

LOUISIANA BAR JOURNAL

October / November 2012

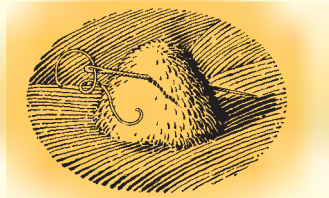
Volume 60, Number 3



**BOOMERS IN THE
MILLENNIALS' WORLD
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THE LEGAL PROFESSION**



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- Informational packets will be distributed starting on Nov. 6, 2012
- No required minimum or maximum amount on gifts
- Gift collection will run from Monday, Dec. 3 through Wednesday, Dec. 5, 2012.
- More details about gift-wrapping, drop-off, etc., will be included in the informational packet.



The Secret Santa Project also welcomes monetary donations to help buy gifts for children not adopted. For more information, visit www.lsba.org/goto/SecretSanta.



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

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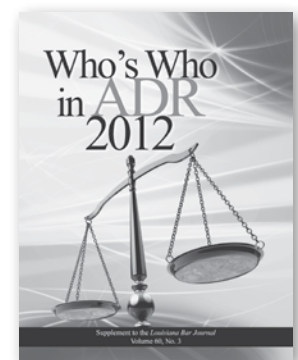
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“New York City celebrating the surrender of Japan. They threw anything and kissed anybody in Times Square,” Aug. 14, 1945. Photographer Lt. Victor Jorgensen. From the National Archives.

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By Edward J.
Walters, Jr.

They're Here . . . (and so are their kids)! Now What Do We Do With Them?

Being born in 1947, I qualify as one of “them” — the “Baby Boomers.” That should explain our use of the bit of nostalgia on this *Journal's* cover. That spur-of-the-moment image of the sailor kissing the nurse on VJ Day in Times Square on Aug. 14, 1945, more than any other photo, screams “Boomer,” and, in a sense, heralds the mass of children soon-to-be-born to our “Greatest Generation.”



(Just a note: Our photo, now housed in the National Archives, was taken by Navy photojournalist Lt. Victor Jorgensen at the same moment, but from a slightly different angle, as the more famous photo snapped by Alfred Eisenstaedt. Both photos convey the same sense of jubilation and promise of a better future.)

So, the “Boomers” are now here and we have special needs and great expectations — of ourselves, our families and Our Bar. But we’re not the only ones here — we brought our kids! They, too, have special needs (different from ours) and great expectations — of us, of themselves, and of Their Bar. We are THE Bar for both groups. We knew WE were coming, of course, and we knew THEY were coming. So, what have we done about it? Read on . . .

Senior Lawyers Division Established

The knowledge, experience and wisdom of the senior members of our Bar are a resource that, in the past, had not been organized and utilized to its true advantage. The Louisiana State Bar Association (LSBA) recently established the Senior Lawyers Division. LSBA members are automatically enrolled in the Division in the year in which they reach age 65. The main purpose of the Division is to provide a forum for study and discussion of issues of importance to senior lawyers, including, but not limited to, retirement planning, the Affordable Care Act, transitioning from law practice, health insurance, Medicare’s effect on earnings, Social Security benefits, wills and trusts. Division Chair Michael A. Patterson, Vice Chair Herschel E. Richard, Jr. and members have met to formulate plans and goals. Expect to hear much more from this Division in the coming months. To review the minutes of the June 7 meeting and the Division’s bylaws online, go to: www.lsba.org/InsideLSBA/SeniorLawyersDivision.asp.

Mentoring Program in Development

Barry H. Grodsky, chair of the LSBA’s Committee on the Profession, has led the charge to implement a program of mandatory mentoring for new Bar admittees. The concept was approved by the LSBA’s House of Delegates and the committee is currently working with the Louisiana Supreme Court to develop the program. One idea is to have

Continued on page 194



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Ipse Dixit continued from page 192

mentors appointed by the Supreme Court. Another idea is to actively involve members of the Senior Lawyers Division as mentors, thereby forming a symbiotic relationship between the senior lawyers and the new admittees. As the final plans come into shape, more information will be provided on this important, and timely, program.

Quality of Life Issues

LSBA President John H. Musser IV has chosen “Quality of Life” as one of the main themes of his term as president. He has already implemented programs for recognizing stress, anxiety and depression in the workplace for the Board of Governors and plans to carry this message to the membership throughout this year. More information on these efforts will be provided via the LSBA’s print and online media, as well as the LSBA’s various social media outlets.

Lawyers Assistance Program Tackles Depression

We all know that the Lawyers Assistance Program (LAP) has been instrumental in assisting lawyers with problems related to drugs and/or alcohol, but now LAP is attacking another one of our biggest problems—depression. LAP is an extremely valuable resource for lawyers, judges and their family members for information and help regarding depression, other mental impairments such as burnout, addiction and problem gambling. Those in the legal profession are often reticent to reach out for

help, especially for mental health issues like depression. All contact with LAP is strictly confidential as a matter of law—no matter what the problem. For more information on LAP and its many services, go to: www.louisianalap.com.

Lawyers in Transition Issues

According to statistics from the American Bar Association, 74 percent of attorneys practice in the private sector, and 48 percent of these private-sector attorneys fall into the category of sole practitioners. With the aging of the “baby boomers,” by the year 2020, some 250,000 lawyers nationally will reach retirement age. The Louisiana demographics should be similar.

The Lawyers in Transition Committee was created and charged with the responsibility of studying the effect on a lawyer’s clients when that lawyer is deceased, missing or unable to practice for any reason, and to develop a procedure to implement a system of orderly transition to another lawyer in order to protect the interests of that lawyer’s clients. The committee has developed a structure of “planned succession” of a lawyer’s practice if any of the above events occur. The “plan” requires a lawyer to designate another lawyer to be the “caretaker” of his or her practice should he or she die or become unable to practice. The committee is working with the Supreme Court to implement this program. Stay tuned for more developments.

Young Lawyers Division

The LSBA has a very active Young Lawyers Division which fosters discussions

and interchange of ideas relative to the duties, responsibilities and problems of the younger members of our Bar. To review all activities of this Division, go to: www.lsba.org/yld.

So what should YOU do? If you like what we’re doing, come join us. Join a committee. Create a committee.

If you don’t like what we’re doing, tell us. Write a letter to the editor. Better yet—join a committee and fix things. We’re YOUR Bar Association, whether you were born in 1947 or 1987.

In This Issue

Read more about the themes of Change, the Future, Boomers and Millennials in this issue:

► LSBA President John H. Musser IV discusses “Change: Technology, Economics of Practice, Generational Shifts” in his President’s Message (see page 198).

► New Orleans attorney and former LSBA President Marta-Ann Schnabel talks about “Boomers in the Millennials’ World: The Future of the Profession.” She also gathered insight from younger members of the Bar for the “Other Voices/Other Views” sidebar (begins on page 200).

► For Boomers and all members, do you know what “digital assets” are and, more importantly, what to do with them? Baton Rouge attorney David H. Ogwyn provides some ideas in his article “Digital Asset Planning and Protection” (see page 208).



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 (LSBA) 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 LSBA 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.

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SOME REVIEWS FROM LAST YEAR'S ATTENDEES: "It's a great one-stop shop."

"I LOVED this conference."

"Best CLE I have ever attended."

"Comfortable, well-organized, relevant, satisfying intellectually."

"One of the best conferences. A lot of CLEs for an excellent price."

"It was a good reality check for me and where I am in relation to other solos."

Solo & Small Firm conference

LSBA 6TH
ANNUAL

FEBRUARY 14 & 15, 2013
Marriott New Orleans Hotel • 555 Canal St
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SOLO OR SMALL FIRM PRACTITIONER?

If you are, this conference is specifically for you.

SAVE THESE DATES! On February 14 - 15, 2013 (the Thursday and Friday immediately after Mardi Gras), the LSBA will sponsor the popular 6th Annual Solo & Small Firm Conference at the New Orleans Marriott. This two-day, low-cost conference is designed specifically for the Louisiana solo and small firm practitioner in a flexible format to fit your individual needs. Satisfy your entire CLE requirement (and then some) surrounded by solo and small firm practitioners from around the state, with your choice of four tracks and over 50 quality national and regional speakers on a range of topics.

► **Latest in Cost-Effective Legal Technology (what works; what doesn't)**

- File Management with Cloud Technology
- Disaster Preparedness and Recovery
- Data Security

► **Law Office Management**

► **Virtual and Mobile Lawyering**

► **Advertising and Marketing**

- Social Media and Building an Internet Presence
- Ins and Outs of Ethical Lawyer Advertising
- Marketing Tips: How to Attract Clients

► **Ethics: How to Prevent and Handle Complaints**

► **Professionalism**

► **Trust Accounting**

► **E-Discovery**

► **Quality of Life: Handling the Stress**

► **Newly Solo Track**

- Setting Up Personal Injury Practice Office
- Setting Up Transactional Practice Office

► **Substantive Law Tips on Areas Common to the Solo Practitioner:**

- Consumer Law
- Divorce and Family Law
- Successions
- Elder Law
- DUI
- Disability Law
- Workers' Compensation
- Personal Injury
- Employment Discrimination
- Basic Criminal - from Stem to Stern
- Credit Card Law
- Legal Malpractice Insurance
- Small Business Counseling
- Tax
- Animal Law
- Effective & Cost-Effective Arbitration and Mediation
- Legislative Updates

► **More to Come...**

ALSO INCLUDED: Networking Reception on Thursday night (at no extra cost) at the hotel for all attendees immediately following the day's programming. For more info, please visit LSBA.org or call (504)619-0138.

Continue to check www.lsba.org/goto/2013Solo for more information about the conference.



LETTERS

READERS RESPOND TO IPSE DIXIT

Funding Legal Services

I read the *Ipsse Dixit* column, “The More Things Change . . .,” with a great deal of interest (*Louisiana Bar Journal*, June/July 2012). In the article, a quote from former Bar President Alvin O. King of Lake Charles was published: “Many families cannot pay for the services of a lawyer.”

In the 1960s and 1970s, the United States Congress and the Louisiana Legislature passed laws that provided for the legal fees to be paid by the defendant upon the success of the case. Initially, these laws were popular. However, after some of the courts stopped awarding a “reasonable legal fee” upon success, the bar then stopped assisting people because attorneys were not being paid “reasonable legal fees.” All of this occurred notwithstanding *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5 Cir. 1974).

The “private attorney general” is a good concept that should be fostered by the Louisiana State Bar Association to assist, to some degree, the “many families who cannot pay for the services of a lawyer.”

In the pursuit of this, the above should be considered.

— Patrick D. Breeden
New Orleans

Funding Public Defense

This letter is in reference to the *Ipsse Dixit* column, “It’s Really Not My Problem, But . . .” (*Louisiana Bar Journal*, August/September 2012).

Many years ago, when the U.S. Supreme Court ruled in *Gideon* that an indigent felony defendant was entitled to appointed counsel, there was an emergency meeting of parish bar presidents in Alexandria. Sam D’Amico couldn’t go and asked me to go in his place for the Baton Rouge Bar Association. There was a lot of consternation over what to do. When they got to the end of the back row, I reminded them that Louisiana had appointed counsel for indigent defendants since the first Territorial legislation and it was included in the 1940 Code of Criminal Procedure. All that was needed was for the judges to appoint counsel, which most had been doing. The problem was spreading the load over the entire bar and cutting into productive time of the more mature lawyers. Larger firms began delegating appointments to younger members, which was to the advantage of the defendants.

Fast forward through the attempts of the reluctant dragons in the Legislature to avoid looking like they were soft on criminals, and we find the present situation.

Look now at the Louisiana district attorneys and their Pretrial Diversion system. If the Legislature were to legitimize the system and set a standard price schedule, a portion of the payments could go to the public defender system and the defendant beneficiaries would be supporting the system.

Another consideration: Every time an arrestee is placed in Pretrial Diversion, you don’t need a public defender — or an assistant district attorney or a judge. Think of the potential savings!

Also, I ran across R.S. 15:170, “Disciplinary action; sanctions of regional directors and district public defenders; just cause; hearing,” enacted in 2007 and 2008 without funding, as Frank X. Neuner, Jr.’s article says (*Louisiana Bar Journal*, August/September 2012). It specifically provides there is no appeal from a disciplinary action. I seem to recall a provision in the Louisiana Constitution of 1974 guaranteeing judicial review of an administrative decision.

Someone just dislikes defenders, don’t they?

— Dennis R. Whalen
Baton Rouge

LSBA Member Services

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



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

For more information,
visit www.lsba.org



By John H.
Musser IV

Change: Technology, Economics of Practice, Generational Shifts

Mark Twain once said, “If you don’t like change, you’re going to like irrelevance even less!” That is where we are in the legal community today. We are confronted with tectonic changes in the ways firms are structured, how we practice on a daily basis, and what clients want from us.

While we may be uncomfortable with the changes — both on the horizon and even on our front porches — we are rapidly discovering that we have to deal with them.

Earlier this year, your Board of Governors, at its annual orientation, considered the direction the practice of law was taking. We discovered from our facilitator, Elizabeth Derrico of the American Bar Association’s Division of Bar Services, that there were three major change drivers, each of which produced significant consequences. They include:

► *Technology, which produces accelerating time pressures, commoditizing work, depersonalizing interaction, a diversifying client base, and increased client sophistication with near universal access to legal information.*

Technology has intruded on the members of the older Bar. Now, time is king and quick response is everything. I remember the advent of the fax machine which, in a few seconds, gave us a way to send someone something with a confirmation of a receipt, but how it put the burden on us for an equally prompt reply. Now it’s even worse with the arrival of email and read receipts! We often lose time for consideration and thoughtful handling of a matter when we rush to judgment on the jet stream. At the same time, there is no question that our machines have improved. There is no more dictation, either to a stenographer or a machine, and no more manual transcribing. Now we sit at our computer and draft matters directly, or we use Dragon Dictation or some other application to dictate to our computer

which immediately types dictation through word recognition software. Google Search answers an incredible amount of questions posed to it with normal speech patterns. We have iPhones which are portable computers the size of a cigarette pack. Remember Dick Tracy’s wrist watch? Or we use iPads or notebook computers in the courtroom for instant answers or instant fact checking.

► *Economics of Practice, which produces increased overhead costs, the vanishing general practitioner, increased billable-hours requirements, stifling law school debt, self-representation, greater specialization, more ADR, and, in short, a practice more client-driven than lawyer-driven.*

The American Bar Association, through its Commission on Ethics 20/20, is evaluating new ways law firms are set up in other jurisdictions. While nothing has been decided, we are aware that, in Australia, law firms are publicly traded on their stock exchange. In England, non-lawyers can have interest in law firms — CPAs and bankers, for example. The purpose is to provide the business community with one-stop shopping for their business problems — not just their legal problems. Will it ever come to Louisiana? That’s a discussion for another day, but the groundwork is out there and being pursued in other jurisdictions in the United States.

► **Generational Shifts**, with its changing expectations of work/life balance, greater diversity, greater expectations for advancement and mobility, and increasing expectations of technological sophistication.

Remember when you went to work for a firm and stayed until you retired? Those days are gone as well. In the modern marketplace, young lawyers feel no compunction to stay with their original firms. They leave for economic reasons, for quality of life issues, for better insurance, for more fulfilling jobs, or just because they are not advancing fast enough. Their views and motivations are not the same as for older lawyers and, quite possibly, “never the twain shall meet.”

The Board of Governors then considered what the practice of law would be like in 10 years. The observations were not encouraging for the profession. We saw fewer oral arguments, more mediation, fewer trials, more in-house counsel, more non-lawyer encroachment, depersonalization, more compulsory representation, more *pro se* litigants, online payment of attorney fees (like Pay Pal), further diminution of professionalism in the Bar, the rise of the paperless office, more paraprofessionals, use of social media as a prime method of communication, more specialized practice, and the increasing use of technology, with the advantage going to those most savvy with it.

As a group, we saw fewer solos, less experienced lawyers, increasing numbers leaving the profession, more lawyers chasing fewer dollars, more non-traditional practice settings, more disaffected members, and much questioning of the value of the education, and/or the practice.

To summarize, we have already seen the change from carbon paper and faxes to email and computers, from dictation to a secretary to doing it yourself. We see demands 24/7 from clients, demands for immediate response, lack of client loyalty, client sophistication, increasing costs and increasing overhead. Add to that a lack of courtesy and professionalism. We see more marketing, a lower reputation for lawyers, more lawyer jokes. We see more stress, more addiction problems and more depression. In short, not a pretty picture!

Considering this environment, what can, and what is, your Bar Association doing for you?

To address quality of life issues and health concerns, we have increased our Association’s financial commitment to the Lawyers Assistance Program (LAP). This will enable LAP to expand its services. As lawyers, we suffer more stress, a higher suicide rate, and more problems with addictions.

To assist with research, we provide the Fastcase online legal research service to you free as part of your bar dues — as well as training on how to use it. Through a partnership with LexisNexis, we provide discounts on its services.

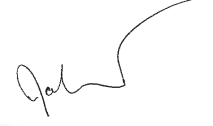
In the office practice area, we provide discounts for Core Vault to protect data and have arranged for our members to use Law Pay Credit Card Processing if they choose. We have discounts with Dell, UPS, hotels across the state and major car rental firms. We also provide access to the ABAMembers Retirement Program. We provide photo IDs for members which often help with security issues with the courts.

We provide a wide variety of CLE programs, highlighted by our multi-topic

seminars at the Annual Meeting and in New York and locally for solos in the spring. We offer technology training CLEs once a month and organize nearly 40 CLEs throughout the year. We try to address all areas of the law.

We are working this year on matching our Senior and Young Lawyers Divisions to provide reciprocal training for both. We are increasing our involvement in the area of professionalism through a mentoring program, expansion of our professionalism initiatives, and assisting with Lawyers in Transition. We work on your behalf in the Legislature as we seek ways to protect and improve our profession.

Have we done enough? Of course not, but we stand ready to respond to all your needs and concerns. We are facing changing times head on and striving to represent your issues and provide solutions as much as possible. Let us know how we can serve you more!



The Pursuit of Balance



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Agenda

The Lawyers Assistance Program, Substance Abuse and Stress (Professionalism)
Donald C. Massey • Adams and Reese • New Orleans

Know Your Numbers: Facts about the Chronic Disease Prevalence in the American Workforce and Ways to Assess Your Risk
Molly Koenig • Gilsbar, Inc. • Covington

Understanding and Countering Burnout - Advice for Attorneys
Geraldyn Datz, Ph.D. • Forrest General Hospital • Jackson, MS

This program has been approved for a maximum of 3 hours of CLE credit, including 1 hour of professionalism.

Register Online at www.lsba.org

BOOMERS IN THE **M**ILLENNIALS' **W**ORLD

THE FUTURE OF THE LEGAL PROFESSION

By Marta-Ann Schnabel



I have a daughter who was quite young when I began writing for this *Journal* back in 2002. Sara has trekked along beside me to many professional events and meetings over the years, and she has occasionally been mentioned (much to her chagrin) in opinion pieces I have written. Most notable, I suppose, was when I revealed to the world that she had a post-it note habit. As a child, between the ages of about 8 and 10, she would post reminders to herself on sticky notes around her room. This was not, in itself, an unusual thing to do. But instead of admonitions to do her homework, Sara's notes read, "Be nicer," "Work harder," "Say thank you" or "Smile." That I was charmed enough by this particular idiosyncrasy to write of it is the source of some bemusement now, since that golden age of childhood has been replaced — as was

inevitable — by the opaque haze of burgeoning adulthood. At age 20, she still never turns down an opportunity to travel with me, but there is little evidence that she considers the directives set forth in those early post-it notes.

Sara makes a brief appearance in these pages again 10 years later not simply out of nostalgia, but because, every now and then, in the midst of a free trip, she hears a speaker or presentation about the legal profession. Since the economic downturn, most of them have been about the "future of the profession." She has taken to characterizing these programs as the "Doom and Gloom" talks. A short-lived journalism major, she tells me that the atmosphere around the "future of the profession" discussions is reminiscent of her time as an intern at the *Times Picayune*. There, even before the layoffs and the limited print editions were announced, reporters and editors behaved as though they were frozen on the precipice of the end of civilization. She says that a roomful of quizzical "Boomer" lawyers trying to digest the latest trending on professional employment, private practice salaries, law school debt, globalization, outsourcing, and web-based competition have the same ambushed affect as print editors and journalism professors. Then she smiles and shrugs her shoulders, primarily because she really can't fathom what all the fuss is about.

My home-grown Millennial has adopted the Albert Einstein approach: "I never think of the future," he once famously said. "It comes soon enough."

I, on the other hand, am more sympathetic to the less famous George Carlin adage: "There is no present. There is only the immediate future and the recent past."

Following is a brief snapshot of the recent past and the smallest taste of what the immediate future might offer. It is by no means an exhaustive look at these issues, about which a great deal has been written and spoken, and I have borrowed heavily from others' writings, studies and speeches.¹ My hope is to give some context to the discussion which has begun to percolate in Louisiana and will no doubt preoccupy us for many years to come.

The Metrics of the Current Legal Economy

Most of us know that the economic downturn, which began in 2008, has not treated our profession very well. What may surprise, however, is that the number of lawyers practicing in law firms peaked back in 2004. Moreover, the legal market has lost more than 22,000 jobs nationwide since 2009. (*ABA Journal*, July 2011). According to a study published by the National Association for Law Placement (NALP) in July of this year, the starting salary for new law graduates from the class of 2011 fell 5 percent when compared with 2010, and has fallen about 17 percent since 2009. Most telling, the median starting *private practice* salary has fallen 35 percent (NALP calls its finding "astonishing") since 2009. 2011 marked the first year that less than 50 percent of law graduates went into private practice.

NALP also says that only about 68 percent of the class of 2010 had legal jobs upon graduation. In 2011, the employment rate was touted at a more impressive 84 percent. The truth, however, is that overall employment statistics for the profession are hard to wrangle, largely because of the varying definition of "employed." Until very recently, many law schools have reported a high percentage of their graduating classes as "employed," regardless of whether the employment was truly as a lawyer, or even full-time. Part-time waiters and bartenders have been rounding out the statistics published. Some schools have even provided short-term employment to their own graduates to boost their numbers, but the nature and extent of the skew has been hard to track. It is estimated by NALP that as many as one-third of all of the law school graduates across the country in the last 10 years are working in non-law-related fields.

According to Tim McMahon, a financial consultant and oft-cited expert in U.S. inflation trends (see www.inflationdata.com), college tuition has experienced an inflation rate of between 300-400 percent since 1985. The Department of Education's National Center for Educational Statistics confirms that law school tuition has risen even faster

and higher than the average undergraduate school tuition in the last 25 years. This is true in both the private and public school sectors. This documents what we all know: law school has become a very expensive proposition.

As the cost of a legal education soared and jobs became scarce, salaries earned by those in the legal profession leveled or declined. According to NALP, the inflation-adjusted income in all sectors of law practice has been stagnant or going down since 1985, and, as noted above, it has taken a precipitous dip in the private sector since 2008. Yet, as Wendy Kaufman of National Public Radio reported in July of this year, law students have continued to incur six-figure debt in anticipation of six-figure salaries. Indeed, the lawyer population has increased by 19 percent in the past 10 years. These students entered law school apparently unable to predict that the *New York Times* would peg the median salary for a 2010 law graduate at \$44,220, while also identifying that there are more than 27,000 “surplus” lawyers in the country. (*New York Times*, June 27, 2011, “The Lawyer Surplus.”) One bright note: According to NALP, Louisiana lawyers fare a little better than the national average. As of Feb. 15, 2011, the median salary for a 2010 graduate in Louisiana was between \$55,000-60,000.

Still, it is a struggle to pay off \$100,000 in debt (the average amount owed by law graduates in the United States, according to Bloomberg Law) while earning \$55,000 a year, a fact not lost on those who founded a nonprofit called Law School Transparency, or LST. A quick trip to the LST website (www.lawschooltransparency.com/) leaves little doubt that there are a significant number of young people who feel betrayed by their legal education and who wish to warn off others. What impact groups like LST have is unknown, but last year’s law school enrollment saw a nationwide 7 percent decline, and a similar reduction is predicted for 2012.

Change is the Law of Life

While visiting Germany during the early years of the Cold War, President



John F. Kennedy told the assembled crowd in Frankfurt that “[c]hange is the law of life.” He warned that “those who look only to the past or the present are certain to miss the future.” A poetic sentiment in June 1963, but 50 years later, change occurs seemingly at the speed of light, and its impact is hard to miss. Remember typewriters? Carbon paper? Word processors? Land lines? Dial-up? VHS? CDs and DVDs? Affordable law school tuition?

Yet, as lawyers, we have been trained to respect precedent. We counsel our

clients to be risk averse. Our comfort zone is the status quo, the here and now. What is our commitment to the “rule of law,” after all, if it is not a commitment to predictability? Change is, in many ways, our enemy. Sometimes it’s just easier to do what we have always done than it is to look forward.

Rather than challenging Kennedy’s view of natural law, then, it is perhaps helpful to also call up the wisdom of Søren Kierkegaard, who wrote, “Life must be lived forward, but it can only be understood backwards.” I am typing

this on a QWERTY keyboard, developed for the manual typewriter and now adapted to my laptop (not to mention my smartphone).

Similarly, the traditions of our justice system and our profession reflect the longevity of a remarkable design which will be altered and adapted along the way. The future is coming and examining the current adaptations which foreshadow it is the best tool we have to prepare for it.

Signs of Change: Technology

Nothing strikes terror in the heart of the average Boomer — and even some Gen-Xers — more than a discussion of technology and its impact on the practice of law. I am no exception to this rule. But having recently conquered the three remote controls which operate what used to be my television (and is now more broadly referred to as the “entertainment system”), I am exhibiting signs of bravery.

Let’s begin with the day in 1987 when I laughed at my then-law partner for suggesting that we needed a fax machine. (In my defense, most of his ideas were genuinely laughable.) Now faxes are a relic, and I am accessible to courts, clients and opposing counsel around the clock. I would (and often do) complain, but the truth is that communication and information technology have become the great equalizers between large and small law firms. My small firm is aided in competing with the “big boys” by technology and its best ripple effect: lower overhead.

We are all familiar with the litany of technological changes that have impacted our practice, and even our everyday lives, over the past 30 years. There is no need to list them here. I am hardly qualified to even attempt to predict what technology will offer five or 10 years from now — although a recent hand surgery did send me to voice-recognition software — and I am convinced that the I-Phone’s Siri is the sly granddaughter of the famous Hal (of *2001: A Space Odyssey* fame).

Gen-Xers and Millennials both identify adaptation to technology and rapid technological advances as the defining component of the generational divide

between those running law firms/legal departments and those starting out in the profession. Millennials are almost smug about the potential for their professional success based on their digital aptitude. (See, “*Other Voices/Other Views*” on page 205.) And smug they should be: I still can’t fully fathom the difference between Tumblr, Facebook and Twitter. Plus, I can’t remember the password for the firm MySpace account.

All of this notwithstanding, the key game changer about technology is that it begat the Internet, and the Internet begat accessibility to information on a grand scale. If part of what your profession brings to the table is specialized access to knowledge and information, the Internet age is destined to have impact.

Signs of Change: Commoditization

There are 1 million lawyers in India who are trained in the common law and speak English. In October 2005, CNN reported that 40,000-80,000 legal jobs would be lost to India by 2015. So far, the figures are closer to only 15,000, and there are some indications that outsourcing has slowed because of the decline in the cost of U.S. lawyers (*New York Times*, Aug. 4, 2010, “Outsourcing to India Draws Western Lawyers”). The American Bar Association (ABA) admits, however, that law schools in China and Australia have applied for ABA accreditation.

Lest you think that this globalization “scare” is reminiscent of all the fuss and fizzle surrounding Y2K, I readily concede that most of us are not all that threatened by overseas competition. On the other hand, I suspect that the same “most of us” have already been impacted by the commoditization of legal services. This is the trending attitude, evident among institutional, corporate, business and individual clients alike, that lawyers are fungible. Most legal pundits (they do exist, go to www.legalonramp.com for a taste) think that the Internet drives legal commoditization. Access to information that used to come only through lawyers now is available on Google, if not through enterprises like LegalZoom, Rocket Lawyer and Cybersettle.

