

# LOUISIANA BAR JOURNAL

August/September 2006

Volume 54, Number 2

## The Gingerbread Man's Run is Over!

Permanent Disbarment is Penalty  
for Using Runners

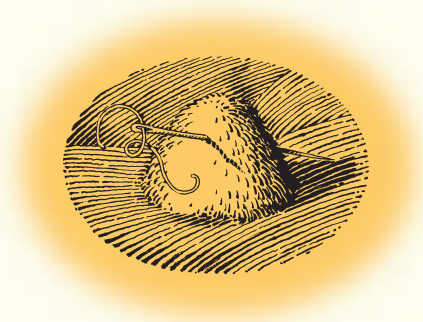


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August / September 2006

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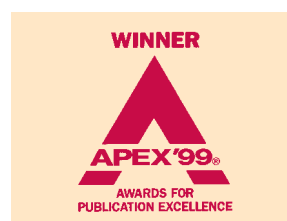
The Louisiana Bar Journal (ISSN 0459-8881) is published bimonthly in the months of February/March, April/May, June/July, August/September, October/November and December/January by the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Telephone: (504)566-1600. Periodicals postage paid at New Orleans, Louisiana and additional offices. Annual subscription rate for members is \$5, which is included in the dues; and for nonmembers, \$45 (domestic) and \$55 (foreign). Canada Agreement No. 40843510. Canada return address, Station A P.O. Box 54, Windsor, Ontario N9A 6J5. E-mail cpcreturns@wdsmail.com.

**Postmaster:** Send change of address to: Louisiana State Bar Journal, 601 St. Charles Avenue, New Orleans, Louisiana 70130.

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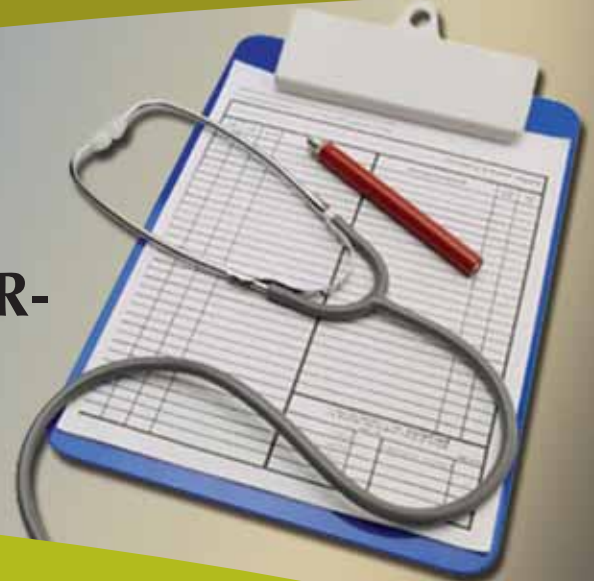


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# Our Profession is Worth the Investment



*By Marta-Ann Schnabel*

**M**y father was just 9 years old when he and his family emigrated from Germany to this country. One Saturday morning, a scant few months before Hitler ordered the invasion of Poland, my grandparents, my father and my uncle left their well-appointed, middle-class home in Hamburg on the pretext of a day trip out of the city's harbor. They carried a picnic basket stuffed with pictures and cash. They wore an extra layer or two of clothes, most of which were heavily hemmed so as to hold pieces of gold and silver. Their route was circuitous, secretive, probably immensely expensive, but they arrived in Amsterdam unharmed and were able to book passage to the United States.

Daddy was perhaps too young to fully understand the experience, as he never spoke of fear or disappointment. He acknowledged that his family had left a very comfortable life — my grandfather owned a chain of apothecaries in Hamburg and my grandmother was reasonably well-known as a writer about matters pertaining to music — but only occasionally expressed remorse at what he had left behind. When he did so, it was mostly to bemoan the scarcity of pastry shops and accomplished butchers in this country. Quality wurst and cream puffs were never in sufficient supply here as compared to his fond memories of the Hamburg of his childhood . . . but the Schnabel family's obvious obsession with food is a separate topic altogether, and one that is doubtless better suited to the periodical of some other discipline.

My own childhood was peppered with my father's descriptions of his assimilation into American society. Where other children begged for their fathers to retell the story of the championship football



**One Saturday morning in October 1938, a scant few months before Hitler ordered the invasion of Poland, my grandparents, my father and my uncle (in photo) left their well-appointed, middle-class home in Hamburg on the pretext of a day trip out of the city's harbor.**

game, I often refused to go to sleep without at least one story about the boarding house that my grandparents managed (and then ultimately purchased) in Hartford. My favorite stories, though, were about my father's first year in the public school system, where he attended class every day, despite the fact that he could not understand a word of English. Well-intentioned neighbors even insisted that he

join the local Boy Scout troop. He had no idea what he had been invited to do, but went willingly until he arrived at the meeting and encountered a roomful of young men in what he considered to be "brown shirt" uniforms. He fled in fear, and it took a great deal of effort to explain to him that Hitler Youth did not exist in America. In the end, my father never received formal instruction in the En-



glish language; instead, his teachers, classmates, even his troop leaders, worked with him relentlessly until — as he explained it — one day he just *understood*.

In short, my father always felt a tremendous gratitude and loyalty toward his adopted country. He had a deep and abiding respect not only for the sanctuary his family was given, but also for the fundamental components of our culture and our system of government. As an outsider, I think, he was far better able to appreciate much of what we take for granted. He felt that it was an honor and a privilege to be an active citizen. I was well into my adolescence before I realized that his views cast him as a bit of an eccentric. For example, one of my most vivid memories of my father is of his annual lecture on April 14. He would insist that I sit with him as he wrote a check to the IRS so that he could explain that the opportunity of democracy carries with it the responsibility of participation and contribution. We cannot take enfranchisement seriously, he would say, unless we invest in it.

Mind you, in my adult life, I have never been quite able to muster my father's patriotic sentiments on tax day. I file extensions; I grumble and curse and complain. My husband, the poster child for the National Taxpayer's Union, has spent the last 20 years (far longer than my father had influence over me) delivering quite a different set of lectures, replete with references to Adam Smith and the virtues of the free market which can only function without regulation and bureaucracy.

Still, there is something about the purity of my father's viewpoint that has stayed with me all these years. By the time I came along, he was no naive rube. He'd been educated in a couple of the finest universities in the country, done a stint as an officer in the U.S. army, horrified his family by marrying a gentile, and uprooted himself and his young wife on a periodic basis in pursuit of his career. Yet, having experienced tyranny, he was a true believer in shouldering the responsibility necessary to preserve participation.

And so am I. When I took office in

June, I gave a short speech that touched just a bit on this theme within the context of our profession. I feel quite certain that nobody noticed, as they all applauded rather enthusiastically — proof, perhaps, of my daughter's perspective that I droned on for far too long for anyone to actually have been listening. So this article is my way of trying again, this time perhaps more directly.

Last year's disasters, while testing our endurance to near capacity, seem also to have brought out the best in us. An evacuee myself, I marveled as the LSBA staff and my colleagues in the bar mobilized to assist our members, local bar associations, law schools, legal aid providers, the governor, the Supreme Court, the Attorney General, even the Legislature in virtually all pertinent aspects of the crisis. What emerged, in my view, was the picture of a working bar association that is very different from the image that many of us hold. Indeed, it's a picture that those who choose not to participate would have trouble even conjuring in their imagination. A picture of committed professionals making hard choices to serve the system of justice and the public good rather than just narrow self-interest.

With the experience of what we can be and what we can do fresh in our mind, I believe that it is time for us as a profession and an association to make the conscious choice that we will continue on that path. Historically, some have viewed us as simply a bloated "trade association" with no consequence or value. Others, perhaps those who hold a worldview akin to my father's, recognize that we are members of a privileged profession that has been granted the benefit and respect inherent in self-regulation — with the expectation that we will take our responsibility for steering the course of justice in this state rather seriously.

I think that we have come to take our privilege for granted. Perhaps more disturbingly, there are signs that the public, the Legislature, even the courts, are losing confidence in us as self-regulators in Louisiana. We are busy tending to our families and our law practices, so we often leave the knotty issues facing the

profession to others. We raise our heads in protest and anger only when we disagree with the result of a hard choice made by others. We feel imposed upon, interfered with, but impotent. "Why doesn't somebody do something about this?" we ask. Well, as Daddy said, democracy — or self-regulation — carries with it the responsibility of participation. An active and meaningful bar association does not come without a price, both in volunteer participation and in dues dollars.

Right now, we are rather like New Orleans was before Katrina. There are few visible signs of levee failure at the LSBA: we have a small percentage of very active and dedicated members who — if they stretch themselves — can cover the work and, when rallied, another small percentage can be relied upon to help. Our staff-to-member ratio is the smallest in the country, but the staff is nonetheless dedicated and admirably effective. And because we raise about 60 percent of our annual income outside of the dues structure, we can just about cover what it costs to do what we do. We have to recognize, however, that the LSBA levees are pretty much at capacity.

I was reminded of my father the other day when I met with a lawyer who is actively involved in a number of LSBA committees and is a former chair of the Louisiana Attorney Disciplinary Board. "\$265 in annual fees — \$100 to the LSBA and \$165 to Discipline — is a bargain in exchange for the privilege of practicing law," he said.

Living in post-Katrina New Orleans, I can tell you that there are few bargains to be had. My firm, a four-lawyer shop, has struggled through unproductive exile, lost clients, displaced opposing counsel and closed courts, just as other firms in affected areas have. Every expense feels outrageous. But, as I devote the majority of each day now to matters that are not fee-generating, I remind myself that our profession is worth the investment.





# The Gingerbread Man's Run is Over!

## Permanent Disbarment is Penalty for Using Runners

By Professor Michelle LaBorde Ghetti

*Run, run  
As fast as you can.  
You can't catch me.  
I'm the gingerbread man.*  
— An old English folktale

Remember that childhood tale? A little boy was told time and again not to open the oven door and let that gingerbread man out. But he did anyway. The gingerbread man ran and ran and challenged anyone to try to catch him.

Louisiana has its own running man — a person, known as a “runner,” who personally contacts victims to sign them up with an attorney. We may not call him a gingerbread man, but we sure tell our attorneys not to let him out of the oven. And these runners, and the attorneys who have let them out of the oven, have challenged anyone to try to catch them.

In 2001, however, the Louisiana Supreme Court — in part based on the serious issues arising due to the illegal use of runners — amended its sanction rules to provide

for the *permanent* disbarment of attorneys in this state.<sup>1</sup> In the four years since that change, five attorneys have been permanently disbarred<sup>2</sup> due to their entanglement in what is now referred to as the “runner-based solicitation industry,”<sup>3</sup> and one has permanently resigned from the practice of law in lieu of discipline.<sup>4</sup> Of the 27 attorneys “caught” using runners since 1979, only *three* currently hold a license to practice law in Louisiana.<sup>5</sup> Perhaps worse, 12 attorneys have been convicted of state and federal felonies, ranging from solicitation to mail or wire fraud to obstruction of justice, and are serving or have served anywhere from two years to 20 years in prison.

### Who is “the Gingerbread Man?”

A “runner” is a person who directly contacts an individual who may have a legal need and recommends a specific attorney<sup>6</sup> to that person in exchange for remuneration from the attorney if the client ultimately hires that attorney. Think Danny DeVito in the movie version of John Grisham’s novel, *The Rainmaker*. Runners come in many shapes and sizes. In the past, ambulance drivers, tow truck drivers, clerks of court and law enforcement officers have been a few of the professions involved in soliciting clients on behalf of attorneys. Over the years, however, the Louisiana Legislature has passed laws making such solicitation by those professions criminal.<sup>7</sup> Runner solicitation cases today do not seem to be tied to any one profession, although legal “assistants” and “investigators” seem to be the most prominent.<sup>8</sup> Taxi drivers,<sup>9</sup> bus drivers, carpenters and even ordained ministers<sup>10</sup> have cashed in on what has become a very lucrative industry.<sup>11</sup>

### Don’t Open the Oven Door!

In one version of “The Gingerbread Man,” Grandma puts the gingerbread man in the oven and tells her grandson not to open the door. In much the same way, the legal profession tells its attorneys the same thing about runners . . . “Don’t open the door!” Rule 7.3 of the

Louisiana Rules of Professional Conduct restricts lawyers from direct in-person contact with potential clients by themselves *or others acting at their request or on their behalf*. Rule of Professional Conduct 7.2 prohibits lawyers from giving anything of value to a person for recommending the lawyer’s services. Lawyers also can be disciplined for not reporting other lawyers who they know to be engaged in solicitation, even if they themselves are not directly involved.<sup>12</sup>

Louisiana also has closed the door. Solicitation by an attorney has been a crime since 1977, a felony since 1993.<sup>13</sup> Prior to 2001, however, any sanction for a person not in one of the above-listed professions was a slap on the hand, a misdemeanor.<sup>14</sup> Since 2001, the sanction for anyone who solicits business for an attorney by direct contact with a potential client is the same as for the attorney — potentially imprisonment at hard labor.<sup>15</sup> At this time, the penalties for a first offense are a fine not to exceed \$5,000 or imprisonment of not more than five years with or without hard labor. Think that is stiff? At press time, pending<sup>16</sup> in the 2006 legislative session is House Bill No. 290, which would increase the fine to not more than \$10,000 and require *mandatory* imprisonment for *not less than* two years nor more than 10 years *at hard labor*.<sup>17</sup>

### Burned Hands

Unfortunately for the many who have played with the gingerbread man, discipline or conviction for solicitation is just one way their hands got burned. When the oven door is opened and the gingerbread man pops out, many discover that a few other “goodies” were baking alongside him. To hide the use of runners, attorneys usually pay them in cash or in checks for small amounts. This leads to problems with the federal government, the Internal Revenue Service in particular. Structuring — breaking up a single currency transaction of more than \$10,000 into separate smaller transactions in order not to trigger the financial institution \$10,000 report filing requirements stated



The Louisiana Supreme Court and the head of the Office of Disciplinary Counsel have both expressed concern about the “collateral effects on the public perception of the judicial system.” Both believe that use of runners erodes “the trust and confidence which the public must have in the legal system for it to function properly.”

in 31 CFR § 103.22(a)(1) — is prohibited by 31 USC § 5324.<sup>18</sup> Stephen Bernstein pled guilty to violating this statute and was sentenced to four months of home detention and three years of probation.<sup>19</sup> Russell Solomon pled guilty to the crime of structuring and paid a \$70,000 fine.<sup>20</sup> Curtis Coney pled guilty to 10 counts of structuring and, through a plea bargain, the government recommended he be sentenced to 33 months in the federal penitentiary and three years of probation.<sup>21</sup>

Greedily, many attorneys bill the runner's fee to the client described as something else — often as “transportation” charges or, if paying doctors for referrals, as “expert fees” or “medical expenses.” Or, sometimes, the attorneys submit a claim to the insurance company knowingly describing payments made by the doctor to a runner or to the attorney as medical expenses and then deducting those amounts from the settlement proceeds upon payment. Sending such a fraudulent bill or claim through the mail to the client or insurance company is mail fraud.<sup>22</sup> Jason Rochon, Karl Kirchberg and Cardell Thomas all pled guilty to mail fraud.<sup>23</sup> Rochon was sentenced to four months in a halfway house and four months of home detention.<sup>24</sup> Kirchberg was sentenced to four months in a halfway house with three years of probation and a \$20,000 fine.<sup>25</sup> Richard Cuccia pled guilty to counts of mail fraud and tax evasion and was sentenced to five years in prison and a \$250,000 fine.<sup>26</sup> Allan

Katz pled guilty to conspiracy to commit mail fraud and was sentenced to 16 months in prison with three years of probation, was fined \$40,000, and was ordered to pay restitution of \$114,675.<sup>27</sup>

Knowing that a felony is being committed and not reporting it is also a federal crime known as misprision of a felony.<sup>28</sup> Tommie Lockhart pled guilty to concealing knowledge of a conspiracy by a medical provider to commit mail fraud; he received three years of probation, a \$2,500 fine and 100 hours of community service.<sup>29</sup> Thomas Grand pled guilty to one count of misprision of a felony for failing to report conspiracy to commit mail fraud by a medical provider and was sentenced to two years of probation and a \$2,500 fine.<sup>30</sup>

And then there are those crimes that get committed as the heat in the oven gets turned up. Fernand L. Laudumiey III and Dennis Mann pled guilty to obstruction of justice for encouraging the runners in their case to testify falsely to the grand jury that was investigating them.<sup>31</sup> They were sentenced to pay hefty fines (Laudumiey, \$20,000; Mann, \$40,000) and serve six months in a halfway house, perform 200 hours of community service and spend three years on probation.<sup>32</sup> They were lucky. Curtis Coney pled guilty to one count of obstruction of justice for asking his secretary to lie, as well as counts of structuring and conspiracy, and was sentenced to 33 months in the federal penitentiary with three years of probation.<sup>33</sup>

## The Chasers

If you remember the story of the gingerbread man, many people chased after him but could not catch him. Similarly, many chased the runners and the attorneys who use them. For years, the Office of Disciplinary Counsel tried to end the use of runners but met with various obstacles, including claims that the runner was a former client,<sup>34</sup> payments disguised as “investigative” or “transportation” fees and untraceable cash payments.<sup>35</sup> In recent years, though, a number of other parties have joined the chase: the Louisiana Department of Insurance (Fraud Unit), Louisiana State Police, local police units, the United States Attorney, the Federal Bureau of Investigation, the Internal Revenue Service, the Metropolitan Crime Commission and various investigative reporters for local and national news media — sometimes even the runners and clients themselves.<sup>36</sup> Possibly, each entity alone could not have caught the gingerbread man; working together, however, they finally caused the cookie to crumble.

## Chomp! Chomp!

In the story, the gingerbread man became very bold. At the end of the story, the gingerbread man ran past a sly fox, bragging all the way. The fox said, “I can't hear you. Come a little closer.” Confident of himself, the gingerbread man came closer, and the fox threw back his head and ate him. The fox in our story is a chameleon who took various and sometimes multiple forms as the above-listed parties worked separately and together to catch the gingerbread man. Solicited clients reported the attorneys, with at least one recording the telephone calls.<sup>37</sup> Clients dissatisfied with their representation or recovery reported the attorneys.<sup>38</sup> Secretaries, paralegals and runners wore recording devices.<sup>39</sup> Runners sued for promised fees.<sup>40</sup> Television cameras began recording accident sites.<sup>41</sup> Anonymous tips were called in to the Metropolitan Crime Commission.<sup>42</sup> In depositions, insurance company attor-

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neys began asking plaintiffs how they found their attorney.<sup>43</sup> Prosecuted attorneys turned state's evidence.<sup>44</sup>

### Why Did the Fox Eat the Gingerbread Man?

In the story, the fox was not able to change his nature. For our purposes, though, the question is more appropriately directed to the grandmother — why should the gingerbread man be kept in the oven?

The Louisiana Supreme Court has stated that “[u]nquestionably, engaging in runner-based solicitation is one of the most serious professional violations an attorney may commit.”<sup>45</sup> Depending on whom you ask, it harms the client, it sometimes harms the runners, it harms the public and it harms the profession.

#### Harm to the Client

Using runners is, of course, an indirect way for an attorney to solicit a potential client by having the runner bring in the client. In holding that bar associations can regulate direct solicitation, the United States Supreme Court has recognized that:

the potential for overreaching is significantly greater when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured, or distressed lay person. Such an individual may place his trust in a lawyer, regardless of the latter's qualifications or the individual's actual need for representation, simply in response to persuasion under circumstances conducive to uninformed acquiescence.<sup>46</sup>

Another expressed concern is character: if the attorney is going to engage in one form of unethical conduct, he probably does not have the client's best interest at heart. That throws the quality of overall representation by the person into question. Furthermore, given the sheer volume of work in some of these offices, the attorney may not be able to handle adequately all the cases he takes. This leads to inadequate representation, lack of re-

turned phone calls and inattention to the case. It also leads to the unauthorized practice of law when paralegals are left to handle the business of the firm. Finally, in many cases, legitimate wreck victims are cheated out of their full settlements because runner fees and other costs were tacked onto their legal bills.<sup>47</sup>

#### Exploitation of Runners

Another expressed concern, although in other states more than Louisiana, is the exploitation of runners. In many cases, the runners are poor, uneducated and/or do not speak English.<sup>48</sup> Often these individuals are unaware of the criminal ramifications of their actions, and many times the attorneys make promises to these individuals that they do not keep. Given the displacement and damage caused by Hurricanes Katrina and Rita and the attendant possible increase in causes of action, this may be a future cause for concern in Louisiana.

#### Harm to the Public in General

The biggest stated concern for the public is that insurance fraud increases the cost of insurance in Louisiana. Some estimate that insurance fraud and the runner-based solicitation industry have caused insurance rates in the New Orleans area to increase 40 to 50 percent.<sup>49</sup> The Louisiana Coalition Against Insurance Fraud estimated in 1995 that insurance fraud cost every Louisiana family \$1,600 a year.<sup>50</sup> Furthermore, many be-

The Louisiana Supreme Court has expressed great concern about how the use of runners harms the integrity of the legal profession, finding it a “serious matter reflecting on the moral character so necessary to a proper handling of the public's legal business.” It lowers the legal profession's status by turning the profession into “the business of selling lawsuits.”

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lieve it ferments litigation and raises the possibility of non-meritorious claims, again raising the cost of doing business in Louisiana to all.<sup>51</sup>

### Harm to the Image of Legal System

The Louisiana Supreme Court and the head of the Office of Disciplinary Counsel have both expressed concern about the "collateral effects on the public perception of the judicial system."<sup>52</sup> Both believe that use of runners erodes "the trust and confidence which the public must have in the legal system for it to function properly."<sup>53</sup>

### Harm to the Legal Profession

The Louisiana Supreme Court has expressed great concern about how the use of runners harms the integrity of the legal profession,<sup>54</sup> finding it a "serious matter reflecting on the moral character so necessary to a proper handling of the public's legal business."<sup>55</sup> It lowers the legal profession's status by turning the profession into "the business of selling lawsuits."<sup>56</sup> It has certainly made lawyers the butt of many a joke; in fact, the practice has become so synonymous with attorneys that the term "ambulance chaser" is actually included in many dictionaries.<sup>57</sup>

### Future

In 1996, the Louisiana Supreme Court "encourage[d] Disciplinary Counsel to utilize fully his investigative staff and his

resources to pursue any reports [of solicitation] and to bring proof of such behavior to th[e] court for punishment sufficient to deter further misconduct."<sup>58</sup> For the last 10 years, Disciplinary Counsel has done just that and, based on the most recent decision of the Supreme Court in this area, is continuing to do so.<sup>59</sup> So, for those of you feeling an "envie" for gingerbread . . . Don't open the door!

### FOOTNOTES

1. Louisiana Supreme Court Rule XIX, Appendix E was added. Guideline 6 specifically provides for permanent disbarment for runner-based solicitation. In the 25 years prior to this change, the Supreme Court has refused to readmit only four of the 27 disbarred attorneys who applied. Of those readmitted, 10 got into trouble again, and four were disbarred again. James Gill, "Scumbag Lawyers Need To Go," *Times-Picayune* (New Orleans), June 11, 2000, at B7.

2. In re Coney, 04-2603 (La. 01/07/2005), 891 So.2d 658; In re O'Keefe, 03-3195 (La. 7/2/04), 877 So.2d 79; In re Laudumiey, 03-0234 (La. 6/27/03), 849 So.2d 515; and, In re Kirchberg, 03-0957 (La. 9/26/03), 856 So.2d 1162. Other attorneys escaped permanent disbarment and were only suspended — three for three years, one for two years, and one for one year — due to their cooperation with the Office of Disciplinary Counsel and/or inexperience.

3. The phrase was coined by Charles B. Plattsmier, chief counsel for the Office of Disciplinary Counsel. Since 2001, 43 attorneys have been permanently disbarred for various reasons.

4. In re Solomon, 06-0632 (La. 5/2/06), \_\_\_\_ So.2d \_\_\_\_.

5. Two of the 27, Andrew Vidrine and Ernest Caulfield, have passed away.

6. A runner also may recommend a specific doctor who then recommends the attorney. See, e.g., In re Solomon, No. 04-DB-060 (03/20/2006)(found at [www.ladb.org](http://www.ladb.org)).

7. La. R.S. 14:356.3 (ambulance drivers); La. R.S. 14:356.1 (wrecker drivers); La. R.S. 14:356 (clerks of court); La. R.S. 42:1413 (law enforcement officers).

8. Perhaps the two most famous legal assistants involved in the runner-based solicitation industry are Ernest Aiavolasiti and Michael Palmisano, part of the infamous "Canal Street Cartel," who ran clients for five of the attorneys disciplined for solicitation through runners. See In re O'Keefe, 03-3195 (La. 7/2/04), 877 So.2d 79; In re Laudumiey, 03-0234 (La. 6/27/03), 849 So.2d 515; In re Goff, 02-1899 (La. 1/28/03), 837 So.2d 1201; In re Bernstein, 98-3207 (La. 1/29/99), 725 So.2d 483.

9. See, e.g., In re St. Romain, 560 So.2d 820 (La. 1990).

10. In two of the most egregious cases reported, although not in Louisiana, men of the cloth have acted as runners, offering to pray with people at disaster scenes or emergency rooms and then handing them a card and recommending an attorney to represent them. See Florida Bar v. Barrett, 897 So.2d 1269 (2005); Christopher Scanlan, "Preying on disasters — Priest-Imposter Sought after Detroit Crash," *St. Petersburg Times*, Sept. 19, 1987, at 1A.

11. One runner, Damascus Wright of New Orleans, reportedly made \$454,000 in a year. Natalie Pompilio, "16 Held in Plan to Solicit Clients Wreck Victims Lured to Lawyer," *Times-Picayune* (New Orleans), Sept. 4, 1999, at A1. Richard Cuccia is said to have paid his runners \$1.6 million between 1996 and 1998. James Gill, "Scumbag Lawyers Need To Go," *Times-Picayune* (New Orleans), June 11, 2000, at B7.

12. See, e.g., In re Brigandi, 02-2873 (La. 4/9/2003), 843 So.2d 1083 (failure to report Richard Cuccia); In re Goff, 837 So.2d 1201 (failure to report Michael O'Keefe).

13. La. R.S. 37:219 (2001). This law, however, has rarely been enforced. No prosecutions under this statute were reported until 1998 when Jose Castro pled guilty to unlawful solicitation and was sentenced to 2.5 years in state prison. Richard Cuccia was booked in 1999 with seven counts of unlawful solicitation and seven counts of unlawful payments to "runners." Joe Darby, "Three Booked in Plot Lawyer Lured Clients, Cops Say," *Times-Picayune* (New Orleans), March 24, 1999, at B1.

14. La. R.S. 37:213(2) (1950) (as amended prior to 2001).

15. *Id.*

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16. HB 290 passed the House by a vote of 76-19. As of June 1, 2006, it was assigned to Senate Judiciary A Committee for consideration.

17. HLS 06RS-947. Also pending before the Legislature is a Senate Bill that would criminalize direct contact by attorneys who violate Louisiana Rule of Professional Conduct 7.3 and would fine attorneys not more than \$2,500 for a first offense. See SB 152.

18. 31 USC § 5324 (2005) is also known as the "anti-smurfing statute." "Smurf" is a name given to a person who scurries from bank to bank to cash checks and make deposits so that no one transaction is more than \$10,000. The application of this statute to attorneys using runners is complicated and controversial. See Sarah N. Welling, "Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions," 41 Fla. L. Rev. 287, 309 (1989), for an in-depth discussion of the application of these laws.

19. Joe Gyan, Jr., "La. Supreme Court Suspends Another Lawyer in Fraud Case," *Advocate* (Baton Rouge), May 17, 2001, at A7.

20. Joe Gyan, Jr., "Lawyer Agrees to Pay \$70,000 in Fraudulent 'Runner' Scheme," *Advocate* (Baton Rouge), July 27, 2001, at 4B. See also In re Solomon, No. 04-DB-060 (03/10/2006) at [www.ladb.org](http://www.ladb.org).

21. See In re Coney, 04-2603 (La. 01/07/05), 891 So.2d 658, 659 n.2.

22. 18 USC § 1341 (2002).

23. Bruce Schultz, "Runners Fill Legal Coffers, Negative Image of Lawyers," *Advocate* (Baton Rouge), Nov. 20, 2000, at 1A. All four were also ultimately disbarred, although permanent disbarment had not yet been adopted. See In re Kirchberg, (La. 9/26/03), 856 So.2d 1162; In re Lockhart, 01-DB-016 (06/06/2001) at [www.ladb.org](http://www.ladb.org); In re Rochon, 00-3356 (La. 01/12/01), 776 So.2d 432; In re Thomas, 00-1952 (La. 10/09/00), 770 So.2d 323. (Rochon and Thomas were not, however, disciplined for using runners.)

24. In re Rochon, 776 So.2d 432.

25. In re Kirchberg, 856 So.2d 1162.

26. Rhonda Bell, "Two Lawyers Guilty in Scheme," *Times-Picayune* (New Orleans), Dec. 2, 1999 at 3B. See also Gill, supra note 1. Cuccia agreed to a consent disbarment.

27. In re Katz, 95-2614 (La.1/5/1996), 665 So.2d 1165.

28. 18 USC § 4 (1994).

29. Joe Gyan, Jr., "Lawyer Gets Probation for 'Runners' Scheme," *Advocate* (Baton Rouge), Dec. 16, 2000, at A5. See also In re Lockhart, 01-DB-016 (06/06/01) at [www.ladb.org](http://www.ladb.org); In re Rochon, 00-3356 (La. 01/12/01), 776 So.2d 432. Two paralegals, Aiavolasiti and Palmisano, also pled guilty to misprision of a felony. See Joe Gyan, "Probe Cleaning State of Corrupt Lawyers," *Advocate*

(Baton Rouge), Sept. 18, 2001, at A9.

30. Bell, supra note 26; Joe Gyan, Jr., "Another N.O. Lawyer Loses License over 'Runners,'" *Advocate* (Baton Rouge), Feb. 13, 2001 at A3. See also In re Grand, 01-0131 (La. 2/9/2001), 778 So.2d 580.

31. Susan Finch, "N.O. Lawyers Sentenced for Obstructing Probe: 2 Urged Insurance Fraud Witnesses to Lie," *Times-Picayune* (New Orleans), May 24, 2001, and May 25, 2001, at A19. See also In re Laudumiey, 01-DB-077 (1/22/03) at [www.ladb.org](http://www.ladb.org).

32. *Id.* Both were permanently disbarred, In re Laudumiey, 03-0234 (La. 6/27/03), 849 So.2d 515.

33. "Lawyer Pleads Guilty to Using 'Runners,'" *Advocate* (Baton Rouge), May 17, 2003, at A6. Coney's wife also pled guilty to one count of obstruction of justice. Supra. Coney was permanently disbarred.

