

LOUISIANA BAR JOURNAL

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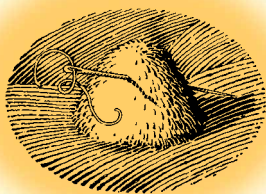
Volume 62, Number 1



Joseph L. "Larry" Shea, Jr.
74th LSBA President
Shreveport



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Departments

Editor's Message 7
Association Actions 26
Practice Management 36
Lawyers Assistance 37
Focus on Diversity 38
Puzzle 40
Discipline Reports 41
Recent Developments 46
Young Lawyers 61
Judicial Notes 67
People 68
News 71
Classified 78
The Last Word 80

Also Inside

SOLACE 5
Member Services 6
Alcohol/Drug Abuse Hotline 40
ADR Directory Information 60
Advertisers' Index 77
Expert Directory Information BC

Features

One on One with Joseph L. (Larry) Shea, Jr., 74th LSBA President: On Outreach and "Coming Together" to Meet the Profession's Needs and Challenges Today. Interviewed by Barry H. Grodsky 8
Medicaid Secondary Payer in Louisiana in View of Wos — What Next? By Nicholas W. D'Aquila 18
Book Review: Business and Commercial Litigation in Federal Courts (3d Ed.) Reviewed by Mark A. Cunningham 22
In Memoriam: Thomas O. Collins, Jr. 24
Profiles of LSBA Officers and Board of Governors 26
Profiles of LSBA Young Lawyers Division Officers and Council 62



Joseph L. (Larry) Shea, Jr. of Shreveport, second from left, is the 74th President of the Louisiana State Bar Association. With him are family members, from left, his daughter Shawn Meyer, his grandson Morgan Meyer, his wife Jane, his daughter Shannon Bamburg and his son-in-law Chris Bamburg. Photo by Kathryn Gaiennie Fine Photography.

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- ▶ "Bar Briefs" (online)
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- ▶ **Hertz** – (800)654-2210 • Discount No. 277795

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Louisiana Hotels

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Here's How We Keep You Informed...



By Barry H. Grodsky

The Louisiana State Bar Association's (LSBA) secretary has a number of duties and, among them, is responsibility for the Bar's publications. In general, most attorneys know something about these publications but I thought it important to give more information so members know exactly what publications the Bar has and the purpose of each one.

Louisiana Bar Journal

The most recognizable, of course, is the *Louisiana Bar Journal*, the official publication of the LSBA. The 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 is published six times a year (February/March, April/May, June/July, August/September, October/November and December/January). Print runs average 22,000. The *Journal* is archived (and searchable) online currently back to 2005.

The *Journal's* content is 30 percent ads to 70 percent editorial, a ratio consistent with similar magazines. It includes both display and classified advertising. 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 (October/November issue) and "the Expert Witness, Consultant & Legal Services" directory (December/January issue).

The LSBA secretary is the editor of the *Journal* and has final authority on editorial content. The editor, with input from the Editorial Board, will select all of the *Journal's* feature articles as well as overall publication decisions relating to content. For example, I have decided to increase the number of themed issues each year. The Editorial Board

is unique in that its members are selected by the secretary; the majority of other LSBA committees are selected by the president.

The Editorial Board is a standing committee of the Bar and consists of five or more members. Today's Editorial Board has over twice that many members. The editors are responsible for all feature and section articles, editing for length, style and content, substance checking and citation checking. Editors are occasionally called upon to write an article. The Editorial Board works directly with the LSBA staff two to three months ahead for every publication.

Typically as editor, I will receive proposed articles and will make the initial decision to present them to the board. Not all articles will be submitted for review. (For instance, an attorney in Scotland proposed an article on succession procedure in Scotland. He said this would be of great use to Louisiana attorneys. But I decided not to use it). The staff is also very involved in this process. If an article is accepted for publication, the next decisions are when it will be published and how (for example, in a themed issue with related articles). The staff ensures that other submissions (such as the Editor's Messages) are timely done. The editor will conduct a final review of the full magazine and then the issue goes to print.

"Bar Briefs"

The next publication is the "Bar Briefs," a bimonthly online newsletter with articles on activities of the LSBA and its affiliates. It is uploaded to the LSBA website in January, March, May, July, September and November. Once it is uploaded, its availability is e-blasted to 27,500+ email addresses. It was originally a print publication but became "online only" in January 2010.

The "Bar Briefs" is currently in its 29th volume and is generally between 12-16 pages. It includes display and classified

advertising and includes reports on elections, CLE offerings, meetings and other news of note for LSBA members. Each issue is archived and searchable online.

"Louisiana Bar Today"

"Louisiana Bar Today" is a text-only e-newsletter emailed every other Tuesday. It generally includes LSBA departmental news and other items of interest to members. Subscriptions are free to members and non-members.

Website

The LSBA's website, www.lsba.org, has been significantly upgraded. It provides an array of information about LSBA activities, programs, services and other events with easy accessibility. This includes important public resource information on Access to Justice, the Louisiana Center for Law and Civic Education and consumer brochures. It offers links to Fastcase and the membership directory — two of the most-accessed features. Other resources are available for contacting the Lawyers Assistance Program, Inc. (LAP) and the SOLACE program, as well as to gather details about member programs and practice management.

Social Media

The LSBA is committed to its social media presence. This is growing and becoming more popular. There are 1,112 Facebook followers, 111 Google+ followers, 127 Pinterest followers, 1,831 Twitter followers and 803 LinkedIn followers. LSBA President Larry Shea has a Twitter account and his activities as Bar President can be followed. He is the first president to offer this type of access.

We are here to keep you informed and now you know how we do it!



One on One with Joseph L. (Larry) Shea, Jr., 74th LSBA President:

*On Outreach and “Coming Together” to Meet
the Profession’s Needs and Challenges Today*

Interviewed by Barry H. Grodsky
Louisiana State Bar Association Secretary

Joseph L. (Larry) Shea, Jr., the Louisiana State Bar Association’s 74th president, is a member in the Shreveport office of Bradley Murchison Kelly & Shea, L.L.C. He received a BA degree in 1974 from Tulane University and his JD degree in 1978 from Louisiana State University Paul M. Hebert Law Center (Order of the Coif and Louisiana Law Review executive editor). He was admitted to practice in Louisiana in 1978 and in Texas in 1996.

Shea served as 2013-14 Louisiana State Bar Association (LSBA) president-elect and has chaired the LSBA’s Ethics Advisory Service Subcommittee and the Multijurisdictional Practice Committee. He also served on the Ethics 2000 Committee. He received the LSBA President’s Award in 2002.

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

He was inducted into the LSU Paul M. Hebert Law Center Hall of Fame. He also has been listed in 2009-13 The Best Lawyers in America directories, including as 2013 Shreveport Litigation-Environmental Lawyer of the Year; in 2008-13 Louisiana Super Lawyers directories; and in the 2013 Chambers USA directory as a leader in the field for Energy & Natural Resources: Oil & Gas.

Shea and his wife, Jane, have been married for 40 years and are the parents of two children.

Joseph L. (Larry) Shea, Jr. of Shreveport, second from left, is the 74th President of the Louisiana State Bar Association. With him are family members, from left, his daughter Shawn Meyer, his grandson Morgan Meyer, his wife Jane, his daughter Shannon Bamburg and his son-in-law Chris Bamburg. Photo by Kathryn Gaiennie Fine Photography.

Journal: What was your motivation to become a lawyer?

Shea: My wife Jane was my motivation. I was working for an oil company. She thought I was not happy and she applied to law schools for me. So, I went to law school. I had been on the traveling Debate Team at Tulane and she knew I was interested in the practice of law. I always talked about being in law, but I had no family background there. No family members were lawyers. But she knew I had an interest and we decided I should pursue it.

Journal: Do you have any desire to go back to your former position?

Shea: No. I enjoy the practice of law. It's what I should have done from the start. I am happy to be doing it.

Journal: Tell us more about your family.

Shea: My wife and I started dating when she was 14 and I was 16. She is my partner and my best friend. We have two girls — Shawn, who is the mother of my grandson, Morgan, and my younger daughter, Shannon, who just got married last fall. They all live in Shreveport now. At one time, the girls were on both coasts, one in California and the other in Florida. But they both moved back and we are happy with them being close to us again.

Journal: What was your very first legal job?

Shea: I went straight to work with the firm (called at that time) Hargrove, Guyton, Ramey & Barlow, an oil and gas-related firm. I began there and I have never really moved my office. The firm has changed names on occasion and we've changed our physical offices a couple of times, but I've always been with the same group of lawyers since 1978.

Journal: What is the primary emphasis of your practice?

Shea: Oil and gas litigation and contract work. We represent a number of independent producers and some traded companies. I also handle other types of litigation and transactional work, not just production-related litigation and contracts. For example, I do environmental-type litigation.



Larry Shea, Jr. with wife Jane and daughters Shannon and Shawn. *Provided by Shea family.*

Journal: What was your first real job ever, your first paycheck?

Shea: I was a maintenance guy at Bealls (Department Store). I would clean up around the place. I also worked at my aunt's restaurant, a diner. I worked at the diner as a short-order cook and helped her out. Those were high school jobs. I worked offshore with Texaco after my first year of college. I also worked at the Texaco office on Canal Street in New Orleans (across from the Jung Hotel) in the petroleum engineering department.

Journal: You have the reputation now as a good cook. Did the diner give you that training?

Shea: Well, it did teach me a little about how to cook. But I started learning how to do more of it later, as time has gone on.

Journal: What is your super specialty?

Shea: Well, I make a very good scallop dish with a champagne sauce. It is pretty good, if I say so myself. But mostly people who come over want me to grill steaks and maybe a little lobster.

Journal: Who are your heroes and role models?

Shea: I knew you were going to ask me that. Early on in my legal career, my objective was to be a criminal defense lawyer, like F. Lee Bailey (who, of course, was one

of the lawyers on O.J. Simpson's defense team). I had seen some film of him in the courtroom and I thought I would enjoy doing that when I started law school. That was my objective. After entering the practice, I looked up to several of my senior partners, Ray Barlow and Billy Pesnell. They served as great advisors in my career.

Journal: Being from Shreveport, is there a difference being a president from there as compared to another part of the state? A vast majority of Louisiana lawyers practice at the I-10 corridor or south. How does that affect the overall practice of law and you as president?

Shea: It doesn't affect the practice of law. Shreveport is a great place to practice law. We have more sophisticated types of legal work in the Shreveport area than some may think. We are often in litigation and negotiations with major firms from Houston, Dallas, New Orleans and other parts of the country. It is a little easier to practice in Shreveport due to the professionalism and camaraderie displayed by most of our lawyers. We enjoy each other's company. Our firm has an "open-door" policy. Our young lawyers are comfortable stepping in and asking questions. We have a good practice in that sense. It's a culture that we enjoy. As far as being a president from Shreveport, you cannot change the fact

that the Bar offices are at the other end of the state. That poses a challenge, but I have a lot of support from my family, partners and friends.

Journal: As president, how are you going to get more outreach in the northern part of the state and get more members there involved in Bar activities?

Shea: I do have some plans. My primary initiative is to try to bring the Bar out to the other parts of the state. It's an unfair criticism that the LSBA is an I-10 Bar, even though a lot of the workings of the Bar are in New Orleans. I tell people it's the same distance from New Orleans to Shreveport as it is from Shreveport to New Orleans. One idea I have is to create regional panels, where we will have board members selecting volunteers from each region of the state to serve on those panels. One function I want the panels to serve is the identification of "citizen lawyers," folks who practice law but also do many other things for their communities. It will be helpful to get the State Bar involved by recognizing those lawyers who are making a difference by improving their communities. Let's recognize them and get the panels to help us in identifying them.

Journal: As the LSBA's Mentoring Program will be activated in a few months,



Joseph L. (Larry) Shea, Jr. in high school. *Provided by Shea family.*



Joseph L. (Larry) Shea, Jr. at the Louisiana Bar Center. *Photo by LSBA Staff.*

I've been very impressed and encouraged by the Shreveport Bar's and the Shreveport Inn of Court's responses. Do you see a working relationship with the State Bar and local bars?

Shea: Yes, that's another concept I'd like to bring about. The LSBA used to have a "committee of the bars," consisting of representatives of specialty and local bars, offering a forum to discuss similar problems confronted by all bars. We (as Bar leaders) have the advantage of attending national meetings and learning how to improve local bars. Through the committee of the bars, we can pass these ideas on. The State Bar can assist local bars through the organization of such a committee.

Journal: You have taken a different path to the presidency. Most presidents rise up from the Board of Governors. You have risen through the House of Delegates. Does that change the way you will approach your term in office?

Shea: When I was honored with this nomination and then elected, it changed what I had to do. I had to spend more time learning about other aspects of the LSBA that I had not been directly involved in. True, I had not served on the Board, but I served in the House for a long time, as well as on a number of committees. These committees mostly

involved ethics issues — Ethics 2000, the Multijurisdictional Practice Committee — and I helped rewrite the rules. I served on the committee that wrote the rules on advertising. I served under 10-15 presidents on different committees. I've long been active in the committee system. I've been involved in the creation of the Ethics School. Actually, last fall was the first time that I didn't speak at the Ethics School because of conflicts with my president-elect schedule. I've also spoken at every Bridging the Gap seminar, except for a recent one because of similar conflicts. I've been actively involved as a Bar speaker on ethics issues. I've always felt that the Bridging the Gap and Ethics School programs are important projects to further the ethical development of the Bar as a whole.

Journal: You have been in practice for 35+ years. How has the practice changed? Good or bad?

Shea: Law firms have changed. There is more mobility among young lawyers. These young lawyers don't tend to stay in the same place as long as they used to. When I started, it was rare to see moves to other firms. Mobility has changed the practice. The practice also went through a period of reduction in professionalism. I think we are on an uptick on that, though. I find lawyers are far more professional

today, a lot like the fellows I began practicing with. Yes, there's a business to the practice of law but it's a profession, and attorneys should act in a professional manner when dealing with the courts, clients and other attorneys. I believe there's been an improvement in professionalism overall in the last 10 years.

Journal: The Committee on the Profession has increased professionalism training in the law schools. Is that important? Should it continue?

Shea: Absolutely! As a graduate of LSU Paul M. Hebert Law Center, I have been a part of the professionalism orientations for first-year students from its inception. I have not had the opportunity to attend the orientations at the other law schools. But this is an excellent opportunity to engage the students right off — early — and let them know the significance that professionalism has to the overall practice of law. These programs do a lot of good.

Journal: As president, it will be important to maintain a working relationship with the Louisiana Supreme Court and the Chief Justice. Have you had previous experience dealing with the court and chief?

Shea: Chief Justice Bernette Joshua Johnson is an exceptional person. I've had the opportunity to visit with her about Bar matters. She is astute as to what's going on in the profession. She has a great interest in improving the legal profession in Louisiana. I've also had friendships with other members of the court. Justice Jeff Victory and I practiced in similar matters when I first started practicing law. I've known Justice Victory for 35 years. He's a fine person. I had the opportunity to work with former Chief Justice Pascal F. Calogero, Jr. quite a bit when I headed the Attorney Disciplinary Board. I also worked with former Chief Justice Catherine D. Kimball on similar issues. There has always been an excellent relationship from a professional standpoint between the Bar and the court. Our issues and concerns are always of great interest to the court.

Journal: You've had extensive involvement with the Disciplinary Board. Will this past involvement be helpful during your term?



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, left, with Larry & Jane Shea.
Photo by Matthew Hinton Photography.

Shea: I have great respect for Disciplinary Counsel Charles B. (Chuck) Plattsmier. We went to school together and I worked with him in the disciplinary system. He works very hard and does an excellent job. I look forward to working with Chuck during my term and coordinating our efforts to further ethics and professionalism.

Journal: A recent focus of the LSBA has been promotion of the work of the Lawyers Assistance Program (LAP). What are your goals and visions for this program?

Shea: That's an important program. It has become increasingly more evident how difficult and dangerous the situations can be for Bar members suffering from depression and addictions who also must navigate the high-pressure world of a law practice. Statistically, it has been proven that legal professionals suffer more from these types of disabling conditions than other professions and the general population. Significantly more. LAP Executive Director Buddy Stockwell does a great job. He works tirelessly at what he does. As a Bar, we must make sure the program is funded properly. We must provide whatever assistance we can to help Buddy do what needs to be done to address these serious issues.

Journal: You have had extensive involve-

ment in drafting the lawyer advertising rules. How did those rules come about?

Shea: First, because of constitutional decisions rendered, we needed to recognize that lawyers had the right to advertise their services. We wanted to draft some rules that articulated that right to attorneys but also create some rules requiring that the advertising be clear to the public, to make sure the public was not misled by the advertising. We needed to protect the public. That was the primary driving force behind creation of the advertising rules. We went through a substantial process. During the Ethics 2000 project, the advertising rules were the one part of the rules we did not address. But we knew we needed to address them. The group composed of advertising lawyers, plaintiffs' lawyers and defense lawyers developed the rules we thought would be beneficial to the lawyers, the profession and the public.

Journal: Are the lawyer advertising rules a success?

Shea: Yes, they are. Before the institution of the advertising rules, some ads were simply outrageous. I believe these advertising rules have curbed some of that and have resulted in advertising messages that are more straightforward and direct for the public. LSBA Ethics Counsel Richard

Lemmler does a great job in overseeing the lawyer advertising rules program. I believe the rules have benefited the public. That's what the Bar is here for — to serve the public and the profession. Serving the public is a primary objective.

Journal: You also were involved in the Ethics Advisory Service. How important is that service?

Shea: I was head of the Ethics Advisory Service Committee when it was a committee of the Bar. I remained head when it became a subcommittee of the Rules of Professional Conduct Committee (I'm also a committee member). This subcommittee has consisted of people with backgrounds in the disciplinary system, those who have taught ethics or those who have been involved in the practice of law involving ethics. The subcommittee still consists of those people. It offers an exceptional opportunity and service to the profession. Some members don't know enough about it. When you are confronted with a potential ethics situation and you don't know how to handle it, you can call the Bar. Richard Lemmler or Eric Barefield will talk with you and address your problem. Sometimes, members may think problems are unique to them, but many of those problems, more often than not, have surfaced hundreds of times before with other lawyers. Not that this service is an absolute bar to some disciplinary problem down the line, but it's rare to see instances of further trouble after someone had a problem, went to the Ethics Advisory Service, asked for and received advice, and then followed that advice.

Journal: What was the first thing that drew you to Bar activities?

Shea: There was a time when there seemed to be some disconnect between the disciplinary system and the Bar. I wanted to be part of the Bar so I could help to bridge these differences. A lot of lawyers do that and become a part of the Bar. The Bar provides so many important programs for the public and the profession. We need to work with other aspects of the system — the disciplinary system, MCLE, Bar Admissions — all working together to improve the practice. I wanted to be here to get across the views of the



Joseph L. (Larry) Shea, Jr. during his interview. Photo by LSBA Staff.

disciplinary system. That's why I was so involved in Ethics 2000 and the Ethics Advisory Service — to help transmit the interests of the disciplinary system into activities of the Bar.

Journal: In addition to practicing law, I know you taught at Centenary College for a dozen years. What was that like?

Shea: I enjoy teaching. I taught business law at the school, 8 a.m. Monday, Wednesday and Friday. It was an interesting activity. Many of my students ended up going to law school and some of them worked at my law firm. I think they enjoyed the class. It is a different experience for the students when the person teaching you business law actually practices business law.

Journal: How is your working relationship with your predecessor President Richard Leefe?

Shea: Richard is a very interesting person. His experiences are just grand, all the way from his service to our country in Vietnam to his teaching in different countries. On top of that, he is a nice person. I have

enjoyed working with him and helping him further his objectives. It's been an exceptional experience.

Journal: You also know who your successor will be, Mark Cunningham. Are you working with him?

Shea: Mark and I are working together. That's going to be a good partnership. Mark comes from a big firm in New Orleans so he has those New Orleans connections. It's always good to have someone with a New Orleans connection to know what's going on there. He is supportive of the concepts for increased outreach to the rest of the state. It's important for him. I'm excited about the opportunity. He has a lot of good ideas. This year, we may be able to start some of Mark's initiatives, while continuing my programs as well as those of Richard, John Musser, and the presidents before them.

Journal: How is your working relationship with LSBA Executive Director Loretta Larsen?

Shea: Loretta is a great director. She

is well respected nationally for her contributions to the legal profession. She is knowledgeable about what she does and very perceptive, knowing exactly how to handle issues or other situations as they arise. She is your right hand in all that you do. The LSBA is so fortunate to have someone like Loretta on staff to offer continuity. Presidents do work hard during their year in office to further the legal profession. But we'll come and go. Loretta works hard year after year.

Journal: When you began your law practice, it's likely that your challenges were not the same challenges facing today's lawyers. What are today's challenges? Can the Bar do anything to assist?

Shea: Yes, there are different challenges today. Back then, if you paid attention in law school, worked hard and did well, you would have a place to go. You most likely could go anywhere in the state and find a job. Almost every person who graduated from law school had an opportunity to work with someone in the state. It's not that way now. Economic conditions are such that we have a serious problem. Now graduates come out of law school and can't find a job — and some of these are people who did well in law school. It's a difficult situation. It forces these graduates to hang out a shingle and try to do it on their own. You can go to law school, but it's also important to get some direction in the practical aspects of practicing law once you get out. You need someone with experience to offer guidance in how to do it. That brings me to our Mentoring Program. Shreveport is proud to be a leader in the pilot mentoring program. This is an important step in getting these young lawyers who hang out a shingle in their own practice to receive guidance in "how to practice law" from the more experienced lawyers. Law schools can teach you all about the law, but there's more that needs to be taught, easily accessible from the senior lawyers' perspective. That's the primary difference today than when I graduated law school.

Potential law school students have seen this jobs situation and, as a consequence, we also have a situation where there are a reduced number of applications to law schools. We have some exceptional law



Joseph L. (Larry) Shea, Jr., from left, John H. Musser IV, Richard K. Leefe, James J. Davidson III and Michael A. Patterson at the 2013 Annual Meeting in Destin, Fla. Photo by Matthew Hinton Photography.

schools in the state, all there to provide quality education to all students. But, to do that, you have to spend some money on your professors and other aspects of law schools — like libraries and other items that cost money to maintain and be available to provide a quality legal education. This puts a crunch on law schools when applications are reduced. It may require reducing class sizes. I recognize that. We as a Bar have to assist the students, the law schools and the profession. We need to protect the profession by offering help to those who need more assistance in the practice. We need to help law schools go through this period where they have these problems. We're doing much to address these issues. Richard (Leefe) has been active in this process, developing ideas and concepts to improve the circumstances for everyone. It's important for me to continue this work.

Journal: I attended, with you and others, the LSBA Sonoma CLE. Not only was it a wonderful multi-topic CLE, but it also offered the chance for camaraderie and companionship among lawyers. Are such events important to the profession?

Shea: Yes, they are. We have that kind of relationship in my law office. We have office get-togethers, with our offices in Shreveport, New Orleans and Baton Rouge. It gives us an opportunity to visit with colleagues in all offices. That's

important, to visit socially and not just through work. The Bar seminars and events also provide those opportunities. The LSBA's CLE seminars give lawyers the chance to spend time with other lawyers, many of whom share common interests. At the recent Solo and Small Firm Conference, there was considerable time to network. It was an exceptional seminar with great speakers. Also, our combined Annual Meeting and Summer School events offer a variety of ways to network with fellow legal professionals... young lawyers, older lawyers and judges, all meet after CLE programs and during several evening functions.

Journal: What do you do to relax?

Shea: Golf. I love to play golf. I have played since I was 9 years old. There was a time when I actually could play. Now I enjoy going around the golf course and hitting the ball, wherever it lands it lands. I have good friends I play with in Shreveport and I have friends I travel with to play. For a number of years, I attended the Masters tournament. I enjoy that sport. My uncles and cousins were golfers. One of my aunts actually taught me how to play when I was young. It was something the family did. It's an activity that has allowed me to share time with good friends.

Journal: As incoming president, you have the unique quality of having the

best wine collection of any Bar president.

Shea: I doubt it. I do have a nice wine collection. I do enjoy a good wine. But I doubt that I have the best wine collection of any president who has ever been... maybe the last couple of presidents.

Journal: Former LSBA President John Musser, as a solo practitioner, had as his theme the "Year of the Solo." More than 50 percent of our membership is made up of solo practitioners. What can, and should, the Bar be doing for solo practitioners?

Shea: When I was president-elect-designee, I had the opportunity to travel the state with John and visit with various bars and bar leaders. I learned that many members didn't know of all the services the Bar provides. We need to do a better job of getting the word out to Bar members of how many services and programs are offered. We can do a number of things for solos. For one, the Solo and Small Firm Conference is excellent and we should continue to have those conferences, not just in New Orleans but in other parts of the state. Solo practitioners face different problems than colleagues in larger firms. One way to first address the problems of solos is to...ask them. What do you want the Bar to do for you? John and I asked the same questions. If there is a way for the Bar to do it, we need to provide the service.

Journal: Are you a better golfer than John Musser?

Shea: I haven't seen John play golf. But I had him describe his game. From the description I received, I might have a chance to beat him.

Journal: How can we get young lawyers practicing 10 years or less (who are getting involved with the federal bar, Inns of Court and local bars) more involved in state Bar activities?

