

# LOUISIANA BAR JOURNAL

February/March 2006

Volume 53, Number 5

## **Louisiana Eminent Domain After *Kelo* and Katrina**

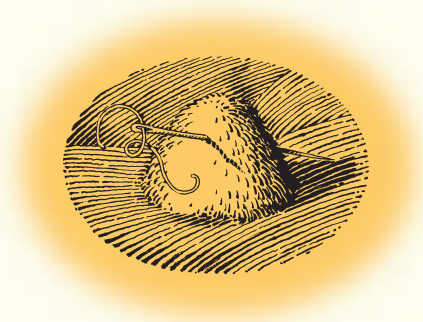
## **Insurance Coverage for Business Interruption Claims**

### **Also Inside:**

- Vacating Arbitrator Awards for Bias  
Due to Non-Disclosed Relationships
- William H. Rehnquist, Sept. 3, 2005:  
The Chief at LSU Law



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# LOUISIANA BAR JOURNAL

February/March 2006

Volume 53, Number 5

## TABLE OF CONTENTS



### Louisiana Eminent Domain After *Kelo* and Katrina

By Randall A. Smith  
363

### Insurance Coverage for Business Interruption Claims in the Aftermath of Hurricanes Katrina and Rita

By José R. Cot  
368

### Vacating Arbitrator Awards for Bias Due to Non-Disclosed Relationships

By Elizabeth Baker Murrill  
372

### William H. Rehnquist, Sept. 3, 2005: The Chief at LSU Law

By Paul R. Baier  
377

### LSBA Staff: Contact Information 381

## DEPARTMENTS

### President's Message

Teaching Students: Our Democracy  
By Frank X. Neuner, Jr.  
358

### Member Services 360

### Association Actions Legal Specialization Professionalism Award 386

### Lawyers Helping Lawyers Public Opinion 05-RPCC-005 By Rules of Professional Conduct Committee 390

### Focus on Professionalism Professionalism Blowing in the Wind By Val P. Exnicios 394

### Recent Developments 396

Cover design by Shelly A. Buckel



Painting of Chief Justice William H. Rehnquist  
by Thomas Loepp, Collection of the  
Supreme Court of the United States

377

### People 402

### Discipline Reports 404

### Classified 406

### News 409

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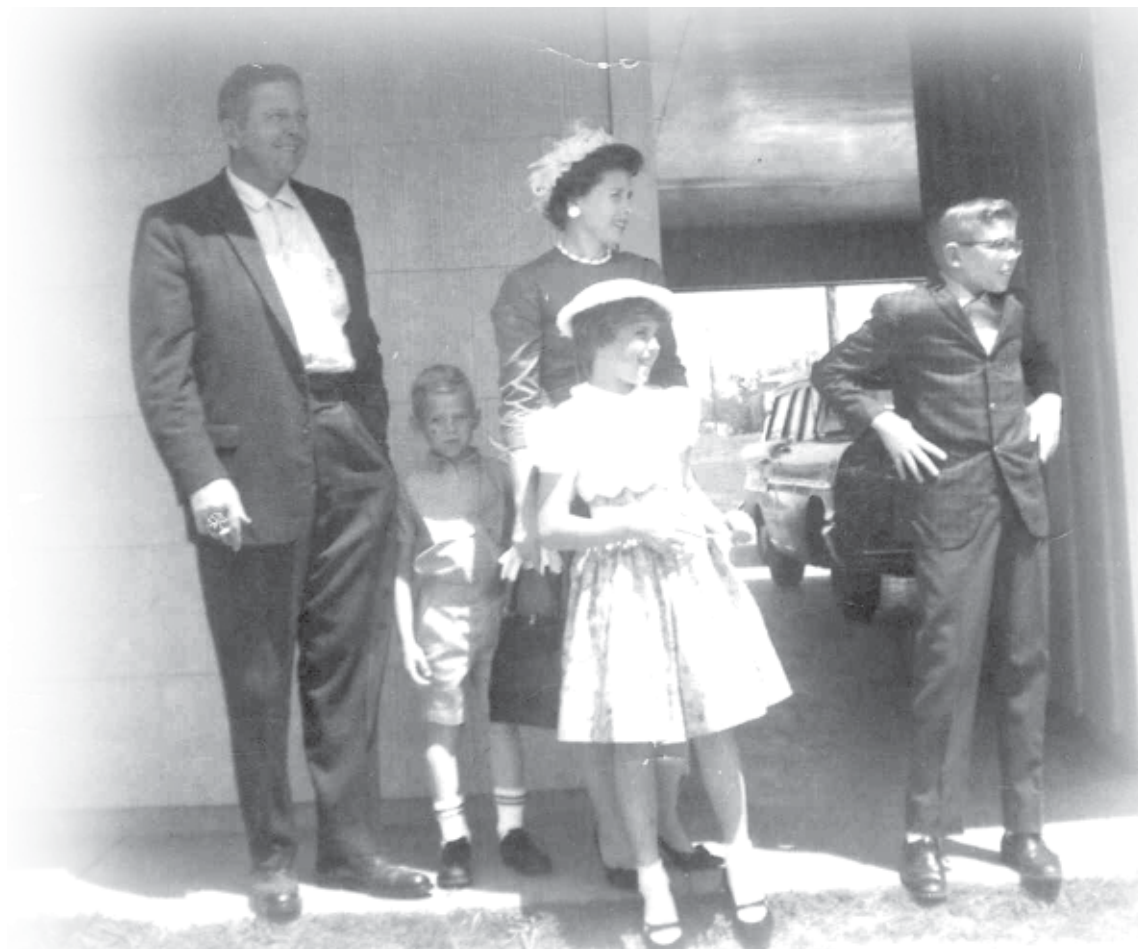
*By Frank X. Neuner, Jr.*

One of the downsides of “maturity” is that every now and then a relative uncovers a piece of family memorabilia that demonstrates just how far I’ve had to come. The picture on this page is one such reminder: it depicts my family on a Sunday morning in 1961 as we were on our way to church. There I am, in all my glory: the ultimate nerd. I believe that they created the famous TV character, Urkel, based on this picture alone! In addition to embarrassing me, this picture serves as reminder of the world that I grew up in. Most importantly, it reminds me of how much Ameri-

can society has changed for the better in the last 40 years.

Children raised in today’s world not only have a better sense of style, but also have the benefit of a broader worldview. Schools today often have a more diverse student population and offer more exposure to a wider range of ideas. They are far from perfect, however, and I believe that students would be well served if encouraged to learn more about the law and law-related issues. An understanding of our system of justice, after all, is essential to proper participation as a citizen in our democracy. The work of the

Louisiana Center for Law and Civic Education (LCE)<sup>1</sup> is directed at helping schools open these doors for their students. The LCE, a public education partner of the Louisiana State Bar Association, is funded in part by the Interest on Lawyers’ Trust Account (IOLTA) program of the Louisiana Bar Foundation, as well as through various private and public donations and grants. The purpose of the LCE is to coordinate, implement and develop law and civic education programs for students and train teachers in the delivery of law and civic education programs.



**The Neuners in 1961.  
Frank X. Neuner, Sr.  
and Mary Neuner and  
their children,  
Mary Jane Neuner  
(Riley), Tony Neuner  
and current President,  
Frank Neuner,  
at far right.**



As part of its mission, this past summer the LCE conducted a weeklong summer institute, which provided training for educators, juvenile justice practitioners and representatives of civic and community organizations who work with youth. The participants received training in an interactive communicative setting to enhance their existing curriculum and problem-solving activities. A special feature of this year's institute was a mock congressional hearing at the Louisiana Supreme Court, at which participants were given the opportunity to argue their positions and offer testimony to the hearing members. Those who participated as hearing members included U.S. District Judge Ivan Lemelle; U.S. District Judge Mary Ann Lemmon; U.S. Magistrate Judge Karen Roby; Pam Carter with Baker Donelson; State Representative Karen Carter; Donna Ganey, assistant superintendent of the Louisiana Department of Education; Phyllis Landrieu, Orleans Parish School Board member; Dr. Bill Miller with the Quality Education Support Services; State Senator Ed Murray; and Jamie Staub, "We the People" district coordinator.<sup>2</sup> This interactive exercise required participants to "testify" and argue their positions to the hearing members.

As the guest of the National "We the People" Program, I had the privilege of judging middle school competition for the Indiana State Bar Association's "We the People" Program in Indianapolis this past December. In addition to judging

the finals of the middle school competition, I observed the finals for the high school competition, and we are very fortunate in Louisiana that the LCE will sponsor a statewide "We the People" Program in Louisiana beginning next year. I encourage all of you to volunteer as judges for the program at both the regional and state levels.

LCE also has been very instrumental in creating a Law Signature Program at Northside High in Lafayette, the first of its kind in Louisiana outside of the greater New Orleans area. It is through the hard work and dedication of Liz Tullier, an award-winning teacher at Northside High, that the Law Signature Program has been implemented. In 2004, Tullier received the President's Education Award from the Louisiana State Bar Association and also the ABA Auxiliary National High School Teacher of the Year Award for a course she taught on "Street Law," in which she supplemented the regular curriculum by incorporating local lawyers and police officers to serve as mentors and instructors to her students. Her dedication and enthusiasm led to Northside High being designated a Signature Law School last year.

Immediate Past ABA President Robert Grey said it best in a speech he delivered at the "Street Law" awards dinner on April 5, 2005 in Washington, D.C.: "These teachers . . . represent the best efforts in our schools and communities to challenge and encourage students — and

not just students, but all of us — to become educated about the importance of the rule of law to a just society and the vital role of the legal system in ensuring justice, liberty and human dignity . . . I would like to encourage each of you to involve the young people — or old, it doesn't matter — in your communities in learning about the role of law in our society. There is always room for one more person, and space for one more voice."

Through programs like Law Signature Schools and the work of LCE, we will not only educate our young people about the role of the courts and the justice system, but we will open doors for them which have been closed. In the process, we will make our justice system more representative of the people it serves and a better society for all Americans.

#### FOOTNOTES

1. The Louisiana Center for Law and Civic Education is a 501C3 nonprofit corporation.

2. *We the People: The Citizen and Constitution* promotes civic competency and responsibility among the nation's elementary and secondary students.

## ABA House Adopts Resolution Supporting Hurricane Relief and Reconstruction

The American Bar Association's House of Delegates on Feb. 13 adopted a resolution supporting various aspects of hurricane relief and reconstruction, in particular that federal, state and local governments take all steps necessary to ensure that the civil and criminal justice systems have the necessary resources to maintain the continuity of the rule of law. To read the full resolution, go to: <http://www.lsba.org/home1/NewsDetails.asp?NewsID=81>.

## Legislature Approves Senate Bill 42

The Louisiana Legislature approved Senate Bill 42, supported by the Louisiana State Bar Association, which provides that the Judicial Council review and make recommendations to the Legislature concerning judicial districts.

To view the legislation as enrolled, go to: <http://www.legis.state.la.us/billdata/streamdocument.asp?did=335827>.

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# LOUISIANA

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# EMINENT DOMAIN

## After *Kelo* and Katrina

By Randall A. Smith

**T**he United States and Louisiana Constitutions permit the taking (“condemnation” or “expropriation”) of private property without the consent of the owner, provided that the taking is for a public purpose or use and just compensation is paid. In Louisiana, expropriating authorities exercise this power pursuant to specialized procedures intended by the Louisiana Legislature to guarantee due process to landowners. The statutes governing expropriation suits are somewhat complex and lack uniformity among various types of takings, and trial procedures differ greatly from ordinary proceedings.

After Hurricanes Katrina and Rita, many Louisiana landowners have less property that can be taken, but a recent decision by the United States Supreme Court, *Kelo v. City of New London*,<sup>1</sup> may assist Louisiana governmental agencies in taking property to promote economic development and rebuilding in the aftermath of these devastating hurricanes.

The Fifth Amendment to the Constitution, made applicable to the states by the 14th Amendment, provides that “private property [shall not] be taken for public use, without just compensation.” Article 1, § 4 of the Louisiana Constitution of 1974 provides similarly that “[p]roperty shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit.” The terms “public use” and “public purposes” are defined in neither the United States nor Louisiana Constitutions; although these terms have always been interpreted rather broadly, the recent decision by the United States Supreme Court in *Kelo v. City of New London*<sup>2</sup> appears to have broadened them still further.

The dispute in *Kelo* arose when the City of New London expropriated property for a comprehensive waterfront development following Pfizer’s announcement that it was building a facility near New London’s Fort Trumbull neighborhood. The development plan was pre-

pared by New London’s City Council’s consultant, New London Development Corp. (NLDC), and encompassed 90 acres, including 115 privately owned properties and 32 acres already utilized by the government.<sup>3</sup> The development plan included a waterfront conference hotel, restaurants, shopping, marinas, a riverwalk, a museum, office and retail space and parking.<sup>4</sup>

Most of the private property necessary to implement the plan was acquired by voluntary sale. However, owners of 15 of the 115 necessary parcels refused to sell their property, and the New London City Council authorized the exercise of eminent domain over these 15 parcels.<sup>5</sup> The properties were neither blighted nor in bad condition.<sup>6</sup> The home of one of the petitioners had been in her family for more than 100 years.<sup>7</sup>

After the property owners’ efforts to invalidate the takings failed on the state level, the United States Supreme Court granted certiorari to consider whether economic development was a valid public purpose supporting the exercise of

eminent domain. In an opinion authored by Justice Stevens and joined by Justices Kennedy, Souter, Ginsburg and Breyer, the court acknowledged that purely private takings, as well as takings under the mere pretext of a public purpose, are forbidden.<sup>8</sup> In this case, however, the court found that there was “no evidence of an illegitimate purpose” and that the taking was in furtherance of a carefully considered development plan.<sup>9</sup> The court declined to adopt a test requiring a detailed examination of a particular use, finding that a literal “use by the public” test would be too “impractical” and “difficult to administer.”<sup>10</sup> Instead, the court adhered to a broad definition of “public purpose” and a “longstanding policy of deference to legislative judgments in this field,”<sup>11</sup> citing its prior decisions in *Berman v. Parker*<sup>12</sup> and *Hawaii Housing Authority v. Midkiff*.<sup>13</sup>

In *Berman*, the court upheld the exercise of eminent domain to redevelop a blighted area of Washington, D.C., even though the expropriation included property not itself blighted and a portion of the property was to be transferred to private parties. In *Hawaii Housing*, the court found that the elimination of an oligarchy — by expropriating and transferring property from private individuals to other private parties — was a legitimate public purpose, contrary to the 9th Circuit’s conclusion that the taking was “a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B’s private use

and benefit.”<sup>14</sup>

In accordance with its history of deference to governmental findings of public purpose, the court deferred to the city’s finding that the Fort Trumbull area was sufficiently distressed to warrant a redevelopment program. Considering the development plan as a whole, the court found that it “unquestionably” served a public purpose.<sup>15</sup> Moreover, the court found no basis for distinguishing economic development from other public purposes it had recognized previously, such as agriculture, mining, alleviating blight, breaking up a land oligarchy, or eliminating barriers to entry in the free market.<sup>16</sup> The court responded to the concerns expressed by the dissenters, reassuring that nothing in its opinion eliminated the requirement of payment of just compensation. Moreover, it emphasized that states are free to restrict the takings power further if they see fit:

We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose “public use” requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.<sup>17</sup>

Justice Kennedy concurred, but advocated adoption of a rational basis test for examining public purpose.<sup>18</sup> He distinguished this case from one that might require a more stringent standard on grounds that: (1) the taking occurred in the context of a comprehensive development plan; (2) the economic benefits of the project were ample; (3) the identity of most private beneficiaries of the plan were unknown at the time of its formulation; and (4) the city complied with elaborate procedural safeguards and requirements.<sup>19</sup>

Justice O’Connor authored a lengthy dissent, which was joined by Justices Rehnquist, Scalia and Thomas. The dissent asserted that, as a consequence of the court’s opinion:

[A]ll private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — *i.e.*, given to an owner who will use it in a way that the legislature deems more beneficial to the public — in the process . . . . The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.<sup>20</sup>

The dissenters predicted that “the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.”<sup>21</sup> Justice Thomas, dissenting separately, expressed similar concerns and suggested that the court reconsider prior decisions to the extent they have strayed from the Constitution’s original meaning of “public use.”<sup>22</sup>

Although the dissent in *Kelo* was aggressive, its import was lessened in fall 2005 by the death of Chief Justice Rehnquist in September 2005 and the impending retirement of Justice O’Connor. Although neither the newly confirmed Justice John Roberts nor any

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other Supreme Court nominee has publicly announced a position regarding *Kelo*, it is unlikely that the court will retreat from its position regarding the government's expropriation powers in the near future.