34. See, e.g., In re St. Romain, 560 So.2d 820 (La. 1990).

35. Interview with Charles B. Plattsmier, Chief Disciplinary Counsel, in Baton Rouge, La. (June 25, 2005).

36. Pamela Coyle, "Insurance Fraud Probe Snares Doctor," *Times-Picayune* (New Orleans), June 30, 2000, at B3. See also further discussion below.

37. See, e.g., In re D'Amico, 94-3005 (La. 2/28/96), 668 So.2d 730 (Mr. D'Amico was not found to have improperly disciplined this person); In re Reis, 98-DB-084 (10/01/1999) (a typical case of multiple solicitations; Mr. Reis ultimately permanently resigned from the practice of law; see In re Reis, 00-3299 (La. 12/15/00), 776 So.2d 425).

38. See, e.g., In re Cuccia, 99-DB-054 (10/22/1999) at [www.ladb.org](http://www.ladb.org) (complaints to ODC of neglect, failure to communicate, failure to properly account and, occasionally, allegations that these clients had been solicited); In re St. Romain, 560 So.2d 820 (La. 1990) (clients thought settlement amounts inadequate).

39. See, e.g., In re Laudumiey, 01-DB-077 (1/22/03) at [www.ladb.org](http://www.ladb.org) (infamous runners Aiavolasiti and Palmisano cooperated with federal authorities and wore hidden recording devices to a meeting with attorneys wherein attorneys tried to persuade them to lie to grand jury); In re Coney, 04-2603 (La. 01/07/05), 891 So.2d 658 (secretary wore recording device).

40. See, e.g., In re Beard, 374 So.2d 1179 (La. 1979).

41. For example, the television program 20/20 took footage of runners swooping in on an automobile accident producers had staged in New Orleans. James Gill, "'Canal Street Cartel' Still At Work," *Times-Picayune* (New Orleans), Feb. 18, 1998, at B7.

42. Rafael Goyeneche, executive director of the Metropolitan Crime Commission, said his agency got tips about Cuccia and Grand and

passed them on to the authorities. Pamela Coyle, "Plaintiff Lawyers Indicted In Fraud Scheme Attorneys Took Doctors' Kickbacks, Police Say," *Times-Picayune* (New Orleans), Nov. 5, 1999, at B1.

43. See, e.g., In re Laudumiey, 03-0234 (La. 6/27/03), 849 So.2d 515.

44. See, e.g., In re Brigandi, 02-2873 (La. 4/9/03), 843 So.2d 1083.

45. In re Goff, 02-1899 (La. 1/28/2004), 837 So.2d 1201. See also In re Lockhart, 01-1645 (La. 9/21/01), 795 So.2d 309.

46. *Ohralik v. Ohio State Bar Ass'n*, 346 U.S. 447 (1978).

47. Pompilio, supra note 11.

48. See, e.g., *Vidrine v. Abshire*, 558 So.2d 288 (La. 1990) (58-year-old illiterate self-employed carpenter with second-grade education).

49. Schultz, supra note 23 (quoting Charles B. Plattsmier); Darby, supra note 13 (quoting Rafael Goyeneche, director of the Metropolitan Crime Commission).

50. Pompilio, supra note 11.

51. Pompilio, supra note 11.

52. Schultz, supra note 23.

53. In re Naquin, 00-3082 (La. 12/18/00), 775 So.2d 1060.

54. In re Grand, 01-0131 (La. 2/9/01), 778 So.2d 580; Dugas v. Summers, 339 So.2d 934 (La. App. 4 Cir. 1976), writ denied, 341 So.2d 1132 (La.1977); In re Desalvo, No. 91-DB-016 (1991) at [www.ladb.org](http://www.ladb.org); In re St. Romain, 560 So.2d 820 (La. 1990).

55. In re Desalvo, *Id.*

56. Schultz, supra note 23 (quoting Clancy DuBos).

57. See, e.g., *The American Heritage Dictionary of the English Language* (4th ed. 2000).

58. In re D'Amico, 94-3005 (La. 2/28/96), 668 So.2d 730.

59. In re Solomon, 06-0632 (La. 5/2/06), \_\_\_\_ So.2d \_\_\_\_ (permanent disbarment).

## ABOUT THE AUTHOR

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# Understanding the Stafford Act

Providing Disaster-Related  
Legal Assistance  
to Individual Victims  
of Hurricanes and  
Other Natural Disasters

By John K. Pierre

**W**hen a natural disaster strikes, such as a hurricane, many survivors are forced from their homes because such residences are severely damaged or otherwise made uninhabitable. Some survivors are rendered homeless and do not regain permanent housing for significant amounts of time, ranging from weeks, months or even years after the natural disaster! Over the last 20 years, Americans have been victimized by a number of major natural disasters that have killed thousands and left hundreds of thousands without homes immediately after the disaster. While the needs of victims affected by natural disasters are generally served by a myriad of (a) federal, state and local government agencies, (b) private entities and (c) nonprofit or non-governmental organizations, most individual victims of natural disasters look to the Federal Emergency Management Agency (FEMA) to provide aid to them in their hour of need.



Most attorneys are unfamiliar with how FEMA works to provide assistance to individual victims of natural disasters and the Stafford Act which provides FEMA federal legislative authority for an elaborate web of programs designed to alleviate the suffering and damage which results from such disasters. Attorneys can play a vital role in helping individual victims of natural disasters understand their rights under the Stafford Act.

## Overview of the Stafford Act and Its Relevance to Hurricanes Katrina and Rita

On Aug. 29, 2005, just prior to dawn, Hurricane Katrina struck the Gulf Coast region of the United States, devastating southeastern Louisiana, before moving across Mississippi and into Alabama. Hundreds of thousands of people were forced to evacuate their homes. Soon thereafter, in late September, Hurricane Rita struck in southwestern Louisiana, causing tens of thousands of people to evacuate their homes. Hurricanes Katrina and Rita were acts of nature with inhumane consequences that overwhelmed the resources of state and local governments. When catastrophic natural disasters occur, the principal federal statute providing assistance to state and local governments, as well as to individuals, is the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act).<sup>1</sup> Under the Stafford Act, the federal agency principally charged to care for Americans who are victims of natural disasters is FEMA.

The mission of FEMA as set forth in the Stafford Act and corresponding regulations is to assist the efforts of the states in expediting the rendering of aid, assistance and emergency services, and the reconstruction and rehabilitation of areas devastated by disasters.<sup>2</sup> FEMA assists state and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies.<sup>3</sup> FEMA, among other things, provides federal assistance programs for public

*Partly because of  
Hurricanes Katrina and  
Rita, Louisiana attorneys  
are now aware more than  
ever that natural disasters  
will give rise to legal needs  
previously unanticipated  
and unimaginable.*

and private losses and needs resulting from disasters.<sup>4</sup>

Before FEMA can render assistance in any particular place and time, a governor of a state must request that the President of the United States declare the existence of a major disaster or emergency in the area.<sup>5</sup> The governor's request must be based on a determination that the disaster is so severe and large that an effective response is beyond the capabilities of the state and local governments affected by the disaster.<sup>6</sup> Based on that request, the President may declare that a major disaster or emergency exists, thus triggering the availability of FEMA assistance.<sup>7</sup>

If the President declares a "major disaster" or emergency, he or she may:

- ▶ direct federal agencies to use their authorities and resources granted under federal law to support state and local assistance efforts;<sup>8</sup>
- ▶ coordinate all disaster efforts between federal agencies and state and local governments;<sup>9</sup>
- ▶ provide technical and advisory assistance to state and local governments;<sup>10</sup> and
- ▶ assist state and local governments in the distribution of medicine, food and other consumable supplies, and emergency assistance.<sup>11</sup>

The provisions of the Stafford Act also authorize federal assistance to individuals and households. In particular, the

Act provides that the President may provide temporary housing assistance to individuals and households who are displaced from their pre-disaster primary residences or whose pre-disaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.<sup>12</sup> More specifically, the Act outlines two types of temporary housing assistance — financial assistance and direct assistance. Financial assistance provides funds to rent alternate housing accommodations.<sup>13</sup> Direct assistance provides temporary housing units, when there may be a lack of available housing resources for rent.<sup>14</sup> Under the Act, the President is empowered to determine appropriate types of housing assistance to be provided, based upon factors such as cost effectiveness, convenience to the individuals and households and such other factors as the President may consider appropriate.<sup>15</sup>

Financial assistance, sometimes known as "rental assistance," is supposed to enable victims of disasters to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings. FEMA commonly administers the rental assistance program by granting a check to eligible individuals for an initial three-month period to cover the cost of rent and thereafter provides assistance beyond the three-month period upon proof of need.

Direct assistance, sometimes known as "trailer assistance," enables disaster victims to receive actual temporary housing units, such as a trailer or mobile home. Trailer assistance is available to victims who cannot use rental assistance because of, for example, a lack of rental housing.<sup>16</sup> The Stafford Act authorizes rental and trailer assistance, which is intended to be "temporary," to both pre-disaster renters and homeowners. Under the Act, temporary housing assistance is available for 18 months from the date that the President declared a disaster, but may be extended beyond that time.<sup>17</sup> This 18-month period applies to both rental and trailer assistance. Applications for temporary housing assistance and for the

distribution of federal benefits pursuant to the Stafford Act must be done in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age or economic status.<sup>18</sup>

Contrary to popular belief, individual recipients of housing assistance are not guaranteed housing assistance for the full 18 months from the date of declaration of a major disaster. In addition to housing assistance, the Stafford Act authorizes the President to provide financial assistance to address "other needs."<sup>19</sup> Specifically, the Act provides that the President may provide financial assistance to victims of a major disaster to meet disaster-related medical, dental and funeral expenses, or to address personal property, transportation and other necessary expenses or serious needs resulting from the major disaster.<sup>20</sup> By regulation, FEMA requires applicants for "other needs" assistance to apply for a disaster loan from the Small Business Administration to cover the expenses for which such assistance is sought. One criterion of eligibility for "other needs" assistance is denial or inadequacy of an SBA loan.<sup>21</sup>

The financial assistance to address other needs is known as the Individual and Family Grant Program. In relation to both "other needs" assistance and temporary housing assistance, the Act provides that no individual or household shall receive financial assistance greater than \$25,000, adjusted for inflation, with respect to a single major disaster.<sup>22</sup>

Concern over fraud and receipt of duplicative benefits is addressed in the Act. The Act prohibits duplication of benefits. Hence, the Act requires that the President, in consultation with any federal agency providing assistance under the Act, ensure that no one receives assistance for any part of a loss that is covered by any other source.<sup>23</sup> For example, FEMA regulations require an applicant for assistance under the Act to apply for insurance proceeds to cover any insured loss. The regulations state that assistance for one temporary residence will generally be provided for each pre-disaster household.<sup>24</sup> This pre-disaster household

provision is known as the "Shared Household Rule."

## Delegation of Presidential Authority, Immunity and Litigation

The Act authorizes the promulgation of regulations to carry out its provisions and expressly permits the President to delegate the authority conferred upon him or her by the Act.<sup>25</sup> Pursuant to that provision, the President has delegated to the FEMA Director most of the functions vested in the President by the Stafford Act, with a few exceptions.<sup>26</sup> However, the power to declare major disasters has not been delegated.<sup>27</sup> Hence, while the President has delegated his authority under the Stafford Act to FEMA, the President has not delegated the authority to declare a major disaster.

FEMA and/or any other federal governmental agency is not liable for any claim based upon the exercise or performance of or failure to exercise or perform a "discretionary" function or duty to carrying out the provisions of the Stafford Act.<sup>28</sup> The federal government vigorously defends statutory immunity with respect to the exercise or performance of "discretionary" functions.<sup>29</sup> FEMA, however, despite the statutory immunity with respect to discretionary functions, can be sued successfully if the plaintiffs raise constitutional claims such as due process and equal protection.<sup>30</sup>

## Conclusion

As FEMA has discovered recently, the importance of quickly responding to natural disasters is of paramount importance. Partly because of Hurricanes Katrina and Rita, Louisiana attorneys are now aware more than ever that natural disasters will give rise to legal needs previously unanticipated and unimaginable. Given this new reality, lawyers now play a critical role in natural disaster relief efforts and must become more familiar with legal issues created by natural disasters.

## FOOTNOTES

1. 42 U.S.C. § 5121, *et. seq.*
2. 42 U.S.C. § 5121.
3. 44 C.F.R. § 206.3.
4. *Id.*
5. 42 U.S.C. § 5170.
6. *Id.*
7. *Id.*
8. 42 U.S.C. § 5170a.
9. *Id.*
10. *Id.*
11. *Id.*
12. 42 U.S.C. § 5174(a)(1).
13. 42 U.S.C. § 5174(c)(1).
14. *Id.*
15. 42 U.S.C. § 5174(b)(2)(A).
16. 42 U.S.C. § 5174(c)(1)(B)(I).
17. 44 C.F.R. § 206.110(e).
18. 42 U.S.C. § 5174(a).
19. 42 U.S.C. § 5174(c).
20. *Id.*
21. 44 C.F.R. § 260.119.
22. 42 U.S.C. § 5174 (h).
23. 42 U.S.C. § 5155.
24. *Id.*
25. 42 U.S.C. § 5164.
26. Executive Order 12,673; 54 Fed. Reg. 12,571 (March 23, 1989).
27. *Id.*
28. 42 U.S.C. § 5148.
29. See e.g., *Graham v. FEMA*, 149 F.3d 997 (9 Cir. 1998); *City of Bruno v. FEMA*, 181 F. Supp. 2d 1010 (N.D. Cal. 2001).
30. See *Lockett v. FEMA*, 836 F. Supp. 847 (S.D. Fla. 1993).

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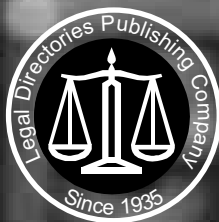
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# Insurance “Bad Faith” Law After the Hurricanes

By Dean A. Sutherland

Duties Owed by Insurance Companies and Potential Penalties for Violation of Those Duties

**T**he devastation of south Louisiana caused by Hurricanes Katrina and Rita has led to an unprecedented number of insurance claims.

Different statutes apply to different types of insurance policies. Claims for benefits for life insurance contracts are governed by La. R.S. 22:656. Health and accident claims are governed by La. R.S. 22:657. All other types of insurance policies are governed by La. R.S. 22:658 and La. R.S. 22:1220.<sup>1</sup>

Under certain circumstances, the Insurance Code allows an insured to recover damages, penalties and attorney’s fees from its insurer.<sup>2</sup> These statutory provisions are not uniform regarding the types of prohibited conduct or the potential penalties. This article reviews the statutory penalties that may be imposed on insurance companies for improper handling of first-party property insurance claims under La. R.S. 22:658 and La. R.S. 22:1220.

## Types of Insurer Misconduct that Can Trigger Statutory Penalties

For all insurance policies (except life insurance, accident and health insurance or workers’ compensation), La. R.S. 22:658<sup>3</sup> and/or La. R.S. 22:1220<sup>4</sup> are applicable. The standard of insurer misconduct that may trigger the imposition of statutory penalties under La. R.S. 22:658(B)(1) and La. R.S. 22:1220



(B)(5)<sup>5</sup> is nonpayment that is “arbitrary, capricious or without probable cause.”

## Statutory Penalties

The La. R.S. 22:658 penalty for “all other” policies was amended in 2003 and again in 2006.<sup>6</sup> The 2006 amendment increased the penalty to:

fifty percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater . . . or in the event a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due.<sup>7</sup>

For statutory violations occurring after Aug. 15, 2006, attorney’s fees are recoverable.<sup>8</sup>

La. R.S. 22:1220(A) allows an insured to recover compensatory damages resulting from its insurer’s breach of its statutory obligations. Additionally, La. R.S. 22:1220(C) subjects the insurer to potential penalties “in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.”

## Penalties May Be Awarded Even Absent Proof of Actual Damages

La. R.S. 22:1220(C) penalties may be awarded for an insurer’s breach of La. R.S. 22:1220, even absent proof of actual damages caused by the insurer’s misconduct.<sup>9</sup>

The maximum penalty, when there is no proof of damages caused by the breach of the insurer’s duties under La. R.S. 22:1220, is \$5,000.<sup>10</sup>

## Overlap Between “Bad Faith” Penalty Statutes

Recognizing that La. R.S. 22:658(A)(1) and La. R.S. 22:1220(B)(5) overlap, *Calogero v. Safeway Insurance Company of Louisiana*, *supra*, affirmed the award of attorney’s fees pursuant to

the former version La. R.S. 22:658(B)(1) and of higher statutory penalties under La. R.S. 22:1220(C).

An insured may wish to assert penalty claims under both La. R.S. 22:658(B)(1) and La. R.S. 22:1220(C).

The two statutes have different time periods before the insurer’s inaction triggers potential penalties.<sup>11</sup> If the insurer violates its statutory obligations for more than 30, but less than 60, days after receiving a “satisfactory proof of loss,” only La. R.S. 22:658 is applicable.

The penalty provisions of La. R.S. 22:658(B)(1) are mandatory.<sup>12</sup>

The potential La. R.S. 22:1220(C)<sup>13</sup> penalties could be substantially greater than the penalties provided by La. R.S. 22:658(B)(1).<sup>14</sup>

## What Must An Insured Prove to Establish a “Bad Faith” Claim?

An insured seeking statutory penalties pursuant to La. R.S. 22:658(B)(1) and/or La. R.S. 22:1220(B)(5)/1220(C) must prove three things:

- ▶ the insurer received a satisfactory proof of loss;
- ▶ the insurer failed to pay the claim within the applicable statutory period; and
- ▶ the insurer’s failure to pay was arbitrary and capricious.<sup>15</sup>

For an insurer’s violation of any subpart of La. R.S. 22:1220(B), other than La. R.S. 22:1220(B)(5), proof that the insurer’s actions were “arbitrary, capricious or without probable cause” is unnecessary.<sup>16</sup>

## What is a “Satisfactory Proof of Loss?”

The phrase “satisfactory proof of loss” is not defined in any “bad faith” statute. No specific form or mandatory information is required.

The Louisiana Supreme Court has defined a La. R.S. 22:658 “satisfactory proof of loss” in an UM coverage claim as follows:

. . . the insured must show that the insurer received sufficient facts which fully apprise the insurer that (1) the owner or operator of the other vehicle involved in the accident was uninsured or under insured; (2) that he [or she] was at fault; (3) that such fault gave rise to damages; and (4) establish the extent of those damages.<sup>17</sup>

A less-demanding test is used in other “bad faith” claims. For example, a handwritten estimate of repairs on a fire-damaged residence was a satisfactory proof of loss under a homeowner’s policy.<sup>18</sup>

The inspection of the damaged property by an independent adjuster hired by the insurer is a “satisfactory proof of loss” under La. R.S. 22:1220(B)(5).<sup>19</sup>

## What Does “Arbitrary, Capricious or Without Probable Cause” Mean?

An insurer faces potential exposure to statutory penalties pursuant to La. R.S. 22:658(B)(1) and La. R.S. 22:1220(B)(5) when its failure to pay is “arbitrary, capricious or without probable cause.” While “bad faith” is a shorthand reference for “arbitrary, capricious or without probable cause,” the two phrases have different meanings.

In *Reed v. State Farm*, the Supreme Court explained that an insurer’s misconduct meets the “arbitrary, capricious or without probable cause” standard when the insurer’s actions are unjustified, lack a reasonable basis or are without probable cause or excuse.<sup>20</sup>

## Unconditional Tender

La. R.S. 22:658(A)(1) requires that:

[a]ll insurers issuing any type of contract [other than life, health and accident and workers’ compensation policies] shall pay the amount of any claim due any insured within thirty days after receipt of satisfac-

tory proofs of loss from the insured or any party in interest.

The payment must be unconditional and in an amount as to which reasonable minds cannot disagree.<sup>21</sup>

An offer of payment tied to a complete release of the insured's claim is not an unconditional tender required by La. R.S. 22:658.<sup>22</sup>

## Misrepresentation of Coverage

An insurer's denial of coverage may violate its obligations under La. R.S. 22:1220(B)(1). When an insurer refuses to pay a claim based on its interpretation of its policy's coverage, there is no "bright line" test to determine whether it violated La. R.S. 22:1220(B)(1). A denial based on a reasonable and legitimate dispute "as to the extent and causation of a claim" does not constitute bad faith.<sup>23</sup>

However, an insurer that rejects a claim based solely on its misinterpretation of its policy's coverage may be liable for statutory penalties.<sup>24</sup>

In *McGee v. Omni Ins. Co.*,<sup>25</sup> the insurer violated La. R.S. 22:1220(B)(1) through its failure to keep the insured advised of the status of the litigation and its failure to communicate the "pertinent facts" to the insured. **"Misrepresentation can occur when an insurer either makes untrue statements to an insured concerning pertinent facts or fails to divulge pertinent facts to the insured."**<sup>26</sup>

## Reasonable Investigation/ Loss Adjustment

An insurer may be liable for La. R.S. 22:658 and La. R.S. 22:1220 penalties if it fails to properly investigate a claim or to initiate a loss adjustment after it receives notice of the loss.

### Duty to Investigate Under La. R.S. 22:658

La. R.S. 22:658(A)(3) includes a duty to investigate.<sup>27</sup>

La. R.S. 22:658(A)(3) obligates the insurer to take "some substantive and affirmative step to accumulate the facts that are necessary to evaluate the claim."<sup>28</sup>

Merely opening a file does not comply with La. R.S. 22:658(A)(3).<sup>29</sup>

### Duty to Investigate Under La. R.S. 22:1220

Even though a property damage insurer timely begins to adjust a claim, it may be liable for La. R.S. 22:1220 statutory penalties for an insufficient investigation.<sup>30</sup>

## Defenses to Bad Faith Claims

Several potential defenses are available to an insurer facing a statutory penalty claim:

- ▶ A valid underlying claim must exist.<sup>31</sup>
- ▶ The refusal to pay was reasonable, even if wrong.<sup>32</sup>
- ▶ The insured withheld necessary information.<sup>33</sup>
- ▶ "Bad faith" depends on facts known

to the insurer on the date of the refusal to pay.<sup>34</sup>

- ▶ As "penal" statutes, La. R.S. 22:658 and La. R.S. 22:1220 are strictly construed.<sup>35</sup>

## Conclusion

Normally, an insurance company's denial of a first-party claim by its insured will not support a statutory "bad faith" penalty claim against the insurer. However, if an insurance company's violation of its statutory duties is unjustified, lacks a reasonable basis or is without probable cause or excuse, statutory penalties may be imposed.

## FOOTNOTES

1. Workers' compensation bad faith claims are governed by the workers' compensation law, La. R.S. 23:1021, *et seq.*

2. This article addresses private causes of action. The Unfair Trade Practices Act, La. R.S. 22:1214(14) and La. R.S. 22:1217, does not create a private cause of action to recover penalties. *Theriot v. Midland Risk Ins. Co.*, 95-2895 (La. 5/20/97), 694 So.2d 184, 189-193.

3. La. R.S. 22:658(C) applies to workers' compensation cases. La. R.S. 23:1201(I).

4. La. R.S. 22:1220(D) excludes only health and accident insurance policies from its coverage.

5. *See Sultana Corp. v. Jewelers Mut. Ins. Co.*, 03-0360 (La. 12/3/03), 860 So.2d 1112.

6. Acts 2003, No. 790, § 1. Acts 2006, No. 813 (effective 8/15/06).

7. La. R.S. 22:658(B)(1).

8. Between the effective dates of the 2003 and 2006 amendments to La. R.S. 22:658, attorney's fees were not recoverable.

9. *Sultana*, 860 So.2d at 1118-1119.

10. *Urrate v. Argonaut Great Cent. Ins. Co.*, 04-256 (La. App. 5 Cir. 8/31/04), 881 So.2d 787, 791-792, *writs denied*, 04-2644 (La. 1/7/05), 891 So.2d 686 and 04-2685 (La. 1/7/05), 891 So.2d 690; *Hollier v. State Farm Mut. Auto. Ins. Co.*, 01-0592 (La. App. 3 Cir. 10/31/01), 799 So.2d 793, *writ denied*, 01-3163 (La. 2/22/02), 810 So.2d 1135.

11. The time period under La. R.S. 22:658 is 30 days. The time period under La. R.S. 22:1220 is 60 days.

12. *See Sultana*, 860 So.2d at 1117. This portion of the opinion is *dicta*. The issue before the *Sultana* court was whether the insured must prove that it suffered damages as a result of the insurer's violation of La. R.S. 22:1220(B)(2), as a prerequisite for the award of penalties under La. R.S. 22:1220(C). The court did not

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mention Reed, *supra*, decided six weeks earlier, in which the split between the lower courts as to whether La. R.S. 22:1220(C) penalties are mandatory or discretionary was noted.

13. In addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or \$5,000, whichever is greater.

14. Violation under La. R.S. 22:1220(C) "shall subject the insurer to a penalty, in addition to the amount of the loss, of twenty-five percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater . . ."

15. Boudreaux v. State Farm Mut. Auto. Ins. Co., 04-1339 (La. App. 4 Cir. 2/2/05), 896 So.2d 230, 233.

16. Sultana, *supra*.

17. McDill v. Utica Mutual Ins. Co., 475 So.2d 1085, 1089 (La. 1985).

18. See Sevier v. U.S. Fidelity & Guar. Co., 86-0801 (La.11/24/86), 497 So.2d 1380, 1384 (as long as the insurer receives sufficient information to act on the claim, "the manner in which it obtains the information is immaterial").

19. Becnel v. Lafayette Ins. Co., 99-2966 (La. App. 4 Cir. 11/15/00), 773 So.2d 247, *writ denied*, 00-3458 (La. 2/9/01), 785 So.2d 827; Carter v. Safeway Ins. Co., 37,788 (La. App. 2 Cir. 10/29/03), 859 So.2d 279.

20. La. R.S. 22:658 and La. R.S. 22:1220 require proof that the insurer was "arbitrary, capricious, or without probable cause," a phrase that is synonymous with "vexatious." Both phrases describe an insurer whose willful refusal of a claim is not based on a good-faith

defense. See Reed, 857 So.2d at 1021.

21. Genusa v. Robert, 98-449 (La. App. 5 Cir. 10/14/98), 720 So.2d 166, 172-173; Patin v. Imperial Lloyds Ins. Co., 95-841 (La. App. 3 Cir. 1/17/96), 670 So.2d 238, 244. The La. R.S. 22:658A(1) unconditional tender requirement is not limited to UM claims. Dufrene v. Imperial Fire and Cas. Ins. Co., 03-1001 (La. App. 5 Cir. 2/10/04), 866 So.2d 380, *writ denied*, 04-0891 (La. 5/21/04), 874 So.2d 176; La. R.S. 22:658(B)(1); Carter, 859 So.2d at 285-286.

22. Hayes v. Allstate Ins. Co., 99-1558 (La. App. 3 Cir. 3/1/00), 758 So.2d 900, *writ denied*, 00-1587 (La. 8/31/00), 766 So.2d 1280.

23. Reed, 857 So.2d at 1021.

24. Dawson Farms, L.L.C. v. Millers Mut. Fire Ins. Co., 34,801 (La. App. 2 Cir. 8/1/01), 794 So.2d 949, at 953, *writs denied*, 01-2477 (La. 12/07/01), 803 So.2d 34 and 01-2497 (La. 12/07/01), 803 So.2d 37.

25. 02-1012 (La. App. 3 Cir. 3/5/03), 840 So.2d 1248, *writs denied*, 03-1375 (La. 12/12/03), 860 So.2d 1149 and 03-1382 (La. 12/12/03), 860 So.2d 1149.

26. McGee, 840 So.2d at 1256 (emphasis added).

27. Wallace v. State Farm Mut. Auto. Ins. Co., 36,099 (La. App. 2 Cir. 6/14/02), 821 So.2d 704, 713.

28. McClendon v. Economy Fire & Cas. Ins. Co., 98-1537 (La. App. 3 Cir. 4/7/99), 732 So.2d 727, 731.

29. Hollier v. State Farm Mut. Auto. Ins. Co., 01-0592 (La. App. 3 Cir. 10/31/01), 799 So.2d 793, *writ denied*, 01-3163 (La. 2/22/02), 810 So.2d 1135.

30. Clark v. McNabb, 04-0005 (La. App. 3 Cir. 5/19/04), 878 So.2d 677, 684.

31. Robin v. Allstate Ins. Co., 02-689 (La.

App. 3 Cir. 2/5/03), 844 So.2d 41, 46.

32. Kottle v. Provident Life and Acc. Ins. Co., 34,099 (La. App. 2 Cir. 12/15/00), 775 So.2d 64, 79, *writ denied*, 01-0490 (La. 4/20/01), 790 So.2d 635.

33. Boudreaux v. State Farm Mut. Auto. Ins. Co., 04-1339 (La. App. 4 Cir. 2/2/05), 896 So.2d 230.

34. Sutton v. Oncale, 99-967 (La. App. 5 Cir. 3/29/00), 765 So.2d 1072.

35. Vaughn v. Franklin, 00-0291 (La. App. 1 Cir. 3/28/01), 785 So.2d 79, *writ denied*, 01-1551 (La. 10/5/01), 798 So.2d 969; Bennett v. State Farm Ins. Co., 03-1195 (La. App. 3 Cir. 3/24/04), 869 So.2d 321, 328.

## ABOUT THE AUTHOR

Dean A. Sutherland is of counsel in the New Orleans office of Jeanson & Remondet. His practice includes insurance coverage disputes, admiralty and maritime law and construction litigation. In addition to his active legal practice, he is an adjunct faculty member at Loyola University Law School in New Orleans, where he teaches insurance law, and Louisiana State University Paul M. Hebert Law Center, where he teaches maritime personal injury law, admiralty law and the advanced torts litigation seminar. For more than 20 years, he has taught in numerous trial advocacy programs sponsored by the National Institute for Trial Advocacy, the Louisiana Association of Defense Counsel and the LSU Law Center. (Ste. 1700, 365 Canal St., New Orleans, LA 70170)



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# SHOW ME THE MONEY!

## What Exactly Are the Duties of Insurance Agents and Brokers?

By Frederic Theodore Le Clercq

**F**ollowing the destruction caused by Hurricanes Katrina and Rita in 2005, many Louisiana businesses and individuals may be saying the same thing to their insurance people: **SHOW ME THE MONEY!**

The largest natural disaster in the history of our nation demonstrates the immense need for proper insurance coverage. Who is at fault when there is a gap? When a company or individual is faced with huge and unexpected loss, only to learn later that there is an insurance dispute,<sup>1</sup> the company or individual will take action to try and recoup the losses.

