LOUISIANA BAR
JOURNAL

October/November 2007 Volume 55, Number 3

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LOUISIANA BAR JOURNAL

October / November 2007 Volume 55, Number 3

Departments

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Features

Cover Art

*Jeffie Lanter, **Oyster**, 2007, mixed media.*

From the collection of the Creative Writing Department at the New Orleans Center for Creative Arts/Riverfront (NOCCA). NOCCA is Louisiana's arts conservatory for high school students. Jeffie Lanter is a 2007 graduate of NOCCA's Visual Arts Program. See page 160 for more information about the artist.

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Artists of any age, working in any genre, are encouraged to submit work for consideration. Legal and Louisiana themes are preferred. For submission information, see page 161.

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*Jeffie Lanter, **Oyster**, 2007, mixed media. From the collection of the Creative Writing Department at the New Orleans Center for Creative Arts/Riverfront (NOCCA). NOCCA is Louisiana's arts conservatory for high school students. Jeffie Lanter is a 2007 graduate of NOCCA's Visual Arts Program.*

Cover Artist
Jeffie Lanter

Jeffie Lanter was born in New Orleans in 1988 and raised in Mandeville. Throughout grade school, she participated in the Talented Arts Program until she was accepted into the New Orleans Center for Creative Arts/Riverfront (NOCCA) in her sophomore year of high school. For three years, she attended NOCCA where she was provided with the opportunity to learn from talented working artists, taking her art to a more serious level. After the disruption of Hurricane Katrina and with NOCCA temporarily closed, she spent a year at the Idyllwild Arts Academy in California. She returned to New Orleans the following year to graduate with honors at both Fontainebleau High School and NOCCA. She was awarded the Daniel Price Scholarship in recognition of a young aspiring artist who values and embraces the city of New Orleans. Currently, she is a freshman at the Memphis College of Art in Memphis, Tenn. Her plans are to return to New Orleans, starting a career in either art education or art therapy.

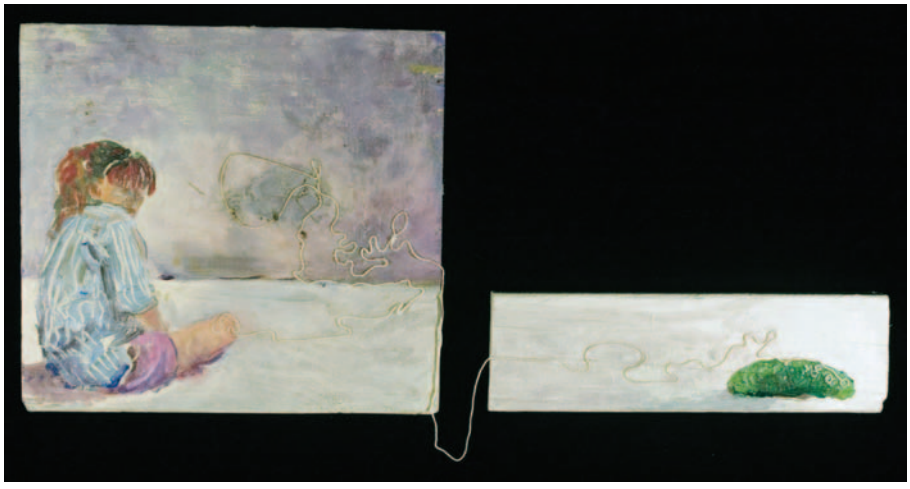
About the Art … From the Artist!
"Oyster" and "Pickle"

Living and growing up in a genuinely unique city such as New Orleans offers me the opportunity to feel artistically free. During my senior year of high school, I focused on creating artwork that compared past childhood experiences to the person I am now. This important time in my life — of learning how to be independent — is frightening, but also exhilarating. Through this series of artwork, I express the innocence of discovery and curiosity of the unknown.

My inspiration for "Oyster" developed while concentrating on the shape and form of a person's knees. I noticed many similarities between the structure of an oyster and the shapes created in the knee. Through this connection, I was able to make a transition to another concept of growing up: environment. Using the oyster as subject matter in my work allowed me to engage the viewer with facets of mystery. The piece challenges the viewer to ask questions about what he/she is looking at and why. My goal was to avoid the oyster becoming simply a "symbol" of New Orleans, but rather engage the viewer through composition, color and technique, to portray a deeper history of how I relate to the city. I have experimented with a variety of techniques — such as collaging different patterned wallpapers, string and cut-out shapes to help create visual connections in the work. This freedom of process, and the joy of experimenting with technique, has helped to reinforce my concepts of play and discovery within the pieces.

In the piece titled "Pickle," there is a feeling of ambiguity created when the figure has her back turned. The idea, once again, reflects a personal exploration and relationships to outside surroundings. My ultimate goal with this work is to give the viewer a moment of self-reflection. Utilizing intentional color schemes, collage techniques and playful subject matter, I encourage the viewer to make his or her own personal relationships with the work. The purpose of these pieces is to bring attention to the importance of growing up and discovery. While my art expresses ideas from my childhood, I want the viewer to make a connection with his or her experiences growing up.

— Jeffie Lanter



*Jeffie Lanter, **Pickle**, 2007, mixed media. Reproduced by permission of the artist.*

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Artwork may be oriented vertically or horizontally. The *Journal* trim size is 8.5 inches wide by 10 7/8 inches tall. The bleed size is 8 5/8 inches wide by 11 1/8 inches tall. Artists wishing to submit a full-page vertical piece of artwork (with or without a bleed edge) should make the active portion of the design at least 2 inches from the top edge and 2 inches from the bottom edge to accommodate the *Journal*'s masthead and mailing label.

To submit artwork for review, artists may mail a photocopy or a photograph of their original artwork. (Do not submit original artwork at this stage. If your artwork is in color, send a color photocopy.) Or, artists may e-mail a low-resolution scan or a photo of the artwork (either as a PDF, JPG or TIF file).

The *Journal* staff will contact artists whose work has been selected to make arrangements for submission of original art or high-resolution digital files.

After a piece of artwork is accepted for publication, artists will be asked to sign a release form and provide a short biography, photo and explanation of the artwork. No monetary compensation will be paid, but artists will receive copies of the *Journal*.

Mail or e-mail your art to: Darlene M. LaBranche, Publications Coordinator, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; dlabranche@lsba.org. Direct your questions to LaBranche at (504)619-0112 or (800)421-5722, ext. 112.

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I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

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Don't Be Shy! It's Your Bar Association

By Mark A. Cunningham

Take Advantage of LSBA Services and Tell Us What Else We Can Do to Help!

The Louisiana State Bar Association is here to help your practice. In this issue (page 163) and every issue of the *Bar Journal*, you will find a list of services available to all members. Our programs include free online legal research, an ethics advisory service, a substance abuse hotline, mentoring for young lawyers, CLE and practice management assistance, to name just a few. Take a second to review the services listed on the Member Services page to make sure you have not been missing out.

But don't stop there. The LSBA wants to do more for you and needs your guidance. Write us a letter, send an e-mail or pick up the telephone. Tell us what kind of services the LSBA might offer which would help improve your legal practice and quality of life. Speak up and think big. You will find that the LSBA staff and LSBA leadership want to hear from you. And although it may not always be possible for the LSBA to give you exactly what you want, I can guarantee you we will try.

Here is how you can reach us:

- Loretta Larsen, LSBA Executive Director, (504)619-0113, loretta@lsba.org
- S.Guy deLaup, LSBA President, (504)838-8777, gdelaup@connicklaw.com
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Election Balloting Online Only: Verify Your E-Mail Address on File with the LSBA

Balloting in this year's elections will be conducted online only, in keeping with procedures adopted by the Board of Governors.

Now is the time for members to verify e-mail addresses currently on file with the LSBA.

Members should go to *http://www.lsba.org/2007MemberLogin/MemberLogin.asp* for access into the secured areas of the Web site.

Web Site Log-in: Retrieve PIN Numbers and Passwords Online

The LSBA's updated Web site requires members to use a special log-in PIN number to create a password for access into secured areas of the site. Personal PIN numbers were mailed to members in June with the dues notice and registration statement. But, if you can't locate your PIN number, or you don't recall your password, use the LSBA Web site to retrieve both. Go to: *http://www.lsba.org/2007MemberLogin/CreateAccount.asp*. Once there, you have the options to log in, create the member account or retrieve passwords and PIN numbers.

LETTERS

Judges' Responsibilities Toward Professionalism

It never ceases to amaze me that CLE courses and scholarly articles appeal to the members of the Bar to be ever mindful of their professional responsibilities, even in the face of insults being hurled their way by opposing counsel. (Focus on Professionalism, James A. George, August/September 2007 *Journal*).

When such behavior is ignored, it is silently condoned by a judge. Under their judicial responsibilities, judges are required to oversee their courtrooms and insure decorum so that all parties have equal access to justice. Judges who permit displays of unprofessional behavior in their courtrooms are as guilty as abusive opposing counsel.

The judiciary is in a better position to curtail insulting behavior, not professional members of the Bar who must take it on the chin and refrain from responding in kind. It's the referee that has the responsibility to call foul when the game gets rough.

Name the last time you experienced unprofessional behavior in the courtroom of a judge who ran his/her court with high standards of judicial conduct? You probably can't. Unprofessional behavior just isn't tolerated by judges who are mindful in *their* responsibilities to the public and members of the Bar.

Chad Pellerin
Litigation Division
Attorney General's Office
New Orleans

Letters to the Editor Policy

1. At the discretion of the Editorial Board (EB), letters to the editor are published in the *Louisiana Bar Journal*.

2. If there is any question about whether a particular letter to the editor should be published, the decision of the editor shall be final. If a letter questioning or criticizing Louisiana State Bar Association policies, rules or functions is received, the editor is encouraged to send a copy of that letter to the appropriate entity for reply within the production schedule of the *Louisiana Bar Journal*. If the editor deems it appropriate, replies may be printed with the original letter, or in a subsequent issue of the *Louisiana Bar Journal*.

3. Letters should be no longer than 200 words.

4. Letters should be typewritten, signed and, if applicable, include LSBA member number, address and phone number. Letters from non-members of the LSBA also will be considered for publication. Unsigned letters are not published.

5. Not more than three letters from any individual will be published within one year.

6. Letters also may be clarified or edited for grammar, punctuation and style by staff. In addition, the EB may edit letters based on space considerations and the number and nature of letters received on any single topic. Editors may limit the number of letters published on a single topic, choosing letters that provide differing perspectives. Authors, editorial staff or other State Bar representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

7. Letters may pertain to recent articles, columns or other letters. Letters responding to a previously published letter should address the issues and not be a personal attack on the author.

8. No letter shall be published that contains defamatory or obscene material, violates the Rules of Professional Conduct or otherwise may subject the LSBA to civil or criminal liability.

9. No letter shall be published that contains a solicitation or advertisement for a commercial or business purpose.

Legal Education in Louisiana: We Can Do Better

By S. Guy deLaup

Growing up, I was always interested and inquisitive about the law. I guess that is why I eventually became a lawyer. While I can understand that a career in the law is not for everyone, it amazes me that most people lack even the most basic information about our government, our court system, and our rights and responsibilities as citizens. I think this is directly attributable to a lack of civic education in the country as a whole, and particularly in Louisiana.

A fairly recent survey by the American Bar Association revealed that only 52 percent of adults were able to identify the three branches of government. More than one in five people believed that the three branches of government were Republican, Democrat and Independent. The same survey revealed that fewer than half of all Americans could correctly identify the meaning of the separation of powers. The conclusion drawn by those who conducted the survey was that most Americans do not understand our most basic constitutional principles and that we, as a society, are disengaging from our political institutions in increasing numbers.[1]

Consistent with the findings of this survey, I am told that Louisiana schools only require one-half of a credit hour in civics as a prerequisite to high school graduation.

Instruction in civics prepares students for becoming participatory citizens. It introduces the basic premise of our system of government and instills an understanding of the value of American democracy. When educated about the founding fathers' belief that a balance of power amongst three branches of government would protect Americans from dictators and tyrants, students develop a better sense of why the executive, legislative and judicial branches operate as they do. Basic information about how a bill becomes a law, the difference between criminal and civil law, or the makeup of our court system can provide students and young people with considerable insight into the headlines of the day. More importantly, young people with this information are empowered to believe that they have a voice in what happens to them and their community.

Civics programs must become institutionalized in our schools. We need more classes focused on law and government, as well as a better curriculum in order to assure that students will have the tools necessary to participate in a democratic society. One semester of instruction is simply inadequate to meet the obligation to our young people. At a minimum, a full year of instruction in both middle and high schools should be required.

Students in Louisiana deserve access to this type of civic learning. In my view, this information is as important as learning to read or write or perform basic math functions. Without a sense of context and self-determination, young people grow into adults who are dependent on others to navigate their environment. Students who finish school unaware of these civic responsibilities are less likely to register to vote, serve on a jury or run for political office. But perhaps more importantly, they are confused by those societal forces which impact their lives.

Louisiana lawyers should be proud of the Louisiana Center for Law and Civic Education (LCE), a statewide educational organization committed to advancing the study of law and civic education, while promoting the practical application of the law throughout Louisiana's schools. LCE was founded by lawyers and remains an active force in the state primarily through the efforts of our profession. Through its nationally recognized programming, LCE has been working to improve both the content base and the participatory knowledge of Louisiana students. LCE provides in-service training to Louisiana teachers in civics to insure that those who are teaching our children themselves understand how our government and justice system work. In addition, LCE brings classrooms to the courts, while at the same time bringing lawyers, law enforcement officers and judges to the classrooms. This organization also has been instrumental in creating three "Law Signature Schools" in the state. Each provides high school students with a comprehensive program concentrating on a variety of aspects of the law and legal processes.

Recently, LCE initiated a program called "Order in the Court," designed to enhance the public's awareness and understanding of the Louisiana judicial system by providing lesson plans to state and federal judges, as well as lawyer volunteers, to assist in teaching students about the role of the courts. LCE serves

as a resource center and assists in coordinating visits to classrooms and courts. *(Read more about the "Order in the Court" program on page 209.)*

Often working collaboratively with the LCE, the Louisiana State Bar Association's Young Lawyers Section also contributes to civic education through its high school essay contest and highly successful statewide mock trial competition. This also provides an opportunity to many judges and lawyers to volunteer to work with students.

While we can be proud of the legal community's efforts to promote legal and civic education, we cannot do it alone. Civics programs must become institutionalized in our schools. We need more classes focused on law and government, as well as a better curriculum in order to insure that students will have the tools necessary to participate in a democratic society. One semester of instruction is simply inadequate to meet the obligation to our young people. At a minimum, a full year of instruction in both middle and high schools should be required.

Graduates of Louisiana schools should be well versed in the fundamentals of government, including how our state and federal court systems work. They should know the major elected officials at the state, federal and local level. Moreover, an understanding of the juvenile, traffic and small claims court systems amounts to a life skill that many students will find invaluable.

This is not a radical proposition, and it is unlikely to be very costly, as most lawyers and judges would gladly give their time to assist with these courses. It is a modest and reasonable proposal that I humbly present to the Board of Elementary and Secondary Education, the Legislature and the Governor of Louisiana. Let's take the lead in building a responsible citizenry to improve the future of our state!

FOOTNOTE

1. Civics education, American Bar Association, Defending Liberty and Pursuing Justice (July 2005).

Need 2007 CLE Hours?

Earn Those Credits with LSBA Programs!

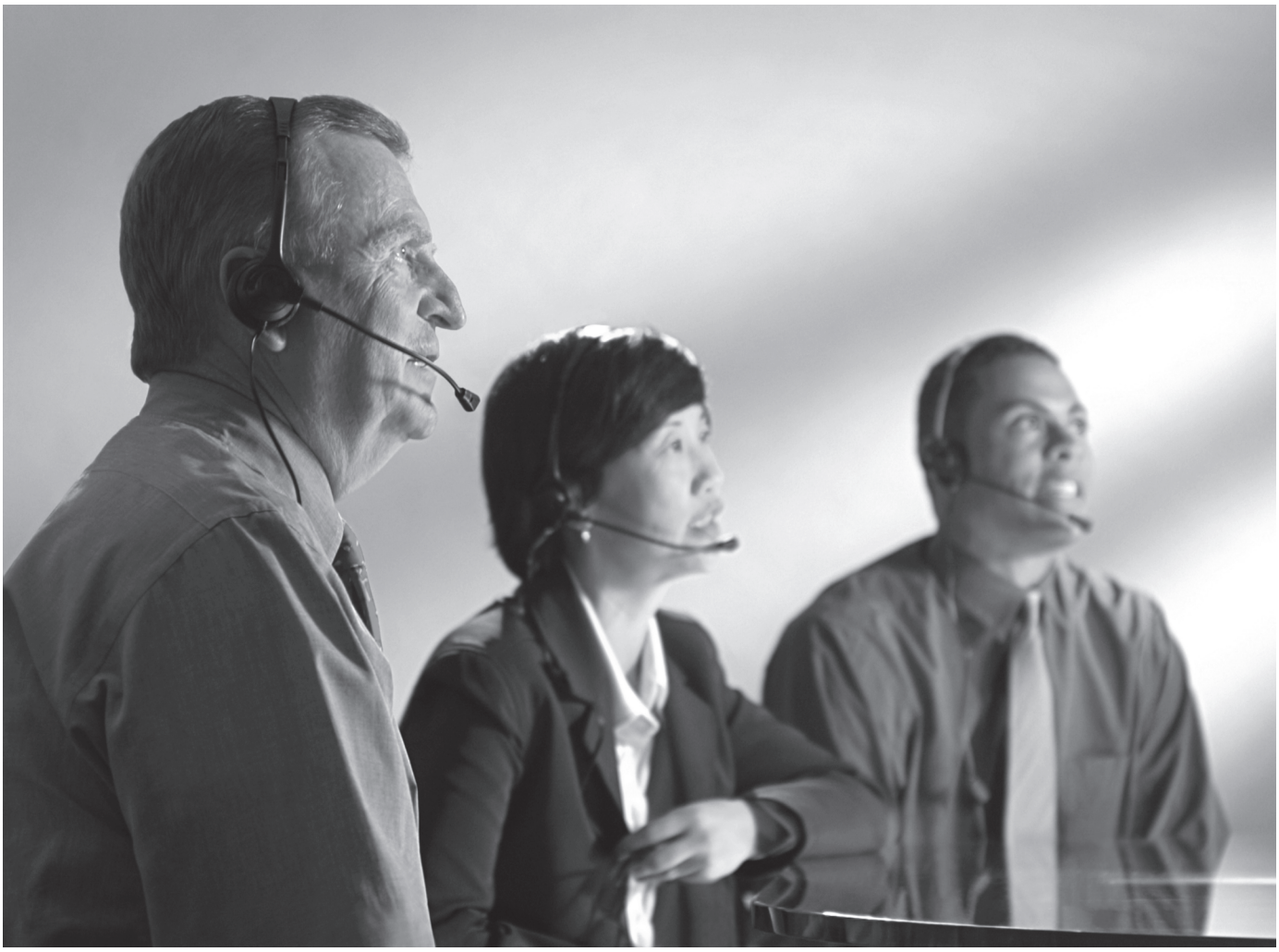
The Louisiana State Bar Association has scheduled several CLE seminars through December. Some of the programs are being offered as online seminars and live Webcasts through LegalSpan. To fully review all programs, to register online or to download a mail-in registration form, go to: *http://www.lsba.org/2007cle/cle.asp*. Here's a brief seminar overview:

- **47th Annual Bridging the Gap,** Thursday and Friday, Oct. 25-26, Sheraton New Orleans Hotel, 500 Canal St. Approved for 14 hours, including 5.25 hours of ethics, 1.5 hours of professionalism and 2.25 hours of law practice management. This program is designed for newly admitted attorneys, but all attorneys are invited to participate.
- **Ethics and Professionalism**, Friday, Nov. 2, Horseshoe Casino and Hotel, 711 Horseshoe Blvd., Bossier City. Approved for 4 hours, including 3 hours of ethics and 1 hour of professionalism.
- **Criminal Law Seminar, Sentencing: What Exactly Happens to Client After He Pleads Guilty or Gets Convicted**, Friday, Nov. 9, New Orleans Marriott Hotel, 555 Canal St. Approved for 6.75 hours, including 1 hour of ethics.
- **Workers' Compensation Seminar**, co-sponsored by the LSBA and the Insurance, Tort, Workers' Compensation and Admiralty Law Section, Thursday, Nov. 15, Sheraton Baton Rouge Convention Center, 102 France St., Baton Rouge. Approved for 7 hours, including 1 hour of ethics and 1 hour of professionalism.
- **Law & Order: Litigation in Louisiana**, Friday, Nov. 30, New Orleans Marriott Hotel, 555 Canal St. Approved for 6.25 hours, including 1 hour of professionalism.
- **Coming in December** . . . **Ethics & Professionalism: Watch Your P's and Q's**, Dec. 7, New Orleans; and **Summer School Revisited**, Dec. 13-14, New Orleans.

LSBA members are encouraged to register early for the LSBA's "New York, New York Multi-Topic CLE" from Nov. 18-20 at the Grand Hyatt New York. The program has been approved for 13 CLE hours, including 1 hour of ethics and 1 hour of professionalism. The LSBA has secured a discounted hotel room rate for the nights of Nov. 16-21. There are a limited number of rooms so members are urged to book accommodations soon.

Don't forget early booking of airfare, too, as this is Thanksgiving week.

For more information on the program and speakers, to register online or to download a mail-in registration form, go to: *http://www.lsba.org/2007cle/seminardetail.asp?CLEID=60*.



The Duty to Find a Knowledgeable Corporate Designee — Or to Educate One

By John Randall Whaley and Richard J. Arsenault

The deposition of a legal entity is, of course, a legal fiction. As such, "when a corporation is involved, the information sought must be obtained from a natural person who can speak for the corporation."[1] The corporation appears vicariously through its designee.[2]

> For a corporate deposition to operate effectively, the deposing party must designate the areas of inquiry with reasonable particularity and the corporation must designate and adequately prepare witnesses to address these matters.[3]

This article discusses the requirements for producing a knowledgeable corporate designee so that legitimate discovery can be had during a corporate deposition.

The corporate deposition under La. C.C.P. art. 1442 is a critical discovery tool. Like Fed. R. Civ. P. 30(b)(6), La. C.C.P. art. 1442 allows the deposition of "a public or private corporation, partnership, or association or governmental agency." The requesting party must describe with "reasonable particularity the matters on which the examination is requested." In turn, "the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which" the person will testify. "The persons so designated shall testify as to matters known or reasonably available to the organization."

There is a great body of federal law that details the parties' respective obligations for a corporate deposition under Rule 30(b)(6). The Louisiana Supreme Court has repeatedly encouraged Louisiana courts to consider federal cases dealing with federal statutes similar to state statutes, particularly when no Louisiana jurisprudence is present. Given the similarities between Rule 30(b)(6) and La. C.C.P. art. 1442, it is the authors' view that federal law can provide guidance when disputes arise.

The requirement that the requesting party describe with "reasonable particularity" the matters on which the examination is requested was added to the federal rule to avoid the difficulties encountered by both sides when the examining party is unable to determine who within a corporation would best be able to provide the information sought, to avoid the "bandying" by corporations where individual officers disclaim knowledge of facts clearly known to the corporation, and to assist corporations which found an unnecessarily large number of their officers and agents were being deposed.[4] As a result, this procedure gives the corporation being deposed more control by allowing it to decide who to designate and then having the opportunity to prepare that witness to testify on the corporation's behalf on the topics previously outlined by the requesting party.

