

LOUISIANA BAR
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Louisiana Supreme Court
Chief Justice Catherine D. Kimball
Retires After 20 Years of Service





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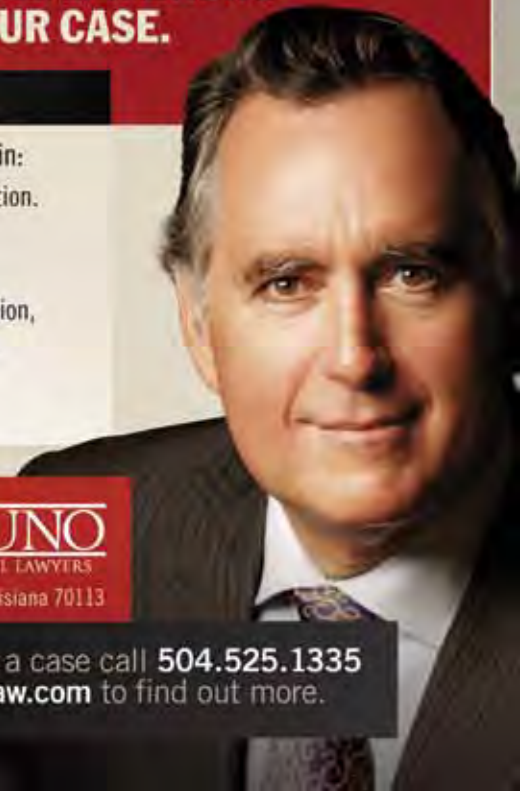
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*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.

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www.lsba.org/GoTo/BienvilleHouse
- ▶ **Hilton St. Charles**, (504)378-2809
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- ▶ **Hotel InterContinental**, (877)866-9005
e-mail: dawn.pembo@ihg.com
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By Edward J.
Walters, Jr.

Chief Justice Kitty — A Personal Reflection about a Personable Person

So, one beautiful afternoon I'm sitting in the Napoleon House in New Orleans with my wife, Norma, my son who lives in Washington, D.C. and his wife, both lawyers. The doors are open to the sidewalk and we are enjoying the weather, the company and the French Quarter.

I'm trying to figure out what we're going to do next, and I'm sitting there looking across Chartres Street at our new Supreme Court building. Hmm... I had not had the opportunity to see it since it had been finished. It was brand new and it looked beautiful.

So I said, "Let's go across the street for a tour of the new Louisiana Supreme Court Building." Everyone thought that would be a good idea — IF they would let us in — a BIG if — so off we went. I figured we'd at least get to see the beautiful marble foyer.

When we got to the security area, I could see problems looming. We didn't look like lawyers. We looked like scruffy tourists.

They wanted to know just why we were there. I had no good response and I am sure they didn't want random tourists roaming around their nice new building.

I took a shot: "Is Justice Kimball in?"
"What?"

"Is Justice Kimball in?"

"Do you have an appointment with her or a meeting of some sort? We have nothing like that on our schedule and there are no arguments today."

"... er, no. I just wanted to say Hi."

They looked at me, politely and professionally, like I had two heads. I guess they don't get much "I just wanted to drop by and say hi" traffic.

One of the nice security folks offered to call her office and see. She was in. She told the security folks to let us come up to her chambers.

We went up and told her what we were doing and she said, "Of, course Dahling..." (as she is wont to say) and proceeded to show us around. She could not have been more gracious. She showed us what she was doing to remodel her new chambers to take over as Chief. Then she took us around and showed us some of the building and, as I recall, the courtroom and library.

My family was very impressed (as was I) that we got a personal tour of her chambers by the incoming Chief Justice of the Louisiana Supreme Court.

Itell you this for one reason. You will read in the ensuing pages of the *Journal* what a great Chief she has been, what a vanguard she has been in the legal field and all of her notable accomplishments. I just wanted to express, in addition to all of that, what a nice person she is. Always.

I didn't tell anyone this story until now because I am sure she didn't want everyone and his brother "dropping by" for a free walking tour by the Chief Justice of the Louisiana Supreme Court. She probably would have done it, though. That's the kind of person she is.

In This Issue

Several articles in this *Journal* focus on the career of retiring Chief Justice Kimball, including:

- ▶ An interview with the Chief by Barry H. Grodsky.
- ▶ Observations from the Supreme Court Justices and court staff.
- ▶ An article by Kären A. Hallstrom on the Chief's work in juvenile justice.
- ▶ An article by two women past presidents of the Louisiana State Bar Association — Hon. Elizabeth Erny Foote and Marta-Ann Schnabel — on the Chief's influence on women in the profession.
- ▶ An article by family friend John Wayne Jewell on "Kitty Ann."

In Future Issues

- ▶ Our February/March issue will include an interview with incoming Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.
- ▶ Our April/May issue will be dedicated to the 200th anniversary of the Louisiana Supreme Court. Also planned for future issues are interviews with all of the Justices, one per issue, in alphabetical order.

2013 Judicial Interest Rate is 4%

Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2013 will be four (4.0%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, and Acts 2012, No. 825, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2013 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2012, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75%) percent.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on Oct. 13, 2012. Thus, the effective judicial interest rate for the calendar year 2013 shall be four (4.0%) percent per annum.

La. R.S. 13:4202(B)(2) provides that the publication of the commissioner's determination in the Louisiana Register "shall not be considered rulemaking within the intendment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953." Therefore, (1) a fiscal impact statement, (2) a family impact statement, and (3) a notice of intent are not required to be filed with the Louisiana Register.

— **John P. Ducrest, CPA**
Commissioner of Financial Institutions
 Date: October 25, 2012

Judicial Interest Rates Through 2013

Date	Rate
Prior to Sept. 12, 1980	7.00 percent
Sept. 12, 1980 to Sept. 10, 1981	10.00 percent
Sept. 11, 1981 to Dec. 31, 1987	12.00 percent
Jan. 1, 1988 to Dec. 31, 1988	9.75 percent
Jan. 1, 1989 to Dec. 31, 1989	11.50 percent
Jan. 1, 1990 to Dec. 31, 1990	11.50 percent
Jan. 1, 1991 to Dec. 31, 1991	11.00 percent
Jan. 1, 1992 to Dec. 31, 1992	9.00 percent
Jan. 1, 1993 to Dec. 31, 1993	7.00 percent
Jan. 1, 1994 to Dec. 31, 1994	7.00 percent
Jan. 1, 1995 to Dec. 31, 1995	8.75 percent
Jan. 1, 1996 to Dec. 31, 1996	9.75 percent
Jan. 1, 1997 to July 31, 1997	9.25 percent
Aug. 1, 1997 to Dec. 31, 1997	7.90 percent
Jan. 1, 1998 to Dec. 31, 1998	7.60 percent
Jan. 1, 1999 to Dec. 31, 1999	6.73 percent
Jan. 1, 2000 to Dec. 31, 2000	7.285 percent
Jan. 1, 2001 to Dec. 31, 2001	8.241 percent
Jan. 1, 2002 to Dec. 31, 2002	5.75 percent
Jan. 1, 2003 to Dec. 31, 2003	4.50 percent
Jan. 1, 2004 to Dec. 31, 2004	5.25 percent
Jan. 1, 2005 to Dec. 31, 2005	6.00 percent
Jan. 1, 2006 to Dec. 31, 2006	8.00 percent
Jan. 1, 2007 to Dec. 31, 2007	9.50 percent
Jan. 1, 2008 to Dec. 31, 2008	8.50 percent
Jan. 1, 2009 to Dec. 31, 2009	5.50 percent
Jan. 1, 2010 to Dec. 31, 2010	3.75 percent
Jan. 1, 2011 to Dec. 31, 2011	4.00 percent
Jan. 1, 2012 to Dec. 31, 2012	4.00 percent
Jan. 1, 2013 to Dec. 31, 2013	4.00 percent

Judicial Interest Rate Calculator Online!

Need to calculate judicial interest? Check out the Judicial Interest Rate Calculator (courtesy of Alexandria attorney Charles D. Elliott) on the Louisiana State Bar Association's website.

Go to: www.lsb.org.

Click "Judicial Interest Rate Calculator" on the left side of the home page.

In Response to Public Defense System Plight

Mr. Walters is right: The plight of our public defense system is the collective problem of the legal community (*Ipse Dixit* column by Edward J. Walters, Jr., August/September 2012 *Louisiana Bar Journal*.)

Through the creation of the Pro Bono Consortium, members of the New Orleans private bar relieved some of the crisis the Orleans Public Defenders Office (OPD) faced earlier this year when forced to implement service restrictions. No chief defender ever hopes to face that, but, without the volunteer contributions of the private bar, it would have been much more detrimental for our clients and the criminal justice system. I sincerely thank those who came to the rescue.

OPD is not the only office forced to restrict services due to lack of funds. As of Nov. 1, five other districts are in, or moving towards, restrictions and many more have made significant cutbacks to lawyers, investigators and other resources. Unless the New Orleans City Council increases our budget, we may well be there again. Until sufficient, stable funding for all public defenders is achieved, crises like this are inevitable.

I thank Mr. Walters for acknowledging the work of the public defender: "The volume of their work is intense and never-ending, which is a testament to their critical role in the efficient and effective operation of our criminal justice system."

I ask for your continued support and urge you to join in calling upon our elected officials to deliver the access to justice the Constitution guarantees.

Derwyn D. Bunton
Chief District Defender,
Orleans Public Defenders
New Orleans

Correcting Info on Legal Orientation Program

I took pleasure in reading the article, "Pro Se in Louisiana: Working to Make a Difference in the Lives of Self-Represented Litigants" (October/November 2012 *Louisiana Bar Journal*). However, the information regarding the VERA Institute of Justice Legal Orientation Program (LOP) is incorrect. The LOP operates from Catholic Charities of the Diocese of Baton Rouge (CCDBR) Immigration Legal Services (ILS). Catholic Charities of the Archdiocese of New Orleans has not been involved with the LOP since 2010.

Also, I would like to provide more accurate information regarding the LOP. Through the Vera Institute of Justice, we conduct the LOP at the LaSalle Detention Center in Jena. There are four components to the LOP: (1) General Orientation, an education session regarding procedures, rights and possible defenses in Immigration Court; (2) Individual Orientation, individual non-advisory guidance as to what options may be available; (3) Workshops, detainees are taught how to appear pro se in their cases; and (4) Pro Bono Counsel, potential referrals in which the attorney

ensures that the case is accepted on a pro bono basis with mentoring provided by CCDBR-ILS, if needed.

Corina E. Salazar
Managing Attorney,
Immigration Legal Services
Catholic Charities of the
Diocese of Baton Rouge
Baton Rouge

Newsmaker for Many Reasons

I submit the following for publication in the *Louisiana Bar Journal*:

Gary F. LeGros, Jr., a sole practitioner in Franklin, La., is pleased to announce that he continues to practice law after 30 years, has not been disciplined by the Disciplinary Counsel and has not been sued. Yet. He is not listed in the 10 best lawyers of Louisiana, Louisiana Super Lawyers or the billion-dollar roundtable club; however, he does not commingle clients funds with his own, meets most deadlines, and his wife and dog still like him — most of the time.

Gary F. LeGros, Jr.
Franklin

LSBA Member Services

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



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

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Don C. Keenan

During his more than 35-year national career, Don Keenan has obtained for clients more than 217 verdicts and settlements exceeding \$1 million. He has handled cases in more than 47 states and five foreign countries. NBC News featured him as a pioneer in the evolution of focus groups 27 years ago and he is now a recognized innovator of the trial bar. In 1993 Keenan founded the non-profit Keenan's Kids Foundation as a result of his strong belief that an attorney's duty does not end when justice for the client is secured. Keenan believes it is equally important to learn prevention lessons from a case and to formulate a public awareness campaign to help prevent future injuries and deaths and, when necessary, to push for legislation and regulations.

featuring

DON C. KEENAN

One of the authors of the wildly popular *Reptile: The 2009 Manual of the Plaintiff's Revolution*

Atlanta attorney Don Keenan and jury consultant David Ball's *Reptile* is revolutionizing the way trial attorneys approach and win their cases. The proof is in the numbers — more than \$4 billion in verdicts and settlements have been credited to the *Reptile*. The conference combines one-half day of lecture with a one-half day case workshop.

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Not a member of LAJ? Join online or call 225-383-5554 to join by phone or fax.



By John H.
Musser IV

A Person of Substance

I recently had the opportunity to attend the Opening of Court ceremony in Shreveport. I was made most welcome and was very impressed with the new Bar Center that opened that day. It is a wonderful facility for the local bar and for visiting lawyers as well.

It was interesting to note that the Shreveport Bar was moving forward on its own mentoring program, having ascertained a need for that kind of guidance during the first formative years of a new lawyer's professional life. Needless to say, that program dovetails directly with the mentoring program we are seeking to establish statewide. The mentoring proposal is currently before the Louisiana Supreme Court and we hope to shortly have approval for the program, at least on a trial basis. Shreveport has volunteered to



Louisiana State Bar Association President John H. Musser IV, right, with LSBA Board of Governors District 8 representative Karelia R. Stewart-Green, following the Opening of Court ceremony in Shreveport. Photo by Ross Foote.

be one of the test areas, along with Baton Rouge and New Orleans.

During the ceremony, I also took note of the manner in which the Shreveport Bar eulogized each of its members who had died in the past year. A separate eulogy was given for each deceased member by another Bar member. Each person did a beautiful job, painting a very clear picture of how the decedents had individually practiced law, how they had each, in their own way, contributed to the development of the profession, and how they had each sought to attain the goals we aim for as we begin our careers. At the same ceremony, new members who have just passed their

bar exams were invited to cross the bar and be introduced to the court.

As I spoke to the courtroom full of loved ones — both for those who had passed and those who were newly admitted — I was struck with the thought that the true measure of our career occurs between those two events: the crossing of the bar and the departure there from. The time in between becomes what we strive for in our profession.

In Shreveport, I heard five moving eulogies, each different but yet each the same. They all revealed the career of a person of substance. That phrase, “a person of substance,” says so much about



Louisiana State Bar Association President John H. Musser IV addressed those attending the Opening of Court ceremony in Shreveport. *Photo by Ross Foote.*

what we, as lawyers, attempt to do. We each strive to add to our profession in some way, to serve clients in some way, to serve our community in some way, and to still be a friend or a father or mother to our families. Some careers are cut short, others extend, but the overriding goal is to be a person of substance.

When we, in the State Bar, honor our deceased brethren in ceremonies in early October each year, we do not have the opportunity to personally reflect in a public way on the qualities of each of the individual lawyers being honored. Even knowing of all that these members have given to us, to the profession and to their communities, we are restricted by time and know that the accolades due each would be immeasurable. That has to be left to the local bars, as they do in Shreveport and in other communities, for only then can we do justice to all that they have meant to our lives, our communities and our profession. We do, however, recognize our 50-, 60- and 70-year members in January of each year, hoping in that way to thank them for all they have done.

It is thus fitting that in this issue we honor a person of substance, our Chief Justice Catherine D. (Kitty) Kimball. As

she retires from the bench as chief justice of the Louisiana Supreme Court — having been its first female member and then first female chief justice — she possesses and embodies all that we search for when we look for a person of substance. The Chief has shown grace and grit in the face of

adversity as she has returned from the effects of a stroke to lead the court. Prior to that, her career as both a district judge and appellate judge clearly manifest a love for people and for the law. Her dedication to this state and her local community is clear. We will miss her in our daily lives as lawyers but will still have the opportunity to continue to learn from her. Her humility and dedication to our profession mark her as a person of substance.

When we speak of professionalism, we are looking to the lessons of those members of our profession who have embodied the term “a person of substance,” the ones who have worked and sacrificed to improve our lives. Some contribute in little ways, some in big, but they have one universal trait — they are all faithful to their oaths as lawyers. We strive to do well for all, to make a difference, to be persons of substance. It is fitting that the measure of our professional lives lies between crossing the bar as young lawyers and being eulogized upon departure, each in our separate ways, yet still each sharing that most welcome of all compliments — they were a person of substance.



Louisiana State Bar Association President John H. Musser IV, right, attended the Opening of Court ceremony in Shreveport. With him is Shreveport attorney **John L. (Larry) Shea**, recently certified elected as 2013-14 LSBA president-elect. *Photo by Ross Foote.*





About this Issue:

Louisiana Supreme Court Chief Justice Catherine D. Kimball

By Edward J. Walters, Jr.
Louisiana State Bar Association Secretary / Journal Editor

We are proud to dedicate this issue of the Louisiana Bar Journal to Catherine D. Kimball. She will retire as Chief Justice of the Louisiana Supreme Court in January 2013, after 20 years of service on the court.

Chief Justice Kimball has crossed many milestones in her professional career. Elected in November 1992 from the Fifth Supreme Court District, she became the first woman to serve on the Supreme Court. In January 2009, she was sworn in as chief justice, making her the first woman chief justice in Louisiana.

She has conceived and implemented many improvements to Louisiana's justice system (chief among them, improvements in the juvenile justice system) and has laid the groundwork for many more improvements to come.

On behalf of the Louisiana State Bar Association, we wish her well in her retirement.



One on One with Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball

Interviewed by Barry H. Grodsky



Chief Justice Catherine D. (Kitty) Kimball will retire from the Louisiana Supreme Court in January 2013, after 20 years of service on the court. Elected in November 1992 from the Fifth Supreme Court District, she became the first woman to serve on the Supreme Court. In January 2009, she was sworn in as chief justice, making her the first woman chief justice in Louisiana.

Prior to her service on the Louisiana Supreme Court, Chief Justice Kimball served as a district court judge in the 18th Judicial District for 10 years, including two years as chief judge. Her legal career also has included work as a sole practitioner (1975-82) and as an assistant district attorney (1978-82). She received her JD degree in 1970 from Louisiana State University Paul M. Hebert Law Center.

During her career, she has served on numerous legal and professional associations. Among them, she has chaired the Louisiana Supreme Court Case Management Information System Task Force, the Louisiana Supreme Court Technology Committee, the Judiciary Subcommittee of the Southeast Louisiana Criminal Justice Recovery Task Force, the Judicial Budgetary Control Board and the Integrated Criminal Justice Information System Policy Board. She also was a member of the Juvenile Justice Implementation Commission, the Louisiana Law Enforcement Commission, the U.S. Department of Justice National Integration Resource Center Task Force and the Louisiana Children's Cabinet.

Louisiana Supreme Court Chief Justice Catherine D. Kimball. *Photo provided by Kimball family.*





One on One with Chief Justice Catherine D. (Kitty) Kimball

Journal: When did you first know you wanted to be a lawyer? What motivated you?

Kimball: It was kind of strange. I was riding to Texas A&M with a friend of my Dad's, who was visiting his son, also a friend of mine. The family had been friends forever. He asked me what I wanted to do with my life. I was just coming out of high school and I said I didn't know. He said I should think about going to law school and becoming a lawyer. I gave it some thought and finally decided it was something I could do and have something I could fall back on if I wanted to work, or needed to work . . . and not have to get a job at TG&Y or a dime store. But I never intended to work, ever.

Journal: What made you decide to seek a seat on the Louisiana Supreme Court?

Kimball: My whole career has been a little odd. I was on the District Court and I loved being on the District Court. When a vacancy came up, lots of lawyers were not pleased with the candidates in the race and started asking me to run. I had no thought of ever doing this. But Leah Guerry — a friend of mine for years — called me. She was the executive director of the Louisiana Trial Lawyers Association, now the Louisiana Association for Justice. She said her president wanted to talk to me about running for the Supreme Court. I said I don't want to run for the Supreme Court, but eventually, I said yes. When I spoke to him, I told him I didn't know if I wanted to do this. I told him that in my District Court job I can help people whose kids have drug problems. I can help domestic violence victims. I like that. He said just think about how much more you can do at the higher level. That hooked me and I thought I'd give it a shot. He was right. We've done a lot of things at our level. The Supreme Court impacts a lot more people with how we handle domestic violence issues and by creating drug courts.

Journal: We have done a lot of work with mentoring. It's a big area of the Bar's focus. Did you have any mentors in your career?

Kimball: When I came to New Roads to practice by myself in 1975, the lawyers in town were so helpful. Any time I had a problem, you could ask any lawyer in town . . . one fellow in particular, Robert Kearney, who was the nicest guy in the world. I had some of the weirdest cases. Somebody went out in a boat in the Mississippi River and disappeared and never came back and they wanted to find out if this was some sort of admiralty case — a big boat ran over a little boat. Declaring people dead and all kinds of things that you'd see on TV. Another lady wanted to know if she could get a divorce and not say she had a child because the child was not the child of her husband. This was way before the days people talked about birth mothers and other things. I called the Supreme Court and they told me I could not do this. Weird things. I'd call Robert or other lawyers and talk to them about situations and they were always helpful. In a small town, there was just the practicing bar. There wasn't anything like an official mentoring program, but you knew you could go to any lawyer if you had a problem. They were always glad to help you.

Journal: What was your family's role in your wanting to be a judge and justice?

Kimball: At any point, if they ever would have said, "No, don't go forward," that would have been the end of it. My family was always supportive, and I always looked for support from them. If my children said, "No, Mom, don't run for the Supreme Court," it would have been over. I wouldn't have done it.

Journal: In your tenure on the Supreme Court, have there been any cases you would deem the most significant?

Kimball: Not really, because all of our cases are significant . . . as they should be or we shouldn't be granting a writ. I can't point to one or one group of them that have more significance than another. I think they are all important.

Journal: The Bar has placed a focus on professionalism, making it more noticeable. As a lawyer, judge and justice, have you seen an improvement in or a decline in professionalism?

Kimball: From when I first started, definitely there has been a decline in professionalism. But I think things have gotten better since the focus has increased and an emphasis has been placed on professionalism. Thanks to the efforts of the LSBA and the bench, attorneys are paying more attention to what it means to act "professional," and it is starting to improve.

Journal: What has changed in the practice of law today?

Kimball: Everything has gotten more complicated because life has gotten more complicated. Issues are more complicated, cases as well. Things used to be simpler than they are now.

Journal: Do you have any tips to share for practitioners to do a better job before the Louisiana Supreme Court and other courts?

Kimball: The same things that anybody would say in any court — preparation. One of the things some people don't concentrate on in our court is they don't completely understand the function of why they are there. There are so close to their own case that they don't realize it is not their case that is of interest but the issue that their case presents. The issue is much broader than just their case. When they get a writ, they need to focus on the issue that got them there and where does this issue go from here, besides the issues between these two parties.

Journal: Do you have any advice for the incoming Chief Justice?

Kimball: I don't know if I'd give her any advice. She's been on the court for 18 years. We talk daily or every other day and I am more than happy to do what I can to help her. I send her lots of correspondence from all over the country. But she doesn't need any advice. She knows what's out there.

Journal: You have had a wonderful tenure on the court. Looking back, what is your greatest accomplishment?

Kimball: One of the things I've been interested in is the administrative functions of the court. One of the main things that



sticks out is our drug court operation. We took over the funding for all the drug courts in the state. We monitor them, keep up with them, work with them. That's one of the highlights. I'm also proud of the involvement I have had with issues affecting children, such as working with the Sunshine Foundation, which provides books to preschoolers. I have also been involved for many years with juvenile justice reform and the work of the Juvenile Justice Implementation Commission. Our juvenile justice system isn't perfect, but it certainly is in better shape than when I first came to the Supreme Court 20 years ago.

Journal: What did you enjoy the most about being a justice?

Kimball: All of the interaction from the administrative duties. I was liaison to the district judges and I worked with them on their projects. I was the legislative liaison. I worked with the Legislature on everything we did legislatively over the years. I have enjoyed the most all of the administrative kinds of things we have gotten to do, including with the Bar and with the judges. Not that I don't enjoy the opinions, some are enjoyable and some not so much fun.

Journal: Now that the end of your time on the court is near, do you have any great future plans?

Kimball: Not yet. Since my stroke, I'm trying to learn to live at a slower pace. I thought I was fine working 80-100 hours a week. I didn't see anything wrong with that, but my body didn't think it was so fine. I am trying to learn to step it down a bit.

Journal: Now that you are leaving the court, what do you think will be your legacy?

Kimball: I really don't think about my legacy. That's for others to decide.

Journal: Would you like to pass on some advice you have gleaned from your legal career?

Kimball: Do the best you can with what you have. That's advice I have received ever since I was a little child.

Journal: Have there been other judges you looked up to and admired?

Kimball: I'm sure there were. I've met a broad range of people. No one particular person. But when I went on the bench here, Judge Ian Claiborne had been on the bench for a long time. He was a very smart man. I looked up to him a lot over the years. I was fortunate to be appointed to the District Judges Executive Committee in my first year as a trial judge. That role meant traveling around the state and meeting lots of trial judges. I looked up to a lot of them.

Journal: What would you have been if you had not been a lawyer or judge?

Kimball: The only thing I can possibly think of is my Dad was CEO and a major stockholder in an insurance company in

Alexandria. I'm assuming I would have worked for him. But I never planned to work, period. My mother was a stay-at-home mom. She got her master's degree in special education after my youngest brother graduated from high school. I had four brothers and a stay-at-home mom. I thought I'd get married and stay at home, too. That didn't work. The marriage, of course, did — 45 years strong. But staying at home when you have three babies and no money, that didn't work. So working wasn't such a bad option.

Journal: Is there anything fun or interesting about you that we don't know that you can share with us?

Kimball: Well, I don't know what that would be. I don't really have any hobbies. All I ever did was work, which is why I had this stroke. One thing I do now is that every morning I get on my iPad and do "Brain Pop," which is an app consisting of a daily brain exercise and memory trainer. It's also a lot of fun and educational.

Journal: When you were first out of law school, you worked in the Attorney General's office?

Kimball: I first clerked for a federal judge, Nauman Scott in Alexandria, then I went to the AG's office, the first lawyer hired in the Criminal Division.

Journal: Who were others you worked with in the AG's office?

Kimball: I worked with several law clerks in the AG's office. Mike Ponder was hired as a lawyer in the Criminal Division. Freddie Pitcher and Ralph Tyson were law clerks there when they were still in law school. John Sinquefield was hired after me. Richard Ieyoub was one of the clerks. I met quite a few people there who were helpful to me in later years. After I became a justice, Richard came down and introduced his wife, saying I used to be his boss. I told him, "Hate to tell you, honey, I still am!"

Journal: Do you have any advice to those thinking about a career in the law?

Kimball: They need to commit to a lifelong experience of studying.

Journal: Is there anything we haven't asked you that we should have asked you?

Kimball: Let me just say that I am so happy that I have no more elections to run. It's nice to look at them from the outside instead of from the inside. ♦

Barry H. Grodsky, a partner in the New Orleans firm of Taggart Morton, L.L.C., is currently serving as First Board District representative on the Louisiana State Bar Association's Board of Governors. He is a member of the Louisiana Bar Journal Editorial Board and chairs the LSBA's Committee on the Profession. He will become the LSBA secretary and Journal editor in June 2013. (Ste. 2100, 1100 Poydras St., New Orleans, LA 70163)





In Their Words:

Observations from Supreme Court Justices and Staff on

Chief Justice Catherine D. Kimball

From that first day more than 30 years ago when a young female lawyer from New Roads announced she was running for the 18th Judicial District Court, much has been written about Catherine D. Kimball. Articles have been written from many different perspectives and about many different subjects — Chief Justice Kimball’s personal story, the cases she authored, the administrative initiatives she has undertaken. In this article, another perspective is offered — that of several men and women, including justices, attorneys and staffers, who have worked with her day in and day out at the Louisiana Supreme Court.

The sitting justices of the Louisiana Supreme Court and staff department heads were asked a simple question: “Considering the impending retirement of Chief Justice Catherine D. Kimball, in your opinion, how has Chief Justice Kimball impacted the Louisiana Supreme Court and the legal profession?” Following are the responses, in their own words, of the people who it might be said worked more closely with Chief Justice Kimball than anyone else.



(Above) The Louisiana Supreme Court Justices in 2009. From left: Justice John L. Weimer, Justice Chet D. Traylor, Justice Bernette J. Johnson, Chief Justice Catherine D. Kimball, Justice Jeffrey P. Victory, Justice Jeannette Theriot Knoll and Justice Greg G. Guidry. *Reproduced with permission of the Louisiana Supreme Court.*



(Right) The Louisiana Supreme Court Justices in 2012. Back row: Justice Greg G. Guidry, Justice John L. Weimer, Justice Marcus Clark and Justice Jeannette Theriot Knoll. Front row: Justice Bernette J. Johnson, Chief Justice Catherine D. Kimball and Justice Jeffrey P. Victory. *Reproduced with permission of the Louisiana Supreme Court.*



Justice Bernette Joshua Johnson said: “Yes, it is true that Chief Justice Kimball was the first female on the Louisiana Supreme Court and the first female Chief Justice, and these are both incredible accomplishments. However, it is Kitty Kimball, the jurist and administrator, who will leave the biggest impression on the Court and our legal profession. As the chief administrative officer of our court system, I have always been impressed with Chief Justice Kimball’s promotion of a collaborative approach, and this approach has benefitted all levels of the state judiciary. For example, building on the relationships she made when her husband Clyde was in the Legislature, Chief Justice Kimball continued to work with the Louisiana Legislature for many years, including annual appearances to explain the judiciary’s budget requests. When the Legislature asked the Court to take on the oversight of newly-formed Drug Courts throughout the state, Chief Justice Kimball led the way to establishing the Supreme Court Drug Court Office, which promotes and supports the creation of new Drug Courts. Our Drug Court office now provides support to more than 29 adult drug courts, 17 juvenile drug courts and two family preservation courts. Chief Justice Kimball also has maintained regular communication with the Governor’s office and the executive branch, and has worked closely with them throughout the years, especially in times of emergency, like Hurricanes Katrina, Rita, Gustav and Isaac. Her spirit of collaboration will live on.”

Several other justices also commented on the long-lasting impact of Chief Justice Kimball’s administrative activities.