Perhaps you are not worried about the business otherwise going to self-help websites. Perhaps you believe that there is little, if any, profit to be made from clients who would turn to those web-based services. Consider, then, Internet forums like Ariba or Shpoonkle, which offer reverse auction opportunities for clients. Still think it’s not coming your way? Then look into RFX Legal, which promises to “optimize the value of legal services” by providing a “management integrated legal sourcing and procurement tool” to allow businesses to receive bids from lawyers and firms. It also offers an analytic tool to measure the value of the legal services provided.

If none of these services has yet touched your practice, it’s a good bet that they are on their way. Given the amount of time most of us spend bemoaning the lack of client loyalty, cursing client micromanagement or renegotiating rates, my guess is that they are influential already.

Some have suggested that the traditional law firm business model is out of date and contributing to the economic woes of the profession. This discussion began more than 10 years ago when the regulation of multijurisdictional practice sparked considerable controversy. More recently, the ABA Commission on Ethics 20/20 has taken on issues like profit-sharing with non-lawyers, maintaining a “virtual presence” in more than one jurisdiction, contracting with other lawyers and law firms, and reframing the definitions of conflicts of interest. The ABA effort is destined to go on for a while and, thereafter, the trickle down to states may be rather slow. Nonetheless, it is noteworthy that in the United Kingdom the rules have already changed, and outside investors are now permitted to invest in law firms (“Capitalism’s Next Frontier,” *The American Lawyer*, Nov. 3, 2010).

Signs of Change: Generational Alphabet Soup

About 55 percent of lawyers in practice in the United States today are part of the Baby Boom generation. That means they were born between 1946 and 1964,

making them between 48 and 66 years old. The remaining 45 percent of practitioners are split between Gen-X, who were born roughly between 1965 and 1979 and range from 33 to 46 years old, and Millennials, born in the 1980s and 1990s and who are 20 to 35 years old. If you are wondering, as I did, what became of Gen-Y, it turns out that it mostly went the way of the “Pepsi Generation” — which is to say that the label lost popularity fairly quickly. Gen-Y and Millennial refer approximately to the same set of young people. There also seems to be a Generation-Z, meant to identify the teenage siblings of the youngest Millennials. Gen-Zers’ most noteworthy characteristic seems to be that they are “digital natives.” These are individuals who have never known a world without the Internet, computers, i-phones and digital technology, and they are on the cusp of entering law school now.

It may be a digression to define the characteristics regularly associated with Baby Boomers, which seem to be well known. We are the folks at the laboring oar of most law firms and legal departments these days. We were the post-WWII bonanza generation, the inevitable intersection of nascent affluence and the GI Bill. We emerged from the “Summer of Love,” Woodstock, ’Nam and Watergate full of transformational ideals, most of which were ceded to practicality. We are on the verge of a perhaps underfunded retirement.

Gen-Xers are somehow less often defined by popular culture than the generations on either side of them, perhaps because they have left behind youth and still have some distance to retirement. Moreover, when they first emerged on the scene, they took considerable heat from their elders. According to the University of Michigan’s long-term research project called “The Longitudinal Study of American Youth” (LSAY), Gen-X is the first generation to grow up in the Internet era. About 86 percent work part-time or full-time; 70 percent spend more than 40 hours a week working and commuting; 79 percent of Gen-X women work; and 47 percent of the working women work more than 40 hours per week. Two-thirds of Gen-Xers are satisfied with their current jobs. About 66 percent are married, and

71 percent (77 percent of the women) have children at home. One-third report active participation in a professional, business or union organization. About 4 percent reported active membership in a book group, and only 3 percent reported involvement in an environmental group. About 97 percent regularly use the Internet; 80 percent indicated they used the Internet to obtain health and medical information, but apparently the LSAY did not ask about use of the Internet to obtain legal information. In short, Gen-Xers are industrious but independent. They were “latch-key” kids who watched their parents toil in a traditional market environment while the economy changed around them. They learned the lesson of adaptability and flexibility, tempered by a certain amount of impatience. They are inclined to make a change rather than “tough it out.”

In 2010, the Pew Research Center published its study of Millennials with the descriptor “Confident. Connected. Open to change.” The report notes that this generation is more ethnically diverse than those who came before — with the percentage of the white Millennials 9 percent lower than the percentage of white Gen-Xers. Nearly one in four Millennials have a piercing other than on their earlobes; nearly four in 10 have a tattoo. About 75 percent have a social media presence. Only about 60 percent were raised by both parents, and 37 percent of those between 18 and 29 years were unemployed at the time of the study. Pew reports that Millennials consider themselves to be a distinctive generation, primarily because of their understanding and use of technology. They are, as young Sara exemplifies, unfailingly optimistic in spite of tough economic times.

Optimism is a Strategy for Making a Better Future

A topic as broad and textured as “The Future of the Legal Profession” evokes a thousand different visions, only a fraction of which have been touched on here. As an insular and chubby 50-something woman who has just been inducted, most unwillingly, into AARP, there is little

doubt of my taint. I’d rather return to my Dictaphone and, if at all possible, narrative billing. I’d trade in my smartphone for being tied to the desk until 8 each evening and carrying a paper calendar. I’d like the occasional two-hour lunch without interruption. Mostly, I dream of a one-day jury trial every month or so.

And then I remember that during those “good old days,” I was often the only woman in the room. Sometimes I wasn’t even invited into the room.

Noam Chomsky, the octogenarian professor of linguistics, better known as a political philosopher and lecturer, once said that, “[O]ptimism is a strategy for making a better future. Because unless you believe that the future can be better, you are unlikely to step up and take responsibility for making it so.”²

Or, as Sara might write on a post-it note, “Embrace the Future.”

FOOTNOTES

1. My profound thanks go to Frederic S. Ury of Ury & Moskow, L.L.C., Fairfield, CT, past president of the National Conference of Bar Presidents; Thomas W. Lyons III of Strauss, Factor, Laing & Lyons, Providence, RI, past president of the National Conference of Bar Presidents; Elizabeth Derrico, associate director for Bar Information and Management, American Bar Association’s Division for Bar Services; and Jordan Furlong of Edge International in Ottawa, Canada, author of the *Law 21: Dispatches From A Legal Profession* on the Brink blog, all of whom compiled much of the information referenced here and have graciously shared it with me.

2. Quoting Chomsky, particularly in this era of red v. blue politics, may send an unintended message. I hope not. I’m just a sucker for a nicely phrased sentiment.

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Other Voices/Other Views on the “Future of the Legal Profession”

By Marta-Ann Schnabel

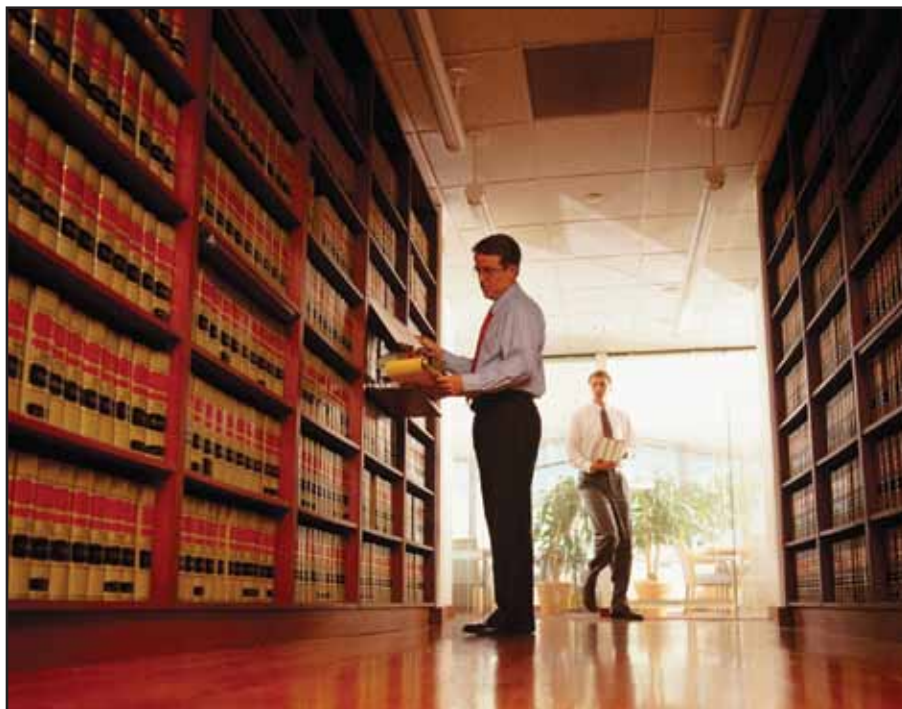
The vast majority of articles, PowerPoint presentations, lectures and even hushed conversations about the “future of the profession” either originate with, or are directed at, the over-40 crowd. What we think of as “the future” is, to some extent, the reality of life for most Millennials. It seemed less than sporting, then, to allow this Boomer the last word on the topic.

Many thanks to Michael W. Schachtman, Kristen H. Schorp, Jonathan M. Rhodes and Sarah E. Stogner for their help in cajoling their friends and colleagues into this discussion. The result is a very unscientific sampling of lawyers with fewer than 10 years in the practice and from various settings and backgrounds. In an abundance of caution, their contributions have been provided without attribution and with a minimum of editing. Hearing these viewpoints has been heartening. It appears that the thread of what motivates us in this profession remains the same, regardless of age, experience or technological differences. Still, the voices of these young lawyers strongly echo the concerns of their generation and of the times in which we live.

When asked what appealed to them about being an attorney, many cited the service component of the profession. They have a strong desire “to make a difference” or “help other people.” A number added that “problem solving” gave them particular satisfaction.

“What I like most is the opportunity to care for the people I represent,” offered one respondent.

“I find it very gratifying when I have the opportunity to help someone achieve a result, whether that is the enforcement of a contract, the grant of a servitude, or upholding the validity of the last will of their family member,” said a fourth-year



associate from Alexandria.

Harnessing a legal education to effect change was a motivator for some. “I like feeling like I have the power and the ability to make a difference,” said one 2007 graduate who practices public interest law.

Another, who works in government, said, “I love the responsibility that comes with being an attorney.” Before law school, he worked as an assistant on Capitol Hill, but he did not really feel like his role had impact. “Now,” he boasted, “I am making a substantial change . . . [in] the city of New Orleans, which would not have been possible without that [law] degree.”

Others enjoyed the challenge inherent in learning about their clients’ business in order to find solutions for them. “[A]s a lawyer, you obtain a working knowledge of a wide range of subjects, from banking to insurance to health care and so on. I can’t think of a profession where one has such varied experiences.”

In describing what troubles them most about the profession, some expressed disillusionment about the nature of the justice system. “I thought that whoever was ‘right’ with respect to the law would prevail. In actuality, success in litigation is a function of several factors, including, but not limited to, a persuasive legal argument, the immediate wants and needs of the parties involved (for example, what might be revealed through the discovery process), and the ability to communicate effectively with the court and opposing counsel. I have been disappointed that negotiation often turns on the question of ‘what will it take to make this lunatic go away?’”

Not surprisingly, most noted that the hardest hurdle to overcome has been the cost of their legal education. “A large part of my career choices center on the debt burden of my student loans,” said one respondent, echoing the sentiments of many.

Continued next page



In addition, these young lawyers complain about the tone of the practice. “What I like least is the unnecessarily adversarial posture that many other attorneys adopt, without any real purpose,” offered one general practitioner who has been in private practice for three years. A number of respondents indicated that “billable hours,” a demanding schedule and heavy workloads were their least favorite aspects of the profession.

These young lawyers were most prolific when describing the divide between older and younger lawyers. “Older attorneys have had to significantly adjust the way they practice over the course of their careers as technology has developed. Email has replaced the telephone as the primary means of communication, computers and the Internet have been substituted for books when doing research, computers replaced typewriters and Dictaphones . . .,” one respondent confided. “As a younger lawyer, I have grown up with these technologies and developed my practice using them, as opposed to having to adjust to them. I think this helps me be more efficient and streamlined.”

An associate in her fifth year with a large firm notes, “While there is no substitute for being in the office, most young lawyers are technologically adept and can perform quality work outside the office and during nontraditional hours.” A solo practitioner noted that “the Internet is obviously a game-changer — from

marketing, to cloud computing, to having all my files available to me at all times.”

Most respondents felt that technology had positively impacted legal research as well. “Many older lawyers speak somewhat condescendingly about younger attorneys’ ability to ‘use the books.’ I do use the books when I am at a loss as to where to start my research. But, in most instances, I find the Boolean search capability of a good legal search engine to deliver much better results.” They noted that access to legal research is easier and cheaper than it has ever been before.

Some young lawyers mark the difference between the “good old days” and their current circumstance by decreasing opportunity. More than one suggested that “hands-on” experience has become more difficult to obtain, largely because so few clients are willing to take a case to trial today as compared to 20 or 30 years ago. “I think attorneys of my generation fail to see the value of camaraderie because they aren’t spending as much time in court together,” offered one fourth-year associate at a medium-sized New Orleans firm.

Another suggested that because of this change in the practice, she handles clients differently from the way her elders do. “I like to focus on the big picture. In today’s legal practice, almost every case will settle. I try to manage my client’s expectations from the beginning and try to get them in the mode of accepting a

‘fair compromise’ instead of ‘winning.’”

The question of the practice of law as a business rather than a profession, which is a recurrent theme among older lawyers, is on the mind of these Millennials as well. “Our generation is facing a bigger concentration on profitability” is the opinion of a 2007 graduate. “I feel that law firms are run today more like other businesses than they were in the past. I don’t necessarily think that this is bad, but I think it has changed the culture at a lot of firms such that people have become numbers. A lot of firms fail to value the non-billable time which is committed to bar and civic work.”

Only one of those polled was equivocal about whether she would become an attorney again if given a second chance. The practice of law is not what she expected, she said, and she constantly feels “behind and in a reactionary role.” She had hoped for more job satisfaction. But the balance of the respondents like what they do.

“I think that this new generation of attorneys has a much wider array of resources to pull from,” explained one young man who practices environmental law, “and this benefits research and overall work product.”

Looking to the future, a fifth-year associate at a major regional firm suggested that “the entrepreneurial culture that is taking over the state can only brighten the legal profession’s future in Louisiana.”

Continuing Legal Education

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**12th Annual Class Action/
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November 30, 2012

Ritz-Carlton Hotel New Orleans

See more info on page 228.

**Ethics & Professionalism:
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December 7, 2012

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Quality of Life: The Pursuit of Balance

December 11, 2012

Sheraton New Orleans Hotel

See more info on page 199.

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February 14 - 15, 2013

Marriot New Orleans

See more info on page 196.



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Digital Asset Planning and Protection

INVENTORY, PROVIDE ACCESS AND LEAVE INSTRUCTIONS

By David H. Ogwyn

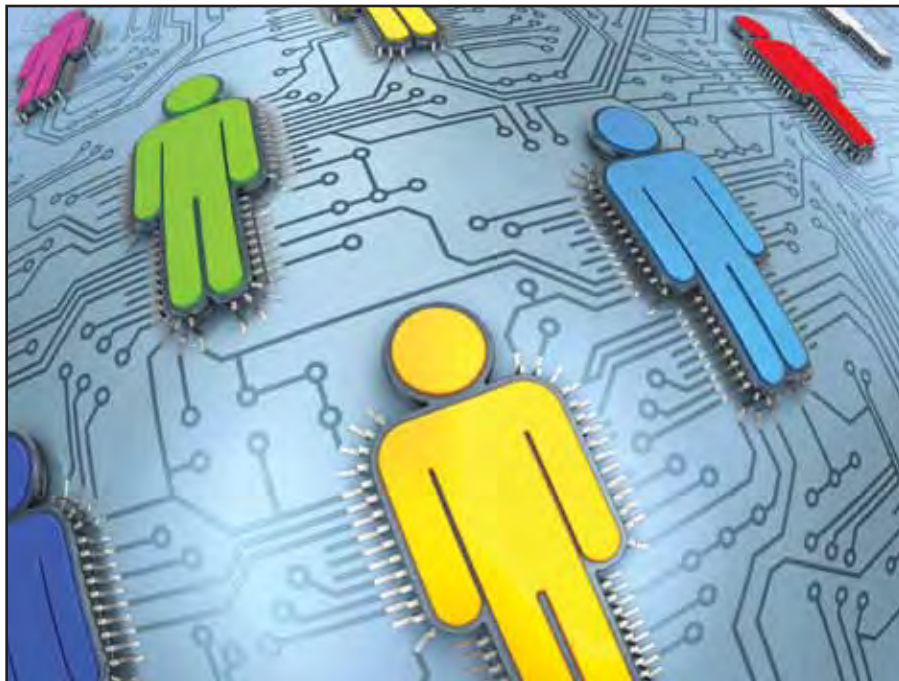
One of the many lessons learned from Hurricane Katrina was the vulnerability of personal and business records and documents. Ernest (Ernie) Svenson and Loyola University College of Law Professor Dane S. Ciolino recently presented a CLE program on maximizing the use of technology in the practice of law. Leading into his portion of the presentation, Ciolino said it was during the course of his evacuation to Shreveport that he began the transition to a “paperless” law practice of storing and backing up files online.

The lesson underscored by catastrophic loss in Katrina served to reinforce a trend which is now mainstream — the digital storage of everything from recipes and photos to financial statements and tax documents. Service providers, including banks, insurance companies and various utility agencies, encourage their customers to switch to paperless statements and online account management. Money is transferred, bills are paid, and loans are obtained all online. While at first glance this may seem convenient and environmentally friendly, what are the ramifications as they relate to estate planning or the incapacity of an account holder?

Sharon Nelson, noted electronic evidence blogger at *Ride the Lightning* and co-host of the American Bar Association's podcast series called *The Digital Edge: Lawyers and Technology*, shared a specific example. In this case, a husband, who had handled all of the family finances and paid bills online monthly, died without providing for anyone else to have access to the usernames or passwords for the various accounts. His widow, in addition to dealing with the loss of her spouse, was now unable to determine what bills were due or keep accounts current; as a result, her credit was wrecked.

Most traditional wills provide for an executor who is charged with marshaling the assets and taking care of the business of the estate. It used to be that important documents were stored in file cabinets or safety deposit boxes. If an individual died and failed to leave a list of important accounts and documents, such information could largely be compiled by rifling through a desk and reviewing incoming mail for account information. Now, much of this information is stored and communicated electronically.

What happens to the digital assets of individuals when they become incapacitated or die? In an increasingly paperless world, failure to provide for the transfer of account access and other online records could leave family members and business associates unable to keep finances current or continue a business.



What are Digital Assets?

Digital assets include any file, email, document, image or video stored on digital devices including desktops, laptops, tablets, smart phones, or other electronic storage devices. Also included are online accounts such as:

- ▶ LinkedIn
- ▶ Facebook
- ▶ Twitter
- ▶ Google+
- ▶ Multiple email accounts
- ▶ Cloud-based photo sharing or storage accounts
- ▶ Personal and professional website or blogs
- ▶ Bank accounts
- ▶ Cloud-based document and client files (Dropbox, SugarSync, Evernote, etc.)
- ▶ Shopping or e-commerce accounts with stored credit card or bank information, (eBay, PayPal, etc.)

Beyond personal and financial accounts, attorneys have additional concerns and obligations regarding online file access as it relates to client matters. In years past, when an attorney became incapacitated or died, another attorney could review and inventory physical files to contact clients, assume cases and wind down the practice. Now much of this information is stored electronically, behind various levels of

passwords and data encryption, and in multiple cloud storage systems. These files fall within the ambit of digital assets for which succession planning is a necessity.

Legal Uncertainty in the Digital World

In general, the law provides for succession administration whether testate or intestate. But how do these laws integrate with the digital world and online accounts? In the absence of specific laws to the contrary, what happens to your digital assets and online records when you die is largely controlled by the Terms of Service that accompany the different websites or companies with which you have accounts. (*See sidebar article on page 211.*) A quick review of various sites' Terms of Service reveals what a cumbersome and complicated process lies ahead if an individual has multiple accounts and has failed to plan properly.

Only five states have adopted laws specific to rights of access to digital assets. Connecticut and Rhode Island provide for an executor's access to email accounts.¹ Oklahoma, Idaho and Indiana provide for a personal representative to have access to social networking sites and email accounts.²

Since 2011, the Uniform Law Commission (ULC) has focused on addressing the void of clear authority related to fiduciary access and management of online accounts and digital assets. In July 2012, the ULC accepted the recommendation of the study committee and appointed a drafting committee³ to compose model legislation to be added to the Uniform Probate Code⁴ or adopted as free-standing legislation. The proposed legislation would grant fiduciaries specific powers and authority to gain access to an individual's online accounts and digital property during incapacity and after death.

What to Do?

Waiting for legislation to catch up with rapidly evolving technology and the explosion of digital assets is not the answer. While legislation can provide predictability and ease the transition, in the meantime, here are some practical steps you can take to ensure a smoother transition for your digital assets.

► Inventory your digital accounts.

Consider the following questions. If your computer and all your electronic devices, including smart phone, back-up and flash drives, were stolen, what valuable or sentimental digital assets would you lose? If all of your online accounts and passwords were deleted, what valuable and sentimental digital assets would you lose? If you were to become incapacitated today, would anyone be able to access your digital assets and continue to pay your bills online? As an attorney, would anyone be able to access and inventory your current client matters and notify your clients to arrange for their continued legal representation?

By identifying your digital assets, you save your estate time and expense and minimize the possibility that your client's files, as well as your personal online photo and cloud-based blogs (today's version of photo albums, diaries and shoeboxes full of love letters), will be lost forever. Considering



these scenarios, it is worth investing half an hour now to document your online accounts and passwords. Going forward, it would be wise to review this list on at least a quarterly basis as your passwords may change and additional accounts are created.

► Provide for access.

There are a variety of options for inventorying your online accounts and passwords. You could create a list in spreadsheet, or there are several websites, accessible through a master password, which will store your passwords and account information for any of your other online accounts and profiles. If you elect this option, again you must provide some means of conveying that "master password" to another individual in the event of your death or incapacity.

There may be various solutions for planning for digital assets, but typically a will is not the best place to record the access information for online accounts and file storage sites. This is because a will, once probated, becomes part of the public record. Additionally, amending a will every time a new account is added or a password is changed is not a practical solution.

Therefore, a separate document identifying accounts, passwords, security questions and answers would seem to be the better practice for listing access information for online accounts. Such a

document once created could be printed out or stored on a USB flash drive and stored in a safe location.

Another option would be a Digital Asset Trust or DAP (Digital Asset Protection) Trust. One of the particular benefits of a trust is that it can provide a vehicle for uninterrupted account access and continued rights to music, movies and books which are typically granted in license form only.

► Provide for instructions as to what you want to happen with your digital assets.

With respect to client matters, you need to make arrangements for the access and transfer of the digital assets related to their cases. As for your individual accounts, there are some which you will want closed, and others that you will want the data (photographs, scanned notes, memoirs, etc.) downloaded and preserved for your family and loved ones. If you fail to provide the information necessary to access them in the event of your incapacity or death, then they will probably be lost forever.

Conclusion

The digital revolution has changed the way people interact, conduct business and store personal information. The composer Leonard Bernstein prepared a draft of his memoir, entitled *Blue Ink*,



and left it password-protected online.⁵ He died in 1990 and, unfortunately, told no one the password. Today, 22 years after his death, his memoir is still inaccessible and unavailable.

Whether as estate planners or as individuals, it is imperative that we implement some form of digital succession plan. Although new laws are certainly necessary to provide for uniformity and predictability in the transfer of digital assets, as individuals and attorneys, we can do a great deal to provide guidance to our clients and continuity for our own families and loved ones. By inventorying our assets, providing appropriate access, and leaving instructions, we can ensure that the gap between paper and digital does not result in the loss of critical business information and personal family treasures.

FOOTNOTES

1. C.G.S.A. § 45a-334a (2005), Connecticut Public Act No. 05-136: An Act Concerning Access to Decedent's Electronic Mail Accounts; Rhode Island § 33-27 (2007), Access to Decedents' Electronic Mail Accounts Act.

2. 58 Okl. St. Ann. § 269 (2011); *Id.* Code Ann. § 15-5-424 (2011); In. Code Ann. 29-1-13-1.1 (2007).

3. Minutes from July 17, 2012, meeting of Executive Committee, Uniform Law Commission, Nashville, TN: http://www.uniformlaws.org/shared/docs/executive/2012jul17_EC_Min_2012%20annual%20meeting_Final.pdf.

4. La. R.S. 9:2421, *et seq.*

5. Helen W. Gunnarsson, "Plan for Administering Your Digital Estate," 99 Ill. B.J. 71 (2011).

David H. Ogwyn, attorney and owner of Ogwyn Law Firm, L.L.C., received his BS degree in 1997 and his JD degree in 2001 from Louisiana State University and its Paul M. Hebert Law Center. His practice primarily focuses in the areas of business representation and litigation, oil and gas, and estate planning. He is an active member of the Baton Rouge Bar Association and is currently chairing the board of directors for the West Baton Rouge Chamber of Commerce. (P.O. Box 1942, Baton Rouge, LA 70821)



Summary of Various Service Provider Policies

In the absence of specific laws to the contrary, what happens to your digital assets and online records when you die is largely controlled by the Terms of Service that accompany the different websites or companies with which you have accounts.

Gmail states that in "rare cases," it may be able to provide the account content to an authorized representative of the deceased user. <http://support.google.com/mail/bin/answer.py?hl=en&answer=14300>

Hotmail/Outlook will send a copy of any email messages that may be stored on a decedent's account, along with any existing contact lists, and will ultimately close the account upon request. It will not provide the password to an account or transfer ownership of the account. <http://bit.ly/RsZUgg>

Yahoo! will permanently delete all content and terminate the account upon receipt of a copy of a death certificate. It will not provide access to user's accounts or email. See, Section 27, No Rights of Survivorship and Non-Transferability, <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>.

Facebook will memorialize a decedent's account to allow friends and family to write on the decedent's wall in remembrance. The account may be closed upon a formal request from the decedent's next of kin or upon a legal request. See, Memorializing accounts, <https://www.facebook.com/about/privacy/#!/about/privacy/other>.

LinkedIn will remove a decedent's account, after receiving a verification of death form, along with the email address registered to the deceased member's account. https://help.linkedin.com/app/answers/detail/a_id/2842/related/1

Twitter allows family members to remove the decedent's account or save a backup of the decedent's public tweets. <http://bit.ly/mJlqL>

PayPal allows the executor of the estate to close the account. Appropriate documentation, including Letters of Administration, the death certificate of the account holder, and a copy of the executor's photo ID must be faxed to (402)537-5732. If there are funds in the PayPal account, a check will be issued in the account holder's name.

iTunes. Apple states, when you "buy" a digital file (music, movies and books), you are acquiring a non-transferable license for personal use. While Apple's Terms of Service include a provision related to the remote prospect of using its services to develop nuclear weapons, it fails to provide anything for the certain prospect of the death of an account holder. ("You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, chemical or biological weapons.") <http://www.apple.com/legal/itunes/us/terms.html>

Digital Estate Services List: <http://www.thedigitalbeyond.com/online-services-list/>



Alternative Dispute Resolution

MEDIATING HIGH-CONFLICT DOMESTIC RELATIONS CASES

By Bobby Marzine Harges

*The way I used to love you
Baby, that's the way I hate you now.*
—Blues great B.B. King

An increasingly large number of parties who are litigating in family courts in Louisiana are not represented by attorneys. These pro se litigants either cannot afford the costs and fees normally associated with litigation or choose not to pay these costs and fees. Thus, they decide to handle their issues in family court themselves without direct representation by attorneys. As a result, these litigants will usually appear before a private mediator who is court-appointed by La. R.S. 9:332 or before a court official, such as a hearing officer, court commissioner or judge, who may be serving in a quasi-mediative capacity. These “mediators,” whether in private practice or part of the court staff, will need special skills to aid them in working with the parties they encounter in a mediation proceeding.