Clearly, when a corporation is served with a corporate deposition notice, the corporation is compelled to comply, and it may be ordered to designate a witness if it fails to do so.[5] In *Marker v. Union Fidelity Life Ins. Co.*,[6] the court noted that a notice of a corporate deposition:

> requires the corporation to produce one or more officers to testify with respect to matters set out in the deposition notice or subpoena . . . . The corporation then must not only produce such number of persons as will satisfy the request, *but more importantly*, *prepare them* so that they may give *complete*, *knowledgeable*, and *binding* answers on behalf of the corporation.[7]

Feigning ignorance of designated topics does not work for a corporation like it may for an individual either. That is because the "memory" of a corporation is much different from that of a regular deponent.

A corporate deposition notice places the burden upon the deponent to make a conscientious, good-faith endeavor to prepare its designees in order that they can "answer *fully*, *completely*, and *unevasively*."[8] The duty of preparation "goes beyond matters personally known to that designee or to matters in which that designee was personally involved."[9] If necessary, the deponent must use documents, past employees and other resources in performing this required preparation.[10] This level of preparation is required because the testimony elicited at the corporate deposition represents the knowledge of the corporation, not of the individual deponent.[11] The designated witness is "speaking for the corporation" and her testimony must be distinguished from that of a "mere corporate employee" whose deposition is not considered that of the corporation and whose presence must be obtained by subpoena.[12] The fact that the person designated by the corporation does not possess personal knowledge of the matters set forth in the deposition notice does not excuse the corporation from preparing the designee so that the designee may give knowledgeable and binding answers for the corporation.[13] Thus, the duty to present and prepare a corporate designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved.[14]

As a result, it is apparent that the corporate designee does not give his personal opinions but presents the corporation's "position" on the topics described in the notice. The designee must testify not only about facts within the corporation's knowledge but also its subjective beliefs and opinions and the corporation must provide the corporation's interpretation of documents and events.[15] "The designee, in essence, represents the corporation just as an individual represents him or herself at a deposition. Were it otherwise, a corporation would be able to deceitfully select at trial the most convenient answer presented by a number of finger-pointing witnesses at the deposition."[16] "Truth would suffer" if corporations were allowed to do so.[17]

To ensure that the corporate designee is qualified to testify beyond her own personal knowledge, the corporation must prepare its corporate designee to so testify, including ensuring that the designee reviews all applicable documents. Specifically, "even if the documents are voluminous and the review of those documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed."[18] Other courts have stated that "the burden upon the responding party, to prepare a knowledgeable corporate witness, may be an onerous one, but we are not aware of any less onerous means of assuring that the position of a corporation that is involved in litigation can be fully and fairly explored.[19] This level of preparation is necessary "in order to make the deposition a meaningful one" and "to prevent the 'sandbagging' of an opponent by conducting a half-hearted inquiry before the deposition but a thorough and vigorous one before the trial. This would totally defeat the purpose of the discovery process" in the opinion of some courts.[20] While preparing for a corporate deposition can be burdensome, "this is merely the result of the concomitant obligation from the privilege of being able to use the corporation form in order to conduct business."[21]

If "the originally designated spokesman for the corporation lacks knowledge in the identified areas of inquiry, that does not become the inquiring party's problem, but demonstrates the responding party's failure of duty."[22] "Producing an unprepared witness is tantamount to a failure to appear at a deposition."[23] The

court in *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp.*,[24] stated that, "If the agent [of a corporation] is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all."

Feigning ignorance of designated topics does not work for a corporation like it may for an individual either. That is because the "memory" of a corporation is much different from that of a regular deponent. "An individual's personal memory is no more extensive than his or her life. However, a corporation has a life beyond that of mortals."[25] Because corporations can discharge its "memory," (*i.e.*, employees), and they can voluntarily separate themselves from the corporation, courts have found that it is "not uncommon to have a situation . . . where a corporation indicates that it no longer employs individuals who have memory of a distant event or that such individuals are deceased."[26] These problems, however, do not relieve a corporation from preparing its corporate designee to the extent matters are reasonably knowable and available, whether from documents, past employees or other sources.

Prior production of documents that may contain information relative to the corporate deposition does not relieve the corporation from preparing a deponent to testify at a corporate deposition. One court has argued that such an argument was "disingenuous at best."[27] "Without having a witness or witnesses who can testify so as to bind the corporation, the deposing party is left at an unfair disadvantage, having no understanding of what the corporation's position is as to the many areas of inquiry."[28]

In *In re: Vitamins Anti-Trust Litig.,*[29] the court rejected the defendant corporation's argument that additional corporate deposition testimony would be duplicative because the information sought was available in documents. The court stated that "the two forms of discovery are not equivalent."[30] Another court has explained that, "A document can be given differing significance in meaning by different witnesses, but the testimony of a corporate deponent binds the corporation to the explanation given."[31] Simply put, the availability of documents is not the equivalent of corporate testimony regarding the subject matter of that document.[32]

Further, the fact that a corporate deposition might cover subjects discussed by individual employees of the corporation in previous individual depositions does not moot the need for a corporate deposition. Such an argument "misses the purposes" of a corporate deposition.[33]

A close review of these federal authorities indicates that a corporation must endeavor to find or educate an appropriate designee when issued a deposition notice under La. C.C.P. art. 1442. If the corporation fails to do so, the discovery process suffers.

FOOTNOTES

1. United States v. Taylor, 166 F.R.D 356, 360 (*citing* 8A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 3526 at 33 (2d. ed. 1994)).
2. Resolution Trust v. Southern Union Co., 985 F.2d 196, 197 (5 Cir. 1993).
3. Taylor, 166 F.R.D. at 360.
4. Fed.R.Civ.P. 30(b)(6) Advisory Committee's Note.
5. 8A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 3526 at 33 (2d. ed. 1994).
6. 125 F.R.D. 121 (M.D.N.C. 1989).
7. *Id.* at 126 (emphasis added).
8. Briddell v. St. Gobain Abrasives, Inc., 233 F.R.D. 57, 59 (emphasis added).
9. Taylor, 166 F.R.D. at 361.
10. *Id.*
11. *Id.*
12. *Id.* (*quoting* 8A Wright, Miller and Marcus, § 2103, at 36-37).
13. Taylor, 166 F.R.D. at 361; Dravo Corp. v. Liberty Mutual Ins. Co., 164 F.R.D. 70, 75 (D. Neb. 1995).
14. Taylor, 166 F.R.D. at 361 (*citing* Buycks-Roberson v. Citibank Federal Sav. Bank, 162 F.R.D. 338, 343 (N.D. Ill. 1995)).
15. *Id.* (emphasis added).
16. *Id.* (*citing* Lapenna v. UpJohn Co., 110 FRD 15, 25 (E.D. 1986)) (emphasis added).
17. *Id.*
18. Calzaturficio S.C.A.R.P.A. v. Fabiano Shoe Co., Inc., 201 F.R.D. 33, 37 (D.Mass. 2001).
19. Prokosch v. Catalina Lighting, Inc., 193 F.R.D. 633, 638 (D. Minn. 2000).
20. Taylor, 166 F.R.D. at 362.
21. *Id.*
22. Poole ex rel. Elliott v. Textron, Inc., 192 F.R.D. 494, 504-05 (D. Md. 2000).
23. Starlight Int'l Inc. v. Herlihy, 186 F.R.D. 626, 639 (D. Kan., 1999) (*citing* Taylor, 166 F.R.D. at 363); Resolution Trust, 985, F.2d. at 197.
24. 228 F.3d 275, 303 (3 Cir. 2000).
25. Taylor, 166 F.R.D. at 361.
26. *Id.*
27. Calzaturficio, 201 F.R.D. at 37.
28. *Id.*
29. 216 F.R.D. 168 (D.D.C. 2003).
30. *Id.* at 174.
31. United States ex rel Fago v. M & T Mort. Corp., 235 F.R.D. 11, 24 (D.D.C. 2006).
32. *Id.*
33. *Id.*

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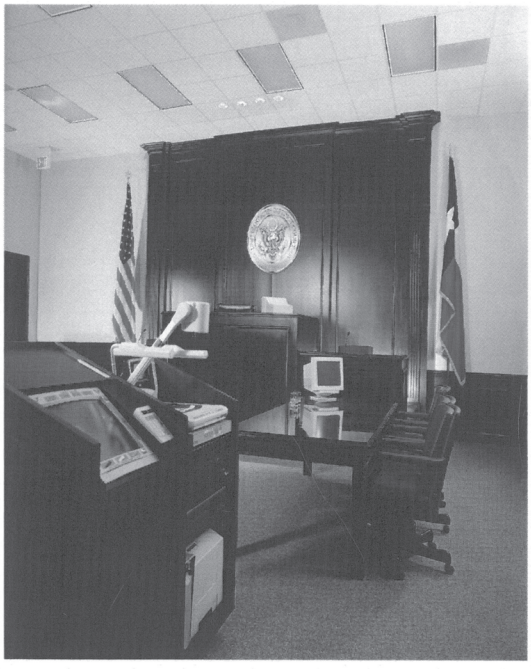

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Successor Liability in Louisiana

By George W. Kuney

Successor liability is an exception to the general rule that, when one corporate or other juridical person sells assets to another entity, the assets are transferred free and clear of all but valid liens and security interests. When successor liability is imposed, a creditor or plaintiff with a claim against the seller may assert that claim against and collect payment from the purchaser.

Historically, successor liability was a flexible doctrine, designed to eliminate the harsh results that could attend strict application of corporate law. Over time, however, as successor liability doctrines evolved, they became ossified and lacking in flexibility in many jurisdictions. As this occurred, corporate lawyers and those who structure transactions learned how to avoid application of successor liability doctrines.[1] This article summarizes what has become of various species of non-statutory successor liability in Louisiana.[2]

There are two broad groups of successor liability doctrines, those that are judge-made and those that are creatures of statute. Both represent a distinct public policy that, in certain instances and for certain liabilities, the general rule of non-liability of a successor for a predecessor's debts following an asset sale should not apply. This article addresses the status of the first group, judge-made successor liability in Louisiana.

The current judge-made successor liability law is a product of the rise of corporate law in the last half of the 19th century and early part of the 20th century. It appears to have developed because of and in reaction to the rise of corporate law.[3] It may be better to characterize it as a part of that body of law, much like the "alter ego" or "piercing the corporate veil" doctrines,[4] rather than as a creature of tort law, although it is used as a tool by plaintiffs who are involuntary tort claimants.

The State of Successor Liability in Louisiana

When examined in detail, the types of judge-made successor liability recog-

nized across the various states of the union can be classified into five general species, each of which is specifically defined on a jurisdiction-by-jurisdiction basis. The five categories of successor liability addressed in this article are: (1) Intentional Assumptions of Liabilities, (2) Fraudulent Schemes to Escape Liability, (3) *De Facto* Mergers, (4) The Continuity Exceptions: Mere Continuation and Continuity of Enterprise, and (5) The Product Line Exception. Louisiana recognizes the first two and a third which appears to be a specialized combination of the *De Facto* Merger and Mere Continuation doctrines called the "continuation" doctrine.

When examining successor liability, especially when crossing from one jurisdiction to another, one should keep in mind that there is variance and overlap between the species and their formulation in particular jurisdictions. The label a court uses for its test is not necessarily one with a standardized meaning applicable across jurisdictions. Accordingly, it is dangerous to place too much reliance on a name; the underlying substance should always be examined.

The Louisiana appellate courts in recent years have expressly refused to "set forth any ultimate test of successor firm liability" although they appear to have accepted the traditional forms of the doctrine.[5] In *Bourque v. Lehmann Lathe Inc.,* the court discussed with apparent approval: express or implied assumption, fraud, and *de facto* merger and mere continuation, although it found that none of these doctrines applied to the tort claim at issue in the case.[6] The same decision expressly refused to accept or reject the product line theory of California's *Ray v. Alad*.[7]

Intentional (Express or Implied) Assumption of Liabilities

Intentional assumption of liabilities, express or implied, is probably the simplest of the successor liability species. Imposing liability on a successor that by its actions is shown to have assumed liabilities is essentially an exercise in the realm of contract law, drawing on doctrines of construction and the objective theory of contract.[8]

In discussing this form of successor liability in the context of a tort claim for injuries from a defective lathe, the *Bourque* court stated that this form of successor liability:

> is premised upon the concept that a voluntary sale of all assets includes, or should include, negotiations as to the transfer of all aspects of the corporate balance sheet. The parties to the sale are free to bargain, and potential liability is certainly one of the factors that rational businessmen include in the negotiations of such sales.[9]

Interestingly, in more recent cases involving *contract-based* or *tax claims*, the Louisiana courts of appeal have been far less accommodating or approving of successor liability, although they have not expressly disavowed the doctrine, merely finding it inapplicable on the facts of the cases presented due to the perceived separate nature of the defendants involved.[10]

Fraudulent Schemes to Escape Liability

The next species of successor liability is the doctrine based on fraud. Fraudulent schemes to escape liability by using corporate law limitation-of-liability principles to defeat the legitimate interests of creditors illustrate an example of the need for successor liability to prevent injustice. If a corporation's equity holders, for example, arrange for the company's assets to be sold to a new company in which they also hold an equity or other stake for less value than would be produced if the assets were deployed by the original company in the ordinary course of business, then the legitimate interests and expectations of the company's creditors have been frustrated.[11] By allowing liability to attach to the successor corporation in such instances, the creditors' interests and expectations are respected. The challenge, of course, is defining the standard that separates the fraudulent scheme from the legitimate one.

Based on *Wolff v. Shreveport Gas*,[12] a 1916 decision from the Louisiana Supreme Court, the courts will impose successor liability when there is evidence of fraud in the transaction.[13] The *Wolff* court relied on the trust fund doctrine in finding that the surviving corporation is liable to the predecessor's creditors if the transaction was entered into fraudulently.[14]

De Facto Merger — Louisiana's Continuity Doctrine

In a *statutory* merger, the successor corporation becomes liable for the predecessor's debts.[15] The *de facto* merger species of successor liability creates the same result in the asset sale context to avoid allowing form to overcome substance. A *de facto* merger, then, allows liability to attach when an asset sale has mimicked the results of a statutory merger except for the continuity of liability. The main difference between the subspecies of *de facto* merger in various jurisdictions is how rigid or flexible the test is. In other words, how many required elements must be shown to establish applicability of the doctrine? On one end of the spectrum is the lengthy, mandatory checklist of required elements; on the other, the non-exclusive list of factors to be weighed in a totality of the circumstances fashion.

Louisiana's continuation doctrine does not fit precisely into any of the traditional exceptions to successor non-liability. However, based on the *Wolff* court's description of the transactions that may give rise to liability, the continuation doctrine appears to give effect to the traditional *de facto* merger doctrine. This conclusion is buttressed by the fact that Louisiana courts require continuity of shareholders before they will impose liability on a purchasing corporation, which indicates that Louisiana courts follow the more traditional approach to successor liability rather than the more expansive approach represented by the Continuity of Enterprise or Product Line doctrines, which do not require this continuity of ownership.

The *Wolff* continuation doctrine applies to consolidations, mergers, continuations and *de facto* mergers. The *Wolff* court summarized the four general cat-

egories of business reorganizations that may produce a "continuation:"

> The first of such groups comprehends consolidations proper, where all the constituent companies cease to exist and a new one comes into being; the second, cases of merger proper, in which one of the corporate parties ceases to exist while the other continues. The third group comprehends cases where a new corporation is, either in law or in point of fact, the reincarnation of an old one. To the fourth group belong those transactions whereby a corporation, although continuing to exist de jure, is in fact merged in another, which, by acquiring its assets and business, has left of the other only its corporate shell.[16]

The Louisiana Supreme Court later explained in a 1960 case that the continuation doctrine is only available where there is continuity of ownership between the selling and purchasing corporations:

> [T]he "continuation" doctrine of the *Wolff* case can be invoked only when it is shown that the major stockholders of the selling corporation also have a substantial or almost identical interest in the purchasing corporation, for, otherwise, there would be no premise for concluding that the new corporation is a reincarnation of the old.[17]

This case, however, appears not to be subsequently cited and may be classified as "disapproved by neglect." Even though the Louisiana Supreme Court requires continuity of ownership before imposing liability under the "continuation" doctrine, the 5th Circuit Court of Appeals developed a test for Louisiana's continuation doctrine based on a list of non-dispositive factors, one of which is continuity of ownership.[18] Federal courts, purportedly applying Louisiana law, have used this multi-factor test, which does not require continuity of ownership, even though the Louisiana Supreme Court appears to clearly require continuity of ownership before liability will be imposed under the continuation doctrine.[19]

The most recent cases to consider the continuation doctrine have, as noted above, done so in the context of *non-tort* claims. In those cases, the court rejected application of the doctrine to the facts at hand, finding the requisite separateness between the entities to deny successor liability, but did not find that the doctrine was not viable in Louisiana on a showing of proper facts. In *Morrison v. C.A. Guidry Produce*,[20] after discussing the *Wolff* case from 1916, the court rejected the state's claim for back taxes as asserted against a new corporation owned by a shareholder of the predecessor:

> The issue before us is whether House of Quality is a "successor corporation" who has assumed the assets of Guidry Produce and has become solidarily liable for its debts. House of Quality's sole shareholder is Vivian Guidry, who was a shareholder in Guidry Produce. Although it uses the same land and buildings, it rents these assets, it does not own them. House of Quality has many of the same customers as Guidry Produce. However, House of Quality has purchased new and separate equipment to operate the business. Considering the evidence as a whole, we agree with the trial court that House of Quality is not a successor corporation[.][21]

Similarly, in *TLC Novelty Co., Inc. v. Perino's Inc.*,[22] the court rejected a breach of contract claim that was valid as against a corporation that operated a seafood market and delicatessen that was asserted against a separate corporation operating bar and grill businesses under the same or substantially similar name. Although all three entities in the Perino's corporate family were owned by the same person and managed by her son, the court respected the separate nature of the corporate entities:

> These were separate legal entities, all conducting their respective businesses simultaneously. There were separate bank accounts, licenses, and alcohol permits. We find that Perino's II was not a successor to Perino's I, nor a reincarnation of Perino's I and that the two businesses did not comprise a single business enterprise.[23]

This suggests, to this author at least, that at least in cases involving non-tort claims, businesses that are separately structured and observe corporate formalities and maintain separateness of their operations and assets, successor liability will not be an easy doctrine to apply in Louisiana courts.[24] The same rule, however, may not be applicable to the tort claims of involuntary creditors, and the *Wolff* case remains good law from the Louisiana Supreme Court, allowing imposition of successor liability upon an entity that

purchases substantially all the assets of a business and continues its operations.[25]

Theories of Successor Liability Not (Yet?) Recognized in Louisiana

Continuity of Enterprise

Unlike the more traditional and long-standing mere continuation exception, the continuity of enterprise theory does not require strict continuity of shareholders or owners (and possibly directors and officers) between the predecessor and the successor — although the degree or extent of continuity of owners, directors and officers is a factor.[26] Further, continuity of enterprise generally does not include the requirement of dissolution of the predecessor upon or soon after the sale, which is often a factor — and sometimes a requirement — in jurisdictions applying the mere continuation doctrine.[27]

A detailed examination of continuity of enterprise in the jurisdictions that have adopted it discloses three subspecies at work. All the variations of the continuity of enterprise exception derive from *Turner v. Bituminous Cas. Co.*[28] Variations in the application of the *Turner* factors create the three subspecies.

In *Turner,* the Michigan Supreme Court expanded the four traditional categories of successor liability, and in so doing, developed a continuity of enterprise theory of successor liability.[29] The court adopted the rule that, in the sale of corporate assets for cash, three criteria would be the threshold guidelines to establish whether there is continuity of enterprise between the transferee and the transferor corporations:

(1) There is a continuation of the enterprise of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations;
(2) The seller corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible; and
(3) The purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the seller corporation.[30]

The Michigan Supreme Court did not address the limits of the continuity of enterprise exception again until 1999 in *Foster v. Cone-Blanchard Mach. Co.*[31] In *Foster*, a plaintiff, injured while operating a feed screw machine, sued the corporate successor after receiving a $500,000 settlement from the predecessor corporation.[32] The court held that:

> because [the] predecessor was available for recourse as witnessed by plaintiff's negotiated settlement with the predecessor for $500,000, the continuity of enterprise theory of successor liability is inapplicable.[33]

The *Foster* court thus resolved two issues left open in *Turner*. First, the Michigan appellate decisions prior to *Foster* cited *Turner* for the proposition that the continuity of enterprise test comprised four elements or factors, following the four items enumerated in the *Turner* court's holding and not the three listed in its announcement of the rule.[34] The *Foster* court clarified that, in fact, only three items are involved in the *Turner* rule, and they are required elements.[35]

Second, the *Foster* court held that the "'continuity of enterprise' doctrine applies only when the transferor is no longer viable and capable of being sued."[36] The court's interpretation of the underlying rationale of *Turner* was "to provide a

source of recovery for injured plaintiffs."[37] According to Justice Brickley, the *Turner* court expanded liability based on the successor's continued enjoyment of "certain continuing benefits":

> [T]he test in *Turner* is designed to determine whether the company (or enterprise) involved in the lawsuit is essentially the same company that was allegedly negligent in designing or manufacturing the offending product.[38]

The *Foster* decision thus appears to return Michigan law to its state immediately after *Turner* was decided: continuity of enterprise is a recognized doctrine of successor liability and the doctrine has three required elements. To the extent that intervening decisions had narrowed *Turner* with the addition of a fourth factor — whether the purchasing corporation holds itself out to the world as the effective continuation of the seller corporation — that revision of the doctrine appears to have been reversed. Further, to the extent that *Turner's* "guidelines" had been considered factors by other courts adopting the continuity of enterprise, the *Foster* court made it clear that it interpreted its own rule as one composed of elements.

There are no reported decisions in Louisiana regarding the continuity of enterprise doctrine. However, in *Russell v. SunAmerica Sec., Inc.,*[39] the U.S. 5th Circuit used the eight-factor continuity of enterprise test found in *Mozingo v. Correct Manufacturing Corp.*[40] as its test for the Louisiana continuation doctrine. Other U.S. District Courts in Louisiana have followed *Russell* in using this test, strangely labeling it "mere continuation," but it appears that no state courts have done so.[41] This demonstrates the fluidity of successor liability doctrines and how difficult it can become to label the different exceptions as the lines between them continue to blur.

The Product Line Exception of *Ray v. Alad*

In *Ray v. Alad*,[42] the California Supreme Court recognized the product line exception to the general rule of successor non-liability. It is a species of liability that is very similar to continuity of enterprise. The court articulated the following "justifications" for imposing liability on a successor corporation:

> (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's goodwill being enjoyed by the successor in the continued operation of the business.[43]

The term "justifications" is somewhat ambiguous as to whether it connotes required elements or non-exclusive factors to be balanced, much like the *Turner* guidelines.

Like the Michigan Supreme Court in *Foster,* which revisited *Turner* some years after the original opinion was issued, the California Supreme Court returned to *Ray v. Alad* some years later to "clarify" things. In *Henkel Corp. v. Hartford Acc. & Indemn. Co.*,[44] the California Supreme Court referred to these three justifications as conditions, thus suggesting that they were essential elements under the product line exception. Despite its name, the product line theory of successor liability appears only rarely, if at all, to have been applied in a reported decision to a successor that had acquired merely one of many product lines from the predecessor; in nearly all reported cases, it appears to have been applied to sales of substantially all of a predecessor's assets.[45] In fact, one court has emphasized that the "policy justifications for our adopting the product line rule require the transfer of substantially all of the predecessor's assets to the successor corporation."[46]

The product line doctrine, where accepted, breaks into two distinct subspecies. The two differ only as to whether *Ray*'s "virtual destruction of the plaintiff's [other] remedies" condition is strictly required in order to permit recovery.

