

# LOUISIANA BAR JOURNAL

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Volume 66, Number 3

## Code of Professionalism

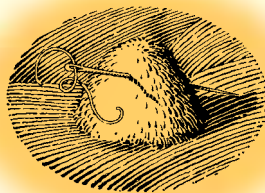
### Also Inside:

- Legislative Updates Regarding Juvenile Matters in Louisiana
- Attracting Moderate Income Clients: Why Expanding Your Client Base Can Increase Your Bottom Line
- Louisiana's Legal Legends: The Dawkinses of Union Parish
- 2018 Alternative Dispute Resolution Directory





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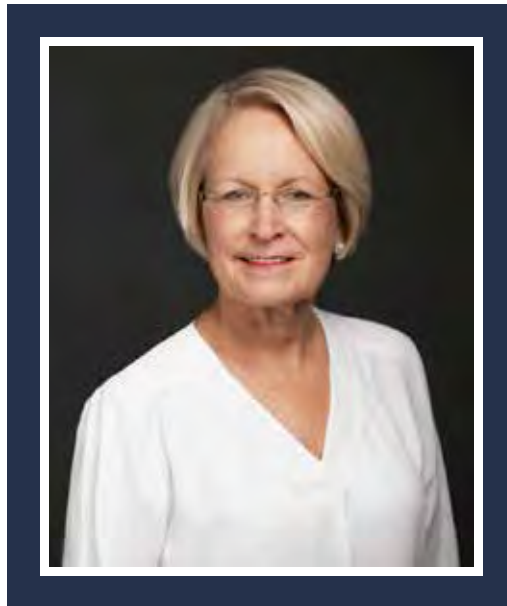


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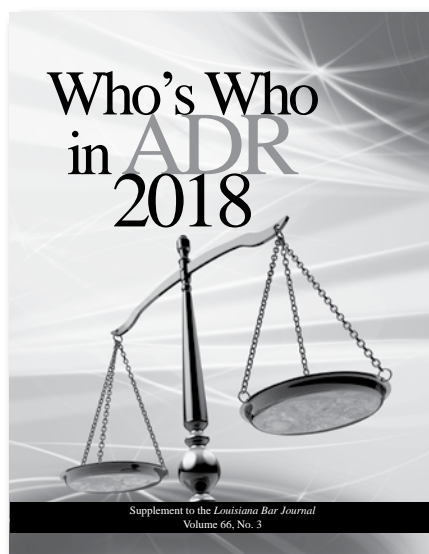
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By John E.  
McAuliffe, Jr.

# 40 Years (and Counting?)

**A**s this issue of the *Louisiana Bar Journal* is distributed to our members, our very newest lawyers will be sworn in on Oct. 15. We congratulate all of them and welcome them to this practice of law.

It was 40 years ago in October 1978 that I and two of my best friends were sworn in as new attorneys. I consider myself lucky to have attended law school with such close friends. However, we all took different paths after graduation.

Jean Champagne, Leon Cannizzaro and I all graduated from De La Salle High School. The three of us then attended and graduated from the University of New Orleans. Finally, we three graduated from Loyola University Law School in 1978. At that point, we finally “separated” from each other — at least as far as our distinct careers.

Jean began his career as a CPA-lawyer with one of the “big eight” accounting firms. Thereafter, he has been involved with several businesses and currently works for a bank. He is well known in business, banking and civic circles in St. Tammany Parish. (Yes, he moved away to that faraway land on the north shore of Lake Pontchartrain.)

Leon began his career as an assistant district attorney in Orleans Parish and then had a short stint as a criminal defense attorney. After that came his political career as a trial court judge, an appellate court judge and finally as Orleans Parish district attorney. He, of course, remains in that office.

My path was different from both of my friends. I spent one year as an in-house corporate attorney. I then left the corporate world and became an insurance defense attorney, where I am today.

*“...Hold on to those good friends you made in law school. They will continue to be important to you. They can be an unending source of counsel for you, and sometimes your next position or opportunity can result from your [law school mates]...”*

The three of us have remained close friends. We continue to meet for lunch. We continue to discuss our legal and non-legal problems. We have attended weddings for all of our respective children. Our wives are friends. We all miss each other’s parents although we continue to tell stories about them. (I think I do a fairly good imitation of Jean’s father. No need to imitate Leon’s father. If you see Leon, you are seeing his Dad.)

All of this leads to two important points for our new attorneys.

First, hold on to those good friends you made in law school. They will continue to be important to you. They can be an unending source of counsel for you, and sometimes your next position or opportunity can result from your continued associations with your law school mates. Through the years, you will need advice on issues unrelated to your particular field of practice. You will find your law school friends may well have invaluable information and insight for you. Most

of all, your good friends are in the best position to tell you when YOU are wrong or should change something in your life.

Second, there are many careers where a law degree gives you a “foot in the door” and an advantage. You do not have to actually “practice” law. Business, accounting, banking and other industries have a need for well-educated (*i.e.*, law degree) and innovative professionals. Keep your options open. Your first career track does not have to be your last. Again, those law school friends may be in the best position to assist you in any career decisions.

We salute our new admittees. Many of you, at times, exhibited a herculean effort in balancing your studies, family life, work and personal obligations. You and your friends will now join our profession, and we hope your career is rewarding and gratifying as you push to YOUR 40 years of practice.



By Barry H. Grodsky

# “Try It. You’ll Like It!”

A few years ago, my wife, daughter and I went to a seafood restaurant for dinner. My daughter, Caroline, had never seen, much less eaten, a raw oyster and was fascinated when a dozen of them were delivered to me. As she kept staring, I asked if she wanted to try one. “Nope.” I asked again, same response. Finally, I asked, “Why not?” She said, “Because I don’t like them.” I replied, “How do you know? You’ve never had one.” I gave a lot of reasons why she should try an oyster and, reluctantly, Caroline finally ate one with a bit of cocktail sauce. Two bites, then she spit it out. “That’s fine,” I said, “at least you tried one.”

A few minutes later, she asked if she could try another one. This time the result was different. She liked it. She proceeded to eat the last six I had on my plate.

That dinner came to mind when I bumped into a well-known New Orleans attorney sometime ago. He had been disillusioned by a prior experience with the Bar. I asked him to become a mentor in the Transition Into Practice Program. He said no. I asked why not. He said he would not like it. We went back and forth and then he said, “You’ve got five minutes to convince me.” Five minutes later, he decided to become a mentor. He went through the mentor training, completed the mentor program and went to the mentor reception. He admitted that, once he was convinced to try it, he liked it. Amazing!

As long as I have been in Bar leadership, I have preached this — try something, anything, for the Bar. You will be amazed. Perhaps I am the Bar’s biggest cheerleader. That’s fine. But I wouldn’t do this if I did not believe in our Bar. I am convinced now more than ever that many lawyers simply don’t know just how terrific our Bar is and what it has to offer.

At a recent meeting of the National Conference of Bar Presidents, an affiliate of the American Bar Association, the moderator asked the group — more than 100 people were in attendance — if anyone was satisfied with his/her Bar. I looked around and no one had raised a hand. I whispered to Loretta Larsen, our Executive Director, that I was really happy. She said, “Raise your hand!” I did. Only one other Bar president did the same.

I see significant problems in other states — unfriendly Legislatures controlling the Bars, poor relationships between the Bars and the state courts, Bars being sued, the inability to get volunteers, turmoil in certain courts. We have none of these problems. What we have is an energetic Bar with countless volunteers and Loretta and our friends at the Bar who do an unbelievable job. But there are far too many among our approximately 23,000 members — judges and lawyers alike — who are simply afraid of sticking their toes in the water. Perhaps fear of the unknown — like eating an oyster for the first time — is preventing too many of our members from joining in.

I understand. We’re all busy with jobs and families. Other interests take our time. There are only so many hours in a day. But, believe me, you’re missing out. Just like my daughter, try one. Join a committee or a section. Don’t just attend a CLE, but give one. Become a mentor. Run for a seat in the House of Delegates. Volunteer for a law school orientation program. Submit an article for the *Louisiana Bar Journal*. Attend the LSBA’s Midyear Meeting or Annual Meeting. Do one thing. That’s all I ask.

Becoming engaged in Bar activities can be outside the law, too. Let’s talk about your non-legal interests. The *Journal* has featured articles on Anthony M. (Tony) DiLeo’s paintings and Judge Michael A. Pitman’s

and Randy P. Roussel’s photography. What interests do you have outside the practice? Let’s publish it.

It’s so easy to get involved. Check out the LSBA’s website and find something, anything, which interests you and just do it. For our young lawyers, the Young Lawyers Division has great programs, many focused on access to justice. For more seasoned lawyers, get active in the Senior Lawyers Division. Each Division has much to offer, including a joint lunch and CLE program in Baton Rouge in February.

Those who get involved see the merits and gain from it. Often, once you are in, participation expands. But, almost without exception, those who complain the most about the Bar do the least for it. If you give to the Bar, the Bar will give back to you many times over.

I have spoken personally to many lawyers who have become active; some have become very involved and others have done one thing. But, frankly, that’s all I’m asking. Do one thing — anything — for the Bar. What’s stopping you? The simple answer is “you.” If I can convince just one member to perform one Bar function, then I’ve succeeded. But with my faith in the Bar, participating in its programs and activities, having witnessed the true camaraderie of our members at Bar functions and seeing how much you get back just by giving a little, I know that if you try it, you really will like it.

I also know that, as you give to the Bar, both the Bar and you will benefit. I can assure you of that. Give it a try and see what the Bar can offer. There’s no doubt that, when you bite into this oyster, you will find your pearl.

*Barry Grodsky*

# Code of Professionalism

***The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.***

- MY WORD is my bond.
- I WILL conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- I WILL NOT knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- I WILL be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- I WILL allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- I WILL NOT abuse or misuse the law, its procedures or the participants in the judicial process.
- I WILL cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.
- I WILL NOT engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- I WILL support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- I WILL work to protect and improve the image of the legal profession in the eyes of the public.
- I WILL endeavor to improve our system of justice.
- I WILL use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- I WILL seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- I WILL be supportive of new members in the profession.
- I WILL stay informed about changes in the law, communication, and technology which affect the practice of law.

*Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. This revised Code, a product of the LSBA Committee on the Profession, was approved by the LSBA HOD in January 2018 and approved by the LA Supreme Court in March 2018.*



# LSBA and Louisiana Supreme Court Update Attorney Code of Professionalism

By Alicia M. Bendana

The Louisiana State Bar Association's (LSBA) Professionalism and Quality of Life Committee began drafting Louisiana's first attorney Code of Professionalism<sup>1</sup> in 1991. The LSBA's House of Delegates and Board of Governors approved the first Code at its Midyear Meeting the following year, and, on Jan. 20, 1992, the Louisiana Supreme Court adopted it.

In 2017, the LSBA's Committee on the Profession, under the leadership of current LSBA President Barry H. Grodsky, formed a subcommittee to revisit, update and modernize the 26-year-old Code of Professionalism. At the outset, the subcommittee agreed it would not rewrite the Code and would style any additions or changes to conform with the existing language in the Code. The subcommittee conducted numerous meetings to discuss current challenges to attorneys, the judicial system and the image of the legal profession. After numerous drafts, the subcommittee agreed on a final draft of an amended Code. The LSBA's House of Delegates and Board of Governors approved the proposed amended Code at the LSBA's Midyear Meeting in January 2018 and the Louisiana Supreme Court adopted the amended Code of Professionalism, as written, on April 11, 2018.

The Code now, as before, represents aspirational goals for Louisiana attorneys who seek to implement and maintain standards of civility and professionalism that exceed the minimum mandated by the Louisiana Rules of Professional Conduct. A "redline" of the LSBA's new amended Code of Professionalism is below. All new

language is underlined and any revised or updated pledges are in *italics*.

## Code of Professionalism

The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.

► My word is my bond.

► I will conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.

► *I will not knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.*

► *I will be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.*

► I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.

► I will not abuse or misuse the law, its procedures or the participants in the judicial process.

► *I will cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harass-*

*ment of any other counsel or party.*

► *I will not engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.*

► I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.

► I will work to protect and improve the image of the legal profession in the eyes of the public.

► I will endeavor to improve our system of justice.

► I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.

► I will seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.

► I will be supportive of new members in the profession.

► I will stay informed about changes in the law, communication, and technology which affect the practice of law.

In 1997, the Louisiana Supreme Court amended its Rules for Continuing Legal Education to require that every Louisiana lawyer attend at least one hour of professionalism CLE each year. Attorneys have been taking professionalism courses on essentially the same professionalism topics for the past 20 years. The new amended Code opens up a number of additional topics related to attorney professionalism which the Committee on the Profession hopes will inspire education, discussion and action. Some of the new changes to the Code include the following.

## **Preamble: The Law is a Profession**

The new preamble to the Code stresses that the law is a profession and that “we, as lawyers, should always aspire to the highest ideals of our profession.” The preamble identifies the core characteristics of the professional attorney as honesty and integrity and stresses the professional attorney’s responsibility to the judicial system, the public, colleagues and the rule of law. The new Code encourages attorneys to promote and commit to civility in their professional lives and to work to restore greater civility to the profession.<sup>2</sup>

## **Inclusive Thinking**

The new Code establishes an aspirational goal for lawyers to be mindful of refraining from actions or commentary that would be considered demeaning or derogatory toward others. This concept of inclusive thinking goes beyond the boundaries of anti-discrimination and hopes to inspire attorneys to consider and incorporate alternative perspectives, experiences, values, expectations and modes of thought before speaking and taking action.

## **Cooperation**

The Bar understands that attorneys must be zealous advocates for their clients, and, especially in high-stakes litigation, opportunities for cooperation do not always present themselves. Attorneys in adversarial situations should, however, challenge themselves to look for opportunities for cooperation, communication, compromise and search for creative solutions. A “scorched earth” approach in litigation and negotiation can be counter-productive as such an approach costs clients money and frequently diverts attorneys’ time, energy and focus away from what, oftentimes, amounts to a smaller number of genuine and relevant disputed facts or issues. Likewise in transactional matters, adversaries who are pushed too hard may refuse to agree to deal points “on principle” despite the fact that such concessions may cost the party nothing and create goodwill which will facilitate deal closing.<sup>3</sup>

## **Public Image of the Legal Profession**

The public’s perception of, and faith in, the legal profession is waning. There is a need to preserve the image of the legal profession in the eyes of the public and to support programs and activities that educate the public about the law and the legal system. Attorneys should aspire to conduct themselves in a manner that will encourage trust of the legal profession by members of the public. Attorneys should also be mindful of their obligation to enhance the image of the legal profession in all of their professional activities and be so guided in comments about the judiciary, opposing counsel or the members of any other profession, and in the methods and contents of advertising and public communications.

## **Improve System of Justice**

As a self-governing legal community, attorneys should always seek to improve the law and to improve access to, and the administration of, justice. The hope is that the new Code will inspire Louisiana attorneys to work with judges and other members of the bar to strive to make the legal system more accessible, affordable and responsive to all.

## **Social Media**

The American Bar Association’s Legal Technology Resource Center surveys individual attorneys’ and law firms’ use of blogging and social media. The following statistics from the Center’s 2016 Legal Technology Survey Report reveal a majority of attorneys and law firms now use social media for professional purposes:<sup>4</sup>

► 74 percent reported that their firms have a presence on social media (only 26 percent do not).

► 76 percent reported individually using social media for professional purposes (only 24 percent do not).

► 78 percent report that their firms maintain a presence on LinkedIn (only 22 percent do not).

► More than 85 percent report that

they individually maintain a presence on LinkedIn for professional use (less than 15 percent do not).

This was not the case 20 years ago. The new Code introduces the concept of eProfessionalism, defined as the application of professionalism to an attorney’s Internet activities. Beyond the firm website and use of LinkedIn (a professional networking social media platform), attorneys are now communicating for professional purposes through blogging, Facebook and Twitter. Because some of these social media platforms were originally developed and used for personal communications, attorneys focused on professionalism should be mindful about drawing a distinction between private and public communications on such platforms as those lines are not always clear.<sup>5</sup>

## **Pro Bono and Public Service**

The new Code recommends that attorneys seeking to deepen their commitment to professionalism look for opportunities to provide pro bono services to those in need. While there are many ways that private citizens, including attorneys, can serve the public interest, only attorneys can provide legal representation to the indigent. Notwithstanding the primary benefits of assisting the poor and improving the system of justice, attorneys who do pro bono work often report a number of professional and personal benefits including gaining additional experience, education, increased recognition and personal satisfaction.<sup>6</sup> Moreover, additional incentive exists for pro bono service in Louisiana. Currently, Louisiana attorneys must earn 12.5 hours of CLE credit each year to maintain their law licenses. In March 2015, the Louisiana Supreme Court announced Rule XXX, Rule 3, Regulation 3.21 which went into effect May 1, 2015. The Rule states that attorneys who provide pro bono legal representation “shall receive one (1) hour of CLE credit for each five (5) hours of pro bono representation, up to a maximum of three (3) hours of CLE credit for each calendar year.”<sup>7</sup>



## Mentorship

As all experienced attorneys know, law school does not fully prepare new attorneys for the practice of law. Beyond what can be learned in books, new attorneys must learn the most effective ways of advocating to judges and juries, must learn how to handle themselves around difficult, more experienced opposing counsel, and must learn how to manage difficult clients, all while assessing the value of participating in the local legal community, assisting the less fortunate through pro bono service, and self-monitoring their behavior pursuant to the Rules of Professional Conduct. The new Code does not advocate forced mentoring but rather encourages experienced attorneys to look for opportunities to assist new attorneys navigate the many difficult challenges they will inevitably face as their careers progress. This goal also seeks to instill a professional and service-focused mindset in the new members of the profession.<sup>8</sup>

## Continuing Skill Development and Adaptation

Graduating from law school, passing the bar exam, and taking required continuing legal education classes should not be the limit of an attorney's education. The amended Code sets an aspirational goal for attorneys to, over the course of their careers, continually self-evaluate capacities and skills that clients want and need. An attorney's development of skills is a life-long process acquired through stages. Given today's ever-changing legal landscape, attorneys should seek to be comfortable adapting to fast-paced changes in the law, communication and technology.

## Conclusion

The practice of law is a profession. As members of that profession, attorneys pursue a common calling in the spirit of public service for the public good. Throughout the history of this country, citizens have looked to the legal profession for leadership and guidance. In approving the above



amendments to Code of Professionalism, the LSBA and the Supreme Court seek to expand attorneys' professionalism goals and reinvigorate discussion, education and action on a broader, more current scope of professionalism topics.

## FOOTNOTES

1. Forty-four of the 50 state bar associations, as well as many local bar associations and courts, have adopted voluntary Codes of Professionalism. [www.americanbar.org/groups/professional\\_responsibility/resources/professionalism/professionalism\\_codes.html](http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes.html).

2. Resources, Law as a Profession: Neil Hamilton and Verna Monson, "The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law," 24 Geo J. Legal Ethics 137, 140 (2011); Michael B. Greenstein, *On Being a Lawyer of Good Reputation, and Why That Matters* (March 17, 2011), <http://spousealouse.wordpress.com/2011/03/17/on-being-a-lawyer-of-good-reputation-and-why-that-matters/>; Daniel L. Harris and John V. Acosta, "Conduct Counts, On Professionalism: Professionalism for Litigation and Courtroom Practice," 67 Or.St.B.Bull. 40 (2007); Christopher J. Masoner, "The Importance of Perceptions," 75 J. Kan. B.A. 7 (March 2006); Pamela Bucy Pierson, *The Business of Being a Lawyer* (2014); Heather Schlegel, *In Trust We Trust: Why Reputation is the Currency of the Future*, CNN (Sept. 23, 2014), <http://edition.cnn.com/2014/09/23/opinion/in-trust-reputation-currency/>; Fred C. Zacharias, "Effects of Reputation on the Legal Profession," 65 Wash. & Lee L. Rev. 173 (2008).

3. Resources, Cooperation: Robin Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (Bruce Patton ed., 3rd ed. 2011).

4. Allison Shields, ABA TECHREPORT 2016, *Blogging and Social Media*, [www.americanbar.org/groups/law\\_practice/publications/techreport/2016/social\\_media\\_blogging.html](http://www.americanbar.org/groups/law_practice/publications/techreport/2016/social_media_blogging.html).

5. Resources, Social Media: ABA Legal Tech-

nology Resource Center, *Social Media for Lawyers*, [www.americanbar.org/groups/departments\\_offices/legal\\_technology\\_resources/resources/social-media.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/social-media.html). Jared Correia, *Twitter in One Hour for Lawyers* (2012); Dennis Kennedy and Allison C. Shields, *Facebook in One Hour for Lawyers* (2012); Dennis Kennedy and Allison C. Shields, *LinkedIn in One Hour for Lawyers* (2d ed. 2013); Ernie Svenson, *Blogging in One Hour for Lawyers* (2012); Cal. Comm. On Prof'l Responsibility & Conduct, Formal Op. 2012-186 (2012); Col. Bar Ass'n Ethics Comm., Formal Op. 127, *Use of Social Media for Investigative Purposes* (2015); Dist. of Columbia Bar, Op. 370, *Social Media I: Marketing and Personal Use* (2016); Dist. of Columbia Bar, Op. 371, *Social Media II: Use of Social Media in Providing Legal Services* (2016); N.Y. State Bar Ass'n Commercial & Federal Litigation Section, *Social Media Ethics Guidelines* (updated June 9, 2015); Pa. Bar Ass'n Comm. on Ethics & Prof'l Responsibility, Formal Op. 2014-300 (2014), *Ethical Obligations for Attorneys Using Social Media*.

6. Resources, Pro Bono and Public Service: Roxanne J. Medina-Solomon, "Variety is the Spice of Pro Bono," 78 Mich. B.J. 1312 (1999); Deborah J. Rhode, "Pro Bono in Principle and in Practice," 53 J. Legal Educ. 413 (2003); Barbara A. Ruth, *Tax Benefits Associated With Pro Bono and Other Volunteer Activities*, <https://www.duanemorris.com/articles/article3160.html> (March 3, 2009); Melissa H. Weresh, "The Chicken or the Egg? Public Service Orientation and Lawyer Well-Being," 36 U. Ark. Little Rock L. Rev. 463 (2014).

7. "To receive credit, the Member shall submit MCLE Form 6 (Application for CLE Credit for Pro Bono Services)." *Id.*

8. Resources, Mentoring: Ida Abbott, *The Lawyer's Guide to Mentoring* (2000); Ida Abbott, *Working with a Mentor: 50 Practical Suggestions for Success* (2006); Matthew Christiano and Amy Timmer, *Maximizing Relationships to Become a Successful Lawyer: Innovative Mentoring for Lawyers and Law Students* (2012); Lori L. Keating and Amy Timmer, *Mentoring: No App for That, in the Relevant Lawyer: Reimagining the Future of the Legal Profession* (Paul A. Haskins ed., 2015); Michael Maslanka, *At Your Desk*, Texas Bar Blog (Sept. 21, 2015), <http://blog.texasbar.com/2015/09/articles/texas-bar-tv/mike-maslanka-your-desk/>; National Legal Mentoring Consortium, <http://www.legalmentoring.org>.

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# Legislative Updates Regarding Juvenile Matters in Louisiana

By Katy Walker, Ph.D.



Over the past decade, courts and legislatures have increasingly repudiated the punitive responses that characterized juvenile sentencing in the 1990s. These policy reforms acknowledge and further the juvenile justice system's focus on rehabilitation and individualized treatment. Additionally, a large body of research has emerged in the past three decades demonstrating the need to further examine the use of incarceration in the juvenile justice system. Numerous studies have established that juvenile incarceration fails to help rehabilitate young people, finding that 70 to 80 percent of youth are arrested within two years of release. This research also shows that incarceration is no more effective in reducing future criminality or delinquency among young people than probation or alternative sanctions.<sup>1</sup>

While the groundwork for juvenile justice reform in Louisiana was initiated in 2003,<sup>2</sup> there has been a resurgence of effort among lawmakers in recent years to follow through on this promise. In doing so, they have joined policymakers and stakeholders nationwide who recognize that young people have an enormous capacity for change and positive growth, notwithstanding the severity of their crimes.

