

# LOUISIANA BAR JOURNAL

June / July 2019

Volume 67, Number 1

**Robert A. Kutcher**

79<sup>th</sup> LSBA President


*Metairie*



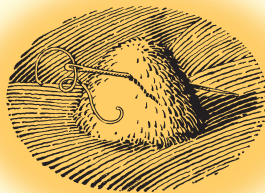
## Also Inside:

- What Does It Mean to Be a Lawyer Today and What Can We Learn from the Cajuns?
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- Celebrating Diversity in Law: Tulane Law School Celebrates 50 Years of Graduating Black Lawyers





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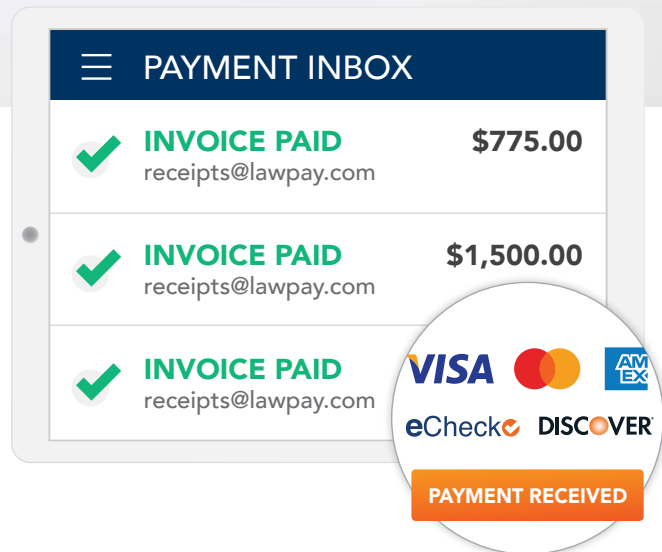


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Cover Photo: Robert A. Kutcher, the 79th president of the Louisiana State Bar Association, with his wife, Renee, and their family. Front row from left, Tori Rosenbloom, Ben Rosenbloom, Andy Kutcher, Renee Kutcher, Robert Kutcher, Emma Rosenbloom and Molly Rosenbloom. Back row from left, Erin Rosenbloom, Jake Rosenbloom, JC Rosenbloom, Skylar Rosenbloom, Claire Rosenbloom, Brittany Rosenbloom and Jessie Kutcher. Read the President's Interview beginning on page 6.  
*Photo by Liz Daino Photography.*

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By Patrick A. Talley, Jr.

# Believe It or Not: My First Editor's Message

Editor of the *Louisiana Bar Journal*. Me? That's both surprising and shocking (depending on who you are talking to). My Mom would be shocked. She was an English major and she edited and corrected my papers all through high school (pretty extensively, I should add), so she would say there must be some mistake. My college professors would be surprised since I made an automatic F-error on my first English lit paper for a "comma splice." (A what?) My secretary and associates who work with me daily (who extensively edit everything I write) would be thinking, "Talley, the guy who never met a sentence that couldn't use a comma somewhere (correctly used or not) is the editor? You've got to be kidding!" So, yes, most people who know me will probably be surprised and/or shocked to learn that I am now the editor of the *Journal*, beginning with this issue, Volume 67, No. 1. Quite frankly, I'm a little shocked and surprised myself (and, admittedly, a little intimidated, too).

How and where do I start my journey as editor? As a history major, my first inclination was to do a little historical research. This is Volume 67. What about Volume 1, I queried? Actually the first official publication of the Louisiana State Bar Association (LSBA) was called *The Louisiana Bar*, first published in 1942. The Editor's Message in that issue gives an idea of why a publication was established:

Feeling that there is a real need in Louisiana for a bar publication treating the association's activities and matters of general importance to attorneys, the Board of Governors of the Louisiana State Bar Association, with this issue of *The Louisiana*

*Bar*, undertakes the publication of an official organ for one year.

Incidentally, the lead story in that first issue was an article about the St. Martinville Courthouse, constructed in 1855. Adopting the architectural design of the Parthenon of Greece, the courthouse was a magnificent building of architectural beauty and grace, with its front supported by four very large Ionian columns. (*Read more about St. Martin Parish in the "Local Practice" section of this issue on page 32.*)

Just over a decade later, in July 1953, the *Louisiana Bar Journal* was born. Interestingly, one of the articles featured in that first issue was written by Hon. Robert G. Storey, then-president of the American Bar Association. In the article, "Our Changing Profession," he wrote: "[W]e are all living in changing times. The law and the lawyers are likewise in changing times. The impact of the changing social conditions [is] almost unprecedented."

Sound familiar? Now some 65 years later, with several generations of lawyers in between, the theme of the LSBA's Annual Meeting this year, under the leadership of President Robert A. Kutcher, is "Evolution of the Profession." When I asked him why he chose that theme, Bob explained, similar to Robert Storey, "[T]he profession is a very different practice today than when I graduated law school. We are facing different issues and different problems. We have to deal with life in the 21st century. The profession, like the rest of society, has evolved."

So, too, the *Louisiana Bar Journal* has evolved. Since 1953, the *Journal* has been the official publication of the LSBA. It began as a quarterly publication in digest size, expanding to six times a year with Volume

29 in 1981. Today, this full-size, full-color professional magazine is devoted to reporting on substantive legal matters, issues impacting the profession, information about the Bar's members and, in general, other topics of interest to Louisiana lawyers. It averages 80 pages an issue and print runs are 22,000+. The *Journal* is archived (and searchable) online currently back to 1998.

The LSBA's Annual Report is delivered to members through the *Journal*. The *Journal* also is the vehicle for two advertising supplements — the Who's Who in ADR directory and the Expert Witness, Consultant & Legal Services directory.

In recognition of its high quality over the years, the *Journal* has received numerous accolades and awards from several groups, including the National Association of Bar Executives, the International Association of Business Communicators (New Orleans Chapter) and the Public Relations Society of America (New Orleans Chapter).

As I become the editor of the *Louisiana Bar Journal*, the historical significance of this publication and its importance to the law profession in Louisiana are not lost on me. To guide me in this new role, I have the shoulders of 66 volumes of *Louisiana Bar Journal* editors who have come before me and have made the *Journal* the quality publication it is today. Plus, I have the advantage of managing editor Darlene LaBranche and a professional LSBA communications staff. They are truly the best in the business and deserve all the credit for the success of this *Journal*.

As I begin this journey, let me assure you that we will continue to strive to make this the best publication we can, a publication that continues to evolve as our profession evolves . . . a *Journal* of which you can truly be proud.



President's Interview



# One on One with Robert A. Kutcher, 79<sup>th</sup> LSBA President: *On Strategic Planning and the “Evolution of the Profession”*

Interviewed by Patrick A. Talley, Jr.

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

Kutcher served as president-elect of the Louisiana State Bar Association (LSBA) in 2018-19 and as treasurer in 2014-16. He served in the House of Delegates and on the House Liaison Committee for several terms. He is a member of the Legislation Committee and the Committee on the Profession. He was a member of the Louisiana Bar Journal Editorial Board and is a co-chair of the Summer School Planning Committee. He also served on the Nominating Committee and the Rules of Professional Conduct Committee. He chaired the Audit Committee in 2013 and received the LSBA President's Award in 2013.

He served as a board member of the Louisiana Civil Justice Center (2015-18) and the Pro Bono Project (2014-17). He was a member of the Louisiana Attorney Disciplinary Board from 1993-99, chairing the board in 1999. He was a member of the Federal Bar Association New Orleans Chapter from 1984-92, serving



as president in 1991-92. He is a Fellow of the Louisiana Bar Foundation and the American Bar Foundation and is a master in the Thomas More Inn of Court.

Kutcher chaired the Louisiana State Advisory Committee to the U.S. Civil Rights Commission from 1990-94. He was an associate commissioner of the Anti-Defamation League National Commission

from 1991-2002, regional chair of the Anti-Defamation League from 1992-96 and regional board member since 1984.

In his community, he served as president of Shir Chadash Conservative Synagogue and the Jewish Community Center of New Orleans. He also served as a board member of the Jewish Community Centers of North America in 1992-98.

(Left) Robert A. Kutcher, the 79th president of the Louisiana State Bar Association. Photo by Liz Daino Photography.

(Above) The Robert A. Kutcher family: Front row from left, Tori Rosenbloom, Ben Rosenbloom, Andy Kutcher, Renee Kutcher, Robert Kutcher, Emma Rosenbloom and Molly Rosenbloom. Back row from left, Erin Rosenbloom, Jake Rosenbloom, JC Rosenbloom, Skylar Rosenbloom, Claire Rosenbloom, Brittany Rosenbloom and Jessie Kutcher. Photo by Liz Daino Photography.



Robert Kutcher at the 2018 Southern Conference of Bar Presidents in New Orleans, La.

*He has been listed in Best Lawyers (2012-2019), including 2013 New Orleans Litigation-Real Estate Lawyer of the Year and Lawyer of the Year 2018 in the practice areas of closely held companies and family businesses law; and Louisiana Super Lawyers in business litigation (2008-2019).*

*Kutcher and his wife, Renee B. Kutcher, have been married for 34 years. They have four children.*

**Talley:** Bob, you are now the 79th president of the Louisiana State Bar Association, congratulations! You are very well known in the LSBA. But for those members who may not know you as well, tell us about yourself.

**Kutcher:** I have been married for 34 years. My wife Renee and I have four children. We have lived in the same house for 34 years, much to my wife's chagrin. Of our four kids, three of them live in New Orleans. I count myself lucky on that score. And I've been practicing law since law school graduation.

**Talley:** I know there's an interesting story about how you met your wife.

**Kutcher:** I was having lunch with Judge Marty Feldman at Galatoire's. I worked with him — we were partners — before he became a judge. I was waiting for the judge and Renee walked in and the doorman tried to seat her with me, which I thought was a terrific idea. She didn't. She was meeting someone else. We had the same waiter. As Renee and her friend were

leaving, the waiter physically brought her to my table and sat her down. That is how we met. She ducked my phone calls for a couple of weeks. Then we went out and we were married within the year.

**Talley:** What are your interests outside of the practice of law?

**Kutcher:** I gave up golf after Hurricane Katrina as there were more pressing matters to deal with in New Orleans at that time. Since then, I go to the gym. I like live music. I have no musical talent but I am capable of clapping after a song. I also go to music festivals and live shows.

**Talley:** I know you are an avid fan of the New Orleans Jazz Fest.

**Kutcher:** Yes, but one of my sacrifices this past year was missing both weekends of Jazz Fest because of Bar-related activities. But I generally do go to Jazz Fest every year. Last year, a guy who used to live here but now lives in Los Angeles did a documentary on Jazz Fest and I was one of the featured people interviewed.

**Talley:** Bob, tell us a little about your law practice.

**Kutcher:** Since law school graduation, I always handled commercial litigation, securities, antitrust, "fraud du jour" and breach of contract cases. In the early 2000s, I began doing more real estate-related work. My practice caseload is now 50-50 commercial and commercial real estate work, such as leasing, sales, purchasing, financing and landlord-tenant disputes. One of the great advantages of doing both is a lot of transactional lawyers have no idea how to read a contract and see problems from the litigation perspective. I enjoy them both. It's two different mindsets. Litigation very often is a win-lose situation. Transactional work is a win-win situation, a place where both sides are happy.

**Talley:** We have had cases together. You are an outstanding litigator.

**Kutcher:** And we may have a few more together.

**Talley:** Tell us about your law firm. Who are your partners?

**Kutcher:** My firm is Richard Kutcher Tygier & Luminais in Metairie. My law partner, Nicole Tygier, and I have been together since she got out of law school in 1987. We have practiced law together for 30-plus years. My other partners are Brad Luminais and Tom Richard. Their practices focus primarily on insurance defense. We have been together since 1996. I am also fortunate to have had the same two assistants, Celeste Pfefferle and Julie Wisecarver, for over 20 years. They make my life much easier.

**Talley:** You are also involved in many civic activities outside of the practice of law. Tell us about some of those activities.

**Kutcher:** Over the years, I have served a number of different boards. I was the regional chair of the Anti-Defamation League. I was president of my synagogue. I was on the national board of the Jewish Community Centers of America. I was president of the local Jewish Community Center. I was chair of the Louisiana State Advisory Committee to the U.S. Civil Rights Commission. Every state has an advisory committee. I was appointed chair during President George H.W. Bush's tenure. I have been active in several civic and Bar activities. I really believe we have an obligation to give something back to our community and service is the best way to do it.

**Talley:** You have not always lived in Louisiana. How did you get to New Orleans?

**Kutcher:** I am originally from New York. I graduated from Cornell University in 1972 with no plan other than to hang out in college. That was not an uncommon circumstance back then. My father was infinitely more worried about my future than I was. I grew up in the hotel business. My family owned a resort hotel in the Catskill Mountains. After college graduation, I had an opportunity to go to Loyola Law School. In all candor, I always wanted to go to Mardi Gras. So I thought it was a good way to get to Mardi Gras. I enrolled in law school in 1972 and never left.

**Talley:** I bet your first Mardi Gras was a lot of fun because you are still here.



**Kutcher:** For many people, the concept of drinking 24 hours a day, and drinking on the street, takes a little bit of adjustment. I probably overdid it at times. But I still go to Mardi Gras and I'm still here.

**Talley:** Tell us about your law school days. Did you like law school?

**Kutcher:** I had no grand plan. I know people say this is what they always wanted to do with their lives. But I confess I'm not one of those people. I enjoyed law school. It was fun and intellectually stimulating. The first year of law school was more of a chore but it was something I enjoyed doing. I did well in law school and I graduated with honors. I was vice president of the Student Bar Association. After I graduated, I applied for some clerkships. I eventually clerked for Judge R. Blake West in the U.S. Eastern District of Louisiana. After the clerkship was completed in two years, I went into private practice.

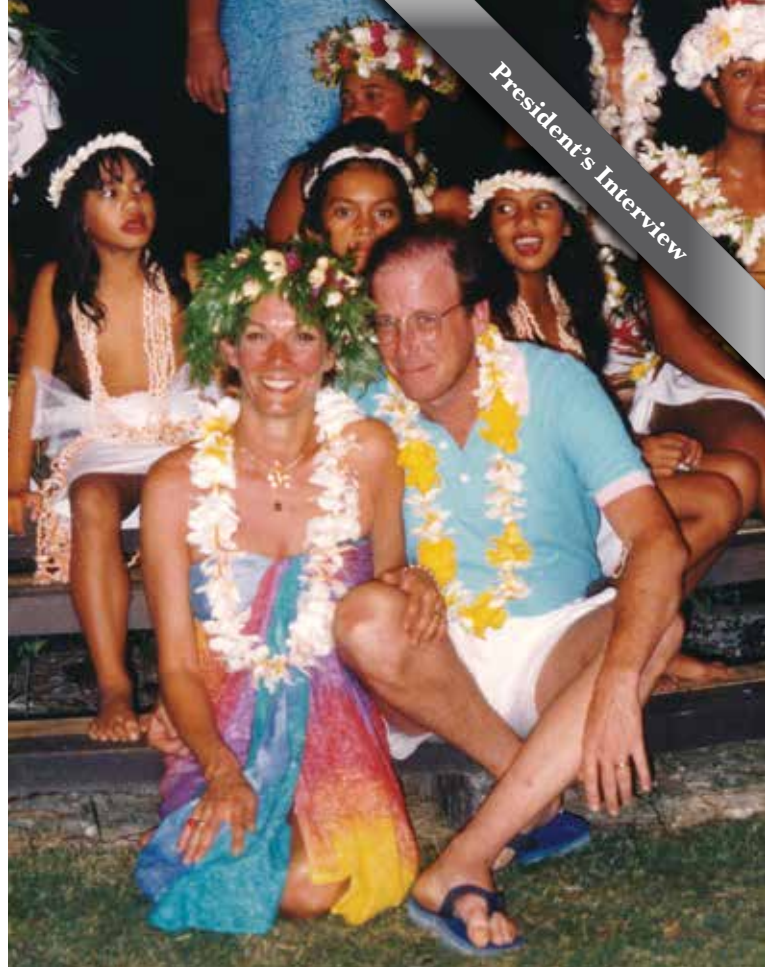
**Talley:** How was the clerkship with Judge West? What was the law practice like at that time, as seen from the eyes of a law clerk?

**Kutcher:** It was a terrific learning experience. If an opportunity arises to be a law clerk, I tell law graduates to seriously examine it because you learn how to practice law by watching other lawyers and reading other lawyers' briefs. You also learn what sells and what doesn't sell, what's important and what isn't. And you make connections. Back then, we still had oral arguments every other Wednesday. Everyone came to the courthouse (at that time, still on Royal Street in the French Quarter). You saw who was a good lawyer, who was an honest lawyer, who made good arguments and who didn't. There was a sense of collegiality. That, unfortunately, has diminished in the federal system. It was a smaller bar in 1975. There are more lawyers today than when I started practicing law. There was more of a communal sense. All lawyers were there together and you had multiple cases together. That tends to build relationships. When you are involved with suits with other lawyers, you can develop a relationship. It was a very different time. It was more sociable and more collegial. It was a

community of lawyers.

**Talley:** As Bar president, you will be focused on the needs and concerns of all members. What do you consider the major challenges to the practice of law today?

**Kutcher:** There are a number of issues. The practice of law is not what it once was. There are so many changes. One, the sheer number of lawyers. Then there is the 24/7 demand cycle. When I started practicing law, when you went out of town, someone calling you would be told that he'll be back on Thursday. The person needing to talk to you would just call back on Thursday. Now that's gone. Everyone has cell phones, emails, texting, laptops. There is constant demand on lawyers' time and you are pulled in many more directions. As a result, it is a more stressful profession today. On top of that, for younger lawyers, they also have the student debt issue, which is stifling. On the young lawyer side, there is more mobility among lawyers. When I began practice, if you changed firms once or twice, that was a lot. Now lawyers move much more. Another factor, back then, everybody had a job. It may not be the job you wanted, but you could get a job. If you chose to hang a shingle, it was because it was your choice, not dictated by necessity. There is a need for more support now that more lawyers are going solo. We have an active solo and small firm practice section. The section presents a two-day tech-related program, which is fascinating. I spoke there a couple of years ago and it was remarkably impressive. We can do so much more for our clients with technology. Another issue is some lawyers don't have brick-and-mortar offices now. Libraries in many law firms are all electronic now. That's the



Bob and Renee Kutcher in Tahiti. Photo provided by Kutcher Family.

reality. It's a very different environment. What the Bar needs to do is respond to the needs of lawyers today. We try to do that. I encourage every member to go to the LSBA website and take five minutes to review the services the Bar offers. We all get stuck in our own ruts. You don't realize the resources and services you have from the Bar unless you make the effort to find out what we do. We have a number of programs all of which are of benefit to all segments of lawyers.

**Talley:** Bob, now let's talk about the theme of your presidency, "Evolution of the Profession." Why did you choose that theme and what does it mean?

**Kutcher:** I chose it for two reasons. One, it is a very different practice today than when I graduated law school. We are facing different issues and different problems. We have to deal with life in the 21st century. The profession, like the rest of society, has evolved. The other reason, in all candor, is going back to my affection for music. The year 2019 is the



Bob Kutcher was awarded the Loyola University College of Law Memorial Glass Award at the 2018 LSBA Annual Meeting in Destin, Fla. Photo provided by Kutcher Family.

50th anniversary of Woodstock, which I attended. I thought I would kill two birds with one stone by combining the reality of the changing law practice with some tribute that I am still here 50 years later.

**Talley:** I first met you when you were president of the Federal Bar Association a number of years ago. You have always been involved in Bar activities, whether it was the FBA or the LSBA. How and why did you begin your Bar involvement and why is it important?

**Kutcher:** We all have an obligation to make this profession better. The way we can make this profession better is giving our time, knowledge and experience we have to make our organizations better. The practice of law should be more than just a living. This is an honored profession. We all have some obligation to give back. I was active in the FBA through several leadership positions, then I became president. I was active on the Louisiana Attorney

you get involved, the more you help the profession and the more you get out of it. As I got involved, I liked it. I became House liaison in 2006 and served on the Board of Governors when Marta-Ann Schnabel was LSBA president. I have served on the Board off and on ever since. The one common thread of all LSBA presidents I have served with is all we want to do is make the Bar better. There is no hidden agenda, no private alternative. The goal is to make this Bar better for its members. We have the right and the privilege to self-regulate our practice. That's an important responsibility. We should do our best to honor that responsibility.

**Talley:** Do you feel your experiences in Bar work will be beneficial to your ability to lead the LSBA as president?

**Kutcher:** Yes, I've been active in the Bar since 1996. I have served on the Board of Governors and in the House of Delegates. I've been treasurer. I served on



LSBA President Mike A. Patterson, Robert Kutcher and LSBA President John H. Musser IV at the 2011 Annual Meeting in Las Vegas, Nev. Photo by Wynne Photography.

almost all committees in some capacity. I understand how this Bar works. Of all the not-for-profits I have been involved with, this LSBA staff, from (Executive Director) Loretta Larsen on down, is head-and-shoulders the best group of staff people I have dealt with. They are responsive, informative and helpful. The Bar presidency is a temporary job. In 2020, Alainna Mire will become president. My job during my tenure is to do the best job I can to lead this Bar in the direction of what we can do best for our members.

**Talley:** Speaking of prior presidents, you are the 79th and you follow an impressive list of men and women who've led the LSBA quite effectively. What stands out about the group as a whole? What about the group will you emulate and what will you do differently?

**Kutcher:** What stands out as a whole is, we have no secret agenda. All of us are in it to make the Bar work for its members and to offer value for the dues the members pay. I have been privileged to serve with every LSBA president since Marta-Ann Schnabel all the way to Barry Grodsky. I think that the common thread, even though they have different practices, different views of life and different politics, is we have the same objective. My job, and every president's job, is to do the best we can for the association.





Skylar Rosenbloom, Jessica Kutcher and Robert Kutcher at the 2014 LSBA Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.



Robert Kutcher at the 2018 Annual Meeting Beach Bash event in Destin, Fla. Photo by Matthew Hinton Photography.

**Talley:** Bob, what does it mean to be the president of a bar association that includes every attorney in the state as a member?

**Kutcher:** It is a tremendous responsibility. I do not pretend to know all the needs of all lawyers practicing law in the state. My job, the Bar's job, the Board's job is to do the best we can to provide all available services to our membership, whether that consists of CLE programming, ethics school, dealing with substance/alcohol abuse, all of that is what we need to address with our membership. The legal profession has a problem with substance/alcohol abuse issues and the opioid issues are blowing up. Our JLAP program has done an effective job with dealing with lawyers, employees and spouses with those issues. The responsibility is to just do the best we can for our membership.

**Talley:** How does the concept of responsibility translate into your goals as Bar president?

**Kutcher:** LSBA President Barry Grodsky has done a terrific job. This goes for everyone who has served in the president's position. This is a time-consuming job. It takes away from your practice, no dispute about that. One of the things Barry did is he convened a Strategic Planning meeting in the fall of 2018. From that meeting, we have developed six goals,

which we are in the process of implementing. My goal for this year is to get those goals implemented and operational. Some are short-term, some longer.

We should cultivate professionalism, collegiality and quality of life. When I started, there was no such thing as formal professionalism. In all candor, when the professionalism requirement was implemented, I honestly questioned its need. But, yes, we do need it.

One of the issues troubling to me is some younger people don't see the need, or don't have the ability, to pick up a phone and make a phone call. I'm not going to develop a relationship with a lawyer on the other side of an email or text. Email is great, but, if I can't solve something in three emails back and forth, I will pick up the phone. Often when you get in an elevator, there are six people all looking at their phones. We need to have a better sense of community.

We should foster inclusion and participation by focusing on the diversity of our membership. We want all Louisiana-licensed lawyers active in the bar association. The Bar is not a big firm or big city Bar. It's not a below I-10 Bar. It's everyone's. We want to partner with local and specialty Bars. Our Young Lawyers Division is very active.

We want to expand access to justice. Civil access to justice in this state and

country is so woefully underfunded and it's not fair. I recently read an article that a self-represented litigant in domestic court in Orleans Parish was arguing for a bond against her husband. She had text messages and abusive photos all on her phone. There was no one to tell her to print the messages out as evidence. There needs to be better opportunities for individuals to have legal representation.

As a profession, we have always come under fire, being out there for ourselves, taking people's money. We want to improve the trust in the legal system. The more people believe in lawyers and the legal system, the better off we all are.

We also recognize that we are the last profession to have the ability to self-regulate. We want to preserve that both for our benefit and for the public's benefit as well.

I hope that over the next year we can take steps to implement these goals. That's what we are trying to achieve in the upcoming year.

I encourage every lawyer to look at our website and see what we do. Open the newsletters and emails from the Bar. There is something for everyone there.

**Talley:** You mentioned regulatory functions that the Bar performs. How is our relationship with the Louisiana Supreme Court?



Robert A. Kutcher. Photo by Liz Daino Photography.

**Kutcher:** The Bar's relationship with the Louisiana Supreme Court is excellent and it always has been. This Supreme Court and Chief Justice Bernette Joshua Johnson have been extremely supportive of the LSBA. They are excellent partners. The justices are active in any number of Bar activities. A majority of the Supreme Court justices attend our Annual Meeting and Summer School in Destin. It is difficult to find another state with this sort of relationship between the regulatory Supreme Court and the regulated Bar Association.

**Talley:** You have been involved as co-chair of the Summer School Planning Committee for several years. Tell us about the planning.

**Kutcher:** For the past several years, Judge Ricky Wicker, Minor Pipes and I have been co-chairs. We start on Summer School planning in August of the preceding year. We meet with the incoming president for ideas. We get speakers, then flesh out the program. This year, we have a terrific program. We try to do a combination of nuts-and-bolts practical topics and some broader-based topics. That is the goal every year. We do it in conjunction with the Louisiana Judicial College. We encourage

everybody to attend. It's a networking opportunity for judges and lawyers to meet and talk and develop a relationship. You have a much better relationship with somebody you shook hands with at a party than emailing them or calling on them cold. We develop a program that's attractive to the broadest-based number of Louisiana lawyers. It's a terrific opportunity.

**Talley:** Plus, if you go to Summer School, you can be there in person when you are sworn in as president. That's *la-gniappe*!

**Kutcher:** Yes. If you come to the Summer School and Annual Meeting, I encourage everyone to attend the Thursday installation lunch. I promise my speech will be short.

**Talley:** I've often heard the saying, "you are what you wear." You have a reputation for being quite the dresser, no matter the occasion. What does that say about you?

**Kutcher:** That I know what the occasion is when I decide how to dress. The reality is I grew up in a hotel and you couldn't go to dinner in pajamas and a bathrobe. You went to the dining room. You had a dress code. When I was young kid, on Saturday night, the women wore evening gowns and the men wore tuxedos. You wore a coat and tie to dinner. You dressed for the occasion. If I'm going to court, I wear a coat and tie. If I'm coming downtown, I usually wear a sport coat. If I go to Jazz Fest, I will wear Jazz Fest festival attire. For the beach, beach attire. You can always tell the out-of-town, first-time speakers at the Annual Meeting because they show up in coat and tie.

