

# LOUISIANA BAR JOURNAL

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Volume 70, Number 6

## A State Court Practitioner's Guide to Louisiana Federal District Courts

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- Programming Digital Privacy into Public Policy
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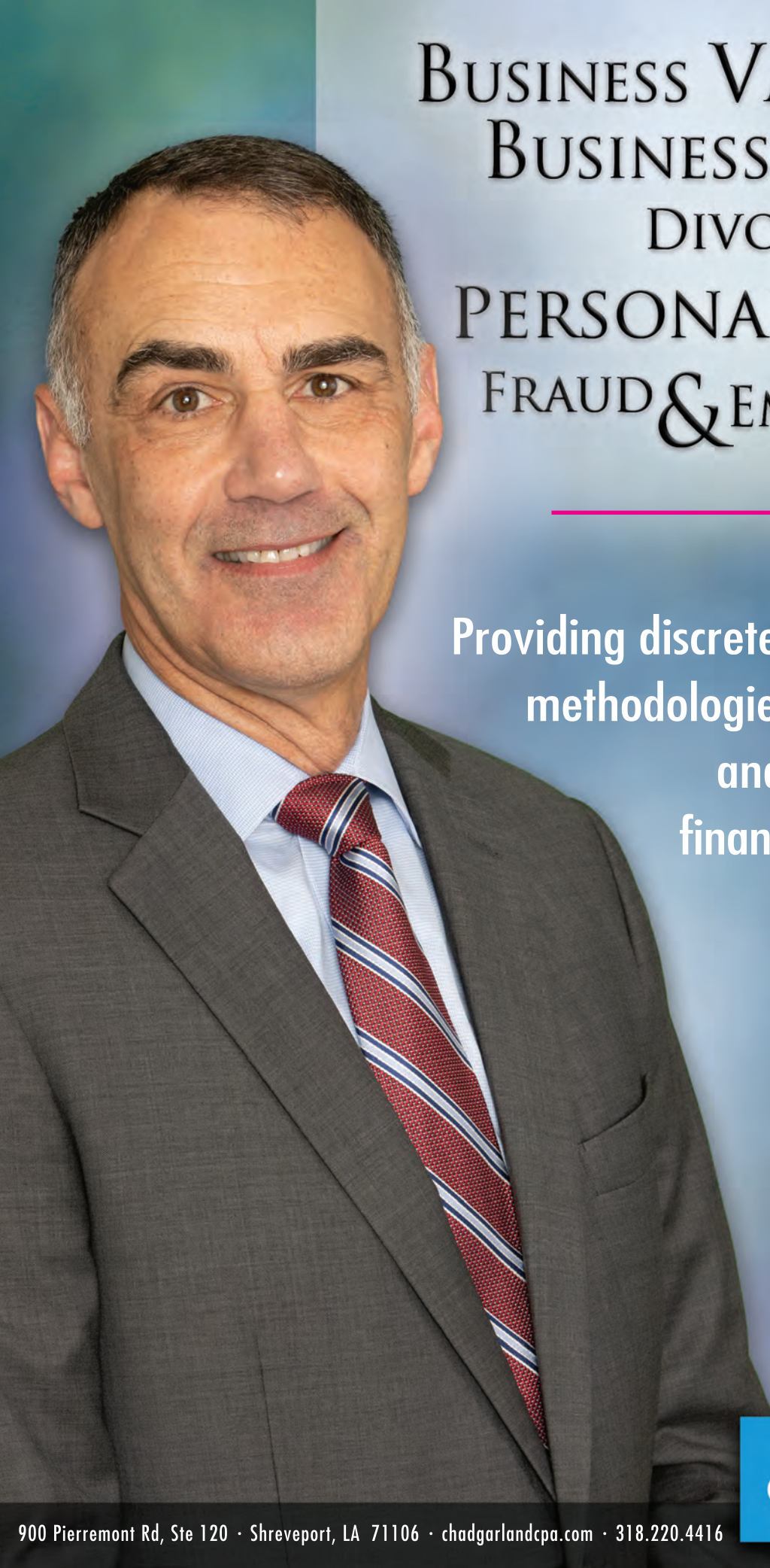
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By C.A. (Hap) Martin III

# HAPPY TRAILS TO YOU

I am amazed that this two-year journey as Louisiana State Bar Association (LSBA) secretary and editor of the *Louisiana Bar Journal* is at an end. When I was looking at the two years from the front end, the time seemed to extend forever. Now, at the end, it has flown. We have had an interesting time with multiple hurricanes, including one that reached all the way up into north Louisiana, as well as the continuing litigation over the mandatory bar. One thing I would like to think remained consistent was the quality of the articles and contents of the *Louisiana Bar Journal*.

I have been blessed, or more accurately, you have been blessed by the gifted attorney writers who have contributed their knowledge, wit and wisdom to the pages of your *Journal*. I have said before, and I will state with confidence, that the *Louisiana Bar Journal* is one of the finest professional journals of its type anywhere in the country. I was very nervous at the outset of this endeavor because I did not know where such articles would come from, but finding quality articles and content was never a problem. I want to thank all our contributors and the *Journal* Editorial Board members for the outstanding work they have done in providing these articles and preparing them for publication. The Editorial Board is a hard-working group that does not get any limelight, but the members are essential to this publication.

Even more so, we are incredibly fortunate with the *Journal* staff members who handle the layout, photos and the myriad other things needed for such a quality product. Our LSBA



Communications Department staff is next to none and has made my job much easier than ever expected; I thank each of them for all their diligent efforts. My hat is off to them, and they have my sincere appreciation. We do not always make it easy on them, but they are great in meeting the publication deadlines that are looming and doing so with actions that are gracious, yet insistent, to those of us who are lagging behind with our input. This job would be impossible without this dedicated and talented staff.

I would be remiss here at the end if I did not thank someone behind the scenes who smoothed out these Editor's Messages and made them more readable. My wife Diane was my editor, and she was gracious in her comments along the way with my deplorable grammar. She has also been with me at the various functions and activities required by this position, and I appreciate the time and

effort she sacrificed to be with me along the way. I know that you enjoyed seeing her a lot more than me. She keeps me on the straight and narrow . . . or at least tries to keep me there.

I am looking forward to being able to play a little more golf these days (hence the photo), but I do intend to stay involved in the LSBA and look forward to, hopefully, a few more years of service to this organization that I have come to enjoy late in life.

Thinking about the end of my term reminded me of a song which most of you probably have not heard. It was the theme song for Roy Rogers and Dale Evans that they would sing at the end of each of their radio broadcasts and then their TV shows during the 1940s to 1960s. My mother would sing it to me at bedtime when I was young (and sometimes when I was not so young just to harass me). It is a bittersweet memory because my mother could not carry a tune in a bucket, but she made up for her lack of talent with enthusiasm. The song is "Happy Trails," and it felt appropriate for this final Editor's Message. I will leave you with the chorus:

*Happy trails to you,  
Until we meet again.  
Happy trails to you,  
Keep smiling until then.*

Thank you, and it has been a pleasure to serve as your LSBA secretary and *Louisiana Bar Journal* editor.

A handwritten signature in black ink, appearing to read "C.A. Martin III". The signature is stylized and written in cursive.



# SAVE THE DATES...

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**Richard Arsenault** has chaired both symposiums since inception. He has been recognized as one of America's Top 50 Influential Trial Lawyers by *Trial Lawyer Magazine*. He has also been an invited lecturer at various law schools including Baylor, Duke, Emory, Tulane, George Washington and LSU, where he served on the Trial Advocacy Faculty. He has been involved in over 25 Multidistrict litigation proceedings, often serving in leadership capacities. In the Actos MDL where he was lead counsel, a \$9 billion verdict was followed by a \$2.4 billion settlement which is the largest single mass tort settlement for a drug that is still on the market. *The Wall Street Journal* has described Richard as having "national notoriety" and as a "big gun" amongst attorneys in competition for leadership roles. *BusinessWeek* described him as "a Dean of the Louisiana Tort Bar" and the *NY Times* described him as one of the "big players" in the legal community.



By Stephen I. Dwyer

# Continuing Our Efforts on Access to Justice, Civility and Rule of Law

**A**s I am rounding the bend into the last quarter of my tenure as President of the Louisiana State Bar Association (LSBA), many activities and experiences captivate my thoughts. Some experiences have been mundane and some have been inspirational. But all have contributed to a sense of satisfaction and achievement but, more importantly, to a profound gratitude for the faith and trust that my fellow attorneys have placed in me.

As I took the oath of office, I was not entirely certain of what lay ahead. I was somewhat facetiously advised to stay the course and to not let the lights go out. I was also advised to eschew the temptation to come into office with a multitude of priorities, goals and projects. And I have accepted all of that advice. So I have focused on two overarching concepts which I believe should tell the story of who we are as lawyers. I have focused on renewing a sense of civility in both our private lives and in our professional lives. And I have embraced our obligation of service to others and our unwavering commitment to Access to Justice.

Clearly, civility must be a core element of attorney professionalism. It is so very important that we exhibit civility in our interactions with each other, with our communities, with our clients and with the judicial system. How often do we see court proceedings devolve into attorneys acting as gladiators disrespectful of their opponents and preparing for a kill? Even in the transactional realm, such word fights can often descend into disrespect and harsh accusations. But it is so important to always focus on the fact that we are guardians of the Rule of Law and that our actions and words must consistently underscore the nobility of our profession. Our projection of ourselves as lawyers to the public must be founded in our ability to dem-

onstrate civility in our professional dealings. As John F. Kennedy once said, "Civility is not a weakness." Civility is more than a matter of politeness or manners. Rather it is a code of decency in a civilized society and it is our noble profession that maintains social order in that society.

My other focus has been on the plight of those in our society who are underprivileged, underserved and underrepresented. For the protection of the Rule of Law to be our guidepost and underlying driving force, there must be access to affordable and pro bono legal services for the vulnerable in our society. It is important that we continue our efforts — even redouble our efforts — to remove barriers to civil justice for low-income and underprivileged people. Our Code of Professionalism requires that we seek opportunities to assist those who cannot afford legal help. The Louisiana Rules of Professional Conduct, Rule 6.1, titled "Voluntary Pro Bono Public Service," provides:

"Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this aspirational goal, the lawyer should:

(a) Provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

- (1) Persons of limited means or
- (2) Charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) Provide any additional services through:

(1) Delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) Delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) Participation in activities for improving the law, legal system or the legal profession."

In helping us fulfill these important goals, the LSBA has organized an extremely robust program addressing Access to Justice issues and providing many different paths for attorneys to raise their hands and to promote this important goal which elevates the nobility of our profession but which, more importantly, improves the lives of those who would otherwise be helpless without us. Some programs might require more of our time and effort. And others afford us the opportunity to be of service in very meaningful ways that might seem simple for us, but which are overwhelmingly needed and appreciated by those whom we strive to serve.

Our Access to Justice Department and Access to Justice Committee were created after severe cuts in federal funding to Legal Services Corporations. In fact, since 1994, funding increases have been less than 1 percent per year, a rate far below even the annual inflation rate. Our Louisiana Supreme

Court has responded to our challenges with the creation of the Access to Justice Commission. Our efforts as a bar association are many and varied and they are too numerous to list in this article. Among our many activities, we have created the Modest Means Directory of attorneys willing to help those of modest means by charging reduced rates based on income. This program directly targets the 1,300,000 people in our state who don't qualify for legal aid but who can't afford market rates. We have started La.FreeLegalAnswers.org whereby volunteer attorneys respond to questions about civil legal issues and receive malpractice coverage through the program.

Of course, there are many more programs designed to both respond to the need of the underprivileged and to provide our Louisiana attorneys with the vehicles and tools to serve and give back to those in need. Our Lawyers in Libraries program provides free legal advice from our volunteers in libraries around the state. Our Wills for Heroes Program, through the efforts and dedication of our Young Lawyers Division, assists first responders in their planning and need for wills. These are but a few of our activities. The opportunities to serve are many and the rewards are abundant. I cannot emphasize too strongly how easy it is to visit our website and to offer to volunteer for such efforts.

In pursuing support and encouragement for our Access to Justice programs, we recently joined forces with Dean Madeleine M. Landrieu of Loyola University College of Law and with our Access to Justice Commission to "brainstorm" ways to make the delivery of services even more effective and efficient. From a very long but very inspirational lunch meeting with Dean Landrieu, Monte Mollere, the leader of the LSBA's Access to Justice activities, and Loyola's Professor Davida Finger, there was born the Inaugural Access to Justice Conclave.

With the generous and enthusiastic support of the Louisiana Supreme Court, the LSBA, in conjunction with the LSBA's Access to Justice Commission, and Loyola University College of Law, we hosted this first-ever Access to Justice Conclave held at the Louisiana Supreme Court. The Conclave was opened by an address from Chief Justice John Weimer who firmly underscored the



Stephen I. Dwyer addresses the ATJ Conclave. Photo by Stacie Pomes.

importance of the goals and noble aspirations of all of us in meeting our obligations to bring Access to Justice into our vulnerable communities. The Conclave was widely and enthusiastically attended and brought together Access to Justice leaders from all parts of our state. We vigorously discussed the issues and challenges of delivering legal services to those who are in need and also concretely developed ways to combine our efforts and to effectively and efficiently address the many challenges to providing Access to Justice services across our entire state.

We were specifically successful in moving beyond the valuable ideas expressed by our participants to specifically begin to chart the necessary pathways that connect all organizations in our efforts to serve those underserved segments of population in their legal needs. Our goals were bold, but they were embraced and addressed by our participants who plan to continue to communicate:

- ▶ To introduce and engage new leaders and partners to Louisiana's access to justice work;
- ▶ To increase efficiency and impact by strengthening ongoing cooperation, coordination and effective communication among access to justice stakeholders;
- ▶ To identify priority projects for increasing access to justice; and
- ▶ To increase outreach and active marketing to people with unmet legal needs.

There are so many people in our underprivileged communities who really are not

aware of their own legal needs. We need to be out in those communities to educate our fellow citizens (1) about their legal needs and (2) the availability of a myriad of services. The LSBA plans to continue its diligent efforts and commitment to the goals of Access to Justice in order to fulfill the needs of the many underprivileged citizens throughout our state. The Conclave on Access to Justice provided very real opportunities to bring together the various organizations and providers of legal aid services. The LSBA will remain an enthusiastic and dedicated leader in the continuing efforts to serve the Rule of Law and fulfill our obligations to be of service to all of those in need.

On a personal note, please let me express my deep and heartfelt gratitude for the immense privilege of being able to serve all of you and our profession over this year. I have been able to visit with old friends and make many new friends through the incredibly diverse and robust activities of the LSBA. The rewards of being able to represent you have been immeasurable and have made this journey truly unforgettable. I look forward to continuing to serve the LSBA and to be a part of its significant impact, not only on the lives of our fellow lawyers, but also on the lives of the public whom we serve.

# A State Court Practitioner's Guide to Louisiana Federal District Courts

By Peter M. Mansfield

*Federal court is scary.* At least that's what some Louisiana civil litigators have confessed concerning their infrequent, and sometimes unwilling, forays outside the familiar confines of Louisiana state courts. While unfamiliar to predominantly state court litigators, it need not be scary.

Consider what follows in the same way you might read the preface of a *Fodor's* or *Lonely Planet* book about an anticipated travel destination. It is by no means comprehensive or a substitute for experiential learning, but it is a helpful summary of the highlights of the location and a forewarning of some commonly occurring pitfalls.

## Louisiana's Three Federal Judicial Districts

Much like Gaul in Julius Caesar's time, all of Louisiana is divided into three parts.<sup>1</sup>

The Eastern District of Louisiana (EDLA) covers 13 parishes, primarily in the southeastern part of the state.<sup>2</sup> The courthouse is situated at downtown New Orleans, within a short walking distance of the 5th Circuit Court of Appeals building.<sup>3</sup>

The Western District of Louisiana (WDLA) covers the largest number of parishes (42) and square mileage.<sup>4</sup> The WDLA is spread across five administrative divisions with courthouses in Alexandria, Lafayette, Lake Charles, Monroe and Shreveport.<sup>5</sup>

The Middle District of Louisiana (MDLA) is the newest federal judicial district in Louisiana, carved out of the EDLA in 1971.<sup>6</sup> The MDLA covers nine parishes with the courthouse located in downtown Baton Rouge.<sup>7</sup>

### What's Common to All Three Judicial Districts?

Before practicing in a Louisiana federal district court, you must be admitted to that court's bar.<sup>8</sup> Each federal judicial district requires, and has, a separate admission.<sup>9</sup> In the EDLA, an applicant in good standing with the Louisiana State Bar must submit an application with the supporting certification of two active members of the EDLA bar.<sup>10</sup> The WDLA application is online, requires a Certificate of Good Standing from the Louisiana Supreme Court, and only one attorney's supporting certification.<sup>11</sup> The MDLA requires a current member of its bar to move for an applicant's admission and a second character certification from a current member.<sup>12</sup>

The attorney admission procedures for each court include a registration for e-filing with the case management/electronic case files (CM/ECF) system. Except for sealed or in camera submissions, none of the district clerk of courts permit paper filing.<sup>13</sup>

Once a matter is docketed in federal court — whether as a newly filed complaint, removed state court action, or a transfer from another federal court — it will be random assigned to a district court judge and one magistrate judge. Typically, the case stays in that section and division, unless it is a collateral proceeding or a re-

filed case. That is, if the subject matter of the new matter comprises all or a material part of another criminal or civil action then, or was previously pending before the court, the new matter is usually transferred to judges assigned to the older matter to “promote judicial economy, conserve judicial resources, and avoid potential forum shopping and conflicting court rulings.”<sup>14</sup> All counsel are obligated to alert the courts of any related cases.

Consistent with Rule 1's goal (Federal Rules of Civil Procedure) to make federal litigation “inexpensive,” parties subject to service in federal court have “a duty to avoid unnecessary expenses of serving the summons.”<sup>15</sup> By waiving formal service of a summons, defendants in federal court have almost three times as long to file responsive pleadings.<sup>16</sup> They also avoid a potential cost-shifting sanction for refusing to execute a waiver without a good cause.<sup>17</sup>

Each court has slightly different procedures for assigning pre-trial deadlines and a trial date in a scheduling order. What's common among all three districts, and *all* federal district courts, is the paramount importance of meeting all deadlines in the scheduling order.<sup>18</sup> Typically, the scheduling order will provide deadlines for Rule 26(a) initial disclosures, amendments of pleadings, depositions and discovery, expert reports, dispositive motions, witness and exhibit lists, motions in limine, settlement conferences, jury voir dire, jury interrogatories, jury instructions, proposed pre-trial orders, and trial memoranda. The order may also contain dates for interim status conferences, along with the final pre-trial conference and trial.

Rule 16(b)(4) provides that scheduling-order deadlines may be modified “only for good cause” and with the court's consent. The 5th Circuit has construed this standard to require consideration of four factors: 1) the explanation for the failure to meet the court's original scheduling-order deadline; 2) the importance of the otherwise untimely evidence or filing; 3) the prejudice in allowing the evidence or filing; and 4) the availability of a continuance to cure such prejudice.<sup>19</sup> District courts, however, have broad discretion to preserve the integrity of a scheduling order and “power to control their dockets by refusing to give ineffective litigants a second chance to develop their case.”<sup>20</sup> Further, judges within the same court vary in what they

deem good-cause, important, prejudicial, or continuance-worthy. Therefore, the best practice is to assume the judge will deny all requests for scheduling-order extensions.

Finally, take the time to thoroughly read the scheduling order. Various sections of court have judge-specific requirements you could easily miss.<sup>21</sup>

### Unique Procedures

Each federal district court in Louisiana has its own local rules. Some areas of divergence are listed below.

#### Eastern District of Louisiana

Defendants can secure one 21-day extension of time to file a first responsive pleading with an ex parte motion if plaintiff has not proactively filed into the record an objection with the initial complaint.<sup>22</sup> Next, the court's case manager will set a telephonic scheduling conference, which typically occurs about two-to-four weeks after the defendant files its first responsive pleading, whether an answer or Rule 12 motion. Trial counsel must participate in the scheduling conference with a calendar handy to pick dates for the trial, final pre-trial conference, and any status conferences with the court. From there, the case manager will calculate the remaining pre-trial deadlines and generate a written scheduling order that, as explained above, will govern the progress of the case. The parties are not required to submit a formal Rule 26(f) discovery plan to the court but are required to exchange Rule 26(a) initial disclosures if they don't both agree to waive them.<sup>23</sup>

The EDLA's local rules automatically refer all Title VII employment-discrimination cases, among other less frequently litigated matters, to the assigned magistrate judge to exercise the full jurisdiction of the district court under 28 U.S.C. § 636(c) with the consent of the parties, though either party may withhold consent and elect to proceed before the assigned district court judge.<sup>24</sup> The parties may consent to proceed before the magistrate judge in other cases, though they are responsible for executing and submitting the consent form to the court. Certain pre-trial motions, including, most significantly, all civil discovery motions, are referred to the assigned magistrate judge.<sup>25</sup> But district

judges in the EDLA typically don't refer case-dispositive motions to magistrate judges for reports and recommendations under Fed. R. Civ. P. 72(b)(1).

Counsel filing a contested motion in the EDLA must notice it for submission at least 15 days out.<sup>26</sup> Each judge in the EDLA has motion-submission dates listed online, which typically fall on Wednesdays.<sup>27</sup> Opposition memoranda are due no later than eight days before submission,<sup>28</sup> which can create some tight turnarounds if a weighty dispositive motion is filed with the minimum 15-day notice. EDLA local rules do not set a deadline for reply memoranda, though they are typically permitted if the filer timely seeks leave of court at least two business days before the submission date. Ex parte or consent motions don't need a separate memorandum of law or notice of submission but must include a proposed order.<sup>29</sup>

The default rule for contested motions is that they're submitted on the papers only without any oral argument, in-court presentation, or live hearing unless a party files a separate request for oral argument.<sup>30</sup> From there, the district court may deny the request for oral argument and take up the motion on the papers only, hold oral argument on the date and time listed in the original notice of submission, or set a new date and time to accommodate oral argument.

The 13 judges in the EDLA vary in their approaches to settlement conferences with the assigned magistrate judge. Many require settlement conferences and set a deadline for them to occur, while others just indicate that a settlement conference is available if the parties desire to schedule one. Regardless, the standard pre-trial order form used in the EDLA requires the parties to certify to the court that they at least considered the possibility of settlement.

### **Western District of Louisiana**

The WDLA has five administrative divisions with courthouses. Thus, WDLA practitioners must first figure out where their case will land. If a case is removed from state court, venue exists in the "division embracing the place where such action [was] pending" in state court.<sup>31</sup> If a case is first filed in the WDLA, plaintiff's counsel will select an

administrative division from a dropdown menu on the CM/ECF system. While the general federal venue statute does not address administrative divisions,<sup>32</sup> division selection typically corresponds to the domicile and convenience of the plaintiff. But that's not to say that the plaintiff's initial division choice always controls; the clerk or judges of the court may order an intra-district, inter-divisional transfer.<sup>33</sup> Generally, cases are assigned on a geographic basis to the judges in the division to which the case is allotted. But WDLA judges share caseloads across divisions.<sup>34</sup> For instance, Judge Terry A. Doughty sits in the Monroe division but receives a percentage of new case assignments in all five administrative divisions according to the WDLA's standing order on case assignment.<sup>35</sup>

After defendant answers, the court will issue an order setting a deadline for submission of a Rule 26(f) report, and a date for a Rule 16 scheduling conference about a week thereafter. The parties have an opportunity in the Rule 26(f) report to indicate consent to trial before the magistrate judge under 28 U.S.C. § 636(c). Most sections of court in the WDLA automatically set default pre-trial deadlines in the scheduling order that are backed out from the assigned trial date.

A WDLA local rule lists 10 specific motions that don't require a separate memorandum in support or hearing date and may be filed with a proposed order and certificate of consent (or an attempt to secure consent).<sup>36</sup> The WDLA frequently refers contested motions to the assigned magistrate judge for a report and recommendation under Fed. R. Civ. P. 72(b)(1). After a motion is filed in the WDLA, the clerk of court will issue an order setting the motion for submission. This order will also contain deadlines for the opposition (21 days from motion-filing under local rules)<sup>37</sup> and the reply (usually seven days after the opposition). Parties may request oral argument, but the WDLA typically resolves motions exclusively on the written submissions.<sup>38</sup>

Settlement conferences in WDLA cases vary from judge to judge; specific alternative-dispute-resolution requirements may be found in each judge's scheduling order. Parties seeking a settlement conference with a magistrate judge may schedule one with chambers.

### **Middle District of Louisiana**

In a recent amendment to local rules, the MDLA now requires a certificate of interested persons,<sup>39</sup> which is broader than the corporate-disclosure statement required under Fed. R. Civ. P. 7.1(a). Parties must file: "A complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case."<sup>40</sup> Counsel should use a model compliance form appearing on the MDLA's website.<sup>41</sup>

Shortly after a new civil matter is filed in the MDLA, the assigned magistrate judge will issue an order setting a scheduling conference with the parties. That scheduling conference is usually calendared a few months out to afford sufficient time for service, initial disclosures under Rule 26(a), and a Rule 26(f) conference between the parties. In that Rule 26(f) conference, the parties will select deadlines for amendments, discovery, expert reports and motions. The parties submit those proposed deadlines to the court in a status report due two weeks before the scheduling conference.<sup>42</sup> In that status report, the parties also indicate whether there is unanimous consent to proceed before the magistrate judge under 28 U.S.C. § 636(c). Defendants may secure a 21-day extension of time to file a responsive pleading on ex parte motion if plaintiff has not previously filed an objection.<sup>43</sup>

Once the parties submit their joint status report, the magistrate judge will usually cancel the scheduling conference at the parties' request and adopt the parties' proposed deadlines in a Rule 16(b) scheduling order. If necessary, the magistrate judge may hold the scheduling conference to address and resolve any issues or disputes appearing in the parties' status report. The court's scheduling order will also include dates for the pre-trial order, pre-trial conference and trial, based on the presiding district court judge's calendar and availability.

Discovery motions are typically referred to the assigned magistrate judge for resolution, though district court judges in the MDLA typically do not refer case-dispositive motions to magistrate judges for reports and recommendation.

The MDLA's local rules count forward when setting deadlines in motion practice. That is, an opposition memorandum to a contested motion is due 21 days after the motion is filed.<sup>44</sup> Reply memos are presumptively allowed for Rule 12 motions to dismiss and Rule 56 motions for summary judgment<sup>45</sup> and are due 14 days after the opposition. Oral argument is only allowed on court order,<sup>46</sup> which rarely occurs in the MDLA.

As in the WDLA, there are 10 specific motions listed in MDLA Local Rule 7(e) that do not require a separate memorandum in support, though the moving party must attempt to secure the opposing party's consent, and include a proposed order.<sup>47</sup> Further, the moving party is required to email a copy of that proposed order to the respective judge's chambers.

Parties desiring a settlement conference in the MDLA may schedule one directly with the assigned magistrate judge. While settlement conferences aren't mandatory in the MDLA, the parties must execute and submit to the court an affidavit of their settlement efforts before proceeding to trial.<sup>48</sup>

## Conclusion

While the deadline-intensive practice in Louisiana's federal district courts may appear a bit rigid at first blush, most experienced federal-court litigators appreciate the predictability and pace of the proceedings. Indeed, most would agree that these tried-and-true procedures afford parties a fair and timely opportunity to develop, prune, and settle or try their cases. Hopefully this short overview will guide you to the same conclusion when your journey into federal court is complete.

**Author's Note:** In late March 2023, the EDLA publicized a proposed change to LR 7.5 on reply memos. If eventually adopted, the amended rule would presumptively allow a reply memo without leave of court if filed three business days before the noticed submission date on the contested motion.

## FOOTNOTES

1. 28 U.S.C. § 98.  
 2. *Id.* at § 98(a).  
 3. *Id.* The statute also lists an EDLA court location in Houma, *id.*, but the Judicial Conference of the United States released the Houma court-

room space in 2005 as a cost-cutting measure. Judicial Conference of the United States, *Report of Proceedings* 30 (March 15, 2005), [www.uscourts.gov/sites/default/files/2005-03.pdf](http://www.uscourts.gov/sites/default/files/2005-03.pdf). Since then, the EDLA hears all cases in New Orleans. EDLA, *Order* (April 7, 2005), [www.laed.uscourts.gov/sites/default/files/pdfs/Houma2.pdf](http://www.laed.uscourts.gov/sites/default/files/pdfs/Houma2.pdf).