In such cases, agents and brokers are likely targets, even if they have fulfilled all their duties placing the coverage. As in other jurisdictions, Louisiana insurance agents, brokers and their agencies can be held liable for such claims only if they are found to have breached a legal duty owed to their customers.<sup>2</sup>

Insurance agents and brokers owe a fiduciary duty to their customers only to the extent they have agreed to procure the coverage desired by the customer.<sup>3</sup> They are responsible not only for their unfaithfulness in the performance of this duty, but also their fault and neglect.<sup>4</sup> Agents and brokers are not liable just because

there is an uncovered loss. To be liable, they must have breached a contractual or delictual duty to their customer. A review of Louisiana jurisprudence demonstrates that agents and brokers have been held liable most frequently for uncovered losses when they fail to:

- ▶ sufficiently advise a client with regard to recommended coverage;
- ▶ agree to undertake the duty to procure insurance, using reasonable diligence in attempting to place the insurance; and
- ▶ promptly notify a client of a failure or inability to obtain the insurance.<sup>5</sup>

There have been other duties recognized,



and courts have always left open the possibility of the existence of other duties.<sup>6</sup>

### **Duty of Knowledge and Advice: A Point for Litigation**

Agents and brokers must be familiar with the types of policies they are selling, as well as the terms and scope of those policies. They have a duty to exercise reasonable diligence in determining what is included and what perils are excluded by the policy language.<sup>7</sup> It is important to note, however, that Louisiana law does not require an agent or broker to discuss every situation which may arise and for which the policy does or does not provide coverage. The law requires, instead, that when a customer has expressed concern about a specific risk, and the policy procured by the agent does not cover this risk, he must so inform his client. In a business where parts of a transaction are handled on the phone, disputes may arise over the specific risks voiced to the agent or broker.

Although the purchaser has a duty to effectively communicate his request for coverage to the agent or broker,<sup>8</sup> an agent or broker is not a “mere order taker.” The agent or broker can have a duty to advise an insured with regard to the recommended coverage and procure needed coverage even if not specifically requested by the insured. By the same token, agents and brokers are not charged with having expert knowledge of all risks involved in a particular business.<sup>9</sup> Cases of errors and omissions liability and the application of their duties are fact specific, and frequently they hinge on the history and relationship between the agent or broker and his customer. Where an agent is familiar with the insured’s business, has reason to know of the risks that an insured wants protected, and has experience with the types of coverage available in a particular market, the agent or broker’s undertaking to procure insurance includes an agreement by the agent to provide coverage for the client’s specific concerns.<sup>10</sup>

Take, for instance, the case of *Offshore Production Contractors, Inc. v.*

*The duties owed by agents and brokers are not exclusive. The significant losses and desperate attempts at recovery following events like Hurricanes Katrina and Rita could open the door to the creation of new duties.*

*Republic Underwriters Ins. Co.*,<sup>11</sup> where the court found that a broker, who was familiar with the insured’s business and its risks, did not act diligently when he undertook to obtain builder’s risk standby insurance for an insured construction company’s offshore oil pipeline project and obtained a policy that did not cover weather down time. Plaintiff’s broker never informed the company that it could have purchased a more extensive policy which would have covered this specific area plaintiff had concern about, namely weather down time. The broker instead took the policy to the plaintiff and represented that it was the broadest coverage available in the industry.

Likewise, in the case of *Durham v. McFarland, Gay and Clay, Inc.*,<sup>12</sup> the court found that an insurance agent, who handled the plaintiff’s insurance needs for 10 to 15 years, breached his duty to advise the plaintiff of the need for flood insurance on the insured’s boat house residence and to obtain such coverage when the plaintiff had requested the agent transfer coverage from his residence to his boat house. The court pointed out that the agent further failed in this duty because he became aware of the lack of flood insurance coverage several months before a flood damaged the boat house.

Improper advice also may be a basis

for liability. In *Neustadter v. Bridges*,<sup>13</sup> a broker was held to have breached a duty owed to his customer when he did not properly advise his client as to the effective date of the insurance coverage. The agent was liable after he made oral assertions that led the customer to believe that a policy covering a church van was effective even before the premium was paid and the paperwork signed. Plaintiff’s case was bolstered by the fact that a bank manager corroborated the plaintiff’s testimony that the broker advised that the coverage was effective immediately.

In *Taylor v. Sider*,<sup>14</sup> the court found an agent failed in his duty when he did not properly advise a customer on relevant provisions of Louisiana law. The plaintiff successfully stated a claim when she argued that had the agent informed her of the relevant provisions of Louisiana law, she may have opted for a different type of coverage, which would have provided recovery in that case.

### **Duty to Procure Insurance Coverage**

An insurance customer can recover for a loss arising out of the failure of an agent or broker to obtain coverage when the agent or broker:

- ▶ agrees to procure insurance for the client;
- ▶ fails to use reasonable diligence in attempting to place the insurance or fails to notify the client promptly of the failure to obtain the insurance; and
- ▶ warrants the client’s assumption that the client was properly insured.<sup>15</sup>

In the post-Katrina case of *Landry v. State Farm Fire & Casualty Co.*,<sup>16</sup> in ruling on the issue of improper joinder, the district judge found that plaintiffs’ complaint sufficiently pled a state law errors and omissions claim against the defendant insurance agent. Plaintiffs had alleged facts supporting all the above elements necessary to state a claim for failure to procure coverage.<sup>17</sup> Specifically, plaintiffs alleged that in 2003, when they transferred their State Farm account to the defendant insurance agent, they asked that he review their coverages and

ensure that they received the best coverage available. After their home was destroyed from the flood resulting from Hurricane Katrina, they received a payment for the destruction of their home; however, they were denied coverage and did not receive any payment for their losses associated with the contents of their home.

At that time, they learned their flood insurance policy did not include coverage for the contents of their home. The district judge held the facts alleged did state a cause of action against their insurance agent for failure to procure insurance coverage.

In the seminal case of *Karam v. St. Paul Fire & Marine Insurance*,<sup>18</sup> the court held an agent liable for obtaining the wrong amount of coverage. The plaintiff requested the maximum amount of property damage liability coverage as the agent could obtain. The agent testified that he intended to procure \$100,000 of coverage, but by error on his part, only obtained \$10,000 of coverage. The invoice sent to the insured indicated that the agent had obtained \$100,000 in coverage. Plaintiff testified that he relied on the agent to procure as much property damage liability coverage as he could write. The agent was liable, therefore, for failing to procure adequate or requested coverage.

In the case of *Chandler v. Jones*,<sup>19</sup> an agent was held to have breached his duty to procure insurance by knowingly leaving coverage gaps between primary and excess coverage. An insured company had inquired with an agent to obtain excess liability insurance. The primary policy had \$250,000 liability limits, and the excess insurance policy obtained did not commence until the insured's liability exceeded \$500,000.

The court held the agent liable for losses because he knew there was a gap in coverage but did not advise the customer that the excess policy limits could be reduced to lessen or eliminate the gap and he failed to follow up to see if the problem had been resolved by the insured.

## Duty to Promptly Notify of Failure to Obtain Coverage

An agent or broker can be relieved of his duty to procure coverage if he uses reasonable diligence to notify the client promptly when he has failed to obtain the coverage desired.<sup>20</sup> In *Cambre v. Travelers Indemnity Co.*,<sup>21</sup> the plaintiff was permitted recovery of losses, where an agent failed to promptly notify the plaintiff of his inability to obtain the requested insurance. The plaintiff had requested an "all risks" policy, but the agent obtained a "named risks" policy, which was the only policy that was procurable. The agent, therefore, had a duty to discuss his failure (or inability to procure) with his customer.

An agent or broker also must use reasonable diligence in the manner in which he notifies customers of the inability to procure the insurance coverage. In *Durham v. McFarland, Gay and Clay, Inc.*,<sup>22</sup> the court held an agent breached this duty when he attempted to notify the customer by unsuccessful telephone calls and a letter that was not sent certified mail.

However, in *Zinsel Co., Inc. v. J. Everett Eaves, Inc.*,<sup>23</sup> the court did not find a breach of duty by an agent when it relied on a letter of the insurance company notifying an insured of a congressional increase in available maximum flood coverage limits. Although the plaintiff had always maintained the maximum coverage limits, the agent was not held to a duty to ensure that the insured always carried the maximum coverage. Although an agent has a duty to inform the insured of pertinent changes in flood insurance available, the agent did not breach this duty by relying on notification by the insurance company.

## Will There Be Other Duties Recognized in Litigation Following Katrina and Rita?

The duties owed by agents and brokers are not exclusive. The significant losses and desperate attempts at recovery following events like Hurricanes Katrina

and Rita could open the door to the creation of new duties.

One court, however, has not been so willing. In *Tomlinson v. Allstate Indemnity Co.*,<sup>24</sup> plaintiffs attempted to assert claims against their insurance agent for her "complete lack of assistance and cooperation" and her "failure to handle their claims effectively." The district judge found that these allegations did not state a breach of fiduciary duty claim because under Louisiana law an insurance agent is deemed to be the representative of the insurer and therefore does not have a fiduciary duty to the insured. The court explained that although courts sometimes find the existence of a fiduciary duty between an agent or broker and his customer, it is limited to cases in which there is an agreement to procure insurance coverage. The court then addressed plaintiffs' allegations in the context of a negligence claim arising in tort. Plaintiffs pled the agent had allegedly failed to properly handle the claim, failed to be present at the inspection to assist in the proper handling of the claim, and failed to advise them on how to mitigate their damages. The district judge found that these allegations did not state a cause of action in tort because plaintiffs could not point to any authority to support their proposition that the agent had a duty to help an insured properly handle a claim. The district judge explained that such claims are properly asserted against the insurance company, not against the agent or broker.

## Conclusion

Many of these claims will fail because the courts will find that there was either no duty or that the duty was fulfilled. When courts are forced with difficult decisions and consider the facts and equities of each case, it would not be surprising to see new duties arise not previously recognized by our courts. How courts define the scope of the duties owed will significantly impact what happens to these claims.

## FOOTNOTES

1. The dichotomy between wind damage and flood damage is not specifically covered here. *See, e.g.,* Buente v. Allstate Ins. Co., 422 F.Supp.2d 690 (S.D.Miss. 2006) (March 24, 2006) (S.D. Miss) (upholding surface waters exclusion).

2. Taylor v. Sider, 1999-2521 (La. App. 4 Cir. 5/31/00), 765 So.2d 416, 418; Mauroner v. Massachusetts Indem. and Life Ins. Co., 520 So.2d 451 (La. App. 5 Cir. 1988), *writ denied*, 524 So.2d 518 (La. 1988).

3. Graves v. State Farm Mut. Auto Ins. Co., 2001-1243 (La. App. 3 Cir. 6/26/02), 821 So.2d 769, 772.

4. *Id.*

5. Durham v. McFarland, Gay and Clay, Inc., 527 So.2d 403, 405 (La. App. Cir.); Foster v. Nunemaker, 201 So.2d 215, 217 (La. App. 4 Cir. 1967); Foster v. American Deposit Insurance Co., 435 So.2d 571 (La. App. 3 Cir. 1983); Bordelon v. Herculean Risks, Inc., 241 So.2d 766, 771 (La. App. 3 Cir. 1970). Other duties not specifically discussed herein that are recognized in this Louisiana jurisprudence include a duty to investigate and ascertain the financial condition of prospective insurance companies

and to promptly notify the insured of a cancellation or termination of insurance coverage.

6. Durham, 527 So.2d at 405.

7. Offshore Production Contractors, Inc. v. Republic Underwriters Insurance Co., 910 F.2d 224, 231 (5 Cir. 8/29/90).

8. Porter v. Utica Mut. Ins. Co., 357 So.2d 1234, 1238 (La. App. 2 Cir. 1978).

9. Dooley v. Wright, 501 So.2d 980, 985 (La. App. 1987).

10. Offshore, 910 F.2d at 230.

11. *Id.* at 231.

12. Durham, 527 So.2d at 404.

13. Neustadter v. Bridges, 406 So.2d 738 (La. App. 4 Cir. 1981).

14. Taylor, 765 So.2d at 417.

15. Graves, 821 So.2d at 772.

16. \_\_\_\_ F.Supp.2d \_\_\_\_, 2006 WL 1159391 (E.D.La. 4/25/06).

17. *Id.* at \*6. Incidentally, the Landry Court held that the National Flood Insurance Act does not pre-empt state law claims involving negligent policy procurement, so as to give rise to federal question jurisdiction.

18. Karam v. St. Paul Fire & Marine Insurance, 281 So.2d 728 (La. 1973).

19. Chandler v. Jones, 532 So.2d 402 (La. App. 3 Cir. 1988).

20. Karam, *supra*, at note 19; Cambre v. Travelers Indemnity Co., 404 So.2d 511 (La. App. 4 Cir.), *writ denied*, 410 So.2d 761 (La. 1/8/82).

21. Cambre, 404 So.2d at 516.

22. Durham, 527 So.2d at 406-407.

23. Zinsel Co., Inc. v. J. Everett Eaves, Inc., (La. App. 5 Cir. 11/30/99), 749 So.2d 798.

24. Tomlinson v. Allstate Indemnity Co., 2006 WL 1331541 (E.D. La. 5/12/06).

## ABOUT THE AUTHOR

*Frederic Theodore (Ted) Le Clercq is a partner in the firm of Deutsch, Kerrigan & Stiles, L.L.P. In addition to being a frequent writer and speaker on professional liability matters, he handles professional liability claims in Louisiana and Mississippi. He is the co-chair of the Labor and Employment Section for his firm. He hopes to be back in his post-Katrina house by the time this article is printed. (755 Magazine St., New Orleans, LA 70130-3672)*



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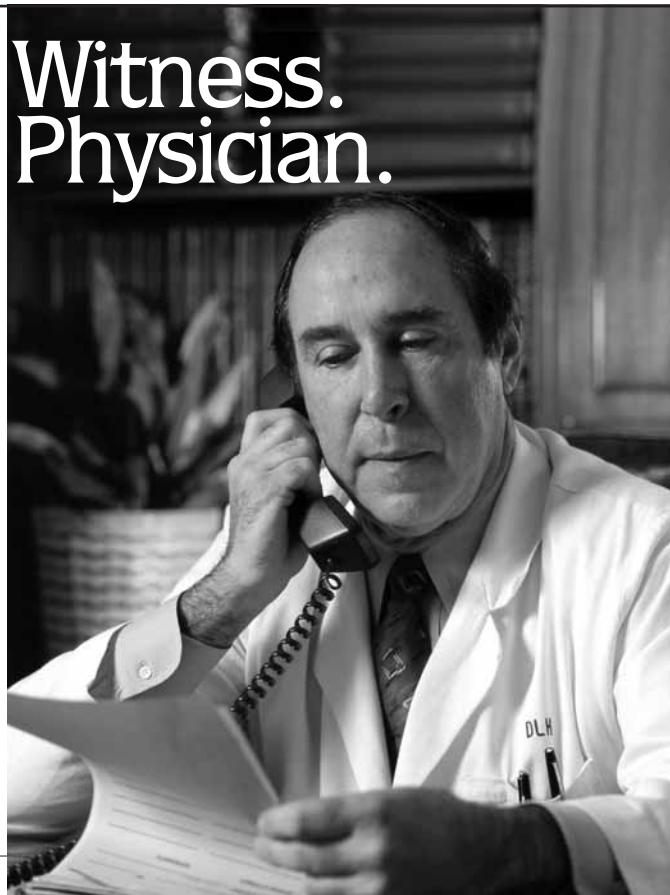


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### Other Positions Open in 2006-07 Elections

#### Nominating Committee to Meet Aug. 25 to Nominate President-Elect, Secretary

The Nominating Committee of the Louisiana State Bar Association will meet Friday, Aug. 25, to nominate a president-

elect for the 2007-08 term and a secretary for the 2007-09 term. The president-elect will automatically assume the presidency in 2008-09.

According to the president-elect rotation, the nominee must come from Nominating Committee District 3 (parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, DeSoto, East

Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Jefferson Davis, Lafayette, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, St. Martin, St. Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll and Winn).

According to the secretary rotation, the nominee must come from Nominating Committee District 1 (parishes of

## 2006-07 Nominating Committee

### Marta-Ann Schnabel, Chair

(504)799-4200 • fax (504)799-4211 • mas@obryonlaw.com

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Orleans, Plaquemines, St. Bernard and St. Tammany).

Any member interested in seeking the position of president-elect or secretary should immediately contact members of the Nominating Committee. (*Members' names, phone/fax numbers and e-mail addresses are on page 98.*)

The Nominating Committee report will be submitted to the Board of Governors on Saturday, Aug. 26. On Monday, Sept. 25, notices of the action of the Nominating Committee will be mailed to all LSBA members, along with instructions for additional nominations by petition. Self-qualification forms for positions on the Board of Governors, House of Delegates, Young Lawyers Section Council, Nominating Committee and American Bar Association House of Delegates also will be mailed to all members on Sept. 25.

Per a Board of Governors decision, the remainder of the election cycle will be conducted electronically only. Deadline for return of nominations by petition and qualification forms is Monday, Oct. 23. First election ballots will be e-mailed Monday, Nov. 20, and online voting must be completed by Monday, Jan. 8, 2007.

Bar members are encouraged to check the accuracy of their e-mail addresses on file with the LSBA. Go to: [www.lsba.org/membership](http://www.lsba.org/membership).

Other positions open for the 2006-07 elections are:

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

**Nominating Committee** (15 positions, one-year terms): District 1A, Orleans Parish, four members; District 1B, parishes of Plaquemines, St. Bernard and St. Tammany, one member; District 2A, East Baton Rouge Parish, two members; District 2B, Jefferson Parish, two members; District 2C, parishes of Ascension, Assumption, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana, one member; District 3A, Lafayette Parish, one mem-

ber; District 3B, parishes of Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Martin, St. Mary and Vermilion, one member; District 3C, parishes of Allen, Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry and Vernon, one member; District 3D, parishes of Bossier and Caddo, one member; and District 3E, parishes of Bienville, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll and Winn, one member.

**LSBA House of Delegates** (two-year terms): 20th through 40th Judicial Districts and Orleans Parish.

**Young Lawyers Section:** chair-elect (one-year term); secretary (one-year term); and one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

**ABA House of Delegates** (two-year term) (*must be a member of the American Bar Association*): one delegate.

For additional information on the nomination process or Association elections, contact Executive Assistant Ramona K. Meyers at (504)619-0115 or (800)421-5722, ext. 115.

### Applications Being Accepted for Bankruptcy Law Certification

The Louisiana Board of Legal Specialization (LBLS) has announced that applications for 2007 certification in both Business Bankruptcy Law and Consumer Bankruptcy Law will be accepted through September 2006.

Both certifications may be simultaneously applied for with the LBLS and the American Board of Certification, the testing agency. Information concerning the American Board of Certification will be provided with the LBLS application form(s).

If you meet the minimum five-year, full-time practice requirement and are interested in applying, fax or mail the following information to:

**Catherine S. Zulli, Executive Director**  
**Louisiana Board of Legal Specialization**  
**601 St. Charles Ave., New Orleans, La. 70130-3404**  
**Phone (480)699-0786**  
**E-mail [czulli@lsba.org](mailto:czulli@lsba.org)**

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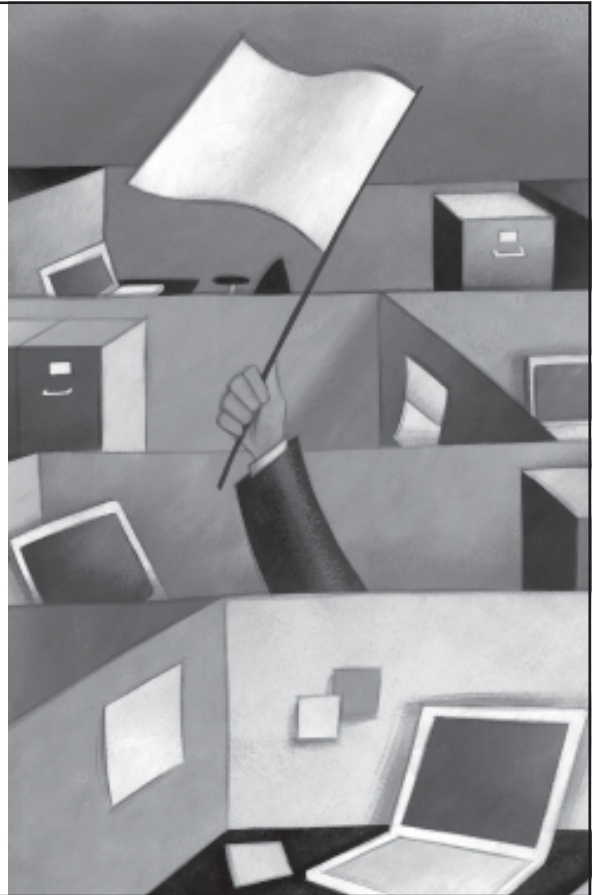
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# We're Back!

## LSBA 2006-07 CLE Seminar Calendar

The Louisiana State Bar Association has planned a year's worth of continuing legal education seminars to fit all tastes and needs. For more information on any program, contact CLE Coordinator Annette C. Buras at (504)619-0102 or (800)421-5722, ext. 102, or e-mail [aburas@lsba.org](mailto:aburas@lsba.org). Information on CLE seminars also can be found on the LSBA's Web site. Go to: [www.lsba.org/cle-1/cle-1.html](http://www.lsba.org/cle-1/cle-1.html). Below are seminars through June 2007.

LSBA  
CLE

### **HIPAA**

Feb. 16, 2007  
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### **Destination Disney!**

Feb. 19-21, 2007  
Lake Buena Vista, Fla.

### **Domestic Law**

March 9, 2007  
New Orleans

### **Estate Planning**

March 16, 2007  
New Orleans

### **Practicing Law: The Early Years**

March 23, 2007  
New Orleans

### **ADR**

April 7, 2007  
New Orleans

### **Evidence**

April 20, 2007  
New Orleans

### **CLE for New Admittees**

April 23, 2007  
Baton Rouge

### **Jazz Fest**

April 27 2007  
New Orleans

### **Summer School for Lawyers**

June 3-6, 2007  
Sandestin, Fla.

### **Ethics & Professionalism**

#### **Summer Re-Run**

June 22, 2007  
New Orleans

### **Employment Law Update 2006:**

#### **A Changing Landscape**

Aug. 25, 2006  
New Orleans

### **13th Annual Admiralty Symposium**

Sept. 1, 2006  
New Orleans

### **Social Security: Disability Law**

Sept. 8, 2006  
New Orleans

### **Recent Developments in Bankruptcy**

Sept. 22, 2006  
New Orleans

### **Ethics & Professionalism**

Sept. 26, 2006  
Lafayette

### **It's a Jungle Out There! Exploring the Wild Side of Insurance Law**

Sept. 29, 2006  
New Orleans

### **Ethics & Professionalism**

Oct. 6, 2006  
New Orleans

### **Fear Factor: Electronic Discovery & Admissibility**

Oct. 13, 2006  
New Orleans

### **Bridging the Gap**

Oct. 26-27, 2006  
New Orleans

### **6th Annual Class Action/**

#### **Mass Tort Symposium**

Oct. 20, 2006  
New Orleans

### **Breaking Down the Walls of Separation — A Day of Dialogue: What Judges and Lawyers Can Learn From Each Other**

Nov. 3, 2006  
New Orleans

### **Professional Liability in the 21st Century**

Nov. 10, 2006  
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### **Be the First in Line for Workers' Compensation Updates**

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New Orleans

### **Summer School Revisited**

Dec. 7-8, 2006  
New Orleans

### **Mediation Seminar**

Feb. 2, 2007  
New Orleans

## 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.

Recommended format for citation of PUBLIC opinions: e.g., "LSBA-RPCC PUBLIC Opinion 05-RPCC-001 (04/04/2005)".

Questions, comments or suggestions regarding the opinions, the publication process or the Ethics Advisory Service may be directed to Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130; direct dial (504)619-0144; fax (504)598-6753; e-mail: RLemmler@lsba.org.

## PUBLIC Opinion 06-RPCC-008<sup>1</sup>

### Client File Retention

*There is no comprehensive rule on retaining closed client files. The rule relating to safekeeping of clients' funds should be consulted and a file retention policy based on good judgment should be developed by every law firm and solo practitioner for the disposal of closed client files.*

Unfortunately, there are no hard and fast rules regulating a lawyer's obligation to retain and store client files in which the work has been concluded and the file closed. The volume of paperwork in client files has multiplied exponentially in the past years, and lawyers and law firms have been overwhelmed with the volume of closed files being stored and the expense of storage. Until digital storage is permitted wide-scale by the rules and becomes a generally accepted mode of storage for most, if not all documents, this problem will continue to create a burden on lawyers.

While there is no apparent general duty of a lawyer or a law firm to preserve a client's file indefinitely, Rule 1.15(a) of the Louisiana Rules of Professional Conduct (2004) (the LRPC), as well as Section 28(A) of Rule XIX of the Rules of the Supreme Court of Louisiana, provide for safekeeping of clients' funds and other property — and records thereof — for a period of five years after termination of the representation.<sup>2</sup>

Although the LRPC and Rule XIX do not contain any specific provisions dealing with the retention of client files, the close connection between records of client property, trust accounts, funds, etc., and client files suggests that it is inadvis-

able for lawyers not to retain and keep safe client files (or copies of same, in the event that the original file has been otherwise relinquished to the client) for a minimum of five years following the termination of the representation.<sup>3</sup>

Additionally, as there is still effectively no prescriptive period for attorney disciplinary complaints, except a recently adopted 10-year liberative prescriptive period on matters of attorney professional misconduct where the mental element is merely negligence,<sup>4</sup> we cannot begin to suggest that disposal of client files, even after the expiration of the minimum five-year period for safekeeping clients' property, might be advisable.

Practices of different lawyers and law firms are so varied and complex that disposal of certain files or types of files generated in one type of practice, such as criminal or insurance defense, might not be appropriate for another type practice, such as a transactional or estate planning/probate practice.

Therefore, it is our opinion that every lawyer and/or law firm should develop a policy for the orderly and prudent disposition of closed client files.<sup>5</sup> In the development of such a policy, a number of considerations should be made, most of which are based on common sense.<sup>6</sup> Careful consideration should be given to particular types of files and sometimes a subjective approach must be used by the particular lawyer who worked on the file, if she is available.

An article entitled "Spring Cleaning: A Dozen Pointers for Purging Files," published in the ABA's magazine, *The Young Lawyer*, and reprinted in the *Journal of the Kansas Bar Association*, May 1997, suggests 12 guidelines for disposing of closed files.<sup>7</sup>

The ABA Informal Opinion 1384, March 14, 1977, suggests the following considerations:



1. Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in (sic) behalf of the client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).
2. A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired.
3. A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect will be preserved by the lawyer.
4. In determining the length of time for retention or disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.
5. A lawyer should take special care to preserve indefinitely accurate and complete records of the lawyer's receipt and disbursement of trust funds.
6. In disposing of a file, a lawyer should protect the confidentiality of the contents.
7. A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.

8. A lawyer should preserve, perhaps for an extended time, an index or identification of the files that the lawyer has destroyed or disposed of."<sup>8</sup>

Because there are no specific rules regulating a lawyer's or law firm's retention of client files other than the rules governing safekeeping of client property, it is the Committee's opinion that each lawyer and/or law firm should promulgate a file retention policy tailored to the character of their respective clients and areas of practice. It would appear that the best practice would be to retain all closed client files for a minimum of five years, to notify the client, if he is available, prior to destruction of the file to provide him a reasonable opportunity to take the file, and to develop a policy for disposal or retention of client files after that time.

#### 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 LSBA, 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. See *Louisiana Rules of Professional Conduct* (2004), Rule 1.15(a),

"...Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation . . . ."

and *Rules of the Supreme Court of Louisiana*, Rule XIX, Section 28(A),

"...Every lawyer engaged in the practice of law in Louisiana shall maintain and

preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client . . . ."

See also, Informal Opinion 1384, of the ABA Committee on Ethics and Professional Responsibility, March 14, 1977. Note also that Louisiana Civil Code Article 3496 provides that:

"An action by a client against an attorney for the return of papers delivered to him for purposes of a law suit is subject to a liberative prescription of three years. This prescription commences to run from the rendition of a final judgment in the law suit or the termination of the attorney-client relationship."

3. At the conclusion of the case, the lawyer may return the client's file to the client at the client's request, retaining only the financial records mandated by the Louisiana Rules of Professional Conduct and the Rules of the Supreme Court of Louisiana, quoted *supra*.

4. *Rules of the Supreme Court of Louisiana*, Rule XIX, Section 31, amendment effective May 30, 2003.

5. A good document retention policy would include advising clients in the lawyer's initial engagement letter or representation agreement when the client's records might later be destroyed (e.g., after five years following termination of the representation).

6. *Louisiana Bar Journal*, Vol. 49, No. 6, pp. 470-472.

7. See "Spring Cleaning: A Dozen Pointers for Purging Files," ABA Publication, April 1997, *The Young Lawyer*, reprinted in *Journal of the Kansas Bar Association*, May 1997, 66-MAY J. Kan. B.A. 18.

1. Before destroying any file, the lawyer or law firm should have it microfilmed or microfiched, (*or electronically scanned*) after tossing out irrelevant and obviously discardable materials. The cost of doing this is relatively nominal, and it reduces storage costs to almost nothing. (*Italicized portion ours.*)

2. With continuing clients, make arrangements for returning files to the

client or a time schedule for destruction. For single-matter clients, make suitable arrangements before the entire matter concludes.

3. If no arrangements have previously been made and the client is unavailable, hold any files that are likely to be important for a minimum of five years.
4. All trust account records, receipts and disbursements should be permanently maintained, or, at least, microfilmed prior to destruction of paper records.
5. On any matter where there might be a claim of malpractice, maintain the file for six years (*we suggest 10 years in Louisiana, in view of Section 31, Rule XIX, discussed supra*) and then microfilm before destroying it. (Italicized portion ours.)
6. On matters involving contracts, notes or any other matter with long statutes

of limitation, retain the files for up to 15 years, or until the client's consent is obtained for destruction.

7. On criminal matters, in general, maintain the files for at least six years after the end of the sentence or termination of the case. There are certainly exceptions to this rule, for example, in some cases involving repeat offenders.
8. On matters of guardianship or trust, keep the file at least six years after the termination of the guardianship or trust and coming of age or restoration to competency, except financial records, which should be maintained indefinitely.
9. On real estate matters, keep files at least six years and then microfilm prior to destruction; send all important papers to the client.
10. On tax matters, maintain files a bare

minimum of five years; it is suggested to hold tax files for six years on normal matters and, if there is any hint of possible fraud, maintain the files indefinitely.