Louisiana courts have not had an opportunity to consider the impact of *Kelo*. The public purpose for expropriations is not often challenged for three reasons. First, Louisiana courts rarely sustain challenges to the public purpose for an expropriation.<sup>23</sup> Second, the Louisiana Legislature has limited the time within which a landowner may challenge the public purpose of a taking to 10 days from the date of formal notice of the taking.<sup>24</sup> Finally, the term "public purpose" has always been interpreted broadly in Louisiana. Indeed, economic development was recognized by Louisiana appellate courts as a public purpose years prior to the *Kelo* decision. In *Town of Vidalia v. Unopened Succession of Ruffin*,<sup>25</sup> the 3rd Circuit held that:

any allocation to a use resulting in advantages to the public at large will suffice to constitute a public purpose. Moreover, a use of the property by a private individual or corporation, when such use is *merely incidental* to the public use of the property by the state or its political subdivisions, does not destroy an otherwise valid public purpose.<sup>26</sup>

Subsequently, in *City of Shreveport v. Chanse Gas Corp.*,<sup>27</sup> the 2nd Circuit confirmed that economic development is a public purpose under Louisiana law. In *City of Shreveport*, the city expropriated property for the purpose of building a convention center and hotel. The trial court rejected the landowners' challenge to the public purpose for the taking. On appeal, the landowners argued that the economic development anticipated to be generated by the convention center and

hotel was an insufficient public purpose, that the project would be a financial drain on the city, and that the city would have to donate the property to a private developer in order to have the project built. Relying on *Town of Vidalia* and the cases later cited in *Kelo* (*Berman* and *Hawaii Housing*), the court held that economic development was a sufficient public purpose and adopted a preponderance of the evidence test that the government must meet to demonstrate public need.<sup>28</sup> The court held that, once the government meets that burden, a landowner must show abuse of discretion by the expropriating authority in selecting the project site, which requires showing that the government acted "in bad faith, without adequate determining principles, or without reason."<sup>29</sup> The court found that the government met its burden by showing a rational relationship to a public purpose.<sup>30</sup>

Following the United States Supreme Court's suggestion that the states are free

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to limit expropriation powers, the legislatures in 28 states have discussed or proposed legislation to limit the taking of private property for economic development purposes and/or for transfer to other private parties.<sup>31</sup> As of Dec. 16, 2005, Alabama, Delaware, Ohio and Texas had passed legislation designed to curb *Kelo*'s impact.<sup>32</sup> Also, in the 109th Congress, First Session, the House of Representatives passed H.R. 4128, which would withhold federal economic development funds from states that expropriate property for economic development purposes.<sup>33</sup>

Louisiana has passed no laws specifically designed to curb the impact of *Kelo*. On the contrary, in Louisiana, Hurricanes Katrina and Rita have provided a strong incentive to the Legislature to utilize *Kelo* to redevelop New Orleans and the surrounding areas. Nevertheless, the Legislature issued a Concurrent Resolution memorializing Congress to take innovative steps to provide housing for hurricane victims, but specifically stating that "any comprehensive development plan must clearly indicate that no powers of eminent domain shall be granted." Without mentioning expropriation or *Kelo*, the Legislature has introduced other legislation that may support future expropriations: HB 2 in the 2005 First Extraordinary Session (returned to the calendar in November 2005) proposes a statute recognizing that the rebuilding of utilities destroyed by the hurricane is "a valid public purpose."<sup>34</sup>

As Louisiana recovers from Hurricanes Rita and Katrina, the Legislature may be inclined to utilize economic de-

velopment to support expropriation of private property to rebuild damaged areas. Various governmental agencies are already drafting and unveiling broad redevelopment plans encompassing economic redevelopment and rebuilding of necessary infrastructure. In view of the urgency of the situation and need for housing and public infrastructure, it is likely that the number of expropriation proceedings will increase in the next several years. In view of *Kelo* and its broad definition of public purpose, it may be difficult to challenge the public purpose for these takings. However, these landowners will still be entitled to just compensation and their day in court, and they will need assistance in wading through the expropriation laws to ensure that appropriate compensation is paid.

#### FOOTNOTES

1. *Kelo v. City of New London*, \_\_\_\_ U.S. \_\_\_\_, 125 S.Ct. 2655, 162 L. Ed. 2d 439 (2005).
2. *Id.*
3. *Id.* at 2659.
4. *Id.*
5. *Id.* at 2660. After initiating the condemnation proceeding, NLDC announced its intention to lease some parcels to private parties and disclosed its negotiations for a 99-year lease for \$1 per year. *Id.* at 2660, n. 4.
6. *Id.*
7. *Id.* at 2671 (O'Connor, J., dissenting).
8. *Id.* at 2661, citing *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 104 S.Ct. 2321, 2331, 81 L. Ed. 2d 186 (1984), and *Missouri Pac. R. Co. v. Nebraska*, 164 U.S. 403, 17 S.Ct. 130, 41 L. Ed. 489 (1896).
9. *Id.*
10. *Id.* at 2662.
11. *Id.* at 2663.
12. 348 U.S. 26, 75 S.Ct. 98, 99 L. Ed. 27

(1954).

13. 467 U.S. 229, 104 S.Ct. 2321, 2331, 81 L. Ed. 2d 186 (1984).

14. *Id.* at 235. The government owned 49 percent of the land, and another 47 percent was owned by only 72 private persons.

15. *Kelo*, 125 S.Ct. at 2665.

16. *Id.*

17. *Id.* at 2668.

18. *Id.* at 2669 (Kennedy, J., concurring).

19. *Id.* at 2670 (Kennedy, J., concurring).

20. *Id.* at 2671, 2676 (O'Connor, J., dissenting).

21. *Id.* at 2677 (O'Connor, J., dissenting).

22. *Id.* at 2678 (Thomas, J., dissenting).

23. *See, e.g., DOTD v. Estate of Griffin*, 95-1464 (La. App. 1 Cir. 2/23/96), 669 So.2d 566.

24. *See, e.g., La. R.S.* 19:147; 19:276; 19:296; 19:316; 38:357 (West 2005) (giving landowners 10 days from date of service of notice of expropriation to challenge public purpose of "quick taking" expropriations by various governmental authorities).

25. 95-580 (La. App. 3 Cir. 10/4/95), 663 So.2d 315.

26. *Id.* at 319.

27. 34,959 (La. App. 2 Cir. 8/22/01), 794 So.2d 962, writ denied, 01-2657 (La. 1/4/02), 805 So.2d 209.

28. *Id.* at 972.

29. *Id.* (citations omitted).

30. *Id.*

31. Tresa Baldas, "States Ride Post-*Kelo*' Wave of Legislation," *Nat'l L.J.* (8/2/05), p. 1. The 28 states included Louisiana, which ultimately did not pass legislation expressly limiting *Kelo*.

32. National Conference of State Legislatures, *Post Kelo v. New London State Eminent Domain Legislation* (12/16/05) (updated regularly at <http://www.ncsl.org/programs/natres/post-keloleg.htm>).

33. The bill was received in the Senate on Nov. 4, 2005 and referred to the Committee on the Judiciary.

34. HCR No. 42, First Extraordinary Session of 2005.

### Do You Have a Post-Hurricane Professionalism Story?

Members of the LSBA's Professionalism & Quality of Life Committee are aware that there have been remarkable acts of kindness and selflessness shown to Bar colleagues following the two hurricanes, including assistance with their practices and with basic needs ... in other words, true "professionalism." The committee is now soliciting "professionalism" stories from members, with the idea of publishing them online, in print publications, or both. Send your story or comments to: Publications Coordinator Darlene M. LaBranche, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; or e-mail [dlabranche@lsba.org](mailto:dlabranche@lsba.org).

### ABOUT THE AUTHOR

Randall A. Smith, a 1982 graduate of Yale Law School, clerked for Judge Charles Schwartz and was an associate and partner at Stone Pigman before founding the law firm of Smith & Fawer. He has tried dozens of expropriation cases in state and federal courts throughout Louisiana. (Ste. 3702, 201 St. Charles Ave., New Orleans, LA 70170)





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## Insurance Coverage for Business Interruption Claims in the Aftermath of Hurricanes Katrina and Rita

By José R. Cot

**I**n the aftermath of Hurricanes Katrina and Rita, many business owners in southeast Louisiana have filed insurance claims in connection with damage to their buildings, equipment and other assets. Coverage with respect to these claims is generally provided under comprehensive first-party property policies. These policies are typically written on an “all-risk” or “multi-peril” basis, meaning that they are designed to indemnify the policyholder for all direct physical loss or damage to his/her premises caused by a covered peril, as well as business personal property (the so-called “contents loss” coverage), unless the loss is otherwise excluded under the policy. Generally speaking, these policies contain water or flood exclusions, and resolution of the scope of coverage afforded under the policy — particularly after a hurricane — centers on the proverbial “wind v. flood” con-

trovery, *i.e.*, whether the ensuing losses were caused by the hurricane’s high winds (which is a covered peril under the policy), as opposed to wind-driven water or tidal surge flooding (which are excluded perils). The risk of damage as a result of water or flooding, however, is typically covered through a separate policy (such as a flood policy), designed to complement the coverage afforded under the property policy.

### Scope of Business Interruption Coverage

A significant component of commercial first-party property insurance policies is the so-called “business interruption” insurance.<sup>1</sup> This type of coverage is designed to protect the insured for the

risks associated with an interruption of the insured's business as a result of damage to the insured's property that results in a total or partial suspension of the insured's business operations. Although business interruption insurance is designed to protect the insured, it is also designed to prevent the insured from being placed in a better position if no loss or interruption of business had occurred.<sup>2</sup>

Although the phrase "business interruption" is widely used in the insurance industry, many commercial policies incorporate other terms such as "delay," "loss of market" and/or "consequential" loss or damages. Practitioners should be mindful of the fact that differences in the phraseology used in many of the policies providing such coverage have resulted in a significant amount of litigation regarding the interpretation and application of policy terms and conditions to specific factual scenarios. A comprehensive analysis of the terms and conditions of a particular policy is essential to determine the insurer's obligations with respect to covered perils and any applicable policy exclusions or limitations, as well as the proper methodology to compute the insured's business interruption losses. While there is not a plethora of reported cases interpreting business interruption insurance policies under Louisiana law, the few reported cases provide some guiding principles in evaluating coverage under these types of policies.

For example, some policies provide that the insurer will pay for the actual loss of business income that the insured sustains due to the suspension of his/her business "operations" during the "period of restoration." "Operations" generally means business activities occurring at the insured's premises.<sup>3</sup> Moreover, the "period of restoration" generally means the period of time that begins with the date of direct physical loss or damage caused by, or resulting from, a covered peril and ends on the date when the property should be repaired, rebuilt or replaced, or the date when business is resumed at a permanent or new location.<sup>4</sup> Some policies actually provide a specific time frame (for example, 12 or 18 months) to delineate the "period of restoration."

In addition to any loss of net income, most business interruption policies also cover normal operating expenses incurred by the insured, including payroll, employee benefits, FICA payments, union dues and insurance premiums. However, officers, executives, department managers and contract employees are typically excluded from the standard payroll expense coverage.

## Computation of the Loss

Business interruption insurance is either "valued," meaning that the parties have agreed upon the value of the insured's loss in advance, or "open," which requires proof of the actual loss of business sustained by the insured.

Under most business interruption policies, the loss is calculated by reference to the insured business' net income, *i.e.*, the net profit or loss (before income taxes) that would have been earned or incurred if no physical loss or damage had occurred.

In other words, the loss is based on the difference between the net profit the insured business would have received without the interruption and the net profit that it actually received. Some policies define net income so as to *exclude* any income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the covered cause of the loss on customers or other businesses.

Other types of business interruption policies provide that the formula for calculating the insured's loss is in terms of reduction of gross earnings. Under these policies, a "projection" of earnings is an accepted method of calculating the business interruption loss.

Therefore, in determining gross earnings, due consideration is given to the experience of the business *before* the date of damage or destruction and the *probable* experience thereafter had no loss occurred.<sup>5</sup> Some policies include specific appraisal provisions for valuing the loss of income and extra expense. Appraisal clauses may provide for the selection of independent appraisers and an impartial umpire.

## Extra Expenses

The typical business interruption policy also indemnifies the insured for any necessary "extra expense," which refers to expenses incurred to avoid or minimize the suspension of business and to continue business operations either at the insured premises, or at a temporary location. Extra expense usually includes any moving or relocation expenses, the cost to equip and operate temporary locations, and the cost to research, replace or restore lost information on damaged valuable papers and records, provided that it reduces the amount of the loss that otherwise would be paid under the business interruption coverage.<sup>6</sup>

*Although the phrase "business interruption" is widely used in the insurance industry, many commercial policies incorporate other terms such as "delay," "loss of market" and/or "consequential" loss or damages.*

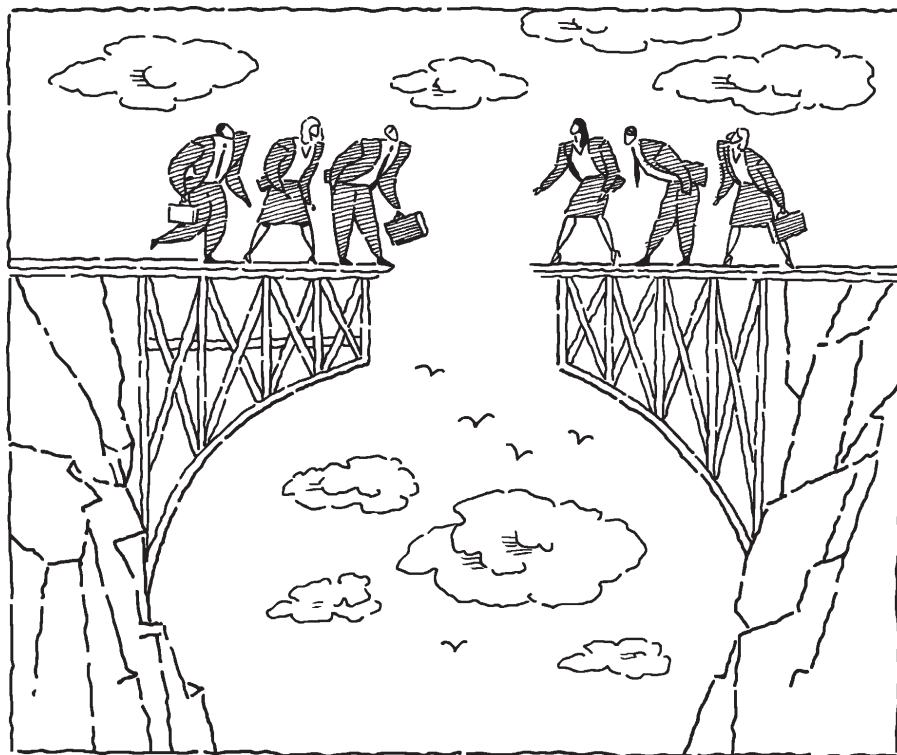
## Standard Exclusions

As with most types of insurance coverage, standard business interruption policies also contain certain policy exclusions. For example, there is no coverage for any extra expense or increase of business income loss caused by enforcement of any ordinance or law regulating the use, construction, repair or demolition of property. Delays in rebuilding, repairing or replacing the property, or in resuming business operations, which are attributable to interference by strikers or other persons is also excluded. Similarly, business interruption policies typically exclude extra expense or increase of business income loss due to suspension, lapse or cancellation of any license, lease or contract. Some policies also provide that delay in adjustment of the claim (if there is a dispute between the insurer and the insured) will not extend the period of time for which coverage applies.

Additionally, some business interruption policies contain "idle period" clauses, designed to exclude coverage for a period during which the insured's business operations would not have been maintained even if no peril insured against had occurred. Generally, there is no coverage for additional business income loss due to the enforcement of any ordinance or law requiring the insured to test for, clean up or remove any pollutants. Finally, business interruption policies typically exclude "consequential or remote" loss and/or delay, loss of use or loss of market.

## Civil Authority Coverage

A standard coverage extension contained in most business interruption policies provides that the insurer will indemnify the insured for the actual loss of business income and any necessary extra expense caused by action of civil authority that prohibits access to the insured's premises as a result of off-premises damage caused by, or resulting from, a covered peril under the policy.<sup>7</sup> This coverage is commonly referred to as the Civil Authority Coverage and is often available for a period of up to 30 consecutive



*From the insured's standpoint, it is important to note that business interruption insurance claims are, as are most first-party insurance claims, subject to established claims handling and settlement requirements under Louisiana law, including the bad faith statutes.*

days from the date of the action of civil authority. This type of coverage is significant in the context of mandatory evacuation orders imposed before a hurricane and curfews or road closures that may impact operation of the insured's business after the storm.

Some business interruption policies also contain coverage for prevention of ingress/egress as a result of physical damage and do not require an order of civil authority. However, generally speaking, ingress/egress coverage is *inapplicable* when it is possible to gain access to the insured's premises, even if access is limited.

## Duty to Mitigate and Adjustment of the Claim

As with most first-party policies, the

insured has an affirmative obligation to mitigate or reduce the loss by taking reasonable steps to shorten the indemnity period. For example, if possible, the insured must reduce the business interruption loss by complete or partial resumption of the business at a temporary location, or by making use of the merchandise or other property at the insured premises.

