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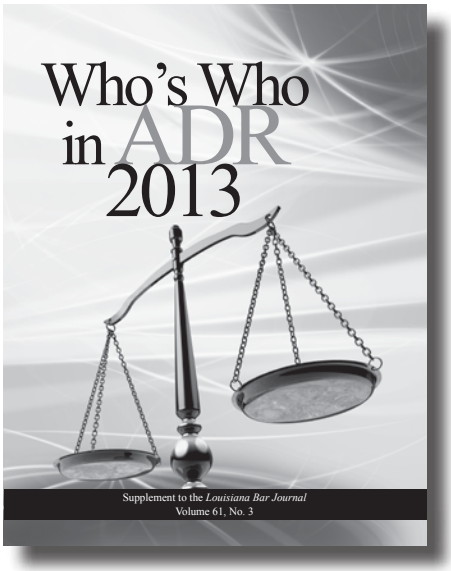

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Shreveport attorneys, from left, Harold C. Gilley, Jr., Patricia A. Gilley and Tristan P. Gilley on the steps of the U.S. Supreme Court in Washington D.C. *Photo provided by the Gilley Family. Read more on page 178.*

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By Barry H. Grodsky

Vince, Thanks for Making Us Smile!

Although I hope one day to do so, I have never met Vince Fornias. I really would like to. We all know Vince as the author of "Lucid Intervals," the often irreverent, ever witty last page of the *Louisiana Bar Journal*. Anyone who can write like he does would be great, not to mention fun, to meet.

Vince Fornias

But, alas, all good things must come to an end and it is with sadness that Vince will not be contributing his "Lucid Intervals" segment for the *Journal* any longer.

How many times have we heard attorneys say they are "looking at the back of the *Bar Journal*?" The standard joke, of course, was to see who was in the disciplinary report. However, just as often, it was to read "Lucid Intervals" first before digging into the substance of the *Journal*.

Vince's wit and wisdom made us smile, made us think and made us chuckle. He didn't cross the line to simply spew lawyer jokes, which are actually demeaning to the profession and generally not very funny. He wrote to truly humor us.

I recall two particularly funny articles he wrote — one titled "Electile Dysfunction" was the official guide to Louisiana elections, and the other provided a list of text message acronyms (my favorite was "PIH," Plattsmier Is Holding).

Vince will be missed, but the last page will carry on. While "Lucid Intervals" will be no more, the *Journal* will have "The Last Word" to grace its final page. The tone will be a bit different. We will have articles from Bar members dealing with humor, personal perspectives, human interest and just plain old "feel good" pieces. The authors will vary; the next few *Journals* will have contributions from our Editorial Board. We certainly welcome contributions from lawyers and judges alike (remember, though, no lawyer jokes).

So now we bid a fond farewell to Vince Fornias. We thank him for his contributions and hard work and for making us smile and often laugh out loud. Realizing he wanted to spend time doing other things was apparently indeed his final "Lucid Interval."

Barry Grodsky

By Richard K. Leefe

The New Class of Lawyers

In October 2013, we welcomed a new class of attorneys to the practice of law in Louisiana. Each one became a new member of the Louisiana State Bar Association (LSBA). It is our obligation to provide the assistance they need to get their practices going — whether it is in their new employment or whether it is helping them move past unemployment (as, unfortunately, many will face).

> It is my hope that as practicing attorneys we all become involved in helping these new attorneys get their feet on the ground and learn the practical elements of the practice which are not apparent until an attorney is in the trenches and gains true experience.

Having discussed these issues at length with the judiciary in Louisiana, it has become clear to me that when we declare newly admitted attorneys as ready to represent the public on their own, we are doing a disservice to the public. This is not meant as a criticism of the law schools or the new attorneys. The simple fact is that, just as doctors are required to complete a residency after medical school before they are certified as truly ready to treat the public on their own, lawyers need practical help and experience to learn the nuances of the practice of law. It was certainly my experience that attorneys truly learn to practice law after they graduate from law school and actually engage in the practice.

An effort to engage the experienced attorneys in solving these issues is a worthy project. These efforts have been in the organizational stages in Louisiana for several years and already are underway in a number of states. As I have discussed in previous President's Messages, the test mentoring program approved on May 15, 2013, by the Louisiana Supreme Court as Transition Into Practice (TIP) is moving toward implementation on Jan. 1, 2015. This program is certainly a step in the right direction and we all need to give it as much support as we can. We will need mentors. Please support the program and volunteer to be a mentor.

As LSBA president, I attended the National Conference of Bar Presidents in August 2013 and heard the countrywide discussion of the issues facing state bar associations. The issues we have are not unusual to Louisiana; the other states are seeing the same questions.

Each state expressed concern over the lack of employment of new attorneys, concern over new attorneys' preparedness for actual practice, as well as considerable discussion of the lack of understanding of young lawyers by the older attorneys. We all need to keep in mind that the new lawyers are who they are — they are the future of the profession. We may not agree with all that the younger set is about, but

they are who they are and we need to ensure that the profession continues to provide a fair and honest system for the public. Complaining about attitude, lack of respect, dress, appearance, dedication, etc., does not change the fact that times are changing. This, along with the new digital age of practice, is now a fact of life that must be recognized.

It is my hope that as practicing attorneys we all become involved in helping these new attorneys get their feet on the ground and learn the practical elements of the practice which are not apparent until an attorney is in the trenches and gains true experience.

By the time you read this, the LSBA-established "Month of Legal Service" for the members of the bench and bar will be well underway. Local bars and judicial districts are working together to offer and man "Ask-A-Lawyer" desks at their courthouses to help self-represented litigants gain access to justice that is often out of their reach. We need to show the willingness of Bar members to make the justice system available to all and show the new attorneys that public service is something we all need to participate in. If we all do our part, the effort is spread over more people and the effort needed from each individual is lessened. When some do not help, it raises the burden on those who do. We have not always been very good at emphasizing the good that Bar members do every day; this is an opportunity to show the public as well as new attorneys that bringing justice to all is a part of our system that we take seriously and are willing to give of ourselves for that goal.

As president, the LSBA membership has made me very proud of the outpouring of offers to help. From Lake Charles to Monroe, from New Orleans to Shreveport, it has been amazing how many attorneys have offered their help and come through when asked. The judiciary has expressed its appreciation and help in making a difference to those who are overwhelmed by the system and unable to afford the legal assistance they need. Be one of the attorneys who show the public that our profession is a good and honorable one.

Patricia Gilley and *Henderson v. United States*:

A Shreveport Small-Firm Lawyer's Path to Victory in the U.S. Supreme Court

By S. Christopher Slatten

Attorney Patricia A. (Pat) Gilley of Shreveport briefed and argued a case in the United States Supreme Court in 2012 — a rare event in itself for a Louisiana small-firm practitioner. In February of this year, she learned that she prevailed in that case, *Henderson v. U.S.*, 133 S.Ct. 1121 (2013). Her legal career and her solo effort before the high court were both along roads less traveled. During an interview at her family law firm, Gilley & Gilley in Shreveport, she discussed her personal history and the experience of presenting an argument to the Supreme Court. (She works with her husband, Harold C. Gilley, Jr., and their son, Tristan P. Gilley. All are referenced by their first names for the remainder of the article.)

Pat's interest in the law began at a young age as she grew up in small-town Streator, Ill., as the oldest of five children of a lawyer. She fondly recalls tagging along with her father for court appearances and being impressed when he walked through the bar and joined others with business before the court.

Pat considered another career path — a religious convent — but her life took a different turn when, in 1968, she sat beside young Harold Gilley in a class at the University of Illinois. It took Harold until the second semester to ask Pat out — to a Supremes concert — but Pat knew by the second date that she would marry him. They married in 1971.

Harold was committed to the Air Force after college, but he wanted to go to law school. Uncle Sam told him he was going to Thailand instead — unless he quickly confirmed admission to law school. Pat started working the phones. The couple had no ties with Louisiana, but she was able to persuade the chancellor of Louisiana State University Law School to admit them both. The Illinois natives drove to Baton Rouge in 1974 to begin their indoctrination in the civil law. After graduation, Harold was transferred to England Air Force Base in Alexandria, and Pat clerked for 3rd Circuit Judge William A. Culpepper.

The Air Force then decided that Harold was needed in Alaska, and the couple lived in Anchorage for five years. Pat worked for the Bureau of Land Management as a land-law examiner, where she found it thrilling to issue original patents from the United States to individuals who had staked out homesteads and claims in the wilderness. The couple had their first of three children in 1980, and Pat gave up her job to be a mother and homemaker for the next 10 years.

Shreveport attorney Patricia A. Gilley. *Photo provided by the Gilley Family.*

The Gilley family landed in the Shreveport area in 1986 after Harold was transferred to Barksdale Air Force Base. Pat soon persuaded Harold to retire after 20 years of service so the family could settle in the area. They both worked for a time for Support Enforcement, but Pat wanted to start a law firm.

The Gilleys took the risk and opened their firm, with their beginning civil practice supplemented with income Pat earned as a part-time conflicts attorney for the Caddo Parish Public Defender Board, where she saw her first courtroom work. The firm gained clients through the Shreveport Bar Association's attorney referral service and referrals from area attorneys. Among those referrals were civil rights cases from Shreveport attorney Henry C. Walker, which gave the Gilleys their first experiences in federal court.

Gilley & Gilley now has a broad general practice that handles everything from adoptions to successions. The Gilleys' son, Tristan P. Gilley, recently joined the firm. Pat says they love doing what they do, but her favorite cases are the federal criminal appointments she receives as a member of the Criminal Justice Act (CJA) panel. Her first jury trial was on a CJA appointment to represent a member of the Bottoms Boys gang in a lengthy multi-defendant trial in Shreveport in 1994. Almost 20 years later, her eyes still flash when she insists that her client never should have been charged as part of the conspiracy.

Pat's appellate experience has been primarily in CJA cases, and she has argued a few times before the 5th Circuit. The cases take a lot of preparation, but Pat says she finds the work rewarding and important. "Important" is a word Pat uses often to describe the causes of her clients. She knows it aggravates some courts when she "stirs them up" with motions and arguments that others might forego, but she says, "I'm going to do what I think is important."

One of these important clients was Armarcion Henderson, indicted for being a felon in possession of a firearm after the Haynesville chief of police stopped a truck in which Henderson was a passenger and found an SKS rifle and 20 rounds of ammunition beneath the passenger-side seat. Pat received a CJA appointment to represent Henderson. She filed a motion to suppress that was hotly contested, yet ultimately unsuccessful.

After losing the motion, Henderson pleaded guilty, subject to the right to appeal the suppression ruling, which made the case look just like scores of other felon-in-possession cases that pass through the federal court every year. There was certainly nothing about it that would make anyone predict it would reach the Supreme Court.

Then came the sentencing.

The sentencing guidelines suggested a range of 33 to 41 months of incarceration. There was evidence Henderson suffered from a substance abuse problem. The Bureau of Prisons has a highly regarded drug treatment program, but it is often unavailable to prisoners who are in for a short term. The district judge sentenced Henderson to 60 months in prison for the stated purpose that he could obtain drug rehabilitation.

Pat did not raise a procedural objection, but she later filed a motion to correct the sentence based on language in 18 U.S.C. § 3582(a). The statute says that certain fac-

tors are to be considered in determining a sentence, "recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation." The district court denied the motion as untimely and said the issue would be left to the appellate court.

Pat appealed. With the appeal pending, *Tapia v. U.S.*, 131 S.Ct. 2382 (2011), interpreted § 3582(a) and held 9-0 that it is error for a court to "impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation." The 5th Circuit Court of Appeals said Pat was correct that the district court erred, but the lack of a timely objection meant the appellate court could change the result only if it was "plain error" within the meaning of Federal Rule of Criminal Procedure 52(b).

The error had not been "plain" before *Tapia*, but it was "plain" afterward. The question was whether the error had to be plain when the district court imposed the sentence, or when the appellate court decided the appeal.

The 5th Circuit panel held that the error had to be plain at the time the district court imposed the sentence. Pat applied for en banc rehearing, but the court denied her petition by a 7-10 vote.

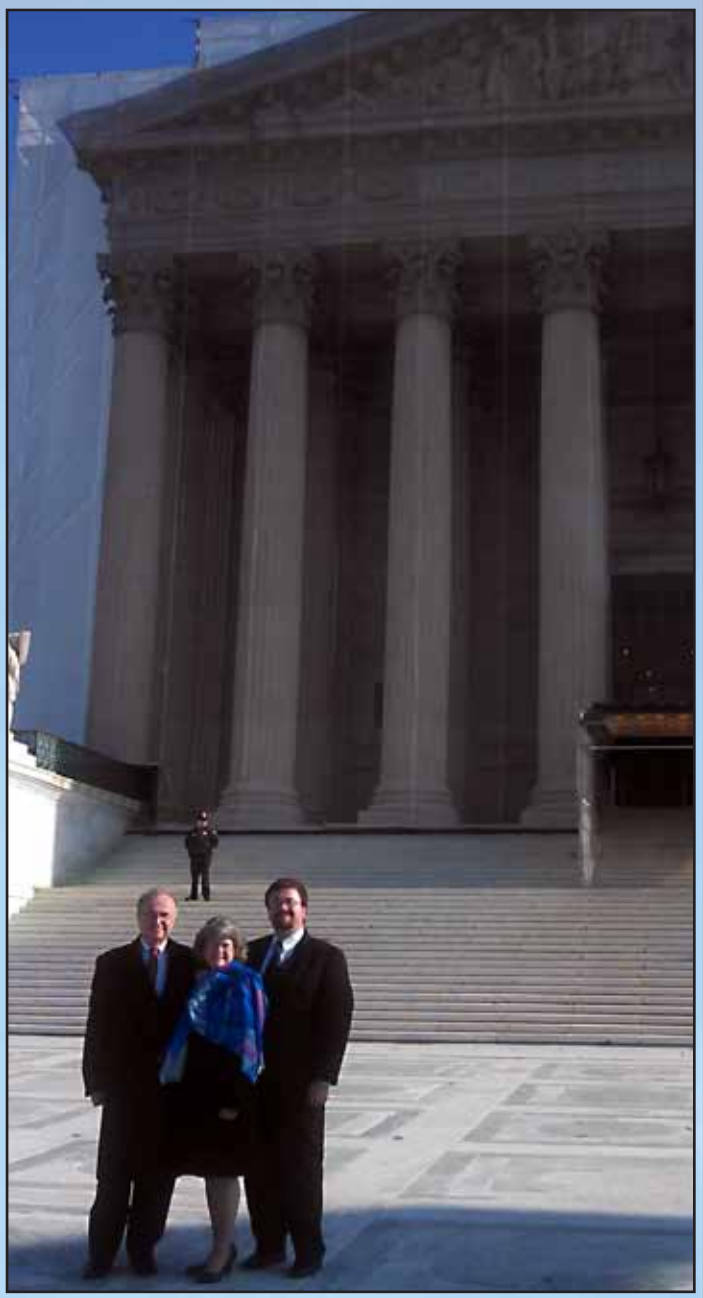
Many law school clinics and Supreme Court practitioners watch for likely candidates to make it to the high court. The federal circuits were split on the issue in *Henderson*, which made it a strong contender. Pat's phone began to ring and emails came pouring in immediately after the en banc denial. She was overwhelmed with offers from clinics and other specialists who wanted to take over the case and apply for certiorari. She received DVDs, brochures and other material touting the experience of various volunteers.

In the 19th century, argument before the Supreme Court was dominated by a handful of attorneys such as Daniel Webster and Frances Scott Key, some of whom argued hundreds of cases. A strong Supreme Court specialist bar has returned in recent years. Richard J. Lazarus, "Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar," 96 *Georgetown Law Journal* 1487 (2008).

These specialists, moreover, appear to be winning. A review of merits cases from 2004-10 showed that specialists, including law school clinics, won a significantly greater percentage of their cases than nonspecialists. Criminal defendants, civil plaintiffs and immigrants represented by specialists prevailed in 67 percent of the cases in which they were petitioners and 32 percent as respondents. Such litigants represented by nonspecialists won only 48 percent of cases as petitioners and 14.5 percent as respondents. Within the ranks of the specialists, law school clinics performed well. Their clients won 70 percent as petitioners and 35 percent as respondents. *See,* Jeffrey L. Fisher, "A Clinic's Place in the Supreme Court Bar," 65 *Stanford Law Review* 137 (2013).

Pat first declined the many offers to take over the case, but then she received an offer from Professor Michael F. Sturley, a former Justice Powell law clerk who directs a Supreme Court clinic at the University of Texas (UT). He offered to have his students help but allow Pat to remain as lead counsel. She accepted. The students, along with attorneys in Houston, Texas, and Washington, D.C., went to work on the petition for certiorari.

The Supreme Court receives about 10,000 petitions for certiorari each year. Around 80 to 100 — less than 1 percent — have been granted in recent terms.



Shreveport attorneys, from left, Harold C. Gilley, Jr., Patricia A. Gilley and Tristan P. Gilley on the steps of the U.S. Supreme Court in Washington D.C. *Photo provided by the Gilley Family.*

The Supreme Court granted Henderson's petition in June 2012. By that time, the law students who helped earlier had graduated or gone home for the summer, but there were still volunteers who wanted to help review the merits brief, and they put pressure on Pat to issue an early draft. She gathered multiple binders of research materials, practically lived at the office, stopped taking new clients, and devoted herself to the brief, but she still could not produce one to her satisfaction under the time demands

of her volunteers. She eventually parted ways with them and, again taking a road less traveled, wrote the brief on her own. She read, about two weeks before the brief was due, a comment from Justice Antonin Scalia indicating that the justices cringe when ordinary trial lawyers come before the Court. That did little to calm her nerves.

The briefing process did have its pleasantness. The Solicitor General represents the United States before the Supreme Court, and Assistant Solicitor General Jeffrey B. Wall was assigned to *Henderson*. Pat and Wall talked on the phone often and got along well with regard to various extensions and preparing the joint appendix. The briefing process was also different because the Court requires briefs be printed, much like a paperback book. (If you find yourself before the Supreme Court, Cockle Law Brief Printing will find you and offer its services if you ever have a case before the Court. They will check your citations and proofread the brief, but the service is not cheap. Pat's printing bill was $2,800.)

William K. Suter, a retired Army major general and Tulane Law School graduate, has been the clerk of the Supreme Court for more than 20 years. Pat says the members of his staff could not be nicer, although the members of her firm did call one deputy clerk "the drill instructor" because she often called and told them exactly what to do, and when to do it, so as to keep the case on track.

Oral argument was scheduled for the Wednesday after Thanksgiving. Pat's preparation included a practice argument at Louisiana State University Paul M. Hebert Law Center. Two weeks before the argument, she traveled to the University of Texas, where students portrayed the justices and grilled her about the issues. The next week, she traveled to Georgetown Law School for a well-known moot court program offered to attorneys with cases before the Supreme Court. Two professors and three experienced criminal law attorneys put Pat through her paces.

Pat, Harold, Tristan and six other family members traveled to Washington, D.C. for the oral argument. The three lawyers in the family were able to view an argument the day before. Pat, who said she used to get sick when she gave a presentation in school, admits to being only a little nervous when her big day arrived. She said her lack of nerves was due to months of preparation and her confidence that she would win because her position was "so right."

Patricia and Harold Gilley, right, with William K. Suter, clerk of the U.S. Supreme Court. Suter, a Tulane Law School graduate who was admitted to the Louisiana State Bar in 1962, retired from the clerk's position on Aug. 31, 2013, after 22 years of service. *Photo provided by the Gilley Family.*

Pat and Harold were both able to sit at the counsel table, with the rest of the family in the viewing gallery. Two quill pens, a Court tradition, were on the desk for them and can now be seen in their Shreveport offices. Wall arrived in the formal morning coat that members of the Solicitor General's office traditionally wear when before the Court. Pat stood to shake his hand on meeting him for the first time, but he gave her a big hug and some advice: "Have fun."

Pat approached the lectern. Professor Paul R. Baier, constitutional law professor at LSU Law Center and a Judicial Fellow at the Court in 1975-76, had advised Pat to show that she knew what she was doing by reaching for the hand crank on the side of the lectern and adjusting the height. Fortunately, Pat had mentioned this to General Suter during a visit, and he quickly begged her not to touch the ancient and delicate mechanism. Mistake avoided.

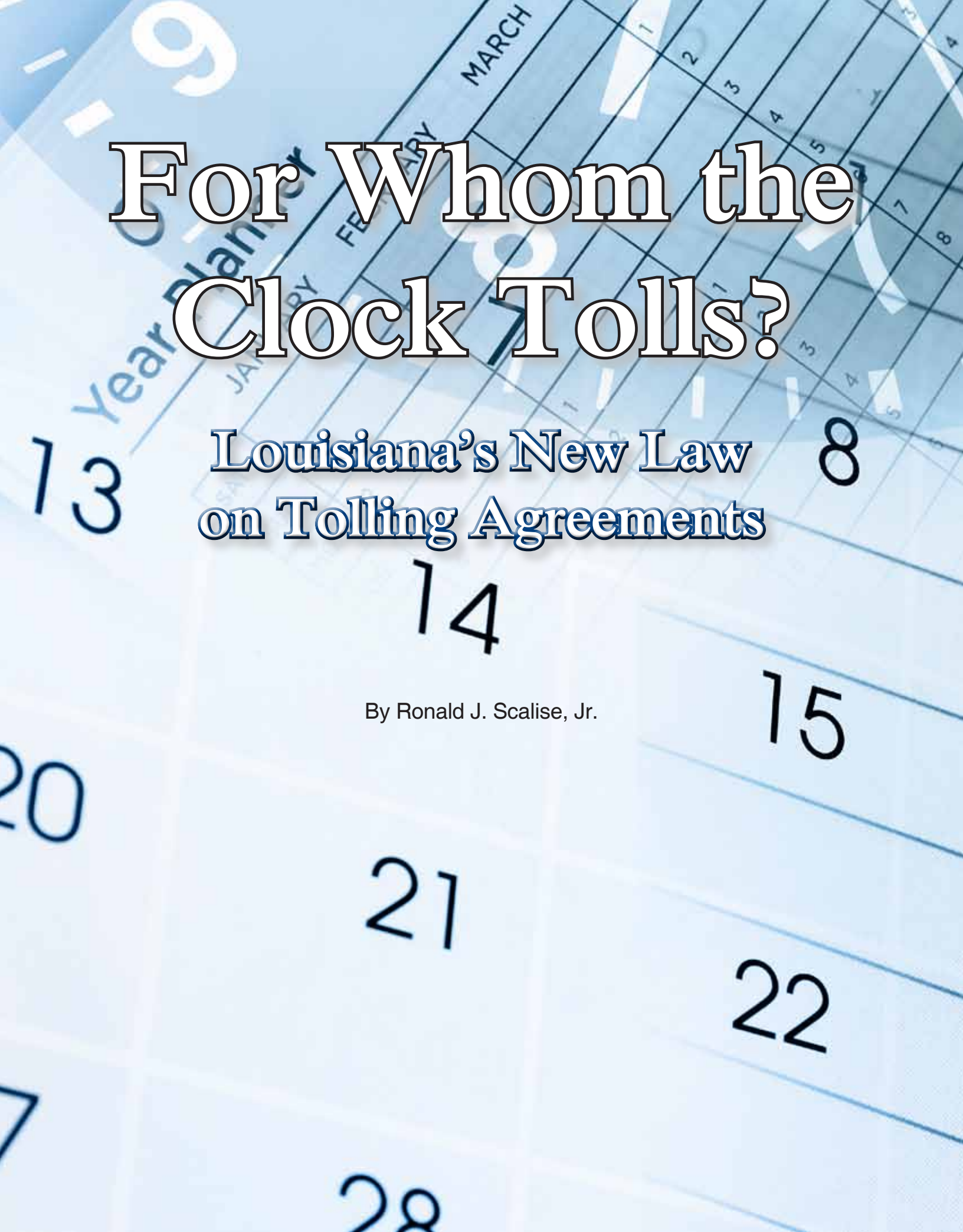
Pat barely got started before the questions flew. Chief Justice John G. Roberts, Jr. and Justices Antonin Scalia, Ruth Bader Ginsburg, Anthony M. Kennedy, Samuel A. Alito, Jr., Stephen G. Breyer and Sonia Sotomayor all had questions or comments during Pat's argument. Justice Elena Kagan weighed in during Wall's argument. Justice Clarence Thomas was not moved to break his famous silence. The attorneys stand close to the long bench. Pat said she felt like her head was on a swivel, searching for the face of the justice who asked the last question.

Thirty minutes is allowed for each side to argue. A white light comes on after 25 minutes, and an attorney may reserve some of the remaining time for rebuttal. A red light comes on after 30 minutes, which usually signals the last word. Pat says she was so in the moment that neither she nor Harold saw either light come on. Professor Baier told her she managed to get an extra 17 seconds, which is quite rare, before the Chief Justice ended it with, "Thank you, counsel."

Pat returned from D.C. and moved on to other clients and cases. Pat said she never checked on the resolution of the case because she knew she would win. When she arrived at work on Feb. 20, 2013, her 42nd wedding anniversary, her email inbox was filled with messages of congratulation. She wondered how the people at UT and lawyers scattered around the country knew it was her anniversary, but when she opened the first message she saw that she had won Henderson's case by a 6-3 vote.