Shea: We do have a Leadership LSBA program and are always looking for young lawyers in different parts of the state to get into this leadership program. Former President Larry Feldman started this program. Great idea! We need young lawyers on our committees and in our sections. The only way to do this is to go out and get them to do it. I have the



Joseph L. (Larry) Shea, Jr. on the golf course at the Ridge Runner Golf Tournament. *Provided by Shea family.*



opportunity to meet young lawyers all over the state who would be great assets to the state Bar. If they participate in state Bar activities, they will find it incredibly rewarding. It's an opportunity to do some good for the public and their practices. We do have some good young lawyers involved in this leadership program. If there is a way to organize that committee of the bars I mentioned earlier, then we would get them involved. For instance, the Shreveport Bar has an active group of young lawyers. If we give them the opportunity to get involved on the state level, they will. Our Young Lawyers Division does good work. We could do more for them. In the end, today's young lawyers are the next group of people coming through who will be taking over the reins one day.

Journal: As a litigator, do you have that one great case?

Shea: I had some interesting cases early in my career. Not that they were big trials but they produced law. I have always been interested in, not so much the trial, but the legal concepts produced. One case, *Bondy v. Texas Eastern*, established the rule on recovery of damages for fear of cancer. The rules developed in that matter are still cited in environmental cases today. I was involved in a trial with a partner called *Winterrowd v. Travelers*. We represented a fireman who had a second job to enhance

his income. He had his hands caught in a punch press. The case as decided found liability for failure to warn on the part of the equipment manufacturer. The press involved was over 50 years old. That decision eventually led to products liability laws being enacted to limit the impact of *Winterrowd*. So, I have been involved in cases where we've made law. A notable matter that I handled that went to trial was the New Orleans Tank Car Litigation. That case took 20 years to resolve and the original trial went on for nearly three months.

Journal: As a litigator, have you ever had the desire to be a judge?

Shea: I have had that desire in some cases that I was trying. It might have helped on occasion. I never saw myself as a judge, though. I have very strong views. Successful judges must listen and develop their viewpoints (factual or legal issues) based on what is presented to them and not on some preconception on what it should be. I'll let them do that and I'll try to advocate for my client. I try not to advocate positions that I don't believe in or I don't believe the law will support. (Being a judge) is not in my nature. I might end up arguing with someone. I appreciate a good judge listening to what everyone has to say and then making a decision based on what they've heard, read or studied themselves.

Journal: When you ran for LSBA president, was this the first time you ran for any office?

Shea: I'm not political by nature. I have never really campaigned to win an election. I have successfully run for the House of Delegates many times. I did run for the LSBA Board of Governors once, but I lost.

Journal: You are standing before a law school graduation class. What advice do you have for the graduates in your commencement speech?

Shea: You have now taken one of the final steps toward entering an important profession. It's important to our society. We are a profession that takes pride in seeing that we provide guidance to our society and assist in its orderly development. We assist people who need protection, those who don't have it and need it. The graduates need to know there's a higher order to life once you become a lawyer. I want to communicate that understanding to them. They are going to do important things and they should. I would let them know it won't be easy. There will be a great deal of hard work to do it right. But it is a rewarding time to be a lawyer.

Journal: What was the best vacation you ever took?

Shea: I have taken a lot of fine vacations. Since I'm a golf nut, I have played Pebble Beach four or five times. Those were great trips. It's a beautiful part of the country. I enjoy Carmel and San Francisco. I like the food, the culture and the theater there. My wife and I love theater. It's hard to separate those trips from going to New York and seeing plays. I had a lot of nice vacations with the family, too, with my wife and kids. The best one was to Disney World when the kids were younger. I've never seen bigger smiles. It was a tremendous experience I will always remember.

Journal: If you were not practicing law, what would you be doing?

Shea: I'd probably be in the oil business in some way. That's just where my family was, and is, and it's something I would be doing. I'm kind of still in it as a lawyer.

Journal: Have you fully developed a theme for your presidency?

Shea: If I had to pick one theme, I want us to "Come Together" all across the state and address the needs of the profession and service to the public as much as we can. (That's why I picked "Come Together" as

the theme for the Annual Meeting/Summer School.) There are tremendous, important issues out there...lawyer assistance and access to justice among them. There is the need for us to provide the basic legal services to those who can't afford them, both on the criminal and civil side. We are working with the Louisiana Bar Foundation and legal services programs statewide to help the judicial system. We need to come together and understand that there are needs. We need to provide adequate funding for the judicial system and the judges so they can administer this process. We need to address all of those items and many more. Some of these are aspects of the Bar that I was not involved in before my election. I've been learning more about these issues. There are tremendous needs but also tremendous opportunities. Problems are not problems, but opportunities to do something better. That's what we need to do.

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Barry H. Grodsky interviews Joseph L. (Larry) Shea, Jr. at the Louisiana Bar Center. Photo by LSBA Staff.

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

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

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

Persistent apathy or "empty" feeling

Drug or alcohol abuse

Changes in energy, eating or sleep habits

Loss of interest or pleasure, dropping hobbies

Trouble concentrating or remembering things

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

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

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Medicaid Secondary Payer in Louisiana in View of *Wos* – What Next?

By Nicholas W. D'Aquila



If you have paid attention to the news in the past several years, you are probably familiar with the rising costs of health care in our country. Government and private health insurers have begun re-engineering the way they do business, and, as a result, health insurance beneficiaries and the attorneys who represent them have been affected in monumental ways.

One way the attorney-client/beneficiary relationship has changed is through the emergence of secondary payer laws. When a person with health insurance is injured in an accident and seeks medical treatment, his health insurer typically pays for the associated medical bills. If the accident was the fault of another person and the insured sues that person, secondary payer laws may come into play. In this case, the plaintiff's health insurer (whether government, private, ERISA, etc.) usually has a right to be reimbursed for its past expenditures on the tort-related injury. This right of reimbursement functions as a lien and attaches to any settlement, judgment or other award the plaintiff may later receive as a result of the underlying third-party liability action.

If you have handled a third-party liability action in the past several years, you may be familiar with the intricacies of the Medicare Secondary Payer Act (MSP Act). While the MSP Act warrants in-depth discussion, this article focuses on a related topic that, until recently, has not garnered the same amount of attention: Medicaid¹ secondary payer reimbursement obligations.

Last year, in *Wos v. E.M.A.*,² the U.S. Supreme Court issued a landmark opinion relating to Medicaid secondary payer laws. The court's ruling shined a bright spotlight on the question of how much state Medicaid programs can recover from plaintiff-beneficiaries who settle third-party liability actions. Specifically, the decision expressed clear guidance that a state Medicaid program was prohibited from recovering any portion of a Medicaid beneficiary's settlement that was not identifiable as compensation for past medical expenses.

In response to *Wos*, several states began to revise their Medicaid secondary payer reimbursement statutes.³ It seemed Louisiana was well-suited to follow the trend, as its secondary payer statute conflicted with the court's ruling. However, nine months after the *Wos* decision, President Obama

signed the Bipartisan Budget Act of 2013 (the Budget Act), which contains provisions that appear to nullify the court's ruling and its antecedents. The provisions in the Budget Act are slated to become effective in October 2014, but, until then, it's important to understand both how we arrived at this point and the current status of Louisiana's Medicaid secondary payer statute.

Medicaid Secondary Payer Laws and the Federal Medicaid Anti-Lien Statute

In part because the federal government provides the majority of funding for most state Medicaid programs, federal statutes require all state Medicaid agencies to create and implement Medicaid secondary payer laws. States must develop procedures to identify liability actions involving Medicaid beneficiaries, and, according to 42 U.S.C. § 1396k(a)(1)(A) and 42 U.S.C. § 1396a(a)(25)(H), they must:

- ▶ require Medicaid beneficiaries "to assign the state any rights . . . to payment for medical care from any third party;"⁴ and

- ▶ adopt secondary payer laws that grant the state the right to recover from any "payment by any other party for such health care items or services" a Medicaid beneficiary may receive, whether settlement, judgment or other award.⁵

These federal statutes appear to grant states an ironclad right to recover Medicaid-paid, past medical expenses caused by a tortfeasor. But because Medicaid is administered by each individual state, the framework for compliance varies and practical implementation of these directives has proven to be challenging and inconsistent.

Further complicating the creation and implementation of valid Medicaid secondary payer laws is 42 U.S.C. § 1396p(a)(1)(A), known as the Federal Medicaid Anti-Lien Statute. The Medicaid Anti-Lien Statute provides that "[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan . . ." The statute is interpreted to mean that a state Medicaid program cannot assert a secondary payer lien on the personal property of a Medicaid beneficiary prior to death and is limited to recovery from the

portion of a beneficiary's settlement that is identifiable as compensation for past medical expenses.⁶

With somewhat conflicting instruction being delivered to the states, it was inevitable that state Medicaid agencies and beneficiaries would need to turn to the court system for clarification on their obligations relating to Medicaid secondary payer laws.

U.S. Supreme Court's Decision in *Wos v. E.M.A.*

In March 2013, the U.S. Supreme Court issued its ruling in *Wos v. E.M.A.* and provided further guidance on how a Medicaid secondary payer statute should operate. *Wos* involved a medical malpractice claim that settled for \$2.8 million. Because North Carolina's Medicaid program paid a portion of the plaintiff's medical expenses, it sought to recoup its expenditures through its Medicaid secondary payer statute. The agency notified the plaintiff that it planned to seek one-third of the total settlement proceeds as partial reimbursement for the \$1.8 million it had spent on her medical care. The plaintiff then challenged the agency's recovery attempt on the basis that it violated the Medicaid Anti-Lien Statute.

North Carolina's Medicaid secondary payer statute granted its Medicaid agency the right to seek reimbursement from any portion of a beneficiary's liability settlement, regardless of whether that portion was meant to compensate the beneficiary for pain and suffering, lost wages or other non-medical-related damages.⁷ The plaintiff argued that the Medicaid Anti-Lien Statute clearly prohibited the agency's recovery of any portion of the settlement not designated as compensation for past medical expenses.

The Supreme Court ruled in favor of the plaintiff, reasoning that the North Carolina Statute was preempted to the extent that it allowed the state to recover any portion of a Medicaid beneficiary's judgment or settlement not designated for past medical care.⁸ This result was attainable because the parties had not allocated damages in the settlement agreement. None of the interested parties, including the state, had attempted to determine which portion of the \$2.8 million represented past medical expenses. The court relied on the Medicaid Anti-Lien

Statute, 42 U.S.C. § 1396k(a)(1)(A) and 42 U.S.C. § 1396a(a)(25)(H), in ruling that without a process for determining which part of a beneficiary's settlement was actually compensation for past medical expenses, the North Carolina statute's automatic lien on one-third of a beneficiary's settlement was arbitrary and could not stand.⁹

The decision affirmed that a state Medicaid agency could not seek reimbursement from any portion of a beneficiary's settlement not identifiable as compensation for past medical expenses, and it essentially tasked states with developing non-arbitrary methods to determine which portion of a beneficiary's settlement was attributable to past medical expenses.

Louisiana's Medicaid Secondary Payer Statute in Light of the *Wos* Ruling

Louisiana's Medicaid secondary payer process is codified in La. R.S. 46:446-446.6. These statutes impart notice requirements on both Medicaid beneficiaries and defendants involved in third-party liability actions. They also grant the state a statutory right of intervention to assert its right to reimbursement, its lien, for past injury-related medical expenses it paid. The general framework for Louisiana's Medicaid secondary payer process seems to comply with the federal requirements mentioned previously; however, La. R.S. 46:446(F) provides in pertinent part that:

DHH shall have a privilege for the medical payments made by the department on behalf of an injured or ill Medicaid recipient on the amount payable to the injured recipient, his heirs, or legal representatives ***out of the total amount of any recovery*** or sum had, collected, or to be collected, whether by judgment, or by settlement or compromise (emphasis added.)

A plain reading of this portion of Louisiana's reimbursement statute is that Louisiana Department of Health and Hospitals' (DHH) right to recoup state-paid past medical expenses extends over the entire amount of any settlement or award

received by a Medicaid beneficiary. Similar to the North Carolina statute challenged in *Wos*, Louisiana's reimbursement right is not limited to the portion of an award that represents past medical expenses. As such, the statute appears to be in direct conflict with the U.S. Supreme Court's ruling, which clearly states Medicaid agencies cannot arbitrarily seek reimbursement from any portion of a liability settlement not identifiable as compensation for past medical care.

Because Louisiana's current Medicaid secondary payer process extends DHH's secondary payer recovery rights beyond the bounds set by the U.S. Supreme Court's ruling in *Wos*, it is apparently necessary for the Louisiana Legislature to modify La. R.S. 46:446(F) and establish a method to reasonably determine which part of a Medicaid beneficiary's settlement or judgment is for past medical expenses (*i.e.*, the portion from which DHH may seek recovery of Medicaid-paid medical expenses). Prior to December 2013, it also appeared that Louisiana's secondary payer reimbursement statute would be ripe for challenge if not addressed in the near future.

The Bipartisan Budget Act of 2013: A Congressional Response to *Wos*

In December 2013, President Obama signed the Budget Act. Section 202(b) of the Budget Act effectively creates an exception to the Federal Medicaid Anti-Lien Statute such that states can recover from the entirety of a Medicaid beneficiary's settlement without allocation for past medical expenses. If Section 202(b) goes into effect as scheduled in October 2014, federal law will be modified to remove the limitations placed on states' (1) automatic assignment provision that formerly assigned to the state any right to recover payments for medical care from third-party settlements (42 U.S.C. § 1396k(a)(1)(A)); and (2) secondary payer laws that only granted recovery for health care items or services out of third-party settlements, judgments, or other payments (42 U.S.C. § 1396a(a)(25)(H)).¹⁰

Taken together, these changes aim to grant state Medicaid agencies the ability to recover all of their tort-related medical expenditures from the entire amount of any

settlement, judgment or award received by a Medicaid beneficiary.

Section 202(b) also modifies the Medicaid Anti-Lien Statute to allow state Medicaid agencies to place a lien on the property of a beneficiary prior to his death as long as it relates to Medicaid secondary payer obligations. If the Budget Act changes become effective, 42 U.S.C. § 1396p(a)(1)(A)(ii) would read "[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except pursuant to rights acquired by or assigned to the State in accordance with Section 42 U.S.C. 1396a(a)(25)(H) or 42 U.S.C. § 1396k(a)(1)(A)."¹¹

If the Budget Act provisions go into effect, the legislation effectively will overrule and invalidate the Supreme Court's ruling in *Wos*. Thus, the need for Louisiana's Legislature to modify La. R.S. 46:446(F) would dissipate, and Medicaid agencies across the country will be incentivized to seek full reimbursement from the total amount of any settlement or award received by a Medicaid beneficiary regardless of whether there is an allocation of damages.

Conclusion

Medicaid secondary payer laws are clearly in a state of flux. The U.S. Supreme Court's ruling in *Wos* in 2013 appeared to remove some of the obscurity that surrounded the laws and their implementation; the ruling made it clear that state Medicaid agencies were only entitled to recoup state-paid past medical expenses from the portion of a beneficiary's settlement designated as compensation for such, and that absent a non-arbitrary mechanism for determining which part of a beneficiary's settlement was for past medical expenses, such reimbursement statutes could not stand. However, any practical guidance provided to the states by the *Wos* decision may become meaningless if Section 202(b) of the Budget Act goes into full effect in October 2014. The Budget Act would invalidate the *Wos* ruling, modify the federal statutes that govern Medicaid secondary payer obligations, and potentially allow Medicaid agencies to seek reimbursement for state-paid past medical expenses from the entirety of a beneficiary's

settlement, regardless of whether there is an allocation of damages.

Louisiana's Medicaid secondary payer statute is currently not in compliance with the standards set forth in the *Wos* ruling; however, it would likely become compliant with the federal statutes as they are intended to be modified by the Budget Act. But until then and despite all the uncertainties, practitioners representing Medicaid beneficiaries should be cognizant of the *Wos* ruling when addressing a reimbursement request from Louisiana DHH but also should take steps to comply with the Louisiana Medicaid secondary payer obligations primarily found in La. R.S. 46:446-446.6., as penalties for failure to consider Medicaid's interest can include loss of health insurance coverage for clients and possible monetary penalties for all parties involved.¹²

The author would like to thank M. Palmer Lambert with the firm of Gainsburgh, Benjamin, David, Meunier & Warshawer, L.L.C., in New Orleans for his assistance with the preparation of this article.

FOOTNOTES

1. Medicaid is administered by state agencies, such as the Louisiana Department of Health and Hospitals. In Louisiana, the primary recipients of Medicaid are children, parents, pregnant women and seniors with certain disabilities. As of January 2014, there were approximately 1.2 million people in Louisiana receiving Medicaid benefits (almost 30 percent of the state's population).

2. *Wos v. E.M.A.*, 133 S.Ct. 1391 (2013).

3. Florida, West Virginia and Maryland.

4. 42 U.S.C. § 1396k(a)(1)(A).

5. 42 U.S.C. § 1396(a)(25)(H).

6. See *Wos v. E.M.A.*, 133 S.Ct. 1391, 1402 (2013) (citing *Ark. Dep't of Health and Human Services v. Ahlborn*, 547 U.S. 268, 284 (2006)); *Weaver v. Malinda*, 07-708, p. 6 (La. App. 5 Cir. 2/19/08), 980 So.2d 55, 61.

7. The North Carolina Medicaid secondary payer statute provided that the state's recovery would be the lower of the actual medical expenses paid by Medicaid or one-third of the settlement value.

8. *Wos* at 1402.

9. *Id.*

10. If Section 202(b) goes into effect, 42 U.S.C. § 1396k(a)(1)(A) would require Medicaid beneficiaries "to assign the state any rights . . . to any payment from a third party that has a legal liability to pay for care and services . . ." 42 U.S.C. § 1396(a)(25)(H) would allow states to have secondary payer laws granting the state the right to recover "any payments by such third party" a Medicaid beneficiary may receive in the form of a settlement, judgment or other award.

11. The statute actually cites sections 1902(a)(25)(H) and 1912(a)(1)(A) of the Social Security Act; however, 42 U.S.C. 1396a(a)(25)(H) and 42 U.S.C. § 1396k(a)(1)(A) are the statutory equivalents.

12. On April 1, 2014, President Obama signed the Protecting Access to Medicare Act of 2014 (U.S. House, 113th Congress, 2nd Session, H.R. 4302; Public Law No. 113-93). This legislation delays the implementation date of the provisions of the 2013 Budget Act affecting Medicaid secondary payer obligations until Oct. 1, 2016. This development further demonstrates that, for the immediate future, practitioners should be cognizant of the *Wos* ruling when addressing Medicaid secondary payer reimbursement obligations, as it is still the law of the land.

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Book Review

Business and Commercial Litigation in Federal Courts (3d Ed.)

Robert L. Haig, Editor-in-Chief

Published by Thomson Reuters and the American Bar Association
Section of Litigation

Reviewed by Mark A. Cunningham

Publications offering practical guidance and insight for lawyers have become ubiquitous in recent years. They all promise to help us work faster and advise clients with confidence. Some attempt to fulfill these promises through daily, weekly or monthly compilations of narrowly focused articles. Others hit you over the head with multi-volume treatises spanning several library book shelves.



Most efforts fall short — some too superficial, others too dense. The third edition of *Business and Commercial Litigation in Federal Courts* (ABA Section of Litigation/Thomson Reuters) stands apart by positioning itself between the two extremes and, in so doing, represents an attractive, modestly-priced option for attorneys looking for an easy-to-use, step-by-step practice guide for federal court commercial litigation.

With 251 principal authors, including seven United States circuit judges and 15 United States district judges, this 11-volume treatise covers a lot of ground very well and succeeds as the only comprehensive book on federal court commercial litigation.

Volumes 1-5 consist of 63 chapters dedicated to the procedural side of commercial lawsuits. Beginning with case investigations and evaluations, the treatise moves through jurisdiction, pleadings, discovery, motions, case preparation, trials and appeals. These chapters do not represent mere restatements of the applicable rules and case law. Rather, after providing an overview of the law, each chapter explores strategic and logistical considerations often providing useful checklists, forms and other practice aids to assist the practitioner looking for quick guidance.

For example, Chapter 26 of the treatise is dedicated solely to interrogatories. Co-written by United States District Judge William S. Duffey and Jason Stach, a patent litigator at Finnegan, Henderson, Chapter 26 is divided into 35 sections and provides an extensive discussion about the tactical considerations for drafting and responding to interrogatories. Granted, interrogatories may be the least interesting part of federal court litigation, but the short shrift attorneys often give them is undeserved and can lead to strategic mistakes. Judge Duffey and Stach take this challenging subject and provide useful insight into the tactical considerations surrounding drafting and answering interrogatories. However, they also take the discussion further by walking the reader through the opportunities and

challenges for using interrogatories as effective evidentiary tools at trial.

While the procedural aspects of federal practice apply generally to commercial and non-commercial civil cases, Robert L. Haig, the editor-in-chief of the third edition, has done an effective job at keeping the authors firmly focused on business litigation. The chapter dedicated to personal jurisdiction, for instance, provides an overview of the general law pertaining to personal jurisdiction, but quickly transitions to a thorough consideration of the application of personal jurisdiction due process standards to specific types of juridical persons (e.g., parent/subsidiary relationships, partnerships, distributors, agents and co-conspirators) and particular commercial activities (e.g., manufacturing, contracts, purchase of goods, defamation, advertising and intellectual property licensing).

Likewise, Haig was careful to allocate sufficient bandwidth to the procedural complexities of many commercial disputes by dedicating individual chapters to the law and tactics applicable to such issues as multidistrict litigation, the coordination of parallel proceedings in state and federal courts, the interplay between commercial litigation and criminal proceedings, issue and claim preclusion, and provisional remedies.

This third edition truly distinguishes itself by including 67 chapters on the substantive law in the areas most commonly encountered by commercial litigators. Few attorneys in Louisiana have the luxury of focusing their practice on a single area of substantive law. We are still, for the most part, generalists. What this treatise offers with respect to each substantive area of law is an easy-to-read overview of the applicable law. The detail is sufficient to orient the reader to the principal issues likely to be encountered in the case without being overwhelming. The substantive law chapters also discuss common strategic issues related to case management, motion practice, discovery, and the use of experts for both plaintiffs and defendants. The substantive law chapters

also often provide jury charges and other helpful practice forms.

For this third edition, Haig significantly expanded the number of areas of substantive law covered by the treatise. To name a few, there are individual chapters dedicated to patent, trademark, copyright, licensing, business torts, antitrust, warranties, sale of goods, bills and notes, agency, franchising, director and officer liability, theft of business opportunities, insurance, reinsurance, letters of credit, banking, collections, tax, FCPA, RICO and ERISA. Scanning the long list of substantive law chapters raises the question of whether the third edition tries to do too much by taking on subjects such as medical malpractice, sports, entertainment and white collar crime. However, these chapters serve an important purpose for the generalist who needs an easy reference source.

Business and Commercial Litigation in Federal Courts (Third Edition) offers value because it under-promises and over-delivers. It is comprehensive enough to provide practitioners with a strong desk reference for most issues encountered in commercial litigation in federal courts but is not so voluminous that it must be relegated to your library. If you make the investment, you will use this series because it will help you work faster and advise clients with confidence.

Mark A. Cunningham was installed in June as president-elect of the Louisiana State Bar Association (LSBA). A partner in the New Orleans office of Jones Walker, L.L.P., he has previously served as LSBA treasurer, secretary, Louisiana Bar Journal editor and Executive



Committee member. He also served on the Board of Governors and in the House of Delegates. He received a BA degree in 1989 from Claremont Colleges (Pitzer College), his JD degree in 1992 from Tulane Law School and an LLM (trade regulation) degree in 1994 from New York University Law School. (mcunningham@joneswalker.com; 201 St. Charles Ave., 50th Flr., New Orleans, LA 70170-5100)

In Memoriam: Thomas O. Collins, Jr., Former LSBA Executive Counsel

Thomas O. Collins, Jr., former executive counsel of the Louisiana State Bar Association, died April 13. He was 88. He was married to the late Rose Mary DuCros Collins for 65 years. He is survived by a son, a daughter, two grandchildren and other relatives.

Mr. Collins, a New Orleans native and resident of Metairie, retired from the Association on May 31, 1991, after having served more than 26 years as executive counsel. At the time of his retirement, he had the distinction of holding the second longest tenure as a bar executive in the United States.

An alumnus of Loyola University Law School, Mr. Collins was admitted to practice in Louisiana in 1951. He was in the private practice of law in New Orleans from 1953-56. Prior to that, he was on military duty, serving for two years as an instructor in military law and related federal statutes.

Throughout his professional career, he received several awards. In 1987, he received the Distinguished Attorney Award from the Louisiana Bar Foundation for his contributions to the system of justice and for his many years of exemplary public service. He was also honored by the Louisiana State Bar Association's Young Lawyers Section in 1981 for his contribution to the development of that section and by the Association in 1984 and 1989 for his 20 and 25 years of dedicated service.

An article published in the April 1991 *Louisiana Bar Journal* (Vol. 38, No. 6) served as a tribute on the occasion of his retirement. That article, "End of an Era," is excerpted below.

"Chosen from a field of 57 candidates in 1964, Mr. Collins serviced a membership of approximately 4,000 with a staff of four at the commencement of his tenure. He fulfilled his vast scope of responsibilities to both the public and the profession, including acting as managing editor of



the *Louisiana Bar Journal*, overseeing the work of bar admissions, and handling all legal matters, including acting as the sole counsel in the area of discipline. As Executive Counsel, he served as Executive Director, General Counsel and Chief Disciplinary Counsel to the Bar...