As with other forms of property insurance, adjustment of a business interruption claim usually requires assistance from expert witnesses, such as a forensic accountant. This is particularly important in calculating and documenting the amount of lost earnings that the insured has suffered as a result of the business interruption caused by damage to covered property. Courts have generally recognized that lost earnings need only be



proved to a reasonable certainty. Where it is not possible to state or prove a precise measure of lost earnings, the trier of fact has reasonable discretion to assess damages based on all the facts and circumstances of the case.<sup>8</sup> From an evidentiary standpoint, the insured's books and other financial records are admissible to establish the extent of the loss. Additionally, the insured's accounting practices are also considered, although they are not necessarily controlling in terms of the ultimate adjustment of the loss. Practitioners should consult applicable state statutes and jurisprudence with respect to the admissibility of business records, claim support documentation and related evidentiary issues.

Insurance coverage disputes involving business interruption insurance are not significantly different from most other insurance coverage litigation.<sup>9</sup> From the insured's standpoint, it is important to note that business interruption insurance claims are, as are most first-party insurance claims, subject to established claims handling and settlement requirements under Louisiana law, including the bad faith statutes. From a defense perspective, the insurer's counsel should be proactive in the investigation of the claim, raise applicable policy defenses and, if appropriate, issue reservation of rights under the policy. Of course, all of this is particularly important if it appears that a coverage dispute is likely to result in litigation.

On the other hand, because adjustment of business interruption claims requires interpretation of technical policy provisions and is generally based on evaluation of objective financial data, consideration should be given to the resolution of these claims by means of ADR mechanisms, particularly mediation. In most cases, an effective mediator should be able to assist the parties in identifying the key issues and in reaching a prompt and cost-effective out-of-court settlement.

#### FOOTNOTES

1. For a comprehensive discussion of business interruption insurance, see generally B.

Ostrager and T. Newman, *Handbook on Insurance Coverage Disputes*, §16.01 (12th Ed. 2004), and "Business Interruption Insurance," 37 A.L.R. 5th 41 (1996-2005).

2. See *United Land Investors, Inc. v. Northern Ins. Co. of America*, 476 So.2d 432 (La. App. 2 Cir. 1985).

3. See *Copes v. American Central Ins. Co.*, 85 Fed. Appx. 391 (5 Cir. 2004). However, some business interruption policies extend coverage where damage occurs to the property of the insured's suppliers and/or customers, as opposed to the insured's own property. This is referred to as "contingent" business interruption coverage. See, *C II Carbon, L.L.C. v. National Union Fire Ins. Co. of La., Inc.*, \_\_\_\_ So.2d \_\_\_\_, 2005 WL 3528761 (La. App. 4 Cir. 2005).

4. But see *United Land Investors*, supra at 437-438 (providing coverage for the "actual length of the business interruption" where the insured could not begin rebuilding until it received payment from the insurer).

5. See *Cotton Bros. Banking Co. v. Industrial Risk Insurers*, 774 F.Supp. 1009 (W.D. La. 1989), *aff'd*, 951 F.2d 54 (5 Cir. 1992).

6. See generally M. Quinn and P. Hopper, "Extra Expense and Business Interruption Coverage," 26 No. 3 Ins. Litig. Rep. 97 (2004).

7. See *730 Bienville Partners, Ltd. v. Assurance Company of America*, 2002 WL 31996014 (E.D. La. 2002)(Feldman, J.).

8. *Cotton Bros. Banking Co.*, 774 F.Supp. at 1028.


9. See generally D. Polin, *Recovery Under Business Interruption Insurance*, 41 Am. Jur. Proof of Facts 3d 319 (2005).

#### ABOUT THE AUTHOR

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# Vacating Arbitrator Awards for Bias Due to Non-Disclosed Relationships

By Elizabeth Baker Murrill

The inclusion of arbitration agreements as a method to resolve commercial disputes has been recognized by Congress as a significant practice since 1925, when it enacted the Federal Arbitration Act (FAA). In the past, arbitration was usually reserved for situations where parties wanted a decision-maker with training or experience in a particular commercial arena. More recently, arbitration clauses appear in all kinds of contracts, even consumer adhesion contracts.

Lawyers are likely to find themselves acting as advocates in arbitration proceedings as frequently as they find themselves in the courthouse. Thus, it is becoming essential for lawyers to educate themselves on advocacy and procedures in arbitration practice and on what their legal options are if they find themselves

on the losing side of an arbitrator's award.

Arbitrator bias is one of the grounds for vacating an award under both the FAA and Louisiana law, but one that has generated conflicting approaches regarding the standard of proof required of parties claiming it. Section 10 of the FAA states a number of grounds on which an arbitrator's award may be vacated. One of the grounds is "where there was evident partiality or corruption in the arbitrators, or either of them . . . ."<sup>1</sup> It is the term "evident partiality" that has vexed the courts.

The U.S. 5th Circuit Court of Appeals recently addressed the standard of proof required to demonstrate evident partiality when it decided *Positive Software Solutions, Inc. v. New Century Mortgage Corp.*<sup>2</sup> For the first time, the 5th Circuit definitively states its position on the scope

of arbitrator disclosure requirements arising from §10 of the Federal Arbitration Act and also states its position on waiver of the right to seek vacation of a judgment based on potential partiality of the arbitrator. The 5th Circuit adopted a broad approach to disclosure requirements, which places it at odds with Louisiana state cases on the same issue.

## United States Supreme Court and *Commonwealth Coatings*

The United States Supreme Court in 1968 addressed the standard of proof required to show "evident partiality" in *Commonwealth Coatings Corp. v. Continental Casualty Co.*<sup>3</sup> The court held that arbitrators must disclose any dealings that might "create the impression of possible bias."

In *Commonwealth Coatings*, the arbitrator served as an engineering contractor for various people in connection with building projects. One of his customers was the prime contractor that the petitioner sued. The facts showed the relationship was sporadic with no dealings between them in the previous year. The court still described the prime contractor's business with the arbitrator as "repeated and significant."<sup>4</sup> The arbitrator did not disclose this relationship prior to the arbitration, and it was not revealed until after the award. Predictably, the three-person panel unanimously issued a decision against the petitioner, *Commonwealth Coatings*.

Although the petitioner sought to vacate the arbitrator panel's ruling based on the failure to reveal this information, the petitioner did not claim the ruling was in fact biased or unfair. Justice Black, writing for the majority, did not require any proof of actual bias, holding instead that disclosure is necessary where the arbitrator has a substantial interest in a firm or has done more than "trivial" business with a party. Black stated that "strict morality and fairness" is what Congress would have expected of an arbitrator. In the case of courts, Black said, this is a constitutional principle and there was "no basis for refusing to find the same concept" in the FAA provisions governing arbitration proceedings and in particular those providing that an award may be set aside on the basis of "evident partiality."<sup>5</sup> Black further stated that the court possibly should be:

even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have free rein to decide the law as well as the facts and are not subject to appellate review.<sup>6</sup>

Justice White, joined by Justice Marshall, wrote a concurring opinion that has caused some courts to interpret this decision as a plurality opinion rather than a majority opinion. Viewing it as a plurality opinion has given some courts reason to disregard much of Justice

Black's opinion as *dicta*, even though the concurring judges wrote they were "happy to join" Black's opinion and wrote only to make "additional remarks."<sup>7</sup> By narrowly interpreting the *Commonwealth Coatings* decision, these courts impose a stricter burden of proof to vacate an arbitrator's award.

### 5th Circuit and *Positive Software Solutions*

The 5th Circuit, however, did not elect to narrowly interpret *Commonwealth Coatings*. In *Positive Software Solutions*, the 5th Circuit explicitly adopts the broader standard of proof, holding that:

an arbitrator selected by the parties displays evident partiality by the very failure to disclose facts that might create a reasonable impression of the arbitrator's partiality. The evident partiality is demonstrated from the non-disclosure, regardless of whether actual bias is established.<sup>8</sup>

The 5th Circuit stated that it was not adopting a *per se* rule in non-disclosure cases and that an arbitrator need not disclose "trivial relationships." The court cautioned, however, that an arbitrator should always "err in favor of disclosure."<sup>9</sup>

The facts of *Positive Software Solutions* were more egregious than those of *Commonwealth Coatings*. The arbitrator in *Positive Software Solutions* had been co-counsel in different litigation with one of the lawyers representing the defendant, New Century Mortgage. The arbitrator was notified of the names of the lawyers for both sides prior to his appointment through the American Arbitration Association (AAA) and had numerous opportunities to disclose this relationship. AAA even offered assistance to the arbitrator in determining whether he had any relationships requiring disclosure. The arbitrator repeatedly declined and, throughout the arbitration proceeding, neither he nor his former co-counsel revealed their former professional relationship. The arbitrator's award de-

nied all of Positive Software's claims for relief. Unlike *Commonwealth Coatings*, this was not a three-person panel.

The 5th Circuit emphasizes the court's concern with "integrity of the process" and also with the parties' right "to be the architects of their own arbitration process."<sup>10</sup> The court distinguished between non-disclosure cases and actual bias cases, finding that in non-disclosure cases the integrity of the process is at issue whereas in actual bias claims the integrity of the arbitrator's decision is at issue. Because the court has a strict duty to protect the integrity of the process, the appropriate standard of proof in non-disclosure cases does not require proof of actual bias.

In *Positive Software Solutions*, the 5th Circuit resolves an issue that has produced conflicting jurisprudence in other circuits. The relationship described in this case is a common one. Two law firms join as co-counsel and some time later one of the lawyers in the former litigation is nominated as an arbitrator in a case where former co-counsel represents a party. Is it really confusing as to what the arbitrator should do? Seemingly not—and the 5th Circuit makes it explicitly clear that the arbitrator should "err on the side of disclosure." (The court in *dicta* also suggests the lawyer who knew about the relationship also should have disclosed it, but does not address any ethical or malpractice implications of counsel's failure to do so.)

### Louisiana's Stricter Standard

La. R.S. 9:4210 is almost identical to the federal statute,<sup>11</sup> but Louisiana courts have not defined the standard of proof as clearly as the 5th Circuit. The only cases decided by the Louisiana Supreme Court do not involve factual circumstances like the ones in *Positive Software Solutions* or *Commonwealth Coatings*. In *Firmin v. Garber*,<sup>12</sup> the Supreme Court stated that to constitute evident partiality, it must "clearly appear that the arbitrator was biased, prejudiced, or personally interested in the dispute," giving examples of "a blood relationship with one of the



parties or a pecuniary interest in the outcome of the dispute.”<sup>13</sup> The petitioner in *Firmin* failed because he did not produce any independent evidence of a disqualifying relationship — only the record of the proceeding.

The subject of bias was subsequently raised in *National Tea Co. v. R.R. Richmond*, where the Louisiana Supreme Court stated that “evident partiality . . . is a strong bias, prejudice or personal interest,” citing *Firmin*. The facts of *National Tea*, however, did not involve an undisclosed relationship. The arbitrator in *National Tea* disclosed his relationship and was appointed to the three-person panel as a non-neutral.<sup>14</sup>

The 3rd Circuit in *Allen v. A&W Contractors, Inc.* faced a situation much like the one in *Commonwealth Coatings*, but reached a different result.<sup>15</sup> In *Allen*, the attorney arbitrator had been co-counsel with a lawyer for one of the parties in previous litigation, but did not disclose the relationship. The court cited *Firmin*, and several out-of-state cases, but did not mention *Commonwealth Coatings*. The court held that the arbitrator’s undisclosed relationship did *not* require vacating the award because “the evidence [fell] short of showing a disqualifying relationship sufficient to justify vacating the arbitrator’s award.”<sup>16</sup> Unlike the United States Supreme Court and the 5th Circuit, the 3rd Circuit examined the record, finding that the arbitrator “had conducted the entire proceeding in a fair, impartial and professional manner,” further justifying the result.<sup>17</sup>

The 1st Circuit addressed the issue of bias in *In re: Arbitration between U.S. Turnkey Exploration, Inc. and PSI, Inc.*, but in the context of an allegation of improper conduct rather than an undisclosed relationship. Interestingly, in discussing the standards of proof for “evident partiality,” the court cited *Morelite Construction v. N.Y.C. Dist. Council Carpenters*, 748 F.2d 79 (2 Cir. 1984), a federal decision which adopted the narrow interpretation of *Commonwealth Coatings* and imposed a stricter burden of proof on the party seeking to vacate an award. The 1st Circuit stated that:



*For lawyers representing a party in an arbitration proceeding and who know about the undisclosed relationship, it would behoove the lawyer to fully disclose, even if the arbitrator has not.*

Proof of evident partiality requires more than an “appearance of bias.” A challenging party must show that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration.<sup>18</sup>

Unlike the Louisiana court, the 5th Circuit in *Positive Software Solutions* explicitly rejected the *Morelite* standard of proof in favor of a “demanding disclosure rule” and also explicitly rejected *Morelite*’s narrow view of *Commonwealth Coatings*.

### When in Doubt, Disclose

Many firms have wide-ranging practices. Frequently, some of the members of these firms act as arbitrators. What if the facts are such that the arbitrator was involved in litigation as co-counsel with another lawyer or firm who later represents a party in a proceeding before the

arbitrator? Louisiana decisions suggest that such a relationship may be too indirect to be grounds for vacating an arbitrator award, and, in any event, the burden of proof on the petitioner will be substantial. The 5th Circuit may have an easier time finding “evident partiality” sufficient to vacate an award because of the emphasis it puts on protecting the integrity of the process and the expectations of the parties. Both federal and state cases demonstrate the decision will be a very circumstantial determination. The 5th Circuit advises that arbitrators should disclose when in doubt.

Although all courts take the issue seriously and devote a fair amount of space discussing it, the approach is still one of reluctance to vacate an award. The burden of proof is always on the party seeking to vacate. Practitioners seeking to vacate a judgment based on a subsequently discovered relationship between the arbitrator and another party should be aware that despite the fairly strong language in judicial opinions, it will still be difficult to win on this claim. With different standards now evident, however, parties could argue that federal law pre-empts Louisiana law on this issue and the broader disclosure rule should apply.

### When Do You Waive Your Bias Claim?

*Positive Software Solutions* also resolves a related issue that always arises where a party seeks to vacate an arbitrator’s award — the issue of waiver. Where one party seeks to vacate, the other party virtually always claims waiver. A party can waive its right to complain about arbitrator bias or partiality, particularly if the party discovers the undisclosed relationship prior to the arbitrator’s award. The cases disagree on what standard of knowledge is required for a party to waive this claim — “knew or should have known” or actual knowledge.

The 5th Circuit, deciding this issue for the first time, holds that when a party does not discover the undisclosed relationship until after the award, it does not waive its right to ask a court to vacate the

award. The 5th Circuit firmly resolves this issue, holding that actual knowledge is the standard required for waiver.<sup>19</sup> No Louisiana cases have addressed this issue.

## Conclusion

The issue of when to vacate an arbitrator's award for "evident partiality" in cases where an undisclosed relationship surfaces after the arbitrator's award has been a troubling one for courts. Despite the strong language used by the United States Supreme Court, courts still struggle with where the line should be drawn. For arbitrators, the best approach is to disclose any prior relationships, allowing the parties to choose their arbitrator with full knowledge of the arbitrator's circumstances. For lawyers representing a party in an arbitration proceeding and who know about the undisclosed relationship, it would also behoove the lawyer to fully disclose, even if the arbitrator has not. Lawyers who attack an arbitration award under these circumstances now have a pre-emption argument they can make in Louisiana court.

The courts unanimously agree that non-disclosure is grounds for attacking the award and, depending on the nature

and extent of the relationship, may justify vacating the award. So the best rule is to disclose. Not disclosing the relationship also may have ethical and malpractice implications for an attorney, especially if the client loses its award due to a relationship the attorney could have revealed.

## FOOTNOTES

1. 9 U.S.C. §10(a)(2).
2. 04-11432 (5 Cir. 1/11/06), 2006 WL 52276.
3. 89 S.Ct. 337 (1968).
4. *Id.* at 338.
5. *Id.* at 339.
6. *Id.*
7. See *Morelite Constr. Corp. v. New York District Council Carpenters Benefit Funds*, 748 F.2d 79 (2 Cir. 1984); *Apperson v. Fleet Carrier Corp.*, 879 F.2d 1344, 1358, n.19 (6 Cir. 1989); but *c.f.*, *ANR Coal Co. v. Cogentrix of North Carolina*, 173 F.3d 493 (4 Cir. 1999) (requiring a four-factor analysis), and *Schmitz v. Zilveti*, 20 F.3d 1043, 1046-47 (9 Cir. 1994).
8. *Positive Software Solutions*, 2006 WL 52276 at 5.
9. *Id.*
10. *Id.* at 4, 5, citing *Commonwealth Coatings*, 89 S.Ct. at 340 (J. White, concurring).
11. Section 10 of the FAA is the source provision of La. R.S. 9:4210.
12. 353 So.2d 975 (La. 1977).

13. *Id.* at 978, citing cases from Illinois, Connecticut and Washington, but not mentioning *Commonwealth Coatings*.

14. Cases where a non-neutral member of an arbitrator panel is accused of non-disclosure have a different result because parties expect the non-neutral arbitrator to have a bias toward the appointing party. See, e.g., *Ad-Med v. Bruce Iteld, M.D.*, 1998-1414 (La. App. 4 Cir. 2/3/99), 728 So.2d 556; and *National Tea Co. v. R.R. Richmond*, 433 So.2d (La. App. 3 Cir. 1983).