Pat's legal career, with a decade passing between her clerkship and her next job as a lawyer, has taken an unusual path. She has now marked that career with a special distinction and she achieved it in her own way. Pat would agree that she often seeks the road less traveled, not only in law but also in life. Whatever path she takes, Pat fights for the causes which she believes are "important," but, even more significantly, she enjoys every minute of it.

S. Christopher (Chris) Slatten, a 1990 graduate of Louisiana State University Paul M. Hebert Law Center, serves as law clerk to Magistrate Judge Mark L. Hornsby, U.S. District Court, Western District of Louisiana, in Shreveport. He is a member of the Louisiana Supreme Court's Committee on Bar Admissions. He is co-chair of the Editorial Board of The Bar Review, *published by the Shreveport Bar Association. A version of this article first appeared in the April 2013 issue of that publication. (U.S. District Court, Ste. 1148, 300 Fannin St., Shreveport, LA 71101-3122)*



For Whom the Clock Tolls?

Louisiana's New Law on Tolling Agreements

By Ronald J. Scalise, Jr.

Effective Aug. 1, 2013, Louisiana for the first time allows tolling agreements. Popular in other states, tolling agreements are contracts by which parties involved in a dispute agree to extend the relevant liberative prescriptive period. For a variety of reasons, however, tolling agreements have not, until now, been enforceable in Louisiana. By effect of Act 88 of 2013, the previous preclusions in Louisiana law no longer apply, and parties are now free, within limits, to extend a liberative prescriptive period.

Background and Purpose

The Prescription Committee of the Louisiana State Law Institute was formed in 2011 to address House Concurrent Resolution 28. Specifically, the resolution requested that the Law Institute "study agreements to voluntarily extend liberative prescriptive periods and to make specific recommendations for authorizing agreements to extend liberative prescriptive periods."[1] The resolution noted that tolling agreements are valid in some states and observed that parties in Louisiana must often needlessly file suit to preserve their rights against the running of a short prescriptive period. Although not limited to tort suits, the problem is particularly vexing in delictual actions where the general prescriptive period is only one year.[2]

The primary stumbling block to tolling agreements in Louisiana has always been Article 3471 of the Civil Code, which states that "[a] juridical act purporting to exclude prescription, to specify a longer period than that established by law, or to make the requirements of prescription more onerous, is null."[3] Because a tolling agreement would give an obligee a longer time to sue than provided for by legislation, tolling agreements have always been treated as "specifying a longer period than that established by law" and thus viewed as ineffective.[4]

After detailed study, the Law Institute recommended and the Legislature enacted a much needed change. The change now allows parties to extend a prescriptive period rather than wastefully filing suit to interrupt the prescriptive period, only to dismiss the suit later after settlement negotiations are fruitful. Now, prescriptive periods can be extended; negotiations can proceed; and, in many instances, resolutions can occur, without unnecessarily incurring filing fees and needlessly wasting judicial resources.

How to Extend Prescription

Although the new law allows for the extension of liberative prescription, parties must comply with certain prerequisites to do so. Most notably, for an extension of liberative prescription to be granted, it must be both express and in writing — requirements that are not uncommon in the Civil Code.[5] Oral extensions are not allowable, and the comments to the new articles make clear that the form requirements for an extension are imposed for proof purposes. Casual statements during settlement negotiations should not be relied upon to effectuate an extension; rather all extensions must be committed to writing. To constitute a "writing," an act can be either in authentic form or under private signature.[6]

Again, for proof purposes, extensions, even those in writing, must be "express" to be effective. The term "express" in this context is used in opposition to "tacit" and to indicate that ambiguous statements that might be construed as intending an extension are not sufficient. Magic words are not required, but clear intent is. Although Louisiana has no prior experience with tolling agreements, the law of other states may be helpful. Statements that the "applicable prescriptive period will be tolled" or that the "relevant period of limitation will be extended" should thus be effective and enforced under the new legislation. The goal is to allow extensions but to avoid evidentiary contests. Thus, within the ambit of the code articles, any statement in proper form that clearly indicates the intent to extend prescription should be given that effect.

Despite the subtitle to this article, an "agreement" is not necessary to extend a prescriptive period, although one would certainly be allowable. Rather, the legislation requires only a juridical act by the obligor. As explained in the Civil Code, a juridical act is "a lawful volitional act intended to have legal consequences."[7] A juridical act "may be a unilateral act, such as an affidavit, or a bilateral act, such as a contract."[8] The rationale for not requiring an agreement is simple: an obligee will always favor more time to sue and thus his consent to an extension of prescription should not be required.

The Limits of an Extension of Prescription

Although the new legislation allows for parties effectively to extend a prescriptive period, it is not without limitations. First, an extension of prescription may occur only after a cause of action accrues, not before. Parties may not extend a prescriptive period prospectively or before prescription has begun to run.[9] Contracts that attempt at the time of formation to create a longer prescriptive period than that established by legislation for a cause of action that has not yet arisen are still unenforceable

under the new legislation and still violative of Article 3471.[10]

Second, an extension of prescription may be granted for up to a one-year period, but not longer. The goal is to grant flexibility to parties but not to allow overreaching and to "prevent[ ] an obligor from rashly granting an excessively long or indefinite extension" that, after cool reflection, would obviously work to his prejudice.[11] If, as in some cases, a year-long extension is still not enough time to resolve a dispute, the parties may always grant another year-long extension to continue their talks. Although there is no limit on the number of extensions that can be granted, each extension can only be granted for up to one year, and the year time period commences to run from "the date of the juridical act granting it."[12]

Thus, parties cannot sign several extensions at the same time in an attempt to frustrate the year limitation and in the hopes of achieving a multi-year extension. Similarly, parties are not allowed to execute acts with separate "calendar dates" and "effective dates" in an attempt to extend a prescriptive period beyond a year or to create a series of extensions that take effect after the expiration of others. Each extension takes effect on its day of execution. Clever attempts to frustrate the limitations of the law should be viewed as unenforceable and in violation of both the language and intent of the new legislation.

Once a period of prescription has been effectively extended, however, the extension is itself treated as a prescriptive period and thus can be subject to interruption or suspension, just as any prescriptive period could be.[13] Consequently, the acknowledgment of a debt during a period of extension will serve to reset the prescriptive clock as it would have had it occurred during the original prescriptive period.[14]

Finally, periods of time that are designated as preemptive are not subject to extension as those periods of time are "fixed by law for the existence of a right," rather than merely the enforceability of a right.[15] At the end of a preemptive period, a right ceases to exist and cannot be extended by juridical act or contract.[16] Thus, parties may not, for instance, extend a period to bring a claim for lesion[17] or to seek spousal support[18] or for any other claim that is characterized as peremptive rather than prescriptive.

The Effects of an Extension

In addition to the requirements for granting an extension of prescription, the effects of an extension must also be closely considered. As a preliminary matter, the effects of an extension are obvious: An obligee has additional time (up to one year) to sue an obligor who has granted the extension. In situations involving multiple obligors, however, more complexity exists if only one obligor grants an extension but is bound jointly or solidarily together with others for a debt. Consider, for instance, multiple borrowers who have defaulted on a loan repayment. If, rather than sue the borrowers, the lender obtains an extension to sue and eventually negotiates with the borrowers on a new repayment schedule, the lender must be sure to obtain the extension from all the borrowers. Otherwise, prescription will run with respect to the borrowers who did not grant the extension, and the lender will be left with recourse against only the borrower who granted the extension. In short, although an interruption in prescription, such as might occur by virtue of an acknowledgment of a debt, is effective against solidary obligors and joint obligors of indivisible obligations, an extension granted by one obligor is not. The approach of the new legislation is deliberatively conservative to ensure that the extension, although possible, operates only against those obligors who know of it and approve.

Further complexities, however, exist in the context of sureties who may be bound for the debt of the principal obligor. Because a suretyship is an accessorial obligation, a surety obviously cannot grant an extension that is effective against his principal, at least not without the consent of the principal.[19] In fact, to the extent the principal obligation prescribes because the obligor has not granted an extension, not only could the principal obligor not be sued but also the surety — even the one who putatively granted an extension — would likewise be immune from suit. Thus, for an extension of prescription to be effective with respect to a surety, the principal obligor must be involved in the granting of the extension.

This does not mean, however, that *only* the principal obligor should grant the extension. Although it is true that the grant of an extension of prescription by the principal obligor would be effective as to his sureties,[20] the surety may have a defense under suretyship law and, in certain circumstances, be able to terminate the suretyship entirely. In the context of an ordinary suretyship, Article 3062 extinguishes a suretyship if there has been a "modification or amendment of the principal obligation . . . in a material manner and without the consent of the surety."[21] To the extent the suretyship is a commercial one, the obligation is similarly extinguished but only "to the extent the surety is prejudiced by the action of the creditor, unless the principal obligation is one other than for the payment of money, and the surety should have contemplated that the creditor might take such action in the ordinary course of performance of the obligation."[22] Comment (c) to Article 3505.3 reminds the reader that the new prescription articles, like all articles in the

Civil Code, should not be read in a vacuum but interpreted *in pari materia* with other articles in the Civil Code on relevant topics.

With respect to multiple obligees, the situation is very different. Unlike an obligor, an obligee will always benefit from an extension of prescription. Consequently, the concern in ensuring that every affected obligor consent to an extension does not exist with respect to multiple obligees. In fact, for the same reasons that the consent of the obligee is not required for an extension, the benefits that arise from an extension of prescription should redound to the benefit of all solidary obligees and all those joint obligees of an indivisible obligation, even those who did not consent to or have knowledge of the extension. In this instance, the effects of an extension mirror those of an interruption in prescription.[23]

Unfinished Business

Despite the success of Act 88, work related to prescription remains to be done. In addition to the enactment of Articles 3505 through 3505.4 concerning extensions of prescription, the proposed legislation also included a revision to Article 3471, which would have amended the article to read as follows:

> A provision in a juridical act purporting to specify a different prescriptive period than that established by legislat[ion], to exclude prescription, or to make the requirements for the accrual of prescription more onerous is absolutely null. Nevertheless, parties may agree in writing to shorten a prescriptive period to a stated amount of time that is reasonable and is in no event less than one year.

The purpose of the proposed revision to Article 3471 was manifold. First, the proposed revision corrected some minor semantic inaccuracies in the original article, such as by stating that only a "provision in a juridical act" in violation of the article would be "absolutely null" rather than the entire "juridical act" itself. Second and more importantly, the proposed comments made clear that the new legislation in Articles 3505-3505.4 was excepted from the prohibitory scope of the article. Third, the proposal also clarified that, despite some erroneous jurisprudence, shortening of prescription is allowed. In fact, agreements shortening prescription have long been allowable in Louisiana and in a variety of other civil law jurisdictions and common law states.[24] A few Louisiana courts, however, have mistakenly found agreements shortening prescription to be "more onerous" and thus invalid under Article 3471.[25] The term "more onerous" in Article 3471, however, refers to actions or agreements that make the invocation of prescription more difficult for the obligor. For example, agreements not to plead prescription, to interrupt prescription, to delay the commencement of prescription, or to provide for additional causes of interruption are "more onerous" because they make the accrual of prescription more difficult for the obligor, the party primarily protected by the accrual of prescription.[26]

Unfortunately, the proposed changes to Article 3471 were excised by the Legislature, and the confusing cases persist in Louisiana. Nonetheless, for the reasons stated above, agreements shortening prescription are and should continue to be allowable. Moreover, despite the deletion of the express cross reference in a proposed comment, Article 3471 as it currently stands should not be viewed to continue to preclude voluntary extensions of prescription. Rather, Article 3505-3505.4 should be appropriately read as more specific and later expressions of the legislative will than that embodied in Article 3471. The continuing prohibition in Article 3471 against "specify[ing] a longer [prescriptive] period" can properly be understood as continuing to prohibit prospective extensions of prescription, as Article 3505 allows for extensions only after a cause of action arises, not before. Such a reading gives meaning and respect to the literal language and intent of both Articles 3471 and 3505, as well as comporting with well-accepted techniques of statutory interpretation and common sense.[27]

FOOTNOTES

1. HCR 28 (2011).
2. La. Civ.C. art. 3492.
3. *Id*. art. 3471.
4. *Id*.
5. *Id*. arts. 3038 & 963, 3450. *See also*, La. Civ.C. art. 3505.1 cmts. (a) & (b).
6. La. Civ.C. arts. 1833 & 1837.
7. *Id*. art. 3471, cmt (c).
8. *Id*.
9. *Id*. art. 3505, cmt (a).
10. *Id*. art. 3471.
11. *Id*. art. 3505, cmt (c).
12. *Id*. art. 3505.2.
13. *Id*. art. 3505.4.
14. *Id*. arts. 3464, 3466 & 3505.4.
15. *Id*. art. 3458.
16. *Id*.
17. *Id*. art. 2595.
18. *Id*. art. 117.
19. *Id*. arts. 3035 & 1913.
20. *Id*. art. 3505.3.
21. *Id*. art. 3062.
22. *Id*.
23. La. Civ.C. arts. 1793 & 1789.
24. *See, e.g.*, Green v. Peoples Benev. Indus. Life Ins. Co., 5 So.2d 916 (La. App. 1941); Carraway v. Merchants' Mut. Ins. Co., 26 La. Ann. 298 (La. 1874); Code Civil (Fr.) art. 2220 (1804); BGB § 202; Austrian Civil Code § 1502; Dutch Civil Code art. 3:322, para. 3; Principles of European Contract Law art. 14:601; Unidroit Principles art. 10.3; Beeson v. Schloss, 192 P. 292, 294 (1920); Zalkind v. Ceradyne, Inc., 194 Cal. App. 4 1010 (2011); City of Hot Springs v. Nat. Sur. Co., 531 S.W.2d 8 (Ark. 1975); Hepp v. United Airlines, Inc., 540 P.2d 1141 (Colo. App. 1975); Smith v. Auto-Owners, Inc. Co., 877 N.E.2d 1220 (Ind. App. 2007).
25. *See, e.g.*, Contours Unlimited v. Board of Comm'rs, 630 So.2d 916 (La. App. 4 Cir. 1993); Cameron v. Bruce, 42-873, 42-983 (La. App 2 Cir. 4/23/08), 981 So.2d 204; Prestridge v. Bank of Jena, 05-545 (La. App. 3 Cir. 3/8/06), 924 So.2d 1266 (finding an agreement regarding a substantive element of a cause of action to be "more onerous" and thus violative of Article 3471). *But see*, Groue v. Capital One, 10-0476 (La. App. 1 Cir. 9/10/10), 47 So.3d 1038 (finding that a contractually shortened period to notify a bank of an altered check not to be violative of Article 3471).
26. *See, e.g.*, Constantine Semanteras, *General Principles of Civil Law* § 1036 (4th ed.) (in Greek).
27. La. Civ.C. arts. 10 & 13.

Ronald J. Scalise, Jr. is vice dean for academic affairs and the A.D. Freeman Professor of Civil Law at Tulane Law School. He is the reporter for the Prescription Committee of the Louisiana State Law Institute. He also is serving as the faculty representative for Tulane Law School on the Louisiana State Bar Association's Board of Governors. The views expressed herein are attributable solely to the author. (6329 Freret St., New Orleans, LA 70118)

Book Review

Flood of Lies: The St. Rita's Nursing Home Tragedy

By James A. Cobb, Jr.

(Pelican Publishing Co., Gretna, La., published July 26, 2013, 320 pages, available in hardcover and e-book).

Reviewed by Pascal F. Calogero, Jr.

Do you remember why you went to law school? Would you like a reminder of how your practice can — indeed, should — embody the most noble aspects of our profession? Reading *Flood of Lies: The St. Rita's Nursing Home Tragedy* by James A. Cobb, Jr., a fellow Louisiana lawyer, will inspire your inner Atticus Finch and fuel your passion for the practice of law.

My friend and colleague Jim Cobb has penned a page-turner about one of the most publicized tragedies of Hurricane Katrina: the death of 35 elderly patients at St. Rita's Nursing Home and the subsequent prosecution for negligent homicide and elder abuse of the home's owners, Sal and Mabel Mangano.

No doubt you know the havoc of Katrina because you and yours lived it. You probably also recall the news stories about the trial, and perhaps its outcome. Regardless, I can assure you will be riveted to *Flood of Lies* because Cobb cuts through the media's imagination and invective to tell the *real* story of *State of Louisiana v. Salvador Mangano et al.* — from his own perspective as lead defense attorney for the Manganos.

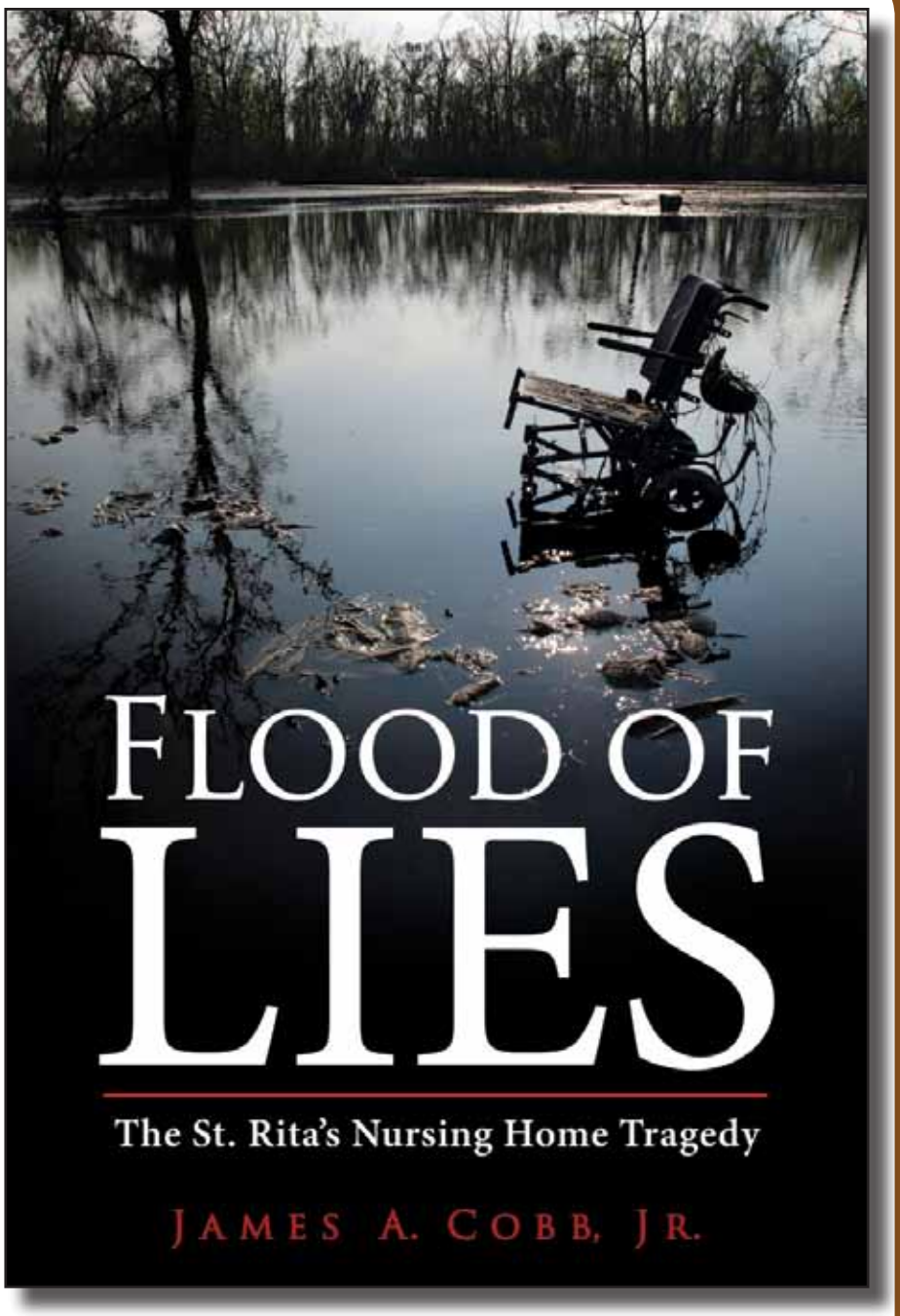
That real story is about heroism, commitment and sacrifice — first by the Manganos, who faced life imprisonment despite having risked their own lives in the care of their residents, and then, too, by Cobb himself, who, in the face of great personal and professional sacrifice, led the defense team that undertook the desperate challenge of defending the Manganos, an elderly couple pilloried by the politicians, the press and the public.

Cobb's telling of the story is masterful, and you will read into the wee hours because you will crave every twist and turn behind the scenes. But it is the essence of Cobb's decision to undertake representation of Sal and Mabel Mangano, who were vilified as Public Enemy No. 1 in the wake of the storm, that makes this book essential reading for every lawyer and aspiring lawyer.

Why?

Because *Flood of Lies* proves that advocacy matters. It matters to our clients, whether saints or scoundrels in the court of public opinion. It matters to justice, as its judges and officers of the court strive to uphold the law. It matters to the public, who rely on — and, indeed, deserve — professional representation to protect their rights. In sum, we members of the Bar are custodians of the law, those ideals of our society enshrined by the Legislature. We must not shirk our responsibility to enforce those ideals, even for — nay, especially for — unpopular causes and unpopular people.

Just as I hold up Cobb's masterpiece *Flood of Lies* to you as an example to inspire all of us in our law practice, Cobb himself cites America's founding father John Adams as his inspiration to represent the Manganos, despite facing public opprobrium himself. Recall your grade-school studies of the Boston Massacre — the 18th century one, not the recent act of terrorism at the Marathon. In 1770, the colonists were becoming restive under British rule, which led to the Crown stationing its troops in Boston. One fateful evening, a few patriotic colonists taunted the British sentries with insults, then snowballs. Their superior officer, Captain Preston, was summoned. Meanwhile, the crowd grew into a mob. Tensions mounted. The soldiers fired their muskets. Five colonists died and more were wounded.



Eight British soldiers were charged with murder of the five dead colonists. A propaganda war raged on both sides of the Atlantic. Supporters of the Crown decried the colonists' refusal to recognize the British authority. The colonists rallied that redcoats could not quell the Spirit of Liberty. Against that backdrop of revolutionary fervor, few advocated for a fair trial of the men charged with murder. Indeed, several lawyers *outright refused to represent* Captain Preston or his men.

Then John Adams, ardent American patriot and future President of the United States, stepped up to defend Captain

Preston and his detachment of men. To do so, he first had to step away from his own political leanings and personal ambition. By all accounts, Adams did so because he believed fervently in the principle of a fair trial; certainly Adams had no interest in the British cause. Moreover, Adams acted *in the absence of any constitutional imperative* to do so. It was 1770: there was as yet no United States of America, no U.S. Constitution, no Sixth Amendment right to counsel. But Adams recognized that convicting a man for a crime — especially a crime as serious as murder — required a fair trial, and a fair trial required representation by a lawyer.

So where others stepped away, Adams stepped up. He advocated the law and the facts on behalf of his clients: the soldiers who had fired were not killing innocent bystanders, but rather were defending themselves against an angry mob of "saucy boys." The jury of colonists who lived in a town steeped with revolutionary rhetoric against the British defendants ultimately agreed with Adams. Six soldiers were acquitted and two were found guilty of a lesser charge. But for Adams' principled defense of the British soldiers, justice would not have prevailed on the eve of our revolution. As Mr. Adams recounted in his diary, "Judgment of death against those soldiers would have been as foul a stain upon this country as the executions of the Quakers or witches, anciently."

The same principle was at stake in Cobb's decision to represent the Manganos following Hurricane Katrina. As the political powers scapegoated the Manganos for their own foibles, and as the international press shredded the Manganos' upstanding reputation as hard-working caregivers for the most vulnerable members of our aging families, Cobb stepped up. In the face of every possible legal and political shenanigan (no spoilers here — read the book for the dramatic details), he and his team advocated for the Manganos, overcoming the widespread presumption of their guilt and securing full acquittals on all 118 counts against them in a court of law.

Cobb did so notwithstanding his own personal travails. All of us face the demands of family and making a living. As we know, these demands were compounded exponentially in the wake of Hurricane Katrina. Cobb himself lost his home and his office was displaced — with no income on the horizon. Financial security for himself and his family was in peril. Nonetheless, he fulfilled his professional duty — not only by wielding his legal acumen to provide diligent, competent representation of two criminal defendants, but, even more importantly, by his accepting an unpopular representation against seemingly insurmountable odds.

It is Cobb's commitment to his clients and to our profession and its ideals that inspires me to recommend *Flood of Lies* to you. His prose is passionate and profane. He is irascible and charming in turns. He will make you weep. He will make you rail. But, most importantly, his gripping narrative of the St. Rita's trial of the Manganos in St. Francisville reminds us of the nobility in law. Like John Adams, Jim Cobb proves that good lawyering is more than doing everything right; it is *doing the right thing*. We should all be so bold in our practice.

James A. Cobb, Jr. is a 1978 graduate of Tulane Law School. For nearly 30 years, he was a litigator and partner in the New Orleans firm of Emmett, Cobb, Waits & Henning. He was an adjunct professor and director of Tulane's Trial Advocacy Program for 31 years. Most recently, he has been an invited member of the Harvard Law School faculty, teaching and lecturing in the school's Trial Advocacy Workshop for the past six years.