"Since discipline became a separate entity from the Association on April 1, 1990, Mr. Collins has been able to devote more of his time to administrative obligations. He is presently working

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

Larry served as 2013-14 Louisiana State Bar Association (LSBA) president-elect and has chaired the LSBA's Ethics Advisory Service Subcommittee and the Multijurisdictional Practice Committee. He also served on the Ethics 2000 Committee. He received the LSBA President's Award in 2002.

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

He was inducted into the LSU Paul M. Hebert Law Center Hall of Fame. He also has been listed in 2009-13 *The Best*

Lawyers in America directories, including as 2013 Shreveport Litigation-Environmental Lawyer of the Year; in 2008-13 *Louisiana Super Lawyers* directories; and in the 2013 *Chambers USA* directory as a leader in the field for Energy & Natural Resources: Oil & Gas.

In his community, Larry is a member of St. Mark's Episcopal Church. He and his wife, Jane, have been married for 40 years and are the parents of two children.

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

He serves on the boards of directors of the Louisiana Center for Law and Civic Education, the New Orleans Regional Leadership Institute and the New Orleans Bar Association. He chaired The Pro Bono Project (New Orleans) in 2009-10 and received the Project's 2009 Leadership Award and the Project's 2007 and 2008 Distinguished Service Award. He is a former board chair of WRBH Radio for the Blind and Print Handicapped.

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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.

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Robert A. Kutcher

Bob has served on the Louisiana

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He has been listed in *The Best Lawyers in America* as the 2013 New Orleans Litigation-Real Estate Lawyer of the Year; *Best Lawyers* (2012) in the practice areas of closely held companies and family business law, commercial litigation and litigation-real estate, 2012; *Louisiana Super Lawyers* (2008-12); and New Orleans *CityBusiness* "Leadership in Law," 2007.

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He is a Vietnam veteran, serving as a combat engineer officer in the U.S. Army from 1969-71 where he commanded a 160-man engineer company in the Mekong Delta. He attended the U.S. Army Engineer Officers School at Fort Belvoir, Va., and is a member of the Military Order of Foreign Wars.

Richard served as 2013-14 president of the Louisiana State Bar Association (LSBA), as 2012-13 president-elect and as



Richard K. Leefe

2011-12 secretary and editor of the *Louisiana Bar Journal*. He served as a member of the LSBA's Board of Governors and is a member of the LSBA Executive Committee. He was the original chair of the LSBA Senior Lawyers Division. He has served or currently serves as a member of the LSBA Rules of Professional Conduct Committee, the Committee on the Profession and the Public Access and Consumer Protection Committee, among others. He also is a Louisiana Bar Foundation Fellow, serves on the board of directors of the Louisiana Bar Foundation and the Louisiana State Law Institute, and is a member of the American Bar Association's (ABA) House of Delegates. He serves on the ABA Legal Services Job Corps Task Force by appointment of the ABA president. He received the LSBA President's Award in 2011.

He taught law school at Loyola University College of Law in New Orleans from 1976-2002, teaching Evidence, NIL and legal research and writing. He also taught American law to Chinese law students at the Huazhong School of Law in Wuhan, China, in 2002, and taught Chinese engineer Ph.D. candidates at the same school in 2009. In 2012, he taught Courtroom Evidence to executive MBA students at Loyola University Business School.

Richard has handled legal matters in Europe, Africa, Asia and South America, as well as in many states in the United States.

He is the author of the treatise *Louisiana Code of Evidence Practice Guide*, 3rd edition (2005), published by Lexis Publishing. He also wrote the 1st and 2nd editions in 1990 and 1995. He received the Distinguished Service Award from Loyola University College of Law in 1992, the Excellence in Education Award from Professional Education Systems in 1991 and the LSBA Young Lawyers Section Award of Appreciation in 1991.

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David W. Leefe

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

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

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Eddie chairs the Louisiana State Bar Association's (LSBA) Public Access and Consumer Protection Committee, has presented programs on State Court Rules and Motions for the LSBA's Bridging the Gap CLE seminar, and is a participant for the LSBA's Law School Professionalism

Orientations at Loyola University College of Law. He received the LSBA President's Award in 2012 and the LSBA Pro Bono Publico Award in 2003.

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

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

In his community, Blake is past chair of the Lafayette Downtown Development Authority and hosts several fundraisers

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

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

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

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

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Fifth Board District

Michael E. (Mike) Holoway is a partner

in the Covington office of Milling Benson Woodward, L.L.P. He majored in accounting at the University of North Florida and received his JD degree in 1983 from Tulane Law School. He was admitted to practice in Louisiana in 1983.



Michael E.
Holoway

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

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

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C. Kevin Hayes
Fifth Board District

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



C. Kevin Hayes

Kevin has served in the Louisiana State Bar Association's (LSBA) House of Delegates and is a member of the LSBA's Bar Governance Committee. He received the LSBA Young Lawyers Division's Outstanding Young Lawyer Award in 2001. He serves on the board for the Louisiana Center for Law and Civic Edu-

cation.

He served as 2008 president of the Baton Rouge Bar Association (BRBA), chaired the BRBA's Young Lawyers Section in 1998 and received the BRBA's Judge Keogh Memorial Award in 2002. He was the 2010 president of the Association of Louisiana Lobbyists and is a member of the State Capitol Group and the Supreme Court of Louisiana Historical Society. He was a member of the 2011 Leadership Louisiana class for the Council for a Better Louisiana. He was recognized by the *Baton Rouge Business Report* (40 Under 40) in 2001 and by *The Best Lawyers in America* (government relations law).

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

Kevin is the father of two children.
450 Laurel St., Baton Rouge, LA 70801
(225)268-2725 • fax (225)336-5137
email: kevin.hayes@arlaw.com
website: www.adamsandrese.com

Robert G. Levy
Sixth Board District

Robert G. Levy is a partner in the Alexandria firm of LaCroix, Levy & Barnett, L.L.C., and an assistant district attorney for the 9th Judicial District. He received a BS degree in 1973 from Louisiana State University and his JD degree in 1976 from LSU Law School. He was admitted to practice in Louisiana in 1976.



Robert G. Levy

Bob is board-certified as a family law specialist by the Louisiana Board of Legal Specialization (LBLS). He also serves on the LBLS board and on the LBLS Family Law Advisory Commission. He is the current chair of the Louisiana State Bar Association's (LSBA) Family Law Section Council. He served on the LSBA's Technology Committee and is a member of the LSBA's Children's Law Committee.

He is a past president of the Alexandria Bar Association and the Louisiana Support Enforcement Association (currently serving as treasurer). He is a mem-

ber of the Crossroads American Inn of Court.

In his community, he served on the board of the Rapides Symphony Orchestra and Ballet Alexandria. He served as president of the ballet's successor, Red River Dance Theatre Company, for many years and frequently plays trombone with the Red River Jazz Band.

Bob is the father of two grown daughters.
*Ste. B, 1101 Bolton Ave.
Alexandria, LA 71301
(318)443-7615 • fax (318)443-0074
email: rglevy@rglevy.com*

Thomas M. Hayes III Seventh Board District

Thomas M. Hayes III is a partner in the Monroe firm of Hayes, Harkey, Smith & Cascio, L.L.P. He graduated, with honors, in 1974 from the University of the South in Sewanee, TN, and received his JD degree in 1977 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1977.



**Thomas M.
Hayes III**

Tom served on the Louisiana State Bar Association's Board of Governors from 1992-94 and has served several terms on the Nominating Committee. From 1991-97, he served as an examiner on the Supreme Court's Committee on Bar Admissions; he currently serves as assistant examiner.

He is a Fellow of the American College of Trial Lawyers, the American Bar Foundation and the Louisiana Bar Foundation. He is a council member of the Louisiana State Law Institute and a member of the Louisiana Association of Defense Counsel, the Federation of Insurance and Corporate Counsel and the Association of Defense Trial Attorneys.

Tom and his wife, Karen Luikart Hayes, have been married for 37 years and are the parents of four children.

*2811 Kilpatrick Blvd., Monroe, LA 71201
(318)387-2422 • fax (318)388-5809
email: tom@hhsclaw.com*

Karelia R. Stewart Eighth Board District

Karelia R. Stewart is a prosecutor in the Caddo Parish District Attorney's Office where she handles felony drug cases, inclusive of judge and jury trials. She is the section chief of the Drug Division in the District Attorney's Office. She received her undergraduate degree, *cum laude*, in 2001 from Dillard University and her JD degree in 2004 from Loyola University College of Law. She was admitted to practice in Louisiana in 2006.



**Karelia R.
Stewart**

Karelia has served as an at-large member of the Louisiana State Bar Association's (LSBA) Board of Governors, as the District 8 representative on the LSBA's Young Lawyers Division Council, and as a member of the LSBA's House of Delegates representing the First Judicial District, Caddo Parish. She is a member of the LSBA's Committee on the Profession, the Access to Justice Committee and the Criminal Justice Committee and has served on the Committee to Review Proposed Changes to the Louisiana Bar Exam. She is a member of the Committee for Bar Admissions.

She is a past president of the Shreveport Bar Association's (SBA) Young Lawyers Section, and a member of the SBA's Women Section, the Black Lawyers Association of Shreveport-Bossier, the Harry V. Booth and Judge Henry A. Politz American Inn of Court and the Louisiana State Law Institute. She was recently selected by her peers as a "Top Lawyer" in Shreveport.

Karelia is a board member of the River City Repertory Theater and Sci-Port: Louisiana's Science Center. She volunteers for community service projects of Delta Sigma Theta Sorority, Inc., the Junior League of Shreveport-Bossier and LANO's Community Class and works with the Teen Club Group, an after-school program of Volunteers of America offering students career guidance. She was selected by the Greater Shreveport Chamber of Commerce as a member of the 2008 class of "40 Under 40" young

professionals.

She is married to Frederick Green.
*501 Texas St., Shreveport, LA 71101
(318)226-6998, ext. 1070
fax (318)226-6204
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J. Lee Hoffoss, Jr. Chair, Young Lawyers Division

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



J. Lee Hoffoss, Jr.

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

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

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

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

*3205 Ryan St., Lake Charles, LA 70601
(337)433-2053 • fax (337)433-2055
email: jlhoffoss@hdinjurylaw.com
website: www.HDInjuryLaw.com*

Julie Hayes Ferris At-Large Member

Julie Hayes Ferris is an attorney in Baton Rouge. She previously was the interim state public defender for the Louisiana Public Defender Board. She received a BS degree in criminal justice, *magna cum laude*, in 2001 from Louisiana Col-

lege and her JD degree in 2004 from Louisiana State University Paul M. Hebert Law Center, where she was a member of the *Louisiana Law Review* and elected into the Order of the Coif. She was admitted to practice in Louisiana in 2004.



Julie Hayes Ferris

In addition to her law practice, she is a licensed real estate agent, providing commercial and residential real estate services in the Greater Baton Rouge area.

She is married to Doug Ferris and is the mother of two children.

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email: julieferris620@gmail.com

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

Mickey S. deLaup is the owner of Mickey S. deLaup, A.P.L.C., in Metairie. She has practiced insurance litigation defense for more than 30 years. Previously, she was a founding member and managing partner of deLaup & Enright, L.L.C. She received a BA degree in political science in 1978 from Louisiana Tech University and her JD degree in 1981 from Louisiana State University Paul M. Hebert Law Center.



Mickey S. deLaup

Mickey is a member of the American Board of Trial Advocates, the American Bar Association and the Defense Research Institute. She is a director of the Louisiana Association of Defense Counsel and the Southeast Louisiana Legal Services. She is vice president of the Jefferson Bar Association and a founding member and former Executive Board member of the Judge John C. Boutall American Inn of Court.

She is a Louisiana Bar Foundation Fellow and has worked with the New Orleans Pro Bono Project as a volunteer since 1990, serving on its board and as its chair. She has been recognized by *Louisiana Super Lawyers* (2012, 2013 and 2014), in Mar-

tindale-Hubbell's Bar Register of Preeminent Women Lawyers and was honored by New Orleans *CityBusiness* as one of the 50 attorneys chosen for the 2014 "Leadership in Law" recognition.

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

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

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



John M. Frazier

John has served in the Louisiana State Bar Association's (LSBA) House of Delegates, on the Board of Governors as the Eighth District representative and on the LSBA's Committee to Review Proposed Changes to the Louisiana Bar Exam. He also served for several years on the LSBA Legislation Committee.

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

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

west Louisiana.

He and his wife, Alice, have been married for 39 years and are the parents of a daughter, Meg, also a shareholder in Wiener, Weiss & Madison, A.P.C.

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

John M. Church is a professor of law at Louisiana State University Paul M. Hebert Law Center. He received a BA degree in 1983 from Central Michigan University, an MS degree in 1985 from the University of Illinois at Urbana/Champaign and his JD degree in 1988 from the University of Colorado. He has a faculty membership in the Louisiana State Bar Association (LSBA). He was admitted to practice in Colorado in 1988.



John M. Church

John has served on the LSBA's Access to Justice Committee since 2007. He is a founding board member of the Louisiana Civil Justice Center. He is a member of the American Intellectual Property Law Association and the American Law and Economics Association.

He and his wife, Karen, were married in 2012. He is the father of two children.

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

Ronald J. Scalise, Jr. is vice dean for academic affairs and the A.D. Freeman Professor of Civil Law at Tulane Law School. He received a BA degree in 1997 from Tulane University, his JD degree in 2000 from Tulane Law School and



Ronald J. Scalise, Jr.

an LLM in 2003 from Cambridge University (Trinity College). He was admitted to practice in Louisiana in 2000.

Ronald has served on the Louisiana Board of Legal Specialization since 2011 and the Louisiana Bar Exam Advisory Committee since 2008. He also served on the Committee to Review Proposed Changes to the Louisiana Bar Exam.

He is a member of the American Society of Comparative Law, the American Bar Association and the Louisiana State Law Institute (council member, committee member and reporter). He received the Chancellor's Distinguished Service Award from Louisiana State University Paul M. Hebert Law Center in 2009, the Hessel Yntema Prize for Outstanding Comparative Law Scholarship in 2008 and the Gates Fellowship in 2003.

He is the father of a daughter.

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**Marguerite L. (Peggy) Adams
Louisiana State Law Institute**

Marguerite L. (Peggy) Adams is a shareholder in the New Orleans office of Liskow & Lewis, P.L.C. She received a BA degree in 1972 from Auburn University, an MCD degree in 1975 from Louisiana State University Medical Center and her JD degree in 1981 from Loyola University College of Law. She was admitted to practice in Louisiana in 1981.



**Marguerite L.
(Peggy) Adams**

Peggy is past chair of the Louisiana State Bar Association's Trusts, Estate, Probate and Immovable Property Law Section. She is a Fellow of the American College of Trust and Estate Counsel, a council member of the Louisiana State Law Institute and a member of the Commercial Real Estate Women of New Orleans.

She has been recognized in *Louisiana Super Lawyers* (2007-13), *The Best Lawyers in America* (2003-13), *Chambers USA* (2007-12) and in *New Orleans City-Business* "Leadership in Law" (2006) and

Woman of the Year (2011) listings.

In her community, she is president of the Greater New Orleans Foundation's Cornerstone Council, a member of the Archdiocese of New Orleans Finance Council and a past president of the Academy of the Sacred Heart Alumnae Board (Alumna of the Year in 2008).

Peggy and her husband, Thomas Keasler Foutz, have been married for 16 years. She is the mother of two children.

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**S. Jacob Braud
Member, House of Delegates Liaison
Committee**

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



S. Jacob Braud

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

He is a member of the Plaquemines Parish Bar Association, the Jefferson Bar Association, the Louisiana Association for Justice and the American Association for Justice.

Jacob and his wife, Erin O. Braud, have been married for seven years and are the parents of two children.

Ste. 101, 8114 Highway 23

Belle Chasse, LA 70037

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website: www.NolaAttorneys.com

**Alainna R. Mire
Member, House of Delegates Liaison
Committee**

Alainna R. Mire is an assistant attorney

for the Alexandria City Attorney's Office. 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.



Alainna R. Mire

She was admitted to practice in Louisiana in 2004.

Alainna served as Louisiana State Bar Association Young Lawyers Division (YLD) chair, chair-elect and secretary and as District 6 representative on the YLD Council.

She is a member of the Alexandria Bar Association's Young Lawyers Council, the American Bar Association and the Crossroads American Inn of Court of Alexandria/Pineville. She also serves as a member of the Central Louisiana Pro Bono Project board and as an attorney member of the city of Alexandria Human Relations Commission.

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Loyola University College of Law student Wayne Connor, left, presented Ariel Glover, a student at the University of Louisiana-Lafayette who is preparing to take the LSAT, with a scholarship to attend the Kaplan preparatory course. The scholarship was presented during the "Setting the Bar" program, sponsored by the Louisiana State Bar Association's Member Outreach and Diversity Department to help prepare college graduates and college seniors to take the LSAT and to provide them with more information about law school and the field of law.

Photo by Bonnie DeSalle.

Pierre Joins LSBA Staff as Member Outreach and Diversity Director

Tricia R. Pierre joined the Louisiana State Bar Association (LSBA) staff in March as the Director of Member Outreach and Diversity.

In this position, she is responsible for outreach efforts, with emphasis on diversity initiatives and local bar relationships. She will facilitate the annual diversity conclaves and minority job fairs, coordinate diversity training for



Tricia R. Pierre

the judiciary and attorneys, and support local and specialty bar associations in their programming, membership and networking efforts. She also will coordinate the assessment of present and proposed member benefits to ensure that members have access to benefits to enhance their practices.

Pierre received a BA degree from Louisiana State University and her JD degree from Southern University Law Center.

Prior to joining the LSBA staff, she was a practicing attorney in the 15th Judicial District. A dedicated practitioner and volunteer, her representation of indigent clients spanned 13 years as either a full-

time or contract employee of the Public Defender Office. Beginning her career as a solo practitioner in 2002, her practice areas included criminal law, traffic, family law, personal injury and civil litigation.

Pierre served as a member of the LSBA's House of Delegates and on the Board of Governors as a member of the House Liaison Committee. She also served on the LSBA's Committee on the Profession, the Diversity Committee, the Task Force on Diversity, the Legislation Committee and the Access to Justice Committee. She received a 2008 LSBA President's Award for her work on diversity issues. She was a member of the Leadership LSBA Class of 2004-05. She formerly served as an at-large representative on the LSBA's Young Lawyers Division Council.

Also active in local bar activities, she currently serves as the first female African-American president of the Lafayette Bar Association (LBA). She also served on the LBA board of directors as a representative of the Louis A. Martinet Legal Society, Inc. She is a past president of the Louis A. Martinet Legal Society's Greater Lafayette Chapter.

In April 2014, Southern University Law Center presented Pierre with its Distinguished Alumni Award.

Attorneys Apply for Certification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130-3404, c/o Executive Director Barbara M. Shafranski, no later than June 30, 2014.

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

Family Law

Caleb K. Aguiard.....Lafayette
 Joan M. Malbrough Houma
 Sachida R. RamanLafayette
 Krystyl R. Treadaway.....Metairie

Tax Law

Steven A. Grenier Shreveport
 Johnette L. Martin Baton Rouge

Estate Planning & Administration Law

Orr Adams, Jr.....Metairie
 M. Elizabeth Bowman..... Gretna
 Laura E. Fine New Orleans
 Steven A. Grenier Shreveport
 Kyle A. Moore Shreveport
 Jonathan PerryKaplan
 Carla H. SibilleBaton Rouge
 Christian N. Weiler..... New Orleans



The Louisiana State Bar Association's Environmental Law Section presented its CLE seminar in November 2013 in New Orleans. Topics included current issues in legacy litigation, procedural matters and ethics regarding the use of social media. Among the speakers were, from left, Ryan M. Seidemann, Victor L. Marcello, S. Beaux Jones, Pamela R. Mascari and Keith B. Hall.

LBSL Accepting Applications for Bankruptcy Law Certification Through September

The Louisiana Board of Legal Specialization (LBSL) is accepting applications for 2014 certification in business bankruptcy law and consumer bankruptcy law through Sept. 30, 2014.

The LBSL announced that the application fee for 2014 applicants seeking certification will be waived.

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. The five-year practice requirement must be met for the period ending Dec. 31, 2014. Further

requirements are that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought; passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought; and five favorable references. Peer review shall be 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.

Regarding 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 Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBSL. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBSL Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128. For more information, go to the LBSL website at: www.lascmcle.org/specialization.

LSBA Member Services

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

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

Lawyers' Assistance Program

www.louisianalap.com • (866)354-9334

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

LSBA Professional Programs

Department Services

Client Assistance Fund

cgrodsky@lsba.org

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

Fastcase

www.lsba.org/fastcase

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

Lawyer Advertising Filing and Evaluation • rlemmler@lsba.org

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

Practice Assistance and Improvement • bking@lsba.org

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



For more information,
visit www.lsba.org

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John W. deGravelles

deGravelles, Palmintier, Holthaus & Frugé; Baton Rouge

John Neale deGravelles

deGravelles, Palmintier, Holthaus & Frugé; Baton Rouge

Recent BP Developments

Stephen J. Herman

Herman, Herman & Katz, LLC; New Orleans

James P. Roy

Domengeaux Wright Roy & Edwards, LLC; Lafayette

Matthew E. Lundy

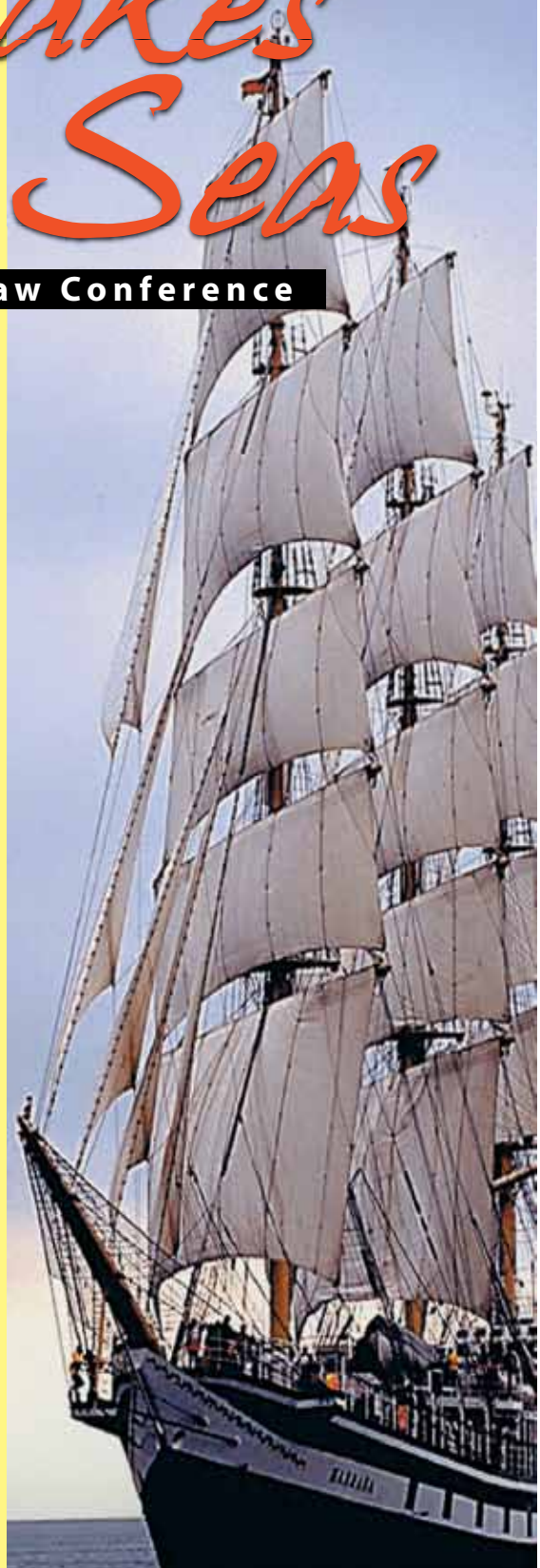
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By Johanna G. Averill

ENGAGEMENT LETTERS AS EVIDENCE

In the April/May 2014 *Louisiana Bar Journal*, we pointed out the key elements and benefits of using an engagement letter. Following are actual examples where the use of such letters aided in defending against legal malpractice claims.

1) A law firm represented a client in an administrative proceeding before the IRS. The client contended that the law firm committed legal malpractice by failing to pursue third parties for liability concerning the outstanding taxes. After reviewing the engagement letter, which clearly outlined the **scope of the representation** of the client, the court

ruled in favor of the law firm.

2) A law firm sued its former client for fees it was still owed. The client attempted to evade payment and contended the firm had told him that it would seek its attorneys' fees from the opposing party. The court reviewed the engagement letter between the firm and the client, which stated that it was the **client's responsibility to pay** the legal fees, and ruled against the client.

3) A law firm was retained to assist its client in its business formation and in issuing bonds related to the development of certain real estate. During the construction, it was determined that the

site was not safe due to live unexploded munitions on the property. The client defaulted on the bonds and sought to recover damages from the law firm for failing to conduct an environmental due diligence. The engagement letter clearly defined the **scope of the representation** as business formation and bond issuance only. The court found that the client failed to show that environmental clearance was within the scope of the firm's duty and concluded that the firm did not commit malpractice.