When parties arrive at a child custody, divorce or family mediation (hereinafter referred to as “family mediation”), they are usually very emotional. This phase of their lives is full of stress. Some of the losses that parties suffer in a separation and/or divorce are: economic loss; loss of a home; social loss; loss of daily contact with children; loss of a housekeeper, cook, grocery buyer, clothes buyer and/or taxi driver; loss of a repairman, gardener or person with technical knowledge; loss of a career; loss of the ex-spouse’s family members and friends; loss of a sex partner; loss of physical security; and loss of a value system.

The emotions associated with these losses affect the parties’ moods, their attitudes, their ways of thinking, and their behavior in a mediation. The feelings that divorcing and/or separating parties could have in a family mediation include abandonment, shock, anger, denial, insecurity, low self-esteem, confusion, depression, loneliness, betrayal and victimization. Sleepless nights, strange illnesses and weird feelings also are among the things that participants in a family mediation may be experiencing. It is common for parties to experience or engage in behavior they have never experienced before. Parties may sometimes be surprised by their own behavior. Many times, they are not “themselves.”

Some feelings that may be associated with a divorce or separation include: “I’m going crazy;” “Life isn’t worth it without her;” “I feel dead, like a walking zombie;” “I am sad and cry all the time and don’t know why;” “I’m helpless;” “I’m hopeless;” “I’d like to kill my ex;” “If I can’t have her, no one can have her;” and “I’m not me anymore.” The mediator must recognize that these feelings could possibly exist and learn how to deal with them.

During the mediation, it is important for the mediator to “normalize” these feelings. In other words, the mediator should inform the parties that it is not uncommon for people going through stressful times to have feelings that are unusual and that these strange feelings are a natural part of the stressful experience.

Many people experiencing separation



and/or divorce have been to counseling, are currently in counseling, or are in serious need of counseling. Thus, in some instances, it may be appropriate for the mediator to suggest that one or more of the parties seek professional counseling. It is rare for the parties to be in complete agreement about the separation or divorce. Usually, one party made a decision to leave after serious deliberation and informed the other party who may be completely shocked or surprised about the separation or divorce.

Role of the Mediator

In a family mediation, the task of the mediator is to be neutral, fair and impartial.¹ During the mediation, the mediator should introduce himself/herself to the parties, explain the mediation process, allow the parties to state their issues and concerns in their own words, help the parties identify the issues, help the parties generate options, negotiate and/or bargain, and assist the parties in reaching an agreement. Prior to the mediation, the mediator has a duty to assist the parties in formulating a written, signed and dated agreement to mediate.² This document should identify the controversies between the parties, affirm their intent to resolve the controversies through mediation, and specify the circumstances under which the mediation may terminate.³ Finally, the mediator

has the responsibility of drafting the memorandum of understanding, which is a document that states the mediator’s understanding of the agreements reached by the parties. When the parties are not represented by lawyers in the mediation, the mediator has a duty to recommend that the parties obtain review by an attorney of any agreement reached prior to signing such an agreement.⁴ It is important to note that in a private or court-appointed mediation, the mediator is not a judge, court commissioner or hearing officer for he/she has no power to impose a solution on the parties.⁵ However, when hearing officers, court commissioners or judges serve in a mediation-type capacity, this is not always true.

Dealing with Emotional Parties

When emotional parties act out in a mediation or in ways that are not beneficial to the mediation process, the mediator needs to develop a number of tools that he/she can use to assist in dealing with the participants so the process will not get out of hand. Unlike judges, hearing officers and court commissioners who have the imprimatur of the court behind them or court officials such as bailiffs, court reporters, criers or other court personnel to assist them when they meet with disputing parties, mediators have no such status, power or court

personnel. Mediators simply have their power of persuasion, their knowledge of human behavior, their knowledge of the mediation process, and their skills as a neutral and impartial party to assist them in maintaining control of the mediation process.

When a mediator first encounters parties in a high-conflict mediation, it is important for the mediator to keep a safe and professional environment. Thus, in his/her opening statement, the mediator should get the parties' commitment to conduct the mediation under certain guidelines. These guidelines include a commitment to be courteous to the mediator and the other parties, a commitment that only one party speaks at a time, and a commitment that if one party has something to say while the other is speaking, the party will write down the thoughts to be used later during the time allotted to speak. These rules are important; when the parties begin to argue, the mediator should remind the parties of these ground rules. This reminder may be made by the mediator numerous times during the mediation.

During the mediation process, parties tend to argue about things that occurred in the past. While past occurrences will help the mediator understand the parties and their issues, the mediator should not dwell in the past or allow the parties to remain focused there. When children are involved, the mediator should obtain the parties' commitment to negotiate based on the best interests of the children. If the parties commit to this ground rule at the beginning of the mediation, bringing their attention back to this commitment tends to disarm them and refocus them on their children. The mediator should reorient the parties to the future and the previous standard that the parties committed to at the beginning of the mediation, "the best interests of the child." When parties rehash the past, the mediator may ask, "How does that relate to the best interest of your child?" Alternatively, the mediator could state, "That is something I have no control over. It occurred in the past. I want us to focus on the future."

When the mediator notices that the parties are raising their voices, the mediator should not raise his/her voice to



match their tone of voice. This will only escalate the situation and the mediation may get out of control. The mediator should remain calm and focused at all times.

When the parties become excited and begin to speak faster and faster, the mediator should not speak faster to match the parties' speech. If anything, the mediator should consider speaking more slowly when this happens. This will cause the parties to notice how the mediator's reaction to their conduct is in contrast to their behavior.

However, it is not necessary for the mediator to correct the parties every time they argue with each other because many times the parties are voicing their issues, concerns and gripes with the other party. The mediator should distinguish emotions from behavior. It is normal for parties to become emotional when they are negotiating in the presence of an ex-spouse or ex-lover. As long as the parties are arguing or discussing the matter constructively, the mediator should observe the parties and listen attentively to their statements. The mediator should take note of the concerns of the parties and inform them that he/she has heard their concerns. This can be accomplished by the mediator mirroring the statements of the parties. Mirroring involves the mediator repeating back to the speaker the mediator's understanding of the feeling or content of what he/she has just heard.

If the behavior of the parties becomes destructive or dangerous, it is at this point that the mediator should intervene and take control of the process. The mediator should not allow the behavior of one party to become a threat of harm or harmful to the other party or to the mediator. If safety is a concern, the mediator could terminate the mediation and take whatever action he/she deems appropriate. Judges, commissioners and hearing officers who are serving as mediators will have the power of the court behind them to help them handle unruly parties.

Developing Trust

At all times, the mediator should remain neutral and non-judgmental. The mediator should not take sides in a mediation for credibility is always in issue. If the parties believe that the mediator is taking sides, trust will be destroyed and very little will be accomplished during the mediation. The mediator is continually struggling to gain the trust of the parties. The more the parties trust the mediator, the more they will cooperate with the mediator in reaching agreement. Trust is not something that comes with the mediator's credentials or the fact that he/she is a court official. While parties may be impressed with the mediator's credentials, they may not trust the mediator.

Even when the parties are “acting up,” the mediator should not become disgusted with the parties as if they are acting like children. Remember that this is a seriously stressful time for parties who are separating and/or divorcing. Even when the mediator believes that the parties are “crazy” or “weird” because they are arguing over something that the mediator considers trivial or worthless, the mediator should still be respectful to the parties. Respect builds trust, and trust builds credibility. Credibility assists the mediator in becoming more effective as a neutral.

Time-Out

When the parties escalate their arguments to a point that is not productive, the mediator could call a “time-out.” A time-out literally stops the parties in their tracks and focuses them on the mediator. This is a way of taking control of the process. The mediator is essentially saying to the parties that their behavior is not appropriate for the mediation and that they should change their behavior. After calling time-out, the mediator can refocus the parties on the basic ground rules that they agreed to at the commencement of the mediation. At this point, the mediator could suggest a neutral path toward resolution.

If the parties begin to name-call, become aggressive, or escalate their behavior beyond what is considered safe for a mediation, the mediator could consider calling for a caucus. A caucus is a private meeting between the mediator and one of the parties. If the anger is being directed toward one party, when that party is removed from the presence of the aggravated party, the anger may decrease. The mediator must inform the parties that anything disclosed in the caucus will be kept confidential if the party makes such a request.

Mediator’s Training

The mediator’s training is often helpful in assisting him/her to handle emotional parties in mediation. In



Louisiana, mediators who mediate child custody and visitation issues are required to obtain mediation training regarding ethical standards, including confidentiality and conflict of interests; child development, including the impact of divorce on development; family systems theory; and communication skills.⁶ Moreover, although not required by Louisiana statutory law, child custody mediators also should receive training on domestic violence issues. This training should help the mediator recognize when safety is a concern, when the mediation process is no longer productive, or when the process is not fair to one of the parties such that the mediation should be terminated.

An understanding of the nature of family systems and the dynamics of divorce will help the mediator understand when a party is making concessions simply to appease the other party. Additionally, knowledge of these matters will tend to assist the mediator in determining when there is a serious power imbalance in the mediation. Knowledge of power imbalances allows the mediator to empower the weaker party by asking questions and developing the information and knowledge base so that both parties can make informed decisions.

Custody mediators in Louisiana also

are required to receive training in the Louisiana judicial system and judicial procedure in domestic cases as well as on the mediation process and required document execution.⁷ This training should aid the mediator in understanding the judicial system, the mediation process, and how to help the parties reach agreement.

Conclusion

Parties usually enter family mediations very emotional and under a large amount of stress. These emotions and stress will cause a great deal of conflict as the parties attempt to negotiate with each other. The mediator should realize that these emotions are a normal part of a stressful time for the parties. This understanding by the mediator will aid in appreciating the emotions and feelings the parties are experiencing and will assist in developing appropriate tools and techniques for dealing with emotional parties in family mediations.

FOOTNOTES

1. La. R.S. 9:333(C) (articulating duty of mediator in child custody and visitation mediations).
2. La. R.S. 9:333(A) (articulating duty of mediator in child custody and visitation mediations).
3. *Id.*
4. La. R.S. 9:333(B) (articulating duty of mediator in child custody and visitation mediations).
5. La. R.S. 9:333(C) (articulating duty of mediator in child custody and visitation mediations).
6. La. R.S. 9:334(C) (Louisiana mediator qualification statute for child custody and visitation mediations).
7. *Id.*

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Pro Se in Louisiana:

Working to Make a Difference in the Lives of Self-Represented Litigants

The legal community knows the hazards associated with “going it alone” in the justice system. Without training in the law and procedure, a self-represented litigant (SRL) may be at a severe disadvantage and risk losing his/her legal rights. It generally takes much longer to adjudicate a SRL’s case, and court dockets invariably get congested. Nevertheless, judges and state courts around the country have reported that SRLs are making up 50-60 percent of their court cases.¹ Given the inherent challenges, why are so many going it alone?

With poverty in America at its highest rate in 50 years — today, more than 46 million Americans live below the poverty level — many litigants find themselves unable to afford or otherwise access representation. Why aren’t SRLs receiving free legal aid from Louisiana’s legal service programs or other nonprofit legal aid organizations? The fact is, legal services organizations work at capacity and lack adequate resources to meet all needs for legal services. One study found that only 33 percent of the poor who qualify for legal services can actually be fully served by these legal services organizations due to budgetary constraints.² Also, grant restrictions and conflict rules can prohibit many poor people from qualifying for free legal services.

As poverty levels rise, and budgets for legal services programs are cut, more litigants can be expected to enter court without lawyers. One solution: Attorneys are finding ways to bridge this service gap by volunteering time and experience to assist SRLs.

The Louisiana State Bar Association’s (LSBA) Access to Justice *Self-Represented Litigation* Subcommittee is offering information on these projects and other innovative solutions to assist SRLs. Several volunteer opportunities are provided for attorneys wanting to become more involved.

Clinics for Self-Represented Litigants

The *pro se* clinics offered by Southeast Louisiana Legal Services (SLLS) are unique opportunities to discover common difficulties SRLs have with the legal process. Some common problems are participants filing paperwork out of order, having difficulty with the waiver of service and having spouses served. Most say the process is bewildering and confusing. Our clinic model allows us the ability to focus on those procedural problems without providing legal advice. For several months, I worked with the SLLS *Pro Se* Divorce Clinic. Many people need assistance with establishing or modifying custody or a divorce with custody. They also need instructions on filling out *informa pauperis* affidavits and procedural direction with filing their 102 divorce forms. Knowing this, our team is able to focus on developing materials with the court for the SRLs to simply fill out and file on their own. This partnership with the judiciary is very successful and we are working on preparing additional documents. Clinic participants who complete the process will let us know of their success with their cases. They express feelings of accomplishment and pride.

Another clinic model is our *Pro Se* Eviction Defense Clinic at 1st City Court in Orleans Parish. The clinic operates as a triage to assist low-income tenants who may have defenses to their eviction. There are only a handful of affirmative defenses that can be identified and explained in the minutes before the hearing, and the tenants to whom these defenses apply can raise them during the hearing. For others, we inform them of other possible resolutions, such as the ability to negotiate with the landlord for more time or to agree on a payment plan.

—M. Shaughn Zambolla
Equal Justice Works AmeriCorps
Legal Fellow, Southeast Louisiana
Legal Services

Forms and Documents for Self-Represented Litigants

In primarily family law cases, Acadiana Legal Services Corp. (ALSC) provides *pro se* forms on a case-by-case

basis to applicants unable to receive full representation from ALSC's staff attorneys. The decision to provide a form usually depends on the complexity of the matter, whether there is a hearing officer process with the court, and the applicant involved. These matters include custody, visitation and child support.

—Sachida R. Raman
Managing Attorney,
Acadiana Legal Services Corp.

LSBA Developing Court-Based Help Desks

The LSBA's Access to Justice Committee views the crisis of *pro se* litigants as one of the greatest challenges facing the legal system today. The committee established the *Pro Se* Subcommittee to address this growing issue. Over the past five years, the subcommittee has developed an Action Plan to improve effective execution of educational materials, funding identification and communication with all stakeholders. Several members also have served on the Louisiana Supreme Court's Self-Represented Litigant Task Force. In support of the subcommittee's work, the LSBA hired Michael W. Schachtman as the new Self-Represented Litigation counsel. He will work to expand, duplicate and supervise the now three Self-Help Resource Centers (SHRC) and coordinate with the legal services providers, pro bono projects, courts and others to develop new materials and collect data.

Often lawyers' own dockets and calendars are so crowded that it is impossible for them to accept pro bono cases. The self-help resource centers allow lawyers to participate in pro bono efforts while maintaining control of their calendars and caseloads. Most importantly, though, SHRCs offer much-needed assistance to the public and the over-burdened courts. We are very hopeful that the SHRCs will proliferate throughout the state.

—Marta-Ann Schnabel
President, LSBA Access to Justice
Steering Committee

Volunteers at Work

I was astonishingly enlightened on the need for the Orleans Parish Civil District Court's Self-Help Resource Center after

staffing the desk the first few times. Particularly rewarding was witnessing how the help desk offers assistance to the victims of abuse in our community. I had no idea of the volume of abuse cases in CDC or the need for assisting unrepresented victims.

—Philip A. Franco
Partner, Adams and Reese, L.L.P.
Volunteer, The Pro Bono Project
(New Orleans)

Websites and Automated Forms

Southeast Louisiana Legal Services (SLLS) administers websites to help low-income people and to support pro bono and public interest advocates. The website, www.lawhelp.org/la, is Louisiana's site in the award-winning LawHelp national network of legal information and resource sites. That site includes a special topic area for self-represented litigants. Resources include automated court forms, automated forms for various legal issues and multimedia presentations. SLLS pioneered Louisiana's efforts to bring automated court forms to the public with the support of a Technology Initiative Grant from the Legal Services Corp.

On the advocate front, the website, www.probono.net/la, serves hundreds of site subscribers across a wide swath of Louisiana's public interest and pro bono communities. The site hosts an expansive online library of practice resources, an extensive list of email groups and active news and events pages.

—Lisa J. Stansky,
Statewide Website Coordinator

Other Louisiana Resources

Louisiana organizations have dedicated resources to assisting SRLs. Some of those efforts include:

► The 9th Judicial District Court in Alexandria operates a Self-Help Resource Center, providing legal information, forms and other resources to SRLs. The court soon will launch a SRL website for the access of forms and information. For more information, go to: www.9thjdc.org.

► The Baton Rouge Bar Foundation staffs and organizes volunteers for the East Baton Rouge Family Court Self-Help

Resource Center located on the fourth floor of the 19th Judicial District Court building. To volunteer, contact (225)344-4803.

► The **Lafayette Volunteer Lawyers' Program** and the **Acadiana Legal Service Corp.** were the first to initiate *pro se* divorce clinics in the state. The service covers the parishes of Acadia, Vermilion and Lafayette. Contact (337)237-4700 for more information.

► The **Lafayette Volunteer Lawyers' Program Pro Se Kiosk** is an effort between the Lafayette Bar Foundation and the 15th Judicial District Court to provide *pro se* domestic forms at the public law library. Contact (337)237-4700 for more information.

► The **Louisiana Civil Justice Center** provides intake and referral services in certain legal areas, allowing legal service and pro bono lawyers to devote more of their time to direct legal services. Call the help line at (504)355-0970 or (800)310-7029.

► The **Pro Bono Project** (New Orleans) organizes volunteers to staff the Self-Help Resource Center on the fourth floor of Orleans Parish Civil District Court. To volunteer, contact The Pro Bono Project at (504)581-4043.

► **Southeast Louisiana Legal Services** facilitates clinics to educate SRLs, including the Automated *Pro Se* Uncontested Divorce Project, the Automated Housing Law Resources, *Pro Se* Security Deposit Clinic and the Expungement Clinic. Contact (504)529-1000 for more information.

► The **VERA Institute** of Justice Legal Orientation Program (LOP), with facilities at both Catholic Charities of the Diocese of Baton Rouge and Catholic Charities of the Archdiocese of New Orleans, combines intense *pro se* education in the immigration court context with the opportunity to locate pro bono counsel for exceptional cases. Call (225)336-8700 for more information.

► The **Louisiana State Bar Association** has prepared a "What You Need to Know About Representing Yourself in Court" brochure in its line of consumer brochures. These brochures can be viewed and ordered at the LSBA website, www.lsba.org/PublicResources/consumerbrochures.asp.



FOOTNOTES

1. Richard Zorza, *Access to Justice: Economic Crisis Challenges, Impacts, and Responses*, National Center for State Courts (NCSC) Online Publication (Trends 2009). www.ncsconline.org/WC/Publications/Trends/Trendssum/ProSeTrSum.html. See also, Madelynn Herman, *NCSC Court Topics, Knowledge and Information Services, Self-Representation, Pro Se Statistics, Memorandum* (Sept. 25, 2006): "Report to the Utah Judicial Council, July 25, 2006: For divorce cases, 49 percent of petitioners and 81 percent of respondents are self-represented. California

Judicial Council Task Force on Self-Represented Litigants (2004): For family law cases: 67 percent of petitioners at filing (72 percent for largest counties) are self-represented and 80 percent of petitioners at disposition for dissolution cases are self-represented." www.ncsconline.org/wc/publications/memos/prosestatsmemo.htm. At time of publication, Louisiana has not quantified the number of individuals going to court *pro se*.

2. The national study was coordinated by the Legal Services Corp., *An Indicator of Louisiana's Gap in Access to Justice* (data was collected from 3/16/09-5/15/09).

Do Good. Do Well. Do Pro Bono.

By Linton W. Carney

In today's turbulent economic times, many members of the legal profession are finding it more difficult to maintain profitable practices. Particularly, the scores of recent graduates are competing for scarce employment opportunities. The economy has impacted all Americans, most acutely those without the benefit of a graduate degree and professional connections. With poverty in America at its highest rate in 50 years, legal needs are on the rise. As legal service providers face some of the largest budget cuts in decades, achieving equal justice for all has become increasingly difficult, and our profession must find innovative ways to bridge the gap.

If the past is prelude to the present, there is no reason to doubt that Louisiana's legal community will find workable solutions to complex problems. We will find ways to leverage our existing resources to both support the profession and provide access to justice for all. In short, we can "do good" work in our community, and "do well" for our profession, when we "do pro bono."

Do Good.

Louisiana has many pro bono organizations, with at least one major pro bono service coordinator in each region of the state. Through these programs, attorneys have the opportunity to engage in substantive legal work that directly benefits those in need.

The Baton Rouge Bar Association has helped to develop a Self-Help Desk for self-represented litigants at the East Baton Rouge Family Court and runs regular advice desks such as the "Thirst for Justice" program in partnership with the St. Vincent DePaul Society.

The Shreveport Bar Foundation Pro Bono Project has developed a regular "Ask a Lawyer" Clinic where residents, with a special focus on veterans, can speak with attorney volunteers about legal issues.

The Pro Bono Project in New Orleans increased its services to clients with consumer problems through new clinics with community partners staffed by volunteers

recruited and trained for the purpose.

In Alexandria, the Central Louisiana Pro Bono Project has helped to coordinate training and pro bono opportunities for attorneys to take on critical Child in Need of Care cases, representing the interest of neglected and abused children who find themselves navigating a complicated justice system.

These are just a few of the ways that Louisiana's pro bono attorneys are doing good work in our communities.

Do Well.

Many pro bono attorneys also find that they are doing well through their efforts. While today's new attorneys face a challenging economic climate and more difficult job prospects, doing volunteer work through a recognized pro bono organization can give them hands-on experience, networking opportunities and recognition for their good work. This is also a way for an unemployed/underemployed attorney to practice law, allowing them to distinguish themselves as more seasoned recruits during the job interview process.

Pro bono service will benefit the community, and it can benefit legal careers by helping attorneys build knowledge and practice skills through training, client interaction and mentoring from more experienced colleagues.

Attorney Shandy L. Arguelles of the De St. Germain Law Office in Slidell explained that her pro bono experience helped jump-start her solo practice. As a recent graduate, Arguelles had only a small number of clients and little legal experience. When a mentor suggested that she contact the Southeast Louisiana Legal Services pro bono program, she decided to offer her help. "Taking those first steps as a solo was scary," Arguelles said, but her pro bono cases helped her to build confidence by developing office forms, engaging in client interaction, filing pleadings and familiarizing herself with the overall process of lawyering. "Reaching out to volunteer for the pro bono initiative opened doors for me to meet and interact

with attorneys that I otherwise would not have met," she said. It has been almost four years since Arguelles made her first call to do pro bono, and she still strives to keep at least one active pro bono file at a time.

Another recent graduate, attorney Matthew M. Livaccari, also benefitted from his experience volunteering with The Pro Bono Project in New Orleans. As a new attorney with limited legal experience, he was given an opportunity to handle cases on his own and interact with clients. The pro bono work "helped prepare me for the work I do now, allowing me to develop the legal skills which I use on a daily basis," he said. Pro bono service is a mutually beneficial endeavor. "My work at The Pro Bono Project was also personally fulfilling, imbuing me with a sense of accomplishment and satisfaction for the results I was able to produce for my clients," he said.

An exemplary Pro Bono Project volunteer, Livaccari, in just a few months, had taken on more than 100 divorce cases. While not all pro bono volunteers are expected to take on such a volume, every attorney can contribute something in terms of time and skills, and every pro bono hour counts.

Do Pro Bono.

If every attorney in Louisiana met the Rules of Professional Conduct Rule 6.1 aspirational goal of 50 pro bono hours annually, that would provide more than 1 million hours each year dedicated to helping meet legal needs in our state and strengthening our profession.

To review volunteer opportunities in your area and statewide, go online to: www.lsba.org/atj.

Linton W. Carney is chair of the Louisiana State Bar Association Access to Justice Pro Bono Subcommittee. He is chief legal officer and coordinator of the Homeless Outreach and Clinic for The Pro Bono Project in New Orleans. He can be emailed at lcarney@probono-no.org.

Louisiana Celebrates Pro Bono

Legal services are often unavailable for many poor people in Louisiana. Low-income households in Louisiana will experience approximately one civil legal need every year, but, due to limited resources, only one in five will be assisted by a legal aid provider or pro bono volunteer. This means approximately 80 percent of the state's most vulnerable citizens have no representation as they attempt to secure the most basic legal needs, like protection from an abusive spouse or access to affordable housing.

In facing these challenges, Louisiana's legal community has an inspiring tradition of public service. In 2011 alone, Louisiana's attorneys provided more than 130,000 hours of pro bono service and seven law firms around the state, representing hundreds of attorneys, adopted a version of the model pro bono policy for the first time. Several other firms, with pro bono policies already in place, reaffirmed their commitment by renewing their policies.

During difficult economic times,

Louisiana's lawyers may be impacted as well by a lack of employment opportunities, especially for recent graduates. Volunteering as a pro bono attorney not only provides much needed support for the community, but it also gives attorneys an opportunity to gain substantive legal experience, mentoring and connections with potential employers. There are so many ways in which pro bono service is both a win for the community and a win for the legal profession.

The Louisiana State Bar Association (LSBA) recently joined other state bars in celebrating the community's commitment to public service and the profession. Several Louisiana events were scheduled during National Pro Bono Week Oct. 21-27. In conjunction with the American Bar Association, Pro Bono Week is part of a coordinated effort to showcase the great difference that pro bono lawyers make to the nation.

In September, Governor Jindal issued a Pro Bono Week Proclamation, urging all Louisianans to recognize the

contributions of the legal community to help those most in need. Louisiana's Pro Bono Week Celebration focused attention to the legal work lawyers do in their communities to improve the lives of their friends and neighbors.

Across Louisiana, local pro bono programs and community organizations organized a series of events during Pro Bono Week (and the month of October) to highlight the work of Louisiana's pro bono community. These events ranged from awards ceremonies and networking receptions to CLEs and volunteer opportunities.

This year, the LSBA and its partners embarked on an ambitious new program to bring legal services to each corner of the state and to celebrate the work these lawyers are doing for the community. On Oct. 25, pro bono programs participated in a Statewide Day of Service, including events in Alexandria, Baton Rouge and New Orleans. Each location provided a free legal clinic or an ask-a-lawyer program for those in their community who cannot afford or access a lawyer on their own.

Even after thousands of hours of volunteer time and thousands of clients served, there is still much work to be done. Members of the Louisiana Bar recognize that it takes more than one week each year to promote and improve pro bono programs. In an effort to build truly sustainable and effective pro bono services, the LSBA's Access to Justice Pro Bono Subcommittee presented its annual strategic planning session during the Louisiana Justice Community Conference in Baton Rouge on Oct. 11. The group focused on recruiting, retaining and rewarding those who volunteer their time to the public and strive to reach their professional goal of service.

For more information about pro bono volunteer opportunities near you, visit the LSBA's pro bono page at www.lsba.org/ATJ/probonoresources.asp, or ProBono.net, the statewide listserv for attorneys, at www.probono.net/la/.

Celebrate Pro Bono! National Pro Bono Celebration October 2012



Sponsored by the ABA, the National Pro Bono Celebration is a coordinated effort to showcase the great difference that pro bono lawyers make to the nation. LSBA's Access to Justice Program is working with your local pro bono project to highlight the work of Louisiana's pro bono community and the difference it makes to our state, its system of justice, its communities and, most of all, to the clients served. Visit www.lsba.org/celebrateprobono for more information on events in your area and how to get involved.

Louisiana celebrates pro bono all year!
www.lsba.org/ATJ

Louisiana Celebrates National Pro Bono Week

Several events were scheduled across the state during National Pro Bono Week, Oct. 21-27.

Saturday, October 20, 2012

▶ “Ask a Lawyer Day.” The Baton Rouge Bar Foundation Pro Bono Project hosted a free walk-in legal advice clinic on all topics at the Main Library in Baton Rouge.

Tuesday, October 23, 2012

▶ Construction Law CLE. For many residents in Louisiana, working with a contractor and completing home repairs are essential parts of life following storms and flooding. To encourage pro bono assistance in these matters, The Pro Bono Project in New Orleans organized a one-hour CLE on construction law presented and hosted by Krebs, Farley & Pelleteri, P.L.L.C..

▶ Self-Help Resource Center. The Baton Rouge Bar Foundation Pro Bono Project hosted a Pro Se Help Desk specifically for family matters at the East Baton Rouge Parish Family Court.

