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Cover Photo
Francis Xavier Neuner, Jr. and his family, from left, daughter Mary Frances, son Xavier, daughter Hearin, Frank, daughter Gretchen Neuner Daniels, son-in-law Randy Daniels and Frank’s wife Tracy.

Cover photo by Robin May Photography.

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Francis Xavier Neuner, Jr.
65th LSBA President:
The New LSBA President Minds His Ps
Interviewed by E. Wade Shows

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Patient. Persuasive. Professional. Ask anyone in Lafayette about the new Louisiana State Bar Association (LSBA) president, and you will hear at least one of the three “Ps.” Francis Xavier Neuner, Jr., the first in his family to attend college, blends a polite small-town manner with a splash of GQ style and an endless willingness to push to get the job done. These charming, if somewhat contradictory traits, were developed during his childhood in Baton Rouge as the eldest son of Francis Xavier, Sr., a hardware salesman and World War II veteran of 25 missions as a crew chief in B-17s. Mary, Frank’s mom, led the family emphasis on service and hard work (the fundamentals of the “Ps”).

Frank graduated from Broadmoor High School in 1969, but took his parents’ advice and enrolled at Louisiana State University rather than enrolling in court reporter school as a high school teacher had recommended. LSU was the only possible college choice for Frank, who is a lifelong LSU football fan, and still bemoans the fact that he missed the Billy Cannon 89-yard run back on Halloween night because he had been persuaded to give his tickets to cousins visiting from out of town.

Thirty years later, Frank has proven that his parents’ advice was on the mark. The managing partner of LaBorde & Neuner, Frank is licensed to...
practice both in Texas and Louisiana, but his energetic leadership style and enthusiastic volunteerism has packed his résumé full of more accomplishments than would seem possible for a man who heads an 18-person firm, handles a busy maritime practice, and finds time for family and friends. For example, Frank is a past president of the Lafayette Parish Bar Association and also an active member of the American Inn of Court of Acadiana. He has served as a member of the LSBA Board of Governors and also as the treasurer of the Association. He was the recipient of the David A. Hamilton Lifetime Achievement Award for his commitment to the promotion of legal services to the poor and his contributions to pro bono efforts, particularly in his native Lafayette. He was honored in 2004 by the National Client Protection Organization with the Isaac Hecht Law Client Protection Award for his leadership in reforming the LSBA’s Client Assistance Program. In addition, Frank has served as the president of the United Way in Lafayette, as well as board chair of a nonprofit hospital in Lafayette.

The secret to juggling all these commitments so successfully? Why, Tracy Neuner, of course. Married 33 years ago while Frank was still in college, Tracy learned early that flexibility, independence, resilience and a sense of humor were key. Ever the multi-tasker, Frank tends to field a constant array of phone calls from his four children, whether they be calling from down the street in Lafayette, or as far away as Boca Raton or Savannah. Yet, Tracy manages their complicated comings and goings and wildly variant interests with aplomb, keeping Frank well-informed and well-involved along the way. Most importantly, Tracy loves to drive and doesn’t blink when daughter Mary Frances’s volleyball team must travel to Texas, or when Frank needs to tackle a stack of work on his way to a bar meeting in Shreveport. In truth, certain other members of the Board of Governors have been known to stow away in the Neuner car, if only to get caught up on the latest news from Baton Rouge or Lafayette. Never at a loss for conversation, Tracy is a reassuring presence at even the most grueling social event.

The Neuners make a formidable team, balancing their commitment to family with the demands of a busy career and a strong belief in community service. No wonder that Frank’s eldest daughter, Gretchen, upon witnessing her father’s performance during the entertainment segment of a recent LSBA Annual Meeting, was heard to exclaim, “Isn’t he just wonderful?” Admittedly, most girls adore their fathers, but few are so devoted as to claim kinship, much less admiration, while daddy is dancing with four other pals before a large crowd, wearing a cheesy police uniform costume, and singing “LSBA” in a satirical romp as The “Village” of Sandestin People.

Although Frank blames Past President Larry Feldman for his ill-fated stint as a pop star (sadly, only Gretchen thought the LSBA version of the Village People was “wonderful”—even her more artistic siblings, Hearin and Tripp, avoided such superlatives), he readily admits that being able to poke fun at himself is an important component of what keeps him

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**On Professionalism**

I regularly hear lawyers complain that it does no good for a CLE instructor to tell someone to “be nice.” The theory is that one either is nice or one isn’t, but that no amount of instruction can change a basic personality trait. . . . I’m hoping that a Professionalism Center would assist us in incubating and then regulating better professionalism programs for our lawyers.

— Frank X. Neuner, Jr.
On Plans

A great many of our members — and my partners — do not understand how the officers and Board of Governors of the LSBA are elected. This tells me that we simply do not have enough involvement of the lawyers throughout the state, and I’d like to change that.

— Frank X. Neuner, Jr.

grounded and gives him perspective. It might even be a fourth “P.” “Indeed,” Frank offers, “I believe that some old-fashioned humility goes a long way toward promoting the proper attitude toward Professionalism.”

The three (or four) “Ps” notwithstanding, professionalism will be one of the key focuses of Frank’s year as president. Having begun his involvement with the state bar association in 1990 as an appointee to the Professionalism & Quality of Life Committee, Frank became its chair in 1996, and has devoted much of his time to professionalism issues, including the adoption of the Code of Professionalism by the House of Delegates, the adoption of the mandatory professionalism CLE hour by the House of Delegates and the Louisiana Supreme Court and the professionalism orientation programs at Louisiana law schools.

Hoping to launch a Professionalism Center, perhaps modeled after programs in Texas and Georgia, Frank believes that there is significant need for such a resource. “One of the criticisms of the professionalism CLE hours,” he explains, “has been that some of the programs are not very good. I regularly hear lawyers complain that it does no good for a CLE instructor to tell someone to ‘be nice.’ The theory is that one either is nice or one isn’t, but that no amount of instruction can change a basic personality trait. This criticism ignores much of what a good professionalism program could include. I’m hoping that a Professionalism Center would assist us in incubating and then regulating better professionalism programs for our lawyers. We’d be able to assure that professionalism CLEs are meaningful.”

When asked about other plans for his term, Frank admits that his aspirations are very similar to those of past presidents, such as Charlie Weems, Larry Feldman, Jay Zainey and Phelps Gay. “My goal is to make the LSBA more user-friendly to the members, to make it a more valuable resource and reach out to the members.” Using his own law partners as his barometer, Frank has learned that a great many LSBA members do not fully understand what the bar association does and does not do. “For example,” he says, “a great many of our members — and my partners — do not understand how the officers and Board of Governors of the LSBA are elected. This tells me
that we simply do not have enough involvement of the lawyers throughout the state, and I’d like to change that.”

Frank recognizes that initiatives with true impact are those which transcend a single year and a single president. He cites the Professional Assessment Task Force as an example of an initiative, begun last bar year at Mike McKay’s instigation, which is targeted to a broad result over a number of years. “The Task Force is comprised of about 24 lawyers from around the state looking at different issues that affect the public’s perception of the profession and the profession’s perception of itself. It hopes to hold Town Hall meetings across the state and to reach out not just to lawyers, but also to the public so as to get some input on how the justice system can be improved.”

A multi-year initiative which might be launched under Frank’s tutelage is a mentoring program. Commenting on the possibilities for such a program, Frank has said, “I recognize that in the past our Supreme Court and others have not been anxious to create additional impediments to the commencement of practice for students coming out of law school. However, Georgia, again a leader, has just adopted a mandatory mentoring program for every new lawyer in the state. If you are in a firm, a partner in the firm could be your mentor, but if you are hanging out a shingle, you will have a mentor appointed. The mentor gets CLE credit, and the program is administered by the bar association. Georgia lawyers voted to increase their dues by $10 per person to institute this program. Obviously, I am not going to suggest that we adopt a similar program this year, but it is worthy of further study.”

While Frank’s goals are similar to those of his predecessors, he comes to the job of president with one very significant credential that most of them did not have. Frank has also served as LSBA treasurer and has more than a passing familiarity with the intricacies and difficulties of the budget. When asked whether a dues increase will be necessary to implement and/or continue the programs he envisions, his answer suggests yet another “P” – “plain-talking”: “I have watched bar finances very closely for a number of years now. Unfortunately, the $100 each member pays in annual dues does not buy

On Projects

Georgia . . . has just adopted a mandatory mentoring program for every new lawyer in the state. If you are in a firm, a partner in the firm could be your mentor, but if you are hanging out a shingle, you will have a mentor appointed. The mentor gets CLE credit, and the program is administered by the bar association.

— Frank X. Neuner, Jr.

today what it did 25 years ago. To provide the programs and initiatives we already have in place, we spend $4.25 million annually; our dues income accounts for just over $1.75 million. Each year, we have to find another $2.5 million in non-dues income to keep everything operational. Right now that’s a challenge which our resourceful and talented staff handles well, and we are continuing to look at ways to allocate resources more efficiently, while increasing other sources of revenue. If we keep the proper focus on servicing and supporting our profession, the finances will follow suit.”

Patient. Persuasive. Professional. Plain-talking. Frank Neuner intends to bring these talents to the task of being LSBA president, and there’s little doubt that we will all be the better for it.

E. Wade Shows is Louisiana State Bar Association secretary and editor of the Louisiana Bar Journal. He is managing partner of the Baton Rouge firm of Shows, Cali and Berthelot, L.L.P. (P.O. Drawer 4425, Baton Rouge, LA 70821-4425)
Louisiana courts have begun to come to grips with the serious ethical problems that arise when an insurance carrier “reserves rights” as to coverage while simultaneously undertaking to provide its insured a defense. Recently, the Louisiana 1st and 5th Circuits ruled that the insurer’s reservation of coverage denials or defenses sets up a conflict of interest between the carrier and insured that entitles the insured to select independent counsel at the carrier’s expense.1 This article addresses these important legal developments, their implications for insurers, insureds and their legal counsel, and some lingering unresolved issues.

### The Carrier’s Duty to Defend

It is settled Louisiana law that under a traditional “defense” policy (by which the insurance carrier agrees to defend the insured from claims covered under the policy), the carrier’s obligation to defend the insured is separate and distinct from its obligation to indemnify the insured.2 Due to the breadth of the carrier’s duty to defend, the carrier frequently finds itself in the position of undertaking its insured’s defense while simultaneously asserting denials and/or defenses to cov-

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**When the Carrier and Insured Part Ways:**

The Insured’s Right to Independent Counsel

By James A. Brown and Shannon S. Holtzman

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Previous Practices

Due to the breadth of the carrier’s duty to defend, the carrier frequently finds itself in the position of undertaking its insured’s defense while simultaneously asserting denials and/or defenses to cov-
The court thus held that the insured was entitled by law to select independent counsel to represent them at [the insurance carrier’s] expense.”

The Belanger court reasoned the appointed counsel’s representation of the insured likely would constitute a breach of the duty of loyalty owed to the client under Louisiana Rule of Professional Conduct 1.7. According to the court:

Such representation would ostensibly “be materially limited by [each] lawyer’s responsibilities to another client or to a third person,” i.e., each attorney’s responsibilities to Lexington [the carrier] inasmuch as Lexington retains/delegates an attorney for its insured, . . ., whose primary role at this juncture is addressing insurance coverage. Under the jurisprudence and the Rules of Professional Conduct, separate counsel must be employed to represent Gabriel Chemicals [the insured] to avoid a conflict of interest.13

Addressing a similar reimbursement claim by an insured, the Louisiana 5th Circuit followed Belanger in Smith v. Reliance Ins. Co.14 The Smith court expressly rejected the carrier’s argument that, notwithstanding its assertion of coverage exclusions, the carrier had the right to select defense counsel for the insured. According to the court:

The plaintiffs’ allegations and Reliance’s claim of coverage exclusions create a conflict of interest between the insurer and its insured which entitles the insured to assume control of the defense of the tort action and to select its own counsel. Reliance must underwrite reasonable costs incurred by the insured.15

However, in a more recent decision, the United States 5th Circuit applied Louisiana law to retreat somewhat from Belanger and Smith. In Trinity Universal Ins. Co. v. Stevens Forestry Serv., Inc.,16 the court denied the insured’s claim for reimbursement of its independently selected counsel’s fees on the ground that defense counsel selected by the carrier was adequate and competent. The court found “[t]he fact that Trinity [the carrier] reserved the right to later deny coverage does not negate the fact that it fulfilled its duty of providing Stevens with adequate counsel.”17 Accordingly, the court held the insurer was “not required to reimburse [the insured] for the fees or costs associated with [its] hiring of additional counsel where [the insurer] . . . provided [the insured] with competent counsel in the Underlying Action.”18 Significantly, the court distinguished Smith and Belanger on the grounds that in those cases the insured explicitly rejected the defense counsel appointed by the carriers:

These cases are distinguishable . . . and not on point in this case. Both involved an insured who wished to reject the insurer’s proffered counsel and instead employ independent counsel . . . Here . . . the insured accepted insurer’s counsel, but also wished to receive reimbursement for independent counsel.19

Obviously, the insured’s failure to explicitly reject the counsel appointed by the carrier limits the import of Trinity. It does not seem unreasonable to deny the insured reimbursement of the fees of additional counsel employed by him after he has accepted (or not rejected) the counsel appointed by the carrier.

Unresolved Issues

The Trinity decision nonetheless leaves some important issues unresolved. It is not clear from the decision’s text whether the defense counsel appointed by the carrier had an ongoing attorney-client relationship with the carrier. The absence of any discussion of ethical constraints limiting the appointed counsel’s ability to represent the insured suggests there may have been no such relationship. In such cases, the appointed counsel presumably is free to represent the insured on coverage issues against the carrier unless the carrier has sought to limit the scope of the appointed counsel’s representation to
defensive issues. The Trinity decision thus leaves open the argument that, even after a reservation of rights as to coverage, the carrier may control the appointment of defense counsel provided the appointed counsel has no professional relationship with the carrier and is otherwise “adequate and competent.”

What happens if the carrier appoints “independent” counsel for the insured (meaning counsel that has no attorney-client relationship with carrier), but limits the appointment to defensive issues? Such constraints can become particularly troublesome when the line between “defensive” and “coverage” issues becomes blurred. For example, issues of whether an individual acted within the course and scope of his employment with the insured corporation, or in his capacity as a partner or member of an insured entity, may determine both liability to the claimant and the availability of insurance coverage. Similarly, issues relating to the degree of an insured’s culpability may control both liability and insurance coverage. Negligent or grossly negligent conduct typically is covered by insurance, while fraud and dishonesty are not covered.

One could make a strong case that it is impossible for the appointed “defense” counsel to draw the line between defensive and coverage issues when, as so often happens in complex tort and professional liability cases, the issues overlap. Otherwise stated, when the carrier reserves rights as to coverage, the insured needs a “full” lawyer (one who can represent him on all issues in the case). “Half” a lawyer won’t do. Hence, any limitation by the carrier on the scope of appointed counsel’s representation of the insured arguably renders that counsel “inadequate” and not “independent,” thereby entitling the insured to choose other counsel at the carrier’s expense.

“Cumis” Endorsements

Louisiana has lagged well behind other jurisdictions in clearly recognizing the insured’s right to select independent counsel when the carrier reserves rights as to coverage.20 The principle has become so familiar that carriers now include so-called Cumis endorsements in their liability insurance policies that seek to regulate the insured’s selection of independent counsel.21 Generally, a Cumis endorsement permits an insurance carrier to require the insured’s independent counsel to have certain minimum qualifications for insurance defense practice and meet minimum requirements as to professional liability insurance and related matters.22

Typically, Cumis endorsements also seek to limit the billing rates of independent counsel to the rates customarily paid by the insurance carrier to appointed counsel in the relevant community. In Belanger, the court appeared to give effect to the Cumis endorsement set forth in the policy by stating:

Application of the Cumis endorsement requires by its plain language that the attorney fees and all other litigation expenses Lexington [the insurance carrier] must pay to counsel selected by Gabriel Chemicals are limited to the rates Lexington actually pays to counsel the insurer retains in the ordinary course of business in the defense of similar claims.23

The court, however, stopped short of deciding the issue of fees, concluding “the quantum of any reimbursement claim incurred thus far cannot be, and [is] not, decided.”24 The Smith and Trinity cases did not address the issue of Cumis endorsements.25

Cumis endorsements become problematic when the billing rates customarily paid by the carrier to “panel” counsel in the relevant locale are significantly lower than the rates of the independent counsel that the insured desires to retain. The panel rate may not be acceptable to the counsel selected by the insured. It seems only a matter of time before an insured argues that the carrier’s attempt to limit the billing rates of its chosen counsel impermissibly inhibits the freedom to select independent counsel. This significant unresolved issue can supply leverage to both the carrier and the insured’s counsel in the negotiation of a billing rate somewhere between the carrier’s “panel” rate and the higher standard rate of the insured’s chosen counsel.

Critical Privilege Issues

The independent counsel selected by the insured must remain ever mindful that her client is the insured — not the carrier — and that the client’s interests are adverse to the carrier on coverage issues. She must be prepared to vigorously litigate the client’s coverage positions against the carrier and must resist any and all attempts by the carrier’s representatives to constrain her advocacy on issues of coverage. In many cases, the insured’s independent counsel becomes equally adverse to the carrier and the plaintiff.

Additionally, the insured’s independent counsel must remember her communications with the client on coverage issues are privileged and must not be shared with the carrier. The issue of privilege becomes particularly important in the

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context of narrative fee billing. Narrative fee bills for defensive work only should be addressed to the insured, but copied to the carrier for payment by the carrier. Coverage work, which is not properly billed to the carrier, should be separately billed to the insured, under a separate file or billing number, to avoid any possibility that the carrier will become privy to details of coverage advice and work performed for the insured. Failure to follow such procedures threatens to compromise the attorney-client privilege with the insured and undermine the effectiveness of the attorney’s representation of her client.

Conclusion

Louisiana appears to be catching up to other states in recognizing the insured’s right to independent counsel when the carrier reserves rights as to coverage. Previous practices that arguably blurred the lines of representation and loyalty and constrained the effectiveness of appointed counsel are coming to an end. Louisiana courts, however, have yet to resolve several important issues with potentially serious legal, ethical and economic implications for carriers, insureds and their counsel. Stay tuned.

FOOTNOTES

1. Belanger v. Gabriel Chem., Inc., 00-0747 (La. App. 1 Cir. 5/23/01), 787 So.2d 559, 564, writ denied, 802 So.2d 612 (La. 2001); Smith v. Reliance Ins. Co., 01-888 (La. App. 5 Cir. 1/15/02), 807 So.2d 1010, 1022.


3. Id. at 1218 (emphasis added).

4. Smith v. Reliance Ins. Co., 01-888 (La. App. 5 Cir. 1/15/02), 807 So.2d 1010, 1021 (original emphasis) (citing Jensen v. Snellings, 841 F.2d 600, 612 (5 Cir. 1988)).


6. See Belanger, supra note 1, 787 So.2d at 564.

7. See, e.g., Peavey Co. v. M/V ANPA, 971 F.2d 1168, 1175 (5 Cir. 1992) (applying Louisiana law).

8. See, e.g., H. Alston Johnson III, Insurer’s Responsibilities in First Party & Third Party Actions: Bad Faith and Other Issues 18, in Hittin’ the High Notes: 18th Summer School for Lawyers (La. State Bar Ass’n ed., 2002); see also Belanger, supra note 1, 787 So.2d at 564.

9. It is fairly well settled that, when the carrier reserves rights as to coverage, the appointed “panel” counsel cannot simultaneously represent the carrier and the insured in the particular matter to which the appointment pertains. See Dugas Pest Control of Baton Rouge, Inc. v. Mutual Fire, Marine & Inland Ins. Co., 504 So.2d 1051, 1054 (La. App. 1 Cir. 1987) (holding appointed counsel ethically prohibited from simultaneously representing carrier and insured when carrier reserves rights on coverage). Previous precedents, however, did not specifically address the practice that is the focus of the instant article — the carrier’s appointment of one of its “panel” counsel to represent the insured on defensive matters, but not coverage issues.

10. Supra, note 1.

11. Id. at 565 (citing Dugas Pest Control of Baton Rouge, Inc. v. Mutual Fire, Marine & Inland Ins. Co., 504 So.2d 1051, 1054 (La. App. 1 Cir. 1987)).

12. Id. at 566.

13. 787 So.2d at 565. The factual recitation in the Belanger opinion indicates the insurance carrier appointed counsel to represent the insured on both defensive and coverage issues. Id. It is unclear from the opinion whether the appointed counsel had an ongoing attorney-client relationship with the carrier, although the court seems to have assumed there was such a relationship. It would seem obvious that in such a case the appointed counsel could not ethically represent the insured on coverage issues adverse to the carrier. The court, however, recognized the insured’s right to select independent counsel on all issues, without drawing a distinction between coverage and defense. Id.

14. 01-888 (La. App. 5 Cir. 1/15/02), 807 So.2d 1010.

15. Id. at 1022.

16. 335 F.3d 353, 356 (5 Cir. 2003).

17. Id.

18. Id. The Trinity court followed Nat’l Union Fire Ins. Co. v. Circle, Inc., 915 F.2d 986, 991 (5 Cir. 1990), where the 5th Circuit noted an insured could state a claim for breach of the insurer’s duty to defend if the insured could prove the separate counsel provided by the insurer was “objectively inadequate.” The Nat’l Union court, however, did not discuss or define what might amount to “objectively inadequate” counsel.