Justice Jeannette Theriot Knoll said: “It is impossible to say enough about what Kitty Kimball has done for the youth of Louisiana. From her work with the Sunshine Foundation which provides books to preschoolers to her dogged pursuit of reforms in our juvenile justice system, she has been a fierce advocate for our children. She doesn’t just talk about juvenile justice reform, she acts. She worked tirelessly on the Juvenile Justice

Implementation Commission to promote much-needed reforms. I was privileged to attend one of the numerous trips Kitty organized for elected officials and others involved in our juvenile justice system to Missouri to observe and learn about that state’s progressive work with juveniles. I am hopeful we can continue the great work she began so long ago. And while I am happy for Kitty that she is ‘hanging up the cleats’ after a long and successful career, she will be greatly missed. She certainly is deserving of retiring to a less stressful life surrounded by the love and support of her beautiful family.”

Justice Marcus R. Clark said: “As a district court judge, I appreciated the Chief’s efforts on making protective orders available to law enforcement through the Louisiana Protective Order Registry. Having these orders available and accessible made a difference in many domestic violence cases and a difference in the lives of women across the state. As the junior justice, I have only served with Chief Justice Kimball for a few years, but I have learned much from her leadership, her passion and her dedication.”

Chief Justice Kimball’s leadership was the focus of **Justice Greg G. Guidry’s** comments: “In my opinion, Kitty is the consummate leader. Her energy, her drive and her ideas are beyond comparison. She has the ability to inspire others. She recognized the important roles that we as state judges play not only in the legal profession but also in our communities. Several years ago, Chief Justice Kimball had an idea to foster leadership in our state judges, and the Louisiana Judicial Leadership Institute was born. Each year, roughly two dozen judges are chosen from many applicants to participate in the Institute’s class. Throughout the year, they attend several sessions in different parts of the state, networking with the judges in their class and learning leadership skills. The feedback from the first two years of the Institute’s operation has been positive, without exception, and I hope the Institute will continue for many years, enabling all our state judges to benefit from the Chief’s vision.”

Justice Jeffrey P. Victory commented on the impact of Chief Justice Kimball’s leadership in the judicial administration arena: “Justice Kimball will be remembered at the Louisiana Supreme Court for several accomplishments, but, during the 18 years we have worked together, I have always been impressed by her administrative work. Kitty served the court ably as a liaison to the legislative branch even before she became chief justice. After she became chief, she then assumed the administrative responsibilities of the position with her trademark energy and tenacity. As a six-year cancer survivor, I know how difficult it has been for her since her stroke to keep up with the demanding workload required of a justice of the Louisiana Supreme Court. Her dedication to her job and her determination to recover from her physical limitations comprise a significant part of the legacy she leaves upon her retirement from the judiciary.”

Justice John L. Weimer succinctly summed up his thoughts of Chief Justice Kimball’s lasting impact on the Court and the legal profession: “Chief Justice Kimball has led by example. Throughout her career, she has been dedicated and devoted to our system of justice. She has worked tirelessly and diligently to ensure that the courts of Louisiana effectively and efficiently serve the ideals of justice, fairness and impartiality when applying the law to the facts. She is truly a public servant.”

Chief Justice Kimball will leave a lasting mark on the jurisprudence of the state.

Melvin J. (Mel) Dugas, director of the Court’s Civil Staff, said: “It has often been said that the mark of a great musician is the ability to hit the right notes at the right time. Chief Justice Kimball taught me that the mark of a great Supreme Court justice is the ability to identify the right cases in the right posture for decision. Chief Justice Kimball’s philosophy is reflected in her concurring opinion in *Lenard v. Dilley*, 01-1522 (La. 1/15/02), 805 So.2d 175, in which she explained that ‘[r]eviewing decisions stemming from motions in limine is, in my view,



an inefficient allocation of this court's already strained judicial time and resources because decisions relating to such motions are generally made prior to trial, are interlocutory rulings that can be changed by the trial court during the course of trial, and often reach this court without a developed record upon which to review the trial court's decision.' As shown by this concurrence, she wisely recognized that the Louisiana Supreme Court's limited resources do not permit it to correct every error in the state. Rather, she sought to select for review those cases best postured to give guidance to the lower courts and develop the jurisprudence. This philosophy of judicial restraint and efficient allocation of judicial resources may prove to be one of Chief Justice Kimball's most enduring legacies."

Her impact in the criminal law arena was recognized by **Gregory Pechukas**, long-time director of the Court's Central Staff: "Let's just say that the Chief, as only befits her position, has been the giver of rules. She was extremely adept at pulling jurisprudence together into a set of clear rules on a variety of subjects as a practical guide to practitioners, to wit: introduction of other crimes evidence, *State v. Rose*, 06-0402 (La. 2/22/07) (domestic violence), 949 So.2d 1236; *State v. Hills*, 99-1750 (La. 5/16/00), 761 So.2d 516 (modus operandi evidence to prove identity); *State v. Cotton*, 00-0850 (La. 1/29/01), 778 So.2d 569 (despite acquittal of other crime in prior trial); trial of habitual offender bills with respect to burdens of production and persuasion, *State v. Shelton*, 621 So.2d 769 (1992) (one exemplar of her work and a far-reaching opinion); trials of capital cases with respect to preserving sentencing phase error for review, *State v. Wessinger*, 98-1234 (La. 5/28/99), 736 So.2d 162, and relaxing corpus delicti rule for introducing other crimes evidence at sentencing, *State v. Connolly*, 96-1680 (La. 7/1/97), 700 So.2d 810; and last, but surely not least, reviving obscure jurisprudence from another era, requiring defense counsel to use one of his remaining peremptory challenges to remove a prospective juror (as opposed to seating her on the jury) or

waive review of a trial court's denial of a challenge for cause, *State v. Bourque*, 622 So.2d 198 (La. 1993)."

Supreme Court Law Librarian **Georgia Chadwick** believes that Chief Justice Kimball's lasting influence on the Court might be the results produced by her management style: "I would say the Chief let everyone know, from the top down, that she expected us to focus every day on supporting the justices in their work. The Chief provided a vision as to what she wanted to be accomplished, but it was up to individuals to determine how to best reach the goals she set. The Chief valued teamwork because she appreciated different viewpoints. Everyone has something to contribute when working together to accomplish a goal."

Clerk of Court **John Tarlton Olivier** said Chief Justice Kimball's interest in being on the cutting edge of court innovations and technology will be one area where her impact will be felt for years to come. "With regard to technology, one of Justice Kimball's bucket list items before retiring was to have electronic filing up and running. She tasked our office and our IT department with getting this accomplished, and, with the assistance of Justice Clark, our Technology Justice, we accomplished this goal, opening up e-filing to the legal community, statewide, several months ago. Our e-filing system has received rave reviews from practitioners across the state who appreciate the ease and convenience. Under Chief Justice Kimball's direction, we implemented many technological projects, including holding several of our regular weekly court conferences by video so as to eliminate the time and expenses of justices' travel, and the implementation of an Enterprise Resource Program which integrates our business and human resource systems. We are one of the most technologically advanced appellate courts in the country, thanks to Chief Justice Kimball."

Judicial Administrator **Timothy F. Averill** offered a personal reminiscence: "Stories about Justice Kimball could probably fill many books, but one small personal observation, which may be

unknown to many, underscores her unique influence as a judge. Following the devastation wrought by Hurricane Katrina, the judiciary was in a state of disarray, and Supreme Court operations had been moved to Baton Rouge. Justice Kimball, in close consultation with the Governor and the Legislature, and routinely working 16- to 17-hour days, helped bring the state in general, and the judiciary and legal profession in particular, 'back from the dead.' We would routinely work until 7 p.m. or so at night; Justice Kimball would invite staff into her office and perhaps offer some well-deserved refreshments, whereupon we would brainstorm about what programs and operations could be resurrected the next day. Louisiana's initial recovery from Katrina was nothing short of remarkable; Justice Kimball's contribution to that recovery is not well-known, but extraordinary nonetheless. Unfortunately, her seemingly tireless work habits may have hastened her retirement. Nonetheless, the state of Louisiana, the Supreme Court of Louisiana, the legal profession, and the state judiciary are truly indebted to Chief Justice Kimball for the time and effort she did give us as Chief Justice, Justice, Judge, attorney, colleague, mentor and friend."

Sandra A. Vujnovich, executive counsel for the Louisiana Supreme Court, has had the distinct privilege of working with Chief Justice Kimball for many years, and especially the last four years during her tenure as Chief. "I have only this to add: I believe it is next to impossible to truly assess the immense impact that history will show that Chief Justice Kimball has had on the Court and our legal profession. All I can say is, the Louisiana Supreme Court, the state judiciary, the legal profession, and the lives of many of the citizens of the state of Louisiana are much improved today because years ago a young country lawyer chose to dedicate her life to public service. We are all the better for it. We thank you, Chief, and we all wish you a happy and enjoyable retirement." ♦



'A Champion for Children': Juvenile Justice Improvements are Hallmark of Justice Kimball's Career

By Kären A. Hallstrom

There is perhaps no greater calling in the legal profession than to improve the administration of justice for our most vulnerable citizens.

During the course of her formidable career, Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball has passionately and persistently pursued better outcomes for children, youth and families in Louisiana.

As a lawyer, a judge, a justice and Chief Justice, and as an active member of numerous committees, task forces, commissions and associations, Justice Kimball has maintained a keen awareness of the impact of the judicial system on the young and disenfranchised and has demonstrated outstanding leadership for systemic reform efforts and unceasing energy to participate fully in them. She has understood when change was needed, advocated for it, endured the forces of resistance and embraced the promise of a better future. A comprehensive accounting of all Justice Kimball's accomplishments on behalf of children would be voluminous; she has spent most of her life caring for children, her own — as a mother and grandmother — as well as for countless others who have benefitted from her compassion and concern.



Forexample, in 1997, Justice Kimball initiated the Sunshine Project, which undertook the writing and dissemination of a special book called “You Are Sunshine.” Since then, this book has been provided to every kindergarten child in Louisiana in an effort to build and support their self-esteem.

Justice Kimball has been particularly attentive to the needs of children in the court system and has sought ways to effectively address those needs. She has recognized the value of specialized training, of learning and applying best practices and of being intentional and data driven, and has supported implementation of programs and initiatives accordingly. She provided leadership as the Court accepted responsibility for statewide efforts such as the Supreme Court’s CASA Assistance Program, FINS Assistance Program and Drug Court Program.

John Wyble, executive director of Louisiana CASA, said, “Justice Kimball has long advocated with passion and determination to make Louisiana a better place for all children. Her leadership and support of CASA has ensured that thousands of children in foster care have had a CASA volunteer speak up in court for their best interests. She is truly a champion for children.”

Justice Kimball also has been the lead justice for the Louisiana Court Improvement Program, overseeing such initiatives as the CIP Judicial Fellowship and the creation of a center of excellence for children and families.

As Justice Kimball explained to the Legislature last year, “[T]he center is yet another demonstration of our recognition that it is our collective responsibility that we, in all of our roles — whether judicial, executive, legislative, public, private, local or state — should apply what we’ve learned, and base our policies, procedure and budgets on what has shown to improve outcomes for our children.” She has encouraged and supported development of an integrated juvenile justice information system, and she was instrumental in facilitating the new statewide system of legal representation in child protection cases. When necessary, she has encouraged — and sometimes mandated — statewide judicial training on issues impacting children, such as the Adoption and Safe Families Act and waiver of counsel by juveniles.

““ *I have the deepest admiration for my dear friend, Chief Justice Kitty Kimball, who served the people of Louisiana with dignity and class in and out of the courtroom. Few troubled children of Louisiana will ever understand the effort and commitment Justice Kimball made on their behalf. We owe her a deep debt of gratitude for turning the juvenile justice system away from one that put young people into prison programs designed for adult offenders, effectively training them for a life of crime.*

She inspired me and others to provide incarcerated children with quality, age-appropriate educational programs. This approach has resulted in turning those same troubled children into productive adults while reducing recidivism rates.

Thank you, Chief Justice Kimball, for your trailblazing work. Louisiana appreciates you and is a better state for having you on its Supreme Court.”

—Kathleen Babineaux Blanco
Louisiana Governor, 2004-08

Hon. Madeleine M. Landrieu, a judge on the 4th Circuit Court of Appeal, appreciates the judicial role model Justice Kimball has been. “The Chief’s leadership in the area of juvenile justice cannot be overstated. Her contributions in this area will live on well beyond her retirement. Those of us serving in the judiciary should grab the baton as she passes it to us, and work hard every day to ensure that children are not needlessly sent from schools to the juvenile justice system, and are not removed from abusive homes only to be left to wander through the maze of our foster care system. We should never stop fighting her fight — the fight for the children of our state.”

Justice Kimball’s leadership has extended beyond the courts to others who have a profound impact on the lives of children, including legislators, government/agency leaders and law enforcement. She has demonstrated a remarkable ability to work effectively with a succession of Louisiana administrations and legislatures, as well as with various federal agencies, national foundations and juvenile justice and child welfare professionals from many different states.

In her 2009 judiciary address to the Joint Session of the House and Senate, Justice Kimball openly acknowledged that the juvenile justice system was a subject very dear to her heart and urged the legislators to continue moving forward with the reforms that had been made. Again in 2011, her remarks to the joint session included references to her interest and involvement in juvenile justice and child welfare reform efforts. She specifically asked for the Legislature’s “continued support and assistance for our children.”

U.S. Sen. Mary Landrieu said, “As Kitty prepares to retire in January, I commend her for her years of service to our state and for her unwavering commitment to the Louisiana Constitution. She became known for collaborating with the Legislature and working well with Republican and Democratic governors alike. Most significantly, she became known for making strides in juvenile justice and she has a deep understanding of the effects that



courts can have on children.”

Justice Kimball was the motivating force for advancing the back-burnered juvenile justice reform recommendation relative to adoption of statewide juvenile detention standards. Today legislation is in place that directs implementation of the model standards developed and requires licensing of all Louisiana detention centers.

Dane Bolin, director of the Office of Juvenile Justice Services in Calcasieu Parish and the head of the Louisiana Juvenile Detention Association, thanks the Chief from the thousands of children impacted. “Your vision of having all detention centers licensed for the first time in our state’s history will have a lasting impact on our kids.”

After reading the 2011 Annie E. Casey “Kid’s Count” report, Justice Kimball contacted the administration to ask what should be done. As a result, the Chief and the heads of each of the major Louisiana departments serving children (Department of Health & Hospitals, Department of Children & Family Services, Department of Education, and Office of Juvenile Justice) convened a summit of public and private sector leaders on the future of Louisiana’s children. Justice Kimball remarked: “I cannot imagine any endeavor more important than public and private leaders coming together to commit to and plan for improving outcomes for Louisiana’s children. The time and effort we invest in our children now will build the future for everyone in this state.”

Justice Kimball has actively participated and prompted others to participate in state and national level commissions, teams, work groups and other multi-disciplinary opportunities to improve the well-being of Louisiana’s children.

Louisiana Department of Health and Hospitals Secretary Bruce D. Greenstein said, “Chief Justice Kimball helped catalyze a major statewide effort that brought together child advocates and stakeholders to improve the lives of our kids. Now, only a year later, we’ve launched the Louisiana Kids Dashboard,

“Over the last decade, Louisiana juvenile justice has undergone much-needed systemic change, brought about by the efforts of people determined to provide better conditions and services for Louisiana youth. No one recognized the need for improvement more than Chief Justice Catherine (Kitty) Kimball.

Justice Kimball has given much to Louisiana, the children of our state, and the Office of Juvenile Justice (OJJ) in particular. Kitty Kimball championed the cause of reforming the state’s juvenile justice system. The state Legislature created the Juvenile Justice Implementation Commission as the chief vehicle for reform and Justice Kimball proudly served as a dedicated member. She has spent untold time and effort working to transform the entire continuum of juvenile justice services throughout the state, to provide more effective services for Louisiana’s at-risk youth.

I can think of no one in Louisiana who has consistently worked harder to improve conditions for Louisiana’s most fragile youth and their families. The state of Louisiana and OJJ owe an incalculable debt of gratitude to Chief Justice Kimball for giving voice to a dire need and her unending efforts to make life better for the most vulnerable of our citizens.”

—Dr. Mary L. Livers
Deputy Secretary, Louisiana Office of Juvenile Justice

an innovative tool to measure and track health and well-being outcomes of children across the state. Louisiana’s kids will always have an ally and an advocate in Kitty Kimball.”

For several years, Justice Kimball served as an active member of the Louisiana Children’s Cabinet and was an instrumental commissioner on the Juvenile Justice Reform Implementation Commission. She worked closely with the MacArthur Foundation and the Casey Foundation on juvenile justice reform efforts, and cajoled countless judges and legislators to take the trip to Missouri to see for themselves what an effective and efficient system could look like.

Laurie R. Garduque, MacArthur’s director of Justice Reform, recalls Justice Kimball’s role: “When we were first thinking about Louisiana as a potential Models for Change state, we wanted to see where the leadership

would come from, and who would inspire and motivate the state to go faster and further in juvenile justice reform — we knew leadership would be critical. When we met Justice Kimball, we were convinced and persuaded that Louisiana was one of our states. Seven years later, the evidence bears us out. Justice Kimball was critical in bringing together the collaboration and vision that makes us proud of what Louisiana has accomplished, and gives us confidence that Louisiana will continue to move forward in the future.”

David W. Burton, district attorney in the 36th Judicial District and chair of the Louisiana District Attorneys Association Juvenile Justice Task Force, is one of the many juvenile justice professionals who have worked closely with the Chief on system improvement for more than 10 years. He and his colleagues have seen Justice Kimball as an effective voice for thoughtful, meaningful reform. “Chief Justice Kimball has been a true



Chief Justice Catherine D. Kimball and Kathleen Babineaux Blanco on the occasion of the induction of the Chief Justice. Photo by Ross Foote.

'Champion of Juvenile Justice Reform,' dedicated to the concept that safeguarding our citizens is consistent with a juvenile justice program based upon a therapeutic model, with positive behavior modification as its goal," Burton said. "She has remained steadfast in her advocacy for Juvenile Justice Reform, with the belief that early intervention is a key component of the larger criminal justice system. While we are saddened by the news of her retirement, we are heartened by her continued advocacy for reform, and happy that she will have the opportunity to spend more time with her family, to enjoy her retirement with the satisfaction of a job well done."

The myriad accomplishments and awards for Justice Kimball's work on behalf of children are far too numerous to recount here. In the last few months, she was presented with the first



Chief Justice Catherine D. Kimball and two lifelong friends, Suzy Duplantier and Patsy Anderson, on the occasion of the induction of the Chief Justice. Photo by Ross Foote.

"Champion of Louisiana Juvenile Justice" Award by the Office of Juvenile Justice for advocating reform of the state's juvenile justice system.

Dr. Debra K. DePrato, project director of the MacArthur Foundation's Louisiana Models for Change program and director of the Institute for Public Health and Justice at LSUHSC, explains: "Justice Kimball is not afraid to look at the system and do better. She embraces change and is always looking for the betterment of Louisiana's youth. She is inspiring to all who are working in the juvenile justice realm in Louisiana. She is our champion and leader and demonstrates this time and again."

Justice Kimball is equally lauded among child welfare stakeholders. She was the recipient of the 2012 Together We Can "Lifetime Achievement Award," presented each year to an individual who has demonstrated an enduring commitment to serving Louisiana's children and families.

Louisiana Commissioner of Administration Kristy Nichols said, "Chief Justice Kimball's commitment to child welfare and juvenile justice issues throughout her career has served the citizens of Louisiana well. Her early work framed her view of the special attention needed for children involved in the child welfare system. This view has continued to shape her support for the Louisiana Supreme Court's partnership with federal and state officials in the child welfare system to promote better outcomes for children and families through coordination and training among the judiciary and attorneys. Most recently, Chief Justice Kimball demonstrated unwavering support for ongoing development and training in the child welfare system through the Pelican Center for Children and Families, which provides an opportunity for formal, collaborative relationships among key child welfare stakeholders. While her voice on the court will truly be missed, Chief Kimball leaves a legacy of encouraging partnership between all branches of government and stakeholders to promote programs with the goal of improving outcomes for Louisiana's children."

Suffice it to say that this amazing, powerful woman is retiring from the bench with a legacy of putting children first. She has made a real difference and set a course that will continue to improve the welfare of the children and families in the future. When it comes to justice for Louisiana's children, Justice Kimball has the mind of a jurist, the heart of a mother, and the spirit of a warrior. On behalf of those whose voices are too often silenced or ignored or drowned out: Thank you, Justice Kimball, for giving your all. ♦

Kären A. Hallstrom, JD/MSW, is the Deputy Judicial Administrator for Children and Families in the Office of the Judicial Administrator, Louisiana Supreme Court. (Ste. 1550, 1555 Poydras St., New Orleans, LA 70112)





Chief Justice Kimball: Women of the Latest Vintage Have a “Role Model Worthy of Our Gender”

By Hon. Elizabeth Erny Foote and Marta-Ann Schnabel

Women litigators of a certain “vintage” came along in the profession at a time when the only available role models were men. This seems more disturbing in retrospect, really, than it did at the time. Back then, there was a collective sense of excitement and not a lot of worry about the origin of the advice and training. Truth be told, these women felt a little plucky and a whole lot empowered. They didn’t look around that much at what the other girls were doing, because, well, there were so few others to see. Life was an adventure full of endless possibilities.

Louisiana Supreme Court Chief Justice Catherine D. Kimball addressing the LSBA General Assembly at the 2009 Annual Meeting.
Photo by Matthew Hinton.





Chief Justice Kimball: Women of the Latest Vintage



Hon. Elizabeth Erny Foote talks with Louisiana Supreme Court Chief Justice Catherine D. Kimball and Michael A. Patterson before the LCLCE reception during the 2009 Annual Meeting in Destin, Fla. *Photo by Matthew Hinton.*

When Catherine D. (Kitty) Kimball was elected to Division A of the 18th Judicial District Court in 1982, she had already been practicing law for 12 years. She was one of only a handful of women on the bench in Louisiana, and one of the very few not serving as an administrative judge or sitting in a dedicated family or juvenile court. She had borne three children (two of them while attending law school), worked for the Louisiana Attorney General and the Commission on Law Enforcement, nursed her husband through a bout with cancer, and set out her own shingle from which she represented Fortune 500 corporations. She no longer needed a role model; she had become one.

The authors of this article are of a somewhat newer “vintage” than the Chief Justice, but it goes without saying that we thought we were pretty special in 1982. Recently launched from academic success, we were just naïve enough to have been oblivious of the nature and extent of Judge Kimball’s accomplishment. Ten years later, however, when Kitty Kimball was elected as the first woman to the Louisiana Supreme Court from a district of 1.4 million people, comprising about one-third of the state, we knew enough to be admiring.

By the time we took on leadership roles in the Louisiana State Bar Association, admiration had grown to awe, as we watched Justice Kimball juggle the heavy workload of a Supreme Court justice (the volume of writs requires the justices, as a base line, to review 2,500-3,500 pages a week) with her passion for ensuring the “fair and orderly administration of justice.” Though this may be a meaningless buzz phrase in the hands of mortals, Kitty Kimball knew from her days as a country lawyer and as a district court judge that people’s access to the court system depended on a strong infrastructure. Particularly committed to combatting domestic violence and ensuring justice for children, we watched Justice Kimball bring innovations and improvements to Louisiana’s court system. She found funding and matched volunteers and workers to programs and initiatives. She gave pep talks in public and cajoled in private. Intolerant of procrastination and evasion, Kitty Kimball developed a reputation for being direct and persuasive. Those talents reached super-hero proportion when she steered the

judicial system’s post-Katrina recovery.

In short, as we reached the place where we were called upon to work with the Justice, we were worried. All the bravado of our own careers — and we had experienced a number of “first women” moments of our own — seemed to pale in comparison. Quite honestly, we again failed to notice that there were not a lot of other girls in the room (although, to be sure, many more than there had been 25 years earlier). Still, we donned our finest suits and most becoming low heels, fluffed up our hair, and met with Justice Kimball on a variety of issues that impacted the courts and the profession. One meeting led to another, and before long, we realized it was never too late to find a role model.

Alone with her after a work day, or on the plane to the next work day, we sat at rapt attention while the Justice discussed the issues that confronted the Louisiana justice system in a narrative style that seemed relentlessly poised for new explorations and new solutions. She seemed never to need sleep nor lack enthusiasm. She dissected petty turf wars with the ease of a career diplomat, never lowering herself to the battle, but always displaying an uncanny knack for understanding each side’s position. Usually she could bring peace, but always she ended the impasse so that her objective could be accomplished. She would consider a situation carefully, then form an opinion, express it, and stick to



Louisiana Supreme Court Chief Justice Catherine D. Kimball in earlier days. *Photo provided by the Kimball family.*



Louisiana Supreme Court Chief Justice Catherine D. Kimball and Marta-Ann Schnabel during a quiet moment at the 2005 Annual Meeting in Destin, Fla. Photo by Ross Foote.

it. She never felt challenged by disagreement, but she was very seldom persuaded away from her own vision.

What struck us the most, however, was how warm and fun-loving she is. She talked of fashion and recipes and kids and husbands a half breath after she had solved the weightiest of problems, even after only four hours of sleep and in the midst of fighting with FEMA over funding for court services. She confided that, like us, she had always over-compensated for being a working mom. She remembered how she had been furiously focused on being sure that her children had home-cooked meals and snacks by rising in the wee hours of the morning to make them — a compulsion that finally ended when her third child asked if she couldn't have "cookies in packages like everyone else." She had juggled her professional schedule to attend mid-day mothers' club meetings because, well, none of the other mothers worked, and her children would have suffered if she had not participated. She was honest in acknowledging that she was a much better mother, in many ways, because she worked — but that the price of her career had been maternal guilt.

Justice Kimball told us that she had been reluctant to run for the district court bench, but that she had been talked into it by her husband, Clyde, who reasoned that she would be filling an unexpired term and could choose not to run again if she didn't like it. At the end of two years, he wanted her to quit and go back to a more lucrative private practice, but she had discovered that being a judge in a country parish meant that she could make a real difference in helping real people solve their problems. She talked of her first exposure to women who were victims of domestic violence, of young men who suffered from mental illness and drug addiction, of children who were abused. She even spoke of her reluctance to move up to the Supreme Court because she worried that she would be less able to help people. She ran only when she was persuaded that as a Supreme Court justice she could help develop more and longer term solutions for the people she

saw in a district courtroom. And she was excited to become Chief Justice because she knew that she could do even more.

We were surprised to be invited to travel to New York with her in 2008 to visit a community-based court in Brooklyn called the Red Hook Community Justice Center. Red Hook is a famously troubled neighborhood, where crime and familial disintegration had taken over. The Justice Center combines family, juvenile and criminal court under one roof with innovative interventions like peer mediation, mental health assistance and drug treatment, and Justice Kimball wanted to see if any aspects of the Red Hook model could be brought home to Louisiana. So as not to waste a moment, we were also scheduled to speak to a meeting of the New York City Bar Association about post-Katrina assistance from out-of-state lawyers.

Then she said, "And we can share a hotel room to keep down costs!" Tireless, by the way, is an adjective wasted on any description that does not include Justice Kimball. Even with the press of an ambitious day-time schedule, augmented by a healthy dose of night-time Broadway, the Justice would literally talk us to sleep at night. In our jammies, teeth brushed, lights out, Kitty Kimball was still sharing ideas and looking for input. A natural politician, she spoke to people in New York City high-rise elevators as though they were her neighbors in Ventress. Often they confided in her about the best place to eat, drink or get a bargain. At one point, she had almost talked us into a very large wine-tasting for a group of (all-male, by the look of it) sommeliers and wine experts from across the country.

There is, however, something bittersweet about praising the Justice's drive and enthusiasm for her work, since her doctors have suggested to her that her unrelenting schedule and her unwillingness to rest contributed to the stroke she suffered on Jan. 10, 2010. And that inability to do anything at less than full speed has, indeed, contributed to her decision to retire at the end of this year.

Kitty Kimball has taught us that service in the name of justice should form the basis for all that a lawyer and a judge does. So now women of the latest "vintage" can truly lay claim to a role model worthy of our gender. ♦

Hon. Elizabeth Erny Foote was confirmed by the U.S. Senate in June 2010 to the judgeship in the U.S. District Court for the Western District of Louisiana. She was the first woman to serve as a Louisiana State Bar Association (LSBA) officer when she served as treasurer from 1994-96. She later served as LSBA president in 2008-09. (300 Fannin St., Shreveport, LA 71101-3083)



Marta-Ann Schnabel, a shareholder in the New Orleans law firm of O'Bryon & Schnabel, P.L.C., served as the first woman president of the Louisiana State Bar Association in 2006-07. She is a member of the American Bar Association's Standing Committee on Bar Activities and Services. (Ste. 1950, 1010 Common St., New Orleans, LA 70112)





The Relevant Justice

By Frank X. Neuner, Jr.

*I*t is a privilege to share my experiences with Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball during my tenure as Louisiana State Bar Association (LSBA) president in 2005. As everyone in Louisiana knows, Hurricane Katrina brought destruction to our coastal cities and devastation to the lives of all our citizens. Hurricane Katrina also threw our justice system into disarray. Coming into office as the new LSBA president in the summer of 2005, I could not predict that barely a month later we would experience Hurricane Katrina, and then Hurricane Rita, nor the effect these storms would have on my time as Bar president and on the lives of over half of the licensed, practicing lawyers in Louisiana.



Clyde Kimball, Louisiana Supreme Court Chief Justice Catherine D. Kimball, Tracy Neuner, and Frank X. Neuner, Jr. at the 2005 Annual Meeting in Las Vegas. Photo from LSBA archives.

It was against this backdrop of devastation that I came to know Chief Justice Kimball so well, quickly discovering that her leadership and dedication to the state and its system of justice would serve as an invaluable example for me in fulfilling my own duties as Bar president. To be a relevant Bar president, I merely had to follow her example.