**Talley:** You are also frequently seen with a cigar. I've never seen you smoke the cigar, but you always have it.

**Kutcher:** I used to smoke cigars. My grandfather, my father, my uncle all smoked cigars. I picked up the habit, too. Eventually, though, I was squeezed out of smoking in more and more places. I used to smoke a cigar on the golf course, but I gave up golf. So, I ran out of places to smoke.

**Talley:** What is Bob Kutcher passionate about?

**Kutcher:** I have no answer for that. I'm perfectly happy wherever I am. I don't have

a bucket list, which aggravates my wife. But I am a live-for-the-moment person. I love practicing law. My father told me years ago: If you look in the mirror and don't like what you see, do something else. If this isn't for you, then don't do it. Life is too short. I found something I like and I'm relatively good at it. There's precious few things I'm good at so I want to take advantage of what I can do. That's what I'm passionate about.

**Talley:** Thank you for all you have done for the Bar for many years and thank you for what you are about to do. You are an outstanding man, professionally and personally. You will be a great president. What is the state of the profession and are you optimistic about the future?

**Kutcher:** You have to be optimistic. I learned a long time ago either you will be happy or miserable. Life will go on no matter what so do your best to be happy about it. Our profession is changing. It's not like it was 25 years ago and it won't be the same 25 years from now. The evolution of artificial intelligence will impact lawyers more. I don't have a crystal ball, so I don't know where we will be in 25 years. But there will always be lawyers, and I hope the profession that exists in the future will build upon what we have done now for our members and will continue to make our Bar Association and the profession better for its members.

**Talley:** When I arrived to do this interview, someone in the Bar Center jokingly asked if the "victim" was here yet. I hope you haven't felt like a victim in this interview.

**Kutcher:** Of course not. This has been delightful.

**Talley:** Thanks, Bob, and good luck to you this year. I know you will be a very successful LSBA President.

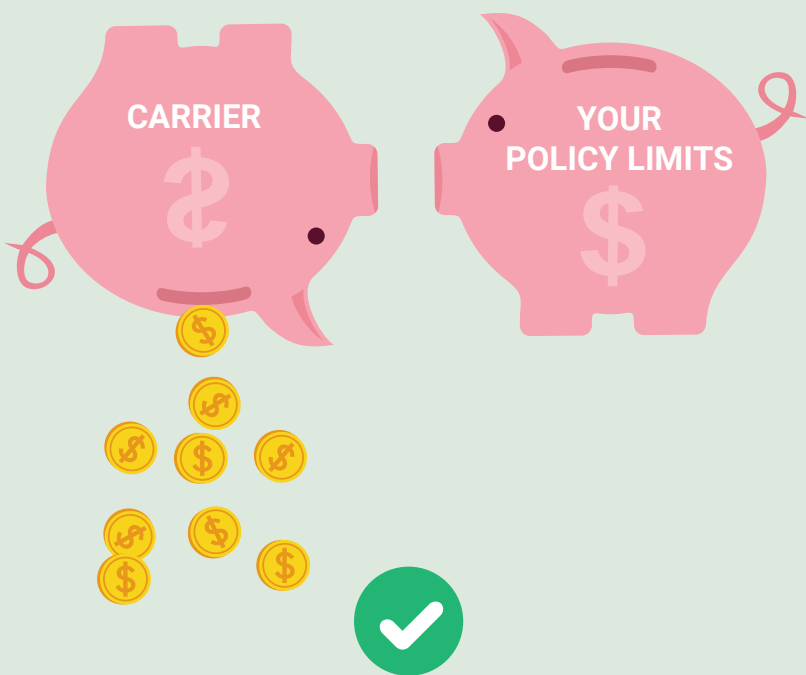
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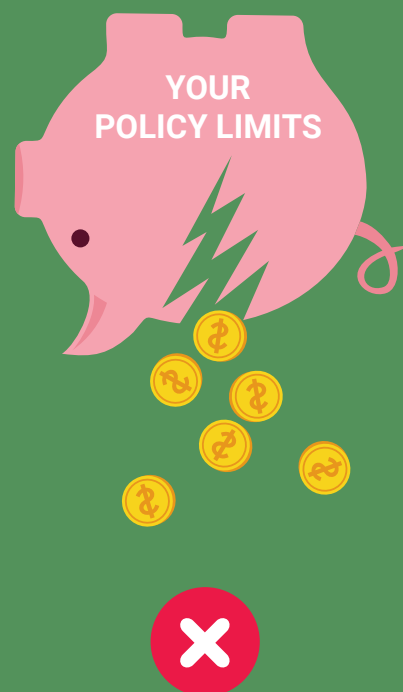
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# Commentary:

## What Does It Mean to Be a Lawyer Today and What Can We Learn from the Cajuns?

By John D. Schoonenberg

The Louisiana State Bar Association's (LSBA) Francophone Section will present the Judge Allen M. Babineaux Symposium at the University of Moncton Law School in New Brunswick, Canada, on Aug. 20 as part of a two-day event.<sup>1</sup> (*More information on the event can be found on page 16.*) This article forms the basis for my symposium presentation.

The legal landscape is changing rapidly. With the onslaught of technology and advertising and the advent of legal service companies, it is a wonder any of us can keep pace except for the techno savvy and the virtuosos.

This rapid change has had a dramatic impact on our profession which, in many cases, has not been positive. Alcohol and drug abuse among lawyers and judges is at an all-time high.<sup>2</sup>

I believe we have lost many practitioners because they could not keep pace with the technology or dwindling legal market. Some have fallen because they could no longer take the stress of law practice.

What can we do as lawyers to survive not only economically but emotionally and spiritually?

As I think about the future of our profession and the challenges we face, I am reminded of the struggle of the Cajun people to retain their culture. I recall the disparaging comments often hurled at the Cajuns. But despite the negative stereotypes of the Cajuns, their culture and language has not only survived but flourished.

The positive qualities of the Cajuns were their religious beliefs, friendliness, hospitality, collegiality, family ties and language. Their uniqueness makes them strong.

Prior to WWII, the Cajun culture and language remained somewhat isolated. The language was significant in holding the culture together and newspapers were printed in both French and English.

After WWII, newspaper editors began to print the papers only in English. French in the courtrooms began to wane. Cajun children were punished for speaking French in school. Country doctors stopped speaking French to their patients. The Cajun culture began to unravel. They had to learn to read and write "*en anglais*." They had to quickly "urbanize" in order to survive.<sup>3</sup> Scholars across the globe have used the Cajuns as a case study of assimilation and recipe against ethnic cleansing.

Then in the early 1970s, Cajun intellectuals and artists, such as Barry Jean Ancelet and Zachary Richard, began to promote the language, culture and the



music. Amanda LaFleur Giambrone started the first Cajun language curriculum at Louisiana State University.<sup>4</sup> Warren A. Perrin, chair of the LSBA Francophone Section, has written several books on the history and culture of the Acadians and successfully obtained a royal proclamation of apology from the Queen of England for the Acadian Deportation. Gov. Edwin Edwards, Louisiana's first Cajun governor, was also partially responsible, along with other legislators, for the passage of Art. XII, Sec. 4, of the 1974 Constitution which allowed the people to "preserve, foster and promote their respective historic linguistic and cultural origins."

## What Can We Learn from the Cajuns?

Our profession is at a crossroads. Can we survive the onslaught? Will the law firm as we know it exist in 20 or 30 years? Bundled services firms, like Axiom and LegalZoom, are invading the legal market.

The Cajuns almost did not survive. Yet they exist and continue to grow in South Louisiana. There has been a renaissance in the music, language and the culture.

How did they do it?

The Cajuns have a collective sense of self-identity. They take pride in their language and culture. They refused to be homogenized. It is not uncommon to hear French spoken again.

I can remember trying a case in 17th Judicial District Court in Lafourche Parish as a young attorney. One of the witnesses did not speak English. Judge Wollen J. Falgout translated the woman's testimony and gave it back to the court reporter in English. There was no need for a translator. Judge Cleveland J. Marcel, Jr. in the 32nd Judicial District Court often translated from the bench.

I believe we can take a lesson out of the Cajun culture playbook to help us survive as a profession.

## Collegiality, Custom and Traditions

I can remember a time when we were all proud to be lawyers, when we tried to help each other before things became cutthroat and competitive. Veteran attorneys should



not hesitate to offer advice and mentoring to younger and less experienced attorneys.

We are all one large legal family. We should care about our fellow attorneys. If we see a colleague suffering, we should offer assistance. We need to learn to live, love and forget, just like the Cajuns.

We should commit to maintain our customs and traditions, such as law societies, local bar associations, swearing-in ceremonies, Red Mass and the "Charge" at law school graduations. All of the things that separate us from other trades and professions should be actively maintained and promoted.

## Our Civilian Tradition

Louisiana's primary distinction from other legal jurisdictions is our civilian law tradition, which comes directly from France and the Napoleonic Code.<sup>5</sup> However, our Code is an amalgamation of French and Spanish law.

We all studied the Civil Code in law school. The simplicity and uniqueness of the code was wasted upon me as a young law student. It was not until much later in practice that I began to appreciate its genius as a method of solving legal problems and disputes. Our civilian tradition relies on statutory law as opposed to precedent in common law states.

## Technology and Survival

As seasoned attorneys, if we want to remain relevant and productive, we should attempt to embrace technology. Computer programs like Microsoft Word, QuickBooks (for billing) and Microsoft Outlook (for calendaring) should be part of our practices. Many attorneys have refused to use email or smartphones; most of them are no longer in practice.

The Cajuns adapted and assimilated but, at the same time, maintained their cultural identity. If we are to survive as a profession, we must do the same. The Cajuns lived by a code which revolved around their God, family, hard work and fairness. We will survive if we live by the same basic code. They were ethical and refused to take an oath of allegiance to the British crown.<sup>6</sup>

## Conclusion

There are many similarities between the Cajun culture and the Louisiana Rules of Professional Conduct. Competency, diligence, communication and truthfulness are the bedrock of our profession.<sup>7</sup>

We live and practice in a rapidly changing world. In order to survive and thrive, we need to maintain our competency and learn new skills. Like the Cajuns, we must learn to assimilate into this new legal culture. We can learn from our Cajun





brothers and sisters and derive inspiration from their struggle to face a brave new world. Communication with clients and other attorneys, often via technology, is a key component of our survival. Like the Cajuns fought to hold their language, we must fight to preserve our legal language and traditions as we are attacked by many non-lawyer legal service companies, the “barbarians at the gate.”<sup>8</sup> What makes us strong is our uniqueness. In our civilian tradition, we have something that no other state has in the union.

The life of an attorney is not easy; however, with help from our Cajun friends, we can live, practice and thrive — à *bientôt*.

## FOOTNOTES

1. The symposium will be held in conjunction with the Congrès Mondial Acadien 2019, World Acadian Reunion, held every five years. This year’s symposium will take place at the University of Moncton Law School on Aug. 20, 2019. The University of Moncton is one of only two law schools in Canada where all classes are taught in French. The other French-speaking university is St. Anne in Pointe-de-l’Église, Nova Scotia.

2. Report from the National Task Force on Lawyer Well-Being, American Bar Association, Nov. 9, 2018, [www.americanbar.org/groups/lawyer\\_assistance/task\\_force\\_report/](http://www.americanbar.org/groups/lawyer_assistance/task_force_report/).

3. This is a controversial subject. However, I believe that CODOFIL (Council for the Development of French in Louisiana) deserves much of the credit for the renaissance of French in Louisiana and, as a direct result, the revitalization of the culture.

4. Amanda LaFleur Giambrone, coordinatrice des études cadjines, 1998-2015. She is also the author of *Tonnerre Mes Chiens!* and numerous other books on the Cajun language.

5. The Napoleonic Code, officially today known

as *le code civil*, is the French Civil Code established under Napoleon in 1804. The Civil Code gave post-revolutionary France its first coherent set of laws concerning property, the family, persons, inheritance and individual rights. It was revised in 1825 and 1870 and is still in use today. See, “The History and Development of the Louisiana Civil Code,” Vol. 19, No. 1, Legislative Symposium: The 1958 Regular Session, December 1958, John T. Hood, Jr. Our code is an amalgamation of French and Spanish law. See also, *An Elementary Treatise of the Civil Law of Louisiana*, Vol. 1, An Introduction of Louisiana’s Civil Law Tradition, by J.-R. Trahan.

6. This also is a controversial subject. Many historians and commentators believe they were not expelled from Nova Scotia for refusal to take the oath. Many of them may have been willing to take an empty oath. The real reason for their expulsion was simply a “land grab” by the British.

7. Louisiana Rules of Professional Conduct, Rules 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); and 4.1 (Truthfulness).

8. I borrow this term from a book title, *Barbarians at the Gate: The Fall of RJR Nabisco*, a book about the leveraged buyout of RJR Nabisco written by investigative journalists Bryan Burrough and John Helyar. The book was made into an HBO movie in 1993.

*John D. Schoonenberg is a senior attorney practicing with the firm of Henderson, Reilly Boudreaux & Schoonenberg in Houma. He received his BA degree in history in 1972 from Nicholls State University, his JD degree in 1975 from Loyola University Law School and an LLM in international taxation in 2003 from St. Thomas University. He is a member of the Louisiana State Bar Association’s Francophone Section. He attended the French Immersion Program at Université Sainte Anne in Pointe-de-l’Église, Nova Scotia, in 2016. (jds@hrb-law.com; 300 Lafayette St., Houma, LA 70360)*



## Registration Open for Francophone Section’s August CLE Program in Canada

The Louisiana State Bar Association’s (LSBA) Francophone Section is presenting a CLE program, “Acadian Diaspora: From Louisiana to Acadia,” on Aug. 20 on the campus of the University of Moncton School of Law in New Brunswick, Canada. The program commemorates the 50th anniversary of the recognition of language/law rights in Canada, the 20th anniversary of the founding of the LSBA’s Francophone Section and the 40th anniversary of the collaboration of the University of Moncton School of Law with the LSBA.

Program organizers are applying for 4 hours of CLE credit, including ethics and professionalism. Cost is \$175 (including the closing reception).

The Francophone Section’s Executive Committee has assembled an outstanding program to be moderated by New Orleans attorney Louis R. Koerner, Jr., co-chair of the Francophone Section. Presenters include three Louisiana attorneys — Warren A. Perrin, Fernin F. Eaton and John D. Schoonenberg — and four Louisiana and Canadian historians, including Jason P. Theriot, Ph.D., Houston, Texas; Jean-Robert Friguault, New Brunswick, Canada; Barry J. Ancelet, Ph.D., Lafayette; and Mary Perrin, Lafayette.

To register, complete the registration form and mail to: Louisiana State Bar Association Francophone Section, 251 La Rue France, Lafayette, LA 70508.

Download a registration form: <http://files.lsba.org/documents/News/LSBANews/2019FrancophoneCLE.pdf>.

For more information, contact Warren A. Perrin, (337)233-5832, [perrin@plddo.com](mailto:perrin@plddo.com); or Louis R. Koerner, Jr., (985)580-0350, [koerner@koerner-law.com](mailto:koerner@koerner-law.com).



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## Six Legal Professionals Participating in 2018-19 Distinguished Access to Justice Pro Bono Fellows Program

By Mark C. Surprenant

**T**he Louisiana State Bar Association's (LSBA) Access to Justice Commission, co-chaired by Louisiana Supreme Court Justice James T. Genovese and Lafayette attorney Jeffrey K. Coreil, introduced its 2018-19 class of six Distinguished Access to Justice (ATJ) Pro Bono Fellows and partner host organizations at a ceremony at the Supreme Court in November 2018. These six new ATJ Fellows follow in the footsteps of the original 2017-18 class of five Fellows.

This LSBA program, launched in 2017 and only the second of its kind in the country, is for judges and lawyers willing to devote at least 20 hours per month in access to justice service. Each Distinguished ATJ Fellow partners with a host entity as they work together on their common goal of ensuring that each Louisiana citizen has

meaningful access to the judicial system regardless of their economic status.

"Access to justice is of critical importance to all of our citizens to ensure their right to fairly and impartially avail themselves of our judicial system," said LSBA 2018-19 President Barry H. Grodsky. "The work of these Distinguished Access to Justice Fellows shows just how important these rights are. The LSBA is very proud of what they have accomplished and we know that many will benefit from their continued efforts. They lead by example and the Bar hopes that others will follow this lead to help those who often are not able to help themselves. Congratulations to all of these Distinguished Access to Justice Fellows," Grodsky added.

The 2018-19 Distinguished ATJ Fellows, with their partner host organizations, are profiled below.

### **Terrel J. Broussard, Judge *Pro Tempore* / Southeast Louisiana Legal Services**

Terrel J. Broussard has served as judge *pro tempore* on the Louisiana 4th Circuit Court of Appeal. He also has been a mediator at Broussard Dispute Solutions, L.L.C.; a partner at the New Orleans law firm of Montgomery Barnett, L.L.P.; and the general counsel for Hammerman & Gainer, Inc. He has served on the Board of Regents of Our Lady of Holy Cross College and on the board of directors for both Catholic Charities in New Orleans and the New Orleans Business Development District. He was an adjunct professor at Dillard University for 28 years and has been an ordained deacon in the Catholic Church for the past 19 years. As a Distinguished ATJ Fellow, Broussard will partner with Southeast Louisiana Legal Services (SLLS) and take a leadership role in helping

The Louisiana State Bar Association's (LSBA) Access to Justice Commission, co-chaired by Louisiana Supreme Court Justice James T. Genovese, second from right, and Lafayette attorney Jeffrey K. Coreil, far left, introduced its 2018-19 class of six Distinguished Access to Justice (ATJ) Pro Bono Fellows at a November 2018 ceremony at the Supreme Court. Fellows and others attending, from left, Coreil; 2017-19 LSBA Secretary John E. McAuliffe, Jr.; LSBAATJ Director Monte T. Mollere; Fellow Donald W. North; Fellow Frank X. Neuner, Jr.; Fellow Judge Harry R. Randow; Fellow Linton W. Carney; Fellow Joseph R. Oelkers III; Justice Genovese; and Mark C. Surprenant, chair of the LSBA Distinguished Access to Justice Pro Bono Fellows Program Committee. Not in photo is Fellow Terrel J. Broussard.



SLLS extend its outreach to senior citizens who often are unaware of how to address their legal concerns and needs. In addition, among other potential meaningful tasks, he will help SLLS develop a relationship with church-related entities which provide pro bono legal workshops for the poor in their parishes and neighborhoods. He will serve in a liaison role connecting those needy individuals and families to the services of SLLS.

#### **Linton W. Carney / The Pro Bono Project**

Linton Carney served as the first chief legal officer for The Pro Bono Project from 2009-16. He has continued to provide his knowledge and experience to The Project, its staff, clients and volunteers in all needed ways since his retirement. In 2016, Carney received the LSBA President's Access to Justice Award. Before joining The Project, he served as the executive director of AIDSLaw after a successful career as a partner at the New Orleans law firm of Monroe & Lemann. He was a member of the LSBA's Access to Justice Committee for many years and served on the board for the initial LSBA Access to Justice Commission. As an ATJ Fellow, Carney will continue to provide his assistance and experience to The Pro Bono Project and its clients.

#### **Frank X. Neuner, Jr. / Legal Services Corporation**

In June 2018, Frank X. Neuner, Jr. was appointed by President Trump to serve on the board of directors of the Legal Services Corporation (LSC), the single largest funder of civil legal aid for low-income Americans. Acadiana Legal Service Corp. and Southeast Louisiana Legal Services are the LSC-funded entities in Louisiana. Neuner is the founder and managing partner of the NeunerPate law firm in Lafayette. Among his many accomplishments, he served as LSBA president in 2005-06; chaired the Louisiana Public Defender Board from 2008-13; received the Louisiana Bar Foundation Distinguished Attorney Award in 2013; and received the David A. Hamilton Lifetime Achievement Award in 2014 because of his outstanding volunteer work in the access to justice arena throughout his career. As an ATJ Fellow, Neuner's leadership role with the LSC will be invaluable to Acadiana Legal Service Corp. and Southeast Louisiana

Legal Services as they deal with funding and other issues which can jeopardize the work they do for those in need.

#### **Donald W. North / Southern University Law Center**

Donald North has been a highly regarded member of the faculty of Southern University Law Center since 1998. He was the law school's clinical education program director for 14 years. He is presently in charge of the law school's pro bono program which not only educates students about access to justice needs, issues and concerns, but also places them within the access to justice world with various courts, legal services providers, state agencies and public defender offices. Before becoming a member of the Southern University Law Center faculty, North served in the U.S. Army's Judge Advocate General Corps. After leaving active duty, he worked for the Louisiana Department of Justice as an assistant attorney general, serving as a prosecutor in the criminal and Medicaid fraud divisions. He also is a current member of the LSBA's Board of Governors as the representative from Southern University Law Center. He frequently offers pro bono legal services to the public defender office in Baton Rouge. As an ATJ Fellow, he will continue the work he does daily for the students at Southern University Law Center as he grows and develops the next generation of ATJ leaders.

#### **Joseph R. Oelkers III / Acadiana Legal Service Corp.**

Joseph R. Oelkers III was the founder and executive director of Acadiana Legal Service Corp. (ALSC) from 1978-2016. Since 2016, he has continued to volunteer countless hours and provide his wisdom, experience and advice to ALSC in all requested and needed ways. In 2017, he received the Calogero Justice Award from the Louisiana Bar Foundation. Over his career, Oelkers has held many leadership positions. He is a former president of the Lafayette Bar Association and chaired the LSBA Access to Justice Committee for 10 years. He also was on the board of the first Access to Justice Commission. As an ATJ Fellow, he will continue his relationship with ALSC as they work to assist Louisiana individuals and families in need.



**Louisiana Supreme Court Justice James T. Genovese, co-chair of the Louisiana State Bar Association's Access to Justice Commission, addressed attendees at the ceremony introducing the 2018-19 class of Distinguished Access to Justice Pro Bono Fellows.**

#### **Judge Harry F. Randow / Louisiana Access to Justice Commission**

After a successful private practice, Judge Harry F. Randow was first elected to the 9th Judicial District Court in Rapides Parish in 1998. He was re-elected in 2002 and in 2008. He also served as chief judge of that court. He is a member of the Louisiana District Judges Association. He has served as a board member of the Louisiana Access to Justice Commission from its beginning and was a former member of the LSBA's Access to Justice Committee. Judge Randow has been involved in several projects of the Louisiana Access to Justice Commission over the years. He is an example to other judges, either still on the bench or retired, as to the importance of community service and involvement in access to justice issues. He is the first former full-time district court judge as a Distinguished ATJ Fellow and is an excellent model for other judges to follow his lead and become part of this program. As an ATJ Fellow, he will continue his work with the Access to Justice Commission.

#### **Future Fellows and Partner Host Entities**

Anyone interested in participating in this program, either as a Fellow or as a partner host entity, should email Mark C. Surprenant at [mark.surprenant@arlaw.com](mailto:mark.surprenant@arlaw.com).

*Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., is the chair of the LSBA Distinguished Access to Justice Pro Bono Fellows Program Committee. ([mark.surprenant@arlaw.com](mailto:mark.surprenant@arlaw.com); One Shell Square, Ste. 4500, 701 Poydras St., New Orleans, LA 70139)*



# Celebrating Diversity in Law:

Tulane Law School Celebrates 50 Years of Graduating Black Lawyers

By Chief U.S. Magistrate Judge Karen Wells Roby

**T**ulane Law School began graduating African-American students in 1968 during a time when the civil rights movement began and tensions were high. It was the same year that Martin Luther King, Jr. was assassinated in Memphis.<sup>1</sup> Richard Nixon had been elected president and the Vietnam War was in full force.

Against this backdrop of tumultuous times in America, in Louisiana, positive change began to take place. In May 1968, Michael A. Starks became the first black male to graduate from Tulane Law School. Starks, a public servant, worked in the New Orleans area as an attorney for the City of New Orleans



In May 1968, Michael A. Starks became the first black male to graduate from Tulane Law School. Photo provided by Tulane Law School.

and the Housing Authority (HANO). Described as a kind and gentle spirit, Starks was always willing to help others and would return to Tulane to share his wisdom.

While Starks was preparing to graduate in 1968, Janice Martin Foster had joined the entering law school class of 1967. In the fall of 1967, Foster walked into Tulane Law School as one of only four women starting courses that year. "It took me a little while, but I didn't realize that I was the only black woman until I got to class and no one looked like me," she recalled.

Foster became the law school's first black woman graduate in 1970, two years after Starks. Foster was only the second black law graduate. Not just in one class, Foster was tops in a number of classes. Her grades enabled her to join the staff of the prestigious *Tulane Law Review* and she eventually became associate editor.

Foster graduated Order of the Coif, an honor bestowed on the top 10 percent of the graduating class. "I know some older stu-

dents paved the way for me into the city's law firms," she said, which led to her clerkship at Jones Walker LLP. She stayed there her entire career, mostly advising clients on the preparation of wills, marital trusts, exemption trusts, life insurance trusts, powers of attorney and charitable gifts.

It is the history of Starks and Foster and the 1,000 other black lawyers who have graduated from Tulane Law School that was celebrated the weekend of Feb. 8-10, which marked the 50th year of graduating African-American lawyers. In recognition of their success and the impact that Tulane has had on graduating black lawyers, the law school honored graduates from 1968-79. The honorees were:

► Class of 1972: Donald J. Bernard and Ronald P. Nabonne.

► Class of 1973: Terrel J. Broussard, Sandra Carter and George V. Perez, Jr.

► Class of 1974: Victor A. Dubuclet III, Hattie M. Broussard, Wayne J. Lee and Charles L. Scott.

(Above) Several 1968-79 graduates of Tulane Law School were recognized during the Tulane Black Law Alumni Reunion the weekend of Feb. 8-10. The event marked the 50th year of Tulane's graduating African-American lawyers. Graduates recognized included, seated from left, Janice Martin Foster, class of 1970, the law school's first black woman graduate; Hattie M. Broussard, class of 1974; Theon A. Wilson, class of 1976; Avis M. Russell, class of 1979; and Rosa H. Edwards, class of 1978. Standing from left, Ronald P. Nabonne, class of 1972; Terrel J. Broussard, class of 1973; Judge Ulysses G. Thibodeaux, class of 1975; Judge (Ret.) Michael G. Bagneris, class of 1975; Ronald L. Wilson, class of 1975; Wayne J. Lee, class of 1974; Donald J. Bernard, class of 1972; and Judge (Ret.) Donald T. Johnson, class of 1977. Standing far right is Tulane Law School Dean David D. Meyer. Photo by Tracie Morris Schaefer from Studio U.



► Class of 1975: Michael G. Bagneris, Ulysses G. Thibodeaux and Ronald L. Wilson.

► Class of 1976: Charles R. Grady and Theon A. Wilson.

► Class of 1977: Geraldine P. Caliste, Jean Charles, Darryl A. Derbigny and Donald T. Johnson.

► Class of 1978: Rosa H. Edwards, Brenda Fluker and J. Forrest Johnson.

► Class of 1979: Avis M. Russell, Clifton A. Vaughn and Vince A. Bartholomew.