Wednesday, October 24, 2012

▶ Title Clearing Project, Small Successions CLE. The Pro Bono Project in New Orleans organized a one-hour CLE on simple succession procedures for attorneys interested in helping residents to clear title to their properties and maintain homeownership. The CLE was presented by attorney Chris Coty of the Pro Bono Project and hosted by Jones Walker, L.L.P.

▶ Thirst for Justice. A free walk-in legal advice clinic was held at St. Vincent de Paul in Baton Rouge. The clinic covered all topics.

▶ Free Bankruptcy Seminar. Arthur Vingiello and Gary McKenzie of Steffes, Vingiello & McKenzie presented a free seminar in Baton Rouge on the fundamentals of bankruptcy (“Bankruptcy and Bolts”) to attorneys who accept two pro bono bankruptcy cases.

Statewide Day of Service Thursday, October 25, 2012

▶ Lake Charles Advice Clinics. Southwest Louisiana Legal Services will conduct free legal advice clinics at the Calcasieu Parish public libraries throughout the fall and will provide free notarial services through the Salvation Army.

▶ Assisting Our Elders: Wills and Power of Attorney Clinic. The Central Louisiana Pro Bono Project hosted a free Wills and Power of Attorney Clinic at the Rapides Parish Main Library in Alexandria.

▶ BP/Deepwater Horizon Claims Clinic. As part of the statewide pro bono day of service, The Pro Bono Project in New Orleans organized a legal clinic to provide assistance with BP/DWH claims. This clinic is being held in partnership with St. Peter Claver Catholic Church in New Orleans and staffed by the Pro Bono Project and attorney volunteers.

▶ Self-Help Resource Center. The Baton Rouge Bar Foundation Pro Bono Project hosted a Pro Se Help Desk specifically for family matters at the East Baton Rouge Parish Family Court.

▶ Thirst for Justice. A free walk-in legal advice clinic was held at St. Vincent de Paul in Baton Rouge. The clinic covered all topics.

▶ Preserving Homeownership CLE. Louisiana Appleseed, the Pro Bono Project in New Orleans and Southeast Louisiana Legal Services organized a three-hour CLE on heir property and clear title. Participants learned the law and issues that affect low-income clients so they can provide pro bono services in their communities.

Friday, October 26, 2012

▶ Celebrate Pro Bono: Go Casual for Pro Bono Fundraising Event. The Baton Rouge Bar Association teamed up with law firms in the area for its “Go Casual for Pro Bono” event. Participating attorneys and law firms held a “casual Friday dress” day. In exchange for a donation to the Baton Rouge Bar Foundation Pro Bono Project, attorneys and support staff were allowed to wear casual dress to the office.

▶ BP/Deepwater Horizon Claims CLE. The Pro Bono Project in New Orleans organized a one-hour CLE on the BP/DWH claims process, presented by Sean Sullivan with the Pro Bono Project.

▶ Jim Ortego Pro Bono Award Ceremony. Southwest Louisiana Legal Services presented the Jim Ortego Pro Bono Award at the Fall Court Ceremony at the 14th Judicial District Courthouse.

▶ Monroe Pro Bono Hosts Awards Luncheon. Legal Services of North Louisiana, Inc. Pro Bono Project (Monroe branch) conducted its annual Pro Bono Awards Day luncheon for its attorney volunteers.

▶ Northshore Pro Bono Awards Luncheon. The North Shore Pro Bono Project of Southeast Louisiana Legal Services presented its annual awards luncheon. Judge Reginald T. Badeaux III was the guest speaker.

Saturday, Oct. 27, 2012

▶ Wills for Heroes. The Louisiana State Bar Association’s Young Lawyers Division, in cooperation with the Baton Rouge Bar Association, sponsored a Wills for Heroes event for the Louisiana State Police Troop A.

Other Activities and Events

▶ The Central Louisiana Pro Bono Project reported that a digital billboard ran an appreciation ad for pro bono attorney volunteers on Tuesday, Wednesday and Thursday during the week. An appreciation ad also was placed in the local newspaper naming and thanking pro bono attorneys who accepted cases in 2011-12.

▶ The North Shore Pro Bono Project of Southeast Louisiana Legal Services held a free “Ask a Lawyer” day on Friday, Oct. 5, at the Covington Branch of the St. Tammany Parish Library.

▶ Southwest Louisiana Legal Services contacted the mayor about declaring “Pro Bono Week” for Lake Charles.

▶ The Pro Bono Project in New Orleans secured proclamations for Pro Bono Week from New Orleans Mayor Mitch Landrieu and Jefferson Parish President John Young.

For a complete list of events, visit www.lsba.org/celebrateprobono

Successful Suit Up Legal Internship Program Ends with Students' Oral Arguments

By Abigail Hanemann

The Louisiana State Bar Association (LSBA) and the Just the Beginning Foundation (JTBF) successfully hosted the "Suit Up for the Future" High School Summer Legal Institute and Internship Program for 14 high school students. From June 11-29, the students broadened their view of the legal profession and learned the "ins and outs" of what it takes to be an attorney. Throughout the program, the students shadowed attorneys, learned law school lessons, met judges, and even shook hands with a few celebrities.

Judge Max N. Tobias, Jr., with Louisiana's 4th Circuit Court of Appeal, explained why the program is so important. "How can you know what you want to do if you don't know what you don't want to do? The Suit Up program gives high school students real-life exposure to what the law is and what lawyers and judges do in order to be able to make an informed decision about what he or she wants to do to make a living."

The program's goal is to expose the students to the law and to different people who practice law or use the law in their current fields of work.

The students observed the usefulness of a law degree and the many different paths they could take by attaining one. Throughout the program, the students were addressed by attorneys, businessmen and women who utilized their law degree to achieve success. These inspirational individuals had unique and often challenging paths to becoming attorneys.

"The high school institute was a great experience for the students and for me," said speaker Karl J. Connor, government affairs director for BP America, Inc. "It was great



Louisiana State Bar Association President-Elect Richard K. Leefe, left, spoke to students on the final day of the "Suit Up" program. Among those judging the oral arguments were, from left, Judge Max N. Tobias, Jr., Judge Tiffany Gautier Chase and Judge Marc E. Johnson. Photo by LSBA staff.

to see such bright and inquisitive minds from such a geographical, racial and gender diverse group. This program must continue. It promotes all that is great about the LSBA."

As week one of "Suit Up for the Future" began, students were greeted by Magistrate Judge Karen Wells Roby (United States District Court, Eastern District of Louisiana) and Tulane Law School Professors Amy Gadja and Janet Hoeffel. Judge Roby introduced the students to the commitment and passion one must have to be an attorney or a judge. "As a law student, lawyer or judge, you need to have a heart for the truth, a passion for fairness, the desire to get it right and the work ethic to follow through," Judge Roby emphasized.

Professor Gadja presented "The Land of Law School," a broad overview of topics the students could expect to learn in law school, such as the different types of torts. Professor Hoeffel discussed criminal procedure and presented several cases regarding the ways of the criminal justice system and the constitutionality of the law. As a gift, Professor Hoeffel brought copies

of federal and state criminal procedure books for students who wanted to further their legal knowledge.

Week one was not all sitting and listening for the students. During the first week of the internship, the *Baldwin v. Costner* trial was occurring in the Eastern District federal courthouse. The students were able to view the court proceeding, listen to the examination of witnesses, and truly grasp the art of legal oral argument while in the presence of two Hollywood stars: Kevin Costner and Stephen Baldwin. The students were delighted as Costner took time to speak to some of them on a break.

As week two kicked off, the students were assigned to write a memorandum on a motion to change venue, which they would then be required to present as an oral argument on the last day of the program. Law school students and JTBF interns of Judge Roby—Mayur Patel¹ and Nandini Kavuri²—were assigned to guide the students with their memoranda. The students were later invited to view oral arguments at the Louisiana 4th Circuit Court of Appeal in civil and criminal

Continued on page 224

Is the MSP Act PUZZLING?



... let us help put the **PIECES TOGETHER**

DATE: December 12, 2012

TIME: 8:00 am

LOCATION: Noland/Laborde Room

The Cook Hotel and Conference Center at LSU
3838 West Lakeshore Drive, Baton Rouge, LA

COST: \$35.00 a person

Seating is limited ~ 6 hours of CLE and CE credit

TOPICS

- Timeline of a Medicare-Involved Case (Dealing with CMS, COBC, and MSPRC)
- State and Federal Liens, Rights of Reimbursement and Subrogation
- Medicare Secondary Payer Act – Best Practices for Plaintiffs and Defendants
- Myths and Legends of the MSP Act (Q & A)



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The Louisiana State Bar Association and the Just the Beginning Foundation successfully hosted the “Suit Up for the Future” High School Summer Legal Institute and Internship Program for 14 high school students. The students are joined by judges and other organizers on the final day of the program. *Photo by LSBA staff.*

Suit Up continued from page 222

appellate cases presided by Judge Edwin A. Lombard, Judge Max N. Tobias, Jr. and Judge Dennis R. Bagneris, Sr. The students listened intently to the cases and questions of the judges and attorneys, and afterwards dined with Judge Tobias and Judge Lombard in the judges’ lunchroom. The students were given the opportunity to ask Judge Tobias questions about the law and about his journey in becoming an appellate judge.

Later that week, the students began shadowing attorneys of several different areas of the law. Some students were assigned to private practices, while others were sent to public entities. The shadowing exercise drew positive feedback not only from the students, but from the attorneys as well.

In the third and final week of the program, the students visited the Orleans Parish Criminal District Court, where they witnessed arraignments, motions and several trials. They met with Orleans Parish District Attorney Leon A. Cannizzaro, Jr., who shared his legal philosophy and his passionate belief in the law. In this, the students were given a completely different perspective of the legal field. Between their exposure to criminal cases and their personal interaction with the district attorney, the students gained stirring new insight into the reality of criminal law.

On their final day, the students presented their oral arguments on their memoranda in front of a panel of judges: Judge Max N. Tobias, Jr., Louisiana 4th Circuit



Jenny Wang, left, a 12th grader at Baton Rouge High School, received “Best Brief” recognition. Journee Berry, right, a 12th grader at St. Mary’s Dominican High School, won the top prize in a judged decision regarding her oral argument. With them is Magistrate Judge Karen Wells Roby. *Photo by LSBA staff.*

Court of Appeal; Judge Marc E. Johnson, Louisiana 5th Circuit Court of Appeal; Judge Tiffany Gautier Chase, Orleans Parish Civil District Court; Judge Karen Wells Roby, United States District Court, Eastern District of Louisiana; and Judge Regina Harris Bartholomew, Orleans Parish Civil District Court.

Several awards were presented based on performances. Jenny Wang, a 12th grader at Baton Rouge High School, received “Best Brief” recognition. Journee Berry, a 12th grader at St. Mary’s Dominican High School, won the top prize in a judged decision regarding her oral argument. Ashley Ramirez, an 11th grader at Northshore High School, was recognized as Best Brief runner-up. Calli Farrell, an 11th grader at Haynes Academy, and Abigail Hanemann, a 12th grader at St. Mary’s Dominican High School, were recognized as Best Oralists runners-up.

After all the hard work and enriching experiences, the students concluded the program with a certificate of completion and a souvenir photo of the experience that opened the door to the path of justice.

The LSBA and the JTBF acknowledged the attorneys and entities who provided funding to allow the student participants to receive \$250 stipends for their efforts: Val P. Exnicios, Liska, Exnicios & Nungesser; Marcus R. Patillo, Patillo Law Firm; LSBA Alternative Dispute Resolution Section; LSBA Antitrust and Trade Regulation Section; LSBA Civil Law and Litigation Section; LSBA Class Action Section; LSBA Government and Public Law Section; and LSBA Trust, Estates, Probate and Immovable Property Law Section.

FOOTNOTES

1. Mayur Patel is a rising third-year law student at West Virginia University College of Law who also served as a summer extern for 10 weeks with U.S. Magistrate Judge Karen Wells Roby.

2. Nandini Kavuri is a rising second-year law student at the University of Houston Law Center who served as a summer extern for 10 weeks with U.S. Magistrate Judge Karen Wells Roby.

Abigail Hanemann, a 2012 “Suit Up for the Future” program participant, is a senior at St. Mary’s Dominican High School in New Orleans this year.



Year of the SOLO

By Shawn L. Holahan

LEGAL TECHNOLOGY DECISIONS

Editor's Note: Louisiana State Bar Association President John H. Musser IV—a solo practitioner himself—has designated his term in office as “The Year of the Solo.” The Louisiana Bar Journal will offer articles in each issue touching on various aspects of the solo practitioner’s daily practice. If you want a specific topic addressed email LSBA Secretary Edward J. Walters, Jr., walters@lawbr.net.

The right legal technology can help level the playing field for the solo and small office practitioner. However, one size doesn’t fit all, and it’s not “one call, that’s all.”

Appropriate legal technology choices should take into consideration your type of practice, your existing equipment, and whether you have staff, among other things. Do you need a tech overhaul because your equipment is obsolete, or do you merely want to augment what you currently have? How do you find out what’s right for you?

The good news is that easily understood legal tech information is available — for free. Online resources are just a click away.

Candid, Product-Specific Reviews

Avail yourself of candid, product-specific reviews by tech-able, practicing lawyers, nationwide and locally, who have vetted tech solutions in their blogs.

Examples of excellent lawyer blogs with product reviews are:

► *Above and Beyond* by Mary Abraham, <http://aboveandbeyondkm.com/>

► *Future Lawyer* by Richard Georges, <http://www.futurelawyer.com/>

► *Law Practice Tips Blog* by Jim Calloway, with the Oklahoma State Bar Association and a speaker at one of the LSBA’s Solo and Small Firm Conferences, http://jimcalloway.typepad.com/lawpracticetips/law_office_hardware_software/

► *Lawyerist.com* by Sam Glover and Aaron Street (with 12 regularly contributing writers), <http://lawyerist.com/tech/>

For other lawyer blog examples, check the American Bar Association’s (ABA) *Law Practice TODAY*’s website, http://www.americanbar.org/publications/law_practice_today_home/law_practice_today_archive/july11/7_great_legal_technology_law_blogs.html.

ABA’s Legal Resource Technology Center

Go online to the ABA’s Legal Resource Technology Center (LRTC) for many excellent free resources (ABA membership is not required). Of particular note is the LRTC’s extensive comparison chart of the latest legal technology products: case management systems, time and billing products, litigation support and blog or website providers.

The ABA’s LRTC staff regularly writes about technology topics for other bar associations, publications and organizations. The free LRTC online resources, including the comparison charts, can be found at: http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fjis.html.

Access a Podcast

Hear podcasts from the ABA’s *The Digital Edge: Lawyers and Technology*, featuring practitioners who offer their views and critiques on products and tech strategies. Find the podcasts at: <http://feeds.feedburner.com/TheDigitalEdgeLawyersAndTechnology>.

Like Real Books? Get a Discount on This One!

An excellent resource, in softbound book form, is the yearly *Solo and Small Firm Legal Technology Guide: Critical Decision Made Simple* by Sharon D. Nelson, John W. Simek and Michael C. Maschke. (Nelson and Simek will be

featured speakers at the LSBA’s next Solo and Small Firm Conference Feb. 14-15, 2013, at the New Orleans Marriott).

This annual guide is the only one of its kind, written to assist the small office practitioner find the best tech for the dollar. You’ll find the most current information and recommendations on computers, servers, networking equipment, legal software, cloud computing, printers, security products, smartphones, the iPad and anything else a lawyer might need. The authors also provide step-by-step instructions for making sound tech decisions.

This book is worth a look. You have a couple of options:

► Borrow a copy from the LSBA’s Lending Library. To access the library, go to: http://www.lsba.org/MemberServices/lpm-lending_library.asp.

► If you want to purchase a copy, the LSBA is offering the book at a favorable discounted rate. To obtain a copy of the 2012 guide at the discounted rate of \$50 (regularly sells for \$90), call Kristy Nunez at (504)619-0138.

Ask Your Colleagues

Finally, tech advice also can come from your fellow practitioners. Find others whose practices are like yours and compare notes. Attend the LSBA’s technology seminars and, in particular, the Solo and Small Firm Conference, which feature technology speakers and offer important networking opportunities to discuss technology decisions with your fellow practitioners.

Louisiana State Bar Association’s Practice Management Counsel Shawn L. Holahan was appointed to the Publications Board of the ABA’s Law Practice Management Section and elected as secretary of the ABA’s Practice Management Group of North America. She can be contacted via email at shawn.holahan@lsba.org.



LAWYERS Give Back

RONALD C. RICHARD

When the Oak Park Food Pantry in Lake Charles was literally one week from being completely out of food, attorney Ronald C. Richard did what he has always done: He marshaled community resources, tapped his colleagues for assistance and collected enough food to sustain the pantry for a year!

Richard said his strong community activism comes from a solid foundation. “My mother and my church drilled into me the old adage, ‘To whom much is given, much is required.’ I feel compelled to return the blessings that have been bestowed on me. It is essential to a complete life,” he said.

Currently serving as co-chair of the Louisiana State Bar Association/Louisiana Bar Foundation’s Community Action Committee, Richard returns his blessings often, working with many causes in his community.

He is committed to long-term assistance to the Oak Park Food Pantry and also works with a Chik-Fil-A program to collect food donations every spring as part of the Fill-the-Truck Campaign.

Richard is a 2012 sponsor for Harbour House; a 2012 sponsor to Art on Wheels; a multiple-year sponsor of the Southwest Louisiana Martin Luther King, Jr. Celebration and Prayer Breakfast; a grand marshal of the 2012 Lake Charles Martin Luther King, Jr. Parade; an annual sponsor and judge of the Southwest Louisiana Juneteenth Festival; a sponsor of the National Association of Mental Illness fundraiser in Southwest Louisiana; a sponsor of the Calcasieu Literacy Council; a sponsor of Pentecostal Youth Camp; a speaker at educational events for various churches; and numerous other activities.

While assisting those who are most in need of help is the most gratifying benefit of a life of community service, Richard



Lake Charles attorney Ronald C. Richard, working the dolly, marshaled community resources and tapped his colleagues for assistance to collect donations to a local food pantry. Photo provided by Ronald C. Richard.

said there are several benefits.

“The feeling of goodness and completion of the soul that comes from giving back, I believe, truly makes us better lawyers,” he said. “Sometimes, the public views our blessings as either unearned or they see us as unappreciative” of the success. “They need to see us being thankful for our gifted position in society and evidencing that thankfulness by giving back to the community.”

Richard’s advice to his colleagues is very straightforward. “GET INVOLVED. Donate to every cause you can, even if it’s just a small amount. People need to see lawyers giving. Support your church’s youth group. Support the school band. Support projects that perhaps lawyers rarely support (such as a church barbecue),” he said.

“But, most importantly,” he said, “involve your family in your community efforts. The public should see you, your spouse and your children involved in these efforts together. It is not only good for your family but it also humanizes us to the public and increases our non-legal interaction with them.”

Remember, “the family you helped during that hurricane . . . they just may send you the case of your life. You never know from whence the next blessing will come. Why not do some blessing in the meantime!”

Richard is managing member of Richard Law Firm, L.L.C., in Lake Charles. He is the senior attorney and manager of an eight-person staff. He received a BA degree in history from the University of Houston and his JD degree from Louisiana State University Paul M. Hebert Law Center. He is currently a member of the American, 5th Circuit and Southwest Louisiana bar associations. He also is a member of the North American Wild Turkey Federation, the Louisiana Wildlife Federation and other organizations.

Louisiana State Bar Association members throughout the state give back to their communities in many ways and for a variety of reasons. Some take on pro bono cases, some volunteer to raise money for disease cures, some build houses and offer nourishment for the needy — and most never seek public recognition for their contributions. The Louisiana Bar Journal wants to acknowledge the work of these outstanding community servants. If you know someone who should be recognized, contact LSBA Publications Coordinator Darlene M. LaBranche, email dlabranche@lsba.org or call (504)619-0112 or (800)421-5722, ext. 112.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

COMPASSION FATIGUE

Litigation can be extremely stressful for all involved, especially in high-conflict cases involving domestic and criminal matters. To protect our own emotional well-being in the midst of the trauma and chaos encountered in high-stress areas of the law, it is fair to say that both attorneys and judges quickly realize they must strive for professional objectivity lest they become emotionally entangled in the cases. But scientific research now indicates that simply deciding to remain objective may not be effective and that our natural empathetic responses may overpower our intellectual efforts to maintain objectivity. The result can be Compassion Fatigue (CF), a specific type of emotional burnout that can happen to anyone at any age and cause debilitating symptoms.

One of the first studies about CF's impact on lawyers was conducted in 2003 by Andrew Levin, M.D., at New York Medical College, Valhalla, NY. He focused on attorneys handling domestic violence and criminal cases: "The attorneys demonstrated higher levels of intrusive recollection of trauma material, avoidance of reminders of the material and diminished pleasure and interest in activities, and difficulties with sleep, irritability and concentration." Although not included in Levin's study, it is common-sensical that domestic and criminal court judges who are exposed to traumatic evidence day after day are at equal, if not even greater, risk for CF.

During Dr. Levin's study, one attorney responded: "It actually feels good to hear that I am not the only one who feels depressed and helpless and that these issues are worth studying. Fortunately, the stress has decreased with experience and time for me, but I still have vivid memories of quite traumatic experiences representing victims of domestic violence who were so betrayed that it was difficult to continue to have faith in humankind."

Lawyers Assistance Program, Inc. (LAP)

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334
Email: lap@louisianalap.com

Lawyers and judges who are routinely exposed to traumatic evidence and distraught clients are often able to instantly recall, even after years have passed, how painful a particular case was, not only for the clients, but for everyone involved. Why, despite our best efforts to remain professionally detached, are we so profoundly affected by certain cases and for such a long time?

The answer may lie in relatively new research surrounding empathy and the role of the brain's mirror neurons. Giacomo Rizzolatti, an Italian neurophysiologist at the University of Parma, discovered an interesting phenomenon by accident: a macaque monkey's recorded brain waves respond identically whether the monkey picks up an object or the monkey sees a scientist pick up the same object. The premise is that when we review evidence and empathize, or actually observe behavior, our mirror neurons can spark as if we are actually experiencing the event rather than just observing it. Whether strong sensations during a suspenseful football game or a chill down the spine by seeing someone mishandling a sharp knife, we have all experienced our own mirror neurons at work.

What can we do to deal with the residual impact of empathy-driven stress while practicing law and being continually exposed to traumatic evidence and clients in distress? A great place to start is at the American Bar Association's website section for the Commission on Lawyers Assistance Programs. There you will find a webpage on the subject of Compassion Fatigue.¹

Some of the warning signs of CF include: excessive workloads that encroach

on personal time; feeling exhausted all the time; nightmares; becoming pessimistic, irritable and losing faith in humanity; alienating from others; and becoming generally unhappy, unproductive and no longer on top of your game.

Awareness is the first step in fighting CF. Dealing with the negative emotions that CF is causing is paramount. It is important not to "stuff" your feelings. Find a way to debrief traumatic cases with another practitioner who understands and is supportive to help you process how you were affected by the case. Also, exercise, good sleep habits and general self-care are important. Maintaining balance between work and personal life and learning how to say "no" when you are already overloaded also are good practices. If need be, a therapist can be very beneficial in the fight against CF. As set forth on the ABA's CF webpage, when it comes to CF, you should stop thinking "I should be able to do this by myself" and start thinking "I don't have to do it all by myself."

Those who practice domestic and criminal law must remain especially vigilant against CF. If you feel overwhelmed, burned out, and you or someone you know could use help regarding Compassion Fatigue, contact the Lawyers Assistance Program at (866)354-9334, email lap@louisianalap.com, or visit LAP online at www.louisianalap.com. Your call is confidential as a matter of law and you do not have to give your name.

FOOTNOTE

1. www.americanbar.org/groups/lawyer_assistance/resources/compassion_fatigue.html.

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



12th Annual Class Action/ Complex Litigation Symposium

Co-Sponsored by the Louisiana State Bar Association's Insurance, Tort, Workers' Comp & Admiralty Section

FRIDAY, NOVEMBER 30, 2012

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Today's complex litigation landscape presents huge challenges for lawyers, litigants, and our courts. The stakes are high for those on either side of the "V". **RICHARD J. ARSENAULT**, seminar chair, brings together national speakers and leaders from both sides of the complex litigation bar, and members of the judiciary, to explain critical developments in federal/state relations and important MDL trends. Other topics include the consumer claim angle, new frontiers for electronically stored information, the role and scope of Special Masters, and complex construction litigation, just to name a few. A dynamic panel from the bench and bar will give their perspective on professionalism in complex litigation, while speakers from around the country share innovative strategies to meet the legal challenges of complex litigation.

TOPICS DESIGNED FOR THE CLASS ACTION/COMPLEX LITIGATION PRACTITIONER

- ▶ Consumer Claim Angle on Mass Tort Litigation
- ▶ Artificial Intelligence, Predictive Coding, Concept Searching and New Frontiers for Electronically Stored Information
- ▶ Aggregate Settlements (Connecting the Ethical Dots)
- ▶ Where's the Fifth Circuit on *Daubert*?
- ▶ The Increasing Roles and Scope of Special Masters in Complex Litigation
- ▶ Complex Litigation Collides with the Media: Damage Control
- ▶ The Game Changer: How to Try and Defend the Bellwether Case
- ▶ Big Business: Too Big to Fail, Too Big to Regulate (and the Litigation Implications)
- ▶ Federal/State Relations: Peacefully Co-Existing in Parallel Universes (The Tension between the All Writs Act and the Anti-Injunction Act)
- ▶ Complex Construction Litigation (Deconstructing Myths)
- ▶ Important MDL Trends; What, When and Why to Argue
- ▶ Professionalism in the Complex Litigation Landscape: Perspectives from the Bench and Bar

SPEAKERS INCLUDE

- ▶ Hon. Eldon A. Fallon ▶ Former Magistrate Ronald J. Hedges ▶ Hon. Ed Kinkeade ▶ Magistrate Andrew J. Peck
- ▶ Hon. James M. Stanton, Former State District Judge ▶ Hon. Sarah A. Vance
- ▶ Richard J. Arsenault, Seminar Chair ▶ William Audet ▶ John Beisner ▶ Rich Bernardo ▶ Timothy J. Becker
- ▶ Larry P. Boyd ▶ Daniel K. Bryson ▶ Mark Burton, Jr. ▶ John Climaco ▶ Nicholas Drakulich ▶ Amy Eskin
- ▶ Adam L. Hoeflich ▶ Jennifer Hoekstra ▶ Eric D. Holland ▶ Michael K. Johnson ▶ Adam J. Levitt
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- ▶ **Complex Litigation Collides with the Media: Damage Control**

• Mark Geragos, Los Angeles, CA

- ▶ **The Game Changer: How to Try and Defend the Bellwether Case**

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What I see daily from my clients is, far too often, they allow life to control them instead of them taking control of their life. Anyone trying to balance an extremely hectic work and home schedule knows that, over time, it will wear you down. As I heard a respected neurologist say, the human brain is simply not built for our 24-hour lifestyle and the constant barrage of information that comes with it. One of the first things that happens to our body is a continuous draining of energy. Over time, that constant draining of energy turns into a potentially dangerous loss of passion for life.

This is a significant topic for many in the legal profession. As life becomes busier and complicated, you tend to forget what it feels like to feel good or to have energy. Big and small things that used to be fun and enjoyable are often viewed as another “to do” on a long list of tasks. Before you even try to make positive changes to your life, I tell clients they are setting themselves up for failure unless they get down to basics and find their passion for life again.

When I say passion, what does that mean? Simply put, passion is a life force, the internal combustion engine that sparks the fire within you. Attaining what we want in life is almost never easy, nor meant to be. We are conditioned from birth to follow the maxim “you get what you work for,” and our brains are likely genetically programmed that way as well. We are inclined to work at whatever we like to do or what we do best. We are expected to be productive, and that is all for the good. But those who succeed welcome a challenge for the satisfaction of reaching a goal. Passion is free for the taking, but it must be nurtured and maintained. Passion does not run on autopilot. It thrives on self-awareness and effort. Only then does passion become the energy that moves you forward.

