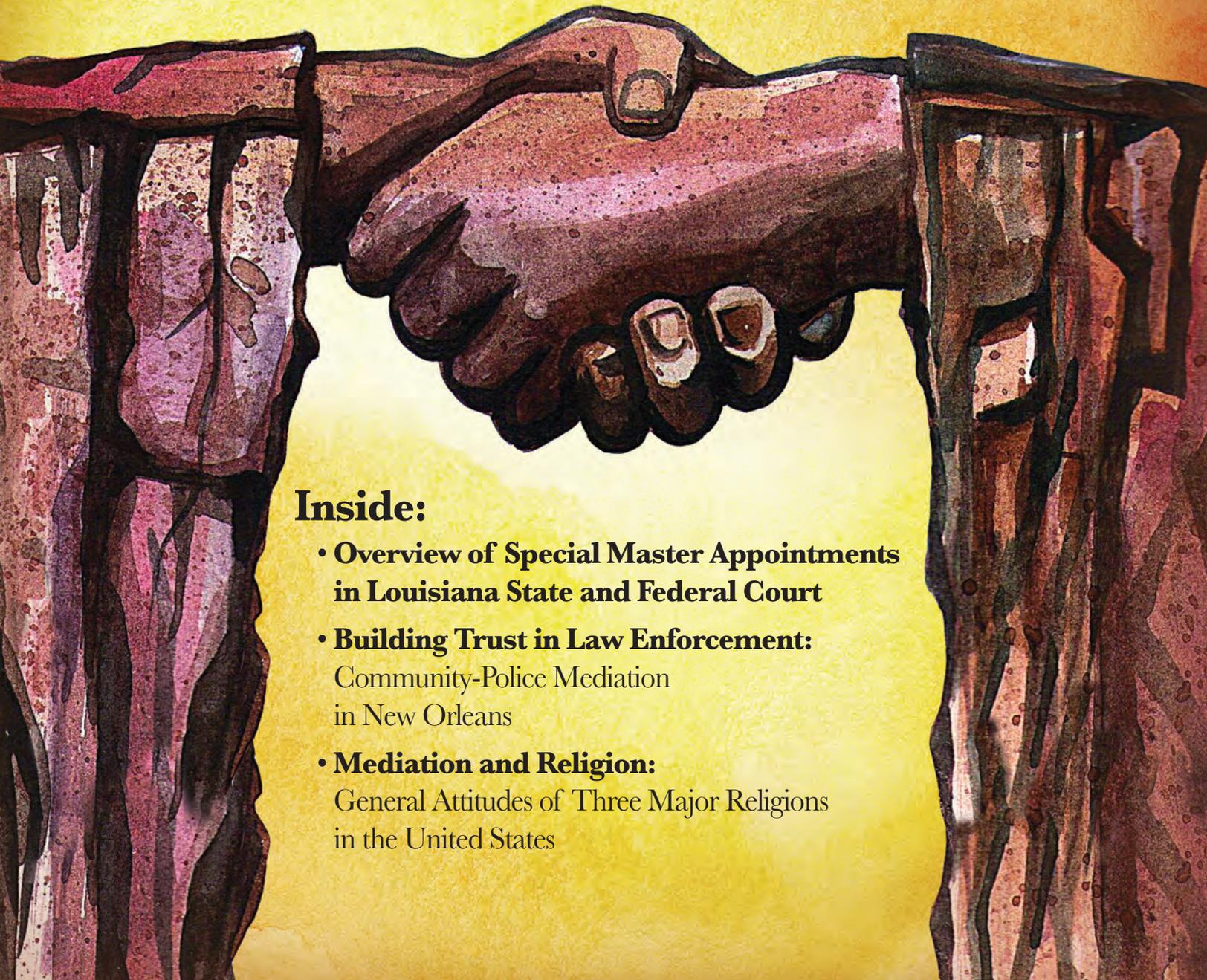


LOUISIANA BAR JOURNAL

October / November 2015

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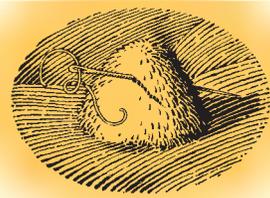


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- **Overview of Special Master Appointments in Louisiana State and Federal Court**
- **Building Trust in Law Enforcement:**
Community-Police Mediation
in New Orleans
- **Mediation and Religion:**
General Attitudes of Three Major Religions
in the United States



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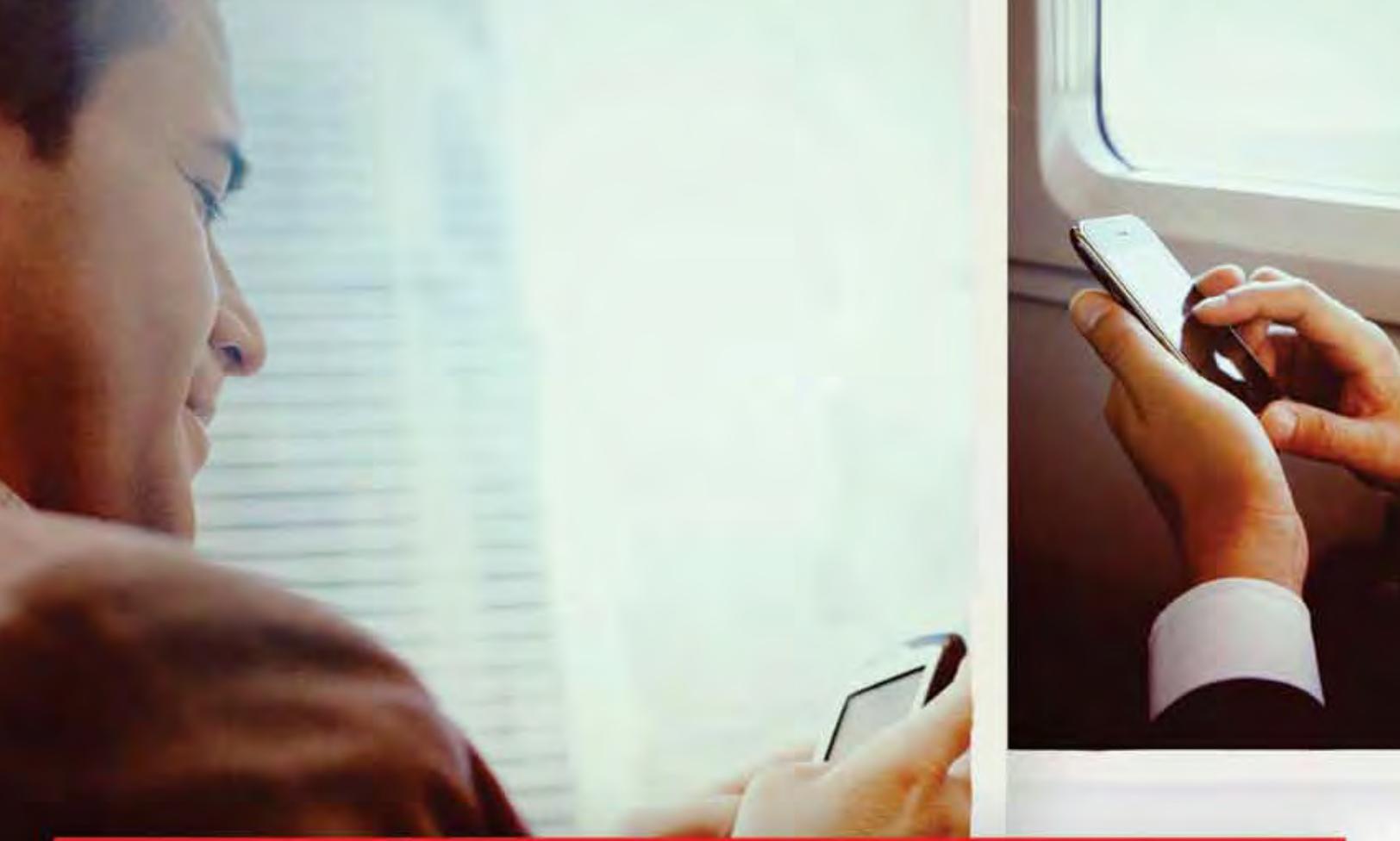
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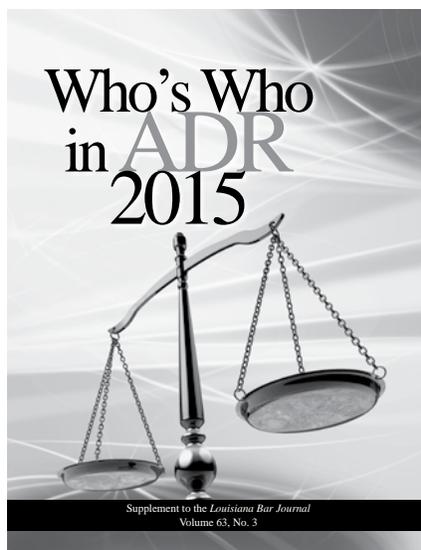
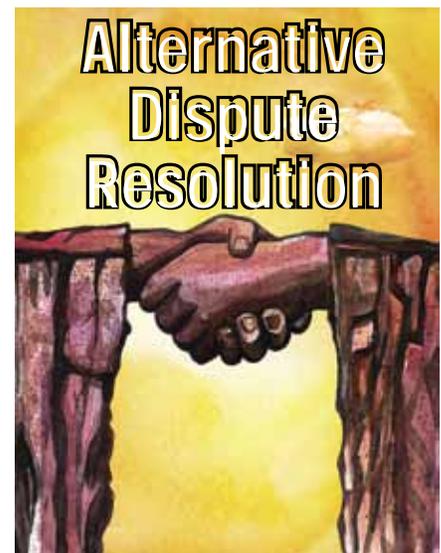
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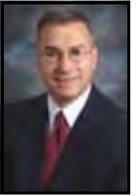
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By Alainna R. Mire

Of S'Mores, Memories and the LSBA's 75th Anniversary

While at a festival with friends, we started to reminisce about our childhoods. It all started innocently enough while enjoying a vanilla latte and s'mores at a lounge. While two of us just thought it was neat, our other friend was in heaven. He explained there was a technique to roasting the perfect marshmallow and a certain way to "make" your s'more. Apparently, when he was a child, someone in his family would build a wood fire in the backyard so they could roast marshmallows and wieners.

After a good dose of friendly laughter, we decided we wanted to experience his childhood memory as adults. We are currently in the process of planning an evening that will include roasting marshmallows for s'mores and making Frito pies and hot dogs. Because he is our friend, we want to recreate and experience something that was such a positive experience in his life.

The idea of experiencing things as others do or learning about them is what it means to learn about and embrace diversity.

Each person has different life experiences that impact who he or she becomes as an adult. These life experiences shape one's core values and beliefs. I am very fortunate to have a diverse family that is open and tolerant towards others. Not everyone is as open-minded and accepting of those they perceive as "different." Some younger adults may think we already live in a society that is accepting of diverse people and cultures, yet older adults may not see it the same way. My parents lived through the civil rights movement as did the parents of others my age. My childhood was more open because of the movement experienced by my parents.

As editor of the *Louisiana Bar Journal*, I am appreciative of the ability to have, and to work with, a diverse Editorial Board. The Board comes from both a diverse practice and cultural background. The ability of the entire Board to collaborate and discuss submissions in a professional and courteous manner is what makes it such a great group. In my opinion, multiple

perspectives are necessary in order to continue to grow as an association.

The Louisiana State Bar Association will be celebrating its 75th anniversary in 2016. As such, we would like you to celebrate with us by submitting articles, photographs and other materials that you may have to commemorate this milestone.

By the way, I've also added pumpkin carving to my wood fire fall evening with friends because it is something that I always did with my family as a child. My friends are family by choice so we embrace each other as I was taught to embrace people from different backgrounds and socioeconomic status.

Our Association has made strides in embracing diversity, but we still have a way to go. I hope the next 75 years are even better than the first ones.

The LSBA is Turning 75 in 2016!

Help the Louisiana State Bar Association celebrate its 75th anniversary by submitting material for the commemorative issue of the *Louisiana Bar Journal* in spring 2016.

Do you have an article idea? Do you want to write an article? Do you have photographs in your collection that would be of interest to the membership?

Email your ideas by Friday, Dec. 4, to Editor Alainna R. Mire, alainna.mire@cityofalex.com, or Publications Coordinator Darlene M. LaBranche, dlabranche@lsba.org.

In Response to Recent Developments Article

In response to the Criminal Law Section Recent Developments article in the April/May 2015 *Louisiana Bar Journal* (Volume 62, Number 6), I take exception to the fact that the victim was identified as “an Angola prison guard.” His name was Brent Miller, a likeable young man who had the whole world in front of him when he was brutally murdered on the job in 1972 by the three inmates who were twice convicted of murdering him.

The article does not seem to be an objective statement briefing the legal points of the case, but more the perspective from those who want to exonerate these defendants of Brent’s murder. It is hard for me to believe that the investigators at Louisiana State Penitentiary would have blamed three innocent inmates for the death of their employee and let the guilty parties go untouched. It also should

be pointed out that the convictions were only overturned on technicalities and not on any defect in the proof that found the defendants guilty. The fact that the racial makeup of the jury and the grand jury was not to the federal court’s liking did not mean that there was any bias against the defendants or that they would have been found anything other than guilty regardless of the jury’s makeup.

To date, there has never been any indication of anyone other than the three named defendants as being guilty of the brutal murder of Brent Miller, and I seriously doubt that the knife attacked Mr. Miller on its own and inflicted approximately 40 stab wounds to his body.

Charles E. Griffin II
St. Francisville



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

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

3. Letters should be no longer than 200 words.

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

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

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



By Mark A.
Cunningham

Civil Discourse and the Role of the Profession in Public Policy

I am deferring my President's Message until the next issue to allow for the publication of the essay below from Roger A. Stetter. Mr. Stetter is an active volunteer for the Senior Lawyers Division, and he has had a distinguished career as a law professor and trial attorney. So when Mr. Stetter could not find a home for his essay, I asked for it to be published here.

In his essay, Mr. Stetter takes on the difficult issue of race in America and its role in recent events surrounding controversial shootings in South Carolina, Ferguson, Mo., and elsewhere. He argues that society should re-examine law enforcement policies on the use of deadly

force and police officer training. Some members may have different views on how best to protect the safety of police officers while at the same time respecting individual rights. The role of the LSBA is not to answer these questions or take sides in the debate, but rather to promote civil discourse within the legal profession.

In that spirit, I encourage members to speak out on public policy issues impacting the rule of law. Write to the *Louisiana Bar Journal* editor or the editor of your local newspaper. Run for political office. In 1978, the *Louisiana Law Review* published an article discussing the role of lawyers in the Louisiana Legislature, noting that lawyers represented the largest single

occupational group in the Legislature and generally comprised more than 30 percent of its members. Patrick F. O'Connor, *et al.*, "The Political Behavior of Lawyers in the Louisiana House of Representatives," 39 La. L. Rev. 43 (1978). Lawyers continue to play a significant role in the Louisiana Legislature, but their voices are increasingly drowned out by others who do not share the same commitment to civility and professionalism. Over time, the legal profession will surely help reinstitute civility in the political process but only if members take the time to share their points of view.

Here is what one member had to say:

It's Time to Review Deadly Force Policies and at the Same Time Fund Better Training and Compensation for Law Enforcement

By Roger A. Stetter

A spate of recent police shootings of unarmed African-American men — most notably of a man in South Carolina who was pulled over for a broken tail light and shot repeatedly in the back while running away from a police officer — has focused national attention on the use of deadly force by law enforcement officers.¹

Police work is dangerous, especially when millions of people are carrying handguns and ready to use them at the drop of a hat.² But we are left trying to understand how a minor infraction or mere suspicion of criminal activity often escalates into a deadly confrontation, and why police officers are not better trained to avoid the use of lethal force unless it is absolutely necessary.

Remarkably, there is no comprehen-

sive data base on the number of police homicides and a majority of police departments do not file fatal police shooting reports at all.³ However, we do know that young African-American males are at far greater risk of being shot dead by police than their white counterparts — 21 times greater, according to a recent study of federally collected data on fatal police shootings.⁴

Unfortunately, running from the police has become a way of life among young African-American men in heavily policed neighborhoods. Some flee because they are in possession of drugs, others because they are afraid that the police might rough them up during random stops, even if they do not try to escape.⁵ Mutual suspicion and distrust between young African-American

men and law enforcement officers lead all too often to fatalities.

In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court held that when a law enforcement officer is pursuing a fleeing suspect, he or she may not use deadly force to prevent an escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." The Court's ruling sounds reassuring. However, it provides no practical guidance on when police officers should chase people or draw their guns, and when they should back away, wait or try to defuse the situation.

Curbing police shootings requires a re-examination of deadly force policies and a serious investment in police recruitment,

training and retention. Police training in the use of deadly force is woefully inadequate. The lion's share of police budgets goes to salaries and equipment with almost nothing left for training. A Justice Department report on the Philadelphia Police Department states that police officers' firearms training focuses more on target practice and less on the police department's policies about when officers can fire their weapons.⁶ The average police training in the United States is 15 weeks and, in most police departments, the only criteria for new recruits are a GED and the non-use of drugs during the previous three years.⁷ The South Carolina police officer who shot an unarmed African-American man in the back was allowed to stay on the force despite a 2013 complaint that he used excessive force against another unarmed African-American man.⁸

The role of police in a free society is to enforce the law in a manner that is fair and just to all people and to only use deadly force as a last resort. But this requires an investment in proper education and training of police officers as well as generous

pay for the men and women who risk their lives to protect us from harm. Whether or not the necessary investment will be made to achieve proper community policing in the United States remains an open question.

FOOTNOTES

1. The police shooting in South Carolina came on the heels of a rash of similar incidents over the past year, including the shooting of Michael Brown, an unarmed African-American teenager, in Ferguson, Mo. The Ferguson police officer has been cleared of any wrongdoing. However, the South Carolina shooting was captured on video by a bystander and the police officer has been indicted for murder. Alan Blinder and Timothy Williams, "Ex-South Carolina Officer Is Indicted in Shooting Death of Black Man," *New York Times* (June 9, 2015), at A12. This is one of the few times an offending officer has been charged with a crime.

2. Approximately 21 million background checks were conducted for gun sales in the United States in 2013. Katie Pavlich, "Gun Sales Set New Record," *Townhall.com* (Jan 7, 2014).

3. The FBI maintains a Uniform Crime Reporting Program which relies on law enforcement agencies to voluntarily submit crime reports. This database only includes justifiable homicides.

4. Ryan Gabrielson, *et al.*, "Deadly Force, in

Black and White," *ProPublica* (Oct. 10, 2014).

5. John Eligon, "For Some, Running from Police Is the Norm, Some in Baltimore Say," *New York Times* (May 11, 2015) at A10. FBI reports filed for the years 2010 to 2012 indicate that of 15 teenagers shot fleeing arrest, 14 were African-American. A recent study by the American Society of Criminology found that over a 10-year period in which St. Louis police fired their weapons, more than 90 percent of their targets were African-American. Michael Wines, "Are Police Bigoted?," *New York Times* (Aug. 30, 2014).

6. Gene Demby, "Takeaways from The Federal Report on Deadly Force By Philadelphia Cops," *www.npr.org* (March 25, 2015).

7. Paul Waldman, "Expert: U.S. Police Training in Use of Deadly Force Woefully Inadequate," *The American Prospect* (Aug. 27, 2014), available at <http://prospect.org>.

8. Michael Slager, "Cop Who Killed Unarmed Black Man Walter Scott Had Prior Excessive Force Complaint," *Huffington Post* (April 9, 2015). On June 9, 2015, a grand jury indicted him for murder.

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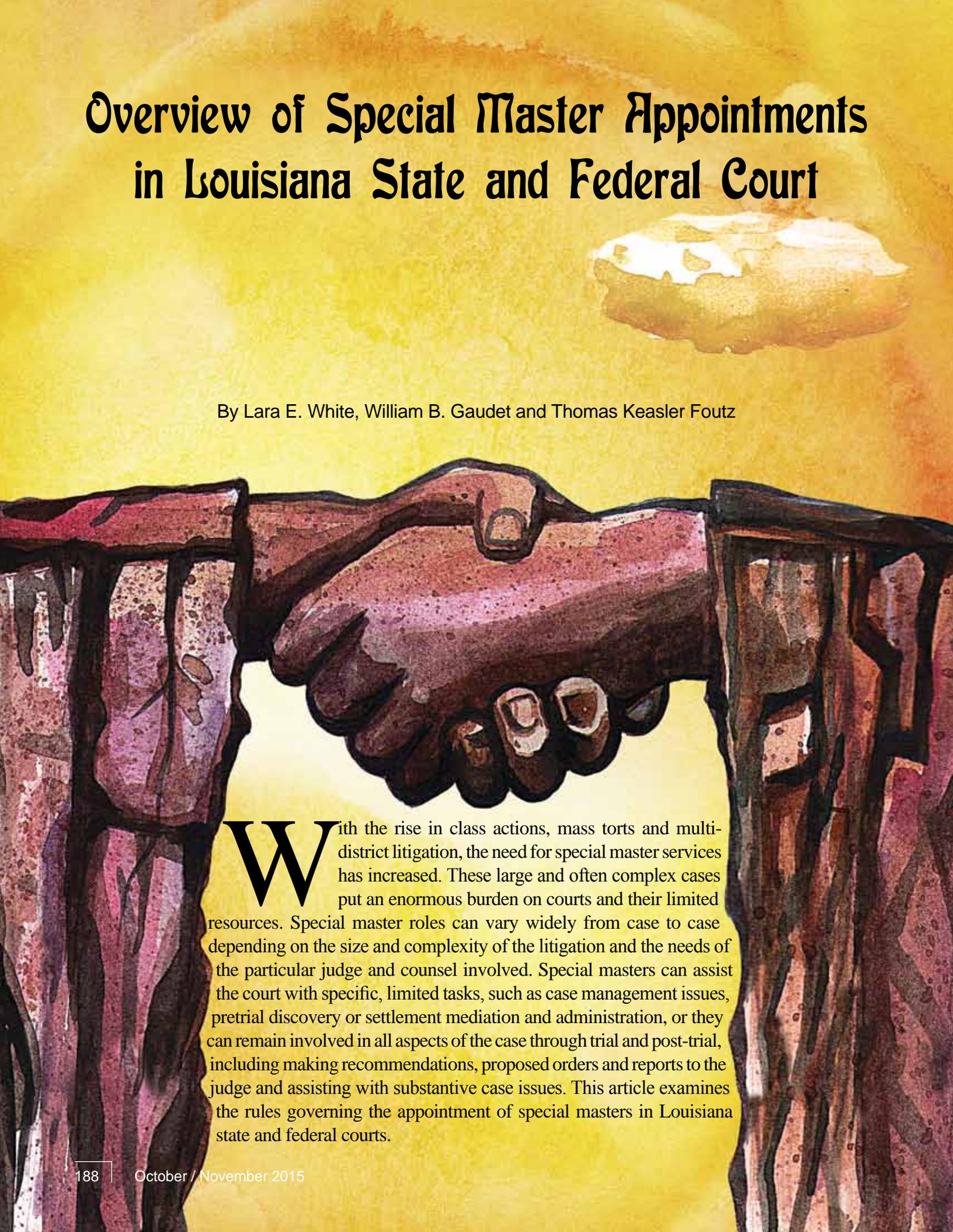
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Overview of Special Master Appointments in Louisiana State and Federal Court

By Lara E. White, William B. Gaudet and Thomas Keasler Foutz



With the rise in class actions, mass torts and multi-district litigation, the need for special master services has increased. These large and often complex cases put an enormous burden on courts and their limited resources. Special master roles can vary widely from case to case depending on the size and complexity of the litigation and the needs of the particular judge and counsel involved. Special masters can assist the court with specific, limited tasks, such as case management issues, pretrial discovery or settlement mediation and administration, or they can remain involved in all aspects of the case through trial and post-trial, including making recommendations, proposed orders and reports to the judge and assisting with substantive case issues. This article examines the rules governing the appointment of special masters in Louisiana state and federal courts.