11. Family law, custody problems and related files must be maintained as long as possible problems exist and then for at least six additional years. It is strongly recommended that these be microfilmed before destruction.
  12. Tort matters involving adults could probably be safely destroyed after six years with prior notice to the client. These files should be microfilmed in case there is another injury claim. In tort actions involving minors, hold the files until at least two years after coming of age, or six years, whichever is longer. (Emphasis and comments ours.)
8. *Supra*, footnote 2, Informal Opinion 1384.

## Ethics Advisory Service

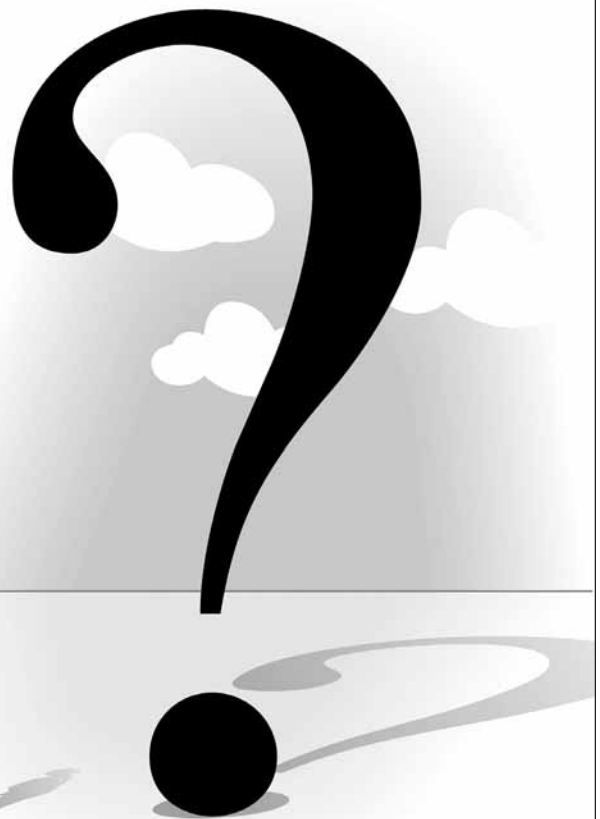
- Unsure of your ethical obligations as a lawyer?
- Worried about doing the right thing or wrong thing?
- Need some advice or just someone to bounce your ideas off of before going forward?

The Louisiana State Bar Association offers completely confidential, totally FREE ethics advice and opinions to each of its licensed members in good-standing.

Call, email, fax or write us with questions about your own prospective conduct. Don't struggle by yourself with these difficult questions- we're here and ready to help you!

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# INTELLECTUAL PROPERTY

## PATENTS, COPYRIGHTS & TRADEMARKS

*We have obtained over 1,000 patents,  
copyrights and trademarks for  
clients throughout Louisiana and  
across the country.*

*We can help your clients acquire the  
patents, copyrights and trademarks  
that will protect their ideas, and  
defend their intellectual property  
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# FOCUS ON

## Professionalism

By Judge Dee D. Drell

### DILEMMA OF THE UNPROFESSIONAL JUDGE

Prior to taking the bench, I practiced law for 32 years, including the time I spent in the Army Judge Advocate General's Corps. I appeared before many judges, over time. In handling all kinds of litigation, I became starkly convinced that we must add an important teaching point to be considered whenever a client must face litigation. That point, I think, is, in addition to an evaluation of the relative merits of any case, to be sure to answer the question, "Who is the judge?"

Face it. The question has haunted you every time you've walked into a courtroom. It is an important question because, more often than not, there are numerous matters that will require not some ethereal application of a fine point of law but, instead, a pure and simple judgment call by a jurist. Put succinctly, in any given suit, the judge's having made some ruling that was entirely within his or her discretion and not likely to be reversed can, on a really bad day, gut your case. Heck, it happens all the time.

Most of the jurists I grew up with in my practice are good people who work hard and give it their best shot. Oh, certainly, some of them are viewed by the litigators as having some propensity one way or the other as more "plaintiff-oriented" or more "defense-oriented" or of equanimity when it comes to domestic cases. Some are even viewed as eminently fair, and no one seems afraid to try cases before them. The space limitations here do not allow for a more detailed discussion on these mildly preferential issues in judging, other than to say that, in places where judges are elected, there is enormous pressure placed on those judges resulting from competition between the judicial duty to the public and the efforts of those who would have the judicial officer subject to the whims of a constituency arising from political contributions.

But then, as I said, this is a topic for another day.

No, what I am tuned into at this juncture is the remarkable challenge to the lawyer who tries to practice professionally before a judge who is considered in the view of lawyers practicing in his or her court to be without much in the way of scruples. Just what *does* one do in such a situation? I've been in some of them, and it's tough. After all, if you are the one who files a complaint, even out of the best sense of honor, you run the risk of retaliation (or at least perceived retaliation) from the judge, and your client will be the one ostensibly to suffer. Likewise, you're already so busy, you just don't need or want the hassle of becoming embroiled in that kind of controversy. So, what do you usually do? SETTLE, that's what. Perhaps not a bad thing. Most cases probably should settle. The travesty is when you settle those cases that really had potential merit.

The problem is that running and hiding from an unscrupulous judge just exacerbates a difficult situation. In my view, the only truly professional thing to do is determine to confront the situation in an attempt to make it better. I suggest you begin with the understanding that judges are people, too. They only wear the robe because of the perceived confidence the public has in them. Even in some egregious situations, a judge may respond to the realization that his or her reputation is becoming tarnished. Often in this erstwhile isolated job, which is one necessarily of an "ivory tower" nature, we can become distracted from the rules of humility that should govern us.

So, how do you pull this off? I would suggest that, in some instances, before you either file a complaint or choose not to, consider candid discussions with folks in other parts of the bar. See if your perceptions play out. My experiences

tell me that professionals on all sides have a common wish: to be treated fairly at the bench. Professionals recognize that we are all diminished by an unfair jurist. Assuming your perceptions are confirmed by others, plan a strategy. The best first step, if you believe the jurist can be salvaged, might be a visit by a *group* of bar members of all persuasions to discuss your concerns. Such a conference should not occur while any participants have active litigation pending to avoid running afoul of Rule 3.5 of the Rules of Professional Conduct.

During the visit, make it clear why you are there, and that both your wish and expectations are that there will be amendment of approach by the judge. This kind of visit is unpleasant, of course, but it may be a hallmark of truly professional attorneys. If there is an insufficient number of attorneys with ethical reputations willing to join you, it is extremely risky to go it alone. In such a circumstance, you may have to fall back on the more traditional methods of judicial discipline, assuming things are that bad.

These are difficult situations in all events. They require the testing of your own sense of professionalism and your responsibility to the legal system we cherish and honor. By being a bit brave and willing to take some risk, you may be able to effect a great work to restore confidence in one corner of the judicial system!

*Dee D. Drell is a United States district judge for the Western District of Louisiana (Alexandria Division). He also is a member of the Louisiana State Bar Association's Professionalism and Quality of Life Committee. He can be reached at (318)473-7420 or via e-mail at dee\_drell@lawd.uscourts.gov.*





Marta-Ann Schnabel was sworn in as the 2006-07 president of the Louisiana State Bar Association by the Women of the Orleans Parish Bench, including Hon. Piper D. Griffin, Hon. Carolyn Gill-Jefferson, Hon. Madeleine M. Landrieu, Hon. Terri Fleming Love, Hon. Nadine M. Ramsey and Hon. Ethel Simms-Julien.

## Annual Meeting 2006 / LSBA Homecoming

All photos by Ard Gallery  
More photos on pages 158-159



The 2006-07 Board of Governors was sworn in during the Annual Meeting by Louisiana Supreme Court Associate Justice Catherine D. Kimball. Seated from left, board members Kelly M. Legier and Paula Hartley Clayton; Secretary E. Wade Shows; President-Elect S. Guy deLaup; President Marta-Ann Schnabel; Immediate Past President Frank X. Neuner, Jr.; and board members Celia R. Cangelosi, Patricia A. Krebs, Shannan L. Hicks and Joseph A. Conino. Standing

from left, board members John M. Church and Walter M. Sanchez; Young Lawyers Division Chair Mark E. Morice; board member Raymond T. Diamond; Treasurer James R. Nieset; and board members Ronald J. Sholes, W. Jay Luneau, Donald R. Miller, Carrick B. Inabnett and Jack C. Benjamin, Jr. Not in photo are board members Steven G. "Buzz" Durio, Joseph W. Mengis, J. Christopher Peters and Robert A. Kutcher.



## Attorneys, Bar Associations Receive President's Awards

Eleven Louisiana State Bar Association (LSBA) President's Awards were presented during the Annual Meeting by 2005-06 President Frank X. Neuner, Jr. Eight attorneys and three bar associations were recognized for their services during Hurricanes Katrina and Rita.

Honored were John S. Coulter of Baton Rouge, Winston G. DeCuir, Jr. of Baton Rouge, Bobby J. Delise of Metairie, Steven G. Durio of Lafayette, Val P. Exnicios of New Orleans, William R. Leary of Houma, Timothy A. Maragos of Lafayette and Susan S. Simon of Lafayette, as well as the Baton Rouge Bar Association, the Lafayette Parish Bar Association and the State Bar of Texas.

### ► John S. (Chip) Coulter

Coulter was honored for his many contributions to the LSBA following Hurricanes Katrina and Rita.



President's Award recipient John S. (Chip) Coulter, left, and 2005-06 LSBA President Frank X. Neuner, Jr.

## ANNUAL MEETING 2006

He currently serves as special counsel to the Louisiana Supreme Court. From 1992-2005, he was an assistant attorney general with the Louisiana Department of Justice, primarily handling medical malpractice and civil rights litigation. He has been assistant executive counsel to the Governor, chief counsel of the Office of Workers' Compensation and counsel to the Louisiana Parole Board. He is a 1990 graduate of Southern University Law Center and clerked for the late Sen. John J. Hainkel, Jr., the Louisiana House of Representatives and the 20th Judicial District Court.

He has served on the LSBA Board of Governors and in the House of Delegates and currently is a member of the *Louisiana Bar Journal* Editorial Board and the Access to Justice Committee. He is a Fellow of the Louisiana Bar Foundation and is a member of the Baton Rouge Bar Association Pro Bono Project and the Feliciana Bar Association.

### ► Winston G. DeCuir, Jr.

DeCuir was honored for his services as chair of the Hurricane Relief Task Force Grants Subcommittee.

He practices with the firm of DeCuir, Clark & Adams, L.L.P. His practice has been primarily in the areas of labor and employment litigation (private and pub-



President's Award recipient Winston G. DeCuir, Jr., left, and 2005-06 LSBA President Frank X. Neuner, Jr.

lic sectors) and business-related immigration. He was an active member of the New Orleans Louis A. Martinet Legal Society (vice president, 2002-03) and a former member of the New Orleans Bar Association Young Lawyers Section. He is now an active member of the Baton Rouge chapter of the Louis A. Martinet Legal Society. He received his JD degree in 1998 from Louisiana State University Paul M. Hebert Law Center, where he served as an associate editor of the *Louisiana Law Review*.

### ► Bobby J. Delise

Delise was honored for his work with the LSBA Professionalism and Quality of Life Committee and his many contributions to the LSBA following Hurricanes Katrina and Rita.

He is founding partner of the New Orleans-based law firm of Delise Amedee Hall. His primary area of expertise is the representation of an international clientele of oil field, inland and construction commercial divers, technical, public safety and recreational divers in personal injury litigation. In addition to his litigation practice, he is engaged in the representation of individuals and enterprises in international and commercial litigation and contracts.

He received his JD degree from Loyola



President's Award recipient Bobby J. Delise, left, and 2005-06 LSBA President Frank X. Neuner, Jr.





President's Award recipient Val P. Exnicios, left, and 2005-06 LSBA President Frank X. Neuner, Jr.

University Law School in 1979, a master of laws (LLM) from Tulane Law School in 1990 and his BS degree from Louisiana State University in 1976. He holds Martindale-Hubbell's highest (AV) rating. He was admitted to the Louisiana State Bar in 1979 and the Texas State and Colorado State bar associations in 1998. He has been admitted *pro hac vice* in numerous federal and state courts throughout the United States. He sits on the faculty of the Undersea and Hyperbaric Medical Society, where he lectures on diving law and legal issues related to hyperbaric medicine.

Delise is the past chair and present co-chair of the Professionalism and Quality of Life Committee. He has written and lectured extensively on professionalism and ethics within the legal profession.

► **Steven G. (Buzz) Durio**

Durio was honored for his many contributions to the LSBA in conjunction with his efforts to protect the public by limiting and regulating public adjusting.

He is founding



Steven G. (Buzz) Durio



President's Award recipient William R. Leary, left, and 2005-06 LSBA President Frank X. Neuner, Jr.

partner of the Lafayette firm of Durio, McGoffin, Staggs and Ackermann. He received a BA degree in 1977 from Louisiana State University and his JD degree in 1977 from LSU Paul M. Hebert Law Center (managing editor, *Louisiana Law Review*, 1975-77). He was admitted to practice in Louisiana in 1977.

He has served in the LSBA House of Delegates since 1986 and on the LSBA Nominating Committee since 1995. He was chair of the LSBA Public Access and Consumer Protection Committee from 1997-2000 and in 2004. He has been a member of the American Bar Association since 1977, the Louisiana Organization for Judicial Excellence since 1991 and the Louisiana Bar Foundation since 1987. He received the LSBA President's Award in 1999.

► **Val P. Exnicios**

Exnicios was honored for his work with the LSBA Mandatory Continuing Legal Education Committee and his many contributions to the LSBA following Hurricanes Katrina and Rita.

He is managing attorney and senior trial counsel of the law firm of Liska, Exnicios & Nungesser in New Orleans. His primary practice is in the areas of class actions, toxic torts, personal injury and consumer protection litigation. He

has served on numerous Plaintiff Steering Committees in both state and federal court and has served as lead and/or co-lead counsel in mass tort actions in Louisiana, Mississippi and Florida.

A frequent speaker at CLE seminars on professionalism, ethics and mass torts, Exnicios serves as chair of the LSBA's Section Council, chair of the Bench & Bar Section, and as a member of the Professionalism, Diversity, Legislation, MCLE, and Rules of Professional Conduct/Ethics Advisory committees. He received his JD degree in 1989 from Loyola University Law School, where he was a member of both the *Law Review* and Moot Court Board and served as a Bonomo Scholar.

► **William R. Leary**

Leary was honored for his work with the LSBA's Lawyers Assistance Program and disaster relief support following Hurricanes Katrina and Rita.

He is the executive director of the Louisiana Lawyers Assistance Program, Inc. He was one of the original members of a committee in 1985 (Impaired Lawyers), which in 1992 became the Lawyers Assistance Program, Inc. (LAP). LAP is a confidential service that provides assistance with alcoholism, drug addiction, stress, compulsive disorders, depression, anxiety and other issues that affect a lawyer's ability to function.

He is a past member of the ABA Commission on Lawyers Assistance Programs and presently serves on the Advisory Board of the ABA CoLAP Evaluation team, which travels across the United States reviewing and making recommendations for expansion and increased effectiveness of LAPs. He is presently a member of the ABA Judicial Assistance Task Force, CoLAP Directors Life Balance Task Force and the Evaluation Committee.

Leary received his JD degree in 1966 from Loyola University Law School. He is a licensed addiction counselor. His primary practice was in the areas of banking and real estate. He has written and lectured extensively on the work of LAPs, substance abuse and gambling addiction in the legal profession.

## ANNUAL MEETING 2006

### ► Timothy A. Maragos

Maragos was honored for his service as chair of the LSBA Public Information Committee and his many contributions to the LSBA following Hurricanes Katrina and Rita.

He is employed by the corporate law department of State Farm Mutual Automobile Insurance Co. and works as a trial attorney in its Lafayette Staff Counsel Office. He has been with the firm since 1999. Previously, he worked for the Louisiana Department of Justice in its Risk Litigation section and in private practice, and also has clerked for two federal judges, Hon. Donald E. Walter and Hon. Rebecca F. Doherty.

He received a BA degree in journalism and mass communications from New Mexico State University in 1976 and worked as a newspaper reporter and editor and as public information officer and lobbyist for the City of Lafayette before earning his law degree from Louisiana State University Paul M. Hebert Law Center in 1988.

Maragos currently serves as a member of the LSBA House of Delegates and served as a House of Delegates liaison to the Board of Governors. He is in his



**President's Award recipient Timothy A. Maragos, left, and 2005-06 LSBA President Frank X. Neuner, Jr.**

second term as a Hearing Committee member for the Louisiana Attorney Disciplinary Board, serving as chair of Committee 5. He is a 2001 recipient of the LSBA's President's Award. He also is a member of the board for the Family Violence Intervention Program and the Lafayette Community Correctional Center. He has just completed his studies to become a permanent deacon for the



**President's Award recipient Susan S. Simon, left, and 2005-06 LSBA President Frank X. Neuner, Jr.**

Catholic Diocese of Lafayette and hopes to be ordained in September.

### ► Susan S. Simon

Simon was honored for her many contributions to the LSBA following Hurricanes Katrina and Rita.

She is a former partner of the law firm of Laborde and Neuner, having retired in 2002 after 19 years of litigation practice. She received the LSBA's Crystal Gavel Award in 2002 and the Sam Dalton Capital Defense Special Advocacy Award from the Louisiana Criminal Defense Lawyers Association in 2001 as a result of the pro bono representation of a death row inmate. She was a team leader of the American Inn of Court of Acadiana and has served as a member of the Louisiana Federal Court Bench/Bar Liaison Committee, a member of the *amicus curiae* committee of the Louisiana Association of Defense Counsel, as state coordinator for the American Bar Association Woman Advocate Committee and as a board member of the American Heart Association, Acadiana Division.

Simon has also served on the faculty of numerous continuing legal education programs, including programs sponsored by the National Institute for Trial Advocacy, the Louisiana State Bar Association, Louisiana State University Paul M.



**Accepting the President's Award on behalf of the Baton Rouge Bar Association were, from left, President Jay Jalenak, Jr. and Executive Director Ann Scarle. Presenting the award is 2005-06 LSBA President Frank X. Neuner, Jr. Scarle and the Baton Rouge Bar Association also received a Friend of Pro Bono Award.**



Hebert Law Center, Tulane Law School, the Louisiana Association of Defense Counsel and the Lafayette Parish Bar Association.

She received her JD degree in 1983 from Tulane Law School, where she graduated *magna cum laude* and was selected for membership in the Order of the Coif.

### ► Baton Rouge Bar Association

The Baton Rouge Bar Association (BRBA) was honored for its many contributions to the LSBA following Hurricanes Katrina and Rita.

The association of 2,300 members was incorporated in 1929 by a group of civic-minded attorneys and provides numerous member and public service activities, including continuing education, a monthly magazine, Lawyer Referral Service, youth education programs and a Pro Bono Project.

In the aftermath of Hurricanes Katrina and Rita, the BRBA was uniquely poised to assist with the legal needs of Louisiana residents. Within days of Hurricane Katrina's landfall, the BRBA began staffing a legal services hotline for the LSBA. During the six weeks of operation by the BRBA, more than 4,000 calls were received and 3,215 clients were assisted with their legal problems. In addition, the BRBA assisted the LSBA and the Louisiana Bar Foundation (LBF) with the initial collection of funds for the Hurricane Katrina Relief Fund until the LSBA and the LBF were able to take over the administration of this fund.

### ► Lafayette Parish Bar Association

The Lafayette Parish Bar Association was honored for its many contributions to the LSBA following Hurricanes Katrina and Rita.

The professional association is comprised of 850 attorneys in the Acadiana area whose mission is to serve the profession, its members and the community by promoting justice, professional excellence, respect for the rule of law and fellowship amongst attorneys and the court. The association's motto is "Motivated by Justice, Inspired



Accepting the President's Award on behalf of the Lafayette Parish Bar Association was President Kenny Oliver, left. Presenting the award is 2005-06 LSBA President Frank X. Neuner, Jr.

By Service." The members strive each day to achieve this motto whether it is in their daily practice or by supporting the community in which they live.

### ► State Bar of Texas

The State Bar of Texas was honored for its many contributions to the LSBA following Hurricanes Katrina and Rita.

The association is made up of more than 77,000 active members and more than 11,000 inactive members. Texas' unified bar exemplifies the profession's collective responsibility to protect the public and ensure high professional standards.

As hurricane evacuees from Louisiana began filling stadiums, convention centers and military bases throughout Texas, local bar associations began to react. Volunteers stepped up to the plate, food and clothing drives got underway, and people were on the ground making preparations and filling needs. The State Bar of Texas took on the role of coordination — working to ensure that all of those helping had the tools they needed and could benefit from knowledge or infrastructure developed by others. With Web sites being updated from moment to moment and the incredible outpouring of support, Texas lawyers were able to help



Accepting the President's Award on behalf of the State Bar of Texas was President Eduardo Rodriguez, left. Presenting the award is 2005-06 LSBA President Frank X. Neuner, Jr.

their colleagues from other states as well as the thousands of people who found themselves evacuated from their homes.

When State Bar of Texas President Eduardo R. Rodriguez talked to LSBA President Frank X. Neuner, Jr., Neuner did not know if the Louisiana Bar Center had survived or the location and status of staff members. Calls were coming in offering assistance from outside the state and from lawyers inside the state asking about court hearings, law practices, court-houses and other practice-related issues. The State Bar of Texas sent several staff members to assist the lawyers of Louisiana and the LSBA staff.

The legal aid organizations and pro bono programs throughout Texas have partnered with the LSBA and local bar associations to answer the disaster legal hotline, hold clinics and provide legal advice at shelters. The State Bar Law Office Management Program contributed its skill and expertise for training sessions designed to help Louisiana lawyers clean up and rebuild. More than 130 Louisiana lawyers registered as Louisiana lawyers practicing from Texas. This registration process allowed lawyers to continue to handle clients' matters from Texas through May 1, 2006.



## David A. Hamilton Lifetime Achievement Award

### Judge Shortess Receives Hamilton Lifetime Achievement Award

Judge Melvin A. Shortess of Baton Rouge received the 2006 Louisiana State Bar Association's David A. Hamilton Lifetime Achievement Award, presented during the Annual Meeting in June.

In January 2001, Judge Shortess approached the leadership of the Baton Rouge Bar Association with the concept of a free legal clinic, "Thirst for Justice." The Pro Bono Committee enthusiastically embraced the idea and, within five months, forms were developed, volunteers were recruited and "Thirst for Justice" opened its doors. He is presently working with U.S. District Court Judges Jay Zainey and James Brady to expand the legal clinic and to recruit more law firm participation.

Judge Shortess served 18 years on the 1st Circuit Court of Appeal and a total of 15 years on the 19th Judicial District Court and City Court of Baton Rouge. On July 31, 2000, he retired from the bench after 33 years as a public servant. During that time, he was an active supporter of the Baton Rouge Bar Association and the Louisiana State Bar Association.

Shortess is active in his church, Our Lady of Mercy Catholic Church and the Diocese of Baton Rouge, the Food Bank of Greater Baton Rouge and over the years has been active with the Boy Scouts of America, the Capital Area Agency on Aging and Louisiana State University Paul M. Hebert Law Center.



**Hamilton Lifetime Achievement Award recipient Judge Melvin A. Shortess, right, and 2005-06 LSBA President Frank X. Neuner, Jr.**



**Career Public Interest Award recipient Sarah J. Campbell, left, and 2005-06 LSBA President Frank X. Neuner, Jr.**



## Career Public Interest Award

### Campbell Receives 2006 Career Public Interest Award

Attorney Sarah J. Campbell of Covington received the 2006 Louisiana State Bar Association's Career Public Interest Award for her commitment to pro bono efforts. The award was presented during the Annual Meeting in June.

A graduate of Louisiana State University Paul M. Hebert Law Center in 1976, Campbell was admitted to the Louisiana Bar in October 1976. She has been a member of the federal bar since 1979. After working for a private law firm, she began her work with Legal Services in 1978.

Campbell served as a staff attorney, branch manager and litigation director at two legal services programs, and as executive director of Kisatchie Legal Services Corp. While most of her career has been in north Louisiana, she has been the managing attorney of the Covington office of Southeast Louisiana Legal Services since August 2005. She provided extensive direct legal assistance to individual poor clients via advice, brief services, extended litigation and appellate work. She developed and implemented an intake and advice hotline system that was used as a model in the state. Throughout her career, she advised and mentored many attorneys, some of whom still work with Legal Services. She collaborated with multiple organizations, including school boards, domestic violence programs and others.

She is a former Louisiana representative to the Southeast Project Directors Association and a Southeast Project Representative on the Project Advisory Group, served as secretary and later vice president of the board of directors of the Natchitoches Domestic Violence Education and Support Group and was the first president of the St. Denis Inn of Court. She has been a trainer to various groups, including the Natchitoches Bar Association, legal services attorneys and organizations such as Councils on Aging, Natchitoches Votech and Louisiana School for Math, Science and the Arts.



## Six Pro Bono Publico Awards Presented at Annual Meeting

Five attorneys and a law firm were the recipients of 2006 Louisiana State Bar Association Pro Bono Publico Awards, presented during the Annual Meeting in June. Honored were attorneys Lauren Killebrew Covell of Baton Rouge, Catherine E. Lasky of New Orleans, David Rabb, Jr. of Shreveport, H. Clay Walker of Shreveport and Laurence Wong of New Orleans and the New York law firm of Schulte Roth & Zabel, L.L.P.

### ► Lauren Killebrew Covell

Covell received her JD degree from Louisiana State University Paul M. Hebert Law Center in 1976. She is married to Stephen E. Covell with whom she has been practicing as Covell & Covell since 1979. Her primary areas of practice are qualified domestic relations orders (QDRO) and estate planning. She was the primary author and lobbyist on behalf of the Family Law Section for La. R.S. 9:2801B, regarding the amendment of judgments to enable them to receive "qualified" status from the plan administrators as QDROs.



Lauren K. Covell

She is co-author of *The Louisiana Legal Advisor*, a laymen's guide to Louisiana civil law, now in its fourth edition. The *Advisor* is available in most Louisiana bookstores, in all parish and state libraries, in the United States Supreme Court Library and the Library of Congress.

She is a member of the Baton Rouge Bar Association (BRBA) and is involved with the Family Law Section, the Law Day Committee and the Pro Bono Project. She

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Pro Bono Publico Award recipient Catherine E. Lasky, left, and 2005-06 LSBA President Frank X. Neuner, Jr.

has been a Baton Rouge Bar Foundation committee member for nearly 20 years.

Covell has been recognized by the BRBA for her legal services on behalf of the indigent, having received awards for the provision of more than 300 hours of legal services to the Pro Bono Project and with the 2005 BRBA's David A. Hamilton Pro Bono Award. She also has participated in the Thirst for Justice and Ask-A-Lawyer programs.

### ► Catherine E. (Katie) Lasky

Lasky is an associate in the law firm of Phelps Dunbar, L.L.P. Her primary practice is in the areas of commercial litigation, bankruptcy and bankruptcy litigation. She has worked on a variety of matters, including an action seeking recovery of damages for breaches of fiduciary duty and acts of malpractice arising out of the liquidation of a large regional grocery chain; representation of a Chapter 7 trustee in approximately 50 separate cases arising from the failure of a national sportswear manufacturer; and various other actions in state, federal and bankruptcy courts.

She is a member of the Louisiana State, American and New Jersey bar associations. She recently published an article entitled "Are Attorneys 'Debt Relief Agencies' Under the Bankruptcy



Pro Bono Publico Award recipient David Rabb, Jr., left, and 2005-06 LSBA President Frank X. Neuner, Jr.

Abuse Prevention and Consumer Protection Act of 2005?" in *The Bankruptcy Strategist* and the ABA's Bankruptcy Litigation Newsletter.

Lasky received her JD degree, *cum laude*, in 2003 from the Georgetown University Law Center and received a Dean's Certificate for special and outstanding service to the Georgetown community.

She is recognized for her commitment to the mission and spirit of The Pro Bono Project. In the past year, she has provided 175 hours of pro bono legal services through The Pro Bono Project and other organizations. Upon returning to New Orleans in October 2005, she began staffing a legal clinic in New Orleans' Ninth Ward. Since the hurricanes, she has handled a variety of matters for clients of The Pro Bono Project, many on an emergency basis.

Lasky also serves as Phelps Dunbar's liaison to the Homeless Experience Legal Protection (H.E.L.P.) program organized by Judge Jay C. Zainey of the United States District Court for the Eastern District of Louisiana. The program provides legal services and advocacy for New Orleans' homeless population. She is also active in Phelps Dunbar's pro bono representation of a Louisiana death row inmate in state and federal post-conviction proceedings.



► **David Rabb, Jr.**

Rabb, a sole practitioner in Shreveport, practices primarily in successions and donations. He earned a BS degree in accounting in 1971, a M.Ed. degree in counseling in 1977 and his JD degree in 1980, all from Southern University.

Prior to going into private practice in 1990, he served as a staff attorney with the Northwest Louisiana Legal Services Program. He served as chair of the board of directors for Northwest Louisiana Legal Services from 1996-97. Since being in private practice, he has participated in the Northwest Louisiana Pro Bono Project, regularly accepting cases and volunteering for counseling interviews.

Rabb is a member of the Shreveport Bar Association and the Louisiana State Bar Association's Client Assistance Fund Committee and serves as treasurer for the Black Lawyers Association of Shreveport/Bossier.

► **H. Clay Walker**

Walker is an associate in the law firm of Walker & Lyons, L.L.P. His primary practice is in the areas of civil rights, Title VII and 42 USC § 1983, as well as juvenile, Children in Need of Care (CINC) and delinquency.

He served as 2004 president of the Shreveport Bar Association's Young Lawyers Section. He has been a member of the Shreveport Bar Foundation Pro Bono Project Committee since 2000, has served as a volunteer judge for Teen Court since 2002 and is currently serving as president of the Samaritan Counseling Center Board.

He received his undergraduate degree from Lewis and Clark in Portland, Ore., and his JD degree in 1998 from Northeastern University in Boston, Mass.

Within the last year, Walker accrued more than 200 hours of pro bono work in the areas of domestic violence and juvenile abuse and delinquency cases. He is



**H. Clay Walker**



2005-06 LSBA President Frank X. Neuner, Jr. was presented with several awards during the Annual Meeting. Left photo, 2006-07 LSBA President Marta-Ann Schnabel presented an award to Neuner for his service as president. Right photo, LSBA Past President Michael W. McKay presented a special award to Neuner for his extraordinary services following the hurricanes.



currently working with the Southern Poverty Law Center on special education rights for children in Caddo Parish.

► **Laurence Wong**

Wong is in solo practice where he works on both criminal and civil matters. He graduated from Loyola University Law School in 2003 and received the outstanding law clinic student award. He also was selected by the law school faculty to be a student member of the St. Thomas More Inn of Court.