These are just a few examples where proper engagement letters can be the critical evidence in a legal malpractice defense. If you do not currently use this cost-effective tool, start now. If you have any questions or would like free engagement letter templates, contact Gilsbar's Loss Prevention Counsel.

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



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More information
on page 60.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

HITTING BOTTOM

No one can make an alcoholic or drug addict accept help. It is only when the alcoholic or addict honestly admits a substance use disorder and genuinely surrenders to help that the seed of recovery can be effectively planted and hopefully flourishes. Commonly referred to as “hitting bottom,” this potential turning point is, in large degree, unpredictable as to both when and if it will happen for any given person suffering from alcoholism and/or drug addiction.

In recovery circles, we listen keenly to the personal stories of “high bottom” alcoholics and addicts who luckily made it into recovery without severe and irreparable consequences and also shudder when hearing the personal stories of “low bottom” alcoholics and addicts who literally lost everything and very narrowly escaped with their lives before accepting help and getting sober. Some do not make it out. They perish from the disease.

There is always intense curiosity among those in recovery as to how each person managed to escape the immediate grip of alcoholism and addiction and somehow turn successfully toward recovery. What did that particular person’s path to recovery entail? Was there strong and loving acceptance and support from family? Was the person’s employer supportive, too? Or, did the person manage to hit bottom, survive and miraculously make it into recovery despite unsupportive family, friends and employers, etc.? Surprisingly, no definite criteria can explain why some people accept help early and some people reject help to their ongoing detriment.

As the fabric of recovery from substance use disorders continues to be woven with millions of individual stories now told, some things do remain clear: hitting bottom is not only unpredictable but appears to be rather *mysterious*. It leaves witnesses with the general impression that it is totally

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random as to who will make it into recovery early and stay in recovery versus those who suffer repeated appalling consequences and still steadfastly reject help, even to the point of their death.

It can be very frustrating and challenging when working with certain alcoholics and addicts who, to the untrained eye, seem to perpetually *choose* to ignore every crisis and consequence and reject every offer of help. These people appear to be defiantly set upon an intentional mission of digging a “deeper hole” of consequences for themselves through sheer recalcitrance. In truth, the ongoing destructive behavior in these “low bottom” cases often emanates from the extremely powerful denial component of the diseases of alcoholism and addiction.

As one would commonsensically expect, as denial and ego both increase in any given alcoholic or addict, so does their ability to rationalize, minimize and ignore substance abuse-related consequences. For example, arrests for driving while intoxicated are often deemed merely to be bad luck. Trouble at work for missing deadlines or failing to meet obligations due to drinking or hangovers is blamed on the employer or fellow employees who are all somehow uptight, unfair or simply too demanding. The practicing alcoholic or addict is also often quick to blame others for the ever-widening path of destruction being visited upon family and personal relationships. The family is often chided by the alcoholic or addict for not being understanding and supportive, all of which is the practicing alcoholic’s or addict’s

shorthand for “if you really love me you will continue to bail me out and clean up all my messes, tolerate my substance-related bad behavior, and let me continue to abuse alcohol and drugs in peace.” But there is no peace when a practicing alcoholic or addict is in your immediate ranks . . . not for anyone involved.

In the often heartbreaking business of trying to help practicing alcoholics and addicts into recovery, and watching them suffer in the grip of the disease, the catchphrase “*it takes what it takes*” is used as shorthand within the recovery community to succinctly describe the sheer randomness of what it will finally take for any given person to hit bottom and really surrender and accept help into recovery.

Against the backdrop of the above, one serious question presents itself: Is there *anything* that any of us can do to help a person get into recovery earlier rather than later or not at all, or are we all resigned to simply watch the person incur ongoing damages? The answer is that in some cases we CAN do something! A professional intervention can be successful in encouraging someone to surrender to recovery now, before things get any worse for them and those around them.

In the next *Louisiana Bar Journal*, we will continue this conversation and specifically address the subject of professional interventions. Until then, if you or someone you know needs help with any mental health issue, make a confidential call to LAP at (866)354-9334, email LAP@louisianaLAP.com, or visit us on the web at www.louisianalap.com.

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



About 320 people attended the Louisiana State Bar Association's (LSBA) seventh annual Conclave on Diversity in the Legal Profession March 21 in New Orleans — the highest attendance in Conclave history and a clear demonstration of the legal profession's interest in diversity and inclusion issues. The Conclave, with the theme "Inclusive Professionalism: Harnessing the Power of Our Differences," was accessible to attorneys statewide, for viewing at their desks or on cell phones, via a live feed courtesy of Southern University Law Center. For the first time, viewers at a satellite location at Southern University Law Center received CLE credit for offsite viewing.

In addition to the LSBA, the event was sponsored by several local and specialty bar associations and in cooperation with the Louisiana Supreme Court.

Four breakout sessions opened the day, including an invitation-only breakfast session for managing partners. Panel members included attorneys Dominique Bright-Wheeler, Capital One; Jade A. Brown-Russell, Caesars Entertainment Corp.; Lacrechia G. Cade, Morehouse University; Paul C. Kitziger, Liskow & Lewis, A.P.L.C.; Monica B. Mason, Deere & Company; Sherry D. Williams, Halliburton Corp.; and Alyssa Maurice-Anderson and Courtney R. Nicholson, Entergy Services, Inc. More than 25 managing partners discussed "Sponsorship: The New Normal for Mentoring," touching on the importance of effective sponsorship initiatives to create more inclusive law office environments, the distinction between sponsorship and mentoring, and the impact of sponsorship on recruitment and retention. The session was co-hosted by the Minority Corporate Counsel Association and the Association of Corporate Counsel Louisiana Chapter.

During the breakout session "Blind



Louisiana State Bar Association President-Elect Joseph L. (Larry) Shea, Jr., left, and President Richard K. Leefe, center, joined U.S. Attorney Kenneth A. Polite, Jr. (Eastern District of Louisiana) at the 2014 Conclave on Diversity.

Justice: Lessons Learned from the Trayvon Martin Case and Other Cases," moderators James E. Bowen and Derwyn D. Bunton (Orleans Parish Public Defender's Office) guided the panel of defense and prosecution attorneys in discussions about identifying bias and ways to minimize the impact of unconscious bias within the criminal justice system. Panelists Kevin V. Boshea, Harry L. Daniels III, Hillar C. Moore III and Leslie S. Ricard discussed the Trayvon Martin and Michael Dunn cases, identifying biases demonstrated by the defendants, the investigating police, prosecuting attorneys and jurors. This session was co-hosted by the Louisiana District Judges Association, the Louisiana Judicial Council and the Louisiana Association of Criminal Defense Lawyers.

In the breakout session "Leadership with Intention: Institutionalizing Diversity and Inclusion in Your Organization," moderator Pamela Washington Carter presented hypothetical situations and ways to incorporate inclusion and diversity within legal environments, whether they be solo practitioners,

small firms, large firms or corporate organizations. Panelists included Gary M. Carter, Jr., Mark A. Cunningham and Sharon E. Jones.

The breakout session "Navigating Recent Supreme Court Precedent Regarding Same-Sex Marriage and Benefits" was sponsored by the Williams Institute, a national think tank conducting independent research on sexual orientation and gender identity law and public policy. Presenter Professor Todd G. Brower, judicial education director at the Williams Institute and UCLA Law School, led the attendees in an open forum about the U.S. Supreme Court's rulings in *Hollingsworth V. Perry* (challenging California's constitutional amendment prohibiting same-sex marriage) and *United States v. Windsor* (concerning the federal Defense of Marriage Act and the entitlement of same-sex married couples to federal benefits).

Dr. Arin Reeves with Nextions, Inc. was the luncheon keynote speaker. Reeves, an author and champion of diversity and inclusion issues, infused her presentation with scientific facts and research studies about bias, inclusion and

diversity. “While people’s commitment to seeking out and including diverse perspectives is sincere and conscious, many of their behaviors are unintentional and unconscious. This is a primary reason why people’s actions don’t always line up with their intentions,” she said. “Recognizing and interrupting unconscious biases — the cause of our unintentional and unconscious behaviors — realigns our actions with our intentions and allows us to be as inclusive in our actions as we are with our intentions.” Louisiana Supreme Court Chief Justice Bernette Joshua Johnson introduced Dr. Reeves.

The presentation by diversity expert Vernā Myers (Vernā Myers Consulting Group, L.L.C.) was a highlight of the Conclave. Her interactive presentation, “What If I Say the Wrong Thing,” focused on “interrupting bias” or what individuals can do when they feel they are experiencing or witnessing bias. “Interrupting bias is not about trying to change a person. It is about using your own advantage to literally interrupt the person’s biased statement or behavior and thereby change the experience of exclusion for others. Creating inclusion and fairness requires us to act; the cost of silence is too great,” she said. Using hypothetical scenarios, she directed



Professor Todd G. Brower, judicial education director at the Williams Institute and UCLA Law School, moderated a session on “Navigating Recent Supreme Court Precedent Regarding Same-Sex Marriage and Benefits.”

a discussion about tools to use in interrupting bias.

The panel, “Tools for Conquering Bias in the Courts,” moderated by Louisiana 3rd Circuit Chief Judge Ulysses Gene Thibodeaux, offered practical tools in alleviating bias in the administration of justice. The panel discussed witness identification, jury selection, deliberations and sentencing. Panelists included attorneys John H. Craft and Arthur A. (Buddy) Lemann III, U.S. District Court Chief Judge Brian A. Jackson (Middle District of Louisiana) and Orleans Parish Criminal District

Court Judge Keva Landrum-Johnson.

The final ethics session, “Navigating Cognitive Biases, Blind Spots and Cultural Impairments When Balancing Ethical Decision-Making,” highlighted research studies and statistics concerning inherent biases and their role in decision-making. Moderator Tigran W. Eldred, associate professor of law at New England Law in Boston, discussed the ways human beings cognitively process difference and the ways to overcome those initial reactions. Panelists were attorneys Elizabeth A. Alston, David L. Douglass, Elizabeth J. Futrell and L. Victor Gregoire, Jr.

Many attendees said they are motivated and ready to begin the work of inclusion and diversity outreach. Participant O.B. Edwards said, “This Conclave has been a very beneficial and eye-opening experience for me. I leave here both motivated and armed with some effective tools to help me grow in cultural competency. I feel more equipped to reach out to and identify with a more diverse population.”

The eighth annual Conclave on Diversity in the Legal Profession in 2015 will build on the lessons learned these past seven years.

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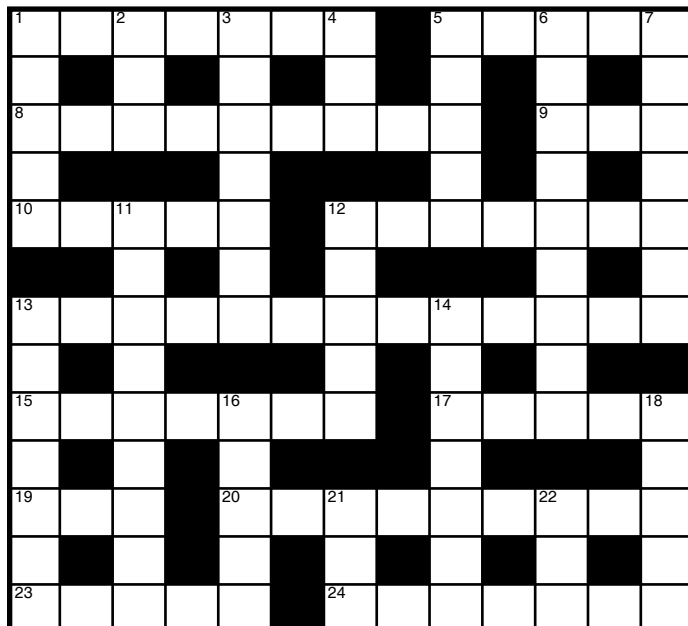
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Crossword PUZZLE

By Hal Odom, Jr.

OLD LOUISIANA LIT



ACROSS

- 1 Came to fruition (7)
- 5 Got up (5)
- 8 "Children of ____," 1937 novel by Lyle Saxon (9)
- 9 Meadowland (3)
- 10 Conjuring; hoodoo (5)
- 12 Kind of bowling pin (7)
- 13 Like most medicine containers, since 1982 Tylenol poisonings (6-7)
- 15 Suffocate (7)
- 17 Noted manufacturer of electric cars (5)
- 19 "____ pro nobis" (3)
- 20 "The ____," 1899 novel by Kate Chopin (9)
- 23 Mark ____, author of "Life on the Mississippi" (5)
- 24 Alcée ____, author of 1894 anthology "Louisiana Folktales" (7)

DOWN

- 1 Kind of buddies (5)
- 2 "____ the ramparts we watched" (1'2)
- 3 Leg iron (7)
- 4 Artificial coloring (3)
- 5 Japanese finger food (5)
- 6 "Memories of a Southern Woman ____," 1932 autobiography by Grace King (2, 7)
- 7 Local speech, beautifully noted by
- 16 Down (7)
- 11 Folktale anthology by Lyle Saxon (5, 2-2)
- 12 Take an oath (5)
- 13 Eject (4, 3)
- 14 "Look at the skies, they have stars ____ eyes" (2, 5)
- 16 Lafcadio ____, author of "Gombo Zhèbes" (5)
- 18 Chagrin (5)
- 21 1980s-era sitcom featuring a stuffed animal from the planet Melmac (3)
- 22 Three on a sundial (3)

Answers on page 77.

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			William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
			Steve Thomas.....(318)872-6250

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date April 4, 2014.

Decisions

Samantha Renee Ackers, Prairieville, (2014-B-0075) **Suspended for one year and one day** ordered by the court as consent discipline on Feb. 21, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist*: Negligently commingled and converted client funds; and charged her client legal fees for non-legal services.

Hugh Dumas Aldige, Metairie, (2014-B-0016) **Six-month suspension, with**

all but 30 days deferred, subject to six months of unsupervised probation with conditions, ordered by the court as consent discipline on Feb. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 14, 2014. *Gist*: A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; falsify evidence, counsel or assist a witness to testify falsely, or offer an

inducement to a witness that is prohibited by law; engage in conduct prejudicial to the administration of justice; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and violate or attempt to violate the Rules of Professional Conduct.

Ryan A. Beason, Houston, TX, (2014-B-0205) **Suspended for one year and one day, with all but 90 days deferred, followed by two years' unsupervised probation**, ordered by the court as consent discipline on Feb. 28, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 28, 2014. *Gist*: Practiced law while ineligible to do so.

Murphy F. Bell, Jr., Baton Rouge, (2014-B-0184) **Suspended for one year and one day, fully deferred, followed by two years' supervised probation**, ordered by the court as consent discipline on Feb. 21, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist*: Commingled personal funds with client funds in his trust account; and converting client and third-party funds, contrary to the provisions of the Rules of Professional Conduct.

Joan Benge, Kenner, (2014-OB-0060) **Reinstated to the practice of law** ordered by the court on Feb. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 14, 2014.

Francis C. Broussard, West Monroe, (2014-B-0386) **Interim suspension by consent** ordered by the court on Feb. 26, 2014.

Andrew Craig Christenberry, New Orleans, (2013-B-2461) **Suspended for one year and one day, with all but three months deferred, subject to two years' supervised probation**, ordered by the

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court on Jan. 27, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 10, 2014. *Gist:* Neglected clients' legal matters; failed to communicate; failed to refund unearned fees; and failed to cooperate with the Office of Disciplinary Counsel.

Royal Leon Colbert, Jr., Lafayette, (2013-B-2928) **Public reprimand** ordered by the court as consent discipline on Feb. 7, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 7, 2014. *Gist:* Engaging in conduct prejudicial to the administration of justice; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Felix Anthony Dejean IV, Baton Rouge, (2013-B-2311) **Board's issuance of a public reprimand** was affirmed by the court on Jan. 10, 2014. JUDGMENT FINAL and EFFECTIVE on Jan. 30, 2014. *Gist:* Conduct prejudicial to the administration of justice.

Ford J. Dieth, River Ridge, (2013-B-2728) **Suspended for one year, with all but 90 days deferred, followed by one-year unsupervised probation**, ordered by the court as consent discipline on Jan. 17, 2014. JUDGMENT FINAL and EFFECTIVE on Jan. 17, 2014. *Gist:* Neglecting a legal matter; failing to deposit an advance fee into a client trust account; and incorrectly reporting on his trust account disclosure statement that he does not handle client funds.

Jeff David Easley, Alexandria, (2014-OB-0059) **Readmitted to the practice of law** ordered by the court on Feb. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 14, 2014.

André Thomas Haydel, New Orleans, (2014-OB-0547) **Voluntary transfer to disability/inactive status** ordered by the court on March 20, 2014. JUDGMENT FINAL and EFFECTIVE on March 20, 2014.

Timothy Baron Holden, Mansfield, (2014-B-0390) **Suspended for three years** ordered by the court as consent discipline on March 21, 2014. JUDGMENT FINAL and EFFECTIVE on March 21, 2014. *Gist:* Arrested and charged with simple possession of marijuana; misrepresented his history of marijuana use to the Committee on Bar Admissions and to

a LAP evaluator.

Anthony Hollis, Shreveport, (2013-B-2667) **Disbarred** by the court on Feb. 7, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist:* Failed to provide competent representation to his clients; neglected legal matters; failed to communicate with clients; engaged in the unauthorized practice of law; abandoned his law practice without protecting the interests of his clients; and failed to cooperate with the ODC in its investigations.

Mack Hollis, Shreveport, (2013-B-2568) **Suspended for one year and one day** ordered by the court on March 14, 2014. JUDGMENT FINAL and EFFECTIVE on March 28, 2014. *Gist:* Neglected his clients' legal matter, causing their personal injury claim to prescribe; backdated pauper affidavit; and improperly notarized the affidavit by notarizing same outside of the presence of the affiant and notarized same when he was not a duly commissioned notary.

Michael L. Jackson, Baton Rouge,

(2014-B-0185) **Suspended for one year and one day, fully deferred, followed by two years' supervised probation**, ordered by the court as consent discipline on Feb. 21, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist:* Commingled personal funds with client funds in his trust account; and converting client and third-party funds, contrary to the provisions of the Rules of Professional Conduct.

Keisha M. Jones-Joseph, Shreveport, (2014-B-0061) **Disbarred** ordered by the court on Feb. 28, 2014. JUDGMENT FINAL and EFFECTIVE on March 14, 2014. *Gist:* Neglected several clients' legal matters; failed to maintain communication with clients; failed to account for and return unearned fees; and failed to cooperate with ODC in the investigation.

Darien Lester, Shreveport, (2013-B-2825) **Adjudged guilty of additional violations warranting discipline, which shall be considered in the event he seeks**

Continued next page

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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 4, 2014.

Respondent	Disposition	Date Filed	Docket No.
Alicia Johnson Butler	[Reciprocal] Suspension.	4/2/14	14-197
Ermence Debose-Parent	[Reciprocal] Permanent resignation.	4/2/14	14-353
Ford Dieth	[Reciprocal] Suspension.	4/2/14	14-282
Arthur L. Harris, Sr.	[Reciprocal] Suspension.	2/28/14	13-6677
Jan Maselli Mann	Permanent resignation.	3/25/14	12-2845
Jeannie Morris	[Reciprocal] Suspension.	4/2/14	12-352
David J. Motter	[Reciprocal] Suspension.	4/2/14	14-283
Salvador R. Perricone	Permanent resignation.	4/3/14	12-2844
Mark L. Ross	[Reciprocal] Suspension.	4/2/14	14-198
Thomas Robert Schmidt	[Reciprocal] Suspension.	2/28/14	14-60
Gilbert E. Stampley	[Reciprocal] Suspension.	2/28/14	13-6678

Discipline continued from page 42
readmission after becoming eligible to do so, ordered by the court on Feb. 14, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 28, 2014. *Gist*: Neglected legal matters; failed to communicate with clients; and failed to refund unearned fees.

Bradley David Meyer, LaPlace, (2013-B-2410) **Permanent disbarment** ordered by the court on Jan. 17, 2014. JUDGMENT FINAL and EFFECTIVE

on Jan. 31, 2014. *Gist*: Failure to refund unearned fees; repeated or multiple instance of intentional conversion of client funds with substantial harm; and a disregard for his clients and for his duties as an attorney.

Philip Montelepre, New Orleans, (2013-B-3004) **Public reprimand** ordered by the court as consent discipline on Feb. 7, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 7, 2014. *Gist*: Engaged in the practice of law while

ineligible to do so.

Jeannie Morris, Metairie, (2013-B-2829) **Suspension for six months, fully deferred, subject to two years' probation**, ordered by the court as consent discipline on Jan. 27, 2014. JUDGMENT FINAL and EFFECTIVE on Jan. 27, 2014. *Gist*: Commingled personal funds with client funds in her client trust account and allowed the account to become overdrawn.

Continued next page



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David J. Motter, Metairie, (2013-B-2591) **Suspended for one year and one day, fully deferred, conditioned upon two years' supervised probation**, ordered by the court as consent discipline on Jan. 17, 2014. JUDGMENT FINAL and EFFECTIVE on Jan. 17, 2014. *Gist:* Failed to communicate with a client; failed to hold disputed funds in trust; commingled client funds; engaged in conduct constituting a conflict of interest; and engaged in conduct prejudicial to the administration of justice.

Danny Wayne Sylvester, Jr., Alexandria, (2014-B-0183) **Permanent resignation in lieu of discipline from the practice of law** ordered by the court on Feb. 21, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist:* Improperly handled client funds.

Stacey L. Thomas, New Roads, (2013-B-2685) **Suspended for 91 days retroactive to Feb. 13, 2012, the date of interim suspension, and suspended for 180 days**, ordered by the court, as reciprocal discipline for discipline imposed by

Alabama, on Feb. 7, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 21, 2014. *Gist:* Lack of diligence; failure to communicate with clients; safekeeping property of clients or third parties; and violate or attempt to violate the Rules of Professional Conduct.

Alphonse M. Thompson, Jr., New Orleans, (2014-B-0210) **Public reprimand** ordered by the court as consent discipline on Feb. 28, 2014. JUDGMENT FINAL and EFFECTIVE on Feb. 28, 2014. *Gist:* Failing to properly supervise a non-lawyer assistant; and mishandled his client trust account.

Robert W. Tucker, Sr., Baton Rouge, (2013-B-2820) **Public reprimand** ordered by the court as consent discipline on Jan. 27, 2014. JUDGMENT FINAL and EFFECTIVE on Jan. 27, 2014. *Gist:* Neglected a legal matter; failed to adequately communicate with a client; failed to properly withdraw from a representation; and failed to relinquish an unnegotiated settlement check in a timely manner.

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

	No. of Violations
Communication.....	1
Conduct prejudicial to the administration of justice.....	3
Diligence.....	1
Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege	1
False statements to disciplinary authorities.....	1
TOTAL INDIVIDUALS ADMONISHED.....	3



Lane Ewing
Former Asst. U.S. Attorney

Stan Lemelle
Former Criminal Chief,
U.S. Attorney

Don Cazayoux
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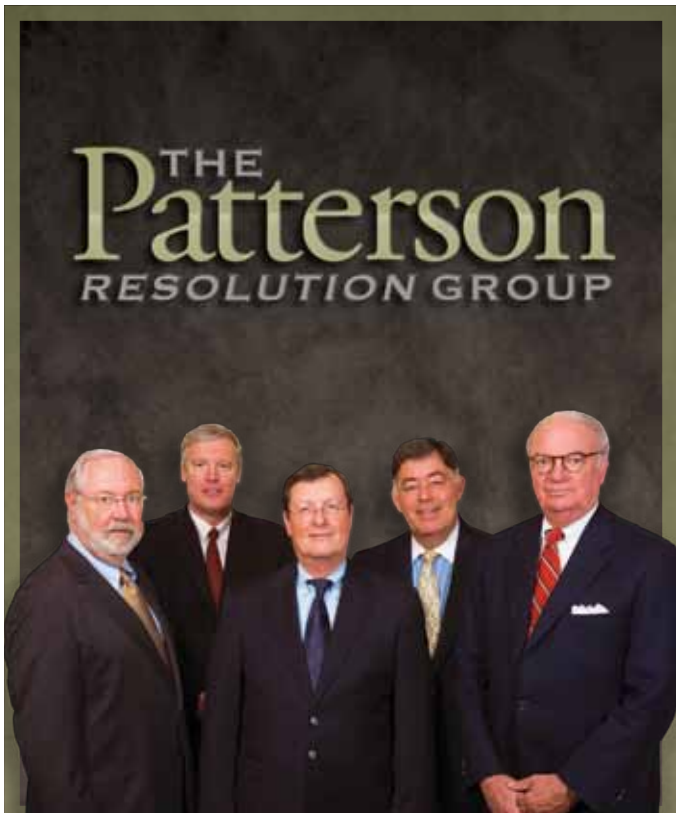
U.S. 7th Circuit Binds Party to Mediation Agreement Without Signature

In *Bauer v. Qwest Communications Co., L.L.C.*, 743 F.3d 221 (2014), the U.S. 7th Circuit Court of Appeals affirmed the U.S. district court decision that a party

can be bound to a mediation agreement without signing the document. The court based its decision on the parties' lengthy litigation relationship, among other factors. Prior to the mediation, the lawyers were involved in a class action settlement involving multiple parties that resolved 10 years of litigation. The issue arose between the lawyers when the district court awarded attorneys' fees and expenses. The lawyers were unable to reach a division of attorneys' fees on their own. To resolve the dispute, they agreed to pursue mediation.