Part of restoring that passion is to

“Passion is free for the taking, but it must be nurtured and maintained. Passion does not run on autopilot. It thrives on self-awareness and effort...”

--Mackie Shilstone

determine how you view life and how you approach goals you set for yourself. Ask yourself: “When there is a challenge or goal in front of me, do I tackle it saying ‘failure is not an option’ or do I seem to dwell on how hard the challenge may be?” Your approach says a lot about how you tackle life. By no means do you always have to achieve every goal, but it does mean that approaching it positively sets the tone for the expectation of success. That is a great way to rev up the passion for life.

To begin, I recommend gauging your attitude to get a better understanding of your view of life. There is a simple self-test you can take to give you a starting point. Using a scale of *never, sometimes or always*, ask yourself the following questions:

- ▶ Do I let others’ opinions influence the goals I set and affect the confidence I have in my ability to reach them?
- ▶ Do I thoroughly evaluate my current situation before I set a goal?
- ▶ When I set goals, do I know what I want to accomplish over the long term?
- ▶ Do I have a clear vision of where I want to end up when I achieve my goal?

▶ Do I strive for goals in realistic, incremental steps?

▶ Do I feel relaxed and clear-headed when I think about goals?

▶ Do I get intimidated by the process I may have to go through to achieve my goals?

Your answer to these questions should provide good insight into how passionate you are in life and your ability to reach goals you set. It can help determine if the goals you are setting are the right goals for you. It may even encourage you to get down into the basics of what you want out of life to start on a fresh course. Remember, sometimes we must shake our foundations to stand on solid ground.

So, the take-away is this — to find your passion and rekindle your ability to improve your life and successfully achieve goals, do an honest assessment of where you are. Surround yourself with friends and family who can be positive influences and give sound advice you can build on. Visit your primary care physician to get a clear picture of your overall health. Build your life around things you enjoy, and that will better prepare you to cope with the stresses of life. In basic terms, rebuild a strong foundation and passion and success should follow.

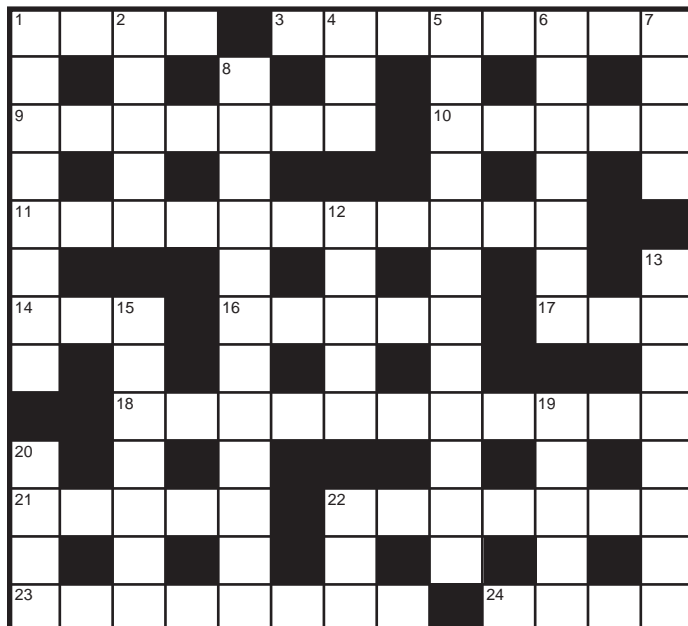
Mackie Shilstone is executive director of the Fitness Principle at East Jefferson General Hospital. He can be reached at (504)457-3100. For more information on his Executive Wellness Institute, visit www.ejgh.org/thefitnessprinciple.



Crossword PUZZLE

By Hal Odom, Jr.

GENERAL DEFENSES



ACROSS

- 1 Civil wrong (4)
- 3 Tort victim has a duty to do this, vis-à-vis damages (8)
- 9 *Pro se* criminal defendants often need this kind of counsel (7)
- 10 South American mountains (5)
- 11 Kind of fault that supplanted contributory negligence (11)
- 14 Distress signal (1, 1, 1)
- 16 Shore of 1950s TV (5)
- 17 Educational inst. in Hammond (1,1, 1)
- 18 Kind of injury for which tortfeasor may not have to pay (3-8)
- 21 Good reaction to a bad pun (5)
- 22 Island on which U.S. Marines famously raised the flag in 1945 (3, 4)
- 23 Type of analysis used to find liability for 1 Across (4-4)
- 24 TV award (4)

DOWN

- 1 Suit brought to determine an unsettled legal issue of public interest (4, 4)
- 2 Coin of the ___ (5)
- 4 Certain league in the Northeast U.S. (3)
- 5 Having a sudden difficulty; lacking sufficient space (2, 1, 5, 4)
- 6 Ursula of "Dr. No" (7)
- 7 ___ of association is part of 23 Across (4)
- 8 He discovered the smallpox vaccine (6, 6)
- 12 Append (5)
- 13 Unauthorized entry with intent to commit felony or any theft (8)
- 15 Opposite of oppose (7)
- 19 Figure of speech (5)
- 20 Ripened (4)
- 22 1040 org. (1, 1, 1)

Answers on page 268.

Alcohol and Drug Abuse Hotline

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

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| | | | |
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| Baton Rouge | Steven Adams.....(225)753-1365 (225)924-1510 | Monroe | Robert A. Lee....(318)387-3872, (318)388-4472 |
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| | John A. Gutierrez.....(225)715-5438 (225)744-3555 | | Donald Massey.....(504)585-0290 |
| Houma | Bill Leary.....(985)868-4826 | | Dian Tooley.....(504)861-5682 (504)831-1838 |
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| | | | Steve Thomas.....(318)872-6250 |

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150+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 13th consecutive year, the Louisiana State Bar Association's (LSBA) Committee on the Profession 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 John H. Musser IV led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included LSBA President-Elect Richard K. Leefe; Louisiana Supreme Court Justice Greg G. Guidry and Justice John L. Weimer III; and LSBA Committee on the Profession Chair Barry H. Grodsky.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Vice Chancellor Gregory Smith, Loyola University College of Law Dean Maria Pabon Lopez, Southern University Law Center Chancellor Freddie Pitcher, Jr. and Tulane Law School Dean David Meyer.

Following the opening remarks, the law students were divided into smaller groups, where they discussed various ethics and 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 staffs of the law schools have been accommodating in assisting with the logistical challenges of putting this program together.

Attorneys and judges volunteering their services this year were:



Louisiana State Bar Association President John H. Musser IV addressed the first-year students participating in the professionalism orientation at Louisiana State University Paul M. Hebert Law Center. *Photo by LSBA Staff.*

Louisiana State University Paul M. Hebert Law Center

| | | |
|-------------------------|--------------------------|----------------------------|
| Bradley Aldrich | Orlando N. Hamilton, Jr. | Hon. Pamela Moses-Laramore |
| Russell W. Beall | David M. Hansen | Frank X. Neuner, Jr. |
| Leila P. Braswell | Holly G. Hansen | Tammy P. Northrup |
| Robert J. Burns, Jr. | Michael E. Holoway | David H. Ogwyn |
| Hon. Marilyn C. Castle | Bernadine Johnson | Michael A. Patterson |
| Stephen F. Chiccarelli | James Eric Johnson | Charles B. Plattsmier |
| Brian L. Coody | Frederick D. Jones | Sera H. Russell III |
| Jeffrey K. Coreil | Hon. Charles W. Kelly IV | Gary J. Russo |
| Hon. John D. Crigler | R. Loren Kleinpeter | Robert E. Shadoin |
| Hon. Laura P. Davis | Paulette P. LaBostrie | Joseph L. Shea, Jr. |
| S. Guy deLaup | Christine Lipsey | Azelie Z. Shelby |
| Hon. Glennon P. Everett | Timothy A. Maragos | Brandon O. Wallace |
| L. Paul Foreman | William T. McCall | Michael S. Walsh |
| John M. Frazier | Gregory J. McDonald | Thomas Womack |
| Stephen W. Glusman | Hon. Milton Moore III | John David Ziober |
| Aaron L. Green | Gregory K. Moroux | |
| Barry H. Grodsky | Gregory K. Moroux, Jr. | |
| John Clay Hamilton | Hon. William A. Morvant | Continued next page |



Loyola University College of Law first-year students participated in the professionalism orientation's breakout sessions facilitated by attorneys and judges. *Photo by LSBA Staff.*

Loyola University College of Law

Gregory C. Bachaud
 Hon. Regina H. Bartholomew
 Kay B. Baxter
 Hon. Paul A. Bonin
 Charles N. Branton
 Hon. Camille G. Buras
 Ariel A. Campos, Sr.
 Hon. Susan M. Chehardy
 Sandra K. Cosby
 Darryl J. Foster
 Monique M. Garsaud
 Barry H. Grodsky
 Hon. John C. Grout, Jr. (Ret.)
 Hon. Carolyn W. Jefferson (Ret.)
 Robert A. Kutcher
 Monique M. Lafontaine

Richard K. Leefe
 James H. Looney
 Hon. Juana Marine-Lombard
 John E. McAuliffe, Jr.
 Gregory J. McDonald
 Lorraine P. McInnis
 Emily S. Morrison
 Francis B. Mulhall
 Brad Newchurch
 Hon. Allison H. Penzato
 Dayal Reddy
 Doris A. Royce
 Michele M. Smith
 Hon. Raymond S. Steib, Jr.
 Tina Suggs
 Barbara M. Weller

Southern University Law Center

Troy N. Bell
 Virginia G. Benoist
 Alfreda T. Bester
 Austin P. Clancy
 Jeffrey K. Cody
 Monique M. Edwards
 Douglas K. Foster
 Tiffany L. Foxworth
 Eugene G. Gouaux III
 Hon. Roxie F. Goynes
 Barry H. Grodsky
 Burton P. Guidry
 Hon. John M. Guidry
 Michael E. Holoway
 Frederick D. Jones
 Paulette P. LaBostrie
 Christine Lipsey
 Charlotte McDaniel McGehee
 Amy Lynn McInnis
 Alejandro Perkins
 Kathleen E. Petersen
 Joyce M. Plummer
 Hon. Suzan S. Ponder
 Cynthia Reed
 Tina Suggs
 Marsha Wade
 Tavares A. Walker
 Hon. Kirk A. Williams

Continued next page

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Speakers for the professionalism orientation at Southern University Law Center included, from left, Louisiana State Bar Association (LSBA) President-Elect Richard K. Leefe, Chancellor Freddie Pitcher, Jr., Associate Vice Chancellor for Records and Enrollment Management Elaine Simmons, Louisiana Supreme Court Associate Justice John L. Weimer III, LSBA Committee on the Profession Chair Barry H. Grodsky and Vice Chancellor Russell L. Jones. *Photo provided by Southern University Law Center.*

Tulane Law School

Mark E. Andrews
 Marie Breaux
 Hon. Jerry A. Brown
 Allison P. Burbank
 Christopher E. Carey
 Kevin Christensen
 Sandra K. Cosby
 Mickey S. deLaup
 S. Guy deLaup
 Bobby J. Delise
 Richard M. Exnicios
 Judith A. Gainsburgh
 Lauren E. Godshall
 Barry H. Grodsky
 Hon. John C. Grout, Jr. (Ret.)
 Michael E. Holoway

Robert A. Kutcher
 Andrea S. Lestelle
 Terrence J. Lestelle
 Lynn Luker
 Ernest R. Malone, Jr.
 Brian J. Munson
 John H. Musser V
 James R. Nieset, Jr.
 H. Philip Radecker, Jr.
 Ruth L. Ramsey
 Michael W. Rutledge
 Hon. Raymond S. Steib, Jr.
 Christopher R. Teske
 Hon. Max N. Tobias, Jr.
 Hon. Fredericka H. Wicker
 Rachel W. Wisdom



Tulane Law School first-year students filled the auditorium to hear professionalism orientation opening remarks before breaking out into smaller groups for further discussion on the topic. *Photo by LSBA Staff.*

Past Presidents Personally Promote Professionalism

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 Hon. Elizabeth Erny Foote
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The Louisiana State Bar Association would like to thank our gracious sponsor for supporting the Law School Professionalism Orientations.



SEND YOUR NEWS!

The *Louisiana Bar Journal* would like to publish news and photos of your activities and accomplishments.

Email your news items and photos to:
 LSBA Publications Coordinator
 Darlene LaBranche at
 dlabranche@lsba.org.

Or mail press releases to:
 Darlene LaBranche
 601 St. Charles Ave.
 New Orleans, LA 70130-3404

REPORT BY DISCIPLINARY COUNSEL

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

Decisions

Clovus Jackson Ashley II, Krotz Springs, (2012-B-1280) **Suspended for one year, fully deferred, subject to one-year period of supervised probation**, ordered by the court as consent discipline on June 13, 2012. JUDGMENT FINAL and EFFECTIVE on June 13, 2012. *Gist:* Neglecting his client's legal matter; and failing to communicate with his client.

Lewis B. Blanche, Owings Mill, Md., formerly of Baton Rouge, (2012-B-0552) **Suspended for three years, retroactive to the date of his Nov. 9, 2010, interim suspension**, ordered by the court on June 22, 2012. JUDGMENT FINAL and EFFECTIVE on July 6, 2012. *Gist:* Convicted of three drug- and alcohol-related criminal offenses; neglecting a legal matter; and failing to communicate with a client.

Sheridan Xavier Cooper, New Orleans, (2012-B-0599) **Suspended for two years and ordered to make restitution** ordered by the court on June 15, 2012. JUDGMENT FINAL and EFFECTIVE on June 29, 2012. *Gist:* Commingled client and third-party funds with her personal funds in her personal checking account and failed to pay \$6,400 owed to her clients' medical provider.

Kerwin W. Doyle, New Orleans, (2012-OB-1303) **Reinstated to the practice of law, subject to one-year period of supervised probation**, ordered by the Louisiana Supreme Court on June 20, 2012. JUDGMENT FINAL and EFFECTIVE on June 20, 2012.

Byrne W. Dyer III, Metairie, (2012-B-1412) **Public reprimand** ordered by the court as consent discipline on

June 27, 2012. JUDGMENT FINAL and EFFECTIVE on June 27, 2012. *Gist:* Neglected a legal matter; failed to communicate with his client; and failed to properly withdraw from the representation of the client.

Gregory Paul Hardy, St. Martinville, (2012-B-1164) **Eighteen-month suspension** ordered by the court as consent discipline on June 22, 2012. JUDGMENT FINAL and EFFECTIVE on June 22, 2012. *Gist:* Professional misconduct including

failure to refund unearned fees; and failure to cooperate in ODC's investigation.

Joseph F. LaHatte, Jr., New Orleans, (2012-OB-1060) **Permanent resignation in lieu of discipline** ordered by the court on June 15, 2012. JUDGMENT FINAL and EFFECTIVE on June 15, 2012. *Gist:* Engaged in the unauthorized practice of law after he was suspended; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Continued next page



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Judge, Ret.



Carey Guglielmo



Richard Hymel



Caprice Ieyoub Ph.D.



Thomas Juneau Sr.



Katherine Loos



Glen Scott Love



Andrew McGlathery



John McLindon
Arbitrator



Doug Moreau
Judge, Ret.



John Perry Jr.



Michael Ponder
Judge, Ret.



Bert Robinson
Arbitrator



Keely Scott



Emmett Sole



Myron Walker Jr.



Patrick Wartelle

New Orleans & Northshore



Robert Burns Sr.
Judge, Ret.



Pascal Calogero Jr.
Justice, Ret.



James Cobb, Jr.



James Dagate



Michael Helm



Richard Kingrea



A. J. Krouse



Donald Armand Jr.



Brian Crawford



Peggy Landry



Andrew Lemmon



Daniel Lund III



Christopher Moody



Michael Pulaski



David Shea



Brian Homza



Hodge O'Neal III



Chet Traylor
Justice, Ret.

North Louisiana

Elise Marybeth LaMartina, Mandeville, (2012-B-0892) **Probation revoked and the previously deferred one-year-and-one-day suspension imposed in the matter of *In re: LaMartina*, 10-0093 (La. 7/2/10), 38 So.3d 266, made immediately executory** ordered by the court on May 25, 2012. JUDGMENT FINAL and EFFECTIVE on May 25, 2012. *Gist*: Engaging in additional misconduct during a period of probation.

Kimuel W. Lee, Baton Rouge, (2011-B-2530) **Suspended for two years and ordered to submit to fee dispute arbitration** ordered by the court on April 13, 2012. Rehearing denied on May 25, 2012. JUDGMENT FINAL and EFFECTIVE on May 25, 2012. *Gist*: Failed to provide competent representation; charged and collected an excessive fee; failed to promptly remit funds to clients; and engaged in dishonest conduct.

Shiela Linscomb, Lafayette, (2012-B-0975) **Suspended for three years,**

retroactive to June 3, 2009, the date of her interim suspension, followed by two years' probation with conditions ordered by the court as consent discipline on June 15, 2012. JUDGMENT FINAL and EFFECTIVE on June 15, 2012. *Gist*: Failed to refund unearned fees in multiple client matters.

Mack H. McCraney, Hammond, (2012-B-0887) **Suspended for six months, fully deferred, subject to a two-year period of supervised probation with conditions**, ordered by the court as consent discipline on May 25, 2012. JUDGMENT FINAL and EFFECTIVE on May 25, 2012. *Gist*: Commingled personal funds with client funds in the trust account; issued trust account checks to pay personal expenses; and overdrafted the trust account.

Lynn Perkins Perez, Braithwaite, (2012-OB-1527) **Transfer to disability inactive status** ordered by the court on July 10, 2012. JUDGMENT FINAL and EFFECTIVE on July 10, 2012.

Kimberly Marie Richardson, New

Orleans, (2012-B-1213) **One-year-and-one-day suspension, fully deferred and conditioned upon a five-year period of supervised probation** ordered by the court on June 15, 2012, as consent discipline. JUDGMENT FINAL and EFFECTIVE on June 15, 2012. *Gist*: Signed the name of another lawyer as notary on two affidavits.

Derrick D.T. Shepherd, Marrero, (2011-B-2011) **Permanent disbarment** ordered by the court on June 22, 2012. JUDGMENT FINAL and EFFECTIVE on July 6, 2012. *Gist*: Convicted of conspiracy to commit money laundering, a felony under federal law; willingly entered into a money laundering scheme; and tried to disguise his misdeeds as legitimate legal work.

Stacey L. Thomas, New Roads, formerly of New Orleans and Baton Rouge, (2012-B-1129) **Suspended for six months (consent), fully deferred, subject to two years' unsupervised probation**, ordered by the court on June 22, 2012. JUDGMENT FINAL and EFFECTIVE on June 22, 2012. *Gist*: Mishandled a real estate closing.

Charles Gary Wainwright, New Orleans, (2012-B-1392) **Suspended for 18 months (consent), subject to conditions**, ordered by the court on June 29, 2012. JUDGMENT FINAL and EFFECTIVE on June 29, 2012. *Gist*: Neglected clients' legal matters; failed to communicate with clients; failed to return unearned fees; mishandled client funds; engaged in conduct intended to disrupt a tribunal; and engaged in the practice of law while ineligible to do so.

J. Courtney Wilson, Metairie, (2012-B-1028) **Public reprimand (consent)** ordered by the court on June 15, 2012. JUDGMENT FINAL and EFFECTIVE on June 15, 2012. *Gist*: Attempted to communicate directly with employees of the represented defendant without the permission of the defendant's attorney.

Kathleen M. Wilson, Baton Rouge, (2012-B-0579) **Suspended for one year and one day, fully deferred, subject to two years' supervised probation**, ordered by the court on June 15, 2012. JUDGMENT FINAL and EFFECTIVE on June 29, 2012. *Gist*: Failure to properly handle her client trust account; and failure to promptly pay third-party medical providers.

Elizabeth A. Alston

Counselor, advocate and expert witness

Practice limited to matters involving legal and judicial ethics

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JULIE BROWN WHITE

Former Prosecutor, Office of Disciplinary Counsel (1998-2006)
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DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Aug. 1, 2012.

| Respondent | Disposition | Date Filed | Docket No. |
|----------------------|--|------------|------------|
| John Salm Alford | [Reciprocal] Suspension. | 6/7/12 | 12-723 |
| Jeanne Marie Bourque | [Reciprocal] Disability inactive status. | 6/26/12 | 12-1320 |
| Craig T. Broussard | [Reciprocal] Suspension. | 6/26/12 | 12-1321 |
| Debra L. Cassibry | [Reciprocal] Interim suspension. | 6/26/12 | 12-1250 |
| Robert Leslie Graves | [Reciprocal] Permanent resignation. | 6/26/12 | 12-1248 |
| Edward Bissau Mendy | [Reciprocal] Suspension. | 6/26/12 | 12-1355 |

Discipline continued from page 236

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

No. of Violations

A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges

on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.....2

Claiming a specialty that does not exist.....1

Communicating with a represented party without authority to do so by law or a court order.....1

Failed to promptly remit the Medicaid funds in a timely fashion as he was obliged to do 1

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

Negligently permitted some of his own funds to remain in the trust account, resulting in a commingling of funds ... 1

**TOTAL INDIVIDUALS
ADMONISHED.....6**



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An Attorney, And You
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CLIENT ASSISTANCE FUND PAYMENTS - NOVEMBER 2011, MARCH 2012 & MAY 2012

| Attorney | Amount Paid | Gist |
|------------------------|-------------|--|
| Elise M. Beauchamp | \$1,124.00 | #1348 – Unearned fee in a domestic matter |
| Stephen P. Callahan | \$700.00 | #1322 – Unearned fee in a property confiscation matter |
| John D. Conry | \$3,564.50 | #1345 – Conversion in a property insurance matter |
| John D. Conry | \$10,323.13 | #1354 – Conversion in a property insurance matter |
| John D. Conry | \$8,250.00 | #1362 – Conversion in an insurance matter |
| Claire R. Deslatte | \$600.00 | #1357 – Unearned fee in a domestic matter |
| James P. Gaharan, Jr. | \$7,236.91 | #1319 – Conversion in a civil matter |
| Carla M. Gaston | \$1,330.07 | #1282 – Unearned fee in a civil matter |
| Charles T. Phillips II | \$2,250.00 | #1334 – Unearned fee in a community property matter |
| Charles T. Phillips II | \$300.00 | #1338 – Conversion of costs in a domestic matter |
| Charles T. Phillips II | \$2,300.00 | #1320 – Conversion of costs in a domestic matter |
| Charles T. Phillips II | \$750.00 | #1344 – Unearned fee in a criminal matter |
| Kenota L. Pulliam | \$5,500.00 | #1230 – Unearned fee in a criminal matter |
| Kenota L. Pulliam | \$4,500.00 | #1266 – Unearned fee in a criminal matter |
| Kevin R. Rees | \$25,000.00 | #1191 – Conversion in a personal injury matter |
| Kevin R. Rees | \$6,666.66 | #1200 – Conversion in a personal injury matter |
| Kevin R. Rees | \$25,000.00 | #1262 – Conversion in a personal injury matter |

Q&A

LOUISIANA CLIENT ASSISTANCE FUND

What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to \$25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

How do I file a claim?

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

requested to complete an Application for Relief and Financial Information Form.

Does the Fund cover fees?

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

Is there any charge for seeking Client Assistance Fund help?

No. The process is free.

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ABOUT THE MEDIATION INSTITUTE

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

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

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





To Arbitrate or Not to Arbitrate? There is No Question

The Supreme Court recently held arbitration agreements to be valid in many consumer contracts. The court opined that the Federal Arbitration Act (FAA) establishes liberal federal policy favoring arbitration agreements, and such agreements may be overridden only when there is a contrary congressional command. *CompuCredit Corp. v. Greenwood*, 132 S.Ct. 665, 669 (2012). Whereas the *CompuCredit Corp.* decision involved a dispute over a mandatory arbitration clause in credit-card applications, the most recent high court decision evaluating the validity of arbitration agreements centers on tort claims. *Marmet Health Care Ctr., Inc. v. Brown*, 132 S.Ct. 1201, 1204 (2012).

In *Marmet*, Clayton Brown, Jeffrey Taylor and Sharon Marchio each brought negligence suits against nursing homes in West Virginia. Each party signed a contract with a nursing home on behalf of a family member who required extensive nursing care. Brown's and Taylor's agreements included a clause that required the parties to arbitrate all disputes except late-payment claims. Marchio's agreement also included an arbitration clause, but made no exceptions. Each claim was based on the negligence of the nursing homes for causing injuries or harm that resulted in the death of each party's respective family member. A West Virginia state court dismissed the lawsuits by Brown and

Taylor based on the agreements to arbitrate contained in the contracts.

On appeal, the West Virginia Supreme Court of Appeals (hereinafter, the state supreme court) reversed the decision. The state supreme court ruled that the FAA did not apply to personal injury or wrongful death claims because those types of claims do not result from a written agreement evidencing a transaction affecting interstate commerce. The court believed that the FAA forces parties to arbitrate only those issues that were agreed upon via a "clear and unmistakable writing." This does not occur in tort claims, the court reasoned, as tort claims are not typically bargained for; no one expects to commit

a tort or have a tort committed upon him. The state supreme court attempted to distinguish between a "conflicting" provision and an "exception," holding that personal injury and wrongful death claims were an exception to the FAA. By coming to this conclusion, the state supreme court did not believe there to be a conflict between state and federal law, so there should not be a federal preemption issue.

The U.S. Supreme Court disagreed. The high court concluded that the West Virginia court's interpretation was incorrect because (1) the text of the FAA statute does not provide for a personal injury or wrongful death exception, (2) it "reflects an emphatic federal policy in favor of

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arbitral dispute resolution,” and (3) it “requires courts to enforce the bargain of the parties to arbitrate.” Furthermore, it is well settled law, as the Supreme Court was quick to point out, that when state law prohibits arbitration in certain “classes” or “types” of disputes, here personal injury and wrongful death, the conflicting provision is displaced by the FAA. The court deemed West Virginia’s categorical prohibition against enforcing pre-dispute arbitration agreements for personal injury or wrongful death claims against nursing homes to be in conflict with federal law, and the prohibition was, therefore, preempted by it.

In a proposed “alternate” holding, the state supreme court reasoned that nothing in the FAA overrides traditional rules of contract interpretation. *Brown ex rel. Brown v. Genesis Healthcare Corp.*, 724 S.E.2d 250, 281 (2011), judgment vacated sub nom. *Marmet Health Care Ctr., Inc. v. Brown*, 132 S.Ct. 1201 (2012). Therefore, contract defenses, such as laches, estoppel, waiver, fraud, duress or unconscionability, may be used to vitiate an arbitration agree-

ment. The state supreme court opined that pre-dispute arbitration agreements regarding personal injury and wrongful death claims are unconscionable and, therefore, unenforceable. But in the state supreme court’s advocacy of unconscionability, the court cited West Virginia’s public policy rule of not enforcing pre-dispute arbitration agreements in personal injury or wrongful death cases — the same rule that the U.S. Supreme Court found earlier in the opinion to be in conflict with the FAA and, therefore, displaced by FAA provisions. The U.S. Supreme Court was uncertain of how much the invalid rule influenced the state supreme court’s determination of unconscionability, and, therefore, the case was remanded for a determination of whether, absent the public policy argument, the arbitration clauses were invalid for reasons that are not preempted by the FAA.

This decision should be closely examined by businesses and consumers alike. The U.S. Supreme Court is applying a strict interpretation of the FAA provisions by enforcing arbitration agreements on

all disputes that arise out of a contract that contains an arbitration provision. In consummating such a contract, the consumer is not only vacating his right to litigate in court for disputes that arise from the contract directly, but also derivative disputes arising from the nature of the relationship created by the contract. At present, it seems that the only way out of an arbitration agreement is invalidation on the face of the agreement itself. Therefore, it becomes the consumer’s responsibility to note the existence of arbitration clauses and decide whether he/she is willing to give up the fundamental right to litigate in court.

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Supreme Court Requires Credit Bidding Opportunity in Sale of Assets Lien-Free

RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank, 132 S.Ct. 2065 (2012).