4. 28 U.S.C. § 98(c).  
 5. *Id.* The statute also authorizes an Opelousas court location, *id.*, though the WDLA currently has no Opelousas division. WDLA LR 77.3.

6. Pub. L. 92-208, § 3, 85 Stat. 741 (1971).  
 7. 28 U.S.C. § 98(b).

8. Each federal judicial district has procedures for lawyer disciplinary enforcement that include suspension from practice in the respective district.

9. EDLA LR 83.2.1; WDLA LR 83.2.1; MDLA LR 83(b)(1). The New Orleans Chapter of the Federal Bar Association annually offers the Malcolm Monroe Federal Practice CLE, which conveniently concludes with a swearing-in ceremony for all federal courts in Louisiana, including the 5th Circuit Court of Appeals.

10. EDLA, *Petition for Admission to Practice*, [www.laed.uscourts.gov/sites/default/files/forms/pfap-pkt.pdf](http://www.laed.uscourts.gov/sites/default/files/forms/pfap-pkt.pdf) (last visited July 23, 2022); EDLA LR 83.2.1-83.2.2.

11. WDLA, *Admissions Applications*, [www.lawd.uscourts.gov/admission-applications](http://www.lawd.uscourts.gov/admission-applications) (last visited July 23, 2022); WDLA LR 83.2.1-83.2.2.

12. MDLA, *Attorney Admission*, [www.lamd.uscourts.gov/attorney-admission](http://www.lamd.uscourts.gov/attorney-admission) (last visited July 23, 2022); MDLA LR 83(b)(1)-(2).

13. EDLA, *Administrative Procedures for Electronic Case Filings and Unique Procedures and Practice for Electronic Filings*; WDLA, *Administrative Procedures for Filing Electronic Documents for Civil and Criminal Cases*; MDLA, *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil and Criminal Cases*. When a document is electronically filed in federal court, the CM/ECF system automatically generates an email to enrolled counsel that constitutes service of the filed document under Fed. R. Civ. P. 5(b)(2)(E). This is the exclusive means of service on enrolled counsel after service of the initial complaint. *See infra* notes 17-19 and corresponding text.

14. EDLA LR 3.1 & 3.1.1; WDLA LR 3.1; MDLA LR 3.

15. Fed. R. Civ. P. 4(d)(1).  
 16. Fed. R. Civ. P. 4(d)(2)-(3); *see also* Fed. R. Civ. P. 12(a)(1)(A)(ii).

17. Fed. R. Civ. P. 4(d)(2).  
 18. Fed. R. Civ. P. 16(b).

19. Geiserman v. MacDonald, 893 F.2d 787, 791 (5 Cir. 1990); S&W Enters., LLC v. SouthTrust Bank of Alabama, NA, 315 F.3d 533, 536 (5 Cir. 2003).

20. S.W. Enters., 315 F.3d at 535-37 (internal citation omitted).

21. For instance, in the EDLA, one judge requires a status conference before a party files a motion for summary judgment under Rule 56. Others require submission of written status reports in advance of interim status conferences. And others have detailed instructions on the filing of deposition testimony, citations to record evidence, tables of contents/authorities, and delivery of courtesy paper copies of filings to chambers.

22. EDLA LR 7.8.  
 23. EDLA LR 26.1 & 26.2.

24. EDLA LR 73.2(C).  
 25. EDLA LR 72.1(A).  
 26. EDLA LR 7.2.  
 27. EDLA, *Motion Hearing and Oral Argument Dates*, [www.laed.uscourts.gov/cases/motions/MoHear.htm](http://www.laed.uscourts.gov/cases/motions/MoHear.htm) (last visited July 23, 2022).

28. EDLA LR 7.5.  
 29. EDLA LR 7.3-7.4.  
 30. EDLA LR 7.2 & 78.1.

31. 28 U.S.C. § 1441(a). The WDLA's website and local rules list the various civil parishes covered by each of the five administrative divisions. *See* WDLA, *Clerk's Office*, [www.lawd.uscourts.gov/clerk-office](http://www.lawd.uscourts.gov/clerk-office) (last visited July 23, 2022); WDLA LR 77.3.

32. 28 U.S.C. § 1391.

33. *See generally* WDLA, *Guide to Practice* (March 1, 2022), [www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/GUIDE\\_TO\\_PRACTICE.030122.ppm.pdf](http://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/GUIDE_TO_PRACTICE.030122.ppm.pdf) ("Normally, cases are assigned to the division where the action arose or where a preponderance of the parties is located. However, assignment of cases is a matter of administration and is accomplished in accordance with the instructions of the Court.")

34. WDLA, *FAQ-How are judges assigned to cases?*, [www.lawd.uscourts.gov/content/how-are-judges-assigned-cases](http://www.lawd.uscourts.gov/content/how-are-judges-assigned-cases) (last visited July 23, 2022).

35. WDLA, *Standing Order – SO 1.61* (March 16, 2022), [www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/SO\\_1.61\\_2022March16\\_Signed.pdf](http://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/SO_1.61_2022March16_Signed.pdf).

36. WDLA 7.4.1.  
 37. WDLA LR 7.5.

38. WDLA LR 78.1.  
 39. MDLA LR 7.1 & 10(a)(4).

40. MDLA, *Certificate of Interested Persons*, [www.lamd.uscourts.gov/sites/default/files/forms/LAMDICOIP.pdf](http://www.lamd.uscourts.gov/sites/default/files/forms/LAMDICOIP.pdf) (last visited July 23, 2022).

41. *Id.*  
 42. MDLA LR 26(a).

43. MDLA LR 7(a).  
 44. MDLA LR 7(f).

45. Reply memos for non-dispositive motions require leave of court, which is typically granted.

46. MDLA LR 78(b).  
 47. MDLA LR 7(e).

48. *See, e.g.*, MDLA, *Instructions for Preparing the Final Affidavit of Settlement Efforts for Civil Trials Before Judge John D. deGravelles*, [www.lamd.uscourts.gov/sites/default/files/pdf/JWDInstructions.pdf](http://www.lamd.uscourts.gov/sites/default/files/pdf/JWDInstructions.pdf) (last visited July 23, 2022).

Peter M. Mansfield is chief of the Civil Division for the U.S. Attorney's Office in the Eastern District of Louisiana, where he has worked since 2005. Prior to that, he was in private practice in New Orleans. The author thanks AUSAs Chase E. Zachary (MDLA) and Shannon T. Brown (WDLA) for their input and editorial assistance. This article represents the personal views of the author and does not constitute official-capacity guidance from the U.S. Department of Justice. ([peter.mansfield@usdoj.gov](mailto:peter.mansfield@usdoj.gov); Ste. 1600, 650 Poydras St., New Orleans, LA 70130)



# ***PROGRAMMING DIGITAL PRIVACY INTO PUBLIC POLICY:***

## **A New Rule of Law Through Legislative Action**

By Jeff D. McAlpin





Legal stability is cited as a fundamental characteristic of the rule of law.<sup>1</sup> At the same time, a body of law, to maintain long-term viability, must be able to cope with novel situations, including new legal relationships and technologies. These two characteristics emblematic of the rule of law, predictability and adaptability, co-exist under tension with each other. In common-law jurisdictions, the tension is resolved by relegating to the domain of private law “everyday tort, contract and property cases” and deciding them based on precedent, which is “open to modification.”<sup>2</sup> On the other hand, irrespective of whether a governmental entity is a common-law or civilian jurisdiction, changes to its public law are most often accomplished through legislation, with the political process balancing the impetus for change against the value of stability.

To Louisiana civilians, this is a familiar process, as in Louisiana the Legislature is the source of law both public and private. For digital-privacy regulation, now a public policy question, the tension between consumer advocates seeking new protections and business interests requiring the predictability of clear regulatory guidance is being mediated through the legislative process at the state, federal and international level.

As of November 2022, no singular federal law regulates digital privacy. This article summarizes the history of the right to privacy and then provides a snapshot of the rapidly evolving landscape of state data-privacy regulation. It also discusses pending federal privacy legislation, noting objections to its passage and contrasting it with legislation in the European Union. Lastly, this article highlights the regulatory burdens of digital-privacy legislation from a business perspective, including actionable steps companies with access to consumer digital information can take in preparing compliance plans amidst the kaleidoscope of state legislation.

## A Brief History of Privacy

In 1890, Samuel D. Warren and Louis D. Brandeis (ranked second and first in

their graduating classes at Harvard Law School in 1877, respectively) published “The Right to Privacy” in the *Harvard Law Review*.<sup>3</sup> The Harvard article traced, through the centuries, the development in the common law of new rights based on old rights. The development of new technologies, such as photography and audio recording, led to new media with mass dissemination of image and sound. Through these new media (tabloid newspapers, for example), the private, domestic affairs of non-public figures were brought with new immediacy into the public eye.<sup>4</sup>

In 1965, the Supreme Court in *Griswold v. Connecticut* first recognized privacy as a right, albeit a right not specifically guaranteed in the Constitution. Justice Douglas’ majority opinion characterized the right to privacy as “penumbras,” gray shadows formed by emanations from “specific guarantees in the Bill of Rights.”<sup>5</sup> *Roe v. Wade* in 1973 cited *Griswold* when finding a liberty interest as the foundation for a right to privacy in reproductive decisions but ultimately relied on incorporation through the Due Process Clause of the Fourteenth Amendment.<sup>6</sup> Cases after *Roe*, but before the *Dobbs* decision, also typically grounded the right to privacy not in a penumbral theory but under the substantive Due Process Clause of the Fourteenth Amendment.<sup>7</sup>

The Supreme Court overruled *Roe* and later cases on abortion in June 2022 with *Dobbs v. Jackson Women’s Health Organization*, observing that the right to abortion was unknown at the time of the adoption of the Fourteenth Amendment. Justice Alito’s majority opinion in *Dobbs*, centering its analysis on what rights were recognized at the time of the Fourteenth Amendment’s adoption in 1868, calls into question whether other previously recognized privacy rights will continue to enjoy constitutional protection.<sup>8</sup>

In contrast to the Constitution of the United States, many state constitutions explicitly state a right to privacy among the individual rights recognized by the state.<sup>9</sup> Many amendments adding a right to privacy to state constitutions were passed in 1970s, a time of public concern about how the creation and use of

computerized databases might impact individuals’ privacy rights.<sup>10</sup> Coupled with this constitutional recognition, state legislative implementation of enforcement mechanisms afforded protection under law of the privacy rights of citizens. Public concern also led to federal legislation. The Privacy Act of 1974 established a code of fair information practices governing the collection, maintenance, use and dissemination of information about individuals by federal agencies.<sup>11</sup> Exceptions to the statute include information compiled (1) in anticipation of civil litigation, (2) by the CIA and (3) for agency use pertaining to criminal law enforcement.<sup>12</sup>

## Current State of Digital Privacy Regulation: State, Federal and International

Indeed, the current landscape of federal data-privacy regulation is not so much a vacuum as a miscellany, complete with acronyms: the Health Insurance Portability and Accountability Act (HIPAA); the Fair Credit Reporting Act (FCRA); the Family Educational Rights and Privacy Act (FERPA); the Gramm-Leach-Bliley Act (GLBA); the Electronic Communications Privacy Act (ECPA) (from 1986 and ill-suited to the modern Internet, redefined to large extent by the USA Patriot Act); the Children’s Online Privacy Protection Rule (COPPA) (imposing data-collection limits for children under 13 years of age); the Video Privacy Protection Act (VPPA) (a reaction after the video-rental history of Supreme Court nominee Robert Bork was obtained by a journalist, but held not to apply against streaming companies); and the Federal Trade Commission Act (FTC Act) (allowing the FTC to go after apps or websites that violate their own policies or terms of their marketing language).<sup>13</sup>

Amidst this alphabet soup is a state law landscape that is constantly evolving. Five states (California, Colorado, Connecticut, Virginia and Utah) have signed digital-privacy legislation.<sup>14</sup> California’s law first became effective in 2020, while the other four states with

signed legislation became or will become effective on various dates in 2023. Four other states (Michigan, New Jersey, Ohio and Pennsylvania) have active bills as of November 2022. The status of those bills is uncertain and underscores a larger uncertainty as to the future of data-privacy legislation on a state-by-state basis, especially with respect to national companies that must comply with those laws.

A brief overview of the consumer protections provided by data-privacy regulations in California and the European Union is useful before exploring the pending federal data-privacy regulation and obstacles to its passage.

Consumer-advocacy groups consider California's state law, the California Consumer Privacy Act (CCPA), as enhanced by amendments effective Jan. 1, 2023, to afford the most protection of any current state law.<sup>15</sup> Among its basic privacy rights, the CCPA gives consumers (1) the right to know about the personal information a business collects about them and how it is used and shared; (2) the right to delete personal information collected from them (with some exceptions); (3) the right to opt-out of the sale of their personal information; and (4) the right to non-discrimination for exercising their CCPA rights.<sup>16</sup> Under the act, businesses must give consumers notice explaining their privacy practices. The notice requirement applies to data brokers and many other businesses, not just businesses that collect digital information directly from consumers.

The European Union Parliament passed data-privacy regulation, termed the General Data Privacy Regulation (GDPR), in April 2016, effective on May 5, 2016, and transposed into the national law of EU countries by a May 6, 2018, deadline.<sup>17</sup> The GDPR has five major aspects: (1) The law requires data inventory, or mapping, which means companies must document how all personal data is used, managed, processed and shared. (2) Individuals have the right to learn more about what data a company possesses. This right includes a "writ of habeas data," where companies are required to provide all information they possess related to an individual. The individual also has the right to amend that data or

demand the company delete it if the individual does not want the company to have it. (3) Third-parties or vendors must be managed by companies subject to jurisdiction under the act for security and to mitigate against the risk of data breaches. (4) A requirement of privacy by design, where new technologies, new business processes or new uses of personal data must also provide privacy protections. (5) Companies must identify specific individuals to be responsible for privacy at that company.<sup>18</sup>

Further, there are conflicts-of-law issues where the GDPR may grant fewer or more protections than the constitutions or laws of member states of the EU. The risks to U.S. companies associated with non-compliance of the GDPR are substantial: in 2021, Amazon, Meta and Google were levied penalties of over \$100 million in the aggregate, and the data indicates both the individual number and aggregate amount of fines increased in 2022.<sup>19</sup>

### **Obstacles to Uniformity Through Federal Regulation: Conflict Between Consumer and Business Interests**

Policy questions around the proposed federal legislation, the American Data Privacy and Protection Act (ADPPA), implicate both California and EU law.<sup>20</sup> Although a detailed analysis of ADPPA's specific provisions are beyond the scope of this article, considering they may be amended during 2023 as part of legislative compromise, the Congressional Research Service has provided an overview of the act, including a summary of the bill and a comparison to existing federal privacy legislation.<sup>21</sup> The federal bill would grant similar (but not identical) protections to the California law while its enforcement mechanisms would be markedly different. Congressional representatives, including former Speaker of the House Nancy Pelosi, have opposed passage of the bill in its current form, citing concerns that it will preempt existing California law and offer less protection and enforcement to consumers.<sup>22</sup> The preemption provisions of the ADPPA would prevent states from enacting new

data-privacy laws in reaction to changes in the use of data by companies brought about by technological advances.<sup>23</sup>

One solution to this legislative stalemate is similar to the waiver granted by the Clean Air Act of 1967, in which California was authorized to set its own vehicle-emissions standards; under such a waiver, the ADDPA could include provisions that California digital-privacy regulation was not preempted by the federal law.<sup>24</sup> Arguments for affording California special treatment cite that the state is the epicenter of technological innovation (*i.e.*, Silicon Valley) and the situs of the headquarters of many of the largest technology companies. This solution is speculative, as of late 2022, and the future of the federal legislation and whether California will be granted a preemption waiver to facilitate passage of the bill remain uncertain.

The need for federal regulation in this area is arguably less uncertain. Over the last two years, state regulation has been an evolving patchwork, exacerbated not only by the existence of multiple jurisdictions but also by the rapid pace of change inherent in digital technologies. Navigation of state regulations is daunting, especially from the perspective of businesses. For these businesses subject to regulation by digital-privacy acts, the costs of compliance are non-negligible, even under one regulatory regime.<sup>25</sup> Regulatory burdens from multiple states, with each state having different requirements, would cost, in their aggregate, a greater amount than the single cost of compliance with one, nationwide regulatory system.

### **Preparation Is Still Possible in the Shadow of Regulatory Uncertainty**

In the meantime, companies should develop compliance plans with one eye to the applicable state and international regulatory landscapes and another eye to the proposed federal rules. Industry associations for specific areas of the law can be a source of guidance.<sup>26</sup> Those companies not subject to the jurisdiction of the CCPA or the GDPR may still be in the favorable position to prevent rather than cure non-compliance.

Under the assumption that new data-privacy legislation will apply to any company that does business in those states, compliance plans should address several key areas. As an initial step, legal departments should have letters ready with a legal reason not to comply with the request. Second, a business should develop a process for opt-out requests. A process-focused approach would include clearly defining the standard channel to complete a task and the creation of forms to use in the process.

To ensure compliance with the law, a company will need to follow a multi-step process. First, a company should internally map its data, making special notes of where it stores personal consumer information (including any inferences drawn from consumer information to create a consumer profile). A complete map will include how the company collects data; why, when and where it is stored; how long the data is retained; whether it is “writeable” (*i.e.*, capable of modification or deletion); and whether it is shared with any third parties. Then, contracts with third parties, including employees and service providers, should be drafted to include language on data-privacy rights (including such rights as the right of consumers to request their data, amend it and order it deleted). Finally, the company should check regulatory requirements against both the map of the company’s data and the language of its contracts. Only by performing a cross-check among all three areas can the company ensure it complies with the law.<sup>27</sup>

Irrespective of the ultimate shape of digital-privacy legislation, it is safe to assume that it bears the continued close attention of stakeholders in business as well as consumers and their advocates. The advantage to be gained through preventative measures, seeking to anticipate a regulatory environment that is not yet present, must be weighed against the substantial compliance costs to companies. As these consumer protections move into a previously unregulated sphere of human endeavor, the rule of law will, as it always has, replace a chaotic environment, full of opportunity and hazards, with a measure of certainty. The unique certainty and protection of rule of law

is the hallmark of the world’s strongest free and thriving economies. In the digital economy, as it was in earlier emergent economies, the benefits of the law’s prescribed rights will come at the cost of its prescribed responsibilities.

## FOOTNOTES

1. Stefanie A. Lindquist & Frank C. Cross, *Stability, Predictability, and the Rule of Law: Stare Decisis as Reciprocity Norm*, Conference Paper, Univ. of Tex. Sch. of L., Conference on Measuring the Rule of Law (2010), <https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf>.

2. Maimon Schwarzschild, “Keeping it Private,” 44 San Diego L. Rev. 677, 677-78 (2007).

3. Samuel D. Warren & Louis D. Brandeis, “The Right to Privacy,” 4 Harv. L. Rev. 193 (1890).

4. See, Matthew L. Bycer, *Understanding the 1890 Warren and Brandeis “The Right to Privacy” Article*, Nat’l Juris Univ., <https://nationalparalegal.edu/UnderstandingWarrenBrandeis.aspx> (last visited Dec. 24, 2022).

5. *Griswold v. Connecticut*, 381 U.S. 479, 483-84 (1965). Among the specific provisions relied upon by *Griswold* are the freedom of association in the First Amendment, the Third Amendment (prohibiting quartering of soldiers), the Fourth Amendment, the Self-Incrimination Clause of the Fifth Amendment and the Ninth Amendment (reserving rights unenumerated in the Bill of Rights to the people).

6. *Roe v. Wade*, 410 U.S. 113, 153 (1973).

7. *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that Texas statutes criminalizing homosexual conduct as unconstitutional based on a liberty interest under the Due Process Clause); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846 (1992).

8. *Dobbs v. Jackson Women’s Health Org.*, 142 S.Ct. 2228, 2246-48 (2022).

9. *See, e.g.*, La. Const. of 1974, art. I, § 5 (1974) (“Every person shall be secure . . . against . . . invasions of privacy.”); Cal. Const., art. I, § 1 (am. 1974) (“All people are by nature free and independent and have inalienable rights. Among these are . . . privacy.”); Alaska Const. (amended 1972) (“The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.”).

10. Electronic Privacy Information Center, <https://epic.org/the-privacy-act-of-1974/> (last visited Dec. 24, 2022).

11. 5 U.S.C. § 552a (2022).

12. Office of Privacy & Civil Liberties, *Ten Exemptions*, Overview of the Privacy Act of 1974 (2020 ed.), available at <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/exemptions> (last visited Dec. 24, 2022); see also, U.S. Dep’t of Just., *Overview of the Privacy Act of 1974* (2020 ed.) (comprehensive treatise of existing Privacy Act case law).

13. Thorin Soskowski, “The State of Consumer Data Privacy Laws in the US (and Why It Matters),” *Wirecutter* (Sept. 6, 2021), <https://www.nytimes.com/wirecutter/blog/state-of-privacy-laws-in-us/>.

14. Anhoky Desai, *US State Privacy Legislation Tracker*, Int’l Ass’n of Privacy Prof’ls (Oct. 7, 2022), <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>. Click “View Chart.”

15. Cal. Civ. Code §§ 1798.100-199 (West 2022).

16. Rob Bonta, Cal. Dep’t of Just., Office of the Atty. Gen., *California Consumer Privacy Act (CCPA)*, <https://oag.ca.gov/privacy/ccpa> (last visited Dec. 24, 2022).

17. Full text pdf: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>; see also, [https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en) (last visited Nov. 1, 2022).

18. Wendell J. Bartnick et al., “Present and Future Data Privacy Outlook.” 24 *Currents: J. Int’l Econ. L.* 70, 71 (2020).

19. <https://www.enforcementtracker.com/> (last visited Nov. 1, 2022).

20. H.R. 8152, 117th Cong. (2d Sess. 2022), available at <https://www.congress.gov/117/bills/hr8152/BILLS-117hr8152ih.pdf>.

21. Congressional Research Service, *Overview of the American Data Privacy and Protection Act*, H.R. 8152 (Aug. 31, 2022), available at: <https://crsreports.congress.gov/product/pdf/LSB/LSB10776>.

22. See Joseph Duball, *Calif. Privacy Agency Takes Aim at Dismantling Federal Privacy Preemption*, Int’l Ass’n of Privacy Prof’ls (July 29, 2022), <https://iapp.org/news/a/cppa-takes-aim-at-dismantling-american-data-privacy-and-protection-acts-preemption/>.

23. Preemption clause of ADPPA, § 404(b).

24. Danielle Keats Citron & Alison Goeke, *Nancy Pelosi Is Blocking Landmark Data Privacy Legislation—for a Good Reason*, *Slate* (Sept. 9, 2022, 5:50 a.m.), <https://slate.com/technology/2022/09/nancy-pelosi-data-privacy-law-adppa.html>.

25. “Becoming GDPR compliant may require a year’s worth of work, depending on the company’s resources.” Bartnick, *supra* note 18.

26. See, e.g., *Data Privacy*, American Land Title Ass’n, <https://www.alta.org/advocacy/data-privacy.cfm> (providing information on compliance plans in the context of real estate title examinations) (last visited Dec. 24, 2022).

27. Notes taken at Session 3, “Data Privacy 2021,” by Elizabeth Blosser of American Land Title Association, during the 2021 Annual Convention of the Louisiana Land Title Association on Dec. 1, 2021, in New Orleans, Louisiana (on file with author).

Jeff D. McAlpin is a 2017 graduate of Southern University Law Center with admissions to the Alaska (2017) and Louisiana (2019) bars. He has taught advanced legal analysis and writing at SULC since 2020 and is a solo practitioner based in St. Tammany Parish. ([jeff.d.mcalpin@gmail.com](mailto:jeff.d.mcalpin@gmail.com); [www.mcalpinlawfirm.com](http://www.mcalpinlawfirm.com))



# PERSPECTIVES ON PROFESSIONALISM:

## Diversity Matters — Remembering Don Horton

By Justice Scott J. Crichton



*Don Horton and Louisiana Supreme Court Associate Justice Scott J. Crichton. Photo courtesy Justice Crichton / Louisiana Supreme Court.*



**Don Horton.** Photo courtesy Justice Crichton / Louisiana Supreme Court.

Section 3(c) of La. Supreme Court Rule XXX defines professionalism, in pertinent part, to include “elimination of bias or discriminatory communication or conduct” and “sensitivity to cultural and other differences when interacting with members of the public, judges, jurors, litigants, attorneys, and court personnel.”

My friend Don Horton was an educator and businessman, not a lawyer. However, his contributions to the community and his interactions with people from all walks of life evidence the vitality of this concept for all of us in the legal profession. Each of us can aspire to meet Don’s example by exhibiting these traits throughout our legal careers.

*This article was previously published in The Times (Shreveport) and in The Bar Review (Shreveport Bar Association).*

It was more than just raucous YMCA locker room banter between two “grown

ass men” (as CBS Mornings cohost Gayle King often quips); and it was even more than a racial epithet-peppered kerfuffle. They seemed to be on the brink of combat, and for a few anxious minutes, I pondered whether to intervene. As I gingerly approached, hoping to quell the intensity, one of them held out his hand, “I’m Don Horton and am just a black janitor and this is Fleet Howell, a rich white lawyer.”

Turns out, the two were the best of friends and frequently referred to each other as “brothers,” all the while trying to annihilate each other on the handball court before adjourning for dinner with their spouses.

The joy their deep friendship brought to them was infectious — and I was drawn to them. Eventually, my wife and I found ourselves joining the Hortons and Howells for dinners and various events (however, I never had the skills to join either one on the handball court).

Over the next several decades, I had countless lunch visits with Don, a man

that many of my contemporaries already knew — starting with those who had attended Captain Shreve High School.

Don, who had a BA in English and a master’s in education, taught Honors English and Humanities at Captain Shreve High School (1970-77), where he also served as assistant principal (1977-87). He would weave into our conversations vignettes drawn from Sophocles, *Oedipus the King*, *Oedipus at Colonus* and *Antigone*. Since the collection of Plato’s *Republic* deals with justice, character and the “just man,” Don observed that I needed to read all 10 books, officially assigning it, for my “reading pleasure and in [my] spare time.”

After Don retired from a quarter century in the school system in 1987, he wasn’t done; his entrepreneurial spirit kicked in. For the next 30 (plus) years, Don started many successful businesses, some of which included C&H Services, Inc. (a thriving janitorial services company of which he was co-owner and the

source of his humble “just a janitor” introduction); Fast Tax Service, Inc.; Premier Management Company; and even a coffee shop (which I frequented).

Don also lived a life of service, and, in doing so, made our community a better place for all. Don knew the importance of ensuring access to first-rate medical care for the citizens of north Louisiana and for years served as chair of the Development and Fundraising Committee for LSU Health Sciences Foundation, raising substantial funds to provide care to those in need irrespective of their ability to pay.

He also served on the prestigious Committee of 100 for Economic Development, Inc., a Louisiana nongovernmental organization that promotes public policies aimed at retaining existing businesses and recruiting new, innovative businesses to our state.

For two four-year terms, 1995-99 and 2001-05, he served on the Judiciary Commission of Louisiana, a constitutionally created body consisting of three judges, three lawyers and three “citizens” (not public officials and not lawyers). Empowered to investigate complaints of misconduct of judges, the Commission holds trials and makes recommendations on appropriate sanctions to the Louisiana Supreme Court. Drawing from his background as assistant principal at Captain Shreve, where he was known for swift and sure discipline, Don was an engaged member. After intently listening to the proceedings and hearing from his eight colleagues on the Commission, Don’s “method,” when he deemed it warranted, was to launch into intense and sometimes blistering cross-examination, with the recalcitrant judge usually apologizing and exclaiming, “You will never see me again!”