19. Id. at 356, note 3 (internal citations omitted).


22. Johnson, supra note 8, at 19.

23. 787 So.2d at 566-67.

24. Id. at 567.

25. See Johnson, supranote 8, at 20-21 (“The insurer [in Smith] did not argue that it had a Cumis endorsement, which it almost certainly would have done if its policy had contained such an endorsement.”).
Why Do You Need to Know About Domestic Violence?

How Attorneys Can Recognize and Address the Problem

By Kathleen Finley Duthu

Most attorneys would likely agree that domestic violence is a serious social problem. However, they can mistakenly believe that domestic violence doesn’t have anything to do with them—their family, friends, community or law practice. This misunderstanding exists even though Louisiana had the second highest rate of men killing women in the nation for 2002 and has consistently ranked among the worst five states. Between Jan. 1, 1997, and Sept. 30, 2004, the statewide Louisiana Protective Order Registry (LPOR) had received almost 103,000 orders issued by civil, criminal and juvenile courts to prevent further abuse. Also, studies suggest that between 3.3 and 10 million children witness some form of domestic violence in their home every year. This article will provide an overview for attorneys who don’t regularly practice domestic violence-related law but should be able to recognize and address the problem.

Domestic violence can have far-reaching impact on almost any type of legal practice, community or family, whether located in a rural small town or a large urban area in any state. While criminal and family law practice are the most obvious, domestic violence issues can exist in almost every area of the law, including tort, health care, tax, property, immigration, international, housing, employment, corporate, public benefits and bankruptcy. For example, a wife might seek relief from federal tax liability because her abusive husband coerced her to sign the joint tax return. An employer must defend a wrongful death action alleging it failed to respond to an employee’s risk of domestic violence on the job. An immigrant might ask whether she will be able to stay in the United States if she leaves her abusive husband and whether she can get the children back if he takes them to Mexico as he has threatened.

Even experienced attorneys may not know when domestic violence is involved in some of their cases. A client may minimize or not tell for a variety of reasons, including fear of retaliation, belief that the attorney would not take the case, shame and embarrassment, and lack of understanding of relevance to the legal case. Every attorney should have an adequate understanding of the dynamics to recognize and address the issue when it exists. Indeed, the present and future safety of your client or your client’s family may depend on it.
Colloquially, the term “domestic violence” is used synonymously with “battering” and refers to intentional acts of physical, sexual, emotional and/or psychological abuse perpetrated against a current or former intimate or dating partner. The perpetrator uses various forms of abuse to obtain or maintain power and control over the victim. Physical and sexual assaults are part of a coercive behavior pattern that also can include threats, insults, name-calling, intimidation, isolation, economic control, harming pets, destroying personal property and injuring children. The level of violence and risk of serious injury or death increases dramatically when the victim is trying to leave or has recently left the relationship and the batterer fears losing his power and control.

Domestic violence crosses all geographic, socioeconomic, racial, cultural, religious, educational and occupational boundaries. The overwhelming majority of domestic violence is committed by men against women, although some women are abusive to their male or female partners. It occurs with about the same statistical frequency in heterosexual and homosexual relationships, but most Louisiana domestic violence laws do not apply to same-sex partners.

Past and current victims of domestic violence are over-represented in the welfare population. That is not surprising since domestic violence can seriously affect a victim’s ability to financially support herself and her family. During and after the relationship, the abuser can interfere with the victim’s efforts to find and maintain employment and prevent her from furthering her education and career. Batters are less likely than non-batters to pay child support fully and consistently. Domestic violence is also an important cause of homelessness for women and children.

Unfortunately, our society seems to blame the victim who stays in or returns to the relationship more than the perpetrator who abuses her. Leaving an abusive relationship is usually a long, difficult process, and there are practical and rational reasons for not doing it sooner. Considerations may include the frequency and severity of the abuse, fear of retaliation, isolation from family and support systems, religious beliefs and fear of losing child custody. Batters frequently threaten to kill the victim if she ever leaves or to take the children where she will never find them. There is a dramatically elevated rate of batterers physically and sexually abusing their children, and there are reasons to believe that the risk actually increases after separation because of the mother’s inability to monitor or intervene and the batterer’s common retaliatory tactics.

Also, most of these relationships are not violent all of the time, and batterers can have their good qualities. The happier times may lead the victim to believe that things will get better and her partner will change his behavior. Understandably, this frustrates attorneys, judges, relatives and others trying to help, but they should remember that most victims do eventually permanently leave the relationship.

Economic dependence is often the most practical reason for staying or returning. Even if the victim is a highly paid professional, all of the money is likely tightly controlled by the abuser. If they are not married, she is not entitled to any of “his” property even if they have lived together. Public assistance for food, housing, child care and medical care is severely limited. Hiring an attorney is often too expensive, especially if there will be protracted litigation, and navigating the court system by herself can be very intimidating.

In addition to presenting legal options, an attorney should address the client’s non-legal needs and the likelihood that the violence will increase upon separation and taking legal action. Couples’ counseling and mediation generally are not appropriate in domestic violence situations because of the significant risk of physical and emotional harm and imbalance of power in the relationship. If the victim decides to pursue legal options, the attorney should let her know when the defendant will be served with any pleading so she can take steps to protect herself if needed. The address and parish of the residence of each petitioner and person on whose behalf a petition for protective order, injunction or child custody involving domestic violence is filed may remain confidential with the court.

Safe living arrangements are just one important part of safety planning for victims. Domestic violence shelters and programs have specially trained advocates to assist with individualized safety plans and counseling for the victims and their children. Advocates also conduct lethality assessments to help determine the level of risk of the batterer causing serious harm or death. You can contact your local shelter or battered women’s program or the Louisiana Coalition Against Domestic Violence for information and referrals. In addition, there are several national organizations and Louisiana legal service providers with experience handling domestic violence-related issues that can share their expertise and resource materials.

Louisiana has several civil and criminal domestic violence statutes and numerous laws in other practice areas that can be used in cases involving abuse. There are also federal civil and criminal laws that apply to domestic violence and related legal problems such as immigration, tax and housing. The following Louisiana civil laws are particularly useful to assist victims who are presently in danger of further abuse:

- Domestic Abuse Assistance Act;
- Protection from Dating Violence Act;
- Injunction Against Abuse Ancillary to a Petition for Divorce; and
- Post-Separation Family Violence Relief Act.

Victims can use the Domestic Abuse Assistance Act or Protection from Dating Violence Act to petition for a civil ex parte temporary restraining order (TRO) and protective order against the abuser and are not required to pre-pay court costs to file. After the petitioner shows immediate and present danger of abuse, the court may grant a TRO valid for up to 20 days. If the petitioner proves the
allegations of abuse by a preponderance of the evidence at a contradictory hearing, the court can issue a protective order valid for up to 18 months. Relief can include, but is not limited to, the following:

- prohibiting the defendant from abusing or harassing petitioner;
- restraining defendant from going near petitioner’s residence or workplace;
- awarding use and possession of property such as a car;
- granting petitioner possession of the residence to the exclusion of the defendant;
- awarding temporary child custody and visitation; and
- ordering payment of temporary child and spousal support.

Similarly, protective orders issued by a juvenile court pursuant to the Children’s Code’s Domestic Abuse Assistance Act are valid for up to six months. However, if it is for the protection of a minor child who has been sexually molested, the order will be valid at least until the child turns 18 years old.

The LPOR has standard forms for the petitions and orders available at local courthouses and on its Web site and computer software. The clerk of the issuing court must promptly transmit the Uniform Abuse Prevention Order to the LPOR to enter the TRO or protective order into its database. Violations of valid protective orders can be punished by civil contempt of court or by arrest and prosecution for the misdemeanor crime of violation of a protective order. Federal law requires states to give full faith and credit to protective orders issued by a court of another state or an Indian tribe and makes interstate violation of a protective order a federal crime.

The Post-Separation Family Violence Relief Act creates a legal presumption that a parent who has a history of perpetrating family violence shall not be awarded sole or joint custody of the children and can be used in conjunction with a petition for divorce and/or child custody. This can be especially helpful since batters seek custody much more frequently than do non-battering fathers.

The court shall only supervised visitation with the abusive parent conditioned on participation in and completion of a treatment program. Also, certain orders and judgments in family violence cases must contain an injunction, and violation of the injunction shall result in termination of all court-ordered visitation.

The legal and practical advice of an attorney is especially important because many domestic violence victims have never previously reported the abuse to police, physicians, counselors, family or friends. The actions and attitudes of judges, lawyers and their staff members can have a tremendous impact on whether the victims will successfully and permanently leave the abusive relationship. Legal professionals must do their best to recognize and address domestic violence when it exists in their cases and realize that the problem may affect their own practice, colleagues, neighbors or family.

FOOTNOTES


2. Types of orders in the Registry for period Jan. 1, 1997 through Sept. 30, 2004, report dated Oct. 14, 2004, provided by the executive director of the LPOR to the Tulane Domestic Violence Clinic. The LPOR is maintained by the Office of the Judicial Administrator, Supreme Court of Louisiana. It is a statewide repository for civil (temporary restraining order, protective order, preliminary injunction, permanent injunction) and criminal (bail restrictions, peace bonds, sentencing order, probation condition) orders issued by criminal, civil and juvenile courts for the purpose of preventing harassing, threatening or violent acts against a spouse, intimate cohabitant, dating partner, family or household member. For the period of Jan. 1, 1997, through Sept. 30, 2004, the Registry had received a total of 102,954 civil and criminal orders.


4. The specific legal definitions of domestic violence often differ from state to state and from criminal to civil laws. It is sometimes called “family violence,” “spousal abuse,” “dating violence” or “domestic abuse.” Some of the Louisiana civil and criminal definitions are broad enough to include acts committed against family and household members that could also be considered “child abuse” or “elder abuse.” Read each statute carefully to ensure that it applies to a particular situation.

5. The dynamics are best illustrated by the Power and Control Wheel diagram developed by the Domestic Abuse Intervention Project in Duluth, Minn., and available at http://www.duluth-model.org/images/power.gif.


7. Id.

8. Id.
9. The Protection from Dating Violence Act (La. R.S. 46:2151) can be used to obtain a TRO and protective order against a dating partner of the same or opposite sex. However, the Domestic Abuse Assistance Act (La. R.S. 46:2131 et seq.) and the crime of Domestic Abuse Battery (La. R.S. 14:35.3) apply to current or former cohabitants of the opposite sex but not of the same sex.

10. ABA, supra note 6.

11. A study of domestic violence survivors found that 74 percent of employed battered women were harassed by their partner while they were at work. In a national survey, 24 percent of women who had experienced domestic violence said that the abuse caused them to arrive late at work or miss days of work. Family Violence Prevention Fund, “The Facts on the Workplace and Domestic Violence” at http://endabuse.org/resources/facts/workplace.pdf.


13. Id. at 117. See also La. R.S. 40:506(D) enacted in 2004 to prohibit local public housing authorities from terminating tenancy or other assistance because a household member or resident was a victim of domestic abuse, dating violence or family violence.

14. Id. at 154.


16. The online guide available at http://www.LawHelp.org/LA offers Louisiana pro se litigants free legal information and referrals to free services. The Family and Children section has a link to Domestic Violence information. The Web site also offers resources for lawyers and other legal advocates working with lower income clients.

17. Bancroft and Silverman, supra note 12, at 204. See La. R.S. 9:363 prohibiting courts from ordering mediation in certain cases if a spouse or parent satisfies the court that she or he or any of the children have been a victim of family violence perpetrated by the other spouse or parent.

18. La. C.C.P. art. 891(B); see also Confidential Address Form for Petition for Protection from Abuse pursuant to La. R.S. 46:2131, et seq., La. R.S. 46:2151, La. R.S. 13:4248 or La. Ch. C. art. 1564 et seq. (LPOR Form F).

19. The Louisiana Coalition Against Domestic Violence can be contacted at (225)752-1296. Its statewide 24-hour crisis hotline is 1-888-411-1333. The Web site (www.lcadv.org) lists contact information for approximately 20 domestic violence shelters and programs located throughout the state.


21. For example, Tulane Law School started the first Domestic Violence Clinic in Louisiana in 2002 to exclusively provide civil legal assistance to low-income domestic violence victims in Orleans Parish and to train law student attorneys. The Tulane Domestic Violence Clinic also has graduate social work interns to assist clients with safety planning and other non-legal needs as well as community partners, including the New Orleans YWCA Battered Women’s Program.


28. La. R.S. 46:2136F.

29. La. R.S. 46:2136A.

30. La. Ch. C. art. 1570F.

31. Id.

32. Practitioners and pro se petitioners should use the latest version of the standardized LPOR forms and instructions. Visit the Web site (www.lpor.org/pro_forms.htm) or contact LPOR at (504)568-5749 for more information.


34. La. R.S. 13:4611.

35. La. R.S. 14:79.


38. La. R.S. 9:364.


40. La. R.S. 9:364C.


ABOUT THE AUTHOR

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He has served as director of Capital Area Legal Services, as a probation monitor for the Office of Disciplinary Counsel and as an examiner and grader for the Louisiana bar exam. He is a member of the Dean Henry McMahon American Inn of Court. He served as 2001-04 chair of the LSU Law Chancellor’s Council and was a founding member of the National Alumni Board.

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She received the LSBA President’s Award in 2000, the Louis A. Martinet Legal Society, Inc. President’s Award in 2000 and 2004, the Martinet A.P. Tureaud Award in 2003 and the NO/AIDS Task Force Humanities Award in 2003. She is the 2005 recipient of the CityBusiness Leadership in Law award and received the YLC Role Model Award in 2004 and the YWCA Role Model Award in 2001.

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

Buzz has served in the Louisiana State Bar Association (LSBA) House of Delegates since 1986 and on the LSBA Nominating Committee since 1995. He was chair of the LSBA Public Access and Consumer Protection Committee from 1997-2000 and in 2004.

He has been a member of the American Bar Association since 1977, the Louisiana Organization for Judicial Excellence since 1991 and the Louisiana Bar Foundation since 1987. He received the LSBA President’s Award in 1999 and the Silver Beaver Award from the Evangeline Area Council Boy Scouts of America in 2005.

In his community, Buzz is active in the scouting program through Evangeline Area Council Boys Scouts of America, serving as assistant scout master for Troop 405 since 1992 and handling Louisiana hunter safety instruction since 1999. He also is a member of Our Lady of Fatima Catholic Church.

Buzz and his wife, Renee Abadie Durio, have been married for 31 years and are the parents of three children.
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James R. Nieset
Fourth Board District
James R. Nieset of Lake Charles is a partner/ shareholder in the Lake Charles firm of Plauché, Smith & Nieset. He received a BS degree in 1964 from Tulane University and his JD degree in 1967 from Tulane Law School. He was admitted to practice in Louisiana in 1967.

James is treasurer and president of the Southwest Louisiana Bar Association. He is a member of the Defense Research Institute, the American Maritime Association and the Louisiana Association of Defense Counsel.

He also is a member of the Tulane University President’s Council, the Tulane University Law School Dean’s Council and the Tulane University Admiralty Law Institute Planning Committee.
James received the Dermot S. McGlinchey Lifetime Achievement Award from Tulane University in 2000 and the Volunteer of the Year Award from Tulane University in 1992.

He and his wife, Mercedes (Mercy) Plauché Nieset, have been married for 39 years and are the parents of four children.
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Celia R. Cangelosi
Fifth Board District

Celia R. Cangelosi of Baton Rouge is a sole practitioner in Baton Rouge. She received a BA degree in 1976 from Louisiana State University and her JD degree in 1976 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 1976.

Celia has served as a member of the East Baton Rouge Parish Indigent Defender Board since 1996 and is a current member of the United States District Court (Middle District of Louisiana) Criminal Justice Act Panel. She received the Baton Rouge Bar Association’s President’s Award in 2001 and the Double Century Club award for her pro bono work.

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William M. Ford
Sixth Board District

William M. Ford of Alexandria is the owner of the Ford Law Firm in Alexandria. He received his LLB and JD degrees in 1961 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1961.

William has served in the Louisiana State Bar Association House of Delegates and on the Nominating Committee. He chaired the State Local Bar Liaison Committee from 1996-97.

He currently serves as probation monitor for the Louisiana Office of Disciplinary Counsel. He is a member of the Louisiana Bar Foundation and chairs the Alexandria Civil Service Commission. He is the recipient of the Monte M. Lemann Award from the Louisiana Civil Service League.

In his community, William is a past president of the Alexandria Kiwanis Club and former chair of the board of trustees of the First United Methodist Church of Pineville.

He and his wife, Zina Tompkins Ford, have been married for 16 years. He has three children.

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Richard L. Fewell, Jr.
Seventh Board District

Richard L. Fewell, Jr. of West Monroe is owner and president of the West Monroe firm of Richard L. Fewell, Jr., A.P.L.C. He received his BA degree in 1984 from the University of Louisiana at Monroe and his JD degree in 1988 from Loyola University Law School. He was admitted to practice in Louisiana in 1988.

Richard is a member of the American College of Legal Medicine. He is board-certified as a civil trial advocate and is a member of the National Board of Trial Advocacy.

In his community, he is a 32nd degree mason and a member of the Shriners, the Rotary Club of Monroe and the Chamber of Commerce.

Richard and his wife, Judith Fewell, have been married for 16 years and are the parents of two children.

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Edwin L. Blewer, Jr.
Eighth Board District

Edwin L. Blewer, Jr. of Shreveport is of counsel to the Shreveport law firm of Cook, Yancey, King & Galloway. He received his BS degree, cum laude, in 1956 from Louisiana State University and his LLB degree in 1957 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1957.

Edwin is the chair emeritus of the Louisiana State Bar Association (LSBA) Committee on Alcohol and Drug Abuse and is active in the Louisiana Lawyer Assistance Program. He is a recipient of the LSBA President’s Award.

He is a member of the American Bar Association and served as chair of the Commission on Lawyer Assistance Programs from 1988-2002. He is a member of the Shreveport Bar Association, having served as president in 1988.

In his community, Edwin serves on the Louisiana Commission on Alcohol and Drug Abuse, the Louisiana Commission on Addictive Disorders, and the Council on Alcoholism and Drug Abuse of Northwest Louisiana.

He and his wife Julia have been married for 42 years and have two children.

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Pamela W. Carter
At-Large Member
Pamela W. Carter of LaPlace is a partner in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz. She received her BA degree in 1989 from Louisiana State University and her JD degree, cum laude, in 1995 from Southern University Law Center. She was admitted to practice in Louisiana in 1996.

Pamela has served on the Editorial Board of the Louisiana Bar Journal. She also has served on the Louisiana State Bar Association (LSBA) Multijurisdictional Practice Committee and the LSBA Community Action Committee.

She is a member of the American Bar Association, the Defense Research Institute and the International Association of Defense Counsel.

Pamela and her husband Jerome have been married for 16 years and are the parents of two children.

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Paula Hartley Clayton
At-Large Member
Paula Hartley Clayton of Port Allen is a sole practitioner in Port Allen and a hearing officer for the 18th Judicial District Court (JDC), hearing all family law-related cases in the parishes of Iberville, Pointe Coupee and West Baton Rouge. She received a BS degree in 1988 from Southern University and her JD degree in 1991 from Southern University Law Center. She was admitted to practice in Louisiana in 1992.

She served as an assistant public defender in the 18th JDC from 1995-98. She was appointed as an assistant district attorney for the 18th JDC in 2000 and served in that position until her appointment as a hearing officer.

Paula is a member of the Louis A. Martinet Legal Society (former secretary), the Baton Rouge Bar Association (Pro Bono Section, Family Law Section, former co-chair of the Uniforms for Kids project), Forum 35 (former board member) and the Southern University Law Center Inn of Court. She is a former member of the 18th JDC Public Defender Board.

She is a member of the St. Augustine Catholic Church in New Roads. Paula and her husband Antonio have been married for four years and are the parents of one child.

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Shannan L. Hicks
At-Large Member
Shannan L. Hicks of Shreveport is an associate in the Shreveport office of Jeansonne & Remondet. She received a BA degree in 1992 from Louisiana State University and her JD degree in 1995 from Tulane Law School. She was admitted to practice in Louisiana in 1999.

Shannan is a member of the Louisiana Bar Journal/Editorial Board, served as the District 8 representative on the Louisiana State Bar Association (LSBA) Young Lawyers Section Council and was a member of the 2003-04 Leadership LSBA Class.

She is a member of the Shreveport Bar Association (executive board member), the Harry Booth/Judge Henry Politz American Inn of Court (barrister) and the Black Lawyers Association of Shreveport-Bossier (CLE chair).

In her community, Shannan is treasurer of the Red River Revel Governing Board, advisory planning chair of the Junior League of Shreveport-Bossier and vice president of the Alpha Kappa Alpha Sorority, Sigma Rho Omega Chapter.

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John M. Church
Faculty, LSU Paul M. Hebert Law Center
John M. Church of Hammond is the Harry Redmon Professor of Law at Louisiana State University Paul M. Hebert Law Center. He received a BS degree in 1983 from Central Michigan University, an MS degree in 1985 from the University of Illinois and his JD degree in 1988 from the University of Colorado Law School. He was admitted to practice in Colorado in 1988.


He and his wife, Adriana White, have been married for one year. He is the father of one child.

