excellent analytical skills. Must enjoy being a team player. Must have a positive attitude and stable employment history. Five-plus years' experience preferred. Judicial clerkship experience preferred. Top 10 percent of class preferred. To apply and for more information, visit the Curry & Friend, P.L.C., website at: www.curryandfriend.com/careers.

Texas attorney, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300; email manfred@msternberg.com.

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Well-qualified insurance claims expert. Certified general adjuster/certified flood general adjuster/senior claims law associate. Best practices, bad faith, property damage, freight damage, general liability, errors and omissions, business interruption, construction defect, building code research. Former Florida certified general contractor and commercial roofing contractor. Former building code official. (206)465-2152, Adjuster Consulting, L.L.C., James Heiden.

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South Florida counsel accepting referrals of personal injury claims in south Florida, including automobile, premises liability and industrial accidents. Licensed in both Louisiana (1979) and Florida (1991) with more than 35 years of experience. Contact Gary M. Hellman, Esq., Goldman & Hellman, Ste. 404, 8751 West Broward Blvd., Ft. Lauderdale, FL 33324, (954)356-0460, gary@goldmanandhellman.com.

BOOKS WANTED

Looking to buy used/out-of-date Louisiana Digest, Federal Digest, Words and Phrases. Will pick up. Contact Rick Norman, (337)436-7787, email rnorman@normanblc.com

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NOTICE

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

ANSWERS for puzzle on page 36.

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The Last **WORD**

By Edward J. Walters, Jr.

LSBA SUCCESS STORY: MENTOR PROGRAM

During the 2016 Louisiana State Bar Association's (LSBA)/Louisiana Judicial College's joint Summer School, 12 lawyers and 12 judges representing all levels — age, time in service or practice, gender and race — met to engage in an open dialogue about character and leadership.

During the conversation, the discussion turned to the challenges of practice for younger lawyers. Of the 24 people in attendance — all well-connected lawyers and judges — only two or three of them knew about the LSBA's Transition into Practice (TIP) Mentor Program, ably begun and coordinated by Committee on the Profession Chair Barry H. Grodsky.

The LSBA's Mentor Program can help address the challenges of practice for these newly admitted attorneys, many who are not able to find employment in firms and who resort to hanging out their own shingle without the opportunity of gaining sufficient experience of the reality of practice in a law firm. Assisting these new attorneys is important to the overall practice of law... and it's a win-win for both the mentee and the mentor. Read on...

What Is It?

The TIP Mentor Program began as a pilot project in New Orleans, Baton Rouge and Shreveport. The Louisiana Supreme Court recently authorized the program to roll statewide.

What Does It Do?

The program matches one mentor with one mentee, allowing more experienced attorneys to share their knowledge with those who are just starting their careers. The year-long program has numerous requirements, including attending a civil and a criminal hearing or trial in state and federal court; attending an appellate court oral argument (including online Supreme Court oral argument); and attending a

deposition (with mentor).

The mentor and mentee are required to meet four times during the year-long program. Several topics must be discussed, including “unwritten” customary rules of civility and etiquette among lawyers and judges; the Louisiana Code of Professionalism; the mentee's long-term career objectives and ways to meet these goals; substance abuse and mental health issues, including warning signs, colleagues with problems and resources, and specific information about the Judges and Lawyers Assistance Program (JLAP); different career paths and resources for exploring options; differences in working in various sized firms and government positions; managing law school debt; job search strategies; handling of conflict issues and review of applicable ethical rules; handling ethics issues at law firms with associates, partners and other colleagues; client and business development and retention and ethical issues; importance of constant communication with client, providing updates and status reports; fee arrangements and contracts; proper legal counseling techniques and duty of advising clients; appropriate ways (including ethics, professionalism, custom, etiquette) in dealing with others on behalf of client; client confidentiality and privileges; how to screen for and recognize conflicts; calendar reminders and docket systems; and many more topics.

Who Can Do It?

The Supreme Court will appoint qualifying mentors recommended by the LSBA based on submitted mentor applications. Most of us can do it. Even judges may serve as mentors.

What Are the Results?

The LSBA has spoken to several mentors and mentees to see how the program is working. The results were overwhelmingly positive . . . for both the

mentors and the mentees.

“It's one of the best things I ever did as a lawyer to pay back to the system to which I owe so much.”

One mentor/mentee pair has established a relationship for life. Even after the end of the program, they have lunch regularly, discuss cases back and forth, discuss important career decisions, and other normal lawyer stuff. The mentor is looking forward to attending the mentee's upcoming wedding.

So What Can YOU Do?

You can complain about the state of the profession or you can actually DO something. Be a mentor. Register online at: www.lsba.org/Mentoring. You will not regret it.

We love our profession that has given us so much. This is an opportunity to pay back and have fun at the same time. You can help our profession, make a friend, and learn some stuff yourself because YOU need to be prepared as well.

Young lawyers wanting to join the program can register online at the above link as well or read more in the TIP handbook: www.lsba.org/goto/tipmentorhandbook.

Creation of the TIP program was only possible with the continued support of LSBA leadership and the Louisiana Supreme Court. Try it. It will enhance your enjoyment of our profession and make you remember why you went to law school.

Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal's Editorial Board. He is the chair of the LSBA



Senior Lawyers Division and edited the Division's e-newsletter Seasoning. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)

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