The weekend opened with the Dreyfous Lecture on Civil Liberties and Human Rights given by University of Pennsylvania Law Professor Dorothy E. Roberts, an acclaimed scholar of race, gender and the law. Political activist and CNN and NPR legal analyst Angela Rye provided the keynote address on the role of the black lawyer in today's political climate. Black law alumni traveled from across the country to "Reunite, Reconnect and Reflect."

Sherri Jefferson (Law Class, 1994) made the trek from California back to New Orleans with few specific expectations about what the school's inaugural Black Law Alumni Reunion would bring. "I thought it would be nice to hear this panel or that panel and maybe see some of my old classmates," she said. "But from the first panel (the Dreyfous Lecture on Civil Liberties and Human Rights featuring Dorothy Roberts), I was riveted. Everything after that was the same way."

Jefferson said she was impressed with panels on pioneering black alumni, on advancing a career as a black lawyer, on creating opportunities for others who follow, and on race and gender and the law. She thought the choice of keynote speaker, Angela Rye, known for challenging institutional norms on race and gender, "showed how Tulane Law is open to having a diversity of opinions on campus."

The reunion was a marquee moment for the law school, celebrating 50 years of achievement by black alumni and honoring the graduation of the man who broke barriers and desegregated Tulane Law in 1968, Michael Starks. "I am pleased by, and proud of, the administration for conceiving, planning and fully supporting this event," Jefferson wrote in her post-reunion survey. "I have never felt as valued an alumna as I did this past weekend."

The alumni attending the reunion

spanned the decades, with the early pioneering graduates (numbering in single digits) joining the big, boisterous classes of the 1980s and 1990s (some with more than 50 black students in them).

Tulane Law School Dean David D. Meyer noted, "Many of these graduates, like Starks, have gone on to careers of great distinction and impact — as leaders of law firms, judges, academics, public servants and entrepreneurs — and have transformed communities across the nation."

During the weekend, emotions ran high from the first panel that highlighted the stories of early graduates and the hardships they overcame as they trickled into the profession to the last farewell brunch when the classes of the late 1960s and the 1970s were honored for their pioneering achievements.

Michael D. Pegues (Law Class, 1991), a shareholder at Polsinelli, P.C., in the firm's Dallas and Houston, Texas, offices, put it succinctly on his Instagram feed along with a photo of those trailblazing graduates: "The Tulane Law School welcomed home its African-American alumni this weekend, and it was all red carpet, all weekend," he wrote. "These alums made it possible for me to attend Tulane Law School and ultimately provide for my family. Thank you for your perseverance, endurance and determination."

Larry English (Law Class, 1983), CEO of English Consulting Group with a long career in construction law and public service, spoke during a career-centered panel and attended several others including one celebrating 40 years of clinical education at his alma mater. He said the weekend was an emotional one for him. "Tulane Law School changed the trajectory of my life. I was the first in my family to go to college," he said. "I have a grandson living in a world I could not have imagined. Ultimately, whatever he accomplishes can be traced back to the fact that his grandfather graduated from Tulane Law School, so this is a very emotional weekend for me. It all just came home for me."

The weekend was not only a celebration of the past 50 years but also an acknowledgment of the next 50 years of future black Tulane Law students. The school commissioned New Orleans artist Dwayne Conrad to commemorate the event and acknowledge its black law alumni history with an acrylic on canvas painting titled "Silent No More." It depicts

the journey of the first African-Americans to integrate Tulane Law School. The artist enlisted the aid of university archives, court documents and personal photos as he crafted this visual remembrance. The painting, commissioned by Tulane University, will occupy a place of prominence in the Law School as a permanent tribute to the courage and determination of these two civil rights champions.

The weekend continued with CLEs; a ball at the New Orleans Jazz Reunion featuring New Orleans artist Gina Brown; a Jazz Brunch at Tulane's Glazer Stadium honoring graduates from 1968-79 and Starks and Foster; and a video presentation of a documentary film, "The Legacy of Tulane Law's Black Alumni, the First 50 Years" produced by BMM Productions.

Recognizing the talent and history of its alumni, Tulane launched a yearlong celebration of black law alumni achievement beginning in May 2018. Throughout 2019, events in the law school and around the country have reflected on the contributions of its black law alumni. The celebration of diversity will continue. The next Tulane Black Law Alumni Reunion is set for February 2023.

Since 1968, Tulane Law School has graduated more than 1,000 African-American students and more than 2,000 students of color. What began with one remarkable man now makes up roughly a fifth of all Tulane Law graduates since Mr. Starks' graduation.

## FOOTNOTE

1. "The Day that Hope Died," [www.smithsonianmag.com/history/revisiting-sanitation-workers-strike-180967512/](http://www.smithsonianmag.com/history/revisiting-sanitation-workers-strike-180967512/), January 2018.

*Chief U.S. Magistrate Judge Karen Wells Roby, with the U.S. District Court for the Eastern District of Louisiana since 1999, is a Tulane Law School graduate. She is a former president of the Federal Magistrate Judges Association (FMJA) and received the 2016 FMJA Founder's Award. She received the Louisiana State Bar Association's (LSBA) 2017 Chief Justice Bernette Joshua Johnson Trailblazer Award. She served as co-chair of the American Bar Association's Litigation Section's Diversity and Inclusion Committee. As the coordinating judicial officer of the LSBA's Suit Up for the Future Program, she annually inspires diverse groups of high school students to consider the legal profession. (karen\_robby@laed.uscourts.gov; 500 Poydras St., New Orleans, LA 70130)*



## Deadline July 1: 2019-20 LSBA Dues, LADB Assessment; Registration Statement, Trust Account Form

**L**ouisiana State Bar Association (LSBA) members must pay their 2019-20 LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessment and file their Attorney Registration Statement and Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form by July 1.

LSBA members have the option to pay their 2019-20 LSBA dues and LADB assessment by ACH electronic check, credit card, or download and mail their Attorney Registration Statement and checks for the payment of fees. Members are encouraged to pay and file electronically, as this access will be available 24/7, including times when the Bar Center is closed or if mail service is disrupted due to inclement weather. Further, electronic payment gives members more control over their information in the database and allows for more timely updates to their member records.

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

After member data is confirmed but before the payment/filing process begins, members will be advised that they

also need to go to [www.LADB.org](http://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 will be the same as in prior years. In lieu of mailing a statement to each member, in mid-May, the LSBA mailed each member a postcard, which provided instructions to go online to [www.LSBA.org](http://www.LSBA.org) to complete the registration process, and to go online to [www.LADB.org](http://www.LADB.org) to complete the Trust Account Form. ***This is the only mailing members will receive prior to the July 1, 2019, due date; attorney registration statements will NOT be mailed.***

With the introduction of the new email address, [compliance@lsbamembership.com](mailto:compliance@lsbamembership.com), the LSBA will email reminders throughout the dues collection period. Members are encouraged to add this email address to their contact list to avoid missing important communications. Members should not reply to this email address, but rather direct questions to [processing@lsba.org](mailto:processing@lsba.org).

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 will remain July 1. The LSBA will continue to mail delinquency and ineligibility notices to those who fail to meet the deadlines.

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

- ▶ LSBA dues (practicing more than three years): \$200;
- ▶ LSBA dues (practicing three years or less): \$80;
- ▶ LADB assessment (practicing more than three years): \$235; and
- ▶ LADB assessment (practicing three years or less): \$170.

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

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

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

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

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



# MEDIATION AND ARBITRATION *of* COMPLEX DISPUTES



Guy deLaup



Ross Foote



Phelps Gay



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Patrick Ottinger



Mike Patterson



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## THE Patterson RESOLUTION GROUP

◀ **Marta-Ann Schnabel** was the first woman President of the Louisiana State Bar Association. A seasoned litigator who has represented plaintiffs and defendants, Marta understands the importance of finding practical and affordable solutions to complex problems. She has been honored as a SuperLawyer and has been named one of the top 25 women attorneys in Louisiana. Her training as a mediator includes studies at the Straus Institute for Dispute Resolution, Pepperdine University. She is a speaker on negotiation and mediation tactics, addressing gender and generational differences in negotiation styles and offering practical advice for resolving conflicts among people of different perspectives.



## LBSL Accepting Certification Applications in Bankruptcy Law

The Louisiana Board of Legal Specialization (LBSL) is accepting applications for certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2019.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that, each year, a minimum percentage of the attorney's practice must be devoted to the area of certification sought, and the attorney must pass a written examination to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters

in the specialty field. Refer to the LBSL standards for the applicable specialty for a detailed description of the requirements: [www.lsba.org/goto/specialization](http://www.lsba.org/goto/specialization).

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the LBSL simultaneously with the testing agency to avoid delay of board certification by the LBSL. Information concerning the American Board of Certification will be provided with the application form(s) and can be viewed online at: [www.abcwORLD.org](http://www.abcwORLD.org).

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

## LBSL Appellate Practice Standards Amended

An amendment to the Louisiana Board of Legal Specialization (LBSL) Appellate Practice Standards to reduce the annual appellate practice specialization CLE requirement from 18 hours to 15 hours was approved by the Louisiana State Bar Association's House of Delegates and the Board of Governors at the Jan. 19, 2019, meeting.

A copy of the amended LBSL Appellate Practice Standards was emailed to all appellate practice specialists. A copy may be downloaded from the LBSL website at: [www.lsba.org/goto/lbslappellatestandards](http://www.lsba.org/goto/lbslappellatestandards).

The LBSL will accept applications for certification in appellate practice, estate planning and administration, family law, health law and tax law from Nov. 1, 2019, through Feb. 28, 2020.

For more information, email LBSL Specialization Director Mary Ann Wegmann at [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org).

## 2019-2020 Officers and Board of Governors

### Officers 2019-20

#### Robert A. Kutcher President

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



Robert A. Kutcher

Bob served as president-elect of the Louisiana State Bar Association (LSBA) in 2018-19 and as treasurer in 2014-16. He served in the House of Delegates and on the House Liaison Committee for several terms. He is a member of the Legislation Committee and the Committee on the Profession. He

was a member of the *Louisiana Bar Journal* Editorial Board and is a co-chair of the Summer School Planning Committee. He also served on the Nominating Committee and the Rules of Professional Conduct Committee. He chaired the Audit Committee in 2013 and received the LSBA President's Award in 2013.

He served as a board member of the Louisiana Civil Justice Center (2015-18) and the Pro Bono Project (2014-17). He was a member of the Louisiana Attorney Disciplinary Board from 1993-99, chairing the board in 1999. He was a member of the Federal Bar Association New Orleans Chapter from 1984-92, serving as president in 1991-92. He is a Fellow of the Louisiana Bar Foundation and the American Bar Foundation and is a master in the Thomas More Inn of Court.

Bob chaired the Louisiana State Advisory Committee to the U.S. Civil Rights Commission from 1990-94. He was an associate commissioner of the Anti-Defamation League National Commission

from 1991-2002, regional chair of the Anti-Defamation League from 1992-96 and regional board member since 1984.

In his community, he served as president of Shir Chadash Conservative Synagogue and the Jewish Community Center of New Orleans. He also served as a board member of the Jewish Community Centers of North America in 1992-98.

He has been listed in *Best Lawyers* (2012-2019), including 2013 New Orleans Litigation-Real Estate Lawyer of the Year and Lawyer of the Year 2018 in the practice areas of closely held companies and family businesses law; and *Louisiana Super Lawyers* in business litigation (2008-2019).

Bob and his wife, Renee B. Kutcher, have been married for 34 years. They have four children.

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**Alainna R. Mire  
President-Elect**

Alainna R. Mire is the chief resilience officer and an assistant attorney for the City of Alexandria and a former human resources director. She received a BA degree in political science in 2000 from Louisiana State University and her JD/BCL degree in 2004 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2004.



**Alainna R. Mire**

Alainna served as Louisiana State Bar Association secretary and *Louisiana Bar Journal* editor in 2015-17. She also served as LSBA Young Lawyers Division chair, chair-elect, secretary and District 6 representative. She served on the LSBA's Board of Governors as House of Delegates Liaison Committee chair.

A former officer of the Central Louisiana Pro Bono Project and chair of the Alexandria Bar Association's Young Lawyers Council, she is a member of the Alexandria Bar Association, the American Bar Association and co-chair of the Louisiana Bar Foundation's Membership Committee. She is a former chair of the United Way of Central Louisiana.

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**Patrick A. Talley, Jr.  
Secretary**

Patrick A. Talley, Jr. is a partner in the New Orleans office of Phelps Dunbar, L.L.P. He received a BA degree in 1976 from Armstrong College (Georgia Southern University), his JD degree in 1982 from Louisiana State University Paul M. Hebert Law Center and an LLM in energy and environmental law in 1993 from Tulane Law School. He was admitted to practice in Louisiana in 1982. He also is admitted in Texas.



**Patrick A. Talley, Jr.**

Pat served on the Louisiana State Bar Association's (LSBA) Board of Governors from 2014-17 (First Board District). Prior to this service, he was a member of the LSBA's House of Delegates (since 1994) and was re-elected to the House in 2017. He also is a member of the Louisiana Bar Foundation.

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

He is AV-rated by Martindale-Hubbell and has been recognized in several editions of *Best Lawyers in America*, including as the 2016 New Orleans Lawyer of the Year in railroad law. He also has been recognized in several editions of *Louisiana Super Lawyers* and in *New Orleans City Business*' "Leadership in Law."

In his community, Pat currently serves on the boards of the Louisiana Southeast Council Boy Scouts of America and Holy Name of Jesus School. He also was a member of the Louisiana Recovery Authority (Environmental Task Force member), the New Orleans Charter Schools Foundation (vice president), Pi Kappa Alpha Fraternity (international president), the Carrollton Boosters, Inc. (president), the Louisiana Children's Museum, St. George Episcopal School (trustee) and the Academy of the Sacred Heart (president).

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**Shayna L. Sonnier  
Treasurer**

Shayna L. Sonnier is a partner in the Lake Charles firm of Hunter, Hunter & Sonnier, L.L.C. She received a bachelor's degree in 2000 from the University of Louisiana-Lafayette and her law degree



**Shayna L. Sonnier**

in 2003 from Dedman School of Law, Southern Methodist University. She was admitted to practice in Texas in 2003 and in Louisiana in 2005.

Shayna served as Fourth District representative on the Louisiana State Bar Association's (LSBA) Board of Governors. She also served as chair, immediate past chair, chair-elect, secretary and District 4 representative on the LSBA's Young Lawyers Division (YLD) Council. She co-chaired the YLD's Wills for Heroes Committee.

She currently serves on the boards for the Louisiana Bar Foundation and the Louisiana Center for Law and Civic Education.

Shayna has served as secretary, treasurer, president-elect, president, and past president of the Southwest Louisiana Bar Association (SWLBA) and is a past president of the SWLBA's Young Lawyers Section.

In her community, she is a member of St. Luke Simpson United Methodist Church, where she serves as secretary on the Church Council.

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**Barry H. Grodsky  
Immediate Past President**

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 H. Grodsky**

Barry served as Louisiana State Bar Association (LSBA) president in 2018-19, president-elect in 2017-18 and 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 chaired 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 and the Bar's Outstanding Service Award in 2013-14.

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 and received the Distinguished Faculty Award in 2016.

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

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## Board of Governors 2019-20

### 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 2005-17. 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 26 years and are the parents of two children.

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Darryl J. Foster

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### Lawrence J. (Larry) Centola III

#### First Board District

Lawrence J. (Larry) Centola III is a principal member of the New Orleans firm of Martzell, Bickford & Centola. He received a BA degree in political science in 1998 from Louisiana State University and his JD degree in 2001 from

LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2001.

Larry serves on the Louisiana State Bar Association's (LSBA) Client Assistance Fund Committee and the Nominating Committee. He served as LSBA Young Lawyers Division chair in 2012-13. He received the LSBA Young Lawyers Division's Bat P. Sullivan, Jr. Chair's Award in 2007.

He serves on the board of directors of the Federal Bar Association New Orleans Chapter and on the Board of Governors for the Louisiana Association for Justice. He serves as the torts bar examiner for the Louisiana Bar exam.

In a ceremony at the United States Supreme Court, he was presented with the 2008 Sandra Day O'Connor Award for Professional Service from the American Inns of Court. The national award is presented to an attorney who has been practicing for fewer than 10 years.

He and his wife Amy have been married for 14 years and are the parents of three girls.

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Lawrence J. (Larry) Centola III

### Stephen I. Dwyer

#### Second Board District

Stephen I. Dwyer is the managing 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 American Bar Association, the New Orleans Bar Association, the Jefferson 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 *New Orleans City Business* "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 Northshore 501(c)(3) for special needs children, is the 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.

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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 has served on the Louisiana



Shannon Seiler Dartez

State Bar Association's (LSBA) Board of Governors and House of Delegates and is a member of the LSBA's Insurance Committee, previously chairing the 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 member of the Leadership Institute of Acadiana and a graduate of Leadership Lafayette. She is 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 20 years and are the parents of two children.

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#### **Todd S. Clemons** **Fourth Board District**

Todd S. Clemons is the founder of Todd Clemons & Associates in Lake Charles. His primary areas of practice are criminal defense, post-conviction relief and general civil litigation. He received his undergraduate degree from the University of Louisiana-Lafayette and his JD degree, *magna cum laude*, from Southern University Law Center. He was admitted to practice in Louisiana in 1987.

Todd is a former assistant district attorney in Calcasieu Parish and a former federal prosecutor in the U.S. District Court, Western District of Louisiana. He also served as judge *pro tempore* in 14th Judicial District Court.

He currently serves on the Louisiana Supreme Court Committee on Bar Admissions as a bar examiner. He writes the criminal law, procedure and evidence portion of the exam. He also is a member of the Judicial Council of the Louisiana Supreme Court.



**Todd S. Clemons**

In his community, he is a member of the Sowela Foundation which raises funds for Sowela Community College in Lake Charles. He also served as president of the board of directors of Big Brothers/Big Sisters of Southwest Louisiana. He is a life member of Omega Psi Phi Fraternity, Inc., serving as the four-state Ninth District representative. He is a member of Christian Baptist Church, serving as a moderator and on the board of directors.

Todd and his wife, Stefanie O. Clemons, have been married for 32 years and are the parents of two children.

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#### **Valerie Turner Schexnayder** **Fifth Board District**

Valerie Turner Schexnayder is a special counsel with Mickey S. deLaup, A.P.L.C. She previously served as a Louisiana State Bar Association (LSBA) Distinguished Access to Justice Pro Bono Fellow, partnering with the Baton Rouge Bar Association as it develops and grows its pro bono outreach to veterans and their families. 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 previously represented the 19th Judicial District in the LSBA's House of Delegates and was a District 2 representative on the Young Lawyers Division Council from 1997-99. She is a member of the Access to Justice Commission and served on the Bar Governance Committee and Continuing Legal Education Committee. She was 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. In her community, she currently serves on the board of directors for the Tiger Athletic Foundation, the Junior League of Baton Rouge, the Emerge Center Foundation and as vice chair of the Capital



**Valerie Turner Schexnayder**

Area Finance Authority's board of trustees.

Valerie and her husband Todd have been married for 31 years and are the parents of two children.

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#### **Kelly M. Rabalais** **Fifth Board District**

Kelly M. Rabalais is chief administrative officer for St. Tammany Parish Government. She received a BA degree in political science in 1996 from Louisiana State University and her JD degree in 1999 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2000.

Kelly was elected to the Louisiana State Bar Association's Nominating Committee in 2018 and 2019 and is a member of the Committee on the Profession.

She is a member of the Federal Bar Association New Orleans Chapter's board of directors and Government Relations Committee. She is serving a 2018-21 term on the Lawyer Disciplinary Committee of the U.S. District Court, Eastern District of Louisiana. She also is a member of the 22nd Judicial District Bar Association, serving as 2017 and 2018 Women in Law chair and 2019 Community Outreach chair. She received the 2016 BGR (Bureau of Governmental Research) Excellence in Government Merit Award.

In her community, she is a member of the Safe Haven Foundation.

Kelly and her husband, J. Michael Rabalais, Jr., have been married for 23 years and are the parents of two children.

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#### **Edward L. Tarpley, Jr.** **Sixth Board District**

Edward L. Tarpley, Jr. is the owner of Edward L. Tarpley, Jr., A.P.L.C., in Alexandria. He received a BA degree in history in 1976 from Louisiana State University and his JD degree in 1979 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1980.



**Kelly M. Rabalais**



Ed served in the Louisiana State Bar Association's House of Delegates from 1992-94 and 2016-18. He is a member of the Alexandria Bar Association, the Louisiana Association of Criminal Defense Lawyers and The Federalist Society.



**Edward L. Tarpley, Jr.**

In his community, he is a member of the Alexandria Rotary Club, vice president and a board of trustees member for the Cenla Pregnancy Center and a member of the Louisiana Governor's Prayer Breakfast Steering Committee.

Ed and his wife, Deborah Campbell Tarpley, are the parents of seven children.  
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#### **Paul L. Hurd Seventh Board District**

Paul L. Hurd is the sole shareholder in Paul Loy Hurd, A.P.L.C., and in Home Title Guaranty Co., both in Monroe. He received a BA degree in philosophy in 1976 from Tulane University and his JD degree in 1978 from Tulane Law School. He was admitted to practice in Louisiana in 1978.



**Paul L. Hurd**

Paul is a former member of the Louisiana State Bar Association's House of Delegates and a current member of the LSBA's Criminal Justice Committee.

In his community, he is a member of Parkview Baptist Church in Monroe.

He and his wife, Cathy Vines Hurd, have been married for 42 years and are the parents of three children.

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#### **Patrick J. Harrington Eighth Board District**

Patrick J. Harrington is an attorney who practices primarily in criminal law and family law in the Shreveport-Bossier area, including contract work with the

Bossier Parish and Caddo Parish Public Defenders Offices. He received a bachelor's degree in 2012 from Louisiana State University-Shreveport and his JD degree in 2016 from Southern University Law Center. He was admitted to practice in Louisiana in 2016.



**Patrick J. Harrington**

Patrick is a member of the boards of directors of the North Shreveport Business Association, the Shreveport Bar Foundation, the LSU-Shreveport Alumni Association and Louisiana Workforce Development (7th Planning District Consortium).

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#### **Scott L. Sternberg Chair, Young Lawyers Division**

Scott L. Sternberg is a partner at Sternberg, Naccari & White, L.L.C., with offices in New Orleans and Baton Rouge, where he focuses on business, general litigation and media matters. His media focus has involved litigation for newspapers, including *The Advocate*, and legal and legislative work for the Louisiana Press Association. He received a BA degree in journalism from Louisiana State University and his JD/DCL degree from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2010.



**Scott L. Sternberg**

Scott has served as chair-elect, secretary and District 1 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division (YLD) Council. As part of the YLD's strategic planning, he chaired the first Louisiana Young Lawyers Conference in 2019. In 2019, he received an LSBA Citizen Lawyer Award for his pro bono, professional and charitable activities. In 2015, he received the LSBA's Stephen T. Victory Memorial Award for most outstanding *Louisiana Bar Journal* article. He served on several LSBA committees and was a member of the 2012-13

Leadership LSBA Class.

He serves as the immediate past chair of the Federal Bar Association New Orleans Chapter's Younger Lawyers Division and has taught at LSU and Loyola. He serves on the boards of the Pro Bono Project, the Louisiana Center for Law and Civic Education and the Jefferson Parish Chamber of Commerce. 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.

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

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#### **Monique Y. Metoyer At-Large Member**

Monique Y. Metoyer is an assistant district attorney/homicide screening chief 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



**Monique Y. Metoyer**

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 for the St. James Memorial Catholic Church in Alexandria.

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#### **Lynn Luker At-Large Member**

Lynn Luker is of counsel in the New Orleans law firm of Stanley, Reuter, Ross, Thornton & Alford, L.L.C. She received a

BA degree in psychology in 1978 from the University of New Orleans, her JD degree in 1981 from Tulane University Law School (Order of Barristers), an LLM (with distinction) in admiralty law in 1985 from Tulane Law School and an LLM in energy and environmental law in 1992 from Tulane Law School. She was admitted to practice in Louisiana in 1981 and in Massachusetts in 2007.



**Lynn Luker**

Lynn chairs the Louisiana State Bar Association's (LSBA) Civil Law and Litigation Section and is a member of the LSBA's Committee on the Profession and the CLE Committee.

She is an adjunct professor at Tulane Law School and co-director of the Trial Advocacy and Civil Pre-Trial Boot Camp. She is also a mediator/arbitrator for Perry Dampf Dispute Solutions and a proctor in admiralty for the Maritime Law Association. She has served as judge *pro tempore* for Orleans Parish Civil District Court and is a former chair of the Louisiana Judiciary Commission. She has received several awards, including the LSBA's Human Rights Award, the Tulane Law School Distinguished Teaching Award and the Association of Women Attorneys' Michaelle Pitard Wynne Professionalism Award.

In her community, she mentors women, minorities, young lawyers and young people. She is a Sunday school teacher and lector for Trinity Episcopal Church. She is the mother of two children.

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### **Tina L. Suggs**

#### **At-Large Member**

Tina L. Suggs is in-house counsel for State Farm Insurance Co. in Metairie. She received a BS degree in medical technology in 1991 from the University of New Orleans and Louisiana State University School of Allied Health and her



**Tina L. Suggs**

JD degree in 2004 from Loyola University

College of Law. She was admitted to practice in Louisiana in 2005.

Tina was a member of the Louisiana State Bar Association's (LSBA) House of Delegates, representing the 24th Judicial District. She also is a member of the Committee on the Profession and the Legislation Committee.

She is a member of the New Orleans Association of Defense Counsel, the Jefferson Bar Association and State Farm's National Diversity and Inclusion Committee and Engagement Committee. She is the recipient of the Influential Pacesetter Award from the City of Jeanerette and the Living Legend Award from First Church of God in Christ.

In her community, she is a member of Delta Sigma Theta Sorority, involved in local and international community projects. She also assists in the Project H.E.L.P. program, providing notarial services to the homeless.

Tina and her husband, Everett C. Suggs, have been married for 26 years and are the parents of two children.

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### **Monica Hof Wallace**

#### **Faculty, Loyola University College of Law**

Monica Hof Wallace is the Dean Marcel Garsaud, Jr. Distinguished Professor of Law and executive director of the Advocacy Center at Loyola University College of Law. She received a BS degree, *cum laude*, in finance in 1993 from Louisiana State University and her JD degree, *summa cum laude*, in 1998 from Loyola University College of Law. She was admitted to practice in Louisiana in 1998. Before entering private practice, she clerked for Judge Jacques L. Wiener, Jr. of the U.S. 5th Circuit and Judge Barry Ted Moskowitz of the U.S. District Court in San Diego.

Monica is active on several committees for the Louisiana State Law Institute. She serves on the St. Thomas More Inn of Court Executive Committee and is a Fellow for the Louisiana Bar Foundation and Educating Tomorrow's Lawyers. She



**Monica Hof Wallace**

received the Gillis Long Poverty Law Center's Public Service Award and the Outstanding Research in Law Faculty Award and is a three-time honoree of Professor of the Year.