During this difficult time, there was no more dedicated public servant than Chief Justice Kimball. She continually put the interests of Louisiana, its citizens, its judiciary and its lawyers above her own and worked tirelessly to reestablish and rebuild the justice system in Louisiana after these two destructive hurricanes.

The day after Hurricane Katrina made landfall in south Louisiana, Chief Justice Kimball invited me to participate in the first of many meetings to develop an action plan for reopening the courts and making them accessible, while simultaneously protecting the rights of the displaced citizens and lawyers. This initial planning meeting would be the first of literally hundreds, most led and directed by Chief Justice Kimball, where the rebuilding of Louisiana's justice system remained the constant goal. An immediate step was the decision by the Supreme Court to declare a judicial holiday, which in turn led to the enactment of legislation suspending prescription for almost a year following the storm.

Throughout the time I worked with Chief Justice Kimball, I stood in awe of her tireless efforts and boundless energy — she hosted daily pre-dawn conference calls and was getting by on only a few hours of sleep at night — all dedicated to the rebuilding of Louisiana. I soon realized I was no match for Chief Justice Kimball's energy, dedication and enthusiasm.

I recognize the considerable efforts of former Chief Justice

Pascal F. Calogero, Jr. and the other members of the court, who also worked to rebuild the justice system. But, because of my frequent interaction and discussions with Chief Justice Kimball, I observed firsthand the significance and relevance of her extraordinary efforts and their benefit to the legal profession, the justice system and the state of Louisiana.

Though I had known Chief Justice Kimball and her husband and life partner, Clyde, for several years, I truly came to appreciate their special bond and relationship as a result of the circumstances created by Hurricanes Katrina and Rita. I am truly happy for her and her family, and I wish her a truly enjoyable retirement with her family after her valuable service on the Supreme Court comes to a close in January.

We all strive to be relevant and to give of ourselves to others, but, by her example, Chief Justice Kimball demonstrated to me the true meaning of selfless public service that makes a real difference in the lives of those around her — and she made a profound difference in my life.

I, for one, will miss Chief Justice Kimball's energy, dedication, wisdom, wit and her service on the court. Louisiana's justice system will miss a tireless and dedicated jurist. ♦

Frank X. Neuner, Jr. has been managing partner of the Lafayette law firm of Laborde & Neuner since 1998. He has chaired the Louisiana Public Defender Board since 2008. He received a BS degree in 1972 and his JD degree in 1976 from Louisiana State University and its Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1976 and in Texas in 1994. He served as president of the Louisiana State Bar Association from June 2005-June 2006. He served in the American Bar Association House of Delegates from 1999-2009. (Ste. 200, 1001 West Pinhook Rd., Lafayette, LA 70503)



Chief Justice Kimball:

Through the Eyes

of Her Clerks

Compiled by Darrel J. Papillion

Over her many years as a Louisiana Supreme Court justice, Chief Justice Catherine D. (Kitty) Kimball had the opportunity to hire many recent law school graduates to work in her office for a year or two as her judicial clerks. Over the years, her “clerk children,” as she affectionately called them, have become successful lawyers all over Louisiana and the country. Justice Kimball remained in close contact with many of her clerks, sharing holiday cards and birth news, and was always available to give them advice — in good times and in bad. The Louisiana Bar Journal asked a few of those clerks to give us their thoughts about working so closely with Justice Kimball.





“One of my most vivid memories of the Chief is her uncanny ability to recall cases, both recent and from long ago, that are relevant to an issue at hand. Often, when I was working with her on an order or decision, she would suddenly — and excitedly — recall the name of a case or, in the absence of the full case name, the names of parties, the subject of the decision, or the time period in which it was handed down. Sure enough, the case would be directly on point or relevant to the issue before us. On the rare occasion when she could not recall the full case name and we could not find the case immediately, you could be assured that she would pop into your office sometime in the next few hours or days with the case name — it having just come to her. What is truly impressive about this ability is that many of these cases were decided, not simply in recent years, but when she first came to the court. Yet she always remembered them.”

—**Michael J. Palestina**

Stanley, Reuter, Ross, Thornton & Alford, L.L.C.
New Orleans
(Law Clerk, 2008-09)

“Justice Kimball revealed her sense of humor and disposition to us shortly after being sworn in as the first woman on the Louisiana Supreme Court. She returned from having lunch with a prominent local lawyer, bursting with laughter over an incident which had occurred. It was apparently Secretary’s Day, and the restaurant they were visiting was providing gift bags to all secretaries who dined with them. The wait staff, seeing the local lawyer and his female guest, assumed Justice Kimball was a secretary and provided her a gift bag. The gesture caused her lunch guest great dismay, but Justice Kimball found the entire event comical.”

—**Scott C. Barney**

Chaffe McCall, L.L.P.
Baton Rouge
(Law Clerk, 1992-93)

“My first day began with learning Justice Kimball’s golden rule of her office. She explained that she understood we were going to make mistakes. She said that when we do, we should notify her immediately along with a proposal on how to fix it . . . because if we do not and try to cover it up, we should go ahead and pack up our belongings and find new employment. It was probably the best advice I’ve ever received.

“For holidays, Justice Kimball always assigned a ‘duty clerk’ to attend to any emergency writs that may be filed. There was some confusion over which of us had that duty over New Year’s when LSU played Texas in the Cotton Bowl. During the game, her son, sitting a few rows behind me, tapped me on the shoulder and handed me his cell phone because someone wanted to speak with me. During a brief exchange of pleasantries with CDK (her court moniker) about the game, I assured her that my cell phone



Louisiana Supreme Court Chief Justice Catherine D. Kimball. *Photo provided by Kimball family.*

would allow me to respond to any emergency even though I was in a different state. She never mentioned the exchange again, until my last day when I was bringing her briefcases to her car. In the elevator, she told me that I had been one of her more gutsy (edited for publication) clerks because of our chat during the Cotton Bowl. She then smiled and told me that trait would serve me well in private practice.

“*What are the facts . . .* An expression burned into my brain. Justice Kimball taught me that many lawyers blindly cite legal principles from cases. However, good lawyers distinguish themselves by understanding those principles depend on the facts of each case. During my clerkship, I had to be prepared to be quizzed on the facts of any case I cited in a writ report for her. If only every lawyer had the opportunity to clerk for Justice Kimball!

“An exemplary jurist. That is how I’d describe Justice Kimball. I can personally attest that she read every writ and the entire record of each case that was before her. I know because I carried between four to five briefcases to her car each week! You may disagree with the outcome of an opinion with her name on it. But be certain that Justice Kimball did what we would want from any jurist — she personally made a reasoned decision by applying the law to all of the facts presented to her.”

—**L. Andrew Melsheimer**

Thompson & Knights, L.L.P.
Dallas, TX
(Law Clerk, 2002-03)



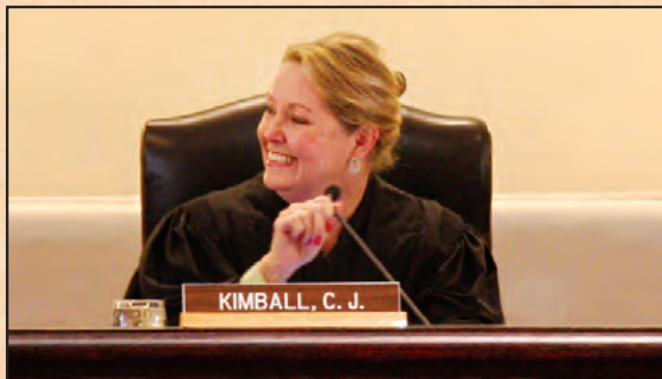
“The briefcases. I’ll never forget the briefcases. Literally six to eight large briefcases packed with writ applications and briefs that we would load into her van every week for the trip back home to New Roads. A little light reading for her weekend. She was totally devoted to her daily work as a justice, and it was that effort, and her insistence that we always work to find the right answer, that led to her thorough treatment of the issues before the court. She believed it was a privilege to serve the people of Louisiana. My memories of clerking for Justice Kimball are some of the fondest of my career, and I will always be grateful for the opportunity that she gave me.”

—**Kyle P. Polozola**
Dupuis & Polozola, L.L.C.
Lafayette
(Law Clerk, 1996-97)

“One of the most memorable things about clerking for Justice Kimball during the 1994-95 term was her ‘transformation’ from Justice Kimball to ‘Miss Kitty’ — albeit solely in *private* conversations among Supreme Court law clerks. You see, I had grown up down the street from Justice Kimball, attended school with her children, and had known her all my life (in rural, southern fashion) simply as ‘Miss Kitty.’ So, when I showed up to clerk for Justice Kimball in 1994, I naturally continued to address her in chambers as ‘Miss Kitty.’ She welcomed (even expected) the informality. However, my fellow clerks were rather dumbfounded during the first few days of our tenure — not realizing my background with the judge. Needless to say, by the end of our term, several other law clerks were affectionately referring to Justice Kimball as ‘Miss Kitty’ in private law clerk circles — never to her face — although she knew, and I think viewed it as a compliment.”

—**Stephen P. Jewell**
Jewell & Jewell
New Roads
(Law Clerk, 1994-95)

“I learned a lot from Justice Kimball as a role model. She showed me the importance of challenging assumptions (my own or others) and thinking about legal issues from every angle. I quickly learned that, if she asked my opinion on a legal issue, she would want to know not just what I thought but *why* I thought it. She challenged my opinions, and she invited challenge of her own. I often came away from a discussion with her with a broader understanding of an issue because of the way she approached it, from multiple perspectives. I also learned that her memory is amazing — she could remember very old cases with incredible accuracy. She also had an uncanny ability to learn by listening; she could listen to an argument or a complicated recitation of facts and grasp the subtle nuances of a case instantly, without taking notes. Listening may be one of her greatest skills. The



Louisiana Supreme Court Chief Justice Catherine D. Kimball at the Louisiana Supreme Court. Photo provided by Kimball family.

court was better for her service, and it will be much worse for her absence.”

—**Bruce W. Hamilton**
Barrasso, Udsin, Kupperman, Freeman & Sarver, L.L.C.
New Orleans
(Law Clerk, 2010-11)

“Justice Kimball was a tireless worker who wanted to obtain the correct result in her cases. It did not matter to her who the lawyers or litigants were in the cases she decided — she treated everyone the same. I remember her explicitly instructing us that we should never tell her the names of the lawyers in the matters being considered by our court on writs or similar proceedings. She did not want to know who the parties were. I was also impressed at how strongly she felt that state employees should work as diligently as employees in the private sector. She pushed herself very hard — every night and weekend, she read briefcases full of writ reports, memoranda and research materials we had prepared. She also pushed us very hard to ensure that we did very good work. Clerking for Justice Kimball was one of the defining experiences of my legal career — she taught me a tremendous amount about life, work and the law. She will always be larger than life to me.

“One funny thing I can say about Justice Kimball is that she could never hide when she was upset. I may get in trouble for revealing this, but Justice Kimball is physically incapable of hiding anger or frustration. She is a human thermometer! When we had to give her bad news, or if we (very rarely, I might add) did something she did not like, her neck would immediately turn very, very red. When I was sitting in the gallery of the court as a law clerk taking notes from oral argument proceedings, I could always tell if one of the lawyers was getting on her nerves because her neck would turn beet red!”

—**Darrel J. Papillion**
Walters, Papillion, Thomas, Cullens, L.L.C.
Baton Rouge
(Law Clerk, 1994-95)





We Call Her “Kitty Ann”

By John Wayne Jewell

*I*t doesn't sound like a name one would call the Chief Justice of the Louisiana Supreme Court, or any judge for that matter. But that's what my family and most of her close friends have called the Honorable Catherine Dick Kimball for the 50-odd years we've known her. The name does not lessen the respect which we have for her but, instead, reflects the personality of this wonderful woman.

Louisiana Supreme Court Chief Justice Catherine D. Kimball bringing order to a meeting. *Photo by Ross Foote.*





Louisiana Supreme Court Chief Justice Catherine D. Kimball with family and friends on a ski trip. *Photo provided by Kimball family.*

While others will write about the Chief Justice's many accomplishments, I set my hand to this in an attempt to reveal something of her early career and, more importantly, her personal side, and to thank her for her family's friendship with mine.

I grew up with Clyde Kimball in our small town of New Roads and was his fraternity brother at LSU. Neither of us knew Kitty Ann Dick prior to 1963. She was growing up in the "big city" of Alexandria where she was born in 1945 to the late William H. Dick and Jane Kelley Dick. She was the oldest of five, with four younger brothers. After graduating in 1963 from Bolton High School, she came to LSU that year, and we have had the privilege of knowing her since. She entered LSU Law School in 1966, and she and Clyde married the following year.

After graduating in 1970, and bearing two children (Kevin and Catherine) along the way, she and Clyde lived in Alexandria where she clerked for U.S. District Judge Nauman Scott and later served successively as special counsel to the Louisiana Attorney General's Office and general counsel to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice. A few years after their third child (Lyria) was born, the Kimballs moved to New Roads, where she later began the solo practice of law in 1975 — the same year Clyde ran for and won a seat in the Louisiana House of Representatives, a seat he held for 16 years until he decided not to seek re-election. She practiced law and served as assistant district attorney until 1982.

That year, Clyde's uncle, Dan Kimball, a longtime district judge for the 18th Judicial District (Iberville, West Baton Rouge

and Pointe Coupee parishes), died. Kitty Ann was persuaded to run for his seat and she won. She served on the district bench until 1992 when the Supreme Court seat she now holds became open. Until that year, this seat had been occupied by men from Baton Rouge — the most populous of the 12 parishes it served at the time. Aware of the challenge, she accepted it head on. Against great odds, she and Clyde campaigned tirelessly from St. Landry



Louisiana Supreme Court Chief Justice Catherine D. Kimball and family. *Photo provided by Kimball family.*



Parish on the west to Washington and St. Tammany parishes on the east. She carried every parish in the general election.

As a colleague in the practice of law, Kitty Ann added much to our local bar — and not just because she was the first woman to have an office in New Roads, although that probably helped. Who would think of being un-professional to this lady?

As a district judge, her intellect and knowledge of law and procedure was apparent from the beginning. Never was a judge more hardworking and, at the same time, so accessible to the bar. Her office was always open.

As an associate justice and Chief Justice of our state’s highest court, I need say no more. It has been a continuation of the same high standards.

But with all of that said, it is the personal side of this special woman that has impressed me the most. While there are many women in our profession today, it was not so in the 1970s and 1980s. Maybe it was growing up with four little brothers that prepared her so well for her future roles in life. I have had the privilege of observing firsthand the way she maneuvered her role as a wife and mother side by side with her professional duties. When church, school or community asked, Kitty Ann did her part and never used her career as an excuse not to respond. The jobs she accepted were numerous: president of her church council, president of the local Mothers Club, member of the local parochial school board, president of the Legislative Wives Auxiliary, to name a few.

She has always been unpretentious to a fault. Outside court, one would never know her occupation, other than that of a wife, mother, sister or friend. Even on the mountains of Colorado, she looked and acted like a sweet, ordinary wife (well . . . maybe not quite so much . . . after all, she was in pain) while being transported by the ski patrol down the mountain after a bad fall while trying to keep up with Clyde (another of the challenges she refused to turn down).

When my son had the honor of clerking for her at the Supreme



Clyde Kimball and Louisiana Supreme Court Chief Justice Catherine D. Kimball. *Photo provided by Kimball family.*

Court, he had difficulty remembering to call her “Justice Kimball,” instead referring to her as “Miss Kitty Ann.” She finally told him to give up and that it was OK to use the name he had grown up using.

When she joined the Supreme Court on Jan. 12, 1993, I was given the privilege of introducing the new justice, and the following is some of what I had to say:

“Yes, Kitty Kimball is a good judge, but it has been said that no one is a good judge who is not first a good man or woman; that one may have learned intellect and have exhaustive knowledge of written laws and jurisprudence, but if one does not have a moral quality summed up in love of neighbor, that learned intellect will produce technically competent but invalid work.

“Kitty Kimball is a good woman. Everyone in this Courtroom who knows her has been touched by this goodness, by her generosity, by her desire to serve her community, by her sympathy and her understanding, her patience and, most of all, by her love for family and friends, and for her God.”

The same words hold true today.

Soon our Chief Justice will enjoy her well-deserved retirement with Clyde, her three children and their families, including six grandchildren.

Yes, we’ve always called her “Kitty Ann” and always will. Thankfully, we will now have the chance to do so much more often. On behalf of all of New Roads and Pointe Coupee Parish, thanks for being our friend, and welcome home, Kitty Ann. ♦



Louisiana Supreme Court Chief Justice Catherine D. Kimball at a Red Mass. *Photo provided by Kimball family.*

John Wayne Jewell, a partner in the New Roads firm of Jewell & Jewell, is currently the Louisiana State Law Institute representative on the Louisiana State Bar Association’s Board of Governors. He has served on the Louisiana State Law Institute Council since 2000. He is a 1968 graduate of Louisiana State University Paul M. Hebert Law Center. (P.O. Box 156, New Roads, LA 70760)





Louisiana Supreme Court Chief Justice Catherine D. Kimball was presented with a framed copy of the Louisiana District Judges Association’s and Louisiana Center for Law and Civic Education’s resolutions establishing the endowment fund and renaming the Summer Institute to the *Justice Catherine D. Kimball Summer Institute*. From left, Judge James M. Cunningham, Rayne City Court; Judge Burrell J. Carter, chief judge, 1st Circuit Court of Appeal; Judge Scott J. Crichton, 1st Judicial District Court and 2011-12 president of the Louisiana District Judges Association; Chief Justice Kimball; and Judge C. Wendell Manning, 4th Judicial District Court and Louisiana Center for Law and Civic Education board member. *Photo courtesy of the Louisiana Supreme Court.*

Justice Catherine D. Kimball Summer Institute Endowment Fund Established

Louisiana Supreme Court Chief Justice Catherine D. Kimball, a staunch supporter of the Louisiana Center for Law and Civic Education (LCLCE), helped to pave the way for the Center to create programs that are meaningful and useful to hundreds of educators throughout the state.

In October 2012, the Louisiana District Judges Association (LDJA), with the desire to continue Chief Justice Kimball’s commitment to civic education, made a generous donation to create a sustaining endowment fund to support the LCLCE’s annual Summer Institute, a teacher training program that provides interactive teaching strategies to enhance existing



Dedicated to Training Teachers in Civic and Law Related Education

curriculum and activities.

In recognition of Chief

Justice Kimball’s support of the Summer Institute and acknowledging the LDJA’s generous donation for the creation of the endowment fund, the LCLCE renamed the program, the *Justice Catherine D. Kimball Summer Institute*. Donations to the Justice Catherine D. Kimball Summer Institute Endowment Fund will be used in perpetuity for the continuance of teacher training in Louisiana.

The LCLCE is a 501(c)(3) nonprofit organization. Donations to this fund are tax-deductible to the fullest extent allowed by the law. Checks are payable to “Louisiana Center for Law and Civic Education” and can be mailed to 601 St. Charles Ave., New Orleans, LA 70130. ♦

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 1, 2012, honoring members of the Bench and Bar who died in the past year. The exercises followed the 60th annual Red Mass held earlier that morning at St. Louis Cathedral in New Orleans. The Red Mass was sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.

LSBA President John H. Musser IV of New Orleans opened the memorial

exercises, requesting that the court dedicate this day to the honor and memory of those members of the Bench and Bar who have passed away during the last 12 months. On behalf of the LSBA, he extended condolences to the families and friends of the judges and lawyers.

LSBA President-Elect Richard K. Leefe of Metairie read the names of all deceased members being recognized.

Hon. Catherine D. Kimball, chief justice of the Louisiana Supreme Court, gave the closing remarks. The invocation

was given by the Rev. Kelly W. Hostetler, associate pastor, St. Charles Avenue Presbyterian Church. The benediction was given by the Right Rev. Morris K. Thompson, Jr., Bishop of Louisiana, Episcopal Diocese of Louisiana.

Donald R. Abaunza, an attorney in the New Orleans office of Liskow & Lewis, P.L.C., gave the general eulogy.

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

The members recognized included:

Members of the Judiciary 2011-12

Hon. Joseph R. Bossetta..... Mandeville
 Hon. Ian W. Claiborne New Roads
 Hon. Edward N. Engolio.....Plaquemine
 Hon. Joseph I.
 Giarrusso, Jr.New Orleans
 Hon. Dominic C. Grieshaber... Covington
 Hon. Isom J. Guillory, Jr. Eunice
 Hon. Edward M. Mouser Oberlin
 Hon. G. Bradford Ware Rayne

Members of the Bar 2011-12

Louis Alfred, Jr.....New Orleans
 Charles James Arceneaux Marrero
 Gregory R. Aymond Alexandria
 Charles J. BabingtonNew Orleans
 Michael H. BagotNew Orleans
 James A. Barton IIICovington
 Richard J. Batt, Jr.New Orleans
 James E. Beal Jonesboro
 Fred G. Benton, Jr.Baton Rouge
 Michael F. Bollman.....New Orleans
 George W. Bolton, Jr. Rayville
 Keith M. Borne Lafayette
 Conrad A. Bourgeois.....
 Diamondhead, MS

George T. Bourgeois Metairie
 Carl O. Brown, Jr.New Orleans
 William D. Brown III.....Monroe
 Jack C. CaldwellBaton Rouge
 Rodney C. Cashe.....Hammond
 William Kearney
 Christovich.....New Orleans
 Donald J. Cicet.....LaPlace
 Jeffrey C. Collins Metairie
 John M. Crum, Jr.....LaPlace
 Tommy K. Cryer Shreveport
 Roy M. D'Aquila Kenner
 Corwith Davis III..... Alexandria
 Jerry F. DavisBaton Rouge
 Thomas S. Derveloy, Jr. Lafayette
 Michael A. Dessommes.... Pensacola, FL
 Salvador L. Diesi Breaux Bridge
 R. Travis Douglas.....Washington
 Ernest R. EldredBaton Rouge
 Phillip D. Endom El Paso, TX
 Michael F. Escudier..... Metairie
 Gordon Overton Ewin..... Cheneyville
 Warren L. Garfunkel Shreveport
 William Todd Gates Shreveport
 Gerard T. Gelpi Bay St. Louis, MS
 Judy Ann Gic.....New Orleans
 Paul R. Gilbert Chevy Chase, MD
 George Wray Gill, Jr.New Orleans
 Keith E. GislesonNew Orleans
 Elsie B. HalfordMetairie, LA

Hubert J. Hansen.....Shreveport
 Bruce W. Harris.....Baton Rouge
 Joseph W.P. HeckerBaton Rouge
 Colin J. HedlundNew Orleans
 Odom B. Heebe.....Metairie
 William Lovejoy Henning Sulphur
 John Ashby Hernandez III Lafayette
 George S. HesniNew Orleans
 Maunsel W. HickeyNew Orleans
 Donald A. Hoffman.....New Orleans
 Charles Manly Horton, Jr. Metairie
 John F. Johnson Harrisonburg
 Lloyd Stafford
 Jolibois, Jr.New Orleans
 Carroll G. Jones Ruston
 Timothy A. Jones Lafayette
 Katrina Evette KeysLeesville
 Marshall L. KleinGretna
 Brent Anthony Klibert.....Metairie
 Charles A. Koehler, Jr.Raleigh, NC
 Ronald M. Labbe Lafayette
 Walter T. LanouxNew Orleans
 John Francis LathamNew Orleans
 Arden J. Lea Homer
 Milton L. LeBlanc, Jr. Dallas, TX
 Robert E. Lee, Sr. Marrero
 Nolan Gerald
 LeVan Black Mountain, NC
 James E. Lewis..... Ruston
 Karl E. Lewis, Jr..... Houma

Continued next page

Daniel T. McKearan, Jr. Metairie
Joseph J. McKernan Baton Rouge
Henry D. McNamara, Jr. Metairie
Warren L. Mengis Baton Rouge
Paul A. Monju New Orleans
Peter R. Monrose, Jr. New Orleans
Robert M. Moore Washington, DC
Benjamin W. Mount Lake Charles
Daniel T. Murchison, Sr. ... Natchitoches
Jean Marie Murnane Baton Rouge
Johanna Gabrielle Myers .. Houston, TX
Charles F. Nunnally III. Alexandria
Luke H. Olivier Lafayette
Donald V. Organ Bush
John Marshall Page, Jr. New Orleans
Clement F. Perschall, Jr. New Orleans
Tom Fore Phillips Baton Rouge
Samuel V. Prunty Greenville, SC
James A. Reeder McLean, VA
Michael Patrick Regan Chicago, IL
Joyce L. Richard Iowa
Kenneth Rigby Shreveport
Sidney M. Rihner Metairie
Melvin Louis Riley Zachary
Victor L. Roy III Baton Rouge
Victor A. Sachse III Baton Rouge
John A. Sanchez, Jr. Ponchatoula
Daniel R. Sartor, Jr. Monroe
Charley J. Schrader, Jr. Houma
Dewey J. Smith, Jr. Monroe
Joseph T. Sneed IV Cameron, TX
Ernest N. Souhlas Covington
J. Nathan Stansbury Lafayette
Edward F. Stauss, Jr. New Orleans
Jean M. Sweeney Metairie
Elmer R. Tapper Diamondhead, MS
Richard A. Tonry Chalmette
George H. Toye Covington
Spencer Lyle Trahan Lake Charles
Jason Norman Treigle Metairie
Risley C. Triche Napoleonville
Edward J. Villere New Orleans
Dorothy F. Waldrup San Rafael, CA
P. Bruce Waters Bowman, GA
Dorothy M. Webb Houston, TX
John J. Weigel New Orleans
Darren G. Wells New Orleans
James M. Whitehead. Williamsburg, VA
Blane Gerard Williams Alexandria
William Waller Young, Jr.
..... Pass Christian, MS

La. Board of Legal Specialization Waives Fees for 2013 Applicants

The Louisiana Board of Legal Specialization (LBLS) has announced that the application and exam fees for 2013 applicants seeking certification will be waived. This translates to a \$400 savings.

The LBLS understands the challenges of the current economy and the need to encourage the younger generation of attorneys to consider legal specialization. “[W]e received such positive feedback and noted growth from our initial waiver idea in 2012 that the board decided to apply the waiver for 2013 to continue the growth of qualified specialists in Louisiana,” said LBLS Chair Kendrick J. Guidry of Lake Charles.

The LBLS is currently accepting requests for applications for 2014 certification in five areas — business bankruptcy law, consumer bankruptcy law, estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is April 15, 2013. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2013.

With the expanding complexity of the law, specialization has become a means of improving competence in the legal profession and thereby protecting the public. An increasing number of attorneys are choosing to be recognized as having special

knowledge and experience by becoming certified specialists. As a matter of practical necessity, most lawyers specialize to some degree by limiting the range of matters they handle. Legal specialization helps the general public locate a lawyer who has demonstrated ability and experience in a certain field of law.

The LBLS said certification in labor and employment law is now in development.

The minimum requirements for certification are:

▶ A minimum of five years in the practice of law on a full-time basis.

▶ Satisfactory showing of substantial involvement in the particular field of law for which certification is sought.

▶ Passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought.

▶ Five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field.

Anyone interested in applying for certification should contact LBLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128.

LBLS Announces New Chair, Board, Director

Several changes were noted in 2012 for the Louisiana Board of Legal Specialization (LBLS). Kendrick J. Guidry of Lake Charles is the new board chair and Monique Clement of Ruston was named vice chair.

Also serving on the LBLS board are James G. Dalferes, Harahan; Chauntis Trenelle Jenkins, New Orleans; Allen P. Jones, Shreveport; Vincent A. Saffiotti, Baton Rouge; Ronald J. Scalise, Jr., New Orleans; J. Kevin Stelly, Lafayette; Thomas Rockwell Willson, Alexandria; and Robert G. Levy, Alexandria.

Barbara M. Shafranski joined the LBLS as the new executive director. Shafranski, originally from New Jersey, brings 30 years of legal experience to the LBLS.

She will attend various CLE seminars and conferences throughout the year to promote legal specialization. For more information on specialization, contact Shafranski, 601 St. Charles Ave., New Orleans, LA 70130; call (504)619-0128; or email barbara.shafranski@lsba.org.

Also in 2012, the LBLS established a LinkedIn site to better serve the specialists through the use of social media. All are encouraged to “follow” LBLS on LinkedIn. The LBLS website is currently being upgraded so prospective applicants and specialists may download forms in 2013.

For more information, go to the LBLS website at: www.lascmcle.org/specialization.

Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization, as approved by order of the Louisiana Supreme Court, and in accordance with Rule 7.2(c)(5) of the Louisiana Rules of Professional Conduct, the following Louisiana State Bar Association members have satisfactorily met the established criteria and are qualified as board-certified specialists in the following areas for a five-year period which began Jan. 1, 2013, and will end on Dec. 31, 2017.

Estate Planning and Administration Law
Gregory H. Walker Alexandria

Family Law

Gay Lynn Babin Lafayette
Nicole R. Dillon Hammond
Laurie N. Marrien Baton Rouge
Nedi A. Morgan Plaquemine

Tax Law

Antonio C. Ferachi Plaquemine
Benjamin A. Huxen II Baton Rouge
Nicholas C. Tomlinson New Orleans
Matthew A. Treuting New Orleans

The Louisiana Board of Legal Specialization was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become board certified in accordance with the Plan of Legal Specialization, an attorney must be an active member of the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate substantial experience in the specialty area and pass a written examination. Presently, the five areas of law for which the Louisiana Board of Legal Specialization is offering certification are business bankruptcy law, consumer bankruptcy law, estate planning and administration law, family law and tax law.

To apply for certification, contact Barbara M. Shafranski, Executive Director, email barbara.shafranski@lsba.org or call (504)619-0128 or (800)421-5722, ext. 128.

For more information, go to the Louisiana Board of Legal Specialization's website at www.lascmcle.org/specialization.