No reported decision in Louisiana has adopted the product line doctrine.

Conclusion

This article and its more detailed companion pieces in the Florida State University *Business Review* and on the author's Web site attempt to detail some of the history and the current condition of successor liability law in Louisiana. The purpose of the doctrines was to provide contract and tort creditors with an avenue of recovery against a successor entity in appropriate cases when the predecessor that contracted with them or committed the tort or the action that later gave rise to the tort had sold substantially all of its assets and was no longer a viable source of recovery. Its various species acted as a pressure relief valve on the strict limitation of liability created by corporate law. The doctrine is in the nature of an "equitable" doctrine insofar as it is invoked when strict application of corporate law would offend the conscience of the court. In large part, the doctrine remains intact and still serves that purpose.

FOOTNOTES

1. *See* George W. Kuney, "A Taxonomy and Evaluation of Successor Liability," 6 Fla. St. U. Bus. L. Rev. 1 (2007).

2. A detailed jurisdiction-by-jurisdiction analysis and explanation of the state of judge-made successor liability law may be found at *www.law.utk.edu/Faculty/APPENDIXKun.pdfey.htm*; it is updated regularly to remain current.

3. *See, e.g.,* Wolff v. Shreveport Gas, Electric Light & Power Co., 138 La. 743, 70 So. 789 (1916), discussed below.

4. *See generally* Steven L. Schwarcz, "Collapsing Corporate Structures: Resolving the Tension Between Form and Substance," 60 Bus. Law. 109 (2004).

5. Bourque v. Lehmann Lathe, Inc., 476 So.2d 1125, 1127 (La. App. 3 Cir. 1985); *see also* Wolff, 70 So. 789 (fraudulent schemes to escape liability through sale of a company's assets to a newly formed corporation following an explosion).

6. Bourque, 476 So.2d at 1126.

7. *Id.* at 1128.

8. Michael J. Zaino, "Bielagus v. EMRE: New Hampshire Rejects Traditional Test for Corporate Successor Liability Following an Asset Purchase," 45.N.H. B.J 26 (2004).

9. Bourque, 476 So.2d at 1127.

10. TLC Novelty Co., Inc. v. Perino's Inc., 04-281 (La. App. 5 Cir. 8/31/04), 881 So.2d 1267 (contract claim for breach of video game contracts with the first Perino's bar not assertable against the second and third bars of the same name separately incorporated by the same owner, each managed by her son); Morrison v. C.A. Guidry Produce, 2003-307 (La. App. 3 Cir. 10/1/03), 856 So.2d 1222 (state's tax claim not assertable against company not found to be a successor of the taxpayer under Wolff, *supra*; *see also*, Central Business Forms Inc. v. N-Sure Systems Inc. 540 So.2d 1029 (La. App. 2 Cir. 1989).

11. Causation is a required element of all species of the fraud exception. *See, e.g.*, Milliken & Co. v. Duro Textiles, LLC, 19 Mass. L. Rptr. 509 (2005) (discussing need for causation, but also that judgment creditors could look to company's long-term prospects, not just immediate insolvency).

12. 138 La. 743, 70 So. 789 (1916).

13. Roddy v. NORCO Local 4-750, Oil, Chem. & Atomic Workers Int'l Union, 359 So.2d 957, 960 (La. 1978) (quoting Wolff, *supra*); G-I Holdings Inc. v. Bennet (In re G-I Holdings Inc.), 380 F. Supp. 2d 469 (D.N.J. 2005)); Hollowell v. Orleans Reg'l Hosp. LLC, 217 F.3d 379, 390 (5 Cir. La. 2000) (emphasizing the difference between the fraud exception and the continuation exception).

14. Wolff, 70 So. at 794. Another court characterized the imposition of successor liability as a form of piercing the corporate veil. Amoco Prod. Co. v. Texaco, Inc., 838 So.2d 821 (La. Ct. App. 2003), citing Roddy v. Norco Local 4-750, 359 So.2d 957, 960 (La. 1978).

15. G. William Joyner III, "Beyond *Budd Tire*: Examining Successor Liability in North Carolina," 30 Wake Forest L. Rev. 889, 894 (1995).

16. Wolff, 70 So. at 794.

17. National Sur. Corp. v. Pope Park, Inc., 240 La. 63, 71-72, 121 So.2d 240, 243 (1960).

18. *See* Russell v. SunAmerica Sec., Inc., 962 F.2d 1169, 1175 (5 Cir. 1992) (relying on Mozingo v. Correct Mfg. Corp., 752 F.2d 168, 174 (5th Cir. Miss. 1985); Action Mfg. Co. v. Simon Wrecking Co., 387 F. Supp. 2d 439 (E.D. Pa. 2005); Ennis v. Loiseau, 164 S.W.3d 698 (2005)).

19. *See, e.g.*, Hollowell v. Orleans Reg'l Hosp. LLC, 217 F.3d 379, 390 (5 Cir. La. 2000).

20. 2003-307 (La. App. 3 Cir. 10/1/03), 856 So.2d 1222.

21. *Id.* at p. 9, 856 So.2d at 1228-1229.

22. 04-281 (La. App. 5 Cir. 8/31/04), 881 So.2d 1267.

23. *Id.* at p. 7, 881 So.2d at 1271.

24. *See,* In Re: Scully's Aluminum Crafts, Inc. 352 B.R. 783 (Bankr. W.D. La. 2006) (breaking boat dealer up into separate companies for manufacturing, sales and a third entity which owned all assets and leased to other two was not considered a continuation for purposes of successor liability); TLC Novelty Co., Inc., *supra*; Morrison v. C.A. Guidry Produce, *supra*; Central Bus. Forms Inc. v. N-Sure Systems Inc., *supra*.

25. *See,* Doskey v. Hebert, 93-1564 (La. App. 4 Cir. 9/29/94), 645 So.2d 674 (failure to perform on a pest control contract caused plaintiff's home to suffer termite damage; corporate purchaser considered successor where damage occurred out of breached contract in effect at time of purchase); Roddy v. NORCO Local 4-750, Oil, Chem. & Atomic Workers Int'l Union, *supra*; *but see,* LaBlanc v. Adams, 510 So.2d 678 (La. App. 4 Cir.), *writ denied*, 514 So.2d 458 (1987) (tort suit arising out of a car accident where corporation found not to be a successor); Bourque v. Lehmann Lathe, Inc., *supra*.

26. Mozingo, 752 F.2d at 174-75 (noting that the traditional mere continuation exception requires identity of stockholders, directors and officers); *see also* Savage Arms Inc. v. Western Auto Supply, 18 P.3d 49, 55 (Alaska 2001) (mere continuation theory requires "the existence of identical shareholders").

27. Turner v. Bituminous Cas. Co., 397 Mich. 406, 244 N.W. 2d 873, 882 (1976) (dissolution of the seller soon after the sale one of four enumerated factors indicating continuity of enterprise).

28. *Id*.

29. *Id*.

30. *Id.* at 879 (citing McKee v. Harris-Seybold Co., Div. of Harris-Intertype Corp., 264 A.2d 98, 103, 105 (N.J. 1970), which has since been overruled). These are three of the four factors from *McKee* used to determine whether liability will arise under the *de facto* merger form of successor liability.

31. 460 Mich. 696, 597 N.W. 2d 506 (1999).

32. *Id*., at 508.

33. *Id.*

34. Fenton Area Pub. Sch. v. Sorensen-Gross Constr. Co., 124 Mich. App. 631, 335 N.W. 2d 225-26 (1983); Lemire v. Garrard Drugs, 95 Mich. App. 520, 291 N.W. 2d 103, 105 (1980); Powers v. Baker-Perkins, Inc., 92 Mich. App. 645, 285 N.W. 2d 402, 406 (1979); Pelc v. Bendix Mach. Tool Corp., 111 Mich. App. 343, 314 N.W. 2d 614, 618 (1981); State Farm Fire & Cas. Ins. Co. v. Pitney-Bowes Management Servs., Inc., 1999 WL 33451719, at *1 (Mich. App. April 2, 1999).

35. 597 N.W. 2d at 510.

36. *Id.* at 511.

37. *Id.* Justice Brickley, in dissent, disagreed with the majority as to the underlying rationale of *Turner.*

38. *Id.* at 513.

39. 962 F.2d 1169, 1175 (5 Cir. 1992).

40. 752 F.2d 168, 175 (5 Cir. 1985) (applying Mississippi law).

41. Hollowell v. Orleans Reg'l Hosp. LLC, 217 F.3d 379, 390 (5 Cir. La. 2000).

42. 19 Cal. 3d 22, 560 P.2d 3 (1977).

43. *Id.* at 9.

44. 29 Cal. 4th 932, 62 P.3d 69, 73 (2003).

45. George W. Kuney and Donna C. Looper, "Successor Liability in California," 20 CEB Cal. Bus. L. Pract. 50 (2005).

46. Hall v. Armstrong Cork, Inc., 103 Wash. 2d 258, 260, 692 P. 2d 787, 789 n.1 (1984) (refusing to apply product line test to successor that purchased but one of many asbestos product lines).

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Workers' Compensation

Once Upon a Time There Was *Moody v. Arabie*

By Musa Rahman

In Louisiana, workers' compensation third-party claims are governed by La. R.S. § 23:1101 *et seq*. (La. R.S. § 23:1101). Under the statute, when an employee injured on the job initiates a third-party tort action, he must notify the employer or the compensation insurer of such action; the employer or insurer may then intervene in the pending suit for reimbursement of benefits paid to the injured worker.[1] If the plaintiff/employee prevails on his claim, the employer or insurer becomes statutorily liable for a portion of the employee's costs and attorney fees.[2] In Louisiana, we call this the "*Moody*" fee.

In 1986, in the landmark case of *Moody v. Arabie*,[3] the Louisiana Supreme Court held for the first time that the intervening employer/insurer, as co-owner of a property right, was charged with a "proportionate share" of the employee's costs and attorney fees after successfully prosecuting a personal injury suit. Not long after, the Louisiana Legislature adopted, enacted and codified the core ideas of *Moody* via several amendments. Yet, the circuit courts struggled to reconcile the words of the statute itself and the import of *Moody*.

As a result of this confusion, the Legislature revisited La. R.S. § 23:1103(C), *et seq*. Today, the statute provides, in pertinent part:

> C. (1) If either the employer or employee intervenes in the third party suit filed by the other, the intervenor shall only be responsible for a share of the reasonable legal fees and costs incurred by the attorney retained by the plaintiff, which portion shall not exceed one-third of the intervenor's recovery for prejudgment payments or prejudgment damages. The amount of the portion of attorney fees shall be determined by the dis-

trict court based on the proportionate services of the attorneys which benefited or augmented the recovery from the third party . . . Costs shall include taxable court costs as well as the fees of experts retained by the plaintiff. The pro rata share of the intervenor's costs shall be based on intervenor's recovery of prejudgment payment or prejudgment damages.

(2) When recovery of damages from a third party is made without filing of a suit, the employer shall be responsible for an amount, not to exceed one-third of his recovery on pre-compromise payments, for reasonable legal fees and costs incurred by the attorney retained by the employee or his dependent in pursuit of the third party matter. The responsibility for payment of this amount shall exist only if there is written approval of the compromise by the employer, his compensation carrier, or the compensation payor.

Although *Moody* was an important decision, its fallout, particularly the concepts of "proportionate share" and "costs," resulted in years of litigation. The formula derived from *Moody* was useful as long as the final judgment or settlement exceeded the workers' compensation payments. This formula — dividing the intervenor's total lien[4] by the amount of the judgment or settlement — was used to calculate the percentage of the intervenor's liability for costs.

As stated above, the application of the formula gives rise to many questions. As an example, in *Moody*, the total recovery was $82,303.72, while the total workers' compensation lien was $49,286.23. In that case, applying the formula of lien divided by total judgment resulted in the figure of 59.88 percent, representing the intervenor's proportionate share of costs ($49,286.23 / $ 82,303.72 = .5988 x 100 = 59.88 percent).[5] Unfortunately, the novel formula provided by *Moody* is limited in its application to cases in which the lien exceeds the judgment or settlement amount; otherwise, the formula may result in an absurd conclusion. For example, assume that plaintiff's total settlement or judgment is $25,000 (policy limits), and that the workers' compensation lien is $100,000. A proper application of the formula would result in the assessment of 400 percent of litigation costs[6] as the intervenor's proportionate share. Truly, such a result would be *ad absurdum* under any mode of thought or law.

As mentioned above, after *Moody* was handed down, many circuits seemed to differ on their interpretation of the decision. In Louisiana, the 3rd Circuit Court of Appeal once assessed 100 percent in costs to the intervenor.[7] In contrast, the 2nd Circuit Court of Appeal once found costs outside the scope of the statute;[8] however, in another case, it allowed an equal division of 50 percent to each party.[9] In one case, the 4th Circuit Court of Appeal overzealously applied *Moody* by adding future indemnity and medical expenses to the recoverable lien, dividing this amount by the amount of the settlement, and ultimately assessing 79 percent of costs to the intervenor.[10] Not until very recently did the Legislature react to disparate decisions issued by the several circuits. In response, the Legislature capped "costs and attorney fees" at a combined ratio of one-third.[11]

A core principle which *Moody* contributed to Louisiana law is that of "[co]-ownership of property right consisting of a right to recover damages from the third person."[12] Today, despite the subsequent actions of the Legislature, the idea of co-ownership between the employee-plaintiff and the intervenor (employer/insurer) still exists. As a consequence, the argument that no "*Moody* fee" is owed where no suit is filed by the employee often will fail to persuade the court.[13] In fact, the fee is owed whenever settlement is perfected before the injured employee files suit or when the employer intervenes in the insurer's subrogation action.[14] Under La. R.S.§ 23:1103(C)(1), "[t]he employee as intervenor shall not be responsible for the employer's attorney fees . . . ."[15] In other words, there is no reverse *Moody* in Louisiana.

In general, the "*Moody* fee" is owed when a suit filed by the employer/insurer is consolidated with the suit filed by the employee.[16] A plaintiff who prosecutes a case to its end will be owed costs and attorney fees pursuant to La. R.S. § 23:1103(C)(1). Depending upon the non-duplicative work done, the employer or compensation intervenor may be entitled to a credit for its "pro rata" share of costs, but not attorney fees. Thus, as can be inferred, *Moody v. Arabie* is not just law of the past. In fact, Louisiana courts[17] will sometimes look to *Moody* when the factual situations presented fall outside the parameters of the statute.[18]

The principle of co-ownership or true alignment of the parties against a common enemy is essential to a *Moody* claim. As a consequence, there will be no liability under such a claim where the injured employee and the employer/insurer's interests against the third party are adverse. In other words, when (a) the same self-insured employer sued in tort has paid workers' compensation benefits,[19] (b) the insurer sued in tort has also paid workers' compensation benefits,[20] or (c) the injured employee compromises with the third party before filing suit without the employer or insurer's approval,[21] no "*Moody* fee" will be owed by the employer or insurer.

Extending *Moody* beyond the workers' compensation setting has often been unsuccessful.[22] For instance, the Louisiana 5th Circuit declined to extend it to a Jones Act claim against the employer and insurer on account of the absence of a co-ownership interest.[23] In *Barracea v. Cobb,*[24] the Louisiana Supreme Court relied upon the principle of co-ownership between an insured plaintiff and the intervening health insurer in a third-party tort action and applied *Moody* to access the insurer's liability for plaintiff's attorney fees. This relationship of co-ownership can only exist between an injured employee and the compensation insurer/employer. It cannot exist between the employee's counsel and the intervenor[25] or where there is no third party.[26]

Under present Louisiana jurisprudence, a claim brought under *Moody* and

La. R.S. § 23:1103(C)(1) can be raised at any stage during trial or post trial,[27] and the plaintiff's attorney has the right to demand a post-judgment hearing[28] at the district level. However, failure to timely file a *Moody* claim with the district court may extinguish that right forever.[29]

Although La. R.S. § 23:1101(C)(1) does not specifically address credits or offsets in favor of the intervening insurer or the employer, its language, "based on proportionate services of the attorneys" and "pro rata share of intervenors costs," appears to be a credit provision. Historically, Louisiana courts have given such relief to the employer/insurer for costs and expenses, but not for attorney fees.[30] Applying the *Moody* principles, the 4th Circuit in *Brumfield v. Coastal Cargo Co., Inc*.[31] affirmed a $15,000 award for the compensation intervenor for non-duplicative participation in the prosecution of the claim. Similarly, the 3rd Circuit in *Denton v. Cormier*[32] gave credit to the compensation insurer for its contribution and involvement in the parties' common pursuit against the tortfeasor. Yet, in *Broussard v. Lewis,*[33] the court awarded the intervening workers' compensation insurer no credit where most of the work performed related mostly to the carrier's right of intervention, rather than third-party liability. The court in *Jaffarzad v. Jones Truck Lines, Inc*.[34] also declined to award credit to the compensation insurer. That court reasoned that, although the intervenor incurred substantial expenses in hiring separate counsel, that counsel did not benefit or augment plaintiff's recovery.[35]

From a clear reading of the statute, it appears that the age-old controversy of calculating the "*Moody* fee" based on plaintiff's contingency fee agreement with his attorney is no longer viable. Traditionally, Louisiana courts expressed divergent opinions on this matter. For instance, the 1st Circuit did not recognize "any contingency fee" and looked to the Code of Professional Responsibility instead.[36] In *Graves v. Lou Ana Foods, Inc.,*[37] the 3rd Circuit took a reasonable attorney fees-based approach in calculating the "*Moody* fee." The 2nd Circuit in *Herrington v. Mayo*[38] rejected a one-third contingency fee arrangement between the plaintiff and his attorney as a basis for calculating such fees. Originally, in *Moody*, the Supreme Court relied upon the Code of Professional Responsibility and not an attorney-client contract. All these approaches are of interest to scholars and academics alike because of the developments of these principles in the 20 years since the Supreme Court handed down its ruling it *Moody v. Arabie*. Despite the passing of La. R.S. § 23:1103(C), its legacy continues today and will be relevant in Louisiana legal analysis for years to come.

FOOTNOTES

1. *See* La. R.S. § 23:1102 (West 2006).
2. *See* La. R.S. § 23:1103(C), *et. seq.* (West 2006).
3. Moody v. Arabie, 498 So.2d 1081 (La. 1986).
4. Reimbursements are commonly referred to as "liens." This is likely due to the fact that the right to recovery is statutory. *See* La. R.S. § 23:1101, *et seq*. (West 2006).
5. *See also* Taylor v. Production Services, Inc. of Mississippi, 600 So.2d 63, 65-66 (La. 1992) (explaining application of *Moody* formula).
6. $ 100,000 / 25,000 = 4.0 x 100 = 400 percent.
7. *See* Baton Rouge Home Health Care Corp. v. Lemoine, 640 So.2d 797, 798-99 (La. App. 3 Cir. 6/1/94) (interpreting pre-amendment La. R.S. § 23: 1103(C) where attorney fees were one-third *plus* costs).
8. *See* Norris v. Goeders, 652 So.2d 144, 148 (La. App. 2 Cir. 3/10/95).
9. *See* Yocum v. City of Minden, 649 So.2d 129, 134 (La. App. 2 Cir. 1/25/95).
10. *See* Rabito v. Otis Elevator Co., 633 So.2d 368, 378-79 (La. App. 4 Cir. 2/11/94).
11. This ratio is set forth in the latest version of La. R.S. § 23:1103(C)(1).
12. *See* Moody, 498 So.2d at 1085.
13. *See* Gray Ins. Co. v. Salvatierra, 679 So.2d 909 (La. App. 3 Cir. 8/14/96).
14. *See* Gray, 679 So.2d at 910-11; *see also* Thompson v. Gray and Co., 590 So.2d 1318 (La. App. 1 Cir. 1991).
15. La. R.S. § 23:1103(C)(1). (West 2006); for discussion regarding non-litigated claims, *see* La. R.S. § 23:1103(C)(2).
16. *See* City of Baton Rouge v. Goudeau, 803 So.2d 1130, 1133 (La. App. 1 Cir. 12/28/01). The applicable law at the time of decision was La. R.S. § 23:1103(C).
17. *See, e.g.,* Denton v. Cormier, 556 So.2d 931 (La. App. 3 Cir. 1990).
18. *See, e.g.*, Degruise v. Houma Courier Newspaper Corp., 683 So.2d 689 (La. 1996).
19. *See, e.g.,* Hebert v. Jeffrey, 671 So.2d 904 (La. 1996).
20. *See* Degruise, 683 So.2d at 689 (La. 1996). Here the intervening workers' compensation insurer also happened to be the third-party UM/UIM insurer.
21. *See* La. R.S. § 23:1103(2) (West 2006).
22. *See* McClain v. Caddo Parish School Board, 599 So.2d 878 (La. App. 2 Cir. 1992).
23. *See* Seymour v. Cigna Ins. Co., 653 So.2d 649, 652 (La. App. 5 Cir. 3/15/95).
24. 668 So.2d 1129 (La. 1996); *see also*, Masters v. State Farm Mut. Auto. Ins. Co., 840 So.2d 665 (La. App. 2 Cir. 3/5/03).
25. *See* Wiedemann and Fransen v. Highland Ins. Co., 617 So.2d 105 (La. App. 4 Cir. 1993).
26. *See* Deville v. South Central Industrial, Inc., 764 So.2d 335 (La. App. 1 Cir. 6/23/2000).
27. *See* Denton, 556 So.2d at 935.
28. *See* Rivet v. Leblanc, 600 So.2d 1358, 1363 (La. App. 1 Cir. 1992).
29. *See* Allstate v. Knighten, 705 So.2d 240, 244 (La. App. 2 Cir. 12/10/97); Spears v. Broussard, 602 So.2d 235, 238 (La. App. 3 Cir. 1992).
30. *See* Taylor v. Production Services, Inc., 600 So.2d 63, 67 (La.1992).
31. 768 So.2d 634, 643 (La. App. 4 Cir. 6/28/2000).
32. *See* Denton, 556 So.2d at 932 (La. App. 3 Cir. 1991) (reducing plaintiff's *Moody* fee by $15,000 based on the efforts by the intervenor in prosecuting the third-party suit).
33. 614 So.2d 260, 262 (La. App. 3 Cir. 1993).
34. 561 So.2d 144 (La. App. 3 Cir. 1990).
35. *See id.* at 160; *see also* Broussard, 614 So.2d at 261-62.
36. *See* Major v. Cotton's, Inc., 551 So.2d 57, 59 (La. App. 1 Cir. 1989); *see also* Myers v. Burger King Corp., 638 So.2d 369, 381 (La. App. 4 Cir. 1994) (declining to consider 40 percent contingency fee agreement in calculating *Moody*).
37. 604 So.2d 150, 168 (La. App. 3 Cir. 1992).
38. 550 So.2d 745, 747 (La. App. 2 Cir. 1989).

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150+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the eighth consecutive year, the Louisiana State Bar Association's (LSBA) Professionalism and Quality of Life (P&QL) Committee hosted law school orientations on professionalism at Louisiana's four law schools. More than 150 attorneys and judges from across the state participated in the programs in August.