During 2016 alone, the Louisiana Legislature passed a trilogy of sweeping reforms. That year, with the passage of the "Raise the Age Act" (Act 501), Louisiana joined 41 other states that have raised the age of juvenile jurisdiction to 17. The year 2016 also saw the enactment of a law (Act 499) to "right-size" the juvenile justice system by ensuring that children are not kept in state facilities for excessive periods of time and by mandating data reporting about youth in detention centers and juvenile prisons. Additionally, the "Safe and Fair Return Act" (Act 617) mandates that children in the custody of the Office of Juvenile Justice (OJJ) receive semi-annual review hearings to ensure that the children are receiving appropriate services and to determine whether they are making progress in custody in anticipation of their eventual release.

During the 2018 legislative session,

the Louisiana Legislature made further strides to bring the state into line with national best practices in juvenile law and procedures, passing a series of reforms that affect a range of juvenile issues, explained below.

### **Act 467: Rolling Back Mandatory Sentences for Youth**

The passage of Act 467, signed into law by Governor Edwards on May 23, marks a historic shift in how the state treats young people who have committed more serious offenses. Specifically, Act 467 rolls back mandatory sentences for youth as articulated in La. Ch.C. art. 897.1, colloquially referred to as "the Vitter Law."<sup>3</sup>

Under previous law, youth 14 years of age and older and adjudicated in the juvenile justice system<sup>4</sup> for first-degree murder, second-degree murder, first degree/aggravated rape or aggravated kidnapping were committed to secure care until the age of 21 ("juvenile life") without the opportunity to have their sentences modified. Additionally, for children adjudicated delinquent for armed robbery, while the judge had the discretion to impose whatever sentence he or she deemed appropriate (up to age 21), a child had to serve the entire length of the sentence imposed without the possibility of review or modification of the sentence.

The resulting dynamic of this law was that young people were incarcerated far past the point of rehabilitation,<sup>5</sup> which was wasteful and counterproductive. Moreover, the inability of judges to modify these sentences not only discouraged children from doing well while in custody but also proved problematic for facility staff who lacked the ability to provide incentives to the children to excel under their care. Another detrimental consequence of the law was that children, upon completing their sentences, were released without any supervision or re-entry services to help them successfully re-enter their communities.

Under Act 467, however, a child age 14 or older and adjudicated for first-degree/aggravated rape (La. R.S. 14:42) or aggravated kidnapping (La. R.S. 14:44) may now have his or her case modified by a judge after serving at least three years in the custody of OJJ. In cases involving armed robbery (La. R.S. 14:64), a judge may modify a child's disposition after three years or, if the disposition is shorter than three years, after two-thirds of his time is served. Unfortunately, dispositions for first- or second-degree murder remain ineligible for modification. The provisions of the new law apply to all children in the custody of OJJ on or after Aug. 1, 2018.

These changes bring state law into line with an increasing body of research indicating that there is little or no correlation between a child's length of stay in a residential facility and his or her likelihood of reoffending.<sup>6</sup> Indeed, research shows that placement in a juvenile facility beyond six months is ineffective at reducing recidivism and may even increase recidivism rates.<sup>7</sup> Mandatory sentences also ignore the fact that, as youth mature, they typically outgrow the types of behavior that lead to contact with the juvenile or criminal justice systems. This is frequently referred to as the "age-crime curve" and holds true even for those youth who commit violent offenses.<sup>8</sup>

Act 467's amendments to La. Ch.C. art. 897.1, while imperfect, bring Louisiana's law into closer alignment with the purpose of the juvenile justice system, as well as recent Supreme Court cases recognizing the need for individualized sentencing in juvenile cases due to a juvenile's diminished culpability and heightened ability for rehabilitation.

### **Act 355: Ensuring Regular Post-Dispositional Hearings for Youth in State Custody**

In 2016, state lawmakers passed legislation (Act 617) requiring routine in-person hearings before a judge for children in the custody of OJJ. The law



stipulates that all children in OJJ custody receive review hearings every six months to determine whether they are making progress in custody (La. Ch.C. art. 906). Additionally, for children serving time in secure care for a felony-grade offense that is not a crime of violence, a contradictory hearing must occur after nine months to determine whether continued confinement is necessary. The child may remain in OJJ custody only if the judge determines that his treatment cannot be completed in a less restrictive setting (La. Ch.C. art. 898).

Although these went into effect in 2016, confusion over who is ultimately responsible for scheduling the hearings resulted in very few of these legally mandated hearings being set. Act 355 — which went into effect Aug. 1, 2018 — clarifies that it is the court's responsibility to set the hearing dates and specifies that the hearing date be set by the court at the time of disposition.

It also includes a schedule of hearings for children who were already entitled to them under current law. Thus, for children who are currently in state custody but have not yet received a required hearing, the court must schedule one no later than Sept. 30, 2018, for a date no later than Oct. 30, 2018. The new procedures and this schedule apply to both review hearings and contradictory hearings.

By facilitating multiple opportunities for a judge to review a child's progress, mandatory post-disposition hearings ensure that a child is receiving the necessary treatment and services and create an incentive for youth by providing a chance for them to demonstrate their progress and growth. Perhaps most significantly, these hearings will help to ensure that children are not being held for excessive periods of time.

Data shows that Louisiana incarcerates children for extraordinary long lengths of time<sup>9</sup> — particularly when compared to the rest of the nation. In fact, youth in Louisiana typically face extremely long sentences that do not necessarily correlate with the seriousness of their offense. Data shows that average sentences for violent and non-violent

felonies are nearly identical. Youth with non-violent felonies face, on average, the longest sentences. Further, as with sentence length, the amount of time a child has served does not necessarily correlate with the seriousness of his offense. In fact, youth serving time for non-violent felonies and misdemeanors were more likely to have already served the majority of their sentences than youth with violent felony offenses.<sup>10</sup>

Children incarcerated for long periods of time in the juvenile system increases recidivism and wastes public resources.<sup>11</sup> Mandated, semi-annual review hearings where the presumption is for not continuing detention will help cut down the excessive lengths of stay currently characteristic of Louisiana's juvenile justice system by facilitating an opportunity for judges to consider motions to modify a child's disposition and release him/her from custody. Further, regular in-person hearings allow judges to assess the safety and well-being of each child while in state custody, including the conditions of confinement.

### **Act 453: Ending the Practice of Indiscriminate Shackling**

In much of Louisiana, juveniles who are detained pre-trial are routinely shackled in court. This typically happens without any regard for a child's age or charge or whether the child poses a safety or flight risk. Beyond the obvious repercussion of emotionally and psychologically harming youth,<sup>12</sup> indiscriminate shackling, as in the case of adults, interferes with a child's presumption of innocence<sup>13</sup> and runs counter to the rehabilitative focus of juvenile courts. Act 453 remedies this troublesome practice by eliminating the use of indiscriminate shackling in juvenile court, allowing it only under very limited circumstances. In doing so, Louisiana joins 31 other states that have passed legislation limiting the use of restraints on juveniles.

Act 453 amends La. Ch.C. art. 408, providing that a child may not be shackled unless a request is made by law enforcement or prosecutors. A judge must

then find that the child presents a particularized risk of flight or physical harm to himself or others. The fact that a child is detained is not sufficient justification for restraints. If a request for a child to be shackled is made, the child's attorney must be provided an opportunity to be heard and object on the record, but the child does not need to be present for the proceedings. This law only applies inside the courtroom — not in the detention center, during transportation, or if the child is waiting outside the courtroom for the hearing to begin.

### **Act 321: Clarifying OJJ's Authority over Children in its Custody**

Act 321 clarifies that OJJ has the authority to move a child into a less-restrictive setting within its custody continuum. The law further provides that, in cases where OJJ is seeking the release of a child from its custody, it must return to court for a contradictory hearing.

Louisiana's higher courts have already ruled that OJJ maintains the authority to step a child down from a more secure to a less secure setting. As the 4th Circuit Court of Appeal stated in *State in the Interest of E.P.*:

Louisiana public policy provides "that commitment of a juvenile to the care of the department is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile." La. Ch.C. art. 906(A) (2). La. Ch.C. art. 901(D) provides that OJJ "shall have sole custody of the child and . . . shall determine the child's placement, care, and treatment, and the expenditures to be made therefore, through appropriate examinations, tests, or evaluations conducted under the supervision of the department."<sup>14</sup>

Act 321 simply adjusts the statute to comply with case law. This law will



allow OJJ, where appropriate, to move youth into less-restrictive settings and better respond to the individualized needs of the young people in its custody. As stated above, research demonstrates that keeping children in secure care for too long actually increases the likelihood that they will commit another offense. Youth will be better served by OJJ freely exercising its authority to determine the appropriate care and treatment of youth in its custody and allow OJJ to better fulfill the rehabilitative mandate of the state's juvenile justice system.

### Act 654: Delay of "Raise the Age"

Due to ongoing questions about the state's fiscal health and related concerns over OJJ's capacity and funding, the 2018 regular session also resulted in a minor setback for Louisiana's recent law change regarding the state's upper-age limit of juvenile court.

In 2016, the Legislature passed Act 501 to raise the age of criminal responsibility so that Louisiana's 17-years-olds would no longer be automatically prosecuted as adults. At the time, Louisiana was one of only nine states left in the country who had not passed legislation to change the upper-age limit of juvenile court. The original legislation changed the definition of a child, starting after June 30, 2018, to include 17-year-olds who commit a delinquent act on or after July 1, 2018, when the act is not a crime of violence as defined in R.S. 14:2. After June 30, 2020, the definition of a child would include anyone under age 18 who commits any delinquent act, including crimes of violence on or after July 1, 2020.<sup>15</sup>

During the 2018 session, the Legislature passed Act 654, which delays the effective date of the "Raise the Age" Act. Under the new law's revisions, the first phase of implementation will now take effect on March 1, 2019. The second phase of implementation, which will fully raise the age of criminal jurisdiction to 18, will take effect as originally scheduled in July 2020.

Fortunately, there can be no further

delays to the first phase of the law's implementation. The timeline for full implementation in 2020 should remain on track. Many of the aforementioned law changes — including Acts 467, 355 and 321 — will help safely reduce the number of youth in OJJ custody, freeing up beds and funding. Additionally, in the third special session, lawmakers allocated an additional \$4 million to OJJ to help cover any additional costs that might be required for implementation of the law.

### Hope for More Changes Ahead

In 2003, the Louisiana Legislature explicitly acknowledged that the goals of the state's juvenile justice system should be prevention, protection, rehabilitation and restoration.<sup>16</sup> Louisiana has made significant strides toward actualizing these four core principles, but significant work remains. Louisiana lawmakers should continue to move away from "tough on crime policies" by enacting policies and programs, among others, that divert more children away from the juvenile justice system, reduce unnecessary detention and keep children out of the adult system.

### FOOTNOTES

1. The Annie E. Casey Foundation, "No Place for Kids: The Case for Reducing Juvenile Incarceration" (2011), 9-12.

2. In 2003, the Louisiana Legislature passed Act 1225, also known as the Juvenile Justice Reform Act. Act 1225 provided a framework for reorganizing and reforming the state's juvenile justice.

3. The bill that codified 897.1, HB 692, was sponsored by then-Rep. David Vitter.

4. All of these youth were eligible for prosecution in the adult system, pursuant to La. Ch.C. art. 305. 15- and 16-year-olds with these charges could be prosecuted as adults solely by the District Attorney. Thus, youth subject to the "Vitter law" were determined to be amenable to rehabilitation.

5. The Louisiana Children's Code "shall be liberally construed to the end that each child and parent coming within the jurisdiction of the court shall be accorded due process and that each child shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare." La. Ch.C. art. 102.

6. K.P. Winokur, A. Smith, S.R. Bontranger and

J.L. Blankenship, 2008, "Juvenile Recidivism and Length of Stay," *Journal of Criminal Justice*, Vol. 36, pp. 126-137; J. Myner, J. Santman, G. Cappelletty and B. Perlmutter, 1998, "Variables Related to Recidivism Among Juvenile Offenders," *International Journal of Offender Therapy and Comparative Criminology*, Vol. 42, No. 1, 65-90; A. Katsiyannis and T. Archwamety, 1997, "Factors Related to Recidivism Among Delinquent Youths in a State Correctional Facility," *Journal of Child and Family Studies*, Vol. 6, No. 1, pp. 43-55.

7. M. Lipsey and D. Wilson, 1998, *Effective intervention for serious juvenile offenders: A synthesis of research, Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*, edited by R. Loeber and D.P. Farrington. Thousand Oaks, CA, Sage Publications; J.C. Howell, 1998, *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework*, Thousand Oaks, CA, Sage Publications, p. 136.

8. See, Laurence Steinberg, Elizabeth Cauffman and Kathryn C. Monahan, "Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders," in OJJDP Juvenile Justice Bulletin (March 2015), [www.ojjdp.gov/pubs/248391.pdf](http://www.ojjdp.gov/pubs/248391.pdf); and Terrie E. Moffitt, "Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review*, Vol. 100, No. 4 (1993).

9. Based on data provided to the Louisiana Center for Children's Rights by the Louisiana Office of Juvenile Justice.

10. *Id.*

11. Pew Charitable Trusts, "Issue Brief: Re-Examining Juvenile Incarceration," April 20, 2015.

12. American Psychological Association, "The Use of Restraint in Correctional Mental Health Care" (2006).

13. In the case of adults, the Supreme Court has ruled that the use of restraints is inherently prejudicial and unconstitutional unless justified by an essential state interest specific to the particular defendant. See, *Deck v. Missouri*, 125 S.Ct. 2007 (2005).

14. State in the Interest of E.P., 17-0495 (La. App. 4 Cir. 6/13/17, unpublished).

15. Act 501, [www.legis.la.gov/legis/ViewDocument.aspx?d=1012088](http://www.legis.la.gov/legis/ViewDocument.aspx?d=1012088).

16. La. H.R. Con. Res. 56 (2003).

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# **LSBA, ATJ Commission**

## **Create Modest Means Online Legal Directory**

### **Attracting Moderate Income Clients: Why Expanding Your Client Base Can Increase Your Bottom Line**

By Amy E. Duncan

**I**n March 2016, Mary's husband Ron was diagnosed with a progressive brain disorder called Lewy body dementia. At the time of the diagnosis, Mary had a full-time job as an office manager earning \$24/hour. Ron was self-employed, but eventually gave up his business due to the effect the disorder was having on his ability to work. On Mary's income, Ron's Social Security and Medicare, Mary was able to care for Ron until his condition became so debilitating that he required 24-hour medical attention. With limited funds, Mary started the stressful process of getting Ron's legal affairs in order before placing him in a senior nursing facility that could care for him full time.

Mary first sought assistance from local nonprofits and legal aid organizations but quickly found out that she did not qualify for free legal aid. Although she couldn't afford an attorney at the going rate of \$250 an hour, she was willing to work with an attorney at a reduced rate, say \$50-\$75 per hour. Because of the time sensitivity of the matter and not knowing where or how to find an attorney she could afford, Mary went ahead and handled her family's legal affairs — succession, power of attorney, etc. — on her own. Mary knows that working with an attorney would have greatly alleviated the stress of handling these matters while working full time, taking care of her husband, and coping with the grief of losing her husband to an aggressive disease. But, without access to affordable legal services, she felt she had no choice but to handle it on her own.



Mary's story is the story of many people in the United States with legal matters that go unaddressed by the legal profession. Mary's family falls into what is known as the "justice gap." This is the gap between being able to afford market-rate legal services and qualifying for free legal aid based on one's income. Mary is in the middle. She makes too much to qualify for free legal aid, but not enough to afford the going rate. So she, like many others, decided to take on a complex legal matter and all of its attendant consequences on her own.

Mary's story, in terms of income, is even more common in Louisiana. Louisiana is home to 4.684 million people, making it the 25th most populous state in the United States and the 10th most populous in the South.<sup>1</sup> Sadly, Louisiana also has the third highest poverty rate in the nation, with 20 percent of people falling below the poverty line—\$24,340 for a family of four.<sup>2</sup> Median household income in 2012-16 was \$45,652, meaning that half of the households in Louisiana make this amount or less. That is nearly \$10,000 below the national statistics.<sup>3</sup> About 1.3 million people in Louisiana match Mary's economic circumstance. They fall between 200-400 percent of the poverty guideline set by the Census Bureau, meaning they make above the eligibility guidelines for free legal aid.

A national study by the American Bar Association (ABA) found that half of low- and moderate-income American households are facing one or more situations that could be addressed by the civil justice system. The same report concluded that nearly two-thirds of moderate-income households with civil legal needs were not finding their way to the justice system.<sup>4</sup>

The legal profession has responded to alarms about the lack of access to legal representation for the public with initiatives to fight or fill cuts to legal services programs, to promote lawyers providing free services through pro bono assistance, to develop resources for self-represented litigants, and to allow for the unbundling of legal services. Lawyers have even raised ideas about taking matters outside of the legal system and away from the need for a lawyer—allowing diverse services to be provided by non-lawyer professionals.<sup>5</sup> However, many believe the answer to reducing the gap in accessible legal services is the legal



profession's sincere commitment to making changes to the current market fee rates.

### **The Current and Future State of the Legal Market**

The legal market, with regard to price, is becoming more and more competitive. Despite the demand for legal services, the Bureau of Labor Statistics (BLS) suggests that "more price competition over the next decade may lead law firms to rethink their project staffing in order to reduce costs to clients." BLS expects clients, both private and corporate, to cut back on legal expenses by demanding less expensive rates and scrutinizing invoices. They predict that work previously assigned to lawyers, such as document review, may now be given to non-lawyers, such as paralegals and legal assistants, and routine work may be outsourced to other lower-cost legal providers.<sup>6</sup>

These types of responses to price competition place continued pressure on the job market, particularly for new lawyers. In 2016, 73 percent of the graduates of 204 ABA-accredited law schools had full-time jobs that required law degrees. This is after seeing a 7 percent decrease in class size due to lower enrollment.<sup>7</sup> Considering the supply of trained lawyers without work along with the demand by the middle class for affordable legal services, one would think this would translate into lower costs and more legal needs being met. Yet, the cost for services continues to rise.<sup>8</sup>

When compared to other industries,

the legal profession has been slow to adapt to changing trends—trends that ultimately affect the cost for services. Technology, for instance, is changing the traditional workflow approach. The traditional approach usually means legal advice handcrafted by lawyers (some in partnership), delivered on a one-on-one basis with the output being documentation, and, generally, the charge for the services computed on an hourly billing basis. With this approach, most legal services have become unaffordable to their consumer users. By incorporating new technologies, attorneys are able to reduce the time and cost spent on tasks such as document assembly and other responsibilities that typically consume an attorney's time.

In terms of the future of legal services, commentators have predicted radical changes to the legal world over the next two decades, with cost being the focus of the changes. Richard and Daniel Susskind's book, *The Future of the Professions*, suggests that technology, and specifically artificial intelligence (AI), will have a fundamental impact on the legal industry and the role of lawyers in the future. They argue that the current professions, including legal, are unaffordable and antiquated, with the talent of the best enjoyed only by a few.<sup>9</sup> At the other end is the growing supply of technologically driven alternatives to traditional legal service, leading to increased momentum of the DIY movement in which clients turn away from traditional law firm services.

In a competitive landscape for legal

services, attorneys and law firms should be willing to incorporate new approaches to delivering legal services, specifically to reach middle-income consumers whose legal needs are not being met. By being proactive and adapting to the changing market for legal services, attorneys can save time and money, grow their businesses and increase access to affordable legal services. Below are some ways attorneys can adapt to the changing landscape and incorporate cost-effective legal solutions into their business models to meet the legal needs of modest means clients.

### **Make Services More Accessible to Modest Means Clients and Adapt to Changing Markets**

#### **Leverage Technology to Increase Your Reach**

Technology is playing a fundamental role in the transformation of the legal profession. This transformation can translate to time savings for attorneys and cost savings for consumers.

For instance, new programs that systemize document assembly allow attorneys to generate high-quality documents after straightforward interactive consultations with users.<sup>10</sup> Some automation programs are even offered within cloud-based case management programs.<sup>11</sup>

Companies in Silicon Valley are even offering AI programs to attorneys (some at no cost) to increase affordable access to justice — programs that can help quickly identify bad case law, find similar case law, or summarize the facts of a case.<sup>12</sup>

There are also legal technology programs available to save both the clients' and attorneys' time. One example is end-to-end online credit processing payment programs like LawPay that allow customers to pay for attorney services online. Additionally, case management software programs now have automated processes for collecting on past due accounts.<sup>13</sup>

These are just a few ways new technologies are changing how lawyers' practice — ways that can positively affect the attorney's bottom line and translate into cost savings for clients.

#### **Offer Affordable Pricing Options for Clients with Limited Means**

By now, most U.S. law firms have the option of an Alternative Fee Arrangement (AFA), broadly defined as charging for legal services in any method other than the standard billable hour. However, there's a difference between simply having that option and affirmatively engaging with a client to determine what fee model best meets his or her needs. In a broader context, actively offering clients AFAs could greatly increase the perception of value and promote trust in the firm-client relationship.

For modest means clients, their ability to pay will depend on their income. Some billable-hour pricing options, like sliding scale, may work for middle-income clients, if the fee structure is based on their income. For instance, attorneys may work on a sliding scale in which they reduce their hourly standard rate by 75 percent for people falling between 200-250 percent of the poverty guidelines, 50 percent for people falling between 250-350 percent, and 25 percent for 350-400 percent. When the billable hour acts as a disincentive to efficiency, flat fees can increase transparency giving the client an opportunity to determine whether he or she can afford to pay for the services.

#### **Increase Transparency in Pricing so Consumers Know What to Expect and Don't Shy Away from Seeking Legal Assistance**

The allusion and mystery of the cost for legal services simply does not work for a family with limited means. The lack of price information has been raised as a culprit for people not obtaining the legal advice they need.<sup>14</sup> When people engage services in most consumer markets, they expect to receive actual or even estimated costs before agreeing to the transaction.

Most professional services offer transparent pricing. Why should the legal industry be an exception? For many areas of law — including immigration, DUI and traffic, and minor criminal cases — transparent pricing is offered by way of fixed fees. In setting affordable rates, understanding the time and costs associated with a particular matter will be key to determining price. The Chicago Bar Foundation's Pricing Toolkit for attorneys seeking to serve low- and moderate-

income clients is a helpful resource that provides a step-by-step process in setting fee arrangements alternative to the billable hour, such as a flat fee rate, to meet the legal needs and budgetary restrictions of the population.<sup>15</sup>

#### **Use Limited Scope Representation to Dip into the Untapped Market**

Limited scope representation, sometimes referred to as unbundled legal services, is a way for attorneys to address consumer demand and increase legal access for middle-income consumers. Limited scope representation is governed by Rule of Professional Conduct 1.2(c) and is defined as an agreement between an attorney and client in which the attorney represents or assists the client for part, but not all, of the client's legal matter. A Louisiana attorney may undertake limited scope representation of a client in a divorce case by agreeing to handle the custody dispute, but decline to handle the community property partition. Or an attorney may handle a products-liability case for an employee injured on the job, but decline to handle the worker's compensation matter. There are many possibilities within the realm of limited scope representation — as long as the scope of services provided is reasonable and the requirements under Rule of Professional Conduct 1.2(c) are met.<sup>16</sup>

In a DIY culture where information can be accessed at the click of a button for free, some people, especially those with limited means, are less inclined to seek full representation services at an unknown cost to be later determined. In the proper context, offering limited scope representation can make access to legal services affordable and, if done correctly, can be profitable for the attorney by increasing his or her client base.