In 2002, the Shreveport Bar Association honored Don with the prestigious Liberty Bell Award. From a field of many nominations, each year the SBA selects one person, usually a nonlawyer, who has demonstrated dedication to community service that “strengthens the effectiveness of the American system

of freedom under law.” Don often complained that the trophy bestowed to him, which was a replica of the Liberty Bell, had a crack in it and the SBA should replace it with a nondefective bell. Of course, such comments were again examples of Don’s humor and humility, as when examined on that statement, Don conceded his unsurprisingly deep knowledge about the Liberty Bell and how it sustained its famous 1846 crack.

Consistent with his commitment to “freedom under law,” issues of diversity and equality always mattered to Don. Growing up in the South during the period of integration and especially working as a teacher and administrator in a previously all-white segregated high school, he witnessed outrageous racial disparity and endured pain. Treating people equally and with dignity mattered to Don. And so, during the last 10 years of his life, Don became a partner in Diversity Matters, a firm that addressed human relations issues, especially those involving race in the workplace. Don, always forward-thinking and hopeful, considered his work to be less about color of skin and more about understanding and appreciating the diverse cultures in America.

One last unforgettable moment for me was my campaign inaugural event in 2012, at which I was honored that Don agreed to speak. To keep all three speakers on track, I emphasized no more than five minutes for each. Before the speeches were set to commence, I noticed Don with a full glass of chardonnay. I didn’t think too much about it — until I saw him with a second glass and on his way to the podium. In front of the several hundred in attendance, fueled with plenty of chardonnay, he was undaunted by time restraints — Don let it rip! Yes, nail-biting at first but ultimately he gave the best speech of the evening. Just like Fleet, I was proud to call him my friend, my brother.

Don knew the Lord and God’s word. For many years, he worshiped at Little Union Baptist Church, (of course) teaching Sunday school. Next to God, family was most important. Don adored

his wife, whom he affectionately called “Miss Ruby,” and loved his son Calvin. A close runner-up to God and family was relationships — diverse and meaningful ones. When Fleet died in 2014, Don was never quite the same; he had lost his best friend, one who relentlessly battled him on the handball court, one who invited him into successful business ventures and one with whom he could celebrate important occasions.

During the first half of 2022, I learned that Don’s health was rapidly declining. After knowing and loving the now 89-year-old Don Horton for more than three decades, I couldn’t comprehend what it would mean to lose Don — both for the Shreveport community and personally for me. I visited him at his home, bringing food and conversation, intent on letting him know that our friendship was undying.

Don died on Oct. 20, 2022. Don will live on in our hearts: for those he taught at Captain Shreve and Little Union, for his colleagues and employees in the business world, even for those once recalcitrant but now rehabilitated judges — and for people like me who so richly benefited from the wisdom and devoted friendship that he provided.

I imagine Mahalia Jackson greeting Don with her song “A City Called Heaven,” a place, in the hands of God, where we’re all the same. I imagine Fleet embracing Don with a commendation of “well done, my brother” followed by an invitation to once again battle on the handball court.

Meanwhile, for me, I guess that I better get busy with my reading assignment, the 10 books of Plato’s *Republic*, as there will surely be a test.

*Louisiana Supreme Court Associate Justice Scott J. Crichton is chair of the Louisiana Judicial College and is the Court’s statutory designee to the Louisiana Sheriffs’ Executive Management Institute Board, the Louisiana Commission on Law Enforcement and the Judges Imparting Knowledge, Education and Skills Task Force. He serves on the board for the Louisiana Center for Law and Civic Education and is the recipient of the 2022 Judge Benjamin Jones Judges in the Classroom Award. (scrichton@lasc.org)*



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# JOINT LSBA/LJC SUMMER SCHOOL HIGHLIGHTS

## Sunday

**GUANTANAMO:** Where the Rule of Law had to Face the Music  
**Keep Negotiations Humming Along:** What Role, if any, Does Civility Have in Negotiations?  
**Do You Believe in Magic:** Music Licensing in the Digital

## Monday

**I Can See Clearly Now:** Recent Developments in Louisiana Civil Procedure  
**Sittin' on the "Doc" of the Bay, Watching the Writing Deadlines Come My Way:**  
**Fine-Tuning Your Voice:** Legal Writing  
**Let's Give Them Something to Talk About:** Incredibly Stupid Things Lawyers Have Said  
and Done and the Resulting Consequences  
**She Works Hard for Her Money:** HR 1 for Lawyers  
**Ethics Serenade:** Questions for the Audience with Some Violin for the Mood  
**Today's Jazz Funeral:** Recent Developments in Successions Law  
**Cry if You Want To:** Healthcare Law 101  
**Do You Hear Me Now?:** Reading the Room  
**When I'm 64:** ERISA - What's Up  
**Do You Believe in Magic:** Music Licensing in the Digital

## Tuesday

**The Jurisprudential Grammys:** Louisiana Supreme Court - The Year in Review  
**What We Are Talking About When We Are Talking About "Class Actions"?:**  
Two Recent Examples: The Hard Rock Collapse and the Dean Nursing Home



**What's Love Got to Do with It?:**  
A Retrospective Study of the 2018  
Domestic Violence Law Changes  
and Where We Are Headed  
from Here

**Mr. Big Stuff:** Business  
Valuation - What You Need  
to Know

**Our House:** Property Law  
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## *Tuesday (continued)*

**Money, Money, Money:** Accounting Basics for Attorneys - Business Litigation and Reading Financial Statements

**Blockchain of Fools:** The Fall of Cryptocurrency, What's Next?

**Hurricane Litigation**

**It Don't Mean a Thing (If it Ain't Got That Swing):** How Implicit Bias Disrupts the Frequency of Our Values

**This Land is (Not) Your Land:** Expropriation - What's Hot?

**Mercy Now:** A Brief Update of the United States Supreme Court's Last Two Terms

**Robo Judge:** The Law and A.I.

**For Your Eyes Only:** Data Privacy - A Primer on New and Proposed Rules for Collecting and Processing Consumer Data

**Always Tomorrow:** Covid Taught Us that Alternate Work Schedules are "Here To Stay". Just What Does that Mean?"

## *Wednesday*

**Born Free:** What Does It Mean Under the Constitution and the Bill of Rights? -

**Read the Fine Print and All That Jazz:** Tips on How to Read an Insurance Policy and Other Insurance Coverage Issues

**I Heard it Through the Grapevine:** "It's Not Offered for the Truth, Your Honor" and other Bogus Hearsay Arguments

**How Will I Know?:** An Application of Tinker - A Case Study

**Profe\$\$ionalism: Money for Nothing** - Practical Applications of Professionalism

**Country Boy's Dream:** Judges/Lawyers in the Classroom Program

**Tom on Torts**

**Hitting the High Notes:** Why the LBF is Good for the Profession?

**Choices:** Crime, Consequences, and the Power of Choice

## *Thursday*

**You're All I Need to Get By:** Professionalism for Lawyers and Judges

## *Friday*

**Great Debate - Who Can I Turn To?:** 2023 Gubernatorial Candidate Forum

**The Reprise:** An Overview of Legislative Updates from the 2023 Session

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Registration Options	Early (by 5/1/23)	Advance (by 6/2/23)	On-Site (after 6/2/23)
Lawyers .....	\$850	\$895	\$950
Lawyers 4-Day .....	\$775	\$825	\$875
Judges .....	\$725	\$775	\$825
Judges 4-Day .....	\$675	\$695	\$725
Legal Services/Gov't/ Academia/ YLD member/Misc** .....	\$725	\$775	\$825
Legal Services/Gov't/Academia/ YLD member/Misc** 4-Day .....	\$675	\$695	\$725

*In-person registration is for LSBA member and spouse/guest when indicated on Registration Form.*

- ▶ Includes seminar registration, programs, business meetings and admission to Exhibit Hall;
- ▶ electronic version of the seminar materials for attendees to download;
- ▶ daily continental breakfast/coffee/refreshment breaks;
- ▶ up to two adult admission to receptions, dinners, installations and other events planned as part of the Annual Meeting & Joint Summer School. Check back on the website at [www.lsba.org/AnnualMeeting](http://www.lsba.org/AnnualMeeting) for an up-to-date agenda.

\* Spouse/guest name must be indicated on the Registration Form to receive admittance to events included in registration. Additional admission for children and guests will be available for purchase for the social functions.

\* To purchase additional tickets for events, please contact: Kristin Durand, Program Coordinator – Meetings and Events, at [Kristin.Durand@lsba.org](mailto:Kristin.Durand@lsba.org) or call (504)619-0116 or call tollfree (800)421-LSBA, ext. 116.

\* For registration questions, please contact: Annette Buras, LSBA CLE Coordinator, at [aburas@lsba.org](mailto:aburas@lsba.org) or call (504)619-0102 or call tollfree (800)421-LSBA, ext. 102.

## Cancellations, Refunds & Course Materials

Cancellation of registration must be received in writing by the LSBA no later than Friday, May 20, 2022. Cancellations will receive a full refund, less a \$30 administrative charge. Absolutely no refunds will be made after Friday, May 20, 2022. Requests should be mailed to the Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; faxed to (504) 598-6753; or e-mailed to [aburas@lsba.org](mailto:aburas@lsba.org). Any questions, please contact Annette Buras, CLE Coordinator, (504)619-0102.

**Important Note:** A link to the seminar materials will be emailed prior to the event; it is suggested you print the materials in advance and bring them with you. The link will be sent to the email address of record provided to the LSBA. If you choose to review the materials from your laptop, we strongly suggest you charge your laptop battery, as electrical outlets may be limited. **PLEASE NOTE:** Printed materials will not be available.

# 2023 Registration Form

Judge Bar Roll Number \_\_\_\_\_ First Name for Badge \_\_\_\_\_

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Firm Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

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Please register my spouse/guest for social events at no additional charge. (*Spouse/guest must be registered to receive tickets.*)

Spouse/Guest Name (for Badge) \_\_\_\_\_

Check here or contact the LSBA if you have a disability which may require special accommodations at this conference. The LSBA is committed to ensuring full accessibility for all registrants.

## Registration Options

	Early (by 5/1/23)	Advance (by 6/2/23)	On-Site (after 6/2/23)	
<input type="checkbox"/> Lawyers .....	\$850 .....	\$895 .....	\$950 .....	_____
<input type="checkbox"/> Lawyers 4-Day .....	\$775 .....	\$825 .....	\$875 .....	_____
<input type="checkbox"/> Judges .....	\$725 .....	\$775 .....	\$825 .....	_____
<input type="checkbox"/> Judges 4-Day .....	\$675 .....	\$695 .....	\$725 .....	_____
<input type="checkbox"/> Legal Services / Gov't / Academia/ YLD Member / Misc.** .....	\$725 .....	\$775 .....	\$825 .....	_____
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\*\*Special Pricing applies to judges, lawyers employed full-time by local, state, or federal government, and lawyers employed full-time by legal aid agencies or indigent defense agencies or members of the House of Delegates or the Board of Governors or the LSBA Young Lawyers Division. YLD Member qualifications: Every member of the Louisiana State Bar Association who has not reached the age of thirty-nine (39) years or who has been admitted to the practice of law for less than five (5) years, whichever is later, is by virtue thereof a member of the Young Lawyers Division. (Article I, Section 1, Bylaws of the Louisiana State Bar Association, Young Lawyers Division).

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CREDIT CARD INFO

## 2023-24 LSBA Dues and LADB Assessment Payment Cycle to Begin in May

The purpose of the Louisiana State Bar Association (LSBA) is set forth in Art. III § 1 of its Articles of Incorporation. The expenditure of funds by the LSBA is limited as set forth in the LSBA's Articles and Bylaws; Supreme Court Rule XVIII § 6; *Keller v. State Bar of California*, 496 U.S. 1 (1990); and *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).

A member may object to the use of any portion of the member's bar dues for activities he or she considers inconsistent with the foregoing constitutional standards. Member objections must be filed within 45 days of the date of the Bar's publication of notice of the activity to which the member is objecting. Details on the objection, refund and arbitration procedures are included in Article XII of the LSBA By-Laws. Review the LSBA's Articles and By-Laws at: [www.lsba.org/BarGovernance/ByLawsAndArticles.aspx](http://www.lsba.org/BarGovernance/ByLawsAndArticles.aspx).

Additional information on annual LSBA expenditures will be made available for the May 2023 issue of "Bar Briefs." The LSBA's annual reports also are available at: [www.lsba.org/NewsAndPublications/AnnualReports.aspx](http://www.lsba.org/NewsAndPublications/AnnualReports.aspx).

### Payment of Dues and Assessment

LSBA members have the option to pay their 2023-24 LSBA dues and Louisiana Attorney Disciplinary Board (LADB) assessment by ACH electronic check, credit card, or download and mail their Attorney Registration Statement and checks for the payment of fees. Members are encouraged to pay and file electronically, as this access will be available 24/7, including times when the Bar Center is closed or if mail service is disrupted due to inclement weather. Further,

electronic payment gives members more control over their information in the database and allows for more timely updates to their member records.

Filing the Attorney Registration Statement is an important part of an LSBA member's annual requirement and can be completed by mail or electronically. Mailing in the Attorney Registration Statement with two separate payments of Dues and Assessment constitutes filing. When paying online, verifying and/or updating member demographic information serves as electronically filing the Attorney Registration Statement.

Emeritus Status is available for lawyers who only handle pro bono work or uncompensated work for family members (both subject to certain guidelines and restrictions) and who meet age and practice criteria. Lawyers should review the Emeritus Status guidelines and restrictions for possible election. Election of emeritus status MUST be made prior to payment of the Dues and Assessment and the election deadline for the 2023-24 membership year is June 30, 2023. Review the "Emeritus Status Guidelines and Restrictions and Notice of Application" at: [www.lsba.org/Members/EmeritusStatus.aspx](http://www.lsba.org/Members/EmeritusStatus.aspx).

Filing electronically can be a quick and simple process, utilizing the online member accounts that participants have relied on for years to register for CLE seminars and to access Fastcase. If an attorney has not yet set up a member account, one can easily be created at: <https://www.lsba.org/Members/memberacct.aspx>. This webpage also allows members to edit their existing accounts and reset a lost or forgotten account password.

After member data is confirmed but before the payment/filing process begins, members will be advised that they also need to go to <https://www.LADB.org> to complete the Louisiana Supreme Court Trust Account Disclosure and Overdraft Notification Authorization Form and will be asked to confirm that they understand this requirement. The Louisiana Attorney Disciplinary Board is the certifying agency for the Trust filing for LSBA members' IOLTA accounts. Filing is quick and easy at [www.ladb.org](http://www.ladb.org) and any issues concerning trust accounts should be directed to LADB at (504)834-1488.

The collection schedule will be the same as in prior years. In lieu of mailing a statement to each member, in mid-May, the LSBA will mail a postcard to each member, which will provide instructions to go online to <https://www.LSBA.org> to complete the registration process, pay the annual dues and assessment, and go online to <https://www.LADB.org> to complete the Trust Account Form. ***This is the only mailing members will receive prior to the July 1, 2023, due date; attorney registration statements will NOT be mailed.***

Throughout the dues collection period, the LSBA will email reminders using the email address, [compliance@lsbamembership.com](mailto:compliance@lsbamembership.com). Members are encouraged to add this email address to their contact list to avoid missing important communications. Members should not reply to this email address, but rather direct questions to [processing@lsba.org](mailto:processing@lsba.org).

Once members have electronically filed their Attorney Registration Statements (including any necessary

Continued next page

**Dues** continued from page 444

changes and/or updates) and made the required payments, they will receive email confirmations. The filing and payment deadline will remain July 1, 2023. The LSBA will continue to mail delinquency and ineligibility notices to those who fail to meet the deadlines.

Members who elect to pay by electronic check will continue to pay the following fees:

- ▶ LSBA dues (practicing more than three years): \$200;
- ▶ LSBA dues (Emeritus Status): \$100; and
- ▶ LSBA dues (practicing three years or less): \$80;
- ▶ LADB assessment (practicing more than three years): \$235;
- ▶ LADB assessment (Emeritus Status): \$117.50; and
- ▶ LADB assessment (practicing three years or less): \$170.

***Those who are planning to pay by electronic check should contact their financial institutions to confirm that their accounts allow payment by this method. If your account is Positive Pay Protected, update the Company ID 1016207445.***

As was the case last year, processing fees of 3%, plus a .20 transaction fee, will be assessed if choosing to pay by credit card. Total amounts, including assessed fees, are as follows:

- ▶ LSBA dues (practicing more than three years): \$206.20;
- ▶ LSBA dues (Emeritus Status): \$103.20; and
- ▶ LSBA dues (practicing three years or less): \$82.60;
- ▶ LADB assessment (practicing more than three years): \$242.25;
- ▶ LADB assessment (Emeritus Status): \$121.23; and
- ▶ LADB assessment (practicing three years or less): \$175.30.

Bar staff members will be available to answer questions and provide assistance to members. All questions and concerns should be directed to:

- ▶ Email — [processing@LSBA.org](mailto:processing@LSBA.org)
- ▶ Telephone — (504)566-1600 or (800)421-LSBA; ask for Payment Processing.

## **LBSLS Accepting Bankruptcy Law Certification Applications Through Sept. 30**

The Louisiana Board of Legal Specialization (LBSLS) will be accepting applications for business bankruptcy law and consumer bankruptcy law certification from now through Sept. 30, 2023.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum percentage of the attorney's practice must be devoted to the area of certification sought, passing a written examination to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBSLS standards for the applicable specialty for a detailed description of the requirements for application: [www.lsba.org/documents/Specialization/LSBAPlanofLegalspecialization2017.pdf](http://www.lsba.org/documents/Specialization/LSBAPlanofLegalspecialization2017.pdf).

In addition to the above, applicants must meet a minimum CLE requirement

for the year in which application is made and the examination is administered. Bankruptcy Law CLE is regulated by the American Board of Certification, the testing agency.

Approved specialization CLE courses can be viewed on the LBSLS Approved Course Calendar at: [www.lsba.org/MCLE/MCLECalendar.aspx?L=S](http://www.lsba.org/MCLE/MCLECalendar.aspx?L=S). Check off your specialization and click on "Search Courses" to find approved specialization CLE.

With regard to applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBSLS. Information concerning the American Board of Certification will be provided with the application form(s).

Anyone interested in applying for certification should contact LBSLS Specialization Director Mary Ann Wegmann, email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org), or call (504)619-0128. For more information, go to the LBSLS website: [www.lsba.org/specialization/](http://www.lsba.org/specialization/).

## **LSBA Section Membership: Renew or Sign Up by April 21**

The 2023-24 application for membership in the Louisiana State Bar Association's (LSBA) 30 sections was mailed Feb. 8. Members are encouraged to sign up for the sections by returning the application and payment by Friday, April 21, to: Section Membership, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404.

The Section application and brochure also are available online at: [www.lsba.org/BarGovernance/Sections.aspx](http://www.lsba.org/BarGovernance/Sections.aspx).

Members needing an additional copy should follow the link to download and print the application or brochure. Note: Members should select the correct application based on the fiscal year in which they would like to join.

For more information, contact the Membership Department, (504)566-1600, (800)421-5722, or email [processing@lsba.org](mailto:processing@lsba.org).



Back Row: P. Michael Maneille; Leon J. Minvielle III; Thomas D. Brumbaugh; Hon. Jimmy W. Wiley; Hon. William J. Burris; Hon. Larry R. Dean; Allan J. Sanders; Hon. James E. Kuhn; Hon. Roy S. Lilley; David L. Landry; Edwin R. Fleischmann, Jr.; Robert J. Pastor; Thomas J. Lutkewitte; Alvin A. LeBlanc; Ian F. Hipwell; Malcolm J. Dugas, Jr.; Elliott W. Atkinson, Jr.; Thomas P. Anzelmo, Sr.; Hon. James M. Cunningham; David A. Hilleren; P. Albert Bienvenu; Ralph R. Alexis III; Francis J. Barry, Jr.; William P. Stubbs, Jr.; Janice L. Gonzales; John T. Nesser; William G. Cherbonnier, Jr.; Hon. John L. Van Norman III; Jack Derrick Miller; Terry J. Johnson; Joseph Michael Orlesh, Jr.; James P. Doré; Kenneth M. Henke; John Q. Davis; James D. Caldwell, Sr.; Hon. John D. Engelsman; Delbert G. Talley; Hon. Paul J. de Mahy and Hon. Anthony J. Marabella, Jr.  
 Front Row: Stephen C. LeBlanc; Mary B. Petrucci; James E. Stovall; Jerald L. Album; John H. Ryan; Michael S. Wolf; Cary W. Vercher; C. Daniel Street; Ronald S. Macaluso; Mack H. McCraney; Anita M. Warner; Hon. James H. Mixon; Joseph A. Cusimano, Jr.; and Brian M. Begue.

## LSBA 70-, 60-, 50-Year Members Recognized at January Ceremony

Louisiana State Bar Association (LSBA) members who have reached half a century and beyond in their professional careers were recognized at a reception on Jan. 20 in Baton Rouge, in conjunction with the LSBA's Midyear Meeting. During the reception, the honorees received medals presented by LSBA President Stephen I. Dwyer. The

honorees also posed for photos with Dwyer and Louisiana Supreme Court Chief Justice John L. Weimer.

To review the list of the 70-year members (admitted in 1953), 60-year members (admitted in 1963) and 50-year members (admitted in 1973), go online to: [www.lsba.org/midyearmeeting/photos.aspx](http://www.lsba.org/midyearmeeting/photos.aspx).



60-Year honorees included Charles R. Sonnier; Daniel Lund; Willie D. Maynor.

## House Resolution Deadline is May 10 for Annual Meeting

The deadline for submitting resolutions for the next Louisiana State Bar Association's (LSBA) House of Delegates meeting is Wednesday, May 10.

The House will meet on Thursday, June 8, in conjunction with the LSBA's

Annual Meeting at Sandestin Golf and Beach Resort in Destin, Fla.

Resolutions by House members and committee and section chairs should be mailed to LSBA Secretary C.A. (Hap) Martin III, c/o Louisiana Bar Center, 601 St. Charles Ave., New Orleans, LA 70130-

3404. All resolutions proposed to be considered at the meeting must be received on or before May 10. Resolutions must be signed by the author. Also, copies of all resolutions should be emailed (in MS Word format) to LSBA Executive Assistant Jen France at [jen.france@lsba.org](mailto:jen.france@lsba.org).

## Attorneys Apply for Board Certification as Legal Specialists

Pursuant to the rules and regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for board certification as legal specialists. Any person wishing to comment upon the qualifications of

any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Mary Ann Wegmann, Specialization Director, no later than May 5, 2023.

It is also requested that any knowledge

of sanctions or other professional action against an applicant be reported during this comment period.

### Consumer Bankruptcy Law

Kelli R. Cook..... Haughton  
 Michele S. Cook..... Haughton



# ATJ Developing Leadership Intern Program: Catching Up with the Interns

Since 2016, the Access to Justice (ATJ) Commission has sponsored and coordinated the ATJ Developing Leadership Intern Program. This unique six-week program provides interns with a bird's-eye view of Louisiana's civil legal aid network, allowing them to spend time with district judges and civil legal aid programs. Each year, four 1Ls are selected (one from each Louisiana law school). The interns focus on the civil legal needs of low-income people, the ways in which organizations within the justice community address those needs, and how these services are increasing the quality of life for those served.

The concept of this program was developed during the March 2015 Access to Justice Summit where participants concluded that cultivating the next generation of access to justice leaders should be a priority toward sensible succession planning to ensure continued efforts within Louisiana's civil legal aid network.

Several past interns were contacted to determine what they are doing now and how the internship helped shape their legal mindsets.

## **Hilary Renshaw,**

**ATJ Intern 2016.** I am working as the associate general counsel for the Utah System of Higher Education (USHE). The USHE is governed by the Utah Board of Higher Education and is comprised of Utah's eight public colleges and universities and eight technical colleges. The CEO of USHE is the Commissioner of Higher Education. I conduct legal research and provide legal advice to the Board and the Office of the Commissioner. In law school, the internship allowed me to be exposed to different types of experiences that helped me understand there were a lot of options outside the traditional firm route. This gave me the confidence to explore other job opportunities once I completed law school. Additionally, the internship showed me the value and importance of equity, diversity and inclusion



**Hilary Renshaw**

in systems and agencies. After law school, the internship showed my commitment to helping marginalized communities, gave me experience and exposure to promoting access to justice and helped me obtain my current job. The internship helped me solidify my desire to use my law degree to help others have access to justice.

## **Leila M. Abu-Orf,**

**ATJ Intern 2017:** I work at Burns Charest, LLP, in New Orleans, a plaintiffs' class action boutique firm where I participate in all stages of litigation on behalf of plaintiffs in various class actions, mass actions and other complex litigation across the country. My selection for, and participation in, the ATJ internship program opened a lot of doors for me while I was in law school. Not just because it is a great item to have on your résumé, but more importantly, you meet a ton of attorneys and other folks who you will continue to run into and even work with in the future. The ATJ internship program also provided an invaluable layout of the civil legal aid programs throughout New Orleans and Louisiana more broadly. Having an intimate understanding of these programs and networks has been helpful to me as a practicing attorney in countless ways. I would describe the internship as "the best non-traditional internship program during law school that you could secure."



**Leila M. Abu-Orf**

## **Monette M.**

**Davis, ATJ Intern 2017:** I am currently an associate attorney at Stone Pigman Walther Wittmann, LLC, in New Orleans where I assist clients with fiduciary litigation, commercial litigation, insurance defense and family law matters. The internship program provided me with a great perspective of how our judicial system can bridge the gap between citizens and the courts. The program showed me how far our judicial system



**Monette M. Davis**

has come but also how much work we still have to do to ensure that each person has access to the judicial system. I would describe the internship as one of the most amazing programs in the state of Louisiana that allows you to network with individuals in the state bar and attorneys and judges in the profession.

## **Milton Joseph**

**(MJ) Hernandez, ATJ Intern 2017:** I am currently clerking for Judge Brian A. Jackson, U.S. District Court, Middle District of Louisiana. Participating in the internship program is one of my fondest



**Milton Joseph (MJ) Hernandez**

memories from law school. As a student with only one year of law school under my belt, the program opened my eyes to all the organizations working to promote access to civil legal aid throughout Louisiana. I greatly benefited from the program; working with legal aid offices, law firms, judges and the Access to Justice Commission gave me experiences that I would not have had elsewhere and allowed me to learn from so many who work so hard to bring civil legal aid to all Louisianians. The internship "is an incredible opportunity for law students who want to lend their helping hands to attorneys, judges and organizations in their ongoing and admirable efforts to make sure that we all have access to justice."

## **DeJonique J.**

**Carter, ATJ Intern 2018:** I have the pleasure of serving as the pre-law advisor at Dillard University. In this role, my goal and mission are to diversify the legal profession one student at a time.



**DeJonique J. Carter**

I joined Dillard University in 2020 while completing my last year of law school and I never looked back. This role was the perfect opportunity for me to utilize both my social work degree and JD to enhance the legal profession. It is truly a blessing to inspire, advise, support and expose under-

graduate students from Dillard University, Xavier University and Southern University of New Orleans (SUNO) to the legal profession. The internship program exposed me to a variety of legal challenges that underserved populations and communities face. Although I am not serving the legal profession in a capacity that is directly aligned with the exposure from the internship, I am indirectly exposing undergraduate students to some of these professions. I would summarize the internship by saying that the legal profession needs agencies and people who are willing to fight for the injustices of the oppressed and the internship provides law students with one opportunity to do just that.

**Kansas M. Guidry, ATJ Intern 2018:**

I recently began my position as a litigation attorney at Barrasso, Usdin, Kupperman, Freeman & Sarver, LLC, in New Orleans. After law school, I clerked for Judge Barry W. Ashe, U.S. District Court, Eastern District of Louisiana. I then clerked for Judge Jacques L. Wiener, Jr., U.S. 5th Circuit Court of Appeals. During law school, I was able to connect with The Pro Bono Project again to complete my pro bono requirement at Tulane by serving at the self-help desk at the 24th Judicial District Court. This was a rewarding experience because we were able to help guide individuals through the legal process for already stressful situations, such as filing for divorce and child custody. Through the internship, I had the opportunity to meet so many heroes in our community and began to understand how they tackle complicated and pervasive legal issues from different perspectives. I learned that all attorneys, no matter their practice area, can make a profound difference in their community by incorporating pro bono work into their careers.