In 2007, RadLAX Gateway Hotel and RadLAX Gateway Deck, L.L.C. (the debtors) purchased the Radisson Hotel at Los Angeles International Airport and the adjoining lot on which the debtors intended to build a parking structure. To finance the purchase and construction, the debtors obtained a loan from Longview Ultra Construction Loan Investment Fund (the lenders), for which Amalgamated Bank (bank) serves as trustee. The lenders obtained a “blanket lien on all of the debtors’ assets to secure the loan.” The construction of the parking structure proved more expensive than anticipated, and the debtors filed for Chapter 11 bankruptcy in 2009.

Thereafter, the debtors submitted their Chapter 11 “plan” by which the creditors were divided into separate classes and the treatment of each class was specified. Under this plan, the debtors sought to auction their assets free and clear of all liens without allowing the bank to “credit bid” using the debt owed to offset the purchase price. It was then the debtors’ intent to repay the bank with the sale proceeds.

Prior to a court’s confirmation of a plan, each class of creditors must consent, subject to certain exceptions, known as “cramdown” plans, established by 11 U.S.C. § 1129(b)(2)(A). In this section, under clause (i), the secured creditor retains its lien on the property and receives deferred cash payments. Clause (ii) allows the property to be sold free and clear of all liens, but the creditor is entitled to credit bid, and it receives a lien on the sale proceeds. Under clause (iii), the creditor is provided with the “indubitable equivalent” of its claim. As the debtors’ plan did not permit credit bidding pursuant to clause (ii), the debtors argued that its plan provided the indubitable equivalent to the bank under clause (iii), and, thus, the bank’s consent to the plan was not required. Unpersuaded, the bankruptcy court denied the debtors’ sale and bid procedures motion, and the 7th Circuit affirmed.

The Supreme Court, applying the

general, commonly applied statutory-interpretation rule that the “specific governs the general,” found that clause (ii) offers detailed requirements for selling lien-free collateral, while clause (iii) is “broadly worded” and “says nothing about such a sale.”

The general/specific canon explains that the “general language” of clause (iii), “although broad enough to include it, will not be held to apply to a matter specifically dealt with” in clause (ii).

The court reasoned that, as clause (ii) covers the sale of assets free and clear of liens, while clause (iii) is a residual provisions “covering dispositions under all other plans,” the debtors may not sell their property free of liens under section 1129(b)(2)(A) without permitting the bank to credit bid as required under clause (ii).

Forward Looking Contract Provides Defense to Avoidance Action

Lightfoot v. MXEnergy Elec., Inc. (In re MBS Mgmt. Servs., Inc.), ___ F.3d ___ (5 Cir. 2012).



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MBS Management Services, Inc. managed apartment complexes in Texas and Louisiana. In 2005, MBS entered into a contract with Vantage Power Services, L.P., purchasing the “full elective requirements” for specified properties for 24 months, priced per kilowatt-hour, based on actual metered use. These agreements were later sold by Vantage to MXEnergy Electric, Inc. (MX). In August 2007, MBS paid \$156,345.93 to MX to cover past-due amounts.

On Nov. 5, 2007, MBS filed for voluntary Chapter 11 bankruptcy, and the trustee initiated this adversary proceeding to recover the money paid to MX, arguing that it was an avoidable preferential transfer under 11 U.S.C. § 547(b) as the payments were made within the 90 days prior to the bankruptcy filing, while MBS was insolvent, and the payments remitted to MX were more than it would have received in a Chapter 7 liquidation. MX

refuted this argument, alleging that the avoidance was impermissible under 11 U.S.C. § 546(e), which shields “a transfer that is a... settlement payment... made by or to [a]... forward contract merchant...” (citing 11 U.S.C. § 546(e)).

The bankruptcy court ruled, and the district court affirmed, that the agreement was, in fact, a forward contract and that the payments were not avoidable preferential transfers. On appeal, the 5th Circuit looked to the Bankruptcy Code’s definition of a “forward contract” as “a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity... with a maturity date more than two days after the contract is entered into...” (citing 11 U.S.C. § 101(25)(A)).

The trustee argued that as the contract contained no specific delivery dates and no specific quantity of electricity to be purchased, it was not a forward contract.

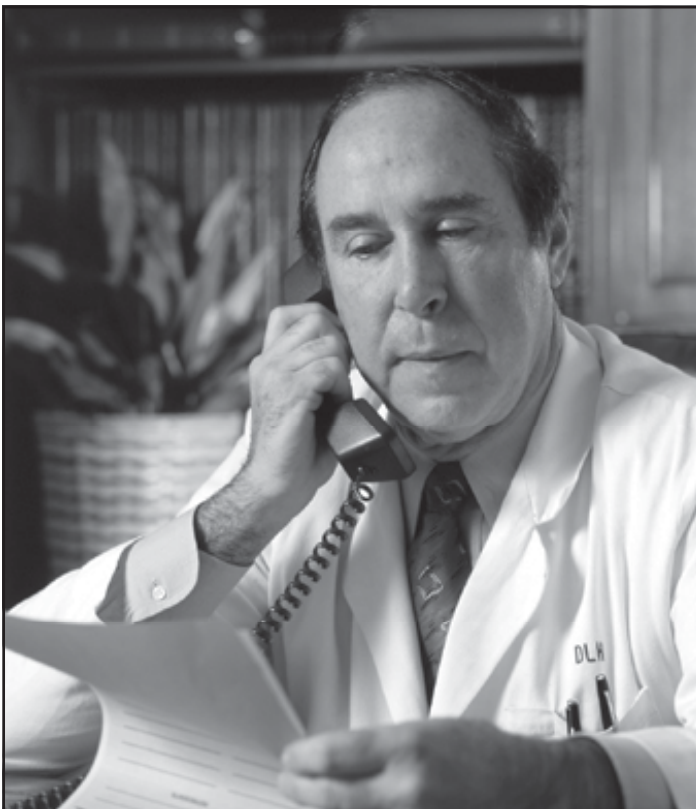
The 5th Circuit disagreed, stating that there are no such limitations under the statutory language of section 546(e), as the Bankruptcy Code reasonably forewent encumbering the definition of a forward contract with technical requirements. The court went on to conclude that simply because a contract does not include a specific maturity date, it does not mean that no maturity date exists, as argued by the trustee. Finding that the agreement was a forward contract within the meaning of 11 U.S.C. § 546(e), the 5th Circuit upheld the bankruptcy and district court decisions rejecting the trustee’s avoidance actions.

—**Tristan E. Manthey**

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Final Spousal Support

Ashworth v. Ashworth, 11-1270 (La. App. 3 Cir. 3/7/12), 86 So.3d 134.

The trial court found Ms. Ashworth free from fault and awarded her final spousal support. Mr. Ashworth appealed. The court of appeal found that the trial court did not abuse its discretion in finding that her leaving the matrimonial domicile was justified based on information she had regarding Mr. Ashworth's suspected adultery with two women. Moreover, he never asked her to return, and he was living with another woman within three months after she left. Further, her behavior was reasonably based and did not make their living together insupportable. Her testimony as to what her brother and niece told her about his actions was not hearsay because it was not offered for the truth, but for purposes of why she did what she did. Because her work as a sitter for the elderly was tenuous, extra income she picked up for extra days was uncertain and acted as a "buffer" for when she did not have steady work.

Child Support

Ficarra v. Ficarra, 11-0569 (La. App. 5 Cir. 2/14/12), 88 So.3d 548.

The trial court did not err in finding Mr. Ficarra's income to be \$6,000 per month because his testimony was not credible, his tax returns did not accurately report his income, the ownership and books of the family company he worked for were unclear and untrustworthy, and the testimony of the special master and a CPA supported this higher income. Because of the parties' son's medical and learning issues, camp/child care and private school expenses were necessary. The trial court did not err in not considering her living with her parents as expense sharing benefits. Because the sum due between her demand and date of judgment was not a sum "in arrears," interest was due only from the date of the judgment, not on each payment as it became due.

Custody

Stewart v. Stewart, 11-1334 (La. App. 3 Cir. 3/7/12), 86 So.3d 148.

The trial court's judgment awarding joint legal custody, shared 50/50 physical custody and co-domiciliary status, and providing that the child would remain in his current school and that the parties attend family counseling was sufficient to constitute a plan of implementation under La. R.S. 9:335. Decision-making authority

not specifically provided for was shared equally. The trial court is not required to itemize in its reasons for judgment the factors under La. Civ.C. art. 134; a party can move for reasons for judgment. The 3rd Circuit found that a designation of "co-domiciliary parents" was within the trial court's authority, refusing to follow the 2nd and 4th Circuits, who have found that the law does not allow for such a term. The parents' inability to get along and their respective active participation in the child's life were reasons for such a designation. Although the court-appointed evaluator had never done a custody evaluation before and had not attended seminars to specifically train him to do custody evaluations, he was a licensed marriage and family therapist, had previously testified as an expert in marriage and family therapy, had a master's degree in counseling, and had training as a qualified divorce mediator, and was thus sufficiently qualified as an expert. The trial court did not err in not qualifying the mother's expert psychologist as an expert in developmental disabilities because his work over the past years had primarily been in administration, not firsthand patient contact.

Gallet v. Gallet, 11-1416 (La. App. 3 Cir. 3/7/12), 86 So.3d 179.

The trial court did not abuse its discretion in finding no change of circumstances under *Bergeron* to change joint custody to the father as sole custodian or name him domiciliary parent as he wanted. The court



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addressed the testimony of various mental health professionals and agreed with the trial court that the child's anxiety problems were due to the parents' constant tensions and the father's having her report to him events at the mother's home. His numerous complaints about her decision-making and actions were over "relatively minor" things and did not rise to require a change under *Bergeron*. The trial court did not err in maintaining her choice of a counselor for the child, which complied with the custody plan. There was no abuse of discretion in the trial court's denying his rule for contempt because the evidence was "ambiguous." The trial court's appointment of a parenting coordinator was affirmed to help the parties' communication and management of the child's activities.

Martin v. Martin, 11-1496 (La. App. 3 Cir. 5/16/12), 89 So.3d 526.

Although Ms. Woods violated the provisions of the relocation statute by moving without court authority or Mr. Martin's consent, the court of appeal reversed the trial court's change of domiciliary custody from her to him

because of the child's young age and her better ability to provide a stable environment. Their disputes over travel arrangements for custodial periods were also insufficient to support a change of custody. Her cohabitation in violation of the court order prior to her marriage was also insufficient to support a change of domiciliary parent because he failed to show that it had a negative impact on the child. However, the court of appeal affirmed the trial court's order that she pay him court costs plus attorney's fees as a result of his objection to her relocation, and remanded for a new implementation order due to the relocation.

Community Property

Jenkins v. Leonard, 47,001 (La. App. 2 Cir. 2/29/12), 87 So.3d 230.

Where parties are separate in property under a valid marriage contract, "the mere inclusion of the name of a spouse and one's marital status in a deed does not, standing alone, constitute evidence of an intent to make an asset community rather than separate." Even though the parties

had acquired some co-owned property during their marriage, where there was no documentary evidence to show an intent to make other properties co-owned, they had to be classified as separate. As stated: "The couple's purchase of several assets together did not manifest an intent to abolish the marital regime they established by contract nor did it somehow convert their marital regime from separate to one of acquets and gains."

Succession of Tabor, 11-1245 (La. App. 3 Cir. 4/4/12), 87 So.3d 982.

Because satisfaction of conditional requirements and the approval to pay a suspensive mineral lease bonus arising from Ms. Tabor's separate immovable property were completed prior to Mr. Tabor's death, the payment, even though made after his death, was community property. The court of appeal found that the payment was not a civil fruit under La. Civ.C. art. 551, but was to be treated as one for classification purposes under La. Civ.C. art. 2339. His succession was also due legal interest from the date of demand.

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Raymond v. Fluellen, 11-1290 (La. App. 4 Cir. 3/7/12), 88 So.3d 652.

After Mr. Fluellen did not submit his inserts for the joint pre-trial descriptive list, Ms. Raymond moved to have her part of the list accepted as true, which the trial court granted, and then partitioned the property and awarded reimbursement claims based on her list. On Mr. Fluellen's appeal, the court of appeal reversed, finding that the trial court erroneously disregarded the list he had previously timely filed, and that there was no procedure that allowed a court to accept one party's list as a judicial determination of the assets and liabilities after both parties had filed lists. While the trial court could have sanctioned him for failing to comply with its pretrial order, Ms. Raymond still had to present evidence to support her list.

—David M. Prados

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Work of the 2012 Louisiana Legislature

In its 2012 Regular Session, the Louisiana Legislature passed several bills of interest to the construction industry in the state. A synopsis of some of the changes follows.

Senate Bill 258

La. R.S. 9:2772, governing preemptive periods for filing suit or initiating arbitration on private construction projects, was amended to address a hiccup of sorts in the law concerning claims for indemnification. In 2011, in the case of *Ebinger v. Venus Construction Co.*, 10-2516 (La. 2011), 65 So.3d 1279, the Louisiana Supreme Court declared that the five-year preemptive period for filing an action on a construction

contract ran contemporaneously against all parties involved in a construction project. For example, in the event that an owner sued a general contractor at the end of the fifth year, it is distinctly likely that the general contractor might not have any ability to seek indemnity from a subcontractor or supplier that may have been responsible for the matters about which the owner complained. That unfortunate result would ensue despite the fact that the general contractor had no way to seek indemnity timely.

The change to the law now provides for the exact circumstance described above. The amendment states that if "within ninety days of" (presumably this means 90 days in advance of) the expiration of the five-year preemptive period a claim is brought against any person or entity contemplated by the statute, that person or entity will have 90 days from the date of "service of the main demand or, in the case of a third-party defendant, within ninety days from service of process of the third-party demand," to file its own claim for contribution, indemnity or a third-party claim against any other party.

This bill became effective Aug. 1, 2012.

Senate Bill 338

Taking away the latitude of public owners to delay the execution of awarded contracts for extended periods of time, the Legislature amended La. R.S. 38:2215 by adding language that now provides for a maximum period of time for the final execution of awarded public contracts. Under the added provision, if the contractor has provided all necessary documents to the public entity within 10 days of the opening of bids and no bid challenge has been submitted to the public entity, the contractor and public entity shall execute the contract not later than 45 days from the public entity's acceptance of the lowest responsible bid.

This bill became effective July 1, 2012.

House Bill 450

Often a change in the law merely adds to the confusion on the topic. The Louisiana lien laws (both Public and Private Works) have been the source of consternation for years based upon the myriad disparate, inconsistent regulations concerning timing and filing in each of the statutory schemes.

One of the principal sources of heartburn is the calculation of the time allowed for filing suit to enforce a claim following the filing of

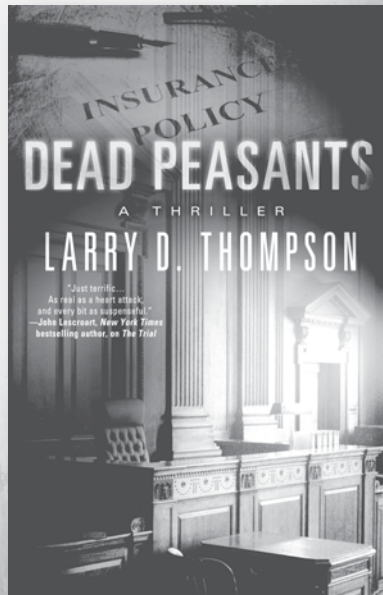
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a statement of lien or privilege. On that topic, La. R.S. 9:4823 has now been amended to provide that — for Private Works Act liens only — beginning on the effective date of the Act, a claimant will have one year after the filing of the statement of claim of privilege to institute a suit to enforce. This changes the soon-to-be-former provision, which provided that the one-year period for filing suit began to run from the expiration of the deadline for filing the statement of claim or privilege. (Compare the Public Works Act, which provides that suit to enforce a claim under the Act must be filed within one year following the date upon which the certificate of substantial completion/termination is filed.)

This revision arguably benefits no particular group: while the change potentially shortens the period of time a Private Works Act claimant may have to file suit, it means for owners that certain claimants may find it necessary to file suit much earlier than previously required. This may entail that lien claims by trades that complete work early on a major project (for example, pile drivers) may choose to initiate suit during the

course of the construction project as opposed to after the job is completed.

Note that the effective date of this portion of the bill is not until Aug. 1, 2013. Until then, the existing law remains in full force and effect.

House Bill 996

This bill, amending and reenacting Louisiana Public Bid Law provision La. R.S.38:2212.10(F) and enacting La. R.S. 38:2212.10(G) concerning E-Verify procedures, clarifies the existing, albeit relatively new, law by declaring that E-Verify provisions concerning eligibility to work in the United States do not apply to all “public contract work” but rather only to “contracts for public works.” According to the terms of the revised law, “public works” has the traditional meaning of the term in the Public Bid Law, that is, it means “the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.”

This bill became effective Aug. 1, 2012.

House Bill 1129

The Legislature amended Public Bid Law provision La. R.S. 38:2212 on the topic of post-bid document submission. In order to clarify a matter that had become the source of litigation (*see, e.g., L.L. & G. Constr. v. Greater Lafourche Port Comm’n*, 11-1024 (La. App. 1 Cir. 5/3/12), 2012 WL 1564350 (unpublished)), the Legislature changed the law to more clearly state that the “other documentation and information” that can be required of bidders after the opening date specifically includes (but is not necessarily limited to) low bidder’s attestations pursuant to R.S. 38:2212.10 and 2227. The attestations provided by the cited statutes are composed of certifications concerning prior criminal convictions (or lack of same) of the low bidder.

This bill became effective Aug. 1, 2012.

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Tort: Same-Sex Sexual Harassment

EEOC v. Boh Bros. Constr. Co., ___ F.3d ___ (5 Cir. 2012).

Suit was filed on behalf of Kerry Woods, a construction worker on an all-male Boh Bros. crew, claiming same-sex harassment by his crew superintendent, Chuck Wolfe, who referred to him in raw homophobic

epithets and lewd gestures, calling him “faggot” and “princess,” approaching him from behind to simulate sexual intercourse and exposing himself to Woods. After complaining of this behavior, Woods was transferred to another crew at a different work site. A year later, Woods was laid off for lack of work, whereupon he filed an EEOC charge of discrimination alleging, *inter alia*, sexual harassment.

The EEOC brought an enforcement action in district court on Woods’s behalf under Title VII of the Civil Rights Act of 1964, which makes it “an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or

privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). The Supreme Court has recognized sexual harassment as a form of discriminatory treatment under Title VII. The jury, sympathetic to Woods, returned a substantial verdict for actual and punitive damages against Boh Bros., which filed this appeal.

The 5th Circuit prefaced its opinion by noting:

There is no claim or evidence that either Woods or Wolfe is homosexual or effeminate. There is plenty of evidence that Wolfe is a world-class trash talker and master of vulgarity in an environment where these characteristics abound . . . [and] no question . . . that Woods was the primary and constant victim of Wolfe’s offensive abuse and harassment, much of it in the nature of sexual vulgarity The EEOC’s case depends on the proposition that sex stereotyping by a member of the same sex can constitute sexual harassment under Title VII . . . because Woods did not, in Wolfe’s view, conform to the male stereotype.

In the seminal case of *Oncale v. Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998), the Supreme Court established three evidentiary paths to show same-sex harassment: (1) the same inference drawn in most male-female harassment situations, *i.e.*, explicit or implicit proposals of sexual activity, “if there were credible evidence that the harasser was homosexual;” (2) harassing conduct not motivated by sexual desire, such as “if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace;” or (3) direct comparative evidence of how the alleged harasser treated both sexes in a mixed-sex workplace.

The court found that it was not the federal court’s business “to clean up the language and conduct of construction sites.” Title VII is not “a general civility code for the American workplace,” and it “protects employees against workplace discrimination, not against all forms of



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mistreatment.”

The court stated that even if the EEOC has asserted a viable theory of Title VII discrimination in behalf of Woods, “it is a circular truth that a plaintiff may not recover based on nonconformance to gender stereotypes unless the plaintiff conforms to nonconformance gender stereotypes.” Because the court found “insufficient evidence that Wolfe ‘acted on the basis of gender’ in his treatment of Woods,” the judgment was vacated and the case remanded. Compare *Cherry v. Shaw Coastal, Inc.*, 668 F.3d 182 (5 Cir. 2012), for a somewhat similar factual situation yielding a somewhat different result, discussed in *Recent Developments: Insurance, Tort, Workers’ Compensation & Admiralty Law*, 59 La. Bar J. 449, 450 (2012).

Admiralty: LHWCA Situs and Status

New Orleans Depot Servs., Inc. v. Dir., Off. of Workers’ Comp. Programs, ___

F.3d ___ (5 Cir. 2012).

Juan Zepeda, most recently employed by petitioner NODSI as a container-repair mechanic, sought permanent-partial-disability benefits under the Longshore and Harbor Workers’ Compensation Act (LHWCA), 33 U.S.C. § 900, *et seq.* NODSI objected to the administrative law judge’s factual findings that its container-repair yard is a maritime situs and that Zepeda is a maritime employee. The yard is 300 yards from the Industrial Canal and has no water frontage or docking facilities. Containers being repaired were variously used in rail or marine transport.

“For a claimant to be eligible for benefit under the LHWCA (1) his injury must occur on a maritime situs, and (2) his status must be that of a maritime employee. Both requirements must be met for the claimant to receive benefits under the Act.” *Coastal Prod. Servs., Inc. v. Hudson*, 555 F.3d 426 (5 Cir. 2009).

In determining that NODSI’s repair yard is a maritime situs, the ALJ considered its use in servicing containers used in maritime shipping and offloaded at the Port of

New Orleans, and its proximity to marine facilities in the surrounding area.

As to Zepeda’s status as a maritime employee, “the Supreme Court has instructed that occupations in addition to those enumerated in the statute will be covered as maritime employment if the occupation entails activities that are an integral or essential part of the loading, unloading, building or repairing of a vessel.” The ALJ determined that Zepeda engaged in maritime employment because he repaired marine containers, “an essential function of the loading and unloading process.”

The petition for review was denied. Judge Clement weighed in with a vigorous nine-page dissent.

—**John Zachary Blanchard, Jr.**
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Revocation of Anti-Counterfeiting Trade Agreement

The European Parliament strongly defeated the Anti-Counterfeiting Trade Agreement (ACTA) on July 4, with 478 members voting against the treaty and only 39 in favor. The ACTA standardizes national laws protecting various intellectual property, including music, movies, pharmaceuticals, fashion goods and many other products that often fall prey to piracy. Opponents feared the treaty would limit Internet freedom and promote censorship and invasions of privacy by allowing private companies to spy on Internet activities in search of ACTA violations. The United States, Australia,

Japan, Canada and several others have signed the treaty, but none of them have ratified it yet.

Interim Report on U.S.-E.U. Free-Trade Agreement

On June 19, trade officials from the European Union and United States submitted an interim feasibility report to their leaders on a potential U.S.-E.U. bilateral free-trade agreement. A transatlantic free-trade agreement would cover the largest amount of economic investment in the world. The report addresses various areas of mutual benefit where the two trading partners are likely to agree, such as reciprocal market access openings in services, goods, customs facilitation and investment. However, the report identifies numerous areas lacking convergence where additional work must be done in order to permit negotiations, including rules, agriculture and intellectual property.

MERCOSUR: Suspension of Paraguay, Admission of Venezuela

The presidents of three members of MERCOSUR, the Southern Cone trade bloc, voted to suspend Paraguay's membership because of the impeachment of Paraguay's President Fernando Lugo. President Lugo was removed over his role in the eviction of landless farmers that resulted in more than 15 deaths. The dismissal of the president was viewed as a parliamentary coup, with the president having fewer than 24 hours to prepare his defense. Paraguay's economy relies heavily on trade within the bloc, and MERCOSUR has issued no statement on when or if Paraguay's suspension will be lifted.

As soon as Paraguay's suspension was notified, Venezuela was admitted to MERCOSUR as a full member. Venezuela's application to join the bloc as a full member had been stalled by objection



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from Paraguay. Venezuela's energy production is important in the region, but Paraguay had objected to full membership primarily on human rights grounds.

China-MERCOSUR Free-Trade Agreement

Chinese Premier Wen Jiabao announced a proposed \$10 billion credit line for Latin American countries to support infrastructure projects in the region. In connection with the credit line, China proposed a free-trade agreement with MERCOSUR in order to increase its trade in the southern cone. China has the world's largest foreign-exchange reserve, and Latin American countries are developing infrastructure projects to boost their economies. A free-trade agreement would increase bilateral trade by lowering tariff and non-tariff barriers and protect Chinese investments in the region. The current stand-off with Paraguay notwithstanding, MERCOSUR is an obvious free-trade partner for China because of its members' abundance of natural resources.

DR-CAFTA

In the Matter of the Arbitration between Railroad Development Corporation and Republic of Guatemala, International

Center for Settlement of Investment Disputes, ICSID Case No. ARB/07/23 (June 29, 2012).

A decision on the first DR-CAFTA dispute-settlement claim to reach the merits stage was issued on June 29. The ICSID tribunal ordered the Republic of Guatemala to pay the investor approximately \$12 million in damages regarding a dispute over the operation of Guatemala's railway system. The claimant, Railroad Development Corporation (RDC), secured a government bid in 1997 to operate Guatemala's railways for 50 years. Guatemala's executive branch subsequently declared the contract *lesivo* (harmful or damaging) because RDC purportedly failed to adequately rehabilitate the rail system.

RDC filed its arbitration request with ICSID in 2007 under the investment rules established in DR-CAFTA. RDC claimed that the *lesivo* declaration breached the minimum standard of treatment required under DR-CAFTA Article 10.5 by failing to provide fair and equitable treatment, and full protection and security, to its investment; the *lesivo* amounted to an indirect expropriation in violation of DR-CAFTA Article 10.7.1; and Guatemala violated the National Treatment requirement of DR-CAFTA Article 10.3. RDC sought approximately \$64 million in damages, plus costs and attorney's fees.

The tribunal ruled that Guatemala breached the minimum standard of treatment required under DR-CAFTA Article 10.5 as its conduct was arbitrary and grossly unfair. Guatemala was ordered to pay nearly \$12 million in damages, the exact amount to be determined based upon a valuation of shares in the venture. The tribunal used its discretion under the ICSID Arbitration Rules to refuse RDC's request for attorney's fees and costs under DR-CAFTA Article 10.26.1. The tribunal distinguished between the merits phase and jurisdictional phase when ordering payment of ICSID administrative expenses. Guatemala was ordered to pay 100 percent of ICSID's jurisdictional administrative expenses on the grounds that Guatemala's objections to jurisdiction were twice rejected "in an unusually protracted process." Each party was ordered to pay 50 percent of ICSID's merits expenses.

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Legacy Litigation

During its 2012 Regular Session, the Louisiana Legislature adopted two bills relating to legacy litigation, and Governor Jindal signed each into law. The first bill became Act 754, described in a previous *Recent Developments/Mineral Law* article (Vol. 60, No. 2, August/September 2012, pages 162-63).

The second bill became Act 779. It enacts a new section of R.S. 30:29 that authorizes parties in legacy litigation to subpoena any Office of Conservation “employee, contractor, or representative” for testimony at a deposition or trial if that person was involved in formulating the “feasible plan” for remediation.

Act 779 also establishes a procedure whereby a defendant may request a hearing at which the plaintiff has the initial burden of introducing evidence of environmental damages. If the plaintiff introduces such evidence, the defendant has the burden of establishing the lack of a genuine issue of material fact regarding whether the defendant is legally responsible for the contamination. If a defendant demonstrates the absence of a genuine issue, the court must dismiss that defendant without prejudice. If another party later discovers evidence that the dismissed defendant

may have liability, the party may cause the dismissed defendant to be rejoined to the litigation. If the dismissed defendant is never rejoined, the defendant is entitled to a dismissal with prejudice when the litigation ends in a final, non-appealable judgment.

Act 779 also:

- ▶ provides that liberative prescription is suspended for one year if a person submits to the Office of Conservation a “notice of intent to investigate” alleged contamination;

- ▶ restricts ex parte communications with the Office during the time that it is considering proposed plans; and

- ▶ authorizes the Office to issue compliance orders for remediation after a person admits liability or is found liable for contamination. Finally, if a party admits liability, Act 779 requires that party to waive any contractual indemnification rights it might have for any punitive damages claims that are based on the contamination.