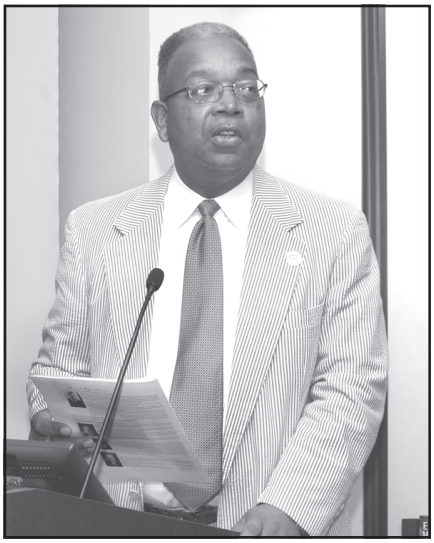
LSBA President S. Guy deLaup led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included past LSBA presidents Patrick S. Ottinger and Hon. Jay C. Zainey; Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr.; Supreme Court Justices Bernette J. Johnson and John L. Weimer III; Supreme Court Clerk of Court John Tarlton Olivier; Judge Helen Ginger Berrigan, U.S. District Court, Eastern District of Louisiana; Louisiana Bar Foundation President Elwood F. Cahill, Jr. and LBF representatives Cyrus J. Greco and Drew A. Ranier; and P&QL representatives Sandra K. Cosby, Barry H. Grodsky and Shelley Hammond Provosty.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Chancellor Jack M. Weiss, Loyola University College of Law Dean of Admissions K. Michele Allison-Davis, Southern University Law Center Chancellor Freddie Pitcher, Jr. and Tulane Law School Dean Lawrence Ponoroff. Following the opening remarks, the law students were divided into smaller groups, where they discussed various ethics and

Continued next page

Guest speakers, from left, Judge Helen Ginger Berrigan (at podium), Tulane Law School Dean Lawrence Ponoroff, Louisiana Supreme Court Clerk of Court John Tarlton Olivier and LSBA President S. Guy deLaup.

Guest speakers, from left, past LSBA President Patrick S. Ottinger and Louisiana Supreme Court Justice Bernette J. Johnson.



Left, Southern University Law Center Chancellor Freddie Pitcher, Jr. Top, Louisiana Supreme Court Justice John L. Weimer III addressed Southern law students.

Photos by John Williams

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professionalism scenarios with attorney and lawyer volunteers.

This orientation program, inaugurated in August 2000, has been institutionalized as a yearly project for the LSBA and the law schools. The deans and admissions staff of all of the law schools have been accommodating in assisting with the logistical challenges of putting this program together.

Attorneys and judges volunteering their services were:

Louisiana State University Paul M. Hebert Law Center

Hon. Jerome J. Barbera III
Hon. Kay Bates
Leah A. Barron
David L. Bateman
Russell W. Beall
Hon. Randall L. Bethancourt
Fred Sherman Boughton, Jr.
Hon. James J. Brady
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Joseph L. Shea, Jr.
Richard A. Sherburne, Jr.

Continued next page

Law students were divided into smaller groups, where they discussed various ethics and professionalism scenarios with attorney and lawyer volunteers.

Louisiana State Bar Association President S. Guy deLaup.

Photo by John Williams

It's Time to Check Your CLE Credits for 2007

It's time to check your CLE records for the compliance period ending Dec. 31, 2007. All Louisiana licensed attorneys are required to earn 12.5 hours, including 1 hour each of ethics and professionalism credit, by Dec. 31, 2007. Attorneys newly admitted in 2006 also must earn 12.5 hours, including a minimum of 8 hours of ethics, professionalism or law office management by the same deadline.

For individual transcript information, out-of-state course application forms and forms for teaching and publishing credit, access the MCLE Web site: *www.lascmcle.org.*

The application form for attorneys claiming an exemption will be available online on Dec. 1. Attorneys claiming exemptions MUST file annually.

All compliance records must be submitted to the MCLE office no later than Jan. 31, 2008, to avoid the delinquency penalty.

Any questions regarding your MCLE compliance should be directed to the MCLE staff at (504)828-1414.

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Anthony J. Staines
Hon. Pam Taylor-Johnson
Hon. John D. Trahan
J. David Ziober

Loyola University Law School

Hon. Randall L. Bethancourt
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Parris A. Taylor
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QUALITY of Life

By Anonymous | SUBSTANCE ABUSE

We are all aware of the prevalence of substance abuse in the legal profession. However, in one study conducted in North Carolina, it was reported that nearly 17 percent of lawyers admit to drinking three to five alcoholic beverages every day.[1] A study of Washington lawyers revealed that 18 percent were classified as "problem drinkers," almost double the approximately 10 percent alcohol abuse or dependency rate estimated for adults in the United States.[2] It has even been estimated that 15 percent of all lawyers are alcoholics.[3]

This column is a gentle reminder to consider the magnitude of the problem faced by so many, personally and professionally. We share with you the following story from an anonymous attorney who has faced this problem head-on.

"Growing up to be an alcoholic was never on my list of things to do when I was young. No one in my family ever had a problem with alcohol or any other substance. My idea of an alcoholic was someone who drank too much and got into fights, or slurred his/her words. Anyone but me.

"I always got good grades in school and went to college. Until then, my drinking was of little consequence. I had tasted alcohol but didn't like it. However, at college, everyone was drinking and I wanted to fit in. Gradually I acquired a taste for alcohol. I had my first blackout during freshman year and swore I'd never drink that much again. I learned later that blackouts may be an indication of alcoholism. I can't say, however, that the knowledge back then would have made any difference.

"After college, I entered law school. I did not drink during the week (I took a full load of classes and worked to support myself) but often "tied one on" over the weekend. I graduated from law school in the top 5 percent of my class. Drinking didn't affect my school performance, so why would I question the amounts I drank?

"I got a job as an associate and got married. It seemed as if I had finally made it. Life was fun and carefree. I was making more money than I ever had. Partying was a part of my life. I had a car accident while in a blackout, but no one was injured so I quickly dismissed the event as something that could happen to anyone. I never thought I had a problem.

"While home on maternity leave after the birth of my second son, my drinking increased and I began drinking in the morning by mixing liquors into my coffee. I often drove while "slightly intoxicated" with my children in the car. Looking back, I am grateful that nothing happened to them or anyone else on the roads.

"I went back to work in November 1994 but still wasn't happy. My marriage wasn't going well, I didn't like what I was doing, and I wasn't happy as I thought I should be. My drinking increased, both in frequency and quantity. There were more blackouts and horrible hangovers. Still, the idea of being an alcoholic never crossed my mind.

"In April 1995, I moved out of my home, leaving behind my spouse and two children. For three weeks, I drank every night after work and most of the weekends. Then one Sunday evening, I opened a new fifth of Jack Daniels, intending to have one or two drinks. Next I knew, it was 5 a.m. Monday and the entire bottle was gone. I had consumed a fifth of Jack Daniels by myself and in a complete blackout!

"That was it for me. I admitted for the first time that I was an alcoholic. I understood that I had to quit drinking, but didn't know how. Fortunately, I had a friend who had been sober for two years. He took me to my first AA meeting the next day.

"I did not know anything about AA, but was sure I would never enjoy life again. I was amazed that many of the people looked like me: clean, nicely dressed, good jobs. I learned that attorneys have a much higher incidence of alcoholism than the general population. As rebellious as I was, I did exactly what I was told for the first time of my life. I have not taken a drink since my first meeting.

"One of the greatest joys of sobriety is carrying the message of AA to other alcoholics, particularly lawyers. I work with the LSBA's Committee on Drug and Alcohol Abuse. I also help other women, and attend meetings in correctional institutions, halfway houses and hospitals. Most importantly, I am now living a life I always wanted: one full of joy, serenity, and usefulness."

For discreet, confidential assistance, call the **Louisiana Lawyers Assistance Program, Inc. Hotline, 1-866-354-9334.** Telephone any time in confidence.

FOOTNOTES

1. *See* Patrick J. Schiltz, "On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession," 52 Vand. L. Rev. 871, 876 (citing North Carolina Bar Ass'n, Report of the Quality of Life Task Force and Recommendations 4 (1991)).

2. *See id.* (citing G. Andrew H. Benjamin, et al., "The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers," 13 Int'l J.L. & Psychiatry, 233, 240 (1990)).

3. *See id.* (citing Eric Dorgin, "Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions," 15 Law & Psychol. Rev. 117, 127 (1991)).

We want your ideas, solutions and suggestions! Tell us how you add to the quality of your life, or let us know if there is something you would like to see addressed in this column. E-mail or call Louisiana Bar Journal Editorial Board members Lucie E. Thornton, lthornton@burglass.com, (504)836-2220; Meredith A. Cunningham, mcunningham@barrassousdin.com, (504)589-9700; or Rachel G. Webre, rwebre@glllaw.com, (504)561-0400.

Local PRACTICE

By Hal Odom, Jr. | FOCUS: 1ST JDC AND CADDO PARISH

There is no truth to the stale old joke that, in Shreveport, "they" use Vernon's *Texas Statutes Annotated*. *Au contraire*, we have been part of Louisiana since the Louisiana Purchase! The practice and procedure you use in other parts of the state will serve you perfectly well in the First Judicial District, which is coterminous with Caddo Parish. There are no secret, unwritten rules, no traps for the unwary. We follow the Uniform Rules and the Code of Civil Procedure, with just a few distinctive features.

Court Matters

The court uses a civil docket coordinator, Gailyn Dennis, to make trial settings. Attorneys wishing to set a matter for trial must send a letter to the assigned judge's office requesting a phone conference, listing phone and fax numbers for all attorneys and any unrepresented parties. Dennis will set up a conference call with these people to fix a trial date agreeable to all.

Local practice is for attorneys to phone opposing counsel before filing a motion for extension of time. This way, when they file the motion, they can state that the other side either consents to or opposes the extension. The civil judges roundly dislike having to ascertain consent before the merits of the motion.

Monday is "argument day" for rules, confirmations, exceptions and similar matters. The docket is normally heavy. Attorneys who wish to pass a docketed rule are asked to notify the judge's office by the preceding Wednesday afternoon — the civil judges greatly appreciate *not* having to prepare for an argument that won't occur. Perhaps the fundamental common courtesy is being on time for any hearing; a domestic section judge pointedly reminds all counsel, "If you cannot be on time or wish to continue a case, let the judge know in advance."

Many useful facts about pleading and motion practice are set out on the clerk of court's Web site, *www.caddoclerk.com*. The "Forms" page includes a civil default slip, but note that you must file a motion and order to set any matter for argument.

The clerk also offers a remote access option that allows subscribers to search civil suit records for names, costs, minutes and sheriff returns on service of process. By the next business day, a scanned image of any filing is posted. E-mail notices of filings also can be requested. The subscription requires an installation fee of $100 and a monthly access fee of $30, so it may not be practical to follow a single case in the system; however, nearly 500 subscribers are now online and find it incredibly useful.

Travel, Food, Lodgings

From most parts of the state, getting to Shreveport means using I-49. Discerning listeners have discovered that NPR can be heard uninterrupted on Red River Radio at 90.7 FM (Alexandria) and 89.9 FM (Shreveport).

To reach the courthouse, take I-49 to its junction with I-20 and turn right (east), drive about one mile to Exit 19A, and take the Spring Street (north) ramp. Drive up Spring Street and turn left at the third signal, Milam (rhymes with *phylum*) Street. The south side of Milam between Edwards and Marshall is occupied by parking lots, the last of which is for hourly or daily parking. (If this is full, you must troll the parking meters.) The courthouse is catercorner from the parking area.

The Caddo Parish Courthouse has an oblique presidential connection. Longtime Shreveport lawyer and historian Art Carmody, Jr. said shortly after the building was completed in 1928, a county judge from Jackson County, Mo., took a tour through the south in search of architectural ideas for a new Kansas City courthouse. According to Art, "After he reached Shreveport, he looked no more." Kansas City's courthouse looks like a tall version of ours. That aspiring politician from Missouri was Harry S. Truman.

For noon recess, finding a nearby lunch location can be challenging, as transitional economics have shuttered most of the eateries that once encircled the courthouse. Subway is half a block east on Texas Street and Panos' Diner half a block east on Milam. A slightly longer walk west down Milam will take you to Nanking, Shreveport's oldest Chinese restaurant. A short drive to the riverfront will take you to Brothers' Seafood, with its outstanding Southern-style cooking, and Nicky's, a local Tex-Mex favorite. The Petroleum Club is located on the 15th and 16th floors of Mid South Towers, about one and a half blocks northeast of the courthouse. It is members-only, but it reciprocates with the Petroleum Clubs in New Orleans and Lafayette, and with the Lotus Club in Monroe.

For an overnight stay, the full-service Convention Center Hilton recently opened on the north side of downtown. The Remington Suite on Travis Street, another upper-end option, has hosted President Clinton and Donald Trump. Standard accommodations are the Holiday Inn and Best Western Chateau Suites on either side of Spring Street just as you exit I-20. Sam's Town and El Dorado casinos both have high-rise hotels.

Leave the Texas law books at home!

If you have any suggestions for future installments of "Local Practice," e-mail these members of the Louisiana Bar Journal Editorial Board: Hal Odom Jr., rhodom@lasccoa.state.la.us; Tyler G. Storms, tstorms@stormslaw.com; Larry Marino, lmarino@oatshudson.com; Dan Rauh, drauh@glllaw.com; Ed Walters Jr., walters@mwtlaw.net; or Margaret Judice, margaretjudice@cox-internet.com.

By Lawrence E. Marino | NEWEST COURTHOUSE IN LOUISIANA

Where is the newest courthouse in Louisiana?

Answer by Lawrence E. Marino

The newest courthouse in Louisiana is the Plaquemines Parish Courthouse complex at 450 F. Edward Blvd. in Belle Chasse, La. This is a temporary replacement for the previous courthouse damaged by Hurricane Katrina. Interestingly, the previous courthouse was itself a recent replacement.

The first official Plaquemines Parish Courthouse was located in a wooden plantation home in the parish seat of Pointe a la Hache (Ax Point). The home was donated to the parish in 1846. A second courthouse, also in Pointe a la Hache, burned in 1882. A third was built in front of the old one in 1890. The 1890 courthouse, designed to withstand hurricanes, was built in the Italianate style with buff-colored brick at a cost of $16,000. Unfortunately, it was not designed to withstand arson.

The 1890 courthouse survived for 112 years, through hurricanes, alterations, expansions and even armed political skirmishes. Soon after it was built, the hurricane of 1893 caused extensive damage, including loss of the roof. The bell on the courthouse, which weighed several hundred pounds, fell with such force that residents heard it fall above the high wind and heavy rains. Another hurricane damaged the courthouse again in 1915. The court records were saved but suffered water damage, and many were faded to the point of illegibility.

By the 1990s, parish officials and courthouse personnel agreed that the 1890 courthouse lacked capacity to meet the growing needs of the parish. In 1998, the Louisiana Legislature appointed the Plaquemines Courthouse Commission to oversee construction of a new parish courthouse.

These efforts took on new urgency on Jan. 12, 2002, when the 1890 courthouse burned. It was a total loss. Clerk of court employees and others formed a human chain to rescue records and were at least partially successful. Many records were kept in the old jail next door, which suffered minor damage.

James D. Chancey pled guilty in June 2007 to one count of arson of the Plaquemines Parish Courthouse (together with other counts of conspiracy to commit arson, and several counts of mail fraud). Apparently, Chancey sought to destroy criminal records housed at the courthouse.

Following the fire in 2002, a temporary courthouse was located at 25078 Highway 11 in Diamond. This structure was even more temporary than anyone intended because of Hurricane Katrina on Aug. 29, 2005.

Immediately after the hurricane, parish prisoners were moved to Baton Rouge. Some who had been jailed for minor offenses were released. The Plaquemines Parish District Court was operating by October 2005, holding court in places such as the Belle Chasse library, the firehouse and the kitchen of the courthouse, depending on the number of people involved in the proceedings on any particular day. Beyond the damage to the courthouse, the hurricane destroyed the homes of at least one of the district judges and several court personnel. As a result of these disruptions, contempt orders and warrants could not be issued until Jan. 1, 2006.

Since the hurricane, the district court has relocated to two temporary courthouses located at 450 F. Edward Blvd. and 301 Main St., both in Belle Chasse. The F. Edward Boulevard courthouse is actually a complex of seven connected modular buildings provided by the Federal Emergency Management Agency in the aftermath of Katrina. The district court began using this complex in October 2006, making it the newest courthouse in Louisiana. The complex contains office space, a jury room and a main courtroom and is used primarily for jury trials. The clerk of court is housed in the complex, and filings should be made at this address.

The Main Street facility is used only as a small courtroom for bench trials. Plaquemines Parish bought the property for another purpose prior to the hurricane, but began using it for the court due to the hurricane damage.

Both Belle Chasse facilities are intended to be temporary courthouses. Construction of a new courthouse is awaiting resolution of the issue of moving the parish seat from Pointe a la Hache to a location on the west bank of the parish. The voters have rejected moving the parish seat in two previous elections but, until this issue is resolved, construction of a new courthouse will not be approved. Until then, the Plaquemines Parish Courthouse, the newest in the state, remains yet another result and reminder of the hurricanes of 2005.

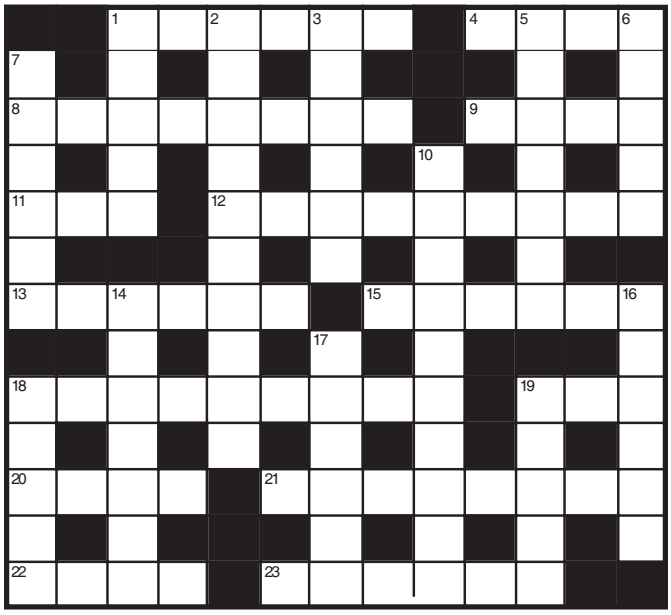
Readers are encouraged to submit legal history questions or ideas for future Journals. Mail your questions to Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404, or e-mail Editorial Board members Lawrence E. Marino, lmarino@oatshudson.com; Katherine Tonnas, ktonnas2@msn.com; or John S. (Chip) Coulter, ccoulter @lasc.org.

PUZZLE

CROSSWORD

A Question of Sales

By Hal Odom, Jr.



ACROSS

1 Items of philatelic commerce
4 Notice or lend
8 What most prices do
9 ____ *Karenina*
11 ____ *Siete Partidas*
12 Very fancy handle
13 Area of the economy
15 ____ *minoris*
18 Fictional Tahoe spread
19 ____ *major*
20 Nothing to Henri
21 Big topic at dog shows
22 *Pendente* ____
23 Louisiana governor

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1 Fires unceremoniously
2 Sale *per* ____ (between named estates)
3 Elapse (2 words)
5 Star of 2005 nature movie
6 Expanse of land
7 Proofs of ownership
10 False contract
14 One essential element of sale
16 Legal questions
17 Objective of La. C.C. Book III, Title VII (2 words)
18 Risk of loss
19 *Actio de in rem* ____

Answers on page 223.

By Rules of Professional Conduct Committee | PUBLIC OPINION 07-RPCC-013

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 07-RPCC-013[1]

Sharing Office Space Without Sharing Liabilities and Conflicts

The practice of sharing office space with fellow lawyers is permissible and does not bring with it any "associational" hazards, provided it is done correctly. Special care must be exercised to ensure that client confidences are preserved and that the public is not left with the impression that a law firm exists where there is none. Should such safeguarding measures fail, the lawyer may be deemed to be sharing not only office space with his or her colleagues, but malpractice liability and conflicts of interest as well.

Many lawyers, especially solo practitioners and those just beginning their careers, find it an attractive option to share office space with others. The advantages of office-sharing — both financial and professional — are apparent. By dividing rent and making common use of equipment, personnel and other resources, the costs of maintaining a practice are kept to a minimum. Less-experienced lawyers who wish to practice on their own, moreover, may look to their office-mates for guidance that otherwise may not be available to them. However, the same aspects of communal offices that make them convenient and beneficial also could give rise to serious ethical risks. Although such arrangements are allowable under the Louisiana Rules of Professional Conduct, office-sharing, when implemented haphazardly, can compromise confidentiality, create unexpected conflicts of interests and engender vicarious professional liability among the participating lawyers.

With an eye toward assisting practitioners in maximizing the utility of office-sharing without becoming ensnared in unintended adverse consequences, the approach of this opinion is pragmatic. The first part of the opinion illustrates the folly of office-sharing gone awry, with reference to two Louisiana cases, *Gravois v. New England Ins. Co.*, 553 So.2d 1034 (La. App. 4 Cir. 1989), and *United States v. Cheshire*, 707 F. Supp. 235 (M.D. La. 1989). Against the backdrop of that case study, the second part offers a variety of suggestions that may be used to keep separate the practices of office-sharing lawyers.

The Potential Problems

Due to the nature of the office-sharing arrangement, *i.e.*, working in close physical proximity among other lawyers with unaffiliated practices, the most pronounced hazards are the inadvertent sharing of malpractice liability and conflicts. Malpractice liability was the subject of *Gravois*. In that case, a lawyer uninvolved with a representation was sued based on the wrongdoing of another lawyer with whom he shared office space.[2] In defense, the lawyer maintained that no partnership existed, explaining that the two shared an office, but not fees or business losses. On the other hand, the court noted that the lawyers' letterhead, office door and telephone and legal directory listings bore both lawyers' names, "Wegmann and Longenecker." Malpractice insurance was obtained under the same title. Nonetheless, the court ultimately determined that no partnership existed.

Whether there was a partnership by estoppel appeared to be a closer question. In the final analysis, however, the *Gravois* court once again sided with the office-sharing lawyer. Primarily based on the fact that profits and losses were not shared and the client's inability to prove detrimental reliance on the appearances of

a partnership, the court held that the lawyer was not vicariously liable for any malpractice his colleague may have committed.

The lawyers in *Cheshire* were not as fortunate. There, a lawyer represented a criminal defendant after having represented the government's key witness in a substantially related matter and was disqualified as a result. Also at issue was whether the other defendant's counsel, who shared an office with the conflicted lawyer, should be similarly disqualified pursuant to Rule 1.10, the rule governing "imputed" conflicts for lawyers associated in the same law firm.[3] As in *Gravois*, there was little question that the lawyers in fact practiced independently from one another, maintaining separate bank accounts, files, clients, secretaries and office staff. But also as in *Gravois*, the lawyers additionally shared common stationery labeled "Marabella, Fournet, and Hardlcka, an Association of Attorneys at Law." Notwithstanding the similarities between the facts of the cases, the *Cheshire* court (possibly because the requirements for a claim predicated on partnership by estoppel were not in play) ruled differently. The association was treated as a law firm for purposes of Rule 1.10 and the second lawyer was disqualified as well.