Hon. Pascal F. Calogero, Jr., retired chief justice of the Louisiana Supreme Court, was admitted to the Louisiana bar in 1954. After serving 36 years on the Supreme Court, Chief Justice Calogero retired and returned to the private practice of law by opening his own practice, Pascal F. Calogero, Jr., A.P.L.C., in New Orleans. He also is of counsel to the firm of Ajubita, Leftwich & Salzer, L.L.C., in New Orleans. (1500 Energy Centre, Ste. 1500, 1100 Poydras St., New Orleans, LA 70163)

Save the dates!

Louisiana State Bar Association

Serving the Public. Serving the Profession.

In the legal community the more you know, the faster you'll get ahead. That's why the Louisiana State Bar Association offers a variety of seminars on a wide range of legal topics. Enrolling in them will help you stay competitive and keep up with the ever-changing laws. The Continuing Legal Education Program Committee sponsors more than 20 programs each year, ranging from 15-hour credit seminars to one-hour ethics classes. Check online for the most up-to-date list of upcoming seminars at *www.lsba.org/CLE*.

Upcoming LSBA CLE Seminars

Consumer-Mortgage Law: The Players, Procedures, Practices, and Pitfalls

Foreclosure rates have increased nationally by more than 200% since 1980!! Since the start of the real estate crash and the consequent foreclosure crisis, there have been several developments in the tactics used to defend, delay and stop residential and commercial foreclosures.

November 15, 2013
Hyatt French Quarter • New Orleans

DWI: What Everyone Should Know BUT No One Would Tell You!!

Take advantage of this seminar which will present a comprehensive and practical view of DWI, featuring experienced professionals in the field of the Intoxilyzer, Standard Field Sobriety Test, and Toxicology.

November 15, 2013
Hyatt French Quarter • New Orleans

13th Annual Class Action/Complex Litigation Symposium

Complex litigation unquestionably presents high stake challenges for litigants. The good news is that it also provides both the bench and bar with an opportunity for creative thinking. RICHARD J. ARSENAULT, seminar chair, brings together power hitters from around the country, as well as leaders from both sides of the complex litigation bar, and esteemed members of the judiciary, to share ideas and explore critical developments, trends and perspectives.

November 22, 2013
Westin Canal Place Hotel

New York, New York CLE

New York is... Great Sightseeing, Museums & Galleries, World Class Music and Broadway Shows, Radio City Music Hall Christmas Extravaganza, Festivals & Street Fairs, Macy's Thanksgiving Parade, Spectacular Shopping, Awesome Dining, and much more!! New York City has it all. Experience it again!

November 23 - 25, 2013
Millennium Broadway Hotel • New York

CLE & Social! Sponsored by Senior Lawyer Division & Young Lawyers Division

The LSBA's Senior Lawyers Division and Young Lawyers Division are joining forces to present their first joint CLE program, scheduled from noon-6:45 p.m. The CLE will feature both credit and non-credit programs. The following sessions are approved for 3 CLE credit hours: Retirement and Estate Planning; Social Media and Technology Today; and Mentoring. Non-credit sessions will cover wellness and wine-tasting.

December 2, 2013
Hyatt French Quarter Hotel • New Orleans

Ethics & Professionalism: Watch Your P's & Q's

Don't wait til the end of the year! Satisfy your CLE requirements before the Dec. 31st deadline by getting your ethics or professionalism credit. This program offers your choice of attending just one hour, multiple hours or the full day.

December 6, 2013
Sheraton New Orleans Hotel

Moving Your Cases Through Court!! Motion Practice CLE

Motions can move, stop or change the direction of a case. Spend the day with HON. RONALD J. SHOLES & HON. CARL J. BARBIER, seminar co-chairs, and an impressive roster of knowledgeable members of the bench & Bar as they provide the nuts & bolts to get your motion practice in gear!

December 10, 2013
Westin Canal Place Hotel

25th Summer School Revisited

Fall is approaching, but the LSBA is hanging on to Summer! Join us for Summer School Revisited, a multi-topic CLE program that highlights presentations from the Summer School held in Sandestin.

December 12 - 13, 2013
Sheraton New Orleans Hotel

For up-to-date information, visit *www.lsba.org/CLE*

Lawyers Assistance Program, Inc. Establishes Free Depression Recovery Groups Statewide

By J.E. (Buddy) Stockwell

The Louisiana Lawyers Assistance Program, Inc. (LAP) has established free Depression Recovery Groups statewide. These groups, facilitated by local mental health professionals, are open to lawyers, judges and law students and are currently offered in Shreveport, Baton Rouge and New Orleans. The groups are absolutely confidential and participation does not create any medical records. There is no obligation incurred by participants other than the simple promise of adhering to strict confidentiality and group decorum.

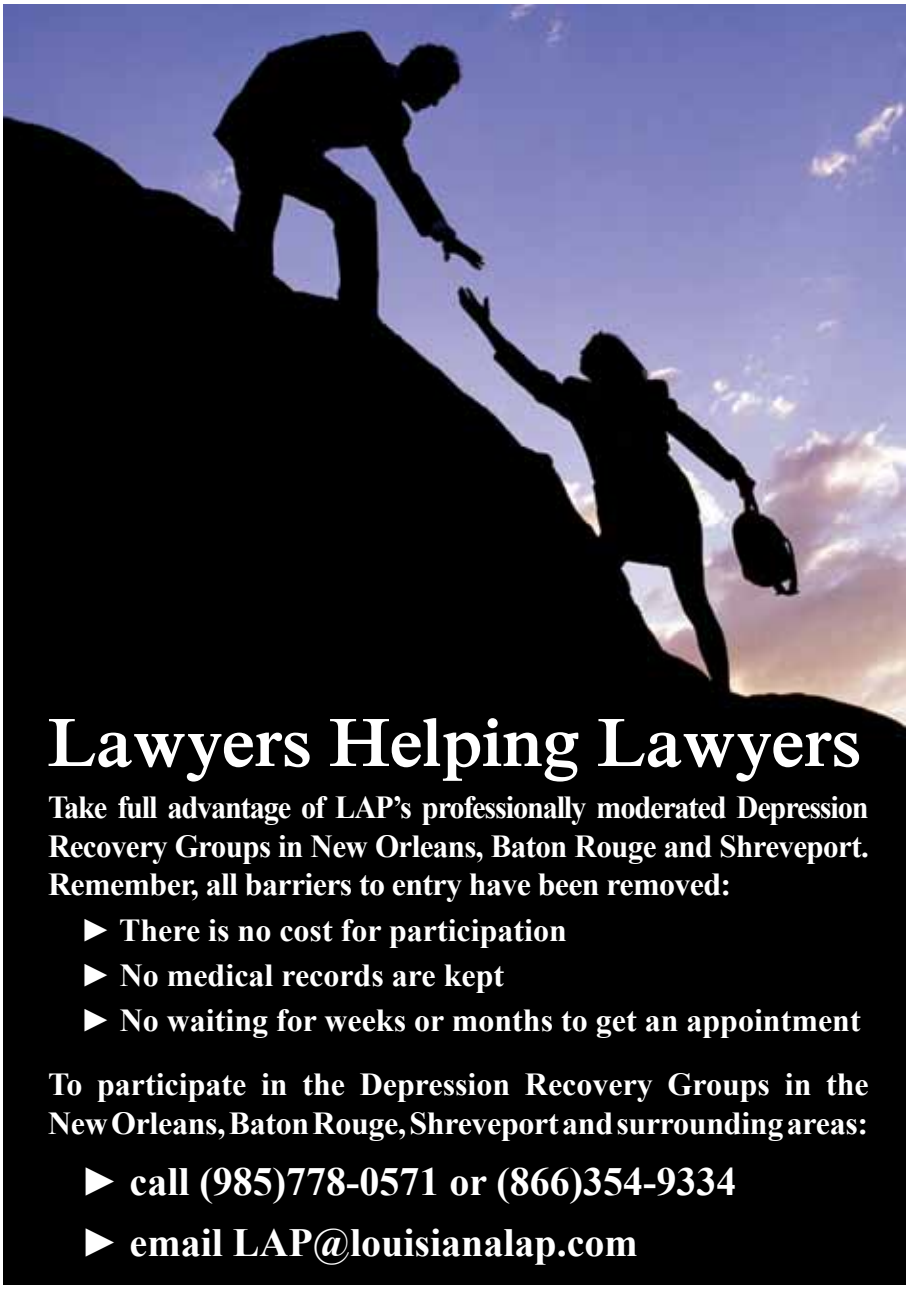
These groups are designed to directly address the epidemic of depression in the legal profession. Depression has long surpassed alcoholism and addiction as the most predominant mental health disorder affecting lawyers and judges. An alarming number of legal professionals — our peers — are lost to suicide each year. Depression is a very serious condition that can impair the executive function in a lawyer or judge. If left untreated, depression can lead to the intensification of other mental health disorders, including but not limited to substance use disorders.

For many years, the LAP has provided comprehensive mental health care support. The LAP-approved facilitation of confidential assessments, treatment, recovery support, and LAP recovery monitoring are offered in ALL mental health areas, not just cases involving alcoholism and addiction. The LAP continues to see a marked increase in the numbers of law students, lawyers, judges and their family members who reach out to LAP regarding mental health issues not involving any alcohol or drug abuse problems. Whatever the mental health issue, confidential LAP assistance is available.

As to the LAP's new Depression Recovery Groups, it has long been established that participation in a quality support group can significantly increase a person's chances of long-term recovery in most cases. Experts opine that group participation renders a demonstrable increase in coping skills that develop more quickly in a group setting.

Group participation is particularly advantageous in depression cases because depression is a disease rooted in isolation. Group participation can be instrumental in helping depressed individuals break through their isolation, begin to share experiences and learn from other's experiences, and become valuable participants in a fellowship that generates hope and trust.

The LAP has always recognized that legal professionals are much more receptive to participating in confidential groups that only involve members of the legal profession. Beginning with training in law school, and then reinforced in the course of practicing law, legal professionals tend to believe that only a fellow law student, lawyer or judge can possibly begin to fathom the level of stress and pressure experienced in the rough-and-tumble practice of law.



Lawyers Helping Lawyers

Take full advantage of LAP's professionally moderated Depression Recovery Groups in New Orleans, Baton Rouge and Shreveport. Remember, all barriers to entry have been removed:

- **There is no cost for participation**
- **No medical records are kept**
- **No waiting for weeks or months to get an appointment**

To participate in the Depression Recovery Groups in the New Orleans, Baton Rouge, Shreveport and surrounding areas:

- **call (985)778-0571 or (866)354-9334**
- **email LAP@louisianalap.com**

In fact, oftentimes when a lawyer or judge comes in to the LAP, and then agrees to be referred to a LAP-approved resource, the lawyer or judge will skeptically add: "I'll go, but I don't have much faith in clinical help because there is no way that a doctor or therapist can appreciate what my life as a lawyer (or judge) is really like."

On some level, that is accurate. It is fair to say that law school, the bar exam and the practice of law are situations that cannot be fully understood without personally experiencing them. That is why there is no substitute for the invaluable "Lawyers Helping Lawyers" foundation of LAP. When lawyers and judges reach out and join together in recovery, an irreplaceable synergy occurs. These groups often provide lawyers and judges with the comfort zone needed to take off their "legal armor," trust clinical help and the group process, and respect feedback from the group. Within groups of their peers, members learn by example (both good and bad) from those working together to meet the challenges of recovery.

Of course, a depression problem must

be identified before help can begin. Lawyers and judges are often ill-equipped to recognize within themselves the symptoms of depression. More often than not, lawyers and judges confidentially reaching out to LAP report they cannot explain anything truly different occurring at work other than they just cannot seem to function at the same high level they used to. They report an uncharacteristic propensity for procrastination and a new feeling of being overwhelmed because they have not stayed on top of their docket or practice.

For many, there is a common concern that they have simply become unhappy with practicing law. Many times they attribute these symptoms to general "burnout" or becoming weary after many years of high-pressure practice. In truth, however, the person may actually be suffering from depression.

As to the statistical basis for the level of concern devoted to combating depression in the legal profession, it has long been established that the legal profession suffers the highest rates of depression — at least 30 percent. Some say those rates are now even higher. Conservatively speaking, at an absolute minimum, there are at least 5,000 Louisiana lawyers and judges suffering from some form of depression.

This is no surprise, considering the large numbers of lawyers competing for clients, stress and pressure from information overload while practicing in a high-speed technology world, financial challenges in today's uncertain economic climate, and the increased propensity of clients to lodge complaints against their lawyers.

The question is not whether depression is a severe problem in the legal profession, but rather how can the suffering and suicides in the ranks be effectively fought and prevented. First, awareness must be raised about the problem of depression and depression must be normalized as a health issue. The LAP has produced a new CLE presentation on depression that explains what it is, delineates the symptoms, provides information on how to recognize it, and encourages people to reach out to help themselves or someone they are concerned about. Unless the problem is detected and someone reaches out, nothing can be done about it.

Know the Signs That Can Save a Life!

Depression Warning Signs include difficulty concentrating, remembering details and making decisions; fatigue and decreased energy; feelings of guilt, worthlessness and/or helplessness; feelings of hopelessness and/or pessimism; insomnia, early-morning wakefulness or excessive sleeping; irritability and restlessness; loss of interest in activities or hobbies once pleasurable; overeating or appetite loss; persistent aches or pains, headaches, cramps or digestive problems that do not ease even with treatment; persistent sad, anxious or "empty" feelings; and thoughts of suicide or suicide attempts.

Suicide Warning Signs include thinking or talking about things such as wanting to die; feelings of hopelessness or having no reason to live; feelings of being trapped or in unbearable pain; and being a burden to others. Also, beware of behavior that includes increased use of alcohol or drugs; being anxious, agitated or reckless; sleeping too little or too much; withdrawing or isolating from others; showing rage or talking about seeking revenge; or displaying extreme mood swings.

Suicide Risk Factors that particularly affect lawyers and judges include mood disorders such as depression and anxiety disorders; alcohol and substance disorders; hopelessness; aggressive tendencies; job or financial loss; loss of relationship; lack of social support and sense of isolation; and the stigma associated with asking for help.

It is important to acknowledge that no one is immune to depression. It can attack anyone at any time. Mental health issues such as depression have absolutely nothing whatsoever to do with intelligence, competence, tenacity or willpower. Whether the depression is primarily situational or resulting from a physiological imbalance of brain chemistry, depression is a health issue and not the least bit rooted in character. As hard as it is for lawyers and judges to accept, there is no way to "lawyer" or think your way out of depression: It requires clinical help.

Also, it remains very difficult to beat down the strong stigmas that impede people's ability to seek and offer help regarding depression. There must be a call to arms within the legal profession to those who are suffering, encouraging them to reach out confidentially to the LAP for help. Even more important, those who see a peer suffering or in trouble are encouraged to reach out confidentially to LAP on that peer's behalf.

People willing to reach out on behalf of another can actually make the biggest difference of all in terms of helping the person before the depression problem becomes severe. The person suffering from depression may not be aware of it, may be in denial, or may be afraid to face it. In many cases the person does not reach out until severe consequences are incurred or a true crisis has been reached. In some of those cases, the help will not come soon enough to avert a tragedy.

Take full advantage of LAP's professionally moderated Depression Recovery Groups in New Orleans, Baton Rouge and Shreveport. Remember, all barriers to entry have been removed: There is no cost for participation, no medical records are kept, and those seeking help do not have to wait for weeks or months to get an appointment.

Those wanting to participate in the Depression Recovery Groups in the New Orleans, Baton Rouge, Shreveport and surrounding areas should call (985)778-0571 or (866)354-9334, or email LAP@louisianalap.com.

As always, you do not have to give your name when you call LAP. Pursuant to La R.S. 37:221, all calls to the Lawyers Assistance Program are confidential as a matter of law.

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.

We Can Help.

The signs of depression aren't easy to read. No one is completely immune. If you or a colleague experiences signs of depression, please call.

L · A · P

LAWYERS ASSISTANCE PROGRAM, INC.

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334 • Email: lap@louisianalap.com • *www.louisianalap.com*

LSBA Supports Local Pro Bono Efforts with October Month of Service

The Louisiana State Bar Association chose October as its Month of Service in order to coincide with and support local efforts during National Celebrate Pro Bono Week. Celebrate Pro Bono Week, held the last full week of October, is a national effort to meet the ever increasing needs of our most vulnerable citizens by encouraging local support of volunteer legal service efforts.

Yearly, low-income households in Louisiana are expected to experience approximately one civil legal need, but only one in five of those low-income households will have the benefit of being represented by an attorney in that legal matter. This means approximately 80 percent of the state's most vulnerable citizens have no representation as they attempt to secure the most basic legal needs, like protection from an abusive spouse or access to affordable housing. These individuals often turn to Louisiana's network of civil legal aid providers for help. However, this safety network of legal service and pro bono organizations, has recently experienced its own difficulties because of reductions of financial support during these difficult economic times.

The National Celebration of Pro Bono provides an opportunity for local legal organizations across Louisiana to take the next step in their efforts to provide high quality legal services to those living on the social margins.

The LSBA supports these local efforts by providing information, resources, publicity items, a coordinated state calendar of events and advice through its Access to Justice Program. LSBA President Richard K. Leefe designated October as Louisiana's "Month of Legal Service" for LSBA members in order to coincide with, and culminate in, the National Celebrate Pro Bono Week, Oct. 20-26. The goal of the "Month of Legal Service" was for attorneys and bar leaders to work with, and alongside, local organizations to help make a difference in their communities by providing assistance to benefit those most in need. Specifically, local bars and legal organizations were encouraged to give their time and experience by providing legal advice or help to unrepresented individuals at local courts.

> "Providing information and advice to individuals in the court house not only addresses an immediate legal need, but makes unrepresented litigants aware of the importance of having good legal advice and assures them that the courts can truly provide relief."
>
> – LSBA President Richard K. Leefe

"Providing information and advice to individuals in the court house not only addresses an immediate legal need, but makes unrepresented litigants aware of the importance of having good legal advice and assures them that the courts can truly provide relief," said LSBA President Richard K. Leefe. Bar leaders and local pro bono coordinators conducted legal advice events throughout the state, some of the events breaking ground as "firsts" in local court houses. A list and photos of events held during the month of October can be found at: *www.lsba.org/goto/MonthofService.*

Louisiana's pro bono organizations are to be commended for their ongoing, untiring efforts to face the challenge of providing volunteer legal services. Louisiana's legal community has an inspiring tradition of public service and in 2012 alone, Louisiana's attorneys reported providing more than 132,000 hours of pro bono service. However, even with donations of thousands of hours of volunteer time and thousands of clients served, there is still much work to be done.

"The National Celebration of Pro Bono and LSBA Month of Service provide support and acknowledgement of the great work being done in pro bono in Louisiana, but it takes more than one week, or even a month, to promote and improve pro bono programs. Louisiana pro bono organizations need your help every day of the year to ensure the legal needs of our fellow citizens are met," said LSBA Access to Justice Director Monte Mollere. For more information about pro bono volunteer opportunities, contact a pro bono organization near you. A list of organizations who could use your help can be found at: *www.lsba.org/goto/MonthofService.*

Louisiana Celebrates Month of Pro Bono Work

Numerous events were scheduled across the state for the October Month of Legal Service.

Tuesday, October 1, 2013

► **19th JDC Self Help Resource Center**. The East Baton Rouge Family Court hosts an ongoing Self-Help Resource Center at the 19th JDC every Tuesday and Thursday.

Wednesday, October 2, 2013

► **Orleans Parish Self Help Resource Center.** The Civil District Court in New Orleans hosts its ongoing SRL efforts conducted by Baker Donelson, Entergy, Adams and Reese, and Bruno & Bruno every Monday and Wednesday.

Tuesday, October 8, 2013

► **Arts and the Law.** Attorneys discussed legal issues with local artists and musicians. Topics discussed were sales tax, permits and licenses.

Wednesday, October 9, 2013

► **Veterans' Ask-a-Lawyer Day.** The Shreveport Bar Association organized a one-day free legal advice for veterans.

Friday, October 11, 2013

► **9th JDC Self-Help Resource Center.** The Central LA Pro Bono Project hosted a Self-Help Resource Center at the 9th JDC.

Wednesday, October 16, 2013

► **ADR Section School Outreach Program.** Members of the ADR Council gave presentations targeted to third and sixth graders at schools in Baton Rouge.

Friday, October 18, 2013

► **"Ask-A-Lawyer Day."** The Orleans Civil District Court hosted a free walk-in legal clinic on all topics.

Saturday, October 19, 2013

► **"Ask-A-Lawyer Day."** The Baton Rouge Bar Foundation's Pro Bono Project hosted a free walk-in legal advice clinic on all topics at the Main Library in Baton Rouge.

► **Hispanic Community Legal Clinic.** The Pro Bono Project hosted a free walk-in legal advice clinic on all topics targeted toward the Hispanic community at the Hispanic Resource Center.

Jennifer Johnson, Alan Briethaup, Lamar Walters, Ashley Smith and Kim Lanier Lawrence stand ready to assist visitors to the 4th JDC Ask-a-Lawyer event.

Several events were scheduled across the state during National Pro Bono Week, Oct. 20-26.

Monday, October 21, 2013

► **"Divorce Workshop."** The Pro Bono Project along with volunteer attorneys from the Capital One Legal team conducted a divorce workshop for clients. Clients received help from a volunteer attorney reviewing, signing, attesting to, and notarizing divorce pleadings. 40-50 people were scheduled at the workshop.

► **"Senior Clinic."** The Pro Bono Project hosted a free walk-in legal advice clinic on all topics targeted toward the elderly at the Metairie Senior Center.

Wednesday, October 23, 2013

► **Financial Literacy Seminar.** Baton Rouge volunteer attorneys presented information on reverse mortgages, debtors' rights and debtor issues pertinent to senior citizens at the Delmont Service Center in Baton Rouge.

► **"Thirst for Justice."** The Baton Rouge Bar Association organized a free walk-in legal advice clinic held at St. Vincent de Paul in Baton Rouge covering all topics.

Statewide Day of Service

Thursday, October 24, 2013

► **Wills and Power of Attorney Clinic.** The Central Louisiana Pro Bono Project hosted a free Wills and Power of Attorney Clinic at the Rapides Parish Main Library. Attorneys were available to prepare wills, both living and simple, and Power of Attorneys, both durable and healthcare.

► **Free Legal Clinic.** The Jefferson Bar Association held a free legal clinic for unrepresented persons of Jefferson Parish.

► **"Wills for Heroes."** The LSBA Young Lawyers Division, with the Shreveport Bar Association, participated in a Wills for Heroes event at the Shreveport Bar Center.

► **"Thirst for Justice."** The Baton Rouge Bar Association organized a free walk-in legal advice clinic held at St. Vincent de Paul in Baton Rouge covering all topics.

Friday, October 25, 2013

► **"Ask a Lawyer Day."** The Northshore Pro Bono Project of Southeast Louisiana Legal Services hosted an "Ask-A-Lawyer" event free-of-charge.

Saturday, October 26, 2013

► **Consumer Clinic.** The Pro Bono Project hosted a free walk-in legal advice clinic on consumer topics at St. Peter Claver Church.

For a complete list of events, visit *www.lsba.org/goto/MonthofService*

"Suit Up for the Future" Program Receives National ABA Award

The "Suit Up for the Future" High School Summer Legal Institute and Internship Program, a joint project of the Louisiana State Bar Association (LSBA) and the Just the Beginning Foundation, was one of three recipients of the 2013 American Bar Association (ABA) Partnership Award. The ABA's Standing Committee on Bar Activities and Services presented the award Aug. 9 during a joint luncheon of the National Conference of Bar Presidents, the National Association of Bar Executives and the National Conference of Bar Foundations, in conjunction with the ABA Annual Meeting in San Francisco.

The award recognizes outstanding programming and related work to increase diversity across all spectrums of the legal profession.

The Suit Up Program, a first-of-its-kind program at its inception in 2011, was recognized for being "an excellent pipeline initiative, well-developed and well-executed."

The multi-week program introduces high school juniors, seniors and recent graduates to all aspects of the legal profession so they might consider a future legal career. Along with law-related field trips and daily guest speakers, the students receive instruction on law school courses, legal research, writing skills, group collaboration for mock cases, oral arguments and basic office etiquette and attire. At the conclusion of the program, the students complete a draft résumé, personal college statement and legal memorandum, and present an oral argument to three sitting judges on Louisiana state and federal courts.

The "Suit Up for the Future" High School Summer Legal Institute and Internship Program received the 2013 American Bar Association Partnership Award. Attending the Aug. 9 award presentation were, from left, Louisiana State Bar Association (LSBA) President-Elect John L. (Larry) Shea, LSBA President Richard K. Leefe, LSBA Member Outreach and Diversity Director Kelly McNeil Legier, LSBA Executive Director Loretta Larsen, CAE, and LSBA Immediate Past President John H. Musser IV.

Also receiving the Partnership Award were the Dallas Bar Association for its Diversity Summit and the Monroe County (N.Y.) Bar Association for its Rochester Legal Diversity Clerkship Program.