15. 433 So.2d 839 (La. App. 3 Cir. 1983).

16. *Id.* at 841.

17. *Id.*

18. *Id.* None of the Louisiana cases mention the United States Supreme Court opinion, but *Morelite* discusses it and viewed the opinion as a plurality.

19. *Id.* at 6.

## ABOUT THE AUTHOR

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Painting by Thomas Loepp, Collection of the Supreme Court of the United States

**This painting of U.S. Supreme Court Chief Justice William H. Rehnquist was given to him by his clerks and it now hangs in the West Conference Room of the Court.**



# William H. Rehnquist † Sept. 3, 2005

## The Chief at LSU Law

By Paul R. Baier

*I think that a judge's disposition should be about evenly balanced between sail and anchor. He cannot be anchored to the past mechanically by a line of precedents, but by the same token he ought not to be moved by each puff of novel doctrine which may be generated by one group of litigants or another.*

— U.S. Supreme Court Chief Justice William H. Rehnquist in a speech at LSU Paul M. Hebert Law Center

AN avalanche of snow shut down the United States Capitol. Across First Street, at the Rehnquist Court, it was business as usual.

Katrina knocked us down hard, but the day after Labor Day LSU Law was back on its feet. Such is our strength. Our stomachs were in knots, truth to tell. Chief Justice Rehnquist died the preceding Saturday.<sup>1</sup> Sadly, Jim Bowers and I paid our respects in the Law Review Seminar. Rehnquist's former law clerk John Roberts succeeds him as Chief Justice of the United States. Thus life gives our law reviewers and our courageous students another season — we have witnessed it ourselves — of hurricane, Court, and Constitution. "We are very quiet there, but it is the quiet of a storm centre, as we all know."<sup>2</sup>

As it happens, William H. Rehnquist was a great friend of LSU Law Center, visiting us twice a decade apart — first his Edward Douglass White Lectures in 1983, next his Alvin and Janice Rubin Lectures in 1993. For a Rehnquist tribute, nothing flowery will do. The Chief Justice was not a flowery guy.

One remembers well a few gold stripes on the Chief's black robe<sup>3</sup> — a Rehnquist touch of *Gilbert and Sullivan*. As an Associate Justice, he let himself go. I remember seeing him in a loud orange tie and long sideburns during oral argument in what I call the *Policeman's Long Hair Case*.<sup>4</sup> The Chief Justice voted with the Chief of Police, our students know.

For my little prayer, I will let The Chief at LSU Law do the talking. I will only set the stage.

William Rehnquist's courage held on to the very end. The *New York Times* photograph of a weakened Chief Justice of the United States swearing in President Bush in January 2004 sticks in memory. The news is very sad to those who knew him personally. All of his colleagues loved him. I have this from Justice Brennan. Justice O'Connor's tears on seeing the casket draped in the American flag being carried up the front steps of the Court touched

*Chief Justice Rehnquist's last opinion is a triumph of brains, conviction, and time: "The question here is whether the Establishment Clause of the First Amendment allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. We hold that it does."*  
*Van Orden v. Perry,*  
*June 27, 2005.*

hearts. Mama Dot, up from Gretna, saw O'Connor's anguish in the *Advocate's* photograph.<sup>5</sup>

Katrina wreaked havoc upon us and upon the nation. But we at LSU Law know that the death of the 16th Chief Justice of the United States is worthy of note. "An institution takes its tone from the top." This was Charles Evans Hughes's admonition to those who would lead. I can say from personal observation that William H. Rehnquist set Hughes's tone when he presided as Chief Justice of the United States during oral argument.

On the public side of the curtain, William Rehnquist was all Hughes — strictly business. On the private side, like Charles Evans Hughes, he was about as delightful as they come. His droll wit was a part of the man. He loved poker. He loved singing Christmas carols to Ron Martinson's piano in the West Conference Room. Justice Antonin Scalia is a nice foil. *Il Guidice Sapiente* likes the rough and tumble of the law on Mount Olympus. William Rehnquist would rather just get on with it. He was a Jobbist.<sup>6</sup>

Our Chief once skipped a State of the Union address to go to his painting lesson. He sat as a trial judge in Richmond, Va., for a change of pace. (His ruling was reversed by the 4th Circuit Court of Appeals, say it softly.) He finished first at Stanford Law School, two notches above Sandra Day O'Connor. Justice Robert Jackson hired him as his law clerk.<sup>7</sup>

Looking back over 33 years, it is clear to me that Rehnquist's record reflects the wisdom of Robert Jackson: "There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."<sup>8</sup>

Chief Justice Rehnquist could surprise even Yale Kamisar. He could bow to the past, even to those precedents he condemned. He could say to Congress: "Thou Shalt Not Overrule *Miranda*." This is *Dickerson v. United States*,<sup>9</sup> as we all know.

Cynics say that *Bush v. Gore*<sup>10</sup> is a rotten egg begotten by Rehnquist & Co. That is not how I teach it. "Cynicism is the worst sin," according to Justice Frankfurter, whose constitutional sensibilities are part and parcel of *Bush v. Gore* and Chief Justice Rehnquist's *Flag Burning* dissent in *Texas v. Johnson*.<sup>11</sup>

I remember seeing Justice Rehnquist walking briskly on the sidewalks of the Court when I was

privileged to work inside the Court as a Judicial Fellow, a program Chief Justice Rehnquist strongly supported. This was exactly 30 years ago. I have grown up, so to speak, with William Rehnquist on the Court. He wore Hush Puppies, size 14D. He was a tall figure.

Later I urged him to deliver an Edward Douglass White Lecture at LSU. He added life to our learning. At a faculty luncheon, I thanked him very much on behalf of those of us who teach Constitutional Law for his majority opinion in *United States v. Lopez*.<sup>12</sup> I could tell from his laughter that he knew exactly what I meant.

The Court's work is arduous, and we in the law schools have all the fun teaching its decisions term after term, seeing the Court whole over time.

Chief Justice Rehnquist's last opinion is a triumph of brains, conviction, and time: "The question here is whether the Establishment Clause of the First Amendment allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. We hold that it does." *Van Orden v. Perry*,<sup>13</sup> June 27, 2005. Thus a stricture of the Constitution is tempered with common sense. I am sure my precious friend and colleague Professor John Baker, who lost *Wallace v. Jaffree*<sup>14</sup> but won Rehnquist's vote, is pleased and justly proud.

William H. Rehnquist wound up his E.D. White Lectures in LSU's Union Theater with three quotations and timeless insight. He quoted Thomas McCauley, the English historian of the 19th century, who observed to one of his American friends, "Sir, your Constitution is all sail and no anchor." What was William Rehnquist's reaction?

The stage is set. Here is The Chief at LSU Law:

I think that a judge's disposition should be about evenly balanced between sail and anchor. He cannot be anchored to the past mechanically by a line of precedents, but by the same token he ought not to be moved by each puff of novel doctrine which may be generated by one group of litigants or another.

Perhaps Polonius put it as well as anyone when he told Laertes, "To thine own self be true . . . , [and] thou cans't not then be to any man false."

Finally, whether it be denominated "com-

mon sense,” some patchwork of knowledge of the human condition gained from experience, or put some other way, the best judges undoubtedly have some sort of understanding of human nature and how the world works.<sup>15</sup>

And what of Louisiana’s Great Chief Justice Edward Douglass White, who was regarded by his contemporaries as having “an indefinable ‘plus’ which is very difficult to articulate”: —

Perhaps Edward Douglass White, whom these lectures honor, possessed that more general important quality of being a good judge — equally important for the effective discharge of many other positions of public responsibility —, the quality epitomized by Matthew Arnold’s description of Sophocles that he “saw life steadily, and saw it whole.”<sup>16</sup>

William H. Rehnquist saw life steadily, and saw it whole. Supremely, he was true to himself. *Requiescat in pace.*

#### FOOTNOTES

1. See Linda Greenhouse, “William H. Rehnquist, Architect of Conservative Court, Dies at 80,” *The New York Times National*, Monday, Sept. 5, 2005, A16–A18.

2. Oliver Wendell Holmes, Jr., *Law and the Court* (1913), in *Collected Legal Papers* 291, 292 (New York, 1920).

3. Stephen Crowley’s poignant photograph in the *New York Times*, *supra* note 1, at A17, catches the Chief’s stripes and The Rehnquist Court for a last time.

4. *Kelley v. Johnson*, 425 U.S. 238 (1976).

5. See Gina Holland, “Rehnquist Lies in State,” *The Advocate* (Baton Rouge), Sept. 7, 2005, 2A, Associated Press Photo by Kevin Wolf.

6. The figure is Learned Hand’s, his “Society of Jobbists,” — “the mythical assembly of those committed above all to doing their jobs well.” Gerald Gunther, *Learned Hand: The Man and the Judge* 403 (New York, 1994). “And what were the standards for admission to this guild of Jobbists?”

It is an honest craft, which gives good measure for its wages, and undertakes only those jobs which the members can do in proper workmanlike fashion, which of course means no more than that they must like them. [Its work] demands right quality, better than the market will pass.

*Id.*, quoting *The Spirit of Liberty: Papers and Addresses of Learned Hand* 62 (New York, 1960).

7. “The clerkship with Justice Jackson would be my first job as an honest-to-goodness graduate lawyer.” William H. Rehnquist, Introduction, *A Law Clerk Comes to Washington*, *The Supreme Court* 4 (Knopf, 2001). Chief Justice Rehnquist’s account of his job interview with Justice Jackson, *id.*, pp.4–5, gives one hope: “I walked out of the room convinced that he had written me off as a total loss in the first minutes of our visit.”

8. *Terminiello v. Chicago*, 337 U.S. 1, 37 (1949) (Mr. Justice Jackson, dissenting).

9. 530 U.S. 428 (2000).

10. 531 U.S. 98 (2000).

11. 491 U.S. 397, 421 (1989) (Rehnquist, C.J., dissenting).

12. 514 U.S. 594 (1995).

13. 545 U.S. \_\_\_, 125 S.Ct. 2854 (2005) (Rehnquist, C.J., announcing the judgment of

the Court and delivering an opinion, in which Justices Scalia, Kennedy and Thomas join).

14. 472 U.S. 38 (1985).

15. *Lions Under the Throne: The Supreme Court in the Mirror of Chief Justices — The Edward Douglass White Lectures of Chief Justices Warren E. Burger and William H. Rehnquist* 105 (Paul R. Baier ed., Louisiana Bar Foundation, New Orleans, 1995).

16. *Id.*, at 106-07.

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## Journal Editorial Board Seeking Multigenerational Legal Families

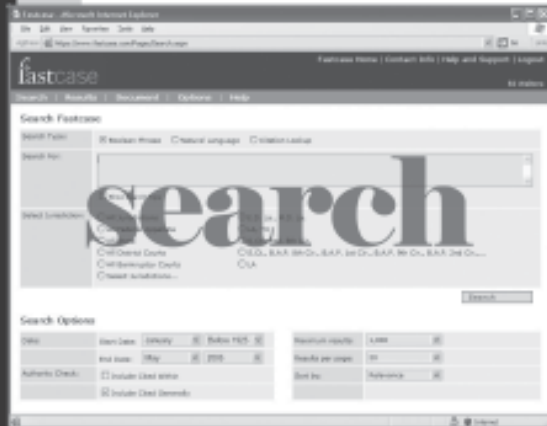
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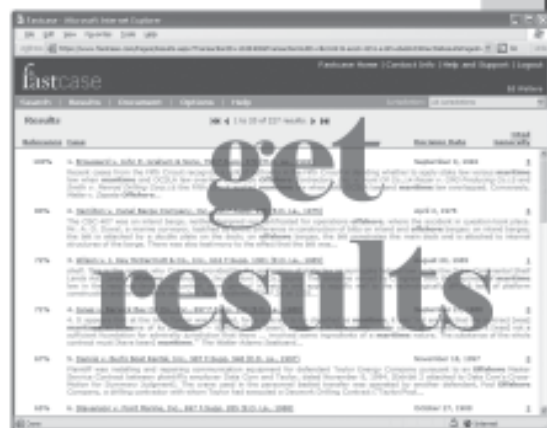


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## Contacting Staff Members by Phone, Fax and E-mail

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**Loretta Larsen, CAE**

#### **Loretta Larsen, CAE Executive Director**

Loretta is responsible for the overall administration of the Association's activities. She works closely with the officers, Board of Governors and House of Delegates on the LSBA's programs and operations. Loretta works with the leadership on strategic and financial planning. She manages the staff and generally oversees the day-to-day operations of the Association. Loretta joined the Bar as communications and programs director in 1986 and was promoted to her current position in 1991.

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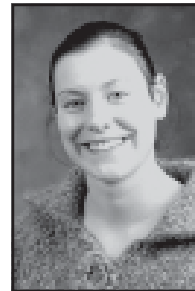
Caryl works closely with the executive director and executive assistant in providing staff support for the day-to-day operations of the executive office and is the primary contact to reserve meeting rooms at the Louisiana Bar Center. She handles advertising for Bar publications and assists members of the Communications Department on an as-needed basis. She joined the staff in 2000.

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Monte has been with the Access to Justice program since its inception and coordinates the efforts of the Association and the Louisiana Bar Foundation in providing a stronger statewide system of delivery of legal services to the poor. Working with the Access to Justice Committee, he provides a forum for legal services and pro bono providers to network. Monte joined the staff in 1997.

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Denise is responsible for all financial operations and for oversight of membership procedures. She works closely with the treasurer, executive director and the external auditors. Denise joined the staff in 1989 as assistant bookkeeper, was promoted to bookkeeper/membership coordinator in 1990 and became a director in 1998.

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Brooke directs the Association's communications efforts, including the *Louisiana Bar Journal*, "Bar Briefs," the Annual Report and the Web site. She also serves as the primary staff liaison to the state's local and specialty bar associations, organizes media coverage for the LSBA's activities and serves as staff liaison to the Public Information Committee. She joined the staff in 2006.

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### **Law-Related Education Department**

#### **Maria Yiannopoulos Law-Related Education Director**

Maria has been the executive director of the Louisiana Center for Law and Civic Education since it was founded in 1993. She joined the LSBA staff in 1998 when the Center affiliated with the Bar Association. Maria coordinates law-related education in schools and conducts training workshops for both educators and lawyers. She also writes the grants that provide the funding for the Center's administration and programs.

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Christine has primary responsibility for providing staff support to the Association's voluntary sections and serves as liaison to the Section Council. She also works closely with the membership services director on committee administration. She joined the staff in 1995 and was promoted in 2000.

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### **Professional Programs Department**

#### **Cheri Cotogno Grodsky Professional Programs Director**

Cheri oversees the Association's professional programs, including Practice Assistance and Continuing Legal Education. She also works with the Client Assistance Foundation and Professionalism and Quality of Life Committee. She is responsible for the development, implementation and operation of the Practice Assistance and Improvement Program. Cheri works with the CLE Program Committee and has financial oversight for the Association's CLE seminars.

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**Christine A.  
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**Cheri Cotogno  
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**William N. King**





**Eric Barefield**

**Eric Barefield**

**Deputy Practice Assistance Counsel**

Eric works in the administration of the Practice Assistance and Improvement Program. He joined the staff in November 2005, after working with the Office of Disciplinary Counsel for seven years. He also worked as an assistant district attorney for three years with the Orleans Parish District Attorney's Office.

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**Annette C. Buras**

**Annette C. Buras, CLE Program**

**Administrative Assistant**

Annette handles processing of registrations for Bar-sponsored CLE seminars, as well as requests for seminar information and/or publications. She also works on site at Bar-sponsored seminars. Annette joined the staff as receptionist in 1992 and was promoted to her current position in 1994.

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Connie provides clerical support and works closely with the professional programs director in the administration of the diversionary programs, the lawyer/client assistance program and other professional programs. She joined the staff in 1998 after working for the Louisiana Attorney Disciplinary Board for five years.

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Kristy provides clerical support and works closely with practice assistance counsel in the operation of the Practice Assistance and Improvement Program and LSBA Fee Dispute Resolution Program. Kristy joined the staff in 1998 and worked with the administration director until assuming this position in November 2000.

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**Ethics Counsel**

Richard works with the Ethics Advisory Service Committee to render informal, non-binding ethics opinions to members of the Bar to assist them in resolving ethical dilemmas that arise in their practices. He joined the staff in 2002, after practicing law in New Orleans for 14 years as a solo general practitioner.

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**Specialization Department**

**Catherine S. Zulli**

**Specialization Board Director**

Working closely with the Supreme Court-appointed Louisiana Board of Legal Specialization, Cathy is responsible for the overall administration of the legal specialization program. Cathy joined the staff in 1990 as member services assistant and was promoted to her current position in 1995.

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- ▶ Consumer Bankruptcy Law \*
- ▶ Estate Planning and Administration
- ▶ Family Law
- ▶ Tax Law

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

- ▶ Estate Planning and Administration — 18 hours of estate planning law.
- ▶ Family Law — 18 hours of family law.
- ▶ Tax Law — 20 hours of tax law.