The Solutions

As the analyses in these cases suggest, determining whether the line separating mere office-sharing from other types of associations has been crossed is a fact-laden inquiry, one of degree that balances the factors indicative of separateness against those indicative of a traditional law firm. Several measures protective of both lawyer and client are commonly recommended to better the odds that nothing more than mere office-sharing will be found to have occurred:

▶ **Avoid financial entanglements.** Perhaps most importantly, lawyers sharing office space cannot use the same trust account and should avoid maintaining communal bank accounts of any kind. By the same token, and precisely because they are not practicing together in the same law firm, any agreement between the lawyers to share fees must comport with Rule 1.5(e), which, among other things, requires the client to consent in writing to a joint representation and to be advised in writing of each lawyer's share in the fee.[4] The terms of how expenses will be divided and shared among the lawyers should also preferably be reduced to writing, with all third-party contracts and other agreements for services, supplies, equipment, staff, etc., executed using only an individual lawyer's name, rather than jointly using the names of two or more of the office-sharing lawyers.

▶ **Labels matter.** Rule 7.5(d) instructs that ". . . *Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact* . . . ."[5] It is the opinion of the Committee that having stationery, office signs, letterhead, etc., that give the appearance of a law firm where there is none would be prohibited by Rule 7.5. Likewise, the tests for vicarious malpractice liability and imputed disqualification, in part, turn

upon whether the lawyers have held themselves out to the public as a single law firm. For these reasons, the office-sharing lawyers should make arrangements for their own separate letterhead, business cards, telephone listings and building-directory listings. If a receptionist and telephone number are to be shared, the receptionist should be instructed to answer the telephone with a generic greeting, such as "law office." Any designation or title that could be reasonably construed to imply that the lawyers practice together should be rejected and avoided.[6]

Along these same lines, it should be noted that "Of Counsel" is a broad term used to describe an array of relationships, including lawyers who: (1) practice with a firm on a basis different from the firm's other lawyers; (2) are retired but remain part of the firm for limited and/or periodic consultation; or (3) have migrated laterally with the expectation of being made a partner in short order. Regardless of the nature of the relationship, any lawyer designated "Of Counsel" must have a "*close, regular, personal*" relationship "*entailing frequent and continuing*" contact with the law firm.[7] Lawyers simply sharing office space fall short of satisfying this requirement and, accordingly, should not bestow the title on one another.

▶ **Protect client confidences.** Aside from creating unanticipated malpractice exposure and conflicts, office-sharing also can endanger client confidences. To reduce the danger, lawyers sharing office space should restrict access to client files, avoid sharing computer systems without appropriate security and policies in place, and ensure office-mates cannot access others' telephone conversations.

▶ **Other measures.** Generally speaking, aside from the suggestions listed above, office-sharing lawyers should use common sense to take any other action, appropriate to their particular circumstances, to dispel the notion that a law firm has been formed by virtue of the arrangement. For instance, carrying joint malpractice insurance likely will support a presumption that the lawyers are in partnership. Additionally, if at all possible, a lawyer seeking to share office space may wish to do so only with those who practice in different areas of the law. Provided measures like these are instituted, lawyers should be able to accomplish office-sharing without inviting unintended ethical problems.

Conclusion

The Committee believes that the practice of sharing office space with fellow lawyers is permissible and does not bring with it any "associational" hazards, provided it is done correctly. Special care must be exercised to ensure that client confidences are preserved and that the public is not left with the impression that a law firm exists where there is none. Should such safeguarding measures fail, the lawyer may be deemed to be sharing not only office space with his or her colleagues, but also malpractice liability and conflicts of interest as well.

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. At the behest of his office-mate, the lawyer allegedly notarized a procuration unauthorized by the client. That accusation is immaterial for purposes of this discussion.

3. Rule 1.10(a) of the Louisiana Rules of Professional Conduct reads: "*While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.*"

4. Rule 1.5(e) of the Louisiana Rules of Professional Conduct: ". . . *(e) A division of fee between lawyers who are not in the same firm may be made only if: . . . (1) the client agrees in writing to the representation by all of the lawyers involved and is advised in writing as to the share of the fee that each lawyer will receive; . . . (2) the total fee is reasonable; and. . . (3) each lawyer renders meaningful legal services for the client in the matter . . . .*"

5. Rule 7.5(d) of the Louisiana Rules of Professional Conduct.

6. By way of example, the following designations, some of which evidence the lawyers' intention to disclaim a partnership, have been declared misleading: "A Legal Association;" "Association of Solo Practitioners" or "Independent Practitioners;" and "X, Y and Z, Law Offices of Independent Practitioners." *See* ABA/BNA Lawyer's Manual on Professional Conduct Reference Manual, Sharing Office Space, ABA-BNA-MOPC 91:601 (2003).

7. *See, e.g.,* ABA Formal Op. 90-357 (1990).

AN OPPORTUNITY WE SHOULD ALL EMBRACE

By Bobby J. Delise

Two years ago, the evil twin sisters Katrina and Rita ravaged south Louisiana, leaving in their wake the greatest diaspora in American history, ruined businesses, a great American city virtually destroyed and a wounded population that will take years to heal.

While the remaining evidence of eight-foot watermarks, a battered coastline and gutted homes are still with us, the storms also may have afforded our legal profession a rare and historic opportunity to help repair, renew and transform Louisiana in a truly unique and meaningful way. The American legal community has often helped transform the history of the United States. How we as counselors and administrators of justice conduct ourselves now may define us for generations.

We have already seen our legal system in action in Louisiana's post Katrina-Rita era. In February 2006, we witnessed Judge Ivan L.R. Lemelle address the rights of the New Orleans electorate in refusing to set aside the Legislature's plan to hold citywide elections in April 2006. This past July, an Orleans Parish grand jury returned a "no-true bill" following Louisiana Attorney General Charles C. Foti, Jr.'s and Orleans Parish District Attorney Eddie J. Jordan, Jr.'s efforts to prosecute New Orleans physician Dr. Anna Pou and two nurses for homicide in connection with their actions at Memorial Medical Center in the days following Katrina. Plaintiff and defense counsel have handled thousands of Katrina-related cases and continue to do so. Presently, Louisiana courts are filled with litigation related to unresolved legal issues, including the federal government's liability for the levee breaks and homeowners' insurance claims involving "wind versus water" damage. Of course, the legal community in the metropolitan New Orleans area continues to struggle in its attempt to address the horrific upsurge in crime.

Our citizens come to us in their time of need and turmoil. Let us embrace this opportunity and take a leadership role in helping rebuild and renew Louisiana in its time of need. Let us be a beacon of hope and inspiration.

Unresolved legal issues such as "the right of return" for displaced public housing residents in New Orleans, the legal rights of thousands of undocumented immigrant workers helping to rebuild New Orleans, and the still unfulfilled constitutional obligation of Louisiana to provide health care and education to the poor will, over time, find their way through the legal system. With increasing momentum to recall and/or impeach elected public officials, it is foreseeable that our legal system will be called upon to address the unclear standard for impeachment found in the Louisiana Constitution.

Our present legal challenges are perhaps a mere foreshadowing of the yet unknown tests before us. If the past two years are prophetic of the future, only the strong of heart and resolved of mind can confront what's ahead.

As members of the Bench and Bar struggling with post-Katrina/Rita issues, we are obliged to follow the ethical mandates of Louisiana's Code of Judicial Conduct and Rules of Professional Conduct. These, however, are the minimal standards. If we are to succeed in these troubling times, we should aspire to a higher standard. We should conduct our day-to-day actions with the highest degree of honesty, integrity, civility and respect. We should extend kindness and patience to those we represent, to those we find opposing our position and to those for whom we must render judgment. We must be tireless in our pursuit of justice for our clients and the community. In short, we must go beyond what is "minimally" expected of us.

At this time in our nation's history, when the public's approval rating for its local and state government, Congress and the President are at historic lows, where can our citizens look for leadership, inspiration and guidance? Where can Louisiana citizens look to sort out their personal crises brought on by the 2005 hurricanes? Our citizens should look in the same place where the parents of the African-American students seeking equal public school access in Topeka, Kansas, looked in 1954. They should find counsel in the same place where Clarence Earl Gideon looked in 1962 when he took up his pen and paper and wrote to the Supreme Court seeking justice after being wrongfully convicted of a crime he didn't commit. Our citizens should go to the same place where others seek advice and counsel in civil or criminal matters: to the American attorney and the American system of justice.

Our citizens come to us in their time of need and turmoil. Let us embrace this opportunity and take a leadership role in helping rebuild and renew Louisiana in its time of need. Let us be a beacon of hope and inspiration.

Bobby J. Delise is a former chair of the Louisiana State Bar Association's Professionalism and Quality of Life Committee. He is a partner in the firm of Delise & Hall. He can be reached at (504)836-8000 or via e-mail at bdelise@dahlaw.com.

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Aug. 1, 2007.

Decisions

Michael Chris Aguillard, New Iberia, (2007-B-0351) **Permanent disbarment** ordered by the court on June 15, 2007. JUDGMENT FINAL and EFFECTIVE on June 29, 2007. *Gist*: Violating the Rules of Professional Conduct; and the commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

Mark J. Armato, New Orleans, (2007-B-0500) **Suspension of one year and one day** ordered by the court on June 1, 2007. JUDGMENT FINAL and EFFECTIVE on June 15, 2007. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with clients; failure to protect clients' interests upon termination of representation; and failure to cooperate with the Office of Disciplinary Counsel in its investigation.

Joseph M. Bruno, New Orleans, (2006-B-2791) **Three-year suspension with 18 months deferred** ordered by the court on May 11, 2007. JUDGMENT FINAL and EFFECTIVE on May 25, 2007. *Gist*: Offering an inducement to a witness that is prohibited by law; and knowingly making a false statement of material fact or law to a tribunal.

Robert F. DeJean, Jr., Opelousas, (2007-B-1523) **Interim suspension for threat of harm** ordered by the court on July 19, 2007.

Yvonne L. Hughes, New Orleans, (2006-B-2901) **Permanent disbarment** ordered by the court on May 11, 2007. JUDGMENT FINAL and EFFECTIVE on May 25, 2007. *Gist*: Engaging in conduct prejudicial to the administration of justice.

Michael L. Hyman, Lafayette, (2007-B-0636) **Nine-month suspension with all but 90 days deferred followed by two-year period of supervised probation with conditions** ordered by the court on June 1, 2007. JUDGMENT FINAL and EFFECTIVE on June 15, 2007. *Gist*: Failure to return client file; failure to cooperate with the Office of Disciplinary Counsel; violating or attempting to violate the Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice; and threatening to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

Michael J. Kincade, Metairie, (2007-B-1126) **Interim suspension** ordered by the court on June 1, 2007.

Craig Hunter King, Zachary, (2007-B-1079) **Interim suspension** ordered by the court on June 26, 2007.

Thomas G. McHugh, St. Martinville, (2007-B-1337) **Interim suspension** ordered by the court on July 3, 2007.

Paul S. Minor, Biloxi, Miss., (2007-B-1184) **Interim suspension** ordered by the court on June 20, 2007.

Stephen K. Peters, Baton Rouge, (2007-B-0349) **Suspended from the practice of law for a period of three years** by order of the court on June 29, 2007. JUDGMENT FINAL and EFFECTIVE on July 13, 2007. *Gist:* Lack of diligence; failure to properly communicate with clients; failure to deposit disputed fee into a trust account and failure to provide client with an accounting; engaging in a conflict of interest; commingling personal funds in the client trust account; displaying a lack of candor toward the tribunal; improperly communicating with person represented by counsel; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Nanak Singh Rai, New Orleans, (2007-B-0973) **One-year suspension fully deferred conditioned upon an un-**

Continued next page

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Aug. 1, 2007.

Respondent	Disposition	Date Filed	Docket No.
Gregory Avery	Reinstated.	6/21/07	02- 3612 E
Deborah Harkins Baer	Interim suspension.	8/21/07	07-2957 C
Larry Bankston	Reinstated.	7/27/07	97-3303 E
William Dale Behan	Interim suspension.	8/21/07	07-2873 C
Yvonne Hughes	Disbarred.	8/15/07	04-1968 I
Janie Kehr	Suspended (one year and one day).	8/16/07	07-2148 S
Michael J. Kincade	Interim suspension.	8/15/07	07-3362 D
Philip Lawrence	Suspended (18 months).	8/15/07	07-2871 I
Craig W. Marks	Permanent resignation.	8/16/07	05-1493 S
Scott E. Meece	Interim suspension.	8/16/07	07-2956 B
Willie J. Nunnery	Suspended (two months).	8/15/07	07-2147 A
Michael J. Reynolds	Interim suspension.	8/15/07	07-2955 I
Joseph H. Simpson	Suspended (three years).	8/21/07	07-3804 L

Discipline continued from page 192

supervised probationary period of one year ordered by the court on June 1, 2007. *Gist*: Failure to act with reasonable diligence and promptness; and commingling of client and personal funds in his trust account.

Gary Sheffield, Pineville, (2007-B-0288) **Permanent disbarment** ordered by the court on June 15, 2007. JUDGMENT FINAL and EFFECTIVE on July 5, 2007. *Gist*: Failure to refund an unearned fee; commission of a criminal act; and conduct involving dishonesty, fraud, deceit or misrepresentation.

Joseph H. Simpson, Amite, (2007-B-0070) **Three-year suspension with all but one year and one day deferred subject to the conditions** ordered by the court on June 29, 2007. JUDGMENT FINAL AND EFFECTIVE on July 16, 2007. *Gist*: Excessive fee; vexatious litigation against client; and conduct involving dishonesty, fraud, deceit or misrepresentation.

Eddie L. Stephens, Baton Rouge, (2007-B-0180) **Permanent disbarment** ordered by the court on April 27, 2007. JUDGMENT FINAL and EFFECTIVE on May 11, 2007. *Gist:* Violating the Rules of Professional Conduct; commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and engaging in conduct prejudicial to the administration of justice.

Keith D. Thornton, Baton Rouge, (2007-B-0204) **Suspension of two years** ordered by the court on June 15, 2007. JUDGMENT FINAL and EFFECTIVE on June 29, 2007. *Gist:* Failure to act with reasonable diligence and promptness in representing a client; failure to communicate with a client; failure to

Continued next page

Discipline

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make reasonable efforts to expedite litigation; failure to cooperate with the ODC in its investigation; and engaging in conduct prejudicial to the administration of justice.

Clifford L. Williams, Baton Rouge, (2007-OB-1127) **Permanent resignation from the practice of law in lieu of discipline** by order of the court on June 13, 2007. JUDGMENT FINAL and EFFECTIVE on June 13, 2007. *Gist:* Engaging in the unauthorized practice of law; violating or attempting to violate the Rules of Professional Conduct; and conduct involving dishonesty, fraud, deceit or misrepresentation.

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

	No. of Violations
Engaging in conduct prejudicial to the administration of justice	1
Safekeeping property	1
Lack of diligence	1
Lack of communication	1
TOTAL INDIVIDUALS ADMONISHED	**3**

Alcohol and Drug Abuse Hotline

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

Area	Committee Contact	Phone
Alexandria	Stephen E. Everett	(318)640-1824, (318)443-6312
Baton Rouge	Steven Adams	(225)753-1365, (225)924-1510
	David E. Cooley	(225)751-7927, (225)753-3407
	John A. Gutierrez	(225)715-5438, (225)744-3555
Houma	Bill Leary	(985)851-0611, (985)868-4826
Lafayette	Alfred "Smitty" Landry	(337)364-5408, (337)364-7626
	Thomas E. Guilbeau	(337)232-7240
	James Lambert	(337)233-8695, (337)235-1825
Lake Charles	Thomas M. Bergstedt	(337)433-3004, (337)558-5032
	Nanette H. Cagney	(337)437-3884, (337)477-3986
Monroe	Robert A. Lee	(318)387-3872, (318)388-4472
	Nancy Carol Snow	(318)366-1820
New Orleans	Deborah Faust	(504)486-4411, (504)833-8500
	Donald Massey	(504)585-0290
	Dian Tooley	(504)861-5682, (504)831-1838
Shreveport	Bill Allison	(318)221-0300, (318)865-6367
	Ed Blewer	(318)227-7712, (318)865-6812
	Steve Thomas	(318)872-6250

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

Appellate

Final Judgment Not Really Final

The 1st Circuit determined that the trial court's judgment was not a valid final judgment. Without a final judgment, the appellate court had no jurisdiction, and it dismissed the case.

The jury in its verdict form specified percentages of negligence to the defendants and damages amounts for the plaintiff. The trial-court judgment quoted the verdict form's questions and answers verbatim, and then stated, "Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the verdict be and it is hereby made the Judgment of this Court." On appeal, the 1st Circuit said that the judgment does not identify the defendants who are cast in judgment, nor does it order any of the defendants to pay money to the plaintiff. One cannot discern from its face against whom it may be enforced. A valid final judgment must name the party in favor of whom the ruling is ordered, against whom the ruling is ordered, and the relief. *Fournet v. Smith*, 06-1075 (La. App. 1 Cir. 5/4/07).

(The judgment was "not designated for publication." Under La. C.C.P. art. 2168, however, the appellate courts must post such decisions on their Internet Web sites, and opinions so posted may be cited as authority.)

Appealing a Contempt Judgment

The trial judge found an heir in contempt for violating orders in a succession case; she ordered the heir to pay a fine of $1,000. After a final judgment in the case (homologating the tableau of distribution), the heir appealed the contempt judgment.

A judgment of contempt is interlocutory, since it does not determine the merits of the case. It is not immediately appealable except when expressly provided by law. La. C.C.P. art. 2083C. The court said that no statute allows the immediate appeal of an interlocutory judgment. An appellant can seek review of all adverse interlocutory judgments when he takes an unrestricted appeal of a final judgment.

Until Jan. 1, 2006, art. 2083 allowed immediate appeals of interlocutory judgments when they caused "irreparable harm." This contempt judgment was rendered during 2005, but the final judgment was signed in 2006, so the court of appeal held that the interlocutory contempt judgment could be appealed along with the final judgment. *Succession of Bell,* 06-1710 (La. App. 1 Cir. 6/8/07), ____ So.2d ____.

Appellate Court Ignores Post-Judgment Filings

Plaintiff sued Defendants A, B and C in the wrong venue, Orleans Parish, and served only Defendant A before the one-year prescription ran. The trial court in Orleans Parish granted Defendant A's venue exception and transferred the suit to Jefferson Parish. The trial court in Jefferson Parish granted exceptions of prescription filed by Defendants B and C, who had not been sued or served within the one-year prescription period. On appeal, the plaintiff argued that a no-right-of-action exception filed by Defendant A after the trial court granted the exception of prescription warranted reversal. The 5th Circuit held that it cannot base its decision on pleadings filed after the case was appealed. To do so would be to assume original jurisdiction. Affirmed. *Brondum v. Fritts*, 07-0024 (La. App. 5 Cir. 5/29/07), ____ So.2d ____.

New Trial Judgment Makes First Unappealable

The plaintiffs sued to rescind their sale of property to defendants. They alleged that 1) the defendant LLC did not exist at the time of the property sale, and 2) the sale was null due to lesion beyond moiety. Defendants filed a summary judgment motion arguing that the plaintiffs could not prove lesion beyond moiety. The trial judge granted this motion in May 2006. The following month, the trial judge granted a motion for new trial. In this judgment, the court amended its earlier judgment to specify that only the claim based upon lesion beyond moiety was dismissed; demands to set aside the property sale on other grounds were not dismissed. The plaintiff appealed the first judgment.

The 5th Circuit held that the grant of a new trial (or a JNOV) sets aside the original judgment. A court of appeal has no jurisdiction to review a judgment modified due to post-judgment motion practice. Additionally, the trial court's judgment was not appealable because it did not dispose of all the issues in the case. It was an unappealable partial judgment under La. C.C.P. art. 1915B. Appeal dismissed. *Nolan v. High Grass LLC*, 07-0080 (La. App. 5 Cir. 5/29/07), ____ So.2d ____.

Redundant Appeal of Denial of New-Trial Motion

The plaintiff sued Wal-Mart after an adverse reaction from a drug received at the pharmacy department. The trial court dismissed the action on summary judgment. The plaintiff appealed the summary judgment and the trial court's refusal to grant a new trial. The 1st Circuit affirmed the summary judgment and then addressed the plaintiff's assignment that the trial judge erred in denying her motion for new trial. The court said that the appeal of the denial of a new trial is to be considered as an appeal of the judgment on the merits, when it is clear from the appellant's brief that the appeal was intended to be on the merits. In this case, appealing the trial judge's denial of the new-trial motion was the same as appealing the grant of the summary judgment. So the appellate court ignored this assignment of error. *McKee v. Wal-Mart Stores Inc*., 06-1672 (La. App. 1 Cir. 6/8/07), ____ So.2d ____.

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Corporate and Business Law

No Direct Claims Against Directors for Breach of Fiduciary Duties

North Am. Catholic Educ. Programming Found., Inc. v. Gheewalla, ____ A.2d ____ (2007).

In *North American Catholic Educational Programming Foundation, Inc.*, a case of first impression, the Delaware Supreme Court held that creditors of a corporation that is either insolvent or operating in the zone of insolvency have no direct claims against members of the board of directors for breach of fiduciary duties.

The business and affairs of a corporation are managed by a board of directors who are charged with fiduciary duties to the corporation and its shareholders. When the corporation is insolvent, the principal beneficiaries of the corporation's growth and increased value are its creditors. Thus, the law recognizes that, in most circumstances, the creditors of an insolvent corporation have the right to assert derivative claims against a director for breach of fiduciary duties owed

to the corporation. *Id*. at 7. The Delaware Supreme Court refused to recognize that the directors of an insolvent corporation have direct fiduciary duties to the corporation's creditors, reasoning that to do so would create a conflict between the director's duty to maximize the value of the insolvent corporation for the benefit of all having an interest in the corporation and the direct fiduciary duty owed to individual creditors. *Id*. at 8.

Similarly, the Delaware Supreme Court held that directors of a corporation operating in the zone of insolvency owe no fiduciary duties to the corporation's creditors, stating that:

> [w]hen a solvent corporation is navigating in the zone of insolvency, the focus for Delaware directors does not change: directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the benefit of its shareholder owners.

Id. at 7.

In determining that creditors have no direct claims against directors for breach of fiduciary duties, the Delaware Supreme Court reasoned that creditors' existing protections — negotiated agreements, security instruments, the implied covenant of good faith and fair dealing, fraudulent conveyance law and bankruptcy law — render a direct action for breach of fiduciary duties unnecessary. Also, a corporation in the zone of insolvency is uniquely in need of "effective and proactive leadership" and the ability to negotiate in good faith with its creditors. These interests would be undermined by the prospect of individual liability in the form of a direct claim by a creditor. *Id*. at 6.

This case does not limit the right of a creditor to assert derivative breach of fiduciary duty claims on behalf of the corporation, or direct non-fiduciary claims.

"Strong Inference" of Scienter

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 127 S.Ct. 2499 (2007).

In order to state a claim in a private securities fraud action under the Private Securities Litigation Reform Act of 1995, the plaintiff must state with particularity both facts constituting the alleged violation and facts evidencing scienter, *i.e.*, the defendant's intention to deceive, manipulate or defraud. Specifically, according to § 21D(b)(2), plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." In *Tellabs*, the Supreme Court held that courts should consider competing infer-

ences in determining whether an inference of scienter is "strong" within the meaning of § 21D(b)(2), finding that an inference of scienter must be more than merely plausible or reasonable; it must be cogent and at least as compelling as any opposing inference of non-fraudulent intent.

Shareholders of Nonprofits May Duplicate and Abstract Corporate Records

Owens v. Southwest Ouachita Waterworks, 42,278 (La. App. 2 Cir. 6/20/07), ____ So.2d ____.