#### **How is the LSBA Addressing the Justice Gap?**

Each month, the Louisiana State Bar Association (LSBA) receives more than 500 calls from people seeking legal counsel, many of whom fall within the justice gap. Recognizing this dilemma facing middle-income families, the LSBA, through its Access to Justice Commission, created a Modest Means Committee in 2016. After studying the need, surveying Louisiana



attorneys and analyzing national programs, the committee created the Modest Means Online Legal Directory. The directory is designed to connect attorneys offering affordable legal services with Louisiana residents falling at or below 400 percent of the poverty line. The attorneys offering affordable rates do so by way of a sliding scale based on the client's income, flat fees, or by offering limited scope representation subject to the requirements of Rule of Professional Conduct 1.2(c).

## How Can Attorneys Join the Directory?

The Modest Means Online Legal Directory is open to all active Louisiana attorneys in good standing who offer reduced-cost legal representation to people falling at or below 400 percent of the federal poverty line. To sign up, follow these steps:

- Go to: [www.lsba.org/ATJCommission/ModestMeans.aspx](http://www.lsba.org/ATJCommission/ModestMeans.aspx).
- Complete the one-hour, on-demand CLE on "Ethical Considerations for Representing Clients with Limited Means" (see fee waiver opportunity below).
- Take a brief survey.
- Complete the online application form.

Once the attorney completes the process and is determined eligible to participate, the attorney's name, photo, contact information, practice areas and types of affordable legal services offered will be listed in the directory.

The directory is accessible to the public through the LSBA's new "Find Legal Help Portal" designed to connect the public with the full spectrum of legal services available in the state. The portal, located at [www.LSBA.org/goto/FindLegalHelp](http://www.LSBA.org/goto/FindLegalHelp), includes options for hiring an attorney, legal aid and "pro bono" programs, self-help resources, and online and telephonic assistance.

In addition to the portal, the LSBA also operates an online legal answers page called LA Free Legal Answers, <https://la.freelegalanswers.org/>, where people falling below 250 percent of the federal poverty guidelines can post legal questions and have them answered by attorney volunteers.

## Conclusion

Distribution of legal services in the United States is often compared to the profile of a martini glass. At the very top, where the glass is the widest, is where Big Law and Big Corporations mix and the majority of the spending on legal services occurs. The thin base of the glass represents free legal services provided to the poor. The stem represents small businesses and middle-class families waiting for affordable legal services to become available.

The legal profession needs to devote energy to focus on the stem, an untapped market in many respects, for which people can afford to pay for services at affordable rates. With predictions of increased price competition in the legal market and people not seeking legal assistance for problems that require an attorney, now is the perfect time to improve internal processes within your law firm to better meet the legal needs of the middle class.

## FOOTNOTES

1. U.S. Census Bureau, Tables, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2017, available at: <https://www.census.gov/data/datasets/2017/demo/popest/state-total.html>.

2. U.S. Census Bureau, QuickFacts Louisiana (last visited April 9, 2018), available at: <https://www.census.gov/quickfacts/LA>.

3. *Id.*

4. Am. Bar Ass'n., "Legal Needs and Civil Justice: A Survey of Americans" (1994), available at: [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/downloads/legalneedstudy.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf).

5. Ann Juergens, Faculty Scholarship, "Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients," 39 Wm. Mitchell L. Rev. 82-83 (2012), available at: <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1249&context=facsch>.

6. U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook: Lawyers (last modified Jan. 30, 2018), available at: <https://www.bls.gov/ooh/legal/lawyers.htm>.

7. Press Release, Am Bar Ass'n., "ABA legal education section releases employment data for graduating law class of 2016" (May 11, 2017), available at: [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2017\\_employment\\_data\\_2016\\_graduates\\_news\\_release.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_employment_data_2016_graduates_news_release.authcheckdam.pdf).

8. Gabe Friedman, "Report: Law Firms Jacking Up Rates, Demand Flat," Bloomberg Law, Nov. 13,

2017, <https://biglawbusiness.com/report-law-firms-jacking-up-rates-demand-flat/> (Law firms increase billing rates by four percent based on a report by the Citi Private Bank Law Firm Group).

9. Richard and Daniel Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts*, 3 (Oxford Univ. Press, 1st ed. 2015).

10. In Louisiana, Ayla Legal Systems offers state-specific document assembly and generation program. To learn more, go to: <http://www.aylalegal.com/>.

11. Clio Case Management is cloud-based software that offers document automation within its program. To learn more, go to: [www.lsba.org/Members/TechnologyServices.aspx](http://www.lsba.org/Members/TechnologyServices.aspx).

12. Ross Intelligence, a company in Silicon Valley, created EVA, an AI system available for free. To learn more, go to: <https://rossintelligence.com/ross-new-coworker-eva/>.

13. Clio Case Management Software provides this within its platform.

14. See, Solicitors Regulation Auth., "Price transparency in the legal services market" (January 2018), available at: <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page> (Solicitors Regulation Authority (SRA), the body that regulates solicitors and law firms in England and Wales, commissioned a comprehensive study to determine whether firms should be required to publish price information after the Competition and Markets Authority (CMA) found that the lack of transparency of legal service price information weakened competition and meant consumers did not get the legal advice they needed.).

15. Justice Entrepreneurs Project & Chicago Bar Found., "Pricing Toolkit for attorneys seeking to serve low- and moderate-income clients" (March 21, 2016), available at: <https://chicagobarfoundation.org/resources/practice/pricing-toolkit/>.

16. The Louisiana Supreme Court has made *Notice of Limited Appearance* forms available online for Family Law and Non-Family Law cases (see, <https://www.lasc.org/rules/supreme.asp>). The Alabama Access to Justice Commission has published a helpful presentation on limited scope representation presented by Sue Talia available at: <http://www.alabamajustice.org/i-can-help/limited-scope-representation/>.

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# The Dawkinses of Union Parish



**L**ouisiana's legal legacy is deep-rooted in every corner of the state. Over the course of 300-plus years of history, the legal profession in the state has been peopled by patriots and scholars, by activists and visionaries. Inspired by the New Orleans' Tricentennial, the *Louisiana Bar Journal* began a new series to commemorate and recognize the state's legal legends, including "legends in their own time."

For this issue, we focus on the Dawkinses of Union Parish.

**Book Author's Note:** *I did my best to identify all the lawyers in Duncan Dekalb Dawkins's line, but after the book was published, another descendant provided the names of five more lawyers. Those names have been added to the excerpt below. I am almost certain there are more lawyer descendants because there are branches of the family whose locations we have not found who have a legacy of lawyers. I am still trying to find more but no luck yet.*



Beth Dawkins Bassett.



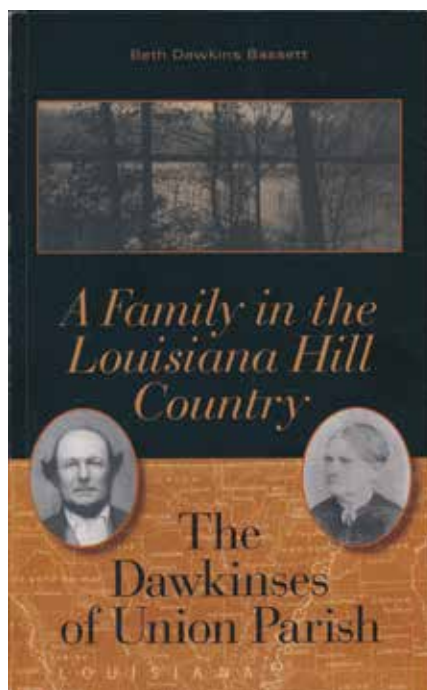
An Excerpt from the Book:  
***A Family in the  
Louisiana Hill Country:  
The Dawkinses of Union Parish***

By Beth Dawkins Bassett

The first descendants of Duncan Dawkins to take up the practice of law were two sons born to his second wife, Margaret Brooks Thompson Dawkins: Robert Brooks Dawkins and Oliver Cromwell Dawkins. Robert subsequently was elected to a judgeship. In each of the four generations since, several descendants of Duncan Dawkins and his first two wives, Alpha Nan Cochran and Margaret Brooks Thompson, have become lawyers, twenty-two in all. Four became judges.



Duncan Dekalb Dawkins.  
Photo courtesy of Dawkins Family.



Book cover designed by Michael Hooten.

**Oliver Cromwell Dawkins**  
**b.1859 d.1928**

Oliver C. Dawkins grew up in Union Parish, Louisiana. He attended the public schools of the parish and then the University of Tennessee, Knoxville, for three years. He returned to Union Parish, where he taught school while reading law. He was admitted to the Louisiana bar in 1886 and practiced with his elder brother Robert Brooks Dawkins in Farmerville. In 1883, an article in the *Ouachita Telegraph* called him editor of *The Farmerville Appeal* newspaper. He later was an editor of *The Farmerville Gazette*, still in existence. In 1896, Oliver and his family moved to Monroe and bought *The Monroe Evening News*. He both practiced law and ran the newspaper until 1906, when he sold the paper and returned full time to his practice. In 1918, his son Joseph Brooks Dawkins joined his practice. As a newspaperman, Oliver became interested and active in politics, advocating the gold standard and white primaries and opposing the activities of the Ku Klux Klan. He ran for the United States Congress twice from the Fifth Congressional District of Louisiana, in 1902 and in 1912, but was narrowly defeated each time. He was widely known as an after-dinner speaker. He continued to practice law until his death.

**Grandsons of  
Duncan Dawkins**

**Judge Benjamin Cornwell Dawkins**  
**b.1881 d.1966**

Judge Ben C. Dawkins was educated at Louisiana Industrial Institute and the Tulane School of Law, where he received the LL.B. degree in 1906. He was admitted to the Louisiana bar that year. He did not complete his degree at LII, but found work as a law secretary and court reporter and read law at night from 1902 until 1905, when he entered law school. Following his admission to the bar, he joined the firm of Lamkin, Millsap & Dawkins in Monroe, and in 1909, became a partner in Mulholland & Dawkins. In 1912, at age thirty-one, he was elected judge of the judicial district comprising Ouachita and Morehouse parishes and was reelected without opposition four years later. In 1918, at age thirty-seven, he took his seat as an Associate Justice of the Supreme Court of Louisiana, having been elected to that position. In 1924, he resigned as Senior Associate Justice of the Supreme Court to accept an appointment by Pres. Calvin Coolidge as United States District Judge of the United States District Court for the Western Judicial District of Louisiana. This appointment of a traditional Democrat, made by the then-Republican administration, was based only on merit.

Judge Dawkins served as a member of the Constitutional Convention of 1921 by appointment of Louisiana Gov. John M. Parker and was part of the Judiciary Committee that helped write the provisions that now govern the judicial system of the state of Louisiana. As a member of the Committee on Coordination, he helped revise and harmonize all the ordinances that became part of the Louisiana Constitution.

Judge Dawkins retired in 1953, but continued to preside over federal courts that included the United States Fifth Circuit Court of Appeals in New Orleans, and those in several other states, until he was well over eighty years of age. After his death, his peers compared him to famous jurists in history and contended that he should have been appointed to the Supreme Court of the United States.

**Sons of Duncan Dawkins**

**Judge Robert Brooks Dawkins**  
**b.1857 d.1923**

Judge Robert B. Dawkins was born in Union Parish, Louisiana, and educated in the public schools of the parish and at Roanoke College, Salem, Virginia, from which he graduated in 1879 with the A.B. degree. Returning to Union Parish, he served as the superintendent of education and read law at the same time. He was admitted to the Louisiana bar in 1886.

He was elected to the Louisiana Senate in 1896 from the district composed of Union, Lincoln, Morehouse, and West Carroll parishes. In 1898, he was a member of the Constitutional Convention. In 1900, he was elected Judge of the Louisiana Fourth Judicial District, composed of Lincoln and Union parishes, and there he served fourteen years. In 1916, he was elected to the Louisiana Court of Appeals, Second Circuit, comprising the parishes of Bienville, Claiborne, Jackson, Bossier, Webster, Catahoula, Winn, Grant, Union, and Lincoln. He was a judge on the Court of Appeals at the time of his death.

Former Louisiana Gov. Sam Jones, one of the speakers at the Memorial Service held for Judge Dawkins in 1967 at the Federal Court Room at Alexandria, Louisiana, said the following: "Judge Dawkins was a man of lofty ideals . . . . He gave no recognition to prominence, wealth or high office. In fact, he presided over the trial of a former Governor of Louisiana and imposed a substantial sentence (10 years) upon the latter's conviction . . . . His court held the uniform and universal respect of the people. This perhaps is his greatest contribution."

**Herbert Elmer Dawkins**  
**b.1882 d.1929**

Herbert E. Dawkins attended the public schools of Union Parish, Louisiana, and, after teaching school for one year, entered Louisiana Industrial Institute, now Louisiana Tech University. There he earned the Bachelor of Industry degree in 1905 and served as class orator for the graduation ceremony. While at LII, he represented the Agatheridan Literary Society in a debate and was presented with a medal, and he served as literary editor of the school annual, *Lagniappe*.

He taught school one year and then entered the Louisiana State University School of Law in 1906, and, in 1909, received dual degrees, the B.A. degree in literature and the LL.B. degree. At LSU, he served as editor of the annual, *The Gumbo*, during his senior year. He had paid his way through LII by working in the cafeteria, and he supplemented the money he had earned teaching by working in the cafeteria at LSU to pay his way through law school. He was admitted to the Louisiana bar in 1909 and went into partnerships in Farmerville, first with H.C. Fields and then with Everett, Elder, Hodge & Dawkins. In 1911, he became a sole practitioner. He was a member of the Missionary Baptist Church.

**Bruton Thompson Dawkins**  
**b.1887 d.1933**

Bruton T. Dawkins was born in Union Parish, Louisiana. He graduated from the Louisiana State University School of Law in 1909 and was admitted to the Louisiana bar before his twenty-second year of age. For one year, he practiced law in Monroe,

Louisiana. From 1911 until his death, he practiced in Alexandria, Louisiana. He was a member of the Episcopal Church, a Knight Templar, a Mason, an Elk, a Democrat, and a member of the parish Democratic Executive Committee.

**Joseph Brooks Dawkins**  
**b.1890 d.1972**

Joseph B. Dawkins was educated in the Ouachita Parish and Monroe City school systems, and at Washington and Lee University and the Louisiana State University School of Law. He was admitted to the Louisiana bar in 1914 and worked in the Louisiana Attorney General's Office through 1916. He enlisted in the United States Army during World War I and served in France in the Coast Artillery Corps, which included field artillery and heavy artillery. In 1918, he joined the Monroe law firm of his father, Oliver C. Dawkins. From 1924 to 1936, he was Attorney for the Supervisor of Public Accounts for the Fifth Congressional District of Louisiana. He practiced law for fifty-seven years.

In his manuscript *The Dawkins and Norris Families*, Joseph Brooks Dawkins, Jr. wrote of his father: "He loved the practice of law and in particular where it was of benefit to the common man. At his death, his office ledgers reflected many small fees of which some had been paid off at the rate of a dollar or two per week and others which had never been collected. During the depression years from 1932 until the 1940s, he took in fees which ranged from collard greens and opossums to a 1928 Hupmobile, and he loved every minute of it. Life to him was so fascinating and so extremely interesting that one never heard him complain. Many times, regardless of how bad things were or how bad things might likely turn out to be, he has said, 'it will certainly be interesting to see what happens.'"

**Robert Brooks Dawkins, Jr.**  
**b.1897 d.1959**

Robert B. Dawkins, Jr. grew up in Ruston, Louisiana. In 1915, he went to Washington, D.C., as secretary to Louisiana Representative Riley Wilson. He enlisted in World War I in 1917, in the United States Army Air Service, and saw

duty in France as a pilot.

After WWI, he earned the law degree at Georgetown University and was law clerk to the Chief Justice of the Supreme Court of the District of Columbia for a year. In 1929, he joined the Federal Trade Commission (FTC) as an anti-trust specialist. He served in various legal positions and argued the Cement Institute Case and the Rigid Steel Conduit Case before the Supreme Court of the United States. He was appointed Assistant General Counsel for the FTC and placed in charge of the staff of special legal assistants.

After World War II, he was a member of the joint United States State Department and War Department Commission on Japanese Combines. This commission prepared and recommended plans for the decartelization of Japanese industry and laid the foundation for the first anti-trust statute in Japan. After his retirement, he was an adviser to the Small Business Committee of the United States House of Representatives.

Mr. Dawkins died at age sixty-two, in McLean, Virginia, and was buried at Arlington National Cemetery.

**Judge James Robert Dawkins**  
**b.1901 d.1974**

Judge James Robert Dawkins was born in Union Parish, Louisiana, and attended the public schools of Farmerville. In 1919, he entered Louisiana State University and attended two years. He subsequently entered the Atlanta College of Pharmacy and, after graduation, practiced this profession for several years. In 1925, he reentered LSU and, in 1928, graduated with the Bachelor of Laws degree as valedictorian of his class. He practiced law in Monroe, Louisiana, and then in Farmerville as a sole practitioner.

In 1953, at age fifty-two, he was elected Judge of the Third Judicial District of Louisiana, comprising Union and Lincoln parishes, and served three six-year terms. Prior to his election to the bench, he served one term as mayor of Farmerville and as attorney for all the municipalities in the parish. He was a member and deacon of the First Baptist Church of Farmerville and Temple Baptist Church in Ruston. He served as a member of the Board of Trustees of Louisiana College



and the Judicial Council of the Louisiana Supreme Court. By special assignment by the Louisiana Supreme Court, he sat on the bench on several occasions in other judicial districts, including the Fourth Circuit Court of Appeal in New Orleans.

**Wilbur Dawkins Atkins, Sr.**  
**b.1905 d.1992**

Wilbur Dawkins Atkins, Sr. studied law for three years under attorneys and passed the Bar in 1936. He practiced in Baton Rouge and Lafayette.

**Col. Woodrow Wilson Atkins**  
**b.1917 d.2010**

Col. Woodrow Wilson Atkins was granted an early law degree in December 1941, just after the bombing of Pearl Harbor. He served for twenty years in the Judge Advocate Division of the Army in the United States, Germany, and Korea.

**Ben Edgar Atkins**  
**b.1922 d.1998**

Ben Edgar Atkins graduated from LSU Law School. He practiced in East Baton Rouge Parish.

**Great-Grandsons of  
Duncan Dawkins**

**Judge Benjamin Cornwell  
Dawkins, Jr.**  
**b.1911 d.1984**

Judge Benjamin C. Dawkins, Jr. was born in Monroe, Louisiana, and lived there until 1918 when his father was elected to the Louisiana Supreme Court, based in New Orleans. He graduated from Tulane University and from the Louisiana State University School of Law with the LL.B. He played varsity football at Tulane and went to the Rose Bowl in 1932. After receiving his law degree, he practiced in Monroe one year as a solo practitioner. The following year, he joined the Shreveport firm of Blanchard, Goldstein, Walker & O'Quin. During World War II, he joined the United States Navy and received a 2nd Lt. Commission. He served as a naval aviator and flew some seventy-two Pacific Ocean crossings from San Francisco to Honolulu, Hawaii, and other islands in the Pacific theater, bringing blood for battle-

field transfusions and ferrying wounded U.S. soldiers and Japanese prisoners of war back to the United States.

After the war, he resumed his law practice, and, in 1953, he was appointed by Pres. Dwight D. Eisenhower to succeed his father as United States District Judge of the United States District Court for the Western Judicial District of Louisiana. He was responsible for issuing desegregation orders to twenty-one school boards in twenty Louisiana parishes and in the Monroe City Schools, and he ruled that Monroe and Shreveport change their then-forms of government to more representative constructs. He served as a federal judge for twenty-six years, retiring in 1979.

Oral interviews conducted with Judge Dawkins are on file in the archives of the library of Louisiana State University in Shreveport. The emphasis is the Federal Court's involvement in the Civil Rights revolution.

**Samuel Duncan Dawkins, Jr.**  
**b.1926 d.2004**

Samuel D. Dawkins Jr. was born in Port Arthur, Texas, and attended schools there. After graduating from the University of Texas at Austin in 1950, he was commissioned as an ensign in the United States Navy. He served two terms in the regular Navy and then entered the Naval Reserve, retiring as a full Captain in 1985. In 1956, he earned the law degree from the University of Texas. He practiced civil law in Dallas and Houston.

**Wilbur Dawkins Atkins, Jr.**  
**b.1942 d.2008**

Wilbur D. Atkins, Jr. graduated from LSU Law School and practiced in Baton Rouge and Lafayette.

**Jerome Ersel Dawkins**  
**b.1935**

Jerome E. Dawkins grew up in Port Arthur, Texas, and attended schools there. He graduated from Baylor Law School in Waco, Texas. He practiced law as a corporate attorney for Mobil Oil in Dallas, Texas, and New York, N.Y., until his retirement.

*A Family in the Louisiana Hill Country: The Dawkinses of Union Parish* may be purchased at the **Union Museum of History and Art**, 116 N. Main St., Farmerville, LA 71241, or ordered from **Beth Dawkins Bassett, P.O. Box 57, Winder, GA 30680**. 206 pp., soft cover, \$25.

Sarah Elizabeth (Beth) Dawkins Bassett, a descendant of Duncan Dekalb Dawkins, was born in Farmerville, La., and attended Union Parish public schools and Louisiana Tech University, where she earned a bachelor's degree in music in 1957. Later that year, she attended Indiana University as a voice major. She taught public school music in Orlando, Fla., and, subsequently, performed as a professional church soloist in Atlanta, Ga., where her husband, the late Harold Lane Bassett, was on the engineering faculty at Georgia Tech. In 1979, she received a master's degree in education from Georgia State University in Atlanta. Before completing her degree, she began work as writer for the magazine *Brown's Guide to Georgia*. In 1980, she began work as associate editor and principal writer for *Emory Magazine* and assistant director of the Office of Periodicals at Emory University. She left the university in 1993 to begin freelancing. She has written seven non-fiction books and edited five. Bassett's photo was taken by photographer Billy Howard. (sedbassett@comcast.net; P.O. Box 57, Winder, GA 30680)

**Robert Glen Dawkins**  
**b.1935**

Robert G. Dawkins grew up in Farmerville, Louisiana. He attended the Farmerville public schools, Louisiana Polytechnic Institute (now Louisiana Tech University), and Louisiana State University. In 1959, he graduated from the LSU School of Law. He first practiced law in the firm of Rabun & Dawkins in Farmerville and now is a sole practitioner in Ruston, Louisiana.

While at LSU, he became a member of Phi Gamma Mu National Social Science Honor Society and Phi Delta Phi legal fraternity. In Farmerville, he held offices in

several local civic organizations and was voted Man of the Year in 1960 by the local chapter of the United States Junior Chamber of Commerce. He is a member of Temple Baptist Church in Ruston, a trustee of Louisiana College, a mason, and a founder of Cedar Creek School in Ruston.

In 1999, he was elected to the Council of the Louisiana State Law Institute, a body created by the Legislature in 1938 as an official law advisory agency. The thirty-one-member Institute consists of faculty members of the law schools of LSU, Tulane University, Loyola University, and Southern University; and nineteen practicing attorneys. In 2013, he was appointed a senior officer and member of the Executive Committee of that body. "These positions are bestowed impartially," wrote former State Supreme Court Justice Edward J. Bleich, "because of hard work, contribution and ability. These are qualities clearly possessed by Robert Dawkins."

### Great-Great-Grandsons and Great-Great-Granddaughter of Duncan Dawkins

#### Albert Bartholamew Dawkins b.1923 d.2013

Albert B. Dawkins was born in New Orleans but moved with his family to Denver, Colorado, at age seven and attended schools there. In 1941, he enlisted in the United States Marine Corps and served in the Pacific Theater for three years, rising to the rank of Sergeant. He saw action in several crucial battles, including the Battle of Midway. He entered the University of Denver and graduated from the University

of Denver Law School in 1950. He practiced law in Denver for forty-one years, retiring in 1991. "Lawyers are the first line of defense against authoritarianism," he wrote in 2010.