Federal Court

Appointment

The rule governing the use of special masters in federal court is Federal Rule of Civil Procedure 53. A federal court may appoint a special master in limited circumstances, as district judges must retain the primary responsibility for the cases in their courts.¹ Rule 53(a)(1) provides the three standards for special master appointments: (1) by consent of the parties; (2) for trial duties; and (3) for pretrial or post-trial duties.²

Although a special master may be appointed by consent of the parties, mere consent does not obligate the court to actually make the appointment, as the court has the ultimate discretion on this issue.³ A court also has ultimate authority to appoint a special master for trial, pretrial or post-trial duties, even without the consent of the parties, if the court meets the conditions provided in Rule 53(a)(1)(B) and (C). It should be noted, however, that a court may not appoint a special master for trial duties without the consent of all parties when the case will be tried to a jury.⁴

Trial master appointments are limited.⁵ Examples of trial master duties include presiding over an evidentiary hearing, a preliminary injunction hearing, or determining complex damages issues.⁶

Pretrial and post-trial masters are used by district courts when help is needed to manage unusually large or complex cases, and when the judge and magistrate are unavailable to timely or effectively handle certain matters. The intent is for these appointments to be made only when there is a clear need for such assistance.⁷ Examples of pretrial master duties include handling e-discovery matters, reviewing extensive documents for privilege, overseeing investigations, settlement conferences and administrative oversight.⁸ Post-trial master duties may involve enforcing a complex decree.⁹

A special master is subject to the same conflicts of interest and disqualification standards as that of a district judge under 28 U.S.C. § 455.¹⁰ However, the parties, with court approval, may still consent to a special master appointment after disclosure of the grounds for disqualification under Rule 53(a)(2).¹¹ Because a special master is not a public judicial officer, a court may find it appropriate to permit the parties to

consent to a special master appointment when circumstances would otherwise require judges to disqualify themselves.¹²

Order of Appointment

Once the court decides that a special master will be appointed, the court must give notice to the parties of who is proposed for this appointment and the terms of the appointment, and also give the parties an opportunity to be heard on these issues and to nominate other candidates for appointment.¹³ After a special master has been selected, the scope and limits of the master's duties and authority must be detailed in a written order. The more detailed the order, the better, so as to not have any misunderstanding or confusion. The order should include information on: (1) the specific duties of the master and any limits on authority; (2) guidelines for *ex parte* communications with the court and the parties;¹⁴ (3) any materials that need to be preserved and filed to record the activities of the special master; (4) the procedures and deadlines for reviewing any orders, findings or recommendations of the master; and (5) the plans and procedures for compensating the master under Rule 53(g).¹⁵ The parties must be given an opportunity to be heard on the terms of the appointment order.¹⁶ The final order of appointment may be amended later as long as there is notice to the parties and an opportunity for hearing.¹⁷

Authority, Orders and Reports

Once appointed, a special master has broad authority to meet his/her assigned duties as provided in the appointing order.¹⁸ Any order issued by a special master must be filed with the court and entered on the docket and must be served on all parties.¹⁹ The special master must prepare and file reports to the court as the court requires in the appointing order, and must file and serve the report on the parties unless otherwise directed by the court order.²⁰

Prior to acting on a special master's order, report or recommendation, the court must first provide the parties with notice and hearing.²¹ In response, a party may file an objection, or motion to adopt or modify, within the time frame set by the rules or the court.²² Any objections to findings of fact or conclusions of law made or recommended by the special master are reviewed by the

court *de novo*.²³ However, a master's ruling on a procedural matter may only be set aside for an abuse of discretion unless otherwise indicated in the appointing order.²⁴ The court is the ultimate authority over the master's order, report or recommendation, and "may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions."²⁵

Compensation

The court will determine the special master's compensation as provided in the appointing order or subsequent amendments.²⁶ The court also will determine how the master's fees will be allocated between the parties or taken from a fund or the subject matter of the litigation within the custody of the court.²⁷ When considering the allocation of fees, the court may consider the amount in controversy, the means of the parties, and whether any particular party is more responsible for the appointment of the master in the case.²⁸ After a decision on the merits, the court may decide to amend an interim allocation.²⁹

Louisiana State Court

Appointment

Louisiana's special master statute is relatively recent, as compared with the federal rule. La. R.S. 13:4165, governing the appointment of special masters, was enacted by the Louisiana Legislature in 1997. This original statute was less than clear as to what the specific role of the special master would be in a particular matter appointment. This led to concerns and objections when the role of the special master was expanded during the course of the matter without complete notice to the parties. Another concern regarding the application of this original statute was the appointment of special masters without full consent of all the parties.

Because of concerns expressed by both the plaintiff and defense bar and other interested parties, Louisiana's statute was amended and enacted by the Louisiana Legislature and became effective on Aug. 1, 2014.³⁰ The specific consent requirement of the Louisiana statute differs from the federal rule. As noted above, a federal judge has authority to appoint a special master even

without the consent of the parties. However, the Louisiana statute by its general terms, while requiring consent of the parties, does not require the court to provide the parties an opportunity for a hearing on the appointment or the right to nominate other candidates for appointment.

When compared with the federal rule, the Louisiana statute does not provide specific guidelines for the formal disclosures by the special master or the details that should be included in the order of appointment—*e.g.*, guidelines for *ex parte* communications, preservation and recordation of special master activities, and disclosure requirements. The Louisiana statute requires reports from the special master to be served on the parties and a right to objections in a contradictory hearing regarding that report before the court adopts, modifies or rejects the report of the special master.

There is minimal Louisiana case law discussing the special master issues but, given the increase in the use of special masters in Louisiana, more decisions are likely to be forthcoming. Until more guidance is provided by the Louisiana courts, the parties should consider the more specific guidance provided by the federal rules and federal courts.

Authority, Orders and Reports

Like the federal rule, the Louisiana statute provides broad authority to the special master and leaves much discretion with the district courts regarding the limits of authority, the issues that can be addressed, and the reports to be provided by the special master. The federal rule and authorities

interpreting that rule are more specific as to the power of a special master to conduct evidentiary hearings, imposing certain sanctions, and providing parties with notice of hearings before the special master. But given the broad authority provided to state courts, those issues should be addressed in a more detailed order of appointment and the federal form should be used as a template. It is important for the state court judge, in coordination with the special master, to spend the time to anticipate all issues that may arise during the course of the litigation, set forth the details of the special master's authority and anticipated scope of tasks, and provide as much detail as reasonable in order to avoid future objections by the parties.³¹

Compensation

Like the federal rule, state courts determine the special master's compensation; unlike the federal rule, the Louisiana statute provides that this compensation is to be taxed as costs of court. Because the estimate of the amount of compensation of the special master is to be provided before appointment, it is important for the special master to notify the parties well in advance of seeking an order for compensation if there are valid reasons to increase that original estimate. Once again, however, there is little guidance for the state courts regarding the factors to be applied in approving the special master's compensation. There are ample filings and orders in the federal court system that can be adopted. Because the compensation of a special master will be scrutinized not only by the judge but also by the parties paying the special master,

the backup documentation and details of the time and tasks being charged require even higher scrutiny by the special master.

FOOTNOTES

1. The Advisory Committee Note to the 2003 Amendments to Rule 53.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Fed. R. Civ. P. 53(a)(2).

11. *Id.*

12. The Advisory Committee Note to the 2003 Amendments to Rule 53.

13. *Id.*

14. Although not dictated by the rule, normally, *ex parte* communications between a special master and the court and parties are discouraged. There may, however, be circumstances when it would be beneficial, and even necessary, for such communications to take place. Ultimately, these are matters of discretion for the court, but it is important that the parameters for such communications be laid out in the order of appointment. *See*, the Advisory Committee Note to the 2003 Amendments to Rule 53.

15. Fed. R. Civ. P. 53(b)(2).

16. The Advisory Committee Note to the 2003 Amendments to Rule 53.

17. Fed. R. Civ. P. 53(b)(4).

18. The Advisory Committee Note to the 2003 Amendments to Rule 53.

19. Fed. R. Civ. P. 53(d).

20. Fed. R. Civ. P. 53(e).

21. Fed. R. Civ. P. 53(f)(1).

22. Fed. R. Civ. P. 53(f)(2).

23. Fed. R. Civ. P. 53(f)(3)&(4).

24. Fed. R. Civ. P. 53(f)(5).

25. Fed. R. Civ. P. 53(g)(1).

26. Fed. R. Civ. P. 53(g)(1).

27. Fed. R. Civ. P. 53(g)(2).

28. Fed. R. Civ. P. 53(g)(3).

29. *Id.*

30. The special master statute in its present form is designed to ameliorate the concerns noted above and require the court to specify the "anticipated specification of the powers to the special master" and more clearly require the consent of the parties contingent upon: (1) an estimate of the amount of the compensation of the special master; (2) the identity of the special master; and (3) the court's anticipated specifications of the powers of the special master.

31. An example of the role and authority of a special master can be found in *Pollard v. Alpha Technical*, 31 So.3d 576 (La. App. 4 Cir. 2010). There, the special master's authority included holding an evidentiary hearing on class certification and issuing recommendations to the court. The district court affirmed the special master's recommendations denying class certification and the court of appeal affirmed.



Special Masters

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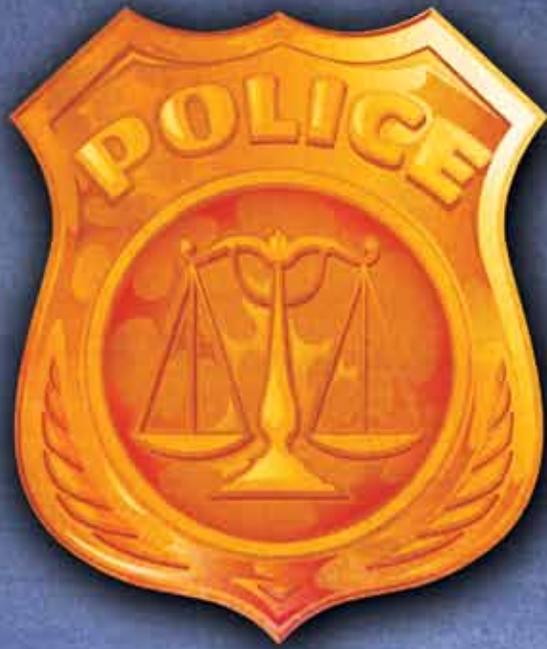


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Building Trust in Law Enforcement:

Community-Police Mediation in New Orleans

By Lou Furman and Alison R. McCrary

I am awestruck by the ability and willingness of mediation participants to confront some of the most contentious issues affecting community-police relations in New Orleans and around the country, from issues of race and aggression, to notions of service, courtesy and shared responsibility.

—Community-Police Mediator

The U.S. Department of Justice spent \$4.75 million creating a National Initiative for Building Confidence and Trust between communities and the justice system. Across the nation, many acknowledge that police and community relationships

suffer because of poor training, weak oversight and cited unconstitutional behavior on the part of police departments.¹ Trust in law enforcement is low, especially in communities of color,² leading to protests across the country about police behavior from Ferguson to Baltimore, from Philadelphia to New Orleans.

In 2014, the New Orleans Office of the Independent Police Monitor launched its Community-Police Mediation Program as a strategy to strengthen community trust in police and to build stronger relationships between the community and police. In its first year of operation, the program has become a national model to improve community and police relation-

ships and build mutual understanding. The program exemplifies the essential principles and standards of community mediation.

Every case is co-mediated with two of the 30 community-police mediators who match the age, race and gender demographics of the officer and civilian. Each mediator has more than 50 hours of specialized training in community-police mediation. The mediations take place in private rooms in community spaces such as public libraries, community centers and schools near where the civilian or officer live or work rather than government buildings.

For several years, civilians have

voiced concerns about the New Orleans Police Department (NOPD) regarding alleged NOPD officer misconduct, disrespect, poor communication and perceived racism. In the last decade, these complaints surfaced in two independent reviews of NOPD — the Police-Civilian Review Task Force Report in 2001 and the U.S. Department of Justice Civil Rights Division's investigation in 2011.

The Police-Civilian Review Task Force recommended the implementation of an independent police monitor to support NOPD reform and mend community-police relationships. In 2008, 70 percent of the electorate in the City of New Orleans voted to amend the city charter to create the Office of the Independent Police Monitor (OIPM).

A major aspect of the OIPM's mandate is to develop trust between NOPD officers and civilians. Public distrust in the NOPD emanated, in part, from several high-profile officer convictions, accusations of constitutional rights violations, and strained relationships with minority groups due to disproportionate treatment. While there have been a number of programs in place to improve the level of trust between the community and the NOPD, civilians continue to initiate a sizable number of complaints. According to NOPD Public Integrity Bureau data, at least 870 misconduct complaints were made against police officers in 2014, down from 994 complaints the previous year.³ However, it also should be noted that this is likely an underestimation as many experiences of dissatisfaction or police misconduct go unreported. While the number of complaints is sizable, public trust in the NOPD investigating complaints is also low, demonstrating that there are some people unwilling to file complaints with the NOPD as it is also the agency responsible for investigating them. As the OIPM works with the NOPD to build a more trustworthy complaints-and-accountability system, it also provides a more immediate alternative in the form of mediation.

Traditional complaint-investigation processes are not always the most effective way to resolve police-community conflict. Lawmakers reflected this view through the OIPM city ordinance, which

mandates the creation of a community-police mediation program. This approach is in line with the Police-Civilian Review Task Force's recommendation to develop an alternative dispute resolution mechanism to resolve civilian-police conflicts.

The aims of the mediation program, conceived in 2012 and launched in 2014, are:

- ▶ to create mutual understanding between civilians and police officers;
- ▶ to establish the legitimacy of mediation; and
- ▶ to improve compliance and cooperation in mediation.

Funding for the pilot year of the mediation program was secured with a grant from the Department of Justice's Community-Oriented Policing Services (COPS). In 2015, the program received funding from Baptist Community Ministries to allow the continuation of the program through May 2017. Future funding of the program relies on public financing of the program either through the Office of the Inspector General's budget that currently holds all funding for the Independent Police Monitor or other public funds. Lack of sustainable funding is the number one reason similar programs around the country fail.

The program includes justice-based policing principles that specifically address the relational aspect of mediation required in community policing. Justice-based policing is particularly concerned with the relationship between minority groups and perceptions of discriminatory policing. It considers the legitimate use of police authority and civilian perceptions of fairness and justice. Researchers have found empirical evidence that procedural justice, one principle of justice-based policing, enhances police legitimacy. Procedural justice occurs where there is participation, dignity and trust in community-police relations. Participation allows civilians to present their own view and contribute to decision-making, resulting in perceptions of fairness (even if it may not influence the legal outcome). Dignity and respect by police acknowledge the individual's rights and values as a competent, equal person. Trust occurs when officers model dignity and respect and clearly explain decisions that translate into more positive feelings about the legitimacy of police as a law

enforcement institution.

Another principle of justice-based policing is reconciliation. Reconciliation facilitates honest conversations between community members and police officers allowing them to address historic tensions, grievances and misunderstandings in order to strengthen relationships. The mediation program allows for this expression. Both procedural and reconciliation justice are highlighted principles of the National Initiative for Building Confidence and Trust.

Mediation provides a medium for justice-based policing. It allows the participants to be fully heard and understood, to speak directly with each other in a safe space, to give each other feedback, and to help to prevent similar incidents from occurring in the future. The civilian is able to regain confidence in police services and to play an active role in a solution. Officers have the opportunity to gain new understandings, improve community relationships and trust, explain why they may have acted the way they did on a certain day, and share about their role.

Mediation is powerful because both the complainant and the officer gain an understanding of why the other person acted as he or she did. When the participants gain this knowledge, the other's behavior is put into a new context that is more understandable. The person may not approve of what happened but can understand why it happened. When mediation is successful, this understanding can, and often does, lead to forgiveness and healing.

This mediation experience was tremendous. The complaint process triggered something in this one officer. He remembered the signs around town that read "think that you might be wrong" and he reviewed his body-worn camera footage since he didn't remember speaking to the civilian in a rude tone. He reviewed his footage and, during the mediation, he apologized in the first 15 minutes. The two participants developed a great process, examined the conflict and their interaction, and made plans for the future. At about halfway through the process, we took a short break. As the other mediator and I were walking back into the room, the officer and civilian had made it back before us and we observed them hugging

each other. At the end of the mediation, they exchanged cell phone numbers and set a date for lunch.

—Community-Police Mediator

In the long term, mediation helps with resource efficiency in the handling of complaints. It resolves complaints in a satisfactory manner for all involved, improves community-police relations and builds trust between the participants.

A Project Board, a Planning Committee and the OIPM Project Team created the mediation program. The Planning Committee consisted of members of the community at large, criminal justice experts, police association representatives, city government representatives, mediators and business professionals.

The mediation program requires a set of principles to guide its delivery and streamline both delivery and evaluation. The Planning Committee and the Project Board agreed to the following 10 principles: (1) ensure mediation is voluntary; (2) ensure mediation is confidential; (3) offer bilingual mediators or translators in mediation; (4) ensure mediation is for issues that meet the inclusion criteria; (5) ensure mediation does not replace police accountability; (6) clearly explain the mediation outcome; (7) provide officer incentives to participate in mediation; (8) deliver the project with trained mediators; (9) recognize the power differential between police and civilians; and (10) record success of mediation.

The Planning Committee and the Project Board agreed to the following three organizational goals for the project:

► **Listening.** In mediation, a safe environment will be created and facilitated in which each participant feels secure in expressing and hearing one another's points of view.

► **Problem solving.** In mediation, participants will listen to each other to determine what led to the complaint and police interaction and, working together, all participants will decide on solutions or next steps.

► **Transformation.** In mediation, community members and police will sit together in a restorative practice that recognizes a breakdown in relationship as the source of the conflict and seeks, first and foremost, to repair that relationship.

The OIPM built a collaboration that included the NOPD and nonprofit agencies — the Louisiana Public Health Institute which developed the evaluation; Community Mediation Services which helped recruit and train mediators; and Community Mediation Maryland which provided specialized police-community mediation training — to transform the philosophies underlying the mediation program to concrete practice.

The collaboration with the NOPD was essential for the program's success. The NOPD has publicly acknowledged the need to repair and cultivate community partnerships. Its clear embrace and participation in the program serves to reinforce its commitment to community policing. The types of complaints that the NOPD policy most commonly refers for mediation are those related to professionalism, discourtesy or neglect of duty.

The Louisiana Public Health Institute's evaluation findings from all of the mediation sessions conducted in 2014 through pre- and post-mediation session surveys revealed that police officers and civilians believe that the mediation sessions were unbiased, helped resolve issues between police officers and civilians, and are a better option than formal disciplinary action against officers.

After the mediation session, civilians agreed that the session helped them gain a better understanding of policing. Police officers agreed that the mediation session helped build mutual respect between them and the civilian, that mediation is a good way of resolving disputes between civilians and police officers, and that they would agree to mediations in the future.

Most civilians agreed that if they had information about a crime or incident in their neighborhood, they would share that information with the police officer who participated in the mediation.

Conclusion

The establishment and continuance of the New Orleans Community-Police Mediation Program is vital to the City of New Orleans. The evaluation data and findings from the program offer a model to other cities where the lack of public trust in the

police department may have an impact on the capacity to reduce the rate of violent crime. For example, the stories, number of cases successfully resolved, and the data reflecting the level of confidence increased through mediation will be valuable tools for other departments facing similar problems in public trust and seeking processes to develop mutual understanding and improved community and police relationships.

FOOTNOTES

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Lou Furman is a mediator focusing on community issues and police/civilian relationships. A practitioner of restorative approaches, he is the former executive director of Community Mediation Services, a professor emeritus at Washington State University and a registered drama therapist. He established programs in alternative and charter schools, worked extensively with incarcerated youth and special populations, and facilitates trainings in communication skills, mediation, restorative practices and trauma awareness and resilience. (furman44@gmail.com; 7719 Cohn St., New Orleans, LA 70118)



Sister Alison R. McCrary, Esq., is director of the New Orleans Community-Police Mediation Program at the Office of the Independent Police Monitor, a social justice attorney, a spiritual advisor on death row and a Catholic Sister. She currently serves on the Leadership Team for the Community Mediation Section of the Association for Conflict Resolution. As a 2010 Soros Justice Advocacy Fellow in New Orleans, she challenged and changed policing practices and policies to transform relationships between police officers and the bearers of New Orleans' indigenous cultural traditions. She received her JD degree from Loyola University College of Law in New Orleans. (atyalisonmccrary@gmail.com; 4030 Delgado Dr., New Orleans, LA 70119)



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Mediation and Religion:

General Attitudes of Three Major Religions in the United States

By Aaron T. Hubbard

In a world where most inhabitants belong to one religious faith or another — and where, unfortunately, various religious texts are used to justify both global and personal conflict — it is important to bring to light what these texts instruct on how to live in peace with others.

In 2014, the Pew Forum on Religion & Public Life surveyed adults in the United States; the findings (published in 2015) indicated that, about 76.5 percent of adults self-identify as affiliated with an organized religion, and about 22.8 percent of adults self-identify as unaffiliated.¹ Nationally, three of the most prevalent religions are Christianity (70.6 percent), Judaism (1.7 percent) and Islam (0.9 percent).² In Louisiana, about 87 percent of adults self-identify as affiliated with an organized religion, and about 13 percent of adults self-identify as unaffiliated.³ In Louisiana, three of the most prevalent religions are Christianity (85 percent), Judaism (0.5 percent) and Islam (1 percent).⁴ This means that, both nationwide and in Louisiana, there is a high

probability that any given party to mediation will have some religious affiliation. According to a 2013 publication by the Pew Research Center, “many religious groups encourage members who are accused of (non-criminal) moral wrongdoing or who are involved in a financial dispute . . . to engage in mediation in an effort to come to a voluntary agreement.”⁵

Religious values and beliefs have been identified as some of the interests that can motivate a party to settle or create a barrier for settlement.⁶ Therefore, it is important to understand the attitudes that the three religions listed above have toward mediation.

Christianity

The Christian faith has a history of encouraging its adherents to settle matters through means other than litigation. The primary text of the Christian faith is the Bible. The Bible has several verses in both the Old Testament and the New Testament that encourage or model mediation. These passages “promote reconciliation and forgiveness for everyone involved.”⁷ Christianity understands the purpose of mediation and mediator as “the activity and person performing it [mediation] of

functioning as a go-between or intermediary between two people or parties, in order to initiate a relationship, promote mutual understanding or activity, or effect reconciliation after a dispute.”⁸ Mediation also is defined as the “achieving of fellowship and reconciliation between separated parties.”⁹ Mediation is acknowledged to be useful in both “innocent circumstances and when people are at odds with one another.”¹⁰ Peacemaker Ministries identifies mediation as a process for “the local church, not a task reserved for professional mediators or lawyers.”¹¹ Peacemaker Ministries also states the purpose of mediation is to do more than “try to resolve surface issues,” but rather to “seek genuine reconciliation with others.”¹²

The Christian approach to mediation is primarily drawn from three biblical passages — Matthew 5:9, Matthew 18:15-17 and 1 Corinthians 6:1-7.