The Louisiana 2nd Circuit held in *Owens* that a nonprofit corporation's shareholders have the right to copy, duplicate and extract data from its corporate records despite the language of La. R.S. 13:2701 that expressly gives shareholders of a nonprofit corporation only the right to "examine in person, or by agent or attorney, at any reasonable time, the records of the corporation . . . ."

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Criminal Law

Presumption of Reasonableness for Federal Sentencing Guidelines

Rita v. United States, 127 S.Ct. 2456 (2007).

Victor Rita ordered a parts kit with which the Bureau of Alcohol, Tobacco and Firearms (ATF) believed he could assemble a machine gun. When contacted by ATF, Rita sent back the original kit he had ordered and got a new kit that could not be used to make a machine gun. An investigation ensued, in which Rita was placed under oath before the grand jury, where he denied that ATF had inquired about the kit or that he had spoken to the supplier about the kit during the investigation.

Rita was charged with perjury, making false statements and obstruction of justice. He was convicted of all counts after a jury trial. At sentencing, the counts were combined under USSG § 3D1.1. The presentence report gave him a base offense level of 20 and criminal history category of I, for a sentencing range of 33-41 months. At the sentencing hearing, defense counsel argued that Rita should get a sentence below the Guidelines, using the factors of 18 U.S.C. § 3553, due to poor health and distinguished military service. The judge disagreed and sentenced Rita to the minimum Guidelines sentence of 33 months. On appeal, the defendant argued that his sentence was unreasonable because it failed to adequately consider his history and characteristics, and because it was greater than necessary to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553.

The 4th Circuit rejected Rita's argument, noting that its circuit precedent declared Guidelines sentences presumptively reasonable (as does the 5th Circuit, *see United States v. Alonzo*, 435 F.3d 551, 554 (5 Cir. 2006)). Rita then sought certiorari, citing the circuit split regarding the presumption of reasonableness applied to Guidelines sentences, and the Supreme Court granted review and affirmed.

Justice Breyer, writing for the majority, began with a review of the Sentencing Commission's work and noted that the commission's goals were to create guidelines that met the goals of 18 U.S.C. § 3553. According to Justice Breyer, to the extent that a presumption of reasonableness is in place, it reflects merely that the Guidelines have met the goal of matching with 18 U.S.C. § 3553 and that the judge has come to the same conclusion. The presumption must be rebuttable and is truly a presumption for the appellate courts to impose, but it is permissible, according to the court.

Rita further argued that the Sixth Amendment was violated by the presumption, in that the judicial fact-finding process of federal sentencing is bolstered by the presumption. The majority dismissed this argument, noting that a presumption does not require the sentencing judge to impose a Guidelines sentence, and even less forbids the sentencing judge from deviating from the Guidelines based on his or her factual findings. Justice Breyer also noted that the issue of having judges explain non-Guidelines sentences more thoroughly, in order to justify their actions, will be reviewed next term in *Gall v. United States*, 127 S.Ct. 2933 (2007) (granting cert.).

Finally, Rita argued that the sentencing court failed to properly analyze the relevant sentencing factors. Although 18 U.S.C. § 3553 does require a judge to state his reasons, the court found that the arguments at sentencing were simple and straightforward, and that the judge's comments, though brief, were adequate for the imposition of a Guidelines sentence.

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Family Law

Custody

Laurence v. Laurence, 07-0011 (La. App. 3 Cir. 5/30/07), 957 So.2d 931, *writ denied*, 07-1322 (La. 7/5/07), 959 So.2d 891.

The trial court maintained the parties' 50/50 time alternating weeks, but changed the co-domiciliary status to name Mr. Laurence as the domiciliary parent for two reasons: (1) he provided more stability for the children, and (2) they had been attending school near his home and would have had to change schools if the mother was named primary domiciliary parent. The mother's motion for new trial was properly denied because she raised the fact that Mr. Laurence was not the biological father of one of the children after she lost at trial; the evidence was not newly discovered, and it would have created a substantial risk of harm to separate the two children from each other.

Mayo v. Henson, 42,250 (La. App. 2 Cir. 5/9/07), 957 So.2d 318.

Although the mother had a history of alcohol-abuse-related problems, and the father a history of drug-abuse problems, the court of appeal affirmed the trial court's decision to place "primary custody" with the mother "by naming her domiciliary parent" because she had been the child's primary caretaker, it was desirable to maintain continuity of the child's environment, and the mother had successfully raised an older child.

Steinebach v. Steinebach, 07-0038 (La. App. 3 Cir. 5/2/07), 957 So.2d 291.

The trial court did not err in naming the

mother domiciliary parent where the father had failed to provide support, and she was more willing to facilitate visitation. In this custody dispute between a father who lived in Florida and a mother who lived in Arkansas, the court of appeal affirmed alternating custody of the preschool child, with the child spending one month out of four with the father. The child support award of $100 a month, which deviated from the Guidelines calculation of $455 per month, was affirmed because (1) he was paying community debt, (2) part of his income was from the G.I. Bill, (3) he was attending school, and (4) the court ordered him to pay all transportation costs for the visitation, as well as one-half of medical costs after insurance. He also was allowed to claim the dependency exemption.

Child Support

Barnes v. Barnes, 07-0027 (La. App. 3 Cir. 5/2/07), 957 So.2d 251.

The trial court amended ex parte the parties' child support decree to require the father to make payments by income assignment to the Louisiana Department of Social Services, even though the department was not providing support enforcement services to the mother and the father was not in arrears. The court of appeal reversed, finding it "elementary" that the Medicaid services provided by DSS were not "support enforcement services."

Aydelott v. Aydelott, 42,161 (La. App. 2 Cir. 5/9/07), 957 So.2d 350.

The court of appeal reversed the trial court's child-support determination because it deviated from the Guidelines with no explanation other than that the trial court thought the amount "proper." The court of appeal calculated child support after deciding that the record contained sufficient information. Because the parties had shared equal custody between the date of Mr. Aydelott's rule and December, 2005, when Mr. Aydelott was awarded primary custody, the court made the order that she pay child support to him retroactive to Jan. 1, 2006, calculated under Worksheet "A," instead of to the date of his award. She was awarded two months' credit against her child support for the time she had the three children and for her primary care during the summer.

Adoption

In re A.G.T., 06-0805 (La. App. 5 Cir. 3/13/07), 956 So.2d 641, *writ denied*, 07-0783 (La. 5/4/07), 956 So.2d 611.

The court of appeal affirmed the juvenile court's finding that the father forfeited his right to contest an intra-family adoption by failing to make child support payments or to visit or contact the child in excess of six months, and that it was in the child's best interest to allow the adoption. Neither his filing of a rule for visitation nor Governor Blanco's executive orders suspending deadlines for filing legal proceedings post-Katrina extended the six-month period. The rule was filed in Baton Rouge, even though the father had the resources and opportunity to discover that the mother and child had returned to Metairie after the hurricane. Moreover, the executive order could not suspend his obligation to pay child support.

Property

Moise v. Moise, 06-0876 (La. App. 5 Cir. 3/13/07), 956 So.2d 9.

Because an LLC formed during the community was capitalized with Mr. Moise's separate property, the entity was his separate property. Ms. Moise being listed on some documents as a member of the LLC and her performance of some services of a manager were not sufficient to change her status.

Murrell v. Murrell, 42,070 (La. App. 2 Cir. 4/25/07), 956 So.2d 697.

Seven years after Mr. Murrell agreed to continue to pay health- insurance premiums for Ms. Murrell as "further consideration" in the property partition, he filed a petition to terminate his obligation, alleging that it was in the nature of support and that circumstances had changed. Ms. Murrell's exception of prescription of five years to rescind a partition was maintained by the trial court and court of appeal, and his petition was dismissed.

Jett v. Jett, 06-1648 (La. App. 3 Cir. 5/23/07), 957 So.2d 368.

The court of appeal reversed the trial court's ruling that Mr. Jett met the factors required by *Hare*, finding, instead, that his promotions were due to the same efforts he had made during the marriage and that there were not "singular personal factors" leading to the increases in his benefits.

Andries v. Andries, 07-0088 (La. App. 3 Cir. 5/30/07), 957 So.2d 954.

The lack of a trial transcript and of a narrative of the facts under La. C.C.P. art. 2131 is imputable to the appellant. Because neither party offered evidence of the value of a certificate of deposit as of the date of the trial, as required by La. R.S. 9:2801, the trial court did not err in basing its award on the value in the record as of a date prior to trial. The court of appeal affirmed the trial court treating two automobiles as if they did "not even

exist" for purposes of the partition because there was no record of their value in the record. The court affirmed reimbursement to the husband for one-half of payments after the termination of the community on a motor home, which the parties allowed the creditor to repossess. The appellate court found that even though she lived in the motor home after termination, the trial court properly divided the deficiency judgment for the motor home between them. The husband was denied other reimbursement claims for lack of proof. His claim that he had already paid her one-half of an income tax refund was also denied based on the trial court's credibility determination.

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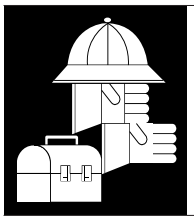

Labor and Employment Law

Home Health Aides Remain Excluded from Minimum and Overtime Wage Requirements

On June 11, the United States Supreme Court unanimously upheld a Department of Labor (DOL) regulation that excludes from the Fair Labor Standards Act's (FLSA) wage and overtime requirements third-party employed workers who provide in-home companion care for elderly and disabled people. *Long Island Care at Home, Ltd. v. Coke*, 127 S.Ct. 2339 (2007) (*Coke III*).

Critics of the decision assert it will drive sorely needed qualified workers from home-care services by failing to assure fair compensation to them and will perpetuate disparities in compensation for women. Supporters contend it will help ensure that home care for the elderly and disabled remains affordable for working, middle- and low-income families and will prevent a sudden, dramatic escalation in Medicaid funding that would drain local government coffers.

In 1974, Congress amended the FLSA to extend minimum and overtime wage protections to employees performing "domestic services." At the same time, Congress provided an exemption from FLSA requirements for those domestic service employees who "provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." 29 U.S.C. § 213(a)(15). Under a DOL regulation promulgated in 1975 (hereinafter third-party employer

regulation), this exemption includes "companionship" workers "employed by an employer or agency other than the family or household using their services." 29 C.F.R. § 552.109(a).

In 2002, a home-health aide named Evelyn Coke filed suit against her employer, Long Island Care at Home, Ltd., and its owner (together, Long Island) claiming they failed to pay her minimum and overtime wages in violation of the FLSA. The lawsuit directly challenged the validity of the DOL third-party employer regulation, 29 C.F.R. § 552.109(a). The district court entered judgment on the pleadings dismissing the suit, finding the third-party employer regulation, § 552.109(a), valid and controlling.

On appeal, the 2nd Circuit held the regulation unenforceable and set aside the district court's judgment. *Coke v. Long Island Care at Home, Ltd.,* 376 F.3d 118 (2 Cir. 2004) (*Coke I).* The court reasoned that the regulation was merely interpretive, was therefore accorded less deference than applied by the district court, and did not warrant even that level of deference because (among other things) it conflicted with another regulation that defined domestic-service workers as those employed in the household of their employer. *Id.* at 130-34. Long Island sought certiorari, and the Supreme Court vacated the decision and remanded with instructions for reconsideration in view of a recent DOL Advisory Memorandum supporting enforcement of the regulation. Upon remand, the 2nd Circuit again held the regulation unenforceable. *Coke v. Long Island Care at Home, Ltd,* 462 F.3d. 48 (2 Cir. 2006) (*Coke II)*. Long Island sought certiorari and the court granted its petition.

Coke acknowledged that the third-party employer regulation on its face applied to her employment and that, if it was enforceable, she could not prevail. Thus, the sole question considered by the court was "whether, in light of the [FLSA's] text and history, and a different (apparently conflicting) regulation, the [third-party employer] regulation is valid and binding." *Coke III*, 127 S.Ct. at 2344. The Supreme Court held that it is.

First, the court rejected the argument that by promulgating the regulation DOL exceeded the authority delegated to it by Congress. Rather, the court noted express language in the amendment granting DOL broad definitional authority, including the authority to decide whether to include workers paid by third parties within the scope of the definitions of "domestic service employment" and "companionship services." *Id.* at 2347. Moreover, the court reasoned that legislative history does not show the regulation is at odds with congressional intent and specifically referenced a statement by one senator:

> "expressing concern that requiring payment of minimum wage to companionship workers might make such services so expensive that some people would be forced to leave the work force in order to take care of aged or infirm parents."

Id. (quoting from 119 Cong. Rec. at 24798, Sen. Johnston).

Second, the court rejected Coke's argument that the third-party employer regulation is invalid because it conflicts with another, purportedly controlling, DOL regulation. *Coke III*, 127 S.Ct. at 2347-48. The court conceded that the two regulations are inconsistent because one limits the definition of "domestic service employee" for purposes of the 29 U.S.C. § 213(a)(15) exemption to workers employed by the household, but the other includes workers who are not employed by the household. *Id.* at 2348. Yet it concluded that § 552.109(a) is controlling on the issue of third-party employment. *Id.* In so doing, the court considered serious problems that would be created by granting controlling authority to the other regulation, the policy of the specific governing the general, and DOL's "considered views" on the matter as explained in the DOL memorandum. *Id.* at 2348-49.

Third, the court determined that § 552.109(a) was not merely an "interpretive" regulation entitled to little deference, as argued by Coke and determined by the 2nd Circuit. *Id.* at 2350-51. Rather, the court concluded that the court should accord great deference to DOL's rule. Finally, the court concluded that the 1974 agency notice-and-comment procedures were sufficient. *Id.* at 2351-52.

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Professional Liability

Coleman Factors

Blevins v. Hamilton Med. Ctr., Inc., 07-0127 (La. 6/29/07), 959 So.2d 440.

Mr. Blevins fell to the floor and was injured when his hospital bed rolled away as he attempted to get out of it to use a bedside commode. He filed a medical-review-panel complaint and a lawsuit. The hospital (SMC) filed an exception of prematurity, contending that all of the allegations in the lawsuit had first to be presented to a panel. Blevins answered that some of the allegations fell within the purview of the MMA, whereas others did not. The district court agreed with Blevins, but the court of appeal did not and ruled that all of the allegations fell under the MMA.

The Louisiana Supreme Court decided the case based on the application of the six "*Coleman* factors." *Coleman v. Deno*, 01-1517, pp. 17-18 (La. 1/25/02), 813 So.2d 303, 315-16.

SMC contended that a hospital bed cannot be segregated from the treatment of a patient, as the patient spends most of his time in the bed recovering. The court found that furnishing equipment that was not in working order had nothing to do with the condition for which the patient was hospitalized. He was hospitalized to treat a groin infection, but, when he fell, he injured his knee. The incident occurred because the bed was defective or someone failed to "lock" it. This is a job "routinely performed by maintenance or housekeeping personnel" and is therefore not treatment-related.

Locking or securing a bed does not require expert medical testimony. Thus the second *Coleman* factor weighed in favor of the plaintiff.

Whether or not to keep the bed locked does not require an assessment of the patient's medical condition, *i.e.*, the groin infection had nothing to do with the bed's not working properly. Therefore, the third *Coleman* factor weighed in favor of a general negligence claim.

SMC claimed that the plaintiff had to be assisted during part of his recuperation to transfer to and from the bedside commode. The incident did not occur in the context of a patient/health-care-provider relationship; it happened when the patient put pressure on the bed. Thus, the fourth factor also weighed in favor of the plaintiff's position.

SMC also contended that the beds and bedside commodes are solely for patients' use, but the court found it just as reasonable to conclude that any visitor to the hospital who put pressure on this particular bed would have suffered the same injury. Consequently, the fifth factor weighed in favor of a general negligence claim.

The parties stipulated that none of the alleged actions or inactions was intentional, and thus the sixth factor was the only one that met the *Coleman* test.

SMC also contended that the plaintiff's general negligence allegations were so intertwined with his malpractice claims that they could not be severed. The court disagreed, and relied on *Coleman* in holding that only those claims "arising from medical malpractice" can be governed by the Act. Therefore, three of Blevins' contentions (failing to furnish equipment in proper working condition, failing to keep the bed in its lowest position with the wheels locked, and failing properly to instruct the patient on the proper use and safety with respect to the bed) fell outside the provisions of the Act. Thus, the judgment of the court of appeal was reversed as to these claims.

The Cap

Taylor v. Clement, 04-1069 (La. App. 3 Cir. 7/6/07), ____ So.2d ____.

The 3rd Circuit Court of Appeal had previously ruled in consolidated cases (*Arrington* and *Taylor*) that the statutory cap on damages was unconstitutional. In two per curiam opinions, the Supreme Court vacated the judgments on procedural grounds and remanded the cases to the court of appeal. The 3rd Circuit has now remanded the entire case to the trial court, a move that will allow the plaintiffs to particularize all grounds for their claim that La. R.S. 40:1299.42(B) is unconstitutional and also to afford the state of Louisiana and the PCF an opportunity fully to address and litigate those grounds. The court of appeal noted that the state, in framing its position earlier, relied on prior jurisprudence and:

> did not present any evidence in the record or make any showing that the cap continues to serve a legitimate public purpose and that a reasonable basis still exists for maintaining the discriminatory classification affecting Plaintiffs' right to full recovery in medical malpractice cases. We will not penalize the State for the failure, however . . . this evidence is readily available and important to a full examination of the issue. Accordingly, we elect on remand, consistent with the supreme court's decision in *Sibley II*, to instruct the district court to re-examine all of the issues raised and to determine whether the statute is constitutional after permitting the parties to amend the pleading, to conduct full discovery, to introduce additional evidence . . . .

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SOLACE / Support of Lawyers/Legal Personnel All Concern Encouraged

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

Area	Coordinator	Phone	E-mail
Alexandria Area	Elizabeth Erny Foote	(318)445-4480	efoote@psfllp.com
Baton Rouge Area	Ann G. Scarle	(225)214-5563	ann@brba.org
Covington/Mandeville Area	Suzanne E. Bayle	(504)524-3781	sebayle@bellsouth.net
Denham Springs Area	Mary E. Heck Barrios	(225)664-9508	mary@barrioslaw.com
Houma/Thibodaux Area	Danna Schwab	(985)868-1342	dschwab@theschwablawfirm.com
Jefferson Parish Area	Pat M. Franz	(504)455-1986	patfranz@bellsouth.net
Lafayette Area	Susan Holliday	(337)237-4700	susan@lafayettebar.org
Lake Charles Area	Joel Lutz	(337)433-0022	joel@stuteslaw.com
Monroe Area	Daniel J. Ellender	(318)647-3311	mail@ellenderlaw.com
Natchitoches Area	Peyton Cunningham, Jr.	(318)352-6314 (318)481-5815	peytonc1@bellsouth.net
New Orleans Area	Helena N. Henderson	(504)525-7453	hhenderson@neworleansbar.org
Opelousas/Ville Platte/Sunset Area	John L. Olivier	(337)662-5242 (337)942-9836 (337)232-0874	johnolivier@centurytel.net
Shreveport Area	Patti Guin	(318)222-3643	pguin@shreveportbar.com

For more information, go to: *www.lsba.org/2007InsideLSBA/solace.asp.*

Secret Santa

Brightening the holidays for needy children

During the holiday season, the needs of others are more apparent than at other times of the year. For this reason, the Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee is inviting Bar members and others associated with the legal community to help meet these needs by participating in the 11th annual Secret Santa Project.

The Committee has identified several agencies that serve disadvantaged children who desperately need clothing and gifts. To the best of its ability, the Committee has ensured that these agencies are not receiving similar help from any other source.

Most of the children served by the Project are young. However, we have made a special effort to include teenagers, up to the age of 18 years old. The teenagers served by the agencies we have identified are likely to be working to support their families, not to buy gifts for themselves. Thus, we ask that you help us to help these children. It will just require a little extra effort on your part.

Participation in the program is fun and easy. Anyone sponsoring a child will receive a child's Christmas Wish List. Sponsoring Santas will then take the list and go shopping. There is no required minimum or maximum and whatever gifts a child receives through the program will be more than he or she is expecting. Each sponsoring Santa will then bring the wrapped gifts directly to the designated collection center. Gift collection will run from Monday, Dec. 3 through Thursday, Dec. 6, 2007. Details about gift wrapping, dropoff, etc., will be included in the packet you receive as a sponsoring Santa.

The Secret Santa Project also welcomes monetary donations in addition to or in lieu of gifts to help defray administrative costs and to buy gifts for children who may not be adopted by a Secret Santa. **If you wish to make a monetary donation, please make the check payable to the "Louisiana Bar Foundation" and mail it to the attention of Krystal Bellanger, Louisiana Bar Center, 601 St. Charles Ave., New Orleans, LA 70130.**

This Project not only provides holiday cheer to the less fortunate but also improves the image of the legal profession by developing ongoing relationships with social service agencies who serve our community and by setting an example of generosity. By participating in this program, you will encourage children to dream!

For more information or questions about the Project, contact Krystal L. Bellanger at (504)619-0131 or kbellanger@lsba.org.

Name: _____

Firm/Company: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

E-mail: _____

I would like to sponsor _____ children.

It is most convenient for me to deliver gifts to this area:

❑ Designated Collection Center
❑ Louisiana Bar Center

To participate, fax this form to:
Krystal L. Bellanger
(504)566-0930

YOUNG LAWYER SPOTLIGHT

Maurice C. Ruffin
New Orleans

The Louisiana State Bar Association's Young Lawyers Section Council is spotlighting the accomplishments and activities of Maurice C. Ruffin.

Ruffin is an associate with Adams and Reese, where he is a member of the Agricultural Chemicals Litigation Team and the Commercial Disputes Resolution Team. His practice areas also include medical defense liability, drug and medical device product liability, and railroad and casualty litigation. He earned his BA degree in English from the University of New Orleans in 2000 and his JD degree from Loyola University Law School in 2003. He is married to Tanzanika Ruffin, also a practicing attorney.

He is active in the New Orleans Bar Association (NOBA) and is currently serving as treasurer of its Young Lawyers Section. He was 2006 co-chair and 2007 chair of the Bar & Grille Committee. Under his direction, the 2007 Bar & Grille event raised more than $17,000 for the New Orleans Legal Assistance Corp. He also has chaired the NOBA's annual High School Mock Trial Competition for the past three years.
Ruffin is a former board member of the Louisiana Center for Law and Civic Education. His professional memberships include the American Bar Association, Federal Bar Association, the American Inns of Court and the Martinet Society.

In addition to his involvement in bar activities, he volunteers in his community. He serves on the board of directors of Start the Adventure in Reading (STAIR), a nonprofit, children's literacy organization that provides reading tutors for public school second-grade students. Also, pre-Hurricane Katrina, he volunteered every Friday morning at the Alternative High School, a school for students expelled from other Orleans Parish schools. Through this program, he, along with Judges Helen "Ginger" Berrigan and Stanwood Duval, presented a weekly law and civics class to the program's at-risk youth.

Ruffin is deeply committed to providing pro bono legal services. He is a volunteer with Louisiana Appleseed, a nonprofit organization seeking to address problems at their root causes, working toward practical, systemic solutions. He has been active in Louisiana Appleseed since it was re-established earlier this year through the efforts of his colleagues at Adams and Reese and others. Currently, he is involved in a project aimed at improving teacher recruitment and retention within the public school system. He also has worked as a pro bono attorney in numerous child-welfare-related cases.

He is a board member of DesireNola.org, a nonprofit providing financial support to small businesses affected by Hurricane Katrina, and serves on the Small Business Development and Grants committees. He has assisted Judge Jay Zainey's HELP program, dedicated to providing legal assistance to the homeless community.