#### Franklin White Dawkins b.1948

Franklin White Dawkins earned the B.B.A. degree in accounting from Southern Methodist University, Dallas, Texas, in 1970; the J.D. degree from Louisiana State University Law Center, Baton Rouge, in 1974; and the LL.M. degree in health law from the University of Houston Law Center, Houston, Texas, in 2007.

He served as Senior Law Clerk to the Chief United States District Judge, Middle District of Louisiana, from 1974-1976. In 1976, he joined the McGlinchey Stafford firm in New Orleans. In 1978, he served as contract officer to the County Counsel's Office, Lane County, Eugene, Oregon, and, in 1979, he was appointed Assistant United States Attorney for the Western District of Louisiana. As assistant United States attorney, he represented the United States Department of Justice in a case that went before the United States Supreme Court, *U.S. v. Villamonte-Marques*. In 1982, he joined the Lafayette, Louisiana, law firm Roy, Carmouche, Bivins, Judice, Henke & Breaud as a partner, and, in 1989, he opened a solo practice. Since 2008, he has practiced health law and federal criminal defense law.

He is founder and director of the Louisiana High School Hockey Association; master, American Inns of Court of Acadiana; a past member of the boards for Faith House, Lafayette Juvenile

& Young Adult Program, Lafayette Parish Bar Association, and Southwest Louisiana Hockey Officials Association; and a present member of the American Red Cross, Acadiana Chapter.

#### Cindy Atkins Bethea b.1952

Cindy Atkins Bethea graduated from Southern University Law School. She practices in Denham Springs, Louisiana.

### Great-Great-Great Granddaughter and Great-Great-Great Grandsons of Duncan Dawkins

#### Mary Elizabeth Dawkins b.1956

The first female lawyer among Duncan Dawkins's descendants was born in Denver, Colorado. She first attended Colorado University, Denver, and graduated as a paralegal. Some three years later, she enrolled in Denver University Law School. She passed the Colorado bar in 1992.

#### Eugene Donnaud Briere Dates Unknown

According to Judge Ben C. Dawkins, Eugene Donnaud Briere practiced law in New Orleans, Louisiana.

#### John Donnaud Dates Unknown

According to Judge Ben C. Dawkins, John Donnaud practiced law in New Orleans, Louisiana, and then in Washington, D.C.

## Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — *are required to be filed* with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or

concurrent with first use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing

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

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





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## Elections: Self-Qualifying Deadline is Oct. 22; Voting Begins Nov. 19

Several leadership positions are open in the 2018-19 Louisiana State Bar Association (LSBA) election cycle, including positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House of Delegates.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 22. First election ballots will be available to members on Monday, Nov. 19.

Alainna R. Mire of Alexandria and Patrick A. Talley, Jr. of New Orleans have been nominated for 2019-20 LSBA president-elect and 2019-21 LSBA secretary, respectively. The president-elect will automatically assume the presidency in 2020-21.

According to the president-elect rotation, the nominee must have his/her preferred mailing address in Nominating Committee District 3 (parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Jefferson Davis, Lafayette, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, St. Martin, St. Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll and Winn).

According to the secretary rotation, the nominee must have his/her preferred mailing address in Nominating Committee District 1 (parishes of Orleans, Plaquemines,

St. Bernard and St. Tammany).

Also, the Young Lawyers Division (YLD) Council nominated Carrie L. Jones of Baton Rouge and Graham H. Ryan of New Orleans for 2019-20 YLD chair-elect and secretary, respectively.

Other positions to be filled include:

**Board of Governors** (three-year terms) — one member each from the First, Fourth and Fifth Board Districts.

**LSBA House of Delegates** (two-year terms) — one delegate from each of the Twentieth through Forty-Second Judicial Districts, plus one additional delegate for every additional district judge in each district.

**Nominating Committee** (15 members, one-year terms).

**Young Lawyers Division. Chair-elect** (2019-20 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. **Secretary** (2019-20 term), nominee **shall** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Also, one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

**American Bar Association House of Delegates** (*must be a member of the American Bar Association*) — one delegate from the membership at large (two-year term).

## House Resolution Deadline is Dec. 14 for 2019 Midyear Meeting

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 17-19, 2019, at the Renaissance Hotel in Baton Rouge. The deadline for submitting resolutions for the House of Delegates meeting is Friday, Dec. 14. (The House will meet on Jan. 19, 2019.)

Resolutions by House members and committee and section chairs should be mailed to LSBA Secretary John E. McAuliffe, Jr., 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. 14. 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](mailto:mindi.hunter@lsba.org).



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Zwain

# LBSL Accepting Requests for Certification Applications

**T**he Louisiana Board of Legal Specialization (LBSL) is accepting applications for certification in five areas — appellate practice, estate planning and administration, family law, health law and tax law — from Nov. 1, 2018, through Feb. 28, 2019. Also, the LBSL will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2019, through Sept. 30, 2019.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that, each year, a minimum percentage of the attorney's practice must be devoted to the area of certification sought, and the attorney must pass a written examination to demonstrate sufficient knowledge, skills and

proficiency in the area for which certification is sought and provide five favorable references. Peer review is used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBSL standards for the applicable specialty for a detailed description of the requirements: [www.lascmcle.org/specialization/index.aspx](http://www.lascmcle.org/specialization/index.aspx).

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:

- ▶ Appellate Practice — 18 hours of appellate practice law.
- ▶ Estate Planning and Administration Law — 18 hours of estate planning law.
- ▶ Family Law — 18 hours of family law.
- ▶ Health Law — 15 hours of health law.
- ▶ Tax Law — 18 hours of tax law.

▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

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

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

Review approved specializations CLE courses online: [www.lascmcle.org/apps/calendar.aspx](http://www.lascmcle.org/apps/calendar.aspx)

## LSBA Member Services – Business Services

**F**or information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA. These services are benefits of membership with the Louisiana State Bar Association.

### Programs

- ▶ **Client Assistance Fund**  
[www.lsba.org/goto/clientassistancefund](http://www.lsba.org/goto/clientassistancefund)
- ▶ **Continuing Legal Education**  
[www.lsba.org/cle](http://www.lsba.org/cle)
- ▶ **Ethics Advisory Service**  
[www.lsba.org/goto/ethicsadvisory](http://www.lsba.org/goto/ethicsadvisory)
- ▶ **Legal Specialization Program**  
[www.lsba.org/Public/LawyerSpecialization.aspx](http://www.lsba.org/Public/LawyerSpecialization.aspx)
- ▶ **Loss Prevention Counsel**  
[www.lsba.org/Members/LossPreventionCounsel.aspx](http://www.lsba.org/Members/LossPreventionCounsel.aspx)  
Johanna G. Averill, Lindsey M. Ladouceur and Elizabeth LeBlanc Voss • (800)GILSBAR



### Insurance through Gilsbar

- ▶ Group Insurance, Major Medical, Disability and Malpractice Insurance  
(800)GILSBAR • (504)529-3505

### Car Rental Programs

- ▶ **Avis** • (800)331-1212  
Discount No. A536100
- ▶ **Budget Rent-a-Car** • (800)527-0700  
Discount No. Z855300
- ▶ **Hertz** – (800)654-2210  
Discount No. 277795

### Other Vendors

- ▶ ABA Members Retirement — (800)826-8901  
[abaretirement.com/welcome/louisiana](http://abaretirement.com/welcome/louisiana)
- ▶ Citrix ShareFile — (805)617-7027
- ▶ Clio — (888)858-2546
- ▶ CosmoLex — (866)878-6798
- ▶ Dell — (800)999-3355 or 1-877-568-3355
- ▶ Geico — (800)368-2734
- ▶ LawPay — (866)376-0950
- ▶ LexisNexis — (800)356-6548
- ▶ MyCase — (866)463-6110
- ▶ Office Depot — (800)650-1222
- ▶ Shop ABA — (800)285-2221
- ▶ United Parcel Service — (800)325-7000

For more information on LSBA Member discount business services, visit [www.lsba.org/goto/businessservices](http://www.lsba.org/goto/businessservices)



**L**awyers and law firms can implement various practices and procedures to strengthen cybersecurity protocols. For lawyers, information accessibility must be balanced with the duty to keep client information confidential, Rule 1.6 of the Louisiana Rules of Professional Conduct, and the duty to safeguard client property, Rule 1.15. Lawyers cannot simply scan files, save them to their computer or in the cloud and forget about them. Lawyers must protect any electronically accessible client data to minimize the risk of data breaches, loss and professional liability.

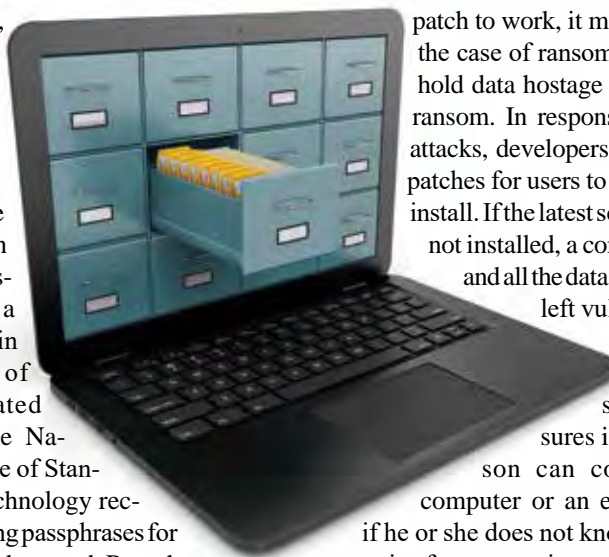
**Encryption.** Electronic storage and transmission of client data have made legal practice easier and more efficient. Unauthorized access of that data can increase the risk of an ethical violation if that data is not adequately protected. Disk encryption automatically encodes the data on a computer's disk drive using an algorithm or key to deny access to content. After encryption, files can be accessed using a password or passkey. Encryption can help prevent unauthorized access if the computer is lost or stolen or if the system is hacked. For email, encryption can scramble the content so that only the sender and intended recipient can access the actual message. Email encryption can also disable the ability to forward an email.

Although the major operating systems offer built-in encryption abilities, special consideration should be given to determine whether the encryption is strong enough for the type of data being protected. Federal and state regulations can require more stringent encryption methods (*e.g.*, end-to-end or zero-knowledge).

**Passphrase protection for files and devices.** Implement a "password" policy. Passwords are a basic security measure for protecting one's online presence, com-

puter system, particular device or files. According to the 2017 Data Breach Investigative Report, stolen or weak passwords were a major factor in 81 percent of hacking-related breaches. The National Institute of Standards and Technology recommends using passphrases for each password created. Passphrases are longer and more difficult to guess than the typical user-created password. Other tips include using a password manager. Some password managers store saved passwords in a virtual "vault" for access, while others generate passwords on demand. Whether retrieving stored passwords or generating new ones, the password manager will often require a "master" password for access, which must be kept secure. Passwords are a good start for defending against unauthorized access as they can be used to protect specific files and/or devices.

**Keep devices and software updated.** Using software that is no longer supported with security updates not only leaves a door wide open to access confidential information, but also is unethical because the software is vulnerable to attack. For supported software, security updates should be installed as soon as patches are issued by the developer. If not, a whole system can be infiltrated by malware. Examples of malware include phishing emails, ransomware and botnets. The recent NotPetya ransomware exploited a vulnerability in the Windows Server Message Block. Microsoft released a patch, but, for a



patch to work, it must be used. In the case of ransomware, hackers hold data hostage and demand a ransom. In response to malware attacks, developers issue security patches for users to download and install. If the latest security patch is not installed, a computer system and all the data it holds are still left vulnerable.

**Be aware.** Even with security measures in place, a person can compromise a computer or an entire network if he or she does not know how to use security features or is not aware of current threats. Clicking an email link can launch any number of malware attacks. Learning how to encrypt files on a computer, for an email or on a flash drive, can help prevent unauthorized access and data theft. Training employees on cybersecurity awareness is important if data is to be protected. Annual or quarterly training updates can help keep employees current on the latest threats and trends in cybersecurity breaches.

**Test your system.** Check for vulnerabilities by having your system evaluated by a credible IT professional or third-party service provider. A vulnerability analysis can help to assess the security-worthiness of your system and help you determine whether upgrades should be made.

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



# LAWYERS Assistance

By J.E. (Buddy) Stockwell

## ABA LAUNCHES WELL-BEING TOOLKIT

In the last two years, the legal profession has experienced a sobering “wake-up call” about how serious the wellness and mental health challenges are in our ranks. In short, profession-wide action is needed to improve lawyer well-being for all of us.

In February 2016, the national study “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” was published, conclusively establishing that the legal profession suffers striking rates of depression, alcoholism and addiction. Very unhealthy rates of anxiety and stress are also prevalent in our profession.

In response to that 2016 study, the American Bar Association (ABA) published its “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change” report in August 2017, challenging all stakeholders in the profession to take action. The report offered specific recommendations on what each segment of the profession can do to help turn our overall culture in a direction that promotes well-being. We need to learn how to set boundaries and carve out dedicated time for self-care, placing our personal well-being first. The mission is simple: learn real tools for self-care and then make using them a real priority.

It’s a very tall order for legal professionals. We are all driven and competitive by nature. In law school, many of us practiced self-sacrifice mixed with indestructible tenacity as the basic recipe for competing at an unprecedented academic level. We then took that high level of energy, dedication, skill and passion to the legal profession. Basically, we set our work-ethic “cruise controls” at a very high speed and buckled up for the long haul.

That’s all well and good, but most of us did not receive any education on how important it is for all high-functioning professionals to still maintain well-being and promote healthy work environments. Also,

heretofore, we have never had a specific manual to teach us how to take personal steps to set boundaries and prioritize well-being.

There’s great news to report!

Just published in 2018, in partnership with the ABA, the “Well-Being Toolkit for Lawyers and Legal Employers” is a comprehensive manual created by Anne M. Brafford, JD, MAPP and PhD “in progress.” The well-developed treatise discusses topics including the Definition of Lawyer Well-Being; the Definition of a Healthy Workplace; 8-Step Action Plan for Legal Employers; Policies and Practice Audit; Activities and Events; Education and Development; Assessments; Online Resources and Technology; Book Recommendations; Well-Being Partners; Well-Being Speakers and Consultants; Activity Workbook; and Well-Being Partner Appendix.

All of the above ABA reports and the new Well-Being Toolkit are available on the Judges and Lawyers Assistance Program, Inc. (JLAP) website: [www.louisianajlap.com/wellbeingtoolkit/](http://www.louisianajlap.com/wellbeingtoolkit/).

Per the ABA Toolkit:

*Because too many lawyers aren’t thriving, multiple initiatives have been launched to take action. For example, in 2015, former Chair of the American Bar Association’s (ABA) Law Practice Division Tom Bolt successfully advocated for the creation of a new Attorney Well-Being Committee. Next, the National Task Force on Lawyer Well-Being was formed and it issued a comprehensive report, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” The report motivated ABA President Hilarie Bass to form a Presidential Working Group to Advance Well-Being in the Legal Profession focused on how legal employers can support healthy workplaces.*

*The toolkit is designed to help lawyers and legal employers improve well-being holistically and systemically. This goal will require new choices, considerable effort and changes that will likely upset the*

*status quo. Positive change agents might meet resistance, including that there is no room, time, resources or need for change. This toolkit offers reasons for prioritizing lawyer well-being as well as information, strategies and resources for implementing a plan for positive change.*

Practicing lawyer well-being is the key to reducing the currently elevated numbers of mental health problems that the legal profession suffers. While JLAP provides an extremely effective “peer-professionals’ program” and totally confidential services to assist those who have developed diagnosable problems with alcohol, drugs, depression and other types of mental health issues, JLAP also fully supports general health, wellness and mindfulness. Practicing self-care can effectively prevent the development of some mental health issues.

In the last two years, JLAP has dedicated significant resources to the lawyer well-being initiative. JLAP’s CLE presentations on “Compassion Fatigue” and “The Professional Duty of Self-Care” have been popular.

Visit JLAP’s website to download the new ABA Well-Being Toolkit. Remember, JLAP offers complete wellness and well-being support to Louisiana’s legal profession. JLAP can provide resource material, CLE presentations and clinical referrals to help you or your law firm come up to speed on well-being initiatives. Call JLAP at (985)778-0571, email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com) or visit the website, [www.louisianajlap.com](http://www.louisianajlap.com).

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





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## 24 Students Complete 2018 Suit Up for the Future

**T**he Louisiana State Bar Association's (LSBA) Suit Up for the Future High School Summer Legal Institute and Internship Program had another successful year with 24 student interns completing the program. The three-week program (June 11-29) included abridged law school sessions; shadowing opportunities at law firms, courts and agencies; and field trips to courts and law schools.

During the program, students prepared written memoranda to support their oral arguments. Oral arguments were presented on the last day of the program to a panel of judges at the U.S. District Court, Eastern District of Louisiana.

The LSBA's Suit Up for the Future Program, a partnership with Just the Beginning, the Louisiana Bar Foundation and the Louisiana law schools, is an award-winning Diversity Pipeline program and a 2013 American Bar Association Partnership recipient.

The Suit Up Program's success is credited to its dedicated volunteers.

► LSBA Pipeline to Diversity and Outreach Subcommittee Co-Chairs Adria Nobles Kimbrough, The Kullman Firm; and Scherri N. Guidry, 15th JDC Public Defenders Office.

► LSBA President Barry H. Grodsky.

► Instructors — Professors Isabel Medina and Emily Bishop, Loyola University College of Law; Professors Jeffrey C. Brooks and Robert E. Lancaster, Louisiana State University (LSU) Paul M. Hebert Law Center; Advocacy Fellow Annie Scardulla, LSU Paul M. Hebert Law Center; and Professor Russell L. Jones, Southern University Law Center.

► Shadowing Employers — Judge June Berry Darensburg, 24th JDC; Judge Lee V. Faulkner, Jr., 24th JDC; Judge Piper Griffin, Orleans Parish Civil District Court;



Members of the 2018 Suit Up for the Future class and program coordinators. Front row from left, Adria Nobles Kimbrough, The Kullman Firm, co-chair, Pipeline to Diversity and Outreach Subcommittee; Spring A. Gaines, Loyola University College of Law; students Lanisha M. Dorsey, Shandrea U.M. Dyson, Gabrielle A. Bradford, Brooklyn M. Comeaux, Aria A. Morgan, Nakia Williams, Theresa M. Falgoust and Grace H. Traina; and Scherri N. Guidry, 15th JDC Public Defenders Office, co-chair, Pipeline to Diversity and Outreach Subcommittee. Middle row from left, Elizabeth (Libby) Crocker, Tulane University Law School; students Alexandria D. Flakes, Adrija Bhattacharjee, Alyssa M. Portillo, Cassadi L. Marone, Terrol L. Perkins, Paitlyn M. McDonald, Nisha V. Bhatia and Rose Z. Ayyad; and Jay J. Vega, Tulane University Law School. Top row from left, students Bridget (Bee) Spinney, Chloe G. Brown, Matias D. Witte, Solange G. Campbell, Christian H. Lacoste, Amaya E. Felix, Kewanée A. Harris and Patrick D. Murray.

Judge Ivan L.R. Lemelle, U.S. District Court, Eastern District of Louisiana; Judge Angelique A. Reed, 1st City Court, Orleans Parish; Judge D. Nicole Sheppard, Orleans Parish Civil District Court; Adams and Reese, LLP; Courington Kiefer & Sommers, L.L.C.; Deutsch Kerrigan, LLP; Irwin Fritchie Urquhart & Moore, LLC; Kelly Hart & Pitre; Shields Mott, L.L.P.; Stone Pigman Walther Wittmann, L.L.C.; Orleans Public Defenders Office; Orleans Parish District Attorney's Office; and Entergy Services, Inc.

► Judges' Panel — Judge Janis Van Meerveld and Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; Judge D. Nicole Sheppard (Section J), Orleans Parish Civil District Court; and Judge Paula A. Brown and Judge Tiffany G. Chase, Louisiana 4th Circuit Court of Appeal.

► Field Trip Presenters — Judge Joyce

Cossich Lobrano and Judge (Ret.) Max N. Tobias, Jr., Louisiana 4th Circuit Court of Appeal; Judge Camille Buras (Section H)



Welcoming Suit Up students on the first day were, from left, Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; 2018-19 Louisiana State Bar Association President Barry H. Grodsky; and Scherri N. Guidry, 15th JDC Public Defenders Office, co-chair, LSBA Pipeline to Diversity and Outreach Subcommittee.



and Judge Tracey Flemings-Davillier (Section B), Orleans Parish Criminal District Court; Loyola University College of Law; Tulane University; Tulane University Law School; and Robert Gunn and Miriam Childs, Louisiana Supreme Court.

► Interns — Asia Hentkowski, Ashley Berry, Elizabeth (Libby) Crocker, Spring A. Gaines, Jay J. Vega; and Brian Trepanier, law clerk to Judge Karen Wells Roby.

► Lunch Presenters — Natalie S. Blackman, Caroline F. Bordelon, J. Michael Bowman, Alayne K. Gobeille, Robert W. Goeke, Amanda R. James, Janet Kearney, Kristen A. Lee, Dayal S. Reddy, Kimberly R. Silas and Micah C. Zeno.



Derwyn D. Bunton, chief district defender, Orleans Public Defenders Office.



“Legal Research and Writing” presenter Professor Emily Bishop, Loyola University College of Law.



“Statutory Interpretation” presenters, from left, Caroline F. Bordelon, Gieger, Laborde & Laperouse, LLC; Micah C. Zeno, Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC; and Kristen A. Lee, law clerk, Louisiana 4th Circuit Court of Appeal.



“College and Law School Admission Preparation Workshop” presenters, from left, Daphne A. James, associate director of admissions, Office of Admissions, LSU Paul M. Hebert Law Center; and Sierra Cason, admission counselor, Office of Undergraduate Admission, Tulane University.



“How a Legal Career Provides You with Meaning, Purpose and a Mission in Life” presenter Professor Robert E. Lancaster, LSU Paul M. Hebert Law Center.



“Criminal Law” presenter Professor Russell L. Jones, center, Jesse N. Stone, Jr. Endowed Professor of Law, Southern University Law Center, with student interns.



The 24 student interns participating in the 2018 Suit Up Program.



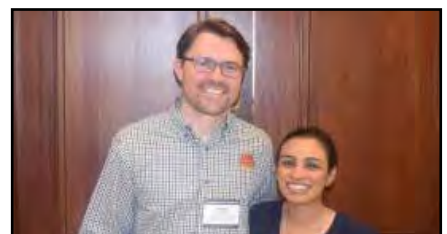
Orleans Parish District Attorney Leon A. Cannizzaro, Jr.



On the final day of the program, Suit Up student interns presented oral arguments before a panel of judges. From left, Judge Paula A. Brown, Louisiana 4th Circuit Court of Appeal; a.m. session Oral Argument winner and Best Memo winner (prosecution), Aria A. Morgan; a.m. session Oral Argument winner (defense), Adrija Bhattacharjee; p.m. session Oral Argument winner (defense), Christian H. Lacoste; p.m. session Oral Argument winner (prosecution), Theresa M. Falgoust; Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; and Judge Tiffany G. Chase, Louisiana 4th Circuit Court of Appeal. Not in photo, Gabrielle A. Bradford, Best Memo winner (defense).



“Constitutional Law” presenter Professor Isabel Medina, Loyola University College of Law.



“College and Law School Admission Preparation Workshop” presenters, from left, Brent McLemore, assistant director at the Loyola Career Development Center, Office of Student Affairs, Loyola University New Orleans; and Veronica Aviles, admissions counselor, Loyola University New Orleans.