LSBA Executive Director to Serve on NABE Board

Louisiana State Bar Association (LSBA) Executive Director Loretta Larsen, CAE, was installed Aug. 8 as a state bar director on the National Association of Bar Executives (NABE) Board of Directors. She will serve a two-year term.

An association executive for nearly 30 years, Larsen became the LSBA's first woman and first non-lawyer executive director in 1991. Under her leadership, the LSBA has expanded to include initiatives such as disciplinary diversion, a statewide access to justice program, law office management, professionalism and diversity.

In addition to her membership in NABE, she is a member of the American Society of Association Executives (ASAE) and the Louisiana Society of Association Executives (LSAE). She chaired the NABE Administration and Finance Section in 2011-12 and served on the NABE Program Committee for the 2012 Midyear Meeting in New Orleans. She has previously chaired the NABE Chief Staff Executives (1997-98) and Surveys (1993-95) committees, and has been a member of the Bylaws Committee (2003-04) and Program Committee (2006-08).

Larsen served as LSAE president in 2002, after having served as vice president and as a member of its board of directors. She was the 2011 chair of the board of directors of AIDSLaw of Louisiana, Inc. and has served since 2007 as secretary of the board of the Louisiana Center for Law and Civic Education. She recently joined the board of the Louisiana Civil Justice Center.

She has presented programs for NABE, the National Conference of Bar Presidents and the Louisiana Society of Association Executives on topics including leadership, disaster response, finances, communications, human resources and event planning. She received the CAE (Certified Association Executive) designation in 2005.

Third Legal Internship Program for High School Students Completed

The Louisiana State Bar Association (LSBA) partnered with the Just the Beginning Foundation to complete the third "Suit Up for the Future" High School Summer Legal Institute and Internship Program this past summer. This year, 25 high school juniors, seniors and recent high school graduates participated in the June 10-28 program.

Programming included lectures on various legal topics, discussions about ethics, field trips to the courts (including Orleans Parish Criminal District Court, Orleans Parish Civil District Court, Orleans Parish Municipal Court and the United States District Court, Eastern District of Louisiana), field trips to law schools, and several Law Firm Internship days.

The program ended on June 28 with mock oral arguments in the courtroom of Magistrate Judge Karen Wells Roby, United States District Court, Eastern District of Louisiana.

"The summer internship program provides students with practical, hands-on experience of what it takes to get into law school, and what it's like to be a law student and lawyer. As they assess their career options in high school, no other such opportunity in any other profession can be found," said Judge Roby, a coordinator of the internship program and a member of both sponsoring organizations.

"The effect of the Suit Up Program in the community is unparalleled. It provides students with a realist preview of the legal profession and a pathway to accomplish their goal of becoming a lawyer," said Chauntis T. Jenkins, co-chair of the LSBA's Diversity Committee.

The Louisiana State Bar Association partnered with the Just the Beginning Foundation to complete the third "Suit Up for the Future" High School Summer Legal Institute and Internship Program this past summer. This year, 25 high school juniors, seniors and recent high school graduates participated in the program. A visit to the Louisiana Supreme Court was one of many activities. *Photo by LSBA Staff.*

"The Suit Up Summer Internship Program affords students the unique opportunity to gain a bird's-eye view of the challenges and rewards of becoming an attorney," said Hon. Karen K. Herman, judge in Orleans Parish Criminal Court and co-chair of the LSBA's Diversity Committee. "There is no other program like it, and the experience gained by the students involved is without measure."

The program organizers gave special thanks to Loyola University College of Law, Louisiana State University Paul M. Hebert Law Center, Southern University Law Center and Tulane University Law School.

The program expenses were underwritten in part by a grant from the Minority Corporate Counsel Association.

LSBA Director to Chair NABE Diversity Committee

Louisiana State Bar Association (LSBA) Member Outreach and Diversity Director Kelly McNeil Legier was named chair of the National Association of Bar Executives (NABE) Diversity Development Committee during the NABE Annual Meeting in August. The committee assists local and state bar leaders in gathering information, resources and skills needed to address and manage a broad range of minority involvement issues.

Legier received her BA degree, *magna cum laude*, in 1989 from Loyola University in New Orleans and her JD degree, *cum laude*, in 1993, from Loyola University College of Law.

Before accepting the LSBA position, she worked in the Staff Attorney's Office of the United States 5th Circuit Court of Appeals. She also practiced law with Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.C.; Shook Hardy & Bacon, L.L.P. (a Kansas City-based firm); and Proskauer Rose, L.L.P. (a New York-based firm).

Legier is a member of the board of directors of the New Orleans Chapter of the Federal Bar Association and the Bureau of Governmental Research. She is a Fellow of the Louisiana Bar Foundation. She served on the LSBA's Board of Governors and on the American Bar Association Presidential Diversity Report *Next Steps* Subcommittee in 2010. She is an instructor for the National Institute of Trial Advocacy and the Louisiana State University Trial Advocacy Program and is a volunteer for the Pro Bono Project and Teen Court Program.

Board-Certified Specialists Need CLE Compliance

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as set forth in the individual standards for each field of legal specialization, board-certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2013. The requirement for each area of specialty is as follows:

► Estate Planning and Administration Law — 18 hours of estate planning law.

► Family Law — 18 hours of family law.

► Tax Law — 20 hours of tax law.

► Bankruptcy Law — CLE is regulated by the American Board of Certification.

CLE credits will be computed on a calendar year basis and all attendance information shall be delivered to the Mandatory Continuing Legal Education (MCLE) Department. The deadline for filing annual CLE is Jan. 31 of the following year. Failure to timely report specialization CLE hours will result in a penalty assessment.

Small BP Deepwater Horizon Claims Can Be Referred to Public Interest Organizations

By Linton W. Carney and Darin S. Britt
The Pro Bono Project, New Orleans

For more than three years, residents of the Gulf Coast and coastal states have lived with the economic and emotional consequences of the BP Deepwater Horizon spill. Within days of the spill's occurrence, public interest organizations in the region began collaborating with the aim of preventing the spill effects from devastating their low-income clients, the people most likely to suffer without redress.

The multistate consortium, spearheaded by the Mississippi Center for Justice and including entities from Alabama, Florida and Louisiana, continued to advocate for assistance to the most vulnerable and eventually received funding to assist them from the Gulf Coast Claims Facility. This funding was continued by the Settlement Authority when it took over handling claims last year.

In the past year, the consortium has helped more than 5,400 people in the four states with a full range of claims, including those for wage earners, small businesses, boat owners, cleanup workers, coastal property owners, and others affected by the disaster.

But with the April 2014 deadline looming, and a determined effort by BP to challenge the Settlement's compensation terms coupled with a public relations campaign calling into question the ethics of the Settlement Authority, many advocates have expressed concern that low-income residents of the area may have become discouraged from seeking the help that is available to them. At the same time, these advocates realize that a huge influx of last-minute claims will overtax the private bar with small claims that aren't economically attractive either due to complexity or (more often) to the small amount involved.

To prevent this collision of interests, the public interest organizations across the region have stepped up outreach to the potential clients through innovative clinics, canvassing and referrals.

Louisiana Civil Justice Center law clerks Amy Duncan and Mia Lewis assisted those affected by the BP oil spill at the Terrebonne Parish Library in Dulac.

In Louisiana, the Louisiana Civil Justice Center's (LCJC) Enjolie Dawson led a canvassing expedition in Terrebonne Parish on June 20, 2013, with the assistance of two LCJC interns and Jacqueline Aaron, an intern at The Pro Bono Project. The canvassing expedition was conducted to increase awareness of a free legal aid clinic set for the following week at the Chauvin Library. The participants distributed brochures at bait shops, strip malls, banks, hotels, individual businesses and restaurants.

At each location, they worked in teams of two, talking with business managers to inform them of the clinic and asking them to display the outreach handouts for their employees and customers. Many managers agreed to promote the clinic. Businesses related to the seafood industry were particularly receptive and told how they were still suffering three years after the spill; one owner said his company was still down $30,000 every month compared to before the spill.

But increased outreach alone won't ensure that everyone gets a chance to be compensated. To help make sure that the poor get a fair deal from the Settlement, members of the private bar can refer their small claims to members of the Louisiana nonprofit community for representation.

Louisiana agencies working together include the Louisiana Civil Justice Center, The Pro Bono Project, Southeast Louisiana Legal Services, the Gulf Coast Center for Law and Policy, and the Louisiana Justice Institute. Practitioners can contact one of those agencies directly to refer a case, but the preferred method is to contact the LCJC at 1-800-310-7029.

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By Carol M. Rider | MINIMIZE BREACH OF LAW FIRM DATA

You know your ethical responsibilities regarding protection of confidential client data.[1] You know you have to take reasonable precautions in preventing disclosure when emailing your client, or when saving sensitive information on your computer. But how do you proceed in safeguarding this information? You cannot rely on your IT person to maintain security since you also are required to reasonably supervise non-lawyers.[2] This article discusses the nuts-and-bolts of computer safety, derived from an online article by John W. Simek and Sharon D. Nelson (published in the American Bar Association's online *Law Practice Magazine*, January/February 2012, Vol. 38, No. 1):[3]

► Have a strong password of at least 12 characters. No matter how strong an eight-character password is, it can now be cracked in about two hours. A strong 12-character password takes roughly 17 years to crack (estimate at the time this article was written). Even better is the use of a passphrase, generally 20-30 characters long, which is a series of words that create a phrase personal to the user.

► Don't use the same password everywhere. If they crack you once, they've got you in other places, too.

► Change your passwords regularly. This will foil anyone who has gotten your password.

► Do not have a file named "passwords" on your computer. Do not have your password on a sticky note under your keyboard or in your top right drawer (most common locations)!

► Change the defaults. It doesn't matter if you are configuring a wireless router or installing a server operating system. In all cases, make sure you change any default values. The default user ID and passwords are well known for any software or hardware installation. Apple isn't immune either, since there are default values for their products as well.

► Your laptop should be protected with whole disk encryption — no exceptions. Stolen and lost laptops are one of the leading causes of data breaches. Many of the newer laptops have built-in whole disk encryption. To state the obvious, make sure you enable the encryption or your data won't be protected. Also, encryption may be used in conjunction with biometric access. As an example, our laptops require a fingerprint swipe to power on. Failure at that point leaves the computer hard drive fully encrypted.

► Backup media, a huge source of data leaks, should be encrypted. If you use an online backup service, which means you're storing your data in the cloud, make sure the data is encrypted in transit and while being stored. Also, be sure that employees of the backup vendor do not have access to decrypt keys.

► Thumb drives, which are easy to lose, should be encrypted. You may want to log activity on USB ports, because it is common for employees to lift data via a thumb drive. Without logging, you cannot prove exactly what was copied.

► Keep your server in a locked rack in a locked closet or room. Physical security

is essential.

► Most smartphones write some amount of data to the phone. Opening a client document may write it to the smartphone whether or not you save it. The iPhone is particularly data rich. Make sure you have a PIN for your phone. This is a fundamental protection. Don't use "swiping" to protect your phone as thieves can discern the swipe the vast majority of the time due to the oils from your fingers. Also make sure that you can wipe the data remotely if you lose your phone.

► Solos and small firms should use a single integrated product to deal with spam, viruses and malware. For solos and small firms, we recommend using Kaspersky Internet Security 2012, which contains firewall, anti-virus, anti-spyware, rootkit detection, anti-spam and much more. For larger firms, we are fans of Trend Micro.

► Wireless networks should be set up with the proper security. First and foremost, encryption should be enabled on the wireless device. Whether using Wired Equivalent Privacy (WEP) 128-bit or WPA encryption, make sure that all communications are secure. WEP is weaker and can be cracked. The only wireless encryption standards that have not been cracked (yet) are WPA with the AES (Advanced Encryption Standard) or WPA2.

► Make sure all critical patches are applied. This may be the job of your IT provider, but too often this is not done.

► If software is no longer being supported, its security may be in jeopardy. Upgrade to a supported version to ensure that it is secure.

► Control access. Does your secretary really need access to Quickbooks? Probably not. This is just another invitation to a breach.

► If you terminate an employee, make sure you kill the ID and immediately cut all possible access (including remote) to your network. Don't let the former employee have access to a computer to download personal files without a trusted escort.

► Using cloud providers for software applications is fine, provided that you made reasonable inquiry into their security. Read the terms of service carefully and check your state for current ethics opinions on this subject.

► Be wary of social media applications, as they are now frequently invaded by cybercriminals. Giving another application access to your credentials for Facebook, as an example, could result in your account being hijacked. Even though Facebook now sends all hyperlinks through Websense first (a vast improvement), be wary of clicking on them.

► Consider whether you need cyber insurance to protect against the possible consequences of a breach. Most insurance policies do not cover the cost of investigating a breach, taking remedial steps or notifying those who are affected.

► Have a social media and an incident response policy.

► Let your employees know how to use social media as safely as possible, and if an incident happens, it is helpful to have a plan of action in place.

► Dispose of anything that holds data, including a digital copier, securely. For computers, you can use a free product like DBAN to securely wipe the data.

► Make sure all computers require screen saver passwords, and that the screen saver gets invoked within a reasonable period of inactivity.

► Use wireless hot spots with great care. Do not enter any credit card information or login credentials prior to seeing the https: in the URL.

► For remote access, use a VPN or other encrypted connection.

► Do not give your user ID and password to anybody. This includes your secretary and even the IT support personnel. None of these safeguards are hard to implement. Unfortunately, even if you implement them all, new dangers will arise tomorrow. The name of the game in information security is "constant vigilance."

An attorney's ethical duties of confidentiality and safekeeping are paramount to maintaining the integrity of the legal profession. Regular use of the aforementioned tips will certainly increase protection of your client's data.

FOOTNOTES

1. Rules of Professional Conduct 1.6 and 1.15.
2. Rule of Professional Conduct 5.3.
3. To review the full article by John W. Simek and Sharon D. Nelson, go to: *www.americanbar.org/publications/law_practice_magazine/2012/january_february/hot-buttons.html* .

Carol M. Rider is professional liability loss prevention counsel for the Louisiana State Bar Association and is an employee of Gilsbar, Inc. in Covington, La. She earned her JD degree from Loyola University Law School in 1983. She is a me mber of the Louisiana State Bar Association and has lectured on professionalism and ethics as part of Mandatory Continuing Legal Education requirements for attorneys licensed to practice law in the Louisiana. She also has published several articles for the Louisiana Bar Journal. *She can be emailed at crider@gilsbar.com.*

LAWYERS Assistance

By J.E. (Buddy) Stockwell

THE HIGH-FUNCTIONING ALCOHOLIC

As judges and lawyers, we often exhibit personality traits that help us succeed as law students and, later, as legal professionals.

Review these traits to see whether you recognize any of them in yourself or others in the legal profession: 1) outgoing and gregarious personality; 2) strong ability to function in "survival mode;" 3) exceptional "people skills;" 4) desire to make others happy; 5) need to prove themselves; 6) high level of physical energy; 7) meticulous work ethic; 8) very likable; 9) physically strong; 10) desire to succeed materially; 11) competitive nature; 12) high professional/academic standards; 13) ability to compartmentalize professional and or academic life from personal life; 14) attachment to external success; and 15) desire to exceed parental levels of success.

Believe it or not, this list does not delineate successful traits of legal professionals. Instead, it is a list of traits common among High-Functioning Alcoholics (HFAs). That's not to say that these traits automatically make someone an alcoholic, but it is interesting to learn that some of the traits that propel legal professionals toward success also can disguise the disease of alcoholism.

In the United States, 18 million people meet the criteria for substance use disorders and up to 50 percent of diagnosable alcoholics are HFAs. A mere 9 percent of alcoholics are stereotypically drinking cheap booze from a bottle in a paper bag. In reality, a huge number of alcoholics are found on the job each day, appearing to successfully manage their professional and public lives despite their ongoing drinking problems that, in their minds, are compartmentalized and under control.

HFAs may not admit it but their drinking negatively impacts their work performance at times and they simply get away with it. Many HFAs are professionals who are not closely supervised and have loyal support staff members who cover up mistakes and clean up messes. The HFA's alcoholism progresses undetected as a result. Also, hefty professional salaries often provide HFAs with ample resources to hide or "fix" damages caused by their continued problem drinking.

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For the HFA's personal view, excessive alcohol use is often considered an appropriate reward. The catchphrase "work hard, play hard" is often employed by HFAs to rationalize problem drinking. Further, to try and normalize problem drinking, HFAs often befriend other heavy drinkers who also "play hard."

Unsuccessful at alcohol moderation, HFAs often engage in mind games by claiming the alcohol content of their drinks is not that high or by drinking expensive alcoholic beverages so as to aver they are connoisseurs rather than problem drinkers.

As HFAs expend great effort to appear normal, many secretly suffer painful personal distress: shame and remorse from drunken behavior; frustration over failed attempts to control drinking; and the pain of abstaining for months or years only to "fall off the wagon" and become a problem drinker again.

Early in the HFA conversation, someone always asks: "If the person is successful despite problem drinking, why not leave them alone?" In answering that question, it is paramount to first understand that despite an HFA's best efforts to contain alcoholism within his or her personal life, if left untreated, alcoholism will eventually impact the person's professional performance and public life. By that time, however, the person's private life is often in shambles.

As time marches on, family members, friends and coworkers often ignore and minimize the HFA's problem drinking because they feel that they "have no proof" that the person is really an alcoholic. They also may feel that because the person is still functioning at the moment "it must not be that bad." In truth, it is very bad because the disease worsens over time. HFAs may be successful in delaying consequences but they rarely escape them. Alcoholism is a chronic, progressive and, if left untreated, potentially fatal disease. The HFA's ability to compartmentalize drinking, combined with others' hesitation to address the HFA's drinking, often makes matters worse for HFAs because the problem often grows until an overwhelming avalanche of consequences comes crashing down.

The results can range from severely damaging to deadly. Approximately one third of people who attempt and complete suicide meet diagnosable criteria for alcohol abuse or dependence. That statistic, combined with the legal profession's already high rates of substance abuse and suicides, places those of us in the legal profession at very high risk. By reaching out to the Lawyers Assistance Program (LAP), you can tap into valuable resources that literally can save lives.

If you have a problem, call LAP! If you know someone with a problem, call LAP! Your call is confidential as a matter of law and you do not have to give your name. LAP can be reached at (866)354-9334, by email lap@louisianalap.com, or 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.

Focus on DIVERSITY

By Paul S. Balanon and Michael R. Robinson

LGBT SUBCOMMITTEE'S 'I THEE WED' CLE

The Lesbian, Gay, Bisexual and Transgender (LGBT) Subcommittee of the Louisiana State Bar Association's (LSBA) Diversity Committee hosted a well-attended roundtable of practitioners (and non-practitioners) on July 18 in New Orleans to discuss the ramifications of two U.S. Supreme Court opinions affecting the LGBT community — the opinions issued just weeks before the program.

For the roundtable, three scholars affiliated with UCLA's Williams Institute on Sexual Orientation Law & Public Policy discussed *United States v. Windsor*, holding unconstitutional Section 3 of the federal Defense of Marriage Act (DOMA) that had prohibited federal recognition of valid marriages between persons of the same gender; and *Hollingsworth v. Perry*, holding that appellants lacked standing to challenge a lower court ruling that the State of California could not change its Constitution to deny marriage rights between persons of the same gender. As of July 18, 13 states and the District of Columbia allow marriage of same gender couples.[1] Louisiana does not. This state is constrained from doing so by its so-called "Mini-DOMA."

Dr. Gary Gates, a recognized demographer of the LGBT population in the United States, used the most recent federal census data to explain the population dynamics of the LGBT community. It is estimated that more than 110,000 LGBT individuals live in Louisiana. An estimated 8,000 same-sex couples live in the state, with the majority living in Orleans, Lafayette, Caddo and East Baton Rouge parishes. A significant portion of these couples have been or plan to be married in a state that grants such rights to persons of the same gender, but then return to Louisiana, which does not legally recognize their relationship status.

Professor R. Bradley Sears, assistant dean at UCLA School of Law and executive director of the Williams Institute, explained the effects of DOMA and identified 1,100 or so federal benefits and obligations withheld from couples in same-gender marriages. In light of *Windsor*, differential treatment in such areas as immigration, federal employee benefits, military and veteran spousal benefits, Medicare benefits and federal taxes will no longer be constitutional. He described how marriage equality developed in the United States and the rest of the world over the past 15 years, with expansion of marriage rights to same-gender couples coming through the court system, the ballot box, as well as state legislatures. Sears also discussed the two Supreme Court cases in detail, beginning with their backgrounds, the significance of the rulings, and where he believes the country is headed from here.

The roundtable discussion was led by Professor Todd Brower, judicial education director at the Williams Institute. The open-forum format allowed attendees to voice their thoughts, ask questions and engage in debate covering real-life scenarios that practitioners might encounter. Topics ranged from community property, succession, divorce, child custody and immigration, and how these complicated issues might be resolved by the practitioner in the current legal climate.

The response from attendees was overall very positive. The LGBT Subcommittee is in the process of developing future programs, aimed at advancing the principles set forth in its Mission Statement *(see sidebar)*. For more information on the subcommittee's work or to become a member, go to: *www.lsba.org/diversity*, or email LSBA Member Outreach and Diversity Director Kelly McNeil Legier at kelly.legier@lsba.org.

Mission Statement: Diversity Committee's LGBT Subcommittee

The Mission Statement of the Diversity Committee's Lesbian, Gay, Bisexual and Transgender Subcommittee is:

"To unite attorneys, judges, professors, law students, paralegals and other members of the legal profession in Louisiana around issues facing LGBT individuals; promote solidarity and support among LGBT individuals in the law; encourage law firms to offer domestic partnership benefits to employees; educate the general public, legal profession and courts about legal issues facing LGBT individuals; promote the expertise and advancement of LGBT legal professionals in the legal profession; work with LGBT organizations, community groups and other progressive allied groups and individuals to gain equal rights for all people; promote the creation of coalitions with other legal bar associations and organizations; encourage the adoption of non-discrimination policies in law firms protecting both sexual orientation and gender identity; and encourage and empower LGBT individuals to choose law as a career."

FOOTNOTE

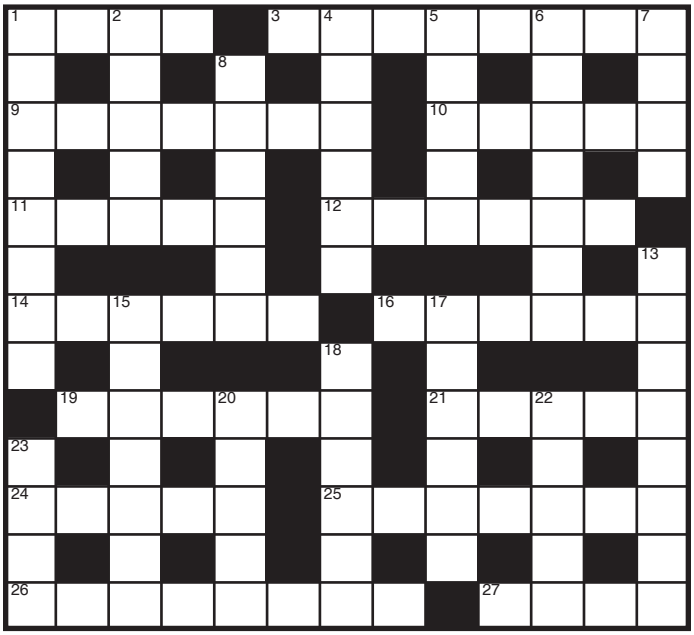
1. In addition to 13 states and the District of Columbia, several countries provide marriage rights for same-gender couples, including South Africa, Canada, New Zealand, Argentina, Uruguay, numerous countries in Europe, and certain states in Brazil and Mexico.

Paul S. Balanon is an attorney with the New Orleans office of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Ste. 3500, 701 Poydras St., New Orleans, LA 70139)

Michael R. Robinson is an attorney with the Irpino Law Firm in New Orleans. (2216 Magazine St., New Orleans, LA 70130)

Crossword PUZZLE

By Hal Odom, Jr. | THE BIGGEST CONSPIRACY



ACROSS

1 ___ Shaw, charged with (and acquitted of conspiracy of 11/22/63 (4)
3 Dallas hospital of 11/22/63 (8)
9 Innocence or credulity (7)
10 Explosive, familiarly (5)
11 Prefix meaning "British" (5)
12 Plaza of 11/22/63 (6)
14 ___ Baines Johnson, sworn in as president on 11/22/63 (6)
16 Site of Louisiana State Penitentiary (6)
19 Assassin (?) of 11/22/63 (6)
21 Parsimonious person (5)
24 Cholula chum (5)
25 Become tiresome (4, 3)
26 Orleans D.A. who prosecuted (and failed to convict) 1 Across (8)
27 Make indistinct (4)

DOWN

1 Texas governor of 11/22/63 (8)
2 Maturation (5)
4 Revises, as a contract or a statute (6)
5 Home country of Barack Obama Sr. (5)
6 Architectural style of Louisiana State Capitol (3, 4)
7 "Good to the last ___" old ad slogan (4)
13 Photographer of 11/22/63 (8)
15 More inclement (7)
17 Japan, in corporate names (6)
18 Very slow, musically (6)
20 Provençal garlic sauce (5)
22 Grassy ___, where shots may have emanated on 11/22/63 (5)
23 Fruit-flavored drink taken on Gemini flights (4)

Answers on page 239.