Pro Bono Award Nomination Deadline is Feb. 15

Do you have a pro bono hero? Someone who has shown dedication and leadership in the world of pro bono work? If the answer is yes, consider nominating that person for a 2013 Pro Bono Award, sponsored by the Louisiana State Bar Association's Access to Justice Committee. The Pro Bono Awards and the Children's Law Award recognize pro bono and public interest attorneys dedicated to serving Louisiana's indigent citizenry.

Nominations will be accepted online for the Friend of Pro Bono Award, the Pro Bono Publico Award, the Career Public Interest Award, the David A. Hamilton Lifetime Achievement Award, the Law Student Award, the Children's Law Award and the Century Club Award. The awards will be presented at a pro bono reception in May 2013.

For more information on the award categories, visit the website, www.lsba.org/goto/nominations. Nominations must be received by 4:30 p.m. Friday, Feb. 15, 2013.

Human Rights Award Nomination Deadline is Jan. 31

Nominations will be accepted through Jan. 31 for the Louisiana State Bar Association's (LSBA) 2013 Human Rights Award. The award recognizes outstanding efforts made by a bar association, a law firm or law department, an individual attorney or judge, a court or a community organization or individual in promoting diversity in the legal profession, in particular, to recognize efforts ensuring the full and equal opportunity of all persons for entry and advancement in Louisiana's legal profession.

One award will be presented during the LSBA's Annual Meeting in June 2013. To download a nomination form or for more information on the award, go to: www.lsba.org/diversity/diversityevents.asp. Or contact LSBA Member Outreach and Diversity Director Kelly McNeil Legier, email kelly.legier@lsba.org or call (504)619-0129.

Important Reminder: Lawyer Advertising Filing Requirement

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

to risk of challenge, complaint and/or disciplinary consequences.

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

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

LSBA ATJ Program Hosts 9th Annual Justice Community Conference

For nine years, the Louisiana State Bar Association's (LSBA) Access to Justice Program has hosted the statewide Louisiana Justice Community Conference aimed at building the strength of the public interest community through training and networking. The October 2012 conference was the biggest to date, with more than 150 public interest advocates attending and more training and networking offerings.

The ninth annual conference opened with greetings from leaders of the Louisiana legal community, including remarks from Louisiana Bar Foundation Vice President Leo C. Hamilton and LSBA Secretary Edward J. Walters, Jr.

William P. Quigley, distinguished professor and director of the Gillis Long Poverty Law Clinic at Loyola University College of Law in New Orleans, delivered the keynote address. He discussed ways that social justice lawyers can strive to overcome the challenges of poverty law practice and serve their client community as passionate advocates. The concepts he discussed touched close to home for many advocates in attendance, and he received a standing ovation for his rousing speech and his unwavering dedication to social justice.

The theme of this year's conference was "Bridging the Gap, Promoting Justice for All in Difficult Economic Times." Tough economic times make it increasingly difficult to ensure access to justice for all. As more people across the state need legal assistance, and legal aid organizations have fewer resources, the legal profession must find innovative solutions to bridge the gap. Toward that goal, conference sessions included updates on expungement law, foreclosure prevention, managing issues related to limited English proficiency and holistic approaches to legal aid practice. Additional training was developed by six substantive law task forces, and practice skills sessions were taught by leading members of the American College of Trial Lawyers. The sessions were led by



Mark L. Glassman, left, of the Federal Trade Commission discussed mortgage assistance relief rules with Mitchell E. Hochberg of the Consumer Financial Protection Bureau during one session of the statewide Louisiana Justice Community Conference.

legal services lawyers and members of the private bar, adding to the diversity of experience and perspectives.

As a new offering this year, the program kicked off with two pre-conference events. The LSBA's Diversity Committee hosted its Disabilities Summit, "Dawn of An Enabled Era: Unraveling the Myths of Attorneys with Disabilities," which provided four hours of training on understanding and practicing with attorneys with disabilities. Also, the Child in Need of Care (CINC) Task Force hosted a full-day training program that provided advocates with necessary training to be certified to represent children in CINC proceedings.

Conference organizers included timely topics to help legal aid attorneys find innovative solutions for clients during difficult economic times. Across the state, practitioners have noted that a major issue affecting their clients is the impact of criminal records and the lack of consistent remedies. To address this issue, attorney Adrienne K. Wheeler, director of law and policy for the Justice and Accountability

Center of Louisiana, and attorney Amanda E. Love of the East Baton Rouge Public Defender's Office presented a popular session on expungement law, practice and opportunities for reform.

Other pressing issues for public interest advocates are housing and consumer issues, such as foreclosure prevention and debt collection. The LSBA invited national experts from the Federal Trade Commission and the new Consumer Financial Protection Bureau in Washington, D.C., to present these topics.

The conference ended with another timely topic — the ethical issues that arise for public interest advocates in today's tough economic landscape. As more people find themselves faced with legal issues because of the loss of a job or foreclosure, legal services are forced to do more with less. LSBA Ethics Counsel Eric K. Barefield and Richard P. Lemmler, Jr. presented an interactive session on the ethics of new practice issues such as limited representation, referrals, self-help desks, pro bono clinics and online tools.

Stand Up and Be Counted: Become a Diversity Principles Signatory

By Michael R. Robinson

It began 50 years ago as a means of ensuring civil rights through affirmative action programs and statutes. But today's movement toward greater diversity is something completely different.

Diversity is now a broad term referring to differences in gender, age, race, disability or condition, sexual orientation, religion or nationality. Relating to the workplace, diversity means that the population in the workplace is not homogeneous. Diversity is important in today's business environment for several reasons, including the ongoing necessity of compliance with anti-discrimination laws, an increasingly multicultural world, and recognition that different perspectives are important.

Inclusion of diverse groups has improved over time, but there is still a long way to go. Statistics from the National Association for Legal Placement show that women, minorities, persons with disabilities, and members of the gay and lesbian community account for much smaller numbers in partner and associate ranks at law firms compared to their corresponding numbers in law school graduating classes.

Why is this important? Although many diversity proponents contend that diversity is important because it is the "right thing to do," or that they must comply with existing statutes, many diversity proponents now talk about diversity in terms of the "business case" or that diversity enhances the bottom line. A Minority Corporate Counsel Association study says, "Law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money."

Recently, many legal employers, recognizing that diversity benefits both clients and society, have stepped up visible efforts to recruit and retain diverse attorneys. Law firms are competing on a regional, national AND global level for clients and attorney talent. As technology

Incentives for Diversity Principles Signatories

- ▶ Certificate of recognition from the LSBA
- ▶ Free CLE registrations to diversity/inclusion roundtable discussions
- ▶ Opportunity to be featured signatory in the "Spotlight" section of the *Bar Briefs*
- ▶ Recognition on the LSBA website
- ▶ Recognition on signage at major LSBA meetings and Diversity Conclaves
- ▶ FREE facilitated diversity/inclusion discussions within their offices (schedule permitting)
- ▶ Recognition in a "Roll Call" of New Signatories in the *Journal* and *Bar Briefs*
- ▶ Chance in raffle for LSBA Annual Meeting or CLE registration

continues to break down geographic and communication barriers, understanding and acceptance of various perspectives, ethnicities and cultures will be more vital. Up-and-coming leaders striving for excellence in this global marketplace must recognize the need to address this issue, incorporate diversity in their definition of success, and continue to work diligently and creatively to include all individuals and perspectives.

In 2008, recognizing the growing need to foster diversity in the legal profession, the Louisiana State Bar Association's (LSBA) Board of Governors and House of Delegates approved a Statement of Diversity Principles. To increase commitment from law firms and LSBA members to these principles, the LSBA instituted a method for firms and members to become signatories to the statement.¹ Along with the recognition signatories receive, there are several other benefits that signatories will enjoy in the coming years.

Many signatories share similar views on the topic.

William H. Hines, managing partner of Jones, Walker, Waechter, Poitevent,

Carrère & Denègre, L.L.P., in New Orleans, said, "The Diversity Principles articulate Jones Walker's values. Being a signatory firm helps guide us in our execution of those values."

Michael A. Patterson, a founding partner of Long Law Firm in Baton Rouge, said, "Diversity amongst our lawyers has broadened our perspective on legal issues for our clients and being a signatory of the Statement of Diversity Principles has made us more competitive with the users of legal services."

W. Michael Adams, president of Blanchard, Walker, O'Quin & Roberts, A P.L.C., in Shreveport, said, "At Blanchard Walker, we believe that a workforce comprised of varied backgrounds and a workplace that appreciates individual differences is better able to serve our clients, the legal profession and our community. We are committed to fostering diversity at our firm and in the legal profession as a whole."

Diversity in the legal profession continues to be an important aspiration and priority for the industry. Federal Bar Association President Fern C. Bomchill said in the May 2012 issue of *Federal Lawyer*: "In today's world, the legal profession must accept and appreciate the differences among people. It is not only the right thing to do, but, in today's world, the workforce that reflects the demographics of the global economy will be stronger and the work product that results from that workforce will be improved."

FOOTNOTE

1. Many firms, judges and institutions have already become signatories. For information on becoming a signatory, go to: www.lsba.org/diversity/DiversityPrinciples.asp.

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

Year of the SOLO

By Shawn L. Holahan

SILVER LINING IN THAT CLOUD

There's a silver lining in that Cloud, but you need to ask the right questions . . . !

Cloud computing has the potential to transform law offices, particularly small law offices. As office information technology (IT) costs increase, cloud computing's cost-effectiveness can become quite enticing. Before you take off for the clouds, know the benefits and risks.

What is THE CLOUD?

If you have sent an email or conducted legal research electronically, you have used the cloud. Cloud tools have now expanded well beyond email and legal research to include the ability to put practically an entire law office in the cloud.

Simply, cloud computing is the delivery of software, data access and data storage through the Internet. A third-party vendor, such as NextPoint or Clio, provides much of the IT infrastructure, so instead of a firm providing its own servers, storage, maintenance, support and security, the vendor manages all these components, and users access the programs and data through the Internet.

Cloud computing allows users of mobile devices—smartphones, laptops, netbooks, tablet computers — to access from anywhere information traditionally accessible only on office computer hard drives and local networks.

One benefit of cloud computing is its ease of use.

Traditional software can be overwhelming, often confounding users and requiring training. Cloud-computing applications often are simple and easy-to-use.

On top of that, traditional software requires constant updating and patches which can cause disruptive changes in how the software is used. Ignoring updates for traditional software can have serious consequences because they are often necessary



to work with new operating systems or to fix problems.

On the other hand, upgrades and patches in the cloud are handled by the vendor, and the cost of upgrades and patches in a cloud environment is rolled into the monthly fee. Cloud vendors can respond quickly and seamlessly to bug reports. Cloud applications are usually operating-system independent, meaning that law firms are free to use any version of Microsoft Windows, Mac OS, Linux, Unix or any other operating system without worrying about compatibility.

Lower Cost

Cloud computing can be substantially cheaper than traditional systems. Traditional software often requires large capital investments with vendors generally charging a named user or concurrent licensing fee. Law firms incur additional costs for maintenance and support. More costs can be incurred to add or remove licensed users because licensing may not be transferable.

The cloud does not present these challenges. In essence, law firms rent software through the cloud instead of purchasing it — an arrangement called software as a service, or SaaS. Instead of requiring firms to maintain software licenses for each application, cloud computing generally requires only a Web browser, such as Internet Explorer or Safari. SaaS programs are priced

on a per-user, per-month basis; they rarely include an implementation fee; and no additional hardware is necessary. Maintenance and support costs — considered operating costs — are included in the monthly fee.

Traditional software may require costly hardware, such as a server, to function properly. Cloud computing diminishes the need for hardware with large hard-drive capacity and fast processing speeds (which can be expensive). For most small legal offices, this will be a clear benefit. However, if a law firm needs very large amounts of data, the money spent over time on cloud computing may approach the amount spent on traditional systems. While most fee-based, cloud-computing vendors offer generous storage space, the vendor may charge extra if users exceed their monthly or total storage cap.

Due Diligence

Cloud computing generally requires access to consistent, high-speed Internet. Although some cloud computing applications have an offline version, like Evernote and NetDocuments, law firms with inconsistent Internet access are not good candidates for cloud computing.

Be aware of the security offered by the cloud provider. Ask questions. In a traditional non-cloud office setting, security breaches, data corruption or bugs are confined to a law firm's local IT environment.

In the cloud, these matters are beyond a law firm's immediate control. For example, vendors may outsource data storage to a separate company, making it necessary to know the security policies of not only the vendor but also the storage provider. Ensure that client and personally identifiable information is encrypted in transit and in storage. Know who has access to the data. If there is a security breach, whose responsibility is it to notify the end user? Is the responsibility the vendor's as well as the storage provider's?

Another security concern is reliable backup of the data in the cloud. Storage providers such as Amazon S3 and Rackspace offer co-location of data, SAS 70 certified security, and many other fail-safes. These vendors often can provide significantly more security and backup than a small law office.

What happens to your data if a vendor dissolves? If the vendor goes into bankruptcy or insolvency, access to and storage of a firm's data becomes an issue. Consider vendors which can provide law firms with local copies of their data to mitigate this risk. Availability of local copies of data should be a priority when choosing a cloud vendor.

What happens to your data if you want to end your relationship with the vendor? Upon termination, the vendor will close the account and users will no longer be able to access the interface that allows them to read, enter and manipulate data. Again, ensure that you can keep a local copy of data so that migration to another vendor is an option.

Some cloud-computing vendors, like Google or Dropbox, offer free applications. However, the confidentiality of client data is at greater risk if a firm, or its members, choose to use free cloud services. Many free products often do not assume liability for lost data, and, in some cases, do not assert rights to the data itself. Vendors of free services often make some data available to advertisers and third parties. Vendors of free services also assert the right to discontinue the service at any time.

With any cloud service, law firms should carefully read the terms of service, as well as the privacy policy. If a cloud vendor is served with a subpoena, will it notify the user before handing over the data? Law firms that must comply with regulations, such as requirements of the Sarbanes-Oxley Act or Health Insurance Portability

and Accountability Act, should make sure those requirements can be met when using a third-party vendor.

Cloud computing allows users to access information from anywhere. But as with any access to sensitive data, users should be wary of accessing cloud-computing applications on a free, open wireless network, such as at a Starbucks, or on a shared, public computer, such as in a library. Always check that the connection is secure. Look for "https" in the browser address bar; otherwise, it is very easy for others to gain access to the information sent through an open wireless network.

Conclusion

Cloud computing is appealing because it reduces IT expenses relating to hardware, support, maintenance and configuration. The cost to be up and running is significantly minimized. It works on a variety of platforms and on most devices. It is built for a mobile workforce who does not want to spend time getting trained on complex software. In some cases, the security supplied by the vendor exceeds that of a small firm.

Lawyers considering the cloud need to make purposeful, informed decisions on the vendors with whom they work. Consider the sensitivity of the data first and foremost, do due diligence on the company — including engaging experts when needed — and perform a thorough cost analysis. You might find that the benefits of the cloud outweigh the risks.²

Lastly, for the latest in cost-effective legal technology, consider attending the Louisiana State Bar Association's Solo & Small Firm Conference on Feb. 14-15, 2013, at the New Orleans Marriott. Early registration is open now. Go online for more information: www.lsba.org/goto/2013solo. Sharon D. Nelson and John W. Simek are among the featured speakers and will be on hand to answer your questions. Along with Michael C. Mashke, they are authors of the annual, very popular *Solo and Small Firm Legal Technology Guide: Critical Decision Made Simple*.

FOOTNOTES

1. This column is adapted from *Reach for the Cloud* by Catherine Reach Sanders and which first appeared in the January 2012 issue of *Trial Magazine*. The director of law practice management and technology

of the Chicago Bar Association and a prolific author on legal technology matters, Reach was a featured speaker at the Louisiana State Bar Association's 2011 Solo & Small Conference. Credit is also given to Joshua Poje with the Legal Resource Center of the American Bar Association.

2. Carefully examine all technology before buying, whether SaaS or traditional. Consider these 20 questions of any SaaS vendor before committing your data to their hands. Vendors that aren't willing or able to answer these questions should be treated with caution.

1. Is there a trial period or demo of your product?
2. What training options are available for customers?
3. What kind of documentation (e.g., manual) is available for your product?
4. How often are new features added to your product?
5. How does your software integrate with other products on the market, especially products in the legal market?
6. How many attorneys are currently using your product?
7. What hours is your tech support available?
8. Do you offer a Service Level Agreement (SLA) and/or would you be willing to negotiate one?
9. What types of guarantees and disclaimers of liability do you include in your Terms of Service?
10. How do you safeguard the privacy/confidentiality of stored data?
11. Who has access to my firm's data when it's stored on your servers?
12. Have you (or your data center) ever had a data breach?
13. How often, and in what manner, will my data be backed up?
14. What is your company's history — e.g., how long have you been in business and where do you derive your funding?
15. Can I remove or copy my data from your servers in a *non-proprietary* format?
16. Where does my data reside — inside or outside of the United States?
17. What happens to my data if your company is sold or goes out of business?
18. Do you require a contractual agreement for a certain length of service (e.g., 12 months, 24 months)?
19. What is the pricing history of your product? How often do you increase rates?
20. Are there any incidental costs I should be aware of?

Louisiana State Bar Association's Practice Management Counsel Shawn L. Holahan is a member of the Publications Board of the ABA's Law Practice Management Section and secretary of the ABA's Practice Management Group of North America. She can be contacted via email at shawn.holahan@lsba.org.



LAWYERS Give Back

TORYAH CAMERON

Editor's Note: Baton Rouge attorney Jack K. Whitehead, Jr. met attorney Toryah Cameron, now active in the Teach For America program, as a new member of the Baton Rouge Sunrise Rotary Club a few months ago. Her story was refreshing to see such energy and enthusiasm about making a difference. She is one of the quiet people who are making a change in Louisiana. She kindly agreed to share her story with the Louisiana Bar Journal.

Journal: Tell us about your background.

Cameron: I was born in Hattiesburg, Miss., lived in Gulfport though third grade, then Jackson until the middle of seventh grade when my mother was transferred to Atlanta with her job at Bell South. I lived in Stone Mountain for about a year before mother remarried someone in the Air Force. We moved to Austin, Texas, where I spent the middle of eighth grade to the end of 10th grade before moving to Zweibruecken, Germany, for 11th and 12th grades.

Journal: What directed you to the legal profession?

Cameron: I didn't know what to do with my undergraduate degree in government. I thought going to law school would be a great opportunity to figure out my next life step because being a lawyer looked pretty cool on television. I attended Harvard for college and Howard University School of Law.

Journal: How long, and where, did you practice law?

Cameron: I was a corporate finance attorney at the DC office of Sullivan & Cromwell for five years before moving to New Orleans to complete a Forrester Fellowship, teaching legal research and writing at Tulane Law School. After Hurricane Katrina, I did contract work in DC as I repaired my home. I returned to New Orleans in 2007 as a staff attorney at Juvenile Regional Services (under the Supreme Court rule permitting out-of-state attorneys to represent indigent defendants), representing indigent children

accused of delinquent acts.

Journal: What attracted you to public service?

Cameron: I wanted my work to have greater meaning to me and to those with whom I worked. The mission of Howard University School of Law is to produce lawyers who know the Constitution and explore its use to help improve local communities and better the lives of underprivileged citizens. It wasn't until I started working with juvenile clients that I saw the real effects on children who are not taking advantage of all the opportunities that education has to offer. I saw that, when learning difficulties and mental health issues were untreated, children can stop succeeding in school. When you think you're not good at school, you begin to avoid it and avoiding school means lack of knowledge and poor decision-making. I wanted to be on the front end of ensuring that children had all the choices and opportunities that education provides.

Journal: What is the Teach For America mission?

Cameron: Teach For America's mission is to close the achievement gap so all children have the opportunity to get an excellent education.

Journal: What do you enjoy most about your work?

Cameron: I love knowing that supporting an excellent teacher to get great results with her students has the probability of changing that child's life trajectory and opens up a world through education that can break a cycle of poverty permanently.

Journal: Can you describe a day that felt as if you made a difference?

Cameron: At a dinner hosted by supporters, I listened to a corps member talking



Toryah Cameron

about how she had lived the same life as her students. This was a woman who looked like the world belonged to her. But then she started to talk about how she had grown up the youngest of five children, how she had gone to bed hungry at night, how her parents hadn't graduated from high school, and how she went to school to eat breakfast and lunch. This corps member then talked about how school was her saving grace, how teachers who held her to high standards in spite of her poverty had shown her the path to opportunity. She talked about how she had studied anthropology in college and wanted to go overseas to work with people in other countries who were in poverty, but then realized there was plenty of work to be done here in America because she needed to pay forward the investment that her teachers had made in her development. I realized on that day the more dedicated teachers we're able to put in classrooms who have this mindset of pulling the next generation out of poverty through educational opportunities was exactly the kind of work I wanted to be a part of.

Journal: If a Louisiana lawyer wants to contribute their time with Teach For America, what avenues are open?

Cameron: The only limiting factor to bringing more excellent Teach For America corps members to Louisiana is money. Clearly financial contributions are the driver in funding the work we do. We also want to welcome our teachers to the communities they're serving in. We invite lawyers to open their homes to our teachers for community dinners to give them a home-cooked meal and point them to the hidden treasures in their communities. Hosting cocktail hours or dinners within their homes for people who want to learn more about how to contribute to our mission are fantastic ways to contribute time. Individual teachers often welcome help in the classroom and that's certainly something that we can help manage by placing a volunteer with a corps member who might need specific assistance.

We in the legal profession are at a greater risk for suicide than those in the general population. Scientific studies — most notably the Johns Hopkins study that compared the prevalence of depression in more than 100 professions — have established that lawyers and judges suffer depression at rates up to three times that of the general population. We suffer alcoholism and addiction at rates up to twice the general population. When depression and substance abuse are more prevalent, so is the risk of suicide.

There are new and effective resources available to help us understand and acknowledge why we are at such heightened risk, such as the website, www.lawyerswithdepression.com, founded by lawyer and depression survivor Dan Lukasik. Despite the availability of better information about the general statistics, a huge problem remains: How do we become better skilled at recognizing warning signs and more able to identify who may need help?

The question “Do you ever really know the people you practice with?” is posed within an article¹ written by Ohio attorney Tabitha M. Hochscheid, which centers on the suicide of her law partner, Ken Jameson, a “universally respected, consummate professional” who by all outward appearances seemed to be enjoying life.

According to Tabitha, no one suspected that Ken, a “self-confessed perfectionist,” was suffering from depression. But, in April 2011, Ken suffered a pinched nerve in his back and underwent surgery in May. He seemed to be recovering well, but on May 22, 2011, without warning, Ken took his own life.

According to Tabitha, “As the next few days unfolded, details began to surface. Following the back procedure, he checked in with people at the office and seemed

like his old self. He visited his mother and called his best friend. But, all the while, Ken was meticulously planning to take his own life. People were in a state of shock and disbelief.”

In hindsight, Tabitha’s law firm sees warning signs: “It’s easy now to look back and see the signs of Ken’s depression (sleep deprivation, self-criticism, a feeling of letting others down, a search for answers and inability to allow others to help) and to wonder what, if anything, could have changed the outcome. Time, however, does not give us this luxury and these questions will never be answered. The best that can be done is to acknowledge that Ken’s illness, depression, can be deadly.”

Suicides continue to take place within our legal profession here in Louisiana. As one would both compassionately expect and solemnly respect, most cases are not publicized and the most intimate facts and circumstances leading up to suicide deaths often remain untold. Against the backdrop of suicide statistics alone, it is easy for many of us to convince ourselves that the problem, as frightening as it may be, simply will not impact us personally.

All the while, the truth is that no one is immune to depression, alcoholism, addiction or other mental disorders that can lead to suicide. We can’t predict who will be beset with these diseases any more than one can conclusively predict the incidence of cancer or diabetes. What we can do, however, is better arm ourselves with knowledge to help fight suicide in our profession. The National Suicide Prevention Lifeline website at www.suicidepreventionlifeline.org lists both risk factors and warning signs.

Suicide Risk Factors that particularly affect lawyers and judges include mood disorders such as depression and anxiety disorders; alcohol and substance disorders; hopelessness; aggressive tendencies; job or financial loss; loss of relationship; lack of

social support and sense of isolation; and the stigma associated with asking for help.

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

A full discussion about suicide risk factors and warning signs is surely beyond the scope of what can be provided here. Thus, visit the National Suicide Prevention Lifeline to obtain additional information. Another resource is the website www.suicide.org that includes a list of Louisiana suicide hotlines, www.suicide.org/hotlines/louisiana-suicide-hotlines.html.

Finally, do not hesitate to place a confidential call to the Lawyers Assistance Program to obtain information about reaching out to someone who may be in trouble or to obtain assistance yourself. All calls to LAP are confidential as a matter of law and you do not have to give your name. Call LAP toll free at (866)354-9334, email LAP@louisianalap.com, or visit LAP on the web at www.louisianalap.com.

FOOTNOTE

1. The article can be accessed at: www.lawyerswithdepression.com/articles/the-suicide-of-a-lawyer-with-depression-kens-story.

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



QUALITY of Life

By Mackie Shilstone

WAIST-TO-HEIGHT RATIO

One of the biggest problems associated with leading an extremely busy lifestyle — such as for people in the legal profession — is weight gain. Unfortunately, many people view weight gain as just an appearance problem instead of realizing it is a health problem. The negative impact of carrying around extra pounds on the body can be more than just worrisome; it can be downright dangerous to your health.

Historically, weight or body mass index was generally accepted as the primary indicators of health and potential risk of developing heart disease, diabetes and a host of other chronic and debilitating diseases. As more scientific research emerges, the better health indicator may be your waist-to-height ratio (WHtR). In a recent study presented in the *Journal of Clinical Endocrinology Metabolism* and quoted on *Livestrong.com* last year, researchers concluded that the WHtR was the strongest predictor of cardiovascular risk and mortality.

This means that where you carry your weight, especially if it's in the belly area,

appears to be more telling than just the sheer amount of weight on your frame or your body mass index number. Even small amounts of extra weight in your midsection should give you pause to consider your current health status and where to focus your exercise regimen.

WHtR can be easily calculated by simply dividing your waist size in inches by your height in inches, and I suggest everyone take a minute to do your calculation. Gender also must be taken into account. For men, a ratio between .43-.46 is considered healthy; 46-53, normal/healthy; 53-58, overweight; 58-63, extremely overweight/obese; and 63 and over, highly obese. For women, a ratio of .42-.46 is considered healthy; 46-49, healthy/normal; 49-54, overweight; 54-58, seriously overweight; and 58 and over, highly obese.

The takeaway is this — where you carry your weight can make a significant difference for many important health risk indicators. Knowing what your ratio is helps you understand what areas of the body to focus on in terms of nutrition and

exercise regimens.

As you begin a fitness program, this ratio gives you the body zones on which to build your program. It is always important to make sure you build in cardiovascular workouts into your routine. Incorporate a healthy eating plan that supports your workouts so you can maximize your results. I always recommend that you see a registered dietitian who can individualize an eating plan based on your health needs. Keep in mind that you should always consult your personal physician before starting your fitness and nutrition plans.

Mackie Shilstone is executive director of the Fitness Principle at East Jefferson General Hospital. He can be reached at (504)457-3100. For more information on his Executive Wellness Institute, visit www.ejgh.org/thefitnessprinciple.



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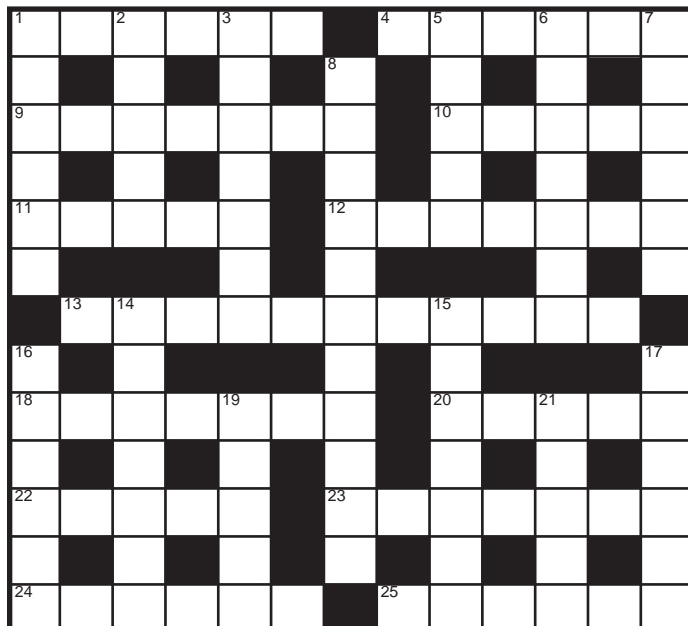


Angie & Cary Bryson

Crossword PUZZLE

By Hal Odom, Jr.

THE VICE (OF CONSENT) SQUAD



ACROSS

- 1 Vice involving violence or threats (6)
- 4 Vice involving woefully inadequate value (6)
- 9 Marcel ____, co-author of *Traité pratique de droit civil français*, leading authority on vices of consent (7)
- 10 Do you type ____ two spaces after a period? (3, 2)
- 11 Explosive stuff (5)
- 12 Japanese art of paper folding (7)
- 13 Relationships of trust that lower the burden of proving 22 Across (11)
- 18 Expensive yellow spice (7)
- 20 Greta of “ninchka” (5)
- 22 Vice involving misrepresentation or suppression of truth (5)
- 23 Welsh rabbit (7)
- 24 Georges ____, co-author of *Traité pratique* with 9 Across (6)
- 25 Joseph ____, editor of the Civil Code in 1947 and 1961 (6)

DOWN

- 1 Rely (6)
- 2 Respond, as to stimulus (5)
- 3 TV show derived from a similar TV show (4-3)
- 5 Nasty bacteria that can flow from a cattle ranch (1, 4)
- 6 Say again (7)
- 7 Chuck of “The Delta Force” (6)
- 8 Some contributors to the American Red Cross (5, 6)
- 14 Way to exit the Interstate (3-4)
- 15 Most populous country in Africa (7)
- 16 Request (3, 3)
- 17 Act of servile respect (6)
- 19 Addendum to insurance contract (5)
- 21 Batman’s sidekick (5)

Answers on page 367.