Ruffin is held in high esteem by his peers. As one colleague described him, "Maurice is an asset to the legal profession and the community as a whole. He is professional with his opponents and is never lacking a smile, warm greeting and can-do spirit. He goes out of his way to assist those less fortunate and to teach others about the legal profession and enhance its reputation."

LOCAL AFFILIATES

Lafayette Young Lawyers Association Sponsors "Christmas in July"

Members of the Lafayette Young Lawyers Association (LYLA) co-ordinated a "Christmas in July" program for a children's shelter in Lafayette. Led by Will Montz, the LYLA donated a dryer to the shelter and spent the afternoon with the children jumping in a Fun Jump, watching movies and eating snow cones.

Berryl F. Thompson II, Lauren Cangelosi and Will Montz with children at the Fun Jump during the Lafayette Young Lawyers Association's "Christmas in July" program.

NOBA Young Lawyers Section Sponsors Annual Mayoral Luncheon

The New Orleans Bar Association's (NOBA) Young Lawyers Section recently sponsored its annual Mayoral Luncheon with New Orleans Mayor C. Ray Nagin. NOBA President Judge Carl J. Barbier introduced Mayor Nagin, who spoke at length about the state of affairs in post-Katrina New Orleans and then opened the floor for questions and comments.

Carey L. Menasco chaired the YLS Mayoral Luncheon Committee.

Attending the New Orleans Bar Association's (NOBA) annual Mayoral Luncheon were, from left, Young Lawyer Section Chair Dana M. Douglas, Mayoral Luncheon Committee Chair Carey L. Menasco, New Orleans Mayor C. Ray Nagin and NOBA President Judge Carl J. Barbier.

New Orleans Bar Donates $25,000 to NOLAC

Tara G. Richard, the 2006 New Orleans Bar Association Young Lawyers Section chair, recently presented a check for $25,000 to Mark Moreau, the New Orleans Legal Assistance Corp. (NOLAC) co-executive director of program services. NOLAC is a nonprofit legal aid program for low-income people. These funds represent money raised at two fundraisers in 2006. The first was the New Orleans Bar & Grille, a cooking competition between law firms and local businesses. The 2006 Bar & Grille was chaired by Conrad Meyer, Alina Pagani

The New Orleans Bar Association Young Lawyers Section (YLS) presented a check for $25,000 to the New Orleans Legal Assistance Corp. From left, Golf Tournament Co-Chairs David "Beau" Haynes and Richard R. Stedman II; YLS 2006 Chair Tara G. Richard; Mark Moreau, co-executive director of program services for NOLAC; Willie Abrams, program counsel for Legal Services Corp.; and 2006 Bar & Grille Co-Chairs Alina Pagani, Maurice C. Ruffin and Conrad Meyer.

Carlyle Paxton, Brandon Letulier, Lafayette Young Lawyers Association President Maggie Simar, Will Montz and Lauren Cangelosi served the children snow cones at the "Christmas in July" event.

and Maurice C. Ruffin. The second fundraiser was the annual YLS Golf Tournament, chaired by David "Beau" Haynes and Richard R. Stedman II.

SWLBA Young Lawyers Host Softball Tournament

Five teams competed at the Southwest Louisiana Bar Association's (SWLBA) Young Lawyers annual softball tournament in August in Lake Charles.

"Wayne's Warriors," the district attorney's team, won all four games and was named the tournament champion. The "Warriors" take their name from the late Wayne Frey who headed the felony section of the District Attorney's Office in Calcasieu Parish for many years. Frey died earlier this year. The "Warriors" also received a trophy for the best T-shirt.

"The Justice League," composed of representatives from the 14th Judicial District Court, took second place. The law firm of Stockwell, Sievert, Viccellio, Clements & Shadddock, known as "The Slammers," won third place. Also competing as "The Grass Pirates" were representatives from the law firm of Plauche, Smith and Nieset who teamed with several attorneys from other firms in the Lake Charles area.

"Wayne's Warriors" was the tournament champion of the Southwest Louisiana Bar Association's Young Lawyers annual softball tournament. Team members include, kneeling from left, Tyler Frey and District Attorney John DeRosier. Sitting from left, Ronnie Rossitto, Vicky Kiffe, Rachel Chauvin, Rea Pearson, Elaine Vidrine, Megan Brame and Bill Pousson. First row standing, from left, Fred LeBleu, Jeremy LaComb, Amber Montoya, Tara Funk, Cindy Killingsworth, Jimmy DeRosier and Lance Hughes. Back row from left, Jaime Gary, Bob Killingsworth, David Green, Mike Duplechin and Skeet Owens.

La. Center for Law & Civic EDUCATION

By Maria Yiannopoulos & Hon. Marc T. Amy

ORDER IN THE COURT!!! INSTITUTE

Social studies educators, representing public and parochial schools across Louisiana, participated in the inaugural "Order in the Court!!!" Teacher/Justice Institute at the Louisiana Supreme Court this past July. Leading the program were, front row from left, Maria Yiannopoulos, executive director of the Louisiana Center for Law and Civic Education (LCE); Jack C. Benjamin, LCE board member; Judge (Ret.) Jimmy Gulotta; and Brenda Nolan, LCE program coordinator.

Twenty-one social studies educators, representing public and parochial schools across Louisiana, participated in the inaugural "Order in the Court!!!" Teacher/Justice Institute at the Louisiana Supreme Court this past July.

The educators spent two days learning directly from Louisiana judges about the court system and its process. The lesson plans, material and content presented at the workshop met Louisiana's Social Studies Benchmarks and Standards as set forth by the State Board of Elementary and Secondary Education.

The following schools were represented: Academy of Our Lady, Jefferson Parish; Alexandria Middle Magnet, Rapides Parish; Baker High School and Central High School, both in East Baton Rouge Parish; Captain Shreve High School, Caddo Parish; Cabrini High School, Mount Carmel Academy and McMain Secondary, Orleans Parish; Choudrant High School, Ouachita Parish; Covington High School, Fontainbleau High School, Mandeville High School, Slidell High School, St. Scholastica Academy and Woodlake Elementary, all in St. Tammany Parish; East Ascension Parish, Galvez Middle School, Glasgow Middle School and Prairieville Middle School, all in Ascension Parish; and North Vermilion High School, Vermilion Parish.

Program chair was Hon. Marc T. Amy, Louisiana 3rd Circuit Court of Appeal.

Presenters were Hon. Justice John L. Weimer, associate justice, Louisiana Supreme Court; Hon. Piper Griffin, Orleans Parish Civil District Court; Hon. Madeleine Landrieu, Orleans Parish Civil District Court; Hon. Terri Love, Louisiana 4th Circuit Court of Appeal; Hon. Charles C. Foti, Jr., Louisiana attorney general; Hon. Ralph Tureau, 23rd Judicial District Court; Hon. Frances Bouillion, Lafayette City Court; Hon. Sylvia Dunne, Louisiana Office of Workers' Compensation; Hon. Gwen Thompson, Louisiana Office of Workers' Compensation; Hon. Phyllis Keaty, 15th Judicial District Court; Hon. Jay Zainey, United States District Court, Eastern District of Louisiana; and Hon. James Gulotta (retired), Louisiana 4th Circuit Court of Appeal.

Also addressing the educators were Val P. Exnicios, attorney and Louisiana Center for Law and Civic Education (LCE) board president; Melanie S. Fields, assistant district attorney for the 19th Judicial District Court and LCE board secretary; Monte T. Mollere, Louisiana State Bar Association Access to Justice director; Marie Erickson, Law Library of Louisiana; Valerie Willard, community relations director for the Louisiana Supreme Court; and Nancy E. Rix, deputy judicial administrator and counsel to the Judiciary Commission of Louisiana.

The educators participated in interactive lesson presentations that synthesized the information presented by the judiciary. Using the text "Great Trials in American History" by Street Law, Inc. and incorporating actual oral arguments presented before the United States Supreme Court via the "Greatest Hits" CD-ROM produced by the U.S. Supreme Court, the educators applied the information presented.

The "Order in the Court!!!" Teacher/Justice Institute allows teachers to explore the concept of justice, civic engagement and the court system and the framework for judicial decision making in Louisiana's state courts. Educators are equipped with interactive teaching methods and receive texts, lesson plans and materials for use in their respective classrooms. The educators also gain access to members of the judiciary to serve as mentors and instructors on the state's judicial process.

Related programs, such as "Open Doors to Federal Courts," the annual Law Day Youth Summit and "Judges in the Classroom," also provide educators and students with additional information that lead toward an increased understanding of the federal and state court process.

The "Order in the Court!!!" Teacher/Justice Institute was funded by the Louisiana Judicial Excellence Foundation, in memory of H. Eustis Reily.

Maria Yiannopoulos is executive director of the Louisiana Center for Law and Civic Education. Hon. Marc T. Amy, a judge on the Louisiana 3rd Circuit Court of Appeal bench, served as "Order in the Court!!!" Teacher/Justice Institute program chair. For more information, contact the LCE office at (225)214-5570 or via e-mail at maria@lalce.org.

JUDICIAL Notes

By Robert Gunn, Louisiana Supreme Court | APPOINTMENTS . . . RETIREMENTS

Appointments

Marta-Ann Schnabel, Bonita Preuett-Armour and James J. Coleman, Sr. were appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for terms of office which conclude on April 21, 2011.

Retirements

- Oakdale City Court Judge Perrell Fuselier retired effective June 30. He took his first oath in 1990 as a judge on that court and served there until his retirement.
- Orleans Parish Criminal District Court Judge Charles L. Elloie retired effective July 1. He served in Section A of the Orleans Criminal Court from 1997 until his retirement.

Death

Retired 1st Judicial District Court Judge C.J. "Neal" Bolin, Jr. died July 2. After receiving his LLB from Louisiana State University Law School in 1951, he was in the private practice of law for six years before serving as assistant district attorney of Caddo Parish for 11 years. He was first elected to the 1st JDC in 1968 and was unopposed in his re-election bids until his retirement from the bench in 1990. While on the bench, he twice served as chief judge. He was a member of a number of professional and civic organizations including the Shreveport and Louisiana State bar associations and the American Judicature Society and was a past member of the Judicial Council of the Louisiana Supreme Court.

FREE to LSBA Members!

FREE to LSBA Members!

Requests from LSBA Members: Fastcase Launches New Features

In response to requests from Louisiana State Bar Association members, Fastcase has launched new features.

Fastcase, the online legal research service, is offered free to Louisiana lawyers as a benefit of LSBA membership.

Now when users log in to Fastcase, they access a customized home page rather than being directed to "Search Cases." The home page includes a list of the different types of materials available on the member benefit (not just cases), as well as a customized search history and a customized "Quick Search" feature.

Also, many members have requested more prominent "Print/Save" buttons and the ability to personalize font sizes; both have been included in the updates. The ability to search newspapers also has been added, and the Authority Check feature has been made more prominent.

To take advantage of all that Fastcase has to offer, go to: www.lsba.org/Member_Services/fastcase.asp.

FASTCASE

To access all the FREE services, go to:
www.lsba.org/Member_Services/fastcase.asp

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., and the Atlanta, Ga., law firm of Gambrell & Stolz, L.L.P., have combined. The combined firm maintains the name of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

Duncan, Courington & Rydberg, L.L.C., announces that **William J. Sommers, Jr.** has become a partner. **Michele Hale DeShazo**, **Magali A. Puente-Martin**, **Peter R. Tafaro**, **Margaret E. Bradley** and **Sarah Campbell-Wood** have become associated with the firm.

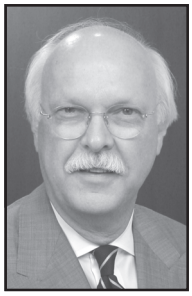
Hunter & Fontana, L.L.P., announces the firm's name change to Fontana, Seelman & Landry, L.L.P. **Wayne J. Fontana**, **Richard L. Seelman** and **Christopher M. Landry** will remain partners in the firm. John S. Hunter will become of counsel to the firm and **Christopher M. McNabb** has joined the firm as an associate.

Galloway, Johnson, Tompkins, Burr & Smith announces that Christopher H. Sherwood has joined the firm.

Lawrence G. Gettys announces the opening of the Baton Rouge office of Brent Coon & Associates, 17405 Perkins

Donald R. Abaunza

Marguerite L. Adams



W. Paul Andersson

Jennifer Borum Bechet

Wm. Blake Bennett

Margaret E. Bradley

M. Aminthe Broussard

James A. Brown

Sarah Campbell-Wood

Shaun G. Clarke

Michele Hale DeShazo

Wayne J. Fontana

Lawrence G. Gettys

Ann M. Halphen

Robert E. Holden

Jonathan A. Hunter

Philip K. Jones, Jr.

William J. Kelly III

Rd., Baton Rouge, LA 70810, phone (225)751-7277 or (877)751-7255.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P., announces that partner **Matthew J. Randazzo III** has relocated to the Lafayette office and **Matthew D. Lane, Jr.** has joined the firm as an associate in the Lafayette office.

William J. Kelly III has joined the Denver, Colo., firm of Hale Friesen, L.L.P., as a partner.

Juneau Law Firm announces that Tonya R. Smith has joined the firm as an associate.

The New Orleans firm of Leake & Andersson, L.L.P., announces its merger with the Lafayette firm of Roy, Bivins, Judice, Roberts & Wartelle, P.L.C. The merged firm is practicing as Leake & Andersson, L.L.P., with offices in New Orleans and Lafayette. Senior partner is **W. Paul Andersson**.

McGlinchey Stafford announces that Jose L. Barro III has joined the firm's New Orleans office as an associate.

Schonekas, Winsberg, Evans and McGoey, L.L.C., announces that **Herbert V. Larson** has joined the firm as of counsel and **Abigail I. MacDonald** has joined the firm as an associate.

Stone Pigman Walther Wittmann, L.L.C., announces that **Jennifer Borum Bechet** has joined the firm as special counsel.

Taylor Porter announces that **Patrick D. Seiter**, **Ann M. Halphen**, **Amy C. Lambert** and **M. Aminthe Broussard** have joined the firm.

Tierney & Smiley, L.L.C., announces its new location at Ste. 104, 11606 Southfork Dr., Baton Rouge, LA 70816, phone (225)298-0770.

NEWSMAKERS

Attorney John F. Caraway of Lacombe, La. has published a book entitled "Coming Back to Life." The book is a general reference to Hurricane Katrina — its cause, damages, loss, upheaval, evacuation and rebuilding. He plans to provide copies to public and private schools as reference guides in their libraries.

James A. George of the Baton Rouge firm of George & George, Ltd., has been appointed by American Inns of Court Foundation President Hon. Deanell R. Tacha as Louisiana liaison for the state's Inns of Court.

Continued next page


Amy C. Lambert


Christopher M. Landry


Matthew D. Lane, Jr.


Herbert V. Larson


Abigail I. MacDonald


Thomas J. McGoey II


Christopher M. McNabb


Christopher D. Mora


Magali A. Puente-Martin


Matthew J. Randazzo III


Leon J. Reymond, Jr.


Richard L. Seelman


Patrick D. Seiter


William J. Sommers, Jr.


Peter R. Tafaro


John D. Wogan

People continued from page 213

J. Burton LeBlanc, of counsel to Dallas' Baron & Budd, P.C., and a named partner in the Baton Rouge-based LeBlanc & Waddell, L.L.P., has been elected to the Executive Committee for the American Association for Justice.

Christopher D. Mora, executive director of the Northshore Business Council and founder, president and CEO of Crimson Consulting Group, L.L.C., was recently appointed to a term on the board of the St. Tammany Economic Development Foundation and graduated with Leadership St. Tammany's Class of 2007. Also a lieutenant commander in the Navy JAG Corps Reserve, he returned home in July from his third overseas tour of active duty, where he was awarded his second Navy Commendation Medal, his third Overseas Service Ribbon and the Global War on Terrorism Expeditionary Medal for service as a legal advisor to NATO forces in a forward deployed location.

Darryl M. Phillips, managing partner of The Cochran Firm-New Orleans, was inducted into the Litigation Counsel of America.

Myron A. Walker, Jr., a partner at Seale, Smith, Zuber & Barnette in Baton Rouge, has been invited to join the American Board of Trial Advocates.

PUBLICATIONS

LSBA members have been selected for inclusion in the following publications:

2007 Chambers USA: America's Leading Lawyers for Business
Liskow & Lewis: Donald R. Abaunza, Marguerite L. Adams, Wm. Blake Bennett, James A. Brown, Shaun G. Clarke, Robert E. Holden, Jonathan A. Hunter, Philip K. Jones, Jr., Thomas J. McGoey II, Leon J. Reymond, Jr. and John D. Wogan.

2007 *Louisiana Super Lawyers*
Seale, Smith, Zuber & Barnette: Myron A. Walker, Jr.

2007 *The International Who's Who of Business Lawyers*
Fisher & Phillips, L.L.P.: Robert K. McCalla and Keith M. Pyburn, Jr.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos) :

Publication	Deadline
Feb./March 2008	Dec. 4, 2007
April/May 2008	Feb. 4, 2008
June/July 2008	April 4, 2008
Aug./Sept. 2008	June 4, 2008

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **$50 per photo**.

Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to: **Publications Coordinator Darlene M. LaBranche, *Louisiana Bar Journal*, 601 St. Charles Ave., New Orleans, LA 70130-3404 or e-mail dlabranche@lsba.org.**

INDEX TO ADVERTISERS

CLASSIFIED

Review past ads at www.lsba.org/publications

CLASSIFIED NOTICES

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:

RATES

CLASSIFIED ADS
Contact Krystal L. Bellanger at (504)619-0131 or (800)421-LSBA, ext. 131.

Non-members of LSBA
$85 per insertion of 50 words or less
$1 per each additional word
$20 for Classy-Box number

Members of the LSBA
$60 per insertion for 50 words or less
$1 per each additional word
No additional charge for Classy-Box number

Screens: $25
Headings: $15 initial headings/large type

BOXED ADS
Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are $70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE
For the February issue of the Journal, all classified notices must be received with payment by Dec. 18, 2007. 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:
Journal Classy Box No. _____
c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED / ATTORNEYS

Shuart & Associates, Legal Search and Staffing, is the leader in legal search and strategic placement of attorneys at all levels throughout Louisiana and the Southeast. With 20 years invested in developing relationships with legal community leaders, and knowing firm cultures and current hot practice areas, Shuart has gained trust and respect as "Louisiana's Leader in Legal." Our accomplishments include hundreds of attorney placements, successful negotiations of practice groups into other firms, and numerous completed searches on behalf of local corporations. We also provide top-caliber legal support staff candidates for both direct hire and contract/temporary placement. All inquiries are held in the strictest of confidence. Shuart & Associates, Legal Search & Staffing, Ste. 2125, 650 Poydras St., New Orleans, LA 70130; (504)836-7595; *www.shuart.com*; info@shuart.com.

Immediate openings with competitive compensation for attorneys with two to 20 years of experience. Multiple positions available in Lafayette, New Orleans and Mandeville. Practice areas include: tax/estate planning, commercial real estate, maritime, insurance coverage and defense, medical malpractice, commercial litigation, products liability and oil and gas. All inquiries will be handled with the utmost of confidentiality. All résumés should be e-mailed to contact@lalawrecruit.com. You also may contact Michelle Voorhies Bech, Esq., or Jenny P. Chunn with Legal & Professional Search Group, L.L.C., Ste. 304, 757 St. Charles Ave., New Orleans, LA 70130, telephone (504)388-3463 or (504)343-6644, or fax (504)522-6226.

Growing New Orleans defense firm seeks energetic, goal-oriented associate with three-plus years' maritime or personal injury experience. Defense litigation experience preferred. Excellent writing and communication skills required. All inquiries will be treated with the strictest of confidence. Qualified candidates should submit résumé, transcript and writing samples to: Admin, 701 Poydras St., 4700 One Shell Square, New Orleans, LA 70139-7708. Visit our Web site at *www.jjbylaw.com*.

Lewis Brisbois Bisgaard & Smith, Lafayette office, seeks attorney with five-plus years' experience in insurance defense. Please fax or e-mail résumé to: (337)504-3341 or russo@lbbslaw.com.

Commercial transactional and litigation lawyer needed. Prominent, large, AV-rated, full-service law firm in Lafayette, La., is looking for a motivated, highly skilled attorney with business, corporate and commercial transactional and litigation experience of between six and 10 years to join its active and expanding practice in its Lafayette office. References to confirm practice experience, credentials and quality of work will be required. Compensation and shareholder opportunities will be commensurate with experience, qualifications and performance. Résumés can be forwarded to C-Box 223.

Minimum qualifications of defense attorneys for the Patient's Compensation Fund — In accordance with R.S. 40:1299.41(J), attorneys appointed to defend PCF cases must meet the following minimum qualifications as established by the Patient's Compensation Fund Oversight Board: (1) Must be a defense-oriented firm with at least 75 percent of practice dedicated to defense; (2) Defense firm appointed to PCF cases shall have NO plaintiff medical malpractice cases; (3) Defense firm must provide proof of professional liability coverage with a minimum limit of $1 million; (4) Defense attorney must have a minimum of five years' experience in the defense of medical malpractice cases; (5) Defense attorney must have completed three trials within the past three years. Presentation of five submissions to a medical review panel may be substituted for each of two trials. However, the defense attorney must have tried at least one case in the past three years. Interested persons may submit written comments to Ms. Lorraine LeBlanc, Executive Director, Patient's Compensation Fund, P.O. Box 3718, Baton Rouge, LA 70821.

Baton Rouge AV-rated law firm seeks attorney to practice in the areas of business, transactional and insurance coverage and defense. Three years' experience preferred but will consider other applicants with excellent academic background or experience. Competitive salary and benefits package. Please send résumé, transcript and writing sample to: C. Brechtel, P.O. Box 1910, Gretna, LA 70054, fax (504)362-5938 or e-mail cjb@grhg.net. All replies held strictly confidential.

AV-rated insurance defense firm with offices in Texas and Louisiana seeks contract and coverage attorney with exceptional legal research and writing skills. Excellent fringe benefits and compensation opportunities commensurate with experience. Willing to consider a flexible work schedule. All replies held in strictest of confidence. Mail confidential résumé to C-Box 224.

Phelps Dunbar, L.L.P., is interested in hiring a lateral attorney with two-five years of experience to work in the insurance and reinsurance group in our New Orleans office. Insurance coverage litigation experience or insurance coverage opinion writing experience preferred but not required. Excellent academic credentials are required (top 25 percent). This position offers competitive salary and benefits and a collegial team-oriented work environment. Interested candidates should contact Ms. Alice Trahant, Ste. 2000, 365 Canal St., New Orleans, LA 70130, fax (504)568-9130 or e-mail trahanta@phelps.com.

Phelps Dunbar, L.L.P., is interested in hiring a lateral attorney with two-plus years of experience to work in the commercial litigation group in our New Orleans office. Excellent academic credentials are required (top 25 percent). This position offers competitive salary and benefits and a collegial team-oriented work environment. Interested candidates should contact Ms. Alice Trahant, Ste. 2000, 365 Canal St., New Orleans, LA 70130, fax (504)568-9130 or e-mail trahanta@phelps.com.

CBD defense firm seeks associate attorney with zero-five years' experience in insurance defense and maritime experience preferred. Competitive salary and benefits. Fax résumé to (504)524-9003.