Alcohol and Drug Abuse Hotline

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The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

FOCUS on Professionalism

By Lauren E. Godshall

PROFESSIONALISM: NOW WITH HOMEWORK

Lawyers frequently discuss the concept of "professionalism" in the context of interacting with other lawyers or judges. This may be a natural byproduct of the intensity and high stakes that often accompany lawyer-lawyer interactions. The presence — or absence — of a truly professional demeanor in one's opponent can be striking.

But it is important to remember, too, that the concept of "professionalism" embraces much more than only lawyer-to-lawyer interactions and, in fact, should be a part of every interaction in a well-functioning office environment, regardless of setting.

Recently, Phillip Hearn, a paralegal I work with, was asked to give a presentation to our entire firm on the topic of "professionalism." In preparing for the talk, Phillip started out by consulting the well-known and well-worn authorities (Google, of course) on the subject. But then he was struck by an idea — instead of *telling* us what the great thinkers, authors, lawyers and politicians have said about professionalism and what it means, he would *ask* us what professionalism means. In the weeks before his presentation, he quietly circulated an email to a cross section of the people in the office — partners, associates, paralegals, secretaries, nurses, administrative staff and accounting staff. He reached out to longtime firm members and new hires — younger and older employees alike. Phillip's email asked each person to simply define the word "professionalism" in his/her own way: "What is 'professionalism' to you?" Then he presented the resulting definitions to all of us, without letting us know who had said what.

The compiled definitions provided us a little peek into what our co-workers consider most important, giving guidance on what we would like to see both from ourselves and from each other as we all work together day in and day out.

Preparation, planning and timeliness were frequently mentioned as qualities inherent to professionalism. Appropriate grooming and attire were the focus of a few. Sincerity, humility, modesty were highlighted in several submissions, as were the somewhat oppositional concepts of taking pride in your work and valuing your role in the organization. Empathy for others was balanced with a need for high-quality, careful work. Many ideas were similar — but, interestingly, it was impossible to tell, from reading each of the submitted definitions, whether they had been written by the most senior partner or the most junior accounting clerk.

In reviewing all of the definitions together, I was struck by a few trends. The definition of "professionalism," as my co-workers had variously defined it, seemed to be a combination of two fundamental elements: the "work product" element and, what I inelegantly called, the "interaction" element. Under "work product," my co-workers spoke of the importance of attention to detail, staying competent in your field, caring about both your work product and your team, and completing every task in a timely fashion, and so forth. As for "interaction," there was repeated mention across multiple definitions of maintaining and demonstrating both honesty and integrity; displaying respect for everyone else in the office; and maturity and being accountable for one's mistakes. Perhaps most dauntingly, it also was mentioned that a true professional maintains these qualities during the most difficult and extraordinary situations. As one submission concluded: "At the end of the day, a true professional is exhausted!"

At the end of his presentation, Phillip left us with his own definition of professionalism — and some homework. He said his understanding of the term involved the important element of choice. We can choose how to conduct ourselves and how to treat others. A professional, Phillip said, chooses to treat others the way he or she would want and expect to be treated, regardless of the recipient's circumstances and regardless of their response.

And then there was the homework. We even got worksheets — and perhaps it would be unprofessional to disregard his assignment? It was simple enough . . . one question followed by blank space. "What is professionalism to me?" A good question for all of us and one I pass along now: If you had to put it into words, what would you say?

Lauren E. Godshall is a member of the Louisiana State Bar Association's Committee on the Profession. She practices environmental litigation as a senior associate in the New Orleans office of Curry & Friend, P.L.C. (Ste. 1200, Whitney Bank Building, 228 St. Charles Ave., New Orleans, LA 70130)

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Aug. 4, 2013.

Decisions

Frank D. Barber III, New Orleans, (2013-B-1132) **Suspended for two years, retroactive to his March 28, 2012, interim suspension**, ordered by the court as consent discipline on June 21, 2013. JUDGMENT FINAL and EFFECTIVE on June 21, 2013. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and violating or attempting to violate the Rules of Professional Conduct.

Scott David Beal, Chicago, Ill., (2013-B-0972) **Suspended for two years** ordered by the court on June 21, 2013. JUDGMENT FINAL and EFFECTIVE on July 5, 2013. *Gist:* Neglected legal matters; settled cases without his clients' approval; and failed to disburse settlement funds to a client.

Russell W. Beall, Baton Rouge, (2013-B-1122) **Public reprimand** ordered by the court as consent discipline on June 14, 2013. JUDGMENT FINAL and EFFECTIVE on June 14, 2013. *Gist:* Improperly split fees with a disbarred attorney.

Darryl M. Breaux, New Orleans, (2013-B-1123) **Suspended for six months, fully deferred, subject to a one-year probationary period**, ordered by the court as consent discipline on June 14, 2013. JUDGMENT FINAL and EFFECTIVE on June 14, 2013. *Gist:* Mishandled his client trust account by maintaining personal funds in the account and allowing it to become overdrawn.

Thomas L. Crabson, Margate, Fla., formerly of Louisiana, (2013-B-0312) **Suspended for one year and one day** ordered by the court on April 12, 2013. JUDGMENT FINAL and EFFECTIVE on April 26, 2013. *Gist:* Convicted of the crime of battery and for failing to cooperate with the Office of Disciplinary Counsel in its investigation.

Hilliard Charles Fazande III, New Orleans, (2013-B-0847) **Suspended for six months, fully deferred, subject to two years' probation with conditions**, ordered by the court as consent discipline on May 17, 2013. JUDGMENT FINAL and EFFECTIVE on May 17, 2013. *Gist:* Overdraft in and improper use of client trust account.

Marvin C. Gros, Donaldsonville, (10-DB-080) **Public reprimand** ordered by the Louisiana Attorney Disciplinary Board on May 14, 2013. JUDGMENT FINAL and EFFECTIVE on May 28, 2013. *Gist:* Negligently failing to supervise an attorney and run his office; negligently failed to receive and respond to court notices and deadlines; and negligently failed to sufficiently explain the significance of the prescription defense

Continued next page

and the reasons for filing, then dismissing, the appeal of the judgment sustaining the prescription exceptions, resulting in the complainant losing her opportunity to litigate her medical malpractice claim.

Joseph B. Harvin, Slidell, (2013-B-0685) **Suspended for three months with all but 30 days deferred, subject to one-year unsupervised probation and condition of Ethics School**, ordered by the court on May 24, 2013. JUDGMENT FINAL and EFFECTIVE on June 7, 2013. *Gist:* Meritorious claims and contentions; candor toward the tribunal; violating the Rules of Professional Conduct; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Nelvil B. Hollingsworth, Zachary, (2013-B-1225) **Suspended for one year and one day, retroactive to his May 30, 2012, interim suspension**, ordered by the court as consent discipline on June 21, 2013. JUDGMENT FINAL and EFFECTIVE on June 21, 2013. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Frank E. Lemaire, Sulphur, (2013-OB-1380) **Transferred to disability inactive status** ordered by the court on June 19, 2013. JUDGMENT FINAL and EFFECTIVE on June 19, 2013.

David M. Mark, Covington, (2013-B-1097) **Interim suspension** ordered by the court on consent on May 22, 2013.

Michael Kevin Powell, Lake Charles, (2013-B-1264) **Suspended for one year and one day, retroactive to his April 25, 2012, interim suspension**, ordered by the court as consent discipline on June 21, 2013. JUDGMENT FINAL and EFFECTIVE on June 21, 2013. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and violating or attempting to violate the Rules of Professional Conduct.

H. Brenner Sadler, Alexandria, (12-DB-032) **Public reprimand and attendance of 2 hours of additional CLE** ordered by the board as final discipline on May 22, 2013. JUDGMENT FINAL and EFFECTIVE on June 5, 2013. *Gist:* Negligent failing to act with diligence and conflict of interest.

Helene Melissa Sugar (Gold), Shreveport, (2013-B-0874) **Suspended for 30 months, retroactive to June 2, 2010, the date of her interim suspension**, ordered by the court as consent discipline on May 31, 2013. JUDGMENT FINAL and EFFECTIVE on May 31, 2013. *Gist:* Neglected legal matters; failed to communicate with clients; failed to refund unearned fees; failed to properly supervise a non-lawyer assistant; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and failed to cooperate with the ODC in its investigations.

Andre F. Toce, Broussard, (2013-B-1086) **Suspended for one year and one day, fully deferred, subject to conditions**, ordered by the court as consent discipline on May 31, 2013. JUDGMENT FINAL and EFFECTIVE on May 31, 2013. *Gist:* Violating or attempting to violate the Rules of Professional Conduct; and violating Rule 8.4(b) (DWI).

Continued next page

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 Aug. 1, 2013.

Respondent	Disposition	Date Filed	Docket No.
Chris L. Bowman	Reinstated.	6/18/13	13-644
Hilliard Charles Fazande III	[Reciprocal] Suspension.	7/16/13	13-4275
Frank T. Fradella	[Reciprocal] Suspension.	7/16/13	13-3679
Joseph B. Harvin	[Reciprocal] Suspension.	7/16/13	13-4810

Discipline continued from page 207

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

No. of Violations

Allowed a non-lawyer to routinely sign checks issued from the IOLTA account...1

Business transaction with a client 1

Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects 1

Conflict of interest.....1

Conflict of interest regarding a prospective client 1

Engage in conduct involving dishonesty, fraud, deceit or misrepresentation 1

Failed 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

Made an arrangement for, charged and collected an unreasonable fee.....1

Misconduct.....1

Regarding bar admission and disciplinary matters 1

Regarding candor toward the tribunal 1

Regarding competence 1

Regarding declining or terminating representation 1

TOTAL INDIVIDUALS ADMONISHED.....9

Mediation Confidentiality Trumps First Amendment Rights

LiMandri v. Wildman, Harrold, Allen & Dixon, No. B234460 (Cal. App. 2d Dist., June 6, 2013), 2013 WL 2451322 (unpublished).

In answering a question about same-sex marriage during the 2009 Miss USA pageant, reigning Miss California Carrie Prejean expressed her belief that marriage "in my country, in my family . . . should be between a man and a woman, no offense to anybody out there." The controversy that ensued led to Prejean finishing second in the pageant; personal attacks against Prejean by the executive directors of the Miss California USA pageant; the resignation of one of those directors when Donald Trump refused to strip Prejean of her Miss California crown; Prejean becoming the darling of family-oriented conservative groups; Prejean ultimately being stripped of her Miss California crown; and, inevitably, a defamation lawsuit by Prejean against the executive directors, among others.

The parties went to mediation in November 2009 with JAMS, signed a JAMS confidentiality agreement, and reached a settlement that included an agreement by the parties and their attorneys to maintain "the strictest confidentiality" regarding the mediation and settlement agreement. A day after the conclusion of the mediation conference, TMZ reported details of the agreement, including that Prejean dropped her monetary demands after being shown a compromising sex video that she made. In subsequent reports, more details of the mediation conference continued to be aired in the media: Prejean first denied that

she was the female on the tape, then was "rendered speechless" when the camera angle changed to show her face; her mother was present in the room and turned "sheet white" when the video was played; and the amount of fees paid to Prejean's attorney, Charles LiMandri. Given that one of the defendants and his attorney were the only members of the defense in the room during the video showing, the court noted that the list of who leaked the information was "considerably limit[ed]."

In November 2010, Charles LiMandri filed suit on his own behalf for breach of the JAMS confidentiality agreement and of the settlement agreement, among other claims. His argument was that he agreed to less than his usual fee in the settlement agreement in order to prevent his client from being "essentially blackmailed with the private photos and videos" and that he had a "right to financial privacy in the amount of his fee award." The defendants attempted to have LiMandri's claims dismissed through the application of California's Strategic Lawsuit Against Public Participation (SLAPP) provision (Code Civ. Proc. § 425.16). The intent of the anti-SLAPP statute is to protect the valid exercise of the constitutional right of freedom of speech in matters involving public significance from lawsuits brought primarily to chill that right. The defendants argued that since Prejean is a public person and the disclosures regarding her sex tape were made on television (a public forum), they were within their First Amendment rights to disclose that information.

The California 2nd District Court of Appeal agreed with the defendants that Prejean was a public person and the disclosures were made in a public forum; however, it affirmed the trial court's decision to deny the motion to strike plaintiff's claims. The court pointed out that it is possible to waive constitutional rights by contract, even the First Amendment right to freedom of speech. The act of signing a confidentiality provision does "[prevent] a party from disclosing the circumstances surrounding a settlement agreement." Further, the court noted that the "confidentiality provision of the Settlement Agreement *expressly* applies to the attorneys for the parties." As such, even though the defense attorney did not sign the settlement agreement as a party, he "is bound by the confidentiality provision to the same extent as [his] client." Therefore, the defense attorney's statements to TMZ and other media outlets about Prejean were not protected speech, and the lawsuit could proceed.

—Paul W. Breaux
Chair, LSBA Alternative Dispute Resolution Section
Peacemakers Mediation Service, L.L.C.
16643 S. Fulwar Skipwith Rd.
Baton Rouge, LA 70810

Calculating the Cramdown Rate in Chapter 11

Wells Fargo Bank Nat'l Ass'n v. Texas Grand Prairie Hotel Realty, L.L.C., 710 F.3d 374 (5 Cir. 2013).

Texas Grand Prairie Hotel Realty, L.L.C. (debtor) obtained a loan secured by debtor's hotel properties. Debtor subsequently filed for Chapter 11 and submitted a plan of reorganization. The secured creditor of the debtor, Wells Fargo, rejected the proposed plan, and the debtor sought to cramdown its plan under Section 1129(b). Both parties stipulated that the cramdown rate should be determined by applying the "prime-plus" formula endorsed by the United States Supreme Court in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004). In *Till*, the Supreme Court used the prime rate and then added a risk adjustment to account for such factors as "the circumstances of the [debtor's] estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 1961.

The prime rate at the time was 3.25 percent. The debtor proposed a cramdown rate of 5 percent, applying an upward risk adjustment of 1.75 percent based on the *Till* factors. Wells Fargo, however, proposed a cramdown rate of 8.8 percent. Wells Fargo devoted the majority of its cramdown rate analysis to determining the *rate of interest that the market would charge* to finance an amount of principal equal to the cramdown loan. Wells Fargo argued that there was no market for loans comparable to the forced loan contemplated under the cramdown plan; therefore, the market rate should be calculated by "taking the weighted average of the interest rates the market would charge for a multi-tiered exit financing package comprised of senior debt, mezzanine debt, and equity." *Wells Fargo*, 710 F.2d at 334. This calculation yielded a *"blended" market rate* of 9.3 percent, arising from the prime rate with an upward adjustment of 6.05 percent to account for the "nature of the security interest." Wells Fargo then adjusted the blended rate in accordance with the remaining *Till* factors, making a downward adjustment of 1.5 percent to account for the sterling "circumstances of the bankruptcy estate" and an upward adjustment of 1 percent to account for the plan's tight feasibility.

The 5th Circuit looked to the decision in *Till*, where a plurality of the U.S. Supreme Court ruled that "bankruptcy courts must calculate the Chapter 13 cramdown rate by applying the prime-plus formula." *Id.* at 331. *Till*'s "prime-plus" method of calculating the cramdown rate stated that the court should: (1) take the national prime rate, and then (2) add a supplemental "risk adjustment" to account for "such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Till*, 124 S.Ct. at 1961. While *Till* observed that "Congress [likely] intended bankruptcy judges and trustees to follow essentially the same [formula] approach when choosing an appropriate interest rate under [Chapter 11]," footnote 14 qualified that extension. *Id.* at 1959. Footnote 14 states that as "efficient markets" for exit financing often exist in business bankruptcies, a "market rate" approach might be more suitable for making the cramdown rate determination under Section 1129(b) in those instances. *Id.* However, markets for exit financing will be considered "efficient" only if they offer a loan with a term, size and collateral comparable to the forced loan contemplated under the cramdown plan.

As there was no such comparable loan to the one contemplated under the debtor's plan, the "market rate" approach was inappropriate to assess the cramdown rate as to Wells Fargo. The 5th Circuit recognized that while Wells Fargo was correct that no willing lender would have extended credit on the terms it was forced to accept under the cramdown plan, this "absurd result" is the natural consequence of the prime-plus method, which sacrifices market realities in favor of simple and feasible bankruptcy reorganizations. The 5th Circuit affirmed the bankruptcy court's use of *Till*'s "prime-plus" formula in calculating a 5 percent cramdown rate as proposed by the debtors, but noted that this formula is not the only, or even the optimal, method for calculating the Chapter 11 cramdown rate.

Absolute Priority Rule Applies to Individual Chapter 11 Debtors

In re Philip Reed Lively, 771 F.3d 406 (5 Cir. 2013).

In his Chapter 11 case, the debtor, Philip Reed Lively, proposed a plan of reorganization that allowed him to retain all of his property by paying his unsecured creditors an amount exceeding the liquidation value of his assets. It was alleged, and Lively did not dispute, that Lively's plan violated the absolute priority rule as it permitted him to retain valuable, non-exempt, prepetition assets. The majority of the unsecured creditors voted against the plan, forcing the bankruptcy court to assess whether the absolute priority rule applied, which would

effectively prevent confirmation unless the dissenting, impaired unsecured creditors were crammed down. The bankruptcy court held the absolute priority rule applied, denied confirmation and certified the issue for immediate appeal.

The 5th Circuit, reviewing the issue *de novo*, began by analyzing the text of section 1129(b)(2)(B)(ii). Lively asserted that the provision carves out an exception through which an individual debtor is entitled to retain property "included in" the debtors' estate under 11 U.S.C. §§ 1115(a) and 541.

Taking the more "narrow" approach to interpretation, the 5th Circuit agreed with the bankruptcy court that the exception to the absolute priority rule plainly covers "only the individual debtor's post-petition earnings and post-petition acquired property." The 5th Circuit further opined that "even if the statutory language is ambiguous, the 'narrow view' must prevail, because the opposite interpretation leads to a repeal by implication of the absolute priority rule for individual debtors." Reasoning that repeals by implication are disfavored, the court determined that standard statutory construction mandates the narrow approach to interpreting section 1129(b)(2)(B)(ii).

The 5th Circuit went on to review the legislative history surrounding the absolute priority rule for individual Chapter 11 debtors. Prior to the 2005 amendments, an individual Chapter 11 debtor could reorganize in Chapter 11 under more favorable terms than in Chapter 13. While a Chapter 13 debtor's post-petition disposable income would be subject to creditors' claims, a Chapter 11 debtor would only have to satisfy the absolute priority rule with assets that were "property of the estate" as of the filing date.

Congress remedied this inequity by including section 541 within section 1115, effectively adding the debtor's post-petition property and earnings to Chapter 11. Congress was then required to modify the absolute priority rule so that debtors would not be saddled with committing all post-petition property to satisfy creditor's claims. The 5th Circuit determined that the most natural reading of these amendments renders no Bankruptcy Code provision superfluous, thereby supporting the narrow approach that individuals are subject to the absolute priority rule. Therefore, the 5th Circuit affirmed the judgment of the bankruptcy court, holding that the Chapter 11 absolute priority rule, 11 U.S.C. § 1129(b)(2)(B), does apply to individual debtor cases.

—Tristan E. Manthey
Chair, LSBA Bankruptcy Law Section
and
Alida C. Wientjes
Heller, Draper, Patrick & Horn, L.L.C.
Ste. 2500, 650 Poydras St.
New Orleans, LA 70130

2013 Louisiana Legislature

Act 239 of 2013 (effective Aug. 1, 2013) enacts Louisiana Code of Criminal Procedure article 878.1 to provide for a sentencing hearing to determine parole eligibility for juvenile homicide offenders who will be sentenced to life, and amends Louisiana Revised Statutes 15:574.4 to establish conditions for parole eligibility for those juveniles determined by the judge at the article 878.1 hearing to be entitled to parole eligibility. (These procedures are in response to *Miller v. Alabama*, 132 S.Ct. 2455 (2012), which the Louisiana Supreme Court applied retroactively in *State ex rel. Landry v. State*, 11-0796 (La. 1/18/13), 106 So.3d 106 (per curiam), without discussion of the retroactivity issue. In *State v. Huntley*, 13-0127 (La. App. 3 Cir. 7/10/13), 118 So.3d 95, 2013 WL 3442136, the Louisiana 3rd Circuit held *Miller v. Alabama* does not apply retroactively on collateral review.)

Act 250 substantially amends pretrial discovery articles to provide for discovery of statements by codefendants and state witnesses, rap sheets of codefendants and witnesses, and law enforcement reports. The amendments establish standards for expert reports, provide for extensive reciprocal discovery, and create a mechanism to protect a witness's identity if the witness's safety may be compromised by disclosure. The amendments apply prospectively to cases billed or indicted after Jan. 1, 2014, unless the parties stipulate otherwise.

Act 251 (effective Aug. 1, 2014) provides for mandatory dismissal of certain repetitive applications for postconviction relief and requires "diligence" in the discovery of postconviction claims. Claims based on the facts-not-known exception to the time limit of Louisiana Code of Criminal Procedure article 930.8

must be submitted within two years of the discovery of the new evidence.

Act 261 (effective Aug. 1, 2013) amends Louisiana Code of Criminal Procedure article 334.4 to create a rebuttable presumption that any defendant who has previously been released on his own recognizance or on the signature of any other person on a felony charge, and who has either been arrested for a new felony offense or has at any time failed to appear in court on a felony offense after having been notified in open court, shall not be released on his own recognizance or on the signature of any other person. The presumption may be overcome if the judge determines, after contradictory hearing in open court, that a review of the relevant factors warrants this type of release.

Act 343 (effective June 17, 2013) amends Louisiana Code of Criminal Procedure article 780 regarding exercise of the right to waive trial by jury. The jury trial waiver must be in the form of a written motion (signed by defendant and counsel) filed "not later than forty-five days prior to the date the case is set for trial." With consent of the district attorney, a defendant may waive his right to a jury trial within 45 days of trial. A jury trial waiver may not be withdrawn.

Involuntary DNA Evidence

Maryland v. King, 133 S.Ct. 1958 (2013).

The Fourth Amendment does not prohibit the collection and analysis of DNA samples from persons arrested, but not yet convicted, on felony charges. During a routine booking procedure, the police took the defendant's DNA sample by using a buccal swab, and the DNA matched to a rape from six years earlier. "When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment."

Sentencing

State v. Dickerson, 48,308 (La. App. 2 Cir. 8/2/13), ____ So.3d ____, 2013 WL 3969612.

La. R.S. 15:308(C) provided the statutory authority for certain inmates to seek modification of their sentences by application to the Louisiana Risk Review Panel, which had the authority to recommend clemency. The repeal of Subsection (C) does not entitle inmates to seek resentencing under the more lenient penalty provisions. The reduction of a final sentence is the equivalent of commutation, which is a power reserved to the executive branch of state government.

—Janis L. Kile
Member, LSBA Criminal Law Section
and
Steffan M. Jambon
Louisiana 1st Circuit Court of Appeal
Central Staff
P.O. Box 4408
Baton Rouge, LA 70821

Supreme Court: Texas Has No Right to Neighboring State's Water

Tarrant Regional Water Dist. v. Herrmann, 133 S.Ct. 2120 (2013).

In 2007, the regional water district in Tarrant County, Texas, sought a permit from neighboring Oklahoma's Water Resources Board to allow the Texas water district to divert water from the Kiamichi River in Oklahoma upstream from where it flows into the Red River for the intended purpose of meeting the annual water supply needs of a portion of its North Central Texas water district customers. The district was aware that Oklahoma law would likely foreclose the issuance of the permit sought. Thus, concurrent with the submittal of its permit application, the district filed suit in federal court seeking to enjoin the state of Oklahoma from enforcing state statutes governing the taking or diverting of water from within Oklahoma's borders by an out-of-state applicant.

The district cited the Red River Compact, a 1980 interstate water compact that allocates water among Louisiana, Arkansas, Texas and Oklahoma, as preempting state laws pertaining to the appropriation or diversion of Oklahoma water outside the state. The district contended that the compact gave it a right to the Oklahoma water in a provision that says as long as enough water is flowing through to Arkansas, each state has "equal rights" to the resource as long as none takes more than 25 percent of the water in excess of the base line. Oklahoma disputed that the provision intended to "allocate" water inside the state of Oklahoma for appropriation or diversion to another signatory state.

The battle over water made its way to the Supreme Court, and, in a unanimous decision, the Court rejected the district's claims, specifically determining that the Red River Compact between the four states in the Red River Basin did not create cross-border rights of the sort sought by the district. Therefore, the state laws governing appropriation and diversion of Oklahoma water were not preempted.

CWA Suit May Proceed Against Offshore Oil & Gas Production Platform

United States of America v. ATP Oil & Gas Corp., ____ F.Supp.2d ____ (E.D. La. 7/1/13), 2013 WL 3305658.