Alcohol and Drug Abuse Hotline

Director J.E. (Buddy) Stockwell III, 1(866)354-9334

1405 W. Causeway Approach, Mandeville, LA 70471-3045 • e-mail lap@louisianalap.com

Alexandria	Steven Cook(318)448-0082	Lake Charles	Thomas M. Bergstedt.....(337)558-5032
Baton Rouge	Steven Adams.....(225)753-1365 (225)924-1510	Monroe	Robert A. Lee(318)387-3872, (318)388-4472
	David E. Cooley.....(225)753-3407	New Orleans	Deborah Faust(504)304-1500
	John A. Gutierrez(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
Houma	Bill Leary.....(985)868-4826		Dian Tooley(504)861-5682 (504)831-1838
Lafayette	Alfred “Smitty” Landry(337)364-5408, (337)364-7626	Shreveport	Michelle AndrePont(318)347-8532
	Thomas E. Guilbeau(337)232-7240		Nancy Carol Snow(318)272-7547
	James Lambert(337)233-8695 (337)235-1825		William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
			Steve Thomas.....(318)872-6250

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

PUBLIC Ethics Advisory Opinions

These Public Opinions have been prepared by the Publications Subcommittee of the Louisiana State Bar Association's Rules of Professional Conduct Committee. The issues and topics covered within these opinions originate from actual requests for ethics advisory opinions submitted to the Ethics Advisory Service by lawyer members of the Association.

In selecting topics and issues for publication, the Publications Subcommittee has reviewed opinions referred to it by Ethics Counsel and/or panel members of the Ethics Advisory Service for purposes of determining whether the opinions submitted address issues of interest, importance and/or significance to the general bar and which are not highly fact-sensitive. The Publications Subcommittee has made every effort to promote and maintain confidentiality of the parties involved in the original requests.

Questions, comments or suggestions regarding the opinions, the publication process or the Ethics Advisory Service may be directed to Eric K. Barefield, Professional Programs Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130; direct dial (504)619-0122; fax (504)598-6753; email ebarefield@lsba.org.

To review opinions (to date) online, go to: www.lsba.org/MemberServices/ethicsadvisoryopinions.asp.

PUBLIC Opinion 12-RPCC-019¹

Accepting Credit Cards for Payment of Fees and Costs

A lawyer may accept credit cards in payment for legal services rendered or advanced for fees and/or costs as long as the lawyer abides by the applicable Louisiana Rules of Professional Conduct, including those pertaining to proper communication with the client, fees and expenses charged, confidentiality and the safekeeping of property. Any credit card agreement between the lawyer and credit card vendor must allow a lawyer to be compliant with the appropriate Rules.

The Committee has evaluated the ethical ramifications of lawyers accepting credit cards in payment of their services or costs. In its consideration, the Committee believes that Rules 1.4, 1.5, 1.6(a) and 1.15 of the Louisiana Rules of Professional Conduct are most relevant.

More and more clients are requesting to use credit cards to pay lawyers' fees for services rendered or to be rendered. In order to accommodate the needs of their clients, many lawyers and law firms enter into so-called "merchant agreements," or contracts with vendors, to offer this service.² Before contracting with a vendor/credit card company, the lawyer should study the agreement carefully to make sure that the obligations imposed would not require the lawyer to violate any of the Rules, and communicate to the client any special fee arrangements which may be required by the client's use of the credit card.³ Among the issues that the lawyer should consider are:

► Does the lawyer intend to charge the clients for any "transaction fee" associated with the use of the credit card, and has the lawyer obtained the necessary informed consent to do so?

► Does the credit card merchant require disclosures of any confidential information to process the charge, and has the client provided informed consent as to that disclosure?

► Has the lawyer considered whether to link the credit card merchant agreement to an operating account or a trust account, given that the funds may be required to be held in trust?

► If the lawyer elects to link the credit card to a trust account, has the lawyer provided that any "charge backs" must only come from the operating account to avoid unintentional conversions?

As the credit card arrangement is a special circumstance requiring the client's informed consent, in keeping with the Louisiana Rules of Professional Conduct the lawyer should communicate with the client, preferably in writing, regarding the obligations of the client and the lawyer under the credit card arrangement.⁴

The use of the credit card typically involves a "transaction fee," which often is calculated as a small percentage of the transaction amount.⁵ If the lawyer treats the transaction fee as an overhead expense, the lawyer must make arrangements to treat the remittance received from the credit card company as a remittance in satisfaction of the entire amount owed. If the lawyer intends that the client still must pay the difference between the original charge amount and the remittance received (*i.e.*, the "transaction fee"), then the lawyer must be certain to comply with Rule 1.8(e)(3) and obtain the informed consent of the client for such a charge.⁶

By way of example, if the client uses a credit card to pay a \$500 advance deposit with a lawyer subject to a 2 percent “transaction fee,” and if the lawyer treats the “transaction fee” as an overhead expense, the lawyer must add \$10 from his operating account to the trust account such that the client enjoys the benefit of an undiminished \$500 trust balance as a result of the credit card transaction. Alternatively, with the informed consent of the client, the lawyer could reflect that the original intended trust balance of \$500 has been reduced to \$490 to offset the “transaction fee,” thus leaving the client with a reduced trust balance of \$490 rather than the full \$500. Lawyers should be aware, however, that some credit card vendors prohibit the lawyer (merchant) from passing “transaction fees” through to the client (consumer). In such cases, the latter option described above would not be available to the lawyer, and the lawyer would be required to treat the “transaction fee” as an “overhead” cost.⁷ There is also a distinction between a reasonable “transaction fee” and, for example, a monthly charge for a credit card processing machine that should only be considered as a non-recoverable overhead cost of the lawyer’s practice.

Use of a credit card by the client may impose on the lawyer, under the lawyer’s agreement with the credit card company, certain obligations to reveal confidential information, some of which the client may not understand would have to be revealed, such as the client’s name, address and nature of the services provided. If the lawyer is unable to find or negotiate an agreement with the vendor/credit card company to use “service descriptions” of a generic nature, such as “services rendered,” the lawyer must comply with Rule 1.6(a) by advising the client of the required disclosures and seeking the client’s informed consent. Clients should also be informed that if there is a dispute regarding charges among the client, the lawyer and credit card vendor/company, confidential information may not be protected due to exceptions contained in Rule 1.6.⁸

“Merchant agreements” or contracts usually require that the lawyer’s credit card account must be linked to a bank

account of the lawyer. This has significant implications if trust account funds are involved. In the event of a client dispute with regard to the lawyer’s fee, depending on the terms of the “merchant agreement,” the bank/credit card company may have the right to “charge back” the disputed amount to the lawyer’s account, regardless of whether the bank account is a trust account or an operating account. Assume that a lawyer appropriately has a trust account for the purpose of receiving advanced deposits for fees and/or costs. If (a) earned fees or funds for costs for a client have been transferred from the lawyer’s trust account to the lawyer’s operating account, (b) the client thereafter disputes the fees or costs, and (c) the credit card account is linked to the trust account, a “charge back” by the credit card company against the lawyer’s trust account may result in a failure to safeguard or conversion of other clients’ funds in violation of Rule 1.15.⁹ On the other hand, if a lawyer’s credit card processing account is linked to the lawyer’s operating account, it would be a violation of Rule 1.15 to place advanced deposits for fees and/or costs provided by a client using a credit card directly into the operating account, as those funds should properly be placed in the trust account. In other instances, when a lawyer might be collecting a payment for work already performed and/or receiving a flat fee, the funds may be placed directly into the operating account, since the funds become the property of the lawyer when paid.¹⁰

Thus, “best practices” would recommend that a lawyer have both the trust account and the operating account linked to the lawyer’s credit card account protecting a client so that funds received from the client’s credit card may be placed correctly into the proper account. The “merchant agreement” or contract between the vendor/credit card company and lawyer should also provide that any “charge back,” other disputed transaction, or costs associated with using the credit card will be charged solely to the lawyer’s operating account. In short, care should be taken by the lawyer to make sure that the lawyer’s agreement with the bank/credit card company does not contain any provisions

which would trigger a violation to Rule 1.15, *Safekeeping of Property*. A lawyer accepting credit cards, therefore, should take steps to make sure that any bank/credit card company used for credit card transactions with clients will be responsive to the ethical requirements of the lawyer. The lawyer should review any “merchant agreements”/contracts and make sure they allow the lawyer to be compliant with the Louisiana Rules of Professional Conduct.¹¹

Conclusion

The Committee is of the opinion that a lawyer may ethically accept credit cards for payment of reasonably earned fees and/or in situations where money is advanced by the client for fees to be earned or for costs, provided that the lawyer has reviewed the “merchant agreement” or contract with the credit card vendor and nothing therein requires the lawyer to violate any of the Louisiana Rules of Professional Conduct. Furthermore, the lawyer should explain to the client any requirements contained in the agreement which may affect client confidentiality and which the client might not understand may be required by the use of the card, and obtain the client’s informed consent with respect to any necessary disclosures and/or the treatment of transaction fees. Additionally, the transactions should not be linked to bank accounts in a manner that exposes the lawyer’s trust account to “charge backs” or credit card costs arising from client disputes and/or transaction costs. The accounts must be arranged to protect clients’ funds and to keep them separate from the lawyer’s own property.

In conclusion, a lawyer may accept credit cards in payment for legal services rendered or advanced for fees and/or costs as long as the lawyer abides by the applicable Louisiana Rules of Professional Conduct, including those pertaining to proper communication with the client, fees and expenses to be charged, confidentiality and the safekeeping of property. Any credit card agreement between the lawyer and credit card vendor must allow a lawyer to be compliant with the appropriate Rules.

Continued next page

FOOTNOTES

1. The comments and opinions of the Committee — public or private — are not binding on any person or tribunal, including — but not limited to — the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published — specifically designated thereon as “PUBLIC” — and may be cited. Private opinions are those that have not been published by the Committee — specifically designated thereon as “NOT FOR PUBLICATION” — and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the Louisiana State Bar Association, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

2. Other laws, including IRS regulations, should also be considered by a lawyer before deciding to accept credit cards. For instance, pursuant to the Housing Assistance Tax Act of 2008, credit card processing companies, beginning Jan. 1, 2013, will be required to verify and match each merchant’s federal tax identification number (TIN) and business name with those on file with the IRS. Missing or incorrect TIN/name information may result in the imposition of “backup withholding” of 28 percent of the credit card amounts being processed. For more information on this topic, see the April 2012 *California Bar Journal* article, “New IRS Section 6050W: What is it, and How it Affects Attorneys” by Amy Porter, www.calbarjournal.com/April2012/TopHeadlines/TH2.aspx.

3. As “merchant agreements” or contracts may differ in content, it is not possible here to anticipate all of the possible variations. See Opinion 348, of the District of Columbia Bar III.A, which outlines several of the provisions found in typical agreements, some of which relate to fees charged and confidentiality, and which might not be known or understood by the client unless the lawyer communicates them to the client properly:

▶ Requirement that reimbursement of unused fees must be credited to the user’s card and not paid by cash or check;

▶ Requirement that the cardholder (client) have “chargeback” rights pending resolution of a dispute (i.e., the credit card company has the right to access the lawyer’s account to debit funds previously deposited into that account and charge them back to the cardholder);

▶ Provision that in disputes, no “chargeback” is made, but the client would not be charged until the matter is resolved (both parties would have an opportunity to submit evidence and have the matter resolved by the company’s dispute resolution section);

▶ Prohibition on charging for services before services are rendered;

▶ Requirement that payments made to the lawyer by the credit card company be made through an approved Settlement Account.

4. Rule 1.4 Communication: “(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules; . . .”

Rule 1.0: (e) “. . . (c) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”

Rule 1.5(B): “. . . The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing with the representation. . . .”

5. The Committee understands that the credit card vendor typically subtracts this transaction fee from the amount remitted to the lawyer. For instance, if the original charge amount was \$500 and the transaction fee is 2 percent of that amount, the credit card vendor would subtract \$10 from the remittance, credit the lawyer’s bank account for \$490, and seek to bill and collect the entire \$500 from the client. The Committee does not believe this practice constitutes the impermissible sharing of a legal fee with a non-lawyer pursuant to Rule 5.4, and is aware of no authority to the contrary.

6. Rule 1.8(e)(3) provides: “. . . (3) Overhead costs of a lawyer’s practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services. With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer’s actual invoiced costs for these expenses. . . .”

7. See Opinion 348, District of Columbia Bar, and footnote 9 therein: “. . . At least one other jurisdiction considering this issue has found that the fees charged by the credit card company ‘are legitimate costs that the attorney may pass on to the client.’” *Utah State Bar Ethics Advisory Op. No. 97-06* (1997).

Rule 1.5, Fees: “(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. . . .”

8. Rule 1.6(a), Confidentiality of Information: “. . . (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, . . . (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: . . . (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, . . .”

See also Colorado Formal Ethics Op. 99 (1997) . . . A lawyer cannot assume that a client who is paying a bill by credit card has impliedly authorized the attorney to disclose otherwise confidential information.

9. Rule 1.15: “. . . (a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. . . .” and

“. . . (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. . . .”

10. For an explanation of the handling of client and third-party funds, see the publication, *The Louisiana Lawyer and Other People’s Money: A Guide to Managing Client Funds*, available online, www.lsb.org, then click on “Online Publications.” As for flat fees, while they may be placed in the operating account, one conservative approach may be to place the flat fee amount initially into the trust account until the work has been performed. If a fee is questioned, Rule 1.5(f)(2) and (5) provide:

(f) Payment of fees in advance of services shall be subject to the following rules: . . .

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer’s trust account, but may be placed in the lawyer’s operating account. . . . (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer’s contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program, www.lsb.org/membershipdirectory/lawyerfee.asp.

11. The Committee is aware that some vendors, such as LawPay (www.lawpay.com) or others, may focus on the handling of credit card arrangements with lawyers’ accounts. Whatever vendor/company is used, a lawyer has an obligation to ensure that the “merchant agreement” and transactions permit a lawyer to meet all ethical standards. While some jurisdictions may have approved a web-based payment processing service allowing for an intermediate account where funds are not placed directly into a lawyer’s trust account but soon thereafter transferred there, other jurisdictions have not. Lawyers should be wary if client funds will not flow directly to the lawyer because the lawyer may inadvertently violate Rule 1.15 if the funds at issue are not directly placed in trust. One way to avoid this concern would be to use an Internet payment processing service only for earned and/or flat fees, but not for advanced deposits for fees and/or advanced costs.

FOCUS on Professionalism

By Mary E. Colvin

MANDATORY MENTORING: THE NEXT STEP

Nothing is more ingrained in law students and young lawyers alike, save for the severe consequences of improperly managing an IOLTA account, than the rapid decline of professionalism in the legal profession.

In response to the growing concerns of the bar and judiciary, the Louisiana Supreme Court implemented the Transition into Practice Program (TIP), a pilot program that makes mentoring mandatory for most new admittees in Baton Rouge and the Greater New Orleans area. TIP allows some groups to defer participation or to opt out completely, on case-by-case approval, including, but not limited to, judicial clerks, in-house counsel, government attorneys, and new admittees practicing in firms with mentoring programs. It is clear that TIP primarily focuses on new admittees either hanging their shingle or starting their career in small firms.

In the current economy, firms historically known for their mentor programs are hiring new graduates at a drastically reduced rate or not hiring them at all. As a 2010 graduate, I witnessed this firsthand as I scrambled to find a job. I consider myself among the lucky few because I began my legal career in a firm that was large enough to provide a multitude of attorneys with resources, war stories and billable work, but small enough to afford me the opportunity to test my practical and professional skills outside of the office. Unfortunately, many of my peers were not so lucky and were forced into hanging the proverbial shingle or accepting jobs with firms with too few attorneys and too much work and, consequently, little time to mentor. Of the 2010 and 2011 Louisiana law school graduates employed in law firms, almost 9 percent are solo practitioners and an astonishing 49 percent are employed by firms with between two and 10 attorneys.¹

At this stage in my career, I honestly cannot imagine being a solo practitioner or working in an environment devoid of practical advice from experienced attorneys. But, a solution is emerging for upcoming graduates. Mandatory mentoring will offer

a mechanism to obtain practical advice on the profession and professionalism.

Mentors can be an invaluable resource to new lawyers who find themselves confronting issues typical in the practice of law but unfamiliar to them, including:

- ▶ working with assistants who are older and more familiar with the practice of law than you are;
- ▶ billing clients;
- ▶ managing your workload and recognizing when you are in over your head;
- ▶ working a file;
- ▶ interacting with clients;
- ▶ dealing with difficult attorneys and challenging judges;
- ▶ conducting yourself appropriately in the courtroom;
- ▶ introducing evidence at hearings;
- ▶ preparing your clients for depositions;
- ▶ noticing and conducting the depositions of other parties, including proper objections, when to call the judge, and identifying the practical ramifications of same; and
- ▶ learning the unwritten rules, which characteristically are only discovered the hard way.

Mentors can provide a support system and framework for young lawyers to assess their progress and shortcomings. Most importantly, mentors can support new lawyers in building and protecting their professional reputations by providing an opportunity to learn from others' mistakes. Once you become licensed and begin interacting with the court, other attorneys and clients, your professional reputation truly begins to develop.

If you act professionally, chances are no one will notice. You do not get credit for doing what is expected of you. But, if you do not return phone calls, fail to communicate with clients, make inappropriate comments in a brief, or otherwise act unprofessionally, someone will notice and that poor choice will follow you. Warren Buffett hit the nail on the head when he said, "[I]t takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do

things differently."

It is clear that mentoring is necessary to promote professionalism and to foster the proper development of young lawyers in Louisiana. But, must it be mandatory?

The simple answer is, yes. The decline of informal mentoring (and, consequently, professionalism) is attributable primarily to two sources. First, the job market for new admittees has forced many to hang out their shingle, cross their fingers and hope for the best. Second, attorneys who were mentored themselves have less spare time to mentor new lawyers in light of the commercialization of the practice of law, increased focus on the billable hour, and ever-changing client expectations.

Mandatory mentoring will not only aid the development of new lawyers, but by design it requires a crop of experienced attorneys to act as mentors and, therefore, it will hold those lawyers accountable for their part in revitalizing professionalism.

Accept this article as a call for experienced lawyers to pay it forward. The success of the TIP program depends, almost exclusively, on the mentors who volunteer their time and impart the knowledge and experience. Help young lawyers successfully navigate the complexities of the legal profession and volunteer to be a mentor.

FOOTNOTE

1. See American Bar Association Section of Legal Education, *Employment Summary Report*, 2010-2011, available at <http://employmentsummary.aba-questionnaire.org/> (last visited Oct. 4, 2012).

Mary E. Colvin is an associate with the firm Donohue, Patrick & Scott, P.L.L.C. She received her undergraduate degree in 2007 from Louisiana State University and her JD degree in 2010 from LSU Paul M. Hebert Law Center. In addition to her involvement in several professional associations, she is a member of the Louisiana State Bar Association's Committee on the Profession. (Ste. 1600, 450 Laurel St., Baton Rouge, LA 70821)



REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 4, 2012.

Decisions

David Belfield III, New Orleans, (2012-B-1690) **Public reprimand by consent** ordered by the court on Sept. 28, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2012. *Gist*: Failure to cooperate with the Office of Disciplinary Counsel in connection with three separate investigative matters.

Raymond Canzoneri, Jr., Metairie, (2012-B-1804) **Interim suspension** ordered by the court on Aug. 7, 2012.

Margrett Ford, Shreveport, (2012-B-1016) **Disbarment** ordered by the court on Sept. 12, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 26, 2012. *Gist*: Neglected legal matters; failed to communicate with clients; failed to return unearned fees and costs; failed to withdraw from representation of clients after suspension in *In re: Ford*, 09-2524 (La. 3/26/10), 30 So.3d 742 ("Ford III"), *reh'g denied*, May 21, 2010; and failed to cooperate with the ODC in its investigations.

Michael K. LeBlanc, New Orleans, (2012-B-1487) **Suspended for three years, retroactive to July 29, 2008, the date of his interim suspension**, ordered by the court as consent discipline on Sept. 14, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 14, 2012. *Gist*: Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with clients; and failure to promptly refund unearned fees.

Frank Miller III, Lake Charles, (2012-OB-1862) **Transfer to disability inactive status** ordered by the court on Sept. 12, 2012. JUDGMENT FINAL and

EFFECTIVE on Sept. 12, 2012.

Hugh E. McNeely, Jedda, Saudi Arabia, formerly of New Orleans, (2012-B-1324) **Suspended for three years, subject to conditions**, ordered by the court on Sept. 14, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 28, 2012. *Gist*: Neglected legal matters of three clients; failed to communicate with them; failed to properly terminate the

representation of the clients by refunding unearned fees and returning client files; and failed to cooperate with the ODC in its investigations.

Johnny Carl Parkerson, Monroe, (2012-OB-1470) **Permanent resignation in lieu of discipline** ordered by the court on Sept. 12, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 12, 2012.

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ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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ELIZABETH S. CORDES

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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 Oct. 1, 2012.

Respondent	Disposition	Date Filed	Docket No.
Clovus Jackson Ashley II	[Reciprocal] Suspension.	8/8/12	12-1651
Terry L. Bonnie	Reinstated.	6/14/12	08-4572
Walter W. Gerhardt	[Reciprocal] Suspension.	8/8/12	12-1437
Edwin D. Hawkins	[Reciprocal] Disbarment.	8/8/12	12-1438
Kimuel Wayne Lee	[Reciprocal] Suspension.	10/16/12	12-1439
Mack H. McCraney	[Reciprocal] Suspension.	8/8/12	12-1436
Lynn Perkins Perez	[Reciprocal] Disability inactive status.	9/6/12	12-1880
Kimberly Marie Richardson	[Reciprocal] Suspension.	10/16/12	12-1653
Derrick D.T. Shepherd	[Reciprocal] Permanent disbarment.	9/6/12	12-1852
Stacey L. Thomas	[Reciprocal] Suspension.	8/8/12	12-1773
Charles Gary Wainwright	[Reciprocal] Suspension.	10/16/12	12-1794
Cindy M. Williams	[Reciprocal] Suspension.	6/26/12	12-1323
Kathleen M. Wilson	[Reciprocal] Suspension.	8/8/12	12-1796



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Phone 337.942.9771 • Fax 337.942.2821 • Leslie@sswethicslaw.com

STEVEN SCHECKMAN

Former Special Counsel, Judiciary Commission (1994-2008)
829 Baronne Street, New Orleans, LA 70113
Phone 504.581.9322 • Fax 504.581.7651 • Steve@sswethicslaw.com

JULIE BROWN WHITE

Former Prosecutor, Office of Disciplinary Counsel (1998-2006)
11715 Bricksome Avenue, Suite A-3, Baton Rouge, LA 70816
Phone 225.293.4774 • Fax 225.292.6579 • Julie@sswethicslaw.com

Discipline continued from page 330

Don L. Simmons, Jr., Baton Rouge, (2012-B-1824) **Interim suspension by consent** ordered by the court on Aug. 10, 2012.

Christopher S. Suba, Baton Rouge, (2012-OB-1478) **Reinstated to the practice of law** ordered by the court on Sept. 21, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 21, 2012.

Rebecca L. Vishnefski, Shreveport, (2012-OB-1716) **Transfer to disability inactive status** ordered by the court on July 25, 2012. JUDGMENT FINAL and EFFECTIVE on July 25, 2012.

Bambi F. Walters, Williamsburg, VA, (2012-B-0974) **Disbarment** ordered by the court as reciprocal discipline for discipline imposed by Virginia and North Carolina on Sept. 12, 2012. JUDGMENT FINAL and EFFECTIVE on Sept. 26, 2012. *Gist*: Unauthorized practice of law in Virginia and conversion of funds.

Continued next page



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Discipline continued from page 331

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

No. of Violations

A lawyer may deposit the lawyer’s own funds in a client trust account for sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose..... 1

Engaging in conduct involving fraud, dishonesty, deceit or misrepresentation.... 1

Failed to act with reasonable diligence and promptness in representing a client..... 1

Failure to cooperate with ODC in its investigation..... 2

Failed to keep the client reasonably informed about the status of the matter 1

TOTAL INDIVIDUALS ADMONISHED..... 5

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2nd Circuit Holds Res Judicata not a Question of Procedural Arbitrability

Wilson v. Allums, 47,147 (La. App. 2 Cir. 6/8/12), 94 So.3d 908, writ denied, 12-1611 (La. 10/26/12), ___ So.3d ___.

In a case of first impression in Louisiana, the Louisiana 2nd Circuit Court of Appeal decided that the question of whether a demand for arbitration is barred by res judicata is a matter for courts, not arbitrators, to decide. The 2nd Circuit applied the teachings of the United States Supreme Court and decisions from around the nation to find that the res judicata question was one of substantive arbitrability.

Wilson v. Allums arose out of a construction contract between Wilson Construction, Inc. and Danny and Angie Allums that contained an arbitration clause. The case began when a lumber supplier sued both Wilson and the Allumses, alleging non-payment. The Allumses filed a cross claim against Wilson but did not reserve the right to arbitrate. The court granted summary judgment for the supplier, but the Allumses' cross claim remained pending.

After three years passed with no activity, the Allumses' attorney wrote to Wilson demanding reimbursement for amounts spent to complete the work and threatening to pursue arbitration if those amounts were not paid within 10 days. In response, Wilson moved to dismiss the still-pending

cross claim as abandoned. The trial court granted the motion and dismissed the cross claim with prejudice.

After the dismissal, the Allumses brought an arbitration demand against Wilson. Wilson responded by filing a petition for preliminary injunction that asserted waiver and res judicata based on the previously dismissed cross claim. In response to the petition, the Allumses sought a dismissal, claiming that arbitration was the proper forum in which to resolve the dispute. The trial court granted the preliminary injunction, based on the res judicata argument. The Allumses appealed.

The questions the court initially had to resolve were whether waiver and res


judicata were questions of "substantive arbitrability" or "procedural arbitrability." According to *Howsam v. Dean Witter Reynolds, Inc.*, 123 S.Ct. 588 (2002), questions of substantive arbitrability are for courts to decide, whereas questions of procedural arbitrability are for arbitrators to decide. Substantive arbitrability pertains only to a narrow class of disputes, including whether the parties are bound by an arbitration clause and whether an arbitration clause applies to the particular dispute. By contrast, procedural arbitrability applies to other "gateway" procedural matters that may impact the disposition of the case, such as waiver or estoppel. In the absence of an agreement to

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the contrary, those issues must be decided by arbitrators.

With those criteria in mind, the court turned first to the waiver issue. The court quickly disposed of that issue because the Louisiana Supreme Court held in *International River Center v. Johns-Manville Sales Corp.*, 02-3060 (La. 12/3/03), 861 So. 2d 139, that waiver is a question of procedural arbitrability. Accordingly, the court concluded it had no jurisdiction to decide the waiver issue.

With respect to the res judicata issue, however, no Louisiana court had addressed whether it was an issue of substantive or procedural arbitrability. Therefore, the court looked to other decisions from around the nation. According to the court, the authorities were split. After discussing the conflicting authorities, the court sided with the substantive arbitrability decisions and found that the question of res judicata must be decided by the courts. In support, the court reasoned that state court judges are in a better position to decide whether a prior state court judgment should be given res judicata effect.

Turning to the merits, the court affirmed the trial court's finding that the prior judgment was res judicata. The court also found that the trial court properly granted the preliminary injunction.

Although the question of whether res judicata is an issue of substantive arbitrability or procedural arbitrability was an issue of first impression, the 2nd Circuit offered little guidance on the issue, saying only that trial court judges are in a "better position" to decide the res judicata issue. The issue, however, presents a challenging dilemma. On the one hand, res judicata does not fit the criteria for substantive arbitrability because it does not pertain to the issues of whether a valid arbitration agreement exists or whether the particular case falls within the scope of the agreement. On the contrary, res judicata fits the definition of "procedural arbitrability" because, like waiver or estoppel, res judicata is a procedural question that bears on the final disposition of the case. This is precisely why the court in *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092 (11 Cir. 2004), a case cited by the *Wilson* court,

decided that res judicata is a question of procedural arbitrability. However, courts that came down on the side of substantive arbitrability made a limited exception, on the ground that judges must protect the integrity of prior judgments. See, *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132 (3 Cir. 1998).

Had the *Wilson* court followed the lead of *John Hancock*, it could have made a limited exception to the standard of procedural arbitrability for the res judicata issue, based on the judiciary's interest in protecting the integrity of final judgments. Instead, the court potentially opened the door to further expansion of substantive arbitrability any time a court is in a "better position" to evaluate a particular defense, which is contrary to the policy of favoring arbitration.

—Scott H. Mason

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Sikes v. Crager, 2012 WL 3518473 (5 Cir. Aug. 16, 2012).

Patricia Ann Crager filed for Chapter 13 bankruptcy and, upon the filing of the plan, the trustee objected to the confirmation of the plan. The trustee asserted that the plan was not filed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) and that the amount of attorney's fees sought by Crager's attorney was unreasonable. The bankruptcy court overruled the trustee's objection, approved Crager's Chapter 13 petition and plan, and requested legal fees and advanced

legal costs. On appeal, the district court reversed the confirmation of the plan and ordered the bankruptcy court to find on remand that the plan was filed in bad faith. Crager then appealed to the 5th Circuit.

On Aug. 16, 2012, the 5th Circuit reversed the ruling of the district court and affirmed the bankruptcy court's confirmation of the debtor's Chapter 13 plan. The court stated that there is no rule in the 5th Circuit that a Chapter 13 plan that "results in the debtor's counsel receiving almost the entire amount paid to the Trustee, leaving other unsecured creditors unpaid, is a per se violation of the 'good faith.'"