**Kansas M. Guidry**

**Zora Y. Djenohan, ATJ Intern 2019:** I'm working at Earthjustice for its fossil fuels program. Earthjustice is an environmental law nonprofit and its fossil fuels program works to prevent the build out of the fossil fuel industry in the Gulf South and Appalachia. My job consists of working with communities and environmental groups in Louisiana and Texas and helping them to bring legal challenges against

petrochemical facilities seeking to locate in their communities. The internship program gave me a broad view of the civil legal sector over a relatively short period of time, allowing me to see what types of working environments made most sense for me. To describe the internship, I would say, "It is like a charcuterie board of the civil legal system, allowing you to get a taste of different ways you can engage and contribute."

**Tiberlee Barnum, ATJ Intern 2020:**

I recently accepted a position with Southern University as the community liaison for the Off-Campus Instructional Site (OCIS) in Shreveport. OCIS will eventually serve as an extension of Southern University Law Center and offer a four-year, part-time JD program to the Ark-La-Tex community. I am tasked with gauging community needs and creating programming and partnerships to address the legal concerns of the community at large and the stakeholders in the area. The internship exposed me to the disparities in access to legal assistance throughout the state. This led me to seek out opportunities that would increase overall access to legal assistance in a major way. During my last semester of law school, I was one of seven students participating in the inaugural semester in the Shreveport program. This represented the first step in bringing legal education, thus increasing the legal talent, to the region. I served as an extern for Judge Shonda D. Stone at the Louisiana 2nd Circuit Court of Appeal. The internship exposed me to a plethora of agencies currently working to challenge the ways our current legal system functions against those of modest means. In turn, I like to think that I am doing my part by increasing opportunities to educate and engage a region that has been without access to some of those same resources that are so prevalent in south Louisiana, namely, a law school, law library, student law clinics and an increased presence of new legal talent.



**Zora Y. Djenohan**



**Tiberlee Barnum**

**Carly E. Jonakin, ATJ Intern 2020:**

I am currently working with Fishman Haygood, LLP, in New Orleans in its litigation group. The internship helped me understand that I could incorporate pro bono work in my legal career, no matter where I ended up working. Pro bono is not just limited to the public interest field. To sum up the ATJ internship experience, I would say that "the Access to Justice Internship provides the best birds-eye view of the New Orleans public interest legal field and shows how so many individuals are working in our city to provide better access to justice for all New Orleanians."



**Carly E. Jonakin**

**Caroline Perlis, ATJ Intern 2021:** I am the senior articles editor for Volume 97 of the *Tulane Law Review*. ATJ greatly affected my future career. Being sponsored by Phelps Dunbar, LLP, allowed me to see that there are attorneys who work at bigger firms who still incorporate pro bono work and other types of civic engagement into their careers. Additionally, the internship allowed me to observe aspects of legal work that I had never been exposed to before, such as trials, depositions and client intake interviews. I recently accepted a position with Phelps Dunbar for after graduation and will be an associate in its Labor & Employment Section beginning in September 2023. I think that the internship is perfect for people who are passionate about public interest work but are not sure how they want to incorporate that work into their future careers. ATJ was the ideal environment for me to learn about the many attorneys and organizations that help serve the people of New Orleans and to get a grasp on the wide variety of job opportunities for attorneys who are civically minded.

The Louisiana State Bar Association's Access to Justice (ATJ) Department would like to acknowledge the 2023 ATJ Developing Leadership Intern Program sponsors. ATJ intern sponsors provide mentorship and a stipend to the four ATJ interns while they learn about Louisiana's civil legal aid network. This year's sponsors include Entergy Services, LLC; Butler Snow, LLP; the LSBA's Civil Law & Litigation Section; and Phelps Dunbar, LLP.

# LSBA Hosts First Access to Justice Conclave with Loyola University College of Law

The Louisiana State Bar Association (LSBA) and Loyola University College of Law hosted the first Access to Justice Conclave on March 3 at the Louisiana Supreme Court. LSBA President Stephen I. Dwyer and Loyola College of Law Dean Madeleine M. Landrieu were the forces behind the event which brought together access to justice thought leaders for input on efforts that can have a lasting impact on low-income Louisianians with legal issues.

Louisiana Supreme Court Chief Justice John L. Weimer opened the Conclave by addressing the needs for access to justice activities and by commending the Conclave's participants for their deep commitment to serving those who are underserved and underrepresented in many of the state's communities.

Recognizing the state's many challenges and how a lack of access to justice leads to poor social, economic and health outcomes, Landrieu and Dwyer invited 50 justice community stakeholders to address the most prevalent issues faced in Louisiana, with the following goals in mind:

- ▶ engaging new leaders and partners into Louisiana's access to justice work;
- ▶ increasing efficiency and impact by strengthening ongoing cooperation, coordination and effective communication among access to justice stakeholders;
- ▶ identifying priority projects for increasing access to justice; and
- ▶ expanding and coordinating community legal education, outreach and marketing to people with unmet legal needs about the services and resources available.

These goals, and the participation by leaders from various organizations, provided for a robust and productive discussion designed to inform strategic priorities that will guide access to justice efforts by the LSBA and other stakeholders over the next several years. Priority activities discussed included creating a comprehensive marketing plan to inform



Alainna R. Mire, Stephen I. Dwyer, Chief Justice John L. Weimer and Dean Madeleine M. Landrieu at the ATJ Conclave. Photos by Stacie LeJune Pomes.



Chief Justice John L. Weimer addresses attendees at the ATJ Conclave. Photos by Stacie LeJune Pomes.

the public about existing resources and legal help, as well as expanding community education training to ensure the recognition of legal issues and needs. These and other priorities are currently being analyzed and assessed by the Louisiana Access to Justice Commission for possible incorporation into its existing strategic plan to carry forward over the next several years.

The event brought representatives from the judiciary and courts, legal community, non-profit legal aid and pro bono organizations, law schools, state and local agencies, and non-traditional access to justice advocates from organizations like United Way and the NAACP. Both Landrieu and Dwyer expect this event to be the first of many to bring thought leaders together and produce tangible next steps to address Louisiana's most chal-



Dean Madeleine M. Landrieu addresses attendees at the ATJ Conclave. Photos by Stacie LeJune Pomes.

lenging barriers to accessing legal help.

These efforts have already enjoyed attention on a national level. Chief Justice Weimer recently submitted a Memorandum concerning the Access to Justice Conclave for a meeting of the Conference of Chief Justices/Conference of State Court Administrators in which he highlighted the Access to Justice Conclave, the work of the LSBA's Access to Justice Committee and all of the great things flowing from these efforts. After that meeting, Danielle Hirsch, managing director of the National Conference of State Courts, sent a communication to its participants specifically calling attention to Chief Justice Weimer's Memorandum and encouraging everyone to read about the great things coming from the LSBA's Access to Justice Conclave.

# LOCAL Practice

By Tyler G. Storms

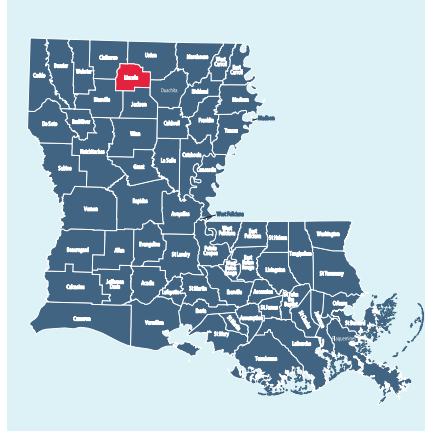
3RD JDC AND LINCOLN PARISH

The *Louisiana Bar Journal* is re-igniting its effort to discuss local practice to offer a glimpse of the distinctive aspects of practice in different district courts across the state. The practical objective is to provide general information that may be of use to attorneys from out of town — from legal concerns like motions, hearings and trials, to recommendations for local food, travel and lodgings.

The 3rd Judicial District comprises Lincoln and Union Parishes, but this article will concentrate on Lincoln Parish (any volunteers to write about Union Parish?)

After the adoption of the Uniform Rules for District Courts, legal practice is fairly uniform throughout the state, but the 3rd Judicial District Court is working on new rules. When asked about the upcoming changes, 3rd JDC Judge Bruce E. Hampton said, “We are in the process of updating our local rules to make sure they are compliant with new laws allowing the use of audio-video equipment in our courtrooms for civil and criminal proceedings. Additionally, the local rules are in need of an overhaul to make sure they are consistent with the uniform rules and with our current practices. We already have a website, [www.thirdjdc.org](http://www.thirdjdc.org), which allows us to post current civil and criminal forms for use by attorneys and the public. This will allow us to post our local rules in a format that is easily accessible by out-of-town attorneys.”

Other 3rd JDC judges told us that, in their experience, local rules pose no problem for out-of-town lawyers. Louisiana Supreme Court Justice Jay B. McCallum, a former 3rd JDC judge, said, “The 3rd JDC proceeds similarly to all other districts. The 3rd JDC takes up uncontested matters before contested, and everyone in Louisiana uses the same substantive law. The issues for any new lawyer in any unfamiliar area have more to do with



personalities and travel logistics.”

Another former 3rd JDC judge, Judge Jeffrey L. Robinson, now serving on the 2nd Circuit Court of Appeal, said, “The 3rd JDC rules are very similar to other jurisdictions in both form and substance. Lincoln and Union Parish courts closely follow the Uniform Rules for District Courts and have always been gracious and accommodating to attorneys and litigants who are unfamiliar with this jurisdiction.”

Here are other things you need to know about the 3rd JDC and Lincoln Parish.

### Setting a Motion/Rule for Hearing

Even though the judges set their own calendars, they ask attorneys to mail these requests to the *clerk of court*, not to the individual judge. Do not send a motion requesting a hearing to an individual judge, even after the case has been assigned to that judge.

Before filing your motion with the clerk of court, you will need to obtain opposing counsel’s available dates for the next three months, complete a return date/hearing cover sheet providing the most convenient available dates for that 90-day period, and submit same with the filing of your motion. The calendar with each division’s scheduled motion hour

dates is located on the 3rd JDC website. If the case has already been assigned, then you need only list dates for the division the case is assigned to. The return date/hearing cover sheet is on the website so it can be printed from the website without having to go through the clerk to obtain a copy.

Each judge rotates between Lincoln Parish and Union Parish, according to separate civil and criminal dockets. The assigned judge will use your first available week according to his or her availability in the rotation.

### Special Settings

These are available in the 3rd JDC for the convenience of attorneys. If you are just requesting special permission to appear at a time later than the 9 a.m. beginning of motion hour, you should confer with opposing counsel and then communicate with the law clerk for the particular division. If you are requesting a special date that is not a motion hour date (*i.e.*, a bench trial date when no other matters are set), then it will need to be set for a phone conference with the appropriate judge.

### Civil Motion Hour

This is held on Monday and Thursday. For default judgments (formerly known as confirmation of default), attorneys are asked to complete a form with the applicable dates and service information. The clerk of court will provide this form upon request. When you phone, ask for the civil department.

### Trials Requiring Witnesses

For the convenience of witnesses, attorneys should advise the court if a lengthy matter will need to go to trial. If a special advance setting is needed, use the conference call procedure described above. The judges assure us that, through this process, every litigant gets his day in

court with minimal inconvenience to the witnesses.

When in doubt, Justice McCallum suggests finding a local lawyer with a good reputation and asking what it takes to do an effective job here. "That will probably be the most valuable information you can get," McCallum said.

### Travel

If you are driving to Ruston from the New Orleans area region, it is strongly recommended to ride north on I-55, then turn west onto I-20 near Jackson, Miss. From any other point south (except perhaps Baton Rouge via Natchez), you should go to Alexandria and then take U.S. 167 north through Winnfield.

### Food Matters

The courthouse is located at the edge of Ruston's historic district, which centers around the railroad tracks right in the middle of U.S. 167's north and south-bound corridors.

If you drive south on U.S. 167 after exiting I-20, Common Goods is a convenient stop for local coffee blends, baked

goods (uncommonly good), doughnuts and avocado toast. Closer to the courthouse is Railway Coffee. Its advantage is being walking distance from the courthouse. Both have wireless access.

If you need to take a lunch break and return to court, Sundown Tavern is recommended, located over the railroad tracks from the courthouse. There is a Newk's across from the courthouse. An outdoor food truck park, south of the railroad tracks, is very popular. The trucks are operated by a chef with the last name of Bourgeois.

There are abundant places to dine near the hotels along I-20. Ruston has the best food choices per capita north of I-10 (rivaled closely by Natchitoches, which has more native specialties). Ruston also is looking forward to becoming the original Louisiana Buc-ee's location.

### Lodgings

Many new hotels have come to Ruston, as it has become a Southern USA regional baseball hub. There is not only Louisiana Tech, which hosted a college world series regional and has one of the

newest and nicest college baseball stadiums you can find, but there is a massive youth travel ball facility that is so nice that Louisiana Tech used it after the 2019 tornado destroyed the old baseball stadium (along with other parts of town). It can be hard to get a room at certain times of the year, so book early. Unless you have plans to do something particular in another part of the state, Ruston is always a good place to stop for the night.

*Tyler G. Storms, an attorney in Ruston, serves on the Louisiana Bar Journal's Editorial Board, in the Louisiana State Bar Association's House of Delegates and on committees of the Louisiana State Law Institute. He is a graduate of Tulane University and its Law School (BA and JD). (tstorms@stormslaw.com; 941 N. Trenton St., Ruston, LA 71270-3327)*



*Have an idea for a "Local Practice" article or, better yet, want to write one? Email Publications Coordinator Darlene M. LaBranche with your ideas at [dlabranche@lsba.org](mailto:dlabranche@lsba.org).*

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# PRACTICE Makes Perfect



By LSBA Practice Assistance and Improvement Committee

## DISASTER PLANNING: MORE TIPS

This section focuses on practice tips and general legal information published in the Louisiana State Bar Association Practice Assistance and Improvement Committee's *Practice Aid Guide: The Essentials of Law Office Management*, available 24/7 online at: [www.lsba.org/PracticeAidGuide](http://www.lsba.org/PracticeAidGuide). Information in this article is found in Section 10.

### Disaster Planning Tips

Effective disaster planning dictates whether your office will survive a disaster. Keep in mind that during a disaster, natural or otherwise, a lawyer's professional and ethical obligations are not suspended.

A destructive hurricane is certainly an example of a potentially business-ending event. However, the mundane (and more common) event, such as an employee termination gone awry or a computer malfunction (virus or other technology issues), can also wreak havoc on a law office. Other examples of business-interrupting events might include illness or disability on your part, or on the part of a key member of your office; theft or burglary; workplace violence; sudden staff changes; client trust account theft; etc.

It is in your and your clients' best interests to have a basic disaster plan in place.

In the February/March 2023 issue of the *Louisiana Bar Journal*, things to do before a disaster occurs were discussed. Here are more recommendations.

### Before the Disaster

#### Back-up Client Files and Important File Information

Back-up your client files and test your backup periodically. Your backup method will depend on how you keep client files. Some lawyers are paper only, while others are nearly totally electronic. The vast majority are a blend of both. Back-up methods favor the lawyer who digitizes data. Lawyers should consider scanning/digitizing active files.

If not digitizing complete files, identify vital client records and other data that are essential for your business to continue operating. Use a small desktop scanner to scan these documents and store copies off-site. At the very least, if you are storing paper files in your office, put them, whenever possible, in a file cabinet away from areas that potentially could suffer water damage.

The top data back-up methods used by lawyers are:

► **Online "Cloud" Storage:** *Pro:* Secure, easy-to-use, cost-effective, automatic backups (in real time or at set times), and data retrieval possible from anywhere with internet. *Con:* Subscription service, with cost depending on the amount of data stored.

► **Personal or Private "Cloud:"** *Pro:* Alternative to server or a cloud subscription service. With Internet, can share files and work remotely from any device. *Con:* Not as easy to implement and relatively new technology.

► **Simple External Hard Drive:** *Pro:* Simple to use, potentially huge storage capacity, easy-to-carry and inexpensive. Encrypt for extra security. *Con:* Easily lost, left and/or damaged.

► **Thumb or Flash Drives:** *Pro:* Inexpensive and very easy to use with potentially huge storage capacity. *Con:* Fragile, easily lost, corruptible and mislabeled.

Optimally, lawyers are storing and securely encrypting their client data and files, online and offline, in many different ways, and backing up in real time, or at least once a day. See Rule 1.6(c).

#### Plan for Cash Reserves and Emergency Line of Credit

In major disasters, local ATMs do not always work and local banks are not open. Have cash ready to sustain you for at least a month. Establish an emergency line of credit.

#### Business Interruption Insurance: Know What Your Policy Covers

Does your policy cover building contents as well as the structure? Do you have

coverage for business interruption and extra expenses?

#### Family Plan

If the disaster affects an entire region, you will not be an effective steward of your clients' information and matters unless your family is safe. You will not be at your best in putting your office back together again unless and until your family is safe. Give some thought as to how you and your family might respond in the case of a regional disaster. Keep in mind the type of accommodations that you might need if your family has to evacuate. Consider pets or elderly members of your family who might need to accompany you.

A family plan also might include important family information in a hard-copy binder where you can keep essential important papers, passwords and contact information. Scan your "family plan" binder's contents and save electronic copies in several places.

### After the Disaster

The disaster has occurred and you have a basic disaster plan. What now?

► Attend to your family. If necessary, take care of your family and yourself first. If your family and loved ones are not safe, you will not be useful to your firm, your staff or your clients. Encourage your partners and your staff to take care of their own families as well.

► Keep a level head. Everything goes wrong all at once during a major disaster and many will be at their wit's end. With a basic disaster plan binder and with your family safe and sound, you can be the level head to handle the next step.

► Triage your issues and resolve the one having the biggest impact. Re-establishing communications with your clients and staff is most likely going to be your biggest and most important task towards beginning recovery.

► Implement your communication plan.



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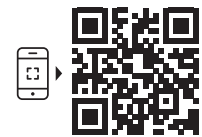


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# PRACTICE Management

By Andrea Brewington Owen

## SUPERVISING NONLAWYER ASSISTANTS

“Failing to supervise a nonlawyer assistant” stood out in a recent Louisiana Attorney Disciplinary Board newsletter. Nonlawyer assistants regularly aid in the lawyer’s provision of professional services. What are the ethical implications of using nonlawyer staff, and what are the best practice management solutions needed to manage the risks and avoid a misstep? While delegating work to nonlawyer staff is expected, the lawyer remains responsible for the conduct and the work product of the nonlawyer under the Louisiana Rules of Professional Conduct.

Rule 5.3(a) of the Rules of Professional Conduct states, “With respect to a nonlawyer employed or retained by or associated with a lawyer: a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.” Partners and supervising attorneys who fail to establish checks and balances in their firm and who fail to provide training for nonlawyer assistants that encourage compliance with a lawyer’s ethical duties can run afoul of this section.

The firm should have a training plan in place in which the assistants are taught the fundamental duties of a lawyer because they must adhere to those. Special attention should be given to the duties of confidentiality, competence and diligence. For example, the nonlawyer needs to know that the information obtained in the course of assisting the lawyer is confidential and that duty even extends to discussions at home with a spouse. An effective training and mentorship program is a measure that can be implemented to reduce ethical violations and lower the risk of liability. This

could include anything from a training manual to reaching out to speakers to present to staff. Firms could even create an employment agreement that lays out the ethical rules and the nonlawyer agrees to ensure that the rules will not be violated.

Rule 5.3(b) establishes the requirement of supervision over the nonlawyer assistant. “A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” The supervising attorney needs to have a protocol in place to provide reasonable oversight over the nonlawyer assistant. Analyze whether you could properly supervise a specific type of work or project and decide if that task could even be delegated to your nonlawyer assistant. Some tasks should only be undertaken by a licensed lawyer. Review the nonlawyer’s work product. Supervise and provide adequate instruction so that the assistant is never having to “guess” how to do a task. Always read over all documents that were drafted by the nonlawyer attorney before signing. These obligations extend to the firm’s office management. Even with supervision, it may not be prudent to allow a nonlawyer assistant to navigate all the rules that surround the management of a lawyer’s trust account.

Rule 5.3(c) states, “A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided

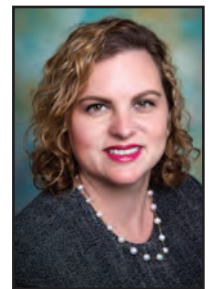
or mitigated but fails to take reasonable remedial action.” Most importantly, from a practice management standpoint, the supervising attorney needs to keep communication open with the nonlawyer assistants. Make sure the nonlawyer assistants feel comfortable approaching you to speak about any concerns they have about their work assignments and revealing any potential misconduct. If they are open with you, you have a chance to take remedial action as required under the rule.

Looking beyond Rule 5.3, an additional potential pitfall with nonlawyer assistants is the conflict of interest rule. Just like with the hire of a new lawyer, best practices suggest that a firm should perform a conflict of interest check when hiring a nonlawyer assistant and any offer of employment made should be contingent on the conflict check. If the nonlawyer assistant worked on a matter when employed by the counsel for the opposing party, you could have a breach of the conflict of interest rules and find yourself defending a motion for disqualification or being sued for conflict of interest in a malpractice suit.

Nonlawyer assistants are vital to a firm’s operations but they must be utilized with proper training and supervision to stay within the supervisor’s ethical bounds.

*Andrea Brewington Owen is a professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar in Covington. She received a BA degree from Auburn University and her JD degree in 2005 from Loyola University New Orleans College of Law.*

*She is licensed to practice law in Louisiana and Alabama. She assists the Louisiana practitioner in preventing legal malpractice, improving office practices and procedures, and lectures on ethics as part of MCLE requirements. Email her at [anowen@gilsbar.com](mailto:anowen@gilsbar.com).*







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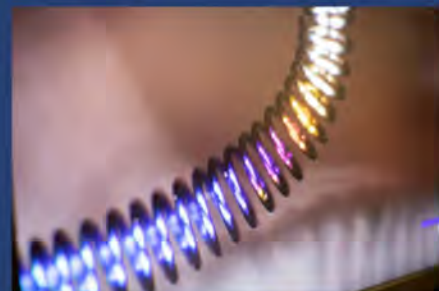
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# Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

SUFFERING IN SILENCE: “WHAT ABOUT ME”

The statistics are alarming:

▶ 21% of lawyers qualify as problem drinkers. That is more than triple the rate for the general population (6%) and nearly double the rate for other highly educated professionals (12%).

▶ 28% struggle with depression.

▶ 19% have symptoms of anxiety.

▶ 25% to 30% of lawyers facing disciplinary charges suffer from some type of addiction or mental illness.<sup>1</sup>

The American Bar Association’s 2020 Profile of the Profession concluded that lawyers have been, and still are, more susceptible to alcohol use, substance use and mental issues compared to the general population and other highly educated professionals.

In general, emotional and mental pain is often viewed as less significant than physical pain. It is easier to say “my back hurts” than to say “my heart or spirit is broken.” Stigma surrounding mental health and shame is real and causes many to suffer in silence.

Our profession, though rewarding, involves an excruciating workload in high-pressure, competitive and stressful workplaces. The demanding and long hours affect our physical, emotional and mental well-being. We help clients through the most difficult times of their lives and we are expected to be strong for others even when we feel empty.

If we take a minute to notice those around us, we realize that we do not know the battles others face. We do not recognize our peers who fake a smile at a social event while having suicidal thoughts. Do you see when a judge is having a good time and a sea of emotions suddenly rushes over her? Do you appreciate the senior partner who makes others happy when he is not?

On a personal level, how do you cope when one moment you are happy and the next you want to give up on everything?

What about when you want to cry your heart out but the tears will not flow? How often do you text, “I’m okay,” when you do not know what to do? Do you text “I’m busy” when you have not left the house in days? Do you go to work, do your job and then go home and fall apart?

Are you tired of being the burned-out, depressed, judgmental version of yourself? Are you tired of lashing out uncontrollably? Has your drinking, smoking, shopping, eating disorder or gambling gotten out of control because you do not want to cope with your emotions in a healthy way?

Do you feel broken, miserable, lost and alone? As a society, we are disconnected, and that disconnection promotes loneliness and keeping things inside. Masking your emotions is lying to your family, friends, coworkers, boss and yourself.

Who can you be honest with and express how hard it is to hold everything in — the fear, anger, sadness, frustration, insecurities and so much more? Have you tried talking to your spouse, a family member or colleague and that person failed to recognize the severity of your cry for help and now you feel trapped and confused?

JLAP’s purpose is to let you know that your experiences matter and are real, even when others deny them. There is nothing to be ashamed of. Acknowledging that everything is not okay embodies bravery, courage and determination. It can be hard to ask for help, but it can often make a huge difference to know that you are not alone and that someone is willing to listen and offer support.

Too many judges, lawyers, law students and legal professionals are suffering, and the impact on the profession and the public is too significant to ignore. Check on one another, no matter how well put together the other person seems.

One can look fine on the outside, while on the inside, the mind is a constant battleground and thoughts are running wild.

We all need someone to check on us as mental illness does not discriminate. Sometimes we need someone to simply be there, not to fix anything or do anything in particular, but to let us feel supported, cared about and seen.

Do not hesitate to reach out for professional help if you or someone you love or know may be struggling. You do not have to suffer in silence. No more pretending to be okay. No more ignoring your mental health and well-being. Ignoring harmful patterns will not only ruin your career but can ruin your entire life.

To learn more or seek confidential, non-disciplinary help in standing up for your needs and breaking the cycles of substance abuse or addiction, contact the professional clinical staff at JLAP at (985)778-0571, email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com), or visit our website at: [www.louisianajlap.com](http://www.louisianajlap.com). The call costs nothing but could make a huge difference.

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## FOOTNOTE

1. “ABA Profile of the Legal Profession 2020,” American Bar Association, [www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf](http://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf).

Dr. Angela White-Bazile, Esq., is the executive director of the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) and can be reached at (985)778-0571, toll-free (866)354-9334 or by email at [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com).





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## 14th Annual Conclave on Diversity: Thanks to Our Sponsors and Co-Hosts!

The Louisiana State Bar Association (LSBA) hosted the Conclave on Diversity in the Legal Profession on Aug. 12, 2022, with the theme “From Theory to Practice.” The Conclave

continues to serve as an opportunity for attorneys and judges to discuss the importance of diversity and inclusion in the legal profession. The LSBA would like to acknowledge its sponsors, co-

hosts, partners and participants who supported the event.

*All photos by Emily Scalf, Sunlit Studio Photography.*



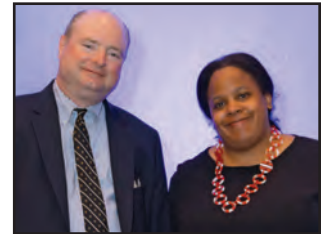
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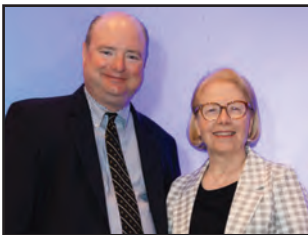
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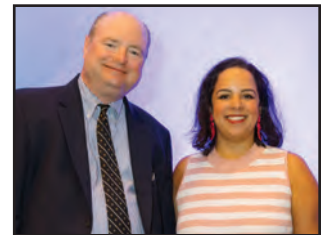
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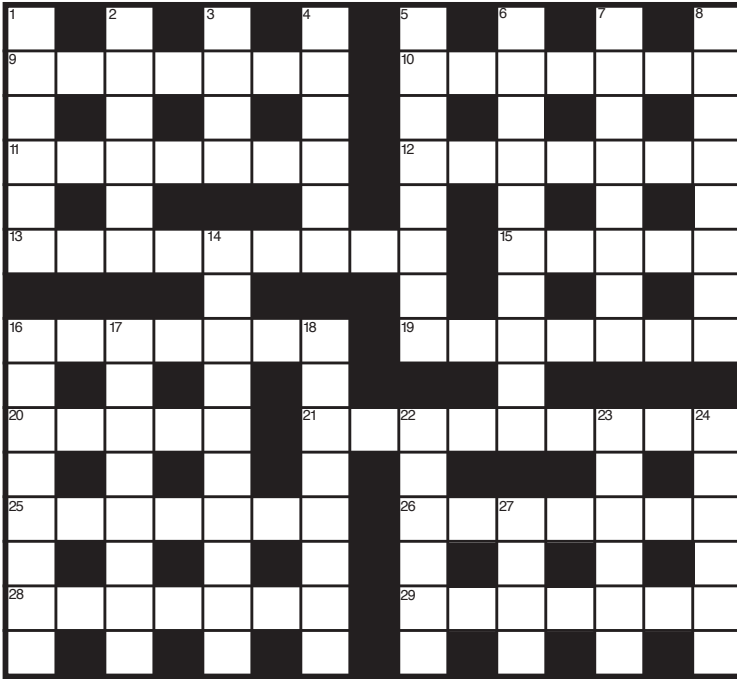
Louisiana Association  
*for* **JUSTICE**

442 Europe Street, Baton Rouge, Louisiana 70802-6406

# Crossword PUZZLE

By Hal Odom, Jr.