**Laurence Wong**

His pro bono services also span both criminal and civil areas. In the past year, he has worked on post-conviction relief in criminal court. In civil court, he has worked on family law issues such as divorce, child custody and succession. He also has volunteered as an attorney at a FEMA recovery center after Hurricane Katrina devastated the region.

► **Schulte Roth & Zabel, L.L.P.**

Schulte Roth & Zabel (SRZ), with 400 attorneys, has offices in New York and London. SRZ was the first firm to place summer associates in one-week

internships with public interest organizations, a program that continues to this day and that has been replicated by a number of other firms. The firm also has litigated a number of *pro bono* cases over the years in areas ranging from housing discrimination to child protection and gun reform. Beyond traditional litigation matters, SRZ has formed strategic partnerships with a variety of nonprofit organizations. The firm regularly advises these strategic partners in their corporate capacities to support their mission-driven work. More than a dozen groups focusing on the needs of the poor are now full-service clients of the firm and receive counsel on business transactions, intellectual property, real estate and tax matters.

Led by litigation partner Howard O. Godnick and at the request of The Lawyers Committee for Civil Rights Under Law, SRZ filed *McWaters v. FEMA* (EDLA), which aimed to compel FEMA to provide temporary housing assistance to survivors of Katrina living in Louisiana, Mississippi and Alabama. More than two dozen attorneys devoted in excess of 7,000 pro bono hours to this class action lawsuit. The TRO obtained stopped more than 150,000 evictions from taking place in FEMA-subsidized hotels over the Christmas holiday season and has forced FEMA to act more expeditiously on applications for aid.





## LSBA Presents 3 Friend of Pro Bono Awards

The Louisiana State Bar Association (LSBA) presented three Friend of Pro Bono Awards during its Annual Meeting in June. Awards were presented to Ann G. Scarle and the Baton Rouge Bar Association; to the Minnesota Bar Association and the Minnesota Bar Foundation; and to the Texas Rio Grande Legal Aid, Inc.

### ► Ann G. Scarle/ Baton Rouge Bar Association

Ann G. Scarle has served as the executive director of the Baton Rouge Bar Association and its related Foundation since 1991. She supervises a staff of nine and oversees the numerous member and public services of the organization. She serves on the board of directors of the National Association of Bar Executives; is a member of the Junior League of Baton Rouge and Capital Area Network; and is a graduate of Leadership Baton Rouge. She is also a member of the LSBA Access to Justice Committee.

The Baton Rouge Bar Association (BRBA) implemented the initial Disaster Legal Services Hotline immediately after Hurricane Katrina. The BRBA hosted the hotline for a period of six weeks until the LSBA was in a position to assume the administration of the service. During this period, the BRBA assisted 3,215 callers with legal problems, including landlord/tenant, family law, insurance and FEMA issues.

The LSBA assumed administration of the hotline in October 2005; however, the BRBA has continued to accept cases for placement with its Pro Bono Project.

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**Texas RioGrande Legal Aid, Inc. received the Friend of Pro Bono Award. Accepting the award is Mary Christine Reed. Presenting the award is 2005-06 LSBA President Frank X. Neuner, Jr.**

### ► Minnesota State Bar Association and Minnesota State Bar Foundation

Within days after the hurricane, Minnesota State Bar Association (MSBA) President Susan Holden assembled a Katrina Relief Task Force to address the unprecedented legal needs. The Task Force is co-chaired by Frederick Finch and Hon. Cara Lee Neville. The Minnesota State Bar Foundation, under President James Patrick Barone, manages funds.

The Task Force has been successful. Fundraising surpassed \$420,000 in cash contributions and pledges. Funds have been distributed to legal services providers — The Pro Bono Project in New Orleans, Southeast Louisiana Legal Services, Mississippi Center for Legal Services and Legal Services Alabama — and to the state bar foundations to assist individual lawyers. Three truckloads of donated office furniture have been shipped. Second Harvest of Greater New Orleans received humanitarian aid. These efforts will make a difference in the ability of low-income clients to access legal services and will help lawyers recover so they can continue to serve their communities.

### ► Texas RioGrande Legal Aid, Inc.

The fallout of Hurricane Katrina made significant, unprecedented demands of the legal communities in the Gulf States — and TRLA was no exception. To give voice to the legal needs of Katrina evacuees, TRLA staff worked with Louisiana legal aid providers and the Louisiana State Bar Association to create the Baton Rouge Call Center, modeled after TRLA's Telephone Access to Justice Call Centers.

TRLA staff made numerous trips to Louisiana, showing law students at Louisiana State University how to use the coordinated computer system linking evacuees with volunteer attorneys across Louisiana and Texas. Since Oct. 14, 2005, the call center in Baton Rouge that provides toll-free access to legal services has received more than 8,500 calls from Katrina evacuees in need of legal assistance. TRLA continues its mission daily within Texas to provide free legal services to the indigent residents of central, south and west Texas in 15 field offices across the state.



**Marta-Ann Schnabel, with a few regal trappings, following her installation as the next leader of the Louisiana State Bar Association.**



## Kurtz, Frilot and Rubin Receive Victory Award for *Journal* Contributions

The 2006 Stephen T. Victory Memorial Award was presented to the co-authors of a *Louisiana Bar Journal* feature article and to the coordinator of a special *Journal* issue. The awards recognizing writing achievements in the *Journal* were presented during the Louisiana State Bar Association's Annual Meeting in June.

M. David Kurtz and Mark W. Frilot shared the award for their article "*Res Judicata* in Louisiana: A Synthesis of Competing Interests," published in the April/May 2006 *Journal*.

Michael H. Rubin received the award for coordinating the special issue on "Diversity in the Legal Profession," published in August/September 2005.



Mark W. Frilot, left, received the Victory Memorial Award. With him is 2005-06 LSBA President Frank X. Neuner, Jr.

**Kurtz** is a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. His practice is focused on commercial litigation, particularly in the areas of construction, Internet and telecommunications, and oil and gas. He has served as a special master to the court in civil litigation and has extensive experience with alternative dispute resolution forums such



M. David Kurtz



Michael H. Rubin

as arbitration and mediation.

**Frilot** is an associate in the Mandeville office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. He concentrates his practice on construction law, construction litigation and commercial litigation. He has particular experience in design professional liability as well as public and private works claims and bidding disputes.

**Rubin**, a member of the Task Force on Diversity in the Profession, served as coordinator and guest editor for the special issue, an initiative of the Task Force. Rubin heads the appellate practice group at McGlinchey Stafford, P.L.L.C., in Baton Rouge. He is a past president of both the Louisiana State Bar Association and the U.S. 5th Circuit Bar.



## La. Center for Law and Civic Education



E. Wade Shows, 2005-06 president of the Louisiana Center for Law and Civic Education, was presented with a plaque of appreciation by incoming President Hon. Karen Wells Roby.



Hon. Karen Wells Roby, right, was sworn in as the 2006-07 president of the Louisiana Center for Law and Civic Education by Louisiana Supreme Court Associate Justice Bernette Johnson.





## Martzell Receives LBF's Curtis R. Boisfontaine Trial Advocacy Award

John R. Martzell received the 2006 Louisiana Bar Foundation's (LBF) Curtis R. Boisfontaine Trial Advocacy Award. The award was presented June 8 at the Louisiana State Bar Association's (LSBA) Annual Meeting.

Martzell was selected for his long-standing devotion to excellence in trial practice and for upholding the standards of ethics and consideration for the courts, litigants and all counsel in his practice of the law. He received a plaque and a \$1,000 cash stipend, which the LBF donates to a non-profit, law-related program or association providing services in Louisiana in the honoree's name.

Martzell practices in New Orleans with the firm of Martzell & Bickford. He has an undergraduate degree from the University of Notre Dame in accounting and a JD degree from the University of Notre Dame Law School. He also served on the Editorial Board of the *Notre Dame Lawyer*. He was law clerk to Hon. J. Skelly Wright, United States District Judge for the Eastern District of Louisiana, and Hon. Frank B. Ellis, United States District Judge for the Eastern District of Louisiana.

He served as director of the Louisiana Commission on Human Relations, Rights and Responsibilities for six years. He is a member of the LSBA, the American Bar Association, the Louisiana Trial Lawyers Association and the Association of Trial Lawyers of America. He is also a member of the National Association of Criminal Defense Lawyers, the Louisiana Association of Criminal Defense Lawyers, the American College of Trial Lawyers and the Council of the Louisiana State Law Institute. He served as

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John R. Martzell, center, is the recipient of the 2006 Curtis R. Boisfontaine Trial Advocacy Award, presented by the Louisiana Bar Foundation. With him are 2005-06 LSBA President Frank X. Neuner, Jr. and 2005-06 Louisiana Bar Foundation President Donna Fraiche.

president of the Louisiana Trial Lawyers Association and as chair of the Department of Public Affairs with the Association of Trial Lawyers of America. He is also listed in the *Best Lawyers of America*

under Personal Injury, Maritime Law, Criminal Defense and Business Litigation categories. He lectures widely to lawyers and law students on a variety of subjects.



Louisiana Supreme Court Associate Justice Catherine D. Kimball swore in members of the 2006-07 Board of Governors.



## LBF Presents Awards at Fellows Luncheon

The Louisiana Bar Foundation (LBF) Annual Fellows Meeting was held on June 8 at the Sandestin Golf and Beach Resort in Sandestin, Fla. LBF President Donna D. Fraiche presented the 2006 President's Award, the 2006 Grantee Award for Excellence in Service and Programming, and the 2006 Horn Blower Award.

### 2006 President's Award

Frank X. Neuner, Jr. of Lafayette was awarded the LBF President's Award. The award is presented each year to a volunteer attorney who has shown extraordinary commitment and dedication in supporting the mission of the LBF, which is to honor and improve the system of justice by funding and promoting efforts which aid and enhance the legal profession. Neuner was recognized for the leadership he displayed during the unprecedented devastation caused by Hurricanes Katrina and Rita.

LBF President Donna Fraiche of Baton Rouge said, "Frank was instrumental after the devastation of Hurricanes Katrina and Rita in establishing a legal hotline, which to date has received more than 13,000 calls. This hotline has provided vital information for victims of the storms and for lawyers in Louisiana. Also, Frank was actively involved in securing funding from various sources which provided grants for disaster-related legal services to Louisiana residents. The LBF is forever grateful to Frank for his leadership, sensitivity and call to justice during and after the worst disaster in U.S. history. The partnership between the LSBA and LBF has never been stronger as a result of the commitment of the presidents of these two organizations to address disaster relief efforts."

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Frank X. Neuner, Jr., right, is the recipient of the Louisiana Bar Foundation's 2006 President's Award. Presenting the award is 2005-06 LBF President Donna Fraiche.



Ann Scarle, right, is the recipient of the Louisiana Bar Foundation's 2006 Horn Blower Award. Presenting the award is 2005-06 LBF President Donna Fraiche.

Neuner is the managing partner of the Lafayette firm of Laborde & Neuner. He is the immediate past president of the Louisiana State Bar Association, a LBF board member, past president of the Lafayette Parish Bar Association and is currently serving as the Louisiana delegate of the American Bar Association's House of Delegates.

### 2006 Grantee Award for Excellence in Service and Programming

The LBF awarded the Grantee Award for Excellence in Service and Programming to the Louisiana Civil Justice Center for its 800 Legal Assistance Call



The Louisiana Civil Justice Center received the LBF's 2006 Grantee Award. Monte T. Mollere, right, accepted the award on its behalf from LBF President Donna Fraiche.



Marta-Ann Schnabel, right, is the recipient of the Louisiana Bar Foundation's 2006 Horn Blower Award. Presenting the award is 2005-06 LBF President Donna Fraiche.

Center (Call Center). This award recognizes a grantee for an innovative, imaginative program and/or public service in the legal arena. The award emphasizes creativity of the idea, efficiency of execution, outcomes of the project or programs and its ability to be duplicated by other service programs and to be proven flexible enough to change course as emerging needs arise.

The Call Center (800-310-7029) provides Louisiana residents with disaster-related free legal advice. The project has coordinated law students, three full-time attorneys and volunteers from all sectors of the legal community to assist more



than 13,000 calls from Louisiana citizens across the United States in need of services.

The Call Center is being recognized for the services provided to the community, promoting awareness and understanding of the legal system and assisting with the administration of justice while serving as an exemplary grantee in carrying out the mission of the LBF.

### 2006 Horn Blower

The LBF awarded both Ann Scarle and Marta-Ann Schnabel with Horn Blower Awards in recognition of their outstanding leadership, support and immediate response to legal community recovery and rebuilding efforts. Scarle and Schnabel have been tooting the horn of the LBF by bringing their civic-minded actions full circle by helping to provide free disaster-related legal services for Louisiana residents.

Scarle, executive director of the Baton Rouge Bar Association since 1991, received her BS degree from Louisiana State University. She is a graduate of the Baton Rouge Chamber of Commerce Leadership Baton Rouge program. She is currently serving her third term as Local Bar Delegate to the National Association of Bar Executives (NABE) Board of Directors. She has served in the following leadership positions with NABE: Public Service Committee, CLE Section (former chair) and Communications Section (1998 conference chair). In addition, she is a member of the following organizations: Baton Rouge Network, LSU Paralegal School Advisory Board, Junior League of Baton Rouge, and a former board member of the Battered Women's Shelter, Westminster Civic Association and the Louisiana Center for Law and Civic Education.

Schnabel is the incoming president of the Louisiana State Bar Association (LSBA). She is a shareholder in the New Orleans firm of O'Bryon & Schnabel, P.L.C. She received a BA degree, *honours*, from Memorial University of Newfoundland, Canada, and her JD degree from Loyola University Law School. She served as co-chair of the LSBA Ac-



**John W. (Jock) Scott and Elwood F. Cahill, Jr. were sworn in as 2006-07 president and vice president, respectively, of the Louisiana Bar Foundation. Administering the oath is Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr.**

cess to Justice Committee and is a member of the Committee on Rules of Professional Conduct and Ethics Advisory Service Committee. She has served as LSBA president-elect and secretary. She received the LSBA President's Award in 1998 and 2004. She is a Fellow of the LBF, Louisiana Association of Defense Counsel and the New Orleans Bar Association. She is a recipient of the Loyola Law School Gillis Long Public Service Award.

### LBF Announces Board

The Louisiana Bar Foundation (LBF) announces the 2006-07 board of directors, with John W. (Jock) Scott of Alexandria as president; Elwood F. Cahill, Jr. of New Orleans as vice president; and Hon. Marc T. Amy of Abbeville as secretary-treasurer.

Scott, in private practice in Alexandria since 1972, served in the Louisiana House of Representatives from 1976-88. He was recognized as "National Legislator of the Year" in 1987. He received his BA degree from Tulane University, his JD degree from Louisiana State University Paul M. Hebert Law Center and his master's and Ph.D. from LSU, Department of History. He is an assistant professor of history at LSU in Alexandria. He has been a member of the LBF since 1989 and has served on the board of directors since 2001.

Cahill, a founding partner of Sher Garner Cahill Richter Klein & Hilbert, L.L.C., in New Orleans, is the immediate past secretary/treasurer of the LBF. He has previously served on the board of the Foundation, as well as the chair of the IOLTA Banking Committee and on the Budget/Investment Committee. He also was the attorney representing the Foundation on a pro bono basis in the original acquisition and renovation of the Louisiana Bar Center in 1987. Besides practicing law, he has been a skills instructor at Loyola Law School since 1992.

Judge Amy is a member of the Louisiana 3rd Circuit Court of Appeal. He is a graduate of Louisiana State University Paul M. Hebert Law Center (JD degree) and the University of Virginia School of Law (LL.M.) in judicial process. A Fellow of Louisiana Bar Foundation, he became a member of the board of directors in 2005 and has served as chair of both the Foundation's Judicial Liaison Committee and the Education Committee.

Newly elected board members are Mathile W. Abramson, Baton Rouge; William N. Norton, New Orleans; and Leon H. Rittenberg, Jr., New Orleans.

Other members of the 2006-07 board of directors include: Hon. Michael G. Bagneris, New Orleans; David F. Bienvenu, New Orleans; Thomas A. Casey, Jr., New Orleans; Hon. Sylvia R. Cooks, Lafayette; S. Guy deLaup, Metairie; Hon. Eldon E. Fallon, New Orleans; Calvin C. Fayard, Jr., Denham Springs; Donna D. Fraiche, New Orleans; Marcel Garsaud, Jr., New Orleans; Brace B. Godfrey, Jr., Baton Rouge; Cyrus J. Greco, Baton Rouge; Harry S. Hardin III, New Orleans; Suzanne M. Jones, Covington; Hon. SHERAL Kellar, Baton Rouge; W. Shelby McKenzie, Baton Rouge; Frank X. Neuner, Jr., Lafayette; Patrick S. Ottinger, Lafayette; Drew A. Ranier, Lake Charles; Dona K. Renegar, Lafayette; Herschel E. Richard, Jr., Shreveport; Garland R. Rolling, Metairie; Marta-Ann Schnabel, New Orleans; John G. Swift, Lafayette; and Paul W. Wright, Houston, Texas.



## Young Lawyers Division Officers, Council Installed; Awards Presented

Mark E. Morice was sworn in as 2006-07 chair of the Louisiana State Bar Association's (LSBA) Young Lawyers Division (YLD) by Jefferson Parish Second Parish Court Judge Stephen C. Grefer during the LSBA's Annual Meeting in June. Judge Grefer also swore in members of the 2006-07 YLD Council. Also during the reception, several awards were presented.

### Officers, Council Installed

Joining Morice at the helm are Karleen J. Green, chair-elect; Valerie Briggs Bargas, secretary; and Dona Kay Renegar, immediate past chair.

Council members are Lawrence J. Centola and Jennifer M. Medley, District 1; Melanie M. Mulcahy and Jennifer L. Zeringue, District 2; Tiffany B. Thornton, District 3; Joel M. Lutz, District 4; Michelle F. Plauche and Edward J. Laperouse II, District 5; Bradley L. Drell, District 6; Jefferson B. Joyce, District 7; Kenota P. Johnson, District 8; Chauntis T. Jenkins, at-large representative; Beth E. Abramson, ABA YLD representative; and Garrett P. LaBorde, YLS representative to the ABA House of Delegates.

### Awards Presented

► **Christopher K. Ralston** of New Orleans received the **Outstanding Young Lawyer Award**. He is a litigator in the commercial litigation section of Phelps Dunbar, L.L.P.

From 1999-2000, he served as law clerk to Hon. Eldon E. Fallon, United States District Judge. During the past five years, he has been an active member of the American, Federal, 5th Circuit,



Top photo: Mark E. Morice, right, was sworn in as the 2006-07 chair of the Young Lawyers Division. Administering the oath was Hon. Stephen C. Grefer, 2nd Parish Court, Jefferson Parish.

At right, 2005-06 Young Lawyers Division Chair Dona K. Renegar was presented with an award for her service in the past year. Incoming Chair Mark E. Morice presented the award.



Bottom photo: Members of the 2006-07 Young Lawyers Division Council.





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Christopher K. Ralston, right, is the recipient of the Outstanding Young Lawyer Award. Presenting the award is Beth Abramson.

Louisiana State and New Orleans bar associations.

Ralston serves and has served as an officer, director and committee chair of the New Orleans Bar Association's (NOBA) Young Lawyers Section. Through partnerships with the Louis A. Martinet Society of New Orleans and New Orleans Legal Assistance Corp., he organizes legal fairs to assist those in need of legal services and referrals. As chair of the NOBA Young Lawyers Section's Public Service Committee, he started the annual "Clean Out Your Closets for the Needy" clothing drive. He has organized the Habitat for Humanity's home-building program and, pre-Katrina, helped build several houses in the Ninth Ward of New Orleans. He provides notarial services for the indigent at the Ozanam Inn and at churches and community organizations. With a grant from the Trust and Real Estate Section of the American Bar Association, he implemented a "Health Care Decisions" project to assist those with an interest in preparing living wills, organ donation decisions and powers of attorney.

In the aftermath of Hurricane Katrina, Ralston refused to evacuate New Orleans for five days after the mandatory evacuation order until his elderly neighbors were safely evacuated by boat. He currently serves as co-chair of the NOBA Young Lawyers Section Public Service Committee. He has organized Adopt-A-



Gordon D. Polozola, right, is the recipient of the Hon. Michaelle Pitard Wynne Professionalism Award. Presenting the award is Karleen Green.

Block recovery and cleanup services at the courthouse and City Hall and has organized meal service and other programs at area homeless shelters.

Ralston was named Outstanding Young Lawyer in 2004 by the NOBA Young Lawyers Section and he received the Distinguished Service Award from The Pro Bono Project in New Orleans for both 2002 and 2003.

He received his JD degree in 1999 from Tulane Law School, where he served as a justice on the Moot Court Board.

► **Gordon D. Polozola** of Baton Rouge received the **Hon. Michaelle Pitard Wynne Professionalism Award**. He is a partner in the law firm of Kean, Miller, Hawthorne, D'Armond, McCowan &



Juleanna D. Munro, right, is the recipient of the Pro Bono Award. Presenting the award is Michelle Plauche.

Jarman, L.L.C. He has earned the designation as a Certified Cogeneration Professional and Distributed Generation Certified Professional from the Association of Engineers. Additionally, he has achieved an AV rating, the highest available rating, with Martindale Hubbell Law Directory.

He has served in numerous officer positions for the Louisiana School for the Deaf Foundation, as a mock trial instructor for St. Joseph's Academy and as a Law Day panel member for the Baton Rouge Bar Association Young Lawyers Section.

Polozola is a member of the Pro Bono Committee of the Baton Rouge Bar Association and accepted the second highest number of pro bono cases of attorneys in his firm. He serves as a member of the



Beth E. Abramson, right, is the recipient of the Bat P. Sullivan Chair's Award. Presenting the award is Dona K. Renegar.



W. Michael Street, right, is the recipient of the Bat P. Sullivan Chair's Award. Presenting the award is Dona K. Renegar.

Louisiana Broadband Advisory Council.

He received his JD degree in 1995 from Louisiana State University Paul M. Hebert Law Center, where he served as senior editor of the *Louisiana Law Review*, was a member of Order of the Coif and a member of the LSU Law Center Hall of Fame.

► **Juleanna Danielle Munro** of Baton Rouge received the **Pro Bono Award**. She received her JD degree in 1995 from Louisiana State University Paul M. Hebert Law Center. After many years working part-time with small general civil practice firms and environmental consulting groups, she has recently joined the firm of Stewart, Hood, & Robbins. She has volunteered her time at the Baton Rouge Bar Association for a variety of projects.

She has received a Baton Rouge Bar Foundation Century Club Award which recognized her commitment of in excess of 100 hours of pro bono representation for clients. She was a speaker for the Baton Rouge Bar Association's 2004 CLE by the Hour program.

Munro has accepted a number of pro bono cases since 1997 in the areas of consumer law and family law, both through the Pro Bono Project and direct client referral. After Hurricane Katrina, she agreed to represent the Baton Rouge Bar Association on a panel reviewing disaster relief grant applications in a program sponsored by the Louisiana Association of Business & Industry. She also actively supported the Disaster Legal Services Hotline in its initial handling at the Baton Rouge Bar Association offices, making efforts to give completed assistance to the victims whenever possible during the initial intake process, but giving extended handling to those matters requiring legal intervention.

► **Beth E. Abramson** of New Orleans and **W. Michael Street** of Monroe received the **Bat P. Sullivan Chair's Award**.

Abramson, an associate in the New Orleans office of the law firm McGlinchey Stafford, P.L.L.C., has served as the American Bar Association/Young Lawyers Division disaster representative in Louisiana for two years. After Hurri-



The Lafayette Young Lawyers Association received the Service to the Bar Award. Tiffany B. Thornton, left, accepted the award from Valerie B. Bargas.

canes Katrina and Rita struck Louisiana, Abramson led the efforts to establish legal disaster relief services to storm victims. With the help of a number of LSBA members, she helped start the Legal Assistance Hotline in Baton Rouge, which has fielded thousands of calls from storm victims on legal issues such as rental property, insurance claims, child custody and employment.

Abramson received her BA and BS degrees in 1998 from Carnegie Mellon University and her JD degree in 2001 from Tulane Law School. She was admitted to practice law in Louisiana in 2001. She is a member of the American Bar Association and the New Orleans Bar Association.

Street, a partner in the law firm of Watson, McMillin & Harrison, has served on the LSBA Young Lawyers Section Council for four years and chaired the Young Lawyers Section Richard M. Ware High School Mock Trial Committee for the last two years. In that capacity, he was responsible for eight regional mock trial tournaments and the state tournament.

Street is 2005-06 president of the 4th Judicial District Bar Association and is secretary/treasurer of the Fred Fudickar, Jr. Inn of Court. He was the 2000 recipient of the 4th Judicial District Bar Association Outstanding Young Lawyer Award.

He received a BA degree, *cum laude*,



The Baton Rouge Bar Association's Young Lawyers Section received the Service to the Public Award. Ann Scarle, left, accepted the award from Valerie B. Bargas.

in 1991 from Centenary College of Louisiana and his JD degree in 1996 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice law in Louisiana in 1996.

► The **Service to the Bar Award** was presented to the **Lafayette Young Lawyers Association** for the preparation of disaster relief training manuals. When LSBA staff members were displaced by Hurricane Katrina, the Lafayette Young Lawyers Association was called upon to assemble more than 500 disaster training manuals. These manuals were drafted by senior members of the Lafayette Parish Bar Association and distributed to Louisiana attorneys throughout the state.

► The **Service to the Public Award** was presented to the **Baton Rouge Young Lawyers Section** for coordination of the disaster legal services hotline. Hurricane Katrina left the Louisiana State Bar Association without electricity, phone service, employees and disabled its disaster legal services hotline. The Baton Rouge Bar Association's Young Lawyers Section recognized the need to provide the public with this service and began hosting the hotline. The hotline became operational on Sept. 2, 2005, serving hurricane victims seven days a week, 12 hours a day, until Oct. 13 when the LSBA assumed the project's administration at the LSU Paul M. Hebert Law Center.



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# Minimum Qualifications for Appointment as a Special Assistant Attorney General

The minimum qualifications for appointment as a special assistant attorney general are listed below.

1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees.
5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.
7. The attorney must be a subscriber to an electronic billing program designated by ORM.
8. The attorney should have a Martindale-Hubbell rating of "bv" or better.
9. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
10. The requirements set forth in 8 and 9 may be waived by the attorney general, in which event the attorney will be placed in a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the claims officer and the assistant director for litigation management of the Office of Risk Management and deputy attorney general of the Louisiana Department of Justice.  
In the event that the attorney's performance is acceptable during the three-year probationary period, he shall be removed from probationary status.  
In the event the attorney's performance is unsatisfactory, he

may be removed from the probationary list or, at the discretion of the claims officer and the assistant director for litigation management and with the concurrence of the state risk director and the LP/DOJ, the probationary period may be extended.

11. Any attorney appointed by the attorney general serves at the pleasure of the attorney general and may be removed by the attorney general at any time without cause.
12. The commissioner of administration may withdraw his concurrence of any attorney only for cause.
13. In accordance with R.S. 42:1113(D), Act 1156 of the 1995 Regular Session: "No legislator or person who has been certified by the secretary of state as elected to the legislature, or spouse of a legislator or person who has been certified as elected to the legislature, nor any corporation, partnership, or other legal entity the legislator or his spouse owns any interest in, except publicly traded corporations, shall enter into any contract or subcontract with any branch, agency, department, or institution of state government or with the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association or any other quasi public entity created in law, unless the contract or subcontract is awarded by competitive bidding after being advertised and awarded in accordance with Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 or is competitively negotiated through a request of proposal process or any similar competitive selection process in accordance with Chapter 16 of Title 39 of the Louisiana Revised Statutes of 1950."

## Additional Requirements for the Defense of Medical Malpractice Claims

14. The attorney should have three years' experience in the defense of medical malpractice claims.
15. The attorney should have participated as counsel of record in at least two medical malpractice trials.
16. Professional malpractice limits shall be at least \$1 million per claim with an aggregate of \$1 million.
17. Requirement 14 and 15 may be waived by the attorney general, in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 9 above.

# RECENT

## Developments

### APPELLATE LAW TO TRUSTS, ESTATE



## Appellate Law

### New Laws and Rules

In this inaugural appellate-law section, many of the recent developments come in the form of new laws and rules:

- The Louisiana Legislature enacted House Bill No. 226, which changes La. C.C.P. art. 2083, the article that

governs which judgments are appealable. Although the change became effective Jan. 1, 2006, it is not yet in the version of the Code of Civil Procedure still in use by many lawyers. Essentially, interlocutory judgments are no longer appealable on a showing that they present irreparable injury, but rather only when expressly provided for by law, such as from a preliminary injunction. The Act also amends La. C.C.P. art. 592 to provide that class-action certification judgments are likewise appealable as of right. Otherwise, an

interlocutory judgment that merely presents the threat of irreparable injury may be challenged only by application for supervisory writ.

- The Louisiana Supreme Court adopted Rule VII, Section 11.2, effective March 29, 2006, providing a procedure for advising the court by letter if pertinent and significant authorities come to a party's attention after all original and reply briefs have been filed. The letter shall be limited to: (a) the name and citation of the opinion or authority; (b) the issue raised by the new case that is pertinent to the issues in the case pending before the court; and (c) a citation to the page number where this point has been raised in briefs or how this issue arose during oral argument. The body of the letter shall not exceed 350 words.
- The U.S. Supreme Court has finally settled the long-standing debate regarding whether citation to unpublished federal opinions should be allowed, approving F.R.A.P. 32.1 to allow this practice. This is a significant development because while upwards of 80 percent of federal appeals are decided by unpublished opinions, a number of federal courts of appeal currently prohibit citation to these opinions, with others discouraging the practice. The proposed rule, unless countermanded by Congress, will apply to decisions issued on or after Jan. 1, 2007.

### Recent Cases

***Amalgamated Transit Union Local 1309 v. Laidlaw Transit Serv., Inc.***, 435 F.3d 1140 (9 Cir. 2006).

The opinion involves the deadline for applying for a permissive appeal under the Class Action Fairness Act of 2005

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(CAFA) when a trial court refuses to accept a class action removed from state court. CAFA provides that a court of appeals may accept such an appeal if application is made "not less than 7 days" after entry of the order. Read literally, such an appeal would never be untimely provided that the litigant waits at least seven days to file its application. Following the approach of the 10th Circuit, however, the 9th Circuit announced that it will read the phrase "not less than 7 days" as if it had been written "not more than 7 days." In dissenting from the denial of rehearing *en banc*, a significant minority of judges began, "Is less more?" They conclude:

The Republic will certainly survive this modest, but dramatic, emendation of the United States Code; I am not so sanguine that in the long term it can stand this kind of abuse of our judicial power.