Matthew 5:9 states: “Blessed are the peacemakers, for they shall be called sons of God.”¹³ This passage encourages Christians to seek to create peace and reconciliation.

Matthew 18:15-17 states: “Moreover if your brother sins against you, go and tell him his fault between you and him alone.

If he hears you, you have gained your brother. But if he will not hear, take with you one or two more, that 'by the mouth of two or three witnesses every word may be established.' And if he refuses to hear them, tell it to the church. But if he refuses to hear the church, let him be to you like a heathen and a tax collector."¹⁴ It is the second sentence of this passage that speaks to mediation. This passage encourages parties who cannot resolve the dispute between themselves to seek a third party (or parties) to help them find a resolution.

This becomes even more important when read alongside 1 Corinthians 6:1-7, which states: "Dare any of you, having a matter against another, go to law before the unrighteous, and not before the saints? . . . I say this to your shame. Is it so, that there is not a wise man among you, not even one, who will be able to judge between his brethren? But brother goes to law against brother, and that before unbelievers! Now therefore, it is already an utter failure for you that you go to law against one another. Why do you not rather accept wrong? Why do you not rather let yourselves be cheated? . . ." ¹⁵ This passage encourages believers to avoid taking matters between other believers to court, but rather to attempt to settle things themselves.

When all three of these passages are read together, they create a strong basis for Christians to attempt to solve disputes through mediation. This principle of encouraging mediation applies in disputes between two Christians, a Christian and a non-Christian, or two non-Christians (if the third party is a Christian).

Judaism

Judaism strongly encourages parties to settle their disputes through mediation.¹⁶ Both "Jewish law, and rabbinical literature . . . praise . . . parties who are able to settle their disputes rather than engage in litigation."¹⁷ Judaism draws upon the biblical text, the Talmud, various other texts and numerous commentaries when addressing conflicts.¹⁸ These sources focus "on compromise in the context of monetary disputes," cautious action, and "accept[ing] compromise in order to prevent conflict and preserve the peace and welfare of the

community."¹⁹

The desire for peace is a central theme and flows through every level of Judaism.²⁰ This leads to principles that encourage peaceful debate and compromise.²¹ There is also a strong belief that any judgment imposed by a third party would only continue the conflict, and that the parties through compromise, mediation and eventual reconciliation can find true resolution of the issue.²² Compromise and mediation are considered preferable to a ruling imposed by a third party because the compromise reached through mediation serves both "righteousness and justice."²³ Compromise is also seen as ensuring that there is as little community upheaval as possible.²⁴ This leads to the conclusion that mediation is encouraged when two Jews are in conflict, but also when a Jew and a non-Jew are in conflict. However, the Jewish tradition does exclude the possibility of mediation "when dealing with external enemies whose behavior is irreparably immoral and whose hostility is uncompromising."²⁵

Islam

The Islamic tradition is supportive of mediation as an alternative to litigation.²⁶ This tradition springs from the Qur'an, the Sunna, the Ijma and the Qiyas.²⁷ These sources encourage "peaceful conflict settlement: within the Islamic community; between Islamic and non-Islamic communities; and between two or more non-Muslim communities."²⁸ The Qur'an has several verses addressing mediation principles.²⁹ Mediation within Islam focuses on "restoring harmony and solidarity and restoring the dignity and prestige of individuals and groups."³⁰ According to author Abdul Azees Sirajudeen, Muslims have a duty to society to resolve disputes, even if that resolution is slightly harmful to the individual.³¹ The following principles play an important role in the Islamic view of mediation — fairness, "collaborative problem solving," attempting to create win-win situations, looking to the future, respect for others, avoiding assigning blame for past issues, acknowledging that an individual's feelings of anger allows that individual to move past his/her anger, "the

belief that Allah is watching over everything," common sense, introspection, and the independence of the parties.³²

Application

In the modern world, religion is often seen as a point of division, but, through mediation, the commonalities of religious beliefs can be a way to bring parties together. All of the above religions embrace the belief that one should live peaceably with his/her neighbor, that conflicts should be resolved between the parties if possible, and that resorting to the legal system is the last resort if an agreement cannot be reached. The use of religious principles in mediation should constitute one of the mediator's tools, but the use of religious principles cannot replace the process of mediation.

According to authors Jacob Bercovitch and S. Ayse Kadayifci-Orellana, "[u]se of religious objects and involvement of faith-based actors in mediation is not a new development."³³ They said, "A religious dimension . . . opens a window or a door of opportunity that brings the parties closer to each other. Ultimately, addressing the legitimate needs of the parties and resolving the issues fairly and satisfactorily is *sine qua non* for any successful mediation effort."³⁴ Restating the same concept, they said that "[u]sing religious symbolism in the course of mediation can open a window to the deeper emotional and spiritual realities of those involved in conflict."³⁵ According to author F. Matthews-Giba, "an appeal to religious and transcendent values [can] provide the motivation to settle a dispute."³⁶

Donal O'Reardon addresses the issue of religion in mediation using four rules — "Separate Doctrine from Interpretation," "Separate Christ from Caesar," "Religious Positions Can't be Mediated, Positions from Religion Can" and "Don't Fear the Reaper."³⁷

O'Reardon's first rule is to focus on the "interpretation and application" of a particular doctrine instead of addressing the validity of the doctrine.³⁸ "The key point here is that belief and action are distinct and that the religious believer almost always understands the difference between the

private doctrinal formulation and the public behavioral expression of that belief,” he said.³⁹ He also said, “It is the mediator’s task to remind the religious believer that, if they think the only expression of their faith is practical and not theoretical, then such practicality is necessarily fractured, imperfect or, at least, partial.”⁴⁰

O’Reardon’s second rule explores the fact that all religions take place in reality.⁴¹ Explaining this principle, he said, “The main point is that all actions which proceed from religious convictions have to take place in an imperfect world. In addition, these actions are themselves interpretations. That is, they flow from a particular understanding of the religious teaching.”⁴² He added that the very selection of mediation to attempt to settle the dispute signals that the parties “recognize the value of a process premised on [‘autonomy and self-determination’] . . . And it is in this very recognition that there are grounds for conflict resolution.”⁴³

The concept behind O’Reardon’s third rule is that the religious beliefs of an individual are not being mediated, but rather the application of those beliefs to the current situation. “It is not the mediator’s role to address the theological content of the believer’s faith and that we are talking here about the actions that follow from that content,” he said.⁴⁴ He added, “It is beyond the remit of (mediators) to explore the cognitive and intellectual content of a faith statement; it is not, however, beyond their remit when the interpretative method used by the believer to relate to that faith statement is then deployed in another context.”⁴⁵

O’Reardon’s final rule focuses on not fearing the role religion can play in mediation. He said: “Religious worldviews are part of the family of human experience and expression. Ignoring them does them an injustice. But it is an injustice as well to those of us in the field of dispute resolution and it denies us the experience of engaging in dispute resolution that speaks to people at the level of their fundamental beliefs and values.”⁴⁶

Conclusion

Religion can be another tool mediators use to help people reach an agree-

ment by appealing to their core values and beliefs. However, this tool must be used with caution due to the possibility of creating an unnecessary point of contention instead of creating a point of agreement. Appealing to religious beliefs in a mediation involving liability cases with lawyers and insurance adjusters may not be positively received by the parties. The use of religious beliefs in mediation seems most appropriate when dealing with individuals who either enter into the mediation understanding that those beliefs may be discussed or who bring up religion on their own during the course of the mediation. Mediators must tread carefully in introducing religious beliefs. Where appropriate, those beliefs can be a powerful tool for mediators to assist parties in reaching a resolution.

FOOTNOTES

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THOMAS C. GALLIGAN, JR. is the president of Colby-Sawyer College. He previously served as dean and professor of law at the University of Tennessee College of Law in Knoxville, Tenn. From 1986 until May 1998, President Galligan taught at the Paul M. Hebert Law Center at Louisiana State University (LSU). His scholarship has been cited in the proposed Restatement (Third) of Torts, and by many courts. He has also testified on admiralty and maritime tort issues before committees of the U.S. House and Senate.



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RICHARD ARSENAULT currently serves as Lead Counsel in the Actos MDL where after a three month trial, the jury rendered a historic \$9 billion dollar verdict. He has been involved in over 25 Multidistrict litigation proceedings, often serving in leadership capacities. The New York Times has referred to him as one of the "big players" in the legal community. The Wall Street Journal described him as having "national notoriety" and as a "big gun" amongst attorneys in competition for leadership roles. Business Week described him as "a dean of the Louisiana tort bar," USA Today featured him as a member of the "Legal Elite" and the New Orleans Times Picayune has referred to him as "an authority on class actions." He has served as a faculty member for LSU's Trial Advocacy Program and lectured at Judicial Colleges.

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Featuring

House Resolution Deadline is Dec. 9 for 2016 Midyear Meeting

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 14-16, 2016, at the JW Marriott Hotel in New Orleans. The deadline for submitting resolutions for the House of Delegates meeting is Wednesday, Dec. 9. (The House will meet on Jan. 16, 2016.)

Resolutions by House members and committee and section chairs should be mailed to LSBA Secretary Alainna R. Mire, c/o Louisiana Bar Center, 601 St. Charles Ave., New Orleans, LA 70130-3404. All resolutions proposed to be considered at the meeting must be received on or before Dec. 9. Resolutions must be signed by the author. Also, copies of all resolutions should be emailed (in MS Word format) to LSBA Executive Assistant Mindi Hunter at mindi.hunter@lsba.org.

Notice: CLE Compliance for Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as set forth in the individual Specialty 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, 2015.

The requirement for each area of specialty is as follows:

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Preliminary specialization transcripts will be mailed in November to all specialists who are delinquent in their specialization CLE hours. The specialization CLE requirement must be satisfied by Dec. 31, 2015.

If you have questions, contact LBLS Executive Director Barbara M. Shafranski at (504)619-0128 or email barbara.shafranski@lsba.org.

For more information or to obtain a copy of specialization transcripts, go to the LBLS's website at: www.lascmcle.org/specialization.

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 5, honoring members of the Bench and Bar who died in the past year. The exercises followed the 63rd annual Red Mass held earlier that morning at St. Louis Cathedral in New Orleans. The Red Mass was sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.

LSBA President Mark A. Cunningham of New Orleans opened the memorial exercises, requesting that the court dedicate this day to the honor and mem-

ory of those members of the Bench and Bar who have passed away during the last 12 months.

LSBA President-Elect Darrel J. Papillion of Baton Rouge read the names of all deceased members being recognized.

LSBA Board of Governors member Patrick A. Talley, Jr., with the New Orleans office of Phelps Dunbar, L.L.P., gave the general eulogy. (*The eulogy begins on page 202.*)

Hon. Bernette Joshua Johnson, chief justice of the Louisiana Supreme Court, gave the closing remarks.

The invocation was given by Rev. Lawrence W. Moore, S.J., interim dean and ex officio Philip and Eugenie Brooks Distinguished Professor of Law at Loyola University College of Law. The benediction was given by East Baton Rouge Parish District Attorney Hilmar C. Moore III.

Following the exercises, the Supreme Court was adjourned in memory of the deceased members of the Bench and Bar.

The members recognized included:

Continued next page

In Memoriam Members of the Judiciary 2014-15

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In Memoriam Members of the Bar 2014-15

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Jerald N. Andry New Orleans, LA November 9, 2014	John A. Broadwell Bossier City, LA September 2, 2015
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J. Michael Early New Orleans, LA August 26, 2015	Leslie L. Inman New Orleans, LA July 18, 2015
Robert J. Elliott Alexandria, LA July 18, 2015	Charles L. Kincade Monroe, LA October 18, 2014
Marshall Joseph Favret New Orleans, LA November 28, 2014	Paul R. Knight Baton Rouge, LA October 9, 2014
Anthony J. Fazio Lake Charles, LA February 17, 2015	John Wilfred Landry, Jr. Crowley, LA January 6, 2015
Nathan S. Fisher Baton Rouge, LA January 15, 2015	Ronald Davis Law Dallas, TX March 4, 2015
Wayne W. Foley New Orleans, LA May 9, 2015	David A. LeClere Baton Rouge, LA July 29, 2015
John Leonard Fontenot, Jr. New Orleans, LA February 10, 2015	Janis Wilhelmina Lemle New Orleans, LA April 6, 2015
Ruth M. Force New Orleans, LA July 13, 2015	Ronald C. Levy Slidell, LA December 9, 2014
Lawrence J. Fritz Kenner, LA August 20, 2015	James P. MacManus Lafayette, LA August 29, 2015
James B. Gardner Shreveport, LA August 30, 2015	Ronald C. Martin Natchitoches, LA March 31, 2015
W. Gerald Gaudet Lafayette, LA November 18, 2014	Paul A. May Baton Rouge, LA April 9, 2015
R. Keith Gee Metairie, LA April 4, 2015	Edmund McCollam Houma, LA September 5, 2014
Susan Anderson Halsey Fort Worth, TX December 19, 2014	Jordan Guzzino McFaul New Orleans, LA August 10, 2015
Richard Leo Harrell Portland, TX March 3, 2015	Charles E. McHale, Jr. New Orleans, LA May 18, 2015
Overton T. Harrington, Jr. Gretna, LA July 23, 2015	Beryl M. McSmith Slidell, LA February 22, 2015
H. Gordon Hartman Metairie, LA November 14, 2014	Ben R. Miller, Jr. Baton Rouge, LA December 2, 2014

Albert Mintz New Orleans, LA August 12, 2015	David A. Rothell Natchitoches, LA September 6, 2014
Nadia St. Paul Moise New Orleans, LA August 6, 2015	John F. Rowley Chalmette, LA November 5, 2014
Philip F. Monte, Jr. Brookhaven, GA July 19, 2015	Edward H. Saer, Jr. Covington, LA June 16, 2015
L. Linton Morgan Covington, LA May 29, 2015	William Joseph Salvaggio Metairie, LA March 20, 2015
Thomas Hadden Morrow Lafayette, LA January 28, 2015	P. Lynwood Sanders Orange, TX December 12, 2014
Michael A. Mule Sugar Land, TX March 17, 2015	Robert Henry Sarpy, Jr. New Orleans, LA July 21, 2015
William G. Nader Shreveport, LA October 4, 2014	Stephanie Wall Schexnayder Gonzales, LA February 15, 2015
George O'Dowd New Orleans, LA April 28, 2015	Phillip D. J. Simon Lafayette, LA February 21, 2015
Joseph B. Olinde Baton Rouge, LA April 7, 2015	Charles B. Sklar Pisgah Forest, NC February 27, 2015
C. Michael Osborne New Orleans, LA February 2, 2015	Allen L. Smith, Jr. Lake Charles, LA January 11, 2015
Jack Peebles Metairie, LA May 13, 2015	Irvin S. Smith New Orleans, LA January 29, 2015
Curtis N. Petrey Shreveport, LA January 8, 2015	Walter J. Suthon III New Orleans, LA December 27, 2014
Peter C. Piccione, Sr. New Orleans, LA April 12, 2015	G. Warren Thornell Shreveport, LA April 14, 2015
James L. Piker Slaughter, LA December 28, 2014	Robert K. Tracy New Iberia, LA January 13, 2015
Shelley V. Poole Austin, TX September 23, 2014	Kenneth Mark Trahan West Monroe, LA May 1, 2015
Jan Andrew Press Palm Harbor, FL June 22, 2015	Michael J. Vallette Ocean Springs, MS February 6, 2015
J. William Pucheu Ville Platte, LA June 15, 2015	William R. Veal Las Vegas, NV March 6, 2015
Claude R. Putnam Abbeville, LA February 25, 2015	Jamie F. Veverica Diamondhead, MS February 9, 2015
Rene Laurent Randon Metairie, LA December 21, 2014	Gerald L. Walter, Jr. Baton Rouge, LA January 14, 2015
Edward A. Rauscher Seattle, WA August 13, 2015	Charles K. Watts Baton Rouge, LA April 8, 2015
Jack Warner Riffle Baton Rouge, LA June 4, 2015	Dennis R. Whalen Baton Rouge, LA June 4, 2015
David Lee Roberson II Norfolk, VA March 22, 2015	Nathan E. Wilson Baton Rouge, LA August 31, 2015
Sylvia Roberts Baton Rouge, LA December 29, 2014	Jack B. Wise Thibodaux, LA November 27, 2014
Charles Rosen II Metairie, LA July 20, 2015	Beverly J. Zervigon Austin, TX April 22, 2015

General Eulogy:

LSBA Memorial Exercises 2015

By Patrick A. Talley, Jr.

Families and friends of our departed colleagues, Madam Chief Justice, Associate Justices, Judges, the distinguished President of the Louisiana State Bar Association, my fellow members of the Bar, Ladies and Gentlemen:

We have come together today from different places, and we are all at different stages in our journey through life. Our paths are varied and we look at life in different ways. But there is one thing we have in common, and that is we have been touched by those whom we honor today.

And so this morning, we put aside our usual daily activities for a while and gather here to remember our colleagues of the Louisiana Bar who died during the past year. We are here today so that in our own way we can celebrate, honor and pay tribute to the lives of these great men and women of the Louisiana Bar, and, in so doing, we express our love and admiration for them.

“Memory,” said Cicero, “is the treasury and guardian of all things.” “Praising what is lost,” said Shakespeare, “makes the remembrance dear.” We come here today in that spirit, gathered here to treasure and praise those distinguished members of the Louisiana Bar who have been lost to us, and thereby to make the memory

of them even more meaningful.

Different people have different ways to memorialize and remember those who have preceded us. Some build monuments of stone or statuary; some erect shrines; some keep the shrines in their hearts. In ancient times, the Pharaohs built their own memorials. However, pyramids and tombs, for all their awesome grandeur, are merely impersonal structures. But every human being leaves another memorial of his or her own building. It is the *impact* of one’s life on those lives that remain and follow.

And so, we gather here today to renew the memory of the impact on our lives by our colleagues of the Bar whose journey through life preceded ours. We are reminded of what that journey left behind. We are here today to honor our beloved family members, friends and colleagues who spent their lives in distinguished legal careers and have served their fellow man as judges and lawyers.

Judge Jay Zainey, one of our distinguished members of the Bar and past President of the Louisiana State Bar Association, aptly described the legal profession in a eulogy several years ago. He said, “Ours is a helping profession. We lawyers are blessed with the ability to help our fellow man.” This, I think, is what

the practice of law is all about — helping others to do what they cannot do alone. Our deceased brothers and sisters of the bench and Bar whom we remember today did the same, dedicating their professional lives to this “helping profession.” And so today, when we remember our deceased colleagues, we remember with quiet satisfaction that they were practitioners of the highest order of this “helping profession,” the practice of law.

It has been said that “the law is but words and paper without the hands and swords of men.” And so it is, that but for the hands and swords of men and women like our deceased colleagues who we are honoring today, the law would truly be meaningless. In remembering them, we are proud that they used their talents and abilities to make the law more than mere words and paper. Our deceased colleagues have built a current of honor and dignity that our legal profession rightfully deserves and we are proud to have known and to have been related to such distinguished people.

So, as we remember our brothers and sisters of the bench and Bar who have died this year, let us strive, like them, to be the hands and the swords of the law. Let us strive, like them, to live our profession to the fullest, to use our talents and abilities



Several speakers participated in the Memorial Exercises on October 5, 2015. Photos by LSBA staff.



to better our society and enrich the lives and minds of those whom we touch. In this way, the mission of our deceased brothers and sisters will live on through us.

But we have another purpose today. We have not come here today solely seeking to reinforce our memories of ones so well worth remembering. We came also to express our condolences to their loved ones who survived them, to show those nearest and dearest to them that their deep sense of loss is shared. As a community of lawyers, this is part of what we do, and our duty to each other in this “helping profession,” for we are truly a legal *community*, not just a collection of individuals practicing law.

Traditionally, the occasion of this Memorial Service, following the annual Red Mass, is a time when friends gather with the bereaved to say, “You are not alone in this loss; you are not alone in remembering; you are not alone in holding onto the memory of a good human being and in recollecting the ways in which he made his mark.” As we come together and share that process of remembering, the remembrance becomes clearer, stronger, better for us all. “Praising what is lost makes the

remembrance dear.” The departed never wholly leave us. We never wholly leave each other. And we remember.

These men and women whom we honor and remember today have gone home, leaving those of us with the memories they gave, the good they did and their contribution to the legal profession which remain as their legacy. We hope that in some way, by showing our own sense of loss and fond remembrance, we can help further the sense of a life well lived, a time on earth well spent, a heritage of lasting meaning in the noble career of the law.

What distinguishes mankind following death is not the construction of monuments nor the composition of epitaphs, but rather the privilege of memory. Memorials can be found in many places and many times, but principally in our hearts.

The epitaph of Sir Christopher Wren in St. Paul’s Cathedral in London, the cathedral he designed, reads, “*Lector, si monumentum requiris circumspice,*” in translation from the Latin, “If you would seek his monument, look around you.” Let me paraphrase that here today. If you would seek a true monument to our colleagues, the ones whom we memorialize

today, look around. It is in *your* faces and in *your* hearts.

In conclusion, I would like to paraphrase from the funeral of a friend of mine who died recently. “God saw they were getting tired and the cure was not to be. So He put his arms around them and whispered, ‘Come with Me.’ With tearful hearts, we watched them fade away. Although we love them dearly, we could not make them stay. Golden hearts stopped beating, hardworking hands to rest. God broke our hearts to prove to us, He only takes the best.”

“*Requiem aeternam dona eis Domine.*”

Grant to them, our dear departed family, friends and former colleagues of the law, eternal rest, Lord, and let perpetual light shine upon them.

Patrick A. Talley, Jr., a partner in the New Orleans office of Phelps Dunbar, L.L.P., represents the First District on the Louisiana State Bar Association’s Board of Governors. (patrick.talley@phelps.com; Ste. 2000, 365 Canal St., New Orleans, LA 70130-6534)



LSBA Member Services

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



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

For more information,
visit www.lsba.org

Heads Up! LSBA Launching Online TECHCENTER in January

Preparations are underway for the January 2016 launch of the Louisiana State Bar Association's (LSBA) online TECHCENTER, a virtual comprehensive resource just a click away on the LSBA's website. Accessible to all LSBA members, from the tech savvy to the not-so-tech savvy, the TECHCENTER will become the one-stop shop for legal technology news and guidance to improve the efficiency and productivity of law practices.

Through the TECHCENTER, LSBA members will be offered assistance in:

- ▶ Choosing the right technology for law practices via product directories, product reviews by lawyers, video clips and podcasts by lawyers, articles and books.

- ▶ Accessing general tech training with free, anywhere, anytime, on-the-spot videos and written materials.

- ▶ Accessing detailed, lawyer-centric tech training through the Chicago Bar Association's online "How To" video library.

- ▶ Registering for tech-related CLE and non-CLE programming and tech webinars.

The TECHCENTER is an initiative of LSBA President Mark A. Cunningham. "Technology is dramatically affecting lawyers and the practice of law, and this powerful trend will continue for the foreseeable future," Cunningham said. "Lawyers in Louisiana who need help integrating technology into their practices can benefit from the TECHCENTER, which promises

to be a practical, comprehensive resource for learning how to harness digital technology," he added.