In her community, she is a board member for Cancer Crusaders and Louisiana Youth Seminar and was named a *New Orleans City Business* "Leader in Law."

Monica and her husband, Todd Wallace, have been married for 18 years and are the parents of two children.

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### **Donald W. North**

#### **Faculty, Southern University Law Center**

Donald W. North is a law professor at Southern University Law Center. He joined the faculty in 1998. He received a BS degree in political science in 1980 from Grambling State University and his JD degree in 1983



**Donald W. North**

from Southern University Law Center. He was admitted to practice in Louisiana in 1984. He also is admitted to the U.S. District Court for the Middle District of Louisiana and the U.S. 5th Circuit Court of Appeals.

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

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

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

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

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**Zelda W. Tucker**  
**Louisiana State Law Institute**

Zelda W. Tucker is deputy city attorney for the City of Shreveport and a sole practitioner. She received a BA degree in English literature in 1983 from Louisiana State University and her JD degree in 1986 from Southern University Law Center. She was admitted to practice in Louisiana in 1986.



**Zelda W. Tucker**

Zelda is a member of the Louisiana State Law Institute Council, the Shreveport Bar Association and the Louisiana Association of Insurance Defense Counsel. She is the recipient of the Shreveport Bar Association's Professionalism Award.

In her community, she is a member of the Shreveport Downtown Rotary and the Shreveport Women's Attorney Association.

Zelda and her husband, James Britt, have been married for 26 years.

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**Shayna Beevers Morvant**  
**Chair, House of Delegates**  
**Liaison Committee**

Shayna Beevers 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 B. Morvant**

Shayna is a general practitioner with class action and civil litigation experience. Her practice areas include personal injury, criminal defense, family law and representation of local law enforcement organizations. She is currently a member of the adjunct faculty at Tulane University Law School, teaching pre-trial litigation skills during the Boot Camp and Trial Advocacy.

She is currently serving her second

term as the District 2 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. She also serves on the LSBA's Board of Governors, in the House of Delegates and is secretary of the Civil Law and Litigation Section. She was elected to the 2019 Nominating Committee. She was a member of the 2015-16 Leadership LSBA Class.

Shayna is the membership chair for the Tulane Inn of Court and is a former chair of the Jefferson Bar Association's Young Lawyers Division. She served a term as the representative at large for the Jefferson Bar Association and was re-elected for a second term for 2019. She is a frequent presenter of CLE topics and has been presenting for the LSBA since 2013, with a focus on social media, professionalism and trial litigation. She also has presented CLE programs for the New Orleans Bar Association, the Jefferson Bar Association and Tulane University Law School.

In her community, she is a former chair of legislative affairs for the Junior League of New Orleans, a Louisiana Children's Museum campaign leader and a member of the Italian American Ladies Auxiliary.

Shayna and her husband Wesley are the parents of two children.

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**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, 2010-13 and since 2017. He cur-



**Jeffrey A. Riggs**

rently serves on the Client Assistance Fund Committee.

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. 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 30 years. He is the father of four children.

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**Ann S. Siddall**  
**Member, House of Delegates**  
**Liaison Committee**

Ann S. Siddall is a sole practitioner in Vidalia. She also is first assistant district attorney for the 7th Judicial District and the city prosecutor for Vidalia. She received a BA degree in 1976 from Louisiana State University and her JD degree in 1979 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 1979 and in Illinois in 1981.

Ann serves in the Louisiana State Bar Association's House of Delegates and is a member of the Legislation Committee. She is a recipient of the LSBA President's Award.

She is a member of the Louisiana District Attorneys Association and is president-elect of the ADA Board of Directors. She is a recipient of the LSU Alumni Chapter Service Award. She is a member of Trinity Episcopal Church.

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**Ann S. Siddall**

By Maggie T. Simar

## ST. MARTIN PARISH

**S**t. Martin Parish, a rural, picturesque parish on Bayou Teche, joins Iberia Parish and St. Mary Parish to form the 16th Judicial District. St. Martin Parish, and its parish seat of St. Martinville, is home to one of the oldest antebellum courthouses in Louisiana and the third oldest in Louisiana. One of the most popular tourist areas — Evangeline Oak Park — is along the Teche. The oak tree itself is named for the heroine of the poem *Evangeline*, written and published by Henry Wadsworth Longfellow in 1847. *Evangeline* was long believed to be a true account of the exile of the Acadians from Nova Scotia by the British beginning in 1755. For those interested in history, Cajun in particular, take time to visit Evangeline's statue while in town.

From most parts of the state, St. Martinville is accessed by Highway 31 or Highway 90. Go south from Lafayette and take a left on Terrace Highway (Highway 92). At Highway 31, take a right (as the locals say, "at the church") and you arrive at the beautiful, columned courthouse. Parking is generally not an issue as there is parking in front of and to the left and right of the courthouse.

### The Courthouse

The courthouse has recently undergone a massive renovation, placing three courtrooms on the second floor (two with jury capabilities and jury deliberation rooms). The large courtroom is straight out of a Perry Mason episode. The second floor houses the home judges' chambers, Anthony Thibodeaux (Division A), Lori A. Landry (Division H) and Suzanne M. deMahy (Division B). It is also home to my favorite place in the courthouse, the Hearing Officer's Office.

The 16th Judicial District is home to eight judges who rotate throughout the

district. The clerk of court schedules dates with the respective judge. The hearing officer sets family docket cases for hearing officer conferences; thereafter, the cases are then sent to the clerk for docketing on the assigned judges rule day, should additional litigation be required. As with other districts utilizing hearing officers, Uniform District Rules dictate the submissions and documentation required prior to the hearing officer conference. If in doubt, call the Hearing Office.

Massive investments have been put into courthouse technology and a permanent IT employee regularly assists cases with IT needs in the courtrooms. On the first floor is the District Attorney's Office, where all DA divisions are housed. The Assessor, Clerk of Court and Voter Registration offices are in a separate building in the back of the courthouse. Also across the street is the Sheriff's department and jail.

With the emphasis on security, weapons are not allowed and everyone entering must pass through a metal detector. Cell phones for attorneys are allowed but must be placed in airplane mode while in the courtrooms. There are clothing restrictions (including shorts and midriff-bearing tops) and those entering the courthouse are monitored by security guards and bailiffs stationed upstairs and downstairs.

### Lunch Options

One day, several out-of-state attorneys were outside my office and I heard them asking the bailiffs about lunch. One said, "I think we have to go to Lafayette to get a sit-down meal." I leapt out of my chair and, with an emphatic "*mais la*," explained there are several wonderful sit-down places along the bayou. One is The St. John Restaurant, a wood-clad restaurant about a mile from the courthouse, as the crow flies. To get to St. John's, follow the bayou past the Evangeline Oak, past the

Acadian Culture Center and through the light. They have a flavorful lunch menu of mainly seafood options. The link is: [www.thestjohnrestaurant.com](http://www.thestjohnrestaurant.com). Stop by for a friendly lunch and insist to sit near the bayou-facing windows for the best (and relaxing) views of the Teche.

Additionally, Kajun King is home to one of the best burgers you will ever taste and, when in season, the best crawfish around. Although Breaux Bridge (the largest city in the parish) is the "Crawfish Capital of the World" and home to the annual Crawfish Festival, the crawfish at Kajun King are some of the best seasoned I have ever tasted. And I can get them at lunch! Bonus!

### Lodging Idea

For lodging, the Old Castillo Bed and Breakfast is next to the Evangeline Oak. According to its website, it has been in operation since 1827 as a community center, hotel, library and Mercy Convent School before it was converted to a bed-and-breakfast. The link is: [www.oldcastillo.com](http://www.oldcastillo.com). Stop by for some Cajun breakfast, y'all!

*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 is a member of the Louisiana Bar Journal Editorial Board. She is currently president of the Lafayette Bar Association. ([msimar@16jdc.org](mailto:msimar@16jdc.org); 415 South Main St., 2nd Flr., St. Martinville, LA 70582)*



*Have an idea for a "Local Practice" article or, better yet, want to write one? Email Publications Coordinator Darlene M. LaBranche with your ideas at [dlabranche@lsba.org](mailto:dlabranche@lsba.org).*



Identifying, avoiding and managing client risks largely define the lawyer's role. As the American Bar Association recognized, "loyalty and independent judgment are essential elements in the lawyer's relationship to a client." (Comments, MRPC Rule 1.7). This means trust is essential. Over time, lawyers gain a personal repository of information about a client's past actions and, like a Sherpa, guide the client away from the precipices of questionable conduct. Anything that calls into question a lawyer's ability to represent the client's interests is a potential conflict of interest which must be addressed and resolved. This may include disclosure of and a waiver of the conflict signed by the affected client. In some cases, the conflict may not be waived, requiring that the lawyer withdraw from representation altogether. Lawyers must maintain loyalty to their clients while guarding against any question about their independent judgment.

Louisiana Rule of Professional Conduct 1.7 governs conflicts of interest involving current clients and prohibits lawyers from representing clients where: 1) representation of one client is directly adverse to another client, or 2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to a current client, a former client, a third person or by some personal interest of the lawyer. However, the lawyer may still represent the client if all of the following conditions are met:

- 1) the lawyer reasonably believes that he/she will be able to provide competent and diligent representation to each affected client;
- 2) the representation is not prohibited by law;
- 3) the representation does not involve a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- 4) each affected client gives informed consent, confirmed in writing.

Where a current client's interests are

directly adverse to those of another client, the lawyer may not undertake representation unless he/she has the written, informed consent of both clients. Whether the conflict arose before or after representation was undertaken, representation must be declined unless the lawyer discloses the specific conflict to each client in accordance with the requirements of Rule 1.7(b).

Pursuant to Louisiana Rule of Professional Conduct 1.9(a), a lawyer who has formerly represented a client in a matter shall not represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. In *Office of Disciplinary Counsel v. Jauregui*, No. 134 DB 2017, the Pennsylvania Supreme Court disciplined a lawyer for what the Disciplinary Board termed a "textbook conflict of interest by representing [new client] in a matter substantially related to [the lawyer's] representation of [former client] in which [new client's] interests were materially adverse to the interests of [former client]." Specifically, the lawyer had formerly represented a sexual assault victim, a college student, in federal (class action) litigation against the college involving procedures concerning the institution's handling of sexual assault complaints. The former client terminated the lawyer's representation. After approximately two years, the lawyer filed suit against the institution on behalf of one of the alleged *assailants* specifically named in the prior litigation. The new lawsuit specifically alleged that the former client/sexual assault victim had encouraged a sham complaint against the new client/alleged assailant. The new lawsuit also disclosed confidential information provided by the former client. The district court disqualified the lawyer based on violations of Rule 1.6 (duty of confidentiality) and Rule 1.9 (conflicts of interest: former clients). The Pennsylvania Supreme Court suspended the lawyer on consent for one year.

## Steps in Avoiding Conflicts

1) Alert prospective clients not to disclose confidential information before the conflicts check has been done. Confidential information may be disclosed during an initial consultation and in some cases, where a conflicts check has not occurred, the lawyer (or law firm) could be conflicted out of representing the prospective and current clients.

2) Employ a conflicts check system. Maintain a list or database of former and current clients, opposing counsel, parties and prospective clients, with complete and accurate information. An online database, securely stored and protected, can provide a relatively speedy and effective means for cross-checking any conflicts.

3) Conduct independent evaluations of identified conflicts. If a conflict is identified, have a disinterested attorney or the conflicts committee evaluate the conflict to determine whether representation should proceed or be withdrawn. The disinterested lawyer or conflicts committee is more likely to be objective in evaluating the attending issues.

4) Ensure that written conflict waivers are obtained from all affected parties. Conflict waivers can reduce the likelihood that a malpractice claim will be filed and can serve to support the lawyer's defense against a claim if one is brought.

Most importantly, be alert to the potential for conflicts. Where a conflict has been identified, address it immediately. Lawyers must be vigilant in managing client risks and avoiding the entanglements that can lead to conflicts of interests.

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](mailto:firm@nsacla.com).



By J.E. (Buddy) Stockwell

## SELF-CARE FOR LAWYERS AND JUDGES

There has been an awakening in the legal profession about the importance of wellness and well-being practices associated with self-care.

Lawyers and judges need to be reminded often that “white knuckling” through long periods of anxiety, stress and lower levels of depression can, without warning, crescendo into mental health issues and even catastrophic events that can take them by surprise.

It’s common knowledge that many lawyers and judges do not take care of themselves and rarely put themselves first. We all know that lawyers and judges are extremely independent and self-sufficient. The pressure-cooker of law school taught us many things and perhaps the overarching lessons were “never give up” and “never admit weaknesses.” As high-functioning individuals, lawyers and judges often push the envelope in every direction.

But what many of us *did not* learn is that we are, in fact, mere mortals regardless of our accomplishments. Smart lawyers and judges often deftly think their way out of problems. Successes, both personal and professional, often result from wielding lawyerly analytical skills. But when self-care boundaries and practices are missing, it puts lawyers and judges at risk for mental health problems.

The problem is that no one, not even the smartest lawyer in the room, can independently outsmart serious mental health illnesses such as anxiety disorders, depression, alcoholism or other substance use disorders. No one is immune from developing a mental health issue. Thus, an ounce of self-care prevention can be invaluable to everyone when it comes to reducing the risks of developing a mental illness.

Of course, not all mental illness can be avoided. It’s a fact, however, that lawyers suffer high rates of mental health issues and that unchecked anxiety, stress and

pressure play a major role. Wellness practices like exercise, meditation and yoga can help reduce stress and preserve mental health. But if you ignore self-care now and fall victim to a chronic illness such as depression or alcoholism, there will be no way to “un-ring that rung bell” and it can outstrip the utility of wellness tools alone.

The epidemic of depression and substance use disorders in the legal profession still remains largely out of sight, hidden by stubborn stigmas. But, at least members of our profession are now becoming more cognizant of the alarming statistics.<sup>1</sup> Also, great national attention has been focused on the duty of self-care to help prevent mental health problems.<sup>2</sup> Nonetheless, it is still extremely difficult to convince all lawyers and judges that they *personally* need to take extra-good care of themselves.

It’s risky for any lawyer or judge to view the well-being movement from a distance and as a good idea *for only those who need it*. Every single person can benefit from improved self-care. The sooner our profession can reconcile that it is okay to be human, the quicker it can become a healthier profession. Self-care must be acknowledged as a universal component of maintaining health and success, rather than rehabilitation support when the chips are down.

If you are feeling stressed out, burned out or not exactly “happy, joyous and free” in the legal profession, here are some self-care basics that lawyers and judges can employ now.

► Reassess your personal boundaries. Sacrificing time with family and rarely having time for interests outside work and the practice of law suggest a need for recalibration. Set goals to balance work and play.

► Don’t become isolated. Get out of the office and the house and make sure you are still genuinely and openly involved with friends and engaged in extracurricular activities NOT associated with being a

lawyer.

► Eliminate problematic interpersonal habits and pessimistic thinking. Become optimistic.

► Beware of the “golden handcuffs” and becoming entrenched in a high-income lifestyle to the exclusion of a healthy personal life outside the practice of law.

► Don’t bring your “lawyering” home with you. Being skeptical, judgmental and striving to always be “right” with friends and family can damage relationships.

► Take the time to develop and adhere to a daily routine of stress management tools such as exercise, diet, meditation, yoga and simple things such as learning to say “no” to new tasks when overburdened and stressed out.

JLAP’s professional clinical staff can help you. If you are interested in obtaining information on ways to beat burnout, stress, anxiety and depression, or you feel that you could possibly benefit from an evaluation, contact JLAP. Your call is confidential as a matter of law and you don’t even have to give your name. For more information, call JLAP at (985)778-0571; e-mail [JLAP@louisianajlap.com](mailto:JLAP@louisianajlap.com); or visit the website at: [www.louisianajlap.com](http://www.louisianajlap.com).

## FOOTNOTES

1. “The Prevalence of Substance Use Disorders and Other Mental Health Concerns Among American Attorneys,” <http://louisianajlap.com/wp-content/uploads/2016/03/HazledenStudy2016.pdf>.

2. “The Path to Lawyer Well-Being,” <http://louisianajlap.com/wp-content/uploads/2017/08/ThePathToLawyerWellBeingReportRevFINAL.pdf>.

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





# FORENSIC AND VALUATION SERVICES



Shown seated: Holly Sharp, CPA, CFE, CFF    Shown standing from left: Thomas Horne, CPA/CFF, CFE; Gilbert Herrera; Michele Avery, CPA/ABV, MBA, CVA, MAFF; Ginger Liu, CPA/ABV, MBA, MS

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### 12th Annual Conclave on Diversity Focuses on “Strides in Diversity”

The 12th annual Conclave on Diversity in the Legal Profession, with the theme “Strides in Diversity: Opening Doors for the Next Generation,” was hosted by the Louisiana State Bar Association (LSBA) on March 8 in New Orleans.

For 12 years, the Conclave has served as an opportunity for attorneys and judges to discuss the importance of diversity and inclusion in the legal profession.

As one attendee said about the experience: “I have attended the Conclave multiple times and always find it refreshing and stimulating. Diversity is extremely important. The emphasis placed on it by the Louisiana State Bar Association is noteworthy and makes me feel good about my profession. This yearly conference serves to remind us, and we need to be reminded, about the attention that should be paid to this issue and about the benefit of diversity in business, law and

society. As I depart from the Conclave, I always feel renewed and happy to be a part of this endeavor. It expands my world! All attorneys, whether minority or not, should have such an experience.”

The LSBA credits the Conclave’s success to the attendees, speakers and sponsors. The next Conclave is March 27, 2020 in New Orleans.

*All Conclave photos by Emily Scalf, Sunlit Studios Photography.*



Attending the LSBA Diversity Committee Award Luncheon, from left, Conclave Subcommittee Co-Chair Denia S. Aiyegbusi, award presenter Kim M. Boyle (Phelps Dunbar, LLP, Gold sponsor), award recipient Wayne J. Lee (Stone Pigman Walther Wittmann, LLC, Gold sponsor), Subcommittee Chair Deidre D. Robert, and Subcommittee Co-Chair John A. Womble.



“The Connect” In-House Corporate Breakfast “Pitch Perfect” session featured moderator Luis A. Leitzelar (Jones Walker LLP, Platinum Plus sponsor); and panelists Latanya Langley (BIC International Co.), Angelique Strong Marks (MAHLE Industries, Inc.), and Rudy A. Figueroa (Mitsui Rail Capital, LLC). The session was sponsored by Toyota Financial Services and the LSBA Corporate and Business Law Section (Platinum Plus sponsor).



“Drivers of Initiative: The Role of In-House Counsel in Growing the D&I Pipeline” breakout session panelists, from left, Sharon Bridges (Baptist Memorial Health Care Corporation), moderator Latanya Langley (BIC International Co.), Conclave Subcommittee Chair Deidre D. Robert (Southern University System, Excellence in Diversity Reception sponsor), and Dominique R. Bright-Wheeler (Toyota Financial Services, Gold sponsor).



“From Child Migration to Detaining Asylum-Seekers: Emerging Crisis in Immigration Law” breakout session panelists, from left, Laila L. Hlass (Tulane University Law School), moderator Thomas A. Saenz (Mexican American Legal Defense and Educational Fund), and Dalia Castillo-Granados (American Bar Association, Children’s Immigration Law Academy).



# 12th Annual Conclave on Diversity in the Legal Profession “Strides in Diversity: Opening Doors for the Next Generation”

*Photos by Emily Scalf, Sunlit Studios Photography.*



Workshop speaker Dr. Katrice Albert (NCAA) challenged Conclave participants to make intentional efforts towards equity and diversity in their organizations and firms in her session titled “Leadership on Purpose: Harnessing our Collective Strength Toward Inclusive Excellence.”



Deidre D. Robert (Southern University System), from left, workshop speaker Dr. Katrice Albert (NCAA), and John A. Womble (Frederick A. Miller & Associates).



Dima Ghawi provided the keynote address titled “Diversity and Inclusion: Worth More than Gold.” From left, Denia S. Aiyegbusi (Deutsch Kerrigan LLP, Platinum sponsor), Ghawi (Dima Ghawi LLC), Deidre D. Robert (Southern University System), and John A. Womble (Frederick A. Miller & Associates).



Southern University Law Center representatives Sherrie Rhodes, left, and Kerri Landry-Thomas, right, with Deidre D. Robert at the Excellence in Diversity Reception. The Excellence in Diversity Reception was sponsored by Southern University Law Center.



Kristi D. Obafunwa and Victor (Vic) J. Suane, Jr. (Kean Miller LLP, Platinum sponsor), and Deidre D. Robert (Southern University System), middle.



Christopher D. James-Lomax (McCranie, Sistrunk, Anzelmo, Hardy, McDaniel & Welch, LLC, Platinum sponsor) with Deidre D. Robert (Southern University System).



Denia S. Aiyegbusi (Deutsch Kerrigan LLP), from left, Deidre D. Robert (Southern University System), and John A. Womble (Frederick A. Miller & Associates).



“Social Justice: Ethical Considerations for Change Agents” plenary session panelists, from left, J. Tyler Clemons (Southern Poverty Law Center), Alysson L. Mills (Fishman Haygood, LLP), and moderator State Rep. Royce I. Duplessis (Duplessis Law Firm, LLC, District 93).

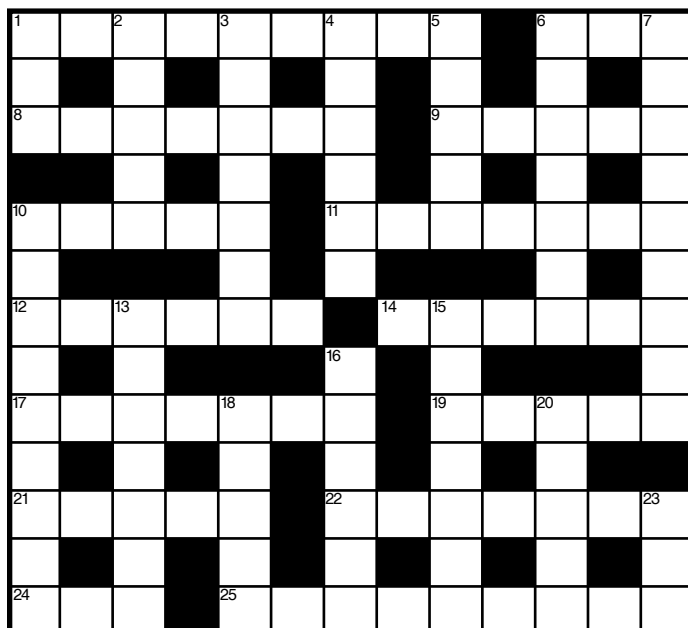


“#MeToo and Beyond: What Have We Learned and Where Will We Go?” plenary session panelists, from left, Jenny R. Yang (Working IDEAL), Jack Chen (Microsoft Corporation), and Andrea L. Gilliam (Unwanted, LLC).

# Crossword PUZZLE

By Hal Odom, Jr.

EVIDENTLY...



## ACROSS

- 1 Old name for "things said or done" (3, 6)
- 6 Banned insecticide (1, 1, 1)
- 8 Extremely slow (7)
- 9 Right \_\_\_, personal servitude granting quasi-predial privileges (2, 3)
- 10 Café du \_\_\_ (5)
- 11 Kind of sense impression that may be admissible (7)
- 12 Parish, elsewhere (6)
- 14 Outpourings (6)
- 17 \_\_\_ loquitur, an evidentiary presumption (3, 4)
- 19 Prerequisites before testifying (5)
- 21 \_\_\_ *alia*, indicating a nonexclusive list (5)
- 22 Challenge a witness's honesty (7)
- 24 \_\_\_ Number System, proprietary index of Thomson Reuters (3)
- 25 An excited one may be admissible (9)

## DOWN

- 1 Eighteen-wheeler (3)
- 2 New \_\_\_, name of Louisiana in the late 18th century (5)
- 3 Manifest, obvious (7)
- 4 Bulbs that caused an economic boom (and bust) in the Netherlands (6)
- 5 Overact (5)
- 6 \_\_\_ v. *Merrell Dow Pharms.* (7)
- 7 Learned ones may be admissible (9)
- 10 Charles T. \_\_\_, author of classic hornbook on evidence (9)
- 13 Unexpectedly defeated at the hands of (5, 2)
- 15 "Live Long and \_\_\_," Vulcan salute (7)
- 16 Cowboy's rope (6)
- 18 Pain \_\_\_, a kind of French toast (5)
- 20 Locomotive (5)
- 23 Shade of color (3)

Answers on page 53.

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

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

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Baton Rouge Area	Ann K. Gregorie	(225)214-5563 ann@brba.org	Natchitoches Area	Peyton Cunningham, Jr.	(318)352-6314 peytonc1@suddenlink.net
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Lake Charles Area	Melissa A. St. Mary	(337)942-1900 melissa@pitrelawfirm.com			

For more information, go to: [www.lsba.org/goto/solace](http://www.lsba.org/goto/solace).



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# FOCUS ON Professionalism

By David P. Vicknair

## ATTEMPTING TO ACHIEVE PROFESSIONALISM

The Louisiana State Bar Association's (LSBA) Committee on the Profession released a new Code of Professionalism in October 2018. It was the result of the committee's work to promulgate rules regarding professionalism in an evolving legal environment, considering social media, technology and other societal advances which have seemingly made litigation more, not less, acerbic.

Much of the newly enacted Code focuses on principle ideas which all Louisiana lawyers should at least give some thought to in their everyday practices. While the Code is aspirational, the basic tenets below may help guide us in our daily litigation practice. All of them are focused on trying to achieve a more professional litigation environment which inures to the benefit of all litigants and the impression the world outside of the legal community has on the efficacy of the judicial system.

### **You are not perfect! Recognize that and move forward.**

We have all sent an email or made comments to opposing counsel that we later regret. Part of the concept of the new Code of Professionalism is not to expect attorneys to be perfect. Note the title and entire premise of this article is based upon attempting to achieve professionalism. One goal of the Code is to provide attorneys with a framework of what we should be working towards in attempting collegiality and professionalism in our law practice. When you do, inevitably, make an unprofessional comment in oral argument, or in a heated phone discussion with opposing counsel, or in an email you should not have sent, move on. Learn from it and get over it. Do your best to recognize it

and attempt to handle future correspondence and dealings with that opposing counsel in a more professional manner. You are not perfect. All that you can expect of yourself is to learn from that situation and handle it differently the next time.

### **What kind of example are you displaying to younger attorneys?**

While I have only been in practice about eight years, I cannot count how many times I have seen cringe-worthy behavior by lawyers who have been practicing for many more years. What kind of example are you setting for younger attorneys, law clerks or court staff? Eventually, each of us is going to retire, change professions or die. *Valar Morghulis*. We should all be conscious of the example we are setting for others in our actions in depositions and in our communications with opposing counsel in litigation.

### **Your opposing counsel is a human. Repeat it over and over.**

Your opposing counsel is a human, too. They have a family. They have friends. They may have children and grandchildren. They have neighbors. Just like you. When they do something you consider a trick in litigation or when they are extremely difficult to deal with, take a breath and realize they have a job to do as well. Unfortunately, some attorneys quickly obtain a reputation for being difficult to deal with and unprofessional. So, what? We are all adults and a part of our job is to deal with difficult people. More important than your opposing counsel's reputation, attitude or behavior is your own behavior and how you react to what you perceive to be unprofessional actions.