Tired of commuting? Boutique Northshore litigation firm with excellent client base seeking associate with three to seven years' experience for product liability and toxic tort defense work. Must have prior litigation experience and good writing skills, and must work well with other attorneys and staff. Competitive salary and benefits. A good long-term opportunity for the right person. Please fax official transcript and writing sample with résumé to (985)871-0082.

Assistant special counsel, Judiciary Commission of Louisiana. Special Counsel's Office of the Judiciary Commission of Louisiana seeks a Louisiana licensed attorney with five to 10 years' litigation experience. Duties include screening, investigating and trial of cases, research and writing, appellate practice and other legal duties. Experience in judicial or legal ethics and the disciplinary process preferred. Significant appellate practice experience, or appellate or federal district court clerkship a plus. Applicants must possess excellent organizational, interpersonal and oral and written communication skills. Must be computer literate and proficient. Starting salary depends on experience. Please send résumé and writing sample to Steven Scheckman, 601 St. Charles Ave., New Orleans, LA 70130 or e-mail to osc@lajao.org. Candidates will be considered as résumés are received, but none will be considered if received after the closing date of Oct. 31, 2007. Please request accommodations if needed to participate in the selection process. Equal Opportunity Employer.

Jones Fussell, L.L.P., a law firm located in the Covington/Mandeville area, is seeking an experienced litigator (with or without a full book of business) with at least five years' experience. Interested applicants should mail a résumé to P.O. Box 1810, Covington, LA 70434 to the attention of Jeffrey D. Schoen.

The Louisiana Public Defender Board has several openings for new statewide positions. For more information, please visit *www.lidab.com*.

A regional law firm is interested in hiring a lateral attorney with three-plus years of regulatory healthcare experience for the firm's Baton Rouge or New Orleans office. Past work experience must include concentration in areas involving fraud and abuse analysis, physician contracting, medical staff issues, HIPAA, provider reimbursement and hospital operations. Excellent academic credentials required (top 25 percent) and Moot Court and/or *Law Review* involvement preferred. The position offers competitive salary and benefits. Interested candidates should send résumé, cover letter and transcript to P.O. Box 51555, New Orleans, LA 70151-1555.

Small Northshore litigation firm seeks individual with one to three years' experience for general civil litigation and trial practice. Must want to litigate. Good opportunity for professional growth. All applications will remain confidential. Send résumé to P.O. Box 4433, Covington, LA 70434.

Orleans Parish District Attorney is seeking experienced prosecutors. Salary range is $50K-$60K. Résumés should be mailed to Ste. 700, 1340 Poydras St., New Orleans, LA 70112, Attn: Loretta Brown.

New Orleans office of a growing Gulf Coast firm seeks a construction law practitioner and/or practice group with a solid, demonstrable client base to spearhead the firm's construction practice in the Gulf region and potentially beyond. Full benefits and a superior compensation program. Mail confidential résumé to C-Box 227.

POSITIONS OFFERED / PARALEGAL

Paralegal. National labor and employment law firm with newly established New Orleans office seeks litigation paralegal with excellent interpersonal and communication skills, ability to deal directly with clients, witnesses and opposing counsel, proficiency with case management programs, Adobe Professional Suite, Word and Excel, ability to take responsibility and meet deadlines. Litigation experience required. Benefits, bonuses, paid parking and salary commensurate with experience and abilities. Kiesewetter Wise Kaplan Prather, P.L.C., Firm Administrator, Ste. 3000, 3725 Champion Hills Dr., Memphis, TN 38125; e-mail info@kiesewetterwise.com. EOE.

POSITIONS OFFERED / LEGAL ASSISTANT

Legal assistant/secretary. National practice labor and employment law firm with newly established New Orleans office seeks person with excellent interpersonal and communication skills, proficiency with Adobe Professional Suite, Word and Excel, and superior typing ability. Previous litigation experience preferred. Benefits, bonuses, paid parking and salary commensurate with experience and abilities. Kiesewetter Wise Kaplan Prather, P.L.C., Attn: Administrator, Ste. 3000, 3725 Champion Hills Dr., Memphis, TN 38125; e-mail info@kiesewetterwise.com. EOE.

POSITIONS WANTED

Baton Rouge AV-rated, board-certified tax and estate planning attorney, LL.M. in taxation, with 20-plus years' experience, seeks affiliation with a Baton Rouge area law firm wishing to start or expand an estate planning, estate administration, elder law and/or tax practice. Some portable business. Please respond to C-Box 226.

SERVICES

Texas attorney, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300.

Lee A. Archer, Esq. Superior appellate briefs, comprehensive legal research, statewide service. Assisting Louisiana attorneys since 1992. Call (337)474-4712, e-mail lee@leeaarcher.com, or visit *www.leeaarcher.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)914-6064.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than nine years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)222-1700.

Securities/Annuities/Hedge Fund Arbitration & Litigation
Joseph F. Myers, Louisiana, Texas, Florida Bars, Public Investors Arbitration Bar Association (PIABA), CPA, AICPA Personal Financial Specialist (PFS), former stockbroker, Law Office: 514 E. Lockwood St., Covington, LA 70433, (985)809-2140, myersno@msn.com.

FOR RENT BOSSIER CITY

Large office space. Louisiana Boardwalk, beautiful conference room overlooking Red River. Centrally located in Bossier City, convenient to all courthouses. Secretarial space, receptionist, waiting area, kitchen/break room, modern copier/fax machine, postage machine, T-1 line Internet connections, HD multimedia plasma TV with international IP video conferencing. Free parking. Shopping, dining and entertainment area. Contact Staci, (318)629-9072 or (318)286-4009.

FOR RENT METAIRIE

Metairie office space. Very nice office on Veterans and Lake in Metairie. Large office with secretarial station, receptionist, furnished conference rooms, waiting room, kitchen and library. Digital copiers, scanners, fax, phone, T1 Internet access included. Contact John Occhipinti or Kit Grace at (504)833-1230.

FOR RENT NEW ORLEANS

Mid-City law office for rent in New Orleans. $485/month. Includes use of conference room, kitchen area, library, utilities and copier. Off Canal and Jeff Davis. Large off-street parking lot. Nice. 221 N. Clark. Across from Mercy Hospital, which has been slated for a huge retail development. Cresson at (504)486-6666.

NOTICE

James H. Brown, Jr. has petitioned for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing this reinstatement must file notice within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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CAREY R. VARNADO
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to attend depositions and hearings

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(601) 544-1234
cvarnado@mpvlaw.com

Cutting Edge Opportunity for Public Interest Attorneys
Join us in initiating a new era in the legal representation of abused and neglected children. Positions also offer opportunity to advocate for persons with mental disabilities. Full time, no outside practice. Experience with juveniles or persons with disabilities helpful. Prior experience in this field not necessary. Salary commensurate with experience. State benefits. Various locations across Louisiana. Send résumé to: Director, Child Advocacy Program, Ste. 812, 150 Third St., Baton Rouge, LA 70801, fax (225)342-6658, e-mail krobshaw@aol.com

UPDATE

Collins Receives Kenneth Palmer Award

Louisiana Judicial Administrator Hugh M. Collins, Ph.D., was awarded the Kenneth Palmer Award in recognition of his service to the Conference of State Court Administrators (COSCA). The award was presented at the 2007 Annual Meeting of the Conference of Chief Justices and COSCA in September.

Hugh M. Collins

The award is presented to a person who has demonstrated extraordinary leadership and excellence in judicial administration and who has helped advance the purposes of COSCA. The award is not presented annually, but when merited.

Collins has been the state's judicial administrator since 1988 and, during this time, has served simultaneously as the chief executive officer of the Judiciary Commission of Louisiana. He is a 1980 graduate of the Institute for Court Management and received his undergraduate degree from Boston College in 1966 and a Ph.D. in mathematics from Tulane University in 1971.

He also has received the National Center for State Courts' Distinguished Service Award and the American Judges Association's Glenn R. Winters Award. In 1998, he was inducted into the Warren E. Burger Society.

He currently is a COSCA liaison to the American Judges Association and is a member of numerous professional and civic organizations.

Judge Carter Appointed to ABA Committee

Chief Judge Burrell J. Carter of the Louisiana 1st Circuit Court of Appeal has been appointed to the American Bar Association's Judicial Division Ethics and Professionalism Committee for the 2007-08 year. The Ethics and Professionalism Committee examines issues of ethics and judicial responsibility affecting the judiciary.

Judge Burrell J. Carter

Judge Carter is currently serving his second term as chair of the Conference of Court of Appeal Judges for Louisiana. He has been a member of the Louisiana judiciary since 1974.

LSBA Bill of Rights Section's Officers Installed

New officers for the Louisiana State Bar Association's Bill of Rights Section were recently installed.

Charles R. "Chick" Moore of Baton Rouge is chair. Prof. Paul R. Baier of Baton Rouge is vice chair. Jelpi P. Picou, Jr. of New Orleans is secretary-treasurer

The Bill of Rights Section also has scheduled a luncheon beginning at noon on Friday, Nov. 30, at Andrea's Restaurant in Metairie. Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. is guest of honor.

For reservations, contact Prof. Baier at (225)578-8326.

New officers for the Louisiana State Bar Association's Bill of Rights Section were recently installed. Attending the event were, from left, Samuel R. Exnicios, New Orleans; Val P. Exnicios, New Orleans; Louisiana State Bar Association President S. Guy deLaup, Metairie; Prof. Paul R. Baier, Baton Rouge, section vice chair; John A. Hernandez III, Lafayette; and Jelpi P. Picou, Jr., New Orleans, section secretary-treasurer. Not in photo is the new section Chair Charles R. "Chick" Moore of Baton Rouge. ***Photo by Christine Richard.***

Alsobrook Receives Award from U.S. Supreme Court Historical Society

Henry B. Alsobrook, Jr., a partner in Adams and Reese's New Orleans office, received the United States Supreme Court Historical Society's Louisiana Chairman's Award for the second consecutive year. He received the award from U.S. Supreme Court Justice Samuel Alito at the Society's annual meeting in June in Washington, D.C.

Henry B. Alsobrook, Jr.

The Society is a nonprofit organization dedicated to the collection and preservation of the history of the U.S. Supreme Court. The Society elects a chair every year for each of the 50 states, with the chair's mission being obtaining new members.

Alsobrook is serving his second consecutive year as the Society's Louisiana state chair. Admitted to the Louisiana Bar in 1957, he recently celebrated his 50th anniversary of practicing law. He is admitted to practice in all state and federal courts in Louisiana, the United States Supreme Court and the 5th and 11th United States Circuit Courts of Appeals.

Law Firm Uses Chevron Diversity Award to Benefit CASA

The law firm of Liskow & Lewis matched an award for diversity accomplishments into a larger donation to CASA New Orleans. The firm was recently honored with the Chevron Corp.'s Law Firm Diversity Recognition Award. The award provides $5,000 for a donation to a nonprofit legal organization of the recipient's choice.

Liskow & Lewis selected CASA (Court-Appointed Special Advocates) as the recipient of its award and matched the award amount. CASA New Orleans trains volunteer advocates for foster children under the jurisdiction of Orleans Parish Juvenile Court.

The law firm of Liskow & Lewis was recently honored with the Chevron Corp.'s Law Firm Diversity Recognition Award and matched that monetary award into a larger donation to CASA New Orleans. Gene Fendler, the firm's managing partner, and Brian Jackson, the firm's Diversity Committee chair, presented a $10,000 donation to CASA New Orleans Executive Director Maureen Goodly in July.

Gene Fendler, the firm's managing partner, and Brian Jackson, the firm's Diversity Committee chair, presented a $10,000 donation to CASA New Orleans Executive Director Maureen Goodly in July.

Greater Covington Bar Association

Roy K. Burns, Jr., left, president of the Greater Covington Bar Association, presented a certificate of appreciation to Assistant District Attorney Scott Gardner for his continuing legal education presentation at the July 20 luncheon.

Wendy Venable, William Goforth and Ursulla Palmer, all with Goforth and Lilley, roped in third place at the Lafayette Volunteer Lawyers bowling tournament.

The wild, spirited tribe from Onebane Law Firm at the Lafayette Volunteer Lawyers bowling tournament.

Jefferson Bar Association

Judge Jay C. Zainey and his wife Joy, from left, recently hosted the Jefferson Bar Association's wine and cheese social at their home. With them are Edie Villarrubia, 2007-08 president of the Law League of Louisiana, and her husband John.

Louisiana State Bar Association President S. Guy deLaup attended the Jefferson Bar Association's wine and cheese social. With him are, from left, Cindy Credo, Cathy Landwehr and Tish Steib.

LOCAL / SPECIALTY BARS

Lafayette Volunteer Lawyers Sponsors Bowling Tournament

Supporters of the Lafayette Parish Bar Foundation's efforts to serve the underprivileged in Lafayette Parish with

pro bono legal assistance roped in a good time on June 1 at Lafayette Lanes for the annual Lafayette Volunteer Lawyers bowling tournament. This year's theme was "Wild, Wild West."

Boyle Awarded NOBA's Presidents' Award

Kim M. Boyle, a partner in the employment law practice group of Phelps Dunbar, L.L.P., is the recipient of the 2007 New Orleans Bar Association's (NOBA) Presidents' Award. NOBA President Judge Carl J. Barbier presented the award to Boyle at a reception in August.

This award recognizes attorneys who have dedicated themselves to community service in the exercise of the highest ideals of citizenship. It is the highest level of recognition from the association.

Boyle has served in several leadership capacities in her career, including NOBA president, Louisiana State Bar Association (LSBA) treasurer, and as a member of the LSBA's Board of Governors and Ethics 2000 Committee. She formerly served on the board of directors of the Federal Bar Association.

She also serves as co-chair for the Committee for a Better New Orleans/ Metropolitan Area Committee, a member of the local advisory board for the United Negro College Fund, a trustee and former secretary of the Greater New Orleans Foundation, a trustee for the WYES-12 board of directors, and a board member for the Bureau of Governmental Research and for the Orleans Indigent Defender Program.

In addition, Boyle is a member of the Louisiana Recovery Authority (LRA) and serves as chair of the LRA Healthcare Committee. She also is a member of the Fleur-de-Lis Ambassadors, a group combating misperceptions about post-Katrina New Orleans by meeting with key leaders nationwide. She previously served on the Bring New Orleans Back Commission, which focused on rebuilding the city post-Katrina, and she served as chair of the Health/Social Services Committee of the commission.

On hand for the award reception were past NOBA presidents Jesse R. Adams, Jr., Allain C. Andry III, Carmelite M. Bertaut, Hon. Jerry A. Brown, Jack C. Benjamin, Sr., Cameron C. Gamble, Grady S. Hurley, John Y. Pearce and Phillip A. Wittmann. Also in attendance were five past Presidents' Award recipients, Robert B. Acomb III, Jack C. Benjamin, Sr., David J. Conroy, Donna D. Fraiche and Wayne J. Lee.

New Orleans Bar Association President Judge Carl J. Barbier presented the 2007 Presidents' Award to Kim M. Boyle.

NOBA Sponsors Annual Bench Bar Conference

Nearly 100 New Orleans-based attorneys and judges attended the recent New Orleans Bar Association's (NOBA) annual Bench Bar Conference in Alabama. This program provided a casual atmosphere for interaction between lawyers and judges.

Welcoming remarks were by program Chair Nancy Scott Degan and Greater New Orleans Louis A. Martinet Legal Society President Sharonda R. Williams. NOBA President Judge Carl J. Barbier presented the keynote speech.

The Friday night Bench Bar Grammys event included dinner and performances by judges and law firms.

Also on the Bench Bar Committee are Judge Carl J. Barbier, Brian M. Ballay, Judge Ethel Simms Julien, Mary L. Meyer and R. Patrick Vance.

LOUISIANA BAR FOUNDATION

Building Capital Development Grant Awarded

The Louisiana Bar Foundation (LBF) in July awarded the second Building Capital Development (BCD) grant to the Lafayette Parish Bar Foundation for the purchase of a new building. The first award was to the Metropolitan Center for Women and Children.

This program awards annual grants up to $25,000 to LBF grantees for the purchase of an office building or renovations that will enhance their ability to provide services in communities.

Recommendations for 2008 BCD grants will be made in November.

Community Partnership Panels Hold First Meeting

The Louisiana Bar Foundation's (LBF) eight Community Partnership Panels (CPP) held their first business meetings in August. These meetings included a meet-and-greet with area grantees. These 12-member panels serve as liaisons to grantees, identify arising community needs and assist in directing LBF funds for administration of justice projects and programs.

The CPP chairs are: Alexandria CPP, District Attorney Jerry Henderson; Baton Rouge Area CPP, Jay M. Jalenak, Jr., Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman; Lafayette Area CPP, Frank X. Neuner, Jr., Laborde & Neuner; Lake Charles CPP, Hon. David Painter, 3rd Circuit Court of Appeal; Monroe Area CPP, Alex W. Rankin, Rankin, Yeldell & Katz, A.P.L.C.;

Greater New Orleans Area CPP, Thomas A. Casey, Jr., Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.; North Shore Area CPP, Michael Conroy, Conroy Law Firm; and Shreveport CPP, attorney Don Weir, Jr. For more information on these programs, contact Grants Coordinator Kevin Murphy at (504)561-1046 or kevin@ raisingthebar.org.

LBF: Outstanding Law Student Volunteer Award

Equal Justice Works AmeriCorps attorneys Kathleen McNelis and Tim Riveria presented Caroline F. Johnson with the first Louisiana Bar Foundation (LBF) Pro Bono Legal Corps Outstanding Law Student Volunteer Award.

This award is given to a Baton Rouge area law student who demonstrates a strong interest in pursuing a career in public interest law and who has volunteered more than 50 hours between May 1 and April 30.

Johnson is a third-year law student at Louisiana State University Paul M. Hebert Law Center. She volunteered more than 100 hours between May 1, 2006, and April 30, 2007. Most of her work has been with The Pro Bono Project's (New Orleans) Succession Project. She has continued her volunteer work with The Pro Bono Project as a succession intern and also volunteers with the Equal Justice Works AmeriCorps attorneys as the 2007-08 Pro Bono Committee chair for the Public Interest Law Society.

Julie M. Pellegrin gave a presentation at the Greater New Orleans Area Community Partnership Panel meeting. Pellegrin is the executive director of The Haven, a domestic violence program in Houma. From left, Julie M. Pellegrin, Thomas A. Casey, Jr. and Louisiana Bar Foundation Vice President Hon. Marc T. Amy.

LBF Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Raymond G. Areaux ..... New Orleans
Mark R. Beebe ..... New Orleans
Hon. Peter H. Beer ..... New Orleans
Michael G. Calogero ..... Metairie
Martha Y. Curtis ..... New Orleans
Pride J. Doran ..... Opelousas
Richard M. Exnicios ..... New Orleans
Philip A. Franco ..... New Orleans
Monica Frois ..... New Orleans
Hon. Jeanette G. Garrett ..... Shreveport
Charles F. Gay, Jr. ..... New Orleans
Michael A. Grace, Jr. ..... Baton Rouge
William H. Howard III .... New Orleans
Christy Fast Kane ..... New Orleans
Peter C. Keenan ..... New Orleans
Tristan Manthey ..... New Orleans
Donald C. Massey ..... New Orleans
Patricia B. McMurray ..... New Orleans
Mary L. Meyer ..... New Orleans
Malcolm A. Meyer ..... New Orleans
Stewart E. Niles, Jr. ..... New Orleans
John W. Perry, Jr. ..... Baton Rouge
Glen Pilie ..... New Orleans
George Pivach II ..... Belle Chasse
Joanne Rinardo ..... New Orleans
John F. Robichaux ..... Lake Charles
Sharon Ryan Rodi ..... New Orleans
Deborah B. Rouen ..... New Orleans
Mark W. Scheon ..... Baton Rouge
Louis G. Shott ..... New Orleans
Prof. Katherine Spaht ..... Baton Rouge
Hon. Sarah S. Vance ..... New Orleans
Dorothy H. Wimberly ..... New Orleans
J. Barbee Winston ..... New Orleans

Caroline F. Johnson, front row right, is the first recipient of the Louisiana Bar Foundation Pro Bono Legal Corps Outstanding Law Student Volunteer Award. With her are Equal Justice Works AmeriCorps attorneys Kathleen McNelis, front row left, and Tim Riveria, back row right, and Professor John Devlin.

ANSWERS for puzzle on page 187

		1 S	T	2 A	M	3 P	S		4 S	5 P	O	6 T
7 T		A		V		A				E		R
8 I	N	C	R	E	A	S	E		9 A	N	N	A
T		K		R		S		10 S		G		C
11 L	A	S		12 S	O	B	R	I	Q	U	E	T
E				I		Y		M		I		
13 S	E	14 C	T	O	R		15 Q	U	A	N	T	16 I
		O		N		17 T		L				S
18 P	O	N	D	E	R	O	S	A		19 V	I	S
E		S		M		S		T		E		U
20 R	I	E	N		21 P	E	D	I	G	R	E	E
I		N				L		O		S		S
22 L	I	T	E		23 B	L	A	N	C	O		

Lucid INTERVALS

By Vincent P. Fornias

FOR THE LOVE OF LAWYERS

One of my grown daughters recently attempted to replace her family's trusty basset hound by contacting one of those fanatical dog-hugging groups of the breed. You know the type. They all wear faded cargo pants and "theme" T-shirts and have no perceptible semblance of a life outside of the breed they are trying to save/place. The preliminary eligibility form she was requested to complete ("Do you understand that bassets shed, drool, smell, drag their ears in food and water, are often very stubborn, need their ears cleaned at least once a week, and can never be off leash outside anywhere except a fenced yard, and are prone to back and skin problems?") would make a Harvard Law application pale in comparison.

And it occurred to me that perhaps Charles Plattsmier, our own czar of errant lawyers, might consider instituting a similar method in re-channeling suspended lawyers back into the mainstream of the practice. An LSBA lawyer adoption application might read as follows:

- Applicant's name
- Business address
- Business phone number
- Fax number
- E-mail address
- Names and addresses of your top 10 clients.
- Name and address of three references we may contact.
- Will the lawyer be housed in a cubicle or an office?
- Will the cubicle/office have access to a ledge or fire escape?
- Do you rent or own your office?
- If you rent, does your current lease permit lawyers in rehabilitation?
- How long have you practiced at this address?
- Do you anticipate moving in the next year?
- If yes, describe your new address and attach architectural rendering.
- If you evacuate for the next hurricane, what will you do with your displaced lawyer?
- Under what circumstances would you feel compelled to give up your displaced lawyer?
- Lawyers in rehabilitation must be allowed to focus on the task at hand. Does your place of business have caffeinated coffee or a snack machine with three or more brands of muffins and/or chocolate treats?
- Have you ever had a displaced lawyer before?
- If so, please provide each said lawyer's history, including type, how old he was when you got him, where you got him from and where he is now.
- Will the lawyer ever be left alone in his office? If so, what is the maximum time he will be left unsupervised?

- Please provide emergency telephone numbers of supervisor.
- Does everyone in your firm want a displaced lawyer?
- Do you understand that a displaced lawyer in rehabilitation may rant, rave, whine, carp, cavail, cop an attitude, appear late, leave early, and may react violently to the initials "LADB"?
- How much exercise will this lawyer receive on a regular basis?
- How much time will you allow your lawyer in rehabilitation to adapt to his new surroundings?
- If the lawyer in rehabilitation is returned to us within 14 days of his placement, do you understand that this will result in an administrative charge and forfeit of future placement opportunities?
- Will you allow an unscheduled visit to your office to determine its suitability for a prospective displaced lawyer?

(Please complete this application in notarized form and return it to the Louisiana Lawyer Rescue Program.)

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