## REAL, REAL ACTIONS



### ACROSS

- 9 Public \_\_\_ Doctrine (7)
- 10 In the open air; healthful (7)
- 11 Full of energy (7)
- 12 Items in the prayer for relief (7)
- 13 Take some time before you decide (5, 2, 2)
- 15 The first Mrs. Trump (5)
- 16 It's fishy in France (7)
- 19 Overnight flights (3-4)
- 20 Unifying idea (5)
- 21 Utterly (9)
- 25 Tattles; reports wrongdoing (5, 2)
- 26 Teutonic temptress (7)
- 28 Looks at; well wishes (7)
- 29 Delete by redaction (4, 3)

### DOWN

- 1 Exchanges; skilled occupations (6)
- 2 Wall bracket for candle or lantern (6)
- 3 Action to remove cloud \_\_\_ title (4)
- 4 Waste receptacle; early 20th-century art movement (6)
- 5 Sporty, open-top car (8)
- 6 Kind of watch; stump speaker (10)
- 7 Action to draw a line (8)
- 8 Encroachment or intrusion (8)
- 14 Action to determine who can occupy (10)
- 16 Action to determine who has title (8)
- 17 Dogmatic principles (8)
- 18 State of undress (8)
- 22 *McDuffie v. \_\_\_*, seminal 9 Across case (6)
- 23 Almost 4 liters, or 4-1/2 litres (6)
- 24 Number of years for acquisitive prescription without title (6)
- 27 Structural collapse; bankruptcy (4)

Answers on page 495.

## 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.

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For more information, go to: [www.lsba.org/goto/solace](http://www.lsba.org/goto/solace).



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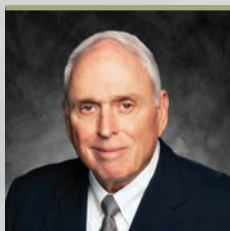
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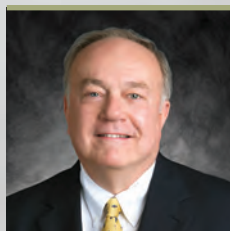
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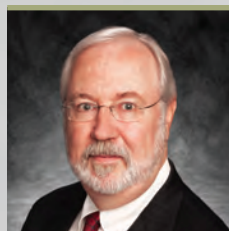
Robert W. **Barton** ■



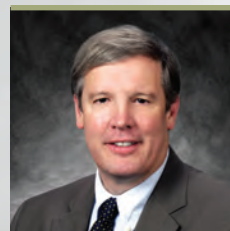
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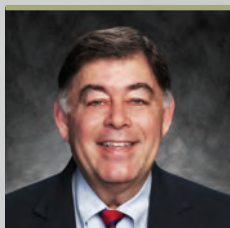
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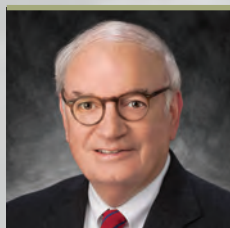
Thomas **Hayes, III** ■



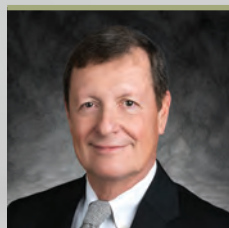
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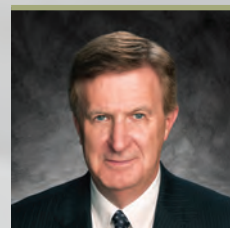
Mike **McKay** ■



Patrick **Ottinger** ■



Mike **Patterson** ■



Larry **Roedel** ■



Marta-Ann **Schnabel** ■

## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Feb. 1, 2023.

### Decisions

**Rita Kay Bacot**, Shreveport, (2022-B-01463) **Suspended by consent from the practice of law for one year and one day, fully deferred, subject to conditions**, by order of the Louisiana Supreme Court on Nov. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2022. *Gist:* Mismanaging client trust account; and violating or attempting to violate the Rules of Professional Conduct.

**Paul John Barker**, Lockport, (2022-

B-01438) **Probation period imposed in *In re: Barker* (La. 4/20/21) extended for one year, subject to conditions**, by order of the Louisiana Supreme Court on Nov. 8, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 8, 2022. *Gist:* Failure to safekeep property of a third party; and violating or attempting to violate the Rules of Professional Conduct.

**S. Michele Blanchard-Airey**, Slidell, (2022-B-01592) **By consent, suspended for six months, fully deferred in its entirety, subject to a two-year period of probation governed**

**by the conditions set forth in the petition for consent discipline**, by order of the Louisiana Supreme Court on Dec. 20, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 20, 2022. *Gist:* Respondent mishandled her client trust account.

**Shytishia Moore Flugence**, Lafayette, (2022-B-1647) **Consented to a six-month period of suspension, fully deferred, with a two-year period of unsupervised probation with**

Continued next page



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### Leslie J. Schiff

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117 W. Landry Street  
Opelousas, Louisiana 70570  
Phone (337) 942-9771  
Fax (337) 942-2821  
leslie@swmethicslaw.com

### Julie Brown White

Former Prosecutor,  
Disciplinary Counsel ('98-'06)  
11715 Bricksome Ave, Suite B-5  
Baton Rouge, Louisiana 70816  
Phone (225) 293-4774  
Fax (225) 292-6579  
julie@swmethicslaw.com

### Damon S. Manning

Former Investigator, Prosecutor  
Disciplinary Counsel ('98-'14)  
201 NW Railroad Ave, Suite 302  
Hammond, Louisiana 70401  
Phone (985) 602-9201  
Fax (985) 393-1130  
damon@swmethicslaw.com



## 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 Feb. 3, 2023.

Respondent	Disposition	Date Filed	Docket No.
Lane N. Bennett	[Reciprocal] Suspension.	12/14/22	22-1125
Tara Elwell	[Reciprocal] Suspension (partially deferred).	12/14/22	22-1237
Eric J. Hessler	[Reciprocal] Suspension (fully deferred).	1/18/23	22-2061
Elizabeth A. Spurgeon	[Reciprocal] Suspension (fully deferred).	1/9/23	22-1932

**Discipline** continued from page 462

**conditions**, by order of the Louisiana Supreme Court on Jan. 25, 2023. JUDGMENT FINAL and EFFECTIVE on Jan. 25, 2023. *Gist:* Respondent mishandled her client trust account; failed to promptly remit funds to third-party providers; failed to execute written contingency fee agreements; failed to prepare settlement statements; and failed to comply with notice requirements when providing financial assistance to clients.

**James Casey Fos**, Covington, (2022-B-01527) **Conditionally reinstated to the practice of law, subject to a two-year period of probation**, by order of the Louisiana Supreme Court on Dec. 6, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 6, 2022.

**Monique Nicole Green**, New Orleans, (2022-B-1469) **Suspended from the practice of law for a period of six months, fully deferred, subject to one-year probation**, by order of

the Louisiana Supreme Court on Nov. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2022. *Gist:* Respondent's misconduct involved violations of Rules of Professional Conduct, Rules 1.15(a), (b) and 8.4(a), resulting from respondent failing to disburse attorney fees from trust account as earned; making client disbursements from trust account prior to deposits; and failing to timely pay third parties.

**Etta Kay Hearn**, Baton Rouge, (2022-B-01456) **Public reprimand (consent)** by order of the Louisiana Supreme Court on Nov. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2022. *Gist:* Engaging in conduct constituting a conflict of interest; and violating or attempting to violate the Rules of Professional Conduct.

**Hester R. Gloston Hilliard**, Metairie, (2022-B-01538) **Consented to a one-year-and-one-day suspension, fully deferred, subject to a two-year period of probation**, by order of

the Louisiana Supreme Court on Dec. 6, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 6, 2022. *Gist:* Respondent neglected legal matters; failed to communicate with clients; and mismanaged her client trust account, resulting in the untimely payment of funds owed to clients and third parties.

**DanMinh Quy Mui**, New Orleans, (2022-B-1305) **Suspension for one-year-and-one-day with all but 30 days deferred, with a period of probation**, by order of the Louisiana Supreme Court on Dec. 6, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 21, 2022. *Gist:* Commission of a criminal act (DWI).

**Richmond C. Odom**, West Monroe, (2022-B-00783) **Suspended for three years from the practice of law** by order of the Louisiana Supreme Court on Dec. 9, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 27, 2022. *Gist:* Respondent violated fiduciary duties owed to a Charitable Remainder  
Continued next page

**CHRISTOVICH & KEARNEY, LLP**  
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**DEFENSE OF ETHICS COMPLAINTS AND CHARGES**

**E. PHELPS GAY      KEVIN R. TULLY**  
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**Discipline** continued from page 463

Unitrust (CRUT) and the income beneficiaries. The failure of the respondent to safeguard the property of third persons constitutes a clear violation of Rule 1.15(a). Additionally, the respondent violated Rule 5.3 by failing to properly supervise the action of his non-lawyer assistant, thereby allowing CRUT funds to be commingled with the personal or operating expenses of the law firm.

**Terrance A. Prout**, New Orleans, (2022-B-1591) **Suspended from the practice of law for a period of six months, deferred in its entirety, subject to a one-year period of unsupervised probation**, by order of the Louisiana Supreme Court on Dec. 20, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 20, 2022. *Gist:* Respondent engaged in unauthorized communication with a represented party; and violated or attempted to violate the Rules of Professional Conduct.

**Richard L. Root**, New Orleans, (2022-B-00954) **Suspended from the practice of law for six months, with**

**five months deferred**, by order of the Louisiana Supreme Court on Dec. 9, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 27, 2022. *Gist:* Respondent used, without consent, the Illinois bar number and electronic signature of a fellow associate in the law firm to file a lawsuit and made false statements of fact to the court and other parties in the litigation.

**Luke J. Thibodeaux II**, Baton Rouge, (2022-B-1487) **By consent, suspended from the practice of law for two years, with all but one one-year-and-one-day deferred, retroactive to his interim suspension of Oct. 6, 2020**, by order of the Louisiana Supreme Court on Jan. 18, 2023. JUDGMENT FINAL and EFFECTIVE on Jan. 18, 2023. *Gist:* No contest plea to charges of domestic battery and simple battery.

**Joseph Harold Turner, Jr.**, Atlanta, GA, (2022-B-1402) **Adjudged guilty of additional violations warranting disbarment, which shall be considered in the event he seeks readmission**

**from our decree of disbarment in *In re: Turner*, 21-0786 (La.10/1/21), 324 So.3d 1038, after being eligible to do so**, by order of the Louisiana Supreme Court on Jan. 11, 2023. JUDGMENT FINAL and EFFECTIVE on Jan. 25, 2023. *Gist:* Respondent failed to comply with his professional obligations; engaged in negotiations with counsel and accepted a fee while he was ineligible to practice law; falsely stated to counsel that he was eligible to practice law; failed to return unearned fees; and failed to cooperate with ODC in its investigation.

**Virgil Maxey Wheeler III**, Metairie, (2022-B-01779) **Transferred to interim suspension status** by order of the Louisiana Supreme Court on Dec. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Dec. 16, 2022.

**Admonitions**

No admonitions for this issue.

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### Avowal

*Kinnett v. Kinnett*, 17-0625 (La. App. 5 Cir. 12/28/22), \_\_\_ So.3d \_\_\_, 2022 WL 17974657, writ granted, 23-0060 (La. 2/24/23), \_\_\_ So.3d \_\_\_, 2023 WL 2203512.

The Louisiana 5th Circuit Court of Appeal, called upon to determine the constitutionality of Louisiana Civil Code article 198, which limits the timeframe for a biological father to bring an avowal action to one year when the child is born of a marriage, found that:

(1) Louisiana’s dual-paternity scheme, granting a biological father the right to parent his biological child with the biological mother and presumed legal father, signifies that a biological father who steps forward

and grasps the opportunity to parent his child when presented with the opportunity, has a fundamental vested liberty interest under Louisiana law in the parenting of his child, which is subject to due process under the Louisiana Constitution.

(2) The language of article 198, which sets forth a one-year preemptive period, not subject to interruption or suspension, provides no notice requirement to a biological father and no duty on behalf of the biological mother to inform the biological father of his possible paternity. Allowing a biological mother alone to control whether a biological father is notified places the “decision in the hands of a potentially adverse decision maker,” violating “the most basic principles of due process under both our state and federal constitutions.”

(3) While the state’s interest in “protecting the child from the upheaval of litigation” is important, article 198’s preemptive period was not sufficiently related to achieving that interest, such that it would outweigh the risk of erroneous deprivation of a biological father’s constitutionally

protected interest in an opportunity to develop a relationship with his child.

Hence, the 5th Circuit reversed the trial court’s judgment finding that article 198 was constitutional, holding that, in fact, it was unconstitutional as applied to Mr. Andrews, an unwed biological father, because:

(1) He had a fundamental constitutional right to parent his child under the Louisiana Constitution, which arose by his demonstration of the full commitment to his responsibilities of parenthood, and not by the mere circumstances of his child’s birth; and

(2) The one-year preemptive period governing his avowal action violated his right to due process by unconstitutionally limiting his vested right to parent his child.

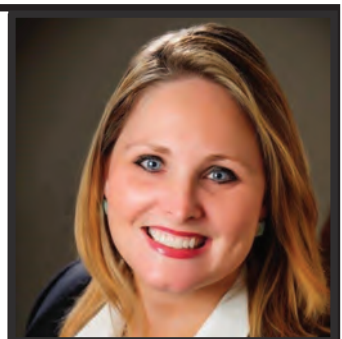
The Louisiana Supreme Court granted writs on Feb. 24, 2023.

—Elizabeth K. Fox  
Member, LSBA Family Law Section  
Hoffman Nguyen & Kuehl, LLC  
Ste. 401, 643 Magazine St.  
New Orleans, LA 70130

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**Labor and  
Employment  
Law**

## **DOL's Proposed Regulations on Independent Contractor Classification Under FLSA**

Independent-contractor classification under the federal Fair Labor Standards Act (FLSA) is a frequent topic of debate among employment attorneys. In recent months, independent-contractor regulations have come under increasing scrutiny by the public at large thanks to the rise of the “gig economy,” mass layoffs in the tech sector and a viral episode of “Last Week Tonight with John Oliver” dedicated to the WWE’s classification of wrestlers as independent contractors.

The FLSA establishes various workplace

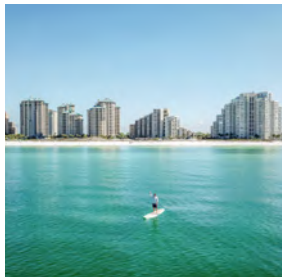
standards that govern private- and public-sector employers, including minimum wage, overtime pay and recordkeeping requirements. The U.S. Department of Labor (DOL) administers and enforces the FLSA, issues the statute’s comprehensive and complex implementing regulations, and provides regulatory guidance through field bulletins, opinion letters and ruling letters. For decades, DOL and courts alike have made it clear that the FLSA’s minimum-wage and overtime requirements apply only to employees, not independent contractors. Less clear, however, is how to distinguish an “employee” from an “independent contractor,” a term that the FLSA does not define at all.

In recent years, DOL has made several attempts to clarify independent-contractor classification under the FLSA. For instance, during the final weeks of the Trump administration, DOL proposed focusing on “two core factors” for independent-contractor classification: “(1) The nature and degree of the worker’s control over the work; and (2) the worker’s opportunity for profit or loss,” with less importance placed on the other “economic reality” factors. 86 Fed. Reg. 1168, 1180 (Jan. 7, 2021). However, DOL formally withdrew this proposed rule five months later. 86 Fed. Reg. 62218 (May 6,

2021).

On Oct. 13, 2022, DOL issued a proposed new rule regarding independent-contractor classification that seeks to eliminate any remnants of the January 2021 proposed rule by “returning to a totality-of-the-circumstances analysis of the economic reality test that has a refined focus on whether each factor shows the worker is economically dependent upon the employer for work versus being in business for themselves, does not use predetermined weighting of factors, and that considers the factors comprehensively instead of as discrete and unrelated.” 87 Fed. Reg. 62218, 62233 (Oct. 13, 2022). This proposed rule would add several new regulations reflecting the DOL’s “general interpretations for determining whether workers are employees or independent contractors under the [FLSA].” 87 Fed. Reg. 62218, 62274. Notably, proposed 29 C.F.R. § 795.110 would formalize an “[e]conomic reality test to determine economic dependence” consisting of six “economic reality factors:” (1) opportunity for profit or loss depending on managerial skill; (2) investments by the worker and the employer; (3) degree of permanence of the work relationship; (4) nature and degree of control; (5) extent to which the work performed is an integral part of the employer’s

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business; and (6) skill and initiative. *Id.* A broad seventh factor would allow consideration of any additional factors that “may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA.” *Id.* at 62275.

In the absence of clear statutory guidance regarding employee/independent-contractor classification, federal courts have traditionally utilized varying forms of an “economic reality test” derived from *United States v. Silk*, 331 U.S. 704 (1947), as a framework for determining “whether the alleged employee so economically depends upon the business to which he renders his services, such that the individual, as a matter of economic reality, is not in business for himself.” *Hobbs v. Petroplex Pipe & Constr., Inc.*, 946 F.3d 824, 829 (5 Cir. 2020). The 5th Circuit’s iteration of the economic-reality test considers the following “five non-exhaustive factors” when assessing FLSA misclassification claims: (1) the degree of control exercised by the alleged employer; (2) the extent of the relative investments of the worker and the alleged employer; (3) the degree to which the worker’s opportunity for profit or loss is determined by the alleged employer; (4) the skill and initiative required in performing the job; and (5) the permanency of the relationship. *Id.*

At this time, courts within the 5th Circuit have yet to address the DOL’s latest proposed independent-contractor regulations. The few district court decisions issued after the publication of DOL’s new proposed rule have continued to apply the traditional

“five non-exhaustive factors” summarized above. *See, e.g., Brunet v. GB Premium Octg Servs., LLC*, No. 4:21-CV-1600, 2022 U.S. Dist. LEXIS 228056, at \*13 (S.D. Tex. Dec. 1, 2022); *Ajquixtos v. Rice & Noodles, Inc.*, No. 4:21-cv-01546, 2022 U.S. Dist. LEXIS 186764, at \*6 (S.D. Tex. Oct. 12, 2022).

However, if the proposed regulations are finalized, district courts may encounter several novel issues when tasked with FLSA misclassification claims. One such issue relates to the DOL’s proposed fifth economic reality factor — the “extent to which the work performed is an integral part of the employer’s business” — which is not analyzed separately under the 5th Circuit’s five-factor economic-reality test. The proposed rule may also impact how courts assess whether a proposed class of plaintiffs “who were designated as independent contractors instead of employees . . . is sufficiently similar to maintain an FLSA collective action” under the new standards for collective-action certification established by *Swales v. KLLM Transp. Servs., LLC*, 985 F.3d 430, 433 (5 Cir. 2021). *Tullis v. Exxonmobil Corp.*, No. 2:22-CV-00192, 2022 U.S. Dist. LEXIS 236058, at \*23-24 (S.D. Tex. Dec. 2, 2022).

—**Justine G. Daniel**  
Member, LSBA Labor and  
Employment Law Section  
Casey Denson Law, LLC  
4601 Dryades St.  
New Orleans, LA 70115



## 3rd Circuit Rejects Solidary Liability of Defendant for Fees and Costs Under Act 312

*Sweet Lake Land & Oil Co. v. Oleum Operating Co.*, 21-0169 (La. App. 3 Cir. 12/7/22), \_\_\_ So.3d \_\_\_, 2022 WL 17482337.

The owner of land in Calcasieu Parish and lessor of multiple oil-and-gas and surface leases, Sweet Lake Land and Oil Co., filed a legacy action against its current and former lessees and operators pursuant to Act 312 (La. R.S. 30:29), as well as tort and contract law, to recover remediation costs, damages for the diminution in value of its property, lost revenue, attorneys’ fees, costs and other damages. The British Petroleum corporate entities (BP) were held liable for environmental damage under Act 312, while Oleum Operating Co. and AKSM, LC, were held liable for restoration under specific contracts, including a 2003 amendment to a 1947 oil, gas and mineral lease and a 2008 lease.

Years after the parties’ liability trials (but before approval of a final remediation plan), Sweet Lake sought to recover its fees and costs incurred throughout the entirety of the litigation



Ronald E. Corkern, Jr.



Brian E. Crawford



Steven D. Crews



Herschel E. Richard



Joseph Payne Williams



J. Chris Guillet

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under Section (E)(1) of La. R.S. 30:29 against all defendants *in solido*. The trial court rendered a partial final judgment, holding BP, Oleum and AKSM solidarily liable for \$5.3 million in attorneys' fees, expert fees and costs. The 3rd Circuit reversed in part and rendered judgment against BP alone for a lesser amount — around \$4.1 million in fees, costs and interest.

To determine the scope of recoverable fees and costs, the court began with the language of Section (E)(1), which allows “a party providing evidence” to recover “all costs attributable to producing that portion of the evidence that directly relates to the establishment of environmental damage, including, but not limited to, expert witness fees, environmental evaluation, investigation and testing, the cost of developing a plan of remediation, and reasonable attorney fees in the trial court and the department.” Based on this, and the stated purpose of Act 312 to resolve environmental-damage claims arising from activities subject to the jurisdiction of the Louisiana Department of Natural Resources (LDNR), the court precluded Sweet Lake from recovering fees and costs incurred in prosecuting other private-damages claims, including its contractual claims against Oleum and AKSM and damages against those other defendants.

The court, however, refused to exclude costs associated with expert testimony that was, in part, derivative or redundant of other expert work because “La. R.S. 30:29(E)(1) contains no limitation to recovery of those fees and costs.” *Id.* at \*\*8. Likewise, the court refused to exclude costs, including mediation and trial presentation costs, incurred through trial after Sweet Lake rejected BP’s remediation plan, which was ultimately accepted by the jury. According to the court, these costs were recoverable because the Section (E)(1) contemplates

a “judgment,” which was not reached in the case until after a full jury trial. The court further found post-judgment costs were recoverable given that LDNR proceedings were ongoing and the trial court had not yet approved a final plan for remediation.

Turning to the issue of solidary liability, the court explained that only one defendant was held liable under Act 312, and thus “BP, alone, must be cast in judgment for the fees and costs attributable to the environmental damage underlying the remedy of La. R.S. 30:29(E).” *Id.* at \*\*13. While Oleum and AKSM assumed contractual duties to restore the property and for “fees and costs attendant thereto,” the court rejected solidary liability because the obligations owed by the defendants “differ” and were “separate.” *Id.* at \*\*14. Louisiana Civil Code article 1797 allows an “obligation [to] be solidary though it derives from a different source for each obligor.” But here, the court found “the parties do not share an obligation. BP, alone, has the obligation of remediation under La. R.S. 30:39, as well as attendant fees and costs provided thereunder.” *Id.* at \*\*13. Likewise, while article 1794 makes clear an obligation is solidary “when each obligor is liable for the whole performance,” the court found Oleum and AKSM were not liable for performing the remediation required of BP under Act 312. In short, any obligation owed by the other defendants for restoration, fees and costs “operates outside of the source of BP’s responsibility and obligation.” *Id.* at \*\*14. Thus, the court reversed the trial court’s finding of solidary liability against BP.

Notably, given the ongoing nature of LDNR proceedings, the court made clear this was an interim award of fees and costs pursuant to a partial final judgment. The court ex-

pressly authorized Sweet Lake to pursue other motions before the trial court to recover additional fees and costs incurred after the July 28, 2020, judgment.

—Keith B. Hall

Member, LSBA Mineral Law Section  
Director, Mineral Law Institute  
LSU Law Center  
1 E. Campus Dr.  
Baton Rouge, LA 70803-1000  
and

Lauren Brink Adams

Member, LSBA Mineral Law Section  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC  
Ste. 3600, 201 St. Charles Ave.  
New Orleans, LA 70170-3600



## Louisiana Health Emergency Powers Act

*Lathon v. Leslie Lakes Retirement Ctr.*, 54,479 (La. App. 2 Cir. 9/21/22), 348 So.3d 888, writ denied, 22-1566 (La. 12/20/22), 352 So.3d 80.

Lathon, a visitor to Leslie Lakes Retirement Center, slipped and fell after stepping in a foreign substance (Kool-Aid)

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spilled by a Leslie Lakes employee. Lathon filed a personal injury civil action against the retirement center.

Leslie Lakes filed a motion for summary judgment claiming it was immune from liability according to the Louisiana Health Emergency Powers Act (LHEPA) because the plaintiff could not prove that its conduct had been willful or constituted gross negligence. The trial court ruled that LHEPA was applicable but denied the defendant's summary judgment motion. Leslie Lakes appealed.

LHEPA declares that "[d]uring a state of public health emergency, any healthcare providers shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct." The appellate court noted that this provision was "in favor" of any health-care providers regarding any personal injury or property damage claims that arose during the public-health emergency period. *Id.* at 890. The 2nd Circuit recognized that the issue before it required interpretation of the legislative intent of the statute and whether the wording was "clear and free of ambiguity" or whether it produced "absurd consequences": "[T]he plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters in which case the intention of the drafters, rather than the strict language, controls." *Id.* at 891 (quoting *State v. Benoit*, 01-2712 (La. 5/14/02), 817 So.2d 11, 13).

As to the definition of gross negligence, the appellate court referenced *Ambrose v. New Orleans Police Department Ambulance Service*, 93-3099 (La. 7/5/94), 639 So.2d 216, 219-20:

Gross negligence has also been termed the entire absence of care and the utter disregard of the dictates of prudence, amounting to complete neglect of the rights of others. Additionally, gross negligence has been described as an extreme departure from ordinary care or the want of even scant care. . . . Gross negligence, therefore, has a well-defined legal meaning distinctly separate, and different, from ordinary negligence.

*Lathon*, 348 So.3d at 891.

The plaintiff argued that, irrespective of the statute's language, hers was a premises-liability claim related to neither medical care nor medical malpractice that could not reasonably fall under the auspices of LHEPA.

The appellate court disagreed and de-

ecided:

1) The language of the statute is clear and unambiguous and led to no absurd consequences.

2) The statute expressly extended immunity to property damage claims to demonstrate legislative purpose reaching beyond medical malpractice.

3) The statute's purpose was to alleviate the liability burden on health-care providers during the COVID-19 pandemic, which overburdened the health-care system.

The court further noted that when the employee spilled the Kool-Aid, "she was engaged in delivering food to patients' rooms because patients were confined therein for COVID safety reasons," thus establishing a causal connection between the plaintiff's claim and COVID protocols that the court said was "easily within the purpose of the statute, and makes it reasonable to apply the immunity statute in this case." Therefore, despite its reversal of the trial court's denial of the defendant's motion for summary judgment, the appellate court found the trial court "was correct in holding that the [LHEPA] is applicable, even though the consequences in this case may be harsh and unfair." *Id.* at 892.

## Protective Order Limiting Discovery

*In Re Porche*, 22-0707 (La. App. 4 Cir. 12/8/22), 353 So.3d 382.

Porche issued a subpoena duces tecum seeking the following from the employer of two defendant health-care providers: "documents pertaining to the internal investigation or review of Ms. Burchfield and Dr. Brooks as it pertains to Travis Porche and his treat-

ment; written or recorded statements obtained with respect to the treatment provided by Dr. Brooks and Ms. Burchfield to Travis Porche; disciplinary records, complaints, and internal reviews associated with Dr. Brooks and Ms. Burchfield; and the entire personnel file of Dr. Brooks and Ms. Burchfield." *Id.* at 383.