Ernest Svenson, the LSBA's TECHCENTER Task Force chair, agreed. "The modern lawyer faces the challenge of learning to harness digital technology in the form of computers, tablets, smartphones and the software that powers those devices. But there are opportunities for lawyers who learn to streamline their practices by leveraging the automation power of digital technology," Svenson said. "The TECHCENTER will be an important resource for Louisiana lawyers who want to learn how to do that."

La. Board of Legal Specialization Accepting Requests for Applications

The Louisiana Board of Legal Specialization (LBLS) is currently accepting requests for applications for January 2017 certification in five areas—bankruptcy law (business and consumer), estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is March 31, 2016. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2016.

With the expanding complexity of the law, specialization has become a means of improving competence in the legal profession and thereby protecting the public. An increasing number of attorneys are choosing to be recognized as having special knowledge and experience by becoming certified specialists. As a matter of practical necessity, most lawyers specialize to some degree by limiting the range of matters they handle. Legal specialization helps the general public locate a lawyer who has demonstrated ability and experience

in a certain field of law.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought, passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered:

- ▶ 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, the testing agency.

Regarding applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s).

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

By Carol M. Rider

MALPRACTICE POLICIES: TECHNOLOGY

Using the cloud to store law firm records is increasingly popular, but it is critical to understand the risks and your responsibilities. For example, does your cloud provider agree to the same standard as you are held? Accidental or intentional disclosure of confidential client information via your computer or your network is serious. Your malpractice policy covers ordinary negligence, but how does the policy respond when there is an electronic breach involving confidential client data? Technology has forced malpractice carriers to clarify existing policy provisions, and in particular when data in the cloud is involved.

An example of negligence is leaving a briefcase at court or at a coffee shop with confidential *paper* files inside. The briefcase is subsequently stolen, sensitive client information is taken, and the client suffers damages. Barring any exclusions, and subject to its terms and conditions, a typical lawyer's malpractice policy would cover the damages up to the policy limits as long as the lawyer was negligent while rendering legal services at the time of the theft.

Other examples of risks associated with being the protector of confidential information include:

- ▶ You accidentally produce privileged documents in the course of discovery.
- ▶ You accidentally email confidential communications to your opponent.
- ▶ You reveal trial strategy during a conversation in a public place.
- ▶ You lose or damage original pieces of evidence.
- ▶ You accidentally delete the operating files on your client's network.
- ▶ Your clients' Social Security numbers are hacked.
- ▶ You leave unshredded confidential documents in a dumpster

Extending the lost briefcase example to a *laptop* whereby client data is stolen, your policy should likewise cover the damages

if the lawyer was negligent while rendering legal services.

However, relying solely on a lawyer's malpractice policy to pay damages in the event of an electronic breach would be risky since negligence may not be the cause, a third party may not be damaged, and the damages could exceed the aggregate limits of liability, especially if the breach involved several clients' data. The cyber/network risk policies and endorsements offer additional coverage and may include:

▶ *Privacy and network security breach* resulting from an attack of a network by a virus, hacker, etc. causing privacy injury, identity theft and/or damage to a network. Physical theft of devices, such as desktop PCs, laptops, USB drives, etc., is a common cause of privacy breaches. In addition to theft of information, hacking can create other problems, such as theft of intellectual property, destruction of data and sabotage. Accidental disclosure of confidential information is not uncommon, especially when equipment or media is not properly erased. Rogue employees and phishing tactics likewise contribute to breaches of confidential information.

▶ *Privacy regulatory expenses*, which may include costs of responding to a regulatory inquiry for alleged violation of a privacy law or security breach notification law.

▶ *Notification and credit monitoring costs* that may cover expenses incurred in notifying parties whose personal information was breached, and those costs to help them monitor their credit in case it was compromised. Most states have breach notification laws that set specific protocol when there is a breach involving personally identifiable information.¹

▶ *Public relations expenses*, which may consist of costs in hiring a PR firm to minimize economic damage from a breach of privacy or security.

▶ *Data forensics* that may include expenses to retain a forensics firm to determine

the cause, source or extent of a data breach.

▶ *Crisis response*, which may include reimbursement for expenses incurred for a wrongful act by the insured or exploitation of an insured's network causing damage to the firm's reputation.

▶ *Extortion demand reimbursement coverage* involving threats to attack the insured's network or to release protected information unless money is paid.

▶ *Business interruption and extra expense coverage* that may include lost business income resulting from an unauthorized access or electronic infection of the firm's network.

▶ *Cost to recreate or restore data and network* to pre-loss conditions.

▶ *Electronic theft* usually involves the unauthorized access to a network, or destruction of or copying of information on a network.

▶ *Third-party vicarious liability coverage and assumed liability of insured* if required by written contract.

If you are considering a cyber/network policy, remember that each is unique and should be carefully reviewed to ensure it is the best fit for the firm and its clients.

FOOTNOTE

1. www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx.

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



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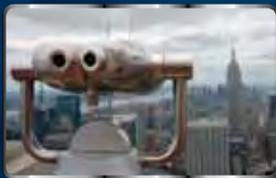
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LAWYERS Assistance

By J.E. (Buddy) Stockwell

“IN RECOVERY” FROM ALCOHOLISM

What does it mean to be “in recovery” from alcoholism? Is being “sober” different from being “in recovery” and does any such difference impact long-term success rates? The experts say yes.

Sarah A. Benton, MS, LMHC, LPC, author of *The High Functioning Alcoholic* (Preager Publishers, 2009), explains that when an alcoholic simply stops drinking without incorporating components such as treatment and mutual-help programs, the person may be simply “white knuckling” his/her abstinence (aka, a “dry drunk”).¹

If the underlying issues that led to alcoholic drinking are left unaddressed, the person will continue to suffer. According to Benton, that is why many “sober” alcoholics may not be currently drinking, but they have developed unhealthy “transfer addictions” (such as food, sex or shopping) to fill the void left when alcohol use was discontinued. They may be sober, but their lives may be “exactly the same, leading them to be jealous of others who are drinking or to struggle with emotional or mental health issues,” she says.

An alcoholic “in recovery” is also sober but he/she has taken additional steps, such as treatment, support group participation and therapy, to address head-on the underlying emotional or mental health issues that fueled the alcohol dependency in the first place.

According to Benton, some individuals can swear off the use of alcohol permanently without any cravings or obsessions and those people are likely problem or heavy drinkers who may not have been alcoholics in the first place. But, for those suffering from alcohol dependency, “alcoholics may abstain for periods of time without help but in most cases will inevitably return to their previous drinking patterns,” Benton says.

While being “in recovery” from alcoholism is clearly understood and guarded by those who are in it, the general public does not have a clear view of what recovery is, partly because a standard definition has been elusive.

Judges and Lawyers Assistance Program, Inc. (JLAP)

Your call is absolutely confidential as a matter of law.

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

In 2007, the Betty Ford Institute recognized the need for a more formal definition of “recovery” and commissioned a consensus panel to produce a report, “What is recovery? A working definition from the Betty Ford Institute.”² The introduction of the report frames the issue: “Individuals who are ‘in recovery’ know what it means to them and how important it is in their life. They do not need a formal definition. However, *recovery* is not clear to the public, to those who research and evaluate addiction treatments, and to those who make policies about addiction.”

A panel of 12 experts produced a three-part definition for “recovery” as follows: *A voluntarily maintained lifestyle characterized by sobriety, personal health, and citizenship.* To be “in recovery,” the person must *voluntarily* meet each of these criteria:

1) Sobriety, meaning abstinence from alcohol and all other non-prescribed drugs. Abstinence is considered primary and the cardinal feature of a recovery lifestyle. Early sobriety is one to 11 months; sustained sobriety, one to five years; and stable sobriety, five years or more.

2) Personal health, meaning an improved quality of personal life as defined and measured by validated instruments such as physical health, psychological health, independence and spirituality scales of the World Health Organization QOL instrument.³

3) Citizenship, meaning living with regard and respect for those around you as defined and measured by validated instruments such as the social function and environment

scales of the WHO-QOL instrument.

The consensus panel noted that criteria 2 and 3 are the components that extend sobriety (mere abstinence) into the broader concept of “recovery” and that “personal health and citizenship are often achieved and sustained through peer support groups such as AA and practices consistent with the 12 steps and 12 traditions.” It is also important to underscore that recovery requires a *voluntary* and willing commitment to recovery. Thus, admitting the problem and surrendering to help is required.

The Judges and Lawyers Assistance Program, Inc. (JLAP) effectively assists alcoholic lawyers, judges, family members, law students and bar applicants in their quest to establish stable recovery that will support successful, happy and productive lives despite prior problems with alcoholism.

If you or someone you know is trying to “white knuckle” his/her way through an alcohol problem, make a confidential call for help to JLAP at (985)778-0571 or email LAP@louisianalap.com and learn more about recovery. Your call is confidential and you do not have to give your name.

FOOTNOTES

1. See, <https://www.psychologytoday.com/blog/the-high-functioning-alcoholic/201005/being-sober-versus-being-in-recovery>.

2. Published by Elsevier, Inc. and Journal of Substance Abuse Treatment, 2007.

3. According to the World Health Organization, the WHO-QOL is a quality-of-life assessment, developed by the WHO-QOL Group with 15 international field centers, simultaneously, to achieve an assessment applicable cross-culturally. www.who.int/mental_health/publications/whoqol/en/.

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



17 Students, Graduates Complete 2015 Suit Up Program

Seventeen New Orleans area high school juniors, seniors and recent graduates participated in the 2015 three-week, pre-law “Suit Up for the Future” High School Summer Legal Institute and Internship Program (June 15-26 and July 6-10). The program concluded with mock oral arguments before two judges’ panels at the U.S. District Court, Eastern District of Louisiana, in New Orleans.

South Plaquemines High School junior Kayla C. Barthelemy won the award in the morning session for Best Oral Argument for the Prosecution. The Defense Award went to Holy Cross High School junior Gerald A. Aviles. In the afternoon session, Treslyn E. Davenport, a St. Mary’s Dominican High School senior, won the Best Oral Argument award for the Prosecution. Lusher High School senior Kyree M. Magee was awarded Best Oral Argument for the Defense.

Awards also were presented to students who submitted exceptional written memoranda. The award for the Best Written Memorandum went to South Plaquemines High School junior Kayla C. Barthelemy for the Prosecution and Haynes Academy graduate Emily R. Lema for the Defense.

Each year, the Louisiana State Bar Association partners with the Just the Beginning Foundation and the Louisiana Bar



2015 Suit Up for the Future class with Hon. Karen Wells Roby during a field trip to the U.S. District Court, Eastern District of Louisiana. Front Row, from left, Amara D. Stokes, Courtney J. Conerly, Victoria S. Suazo, Hon. Karen Wells Roby, Victoria Turner and Treslyn E. Davenport. Second row, from left, Elizabeth Whitfield, Karina Shareen, Emily R. Lema, Alexis M. Turner, DeChanda A. Martin, Taylor E. Austin, Kayla C. Barthelemy and Ann Bondoc. Third row, from left, Miles Edwin Ballard, Gerald A. Aviles, Galatia E. Jones and Kyree M. Magee. Back row, from left, Derrick F. Ransom, Borjius J. Guient and Desmond C. LeBlanc. Not in photo Michaela S. Roussell. Photo by LSBA staff.

Foundation to present the program, an award-winning Diversity Pipeline Program and a 2013 American Bar Association Partnership Program recipient.

High school students are selected to participate based on their academic performance and application essays. The program includes abridged law school

sessions, shadowing opportunities at local firms, courts and agencies, and field trips to courts and law schools.

Several attorneys, professors and law schools’ staff members volunteered for the 2015 program, teaching courses, talking to the students one-on-one or offering “shadowing” opportunities.

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FOCUS ON Professionalism

By Katherine L. Hurst

PRIDE, PREJUDICE AND PROFESSIONALISM

I am proud to be a lawyer. We are part of a noble profession whose advocacy can combat all forms of prejudice in our society and legal system. It is largely through the legal system that we have seen the advancement of civil rights for people of color, women and the LGBT community. Prejudice has no place in our profession. The very meaning of the word is to “pre-judge.” We should not prejudice our fellow professionals based on race, gender, religion, sexual orientation or any other arbitrary standard. Nor should we tolerate prejudice within our profession.

Racism

With the election of President Barack Obama, many suggested we reached a “post-racial age” — a period or society in which racial prejudice or discrimination no longer exists. Great strides have been made in society and our profession, both in Louisiana and nationwide. But, as nice as “post-racial” sounds, we have not yet reached that stage. But the Louisiana State Bar Association (LSBA) has taken steps by adopting a Diversity Statement in 2008, in part: “The LSBA is committed to diversity in its membership, Board of Governors, staff, House of Delegates, committees and all leadership positions. Diversity is an inclusive concept that encompasses race, ethnicity, national origin, religion, gender, age, sexual orientation and disability.”¹

Sexism

Louisiana has 18,868 lawyers practicing within the state — of these, 6,399 are women. Are women lawyers treated with equality and judged in the same way as their male colleagues?

A male lawyer friend once bought me a T-shirt that said, “I’m no Lady! I’m a Lawyer!” Although I wore it proudly, it begged the question: “Can a woman be both?” During my first year out of law school, I clerked for then-Judge Catherine

D. (Kitty) Kimball. Shortly afterward, she became the first woman elected to the Louisiana Supreme Court. She was a great role model showing you can be both a lady and a lawyer.

The standards of what is expected or respected in male versus female lawyers are not always the same. Male lawyers who are assertive and tenacious are respected, while those same qualities in female attorneys are often considered negative. Stereotypes don’t serve our profession or the legal system.

Ageism

One of the easiest targets of diminished respect can be young lawyers. Never underestimate a new lawyer. Those fresh from law school may lack your legal experience but they are fresh with ideas and know the latest in the law and are eager to change the world. I suspect many people dismissed a young lawyer named Sarah Weddington when she took on her first major case. In that case, she changed the law of the land. Regardless of your views on *Roe v. Wade*, you have to respect a young lawyer who has the vision to pursue a landmark constitutional case. I often see young lawyers treated with less respect than their more seasoned colleagues. When we diminish one another, we should not be surprised when society diminishes our profession as a whole.

LGBT Community

Long before anyone heard of Caitlyn Jenner, the Louisiana Supreme Court dealt with the issue of a transsexual lawyer. While I was a freshman LSU law student, a senior was transitioning from male to female. This student was at the top of the class and graduated with honors. Yet when she applied to take the bar, the Louisiana Committee on Bar Admissions denied her application due to her transsexuality. The Louisiana Supreme Court unanimously overturned that decision and allowed her

to sit for the bar. She is now the first openly transsexual elected judge in the nation.

Years ago, I defended a lesbian in a child-custody dispute where the judge was predisposed to deny my client custody because she was a lesbian and in a committed relationship with another woman. I respectfully insisted on my client’s right to her day in court and proved that she was the better parent, the primary factor in any custody case. The judge granted my client custody and justice, not prejudice, prevailed.

Elitism

One of the most insidious forms of prejudice in our profession is elitism. Some lawyers, or groups of lawyers, think they are inherently superior to other colleagues by virtue of their status or area of practice. If you accept the concept that the senior partner of a large law firm deserves more respect than a solo practitioner, elitism has crept into your thinking. As officers of the court, we have a duty to advance the concept that prejudice is unacceptable in society and the legal system.

Are you proud to be a lawyer? If not, make a difference and start by not prejudging your colleagues by arbitrary standards.

FOOTNOTE

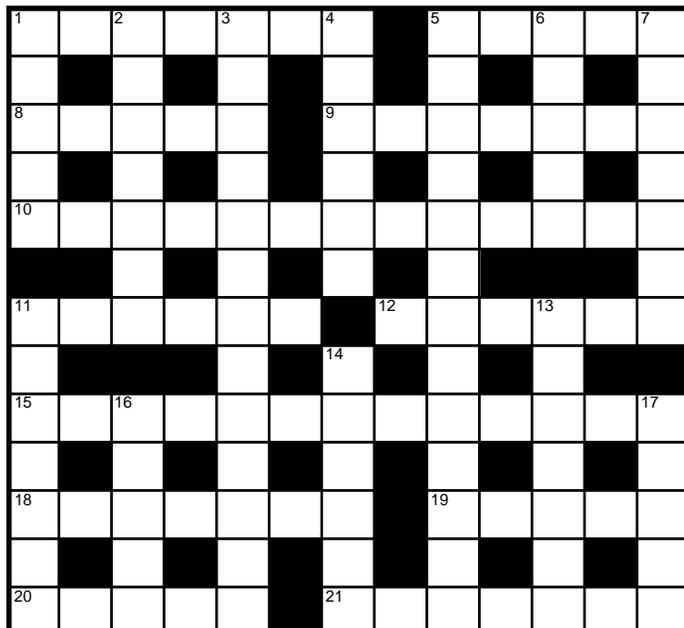
1. For the full Diversity Statement, go to: www.lsba.org/diversity. To show support for diversity in the legal profession, become a signatory.

Katherine L. Hurst is a solo practitioner in Lafayette whose primary practice areas are attorney disciplinary defense and complex domestic litigation. She is a member of the Louisiana State Bar Association’s (LSBA) Committee on the Profession and the LSBA’s Practice Assistance and Improvement Committee. She received her JD degree in 1991 from Louisiana State University Paul M. Hebert Law Center. Prior to establishing her firm, she clerked for former Louisiana Supreme Court Justice Catherine D. (Kitty) Kimball, the Office of Disciplinary Counsel and 3rd Circuit Court of Appeal. (klh@katherinehurst.com; Ste. 555, 600 Jefferson St., Lafayette, LA 70501)

Crossword PUZZLE

By Hal Odom, Jr.

BASIC OBLIGATIONS



ACROSS

- 1 Kind of obligation in which each debtor owes a separate debt (7)
- 5 Pie nut (5)
- 8 Affecting the property, not the person (2, 3)
- 9 Kind of crime for which the arrestee cannot be released on his own recognizance (7)
- 10 Innovator, pioneer (13)
- 11 Assert emphatically (6)
- 12 Attack, physically or verbally (6)
- 15 Doesn't stop, at a place along the way (6, 7)
- 18 Not legal (7)
- 19 Popular Japanese poetic form (5)
- 20 Sees socially (5)
- 21 Kind of term that is stated directly (7)

DOWN

- 1 Narcotics squad action (5)
- 2 Of assorted kinds (7)
- 3 Memoirs; recollections (13)
- 4 ___ the sword... (4, 2)
- 5 Tenured or endowed position on a college faculty (13)
- 6 Obsolescent form of draft (5)
- 7 Kind of obligation that corresponds to moral duty (7)
- 11 Kind of term that is not stated directly (7)
- 13 Kind of conduct that may be prohibited by a protective order (7)
- 14 Sculpture (6)
- 16 Divide; leave (5)
- 17 Drags with difficulty (5)

Answers on page 247.

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8:00-8:30 a.m.	Registration	1:15-2:15 p.m. (1 credit - Prof.)	Professionalism and Effective Oral Argument Hon. James F. McKay, Chief Judge • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Hon. Roland L. Belsome, Jr. • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Hon. Sandra Cabrina Jenkins • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Thomas M. Flanagan • <i>Flanagan Partners</i> • <i>New Orleans</i>
8:30-8:45 a.m. (.25 credit)	Program Overview Thomas M. Flanagan • <i>Flanagan Partners</i> • <i>New Orleans</i>	2:15-3:15 p.m. (1 credit)	Supreme Court Practice – The Law Clerk's Perspective Andy J. Dupre • <i>Flanagan Partners</i> • <i>New Orleans</i> P. J. Kee • <i>Jones Walker</i> • <i>New Orleans</i> Isaac H. Ryan • <i>Deutsch, Kerrigan & Stiles</i> • <i>New Orleans</i> Michael J. Palestina • <i>Kahn Swick & Foti</i> • <i>New Orleans</i>
8:45-9:45 a.m. (1 credit)	The Unique Role of Appellate Counsel Hon. Terri F. Love • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Kim M. Boyle • <i>Phelps Dunbar</i> • <i>New Orleans</i> Marcus V. Brown • <i>Executive Vice President & General Counsel of Entergy Corporation</i> • <i>New Orleans</i>	3:15-3:30 p.m.	Break
9:45-10:45 a.m. (1 credit)	Writ Practice – Hertz and Writ-Grant Considerations Hon. John Michael Guidry • <i>1st Circuit Court of Appeal</i> • <i>Baton Rouge</i> Hon. Rosemary Ledet • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Cheryl M. Kornick • <i>Liskow & Lewis</i> • <i>New Orleans</i>	3:30-4:30 p.m. (1 credit - Ethics)	Ethics on Appeal Hon. William J. Crain • <i>1st Circuit Court of Appeal</i> • <i>Madisonville</i> Hon. Fredericka H. Wicker • <i>5th Circuit Court of Appeal</i> • <i>Gretna</i> Stephen L. Miles • <i>Barrasso Usdin Kupperman Freeman & Sarver</i> • <i>New Orleans</i>
10:45-11:00 a.m.	Break		
11:00 a.m.-Noon (1 credit)	Appellate Briefing – Giving the Court What it Needs Hon. Paul A. Bonin • <i>4th Circuit Court of Appeal</i> • <i>New Orleans</i> Hon. John Michael Guidry • <i>1st Circuit Court of Appeal</i> • <i>Baton Rouge</i> Martin A. Stern • <i>Adams and Reese</i> • <i>New Orleans</i>		
Noon-1:15 p.m.	Lunch (on your own)		

Register Online at www.lsba.org/cle

REPORT BY DISCIPLINARY COUNSEL

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

Decisions

Alan J. Abadie, Chalmette, (2015-OB-1135) **Permanent resignation in lieu of discipline** ordered by the court on June 30, 2015. JUDGMENT FINAL and EFFECTIVE on June 30, 2015. *Gist:* Commission of a criminal act; and violating or attempting to violate the Rules of Professional Conduct.

David G. Arceneaux, Thibodaux, (2015-OB-1066) **Transferred to disability inactive status** ordered by the court on June 3, 2015. JUDGMENT FINAL and EFFECTIVE on June 3, 2015.

Gerald J. Asay, Baton Rouge, (2015-B-1399) **Interim suspension by consent** ordered by the court on July 21, 2015.

Frank J. Ferrara, Jr., Walker, (2015-B-1196) **Adjudged guilty of additional violations which warrant discipline and which may be considered in the**

event he applies for reinstatement from his suspension in *In Re: Ferrara*, 13-0722 (La. 4/26/13), 116 So.3d 654, ordered by the court as consent discipline on June 30, 2015. JUDGMENT FINAL and EFFECTIVE on June 30, 2015. *Gist:* Engaging in conduct involving

misrepresentation; and misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services which promises results.

Donna U. Grodner, Baton Rouge, (2015-B-1093) **Suspended for a period**

Continued on page 214

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Aug. 4, 2015.

Respondent	Disposition	Date Filed	Docket No.
Joseph N. Mole	Suspension	6/5/15	11-966

Discipline continued from page 212 of 60 days ordered by the court as consent discipline on June 30, 2015. JUDGMENT FINAL and EFFECTIVE on June 30, 2015. *Gist:* Affirmative misrepresentations to a federal court while serving as counsel in a civil action.