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Raymond T. Diamond
Faculty, Tulane Law School

Raymond T. Diamond of Baton Rouge is a professor at Tulane Law School. He received a BA degree in 1973 from Yale College and his JD degree in 1977 from Yale Law School. He was admitted to practice in Louisiana in 1977 and in Washington, D.C., in 1980.

Raymond served on the Louisiana State Bar Association Board of Governors in 1994-95. He was a member of the Bar Admissions Advisory Committee in 1998-2000 and the Legal Resources Committee in 1995-97.

He is a member of the American Bar Association, the American Society for Legal History and the National Bar Association.

He is the recipient of the 2003 David J. Langum, Sr. Prize for his book, Brown v. Board of Education: Caste, Culture, and the Constitution, awarded by the Langum Project for Historical Literature. He is the recipient of the 1999 Harlan B. Carter/George S. Knight Freedom Fund Award, presented by the Civil Rights Defense Fund of the National Rifle Association.

Raymond serves on the board of directors of the Supreme Court of Louisiana Historical Society and on the executive committee of the Association of American Law Schools’ Section on Legal History.

He and his wife, Alfreda Sellers Diamond, have been married for 14 years and are the parents of six children.

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Joseph W. Mengis
Louisiana State Law Institute

Joseph W. Mengis of Baton Rouge is a partner in the Baton Rouge firm of Perry, Atkinson, Balhoff, Mengis & Burns, L.L.C. He received a BS degree in 1989 from Louisiana State University and his JD degree in 1992 from LSU Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1992.

Joseph is assistant treasurer of the Louisiana State Law Institute and a member of its Successions and Donations Committee and Coordinating Committee. He teaches succession and donations for the Barbri Bar Review course. He is AV-rated by Martindale-Hubbell.

In his community, he is a business law teacher at Catholic High School in Baton Rouge, a board member of Manresa House of Retreats and secretary-treasurer of Vision 21 Foundation.

Joseph and his wife Stacey have been married for 11 years and are the parents of three children.

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James E. Boren
Chair, House of Delegates Liaison Committee

James E. Boren of Baton Rouge is a sole practitioner in Baton Rouge. He received a BA degree in 1971 from Louisiana Tech University and his JD degree in 1975 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1975.

James serves on the Louisiana State Bar Association’s (LSBA) House of Delegates and the Right to Counsel Committee. He is a hearing committee chair for the Louisiana Attorney Disciplinary Board and is a past chair of the LSBA Criminal Law Section.

He is a member of the Louisiana Association of Criminal Defense Lawyers, the National Association of Criminal Defense Lawyers and the Louisiana Indigent Defense Task Force and is an adjunct professor at LSU Paul M. Hebert Law Center.

He and his wife Teresa have been married for 34 years and are the parents of three children.

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Timothy A. Maragos
House of Delegates Liaison Committee

Timothy A. Maragos of Lafayette is affiliated with the Lafayette firm of John E. Ortego & Associates and is staff attorney (in-house counsel) for State Farm. He received a BA degree in 1976 from New Mexico State University and his JD degree in 1988 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1988.

Timothy serves in the Louisiana State Bar Association (LSBA) House of Delegates, is co-chair of the LSBA Public Information Committee and chairs the Louisiana Attorney Disciplinary Board Hearing Committee. He is a 2001 recipient of the
LSBA President’s Award.

He is a member of the Lafayette Parish Bar Association.

In his community, Timothy is enrolled in studies for ordination to permanent diaconate in the Diocese of Lafayette. He chairs the board of directors of the Family Violence Intervention Program in Lafayette and is a member of the board of the Lafayette Community Correctional Center.

Timothy and his wife, Madelyn Broussard Maragos, have been married for 25 years and are the parents of two children.

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Andrew Reed
House of Delegates Liaison Committee

Andrew Reed of Morgan City is a partner in the Morgan City firm of Aycock, Horne & Coleman. He received a BS degree in 1970 from the University of Southwestern Louisiana (University of Louisiana-Lafayette) and his JD degree in 1975 from Louisiana State University Paul M. Hebert Law Center. He was admitted to practice in Louisiana in 1975.

Andrew has served in the Louisiana State Bar Association (LSBA) House of Delegates since 1986, representing the 16th Judicial District. He served on the House of Delegates Liaison Committee to the Board of Governors in 2001-02 and chaired the committee in 2003-04.

He is a member of the St. Mary Bar Association, the Inn on the Teche Inn of Court and the Louisiana Bankers Association (Bank Counsel Section).

He was named Rotarian of the Year by the Morgan City Rotary Club in 1997. He is a member of the Morgan City Rotary Club, the St. Mary Chamber of Commerce and the St. Mary Shrine Club.

Andrew and his wife Karen have been married for 15 years. He is the father of three children.

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Judena “Judy” Boudreaux of New Orleans has joined the Louisiana State Bar Association (LSBA) staff as communications director.

In this position, Boudreaux oversees all of the LSBA’s communications activities, both internal and external. This includes print publications, the Web site, electronic communications and marketing. Supervising a staff of four, she is directly responsible for media relations and is the primary contact for Louisiana’s local and specialty bar associations.

Boudreaux studied print journalism at Southern University in Baton Rouge and public administration at Central Michigan University in Southfield, Mich.


Boudreaux has served as media consultant, canvas coordinator and fundraising and schedule coordinator for various political candidates in Louisiana and Michigan.

She is a Junior Achievement and Dryades YMCA volunteer, an Each One Save One mentor, a member of the National Association of Black Journalists and the NAACP. She is also a contributing writer for the New Orleans Tribune.

Judy Boudreaux

Boudreaux Joins LSBA Staff as Communications Director

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Applications Being Accepted for Bankruptcy Law Certification

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

You will be required to apply with both the American Board of Certification (the testing agency) and the LBLS; to avoid a delay in board certification, you should apply with both simultaneously. Contact information concerning the American Board of Certification will be provided with the LBLS application form(s).

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

Catherine S. Zulli, Executive Director
Louisiana Board of Legal Specialization
601 St. Charles Ave., New Orleans, La. 70130-3404
Fax (504)528-9154

PLEASE PRINT OR TYPE

Name ________________________________
Address ________________________________
City/State/Zip ________________________________

Please check either or both:

___ Business Bankruptcy Law
___ Consumer Bankruptcy Law

Attorneys Apply for Certification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his or her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, no later than June 30, 2005.

It is also requested that any knowledge of sanctions or other professional action against an applicant be reported during this comment period.

Estate Planning and Administration
John P. Cerise .................. Harahan
Stephen E. Covell .............. Baton Rouge
Alyce B. Landry ............... Prairieville
Regina O. Matthews ......... New Orleans
Joseph W. Mengis .......... Batou Rouge
Jane I. Paddison ........... Covington
Dawn M. Rawls ........... New Orleans
Chris Anthony Verret ........ Lafayette

Family Law
Cynthia A. De Luca.......... New Orleans
David Greenberg .............. Gretna
Charlene O. Kazan ........... Covington
Joan M. Malbrough .......... Houma
Lawrence E. “Tony” Morrow, Jr. .......... Lafayette
Camille E. Saltz ............. Houma
Jerri G. Smitko ............... Houma
D. Randy Wagley ........... Lafayette
Cindy Williams ............ New Orleans

Tax Law
John P. Cerise .................. Harahan
Michele M. Echols .......... Covington
Alyce B. Landry .......... Prairieville
Joseph M. Placer, Jr. ........ Lafayette
Michael A. Tusa .......... New Orleans

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Effective July 1: Free Access to Fastcase Research

Effective July 1, Louisiana State Bar Association (LSBA) members will have free, unlimited access to Fastcase, Inc.’s online legal research services. The contract between the LSBA and the online legal research software provider was executed last month, following Board of Governors’ approval in January.

The Fastcase service, including unlimited access to Fastcase’s 50-state law library, will be available free to every active member of the association.

“We are excited to work with the LSBA on this exciting member benefit,” said Fastcase’s Chief Executive Officer Ed Walters. “Working with bar associations is a high priority for Fastcase, and we hope that Louisiana is the first state of many to partner with us on this important member benefit.”

Although many other state bars offer research member benefits, Louisiana is the first bar association to provide a 50-state law library.

“The Louisiana State Bar Association is extremely happy to announce its agreement with Fastcase to provide an online legal library to all members of the Louisiana Bar,” said LSBA President Michael W. McKay. “This library is being provided to our members as a benefit at no additional cost. It will narrow the gap in resources between small firm and big firm lawyers and will help us all to better represent our clients and improve the quality of justice. We are excited about our relationship with Fastcase in offering what is probably our most important member benefit ever.”

The LSBA/Fastcase library includes:
- all opinions from the U.S. Supreme Court from the founding of the Court;
- all reported opinions from the U.S. Circuit Courts of Appeal from 1924-present;
- Federal District Court cases from 1932-present;
- Federal Bankruptcy cases from 1 B.R. 1 to present;
- for all 50 states, all reported state supreme court and court of appeals opinions from at least 1950 to the present;
- the United States Code (framed from the official U.S. Government source);
- the Code of Federal Regulations (framed from the official U.S. Government sources); and
- the administrative regulations of most states (framed from official sources).

While providing state statutes, regulations and a complete national law library including federal and state cases, Fastcase allows members to use innovative search options never before available to legal researchers. Such options include sorting tools to find the most relevant cases, the option to jump to the most relevant paragraph in a case, and citation analysis tools that identify seminal cases in lists of search results. Another valuable option is Fastcase’s court-admissible, dual-column printing feature, which formats cases in Word or PDF.

The Fastcase service will offer LSBA members a variety of search, viewing, reading, printing and authority checking options, as well as customer support in the form of telephone and e-mail support, live chats and frequently-asked-question lists.

“This is the future of legal research,” Walters said. “In the coming year, we look for many other state bars to work with Fastcase to provide cost-effective, comprehensive member benefits like the LSBA’s.”

The Fastcase service will be beneficial to members, but it is not the only online legal research option available to LSBA members. The LSBA also has an agreement in place with LexisNexis® to provide members with comprehensive and reliable content, both online and in print. (See related article on this page.)

LexisNexis Offers LSBA Members Comprehensive Online, Print Research Sources

Louisiana State Bar Association (LSBA) members have several options when it comes to online legal research. The LSBA has teamed up with LexisNexis® to provide members with comprehensive and reliable content, both online and in print.

LexisNexis is the only online provider to offer top analytical sources such as Matthew Bender®, BNA® and CCH®, as well as a premier combination of news and business giants including Dow Jones® and Reuters®, Barron’s® and Bloomberg®, not to mention The Wall Street Journal and The New York Times to the legal market. LexisNexis also offers an extensive collection of public records, annotated codes and caselaw, as well as Shepard’s® Citation Service. Last year, LexisNexis introduced the Louisiana Annotated Statutes in print, which have been designated an Official Edition of the Louisiana Revised Statutes by the Louisiana Secretary of State.

LexisNexis and the LSBA have joined forces to offer special packages and pricing designed for attorneys in solo or small law firms. The exclusive LSBA member benefits provide access to the LexisNexis® Total Research System, offering the broad perspective an attorney needs to succeed in his/her legal career. Take advantage of precision research capabilities using Lexis® Search Advisor, Case Summaries, LexisNexis® Headnotes, and the exclusive Shepard’s® Citations Service.

The LSBA members are invited to visit the LexisNexis member benefits page for easy access to all the services LexisNexis offers. www.lexisnexis.com/partners/barassociations/cobrand/louisiana.

LexisNexis® Louisiana Annotated Statutes also are available through the LexisNexis bookstore at http://bookstore.lexis.com/bookstore/catalog.
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-001¹

Lawyer Retirement: Ethical Requirements to Client

A lawyer leaving the practice and closing his office should notify his clients of his departure from the practice, make arrangements for the surrender of clients’ files and return all monies or properties in safekeeping.

A lawyer closing his practice is required to exercise reasonable diligence in providing proper advance notification to his clients of his decision to terminate his practice.² He must give adequate time to the client to employ other counsel, must surrender the clients’ files and return any advance fee or property of the client held in safekeeping.³

Guidelines

Some guidelines are helpful in handling different client cases and files:

- If the case is in active litigation, we recommend that, in order to protect the client’s interests, the client should be given reasonable notice of the impending retirement. In addition to written notice, the lawyer should consider personal and telephonic communication. The client should be advised of any pending court dates and directed to employ other counsel. The retiring lawyer also should surrender all papers and property to which the client is entitled — especially the client’s file — to the client’s new attorney or to the client. The lawyer should seek to obtain a signed receipt from each client and/or his new counsel for the relinquished file and/or property.

- If the retiring lawyer is enrolled of record in any litigation, he should file a motion to withdraw and substitute counsel with each court in which the clients’ files/cases are pending and comply with all applicable court rules.

- Files in which the lawyer is still enrolled but which have had no recent litigation or in which suits have been settled require that the lawyer file a motion to withdraw in each such matter and/or a motion to dismiss. Procedures detailed above pertaining to client notification and return of client papers, property and file(s) would also be appropriate here.

- Each active or open client file not tendered at the client’s request to other counsel should be individually analyzed and the client should be advised in writing regarding any steps he should take to protect his interests.

- Retention or destruction of closed files should be determined in accordance with the rules and a file retention policy developed by the attorney based on the nature of the file and good judgment.

- Transactional cases should be handled in much the same manner as described above. However, if the lawyer has been appointed as agent for service of process for any corporation or company, he should also notify the client of the need for it to appoint a new agent.

- Should a client’s whereabouts be unknown, it is our opinion that the lawyer should send out a form letter to each such client using the client’s last known address in an attempt to notify the client of the lawyer’s change in status/withdrawal/termination of representation and the opportunity for the client, if desired, to obtain his files and/or property from the lawyer or the lawyer’s representative.

Records Retention

Rule 1.15 of the Louisiana Rules of Professional Conduct (2004) requires the lawyer to keep and maintain complete
records of all client trust account funds and other client property for a period of five (5) years after termination of the representation. This record-keeping requirement would apply to ALL client matters, including all those addressed above.

While we cannot state a specific period of time in which a lawyer must keep a client’s files — particularly for clients the lawyer is unable to locate — we believe that the lawyer has an obligation to continue to safeguard client property/ funds, which she may be holding for such clients. The lawyer should also be aware that there is still no prescriptive period on most disciplinary complaints. Accordingly, properly disposing of some legal files may not be entirely prudent after termination of representation, as it would be difficult for the lawyer to defend complaints when the files are unavailable. Unfortunately, the lawyer will have to determine on a “case-by-case” basis how to address this issue and should develop a policy for uniformly handling closed files.

A lawyer who is a member of a firm is at less of a disadvantage in terminating his practice than a solo practitioner, as he probably has the comfort of the assistance of other firm members who can attend to the orderly disposition of files, while the solo practitioner is not afforded that luxury. Both should either give or cause to be given timely written notice to clients to permit them to seek other counsel. Any solo practitioner also should consider executing an agreement with another attorney to take over the orderly handling and disposition of his clients’ files. Care should be taken that the confidentiality of clients’ files be maintained.

Keeping Your License
If a lawyer believes she might return to practice at some later date, she should familiarize herself with the Mandatory Continuing Legal Education (MCLE) rules and dues requirements before leaving the practice. Retiring lawyers often desire to retain their licenses even in retirement. Unless otherwise exempt because of age, they will be required to comply with the MCLE requirements. The retired lawyer also would be required to file his annual registration statement (included as part of the annual Louisiana State Bar Association dues/Louisiana Attorney Disciplinary Board assessment billing). Should the lawyer desire to surrender his license and stop practicing but still be affiliated with the Louisiana State Bar Association in an “inactive” status, he could reduce his dues, disciplinary assessment and MCLE obligations during the period of formal inactivity.

Summary
In summary, a lawyer closing his practice should with reasonable diligence notify his clients of his retirement so that they might have adequate time to employ other counsel. He must surrender the client’s files to the client or other counsel and must return any advance, unearned fees and client property held in safekeeping. The lawyer should analyze each file he has not been asked to tender to the client or another attorney and should advise the client as to protection of the client’s interests. Disposition of closed files should be handled in accordance with a file retention policy developed by the attorney or law firm.

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. This opinion does not address closure of a practice because of death or incompetence of the attorney. For excellent discussions of that subject, see ABA Formal Opinion 92-369, 1992, and also, ABA Journal, November 2003, p. 40. Also, see Rule 1.3 of the Louisiana Rules of Professional Conduct (2004): “A lawyer shall act with reasonable diligence and promptness in representing a client.”

3. Rule 1.16(d) of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, “. . . (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client’s new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.”

4. Louisiana Rules of Professional Conduct (2004), Rule 1.15. See also Section 28(A)(2) of

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Rule XIX, Part B of the Rules of the Supreme Court of Louisiana.

5. A published advisory opinion on that topic will be forthcoming in the future.

6. Although, see Section 31 of Rule XIX, Part B, of the Rules of the Supreme Court of Louisiana, amended effective May 30, 2003, which provides for 10-year liberative prescription where the mental element of the disciplinary complaint is merely negligence.

7. A good document retention policy would include advising clients in the lawyer’s initial engagement letter when the client’s records might later be destroyed (e.g., “X” number of years following termination of the representation).

8. Original wills and original stock certificates or units in a corporation or company, for example, should be safeguarded for the client even if the client could not be found.


11. MCLE Rules (Rule 2 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana) and dues requirements (Article I of the By-Laws of the Louisiana State Bar Association).

12. Lawyers 65 years of age and older are exempt from MCLE by Rule 2 of Rule XXX, Part H, of the Rules of the Supreme Court of Louisiana. Currently, the requirement of MCLE for non-exempt lawyers is 12.5 hours per year, including one hour of ethics and one hour of professionalism (see Rule 3 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana).

13. See Section 8 of Rule XIX, Part B of the Rules of the Supreme Court of Louisiana.

14. Section 3 of Article IV of the Louisiana State Bar Association Articles of Incorporation provides that “…Any member in good standing may be enrolled as an inactive member upon his written request to the Secretary, who shall then notify the Supreme Court accordingly.” Section 3 of Article I of the By-Laws of the Louisiana State Bar Association provides, in part, that “…Inactive members shall not be required to pay dues …” See also Section 5 of Article I of those By-Laws regarding reinstatement. Section 1 and Section 7 of Rule 2 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana, exempts members not engaged in the practice of law in the State of Louisiana from MCLE requirements. Section 8(G) of Rule XIX, Part B of the Rules of the Supreme Court of Louisiana, provides for exemption for retired and inactive members from payment of the annual disciplinary assessment to the LADB. As an added “reward,” Section 2 of Article I of the By-Laws of the Louisiana State Bar Association provides for active membership status with full dues exemption for 50-year or longer members; those members are also exempt from MCLE requirements and disciplinary assessment. Kindly check with the Membership and MCLE Departments of the Louisiana State Bar Association and the staff of the LADB for further details on the current rules at the time of retirement.
Did you know that Louisiana was one of the first states in the nation to develop an online resource to help pro bono volunteers and public interest attorneys meet their aspirational goal of 50 hours of pro bono publico legal services per year, as provided in Rule 6.1 of the Louisiana Rules of Professional Conduct? That resource is www.probono.net/la, and its introduction has been met with great enthusiasm in the legal community.

Pro bono attorneys hold the key to justice for thousands of poor Louisiana residents, and www.probono.net/la offers attorneys handling pro bono cases some much-deserved help. The site includes a library full of pleadings, articles, forms, training outlines and other items for use in the representation of pro bono clients. The site also includes an events calendar, news of special interest to pro bono and public interest practitioners and e-mail discussion groups (Listservs) to facilitate discussions with other practitioners in specific areas of the law.

Rowena Jones, a managing attorney in Southeast Louisiana Legal Services’ New Orleans office who also serves as Louisiana’s statewide Web site coordinator, said, “One of the main goals of this Web site is to help make it easier on lawyers who want to do pro bono work. The Web site can help lawyers find appropriate pro bono projects and offers plenty of resources online to handle pro bono work. The password-protected library contains hundreds of briefs, pleadings, articles and forms found useful by pro bono and public interest lawyers. Lawyers interested in meeting urgent pro bono needs may find cases online. Those wanting to get involved in pro bono work can connect with one of the programs in Louisiana that meets their needs.”

All that is necessary for you to receive an invitation to join www.probono.net/la is to volunteer to take a single case with your local pro bono program. Then, simply fill out the information in the Civil Law Practice Area of the site so the site administrator can determine your public interest/pro bono connection. Pro bono coordinators from across the state place cases on the site in an effort to demonstrate the great need in the community for pro bono work.

Pro Bono Project volunteer attorney Jennifer Kretschmann of Kretschmann, Griset and Associates browses the pleadings library for family and successions pleadings, power of attorney forms and to read new articles. “I really enjoyed the primer on In Forma Pauperis, which helped me understand the application process,” she said.

Kretschmann brings a common enthusiasm for pro bono work often seen in newer members of the bar, and she is happy to have the resources www.probono.net offers her as she learns the intricacies of legal practice in general and pro bono practice in particular. “I think the probono.net site is a much needed resource, particularly for new attorneys taking their first pro bono case, because poverty presents unique procedural issues and facts. It is great to have an easily accessible bank of pleadings and briefs as a resource to learn whether other lawyers have come across similar problems. Because new attorneys are unfamiliar with poverty issues, the site allows them to benefit from the wealth of experience belonging to those who devote themselves full-time to this type of practice.”