Brooks and Burchfield filed a motion for a protective order, or in the alternative, to limit the scope of discovery, because the request was "overly broad and intrusive as to privacy interests" at the medical-review-panel stage, further arguing that the records were subject to the peer-review privilege pursuant to La. R.S. 13:3715.3. *Id.* at 383-84. Porche responded that the defendants had not identified any of the documents requested in the subpoena and simply "argued a blanket privilege," which Porche claimed compelled the defendants to produce a privilege log for *in camera* inspection by the district court. *Id.* at 384. The trial court granted the protective order that prevented discovery of the documents.

Porche's sole assignment of error was the trial court's granting the protective order "without evidence that the requested documents passed before a peer review committee and without conducting an *in camera* inspection" of the alleged privileged documents. *Id.* The appellate court agreed, vacated the district court judgment, and remanded the case to the trial court to conduct "an *in camera* inspection of all documents requested" to determine whether the peer review privilege applied "to shield the withheld documents, or any parts, from discovery." *Id.* at 385.

—Robert J. David  
Gainsburgh, Benjamin, David,  
Meunier & Warshauer, LLC  
Ste. 2800, 1100 Poydras St.  
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## Registration Required for Use of Interstate and Foreign Commerce Formula

*Spirit Airlines, Inc. v. Robinson*, BTA Docket No. 11809D (12/8/22), [labta.la.gov/pdfs/Spirit11809.pdf](http://labta.la.gov/pdfs/Spirit11809.pdf).

Spirit Airlines, Inc. operated in Louisiana as an airline company providing commercial passenger-air-transportation services. Spirit's flights originated from New Orleans International Airport and were to destinations outside Louisiana. Spirit purchased aviation jet fuel in Louisiana for use in its aircrafts.

Spirit filed a refund claim with the Louisiana Department of Revenue, claiming an overpayment on its purchases of aviation jet fuel. The Department denied the refund, and Spirit appealed the denial to the Louisiana Board of Tax Appeals (BTA). The BTA previously dismissed Spirit's constitutional claims, leaving before the BTA the sole issue of whether Spirit was entitled to use the formula found in La. R.S. 47:306.1. Spirit asserted a refund by calculating its liability under La. R.S. 47:306.1's formula for dealers in interstate and foreign commerce, which allows for an interstate carrier to pay sales tax on its purchases based on miles operated by the carrier over total miles operated by the carrier.

The Department asserted that Spirit could not use the formula because Spirit never properly registered with the Department as an interstate and foreign commerce dealer as required by statute. Spirit's position was that it implicitly complied with the statute because it became registered as a dealer for purposes of collecting sales tax when it was issued a sales-tax-registration certificate and was assigned a sales-tax-account number.

The BTA noted that the statute requires registration under the rules and regulations of the collector and that a taxpayer may make purchases in this state and import property into this state without paying sales-and-use taxes imposed, provided such purchases or importations are made in strict

compliance with the rules and regulations of the collector.

The BTA held that the statute required such purchases or importations be made in strict compliance with the rules and regulations of the collector. The BTA held Spirit could not use the formula because it failed to properly register as an interstate and foreign commerce dealer as required by statute. Registration was held to be a prerequisite for using the formula.

In support of its holding, the BTA cited *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 104 S.Ct. 2778 (1984), as to the deference that a reviewing court should give to a regulation of the administrative agency charged with the enforcement of the particular law at issue. Under such holding, if Congress or the Legislature has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious or manifestly contrary to the statute.

—**Antonio Charles Ferachi**  
Vice Chair, LSBA Taxation Section  
Director of Litigation-General Counsel  
Louisiana Department of Revenue  
617 North Third St.  
Baton Rouge, LA 70802

## Don't Look Behind the Curtain: MME Exemption Available for Sales to Related Parties

*Hunting Energy Servs., Inc. v. Lopinto*, BTA Docket No. L01064 (Dec. 8, 2022), [labta.la.gov/pdfs/Huntington.pdf](http://labta.la.gov/pdfs/Huntington.pdf).

The Louisiana Board of Tax Appeals held that the manufacturing machinery and equipment (MME) sales-and-use-tax exclusion applied to a company that sold its manufactured products to related parties.

The taxpayer, Hunting Energy Services, fabricated pipe fittings at its facility in Jefferson Parish for end users in the oil exploration-and-production business. The vast majority of Hunting's sales were to related entities that resold the products to the ultimate customer. Jefferson Parish audited Hunting and assessed use tax on machinery and equipment Hunting used in its manufacturing operation. Specifically, the parish asserted that the Jefferson Parish MME exclusion did not apply to Hunting's

machinery because the parish's MME exclusion applies only to the manufacturing of products "for ultimate sales to another," and Hunting's sales to related parties were not made "to another." See Jefferson Parish Code Sec. 35-71(a).

In rejecting the parish's argument, the BTA noted that the definition of "sale" in La. R.S. 47:301(12), to which the Parish conforms, is broad and encompasses the transfer of title or possession of tangible personal property by "any means whatsoever." The BTA then noted that Louisiana courts have previously considered and rejected the notion that sales tax disregards the separate existence of related entities unless the facts are sufficient to warrant piercing the corporate veil. Thus, the BTA concluded that if the related entities establish that they are truly separate legal entities by considering traditional veil-piercing factors, then Hunting's sales to related parties should be considered sales made "to another" and the MME exclusion should apply.

The BTA then reviewed the factors that apply when a court determines whether to disregard the separate existence of related entities. The BTA noted that the mark-up charged to its related entities was the same mark-up charged to customers, and there was no evidence of the presence of other veil-piercing factors, such as a shared bank account, consolidated tax returns or the sharing of employees and business property. As such, the BTA concluded that disregarding the separate existence of Hunting and its related entities would be premised solely on the entities sharing a common parent, which is not sufficient to apply the principles that would allow piercing the corporate veil.

Because there was no evidence to support ignoring the separate-entity nature of Hunting and its related-party customers, the BTA rejected the parish's assertion, granted Hunting's motion for summary judgment and found that Hunting was entitled to the MME exclusion on its purchases of manufacturing machinery and equipment.

—**Derek P. Brondum**  
2L, Tulane Law School  
Under the Supervision of  
**Jaye A. Calhoun** and  
**William J Kolarik II**,  
Members, LSBA Taxation Section  
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### CHAIR'S MESSAGE

# Healthy Habits for a Sustainable Career

By Danielle L. (Dani) Borel

It was once told to me that lawyers are under a lot of stress because our clients place those burdens on us with every task and case they assign. Their stressors of navigating an unclear or high-stakes situation become our stressors. This is in addition to the stress that comes with the territory of trying to be a successful lawyer. And don't forget that most young lawyers have student debt and increasing family demands.

With Mental Health Awareness Month occurring in May, I wanted to acknowledge the challenges young lawyers face and offer a few suggestions for navigating those challenges. For all lawyers to be successful, it requires establishing work habits that are healthy and sustainable.

#### **The Job Will Take Whatever You Give**

Several years ago, I reached a point of feeling utterly overwhelmed and started questioning whether everything I was working towards was worth the stress. I distinctly remember the conversation that was a turning point for me.

At one young lawyer conference, we had a roundtable discussion focused on mental health. As many young lawyers do, I rolled my eyes but participated anyway. During this discussion, one of my fellow young lawyer leaders, who had just made equity partner at her firm, said to me: "The job will take from you as much as you will give it." She explained that the job will take every early

morning, late night or weekend you will give. The job will never tell you to slow down or take time for yourself. The job won't applaud you for skipping a family vacation. The job will not repay you in time for those hours you put in to meet an emergency deadline. Rather, it is our task to set boundaries with our job and to repay ourselves for our hard work.

This concept changed my perspective. It doesn't mean you should not work hard, get tasks done, or that you will never need to put in extra time. Rather, this concept is about self-regulating your boundaries and rewarding yourself for your hard work.

#### **Set Healthy Boundaries**

To be clear, I am not advocating that young lawyers start revolting on billable-hour goals or refusing work assignments! Rather, I'm advocating for young lawyers to self-implement boundaries that allow them to be more efficient and productive at work while working towards a years-long career with their employer. A healthy, happy employee benefits everyone.

Boundaries come in all shapes and sizes. They can include days or times you are available to work, forms of communication that are appropriate, or observa-



Danielle L. Borel

tion of certain holidays.

One of my boundaries is that, except for times of court appearances or trial, I will not be in the office before it officially opens at 8:30 a.m. Rather, you can find me working out, eating breakfast with my daughter, then dropping her off for daycare. Undeniably, I'm trading several billable hours a week for time to focus on myself and my family. As a result, I find I am much more energized and ready to focus when I do arrive, and waste little time before I begin working.

Similarly, I almost never respond to text messages from clients unless we are in time-sensitive or peculiar circumstances. Rather, I redirect the communication back to email and respond immediately that way. As with many millennials, I view texting as a very personal form of communication and find it intrusive when I receive evening texts from clients with their thoughts on their case. The stressors of the job already follow me home; I don't need that compounded by in-my-face reminders presented by text messages.

Finally, brace yourself, I turned off my push notifications for my work email. Yes, it is true I still check my email nearly every night, but I do so when I have a free moment or can allow myself to focus on what I might find. I am no longer filled with anxiety at the dinner table when an email comes across my phone. Admittedly, it took me years to take this step and it was only when I was on maternity leave that I made this transition. However, it has allowed me to better focus on my family when I'm home and devote my attention to work when I'm in the office.

Healthy boundaries are defined differently for every young lawyer. But every lawyer has something that would be beneficial by implementing. I encourage you

Continued next page

**YLD Chair** continued from page 472

to take stock of your current practice and assess whether there are areas that could be tweaked to make you a happier, better-performing young lawyer.

### You Are a Person Outside the Office

Sadly, we need reminding on occasion: we have lives outside of the office. Ideally, we have interests, hobbies and traditions that bring us happiness and fulfillment. While hopefully your profession also brings you joy and fulfillment, your profession ultimately should be a means to be able to enjoy your life outside the office.

Having activities outside the office will make you a better lawyer. It may seem counterintuitive to leave the office an hour early to be able to participate in a local running club, but your effectiveness as a lawyer is dependent on far more than just the amount of time you spend in the office. One clear attribute of extracurricular hobbies is the ability to counteract burnout. A healthy work-life balance also contributes to lower turnover.

### Applaud Your Accomplishments and Pay Yourself Back

Repay the time you gave to the job. If a case required many late nights or weekends, taking time away from yourself, your hobbies and your family, find time to pay those hours back. Also, your hard work is resulting in great accomplishments. Some of those are very visible: winning a trial. Others are not: timely respond to a client's request on short notice. As much as you can, take the time to celebrate these victories, big and small.

As we near the end of our bar year, I want to celebrate the hard work and tremendous efforts of the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) Council and committee members. In addition to successfully executing our existing programs and projects, we added a few this year that I hope you enjoyed.

Congratulations to our CLE Committee for a successful Professionalism Seminar, offering young lawyers a way to obtain ethics, professionalism and law practice management CLE credit from a half-day

virtual seminar. Also, a huge congratulations on the successful launch of our new initiative: Level Up Learning. Working with the LSBA's practice area sections, your YLD offered free, hands-on training programs for practice area-specific skills.

A huge THANK YOU to our amazing Wills for Heroes Committee. This bar year, the LSBA YLD alone and with other bar associations provided more than 160 wills to heroes and their partners across the state.

Mad props to our High School Mock Trial Committee for another flawless competition experience. The impact we have on high schoolers through this program is truly impressive. I have no doubt many of those students will walk among us in future years.

There are not enough emojis to express my gratitude for our Young Lawyers Conference Committee and Awards Committee. On March 31, the LSBA YLD hosted another successful Young Lawyers Conference, complete with a judicial networking hour, a keynote chat with retired Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and Judge Rachael D. Johnson, participation from the chair of the American Bar Association (ABA) Young Lawyers Division, and a fantastic awards ceremony recognizing all our young lawyer and local affiliate award winners. A special congratulations to our *inaugural* class of Top 40 Young Lawyers.

Finally, I am happy to report the Policy Task Force had a successful year, succeeding in having both the LSBA and ABA adopt a policy to advocate for more opportunities for young lawyers to participate in courtrooms.

Thank you, LSBA YLD Council and committee members, for a great and successful year. I hope you found your participation this year as rewarding and fulfilling as I have.

I have truly appreciated the opportunity to serve the LSBA YLD as chair this bar year, and I wish you all long and successful careers! With June marking the end of my year as chair, I will be celebrating these many wins, then repaying myself for the time spent. Don't look for me in July!

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## Young Lawyers Division

LSBA YOUNG LAWYERS DIVISION

2022 TOP 40

The inaugural TOP 40 award is given to Louisiana's top young lawyers who have made exceptional contributions to the legal profession and their community.

### **Whitney M. Antoine • New Orleans**

Whitney M. Antoine practices in the areas of commercial litigation and insurance coverage and bad faith at Barrasso Usdin Kupperman Freeman & Sarver, LLC. After receiving her JD degree, magna cum laude, from Southern University Law Center and before joining the firm, she served as a law clerk to Judge Ivan L.R. Lemelle of the U.S. District Court for the Eastern District of Louisiana.



Whitney M. Antoine

### **Emily E. Booth • New Orleans**

Emily E. Booth, an associate in the firm of Wanek Kirsch Davies, LLC, in New Orleans, is a seasoned litigator whose practice focuses on all aspects of insurance law, including coverage litigation and defense of first-party claims. She is currently chair-elect of the Jefferson Bar Association's Young Lawyers Division board and will serve as 2024 chair. She also serves on the board of directors of the Jefferson Children's Advocacy Center.



Emily E. Booth

### **Brittany Bass Arvie • Shreveport**

Brittany Bass Arvie is a graduate of Southern University and A&M College and Southern University Law Center. She is employed as an assistant district attorney in Caddo Parish for the 1st Judicial District Court.



Brittany Bass Arvie

### **Roya S. Boustany • Lafayette**

Roya S. Boustany is employed as one of the chief felony prosecutors for the Lafayette Parish District Attorney's Office. She serves as president of the Lafayette Bar Association's Young Lawyers Section and president-elect of the Junior League of Lafayette.



Roya S. Boustany

### **Katelyn E. Bayhi • Lafayette**

Katelyn E. Bayhi is an associate at the NeunerPate law firm in Lafayette. Her primary practice areas include commercial litigation, toxic torts, environmental litigation, admiralty and maritime, and property disputes. She is a graduate of the University of Louisiana at Lafayette (2017) and Louisiana State University Paul M. Hebert Law Center (2020).



Katelyn E. Bayhi

### **Camille R. Bryant • New Orleans**

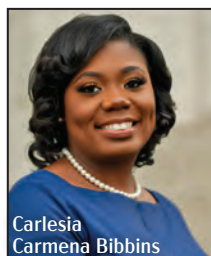
Camille R. Bryant, as a member (partner) on the Labor and Employment team for McGlinchey Stafford, PLLC, guides employers through litigation and investigations. She has served as president of the New Orleans Association for Women Attorneys and the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc., and in board or committee leadership of other legal and community organizations.



Camille R. Bryant

### **Carlesia Carmena Bibbins • Zachary**

Carlesia Carmena Bibbins, an attorney with the Louisiana Department of Health, grew up in Slaughter, La. She is fueled by her passion to be a voice for the voiceless and helping others combat the vicissitudes of life. She has demonstrated what a woman of intellect and commitment can accomplish through her professional endeavors and as an advocate for change in the legal profession.



Carlesia Carmena Bibbins

### **Ashley M. Caruso • Baton Rouge**

Ashley M. Caruso is an attorney with Sternberg, Naccari & White, LLC, based in Baton Rouge. She primarily handles general personal and business litigation and representation, along with handling bankruptcies for businesses and bankruptcy adversary proceedings. She recently obtained her MBA from Mississippi State University.



Ashley M. Caruso

## Young Lawyers Division

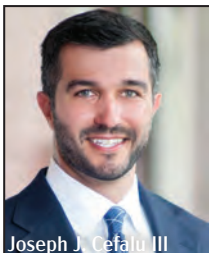
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2022 TOP 40

The inaugural TOP 40 award is given to Louisiana's top young lawyers who have made exceptional contributions to the legal profession and their community.

### Joseph J. Cefalu III • Baton Rouge

Joseph J. (Joe) Cefalu III is a partner practicing in the Casualty Litigation section of the Baton Rouge office of Breazeale, Sachse & Wilson, LLP, where he is also on the firm's recruiting, technology, and diversity and inclusion committees. He has served in various roles with the Baton Rouge Bar Association, the most recent being the editor-in-chief of *The Baton Rouge Lawyer*.



Joseph J. Cefalu III

### Chloé M. Chetta • New Orleans

Chloé M. Chetta, a member in the New Orleans office of Barrasso Usdin Kupperman Freeman & Sarver, LLC, is licensed in both Louisiana and Texas and practices in the areas of complex and commercial litigation, with a special emphasis on appellate issues. She regularly presents on issues of federal jurisdiction and procedure. Before private practice, she served as a law clerk to for Judge Sarah S. Vance of the U.S. District Court for the Eastern District of Louisiana and the Judicial Panel on Multidistrict Litigation and for Judge Stephen A. Higginson of the U.S. 5th Circuit Court of Appeals.



Chloé M. Chetta

### Casey C. DeReus • New Orleans

Casey C. DeReus is a New Orleans attorney who recently accepted a position at a national class action firm, Bragar, Eagel & Squire. Her work includes initiating a class action against TikTok for privacy violations, which resulted in a \$92 million settlement. She founded and runs a local meetup group called Lady Lawyers to connect local lawyers and provide a space for open dialogue and networking.



Casey C. DeReus

### Reed K. Ellis • Lafayette

Reed K. Ellis is an attorney in the firm of Broussard & David in Lafayette. Her practice focuses on serious personal injury and wrongful death cases involving 18-wheeler and automobile accidents, premises liability,

and general injury law. She is a graduate of the University of Mississippi and obtained her JD degree from Louisiana State University Paul M. Hebert Law Center. She is a member of the Lafayette Bar Association, the Louisiana Association for Justice and the American Inn of Court of Acadiana.



Reed K. Ellis

### Valerie E. Fontenot • New Orleans

Valerie E. Fontenot is a partner at Frilot, LLC, and practices in the firm's medical malpractice and healthcare section. She is the firm's first black female partner. She serves on the board of DRI, the Louisiana Association of Defense Counsel, the New Orleans Bar Association and the Greater New Orleans Louis A. Martinet Legal Society, Inc. (current president).



Valerie E. Fontenot

### Amber Barlow Garcia • New Orleans

Amber Barlow Garcia is a partner with Deutsch Kerrigan, LLP's Toxic Tort and Environmental Group in New Orleans. She represents manufacturers, retailers, distributors and premise owners in complex litigation matters, including environmental litigation, toxic tort litigation, and premises and products liability.



Amber Barlow Garcia

### Eugene G. Gouaux III • Lockport

Eugene G. (Gene) Gouaux III is an assistant professor of business law at Nicholls State University, teaching the Legal Environment of Business, Commercial Law, International Business Law and Intellectual Property. He was selected by the U.S. Department of State to the Fulbright Specialist Roster and has taught undergraduate and law students in Austria, China and Vietnam. He is a third-generation attorney practicing with his family's law firm in Lockport, La.



Eugene G. Gouaux III

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### **Kenneth P. Hebert • Lafayette**

Kenneth P. Hebert is a founding partner at Beal & Hebert, LLC, in Lafayette. His practice focuses on serious personal injury and wrongful death cases involving 18-wheeler and automobile accidents, premises liability, general injury and a variety of civil litigation. He earned his JD degree in 2011 from Southern University Law Center. He serves on the board of directors for the Lafayette Bar Association and the LBA's Young Lawyers Section. He is a member of the Acadiana Inn of Court.



Kenneth P. Hebert

### **Jimmie C. Herring, Jr. • Monroe**

Jimmie C. Herring, Jr. is a permanent attorney advisor for the Houston, Texas, Immigration Court for the U.S. Department of Justice and Executive Office for Immigration Review. He previously served as an attorney advisor and judicial law clerk for the Oakdale, La., Immigration Court through the Department of Justice's Attorney General's Honors Program, as well as a judicial law clerk for the 1st Judicial District Court of Caddo Parish in Shreveport. He obtained his BA degree in political science, with honors, from Southern University and A&M College; his master's in public administration degree, with a concentration in public policy, from Louisiana State University; and his JD degree, with honors, from Southern University Law Center.



Jimmie C. Herring, Jr.

### **Derek G. Hoffman • Lake Charles**

Derek G. Hoffman, an associate attorney at Stockwell, Sievert, Viccellio, Clements & Shaddock, LLP, in Lake Charles, completed his undergraduate studies at the University of Utah (2010) and graduated from Louisiana State University Paul M. Hebert Law Center in 2018. His civil practice includes estate planning, succession and probate, and real estate transactions.



Derek G. Hoffman

### **Rachael A. Jeanfreau • New Orleans**

Rachael A. Jeanfreau, a partner in the New Orleans office of Breazeale, Sachse & Wilson, LLP, practices in the areas of labor and employment law and commercial litigation. She received her JD degree, magna cum laude, in 2011 from Tulane University Law School (member of the Tulane Law Review). She was a member of the Leadership Jefferson 2018 class and graduated with the New Orleans Regional Leadership Institute's 2022 Class.



Rachael A. Jeanfreau

### **Adam P. Johnson • Lake Charles**

Adam P. Johnson, with his brother, Jonathan, owns The Johnson Firm in Lake Charles and focuses in family law, criminal defense and personal injury law. He received a BS degree in business management in 2006 from Louisiana State University and his JD degree in 2009 from Southern University Law Center. He represents the Fourth Board District on the Louisiana State Bar Association's Board of Governors. He was a member of the 2013-14 Leadership LSBA Class and co-chaired the 2014-15 Leadership LSBA Class.



Adam P. Johnson

### **Shermin S. Khan • New Orleans**

Shermin S. Khan is a managing attorney in The Khan Law Firm, LLC, in New Orleans. She represents individual and corporate clients in complex civil litigation in the areas of property law, contractual obligations and personal injury. She received her JD degree in 2015 from Southern University Law Center. She is a member of the Louisiana Association for Justice and serves as in-house counsel for the non-profit BMANA: La. Chapter. She is co-chair for the Leadership LSBA Class of 2022-23.



Shermin S. Khan

## Young Lawyers Division

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### Hayden A. Moore • Baton Rouge

Hayden A. Moore is an attorney at Walters, Papillion, Thomas, Cullens, LLC, and a graduate of Southern University Law Center. She serves on the board of directors of the Baton Rouge Bar Association and is involved with its Bench Bar Conference and Gavel Gala events.



Hayden A. Moore

### Ebony S. Morris • New Orleans

Ebony S. Morris is an associate attorney in the New Orleans litigation group of Phelps Dunbar LLP. She has extensive experience in insurance defense and general casualty matters. She is the immediate past president of the Greater New Orleans Louis A. Martinet Legal Society, Inc., chair of the Defense Research Institute's (DRI) first Women of Color Subcommittee and Steering Committee member of DRI's Diversity and Inclusion Committee.



Ebony S. Morris

### Keith J. Naccari • New Orleans

Keith J. Naccari is the co-managing partner and co-founder of Sternberg, Naccari & White, LLC. His practice primarily centers around mergers and acquisitions and tax law.



Keith J. Naccari

### Rachel M. Naquin • New Orleans

Rachel M. Naquin, a partner at Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC, focuses her practice on plaintiff's personal injury litigation. She is a member of the New Orleans Chapter of the Federal Bar Association (FBA) and a board member of its Younger Lawyers Division. She helped organize Justice Camp, an academic program designed to impart civics education and advocacy skills to local high school students.



Rachel M. Naquin

### Sandra James Page • Baton Rouge

Sandra James Page is managing attorney for The Law Offices of Sandra James Page, LLC, in Baton Rouge. A solo practitioner from Shreveport, she practices in the areas of personal injury and criminal defense. She is a Trial Lawyers College graduate, a member of the American Association of Justice and is recognized as a Louisiana Super Lawyers' Rising Star for personal injury and criminal defense.



Sandra James Page

### Marcus J. Plaisance • Baton Rouge

Marcus J. Plaisance is an appellate and trial attorney in his 13th year of practice. He provides legal research and writing services and regularly handles appeals and writes before each of Louisiana's appellate courts, especially the 1st Circuit and the Louisiana Supreme Court.



Marcus J. Plaisance

### Courtney N. Ray • Shreveport

Courtney N. Ray received her BS degree from Northwestern State University and her JD degree from Louisiana State University Paul M. Hebert Law Center. As an assistant district attorney in Caddo Parish, she handles felony crimes from charging through jury trial.



Courtney N. Ray

### Audrius M. Reed • Shreveport

Audrius M. Reed, with Audrius M. Reed, Attorney at Law, LLC, in Shreveport, is a graduate of Southern University Law Center and is a solo practitioner in the areas of family law, criminal defense, personal injury and estate planning. She serves as the program attorney for the LRVDV (Legal Representation for Victims of Domestic Violence) Program of the Shreveport Bar Foundation and the Northwest Louisiana Family Justice Center.



Audrius M. Reed

## Young Lawyers Division



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### Eric W. Sella • *New Orleans*

Eric W. Sella attended Tulane University and Tulane University Law School. He currently maintains a broad insurance practice as senior counsel at Plauche Maselli Parkerson, LLP. He serves on the boards of the New Orleans Bar Association (previously served as chair of the Young Lawyers Section).



Eric W. Sella

### Phillip M. Smith • *Lafayette*

Phillip M. Smith is a partner at NeunerPate in Lafayette. His practice is focused on maritime law and personal injury litigation. He graduated Order of the Coif from Louisiana State University Paul M. Hebert Law Center and served as executive senior editor of the Louisiana Law Review. He volunteers as a coach for his law school's admiralty moot court team and provides pro bono legal representation to survivors of domestic violence and unaccompanied immigrant children.



Phillip M. Smith

### Z. Ambrose Stearns, Jr. • *Lafayette*

Z. Ambrose Stearns, Jr. is an associate in the Lafayette office of Kean Miller, LLP, focusing his practice on offshore energy and marine litigation, general casualty litigation, business and corporate law, and food and beverage law. He is an active member of the Lafayette Bar Association.



Z. Ambrose Stearns, Jr.

### Scott L. Sternberg • *New Orleans*

Scott L. Sternberg is the managing partner of Sternberg, Naccari & White, LLC, with offices in New Orleans and Baton Rouge, where he focuses on business, general litigation and media matters. He received his journalism and law de-



Scott L. Sternberg

grees from Louisiana State University. He is currently serving on the Louisiana State Bar Association's (LSBA) Board of Governors and was the 2019-20 LSBA Young Lawyers Division chair. He founded and chaired the first Louisiana Young Lawyers Conference in 2019.

### Reshonda W. Thompson • *New Orleans*

Reshonda W. Thompson is an associate attorney with Simon, Peragine, Smith & Redfearn, LLP. She practices casualty litigation representing trucking companies and large retailers. She is a board member of the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. and the DRI Young Lawyers Committee.



Reshonda W. Thompson

### Joseph T.D. Tran • *Metairie*

Joseph T.D. Tran is associate general counsel for LAMMICO, where he focuses on insurance, corporate law, data privacy, health-care risk management, intellectual property and contracts. He is a registered patent attorney and is certified by the IAPP as a certified information privacy professional. He is co-chair for the 2022-23 Leadership LSBA Class.



Joseph T.D. Tran

### Vincent V. (Trey) Tumminello III • *Baton Rouge*

Vincent V. (Trey) Tumminello III, a partner in the Baton Rouge office of Taylor Porter, LLP, practices in the areas of commercial transactions, mergers and acquisitions, sports law and real estate. He received a BA degree from the University of Notre Dame and his JD degree in 2013 from Vanderbilt University Law School. He serves on the board of directors of the Baton Rouge Bar Association and has received the Baton Rouge Bar's President's Award.