After years of attempts to resolve the division of fees (beginning in 2006), the lawyers reached an agreement in 2012 via a final "mediator's proposal" that was distributed to the parties and accepted by

all. The agreement was later memorialized and put into a formal writing, with the addition of enforcement language meant to keep any further disputes out of litigation. The written agreement was circulated to all the parties; the parties made recommendations to change the document and were in agreement on the final language of the document. All parties quickly signed except for one, Arthur T. Susman. The lawyers and mediators tried to persuade Susman to sign, but to no avail. The other lawyers who did sign filed a motion asking the district court to hold that Susman be bound to the agreement. After reviewing the evidence, the court ruled that Susman should be bound to the agreement, despite the absence of



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his signature.

Courts of this country have ruled that alternative dispute resolution is a matter of contract. A contract is dependent on mutual agreement or consent and on the intention of the parties. For a contract to form, there must be a meeting of the minds. The court does not look to the subjective intent of the parties but to the objective manifestation of intent. The court must look to the evidence offered to determine whether a meeting of the minds occurred. In this case, the court of appeals felt that the district court was in the best position to determine whether a contract was formed.

One way a party shows consent to be bound to a contract is by his signature. Additionally, a party can be bound to a contract by his acts and conduct under a number of contract theories. The 7th Circuit analyzed the acceptance of a contract based on the silence of the party. Generally, the law does not treat silence as acceptance but rather as a rejection of an offer. This general rule has its own exception if the circumstances make it reasonable for a party to believe silence is acceptance. The court will look at previous dealings to determine whether it is reasonable; if the court finds it is reasonable, the offeree then has the duty to notify the offeror that he does not intend to accept. In the present case, the 7th Circuit found

that silence was acceptance.

The appellate court found this determination reasonable due to a number of factors. The court first looked at the relationship of the parties during the course of the litigation. In this case, the parties worked together for more than a decade in a class action suit. Subsequent to the litigation, the parties mediated the fee arrangement for several years. The court believed that “[b]y this time, the lawyers were a sort of community of interest, working together toward a final resolution of the fee dispute and an end to the litigation.”

The court also examined the actions of the parties. The court cites examples of Susman’s behavior to show why silence should be seen as acceptance, including that Susman was known throughout the litigation to make an objection if he found something objectionable. During the mediation process, Susman raised two minor points to the initial draft after its circulation. The agreement was quickly amended to address those concerns and recirculated. The enforcement provision of which he complains in the present case was not a focus of these objections. Given Susman’s reputation and previous actions, the court did not accept that his objections to the enforcement provisions were genuine. If so, he would have made an objection when they were introduced and not in court.

The court looked not only at the actions and relationships of one party, but took into account the position of all the parties. The “mediator’s proposal” was a last-ditch effort for the mediators to end

the fee dispute. The court looked to the mindset of the other parties, who knowingly took less of a fee distribution than they thought they deserved in order to put an end to future litigation and bring about the prompt distribution of the attorneys’ fees in question. When it was time to sign the agreement, all of the parties, including Susman, were put on notice about the finality of the draft and were asked to make any objections; if there were no objections, the document was considered to be final. The lack of objections from anyone, including Susman, was seen as an acceptance by all the parties involved and led to all the other parties signing the document.

The court viewed Susman’s belated objections as “buyer’s remorse,” and his refusal to sign the agreement as a tactic to reopen the process after a final agreement had been reached. The court was careful not to create a bright-line rule in which parties can be bound to a contract even if they do not sign the document. Instead, the court reached a decision that should be applied on a case-by-case basis after a thorough review of the evidence.

—Dorian Woolaston

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Stay not Required to Preserve Right to Appeal as to Rights not Yet Fully Adjudicated

Newco Energy v. Energytec, Inc., et al. (In the Matter of Energytec, Inc.), No. 12-41162 (Dec. 31, 2013).

Energytec, Inc. (the debtor), the owner and operator of gas pipelines, filed for Chapter 11 bankruptcy in 2009. Newco Energy (Newco) claimed that it maintained a right to a “transportation fee” based on the amount of gas flowing through the pipeline. Newco’s right to the transportation fee arose from an agreement with a previous owner of the pipeline, who

granted Newco a security interest and lien on the entire pipeline to secure payment of the transportation fee. The agreement giving rise to Newco’s interest specified that Newco’s interest was to “run with the land.”

In the course of the debtor’s bankruptcy, the bankruptcy court authorized the sale of the pipeline system to Red Water, but reserved for later determination whether the sale was free and clear of Newco’s right to fees and interests in the pipeline sold. One year after the sale, the bankruptcy court ruled that Newco’s rights were not covenants running with the land and, therefore, the sale of the pipeline was free and clear of Newco’s rights and interests. The district court affirmed, and Newco appealed to the 5th Circuit.

On appeal, the 5th Circuit reviewed the sale of the pipeline conducted by the bankruptcy court. While the debtor argued that jurisprudence requires a sale be stayed in order to preserve the right to set aside the sale on appeal, the 5th Circuit reasoned that Newco was not challenging the sale — it

was challenging the bankruptcy court’s declaration a year after the sale that the transportation fee was not a covenant running with the land. The 5th Circuit turned to 11 U.S.C. § 363(m) which states that the:

reversal or modification on appeal of an authorization . . . of a sale or lease of property does not affect the validity of a sale or lease . . . to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless the authorization and such sale or lease were stayed pending appeal.

Since Red Water proceeded with the sale with full knowledge that the pipeline could potentially be subject to Newco’s rights and interests as those rights and interests had yet to be decided, the 5th Circuit determined that such rights and interests were not integral to the sale.

The 5th Circuit found that section 363(m) did not apply because “[r]equiring a stay before the court can review a decision entered a year after a sale that was not originally free and clear of a particular claim does not follow from the text of section 363(m) or satisfy its purpose.” As the order declaring that Newco’s rights and interests did not run with the land was entered over a year after the sale, Newco was unable to seek a stay at the time of sale. Therefore, section 363(m) did not moot Newco’s appeal as to its rights and interests in the pipeline.

The 5th Circuit then determined, under Texas law, that Newco’s rights and interests to the transportation fee were covenants which ran with the land. As a last resort, the debtor maintained that even if Newco’s interest ran with the land, the pipeline could still be sold “free and clear of any interest . . . only if . . . such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction” under section 363(f)(5). The 5th Circuit found that the determination of what is a qualifying legal or equitable proceeding for purposes of section 363(f)(5) was a question for the bankruptcy court to initially decide. Therefore, the 5th Circuit remanded to the district court to determine whether a qualifying proceeding would enable the



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debtor to sell the pipeline free and clear of Newco's interests under section 363(f)(5).

—**Tristan E. Manthey**

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Are Claims of Contamination Heritable?

In *Pierce v. Atlantic Richfield Co.*, 13-1103 (La. App. 3 Cir. 3/19/14), ___ So.3d ___, the plaintiff-landowners brought claims against numerous insurance and industrial defendants for alleged contamination to their property from oil and gas operations and from the operation of a dump site. The landowners, during the pendency of the litigation, sold the dump site to the company that had operated the site in the 1970s. Despite this sale, the company was never dismissed from the suit and a post-sale amended petition also named the company's insurers, under the Louisiana Direct Action Statute, as additional defendants in the contamination claims. Exceptions of no right of action were granted in favor of the insurers by the trial court relying on the subsequent purchaser doctrine explained by the Louisiana Supreme Court in *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10-2267, 10-2272, 10-2275, 10-2279, 10-2289 (La. 10/25/11), 79 So.3d 246.

The 3rd Circuit upheld the trial court's action in dismissing the insurers. Basically, the 3rd Circuit found controlling *Eagle Pipe's* principle that the right to sue for alleged damage to immovable property is a personal right that can only be exercised as to damage caused to the property

prior to a landowner's acquisition of the property if there is a specific assignment or subrogation of this right.

The 3rd Circuit went on to conclude that no such reserved right existed in the *Pierce* landowners' acquisition (a judgment of possession from their father's estate) and, thus, they had no claims against the insurers. This ruling is an extension of the *Eagle Pipe* decision inasmuch as it extends that decision to property acquired not just through sales or donations, but also through successions — an interesting conundrum in situations where parties may inherit by representation.

—**Ryan M. Seidemann**

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Sole Custody/Torts

Penton v. Castellano, 48,433 (La. App. 2 Cir. 10/23/13), 127 So.3d 944.

Ms. Penton, the assistant principal/disciplinarian at the second-grader's school, sued his divorced parents for injuries she suffered when the child tripped her while she was escorting him to the school office after he had pushed his teacher against a classroom locker. The trial court granted summary judgment in favor of both parents. The court of appeal affirmed as to the mother, but reversed as to the father. Because the father was the sole custodial parent, the mother had no liability for the child's actions. However, the father was subject to strict liability under La. Civ.C. art. 2318. The court of appeal rejected his arguments that, because the school was contractually obligated to care for the child, he owed no duty to Ms. Penton and she was not entitled to assert a claim

under art. 2318. The court found that she was not responsible to take care of the child's health and was not his caretaker; moreover, his duty under art. 2318 did not shift to the school.

Community Property/ Creditor's Rights

Holland v. Holland, 13-636 (La. App. 3 Cir. 12/11/13), 129 So.3d 844.

Judgment creditors of Mr. Holland filed a petition to intervene in these divorce and community property partition proceedings to assert their claims against the community property. The trial court maintained the Hollands' exceptions of no cause and no right of action. The court of appeal reversed, finding that, even though no petition to partition was pending and their regime had been terminated, the property had not been partitioned, and the creditors had a valid revocatory action to attack transfers made by the Hollands in derogation of the creditors' rights.

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Interdiction

In re Interdiction of Parnell, 13-1201 (La. App. 4 Cir. 11/13/13), 129 So.3d 690.

Although the appellants did not appear in the lower court, they had standing to appeal the judgment of interdiction of their mother because they could have intervened in the trial court under La. C.C.P. art. 2086. The trial court erred in ordering the intervention based on the pleadings and a court-appointed doctor's report without a contradictory hearing at which the person sought to be interdicted had a right to appear.

Community Property/ Donations

Schindler v. Schindler, 13-361 (La. App. 5 Cir. 12/19/13), 131 So.3d 439.

Donations by Mr. Schindler to Ms. Davis, who cared for him, were remunerative in nature and Ms. Davis properly met her burden by showing what services she rendered for him. Further, the donations were either made from his separate property, or he had Ms. Schindler's permission to spend the funds under his control, so he did not need her consent

to make the donations. Finally, the donations, \$111,000, were within the range of usual and customary amounts previously donated by the Schindlers to others.

Community Property/ Successions

LeGardeur v. Coleman, 13-435 (La. App. 5 Cir. 12/27/13), 131 So.3d 1035.

After his death, Mr. Coleman's children sued his second wife, claiming that immovable property he transferred to her was improperly transferred and that one-half remained owned by his first wife, their mother, and that an account was mistakenly distributed to her by his executor, as the account was his separate property. The court found that even though the act of sale purporting to transfer to her all of his rights to the immovable property was ineffective in and of itself to transfer the first Ms. Coleman's 50 percent interest, the second Ms. Coleman was in good faith, and the act sufficed to establish "just title" so that she acquired full ownership of the property by 10 years' acquisitive prescription. Thus, once she sold the property, the entire sales proceeds belonged to her. Further, the children failed to present sufficient

evidence to show that the account existed prior to his marriage to the second wife. She was also entitled to the presumption of community. The children had failed to assert any ownership claim for 25 years, and the court believed her testimony over theirs. The testimony from the children's expert was also insufficient to establish that the account, or at least part of it, was Mr. Coleman's separate property. Insurance proceeds received after Hurricane Katrina, which were used to repair the immovable property, were treated as having been used to maintain the livability of the matrimonial home, and, thus, Mr. Coleman's estate was not entitled to reimbursement of those funds. Insufficient evidence was produced to show that the proceeds belonged to Mr. Coleman.

Custody/Surrogacy

Ramsey v. Morales, 48-765, 48-766, 48,767 (La. App. 2 Cir. 11/20/13), 131 So.3d 64.

After Mr. Morales and his wife arranged with Ms. Ramsey for her to bear a child for them, and they entered into a written agreement, twins were born. After 22 months, each party filed a petition for custody. The court of appeal found that the

Notice: Comment Period Set for U.S. Magistrate Judges

The current terms of office for United States Magistrate Judges Sally A. Shushan and Karen Wells Roby will expire on Jan. 31, 2015, and Feb. 21, 2015, respectively. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of a magistrate judge to a new eight-year term.

The duties of a magistrate judge include: (1) conducting most preliminary proceedings in criminal cases; (2) trial and deposition of misdemeanor cases; (3) conducting various pretrial matters and evidentiary proceedings on

delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the parties.

Comments are sought from members of the Bar and the public as to whether the incumbent magistrate judges should be recommended by the panel for reappointment by the court. Comments should be mailed to: William W. Blevins, Clerk, United States District Court, 500 Poydras St., Room C-151, New Orleans, LA 70130.

Comments must be received by Aug. 1, 2014.

trial court's decision granting Ms. Ramsey and Mr. Morales joint custody, with Ms. Ramsey being designated the domiciliary parent, was not manifestly erroneous or clearly wrong and was within the trial court's great discretion. Indeed, it found that had the trial court ruled in favor of Mr. Morales, it was probable that it would have affirmed that judgment.

Divorce/Extinguishment

Schiro v. Farrell, 13-635 (La. App. 5 Cir. 12/19/13), 131 So.3d 997.

After the parties' first divorce petition was extinguished by their pre-divorce reconciliation, a subsequent petition for divorce had to be filed as a new suit and could not be filed under the previous suit number because that matter had been extinguished by the reconciliation. He had accepted service of her second petition, and they had reached a consent judgment on custody, visitation, support, interim spousal support and use of the home and vehicles. After she filed a rule to set the 102 divorce, he filed a motion to dismiss her petition for divorce, and the trial court found that the first suit had been extinguished and suggested that the parties go to the clerk's office to see if the clerk would assign a different number to the second suit as a new suit. He then filed a petition for divorce, and she sought, on the clerk's advice, to have her suit transferred and consolidated with his. The trial court denied her request and dismissed her suit. The court of appeal found that because her first suit had been dismissed as a matter of law on the parties' reconciliation, her second suit should have been filed as a new suit under a new number, and filing the suit under the old number "could not revive the case." The court of appeal did not address the effect of this ruling on the consent judgment reached by the parties, despite her raising the question.

—David M. Prados

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Tort/Premises Liability

Finley v. RaceTrac Petroleum, Inc., et al., 48,923 (La. App. 2 Cir. 4/9/14), ____ So.3d ____.

During a refueling stop at a RaceTrac gas station and convenience store, Karen Finley entered the store to make purchases. Returning to her car, she slipped and fell on an oil slick in a handicapped parking space near the entrance and sustained injuries. She filed suit against RaceTrac pursuant to La. R.S. 9:2800.6, Louisiana's premises liability statute, alleging that the oil slick was in an area where RaceTrac knew, or should have known, of the dangerous condition and that its failure to take reasonable steps to clean up the slick resulted in her injuries. RaceTrac moved for summary judgment, arguing that Finley could not prove that RaceTrac had actual or constructive notice of the condition. Dena Davis and Ermond Ashley, the only two RaceTrac employees present at the time, did not witness the accident. Davis testified that she inspected the parking lot upon arrival at work and did not notice any spills or slippery substance. She could see the parking space from her vantage point at the cash register, but was unable to see whether oil was on the ground. She noted that a vehicle had been parked in

the space prior to Finley's fall, which was corroborated by Finley's testimony. After Finley returned to the store to report her fall, cat litter was poured on the oil slick and promptly swept up, in accordance with store policy, and Davis informed her manager by telephone.

A merchant's tort liability for a patron's injury is governed by La. R.S. 9:2800.6, which provides, in pertinent part:

A. A merchant owes a duty to persons who use his premises to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition. This duty includes a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.

B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following:

(1) The condition presented an unreasonable risk of harm to the claimant and that the risk of harm was reasonably foreseeable.

(2) The merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence.

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(3) The merchant failed to exercise reasonable care.

C. Definitions:

(1) “Constructive notice” means the claimant has proven that the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care[.]

The pivotal issue is whether Finley proved that RaceTrac either created the condition or had actual or constructive notice of the condition which caused the damage, prior to the accident. The record being devoid of any evidence of actual notice, the burden is upon Finley, the non-moving party, to present factual evidence to establish that RaceTrac had constructive notice of the oil slick prior to her fall. A claimant relying upon constructive notice must present positive evidence that the damage-causing condition existed for some period of time sufficient to place the merchant on notice of its existence. This

is not a certain number of minutes prior to the occurrence, but circumstantial evidence from which the factfinder can reasonably infer that it is more probable than not that the condition existed for such time prior to the accident that it should have been discovered and corrected. (Citations omitted.)

“The record amply supports the trial court’s conclusion that Finley failed to prove the temporal element necessary to establish constructive notice, an essential element of Finley’s claim under La. R.S. 9:2800.6. [W]e find no error in the trial court’s conclusion that RaceTrac was entitled to summary judgment.”

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U.S. Supreme Court

Daimler AG v. Bauman, 134 S.Ct. 746 (2014).

The U.S. Supreme Court addressed a unique jurisdictional claim in a case involving activities during the 1976-83 “Dirty War” in Argentina. Twenty-two Argentine residents filed suit in California federal court against Daimler AG, a German corporation with a parent company located in California, alleging that its Argentine subsidiary collaborated with Argentine state security forces to kidnap, detain, torture and murder employees of the Daimler AG Argentine subsidiary. The claims were primarily predicated on the Alien Tort Claims Act.

Daimler AG sought dismissal for lack of personal jurisdiction. The California

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District Court granted the motion finding Daimler AG's affiliation with California insufficient to support general or specific jurisdiction. The 9th Circuit reversed relying upon jurisdictional agency principles, finding that the Argentine subsidiary's connection with its California parent was important and material enough to attribute the subsidiary's conduct to the parent. The U.S. Supreme Court granted certiorari to decide whether Daimler AG is amenable to suit in California within the confines of the Due Process Clause of the 14th Amendment.

Justice Ginsburg's opinion provides a succinct discussion of constitutional precepts of general and specific jurisdiction as applied to out-of-state defendants seeking to avail themselves of an in-state forum. Confirming the less dominant role of general jurisdiction in recent jurisprudence, the court noted that it "has not yet addressed whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary." *Daimler AG*, 134 S.Ct. 746, at 759. The court rejected the 9th Circuit's broad agency analysis, which primarily relied upon the "importance" of the services rendered by the subsidiary to the parent.

Formulated this way, the inquiry into importance stacks the deck, for it will always yield a pro-jurisdiction answer. . . . The Ninth Circuit's agency theory thus appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the "sprawling view of general jurisdiction" the Court rejected in prior cases. *Id.* at 759-760.

Relying upon precepts set forth in the court's famous *International Shoe* decision, the court ruled that the proper test for jurisdiction is not solely whether the foreign company has substantial sales in a state, but rather whether a company's affiliations with the forum are "so continuous and systematic as to render it essentially at home in the forum State." *Id.* at 761. Daimler AG's connection to California does not satisfy this scrutiny and the court reversed the 9th Circuit.

U.S. Federal Circuit Court of Appeals

Guangdong Wireking Housewares & Hardware Co., Ltd. v. United States, 2014 U.S. App. LEXIS 5024 (Fed. Cir. March 18, 2014).

The U.S. Court of Appeals for the Federal Circuit (CAFC) upheld part of a federal law overturning a prior decision of the same court. As previously reported in this column, the CAFC ruled in *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011), *reh'g granted*, 678 F.3d 1308 (Fed. Cir. 2012), that U.S. international trade rules prohibit imposition of both antidumping and countervailing duties on goods from non-market economies. The U.S. Congress legislatively overruled the *GPX* decision through a 2012 amendment to the Tariff Act of 1930, which allows imposition of both trade remedies against non-market economies.

Guangdong brought suit against the United States alleging the 2012 amendment violates the Ex Post Facto Clause of the U.S. Constitution by retroactively imposing countervailing duties in existing cases. The 2012 amendment does not allow the Department of Commerce to retroactively adjust for any double counting that might occur on products already subject to an antidumping order.

A three-judge panel of the CAFC affirmed the U.S. Court of International Trade's prior decision upholding the law's constitutionality. The court agreed with appellant that the legislation had retroactive effect and was not merely a change in law. However, after finding that only in rare circumstances would a civil law violate the Ex Post Facto Clause, the court determined that the law is remedial and not punitive.

The current amendment does not stray from the remedial nature of trade rules generally. The 2012 amendment enables Commerce to apply countervailing duties to NME imports. Thus, this law simply extends Commerce's ability to impose countervailing duties to a new group of importers. And like countervailing duty law generally, the specific purpose of the new law is to remedy the harm American manufacturers and their workers experience as a result of unfair foreign trade practices.

Thus, like antidumping and countervailing duties generally, the specific purpose of the 2012 amendment is remedial, not punitive.

Guangdong Wireking Housewares & Hardware Co., Ltd. v. United States, 2014 U.S. App. LEXIS 5024, *31-32.

World Trade Organization

United States-Countervailing and Anti-Dumping Measures on Certain Products from China (WT/DS449/R) (March 27, 2014).

Staying with the 2012 congressional amendment addressed in *Guangdong*, *supra*, a dispute settlement panel of the World Trade Organization (WTO) released its views on the law's conformity to the WTO Agreements. China challenged the U.S. countervailing duty law at the WTO and requested consultations with the United States on Sept. 17, 2012. China challenged the law as a violation of various Articles of the WTO Subsidies and Countervailing



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Measures Agreement and Anti-Dumping Agreement. China specifically charged that the retroactive application of the law impermissibly results in double remedies on Chinese cases existing prior to the effective date of the new law. The United States maintained 27 orders on Chinese products between November 2006 and March 2012. Consultations failed and a panel was established to resolve the dispute on Dec. 17, 2012.

The panel rejected three Chinese complaints surrounding the United States' failure to promptly publish the new law, as required by Article X of the General Agreement on Tariffs and Trade (GATT). China prevailed in one important respect. The panel agreed that the United States failed to investigate whether "double remedies" arose in the orders at issue, in violation of Articles 19.3, 10 and 32.1 of the SCMA Agreement. The United States previously lost a similar challenge in *United States-Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/R) (Oct. 22, 2010).

This part of the panel decision sets up a potential conflict with U.S. law and the

CAFC opinion. The U.S. 2012 amendment directs Commerce to adjust for "double counting" prospectively only. The CAFC in *Guangdong* ruled that the prospective-only application "does not undermine Congress's overarching remedial intent." "Congress enacted the prospective adjustment provision to ensure that the United States complied with its WTO obligations." *Guangdong, supra* at *24-25. Thus, there is the situation where the WTO panel believes the United States did not perform its WTO obligation in determining whether the law imposes double remedies on certain Chinese products; yet, the CAFC found that Congress specifically intended for the law to comply with WTO obligations and it is otherwise consistent with the U.S. Constitution. China appealed the panel decision on April 11, 2014, to the WTO Appellate Body.

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Private Employers Beware: Employee Confidentiality Policies May Violate NLRA

Regardless of whether its workplace is unionized, an employer must consider whether its policies and rules may be in violation of the National Labor Relations Act (the NLRA). The National Labor Relations Board (the NLRB) traditionally has been associated with enforcing the rights of unionized workers under the NLRA. Over the past year, however, the NLRB has undertaken a nationwide initiative aimed at the nonunion employment relationship—particularly targeting common provisions in employment agreements and policy manuals.

One of the most controversial areas of focus has been employee confidentiality rules and the NLRB's position that those rules unlawfully chill protected concerted activity under the NLRA. On March 24, 2014, the U.S. 5th Circuit Court of Appeals agreed with the NLRB that a broadly-written confidentiality provision had exactly that effect. In *Flex Frac Logistics, L.L.C. v. NLRB*, No. 12-60752, 2014 U.S. App. LEXIS 5429, at *1, 14 (5 Cir. March 24, 2014), the 5th Circuit enforced the NLRB's order "holding that Flex Frac's employee confidentiality policy is an unfair labor practice in violation of Section 8(a)(1)" of the NLRA.

The case involved a Fort Worth-based nonunion trucking company, Flex Frac Logistics, L.L.C., which delivered frac sand to oil and gas well sites through its employees and independent contractors. Because rates charged to customers were confidential, Flex Frac required each of its employees to sign a one-page, at-will employment agreement. That agreement contained a section entitled "Confidential Information," which provided the following:

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See, Flex Frac Logistics, L.L.C. and Silver Eagle Logistics, L.L.C., Joint Employers and Kathy Lopez, 358 N.L.R.B. 127, at p. 1 (2012).

An employee in Flex Frac's accounting department discussed the rates that the company charged its clients to deliver loads of frac sand in relation to what the company paid its drivers, thus revealing the company's profit margin to its competitors. Flex Frac discharged the employee for violating the confidentiality rule, and she filed an unfair labor practice charge with the NLRB.