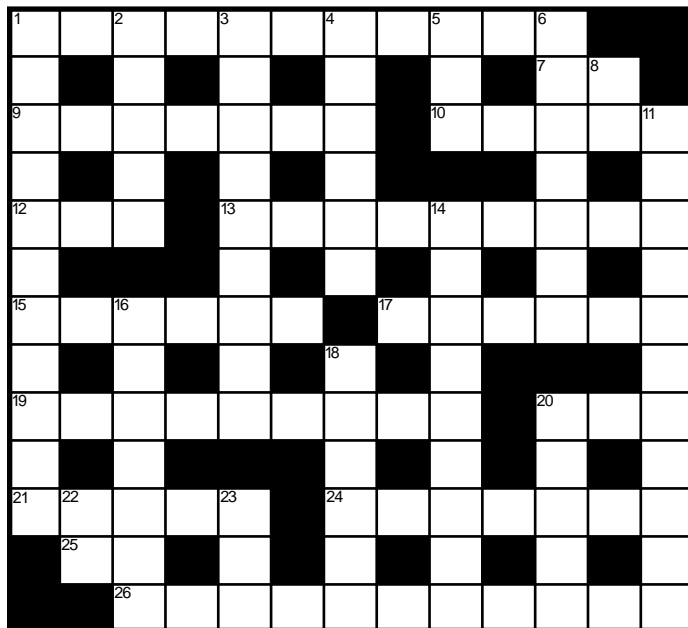


“Oral Argument Workshop (How to Deliver an Oral Argument)” presenters, from left, Professor Jeffrey C. Brooks, assistant professor of professional practice and Annie Scardulla, Advocacy Fellow, LSU Paul M. Hebert Law Center.

# Crossword PUZZLE

By Hal Odom, Jr.

KISS ME "CATE"



## ACROSS

- 1 Document or electronic record of insurance coverage (11)
- 7 Pay close attention (abbr.) (1., 1.)
- 9 Senseless or ill-advised (7)
- 10 ESPN summary (5)
- 12 Funerary vessel (3)
- 13 Prove oneself right (9)
- 15 "The Usual Gang of \_\_\_\_"  
MAD Magazine credit line (6)
- 17 Keen and insightful remark (6)
- 19 Engage in a loud public argument with (or without) physical contact (9)
- 20 Former juvenile detention facility in Monroe and Baton Rouge (1, 1, 1)
- 21 Avoid capture or exceed one's understanding (5)
- 24 Crunchy oat-and-nut confection (7)
- 25 How @ is pronounced (2)
- 26 Pledge as security (11)

## DOWN

- 1 Maintain contact, as with a client (11)
- 2 Many a summer TV show (5)
- 3 One who might file a patent request (9)
- 4 Recite, as magic words (6)
- 5 Mediation and arbitration, e.g. (1, 1, 1)
- 6 As plain as possible, Jacques! (2, 5)
- 8 An undergraduate degree for many lawyers (1., 1.)
- 11 Decide before hearing the evidence (11)
- 14 Shower curses upon (9)
- 16 Honestly (2, 5)
- 18 Former tennis racquet material: no felines were harmed (6)
- 20 Natural sponge (5)
- 22 Its capital is B.R. (2.)
- 23 Particularly (abbr.) (3.)

Answers on page 221.

## Alcohol and Drug Abuse Hotline

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Louisiana Association  
for  
**JUSTICE**

# FOCUS ON Professionalism

By Christy M. Howley Connois

## THE NEED FOR A PLAN

**R**ecent and not-so-recent events in my practice, including the death of several colleagues (some at a very young age and others who were my contemporaries) and the suspension of colleagues for various issues, have brought to the forefront a problem on my mind lately, both in the context of an inability to practice law for some reason and in the context of organization — the need for a plan.

Louisiana attorneys don't just practice in big firms where their partners can take over if something happens to them. Many attorneys in our state practice in small firms or are solo practitioners. If something catastrophic happens to them, many have no succession plans for their practices.

What plan do you have for your practice in the event of a medical emergency, your death or the death of a close family member, or some other unforeseen event that keeps you away from your practice for more than a few weeks? Many (I know, because I've been asking) do not have any plan at all.

Consider this case from New York and the ABA Model Rules.

A New York appellate court ruled in 2014 that a lawyer's death is no excuse for negligently allowing a client's tort claim to prescribe, *Cabrera v. Collazo*, 2014 NY Slip Op. 00622 (N.Y. App. Div. 1st Dept. 2/4/14). The lawyer died 11 days before the statute of limitations ran on his client's medical malpractice claim. The aggrieved client sued his estate for legal malpractice. The court ruled: "Plaintiff is entitled to the factual inference that, at this late juncture and mindful of his ill health, [the lawyer] was aware of the need to prepare and file a complaint or to arrange for one to be filed as soon as the necessary letters of administration were received . . . [He] neither filed a complaint nor engaged another attorney to file one in his stead despite the availability of three attorneys associated with the firm

as of counsel."

The takeaway? Even in death, your clients can pursue you. Also, even in the event of a major illness, we cannot neglect our duties to our clients. You must have a plan for another lawyer to take over your practice in the event of a major illness, catastrophe or even your death.

The comments to ABA Model Rule 1.3 recommend just that:

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. (Dane Ciolino, La. Legal Ethics, 3/5/14).

If you're in a small firm (fewer than five lawyers), could they pick up all of your files and handle them quickly and without any incident like prescription or prejudice to a client? Probably not.

So, here are a few easy guidelines for all of us.

► Keep a client information folder in your computer and keep a client information sheet in the front of each file, with name, address, phone numbers, emails and the like of the client(s) and another person to contact if you cannot reach the client. I would apply this to any type of case including an insurance one and just change client for adjuster.

► Back up all of your files onto an external hard drive kept away from your office or onto the cloud in the event of an emergency.

► Find an IT person to assist with your office setup, organization and file back-up.

This person also can help you set up a list of where your files, bank accounts and passwords are housed. Many IT people are not prohibitively expensive and, I promise you, my IT person has saved my bacon many times.

► If you do not have a law partner, associate someone as of counsel or enlist a colleague and write your succession plan and give it to that person. Make sure they are capable of taking over your practice on little to no notice for a period of time if some emergency befalls you or your family. No one should be unprepared and your clients should not be prejudiced by your life issue.

► Part of your plan should include written instructions on how and where client information is stored, including bank and other account details (e.g., operating and trust account information), information concerning disposition of closed client files, information about law office equipment leases or other contracts, information regarding payment of current liabilities, and information on how you contemplate your successor will be compensated.

Recently, some colleagues and I had the unenviable task of wrapping up the law practice of someone who died unexpectedly. We are still handling it today. Assisted by Louisiana State Bar Association (LSBA) Ethics Counsel Richard P. Lemmler, Jr. (who was so patient and informative and who I highly recommend consulting), we have navigated the waters of this area of our practice that is not highly regulated by the Bar. The only regulation that addresses this is Louisiana Supreme Court Rule XIX, Section 27(A), which states:

**Inventory of Lawyer Files.** If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not



complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients. (*Amended effective Sept. 16, 2005.*)

While there is currently nothing in the Louisiana Rules of Professional Conduct that governs having a succession plan, that may not be the case for long.

The Louisiana Supreme Court has this issue on its mind as Proposed Rule 1.19 is under consideration. This rule would ask all attorneys to create a succession plan or name a successor attorney and place it on file with the LSBA.

Based on my own experiences, I hope the rule is approved soon. Every attorney should create a succession plan and place it with their partners or another attorney and certify that fact to the LSBA each year. That way, clients are protected and so is the profession.

*Christy M. Howley Connois, a member of the Gretna firm of Bowman & Howley, has been practicing law for 22 years. She has a general civil and criminal practice, focusing on family law, personal injury, successions, civil litigation matters, and felony and misdemeanor criminal representation. She is a member of the Louisiana State Bar Association's House of Delegates and co-chairs the LSBA's Committee on the Profession. She was listed in Louisiana Super Lawyers in 2011 and was named as one of the Top 10 Family Law Attorneys in Louisiana in 2015 by the National Academy of Family Law Attorneys. She received her undergraduate degree from Loyola University and her law degree from Loyola University College of Law. (christyhowley@bowmanandhowley.com; 629 Lafayette St., Gretna, LA 70053)*



## 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 Nov. 1-9, 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 2019. (Costumes that were donated after Halloween 2017 are being distributed to children for 2018.)

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New Orleans, LA 70130  
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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Aug. 6, 2018.

### Decisions

**Sean C. Brazil**, New Orleans, (2018-B-0932) **Consented to be transferred to interim suspension status** by order by the Louisiana Supreme Court on June 15, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018.

**Robert O'Neal Chadwick, Jr.**, Alexandria, (2018-B-0691) **By consent has been suspended from the practice of law for one year and one day, with all but six months deferred, subject to a two-year**

**period of unsupervised probation**, by order of the Louisiana Supreme Court on June 15, 2018. ORDER FINAL and EFFECTIVE on June 15, 2018. *Gist:* DWI offense (criminal act).

**John Morris Dunn III**, Covington, (2018-B-0340) **Disbarred for conversion of third-party funds** by order of the Louisiana Supreme Court on May 11, 2018. Rehearing denied on June 15, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018. *Gist:* Respondent converted third-party funds in violation of the Rules

of Professional Conduct.

**Arthur Harris, Sr.**, Metairie, (2018-B-0847) **Probation revoked, previous deferred suspension of one year and one day has been made executory**, by order of the Louisiana Supreme Court on June 15, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018.

**Timothy John Henry, Jr.**, New Orleans, (2018-B-0875) **By consent has been suspended from the practice of law**

Continued next page



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**Discipline** continued from page 206  
for a period of one year, fully deferred, subject to a one-year period of unsupervised probation, by order of the Louisiana Supreme Court on June 15, 2018. ORDER FINAL and EFFECTIVE on June 15, 2018. *Gist:* Commission of a criminal act (DWI first offense); and violating or attempting to violate the Rules of Professional Conduct.

**Raushanah S. Hunter**, Baton Rouge, (2018-B-0341) **Suspended from the practice of law for one year and one day, with all but four months deferred, subject to probation**, by order of the Louisiana Supreme Court on May 18, 2018. ORDER FINAL and EFFECTIVE on June 1, 2018. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate; conflict of interest; failure to cooperate with the Office of Disciplinary Counsel; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

**Marcus Paul LaCombe**, Iowa, LA, (2018-B-0716) **By consent has been**

**suspended from the practice of law for a period of two years, retroactive to his July 6, 2017, interim suspension**, by order of the Louisiana Supreme Court on June 15, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects (domestic abuse and battery).

**Dianne J. Marshall**, New Orleans, (2018-B-0918) **Consented to a public reprimand** by order of the Louisiana Supreme Court on June 15, 2018. JUDGMENT FINAL and EFFECTIVE on June 15, 2018. *Gist:* Respondent failed to act with reasonable diligence and promptness in representing a client; failed to communicate with a client; failed to take reasonable steps to protect a client's interest upon termination of representation; and violated the Rules of Professional Conduct.

**Edward Bissau Mendy**, New Orleans, (2018-B-0384) **Permanently disbarred** by order of the Louisiana Supreme Court on May 25, 2018. JUDGMENT FINAL

and EFFECTIVE on June 9, 2018. *Gist:* Respondent neglected his client's patent matter; failed to communicate with his client; failed to refund any portion of the unearned fee he was paid; and failed to cooperate with the Office of Disciplinary Counsel in its investigation.

**Melanie Kay Shrell**, Ruston, (2018-OB-0974) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on June 25, 2018. JUDGMENT FINAL and EFFECTIVE on June 25, 2018.

**Michael L. Thiel**, Hammond, (2018-B-0367) **Disbarred on consent from the practice of law** by order of the Louisiana Supreme Court on June 25, 2018. JUDGMENT FINAL and EFFECTIVE on June 25, 2018. *Gist:* Respondent's discipline resulted from his pleading guilty to one count of willfully evading the payment of federal taxes.

**Clara E. Toombs**, Monroe, (2018-OB-0948) **Transferred to disability inactive status** by order of the Louisiana Supreme

Continued next page

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

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Aug. 1, 2018.

Respondent	Disposition	Date Filed	Docket No.
David L. Bell	[Reciprocal] Interim suspension.	6/22/18	18-3716
Laetitia Black	[Reciprocal] Suspension.	6/22/18	18-3973
Lionel Lon Burns	[Reciprocal] Suspension.	7/25/18	18-5411
Patrick Hale DeJean	[Reciprocal] Interim suspension.	7/25/18	18-5410
Hilliard Charles Fazande III	[Reciprocal] Interim suspension.	7/25/18	18-5409
Christa Hayes Forrester	[Reciprocal] Suspension.	6/22/18	18-3715
Bryan F. Gill, Jr.	[Reciprocal] Suspension.	6/22/18	18-3971
Matthew Ungarino	One-year suspension [fully deferred].	7/11/18	17-773

**Discipline** continued from page 207

Court on June 25, 2018. JUDGMENT FINAL and EFFECTIVE on June 25, 2018.

Trisha A. Ward, New Orleans, (2018-

OB-1057) **Reinstated to the practice of law, subject to a five-year period of probation**, by order of the Louisiana Supreme Court on July 3, 2018. JUDGMENT FINAL and EFFECTIVE on July 3, 2018. *Gist:*

Ward has proven by clear and convincing evidence that she satisfies the criteria for reinstatement to the practice of law in the Louisiana.

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

Violation of Rule 1.15(f)—Safekeeping of a client's or third person's property stating that every check, draft, transfer or other withdrawal instrument or authorization from a client trust account must be signed or directed by a lawyer, or in the case of a law firm, one or more lawyers authorized by the firm.

### CHRISTOVICH & KEARNEY, LLP

ATTORNEYS AT LAW

#### DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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For more information,  
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### Homestead Property

**Matter of Lopez**, 897 F.3d 663 (5 Cir. 2018).

In *Lopez*, the Chapter 13 debtors listed their Texas property as their homestead, which they claimed as exempt under the Bankruptcy Code and other Texas state laws. The debtors confirmed a plan that provided that the property of the estate, including property that subsequently may come into the estate, would not revert in the debtor except upon, among other things, dismissal of the case.

After plan confirmation, the debtors continually failed to make the required plan payments. To ease their financial burden, the debtors sold their home but failed to seek court permission. Two years later, the debtors filed a motion seeking to retroactively approve the sale.

At the hearing on the motion to sell, the Chapter 13 trustee cited to 5th Circuit precedent that provides that the proceeds from the sale of the homestead property became estate property if they are not re-invested in (or used to purchase) another home within six months. Because the debtors did not purchase another home, the trustee argued, the sale proceeds were no longer exempt and should be brought into the estate.

The bankruptcy court approved the sale motion but ordered that the proceeds were estate property and submitted the funds to the trustee for distribution to the debtors' creditors. After again failing to make plan payments, the bankruptcy court informed the debtors that they could (1)

use some of the proceeds for medical bills but then must turn over the remaining sale proceeds to the trustee, or (2) they could dismiss their case and retain all of the proceeds, foregoing a discharge. The debtors chose to file a motion to voluntarily dismiss their case.

The trustee objected to the motion to dismiss, arguing that it was filed in bad faith in order to retain the sale proceeds, which were gained years prior without court permission, and retain a windfall at the expense of their unpaid creditors. The bankruptcy court granted the voluntary dismissal and ordered that the trustee turn over the proceeds to the debtors.

The trustee appealed, and the district court reversed, holding that the sale pro-

ceeds should be distributed to the debtors' creditors under the plan.

On appeal, the 5th Circuit explained that Section 349(b) of the Bankruptcy Code provides that dismissal of the case revests the property of the estate "in the entity in which such property was vested immediately before the commencement of the case." Because the homestead was vested in the debtors at the commencement of the case, the sale proceeds revested in the debtors on dismissal. The 5th Circuit thus agreed with the bankruptcy court, finding the district court's ruling "untenable" because it ordered distribution of funds to creditors under a defunct plan in a case that was over. Since a trustee can distribute funds to creditors only

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under the specific terms of a plan and because the plan was no longer in effect upon dismissal, the authority to distribute funds ended with the closing of the case.

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## Lawyer for Agent, Director and Officer Did Not Conspire to Defraud Corporation

*Covington Golf & Recreation Park, Inc. v. Keating*, 17-0297 (La. App. 1 Cir. 3/7/18), \_\_\_ So.3d \_\_\_, 2018 WL 1191394.

The 1st Circuit Court of Appeal affirmed the district court's dismissal of a corporation's suit against a lawyer who

had represented the corporation's agent, officer and director. The suit asserted that the lawyer had conspired with his client to defraud the corporation. Covington Golf and Recreation Park, Inc. was incorporated by Charles Gambino, Thomas E. Ketchum, Jr. and Ketchum's wife, Betty Keating, with Gambino and Ketchum serving as directors, as well as president and secretary/treasurer, respectively. Ketchum also served as agent for service of process, with his home address listed as Covington's registered office and principal place of business. Further, Ketchum and Keating owned and leased to Covington the property on which Covington operated its driving range pursuant to a 10-year lease with an option to purchase the property. Attorney Geoffrey Longenecker represented Ketchum and Keating in these transactions.

In April 2008, Longenecker sent Covington a notice-of-default letter on behalf of Ketchum as lessor for failure to pay rent for three months. The letter gave Covington 10 days to cure the default or the lease would be terminated. The letter was delivered to Ketchum's house by both certified mail and hand delivery, and Ketchum acknowledged service by signing the certified mail receipt. Subsequently, Ketchum and Keating filed suit against Covington, and service of the suit was personally made on Ketchum. After Covington failed to timely respond to the petition, a default judgment was

entered against it.

After a notice to vacate was posted on Covington's premises, Covington sued Ketchum and Keating seeking a preliminary and permanent injunction, as well as declaratory judgment that the lease was valid and enforceable. Covington filed an amended pleading to add Longenecker as a defendant, alleging that he had conspired with Ketchum and Keating to commit fraud by suing Covington and obtaining cancellation of the lease.

Covington alleged that Ketchum's intent to defraud it was evident by his not informing Gambino of the suit to cancel the lease, in violation of his fiduciary duty as Covington's director, officer and agent. Further evidence of this intent to defraud was Ketchum's failure to attend two special meetings of the board of directors called by Gambino with the express intent of discussing the status of Covington's tax filings and plans for developing the property further. Ketchum also never raised the issues with the lease despite routine daily interactions with Gambino. Gambino alleged that he learned of the events only upon seeing the notice to vacate posted at Covington's premises. Covington also alleged that Longenecker, as Ketchum's personal attorney, knew of Ketchum's intent in filing suit, and, therefore, had participated in the conspiracy to commit fraud. Ketchum and Keating subsequently declared bankruptcy and were



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dismissed from the suit. Longenecker, thereafter, died and his estate was substituted as the sole defendant.

The trial court found in favor of Longenecker's estate, holding that Covington had failed to meet its burden of proving that Longenecker had knowledge that Ketchum and Keating were committing fraud by using the lawsuit to cancel the lease and not informing Gambino of the lawsuit. Covington appealed, contending the trial court erred in requiring Covington to prove Longenecker's actual knowledge of Ketchum's intent to commit fraud by concealing the suit instead of concluding that Longenecker had such knowledge on circumstantial grounds. The 1st Circuit affirmed the trial court, holding that the trial court had not required the plaintiff to prove actual knowledge by Longenecker. Rather, the appellate court held that the trial court clearly concluded that the plaintiff failed to meet its burden of proving of Longenecker's knowledge even by circumstantial evidence.

Judge Welch dissented from the ma-

jority opinion, stating that the record amply demonstrated Longenecker's involvement in the lawsuit for cancellation of the lease, as well as his knowledge of Ketchum's positions with Covington as agent, director and officer. At the very least, Judge Welch argued, Longenecker "would have been aware" that Ketchum had failed to act in his role as agent for Covington based on Covington's failure to timely respond to the lawsuit for cancellation of the lease. These facts and circumstances, the dissent argued, were sufficient to infer that Longenecker put himself in an "unusual and inappropriate ethical circumstance" and knew of his client's fraudulent intent.

—**Joshua A. DeCuir**  
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## Arguments to Combine Land Loss Suits Rejected

*In Re: La. Coastal Zone Land Loss Litigation*, 317 F.Supp.3d 1346 (Mem) (Multi. D. Lit. 2018.)

After being removed to federal court again (the third time for some of the cases), five judges of the United States Judicial Panel on Multi-District Litigation rejected defendants' arguments to combine the dozens of coastal-land-loss suits into a multi-district litigation format (MDL) pursuant to 28 U.S.C. § 1407. The panel, which sat for hearings in Santa Fe, NM, concluded that centralization is "not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation."

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The panel acknowledged that the 41 cases (29 pending in the Eastern District of Louisiana and 12 in the Western District of Louisiana) broadly implicated the same factual questions — namely, that the five coastal parishes were experiencing significant coastal-land loss and whether or to what extent oil and gas extraction or transmission contributed to that loss — but the panel focused on the fact that each case was specifically tailored to an “operational area” that would likely have distinct causes of action, discovery needs and different defendants.

Although the parties disagreed over the prudence of consolidation as an MDL under section 1407, the parties were mutually agreeable to some form of consolidation at the federal court level. As such, the MDL panel recognized that future consolidation by the Eastern and Western District Courts may be a possibility under 28 U.S.C. § 1404.

The 41 separate cases, which were removed on the basis that the plaintiffs’ preliminary expert reports implicated federal directives issued during World War II and thus before the passage of the Coastal Zone Management Act (upon which the cases are based), now remain in federal district court and await decisions on pending motions to remand.

## NORM Litigation

*Lennie v. Exxon Mobil Corp.*, 17-0204 (La. App. 5 Cir. 6/27/18), \_\_\_\_ So.3d \_\_\_\_, 2018 WL 3131444.

In an appeal from the 24th Judicial District Court, the Louisiana 5th Circuit recently clarified its application of prescription and *contra non valentem* in NORM (naturally occurring radioactive material) litigation.

This case was a survival and wrongful death suit brought by the surviving spouse and children of a man who had worked in a pipe yard where they allege he was exposed to NORM, leading to his death from lung cancer some 16 years after his retirement.

The plaintiffs’ claims were based in tort, thus carrying a one-year prescriptive period under La. Civ.C. art. 2315.1. Lennie died in 2010 — some four years prior to his family filing suit on his behalf. As such, the defendants filed prescription exceptions

at the trial court, which were granted. The trial court found that the plaintiffs failed to meet their burden of proof to apply the doctrine of *contra non valentem*, which suspends the running of prescription against a claimant who is “ignorant of the existence of facts that would enable him to bring a cause of action, provided that his ignorance is not willful, negligent, or unreasonable.” *Guillot v. Daimlerchrysler Corp.*, 08-1485 (La. App. 4 Cir. 9/24/10), 50 So.3d 174, 181 (citing *Wimberly v. Gatch*, 93-2361 (La. 4/11/94), 635 So.2d 206, 212). Relevant to the *Lennie* case, *contra non valentem* may apply when: 1) there has been concealment by the alleged tortfeasor; or 2) where the plaintiffs do not have actual or constructive knowledge of the cause of action even if not induced by the defendant.

More specifically, the plaintiffs alleged that “the defendants actively sought to conceal the causal link between work-related NORM exposure and lung cancer, and downplay the danger of exposure to the radioactive material in the workplace.”

*Lennie* at \*4. In support of this claim, the plaintiffs alleged that NORM was previously discovered by the oil industry and that a trade group was established to develop a screening method to detect NORM, which was approved by the state and adopted by Lennie’s employer. A similar argument was successfully made in *Lester v. Exxon Mobil Corp.*, 10-743 (La. App. 5 Cir. 5/31/12), 102 So.3d 148. However, the 5th Circuit distinguished the *Lester* case due to the plaintiffs’ failure to present “any evidence of actions taken by defendants that would rise to the level of concealment, misrepresentation, or fraud directed towards them.” *Lennie* at \*4. In *Lester*, there was evidence suggesting that the employer showed videos to workers suggesting that NORM exposure was very unlikely.