The trustee argued that the bankruptcy court abused its discretion by awarding attorney fees to Crager's counsel. The 5th Circuit looked to 11 U.S.C. § 330, under which the bankruptcy court can award "reasonable compensation" to attorneys for representing a debtor's "interests in connection with the bankruptcy case based on a consideration of the benefit and necessity" of the services provided, among other factors listed in the statute. Therefore, the 5th Circuit held the bankruptcy court was proper in its use of the Section 330 factors to determine that the attorney fees were reasonable under the circumstances.

"Actual Fraud" Showing Not Required to Exempt Judgment Debts from Discharge

Cardwell v. Gurley, No. 12-40070 (Aug. 31, 2012).

Donald Lee Cardwell and Bill Gurley were business partners and co-owners of a real-estate development business. Cardwell was the managing member and was responsible for handling the business' day-to-day activities. Cardwell made misrepresentations to Gurley, inducing him to consent to a property development transaction that "ultimately injured Gurley to the benefit" of Cardwell. Gurley filed suit in state court and received a judgment against Cardwell. Thereafter, Cardwell filed for bankruptcy and Gurley filed this action seeking to exempt the judgment

from discharge. The bankruptcy court gave preclusive effect to the findings of fact and conclusions of law of the state court and concluded the debt was non-dischargeable; the district court affirmed.

On appeal, the 5th Circuit reviewed 11 U.S.C. § 523(a)(2)(A), which states that a debtor is not discharged from "any debt . . . for money, property, services . . . to the extent obtained by false-pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

The debtor argued that the five-element "actual fraud" test set out in *In re Acosta*, 406 F.3d 367 (5 Cir. 2005), must be applied to all actions brought under § 523(a)(2)(A). The 5th Circuit noted that "it has not determined whether the five-element test applies to all actions under § 523(a)(2)(A), and it need not do so [because] the debt at issue is not dischargeable even under the more stringent *Acosta* test."

The *Acosta* factors state that in order for a debt to be non-dischargeable, a creditor must show:

- (1) that the debtor made a representation;
- (2) that the debtor knew the representation was false;
- (3) that the representation was made with the intent to deceive the creditor;
- (4) that the creditor actually and justifiably relied on the representation; and
- (5) that the creditor sustained a loss as a proximate result of its reliance.

Asserting that the state court did not find "fraud" or an "intent to deceive" in so many words, Cardwell argued the *Acosta* standard was not met.

Finding that Cardwell persuaded Gurley to consent to business transactions that Cardwell had no intention of pursuing, the 5th Circuit ruled that primary *Acosta* elements, numbers 2 and 3, were met. As the result, the 5th Circuit ruled the debt was not dischargeable under § 523(a)(2)(A).

—**Tristan E. Manthey**
Chair, LSBA Bankruptcy Law Section
and
Alida C. Wientjes
Heller, Draper, Patrick & Horn, L.L.C.
Ste. 2500, 650 Poydras St.
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6th Circuit Weighs in on Furnisher Duties Under the FCRA

In *Boggio v. USAA Federal Savings Bank*, 696 F.3d 611 (6 Cir. 2012), the court of appeals reversed and remanded the summary judgment dismissal of a Fair Credit Reporting Act (FCRA) claim under 15 U.S.C. § 1681s-2[b]. This is commonly referred to as the furnisher-reinvestigation action. Plaintiff alleged that USAA Federal Savings Bank violated the FCRA because it failed to investigate adequately and to respond accurately to notices sent to it by various consumer reporting agencies (CRA) about a disputed car loan. The court found that a jury could find both that USAA's

investigation was unreasonable and that Boggio was not responsible for the car loan or lien at issue in the credit reporting.

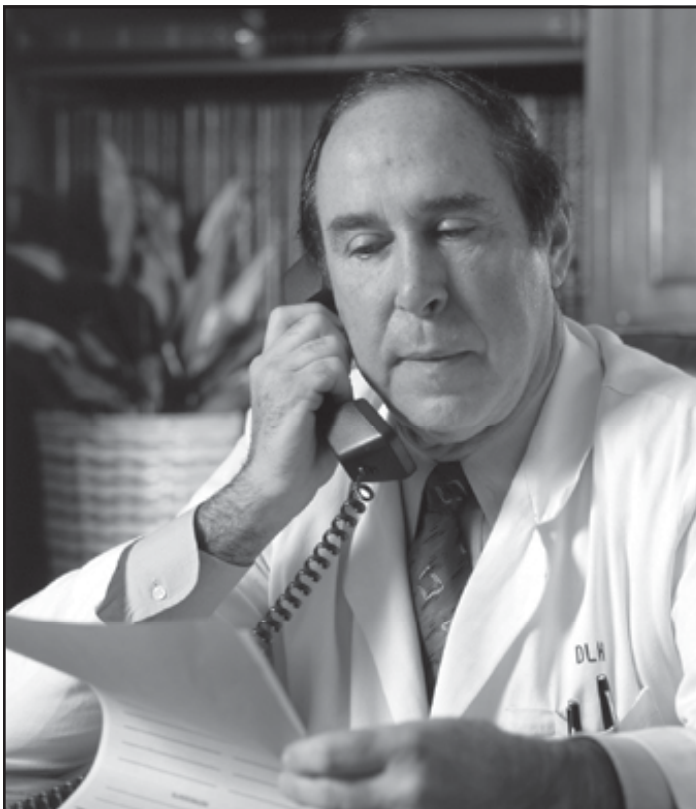
The unsigned security agreement listed plaintiff as a co-signer. Following other circuits and more than 100 district court decisions, the court found a private right of action for negligent or willful violations (equated to reckless disregard per *Safeco Insurance Co. v. Burr*, 127 S.Ct. 2201 (2007)). The furnisher-reinvestigation private right of action can be triggered only by a dispute to a reporting agency that, in turn, communicates the dispute to the furnisher. If the furnisher fails to properly reinvestigate and correct the reporting timely, the furnisher can be found to violate the FCRA.

A reinvestigation must be a real investigation and not some perfunctory recheck; "anything less than a reasonable inquiry would frustrate Congress's goal to create a system that permits consumers to dispute credit inaccuracies." *Boggio*, 696 F.3d at 616. The reinvestigation must be "reasonable," which, like willfulness and negligence, are fact questions reserved to the jury in almost all cases and not proper

for summary judgment. Suggesting that the reporting agencies must do more in the transmittal notice, the court noted that "how thorough an investigation must be to be 'reasonable' turns on what relevant information was provided to a furnisher by the CRA giving notice of a dispute." *Id.* at 617.

The court set forth the furnisher's duties, as follows: (1) review all relevant information provided to it by a CRA regarding a dispute in order to comply with § 1681s-2(b)(1)(B); (2) determine the scope of the investigation by considering the nature and specificity of the information provided by the agency to the furnisher; and (3) report the results of its investigation to the reporting agency under § 1681s-2(b)(1)(C).

After a reasonable investigation and review of all relevant information provided by a reporting agency, a furnisher must then report its findings about a customer's information to the agency that originally provided notice of the dispute. This reporting duty requires a furnisher to respond to an agency regarding the results of the furnisher's investigation, irrespective



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of the outcome of its investigation.

The FCRA further requires that if the investigation finds that the information is incomplete or inaccurate, the furnisher must “report those results to all other [CRAs] to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.” § 1681s-2(b)(1)(D). The furnisher also must either modify, delete or permanently block reporting of information that it finds upon investigation to be inaccurate, incomplete or unverifiable. § 1681s-2(b)(1)(E).

The court further stated that:

as the scope of this duty is determined by reference to inaccurate or incomplete information, the duty equally extends to the discovery of both inaccurate or incomplete consumer information and to the discovery of consumer information that is materially misleading. In addition, a furnisher has a duty to modify, delete, or block its original reporting if it discovers, upon investigation, that it can no longer verify the consumer information it originally supplied to a CRA.

Id. at 618.

The court likewise rejected USAA’s company policy of demanding a sworn affidavit or police report from the contesting consumer before USAA did

anything. Further, USAA testified that its reinvestigation “reviewers were prohibited from consulting documents in his file — including the allegedly forged check in question—and instead would have verified only his identity before responding to a CRA notice,” which showed a genuine dispute as to whether USAA’s investigation was reasonable. *Id.* at 619. After reversing summary judgment, the court remanded for a jury trial.

The court also should have addressed the furnisher’s duties to review its own records in the process and not merely focused on the limited data furnished in the cursory automated consumer dispute verification email-style communication. The problem is that these emails do not incorporate the documents a consumer sends with his or her dispute to the reporting agency. This is a shortcoming of the agencies’ dispute verification process but not a loophole to escape liability on the part of a furnisher. The dispute verification email is never copied to the consumer, so the consumer is left to guess what the reporting agency said to the furnisher.

—David A. Szwak

Chair, LSBA Consumer Protection
Law Section
Bodenheimer, Jones & Szwak, L.L.C.
Ste. 1404, 416 Travis St.
Mid South Tower
Shreveport, LA 71101



EPA Wins New Source Review Case Determining Interpretation of “Routine” Work

In *United States v. Louisiana Generating, L.L.C.*, No. 09-100-JJB-CN, 2012 U.S. Dist. LEXIS 134195 (M.D. La. Sept. 19, 2012), the Louisiana Middle District Court granted summary judgment in favor of the U.S. Environmental Protection Agency (EPA), determining that replacements of two primary reheaters at the Big Cajun II coal-fired generating facility constituted a major modification, triggering the Prevention of Significant Deterioration Provisions (PSD) of the Clean Air Act (CAA). Louisiana Generating (LaGen) had argued that the replacements were “routine maintenance, repair or replacement” which would have exempted the work from the need to comply with the PSD provisions of the CAA.

LaGen purchased Big Cajun II from Cajun Electric in March 2000. Prior to the sale, Cajun Electric replaced the primary reheaters at two of its units because the reheaters were responsible for costly shutdowns. The cost of replacing each reheater was approximately \$4.5 million, which at the time was the most costly project ever undertaken at either unit.

The issue in this litigation was whether this replacement project constituted a major modification, defined in the CAA as a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated pollutant. If so, the facility would be in violation of the PSD program and subject to New Source Review. However, under EPA’s regulations, a “physical change” does not include routine maintenance; thus, if the reheater replacement is routine maintenance, the action is not a modification. Whether work is considered “routine” is determined by the

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so-called “WEPCO” factors, which include the nature, extent, purpose, frequency and cost of the work, as well as any other relevant factors. The EPA has stated that these factors should be applied on a case-by-case basis to make a common-sense finding.

Most of the disagreement between LaGen and the EPA focused on the frequency factor. LaGen argued that the proper approach was to analyze the frequency of replacement on an industry-wide basis, while EPA argued that the analysis should be unit-specific. EPA proposed a heart transplant analogy — while LaGen would like to look at the total number of transplants performed across the medical field, EPA would like to look only at the number of transplants for each individual patient. In essence, LaGen argued for a “routine in the industry” analysis, and EPA argued for a “routine at the unit” analysis. The court found that both approaches are relevant to the analysis, but the unit-specific approach proposed by EPA is much more relevant to a determination of what is routine.

The court stated that whether similar units replace primary reheaters multiple times during a unit’s lifetime is relevant to the discussion. However, the fact that many similar units replace a primary reheater only once in the unit’s lifetime does not automatically make such a replacement routine. The court noted that LaGen could not identify any instances in which a facility had replaced a primary reheater more than once during a unit’s lifetime. The court did, however, agree with LaGen that the industry-wide analysis was relevant because otherwise the analysis would produce the absurd result whereby any work performed for the first time in the unit’s life would have to be considered non-routine. Ultimately, however, the court found in favor of EPA because it placed much greater weight on the frequency of the work performed at the unit in question.

—**Madeline Ahlgren** and
Stephen C. Thompson
Members, LSBA Environmental
Law Section
Harrison Law, L.L.C.
Ste. 820, One American Place
Baton Rouge, LA 70825

Legislature Amends Act 312 and Changes Procedures for Legacy Lawsuits

On Aug. 1, 2012, several new sets of legislation amending the procedures for legacy lawsuits took effect. Legacy lawsuits — in which landowners file suit seeking compensation for remediation of their now-contaminated property against parties who have used their property to conduct oil-and-gas exploration and production activities — have been controlled by Act 312 since 2006. However, as lawsuits have progressed through the judicial system, all parties involved have criticized aspects of

the procedures established by the Act — criticisms that have resulted, for now, in the passage of several bills introducing new or changed procedures.

Senate Bill 555, now in effect, amended La. R.S. 30:29 by adding a new “pre-hearing” option. Now, per La. R.S. 30:29(B)(6), “[w]ithin sixty days of being served with a petition or amended petition asserting an action, a defendant may request that the court conduct a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation.” This (B)(6) pre-hearing responds to the complaint that often landowners name parties with little to no relationship to the property who are then unable to quickly and



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inexpensively escape the litigation. At the (B)(6) hearing, the plaintiff has the initial burden to introduce evidence to support the allegations of environmental damage. The burden then switches to the defendant to show an absence of a genuine issue of material fact that it is the party responsible for the alleged damage. Although the new rule does not mandate how soon this hearing must be scheduled, it does dictate that the court will issue its ruling within 15 days after the (B)(6) hearing.

Senate Bill 555 also suspends prescription for one year for landowner-plaintiffs who perform environmental testing after giving notice (*see* La. R.S. 30:29(B)(7)(a)), prohibits *ex parte* communications with LDNR personnel prior to the issuance of a remediation plan (*see* La. R.S. 30:29 (C)(2)(b)), and concludes with the following waiver of contractual indemnity from punitive damages upon an admission of liability in Subsection 29(L):

If pursuant to the terms of a contract the responsible party is entitled to indemnification against punitive damages arising out of the environmental damage that is subject to the provisions of this Section, the responsible party shall waive the right to enforce the contractual right to indemnification against such punitive damages caused by the responsible party's acts or omissions if the responsible party admits responsibility for the remediation of the environmental damage under applicable regulatory

standards pursuant to the provisions of the Code of Civil Procedure Article 1563. Such waiver of the right to indemnification against punitive damages shall not apply to any other claims or damages.

House Bill 618, now in effect, enacts two new articles of civil procedure: La. C.C.P. articles 1552 and 1563. Article 1552, entitled "Environmental Management Orders," allows any party or the DNR to request in a La. R.S. 30:29 suit that the court order the development of an environmental management order, which must "authorize all parties to access the property allegedly impacted to perform inspections and environmental testing" and requires sharing of all test results.

Article 1563 is entitled "Limited Admission of Liability in Environmental Damage Lawsuits; Effect." It permits La R.S. 30:29 defendants to make a limited admission of environmental liability to allow for the remediation of sites using the existing Act 312 procedure before trial on the merits. Although the limited admission of liability is admissible in court, it is not to be construed as an admission of liability for damages under La. R.S. 30:29(H).

—**Lauren E. Godshall**
Member, LSBA Environmental
Law Section
Curry & Friend, P.L.C.
Ste. 1200, Whitney Bank Building
228 St. Charles Ave.
New Orleans, LA 70130



Final Spousal Support

Rosenfeld v. Rosenfeld, 11-0686 (La. App. 5 Cir. 3/13/12), 90 So.3d 1077.

Ms. Rosenfeld's appeal of this judgment terminating Mr. Rosenfeld's previously stipulated obligation to pay final spousal support to her did not have to be filed within 30 days because it was not a judgment "awarding" support under La. C.C.P. art. 3943. The parties' stipulation, made a consent judgment, provided that he was to pay her final spousal support of \$3,000 per month for two years, and then \$2,000 per month for four years. Upon her remarriage, he filed to terminate the obligation, which the trial court granted. The court of appeal affirmed, finding that as there was no non-modification clause in the agreement, it could be modified on a change of circumstances, and her remarriage terminated the support as a matter of law under La. Civ.C. art. 115.

Faucheux v. Faucheux, 11-0939 (La. App. 5 Cir. 3/27/12), 91 So.3d 1119.

The court of appeal stated that final spousal support is limited to an amount for maintenance (including food, shelter, clothing, transportation, medical and drug expenses, utilities, household necessities and the tax liability arising from the final spousal support) and not to continue the accustomed lifestyle. The trial court's reasons for judgment are not part of the judgment itself, and the trial court's "pre-supposition" that Mr. Faucheux would continue to pay the mortgage was not part of the final spousal support award of \$1,700 per month to Ms. Faucheux. The trial court did not err in not imputing income to her, who, during this 30-year marriage, worked outside of the home very little, was 50 years old and had a limited education and work experience. It was improper to impute the income she had as a real estate agent 12 years ago, and her license was lapsed. The trial court did not err in not limiting the final spousal support to a fixed period.

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Delesdernier v. Delesdernier, 12-0038 (La. App. 5 Cir. 5/31/12), 95 So.3d 588, writs denied, 12-1976, 12-1979 (La. 11/9/12), ___ So.3d ___.

The parties were divorced in 1986, and Mr. Delesdernier agreed to pay Ms. Delesdernier \$2,700 per month spousal support and supply her with a new vehicle every five years. He unilaterally reduced the support two years later and paid a reduced amount every month. In 2010, Ms. Delesdernier filed a rule for contempt and arrearages for the 22 years of unpaid spousal support. The trial court rendered judgment in her favor for \$596,168 in arrears. On appeal, the 5th Circuit reduced the arrears amount to \$518,738, with legal interest on each payment from the date due. The court of appeal also affirmed the trial court's finding that Ms. Delesdernier agreed to waive her interest in Mr. Delesdernier's pension for a life insurance policy to be provided by Mr. Delesdernier, and the pension was thus no longer community property subject to a petition for supplemental partition.

While general divestiture language does

not necessarily divest a spouse of her right to the employee spouse's pension if the community property settlement agreement as a whole does not expressly address the pension, whether the agreement divests the non-employee spouse of rights depends on the intent of the parties. Extrinsic (parole) evidence is admissible to determine the parties' intent when there is a dispute as to the scope of the compromise agreement. The court of appeal found that the trial court did not err in allowing parole evidence even though there was no mention of the pension in the settlement agreement.

Child Support

Kelly v. Kelly, 11-1932 (La. App. 1 Cir. 6/13/12), 94 So.3d 179.

The trial court dismissed Ms. Kelly's rule for contempt and arrearages because she did not appear at trial, even though her attorney appeared. The attorney argued that Ms. Kelly had been "bumped" from a flight and could not appear. The trial court did not accept that reason then, or on her motion for new trial, and maintained its

dismissal of her action, with prejudice. The court of appeal reversed, finding that an appearance was made through the attorney; the court could have proceeded without Ms. Kelly; the court should have considered alternative remedies prior to dismissal with prejudice; and that such a dismissal would prejudice the children who may have been entitled to arrearages.

Custody

Lunney v. Lunney, 11-1891 (La. App. 1 Cir. 2/10/12), 91 So.3d 350, writ denied, 12-0610 (La. 4/4/12), 85 So.3d 130.

Mr. Lunney's statement in his reconventional demand that an alternating weekly schedule would be more beneficial than the present 50-50 alternating days schedule was not a stipulation that a change of circumstances had occurred since the existing judgment. The trial court's allowing Mr. Lunney's psychologist to testify was harmless error because the trial court did not place much weight on it and it did not prejudice the former Ms. Lunney. The trial court did not err in not allowing

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the middle child to testify after counsel had stated that he would not, he was not on the witness list, and the trial court said she had heard enough from the other two children who testified in chambers. Even though the trial court found that she failed to show a change of circumstances to modify the custody arrangement and to name her as domiciliary parent, it nevertheless changed the physical custody schedule anyway. The court of appeal agreed that she failed to prove a change of circumstances, but affirmed the change in the physical custody schedule because, under *Bergeron*, there had to be a change of circumstances before the court could consider a “significant change” in the custody order. Because this change was not significant, it could be made on a best interest showing alone as they were continuing to have 50-50 time, just on a different schedule.

Community Property

Trahan v. Trahan, 12-0173 (La. App. 3 Cir. 6/6/12), 91 So.3d 1291.

Mr. Trahan was unrepresented when he signed documents to terminate the community regime and partition the community property. Neither the documents nor the trial court’s judgment under La. Civ.C. art. 2329 stated that he understood the governing principles and rules of the regimes or that it was in his

best interest to establish a separate regime. Thus, the court of appeal found that the statutory requirements to terminate the regime had not been met.

Delaney v. McCoy, 47,240 (La. App. 2 Cir. 6/20/12), 93 So.3d 845.

Because Mr. Delaney’s pension had not been addressed in the parties’ prior community property judgment or in their extra-judicial partition, Ms. Delaney was entitled to petition for supplemental partition of this asset. Res judicata did not apply because the asset was not previously partitioned, and there was no evidence of an express waiver of her rights to the plan. General divestiture language in their previous agreement did not preclude the supplemental partition. There was no prior transaction and compromise because the asset was not explicitly addressed.

—David M. Prados

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



Jones Act: Scope and Course of Employment

Beech v. Hercules Drilling Co., L.L.C., 691 F.3d 566 (5 Cir. 2012).

Keith Beech was working aboard a jack-up rig owned by Hercules, his employer. Michael Cosenza was similarly employed on the vessel. Cosenza accidentally brought a firearm aboard, in violation of Hercules’ strict policy, and, after discovering his mistake, failed to report it, a further violation. On the fateful night, Cosenza, the only crewman on duty, was assigned to a night shift to monitor the rig’s generator, check certain equipment and report any suspicious activity or problems. Hercules encouraged such watchmen to spend their time between rounds in the break room, watching television and chatting with fellow crewmembers, on theory that the television’s shutdown would signal a generator failure. Thus, in the course of conversation with Beech, Cosenza retrieved the contraband weapon and showed it to Beech, who examined it without handling

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it. The weapon accidentally discharged, mortally wounding Beech, who was not on duty, but aboard the vessel and subject to the call of duty.

Mrs. Beech brought a wrongful death action against Hercules under the Jones Act. Following a bench trial, the district court granted judgment in favor of Mrs. Beech, individually, and as tutrix and guardian of their minor child, in the total amount of \$1,194,329. Hercules appealed, contending that Beech and Cosenza were not acting in the course of their employment at the time of the accident.

Prior to enactment of the Jones Act, 46 U.S.C. § 30104, in 1920, seamen could not recover against their employers for either the employer's own negligence or the negligence of a fellow crew member, but were limited to compensation under general maritime law, which included only unseaworthiness, and maintenance and cure. The Act provides:

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

Thus, the Act extends the protections of the Federal Employer's Liability Act (FELA) to seamen, granting them the same rights enjoyed by railway employees. The Supreme Court has consistently held that because of the seaman's "broad and perilous job duties," the Jones Act should be interpreted liberally "to accomplish its beneficent purposes" to provide for "the welfare of seamen." In *Aguillar v. Standard Oil Co.*, 63 S.Ct. 930 (1943), the court explained:

Unlike men employed in service on land, the seaman, when he finishes his day's work, is neither relieved of obligations to his employer nor wholly free to dispose of his leisure as he sees fit. Of necessity, during the voyage he must eat, drink, lodge and

divert himself within the confines of the ship. In short, during the period of his tenure, the vessel is not merely his place of employment; it is the frame-work of his existence.

The Supreme Court has been adamant that liberal construction does not mean that the Jones Act is a workers' compensation statute because the employer is not the insurer of the safety of his employees while they are on duty. "The basis of his liability is his negligence, not the fact that injuries occur." Thus, common law limits on employer liability are subject to great weight in Jones Act cases. A common law principle that carries great weight is that an employer may be vicariously liable for its employee's negligence (or intentional tort) under the doctrine of *respondet superior* as long as the negligence occurred in the course or scope of employment, *i.e.*, while furthering the employer's (or the ship's) business.

Plaintiff contended, and the district court found, that because Hercules encouraged Cosenza to watch television and socialize with fellow crewmembers between rounds while on duty, his actions were well within the bounds of his job activity that night; thus, at the critical moment — when the gun discharged — Cosenza was acting in the course and scope of his employment. Hercules argued that because Cosenza's decision to show off his firearm did not further Hercules' business interests, and because it was in no way related to his job duties, he was not acting within the course and scope of his employment. Hercules further argued that if this factual scenario does not bring a seaman outside

the course and scope of his employment, no scenario could, meaning the Jones Act would effectively place employers under strict liability.

Noting conflicts in prior opinions of its own and those of the 7th Circuit, the 5th Circuit stated:

Today we make clear that we agree with the Seventh Circuit that regardless of whether the underlying injurious conduct was negligent or intentional, the test for whether a Jones Act employee was acting within the course and scope of his employment is whether his actions at the time of the injury were in furtherance of his employer's business interest.... [W]e conclude that Cosenza was not acting within the course and scope of his employment when he accidentally shot Beech.... Mrs. Beech [cannot] recover from Hercules under the Jones Act. (Footnote omitted.)

The judgment of the district court was reversed. Judge Elrod's compact (10-page) opinion is well written and interesting for its explication of what the Jones Act is and what it is not.

—**John Zachary Blanchard, Jr.**
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United States Supreme Court

Kiobel v. Royal Dutch Petroleum, No. 10-1491.

The U.S. Supreme Court conducted oral argument on Oct. 1, 2012, in a unique case involving the territorial applicability of the U.S. Alien Tort Statute (ATS), 28 U.S.C. § 1350. Plaintiffs filed a class action lawsuit in the United States on behalf of individuals from the Ogonni region in Nigeria who allegedly suffered human rights violations while protesting oil exploration projects in their home region. Royal Dutch Shell and other defendants purportedly aided the Nigerian government in committing numerous acts of violence against the protestors. Plaintiffs were granted asylum in the United States and claim standing under the ATS, which they contend recognizes a cause of action for violations of international law outside the sovereign territory of the United States.

The question before the court is whether corporate civil liability under the ATS can

be adjudicated when the claim arises out of conduct in a foreign country. Opponents contend that the ATS is not an exception to the legal presumption that U.S. law does not apply extraterritorially. BP America and other businesses submitted *amicus curiae* briefs contending that any extension of the ATS to overseas conduct will discourage foreign investment and harm economic development in emerging markets that need foreign expertise. Proponents of the petitioners' position, including Ambassador David J. Scheffer (former Ambassador to the International Criminal Court) and the Parliament of the Federal Republic of Germany, argue that ATS extraterritoriality will enforce the global trend of imposing civil liability for corporate violations of international human rights.

Supreme Court of Nevada

Gutierrez v. Nevada, 2012 WL 4355518 (53506)(Nev. Sept. 19, 2012)(unpublished).

The Supreme Court of Nevada recently remanded a conviction and death sentence for an evidentiary hearing to determine whether the appellant suffered actual prejudice due to the lack of consular assistance during sentencing. The issue stems from the 2004 *Avena* decision of the International Court of Justice, wherein

the ICJ determined that the United States violated the 1963 Vienna Convention on Consular Relations by failing to advise 51 Mexican nationals on death row of their consular notification and access rights. The U.S. Supreme Court ruled in *Medellin v. Texas* that the *Avena* decision does not constitute directly enforceable law in the United States and, therefore, did not provide reprieve for the petitioner, who was subsequently executed.

The Nevada Supreme Court ruled that to the extent a convicted individual could prove "actual prejudice" from the lack of consular notification, he or she may receive the benefit of the *Avena* decision under state procedural rules. Gutierrez arguably suffered actual prejudice insofar as he spoke virtually no English and had the equivalent of a sixth-grade education at the time of his arrest. The court concluded that "reasonable minds can differ" on whether he suffered actual prejudice and ordered an evidentiary hearing to make that determination.

World Trade Organization

China-Certain Measures Affecting Electronic Payment Services, DS413 (July 16, 2012).

The United States requested consultations with China on Sept. 15, 2012,



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regarding electronic payment measures maintained by China that purportedly discriminate against U.S. electronic-payment-services providers. China processes more than \$1 trillion worth of electronic-payment-card transactions each year. The United States alleged violations of the WTO General Agreement on Trade in Services (GATS) insofar as China allowed only one entity, the state-owned China Union Pay, to supply electronic-payment services for payment-card transactions denominated and paid in Renminbi. U.S. and service suppliers from other WTO members are allowed entry only for transactions paid in foreign currency.

A WTO dispute settlement panel ruled in favor of the United States on July 16, 2012. The panel determined that China obligated itself to non-discriminatory treatment and market access in its GATS schedule for both cross-border (Mode 1) and commercial presence (Mode 3) electronic-payment-service providers. The panel found that China runs China Union Pay as a monopoly supplier for the clearing of certain electronic-payment services, in violation of China's GATS Article XVI:2(a) market-access commitment. The WTO Dispute Settlement Body adopted the panel's report on Aug. 31, 2012, and China is now on the clock to bring its non-conforming measures into compliance.

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



Royalty Dispute; Removal; Jurisdictional Amount

Jefferson v. Beusa Energy, L.L.C., ___ F. Supp. 3d ___, 2012 WL 3598394 (W.D. La. 8/17/12).

Jefferson filed suit in state court, seeking a declaration that he owned 73.3 percent of an 80-acre tract in Webster Parish, from which Beusa produced natural gas under multiple leases. In contrast, Beusa asserted that Jefferson owned only a 63.3 percent interest. Although Jefferson did not bring a royalty claim, the primary motivation for his suit was his contention that Beusa was underpaying the royalties owed to Jefferson because the company did not recognize his correct ownership fraction. Beusa removed the case to federal court. Jefferson moved to remand, and the central issue became whether the \$75,000 amount in controversy threshold was satisfied.

Beusa argued that the amount in controversy was the value of a 73.3 percent ownership interest, and that this was \$123,385. But the court agreed with Jefferson's contention that the amount in controversy was the amount of the alleged underpayment of royalties. The court reasoned that because Jefferson had not brought a royalty claim, the double damages

sometimes allowed by the Mineral Code in royalty litigation were not in dispute.

Neither party had submitted evidence regarding the amount of the alleged underpayment in royalties, but based on evidence that was submitted, the court concluded that the alleged underpayment was less than \$20,000. Because Beusa had not carried its burden of showing that the amount in controversy exceeded \$75,000, remand was appropriate. Accordingly, the court granted the motion to remand.