In proceedings before the administrative law judge, Flex Frac representatives testified

that the intent behind the rule was to protect the company's competitive advantage in the marketplace by preventing disclosure of its contractual rates, and that it had no policy, written or unwritten, that prevented employees from discussing their wages. Indeed, the rule on its face contains no reference to wages, compensation or any other specific terms and conditions of employment, although it does prohibit disclosure of "personnel information and documents." The administrative law judge held, and the NLRB affirmed in a 2-1 split decision, that the confidentiality rule is "unlawfully overbroad" because employees could reasonably construe the prohibition against discussion of "personnel information" to preclude discussion of wages and other terms and conditions of employment. *Id.*

On Flex Frac's petition for review, the 5th Circuit agreed with the NLRB's holding that the confidentiality rule is unlawful. *Flex Frac*, 2014 U.S. App. LEXIS 5429, at *1. Flex Frac argued that there was no evidence that it had enforced the confidentiality rule in a way that prohibited employees from discussing wages with individuals outside of the company, or that its employees actually interpreted the rule as prohibiting disclosure of wage information. *Id.* at *9. Nonetheless, the court held that such evidence was unnecessary to uphold the NLRB's order. Instead, the court concluded that Flex Frac's confidentiality rule failed to adequately identify the categories of "personnel information" covered by the rule and, similarly, that the rule failed to include any limitation on the type of "personnel information" that was deemed confidential. *Id.* at *12. The court concluded that the confidentiality rule

violated the NLRA because it implicitly prohibited employee discussion of wage information. *Id.* at *13.

The 5th Circuit's decision in *Flex Frac* is an important reminder that even nonunion employers are subject to certain provisions of the NLRA, and that employment policies should be reviewed periodically and revised if necessary to comport with the NLRA. In particular, confidentiality provisions should be narrowly tailored to the company's legitimate business needs and to prevent disclosure only of bona fide confidential or proprietary information. Employers should avoid broad, general prohibitions and undefined terms that could be read to prohibit employees from discussing wages, hours or other terms and conditions of employment with other employees or individuals outside of the company.

As the 5th Circuit's decision confirms, an overly broad confidentiality policy violates the NLRA if it can be construed as preventing employees from engaging in protected activities such as discussing wages and terms and conditions of employment outside the company — even if there is no evidence that employees actually interpret the policy as restricting those rights.

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3rd Circuit Issues Opinion in *Savoie*

Savoie v. Alice T. Richard, et al., 2014 WL 1306264 (La. App. 3 Cir. 4/2/14), So.3d ____.

The Louisiana 3rd Circuit Court of Appeal issued an interesting opinion in the continuing saga of the *Savoie* case. This case began as a legacy lawsuit in Cameron Parish before Judge Penelope Quinn Richard. In late 2011, following a month-long trial between the Savoies (plaintiffs) and Shell Oil Co. and its affiliate, SWEPI LP (collectively, Shell), the jury awarded plaintiffs \$34 million to restore their property to state regulatory standards (Statewide Order No. 29-B) and an additional \$18 million to remediate their property to the standards set forth in the mineral leases at issue. After trial, pursuant to Act 312 (La. R.S. 30:29), Shell submitted its remediation plan to the Louisiana Department of Natural Resources (LDNR) for approval. The plan required Shell to pay \$3,963,003 to remediate the Savoies' property. The LDNR approved Shell's plan.

The plan was then submitted, without contest by the Savoies, to the trial court for approval. The trial court entered a judgment in favor of plaintiffs — \$34 million to remediate the property to state standards, with Shell paying \$3,963,003 into the registry of the court, as required by Act 312. The remaining \$30 million was converted into a personal judgment in favor of the Savoies, plus the \$18 million awarded by the jury to remediate their property to the standards set forth in the mineral leases.

Shell appealed, asserting four assignments of error: (1) the trial court erred because it did not advise the jury as to Act 312 in its jury charges; (2) the trial court erred in awarding \$30 million as a cash payment for regulatory clean-up; (3) the \$30 million judgment in addition to the

performance of the clean-up amounted to a double recovery, which is illegal pursuant to Louisiana law; and (4) the trial court erred in denying Shell's request for directed verdict.

As to jury instructions, the 3rd Circuit found that the trial court did not violate the law. In fact, the court concluded that the trial court carefully crafted its jury verdict form and instructions (essentially accomplishing the purposes of Act 312), even though the jury did not receive any specific instructions about Act 312. Further, because the verdict form differentiated between regulatory clean-up damages and private damages, the 3rd Circuit believed this was key in overcoming the absence of any instruction regarding Act 312.

As to the amount of damages awarded to plaintiffs for remediation (the \$34 million), the 3rd Circuit held that the Savoies were not entitled to a private judgment in the amount of \$30 million because clearly the \$34 million in remediation damages was meant as just that — to clean up the property, not as private damages. The court found that both the jury verdict form and the trial court's judgment indicated that the \$34 million was meant to *remediate* the property to state standards. Moreover, requiring that the \$34 million be deposited into the registry of the court comported with the 3rd Circuit's reading of Act 312. Thus, the court ruled that the entire \$34 million must be placed into the registry of the court, with any unused portion to be returned to Shell.

As to the directed verdict issue, the 3rd Circuit found that the jury, after listening to four weeks of testimony at trial, carefully heard and weighed the evidence when it arrived at the \$18 million award for remediation beyond state standards. The court did not find Shell's argument — that the remediation requirements of the mineral leases and the state's standards are the same — to be persuasive, mainly because Shell's argument hinged on just two sentences from plaintiffs' expert witness testimony in a trial record that was more than 17,000 pages long.

The Savoies, in answering the appeal, argued that the trial court should have calculated judicial interest from the date of the breach, not the date of judicial demand.

There is case law that suggests in "highly complicated" breach-of-contract cases it is appropriate to award interest from the date of judicial demand. To avoid this rule, the Savoies argued that the instant case was not complicated. The 3rd Circuit, however, disagreed and found that the appropriate measure of interest was from the date of judicial demand.

Based upon these rulings, the 3rd Circuit amended the trial court's judgment and ordered that the entire \$34 million for remediation damages be placed into the registry of the court. The 3rd Circuit affirmed the remainder of the trial court's judgment.

Update: New Regulations Relating to Salt Caverns

On Feb. 20, 2014, the Louisiana Department of Natural Resources promulgated new rules relating to salt caverns.

The new rules for Class III solution-mining injection wells (Statewide Order No. 29-M-3) can be found at Louisiana Administrative Code Title 43, Part XVII, Subpart 5, Chapter 33, Section 3301, *et seq.*

The new rules relating to hydrocarbon storage wells in salt dome cavities (Statewide Order No. 29-M (Rev. 3)) can be found at Louisiana Administrative Code, Title 43, Part XVII, Subpart 3, Chapter 3, Section 301, *et seq.*

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PCF Unilaterally Stops Custodial Care Payments

Watkins, et al. v. Lake Charles Memorial Hospital, et al., 13-1137 (La. 3/25/14), ___ So.3d ___.

Dustin Watkins suffered a stroke *in utero* two days before his birth in 1990. A jury trial in 2003 resulted in damages awarded to Dustin that included future medical care, including custodial care.

The PCF in 2006 disputed the payment of certain custodial care expenses. Watkins obtained a judgment awarding these expenses. The judgment also ordered the PCF to make quarterly payments as specified in the original judgment, provided the plaintiff certify, 30 days prior to any quarterly payment, no change in the patient's condition. The PCF appealed, arguing that it should not have to pay future medical expenses prior to the incurrence of the expenses, or the services being performed, or allowing the submission of a claim for reimbursement of future medical expenses without proving the services were actually performed. The appellate court affirmed the district court's judgment.

In 2011, Ms. Watkins certified "no change" in her son's condition and asked for the advance quarterly payment. The PCF had learned from Facebook postings that Dustin was married, living with his wife, and no longer residing with his mother, facts allegedly verified, and the PCF required Dustin to undergo an independent neurological evaluation.

In August 2011, Watkins again submitted a "no change" affidavit and requested an advance quarterly payment for custodial care. The PCF refused, based on the neurological evaluation by its physician. Thereafter, Watkins submitted no requests for payment and instead sought relief from the district court. In its March 26, 2012, rul-

ing, the district court awarded Dustin 24-hour custodial care expenses to March 26, 2012, and the PCF was ordered to pay the \$5,000 expense incurred by Ms. Watkins to obtain a neurological evaluation that contradicted the PCF's evaluation. The court also ruled Dustin would thereafter be entitled to only six hours per day of custodial care and that the PCF was liable for Watkins' attorney fees and costs. The appellate court affirmed that judgment, following which the Supreme Court granted certiorari.

The PCF argued that no statute required that it obtain court approval to modify a judgment for future care if the claimant submitted falsified affidavits. It also argued that it was only required to pay expenses "actually incurred," had "good reason" to deny the claims, that attorneys' fees and costs were improperly awarded, and that the plaintiff had not submitted any affidavits about Dustin's conditions since August 2011; thus, it was not responsible for any payments after that date.

Watkins countered that the PCF was arbitrary in terminating the custodial care payments without medical justification, as this decision was based solely on Facebook posts (never introduced into evidence), and Dustin continued to suffer cognitive and emotional problems that required ongoing custodial care.

The Supreme Court traced the genesis of the MMA and commented that it was amended in 1984 to provide for severely injured victims disadvantaged by the liability cap by sanctioning:

... a speedy, convenient and inexpensive administrative remedy for the payment of actually incurred medical expenses, without limit, except as tailored to the patient's needs. . . . LSA-R.S. 40:1299.43 aims to remedy to an extent the damage cap's harsh tendency to prune recovery inversely to the injury, and to provide cost-effective actuarially-sound methods for financing and delivering compensation for medical services necessitated by medical malpractice.

In *Watkins*, all Section 1299.43 procedures were followed by the lower courts, and the court determined the medical expenses "are not made executory until review and

approval by the [PCF] or, if denied, upon subsequent order of the court under its continuing jurisdiction." When Watkins sought payment of the expenses denied by the PCF, the district court found it acted unreasonably. In oral reasons for the judgment, the district judge said it had already determined custodial care was necessary, and there was nothing left for the PCF to do other than make the payments. If the PCF felt there was some abuse, however, there were mechanisms in place to request change. Despite the PCF's discovery that Dustin no longer lived with Ms. Watkins, it failed to initiate any proceeding for relief in the district court. In its last appearance before the district court — that led to this review by the Supreme Court — the district judge noted:

The PCF willfully violated the mandate of the 2006 judgment by making the unilateral determination to cease the custodial care payments, despite receiving certification from [the plaintiff] that there had been no change in Dustin's condition.

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... [T]he fact that a misrepresentation or change in condition has occurred or is suspected does not allow the PCF to make the unilateral determination to cease payment.

... [P]rior to discontinuing payments for future medical care related benefits, *i.e.*, custodial care, [the PCF] must first obtain a judicial ruling modifying the prior judgment.

The PCF has no legal right to substitute its own opinion for the ruling of the court.

The court said the PCF had ignored the significance of the district court's 2006 judgment ordering the payments, and court orders must be obeyed until set aside. Failure to comply with the court order is a constructive contempt of court. Irrespective of what evidence the PCF may have for the lack of need for continuing care, the requirement that it comply with a court's judgment until it is modified does not conflict with Section 40:1299.43(C) of the MMA. The district court maintains continuing jurisdiction in future medical care cases and provides for attorneys' fees and costs to be paid by the PCF if it unreasonably fails to pay medical costs within 30 days after submission of a claim. There are no restrictions on a district court's power to "fashion" any remedy to ensure these expenses are timely paid.

The court affirmed the district court's ruling that all expenses claimed prior to amending the judgment were to be paid, including those contested by the PCF by reason of the plaintiff's failure to continue submitting affidavits, because the "no change" affidavit requirement was put in place by the district court to procure *advance payment of expenses*, which had no effect on the power of the court's ruling to adjudicate whether payment was owed for prior or subsequent expenses. The PCF had also stipulated during the March 2012 hearing it was not reserving any rights to contest the validity of the custodial care cost that had accrued prior to the date of the hearing.

The PCF also contended that it should not be required to pay attorneys' fees and costs because it had "good cause" to deny the payments. But, Section 40:1299.43 (E)(2) requires the award of reasonable attorneys'

fees if the PCF unreasonably fails to pay for medical care within 30 days after a claim is submitted. The Supreme Court found the PCF was unreasonable in discontinuing the advance payments.

Finally, the PCF argued the "law of the case doctrine" in support of its claim that the court should examine the correctness of the 2006 lower court decisions. The Supreme Court explained the PCF was trying to merge two separate provisions of the MMA (Sections 1299.43(C) and 1299.43(E)) which would eliminate the district court's continuing jurisdiction, an argument the court rejected.

In a 4-3 opinion, the court concluded, in affirming the lower courts' holdings:

We hold herein that when the PCF denies a claim for payment of a future medical or related expense and the district court thereafter exercises its continuing jurisdiction and issues a ruling as to that matter, the PCF is obligated to comply with the district court's ruling, order, or judgment unless it is modified or set aside by the court.

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Sales Tax Exemption for Purchases for the Government Not Proven

Bridges v. Cepolk Corp., 13-1051 (La. App. 3 Cir. 2/12/14), ___ So.3d ___, 2014 WL 551587.

The 3rd Circuit Court of Appeal reversed a trial court's decision denying the Louisiana Department of Revenue's (Department) motion for summary judgment and granting Cepolk Corp.'s (Cepolk) cross motion for summary

judgment. The 3rd Circuit held that the movable items purchased by Cepolk were subject to sales and use tax, after finding that Cepolk failed to prove it acted as the United States Government's (Government) agent in purchasing the items at issue and that the items were purchased prior to their incorporation into the final product.

Cepolk entered into contracts to modify and replace heating, ventilation and air conditioning (HVAC) systems at the Fort Polk housing complex in Louisiana. The Department conducted a sales and use tax audit of Cepolk, which found Cepolk failed to pay sales tax on approximately \$4 million in purchases of electrical, plumbing, and heating and air conditioning materials and supplies. The Department filed suit to collect. Cepolk asserted that its purchases were made as an agent for the Government and were exempt from sales tax under La. R.S. 47:301(10)(g). The Department filed a motion for summary judgment asserting Cepolk was not a purchasing agent for the Government and its purchases were not exempt from tax. Cepolk filed a cross motion for summary judgment asserting the opposite, which was granted by the district court. Thereafter, the Department appealed.

The 3rd Circuit addressed two questions: (1) whether Cepolk was a purchasing agent for the Government; and (2) whether the purchases were made for future sale to the Government before they were incorporated into the final product?

Relying on *F. Miller & Sons, Inc.*, 02-1680 (La. 2/25/03), 838 So.2d 1269, and La. Admin. Code 61:I.4301, the 3rd Circuit found that, in order for Cepolk to be a valid purchasing agent for the Government, a signed agreement of agency and evidence demonstrating transfer of title to the materials which passed to the governmental agency at the time of purchase were required.

In reviewing the contracts at issue, the 3rd Circuit found that there was no provision proving an agency or mandatory relationship between Cepolk and the Government, nor any signed contract which met the requirements of La. Admin. Code 61:I.4301. Further, the 3rd Circuit found that the contracts showed that

Cepolk was a contractor and title to the materials did not pass to the Government at the time of purchase as required by *F. Miller & Sons, Inc.* and La. Admin. Code 61:1.4301, or at any time prior to their incorporation into the finished product. Considering the foregoing, the 3rd Circuit held that Cepolk owed the tax and that Cepolk had not met its burden of proving that it was entitled to any of the exemptions asserted.

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Computation of Time to Appeal Denial of Claim for Refund

In *Dillard University v. Barfield*, 2013-CA-1336 (La. App. 4 Cir. 4/2/14), Louisiana's 4th Circuit ruled on a controversy involving computation of delays with respect to tax notices. At issue was the date on which the 60-day period for appealing the Department's denial of a claim for refund under La. R.S. 47:1625 begins. La. R.S. 47:1625 provides that an appeal may not be filed "after the expiration of sixty days from the date of mailing by registered mail by the collector to the taxpayer of a notice of the disallowance of the part of the claim to which such appeal relates." Although the date of the event triggering the delay period under this statute is the mailing by registered mail, the court stated that the Department had a practice of issuing post-dated denial letters informing taxpayers that they had 60 days from the date of the letter to file an appeal, which resulted in the date of mailing occurring before the date of the letter. The court affirmed the holdings of the district court and the Board of Tax Appeals which both found that this practice precluded the Department from asserting the statutory language of "sixty days from the date of mailing"

to determine the prescriptive period. Consequently, the event triggering the 60-day period was the date of the notice. Additionally, the court upheld the Board's rule that adopted La. C.C.P. art. 5059 by reference (providing that the date of the event is not to be included in computing a period of time) and upheld its determination that this principle governs the calculation of time delays for La. R.S. 47:1625, and therefore the computation of the 60 days began the day after the date of the notice.

District Court's Subject Matter Jurisdiction over Pending BTA Matters

In *Department of Revenue v. KCS Holdings I, Inc.*, 2013-CA-1479 (La. App. 1. Cir. 3/31/14) (not designated for publication), Louisiana's 1st Circuit ruled on the district court's jurisdiction over matters that were not yet final at the Board of Tax Appeals (BTA) level. After the decision in *UTELCOM, Inc. v. Bridges*, 10-0654 (La. App. 1 Cir. 9/12/11), KCS sought a refund of franchise taxes paid pursuant to La. R.S. 47:1621 and filed a petition with the BTA as a claim against the state. Relying on 47:1621(F) (which provides that Section 1621 shall not be construed to authorize any refund of a tax overpaid through a mistake of law arising from the secretary's misinterpretation of the law), the Department denied the request for refund. After KCS appealed the denial of the refund to the BTA, the Department filed exceptions alleging that KCS had no cause of action and no right of action to pursue its claim under 47:1621 and argued that KCS's sole remedy to recover the taxes it had voluntarily paid was a claim against the state since La. R.S. 47:1621(F) precluded the issuance of a refund. The BTA denied the Department's exceptions and found that, while Section 1621(F) may prohibit the Department from making a refund where the secretary misinterpreted the law, it does not prohibit the BTA from making a refund.

Following the BTA's decision, the

Department filed a petition for judicial review, an application for supervisory writs and a petition for declaratory judgment in district court based upon its position that the BTA erred in determining that 47:1621(F) does not prohibit the taxpayer from obtaining a refund from the Department. Thereafter, the district court consolidated the actions and granted KCS's exception of lack of subject matter jurisdiction over the consolidated actions, and the Department appealed to the 1st Circuit. The court of appeal affirmed the district court's decision that it lacked appellate, supervisory and declaratory judgment jurisdiction, finding as follows: (1) because a district court's appellate jurisdiction under La. R.S. 47:1434 over a "decision or order" of the BTA extends only to "final" decisions or orders by the BTA and the BTA's judgment denying the Department's exception is interlocutory in nature, the district court correctly dismissed the Department's petition for judicial review for lack of subject matter jurisdiction; (2) because the Department's application for supervisory writs neither asserted a claim of deprivation of a constitutionally protected right, nor contended that an agency exceeded its constitutional or statutory authority, the district court correctly dismissed it based upon a lack of subject matter jurisdiction; and (3) since the trial court lacks original jurisdiction to consider the merits of plaintiffs' claims, as distinguished from the legality or constitutionality of the procedural mechanisms for assertion of those claims, the district court correctly sustained the exception of lack of subject matter jurisdiction and dismissed the petition for declaratory judgment, which concerned the merits of the Department's defense to the refund claim rather than a challenge to the statute's legality or constitutionality.

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CHAIR'S MESSAGE

Make the Most of Your Youth: Get Involved in YLD Service Projects

By J. Lee Hoffoss, Jr.

It has been 10 years since I took that solemn oath that we as lawyers take. But taking that oath does more than just permit us to practice law; it allows us to serve those who are underserved or overlooked by the fast-paced world in which we live. Our service comes not just from taking pro bono cases, but from our participation in various legal service projects throughout the year.



J. Lee Hoffoss, Jr.

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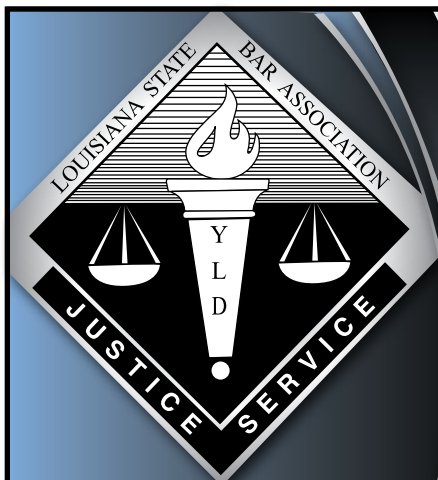
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young lawyers, if you have an idea for a project, pass it along. Do not let any perceived inexperience get in the way of a good idea. We in the YLD leadership are always looking for new ideas for service projects. If you have some thoughts on service projects, please let us know.

For these service projects to be successful, your participation is necessary. It takes more than just the YLD Council to make a service project a success; it takes young lawyer volunteers from all parts of our state. So, make the most of your youth and volunteer for a YLD service project.

In closing, on behalf of the 2014-15 YLD Council, I would like to thank our Immediate Past Chair Kyle A. Ferachi and the entire 2013-14 YLD Council for an outstanding year of service projects. It’s certainly an honor to carry the torch forward, and I will be looking for many new volunteers and service project ideas for another successful year.

If I can be of any help to you this year, please contact me. I look forward to working with the YLD Council, the LSBA Board of Governors, the entire LSBA and all of the young lawyers on a fulfilling Bar year.



YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division news online

Go to: www.lsba.org/YLD

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

YOUNG LAWYERS SPOTLIGHT

Nicholas P. Arnold New Orleans

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting New Orleans attorney Nicholas P. (Nick) Arnold.



Nicholas P. Arnold

Arnold is an attorney with the firm of Christovich & Kearney, L.L.P., in New Orleans. He received a BS degree in business administration in 2005 from Louisiana State University. While at LSU, he served in various leadership roles, ranging from student government, fraternity and charitable organizations. After working on

Capitol Hill and at a Baton Rouge litigation firm while at LSU, he continued his education at Loyola University College of Law in New Orleans, graduating as a member of the Order of Barristers. While at Loyola, he served as chair of the Moot Court Board and chief justice of the Honor Board. He also clerked for litigation firms and externed for Hon. Jay C. Zainey of the United States District Court for the Eastern District of Louisiana.

After graduating from Loyola College of Law in 2008, Arnold began working as an attorney with Christovich & Kearney, where he has maintained a general defense litigation practice, including workers' compensation, tort liability, property damage and small-business advisory work. Much of his work has involved catastrophe and insurance bad faith litigation, areas of Louisiana law that have changed constantly since Hurricane Katrina — which, coincidentally, made landfall the first week he attended law school. He also

works with startup companies, particularly incubator-launched startups, helping them avoid pitfalls commonly encountered by growing businesses. He enjoys presenting continuing education and litigation conference programs to insurance companies on emerging insurance law topics.

Arnold is very involved in various legal groups and associations. He is a board member of the New Orleans Association of Defense Counsel and coordinates his firm's service to the homeless community through the H.E.L.P. (Homeless Experience Legal Protection) Program.

He is married to Robin Penzato Arnold, also a New Orleans attorney, and they are the parents of three children. In his spare time, if he isn't found chasing his children at a losing pace, he can be found hunting and fishing with family and friends. He and his family are members of St. Dominic Catholic Church in New Orleans.

YOUNG LAWYERS DIVISION OFFICERS 2014-15

J. Lee Hoffoss, Jr. Chair

J. Lee Hoffoss, Jr. is a partner in the Lake Charles firm of Hoffoss Devall, L.L.C. He received a BA degree and an MA degree in 2000 and 2001, respectively, from Louisiana Tech University and his JD degree in 2004



J. Lee Hoffoss, Jr.

from Southern University Law Center. He was admitted to practice in Louisiana in 2004 and in Texas in 2010.

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

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

Lawyers (Rising Star).

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

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

3205 Ryan St., Lake Charles, LA 70601
(337)433-2053 • fax (337)433-2055
email: jlhoffoss@hdinjurylaw.com
website: www.HDInjuryLaw.com

Erin O. Braud Chair-Elect

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



Erin O. Braud

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

She and her husband, S. Jacob Braud, have been married for seven years and are the parents of two children.

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Metairie, LA 70002
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email: erin.braud@libertymutual.com

Scotty E. Chabert, Jr. Secretary

Scotty E. Chabert, Jr. is an assistant district attorney for the 18th Judicial District, a partner in the Baton Rouge law firm of Saunders & Chabert and an adjunct professor at Southern University Law Center. He received a BS degree in 2002 from Louisiana State University and his JD degree in 2006 from Southern



Scotty E. Chabert, Jr.

University Law Center. He was admitted to practice in Louisiana in 2006 and in Mississippi in 2007.

Scotty served as District 5 representative on the Louisiana State Bar Association's (LSBA) Young Lawyers Division Council. He was a member of the 2009-10 Leadership LSBA Class and co-chair of the 2010-11 Leadership LSBA Class. He is currently the chair of the Baton Rouge Bar Association's (BRBA) Young Lawyers Section and is a 2010 recipient of the BRBA's President's Award.

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

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

6525 Perkins Rd.

Baton Rouge, LA 70808

(225)771-8100 • fax (225)771-8101

email: schabert@saunderschabert.com

website: www.saunderschabert.com

Kyle A. Ferachi **Immediate Past Chair**

Kyle A. Ferachi is a partner in the Baton Rouge office of McGlinchey Stafford, P.L.L.C. He received a BA degree in 1998 from Louisiana Tech University and his JD degree in 2001 from Louisiana State University Paul M.



Kyle A. Ferachi

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

Kyle served as chair, chair-elect and District 5 representative on the Louisiana State Bar Association's Young Lawyers Division Council.