The *Lennie* plaintiffs also sought to avail themselves of the suspensive influence of *contra non valentem* by alleging that they had no actual or constructive knowledge of the cause of action, also known as the “discovery rule.”

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The *Lennie* plaintiffs testified that they did not have actual knowledge that another party wrongfully caused Lennie's death until they read a newspaper article in 2013. However, the court concluded in its *de novo* review that "Mr. Lennie's diagnosis of lung cancer in January 2010 was constructive notice sufficient to put the Lennies on guard and to call for them to inquire further into the cause of his condition." *Lennie* at \*8. The court found that the Lennies' lack of knowledge was due only to their lack of investigation. In so ruling, the court distinguished an earlier ruling allowing for the application of *contra non valentem* in a situation where the plaintiff has investigated the cause of an injury, but received an alternative diagnosis from a physician.

—S. Beaux Jones

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## Succession

*Sork v. Sork*, 17-0300 (La. App. 1 Cir. 2/9/18), 242 So.3d 640.

Following Mr. Sork's death, 50 percent ownership of a home and the debt thereon was received by Ms. Sork, who was Mr. Sork's second wife, and the other 50 percent of the home and liability was received by his four children from his first wife. She subsequently sued the stepchildren for reimbursement for mortgage payments and for repair and maintenance expenses. After serving two of the four children, she obtained a default against those two children for one-half of the mortgage payments she had made and for one-half of the repair and maintenance expenses. The

court of appeal found that the two children were liable only for their virile shares and amended the judgment to require the two children to pay one-fourth each of the mortgage expenses. The children were joint, not solidary, obligors.

Regarding the repair and maintenance expenses, the court of appeal first rejected the children's argument that those expenses should be offset by Ms. Sork's use of the home, finding that the children had never demanded occupancy of the home and been refused. The children further argued that many of the expenses were not necessary expenses. The court of appeal agreed, reducing the award to those only for expenses necessary to preserve the home and which were sufficiently proven. The dissent argued that the children should have been solidarily obligated on the debt.

*In re Succession of Buhler*, 17-0049 (La. App. 1 Cir. 2/22/18), 243 So.3d 39.

During the parties' marriage, Mr. Buhler executed a will in which he bequeathed all

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of his property to his wife. Subsequently, they divorced, and the trial court signed a judgment. Mr. Buhler then died before the delay for suspensively appealing had passed. Ms. Buhler filed a petition to probate his will, alleging that Mr. Buhler was her husband and seeking to be designated as executrix. After the trial court signed the order, Mr. Buhler's daughter, Ms. Paul, moved to revoke the appointment under La. Civ.C. art. 1608 on the grounds that the Buhlers were divorced at the time of Mr. Buhler's death and that Ms. Buhler misrepresented that she was still married to him. She argued that, because the divorce judgment was not yet final at the time of his death, it abated.

The trial court found that the divorce negated any testamentary provisions in her favor, revoked her appointment as executrix and appointed Ms. Paul as executrix. Both parties then submitted conflicting proposed judgments, and the trial court signed both, Ms. Buhler's one day and Ms. Paul's the next. The court of appeal found that Ms. Paul's judgment was an absolute nullity, as it was substantively different and could not amend the first signed judgment.

Moreover, although Ms. Buhler's proposed judgment was not circulated to opposing counsel in accordance with Rule 9.5, it had been provided to opposing counsel, and the proposed judgment noted that Ms. Paul opposed certain portions. The court of appeal thus found that the purpose for Rule 9.5 had been achieved, and that the error in not allowing the full five days for opposition comments was harmless. Regarding the status of the divorce, the appellate court found that the divorce had not abated, and, because Ms. Buhler did not appeal the divorce judgment, it was final and definitive. Further, her assignments of error regarding failure of service regarding the divorce petition and rule to show cause were rejected because she failed to file declinatory exceptions and, therefore, waived such arguments. Because the judgment of divorce was final, she was removed as executrix.

**Succession of Barrios**, 17-0560 (La. App. 4 Cir. 4/6/18), 243 So.3d 122, *writ denied*, 17-0049 (La. 4/15/16), 191 So.3d 592.

The parties acquired oyster leases dur-

ing their marriage. Mr. Barrios died in 1975. Ms. Barrios died in 1981. The two successions were consolidated in 1984 but remained open without judgments of possession. Subsequently, after the BP oil spill, which affected the leases, one of the parties' children obtained a large recovery from BP. Other heirs sued for their shares, which the court of appeal ultimately awarded to them. The exception of prescription of one of the heirs was denied because the heirs became co-owners on the parents' deaths and their claims did not prescribe because they were co-heirs and co-owners in indivision.

**Succession of Pelt**, 17-0860 (La. App. 3 Cir. 4/11/18), 244 So.3d 476.

The court of appeal reversed the trial court, finding that the decedent's purported daughter's petition to intervene in the succession to establish her filiation was not prescribed because La. Civ.C. art. 197 had to be read in conjunction with art. 870, which provided that succession rights are governed by the law in effect on the date of the decedent's death. While her claim would have been prescribed but for the amendment enacting art. 197, when the two articles were read together, the Legislature's intent was clear that her claim was not prescribed. Moreover, the decedent's heirs did not acquire a vested right in the succession that would have precluded her claim. The trial court surveyed previous jurisprudence as well as the legislative history in conjunction with making its ruling that because her action was brought within one year of Mr. Pelt's death, even though after she reached age 19, her claim was not preempted.

**In re Succession of Bridges**, 17-1291 (La. App. 1 Cir. 2/27/18), 243 So.3d 618, *writ denied*, 17-1291 (La. 5/11/18), 242 So.3d 567.

Mr. and Ms. Bridges were divorced after their first marriage. Mr. Bridges then executed a will under which he left most of his estate to his former wife. The parties then remarried, and, again, divorced. After he died, Ms. Bridges was named executrix and obtained a judgment of possession. Mr. Bridges' son, thereafter, filed a motion seeking to annul the testament, to vacate Ms. Bridges' appointment



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as executrix, and to recognize his succession rights, arguing that the testamentary disposition in her favor should have been revoked under La. Civ.C. art. 1608 since the parties were divorced after the testament was executed and were divorced at the time of his death. The trial court and the court of appeal both rejected his arguments, finding that because they were not married when he executed the will, art. 1608 did not apply; and, further, his intent was for her to be the executrix and legatee, particularly since he did not change the will to grant his son any greater benefits. The court of appeal found that the parties' status at the time the will was executed controlled, and that art. 1608 contemplated that the parties be married at the time of the execution.

## Community Property

*Daigle Oil Distributors, L.L.C. v. Istre*, 17-1069 (La. App. 3 Cir. 4/11/18), 243 So.3d 628.

Ms. Istre embezzled more than \$4 million from her employer, Daigle Oil. The court of appeal affirmed the trial court's judgment that Mr. Istre was liable in solido for the debt. Even though he alleged he was not aware of it, the obligation was classified as a community obligation because it benefitted him and the community regime, and, since incurred during the community, was presumed to be a community obligation, which he failed to rebut. Moreover, he was not entitled to raise on appeal the trial court's denial of her exception of prescription as the exception of prescription is personal to the party who raises it, and he had not raised his own exception of prescription.

—**David M. Prados**

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## Liability in Multimodal Transport Contracts: Himalaya Clause

*Royal SMIT Transformers BV v. Onego Shipping & Chartering, BV*, 898 F.3d 543 (5 Cir. 2018).

Royal SMIT, a Netherlands company, sold three transformers to Entergy Louisiana, L.L.C., and contracted with an intermediary, Central Oceans USA, for delivery via a multimodal through bill of lading. Oceans' subcontractors Onego provided ocean carriage from Rotterdam to New Orleans; Illinois Central provided rail carriage to St. Gabriel; and Berard

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trucked the transformers to Entergy's substation, the final destination. The bill provided:

[Central Oceans] shall be responsible for the acts and omissions of his servants or agents when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the Contract, as if such acts and omissions were his own.

An inspection at St. Gabriel revealed that the transformers were damaged by "excessive vibration" somewhere along the journey. Royal and its insurers sued Oceans and its subcontractors, defendants herein, for breach of contract, fault and negligence, seeking more than \$1,600,000 in damages. Defendants filed a motion for summary judgment, arguing that they were protected from suit by the Himalaya Clause in Royal's contract with Central Oceans:

**15. Defenses and limits for [Central Oceans], Servants, etc.**

(b) [Royal] undertakes that no claim shall be made against any servant, agent, or other persons whose services [Central Oceans] has used in order to perform the Multimodal Transport Contract and if any claim should nevertheless be made, to indemnify [Central Oceans] against all consequences thereof.

(c) However, the provisions of this Contract apply whenever claims relating to the performance of the Multimodal Transport Contract are made against any servant, agent or other person whose services [Central Oceans] has used in order to perform the Multimodal Transport Contract, whether such claims are founded in contract or in tort. In entering into this Contract, [Central Oceans] . . . does so not only on its own behalf but also as agent or trustee for such persons.

The Supreme Court has noted that through bills of lading are central to

modern maritime commerce, which has embraced "door-to-door transport based on efficient use of all modes of transportation by air, water, and land," allowing a cargo owner to arrange for a complex transportation of goods in a single transaction rather than having to negotiate a separate contract for each leg.

In considering whether the clause is enforceable, the court noted:

Himalaya Clauses "extend the bill's defenses and limitations on liability to parties that sign sub-contracts to perform services contemplated by the bills." In other words, they operate much like the mountain range by the same name, creating a barrier between the cargo owner and downstream carriers that can be neither scaled nor circumvented.

Finding the Himalaya Clause in Oceans' contract to be enforceable, the court granted summary judgment, dismissing its subcontractors, the defendants herein.

—**John Zachary Blanchard, Jr.**  
Past Chair, LSBA Insurance, Tort,  
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## United States

*Am. Inst. for Int'l Steel v. United States*,  
U.S. Court of International Trade, Docket  
No. 19-00152 (June 27, 2018).

President Trump's administration is using long-dormant statutory authority to impose punitive tariffs above bound rates on numerous imported products. One of the President's actions imposed 25 percent tariffs on certain imported steel products. The tariffs are premised on Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862. Section 232 delegates authority to the Secretary of Commerce to investigate the national security impact of imported products. The statute requires the Secretary of Commerce to issue a report to the President with factual findings on whether the subject articles are being imported into the United States in such quantities as to threaten to impair national security. Along with the findings, the Commerce Secretary makes recommendations to the President for appropriate action.

President Trump imposed 25 percent tariffs on certain steel products as a result of a Section 232 investigation conducted by



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Secretary of Commerce Wilbur Ross. The American Institute for International Steel (AIIS) filed suit at the United States Court of International Trade in New York seeking to enjoin the steel tariff on the ground that Section 232 is an unconstitutional delegation of legislative power to the President. AIIS contends that the statute violates Article I, Section 1 of the U.S. Constitution and “the system of checks and balances that the Constitution protects.” *See*, Complaint, CIT Case No. 18-00152, at ¶¶ 8-13.

As previously reported in these Recent Developments, U.S. constitutional authority over international trade hinges on a very delicate and precarious balance between the legislative and executive branches. The legislature has exclusive economic authority over foreign commerce, while the executive enjoys substantial leeway over matters of national security and foreign affairs. In most circumstances, presidential international trade action falls under the specific congressional guidelines set forth in Trade Promotion Authority (TPA) legislation. TPA allows the President to act and negotiate on certain international trade matters under statutory criteria set

forth by the legislative branch. This constitutional delegation, while not without its critics, has functioned fairly smoothly in recent history because TPA reserves for Congress the right to vote up or down on presidential trade agreements. The current trade climate, however, is markedly different from recent history. President Trump is using Section 232 for trade actions that are not subject to Congressional approval. The AIIS case raises the significant question of whether the Section 232 delegation provides sufficient intelligible principles to remain an appropriate delegation of legislative power, or if it allows the President to become a legislator under the guise of national security. AIIS filed a motion for summary judgment on July 19, 2018. As of this writing, the United States has not filed its response.

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to different [e]mployees [to] be heard in separate proceedings.” *Id.* at 1620. The employees argued that arbitration could not be compelled because of the National Labor Relations Board’s (NLRB) 2012 decision holding that the National Labor Relations Act (NLRA) trumped the Federal Arbitration Act (FAA).

Justice Gorsuch wrote for the majority and explained that Congress enacted the FAA to mandate that courts recognize arbitration agreements as “valid, irrevocable, and enforceable.” *Id.* at 1621. The act specifically directed courts “to respect and enforce the parties’ chosen arbitration procedures.” *Id.* This applied to whom the parties choose to arbitrate with and the rules the parties decide to govern the arbitration.

The plaintiffs argued that the FAA’s savings clause created an exception because it gave courts the ability to reject arbitration agreements “upon such grounds as exist at law or in equity for the revocation of any contract.” *Id.* at 1616.

Justice Gorsuch relied on Supreme Court precedent in *AT&T Mobility, L.L.C. v. Concepcion*, 131 S.Ct. 1740 (2011), to distinguish between what the Court had held are available contractual defenses, like duress, fraud and unconscionability, and those untenable defenses that “target arbitration either by name or by more subtle methods” and “interfere with fundamental attributes of arbitration.” *Id.* at 1622 (citing *Concepcion* at 1748). In *Concepcion*, the Court had recognized the “traditionally individualized and informal nature” as fundamental attributes of arbitration, *id.* at 1623, and held that a state law prohibiting class action waivers as unconscionable was not a protected defense to arbitration under the FAA because it “sacrifice[d] the principal advantage of arbitration — its informality — and [made] the process slower, more costly, and more likely to generate procedural morass than final judgment.” *Id.*

In *Epic Systems*, none of the employees argued that the arbitration agreements were procured by fraud or duress or some unconscionable way that would defeat any contract. The only attack the employees made on the arbitration agreement was based on mandated



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## Savings Clause Can't Save Plaintiffs' Class Action

*Epic Sys. Corp. v. Lewis*, 138 S.Ct. 1612 (2018).

*Epic Systems* involved a combined appeal of three cases from the 5th, 7th and 9th Circuits. At issue was whether arbitration agreements that waived the employees’ rights to pursue class action FLSA claims against their employers were valid.

One such agreement — emblematic of the group — provided that the employer and employee would arbitrate any disputes and that the arbitration would be individualized, with claims “pertaining



individualized proceedings. For this reason, Justice Gorsuch reasoned, they sought to attack “one of arbitration’s fundamental attributes.” *Id.* at 1622. As the *Epic Systems* plaintiffs asserted the same type of defense to arbitration as the *Concepcion* plaintiffs, the Court found it should come as no surprise to them that “the saving clause still can’t save their cause.” *Id.*

The employees’ next argument was that the NLRA overrides the FAA. The NLRA provides that workers have “[t]he right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” *Id.* at 1624 (quoting 29 U.S.C. § 157). The Court rejected the employees’ assertion that this language manifests congressional intent to displace the FAA where class actions are involved. While the language has been interpreted to allow unions to *bargain* to prohibit arbitration, the Court found no support for the argument that it displaces the FAA’s application to contractual agreements to arbitrate.

The court employed the canon of *ejusdem generis* to reason that the term “other mutual aid or protection” in Section 7 embraces only objects similar in nature to those enumerated in the preceding words, which were limited to “self-organization,” “form[ing], join[ing], or assist[ing] labor organizations,” and “bargain[ing] collectively.” *Id.* at 1625. Ultimately the Court found the “other concerted activities” that NLRA’s Section 7 was referring to were “things employees ‘just do’ for themselves in the course of exercising their right to free association in the workplace, rather than the ‘highly regulated, courtroom-bound activities of class and joint litigation.’” *Id.* (quoting *NLRB v. Alt. Entm’t, Inc.*, 858 F.3d 393 (6 Cir. 2017)).

Justice Gorsuch noted this interpretation was supported by the act itself, which regulates the way employees and their representatives collectively bargain, but does not regulate the adjudication of class or collective actions in

court or arbitral forums. Additionally, the position was strengthened by the fact that the plaintiffs’ claims arose not under the NLRA, but the FLSA, which the Court had previously held could not trump the FAA. In fact, Justice Gorsuch pointed out that the Court had previously rejected every effort to create a conflict between the FAA and any other federal statute, except for one instance since overruled.

The Court similarly rejected the employees’ last argument — that it owed *Chevron* deference to the NLRB’s interpretation of the NLRA’s Section 7. The Court refused to agree “that Congress implicitly delegated to an agency authority to address the meaning of a second statute [that] it does not administer.” *Id.* at 1629. Additionally, *Chevron* requires a statutory ambiguity, which had already been ruled out with statutory rules of interpretation.

With *Epic Systems*, Justice Gorsuch definitively resolved that arbitration agreements waiving class actions are valid and enforceable until and unless Congress explicitly decides otherwise.

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## Closely Watched Mineral Law Case

***Gloria’s Ranch, L.L.C. v. Tauren Exploration, Inc.***, 17-1518 (La. 6/27/18), 2018 WL 3216497.

The Louisiana Supreme Court’s review of *Gloria’s Ranch* has been this state’s most closely watched mineral law case of the year. In it, a mineral lessor brought suit against three entities that held fractional interests in a lease and against Wells Fargo, which held a mortgage that covered one of the lessee’s interest in the lease. The lessor sought unpaid royalties, a penalty based on the nonpayment of royalties, and damages for lost leasing opportunity. The damages for lost leasing opportunity were based on a theory that the lease had terminated as to much of the acreage originally covered by the lease, but that the lessees had refused to acknowledge the termination as required by Mineral Code art. 207 and that the defendants’ failure to acknowledge the termination had prevented the lessor from securing a deal for a new lease at a time when companies were giving large bonuses to secure leases.

After a bench trial, the district court found that the lease had terminated in part for lack of production in paying

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**James W. “Jim” Standley, IV**, former Disciplinary Counsel prosecutor (2009-2016), offers advice and counsel regarding legal ethics as well as defense of lawyers subject to disciplinary proceedings.

quantities, and that the lessees' failure to acknowledge the termination of the lease had caused the lessor to lose a leasing opportunity worth \$22.8 million. In addition, the court found that the lessees had not paid all the royalties that had been due. Further, the court concluded that the loan and mortgage agreements between Wells Fargo and one of the lessees had constituted an assignment of the lease. On these bases, the court entered a judgment holding that the two non-settling lessees and the mortgagee were solidarily liable for damages for the lessor's lost leasing opportunity, unpaid royalties and

a penalty equal to twice the unpaid royalties under Mineral Code art. 140. (The judgment was amended to give a credit for one lessee settling before trial.)

On appeal, the Louisiana 2nd Circuit concluded that the loan agreements did not constitute an assignment of the lease, but that the loan agreements had given Wells Fargo a sufficient interest and degree of control over the lease that a judgment holding Wells Fargo solidarily liable was not manifestly erroneous. Therefore, the appellate court affirmed the trial court's judgment.

The Louisiana Supreme Court reversed the lower courts' judgments to the extent that they imposed liability on Wells Fargo. In doing so, the court rejected the appellate court's conclusion that certain elements of "control" granted to Wells Fargo made it the equivalent of an owner of the lease. The Supreme Court disagreed, concluding that the "control" rights that a lessee had granted to Wells Fargo were commonly granted rights that are designed to protect a lender's collateral when a mineral lease serves as collateral for a loan. Therefore, the lower courts erred by imposing solidary liability for lease obligations on a mere mortgagee of a lessee.

The Supreme Court also addressed an issue that has been in dispute for years — namely, the meaning of certain language in Mineral Code art. 140. The article provides that, in certain circumstances, "the court may award as damages double the amount of royalties due." The question that remained unresolved for years was whether "double" referred to the amount of the judgment or the amount of the penalty. That is, does the article authorize a total award (before attorney's fees and interest) of double the amount of royalties due (this being the sum of the royalties due and a penalty equal to the royalties due) or whether the article authorized a judgment for triple the amount of royalties due (this being the sum of the royalties due and a penalty that was double the amount of royalties due). The Court interpreted article 140 "as authority to award up to double the amount of royalties due," not treble.

In addition, the Court rejected the argument of one of the lessees that because it

only owned a fractional lease interest as to shallow depths, it should not be solidarily liable for the entire lost-leasing damages.

## Act 245 of the 2018 Regular Session

The Louisiana Oil Well Lien Act (LOWLA), La. R.S. 9:4861 *et seq.*, creates a privilege in favor of persons who provide services, equipment or supplies for "operations" at the "well site" of a well that is used either to explore for or produce hydrocarbons, produce water for use in oil and gas operations, or inject (for purposes of disposal) wastewater generated by oil and gas activities.

La. R.S. 9:4861(4)(b) specifies certain activities that do not constitute "operations" for purposes of LOWLA and which, therefore, do not qualify for this privilege. A category of activities that was expressly defined as not constituting "operations" includes those involving "transporting, handling, processing, treating, or otherwise dealing" with "[s]alt water or another waste substance produced in association with hydrocarbons, after it is placed in a truck, rail-car, pipeline, or other means of transportation for disposal away from the well site." *See*, La. R.S. 9:4861(4)(b)(iii). Act 245 of the 2018 Regular Session of the Louisiana Legislature repealed 9:4861(4)(b)(iii). However, the definition of "operations" was not changed. "Operations" constitute "every activity conducted by or for a lessee on a well site" for certain specified purposes. La. R.S. 9:4861(4)(a).

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## Loss of a Chance

**Burchfield v. Wright**, 17-1488 (La. 6/27/18), \_\_\_\_ So.3d \_\_\_\_, 2018 WL 3150182.

The panel in Mr. Burchfield's case found that a breach of a standard of care caused damages. The defendant settled, and a trial against the PCF ensued. The jury found that the plaintiff had proven the defendant's breach of a standard of care and that, while damages resulted from that breach, it was not "a substantial factor" in contributing to the injuries. Instead, the jury found that the breach caused the patient to lose the chance of a better outcome. In a separate jury interrogatory, the jury determined that the value of the lost chance was \$680,000. The trial court issued a judgment that reduced the jury's award to the statutory cap of \$500,000 and allowed the PCF credit for the \$100,000 settlement with the defendant.

The appellate court was troubled by the jury's responses to the verdict form, finding the jury "internally inconsistent, contributing to the troublesome reduction by the trial judge." *Burchfield v. Wright*, 51,459 (La. App. 2 Cir. 6/28/17), 224 So.3d 1170, 1173. While agreeing that this was a loss-of-chance-of-a-better-outcome case, the appellate court decided that the trial court erred by limiting the award to general damages subject to the MMA cap, thus awarding no damages for medical expenses or lost wages. The appellate court affirmed the trial court's \$400,000 award in general damages and awarded past medical expenses of more than \$692,000, lost wages of more than \$490,000 and future medical care, none of which were subject to the cap.

The case proceeded to the Supreme Court, where the plaintiffs argued that the negligence was a substantial cause of the ultimate injury and, alternatively, that absent a greater than 50 percent chance that

the damages would have occurred, the patient nevertheless could have had an outcome better than having to undergo a heart transplant.

The court wrote that the appellate court "misconstrued the theory of lost chance of a better outcome in a medical malpractice case," which it said is "not a separate cause of action distinct from a statutory malpractice claim." Quoting from *Smith v. State, Dep't of Health & Hospitals*, 95-0038 (La. 6/25/96), 676 So.2d 543, the court stated:

The loss of a less-than-even chance of survival is "a distinct injury compensable as general damages" that cannot be calculated with mathematical certainty; thus, the factfinder must make a "subjective determination of the value of that loss, fixing the amount of money that would adequately compensate the claimants for that particular cognizable loss."