The site, www.probono.net/la, is already an incredibly valuable resource, and it will become even more valuable in the near future. The site will soon include an interactive guide to finding pro bono opportunities around the state, and online training will be possible on the site with new webstreaming technology. Remember, attorneys hold the key to pro bono – and www.probono.net/la can be a tool to help open the gates of justice!

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Administrative Law

Only One Party May Appeal

In 1996, State Farm filed an insurance form with the Louisiana Commissioner of Insurance seeking his approval of it as required by law. When the commissioner disapproved the form, State Farm sought redress from an administrative law judge, who ultimately reversed the commissioner’s decision. His petition for judicial review was met with State Farm’s exception of no right of action, which was granted by the district court, basing its decision on La. R.S. 49:964(A)(2), which states that government entities aggrieved by decisions subject to judicial review are not entitled to it (though State Farm was). The judge also denied his motion to amend his petition to allege that the statute was unconstitutional. The appeals court upheld the district court’s decisions, but suggested that the commissioner might seek declaratory relief. The Supreme Court denied writs. Thereafter, the commissioner filed just such a petition, and the relief sought was granted in the district court, which declared the legislative acts creating the administrative law judges and denying the right of appeal to the government unconstitutional. A direct appeal to the Supreme Court was filed by State Farm.

In Wooley v. State Farm Fire & Casualty Ins. Co., 04-0882 (La. 1/19/05), 893 So.2d 746, the Supreme Court reversed the trial court’s judgment, stating that both the act creating a Division of Administrative Law, including the creation of administrative law judges (ALJs), and the act denying the government the right to seek judicial review are proper exercises of the power of the Legislature, and that the commissioner failed to overcome the presumption of their validity. The court found that the matters ALJs adjudicated were not “civil matters” within the meaning of the Louisiana Constitution and that the ALJs did not have the constitutional mandate of an elected judiciary because they exercise only quasi-judicial functions.

When the Louisiana Administrative Procedure Act was adopted in 1961, all adjudications were heard by an administrative body, such as an agency, board or commission. It was believed that the administrative body did not need the right to seek judicial review (it is difficult to lose before your own administrative body). When the Division of Administrative Law was created in 1995, a new set of circumstances arose; i.e., the agency’s actions were no longer judged by it, but by an independent “judiciary.”

The trial judge wrote interesting reasons for judgment. Of special interest was her description of the administrative
law judges, who were addressed as “judge,” enjoyed a judge’s entrance where they worked, and appeared in robes for photographs, even though four of them were not lawyers (having been grandfathered in when later legislation required legal training) but were law enforcement officers formerly employed by the Department of Public Safety and Corrections.

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Alternative Dispute Resolution

Contract, Tort and Redhibition Claims

Snyder v. Belmont Homes, 04-0445 (La. App. 1 Cir. 2/16/05), ___ So.2d ___.

Purchasers of a mobile home, who were unmarried at the time of the sale, but who married after the act of sale, brought claims against the seller and manufacturer of the mobile home alleging contract, tort and redhibition damages. The tort claims were based on toxic mold in the home that allegedly caused personal injuries to the couple and their newborn child. The manufacturer filed an exception of prematurity alleging that a clause in the purchase agreement required that all disputes must be submitted to binding arbitration. The trial court denied the exception and the manufacturer appealed. The court of appeal found that the broad arbitration clause required that all of the husband’s disputes had to be arbitrated. In a case of first impression in Louisiana, the court of appeal also found that the husband’s tort claims were arbitrable because his claims related back to the purchase agreement. The appellate court found that the wife’s claims were not arbitrable because she was not a signatory to the contract and she had not tacitly ratified the agreement to arbitrate. Finally, the personal injury claims of the newborn child were found not to be arbitrable because those claims did not arise out of the contractual obligation. Furthermore, even outside of the context of the arbitration agreement, Louisiana law does not ordinarily bind children to the contracts their parents sign.

Franchisee Prevents Franchisor, Arbitration Group from Conducting Arbitration

Vishal Hospitality, L.L.C. v. Choice Hotels Intern’l, 04-0568 (La. App. 1 Cir. 3/24/05), ___ So.2d ___.

After the Quality Inns franchisor, Choice Hotels International, Inc. (Choice), filed a demand for arbitration with the American Arbitration Association (AAA) seeking to enforce certain provisions under a franchise agreement that Choice had with its franchisee Vishal Hospitality (Vishal), Vishal filed a petition for injunctive relief and declaratory judgment to prevent Choice and the AAA from instituting and conducting any arbitration proceedings pursuant to the franchise agreement. The trial court granted Vishal a preliminary injunction, enjoining Choice and the AAA from conducting the arbitration. The court of appeal affirmed, holding that the arbitration provision was adhesionary and unenforceable because it bound Vishal, the nondrafting party, to arbitration, while reserving to Choice, the drafter of the arbitration clause, the right to litigate various matters in the franchise agreement.
Mediation Settlement Agreement Involving Interdict

**Prewitt v. Rodrigues**, 04-1195 (La. App. 3 Cir. 2/2/05), 893 So.2d 927.

In an action brought for timber trespass by one sibling against another, the court ruled that a mediation settlement agreement reached in Texas in 1995 was not valid and enforceable even though the results of the mediation were memorialized in a written memorandum entitled “Settlement Agreement.” Citing La. C.C.P. arts. 4641 and 4301 and Tex. Prob.Code Ann § 821 (Vernon Supp. 1996), the court found that the settlement agreement was not enforceable because the plaintiff was an interdict, and no agreement selling or exchanging her interest in real property could be entered without court approval. Furthermore, the written memorandum itself contemplated both the reduction of the memorandum to a final settlement document and the submission of that document for court approval pursuant to the Texas Guardianship Code.

Application to Court to Confirm Arbitration Award

**Best v. Best**, 04-0919 (La. App. 3 Cir. 3/2/05), ____ So.2d ____.

In a divorce action, the husband filed a petition for partition of community property. At a hearing officer conference, the hearing officer recommended binding arbitration to settle the community property issues, to which the parties agreed. A binding arbitration agreement was signed by both parties. After the arbitrator rendered his award, the trial court adopted the arbitrator’s findings. The wife, after several attorneys had represented her at the trial level, filed her appeal in proper person because she disagreed with the arbitrator’s and the trial court’s findings. The court of appeal remanded the matter to the trial court for further proceedings because the husband had not filed a motion to confirm the award as prescribed in La. R.S. 9:4209. This statute states that a party may, within one year after the award is made, apply for an order confirming an arbitration award. La. R.S. 9:4209 also requires the party confirming the award to serve notice in writing on the adverse party within five days before the hearing on the motion to confirm. Because the husband did not file an application for an order to confirm the award and did not provide notice to his wife that a hearing would be held on the motion to confirm the award, he did not comply with the statute.

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Corporate and Business Law

**Desire to Maintain Pending Lawsuit is Valid Purpose for Reinstating Corporation**

A corporation dissolved by affidavit may be reinstated for the sole purpose of maintaining a lawsuit filed by the corporation prior to its dissolution. **In re Reinstatement of Venture Assocs.,** 04-0439 (La. App. 1 Cir. 2/11/05), ____ So.2d ____.

In 1989, Venture Associates, Inc. of Louisiana filed a declaratory action against certain insurers for a determination of insurance coverage. Five years later, while the declaratory action was still pending, Venture’s two sharehold-
ers filed an affidavit with the Secretary of State to dissolve the corporation pursuant to La. R.S. 12:142.1. However, they did not have themselves substituted as plaintiffs in the insurance case.

The case continued for seven years before the defendants learned of Venture’s dissolution and filed exceptions of no right of action, which the court granted. Shortly thereafter, the court granted Venture’s ex parte motion to retroactively reinstate its corporate status in order to maintain the lawsuit. The court reasoned that Venture’s shareholders were not trying to hide behind the corporate veil to avoid personal liability, but rather intended simply to maintain a lawsuit that Venture filed several years before its dissolution.

The 1st Circuit affirmed. The court noted that the Louisiana Business Corporation Law (LBCL), La. R.S. 12:1 et seq., sets forth two ways in which a corporation may be voluntarily dissolved: first, by appointment of a liquidator, and second, if the corporation is not doing business and has no debts, by affidavit. Section 148(C) of the LBCL provides that in a dissolution by liquidation, the corporate existence ceases upon the issuance of a certificate of dissolution by the Secretary of State after the liquidation is complete, except for the sole purpose of any lawsuit instituted by the corporation prior to its dissolution or timely filed against it. The liquidator is vested with full authority to sue in the name of the corporation. La. R.S. 12:145(C)(1). However, the LBCL does not address what happens to a pending lawsuit brought by a corporation that is later dissolved by affidavit.

Nevertheless, the court applied the provisions of the LBCL governing dissolution by liquidation, specifically Section 148(C), in concluding that the maintenance of the lawsuit was a practical and lawful purpose for reinstating Venture. In addition, the court relied on Section 149(C) of the LBCL in finding that once Venture was dissolved by affidavit, all powers that would have been vested in a liquidator, had one been appointed, were then conferred upon Venture’s two shareholders. Section 149(C) provides that upon “termination” of a voluntary proceeding for liquidation, the liquidator is divested of his powers, which then revert to the corporation’s management and its shareholders. The court interpreted that section’s reference to “termination” of dissolution proceedings to mean the completion of those proceedings, rather than as a reference to the premature closure of the proceedings before dissolution occurs.

The court relied on the provisions of the LBCL governing dissolution by liquidation even though no liquidator was appointed to assume Venture’s outstanding claims. Indeed, the Louisiana 4th Circuit has held that because La. R.S. 12:142.1 specifically provides that the shareholders of a corporation dissolved by affidavit assume the corporation’s debts, but does not address the disposition of the corporation’s inchoate claims, those claims are terminated when the corporation is dissolved. Gendusa v. City of New Orleans, 93-1527 (La. App. 4 Cir. 2/25/94), 635 So.2d 1158, writ denied, 94-1508 (La. 9/23/94), 642 So.2d 1296. The court in Gendusa noted that the dissolution by affidavit section was added to the LBCL “to provide a means of avoiding the costs and delays of a formal liquidation” for corporations no longer doing business. Id. at 1162. But the consequence of invoking that section is that the corporation forfeits certain benefits of the liquidation process, including having a liquidator pursue the corporation’s outstanding claims. Id. at 1164 (Klees, J., concurring).

Moreover, it would seem that Venture’s reinstatement should have resulted in it being liable for corporation franchise tax and to file federal and state income tax returns. However, the court did not address Venture’s tax status and instead reinstated Venture for the “sole” purpose of maintaining the lawsuit.

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Associate Justice,
U.S. Supreme Court

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Supreme Court Announces Remedy for Indigent Defense Funding Issue

*State v. Citizen*, 04-1841 (La. 4/1/05), ____ So.2d ___.

Adrian Citizen and Benjamin Tonguis both stand indicted for murder in Calcasieu Parish on unrelated factual grounds, but their cases have been consolidated for purposes of appeal. Citizen was indicted for first-degree murder on Oct. 10, 2002, and remains in jail with no funds available for the attorney appointed to represent him. Tonguis was indicted for the first-degree murder of his infant child on April 11, 2002, and though he is not incarcerated, there are still no funds available for the attorney appointed to represent him.

The attorney for Citizen filed a “motion to determine source of funds to provide competent defense” in December 2003; the motion was heard in January 2004. Although the Calcasieu Parish Police Jury (CPPJ) initially indicated a certain willingness to share part of its $3.5 million Criminal Court Fund for indigent defense, it was no longer willing to share at the time of the hearing.

The trial court ruled that La. R.S. 15:304 and La. R.S. 15:571.11 were “ambiguous,” and that the statutes unconstitutionally deprived the defendants of their right to a fair and speedy trial and their right to counsel. The court also ordered the CPPJ to place $200,000 into the court registry for Tonguis’ and Citizen’s attorneys, along with an additional $75,000 for expert witness fees and case-related expenses.

The State and CPPJ appealed the ruling, with the State Attorney General’s Office filing briefs in support of the constitutionality of the statutes. The Supreme Court held that the statutes were not unconstitutional, as they did provide that the State was responsible for the payment of indigent defense (and strictly absolved the parishes and City of New Orleans of any responsibility for indigent defense), and the mere fact that the Legislature was in breach of its responsibility to fund the system did not render the system unconstitutional.

However, the court did construct a remedy, noting that:

[i]mplicit in these defendants’ constitutional right to assistance of counsel is the State’s inability to proceed with their prosecution until it provides adequate funds for their defense.

This is not a guarantee of unlimited funding, or even of “long-shot” defenses, but instead that a defendant is entitled to funds that “will provide indigents an adequate opportunity to present their claims fairly within the adversary system.”

The court reviewed its decision in *State v. Wigley*, 624 So.2d 425 (La. 1993), in which it held that uncompensated representation of indigents, when reasonably imposed, is a professional obligation burdening the privilege of practicing law in this state and does not violate the constitutional rights of attorneys. The case also holds that certain reasonable out-of-pocket expenses and overhead must be paid to the appointed attorney, even though a fee is not mandatory unless the time spent by the attorney on appointed cases is “unreasonable.” It is the district judge’s responsibility to determine that there are sufficient funds to cover the lawyer’s needs prior to appointment, and if funds are not available, the judge should not appoint lawyers from the private bar.
Citizen changes the rules set forth in Wigley by holding that:

A district judge should appoint counsel to represent an indigent defendant from the time of the indigent defendant’s first appearance in court, even if the judge cannot then determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel. The appointed attorney may then file a motion to determine funding, as was done in this case, and if the trial judge determines that adequate funding is not available, the defendant may then file, at his option, a motion to halt the prosecution of the case until adequate funding becomes available. [fn. 15 Of course, we do not intend to interfere with the defendant’s right to a speedy trial.] The judge may thereafter prohibit the State from going forward with the prosecution until he or she determines that appropriate funding is likely to be available.

The unanswered question is what to do with the defendant while the state and parish search for funding. Footnote 15 does not instruct the district courts how to handle motions for speedy trial when a motion to determine funding has been filed.

Further, the time limitations of La. C.Cr.P. 578 could still result in substantial pretrial detention while the funding is sought, particularly if the motion to determine funding is a “preliminary plea” that suspends the running of the time limitation under La. C.Cr.P. 580. Of course, at some point, a lengthy search for funding with an incarcerated defendant who is not released and is not tried may run afoul of the federal and state constitutions’ bar on cruel and unusual punishment and cruel, excessive or unusual punishment.

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Interim Spousal Support

Derouen v. Derouen, 04-1137 (La. App. 3 Cir. 2/2/05), 893 So.2d 981.

Although Ms. Derouen was in need of interim spousal support, Mr. Derouen did not have sufficient ability to pay child support, his own necessary monthly expenses and interim spousal support, so she received no interim spousal support.

Custody

DeSoto v. DeSoto, 04-1248 (La. App. 3 Cir. 2/2/05), 893 So.2d 175.

Bergeron applies to modify “visitation” when the parties have joint custody under a considered decree. Ms. DeSoto failed to meet that burden because the plan in effect was stable. The court distinguished Lea v. Sanders, 04-0762 (La. App. 3 Cir. 12/22/04), 890 So.2d 764, writ denied, 05-0183 (La. 3/24/05), ____ So.2d ____, by stating that Lea did not
address the applicable threshold, but only held that the 43/57 division of time in that case did not trigger Schedule B. DeSoto found that 45.5/54.5 was sufficient to trigger Schedule B. However, the court also set forth and adopted a three-part test to determine whether a court should deviate from the guidelines. Here, the court found that while there was “shared custody,” the trial court did not err in not applying Schedule B because the physical schedule was a “typical school-year summer arrangement,” and because Mr. DeSoto owed no support for June, July and August when he primarily had the child.

Child Support

**Lea v. Sanders**, 04-0762 (La. App. 3 Cir. 12/22/04), 890 So.2d 764, *writ denied*, 05-0183 (La. 3/24/05), ____ So.2d ____.

The 3rd Circuit, in a case of first impression in its circuit, found that La. R.S. 9:319.9 requires 50/50 or a “threshold percentage” of 49 percent to be “shared custody” and that 43 percent was not sufficient. Further, it found that Mr. Lea’s time was mostly on weekends and that he did not have the children for an entire week or weeks during the month, and that this type of arrangement did not significantly decrease the domiciliary parent’s expenses or increase his. **Murphy v. Murphy**, 04-1332 (La. App. 3 Cir. 2/2/05), 894 So.2d 542.

The trial court did not err in allowing Mr. Murphy a one-twelfth visitation credit against child support where the parties had nearly equal time with their child on a two-week rotating schedule, with overnight, holiday and vacation visits. The trial court did not err in making the final child support award retroactive to the date of the original petition, superseding the interim award.

Community Property

**Sequeira v. Sequeira**, 04-0433 (La. App. 5 Cir. 11/30/04), 888 So.2d 1097.

Mr. Sequeira’s LASIK corrective eye surgery on July 25, 2000, approximately two weeks before Ms. Sequeira filed for divorce on Aug. 8, 2000, was not a community debt because it was not incurred for the ordinary and customary expenses of the marriage or for their common interest.

A $2,500 cash advance from a credit card Mr. Sequeira took on July 21, 2000, was also his separate debt because the parties had already physically separated and he provided no explanation for its use or purpose. Fees he paid to a private investigator to observe Ms. Sequeira between July 24, 2000, and July 29, 2000, although in connection with the divorce proceedings, were not a community expense; notably, the investigator did not testify and the parties were divorced under article 102, so the fees were not a cost incurred in an action for divorce.

Although the parties had agreed in a consent judgment awarding her use of the community domicile to reserve his right to seek rent, the court of appeal found that because he did not do so while she was occupying the house, prior to its being sold, the trial court did not err in not awarding rent at the time of the partition. She was entitled to reimbursement of one-half of the community property used to pay his separate credit card debt. His rule to reduce child support was appropriately denied because he was voluntarily underemployed; he made little effort to obtain a salary comparable to his former job, he had numerous unexplained deposits to his accounts, and he was not in good faith.

**Sullivan v. Sullivan**, 04-0334 (La. App. 3 Cir. 12/30/04), 892 So.2d 134.

The parties’ community-property-par-
tition judgment provided Ms. Sullivan an interest in Mr. Sullivan’s Teachers’ Retirement System of Louisiana plan pursuant to Sims. After he withdrew $92,354.74 from his plan, she filed rules to establish and require him to pay her share to her. In the meantime, the value dropped to $60,978.24.

The trial court found, and the court of appeal affirmed, that her share should be valued at the time of the withdrawal because he failed to cooperate with her, despite her amicable demands, to execute a division order, withdrawing the funds instead, including her portion. She was also due legal interest on her share from the date of her demand.

*Teachers’ Retirement System v. Gonzalez*, 04-0602 (La. App. 5 Cir. 12/14/04), 892 So.2d 41.

Dr. Gonzalez and the first Mrs. Gonzalez recognized in their partition agreement her rights to a share of his TRSL plan. He then married Ms. Kelly. However, he died before retiring, and the issue was the division of the return of the accumulated contributions because his judgment with Mrs. Gonzalez did not address this situation, and Ms. Kelly was named as his beneficiary. The court of appeal found that the return of contributions was an omitted asset between Dr. Gonzalez and Mrs. Gonzalez, and looked to general legal principles to determine that Mrs. Gonzalez was entitled to her one-half share of the contributions made during her marriage to Dr. Gonzalez, and that Ms. Kelly was entitled to the remainder of the plan.

**Procedure**

*Forum for Equality PAC v. McKeithen*, 04-2477 (La. 1/19/05), 893 So.2d 715.

The Supreme Court found that the constitutional amendment titled “Defense of Marriage” did not violate the “single object” requirement of Louisiana Constitution article XIII, section 1(B). *Fritsche v. Vermilion Parish Hosp. Serv. Dist. #2*, 04-1192 (La. App. 3 Cir. 2/2/05), 893 So.2d 935.

Louisiana must give full faith and credit to a valid Texas common-law marriage to allow the wife to proceed as the plaintiff in a wrongful death suit in Louisiana regarding her husband.

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Carter v. Haygood, 04-0646 (La. 01/19/05), 892 So.2d 1261.

Mrs. Carter consulted Dr. Haygood in June 1996 for replacement of partial dentures and correction of gaps and overbite. In October 1996, Dr. Haygood extracted 11 teeth and installed new permanent partials. Noting extensive periodontal damage, he did not inform her or treat the condition. The new partials fit improperly; unsuccessful attempts were made to correct the situation. In January 1997, Carter refused to pay a portion of the charges and Dr. Haygood refused to see her for further treatment. Another dentist was consulted, and the problems were successfully treated and resolved.

In December 1997, Mr. and Mrs. Carter filed a malpractice complaint. The medical review panel found no deviation from the applicable standard of care. Suit was filed in April 1999. The district court found for the Carters, awarding aggregate damages of $52,232. The court of appeal reversed as to the claim of negligence in the unnecessary extraction of teeth, holding that it had prescribed, having occurred more than one year prior to filing. Further, the claim for failure to diagnose and treat gum disease had not prescribed, but Dr. Haygood had not “breached the standard of care required of a dentist in his locale in the diagnosis of periodontal disease.” Carter v. Haygood, 01-0367 (La. App. 3 Cir. 5/14/01) (unpublished). The Supreme Court granted a writ:

primarily to address the issue of whether the third category of the doctrine of contra non can be invoked to suspend [prescription] under La. Rev Stat. Ann. § 9:5628, when the plaintiff alleges continuing negligent treatment coupled with defendant’s alleged assurances . . . that he could remedy her problem, and . . . whether the Carters were reasonable in their reliance upon defendant’s assurances.