### **Don't let opposing counsel or the Court control how you react.**

The *fake* Warren Buffet Twitter account posted the following quote: "You will continue to suffer if you have an emotional reaction to everything that is said to you. True power is sitting back and observing things with logic. True power is restraint. If words control you that means everyone else can control you. Breathe and allow things to pass."

Even though it is not from the real Oracle of Omaha, the quote has real application to everyday litigation practice. Cannot stand your opposing counsel? Do not let them control your reaction. Do not let them control your mood on that day. Do not let them steer the tenor and course of litigation. All we each control is how we interact with opposing counsel and the Court. We have all made mistakes in this regard, but conscious attempts to not react to outrageous behavior which we all encounter in litigation practice can steer all our cases in a more professional, positive direction, which ultimately achieves the main goal each of us has in getting results for our clients.

David P. Vicknair is a partner at Scott, Vicknair, Hair & Checki, L.L.C., where his practice focuses on the areas of personal injury litigation, class action litigation, and construction and business litigation. He also is general counsel to small businesses in different industries throughout southeastern Louisiana. He is a member of the Louisiana State Bar Association's Committee on the Profession. (david@svhclaw.com; Ste. 1100, 909 Poydras St., New Orleans, LA 70112)





# **Problem Gambling?**

## **Get Free, Confidential Help.**



Problem Gambling Resource Services  
[www.FreeGamblingHelpLA.org](http://www.FreeGamblingHelpLA.org)  
1-877-770-STOP

### **What is Problem Gambling Resource Services (“PGRS”)?**

PGRS is a new program led by the Louisiana Department of Justice, Gaming Division in partnership with the Louisiana Department of Health, Office of Behavioral Health to bring awareness about problem gambling and the FREE gambling addiction services available to all Louisiana residents. Not only are attorneys in a unique position to determine that their clients may have a gambling problem, but attorneys are at a greater risk themselves.

### **A client’s gambling addiction may be the underlying cause of what led them to seek your help:**

Attorneys are in a unique position to identify problem gambling behavior in their clients because they have access to client information, financial records, and other documentation that is generally not available to others. Clients, protected by attorney-client privilege, may feel safe disclosing a gambling problem to their attorney.

### **Lawyers and their staff are at a high risk for Problem Gambling. Here’s why:**

- Lawyers are among the professionals most likely to suffer from stress and depression, which can play a role in the development of problem gambling behavior.
- Lawyers are risk takers. The legal profession is often a high risk, high reward environment, which may lead to risk taking behavior, such as gambling.
- Lawyers often have access to large sums of money, such as client trust accounts, retainers, settlement proceeds, etc.
- Lawyers are at a heightened risk for alcohol and drug misuse and dependency, which can increase the possibility for developing co-occurring alcohol/drug and gambling addictions.

### **What happens when someone calls 1-877-770-STOP?**

- The Helpline, like all gambling addiction services offered by Louisiana, is confidential and FREE.
- The Helpline is answered by trained, certified and caring Helpline Specialists. The Specialists do not provide counseling, but they will refer you to a qualified counselor and all the FREE resources in your area.

**If you have concerns about your own gambling or if you suspect that a client or colleague may have a problem, call or text 1-877-770-STOP for FREE help.**

## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date April 5, 2019.

### Decisions

**Oscar Augusto Araujo**, Miami, FL, (2019-B-0007) **Consented to suspension for one year and one day, with all but 30 days deferred, followed by a two-year period of supervised probation**, ordered by the Court on Feb. 25, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2019. *Gist*: Respondent mismanaged his client trust account; and made a false statement of material fact to the ODC.

**William Christopher Beary**, New Orleans, (2019-B-0262) **Suspended from the practice of law on an interim basis (consent)** ordered by the Court on Feb. 25, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2019.

**Daniel E. Becnel III**, LaPlace, (2018-B-0848) **Suspended for one year and a day** ordered by the Louisiana Supreme Court on Jan. 30, 2019. Rehearing was denied on March 26, 2019. JUDGMENT FINAL and EFFECTIVE on March 26, 2019. *Gist*: Suspension is a result of

conversion of client funds.

**Sean C. Brazil**, Biloxi, MS, (2019-B-0081) **Consented to disbarment, retroactive to June 15, 2018, the date of his interim suspension**, ordered by the Court on Feb. 25, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2019. *Gist*: Respondent submitted false and inflated billing records to his law firm.

**Craig T. Broussard**, Lafayette, (2019-B-0340) **Consented to revocation of probation and interim suspension**

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## Legal & Judicial Ethics



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

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**Discipline** continued from page 42

ordered by the Court on March 6, 2019. JUDGMENT FINAL and EFFECTIVE on March 6, 2019.

**Alicia Johnson Butler**, New Iberia, (2018-B-1472) **Suspended for one year and one day from the practice of law, with all but six months deferred, subject to a two-year probation period, with conditions**, ordered by the Court on Jan. 30, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 13, 2019. *Gist:* Failure to communicate with client; failure to promptly remit funds to client and third-party medical providers; failure to place disputed funds in a trust account; and violating the Rules of Professional Conduct.

**Lauren G. Coleman**, Alexandria, (2018-B-2099) **Suspended for a year and a day, fully deferred, subject to one-year unsupervised probation**, ordered by the Court on Feb. 11, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 11, 2019. *Gist:* Discipline is a result of her employing a disbarred attorney as a paralegal in her law firm.

**Aubrey E. Denton**, Lafayette, (2019-B-0014) **Suspended for a year and a day, fully deferred, subject to two-year period of probation**, ordered by the Court on Feb. 11, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 11, 2019. *Gist:* Misused his client trust account, and commingled and converted client funds.

**Jennifer Elaine Gaubert**, New Orleans, (2018-B-1980) **Suspended from the practice of law for one year**

**and one day** ordered by the Court on Feb. 11, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2019. *Gist:* Respondent negligently, knowingly and intentionally violated duties owed to the legal profession, causing actual harm to the legal profession.

**Daniel J. Hunter**, Monroe, (2019-B-0158) **Suspended on consent for a period of one year, fully deferred, subject to a two-year period of supervised probation**, ordered by the Louisiana Supreme Court on March 6, 2019. JUDGMENT FINAL and EFFECTIVE on March 6, 2019. *Gist:* Trust account mismanagement resulting in violations of the Rules of Professional Conduct.

**Philip M. Kleinsmith**, Colorado Springs, CO, (2018-B-2010) **Order of disbarment imposed by the Supreme Court of Colorado made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Feb. 18, 2019. JUDGMENT FINAL and EFFECTIVE on March 4, 2019. *Gist:* Failure to timely remit funds to a client or third person; and conduct involving dishonesty, fraud, deceit or misrepresentation.

**Victor Roy Loras III**, Baton Rouge, (2019-B-0444) **Interim suspension** by order of the Court on March 25, 2019. JUDGMENT FINAL and EFFECTIVE on March 25, 2019.

**William M. Magee**, Covington, (2018-B-0383) **Suspended from the practice of law for a period of two years** ordered by the Court on Jan. 30, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 14, 2019. *Gist:*

Knowingly made false statement of fact or law to a tribunal; knowingly offered evidence known to be false; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

**Brian L. McCullough**, Denham Springs, (2019-B-0169) **By consent, interimly suspended from the practice of law** ordered by the Louisiana Supreme Court on Feb. 11, 2019. ORDER FINAL and EFFECTIVE on Feb. 11, 2019.

**Scott W. McQuaig**, Metairie, (2019-B-0308) **Interim suspension** by order of the Court on March 6, 2019. JUDGMENT FINAL and EFFECTIVE on March 6, 2019.

**James E. Moore, Jr.**, Baton Rouge, (2019-B-0163) **By consent, suspended from the practice of law for a period of one year, retroactive to his Jan. 31, 2018, interim suspension, subject to a period of probation**, by order of the Louisiana Supreme Court on March 6, 2019. JUDGMENT FINAL and EFFECTIVE on March 6, 2019. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and violating or attempting to violate the Rules of Professional Conduct.

**Shannon Jay Thomas**, Baton Rouge, (2019-B-0230) **By consent, suspended from the practice of law for one year and one day, retroactive to his Dec. 20, 2018, interim suspension**, by order of the Louisiana Supreme Court on March 18, 2019. JUDGMENT FINAL and EFFECTIVE on March 18,

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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, 2019.

Respondent	Disposition	Date Filed	Docket No.
Andrew T. Adams	[Reciprocal] Interim suspension.	2/13/19	18-11173
Durward D. Casteel	[Reciprocal] Interim suspension.	2/13/19	18-11174
Joshua William Christie	Permanent resignation.	2/13/19	18-11171
Larry Curtis	[Reciprocal] Suspension, fully deferred.	2/13/19	18-11172
Jeanne Marie Laborde	[Reciprocal] Public reprimand.	2/13/19	18-10689

### Discipline continued from page 43

2019. *Gist*: Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and violating or attempting to violate the Rules of Professional Conduct.

**Christine Y. Voelkel**, Mandeville, (2019-B-0344) **Interimly suspended for threat of harm to the public** by order of the Louisiana Supreme Court on

March 8, 2019. JUDGMENT FINAL and EFFECTIVE on March 8, 2019.

**Christopher G. Young**, Baton Rouge, (2019-B-0006) **By consent, suspended from the practice of law for a period of one year and one day, retroactive to his Sept. 28, 2018, interim suspension**, by order of the Louisiana Supreme Court on Feb. 11, 2019. JUDGMENT FINAL and EFFECTIVE on Feb. 11, 2019. *Gist*: Commission of

a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

**No admonitions for this issue.**



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### Judicial Estoppel

**Cox v. Richards**, Case No. 18-60394 (5 Cir. Feb. 7, 2019), 2019 WL 495136.

Cox sought repayment of a \$251,550.14 loan she allegedly made to the defendants, Richards and Canucanoe Rental Cabins, L.L.C. Defendants moved to dismiss based on judicial estoppel, which the district court granted.

In October 2010, Cox filed for Chapter 7 bankruptcy protection. Prior to filing bankruptcy, she received a divorce settlement that included a \$351,550.14 check from her ex-spouse. However, her original bankruptcy schedules listed only \$6,550 in total assets and failed to mention the alleged loan to Richards. She later amended her schedules to include additional assets, but still failed to mention the alleged loan, leaving unanswered the question of where the divorce funds went.

The trustee moved to dismiss Cox's bankruptcy case for two reasons: (1) failure to disclose assets and (2) no entitlement to a discharge under § 727(a)(2)(A), (a)(4)(A), and (a)(5). Subsections (a)(2)(A) and (a)(4)(A) both require a showing that the debtor had fraudulent intent in hiding the assets; subsection (a)(5) allows the bankruptcy court to deny a discharge if the debtor "fails to satisfactorily explain a loss of assets" without proof of fraudulent intent. Cox represented to the bankruptcy court that the proceeds from the divorce settlement were used to pay living expenses and bills and to repay debts to friends, including Richards. After a trial, the bankruptcy court denied Cox a discharge under subsection (a)(5), finding that Cox failed

to satisfactorily explain the loss of the divorce funds. However, the bankruptcy court denied the trustee's motions under subsections (a)(2)(A) and (a)(4)(A), finding that the trustee failed to establish the requisite fraudulent intent.

Years later, Cox filed suit seeking repayment of the alleged loan to Richards, which she claimed was based on an oral agreement.

The 5th Circuit affirmed the district court's ruling, finding that the three requirements to invoke judicial estoppel were met: (1) an asserted legal position plainly inconsistent to a prior position; (2) a judicial acceptance of the prior position; and (3) the party did not act inadvertently. The 5th Circuit held that Cox's representa-

tions to the bankruptcy court regarding her use of the divorce funds and her failure to disclose the loan in her original or amended schedules constituted representations plainly inconsistent with her claim that she loaned the divorce funds to Richards. The court also found that the bankruptcy court accepted those representations and that Cox had ample opportunity to correct the omission of the alleged loan and the use of the divorce funds, but did not. Cox argued that because the bankruptcy court dismissed her case, she reverted to her original position prior to filing and thereby negated her representations. The 5th Circuit disagreed, finding that the bankruptcy court accepted Cox's omission of the loan and her rep-



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representations of how she spent the divorce settlement when it denied the trustee's motion to dismiss under section 727(a)(2)(A) and (a)(4)(A) in the adversary proceeding. The 5th Circuit stated that the adversary proceeding and the underlying bankruptcy case, although related, were two distinct proceedings. As such, the dismissal of the bankruptcy case did not revoke her representations or the bankruptcy court's acceptance of those representations in the adversary proceeding. As to the third element, the court found that it is "almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court . . . because of potential financial benefit resulting from the nondisclosure."

—**Michael E. Landis** and  
**Cherie D. Nobles**  
Members, LSBA Bankruptcy  
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## Determining Fair Value under the LBCA

*Kolwe v. Civil & Structural Eng'rs, Inc.*,  
18-0389 (La. App. 3 Cir. 2/21/19), La.  
App. LEXIS 303.

From late 2014 through mid-2015, defendant Civil and Structural Engineers, Inc. (CASE), a closely-held business corporation, and plaintiff Joseph Kolwe, one of three shareholders, as well as a director, an officer and an employee of CASE, engaged in various discussions, disputes and negotiations relating to Kolwe's employment and, eventually, to his withdrawal from the corporation, none of which reached resolution. In November 2015, CASE provided notice of a special meeting of CASE's board to discuss a profitability

incentive plan for CASE employees and officers. Upon receiving notice, Kolwe's attorney drafted and mailed his notice of withdrawal pursuant to La. R.S. 12:1-1435, *et seq.* Although Kolwe's notice of withdrawal was addressed to the president of CASE and sent by U.S. mail to be delivered to the corporation's principal office, CASE never received the notice. At the meeting, the board discussed and adopted the plan despite Kolwe's objection. At the end of November, CASE terminated Kolwe's employment and removed him as an officer and director of the corporation.

In December 2015, Kolwe filed suit against CASE and the remaining shareholders, alleging claims of shareholder oppression; however, the parties subsequently agreed to bypass a trial on the merits and instead litigate the effective date of Kolwe's withdrawal and the valuation of his shares. Among other issues, the trial court concluded that (1) the corporation's accounts receivable should not be tax-effected under the circumstances in connection with determining the "fair value" of Kolwe's shares; and (2) fair value

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should include CASE's claim to the BP Settlement Fund, even though at the effective date of the valuation, the claim had not yet been approved and the amount ultimately to be paid was not known. The 3rd Circuit affirmed each of these conclusions, as further detailed below. Additionally, though the trial court failed to allow Kolwe to recover interest on the amount owed for his shares, the 3rd Circuit awarded interest from the date of the final judgment, determining the amount to be paid for his shares and ordering payment thereof.

Noting that "the term fair value does not have a commonly accepted meaning and is often incorrectly conflated with the term 'fair market value,'" the 3rd Circuit looked to the Model Business Corporation Act (the MBCA) for guidance on determining the meaning of fair value under the Louisiana Business Corporation Act (LBCA). Based on this, the 3rd Circuit determined that a fair value appraisal "should generally award a shareholder his or her proportional interest in the corporation *after valuing the corporation as a whole, rather than the value of the shareholder's shares when valued alone.*" Further, the appellate court found that the Louisiana Legislature, in drafting the LBCA, expressly disallowed discounting in the context of purchasing a withdrawing shareholder's interest. Thus, the 3rd Circuit concluded fair value is determined by "valuing the company *as a whole* and by ascribing to each share its pro rata portion of that overall enterprise

value," without accounting for (1) the "fair market value" that someone would hypothetically pay for the minority shareholder's interest; (2) the fair value of the whole company were it to be dissolved; or (3) the tax effect to either purchasers or sellers of the shares for which fair value is determined. Accordingly, the 3rd Circuit rejected CASE's argument that fair value be made in the context of "a hypothetical transaction with a third party," noting that to apply this rule would conflate "fair value" and "fair market value."

Additionally, in determining the fair value of Kolwe's shares, the court determined that the accounts receivable of the corporation should not be tax-effected, relying on the lower court's findings that tax-effecting would result in a discount of the shares' fair value, which, as the court explained, is prohibited under the LBCA. Moreover, the 3rd Circuit rejected CASE's argument that the appraisal of Kolwe's shares should exclude the value of CASE's claim to the BP Settlement Fund. CASE argued that the value of the claim was not "known or knowable" as of Kolwe's effective withdrawal date, and, as such, should not be included in the valuation of his shares, in accordance with relevant accounting standards. In rejecting CASE's argument, the court concluded that, though "an exact dollar figure of the BP claim was not approved as of the valuation date" [*i.e.*, the date of Kolwe's withdrawal], the settlement proceedings had completed, such

that the forthcoming payment of the claim, though not the specific amount, was knowable. Therefore, the court affirmed the lower court's decision to include the settlement amount in the valuation of Kolwe's shares.

Finally, the 3rd Circuit allowed an award of interest in connection with the judgment ordering payment for Kolwe's shares pursuant to La. R.S. 12:1-1435. Though the statute does not contain "a positive statutory right to recover interest as a withdrawing shareholder," the 3rd Circuit found Section 1435 sufficiently analogous to other provisions of the LBCA under which such a right exists to permit the court to expand the right to recover interest to withdrawing shareholders. The court concluded that, in this case, interest began to accrue on the date of the final judgment ordering payment of fair value determined by the court, not from the date of Kolwe's judicial demand to enforce his right to withdraw.

—**Alexandra Clark Layfield**

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## Coastal Zone Permitting: Did DNR Act Reasonably on Bayou Bridge Pipeline?

In a 4-1 decision, the Louisiana 5th Circuit Court of Appeal reversed a district court's remand of a state coastal-use permitting decision. In *Joseph v. Secretary, Dep't of Natural Resources*, 18-0414 (La. App. 5 Cir 1/30/19), \_\_\_\_ So.3d \_\_\_\_, 2019 WL 364466, at issue was the viability of a permitting decision by the Louisiana Department of Natural Resources' Office of Coastal Management (DNR) for the Bayou

Bridge Pipeline in St. James Parish.

In April 2017, DNR issued a permit for the Bayou Bridge Pipeline, which runs from Lake Charles to a terminus in St. James Parish. The permit was accompanied by a 34-page decision document reviewing DNR's assessment that the project, as amended through the permitting process, complied with the Louisiana State and Local Coastal Resources Management Act (SLCRMA). On review before Judge Alvin Turner at the 23rd Judicial District, a cadre of plaintiffs challenged DNR's permitting action, alleging, among other things, that in order to comply with SLCRMA, DNR was required to assess and approve the evacuation plans for the pipeline in the event of an emergency and that DNR otherwise violated its constitutional and statutory obligations by arbitrarily and capriciously issuing the Bayou Bridge permit.

The district court agreed in part with the plaintiffs and remanded the permit,

finding:

DNR did not apply Coastal Use Guidelines 711(A) and 719(K), that these guidelines apply, and ordered Bayou Bridge "to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster, in accordance with guideline 719(K), PRIOR to the continued issuance of said permit."

*Id.* at 2-3. On appeal, these findings by the district court were reviewed as was the plaintiffs' cross-appeal alleging that DNR's permit decision violated Louisiana Constitution article IX, section 1.

DNR contended on appeal that Guidelines 711(A) and 719(K) were inapplicable to the Bayou Bridge permit and thus its decision not to apply those requirements was not arbitrary and ca-

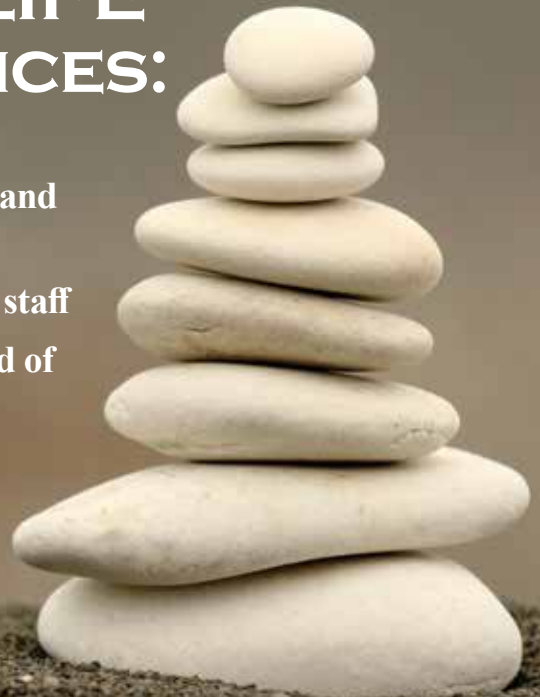
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precious and that the agency's finding of the inapplicability of these regulations was, in fact, an application of them to the permit. The 5th Circuit agreed, finding that Guideline 711(A) was inapplicable to the Bayou Bridge pipeline permit. Guideline 711(A) limits surface alterations resulting from "[i]ndustrial, commercial, urban, residential, and recreational uses." Because DNR found that either there would be no permanent surface alterations from the pipeline (*i.e.*, the pipeline would be buried) or that the pipeline would traverse areas exempted from the requirement that surface alterations be avoided in the Coastal Zone (*i.e.*, in fastlands or in existing utility rights-of-way), this regulatory requirement was inapplicable to the pipeline. The 5th Circuit further agreed with DNR that Guideline 719(K) was inapplicable. Guideline 719(K) requires permit applicants to provide plans for evacuation and emergency response as part of their applications. This regulation applies only to coastal permits for "Oil, Gas, and Other Mineral Activities" in the Coastal Zone. The court agreed with DNR that a pipeline does not fall under activities considered "oil, gas, and other mineral activities" because that specifically-defined term applies only to "those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals." *Id.* at 8-9. Further, the court also recognized that evacuation and emergency matters were properly within the jurisdiction of emergency preparedness offices and the Louisiana Oil Spill Coordinator's Office and that, had DNR required plans for such eventualities, the agency would have exceeded its authority under SLCRMA. *Id.* at 11.

The public trust doctrine, embodied in Louisiana Constitution article IX, section 1, states (in pertinent part), "[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." Arguing that DNR has a positive obligation to ensure the compliance of its decisions with the public trust doctrine, the plaintiffs alleged that the

agency failed in its permitting decision. Although briefed, the district court did not rule on this issue. In order to pass muster under this constitutional provision, Louisiana courts have held that a decision must show that the agency considered:

- (1) whether the proposed [project] fully minimizes adverse environmental effects;
- (2) whether alternate projects, alternate sites, or mitigating measures would offer more protection for the environment than the [project] as proposed without unduly curtailing non-environmental benefits;
- (3) whether the potential and real adverse environmental effects of the proposed [project] have been avoided to the maximum extent possible; and
- (4) whether a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed [project] demonstrate that the latter outweighs the former.

*Id.* at 13. The 5th Circuit's majority disagreed with the plaintiffs, stating that "DNR's thirty-four page Basis of Decision shows that its conclusions were made based on 'thorough and careful review of the coastal use permit application, all comments, responses, data and documents submitted for consideration to this office, along with in-house data, maps, knowledge, familiarity and experience in the project area.'" *Id.* at 14.

It was on this point that Judge Johnson dissented. He did not believe that DNR had discharged its public trust duties, but rather that "[t]he review of the alternative sites/methods mentioned in the 34-page DNR decision was solely an analysis provided by Bayou Pipeline, which was adopted by DNR as its own conclusions." *Id.* at 17. Believing that DNR did not conduct a meaningful independent analysis, Judge Johnson stated, "I find that DNR's adopted decision gave significant consideration to the economic benefits and minimal consideration to the environmental effects on the wildlife and habitats; yet, it gave virtually no consideration to the impact on the human lives in that area." *Id.* at 18. Further, Judge Johnson opined that, because the district court had not ruled on the public trust issue, the decision below was not final and not ripe for appellate review. The majority disagreed with both of Judge Johnson's points and concluded that DNR had discharged its public trust obligations in its permitting decision and accordingly rejected the plaintiffs' cross-appeal. At the time of this article, the plaintiffs have sought writs from the Louisiana Supreme Court on the 5th Circuit's decision.

—Ryan M. Seidemann

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## Custody

**Burds v. Skidmore**, 19-0263 (La. App. 4 Cir. 3/22/19), \_\_\_\_ So.3d \_\_\_\_.

Following the child's coming to Louisiana from Georgia for holiday visitation, the father filed an ex parte order for temporary custody. The mother, who was the domiciliary parent, filed exceptions of lack of subject matter jurisdiction and forum non conveniens, as the child had been residing with her in Georgia for more than six months, such that Georgia was the child's home state under the UCCJEA. The trial court found that the earlier interim judgment provided Louisiana with exclusive, continuing jurisdiction; however, the court of appeal found that that initial judgment, which was not a considered decree and concerning which no evidence of the best interest of the child had been taken, was not sufficient under the UCCJEA to establish jurisdiction in Louisiana; and in any event, Georgia was the home state. Further, Georgia had the most significant connections with the child and was the most convenient forum for litigation.

## Community Property

**Webb v. Webb**, 18-0320 (La. 12/5/18), 263 So.3d 321.

Mr. Webb, an attorney, forged Ms. Webb's name on a loan secured by a mortgage on the family home, which he kept secret from her until his forgery was discovered. In disciplinary proceedings before the Supreme Court, he admitted his misconduct and told the court that he would take sole financial responsibility and would make right what he had done. However, in the parties' subsequent community-property partition, he claimed that the debt was a community obligation and that Ms. Webb should be responsible for her share of that obligation. The district court ruled that his admissions in the Supreme Court were a judicial confession and held that he was responsible for

the debt. The court of appeal reversed.

The Supreme Court reversed the court of appeal, finding that Mr. Webb was estopped from attempting to make Ms. Webb responsible for the debt as a community obligation. The Court stated:

Applying the doctrine of judicial estoppel, which serves to prevent a party from manipulating the court system, we hold that, in the community property litigation, Mr. Webb cannot shift to the position of a creditor as to Mrs. Webb or to the Webbs' former community property for his fraudulent loan — a position which is contrary to the position of "sole financial responsibility" for the loan that he previously expressed to this court.

*Id.* at 324. Both a concurring justice and dissenting justice raised issues with the court's use of the common law doctrine of judicial estoppel.

**Mason v. Mason**, 180299 (La. App. 3 Cir. 11/7/18), 260 So.3d 609.

The court of appeal affirmed the trial court in finding that the parties entered into an oral agreement to modify a previous property partition agreement, in which oral agreement Mr. Mason waived any rights he may have had to Ms. Mason's retirement benefits, in exchange for her dismissing a rule for contempt and arrears for child support against him. The parties disagreed on the terms of their agreement, and the court of appeal affirmed the trial court's discretion regarding the parties' demeanor and credibility. The court of appeal did not consider Mr. Mason's argument for unjust enrichment, as it could not be raised for the first time on appeal.