Thomas C. McBride, Alexandria, (2015-B-1022) **Public reprimand** ordered by the court as consent discipline on June 30, 2015. JUDGMENT FINAL and EFFECTIVE on June 30, 2015. *Gist:* Failure to make reasonable efforts to ensure that other lawyers in his firm conformed their conduct to the Rules of Professional Conduct.

Richard B. Scandrett, Lafayette, (2015-B-0957) **Conditional admission revoked** ordered by the court on June

5, 2015. JUDGMENT FINAL and EFFECTIVE on June 5, 2015. *Gist:* Conditional admission to the practice of law revoked.

Gilbert E. Stampley, New Orleans, (2015-OB-1142) **Permanent resignation from the practice of law in lieu of discipline** ordered by the court on June 30, 2015. JUDGMENT FINAL and EFFECTIVE on June 30, 2015. *Gist:* Engaging in the practice of law during a period of suspension.

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

	No. of Violations
Commingleing.....	1
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Mishandling and misuse of trust account	1
TOTAL INDIVIDUALS ADMONISHED.....	4

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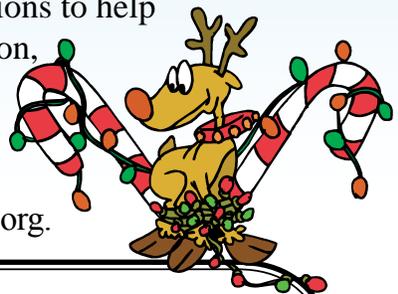
The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee is inviting Bar members and other professionals to brighten the holidays for needy children by participating in the 19th annual Secret Santa Project.

- Sponsors will shop with inspiration from the child's "Wish List."
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For more information or questions about the Project, contact Krystal Bellanger Rodriguez at (504)619-0131 or secretsanta@lsba.org.



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Legislative Agencies Not Required to Refer Potential Contractor Responsibility Determinations

Colonial Press Int'l, Inc. v. United States,
788 F.3d 1350 (Fed. Cir. 2015).

In June 2012, the Government Publishing Office (GPO), a legislative agency, issued an invitation for bids for an executive agency relating to a printing order. The GPO received nine bids in response; one was from Colonial Press International, Inc. Colonial was considered a “small business concern” for purposes of the Small Business Act, 15 U.S.C. §§ 631 *et seq.*

According to the Printing Procurement Regulation GPO Pub. 305.3 (Rev. 2-11) (PPR), the GPO was allowed to award

contracts only to “responsible” bidders who must be able to comply with the proposed delivery schedules and have a satisfactory record of performance on previously awarded contracts. *See*, PPR, Ch. I. § 5.4. If the bidder cannot meet the standards, then it must be deemed non-responsible. *Id.* at § 6.

Normally, a government contract officer may not preclude a concern from being awarded a contract due to it being found non-responsible without referring the matter to the Small Business Administration (SBA) for final disposition under the SBA’s Certificate of Competency Program. *See*, 15 U.S.C. § 637(b)(7) & 13 C.F.R. § 125.5. Under that program, the SBA certifies to the contract officer whether a concern is responsible with respect to a particular procurement.

In the immediate matter, the GPO contract officer reviewed Colonial’s history relating to past GPO contracts, which included Colonial’s recent performance history and other factors. During that period, Colonial was late on approximately 6 percent of deliveries. After an opportunity to respond and without referring the determination to the SBA, the contract officer wrote to Colonial stating that it was found non-responsible and awarded the contract to another bidder.

In response, Colonial filed a bid protest with the Government Accountability Office (GAO) under 31 U.S.C. § 3552 and alleged two points of error — first, that the contract officer’s determination that Colonial was non-responsible was an abuse of discretion; and, second, that under the Act, the responsibility determination should have been referred to the SBA under the Competency Program. The GAO denied Colonial’s protest and found that the GPO was not subject to the referral requirements of the program as a legislative agency; it determined that the contract officer had a reasonable basis for her determination.

After losing at the GAO, Colonial filed a bid protest in the United States Court of Federal Claims pursuant to 28 U.S.C. § 1491(b). Colonial generally argued the same two points, but that court ruled against it on both. Colonial then appealed that decision to the United States Court of Appeals for the Federal Circuit under 28 U.S.C. § 1295(a)(3).

The Federal Circuit was established in 1982 and assumed the appellate jurisdiction of the U.S. Court of Claims, now called the Court of Federal Claims. The Federal Circuit, recognizing whether the SBA applies to a legislative agency was an issue of first impression, considered essentially the same two issues argued before the GAO and the lower court. The legislative agency question is discussed below.

Legislative Agencies and the SBA

The court limited the issue to the definitions of two operative terms in the Small Business Act dealing with the Competency Program — “government procurement officer” and “government contract” in 15 U.S.C. § 637(b)(7). The court reasoned that “[i]f these terms are defined broadly, then § 637(b) could require *any* government procurement officer . . . to refer responsibility determinations to the SBA.” Alternatively, the court reasoned that:

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[i]f...defined narrowly, then § 637(b) could be limited to certain categories of government procurement officers, specifically those in the executive branch, and, as a result, only certain officers would be required to refer responsibility determinations to the SBA.

In examining this, the court evaluated the specific words in the Act “in their context and with a view to their place in the overall statutory scheme,” as opposed to solely focusing on the specific language in § 637(b). See, *Davis v. Mich. Dep’t of Treasury*, 109 S.Ct. 1500 (1989).

In determining whether the operative terms are broadly or narrowly defined, the court noticed that neither term was actually defined in the Act. It then, in looking to the general statutory scheme, stated that because under 15 U.S.C. § 637c(3) a “Government procurement contract” is defined as “any contract for the procurement of any goods or services by any Federal agency,” that the term “Federal agency” must have “the

meaning given the term — agency — by section 551(1) of title 5” Further, the court found that under § 551(1), the term “agency” does not include the Congress, and that, as a legislative agency, the GPO is included in the term “Congress.” Therefore, the court reasoned that the language in § 637(b) should be defined narrowly, and that the Act’s responsibility referral requirement under the program does not apply to the GPO. See generally, *United States v. IBM Corp.*, 892 F.2d 1006, 1009 (Fed. Cir. 1989); *Mayo v. U.S. Printing Office*, 9 F.3d 1450, 1451 (9 Cir. 1993).

Colonial took exception to the court’s reasoning under two theories. First, Colonial proposed to avoid the court’s analysis by suggesting that, instead of examining the GPO’s duties under the Act, the court should examine the duties of the executive agencies on whose behalf the GPO was awarding contracts. The court found this to be an “unpersuasive dodge of the basic issue” and did not address it further. Second, Colonial argued that, because the terms the court focused on do not appear in § 637(b) (7), their definitions are irrelevant. The court

also found this argument unpersuasive and noted that if it took Colonial’s view on the issue, then it would have to:

interpret “Government procurement contracts” to exclude contracts solicited by legislative agencies in some portions of the Act, while interpreting “Government procurement officers” to include contracting officers of those same legislative agencies in another portion of the Act, namely § 637(b)(7).

Additionally, the court noted that the “GAO, GPO, and SBA have interpreted the Small Business Act consistently since 1983” in line with their present interpretation. See, *Fry Commc’ns, Inc.*, 62 Comp. Gen. 164, 167 (1983).

—Bruce L. Mayeaux
Major, Judge Advocate
JAG Legal Center and School
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Barton Doctrine Does Not Apply When Trustee Carrying Out District Court Orders

Carroll v. Abide, 788 F.3d 502 (5 Cir. 2015).

In the bankruptcy cases of William and Carolyn Carroll and their corporation, the Carrolls' children requested a determination that certain movables had been properly transferred to them. Samera Abide, the bankruptcy trustee for the debtors, filed a counterclaim seeking a determination regarding proper ownership. The dispute was withdrawn to the district court. During the case, the district court entered an order that the Carrolls turn over any computers of the debtor-corporation to Abide. The Carrolls asserted that one computer was their personal

computer; however, the trustee took the computer. The plaintiffs filed a motion with the district court requesting the trustee turn over the computer. The district court deferred a ruling on the motion, allowing the trustee to obtain a forensic expert to evaluate the computer. The plaintiffs alleged the district court did not authorize the trustee to access the computer. After making its ruling on ownership, the district court ordered the computer returned. Upon receipt of the computer, the plaintiffs' forensic expert determined that the trustee had accessed the computer three times.

The plaintiffs brought a lawsuit in the district court against Abide claiming she violated their Fourth Amendment right against illegal search and seizure. The district court dismissed the complaint, ruling the plaintiffs were required to request leave of the bankruptcy court to file a lawsuit against the trustee pursuant to the Supreme Court decision *Barton v. Barbour*, 104 U.S. 126, 128 (1881), citing *Davis v. Gray*, 83 U.S. (16 Wall.) 203 (1872). In *Barton*, the Supreme Court held that in order to file a lawsuit against a receiver, a plaintiff must seek leave from the court that appointed the receiver.

An action against a receiver without court permission, the [Supreme] Court reasoned, is an attempt "to obtain some advantage over the other claimants upon the assets in the receiver's hands." If such a suit were allowed, "the court which appointed the receiver and was administering the trust assets would be impotent to restrain him." *Carroll*, 788 F.3d at 505.

The 5th Circuit vacated the district court's decision and remanded to the district court. While the 5th Circuit had previously applied *Barton* to lawsuits against bankruptcy trustees, it held that the *Barton* doctrine did not apply because the claims against Abide, as trustee, stemmed from her conduct while carrying out orders from the district court rather than the bankruptcy court. The 5th Circuit found that the concerns *Barton* implicated did not apply in this situation, *i.e.*, if parties could sue trustees, a foreign court could "turn bankruptcy losers into bankruptcy winners." *Id.* at 506, citing *In re Linton*, 136 F.3d 544, 546 (7 Cir. 1998). The reasoning is that the plaintiffs filed suit in the

same court that presided over the adversary proceeding. The 5th Circuit further found another rationale behind the *Barton* doctrine did not apply, *i.e.*, bankruptcy courts have a strong interest in protecting trustees from personal liability as officers of the court. The 5th Circuit noted that Abide served as an officer in both courts; thus, the district court shared the same interest in protecting the trustee.

Golf Channel May Not Be Burned by Stanford's Ponzi Scheme After All

Janvey v. Golf Channel, Inc., 792 F.2d 539 (5 Cir. 2015), *certified question accepted* (July 17, 2015).

In 2006, Stanford International Bank negotiated a deal with the Golf Channel, Inc. regarding an advertising package. Stanford was apparently attempting to reach the Golf Channel's high-net-worth viewership that was likely to invest in its Ponzi scheme. Ultimately, an agreement was struck to, among other things, provide live coverage of a golf tournament hosted by Stanford. In total, Stanford paid the Golf Channel \$5.9 million.

By 2009, the SEC uncovered the massive Ponzi scheme, one of the largest in the history of the United States. The SEC filed a lawsuit in the Northern District of Texas, and the district court appointed a receiver over Stanford. The receiver sued the Golf Channel to recover the \$5.9 million as a fraudulent conveyance under the Texas Uniform Fraudulent Transfer Act (TUFTA), asserting the transaction provided no value to Stanford's creditors. The Golf Channel asserted an affirmative defense allowed under section 24.009(a) of the TUFTA — "(1) that it took the transfer in good faith; and (2) that, in return for the transfer, it gave the debtor something of 'reasonably equivalent value.'" The Golf Channel argued that it provided "reasonably equivalent value" for the transfers by providing advertising.

In March 2015, the 5th Circuit issued its original opinion, *Janvey v. Golf Channel*, 780 F.3d 641 (5 Cir. 2015) (original opinion), which was discussed in the *Louisiana Bar Journal* (June/July 2015). In the original opinion, the 5th Circuit held value is determined from the perspective

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of the creditors of the transferor, and proof of market value is insufficient. The 5th Circuit found the Golf Channel's advertising services that were purchased to extend a Ponzi scheme could not, as a matter of law, provide any value to Stanford's creditors. Accordingly, the 5th Circuit rendered judgment in favor of the receiver, and the Golf Channel was required to return the full \$5.9 million.

The Golf Channel filed a petition for a panel rehearing, which the 5th Circuit granted, vacating the original opinion. The 5th Circuit found that it must determine under Texas law and the TUFTA the meaning of "value and/or reasonably equivalent value." The 5th Circuit reasoned that there were some discrepancies between the definitions in the TUFTA and the comments in the TUFTA, and that only the Texas Supreme Court could rule on this discrepancy. As there were no decisions from the Texas Supreme Court addressing this dispute, the 5th Circuit certified the following question to the Texas Supreme Court, which it accepted:

Considering the definition of "value" in section 24.004(a) of the Texas

Business and Commerce Code, the definition of "reasonably equivalent value" in section 24.004(d) of the Texas Business and Commerce Code, and the comment in the Uniform Fraudulent Transfer Act stating that "value" is measured "from a creditor's viewpoint," what showing of "value" under TUFTA is sufficient for a transferee to prove the elements of the affirmative defense under section 24.009(a) of the Texas Business and Commerce Code?

The Texas Supreme Court has not ruled as of yet. Stay tuned.

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LLC Shield Exceptions

Hohensee v. Turner, 14-0796 (La. App. 4 Cir. 4/22/15), ___ So.3d ___, 2015 La. App. LEXIS.

The plaintiff sought the services of an architect to design plans for her new home; the architect referred her to an unlicensed architectural designer, who designed the plans, but the architect stamped the design plans so the plaintiff could obtain a building permit. After the plaintiff hired a contractor and problems developed during construction, the plaintiff sued (among others) the architect, asserting deficiencies in the design. Although the architect was a member of a limited liability company, the plaintiff asserted he was personally liable under La. R.S. 12:1320(D), which provides that the



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Louisiana LLC law does not derogate from any rights that any person may by law have against a member of an LLC because of, among other things, “any breach of professional duty or other negligent or wrongful act by such person.”

In *Ogea v. Merritt*, No. 13-1085 (La. 12/10/13), 130 So.3d 888, 898-901, the Supreme Court interpreted R.S. 1320(D) as creating separate exceptions for a “breach of professional duty” and for a “negligent or wrongful act,” and, as to the latter exception, identified four factors to be considered, one of which was “whether the conduct at issue was required by, or was in furtherance of, a contract between the claimant and the LLC.” In *Hohensee*, the majority affirmed the trial court’s grant of summary judgment in favor of the architect, reasoning that the plaintiff must prove that the architect “breached his professional duty to her by negligence or some other wrongful conduct.” Noting un rebutted expert testimony supporting the architect, the majority concluded:

Although [the architect] stamped the

plans for the [plaintiff’s] house, there is no evidence in the record that [the architect] breached any professional duty as an architect. As in *Ogea*, [the architect’s] affixing his seal was in furtherance of the [plaintiff’s] contract with [the contractor], a contract to which [the architect] was not a party. Conduct taken in furtherance of the legitimate goals of that contract does not subject [the architect] to personal liability.

LLC Assignee Issues

Succession of Scheuermann v. Scheuermann & Jones, L.L.C., 15-0040 (La. App. 4 Cir. 5/22/15), ___ So.3d ___, 2015 La. App. LEXIS 1030.

An attorney’s will left her ownership interest in a law firm, a limited liability company, to an individual, whom she also appointed an independent executor of her estate. The Louisiana LLC law provides that “[i]f a member who is an individual dies . . . the member’s membership ceases

and the member’s executor, administrator, guardian, conservator, or other legal representative shall be treated as an assignee of such member’s interest in the [LLC].” La. R.S. 12:1333(A). The LLC law further provides that “[a]n assignment of a membership interest shall not entitle the assignee to become or to exercise any rights or powers of a member until such time as he is admitted,” but does entitle the assignee to receive the assignor’s allocations, share of profits, and distributions. La. R.S. 12:1330(A).

The legatee/executor filed suit against the LLC and its surviving manager member seeking inspection and demanding, among other things, that the two sections of the statute described above be declared unconstitutional, arguing that Section 1333(A) imposes a deprivation of property without due process of law because it transfers an interest in an LLC to the LLC, the surviving member of the LLC, or the executor, rather than to the decedent’s heirs or legatees, and that it is unconstitutionally vague. The defendants alleged that the plaintiff was not entitled to inspection because of R.S. 12:1332(A)(1), which provides that “[a]n assignee of an interest in [an LLC] shall not become a member or participate in the management of the [LLC] unless the other members unanimously consent in writing.” The district court rendered a partial summary judgment declaring Sections 1330 and 1333 constitutional and designated the judgment as appealable. The court of appeal found on *de novo* review that the judgment was improperly designated as appealable and dismissed the appeal without reaching the merits.

Single Business Enterprise

Bridges v. Polychim USA, Inc., 14-0307 (La. App. 1 Cir. 4/24/15, 2015 La. App. Unpub. LEXIS).

During the relevant time, the defendant was a Georgia corporation not qualified to do business in Louisiana. It owned two foreign subsidiaries that, in turn, owned a foreign partnership that owned property and was doing business in Louisiana. The Louisiana Department of Revenue sought to require the defendant to pay Louisiana franchise taxes, asserting (among other things) that Louisiana

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courts have repeatedly allowed creditors to use the single-business-enterprise doctrine to breach the corporate walls between corporations and their subsidiaries and affiliates.

The court of appeal reasoned that the doctrine allows certain businesses to be held liable only for “wrongful acts done in pursuit of [a common business] purpose,” and that the Department was not seeking to hold the defendant liable for the “wrongful” acts of its subsidiaries, but merely for franchise taxes based on their actions. The court also noted that, in this context, the single-business-enterprise doctrine sounded very similar to the “unity of purpose” theory that the Louisiana Supreme Court had rejected in an earlier franchise-tax case.

—**Michael D. Landry**

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Prosecutorial Use of Post-Miranda Silence

State v. Marshall, 13-2007 (La. 12/9/14), 157 So.3d 563.

The Louisiana Supreme Court addressed the applicability of *Doyle v. Ohio*, 96 S.Ct. 2240 (1976), when reviewing a prosecutor’s cross-examination of a defendant regarding his alibi.

The U.S. Supreme Court held in *Doyle* that a defendant’s right to due process is violated when a prosecutor impeaches a defendant’s exculpatory alibi or defense by questioning why he did not provide it when first Mirandized by police, thereby implying that the defendant came up with the story over time and spoke with police only after developing a favorable

set of facts.

On initial review, the Louisiana 4th Circuit Court of Appeal, in a 2-1 decision, vacated the defendant’s conviction and reversed his sentence upon finding that the prosecutor’s use of Marshall’s post-arrest silence violated *Doyle* by using the exercise of his Fifth Amendment right to undermine his plausible self-defense claim. *State v. Marshall*, 12-0650 (La. App. 4 Cir. 7/31/13), 120 So.3d 922. However, a *Doyle* violation is a trial error that is subject to harmless-error analysis. *Doyle*, 96 S.Ct. at 2245.

Upon granting an application for certiorari from the State, the Louisiana Supreme Court reviewed all evidence presented at trial. Marshall was tried by a jury in Orleans Parish for second-degree murder and found guilty of the lesser-included offense of manslaughter for “end[ing] a love triangle” involving himself, the victim and the mother of the victim’s three children.

While the victim was serving a six-month stint in the parish jail, Marshall began a romantic relationship with his

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children’s mother. Upon the victim’s release from jail, the woman decided to attempt reconciliation, but an enraged Marshall confronted them at their home. Described as “much smaller” at 5’6” and 140 pounds, Marshall resorted to a .40 caliber handgun to fight the victim, who “was nearly six feet tall and weighed over 200 pounds.” Nine spent casings were found near the body of the victim, who suffered five gunshot wounds, including two to the back, among other wounds.

Marshall took the stand and testified that he shot in self-defense. “On cross-examination, the state confronted [the] defendant with his failure to stay on the scene and explain to the police” that he shot in self-defense. This violation of *Doyle*, which formed the basis for the 4th Circuit’s decision, was weighed against mounds of forensic, ballistic and eyewitness evidence in light of the harmless-error test set forth in *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993). The Court reiterated the proper framing of the question:

To say that an error did not “contribute” to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial later held to have been erroneous To say that an error

did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered

Marshall, quoting Yates v. Evatt, 111 S.Ct. 1884, 1893 (1991).

Ultimately, the Louisiana Supreme Court adopted the position of the dissenting judge at the 4th Circuit, finding that “the overwhelming physical evidence render[ed] the improper questioning harmless.” *Marshall*, 120 So.3d at 932 (Dysart, J. dissenting). Accordingly, the Court reinstated the verdict and re-imposed the original sentence.

However, the Court took care to clearly incorporate the principles of *Doyle v. Ohio* into Louisiana jurisprudence. Prosecutors throughout Louisiana are thereby on notice that using a defendant’s post-*Miranda* silence to implicate an exculpatory alibi or defense as spurious is a clear violation of due process.

—Chase J. Edwards

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U.S. Supreme Court Reverses EPA’s Mercury Rule

In one of its last opinions of a memorable year for the U.S. Supreme Court, the Court struck down the EPA’s new rule regulating mercury and other air toxins—the Mercury and Air Toxics Standard (MATS) rule. In a 5-4 ruling, the Court declared in *Michigan v. E.P.A.*, 135 S.Ct. 2699 (2015), that the EPA acted unreasonably when it declined to consider the costs to implement its MATS rule. The MATS rule was issued in 2012 and established fairly stringent emissions limits for power plants. Power plants were to come into compliance with the rule by mid-2015, although a one-year extension was granted to coal-fired plants to either install control technology or shut down altogether.

The central issue for the Court was whether the EPA could reasonably refuse to consider cost when issuing the MATS rule. Under the Clean Air Act section 112(n)(1), the “Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such



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regulation is appropriate and necessary.” The argument focused on the “appropriate and necessary” language from (n)(1), specifically whether the EPA was required to consider compliance costs.

In addressing the question of whether regulation of power plants for air toxins was appropriate and necessary, the EPA argued that regulation was appropriate because of risks these emissions posed to the human health and environment, and it found that controls were available that could reduce these harmful emissions. After the EPA issued its rule, multiple states and industry associations sued, arguing that a regulation is only “appropriate and necessary” if compliance costs are considered. The situation was particularly egregious here where the EPA did not consider benefits versus compliance costs, and the plaintiffs argued that the social benefits were valued at \$4 million to \$6 million while the actual costs to the power plant industry to comply with the rule was estimated to be \$9.6 billion. Power plants argued that these outrageous compliance costs, particularly when compared to the estimated benefits, meant that

the rule on its face could not be “appropriate and necessary.”

The Supreme Court agreed with the power plants, holding that the EPA’s interpretation of section 112(n)(1) was unreasonable. The EPA must consider compliance costs before issuing rules regulating the emissions of power plants. However, the ruling was limited to just the MATS rule; the Court stressed that a formal cost-benefit analysis was not called for, and no court has held that benefits of environmental rulings must necessarily outweigh the potential costs of compliance. There seems to be no consensus on whether this decision from the Supreme Court could impact other potential and dramatic expected rulemakings from the EPA on various air emissions.