**Patterson v. Dean Morris, L.L.P.**, 444 F.3d 365 (5 Cir. 2006).

CAFA is unique in that it not only places time limitations on litigants, but also on the courts of appeals, providing that they have only 60 days to decide an appeal under the Act. In another case interpreting provisions in CAFA relating to appeals, the court addressed whether the 60-day period begins when the court grants leave to appeal or when the petition for leave to appeal is filed. The 5th Circuit held the former.

**Johnson v. Mt. Pilgrim Baptist Church**, 05-0337 (La. App. 1 Cir. 3/24/06), \_\_\_\_ So.2d \_\_\_\_.

The court remanded an appeal to the trial court because it lacked jurisdiction. The trial court's judgment did not contain decretal language; it simply stated that the defendants' exception of no cause of action was granted but did not decree that the case was dismissed. The 1st Circuit held that for a judgment to be appealable it must:

- ▶ contain decretal language;
- ▶ name the party in favor of whom the ruling is ordered; and

- ▶ state the relief that is granted or denied.

Without all of these, there is no final judgment.

— **Martin A. Stern**

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## Corporate and Business Law

### Governor Signs Business Organization Conversion Statute

On June 2, 2006, Governor Blanco signed Act No. 153, which provides a streamlined mechanism for limited liability companies, corporations, partnerships and partnerships in commendam to convert to a different type of business entity simply by filing an application with the secretary of state. For example, the new law will allow a corporation to convert to an LLC without having to do a merger.

The law requires that the owners or members of the converting entity must approve the conversion "in the same manner provided for by law and by the

document, instrument, agreement or other writing governing the internal affairs of the converting entity and the conduct of its business." This provision does not make clear what the required vote for a conversion is, so a business entity may need to amend its organizational documents to specify the vote and might opt, out of an abundance of caution, to specify a number higher than a majority of the voting power present.

The conversion application must set forth:

- ▶ the name of the entity before and after the conversion;
- ▶ a statement of the type of entity the business is converting into and that the entity is continuing its existence in the new organizational form;
- ▶ the manner and basis of the conversion of ownership or membership interests in the entity;
- ▶ a statement that the conversion was authorized and approved in accordance with the new law (which will be codified at La. R.S. 12:1601 *et seq.*); and
- ▶ the information required by law to be included in the charter or partnership agreement of the new entity type, along with an initial report if applicable.

The application should be signed by a member or manager of an LLC (depending on who is vested with management authority under the LLC statute), by an officer of a corporation or by any general partner of a partnership or partnership in commendam. The application must then

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be filed with the secretary of state, who in turn will issue a certificate of conversion that must be filed in the conveyance records of any parish in which the entity owns immovable property.

The law provides that the conversion will not be deemed a dissolution of the entity, and the entity will not be required to wind up its affairs. Instead, its existence will continue without interruption in the new organizational form. The entity's interest in movable and immovable property will automatically be transferred to the converted entity, and the entity's obligations and the rights of its creditors will be unaffected by the conversion. If the converted entity has a different tax classification from its prior organizational form, the converted entity's tax liabilities will be calculated based on the current law for the converted entity's new classification, and it must file a short-period tax return. Any pending legal proceedings by or against the entity will continue without the need for substitution of parties.

A business entity may not convert under the new law if, as a result of the conversion, any of its owners or members become personally liable without their consent for the debts of the converted entity after the conversion. In addition, an owner may not become liable for any debts that preceded the conversion unless he or she consents in writing, was liable for those debts prior to the conversion and became liable for the converted entity's existing debts by law.

— **Maureen Brennan Gershanik**  
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### Supreme Court Breaks Limit on Evidence of Third-Party Guilt

*Holmes v. South Carolina*, 126 S.Ct. 1727 (2006).

Bobby Lee Holmes was convicted of murder, criminal sexual conduct, burglary and robbery, and was sentenced to die. At trial, the state relied heavily on forensic evidence, including a palm print inside the home, clothing fiber matches from the home and DNA on Holmes' underwear matching the elderly victim. The defense, in turn, produced experts to attack the handling of the DNA evidence and palm print, and generally went for a conspiracy to clear the arrest combined with mistaken identity. However, evidence at trial was limited, based on South Carolina jurisprudence, and Holmes was not permitted to introduce witnesses to testify that another man, seen in the area on the morning of the attack, had admitted to the crime or that a police officer had asked at least one witness to testify falsely against Holmes. Although some of the evidence was had at a preliminary hearing, it was not presented to the jury.

The South Carolina court used its jurisprudential rules to exclude the evidence, explaining that evidence of third-party guilt is admissible if it raises a reasonable inference as to the defendant's innocence, but where it merely "cast[s] a bare suspicion upon another" or "raise[s] a conjectural inference as to the commission of the crime by another," it is not. On appeal, the South Carolina Supreme Court found no error due to the strength of the prosecution's case, especially the forensic evidence, finding that the defendant's evidence could not "overcome the forensic evidence against him to raise a reasonable inference of his own innocence." The Supreme Court granted certiorari and unanimously reversed.

The Supreme Court explained that all evidence is subject to limitation based on unfair prejudice, confusion of the issues, or potential to mislead the jury (*e.g.*, F.R.E. art. 403, La. C.E. art. 403), and that evidence of third-party guilt may be subject to additional limitations; it must sufficiently connect a third party to the crime committed. The Supreme Court then explained that the South Carolina test was arbitrary and infringed on the defendant's right to present a defense because it not only made the connexity an issue, the limitation was imposed solely on the strength of the prosecution's case, without considering challenges to the reliability of the prosecution's evidence. Because the challenges presented by the defense did not "eviscerate" the forensic evidence and the credibility challenges went to the weight and not the admissibility of the evidence, it was insufficient under South Carolina's jurisprudence.

Although the ruling is based on fairly specific South Carolina jurisprudence, the holding may be worth evaluating for evidence of third-party guilt in Louisiana, especially third-party statements against interest or challenges to forensic evidence.

### Exigent Circumstances Readily Affirmed by Supreme Court

*Brigham City, Utah v. Stuart*, 126 S.Ct. 1943 (2006).

Police responding to a call about a loud party at 3 a.m. were unable to get the residents' attention by knocking on the door and announcing themselves. Entering the driveway and yard of the home, the officers could see an altercation between four adults and a juvenile, who punched one of the adults, causing him to spit blood into a sink. Entering the home and announcing themselves, the officers finally managed to get acknowledged and calm the situation.

The defendants were arrested for contributing to the delinquency of a minor, intoxication and disorderly conduct. The trial court granted the defendants' motion to suppress. The Utah Court of Ap-

peals and Utah Supreme Court affirmed, holding that the injury caused by the juvenile's punch was insufficient grounds to enter the home and that the officers did not act to aid the injured party but instead entered the home for purposes of arresting the defendants. The Supreme Court unanimously reversed.

The Supreme Court found that the officers had an objectively reasonable basis for believing that the injured adult might need help and that the violence observed could easily escalate. The Fourth Amendment does not require that the victim be unconscious or mortally wounded before intrusion becomes "reasonable." Reiterating the rules of Fourth Amendment reasonableness, the Supreme Court explained that:

- ▶ law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury; and
- ▶ reasonableness does not depend on the officer's state of mind, but on an objective evaluation of the circumstances presented.

Justice Stevens, concurring, pointed out that the Utah Supreme Court did not cite the Utah State Constitution as a basis for suppressing the evidence, and that such a citation would have eliminated the Supreme Court's review.

Although the recent ruling of *Georgia v. Randolph*, 126 S.Ct. 1515 (2006), preventing access to the home when two co-occupants disagree on a consent search, may have raised concerns about law enforcement's ability to protect victims of domestic violence, *Brigham City* would appear to give the officers a reasonable protection while responding to such calls.

— Michael S. Walsh

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and

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## Family Law

### Custody

**Brown v. Brown**, 05-1346 (La. App. 3 Cir. 3/1/06), 925 So.2d 662.

The trial court's changing from sole custody with the father, with supervised visits by the mother, to half of the year with the mother in Louisiana and half of the year with the father in Georgia was an abuse of discretion as there was no evidence that the father's custody had been detrimental or not in the best interest of the children, even though the mother overcame an addiction to drugs, remarried and began attending church.

**Poole v. Poole**, 41,220 (La. App. 2 Cir. 3/22/06), 926 So.2d 60.

A consent judgment of custody reached after some evidence of the parental fitness of one parent has been presented and containing no language regarding the imposition of the *Bergeron* standard is not a considered decree. The court of appeal stated:

Applying the *Bergeron* standard to a custody consent judgment in which some of the evidence has been presented, but not evaluated by the judge, would erode the definition of considered decree and the policy reasons for the rule as examined by the *Bergeron* court.

### Child Support

**State v. White**, 05-0718 (La. App. 3 Cir. 2/1/06), 921 So.2d 1144.

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The trial court signed the hearing officer's recommendation as a judgment. Due to defects as to how child support sums were calculated, over what period of time and who was responsible to pay, the court of appeal dismissed the appeal and remanded for clarifications to the judgment, which it found was too indefinite to constitute a final appealable judgment.

## Paternity

**Succ. of McKay**, 05-0603 (La. App. 3 Cir. 2/1/06), 921 So.2d 1219.

After potential heirs' claims to filiation were dismissed as prescribed under former La. Civ.C. art. 209, the enactment of article 197 in 2005 changed the law so as to negate the prior pre-emptive period and make their claims timely under the new law. The succession representative's argument that the new law was unconstitutional because it disturbed vested property rights of others, after claimants' rights had been "destroyed" by peremption, was not considered by the court of appeal because it was raised in brief, not by a pleading such as a petition, exception, motion or answer. Determining that the issue was thus whether their claims were revived under the new law, the court found the new law was substantive and could not be applied retroactively. It reasoned that substantive rights that had accrued to the other parties as a result of the passage of time and peremption of

claims would be affected. Thus, the new law could not revive previously prescribed claims because there was no clear legislative intent for retroactivity and revival.

## Property

**Succ. of Allen**, 05-0745 (La. App. 4 Cir. 1/4/06), 921 So.2d 1030.

Property purchased by Mr. Allen three days before he married Ms. Washington was his separate property. There was no evidence to support Ms. Washington's claim that the security deposit and closing costs were borrowed and the loan repaid with community property, and that mortgage payments and improvements were made with community property or her separate property so as to create some "commingling" to convert the property to community property. The concurring opinion refuted *Jones v. Jones*, 611 So.2d 193 (La. App. 4 Cir. 1992), which supported such a conversion of the classification based on commingling as "an anomaly that was, apparently, decided on an equitable basis."

**Leboyd v. Leboyd**, 05-0377 (La. App. 5 Cir. 1/17/06), 921 So.2d 1050.

The court of appeal affirmed the trial court's award of the family home to Mr. Leboyd because he had remained in it and maintained it after their physical separation, and because she had no special or unique relationship to it.

**Hatsfelt v. Hatsfelt**, 05-0947 (La. App. 3 Cir. 2/1/06), 922 So.2d 732.

A co-owner who incurs expenses in compliance with his obligation under La. Civ.C. art. 2369.3 to preserve and prudently manage the former community property is entitled under La. Civ.C. art. 806 to reimbursement for one-half of those expenses. However, one must show that the funds were used for the property. Here, Mr. Hatsfelt took post-termination loans, deposited the funds to the business account, but could not show that he actually used the money for the business and admitted that he also used the account for personal expenses. Reimbursement was also denied because he failed to keep appropriate records regarding his management, and the court found that "he should not be allowed to profit from his failure."

**Allen v. Allen**, 41,204 (La. App. 2 Cir. 3/2/06), 925 So.2d 671.

Although the trial court partitioned the rights to Mr. Allen's pension, it left open other community property issues to be resolved later. Mr. Allen's appeal of the judgment was dismissed because the judgment was only a partial final judgment and had not been certified for appeal.

## Procedure

**Jimenez v. Jimenez**, 05-0645 (La. App. 5 Cir. 1/31/06), 922 So.2d 672.

La. R.S. 46:2134(F) and La. C.C.P. art. 3063.1(C)(1) do not allow court costs or costs of service to be assessed against a domestic abuse petitioner.

— **David M. Prados**


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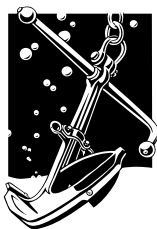
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## Insurance, Tort, Workers' Compensation and Admiralty Law

### State Law Held Applicable Through OCSLA to Accident Occurring During Platform Construction

*Texaco Exploration & Prod., Inc. v. AmClyde Engineered Prod., Inc.*, \_\_\_\_ F.3d \_\_\_\_ (5 Cir. 2006).

This appeal arose out of an accident that occurred during the construction of the Petronius oil and gas production facility on the Outer Continental Shelf. During the construction of the compliant

tower, a main load line on a crane that was mounted on a barge failed, causing the deck section that was then suspended to fall into the Gulf of Mexico. The incident resulted in the loss of the deck section, as well as a delay in the construction project.

Texaco and Marathon, the developers of the project, sued a number of defendants, including AmClyde and Friede Goldman Halter, the successors to the manufacturer of the crane. Plaintiffs did not sue McDermott, the owner of the barge, as a result of a binding arbitration clause contained in the contract between these parties. Nonetheless, the direct defendants tendered McDermott as a third-party defendant pursuant to Federal Rule of Civil Procedure 14(c). McDermott prevailed on a motion for summary judgment based on the arbitration clause, and Texaco appealed the interlocutory order. The 5th Circuit reversed, staying litigation between plaintiffs and McDermott,

and vacating the summary judgment. *See Texaco v. AmClyde*, 243 F.3d 906 (5 Cir. 2001). The 5th Circuit remanded with instructions that plaintiffs' claims against the remaining defendants proceed.

On remand, the district court determined that admiralty law governed and granted a motion to strike Texaco's jury demand. The case proceeded to a bench trial. Following the trial, the district court entered a written judgment, wherein it found that plaintiffs had failed to sustain their burden of proof with respect to liability against all defendants, except McDermott. Plaintiffs appealed, arguing that the district court erred in granting the motion to strike the jury demand based upon an incorrect determination of its subject matter jurisdiction. According to plaintiffs, jurisdiction was properly grounded on the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1349(b)(1)(A), which provides federal courts with jurisdiction over disputes aris-

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ing from the development of minerals on the Outer Continental Shelf. Plaintiffs asserted that admiralty jurisdiction also applied, and that the overlapping jurisdiction gave rise to a jury trial right.

The 5th Circuit agreed with plaintiffs' assertion that OCSLA was applicable because, according to the court, the parties were undeniably involved in the development of the OCS. The court further held that admiralty jurisdiction was not properly invoked, stating that the activities at issue were insufficiently connected to traditional maritime activity. The court explained that:

[t]o the extent that maritime activities surround the construction work underlying the complaint, any connection to maritime law is eclipsed by the construction's connection to the development of the Outer Continental Shelf.

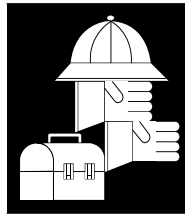
With respect to the substantive law to be applied, the court held that the involvement of the vessel and the other elements of maritime activity that preceded the tower's construction were insufficient to support the application of substantive maritime law. As such, the court held that plaintiffs' claims were governed by OCSLA and not by maritime law.

The court held that the denial of the jury trial was not harmless error, despite the fact that the trial court sustained AmClyde's Rule 50(a) motion for judgment as a matter of law. The court remanded the case to the trial court for further proceedings consistent with its opinion.

The *Texaco* opinion also dealt with several significant insurance issues that may be of interest to practitioners.

— **Brendan P. Doherty**

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## Labor and Employment Law

### Discharge of Pregnant Employee: Failure to Submit "Full Work Release"

*Suire v. LCS Corrections Servs.*, 05-1332 (La. App. 3 Cir. 5/3/06), \_\_\_\_ So.2d \_\_\_\_.

LCS discharged Suire several days after learning she was pregnant. LCS had demanded a work excuse, and Suire's obstetrician provided her one that stated she could work in "a prison environment" and in the "control room." The employer contended that this was a restricted work release and not a "full duty" work release as required by company guidelines, and it thereafter terminated Suire.

The FMLA was not at issue because Suire had not been employed for the requisite time period. However, the trial court concluded that Suire met all requirements of the *McDonnell Douglas* burden-shifting analysis and had thus proved violation of Title VII as well as Louisiana's Pregnancy Discrimination Act. The trial court awarded back wages: \$5,000 for mental anguish and emotional distress and \$3,000 for attorney's fees.

The appellate court rejected the employer's position that the release was not a full release and affirmed the trial court, stating, "We are not at all persuaded by this ineffectual argument." As to damages, the appellate court discussed the Louisiana Supreme Court's persistent admonitions against appellate courts intervening in damage awards, but, nevertheless, found the general damages award "woefully inadequate" and a clear abuse of the trial court's "vast discretion." Reviewing the effects of Suire's discharge on the plaintiff and her family, the appellate court raised the general damages award from \$5,000 to \$25,000

and increased attorney's fees awarded below as well.

### Discharge of Pregnant Employee: Breach of "No Call/No Show" Policy

*Willis v. Coca Cola Enters.*, 445 F.3d 413 (5 Cir. 2006).

Willis, a long-term employee, informed her supervisor that she was pregnant and sick, but "did not specifically articulate that she was sick *because* of the pregnancy." Her supervisor informed her that she could not return to work until she received a release from her doctor. Willis told her supervisor she had an appointment on "Wednesday," which the employer assumed was the following day rather than a week later. When Willis did not call or show during the interim, she was terminated for violation of the company's "no call/no show" policy, which provided that an employee's absence of three consecutive days without notification would be considered a voluntary resignation.

The trial court granted summary judgment, finding that Willis's claims under the FMLA, Title VII and various Louisiana state statutes all failed. The trial court ruled that Willis failed to introduce evidence that she had requested FMLA medical leave and failed to present evidence that the stated reason for her termination was pretextual as would be necessary to find in her favor under the Title VII and Louisiana law claims.

The 5th Circuit reviewed various jurisdictions' rulings as to what constitutes involuntary leave with approval and acknowledged that the FMLA does not prohibit placing an employee on "involuntary FMLA leave." The court concluded, however, that, "even in the case of involuntary leave," the employee must provide notice of the need to take FMLA leave; in other words, the employee must "provide notice to the employer of a serious health condition." Consequently, although Willis was placed on leave pending a medical release, which may have suggested that her employer was aware

of her medical problem, Willis failed to provide sufficient evidence that would place the employer on notice that she had a "serious health condition, such as sickness due to pregnancy." Therefore, the court affirmed summary judgment on the FMLA claim.

As to the Title VII claim of gender discrimination, which encompasses discrimination due to pregnancy, the appellate court upheld the trial court's finding that Willis's evidence was insufficient to show that the request for medical release and subsequent termination for violation of the no call/no show policy was pretextual or motivated by unlawful animus.

## When the ADA and Seniority Systems Collide

*Medrano v. City of San Antonio, Tex.*, (5 Cir. 2006) (unpublished).

A jury found in favor of Medrano on his ADA-based claims that the city failed to provide reasonable accommodation and retaliated against him for engaging in protected activities. The trial court entered judgment as a matter of law against Medrano, ruling that the city's seniority system trumped the ADA's requirement for reasonable accommodation absent a showing of "special circumstances."

The parties stipulated that the city was a covered "employer," that Medrano was "disabled" under the ADA and that Medrano could perform the essential functions of the job at issue. Thus, the collision of the ADA and seniority system was placed squarely at issue.

The 5th Circuit affirmed the trial court, ruling that the trial court must first determine the scope of the seniority system and then determine whether "special circumstances" prevail. Under the facts, the court ultimately concluded that the crucial inescapable shortcoming of the

employee's attempt to establish "special circumstances" was the failure to reveal even a single instance when the employer made an exception in application of its relevant seniority policies. Reviewing prior rulings, the court reaffirmed its holding in *Foreman v. Babcock & Wilcox Co.*, 117 F.3d 800 (5 Cir. 1997):

Following other circuits which have considered the issue, we hold that the ADA does not require an employer to take action inconsistent with the contractual rights of other workers under a collective bargaining agreement.

— Jeffrey A. Riggs

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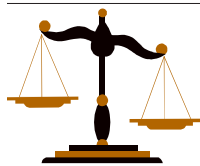
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## Professional Liability

### Extending the Life of the Panel

*Cooley v. Gamble Guest Care Corp.*, 41,042 (La. App. 2 Cir. 5/17/06), \_\_\_\_ So.2d \_\_\_\_.

A medical-review panel's term was to expire on Dec. 6. The defendant filed on Dec. 3 a motion to extend the life of the panel, stating in the motion that the petitioners had no objection to the extension. The order extending the life of the panel was not signed until Dec. 8. The petitioners then filed a lawsuit, claiming that the panel's life expired on Dec. 6 because no order extending its term had been signed by that date. The defendant argued that the mere filing of the motion prior to the expiration date was sufficient to prevent dissolution. The trial court agreed.

La. R.S. 40:1299.47 provides in part that a lawsuit can be filed against a healthcare provider after the expiration of any court-ordered extension of the life of a panel. A panel is then dissolved by operation of law and without the necessity of obtaining a court order.

The court of appeal referenced a Louisiana 5th Circuit opinion, *Crabtree v. Vockroth*, 01-1286 (La. App. 5 Cir. 9/30/02), 827 So.2d 525, writ denied, 02-

2835 (La. 1/31/03), 836 So.2d 77, which held that a "timely filed" motion to extend the life of a panel was sufficient to prevent its dissolution, irrespective of when the order approving the extension was signed. The trial court in *Cooley* did not adopt in full the *Crabtree* court's reasoning, but instead it found that a timely filed motion, when combined with the failure of the petitioners to oppose that motion, gave effect to the motion to extend. The appellate court held that there was no reason to make such a distinction because the failure to object is not a prerequisite to the validity of an order extending the life of a panel, signed after the expiration, as long as it was filed prior to that expiration. The court observed that there are many legitimate reasons that an extension might be filed shortly before the expiration of the panel's life that would make it difficult, if not impossible, to obtain an order signed by a judge prior to the expiration date, and held:

Accordingly, we agree with the holding in *Crabtree*, *supra*, that the timely filing of a motion for the extension of a medical review panel's term together with the trial court's granting of that motion is sufficient to prevent the dissolution of the medical review panel.

### Redacting the Panel Opinion

*Cockerham v. LaSalle Nursing Home*,

06-0010 (La. App. 3 Cir. 5/3/06), \_\_\_\_ So.2d \_\_\_\_.

A medical-review panel found that the defendants met the standard of care. The panel's opinion also included this additional information:

the evidence [does not] support the conclusion that the defendants' actions were causative, in whole or in part, of the damages alleged to have been sustained herein.

The plaintiffs filed a motion in limine to redact the "causation" statement from the panel's opinion because it exceeded the statutory authority of the panel. The trial court granted the motion.

The defendants argued on appeal that there was no statutory or jurisprudential support for the trial court's ruling. The court of appeal disagreed and held that La. R.S. 40:1299.39.1(G)(2) indicates that only when a panel finds that a healthcare provider departed from the standard of care is the panel allowed to reach the issue of causation. Once a panel concludes that there was no departure from the standard of care, R.S. 40:1299.39.1(G) requires that the panel's analysis end. Thus, the trial court's redaction of the panel's opinion was affirmed.

### Patient's Statements to Physician Inadmissible

*Weeks v. Byrd Med. Clinic*, 05-1310 (La. App. 3 Cir. 4/5/06), 927 So.2d 594.

A patient at high risk for falls who required special precautions to prevent them did fall while she was hospitalized. She subsequently died, and a claim was instituted by her daughter.

The hospital filed a motion for summary judgment. In opposing the motion, the plaintiff relied on the deposition testimony of her mother's treating psychiatrist. The psychiatrist testified that, on the day after the fall, the patient told him she called the nursing staff to help her, got out of bed on her own when no one came, and then fell. The psychiatrist also testified that a nurse on the patient's floor

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*Jeanne A. Carpenter*  
Epilepsy Legal Defense Fund



told him that she (the nurse) had been moved to another floor during the night of the fall, although he could not identify the nurse and was not sure of the number of nurses that would have remained on the patient's floor during that shift. The hospital argued that the psychiatrist's testimony was inadmissible hearsay, would not be admissible at trial, and, therefore, did not create a genuine issue of material fact. The trial court agreed.

The plaintiff argued on appeal that the statement made by her mother, while hearsay, was nevertheless admissible as a statement for the purpose of "medical treatment and diagnosis" and an exception for the hearsay rule pursuant to La. C.E. art. 803(4). The appellate court found that the patient's statements to her physician that asked her how she fell "have nothing to do with the diagnosis or treatment of her condition and are therefore inadmissible."

The defendant's evidence established that there was no proof that the hospital breached any standard of care, and summary judgment was affirmed.

### Nurse's Notes Inadmissible

*Evans v. City of Natchitoches*, 05-1278 (La. App. 3 Cir. 4/5/06), 927 So.2d 608.

A defendant in a personal injury trial attempted to introduce the entire medical chart of the plaintiff, including a nurse's note which questioned whether the patient's fall could have aggravated her pre-existing Osgood-Slatter's disease.

Nurses' notes are ordinarily part of the medical record and admissible at trial. However, because the physician for whom the nurse worked testified that the aggravation of the disease was related to the patient's trauma (testimony confirmed by other evidence, including the testimony of another physician), the reliability of the nurse's statements was called into question, and the court concluded that any weight to be given to those statements, even if they were to be admitted, "would be extraordinarily low." The court of appeal affirmed the trial court's holding that the probative value of the questioned documents was substantially outweighed by the danger of unfair prejudice and the nurse's notes were thus inadmissible.

— Robert J. David

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## Trusts, Estate, Probate and Immovable Property Law

### Service of Administrative Zoning Citation Interrupts Prescription

*Perry v. Parish of Jefferson*, 05-0570 (La. App. 5 Cir 1/31/06), 922 So.2d 645.

In *Perry*, the Parish of Jefferson sought to require the operator of a used car lot to install an impervious surface at the car lot. In July 1995, Perry opened a used car lot and, on May 6, 1998, Perry was cited for failing to have an impervious surface at the lot as required by local law. In June 2000, a hearing was held and Perry was ordered to correct the violation. On appeal, Perry asserted that the enforcement action prescribed, citing La. R.S. 9:5625, which provides that all actions brought by a parish to enforce zoning regulations must be brought within three years of receipt of written notice of the infraction. The 5th Circuit held that the enforcement action was timely instituted and service



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of the administrative citation in May 1998 interrupted prescription. In addition, *Parish of Jefferson v. Jacobs*, 623 So.2d 1371 (La. App. 5 Cir. 1993) (only the filing of a suit interrupts prescription), was overruled to the extent that it was inconsistent with the *Perry* decision.

## Donations of Property to Trust an Absolute Nullity

**Funk v. Clement**, 05-0966 (La. App. 3 Cir 3/15/06), 925 So.2d 717.

A judgment creditor instituted a petitory action seeking a declaratory judgment that the judgment debtor, rather than an *inter vivos* trust, was the owner of certain parcels of immovable property. In January 1995, Wendy and David Funk filed suit against Dr. Richard Clement and his medical corporation seeking damages for medical malpractice. In August

1997, Dr. Clement created an *inter vivos* trust and donated immovable and movable property to his wife, the trustee under the trust. In February 1999, Dr. Clement executed an act of donation donating additional immovable property to his wife, as trustee of the trust. The Funks obtained a judgment against Dr. Clement and the corporation on February 2002.

Initially, the 3rd Circuit noted that La. Civ.C. art. 2030 provides that "[a] contract is absolutely null when it violates a rule of public order, as when the object of the contract is illicit or immoral. A contract that is absolutely null [cannot] be confirmed" and is imprescriptible. Citing *Dugas v. Dugas*, 01-0669 (La. App. 3 Cir. 12/26/01), 804 So.2d 878, 881, the court noted:

Louisiana public policy does not permit a potential debtor to transfer property to someone else in order

to secrete it from potential creditors, in essence, for an illicit purpose. This applies to transfers made at the time a cause of action accrues *before* a potential creditor files a suit or obtains a judgment.

Finding that the underlying purpose of these donations was to remove assets out of the reach of creditors, the 3rd Circuit held that the donations contravene public policy and are absolutely null. Implicitly, the court found that this action is imprescriptible though it did not rule on the pre-emptory exception.

In a dissenting opinion, Judge Amy argued that the plaintiff's action is, in fact, a revocatory (Paulian) action, not a petitory action. In this regard, Judge Amy noted that since the applicable prescriptive period for a revocatory action is one year from the date the plaintiff learned of the act, but never more than three years after the date of the act pursuant to La. Civ.C. art. 2041, the plaintiff's action prescribed.

— **Alvin C. Miester III**

Secretary-Treasurer,  
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## YOUNG LAWYER SPOTLIGHT



**Rebekah Huggins  
Lafayette**



Rebekah Huggins graduated from Louisiana State University Paul M. Hebert Law Center in 1993 and was sworn in the same year as a member of the Louisiana State Bar Association (LSBA). Since that time, she has consistently given back to the Lafayette community through her many service projects. Her first job out of law school was with the Acadiana Legal Service Corp. where she concentrated on public benefits law, which included helping indigent people obtain benefits such as Social Security, food stamps and Medicaid. Since 1994, she has accepted pro bono family law cases from the Lafayette Volunteer Lawyers Program and has organized and participated in pro se divorce clinics designed to encourage young lawyers to help indigent individuals complete and handle pro se petitions for divorce.

In 2003 and 2004, Huggins chaired the Lafayette Parish Bar Association's (LPBA) CLE Program where she recruited speakers on a variety of CLE topics and organized CLE programs in Lafayette. From 1995-97, she was chair of the Lafayette Young Lawyers Association's mentor program. She helped young lawyers develop relationships with more experienced attorneys. Her extensive volunteer work and recruitment of other attorney volunteers has enhanced the reputation of lawyers throughout Acadiana.

In 2005, Huggins volunteered to work on task forces rewriting the Lafayette Parish Bar Foundation's bylaws and the LPBA's Employee Handbook.

She has received numerous awards, including the Lafayette Parish Bar Association's President's Award in 2005, the LSBA Young Lawyers Section's Pro Bono Award in 2000, the Outstanding Service Award from the Lafayette Parish Bar Association in 2004 and 2005, and the Lafayette Volunteer Lawyers Outstanding Pro Bono Service Award in 1999.

She is a member of the John M. Duhe American Inn of Court and the Lafayette Parish Bar Association's board.

Huggins is a partner with the Glenn Armentor Law Corporation where she has practiced since 1998. Her practice focuses exclusively on helping injured individuals and she handles cases including automobile accidents, premises liability, workers' compensation, Social Security and civil rights. She is admitted to practice in all Louisiana state courts, the United States District Court for the Eastern and Western Districts of Louisiana and the United States 5th Circuit Court of Appeals.