Moreover, the court noted that if Jefferson prevailed, the difference between the 73.3 percent interest claimed by Jefferson and the 63.3 percent interest recognized by Beusa would come at the expense of Black Bull, L.L.C., another landowner. Thus, Black Bull was a necessary party, but the addition of Black Bull would destroy diversity.

Borrowed Servants

Fairfield Royalty Corp. v. Island Operating Co., Inc., ___ F. Supp. 3d ___, 2012 WL 3613102 (E.D. La. 8/20/12).

Fairfield Royalty co-owned a platform with Apache and Hilcorp. Apache was the designated operator. The platform caught on fire in January 2010. Fairfield claimed that Island Operating, which had entered into a Master Service Contract with Apache, was responsible for more than \$800,000 in damages, including property damages and loss of revenue. Island filed a motion for summary judgment on the basis that (1) the operators of the property were borrowed employees of Apache and (2) the operating agreement barred any claim by plaintiff against Apache and its employees (borrowed or otherwise).

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To determine whether an individual is a borrowed servant, nine factors are evaluated — (1) who has control over the individual and the work he is performing, (2) whose work is being performed, (3) whether an agreement, understanding or meeting of the minds exists between the original and borrowing employer, (4) whether the employee acquiesces a change in employer, (5) whether the original employer terminated his relationship with the employee, (6) who furnished tools and the place for performance, (7) whether the new employment lasted a considerable length of time, (8) who had the right to discharge the employee, and (9) who had the obligation to pay the employee. As to certain of these factors, no facts were disputed, but facts were disputed with respect to five of the factors. Accordingly, the court denied the motion for summary judgment.

Sixteenth Section Lands; Oil & Gas Revenue Owed to School Board

State of Louisiana ex rel. Plaquemines Parish Sch. Bd. v. La. Dep't of Nat. Res., ___ So.3d ___, 2012 WL 3854957 (La. App. 4 Cir. 9/5/12).

The Plaquemines Parish School Board claimed it was entitled to revenue for certain leases producing minerals from Sixteenth Section lands in Plaquemines Parish. Sixteenth Section lands are reserved for the benefit of public schools pursuant to federal law. The School Board filed a motion for summary judgment, seeking an accounting from the Louisiana Department of Natural Resources (LDNR) as to the amount of revenues owed it by the State. The trial

court granted the School Board's motion and ordered that LDNR to pay the School Board \$3,974,127.44 in royalties.

On appeal, the LDNR argued that (1) the trial court erred because prior rulings relating to the lands at issue barred the School Board's claim to the revenue, (2) the granting of the motion for summary judgment violated certain codal and jurisprudential principles, (3) the court erred in awarding a monetary sum because the School Board did not pray for one, and (4) the affidavits submitted in support of the motion for summary judgment were not based on personal knowledge. The appellate court rejected all of these arguments, finding that the School Board was entitled to the revenue it sought based on prior rulings, and affirmed the trial court's grant of summary judgment.

The LDNR also filed exceptions of no cause of action and prescription. As to no cause of action, the appellate court found that, based on the language of La. R.S. 41:640, the School Board clearly had a cause of action against LDNR. As to prescription, the court held that the claims were being asserted by the State through the School Board. Because liberative prescription does not run against the State, the exception was denied.

—**Keith B. Hall**

Member, LSBA Mineral Law Section
Louisiana State University Paul M.
Hebert Law Center
1 E. Campus Dr.
Baton Rouge, LA 70803
and

Colleen C. Jarrott

Member, LSBA Mineral Law Section
Slattery, Marino & Roberts, A.P.L.C.
Ste. 1800, 1100 Poydras St.
New Orleans, LA 70163



Expert Witness Qualification

Benjamin v. Zeichner, 11-1524 (La. App. 3 Cir. 6/27/12), 94 So.3d 1005.

Benjamin sued Dr. Zeichner for alleged medical malpractice occurring in 2000. In 2004, Zeichner filed a motion for summary judgment. Benjamin countered with an expert affidavit from Dr. James Shamblin, which presumably caused the defendant not to set the motion for hearing. The plaintiffs then proffered Dr. Shamblin as an expert witness at trial in 2011. Zeichner objected, contending that Shamblin did not meet Louisiana's statutory requirements for an expert medical witness. Shamblin had surrendered his license to practice in Louisiana in 2007 and did not renew his license to practice in Alabama at the end of 2010.

La. R.S. 9:2794(D)(1) supplements La. C.E. art. 202 and requires that a physician not licensed to practice in any jurisdiction in the United States at the time of trial be a graduate of "a medical school accredited by the American Medical Association's Liaison Committee on Medical Education or the American Osteopathic Association." Shamblin was a 1958 graduate of Tulane Medical School. But there was no "competent evidence" concerning the 1958 accreditation status of that school. The plaintiffs attempted to introduce a faxed letter from Tulane as to its 1958 status, but the court ruled that the letter and attachment to it were inadmissible hearsay, causing the trial judge to refuse to qualify Shamblin.

In evaluating the plaintiffs' appeal of the disqualification, the court noted the district court's broad discretion in determining the admissibility of expert testimony. It acknowledged that subsection (D)(1)(a) allows a physician to testify as an expert, irrespective of whether he is licensed at the time of trial, if he was practicing medicine at the time the claim arose. The defendant



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conceded that Shamblin was practicing at the time the claim arose but objected to his qualifications because of his failure to meet the requirements of subsections (b) (c) and (d). The court of appeal noted, however, that the trial court had not disqualified Shamblin because he failed to meet the requirements of subsections (b) or (c), but because he did not qualify under (d), as the plaintiffs could not prove that Tulane Medical School was accredited at the time of Shamblin's graduation.

The appellate court agreed that Tulane's accreditation had not been proven but noted that this factor alone did not preclude Shamblin from testifying as an expert. Shamblin had been reviewing the evidence in the case and had formed his conclusions before he voluntarily relinquished his medical licenses. He provided an affidavit concerning negligence and causation relating to the death of Mrs. Benjamin while he was licensed in both Alabama and Louisiana and, therefore, he was "clearly qualified" under Louisiana law to provide such testimony. The court held:

We find, therefore, that to require Dr. Shamblin to maintain his licenses simply to testify in this case or to require Plaintiffs at this late date to retain another expert who would be unfamiliar with the case creates an unduly onerous burden, considering there was no question as to Dr. Shamblin's expert qualifications under La.R.S. 9:2794(D)(1)(d) when he rendered his previous affidavit.

The court concluded that to disqualify him retroactively under subsection (d) simply because he voluntarily relinquished his licenses "is a hyper-technical reading of the statute which in no way furthers its intended purpose to provide competent expert witness testimony."

The court of appeal also pointed out that subsection (d) does not "specifically" require that a medical expert be licensed at time of testimony, whereas subsection (a) specifically states that the expert must be practicing at the time the testimony is given or at the time the claim arose. The court stated that "the failure of subsection (d) to contain


a specific time period in its wording creates ambiguity. . . . It is reasonable to assume, considering the lack of a specific time period referenced in subsection (d), that a physician is qualified to testify as an expert if he was licensed at the time the claim arose."

The court concluded that the intent of the statute was to require that expert testimony come from qualified physicians, which Shamblin was found to be. Thus, the appellate court ruled that the trial court erred in disqualifying Shamblin from testifying, a ruling that also required it to reverse the trial court's grant of a directed verdict, as it was premised on the absence of expert testimony.

Waiver of Panel

Alexander v. Shaw-Halder, 11-1136 (La. App. 5 Cir. 5/8/12), 95 So.3d 1100.

Alexander filed a request for a panel alleging negligence by Dr. Shaw-Halder and Halder Creative Smiles Dental, Inc. (Creative). The Patient Compensation Fund (PCF) responded to Alexander's Oct. 24, 2009, request by letter, notifying him that he had failed to provide the dates of the alleged



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malpractice and a brief description of the injuries, while also advising that failure to submit a "corrected request" within 30 days of this notice would mean, for prescriptive purposes, that the original filing date would be invalid. Alexander was also "warned" that the notice did not suspend the one-year time frame to appoint a panel chair, which the PCF said began to run from the date the initial request was filed.

Alexander's response on May 22, 2010, gave additional information about his injuries and stated that he had consulted with the defendant in 2007.

The PCF sent Alexander's counsel a second letter, advising that he had failed to provide the date of the alleged malpractice and that he was required, at least, to provide the month and year so it could determine whether the defendant was PCF-qualified. Again, Alexander was advised that the failure to provide a corrected request within 30 days of its (second) letter would result in his original filing date being of no legal consequence.

On July 29, the PCF again wrote Alexander and advised that his panel request would be dismissed unless he appointed an attorney chair within one year from the filing date. Hearing nothing from Alexander, the PCF notified him on Oct. 25, 2010, that the request for review had been "closed" because of the failure to timely appoint a panel chair, that the panel was deemed to have been waived, and that the filing of a panel request suspended the time in which

suit must be filed until 90 days after it had been dismissed.

Alexander filed a lawsuit on April 7, 2011, claiming that the request had been dismissed without a panel's having rendered an opinion because the defendants "failed to cooperate or participate in the medical review panel process."

The defendants filed exceptions of prescription, and in the alternative, of prematurity. They contended that the panel process never began because Alexander's complaint failed to provide the minimum information despite the PCF's pleas. The defendants also contended that the PCF's dismissal of the panel complaint was improper because it denied them their due process rights, and it was never determined whether Shaw-Halder was entitled to a panel.

The trial court overruled the exception of prescription but sustained the exception of prematurity and dismissed the lawsuit without prejudice.

Alexander contended on appeal that Creative was not a qualified provider and thus not entitled to a panel. The appellate court agreed and reversed the granting of the prematurity exception in Creative's favor.

Alexander's other assignments of error were that the trial court did not require the PCF to form a panel and that it did not address which panel request (October or May) was the operative request that triggered the prescriptive period. He contended that his Oct. 24 request was a "relative nullity" that should not have triggered any provision of

the MMA or interrupted prescription because it did not comply with the requirements of the MMA, yet he also contended that his subsequent May panel request was timely filed, valid, and interrupted prescription; thus, the trial court was incorrect in not ordering the PCF to convene a panel when it sustained the exception of prematurity. It left him, he contended, "in a curious state of procedural limbo," in which he could proceed with neither the panel, which had been dismissed, nor his lawsuit.

The defendants countered that Alexander never filed a valid/sufficient panel request. They argued that the statute not only requires the filing of panel request but also that the claim be presented for panel review before filing suit.

The trial court had not specified which panel request it used in determining the commencement of prescription. The court of appeal deduced that the PCF considered the Oct. 24, 2009, request to be that date and that the trial court had simply affirmed that PCF determination. The appellate court cited La. R.S. 40:1299.47(A)(2)(b), which states that a panel request is "filed" on the date it is received or on the date it is mailed, if mailed by certified or registered mail. The first panel request was sent by certified mail on Oct. 24, 2009. The appeals court ruled that Alexander's other letters were amendments to the October request, not new requests. This was proven, at least in part, because the PCF never dismissed the October request, thus establishing Oct. 24



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as the date that triggered the one-year period to appoint a chair.

As no chair had been appointed within a year from Oct. 24, the court cited La. R.S. 40:1299.47(A)(2)(c), which states that failure to timely appoint is deemed a waiver of the panel process. The PCF notified the parties on July 29, 2010, that the panel request would be dismissed unless a chair was appointed by Oct. 24 and then notified the parties on Oct. 25, 2010, that it had been dismissed. The court ruled that because neither party took the appropriate steps to appoint a chair, the panel had been waived and there was no need to remand the matter to the PCF because "the case is ripe to proceed to the trial court without rendering of an opinion from the medical review panel," thus reversing the trial court's sustaining of the exception of prematurity by Shaw-Halder.

—**Robert J. David**

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



Louisiana Supreme Court Grants Writ

Chase Bank USA, N.A. v. Webeland, Inc., 12-0240 (La. 9/28/12), 98 So.3d 823.

On Sept. 28, 2012, the Louisiana Supreme Court reversed the 1st Circuit Court of Appeal's holding that a default judgment based on an absolute nullity can act as res judicata to a subsequent action seeking to assert the nullity. The case arose in 2003 when Clifford Lane Keen, Jr. and his wife, Vickie Sue Keen, purchased a lot on Shubert Lane in Covington, La. Thereafter, on Dec. 21, 2006, the Keens executed a promissory note in the amount of \$183,700, payable to Chase Bank. To secure repayment of the note, on that same day, the Keens granted Chase Bank a mortgage over the

Shubert Lane property.

When the Keens failed to pay their property taxes in 2004, the St. Tammany Parish sheriff/tax collector sent a tax notice and, subsequently, a delinquency notice to the Keens at the address listed in the act of sale. However, both notices were returned to the sheriff undelivered and stamped "NO SUCH NUMBER." Although the act of sale listed both parties individually as co-owners and the Latin abbreviation "et-ux." was not used in the act of sale to identify Mrs. Keen, the notices were simply addressed to "KEEN, CLIFFORD L JR ET UX."

On June 8, 2005, the sheriff sold the property to Jackson Title Corp. for \$529 in past due taxes, who subsequently sold its interest in the property to Webeland, Inc. through a quitclaim deed. On April 23, 2009, a default judgment was entered in favor of Webeland and against the Keens and Chase Bank, confirming and quieting Webeland's title to the Shubert Lane property, and ordering the erasure of the Shubert Lane mortgage from the mortgage records.

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On April 23, 2010, Deutsche Bank, as assignee of the Chase Bank note and the Shubert Lane mortgage, filed an action to have the 2005 tax sale declared null, Webeland's confirmation judgment declared null, and the Shubert Lane mortgage reinstated. Webeland responded with exceptions of no cause of action, no right of action, prescription and res judicata, and a motion for summary judgment. The district court overruled Webeland's exceptions and denied its motion for summary judgment, holding that the 2005 tax sale was null due to insufficient notice based on the mailing and publication to Mrs. Keen by addressing her simply as "et ux."

Consequently, the confirmation judgment was also absolutely null because it was based on a null act, and thus could not support the exceptions of res judicata, prescription and no cause of action. The 1st Circuit left that ruling in place with regard to Webeland's exception of no cause of action and its motion for summary judgment. But the 1st Circuit's majority ruling found that despite this nullity, Webeland's exception of res judicata should have been sustained because Webeland previously had obtained a default judgment against the

Keens and Chase Bank in a previous tax-title-confirmation action. The 1st Circuit's concurring opinion also found in Webeland's favor, but instead found that Webeland's exception of prescription should have been sustained because an attack on a tax sale for any reason, including for an absolute nullity, must be brought within six months pursuant to Louisiana Constitution article 7, § 25, and Deutsche Bank's subsequent nullity suit was brought too late.

In a summary opinion, the Louisiana Supreme Court found that both these decisions were incorrect. First, the Supreme Court cited *Smitko v. Gulf South Shrimp, Inc.*, 11-2566 (La. 7/2/12), 94 So.3d 750, a recent Louisiana Supreme court decision that overruled the 1st Circuit's finding that a tax debtor's nullity actions were past six months and thus were untimely. In *Smitko*, the court held that lack of constitutional notice as required by *Mennonite Board of Missions v. Adams* and other federal and Louisiana Supreme Court jurisprudence is fatal to a tax sale and results in an absolute nullity. Further, the court found that the six-month time limitation under Louisiana law did not prevent the tax debtor and the mortgagor from raising the absolute nul-

lity. Therefore, the nullity actions in that case were considered to be timely.

As for the exception of res judicata, the Louisiana Supreme Court cited the Louisiana 4th Circuit Court of Appeal decision of *Sutter v. Dane Investments, Inc.*, 07-1268 (La. App. 4 Cir. 6/4/08), 985 So.2d 1263, writ denied, 08-2154 (La. 11/14/08), 996 So.2d 1091. In that case, a tax-sale purchaser brought a tax-sale-confirmation action and obtained a default judgment against the tax debtor. The tax debtor later attacked the tax sale through a separate nullity action. The 4th Circuit stated that the lack of pre-sale notice resulted in an absolute nullity, which could be asserted even after a default judgment.

The Louisiana Supreme Court reversed the appellate court and reinstated the district court's judgment.

—Christina Peck Samuels

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ABOUT THE MEDIATION INSTITUTE

In 1992, James L. Stovall founded The Mediation Institute, an organization that promotes the use of alternative dispute resolution processes in governmental, corporate, and family law arenas. Mr. Stovall has mediated over 1000 cases relating to family, the environment, personal injury, malpractice, and employment issues.

Mr. Stovall has conducted trainings for over 2000 individuals including judges, attorneys, executives, human resource personnel and mental health professionals. He has taught mediation at five universities and conducted in house training for: EEOC, the US Postal Service, the US Department of Veteran's Affairs, Altus Air Force Base, Fort Sill Army Base, and Lucent Technologies.



He holds a Master of Divinity from Phillips Theological Seminary, a BA from the University of Illinois, and attended Louisiana State University Law School. He is a practitioner member of the Association for Conflict Resolution, and is a member and past president of the Oklahoma Academy of Mediators and Arbitrators.

CHAIR'S MESSAGE

Don't Let Youth Be Wasted on the Young

By Larry Centola

George Bernard Shaw wrote, "Youth is wasted on the young." Although sometimes it seems that youth may be wasted on the young, usually we gain so much inspiration and energy from the youth. The Louisiana State Bar Association Young Lawyers Division (LSBA-YLD) has a number of upcoming events involving law students and high school students. Please become a part of these events and get inspired by the youth of our state.



Larry Centola

I Know What You Did Last Summer

This new YLD event is for law students. A group of lawyers will put on a presentation for law students regarding what to expect during summer clerkships. The presenters will tell some war stories, explain what not to do, and answer questions from the students. The first event will begin at 6 p.m. on Jan. 21, 2013, at Jacques Imo's Cafe in New Orleans. The second event will begin at noon on Jan. 26, 2013, at Louisiana State University in Baton Rouge. These events will be held in furtherance of the YLD's efforts to promote the Law Student Membership for the LSBA. If you are interested in assisting with the presentation, contact me. If you know any law students who might be interested in this program, let them know about this exciting event.

Law-Related Education

The Louisiana Center for Law and Civic Education (LCLCE) is a nonprofit 501(c)(3) organization that coordinates, implements and develops quality law and civic education programs and trains others in the delivery of these programs throughout Louisiana. The LCLCE is the educational arm of the LSBA. The YLD is very active with the LCLCE, with YLD members often participating in LCLCE programs such as Lawyers in the Classroom. The 2010 studies from the National Assessment of Educational Progress have shown that while fourth graders are becoming more proficient in civics compared to 2006, 12th graders are becoming less proficient. Think back to

when you were in high school. Did a lawyer you knew or came into contact with inspire you to strive to be a lawyer? You could be that inspiration to a high school student. If you would like to volunteer for LCLCE programs and help teach a civics class, contact me or Peggy Cotogno at the LCLCE, www.lalce.org/the_louisiana_center_for_law_and_civic_education0.aspx.

Thanks to the Chief Justice

In light of the overall theme of this issue, the YLD would like to thank Louisiana Supreme Court Chief Justice Catherine D. (Kitty) Kimball for all of her work with the youth in Louisiana. Justice Kimball has been recognized for her continued efforts regarding juvenile justice in Louisiana. She also received numerous awards for her involvement and leadership in the Court Appointed Special Advocates (CASA) program. The youth of the state are forever indebted to Justice Kimball.

Last night, one of my 5-year-olds told me, "Poor Daddy. You don't get anything because you have children." I responded, "Well, my dear Lily, nothing could be farther from the truth." The inspiration we receive from the youth is immeasurable. In addition to inspiration, we gain perspective, we gain inspiration, and we gain energy from the youth. The more we give to the young people in our community, the more we get back from it, thus making sure that youth is not wasted on the young. I highly encourage you to get involved with law-related activities that serve the youth in your community.

YOUNG LAWYERS SPOTLIGHT

Ethan A. Hunt Monroe

The Louisiana State Bar Association's Young Lawyers Division is spotlighting Monroe attorney Ethan A. Hunt.



Ethan A. Hunt

Hunt, an associate with the law firm of Davenport, Files & Kelly, L.L.P., in Monroe, graduated in 2001 from Louisiana Tech University with a BS degree in biology. After working as a biologist with an environmental consulting firm, he decided to seek a career in law. He graduated in 2006 from Louisiana State University Paul M. Herbert Law Center, earning JD and bachelor of civil laws degrees.

He began his legal career as an associate with Hudson, Potts & Bernstein, L.L.P., one of the oldest law firms in

northeast Louisiana. In 2009, he joined the firm of Davenport, Files & Kelly, L.L.P. His practice focuses on insurance defense and general civil litigation. In addition, he has developed an independent estate law practice, which now comprises approximately 40 percent of his practice.

Hunt is currently serving as president of the 4th Judicial District Young Lawyers Section and is a member of the board of directors for the 4th Judicial District Bar Association. He also is a member of the Louisiana Association of Defense Counsel.

Outside of his legal practice, Hunt has many hobbies and interests. Following in his father's footsteps, he is a master woodworker and enjoys building all sorts of things. He is vice chair of the Administrative Board of the First United Methodist Church in Monroe and a member of the board of directors for Habitat for Humanity. He is a certified ASTM asbestos inspector and has received Wetlands Delineation certification.

Hunt is married and has two daughters. He enjoys coaching his daughters' soccer team, teaching Sunday school, hunting and fishing, and playing golf in his spare time.

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YOUNG LAWYERS DIVISION NEWS

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Go to:

www.lsba.org/YLD

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

Nomination Deadline is Feb. 15, 2013: Young Lawyers Division Awards Nomination Form

The Young Lawyers Division is accepting nominations for the following awards:

- ▶ **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.
- ▶ **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made outstanding contributions to the legal profession and his/her community.
- ▶ **Service to the Public Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service to that local community by which the non-attorney public has been helped. The program or service must be sponsored by the young lawyer local affiliate organization.
- ▶ **Service to the Bar Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service that has benefited and/or enhanced the attorney community in that area. The program or service must be sponsored by the young lawyer local affiliate organization.
- ▶ **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.

All entries must include a nomination form, which may not exceed 10 pages. In addition, entries should include a current photo and résumé of the nominee, newspaper clippings, letters of support and other materials pertinent to the nomination. Nomination packets must be submitted to **Claude (T-Claude) P. Devall, Jr., Chair, LSBA Young Lawyers Division Awards Committee, 1830 Hodges St., Lake Charles, LA 70601**. Any nomination packet that is incomplete or is not received or postmarked on or before **Feb. 15, 2013**, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets. All winners will be announced at the combined LSBA Annual Meeting and LSBA/LJC Summer School in Destin, Fla., in June 2013.

1. Award nominee is being nominated for: (Individuals/local affiliate organizations may be nominated for more than one award. Please check all that apply. Candidates will only be considered for the award(s) for which they have been nominated.)

- | | |
|--|---|
| <input type="checkbox"/> Hon. Michaelle Pitard Wynne Professionalism | <input type="checkbox"/> Outstanding Young Lawyer |
| <input type="checkbox"/> Service to the Public | <input type="checkbox"/> Service to the Bar |
| <input type="checkbox"/> YLD Pro Bono | |

2. Nominator Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____

3. Nominee Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____
Birth Date _____
Marital Status/Family Information _____

4. Describe the nominee's service to the public for the past five years (or longer, if applicable). Include details as to the nature of the service, value to the public, amount of time required, whether nominee's activities are a part of his/her job duties, and other pertinent information.

5. Describe the nominee's service to the Louisiana State Bar Association Young Lawyers Division for the past five years.

6. Describe the nominee's service to the legal profession for the past five years.

7. Describe the nominee's particular awards and achievements during his/her career.

8. Provide a general description of the nominee's law practice.

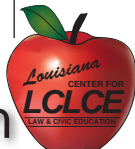
9. Describe what has made the nominee outstanding (answer for Outstanding Young Lawyer Award only).

10. Has the nominee overcome challenges (handicaps, limited resources, etc.)?

11. Why do you believe your nominee deserves this award?

12. Provide other significant information concerning the nominee.

For more information, contact Claude (T-Claude) P. Devall, Jr. at (337)433-2053 or email tclaudedevall.com.



Judges, Lawyers Teach 2,000+ Students on Constitution Day

In observance of Constitution Day on Sept. 17, the Lawyers/Judges in the Classroom Program organized 60 in-school presentations, reaching more than 2,000 students. To encourage all Americans to learn more about the U.S. Constitution, Congress established Constitution Day on Sept. 17, the date when delegates to the Convention signed the Constitution.

Constitution Day presenters included Angela A. Allen-Bell, W. Thomas Angers, Judge Reginald T. Badeaux III, Hon. Damon J. Baldone, Lt. Col. James Barkei, Alison C. Bondurant, Charles Braud, Erin O. Braud, Jessica G. Braun, Danielle N. Brown, Victor J. Brubaker, LaToya Burrell, H. Ted Cox, Judge Scott J. Crichton, John F. Dillon, Mary L. Dumestre, Angela M. Elly, Judge (Ret.) W. Ross Foote, Frances E. Hewitt, Thomas J. Hogan, Jr., Judge Patrick A. Holly, Evan P. Howell III, Bernadine Johnson, Judge Charles R. Jones, Robert C. Lehman, Jackie M. McCreary, Scott W. McQuaig, Martha S. Morgan, Judge Michael A. Pitman, DeVonna M. Ponthieu, Judge J. Wilson Rambo, Sara P. Scurlock, Judge Robert L. Segura, Celeste H. Shields, Judge Raymond S. Steib, Jr., Judge Daniel E. Stretcher, Judge Parris A. Taylor, Clair



Louisiana State Bar Association Young Lawyers Division Education Committee Chair Erin O. Braud conducted a Constitution Day program at Alice Birney Elementary School.

F. White, Holly L. Wiseman, Revettea D. Woods and Marie A. Wright.

Participating schools included Alice Birney Elementary School, Archbishop Hannan High School, Belaire High School, Booker T. Washington High School, Cedarwood School, Ella Dolhonde Elementary School, Estelle Elementary School, Folsom Junior High School, Haynes Academy for Advanced Studies, Holy Ghost School, Huntington High School, Istrouma High School, Jennings High School, Live Oak Middle School, Livingston Parish Literacy and Technology Center, Magnet High School, Marrero Middle School, Martha Vinyard Elementary School, Montessori Educational Center, Mulberry Elementary School, New Iberia Senior High School, Quest School, Roseland Elementary Montessori, Sarah T. Reed High School, St. Anthony of Padua School, St. James High School, St. John Berchmans Catholic School, West Leesville Elementary School and Westgate Senior High School.

Participating teachers included Winnifred Anderson, Tim Anger, Emily Antrainer, Helen Bahm, Millie Ballagh, Mary

Barnes, Barbara Bellar, Jimmy Benton, Ellis Bonaventure, Ashley Chavis, Laurie Duhon, Joelle Flaherty, Stephen Gantz, Katrina Gilliam, Sergio Guzman, Patty Hamilton, Stephanie Harper, Candelaria Jackson, Kelly Jennings, Kathy Jones, Christine Kerber, Patricia Koksall, Meaghan Long, Trenier Mabry, Evelyn McCulla, Rainey Pittman, Carla Powell, Wanda Rogeau, Cindi Shepard, Jane Silvie, Jamie Staub, Gloria Stumpf, Tamra Tramonte, Emily Wagner, Deondra Warner, Roger Whitlock, Judy Williamson and Patricia Wilson.

The Louisiana Center for Law and Civic Education (LCLCE) partners with the Louisiana State Bar Association and the Louisiana District Judges Association to bring volunteer lawyers, judges, legislators and educators together to deliver interactive, law-related presentations to Louisiana schools through the Lawyers in the Classroom/Judges in the Classroom programs. For more information on these programs, visit the LCLCE website, www.lalce.org.



Judge Michael A. Pitman, with 1st Judicial District Court, conducted a Constitution Day program at St. John Berchmans Catholic School.

New Judges

Jessie M. LeBlanc was elected as judge of Division D, 23rd Judicial District Court. She earned her BA degree, *magna cum laude*, in 1991 from Louisiana State University and her JD degree in 1996 from LSU Paul M.



Jessie M. LeBlanc

Hebert Law Center. In 1996, she began her law practice in the areas of civil and criminal litigation. That same year, she was hired as a public defender. In 1998, she was hired as an assistant district attorney in Ascension Parish. In 2003, she was appointed by the judges of the 23rd JDC and the Ascension Parish Court as hearing officer and judicial administrator for the district. Judge LeBlanc is a former member of the Executive Board of the Louisiana Court Administrators Association, and is a past president, vice president and secretary of the 23rd Judicial District Bar Association. She also has been appointed by the Louisiana Supreme Court to serve on the Family Court Rules Committee. She is married to David W. LeBlanc and they are the parents of three children.

Quintillis K. Lawrence was appointed as commissioner, Division B, 19th Judicial District Court. He earned his BA degree in 1998 from Southern University at New Orleans and his JD degree in 2001 from Southern University Law Center, where



Quintillis K. Lawrence

he chaired the Moot Court Board and was a contributing editor of *Reflections Magazine*. Prior to his appointment as commissioner, he served as a public defender in the 19th JDC, as an assistant district attorney in Orleans Parish, 2004-07, and as a judicial clerk in the 18th JDC. Commissioner Lawrence is a captain in the United States Army Reserve, where he is an assistant judge advocate, serving as trial counsel in the 377th Theatre Sustainment Command. He is married to Brandi Littles-Lawrence and they are the parents of two children.

Appointments

► Judge S. Maurice Hicks, Jr. was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term which ends on March 31, 2017.

► Beau P. Sagona was reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term which will begin on Jan. 1, 2013, and will end on Dec. 31, 2015.