Vincent V. (Trey) Tumminello III



## Young Lawyers Division

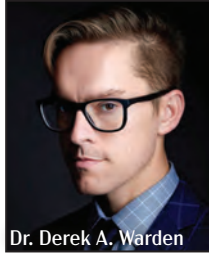
LSBA YOUNG LAWYERS DIVISION

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### Dr. Derek A. Warden • *New Orleans*

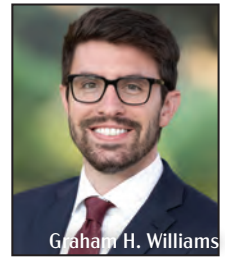
Dr. Derek A. Warden is a career law clerk to Louisiana Supreme Court Justice Piper D. Griffin. He graduated with his JD and GDCL degrees from Louisiana State University Paul M. Hebert Law Center in 2016 and his LL.M. and SJD degrees from Tulane University Law School in 2020 and 2022, respectively.



Dr. Derek A. Warden

### Graham H. Williams • *New Orleans*

Graham H. Williams is a thoughtful and tenacious litigator. In addition to his commercial and business litigation practice, he enjoys working on real estate matters, from construction disputes to nuanced land use, and has built a practice focused on helping clients cut through red tape and get results.



Graham H. Williams

### Victoria T. Washington • *Shreveport*

Victoria T. Washington graduated from Southern University Law Center and clerked for Judge John D. Mosely and Judge Ramon Lafitte at the 1st Judicial District Court. She is employed by the Caddo Parish District Attorney's Office.



Victoria T. Washington

### Lauren A. Williams • *Mandeville*

Lauren A. Williams is a graduate of Louisiana State University Paul H. Hebert Law Center and an associate in the Greater New Orleans office of Galloway, Johnson, Tompkins, Burr & Smith, APLC. She is a strategic and creative litigator who focuses her practice on personal injury and property insurance matters.



Lauren A. Williams

### Elizabeth E. Williams • *Marksville*

Elizabeth E. Williams is a juvenile prosecutor in Avoyelles Parish and a LIFT Fellow. She handles civil legal work for the Family Justice Center of Central Louisiana. She spearheaded the establishment of the Avoyelles Parish Juvenile Diversion Program this year.



Elizabeth E. Williams

Below: Louisiana State Bar Association Young Lawyers Division's Top 40 honorees in attendance at the Young Lawyers Conference Awards Luncheon. Photo by Matthew Hinton Photography.





MARCH 31  
2023

# 2023 LOUISIANA YOUNG LAWYERS CONFERENCE

# EMPOWERED to LEAD



**MEANWHILE AT**  
**Harrah's**  
**New Orleans**



Clockwise from upper top right: Hon. Guy P. Holdridge, Josef P. Ventulan and Hon. Lisa M. Woodruff-White (Ret.)  
Top right: Jennifer G. Lampton, Chief Justice Bernette Joshua Johnson (Ret.) and Hon. Rachael D. Johnson  
Right: Whitney M. Antoine  
Below right: Erica Powell, Jaina Green, Hon. Karelia R. Stewart, Chief Justice Bernette Joshua Johnson (ret.) and Angelina Christina  
Below: YLD Chair Danielle L. Borel  
Lower left: Camille R. Bryant and Valerie E. Fontenot  
Left: Hon. Guy P. Holdridge and Jami L. Ishee  
Above left: Hon. Karelia R. Stewart, Senae D. Hall, Audrius M. Reed and Shelvia Grant  
*All photos by Matthew Hinton Photography.*



# 2023 LOUISIANA YOUNG LAWYERS CONFERENCE



## Young Lawyers, Local Affiliates Recognized at Louisiana Young Lawyers Conference

The Louisiana State Bar Association's Young Lawyers Division (YLD) presented its 2023 Louisiana Young Lawyers Conference on March 31, with the theme "Empowered to Lead." The event featured presentations from judges and lawyers, a judicial networking component and the YLD Awards Luncheon. Several young lawyers and local affiliates were recognized during the luncheon, including the inaugural Top 40 List. Award winners and award finalists are included below. *All photos by Matthew Hinton Photography.*



Program of the Year Award

Outstanding Program of the Year Award. From left, Josephine M. Bahn, chair of the American Bar Association's Young Lawyers Division; Mollie H. Overton, representing Program Award winner New Orleans Bar Association Young Lawyers Section; Derek G. Hoffman, representing Program Award finalist Southwest Louisiana Bar Association's Young Lawyers Council; Audrius M. Reed and Joshua K. Williams, representing Program Award finalist Shreveport Bar Association Young Lawyers' Section; and Danielle L. Borel, 2022-23 chair of the Louisiana State Bar Association's Young Lawyers Division.



Local Affiliate Award

Outstanding Local Affiliate. From left, Josephine M. Bahn, chair of the American Bar Association's Young Lawyers Division; Valerie E. Fontenot, representing Local Affiliate Award finalist Greater New Orleans Louis A. Martinet Legal Society, Inc; Audrius M. Reed, representing Local Affiliate Award winner Shreveport Bar Association Young Lawyers' Section; Derek G. Hoffman, representing Local Affiliate Award finalist Southwest Louisiana Bar Association's Young Lawyers Council; and Danielle L. Borel, 2022-23 chair of the Louisiana State Bar Association's Young Lawyers Division.



Hon. Michaelle Pitard Wynne Professionalism Award

Hon. Michaelle Pitard Wynne Professionalism Award. From left, Rory V. Bellina, member of the Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) Awards Committee; Professionalism Award winner Jami L. Ishee, Lafayette; Professionalism Award finalist Andrew M. Albritton, New Orleans; Professionalism Award finalist Audrius M. Reed, Shreveport; and Danielle L. Borel, 2022-23 chair of the LSBA YLD.



YLD Pro Bono Award

Pro Bono Award. From left, Rory V. Bellina, member of the Louisiana State Bar Association Young Lawyers Division's (LSBA YLD) Awards Committee; Pro Bono Award finalist Carlesia C. Bibbins, Zachary; Pro Bono Award winner Hayley M. Landry, New Orleans; Pro Bono Award winner Remington M. Angelle, Baton Rouge; and Danielle L. Borel, 2022-23 chair of the LSBA YLD.



Outstanding Lawyer of the Year Award



Above: Danielle L. Borel introduced the popular keynote session which featured Jennifer G. Lampton as moderator and Chief Justice Bernette Joshua Johnson (Ret.) and Hon. Rachael D. Johnson as speakers.

Left: Chloé M. Chetta, New Orleans, center, received the Outstanding Young Lawyer Award. With her are Danielle L. Borel, left, and Rory V. Bellina, right.





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The Conference Sprint Sessions, where small discussion groups led by young lawyer local affiliates was a popular session during the conference. *Photo by Matthew Hinton Photography.*



Josef P. Ventulan, ABA YLD representative, moderated the “Means and Meaning: Access to Justice” session with panel members Hon. Lisa M. Woodruff-White (Ret.); Professor Virginia B. Listach, Southern University Law Center; Hon. Patrice W. Oppenheim, 22nd Judicial District Court; and Monte T. Mollere, LSBA Access to Justice Director. *Photo by Matthew Hinton Photography.*

# EMPOWERED to LEAD

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WILLIAMS**

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& Sarver, L.L.C.

Blue Williams

Breazeale, Sachse & Wilson, L.L.P.

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LBA Young Lawyers Section

Simon, Peragine, Smith & Redfearn, L.L.P.

## SUPERCHARGED SPONSOR

Baton Rouge Bar Association

# IT'S TIME TO BOOK A LISTING IN 'WHO'S WHO IN ADR 2023'

The print version of the directory for arbitrators and mediators will be mailed with the October/November 2023 Louisiana Bar Journal.

For one low price, your listing is first published in the print directory, then the directory is uploaded to the LSBA website in interactive PDF format (email addresses and website URLs are activated and instantly accessible). The Web version of the directory remains active for **one full year!**

One price gets you in the print directory and on the Web!

View the 2022 directory at  
[www.lsba.org/goto/adrdirectory](http://www.lsba.org/goto/adrdirectory)

The special Arbitrators and Mediators Directory will feature brief articles and photographs of arbitrators and mediators (**INDIVIDUALS ONLY**).

The articles should be **150 words MAXIMUM**. Provide your address, phone, fax, email address and website information at the end of the listing (not part of the word count).

Submit either original photos or digital photos. Digital photos should be submitted separately from the article as a high-resolution .jpg (at least 300 DPI at 4 inches wide). DO NOT submit digital photographs embedded in word processing programs; send the photograph as a separate file. High-resolution digital photos work best.



**EARLY-BIRD DEADLINE: MAY 1 FOR \$125**  
**FINAL DEADLINE: JULY 21 FOR \$150**

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

If you would like to repeat a prior listing and photo, you may send us a photocopy of that listing along with your check; please provide the year the listing appeared.

## IT'S EASY TO RESERVE SPACE IN THE DIRECTORY!

- Email your listing and photo to Publications Coordinator Darlene M. LaBranche (email: [dlabranche@lsba.org](mailto:dlabranche@lsba.org)). Then mail your check (payable to **Louisiana State Bar Association**) to: **Publications Coordinator Darlene M. LaBranche, 601 St. Charles Ave., New Orleans, La. 70130-3404.**
- Or, mail your listing, photo, disk and check to the above address.

For more information, contact

**Darlene M. LaBranche**  
[dlabranche@lsba.org](mailto:dlabranche@lsba.org)  
(504)619-0112 or (800)421-5722, ext. 112.

## New Judge

**David A. Conachen** was elected Zachary City Court judge, effective Jan. 1. He earned his bachelor's and master's degrees in 1996 and 1999, respectively, from Louisiana State University and



David A. Conachen

his JD degree in 2009 from LSU Paul M. Hebert Law Center. Prior to attending law school, he worked as a licensed real estate agent and certified real estate appraiser for 10 years. In 2010, he joined the Law Offices of Ossie Brown. In 2021, he was appointed to the position of Zachary city prosecutor where he continued until his election as Zachary City Court judge. Judge Conachen is married to Jodi Conachen and they are the parents of three children.

## Judges

► 17th Judicial District Court Judge Steven M. Miller was elected judge for the 1st Circuit Court of Appeal, 1st District, Division D, effective Jan. 1. He earned his bachelor's degree in 1989 from Louisiana State University and his JD degree in 1994 from Tulane University Law School. He worked in private practice from 1995-2014. He served as an assistant indigent defender in 2002 and as an assistant district attorney, felony prosecutor, from 2003-14 in Lafourche Parish. He was elected 17th JDC judge in 2014 and served until his election to the 1st Circuit Court of Appeal. Judge Miller is married to Ann James Miller and they are the parents of two children.

► East Baton Rouge Family Court Judge Hunter V. Greene was elected

judge for the 1st Circuit Court of Appeal, 2nd District, Division B, effective Jan. 1. He earned his bachelor's degree in 1989 from Louisiana State University and his JD degree, *magna cum laude*, in 1994 from Southern University Law Center. Following law school, he worked as an attorney for the Legislative Auditor's Office until 1998, then went into private practice. He served in the Louisiana House of Representatives, representing District 66, from 2005-14. He was elected East Baton Rouge Family Court judge in 2015 and served until his election to the 1st Circuit Court of Appeal. Judge Greene is married to Emily Aaron Greene and they are the parents of three children.

► 4th Judicial District Court Judge Daniel J. (Danny) Ellender was elected judge for the 2nd Circuit Court of Appeal, 1st District, Election Section 2B, effective Jan. 1. He earned his bachelor's degree in 1986 from Louisiana State University and his JD degree in 1991 from LSU Paul M. Hebert Law Center. He worked as a law clerk and staff attorney at the 2nd Circuit Court of Appeal from 1991-93. From 1993-2008, he worked in private practice. He worked at the 4th Judicial District Court as a hearing officer from 1997-98 and as an assistant district attorney from 2002-08. In 2009, he was elected 4th JDC judge where he served until his election to the 2nd Circuit Court of Appeal. He is married to Amy Ellender and they are the parents of six children.

► 14th Judicial District Court Judge Guy E. Bradberry was elected judge for the 3rd Circuit Court of Appeal, 2nd District, Election Section 2B, effective Jan. 1. He earned his bachelor's degree in 1983 from Louisiana State University and his JD degree in 1989 from Southern University Law Center. From 1991-2002, he served as a Family and Juvenile Court hearing officer. In 2003, he was

elected 14th JDC judge where he served until his election to the 3rd Circuit Court of Appeal. Judge Bradberry is immediate past president of the Louisiana District Judges Association and the Louisiana Family & Juvenile Judges Association. He is married to Melanie Rose Temple Bradberry and they are the parents of three children.

► 27th Judicial District Court Judge Ledricka Johnson Thierry was elected judge for the 3rd Circuit Court of Appeal, 3rd District, Section 2D, effective Jan. 1. She earned her bachelor's degree in 1999 from Southern University in Baton Rouge and her JD degree in 2003 from Southern University Law Center. In 2004, she began working in private practice. In 2005, through partnership with the IRS, she established a free tax prep service for the residents of St. Landry Parish. In 2009, she opened a health care center dedicated to helping children with mental health challenges. From 2009-16, she served in the Louisiana House of Representatives. She was elected 27th JDC judge in 2020 where she served until her election to the 3rd Circuit Court of Appeal. Judge Johnson Thierry is married to Travis Thierry and they are the parents of three children.

► Orleans Parish Criminal District Court Judge Karen K. Herman was elected judge for the 4th Circuit Court of Appeal, effective Jan. 1. She earned her bachelor's degree, *magna cum laude*, in 1991 from Emory University and her JD degree, *cum laude*, in 1994 from Tulane University Law School. She worked at the Orleans Parish District Attorney's Office as a law clerk from 1992-94 and became part of the Magistrate Division from 1994-95. She worked in the Trial Division from 1995-97 and on the Violent Office Strike Force from 1997-98. She was a supervisor, Expedited Screening Division, from 1998-99. She was execu-

tive director of Court Watch NOLA and worked as an adjunct professor for trial advocacy at Tulane Law School from 1998-2001. She was elected Orleans Parish Criminal Court judge in 2009 and served until her election to the 4th Circuit Court of Appeal. Judge Herman is married to Stephen Herman and they are the parents of two children.

► Orleans Parish Civil District Court Judge Nakisha Ervin-Knott was elected judge for the 4th Circuit Court of Appeal, Division A, effective Jan. 1. She earned her bachelor's degree, *cum laude*, in 1995 from Xavier University of Louisiana and her JD degree in 1998 from Southern University Law Center. She was a staff attorney at the Legal Aid Bureau from 1998-99. She worked as a law clerk for Judge Terri F. Love at Orleans Parish Civil District Court from 1999-2000. She was a staff attorney at St. Paul Fire & Marine Insurance Co. from 2000-03 and at Batiza, Godofsky & Schroeder from 2003-07. She worked at Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC, as an associate attorney from 2007-13 and as a member from 2013-15. She was elected as an Orleans Parish Civil District Court judge in 2015 and served until her election to the 4th Circuit Court of Appeal. She is a former president of the 4th Circuit Judges Association, vice chair of the Louisiana Supreme Court Technology Commission and chair of the Orleans Parish Civil District Court's Information Technology Committee. Judge Ervin-Knott is married to Steven W. Knott and they are the parents of two children.

► Retired 15th Judicial District Court Judge Jules D. Edwards III was elected judge for Lafayette City Court, effective Jan. 1. He earned his bachelor's degree in 1981 from Loyola University New Orleans and his JD degree in 1984 from Loyola University New Orleans College of Law. He earned a master's degree in 1994 from Louisiana State University and a master's degree in 2005 from the U.S. Army War College. He enlisted in the U.S. Marine Corps Reserve in 1977 and served in the Louisiana Army National Guard until 2007. He served in the Infantry, Artillery and in the Judge Advocate General's Corps and has served as the 256th Infantry Brigade's in-

spector general and the state judge advocate. In 2007, he retired as colonel of the Louisiana National Guard and was recognized as the best Staff Judge Advocate in the United States. He served as an indigent defender attorney, assistant district attorney and counsel to the Louisiana Senate's Select Committee on Crime and Drugs. He worked as a partner at the Edwards and Edwards Law Offices. He was elected 15th JDC judge in 1993 and retired in 2020. He was appointed chief judge in 2001. He has been a drug court judge and was appointed by the Louisiana Supreme Court to serve as a judge-member of the Judiciary Commission. Judge Edwards and his spouse Orida are the parents of three children.

### Reelected Justice/Judges

Louisiana Supreme Court: Chief Justice John L. Weimer.

1st Circuit Court of Appeal, 1st District, Division B: Judge Mitchell R. Theriot.

1st Circuit Court of Appeal, 3rd District, Division B: Judge Page McClendon.

1st Circuit Court of Appeal, 3rd District, Division D: Judge Elizabeth P. Wolfe.

2nd Circuit Court of Appeal, 1st District, Election Sec. 1, Division C: Judge Marcus L. Hunter.

2nd Circuit Court of Appeal, 3rd District, Election Sec. 2, Division B: Chief Judge Frances Jones Pitman.

3rd Circuit Court of Appeal, 1st District, Division A: Judge Elizabeth A. Pickett.

3rd Circuit Court of Appeal, 3rd District, Election Sec. 1, Division C: Judge Gary J. Ortego.

4th Circuit Court of Appeal, 1st District, Division B: Judge Tiffany Gautier Chase.

4th Circuit Court of Appeal, 1st District, Division H: Judge Sandra Cabrina Jenkins.

5th Circuit Court of Appeal, 1st District, Election Sec. 1, Division D: Judge Susan M. Chehardy.

5th Circuit Court of Appeal, 1st District, Election Sec. 1, Division E: Judge Stephen J. Windhorst.

5th Circuit Court of Appeal, 1st

District, Election Sec. 1, Division G: Judge John J. Molaison, Jr.

5th Circuit Court of Appeal, 3rd District, Division A: Judge Robert A. Chaisson.

City Court of Winnsboro: Judge Scott J. Sartin.

1st City Court of New Orleans, Section A: Judge Monique G. Morial.

1st City Court of New Orleans, Section B: Judge Marissa A. Hutabarat.

1st City Court of New Orleans, Section C: Judge Veronica E. Henry.

Municipal and Traffic Court of New Orleans, Division D: Judge Mark J. Shea.

Municipal and Traffic Court of New Orleans, Division G: Judge Steven M. Jupiter.

### Retirements/Concluding Terms of Office

► 1st Circuit Court of Appeal Chief Judge Vanessa Guidry-Whipple retired effective Jan. 3. She earned her bachelor's degree, *summa cum laude*, in 1976 from the University of Southwestern Louisiana (currently University of Louisiana at Lafayette) and her JD degree in 1980 from Loyola University New Orleans College of Law. She was the Orleans Parish Criminal District clerk of court from 1974-2003. She practiced law for 10 years and was employed by the Indigent Defender's Board. In 1990, she became the first female elected to the 1st Circuit Court of Appeal bench, where she also served as chief judge since 2013. She served as an appointed *ad hoc* on the Louisiana Supreme Court, as an appellate judge-member of the Louisiana Judiciary Commission and was appointed faculty member by the U.S. State Department in a foreign language to assist Dominican Republic judges to develop a code of ethics.

► 1st Circuit Court of Appeal Judge J. Michael McDonald retired effective Jan. 1. He earned his bachelor's degree in 1968 from Louisiana State University and his JD degree in 1976 from LSU Law Center. He served in the U.S. Navy from 1968-72 and held the rank of captain in the Navy Reserve. He worked at the firm of D'Amico Curet & Dampf and was an assistant district attorney and narcotics section chief for the East Baton Rouge District Attorney's Office.

In 1986, he was elected to serve as 19th Judicial District Court judge and served until 2002. In 2003, Judge McDonald was elected 1st Circuit Court of Appeal judge and served until his retirement.

► 2nd Circuit Court of Appeal Chief Judge D. Milton Moore III retired effective Jan. 1. He earned his bachelor's degree in 1973 from Louisiana State University and his JD degree in 1976 from LSU Law Center. He practiced law from 1976 until he was elected to the 4th Judicial District Court bench, where he served from 1988-2002. He was chief judge from 1997-98. He served as a member of the Monroe City Council from 1980-88, serving as its chair from 1984-86. Judge Moore was elected 2nd Circuit Court of Appeal judge in 2003, becoming chief judge in October 2020.

► 3rd Circuit Court of Appeal Chief Judge Sylvia R. Cooks retired effective Jan. 1. She earned her bachelor's degree from Louisiana State University, her JD degree from LSU Law Center and her Master of Laws in Judicial Process from the University of Virginia. She served as a trustee on the Lafayette Parish Library Board for five years. She was the first African-American district attorney for the 15th Judicial District and was the first African-American law clerk to work at the Louisiana Supreme Court, receiving the "Outstanding Clerk" distinction. She served on the State of Louisiana's Advisory Committee for Women by special appointment of the Governor. Judge Cooks was elected to the 3rd Circuit Court of Appeal in 1992, becoming that court's first female chief judge in 2021.

► 3rd Circuit Court of Appeal Judge John E. Conery retired effective Jan. 1. He earned his bachelor's degree from the University of Southwestern Louisiana (currently University of Louisiana at Lafayette) and his JD degree, *cum laude*, in 1970 from Loyola University New Orleans College of Law. He practiced law for 25 years before his election to the 16th Judicial District Court bench, where he served from 1995-2012. Judge Conery is a former chair of the Louisiana District Judges Association and is a co-founder and first president of the Inn on the Teche Chapter of the American Inns of Court. In 2013, he was elected 3rd Circuit Court of Appeal judge, where he served until

his retirement.

► 3rd Circuit Court of Appeal Judge Billy H. Ezell retired effective Jan. 1. He earned his bachelor's degree in 1965 from Louisiana State University and his JD degree in 1970 from LSU Law Center. After graduating from law school, he served in the U.S. Army, obtaining the rank of captain, and served in Vietnam before his discharge in 1971. He earned a National Defense Service Medal, the Vietnam Service Medal, the Bronze Star and the Republic of Vietnam Campaign Medal w/60 Dev Rifle M-16 (Exp). He received the Bronze Star for meritorious achievement in ground operations against hostile forces in the fall of 1970. He practiced law at Camp, Carmouche & McHale and at McHale & Bufkin law firms while serving as a city prosecutor for the City of Lake Charles. In 1975, he practiced with Levingston, Liles, Ezell & Tynes until his election to the 14th Judicial District Court bench in 1985. In 2002, he was elected 3rd Circuit Court of Appeal judge, where he served until his retirement.

► 4th Circuit Court of Appeal Judge Edwin A. Lombard retired effective Jan. 1. He earned his bachelor's degree in 1967 from Tulane University and his JD degree in 1970 from Loyola University New Orleans College of Law. He worked as the Orleans Parish Criminal District clerk of court from 1974-2003, where he served as the chief election officer for Orleans Parish. He was instrumental in writing laws and procedures for the Dayton Peace Accord (Bosnia), the Indonesia presidential election and South African local elections. He was a lecturer at the University of Canto Domingo on the establishment of the criminal court record-keeping system. In 2003, he was elected 4th Circuit Court of Appeal judge, where he served until his retirement. In 2004, he was appointed to serve as an *ad hoc* judge at the Louisiana Supreme Court. In 2006, he was appointed by the Louisiana Supreme Court as supernumerary judge *pro tempore* of Orleans Parish Criminal District Court to supervise the recovery, remediation and restoration of criminal evidence after Hurricane Katrina. In 2007, the Louisiana Supreme Court appointed Judge Lombard to serve as a member of

the Judiciary Commission of Louisiana.

## Appointments

► Albert R. Dennis was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1 and will end on Dec. 31, 2025.

► Valerie Briggs Bargas was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1 and will end on Dec. 31, 2023.

► James B. Letten was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1 and will end on Dec. 31, 2025.

► Curtis R. Joseph, Jr. was reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term of office which began Jan. 1 and will end on Dec. 31, 2025.

► Andrea Davis was appointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Examiners of Certified Shorthand Reporters for a term of office which began on Jan. 10 and will end on June 23, 2023.

## Deaths

► Retired Natchitoches City Court Judge Fred Sconyers Gahagan, 71, died Oct. 24, 2022. He earned his bachelor's degree in 1973 from Louisiana Tech University and his JD degree in 1976 from Louisiana State University Law Center. After law school, he practiced law at Gahagan & Gahagan Law Firm. In 1985, he was elected Natchitoches City Court judge and served until his retirement in 2021.

► Retired 18th Judicial District Court Judge Sarah R. Harris, 63, died Nov. 2, 2022. She earned her bachelor's degree in 1980 from Grambling State University and her JD degree in 1983 from Southern University Law Center. She was a practicing attorney prior to and after her term on the bench. She was elected to the 18th Judicial District Court bench and served from 1997-2002.



# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Adams and Reese, LLP, announces that William K. (Billy) Wright IV has been elected as a partner in the New Orleans office. Susan N. Eccles has been elected as a partner in the Baton Rouge office. Eccles also was appointed partner in charge in the Baton Rouge office.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announces that Matthew S. Chester, a shareholder in the firm's New Orleans office, was elected to the firm's board of directors.

Breaux & Stelly Law Firm, LLC, in Lafayette announces that Claire N. David has joined the firm as an associate.

Caffery, Oubre, Campbell & Garrison, LLP, announces that Staci Knox Villemarette has become a partner in the Lafayette office and Brooke S. Wilson-Schexnaider has joined the firm as an associate in the Lafayette office.

The Derbes Law Firm, LLC, in Metairie announces that **Bryan J. O'Neill** and **Jared S. Scheinuk**, formerly associates, have become members of the firm.

Fishman Haygood, LLP, in New Orleans announces that Rebekka C. Veith has been named a partner in the firm.

Fuerst, Carrier & Ogden, LLC, in Lake Charles announces that **Austin J. Pottorff** has joined the firm as an associate.

Hinshaw & Culbertson, LLP, announces that **Emma E. (Bessie) Antin Daschbach** has joined the firm's New Orleans office as a partner.

McGlinchey Stafford, PLLC, announces that Allyson C. Byrd, Angelina Christina, Kevin M. Frey and Marcelle P. Mouldoux have joined the New Orleans office as members (partners). Margaret N. Davis, Jaina D. Green, Morgan E. Kelley, Katherine C. Kovach, Gillian Miculek McCarroll and Erica K. Powell have joined the New Orleans office as associates. Also,

Brad M. Barback has been named of counsel in the Baton Rouge office.

Perrier & Lacoste, LLC, announces that **James H. Johnson** has become a member in the New Orleans office.

Simon, Peragine, Smith & Redfeam, LLP, in New Orleans announces that **Windsor V. Richmond** has been named a partner.

Steeg Law Firm, LLC, in New Orleans announces that **F. Paul Simoneaux** has joined the firm as a partner.

Stone, Pigman, Walther, Wittmann, LLC, announces that Mackenzie D. Rodriguez has joined the firm's New Orleans office as special counsel.

Tranchina & Mansfield, LLC, in Covington announces that **Leslie A. Bonin, H. Craig Cabral** and **Chandler D. McCoy** have joined the firm as attorneys.

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Richard J. Arsenault



Leslie A. Bonin



H. Craig Cabral



Joseph E. Cain



John S. Creevy



Emma E. Antin  
Daschbach



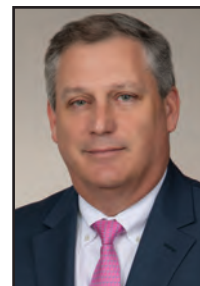
Robert J. David



Brandon E. Davis



Stevan C. Dittman



Michael J. Ecuyer



Lillian E. Eyrich



Alexandra E. Faia

## NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, moderated the Trial Lawyer Hall of Fame Panel at the Mass Torts Made Perfect Seminar in April.

**Brandon E. Davis**, a partner in the New Orleans office of Phelps Dunbar, LLP, was recognized as a certified employment law specialist by the Louisiana Board of Legal Specialization.

Leslie M. Henry, a partner in the New Orleans and Houston, TX, offices of Adams and Reese, LLP, was appointed to the U.S. Golf Association's Executive Committee.