Contra non valentem non currit praescriptio — prescription does not run against a person who could not bring his suit — is a Louisiana jurisprudential doctrine under which prescription may be suspended. Being contrary to public policy favoring certainty that underlies the doctrine of prescription, “statutes are strictly construed against prescription and in favor of the obligation sought to be extinguished.” The courts have recognized four occasions when contra can prevail:

(1) a legal cause prevented the court’s acting;
(2) a contractual condition prevented the creditor from suing;
(3) an act of the debtor prevented the creditor from pursuing a course of action; and
(4) the cause of action was not known or discoverable by defendant, without plaintiff’s fault.

The court found number 3 applicable, holding that “[i]t only became apparent . . . in January 1997, when Dr. Haygood refused to see her again, that . . . she was stuck with broken teeth and with ill-fitting temporary partials.” She timely filed within one year of that date.

The district court’s judgment was reinstated.
Absolute Liability:
Narrow Interpretation
of Civil Code Article 667

Suire v. Lafayette City-Parish Consolidated Gov’t., 04-1459 (La. 4/12/05), __ So.2d ___.

Mr. Suire filed suit against the city of Lafayette, Boh Brothers Construction Co. and Dubroc Engineering, alleging that his home was damaged during a project to dredge a nearby drainage channel and line it with concrete. Among other theories, Suire asserted absolute liability against the city and Dubroc, alleging that the installation of metal sheeting qualified as “pile driving” under La. Civ.C. art. 667. The city and Dubroc filed a cross-claim against Boh Brothers, alleging their entitlement to defense and indemnification under the terms of a contract between the city and Boh Brothers. The city and Dubroc also filed a third-party demand against the contractor’s insurer, National Union, claiming status as additional insureds under Boh Brothers’ CGL policy. The parties filed motions for summary judgment, and the plaintiff’s claims of absolute liability were dismissed. In an unpublished opinion, the 3rd Circuit reversed the trial court’s judgment on the absolute liability issue, finding that there was sufficient similarity between the installation of sheet metal pilings and actual pile driving such that installing metal sheeting qualified as an ultrahazardous activity under art. 667.

Suire v. Lafayette City-Parish Consol. Gov’t., 03-1150 (La. App. 3 Cir. 4/7/04) (unpublished).

The Louisiana Supreme Court reversed the 3rd Circuit’s ruling on the absolute liability issue, holding that:

[i]t is not sufficient to show that there may be some similarities between the activities of installing metal sheeting and conventional pile driving, e.g., the production of vibrations, because article 667 strictly limits ultrahazardous activities to actual “pile driving.”

As such, the court held that Mr. Suire would be unable to avail himself of the less onerous absolute liability standard. The Suire court also considered National Union’s claim that the indemnity and additional-insured provisions in the contract between the city and Boh Brothers were void pursuant to La. R.S. 38:2216(G). La. R.S. 38:2216(G) limits the extent to which a public body may require indemnity from a contractor in the terms of a public contract. Based on this provision, National Union contended that the city was not entitled to indemnity or additional-insured coverage because the provisions were not “legally enforceable” under the terms of the insurance policy. The court partially agreed with National Union, holding that to the extent the language of the contract required defense and indemnity for the city’s negligence, it was void under La. R.S. 38:2216(G). The court held, however, that because the statute refers only to negligence, it did not bar the defense or indemnification of the city for its strict or absolute liability.

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5th Circuit Affirms Judgment in Copyright Case: Rappers’ Songs Don’t Infringe

In Positive Black Talk, Inc. v. Cash Money Records, Inc., the United States 5th Circuit Court of Appeals affirmed a judgment rejecting both the plaintiff’s and the defendants’ claims of copyright infringement and denying the defendants’ request for attorneys’ fees for successful defense of the plaintiff’s infringement claim. 394 F.3d 357 (5 Cir. 2004).

Positive Black Talk, Inc. (PBT) is the owner of the copyright in a song entitled “Back That Ass Up” (PBT’s song), recorded in 1997 by Jerome Temple, the rap artist known as D.J. Jubilee. Alleging copyright infringement by a song entitled “Back That Azz Up,” PBT sued three groups of defendants: Terius Gray, known professionally as Juvenile, the rap artist who recorded “Back That Azz Up;” Cash Money Records, Inc. (Cash), which produced it; and Universal Records, Inc. and related entities, which distributed it. PBT also brought a claim for unfair trade practices against all the defendants. The defendants brought counterclaims for copyright infringement, unfair trade practices and negligent misrepresentation.

Following trial in the Eastern District of Louisiana, the jury rejected both PBT’s and the defendants’ claims for copyright infringement, rejected PBT’s claim for unfair trade practices, and found for Cash on its counterclaims for unfair trade practices and negligent misrepresentation. The district court awarded attorneys’ fees to Cash for its unfair-trade-practices claim, but the court declined to award the defendants any attorneys’ fees for successful defense of PBT’s infringement claim. PBT appealed only the dismissal of its infringement claim; the defendants appealed only the denial of their attorneys’ fees for defeating the same claim.

Jurisdiction
Reviewing its jurisdiction over the subject matter, the appellate court noted that a jurisdictional defect had existed when PBT filed the lawsuit because the Copyright Office had not yet received PBT’s application to register its copyright. But the court held that when the Copyright Office received PBT’s application for registration four days after the lawsuit was filed, the jurisdictional defect was cured.

Elements of Copyright Infringement
The court stated the elements of a claim for copyright infringement. To prove copyright infringement, a plaintiff must prove (1) an ownership interest in a valid copyright and (2) legally actionable copying, which includes two elements, (a) factual copying and (b) substantial similarity. If the plaintiff proves factual copying, then the jury must compare the two works and determine whether the works are substantially similar.

The plaintiff may prove factual copying by direct evidence or by circumstantial evidence supporting the inference that copying has occurred — (1) the defendant’s access to the plaintiff’s copyrighted work and (2) probative similarity. Even if the plaintiff’s evidence supports the inference of factual copying, the defendant can rebut the inference by proving independent creation of the allegedly infringing work.

Jury Instructions
PBT assigned as errors several of the
district court’s jury instructions on copyright infringement and on the defense of independent creation. But the appellate court held that because PBT made its specific objections to the jury instructions in chambers and off the record, PBT failed to preserve the objections for review. Thus the appellate court reviewed the jury instructions under the plain-error standard, which requires a demonstration “that the instructions made an obviously incorrect statement of law that was ‘probably responsible for an incorrect verdict, leading to substantial injustice.’” 394 F.3d at 369.

The appellate court examined the disputed instructions in detail and held that each instruction was not plain error. In reviewing the instructions, the appellate court declined PBT’s request to adopt an inverse relationship between access and probative similarity. The court also rejected PBT’s argument that a defendant must prove independent creation by clear and convincing evidence and held that the instructions correctly required only a preponderance of the evidence. Finally, the court held that the jury instruction on substantial similarity “correctly indicates that the jury should compare the parts of the two songs that are similar.” 394 F.3d at 374.

Evidence

PBT also argued that the district court improperly admitted evidence that PBT’s song contained unauthorized samples of the Jackson Five song “I Want You Back.” The 5th Circuit agreed that the sampling was not relevant to any “unclean hands” defense because the defendants were not the persons harmed by the sampling. But the appellate court held that the sampling was relevant to the issue of what portion of PBT’s song constituted the “hook” or “qualitatively most important part” of the song. 394 F.3d at 374. Thus the district court acted within its discretion in admitting evidence of the sampling.

Attorneys’ Fees

Finally, the 5th Circuit held that the district court acted within its discretion in declining to award attorneys’ fees to the defendants for successful defense of PBT’s infringement claim. The court said that a prevailing party in a copyright case generally should receive its attorneys’ fees, but under Fogerty v. Fantasy Records, Inc., 114 S.Ct. 1023 (1994), and McGaughey v. Twentieth Century Fox Film Corp., 12 F.3d 62 (5 Cir. 1994), the district court retains discretion to decline an award of attorneys’ fees to the prevailing party. The appellate court said that the district court stated the proper legal standard for awarding attorneys’ fees and had adequate grounds for denying them.

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International Law

USTR and Retaliation

The Court of International Trade in Gilda Industries, Inc. v. United States, 353 F. Supp.2d 1364 (Ct. Int’l Trade 2004), addressed the role of the Office of the United States Trade Representative (USTR) in assembling and administering a “retaliation list” pursuant to section 301 of the Trade Act of 1974. The United States prevailed in a World Trade Organization (WTO) dispute with the European Union (EU) concerning the EU’s ban on animals and meat treated with...
hormones. The EU failed to implement the recommendations of the WTO Dispute Settlement Body and the U.S. retaliated by increasing the tariffs of select products from EU countries.

Gilda, the petitioner, was an importer of toasted breads from Spain that were one of the products on which duties were increased. Gilda, the court noted, did not submit written comments or participate in the hearing conducted by USTR to initially determine which products might be subject to increased duties.

The decision of the court declared at the outset that the issues raised involved U.S. foreign policy and would be subject to a “very limited scope of review.” The court held that the Trade and Development Act of 2000 mandates that the retaliation list must include “reciprocal goods,” but should not be interpreted to mean that it may include only reciprocal goods. The court further held that the automatic termination provision, 19 U.S.C. § 2417, did not become effective because the government received written requests from the domestic industry seeking continuation of the increased duties. The opinion stated that the court would not “second-guess the USTR’s determination of whether the domestic industry [was] in fact ‘benefitting’ from the retaliation action.” The decision also declared that although USTR had not implemented the “carousel provision,” the clause that may periodically change the goods subject to increased duties, the Trade Representative was authorized by statute to refrain from revising the retaliation list when it believed that resolution of a trade dispute was “imminent.”

**Foreign Investment: China**

The Ministry of Commerce of the People’s Republic of China promulgated amended Provisions on the Establishment of Investment Companies by Foreign Investors on Nov. 13, 2004. The regulations, according to Article 1, are intended to “promote foreign investors to invest in China, and introduce advanced technologies and management experiences from abroad.” The provisions set forth criteria for the establishment and administration of foreign investment in China. The regulations are available in English at: www.fdi.gov.cn/resupload/epdf/e03760.pdf.

**Wood Packing Material**

The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture published a final rule in the Federal Register, 69 Fed. Reg. 55719 (2005), amending the regulations addressing the importation of wooden packing materials such as pallets, crates, boxes and wood, that support or brace cargo. APHIS, in amending the regulations, adopted the international standards set

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**Public Perception is that Businesses and Trial Lawyer Money Influences Judicial Decisions. Is there a Better Way?**

Numerous studies* indicate campaign spending in judicial elections has risen significantly within the past five years, with the majority of that money coming from trial attorneys and businesses. Many would argue this money taints the perception of a fair and unbiased judiciary. Is there a better way?

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*American Judicature Society—www.ajs.org*
forth by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention (IPPC) in the “Guidelines for Regulating Wood Packing Material in International Trade.”

The amended regulations are intended to address the risks associated with the introduction of plant pests into the United States and, by adopting the international standards, are designed to provide importers and exporters with a uniform set of requirements. Wooden packing materials imported into the United States after Sept. 16, 2005, the effective date of the regulations, must either be heat treated or fumigated with methyl bromide and must be marked in a manner approved by the IPPC certifying compliance with the regulations. The failure to properly treat and mark may result in the immediate re-exportation of the merchandise.

U.S. – Chile FTA

U.S. Customs and Border Protection (CBP) published interim regulations implementing the preferential tariff treatment and other CBP-related aspects of the United States-Chile Free Trade Agreement. The interim regulations became effective March 7, 2005 and were published in the Federal Register at 70 Fed. Reg. 10868 (2005). The U.S.-Chile Free Trade Agreement Implementation Act may be found at 19 U.S.C. 3805n.

Trade Legislation

The Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108-429, was signed into law by the President on Dec. 3, 2004. The Act amends the Harmonized Tariff Schedule of the United States, as well as certain aspects of the United States Code addressing, in part, vessel repair duties, the Generalized System of Preferences, the Caribbean Basin Trade Partnership Act and the African Growth and Opportunity Act. The Act repeals section 1520 (c) of Title 19 of the U.S. Code that authorized Customs and Border Protection to reliquidate an entry to correct a clerical error, mistake of fact or other inadvertence. Section 2103 of the Act, however, amends 19 U.S.C. 1514 to add the matters formerly addressed by section 1520 (c) to the types of decisions of CBP that may be protested and extends the protest period from 90 days to 180 days. Significant aspects of the Act became effective on Dec. 18, 2004. Some parts of the Act provided for other specific effective dates. The Act is available through the Web site of the Library of Congress: http://thomas.loc.gov.

The views expressed do not necessarily represent the views of U.S. Customs and Border Protection or the United States government.

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Sick Leave Due Firefighter for Off-Duty Injury

Johnson v. Marrero-Estelle Volunteer Fire Co. No. 1, 04-2124 (La. 04/12/05), ___ So.2d ____.

Johnson, a full-time paid firefighter, was employed by a not-for-profit corporation under contract with the Jefferson Parish Fire Protection District. He was injured off the job and sought sick leave benefits under La. R.S. 33:1995. Marrero-Estelle argued that the statute applied only to employees of fire departments and then only to on-duty injuries. How-
ever, the Louisiana Supreme Court held that the statute was not to be interpreted narrowly and applied to volunteer fire companies as well. The court read the language “in the course and scope of his employment” to mean “in the employ” and not during the course of a workday. The court noted that the statute covers illness, and most illnesses do not arise at the workplace. The court held the Legislature granted firefighters liberal sick leave benefits because of their contributions to the public good.

Prescription Applied to Retirement Contributions

Fishbein v. State ex rel. La. St. U. Health Servs. Ctr., 04-2482 (La. 04/12/05), ____ So.2d ____.

Fishbein, a physician, was employed as an instructor by LSU from 1970 through her retirement in 2001. Initially, Fishbein received only a base salary, but beginning in 1980, she also received a supplemental salary. However, LSU only made retirement contributions for and reported to the Teachers’ Retirement System of Louisiana her base salary. Fishbein received annual statements from LSU showing her retirement contributions and knew at least by 1989 that LSU made retirement contributions on her base salary only, not the combined amount. The Louisiana Supreme Court held that La. R.S. 11:701(10), which defines earnable compensation as “compensation earned by a member during the full working time as a teacher,” should include the supplemental salary as it reflected the additional responsibilities placed on Fishbein and was used to provide her with an acceptable gross level of compensation. The court applied the three-year prescriptive period under La. Civ.C. art. 3494 because the insufficient retirement contributions were a form of compensation. Since Fishbein filed suit in 2000, claims for contributions before 1997 were prescribed.


When DaimlerChrysler shut down its Louisiana office, Greene, an African-American employee, accepted a transfer to Kansas City after he was unable to obtain a position he preferred. Greene wrote management expressing equal treatment concerns, but he did not allege racial discrimination. He resigned one year after his transfer and complained that the transfer was discriminatory. The 5th Circuit affirmed that Greene failed to establish a prima facie case of discrimination. The transfer was not a demotion because Greene’s job title, duties and pay remained the same. Since it was not an “ultimate employment decision,” it was not an adverse employment action.


Kennerson alleged that the St. Martin Parish School Board fired him due to race discrimination and retaliation because his problems there began after he clashed with a white co-worker, and he was fired only after he filed complaints with the EEOC. However, Kennerson did not present any evidence to rebut the school board’s legitimate, non-discriminatory reason — poor job performance — for terminating his employment. The 5th Circuit stated that conclusory allegations and unsubstantiated assertions were inadequate to satisfy Kennerson’s burden at the summary judgment stage.

Title VII: Summary Judgment Granted


When DaimlerChrysler shut down its Louisiana office, Greene, an African-American employee, accepted a transfer to Kansas City after he was unable to obtain a position he preferred. Greene wrote management expressing equal treatment concerns, but he did not allege racial discrimination. He resigned one year after his transfer and complained that the transfer was discriminatory. The 5th Circuit affirmed that Greene failed to establish a prima facie case of retaliation. The transfer was not a demotion because Greene’s job title, duties and pay remained the same. Since it was not an “ultimate employment decision,” it was not an adverse employment action.


Thompson brought charges against his employer, alleging race and sex discrimination under Title VII for its failure to promote him. The court granted the employer’s motion for summary judgment and alternative motion to dismiss for failure to satisfy Title VII’s 90-day filing requirement. The employer had issued a position letter in response to the EEOC’s decision. Thompson argued that the employer’s action constituted lulling, and that equitable tolling should apply. The court disagreed for several reasons:

► when Thompson received the employer’s response, he still had a month to file the complaint;
► Thompson never moved the court to extend the time period; and
► the employer did not actively mislead Thompson or prevent him from asserting his rights.

The court further found that even if equitable tolling were to apply, the complaint would be dismissed on its merits.


Cleveland, a female store manager at Sam’s Club, was suspended for 10 days with pay and transferred to a different position for using profanity and discussing her sex life with co-workers. She was later discharged for violating a
store policy shortly after filing an EEOC complaint. The court agreed that Cleveland’s transfer was an adverse employment action even though she did not suffer a reduction in pay because it reduced her future employment opportunities. However, the court granted the employer’s motion for summary judgment on Cleveland’s Title VII charge of gender discrimination because Cleveland argued but presented no evidence that male employees who had similar complaints brought against them were treated differently. The court denied Sam’s motion as to her retaliation claim because there was a conflict in evidence, and the reason for her firing could have been pretextual.

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Prenatal Injuries and Prescription

Bailey v. Khoury, 04-0620 (La. 1/20/05), 891 So.2d 1268.

When does prescription begin to run on a claim brought by a plaintiff seeking recovery for herself and for prenatal injuries suffered by her child? This legal question was one of first impression “not only in the State of Louisiana, but in every legal jurisdiction in the United States.”

Jada Bailey was born with birth defects. Months before birth, her mother was told that an ultrasound showed the birth defects, and Ms. Bailey was also told that the injuries were probably caused by medication that she had taken on the advice of her physician. Ms. Bailey filed suit against the healthcare providers who prescribed the drug and against the pharmacies that dispensed it. The claims were filed within one year from the date of the birth, but more than one year from the date Ms. Bailey was told that an ultrasound demonstrated the injuries to the child and of the probable cause of those injuries.

The defendants filed exceptions of prescription as to the claims of the mother and child. The trial court denied the exceptions, and the appellate court affirmed, neither court differentiating between the two causes of action. The Supreme Court granted writs and found it necessary to consider the two causes of action separately.

As to Jada’s claim, Louisiana is one of few jurisdictions in the United States that has specific legal provisions relative to the rights of unborn children. La. Civ.C. art. 26 provides that an unborn child is a natural person from the moment of conception, unless it is born dead, in which case it is considered never to have existed “except for purposes of actions resulting from its wrongful death.” Article 26, said the court, is determinative of Ms. Bailey’s claim on behalf of Jada, especially when the legislative history of article 26 is considered. The court also acknowledged its prior holding in Wartelle v. Women’s & Children’s Hospital, Inc., 97-0744 (La. 12/2/97), 704 So.2d 778, 781, which held that an un-
born fetus can acquire a cause of action, although article 26:

... does not confer actual legal personality; it provides that the fetus shall only be “considered” as a natural child and it limits the fictional personality of the fetus to matters that advance the interest of the fetus. (emphasis added by court).

The legal fiction of the unborn child’s natural personality from the date of conception does not apply when its application would inure to the detriment, rather than the benefit, of the child. To hold that prescription commenced prior to the child’s birth obviously would inure to the child’s detriment; therefore, the claim on behalf of Jada was held to be timely filed.

The defendants argued that prescription began to accrue on the mother’s claim when she had actual or constructive knowledge of the negligence and resulting damages, i.e., the date on which she was told of ultrasound findings and the probable cause of the injuries.

The court conceded that a finding that Ms. Bailey’s claim had prescribed prior to Jada’s birth would not raise the same equitable concerns as would a finding that Jada’s claim had prescribed prior to her birth. Nevertheless, the court found:

... that the twin goals of consistency and predictability would be better served through holding that the claims accrue on the same date. Because Ms. Bailey is the plaintiff in both claims, and because both claims allege the same negligent acts (failure to warn), the determination of when prescriptive (sic) commences on the two claims should not turn upon which hat Ms. Bailey happens to be wearing.

The court also reasoned that commencing prescription on the same date for mother and child would provide the additional benefit of a clear and predictable benchmark that would relieve a woman of the burden of worrying about the need to pursue litigation during her pregnancy.

The court determined as well that the defendants failed to prove that prior to her daughter’s birth Ms. Bailey had “actual or constructive knowledge” that she was the victim of a tort. She knew that her child had developed birth defects, but there was no evidence that she had knowledge that damages suffered by her prior to Jada’s birth “manifested themselves with sufficient certainty to support accrual of a cause of action.”

Burial Expenses and the Cap

Monistere v. Engelhardt, 04-1126 (La. App. 5 Cir. 2/15/05), ____ So.2d ____.

The trial court awarded the survivors of a deceased patient $500,000 in damages plus an amount for “past/future” medical expenses that included the cost of funeral and burial expenses. The defendant contended on appeal that funeral and burial expenses are not “future medical care and related benefits” as contemplated by the MMA. The 5th Circuit agreed and held that “funeral and burial expenses are not future medical and related benefits and cannot be awarded in addition to the statutory cap.” (emphasis added).