The Young Lawyers Division chose to spotlight Huggins because of her continued commitment to her community and for her encouragement of other members of the bar to participate in numerous volunteer programs.

## UPDATE

### Rummel High Student Wins 2006 Essay Contest

Kiet Tuan Lam, a 12th grade student at Archbishop Rummel High School in Jefferson Parish, is the 2006 winner of the Statewide High School Essay Contest, an annual project sponsored by the Louisiana State Bar Association's Young Lawyers Division. (The winning essay begins on page 136.)

The topic involved *Roper v. Simmons*, 03-633, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which the United States Supreme Court held that it is unconstitutional under the Eighth Amendment to the United States Constitution for a jury to impose the death penalty upon a person who commits a capital crime before he has attained the age of 18.

Winners received plaques and monetary awards.

Second place winner was Marissa Jones, Grace Christian School, Rapides Parish. Third place winner was Sebastian Template, Episcopal High School, East Baton Rouge Parish.

Each of the eight district winners received \$50, a certificate and an American flag. District winners were: Kevin Hulin, Archbishop Rummel High School, Jefferson Parish; Erich Edelen, St. Michael's Christian Academy, East Baton Rouge Parish; Justin Mannino, Catholic High School, East Baton Rouge Parish; John-Eric Guillory, Eunice High School, St. Landry Parish; John Potts, Episcopal High School, East Baton Rouge Parish; Marshall Watts, Episcopal High School, East Baton Rouge Parish; Caitlin Hodges, Episcopal High School, East Baton Rouge Parish; and Taegier Douglas, Ouachita Parish High School.

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1st Place Winner  
2006 Statewide High School  
Essay Contest

## Justice, Regardless of Age

By Kiet Tuan Lam

On March 1, 2005, the Supreme Court decided in *Roper v. Simmons* that it was unconstitutional to impose the death penalty upon someone who has committed a capital crime as a minor. After making a series of observations and inferences, a majority of the court deemed execution of a person under the age of 18 to be cruel and unusual punishment, which is explicitly forbidden by the Eighth Amendment. However, the court erred in making (its) decisions; (the court) made many assumptions and extrapolations that were unsupported by sufficient evidence. The defendant in this case and others in similar instances should be duly punished for the heinous crimes they commit.

Christopher Simmons, at the age of 17, carefully planned and executed burglary, kidnapping, stealing, and murder in the first degree. Acting with despicable sang-froid, Simmons brutally killed a defenseless woman, who had been bound and blindfolded by duct tape, by throwing her off of a bridge. The victim, Ms. Shirley Crook, had been completely at the mercy of an unmerciful, unrelenting teenager, devoid of any human conscience. However, integral to his actions was his reliance on a blatant flaw of the justice system: that teenagers are not to be held ultimately responsible for their actions. Simmons specifically made use of this flaw in pointing out that he and his friends would escape punishment because they were minors. Obviously, before committing his crimes, Simmons had already accepted responsibility for his atrocious actions and knew well the gravity of his crimes. However, the focus of the court shifted from Simmons' culpability to this lapse, which indirectly influenced Simmons' decision to murder Ms. Shirley Crook.

Despite his age, Simmons was undoubted fully conscious of his crimes, and consequently, fully liable. However, Justice Kennedy, in delivering the opinion of the court, assumes about teenagers, "Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment" (*Roper v. Simmons* 16). The United States has set legal adulthood at 18 years old — therefore, the court is arguing that persons under the age of 18 are universally less responsible than those who have attained this age. Does a person truly gain so much knowledge and culpability the moment he turns 18? No, it is unreasonable to assume that a person who has not lived a specified number of days is any less responsible than one who has met this requirement. Maturity, logic, and reason are not attained overnight; rather, it is a continuing process that lasts for the duration of one's life. Obviously, the court's indefensible extrapolation draws a rather discriminatory line for culpability and provides for a new, single technicality that will allow countless young murderers to escape from capital punishment. It is much more reasonable that each case take into account the individual's own development, consent, and knowledge of his actions. Simmons knew what he was doing. To say that he is any less responsible because he is younger and to allow him to escape the all-encompassing binds of justice is irresponsible on behalf of the legal system.

Even when the court admits a probable flaw in a categorical ruling, it attempts to cover up its mistakes with psychological justification. It begins, "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption" (*Roper v. Simmons* 19). This assertion proves to be contradictory in itself — if expert psychologists cannot differentiate between the two specified persons, with what evi-

dence can the court claim that depravity is only present in "the rare juvenile?" Further, overlooking the court's paradoxical judgment, another inconsistency develops. Though the court has rationalized its lack of concern for the true condition of the criminal through the difficulty in diagnosis, its reasoning is hardly an acceptable excuse for lethargy. *Regardless* of the effort that must be placed into the endeavor, every court must at least make an attempt at fulfilling its purpose and the purpose of government to maintain order and justice within our society. Convenience cannot be a reason to ignore justice.

The Supreme Court also cites national consent in its argument, noting that since death penalty for minors is relatively infrequent, the nation has turned its shoulder against juvenile punishment since the last case, *Stanford v. Kentucky*, in 1989, when it was ruled that the U.S. Constitution did not prohibit punishment of a minor. However, this argument is riddled with holes. As Justice Sandra Day O'Connor points out in her dissent, "Although the Court finds support for its decision in the fact that a majority of the States now disallow capital punishment of 17-year-old offenders, it refrains from asserting that its holding is compelled by a genuine national consensus... Without a clearer showing that a genuine national consensus forbids the execution of such offenders, this Court should not substitute its own 'inevitably subjective judgment' on how best to resolve this difficult moral question for the judgments of the Nation's democratically elected legislatures" (*Roper v. Simmons* 1-21).

While it is true to say that the Constitution is a living document and that it evolves with the growing needs of the United States as a relatively young nation, to say that the moral standards of the U.S. are evolving completely opposes the examples set by the Supreme Court in recent years. In just the past decades, the federal courts have ruled that the parents of a comatose patient have no say in

**Essay** continued next page

## Essay continued from page 136

whether or not to sustain their child's life, as in the case of Terri Schiavo, nor has a father had any legal input on the birth or murder of his own child since *Roe v. Wade*. Obviously, the "rising standards" of society are an excuse to make *seemingly* ethical decisions that protect the guilty, while these same standards do not apply to other situations where *innocent* lives would be saved instead.

Although international opinion does weigh on the judgment made by the courts, it is important to distinguish the difference between the United States and other countries. While Europe as a whole has enjoyed decreasing crime rates in the past decade, the United States has dealt with overall higher crime rates within the past decades. The court points out that the United States is among the few to still use this form of punishment for minors—for this reason, they claim, it should be discontinued (*Roper v. Simmons* 21). However, whereas the capital punishment might have grown to be inessential and useless to the rest of the world, the United States has found this system necessary in order to suppress the consistently rising number of heinous crimes.

Justice O'Connor ultimately points out the court's flaws in her dissent. She asserts, "The Court's decision today establishes a categorical rule forbidding the execution of any offender for any crime committed before his 18th birthday, no matter how deliberate, wanton, or cruel the offense . . . There is no question that 'the chronological age of a minor is itself a relevant mitigating factor of great weight' . . . But the mitigating characteristics associated with youth do not justify an absolute age limit" (*Roper v. Simmons*). Indeed, while Justice Kennedy has called on the necessity of a clear line, it is obvious that this oversimplifies a complex issue. The system cannot use birthdays as a factor when judging on culpability, and those who have perverted and twisted the law to suit their own sadistic intents should be justly punished, regardless of age.



The team from Jesuit High School in New Orleans won the state title during the March 11 finals of the 2006 Judge Richard N. Ware IV Memorial Statewide High School Mock Trial Competition.

### Jesuit High School Wins State High School Mock Trial Competition

The team from Jesuit High School in New Orleans won the state title during the March 11 finals of the 2006 Judge Richard N. Ware IV Memorial Statewide High School Mock Trial Competition, an annual project of the Louisiana State Bar Association's Young Lawyers Division (YLD).

The problem based on a war crime issue dating back to the time of George Washington was written by Bob Noel and the competition was chaired by YLD Council members W. Michael Street and Valerie Briggs Bargas.

Other rankings were:

- ▶ Second place: Airline High School, Blue Team, Bossier City;
- ▶ Third place: Baton Rouge Magnet High School, Baton Rouge;
- ▶ Fourth place: Airline High School, White Team, Bossier City;
- ▶ Best Attorney: Phil Sampognaro of Airline High School, Blue Team; and
- ▶ Best Witness: Kaitlyn Stockwell of Baton Rouge Magnet High School.



The Blue team from Airline High School in Bossier City placed second during the Statewide High School Mock Trial Competition.



**2006 Judge Richard  
N. Ware IV Memorial  
Statewide High School  
Mock Trial Competition**

Phil Sampognaro of the Airline High School Blue Team was named "Best Attorney" during the Statewide High School Mock Trial Competition.



The team from Baton Rouge Magnet School in Baton Rouge placed third during the Statewide High School Mock Trial Competition.



The White team from Airline High School in Bossier City placed fourth during the Statewide High School Mock Trial Competition.

**LOCAL AFFILIATES**

**Alexandria Bar Association  
YLS Sponsors Bench Bar  
Conference**

The Alexandria Bar Association's Young Lawyers Section sponsored its annual Bench Bar Conference on May 12 at the Alexandria Golf and Country Club. The conference includes a morning CLE program, followed by a golf tournament.

This year, there were 97 registrants.

The CLE program was presented by Patricia Koch, judge, 9th Judicial District Court; attorney Mike Koch; attorney Lottie Bash; Professor Tom Richard, Southern University; and a panel of 3rd Circuit judges including Judge Glenn Gremillion, Judge Jimmie C. Peters, Judge Gene Thibodeaux, Judge John D. Saunders, Judge Billie H. Ezell, Judge James T. Genovese and Judge David Painter.



Attorneys Eric Miller and Paul Lafleur at the Alexandria Bar Association's Young Lawyers Section's Bench Bar Conference golf tournament.



Attorneys Stacey Auzenne and Larry Stewart at the Alexandria Bar Association's Young Lawyers Section's Bench Bar Conference golf tournament.



Participating in the Alexandria Bar Association's Young Lawyers Section's Bench Bar Conference golf tournament were, Shannon Gremillion, Alexandria Young Lawyers Council member; Judge Glenn Gremillion, 3rd Circuit Court of Appeal; W. Jay Luneau, Sixth District representative, Louisiana State Bar Association Board of Governors; and Ted Roberts, Alexandria Young Lawyers Council member.

### Lafayette Young Lawyers Sponsor "Grillin'" for Multiple Sclerosis

The Lafayette Young Lawyers Association (LYLA) participated in the sixth annual Justice Grillin' for Multiple Sclerosis on May 25. Participating in the event were, from left, Cynthia Simon, assistant to district attorney; Paul Gardner, law clerk of Judge Marilyn Castle; April Citron, Brazee & McCormick; Nicole Breau, Acadiana Legal Services; Vandana Chaturvedi, Law Office of Vandana Chaturvedi; Maggie Simar, 16th Judicial District Court hearing officer; and Benjamin Durrett, Preis, Kraft & Roy.



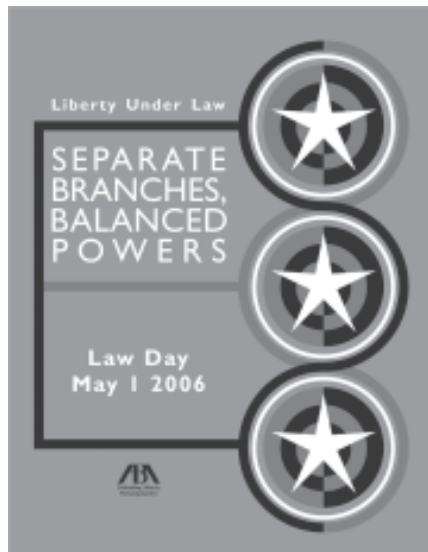


## Baton Rouge Bar Foundation Holds Annual Law Day Ceremony

Events surrounding the Baton Rouge Bar Foundation's Law Day 2006, with the theme "Liberty Under the Law: Separate Branches, Equal Powers," were conducted May 1 at the Baton Rouge River Center and downtown courthouses. Central High School's Color Guard provided the presentation of colors.

After the ceremony, which included a speech given by East Baton Rouge Mayor-President Melvin "Kip" Holden, the students attended courtroom sessions at the 19th Judicial District Courthouse and Baton Rouge City Court. During lunch at the River Center, students were able to view voting booths and the drug court D.A.R.E. booths and learned about the ICare and Fatal Vision programs.

Kyle Landrem served as chair for this year's Law Day. Donna Buuck, Baton Rouge Bar Association education coordinator, was the staff liaison. This year's event was sponsored by the Baton Rouge Bar Foundation, Baton Rouge Bar Association, Junior League of Baton Rouge, Coca Cola Bottling Co., McDonald's and the Louisiana Bar Foundation IOLTA Program.



## Greater Covington Bar Association Announces Law Day Contest Winners

The Greater Covington Bar Association sponsored art, essay and poetry contests in observance of Law Day. Art contest winner is Sage Rose Wilson, a student at Pitcher Junior High School. Essay contest winner is Rebekah Locke, a Slidell High School student. Poetry contest winner is Spencer Dorsey, a student at St. Paul's High School.



Baton Rouge Bar Foundation Law Day Chair Kyle Landrem, Baton Rouge Mayor Melvin "Kip" Holden and Baton Rouge Bar Association President Jay Jalenak, Jr. on stage prior to the BRBF Law Day program. Mayor Holden served as this year's keynote speaker.



Central High School's Color Guard presented the colors at the Baton Rouge Bar Foundation's Law Day 2006 ceremonies. Participating are Cadet Sergeant Raquel Sanders, Cadet Command Sergeant Major Myeashia Smith (Color Guard commander), Cadet Master Sergeant Tony Nix and Cadet Sergeant Courtney Johnson.



Winners in the Baton Rouge Bar Foundation's Law Day essay and poster contests included, from left, Michael Cain, 3rd place; Regan Hubbell, 3rd place; Lance Thomas, 2nd place; Rebecca Taylor, 1st place; Karly Theriot, 1st place; and Nwadiuto Lucious, 2nd place.





**Maureen J. Goodly, center, executive director of CASA, received the New Orleans Bar Association's (NOBA) Liberty Bell Award. From left, NOBA Young Lawyers Section Chair Tara G. Richard, Goodly and NOBA President Carmelite M. Bertaut.**

## Goodly Receives the NOBA Liberty Bell Award

Maureen J. Goodly, executive director of CASA, received the New Orleans Bar Association's (NOBA) Liberty Bell Award, presented in celebration of Law Day. The Liberty Bell Award recognizes non-lawyers for outstanding contributions in encouraging respect for the law and courts.

CASA programs provide volunteers to act on behalf of children who have been adjudicated in order to assist and make recommendations to the court and to advocate for the best interests of the child. CASA assists Orleans Parish child abuse cases, the victims and their families.

NOBA President Carmelite M. Bertaut and Young Lawyers Section Chair Tara G. Richard were on hand for the presentation, held in the courtroom of Orleans Civil District Court Judge Madeleine M. Landrieu. This year's Law Day chairs were Lawrence J. Centola, Dana M. Douglas and Greg L. Johnson.

Presenting a mock trial at Northside High School were, from left, Blake Hanks, Kadeem Harris, Boyd Vizena, Terri Simpson, Natasha Bruno, Ebony Edwards, Brittany Broussard, Brittany Rineholt, Liz Tullier (teacher), Gabrielle Hall, Ivette Barnes and Gavin Senegal.

## Northside High Conducts Law Day Programs

Social studies students at Northside High School in Lafayette participated in a week-long series of Law Day programs, including a mock trial and talks from area attorneys and government officials.

Northside High School is a Law Signature school offering Law I, Law II and forensic science. The school also has a Lafayette City Police Department Explorer Post.

Social studies classes heard talks from 2005-06 Louisiana State Bar Association President Frank X. Neuner, Jr., federal Judge Rebecca Doherty, officers of the Lafayette City Police Department

and area attorneys.

Students in the law studies classes presented a mock trial scenario featuring a civil trial, *Estate of Hans Peter Jensen v. The White Star Line (RMS Titanic)*.



**Attorney Latasha Smith talked to Northside High School students during the Law Week program.**



**Frank X. Neuner, Jr., 2005-06 president of the Louisiana State Bar Association, coached the Northside High School mock trial teams on pointers for the Law Week competition.**



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By Robert Gunn, Louisiana Supreme Court

NEW JUDGE. . . APPOINTMENTS

## New Judge

**June Berry Darensburg** was elected to Division C, 24th Judicial District Court, Jefferson Parish. With her election, she became the first African-American female elected to the 24th JDC bench. She earned her undergraduate degree from Xavier University in 1985 and her JD degree from Loyola University Law School in 1994.



**June Berry  
Darensburg**

She is a member of the American, National and Louisiana State bar associations, the Louisiana Association of Criminal Defense Lawyers, Jefferson Task Force and the Judge John C. Boutall American Inn of Court, in addition to a number of other civic and community organizations. She is the parent of two sons.

## Appointments

Retired Judge Freddie Pitcher, Jr. was appointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for a term of office

which began April 22 and will end on April 21, 2010.

Retired Judge Fred C. Sexton, Jr., Harry S. Hardin III and John B. Scofield were reappointed, by order of the Louisiana Supreme Court, to the Judicial Campaign Oversight Committee for terms of office which began April 22 and will end on April 21, 2010.

## Deaths

Retired 23rd Judicial District Court Judge **Leon J. LeSueur**, 83, died April 30. After earning his undergraduate degree from Louisiana State University in 1943, he graduated from the U.S. Army Infantry Officers' Candidate School, participated in the invasion of Normandy and was awarded the Purple Heart in 1944. He earned his LLB from Louisiana State University Law Center in 1948. While at the university, he was a member of Phi Delta Phi legal fraternity, Phi Kappa Phi and the Order of the Coif. He served as law clerk to the late Sam A. LeBlanc, judge of the 1st Circuit Court of Appeal and later justice of the Louisiana Supreme Court, and to the late Judge Morris A. Lottinger of the 1st Circuit Court of Appeal. From 1948-65, he was in the practice of law in Napoleonville.

He was elected to the 23rd JDC bench in 1965 and was re-elected without opposition in 1966, 1972, 1978 and 1984. He retired from the bench in 1990. At various times, he was appointed to seats on the 14th, 21st and 29th JDC benches, as well as the 4th Circuit Court of Appeal and East Baton Rouge Family Court.

Former 6th Judicial District Court Judge **Alwine Mulhearn Smith Ragland**, 92, died April 30. She earned her undergraduate degree from Principia College in 1932 and her law degree from Tulane Law School in 1935. After practicing law from 1935-74, she was elected to the 6th JDC bench in 1974, becoming the first female elected as a judge in Tallulah (Madison Parish). She was re-elected to that seat in 1978 and 1984. She served on the 6th JDC bench for 16 years, leaving her seat in 1990. A member of the American and Louisiana State bar associations, the National Association of Women Judges and the National College of Probate Judges, she also served as president of the 6th Judicial District Bar Association. She served as president, vice president and secretary-treasurer of the Council of Juvenile and Family Court Judges and was a member of the American Judicature Society, the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice.

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# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Fischer & McMahon of Shreveport announces that Donald E. Hathaway, Jr. has joined the firm as a partner. The firm also announces the elevation of Mark K. Manno to partner.

Kevin S. Frederick, A.P.L.C., is now Frederick Law Firm, located at Ste. 100, 1025 Coolidge in Lafayette. James P. Doherty III has joined the firm.

Frilot Partridge, L.C., announces that **Joel E. Cape** has become a member of the firm.

Gieger, Laborde & Laperouse, L.L.C., announces that **Andrew M. Adams** and **Margaret L. Sunkel** have been elected

members of the firm, **William A. Barousse**, **Krystena L. Harper** and **David B. Wilson** have joined the firm as associates, and **Alistair M. Ward** has become of counsel to the firm.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P., announces that **Brandon A. Brown** has become a partner in the firm's Baton Rouge office, **Aimee Williams Hebert** has become a partner in the firm's New Orleans office, **Michael A. Villa, Jr.** has joined the firm as an associate in the Lafayette office, and **Demarcus J. Gordon** has joined the firm as an associate in the New Orleans office.

Christian N. Heausler has joined KBR (Kellogg Brown & Root) as a patent attorney in Houston, Texas.

Jeansonne & Remondet, L.L.C., an-

nounces that **Scott F. Higgins** has become a partner in the firm's Lafayette office and **Roger A. Javier** has become a partner in the firm's New Orleans office.

Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., announces that **Katherine Lafaye Winters** has joined the firm as an associate in the New Orleans office.

Kanner & Whiteley, L.L.C., announces that Cynthia S. Green has become a member of the firm.

Lemle & Kelleher, L.L.P., announces that **Thomas Louis Colletta, Jr.** has joined the firm as an associate.

McGlinchey Stafford, P.L.L.C., announces that it has elected new members:



Andrew M. Adams



M. Nan Alessandra



William A.  
Barousse



Kim M. Boyle



Brandon A. Brown



Joel E. Cape



Christina L.  
Carroll



Paige J. Cline



Thomas Louis  
Colletta, Jr.



Jose C. Corrada



Philip deV.  
Claverie, Sr.



Louis B. Gerber

F. Sherman Boughton, Lisa D. Munyon and Nathalie G. Simon in its New Orleans office, and Christine S. Goldberg, Melissa M. Mulkey and Jay O'Brien in its Baton Rouge office.

Middleberg Riddle & Gianna announces that **Charles R. Penot, Jr., Jeanmarie LoCoco, Dawn M. Palmisano** and **Jeffrey C. Vaughan** have joined the firm as partners, and **Paige J. Cline, Louis B. Gerber, Lezly L. Petrovich, Courtney D. Kent, Jose C. Corrada, Jennifer R. Warden, Debra D. Morris** and **Michael R. Schulze** have joined the firm as associates.

Phelps Dunbar, L.L.P., announces that Susan N. Eccles has joined the firm's New Orleans office as an associate and Dan B. Zimmerman has joined the firm's New Orleans office as a staff attorney.

Plauché, Smith & Nieset announces that **Kendrick J. Guidry** has joined the firm as an associate in Lake Charles.

Reich, Meeks & Treadaway, L.L.C., announces that Roch P. Poelman has joined

the firm as an associate.

Robein, Urann & Lurye, P.L.C., announces that **Christina L. Carroll** has become associated with the firm.

Sher Garner Cahill Richter Klein & Hilbert, L.L.C., announces that Alvin C. Miester III has become a member of the firm and Thomas J. Madigan II, Kevin M. McGlone, Sharonda R. Williams, Chad P. Morrow, Lauren L. Hudson, Ellen Pivach Dunbar, Jeffrey D. Kessler, Keith L. Magness and R. Scott Hogan have become associated with the firm.

Steffes, Vingiello & McKenzie, L.L.C., announces that Patrick S. Garrity and Michael H. Piper III have become members of the firm and C. Noel Steffes has joined as an associate.

Sysco Food Services of New Orleans, L.L.C., has named John A. Berry as its director of legal and general counsel.

Weiler & Rees, L.L.C., announces that Micah J. Stewart and Christian N. Weiler have joined the firm as associates.

## NEWSMAKERS

Rudy J. Cerone, a member of McGlinchey Stafford, P.L.L.C., was elected to the board of directors of the American Bankruptcy Institute.

Edward Hayes, a partner with the Saporito Law Firm in New Orleans, represented Louisiana at the 2006 European Union visitors program in Belgium and Luxembourg in June.

**Ellen S. Kovach**, an attorney with Frilot Partridge, was elected to the Jefferson Parish 4th District School Board seat in April.

Jon F. "Chip" Leyens, a partner of The Steeg Law Firm in New Orleans, received a "Leadership in Law" Award from the New Orleans publication *CityBusiness*, which honored 50 lawyers from the area in a supplement to its May 1 issue.

**People** continued next page



**Demarcus J. Gordon**



**Kendrick J. Guidry**



**Krystena L. Harper**



**Aimee Williams Hebert**



**Scott F. Higgins**



**Roger A. Javier**



**Courtney D. Kent**



**Ellen S. Kovach**



**Jeanmarie LoCoco**



**John P. Manard, Jr.**



**Debra D. Morris**



**Dawn M. Palmisano**

Christopher D. Mora, an associate of Adams and Reese, was promoted to the rank of lieutenant commander in the U.S. Navy Reserve JAG Corps. He has been awarded the Joint Service Commendation Medal and two Navy-Marine Corps Overseas Service Ribbons.

Phelps Dunbar, L.L.P., announces that partners **M. Nan Alessandra, Kim M. Boyle, Philip deV. Claverie, Sr.** and **John P. Manard, Jr.** received "Leadership in Law" Awards from the New Orleans publication *CityBusiness*, which honored 50 lawyers from the area in a supplement to its May 1 issue. Also, Phelps Dunbar has been recognized for its diversity efforts by *Minority Law Journal* and *Multicultural Law Magazine*.

**Christopher K. Ralston**, an associate in the New Orleans office of Phelps Dunbar, L.L.P., was honored as the 2006 Outstanding Young Lawyer by the Louisiana State Bar Association's Young Lawyers Division.

Ranie T. Thompson was appointed as an Equal Justice Works Katrina Legal Fel-

low at Southeast Louisiana Legal Services in New Orleans.

**Wayne E. Woods**, with Alpha Title Co., Inc., has been elected chair of the board of commissioners for the Louisiana Housing Finance Agency.

## IN MEMORIAM

St. Amant attorney Darrell D. Cvitanovich, 56, died on April 26 in Pensacola, Fla. He was the son of the late Mildred Elizabeth Cvitanovich and Earl Thomas Cvitanovich, both of Biloxi, Miss. Mr. Cvitanovich received a bachelor of arts degree in political science from Louisiana State University in 1972 and his JD degree from Southern University Law Center in 1986, graduating *magna cum laude* as valedictorian. He was a loyal supporter of Southern University Law Center and a mentor to young attorneys in the Baton Rouge community.

**H. Martin Hunley, Jr.** died Aug. 23, 2005, in New Orleans after a long illness.

He was 87. He completed undergraduate studies at Louisiana State University in 1938 at age 19. He served in the U.S. Army from 1941-45 as a liaison officer with the French Army, receiving the Croix de Guerre for his work. He was honorably discharged as a major. He enrolled in Tulane Law School, graduating first in his class in 1947. He was editor of the *Tulane Law Review* and earned Order of the Coif honors. After clerking for



**H. Martin  
Hunley, Jr.**

Louisiana Supreme Court Associate Justice Howard McCaleb, Mr. Hunley began his legal career in 1948 as an associate with Montgomery Barnett. He soon joined Lemle, Moreno & Lemle, which merged in 1950 with Kelleher, Hurley & Kohlmeier to form Lemle & Kelleher. Mr. Hunley was a partner with Lemle & Kelleher from 1950 until he retired. His defense practice of more than 50 years focused in the areas of railroad,



**Charles R.  
Penot, Jr.**



**Lezly L. Petrovich**



**Christopher K.  
Ralston**



**Michael R. Schulze**



**Margaret L.  
Sunkel**



**Jeffrey C. Vaughan**



**Michael A.  
Villa, Jr.**



**Alistair M. Ward**



**Jennifer R.  
Warden**



**David B. Wilson**



**Katherine Lafaye  
Winters**



**Wayne E. Woods**



medical malpractice and legal malpractice. He was a past president of the New Orleans Bar Association and served in the Louisiana State Bar Association's (LSBA) House of Delegates and on the LSBA's Law Reform Committee and Medical-Legal Committee. He served on the board of alumni editors of the *Tulane Law Review*, as a Fellow of the American College of Trial Lawyers, and as a member of the Louisiana Law Institute. He is survived by seven children, four grandchildren, one sister, two brothers and other relatives.

## PUBLICATIONS

### *Chambers USA 2006*

Named to the 2006 edition of *Chambers USA: America's Leading Business Lawyers*:

- ▶ Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.: Edward H. Arnold III, Roy C. Cheatwood, William N. Norton and James H. Roussel.
- ▶ Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.: Judy Barrasso, Richard Sarver and Steven Usdin.
- ▶ Fisher & Phillips, L.L.P.: Robert K. McCalla, Keith M. Pyburn, Jr. and Michael S. Mitchell.
- ▶ McGlinchey Stafford, P.L.L.C.: Rodolfo J. Aguilar, Jr., Rudy J. Cerone, R. Keith Colvin, James M. Fantaci, Deborah Duplechin Harkins, Mark N. Mallery, E. Fredrick Preis, Jr., Michael H. Rubin, Paul S. West and David S. Willenzik.
- ▶ Phelps Dunbar, L.L.P.: Philip deV. Claverie, Sr., James A. Stuckey, Patrick J. Butler, Jr., Mark A. Fullmer, Brent B. Barriere, Sessions Ault Hootsell III, M. Nan Alessandra, Thomas H. Kiggans, Alan C. Wolf, Steven J. Levine, Brian D. Wallace, Jeffrey M. Barbin, Harry Rosenberg and Randy P. Roussel.

## People Deadlines & Notes

The deadlines for submitting People announcements (and photos) :

Publication	Deadline
Dec.2006/Jan.2007 .....	Oct. 4, 2006
Feb./March 2007 .....	Dec. 4, 2006

Announcements are published free of charge to 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 e-mail dlabranche@lsba.org.**

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Alexandria	Stephen E. Everett .....	(318)640-1824, (318)443-6312
Baton Rouge	Steven Adams ..... David E. Cooley ..... John A. Gutierrez .....	(225)753-1365, (225)924-1510 (225)751-7927, (225)753-3407 (225)715-5438, (225)744-3555
Houma	Bill Leary .....	(985)851-0611, (985)868-4826
Lafayette	Alfred "Smitty" Landry ..... Thomas E. Guilbeau ..... James Lambert .....	(337)364-5408, (337)364-7626 (337)232-7240 (337)233-8695, (337)235-1825
Lake Charles	Thomas M. Bergstedt ..... Nanette H. Cagney .....	(337)433-3004, (337)558-5032 (337)437-3884, (337)477-3986
Monroe	Robert A. Lee .....	(318)387-3872, (318)388-4472
New Orleans	Deborah Faust ..... Donald Massey ..... Dian Tooley .....	(504)486-4411, (504)833-8500 (504)585-0290 (504)861-5682, (504)831-1838
Shreveport	Bill Allison ..... Ed Blewer ..... Steve Thomas .....	(318)221-0300, (318)865-6367 (318)227-7712, (318)865-6812 (318)872-6250

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### REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 1, 2006.