**Deadline for accepting applications for estate planning and administration, family law and/or tax law certification is April 15, 2006. To receive an application, complete the following:**

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Please indicate area of certification desired \_\_\_\_\_

#### Fax, mail or e-mail to:

Catherine S. Zulli, Executive Director  
Louisiana Board of Legal Specialization  
601 St. Charles Ave., New Orleans, LA 70130-3404  
Fax (504)598-6753, E-mail czulli@lsba.org

- ▶ Bankruptcy Law — CLE is regulated by the ABC, the testing agency.

\* Applications for Business Bankruptcy Law and/or Consumer Bankruptcy Law certification will be accepted through September 2006. Although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBLs. Information concerning the American Board of Certification will be provided with the application form(s).

### Applications 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:

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Louisiana Board of Legal Specialization  
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Please check either or both:

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- \_\_\_\_\_ Consumer Bankruptcy Law

## Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as approved by order of the Louisiana Supreme Court, the following members of the Louisiana State Bar Association have satisfactorily met the established criteria and are qualified as board-certified specialists in the following areas for a five-year period beginning Jan. 1, 2006, and ending Dec. 31, 2010.

### Consumer Bankruptcy Law

Gerald J. Breaux ..... Bossier City  
Robin Ranquillo DeLeo ..... Mandeville

### Family Law

Charlene Ory Kazan ..... Covington  
Cindy H. Williams ..... Metairie

### Tax Law

John P. Cerise ..... Metairie  
Michele M. Echols ..... Covington  
Alyce B. Landry ..... Prairieville  
Joseph M. Placer, Jr. .... Lafayette

### Estate Planning and Administration

Because of delays resulting from Hurricanes Katrina and Rita, the examination for certification in estate planning and administration has been postponed until Sept. 1, 2006.

The LBLS was established on Aug. 6, 1993, by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become a certified specialist, an attorney must be an active member of the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate

substantial experience in the specialty area, and pass a written examination. Presently, the five areas of law for which the LBLS is offering certification are business bankruptcy law, consumer bankruptcy law, estate planning and administration, family law and tax law. For further information, contact the Legal Specialization Department of the Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130; (504)619-0128 or (800)421-5722, ext. 128.

Applications for 2007 certification in consumer bankruptcy law, business bankruptcy law, estate planning and administration, family law or tax law also may be obtained by e-mail ([czulli@lsba.org](mailto:czulli@lsba.org)) or by calling (504)722-8159.



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## ABA President Attends Midyear Meeting



American Bar Association President Michael Greco and Judge Madeleine Landrieu spoke about hurricane issues and the criminal and civil justice system in New Orleans during Greco's visit to the Louisiana State Bar Association's Midyear Meeting in January in Baton Rouge. Photo by LSBA Past President Patrick S. Ottinger.



American Bar Association President Michael Greco, center, attended various functions associated with the Louisiana State Bar Association's Midyear Meeting in January in Baton Rouge, including the LSBA Past Presidents' Dinner. With Greco are LSBA Past President Judge Jay C. Zainey, left, and current LSBA President Frank X. Neuner, Jr., right. Photo by LSBA Past President Patrick S. Ottinger.

## Ethics Advisory Service

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### Professionalism Award

Louisiana State Bar Association President Frank X. Neuner, Jr., right, received the Professionalism and Quality of Life Committee's first Professionalism Award. Committee Co-Chair Bobby J. Delise presented the award to Neuner at the LSBA's Midyear Meeting in January. Neuner received the award for his successful efforts in re-establishing the rule of law in areas devastated by Hurricanes Katrina and Rita and for his assistance to Louisiana attorneys affected by the hurricanes.

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## **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 05-RPCC-005<sup>1</sup>**

### **Lawyer Providing "Hotline" Advice in the Wake of a Natural Disaster**

*A lawyer, under the auspices of a program sponsored by a nonprofit organization or court, may provide short-term limited legal services to clients — such as over a "hotline" or at a booth established to help victims of a natural disaster — as long as the lawyer is competent to provide the necessary services. Additionally, the lawyer may properly provide a "second opinion" to persons who may already be represented by counsel but who, for instance, are unable to locate or communicate with their original lawyer. However, profit-based solicitation of disaster victims, especially under the deceptive guise of providing help and/or free disaster assistance, is strictly prohibited.*

The Committee considers the ethical implications of a lawyer who wishes to volunteer to provide assistance to victims of a natural disaster by means of a "victims' hotline" or at a booth sponsored by a nonprofit organization or court. It should be clearly noted that this opinion is specifically limited to Louisiana-licensed lawyers who would provide such advice to Louisiana-based disaster victims with respect to matters of Louisiana law.<sup>2</sup> The conduct of lawyers who are licensed elsewhere is not the subject or focus of this opinion.<sup>3</sup>

### **Competence**

Rule 1.1 of the Louisiana Rules of Professional Conduct (2004) requires that ". . . A lawyer shall provide competent representation to a client. Competent

representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation . . ." Foremost, a lawyer who wishes to provide assistance to persons over a "victims' hotline" or at a booth should possess the knowledge, skill, thoroughness and preparation reasonably necessary to provide competent advice and/or services to those seeking such assistance. As callers to such a "hotline" and visitors to such a booth will likely be desperate for help, eager for assistance and, therefore, most vulnerable, a lawyer who is not competent in the areas of law at issue (and unwilling/unable to attain competence through seminars, training and other learning aids) should refrain from volunteering to provide this type of assistance as that lawyer's participation would have a high potential for causing more harm than good.

Similarly, even if the lawyer has some degree of competence as generally needed for the "hotline" or booth, the lawyer should be careful to limit the scope of the advice given, advising the client of any relevant limitations on the lawyer's competence<sup>4</sup> as well as any relevant limitations on the lawyer's conduct.<sup>5</sup> While there will be a tendency to want to try and provide as much help as possible, the lawyer should be extremely cautious about advising disaster victims on matters or areas of law with which the lawyer has little or no familiarity. As in normal situations, the lawyer confronted with a disaster victim who is seeking advice on matters beyond the lawyer's competence should refer that person to another lawyer who would be capable of providing competent advice or — despite the overwhelming desire to help — compassionately but firmly remind the disaster victim of the limitations of the service and decline to offer advice on those matters which exceed the lawyer's competence.

## Provision of Short-Term Limited Legal Services

Rule 6.5 of the Louisiana Rules of Professional Conduct (2004) provides:

. . . (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: . . . (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and . . . (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter. . . (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule . . .

Provision of legal advice to callers over a “victims’ hotline” or at a booth sponsored by a nonprofit organization — such as a state or local bar association — or a court would qualify under Rule 6.5.<sup>6</sup> Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.<sup>7</sup>

However, a lawyer participating as a volunteer in such a program should still remain reasonably vigilant regarding the potential for conflicts of interest with current clients,<sup>8</sup> former clients<sup>9</sup> or such conflicts pertaining to another lawyer who is associated in a firm with the volunteering lawyer.<sup>10</sup> If the lawyer recognizes such a conflict, the lawyer should refrain from further consultation with the client with respect to the matter and simply refer that client to another, hopefully conflict-free, volunteer lawyer at the “hotline” or booth.<sup>11</sup>

## Persons Already Represented by Counsel

Rule 4.2 of the Louisiana Rules of Professional Conduct (2004) prohibits a lawyer, “. . . in representing a client . . .,” from communicating about the subject of a representation with a person that lawyer knows to be represented by another lawyer in the matter — unless the “new” lawyer has the consent of that other lawyer or the authority of law or a court order. In the days, weeks and months following a natural disaster, clients and their lawyers are quite likely to be scattered all over the country. Communications will be sketchy at best but client matters will, in some instances, not be able to wait.<sup>12</sup> These clients — some of them now suffering as victims of the disaster — will be in dire need of immediate legal assistance but unable to contact their “regular” lawyers. The lawyer who would volunteer to provide advice and other short-term limited legal services by way of a “victims’ hotline” or booth for disaster relief may be confronted with two similar but distinct situations involving disaster victims who are already represented by counsel.

First, volunteering lawyers will likely encounter persons who indicate that they already have “a lawyer” but, in fact, it will be discovered that the original lawyer has not and does not represent this person with respect to what is actually a brand-new, different legal matter than

what was being handled by the original lawyer: for example, post-disaster issues related to FEMA<sup>13</sup> benefits, insurance coverage, food stamps, etc. Under this scenario, Rule 4.2 would not be triggered at all and the volunteer lawyer would not be prohibited from communicating with this disaster victim concerning these new matters since the disaster victim is not yet represented by ANY lawyer with regard to these brand-new matters.<sup>14</sup>

Second, volunteering lawyers may encounter disaster victims who are and have been represented by a lawyer with respect to the same matter now being presented to the volunteer but the original lawyer, for example, is now missing or outside the reach of current communications. Rule 4.2 would not prohibit the volunteer lawyer from also communicating with the disaster victim regarding this matter, as long as the volunteer has no known prior or reasonably anticipated client connection with the same matter or one substantially related to it. The most obvious and common example of this would be a person who seeks a “second opinion” from a lawyer, although that person is already represented by a different lawyer with respect to the matter in question. There is no reason why a client cannot seek and obtain a “second opinion” (or “third opinion,” etc.) in order to satisfy the client’s need for legal advice, information and services — what one lawyer does not offer or provide may perhaps be made available to the client

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by a second (or third or . . .) lawyer.<sup>15</sup> As such, Rule 4.2 does not automatically prohibit a lawyer from speaking with a person about a matter even though that person may already be represented by counsel — as long as the “new” lawyer has no known prior or reasonably anticipated representational connection to that matter or one substantially related to it.

Under the circumstances involving a “victims’ hotline” or disaster relief booth, Rule 4.2 would not prohibit a lawyer who volunteers to provide advice and assistance over the “hotline” or at the booth from helping even clients who may already have a lawyer representing them with a matter, as long as the volunteer lawyer has not, is not currently and does not reasonably expect to be representing another person in connection with that same matter or one substantially related to it.<sup>16</sup> The clients will certainly need legal advice and should not be “shunned” by lawyers (whether manning “hotlines,” booths or consulted in a normal practice setting) merely because the clients might already be represented by another lawyer in that matter but with whom they cannot currently communicate and/or locate.<sup>17</sup>

### No Room for Profit-Motivated Solicitation of Victims

Profit-motivated solicitation by volunteer lawyers will not be tolerated, either directly or for the benefit of others through systematic referrals. Rule 7.1 of

the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, that “. . . (a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer’s services or the services of the lawyer’s firm. . . .” Rule 7.3 of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, that “. . . (a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain . . . .” A lawyer who would volunteer to provide legal advice over a “hotline” or at a booth for disaster victims has no business deceptively preying upon those persons with solicitations for other, paying legal business or pretending to be there only to help others while really trolling for good, paying cases. On the other hand, Rule 7.3 prohibits in-person and person-to-person telephonic solicitation of clients when a significant motive for the lawyer’s doing so is the lawyer’s own pecuniary gain; if the lawyer is genuinely interested in helping as many disaster victims as possible without regard to monetary gain or profit, Rule 7.3 would not prohibit non-coercive “solicitation” of these persons as *pro bono* clients who may be in need of such free advice and assistance.<sup>18</sup>

Moreover, lawyers also should remember that Rule 7.3(b)(iii)(C) prohibits even otherwise acceptable forms of “targeted solicitation”<sup>19</sup> for personal injury or wrongful death claims during a period of 30 days following an accident or disaster involving the person to whom the communication would be sent or a relative of that person.<sup>20</sup> In short, lawyers genuinely wishing to do *pro bono* work under the circumstances in question should be clearly focused on helping others in that manner rather than prospecting for their own personal gain and profit.<sup>21</sup>

### 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. Additionally, following the disaster, Louisiana lawyers who have been displaced outside of Louisiana’s borders and who would provide legal services to Louisiana-based clients (and perhaps some of them now as displaced Louisiana residents) with respect to Louisiana-based matters also should check with the bar licensing authority in that foreign state regarding that state’s position on the Louisiana lawyer’s temporary “multi-jurisdictional practice” there and/or whether that state’s highest court may have issued a special order permitting other forms of practice there by displaced Louisiana lawyers.

3. Lawyers not licensed in Louisiana should consider potential unauthorized practice of law issues with respect to providing legal services to displaced Louisiana residents regarding matters of Louisiana law, absent some special emergency exception which might be ordered by the Louisiana Supreme Court. Exploration of that issue is beyond the scope of this informal advisory opinion.

4. Rule 1.2(c) of the Louisiana Rules of Professional Conduct (2004) states: “. . . A lawyer may limit the scope of representation if

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the limitation is reasonable under the circumstances and the client gives informed consent . . .” It is presumed that the nonprofit organization or court sponsoring the “hotline” or booth will have appropriate safeguards, disclaimers and advance notices in place to advise disaster victims that the advice and services to be provided over the telephone or at the booth will be fairly limited in scope and should not necessarily substitute for a full-fledged, in-depth consultation with a lawyer. See also Comment [2] to Rule 6.5 of the ABA Model Rules of Professional Conduct.

5. Rule 1.4(a) of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part: “. . . (a) A lawyer shall: . . . (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; . . . and . . . (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law . . .”

6. See Comment [1] to Rule 6.5 of the ABA Model Rules of Professional Conduct: “. . . Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no

expectation that the lawyer’s representation of the client will continue beyond the limited consultation . . .”

7. *Id.*, Comment [1].

8. See Rule 1.7 of the Louisiana Rules of Professional Conduct (2004).

9. See Rule 1.9 of the Louisiana Rules of Professional Conduct (2004).

10. See Rule 1.10 of the Louisiana Rules of Professional Conduct (2004).

11. See Rule 1.16 of the Louisiana Rules of Professional Conduct (2004).

12. For example, family law issues such as child custody, child support, etc., will not reasonably be able to just sit and wait for disposition after some return to relative normalcy.

13. Federal Emergency Management Agency.

14. See Comment [4] to Rule 4.2 of the ABA Model Rules of Professional Conduct: “. . . This Rule does not prohibit communication with a represented person, or an employee or agent of such person, **concerning matters outside the representation** . . .” [emphasis added].

15. While lawyers are held to a standard of professional competence and diligence, they are still human, packaged in all different sizes, shapes and varieties and are by no means perfect or all-knowing. Putting the egos of the lawyers aside, clients are always entitled to seek the best legal advice and services that they might be able to find — even if it happens to be assembled from bits and pieces gathered from several different lawyers along the way.

16. If there is such a conflict, Rule 1.7 and/

or Rule 1.9 would generally prevent the volunteer lawyer from advising/assisting that person with respect to the matter in question.

17. The “new” lawyer should also consider, if possible, trying to help the client locate and communicate with the disaster victim’s now-missing original lawyer.

18. See also *In Re: Primus*, 436 U.S. 412 (1978): “. . . Solicitation of prospective litigants by nonprofit organizations that engage in litigation as ‘a form of political expression’ and ‘political association’ constitutes expressive and associational conduct entitled to First Amendment protection, as to which government may regulate only ‘with narrow specificity’ . . .”

19. See Rule 7.3(b)(iii)(A) & (B) of the Louisiana Rules of Professional Conduct.

20. Rule 7.3(b)(iii)(C) of the Louisiana Rules of Professional Conduct: “. . . (iii) In the case of a written communication: . . . (C) if the communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, such communication shall not be initiated by the lawyer unless the accident or disaster occurred more than 30 days prior to the mailing of the communication . . .”

21. There is little doubt that the Louisiana Supreme Court takes a very stern, harsh view of lawyers who would seek simply to take advantage of the misery and misfortune of others by preying upon disaster victims at their lowest and most vulnerable times.



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# FOCUS ON Professionalism

By Val P. Exnicios

PROFESSIONALISM BLOWING IN THE WIND

*"We make a living by what we get,  
we make a life by what we give."*

— **Sir Winston Churchill**

*"A problem is a chance for you  
to do your best."*

— **Duke Ellington**

*"Within every adversity lies  
opportunity."* — **Unknown**

Once upon a time, in a time just six months ago, we fought like adversaries, and all too often, both within and without the courtroom. We concerned ourselves with winning, and at almost all costs, and regardless of the tenets of professionalism. After all, our opponents did not have to like us . . .

they were our adversaries, the enemy, solely to be conquered. And with more than 1 million cases filed in Louisiana's city and parish courts annually, we certainly had ample opportunities as lawyers to practice our adversarial skills. We became extremely good at being enemies and seldom, if ever, sought to be friends, personally or professionally. We forgot that we needed only to be adversaries when duty required it, and only on our fields of battle, our courtrooms, and not when it did not. And then something monumental happened . . . something that compelled us to take a step back and reflect on what we're really all about, and what's truly important in our personal and professional lives . . . and we suddenly realized that it's not how many cases we've won or lost that matters . . . for when circumstances beyond our control make us all victims, there are no winners, and we are all equal as victims.

It is in these trying times that our spirit

of professionalism has arisen. Mother Nature, coupled with human error, has compelled us to focus on our fellow man, and not on conquering him as an adversary, but rather on helping him as a friend and colleague. We have risen to this calamity and once again become professional. A case in point is John Hooper, and those who have joined him in his quest to extend a helping hand.