Expropriation Prerequisites

Act 702 amends existing statutes to provide greater protection of property owners when a company seeks to expropriate property to construct a natural gas pipeline

Act 702 requires a company to make a “good faith” attempt to reach an agreement with a property owner regarding compensation prior to filing an expropriation action, and to offer compensation at least equal to the lowest

appraised value of the property to be acquired. In addition, at least 30 days before filing an expropriation action, the company must send a letter to the property owner by certified mail, setting forth: (1) the legal basis by which the company could exercise expropriation authority; (2) the purpose and conditions of the proposed acquisition of property; (3) the compensation the company proposes to pay; (4) a copy of all appraisals that the company has obtained; (5) a plat showing the boundaries of the proposed acquisition; (6) a description and proposed location of any above-ground facilities the company proposes to place on the property; and (7) a statement of the “considerations for the proposed route or area to be acquired.”

Pre-entry Notice to Surface Owner

Act 795 enacts La. R.S. 30:28(I), which requires operators to provide notice to landowners at least 30 days prior to entering their land to drill. The legislation does not require such notice if the operator has a contract with the landowner, the operator is entering the property only for pre-drilling activities or the operator is drilling an additional well from an existing well pad and the operator is not expanding the pad or the access road to the pad.

Units for Ultra Deep Formations

Act 743 amends La. R.S. 30:5.1 to authorize the Commissioner of Conservation to declare units up to 9,000 acres in size for subterranean “structures” located at a minimum depth of 22,000 feet. The Act anticipates such units could be served by one or more unit wells. The legislation defines “structure” as “a unique geologic feature that potentially traps hydrocarbons in one or more pools or zones.”

Before entering such an order, however, the Commissioner must find, based on evidence presented at a properly noticed public hearing, that:

- ▶ the order is reasonably necessary to prevent waste and the drilling of

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unnecessary wells and to encourage the development of the ultra deep structure;

▶ the operations proposed by the party seeking unitization are economically feasible;

▶ the top of the structure is located at a minimum depth of 22,000 feet;

▶ sufficient evidence exists to establish the limits of the ultra deep structure; and

▶ the party seeking unitization has submitted a reasonable development plan.

The development plan must include the number of wells that the party intends to drill, an estimated schedule for drilling and the anticipated depth for each well. Each interested person is entitled to review all the information submitted, including any seismic data submitted to establish the limits of the ultra deep structure.

Act 743 also amends Louisiana's Risk Fee Statute (La. R.S. 30:10) to require the operator of a unit well to pay to a nonparticipating owner of mineral rights in the unit (even during recovery of the risk fee) a portion of the proceeds of production sufficient to cover any lease royalties or overriding royalties owed by the nonparticipating owner for that production.

NOTE: Copies of legislation are available at the Louisiana Legislature's website, www.legis.state.la.us.

CORRECTION: In discussing *Collins v. Godchaux*, 11-0996 (La. App. 3 Cir. 3/14/12), 86 So.3d 831, *writ denied*, 12-0835 (La. 7/2/12), 92 So.3d 344, the June/July 2012 *Recent Developments/Mineral Law* article referred to a landman involved in that dispute as "Godchaux." Actually, the landman's name was "Collins." We regret the error.

—**Keith B. Hall**

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Recent Legislation

Jones v. Ruston Louisiana Hosp. Co., L.L.C., 46,356 (La. App. 2 Cir. 8/10/11), 71 So.3d 1154, *writ denied*, 11-1970 (La. 11/14/11), 75 So.3d 946, was reported in *Recent Developments/Professional Liability*, 59 La. B.J. 45 (2012).

Jones held that a hospital's failure to honor a do-not-resuscitate order was not covered by the Medical Malpractice Act (MMA), and thus a medical-review panel was not required.

Senate Bill 176, Act 538 (2012), legislatively overruled *Jones*. It amended La. R.S. 40:1299.41 by adding section "L":

L. Any cause of action for the unintentional acts or omissions arising from resuscitating a patient who has a declaration concerning life-sustaining procedures executed pursuant to R.S. 40:1299.58.1 *et seq.*, a Louisiana Physician Order for Scope Treatment executed pursuant to R.S. 40:1299.64.1 *et seq.*, or a do not resuscitate order issued by a physician licensed in this state shall be governed by the provisions of this Part.

House Bill 766, Act 802 (2012), repealed La. R.S. 40:1299.44(A)(7)(e) and amended R.S. 40:1299.39.1, 1299.44 and 1299.47.

Among the act's new provisions are: 1) the name of only one patient need be included in a request for review, and in the case "of a pregnant mother, and her unborn child," naming only the mother suffices; 2) filing fees paid for a panel request that is untimely filed are to be refunded; and 3) health-care providers may raise peremptory exceptions of no right of action, pursuant to La. C.C.P. art. 927(6), without first completing the panel process.

Vehicular Transportation of a Patient

Rivera v. Bolden's Transp. Serv., Inc., 11-1669 (La. App. 1 Cir. 6/28/12), ___ So.3d ___.

Rivera was being transported from Forest Manor Nursing Home to another medical facility. She was wheelchair-bound and was being transported in a vehicle owned by Bolden's Transportation Service. She was provided no seatbelt, nor was she strapped into her wheelchair, and the wheelchair was not fastened to the van. A sudden stop by the driver caused her to fall and to sustain injuries.

Rivera's allegation of negligence against Forest Manor was that its employees failed to provide a wheelchair that adequately secured her while she was being driven to receive medical care. In response to Rivera's lawsuit, which alleged ordinary negligence and not malpractice, Forest Manor raised an exception of prematurity, which the district court sustained, following which Rivera filed a supervisory writ.

The appellate court determined that the negligence claims were not treatment

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related, did not involve a patient's fall from a wheelchair while inside the nursing home or while Rivera was being pushed by a nursing home employee, did not require medical expertise to determine whether "the appropriate standard of care was breached" and did not directly involve "the handling of a patient, including loading and unloading."

The sole question was whether the equipment provided for Rivera's transportation was adequate for her safety. The court decided that the allegations of negligence did not fall under the penumbra of the MMA, and the trial court's granting of the exception of prematurity was reversed.

Negligent Supervision

Talbert v. Evans, 11-1096 (La. App. 4 Cir. 03/7/12), 88 So.3d 673, writ denied, 12-0774 (La. 5/18/12), 89 So.3d 1197.

A medical-review panel found that Dr. Evans breached standards of care by virtue of negligent care rendered by his physician assistant (PA). In the lawsuit that followed, the Patient Compensation Fund (PCF) intervened and filed a motion for summary judgment, contending that it did not cover the

acts of the PA. The trial court concluded that the PA was not PCF-qualified and granted the motion for summary judgment.

The case proceeded to trial, following which the court found in favor of the plaintiffs, opining that Dr. Evans had breached the standard of care by failing properly to supervise his employee.

The total of the damages exceeded Dr. Evans' \$100,000 statutory cap, and the court granted the physician's motion to have the judgment comply with the MMA's limitations. In its original judgment, the trial court found Evans 100 percent at fault, but the judgment was later amended to assign fault of 30 percent to Evans, 30 percent to the clinic and 40 percent to the PA, while continuing to refer to Evans's liability pursuant to the *respondeat superior* doctrine.

The PCF argued on appeal that it was not responsible for the physician's supervision of the PA because "negligent supervision" was not covered under the MMA at the time of the alleged malpractice; more specifically, the MMA's definition of malpractice did not include the word "supervision" at the time of the treatment or death. The appellate court disagreed, citing *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So.2d 303, for the proposition that the MMA "could not possibly exhaust every potential scenario of malpractice as defined by the Act."

Although the trial court amended its original judgment in which it had declared Dr. Evans 100 percent liable, to reflect shared liability among Evans, his clinic and his PA, the appellate court decided that the trial judge intended for *respondeat superior* to apply, having referenced Dr. Evans's responsibility for the actions of the PA, thus making clear the trial court's intention to hold Evans 100 percent liable for the judgment. The appellate court affirmed the judgment of the trial court in all respects except to amend it to specify that Evans was 100 percent liable for the damages.

—Robert J. David

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IRS Announces "Fresh Start" Initiative

During the first half of 2012, and pursuant to the "Fresh Start" Initiative, the Internal Revenue Service (IRS) has announced significant changes to its collection procedures. These changes are detailed below.

Changes to Federal Offer in Compromise Program

On May 21, the IRS announced expansion of its Fresh Start Initiative by offering more flexible terms to the offer in compromise program. The goal is to enable financially distressed taxpayers to quickly clear up their tax problems.

In general, an offer in compromise is an agreement between a taxpayer and the IRS that settles a taxpayer's tax debt for less than the full amount owed. The IRS will not accept an offer in compromise if the IRS believes the tax debt can be paid in full as a lump sum or through an installment agreement. To make this determination, the IRS examines the taxpayer's future income and current assets to determine a taxpayer's reasonable collection potential.

This announcement by the IRS revised financial analysis used to determine which taxpayers qualify for an offer in compromise. This announcement also enables some taxpayers to resolve their tax problems in as little as two years. The changes announced by the IRS include revising the calculation for a taxpayer's projected future income, expanding other living expense allowances and categories, and permitting taxpayers to repay their student loans, including state and local delinquent taxes, pay bank fees and charges, and make credit card payments

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Under the Fresh Start Initiative, when the IRS calculates a taxpayer's reasonable collection potential, it will now look at only one year of future income for those offers paid in five or fewer months, down from four years; and two years of future income for offers paid between six to 24 months, down from five years. Now all offers must be fully paid within 24 months from the date the offer is accepted.

Changes to Federal Installment Agreements

The Fresh Start Initiative of the IRS also includes expansion of its installment program. The IRS has increased the threshold from \$25,000 to \$50,000 before a taxpayer needs to supply the IRS with a financial statement when establishing an installment agreement. In other words, those taxpayers who owe \$50,000 or less in back taxes will now be able to enter into a streamlined agreement with the IRS that stretches the payments over a series of months or years. The maximum term for streamlined installment agreements has been raised to 72 months. Taxpayers also may pay down their balance due to \$50,000 or less to take advantage of this payment option. Streamlined installment agreements may even be established by taxpayers online using the IRS website: www.irs.gov.

Changes to Federal Tax Lien Filings and Withdrawals

The Fresh Start Initiative changes also generally increase the filing threshold for a federal tax lien from \$5,000 to \$10,000. While the IRS will not retroactively apply the new filing threshold, it will withdraw a federal tax lien after certain qualifying taxpayers enter into a "direct debit" installment agreement. To qualify for this lien withdrawal, individual and business taxpayers must meet certain eligibility requirements, such as: (1) owe \$25,000 or less; (2) the direct debit installment agreement must pay the amount owed in full within the shorter of 60 months or before the statute of limitations on collection expires; (3) must be in full compliance with other filing and payment requirements; (4) must have made three consecutive direct debit payments; (5) cannot have previously received a lien withdrawal for the same taxes unless the withdrawal was for an improper filing of the lien; and (6) cannot have defaulted on a current, or any previous, direct debit installment agreement.

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Writ of Mandamus Appropriate Only When Action Purely Ministerial

Aberta, Inc. v. Atkins, 12-0061 (La. 5/25/12), 89 So.3d 1161

In *Aberta*, the Louisiana Supreme Court held that a writ of mandamus ordering a clerk of court to remove from the public records mortgages placed on property was an inappropriate use of the remedy because the cancellation of the mortgages would involve more than a ministerial duty. As a writ of mandamus is appropriate only in directing a public officer to compel the performance of a ministerial duty required by law, the Louisiana Supreme Court reversed the lower courts' grant of mandamus.

The case involved a series of transactions regarding a single piece of property. On Aug. 26, 2003, the subject property was sold to Aberta, the first purchaser, who then turned around and sold the property that same day to Wagner World, the second purchaser. Again the same day, Wagner World granted mortgages on the property. While the first sale to Aberta and the mortgages placed on the property by the second purchaser were recorded the next day, the sale to the

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second purchaser was not recorded until after Aberta sold its shares to a third party.

Aberta subsequently filed a petition for writ of mandamus to cancel the mortgages placed on the property by the second purchaser, arguing that because the sale of property from it to Wagner World was not recorded, Aberta still owned the property, and thus the mortgages granted by the second purchaser were ineffective and should be cancelled. The trial court agreed, granting a writ of mandamus directing the clerk to cancel the mortgages, and the 4th Circuit affirmed.

In a per curiam opinion, the Louisiana Supreme Court reversed the lower courts, holding that mandamus was inappropriate. In reaching its decision, the court noted that while La. C.C.P. art. 3863 provides that “[a] writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law,” mandamus will issue only where the action sought to be compelled is ministerial in nature, *i.e.*, where it contains no element of discretion.

Thus, the court reasoned that while certain statutes impose upon the recorder of mortgages the duty to cancel mortgages when the request meets specific requirements, here, in order to cancel the

mortgages at issue, the recorder would have to determine whether the first purchaser was a third party protected by the public-records doctrine from the unrecorded sale to the second purchaser. Because such a determination was “not a condition admitted or proved to exist and imposed by law,” the cancellation involved more than a ministerial duty and, therefore, mandamus was not appropriate.

Valuing an Estate at the Time of Decedent’s Death: Fair But Not True

In re Succession of Linder, 11-0633 (La. App. 5 Cir. 5/22/12), 92 So.3d 1158.

The 5th Circuit Court of Appeal held that postmortem information, unknown to the parties and discovered after the testator’s death, may not be used to re-value an estate.

The trial court used the fair-market value of the mineral and oil interests in calculating the value of the estate, noting that a fair-market valuation is restricted to the use of information that is available on a specified date, while true value works

backward to determine an asset’s worth on a previous date. The testator’s forced heir, Mrs. Rosenthal, appealed, arguing that the trial court erred in its valuation of the estate and thus the valuation of her legitimate. Mrs. Rosenthal argued that fair-market value and true value are synonyms, and even if the oil and gas’s true value was based on information obtained after decedent’s death, they were, in fact, present in the ground on the date of death. The 5th Circuit rejected these arguments and affirmed the trial court’s calculation, reasoning that Mrs. Rosenthal produced no evidence that the information used to seek a postmortem increase in value was information that was available when Mrs. Linder died. As a result, the court held that the postmortem information could not be used to re-value the estate for it was not known by the parties at the date of death.

—**Christina Peck Samuels**

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CHAIR'S MESSAGE

In Memory of Two Great Champions

By Larry Centola

It is with a heavy heart that I write this Chair's Message. Young lawyers in Louisiana recently lost two of our greatest champions — Joseph Giarrusso, Jr. and John (T-Jean) Hernandez III.



Larry Centola

Joe Giarrusso, Jr. (or "Spike" as he liked to be called and as his name appears in my phone's address book) was a mentor to countless young lawyers over the years. Joe was an adjunct professor at Loyola University College of Law and the Loyola Institute for Ministry. He taught professionalism at Loyola and was a frequent lecturer to the Bar on professionalism and ethics. Because of this teaching and lectures, Joe's influence on young lawyers continues after his passing and will continue for years.



Joseph I. Giarrusso, Jr.

Although Joe attended Tulane Law School and later taught at Loyola, he mentored many of us from the Louisiana State University Law Class of 2001. I remember some of his great stories about his days as a criminal magistrate judge in Orleans Parish, stories where he would tell us what we should and should not do in the future, stories where he was trying to help us learn from the mistakes of others.

In addition to being a criminal magistrate judge, Joe practiced at McGlinchey Stafford for more than 20 years. I can remember his advice to us about practicing at a large firm. Joe's McGlinchey stories were always entertaining. They were delivered with humor and suspense. He was a wonderful storyteller. He was constantly teaching and he was constantly trying to help. He will be greatly missed by all the people who were touched by his life.

As young lawyers, we can carry on Joe's legacy by being professional in our everyday practice of law. We all have lives outside of the practice of law, and we do not know what non-law-related troubles may be going on in the life of another attorney. It is important that we treat each other with respect and honor. If we are professional to one another, we may be able to make the practice of law a little more enjoyable — even if it is just for a moment. By being professional, we can definitely raise the public image of

lawyers. So please, carry on the legacy of Joe Giarrusso, Jr. and be professional in your dealings with other lawyers.

I cannot remember when I first met T-Jean Hernandez. Since my involvement with the Louisiana State Bar Association (LSBA), it seems like T-Jean was just always there. He was the vice president of the Louisiana Center for Law and Civic



John Ashby Hernandez III

Education and he held a number of positions and titles throughout the LSBA over the years. But T-Jean's greatest passion was for everything French. He was a charter member of the LSBA's Francophone Section. He was always promoting international relationships between the LSBA and the bar associations of Quebec, Paris, Haiti, France, Belgium and other French-speaking bar associations. He would regale us with his wonderful tales of his latest trip to Paris. He was a big supporter of young lawyer efforts within the LSBA, and the young lawyers will

Continued next page



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Chair continued from page 257

miss his passion and his support. I will always regret not being able to take a trip to Paris with T-Jean, as we often discussed taking such a trip.

We young lawyers can honor T-Jean by expressing passion for something we love. His passion for all things French was unparalleled. Within minutes of talking to him, you knew that his French heritage was important to him and that he drew great joy from all things French. We can only hope that each of us finds a passion in our lives that brings us that much joy as French culture brought T-Jean.

The law is a social profession. We must

interact with others to accomplish our jobs and our goals. Through interacting with others, we get to meet some truly remarkable people. The LSBA has lost two of those remarkable people, and my words cannot express my gratitude for having known and learned from them. We can continue the legacy of these two great men by being professional and being passionate.

I close by borrowing some words from my friend, Joe III. Tell someone you love them. Hug someone a little bit tighter and longer. Strive to be a remarkable person like Joe Giarrusso, Jr. and T-Jean Hernandez III, and your legacy will live on well after you pass.

YOUNG LAWYERS SPOTLIGHT

Matthew P. Keating Lake Charles

The Louisiana State Bar Association's Young Lawyers Division is spotlighting Lake Charles attorney Matthew P. Keating.

Keating, a partner at Plauché, Smith & Nieset, L.L.C., in Lake Charles, obtained a BS degree

in business management from Louisiana State University in 2003 and his JD degree from South Texas College of Law in 2006. He graduated law school in the top 15 percent of his class, where he was a member of the Phi Delta Phi honors fraternity and, upon graduating, received the Jay D. Hirsch Insurance Scholarship Award for excellence in the study of insurance law.

He is a member of the Louisiana, Texas and American bar associations, the Defense Research Institute and the Louisiana Association of Defense Counsel. He also is a member of the Southwest Louisiana Bar Association, where he has served as an officer and executive board member in the Young Lawyers Section. He has organized and moderated the Southwest Louisiana Bar Association's Young Lawyers Seminar for the past three years.

Keating is a member of the 2012-13 Leadership LSBA Class. He also serves on the board of trustees for Bishop Noland Episcopal Day School in Lake Charles.

He has an extensive litigation practice handling a broad range of cases including insurance defense, insurance coverage disputes, trucking liability, defending and prosecuting the rights of local businesses, premises liability, workers' compensation defense, employment law matters, and class action defense.

Apart from his legal career, he enjoys LSU football, playing tennis, and spending time with his wife, Amanda, and their two children.



Matthew P. Keating



Superwomen

*Female Attorneys Mastering the Game
and the Strategies that Rule*

**Friday,
Nov. 16, 2012**

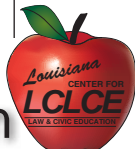
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Members of sponsoring organizations \$55

**To register or receive more information, please go to
www.lsba.org/diversity.**



LCLCE Conducts Summer Institute for Louisiana Educators

Louisiana elementary, middle and high school teachers participated in the 2012 Louisiana Summer Institute in July, coordinated by the Louisiana Center for Law and Civic Education (LCLCE). Teachers, representing all of Louisiana's congressional districts, received training in interactive strategies to add to their existing civics and law-related curriculum. The program was made available to Louisiana educators at no cost.

The program began with welcoming remarks by LCLCE board member Judge Randall L. Bethancourt, 32nd Judicial District. Judge Scott J. Crichton, 1st Judicial District Court and president of the Louisiana District Judges Association, addressed attendees on "Sexting, Texting and Beyond." Loyola University College of Law Professor M. Isabel Medina provided specialized instruction on "Street Law." In addition to training in the "We the People" and Street Law programs, teachers received an introduction to the "Citizens, Not Spectators" voting curriculum that allows schools to earn up to \$300 for the purchase of civics and law-related education materials for use in the classroom. The culminating activity was a mock trial of *Minnesota v. Ronald Riff: A Criminal Mock Trial* by the Summer Institute participants. The mock trial was conducted in the courtroom of U.S. District Court, Eastern District of Louisiana, Magistrate Judge Karen Wells Roby.

Also participating on the faculty were Ann Majeste, Robert Rome and Liz Tullier.



Among the teachers and school administrators attending the 2012 Summer Institute were Daryl Adams, Dwayne Alexander, Van Anderson, Barbara Bellar, Naomi Coyle, Zana Curley, Danielle d'Augereau, Jennifer Donewar, Paige Dyer, Matthew Edwards, Courtney Elkins, Greg Ernst, Lisa Fennell, Joelle Flaherty, Gregory Gilyard, Wayne Hill, Shannon Hudson, Kathy Jones, Chris Kourvelas, Kenny Mathews, Joy McCord, Wanda Murphy, Mitzi Murray, Carla Powell, Monica Speyrer, Liz Tullier, Missy Varnado and Christina Wilbert.



The Louisiana Center for Law and Civic Education (LCLCE) received the 2011 Sandra Day O'Connor Award for the Advancement of Civics Education at ceremonies in July in conjunction with the Conference of Chief Justices and the Conference of State Court Administrators. The award honors an organization, court or individual who has promoted, inspired, improved or led an innovation or accomplishment in the field of civics education related to the justice system. Judge C. Wendell Manning, center, of Louisiana's 4th Judicial District Court accepted the award on behalf of the LCLCE. Presenting the award were Eric T. Washington, chief judge of the District of Columbia and president of the Conference of Chief Justices, and Rosalyn W. Frierson, South Carolina State Court administrator, president of the Conference of State Court Administrators and vice chair of the NCSC board of directors.

By Robert Gunn, Louisiana Supreme Court

RETIREMENT... IN MEMORIAM

Retirement

► 19th Judicial District Court Commissioner John M. Smart, Jr. retired effective June 30. He took his first oath of office as commissioner in 2002. He earned his BA degree in 1978 from Louisiana State University and his JD degree in 1988 from LSU Paul M. Hebert Law Center in 1988.

Deaths

► Retired 33rd Judicial District Court (JDC) Judge Edward M. Mouser, 79, died July 8. Judge Mouser received his LLB degree in 1959 from Louisiana State University and was in the practice of law

in Allen Parish from 1959 until his election to the bench of the 33rd JDC in 1969. He retired in 1988. He was a member of Gamma Eta Gamma legal fraternity and served as a corporal in the U.S. Marine Corps from 1954-56.

► Retired 18th Judicial District Court (JDC) Judge Edward N. Engolio, Sr., 90, died July 11. He was a 1943 graduate of Louisiana State University and earned his JD degree in 1948 from LSU Law School. He was a graduate of the National Judicial College and the University of Nevada Judicial Masters Course. Judge Engolio was a former city attorney for the cities of Plaquemine and White Castle. He was author of the Articles of Incorporation for the Louisiana District Court Judges

Association and served multiple terms as a member of that body's Executive Board. He was the first Louisiana judge to successfully order and maintain women on juries in 1975 and started a model selection system for jurors. He served as first chair of the Board of Governors and vice president of LSU Law School. He was a World War II veteran, serving from 1943-46 in China, Burma, India and French Indo-China (North Vietnam), and served from 1946-72 in the U.S. Army Reserve, achieving the rank of lieutenant colonel. He took his first oath as judge on the 18th JDC in 1969 and served there until his retirement in 1991.

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 event. For assistance, contact a coordinator.

| Area | Coordinator | Contact Info | Area | Coordinator | Contact Info |
|--------------------------|---|-------------------------------------|-----------------------------------|---|--|
| Alexandria | Richard J. Arsenault rarsenault@nbalawfirm.com | (318)487-9874 Cell (318)452-5700 | Monroe | John C. Roa roa@hhsclaw.com | (318)387-2422 |
| Baton Rouge | Ann G. Scarle ann@brba.org | (225)214-5563 | Natchitoches | Peyton Cunningham, Jr. peytoncl@suddenlink.net | (318)352-6314 Cell (318)332-7294 |
| Covington/ Mandeville | Suzanne E. Bayle sebayle@bellsouth.net | (504)524-3781 | New Orleans | Helena N. Henderson hhenderson@neworleansbar.org | (504)525-7453 |
| Denham Springs | Mary E. Heck Barrios mary@barrioslaw.com | (225)664-9508 | Opelousas/ Ville Platte/Sunset | John L. Olivier johnolivier@centurytel.net | (337)662-5242 (337)942-9836 (337)232-0874 |
| Houma/Thibodaux | Danna Schwab dschwab@theschwablawfirm.com | (985)868-1342 | River Parishes | Judge Jude G. Gravois judegravois@bellsouth.net | (225)265-3923 (225)265-9828 Cell (225)270-7705 |
| Jefferson Parish | Pat M. Franz patfranz@bellsouth.net | (504)455-1986 | Shreveport | Bridget Verret bverret@shreveportbar.com | (318)222-3643 |
| Lafayette | Susan Holliday susan@lafayettebar.org | (337)237-4700 | | | |
| Lake Charles | Chantell Marie Smith csmith5@ldol.state.la.us | (337)475-4882 | | | |

For more information, go to:
www.lsba.org/solace

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that **Michael T. Durham** has joined the firm's Baton Rouge office as special counsel.

J. David Andress announces the formation of Andress Law Firm, L.L.C., with offices located at Ste. A, 5841 S. Sherwood Forest Blvd., Baton Rouge, LA 70816, (225)771-8220; and Ste. 207, 1000 Veterans Memorial Blvd., Metairie, LA 70005, (504)912-3805.

Baldwin Haspel Burke & Mayer, L.L.C., in New Orleans announces that **Zachary T. (Zach) Jones** has joined the firm as an associate.

Blanchard, Walker, O'Quin & Roberts, A.P.L.C., in Shreveport announces that Scott R. Wolf has become a shareholder and director of the firm. Also, R. Perry Pringle

and John R. Herzog of Pringle & Herzog, A.P.L.C., announce their association as of counsel with Blanchard, Walker, O'Quin & Roberts.

Breazeale, Sachse & Wilson, L.L.P., announces that **Sunny Mayhall Delacroix** has joined the Baton Rouge office as of counsel. Also, **Stephen M. Angelette** has joined the firm's Baton Rouge office as an associate.

Pamela N. Breedlove, attorney and mediator, announces the opening of her law office, Breedlove Law Firm in Bossier City, (318)423-0845.

Cashe Coudrain & Sandage in Hammond announces that Chris D. Broadwater has joined the firm.

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., in Metairie announces that **Conrad Meyer** has joined the firm as a partner.

Galloway, Johnson, Tompkins, Burr & Smith, A.P.L.C., announces that **Marcelle P. Mouledoux**, **Edward F. Rudiger, Jr.** and **Jeffery B. Struckhoff** have joined the New Orleans office as associates, and **Robert B. Brahan, Jr.** has joined the Lafayette office as an associate. Also, the firm has relocated its Lafayette office to 328 Settler's Trace Blvd., Lafayette, LA 70508.

Hailey, McNamara, Hall, Larmann & Papale, L.L.P., announces that Brian J. Eiselen has joined the firm's Metairie office as of counsel. Richard J. Garvey, Jr. and Christopher G. Otten have joined the firm's Metairie office as associates. Also, the firm, with its principal office in Metairie, announces it has opened an office at Ste. 244, 4550 Post Oak Place Dr., Houston, Texas, 77027; phone (713)552-0697. Managing partner Dominic J. Ovella and equity partners Sean P. Mount and Anne E. Medo (all also licensed in Texas) will service the Texas office.