#### Decisions

**William J. Aubrey**, Lafayette, (2006-B-0004) **Permanently disbarred** by order of the court on April 28, 2006. JUDGMENT FINAL and EFFECTIVE on May 12, 2006. *Gist:* Neglected legal matters; failed to communicate with clients; abandoned his law practice; failed to cooperate with the Office of Disciplinary Counsel in numerous investigations; and conversion of client funds.

**Robert L. Barrios**, Houma, (2005-B-1932) **Two-year suspension** ordered by the court on April 17, 2006. JUDGMENT FINAL and EFFECTIVE on May 1, 2006. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; failure to account for and refund an unearned fee; conflict of interest involving a former client; obligations upon termination of representation; failure to make reasonable efforts to expedite litigation; failure to cooperate with the Office of Disciplinary Counsel in its

investigations; and failure to respond to a lawful demand for information from a disciplinary authority.

**Karl E. Boellert**, Lake Charles, (2006-B-0451) **Consent year-and-a-day suspension, fully deferred, conditioned upon two years of supervised probation**, ordered by the court on April 17, 2006. JUDGMENT FINAL and EFFECTIVE on April 17, 2006. *Gist:* Conflict of interest; and failure to exercise independent professional judgment in representing a client.

**Boolus J. Boohaker**, Baton Rouge, (2006-B-0451) **Consent 18-month suspension, all but six months deferred**, ordered by the court on April 24, 2006. JUDGMENT FINAL and EFFECTIVE on April 24, 2006. *Gist:* Commingling client funds with his own funds; and failure to render an accounting to his client.

**James K. Gaudet**, Gretna, (2005-B-1082) **Six-month suspension, three months deferred, followed by six-month period of probation**, ordered by

the court on Feb. 22, 2006. JUDGMENT FINAL and EFFECTIVE on March 9, 2006. *Gist:* Misrepresenting himself as a judge; having an unclear fee arrangement; failing to return unearned fees; and failure to provide an accounting.

**Katherine Guste**, Gretna, (2006-B-0917) **Consent six months, fully deferred, subject to conditions and probation**, ordered by the court on May 26, 2006. JUDGMENT FINAL and EFFECTIVE on May 26, 2006. *Gist:* Failure to communicate with the client; fees; failure to take reasonable steps to protect client's interest upon termination of representation; and failure to expedite litigation in the interest of the client.

**Robert M. Hodge**, Lafayette, (2006-B-0634) **Interim suspension** ordered by the court on March 29, 2006. JUDGMENT FINAL and EFFECTIVE on March 29, 2006.

**W. Eugene Jessup**, Macon, Ga., (2005-B-1686) **Reciprocal public reprimand** ordered by the court on Feb. 17, 2006. JUDGMENT FINAL and EFFECTIVE on March 3, 2006. *Gist:* Mr. Jessup's public reprimand by reciprocal discipline was the result of a public censure imposed by the Board of Professional Responsibility of the Supreme Court of Tennessee for charging his client an excessive fee.

**Peter John**, Baton Rouge, (2006-B-0173) **Six-month suspension, fully deferred, subject to one-year period of probation with conditions**, ordered by the court on March 31, 2006. JUDGMENT FINAL and EFFECTIVE on March 31, 2006. *Gist:* Failure to commu-

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Continued next page

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of June 1, 2006.

Respondent	Disposition	Date Filed	Docket No.
Roger W. Jordan, Jr.	Three-year deferred suspension, one-year probation.	11/29/05	06-30 J
J. Clemille Simon	Six months, all but 30 days deferred, one-year probation.	11/29/05	06-29 S
Barry J. Landry	Six months' deferred suspension, one-year probation.	1/27/06	06-1273 N
Henry A. Dillon III	Retroactive reciprocal suspension.	1/13/06	06-645 L
Carolyn N. Hazard	Three-year retroactive reciprocal suspension.	12/9/05	06-231 A
James F. Abadie	Public reprimand.	5/16/06	06-1136 A
Jack P. Harris	Disability inactive status until further notice.	5/12/06	06-1135 J
Henry H. Hobgood	Suspended until further order.	3/13/06	06-1280 F
Peter John	Six months' suspension, fully deferred.	5/12/06	06-1841 I
Wade P. Richard	Retroactive reciprocal suspension.	2/15/06	06-1134 S
Clayton P. Schnyder	One-year-and-one-day suspension, retroactive.	3/13/06	06-1279 K

### Discipline Report

Continued from page 148

nicate with a client; and failure to avoid a conflict of interest.

**Clarence T. Nalls, Jr.**, Baton Rouge, (2006-B-0257) **Consent year-and-a-day suspension, fully deferred, conditioned upon two years of supervised probation**, ordered by the court on April 17, 2006. JUDGMENT FINAL and EFFECTIVE on April 17, 2006. *Gist*: Failure to decline or terminate a representation when the representation will result in a violation of the Rules of Professional Conduct or other law; and filing and pursuing a frivolous lawsuit.

**Wade Paul Petite**, Gonzales, (06-OB-1131) **Transferred to disability inactive status pursuant to Rule XIX, § 22(D)** by order of the court on May 17, 2006. JUDGMENT FINAL and EFFECTIVE on May 17, 2006.

**J. Nolan Sandoz, Jr.**, Abbeville, (2006-OB-0831) **Transferred to disability inactive status** by order of the court on April 25, 2006. JUDGMENT FINAL and EFFECTIVE on April 25, 2006.

**Clayton Paul Schnyder, Jr.**, New Orleans, (2005-B-1463) **Year-and-a-day suspension** ordered by the court on Jan. 13, 2006. JUDGMENT FINAL and EFFECTIVE on Jan. 27, 2006. *Gist*: Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; failure to make reasonable efforts to expedite litigation; failure to cooperate with the Office of Disciplinary Counsel in its investigation; and scope of representation.

**Russell A. Solomon**, New Orleans,

(2006-OB-0852 c/w 2006-OB-0632) **Permanent resignation in lieu of discipline** ordered by the court on May 2, 2006. Formal charges in Docket No. 2006-OB-0632 dismissed as moot. JUDGMENT FINAL and EFFECTIVE on May 2, 2006. *Gist*: Revealing information relating to the representation of a client without the client's consent; conflict of interest; failure to hold property of a client or third person that was in the

Continued next page

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## Discipline Report

Continued from page 149

lawyer's possession in connection with a representation separate from the lawyer's own property; failure to exercise independent professional judgment while representing a client; accepting a referral from a person, firm or entity which the lawyer knew engaged in communication or solicitation relating to the referred matter; giving items of value to a person for recommending the lawyer's services; violating the Rules of Professional Conduct; and the commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

**Anne T. Turissini**, New Orleans, (2006-B-0172) **Disbarment** ordered by the court on April 24, 2006. JUDGMENT FINAL and EFFECTIVE on May 8, 2006. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; obligations upon termination of representation; and failure to cooperate with the Office of Disciplinary Counsel in its disciplinary investigation.

**Johnny E. Wellons**, Baton Rouge, (2006-OB-0851) **Transfer to disability inactive status** ordered by the court on May 2, 2006. JUDGMENT FINAL and EFFECTIVE on May 2, 2006.

**James L. Yates**, New Orleans, (2005-B-1808) **Six-month suspension followed by one-year period of super-**

**vised probation** ordered by the court on March 10, 2006. JUDGMENT FINAL and EFFECTIVE on March 24, 2006. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to cooperate with the Office of Disciplinary Counsel in its investigation; and failure to fulfill obligations upon termination of the representation.

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

### No. of Violations

Lack of diligence .....	2
Lack of communication .....	1
Violating the Rules of Professional Conduct .....	3
Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation .....	1
Communicating with person represented by counsel .....	1
Practicing law during a period of ineligibility for noncompliance with mandatory continuing legal education requirements .....	1
Engaging in conduct prejudicial to the administration of justice .....	1

**TOTAL INDIVIDUALS ADMONISHED .....** 5

## LAP Offering Special Post-Hurricanes Program for Lawyers and Families

William R. Leary, director of the Lawyers Assistance Program, Inc. (LAP), is reminding Bar members of the availability of a special service established post-hurricanes to deal with mental trauma.

The Lawyers Assistance Program, Inc. (LAP) has contacted trauma and critical incident therapists who have volunteered to help lawyers and their families by telephone.

Leary and his wife, Kathleen (a licensed addiction counselor and employee assistant professional), will offer follow up beyond the crisis with appropriate referrals and the formation of mental health support groups across the state.

Use the numbers below to make the initial call, then call "866-354-9334" for LAP to follow up.

**Christine Long**

800-343-8527

**Roy Scott**

800-989-7406

**Bonnie Waters, Nancy Brown and Jeff Fortang**

800-525-0210

**Steven Gordon, Chris Anderson and Robin Ryan**

800-634-7710

**Scott Weinstein**

800-282-8981

**Mike Long, Meloney Crawford-Chadwick and Shari Gregory**

800-321-6227

**Barbara Harper and Service Center Staff**

800-945-9722

**Richard LaMadeleine and Ashli Callaway**

800-445-4232, x 3327

**Pan Adams**

501-920-6891



**Deborah M. Henson**

Attorney at Law

504/232-8884

debhenson.austin2006@gmail.com

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

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\$85 per insertion of 50 words or less  
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#### Screens: \$25

Headings: \$15 initial headings/large type

### BOXED ADS

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For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2006. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL  
Classified Notices  
601 St. Charles Avenue  
New Orleans, LA 70130

### RESPONSES

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

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

## POSITIONS OFFERED

**Shuart & Associates**, Legal Search and Staffing, is the leader in legal search and strategic placement of attorneys at all levels throughout Louisiana and the Southeast. With 20 years invested in developing relationships with legal community leaders, and knowing firm cultures and current hot practice areas, Shuart has gained trust and respect as "Louisiana's Leader in Legal." Last year, our accomplishments included 33 lateral attorney placements, the successful negotiation of two practice groups into other firms, and three in-house searches on behalf of local corporations resulting in three placements. We also provide top caliber legal support staff candidates for both direct hire and contract/temporary placement. All inquiries are held in the strictest of confidence. Shuart & Associates, Legal Search & Staffing, Ste. 1910, 650 Poydras, New Orleans, LA 70130; (504)836-7595; [www.shuart.com](http://www.shuart.com); [info@shuart.com](mailto:info@shuart.com).

**AV-rated firm** seeks experienced civil litigation attorney for its Lafayette office. Qualified candidates will have at least three years of trial experience and must have strong research and writing skills. Applications are strictly confidential. Please submit résumé, writing sample

and salary requirements to: Managing Partner, Oats & Hudson, Ste. 400, 100 East Vermilion St., Lafayette, LA 70501.

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**Law Offices of Harry W. Ezim, Jr. & Associates** seeks associate attorney with at least five years of experience in family law. Excellent written communication and drafting skills required. Qualified candidates should submit résumé and writing sample to P.O. Box 1543, Baton Rouge, LA 70821, or fax to (225)929-7717.

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**Lafayette healthcare law firm** seeking associate to handle physician, hospital, nursing home defense litigation. RN degree a plus. Five-plus years' experience only. Furnish résumé, law school transcript and references. Inquiries confidential. P. Guidry, P.O. Box 80369, Lafayette, LA 70598, or e-mail to gachassinlawfirm@hotmail.com.

**Growing Lafayette** AV-rated litigation defense firm seeking attorney with three to six years of experience. Busy practice and pleasant work environment. The position requires strong academic credentials and excellent writing skills. Competitive compensation and benefits. E-mail résumé and writing sample in confidence to trj@juneaulaw.com.

**Insurance defense firm**, AV-rated, New Orleans firm is seeking experienced attorneys with civil trial experience who have a limited portable practice and seeking a two-or-more-year experienced practitioner for building of our firm. Fax résumé to (504)891-3811.

**Full-time or flex position(s)** available for Coif/Law Review attorneys to practice with thriving AV-rated litigation firm in Covington/Mandeville, Lafayette, New Orleans or Baton Rouge areas. Inquiries strictly confidential to: Hiring Partners, P.O. Box 51165, Lafayette, LA 70505.

## SERVICES

**Texas attorney**, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300.

**Louisiana attorney** with 27 years' experience in general practice concentrating primarily in civil litigation available to assist other attorneys throughout Louisiana in overflow work or problem areas of law by preparing memoranda, motions, briefs, appeals, pleadings, pre-trial

orders, trial notebooks, legal research, etc.; New Orleans office; \$75/hour. Résumé available. (985)788-3736.

**Louisiana attorney** with 15 years of civil litigation experience throughout the state available for both plaintiff and defense contract work. Available for litigation services from start through trial. Résumé available upon request. Send inquiries to C-Box 209.

**Legal research/brief writing.** Washington and Lee University Law School graduate, top 10 percent, *cum laude*, Order of the Coif, former U.S. 5th Circuit judicial clerk, available for legal research and brief writing. Excellent analytical and written advocacy skills. Writing samples and references available on request. William L. Downing, (225)273-3055; bill@wdowning.com.

### Briefs/Legal Research/Analysis of Unusual or Problem Cases

**Honors graduate** of top 10 law school, lead counsel on numerous reported cases, federal judicial clerk, 20 years' litigation experience, creative legal thinker, references on request. Catherine Leary, (504)436-9648.

**Legal research/writing.** Top of spring 1967 class, LSU; LLM, Yale, 1968. Writings include briefs, memoranda and pleadings at courts of all levels, plus law review articles. Experience includes both general civil practice and major litigation. State-wide e-mail service. References upon request. William T. Tête, (504)891-6064.

**Former federal court** law clerk. More than 30 years' experience, civil practice and brief writing, before Louisiana state and all federal courts, including U.S. Supreme Court. Proficient in both electronic and manual research. Available for research and/or writing. Can work within time constraints. Mail, fax or e-mail delivery. A fresh mind frequently brings fresh ideas. Contact Wayne Scheuermann, (504)737-4175, or e-mail: WScheuerma@bellsouth.net.

## FOR RENT BATON ROUGE

### Offices for Lease

**320 Somerulos St.** Offices located two blocks from courthouse. Small office, \$950 per month; large office, \$1,200 per month. Rent includes full service janitorial, one covered parking space, local telephone service, voice mail, mail delivery and receptionist. Copy, document management, postage, Internet, courier and e-mail services available with charges based on actual usage. Contact Stacy B. Burns at (225)387-8320 or sburns@gmstl.com.

## FOR RENT MANDEVILLE

**Northshore office space** — New Class A construction available Jan. 1. Still time to have input on colors. West Indies-style building in new West Pointe Office Park on convenient West Causeway Ap-

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proach in Mandeville (two minutes from bridge). 1,450 and 1,185 square feet, each with parking, private kitchen and restroom. Contact Felicia at (504)830-4646.

## FOR RENT METAIRIE

**3,277-square-foot** prime Metairie office space. \$19/square foot, currently used by law firm. Available Jan. 1. Assume lease through August 2008 with right to three- or five-year renewal. Receptionist area with mahogany and marble built-ins, seven offices (one large corner), large conference room, library with built-in shelves, kitchenette with built-ins and dishwasher. Lease includes six reserved prime parking spaces, paid utilities and daily janitorial service. Must see! Contact Felicia, (504)830-4646.

## FOR RENT NEW ORLEANS

**Two offices available** in prestigious downtown building, tastefully renovated. 829 Baronne St. Excellent referral system among lawyers. Includes secretarial space, receptionist, telephones, voice mail, two conference rooms, kitchen, library with CD-ROM, office equipment and parking. Walking distance of CDC, USDC and many fine restaurants. Call Clifford Cardone or Lisa Perrin at (504)581-1394.

**Office-sharing opportunity** for attorney: Potential for referrals; private entrance and bath in beautiful uptown office on Magazine Street. lbrener@brenerlaw.com.

## NOTICE

**Gilmer P. Hingle** has applied for readmission to the Louisiana State Bar Association. Individuals concurring in or opposing this application may file their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd.,

Metairie, LA 70002, within 30 days.

**Christopher S. Suba** has applied for readmission to the practice of law in the state of Louisiana and membership to the Louisiana State Bar Association and requests that any individuals file notice of their opposition or concurrence with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days of this publication.

**Notice is hereby given** to all interested parties that Jason Blaine Rochon has filed a Petition for Readmission of Attorney Disbarred from the Practice of Law and Application for Readmission with

the Louisiana Attorney Disciplinary Board. Any opposition or concurrence to the Petition for Readmission of Attorney Disbarred from the Practice of Law or Application for Readmission must be filed within 30 days of this notice with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Notice is given** that Jay J. Szuba has petitioned for reinstatement to the practice of law. Any person(s) having a concurrence with or opposition to this petition must file notice of the same within 30 days with the Louisiana Attorney Disciplinary Board at Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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## UPDATE

### ABA, LSBA Conduct Legal Assistance Program for Storm Victims

Members of the American Bar Association (ABA) Tort Trial & Insurance Practice Section (TIPS) joined with colleagues from the Louisiana State Bar Association (LSBA) in May to provide a day of hands-on legal assistance to victims of Hurricane Katrina in the New Orleans area.

Months after the hurricane, victims are still in need of a wide range of legal assistance as they try to put their lives back together and rebuild.

The program was offered free to attendees and offered information on insurance, housing and eminent domain, among other issues. More than 20 volunteer lawyers were on hand to assist victims. Speakers included New Orleans Mayor C. Ray Nagin and representatives



New Orleans Mayor C. Ray Nagin was a guest speaker during the ABA/LSBA disaster legal assistance seminar.



Attending the ABA/LSBA disaster legal assistance seminar were 2005-06 LSBA President Frank X. Neuner, Jr. and 2006-07 LSBA President Marta-Ann Schnabel.

of administrative agencies.

This day-long session complemented efforts that began in the wake of the hurricane when the ABA mobilized volunteer members to man legal services phone lines in a contract with FEMA and to perform pro bono legal services for individuals and small businesses affected by the hurricane, as well as to provide assistance to lawyers displaced from the area. A Web site, [www.abanet.org/katrina](http://www.abanet.org/katrina), hosts a wealth of information on efforts to address this national crisis.

Within days of Hurricane Katrina's strike, the LSBA established a disaster legal assistance hotline where lawyers have handled more than 11,000 calls with questions about insurance, landlord/tenant and other issues. The LSBA also published a disaster-training manual and sponsored training seminars to prepare lawyers for duty at the Call Center, at FEMA Disaster Recovery Centers and at various shelters.

"It became clear to us that our services were needed on the ground and that it was important to meet with those in need, to

show them a caring face. TIPS members are working on this effort with the Louisiana State Bar Association to give hope to victims by providing needed legal guidance, and we will be there to assist in mediation and help them cut through the bureaucracy and red tape to find solutions," said TIPS Chair Sandra McCandless of San Francisco.

"We are pleased to partner with the American Bar Association Tort Trial & Insurance Practice Section to offer legal services to those in need," said 2005-06 Louisiana State Bar Association President Frank X. Neuner, Jr. "For the past several months, the legal needs of our citizens have been changing, from initial reaction and response, to rebuilding and recovery. Some citizens are just now realizing what their legal needs are. Our Louisiana attorneys have donated thousands of hours of their time to this effort so far and many more hours will be required of them in the coming weeks and months. Partnering with organizations like the ABA allows us to extend our reach in this long process of rebuilding."



**Hon. Karen Wells Roby**



**Doug Moreau**



**Domoine Rutledge**



**Val Exnicios**

### **Roby Elected 2006-07 President of LCE Board**

Hon. Karen Wells Roby has been elected as the 2006-07 president of the Louisiana Center for Law and Civic Education, a statewide youth education organization. Roby is a magistrate judge for United States District Court, Eastern District of Louisiana.

Elected to serve two-year terms on the board of directors are Doug Moreau, East Baton Rouge Parish district attorney; Domoine Rutledge, general counsel for East Baton Rouge Parish Public Schools; and Val Exnicios, a partner with the New Orleans law firm of Liska, Exnicios and Nungesser.

### **Adams and Reese Offers Community Support, Donations in Two Projects**

Attorneys and staff of the law firm of Adams and Reese recently offered support and donations for two community projects in the New Orleans area.

The firm donated computer and technology equipment to New Schools for New Orleans, a newly created nonprofit

### **Twinning of the Bars**



Attending the "Twinning of the Bars" ceremony in Lafayette were, from left, Frank X. Neuner, Jr., 2005-06 Louisiana State Bar Association president; Philippe Billon, Barreau de Versailles president (bâtonnier); and Kenny Oliver, Lafayette Parish Bar Association president.



Adams and Reese attorney Kyle Potts delivered Easter baskets and dinners to families at St. John the Baptist Community Center.



organization committed to assisting public schools by providing teacher recruitment and screening, help with business services and board governance training.

"We were thrilled to receive donated desktops and networking systems from Adams and Reese, and an Internet/dial tone donation is coming this week. Other businesses have been generous with in-kind donations, too, and we are pleased with their enthusiastic response," said Sarah Usdin of New Schools for New Orleans.

The firm also solicited their vendors for additional equipment such as laptops, servers and printers. Adams and Reese partner Paul G. Pastorek and Chief Information Officer David Erwin both serve on the Steering Committee for New Schools for New Orleans.

In another project, attorneys and staff at Adams and Reese, under the leadership of attorneys Kyle Potts and Byron Berry, raised nearly \$2,400 to provide 40 Easter baskets and dinners to families seeking the services of St. John the Baptist Community Center.

"This program has grown from serving 15 families in its first year to 40 families this year," Potts said.

Southern Hospitality Systems partnered with the firm in preparing and delivering the meals, and Elmer's Candy Co. donated candy to help fill the baskets.

This past year, the Association of Fundraising Professionals' Greater New Orleans Chapter named Adams and Reese its "Corporate Philanthropist of the Year." In 1998, the firm was recognized as the first law firm to receive the national "Excellence in Corporate Volunteerism Award" from the Points of Light Foundation in Washington, D.C.

### Baker Donelson Launches Women's Initiative

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., has launched a firm-wide program designed to enhance the role of women attorneys at the firm.

Baker Donelson's Women's Initiative, officially launched in April, focuses



Adams and Reese staff helped fill 40 Easter baskets delivered to St. John the Baptist Community Center.

on advancing the economic value of the firm by more fully capitalizing on the talents of its women attorneys, improving the recruitment and retention of women attorneys, increasing the representation of women in leadership positions at the firm and improving career development for the firm's women attorneys.

To achieve the goals of the initiative, Baker Donelson will implement a number of activities including work-life balance seminars for the firm's women attorneys, a mentoring program that will pair Baker Donelson female associates with a female shareholder to provide guidance in career path planning and leadership development, and a series of continuing legal education programs for women lawyers and in-house counsel at corporations.

The Women's Initiative Steering Committee, formed in May 2005, designed the effort after conducting a survey of the firm's women attorneys and advisors to identify the focus of the initiative.

### Judges, Mediator Recognized by National Publication

Seven Louisiana judges and one mediator were recently recognized by *Lawdragon*, a national publication which featured 500 leading judges in America.

State court judges on the list are Louisiana Supreme Court Chief Justice Pas-

cal F. Calogero, Jr., Louisiana Supreme Court Justice John Weimer, Orleans Parish Criminal Court Chief Judge Calvin Johnson and Orleans Parish Juvenile Court Judges Ernestine Gray and Mark Doherty. Federal judges on the list are United States District Court Judges Stanwood R. Duval, Jr. and Sarah S. Vance. Mediator John W. Perry of Baton Rouge also is named to the list.

## LOCAL / SPECIALTY BARS

### Baton Rouge Association of Women Attorneys Elects New Officers

The Baton Rouge Association of Women Attorneys recently elected its 2006-07 officers. Adrian Wilson is president; Nikki Essix, vice president; and Teresa Hatfield, secretary.

Regular meetings will resume with the Aug. 23 CLE meeting.

For more information on meetings, contact Wilson at wilsona@ag.state.la.us.

### Lorio Elected President of LADC

Philip D. Lorio III was installed as the 42nd president of the Louisiana Association of Defense Counsel

(LADC). Lorio is a partner with the law firm of Deutsch, Kerrigan & Stiles in New Orleans. Also installed were John Perry, president-elect; Chris Lawler, first vice president; Drake Lee, second vice president; and Ron Sholes, secretary-treasurer.



**Philip D. Lorio III**

The LADC also elected 11 new directors: Judy Barrasso, Lynn Luker, James Irvin, Nancy Dougherty, James (Chuck) Morgan, Bradford H. Felder, Yul Lorio, Russell Potter, Todd Benson, Frank Spruiell and Fred Williams Sartor.

## LOUISIANA BAR FOUNDATION

### LBF Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

John G. Amato .....	New Orleans
James A. Burton .....	New Orleans
Hon. Sidney H. Cates IV .....	New Orleans
James A. Cobb, Jr. ....	New Orleans
Peter A. Feringa, Jr. ....	New Orleans
Meredith L. Hathorn .....	New Orleans
Corinne G. Hufft .....	New Orleans
Harold B. Judell .....	New Orleans
Theresa Marchese .....	New Orleans
Jackie McCreary .....	New Orleans
Joan Miller .....	New Orleans
Loretta Mince .....	New Orleans
Bradford R. Roberts II ....	New Orleans
Kevin Robshaw .....	Baton Rouge
Kermit L. Roux .....	New Orleans
Clement T. Sehart .....	New Orleans
Hon. Sally Shushan .....	New Orleans
Danielle L. Trostorff .....	New Orleans
Allyson Tuttle .....	New Orleans
Hon. Joseph Wilkinson, Jr. ....	New Orleans
Margaret Woodward .....	New Orleans

## LPBA Attends Drug Court Graduation



Members of the Lafayette Parish Bar Association (LPBA) attended the 15th Judicial District Court Drug Court graduation in January. From left, Judge Edward Rubin, 15th JDC; Judge Marilyn Castle, 15th JDC; Kenny Oliver, LPBA president; Joey Durel, Lafayette Parish Consolidated Government president; Judge Thomas Duplantier, 15th JDC; Justice Catherine D. "Kitty" Kimball, Louisiana Supreme Court; Judge Jules Edwards, 15th JDC; and Joe Oelkers, LPBA immediate past president.

### Louisiana Bar Foundation Receives Grants

The Louisiana Bar Foundation (LBF) recently received four grants for disaster relief and other projects.

The LBF received a \$400,000 grant from the Louisiana Disaster Recovery Foundation (LDRF). With this grant, the Foundation will serve as the LDRF-designated nonprofit for legal services for disaster victims. The funds will be used for subgrants to legal service agencies; Call Center marketing; and a project focusing on legal services data collection and analysis. The Call Center provides legal information, advice or assistance to hurricane victims and is staffed by attorneys, law students and support staff.

The Ohio State Bar Foundation Hurricane Katrina Legal Relief Fund

awarded the LBF two grants totaling \$84,050. The grants are restricted to hire an attorney who will pursue systemic litigation to enforce criminal defendants' right to counsel in hurricane-affected areas and to fund the legal business center in St. Bernard Parish.

Equal Justice Works awarded the LBF a Pro Bono Legal Corps subgrant in the amount of \$70,455. Of these funds, the Corporation for National and Community Service will provide \$42,000 in federal funds. The funds will be used to host two AmeriCorps attorneys who will collaborate with community legal aid providers and law schools to develop quality pro bono opportunities and programs; recruit and train law students to volunteer with pro bono projects; and provide ongoing management and coordination of those pro bono projects and volunteers.

**[www.lsba.org](http://www.lsba.org)**

**Your online source for the most up-to-date LSBA news!**

# Annual Meeting 2006 / LSBA Homecoming

All photos by Ard Gallery



**Mickey deLaup and S. Guy deLaup, 2006-07 LSBA President-Elect.**



**2006-07 LSBA President Marta-Ann Schnabel and 2006-07 Young Lawyers Division Chair-Elect Karleen J. Green.**



**Board of Governors members Paula Hartley Clayton and Shannan Hicks and past LSBA Treasurer Kim Boyle.**



**Hon. Michael Bagneris and 2006-07 LSBA President Marta-Ann Schnabel.**





**2006-07 LSBA President Marta-Ann Schnabel and Mississippi Bar Immediate Past President Joy Phillips.**



**2006-07 LSBA President Marta-Ann Schnabel with Tracy Neuner and Pamella Lee.**



**Past LSBA President Michael W. McKay, Shelly Bienvenu and past LSBA President David Bienvenu.**



**2006-07 LSBA President Marta-Ann Schnabel and Winfield E. Little, Jr.**



**Past LSBA Secretary James R. McClelland and Past LSBA President Wayne J. Lee.**



**Louisiana Supreme Court Associate Justice Catherine Kimball and John A. Hernandez III.**

# Lucid INTERVALS

By Vincent P. Fornias

## ASK A STUPID QUESTION . . .

The old adage that he who represents himself has a fool for a client was never more true than in the painful performance recently put on by one Zacarias Moussaoui (Arabic for “Death Wish”), the storied would-be terrorist prosecuted for his role in the 911 attacks.

Moussaoui’s dogged insistence on performing his own cross-examination of an accuser reminds me of a pro bono City Court eviction proceeding long ago in which my own opponent, the landlord, decided to represent himself. After I concluded my brief (but devastatingly effective) direct examination of my victimized tenant/client, I routinely tendered the witness. Up rose the landlord, who approached the witness stand and imme-

diately got “the hook” from the ad hoc judge when his first cross-examination question was, “You lying sack of (blank)!” Excrement deleted.

Many of us were drilled on the late Irving Younger’s Ten Commandments of Cross-Examination. In the following actual trial deposition excerpt, Moussaoui surely set the remains of Professor Younger spinning at warp speed in his far-off resting place. Apparently one of Moussaoui’s accusers, a Malaysian radical named Faiz Bafana, described on direct examination a brief encounter with someone named “John,” who disclosed to him his dream of crashing a plane into the White House. Bafana described “John” in physical terms that made it clear it was either Moussaoui or his evil twin. The prosecutors slightly goofed, however, in not specifically asking the accuser to identify “John” as Moussaoui. Enter Moussaoui:

- M: How do you identify this man “John”?
- B: He looks exactly like you! (Lop off Moussaoui’s right upper extremity.)
- M: (Shocked) You are referring to me? He *looks* like me, or are you *certain* it is me?
- B: Certain! (Off with his left upper extremity.)
- M: Could it be someone who looks like me?
- B: I confirm that it is you! (There goes his left lower appendage.)
- M: But you said “John” had no beard, unlike me!
- B: It is the same. (Moussaoui is now a hemorrhaging bean bag.)
- M: Are you *sure*?
- B: Very sure. (Bring in the ox cart.)
- M: Is it not the case the person you met was very heavy weight?
- B: There’s no doubt. It is you. (Curtains.)
- M: That’s not my question!!

Was anyone surprised when, after witnessing this videotaped kamikaze display, the presiding judge forced Moussaoui to accept legal representation? Ironically, maybe Moussaoui was crazy like a fox. As most of you know, the jury who convicted him nevertheless spared his life, perhaps allowing him to develop his promising future as an incarcerated lecturer of alternative trial defense techniques.



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