For John Hooper, it began with a tear. John, partner in charge of the New York office of Edwards, Angell, Palmer & Dodge (EAP&D), one of the 100 largest firms in the United States, is not generally known as an overly sensitive guy, but Hurricane Katrina's devastating effects on Southeast Louisiana literally brought tears to his eyes, followed almost immediately by an intense need to do whatever he could to help. John, despite being a "New York City Lawyer," had spent countless hours litigating in Louisiana courts, most recently as senior defense counsel for Illinois Central Railroad in



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the *In Re Chemical Release at Bogalusa* and *In Re New Orleans Tank Car* cases, and the images appearing on his television screen of flooded homes and businesses were not images of some faraway place, but were areas well known to him through his travels to the Crescent City. Over the years, John had developed great friendships with New Orleans lawyers on both sides of the “v,” and now those lawyers, and tens of thousands of other New Orleans area residents, were in dire need of help.

John immediately took charge and organized his firm’s fund-raising efforts among its eight offices across the country and arranged for his firm to donate 20 suites of office furniture to Louisiana lawyers whose own offices were destroyed by the floodwaters.

The donation of the 20 suites of office furniture posed a myriad of logistical problems and required contributions from a multitude of New York, Florida, Texas and Louisiana individuals and companies, including Cohen Brothers Realty who contributed the use of its Manhattan freight elevator to move the furniture into moving trucks, to Globe Movers who contributed \$1,500 in labor to load the trucks, to lawyers Duke Williams, Glad Jones, Stuart Smith, Frank Dudenhefer, Linnes Finney (Florida), Chuck Plattsmier

and Larry Langley (Texas) who contributed more than \$4,000 to cover the fuel and other transport costs, to finally, and perhaps most importantly, Bob Ramelli who contributed, and continues to contribute, the use of his New Orleans warehouse to store the furniture to be distributed by the Louisiana State Bar Association.

As a result of John’s efforts, and those who have assisted him, lawyers throughout Southeast Louisiana have received basic necessities such as desks, credenzas and chairs needed to rebuild their offices. Others who have learned of John’s generosity have likewise been inspired to mimic his acts. Several firms and bar associations across the country have now offered to collect excess office furniture to send to South Louisiana so that others of us in need can be helped.

In addition to the donation of furniture, John organized a fund-raising drive that, in short order, raised \$150,000. Of that amount, \$100,000 was donated from individuals within John’s firm, and \$50,000 was contributed by his firm in matching funds. These funds have served as “seed money” for the Gulf Coast Recovery Fund, established by John with Louisiana lawyer Pat Juneau. The GCR fund has begun to make grants to assist those most in need, beginning with an

initial \$25,000 donation to Louisiana’s Children’s Hospital. It is John’s fervent hope and desire that other firms are likewise inspired to join EAP&D in creating charitable funds to help the victims of Hurricanes Katrina and Rita.

As evidenced by John and the countless numbers of others who have extended a helping hand in the six months since Katrina, the effects of these hurricanes have not been all negative. Katrina and Rita have been problems that have provided chances for us “to do our best.” We have been compelled to recall that “we make a living by what we get, we make a life by what we give.” And what we have given most of all to each other is help to make opportunity from our adversity . . . and that is indeed the true spirit of professionalism.

*Val P. Exnicios is managing attorney of Liska, Exnicios & Nungesser. He chairs the Louisiana State Bar Association’s (LSBA) Section Council and the LSBA Bench and Bar Section. He is a member of the LSBA’s Professionalism & Quality of Life Committee, the Diversity in the Profession Task Force and the Legislative Oversight Committee. He can be reached at (504)410-9611 or via e-mail at vpexnicios@exnicioslaw.com.*

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## Developments

### FAMILY LAW TO LABOR



#### Family Law

##### Custody

**Riels v. Riels**, 04-0567 (La. App. 4 Cir. 5/25/05), 905 So.2d 361.

Ms. Riels' claim that the trial court erred in rendering an interim custody judgment and then a final judgment without any evidence to support the change was rejected, as the interim judgment was subject to change until the issuance of the final judgment. Moreover, she did not appeal the interim judgment, and the appeal delay had run. Further, Ms. Riels' claim that her due process rights were violated because of the court's failure to conduct the trial expeditiously was denied, as part of the delay was due to her own actions.

**Adams v. Adams**, 39,424 (La. App. 2 Cir. 4/6/05), 899 So.2d 726.

The parties' agreement in their original custody judgment to be bound by *Bergeron* in any subsequent attempts to modify it was enforceable because no public policy precluded such an agreement, and it served the policies set forth in *Bergeron* to limit custody litigation.

**Ledet v. Ledet**, 04-0509 (La. App. 5 Cir. 3/29/05), 900 So.2d 986.

The trial court did not err in reaching a custody determination when the court-appointed evaluator had not concluded her report, but did testify, and the trial court said she did not rely on the experts, and the court of appeal had ordered the court to expedite the trial. The trial court did not abuse her discretion in questioning a witness and not allowing further questions by plaintiff's attorney, who had already questioned the witness.

**G.S. v. T.S.**, 04-1566 (La. App. 3 Cir. 4/13/05), 900 So.2d 1088.

The court of appeal affirmed the trial court's award of custody of the three children to the father, finding that that award implied a finding that the mother failed to prove that the Post-Separation Family Violence Relief Act applied. Although it was error for the trial court to interview one of the children (who was 9 years old) in chambers without a court reporter present to make a record, it was not reversible error because the trial court did not rely on the exchange, and there was sufficient evidence otherwise in the record for naming the father domiciliary parent regardless of what the child may have said.

**Sisk v. Sisk**, 39,768 (La. App. 2 Cir. 5/11/05), 902 So.2d 1237.

In this UCCJA case, Ms. Sisk's exception of lack of subject matter jurisdiction regarding Mr. Sisk's rule for custody was properly sustained because California was the child's home state, and custody proceedings had begun there before Mr. Sisk filed in Louisiana. Even though

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the child had recently lived in Louisiana, Mr. Sisk's "nexus" argument was rejected. A civil warrant for the return of a child does not have to be served on the parent holding the child. California pleadings could be introduced into evidence by the process server who had served them on Mr. Sisk in Louisiana. Costs were properly assessed against Mr. Sisk because Louisiana was clearly an inappropriate forum.

## Interdiction

**Interdiction of Watts**, 2004-2166 (La. App. 1 Cir. 5/6/05), 903 So.2d 552.

In this interdiction case, the court of appeal reversed the trial court's finding of a full interdiction since venue is jurisdictional and the petitioner failed to show that the purported interdict changed her domicile to the parish in which petitioner filed suit.

## Child Support

**Williams v. Williams**, 2004-1624 (La. App. 4 Cir. 3/16/05), 899 So.2d 628.

A history of consistently attending private school is sufficient for the court to include private school tuition in the child support calculation. The 10th grader's testimony as to her desire to attend public school was found not to be in her best interest.

**Olson v. Olson**, 04-1137 (La. App. 5 Cir. 3/1/05), 900 So.2d 52.

The trial court's denial of Mr. Olson's rule to reduce child support was affirmed because Mr. Olson failed to provide a transcript of the two-day trial and other appropriate orders and exhibits needed for the court of appeal to review the decision. In such cases, the court of appeal must presume that the trial court's judgment is supported by the evidence and is correct.

**State v. Smith**, 05-1 (La. App. 5 Cir. 4/26/05), 902 So.2d 516.

The court of appeal vacated the juvenile court's reduction in Mr. Smith's child support because the record lacked suffi-

cient documentation as to his income and an alleged pre-existing child support obligation, and remanded to the trial court to take more evidence. It also reversed the lower court's award of retroactivity to a date before the actual filing date of the motion for reduction.

**Armstrong v. Rayford**, 39,653 (La. App. 2 Cir. 5/11/05), 902 So.2d 1214.

Social Security benefits received by a child may, in the court's discretion, be credited as an offset against the parent's child support obligation, but there is no automatic entitlement to such a credit. The father was in contempt for non-payment of child support where he paid no child support, but was paying for a house, car, gifts to his grown children, and Internet and cable services.

— **David M. Prados**

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## 5th Circuit's Latest Pronouncement on Late Notice Coverage Defense

**Thyssen, Inc. v. NOBILITY M/V**, 421 F.3d 295 (5 Cir. 2005).

Thyssen, the owner of certain damaged cargo, filed suit against the discharging stevedore, Stafford and Stillwell, and others. Stafford and Stillwell failed to respond to service, and Thyssen moved for a default judgment. The default was granted, and damages in the amount of \$160,696 were awarded to Thyssen. Thyssen later learned through

discovery that Stafford and Stillwell was insured by National Union under a comprehensive marine liability policy. The policy obligated Stafford and Stillwell to provide timely notice to National Union of any occurrences and claims that could potentially be covered by the policy.

Thyssen presented its damages claim to National Union, which advised Thyssen that it intended to deny coverage based on late notice. Thyssen then filed an amended complaint, joining National Union as a defendant under the Louisiana direct-action statute, La. R.S. 22:655. The case proceeded to a bench trial. The court granted National Union's motion for involuntary dismissal at the close of Thyssen's case, finding that National Union was prejudiced by the late notice.

On appeal to the 5th Circuit, the court reiterated the rule that under Louisiana

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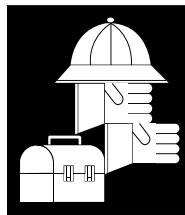
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law, the insurer must make a showing of adequate prejudice to defeat an action brought by a third party under the direct-action statute on the basis of late notice. The court started by noting that "entry of a default judgment is a strong starting point for a claim of prejudice." The court explained that there was no requirement of procedural exhaustion by an insurer, such as appealing the default judgment or seeking to have it set aside, before a showing of prejudice can be made. The court noted, however, that the failure to exhaust procedural remedies could weigh in favor of lack of prejudice. The court found that National Union's loss of opportunity to litigate the action and the lack of representation of the insured during the underlying suit weighed in favor of prejudice. Finally, the court found that the lack of evidence indicating that National Union would have refused to defend or deny coverage weighed in National Union's favor.

In view of the foregoing, the 5th Circuit affirmed the judgment of the district court, dismissing National Union on the basis of late notice.

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## Labor and Employment Law

### **Rodriguez v. ConAgra: A More Lenient Standard for Physical Disability Discrimination Claims?**

In *Rodriguez v. ConAgra Grocery Products Co.*, \_\_\_ F.3d \_\_\_ (5 Cir. 1/10/06), the 5th Circuit rendered what some might view as an uncharacteristically pro-plaintiff decision. It not only reversed the district court's summary judgment in favor of defendant ConAgra, but also entered partial summary judgment in favor of plaintiff Rodriguez on his "regarded as disabled" claim. The approach of the 5th Circuit in *Rodriguez*, in addressing an employment discrimination claim involving a physical impairment, contrasts sharply with its treatment of similar issues when presented by an ADA claimant with an alleged psychological disorder. *See, e.g., Winters v. Pasadena Indep. Sch. Dist.*, 196 Ed. Law Rep. 484 (5 Cir. 2005), and *EEOC v. Exxon Corp.*, 203 F.3d 871 (5 Cir. 2000).

The district court in *Rodriguez* granted summary judgment to ConAgra,

which withdrew an offer to hire Rodriguez as a "Production Utility" employee after he failed his physical. Prior to the exam, Rodriguez provided information regarding his medical history, including that he took medications for diabetes. However, Rodriguez could not remember the names of his diabetes medications or his doctor, nor any general information about his diabetic treatment plan. Thus, when the laboratory test results showed an elevated glucose level in Rodriguez's urine, the doctor concluded that Rodriguez was "not medically qualified" because of "uncontrolled diabetes."

Based upon the subsequent report by the doctor, ConAgra withdrew its offer of employment. However, the human resources director who made the decision for ConAgra testified that if Rodriguez had furnished documentation to show that his diabetes was under control, he would have gotten the job.

The district court noted that it was not disputed that ConAgra based its decision to withdraw the offer on its belief that Rodriguez's diabetes was uncontrolled. Nonetheless, the district court rejected Rodriguez's regarded-as disability claim and granted summary judgment in favor of ConAgra, reasoning that because uncontrolled diabetes was not a disability for "actual disability purposes, it [was] also not a disability for perceived disability purposes." *Rodriguez v. ConAgra Grocery Prods. Co.*, No. 4:03-CV-055-Y, slip op. at 3 (N.D. Tex. Sept. 16, 2004). The district court's analysis appears to rely on the judicially crafted rule that an impairment is not a disability if the person, while medicated, is not substantially limited in a major life activity. *See e.g., Murphy v. United Parcel Service*, 119 S.Ct. 2133 (1999).

The 5th Circuit reversed. It rejected ConAgra's argument that it did not regard Rodriguez as disabled but instead merely misperceived that he had a controllable impairment that was, at the time of his pre-employment physical, not adequately controlled. The panel went on to harshly criticize ConAgra for failing to make an individualized assessment of Rodriguez's

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impairment and for its use of a blanket rule against employing uncontrolled diabetics. The court explained:

At its core, this case is about the [ADA's] emphasis on treating impaired job applicants as *individuals*. ConAgra's blanket policy of refusing to hire what it characterizes as "uncontrolled" diabetics violates this fundamental tenet of ADA law; it embraces what the ADA detests: reliance on "stereotypes and generalizations" about an illness when making employment decisions. *Rodriguez*, slip op. at 3 (footnote omitted).

The *Rodriguez* decision is puzzling in that plaintiff's plain admission that he regularly took medications to treat his diabetes seems irreconcilable with the court's conclusion that his condition did not need to be controlled. *Rodriguez* also somewhat contradicts decisions such as *Bayless v. Orkin Exterminating Co.*, No. 02-50560 (5 Cir. May 5, 2003), which reject diabetics' regarded-as claims because the employer did not regard the impairment as permanent or long-term. Since ConAgra likewise viewed *Rodriguez's* perceived limitations as temporary (they would disappear once his diabetes was adequately controlled), as in *Bayless* there was no perception of disability to support an ADA claim. Indeed, the 5th Circuit noted in *Rodriguez* that ConAgra employed a number of diabetics whose impairments it viewed as controlled. Slip op. at 7, \_\_\_ F.3d \_\_\_\_.

Moreover, the *Rodriguez* opinion starkly contrasts with the court's opinion in *EEOC v. Exxon Corp.*, 203 F.3d 871 (5 Cir. 2000). As in *Rodriguez*, Exxon based the challenged adverse employment actions on its application of a similar blanket policy prohibiting employment of persons with a history of substance abuse in certain positions. There the policy in question had been implemented by Exxon after the disaster commonly known as the Valdez spill.

Pursuant to the policy, employees in highly unsupervised, safety-sensitive positions who had undergone treatment for substance abuse were reassigned to positions that were not highly unsupervised or safety-sensitive. *Id.* at 872. More than 1,500 Exxon employees were reassigned to jobs that were not safety-sensitive. Exxon made no individualized assessment as to the likelihood of relapse of these individuals. To the contrary, all persons with a history of treatment for substance abuse were treated as a class and summarily excluded from certain jobs. *Id.*

Nonetheless, in *Exxon*, the 5th Circuit reversed summary judgment for the plaintiff. There, the panel did not excoriate Exxon for its failure to make individualized assessments or condemn Exxon's blanket rule as embracing reliance on stereotypes and generalizations. Instead, the 5th Circuit held Exxon did not need to offer individualized proof of a direct threat but rather could "defend the standard as a business necessity." *Id.* at 875.

In contrast to its harsh criticisms of ConAgra's blanket policy in *Rodriguez*, the obvious generalizations and stereotyping inherent in Exxon's blanket rule against persons with a history of substance abuse drew no comment from the 5th Circuit. However, the

inconsistency between the two opinions may in part be due to how the issues in each case were presented. ConAgra apparently did not assert that its policy against employing uncontrolled diabetics was justified as a business necessity. Yet a comparison of *Rodriguez* to ADA cases involving psychological impairments leaves the impression that the court treats such impairments less favorably than physical ones. See e.g., *Winters, Exxon*, and *Burch v. Coca Cola Co.*, 119 F.3d 305 (5 Cir. 1997).

If this is so, the 5th Circuit is not alone in providing less protection to those with certain psychological impairments such as alcoholism and addiction, and the difference in treatment may be supported by differing policy considerations. Indeed, the Louisiana Employment Discrimination law definition of "impairment" leaves it to the discretion of the employer whether to exclude "chronic alcoholism or any other form of active drug addiction." La. R.S. 23:322(6).