**Acurio v. Cage**, 52,309 (La. App. 2 Cir. 9/26/18), 257 So.3d 824.

There can be no enforceable oral contract to agree to enter into a pre-nuptial matrimonial agreement. Because a pre-nuptial matrimonial agreement must be in a statutorily defined written form, any antecedent contract must be in the same written form. Further, one cannot detrimentally rely on an unenforceable oral contract, particularly when that party is able to determine the true facts, and when it is inherently unreason-

able to rely on the other party to prepare a legal document when that other person lacks the expertise to be able to prepare such a contract.

## Appeal

**Graver v. L.G.**, 18-0557 (La. App. 5 Cir. 10/3/18), \_\_\_\_ So.3d \_\_\_\_, 2018 WL 4782148.

The trial court awarded visitation with the minor child to his paternal grandparents. The mother moved to stay execution of the judgment pending appeal, which was denied. She then sought writs on the denial of the stay and further sought a stay of the judgment pending the court's resolution of the merits of the appeal. The court found that she was entitled to expeditious consideration of her appeal even though it did not specifically involve a change of custody but provided for grandparent visitation. The court ordered that the record be lodged expeditiously and issued an expedited briefing schedule and special docket setting.

## Parenthood

**Boquet v. Boquet**, 18-0798 (La. App. 3 Cir. 4/10/19), \_\_\_\_ So.3d \_\_\_\_, 2019 WL 1549704.

When Brittany and Nicole married, Nicole was pregnant and Brittany was aware of it. Subsequently, after Brittany filed a petition for divorce, she filed a petition for declaratory judgment and disavowal of the child. The court of appeal found that numerous constitutional issues were not raised in the trial court and could not be raised for the first time before it. It further found that Nicole's exception of prescription was properly granted, as Brittany, "the female spouse of a birth mother, has the same 'constellation of benefits' and obligations as those of a male spouse of a birth mother." Thus, Brittany was presumed to be the parent of the child and had one year from the date of the child's birth to file a disavowal action.

—David M. Prados

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## Surety Owes No Duty to Principal on Bonds, No Duty to Indemnitors

*U.S. Specialty Ins. Co. v. Strategic Planning Ass'n*, No. CV 18-7741, \_\_\_\_ F.Supp. 3d \_\_\_\_ (E.D. La. Jan 23, 2019), 2019 WL 296864.

The surety on a subcontract payment-and-performance bond settled performance claims brought by the general contract and paid payment claims brought by subcontractors and suppliers on a project. The surety then brought suit against the bond principal, Strategic Planning Associates (SPA), and the other individual indemnitors under the general agreement of indemnity (GIA) executed by them in favor of the surety for the losses and expenses it incurred as a result of having issued the bonds for SPA.

In response to the lawsuit, the indemnitors brought several counterclaims against the surety alleging that the surety's actions in settling claims constituted bad faith breach of the bonds, bad faith breach of the indemnity agreement, and bad faith breach of its fiduciary duty to the indem-

nitors. The surety filed a motion to dismiss these counterclaims, arguing that the surety had no such obligations to the indemnitors.

The court first addressed the indemnitors' claims that the surety acted in bad faith under the bonds when settling the general contractor's claims and paying the various payment claims. The court reviewed the language of the bonds and found that the "plain terms of the payment bonds reveal that these surety contracts impose no obligations" upon the surety in favor of the indemnitors. As a result, the court dismissed the indemnitors' bad faith claims with regard to the bonds.

The court next examined the indemnitors' allegations concerning the breach of the GIA. The court reviewed the language of the GIA and concluded that, similar to the bonds, the GIA did not impose any obligations on the surety in favor of the indemnitors. As such, the court found that the indemnitors failed to state a claim for bad faith breach of the GIA.

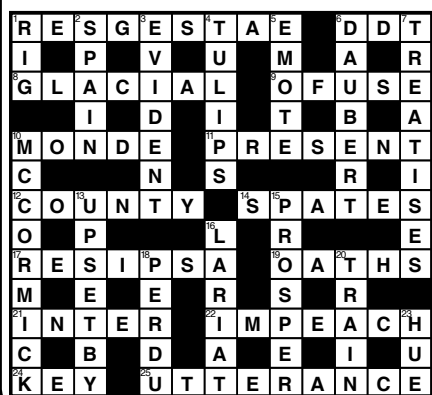
Finally, the court reviewed the indem-

nitors' claim that the surety breached its fiduciary duty to them. They argued that when exercising the power of attorney granted to it by the GIA, the surety was acting as a mandatory who owed them a fiduciary duty. The court found that the power of attorney did not constitute a mandate, as it did not require the surety to undertake any performance, but allowed the surety to carry out the rights assigned to it. Further, because the surety had the right, "in its sole and absolute discretion," to settle SPA's claims, it followed that the surety owed no fiduciary duty to SPA in carrying out that right. Thus, because no fiduciary duty existed, the indemnitors' claim was dismissed.

—**Douglass F. Wynne, Jr.**

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### ANSWERS for puzzle on page 38.



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## Court Implicitly Recognizes Whistleblower Privilege

IBM provoked the ire of a federal court for seeking the identity of current/former employees who leaked damaging documents to a former employee suing the company for age discrimination under the ADEA.

In *Langley v. Int'l Bus. Machines Corp.*, A-18-CV-443-LY (W.D. Tex. Apr. 10, 2019), \_\_\_ F.Supp.3d \_\_\_, 2019 WL 1559146, the plaintiff asserted that IBM's termination of his employment as part of a reduction-in-force was part of a strategy to systematically replace older workers with younger workers. In support of his claims, Langley relied in part on documents that he testified he received from current or

former IBM employees, which included "slides from presentations made to high level decision makers" and planning documents from various units within IBM. *Id.* at \*1.

During Langley's deposition, IBM inquired as to the identity of the individuals who gave him the documents. Langley's attorney instructed him not to respond on the basis of "informant's privilege." IBM moved to compel this testimony and requested sanctions. *Id.* at \*2.

Langley argued the informant's privilege attached to him as a "conduit" to the EEOC because the identities of those who gave him the documents were later provided to the EEOC. Langley further argued that the identity of the "leakers" was irrelevant to IBM's defense because the documents belonged to IBM and were, therefore, accessible to IBM.

The court noted that IBM carefully avoided disputing that these documents were IBM documents. *Id.* at \*3-4. Although the claim of informant's privilege was a creative attempt to shield the testimony, it is clear that the privilege is the government's evidentiary privilege. *Roviaro v. United States*, 77 S.Ct. 623,

627 (1957). The court agreed with IBM that Langley could not avail himself of the "informant's privilege," which belonged solely to the EEOC, but it blasted IBM for pursuing the motion to compel and request for sanctions. The court agreed with Langley that the identity of the "leakers" was irrelevant to IBM's defense, that IBM was in possession of all relevant information about the documents, and that "IBM surely knows where it can find the documents," as well as the "ability to locate the originals, drafts, and original authors of the 'leaked' slides and reports — assuming it has not already done so." *Id.* at \*2 & n. 1.

The court couched its decision in its determination that the identities of the leakers were not relevant to IBM's defenses. The court found that IBM mischaracterized Langley's testimony in its motion, especially the fact that Langley did not testify that he relied on "statements" from the leakers to support his claims, and that Langley's testimony did not suggest that any relevant information would be gained from determining the leakers' identities. The court noted that IBM understandably wanted to plug its leaks, but that a motion to compel was not a legitimate basis to do so. *Id.* at \*2.

The court blamed IBM for not foreseeing this issue before Langley's deposition. The court indicated that IBM "knew well" going into Langley's deposition that Langley would object to disclosing his sources. *Id.* at \*3. The court determined that IBM should have raised the issue with Langley's counsel prior to the deposition and sought a ruling from the court prior to the deposition, which would obviate the need to reopen his deposition. *Id.*

There are several troubling problems with the decision, which seems to contradict the Federal Rules of Civil Procedure. First, relevance is not a legitimate objection to instruct a witness not to answer a question during a deposition. Second, seeking a motion to compel was IBM's appropriate remedy. The Federal Rules of Civil Procedure provide that when a witness fails to answer a question — either upon instruction from counsel or by his own refusal — a motion to compel is the appropriate remedy. Fed. R. Civ. P. 37(a)(3)(B)(i) and (5). Rule 30(c)(2) provides that an attorney may instruct a witness not

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to answer only to preserve a privilege, to enforce a court limitation or to present a motion under Rule 30(d)(3). Rule 30(d)(3) relates to a motion to terminate or limit the deposition on the basis that it is conducted in bad faith or in a manner calculated to annoy, harass, embarrass or oppress the deponent.

The judge noted that IBM was already on “thin ice” when it pursued this motion to compel and requested sanctions, noting that IBM’s previous conduct in discovery had been “less than exemplary.” *Id.* at \*3. IBM had not yet produced the damning documents Langley produced, making IBM’s objections in support of withholding the documents suspect, and IBM did not deny that it created the documents. Further, IBM recognized the problematic content and quickly sought a motion to seal the documents from public view. IBM had previously incurred the ire of this judge and sought to hide its skeletons rather than get ahead of them, and it paid the price in a ruling that is inconsistent with the Federal Rules of Civil Procedure. Ultimately, this case amounts to an implicit recognition of a whistleblower’s privilege, under the shield of a relevancy ruling to justify the privilege.

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## Unleased Owner Not Responsible for Post- Production Costs

**Johnson v. Chesapeake La. L.P.**, \_\_\_\_  
F.Supp.3d \_\_\_\_ (W.D. La. 2019), 2019  
WL 1301985.

The parties disputed whether the operator of a compulsory drilling unit can charge an unleased owner with a proportionate share of post-production costs. The U.S. District Court for the Western District of Louisiana (Hicks, J.) held that such an operator cannot.

La. R.S. 30:10(A)(2) states, “In the event pooling is required, the cost of development and operation of the pooled unit chargeable to the owners therein shall be determined and recovered as provided herein.” Section 30:10(A)(3) provides that owners of unleased mineral rights in a tract in a unit are liable, out of production, for their “tract’s allocated share of the actual reasonable expenditures” incurred by the unit operator in drilling the well and producing oil or gas. The statute does not expressly address post-production costs that the operator may incur in handling and transporting oil or gas prior to selling it.

Nevertheless, unit operators often incur such post-production costs in handling and

arranging the sale of hydrocarbons attributable to unleased interests, particularly if a unit well produces natural gas. This occurs because many owners of unleased interests do not make their own arrangements to sell the portion of gas attributable to the tracts in which they own interests. In such circumstances, the operator has authority to sell the gas attributable to the unleased interests, subject to an obligation to account to the owners of the interests. Typically, operators choose to exercise that authority because the alternative of letting an unleased owner’s share of gas accumulate is not practical.

Post-production costs that operators commonly incur include expenses for treating and compressing gas, then transporting it to the place of sale. This leads to the question disputed in *Johnson*: If the unit operator sells natural gas attributable to an unleased interest, is the owner of that interest responsible for a proportionate share of the post-production costs reasonably incurred by the operator in handling the gas? In *Johnson*, the operator (Chesapeake) argued that it was entitled to charge the unleased owner with a proportionate share of these costs. Otherwise, the unleased owners would be unjustly enriched at Chesapeake’s expense.

The court rejected that argument, noting that 30:10(A)(3) states:

If there is included in any unit created by the commissioner of conservation one or more unleased interests for which the party or parties entitled to market production therefrom have not made arrangements to separately

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dispose of the share of such production attributable to such tract, and the unit operator proceeds with the sale of unit production, then the unit operator shall pay to such party or parties such tract's pro rata share of the proceeds of the sale of production within one hundred eighty days of such sale.

Chesapeake argued that the only purpose of 30:10(A)(3) is to set a deadline for payment, not to govern liability for post-production costs. The court held otherwise. Section 30:10 does not define "pro rata share," but the court concluded that it means a pro rata portion of gross proceeds, from which the operator may subtract only the costs that Section 30:10 expressly authorizes the operator to recover. The district court granted summary judgment in favor of the unleased owners, holding that Chesapeake may not charge them with a share of post-production costs.

## Court Allows Extrinsic Evidence in Interpreting Unambiguous Settlement Agreement

*White v. Cox Operating, L.L.C.*, 18-0755 (La. App. 4 Cir. 3/20/19), \_\_\_\_ So.3d \_\_\_\_, 2019 WL 1291883.

Wade White was the owner of oyster leases in St. Bernard Parish. In 2000, White entered into a "Receipt and Release" (2000 R&R) with Cox in return for \$100,000 for

a well drilled by Cox. In 2012, when Cox sought to drill three more wells, it negotiated a settlement with White that incorporated the 2000 R&R (Letter Agreement) in return for \$175,000. The settlement complied with Oyster Lease Damage Evaluation Board statutes (La. R.S. 56:700.10, *et seq.*) governing the relationship between the oil and gas industry and the oyster industry.

Later, White discovered that Cox drove pilings in an area covered by one of his leases. White complained, and Cox removed the pilings. White later sued Cox for alleged oyster lease damage, despite the Letter Agreement. The district court granted summary judgment, dismissing White's claims based on the Letter Agreement. White appealed.

The Louisiana 4th Circuit reversed, concluding that the Letter Agreement incorporated certain restrictions that the parties' prior settlement had imposed on the location of Cox's activities, and that White had a claim for an alleged breach of those restrictions. The 4th Circuit also stated that, even if the Letter Agreement was not interpreted as incorporating those restrictions, summary judgment would still be improper. Although extrinsic evidence generally cannot be considered in interpreting an unambiguous settlement agreement, Louisiana courts have crafted an exception that allows consideration of extrinsic evidence if it shows that a party did not intend for the settlement to cover certain claims. Here, White offered testimony that he did not intend for the Letter Agreement to release the type of claims presented in his lawsuit.

*Disclosure: Author Colleen C. Jarrott is of counsel at Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., which represented Cox Operating.*

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## Immunizing Credentialing Committees

*Tebault v. E. Jefferson Gen. Hosp.*, 18-0539 (La. App. 5 Cir 3/25/19), \_\_\_\_ So.3d \_\_\_\_, 2019 WL 1339471.

Presented to the court was the *res nova* issue of whether the Health Care Quality Improvement Act (HCQIA), 42 U.S.C. § 11101 *et seq.*, La. R.S. 13:3715.3, or both immunize hospitals from suits brought by or on behalf of patients who allege negligent credentialing. East Jefferson General Hospital claimed it was provided immunity by either statute. The district court denied the defendant's motion for summary judgment based on *Gauthreaux v. Frank*, 95-1033 (La. 6/16/95), 656 So.2d 634, cautioning against an expansive reading of the privileges afforded hospitals in La. R.S. 13:3715.3.

In its writ application to the appellate court, the hospital asserted that both statutes provided immunity. The hospital argued that credentialing is defined statutorily and jurisprudentially as "peer review" and that





both statutes provide immunity to hospitals for peer review. The appellate court quoted *Patrick v. Burget*, 108 S.Ct. 1658, 1665 (1988), and recognized that the purpose of each of those statutes is to incentivize and protect physicians engaging in effective peer review, “essentially immuniz[ing] peer-review action from liability if the action was taken ‘in the reasonable belief that [it] was in the furtherance of quality health care.’” But the court noted that these statutes were enacted because of the significant number of cases filed by the “disgruntled doctors whose staff privileges have been suspended” by peer-review committees. It observed that the Louisiana Supreme Court discussed “the identical policy underpinnings of both conditional privilege and the qualified immunity” as they pertain to inhibiting communication for liability fears, if the communication later turns out to be inaccurate. *Smith v. Our Lady of the Lake Hosp.*, 93-2512 (La. 7/5/94), 639 So.2d 730, 742-43. But *Smith* made no suggestion that either the privilege or qualified immunity applied when a patient sues a hospital for its failure to adequately and properly investigate a physician before granting credentials to practice in its facility:

To the contrary, the underpinning of both is the protection of those who properly investigate from the ire of the investigated, not to protect those who fail to investigate from complaints of later victims of physician incompetency.

The *Tebault* court denied the writ, opining that HCQIA and relevant state immunity provisions do not apply to patient-brought suits for negligent credentialing of healthcare professionals.

## Recredentialing

*Thomas v. Reg'l Health Sys. of Acadiana, L.L.C.*, 18-0215 (La. App. 3 Cir. 2/27/19), \_\_\_ So.3d \_\_\_, 2019 WL 986699.

In another credentialing case, the plaintiffs alleged that the defendants were liable under general tort law because they negligently *re*credentialled a physician and allowed her to practice in their hospitals. The defendants filed exceptions of prematurity,

arguing that the claim sounded in medical malpractice, and the trial court agreed.

The appellate court noted that the “narrow question” was whether negligent “recredentialing” would fall under the auspices of the MMA. The defendants claimed that, while the “initial credentialing” of a physician was general tort, recredentialing a physician for the same privileges that had previously been granted “implicates a peer review and supervision component such as to fall within the gambit of medical malpractice.” See generally, *Billeau v. Opelousas Gen. Hosp. Auth.*, 16-0846 (La. 10/19/16), 218 So.3d 513 (holding that credentialing sounded in general negligence, not malpractice).

The appellate court explained that “[h]iring and credentialing are one and the same, as are retention or recredentialing.” To interpret the Louisiana Supreme Court’s decision in *Billeau* in any other way would lead to unreasonable results. The granting of the exception was reversed and the case was remanded to the district court.

## Recusal

*Raborn v. Albea*, 18-1132 (La. 11/5/18), 255 So.3d 1045 (*per curiam*).

A district court dismissed Raborn’s claims against a healthcare center on a motion for summary judgment. Three weeks later, Raborn filed a motion to recuse the judge.

Raborn claimed that the judge should have disclosed during the time the case was pending in his court that he had a relationship with a physician-member of Raborn’s defendant healthcare center — the physi-

cian was the judge’s personal physician and had testified at the judge’s personal injury trial. Raborn contended that the doctor-patient relationship was close and personal and that a judgment against Raborn’s malpractice defendant could adversely affect the judge’s position. He also argued that the judge should have made Raborn aware of the situation and should have self-recused.

The defendant countered that there was no finding of actual bias or prejudice pursuant to La. C.C.P. art. 151, adding that in reality all judges see physicians and have relationships with many in the community at various levels. Thus, it argued, no precedent should be set that would require recusal simply because a judge was treated by a doctor who worked at the same medical center as another doctor named in a lawsuit. Following an adverse trial-court ruling on the recusal motion, Raborn’s writ application to the appellate court was denied, and he applied for a supervisory writ to the Louisiana Supreme Court. The court granted the writ and in a *per curiam* opinion wrote:

Considering the unique circumstances presented, it is ordered that the trial judge be recused. The case is remanded to the district court for random re-allotment of the case to another judge.

—Robert J. David

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## La. Supreme Court Reverses Ruling that Solar Tax Credit Cap is Unconstitutional

*Ulrich v. Robinson*, 18-0534 (La. 3/26/19),  
\_\_\_ So.3d \_\_\_, 2019 WL 1395316.

In 2015, Justin and Gwen Ulrich and Raymond and Pam Alleman (taxpayers) purchased and installed residential solar systems with the expectation of receiving an income tax credit of up to \$12,500 pursuant to La. R.S. 47:6030(B)(1) (solar tax credits). In 2016, when the taxpayers filed their Louisiana income tax returns for the 2015 year, asserting entitlement to the solar tax credits, the solar tax credits

were denied or reduced by the Louisiana Department of Revenue, citing Act 131 of the 2015 Regular Session. Act 131 limited the maximum amount of the solar tax credits the Department could grant to \$25,000,000 and imposed yearly caps on the credits. The taxpayers filed a class action suit against the Department seeking a declaration that Act 131 was unconstitutional.

The district court held Act 131 was unconstitutional because it retroactively deprived the taxpayers of a vested property right. The court implicitly found the taxpayers had standing to bring the constitutional claim and a justiciable controversy existed because the constitutional issue was not moot. The Department sought a direct appeal to the Louisiana Supreme Court.

The Louisiana Supreme Court reversed the district court's ruling. The Court held the district court erred in overruling the Department's peremptory exception of mootness that was filed based on a statutory amendment that cured the alleged constitutional issue and rendered the in-

stant controversy moot. Specifically, in 2017, the Louisiana Legislature enacted Act 413, which provided additional funding for solar tax credits (Act 413). The court held Act 413 remediated the alleged unconstitutional aspect of Act 131, *i.e.*, the taxpayers' claim that imposition of the aggregate cap eliminated their right to receive solar tax credits by providing for full repayment of the solar tax credits, albeit over a three- or four-year period. The Court found that there was no doubt that Act 413 corrected or cured the condition of which the taxpayers complained, the deprivation of the solar tax credits by virtue of the cap imposed in Act 131, because Act 413 mandated payment of the "full amount of the credit" to "any taxpayer whose claim for credit was denied." Act 413 clearly reinstated the taxpayers' right to the full amount of the solar tax credits.

The taxpayers' petition was held to present no justiciable controversy following the passage of Act 413. As a result, the court held the Department's exception of mootness should have been granted and reversed the district court's declaration that Act 131 was unconstitutional.

—Antonio Charles Ferachi

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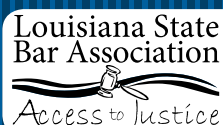
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## Tax on Excess Compensation for Nonprofit Employees

IRC § 4960 was enacted as part of the Tax Cuts and Jobs Act of 2017. Effective for tax years beginning in 2018, this section imposes an excise tax at the corporate tax rate for the amount of any excess compensation paid to a covered employee, which is any one of the highest five compensated employees of the organization for tax years after 2016. Excess remuneration means the amount paid to the covered employee in excess of \$1 million in a tax year or, if the covered employee is receiving parachute payments, the amounts paid after his termination of employment, in amounts in excess of the "base amount of the employ-



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ee's compensation while he was actively employed."

The Internal Revenue Service provided interim guidance in IR Notice 2019-09. The Notice clarified that the excise tax applied to amounts that were paid during the year and to amounts that the employee became vested in during the year. Accordingly, an employee who became substantially vested in deferred compensation that was not to be paid until a later year would have the amount included for purposes of the tax in the year of the vesting, notwithstanding that the payment of the amount was deferred. Generally, this would include amounts under an ineligible deferred-compensation plan governed by IRC § 457(f). Amounts that were actually deferred by the employee and not included in income under § 457(b), or under § 401(k) or a similar plan, would not be included in determining the amount subject to the tax. The Notice provides a grandfather provision for amounts that ceased to be subject to a substantial risk of forfeiture in a year prior to 2018. It provides that the common-law employer of the covered employee is the entity liable for the excise tax and that the common-law employer may not avoid treating an amount as remuneration by reason of a third-party payor or arrangement. In determining the amounts subject to the excise tax, amounts paid by certain related organizations, even if they are not tax-exempt, will be taken into account. The related entity, even if not tax-exempt, would be subject to the excise tax, as would a governmental entity that is related.

With regard to deferred compensation, the amount taken into account is the amount no longer subject to a substantial risk of forfeiture. The portion of the remuneration paid by a related organization results in the organization's liability for a ratable share of the tax. For amounts that are payable as deferred compensation, the amount taken into account is the present value of the deferred compensation that becomes vested during the year. Present value is generally determined by using a discount rate equal to 120% of the applicable federal rate as determined under § 1274(d) and compounded semiannually. For purposes of determining the applicable rate, the period is the term between the date as of which the deferred compensa-

tion is no longer subject to a substantial risk of forfeiture and the date as of which payment is to be made. If the likelihood of payment is less than 50%, the amount will be discounted. If the likelihood of payment exceeds 50%, there will be no discount in determining the value of the anticipated payments.

Tax-exempt organizations and related employers need to be aware of the excise tax under § 4960 when designing deferred-compensation programs and severance plans and entering into employment contracts with employees or prospective employees.

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## Do Water Meter, Water Lines Create a Predial Servitude by Destination of Owner?

*Carpenter v. Guillory Inv., Inc.*, 18-0571 (La. App. 3 Cir. 2/27/19), \_\_\_\_ So.3d \_\_\_\_, 12019 WL 949515, involved a dispute over whether a predial servitude was created by destination by ancestors in title. The northern property housed two water meters on the northwest corner and was owned by Guillory Investments, Inc., while the Carpenters owned the southern property and obtained water from the second water meter on Guillory Investments' property. The dispute arose when the Carpenters' water supply was interrupted. Later, the water supply was disconnected and remained disconnected. The trial court found that an apparent servitude existed in favor of the Carpenters' property.

The two requirements to create a predial servitude by destination of the owner

are: (1) a relationship between two estates that belong to the same owner that would be an apparent servitude if there were two different owners, and (2) a transfer of ownership of one estate by an act that does not negate the creation of a servitude by destination of the owner. The court stated that while water lines are non-apparent because they are buried under the ground, the water meter is a perceivable work and is apparent because it is visible above ground. Gerald Lee Guillory, an officer of Guillory Investments, testified that the realtor who showed him the property pointed out the water meters and told him both water meters serviced his property. There was uncontroverted evidence that the Carpenters received a water bill since they purchased the property in 2013. Likewise, the Carpenters testified that the Water Department records dating back to 2004 show two separate meters on Guillory Investments' property. The court found it inconsequential that Guillory Investments had no particularized knowledge that the water meter on its property serviced the water line connected to the Carpenters' property. The 3rd Circuit affirmed the trial court's judgment, holding that the water line constituted an apparent predial servitude created by destination of the former owner.

In a dissenting opinion, Judge Kyzar opined that the plaintiffs did not meet their burden of proof that the underground water lines servicing the Carpenters' property were an apparent servitude. Kyzar would have held that the existence of the water meter was an insufficient visible work or sign to be considered an apparent servitude. In support, Kyzar noted that the majority relied on *Wagner v. Fairway Villas Condominium Associates*, 01-0734 (La. App. 3 Cir. 3/13/02), 813 So.2d 512. Kyzar stated the language the majority relied on was "pure dicta."

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**I**sometimes dislike the connotation that comes with the description “young lawyer.”

I don't feel like a young lawyer anymore. I have a few years left based on the 39-and-under definition. But when I ran for Young Lawyers Division (YLD) chair, then-Chair Scotty Chabert told me I would be a totally different person by the time I wrote this first YLD Chair's Message. I wouldn't be a “young” lawyer anymore. Although it hasn't really been that long, I can't help thinking he's kind of right.

I'm not sure what I thought a young lawyer was back then. I know what Scotty meant — the journey to secretary through chair-elect, chair and past chair is nearly a five-year process. That's a long time to be in the leadership of a board that is focused on, ostensibly, being really new to this whole lawyer thing. When I ran for YLD secretary, I had only one child, was working at a “big” firm as an associate and was trying to figure out the whole work-life balance thing.

Three kids later, I still haven't figured out work-life balance or anything else, really, but I'm getting better at it. I started my own firm. I built a practice. I expanded my network and my goals in part using the leadership positions (like the New Orleans Federal Bar Association and the LSBA YLD) I have been lucky enough to have.

In considering it, I have recently ar-



Scott L. Sternberg

gued (forcefully) that “young” lawyer doesn't only mean we are just the tech-savvy kids. Just because your kids are our age doesn't mean you can talk down. It doesn't mean we are the only attorneys in our offices that can be the workhorses because we have to prove our worth. It doesn't mean that we're naïve or inexperienced. Anyone, of any age, can be these things at any time. Some of the best “older” lawyers I know still value the marathon session and the deep-dive as much as they hated it as an associate.