He is a past president of the Baton Rouge Bar Association's (BRBA) Young Lawyers Section Council and is the recipient of the 2005 BRBA's President's Award. He is a former member of the BRBA's board of directors and a member of the American Bar Association.

He is a past president of the Greater Baton Rouge Community Tennis Association.

He and his wife, Kara King Ferachi, have been married for 13 years and are the parents of two children.

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Baton Rouge, LA 70801

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website: www.mcglinchey.com

YOUNG LAWYERS DIVISION COUNCIL 2014-15

Dylan T. Thriffiley **District One Representative**

Dylan T. Thriffiley is an associate in the New Orleans office of Kean Miller, L.L.P. She received a BS degree, *magna cum laude*, in 2005 from the University of Tennessee at Chattanooga and her JD degree, *cum laude*, in 2008



Dylan T. Thriffiley

from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2008.

Dylan was a member of the 2010-11 Leadership LSBA Class and served as co-chair of the 2011-12 Leadership LSBA Class. She currently serves as co-chair of the Louisiana State Bar Association's Public Information Committee, as well as a member of the Committee on the Profession and the Bar Governance Committee. She also is a member of the *Louisiana Bar Journal* Editorial Board.

She is a member of the American Bar Association, a Young Lawyers Division board member for the New Orleans Chapter of the Federal Bar Association and the 2014 president of the New Orleans Association for Women Attorneys.

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

She and her husband, Peter S. Thriffiley, Jr., have been married for two years.

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website: www.keanmiller.com

James E. (Jimmy) Courtenay **District One Representative**

James E. (Jimmy) Courtenay is a partner in the Civil Litigation Department in the New Orleans office of Deutsch, Kerrigan & Stiles, L.L.P. He attended Louisiana State University and played football for the LSU Tigers from 2000-03. He received



James E. (Jimmy) Courtenay

a BS degree in accounting in 2003 from LSU, a master's degree in public administration in 2005 from LSU and his JD degree in 2008 from Southern University Law Center. He was admitted to practice in Louisiana in 2008.

Jimmy is a member of the Claims and Litigation Management Alliance, the American Bar Association's Tort and Insurance Practice Section, the New Orleans Bar Association and the Mariner's Club of New Orleans.

He is his wife, Brittany M. Courtenay, have been married for four years and are the parents of two children.

755 Magazine St.

New Orleans, LA 70130

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Jason M. Baer **District Two Representative**

Jason M. Baer is a partner in the Metairie office of Hailey, McNamara, Hall, Larman & Papale, L.L.P. He received a BS degree in accounting in 2005 from Louisiana State University and his JD degree in 2008 from Loyola University College of Law. He was admitted to practice in Louisiana in 2008.



Jason M. Baer

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

Continued next page

sociation (Young Lawyers Division board member).

He and his wife, Liz Lorio Baer, have been married for five years and are the parents of one child.

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website: www.haileymcnamara.com*

Jennifer Z. Rosenbach
District Two Representative

Jennifer Z. Rosenbach is an assistant district attorney with the Jefferson Parish District Attorney's Office. She received a BS degree in 2000 from Louisiana State University and her JD/BCL degree in 2003 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2003.



Jennifer Z. Rosenbach

Jennifer is currently serving on the Louisiana State Bar Association's (LSBA) Crystal Gavel Awards Committee. She was a member of the 2011-12 Leadership LSBA Class and served on the LSBA Young Lawyers Division Council in 2005-08.

She is a member of the Jefferson Bar Association, the Louisiana District Attorneys Association and the National District Attorneys Association. She also is involved with the Junior League of New Orleans.

Jennifer and her husband, Brett Rosenbach, are the parents of one child.

*200 Derbigny St., Gretna, LA 70053
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Kassie L. Hargis
District Three Representative

Kassie L. Hargis is a law clerk for Judge John R. Walker, 32nd Judicial District Court, in Houma. She received her BA degree in English literature in 2000 from Louisiana State University and her JD degree in 2006 from Loyola Univer-



Kassie L. Hargis

sity College of Law. She was admitted to practice in 2007.

Kassie is a member of the Louisiana State Bar Association's House of Delegates, the Committee on the Profession and the Public Access and Consumer Protection Committee.

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

She and her husband, Jeffrey M. Hargis, have been married for seven years.

*Ste. 211, Courthouse Annex
7856 Main St., Houma, LA 70360
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Lynsay M. Fontenot
District Four Representative

Lynsay M. Fontenot is an associate in the Lake Charles firm of Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P. She received a BS degree in risk management and insurance in 2002 from Florida State University and her JD/BCL degree in 2006 from Louisiana State University Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2006.



Lynsay M. Fontenot

Lynsay was a member of the 2011-12 Leadership LSBA Class and was the co-chair of the 2012-13 Leadership LSBA Class. She has served as a member of the Louisiana State Bar Association's Community Action Committee. She co-chaired the Young Lawyers Division's High School Mock Trial Committee in 2013-14.

In her community, she is a member of the Junior League of Lake Charles and "Fusion Five," a young professionals' organization sponsored by the Chamber of Southwest Louisiana. She is a parishioner of Our Lady Queen of Heaven Catholic Church.

Lynsay and her husband, Kevin Fontenot, have been married for five years and are the parents of two children.

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Bradley J. Tate
District Five Representative

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



Bradley J. Tate

Brad was a member of the 2011-12 Leadership LSBA Class and co-chaired the 2012-13 Leadership LSBA Class. He is a member of the Louisiana State Bar Association's Committee on the Profession.

He is a member of the Baton Rouge Bar Association and chairs the American Bar Association's Young Lawyers Division Committee on Taxation.

In his community, he serves as treasurer of the Rotaract Club of Baton Rouge.

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Kristi W. Richard
District Five Representative

Kristi W. Richard is an associate in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., and an adjunct instructor of business law and sports law at Louisiana State University. She received a BS degree in management, *summa cum laude*, in 2004 from LSU, a master's degree in business administration in 2009 from LSU, and her JD/BCL degree, *magna cum laude*, in 2009 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 2009.



Kristi W. Richard

Kristi was a member of the 2012-13 Leadership LSBA Class. She is a member of the Baton Rouge Bar Association and vice chair of its Holiday Star Project.

In her community, she is a community council member of the Junior League of Baton Rouge and a member of the board of directors of the Capital Area March of Dimes.

She and her husband, Daniel Richard, have been married for 11 years.

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Christie C. Wood

District Six Representative

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



Christie C. Wood

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

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

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

105 Yorktown Dr., Alexandria, LA 71303

(318)619-7755 • fax (318)619-7744

email: cwood@fairclothlaw.com

Ashley L. Smith

District Seven Representative

Ashley L. Smith is a law clerk for Judge Sharon I. Marchman and Judge James H. Boddie, Jr. with the 4th Judicial District Court, Ouachita and Morehouse parishes. She received a bachelor of business



Ashley L. Smith

administration degree in accounting in 2001 from the University of Louisiana at Monroe and her JD degree in 2009 from Southern University Law Center. She earned an LLM in taxation in 2010 from Southern Methodist University. She was admitted to practice in Louisiana in 2009.

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

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

Ashley is engaged to Brian Dayton and will be a future stepmother to two children.

300 St. John St., Monroe, LA 71201

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Jerry Edwards, Jr.

District Eight Representative

Jerry Edwards, Jr. is a director in the Shreveport law firm of Blanchard, Walker, O'Quin & Roberts. He received a BA degree in political science in 2002 from Georgia State University and his JD degree in 2005 from Vermont Law School, where he was a member of the Moot Court Board and president of the Student Bar Association. He was admitted to practice in Louisiana in 2006. Before joining Blanchard Walker, he clerked at 1st Judicial District Court (Caddo Parish) for Judge Scott J. Crichton and Judge Jeanette G. Garrett.



Jerry Edwards, Jr.

Jerry is chair of the Judiciary Commission of Louisiana. He coordinated the Louisiana State Bar Association (LSBA) Young Lawyers Division's two Professional Development Seminars in 2012. He was a member of the 2009-10 Leadership LSBA Class and was a speaker at the LSBA's Mini Conclave on Diversity in Shreveport.

He is a member of the Harry V. Booth and Judge Henry A. Politz American Inn

of Court.

Chase Tower, Ste. 1400, 400 Texas St.
Shreveport, LA 71101

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Kellen J. Mathews

At-Large Representative

Kellen J. Mathews is an associate in the

Baton Rouge office of Adams and Reese, L.L.P. He received a BA degree in political science in 2004 from Millsaps College and his JD degree in 2008 from Louisiana State University Paul M. Hebert Law Center.



Kellen J. Mathews

He was admitted to practice in Louisiana in 2008.

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

In his community, he is a board member of the Greater Baton Rouge Food Bank, assisting more than 130 charitable agencies in Baton Rouge and 11 surrounding parishes.

Kellen and his wife, Mikki Ceasar Mathews, have been married for a year.

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Cristin G. Fitzgerald

ABA YLD Representative

Cristin G. Fitzgerald is a member/partner in the New Orleans firm of Fitzgerald & Brown, L.L.C. She received a BAS degree in 2001 from Louisiana State University and her JD degree in 2005 from Loyola University College of Law. She was admitted to practice in Louisiana in 2005. She

also is admitted in New York and Georgia.

Cristin served as a volunteer for the Louisiana State Bar Association Young Lawyers Division's Wills for Heroes program. She is a member of the American Bar Association, the New York State Bar Association, the Georgia State Bar Association, the New Orleans Bar Association and the Louisiana Association for Justice.

In her community, she volunteers her time with the Habitat for Humanity program and with the Susan G. Komen for the Cure program. She also teaches exercise at Hour Blast in New Orleans.

Cristin and her husband, Lanson Bordon, have been married for two years and are the parents of one child.

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Cristin G. Fitzgerald

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

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

Ryan is a member of the Louisiana State Bar Association's (LSBA) House of Delegates, 2011-15. He was a member of the 2012-13 Leadership LSBA Class. He



Ryan M. McCabe

also is a member of the LSBA Rules of Professional Conduct Committee (2009-11 and 2013-present). He is national chair of the Federal Bar Association Professional Ethics Committee (2013-present).

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

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

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By Robert Gunn, Louisiana Supreme Court

NEW JUDGE... APPOINTMENTS

New Judge

Brady D. O'Callaghan

was elected as a judge for the 1st Judicial District Court, Caddo Parish. He earned his BA degree, with honors, in 1995 from Yale University and his JD degree in 1998 from Louisiana State University Paul M. Hebert Law Center. From 2001-03, he worked as a special homicide prosecutor for the Orleans Parish District Attorney's Office. From 2004 until his election to the bench in 2013, he worked as a violent crimes prosecutor/assistant district attorney with the Caddo Parish District Attorney's Office, where he served as a special prosecutor handling complex violent crime litigation at the trial and appellate level. He has served as an instructor at the Shreveport Police Academy, teaching courses to recruits and active officers; presented CLE lectures for Louisiana District Attorneys Association conferences in 2007, 2009 and 2010; and provided a CLE presentation for the Caddo Parish District Attorney's Office in 2012. He is married to Amy O'Callaghan and they are the parents of twin boys.



Brady D. O'Callaghan

Supreme Court News

Attorney **Sandra A. Vujnovich** has been appointed judicial administrator of the Louisiana Supreme Court, effective March 24, the court announced. Prior to this appointment, she was executive counsel to the court and Chief Justice Bernette Joshua Johnson, as well as executive counsel for retired Chief Justice Catherine D. Kimball (2009-13) and retired Chief Justice Pascal F. Calogero, Jr. (1996-2008). Vujnovich received her BA degree, with a public policy/political science double major, in 1981 from Newcomb

College of Tulane University. She received her JD degree in 1986 from Louisiana State University Paul M. Hebert Law Center.

The judicial administrator's position was previously held by **Timothy F. Averill**, who retired from state service after serving three years as judicial administrator and 20 years as deputy judicial administrator-general counsel for the court.

Appointments

► **Marta-Ann Schnabel** was designated, by order of the Louisiana Supreme Court, as chair of the Louisiana Judicial Campaign Oversight Committee, effective April 22.

► Retired Judge **Eugene W. Bryson, Jr.**, **Elizabeth Ann Engolio** and **Mildred E. Methvin** were appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for terms of office which began on May 1 and will end on April 30, 2018.

► **Jan M. Hayden**, **Robert G. Pugh, Jr.** and **Mike C. Sanders** were appointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for terms of office ending on Dec. 31, 2017.

► Judge **Piper D. Griffin** and **Richard A. Goins** were appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began on April 1 and will end on March 31, 2019.

► Justice **Jeannette Theriot Knoll**, **Richard K. Leefe**, **Judge C. Wendell Manning**, **Sen. Edwin R. Murray**, **Lynn Luker**, **Donald W. North** and **Joseph L. (Larry) Shea, Jr.** were appointed, by order of the Louisiana Supreme Court, to the Legal Services Job Corps Task Force. The Task Force is charged with working with the Louisiana State Bar Association and the court to develop innovative ways of providing legal services to indigent populations, while offering experience to new lawyers entering the practice.

Retirements

► 1st Judicial District Court Judge **Roy L. Brun** retired effective Feb. 28. Judge Brun received his BA degree and JD degree from Louisiana State University and began practicing law in 1975. He was a member of the Louisiana House of Representatives from 1988-97 and chaired the House Education Committee. He was a Louisiana member of the Electoral College in the 1984 Presidential Election. He also served six years as Republican National Committee member for Louisiana. He was elected judge of the 1st Judicial District Court in 1997 and served there until his retirement. Upon retirement, Judge Brun was hired as judicial administrator for the 1st Judicial District Court.

► **Pineville City Court Judge J. Phillip Terrell** retired effective March 14. He began serving as judge of Pineville City Court in 1997, after serving from 1990-96 as Pineville city attorney and Pineville city prosecutor. Judge Terrell graduated from Louisiana College and received his JD degree from Louisiana State University Paul M. Hebert Law Center.

Death

► Retired 19th Judicial District Court Judge **Eugene W. McGehee**, 85, died April 11. He began serving as judge of Division I, 19th JDC, in 1972 and served there until his retirement in 1978. Prior to his election as judge, McGehee served in the Louisiana House of Representatives, elected in 1960, 1964 and 1968, each for a four-year term. He received both his BA degree and his LLB degree from Louisiana State University and was admitted to the Bar in 1951. He was a retired colonel with the Louisiana National Guard and was inducted into the Hall of Honor by LSU's Cadets of the Old War Skule in 2001. Judge McGehee also received the Louisiana Distinguished Service Medal and the Armed Forces Reserve Medal.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Matthew A. Treuting** has been named a partner in the firm. Also, **William B. Schwartz**, a partner in the firm, was elected to the firm's Executive Committee.

Morris Bart, L.L.C., in New Orleans announces that 11 new associates joined the firm in 2013, including **Sean A. Blondell**, **Erin E. Cloyd**, **Pamela B. Gautier**, **Matthew D. Hemmer**, **Sophia J. Johnson**, **An-**

gela L. Jones, **Sharika L. King**, **Kathryn G. Landry**, **Shalane E. Loehn**, **Jeffrey M. Lust** and **Austin Marks**. Also, seven new associates joined the firm in 2014, including **Samuel L. Fuller**, **Linda E. Gonzales**, **Erin Delatte Lindgren**, **Jonathan D. Parker**, **Kim L. Paul**, **David K. Smith** and **Reshonda Whitney Thompson**.

Breazeale, Sachse & Wilson, L.L.P., announces that Christopher D. Billings has been named a partner in the Baton Rouge office and Joseph R. Hugg and Wesley M. Plaisance have been named partners in the New Orleans office.

Cazayoux Ewing, L.L.C., announces that it has opened offices in Baton Rouge and New Roads. The Baton Rouge office is located at 257 Maximilian St., Baton Rouge, LA 70802, phone (225)650-7400. The New Roads office is located at 143 E. Main St., New Roads, LA 70760, phone (225)638-3276. The firm is founded by Donald J. Cazayoux, Jr. and J. Lane Ewing, Jr. Also, J. Stan Lemelle has joined the firm.

Durio, McGoffin, Stagg & Ackermann in Lafayette announces that **Ryan M. Goudelocke** has been elected as a director in the firm.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., in New Orleans announces that Nakisha Ervin-Knott and Walter C. (Bubba) Morrison IV were named members in the firm.

Gibson Gruenert, P.L.L.C., based in Lafayette and Houston, Texas, announces that attorney and certified mediator **J. Danielle Munro** has joined the firm.

Haik, Minvielle & Grubbs, L.L.P., in New Iberia announces that **Jean Paul (JP) D'Albor** has been named a partner in the firm.

Hurley & Cot, A.P.L.C., in New Orleans announces that **Shannon A. Kelly**, **Robert K. Denny** and **Shannon M. Cowie** have joined the firm as associates.

Maureen Blackburn Jennings announces the opening of her office for the practice of



Richard J. Arsenault



Jamie H. Baglio



Sean A. Blondell



James T. Busenleener



James Kody Cannon



Erin E. Cloyd



Shannon M. Cowie



Jean Paul D'Albor



Robert K. Denny



Susan Fahey
Desmond



Elia Diaz-Yaeger



Douglas R. Elliott



Samuel L. Fuller



Pamela B. Gautier

employment law in Louisiana and Texas, located at Ste. 1800, 3 Riverway, Houston TX 77056, phone (713)209-2930.

Juneau David, A.P.L.C., in Lafayette announces that Kyle N. Choate has joined the firm as an associate.

Liskow & Lewis, A.P.L.C., announces the election of two new shareholders: Tiffany Delery Davis in the New Orleans office and April L. Rolan-Ogden in the Lafayette office.

Attorney **Darrell J. Loup** has opened his solo practice, the Law Office of Darrell J. Loup, L.L.C., located at Ste. 601, 9720 Siegen Lane, Baton Rouge, LA 70810. He also will be of counsel with Akers & Wisbar, L.L.C., in Baton Rouge, effective June 1. He is retiring as in-house counsel with State Farm Mutual Automobile Insurance Co.

Matthiesen, Wickert & Lehrer, S.C., a firm based in Wisconsin, announces the opening of its New Orleans office, located at Ste. 402, 101 W. Robert E. Lee Blvd., New Orleans, LA 70124, phone (262)673-7850. **James T. Busenlener** is the managing partner of the New Orleans office.

McGlinchey Stafford, P.L.L.C., announces that Camille R. Bryant and Mark R. Deethardt have joined the New Orleans office as associates.

Pendley, Baudin & Coffin, L.L.P., of Plaquemine and New Orleans announces that **Nicholas R. Rockforte** has been named a partner in the firm and **Jessica A. Perez** has joined the firm as an associate.

Preis & Roy, P.L.C., announces that Daryl J. Daigle has joined the firm's New Orleans office.

Pugh, Accardo, Haas, Radecker & Carey, L.L.C., in New Orleans announces that **Margaret M. (Peggy) Joffe**, **Douglas R. Elliott** and **Jamie H. Baglio** have joined the firm as special partners.

Sigler & Raglin, Attorneys at Law, A.P.L.L.C., in Lake Charles announces that **James Kody Cannon** has joined the firm as an associate.

Taylor English Duma, L.L.P., in Atlanta, Ga., announces that Christine S. Tenley has joined the firm.

Walters, Papillion, Thomas, Cullens, L.L.C., of Baton Rouge announces that Hayden A. Moore has joined the firm as an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, participated in a Mass Tort Round Table published in the *Brook Hollow Review*. He was a speaker at the *LSU Law Review*

MDL Symposium on "Collaboration with Judges and Attorneys in MDL Case Management" and "Integrating Aggregated and Disaggregated Discovery Issues," as well as discussing "Predictive Coding and Preservation Obligations" at a recent Louisiana State Bar Association seminar.

Susan Fahey Desmond, a shareholder in the New Orleans office of Jackson Lewis, P.C., was inducted into the National Association of Professional Women's VIP Membership level (VIP Woman of the Year).

Elia Diaz-Yaeger, a shareholder in the firm of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard in New Orleans, was appointed deputy Region XII president of the Hispanic National Bar Association. She is currently serving as immediate past president of the Hispanic Lawyers Association of Louisiana.

Continued next page



Linda E. Gonzales



Ryan M. Goudelocke



Helen Popich Harris



Matthew D. Hemmer



Maureen Blackburn Jennings



Margaret M. Joffe



Sophia J. Johnson



Angela L. Jones



Shannon A. Kelly



Scott B. Kiefer



Sharika L. King



Harvey C. Koch



Kathryn G. Landry



Erin Delatte Lindgren

Melissa M. Grand, an attorney in the Baton Rouge office of Adams and Reese, L.L.P., was elected president and board chair for Boys Hope Girls Hope Baton Rouge.

Helen Popich Harris, with Helen Popich Harris, A.P.L.C., in Lafayette, was selected as a Fellow of the American Academy of Matrimonial Lawyers.

Harvey C. Koch, a partner in the firm of Montgomery Barnett, L.L.P., in New Orleans, received the American Bar Association's (ABA) Martin J. Andrew Award for Lifetime Achievement in Fidelity and Surety Law. The award, recognizing significant contributions to the fidelity and surety law profession, was presented by the ABA's Fidelity and Surety Law Committee. Koch chaired that committee in 1990-91.

W. Brett Mason, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was invited to join the Claims and Litigation Management Alliance.

Robert W. Mouton, managing partner of the New Orleans office of Locke Lord, L.L.P., was named Commercial Real Estate Attorney of the Year in Louisiana by *Corporate International Magazine*.

Matthew A. Treuting, a partner in the firm of Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans, was certified by the Louisiana Board of Legal Specialization in estate planning and administration.

Laura Tuggle was named the new executive director of Southeast Louisiana Legal Services.

PUBLICATIONS

The Best Lawyers in America 2014

Ostendorf Tate Barnett, L.L.P. (New Orleans): John G. Alsbrook.

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): Jack M. Allmont, Joy Goldberg Braun, J. David Forsyth, Max Nathan, Jr., Carole Cukell Neff and Peter S. Title.

Chambers USA 2014

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, Donna D. Fraiche, Steven F. Griffith, Jr., Jan M. Hayden, Kenneth M. Klemm, Amelia W. Koch, M. David Kurtz, Kent A. Lambert, Jon F.

Leyens, Jr., Mark W. Mercante, William N. Norton, David C. Rieveschl, James H. Roussel, Danny G. Shaw and Paul S. West.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Robert L. Atkinson, Thomas M. Benjamin, David R. Cassidy, Murphy J. Foster III, Alan H. Goodman, Richard D. Leibowitz, Steven B. Loeb, Eve B. Masinter, E. Fredrick Preis, Jr., Claude F. Reynaud, Jr. and Jerry L. Stovall, Jr.

Sessions, Fishman, Nathan & Israel, L.L.C. (New Orleans): J. David Forsyth.

Louisiana Super Lawyers 2014

Locke Lord, L.L.P. (New Orleans): Robert W. Mouton.

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

New Orleans CityBusiness

Courington, Kiefer & Sommers, L.L.C. (New Orleans): **Scott B. Kiefer** and **William J. Sommers, Jr.**, Leadership in Law Class 2014.

Montgomery Barnett, L.L.P. (New Orleans): John Y. Pearce, Leadership in Law Class 2014.

Orleans Public Defenders (New Orleans): Chief of Trials Kenny Green, Leadership in Law Class 2014.



Shalane E. Loehn



Darrell J. Loup



Jeffrey M. Lust



Austin Marks



J. Danielle Munro



Jonathan D. Parker



Kim L. Paul



Jessica A. Perez



Nicholas R. Rockforte



William B. Schwartz



David K. Smith



William J. Sommers, Jr.



Reshonda Whitney Thompson



Matthew A. Treuting

UPDATE



Judge (Ret.) Leon L. Emanuel III, second from right, is the new executive director of Legal Services of North Louisiana, Inc. Attending the welcome reception in the central Shreveport office were, from left, Bobby L. Stromile, Ben L. Politz, Mary A. Brown, Emanuel and Mary Ellen Halterman. Two more receptions were held in the Natchitoches and Monroe branch offices.

Emanuel Named Executive Director of Legal Services of North La.

Judge (Ret.) Leon L. Emanuel III is the new executive director of Legal Services of North Louisiana, Inc., with its central office in Shreveport. Emanuel served as a judge in the 1st Judicial District Court (Caddo Parish) for more than 21 years. He was first elected in 1992 and reelected in 1996, 2002 and 2008. He retired in 2013. He is returning to Legal Services work, having previously served as executive director for eight years.

Board and staff members organized welcome receptions in March in the Shreveport, Natchitoches and Monroe offices. The receptions were sponsored by private attorneys and firms. Shreveport sponsors were attorneys Ross E. Shacklette, Patricia A. Shacklette, Mary A. Brown,

Mary Ellen Halterman and Bobby L. Stromile. The law firm of Taylor Townsend sponsored the Natchitoches event and the Monroe event was sponsored by the law firm of Willie Hunter. Also attending the reception was Carrie Rogers, pro bono coordinator with the Shreveport Bar Foundation Pro Bono Project.

Legal Services of North Louisiana, a non-profit agency serving 26 parishes, provides free legal assistance for people who are unable to afford legal representation and whose household income is at or below the federal poverty guideline. Funding is primarily from the Legal Services Corp. in Washington, D.C. Supplemental funding is provided through the Louisiana Bar Foundation.