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Trusts, Estate, Probate and Immovable Property Law

Tax Sale Held Null for Failure to Give Notice

In a recent case, Richard v. Richard, 04-0715 (La. App. 5 Cir. 12/14/04), 892 So.2d 94, the court held a tax sale was null for failure to provide notice of delinquency of taxes to certain co-owners of property. An earlier case, Robinson v. Mafrige, 86 So.2d 72 (La. 1956), had already held that co-owners of record must be given notice of delinquency and notice to one of the co-owners is not sufficient.

However, in the Richard case, the plaintiffs filed a suit to annul the tax sale more than five years after it was recorded. Louisiana Constitution article 7, § 25 (1974) provides that in order for a tax debtor to annul a tax sale, he must bring a suit to annul within five years after the date of recordation of the tax sale. The constitution does provide an exception to the five-year rule if the tax debtor can show proof that he paid the taxes prior to the tax sale. The defendant
argued unsuccessfully that the five-year period is peremptive, rather than prescriptive, and that the running of this period prevented the tax debtor from attacking the tax sale on any ground.

**Prescription vs. Peremption**

The courts in the past have interchangeably referred to the five-year period as “prescriptive” or “preemptive,” but they have also routinely held that, despite the sole exception to the five-year rule provided in the constitution, *i.e.*, payment of the taxes, a tax debtor may annul a tax sale after the five years have run if it is an absolute nullity. This period should properly be referred to as “prescriptive” since the courts have held it can be suspended by the tax debtor’s physical possession of the property. (Not at issue in the *Richard* case was the three-year redemption period, which the courts have held to be “preemptive” and not interrupted by the tax debtor’s physical possession of the property.)

There has been a split between the courts as to whether the failure to give notice is a relative nullity cured by the five-year prescriptive period or an absolute nullity not cured by the five-year prescriptive period. However, since *Mennonite Board of Missions v. Adams*, 103 S.Ct. 2706 (1983), the courts have consistently held that the lack of notice of delinquency renders the tax sale an absolute nullity based on federal due process requirements. Therefore, the decision in the *Richard* case follows the more recent line of cases.

**Notice**

In the *Richard* case, the court cited La. R.S. 47:2180(A)(1)(a), which requires that the tax collector send written notice of delinquency to the record owner of the property. La. R.S. 47:2180(B) requires that the notice shall be sent by certified mail. Under this statute, the only time that advertisement is allowed is when the certified notice is returned as being undeliverable by the post office, provided the notice was sent to the correct address. *Giordano v. MacDonald*, 98-2023 (La. App. 4 Cir. 3/10/99), 729 So.2d 760, writ denied, 99-0986 (La. 6/18/99), 745 So.2d 22. The only notice in the *Richard* case was a published notice.

In a more recent case than *Richard*, *Hamilton v. Royal International Petroleum Corp.*, 03-2660 (La. App. 1 Cir. 3/2/05), ___ So.2d ____, the 1st Circuit held a tax sale null based on the failure of the sheriff to provide the notice required by R.S. 47:2180(A)(1)(b). This statute, enacted in 1997, requires the sheriff to provide the tax debtor, in each year following the year in which the notice of delinquency was made, notice of the amount of taxes due and the manner in which his property may be
redeemed. The notice is to be made each year until the property is no longer redeemable.

Is a Suit to Quiet Title Necessary?

The rulings in the Richard and Hamilton cases make obvious the importance of doing a confirmation suit pursuant to La. R.S. 47:2228, unless there is clear evidence of service of notice on the owners of the property, both before and after the tax sale. Without good notice, there is always a cloud on the tax purchaser’s title. Since the tax sale would be an absolute nullity, there would be no limitation on the time period that the tax debtor has to assert a claim.

Under Article VII, Section 25(C), of the Louisiana Constitution of 1974, if the tax purchaser brings a confirmation suit, which can be filed only after the redemptive period has run, then the tax debtor must bring a proceeding to annul within six months after being served with the confirmation suit. If the confirmation suit is served on the tax debtor after the five-year period, the tax debtor has only 10 days to bring a proceeding to annul. By bringing a confirmation suit, it is possible to cut off any claims that the tax debtor may have to claim the tax sale is a nullity for lack of notice.

Post-Adjudication Sales

The problem created by tax sale titles as a result of the requirement that there be proper notice to the tax debtors both before and after the tax sale has been carried a step further in connection with R.S. 33:4720.11, et seq., which deals with the post-adjudication sale of “abandoned” property. Under La R.S. 33:4720.17, the political subdivision is required to give notice to the tax debtor 60 days before the post-adjudication sale.

The case of Keller v. Allison, 03-1644 (La. App. 4 Cir. 6/23/04), 879 So.2d 344, writ denied, 04-1837 (La. 10/15/04), 883 So.2d 1063, held that this notice must be made by the City of New Orleans. Apparently, the city’s practice was to have the party interested in purchasing the property at a post-adjudication sale send the notice. This case held the post-adjudication sale invalid since there is no authority for the city to designate anyone other than itself to provide the requisite notice.

Tax sale titles have always been problematic, and recent cases have made this even more obvious.

— Ronald S. Wood
Member, LSBA Trusts, Estate, Probate and Immovable Property Law Section
Vice President/State Counsel
Fidelity National Title Insurance Co.
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New Orleans, LA 70163
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AV rated, is a plaintiff’s trial firm accepting referrals in patent and intellectual property cases, securities fraud and class action litigation, false claims act litigation, insurance bad faith cases, catastrophic injury cases, and nursing home neglect and abuse cases. The firm has offices in Daingerfield, Texas; Texarkana, Texas; Shreveport, Louisiana; Albuquerque, New Mexico; and Saltillo, Coahuila, Mexico.

For more information, or to contact any of the firm offices, please visit www.nixlawfirm.com.
CHAIR’S MESSAGE

Start of a New YLS Year

By Dona Kay Renegar

If one had told me six years ago when I first became familiar with the Young Lawyers Section (YLS) as an award recipient that I would someday be addressing that body as its chair, I never would have believed it. Yet, I now have the pleasure and honor to address the members of the Louisiana State Bar Association as chair of the YLS. I look forward to serving in this capacity in the upcoming year and working with Chair-Elect Mark Morice from Gretna and Secretary Karleen Green from Baton Rouge, as well as the council members elected from various districts throughout the state.

Albert Schweitzer once said, “One thing I know: The only ones among you who will be really happy are those who will have sought and found how to serve.” Each of the council members who will serve the YLS for the next year has the genuine desire to serve our constituents, the bar association, and our communities and I am certain will enjoy true happiness in doing so.

The YLS Council is responsible for administering the many section projects that serve young lawyers, students throughout Louisiana and the public in general. For young lawyers recently admitted to the bar, the YLS hosts the Professional Development Seminar, a one-day, free CLE held annually that concentrates on subjects of interest to young lawyers, including professionalism and ethics.

The YLS also hosts the annual Law School Mock Trial Competition in which all four of the state’s law schools participate. This year’s competition was held at Tulane Law School and was won by the team from Loyola University Law School. Loyola’s name will be engraved on the trophy and the school will display the award until the next competition in the spring. In addition to the Law School Mock Trial Competition, the YLS sponsors programs at the law schools on interviewing skills, resume writing and organizing a solo office practice.

The YLS serves the student population of Louisiana at elementary, junior and high school levels. On the first Friday in May each year, the YLS and its local affiliates participate in Law Day activities at elementary, middle and high schools — judging mock trials in which the students play the lawyers, judge and jury in deciding the cases such as “The Big Bad Wolf versus the Three Little Pigs,” presenting interactive lessons on different aspects of the legal system and providing career counseling for older students.

The YLS coordinates the High School Essay Contest each year. The students are asked to advocate for or against a topic from current events facing our society. The overall and regional winners receive monetary prizes, as well as awards presented at ceremonies at the various high schools. The winners of this year’s High School Essay Contest are posted at the YLS Web site at www.lsba.org/yls.

High school students also can participate in the annual YLS-sponsored Richard M. Ware High School Mock Trial Competition. The state is divided into eight districts, each of which hosts a regional competition organized by the local young lawyer affiliate in that region. The state championship is held in different cities throughout the state on a rotating basis. The YLS then helps fund the cost of sending the state champions to the National Mock Trial Competition, held in Charlotte, N.C., this year. Baton Rouge Magnet High School represented Louisiana in the national competition this year and took 14th place.

The Louisiana YLS is an active participant with the American Bar Association. We sponsor a representative to the Young Lawyer Division of the ABA and, in the upcoming year, we will be sponsoring a representative to the ABA House of Delegates as well. The YLS is able to defray some of the costs for its members to attend the annual and midyear ABA meetings and fall and spring conferences to keep abreast of new programs that we can offer to our constituents, students and communities.

The YLS officers and council members donate a great deal of their time to insure the success of these projects and many others. While the time and demand can be a burden, it is by far one of the most worthwhile projects in which I have had the pleasure of being involved.

To quote Albert Schweitzer again, “You must give some time to your fellow men. Even if it’s a little thing, do something for others — something for which you get no pay but the privilege of doing it.”

I encourage every young lawyer to get involved in local young lawyer affiliate activities and those activities sponsored by the YLS Council on a statewide basis. If you are interested in getting involved, please feel free to contact me at (337)237-4370 or at donar@jeanrem.com.

I understand the difficulties in balancing the demands of our professional and personal lives with our bar association and civic activities. I am confident that I speak for the council members who presently serve and those who came before me when I say that service to the Young Lawyers Section is extraordinarily rewarding. We have the opportunity to make a difference in our profession and communities while making fast friendships through our efforts to serve.
2005-06 OFFICERS

Dona Kay Renegar
Chair
Dona Kay Renegar of Lafayette is a partner in the Lafayette firm of Jeansonne & Remondet, L.L.C. She received two BA degrees in 1988 from the University of Louisiana at Lafayette and her JD degree in 1992 from Tulane Law School. She was admitted to practice in Louisiana in 1992.

Dona serves in the Louisiana State Bar Association’s House of Delegates (15th Judicial District) and on the Budget Committee. She received the LSBA Young Lawyers Section’s Outstanding Young Lawyer Award in 1999. She is a Louisiana Bar Foundation Fellow and a member of the Acadiana Inn of Court (barrister).

P.O. Box 91530
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fax (337)235-2011
e-mail: donar@jeanrem.com
Web site: www.jeanrem.com

Mark E. Morice
Chair-Elect
Mark E. Morice of New Orleans is a sole practitioner in Gretna (Morice Law Firm, A.P.L.L.C.) He received his undergraduate degree in 1993 from Southeastern Louisiana University and his JD degree in 1998 from Loyola University Law School. He was admitted to practice in Louisiana in 1998.

Mark chairs the Young Lawyers Section Law School Mock Trial Competition Committee.

He is a director on the Loyola Law Alumni Board, is associate editor of the American Bar Association’s publication The Young Lawyer, is co-chair of the ABA’s Law School Outreach Committee and a member of the ABA’s Professional Development Team. He also is a member of the Jefferson Bar Association.

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(504)366-1641

D. Beau Sylvester, Jr.
Immediate Past Chair
D. Beau Sylvester, Jr. of Alexandria is a partner in the Pineville firm of Tannehill & Sylvester, L.L.P. He received a BA degree in 1990 from Louisiana State University and his JD degree, with honors, in 1994 from Southern University Law Center. He was admitted to practice in Louisiana in 1996 and in Colorado in 1994.

Beau served on the Louisiana State Bar Association Board of Governors from 2004-05, in the House of Delegates from 2002-04 and as Young Lawyers Section chair-elect, secretary and District Six Council representative. He served in the Louisiana State Law Institute in 2004. He is a member of the Louisiana Trial Lawyers Association, the Alexandria Bar Association and the Louisiana Bar Foundation. He chaired the Alexandria Bar Association Young Lawyers Section in 2001-02.

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Web site: tannehillandsylvester.com

Karleen Joseph Green
Secretary
Karleen Joseph Green of Baton Rouge is a partner in the Baton Rouge office of Phelps Dunbar, L.L.P. She received a BS degree in 1994 from Louisiana State University and her JD degree in 1997 from LSU Paul M. Hebert Law Center. She was admitted to practice in Louisiana in 1997.

Karleen is a Louisiana Bar Foundation Fellow and is the recipient of the Louisiana State Bar Association’s Young Lawyers Section Bat P. Sullivan, Jr. Chair’s Award. She is a member of the Baton Rouge Bar Association, the American Bar Association (member of the Employee Benefits and Labor and Employment Law Sections) and the Federal Bar Association (member of the Employment Section).

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LOCAL AFFILIATES

Lafayette Young Lawyers Association Hosts Region III Mock Trial Competition

The Lafayette Young Lawyers Association sponsored the 2005 Region III High School Mock Trial Competition in February at the Lafayette Parish courthouse. Event Chairs Greg A. Koury and Danielle deKerlegand recruited teams and volunteers.

Five teams from four high schools competed against each other for the chance to represent the region at the state competition in Alexandria.

NOBA YLS Hosts Region I High School Mock Trial Competition

The New Orleans Bar Association (NOBA) Young Lawyers Section (YLS) hosted the Richard N. Ware IV Memorial Region I High School Mock Trial Competition on Feb. 26-27 at the United States District Courthouse. This annual competition requires each team to conduct a full trial for each round of competition, including opening statements, direct examinations, cross-examinations and closing arguments.

More than 200 students participated, representing schools from Orleans, St. Tammany, St. Bernard, Washington and Plaquemines parishes. More than 60 lawyers and judges served as presiding judges, score keepers and time keepers.

The winner of this year’s regional tournament was a team representing Jesuit High School. The Jesuit team next competed in the state tournament in Alexandria and placed third.

Among the judges participating were Judge Helen “Ginger” Berrigan, Judge Darryl A. Derbigny, Judge Daniel E. Knowles III, Judge Paulette R. Irons and Judge Lynda Van Davis.

Attorneys serving as presiding judges, score keepers and time keepers were
Robin L. Jones, back left, Karen J. King, front left, and Will Montz double check their score sheets for the final round of competition in the Region III High School Mock Trial Competition in Lafayette.


Participating schools were Ben Franklin High School, Brother Martin High School, Grace King High School, Fontainebleau High School, Jesuit High School, John F. Kennedy High School, Louise S. McGehee High School, Mandeville High School, Pope John Paul II High School, Rabouin High School and St. Paul’s High School.

Co-chairing the Mock Trial Committee were Leslie D. Harris and Maurice C. Ruffin.

Among the volunteers who served as presiding and scoring judges for the Region III High School Mock Trial Competition in Lafayette were, front row from left, Will Montz, Jason T. Reed, Camille A. Domingue, Holli Yandle, Danielle deKerlegand, Robin L. Jones and Jennifer A. Wells. Back row from left, Greg A. Koury, Bobby L. and Angela Odinet and Judge Durwood W. Conque.

The winning team of the Region I Richard N. Ware IV Memorial High School Mock Trial Competition in New Orleans was from Jesuit High School. Front left, Michael Gretchen, Jack Stanton, Michael Tufton, Timothy Brinks, Judge Lynda Van Davis, Tommy Slattery, Travis Andrews, John Becknell, Michael Mims, Coaches Brett D. Wise and J. Jerry Glas and YLS Mock Trial Co-Chair Maurice C. Ruffin. Not in photo: Coaches Charles F. Seemann, Jr., Roland M. Vandenweghe, Jr., Matt J. Mumfrey, Joseph I. Giarrusso III and Stephen M. Pesce.
New Judges

**David L. Bell**, 34, was elected to Division C, Orleans Parish Juvenile Court. He earned his undergraduate degree from Southern University at New Orleans in 1992 and his JD degree from Southern University Law Center in 1995. Prior to his election to the bench, he was in the private practice of law for nine years and worked for the New Orleans Business and Industrial District. He is married to Jacinta Bell and they are the parents of one child.

**Ellis J. Daigle**, 57, was elected to Division B, 27th Judicial District Court, St. Landry Parish. He earned his undergraduate degree from Northwestern State University in 1969 and his JD degree from Louisiana State University Paul M. Hebert Law Center in 1974. He was in the private practice of law for 30 years and served as assistant district attorney in the 27th JDC since 1997 and served as the parish government legal advisor for St. Landry Parish. He is married to Deanne M. Daigle and they are the parents of two children.

**Louis F. Douglas**, 39, was elected to Division E, Orleans Parish Juvenile Court. He earned his undergraduate degree from Morehouse College in 1987 and his JD degree from Loyola University Law School in 1991 where he was a member of the Frederick Douglass Moot Court Team and president of the Black Law Students Association. He is a member of the Louisiana Council of Juvenile and Family Court Judges and the Louis A. Martinet Legal Society, New Orleans Chapter. Prior to taking the bench, he was in the private practice of law, served as a volunteer member of the Louisiana Attorney Disciplinary Board and served as a judge ad hoc in juvenile court. He is married to Stephanie Douglas and they are the parents of two children.

**Dee Ann Hawthorne**, 62, was elected to Division B, 10th Judicial District Court, Natchitoches Parish. She earned her undergraduate degree from Louisiana College in 1978, her master’s degree from Northwestern State University in 1980 and her JD degree from Louisiana State University Paul M. Hebert Law Center in 1985. Prior to taking the bench, she was in the private practice of law and served as president of Court Appointed Special Advocates, served as a member of the Domestic Violence Education and Support group, served as a family law mediator and is a past board member of several organizations. She is married to Harry E. Hawthorne and they are the parents of three children.

**Paulette R. Irons**, 51, was elected to Division M, Orleans Parish Civil District Court. She earned her undergraduate degree from Loyola University in 1975 and her JD degree from Tulane Law School in 1991. Prior to her election to the bench, she was in the private practice of law and served as a member of the Louisiana Legislature since 1992, having been elected to the House of Representatives in 1992 and the state Senate in 1994. She was named Legislator of the Year by the Alliance for Good Government, Crimefighter of the Year by the Victims & Citizens Against Crime, and has received many other awards and honors, including the 2001 Good Housekeeping Award for Women in Government and the 2004 National Organization for Adolescent Pregnancy, Parenting and Prevention Eagle Award. She was honored during Black History Month 2004 by HBO as being one of 10 notable black women leaders in the “Hearing Her Voice, Telling Her Story” national competition. She has worked with Court Appointed Special Advocates and many other groups. She is married to Alvin Irons and they are the parents of two children.

**James “Jim” R. Lamz**, 57, was elected to City Court of Slidell. He earned his undergraduate degree from Loyola University in 1976 and his JD degree from Loyola University Law School in 1979, where he served on the editorial board of “The Code,” the law school’s student newspaper. A graduate of the National Institute of Trial Advocacy, he was in the general practice of law from 1980-85 and 1991-present, and a trial attorney from 1985-91. He served as an investigator for the St. Tammany Parish District Attorney’s Office, as judge ad hoc for the City of Slidell and as hearing committee chair for...
the Louisiana Attorney Disciplinary Board. He is involved in a number of professional, civic and community organizations. He is married to Deanna J. Hamilton.

Deaths

Retired 3rd Circuit Court of Appeal Judge J. Burton Foret, Sr., 75, died March 15. He served as a United States Marine from 1947-50, during the Korean Conflict in 1951 and again in 1952-54. As a student at Louisiana State University, he was president of the junior class of law school, speaker of the Student Senate, and a member of the LSU Student Council and of Phi Delta Phi Legal Fraternity. He was elected the first city judge of the newly created City Court of Ville Platte, serving from 1967-74 when he began service as judge of the 13th Judicial District Court. He was elected to the 3rd Circuit Court of Appeal in 1976 where he served until his retirement in 1992. While on the bench, he served as president of the Council of Juvenile Court Judges, treasurer of the Louisiana City Judges Association, was a member of the Judicial Council of the Louisiana Supreme Court, serving as a delegate of the Conference of Court of Appeal Judges, was elected state chair of the Louisiana Conference of National Youth Development and Delinquency Prevention Institute, and was a member of the board of directors of the Evangeline Council on Law Enforcement. He served as vice president of the Institut International de Droit D’Expression Francaise, an international organization of jurists, law professors and lawyers from 39 countries.

Retired Monroe City Court Judge Diehlmann C. “D.C.” Bernhardt, 76, died April 7. He earned his undergraduate degree from the University of Louisiana at Lafayette in 1949 and his JD degree from Louisiana State University Paul M. Hebert Law Center in 1951. From 1952-54, he served on active duty with the Judge Advocate General Corps, United States Army, and began practicing law as a sole practitioner in 1954. He began working with the Monroe-area Indigent Defender Board in 1978 and became the managing attorney in 1986, where he served until taking his oath of judicial office in 1991. He also worked for the 4th Judicial District’s District Attorney’s Office following his service on the City Court bench.

FYI

By order of the Louisiana Supreme Court, Rule XXX, Rule 6(b), opening paragraph, and Regulation 6.1 of the Rules for Continuing Legal Education, were amended.

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LAWYERS ON THE MOVE

ADR inc., a statewide mediation and arbitration firm, announces the addition of two new members to its New Orleans panel of neutrals: Judge Steven R. Plotkin (retired) and Daniel P. Hurley. Plotkin will serve as chair of ADR inc.’s Arbitration Section.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., announces that Craig R. Isenberg has joined the firm as an associate.

Berrigan, Litchfield, Schonekas, Mann, Traina & Bolner, L.L.C., announces that Matthew P. Chenevert and Brian J. Weimer have joined the firm as associates.