No, to me, being a young lawyer means you are in a special place in your career that requires support because we've all got a journey ahead.

Young lawyers are paying their significant student loans, dealing with the skyrocketing costs of child care or generally trying to keep their co-workers happy. Sometimes they hang their own shingle. Sometimes they work at big firms. Sometimes they do both. In their spare time, they are passionate about things like politics, volunteering or their families (or all three). They are doing paid work, pro bono work and low bono work. They are trying to find their place. Is this the right firm? The right practice? The right career?

Can I make partner?

This year, the YLD is going to focus on helping you through your journey as a young lawyer. It is the next step in our own internal process of evaluating what our function is as a Division.

For some time now, a rotating cast of once-and-future YLD chairs, Executive Board members, YLD Council members and former Council members have worked together hand-in-hand to move the YLD in what we consider to be a better direction.

Last year under Dylan Thriffiley's leadership, we focused internally — we engaged in a significant strategic plan and tried to focus on doing the things we do well, better. We also sought your input. And we're about to ask for more. This year, we will turn our gaze outward. This year, we are going to reach out to more young lawyers than ever before.

You will see your representatives at your young lawyers' meetings. You will see us at your local bar events. We are going to bug you and your friends until you volunteer for one of our fulfilling programs or attend our Young Lawyers Conference (or both!).

In fact, if you want to get involved, email me. My email address is [scott@snw.law](mailto:scott@snw.law). I mean it. We have committees and lifts both light and heavy. We could use those who want to make a difference no matter how much time they have to volunteer.

So, you're a lawyer. At the beginning of your career. With a lot to do, and a lot to juggle. It's true that, like me, you may not always feel like a “young” lawyer. You might not always like how those words make you feel. But until you no longer fit the definition, we at the YLD are going to endeavor to be an essential part of your young lawyer journey. See you out there!

# INTERCONTINENTAL NEW ORLEANS

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## ESSENTIALS

### MASTER WAR ROOM (Bywater Boardroom)

\$999.00++ per day

- 46" Flat screen Plasma TV??
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- Complimentary Wi-Fi
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- Bowl of Whole Fresh Fruit
- Master Key for secure access to meeting room
- Large Boardroom table accommodates up to 10 people, electrical outlets installed
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### JUNIOR WAR ROOM (Gentilly Room)

\$700.00++ per day

- Flexible Boardroom Seating for up to 20
- Complimentary Wi-Fi
- Polycom Phone
- Master Key for secure access to meeting room
- Adequate counter space for printers or storage
- Flexible Set-Up style

### ADDITIONAL VALUE

- 10% off Banquet Menus
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INTERCONTINENTAL  
NEW ORLEANS

A mutually signed courtesy agreement must be executed on or before December 31st, 2019 to receive promotion. Rates are based on availability. Blackout dates may apply. Not applicable to already signed existing contracted events.

## YOUNG LAWYERS SPOTLIGHT

### Erin Sayes Kenny Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Erin Sayes Kenny.

Kenny is a partner at Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge. She is



Erin Sayes Kenny

a 2007 *summa cum laude* graduate and University Medalist from Louisiana State University. She graduated *cum laude* from LSU Paul M. Hebert Law Center, where she served as an issue editor and junior associate of the *Louisiana Law Review*.

She maintains a varied civil litigation and transactional practice. She practices commercial and tort litigation, including insurance defense and insurance coverage cases. Her litigation experience includes numerous pre-trial motions, appeals and mediations. She has served as both lead and co-counsel in several bench and jury trials before state and federal district courts in Louisiana.

She also represents national and lo-

cal restaurants, hotels and retail stores, with an emphasis in alcoholic beverage licensing, compliance and enforcement issues. Her clients enjoy the benefits of her knowledge and working relationship with state and local regulators of the hospitality and alcoholic beverage industry.

Within her firm, Kenny currently serves as chair of the Recruiting Committee. In the Baton Rouge legal community, she is chair-elect of the Baton Rouge Bar Association's Young Lawyers Section Council. She is a board member for the Louisiana Association of Defense Counsel (LADC) and a member of the LADC's Young Lawyers Committee. In her community, she is a board member of the Boys & Girls Club of Greater Baton Rouge.

## YOUNG LAWYERS DIVISION OFFICERS 2019-20

### Scott L. Sternberg Chair

Scott L. Sternberg is a partner at Sternberg, Naccari & White, L.L.C., with offices in New Orleans and Baton Rouge, where he focuses on business, general litigation and media matters. His media focus has involved litigation for newspapers, including *The Advocate*, and legal and legislative work for the Louisiana Press Association. He received a BA degree in journalism from Louisiana State University and his JD/DCL degree from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2010.

Scott has served as chair-elect, secretary and District 1 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division (YLD) Council. As part of the YLD's strategic planning, he chaired the first Louisiana Young Lawyers Conference in 2019. In 2019, he received an LSBA Citizen Lawyer Award for his pro bono, professional and charitable activities. In 2015, he received the LSBA's Stephen T. Victory Memorial Award for most outstanding *Louisiana Bar Journal* article. He served on several LSBA committees and was a member of the 2012-13 Leadership LSBA Class.

He serves as the immediate past chair of the Federal Bar Association New Orleans



Scott L. Sternberg

Chapter's Younger Lawyers Division and has taught at LSU and Loyola. He serves on the boards of the Pro Bono Project, the Louisiana Center for Law and Civic Education and the Jefferson Parish Chamber of Commerce. 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.

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

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### Carrie L. Jones Chair-Elect

Carrie L. Jones is the chief legal officer and general counsel at the Louisiana State Board of Nursing (LSBN), where she focuses on administrative and regulatory law. She has successfully represented the LSBN in state and federal court, served as prosecuting attorney in disciplinary matters, and advised board members and staff on a variety of legal issues. Prior to joining the LSBN, she was a partner at the law firm of Shows, Cali & Walsh, L.L.P. She received a BA degree in mass communication from Louisiana



Carrie L. Jones

State University, her JD/BCL degree from LSU Paul M. Hebert Law Center and an MBA degree from Southeastern Louisiana University. She was admitted to practice in Louisiana in 2008.

Carrie served as the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council secretary in 2018-19 and as District 5 representative from 2015-18. She was a member of the 2013-14 Leadership LSBA Class. She co-chaired the Richard N. Ware High School Mock Trial Competition, served as the Professional Development Seminar coordinator, chaired the Bridging the Gap Committee, served on the Awards Committee, and helped plan the inaugural Louisiana Young Lawyers Conference. She is a member of the *Louisiana Bar Journal* Editorial Board and the LSBA Budget Committee.

She is a member of the Louisiana Attorney Disciplinary Board, which she chaired in 2017. 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. Carrie and her husband, Aaron Jones, have been married for eight years and are the parents of two children.

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**Graham H. Ryan**  
Secretary

Graham H. Ryan is a partner at Jones Walker LLP where he represents businesses and individuals in all phases of litigation, appeals and dispute resolution. He graduated *summa cum laude* in finance from Louisiana State University, received his law degree from LSU Paul M. Hebert Law Center (*Louisiana Law Review*), and is an alumnus of the Harvard Negotiation Institute dispute resolution program.



**Graham H. Ryan**

Graham previously served on the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) Council as the young lawyer member on the American Bar Association (ABA) House of Delegates. He currently serves on the LSBA's Legislation Committee and Access to Justice Committee. He was a member of the 2014-15 Leadership LSBA Class. He received the 2016 LSBA YLD Chair's Award and was named as a 2017 Louisiana Bar Foundation Fellow for his commitment to increasing access to justice.

He was honored as a "Top 40 Young Lawyer" nationally by the ABA. He has served as a council member for the Louisiana State Law Institute, the ABA YLD, the New Orleans Association of Defense Counsel and the Jefferson Bar Association YLD. He co-chaired the ABA YLD Litigation Committee.

In his community, he is a commissioner for the Lakeview Crime Prevention District (New Orleans) and is a former chair of HandsOn New Orleans, a nonprofit volunteer center founded after Hurricane Katrina that engaged more than 60,000 volunteers to rebuild south Louisiana. He also is an attorney volunteer to the homeless and veterans at the Father Harry Thompson Rebuild Center in New Orleans.

Graham and his wife Erin live in Lakeview, New Orleans, with their son.

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email: gryan@joneswalker.com/  
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professionals/graham-h-ryan*

**Dylan T. Thriffley**  
Immediate Past Chair

Dylan T. Thriffley is assistant vice president 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 T. Thriffley**

Dylan served as the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council chair in 2018-19, chair-elect in 2017-18, secretary in 2016-17 and as a District 1 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 served on the board of trustees for the Louisiana Civil Justice Center.

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. Thriffley, Jr., have been married for seven years and are the parents of two children.

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**YOUNG LAWYERS  
DIVISION COUNCIL  
2019-20**

**Randy J. (R.J.) Marse, Jr.**  
District One Representative

Randy J. (R.J.) Marse, Jr. is an associate in the New Orleans office of Liskow & Lewis, A.P.L.C. He received his undergraduate degree in 2000 from Louisiana State University and his JD degree in 2012 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2012.



**Randy J. (R.J.) Marse, Jr.**

R.J. is a member of the Federal Bar Association. He was recognized as *Louisiana Super Lawyers* "Rising Star" in 2017-19 for commercial and maritime litigation.

He and his wife Courtney have been married for nearly six years and have one daughter.

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**Kristen D. Amond**  
District One  
Representative

Kristen D. Amond is an associate in the New Orleans office of Fishman Haygood, L.L.P. She previously clerked for U.S. District Court Judge Susie Morgan, Eastern District of Louisiana. She received a BS degree in management in 2010 from Tulane University and her JD degree, *magna cum laude*, in 2016 from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2016.



**Kristen D. Amond**

Kristen is a member of the Federal Bar Association (New Orleans Chapter) Younger Lawyers Division board and a member of the Association of Women Attorneys.

Continued next page

She and Nancia Sterling have been married for five months.

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### **Shayna Beevers Morvant District Two Representative**

Shayna Beevers 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 B. Morvant**

Shayna is a general practitioner with class action and civil litigation experience. Her practice areas include personal injury, criminal defense, family law and representation of local law enforcement organizations. She is currently a member of the adjunct faculty at Tulane University Law School, teaching pre-trial litigation skills during the Boot Camp and Trial Advocacy.

Shayna is currently serving her second term as the District 2 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. She also serves on the LSBA's Board of Governors, in the House of Delegates, is chair of the House of Delegates Liaison Committee and is secretary of the Civil Law and Litigation Section. She was elected to the 2019 Nominating Committee. She was a member of the 2015-16 Leadership LSBA Class.

Shayna is the membership chair for the Tulane Inn of Court and is a former chair of the Jefferson Bar Association's Young Lawyers Division. She served a term as the representative at large for the Jefferson Bar Association and was re-elected for a second term for 2019. She is a frequent presenter of CLE topics and has been presenting for the LSBA since 2013, with a focus on social media, professionalism and trial litigation. She also has presented CLE programs for the New Orleans Bar Association, the Jefferson Bar Association and Tulane University Law School.

In her community, she is a former chair of legislative affairs for the Junior League of New Orleans, a Louisiana Children's Museum campaign leader and a member of the Italian American Ladies Auxiliary.

Shayna and her husband, Wesley, are the parents of two children.

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### **Betty A. Maury District Two Representative**

Betty A. Maury is the judicial law clerk for Judge Lee V. Faulkner, Jr., Division P, 24th Judicial District Court in Gretna. She received a BA degree, *summa cum laude*, in management of criminal justice in 2008 from Concordia University of Wisconsin and her JD degree in 2013 from Loyola University College of Law. She was admitted to practice in Louisiana in 2013.

Betty is serving in the Louisiana State Bar Association's (LSBA) House of Delegates, representing the 24th Judicial District (2017-21). She is co-chair of the 2018-19 Leadership LSBA Class and was a member of the 2017-18 Leadership LSBA Class. She is the Region 4 Louisiana High School Mock Trial Competition coordinator (2017-19).

She is a member of the Jefferson Bar Association, serving as webmaster and on the CLE Committee and was the 2017 chair of the Young Lawyers Division. She has served on the board of the Louisiana Center for Law and Civic Education since 2016 and participated in several Lawyers in the Classroom programs. She has volunteered to assist in expungement events coordinated by the Justice and Accountability Center of Louisiana.

Betty is the recipient of the New Orleans Children's Advocacy Center Trees of Life Award, 2018; the LSBA Young Lawyers Division's Outstanding Young Lawyer Award, 2017; the Gillis Long Poverty Law Center Public Service Award, 2016; and the New Orleans Association of Women Attorneys' Outstanding Loyola Family Law Clinic Student, 2013.

In her community, she was a member of the CASA Jefferson Event Planning Committee, 2013-18; a Fellow of the Institute of Politics, 2017-18; and a member of the



**Betty A. Maury**

Sigma Kappa Greater New Orleans Alumnae Chapter.

Betty and her husband, Thomas J. Maury, Jr., have been married for 15 years and are the parents of two children.

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### **Megan E. Réaux District Three Representative**

Megan E. Réaux is an associate in the Lafayette firm of Hill & Beyer, A.P.L.C. She handles maritime defense litigation and employment discrimination plaintiff litigation. She received a BA degree, *magna cum laude*, in English literature and Spanish in 2008 from the University of Louisiana-Lafayette and her JD/DCL degree in 2011 from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2011.

Megan is a member of the Louisiana State Bar Association's Insurance, Tort, Workers' Compensation and Admiralty Law Section. She is a frequent contributor to the *LA Free-Legal Answers* online program.

She is a member of the Lafayette Bar Association and the Louisiana Association for Justice. In 2010, she received the Public Interest Law Society Fellowship for work with Hearts of Hope in Lafayette.

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**Megan E. Réaux**

### **Elizabeth F. Shea District Four Representative**

Elizabeth F. Shea is an associate in the Lake Charles firm of Stockwell, Sievert, Viccaglio, Clements & Shaddock, L.L.P. She received a BA degree, *summa cum laude*, in English literature in 2008 from Louisiana State University and



**Elizabeth F. Shea**

her JD/DCL degree in 2011 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2011.

Elizabeth was a member of the 2017-18 Leadership LSBA Class. She co-chaired a High School Mock Trial Regional Competition in 2013 and volunteered for the Wills for Heroes program in 2012 and 2015.

She is a member of the Executive Council for the Southwest Louisiana Bar Association (SWLBA) and is a former president of the SWLBA's Young Lawyers Section. She also is president and a charter member of the SWLBA's Women's Section. She was named a "Top Lawyer" by *Acadiana Profile Magazine* in 2018.

In her community, she is a bimonthly volunteer/server for Abraham's Tent and an annual volunteer for the Holiday Helping Hands project.

Elizabeth and her husband, Tom Shea, have been married for six years and are expecting their first child in June 2019.

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## **Loren D. Shanklin**

### **District Five Representative**

Loren D. Shanklin is a partner in the Baton Rouge firm of Smith Shanklin Sosa, L.L.C. She received a BS degree in secondary education (concentration in history) in 2005 from Louisiana State University and her JD/GDCL in 2010 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2010.

Loren participated in the Louisiana State Bar Association's Young Lawyers Division (YLD) Symposium in 2016 and 2017. She is the 2018 recipient of the YLD's Outstanding Young Lawyer Award.

She is a former chair of the Baton Rouge Bar Association's Young Lawyers Section and a member of the Louisiana Association for Justice. While teaching before law school and coordinating an after school program, Shanklin received the LSU Law Center's 2006 Exceptional Volunteer Award. In 2010,



**Loren D. Shanklin**

she was recognized for volunteering more than 100 hours of pro bono services.

In her community, she is involved in the K.I.D.S. (Karing is Doing Something) Program and is a member of St. Aloysius Catholic Church.

Loren and her husband, David C. Fleshman, have been married for five years and are the parents of two children.

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## **Rachal Cox Cassagne**

### **District Five Representative**

Rachal Cox Cassagne is an associate in commercial litigation in the Baton Rouge office of McGlinchey Stafford, P.L.L.C. She received a BA degree in English in 2011 from Louisiana State University-Shreveport, an MA degree in literary studies in 2013 from Universiteit van Amsterdam and her JD degree, *magna cum laude*, in 2016 from Southern University Law Center. She was admitted to practice in Louisiana in 2016.

Rachal is a member of the Baton Rouge Bar Association's Belly Up with the Bar Committee and the Teen Court Committee. She is a member of the American Bar Association and the Junior League of Baton Rouge and is an observer with the Louisiana State Law Institute. She participated in Forum 35's John W. Barton, Sr. Community Leadership Program in 2018.

In her community, she is a member of Rotaract of Baton Rouge and St. Aloysius Church and serves on the board of the Charles W. Lamar, Jr. YMCA.

Rachal and her husband, Craig Cassagne, Jr., were recently married.

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**Rachal Cox Cassagne**

## **Joshua J. Dara, Jr.**

### **District Six Representative**

Joshua J. Dara, Jr. is an associate in the

Alexandria firm of Gold, Weems, Bruser, Sues & Rundell, A.P.L.C. He received a BS degree in 2010 from Louisiana State University and his JD/GDCL degree in 2014 from LSU Paul M. Hebert Law Center.

He was admitted to practice in Louisiana in 2014.

Joshua is a member of the Crossroads American Inn of Court of Alexandria/Pineville, the Louisiana Association of Defense Counsel, the Defense Research Institute and the Alexandria Bar Association. He is president-elect of the Kiwanis Club of Pineville. In law school, he was a member of the Christian Legal Society and the Black Law Students Association. He also was recognized for outstanding advocacy skills in LSU's NITA Trial Advocacy Program.

He and his wife, Aziza Dara, have been married for three years.

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**Joshua J. Dara, Jr.**

## **Russell A. Woodard, Jr.**

### **District Seven Representative**

Russell A. Woodard, Jr. is a sole practitioner in the Law Offices of Russell A. Woodard, Jr., L.L.C., in Ruston. He received an undergraduate degree in 2008 from Louisiana State University and his JD degree in 2011 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 2011. He is admitted to practice in the U.S. District Court for the Middle and Western Districts of Louisiana.

In law school, Russell finished first in legal writing and was a member of LSU's Sports Law Moot Court team. He also competed in LSU's annual Flory Trial Competition, finishing second place overall.



**Russell A. Woodard, Jr.**

Continued next page



In his community, he has coached youth baseball and football for several years and has served in a leadership role with youth sports organizations.

Russell is engaged to Gabrielle Benedetto and they will marry in September 2019.

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### **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 K. Williams

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 recognized by *SB Magazine* as a "Top Attorney" in 2017 and 2018.

Joshua and his wife Samerrial have been married for three years.

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### **Senae D. Hall** **At-Large Representative**

Senae D. Hall is an assistant district attorney in the Caddo Parish District Attorney's Office in Shreveport. She also is the Human Trafficking Victims Diversion coordinator. She received a BA degree in mass communications in 2008 from Dillard University and her JD degree in 2011 from Southern University Law Center. She was admitted to practice in Louisiana in 2011.



Senae D. Hall

Senae is a member of the 2018-19 Leadership LSBA Class and is a member of the Class Awards Committee. She also volunteered as a mock trial competition judge in 2017 and 2018.

She is a member of the Shreveport Bar Association, the Louisiana District Attorneys Association and the Harry V. Booth/Judge Henry A. Politz American Inn of Court. She was recognized as the Teen Court Volunteer of the Year in 2018 and the Abounding Faith Temple Youth Leader Volunteer of the Year in 2017. She was featured as the February 2019 Member Spotlight by the Shreveport Bar Association Women's Division and was a 2019 panelist for the Macy's Black History Month Historical Black Colleges and Universities Program.

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### **Danielle L. Borel** **ABA YLD Representative**

Danielle L. Borel is a commercial litigation and healthcare litigation associate in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P. She received a BS degree, *magna cum laude*, in 2011 from Louisiana State University and her JD degree, *magna cum laude*, in 2014 from LSU Paul M. Hebert Law Center (*Louisiana Law Review*, 2012-14; Order of the Coif). She was admitted to practice in Louisiana in 2014.



Danielle L. Borel

Dani is a member of the American Bar Association's (ABA) Young Lawyers Division and the ABA Health Law Section. She was recognized as an Emerging Young Lawyer in Healthcare by the ABA Health Law Section in March 2019 and as an ABA Young Lawyers Division Star of the Quarter in spring and fall 2017. She also is a member of the Louisiana Hospital Association and has participated in the Baton Rouge Bar Association's Holiday Star Program.

In her community, she is a member of the board of directors and chairs the advisory board for Lighthouse Louisiana. She

was twice recognized with the Lighthouse Louisiana Door Knocker Award for her service. She also volunteers for PulseBR (American Heart Association).

Dani and her husband, Nathan Judice, have been married for eight years.

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### **Valerie E. Fontenot** **Young Lawyer Member/ ABA House of Delegates**

Valerie E. Fontenot is an associate in the New Orleans firm of Frilot, L.L.C. She received a BA degree in 2007 from Tulane University; a master of public health degree, *magna cum laude*, in 2009 from Louisiana State University Health Sciences Center School of Public Health; and her JD/DCL degree, *cum laude*, in 2013 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2013.



Valerie E. Fontenot

Valerie serves in the Louisiana State Bar Association's House of Delegates and is a member of the Diversity Committee. She is a member of the 2018-19 Leadership LSBA Class.

She is a member of the Louisiana Association of Defense Counsel (LADC) and chairs the Young Lawyers Committee. She is a member of the Defense Research Institute and its Diversity Committee. She is serving as vice president of internal communications for the Greater New Orleans Louis A. Martinet Legal Society, Inc.

She received the 2015 and 2016 Chair's Award presented by the LADC's Young Lawyers Committee. She also is a Fellow of the Institute of Politics. She is a member of Alpha Kappa Alpha Sorority, Inc., Omicron Lambda Omega Chapter, and chairs the annual career luncheon.

Ste. 3700, 1100 Poydras St.  
New Orleans, LA 70163  
(504)599-2900 • fax (504)599-8295  
email: vfontenot@frilot.com



## 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” competition. The team will represent Louisiana in the national competition in Washington, D.C.

The team representing Haynes Academy for Advanced Studies in Metairie won the state title in the “We the People” (WTP) competition held at Loyola University in New Orleans. The team, led by teacher Chris Totaro, advances to the national competition in Washington, D.C.

Also competing in the state finals were teams from Edna Karr High School and John Ehret High School. Team teachers Andrew Renard, 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 knowl-

edge and understanding of constitutional principles and have opportunities to evaluate, take and defend positions on relevant historical and contemporary issues.

The panel of judges consisted of attorneys, educators and WTP alumni, including attorney and WTP alumna Heather W. Angelico; attorney Jason D. Asbill; Louisiana WTP alumna and attorney Lori D. Barker; Louisiana WTP Alumni Representative Tyler Barker, Ph.D.; WTP alumni Mariarenee Contreras and Kathryn Cook; educator Joann Cowgill; attorney Nahum D. Laventhal; WTP alumna Philip Lundy; educator Ann Majeste; attorney Christopher A. Meeks; WTP alumni Bryce Menge, Sabine Mohamed and Hugh Ngo; educator Martha Palmer; WTP alumna Alexci Perilloux; Judge Raymond S. Steib, Jr.; Louisiana WTP alumni Ameer Thabata, Rana Thabata and Jabarie Walker; and Loyola University Political Science Associate Professor Roger White, M.A., Ph.D.

### Adult Civics Education (ACE)



Judge Sandra S. Jenkins, left, Louisiana 4th Circuit Court of Appeal, presented an Adult Civics Education (ACE) program for the Third District Kiwanis Club. With her is Club representative Bob Lippincott. The program topic was “Could You Pass the Test” and addressed basic information on the Constitution, the Bill of Rights and current state and federal legislators.

By David Rigamer, Louisiana Supreme Court

## NEW JUDGES... RETIREMENTS

### New Judges

#### Frank A. Brindisi

was elected judge of the 24th Judicial District Court, Division E. He earned his BA degree in 1981 from John Jay College of Criminal Justice and his JD degree in 1987 from Loyola



Frank A. Brindisi

University College of Law. He worked as assistant district attorney, Orleans Parish District Attorney's Office, 1988-92; assistant attorney general, Criminal Division, Louisiana Department of Justice, 1992-97; assistant district attorney, Jefferson Parish District Attorney's Office, 1997-2008; and assistant attorney general, Criminal Division, Louisiana Department of Justice, 2008 until his election to the bench. He was a recipient of the Victims Against Crime Prosecutor of the Year Award in 2017. Judge Brindisi and his wife, Susan N. Brindisi, are the parents of three children.

**Laurie Reis Brister** was elected judge of the 6th Judicial District Court, Division B. She earned her BA degree in 1988 from Louisiana State University

and her JD degree in 1991 from LSU Paul M. Hebert Law Center. She worked as law clerk, probation officer and hearing officer for Judge Charles R. Brackin, 6th Judicial District Court, from 1991-94. She was magistrate, Mayor's Court, Town of Lake Providence, from 2000-01, and coordinator at Families in Need of Services from 1999-2001. She worked as a partner at Brister and Brister, Attorneys at Law, from 1995-2019 and as assistant district attorney for the 6th Judicial District Attorney's Office from 2002 until her election to the bench. She is an instructor for local law enforcement, a member of the Louisiana District Attorneys Association and a member of the East Carroll Parish Notary Committee. Judge Brister and her husband Andy are the parents of two children.



Laurie Reis Brister

gree in 1989 from Northeast Louisiana University and his JD degree in 1992 from Southern University Law Center. He was in the private practice of law from 1992 until his election to the bench in 2001. He also served as assistant city attorney in Zachary from 1999-2001.

► 19th Judicial District Court Judge Louis R. Daniel retired, effective March 31. He earned his BS degree from Louisiana State University and his JD degree from LSU Paul M. Hebert Law Center. He was elected to the 19th JDC in 1997. He was assistant district attorney, East Baton Rouge Parish, from 1981-96, first assistant attorney for District Attorney Cheney Joseph, Jr. in 1990, and lead section chief from 1990-96.

► 6th Judicial District Court Judge John D. Crigler retired, effective March 7. He earned his BA degree in 1974 from Louisiana State University and his JD degree in 1977 from LSU Paul M. Hebert Law Center. He was elected to the 6th JDC in 1993. From 1977-93, he worked as assistant district attorney for the 6th Judicial District and was in private practice.

### Retirements

► 19th Judicial District Court Judge Todd W. Hernandez retired, effective March 31. He earned his BA de-

## LSBA Member Services

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



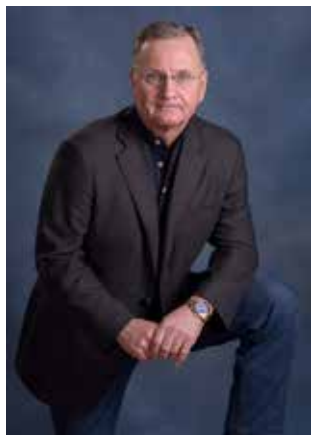
In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive.