**Barbara Juneau Mixon**, an attorney in the Alexandria firm of Neblett, Beard & Arsenault, presented a seminar during the Louisiana State Bar Association's Lawyers in Libraries Program at the branch library named in honor of her grandmother who served as the librarian in Cottonport, La., for more than 40 years.

David M. Prados has retired from practicing law after 33 years with Lowe, Stein, Hoffman, Allweiss & Hauver, LLP. He was a Louisiana board-certified family law specialist and a board-certified ap-

pellate specialist. For many years, he authored the Family Law Section's Recent Developments article for the *Louisiana Bar Journal*. He was recognized many times in *New Orleans Magazine's* Top Lawyers, *Louisiana Super Lawyers* and *Best Lawyers in America* in family law.

**Edward E. (Ted) Roberts III**, an attorney in the Alexandria firm of Neblett, Beard & Arsenault, chaired the Louisiana State Bar Association's "Weathering the Storm of Workers' Comp" seminar.

Amanda S. Stout, of counsel in the Baton Rouge office of McGlinchey Stafford, PLLC, was selected for the 2023 Leadership Baton Rouge professional development program.

**Lewis O. Unglesby**, founder of Unglesby Law Firm, LLC, with offices in Baton Rouge and New Orleans, spoke on "Effective Closing Argument" at the Harvard Club in New York City for the Litigation Counsel of America's annual meeting.

**Michael B. Victorian**, an associate in the Baton Rouge office of Phelps Dunbar, LLP, was named to the Lawyers of Color 2022 Hot List, spotlighting "early- to mid-career attorneys excelling in the legal profession."

## PUBLICATIONS

### *Best Lawyers in America* 2023

**Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC** (New Orleans, Ridgeland, MS): **Robert J. David, Stevan C. Dittman, Michael J. Ecuyer, Gerald E. Meunier, Walter C. Morrison IV** and **Irving J. Warshauer**.

**Stegg Law Firm, LLC** (New Orleans): **Lillian E. Eyrich, David A. Martinez, Randy Opatowsky, Robert M. Steeg** and **Charles L. Stern, Jr.** (New Orleans Lawyer of the Year, Litigation-Real Estate); and **Margaret V. Glass**, Ones to Watch.

### *Louisiana Super Lawyers* 2023

**Adams and Reese, LLP** (Baton Rouge, New Orleans): Richard A. Aguilar, Mark R. Beebe, Charles A. Cerise, Jr., John M. Duck, A. Kirk Gasperecz, William B. Gaudet, Charles F. Gay, Jr., Matthew C. Guy, Christopher D. Joseph, Jr., Edwin C. Laizer, Leslie A. Lanusse, Kellen M. Mathews, Don S. McKinney, Leigh Ann T. Schell, E. Paige Sensenbrenner, Mark A. Stern, Mark C. Surprenant, Katelin H. Varnado and Raymond P. Ward; and Timothy M. Brinks, Mark J. Chaney III, Alexandra R. Lamb, Robert G. Parrott II and William K. Wright IV, Rising Stars.



Soren E. Gisleson



Margaret V. Glass



Russ M. Herman



James H. Johnson



Brian D. Katz



David A. Martinez



Chandler D. McCoy



Gerald E. Meunier



Barbara Juneau  
Mixon



Walter C.  
Morrison IV



Bryan J. O'Neill



Randy Opatowsky

**Barrasso Usdin Kupperman Freeman & Sarver, LLC** (New Orleans): Michael A. Balascio, Judy Y. Barrasso, Jamie L. Berger, George C. Freeman III, Craig R. Isenberg, John W. Joyce, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin; and Christine M. Calogero, Chloé E. Chetta, Robert J. Dressel and Laurence D. LeSueur, Jr., Rising Stars.

**Breazeale, Sachse & Wilson, LLP** (Baton Rouge, New Orleans): Thomas

M. Benjamin, Jude C. Bursavich, Peter J. Butler, Jr., David R. Cassidy, Murphy J. Foster III, Alan H. Goodman, Scott N. Hensgens, Eve B. Masinter, Van R. Mayhall, Jr., Richard G. Passler, Thomas R. Temple, Jr. and Douglas K. Williams; and Danielle L. Borel, Joseph J. Cefalu III, Candace B. Ford, Philip J. Giorlando, Alexandra C. Hains, Rachael A. Jeanfreau, Kelsey Clark Luckett and Catherine B. Moore, Rising Stars.

**Herman, Herman & Katz, LLC**

(New Orleans): **Joseph E. (Jed) Cain, John S. Creevy**, Leonard A. (Lenny) Davis, **Soren E. Gisleson**, Maury A. Herman, **Russ M. Herman**, Stephen J. Herman (number one in Top 10), **Brian D. Katz**, James C. Klick, Dr. Joseph A. Kott and Steven J. Lane; and **Alexandra E. Faia**, Rising Star.

**Steg Law Firm, LLC** (New Orleans): **Lillian E. Eyrich, Robert M. Steg** and **Charles L. Stern, Jr.**

**New Orleans CityBusiness**

**Steg Law Firm, LLC** (New Orleans): **Randy Opotowsky**, Leadership in Law Class 2022.

**New Orleans Magazine Top Lawyers 2022**

**Steg Law Firm, LLC** (New Orleans): **Lillian E. Eyrich** and **Robert M. Steg**.



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## People Deadlines & Notes

**Deadlines for submitting People announcements (and photos):**

Publication	Deadline
Aug. / Sept. 2023	June 4, 2022

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](mailto:dlabranche@lsba.org).**

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## UPDATE

### Legal Help Access Points Expand into Community Action Agency in Catahoula Parish

The Louisiana Access to Justice (ATJ) Commission and its Justice For All (JFA) Project partners celebrated the launch of a Legal Help Access Point in Harrisonburg, La., with a ribbon-cutting ceremony on Jan. 25. This marks the third opening of a Legal Help Access Point in Louisiana.

The Legal Help Access Point, installed in the LaSalle Community Action Association (CAA), gives Catahoula Parish residents a spectrum of options for legal assistance by allowing them to access self-help resources and automated court forms, find out if they qualify for free civil legal aid, get customized legal help and referrals through the Louisiana Bar Foundation and Lagniappe Law Lab's Civil Legal Navigator, and meet virtually with an attorney in a confidential enclosed space.

Initial locations for Legal Help Access Points were all libraries, with the first two being established in the Vidalia branch of the Concordia Parish Library and in the East Carroll Parish Library in Lake Providence. The Harrisonburg location is the first to be installed in a CAA, just steps away from the 7th Judicial District Court in Catahoula Parish.

Like libraries, CAAs are essential to the communities they serve, especially to low-income and disadvantaged individuals. Common to all CAAs is the mission to help their neighbors improve their lives and build more resilient communities through programs such as Head Start, housing assistance, food reimbursement and emergency services.

Together, these three locations offer



The Louisiana Access to Justice Commission and its Justice For All Project partners celebrated the launch of a Legal Help Access Point in Harrisonburg, La., with a ribbon-cutting ceremony on Jan. 25. From left, Sachida R. Raman, executive director of Acadiana Legal Service Corp.; John Lawrence, LaSalle Community Action Association Board chair; Missy Weeks, legislative assistant to Sen. Glen Womack, District 32; Derrick D. Carson, 7th Judicial District, Louisiana Public Defender's Office; Dorothy Oliver, executive director of LaSalle Community Action Association; Mayor Alice Wallace of Winnsboro; and State Rep. Neil Riser, District 20.

much needed resources while reducing the amount of Louisiana encompassed by civil legal resource deserts. (The term "civil legal resource desert" — identified through the ATJ Commission's JFA Project — describes areas within the state that are outside a 45-minute drive time for an in-person, civil legal resource like a civil legal aid office, self-help center or law library.)

Dorothy Oliver, executive director of the LaSalle CAA, played a crucial role in establishing the third access point. Oliver, also a member of the JFA Steering Committee, helped advance the idea of creating access points for legal assistance in the civil legal resource deserts. After the launch of the first Legal Help Access Point in Lake Providence, Oliver insisted on an access point in her

office in Harrisonburg. "The moment I saw this, I knew my community needed one," Oliver said in her opening remarks at the ribbon-cutting event.

Also attending the Harrisonburg event were Kabi Boothe, Harrisonburg Service League; Derrick D. Carson, 7th Judicial District, Louisiana Public Defender's Office; Larisa Field, Catahoula Parish clerk of court; C. Travis Johnson, State Representative, District 21; John Lawrence, LaSalle CAA Board chair; attorney Tron McCoy, from District Attorney Bradley R. Burget's Office; staff members of the LaSalle CAA; Sachida R. Raman, executive director of Acadiana Legal Service Corp., and other ALSC staff; Neil Riser, State Representative, District 20; Mayor

Continued next page



Louisiana State Rep. C. Travis Johnson, District 21, spoke to the crowd about the need for civil legal assistance in his district which covers East Carroll, Madison, Tensas, Concordia and Catahoula parishes.

**Legal Help** continued from page 490

Alice Wallace of Winnsboro; and Missy Weeks, legislative assistant to Sen. Glen Womack, District 32.

As part of the continued JFA work, these three sites will be monitored to determine aspects of the access points that are working well and those that can be improved, and future access points are currently being scouted. In addition, project partners Lagniappe Law Lab and Acadiana Legal Service Corp. are working with the Louisiana State Bar Association’s Lawyers in Libraries

Program to provide virtual educational workshops to educate the community on common legal issues such as successions, heirship property and custody. The Louisiana Access to Justice Commission, Lagniappe Law Lab, the Louisiana Bar Foundation, Acadiana Legal Service Corp and its collaborative partners hope to continue to leverage technology to address access to justice issues in Louisiana and to scale this model by building additional Legal Help Access points throughout the state. To learn more, go to [www.lsba.org/ATJ](http://www.lsba.org/ATJ).



Louisiana Supreme Court Chief Justice John L. Weimer was sworn in for his new 10-year term in January. Thibodaux attorney Daniel A. Cavell administered the oath to Chief Justice Weimer, who was first elected to the Louisiana Supreme Court in 2001. This marks Chief Justice Weimer’s final 10-year term on the Louisiana Supreme Court due to the mandatory retirement age for Louisiana judges. His term will run through 2032. Following his oath of office, Chief Justice Weimer then administered oaths of office to members of the Lafourche Parish School Board.

**LOCAL / SPECIALTY BARS**



Louisiana Gov. John Bel Edwards and the Louisiana Legislative Black Caucus hosted the Louisiana Martinet Chapters for Martinet Day at the Capitol on May 25, 2022. Front row, Rep. Ed Larvadain III, District 26; Michael B. Victorian, Greater Baton Rouge Martinet Chapter president; Ebony S. Morris, Greater New Orleans Martinet Chapter president; Rep. C. Denise Marcelle, District 61; and Rep. Royce I. Duplessis, District 93. Back row, Rep. Sam L. Jenkins, Jr., District 2; Quintillus K. Lawrence, Law Offices of Ossie Brown; Rep. Vincent J. Pierre, District 44; Ronald J. Sholes, Jr., Greater New Orleans Martinet Chapter Political Action co-chair; Gov. Edwards; Lannette Richardson, Southern University Law Center; Harry Landry III, Greater Baton Rouge Martinet Chapter second vice president; and former Sen. Edwin R. Murray, District 4.



The Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. and Foundation held its annual Scholarship Gala and Jazz Brunch on Sept. 24, 2022. The theme of the event was “The Future of the Black Bar: Celebrating 65 years of Leadership, Excellence and Service.” Featured speakers included Kelsey Davis, reporter for Fox 8 Morning Edition, and GNO Martinet officers, Ebony S. Morris, president, Phelps Dunbar, LLP, left, and Valerie E. Fontenot, president-elect, Frilot LLC.



The Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. hosted its annual holiday party and toy drive on Dec. 8, 2022. Officers attending, from left, Harry Landry III, vice president, attorney at law; ReAzalia Z. Allen, secretary, attorney at law; Candace B. Ford, special events coordinator, Breazeale, Sachse & Wilson, LLP; and Michael B. Victorian, president, Phelps Dunbar, LLP.



The Southwest Louisiana Bar Association (SWLBA) hosted the Fall Court Opening Ceremony at the original Calcasieu Parish Courthouse on Oct. 14, 2022. The event was followed by an Annual Fall Membership Luncheon Meeting. From left, Brad A. Guillory, SWLBA past president, Guillory Hargrave & LaCombe; Karen C. McLellan, SWLBA president 2022, Calcasieu Parish District Attorney’s Office; and Shayna L. Sonnier, Louisiana State Bar Association president-elect.

## President's Message

Q&A with 2023-24 LBF President  
Deidre Deculus Robert*Interviewed by 2023-24 Secretary Michael J. Mestayer*

**Mestayer:** Tell us about yourself and your family.

**Robert:** I have been practicing law for a little over two decades. Last April, I was appointed by President Biden to serve as the USDA Rural Development Director for Louisiana. Prior to my appointment, I served as the executive counsel for the Louisiana Department of Transportation and Development, general counsel of the Southern University System and in various positions with the Louisiana Department of Justice and Parish Attorney's Office of East Baton Rouge.

Many may think that the move to USDA is a strange or odd fit for me, but it is not. I am a native of Mamou, La., and the youngest of five children. My father was a rice farmer and my mother worked for the USDA Farm Service Agency for 30 years. I am married to James Robert, Jr., and we have two sons, James III, a sophomore at Louisiana State University, and Jude Michael, a senior at Catholic High School in Baton Rouge. We live in Glynn, La. I didn't move far from Mamou and still am a country girl at heart.

**Mestayer:** How did you get involved with the Louisiana Bar Foundation (LBF)?

**Robert:** I was fortunate to be serving as the deputy director in the Consumer Protection Division of the Attorney General's Office, where we were part of the litigation that led to the National Mortgage Settlement in 2012, when the case was settled. As part of the settlement, Louisiana received funding to provide assistance in the form of education and support to citizens of Louisiana impacted by the mortgage crisis. We partnered with the LBF to assist us in administering

those funds. From that partnership, we launched the Louisiana Mortgage Assistance Program (LMAP) and worked with Louisiana Appleseed to provide assistance to those experiencing mortgage and foreclosure. We traveled extensively throughout the state reaching citizens in need of support.



Deidre Deculus  
Robert

**Mestayer:** Why did you become a Fellow of the LBF?

**Robert:** I fell in love with the mission of the LBF — to provide funding for free civil legal aid — during my time at the AG's office. As a public service attorney, my first position was as an assistant city prosecutor. I saw firsthand that our citizens need legal representation beyond criminal matters. Families need support in several ways, and the funding provided by the LBF to support our legal aid providers and advocates for families and children in need of civil legal aid support is essential. I never knew the LBF existed until 2012! I have been a Fellow since that time. I've served on the board twice and worked on numerous committees. I've seen the impact this organization has on the grantees we fund and the people they serve and am honored to be able to be part of this work.

**Mestayer:** Why do you think the LBF is important to the law profession?

**Robert:** Certainly, they play a critical role managing the funds allocated and entrusted to them by the Louisiana Supreme Court and others, but they carry

out the principle of providing representation and advocacy by funding organizations and agencies that provide that support to those in need who do not have the resources themselves to secure that support. This support enables us to attack the gaps in resources and representation across our state which I believe enhances the reach of the profession and attorneys practicing in this area and providing those services.

**Mestayer:** Why do you think the LBF is important to Louisiana?

**Robert:** Because it works! The total net social return on investment for Louisiana's civil legal aid programs during the 2022 fiscal year was 1,799%. In other words, for every \$1 invested in Louisiana's civil legal aid services, these programs deliver \$17.99 in immediate and long-term consequential financial benefits.

The social return on investment for Louisiana's civil legal aid organizations is higher than many other types of social service organizations. This is based on the high delivery and variety of legal services that result in significant future cost savings or additional income to the state of Louisiana and the number of volunteer (pro bono) hours of legal services delivered by attorneys in Louisiana.

**Mestayer:** What do you see as the biggest challenges facing civil legal aid in Louisiana?

**Robert:** We need more attorneys and advocates engaged in this work and I encourage and challenge our practitioners to step into this space as either a volunteer, employee of legal aid or contract attorney to help us close the gaps. Funding

Continued next page

**LBF President** continued from page 492

is always a concern for legal aid and, as the market continues to move and shift, we are mindful to be fiscally responsible with managing funds.

**Mestayer:** What do you hope to accomplish this year as LBF president?

**Robert:** I am fortunate to have worked with some dedicated presidents and watched the LBF grow over the years. In consideration of all we have ac-

complished over the last several years, I am looking to continue the growth of the investments we make in Louisiana and reach of the organization — from increasing scholarship opportunities under our Kids' Chance Program to touring the state with the Justice Bus to provide resources and representation to all our communities. We partner with a trusted network of more than 70 organizations that lead community-driven efforts to help families facing non-criminal, civil legal challenges and we can do more. We

recently engaged a committee of professionals to explore diversity, equity and inclusion in our organization, to include external and internal scopes. I see this as an opportunity for us as an organization to focus on how we operate and who we serve through an equity lens. This will make us more efficient in developing our strategic goals moving forward. I'm also excited to expand our message and mission into our law schools and with other like-minded professionals. It will be a year of growth opportunity.

## LBF to Honor Distinguished Award Recipients at Gala

The Louisiana Bar Foundation (LBF) will celebrate its 37th Annual Fellows Gala on April 21 and will honor the 2022 Distinguished Jurist Richard T. Haik, Sr., the 2022 Distinguished Attorney Leo C. Hamilton, the 2022 Distinguished Professor Andrea Beauchamp Carroll and the 2022 Calogero Justice Award recipient, Judge Ivan L.R. Lemelle.

**Distinguished Jurist Richard T. Haik, Sr.** served as a judge on the U.S. District Court for the Western District of Louisiana in Lafayette from his appointment in 1991 until his retirement in 2016. He served as chief judge from 2002-09. He received a BS degree from the University of Louisiana at Lafayette and his JD degree in 1975 from Loyola University New Orleans College of Law. He was elected as a state court judge in the 16th Judicial District Court in 1984, after practicing law in his hometown of New Iberia. As a trial judge for 30 years, he conducted countless settlement conferences, with the ability to broker amicable settlements in the most complex matters. He now has a mediation practice, through his of counsel position at Morrow, Morrow, Ryan, Bassett & Haik and as a mediator with Perry Dampf Dispute Solutions.

**Distinguished Attorney Leo C. Hamilton,** a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, LLP, practices in the areas of labor and employment law, administrative law, constitutional law and governmental relations. He earned his JD degree in 1977 from Louisiana State University Paul M. Hebert Law Center. He has served as vice president of the Louisiana State Law



**Judge (Ret.) Richard T. Haik, Sr.**



**Leo C. Hamilton**



**Andrea Beauchamp Carroll**



**Judge Ivan L.R. Lemelle**

Institute, president of the Baton Rouge Bar Association and president and board member of the Louisiana Bar Foundation. He was a member of the House of Delegates of the American Bar Association.

**Distinguished Professor Andrea Beauchamp Carroll** is the associate dean for Student & Academic Affairs and the Donna W. Lee Professor of Family Law at Louisiana State University Paul M. Hebert Law Center. Before joining the LSU Law faculty, she clerked for Judge W. Eugene Davis of the U.S. 5th Circuit Court of Appeals and worked as an associate at the Dallas law firm of Baker Botts, LLP. In 2003, she returned to LSU Law, where she teaches and writes about family law, community property and property. She is active in law reform in Louisiana as a member of the Council of the Louisiana State Law Institute and the Institute's Property, Children's Code and Adult Guardianship Committees. She has led successful legislative reforms in the areas of domestic violence, child relocation, spousal support, surrogacy and community property rights.

**Calogero Justice Award recipient Judge Ivan L.R. Lemelle** was appointed in 1984 to serve as a U.S. magistrate judge

for the Eastern District of Louisiana. In 1998, President Clinton appointed him to U.S. District Judge with unanimous consent of the Senate. He assumed senior judge status in 2015. In his 48 years of judicial service, he expresses appreciation for members of the bench, bar and community who promote diversity, equity, inclusion and access to justice, especially for marginalized and underserved persons. He has been involved in several professional and community organizations, including the Federal Judicial Center's Advisory Committee for the Guide to Judicial Management of Cases in Alternate Dispute Resolution; president of the U.S. 5th Circuit District Judges Association; president of the Loyola College of Law Thomas More Inn of Court; Federal Bar Association New Orleans Chapter Board of Directors; trustee on the American Inns of Court Foundation Board; and member of the American Bar Association Standing Committee on Diversity in the Judiciary and its CoLap Commission.

For the full biographies of all honorees, go online to: [www.raisingthebar.org/distinguished-honorees](http://www.raisingthebar.org/distinguished-honorees).

## 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](http://LSBA.org/classifieds). All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

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### DEADLINE

For the August issue of the Journal, all classified notices must be received with payment by June 16, 2023. Check and ad copy should be sent to:

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**Seeking paralegal,** Civil Division in the 22nd Judicial District, Mandeville, La. This position requires skilled legal research and excellent writing ability to provide written reports and legal memoranda based upon legal research performed. Thorough knowledge of legal principles and practices, legal research techniques and legal terminology a must. Paralegal experience or certification required. For further details, click link: <https://recruiting.paylocity.com/recruiting/jobs/List/5750/District-Attorney-Office>. Or go to the website: <https://DAMontgomery.org>.

## SERVICES

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ences and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)470-9582 (Shreveport).

### Briefs/Legal Research/Analysis of Unusual or Problem Cases

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**Appellate/brief writing services.** LBSL certified appellate practice specialist; appellate briefs and consulting; trial motions and memoranda; research complicated issues of law; 18 years' experience; civil and criminal; federal and statewide services; former Louisiana 5th Circuit law clerk; former assistant district attorney. Desirée Valenti, Andrews Valenti, LLC, desiree@andrewsvalenti.com, (504)799-2585 (New Orleans).

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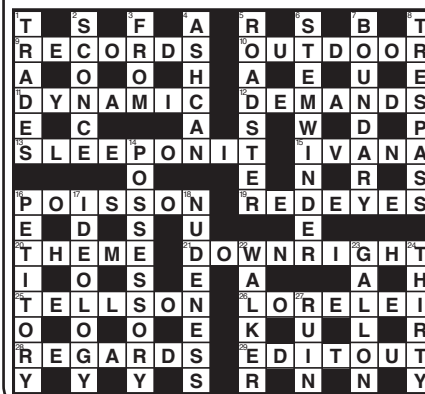
**Notice is hereby given** that John Christopher Alexander intends to petition for reinstatement to the practice of law. Any person(s) concurring with or opposing this petition may file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, 2800 Veterans Memorial Blvd., Ste. 310, Metairie, LA 70002.

**Glenn M. Constantino, Jr.** intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Notice is hereby given** that Michael David Cox intends to file a petition for reinstatement or for readmission to the practice of law. Any person(s) concurring with or opposing said petition must file notice of said concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Luke J. Thibodeaux II** intends to file a petition seeking reinstatement of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

### ANSWERS for puzzle on page 460.



**Notice is hereby given** that Blake G. Williams has filed a petition and has applied for reinstatement to the Louisiana State Bar Association. Any person(s) concurring with or opposing the petition and application for reinstatement must file notice of their concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Notice is hereby given** that Brian Dominic Williams intends on petitioning for reinstatement/readmission to the practice of law. Any person(s) concurring with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.



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# Are You Runnin' with Me?

By E. Phelps Gay

**B**ack in 1978, during the spring semester of my second year at Tulane Law School, I signed up for a survey course in Admiralty Law. Our teacher was a man named Frank Maraist, a visiting professor from LSU. I figured he would look and sound like most of my other law professors — well-mannered, articulate, conservatively dressed, bespectacled, perhaps sporting a degree from Yale or Penn or UVA.

On the first night (he taught for two hours, one night a week, from 7 to 9 p.m.), I walked a bearded figure from Kaplan, La., who (we quickly learned) spoke faster than the speed of sound. At first, it was a little hard to figure out what he was talking about, a situation he seemed to appreciate on the few occasions he paused to catch his breath and ask: “Are you runnin’ with me?”

He was running; we were trying to catch up.

Over time we began to realize we were in the hands of a uniquely talented teacher with a firm grasp of all aspects of admiralty law, spiced with a sense of humor rooted somewhere in the swamps of Vermilion Parish.

Years later, as a lawyer active in the Louisiana Association of Defense Counsel, I got to know Frank, our Executive Director, a little better. He was always kind and generous to my wife, who hails from McComb, Miss. He used to tell me we had something in common. Taking the bait, I asked, “What’s that?” He replied, “We both married up.”

He still spoke at warp speed, and he seemed to crank out books, articles and newsletters almost as fast as he spoke. On admiralty, torts, evidence and civil procedure, he was prodigiously knowledgeable. To my surprise I learned that in 1968 Frank had indeed obtained a Master of Laws at Yale University.

Reportedly, people in Kaplan began asking, “Where’s that Maraist boy?”

Answer: “He’s at Yale.”

Question: “What’s he studying?”

Answer: “I think they’re studying him.”

Born in 1931, Frank graduated from Southwestern Louisiana Institute 20 years later. After serving in the U.S. Army, he entered law school where he graduated in 1958 at the top of his class. That same year he married the love of his life, Catherine Montgomery Underwood, better known as “Toot.” He then practiced at the firm of Sanders, Miller, Downing, Rubin & Kean, where he was mentored by Alvin B. Rubin, later to become a legendary federal judge. From 1962

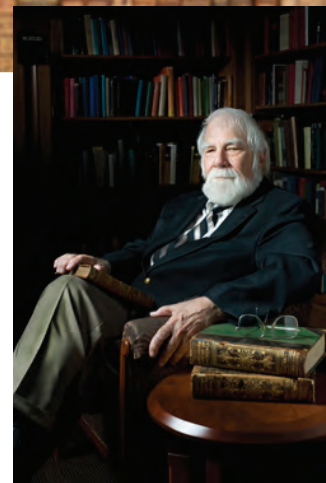
to 1968, he practiced with his uncle at the Abbeville firm of Deshotels & Maraist. He then accepted a position at Ole Miss Law School where he taught from 1969 to 1973.

Moving back to Louisiana in 1974, Frank embarked upon a distinguished 37-year teaching career at the LSU Paul M. Hebert Law Center. It is safe to say Frank taught thousands of Louisiana lawyers and scores of Louisiana judges (including our Chief Justice John L. Weimer), many of whom he mentored in his role as Executive Director of the Louisiana Judicial College.

A Louisiana legend, Frank L. Maraist passed away on Aug. 8, 2022, at the age of 90. At his memorial service a few weeks later, moderated by his friend and colleague, Prof. William R. Corbett, tributes poured in from his daughters, Catherine Maraist Van Hook and Laura Irlbeck, his son Tom Maraist, U.S. 5th Circuit Judge Rhessa H. Barksdale, Prof. Thomas C. Galligan and Chief Justice Weimer. On the back of the program was a collection of famous “Maraist-isms.” Herewith a sample:

- ▶ *That dog won’t hunt.*
- ▶ *Are you runnin’ with me?*
- ▶ *The problem with common sense is it isn’t very common.*
- ▶ *I can explain it to you, but I can’t understand it for you.*
- ▶ *If, toward the close of trial, it becomes painfully obvious that someone sitting at your table is going to jail, make sure it’s the client.*
- ▶ *On jury verdicts: “If you lose, poll. If you win, roll!”*
- ▶ *You think you’ll be driving around town in a Jaguar with that argument?*
- ▶ *Unfortunately, the Rules of Civil Procedure do not have an exception of dumbass.*
- ▶ *There are two parts to being smart: One is being smart, and the other is knowing there are people out there who are just as smart as you.*
- ▶ *You can always tell a person by how he treats the people who work for them, and not how they treat the boss.*

Finally, a Maraist-ism in memory of our late friend, whose wit, wisdom and irrepressible spirit lives on in our hearts: *Can we get an amen?*



Frank L. Maraist  
1931-2022



E. Phelps Gay is a special partner with the firm of Christovich & Kearney, LLP, and an arbitrator with the Patterson Resolution Group. He served as 2000-01 president of the Louisiana State Bar Association and as 2016-17 president of the Louisiana Association of Defense Counsel. (epgay@christovich.com; Ste. 2300, 601 Poydras St., New Orleans, LA 70130)

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