Juries may consider the same evidence in wrongful death and survival actions as in loss-of-chance cases, but in loss-of-chance cases, a lump sum general damage award is required. The appellate court erred when it allocated damages for specific losses, *e.g.*, wage losses and medical expenses. Furthermore, the appellate court ignored the Louisiana Supreme Court's "clear and established jurisprudence" in earlier cases by awarding not only general damages but also granting separate awards for special damages, instead of one lump sum award that encompassed all damages. Considerations of wages and medical expenses "may be appropriate, keeping in mind that a lost chance of a better outcome envisions a less than 50% chance, and thus not full recovery." As to the appellate court's ruling that lump-sum damages for loss of a chance of a better outcome "may include special damages . . . and that 'lump sum' damages should not be limited to the cap for general damages," the Supreme Court observed that "[t]here is no support for such a conclusion in this court's specific jurisprudence on the issue of the calculation of damages for lost chance of a better outcome."

The plaintiffs also argued to the jury that the award should equal 49 percent of the total damages, approximately

\$1,000,000. The jury awarded 35 percent of the total damages sought (\$680,000), a lump sum of general damages that the Supreme Court found was not an abuse of the jury's discretion. Thus, the court reduced that amount to the \$500,000 cap and allowed the PCF a credit for the \$100,000 paid by the defendant.

## Admissibility of Panel Opinions

**Sanderson v. Tulane Univ. Hosp. & Clinic**, 18-0588 (La. 6/15/18), 245 So.3d 1043 (Mem.).

The trial court disallowed the introduction into evidence of the panel opinion after deciding that there was a conflict of interest between a panel member and a defendant. In this *per curiam* opinion, the Supreme Court opined that, absent "allegations that the medical review panel superseded its statutory authority," the opinion is subject to "mandatory admission." The Court concluded: "[T]he mere fact that a member of the panel may not have disclosed a potential conflict of interest is not a ground for automatic exclusion" of the opinion, adding that the plaintiff would have "an adequate opportunity to explore any potential bias" at the trial during cross-examination, thus allowing the factfinder to assign appropriate weight to the panel opinion.

—Robert J. David

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### ANSWERS for puzzle on page 202.

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## Taxation

### Multi-Step Transaction: Net Capital Gain Deduction

*Camp v. Robinson*, BTA Docket No. 10609D (6/13/18).

Samuel and Judith Camp (Taxpayers) were shareholders in PamLab, Inc., a non-publicly traded Nevada corporation with its corporate headquarters and principal operations in Louisiana. PamLab entered into an asset-purchase agreement and plan of reorganization with NSH Buyer, Inc., an affiliate of Nestle S.A. The acquisition was a reorganization, with no gain being recognized on Taxpayers' receipt of the Nestle shares as consideration for substantially all of the assets of PamLab and its subsidiaries. The sale of the assets was preserved in the hands of Taxpayers until Taxpayers would dispose of the Nestle shares in a taxable transaction.

PamLab distributed certain Nestle shares to Taxpayers in 2015, after a one-year holding period. Taxpayers subsequently sold those Nestle shares and recognized a gain that had been deferred since 2013. Taxpayers excluded the gain from the sale of the Nestle shares from their income tax return under the net-capital-gain deduction provided by La. R.S. 47:293(9)(a)(xvii). The Louisiana Department of Revenue disallowed the deduction.

The Department filed a motion for summary judgment, arguing that the transaction that gave rise to the net-capital-gains issue was Taxpayers' sale of Nestle shares in 2015 and, because Nestle S.A. is a publicly traded corporation, not commercially domiciled in Louisiana, the deduction did not apply. The Department relied on La. R.S. 47:293(9)(a)(xvii), which requires that the sale or exchange be of substantially all of the assets of a non-publicly traded corporation that is commercially domi-

ciled in Louisiana in order to qualify for the deduction.

Taxpayers contended that they properly excluded the gain from the sale of the Nestle shares because if all transactions were viewed as interrelated steps of a single transaction, the gain would arise from the exchange of the seller's assets for the Nestle shares in 2013.

The question before the Louisiana Board of Tax Appeals was whether the gain recognized by Taxpayers in 2015 arose from the exchange of substantially all of the seller's assets for the Nestle shares in 2013.

The Board held that Taxpayers were entitled to claim the net-capital-gains deduction for the amount that they would have indisputably been able to claim had they disposed of their business in a single business transaction. However, Taxpayers then admitted to the Board that a portion of the gain recognized on the 2015 sales was the result of appreciation of the Nestle shares after the 2013 transaction. As that portion did not arise from the sale of the assets of PamLab, the Board found that Taxpayers were not entitled to exclude that portion of the gain. Ultimately, the Board denied Taxpayers' motion for summary judgment.

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### U.S. Supreme Court Decision

On June 21, 2018, the U.S. Supreme Court issued its opinion in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018). The issue in *Wayfair* was whether South Dakota could impose a use-tax-collection obligation on large national retailers, *i.e.*, remote sellers, who sold products on-line for delivery into South Dakota. In *Wayfair*, the Court overturned the physical-presence substantial-nexus standard applicable to use-tax-collection requirements articulated by the Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992),

and *National Bellas Hess, Inc. v. Dep't of Revenue of Illinois*, 87 S.Ct. 1389 (1967), and created an undefined sufficiency test for determining whether substantial nexus is satisfied for purposes of the dormant Commerce Clause. The new sufficiency test appears to apply to all state tax regimes, including income, franchise, sales-and-use, gross receipts and property taxes, and may have substantial and significant implications for taxpayers and other parties subject to those regimes.

Post-*Wayfair*, for purposes of the substantial-nexus prong of *Complete Auto Transit, Inc. v. Brady*, 97 S.Ct. 1076 (1977), "[substantial nexus] is established when the taxpayer [or collector] 'avails itself of the substantial privilege of carrying on business' in that jurisdiction." *Wayfair*, 138 S.Ct. at 2099, citing *Polar Tankers, Inc. v. City of Valdez*, 129 S.Ct. 2277 (2009). In *Wayfair*, the Court concluded that the large national retailers at issue satisfied this standard "based on both the economic and virtual contacts" they had with South Dakota. *Id.* Because the *Wayfair* decision does not contain substantive analysis of the economic and virtual contacts that create substantial nexus, that issue will ultimately be decided by the lower courts.

In response to *Wayfair*, the states are issuing guidance (or updating their tax laws) to impose use-tax-collection obligations on out-of-state vendors. While *Wayfair* provided some guidance on the requirements these laws must satisfy to survive dormant Commerce Clause scrutiny, *e.g.*, safe harbors for small businesses and prospective enforcement, it also left that issue to the lower courts to resolve. As a result, a business may have exposure to a state's tax laws (including income-tax exposure) even if the business does not have an in-state physical presence. Businesses should review their contacts with any state in which they do not have a physical presence to determine whether such exposure exists.

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### CHAIR'S MESSAGE

## New Bar Members: Meet the New Code of Professionalism

By Dylan T. Thriffiley

**O**n Oct. 15, the Louisiana State Bar Association (LSBA) admitted and welcomed the newest group of lawyers into the fold. These new admittees are also the newest members of the LSBA's Young Lawyers Division (YLD).

First, I'd like to welcome all of them to the YLD! The YLD is comprised of all attorneys under the age of 39 or who have been in practice for fewer than five years. We are approximately 6,000 lawyers strong and one of the reasons we exist is to encourage young lawyers' interest and participation in Bar activities.

Timed perfectly for the newest LSBA members is the launch of the new Code of Professionalism. (Read more about the Code in this issue beginning on page ???.) While every word of the updated Code of Professionalism is applicable to every member of the LSBA, there are a few statements that stand out to me as particularly applicable to our division.

**I will work to protect and improve the image of the legal profession in the eyes of the public.**

Every lawyer has that family member who loves nothing more than to crack a lawyer joke at the Thanksgiving table. Let's face it. Lawyers don't have the best stereotypical reputation, but that reputation is just that, a stereotype. In my opinion, it's also less true today than it's ever been. Take every opportunity you can to prove the naysayers wrong. Give back to the public, treat your clients and colleagues with respect, and dress the part. Obtaining a law degree and passing the bar is no easy



Dylan T. Thriffiley

feat, but with that accomplishment comes great responsibility.

**I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected**

**of me as a lawyer.**

I will never forget my law school orientation when a professor took the stage and said, "Your legal career started yesterday." That statement had a profound impact on our class, as it was a stark reminder that your reputation is bigger than the four corners of your diploma. Remember that you represent the profession in all of your communications, including the online ones. Step away from email and pick up the phone to call that colleague or opposing counsel. Think twice before you re-post that off-color joke or comment on Facebook. Remember that you ultimately represent the profession in nearly every interaction you have, so strive to promote respect for yourself and your colleagues.

**I will be supportive of new members in the profession.**

While this is technically a call to the more "seasoned" of our colleagues, I encourage you to hold them to this commitment and find yourself a mentor. It just so happens that the LSBA has a formal, statewide mentoring program called the Transition into Practice (TIP) program. The program matches one mentor with one

mentee, allowing more experienced attorneys to share their knowledge with those who are just starting their careers. You can find more information online: [www.lsba.org/mentoring](http://www.lsba.org/mentoring).

So, to new members and seasoned ones, if you want to know more about the Young Lawyers Division or how to get involved, email me at [dylan.thriffiley@ochsner.org](mailto:dylan.thriffiley@ochsner.org).

### YOUNG LAWYERS SPOTLIGHT

#### Christopher H. Hester Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Christopher H. Hester.



Christopher H. Hester

Hester is an assistant district attorney with the East Baton Rouge Parish District Attorney's Office where he currently serves as a section chief. He has most recently held the positions of chief homicide prosecutor and section chief of the Violent Crimes Unit. He previously served as a misdemeanor assistant, junior felony assistant and senior felony assistant. During his nearly nine years as an ADA, he has handled everything from misdemeanors to murders. He is currently on leave from his job as a prosecutor while he runs for Baton Rouge City Court judge.

Immediately after graduating from Louisiana State University Paul M. Hebert Law Center and before he started work as an assistant district attorney, he began his career at Watson, Blanche, Wilson &

Continued next page

# Young Lawyers Division Award Nominations

## Deadline: October 18, 2018

Nominations are open for the following LSBA Young Lawyers Division (YLD) awards. To be eligible for consideration, individual nominees must be a current member of the YLD (attorneys who have not yet reached the age of thirty-nine (39) years or who has been admitted to the practice of law for less than five (5) years) in good standing. The YLD Council selects award winners from recommendations made by a Committee of young lawyers appointed from around the state.

► **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made exceptional contributions to the legal profession and their community. In determining the recipient of this award, the YLD considers a number of factors, including: the nominee's service to the public and community, the nominee's service to the legal profession, the nominee's service to the Louisiana State Bar Association Young Lawyers Division, awards and achievements received during the nominee's legal career, challenges the nominee may have overcome, as well as specific examples of the nominee's outstanding characteristics. Present or former members of the YLD Council are ineligible.

► **Outstanding Local Affiliate.** This award is given to a local affiliate organization that has impacted the lives of young lawyers in an outstanding way. In determining the recipient of this award, the YLD considers a number of factors, including the organization's service to the public, service to the legal profession, successes of initiatives that serve the public and the profession, challenges overcome,

creative use of resources, involvement of young lawyers in programming and services, and inclusiveness.

► **Program of the Year.** This award is given to an organization (bar association, firm, or other entity) that has implemented an outstanding program or service that serves the public or the profession, and enhances the lives of young lawyers or was primarily planned by young lawyer(s). In determining the recipient of this award, the YLD considers a number of factors including young lawyer involvement, impact on the public and/or profession, innovation, inclusiveness, and success.

► **Hon. Michaelle Pitard Wynne Professionalism Award.** This award is given to a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public. In determining the recipient of this award, the YLD considers a number of factors, including the nominee's commitment to promoting respect for the legal system and profession by exhibiting the highest standards of competence, integrity, civility, and ethics, as well as a dedication to enhancing professionalism among lawyers.

► **YLD Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community or the state at large. In determining the recipient of this award, the YLD considers a number of factors, including the total number of *pro bono* hours per year, the impact of the nominee's *pro bono* work, ongoing contributions that have resulted in the increased

access to legal services for the citizens of Louisiana.

Please submit a type-written nomination entry, not to exceed 1,000 words, that describes why the nominee should be considered for the award and that specifically addresses the award criteria and includes, where applicable, nominator and nominee's: (a) name, (b) address, (c) telephone number, and (d) email address.

Nominations for individual awards must include a current photo and résumé of the nominee. Additional attachments for all nominations are encouraged, which may include newspaper clippings, letters of support and other materials pertinent to the nomination. Submissions should not exceed ten (10) pages total.

Nomination packets must be submitted by e-mail or hard copy to: Kristi W. Richard, LSBA YLD Awards Committee Chair, 301 Main St., Flr. 14, Baton Rouge, LA 70801 or email [krichard@mcglinchey.com](mailto:krichard@mcglinchey.com)

Any nomination packet that is incomplete or is not received or postmarked on or before Friday, **October 18, 2018**, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets.

Finalists will be announced in late November, and both finalists and winners will be recognized at the LSBA Midyear Meeting and Young Lawyer Professional Development Conference luncheon in Baton Rouge on January 18, 2019.

For more information, contact Kristi W. Richard at (225) 382-3704 or email [krichard@mcglinchey.com](mailto:krichard@mcglinchey.com).

### Hester continued from page 224

Posner, a law firm practicing primarily in the area of medical malpractice defense where he honed his skills in this unique civil practice.

In 2016, Hester was recognized as one of the *Baton Rouge Business Report's* "40 Under 40" for his career success and impact in the community.

Growing up in Baton Rouge, he is a graduate of Catholic High School and St. Aloysius Catholic School. He earned a bachelor's degree from Louisiana State University and his JD/BCL degree from LSU Paul M. Hebert Law Center. He is an active Baton Rouge Bar Association committee member.

In his community, he is the head coach of the eighth grade boys' basketball team

at St. Aloysius Catholic School. He is the president of the Sigma Phi Epsilon Alumni Volunteer Corporation, an active committee member at First United Methodist Church and a former chair of the Baton Rouge Bridge Academy Board.

Hester is married to his college sweetheart — Emily Burris Hester — and they are the parents of one child, with a new addition arriving early next year.



Louisiana middle and high school teachers participated in the 2018 Justice Catherine D. Kimball Summer Institute in New Orleans.

## Teachers Participate in 2018 Justice Catherine D. Kimball Summer Institute

Louisiana middle and high school teachers met in New Orleans for the 2018 Justice Catherine D. Kimball Summer Institute to learn about the “We the People: The Citizen and the Constitution” civics curriculum.

Participants were welcomed to the program by Louisiana Center for Law and Civic Education (LCLCE) President Judge Randall L. Bethancourt. Raul V. Esquivel III, from the office of Louisiana Supreme

Court Associate Justice John L. Weimer III, gave an informative presentation on *Plessy v. Ferguson*. Louisiana Supreme Court Associate Justices Scott J. Crichton and Weimer also addressed the Institute attendees.

Louisiana 4th Circuit Court of Appeal Chief Judge James F. McKay III welcomed the teachers to the Louisiana Court of Appeal. 4th Circuit Court of Appeal Judge Terri F. Love gave a presentation on the Louisiana court structure and concluded her talk with a tour of her courtroom and office.

Robert Gunn, Louisiana Supreme Court deputy judicial administrator/community relations, and Miriam D. Childs, director of the Law Library of Louisiana, provided a tour of the Louisiana Supreme Court and the Law Library.

Coordinated by the LCLCE, the six-day Summer Institute was made available to educators at no cost to the teachers, with lodging, meals and educational materials for the classroom provided.

Teachers participating were Kristoffer



St. Amant High School teacher Abbie L. Tucker, left, with Miriam D. Childs, director of the Law Library of Louisiana.

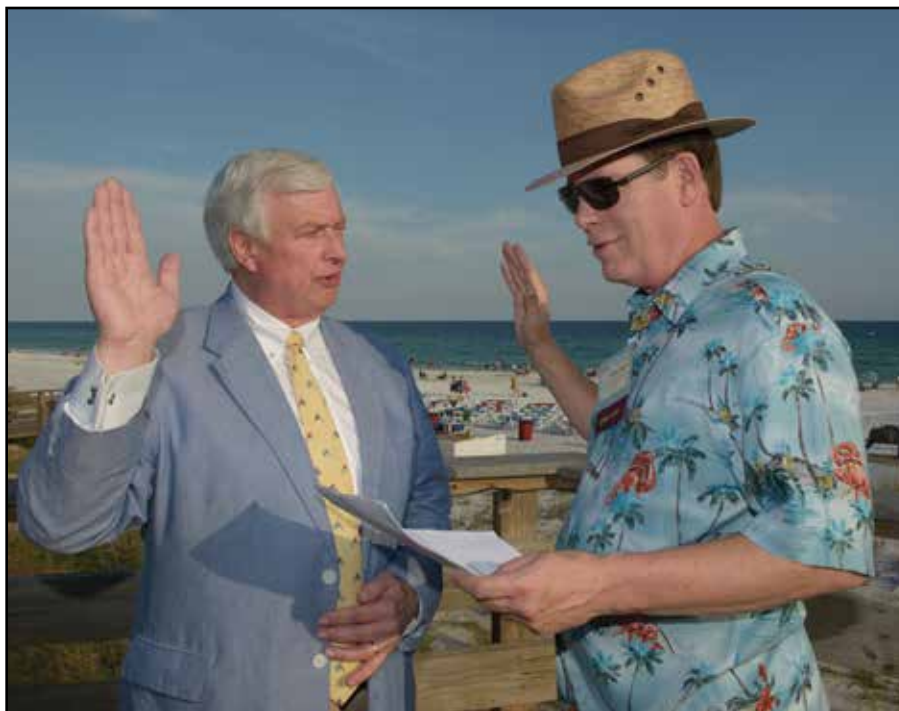


Robert Gunn, Louisiana Supreme Court deputy judicial administrator/community relations, addressed the Summer Institute teachers before conducting a historic building tour.



Bonilla, Thomas Jefferson High School for Advanced Studies; Todd Bowles, Conway Junior High School; Katherine Clemons, Monteleone Junior High School; Joseph Cunningham, David Thibodeaux STEM Magnet Academy; John Evans, Glen Oaks High School; Harvie Douglas Hamilton III, Vanderbilt Catholic High School; Donald Hampton, Griffin Middle Academy; Tony Howard, Horace Mann Arts & Science High School; Willie Earl Larry, Parkview Arts & Science Magnet School; Lionel O'Connor, Park Forest Middle School; Andrew Renard, Edna Karr High School; Regina Rihani, Sylvan Hills Middle School; Carol L. Saulsberry, Hammond Westside Montessori School; Dale Smith, Jr., Grant Junior High School; Amy Steuben, Milton Middle School; Abbie L. Tucker, St. Amant High School; Nicholas A. Turner, East Feliciana High School; Greg Warren, Saline High School; and Alyce Zottoli, Mabelvale Middle School.

Funding for this program was provided by a grant from the U.S. Department of Education through the Supporting Effective Educator Development Program.



Judge Randall L. Bethancourt, left, was sworn in as 2018-19 president of the Louisiana Center for Law and Civic Education (LCLCE) at the Louisiana State Bar Association's Annual Meeting in Destin, Fla. Administering the oath was Judge Raymond S. Steib, Jr. Judge Bethancourt and the other LCLCE officers were sworn in at the LCLCE's annual reception honoring its board members. *Photo by Matthew Hinton Photography.*



Judge Sharon I. Marchman, left, with the 4th Judicial District Court, presented an Adult Civics Education (ACE) program to the Bastrop Lions Club. She is with Club President Dan Wood. The ACE program, sponsored by the Louisiana District Judges Association, the Louisiana State Bar Association and the Louisiana Center for Law and Civic Education, offers members of the legal community with prepared topics designed for presentation to civic and community groups/forums. The program provides handouts and other materials. Anyone interested in making a presentation or providing contact information for community and civic groups that may be interested in an ACE presentation should contact Peggy Cotogno at the LCLCE, (504)566-1600. For more information, go online: [www.lalce.org](http://www.lalce.org).



Donald Joseph Judice III, second from left, a 2017-18 senior at Houma Christian School, was the recipient of the 2018 Civics in Action Award, presented by the Louisiana Center for Law and Civic Education (LCLCE). The award recognizes an outstanding middle or high school student who has demonstrated outstanding civic virtue and involvement in his community. The plaque was presented by Louisiana Supreme Court Associate Justice John L. Weimer III, far left, at the Justice Catherine D. Kimball Summer Institute. From left, Justice Weimer, Judice, Pat Judice, Murlyn Broussard and LCLCE President Judge Randall L. Bethancourt.

By David Rigamer, Louisiana Supreme Court

NEW JUDGES... RETIREMENT... MEMORIAM

### New Judges

#### Tonya Smith

**Lurry** was elected judge, 18th Judicial District Court, Division B. She earned her BA degree in 1996 from Louisiana State University and her JD degree in 1999 from Southern University Law Center. She has practiced law for 17 years and formerly served as an assistant district attorney in the 18th JDC. She is married to John Lurry and they are the parents of three children.



Tonya Smith Lurry

**3rd Judicial District Court Judge Jay B. McCallum** was elected unopposed to the 2nd Circuit Court of Appeal, Division A. He earned his BS degree in 1982 from the University of Louisiana at Monroe and his JD degree in 1985 from Louisiana State

University Paul M. Hebert Law Center. Prior to his election to the bench, he served as assistant district attorney in the 3rd Judicial District, as state representative for District 12, which included Lincoln, Union and portions of Morehouse Parishes from 1992-2003, and was in the private practice of law. He served on the 3rd JDC bench from 2003 until his election to the 2nd Circuit. He is married to the former Deanna Dunham and they are the parents of two children.



Jay B. McCallum

Louisiana State University and his JD degree from Louisiana State University Paul M. Hebert Law Center. Prior to his election to the bench, he served as city attorney for the City of Monroe.

### Death

Retired 4th Circuit Court of Appeal Chief Judge Joan Bernard Armstrong, 77, died June 9. She earned her BA degree from Xavier University and her JD degree in 1967 from Loyola University College of Law, becoming the College of Law's first female African-American graduate. She was appointed by Gov. Edwin Edwards to the Orleans Parish Juvenile Court bench in 1974, becoming the state's first African-American female judge. After 10 years on the Juvenile Court bench, she was elected unopposed to the 4th Circuit Court of Appeal. She became the court's chief judge in 2003 and served there until her retirement in 2011.

### Retirements

4th Judicial District Court Judge Carl Van Sharp retired effective July 31. He earned his BA degree from Northeast

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

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

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
Alexandria Area	Richard J. Arsenault	(318)487-9874 rarsenault@nbalawfirm.com	Monroe Area	John C. Roa	(318)387-2422 roa@hhsclaw.com
Baton Rouge Area	Ann K. Gregorie	(225)214-5563 ann@brba.org	Natchitoches Area	Peyton Cunningham, Jr.	(318)352-6314 peytonc1@suddenlink.net
Covington/ Mandeville Area	Suzanne E. Bayle	(504)524-3781 sebayle@bellsouth.net	New Orleans Area	Helena N. Henderson	(504)525-7453 hhenderson@neworleansbar.org
Denham Springs Area	Mary E. Heck Barrios	(225)664-9508 mary@barrioslaw.com	Opelousas/Ville Platte/ Sunset Area	John L. Olivier	(337)662-5242 johnolivier@centurytel.net
Houma/Thibodaux Area	Danna Schwab	(985)868-1342 dschwab@theschwablawfirm.com			(337)232-0874
Jefferson Parish Area	Pat M. Franz	(504)455-1986 patfranz@bellsouth.net	River Parishes Area	Judge Jude G. Gravois	(225)265-3923 judagravois@bellsouth.net
Lafayette Area	Josette Gossen	(337)237-4700 director@lafayettebar.org			Cell (225)270-7705
Lake Charles Area	Melissa A. St. Mary	(337)942-1900 melissa@pitrelawfirm.com	Shreveport Area	Dana M. Southern	(318)222-3643 dsouthern@shreveportbar.com

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





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# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that A. Zachariah (Zach) Butterworth has joined the firm's New Orleans office as special counsel. Also, Kellen J. Mathews has been appointed partner in charge of the firm's Baton Rouge office.