Cook, Yancy, King & Galloway, A.P.L.C., announces that associate Scott L. Zimmer has been elected a shareholder of the firm. Jennifer C. Pearson, Charles W. Penrod, Matthew R. May, Jason A. Green, J. Jarrod Thrash and Jason B. Nichols have joined the firm as associates.

Curry & Friend, A.P.L.C., announces that Ambrose K. Ramsey III has joined the firm as an associate.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P., announces that J. Lanier Yeates, Jr. has joined the firm as a partner in the Houston office, Deborah F. Malveaux has been named a partner in the New Orleans office, and Ashley S. Green has joined the Baton Rouge office as an associate.

Hammonds & Sills announces that Karen D. Murphy has become a partner in the firm and Carla S. Courtney has joined the firm as an associate, both resident in the Baton Rouge office.
Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Iran A. Thompson II** has joined the firm as an associate.

Jeansonne & Remondet, L.L.C., announces that **Alex A. Lopresto III** has become associated with the firm in the Lafayette office.

Jones Walker announces that **Brandon Kelly Black** and **Warren A. Fleet** have joined the firm’s Baton Rouge office as special counsel.

Kean Miller Hawthorne D’Armond McCowan & Jarman, L.L.P., announces that Mark D. Mese, Jason R. Cashio, Karli Glascock Wilson, Deborah J. Junneau, Terrence D. McCay and Jennifer J. Thomas have been elected to the partnership. Scott D. Huffstetler, Kimberly K. Hymel, Alicia E. Wheeler, Jennifer F. DeCuir, Tara E. Montgomery and Lee-Christine Gaul Young have become associated with the firm. The firm announces the opening of an office at Ste. B, 5035 Bluebonnet Blvd., Baton Rouge, LA 70809, with partners Carey J. Messina and Kevin C. Curry relocating to that office. The firm also announces the relocation of its New Orleans office to LL&E Tower, Ste. 1450, 909 Poydras, New Orleans, LA 70112, and that Christopher J. Dicharry has relocated to that office as partner-in-charge.

The Kullman Firm, A.P.L.C., announces that **Rachel E. Linzy** and **Elizabeth C. Harper** have joined the firm as associates.

Leake & Andersson, L.L.P., announces that **Raymond R. Egan III** has become a member of the firm, **McNeil J. Kemmerly** has become special counsel to the firm, and **Margaret C. Frohn**, **Michael J. Gautier, Jr.** and **Wendy Lynn Rovira** have joined the firm as associates.


McGlinchey Stafford announces that Bailey Henderson Smith and Allen K. Trial have joined the firm’s New Orleans office as associates.

Preston & Cowan, L.L.P., announces that **Sean E. Rastanis** has joined the firm as an associate in the New Orleans office.

Saporito Law Firm announces that **Edward T. Hayes** has rejoined the firm as a partner. He also has joined the adjunct faculty of Tulane Law School where he will teach a course on the World Trade Organization.

Stone Pigman Walther Wittmann, L.L.C., announces that James E.A. Slaton has joined the firm as an associate.

Earl N. Vaughan, former administrative law judge, announces the opening of his practice at 830 Main St., Baton Rouge, LA 70802.
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NewsMakers

Louisiana Assistant Attorney General Jude D. Bourque was invited by the National Institute for Trial Advocacy to become part of its national teaching team for its national training program and its national program for public service lawyers.

Attorney Warren A. Perrin’s book, Acadian Redemption, was awarded the “Best History Book” published in Louisiana in 2004 by the Louisiana Federation Press Women’s Association.

William E. Steffes of Steffes, Vingiello, McKenzie, L.L.C., in Baton Rouge was inducted as a Fellow of the American College of Bankruptcy.

Attorneys Named to Best Lawyers Publication

Several attorneys have been selected by their peers for inclusion in The Best Lawyers in America® 2005-2006. Those recognized are listed by firm:


David Ware & Associates: David A.M. Ware.

People Deadlines & Notes

Note the following deadlines for submitting People announcements (and photos) in future issues of the Louisiana Bar Journal:

Publication Deadline
Oct./Nov. 2005 ...... Aug. 4, 2005
Feb./March 2006 .... Dec. 5, 2005
April/May 2006 ...... Feb. 3, 2006
June/July 2006 ...... April 4, 2006

Announcements are published free of charge to members of the Louisiana State Bar Association. Only the names of Louisiana State Bar Association members are published.

LSBA members may publish photos with their announcements at a cost of $50 per photo. Firms submitting multiple photos for publication must remit $50 for each photo.

Payment for photos must be submitted when the announcement is submitted (adhering to the submission deadlines above). All photos must be paid for prior to publication.

Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator
Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130

Call (504)619-0112 or (800)421-5722, ext. 112

Announcements and photos may be e-mailed to dlabranche@lsba.org.
Louisiana Professional Responsibility Law and Practice 2004

- Incorporates all revisions to the Louisiana Rules of Professional Conduct adopted by the Louisiana Supreme Court in January 2004 on recommendation of the LSBA Ethics 2000 Committee.
- Contains in-depth annotations with Louisiana case law discussing, applying and interpreting the Louisiana Rules of Professional Conduct.
- Includes extensive cross-references to the American Law Institute Restatement of the Law Governing Lawyers (2000).
- Comprehensively indexed to guide practitioners to rules relevant to hundreds of professional responsibility topics.
- Reprints selected LSBA and ABA professionalism guidelines and litigation-conduct standards.
- Edited and annotated by Dane S. Ciolino, Alvin R. Christovich Distinguished Professor of Law, Loyola Law School.


The book includes:
- Louisiana Rules of Professional Conduct (2004), Listed by Article
- Disciplinary Information • Professionalism and Civility

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<td>#674 - Unearned fee in a bankruptcy matter</td>
</tr>
<tr>
<td>George Edward Lucas, Jr.</td>
<td>$16,505.83</td>
<td>#716 - Conversion of client funds in a child support matter</td>
</tr>
<tr>
<td>George Edward Lucas, Jr.</td>
<td>$3,333.00</td>
<td>#664 - Conversion of client funds in a personal injury matter</td>
</tr>
<tr>
<td>Claude E. Phelps, Jr.</td>
<td>$2,363.80</td>
<td>#656 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Cardell Thomas</td>
<td>$1,335.00</td>
<td>#707 - Conversion in a personal injury case</td>
</tr>
<tr>
<td>Katherine T. Tousant</td>
<td>$2,450.00</td>
<td>#596 - Unearned fee in a criminal matter</td>
</tr>
<tr>
<td>Sheila Wharton</td>
<td>$820.00</td>
<td>#669 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Sheila Wharton</td>
<td>$1,500.00</td>
<td>#646 - Unearned fee in a custody matter</td>
</tr>
<tr>
<td>David C. Willard</td>
<td>$1,000.00</td>
<td>#651 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Edwin Jerome Wilson</td>
<td>$2,409.84</td>
<td>#675 - Conversion of client funds in a personal injury matter</td>
</tr>
<tr>
<td>Edwin Jerome Wilson</td>
<td>$4,667.00</td>
<td>#696 - Conversion of client funds in a personal injury matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$335.00</td>
<td>#631 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$360.00</td>
<td>#645 - Unearned fee in a child support matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$364.00</td>
<td>#613 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$1,000.00</td>
<td>#614 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$700.00</td>
<td>#615 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$1,885.00</td>
<td>#648 - Unearned fee in a domestic matter</td>
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<tr>
<td>Stevens J. White</td>
<td>$250.00</td>
<td>#632 - Unearned fee in a domestic matter</td>
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<tr>
<td>Stevens J. White</td>
<td>$800.00</td>
<td>#640 - Unearned fee in a succession matter</td>
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<tr>
<td>Stevens J. White</td>
<td>$1,400.00</td>
<td>#636 - Unearned fee in a custody matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$150.00</td>
<td>#641 - Unearned fee in a domestic matter</td>
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<td>Stevens J. White</td>
<td>$210.00</td>
<td>#639 - Unearned fee in a domestic matter</td>
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<td>Stevens J. White</td>
<td>$635.00</td>
<td>#663 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$800.00</td>
<td>#610 - Unearned fee in an adoption matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$335.00</td>
<td>#611 - Unearned fee in a domestic matter</td>
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<tr>
<td>Stevens J. White</td>
<td>$559.00</td>
<td>#612 - Unearned fee in bankruptcy matter</td>
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<td>Stevens J. White</td>
<td>$175.00</td>
<td>#617 - Unearned fee in a real estate matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$885.00</td>
<td>#623 - Unearned fees in domestic and bankruptcy matters</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$200.00</td>
<td>#650 - Unearned fee in a domestic matter</td>
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<td>Stevens J. White</td>
<td>$335.00</td>
<td>#658 - Unearned fee in a domestic matter</td>
</tr>
<tr>
<td>Stevens J. White</td>
<td>$750.00</td>
<td>#627 - Unearned fee in an interdiction matter</td>
</tr>
</tbody>
</table>
What is the Louisiana Client Assistance Fund?
The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer’s dishonest conduct. The Fund can reimburse clients up to $25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

How do I qualify for the Fund?
Clients must be able to show that the money or property came into the lawyer’s hands.

Does the Fund cover fees?
The Fund will reimburse fees only in limited cases. If the lawyer did no work, fees may be covered by the Fund. Fees are not reimbursable simply because you are dissatisfied with the services or because work was not completed.

Who can, or cannot, qualify for the Fund?
Almost anyone who has lost money due to a lawyer’s dishonesty can apply for reimbursement. You do not have to be a United States citizen. However, if you are the spouse or other close relative of the lawyer in question, or the lawyer’s business partner, employer or employee, or in a business controlled by the lawyer, the Fund will not pay you reimbursement. Also, the Fund will not reimburse for losses suffered by government entities or agencies.

Who decides whether I qualify for reimbursement?
The Client Assistance Fund Committee decides whether you qualify for reimbursement from the Fund, and, if so, whether part or all of your application will be paid. The committee is not obligated to pay any claim. Disbursements from the Fund are at the sole discretion of the committee. The committee is made up of volunteer lawyers who investigate all claims.

How do I file a claim?
Because the Client Assistance Fund Committee requires proof that the lawyer dishonestly took your money or property, you should register a complaint against the lawyer with the Office of Disciplinary Counsel. The Disciplinary Counsel’s office will investigate your complaint. To file a complaint with the Office of Disciplinary Counsel or to obtain a complaint form, write to: Disciplinary Counsel, 4000 South Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816-4388. Client Assistance Fund applications are available by calling or writing: The Client Assistance Fund, 601 St. Charles Ave., New Orleans, LA 70130-3427, (504)566-1600 or (800)421-5722. Applicants are requested to complete an Application for Relief and Financial Information Form.

Are there other avenues to explore to obtain reimbursement?
Depending on the circumstances, you may be able to file a civil lawsuit or criminal charges against the lawyer. You should consult a new lawyer or the district attorney’s office about these matters. Note that there are deadlines for starting this process.

I don’t know another lawyer. How can I find someone?
Call the Lawyer Referral service in your area. These services are listed in the Yellow Pages of the telephone directory.

Is there any charge for seeking Client Assistance Fund help?
No. The process is free.

Do I need an attorney to seek Client Assistance Fund help?
You do not need a lawyer to apply but you may consult one if you wish. Also be aware that if you have a specific legal problem, you should not try to apply or interpret the law without the aid of a trained expert who knows the facts because the facts may change the application of the law.
**REPORT BY DISCIPLINARY COUNSEL**

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date March 31, 2005.

**Decisions**

**Brenda Braud**, Independence, (2004-B-2938) Suspension of one year and one day, fully deferred, subject to successful completion of a two-year period of supervised probation with conditions, ordered by the court on Feb. 18, 2005. JUDGMENT FINAL and EFFECTIVE on Feb. 18, 2005. *Gist:* Negligent commingling and negligent conversion of client funds; and threatening criminal charges to obtain an advantage in a civil matter.


**Daniel R. Del Priore,** Hagatna, Guam, (2005-B-0336) Consent permanent disbarment ordered by the court on March 11, 2005. JUDGMENT FINAL and EFFECTIVE on March 11, 2005. *Gist:* Commission of a criminal act, especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.


**Pierre F. Gaudin,** Gretna, (2005-B-0033) Joint petition for consent discipline in the form of a public reprimand with Ethics School accepted and ordered by the court on Feb. 25, 2005. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2005. *Gist:* Mishandled client funds; engaged in conduct intended to disrupt a tribunal; and failure to promptly remit funds to a third party.


**Keith D. Jones,** Baton Rouge, (2004-B-3044) Consent 90-day suspension, fully deferred, subject to successful completion of a two-year period of probation, ordered by the court on Feb. 18, 2005. JUDGMENT FINAL and EFFECTIVE on Feb. 18, 2005. *Gist:* Failure to ensure that his law partner complied with his professional obligations under Rule 1.8(a).

**Henry B. King, Jr.,** Baton Rouge, (2004-B-0318) Consent public reprimand ordered by the court on April 4, 2005. JUDGMENT FINAL and EFFECTIVE on April 4, 2005. *Gist:* Failure to promptly remit funds to a third party; and failure to properly supervise a non-lawyer assistant.

**Jean Marie Lacobee,** Shreveport, (2004-B-3179) Adjudged guilty by consent of additional violations which warrant discipline and which may be considered in the event she applies for reinstatement from her suspension, accepted and ordered by the court on Jan. 12, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 12, 2005. *Gist:* Mishandled client funds; engaged in conduct intended to disrupt a tribunal; and failure to refund unearned fees.

**Richmond C. Odom,** Baton Rouge, (2005-B-0355) Consent public reprimand with Ethics School ordered by the court on March 11, 2005. JUDGMENT FINAL and EFFECTIVE on March 11, 2005. *Gist:* Engaging in a conflict of interest by representing a client where the representation may be materially limited by the lawyer’s responsibilities to another client or third person or by the lawyer’s own interests; and engaging in a

Discipline continued next page
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 April 1, 2005.

**Respondent** | **Disposition** | **Date Filed** | **Docket No.**
--- | --- | --- | ---
Stacy C. Auzenne | Public reprimand. | 3/8/05 | 04-3430 C
Alfred L. Hansen | Suspended, three years, one year deferred. | 3/8/05 | 05-03 T
Antoine Laurent | Suspended six months, two years probation. | 3/8/05 | 05-02 N
Oliver Wendell Holmes III | Permanently disbarred. | 3/9/05 | 04-3223 A
Kent A. Smith | One-year retroactive (11/29/04) probation. | 3/21/05 | 04-3429 J

**Jay J. Szuba**, Baton Rouge, (2004-B-1571) **Suspension of one year and one day** ordered by the court on Feb. 4, 2005. JUDGMENT FINAL and EFFECTIVE on March 3, 2005. **Gist:** Violating the Rules of Professional Conduct; failure to communicate with clients; failure to act with reasonable diligence; failure to return the unearned portion of a legal fee; failure to properly terminate the representation of clients, unauthorized practice of law; failure to cooperate with the Office of Disciplinary Counsel; and engaging in conduct prejudicial to the administration of justice.


**Hany A. Zohdy**, Baton Rouge, (2004-B-2361) **Three-year suspension with one year deferred, subject to conditions,** ordered by the court on Jan. 19, 2005. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2005. **Gist:** Failure to provide competent representation; meritorious claims and contentions; failure to make reasonable efforts to expedite litigation; candor toward the tribunal; knowingly disobeying an obligation under the rules of a tribunal; in trial, alluding to a matter not relevant or not supported by admissible evidence; engaging in conduct intended to disrupt a tribunal; violating or attempting to violate the Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice.

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

<table>
<thead>
<tr>
<th>No. of Violations</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Engaging in conduct prejudicial to the administration of justice</td>
</tr>
<tr>
<td>1</td>
<td>Failure to inform the court of his client’s whereabouts</td>
</tr>
<tr>
<td>2</td>
<td>Represented a client in the same succession proceedings in which that client’s interests were materially adverse to the interests of a former client</td>
</tr>
<tr>
<td>4</td>
<td>TOTAL INDIVIDUALS ADMONISHED</td>
</tr>
</tbody>
</table>
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Standard classified advertising in our regular typeface and format may now be placed in the Louisiana Bar Journal and on the LSBA Web site, LSBA.org/classifieds. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

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| Members of the LSBA | 60 per insertion of 50 words or less |
| $1 per each additional word |
| No additional charge for Classy-Box number |
| Screen: $25 |
| Headings: $15 initial headings/large type |
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| Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2½” by 2” high. The boxed ads are $70 per insertion and must be paid at the time of placement. No discounts apply. |

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For the October issue of the Journal, all classified notices must be received with payment by Aug. 18, 2005. Check and ad copy should be sent to: LOUISIANA BAR JOURNAL, Classified Notices, 601 St. Charles Avenue, New Orleans, LA 70130.

RESPONSES

To respond to a box number, please address your envelope to:
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601 St. Charles Avenue
New Orleans, LA 70130

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Attorney opportunities. Shuart & Associates provides law firms in the Gulf South with lateral partners and groups, associates, staff attorneys and contract lawyers. Ask about our Project Division and the Shuart Legal Solution Team, a proven cost-saving and effective solution to deal with large case management and litigation support. For law firms, we are a proven source for qualified candidates who prefer the confidentiality and expertise our company offers. For candidates, Shuart offers counseling and advice in assessing opportunities to promote successful careers. For both, we offer an invaluable 20-year history and reputation for being the “Gulf South’s Leader in Legal.” Submit résumé in confidence to Ste. 3100, 3838 N. Causeway Blvd., Metairie, LA 70002. Telephone (504)836-7595. Fax (504)836-7039. Visit our Web site, www.shuart.com, to see current postings of opportunities. All inquiries treated confidentially.

New Orleans CBD tax/business/estate planning law firm seeking an attorney with three to five years’ experience in the areas of corporate, partnership and L.L.C. laws, business transactions and/or state and federal tax planning and controversies. LLM in taxation or comparable experience preferred due to type of practice. Strong writing and communication skills required. Salary will be competitive and will depend upon experience and qualifications. Please send a resume and writing sample which will be held in the strictest confidence to Douglas L. Salzer at Ste. 1500, 1100 Poydras St., New Orleans, LA 70163.

New Orleans attorney seeking employment with New Orleans/Metairie law firm to share office, files, clients and office staff. 30 years’ experience in civil trials, personal injury, real estate transactions, title insurance agent, bankruptcy and divorce. Reply to C-Box 176.

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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.

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.

Louisiana attorney with 26 years’ experience in general practice concentrating primarily in civil litigation available to assist other attorneys throughout Louisiana in overflow work or problem areas of law by preparing memoranda, motions, briefs, appeals, pleadings, pre-trial orders, trial notebooks, legal research, etc.; New Orleans office; $75/hour; résumé available. (228)466-4573.

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New Orleans CBD, 715 Girod St., between St. Charles and Carondelet St. Offices available in historic building. Includes secretarial space, receptionist, telephones, fax, copier, voice mail, conference room, library, kitchen and high-speed Internet access. Call Larry Samuel at (504)524-5555.

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New Orleans CBD, 612 Gravier St., between St. Charles and Camp Street. Individual offices and secretarial spaces are available in this recently renovated building. Includes receptionist, digital telephone system with voice mail, copier, fax, wireless Internet, conference room and much more. Walking distance to court. Call Michelle Whitaker at (504)525-5553 for additional information.

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gguidry@offices1050.com

Notice
I am applying for reinstatement as a member of the Bar by petition filed on or about March 7, 2005. This is my request that any individual file notice of opposition with the board within 30 days. Robert T. DeFrancesch, 2810 W. Airline Highway, LaPlace, LA 70068. Address of board: Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002; phone (504)834-1488.

Judith Z. Gardner has applied for readmission to the Louisiana State Bar Association. Individuals concurring in or opposing this application may file his/her concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

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New Orleans

Recent Developments in Bankruptcy
Aug. 19, 2005
New Orleans

Employment Law 2005
Aug. 26, 2005
New Orleans

13th Annual Admiralty Symposium
Sept. 2, 2005
New Orleans

Social Security Seminar
Sept. 9, 2005
New Orleans

Ethics & Professionalism
Sept. 27, 2005
Lafayette

Insurance
Sept. 30, 2005
New Orleans

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or contact Annette C. Buras or Vanessa A. Duplessis at (504)566-1600 or (800)421-LSBA.
The special Arbitrators and Mediators Directory will feature brief articles and photographs of arbitrators and mediators (INDIVIDUALS ONLY).

The articles should be 150 words MAXIMUM. Please provide your address, phone, fax, e-mail address and Web site information at the end of the listing (not part of the word count).

Submit either original photos or digital photos. Digital photos should be submitted separately from the article, in either .tif, .eps or .jpg format (the order of preference). DO NOT submit digital photographs embedded in word processing programs; send the photograph as a separate file.

Fees and deadlines are as follows:

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<tr>
<th></th>
<th>By June 30</th>
<th>By July 29</th>
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<tbody>
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<td>Directory Only</td>
<td>$100</td>
<td>$125</td>
</tr>
<tr>
<td>Directory/Web</td>
<td>$125</td>
<td>$150</td>
</tr>
</tbody>
</table>

Articles and photographs must be for individuals only. No group articles or group photographs will be used. But, as an ADDED BONUS, firms which have three or more arbitrators/mediators purchasing individual listings will receive a free firm listing in the section. (Firms are responsible for submitting the additional information, 150 words maximum.)