Louisiana Supreme Court Agrees: New Owners Can’t Sue Old Mineral Lessees

Alate 2014 case, *Global Marketing Solutions, L.L.C. v. Blue Mill Farms, Inc.* (Global

1), 13-2132 (La. App. 1 Cir. 9/19/14), 153 So.3d 1209, applied the *Eagle Pipe* subsequent-purchaser doctrine to a Mineral Code claim. The Louisiana Supreme Court has now denied writs. *Global Marketing Solutions, L.L.C. v. Blue Mill Farms, Inc.* (Global 2), 14-2572 (La. 4/23/15), ___ So.3d ___. In the underlying case, the new owner of a 144-acre parcel sued all former mineral lessees once that new owner discovered that the land was contaminated by toxic waste in the soil, claiming that the defendants — former oil and gas companies that were lessees or operators on the property since 1937 — were contractually obligated under their mineral leases to restore the land to its original condition.

The defendants filed a motion for summary judgment that was ultimately granted, based on the subsequent-purchaser doctrine spelled out by the Louisiana Supreme Court in *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10-2267 (La. 10/25/11), 79 So.3d 246. The 1st Circuit agreed and upheld the dismissal of the claims, holding that:

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an owner's right to sue for damage to his property is a personal right and is held by the person who was the owner at the time the damage was caused. This personal right is not transferred to a subsequent owner without a clear stipulation that the right has been transferred.

Global 1, 153 So.3d at 1215. Without evidence that Global had obtained a transfer of this personal right, Global could not sue for pre-existing damage.

Plaintiffs appealed to the Louisiana Supreme Court, again arguing that the *Eagle Pipe* decision was limited to predial leases and was inapplicable to mineral leases and Mineral Code claims. A victory for the plaintiffs would have meant the reversal of numerous post-*Eagle Pipe* suits that have applied the subsequent-purchaser doctrine to mineral leases and Mineral Code claims. The Supreme Court, however, denied the plaintiffs' writ application.

While the Court denied writs without an opinion, Judge Crichton wrote a separate concurrence on the issue, quoting *Eagle Pipe* and declaring:

Under the "subsequent purchaser rule" articulated in *Eagle Pipe & Supply Inc. v. Amerada Hess Corp.*, "an owner of property has no right or actual interest in recovering from a third party for damage which was inflicted on the property before his purchase, in the absence of an assignment or subrogation of the

rights belonging to the owner of the property when the damage was inflicted." Because there is no such assignment or subrogation here, I agree with the decision of the court of appeal.

Global 2 (Crichton, J., concurring) (citations omitted). Although he did not expressly state "*Eagle Pipe's* subsequent purchaser doctrine is equally applicable to both predial and mineral leases," Judge Crichton did add in a footnote citing *Frank C. Minvielle, L.L.C. v. IMC Global Operations, Inc.*, 380 F.Supp. 2d 755, 776 (W.D. La. 2004):

The analysis is similar in the Mineral Code context Because a mineral right is a limited personal servitude, it does not pass with the property, and the subsequent landowner must have "privity of contract, assignment of rights, or be a beneficiary of a *stipulation pour autrui*" to sue.

The body of case law applying the subsequent-purchaser doctrine to legacy lawsuits continues to grow and has received a substantial boost from this latest decision.

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Same-Sex Marriage

Obergefell v. Hodges, 135 S.Ct. 2584 (2015).

Following the U.S. Supreme Court's decision in *United States v. Windsor*, James Obergefell and John Arthur, a same-sex couple, married in Maryland. After learning that their state of residence, Ohio, would not recognize their marriage, they filed a lawsuit, alleging that Ohio's ban on recognition of same-sex marriages validly performed in other states was unconstitutional. The district court agreed, but the 6th Circuit Court of Appeals reversed, holding that Ohio's ban on recognition of same-sex marriages did not violate the U.S. Constitution. The U.S. Supreme Court consolidated *Obergefell* with cases from Tennessee, Michigan and Kentucky and held that the 14th Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.

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Procedure/Service

Edwards v. Mathieu, 14-0673 (La. App. 4 Cir. 3/11/15), 163 So.3d 110.

Because service of the petition for paternity and child support was “served” by long arm to a post office box of Mathieu’s employer, and signed for by someone who was neither his agent nor authorized to receive mail for him, the default judgment entered against Mathieu was vacated.

State v. White, 14-1269 (La. App. 3 Cir. 4/1/15), 162 So.3d 716.

Although Mr. White received a copy of the petition to establish child support, he was never actually served with that petition. Thus, the Rapides Parish judgments of paternity and child support against him were annulled. Moreover, since paternity and child-support matters had previously been filed in Ouachita Parish, which had entered an interim judgment, the matter was remanded to be transferred from Rapides to Ouachita. As the mother had assigned her child-support rights to the Department of Social Services, DSS was to be made a party after the transfer.

Child Support

Holleman v. Barrilleaux, 14-0499 (La. App. 3 Cir. 11/19/14), 161 So.3d 789.

In this child-support-calculation case, the trial court should have included undistributed income from Mr. Holleman’s business as he had the ability to withdraw it or leave it in the business. Regular depreciation was excluded from the income calculation, but accelerated depreciation was added back. Distributions to him from another company also should have been included in his income. “Draws” that he received from his business, above his salary, also should have been included in calculating his income, as were “fringe benefits” paid for him by the company. After determining that his income was \$37,720 per month, and Ms. Barrilleaux’s income was \$4,923 per month, for a combined income of \$42,643 per month, the court of appeal stated that the “proper calculation” was to take the child support sum at \$30,000 (\$2,653), add it to the sum at \$12,600 (\$1,473), for a combined basic obligation of \$4,126, then add child care and health-insurance

costs, and then apportion the total by the parties’ respective shares.

State v. C.B., 14-0360 (La. App. 5 Cir. 10/29/14), 164 So.3d 850.

The father was entitled to credit against future child-support obligations for a lump-sum disability payment made to the child. The court of appeal remanded to the trial court to determine the credit he received when the original child-support case was dismissed in order to determine any remaining credit to be applied to the current child-support order.

Final Spousal Support

Miller v. Miller, 13-1043 (La. App. 3 Cir. 4/2/14), 161 So.3d 690.

Ms. Miller’s testimony as to what Mr. Miller allegedly said during a counseling session waived her claim of a patient health-care-provider privilege, and the trial court erred in refusing to allow the counselor to testify. Nevertheless, that error did not require reversal of the trial court’s finding that she was free from fault

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in the breakup of the marriage because: (1) although Mr. Miller alleged that she had abandoned the marriage, he never asked her to return; therefore, he failed to prove abandonment; (2) she did not engage in cruel treatment of him because her comments that she did not love him or like him were reasonable reactions to her reasonable suspicions that he was involved with another woman; and (3) her refusal to have sex with him when he was drunk was justified, as was her refusal to have sex with him after her suspicions that he was involved with another woman. The trial court's award of \$5,350 per month in final spousal support was reduced by the court of appeal to \$3,350 per month because she should have been imputed an earning capacity relative to an income she could have earned working for someone else, rather than the income she was earning running her own unsuccessful business. Although Mr. Miller complained that Ms. Miller's expenses were excessive, the court did not consider that, given the great disparity in their incomes and the fact that his professional corporation paid most of his expenses.

Stowe v. Stowe, 49,596 (La. App. 2 Cir. 3/4/15), 162 So.3d 638.

Mr. Stowe argued that the award of final spousal support to Ms. Stowe was improper because no financial records of income or expenses were submitted as evidence. However, the court of appeal found that there was no abuse of the trial court's discretion because the record supported the trial court's reliance on the testimony alone even with no supporting documents. Moreover, since Mr. Stowe did not object that discovery had not been exchanged prior to the start of the case, he could not later complain. The court accepted his testimony as to his own income. It found that her testimony as to her expenses and her medical condition was credible. He provided no countervailing evidence. The court also confirmed her freedom from fault, finding that the disputes they had did not rise to a level of fault on her part sufficient to

preclude her from final spousal support. The court did not err in not giving him credit against the support for payments he had made on the car note and insurance, finding that he was entitled to raise those claims as reimbursements in the property partition.

Community Property/ Pension

Ast v. Ast, 14-1282 (La. App. 3 Cir. 4/1/15), 162 So.3d 720.

After the parties reached a stipulation and a judgment was signed by their attorneys and the court, Ms. Ast began receiving her marital share of Mr. Ast's military retirement benefits. He then converted those benefits from retirement to disability benefits and ceased paying her share. Following her rule for contempt, he argued that the court did not have jurisdiction to enforce her claim against his disability benefits or to partition them. His arguments were rejected, and he was ordered to provide her those benefits, as he actively converted the benefit in an attempt to deprive her of her share. Moreover, the judgment provided that she would be entitled to her share of such benefits. His second argument was that the stipulation addressed only military retirement benefits, but that the judgment added references to additional benefits, which should have been struck from the judgment as not conforming to the stipulation. This claim, too, was rejected, as his attorney had signed the judgment, approving it as to form and content, before it was submitted to the court. Moreover, he did not timely file a motion for new trial or appeal concerning the language of the judgment, which had become final.

—David M. Prados

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5th Circuit Clarifies *Chandris* Temporal Requirement for Seaman Status

Alexander v. Express Energy Servs. Operating, L.P., 784 F.3d 1032 (5 Cir. 2015).

The 5th Circuit revisited the requirements for a plaintiff to qualify as a Jones Act seaman. In *Alexander*, the court affirmed a motion for summary judgment granted in favor of Express Energy Services, ruling that the plaintiff did not fulfill the requirements to be a Jones Act seaman because he did not spend more than 30 percent of his time in service of a vessel in navigation. Under the ruling, a plaintiff must *actually work on a vessel* at least 30 percent of his total work time in order to qualify as a seaman under the Jones Act.

The plaintiff was employed as a lead hand/operator for Express Energy Services, plugging decommissioned oil wells off the coast of Louisiana. Plaintiff's duties involved ensuring the plugging operation's success by setting up and running the plugging operation on the deck of oil-production platforms. As many of the platforms were too small to accommodate the crew and their equipment, plaintiff's work also frequently involved the use of Aries Marine Corp. lift boats in conjunction with his platform-related duties to accommodate the additional needed space. Plaintiff was injured while working on a platform when a crane wire snapped, causing a bridge plug/tool combination to drop and roll onto plaintiff's foot. The crane was permanently attached to an Aries lift boat and operated by an Aries employee for the use and benefit of the Express crew.

Plaintiff filed a Jones Act claim against his employer, Express, in the Eastern District of Louisiana. Express filed a motion for summary judgment, arguing that Alexander was a platform-based worker who thus failed to satisfy the *Chandris* test to qualify as a seaman.

To maintain a claim under the Jones Act, 46 U.S.C. § 30104 *et seq.*, the plaintiff must qualify as a seaman, a status that requires meeting a two-pronged test set forth by the Supreme Court in *Chandris, Inc. v. Latsis*, 115 S.Ct. 2172 (1995). *Chandris* establishes that first a plaintiff must prove that his work duties “contribut[e] to the function of the vessel or to the accomplishment of its mission.” The plaintiff need not necessarily aid in the navigation or transportation of the vessel so long as he is “doing the ship’s work.” Second, *Chandris* requires that a seaman have a significant connection to a vessel in navigation, a requirement that separates land-based workers “whose employment does not regularly expose them to the perils of the sea.” Generally, this prong requires that workers spend approximately 30 percent of their time in service of a vessel in navigation.

Express asserted that Alexander did not contribute to the function of a vessel as he worked on non-vessel fixed platforms and, although Alexander spent 35 percent of his plug-and-abandonment job time using a lift boat, he did not satisfy the requirement set

forth in *Chandris* that a plaintiff spend at least 30 percent of his *total work time* on a vessel. Alexander argued that he did contribute to the function of a vessel, namely the Aries lift boat, and that he should be allowed to count all of his time on jobs where an adjacent vessel was used in order to satisfy the 30 percent temporal requirement of *Chandris*.

The district court granted Express’s motion, concluding that Alexander’s duties did not contribute to the function of a vessel because they were related to the fixed platform and not the vessel. The court wrote, “Alexander was only a passenger on the lift boat and . . . the lift boat was merely a support vessel for the platform operations.” The 5th Circuit affirmed the district court’s ruling without addressing the first prong, contributing to the function or mission of a vessel. The 5th Circuit found that Alexander failed to satisfy the second prong under *Chandris*, the temporal-connection requirement that a seaman must spend a substantial amount of time, ordinarily 30 percent, actually working *on a vessel*. Additionally, the 5th Circuit clarified that it was not sufficient that the

plaintiff performed “some incidental work on a vessel” while on the job; rather, the plaintiff must show that he actually worked on a vessel at least 30 percent of the time in order to be classified as a Jones Act seaman.

The 5th Circuit made it clear that plaintiffs cannot qualify as seamen under the Jones Act if their only connections to vessels in navigation are to vessels in support of other operations, such as work on a platform. This decision falls in predictable form under *Chandris* that a worker must perform a substantial part of his work aboard a vessel in navigation. *Alexander* acts as a reminder of the intricacies inherent in maritime law, and of the fact-specific inquiries in determining seaman status of injured employees. The case is instructive for both plaintiff attorneys vetting future clients/cases and for maritime/oil employers, their insurers and their legal team in trying to determine benefits available to employees injured on the job.

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U.S. Court of Appeals for the Federal Circuit

Int'l Custom Prods., Inc. v. United States, 791 F.3d 1329 (Fed. Cir. 2015).

After 10 years of litigation, the U.S. Court of Appeals for the Federal Circuit hammered a U.S. food importer with a \$28 million duty bill. Appellant International Custom Products (ICP) imported a “white sauce” for sale to food manufacturers. *Id.* at 1332. ICP sought a tariff classification from Customs & Border Protection (CBP) in order to establish what tariff, if any, was owed as a result of the importation of the sauce. *Id.* CBP classified the import under the Harmonized Tariff Schedule as “sauces and preparations therefor.” *Id.* Six years after the classification, CBP notified ICP of a new investigation into the classification of white sauce. *Id.* at 1333. In 2005, CBP issued a Notice of Action reclassifying the white sauce under a different classification, “[d]airy spreads.” *Id.* CBP informed ICP that the reclassification applied to all pending and future entries of white sauce. *Id.* The reclassification ultimately created

an astounding tariff increase to ICP of almost 2,400 percent. *Id.*

The ensuing years of litigation began in 2005 when CBP liquidated some of ICP’s pending entries of white sauce under the terms of the 2005 reclassification notice. *Id.* ICP did not file a protest with CBP about the liquidation. *Id.* ICP did file suit against CBP at the U.S. Court of International Trade seeking to overturn the 2005 reclassification notice. *Id.* That court is a court of limited jurisdiction with specific trade boundaries established by Congress. *See*, 28 U.S.C. § 1581 (2000). It has a residual jurisdiction provision that is not available when jurisdiction under another subsection of § 1581 is appropriate, or where the remedy under the applicable subsection of § 1581 is manifestly inadequate. *Id.* at 1332. The applicable subsection in this case is (a), which requires that an aggrieved importer first file a formal protest with CBP, which protest must be denied. *Id.* Once CBP denies the protest, the importer must pay all liquidated duties owed before commencing suit in that court. *Id.*

ICP did not file a protest with CBP but invoked the Trade Court’s residual jurisdiction, arguing that any remedy under subsection (a) is manifestly inadequate because payment of the liquidated duties would put the company “on the brink of bankruptcy” and out of business. *Id.* at 1333. The court exercised its residual jurisdiction and found the 2005 reclassification invalid

for failing to comply with notice and comment procedures. *Id.* The Federal Circuit reversed and vacated on appeal, finding that the Trade Court lacked residual jurisdiction because “mere allegations of financial harm . . . do not make the remedy established by Congress manifestly inadequate.” *Int'l Custom Prods., Inc. v. United States*, 467 F.3d 1324, 1327 (Fed. Cir. 2006). The Federal Circuit ruled that ICP should have protested the CBP reclassification, paid the liquidated duty and then commenced the lawsuit. *Id.* at 1328.

Several other waves of litigation ensued after CBP liquidated additional entries of white sauce. The 2008 liquidations resulting in the duty bill of \$28 million were the subject of the final appeal. The Federal Circuit upheld the Trade Court’s dismissal of ICP’s challenge to the pre-payment requirement. ICP argued that the pre-payment requirement is an unconstitutional violation of the Fifth Amendment Due Process Clause inasmuch as it creates an “insurmountable financial barrier to judicial review.” *Int'l Custom Prods.*, 791 F.3d at 1335. The Federal Circuit noted that “pre-payment of duties owed undoubtedly burdens an importer, and we appreciate the harsh reality that requirement imposes here, as ICP must pay almost \$28 million before it can commence suit in the Trade Court.” *Id.* However, the court’s decision rested on ample precedent holding that pre-payment is an allowable conditional waiver of the United States’ sovereign immunity. *Id.* at 1335-38. ICP’s failure to pay foreclosed any effort to seek a judicial remedy.

This case provides a stark reminder to importers and their counsel to carefully watch all import timelines and deadlines for protests. One available option to minimize the financial impact of an adverse classification is to timely pay the duties owed on the first entry and then timely request suspension of all remaining liquidations pending final resolution of litigation.

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New Proposed Regulations on FLSA Overtime Protections

This summer, the U.S. Department of Labor (Labor) proposed new regulations that will dramatically increase the number of employees who must be paid on an hourly basis under the Fair Labor Standards Act (FLSA). Whereas in the past employees who earned \$455 per week (or \$23,660 per year) could qualify as exempt, the new rule would make the salary threshold for exempt status \$970 per week (or \$50,440 per year). In addition, the proposed regulations increase the “highly compensated” threshold from \$100,000 to \$122,148. Finally, to prevent

the new salary levels from becoming stale over time, Labor is, for the first time, proposing to include an automatic annual update to the salary and compensation thresholds using either a fixed percentile of wages or the Consumer Price Index for urban consumers. It is still up in the air whether non-discretionary bonuses and incentive payments should be included to determine whether the new salary thresholds have been met.

As background, the FLSA generally requires that employers pay overtime for every hour an employee works in excess of 40 in a particular workweek. 29 U.S.C. § 207(a). The FLSA exempts certain groups of employees from the overtime pay requirements. One of the most common exemptions relates to employees working in jobs that are executive, administrative or professional — the so-called “white collar” exemptions. 29 U.S.C. § 213(a)(1). In order for an employee to fall within one of the white-collar exemptions, the employee must perform executive, administrative or professional duties (the duties test) *and* make

a certain weekly salary. The regulations also exempt “highly compensated” employees who “customarily and regularly” perform one of the exempt duties of an administrative, executive or professional employee, but who do not otherwise meet the duties test. 29 C.F.R. § 541.601. It is the salary and compensation threshold for these employees that Labor is targeting with the new proposed regulations.

Labor has admitted the proposed rulemaking will “transfer income from employers to employees in the form of higher earnings.” In fact, Labor estimates that “average annualized direct employer costs will total between \$239.6 and \$255.3 million per year . . .” and “average annualized transfers are estimated to be between \$1.18 and \$1.27 billion . . .” Department of Labor, Frequently Asked Questions: www.dol.gov/whd/overtime/NPRM2015/faq.htm.

Labor estimates that nearly 4.6 million workers who are exempt under the current white-collar exemption would no longer be exempt under the new rules. Similarly, Labor estimates that 36,000

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workers currently exempt under the “highly compensated” category will no longer qualify. Finally, Labor estimates that as many as 6 million workers currently classified as white-collar workers and who earn at least \$455 per week but less than the proposed salary level would have “their overtime protection strengthened because their non-exempt status would be clear based on the salary test alone, without any need to review their duties.” *Id.*

The obvious impact for employees reclassified as non-exempt is that they will begin being paid time-and-a-half if they work more than 40 hours in a week. However, there may be other unintended negative consequences for the employee, possibly including a loss of benefits available only to exempt employees, such as vacation or paid time off or eligibility for certain managerial bonuses.

In addition to the obvious increased monetary cost of compliance for employers, many likely will also suffer additional administrative and record-keeping headaches in figuring out how to adjust their workforce to comply with the rules, while keeping their businesses financially viable. Many employers operating in industries that have relied heavily in the past on lower-level managers previously classified as exempt (such as retail stores and restaurants) will have to reclassify large groups of their workforce and pay them on an hourly basis.

In order to avoid paying overtime to a large number of now non-exempt employees, the employer may decide to increase the total number of employees and decrease work hours, which would likely increase transactional costs, such as onboarding, training and benefits.

The administrative headache would not stop there. Because exempt employees normally do not track their hours, many employers do not have adequate data on the number of hours their formerly exempt employees worked. Employers will need to institute processes to ensure accurate timekeeping for these employees. This may be particularly difficult because non-exempt managerial-type employees often perform a variety of potentially compensable job-related activities during their “off” time, such as receiving and responding to work calls and emails from home, taking work home, working through lunch, etc. All of these activities must now be taken into account by the employer when tracking time and determining its payroll budget and allocation of employee responsibilities.

The regulations will not become final until the 60-day comment period elapses and Labor has had a chance to consider the comments. It will then decide whether to proceed with the proposed changes, issue a new or modified proposal or take no action on the proposed rule. If a substantive change is made to the proposal after the comments, Labor is required to provide the public with further opportunity for comment. If Labor proceeds with the proposed rule, it will be published in the Federal Register and will become effective no less than 30 days after publication.

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Mediation of Legacy Disputes

Acts 2015, No. 448, enacts La. R.S. 30:29.2, which requires parties to legacy disputes to “meet and confer” within 60 days after the end of the automatic stay required by La. R.S. 30:29 “in an effort to assess the dispute, narrow the issues, and reach agreements useful or convenient for the litigation of the action.” In addition, the new statute establishes a procedure by which any party to a legacy lawsuit may compel mediation after the earlier of the close of discovery or approximately 18 months after the litigation is commenced. Responsibility for the cost of mediation will be based on the parties’ agreement or, in the absence of agreement, will be borne by the party that moved to compel mediation.

Cross-Unit Wells

Louisiana law generally prohibits a wellbore from being drilled any closer than 330 feet to a property line, unless the well is within a unit, in which case the law generally prohibits the well from being drilled any closer than 330 feet from the unit boundary, though the Commissioner of Conservation has authority to grant exceptions to this rule. Because fractures tend to propagate in a particular direction in a given shale formation, the region near a unit boundary that is parallel to the direction of propagation tends to remain unfractured, and hydrocarbons in that area are not recovered.

To allow for the recovery of those hydrocarbons, the Commissioner of Conservation sometimes issues orders allowing a horizontal lateral for one unit to extend beyond that unit and into the neighboring unit. Such a well is called a “cross-unit well.” The orders authorizing such wells have provided that the production from the well will be allocated between the units in proportion to the length of horizontal lat-

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eral in each. A concern arose among some people that a cross-unit well could extend only a short distance into a second unit, but hold all leases in the second unit and interrupt prescription of nonuse for mineral servitudes and mineral royalties covering land in the second unit.

Acts 2015, No. 253, enacts La. R.S. 30:9.2. The new statute provides that the Commissioner of Conservation generally may authorize a cross-unit well, but if a horizontal lateral will extend less than 500 feet into the “short unit,” the Commissioner cannot approve the well unless: (1) the operator’s pre-application notice and hearing application expressly state that interested persons may express an objection; and (2) either no person with an interest in the short unit mails an objection to the Commissioner 15 days or more in advance of the application hearing, or the short unit already has one or more horizontal laterals with a combined length of perforated lateral of at least 500 feet.