Breazeale, Sachse & Wilson, L.L.P., announces that **Matthew M. McCluer** has joined the firm's New Orleans office as an associate.

Michael W. Collins announces the opening of his law office, The Collins Law Firm, L.L.C., located at Ste. 102, 2901 Division St., Metairie, LA 70002; (504)900-8009.

Deutsch Kerrigan, L.L.P., announces that **Pierce C. Azuma** has joined the firm's New Orleans office as an associate.

Imtiaz A. Siddiqui announces the formation

of IAS LAW LLC, located at 900 Camp St., 3rd Floor, New Orleans, LA 70130; (504)500-1876; website [www.iaslawllc.com](http://www.iaslawllc.com).

King & Jurgens, L.L.C., announces that Gabriel A. Crowson has joined the firm's New Orleans office as an attorney.

**Darrick M. Lee**, licensed in Louisiana and Texas, has been appointed to the position of Office of Workers' Compensation Administration fraud manager in Baton Rouge.

Lewis, Kullman, Sterbcow & Abramson, L.L.C., based in New Orleans, announces that **Conrad S.P. (Duke) Williams III** has joined the firm as of counsel.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard announces that **Delos E. Flint, Jr.** has joined the firm's New Orleans headquarters as a shareholder.

Milling Benson Woodward, L.L.P., announces that Cody J. Acosta, Carlos J. Saravia and Nicholas G. Grest have joined

the firm's Mandeville office as associates.

Schutte, Terhoeve, Richardson, Eversberg, Cronin, Judice & Boudreaux, L.L.P., in Baton Rouge announces that **Christopher W. Stidham** has joined the firm as a partner.

Shelton Services, Inc., a pollution control and industrial services firm, announces that **David C. Coons** has joined the company as its general counsel, based in New Orleans.

Southern University and A&M College System announces that **Deidre Deculus Rober** has been appointed general counsel.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that **Rebecca M. Hinton** has joined the firm as special counsel.

Attorney E. Peter Urbanowicz, Jr. in Dallas, Texas, was appointed to serve as chief of staff for the U.S. Department of Health and Human Services.

Continued next page



W. Raley Alford III



Richard J. Arsenault



Pierce C. Azuma



David C. Coons



John B. Dunlap III



Delos E. Flint, Jr.



Rebecca M. Hinton



Darrick M. Lee



Lynn Luker



Matthew M. McCluer



Gerald E. Meunier



Frank X. Neuner, Jr.

## NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, will chair the 18th Annual Louisiana State Bar Association Complex Litigation Symposium in New Orleans on Nov. 9. He also will chair a Mass Tort Conference in New York on Nov. 28.

Mark R. Beebe, a partner in the New Orleans office of Adams and Reese, L.L.P., was elected to the International Association of Defense Counsel's board of directors for a three-year term.

John S. Creevy, a partner at Herman, Herman & Katz, L.L.C., in New Orleans, was named to the board of directors for the New Orleans Area Habitat for Humanity.

Louisiana Army National Guardsman **John B. Dunlap III**, a principal in the Baton Rouge law firm of Dunlap Fiore, L.L.C., was promoted to the rank of brigadier general.

Judge Peter J. Garcia, on the bench of 22nd Judicial District Court, received the 2018 Sam Cochran Criminal Justice Award presented by the National Alliance on Mental Illness.

Stephen J. Herman, a partner at Herman, Herman & Katz, L.L.C., in New Orleans, received the 2018 Harry M. Philo Award presented by the American Association for Justice.

Judge Donald R. Johnson, Ph.D., on the bench of 19th Judicial District Court, received the 2018 William R. McMahon Award presented by the National Conference of Specialized Court Judges.

Donald C. Massey, a partner in the New Orleans firm of Couhig Partners, L.L.C., was selected among America's Top 100 High Stakes Litigators for 2018.

**Frank X. Neuner, Jr.**, founder and managing partner of NeunerPate in Lafayette, received the 2018 Lifetime Achievement Award presented by the American Bar Association's Solo, Small Firm and General Practice Division.

Shreveport City Court Judge Sheva M. Sims received the Power of Influence/Woman of Inspiration Award during the 2018 Essence Music Festival in New Orleans.

Attorney Ernest Svenson, formerly of New Orleans, now in St. Louis, Mo., received the 2018 Trainer Award presented by the American Bar Association's Solo, Small Firm and General Practice Division.

## PUBLICATIONS

### *Best Lawyers in America 2018*

**Stanley, Reuter, Ross, Thornton & Alford, L.L.C.** (New Orleans): **Richard C. Stanley** (New Orleans Lawyer of the Year, Legal Malpractice Law-Defendants), **W. Raley Alford III**, **Lynn Luker**, **Thomas P. Owen**, **Bryan C.**

**Reuter, William M. Ross and Jennifer L. Thornton.**

### *Best Lawyers in America 2019*

**Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.** (New Orleans): **Judy Y. Barrasso**, **Celeste R. Coco-Ewing**, **George C. Freeman III** (New Orleans Lawyer of the Year, Securities Litigation), **Craig R. Isenberg**, **John W. Joyce**, **Stephen H. Kupperman**, **H. Minor Pipes III**, **Andrea M. Price**, **Richard E. Sarver** and **Steven W. Usdin.**

**Stanley, Reuter, Ross, Thornton & Alford, L.L.C.** (New Orleans): **Richard C. Stanley** (New Orleans Lawyer of the Year, Bet the Company Litigation), **W. Raley Alford III**, **Lynn Luker**, **Thomas P. Owen**, **Bryan C. Reuter**, **William M. Ross** and **Jennifer L. Thornton.**

### *Chambers USA 2018*

**Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.** (New Orleans): **Gerald E. Meunier.**

### *Louisiana Super Lawyers 2018*

**Adams and Reese, L.L.P.** (Baton Rouge, New Orleans): **Mark R. Beebe**, **Charles A. Cerise, Jr.**, **Robin B. Cheatham**, **Scott Robert Cheatham**, **Jaimme A. Collins**, **Kathleen F. Drew**, **John M. Duck**, **Brooke Duncan III**, **Philip A. Franco**, **A. Kirk Gasperecz**, **William B. Gaudet**, **Charles F. Gay, Jr.**, **Matthew C. Guy**, **Marshall A. Hevron**, **Christopher J. Kane**, **Louis C. LaCour, Jr.**, **Edwin C. Laizer**, **Leslie A. Lanusse**, **Kellen J. Mathews**, **Patrick L. McCune**, **Don S. McKinney**, **Glen M. Pilie**, **Jeffrey E. Richardson**, **Deborah B. Rouen**, **Elizabeth A. Roussel**, **E. Paige Sensenbrenner**, **Ronald J. Sholes**, **Mark J. Spansel**, **Martin A. Stern**, **Mark C. Surprenant**, **Sara C. Valentine** and **Raymond P. Ward.**



Thomas P. Owen



Bryan C. Reuter



Deidre Deculus Robert



William M. Ross



Richard C. Stanley



Christopher W. Stidham



Jennifer L. Thornton



Conrad S.P. Williams III



## UPDATE

# Martinez Sworn In as ABA President-Elect

Judy Perry Martinez, of counsel in the New Orleans law firm of Simon, Peragine, Smith & Redfearn, L.L.P., was sworn in as president-elect of the American Bar Association (ABA) at the close of the ABA Annual Meeting in Chicago on Aug. 7. She will serve a one-year term as president-elect and will be sworn in as ABA president in August 2019.

“Our profession and our country continue to look to the American Bar Association — the only organization that brings together lawyers in private practice, prosecutors, criminal defense counsel, civil legal aid lawyers, policy makers, government lawyers, judges, law professors and law students — to speak on issues critical to the rule of law, justice system and our democratic values, and to lead with knowledge of the law and respect for the principles on which our nation was founded,” Martinez said. “I will be guided by the association’s unparalleled history of standing up for the voiceless and its unwavering commitment to support our members to be the best that they can be each day for their clients and the public they serve.”

Martinez earned her BS degree from the University of New Orleans and her JD degree, with honors, in 1982 from Tulane University Law School, where she earlier served as an instructor in trial advocacy and now serves on the Dean’s Advisory Council.

She was a partner in Simon Peragine from 1982-2003 before she joined Northrop Grumman and became assistant general counsel for litigation and vice president and chief compliance officer. She retired from Northrop Grumman in 2015 to become a Fellow at the Advanced Leadership Initiative at Harvard University, where she spent a year in residence.

Martinez’s commitment to public ser-



Judy Perry Martinez

vice began years ago when she and other members of the Louisiana Bar established the New Orleans Pro Bono Project.

She currently serves as a Fellow in the Louisiana State Bar Association’s (LSBA) Distinguished Access to Justice Pro Bono Fellows Program. She is working with Southeast Louisiana Legal Services on several projects, including work supporting Flood Proof and its expansions and creation of a Veterans Legal Needs Check-Up App.

Martinez has chaired the LSBA Minority Involvement Committee, the Professionalism and Quality of Life Committee and the Post-Conviction Death Penalty Representation Committee. She was named the LSBA’s Outstanding Young Lawyer in 1990 and the Louisiana Bar Foundation’s (LBF) Distinguished Attorney in 2001. She also is a LBF Fellow. She has chaired the New Orleans Bar Association’s Young Lawyers Section.

She is a member of the board of directors and a Fellow of the American Bar Foundation and a member of the American Law Institute.

For more than 30 years, Martinez has held various ABA leadership positions. She chaired the ABA Presidential Commission on the Future of Legal Services from 2014-16 and currently serves as special advisor to the newly established ABA Center for Innovation. She was a member of the ABA Task Force on Building Public Trust in the American Justice System. In 2011, she was appointed chair of the ABA Standing Committee on the Federal Judiciary. She has served as the ABA lead representative to the United Nations and as a member of the ABA Board of Governors and its Executive Committee. She previously served as chair of the ABA Young Lawyers Division, a member of the ABA Commission on Women in the Profession and chair of the ABA Commission on Domestic Violence. She has been a member of the ABA House of Delegates since 1991. She also has served as a member of the ABA Task Force on Attorney Client Privilege, the Council of the ABA Center for Racial and Ethnic Diversity and the ABA’s World Justice Project Committee.

Martinez received the LSBA President’s Award twice. In 2017, she received the LSBA’s David A. Hamilton Lifetime Achievement Award and the New Orleans Bar Association’s Presidents’ Award. In 2012, she received the Camille Gravel Pro Bono Public Service Award from the New Orleans Chapter of the Federal Bar Association. She also is the recipient of the Sam Dalton Capital Defense Advocacy Award from the Louisiana Association of Criminal Defense Counsel (1997), the Michelle Pitard Wynne Professionalism Award from the Association of Women Attorneys (1998) and the Alliance for Justice Award from the National Gay and Lesbian Law Association (1999).

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## Neuner Appointed to Legal Services Corp. Board of Directors

Frank X. Neuner, Jr., managing partner of the law firm NeunerPate in Lafayette, was appointed by President Donald Trump to the Legal Services Corp. (LSC) board of directors. The LSC is the nation's single largest provider of legal assistance grants for low-income Americans.



Frank X. Neuner, Jr.

Neuner received his JD degree in 1976 from Louisiana State University Paul M. Hebert Law Center.

He served as 2005-06 president of the Louisiana State Bar Association during hurricanes Katrina and Rita. In 2013, he shared his experiences in restoring the legal system after natural disasters at the World Justice Forum in The Hague, Netherlands. As president of the Louisiana Client Assistance Foundation since 2001, he oversees reimbursement of funds to clients who lose money due to lawyer misconduct.

Neuner served as chair of the Louisiana Public Defender Board from 2008-13. During that time, he led the effort to create legislation to increase access to defense counsel for low-income individuals.

He served as president of the Lafayette Bar Association and the Lafayette Bar Foundation. He is a member of the Louisiana Association of Defense Counsel, the Defense Research Institute, the Maritime Law Association of the United States and the Federation of Defense and Corporate Counsel. He is a Fellow of the International Society of Barristers and of the International Academy of Trial Lawyers and serves as the American Bar Association (ABA) State Delegate for Louisiana. He recently received the ABA Solo, Small Firm and General Practice Division's 2018 Lifetime Achievement Award.



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, Justice John L. Weimer and Justice James T. Genovese hosted Louisiana Gov. John Bel Edwards and the college students selected to participate in the inaugural Governor's Fellows Program in Louisiana Government at the Louisiana Supreme Court building in New Orleans on Aug. 7. The Fellows Program offers the students the opportunity to collaborate with state agency leaders on existing projects, gain firsthand knowledge of the development and implementation of public policy and obtain a better understanding of Louisiana government and current affairs. The program is a partnership with Louisiana's Office of the Governor, Louisiana State University, Southern University and the Baton Rouge Area Foundation. With the students are, seated from left, Justice Weimer, Gov. Edwards, Chief Justice Johnson and Justice Genovese.

### LOCAL/SPECIALTY BARS

## Alexandria Bar Association Elects 2018 Officers, Council

Members of the Alexandria Bar Association conducted their annual meeting on July 11, electing officers and Executive Council members for 2018.

President Michael S. Koch will be joined by Vice President Ronald G. (Ronnie) Beard, Secretary Carolyn O. Hines and Treasurer Jonathan D. Stokes.

Executive Council members are Tamara S. Battles, June Wells-Foster, Lauren S. Laborde, Allison P. (Allie) Nowlin, Samuel J. (Sam) Spurgeon and Shane D. Williams.

Matthew L. (Matt) Nowlin will chair the Young Lawyers Section.

Former presidents Robert L. Beck III and Aaron L. Green were recognized for their outstanding service to the organization, as well as outgoing Treasurer Magistrate Joseph Perez-Montes and Executive Council member Barbara B. Melton.



The 2018 Alexandria Bar Association officers are, from left, Treasurer Jonathan D. Stokes, Vice President Ronald G. (Ronnie) Beard, Secretary Carolyn O. Hines and President Michael S. Koch.

## McDonald Receives NOBA Liberty Bell Award

Alden J. McDonald, Jr., president and CEO of Liberty Bank & Trust Company, is the recipient of the 2018 Liberty Bell Award, presented by the New Orleans Bar Association during its June 1 Leadership Luncheon. The award recognizes an exceptional non-lawyer leader whose life is dedicated to serving the community in strengthening and promoting the American system of justice.



Alden J. McDonald, Jr.

McDonald was recognized for his support of education through his work with the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc., which awards an annual scholarship to a prelaw student. He also supports the Justice Revis O. Ortique, Jr. Mock Trial Center at Dillard University, is active with the United Negro College Fund, and dedicates resources to the Amistad Research Center to preserve the importance of America's ethnic and racial history.

## LOUISIANA BAR FOUNDATION

### LBF Announces 2018-19 CPP, Committee Chairs

Louisiana Bar Foundation (LBF) President W. Michael Street appointed 2018-19 LBF Community Partnership Panel (CPP) and committee chairs.

CPP chairs include Acadiana CPP, Shannon Seiler Dartez; Bayou Region CPP, Teresa D. King; Capital Area CPP, Linda Law Clark; Central CPP, Elizabeth W. Randall; Greater Orleans CPP, Paula A. Ates; Northeast CPP, Thomas M. Hayes IV; Northshore CPP, Patricia R. Bonneau; Northwest CPP, John C. Nickelson; and Southwest CPP, Judge Guy E. Bradberry.

Committee chairs include Budget/Investment, Christopher K. Ralston; Communications, Harry J. (Skip) Philips, Jr.; Development, Alan G. Brackett; Education, Prof. Russell L. Jones; Governance, Valerie Briggs Bargas; Grants, Christopher K. Ralston; and Kids' Chance, Matthew R. Richards and Sherry A. Watters.

### LBF Grant Application Available Online

The Louisiana Bar Foundation grant application for 2019-20 funding is now available online. Deadline for submitting grant applications is Dec. 3, 2018.

The Loan Repayment Assistance Program (LRAP) application for 2019-20 funding also is available online. Deadline for submitting LRAP applications is Feb. 8, 2019.

For more information, contact Renee LeBoeuf at (504)561-1046 or email [renee@raisingthebar.org](mailto:renee@raisingthebar.org).

Grant applications are available online at: [www.raisingthebar.org](http://www.raisingthebar.org).

Save the Date!

### Louisiana Bar Foundation 33rd Annual Fellows Gala Friday, April 5, 2019 Hyatt Regency New Orleans

Discounted rooms are available Thursday, April 4, and Friday, April 5, 2019, at \$244 a night. To make a reservation, call the Hyatt at 1(888)421-1442 and reference "Louisiana Bar Foundation" or go to <https://book.passkey.com/go/labargala2019>. Reservations must be made before Friday, March 15, 2019. For more Gala information, contact Danielle J. Marshall at (504)561-1046 or email [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).



More than \$30,000 was donated to the Shreveport Bar Association's community projects and building fund, thanks to the 2018 efforts of Shreveport's Krewe of Justinian, the only legal-related Mardi Gras krewe in the United States. Krewe Captain Lawrence W. Pettiette, Jr., left, presented the check to Shreveport Bar Association President James C. (Jim) McMichael, Jr. The Shreveport Bar Center is home to the Shreveport pro bono lawyer program, assistance for victims of domestic violence, the monthly Ask-A-Lawyer program and the annual wills for veterans program, among other legal events. The Krewe of Justinian will celebrate its 25th anniversary in 2019.

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## President's Message

# LBF is Good for the Profession

*By 2018-19 President W. Michael (Mike) Street*

**A**s the Louisiana Bar Foundation (LBF) president, I am proud to be a member of an organization directly impacting the legal profession and the community at large.

Each year, the LBF awards grants to non-profit organizations and public interest attorneys throughout the state to address the civil legal needs of indigent citizens, provide a basic understanding of the law and assist with improvements to the justice system. The organizations we support provide free civil legal aid to women, children, the elderly, people with disabilities, the newly unemployed, those facing loss of their homes, disaster victims and many others by providing services that go to the very heart of the health, safety and security of many of our citizens and their families.

I encourage every member of the Bar to become a member of the LBF. It costs as little as \$200 and your membership represents your commitment to fairness and equal access for all in the justice system.

Members of the LBF are referred to as Fellows. Our membership consists of judges, lawyers and law professors whose professional, public and private careers demonstrate their dedication to the improvement of the administration of justice. LBF membership provides opportunities for networking, professional development, volunteer leadership and committee participation. Some other benefits include:

- ▶ invitations to special events and meetings;
- ▶ participation in annual nominations for the Distinguished Jurist, Attorney and Professor awards; and
- ▶ association with an organization directly impacting the legal profession and recognition of one's contribution to the profession.

There are many ways for Fellows to get involved:

- ▶ The Fellows Class Project is an opportunity for our newest members to get

involved and be a part of the LBF mission through volunteer service. Each year, the class works on a project. This year, in partnership with Louisiana Appleseed, the LSC Liaison Project is working to educate communities about the importance of the legal services corporations.

▶ Join a committee or Community Partnership Panel. Our committees include Communications, Development, Education, Grants and Kids' Chance, as well as the nine regional Community Partnership Panels operating across the state.

▶ The LBF Education Committee, in partnership with the Community Partnership Panels, produces oral histories of retiring judges, Bar leaders and other legal personalities to preserve the history, culture and flavor of Louisiana law. With CPP funding and support, we now have a collection of nearly 100 oral histories that can be viewed on the LBF website.

▶ The Annual Fellows events are hosted by the Community Partnership Panels and are held every spring across the state to update Fellows on LBF activities, local projects and initiatives and to recognize local volunteers.

▶ The Annual Fellows Membership Meeting is an opportunity for Fellows to be updated on LBF activities and elect new board members.

▶ The Kids' Chance Scholarship Program awards educational scholarships to the dependents of workers killed or permanently disabled in a work-related accident.

▶ The Annual Fellows Gala is the LBF's largest fundraiser. Each year, lawyers, judges and professors gather from across the state to support the LBF's mission to



W. Michael Street

preserve, honor and improve our system of justice. The gala is a black-tie event and includes dinner, a silent auction, live entertainment and awards.

In an effort to grow LBF membership, we have removed criteria requiring sponsorship by an existing member of the LBF. I encourage you to go to our website and join today.

Additionally, we have a new program where we invite new members of the Bar to become an LBF Young Lawyer Fellow with a complimentary membership for the first year of practice. After the first year, it costs as little as \$100 to be a Young Lawyer Fellow of the LBF and donations are tax-deductible.

So, why is the LBF good for the profession? Lawyers do great service work every day by helping others. The LBF is the visible public service organization of Louisiana attorneys and brings members of our profession together, maximizing our efforts to better the profession, our communities and ourselves. Membership in the LBF is a statement of commitment to fairness and equal access for all in the justice system.

We invite you to visit the LBF website at [www.raisingthebar.org](http://www.raisingthebar.org) and join today. For any questions, contact Outreach and Events Manager Danielle Marshall at (504)561-1046 or email [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).

### Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation announces new Fellows:

Vanessa W. Anseman.....	Lafayette
Henry W. Kinney III.....	New Orleans
Alexis C. Normand.....	Metairie
Frances Lacy Radcliff.....	New Orleans
J. Ralph White .....	New Orleans
Rachel D. Wortham .....	Shreveport





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

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# The Last WORD

By Edward J. Walters, Jr.

IPSE DIXIT: COLUMBUS TOOK A CHANCE

Many of us know Baton Rouge's John Perry as an excellent mediator, but, as most mediators, he had a prior life as a lawyer.

Many John Perry stories abound, but this one is particularly unusual because it has happened to all of us from time to time, but never quite like this.

So John Perry is in Allentown, Pa., in 1988, taking a deposition in a products liability case. The deposition ran long, as they are wont to do in products cases — through no fault of John, of course (so he says). He had a reservation to fly home immediately after the deposition, from Philadelphia, some 65 miles away by Interstate. His flight was scheduled to leave at 4:30 p.m. Last flight out.

He rushes out of the deposition and he's on the Interstate trying to get to Philadelphia. He's looking at his watch. Not gonna make it. Being the competitor that he is, he is undaunted. He's driving aggressively, even driving on the shoulder passing cars on the right. VERY unlike John Perry.

Well, it's now 4:15 p.m. Where is John? John is just pulling into the airport.

Problem No. 1: He has a rental car he needs to return. Off-site. Not gonna happen.

Problem No. 2: He HAS to catch this flight because he promised his wife (and MUCH better half) Fran that he would be home for her birthday, which he's let work interfere with way too many times in the past. But NOT this time. NO, not THIS time. Not today.

This was in the PC era (pre-cellphone era) so he couldn't just Google the Hertz desk, call them and let them know what's up.

Time is of the essence.

Solution: Don't return the car.

What? That's no solution!

Well, it WAS, that day!

John pulled the car up to where it says "Departures." He saw a very nice fam-



ily — looked like a family sending off a grandmother. John goes to the person who looked like her grandson and said, "Here's a \$20 bill. The keys are in the car. Here's the rental agreement. Please bring this car to the Hertz counter." Then he quickly headed for the gate. (John said if he did it today, it would have probably been a \$100 bill. Inflation, you know.)

He made his flight. That made him happy. That made Fran happy.

BUT, what's the deal with the car?

We're sure who he DIDN'T make happy that day was the Hertz representative at the Philly airport when grandson dropped off the car.

John, of course, doesn't know what happened after he left, but his credit card got charged like no big deal. He never heard a word from anyone.

His partners said, "John, I can't believe

you did this! There's probably a cop pulling over a kid in Laredo claiming to be John Perry and he's showing them the rental agreement."

No courage, them.

It all turned out fine.

John took a chance.

Don't try this at home. True story.

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



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