For National Women's History Month in March, the Louisiana Supreme Court Museum hosted a "Women in Law" exhibit through the month, featuring a timeline of the history of women in law and other displays celebrating Louisiana women judges currently serving the state and federal judiciary. The exhibit made its debut during the annual National Association of Women Judges Conference in October 2013.

Tureaud Portrait Installed in Law Library State Wing

A portrait of the late New Orleans civil rights attorney Alexander Pierre (A.P.) Tureaud, Sr. was officially presented during a March 13 ceremony at the Louisiana Supreme Court.

The portrait, painted by Haitian artist and New Orleans resident Ulrick Jean-Pierre, will be permanently installed in the State Wing of the Louisiana Law Library, located on the second floor of the courthouse. The portrait is a gift to the Louisiana Supreme Court from A.P. Tureaud, Jr.

More than 150 people attended the ceremony, including members of the Supreme Court of Louisiana Historical Society and the A.P. Tureaud, Sr. Legacy Committee, as well as Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and the associate justices.

Tureaud, Sr. was the preeminent civil rights attorney of Louisiana from the mid-1920s until his death in 1972. As the local attorney for the NAACP Legal Defense and Education Fund, he handled nearly all of the desegregation and other civil rights cases filed in Louisiana that successfully ended Jim Crow segregation throughout New Orleans and the state.

"In this year, as the country celebrates the 50th anniversary of the Civil Rights Act of 1964, it is fitting that the portrait of this tireless civil rights attorney be prominently displayed in Louisiana's highest court and that the A.P. Tureaud, Sr. portrait will be the first African-American attorney portrait among the court's historical collection," Chief Justice Johnson said.



Portrait of the late New Orleans civil rights attorney Alexander Pierre (A.P.) Tureaud, Sr. Photo by David Rigamer.

Dr. Norman C. Francis, president of Xavier University of Louisiana and a colleague and friend of Tureaud, Sr., was the featured speaker. G. Okyeame Haley of the Louisiana Supreme Court was the master of ceremonies. Other presenters were A.P. Tureaud, Jr., who in 1953 became the first person of color to attend the formerly segregated Louisiana State University; Donna D. Fraiche, president of the Supreme Court of Louisiana Historical Society; and Royce I. Duplessis, president of the A.P. Tureaud, Sr. Legacy Committee.

Justice Clark to Chair Judicial Budgetary Control Board

Louisiana Supreme Court Associate Justice Marcus R. Clark has been appointed chair of the Judicial Budgetary Control Board, Chief Justice Bernette Joshua Johnson announced. His service will end Dec. 31, 2016.

The Judicial Budgetary Control Board, composed of 13 members who serve three-year terms, governs the expenditure of all funds appropriated by the Legislature to the judiciary. Other board members are the chief justice of the Supreme Court; the chief judge of each court of appeal; a district court judge selected by the Louisiana District Court Judges Association; two other district court judges; a judge from Orleans Parish Criminal Court; a judge of a separate juvenile or family court; and the judicial administrator of the Supreme Court.

Pro Bono Project Names 2014 Officers and Board

The Pro Bono Project of New Orleans has named its 2014 officers and board members. Jan M. Hayden is chair; Carole Cukell Neff, first vice chair; Norman Rubenstein, second vice chair; Christopher K. Ralston, treasurer; Michael T. Tusa, Jr., secretary; and Catherine E. Lasky, immediate past chair.

Serving on the 2014 board are Mindy Brickman, P. Kevin Colomb, Sr., Caroline McSherry Dolan, Michelle Egan, Patrick C. Fraizer, Larry Gibbs, Pamela V. Hansen, Chauntis T. Jenkins, Robert A. Kutcher, Steven J. Lane, Kim A. Perret, Wendy Hickok Robinson and Gregory F. Rouchell.

Ex-officio board members are Alanah Odoms Hebert, Lindsey M. Ladouceur, J. Van Robichaux, Leopold Z. Sher and Pro Bono Project Executive Director Rachel Piercy.

SEND YOUR NEWS!

The *Louisiana Bar Journal* would like to publish news and photos of your activities and accomplishments.

Email your news items and photos to:

LSBA Publications Coordinator Darlene LaBranche at dlabranche@lsba.org.

Or mail press releases to:

Darlene LaBranche, 601 St. Charles Ave., New Orleans, LA 70130-3404

Lafayette Bar Hosts Court Opening Ceremony

The Lafayette Bar Association hosted the annual Court Opening ceremonies on Jan. 6 for the opening of the 15th Judicial District Court. The tradition of opening court each fall dates back to the days when most courts closed during the summer months. Now, the tradition is celebrated in Lafayette at the beginning of the year.

All newly admitted attorneys were formally introduced to the court. Additionally, members of the Bar from Lafayette, Acadia and Vermilion parishes who died during the past year were honored and eulogized by family members and colleagues.

Prior to the court opening, all Lafayette area attorneys and members of the Lafayette Bar Association Auxiliary were invited by Bishop Michael Jarrell to join in the celebration of the annual Red Mass at St. John Cathedral. Following the Mass, the Lafayette Bar Association Auxiliary hosted a reception at the Cathedral Center.



The Lafayette Bar Association (LBA) hosted the annual Court Opening ceremonies on Jan. 6 for the opening of the 15th Judicial District Court. Among those attending were, from left, LBA President-Elect Kyle L. Gideon, LBA President Tricia R. Pierre, Louisiana State Bar Association President Richard K. Leefe; LBA Secretary/Treasurer Danielle D. Cromwell and LBA Immediate Past President Blake R. David.

Martinet Society Hosts Legislative Breakfast

The Greater New Orleans Louis A. Martinet Legal Society, Inc. hosted a legislative breakfast in February, bringing together members of the community and members of the Louisiana Legislature to discuss critical legislation introduced during the 2014 legislative session.

This interactive event allowed legislators from various districts to engage with members of the legal community and the community at-large to address concerns about past and future legislation that might affect the minority community as a whole.

Legislators attending were Speaker Pro Tempore Walter J. Leger III, Sen. Edwin R. Murray, Rep. Jared Brossett, Rep. Wesley Bishop and Rep. Austin Badon.



The New Orleans Bar Association (NOBA) and its Young Lawyers Section (YLS) hosted the annual Tulane/LSU Game Night on March 25. More than 60 people attended the baseball game at Tulane's Turchin Stadium. Attendees also toured Tulane's new football stadium, currently under construction. From left, NOBA President Mark C. Surprenant, NOBA Executive Director Helena Henderson, Game Night sponsor John Pearson, YLS Chair Camala E. Capodice and event organizers Tara G. Richard and Christopher K. Ralston.



The Louisiana Chapter of the American Board of Trial Advocates held its annual meeting and dinner in April. Louisiana Supreme Court Associate Justice Jeanette Theriot Knoll spoke on the "Direction of the Supreme Court and Our Quest for Justice and Progress." Chapter officers also were installed. From left, Sharon Stickling, executive director; Don S. McKinney, treasurer; Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; J. Patrick Hennessy, president; Louisiana Supreme Court Associate Justice Jeanette Theriot Knoll, guest speaker; and Edward E. Rundell, immediate past president. Not in photo, Mike Gertler, president-elect; and J. Michael Veron, secretary.



The Lafayette Bar Association's (LBA) Family Law Section presented a scholarship to Taylor Johnson, fourth from left, to assist with her work with the association this year. She will assist the Lafayette Volunteer Lawyers (LVL) and other LBA sections. From left, Family Law Section President Maggie T. Simar, Lois Allmon, Hon. Pamela Johnson, Johnson, LVL Director Tammy DeRouen and LBA Executive Director Josette Abshire.

Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — *are required to be filed* with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation process, the required filing fee(s) and the pertinent Rules are available online at: <http://www.lsba.org/members/LawyerAdvertising.aspx>.

Inquiries, questions and requests for assistance may be directed to LSBA Ethics Counsel Richard P. Lemmler, Jr., RLemmler@LSBA.org, (800)421-5722, ext. 144, or direct dial (504)619-0144.

INN OF COURT



The Acadiana Inn of Court achieved the Platinum Level Distinction from the American Inns of Court. The Inn's Executive Committee accepted the award, from left, Shawn A. Carter, Steven C. Lanza, Holli K. Yandle, Camille A. Domingue, Mimi E. Methvin, Lisa D. Hanchey, Judge Carl E. Stewart, Judge Ivan L.R. Lemelle, Mike P. Maraist, Danielle D. Cromwell, Amy A. Lee, Diane A. Sorola and Kenanne Dooley.

Acadiana Inn of Court Receives Top National Honors

For the fourth consecutive year, the Acadiana Inn of Court achieved the Platinum Level Distinction from the American Inns of Court (AIC), the highest possible commendation of a local Inn awarded by the AIC. Lafayette's Inn was among only 14 percent of Inns in the country receiving this distinction.

Also recognized by the AIC was Team 1 of the Acadiana Inn, led by Assistant U.S. Attorney Camille A. Domingue, which received the First Place Program Award for its presentation, "Money Talk\$ So Nobody Walks: The Persistent Funding Crisis in Indigent Defense." Team 1 has garnered 12 national awards since 1991.

Acadiana's Inn also received two Outstanding Program Awards from the national Inn. Team 4 won for the "Wizard of Lawz," presented as the program for the 2013 National Inns of Court Foundation symposium in New Orleans. Also receiving an award was Team 8 for its program, "A Celebration of Professionalism."

This is the first time in AIC history that a single Inn has reached Platinum

status, while also receiving a First Place Program Award and two Outstanding Program Awards. Presenting the awards were Chief Judge Carl E. Stewart of the U.S. 5th Circuit Court of Appeals and Judge Ivan L.R. Lemelle, U.S. District Court for the Eastern District of Louisiana.

Lisa D. Hanchey is the 2013-14 president of the Acadiana Inn of Court. The Executive Committee also includes Amy Allums Lee, president-elect; Franchesca L. Hamilton Acker, past president; Frank S. Slavich III, secretary; Elena Arcos Pecoraro, treasurer; Camille A. Domingue, counselor; and Steven C. Lanza, reporter.

Also serving on the Executive Committee are Holli K. Yandle, program chair; Shawn A. Carter, membership chair; Michael P. Maraist and Jerome H. Moroux, membership; Diane A. Sorola, meeting coordinator; Danielle D. Cromwell, community service coordinator; and Mildred E. Methvin and William W. Stagg, at-large members. Kenanne Dooley is Inn administrator.

President's Message

Louisiana Campaign to Preserve Civil Legal Aid

By President Hon. C. Wendell Manning

My focus as Louisiana Bar Foundation (LBF) president is to build on the initiative unveiled earlier this year by raising awareness of the indigent population's civil legal aid needs and increasing the resources available to address those needs. Nearly 20 percent of Louisiana citizens live in poverty. We rank among the highest in the nation. If we are going to improve the lives of children and families, we must recognize that civil legal aid is an essential component of philanthropic efforts to improve the economic, social and health conditions for low-income people and their communities.

Sometimes, legal aid is the only thing standing between a family's ability to be self-sufficient and poverty. For many Louisiana citizens facing crisis, an effective and powerful response must include civil legal aid. Schools, businesses, government agencies and the state as a

whole benefit from resolving civil legal problems. We know that increased funding for civil legal aid will have a ripple effect, impacting not only families served, but the community at large.

The LBF has united with the Louisiana State Bar Association (LSBA) and other key stakeholders to launch the Louisiana Campaign to Preserve Civil Legal Aid. The goal is to raise funds for civil legal aid and increase awareness of the growing civil legal needs of our citizens. The campaign is modeled after similar statewide campaigns in Washington, Oregon, California and Texas. These campaigns are making a big impact in supporting the services provided by their legal aid networks.

For many months, the campaign com-



Hon. C. Wendell Manning

mittee has been busy meeting and planning this initiative. In January, a resolution supporting the campaign was passed by the LSBA House of Delegates. With the state Bar's much needed formal support, the committee is now making plans to roll out the campaign across the state through local and specialty bar associations and other legal organizations. Once we have the support of the bench and bar, the committee will then bring the campaign to the private sector and the public at large.

We want everyone to get involved in the campaign. Volunteer to be on the committee, help us identify legal organizations we can present campaign information to and/or make a donation. We need your help and hope you will join us. I extend a special thanks to the many dedicated volunteers serving on the campaign committee. If you would like to get involved, contact LBF Development Director Laura Sewell at (504)561-1046.

Awards Presented at LBF's 4th Annual Assembly

Several awards were presented during the Louisiana Bar Foundation's (LBF) 28th Annual Fellows Gala, the culminating event of its fourth Annual Assembly in April. Among those receiving awards were Distinguished Jurist Carl E. Stewart, Distinguished Attorney Frank X. Neuner, Jr., Distinguished Professors William R. Corbett and Robert Force, and the Calogero Justice Award recipient Hon. Robert H. Morrison III.

The President's Award and the Horn Blower Award were presented during the LBF Annual Fellows Membership Meeting.

LBF President Leo C. Hamilton presented the **President's Award** to Bennett L. Politz and E. Jane Sherman. The President's Award recognizes outstanding support, volunteer service and dedication and advancement of the LBF's mission and goals. Sherman and Politz have co-chaired the LBF Development Committee, leading the efforts of the "Louisiana Campaign to Preserve Civil Legal Aid."



Louisiana Bar Foundation President Leo C. Hamilton, left, presented the President's Award to E. Jane Sherman. Also honored with the award was Bennett L. Politz. Photo by Matthew Hinton Photography.

Continued next page



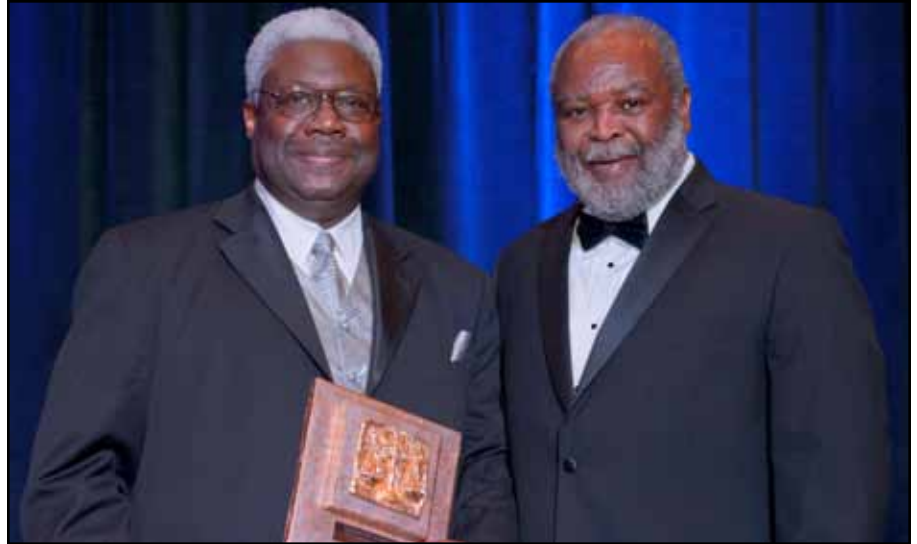
Louisiana Bar Foundation President Leo C. Hamilton, left, presented the Horn Blower Award to the Office of the Louisiana Attorney General Public Protection Division. Division Director Sanettria G. (Sam) Pleasant accepted the award. *Photo by Matthew Hinton Photography.*

LBF continued from page 75

The **Horn Blower Award** was awarded to the Office of the Louisiana Attorney General Public Protection Division. The award is presented to a partner organization in recognition of outstanding support and leadership in advancing an LBF initiative, project or program. The Office of the Louisiana Attorney General Public Protection Division was recognized for its assistance, protections and relief provided to Louisiana citizens affected by the National Mortgage Servicing Settlement. The LBF began working with the Office of the Attorney General last May as Louisiana joined 49 other states in a \$25 billion joint state-federal mortgage servicing settlement with the nation's five largest mortgage services.



Distinguished Attorney Frank X. Neuner, Jr., right, with Louisiana Bar Foundation President Leo C. Hamilton. *Photo by Matthew Hinton Photography.*



Distinguished Jurist Carl E. Stewart, left, with Louisiana Bar Foundation President Leo C. Hamilton. *Photo by Matthew Hinton Photography.*



Distinguished Professor Robert Force, right, with Louisiana Bar Foundation President Leo C. Hamilton. *Photo by Matthew Hinton Photography.*



Distinguished Professor William R. Corbett, right, with Louisiana Bar Foundation President Leo C. Hamilton. *Photo by Matthew Hinton Photography.*



Calogero Justice Award recipient Hon. Robert H. Morrison III, center, with Louisiana Bar Foundation President Leo C. Hamilton, left, and award namesake, Louisiana Supreme Court Chief Justice (Ret.) Pascal F. Calogero, Jr. *Photo by Matthew Hinton Photography.*

Manning to Lead LBF's 2014-15 Board

Hon. C. Wendell Manning, with the 4th Judicial District Court, Division F, in Monroe, was installed as the 2014-15 president of the Louisiana Bar Foundation (LBF). Other officers are Vice President H. Minor Pipes III, New Orleans; Treasurer E. Jane Sherman, Baton Rouge; and Secretary Valerie Briggs Bargas, Baton Rouge.

Judge Manning serves on the 4th Judicial District Court for the parishes of Morehouse and Ouachita. He is a 1988 graduate of Louisiana State University Paul M. Hebert Law Center. He holds a BA degree and an MBA degree in finance from Louisiana Tech University. Prior to being elected judge, he was a partner in the firm of Theus, Grisham, Davis & Leigh, L.L.P., in Monroe.

Pipes is a founding member of Barrasso Usdin Kupperman



Hon. C. Wendell Manning



H. Minor Pipes III

Freeman & Sarver, L.L.C., in New Orleans. He received his BA degree from Pennsylvania State University and his JD degree from Louisiana State University Paul M. Hebert Law Center.

Sherman, an attorney in Baton Rouge, is a charter Fellow of the LBF, beginning her involvement in 1987 while serving as chair of the Louisiana State Bar Association's Young Lawyers Section. She is a former partner of Mangham, Hardy, Rolfs & Abadie and counsel of Phelps Dunbar, L.L.P. She received her undergraduate and JD degrees from Louisiana State University.



E. Jane Sherman

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



Valerie Briggs Bargas

Tulane University Law School.

New board members are Karleen J. Green, Baton Rouge; Rebekah R. Hugkins, Lafayette; and Christopher K. Ralston, New Orleans.

Other members of the 2014-15 board of directors are Mathile W. Abramson, Gonzales; Hon. Marc T. Amy, Abbeville; Paula A. Ates, Destrehan; Amanda W. Barnett, Alexandria; David F. Bienvenu, New Orleans; Alan G. Brackett, New Orleans; Elwood F. Cahill, Jr., New Orleans; Hon. Eldon E. Fallon, New Orleans; Donna D. Fraiche, New Orleans; Marcel Garsaud, Jr., New Orleans; Cyrus J. Greco, Baton Rouge; Leo C. Hamilton, Baton Rouge; Harry S. Hardin III, New Orleans; Suzanne M. Jones, Covington; Patricia A. Krebs, New Orleans; Richard K. Leefe, Metairie; Hon. M. Lauren Lemmon, Hahnville; Hon. James R. McClelland, Franklin; Hon. Page McClendon, Madisonville; Robert C. McCorquodale, Lake Charles; Hon. Roy S. Payne, Marshall, Texas; Drew Ranier, Lake Charles; Herschel E. Richard, Shreveport; Garland R. Rolling, Metairie; Joseph L. (Larry) Shea, Jr. Shreveport; W. Michael Street, Monroe; John G. Swift, Lafayette; and Paul W. Wright, Wimberley, Texas.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces two new Fellows:

Ann B. McIntyre Winnsboro
Charles M. Thomas New Orleans
Colby F. Wenck New Orleans

ANSWERS for puzzle on page 40.



INDEX TO ADVERTISERS

Alston Law Firm, L.L.C.	41	Laporte CPAs & Business Advisors.....	5
D. Wesley Attaway.....	78	LawPay	1
A. David Aymond	79	Legier & Company	IFC
Bourgeois Bennett.....	52	LexisNexis	2
Cardone Law Firm	48	Louisiana Association for Justice.....	35
Cazayoux Ewing, L.L.C.....	44	MAPS, Inc.....	36, 54
Christovich & Kearney, L.L.P.....	42	The Patterson Resolution Group.....	46
CMC Advisors	51	Schafer Group, Ltd.....	57
DiRosa & DiRosa	53	Mary Ann Sherry.....	79
Kay E. Donnelly & Associates.....	49	Schiff, Scheckman & White, L.L.P.....	43
Robert G. Foley.....	78	Southern Coins and Precious Metals	45
Tom Foutz /ADR inc.....	47	C. David Vasser, Jr. / La. Personal Injury Litigation Defense Guide.....	55
Gilsbar, Inc.....	25, IBC	The Write Consultants.....	79
Law Office of Deborah M. Henson, L.L.C.....	42		

CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

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

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\$20 for Classy-Box number

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\$1 per each additional word
No additional charge for Classy-Box number

Screens: \$25

Headings: \$15 initial headings/large type

BOXED ADS

Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE

For the August issue of the Journal, all classified notices must be received with payment by June 18, 2014. Check and ad copy should be sent to:

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Classified Notices
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RESPONSES

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

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c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

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The Last **WORD**

By Joseph I. Giarrusso III

INVALUABLE LIFE LESSONS

If you are reading this, you're a lawyer, related to a lawyer, or both. My situation is even worse. As Romulus and Remus were raised by wolves, I was raised by litigators. Yet instead of running as fast as I could away from all legal things, I chose to marry a lawyer whose father is also a lawyer. In short, I have spent my lifetime in the company of lawyers. This exposure has taught me invaluable life lessons.

Children Are Not Deponents

If you have seen the movie "Finding Nemo," you may remember the sharks who pledge not to consume smaller aquatic life — "I am a nice shark. Not a mindless eatin' machine. If I am to change this image, I must first change myself. Fish are friends. Not food." Lawyers need to repeat a similar mantra with their children. "Our kids are not deponents." When I was about 8 years old, my parents cross-examined me about something I had done wrong. This was not my first rodeo with the barrage of questions, but let's be honest. An 8-year-old against two seasoned lawyers is not a fair fight. After a few minutes of their Q&A, as family legend goes, I exclaimed, "THIS ISN'T FAIR. YOU PEOPLE ARE TRAINED TO QUESTION PEOPLE FOR A LIVING. I HOPE YOU'RE ENJOYING YOUR PERRY MASON MOMENT WITH YOUR CHILD!"

[Note from My Wife: Wives, especially lawyer-wives, also do not like to be deposed and do not like it when you "object" to their answers as "nonresponsive." Repeat: DO NOT OBJECT TO THE RESPONSIVENESS OF THE ANSWER. That's my collective knowledge from 10 years of marriage.]

You're Almost Always Safe with "I Don't Know"

I can safely tell this story now because the parental statute of limitations has run. Fast forward 14 years to when I was in law school. I was leaving a friend's house and was not paying close enough attention to a large truck behind me. I backed my small Sentra into the truck. The truck was damage-free but the Sentra had an apple-sized indentation in the bumper. When I came home from LSU a few weeks later, my Dad noticed the dent and immediately began interrogating me with every iteration of the same question, "How did you screw up your car?" I have to give the old man credit. For 10 minutes, he peppered me with questions about what happened. Finally, seeing there would be no relenting, I said, "Dad, I don't know how the dent happened. That's my story and I'm sticking to it." He gave a faint smile that was half "I cannot believe this is what the kid is pulling" and half "look how far he's come." We never discussed the car dent again.

Well-Placed Humor Can Lessen Punishment/Defuse a Potential Situation

I also learned this lesson the hard way. If I could make a funny quip as my punishment was about to be doled out, then the wardens would go easier on me and might even exonerate me completely. The same is true in a tense deposition or in court. Several months ago, I was working with a "more seasoned" lawyer (a euphemism for "older") whom I will call Dean Fondler.¹ We had a PI case in which we had filed a motion to strike the plaintiff's liability expert. After hearing argument from both sides, the judge issued his ruling from the bench, denying the motion. But he also

issued a tongue-in-cheek challenge: "Mr. Giarrusso, I have been a judge for several years now. I am waiting, just waiting, on that one withering cross-examination that shows me someone is not qualified to offer expert testimony. Let's see if you can be the first." Without missing a beat, I said, "Well, Judge, it sounds like Mr. Fondler has his work cut out for him." Not only could I hear laughter from the other lawyers in the courtroom, but I had now shifted the burden to Dean to answer the challenge. Mom and Dad would have been proud.

Never Let Your Clients See You Negotiate with Your Children

Daughter Number 1, age 7, will either be a car salesman or an attorney. She negotiates without fear and is singularly focused on her ends. I knew we were in major trouble when she was only 2. One afternoon after nap time, she asked for five cookies. I said, "No, but you can have two." Her eyes gleamed as she gleefully accepted. I remember thinking, "Son of a gun. I've been bested by a toddler who would have accepted far less." So, the lineage continues . . .

FOOTNOTE

1. I have changed the name to protect the innocent. But he seriously gets mail addressed to Mr. Fondler.

Joseph I. Giarrusso III is a shareholder in the New Orleans office of Lis-kow & Lewis, P.L.C. He received his JD degree in 2001 from Louisiana State University Paul M. Hebert Law Center (Louisiana Law Review and Order of the Coif). He is admitted to practice in Louisiana and Texas.



The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed. But Editor Barry H. Grodsky is broadening the scope of the section, including "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email Grodsky at bgrodsky@taggartmorton.com or LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

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