If you would like to repeat a prior listing and photo, you may send us a photocopy of that listing along with your check; please provide the year the listing appeared. (Digital photos appearing in ADR directories are archived back to 2000.)

To reserve space in the directory, mail your article, disk, photo and check (payable to Louisiana State Bar Association) to: Arbitrators & Mediators Directory, 601 St. Charles Ave., New Orleans, La. 70130.

Articles and photos may be e-mailed to dlabranche@lsba.org, and checks should be mailed or hand-delivered.

If you require more information, please contact: Darlene M. LaBranche, (504)619-0112 or (800)421-5722, ext. 112.

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Jane Smith
XYZ Arbitration Services, Inc.

Jane Smith has been affiliated with XYZ Arbitration Services, Inc. for five years, handling dispute resolution mainly for the insurance industry. Smith received a BS degree in political science in 1982 from Tulane University and her JD degree in 1987 from Louisiana State University Paul M. Hebert Law Center. Prior to joining XYZ, she was in private practice. Smith believes her professional experience is well suited to the field of arbitration. “This growing trend, to arbitrate rather than litigate, will be beneficial to the legal profession and the burgeoning court system,” Smith said.

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Oral History Profile: Justice Harry T. Lemmon

The Louisiana Bar Foundation recently completed an oral history on Louisiana Supreme Court Justice Harry T. Lemmon. He served the state’s highest court for 21 years before retiring in 2001.

He reminisced about his life, including his childhood in Morgan City and graduation from the University of Southwestern Louisiana in Lafayette with a degree in chemistry. Before entering Loyola University School of Law, he worked in the chemical industry, served in the United States Army and worked with real estate. While at Loyola, he met his wife, Mary Ann Vial Lemmon, who later became a United States district judge.

In 1963, he went into practice with his father-in-law in St. Charles Parish and tried his first case after having been in practice only 30 days. He was elected to the 4th Circuit Court of Appeal in 1970 and to the Supreme Court in 1980. In his first year on the Supreme Court, Justice Lemmon voted on approximately 3,000 criminal matters, which he says was a big challenge because he had neither practiced criminal law nor been a criminal court judge. Although retired from the Louisiana Supreme Court, Lemmon continues to grace the legal profession by volunteering his time to several organizations, including the American Inns of Court, the Louisiana State Law Institute and a governor’s commission to manage prison population.

Lemmon said he is “very proud to be a lawyer” and “thrilled about the legal profession.” He also believes judges and lawyers need to educate the public, the press and the other two co-equal branches of government about the judicial and legal system in order to promote understanding of and confidence in and respect for the system.

The Louisiana Bar Foundation (LBF) actively works to preserve Louisiana’s significant legal history through its Oral History Program. This program exists to broaden and preserve the history, culture and flavor of Louisiana law by filming, editing and producing the oral histories of Louisiana’s retiring judges, bar leaders and other legal personalities. The program, begun in 1999 under the direction of LBF’s Education Committee, is chaired by the Hon. Sylvia R. Cooks. For more information about the Oral History Program, visit the LBF Web site at www.raisingthebar.org.

Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Hon. J. James Brady ........Baton Rouge
Denise Langlois Brown ...New Orleans
Rebecca G. Bush ..........New Orleans
Jeffrey M. Cole ..........Lake Charles
Sandra Diggs-Miller ......New Orleans
Gregory P. Di Leo .........New Orleans
James C. Exnicios .........New Orleans
Monique M. Garsaud ......New Orleans
Shannon S. Holtzman ......New Orleans
Dominick F.
Impastato III ..........New Orleans
Brian M. Klebba ..........New Orleans
Eric A. Kracht ..........Baton Rouge
James C.
McMichael, Jr. ............Shreveport
Patrick W. Pendley ....... Plaquemines
A. Hammond Scott .........New Orleans
Stuart H. Smith ............New Orleans
Randall A. Smith ..........New Orleans
K. Todd Wallace ..........New Orleans
Alan Weinberger ..........New Orleans

Judge, Attorney Receive Pursuit of Justice Awards

A New Orleans judge and a New Orleans attorney are the recipients of Pursuit of Justice Awards, presented on April 29 by the American Bar Association Tort Trial & Insurance Practice Section (TIPS) during the 2005 TIPS spring meeting in New Orleans.

Honored with the awards were Judge Eldon E. Fallon of the United States District Court, Eastern District of Louisiana, and attorney Russ M. Herman, senior partner of the firm Herman, Herman, Katz & Cotlar, L.L.P.

The Pursuit of Justice Award is presented quarterly to recognize civil litigation attorneys who have shown outstanding merit and excelled in ensuring access to justice.

Fallon is known for his experience in complex, multidistrict product liability litigation. His skill in handling complex pharmaceutical litigation was recognized in February when he was assigned to coordinate all pretrial motions and dis-
covery in the federal liability cases involving Vioxx. He previously presided over litigation involving the drug Propulsid.

Fallon earned his BA degree from Tulane University, his JD degree from Louisiana State University Paul M. Hebert Law Center and an LLM degree from Yale Law School. He had a private practice and served as an adjunct professor at Tulane Law School until President Clinton appointed him to the U.S. Eastern District Court in 1995. He was awarded the ABA Pro Bono Publico Award in 1987 and is a member of the American Law Institute.

Herman, who also is board chair of Herman, Mathis, Casey, Kitchens & Gerel, L.L.P., is noted for handling complex class-action cases. He is a lead counsel on anti-tobacco litigation, serving as lead counsel in state class actions on behalf of individual claimants and also represented the Louisiana attorney general. He has worked in many areas of law including product liability, personal injury, medical, environmental, antitrust and construction cases.

Herman earned his BA and LLB degrees from Tulane University, where he is a frequent guest lecturer. He is a past president of the Louisiana Trial Lawyers Association, the American Trial Lawyers Association (ATLA), the Civil Justice Foundation and the Roscoe Pound Foundation. ATLA awarded him a Lifetime Achievement Award and the Leonard Ring Champion of Justice Award.

We Want Your News!
Deadline for news items in the October/November 2005 Louisiana Bar Journal is Thursday, Aug. 4.
E-mail your news items and photos to dlabranche@lsba.org or mail to: Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130.

Kean Miller Provides Trial Advocacy Scholarship for SU Mock Trial Team

Kean Miller Hawthorne D’Armond McCowan & Jarman, L.L.P., recently provided a trial advocacy scholarship to Southern University (SU) Law Center to fund the 2005 SU Law Center student mock trial team.

The mock trial team participated in the American Trial Lawyers Association (ATLA) Trial Advocacy Competition on Feb. 24-27 in Miami, Fla.

“We’re very pleased to be able to give these law students this unique opportunity. The ATLA competition gives these young students an exceptional forum to develop and practice their trial advocacy skills before distinguished members of the bench and bar. We hope our leadership in this area will inspire other law firms to support the activities of the Southern University Law Center and its students,” said Gary A. Bezet, managing partner of the 100-lawyer firm.

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

The New Orleans Legal Assistance Corp. (NOLAC) and Southeast Louisiana Legal Services (SLLS) honored their alumni judges at a Feb. 24 “In the Service of Justice” reception.

In all, 40 NOLAC or SLLS attorneys, staff or board members have served as federal or state court judges. The honorees included two Supreme Court justices, six judges each from the United States District Court and the 4th Circuit Court of Appeal and more than 20 district and juvenile court judges.

Louisiana Supreme Court Justice Bernette J. Johnson, a former NOLAC managing attorney and board president, chaired the event and presented plaques to the honorees for their public service. “It is wonderful to see how many lives have been touched by this legal aid agency,” Justice Johnson said in her address. Honorees included:

**Louisiana Supreme Court**
- Bernette J. Johnson
- Revius O. Ortique (Ret.)

**Louisiana Court of Appeal**
- Joan M.B. Armstrong
- Marcel Garsaud, Jr.
- James C. Gulotta, Sr. (Ret.)
- Edwin A. Lombard
- Terri F. Love
- Ernest N. Morial (deceased)

**United States District Court**
- James A. Comiskey (Ret.)
- Okla Jones (deceased)
- Ivan L.R. Lemelle
- Louis Moore, Jr.
- Karen W. Roby
- Jay C. Zainey

**State District Courts & Juvenile Courts**
- Reginald T. Badeaux III
- Stephen B. Beasley
- Kim M. Boyle
- Margaret Burke (Alaska)
- Sidney H. Cates IV
- Charlotte A. Cooksey (Maryland)

Former Appeal Court Judge Marcel Garsaud, Jr.; Mark A. Moreau, co-director of Southeast Louisiana Legal Services; and Louisiana Supreme Court Justice Bernette J. Johnson, from left, at the “In the Service of Justice” reception. Garsaud was among those former New Orleans Legal Assistance Corp. board members honored at the reception.

St. Bernard Parish Judge Kirk A. Vaughn, left, and Orleans Parish Judge Kern A. Reese enjoying the “In the Service of Justice” reception in honor of former New Orleans Legal Assistance Corp. and Southeast Louisiana Legal Services attorneys and board members who have served as judges.

NOLAC continued next page
Mark A. Moreau, co-director of Southeast Louisiana Legal Services; Orleans Parish Judge Carolyn W. Gill-Jefferson; and Louisiana Supreme Court Justice Bernette J. Johnson, from left, at the “In the Service of Justice” reception. Gill-Jefferson is one of four former New Orleans Legal Assistance Corp. managing attorneys who serve as judges.

U.S. District Court Judge Ivan L.R. Lemelle, left, and Appeal Court Judge Terri F. Love conversing at the “In the Service of Justice” reception held by the New Orleans Legal Assistance Corp. and Southeast Louisiana Legal Services to honor their alumni judges.

NOLAC continued

Darryl A. Derbigny
Nils Douglas (deceased)
Louis Douglas
Charles L. Elloie
Carolyn W. Gill-Jefferson
Alan J. Green
Paulette R. Irons
Madeline Jasmine
Calvin Johnson
Ethel S. Julien
Yada T. Magee
Thomas J. Malik (Ret.)
Kern A. Reese
Ronald J. Sholes
Emile R. St. Pierre
Kirk A. Vaughn
Zoey Waguespack

Judges Kern A. Reese, Carolyn W. Gill-Jefferson, Louisiana Supreme Court Justice Bernette J. Johnson and ex-Orleans Parish Judge (and Louisiana State Bar Association Treasurer) Kim M. Boyle, from left, pose for a group photo of New Orleans Legal Assistance Corp. attorneys or board members who have served on the Orleans Parish Civil District Court.
Chief Justice Calogero Receives First Beacon of Justice Award

Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. was honored as Jurist of the Year and presented with the first Beacon of Justice Award by the Southeast Chapter of the American Board of Trial Advocates (ABOTA) on April 9.

ABOTA, a national organization, is made up of experienced trial lawyers. The group’s mission is to promote civility and professionalism among lawyers, to support the continuation of jury trials in civil cases, and to protect the judiciary from unfair criticism.

Calogero was elected to the Louisiana Supreme Court bench in 1972 and was re-elected in 1974, 1988 and 1998. He took his oath as chief justice of the Louisiana Supreme Court on April 9, 1990, 15 years to the day of receiving the Beacon of Justice Award.

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Southern Law Center Recognizes Golden Law Alumni During Commencement

The Southern University (SU) Law Center honored for the first time its Golden Law Alumni during the 2005 commencement ceremonies on May 14. Honorees included:

Class of 1950
- Ellyson F. Dyson, admitted June 15, 1950; attorney, retired educator, Franklinton, La.
- Alex L. Pitcher, Jr., admitted June 15, 1950; noted civil rights attorney; former NAACP branch president, left Baton Rouge in 1961 for San Francisco, Calif., where he continued his law practice and was elected president of the San Francisco NAACP branch; died Jan. 6, 2000.
- Jesse N. Stone, Jr., admitted June 15, 1950; Shreveport civil rights attorney and educator; former dean of SU School of Law; ad hoc justice of the Louisiana Supreme Court; first president, Southern University System; former member of the SU Board of Supervisors; inducted into the SULC Alumni Hall of Fame in 2003; died May 14, 2001.
- Leroy White, admitted June 15, 1950; Baton Rouge attorney/former SU law professor; retired after 28 years as senior tax attorney with the Internal Revenue Service.

Class of 1951
- Richard B. Millspaugh, admitted June 18, 1951; Opelousas city attorney for more than 30 years; first black resident to register to vote in Opelousas, La.; former grand polemarch, Kappa Alpha Psi; inducted into the SULC Alumni Hall of Fame in 2005.

Class of 1952
- Bruce Bell, admitted June 17, 1952; Baton Rouge attorney; practiced with his brother Murphy Bell, a 1958 Law Center graduate; died Feb. 26, 1964.
SOUTHERN continued

- Freddie B. Warren, Jr., admitted June 17, 1952; New Orleans attorney; died April 1, 1997.

Class of 1953
- Johnnie A. Jones, Sr., admitted June 11, 1953; Baton Rouge civil rights attorney, former state representative; inducted into the SULC Alumni Hall of Fame in 2003.

Class of 1954
- Wilmon Richardson, admitted Feb. 18, 1954; Baton Rouge attorney and businessman; died Sept. 3, 1975.
- Chris Roggerson, Jr., admitted June 11, 1954; retired as senior federal executive as lead counsel of Board of Veterans Appeal; former supervising attorney of the U.S. Employment Opportunity Commission; former deputy director to secretary in the U.S. Department for Health, Education and Welfare’s Office of Civil Rights; and former staff director of Supreme Court Justice Clarence Thomas; died March 8, 2005.

Class of 1955
- Norbert Rayford, admitted June 10, 1955; retired administrative law judge for the Louisiana State Department of Labor, Workers’ Compensation; formerly practiced in Washington, D.C. and in Chicago, Ill.; returned to Baton Rouge in 1973 for a position as assistant professor of law at Southern; former assistant city prosecutor; one of the first commissioners of East Baton Rouge Parish; died March 11, 2005.

LOCAL/SPECIALTY BARS

State Bar Officers Attend Lafayette Parish Bar Membership Meeting

More than 80 members of the Lafayette legal community attended the March 16 Lafayette Parish Bar Association (LPBA) general membership meeting. Guest speakers were Louisiana State Bar Association President Michael W. McKay and Louisiana Bar Foundation President David F. Bienvenu.

Guests included LPBA members and members of the judiciary, including Judge Tucker L. Melancon of the United States District Court, Western District of Louisiana; judges Marc T. Amy and Jimmy T. Genovese of the Louisiana 3rd Circuit Court of Appeal; judges Marilyn C. Castle, Tommy R. Duplantier and Byron Hebert of the 15th Judicial District Court; and Judge Francie M. Bouillion of Lafayette City Court.

Additionally, Glenn Armentor, 2005 chair of the Lafayette Outreach for Civil Justice Campaign, recognized the law firm of Laborde & Neuner with the E.D. White Award. This annual award is presented to the single large firm in Lafayette that handles the largest number of pro bono cases for Lafayette Volunteer Lawyers, a project of the Lafayette Parish Bar Foundation and a beneficiary of the Lafayette Outreach for Civil Justice Campaign.

Following the meeting, members participated in a free, one-hour continuing legal education seminar titled “Practice and Procedure in the 3rd Circuit Court of Appeal,” presented by Judge Jimmy T. Genovese of the 3rd Circuit Court of Appeal.

Lafayette Parish Bar Association Members Attend ABA Conference

Lafayette Parish Bar Association (LPBA) President-Elect Kenny L. Oliver and LPBA Executive Director Susan Holliday joined 300 other leaders of lawyer organizations from across the country at the American Bar Association’s Bar Leadership Institute (BLI). The BLI is held annually in Chicago for incoming officials of local and state bars, special

Lafayette Parish Bar Association (LPBA) general membership meeting guest speakers were, from left, David F. Bienvenu, president of the Louisiana Bar Foundation; and Michael W. McKay, president of the Louisiana State Bar Association. With them are Judge Tucker L. Melancon of the United States District Court, Western District of Louisiana; and Joseph R. Oelkers III, LPBA president.
focus lawyer associations and bar foundations. The seminar provides the opportunity to confer with ABA officials, bar leader colleagues, executive staff and other experts on the operation of such organizations.

They joined ABA President Robert J. Grey, Jr. of Richmond, Va., and ABA President-Elect Michael S. Greco of Boston, Mass., in sessions on bar governance, finance, communications and planning.

Lafayette Parish Bar Association President-Elect Kenny L. Oliver and Executive Director Susan Holliday, center, attended the American Bar Association’s Bar Leadership Institute. With them are ABA President Robert J. Grey, Jr., left, and ABA President-Elect Michael S. Greco.

Lafayette Outreach for Civil Justice Campaign Chair Glenn Armentor, far right, presented the E.D. White Award to members of the firm of Laborde & Neuner, from left, Ben L. Mayeaux, Robert E. Torian, Jennie P. Pellegrin, Kevin P. Merchant and Dean A. Cole.

**Martinet Legal Society Gala**

The Greater Lafayette Chapter of the Louis A. Martinet Legal Society, Inc. held its annual fundraising gala at The City Club at River Ranch. Chairing the gala was Tricia R. Pierre. Special guests were Wayne J. Lee, far right, former president of the Louisiana State Bar Association; and Kim Keenan, far left, president of the National Bar Association. With them is Valerie Gotch Garrett, president of the Louis A. Martinet Lafayette Chapter.
NOBA Returns to Point Clear for Annual Bench Bar Conference

Nearly 100 New Orleans-based attorneys attended the New Orleans Bar Association’s (NOBA) annual Bench Bar Conference at Point Clear, Ala. This program provided an informal atmosphere where lawyers and judges could interact. CLE programs were offered.

Welcoming remarks were by Bench Bar Co-Chairs Judge Carolyn W. Gill-Jefferson and Patricia A. Krebs and by NOBA President Jesse R. Adams, Jr.

Two parties highlighted the evenings. Friday night’s cocktail reception honored the judges. Saturday night’s progressive dinner featured a live band.

Also serving on the Bench Bar Committee were Judge Herbert A. Cade, Judge Sidney H. Cates IV, Carmelita M. Bertaut, Endya E. Delphit, Stevan C. Dittman, Maurice C. Ruffin and R. Patrick Vance.

The New Orleans Bar Association (NOBA) Saturday night party at the Bench Bar Conference. On stage in the background is NOBA member Charlton B. Ogden III performing with his harmonica.
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A while back we reported on the intellectual property skirmishes valiantly being waged by the members of the Zulu Social Aid and Pleasure Club in their crusade to protect the uniqueness of their painted coconut Mardi Gras throws.

Fast forward a few years, and now the Zulu battleground has migrated to the casualty insurance field, and specifically the threat from its insurer that even with a humongous premium increase, the gilded coconut may meet the fate of K & B Purple and Schwegmann’s bags.

According to a recent story, these unique treasures date back at least to the 1920s, when a local sign painter, Lloyd Lucus, got the bright idea to start painting them for show. Alas, much like the doctors, Zuluans claimed their own insurance crisis in the mid-1980s born of fear of what those creative CDC juries might do with injuries sustained from the errant oblong goodies. The lobbying campaign paid off with the signing by Governor Edwards of a “Coconut Bill,” adding the latter to our state’s lengthening laundry list of liability exemptions.

With the exception of dealing with the legions of those darned coconut copycats throughout the world, everything sailed smoothly enough until the recent announcement by Zulu’s insurer. Edwards being presently detained, the krewe sought the help of our sitting insurance commissioner, J. Robert Wooley, who averted another crisis by convincing an insurer to cover the coconuts and reduce the premiums to a manageable increase. Ever the cautious revelers, the krewe is anticipating future crises by exploring ways of preserving the essence and integrity of the coconut’s oblongness.

Never let it be said that this publication is unsympathetic to hallowed traditions. Our Crack Coconut Committee has fashioned a short list of other alternatives intended to stem the tide of exposure before the inevitable coconut class action group arises. Our suggestions:

- Carve far softer bananas or mangos or our own satsumas into oblong coconut-looking shapes. With a little shiny paint and a few beads and feathers tacked on, no one will notice the difference.
- Inscribe a tightly worded liability release on the nut (“The recipient of said coconut, by participation as a spectator herein, hereby expressly waives any and all rights and/or causes of action available to him or through him arising out of any injury or damage sustained, or death caused, directly or indirectly, by contact with or exposure to said coconut, and agrees to hold harmless, defend and indemnify the Zulu Social Aid and Pleasure Club and all agents, employees, principals and insurers thereof from any and all claims in connection therewith”).
- Restrict the parade crowd to insurance adjusters, federal judges, mothers-in-law and engineers. Their heads are so hard that no mere coconut could damage them.
- The coconuts could be liberally padded in bubble wrap or affixed with silver-colored duct tape, being careful to preserve the essence and integrity of the coconut’s oblongness.
- The parade route could be peremptorily transferred to St. Tammany Parish. That way, if someone actually gets hurt and sues, most jurors will hold it against the injured person for not being off skiing during Mardi Gras and award peanuts rather than coconut money.
- New Orleans Saints season tickets could be glued to the nuts in places clearly visible to the general Mardi Gras public. Since no one seems to want these lately, the tainted (Sainted?) coconuts would in all likelihood cause parade goers to scatter from them like Fallujah grenades. One possible complication may arise if some hero in the crowd decides to spare his cohorts by hurling the Saintly coconut back at the float-riding Zuluans.

Stay tuned for the next fascinating legal chapter in the heroic struggle of Zulu to preserve the core of its identity.