During a March 2012 inspection of a floating oil and gas production platform moored to the floor of the Gulf of Mexico 45 miles off the coast of Louisiana, government officials discovered a concealed metal tube connected to a dispersant tank. The tank added chemical dispersant to oil discharges in an outfall pipe after the point where compliance testing was performed in an attempt to mask surface sheen that would have resulted from the excess oil discharges into the ocean. In a suit filed in the Eastern District, the Department of Justice (DOJ) alleged that the company had been conducting this unlawful discharge and dispersant activity since at least October 2010, continuing until the March 2012 inspection, resulting in Clean Water Act (CWA) violations for the oil discharge, the dispersant discharge and violation of the facility's water-discharge permit, a potential penalty that could approach $55 million. In response, ATP filed a motion to dismiss the claims for which the government sought fines, penalties and injunctive relief. In denying ATP's motion to dismiss, U.S. District Judge Nannette J. Brown found, based on the DOJ's claims, that ATP did not fall into any of the exceptions in the CWA that would have exempted it from those claims. Judge Brown further stated that the U.S. Supreme Court has recognized that district courts have broad authority to grant injunctive relief such as that sought

by the DOJ to enjoin any further use of the dispersant tube scheme, when public interests are involved.

President Signs Executive Order on Improving Chemical Facility Safety and Security

In the wake of chemical facility explosions in Texas and Louisiana, on Aug. 1, 2013, President Barack Obama signed an Executive Order aimed at improving the safety and security of chemical facilities and reducing the risks of hazardous chemicals to workers and communities. The order will result in the creation of the Chemical Facility Safety and Security Working Group to improve coordination and sharing of information between the federal, state and local agencies that regulate and inspect chemical facilities. The working group also will be charged with developing regular reports outlining recommendations for improving chemical plant safety in the United States.

Amid public criticism that often unclear and overlapping regulatory oversight and responsibility effectively create an obstacle to ensuring the necessary government agencies have the information needed to properly assess safety and security at chemical facilities and are a contributor to chemical facility accidents, the order requires the Occupational Safety and Health Administration, the Environmental Protection Agency and the Department of Homeland Security to lead an effort to better coordinate and work together to improve safety and security with a specific timeline of expectations.

—Michelle Marney White
Council Member, LSBA Environmental Law Section
Taylor, Porter, Brooks & Phillips, L.L.P.
451 Florida St.
Baton Rouge, LA 70801

Custody/Relocation

Moore v. Moore, 47,947 (La. App. 2 Cir. 3/6/13), 111 So.3d 1120.

The court of appeal found that the trial court did not err in naming the mother as the domiciliary parent and allowing her to relocate to Houston with the parties' three minor children. After reviewing both La. R.S. 9:355.12 and La. Civ.C. art. 134, the court found that the children would have a more stable living environment with their mother and her parents in Texas and that it was more likely that she would facilitate the children's relationship with the other parent, in addition to her being the children's primary caretaker. It also found that Mr. Moore's testimony was not credible and he had deficiencies in his parenting skills. Furthermore, his access to the children should be supervised due to past issues of "pushing and shoving" and the potential for violence between the spouses. Notably, the court of appeal stated that visitation has an independent basis from custody and that *Bergeron* is not applicable to a motion to modify visitation.

Custody

Cormier v. Cormier, 12-1340 (La. App. 3 Cir. 4/24/13), 112 So.3d 1073, *writ denied*, 13-1561 (La. 7/19/13), ____ So.3d ____, 2013 WL 4045955.

The trial court rejected Mr. Cormier's attempt to modify the custody schedule, finding that he failed to a show a change of circumstances. Particularly, her allowing him additional visitation did not establish a material change of circumstances or a "voluntary modification" on her part. The court stated:

> We strongly disagree with this contention and shudder to think of the potential chilling effect such a conclusion would have on encouraging cooperation between parents with joint custody. Keri should not be penalized for attempting to foster an amicable relationship with her ex-spouse and to allow her son extra time with his father.

Community Property

Blanchard v. Blanchard, 12-0106 (La. App. 1 Cir. 12/31/12), 112 So.3d 243, *writ denied*, 13-0488 (La. 4/12/13), 111 So.3d 1013.

Mr. and Ms. Blanchard as part of their community property settlement agreed that Ms. Blanchard would be entitled to one-third of a pending personal injury settlement on behalf of Mr. Blanchard and that he would pay her spousal support until he settled the claim, after which she waived any rights to support. After he settled the suit and his attorneys calculated and paid to her what they claimed to be her share, she sued him and the attorneys, objecting to the calculation. The court found that she had a cause of action against the attorneys but that she was bound to the terms of a letter that her attorney sent to the personal injury attorneys even though she claimed he did not sign it on her behalf. The court further held that although the Family Court for East Baton Rouge Parish had subject matter jurisdiction over the claims between the Blanchards, it did not have subject matter jurisdiction over the matters relating directly to the calculation of the personal injury suit proceeds because that claim was not "between former spouses;" it also involved the personal injury attorneys. It thus ordered that that portion of the suit be transferred to the 19th Judicial District Court.

Martin v. Martin, 12-0549 (La. App. 5 Cir. 3/13/13), 113 So.3d 323, 13-0783 (La. 5/24/13), ____ So.3d ____.

Following a conference with the domestic commissioner at which both parties were represented, a community property settlement agreement was typed and signed by the parties, their attorneys and the domestic commissioner. Mr. Martin's attorney subsequently submitted

to the court a judgment containing the terms of the settlement pursuant to La. District Court Rule 9.5, which the trial judge signed. Ms. Martin, who had previously filed an unsigned objection to the hearing officer's recommendations, now filed a motion to vacate the judgment. After a hearing, the trial court ruled that the original agreement was a valid compromise and that the judgment submitted was in proper form. The court of appeal held that the trial court did not err in denying her motion for a new trial without a hearing as the court found that it had already heard all of her arguments. The trial court also did not err in allegedly not providing her a hearing on her objection because it considered her objections at the hearing on her motion to vacate. Finally, although she testified that she was coerced into signing the agreement and did not understand or agree to it, the evidence showed that she did understand and agree to it. Moreover, the division of the assets was fair, and the compromise was binding.

Armand v. Armand, 12-1394 (La. App. 3 Cir. 4/3/13), 113 So.3d 1168.

In this community property partition, the trial court ruled that Mr. Armand's post-termination bankruptcy resulted in a community with no value, such that, although Ms. Armand had a "*legal* claim" to a portion of the community, and although Mr. Armand had made a reimbursement claim of his own regarding debts he paid in the bankruptcy, neither was to receive anything in the partition. The court of appeal found that because the bankruptcy records were not in the record, although the transcripts indicated that the parties were to make them part of the record, it could not consider the matter. Moreover, as the trial court did not actually partition the assets and address the reimbursement claims because "a bankruptcy only discharges debt and does not extinguish one's interest in property," the trial court's judgment was vacated and the matter was remanded for a new trial in accordance with La. R.S. 9:2801.

Valuation

Fancher v. Prudhome, 47,575 (La. App. 2 Cir. 2/27/13), 112 So.3d 909.

A withdrawing member's interest in a closely held LLC was valued at book value. The market approach was rejected because the entity was a small, closely held LLC, and its profits were "tied to the skill of its members, so that plaintiff's interest was indistinguishable from himself." The income/discounted cash flow method was rejected because the company's future cash flow was indeterminable because the withdrawing member provided almost all of the company's business. The adjusted book value/fair market value approach was rejected because plaintiff failed to provide satisfactory evidence

of the entity's inventory and accounts receivable. He also failed to show the amount of cash the company actually held as of the date of his withdrawal. No discounts were applied. Plaintiff's one-third interest was valued at one-third of the unadjusted book value. The other two members were not personally liable to him because their actions in making a loan on behalf of the entity, and in issuing distributions to themselves after suit was filed, were not grossly negligent or committed with reckless disregard or indifference to the best interest of the entity.

Final Spousal Support

Olsen v. Olsen, 12-0737 (La. App. 5 Cir. 3/13/13), 113 So.3d 274.

In a consent judgment, Mr. Olsen agreed to pay Ms. Olsen periodic spousal support of $700 per month. Five years later, he filed a motion to extinguish that obligation on the grounds that she was cohabitating with a man in the manner of married persons. She filed an exception of *res judicata*, arguing that the consent judgment had become final. The trial court correctly denied her exception of *res judicata*, finding that their original agreement did not state that all alimony issues were compromised, and did not waive his right to seek to terminate the support pursuant to La. Civ.C. art. 115. Further, the trial court's finding that she was cohabitating was affirmed, as the trial court found that "this is more than two (2) friends living together with 'benefits.'"

—David M. Prados
Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, L.L.P.
Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735

Work of the 2013 Louisiana Legislature

In its 2013 Regular Session, the Louisiana Legislature passed several bills of interest to the construction industry in Louisiana. Some of the more important changes in the law are discussed below.

House Bill 190

La. R.S. 9:4822(G), governing the requirements for written liens on private construction projects, was amended in an apparent effort to clarify the "reasonable itemization" requirement set forth in the statute. Per subpart (G)(4) of the statute, lien claimants have historically been required to "reasonably itemize the elements" comprising the lien claim, "including the person for whom or to whom the contract was performed, material supplied, or services rendered." Various courts have dealt with this "reasonable itemization" requirement, including the Louisiana 4th Circuit Court of Appeal in the case of *Jefferson Door Co. v. Cragmar Construction, L.L.C.*, 11-1122 (La. App. 4 Cir. 1/25/12), 81 So.3d 1001, *writ denied*, 12-0454 (La. 4/13/12), 85 So.3d 1250. In *Jefferson Door*, the court declared invalid a lien that purported to itemize its elements by specific reference to the invoices of the claimant — when, in fact, those invoices never got attached to and recorded with the lien.

Ordinarily, when crafting legislation in response to court decisions, legislatures strive to draft changes to the law to address a perceived problem created by the jurisprudence. Here, however, the Louisiana Legislature simply undertook to codify the ruling in *Jefferson Door*, amending subpart (G)(4) of the statute to declare that the requirement to "reasonably itemize" does not require a claimant to attach copies of its invoices, "unless the statement of claim or privilege specifically states that the invoices are attached."

This bill became effective Aug. 1, 2013.

Senate Bill 183

An additional step has always been required for lessors of "movables," which would include heavy equipment such as cranes and other typically rented equipment such as scaffolding, to preserve their ability to assert lien rights on a private project in Louisiana. Historically, that step consisted of delivering a copy of the full lease to the owner of the project, and, if the items are leased to a subcontractor, then a copy of the lease was required to be delivered to the general contractor as well, not more than 10 days after the leased items are first placed at the site of the work. The change in the law now eliminates the requirement for delivery of a copy of the lease and provides instead that "notice" (obviously, written notice) to the required parties is to be provided. The "notice" must contain the following information: the address of the lessor, the address of the lessee, "a description sufficient to identify the movable property placed at the site of the immovable for use in the work," the "term of rental" (presumably, this means

the duration of the rental), the "terms of payment," and the signatures of both the lessor and lessee.

In view of the new requirement — and the fact that the change in the law potentially disallows use of the actual lease document to serve as the statutorily required notice, even though the lease document likely contains all of the information required in the notice — lessors of movables for use on private construction projects in Louisiana should have notice forms pre-drafted and require those forms to be executed by lessees in connection with execution of a lease, in order to avoid running afoul of the 10-day notice deadline set forth in the statute.

(We note that a similar provision in the Louisiana Public Works Act — La. R.S. 38:2242(C)(1) — was not amended and still requires for public projects that lessors provide a full copy of the lease in order to preserve their rights against the statutory payment bond.)

This bill became effective Aug. 1, 2013.

Other Legislative Notes

► Draft legislation seeking to further amend the Louisiana Private Works Act (proposing to double the standard periods of time for the filing of liens, and concerning the matter of the currently-required escrowing of private project retainage pursuant to La. R.S. 9:4815) did not make it out of committee.

► Readers are reminded that, based upon legislation enacted in 2012, the Louisiana Private Works Act (at La. R.S. 9:4823) — effective as of Aug. 1, 2013 — has been amended to provide a shorter time period for filing suit to enforce a lien on a private project. As of the Aug. 1, 2013, effective date, lien claimants must file suit to enforce their Private Works Act liens within one year following the date on which the lien was filed (as opposed to the soon-to-be superseded law, which provides that suits to enforce liens must be filed no later than one year from the expiration of the relevant deadline for filing liens).

—Daniel Lund III
Member, LSBA Fidelity, Surety and Construction Law Section
Shields Mott Lund L.L.P.
Ste. 2600, 650 Poydras St.
New Orleans, LA 70130

Insurance, Tort, Workers' Compensation & Admiralty Law

Jurisdiction

Ryan v. Hercules Offshore, Inc., ____ F.Supp.2d ____, 2013 WL 1967315 (S.D.Tex. May 13, 2013).

The estate of a crewman, who died while constructing an offshore oil well, brought admiralty, Death on the High Seas Act (DOHSA) and *Sieracki* claims against an offshore drilling firm, among other defendants. The action was originally brought in state court and subsequently removed to federal court. The plaintiffs moved for remand on the basis that their claims were general maritime claims that were historically barred from removal pursuant to 28 U.S.C. § 1441. The court denied plaintiffs' motion to remand, holding that recent amendments to 28 U.S.C. § 1441 permitted removal of the plaintiffs' maritime claims.

The previous version of 28 U.S.C. § 1441 provided, in pertinent part:

> (a) *Except as otherwise expressly provided by Act of Congress*, any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending . . . .
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right *under the Constitution, treaties or laws of the United States* shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(Emphasis added.) The statute was amended in 2011. The current version provides:

> (a) **Generally.**—*Except as otherwise expressly provided by Act of Congress*, any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendant or the defendants to the district court of the United States for the district and division embracing the place where such action is pending.
>
> (b) **Removal based on diversity of citizenship**. — (1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.
>
> (2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendant is a citizen of the State in which such action is brought.
>
> (Emphasis added.)

The *Ryan* court found that when Congress amended section 1441, it retained the language in section 1441(a) that permitted a party to remove a case in which a federal district court has original jurisdiction unless prohibited by an "Act of Congress." However, Congress deleted the text in section 1441(b) upon which courts in the 5th Circuit had previously relied as being an "Act of Congress" that precluded removal of admiralty cases that did not meet the other requirements of section 1441(b). Specifically, the court referenced the long line of jurisprudence holding that admiralty cases do not arise under "the Constitution, treaties or laws of the United States" for the purposes of federal question jurisdiction and are thus not removable pursuant to section 1441(b).

When interpreting the 2011 amendment, the court opined that the current version of section 1441(b) is no longer an "Act of Congress" prohibiting federal district courts from exercising original jurisdiction in admiralty cases involving nondiverse parties. Thus, because the court had original jurisdiction over plaintiffs' admiralty claims pursuant to 28 U.S.C. § 1333(1) (district courts "have original jurisdiction, exclusive of the courts of the States, of . . . [a]ny civil

action of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are entitled") and original jurisdiction with regard to plaintiffs' DOHSA and *Sieracki* claims, which were found to sound in admiralty, the court held that removal was proper pursuant to section 1441(a). It additionally noted the "saving to suitors" clause in section 1333(1) does not preclude federal courts from exercising jurisdiction over admiralty claims originally brought in state court.

Jurisdiction

Wells v. Abe's Boat Rentals Inc., 2013 WL 3110322 (S.D.Tex. June 18, 2013) (unpublished).

This case arises from an injury that occurred while the plaintiff was working for Abe's Boat Rentals on a vessel off the Louisiana shore. Particularly, the plaintiff was injured while participating in a transfer of cargo from the vessel to a fixed platform via a crane on the platform. Plaintiff brought suit in state court asserting a Jones Act claim against his employer and negligence claims under general maritime law against the owner of the platform, Energy XXI GOM, L.L.C. (Energy), and the operator of the platform, Island Operating Company, Inc. (Island). The defendants subsequently removed the matter, asserting that pursuant to recent amendments to 28 U.S.C. § 1441, general maritime claims are removable. Specifically, Energy and Island first argued that there was original jurisdiction under the Outer Continental Shelf Lands Act (OCSLA) that allowed the entire case to be removed, while requiring severance and remand of the nonremovable Jones Act claim to state court. The two defendants also argued that even if the claims against them were in fact general maritime claims, they were removable under the amended version of 28 U.S.C. § 1441.

As to the nonremovable Jones Act claim asserted against the plaintiff's employer, the court noted that pursuant to 28 U.S.C. § 1441(c), the claim could be severed and remanded to state court, assuming that the claims against Energy and Island were removable. Addressing the claims against Energy and Island, relying almost exclusively on the reasoning set forth in the court's decision in *Ryan v. Hercules Offshore, Inc.*, ____ F.Supp.2d ____, 2013 WL 1967315 (S.D.Tex. May 13, 2013), the court found that plaintiff's claims were removable whether viewed under the OCSLA or viewed as general maritime claims. Although the court ultimately found that the claims against Energy and Island were federal question claims arising under the OCSLA, making them removable, the court went on to opine that even assuming general maritime law applied, pursuant to the rationale set forth in *Ryan,* the action would nonetheless be removable based on the recent amendments to 28 U.S.C. § 1441. Accordingly, the court denied plaintiff's motion to remand as to Energy and Island and severed and remanded plaintiff's Jones Act claim.

—Tyler D. Trew
Member, LSBA Insurance, Tort, Workers' Compensation and Admiralty Law Section
Gieger, Laborde & Laperouse, L.L.C.
One Shell Square
701 Poydras St., 48th Flr.
New Orleans, LA 70139

Office of the U.S. Trade Representative

Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices and Tablet Computers, Inv. No. 337-TA-794.

On Aug. 3, 2013, the Office of the U.S. Trade Representative (USTR) executed a rarely used statutory prerogative to unilaterally overturn a decision of the International Trade Commission (ITC). The ITC ruled on June 4, 2013, that Apple violated Section 337 of the U.S. Tariff Act by importing certain smartphones and tablet computers that infringed a patent owned by Samsung. The ITC ordered the exclusion from importation of all subject Apple devices and issued a cease and desist on domestic sales of devices already in the market. The ban applied to iPhone 4 and iPad 2 devices using a particular technology patented by Samsung.

Section 337 of the U.S. Tariff Act grants the President, acting through the USTR, the ability to overturn ITC decisions that are contrary to the best interests of the United States with respect to: public health and welfare; competitive conditions in the U.S. economy; production of competitive articles in the United States; U.S. consumers; and U.S. foreign relations. The USTR's Aug. 3 letter overturning the ITC decision cites unspecified concerns regarding competitive conditions in the U.S. economy and the effect of the ban on U.S. consumers. The Samsung patent was a Standard-Essential Patent subject to fair-reasonable and non-discriminatory commitments. The owner of such a patent is generally obligated to allow reasonable access to the technology so as not to engage in "patent hold-up" that may be against the best interests of consumers or the economy. The President was apparently convinced that Samsung was engaging in "patent hold-up" in order to obtain an elevated price for patents that Apple needed for certain wireless devices. Some commentators believe Samsung filed the case simply as retribution for a prior Apple patent victory at the ITC. Regardless of the motive, this is the first time since 1987 that the President has overturned an ITC decision.

TransAtlantic Trade and Investment Partnership Agreement

Negotiations have begun on what would be the largest bilateral free-trade zone in the world. Washington, D.C., was the site of the first round of negotiations in the so-called TransAtlantic Trade and Investment Partnership (TTIP). Approximately 160 negotiators, regulators, attorneys and other personnel identified 15 market-access areas and organized 24 working groups to negotiate the comprehensive and ambitious agenda intended to, in part, spark growth in Europe and consolidate the U.S. economic recovery.

Among the specific areas discussed were disciplines on investment, government procurement, cross-border services, textiles, rules of origin, energy and raw materials, and legal issues. Sanitary and phytosanitary (sps) measures were also taken up, but neither side provided any details on how sps measures would fall within the broader agricultural negotiations. The next round of negotiations is scheduled for Brussels in mid-October.

Latin America

Declaration of the First Ministerial Meeting of the Latin American States Affected by Transnational Interests, Guayaquil, Ecuador (April 22, 2013).

Latin American nations have been subject to increasing numbers of investor-state disputes brought under Bilateral Investment Treaties or Free Trade Agreements. As previously reported in this column, Ecuador and Argentina have received large judgments against them for expropriation and other claims cognizable under international treaty law. In an effort to thwart the rising tide of adverse judgments, ministers from 12 Latin American countries gathered in Ecuador to establish a new coalition to address the increasing number of investor-state disputes. Seven of the countries adopted a declaration agreeing to form a conference of states impacted by transnational interests. While the declaration does not establish any specific course of action and does not seek withdrawal from or reformation of existing treaties, it does create an international observatory to monitor and analyze investment cases and report on potential problems. The declaration likewise calls for the establishment of a regional arbitration center for settling investment disputes. This move is likely to counter the recent awards given by the International Center for Settlement of Investment Disputes in Washington, D.C.

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

Whether Royalties Are Owed on Hedging Profits

Cimarex Energy Co. v. Chastant, ____ F.Appx. ____, (5 Cir. 2013), 2013 WL 3964121 (unpublished).

The United States 5th Circuit affirmed a decision of the United States District Court for the Western District of Louisiana, previously reported in the *Louisiana Bar Journal*'s April/May 2013 Recent Developments/ Mineral Law Section (Vol. 60, No. 6), that a mineral lessee's hedging activities (trading in oil futures) is a purely financial activity and that the lessee does not owe royalties on any profits earned from such activity.

Lease Interpretation

Ross v. Enervest Operating, L.L.C., 48,299 (La. App. 2 Cir. 6/26/13), ____ So.3d ____, 2013 WL 3197465.

The plaintiffs owned an interest in land in Morehouse Parish. They sued, seeking a judgment that a 1916 mineral lease granted by their ancestors in title had terminated. The lease had been amended in 1921 and 1935. The 1921 amendment stated that the lease would terminate automatically if the lessee did not make an annual payment of $3,000 to the lessor by Jan. 10 of each year.

The 1935 amendment required the lessee to pay royalties on natural gas at a specified rate, but also provided that the minimum amount due each year would be $3,000. The $3,000 minimum payment would be due by Jan. 10, and any additional amount owed for the year would be due in February of the following year. The 1935 amendment did not state that the lease would terminate if any payment was not made timely.

After ownership of the land changed, the lessees lost track of the identity of the owners. The lessees mailed checks in order to make the minimum annual payment, but some checks were sent to the wrong persons. In 2009, the plaintiffs' attorney sent a letter to one of the lessees, notifying it of the plaintiffs' ownership interest in the leased land. Within 30 days of receiving the letter, the lessees sent payment to the plaintiffs for the full amount owed, plus interest. The plaintiffs refused to accept payment and filed suit, seeking a judgment that the lease had terminated by operation of the resolutory condition contained in the 1921 amendment. The trial court entered judgment for the plaintiffs.

The 2nd Circuit reversed, holding that the 1935 amendment had eliminated the resolutory condition. Under the Mineral Code articles governing royalty claims, lease termination was improper because the lessee had paid the full amount due within 30 days of receiving notice of nonpayment.

Formation of Voluntary Units

Midnight Drilling, L.L.C. v. Triche, 12-1043 (La. App. 1 Cir. 6/19/13), ____ So.3d ____, 2013 WL 3149456.

Midnight Drilling completed a well from which it began to produce oil and gas in 2009. After two rival groups each claimed to be entitled to the royalties from such production, Midnight filed a concursus action.

One group, the "Triches," owned two noncontiguous tracts of land, one located to the north of the Intercoastal Waterway and the other located to the south. The other group, the "Coles," had inherited mineral servitudes covering each tract. Midnight's new well was located on the northern tract. The question of which group had the right to the disputed royalties depended on whether the servitude covering the northern tract had prescribed.

There had been no activity on the tract itself or in any compulsory unit that would have interrupted prescription. Further, the parties had not created any voluntary unit — at least not by written agreement. The Coles claimed, however, that the parties had treated an earlier well as if it "was produced on a unit basis" and that they had created a voluntary unit that included the northern tract through their conduct. They claimed that production from that voluntary unit had interrupted prescription.

The Louisiana 1st Circuit rejected that argument, noting that (1) mineral servitudes are "incorporeal immovables" and (2) agreements transferring rights relating to immovables generally must be in writing. Therefore, the parties could not have created a voluntary unit through their conduct.

The court discussed the fact that a well had been drilled from a surface location on the northern tract prior to the servitude on that tract having prescribed, but the well was a directional well and the bottom-hole location was not beneath the northern tract. The 1st Circuit held that the bottom-hole location from which oil and gas would be produced, not the surface well site, is the critical location for determining whether drilling interrupts prescription. Therefore, the drilling had not interrupted prescription and the servitude was prescribed. Thus, the Triches were entitled to the royalties.

Solution Mining Legislation

Acts 2013, No. 368 amends La. R.S. 30:3 to add definitions of "solution mined cavern" and "solution mining injection well," and also amends La. R.S. 30:4 to direct the Office of Conservation to promulgate rules to regulate solution mining.

Acts 2013, No. 369 enacts La. R.S. 30:23.1 to require that the owner or operator of a solution-mined cavern must record the survey plat of the well location for the solution mining injection well in the mortgage and conveyance records of the parish in which the cavern is located. Acts 369 also amends La. R.S. 9:3198 to require sellers of residential property to disclose "whether or not a cavity created [by solution mining] lies underneath the property" and whether the property is within one-half mile of a solution mining injection well.