Continued next page



Stephen M. Angelette



Adrienne L. Baumgartner



Robert B. Brahan, Jr.



James L. Breaux



James A. Cobb, Jr.



Sunny Mayhall Delacroix



Michael T. Durham



Keren E. Gesund



Mark E. Hanna



Zachary T. Jones



Conrad Meyer



Marcelle P. Mouledoux

Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., announces that David S. Willenzik has joined the firm's New Orleans office as special counsel.

Liskow & Lewis, A.P.L.C., announces that **James L. Breaux** has joined the firm's New Orleans office as of counsel and **Leon J. (Trey) Raymond III** has joined the New Orleans office as a shareholder.

McGlinchey Stafford, P.L.L.C., announces that **Shannon S. Sale** has joined the firm's New Orleans office as an associate.

Mouledoux, Bland, Legrand & Brackett, L.L.C., in New Orleans announces that **Mark E. Hanna** has been named special counsel to the firm.

Perry Dampf Dispute Solutions announces that **James A. Cobb, Jr.** and **Keely Y. Scott** have joined its panel of mediators. Cobb will continue to be of counsel to the New Orleans firm of Ajubita, Leftwich & Salzer, L.L.C. Scott will continue to practice with Donohue, Patrick & Scott, P.L.L.C., in Baton Rouge.

Phelps Dunbar, L.L.P., announces that Patrick A. Talley, Jr. has joined the firm's New Orleans office as a partner.

Sessions, Fishman, Nathan & Israel, L.L.C., in Metairie announces that **Keren E. Gesund** and **Kirsten H. Smith** have joined the firm as associates.

Karelia R. Stewart has been promoted to chief of the Drug Section in the Caddo Parish District Attorney's Office in Shreveport.

NEWSMAKERS

Adrienne L. Baumgartner, a partner in the Covington office of Porteous, Hainkel & Johnson, L.L.P., has become a Fellow of the American College of Trial Lawyers.

Kristin L. Beckman, an attorney with Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. in New Orleans, was selected as a member of the Louisiana State Bar Association's Leadership LSBA Class for 2012-13.

Craig L. Caesar, of counsel in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was appointed to a two-year term as chair of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse.

Bobby M. Harges, a professor at Loyola University College of Law and affiliated with the mediation firm of MAPS, Inc., is the author of the book, *The Handbook on Louisiana Alternative Dispute Resolution Laws*, recently published by Esquire Books.

William H. (Bill) Howard III, a shareholder in the New Orleans and Baton Rouge offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was elected to a one-year term as Southwest Region vice president of the National Association of Railroad Trial Counsel.

Frank E. Lamothe III, with the Covington office of Lamothe Lea Aertker, L.L.C., was acknowledged as one of the Gold Ribbon sponsors for the Children's Advocacy Center/Hope House Darkness to Light campaign. Also, Lamothe was featured in the Louisiana Association for Justice 2012 Leadership Resource Guide as a member of the council of directors, and he was re-elected to the board of directors of Christwood, a retirement community in Covington.

Sister Alison R. McCrary, CSJ, a human rights attorney, a former Soros Justice Advocacy Fellow in New Orleans, and a religious sister with the Congregation of the Sisters of St. Joseph, was named one of the *National Catholic Reporter's* 2012 Women Making a Difference in the church and in society. McCrary is currently at the congregation's LaGrange Park, Ill., center.

Allen C. Miller, Sr., a partner in the New Orleans office of Phelps Dunbar, L.L.P., was recognized as one of the "2012 Nation's Best Advocates: 40 Lawyers Under 40" by IMPACT and the National Bar Association.

Thomas Kent L. Morrison, a partner in the New Orleans office of Phelps Dunbar, L.L.P., was appointed to the board of directors of the New Orleans Chapter of the Federal Bar Association.

Randolph A. Piedrahita, with the Baton Rouge firm of Dué, Price, Guidry, Piedrahita & Andrews, A.P.A.-N.A.P., was named to the Million Dollar Advocates Forum and the Multi-Million Dollar Advocates Forum for being principal trial counsel in a case awarding a multi-million-dollar jury verdict.



Randolph A. Piedrahita



Leon J. Raymond III



Edward F. Rudiger, Jr.



Shannon S. Sale



Keely Y. Scott



Kirsten H. Smith



Karelia R. Stewart



Jeffery B. Struckhoff

H. Minor Pipes III, an attorney with Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. in New Orleans, was elected secretary of the Louisiana Bar Foundation.

Jeffrey E. Richardson, a partner in the New Orleans office of Adams and Reese, L.L.P., was recognized by Fastcase for his iPhone blog and resource for lawyers, iPhone J.D.

Raymond P. Ward, special counsel in the New Orleans office of Adams and Reese, L.L.P., was elected to the board of directors for Scribes—The American Society of Legal Writers.

Lara E. White, a partner in the New Orleans office of Adams and Reese, L.L.P., was appointed to the American Bar Association 2012-13 Section of Litigation Leadership Team as co-chair of the Products Liability Committee. She also will serve on the section's National Institutes and Regional Meetings Committee.

IN MEMORIAM

Joseph I. Giarrusso, Jr., who, during his legal career, was a magistrate, attorney, mediator and professor, died Sept. 12. He was 60. He received his AB degree, *magna cum laude*, from Georgetown



Joseph I. Giarrusso, Jr.

University in 1974 and his JD degree from Tulane Law School in 1977. He also earned a master of pastoral studies degree from Loyola University in 1985. He is a former federal and state prosecutor and a retired magistrate of Orleans Parish Criminal District Court where he helped to create a Domestic Violence Court section. A frequent speaker on professionalism, ethics, domestic violence and mediation, Mr. Giarrusso practiced with the McGlinchey Stafford, P.L.L.C., law firm for 20 years in the Health Care Section. He served as a mediator for several years, most recently with MAPS, Inc. He was an adjunct professor at Loyola University. He was very involved in the activities of the Louisiana State Bar Association and its

committees, most notably the Committee on the Profession. He is survived by his wife, Orleans Parish Civil District Court Judge Robin M. Giarrusso; his children, Joseph and Courtney; his daughter-in-law, Catherine; and two grandchildren.

John Ashby (T-Jean)

Hernandez III, a law partner with his father at Hernandez & Hernandez, A.P.L.C., in Lafayette, died Sept. 3. He was 44. He received his BA degree in history in 1991 from Louisiana State University and his JD degree in 1994



John Ashby Hernandez III

from Loyola University Law School. He created the Cajun American Society at Loyola Law School and was vice president of the Loyola Student Government Association. Colleagues and friends called his life "a celebration and dedication to the French language and culture." He was a charter member and chair of the Louisiana State Bar Association's (LSBA) Francophone Section and co-chaired, with his father, the Judge Allen M. Babineaux International Civil Law Symposium, which established international relationships with Francophone countries such as Canada, France, Haiti and Belgium. He received the LSBA President's Award in 2004 and the Stephen T. Victory Memorial Award in 2012 for coordinating the February/March 2012 *Louisiana Bar Journal* which recognized the bicentennial of Louisiana's statehood. He held memberships in several organizations, including the Federal Bench Bar Association, the Lafayette Bar Association, the Louisiana Center for Law and Civic Education and the French American Chamber of Commerce. He was a former member of the board of directors of CODOFIL and a charter member of the Alliance Francais in Lafayette. He is survived by his parents, John Ashby Hernandez, Jr. and Patricia D. Hernandez; his fiancée, Cindy McKinney; two sisters, Jeanne Yvette Maynor and Nicole Hernandez Poencot; and several other relatives.

PUBLICATIONS

Chambers USA 2012

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): Mark R. Beebe, Robin B. Cheatham, O. Ray Cornelius, John M. Duck, Brooke Duncan III, Richard B. Easterling, Philip A. Franco, Leslie A. Lanusse, Patricia B. McMurray, Malcolm A. Meyer, Glen M. Pilie, Daniel K. Rester, Justin B. Schmidt and Mark J. Spansel.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Judy Y. Barrasso, George C. Freeman III, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin.

Breazeale, Sachse & Wilson, L.L.P. (Baton Rouge, New Orleans): John T. Andrishok, Thomas M. Benjamin, David R. Cassidy, Murphy J. Foster III, Alan H. Goodman, Eve B. Masinter, E. Fredrick Preis, Jr. and Claude F. Reynaud, Jr.

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

Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P. (Baton Rouge, New Orleans, Houston, Texas): H. Mark Adams, Jennifer L. Anderson, William M. Backstrom, Jr., Edward Hart Bergin, John J. Broders, Boyd A. Bryan, Louis E. Buatt, Robert R. Casey, Michael A. Chernekoff, R. Keith Colvin, Michael B. Donald, J. Kelly Duncan, Elizabeth J. Futrell, Harry S. Hardin III, Pauline F. Hardin, Curtis R. Hearn, Cornelius R. Heusel, David M. Hunter, Charles A. Landry, F. Rivers Lelong, Jr., Sidney F. Lewis V, R. Lewis McHenry, Kenneth J. Najder, J. Marshall Page III, Louis S. Quinn, Jr., Rudolph R. Ramelli, Carl D. Rosenblum, Dionne M. Rousseau, Amy Garrity Scaffidel, Richard J. Tyler, Susan M. Tyler, R. Patrick Vance and Richard P. Wolfe.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

| Publication | Deadline |
|-----------------|--------------|
| Feb./March 2013 | Dec. 4, 2012 |
| April/May 2013 | Feb. 4, 2013 |

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

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

UPDATE

Boyle Receives Thurgood Marshall Award

Attorney Kim M. Boyle, a partner in the New Orleans office of Phelps Dunbar, L.L.P., received the National Black Prosecutors' Thurgood Marshall Award at its annual awards luncheon in July in New Orleans. The award is presented to an individual whose service to the community exemplifies the work of Thurgood Marshall through activism and concern for human and civil rights.



Kim M. Boyle

As an attorney practicing labor and employment law, Boyle has represented local, regional and national companies

in trial and appellate settings. She served as the first female African-American president of the Louisiana State Bar Association and the first African-American president of the New Orleans Bar Association.

Her current volunteerism is focuses on healthcare and education at Tulane University, Princeton University and Touro Infirmary. She has served on the boards of directors of the ACLU of Louisiana, the Greater New Orleans Fair Housing Center, the New Orleans Legal Assistance Corp., Court-Appointed Special Advocates (CASA), the NO/AIDS Task Force, the Bureau for Governmental Research and the Lawyers Committee for Civil Rights Under the Law.

Whitney Selected as Special Counsel

Attorney Mary F. Whitney has been selected to serve as special counsel for the Judiciary Commission of Louisiana.

Whitney, a member of the Louisiana and Florida bar associations, received her undergraduate and master's degrees in 1975 and 1985, respectively, from Nicholls State University and her law degree in 1992 from Florida State University College of Law. She served as assistant special counsel (and most recently, as commission counsel) for the Judiciary Commission of Louisiana.

Attorney Clare D. Fiasconaro will serve as interim commission counsel.



Mary F. Whitney



Louisiana 1st Circuit Court of Appeal Chief Judge Burrell J. Carter of Greensburg, second from left, announced that, for the first time in its history, the court convened a panel comprised of three women judges, including, from left, Judge Page McClendon of Mandeville, panel Chief Judge Vanessa Guidry Whipple of Houma and Judge Toni M. Higginbotham of Baton Rouge. The panel had its first hearings of the 2012-13 docket year in August. The 1st Circuit uses a 16-year rotation to assign its three-judge panel members for a docket year.



Retired Rayne City Court Judge Denald A. Beslin, left, and current Rayne City Court Judge James M. Cunningham III were the recipients of the Evangeline Area Council Boy Scouts of America Distinguished Citizen Awards. Judge Beslin served as Rayne City Court judge from 1965-96. Judge Cunningham has served as Rayne City Court judge since 1997 and is the current president of the Louisiana City Judges Association.

LOCAL / SPECIALTY BARS



Members of the Louisiana Chapter of the American Board of Trial Advocates (ABOTA) hosted a luncheon in July in memory of Donald A. Hoffman, an ABOTA charter member, past president and Executive Committee member. Attending the luncheon in New Orleans were, from left, Bill Wilson, Frank E. Lamothe III, James A. George, Gracella Simmons, S. Gene Fendler, Sharon Stickling, Charles R. (Chick) Moore, Lewis O. Unglesby and Edward E. Rundell. Members created a memory book and presented it to Hoffman's family.

ABOTA La. Chapter Hosts Lecture Series

The Louisiana Chapter of the American Board of Trial Advocates (ABOTA) hosted the James Otis Lecture Series in September at the 19th Judicial District Courthouse in Baton Rouge. The lecture program about the United States Constitution allows high schools to comply with the requirements of the federal statute creating Constitution Day.

Program guest speakers were Judge James J. Brady, U.S. District Court, Middle District of Louisiana; Chancellor Jack M.

Weiss, Louisiana State University Paul M. Hebert Law Center; and Professor Winston W. Riddick, Southern University Law Center. Students and teachers from private and public high schools in East Baton Rouge Parish participated.

Chairing the program were W. Luther Wilson with Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge and Charles R. (Chick) Moore with Moore, Thompson & Lee, A.P.L.C., in Baton Rouge.



Among the teams competing in the Lafayette Young Lawyers Association's Birdie with the Bar golf tournament were, from left, Greg Guidry, Jane Guidry, Edward C. Abell, Jr. and Larry L. Lewis III, with The Onebane Law Firm, A.P.C., in Lafayette.

Lafayette Bar Coordinates Birdie with the Bar Charity Golf Tournament

The third annual Birdie with the Bar golf tournament, organized by the Lafayette Young Lawyers Association, was conducted in May at Le Triomphe golf course. The four-man scramble tournament raised money for the charities championed by the Lafayette Parish Bar Foundation.

Money raised will help cover the costs of filing, administration and processing of cases associated with the foundation's three major programs: Homeless Experience Legal Protection (H.E.L.P.), Protective Order Panel for Victims of Domestic Violence and the Lafayette Volunteer Lawyers program.

The Lafayette Volunteer Lawyers program, together with Acadiana Legal Services Corp., offers individuals help with divorce, custody, bankruptcy and SSI cases. Through the Protective Order Panel, a woman in need can obtain a Title 46 Protective Order against her abuser. Additionally, a homeless person can call on members of Lafayette's legal community for help obtaining his or her birth certificate through the Homeless Experience Legal Protection (H.E.L.P.) program located at the Acadiana Outreach center.



The New Orleans Bar Association and its Young Lawyers Section serves lunch at the Ozanam Inn homeless shelter twice a month. Participating in a recent visit were, from left, Christopher K. Ralston, Nicole Gurba, Sandra L. Sutak, Lauren E. Godshall and Christopher D. Wilson.



The Baton Rouge Bar Foundation is the recipient of the 2012 American Bar Association (ABA) Partnership Award. Accepting the award from Vanita Banks, far left, representing the ABA Standing Committee on Bar Activities and Services, were, from left, Baton Rouge Bar Association (BRBA) Executive Director Ann K. Gregorie, BRBA President Gail S. Stephenson and BRBA Past President Preston J. Castille, Jr.

Baton Rouge Bar Foundation Receives 2012 ABA Partnership Award

The Baton Rouge Bar Foundation is the recipient of the 2012 American Bar Association (ABA) Partnership Award. The award, presented by the ABA Standing Committee on Bar Activities and Services, recognizes organizations for substantial and innovative efforts to advance diversity in the legal community.

Baton Rouge Bar Association (BRBA) Executive Director Ann K. Gregorie, BRBA President Gail S. Stephenson and BRBA Past President Preston J. Castille, Jr. accepted the award on behalf of the Foundation in August at the joint luncheon of the National Conference of Bar Presidents, the National Association of Bar Executives and the National

Conference of Bar Foundations.

Established as an organization dedicated to public service and pro bono assistance, the Baton Rouge Bar Foundation has developed several initiatives focusing on legal education for youth and young adults. The Youth Education Initiative programs include Lawyers in the Classroom, the Junior Partners Academy, Teen Court of Greater Baton Rouge, Law Day and mock trial competitions.

The ABA awards program was co-sponsored by the National Native American Bar Association, the National Asian Pacific American Bar Association, the Hispanic National Bar Association and the National Bar Association.



Leon J. Reymond, Jr., right, is the recipient of the 2012 New Orleans Bar Association's (NOBA) Presidents' Award. Presenting the award is NOBA President R. Patrick Vance.

Reymond Receives NOBA's Presidents' Award

Leon J. Reymond, Jr., a shareholder in the New Orleans office of Liskow & Lewis, P.L.C., is the recipient of the 2012 New Orleans Bar Association's (NOBA) Presidents' Award. NOBA President R. Patrick Vance presented the award during ceremonies in August.

The award recognizes a NOBA member who demonstrates an active commitment to the community, high spiritual and moral standards, and shows concern for the social and cultural well-being of New Orleans citizens.

Reymond received his undergraduate degree from the University of Notre Dame and is a 1969 graduate of Louisiana State University Law School. His practice focuses on commercial real estate, corporations and other business entities, energy, finance and various business transactions. He is a member of the American College of Real Estate Lawyers.

Also attending the ceremony were NOBA past presidents Carmelite M. Bertaut, Hon. Jerry A. Brown, Patricia A. Krebs, Thomas O. Lind and Brian P. Quirk.

Important Reminder: Lawyer Advertising Filing Requirement

Per Rule 7.7 of the Louisiana Rules of Professional Conduct, all lawyer advertisements and all unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) — unless specifically exempt under Rule 7.8 — are required to be filed with the LSBA Rules of Professional Conduct Committee, through LSBA Ethics Counsel, prior to or concurrent with first

use/dissemination. Written evaluation for compliance with the Rules will be provided within 30 days of receipt of a complete filing. Failure to file/late filing will expose the advertising lawyer(s) to risk of challenge, complaint and/or disciplinary consequences.

The necessary Filing Application Form, information about the filing and evaluation

process, the required filing fee(s) and the pertinent Rules are available online at: <http://www.lsba.org/LawyerAdvertising>.

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

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Exhibits by legal service providers

Watch your email and www.lafj.org for updates and registration.



President's Message

LBF's Partnership with Louisiana Appleseed is Flourishing

By Patricia A. Krebs

In 2009, a seed was planted with the partnership of Louisiana Appleseed and the Louisiana Bar Foundation (LBF). Since then, the relationship has flourished and grown, and Louisiana Appleseed is now an active and effective force for equal justice in Louisiana. The LBF has long recognized the need for Louisiana Appleseed's policy-level pro bono work, which produces lasting changes to our legal system and increases justice for all. Through the LBF's legal services network and Louisiana Appleseed's innovative pro bono model, the two organizations work together to develop practical solutions to chronic problems in Louisiana. Together the two organizations work to ease the burden on Louisiana legal service providers and offer an opportunity to make great strides toward equal justice in this state.

Donna D. Fraiche, Louisiana Appleseed president, said, "We are grateful for the strategic partnership between the LBF and Louisiana Appleseed. This innovative partnership has proven to be an effective means of working together to tackle some of our state's toughest problems, resulting in systemic, lasting change, advancing and ensuring equal justice under the law."

Since 2009, Louisiana Appleseed has recruited more than 200 top private practice lawyers, corporate counsel, law students and civic leaders across the state to donate pro bono time to solve problems at their root cause. They work to uncover and correct injustices and barriers to opportunity through legal, legislative and market-based structural reform. Louisiana Appleseed's goal is to advance social justice by effecting change at the policy, or systemic, level. Louisiana Appleseed's projects seek to increase access to education, opportunity and justice.

To increase access to education, Louisiana Appleseed volunteers

currently are drafting a legal handbook for charter school board members to assist in addressing pressing legal and organizational issues facing Louisiana charter schools. The handbook should be ready for distribution this winter.

The efforts to increase access to opportunity continue through Louisiana Appleseed's work to preserve homeownership, empowering homeowners with tools to protect themselves from land loss, generate wealth, and access recovery funds following major disasters. Louisiana Appleseed has successfully advocated to improve the law related to small successions, making it easier and less costly for families to obtain clear title. The organization's legislative efforts are ongoing. This year, Louisiana Appleseed advocated for passage of a bill that eliminates the need to open court succession proceedings for all estates where the decedent died more than 25 years ago, allowing all such estates to be handled by affidavits. Act 618 was signed into law by Gov. Jindal in June 2012.

To increase access to justice, Louisiana Appleseed created an extensive white paper to raise awareness within the judicial system about the rules and regulations guiding *in forma pauperis* (IFP) policies and practices in our court system. The Louisiana State Bar Association (LSBA) recently used the white paper to create an educational pamphlet for the community, judges and clerks about common IFP issues.

Monte T. Mollere, LSBA's Access to Justice director, said, "Louisiana Appleseed and its volunteers are changing



Patricia A. Krebs

the lives of Louisiana citizens daily. Working with Louisiana Appleseed has allowed the LSBA's Access to Justice Committee to more effectively address important systemic issues with judges, private practitioners, courts and the public interest legal community, which ultimately impact how poor Louisianans receive access to justice."

I am proud of the role that the LBF has played in nurturing the seed that has grown into a successful organization that works to build a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest.

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces new Fellows:

- Shelly D. Dick.....Baton Rouge
- Nakisha Ervin-Knott.....New Orleans
- Jean M. Faria.....Baton Rouge
- Sanettria (Sam) G. Pleasant.....Baton Rouge

ANSWERS for puzzle on page 230.

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CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

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:

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

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For the February issue of the Journal, all classified notices must be received with payment by Dec. 18, 2012. Check and ad copy should be sent to:

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POSITIONS OFFERED

Shuart & Associates Legal Search & Staffing. In today's market, many law firms are growing by lateral acquisition of partners/practice groups. Some partners are choosing to relocate to firms where their unique strengths are valued and compensation competitive. This requires broad knowledge of the existing marketplace and insight into the culture of local law firms. Shuart & Associates has a proven track record in providing this service. All inquiries confidential. (504)836-7595. www.shuart.com.

Lafayette healthcare defense firm interviewing for an associate position to handle medical malpractice defense files. Applicants should have a minimum five years' experience in litigation, or a background in nursing in lieu of two-three years of legal experience. Registered nurse attorney preferred, but not required. Competitive salary and benefits package. All inquiries confidential. Email résumés to hope.marks@gachassin.com or mail to Hope Marks, P.O. Box 80369, Lafayette, LA 70598.

Insurance defense attorney. State Farm Insurance Co. is seeking applications from attorneys interested in joining its Lafayette House Counsel office. We would prefer an attorney with relevant experience who has good people and technology skills.

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Growing AV-rated New Orleans defense firm seeks full-time attorney with four-six years' experience in workers' compensation defense. Excellent writing and communication skills required. Great opportunity for advancement to partnership or lateral placement. All inquiries are treated with the strictest confidence. Qualified individuals should submit résumé, transcript and writing samples to: Admin, 701 Poydras St., #4700, New Orleans, LA 70139-7708. Visit our website at www.jjbylaw.com.

Insurance coverage attorney position. Larzelere Picou Wells Simpson Lonero, L.L.C., a Metairie insurance coverage and maritime firm, seeks an experienced coverage attorney. The preferred candidate will have at least seven years of experience in analyzing marine, commercial, and excess insurance policies and drafting written coverage positions. The preferred candidate also will have extensive experience in prosecuting or defending declaratory judgment actions on complex insurance questions. The position offers competitive salary and benefits. Email résumé to rromeu@lpwsl.com.

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Phelps Dunbar, L.L.P., a regional law firm, is interested in hiring a lateral attorney for the firm's Gulfport, MS, office. The preferred candidate will have at least two-plus years of litigation experience. Tort and commercial litigation experience and/or insurance coverage experience and trial experience are a plus. Excellent academic credentials required (top 25 percent). Positions offer competitive salary and benefits. Qualified applicants should forward their résumé and transcript to Rachel Woolridge, Legal Recruiting Coordinator, Phelps Dunbar, L.L.P., Ste. 2000, 365 Canal St., New Orleans, LA 70130, or via email at rachel.woolridge@pelps.com.

Governor's Office of Coastal Activities. Attorney position serves as legal counsel to Director of Coastal Activities; performs legal work associated with integrated coastal protection Master and Annual plans, Coastal Protection and Restoration Authority Board, and other agencies. For information on duties, qualifications and response procedures, call Chip Kline at (225)342-3968.

Affirmative Insurance has an opening for an attorney in the Alexandria, La., area. The position is responsible for providing legal counsel on basic and semi-complex cases including representation in litigation to the company and/or the company's insured persons. This position has regular contact with staff counsel, management, litigation specialists, insured persons and legal community. JD degree is required and previous litigation experience is preferred. Submit résumés to resumes@usagencies.com.

Curry & Friend, P.L.C., a growing New Orleans CBD and Northshore law firm, is seeking qualified candidates for Environmental Law First Chair attorney; must have extensive first chair civil jury trial experience in complex litigation. Environmental and/or toxic tort experience preferred. The firm offers competitive salary and benefits and an excellent work environment. To apply, visit www.curryandfriend.com/careers.html.

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

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 (Shreveport).

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Silent Partners Estate Sales offers professional estate sale and liquidation services to estate executors, real estate agents, and individuals in the metro New Orleans area. Antiques or household items — if it has value, we can sell it. Commission basis; no upfront cost. Free consultation; references available. Lynda Moreau, (504)888-9288, email dustbun@ix.netcom.com.

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Virtual office. Spend more time in New Orleans and write off your trip. Will provide mailing address, conference room, phone services, lobby receptionist, copy, fax, voice mail, Internet. 829 Baronne St. Contact Cliff Cardone, (504)522-3333.

FOR SALE / REAL ESTATE

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FOR SALE / BOOKS

Medical/legal texts for sale. Downsizing towards retirement. Most medical texts are in good to excellent condition. Located in Shreveport. Will sell as a lot or individually. Email for list: shlalaw1@comcast.net.

NOTICE

Notice is hereby given that Kent A. Smith is filing a petition and application for reinstatement to the practice of law in Louisiana. Any interested party may file an opposition or concurrence to this filing with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

Notice is hereby given that John E. Demoruelle has filed an application and petition for reinstatement to the practice of law in Louisiana. Individuals may file notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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By Vincent P. Fornias

“ELECTILE” DYSFUNCTION

It's that time of year, sports fans, when local and state campaigns gear up for the Fall elections. For those of you who have not yet made up your minds, we have consulted exhaustively

with local ad companies and spin doctors to produce below your very own Official Guide to Louisiana Elections (OGLE), a handy-dandy cheat sheet to tape next to your flat screen TV. Its careful and religious

use should help you navigate through the scores of forthcoming commercials to separate the honorable heroes (HH) from obnoxious opponents (OO).

| CATEGORY | HH (HONORABLE HEROES) | OO (OBNOXIOUS OPPONENTS) |
|----------------------|---|--|
| Wardrobe | Soft pastels, working casual, sleeves rolled up | Dark, starched, severe |
| Facial Expression | Angelic smile, determined, looking heavenward | Downward smirk, frown, devilish grin |
| Action | Greeting the masses, petting a dog, throwing or catching a ball (in soothing slow motion) | None. Static, stagnant, mug shot poses |
| Companions | Family, golden retriever, babies | Whores, Doberman pinschers, convicted politicians |
| Setting | Green pastures or front porch | Back alley or jailhouse |
| Ad color | Muted, filtered, sunshiny living color | Sepia or grainy black and white |
| Background Music | Upbeat, hopeful, inspiring (think “Shenandoah”) | Plotting, threatening, conquering (think, entry theme for hyena pack in “Lion King”) |
| Voiceover | Avuncular, warm, trusting (think Morgan Freeman) | Raspy, deep, foreboding (think Vincent Price) |
| Voiceover Vocabulary | “children,” “future” and “change” | “gang,” “past” and “courthouse crowd” |

Just how glibble do they think we are? The ads speak volumes for themselves. No taxpayer dollars were spent in completing this Guide.

If you have experienced, seen or heard something humorous in your day-to-day legal practice, or if you just have an idea for a Lucid Intervals column, by all means, let the Louisiana Bar Journal know. Mail, fax or e-mail your stories, anecdotes, quotes or ideas c/o Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; e-mail dlabranche@lsba.org. She'll make sure your “gems” get into the right hands. Keep smiling!

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