Fees to the Office of Conservation

Acts 2015, No. 362, amends La. R.S. 30:4 to add a subsection “P” that authorizes the Commissioner of Conservation to develop a program whereby permit applicants may pay an extra fee for expedited processing of their application. Act 362 also amends La. R.S. 30:21(B) to increase the ceiling on the statewide aggregate amount of fees that the Office of Conservation may collect on “capable oil wells” and “capable gas wells,” Class I, II and III wells, and certain other facilities. Finally, Act 362 amends La. R.S. 30:21(d) to authorize certain fees and amends 30:136.1(D) to increase fees on state mineral leases.

Parish Coastal Erosion Lawsuits

Plaquemines Parish v. BEPCO, L.P., 13-6704 (E.D. La. July 7, 2015), 2015 WL 4097062.

Multiple parishes each filed multiple lawsuits against various oil and gas companies, alleging that the defendants’ activities have violated state and local regulations and

permits granted pursuant to the State and Local Coastal Resources Management Act, and that in doing so the defendants have caused harm to the coastal areas. The defendants removed the various lawsuits to the United States District Court for the Eastern District of Louisiana. Upon removal, the multiple cases were assigned to different sections of the court. *Plaquemines Parish v. BEPCO, L.P.* was assigned to Judge Nannette Jolivette Brown. The plaintiffs in the various cases moved to remand.

In *BEPCO*, the defendants argued that three independent bases existed for federal subject matter jurisdiction. First, the defendants asserted that there was diversity jurisdiction, notwithstanding the existence of non-diverse parties, because the non-diverse parties had been fraudulently joined. Judge Brown disagreed, holding that the standard for fraudulent joinder was not met. The defendants also argued that subject matter jurisdiction existed, based on the Outer Continental Shelf Lands Act. Judge Brown rejected that argument, concluding that the plaintiffs’ claim(s) did not arise from an operation on the Outer Continental Shelf. Finally, she held that removal was not proper based on maritime jurisdiction, even though the plaintiff complained about dredging activities conducted by vessels on navigable waters, because the claim was brought in state court under the savings-to-suitors clause. Accordingly, the court remanded.

Judge Brown’s order remanding to state court is consistent with orders issued by several other sections of the United States District Court for the Eastern District of Louisiana, which have remanded similar cases brought by parish governments against oil and gas companies.

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Suspension of Prescription: Two Cases

Correro v. Caldwell, 49,778 (La. App. 2 Cir. 6/3/15), 166 So.3d 442.

Dr. Ferrer, Glenwood Medical Center and two unidentified employees of Glenwood were named in *Correro*’s panel request. Dr. Ferrer acknowledged his liability, waived panel proceedings, and was dismissed from the panel proceeding on Aug. 22, 2013. The panel against Glenwood proceeded.

In Glenwood’s panel brief, it argued against any responsibility for Caldwell and Greer (the unidentified employees) because they were not Glenwood employees.

On the date of the panel hearing, *Correro* amended her panel request and specifically named Caldwell and Greer as additional tortfeasors with Dr. Ferrer and Glenwood. Ultimately, the “initial panel” concluded, without awareness of the amendment, that Glenwood failed to meet the standard of care. The panel opinion was mailed to the plaintiff on Dec. 27, 2013. On July 31, 2014, the PCF advised *Correro* that “[u]nknowing to the [PCF] an opinion was rendered on the [initial panel] when the recently submitted amendment dated November 19, 2013 was filed,” and that the amendment “will be processed as a new request for a medical review panel.” The new panel was assigned a separate PCF number and referenced as the “second panel.”

Caldwell and Greer filed exceptions of prescription, arguing that claims against them prescribed on April 7, 2014. They conceded that the “initial panel” suspended prescription during the pendency of the initial panel but, as the plaintiff never filed suit against Ferrer or

Continued on page 233

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

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

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

Persistent apathy or "empty" feeling

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Glenwood after the initial panel opinion had been issued, the claims against the exceptors and any other joint tortfeasors had prescribed. The trial court agreed.

The court of appeal reversed, referencing La. R.S. 1299.47(A)(2) (a), which recites that a request for review suspends prescription “against all joint and solidary obligors, and all joint tortfeasors,” including health-care providers, irrespective of their qualified status under the Act, to the same extent that prescription is suspended against the parties who are subject to the request for review, adding that since the Supreme Court’s opinion in *Borel v. Young*, 07-0419 (La. 11/27/07), 989 So.2d 42, 68, a “special rule of suspension of prescription” in medical malpractice cases applies to all joint tortfeasors, irrespective of whether they are named in the initial panel proceeding.

Caldwell and Greer argued that the suspension ended on April 7, 2014, 90-plus days after the panel opinion was received by the plaintiff, because no suit had been filed against Dr. Ferrer, Glenwood or any other joint tortfeasor. But the appellate court noted that when the plaintiff filed a panel complaint against the exceptors, the panel was still pending as to Glenwood, which served to suspend prescription against all joint tortfeasors, including unnamed ones. The exceptors then relied on *Robin v. Hebert*, 12-1417 (La. App. 3 Cir. 5/1/13), 157 So.3d 63, which held that upon dismissal of a defendant deemed to be not liable, the “late-added defendants were no longer joint tortfeasors, and the special prescriptive periods under the LMMA no longer applied.”

The appellate court found the case *sub judice* factually different from *Robin*, as that case dealt with prescription when a “not liable defendant is dismissed,” whereas in the present case, when Dr. Ferrer waived the panel process, there was no finding that he was “not liable.” The same was found to be true as to Glenwood: When the exceptors were added by the filing of the amended panel complaint, there had been no determination made that it was “not liable.” In fact, as to either of the originally named joint tortfeasors, there was never a finding that they were

not liable to the patient. Thus during the pendency of an allegation of solidary liability or joint liability, the exception of prescription is premature.

The court added, in a footnote, that the exception of prescription could still be raised at trial, and if the exceptors proved that neither Dr. Ferrer nor Glenwood were liable to the plaintiff, their exception of prescription could then be reconsidered.

Maestri v. Pazos, 15-0009 (La. App. 5 Cir. 5/28/15), ___ So.3d ___, 2015 WL 3440341.

The plaintiffs were notified by the PCF that two of the respondents in their request for review (Oceans and Parikh) were qualified health-care providers but the third (Pazos) was not. More than 90 days after notification that he was not qualified, the plaintiffs filed a lawsuit against Pazos, who then filed an exception of prescription. The plaintiffs countered with an amended petition in which they claimed that the qualified providers (Oceans and Parikh) were joint tortfeasors with Pazos, and thus their claim was timely filed, pursuant to the second sentence of La. R.S. 40:1299.47(A)(2) (a). The plaintiffs also argued that the medical-review panel was still pending as to the qualified health-care providers; therefore, the claim against Pazos could not be prescribed. The trial court, however, disagreed and granted the exception.

The plaintiffs did not dispute that their petition was filed beyond the “90-day plus” period of suspension, but they argued that, in addition to the language of R.S. 40:1299.47(A)(2)(a), and the continuing suspension of prescription during the life of a panel, the Supreme Court’s opinion in *Milbert v. Answering Bureau, Inc.*, 13-0022 (La. 6/28/13), 120 So.3d 678, explained and buttressed their argument that the suspension of prescription applied to all joint tortfeasors and solidary obligors, irrespective of their qualified or non-qualified status. The court of appeal agreed that *Milbert* held that a non-qualified, health-care provider may be a joint tortfeasor with a qualified health-care provider who is before a medical-review panel; thus, the suspension of prescription “may” apply to the filing of suit against the non-health-

care provider. *Id.* at 689.

Yet, it distinguished *Milbert* from the instant case in two ways. First, the plaintiff in *Milbert* did not initially file a complaint against a non-qualified provider within one year of the alleged negligence, as had the plaintiffs in *Maestri*, and, second, the *Milbert* plaintiffs filed suit against the non-qualified provider in district court within 90 days of notice from the PCF that Pazos was not a qualified provider, whereas the *Maestri* plaintiffs had not. Therefore, because the plaintiffs in *Maestri* did initially name Pazos in their panel request but did not file suit within a year from the tort, they could not rely on the language of the statute to extend the time to file suit beyond the 90-day plus notification by the PCF of Pazos’s non-qualified status. The court added that La. C.C.P. art. 934 prohibits defeat of a peremptory exception by an amendment to the pleadings.

—Robert J. David

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Sand and Limestone Are Not Materials for Further Processing in Power-Generation

Bridges v. Nelson Indus. Steam Co., 14-1253 (La. App. 3 Cir. 6/24/15), 169 So.3d 711.

The 3rd Circuit Court of Appeal affirmed a trial court decision that found Nelson Industrial Steam Co.'s (NISCO) purchases of sand and limestone for its power-generating process were not exempt or excluded from sales taxes under the further-processing statute, La. R.S. 47:301(10)(c)(i)(aa). The court upheld the state collector's assessment of additional sales taxes and the parish collector's denial of NISCO's claims for refund of sales taxes based on the statute.

NISCO operates power-generation facilities in the Lake Charles area and sells steam and electricity manufactured from those facilities. The process used by NISCO to produce steam and electricity uses sand and limestone and produces ash as a by-product thereof. NISCO sells the ash that is produced to a third party.

NISCO asserted the sand and limestone at issue were not taxable based on the further processing statute, La. R.S. 47:301(10)(c)(i)(aa), which states, "The term 'sale at retail' does not include sale of materials for further processing into articles of tangible personal property for sale at retail." The court applied the test enunciated in *International Paper v. Bridges*, 07-1151 (La. 1/16/08), 972 So.2d 1121: "The raw materials, or their component molecular parts, (1) must be of benefit to the end product; (2) must be a recognizable and identifiable component of the end product; and (3) must have been purchased for the purpose of reprocessing into the end product."

It was undisputed that the sand and limestone did not appear in any form in the steam and electricity produced and sold by NISCO, and NISCO did not contend that

it purchased the sand and limestone for further processing into steam and electricity. Rather, NISCO argued that the materials appear in and benefit the ash and that NISCO intentionally purchased the materials for the additional purpose of manufacturing ash that NISCO sells to third parties. The taxing agencies argued that the ash was a residue, not a purposefully created product; that no manufacturer produces ash alone as a product; and that no business would spend \$46 million on sand and limestone to manufacture ash that sold for only \$6.8 million.

The court looked to the testimony of a professor of tax and cost accounting, who "essentially confirmed that NISCO did not treat the ash as a co-product." Instead, the ash was an incidental by-product that was saleable because the purpose of the sand and limestone was to comply with regulations controlling sulfur emissions. The fact that NISCO found a revenue stream for the ash did not mean the purpose for buying the limestone was changed. The court held the sand and limestone were not purchased for further processing into an end-product — steam or electricity — but were instead part of an incidental by-product. As a result, the

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court affirmed the trial court's finding that NISCO's purchases of sand and limestone were subject to sales tax and not exempt or excluded from tax under the further-processing statute.

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Consistent Basis Reporting Between Estates and Persons Acquiring Property

Consistent tax-basis reporting by the executor of an estate on the federal estate-tax return and the beneficiaries of the estate on their individual income-tax returns will be required under section 2004 of H.R. 3236, *Surface Transportation & Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), which was signed into law on July

31, 2015.

Previously, the values reported on the federal estate-tax return were "deemed" to be the fair-market values of the property passing from the decedent for the purpose of determining the income-tax basis for the property under IRC § 1014 (Treas. Reg. 1.1014-3(a)), but it was not an absolute requirement that the same values be used for federal estate-tax and income-tax purposes, and there were no specific reporting requirements or specific penalties for applying inconsistent values. H.R. 3236 adds (1) a new subsection 1014(f), which states that the basis of property acquired from a decedent cannot exceed the value finally determined for estate-tax purposes; (2) new section 6035, requiring basis reporting by persons required to file estate-tax returns; and (3) inconsistent basis reporting to the list of actions for which a 20 percent accuracy-related penalty is imposed under IRC § 6662.

New IRC § 6035 requires executors of estates and other persons who are required to file returns under IRC § 6018(a) or 6018(b) to now furnish the IRS and the estate's beneficiaries with statements reporting the

value of estate assets within 30 days of the estate-tax return's due date. These new statements are added to the definition of "information return" and "payee statement" under IRC § 6724(d), making failure to furnish them subject to penalty under IRC §§ 6721 and 6722.

Although these new provisions apply to property for which an estate-tax return is filed after the date of enactment, according to Notice 2015-57, effective on Aug. 21, 2015, the IRS has postponed the due date for any statement that IRC § 6035 requires to be filed with the IRS and estate beneficiaries before Feb. 29, 2016, until Feb. 29, 2016, to allow the IRS time to issue guidance addressing the requirements of IRC § 6035.

The IRS is requesting comments on the guidance to be issued, which can be submitted electronically and should refer to Notice 2015-57.

—**Caroline D. Lafourcade**
Member, LSBA Taxation Section
Montgomery Barnett, L.L.P.
3300 Energy Centre, 1100 Poydras St.
New Orleans, LA 70163

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CHAIR'S MESSAGE

Welcome, New Lawyers!

By Erin O. Braud

We welcome our newly licensed attorneys to the practice of law! The swearing-in ceremonies remind me of how it felt to be a new lawyer and the value of good mentors and advice. The transition from law school to lawyer is a big change for most. Now begins learning the art of the billable hour, office etiquette, case management, handling clients and handling other lawyers. With that in mind, I offer some of my favorite advice through the years to our newest lawyers, and some reminders to the rest of us.



Erin O. Braud

Work Hard. Yes, of course, you expect to be told to work hard. But you should work hard strategically. Be available for that horrible assignment from the assigning partner on a Friday night. It's not great for your family life, but you won't have to do it every Friday night, and it comes with the territory. Make sure people know you "stepped up" and know, subtly, how hard you are working. People notice. People remember. It doesn't hurt to send emails in the middle of the night.

But Don't Work Too Hard. On the other hand, there is always more work you can do. You can always have more assignments piled on your plate. If you let yourself get truly overworked, you invite mistakes, missed deadlines, dropped balls and other problems. People will remember those screw-ups much more than all the hours you worked. So once you have bitten off a good amount of work, try not to bite

off more — even though it's always available, absent a financial crisis. Then focus on doing a really great job, on time, on the assignments you've undertaken.

Understand What They Want. When you get an assignment, pay attention from the very beginning. Bring a notepad and take notes. Understand what your supervisor wants you to do, and how your supervisor wants you to present that work product. You don't want to find that you've wasted a lot of time producing something that's not what they want. You look bad that way, and you cause time crunches, emergencies and billing write-offs. If you aren't sure what your supervisor wants, ask him/her. But try to collect all your questions at once rather than bombard your supervisor with a series of emails.

Escape from Email. You're in an office. You can still walk down the hall and talk to someone. Do it. This will enhance the quality of your interactions, help you learn more, and build relationships that will ultimately help you. You might even have a conversation with someone and learn something that wasn't exactly what you expected.

Legal Research. Lawyers are supposed to know law and know how to find answers to legal questions. Those skills atrophy in legal practice, replaced by a general tendency to use online searches to answer every question. Don't let that happen. When legal questions arise, approach them as a lawyer. Get legal answers through legal research. You will learn far more than those answers. It's one of the best ways to develop your knowledge and legal skills.

Evaluation. You are always being

evaluated. Behave accordingly. Dress the part. Don't do silly things generally. Everything you do or say can and will be used against you.

Be Nice. Interact with everyone in a way that builds your personal brand. For that purpose, "everyone" starts with your secretary and the bicycle messenger delivering your dinner. It also includes your colleagues, paralegals and junior associates who might report to you, the partners who assign you work, and opposing counsel. Don't complain. Don't have fits. Don't whine. Eventually, you develop a persona — an image and a perception of who you are — within the firm and even within the larger practice and business world. Your persona consists of the accumulated effect of all the interactions with everyone you've met. And once you establish your persona, it travels through walls and doesn't go away. Once the world perceives you as negative or a whiner or "difficult," it's very hard to change that. Don't let it happen in the first place.¹

Find a Mentor. Law firms have mentor programs. The Louisiana State Bar Association also has a mentor program. There are many reasons to have a mentor: to learn from another's experience (sometimes mistakes), to seek advice, to learn the unwritten rules of being a lawyer, to have a sounding board of ideas, and to see it done before you have to do it on your own. Take time to find a mentor and start building a relationship that will affect, for the better, the rest of your career.

Finally, be diligent, ethical, continue to learn, communicate regularly with your clients and you will do fine in your new role as a new lawyer. Congratulations on your tremendous accomplishment. Welcome to the Bar and good luck!

FOOTNOTE

1. Joshua Stein (Oct. 5, 2012), "From the Career Files: A Dozen Suggestions for New Lawyers" [web log post], <http://abovethelaw.com/2012/10/from-the-career-files-a-dozen-suggestions-for-new-lawyers/>.

YOUNG LAWYERS SPOTLIGHT

Michael E. Platte Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division is spotlighting Baton Rouge attorney Michael E. Platte.

An associate with Ogwyn Law Firm, L.L.C., Platte's practice includes business and commercial litigation, corporate law, construction law and general civil litigation. He has handled a wide range of matters in the area of business and com-



Michael E. Platte

mercial litigation, including shareholder disputes, minority shareholder rights, derivative actions, dissolution and breach of fiduciary duty. He also has represented both owners and contractors in various types of construction litigation.

A lifelong resident of Baton Rouge, he received his undergraduate degree from Louisiana State University and his JD degree in 2008 from Southern University Law Center. Following graduation, he worked for the firm Myles, Cook & Day where his practice focused on construction law, corporate law and general civil litigation. He also served as general counsel for the Zachary Community School Board. In 2010, he joined the law offices of James S. Holliday, Jr., A.P.L.C., in Baton Rouge where he assisted Holliday with the 2010 Louisiana Practice Series for construction and corporate law. He later joined the Baton Rouge firm of Dunlap Fiore, L.L.C.,

where he continued to focus his practice in the areas of construction law, corporate law, business litigation, transactions and general civil litigation.

An active member of the Baton Rouge Bar Association, Platte is founder and co-chair of the Business/Corporate Law Section. He also currently serves on the Law Expo Committee and chaired the 2011 and 2012 Law Expo.

Also active in the Baton Rouge community, he is a member of the board of trustees for the Boys and Girls Club of Greater Baton Rouge, is vice-chair of the Alcohol and Beverage Control Board for East Baton Rouge Parish, and is a member of the Rotary Club of Baton Rouge. He previously served on the board of directors for Forum 35.

Platte and his wife, Anne Bennett Platte, are the parents of one child and are expecting their second child in January.

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– Booker T. Carmichael, J.D.

*Attorney at Law and volunteer with Baton Rouge Bar Association's Pro Bono Project
Baton Rouge, LA*



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By David Rigamer, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS... MEMORIAM

New Judges

Thomas W. Rogers was elected judge, Division B, 3rd Judicial District Court. He earned his BA degree in 1974 from Louisiana Tech and his JD degree in 1977 from Louisiana State University Paul M. Hebert Law Center. He served as law clerk to Judge Charles A. Marvin, 2nd



Thomas W. Rogers

Circuit Court of Appeal, from 1977-78. He next worked for a year as an associate with Hargrove, Guyton, Ramey & Barlow. From 1979 until his election to the bench, he was a partner in Napper, Madden & Rogers in Ruston. Judge Rogers is married to Beth Donner Rogers and they are the parents of three children. They have five grandchildren.

Jefferson R. Thompson was elected judge, Division B, 26th Judicial District Court. He earned his bachelor's degree in 1988 from Northeast Louisiana University and his JD degree in 1995 from Tulane University Law School, where

he was a member of the National Moot Court Trial Team. He began his law practice as an associate with Weems, Wright, Schimpf, Hayter & Gilsoul, A.P.L.C., in Shreveport. From 1997-2003, he was a partner in Boggs & Thompson, A.P.L.C. From 2003 until his election to the bench, he was a solo practitioner in Shreveport. He served as State Repre-



Jefferson R. Thompson

Community Action Committee & 'WEEN DREAM Partnering for Halloween Costume Donations

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee is assisting the 'WEEN DREAM program in the collection of new and/or slightly used Halloween costumes for children in need.

Law firms, attorneys and legal professionals wishing to donate should drop off costumes at the Louisiana Bar Center, 601 St. Charles Ave., New Orleans, on Monday through Friday, Nov. 2-6, during business hours (8:30 a.m.-4:30 p.m.).

Costumes may simply be placed in bags. There is no labeling or sorting process required. 'WEEN DREAM volunteers will handle the sorting process and match the costumes to children for Halloween 2016. (Costumes that were donated after Halloween 2014 are being distributed to children for 2015.)

NEW ORLEANS

Krystal Bellanger Rodriguez
Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130
(504) 566-1600

LAFAYETTE

Jo Abshire
Lafayette Bar Association
2607 Johnston St
Lafayette, LA 70503
(337) 237-4700

ALEXANDRIA

Alainna Mire
Alexandria City Hall
915 Third Street
Alexandria, LA 71301

LAKE CHARLES

Hoffoss Devall, LLC
517 West College Street,
Lake Charles, LA 70605
(337) 433-2053

BATON ROUGE

Baton Rouge Bar Association
544 Main St.
Baton Rouge, LA 70802
(225) 344-4803

MONROE

Clint R. Hanchey
Hayes, Harkey, Smith & Cascio
2811 Kilpatrick Blvd.
Monroe, LA 71201
318-387-2422

SHREVEPORT

Dana Southern
The Shreveport Bar Association
625 Texas Street
Shreveport, LA. 71101
(318) 222-3643



sentative, District 8, from 2012-15. He is the recipient of Tulane University's Yiannopoulos Award and is past president of the Bossier Parish Bar Association. Judge Thompson is married to Toni Thompson and they are the parents of two children.

Timothy S. Marcel was elected judge, Division E, 29th Judicial District Court. He earned his bachelor's degree in 1991 from Nicholls State University and his JD degree in 1996 from Louisiana State University Paul M. Hebert Law Center. He established his private practice in 1997 in Luling. He is past president of the St. Charles Parish Bar Association and served as a board member of the District Court's Indigent Defender Board. Judge Marcel is married to Sarah E. Marcel and they are the parents of twins.



Timothy S. Marcel

Juan W. Pickett was elected judge, Division C, 32nd Judicial District Court, becoming the court's first African-American judge. He earned his BA degree in 1990 from Virginia



Juan W. Pickett

Union University and his JD degree, *cum laude*, in 1993 from Southern University Law Center. He served as a Terrebonne Parish assistant district attorney for more than 20 years and was a Project LEAD instructor for local schools. In 2010, he served as president of the Terrebonne Bar Association. In 2011, he received *The Courier's* Reader's Choice Award for Best Trial Attorney. Judge Pickett is married to Bernadette Robinet Pickett and they are the parents of two children.

Hunter V. Greene was elected judge, Division D, East Baton Rouge Parish Family Court. He earned his BS degree in accounting in 1989 from Louisiana State University and his JD degree, *magna cum laude*, in 1994 from Southern University Law Center. Following his law school graduation, he worked as an attorney for the Legislative Auditor's Office until 1998. He practiced as a sole practitioner from 1998 until his election to the bench. He also served in the Louisiana House of Representatives, representing District 66, from 2005-14. Judge Greene is married to Emily Aaron Greene and they are the parents of three children.



Hunter V. Greene

Appointments

► Judge Alonzo Harris, Judge Robert H. Morrison III, Judge Shonda D. Stone and Judge Benedict J. Willard were appointed, by order of the Louisiana Supreme Court, to the Judicial Budgetary Control Board for terms of office which began July 1 and will end on June 30, 2018.

► Dow Michael Edwards and William C. Kalmbach III were appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began on July 1 and will end on June 20, 2020.