For more information,  
visit [www.lsba.org](http://www.lsba.org)



# 26<sup>TH</sup> ANNUAL LOUISIANA STATE BAR ASSOCIATION ADMIRALTY SYMPOSIUM

SEPTEMBER 13, 2019 – NEW ORLEANS



## Richard J. Arsenault, Seminar Chair

Please join respected members of the Bench and Academia, along with experienced Admiralty practitioners from both sides of the “V” as they provide unique insight into key maritime issues.

### Invited speakers include:



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Hon. Daniel E. Knowles III • Hon. Jay Zainey • Hon. Richard T. Haik, Sr. (ret.)  
Hon. Lance Africk • Prof. Tom Galligan • Lindsey Cheek • Dustin Carter • Blake David  
Jeff Tillery • Darleen Jacobs • J. Neale deGravelles • Steve Herman • Alan Breaud  
Jerome Moroux • Jean Paul Overton • Richard T. Haik, Jr. • J. Christopher Zainey, Jr.  
Kenneth Engerrand • Wesley J. Gralapp • Richard Stanley • Peggy Giglio • Leslie Schiff  
Chase Gore • Lynn Luker • Michael S. Koch • John Yadamec • Eric Holland  
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# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Steven F. Griffith, Jr. was named co-chair of the firm's Business Litigation Group.

Bradley Murchison Kelly & Shea, L.L.C., announces that **Rene A. Louapre IV** has joined the firm's New Orleans office as special counsel.

Chaffe McCall, L.L.P., announces that **John M. Ribarits** has joined the firm's Houston, Texas, office as a partner.

Dunlap Fiore, L.L.C., in Baton Rouge announces that **Jonathon M. Branton** has joined the firm as an associate.

Frilot L.L.C. in New Orleans announces that **Norman C. Sullivan, Jr.** has joined

the firm as senior counsel and **W. Jacob Gardner, Jr.** has joined the firm as special partner.

Gertler Law Firm in New Orleans announces that **Jeremy N. Gettes** has joined the firm as an associate.

Gieger, Laborde & Laperouse, L.L.C., with offices in New Orleans and Houston, Texas, announces that **Victoria E. Emmerling** and **Jameson M. Taylor** have been elected members. Also, **Morgan A. Druhan**, **J. Clark McMillan**, **Leigh B. Ackal** and **Jackson M. Smith** have joined the firm's New Orleans office as associates.

Hargrove, Smelley & Strickland, A.P.L.C., announces the relocation of its offices to Louisiana Tower, Ste. 1600, 401 Edwards St., Shreveport, LA 71101; phone (318)429-7200; website [www.hargrovelawfirm.net](http://www.hargrovelawfirm.net).

Lewis Brisbois Bisgaard & Smith, L.L.P., announces that Lee M. Peacocke has joined the New Orleans office as a partner.

Liskow & Lewis, A.P.L.C., announces that Erin C. Percy and Cherrell Simms Taplin have joined the firm as shareholders in the New Orleans office. Also, Vanessa W. Anseman joined the Lafayette office as of counsel, and Paul M. Adkins joined the Baton Rouge office as of counsel. Several associates have joined the firm — Trinity A. Brown, Melanie N. Derefinko, Brady M. Hadden, Brady C. McMillan, Jacques C. Mestayer, Sara Grace Sirera and Emily A. von Qualen, all in the New Orleans office; and Aubrey A. Denton, Gus E. Laggner, C.J. Miller and John S. Troutman, all in the Lafayette office.

The Louisiana Foundation Against Sexual Assault, based in Baton Rouge, announces that attorney Jaimelle N. Thomas has joined the organization's legal services program.



Leigh B. Ackal



Richard J. Arsenault



Clay V. Bland, Jr.



Danielle L. Borel



Brian M. Bradford



Sean P. Brady



Jonathon M. Branton



Andrea A. Crawford



Rachel M. Dayries



Morgan A. Druhan



Andy J. Dupre



Victoria E. Emmerling

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

Riess LeMieux in New Orleans announces that **Johanna E. (Liz) Lambert** has been named a partner in the firm.

**Jonathan M. Rhodes**, founder and managing attorney of The Rhodes Law Firm, announces that the firm opened its Greater New Orleans office at 300 Huey P. Long Blvd., Gretna, LA 70053; and its Greater Baton Rouge office at 804 Main St., Baton Rouge, LA 70802. Website: [www.therhodeslawfirm.com](http://www.therhodeslawfirm.com).

Scofield, Gerard, Pohorelsky, Gallagher & Landry, L.L.C., in Lake Charles announces that **Andrea A. Crawford** has been elected partner and **Brian M. Bradford** and **Rachel M. Dayries** have joined the firm as associates.

## NEWSMAKERS

John C. Anjier, a shareholder in the New Orleans office of Liskow & Lewis, A.P.L.C., was selected as chair of the National Food and Beverage Foundation.

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, co-chaired a Complex

Litigation/Mass Tort Conference in Cancun, Mexico. He also has been selected by *Attorney and Practice Magazine* as one of Louisiana's Top 10 Attorneys in personal injury law and is nominated as a biographical candidate for the 2019 "Who's Who in America."

**Danielle L. Borel**, an associate in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., received the American Bar Association Health Law Section's Emerging Young Lawyers in Healthcare Award.

Camille R. Bryant, an associate in the New Orleans office of McGlinchey Stafford, P.L.L.C., was selected for the Pathfinders Program for diverse, high-potential, early-career attorneys, through the Leadership Council on Legal Diversity.

Leah N. Engelhardt, a partner in the New Orleans office of Chaffe McCall, L.L.P., was elected as a Fellow in the American College of Coverage Counsel.

R. Marshall Grodner, a member in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., was named 2019 vice president of the American College of Commercial Finance Lawyers. He was appointed as a lifelong Fellow of the College in 2006.

**Jerald N. (Jerry) Jones**, managing partner of the Baton Rouge office of Bradley Murchison Kelly & Shea, L.L.C., was elected chair of the Louisiana Board of Commerce & Industry.

**Van R. Mayhall, Jr.**, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was elected president of the board of directors of the Bocage Racquet Club for 2019.

**James R. (Jim) Raines**, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., is serving as 2019 chair of the Louisiana Association of Business and Industry's Emerging Leaders Council.

Mark C. Surprenant, of counsel in the New Orleans office of Adams and Reese, L.L.P., is serving as president of Southeast Louisiana Legal Services.



Thomas M. Flanagan



W. Jacob Gardner, Jr.



Camille E. Gauthier



Jeremy N. Gettes



Kristopher M. Gould



Meghan F. Grant



Anders F. Holmgren



Jerald N. Jones



Johanna E. Lambert



Rene A. Louapre IV



Van R. Mayhall, Jr.



J. Clark McMillan



## PUBLICATIONS

### *Chambers USA 2019*

**Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.** (Baton Rouge, Mandeville, New Orleans): Edward H. Arnold III, Phyllis G. Cancienne, Roy C. Cheatwood, Nancy Scott Degan, Matthew R. Emmons, Sean L. Finan, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, 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, Kathlyn G. Perez, Danielle L. Trostorff, Paul S. West, Robert L. Wollfarth, Jr. and Adam B. Zuckerman.

**Flanagan Partners, L.L.P.** (New Orleans): **Thomas M. Flanagan.**

### *Louisiana Super Lawyers 2019*

**Flanagan Partners, L.L.P.** (New Orleans): **Clay V. Bland, Jr., Sean P. Brady, Andy J. Dupre, Caitlin J. Flanagan, Harold J. Flanagan, Thomas M. Flanagan, Camille E.**

**Gauthier, Meghan F. Grant and Anders F. Holmgren.**

### *New Orleans City Business*

**Forman Watkins & Krutz, L.L.P.** (New Orleans): Charles H. Abbott, 2019 Leadership in Law Class.

### *New Orleans Magazine*

**Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C.** (New Orleans): Kaye N. Courington, 2018 Top Lawyer.



James R. Raines



Jonathan M. Rhodes



John M. Ribarits



Jackson M. Smith



Norman C.  
Sullivan, Jr.



Jameson M. Taylor

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The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2019/January 2020 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

For more information or to reserve space in the directory, mail and/or e-mail your display ad or text listing/photo and check (payable to the Louisiana State Bar Association) to:

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

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## UPDATE

### Chief Justice Johnson Receives Gertrude E. Rush Award

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson received the Gertrude E. Rush Award from the National Bar Association (NBA). The award was presented by her daughter, Orleans Parish Civil District Court Judge Rachael D. Johnson, at the NBA's 2019 Mid-Year Conference on March 9.

The award, established in 2003, is presented to those who embody the pioneering spirit of Gertrude E. Rush, the first African-American woman admitted to the practice of law in Iowa in 1918

and the sole female co-founder of the NBA.

Upon accepting the award, Chief Justice Johnson said, "I am honored to receive this award which celebrates leadership in the community and in the legal profession, as well as concern for human and civil rights. I have always taken pride in working to advance diversity and inclusion in the legal profession and continue to strive to exemplify an unwavering commitment to justice and fundamental fairness."



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, center, received the Gertrude E. Rush Award from the National Bar Association (NBA). The award was presented by her daughter, Orleans Parish Civil District Court Judge Rachael D. Johnson, left. With them is NBA President Joseph Drayton.

### National Crime Victims' Rights Week Recognized in Shreveport

In observance of National Crime Victims' Rights Week in April, U.S. Attorney David C. Joseph (Western District of Louisiana) was the guest speaker at the annual proclamation ceremony at the Shreveport-Caddo Government Plaza, hosted by the Caddo Parish Sheriff's Office and the Caddo Parish District Attorney's Office. The week's theme was "Honoring Our Past. Creating Hope for the Future."

Each year in April, the Department of Justice and U.S. Attorneys' offices observe National Crime Victims' Rights Week nationwide by honoring victims of crime and those who advocate on their behalf. The Justice Department and U.S. Attorneys' offices also bring awareness to services available to crime victims.



U.S. Attorney David C. Joseph (Western District of Louisiana), fifth from left, was the guest speaker at the National Crime Victims' Rights Week observance in Shreveport. From left, Shreveport Mayor Adrian Perkins, U.S. Marshal Henry Whitehorn, Caddo Parish Sheriff Steve Prator, Caddo Parish District Attorney James E. Stewart, Sr., U.S. Attorney Joseph, Shreveport Police Assistant Chief Wayne Smith and Louisiana State Police Trooper Cordell Williams.



# LSU Law Center Honors 2019 Distinguished Alumni

Five Louisiana State University Paul M. Hebert Law Center alumni were honored during the 2019 Distinguished Alumni Celebration on March 22.

S. Gene Fendler, a former president and managing partner in the New Orleans office of Liskow & Lewis, A.P.L.C., and LSU Law Center Professor Frank L. Maraist were named Alumni of the Year.

Distinguished Achievement honorees were Timothy F. Daniels, a member in the New Orleans office of Irwin Fritchie Urquhart & Moore, L.L.C.; Christine Lipsey, a member of the commercial litigation team in the Baton Rouge office of McGlinchey Stafford, P.L.L.C.; and John T. Nesser III, co-founder, manager, co-chief executive officer and director of All Coast, L.L.C.

The LSU Law Center's Distinguished Alumnus Award is given annually for distinction in professional achievement and loyalty to the LSU Law Center. The Distinguished Achievement awards recognize graduates for professional achievement and career distinction, service to and support of LSU Law Center, and service to the community.

Fendler, the LSU Law Alumni Board of Trustees president, is a 1973 graduate of LSU Law Center and a former member of the *Louisiana Law Review*. He is a trial and appellate lawyer with more than 35 years



Five alumni of Louisiana State University Paul M. Hebert Law Center were honored for their lifetime of service to the Law Center and work in the legal profession. From left, LSU Law Center Dean Thomas C. Galligan, Jr.; Distinguished Achievement honoree John T. Nesser III; Distinguished Achievement honoree Christine Lipsey; Alumnus of the Year S. Gene Fendler; Catherine Maraist and Laura Irlbeck, daughters of Alumnus of the Year Frank L. Maraist; and Distinguished Achievement honoree Timothy F. Daniels.

of experience in casualty and business matters.

Maraist delivered his last lecture on July 14, 2011, to a standing ovation from faculty colleagues, staff and students, a conclusion to a career spanning almost four decades. He taught classes in Evidence, Torts, Admiralty and Advanced Torts Litigation. He authored 23 books on Louisiana torts, evidence, civil procedure and maritime law.

Daniels, a trial attorney, has served on the Board of Trustees for many years and provided leadership for the Law Center's Annual Fund.

Lipsey presents programs on legal ethics and has taught for many years as an adjunct professor at the Law Center, most recently teaching "The Legal Profession" (ethics and professionalism) and Business Torts.

Nesser retired as executive vice president and chief operating officer of McDermott International, Inc. in 2011. He is the co-founder, manager, co-chief executive officer and director of All Coast, L.L.C., which owns and operates lift boats for the offshore oil and gas market in the Gulf of Mexico.



Amy C. Lambert, third from left, was installed as the 2019 president of the Baton Rouge Bar Association (BRBA) in January. Attending the ceremony were, from left, Judge Brian A. Jackson, U.S. District Court, Middle District of Louisiana; Chief Judge Rachelle (Shelly) D. Dick, U.S. District Court, Middle District of Louisiana; Lambert, with Taylor, Porter, Brooks & Phillips, L.L.P.; and Chief Magistrate Judge Erin J. Wilder-Doomes, U.S. District Court, Middle District of Louisiana. Not in photo, BRBA 2019 officers Shelton D. Blunt, president-elect; Christopher K. Jones, treasurer; and David A. Thomas, secretary.



The Younger Lawyers Division of the New Orleans Chapter of the Federal Bar Association hosted its annual holiday party on Dec. 5, 2018. Attending, from left, Kelly M. Legier, Judiciary Commission of Louisiana; Chief Judge Nannette V. Jolivet-Brown, U.S. District Court, EDLA; and Judge Dana M. Douglas, U.S. District Court, EDLA.



## LOCAL/SPECIALTY BARS



Maggie T. Simar, right, was installed as 2019 president of the Lafayette Bar Association. Donovan J. O'Pry II is immediate past president.

### Simar Installed as Lafayette Bar Association President

Maggie T. Simar, 16th Judicial District Court Family Court hearing officer, was installed as 2019 president of the Lafayette Bar Association (LBA) at a ceremony on Nov. 1, 2018. Also installed were Theodore G. (Glenn) Edwards IV, president-elect; Karen J. King, secretary/treasurer; and Donovan J. O'Pry II, immediate past president.

LBA Executive Director Josette Gossen welcomed attendees and Louisiana Supreme Court Associate Justice James T. Genovese swore in the 2019 officers.



Louisiana Supreme Court Associate Justice James T. Genovese, far right, swore in the 2019 Lafayette Bar Association officers. From left, Donovan J. O'Pry II, O'Pry Law Firm, L.L.C., immediate past president; Karen J. King, U.S. Attorney's Office, secretary/treasurer; Theodore G. (Glenn) Edwards IV, Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P., president-elect; and Maggie T. Simar, 16th Judicial District Court Family Court hearing officer, president.



Kelly E. Brilleaux, center, was installed as chair of the New Orleans Bar Association's Young Lawyers Section (NOBA YLS) during the installation ceremony on Nov. 15, 2018. From left, Kristen A. Lee, law clerk to Judge Regina Bartholomew-Woods, Louisiana 4th Circuit Court of Appeal; Brilleaux, Irwin Fritchie Urquhart & Moore, L.L.C.; and attorney Gary W. Johnson, council member, NOBA YLS.



The Federal Bar Association New Orleans Chapter hosted its annual Federal Judges' Reception on Nov. 14, 2018. The reception honored the judiciary of the U.S. 5th Circuit, U.S. District Court for the Eastern District of Louisiana and Bankruptcy Courts. Attending, from left, Jana L. Grauberger, Liskow & Lewis, A.P.L.C.; Judge Dana M. Douglas, U.S. District Court, EDLA; and Colleen C. Jarrott, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.



(Left) The Louis A. Martinet Legal Society, Inc. (LAMS) Greater Lafayette Chapter hosted a Legislative Luncheon on March 14. Presentations on proposed legislation were made by Rep. Vincent J. Pierre, District 44, right, and Rep. Terry C. Landry, Sr., District 96, left. With them is Franchesca L. Hamilton-Acker, president of the LAMS Lafayette Chapter. At the luncheon, a special report was provided by Sen. Gerald Boudreaux, District 24. Roger P. Hamilton, Jr., legislative/judicial relations chair, moderated the luncheon. The Law Office of Marcus A. Bryant was the luncheon sponsor.



In March, members of the Louis A. Martinet Legal Society, Inc. Greater Lafayette Chapter volunteered at their adopted school, J.W. Faulk. Volunteers supplemented the social studies lessons. This volunteer effort is part of the Society's commitment to education. The Community Service Committee is chaired by McKinley B. James, Jr. From left at the podium, Tia C. Benton, McKinley B. James, Jr. and Taylor L. Johnson.

## President's Message

# 365 Days of Justice

By 2019-20 President Amanda W. Barnett

If you attended the Louisiana Bar Foundation's (LBF) 33rd annual Fellows Gala, you know what I am talking about. "365 Days of Justice" is an interactive fundraiser that we launched at the Gala on April 5. The goal is to sell each day of the year. Donations range from \$25 to \$365 depending on which days of the year you select. Donors can celebrate a special event or a loved one by dedicating a day of recognition. The donor's name and the tribute will be displayed on our website.



Amanda W. Barnett

Here's how it works. Go to: [www.raisingthebar.org/365daysofjustice](http://www.raisingthebar.org/365daysofjustice). Choose a day that is meaningful to you or a loved one. It can be a birthday, anniversary or special event, in honor of or in memory of someone special. Then, you can dedicate




The 2019-20 Louisiana Bar Foundation officers were installed at the 33rd annual Fellows Gala on April 5. From left, Treasurer Harry J. (Skip) Phillips, Jr., Baton Rouge; President Amanda W. Barnett, Alexandria; Secretary Alan G. Brackett, New Orleans; and Vice President Christopher K. Ralston, New Orleans. Photo by Adrien Broussard.

the day by personalizing your message. Finish with your donation by following the easy, secure online process. You will receive an email confirmation to document the donation.

"365 Days of Justice" will be active on the LBF website throughout the year. Visit

the LBF's booth during the Louisiana State Bar Association's Annual Meeting in Destin, Fla., and join in the excitement. Donations support the LBF's mission to Fund Civil Legal Aid and Promote Access to Justice. For more information, contact Laura Sewell at (504)561-1046.





### GROW YOUR BUSINESS: JOIN THE MODEST MEANS ONLINE LEGAL DIRECTORY TODAY

The Modest Means Online Legal Directory connects attorneys offering affordable legal services with moderate-income families who do not qualify for free legal aid, yet can afford to pay for legal services at a reduced rate.

The Directory is open to all active Louisiana attorneys in good standing who offer reduced-fee legal services to people falling at or below 400% of the Federal Poverty Line. Many attorneys already offer reduced fees by way of a sliding scale based on the client's income, flat fees, or limited scope representation.

### FIND OUT MORE! CONTACT

Amy Duncan, LSBA Access to Justice Training & Projects Counsel,  
at [amy.duncan@lsba.org](mailto:amy.duncan@lsba.org) with any questions.  
Or for more information online, visit  
[www.lsba.org/ATJCommission/ModestMeans.aspx](http://www.lsba.org/ATJCommission/ModestMeans.aspx).

## 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:  
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Darlene LaBranche at  
[dlabranche@lsba.org](mailto:dlabranche@lsba.org).

Or mail press releases to:  
Darlene LaBranche  
Publications Coordinator  
601 St. Charles Ave.  
New Orleans, LA 70130-3404



# LBF Honors Distinguished Award Recipients at Gala

The Louisiana Bar Foundation (LBF) celebrated its 33rd annual Fellows Gala on April 5 and honored the 2018 Distinguished Jurist D. Milton Moore III, Distinguished Attorney H. Bruce Shreves, Distinguished Professor Thomas C. Galligan, Jr. and Calogero Justice Award recipient, Kendall Vick Public Law Foundation.

**Distinguished Jurist D. Milton Moore III** serves on the bench of the Louisiana 2nd Circuit Court of Appeal. A lifelong resident of Monroe, he received a BA degree in history from Louisiana State University and his JD degree in 1976 from LSU Law School. Prior to his election to the bench in 1988, he maintained a general civil and criminal law practice in Monroe. He served for more than 14 years on the 4th Judicial District Court (Ouachita and Morehouse parishes), serving as chief judge from 1997-98. Judge Moore was instrumental in the establishment of the first Drug Court for the area and was its first presiding judge. He now serves on the Wellspring Foundation board of trustees.

**Distinguished Attorney H. Bruce Shreves** is a founding member of Simon, Peragine, Smith & Redfearn, L.L.P., in New Orleans. Growing up in Sioux Falls, SD, he graduated from Georgetown Law School and was admitted to the South Dakota Bar in 1969. He was drafted and spent four years in the Army Judge Advocate General Corps. While in the Army, he took the Louisiana Bar exam and was admitted in 1972. He practices in the areas of construction, surety law, arbitration and mediation. He is the chair of the Louisiana State Bar Association's Fidelity, Surety and Construction Law Section. He has chaired the American Bar Association's Fidelity and Surety Committee. Thirty years ago, he co-authored one of the first books in Louisiana devoted to construction law.

**Distinguished Professor Thomas C. Galligan, Jr.** has been dean of



The Louisiana Bar Foundation (LBF) recognized the 2018 Distinguished Honorees during its 33rd annual Fellows Gala. From left, Distinguished Professor Thomas C. Galligan, Jr.; Jerome J. Reso, president of the Kendall Vick Public Law Foundation, Calogero Justice Award recipient; 2019-20 LBF President Amanda W. Barnett; Distinguished Attorney H. Bruce Shreves; and Distinguished Jurist D. Milton Moore III. Photo by Adrien Broussard.

Louisiana State University Paul M. Hebert Law Center since July 2016 and holds the James Huntington and Patricia Kleinpeter Odom Professorship of Law. He teaches torts and admiralty. He holds an AB degree in political science from Stanford University, a JD degree from Seattle University School of Law (*summa cum laude* and first in his class) and an LL.M. degree from Columbia University Law School. Prior to his appointment as LSU Law Center dean, he was president and professor of humanities at Colby-Sawyer College and dean and the Elvin E. Overton Distinguished Professor of Law at the University of Tennessee College of Law. He taught at LSU Law Center from 1986-98. From 1995-98, he served as the executive director of the Louisiana Judicial College.

**Calogero Justice Award recipient, Kendall Vick Public Law Foundation.** Kendall Vick was an assistant professor at Loyola University College of Law in the mid-1960s and provided legal experience to the American Civil Liberties Union. He served as assistant attorney

general in the Civil Division of the Louisiana Department of Justice from 1972-88. The Vick Foundation began activities in 1999, with the primary goal being to encourage law graduates to seek careers in public law. The Foundation began providing Loan Repayment Assistance Program (LRAP) grants in 2006 to law graduates in public sector positions in Louisiana. From its inception through 2018, the Vick Foundation has provided LRAP funding in excess of \$2 million.

## LBF Announces New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Meredith Ellis Hamblen .....	Baton Rouge
Lisha C. Landry .....	Baton Rouge
Andrea C. Stentz .....	Thibodaux
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# IPSE DIXIT: Game Worth the Candle?

By Edward J. Walters, Jr.



**Hobson's Choice.** So I'm sitting in this lawyer's library waiting for the deposition to start and I notice a book on his shelf titled *Cassell's Dictionary of Word and Phrase Origins* by Nigel Rees. I had just been informed, in a matter unrelated to the case I was there for, that a decision I was about to make was a "Hobson's Choice." I pulled *Cassell's* off the shelf (this lawyer still had actual books) and looked it up. There really was a Tobias Hobson who lived in Cambridge (until 1631) and who owned a livery at which one could hire a horse. The rule was, however, that you could hire any horse you wanted, as long as it was the one next to the door, or no horse at all. Thus, "Hobson's Choice" is no choice at all.

That led me to wonder if Cassell chronicled any other phrases that we lawyers encounter and use every day but have no idea of the derivation. I looked up a few. (It was a long wait.)

**Red Herring.** How often have we heard, "Your Honor, their argument is a red herring!" We all know that the phrase implies that the argument is meant to distract the court from the REAL issue in the case — YOUR issue. According to Cassell, there is no fish known as a red herring. The phrase was derived from the practice of using a kipper (usually a herring), soaking it in brine, smoking it to produce a very pungent smell, which caused the flesh of the fish to turn reddish. Then the herring was dragged across a trail to see if the dogs would be distracted from the scent they were there to find.

**Draconian.** We've all heard how draconian some laws are or some judge's decision is. Who is this guy and why are lawyers talking so bad about him? According to Cassell, Drakon (aka Draco) was an Athenian legislator known for his harsh, sweeping, drastic and severe legislation causing heavy penalties for small infractions. In response to the unjust interpretation of oral law by Athenian aristocrats, he wrote the Draconian code near the end of the 7th century BC.

**Hoist on His Own Petard.** This is a favorite of Vince Fornias who we all miss writing in this spot. It is from Shakespeare's *Hamlet*. Hamlet discovers a plot on his life by Claudius and resolves to respond by letting the plotter be "hoist on his own petard." A petard is a small explosive device. When the bomb maker accidentally explodes his own explosive device intended to hurt another, but hurts himself instead, he can be hoist into the air and, thus, hoist on his own petard. Used to denote an ironic ending or a just reward. Foiled by one's own plan. An often occurrence in our business.

**One Fell Swoop.** A swoop is the rapid descent made by a bird capturing its prey. A fell is a swift, ruthless attack. Shakespeare used it in *Macbeth* when Macduff learned that his family and servants had been killed. He said, "All my pretty ones? Did you say all? O hell-kite! All! What, all my pretty chickens and their dam at one fell swoop?"

**Have an Axe to Grind.** We owe this one to Benjamin Franklin. We know it means having an ulterior motive, but where did it come from? Seems Ben wrote about it in one of his essays, "Too Much for Your Whistle," relating the story of how a man showed interest in Ben's grindstone and asked how it worked. In the process of explaining, Ben — using much energy — sharpened the visitor's axe for him. This was clearly what the visitor intended all along. Ben always had to ask himself whether other people he encountered had "another axe to grind."

**Beyond the Pale.** We hear, "Your Honor, that action is 'beyond the pale.'" Beyond WHAT pale? Beyond the pale WHAT? We know it means outside the bounds of acceptability, but where did the phrase come from? According to Cassell, "the pale" was the area of English settlement around Dublin in Ireland, dating from the 14th century, in which English law had to be obeyed. The derivation is from the Latin *palus*, meaning "a stake." Anyone who lived beyond this stake or fence was thought to be beyond the bounds of civilization — beyond the pale.

**Is the Game Worth the Candle?** This phrase arose when people used candles for lighting when they gambled or played a game of cards. When the amount at stake was very small, it was questioned whether the game was worth the cost of the candle needed to provide the light by which to play the game. Sometimes it wasn't worth the time and effort involved. ♦



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



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