Retirement

2nd Circuit Court of Appeal Judge Gay C. Gaskins retired, effective Sept. 20. Prior to her election to the circuit court in 1995, Judge Gaskins was a Shreveport City Court judge, serving from January 1991 until November 1995. She received her BA degree in 1975 from Centenary College and her JD degree in 1982 from Louisiana State University Paul M. Hebert Law Center. She is a former Caddo Parish assistant district attorney assigned to the narcotics division. She was active with the YWCA Family Violence Center and chaired the Shreveport Bar Association's "People's Law School."

Death

Retired Orleans Parish Criminal District Court Commissioner Joseph I. Giarrusso Jr., 60, died Sept. 12. He served as a magistrate commissioner from 1992 until his retirement in December 2006. A *magna cum laude* graduate of Georgetown University, he earned his JD degree from Tulane Law School and a master of pastoral studies from Loyola University. Giarrusso helped to create the first dedicated Domestic Violence Section of Criminal District Court as a specialized court. He served as an assistant district attorney and an assistant United States attorney and was appointed the first director of central staff for the Louisiana 4th Circuit Court of Appeal. In 1990, he was a co-recipient of the Louisiana Association of Criminal Defense Lawyer's Capital Defense Advocacy Award and had testified before the House Subcommittee on Civil and Constitutional Rights concerning *habeas corpus* reform. He previously served as chair of the New Orleans Bar Association's Criminal Law Committee. He published numerous articles in law journals and participated as a guest lecturer at the FBI Academy. He was a sustaining member of Phi Beta Kappa.

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that Margaret A. (Meg) Kaul has joined the New Orleans office as an associate.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Kimberly R. Silas** has joined the firm as an associate.

Bienvenu, Bonneze, Foco, Viator & Holinga, A.P.L.L.C., in Baton Rouge announces that **Anthony J. Lascaro** has joined the firm.

BlueWilliams, L.L.P., in Metairie announces that **Scott A. Soule** has joined the firm as a partner and **Tracy C. Rotharmel** and **Christopher M. Hatcher** have joined the firm as associates.

Cotten Schmidt & Abbott, L.L.P., in New Orleans announces that Nancy A. Brechtel,

Amy L. Maccherone and Ryan C. Wallis have been elected partners in the firm. Also, Erin Wedge Latuso has joined the firm as an associate.

Kathleen L. DeBruhl & Associates, L.L.C., in New Orleans announces that former associate **David D. (Beau) Haynes, Jr.** has rejoined the firm.

Duplass, Zwain, Bourgeois, Pfister & Weinstock, A.P.L.C., in Metairie announces that Nicole M. Boyer and Ryan M. Malone have been named partners.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Joshua W. Christie** and **Jonathan D. (Jon) Phelps** have joined the firm's New Orleans office as associates.

LoebLawFirm in Mandeville announces that Hanna M. Verlander, Karrina P. Barnhill and Kristin E. Hendricks have joined the firm.

McGlinchey Stafford, P.L.L.C., announces that **Jamie A. Polozola** has joined the firm's

Baton Rouge office as an associate.

Munck Wilson Mandala, L.L.P., announces that **Mark S. Senter** has joined the Dallas, Texas, office as a partner.

Rena M. Price, senior attorney in the Office of the Regional Counsel, Federal Aviation Administration, was promoted to managing attorney, Safety Enforcement Branch, Southwest Region, Dallas/Fort Worth, Texas.

Regan, Littlefield, Thomas & Sandhu, P.L.C., in New Orleans announces that Joshua D. Gordon has joined the firm.

Shields Mott Lund, L.L.P., in New Orleans announces that **Michael S. Blackwell** has joined the firm as an associate.

Adam G. Young, A.P.L.C., announces that **Laura N. Buck** has joined the firm's Lafayette office as an associate.

Continued next page



Michael S. Blackwell



Laura N. Buck



Joshua W. Christie



Lillian E. Eyrich



Paul S. Fiasconaro



Christopher M. Hatcher



David D. Haynes, Jr.



Mary C. Hester



Bernard S. Johnson



Zachary H. Kupperman



Anthony J. Lascaro



David A. Martinez

NEWSMAKERS

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., and New Orleans office attorneys Monica A. Frois, Laura E. Carlisle, Erin E. Pelleteri, Brandy N. Sheely and Anne Derbes Wittmann received the 2011 Advancement in Animal Law Pro Bono Achievement Award from the Animal Legal Defense Fund.

Paul S. Fiasconaro, domestic relations judicial hearing officer for the 24th Judicial District Court, received the 2012 Hearing Officer of the Year Award from the Louisiana Support Enforcement Association.

Bernard S. Johnson, a partner with Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport, has become a Fellow of the American College of Trial Lawyers.

Mary C. Hester, a partner with Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge, has been named a Fellow of the American Bar Foundation.

Robert E. (Bob) Kleinpeter, with the firm Kleinpeter & Schwartzberg, L.L.C., in Baton Rouge, received the 2012 Stalwart Award from the Louisiana Association for Justice.

Zachary H. Kupperman, an associate of Steeg Law Firm, L.L.C., in New Orleans, was elected to the board of the Anti-Defamation League.

The National Academy of Distinguished Neutrals announces that six attorney-mediators have been inducted as 2012 charter members for the Louisiana chapter: David S. Cook, Lafayette; Glen Scott Love, Baton Rouge; Andrew D. McGlathery III, Lake Charles; Bernard H. McLaughlin, Jr., Lake Charles; Mildred E. (Mimi) Methvin, Lafayette; and Lynne Rothschild Stern, New Orleans.

K. Jacob Ruppert, hearing officer and court counsel for the 11th Judicial District, was elected for a third term as president of the Louisiana Hearing Officers' Association.

Robert M. Steeg, managing partner of Steeg Law Firm, L.L.C., in New Orleans, was appointed by New Orleans Mayor Mitch Landrieu to the City Planning Commission.

Evan Williams, an attorney with Gauthier, Houghtaling & Williams in Metairie, was appointed treasurer of the executive board of the Greater New Orleans Louis A. Martinet Legal Society, Inc.

PUBLICATIONS

The Best Lawyers in America 2013

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baton Rouge, Mandeville, New Orleans): Alissa J. Allison, Edward H. Arnold III, Gerardo R. Barrios, Alton E. Bayard III, Craig L. Caesar, Phyllis G. Cancienne, Roy C. Cheatwood, Stephen F. Chiccarelli, Robert C. Clotworthy, James H. Daigle, Christopher O. Davis, Nancy Scott Degan, Warner J. Delaune, Jr., Robert S. Emmett, Donna D. Fraiche, Mark W. Frilot, Monica A. Frois, Steven F. Griffith, Jr., Jan M. Hayden, William H. Howard III, Errol J. King, Jr., Kenneth M. Klemm, Amelia Williams Koch, Kent A. Lambert, Jon F. Leyens, Jr., Mark W. Mercante, Alexander M. McIntyre, Jr., Christopher G. Morris, William N. Norton, Robert W. Nuzum, Dickie W. Patterson, Paul L. Peyronnin, Edward B. Poitevent II, James H. Rousell, Danny G. Shaw, Margaret M. Silverstein, Danielle L. Trostorff, Paul S. West, Anne Derbes Wittmann and Matthew A. Woolf.

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



Randy Opotowsky



Jonathan D. Phelps



Jamie A. Polozola



Rena M. Price



Tracy C. Rotharmel



K. Jacob Ruppert



Mark S. Senter



Kimberly R. Silas



Scott A. Soule



Robert M. Steeg



Charles L. Stern, Jr.



Evan Williams

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

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): Thomas M. Benjamin, Robert T. Bowsher, David R. Cassidy, David M. Charlton, Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Paul M. Hebert, Jr., Michael R. Hubbell, Eve B. Masinter, Claude F. Reynaud, Jr., Jerry L. Stovall, Jr. and B. Troy Villa.

Jackson Lewis, L.L.P. (New Orleans): Magdalen B. Bickford, Susan F. Desmond and René E. Thorne.

Liskow & Lewis, P.L.C. (Lafayette, New Orleans): Donald R. Abaunza, Marguerite L. Adams, Robert S. Angelico, John Anjier, George Arceneaux III, Wm. Blake Bennett, James A. Brown, Michael P. Cash, George Denegre, Jr., Thomas P. Diaz, Billy J. Domingue, James C. Exnicios, S. Gene Fendler, Joseph C. Giglio, Jr., Don K. Haycraft, Robert E. Holden, Shannon Skelton Holtzman, Jonathan A. Hunter, R. Keith Jarrett, Greg L. Johnson, Matt Jones, Phillip K. Jones, Jr., Cheryl Mollere Kornick, Gene W. Lafitte, David W. Leefe, Thomas B. Lemann, Marilyn C. Maloney, James N. Mansfield III, Thomas J. McGoey II, Robert B. McNeal, Joe B. Norman, William W. Pugh, Richard W. Revels, Jr., Leon J. Reymond, Jr., Leon J. Reymond III, Jamie D. Rhymes, George H. Robinson, Jr., Scott C. Seiler, Lawrence P. Simon, Jr., Randy C. Snyder, John M. Wilson and John D. Wogan.

Steeg Law Firm, L.L.C. (New Orleans): **Robert M. Steeg, Randy Opotowsky, Charles L. Stern, Jr., Lillian E. Eyrich and David A. Martinez.**

Taylor, Porter, Brooks & Phillips, L.L.P. (Baton Rouge): W. Arthur Abercrombie, Jr., Robert W. Barton, John S. Campbell, Jr., John Stone Campbell III, Preston J. Castille, Jr., Robert L. Coco, Anne J. Crochet, Vicki M. Crochet, Bonnie Jeanne Davis, Paul O. Dicharry, Nancy C. Dougherty, James L. Ellis, Brett P. Furr, Eugene R. Groves, Ann M. Halphen, Mary C. Hester, J. Clayton Johnson, Amy C.

Lambert, Amy Groves Lowe, W. Shelby McKenzie, John P. Murrill, J. Michael Parker, Harry J. (Skip) Philips, Jr., Patrick D. Seiter, Fredrick R. Tulley and Gerald L. Walter, Jr.

Benchmark Litigation

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, Celeste R. Coco-Ewing, Meredith A. Cunningham, George C. Freeman III, Craig R. Isenberg, H. Minor Pipes III, Richard E. Sarver and Steven W. Usdin.

Chambers USA 2012

Steeg Law Firm, L.L.C. (New Orleans): **Robert M. Steeg.**

Louisiana Super Lawyers 2012

Cotten Schmidt & Abbott, L.L.P. (New Orleans): Lawrence E. Abbott, Charles H. Abbott and Nancy A. Brechtel.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
April/May 2013	Feb. 4, 2013
June/July 2013	April 4, 2013

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

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

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UPDATE



Judge Karen Wells Roby, fourth from left, with the U.S. District Court for the Eastern District of Louisiana, was installed as 2012-13 national president of the Federal Magistrate Judges Association. Other Executive Committee members are, from left, Judge Malachy E. Mannion, Wilkes-Barre, PA, immediate past president; Judge David C. Keesler, Charlotte, NC, treasurer; Judge Sidney I. Schenkier, Chicago, IL, president-elect; Judge Roby; Judge Karen Strombom, Tacoma, WA, vice president; and Judge Alan Baverman, Atlanta, GA, secretary.

Judge Roby Installed as President of Federal Magistrate Judges Association

U.S. Magistrate Judge Karen Wells Roby (U.S. District Court for the Eastern District of Louisiana) was installed as national president of the Federal Magistrate Judges Association (FMJA) during its 50th annual convention.

Judge Roby is a 1983 graduate of Xavier University of Louisiana, where she received a BS degree in business administration with emphasis in economics, accounting and computer science. She is a 1987 graduate of Tulane Law School, where she serves as an associate professor teaching trial advocacy. She has served on the federal bench since 1999.

As national president, Judge Roby will meet with members of Congress and the

U.S. Supreme Court Chief Justice regarding issues concerning its constituents. Weighing in on policy issues in the federal judiciary, she will work on educating the public about the importance of the magistrate judge system and the integral role the FMJA plays in teaching civics education to students and adults in the United States.

Through its Rules Committee, the FMJA directly works on change to the Federal Rules of Criminal and Civil Procedure. The FMJA also works in partnership on issues of common interest and concern with the Federal Judges Association, the National Conference of Bankruptcy Judges and the Administrative Office of the U.S. Courts.

Judge Lombard Receives Lifetime Achievement Award

Judge Edwin A. Lombard is the recipient of the 2012 George W. Crockett, Jr. Lifetime Achievement Award, presented by the National Bar Association (NBA) Judicial Council. The award's namesake was a U.S. congressman from



Judge Edwin A. Lombard

Michigan who was a member of the Judiciary and Foreign Affairs committees. On the latter, he chaired the Subcommittee on Western Hemisphere Affairs.

Judge Lombard was one of the first African-Americans to be admitted to Tulane University (Rockefeller Fellowship Award). While attending, he founded a group called African-American Congress at Tulane to serve the needs of African-American students at Tulane. He attended Loyola University Law School as a Roosevelt Fellow.

In 1973, he was elected as clerk of Orleans Parish Criminal District Court. He was elected to the 4th Circuit Court of Appeal in 2003. After Hurricane Katrina in 2005, the Louisiana Supreme Court appointed Judge Lombard as Supernumerary Judge to rebuild the criminal justice system in Orleans Parish. He was instrumental in restoring thousands of pieces of evidence needed for criminal trials. In 2007, he was appointed as a member of the Judiciary Commission of Louisiana for a four-year term, serving as chair in 2009 and 2010. He was recently elected president of the NBA/Louisiana Judicial Council.

Judge Stewart Becomes Chief Judge of U.S. 5th Circuit

Judge Carl E. Stewart of Shreveport became the chief judge of the U.S. 5th Circuit Court of Appeals, effective Oct. 1. He succeeds Chief Judge Edith H. Jones. Judge Stewart's elevation marks the second time the chief judge position has been filled by a Shreveport resident. He also becomes the first African-American to serve as chief judge of the 5th Circuit.



Judge Carl E. Stewart

Judge Stewart received his undergraduate degree, *magna cum laude*, in 1971 from Dillard University and his JD degree in 1974 from Loyola University Law School. Following admission to the Louisiana State Bar Association in October 1974, he entered the U.S. Army and served as a captain in the Judge Advocate General Corps until October 1977. Following his military service, he served as a staff attorney with the Louisiana Attorney General's Office, an assistant U.S. attorney, a special assistant city and district attorney and a private practitioner. In 1985, he was elected as a

judge for the 1st Judicial District Court, Caddo Parish, and was reelected without opposition five years later. In 1991, again without opposition, he was elected to the Louisiana 2nd Circuit Court of Appeal. He was appointed as U.S. Circuit judge on May 9, 1994, by President William J. Clinton.

He is national vice president of the American Inns of Court Foundation and a member of the National, Federal, Louisiana and Shreveport bar associations and the Federal Judges Association. He is the immediate past chair of the Advisory Committee on the Federal Rules of Appellate Procedure of the Judicial Conference of the United States, a post to which he was appointed by U.S. Supreme Court Chief Justice William H. Rehnquist and later extended by Chief Justice John G. Roberts, Jr. He has served as a member of the 5th Circuit Judicial Council and, for seven years, chaired its Space and Staffing Committee, which oversees resources for federal building construction.

As Circuit chief judge, Judge Stewart will sit on the Judicial Conference of the United States, which establishes policies for federal courts nationwide.

Supreme Court Names Judiciary Commission Chair, Vice Chair

Fourth Judicial District Court Judge Sharon I. Marchman and 19th Judicial District Court Judge Anthony J. Marabella, Jr. have been elected chair and vice chair, respectively, of the Judiciary Commission of Louisiana, the Louisiana Supreme Court announced.



Judge Sharon I. Marchman

Judge Marchman received her undergraduate degree in 1982 and her law degree in 1985 from Louisiana State University and its Paul M. Hebert Law Center. After working as a law clerk at the



Judge Anthony J. Marabella, Jr.

2nd Circuit Court of Appeal, she entered private practice with the Monroe firm of Theus, Grisham, Davis & Leigh where she became a senior partner. In 2000, she was elected to the 4th Judicial District Court and served as chief judge. She presides over juvenile court and adult drug and DWI court for Morehouse and Ouachita parishes. She also established a juvenile drug court for Ouachita Parish which has become a MacArthur Foundation Model for Change site.

Judge Marabella received his law degree in 1973 from Louisiana State University Paul M. Hebert Law Center. He began his career in Baton Rouge as an assistant parish attorney (1973-75), an assistant district attorney (1975-78) and an assistant public defender (1978-80). He was in private practice devoted to criminal defense from 1980 until his election in 2003. He presides over a criminal docket at the 19th JDC and over drug court. He serves as an adjunct faculty member of LSU Paul M. Hebert Law Center.

LOUISIANA BAR FOUNDATION

Kids' Chance Scholarships Available for 2013-14

The deadline to submit an application for the 2013-14 Louisiana Bar Foundation (LBF) Kids' Chance scholarship is Friday, Feb. 22, 2013. The Kids' Chance scholarship program provides scholarships to the children of Louisiana workers who have been killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law. Since 2004, the program has awarded 179 scholarships totaling \$317,600.

For program details, go to: www.raisingthebar.org/ProgramsAndProjects/KidsChanceGuidelines.asp.

For an application, contact Dee Jones at (504)561-1046 or email dee@raisingthebar.org.



The Louisiana Workers' Compensation Corp. (LWCC) presented the Louisiana Bar Foundation's (LBF) Kids' Chance scholarship program with a check at the ninth annual Kids' Chance Invitational Golf Tournament in September. From left, LBF President Patricia A. Krebs, LWCC President and CEO Kristin W. Wall and Kids' Chance Committee member Gary Knoepfler.



The 2012-13 officers and board members and Younger Lawyers Division officers and board members of the New Orleans Chapter of the Federal Bar Association were installed during the Annual Meeting and luncheon this past August. Eric R. Nowak is chapter president. Amy S. Malish is Younger Lawyers Division chair.

Awards Presented, Officers Installed During N.O. Chapter Federal Bar Association Meeting

Several awards were presented and 2012-13 officers, board members and Younger Lawyers Division board members were installed during the Annual Meeting and luncheon of the New Orleans Chapter of the Federal Bar Association this past August.

Luncheon keynote speaker was Rita Benson LeBlanc, owner/vice chair of the board for the New Orleans Saints and New Orleans Hornets.

Thomas G. Fierke received the 2012 President's Award for contributions to community leadership outside the practice of law. He was honored for his work with the Employer Support of the Guard and Reserve program, a Department of Defense volunteer organization.

John Wilson Reed, a partner of the New Orleans law firm Glass & Reed, received the 2012 John R. (Jack) Martzell Professionalism Award, which recognizes the attorney who best exemplifies outstanding professionalism in the practice of law.

Judy Perry Martinez, vice president, chief compliance officer and Diversity and Inclusion Leadership Council member for Northrop Grumman Corp., received the 2012 Camille F. Gravel, Jr. Public Service Award, presented to an attorney who has done substantial pro bono legal work.

Installed as 2012-13 chapter officers were Eric R. Nowak, president; Wendy Hickok



Awards were presented during the Annual Meeting of the New Orleans Chapter of the Federal Bar Association. From left, John Wilson Reed, 2012 John R. (Jack) Martzell Professionalism Award; Judy Perry Martinez, 2012 Camille F. Gravel, Jr. Public Service Award; and Thomas G. Fierke, 2012 President's Award.

Robinson, president-elect; Christopher J. Alfieri, treasurer; Kelly T. Scalise, recording secretary; Celeste R. Cocco-Ewing, membership chair; Hon. Kurt D. Engelhardt, immediate past president; and Amy S. Malish, Younger Lawyers chair.

The 2012-13 board members are W. Raley Alford III, John T. Balhoff II, Hon. Carl J. Barbier, Walter F. Becker, Jr., Hon. Nannette Jolivet Brown, Brian J. Capitelli, Hon. Lyle W. Cayce, Lawrence J. Centola III, John T. Culotta, Donna Phillips Currault, Michael J. Ecuyer, Joelle Flannigan Evans, Harold J. Flanagan, Kathleen C. Gasparian, Soren E. Gisleson, Brian L. Guillot, Steven

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Installed as 2012-13 Younger Lawyers Division officers are Amy S. Malish, chair, Sara E. Mouledoux, vice chair; Stephen G.A. Myers, secretary; Jennifer L. Englander, treasurer; and Erin K. Arnold, past chair.

The 2012-13 Younger Lawyers Division board members are Matthew S. Almon, Elisabeth L. Baer, Jason M. Baer, Alison N. deClouet, Michael B. DePetrillo, Corey E. Dunbar, Ellen P. Dunbar, Megan M. Dupuy, Sara A. Johnson, Susan G. Keller-Garcia, Sunni J. LeBeouf, Ryan O. Luminais, Lance C. McCardle, Sarah V. Myers, Erin E. Pelleteri, Kelly D. Perrier, Aaron A. Reuter, Elizabeth R. Richard, William W. Sentell, Scott L. Sternberg, Sarah E. Stogner, Erica A. Therio, Dylan Tuggle Thriffley, Christopher J. Weema and Katie F. Wollfarth.

President's Message The Giving Season

By Patricia A. Krebs

With the season of giving upon us, please consider making a year-end gift to the Louisiana Bar Foundation (LBF). Contributions to the LBF ensure justice is a reality, not just for those who can afford it, but for everyone in Louisiana.

A gift to the LBF demonstrates your belief in our mission and will help strengthen the programs we support and the services we provide. Please support the work of the LBF and make your investment in access to justice. Working together, we can meet the legal needs of our state's most vulnerable people.

With your support, the LBF is able to:

- ▶ Help women and children in domestic violence shelters

- ▶ Aid the elderly through financial crises
- ▶ Assist families in retaining their homes
- ▶ Give children a voice in court
- ▶ Bring families back together
- ▶ Provide education to youth about the legal process

- ▶ Build educational courtrooms in schools

- ▶ Bring communities together to identify legal needs in their area

Please take the time during this busy holiday season to reflect on the blessings in your life and consider a gift to the LBF

to provide services that go to the very heart of the health, safety and security of many of our citizens and their families. Make your gift online at: www.raisingthebar.org/gift.

Or mail directly to the LBF, Ste. 1550, 909 Poydras St., New Orleans, LA 70112. If you have any questions, contact our Development Director Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.



Patricia A. Krebs

LBF Seeking Nominations for 2013 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2013 Curtis R. Boisfontaine Trial Advocacy Award.

Nominations should include the nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations must be received in the LBF office by Friday, Feb. 8, 2013, and should be mailed to Dennette Young, Communications Director, Louisiana Bar Foundation, Ste. 1550, 909 Poydras St., New Orleans, LA 70112, or emailed to dennette@raisingthebar.org.

The award — recognizing a Louisiana

attorney who exhibits longstanding devotion to and excellence in trial practice and who upholds the standards of ethics and consideration for the court, litigants and all counsel — will be presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla., in June. The recipient will receive a plaque and \$1,000 will be donated to a Louisiana nonprofit, law-related program or association of the recipient's choice.

This award was established through an endowment to the Louisiana Bar Foundation in memory of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the

Louisiana Association of Defense Counsel. Donations from Sessions, Fishman, Nathan & Israel, L.L.P., the Boisfontaine family and friends established the fund.

Previous recipients of the award are Wood Brown III, William K. Christovich, Patrick A. Juneau, John B. Scofield, Gene W. Lafitte, Charles S. Weems III, Herschel E. Richard, Jr., Jack C. Benjamin, Sr., Robert B. Acomb, Jr., John J. Weigel, Allen Lewis Smith, Jr., H. Alston Johnson III, John R. Martzell, George A. Frilot III, Phillip A. Wittmann, J. Michael Small, John M. McCollam, William R. Forrester, Jr. and Daniel Lund.

LBF Seeking Sponsors for 27th Annual Fellows Gala

The Louisiana Bar Foundation will celebrate the 27th Annual Fellows Gala on Friday, April 12, 2013. The gala and live auction will be held at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans.

Sponsorships are available at the following levels:

- ▶ **Benefactor's Circle, \$5,000:** Includes 30 patron party tickets, 30 gala tickets with three reserved tables (seats 30) and recognition at the event.

- ▶ **Cornerstone, \$3,500:** Includes 20 patron party tickets, 20 gala tickets with two reserved tables (seats 20) and recognition at the event.

- ▶ **Capital, \$2,000:** Includes 10 patron party tickets, 10 gala tickets with one reserved table (seats 10) and recognition at the event.

Individual tickets to the gala are \$150. Young lawyer individual gala tickets are \$100.

Discounted rooms at the Hyatt Regency New Orleans are available for \$209 a night

for Thursday, April 11, and Friday, April 12. Reservations must be made before Friday, March 22, 2013, to get the discounted rate. Call the hotel directly at (888)421-1442 and reference group "Louisiana Bar Foundation" to make a reservation.

For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

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

DEADLINE

For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2013. Check and ad copy should be sent to:

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ANSWERS for puzzle on page 325.



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Lucid INTERVALS

By Vincent P. Fornias

CALL ME PLAINTIFF

My friend John McLindon, a fellow Baton Rouge lawyer who apparently has even less of a life than yours truly, recently referred me to an interesting federal decision from, of all places, the Southern District of California (go figure).

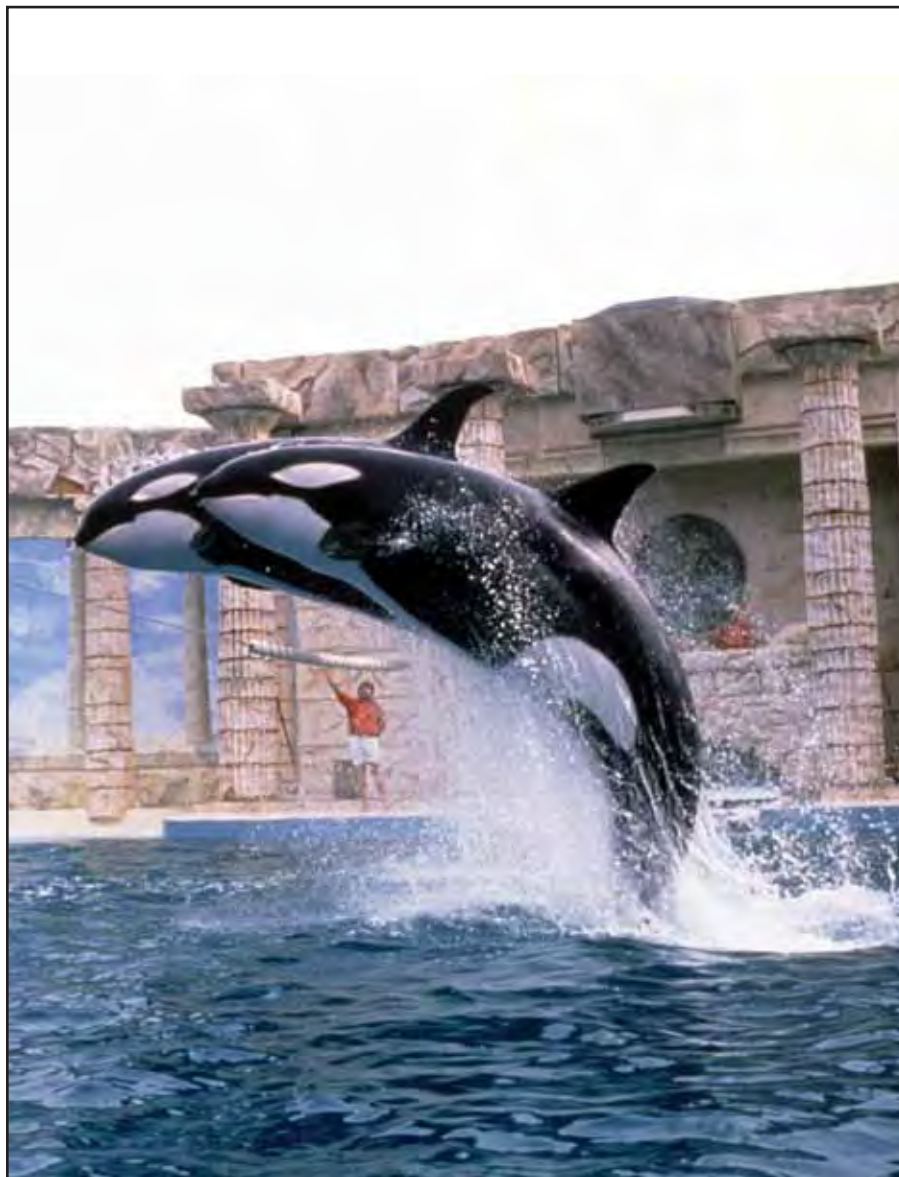
In *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. SeaWorld Parks and Entertainment, Inc.*, 2012 WL 399214, the court apparently was forced to spend untold time and taxpayer dollars to officially decree that whales have no standing (sounding?) under the United States Constitution. Specifically, PETA, that well-known hallmark of moderation rivaled only by Greenpeace and the Taliban, tried unsuccessfully to make a federal case out of the plight of five orca whales sequestered at SeaWorld. In so doing, the court refused to extend the 13th Amendment proscription against involuntary servitude to anyone other than . . . duh . . . human beings.

All of this leads us inevitably to an irresistible litany of issues by inquiring minds similarly lacking a life (cue in the rim shot sound bite):

▶ Were *amicus curiae* briefs filed on behalf of Willy, Flipper and The Little Mermaid?

▶ What was the over/under on referencing The Gill of Rights (yes, we are well aware that *orcinus orca* is far from a fish, but please allow us a little poetic license here)?

▶ Is this decision to be strictly construed to its own facts, the rest being relegated to Moby dictum?



Just imagine if PETA had gotten its way. We would all be changing our tune to “I went on down to the Audubon Zoo and dey all axed to sue.”

If you have experienced, seen or heard something humorous in your day-to-day legal practice, or if you just have an idea for a Lucid Intervals column, by all means, let the Louisiana Bar Journal know. Mail, fax or e-mail your stories, anecdotes, quotes or ideas c/o Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; e-mail dlabranche@lsba.org. She'll make sure your “gems” get into the right hands. Keep smiling!

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