—Keith B. Hall
Member, LSBA Mineral Law Section
Louisiana State University
Paul M. Hebert Law Center
1 E. Campus Dr.
Baton Rouge, LA 70803
and
Colleen C. Jarrott
Member, LSBA Mineral Law Section
Slattery, Marino & Roberts, A.P.L.C.
Ste. 1800, 1100 Poydras St.
New Orleans, LA 70163

Panel Request Requirements

Ward v. Vivian Healthcare & Rehab. Ctr., 47,649 (La. App. 2 Cir. 5/15/13), 116 So.3d 870.

The plaintiff mailed a letter on July 2, 2010, requesting the formation of a medical-review panel. The request listed the "Date of Occurrence" as July 8, 2009, and described the alleged negligence and injury as failing to "provide proper care for Mr. Mancil Watson which caused his death."

The PCF returned the letter, advised the plaintiff it was inadequate because it failed to provide the date of death or a brief description of the alleged malpractice, adding that to "maintain" her original filing date, she was obliged to return the "corrected panel request within thirty (30) days of the date of this letter." The $100 filing fee was not returned. The plaintiff's follow-up letter of Aug. 19 stated that Mr. Watson died on July 8 while a patient at respondent's nursing home due to a stroke that resulted in his inability to walk; the staff allowed bedsores to develop and failed to provide proper nutrition, causing Watson's death.

The defendant filed an exception of prescription, claiming the panel request was untimely because the original filing failed to satisfy the requirements of La. R.S. 40:1299.47(A)(1)(b) and the PCF had no authority to extend the prescriptive period by granting another 30 days for the plaintiff to file corrections, adding that the plaintiff filed 31 days after the PCF's letter. The plaintiff answered that the amended request "related back" to the timely filed request.

The trial court denied the defendant's exception of prescription, and the 2nd Circuit denied the application for supervisory review. The Supreme Court, however, remanded to the appellate court for "briefing, argument and a full opinion."

An exception of prescription involving an interpretation of a statute is a legal issue that requires a de novo standard of review, requiring courts to determine the legislative intent of the statute and apply it as written, if it is unambiguous and its application does not lead to absurd consequences.

The court observed that the Louisiana Medical Malpractice Act (MMA) provides for a limitation on liability and other advantages to health-care providers that are in derogation of the rights of tort victims, which requires that the MMA be strictly construed. One of the advantages is pre-suit panel review.

The *Watson* court found section 47(A)(1)(b) unambiguous as to what information must be provided in a panel request. The statute is silent, however, as to the penalty for failure to comply with all the informational requirements, whereas the penalty for failure to timely pay the filing fee is specific and renders "the request for review of a malpractice claim invalid and without effect." La. R.S.40:1299.47(A)(1)(e).

The defendant acknowledged the statute does not expressly provide that a panel request lacking in one or more of the minimum requirements renders it "invalid and without effect," but argued that no express provision is necessary — the statute defines what constitutes a valid request; therefore, failure to comply with that definition should render it invalid.

When section 47 was amended in 2003 to require panel requests to provide additional information and payment of a filing fee as prerequisites for a valid complaint, it did not include any language of a penalty for the failure to comply with the additional-information amendment. The *Watson* defendant did not contend it was prejudiced by the initial request, and the court noted that it was not job of the judiciary to insert penalty provisions into a statute where the Legislature had not.

Having strictly construed the statute, the court could not conclude the July 7 request "was invalid and without effect and did not suspend prescription on the underlying malpractice claim." Furthermore, the initial letter included the date of death, which was referred to as the "Date of Occurrence." The court noted that a strict construction of the statute revealed no explicit requirement for the listing of the date of death but required only the date of the alleged malpractice.

The defendant also argued that the claimant's failure to specify in what way it failed to provide proper care was also a deficiency. The appellate court cited *Perritt v. Dona*, 02-2601 (La. 7/2/03), 849 So.2d 56, a case that predated the 2003 amendments to section 47. The Supreme Court in *Perritt* said panel requests were not formal petitions and had no required format. Furthermore, a claim need only present sufficient information for the panel to make a determination as to whether the defendant is entitled to the protection of the MMA.

The *Watson* court ruled that the "brief description" of the alleged malpractice amendment comports with the pre-amendment law of *Perritt* insofar as the claimant need only present information for the panel to determine whether the defendant is entitled to the protection of the MMA, following which the panel renders an opinion based not on the initial panel request but on the submission of written evidence to the review panel, as provided by La. R.S. 40:1299.47(D). The court found that the allegation that the defendant did not provide care, which caused Mr. Watson's death:

> suffices as notice to the defendant that a malpractice claim is being asserted based on its failure to provide proper care to Mr. Watson. The details of that alleged failure will be made clear upon the submission of written evidence to the medical review panel.

The court ruled that the initial request was timely filed, appeared to comply with the minimum requirements of the statute, and even if the request failed to comply with those requirements, the statute contained no penalty provision that would render it invalid and without effect, so as to prevent its suspending prescription. The trial court's judgment was affirmed, precluding the need for the appellate court to address the defendant's issues concerning the authority of the PCF to grant additional time to file a corrected request.

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

"Final" State Tax Assessments Cannot Be Paid Under Protest

Devon Energy Prod. Co. v. Bridges, 12-0809 (La. App. 1 Cir. 6/3/13), ____ So.3d ____, 2013 WL 2423898.

The 1st Circuit Court of Appeal affirmed a trial court's decision granting the Louisiana Department of Revenue's exception of no cause of action and dismissal of Devon Energy Production Co.'s payment-under-protest lawsuit because the state tax assessments at issue had already become final.

The Department audited the severance-tax activities for a number of production sites of Devon's predecessor entity and found a number of deficiencies. Accordingly, the Department issued separate Notices of Proposed Assessment in accordance with La. R.S. 47:1562(B). The taxpayer had 30 days to protest the assessments in accordance with La. R.S. 47:1563. No protest was filed. After the expiration of the 30-day protest period, the Department issued Notices of Assessment and Notice of Right to Appeal to the Louisiana Board of Tax Appeals (Final Assessments). The taxpayer then had 60 days to pay the taxes under protest or appeal to the Louisiana Board of Tax Appeals. The Final Assessments notified the taxpayer that the assessments would become final 60 calendar days from the date of the notice. The notices also advised that to avoid the distraint procedure, it would be necessary to either: (1) pay the assessment in full to the Department, (2) pay the assessment under protest, or (3) file a formal petition with the Board. Still no action was taken by the taxpayer.

After the expiration of the 60-day period, Devon paid the assessments in the total amount of $1,250,134.33 under protest and filed suit to challenge the Final Assessments. The Department filed exceptions of no cause of action, no right of action and lack of subject matter jurisdiction. The district court sustained the Department's exception of no cause of action and as a result held the remaining exceptions moot. The taxpayer appealed to the 1st Circuit, which affirmed the trial court's decision.

The taxpayer asserted it had the right to pay the taxes under protest and file suit for refund at any time pursuant to La. R.S. 47:1576. Finding that La. R.S. 47:1576 and La. R.S. 47:1561 are clear and unambiguous, and are to be read together, the 1st Circuit held that after a tax assessment becomes final, a taxpayer may no longer use the payment-under-protest statutes to challenge the assessment.

—Antonio Charles Ferachi
Member, LSBA Taxation Section
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

Recent Board of Tax Appeals Opinions

Several interesting opinions have been issued by the Louisiana Board of Tax Appeals (BTA).

In *General Electric Capital Svcs., Inc. v. Barfield*, BTA Docket No. 7337 (La. Bd. Tax App. 6/19/13), 2013 WL3465284, the BTA overruled numerous exceptions filed by the Department of Revenue and the Attorney General in response to a taxpayer's petition on denial of a refund claim. The taxpayer filed its petition with the BTA requesting a refund of taxes under the provisions of La. R.S. 47:1625 (appeal of refund denial) and, alternatively, under La. R.S. 47:1481 (claim against the state), claiming it was not subject to Louisiana corporate franchise tax in light of *UTELCOM, Inc. & UCOM, Inc. v. Bridges*, 10-654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39 (which held that LAC 61:I.301 was invalid as it pertained to the taxpayer because it exceeded the statute it purported to interpret). The Department filed exceptions of lack of subject matter jurisdiction, no cause of action, and no right of action, all of which were overruled. In rejecting one of the Department's jurisdictional arguments — *i.e.*, that the Board did not have jurisdiction based upon La. R.S. 47:1621(F) which addresses the Secretary's ability to approve a refund based on the Secretary's misinterpretation of the law or rules and regulations and provides for taxpayer remedies of payment under protest and suit to recover or appeal to the BTA in instances where such appeals lie — the Board noted that La. R.S. 47:1625 grants taxpayers the right to appeal to the BTA on the denial of a claim for refund and gives the BTA jurisdiction to determine the correct amount of tax. The Board cited the Louisiana Supreme Court's discussion in *TIN, Inc. v. Washington Parish Sheriff's Office* and its recent ruling in *KCS Holdings I, Inc. v. Bridges* and held that "the logical construction of R.S. 47:1621(F) allows taxpayer appeals to the Board under R.S. 47:1625."

Also, because the taxpayer filed a claim against the state and did not separately serve the Attorney General, the Attorney General filed exceptions of nonjoinder of a party, insufficiency of service of the petition, and

The Tax Section of the
Louisiana State Bar Association

acknowledges and thanks

Rudolph R. Ramelli
of Jones Walker
for his service as
Chair of the Section of Taxation
of the American Bar Association
for the 2012-2013 Term

and congratulates

Jaye A. Calhoun
of McGlinchey Stafford
on her appointment as
Chair-Elect of the State and
Local Tax Subcommittee
of the American Bar Association
for the 2013-2014 Term

prescription. The Board also overruled these exceptions and stated that although it is the Board's practice to have service on the Attorney General in claims against the state, the Attorney General is not an indispensable party in this nonadversarial "claim" and is not required by law to participate in the Board's deliberation of any claim presented.

In another opinion, *Dugal v. Dep't of Revenue*, BTA Docket No. 7058 (La. Bd. Tax App. 4/9/13), 2013 WL2480989, the BTA again denied the Department's exception of prescription where the Department argued that the date on which a notice of assessment is issued should be counted in determining whether a taxpayer's petition is timely filed. The BTA held that Rule 13 of its Rules of Procedure and Practice provides for the computation of time set forth in La. C.C.P. art. 5059, and, therefore, the date of the notice is *not* to be counted in determining the due date of a taxpayer's petition.

Finally, in the case of *Odebrecht Construction, Inc. v. Secretary, Dep't of Revenue and State of Louisiana*, BTA Docket No. 7404 (La. Bd. Tax App. 6/20/13), the BTA granted a taxpayer's request for a sales tax refund on the basis that the exclusion from tax under La. R.S. 47:301(10)(g), pertaining to sales of corporeal movable property intended for future sale to the United States government or its agencies when title of such property is transferred prior to its incorporation into a final product, applied to the taxpayer's purchases of clay, which was in furtherance of its contract with the U.S. Army Corp of Engineers to build levees, because title of the clay, a corporeal movable, passed to the Corp of Engineers upon delivery to the worksite, which was prior to incorporation of the clay into the final product.

—Jaye A. Calhoun
Member, LSBA Taxation Section
and
Christie B. Rao
Member, LSBA Taxation Section
McGlinchey Stafford, P.L.L.C.
601 Poydras St., 12th Flr.
New Orleans, LA 70130

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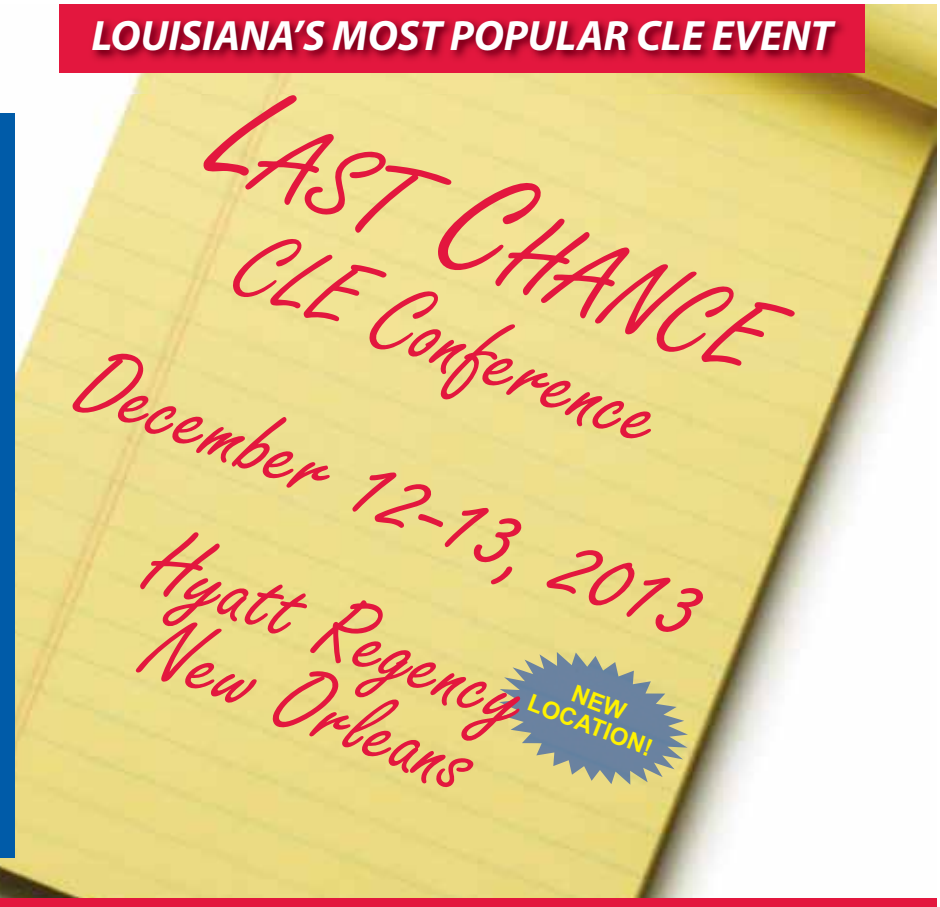

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Louisiana Association for JUSTICE
442 Europe Street
Baton Rouge, Louisiana 70802-6406
225-383-5554
www.lafj.org • info@lafj.org

CHAIR'S MESSAGE

Call to Action

By Kyle A. Ferachi

Kyle A. Ferachi

Louisiana State Bar Association (LSBA) President Richard K. Leefe has designated October as Louisiana's "Month of Legal Service" for LSBA members. The Month of Legal Service coincides with, and will culminate in, the National Celebrate Pro Bono Week from Oct. 20-26. The goal of the Month of Legal Service is for attorneys to help make a difference in their communities by providing assistance to benefit those most in need. Local bars and legal organizations are encouraged to give their time and experience by providing legal advice or help to unrepresented individuals at local courts.

I urge each of you reading to step up your pro bono efforts and contribute at least 10 hours this month assisting those in need of legal services but who cannot afford them. As President Leefe reminds us often, Equal Justice Under Law does not apply only to those who can afford access to justice.

Events are scheduled throughout the state to enable you to participate in organized service and pro bono efforts. For more information on events, go to: *www.lsba.org/ATJ/LAMonthofService.aspx*.

I also invite you to participate in one of the upcoming Young Lawyers Division Wills for Heroes programs. We have upcoming Wills for Heroes events in Shreveport, Oct. 24; Alexandria, Nov. 2; Baton Rouge, Nov. 16; and Lafayette, Dec. 14. Volunteers are needed to assist with will drafting, notary services and coordination. No estate planning experience is necessary and CLE credit is available for the necessary one-hour training.

As always, the Young Lawyers Division is ready and willing to help with efforts around the state for our members. If you know of a project or effort that needs assistance, please let us know.

CLE Opportunity Offered by LSBA
Senior Lawyers Division & Young Lawyers Division

The LSBA's Senior Lawyers Division and Young Lawyers Division are joining forces to present their first joint CLE program, scheduled from noon-6:45 p.m., Monday, Dec. 2, at the Hyatt French Quarter Hotel in New Orleans. The CLE will feature both credit and non-credit programs. The following sessions are approved for 3 CLE credit hours: Retirement and Estate Planning; Social Media and Technology Today; and Mentoring. Non-credit sessions will cover wellness and wine-tasting. Registration is open to lawyers of all ages.

Earn 3 CLE credits while networking with colleagues at this interesting event!
Register today at www.lsba.org/cle

YOUNG LAWYERS SPOTLIGHT

Ross M. Raley
Lake Charles


Ross M. Raley

The Louisiana State Bar Association's (LSBA) Young Lawyers Division is spotlighting Lake Charles attorney Ross M. Raley.

Raley, an attorney with the firm Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P., in Lake Charles, was born in Lafayette and raised in Lake Charles. He received his BS degree in information system and decision sciences from Louisiana State University (LSU), where he was on the Chancellor's Honor Roll for six consecutive semesters, was an Allstate Foundation Scholar and LSU Alumni Scholar for four years, and a Top 100 Scholar in fall 2001. He received his MBA degree in 2010 from LSU, where he received the MBA Outstanding Student Award. He received his JD degree and diploma in civil law in 2010 from LSU Paul M. Hebert Law Center, where he received CALI Awards for achieving the highest grade in Civil Law Property, Business Associations I, Commercial Paper and Media Law Seminar. He was a Faculty Merit Scholar, received the Vinson & Elkins Scholarship for 2009-10, and was on the Chancellor's List in spring 2009. He graduated in the top 9 percent of his class and received the Order of the Coif.

His practice is primarily focused on litigation and labor and employment law. He serves industrial, business, financial and insurance clients, with a large part of his practice devoted to their defense.

A member of the Southwest Louisiana Bar Association (SWLBA), he serves on the SWLBA's Young Lawyers Section Executive Council.

In his community, Raley serves on the board of directors of the American Red Cross Southwest Louisiana Chapter, on the Chamber SWLA's Small Business Committee and on the Chamber's committee to select participants for the SEED Center's Business Incubator. He also volunteers with Big Brothers Big Sisters of Lake Charles.

His hobbies include sports, movies, reading, traveling, running and spending time with family and friends.

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

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

Area	Coordinator	Contact Info
Alexandria	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700
Baton Rouge	Ann G. Scarle ann@brba.org	(225)214-5563
Covington/ Mandeville	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781
Denham Springs	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508
Houma/Thibodaux	Danna Schwab dschwab@theschwablawfirm.com	(985)868-1342
Jefferson Parish	Pat M. Franz patfranz@bellsouth.net	(504)455-1986
Lafayette	Heather Broussard Heather@lafayettebar.org	(337)237-4700
Lake Charles	Chantell Marie Smith csmith5@ldol.state.la.us	(337)475-4882
Monroe	John C. Roa roa@hhsclaw.com	(318)387-2422
Natchitoches	Peyton Cunningham, Jr. peytonc1@suddenlink.net	(318)352-6314 Cell (318)332-7294
New Orleans	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
Opelousas/ Ville Platte/Sunset	John L. Olivier johnolivier@centurytel.net	(337)662-5242 (337)942-9836 (337)232-0874
River Parishes	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 (225)265-9828 Cell (225)270-7705
Shreveport	M'Lissa Peters mpeters@shreveportbar.com	(318)222-3643

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

82 Law Day Programs Presented Statewide

The Louisiana Center for Law and Civic Education (LCLCE) strives to celebrate Law Day in schools statewide that may not otherwise have a Law Day event. The LCLCE, through the "Lawyers in the Classroom/Judges in the Classroom" Program, organized multiple in-class presentations across the state during Law Week. This year, 82 Law Day presentations were conducted, reaching more than 3,500 students. Thanks to dedicated teachers, and attorneys and judges who volunteered their time and talent, these programs occurred in all seven congressional districts and at all grade levels.

Several judges participated in the programs, including Judge Reginald T. Badeaux III, Judge Paul A. Bonin, Judge Eirleen E. Brown, Judge Jeffrey S. Cox, Judge Lilynn A. Cutrer, Judge Clayton A. Davis, Judge Karen K. Herman, Judge Mark A. Jeansonne, Judge Sandra C. Jenkins, Judge Michael E. Lancaster, Judge C. Wendell Manning, Judge Michael A. Pitman, Judge D. Kent Savoie, Judge Robert L. Segura, Judge Sheva M. Sims, Judge Raymond S. Steib, Jr., Judge Parris A. Taylor, Judge Max N. Tobias, Jr., Judge Melise Trahan, Judge Kirk A. Williams and Judge Robert L. Wyatt.

Several attorneys participated in the programs, including Denise A. Allemand, Damon J. Baldone, Danielle N. Brown, Kelly G. Carmena, Trina T. Chu, Albert D. Clary, John F. Dillon, J. Keith Gates, A. Spencer Gulden, Roger Hamilton, Jack Harrison, Evan P. Howell, William Jones, J. Clay LeJeune, Kristi U. Louque, Gernine M. Mailhes, Sarah S. Midboe, Ben Miller, Mark A. Myers, John C. Nickelson, Patti W. Oppenheim, Corey P. Parenton, Thomas G. Robbins, Emilia L. Salas, Meghan B. Shumaker, David Smith, Angel G. Varnado, Jason M. Verdigets and Russell A. Woodard.

Judge Sheva M. Sims, far right, presented a Law Day program at Huntington High School in Shreveport.

Judge Reginald T. Badeaux III, center, presented a Law Day program at Archbishop Hannan High School in Covington.

Judge Max N. Tobias, Jr., back row, fourth from left, presented a Law Day program at Cabrini High School in New Orleans.

With the continued support of the legal community, Louisiana will remain a leader in the promotion of law and civic education in the classroom.

The "Lawyers in the Classroom/Judges in the Classroom" Program is a partnership of the Louisiana District Judges Association, the Louisiana State Bar Association (LSBA) and the LCLCE. The LCLCE is a non-profit 501(c)(3) organization that coordinates, implements and develops law and civic education programs and trains others in the delivery of law and civic education programs throughout Louisiana. It is the public education arm of the LSBA and is funded in part by the Interest on Lawyers Trust Accounts Program through the Louisiana Bar Foundation.

JUDICIAL Notes

By Robert Gunn, Louisiana Supreme Court | NEW JUDGE... RETIREMENT

New Judge


Scott U. Schlegel

Scott U. Schlegel was elected as judge of Division D, 24th Judicial District Court, effective May 18. He received a BS degree in 1999 from Louisiana State University and his JD degree, *cum laude*, in 2004 from Loyola University College of Law. He served as Student Bar Association president from 2003-04. He practiced with McGlinchey Stafford, P.L.L.C., from 2004-07 before joining the Jefferson Parish District Attorney's Office. He worked as a prosecutor in the Family Violence Prosecution Unit from 2007-08 and as a prosecutor in the Felony Division from 2009-12. He has been a member of the Louisiana State Bar Association's Bill of Rights Section since 2010 and served as the section's secretary/treasurer. He is married to Laurie Schlegel and they are the parents of one child.

Retirement

Orleans Parish Traffic Court Judge Ronald J. Sholes retired effective July 31. In 1998, he was elected to Division D of Orleans Parish Traffic Court, serving from 1999-2013. He served as an Orleans Parish Civil District Court judge from 1991-98. He received a BS degree in 1976 from Louisiana State University Medical Center, a Master of Public Health degree in 1980 from Tulane University School of Public Health and his JD degree in 1984 from Loyola University Law School. He is a past president of the Louisiana District Judges Association and the Louisiana 4th and 5th Circuit Judges Associations.

Deaths


Justice Luther F. Cole

► Retired Louisiana Supreme Court Justice Luther F. Cole, 87, died July 26. He was a U.S. Navy veteran, serving as an officer in World War II. He completed his undergraduate studies at Louisiana Tech University and received his JD degree in 1950 from Louisiana State University Law School. He practiced law in Baton Rouge for 16 years and served in the Louisiana House of Representatives from 1964 until his election to the bench. His first judicial oath of office was in 1966 after being unopposed for election to the bench of the 19th Judicial District Court, where he was reelected in 1972 and 1978. In 1979, he was elected for an unexpired term on the bench of the 1st Circuit Court of Appeal. He was reelected to that court for a full term in 1980. In 1986, he took his oath as a Supreme Court associate justice and was reelected without opposition in 1988 for a full term, serving until his retirement in 1992. Justice Cole represented the judiciary many times before Constitutional Convention and Legislative Committees, particularly on issues of judicial tenure, compensation and retirement and on budgetary matters. He drafted and was primarily responsible for the enactment of Act 518 of 1976, establishing a contributory retirement system for judges and court officers. Also, in 1987, as budget officer of the Supreme Court, he initiated a separate judicial appropriations bill providing for the financial needs of the court system. He served as chair, Judicial Budgetary Control Board; president, Baton Rouge Bar Association; president, Louisiana District Judges Association; chief judge, 19th JDC; chair, various Supreme Court committees; and vice chair, Judiciary Commission.

► Retired Bastrop City Court Judge Frank Woodrow (Woody) Wilson, 89, died July 8. He was a World War II veteran, serving as an officer in the U.S. Navy. Prior to his military service, he attended what is now the University of Louisiana-Monroe. Following his discharge, he received his JD degree in 1949 from Louisiana State University Law School. He returned to Bastrop where he established a successful law practice, which he maintained until his death. He served in the Louisiana House of Representatives from 1954-62. He served as judge of Bastrop City Court for 24 years until his retirement in 1984.