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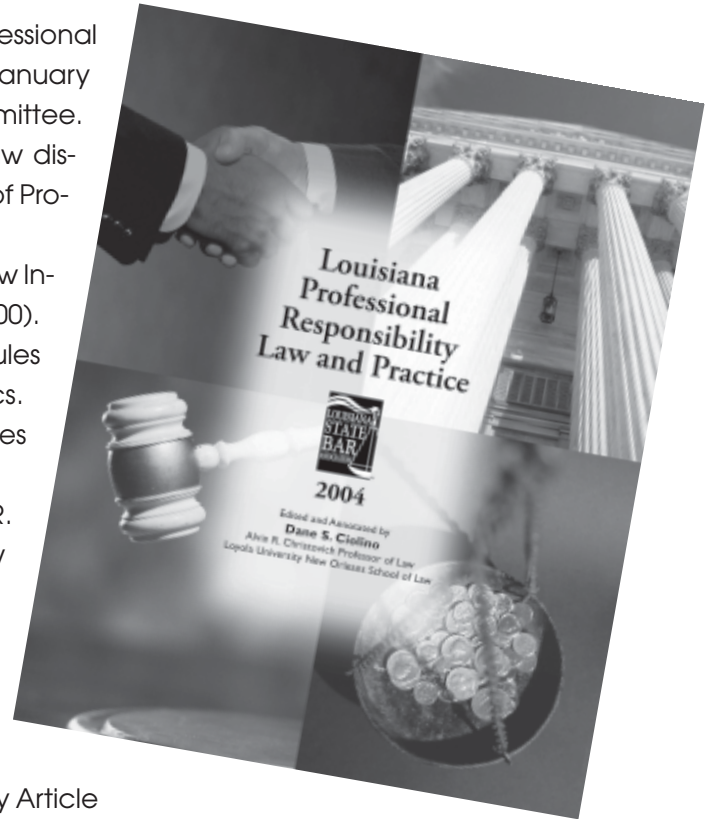


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ana State Bar Association's Young Lawyers Section and is a recipient of the LSBA Young Lawyers Section's Outstanding Young Lawyer Award.

Jones Walker announces that seven associates have joined the firm — Anita B. Curran, Mary E. Gardner, C. Barrett Rice, Joshua J. Lewis and John B. Rosenquest IV in New Orleans, and William D. Lampton and Heather N. Sharp in Baton Rouge.

Frank E. Lamothe III announces the formation of the Lamothe Law Firm, L.L.C., with its principal office in Covington, Ste. 104, 315 Lee Lane; phone (985)249-6800.

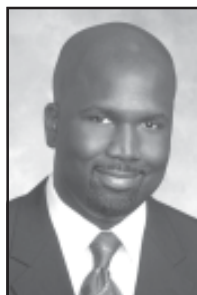
Lemle & Kelleher, L.L.P., announces that three new associates have joined the firm in the New Orleans office **Erica L.**



Charles H. Abbott



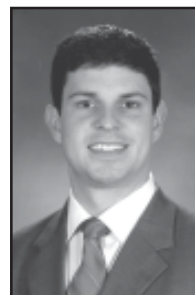
Erica L. Brown



Allen V. Davis



Bridget A. Dinvaunt



Brett P. Fenasci



John L. Fontenot



Jason P. Franco



Megan E.  
Haggerty Guy



Lisa Merz Hedrick



Ross F. Lagarde



Ashley E. Mulé



Janika D. Polk

**Brown, Bridget A. Dinvault and Brett P. Fenasci.**

Liskow & Lewis announces that Alison C. Bondurant has joined the firm's Lafayette office and Andrew "Drew" G. Spaniol and Jason R. Johanson have joined the firm's New Orleans office.

Milling Benson Woodward, L.L.P., announces that Heather L. Landry has joined the firm as an associate in its Baton Rouge office.

Reich, Meeks & Treadaway, L.L.C., announces that Jennifer M. Morris and Loyd J. Bourgeois, Jr. have joined the firm as associates.

## NEWSMAKERS

George L. Clauer III, an attorney practicing in the Greenville, S.C., firm of Skinner & Associates, L.L.C., and a member of the Louisiana Bar, has been certified as a specialist in bankruptcy and debtor-creditor law by the South Carolina Supreme Court Commission on Continuing Legal Education and Specialization.



Matthew F. Popp



Kyle L. Potts



Lee C. Reid



Dona K. Renegar



Maurice C. Ruffin



Mary Edwards  
Taylor



Courtney C.  
Thornton



Walter James  
Woodman

Calvin C. Fayard, Jr., founding and senior partner of Fayard & Honeycutt, A.P.C., was inducted as a Fellow into the International Academy of Trial Lawyers.

Irving J. Warshauer, a member of the firm Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., was inducted as a Fellow of the American College of Trial Lawyers.

## IN MEMORIAM

**Walter James "Woody" Woodman**, 64, died July 7, 2005, after a lengthy illness. A memorial service was held July 12 in Shreveport. Born in Talara, Peru, South America, he grew up in South America and Toronto, Ontario, Canada. He graduated from Miami Military Academy and Upper Canada College before attending Colorado School of Mines, Texas Christian University, and graduating from the University of Miami with a bachelor's degree in psychology. He received his law degree from Southern Methodist University School of Law in Dallas, Texas. He was a member of both the Louisiana and Texas state bar asso-

ciations. He practiced law in Dallas and Waxahachie, Texas. He also practiced law in Shreveport for more than 25 years. He was honored in "Who's Who in America" and "Who's Who in American Law." He was appointed by the governor of Louisiana as a member of the Pan American Commission. He is survived by his wife, Ruth Meyer Woodman; his son, Justin Meyer Woodman; his daughter, Jessica Woodman Monroe; his son-in-law, William Todd Monroe; his granddaughter, Emma Caroline Monroe; his mother, Nora Woodman Montoya; his stepfather, Ricardo Montoya; his brother, Russell T. Woodman; his brother-in-law, Lionel L. Meyer Jr.; and other relatives.

## RETURNING FIRMS

Firms returning to New Orleans:

- Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C.
- Proskauer Rose, L.L.P.

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**Deadline for the June/July 2006 issue is April 4.**



### 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 Dec. 1, 2005.

Respondent	Disposition	Date Filed	Docket No.
Paul T. Voiron	Suspended.	11/16/05	05-3263 K

### REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Jan. 5, 2006.

#### Decisions

**John Joseph Arbour**, Metairie, (2005-B-1189) **Two-year suspension** ordered by the court on Nov. 29, 2005. JUDGMENT FINAL and EFFECTIVE on Dec. 15, 2005. *Gist:* Neglect of a succession matter; charging an excessive fee; failure to refund the unearned portion of fee; issuing checks from a succession account without court approval or supporting documentation; issuing an NSF check from the succession account; failure to provide an accounting and information to other attor-

neys involved in the matter; disobeying court orders; failure to cooperate with the Office of Disciplinary Counsel; and practicing law while ineligible.

**Arcenious Armond, Jr.**, Gretna, (2005-B-1701) **Consent year and a day, fully deferred, subject to two-year period of probation with conditions**, ordered by the court on Nov. 29, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2005. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; failure to refund an unearned fee;

failure to properly terminate representation; and failure to properly supervise non-lawyer assistants.

**Charles R. Browning**, Baton Rouge, (2005-OB-2345) **Transferred to disability inactive status** by order of the court on Dec. 13, 2005. JUDGMENT FINAL and EFFECTIVE on Dec. 13, 2005.

**E. Roland Charles**, Monroe, (2005-B-1971) **Consent year and a day suspension, fully deferred, subject to two-years' probation**, ordered by the court on Dec. 9, 2005. JUDGMENT FINAL and EFFECTIVE on Dec. 9, 2005. *Gist:* Commingling funds and failure to supervise a non-lawyer employee who embezzled client funds.

**Matthew M. Courtman**, Monroe, (2005-B-2309) **Interim suspension** ordered by the court on Nov. 22, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2005.

**Carolyn Nuccio Hazard**, Metairie, (2005-B-1975) **Consent three-year suspension retroactive to date of interim suspension (March 30, 2005)** ordered by the court on Dec. 12, 2005. JUDGMENT FINAL and EFFECTIVE on Dec. 12, 2005. *Gist:* Plea of *nolo contendere* and criminal conviction of charges for simple possession of drugs.

**Roger W. Jordan, Jr.**, New Orleans, (2004-B-2397) **Three-month suspension**

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**fully deferred** ordered by the court on June 29, 2005. Rehearing denied on Nov. 29, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2005. *Gist:* Failure to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.

**John S. Keller**, New Orleans, (2005-B-2273) **Interim suspension** ordered by the court on Nov. 22, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2005.

**William Scott Maxwell**, Baton Rouge, (2005-B-2141) **Interim suspension** ordered by the court on Nov. 16, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2005.

**Walter E. May, Jr.**, Jonesboro, (2005-B-1664) **Public reprimand** ordered by the court on Nov. 29, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2005. *Gist:* Engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Rules of Professional Conduct.

**Jerry F. Palmer**, Metairie, (2005-OB-1644) **Readmission denied** by order of the court on Nov. 28, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 28, 2005.

**J. Clemille Simon**, Lafayette, (2004-B-2947) **Six-month suspension, all but 30 days deferred subject to the conditions**, ordered by the court on June 29, 2005. Rehearing denied. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2005. *Gist:* Making false statements attacking the integrity of a judicial officer.

**Gilda R. Small**, Marksville, (2005-B-1822) **Adjudged guilty of additional violations warranting discipline (consent) which may be considered in the event she applies for reinstatement from her suspension in *In re: Small*, 03-1736 (La. 12/3/03), 863 So.2d 500, after becoming eligible to do so**, ordered by the court on Nov. 29, 2005. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2005. *Gist:* Neglect of a legal matter.

**S. Judd Tookey**, Shreveport, (2005-B-2489) **Interim suspension** ordered by the court on Dec. 14, 2005. JUDGMENT FINAL and EFFECTIVE on Dec. 14, 2005.

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

No. of Violations

Failure to properly supervise ..... 2

Lack of diligence ..... 5

Lack of communication ..... 2  
Failure to properly withdraw  
from representation ..... 1  
Violating or attempting to violate  
the Rules of Professional Conduct ... 1

**TOTAL INDIVIDUALS**

**ADMONISHED ..... 6**

## NOTICE

2001 Louisiana Acts 208 created the Attorney Fee Review Board. The Act allows for payment or reimbursement of legal fees and expenses incurred in the successful defense of state officials, officers, or employees who are charged with criminal conduct or made the target of a grand jury investigation due to conduct arising from acts allegedly undertaken in the performance of their duties.

The Board is charged with establishing hourly rates for legal fees for which the state may be liable pursuant to R.S. 13:5108.3. The rates "shall be sufficient to accommodate matters of varying complexity, as well as work of persons of varying professional qualifications."

The Board met on January 18, 2006. The Board decided that requests for payment or reimbursement of legal fees should be evaluated on a case-by-case basis in accordance with the factors set forth in Rule 1.5 of the Louisiana Rules of Professional Conduct. As directed by statute, the Board set a minimum rate of \$100 per hour and a maximum rate of \$350 per hour. These rates will remain in effect throughout 2006. Beginning in 2007, the minimum hourly rate will remain at \$100, but the maximum hourly rate will be raised to \$400.

Attorneys who represent state officials and employees should be prepared to provide their clients and the Board with sufficient information to enable the Board to assess the reasonableness of attorney fees and expenses.

Any questions regarding the Attorney Fee Review Board should be addressed to Louisiana Supreme Court Deputy Judicial Administrator/General Counsel Tim Averill, 400 Royal Street, Suite 1190, New Orleans, LA 70130-8101.

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For the June issue of the Journal, all classified notices must be received with payment by April 18, 2006. Check and ad copy should be sent to:

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required. Six to 12 years' experience. Send résumé package to Vought Aircraft Industries, Law Department 49L-29, P.O. Box 655907, Dallas, TX 75265; e-mail to gomezli@voughtaircraft.com.

## 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.

**California counsel.** Also admitted in Louisiana. Former associate, blue chip New Orleans firm; 18 years' experience in all aspects of commercial, banking, creditors rights and other litigation and bankruptcy, application of Louisiana law in California courts, California law in Louisiana courts, jurisdiction and conflicts of law. Contact William F. Abbott, (415)863-9337.

**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.

**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. Statewide e-mail service. References upon request. William T. Tête, (504)891-6064.

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## NOTICE

**Jean-Marie Lacobee** informs the Bar and the public of the filing of her petition for reinstatement. Any person(s) opposing or concurring with her petition should file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**I am applying** for reinstatement as a member of the Bar by petition filed on or about Jan. 10, 2006. This is my request that any individuals file notice of opposition or concurrence with the board within 30 days. James Vaughan, 305 Hatten Rd., Seaside, CA 93955. Address of board: Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002; phone (504)834-1488.

**Notice is given** that Nancy L. Yeager has filed an application with the Supreme Court of Louisiana for reinstatement to the Louisiana State Bar Association. Any individuals who wish to oppose or concur with the petition for reinstatement shall file notice with the Louisiana Attorney Disciplinary Board within 30 days of the date of the publication at Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

## INDEX TO ADVERTISERS

AAA RV Pro .....	406
ADR inc. ....	401
Alston Law Firm, L.L.C. ....	404
Babcock Law Firm .....	361
Bates Engineering, Inc. ....	407
Bourgeois Bennett .....	365
Cardone Law Firm, A.P.L.C. ....	394
Certified Mold Free .....	399
Christovich & Kearney, L.L.P. ....	405
Diagnostic Management	
Affiliates .....	395
Kay E. Donnelly & Associates .....	397
Fisher & Phillips, L.L.P. ....	385
Robert G. Foley .....	407
Gilsbar, Inc. ....	IBC
Hope Community Credit Union .....	357
IndexEdge Investment	
Consulting .....	364
JLS Medical-Legal Consulting .....	407
LaPorte, Sehrt, Romig, Hand .....	357
Legal Directories	
Publishing Co., Inc. ....	367
Legier & Materne .....	IFC
LexisNexis .....	354
MAPS, Inc. ....	371, 396
J. Price McNamara, LL.M. ....	412
Elizabeth W. Middleton	
Mediation Services .....	393
The Office Suites at 1050 .....	408
Nash C. Roberts III .....	392
Schafer Group, Ltd., L.L.C. ....	391
ShadowTrack .....	359
Mary Ann Sherry/Write Image .....	406
Smith & Fawer, L.L.P. ....	375
Special Counsel .....	387
Template, Inc. ....	353
West, A Thomson Business .....	OBC
James F. Willeford .....	398
What's New .....	413

### LOUISIANA BAR FOUNDATION

#### LBF Maintaining Its Approach to Outreach Post-Hurricanes

"In this time of crisis, the Louisiana Bar Foundation (LBF) is doing everything possible to continue its mission to preserve, honor and improve our system of justice," said LBF President Donna D. Fraiche. The LBF has maintained a steady approach to its operations in the months following Hurricanes Katrina/Rita. Outreach has remained an important component of activity as demonstrated by the LBF's visits to Baton Rouge and Lake Charles.

On Nov. 7, 2005, Fraiche was the featured speaker at a luncheon in Baton Rouge. The luncheon was an opportunity to meet the president and learn more about the LBF's role in promoting and enhancing the legal profession in Louisiana and how the organization works to advance equal justice under the law. The luncheon was held in the Kean, Miller, Hawthorne, D'Armond, McCowan and Jarman, L.L.P., law firm's conference center.

On Nov. 18, 2005, the LBF attended



**Donna D. Fraiche**  
Louisiana Bar Foundation president

the Southwest Louisiana Bar Association's Annual Membership meeting to make a presentation. Banks from Lake Charles and Beauregard were honored for participating with IOLTA as

"No Fee" banks and nonprofit agencies were awarded mock checks representing their 2005 LBF grants. LBF board member John B. "Spike" Scofield made the presentations.



Lake Charles area recipients of 2005 Louisiana Bar Foundation grants included, from left, Lenn Knapp with Acadiana Legal Service Corp.; Ann Polak from Calcasieu Women's Shelter; Courtney Montgomery with Beauregard Community Concerns; and Gayle Hodnett from CASA of West Central Louisiana.



Lake Charles area banks honored as 2005 IOLTA "no fee" banks included, from left, Richard Byrd of Whitney National Bank; Mitchell Savoie with Jeff Davis Bank & Trust; Karla O'Reilly from First Federal Bank of Louisiana; Glen Bertrand of City Savings Bank & Trust; Chris Smith from Chase; and Raymond Phillips of Cameron State Bank.

## LBF Welcomes New Fellows

The Louisiana Bar Foundation welcomes eight new Fellows:

Patricia Rino Bonneau ..... Mandeville  
Walter Comeaux ..... Baton Rouge  
Hon. Laura P. Davis ..... Baton Rouge  
Tim L. Fields ..... New Orleans  
Steven F. Griffith, Jr. .... New Orleans  
Andrew R. Lee ..... New Orleans  
J. Eric Lockridge ..... Baton Rouge  
Alberto E. Struck ..... New Orleans

## Louisiana Bar Foundation Announces 2006 Grantees

The Louisiana Bar Foundation (LBF) awarded \$1,477,471 in 2006 grants to 49 Louisiana nonprofit organizations whose work is directly in line with the LBF's mission to advance the reality of equal justice under the law.

Since 1989, the LBF has distributed more than \$28.3 million to deserving, justice-related nonprofit organizations throughout the state. These organizations

are responsible for providing the poor with legal representation and giving safe haven to battered women and children in CASA (Court Appointed Special Advocates) programs.

**Administration of Justice.** Through the Access to Justice Program, legal services providers are assisted in their efforts to provide legal help to the poor.

**CASA Programs.** Specially trained advocates are assigned by the court to provide a voice for the child in court proceedings.

**Domestic Violence Programs** enable people to leave abusive relationships and seek safety for themselves and their children.