► David L. Morgan was appointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization for a term of office which ends on June 30, 2018.

Death

30th Judicial District Court Judge James Richard (Jim) Mitchell, 69, died July 24. Valedictorian of Baker High School, he earned both his undergraduate and JD degrees from Louisiana State University. After serving in the U.S. Army as a captain in the Judge Advocate General's office, he started his private practice in 1974 in Leesville. While in private practice, Judge Mitchell served as president of the 30th Judicial District Bar Association and acting city judge and attorney for the Leesville Housing Authority. He was elected to the 30th JDC in 2008 and was re-elected unopposed in 2014.



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 E-mail: ebarefield@lsba.org



PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Johnny L. Domiano, Jr. has been appointed partner in charge of the New Orleans office. Elizabeth A. Roussel, a partner in the New Orleans office, was elected to the firm's Executive Committee. Also, Adam P. Gullotta has joined the New Orleans office as a staff attorney.

Anderson & Boutwell in Hammond announces that **Ashley Anderson Traylor** has joined the firm as an associate.

Coats, Rose, Yale, Ryman & Lee announces that **Jason A. Camelford** and **Molly L. Stanga** have joined the New Orleans office as associates.

Dunlap Fiore, L.L.C., in Baton Rouge announces that **Hunter R. Bertrand** has been elected a partner in the firm, and **Katelin Hughes Varnado** has joined the firm as an associate.

Gregorio, Chafin & Johnson, L.L.C., in Shreveport announces that Verity Gentry Bell has joined the firm as an associate.

Hailey, McNamara, Hall, Larmann & Papale, L.L.P., in Metairie announces that attorney Natasha Z. Wilson has joined the firm. Also, Shannon C. Burr, James H. Johnson, Meredith A. Mayberry, E. Stuart Ponder and B. Marianne Wise have joined the firm as associates.

Hammonds, Sills, Adkins & Guice, L.L.P., with offices in Baton Rouge and Monroe, announces that **Monica M. Vela-Vick** has joined the firm as an associate in the Baton Rouge office.

Jones Walker LLP announces that Henry F. O'Connor III has been elected to the partnership in the Mobile, Ala., office.

Kelly Hart & Pitre announces that **Gary M. Carter, Jr.** has joined the firm as a partner in the New Orleans office.

Perrier & Lacoste, L.L.C., in New Orleans announces that **Kristie L. Mouney** has joined the firm as special counsel.

Phelps Dunbar, L.L.P., announces that former Southern University Law Center Chancellor and retired judge **Freddie Pitcher, Jr.** has rejoined the firm as a senior partner in the Baton Rouge office.

Halima Narcisse Smith and Reed S. Minkin announce the formation and opening of their law firm, Smith Minkin Law Group, L.L.C. Offices are located at 1106 Girod St., Mandeville, LA 70448, (985)951-2222; and Ste. 201, 3201 General de Gaulle Dr., New Orleans, LA 70114, (504)358-2112. Website: www.smithminkin.com.

Stites & Harbison, P.L.L.C., announces that Katrina Lynn Dannheim has joined the firm as counsel in the Louisville, Ky., office.

E. Ann Wise was appointed by Louisiana Gov. Bobby Jindal and confirmed by the



Troy N. Bell



Hunter R. Bertrand



Jason A. Camelford



Gary M. Carter, Jr.



Ryan M. Goudelocke



Chauntis T. Jenkins



Vinson J. Knight



Jayanne Jené
Liggins



Kristie L. Mouney



Freddie Pitcher, Jr.



Christopher J.
Sellers, Jr.



Molly L. Stanga

Louisiana Senate to serve a fourth six-year term as director of the Division of Administrative Law.

NEWSMAKERS

Troy N. Bell, a member in the New Orleans office of Courington, Kiefer & Sommers, L.L.C., was named to the National Black Lawyers Top 100 List for 2015, was selected for membership in the American Chemical Society, and was appointed co-chair of the Louisiana State Bar Association's Diversity Committee and Community Action Committee.

Charles J. Boudreaux, Jr., special counsel in the Lafayette office of Jones Walker LLP, was elected as board president of the New Cardiovascular Horizons Foundation. He will serve as president through July 2017.

Breazeale, Sachse & Wilson, L.L.P., announces that Alan H. Goodman, Murphy J. Foster III and Claude F. Reynaud, Jr. were named Fellows of the Litigation Counsel of America. Goodman is a partner in the New Orleans office. Foster and Reynaud are partners in the Baton Rouge office.

Ryan M. Goudelocke, a partner in the Lafayette firm of Durio, McGoffin, Stagg & Ackermann, is registered to practice before the U.S. Patent and Trademark Office.

Chauntis T. Jenkins, a partner in the New Orleans office of Porteous, Hainkel & Johnson, L.L.P., is the new chair of the American Bar Association's Standing Committee on Disaster Response and Preparedness.

Vinson J. Knight, an attorney in the New Orleans office of Sullivan Stoler Knight, L.C., was elected as a member of the Louisiana State Bar Association's Health Law Section Council.

Jayanne Jené Liggins, an associate in the New Orleans office of Courington, Kiefer & Sommers, L.L.C., was named to the National Black Lawyers Top 100 List for 2015.

Christopher J. Sellers, Jr., an associate in the New Orleans office of Sullivan Stoler Knight, L.C., was appointed as a member of the Louisiana State Bar Association's Bar Governance Committee for 2015-16.

IN MEMORIAM

John A. Broadwell, a civil assistant U.S. attorney in the U.S. Attorney's Office, Western District of Louisiana, Shreveport Division, died Sept. 2 after a long battle with cancer. He was 58. A resident of Bossier City, Mr. Broadwell had more

than 30 years of experience practicing law, with the majority of those years in the U.S. Attorney's Office. He received his undergraduate degree in 1979 from the University of New Orleans and his JD degree in 1983 from



John A. Broadwell

Loyola University College of Law. Following law school graduation, he joined a Shreveport firm and engaged primarily in civil litigation. He next joined the Caddo Parish District Attorney's Office where he initially handled appeals and later handled misdemeanors and felonies as a litigating assistant district attorney. In January 1987, he joined the U.S. Attorney's Office and handled appeals to the 5th Circuit before joining the Civil Division. He served 13 years as the deputy and civil chief of the Civil Division and later served as litigator handling civil matters. He served the U.S. Attorney's Office and the Department of Justice with distinction under five Presidents. Mr. Broadwell is survived by his wife, Diane Davis Broadwell, two children, a granddaughter, his mother, two brothers and other relatives.

Continued next page



Jack M. Stoler



Ashley Anderson Traylor



Katelin Hughes Varnado



Monica M. Vela-Vick

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
Feb./March 2016	Dec. 4, 2015
April/May 2016	Feb. 4, 2016
June/July 2016	April 4, 2016
Aug./Sept. 2016	June 4, 2016

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator Darlene M. LaBranche
Louisiana Bar Journal
 601 St. Charles Ave., New Orleans, LA 70130-3404
 or email dlabranche@lsba.org.

Charles Edmund McHale, Jr., a New Orleans lawyer who was a leading figure in the civil rights movement and who was known for his work with tax sale statutes, died May 18. He was 89. A native New Orleansian, Mr. McHale



Charles E. McHale, Jr.

received a BS degree in geology from Tulane University and law degrees from both the University of Texas-Austin and Loyola University Law School. He practiced law for 64 years and was admitted to practice in United States district courts and the U.S. Supreme Court. In 2012, he served on the committee revising the tax sales statutes for Louisiana and was considered by his colleagues as the “best tax sale attorney.” He was a member of the New Orleans Bar Association’s Executive Committee and received a Lifetime Achievement Award from the Louisiana Land Title Association. He was a past president of the Urban League of Greater New Orleans. He was board chair and founding legal counsel of Methodist Hospital New Orleans and its general counsel from 1965-90. Mr. McHale

is survived by his wife, Betty Woodward McHale, four daughters, nine grandchildren and four great-grandchildren.

PUBLICATIONS

Best Lawyers in America 2016

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, George C. Freeman III, John W. Joyce, Stephen H. Kupperman, H. Minor Pipes III, Thomas A. Roberts, Richard E. Sarver and Steven W. Usdin.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): Robert L. Atkinson, Thomas M. Benjamin, Robert T. Bowsher, Jude C. Bursavich, David R. Cassidy, David M. Charlton, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Emily Black Grey, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, Joseph R. Hugg, David R. Kelly, Eve B. Masinter, Van R. Mayhall, Jr., Trenton J. Oubre, Richard G. Passler, Claude F. Reynaud, Jr., Jerry L. Stovall, Jr., Thomas R. Temple and B. Troy Villa.

Domengeaux Wright Roy Edwards & Colomb, L.L.C. (Lafayette): James H. Domengeaux, James P. Roy, Elwood C. Stevens, Jr. and Bob F. Wright.

Gregorio, Chafin & Johnson, L.L.C.

(Shreveport): Sam N. Gregorio.

Herman, Herman & Katz, L.L.C. (New Orleans): Leonard A. Davis, Soren E. Gisleson, Maury A. Herman, Russ M. Herman, Stephen J. Herman, Brian D. Katz, James C. Klick and Steven J. Lane.

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

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

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

Chambers USA 2015

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

Louisiana Super Lawyers 2015

Gregorio, Chafin & Johnson, L.L.C. (Shreveport): Scott J. Chafin, Jr., Sam N. Gregorio and Julie Payne Johnson.

New Orleans Magazine

Sullivan Stolier Knight, L.C. (New Orleans): **Jack M. Stolier**, Top Lawyer for 2015.

COMING SOON!

COMING IN EARLY 2016! LSBA Online TECHCENTER

The Louisiana State Bar Association’s online TECHCENTER is set for launch in January 2016.

This virtual comprehensive resource will become the one-stop shop for legal technology news and guidance to improve the efficiency and productivity of law practices. Among the offerings:

- ▶ Discussions on technology choices for law practices.
- ▶ General tech training with free videos.
- ▶ Lawyer-centric tech training through the Chicago Bar Association’s online “How To” video library.

Stay tuned for more information via LSBA’s print and online publications and social media!

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UPDATE

LSBA Francophone Section Hosts Ontario Bar

About 140 judges, lawyers, law professors and officials from the Ontario Bar Association attended their annual convention in Lafayette and New Orleans from June 25-30. Hosting events for the group were the Louisiana State Bar Association's Francophone Section, the Lafayette City Parish Government, the U.S. District Court for the Western District of Louisiana and the Federal Bar Association's Lafayette Acadiana Chapter.

The event, which featured continuing education, lectures and meetings focused on a comparison between the justice systems in Ontario and Louisiana, was coordinated by a former member of the Canadian Supreme Court, Justice J.E. Michel Bastarache. Justices Julie Thorburn, Robert N. Beaudoin and Albert Roy also attended the event.

Louisiana 15th Judicial District Court Judge Patrick L. (Rick) Michot addressed the group. The visitors also were given a VIP tour of the Louisiana Supreme Court by Law Library of Louisiana Di-



Louisiana State Bar Association Francophone Section Chair Warren A. Perrin, left, with Attorney General of the Province of Ontario Madeleine Meilleur during the Ontario Bar Association's convention in Louisiana in June.

rector Georgia Chadwick and 4th Circuit Court of Appeal Chief Judge James F. McKay III.

Orleans Parish Criminal District Court Judges Recognized by *ABA Journal*

Orleans Parish Criminal District Court Judges Laurie A. White and Arthur L. Hunter, Jr. were recognized as two of 11 new "Legal Rebels" by the *ABA Journal*. Profiles of all honorees are featured in the cover story, "Meet our 2015 Legal Rebels," in the September 2015 issue, accessible online at: www.abajournal.com/magazine/article/meet_our_2015_legal_rebels.

This is the seventh year that the magazine has recognized "Legal Rebels," defined as legal professionals who are finding new ways to practice law, represent their clients, adjudicate matters and train the next generation. "Rebels" are nominated by readers and staff.

Judge White and Judge Hunter are being recognized for their work in founding the Orleans Re-entry Court Workforce Development Program. This program gives purpose, value and meaning to the time that lifers and inmates spend at Louisiana State Penitentiary at Angola.

Through the program, men serving life sentences teach new inmates GED classes and offer job training in trades like plumbing and carpentry. Prison officials manage the program and select life-sentence inmates they trust to do the teaching. Life skills, including anger management, parenting and character, are also taught by men serving life sentences.

White and Hunter said about 70 percent of released inmates who finish the program successfully reintegrate into society. Participants can win early release once they complete the program, which can take two years. They then serve five years' probation.



The New Orleans Bar Association's Young Lawyers Section coordinates twice-a-month lunch service at Ozanam Inn, a homeless shelter in downtown New Orleans. Recent volunteers included, from left, Christopher D. Wilson, Courtney J. Vance, Jeanne Amy, Christopher K. Ralston, Kimberly Silas, Nicole Gurba and Lauren E. Godshall.



Baton Rouge Bar Association (BRBA) President Robert J. Burns, Jr., center; BRBA Immediate Past President Darrel J. Papillion, right; and C. Frank Holthaus, Louisiana State Bar Association House of Delegates member, were among the attendees at the BRBA's Annual Bench Bar Conference, with the theme "Privacy, Please," in Alabama in July.



Several judges attended the July Baton Rouge Bar Association's Annual Bench Bar Conference, with the theme "Privacy, Please." The conference featured sessions covering all aspects of privacy, from social media and cyberspace to privacy in the workplace. Among the attendees were, from left, Judge Anthony J. Marabella, Jr., 19th Judicial District Court; Judge Alex W. (Brick) Wall, Jr., Baton Rouge City Court; and Judge Michael R. Erwin, 19th Judicial District Court.



Louisiana State University defensive line Coach Ed Orgeron, center, was the guest speaker during the Baton Rouge Bar Association's (BRBA) June 18 luncheon, organized by the BRBA Young Lawyers Section (YLS) Council. From left, Erin Sayes Kenny; Loren Shanklin Fleshman, YLS secretary; Scott M. Levy, YLS chair; Orgeron; Francisca M. Comeaux, Scotty E. Chabert, Jr. and Mackenzie Smith Ledet.

LBF Sets Grant Application Deadlines

The Louisiana Bar Foundation's grant application for 2016-17 funding is available online. The deadline for submitting grant applications is Dec. 1, 2015.

The Loan Repayment Assistance Program (LRAP) application for 2016-17 funding also is available online. The deadline for submitting LRAP applications is Feb. 12, 2016.

For more information, go to: www.raisingthebar.org.

Save the Date! LBF 30th Anniversary Fellows Gala

Friday, April 8, 2016
Hyatt Regency New Orleans

Discounted rooms are available Thursday, April 7, and Friday, April 8, 2016, at \$229 a night. To make a reservation, call the Hyatt at 1(888)421-1442 and reference "Louisiana Bar Foundation" or go to <https://resweb.passkey.com/go/labar-foundationannuagala>. Reservations must be made before Monday, March 14, 2016.

For more Gala information, contact Danielle J. Marshall at (504)561-1046 or email danielle@raisingthebar.org.

SEND YOUR NEWS!

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

Email your news items and photos to:

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

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

President's Message

LBF is Giving Kids a Chance

By President H. Minor Pipes III

Katelyn's dad was a cab driver in New Orleans for 30 years. As he was approaching the customer's destination, the customer robbed him and shot him seven times. He died on the job.

Alesha's dad was an ambulance worker in Cameron Parish. He was crushed when strong winds knocked the trailer housing his office off of its blocks. He was pinned between the building and a car. He died on the job.

This year it is estimated that more than 100 Louisiana workers will die on the job. More than 45,000 will be injured, leaving half of those injured disabled. Families of these individuals will face difficult challenges as they struggle to overcome the financial burden of these losses. Often a child's dream of going to college is crushed because of unexpected income loss and/or the necessity for the child to forfeit an education to help financially support other family members. To these children, the future can appear frightening. Already confronting difficult emotions, they

often have to confront the hurdle of funding their education beyond high school.

This year, Katelyn, Alesha and 15 additional students received \$52,500 in scholarships from the Louisiana Bar Foundation (LBF) Kids' Chance Scholarship Program. These scholarships are specifically awarded to dependents of Louisiana workers who have been killed or permanently and totally disabled in a workplace accident. The LBF Kids' Chance Scholarship Program is administered by the LBF and is governed by a committee representing a cross-section of the state's legal and workers' compensation communities. Since its inception in 2004, the LBF Kids' Chance Scholarship Program has awarded 235 students like Katelyn and Alesha scholarships



H. Minor Pipes III

totaling \$459,600.

The Louisiana Workers' Compensation Corp. is hosting its Annual Kids' Chance Golf Tournament on Oct. 19 at Louisiana Country Club. All proceeds benefit the LBF Kids' Chance Scholarship Program. For more information on the golf tournament, contact Dee Jones at (504)561-1046.

In addition, the LBF is participating in the first National Kids' Chance Awareness Week, Nov. 2-6. Please help us spread the word about this program to families in your area. Applications for the 2016-17 school year, along with the guidelines, will be available on the LBF's website on Dec. 1.

For more information or questions about the LBF Kids' Chance Scholarship Program or to find out how you can participate in a Kids' Chance Awareness Week activity, contact Dennette Young at (504)561-1046, email dennette@raisingthebar.org; or go to the LBF website at: www.raisingthebar.org/kidschance.

Grantee Spotlight: LBF Helping to Protect and Empower Against Abuse

October is Domestic Violence Awareness Month. One out of every four women in a relationship will experience some sort of physical abuse in her lifetime.¹ This could be your mother, your sister, your daughter, your friend. Domestic violence cuts across all socioeconomic lines regardless of gender, race, ethnicity, sexual orientation, income or age.

The domestic violence agencies that the Louisiana Bar Foundation (LBF) funds enable people to leave abusive relationships and seek safety. The essential services provided by these agencies include a 24-hour crisis line; shelter for abused spouses and their children; legal services; education concerning domestic and dating violence; and establishing collaborative relationships with law enforcement, judges, clerks of court

and prosecutors.

The LBF proudly supports the following domestic violence programs: Beauregard Community Concerns, Inc.; Catholic Charities/Project S.A.V.E.; Chez Hope; D.A.R.T. of Lincoln; Faith House, Inc.; Metropolitan Center for Women and Children; Oasis; Project Celebration; Safe Harbor, Inc.; Safety Net for Abused Persons; Southeast Spouse Abuse Program; St. Bernard Battered Women's Program; The Haven, Inc.; The Wellspring Alliance for Families, Inc.; and United Way of Central Louisiana.

FOOTNOTE

1. Patricia Tjaden and Nancy Thoennes. National Institute of Justice and the Centers of Disease Control and Prevention, "Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey," (2000).

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

Jason W. Burge	New Orleans
Hon. Mary L. Doggett	Alexandria
Hon. Desiree Duhon Dyess	Natchitoches
Katie L. Dysart	New Orleans
Jennifer B. Eagan	New Orleans
Brian C. Flanagan	Shreveport
Edmund J. Giering IV	Baton Rouge
Mark M. Judson	Lake Charles
Alida C. Hainkel	New Orleans
Robert C. Lehman	Mandeville
Dixon W. McMakin	Baton Rouge
Alysson L. Mills	New Orleans
Stephanie N. Prestridge	Baton Rouge
Elizabeth S. Sconzert	Mandeville
David O. Walker	Alexandria
Adrienne D. White	Mansfield

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BOXED ADS

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

DEADLINE

For the February issue of the Journal, all classified notices must be received with payment by December 18, 2015. Check and ad copy should be sent to:

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New Orleans, LA 70130

RESPONSES

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

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NOTICE

Notice is hereby given that Thomas G. Wilkinson is filing a petition and application for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for reinstatement may file notice of their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.



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ANSWERS for puzzle on page 210.

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The Last **WORD**

By Edward J. Walters, Jr.

IPSE DIXIT: MIGHT BE A LAWYER IF...

So, I'm in the Wal-Mart, in Galliano, in the checkout line, in a T-shirt and shorts, and the cashier says, "You a lawyer?" Is it that obvious? It certainly wasn't because of what I was buying: fishing tackle . . . fish hooks, corks, some Voodoo Shrimp and The Deadly Dudley Mauler Shrimp.

What is it about us? Do we exude something different? What makes folks think we might be lawyers?

Well, the other night — in the middle of the night — I was flipping through the standard 500 channels, trying to find something to fall asleep to, and I landed upon Jeff Foxworthy explaining how ". . . you just might be a redneck . . ." You know, "If you own a home that is mobile and five cars that aren't, you just might be a redneck." Funny stuff.

I thought about why I couldn't get back to sleep and I realized it was because I was thinking about an upcoming court appearance. Then, this article came to me:

If you've ever been unable to fall asleep in the middle of the night because you're arguing, in your mind, a motion you are going to argue tomorrow morning, you just might be a lawyer.

If you've ever gotten up in the middle of the night and dashed to your office to make sure that case doesn't prescribe TOMORROW!, you just might be a lawyer.

If you've ever left your coat hanging on the back of your chair so your senior partner would think you must be just down the hall, you just might be a lawyer.

If you've ever put on the same blue pinstriped suit that your co-counsel put on the first day of a jury trial, you just might be a lawyer.

If you've ever gone from a paper calendar to a computer calendar and want your paper calendar back, you just might be a lawyer.

If you've ever sat through the judge's oral reasons for judgment and thought, "He must have attended a different trial," you just might be a lawyer.

If you've ever gotten to the end of spending an hour writing a KILLER brief and your computer freezes and won't speak to you, you just might be a lawyer.

If you've ever been in court and thought to yourself, "That is the dumbest argument I have ever HEARD," you just might be a lawyer.

If you've ever been in court and thought to yourself, "That is the dumbest argument I have ever MADE," you just might be a lawyer.

If you've blamed your new phone system for the fact that you did not return that call, not your long lunch at Galatoire's, you just might be a lawyer.

If you've ever called someone back during lunchtime because you really don't want to talk to them, you just might be a lawyer.

If you've ever thought (on Monday), "Hey! We've got time — this ain't really due until Friday," you just might be a lawyer.

If you've ever thought (on Wednesday), "Hey! We've got to get ON this — it's due Friday," you just might be a lawyer.

If you've ever thought (on Thursday), "Hey! This damn thing is due TOMORROW!!!" you just might be a lawyer.

If you've ever been on the Internet looking at the top 10 funniest news bloopers when your senior partner walks in, you just might be a lawyer.

If you've ever gone to court and realized you have NO IDEA what your client looks like, you just might be a lawyer.

If you've ever fussed at your staff for not putting that treatise back on the shelf where it belongs, only to find it under a pile of mail on your desk, you just might be a lawyer.

If you've ever corrected something that you thought was very poorly written and then found out that YOU wrote it, you just might be a lawyer.

If you've ever been in a deposition and took your shoe off and now you can't find it, you just might be a lawyer.

Well, I'm going back to sleep. Maybe next time I go to the Galliano Wal-Mart, I'll wear a coat and tie.

Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal's Editorial Board. He is the chair of the LSBA Senior Lawyers Division and editor of the Division's e-newsletter Seasoning. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)



The Louisiana Bar Journal is looking for authors and ideas for future "The Last Word" articles. Humorous articles will always be welcomed, but the scope has broadened to include "feel-good" pieces, personal reflections, human interest articles or other stories of interest. If you have an idea you'd like to pitch, email LSBA Publications Coordinator Darlene M. LaBranche at dlabranche@lsba.org.

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