► Retired 12th Judicial District Court Judge Benjamin C. (Clyde) Bennett, Jr., 88, died July 9. He began his practice of law in 1948. From 1971-84, he served as a Marksville City Court judge. In 1986, he took the oath as judge for the 12th JDC, where he served until his retirement in 1989. He later served, by appointment of the Louisiana Supreme Court, as judge *pro tempore* in the 9th JDC.

► Retired Pineville City Court Judge Jack Holt, 89, died June 25. Following his service in World War II as a B-24 bomber pilot for the U.S. Army Air Corps, he graduated from Louisiana College and earned his JD degree, with honors, in 1951 from Tulane Law School. He was elected as Pineville's first City Court judge in 1954 and served 20 years in that position until his retirement in 1974.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Andrew J. Graeve** has joined the firm as an associate.

Cashe Coudrain & Sandage in Hammond announces that Callie D. Casstevens has become associated with the firm. She received an LLM in energy and environmental law in 2012.

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., in Metairie announces that **Jeffrey D. Martiny** has joined the firm as an associate.

Conroy Law Firm in Metairie announces that **Amanda D. Hogue** has joined the firm as an associate.

Duplass, Zwain, Bourgeois, Pfister & Weinstock, A.P.L.C., in Metairie announces that Daniel M. Redmann is a partner in the firm.

Heller, Draper, Patrick & Horn, L.L.C., in New Orleans announces that **Heather Cheesbro** has joined the firm as an associate.

Jones Walker, L.L.P., announces that Richard F. Cortizas has rejoined the firm as special counsel in the New Orleans office. Also, John F. Fletcher has joined the firm as a partner in the Jackson, Miss., office.

Laborde & Neuner law firm in Lafayette has changed its name to NeunerPate, effective July 1. Senior founding and managing partner **Frank X. Neuner, Jr.** will lead the firm along with senior partner **James L. Pate**. The firm has expanded with new offices: in Metairie through the acquisition of the firm deLaup & Enright, L.L.C.; and in the Pan American Life Center, 601 Poydras St., New Orleans.

Alyce B. Landry, A.P.L.C., and Alyce B. Landry, CPA, L.L.C., in Prairieville announce that **Nicholas R. Dunham** has joined the firms as an associate attorney/ senior staff accountant.

Long Law Firm, L.L.P., in Baton Rouge announces that **Donald J. Cazayoux, Jr.** has joined the firm as of counsel and **J. Lane Ewing, Jr.** has joined the firm as an associate.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard, A.L.C., announces that **Shaundra M. Westerhoff** has joined the firm as an associate in the New Orleans office and **C. Austin Holliday** has joined the firm as an associate in the Baton Rouge office.

Perrier & Lacoste, L.L.C., in New Orleans announces that **J. Roumain Peters III** has joined the firm as special counsel.

Rainer Anding Talbot & Mulhearn in Baton Rouge announces that **R. Frederick Mulhearn** has been named partner in the firm.

Swanson, Martin & Bell, L.L.P., announces that Jennifer S. Kilpatrick has joined the firm as a partner in the Chicago, Ill., office.

Taggart Morton, L.L.C., in New Orleans announces that **Dorothy L. Tarver** has joined the firm as a member.

Richard J. Arsenault

Judy Y. Barrasso

Donald J. Cazayoux, Jr.

Heather Cheesbro

Nicholas R. Dunham

J. Lane Ewing, Jr.

Andrew J. Graeve

Amanda D. Hogue

C. Austin Holliday

Jeffrey D. Martiny

Stephen L. Miles

R. Frederick Mulhearn

NEWSMAKERS

Adams and Reese, L.L.P., received the "Law Firm Diversity Award" from the National Bar Association at the annual Corporate Law Section convention in July.

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired a Complex Litigation Symposium in Chicago, Ill., in May. He also spoke on managing complex litigation at the 5th Circuit Judicial Conference in Fort Worth, Texas.

David C. Coons, an attorney in the New Orleans office of Adams and Reese, L.L.P., was appointed to the Jefferson Parish affiliate board of CASA (Court Appointed Special Advocates) for children.

R. Marshall Grodner, a member in the Baton Rouge office of McGlinchey Stafford, P.L.L.C., was appointed as vice chair of the Commercial Finance Committee of the American Bar Association's Business Law Section.

Jan M. Hayden, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was named chair of the board of directors of The Pro Bono Project in New Orleans. She will serve an 18-month term.

Aimee Williams Hebert, a member in the New Orleans office of Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C., was appointed to serve on the Council of the Louisiana Mineral Law Institute.

Kenneth M. Klemm, a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was reappointed as co-chair of the American Bar Association's Energy Litigation Committee.

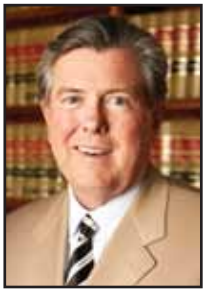
Lynn Luker, with Lynn Luker & Associates, L.L.C. in New Orleans, was elected as chair of the National Association of Minority and Women Owned Law Firms.

Stephen L. Miles, an associate with Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans, was selected as a member of the Leadership LSBA (Louisiana State Bar Association) Class of 2013-14.

Stephen G.A. Myers, a member in the New Orleans office of Irwin, Fritchie, Urquhart & Moore, L.L.C., is a certified mediator and listed on the approved register of civil mediators by the Louisiana State Bar Association's Alternative Dispute Resolution Section.

Frank X. Neuner, Jr., senior founding and managing partner of NeunerPate, headquartered in Lafayette, with offices in Metairie and New Orleans, was invited to speak about disaster recovery of legal systems at the World Justice Forum at The Hague, Netherlands, in July.

Stephen G.A. Myers



Frank X. Neuner, Jr.

James L. Pate

J. Roumain Peters III

Antonio J. Rodriguez

Norman C. Sullivan, Jr.

Dorothy L. Tarver

Shaundra M. Westerhoff

PUBLICATIONS

Benchmark Litigation

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): **Judy Y. Barrasso**, Top 250 Women in Litigation.

***The Best Lawyers in America* 2014**

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): David L. Carrigee, Joel A. Mendler, Jerome J. Reso, Jr., Leon H. Rittenberg III, John A. Rouchell, William B. Schwartz, Paul N. Vance and Karl J. Zimmermann.

Bradley Murchison Kelly & Shea, L.L.C. (Baton Rouge, New Orleans, Shreveport): C. Wm. Bradley, Jr., Darryl J. Foster, Jerald N. Jones, David S. Kelly, Kay C. Medlin, Malcolm S. Murchison, Dwight C. Paulsen III, David E. Redmann, Jr., F. John Reeks, Jr., Joseph L. (Larry) Shea, Jr. and David R. Taggart.

King, Krebs & Jurgens, P.L.L.C. (New Orleans): Eric E. Jarrell, George B. Jurgens III, Patricia A. Krebs, Robert J. Stefani, Jr. and David A. Strauss.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (New Orleans): Steven Hymowitz, Mark N. Mallery, Christopher E. Moore and Christine M. White.

***Chambers USA* 2013**

Bradley Murchison Kelly & Shea, L.L.C. (Baton Rouge, Shreveport): Jerald N. Jones, Joseph L. (Larry) Shea, Jr. and David R. Taggart.

Fowler Rodriguez (New Orleans): **Antonio J. Rodriguez** and **Norman C. Sullivan, Jr.**

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.C. (Baton Rouge, Lafayette, New Orleans): Michael E. Botnick, P. Kevin Colomb, Bob J. Duplantis, Ewell (Tim) E. Eagan, Jr., C. Peck Hayne, Jr., John M. McCollam, Scott A. O'Connor, Louis M. Phillips, Loulan J. Pitre, Gerald H. Schiff, Howard E. Sinor, Jr. and Marion W. Weinstock.

Liskow & Lewis, A.P.L.C. (Lafayette, New Orleans): Donald R. Abaunza, Marguerite L. Adams, Robert S. Angelico, Wm. Blake Bennett, James A. Brown, James C. Exnicios, Joseph I. Giarrusso III, Don K. Haycraft, Joseph P. Hebert, Robert E. Holden, Jonathan A. Hunter, R. Keith Jarrett, Greg L. Johnson, Philip K. Jones, Jr., James E. Lapeze, Thomas J. McGoey II, Robert B. McNeal, Kenneth Allen Polite, Jr., Richard W. Revels, Jr., Leon J. Reymond, Jr., Leon J. Reymond III, Lawrence P. Simon, Jr., Randye C. Snyder and John D. Wogan.

***Louisiana Super Lawyers* 2013**

Broussard & David, L.L.C. (Lafayette): Blake R. David and Richard C. Broussard.

Martindale Hubbell

Law Offices of Joseph E. Ching (New Orleans): Joseph E. Ching, AV rating.

UPDATE

LASC Historical Society Conducts June Meeting

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, far right, addressed board members at the June meeting of the Supreme Court of Louisiana Historical Society.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson welcomed the board of the Supreme Court of Louisiana Historical Society to its June meeting. She expressed the court's thanks for the Society's good work during the court's Bicentennial Year.

Supreme Court of Louisiana Historical Society President Donna D. Fraiche, left, with Louisiana State Bar Association President Richard K. Leefe during the Society's June meeting.

Also during the meeting, the board discussed upcoming programming, the development of its new website, and planning for its annual fall membership meeting.

Attending the meeting were Donna D. Fraiche, board president; Judge Marc T. Amy, first vice president; Mathile W. Abramson, second vice president; Benjamin W. Janke, treasurer; and Prof. Paul R. Baier, secretary.

Other board members attending were Judge (Ret.) James H. Boddie, Jr.; Allen Danos, Jr.; Judge James L. Dennis; Dr. Rachel L. Emanuel; E. Phelps Gay; Leo C. Hamilton, president of the Louisiana Bar Foundation; Richard K. Leefe, president of the Louisiana State Bar Association; and John H. Musser IV, immediate past president of the Louisiana State Bar Association. Society member Prof. Ray Rabalais also attended on behalf of Loyola University College of Law Dean María Pabón López.

Francophone Section Hosts University of Moncton Law Professor

The Louisiana State Bar Association's (LSBA) Francophone Section hosted Professor James E. Lockyer with the University of Moncton School of Law, New Brunswick, Canada, at two events in June.

On June 24, Louisiana 4th Circuit Court of Appeal Chief Judge James F. McKay III hosted Lockyer for a visit to the Louisiana Supreme Court. They visited the court's archives and were given a tour by Law Library of Louisiana librarian Georgia Chadwick.

On June 25, Francophone Section Chair Warren A. Perrin and Jean Robert Frigault with CODOFIL (Council for the Development of French in Louisiana) hosted Lockyer in Lafayette. The group discussed recruitment of Louisiana students to attend the University of Moncton Law School, a symposium to be hosted in New Brunswick during the upcoming World Acadian Congress in mid-August 2014, and the Louisiana State Bar Association hosting the chief justice of the New Brunswick Supreme Court at an upcoming event.

In connection with the Bicentennial of the Louisiana Supreme Court, the Francophone Section is organizing a November symposium focusing on three leaders of the court during the last three decades of the 20th century. Also, the section is organizing an International Law Symposium for mid-July in Paris, France.

The Louisiana State Bar Association's Francophone Section hosted Professor James E. Lockyer, left, with the University of Moncton School of Law, New Brunswick, Canada, at two events in June. Louisiana 4th Circuit Court of Appeal Chief Judge James F. McKay III, right, accompanied Lockyer for a visit to the Louisiana Supreme Court.

Chair, Vice Chair, Member Named to Judiciary Commission

The Louisiana Supreme Court announced that 19th Judicial District Court Judge Anthony J. Marabella, Jr. and Shreveport attorney Jerry Edwards, Jr. were elected chair and vice chair, respectively, of the Judiciary Committee of Louisiana.

Judge Anthony J. Marabella, Jr.

Also, 15th Judicial District Court Judge Jules D. Edwards III was appointed as a new member.

Judge Jules D. Edwards III

Judge Marabella received his law degree in 1973 from Louisiana State University Paul M. Hebert Law Center. He presides over a criminal docket in the 19th JDC and over the drug court. He also is an adjunct faculty member at LSU Law Center.

Jerry Edwards, Jr.

Jerry Edwards received his law degree in 2005 from Vermont Law School. He has been an associate with the Shreveport firm of Blanchard, Walker, O'Quin & Roberts since 2006. He is currently serving as the District 8 representative on the Louisiana State Bar Association's Young Lawyers Division Council.

Judge Edwards received his law degree in 1984 from Loyola University College of Law. He also holds a master's in public administration from Louisiana State University and a master's in strategic studies from the U.S. Army War College. He retired as a colonel of the Louisiana National Guard in 2007. He has presided over the 15th JDC's drug court.

LOCAL/SPECIALTY BARS

Hevron Receives FBA New Orleans Chapter's President's Award

Marshall A. Hevron, right, an associate in the Litigation Practice Group in the New Orleans office of Adams and Reese, L.L.P., received the Federal Bar Association (FBA) New Orleans Chapter's President's Award in August. With him is FBA New Orleans Chapter outgoing President Eric R. Nowak.

Marshall A. Hevron, an associate in the Litigation Practice Group in the New Orleans office of Adams and Reese, L.L.P., received the Federal Bar Association New Orleans Chapter's President's Award at its annual meeting and awards luncheon in August.

Hevron, a former Marine and Operation Iraqi Freedom combat veteran, received the award for his commitment to serving veterans in New Orleans and for reviving the Veterans of Foreign Wars (VFW) Post.

He serves as commander of VFW Post 8973 in New Orleans and helped breathe new life into the Post last year by increasing services to war veterans, such as a job and résumé workshop, job preparation and legal advice. More than 100 veterans have joined the Post since its revival.

The President's Award was conceived by the FBA New Orleans Chapter in the aftermath of Hurricane Katrina to recognize a lawyer for contributions to community and leadership outside the practice of law.

Baton Rouge Bar Association (BRBA) Young Lawyers Section Past Chair Jamie H. Watts, left, presented Catherine Saba Giering with the 2013 Judge Joseph Keogh Memorial Award earlier this year on behalf of the BRBA YLS in recognition of outstanding service to the BRBA.

Linda Law Clark, center, was one of two attorneys honored by the Baton Rouge Bar Foundation Pro Bono Project earlier this year for donating 1,000 hours toward pro bono work. With her are Kenneth A. Mayeaux, left, Baton Rouge Bar Association Pro Bono Committee chair for the past two years, and 2013 Pro Bono Committee Chair Emily P. Ziober.

Rosenberg Receives NOBA's Presidents' Award

Harry Rosenberg

Harry Rosenberg, a partner in the New Orleans office of Phelps Dunbar, L.L.P., received the New Orleans Bar Association's (NOBA) Presidents' Award in July. The Presidents' Award recognizes professional excellence and integrity, along with dedication to community service in the highest ideals of citizenship.

NOBA President Timothy F. Daniels commended Rosenberg "for his attendance to professional ideals, his true concern for the welfare of others and his active commitment to community service."

Rosenberg was recognized for his work with the Court-Appointed Special Advocates, the Innocence Project, the Orleans Parish Public Defenders Program, the New Orleans Indigent Defense Board, the National Conference of Community and Justice, the Milne Boys' Home, among other organizations.

INNS OF COURT

Acadiana Inn of Court Receives Top National Honors

For the third consecutive year, the Acadiana Inn of Court this year achieved the Platinum Level Distinction from the American Inns of Court (AIC), the highest commendation for a local Inn.

Also recognized by the AIC was the Acadiana Inn's Team 1 — led by Assistant U.S. Attorney Camille A. Domingue in Lafayette, with co-team leader Frank X. Neuner, Jr. with the firm NeunerPate in Lafayette — receiving the Outstanding Program Award for its presentation, "These Trying Times: Contemporary Pressures on Contemporary Jurors."

During the past year, the Acadiana Inn has contributed to numerous charities, including donations of business suits to Northside High School's Moot Court team and donations of food to Food Net. The organization also provided attorney volunteers to handle pro bono legal assistance for Hurricane Isaac victims.

In May 2013, the Acadiana Inn presented Team 4's "Wizard of Lawz" program for the National Inns of Court Foundation symposium in New Orleans. The program focuses on a range of attorney conduct from "Rambo" to "Wimpy," with intermediate stops at Zeal and Civility.

Franchesca L. Hamilton Acker, left, Acadiana Inn of Court's 2012-13 president, with Larry Curtis (emeritus member).

Franchesca L. Hamilton Acker is the Acadiana Inn's 2012-13 president. Executive Committee members include Lisa D. Hanchey, president-elect; Michael P. Maraist, past president; Diane A. Sorola, secretary; Amy A. Lee, treasurer; Camille A. Domingue, counselor; Steven C. Lanza, reporter; Mildred E. Methvin, program chair; Shawn A. Carter, membership chair; Elena Arcos Pecoraro and Frank S. Slavich III, membership; Holli K. Yandle, meeting coordinator; and Blake R. David and William W. Stagg, at-large members. Kenanne Dooley is administrator of the Inn.

Judge Carl E. Stewart, right, chief judge of the U.S. 5th Circuit Court of Appeals, was the keynote speaker for the Crossroads American Inn of Court annual banquet in April in Alexandria. Kellen J. Mathews, left, an attorney in the Baton Rouge office of Adams and Reese, L.L.P., who served as 2012-13 Inn president, presented a gift to Judge Stewart. Judge Stewart, active in the American Inns of Court, stressed the importance of maintaining the Inn's relevance in today's legal environment and urged the elder statesmen in the Inn's ranks to seize the opportunity to mentor young attorneys, particularly in professionalism.

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/LawyerAdvertising.*

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.

President's Message

What is Civil Legal Aid and Why Does It Matter?

By Leo C. Hamilton

Civil legal aid is free legal advice and representation to low-income and vulnerable people who cannot otherwise afford legal help. Services can be as simple as educating clients about their rights and responsibilities and giving advice. Complex problems may require more extensive attorney representation. For clients, these services mean the difference between staying in a home and living on the street; between a safe family and a life of fear and violence; between getting paid earned wages and having nothing to eat. Without legal help, even relatively minor problems can escalate. Often the failure to resolve these issues can tear families apart or drive them further into poverty.

Under our criminal justice system, low-income persons are constitutionally guaranteed legal representation before the courts. No such guarantee is provided in civil matters. Yet, I believe that our legal system lacks validity when the least among us is not provided adequate representation in all matters, including civil disputes. From the abused woman seeking safety for herself and her children, to the elderly man unlawfully evicted from his home, legal aid is necessary to ensure that all Americans have access to our civil justice system.

Leo C. Hamilton

Legal aid helps people solve problems:

► Women who are victims of domestic violence.

► Children who need a stable home or special education.

► Homeowners facing foreclosure due to fraudulent schemes.

► Elderly people whose economic security or health care is in jeopardy.

► Disabled people denied opportunities.

► Immigrants who work the lowest-wage jobs without benefits or contracts.

► Tenants facing wrongful evictions.

► Consumers bankrupted by predatory lenders.

► Workers cheated out of wages or denied lawful benefits.

► Communities devastated by natural disasters.

As lawyers, we swore an oath to "never reject, from any consideration personal to [ourselves], the cause of the defenseless or oppressed or delay any person's cause for [monetary gain] or malice." I believe that oath places upon all lawyers, as a profession, the obligation not only to care about civil legal aid, but also to actively do something about it. The Louisiana Bar Foundation (LBF) works every day to do just that.

Since 1989, the LBF has granted $54.4 million to support a network of nonprofit organizations providing critical, free civil legal aid services to women, children, the elderly, the working poor, people with disabilities, the newly unemployed and those facing loss of their homes. If you are unable to personally aid in the delivery of civil aid to the defenseless or oppressed, a tax-deductible contribution to the LBF will help ensure that justice is a reality — not just for those who can afford it, but for everyone in Louisiana. To find out how you can help, contact LBF Development Director Laura Sewell at (504)561-1046.

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Attorney position serves as legal counsel to the Coastal Protection and Restoration Authority of Louisiana (CPRA) and is responsible for providing legal assistance to the CPRA. Work shall include but is not limited to assisting CPRA with the performance of its duties in connection with the Deepwater Horizon explosion that occurred on April 20, 2010, and its oil spill aftermath; communicates and meets with the staff of the Governor's Office, other state agencies and private industry attorneys, regarding issues relating to oil spills and the application of OPA and other relevant laws and regulations; performs other related legal work as assigned. Attorney should have a minimum of three to five years of experience. For information on duties, qualifications and response procedures, email Chip Kline at Chip.Kline@la.gov.

Minimum qualifications of defense attorneys for the Patient's Compensation Fund. In accordance with La. R.S. 40:1299.41(J), attorneys appointed to defend PCF cases must meet the following minimum qualifications as established by the Patient's Compensation Fund Oversight Board: (1) Must be a defense-oriented firm with at least 75 percent of practice dedicated to defense; (2) Defense firm appointed to PCF cases shall have **NO** plaintiff medical malpractice cases; (3) Defense firm must provide proof of Professional Liability coverage with a minimum limit of $1 million; (4) Defense attorney must have a minimum of five years' experience in the defense of medical malpractice cases; (5) Defense attorney must have completed three trials within the past three years. Presentation of five submissions to a medical review panel may be substituted for each of two trials. However, the defense attorney must have tried at least one case in the past three years. Interested persons may submit written comments to Ken Schnauder, Executive Director, Patient's Compensation Fund, P.O. Box 3718, Baton Rouge, LA 70821.

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NOTICE

Notice is given that Michael Kevin Powell intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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C	L	A	Y	■	P	A	R	K	L	A	N	D
O	■	G	■	D	■	M	■	E	■	R	■	R
N	A	I	V	E	T	E	■	N	I	T	R	O
N	■	N	■	N	■	N	■	Y	■	D	■	P
A	N	G	L	O	■	D	E	A	L	E	Y	■
L	■	■	■	V	■	S	■	■	■	C	■	Z
L	Y	N	D	O	N	■	A	N	G	O	L	A
Y	■	A	■	■	■	A	■	I	■	■	■	P
■	O	S	W	A	L	D	■	P	I	K	E	R
T	■	T	■	I	■	A	■	P	■	N	■	U
A	M	I	G	O	■	G	R	O	W	O	L	D
N	■	E	■	L	■	I	■	N	■	L	■	E
G	A	R	R	I	S	O	N	■	B	L	U	R

The Last WORD

By Edward J. Walters, Jr. | **RANT**

As we all now know, sadly, our good friend, Vince Fornias, late of "Lucid Intervals" fame, decided that he would no longer enrich us with his much-beloved *Louisiana Bar Journal* column.

After much pleading and cajoling, he has steadfastly refused to come back to the table, crayon in hand.

I cajoled, "Vince, even though you went to Jesuit, you're a really smart, FUNNY guy. How hard can writing this column BE? There are endless war stories about humorous stuff that happens every day to lawyers. This column should write itself."

Vince replied, "Don't be too sure of that war story solution, Bunkie. For every decent one, there are 10 'you hadda be there' clunkers, and many are prone to political incorrectness."

I told Vince that I was asked to write the last page for this issue and I asked him for ideas. He said, "Just rant about a pet peeve lawyers can relate to."

So I will.

Pet Peeve No. 1: You spend hours toiling over that brief. It's perfect. You proudly sign it (with a flourish) and send it out. You feel good. Proud. It is a masterpiece. Weeks later, while preparing for your oral argument, you reread your perfect brief and find the following sentence: "Plaintiff suggests that *their* is no proof in the record to support defendant's position." Damn spell checker.

Pet Peeve No. 2: You are in litigation. Years pass. After all discovery is completed — depos across the globe — your opponent files a two-foot-high motion for summary judgment, which, I am sure, took MONTHS to prepare. You have either eight days to respond or 21 days to respond. These are usually filed right before the Christmas holidays.

Pet Peeve No. 3: The non-uniform uniform rules. 20 pages of "Uniform Rules" and 225 pages of appendices. Try to find something in there.

Pet Peeve No. 4: The judge takes it under advisement. It's still under advisement. It's STILL under advisement. How do you politely break this logjam? You try: "Dear Judge, Please find enclosed a copy of the *Jones v. Smith* case which may assist you in deciding the above-captioned matter." (Which has now been on your desk for 10 months.) Doesn't work. What now?

Pet Peeve No. 5: You drive several hundred miles to attend a pretrial conference or status conference. Trial counsel MUST attend in person. The conference is held by the judge's law clerk. No judge in sight.

Pet Peeve No. 6: You have to be in court at 9:30. The interstate looks like a parking lot. You break your neck and get there for 9:30. The judge takes the bench at 11:30.

Pet Peeve No. 7: You draft this compelling brief, clearly laying out why your position is the correct one and why your opponent's position is ridiculous. You go to the hearing. It is obvious the judge hasn't read it. Takes it under advisement. Same judge from Peeves 4, 5 and 6.

Pet Peeve No. 8: You wake up in the middle of the night (November 14) and think, "Was the plaintiff's accident on November 14 or December 14? You get in your car and drive to the office. It was December 14. Whew!

Pet Peeve No. 9: It's 9:30. The judge has 43 motions on the docket — ALL set for 9:30. You are number 34. Shouldn't SOME of these be set for 1:00?

Pet Peeve No. 10: Opening the *Louisiana Bar Journal*, going to the last page, and not finding Vince.

We all miss you, Vince.

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

Edward J. Walters, Jr.

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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