**Law-Related Education** brings teachers, community leaders and legal professionals together to teach children about their legal rights, responsibilities and their role as citizens.

**Legal Services Corporations** provide civil legal services to the indigent statewide.

**Other Direct Legal Services Providers** provide legal services of a special nature, such as mental health and immigration.

**Pro Bono Projects** utilize the local, private bar to handle cases for the poor pro bono.

**Teen Courts** offer diversionary programs for first-time misdemeanor youths operated by their peers.

*See grants list next page.*

## Alcohol and Drug Abuse Hotline

Director William R. Leary 1(866)354-9334  
Ste. 4-A, 5789 Hwy. 311, Houma, LA 70360

Area	Committee Contact	Phone
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	Craig Caesar ..... Deborah Faust ..... Donald Massey ..... William A. Porteous ..... Dian Tooley .....	(504)596-2774 (504)486-4411, (504)833-8500 (504)585-0290 (504)581-3838, (504)897-6642 (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

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

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often for information  
and updates  
from the  
Louisiana State  
Bar Association.

# Louisiana Bar Foundation 2006 Grant Recipients

## Administration of Justice

LSBA Access to Justice Program .....	\$37,000
LSBA 800 Legal Assistance Call Center .....	\$70,000
<b>Subtotal .....</b>	<b>\$107,000</b>

## CASA Programs

CASA of Terrebonne, Inc. ....	\$2,828
CASA of West Central of Louisiana .....	\$1,000
<b>Subtotal .....</b>	<b>\$3,828</b>

## Domestic Violence Programs

Beauregard Community Concerns, Inc.	
June Jenkins Women's Shelter .....	\$9,010
Calcasieu Women's Shelter, Inc. ....	\$11,834
Capital Area Family Violence Center/	
Legal Services Component .....	\$4,034
Catholic Charities/Project S.A.V.E. ....	\$22,300
Chez Hope .....	\$9,414
D.A.R.T. of Lincoln (Domestic Abuse	
Resistance Team) .....	\$9,952
Faith House, Inc. ....	\$12,372
Family Counseling Agency, Inc.	
Turning Point Shelter .....	\$8,741
Jeff Davis Communities Against Domestic Inc. ....	\$7,381
Metropolitan Battered Women's Program, Inc. ....	\$30,820
New Start Center .....	\$7,102
Safety Net for Abused Persons .....	\$13,717
Southeast Spouse Abuse Program .....	\$12,500
St. Bernard Battered Women's Center .....	\$2,959
The Haven, Inc. ....	\$7,236
Vernon Community Action Council, Inc. ....	\$7,127
YWCA of Northeast Louisiana/Project SAFE .....	\$11,834
YWCA of Northwest Louisiana, Inc./	
Family Violence Program .....	\$10,355
<b>Subtotal .....</b>	<b>\$198,688</b>

## Law-Related Education

Baton Rouge Bar Foundation LRE Programs .....	\$5,059
Louisiana Center for Law & Civic Education .....	\$35,706
LSBA Young Lawyer LRE Projects .....	\$7,058
LSBA Francophone Section Proves	
Simule Bicentennial Film .....	\$5,000

## Loyola University School of Law

Thurgood Marshall's Coming .....	\$3,250
Youth Service Bureau of St. Tammany LRE Program	\$3,482
<b>Subtotal .....</b>	<b>\$59,555</b>

## Legal Services Corporations

Acadiana Legal Services Corporation .....	\$212,894
Capital Area Legal Services Corporation .....	\$125,866
Legal Services of North Louisiana .....	\$192,789
Southeast Louisiana Legal Service Corp. ....	\$226,727
<b>Subtotal .....</b>	<b>\$758,276</b>

## Other Direct Legal Services

AIDSLAW of Louisiana, Inc. ....	\$35,000
Arts Council of New Orleans Louisiana	
Volunteers Lawyers for Art .....	\$2,500
Catholic Charities Immigration Legal Services .....	\$40,596
Catholic Legal Immigration Network, Inc.	
La. Detention Project .....	\$3,500
Innocence Project New Orleans .....	\$35,000
Legal Aid Bureau .....	\$45,000
Mental Health Association in Louisiana .....	\$35,000
<b>Subtotal .....</b>	<b>\$196,596</b>

## Pro Bono Programs

Baton Rouge Bar Foundation Pro Bono Project .....	\$24,250
Central Louisiana Pro Bono Project .....	\$12,250
Lafayette Parish Bar Foundation	
Pro Bono Project .....	\$20,250
Legal Services of North La./Pro Bono Program .....	\$14,500
Northwest Louisiana Pro Bono Project .....	\$20,000
The Pro Bono Project .....	\$51,578
<b>Subtotal .....</b>	<b>\$142,828</b>

## Teen Courts

Iberia Teen Court, Inc. ....	\$4,000
Teen Court of Calcasieu Parish .....	\$1,700
Teen Court of Greater New Orleans .....	\$3,000
Teen Court of Morehouse .....	\$2,000
<b>Subtotal .....</b>	<b>\$10,700</b>





Shreveport attorney Kirby D. Kelly presented a check to Patricia Combs, a teacher at Minden High School, as October Teacher of the Month.



Shreveport attorney Kirby D. Kelly presented a check to B.J. Kemmerly, a teacher at Youree Drive Middle School in Shreveport, as winner of the "Back to School is Cool" contest.

## Shreveport Attorney Presents Funds to Teachers

Shreveport attorney Kirby D. Kelly presented checks of \$1,000 in December 2005 to local teachers as part of his effort to support local education.

Recipients of the awards were B.J. Kemmerly, winner of the "Back to School is Cool" contest, and Patricia Combs, the October Teacher of the Month. Kemmerly is a teacher at Youree Drive Middle School in Shreveport and Combs is a teacher at Minden High School. Both were nominated by students in their classes.

In addition to monthly donations directly to teachers, Kelly also plans to give college scholarships to 10 high school seniors near the end of the spring semester. The scholarships will be awarded based on the student's financial need, grade point averages and recommendations.

## LAPRA Donates Dues to Mission Board

Members of the Louisiana Association of Professional Responsibility Attorneys (LAPRA) voted to donate their accumulated dues to the North American Mission Board, an arm of the Southern Baptist Convention.

Following Hurricanes Katrina and Rita, LAPRA members and office staff were the beneficiaries of donations of food, housing and other goods and services from the Mission Board. The Mission Board provides food, laundry and other support services to the Red Cross. Both groups were first responders to hurricane victims.

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## Louisiana Bar Foundation's 20th Fellows Gala May 5

The Louisiana Bar Foundation (LBF) will hold the 20th annual Fellows Gala on Friday, May 5 at Houmas House Plantation in Gonzales. Guests of honor will be the 2005 Distinguished Jurist, Hon. Jay C. Zainey, U.S. District Court; Distinguished Professors, Dean Brian Bromberger from Loyola University Law School and Chancellor Freddie Pitcher, Jr. of Southern University Law Center; and Distinguished Attorney, H. Alston Johnson III of Phelps Dunbar.

The theme, "Rebuilding Louisiana Be-

gins with the Foundation," celebrates the importance of the LBF's mission to preserve, honor and improve the justice system to Louisiana's recovery.

In addition to dinner by Houmas House Chef Jeremy Langlois, the event will feature abbreviated tours of the restored historical plantation and gardens.

Cocktails will be served beginning at 7 p.m. in honor of the Fellows Class of 2005 and the 20-year Fellows Class of 1986. Dinner will follow at 8 p.m. in conjunction with a silent auction.

Rooms, starting at \$93, are available at The Cook Hotel on Louisiana State University's campus until April 7. Call

the hotel directly at (225)383-2665 to make reservations. Round-trip transportation is available by reservation for \$10 per person. Buses will run from The Cook Hotel to Houmas House and from New Orleans to Houmas House.

A patron party will be held the evening before the dinner on Thursday, May 4.

Tickets to the gala are \$100 per person. Patron party and gala tickets are available at the following sponsorship levels:

### Cornerstone Level, \$2,500

Includes patron party sponsorship, 10

Continued next page

## What's New! Products and Services for Lawyers

### 3GC, Inc. Offering Verizon Wireless BlackBerry Choices



**D**id you know you could access the Internet using your BlackBerry handheld device as a modem? Have you been out of town and needed or wanted to access your corporate network or Internet but did not have a network card in your laptop computer?

Most wireless carriers only offer data network card solutions to accomplish this, increasing your costs by requiring both a wireless voice plan (cell phone) and a wireless data plan (network card). Good for the wireless company, but not good for your budget.

The Verizon Wireless BlackBerry® model number 7130e exclusively from Verizon allows you to "tether" your handset to your laptop using VZAccess software and the USB cable and port of your laptop PC.

The Verizon BlackBerry puts all this technology in one device, a Voice Solution, an E-mail Solution and Internet Access all in one device.

When the Verizon BlackBerry is purchased, no additional accessories are needed; it ships with a carry case and a USB

cable to charge and synchronize to your Outlook e-mail or other e-mail platforms as well, and supports up to 10 different e-mail addresses if needed.

The advantage of this new technology is eliminating the need for a network card in your laptop, which saves you and your firm money.

Verizon Wireless offers the country's largest Broadband Access network, Evolved Voice Data Optimized (EVDO) where available or National Access (1XRTT) across the country. These are both faster and more stable than the EDGE/GPRS solutions found on other carriers.

Verizon Wireless has the largest high-speed data network in the country and the most reliable network in the country.

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To find out more, contact us at: [www.3GCInc.com](http://www.3GCInc.com), or call (800)706-2514 or (318)388-8598.



*What's New is an information column about new products and services available to lawyers. In addition to hot-off-the-press releases, we include photographs and logos from time to time. For lawyers, it's a good way to keep up with the latest developments. For advertisers, it's a great way to get the word out on new products and services. Call (504)619-0131 for more information.*

patron party tickets, two reserved tables for 20 and program recognition.

**Capital Level, \$1,500**

Includes 10 patron party tickets, one reserved table for 10 and program recognition.

**Pillar Level, \$1,000**

Includes six patron party tickets, six gala tickets and program recognition.

**Foundation Level, \$300**

Includes two patron party tickets, two gala tickets and program recognition.

For more information, contact Donna Cuneo at (504)561-1046 or [donna@raisingthebar.org](mailto:donna@raisingthebar.org), or visit [www.raisingthebar.org](http://www.raisingthebar.org).

### Check the Web Site for Recent Bar Publications

Because of hurricane-related postal service disruptions and displacement of Bar members, the decision was made to temporarily publish Bar publications on our Web site only. This decision affected the September 2005, November 2005 and January 2006 issues of "Bar Briefs" and the October/November 2005 and December 2005/January 2006 issues of the *Louisiana Bar Journal*.

To access these issues, go to:

***Louisiana Bar Journal***

[http://www.lsba.org/publications/louisiana\\_bar\\_journal\\_search.asp](http://www.lsba.org/publications/louisiana_bar_journal_search.asp)

**"Bar Briefs"**

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## Calling All Attorneys UNCLE SAM WANTS You!

to provide legal help to our military reservists.

LSBA/LBF is recruiting attorney volunteers to provide pro-bono assistance to military reservists. Operation Enduring LAMP is an ABA-endorsed project that renders free legal aid to military personnel and their families. Legal services are needed for issues not covered by military laws, such as estate and probate, family law, and employment law. Please help LAMP by volunteering and helping our military get much needed legal assistance. **To join, go to:**

**[www.lsba.org/lamp](http://www.lsba.org/lamp)**



## 2006 Summer School & Annual Meeting Registration Form

Bar Roll Number \_\_\_\_\_ ☐ Judge Name \_\_\_\_\_  
 First Name for Badge \_\_\_\_\_  
 Office Address \_\_\_\_\_ Ste./Floor \_\_\_\_\_  
 City/State/Zip \_\_\_\_\_  
 Office Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

☐ Please register my spouse/guest for the Annual Meeting at no additional charge. ☐ Law League Member

*(Spouse/guest must be registered to receive tickets to the President's Reception, YLS Reception and the Homecoming Dinner and Dance.)*

Spouse/Guest Name \_\_\_\_\_ First Name for Badge \_\_\_\_\_

- ☐ Please include my Children's Homecoming Carnival, Cookout and Dance tickets: first child's age \_\_\_\_ second child's age \_\_\_\_  
☐ Please check here if you are disabled and require special services. Attach a written description of needs.

### Summer School Only Registration

*Includes seminar registration and manual, daily continental breakfast and breaks, and invitation to joint cocktail party with Judicial College.*

☐ Received by April 26: \$525 ☐ Received after April 26 and before May 24: \$550 ☐ Received after May 24 and On Site: \$575

### Annual Meeting Only Registration

*Includes admission to all open programs and business meetings, daily continental breakfasts and breaks, up to two tickets to President's Reception, up to two tickets to YLS Reception, up to two adult tickets to Homecoming Dinner (must be requested), up to two adult tickets to Homecoming Dance, and up to two children's tickets to Homecoming Carnival, Cookout and Dance.*

☐ Received by April 26: \$425 ☐ Received after April 26 and before May 24: \$450 ☐ Received after May 24 and On Site: \$495  
☐ Please include Homecoming Dinner (including installation of officers) tickets for each registrant included in registration fee.

### Summer School & Annual Meeting Discounted Registration

*Includes all programs and events as set forth above.*

☐ Received by April 26: \$900 ☐ Received after April 26 and before May 24: \$950 ☐ Received after May 24 and On Site: \$1,025  
☐ Please include Homecoming Dinner (including installation of officers) tickets for each registrant included in registration fee.

### Additional Tickets

*There is no charge for children under 4. Only members registered for the Annual Meeting may purchase additional tickets*

		by April 26	by May 24	On Site	Quantity	Total Amount
<b>President's Reception</b>		\$85	\$90	\$100	_____	_____
<b>YLS Reception</b>	Adult	\$85	\$90	\$100	_____	_____
	Teen (13-17)	\$25	\$30	\$35	_____	_____
	Child (4-12)	\$15	\$20	\$25	_____	_____
<b>Homecoming Dinner &amp; Dance</b>						
	Adult	\$100	\$110	\$125	_____	_____
	Teen (13-17)	\$40	\$45	\$50	_____	_____
<b>Homecoming Dance</b>						
	Adult	\$50	\$60	\$75	_____	_____
	Teen (13-17)	\$15	\$20	\$25	_____	_____
<b>Homecoming Carnival, Cookout &amp; Dance</b>						
	Child (4-12)	\$25	\$30	\$35	_____	_____

### Payment Method

☐ Pay by Check: Make Checks Payable to the Louisiana State Bar Association.

☐ Pay by Credit Card: Please charge \$ \_\_\_\_\_ to my credit card: (check one) ☐ VISA ☐ MC (no American Express)

Credit Card Account Number \_\_\_\_\_ Expiration \_\_\_\_\_

Name as it Appears on Card \_\_\_\_\_ Signature \_\_\_\_\_

Billing Address for Card \_\_\_\_\_ City/State/Zip \_\_\_\_\_

### Total

Grand Total Enclosed \_\_\_\_\_ (Include all ticket fees with grand total.)

*Return checks to: Louisiana State Bar Association, 601 St. Charles Ave.,  
 New Orleans, LA 70130-3404, Attn: Meeting Registration*

*Fax credit card payment form to (504)598-6753*

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Date Received \_\_\_\_\_

Check # \_\_\_\_\_

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# Sponsorship Opportunities!



## Annual Meeting 2006

June 7, 8 & 9 • Sandestin Golf & Beach Resort • Sandestin, FL

### Sponsorship Levels and Benefits

Platinum:	\$15,000.00+
Gold:	\$10,000.00+
Silver:	\$7,500.00+
Bronze:	\$5,000.00-

### Event/Item:

Guy Wootan Memorial 5k Walk/Run	Gilsbar, Inc.
President's Reception	LexisNexis
Homecoming Dinner & Dance	\$15,000
AM/SS Beach Towels	\$10,000
Young Lawyers' Awards Reception	\$7,500
Golf Tournament	\$7,500
2 Continental Breakfasts/	\$7,500
1 Refreshment Break	
Light Lunch/Exhibit Hall	\$5,000

## Summer School 2006

June 4, 5 & 6 • Sandestin Golf and Beach Resort • Sandestin, FL

### Sponsorship Levels and Benefits

Platinum:	\$4,000.00+
Gold:	\$2,000.00+
Silver:	\$1,000.00+

### Event/Item:

3 Continental Breakfasts	\$4,500.00
Joint Cocktail Party	
w/Judicial College	\$1,500.00
Manual	\$1,000.00
Speakers' Cocktail Party	\$1,500.00

To join these prestigious sponsors in securing an event for sponsorship, contact Director of Membership Services Germaine A. Tarver, at 504.619.0117, or [gtarver@lsba.org](mailto:gtarver@lsba.org)

# Advertising Opportunities!

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To secure ad space in the Annual Meeting Program 2006, contact Director of Membership Services Germaine A. Tarver, at 504.619.0117, or [gtarver@lsba.org](mailto:gtarver@lsba.org).

*The deadline for securing ad space in the Annual Meeting Program 2006 is Friday, April 14, 2006*

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